IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 307

Suit No 781 of 2020

Between

(1) Cradle Wealth Solutions Pte Ltd

… *Plaintiff*

And

(1) MTN Consultants & Building Management Pte Ltd
(2) Nazarisham bin Mohamed Isa

… *Defendants*

JUDGMENT

[Contract — Contractual terms — Entire agreement clause]
[Contract — Contractual terms — Parol evidence rule — Section 94(*c*) Evidence Act]
[Contract — Intention to create legal relations — Sham — Whether settlement agreement was sham agreement]

TABLE OF CONTENTS

Cradle Wealth Solutions Pte Ltd
v
MTN Consultants & Building Management Pte Ltd and another

[2023] SGHC 307

General Division of the High Court — Suit No 781 of 2020
Lee Seiu Kin J
4–6, 14 July, 15 September 2023

27 October 2023 Judgment reserved.

Lee Seiu Kin J:

1 This suit arises from a contractual dispute over a settlement agreement in writing by which the defendants undertook to pay a sum of US$4,000,000 to the claimant by 29 June 2020, with time being of the essence. The settlement agreement resulted from a dispute between the parties over the claimant's investments in the first defendant's business. The claimant's case is a straightforward enforcement of the settlement agreement. The defendants' primary case is that the settlement agreement in writing was a sham. The defendants also ran the alternative case that, notwithstanding the presence of an entire agreement clause in the settlement agreement, the parties had orally agreed *not* to enforce the settlement agreement until the successful "monetisation" of certain alexandrite gemstones which the second defendant had in his possession. As the alexandrite gemstones were never monetised, the defendants claimed that they were not obliged to make the payment under the

settlement agreement. The issues in this case requires a consideration of the proper interpretation of s 94(*c*) of the Evidence Act (Cap 97, 1997 Rev Ed) (the "EA"). Hitherto, there has not been much judicial consideration on this exception to the parol evidence rule which pertains to evidence to prove an oral condition precedent, and to the effect of an entire agreement clause on the same.

Facts

2 The claimant in this action ("Suit 781") is Cradle Wealth Solutions Pte Ltd ("Cradle Wealth"), a Singapore-incorporated company in the business of providing management consultancy services. The sole director of Cradle Wealth is Mr Sathish s/o Rames ("Sathish"), who is also a shareholder in the company.

3 The first defendant is MTN Consultants & Building Management Pte Ltd ("MTN"), a Singapore-incorporated company in the business of providing management consultancy services. The second defendant is Mr Nazarisham bin Mohamed Isa ("Nazarisham"), who is the sole director and shareholder of MTN.[1] I refer to MTN and Nazarisham collectively as the "Defendants".

Background to the dispute

4 Between 2017 and 2018, Cradle Wealth purportedly made investments into MTN, hoping to obtain a return on investment through MTN's business.[2] According to Cradle Wealth, the investments were made through a series of private placement agreements dated between 15 June 2017 to 11 May 2018, and

---

1 AEIC of Sathish s/o Rames dated 17 May 2023 at Tab-2, pp 54–55 (exhibiting the ACRA business profile of MTN dated 15 May 2023); Agreed Bundle of Documents dated 21 June 2023 ("AB") at 42–46.

2 AEIC of Sathish s/o Rames dated 17 May 2023 at paras 10–11.

throughout 2019, the defendants paid Cradle Wealth its returns on these investments.

5 On 24 June 2019, Cradle Wealth sued on the private placement agreements and commenced HC/S 612/2019 ("Suit 612") against MTN in the High Court of the Republic of Singapore for the sum of S$8,500,000. According to Cradle Wealth, this sum represented the outstanding amounts that MTN was obliged to pay under the terms of the private placement agreements.[3] However, the writ was never served on MTN and Suit 612 was quickly withdrawn on 29 August 2019.

6 Cradle Wealth then commenced HC/S 940/2019 ("Suit 940") on 19 September 2019 in the High Court of the Republic of Singapore for the sum of $7,606,000 (the correct figure, which Sathish clarified at trial for the present proceedings, should have been S$7,660,000) jointly and severally against the following parties:[4]

(a) The first defendant and second defendant in Suit 940 were MTN and Nazarisham respectively.

(b) The third defendant in Suit 940 was Mr Abdul Razeez Bin Rasit ("Razeez"), an employee of MTN.

(c) The fourth defendant in Suit 940 was Mr Mohammed Ishak s/o Alamatin Sahib ("Ishak"), who was the Chief Investment Officer of MTN at the material time.

---

3 AB at 143–150.

4 AB at 152.

In Suit 940, Cradle Wealth's claim against MTN was founded on breach of contract, being the sums purportedly due and payable under the private placement agreements as at 30 July 2019. Meanwhile, its claim against all four defendants (*ie*, MTN, Nazarisham, Razeez and Ishak) was in fraudulent and/or negligent and/or innocent misrepresentation and conspiracy, with damages to be assessed.[5]

7 It is not disputed that Cradle Wealth had been facing legal pressure from its creditors (most of whom were also its investor-shareholders) at the time it commenced the above legal proceedings against MTN. At trial, Sathish explained that Cradle Wealth's business involved investing its investors' moneys in various projects in Singapore and overseas, and securing returns for them. Cradle Wealth's investors were given shares in Cradle Wealth and became shareholders, and Cradle Wealth had around 50 of such investor-shareholders. As part of the agreement between Cradle Wealth and these investor-shareholders, Cradle Wealth was also obliged to repay the investment moneys. Several legal claims and winding up actions had been commenced by Cradle Wealth's investor-shareholders against the company, including:

(a) HC/OS 803/2019 ("OS 803"): on 24 June 2019, one Mr Kumaran s/o Veerapandian ("Kumaran") commenced an application for the winding up of Cradle Wealth pursuant to s 254(1)(*e*) of the Companies Act (Cap 50, 2006 Rev Ed). The action was discontinued on 27 June 2019.[6]

---

5 AB at 177–181.

6 1st and 2nd Defendants' Bundle of Documents dated 30 June 2023 ("1DB") at 46.

(b) HC/CWU 147/2019: one day later, on 25 June 2019, Kumaran again filed another winding up application against Cradle Wealth. The action was discontinued on 29 November 2019.[7]

(c) DC/DC 1632/2019: on 31 May 2019, one Mr Vejaiyan s/o Gunasagran commenced legal proceedings against Cradle Wealth for the sum of S$165,000. The action was eventually stayed in favour of arbitration on 27 February 2020.[8]

Mediation on 28 February 2020

8 On 28 February 2020, before Suit 940 could proceed to trial, the parties in Suit 940 attended a mediation session. Cradle Wealth was represented by Sathish and another shareholder, Mr Sylvester Ong ("Sylvester"), together with a team of lawyers from Rajah & Tann Singapore LLP ("R&T"). Sylvester attended the mediation to represent the interests of Cradle Wealth's investor-shareholders.[9] Nazarisham, Razeez and Ishak were also present at the mediation as the defendants in Suit 940 and/or as representatives of MTN, together with their lawyers from Carson Law Chambers and East Asia Law Corporation. The lawyer from Carson Law Chambers was Mr Lim Tean.

9 It is common ground that nearly a full day of mediation took place and that by late afternoon no settlement was at hand. It was at this juncture that Sathish and Sylvester requested for a private discussion with Nazarisham, Razeez and Ishak which then took place at the ground floor café of the Supreme

---

7 1DB at 50.

8 1DB at 44.

9 AEIC of Sathish s/o Rames dated 17 May 2023 at para 18.

Court (the "Café"), without the lawyers and the mediator present. What the parties spoke about as well as the actual agreement reached in the course of this private discussion forms the crux of the present dispute.

10 I pause here to note that by the evidence given in the present proceedings, it appears that the Defendants do not dispute that MTN owed Cradle Wealth outstanding sums under the private placement agreements as claimed in Suit 940. What Nazarisham disputes is the *quantum* of the sum — according to him, by the time Suit 940 was commenced, the defendants had already paid Cradle Wealth a sum of approximately S$4,000,000. Nazarisham had purportedly also given Sathish one kilogram of emeralds then valued at US$750,000[10] to set off the sum owed by MTN to Cradle Wealth. Nazarisham's position is therefore that the actual sum owing in Suit 940 was between S$1,000,000 to S$2,000,000.

11 Be that as it may, following the private discussion at the Café, a settlement agreement in writing dated 28 February 2020 (the "Settlement Agreement") was entered into on the same day and duly signed by the parties to Suit 940, in the presence of their respective teams of lawyers. The Settlement Agreement was drafted by Cradle Wealth's lawyers and a copy extended to the defendants and their lawyers before signing. The Settlement Agreement provided, among other matters, that MTN and Nazarisham were jointly and severally obliged to pay a sum of US$4,000,000 ("Settlement Sum") to MTN by 29 June 2020. Clause 1 of the Settlement Agreement provides as follows:[11]

> 1. In full and final settlement of Suit 940, the Parties agree as follows:-

---

10 AEIC of Nazarisham bin Mohamed Isa dated 16 May 2023 at para 15.

11 AB at 6–7.

> (1) [MTN] and [Nazarisham] shall, jointly and severally, pay the sum of US$4,000,000 (the "**Settlement Sum**") to [Cradle Wealth] by 29 June 2020, with time being of the essence.
>
> (2) [MTN] and [Nazarisham] shall pay the Settlement Sum by way of cheque to **Rajah & Tann Singapore LLP** as solicitors for [Cradle Wealth].
>
> (3) In the event of any default on the part of [MTN] and [Nazarisham] in complying with the obligations under this Agreement, [Cradle Wealth] shall be at liberty to commence fresh proceedings in the High Court of the Republic of Singapore and to obtain judgment for the Settlement Sum on a default/summary basis against [MTN] and [Nazarisham] jointly and severally … [Cradle Wealth] shall not commence fresh proceedings against [Razeez] and [Ishak] in relation to the subject matter of Suit 940 and the Settlement Sum herein.
>
> (4) Within three (3) working days from the date of this Agreement, [Cradle Wealth] shall discontinue Suit 940 against each of the Defendants. The Parties further agree that there shall be no orders as to costs.
>
> (5) This Agreement is entered into by the Parties without admission of any liability by any Party whatsoever.
>
> [emphasis in original]

12 And cl 5 of the Settlement Agreement provides that the agreement contains the entire agreement between the parties:

> 5. This Agreement contains the entire agreement between the Parties with regard to the matters set forth herein. No representations, inducements, promises or agreements, oral or otherwise that are not embodied herein shall be of any force or effect.

13 A notice of discontinuance was duly filed on 2 March 2020 to wholly discontinue Suit 940 with no order as to costs.

14 As the Defendants had not made payment of the Settlement Sum by 29 June 2020, Cradle Wealth commenced the present Suit 781 on 24 August 2020.

The parties' cases

15 The nub of Cradle Wealth's case is simply that the Settlement Agreement constitutes the entire agreement between the parties and, in breach of the Settlement Agreement, MTN and Nazarisham have failed to pay the Settlement Sum. There was no agreement during the mediation or private discussion at the Café on the payment of US$4,000,000 being contingent on the successful monetisation of certain alexandrite gemstones which Nazarisham had in his possession (the "Alexandrite Gemstones"). Therefore, Cradle Wealth seeks the following orders:[12]

(a) US$4,000,000 to be paid forthwith;

(b) interest on the sum pursuant to the Civil Law Act (Cap 43, 1999 Rev Ed);

(c) costs; and

(d) any such other or further relief as the court deems fit or just.

16 On the other hand, MTN and Nazarisham contend that the Settlement Agreement was in fact a sham that was executed to allow Sathish and Sylvester to convince Cradle Wealth's investor-shareholders that they would get their moneys back, and that the parties had agreed that the Settlement Agreement would not be enforced. Further, they contend that the actual agreement reached

12 Statement of Claim dated 24 August 2020 ("SOC") at para 8.

between parties (the "Actual Agreement") during the private discussion at the Café was different from the Settlement Agreement. According to the Defendants, the terms of the Actual Agreement, which was made orally and not recorded in writing, were as follows:[13]

> (a) Sathish and Sylvester shall collaborate with Nazarisham to monetise the Alexandrite Gemstones.
>
> (b) Upon monetisation of the Alexandrite Gemstones, and *only* upon the same, Cradle Wealth shall be entitled to be paid the sum of US$4,000,000, which Cradle Wealth could use to pay its debts to its creditors.
>
> (c) Sathish and Sylvester shall earn commissions for the monetisation of the Alexandrite Gemstones, which could also be used to pay Cradle Wealth's debts over and above the sum of US$4,000,000.
>
> (d) Sathish and Sylvester shall help to bring in new investors for MTN's projects and shall also earn commissions from this, which could also be used to pay Cradle Wealth's debts.
>
> (e) Razeez and Ishak shall have no liability to make any payment to Cradle Wealth.
>
> (f) Cradle Wealth shall discontinue Suit 940 against all defendants to that matter.
>
> (g) Parties shall execute a settlement agreement which would state that MTN and Nazarisham would pay Cradle Wealth the sum of

13 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 2(c)–(e).

> US$4,000,000, so that Sathish and Sylvester could use this settlement agreement to "stave off" Cradle Wealth's creditors from taking action against Cradle Wealth, but this settlement agreement shall not be enforced until the Alexandrite Gemstones have been monetised.

17 The Defendants contend in the alternative, assuming the court finds that the Settlement Agreement was not a sham, that there was an oral agreement between the parties constituting a condition precedent to the attaching of any obligation under the Settlement Agreement. They say that the parties had agreed as a condition precedent that the Alexandrite Gemstones must be monetised before any payment would become due under the Settlement Agreement.[14]

18 Further and in the alternative, the Defendants contend that the parties had entered into a subsequent agreement, namely, a deed of mandate dated 14 March 2020 (the "Deed of Mandate"), which superseded the Settlement Agreement and rendered it null and void.[15] The Deed of Mandate was entered into between Nazarisham, Fides Assets Pte Ltd ("Fides Assets") and Sathish's mother, Mdm Ramai d/o Mottayan ("Mdm Ramai"). Sylvester is the director and majority shareholder of Fides Assets, which is a private family office.[16] Under the terms of the Deed of Mandate,[17] Fides Assets was authorised to offer, negotiate and execute any agreements in relation to the monetisation and/or pledging as collateral of the Alexandrite Gemstones. Fides Assets and Mdm Ramai were also entitled to commissions from the monetisation of the

---

14 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 5(c)(i).

15 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 5(c)(ii).

16 AEIC of Ong Zhi Hui Sylvester dated 22 May 2023 at para 21.

17 AB at 193–195.

Alexandrite Gemstones. At this juncture, I note that it is common ground between the parties that the arrangement as such allowed Sylvester and Cradle Wealth to *indirectly* earn commissions from the monetisation of the Alexandrite Gemstones. Whilst the arrangement with Sylvester (via Fides Assets) was clear, the arrangement with Cradle Wealth was explained by a document signed by Mdm Ramai on 14 March 2020 (which Sathish explained at trial had been wrongly dated 20 March 2020 on the face of the document).[18] In this document, Mdm Ramai agreed that all commissions she received under the Deed of Mandate would be "fully and wholly pledged to all the creditors of [Cradle Wealth]".[19]

19 Further and in the alternative, the Defendants contend that Cradle Wealth is estopped from relying on the Settlement Agreement. According to the Defendants, Sathish (as Cradle Wealth's sole director) and Sylvester (as the representative of Cradle Wealth's investor-shareholders) had by their express representations and/or promises made to the Defendants and by their conduct, permitted and induced the Defendants to believe that the Settlement Agreement would not be enforced pending the monetisation of the Alexandrite Gemstones, with the intention that the Defendants would rely on the same, and the Defendants had suffered detriment as a result, and it was inequitable in all the circumstances for Cradle Wealth to resile on its promise.[20]

20 In response to the Defendants' case, Cradle Wealth reiterates its position that the Settlement Agreement recorded all the terms of the agreement between

---

18 AB at 197.

19 AB at 197.

20 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 5(c)(iii).

the parties which were arrived at during the mediation and/or private discussion at the Café on 28 February 2020. Furthermore, Cradle Wealth was never a party to the Deed of Mandate and was not involved in assisting in the sale of the Alexandrite Gemstones. Instead, the Defendants worked with Sylvester to find a buyer for the Alexandrite Gemstones, with the Deed of Mandate indirectly allowing Sylvester and Cradle Wealth to earn commissions from any sale of the said Gemstones. In this regard, Cradle Wealth insists that Sathish was kept apprised of the discussions between Nazarisham and Sylvester but did not assist in the attempted monetisation of the Alexandrite Gemstones.[21]

Issues to be determined

21 The issues (and sub-issues) that arise for my determination are as follows:

(a) Whether the Settlement Agreement was a sham.

(b) Whether the parties orally agreed as a condition precedent to the Defendants' obligation under cl 1(1) of the Settlement Agreement that the Alexandrite Gemstones must be successfully monetised before any such payment would become due. This also requires my consideration of whether the Defendants can admit extrinsic evidence pursuant to s 94(*c*) of the EA to prove the condition precedent.

(c) Whether the Deed of Mandate superseded the Settlement Agreement and rendered it null and void.

---

[21] Plaintiff's Opening Statement dated 21 June 2023 at para 24.

(d) Whether Cradle Wealth is estopped from relying on the Settlement Agreement.

Issue 1: Whether the Settlement Agreement was a sham

Parties' submissions

22 To recapitulate, the Defendants contend that the Settlement Agreement was a sham that was executed to allow Sathish and Sylvester to convince Cradle Wealth's investor-shareholders that they would get their moneys back, and that the parties had in fact agreed that the Settlement Agreement would not be enforced. Further, they contend that the Actual Agreement between parties was different from the Settlement Agreement. The Actual Agreement had been made orally and was not recorded in writing at all (see [16] above). As part of the Defendants' case, they relied heavily on evidence of Sathish and Sylvester's subsequent conduct in working with Nazarisham to attempt to monetise the Alexandrite Gemstones. There would have been no need for Sathish and Sylvester to have actively done so, if the Settlement Agreement was intended to be legally binding and intended to constitute the entire agreement between the parties. Cradle Wealth could simply have waited until 29 June 2020 for the Defendants to make good on their obligation to pay the Settlement Sum under cl 1(1) of the Settlement Agreement.[22]

23 In response, Cradle Wealth maintains that the Settlement Agreement constitutes the entire agreement between the parties. Cradle Wealth denies that the Settlement Agreement was merely a sham that was executed to placate its investor-shareholders. After the execution of the Settlement Agreement, there

22 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 60.

were separate discussions between Sylvester and Nazarisham on the monetisation of the Alexandrite Gemstones.[23] From Cradle Wealth's perspective at that time, doing so would help Cradle Wealth to recover the moneys under the Settlement Agreement expeditiously, and there was also the possibility that Sylvester and Cradle Wealth could earn commissions and therefore profit from the monetisation of the Alexandrite Gemstones, in addition to recovering the Settlement Sum.

The Defendants' failure to plead the allegation of sham

24 Cradle Wealth submits that the allegation of sham had not been specifically pleaded by the Defendants. In the Defence dated 28 October 2020, the Defendants only pleaded (in relation to the status of the Settlement Agreement):

> 3. What occurred at the mediation which was in relation to [Suit 940] on 28 February 2020, was as follows: -
>
> …
>
> vi. At the private meeting, which was attended by Sathish, Sylvester, Razeez, Ishak and [Nazarisham], Sathish and Sylvester *pleaded* with [Nazarisham] *to conclude a "settlement" agreement so that they could stave off the creditors of [Cradle Wealth],* who had brought legal proceedings against [Cradle Wealth].
>
> vii. Sylvester and Sathish both represented to [Nazarisham] that [Suit 940] had been initiated to placate their [investor-]shareholders and as such a settlement agreement was needed at the mediation to appease and assure them.
>
> …
>
> ix. Sathish and Sylvester promised [Nazarisham] at the private meeting ***that any "settlement" agreement concluded that day would not be enforced until the***

[23] Plaintiff's Opening Statement dated 21 June 2023 at paras 11–12.

> ***Alexandrite gemstones, which [Nazarisham] owns, was monetized*** and could be used to settle the "settlement" sum agreed upon.
>
> …
>
> xiii. It was ***on the basis of*** the matters avered [*sic*] to in paragraphs 3 vi, ix, x, xi and xii herein ***that the Defendants agreed to the "settlement" agreement*** referred to in paragraph 6 of the SOC.
>
> [emphasis added]

In my view, the Defendants' *pleaded* case was, at its highest, that there was an oral agreement that the Settlement Agreement would not be enforced until the Alexandrite Gemstones were successfully monetised (*ie*, a condition precedent). This is distinct from now challenging the very *existence* of the said Settlement Agreement. At the most, the Defendants could perhaps point to the inverted commas in "settlement", in the context of paras 3(vi)–(vii) of the Defence in which it was pleaded that Sathish and Sylvester had begged Nazarisham to conclude the "settlement" agreement in order to stave off the creditors of Cradle Wealth.

25 It is trite that pleadings delineate the parameters of the case and shape the course of the trial. They inform parties of the case that they have to meet (*V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 ("*V Nithia*") at [36]). Equally important to the principle of fairness, pleadings also serve to uphold the rules of natural justice and prevent a trial by ambush (*Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 at [94]). The general rule is therefore that parties are bound by their pleadings and the court is precluded from deciding on a matter that the parties themselves have decided not to put into issue (*V Nithia* at [38]). Nonetheless, the court is not required to adopt an overly formalistic and inflexible rule-bound approach. The

overarching enquiry is one of irreparable prejudice, or, in other words, prejudice that cannot be compensated by costs (*V Nithia* at [40]). In *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] SGCA 21 ("*How Weng Fan*") the Court of Appeal reviewed the authorities in this regard and summarised the principles as follows (at [29]):

> (a) Where the material facts of each element of the legal claim *have been pleaded*, albeit in support of a different legal conclusion than that which is subsequently advanced, the court will be more inclined to allow the legal claim unless there is clear evidence that the defendant will be unduly prejudiced. It will generally be for the party resisting the reformulated claim to show such prejudice.
>
> (b) Where the material facts of each element of the legal claim *have not been pleaded*, the court will only allow the legal claim if the court is satisfied that there will be no prejudice occasioned as a result because both sides engaged with the issue at trial. It will generally be for the party advancing the unpleaded claim to show that there is no prejudice and this could be shown, for instance, by establishing that the issue was raised in evidence, it was clearly appreciated by the other party, and no reasonable objections were taken at the trial to such evidence being led and the point in question being put into issue.

26 I am satisfied that the Defence did at the very least disclose the material facts which would support a defence of sham and gave Cradle Wealth sufficient notice of the case it had to meet, specifically:

(a) That the Defendants alleged that the Settlement Agreement was intended to "stave off" Cradle Wealth's creditors and that such an agreement was needed at the mediation "to appease and assure them".[24]

(b) That the Defendants alleged that the parties had intended that the Settlement Agreement would not be enforced until certain conditions were satisfied (namely, the monetisation of the Alexandrite Gemstones).[25]

Therefore, once the material facts have been pleaded, the pleader can develop the legal consequences of those facts in submissions (*Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd (formerly known as CIMB Securities (Singapore) Pte Ltd)* [2022] SGHC 45 at [64]; *How Weng Fan* at [25]).

27 In fact, the Defendants' position in relation to sham was not entirely clear even in closing submissions, with the Defendants at times appearing to conflate their case premised on sham with their *alternative* case premised on a condition precedent. For instance, at para 59(iii) of the Defendants' Closing Submissions dated 14 July 2023, in relation to the submission on sham, the Defendants contended that Nazarisham "highlighted the vast difference between the valuation of the [Alexandrite Gemstones] and the sum that had to be paid i.e. USD 4m" and this "shows clearly that parties had agreed that the USD 4m payment to [Cradle Wealth] would only be made upon successful monetization of the [Alexandrite Gemstones]".[26] Again, at para 80(ix) of the

---

24 Defence at para 3(vi)–(vii).

25 Defence at para 3(ix).

26 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 59(iii).

same, in relation to examining whether the Settlement Agreement "was intended to create a legal relationship", the Defendants contended that "[i]t was under these circumstances that Nazarisham agreed to the terms of the Actual Agreement including the execution of the Settlement Agreement … which Sathish and [Sylvester] agreed would not be enforced until the [Alexandrite Gemstones were monetised".[27]

28 The way the Defendants chose to run their case on sham suggests to me that there is significant factual overlap between their case premised on sham and their *alternative* case premised on condition precedent. At its core, the Defendants' case is that the Settlement Agreement was a sham in the sense that it did not *accurately* reflect the Actual Agreement, a term of which was that Cradle Wealth shall be entitled to be paid the Settlement Sum only upon successful monetisation of the Alexandrite Gemstones. Understood as such, this issue had been raised in evidence and put to Cradle Wealth's witnesses at trial, which further buttresses my conclusion that there was no irreparable prejudice caused to Cradle Wealth from the Defendants' failure to plead sham.

29 Accordingly, I turn to consider whether the facts disclose a sham.

The applicable law

30 The classic definition of a sham was provided by Diplock LJ (as he then was) in the English Court of Appeal decision of *Snook v London and West Riding Investments Ltd* [1967] 2 QB 786 at 802C–802E and followed by the Court of Appeal in *Toh Eng Tiah v Jiang Angelina and another appeal* [2021] 1 SLR 1176 ("*Toh Eng Tiah*") at [73] as follows:

---

27 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 80(ix).

> … I apprehend that, if [the term 'sham'] has any meaning in law, it means acts done or documents executed by the parties to the 'sham' which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create. But one thing, I think is clear in legal principle, morality and the authorities …, that for acts or documents to be a 'sham,' with whatever legal consequences follow from this, *all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating*. No unexpressed intentions of a 'shammer' affect the rights of a party whom he deceived. …
>
> [emphasis added]

Put another way, the essential element of a sham is that the parties did not intend to create the legal relations that the acts done or documents executed give the impression of creating (*Toh Eng Tiah* at [74]).

31 In *Toh Eng Tiah*, the Court of Appeal further affirmed (at [75]) the principle as summarised by GP Selvam JC (as he then was) in *TKM (Singapore) Pte Ltd v Export Credit Insurance Corp of Singapore Ltd* [1992] 2 SLR(R) 858 at [48] as follows:

> To ascertain whether documents represent the true relationship between parties the following test as laid down by Lindley LJ in the *Yorkshire Wagon Company* case … and Diplock LJ in the *Snook* case … may be formulated: Whether the documents *were intended to create legal relationships* and whether the parties did actually act according to the apparent purpose and tenor of the documents. [emphasis in original]

32 Following from the above, the crux of the sham concept is that there must be a common intention to mislead (*Chng Bee Kheng and another (executrixes and trustees of the estate of Fock Poh Kum, deceased) v Chng Eng Chye* [2013] 2 SLR 715 ("*Chng Bee Kheng*") at [52]). This question turns on the subjective intentions of the parties to the sham (*Chng Bee Kheng* at [54]). In the absence of a common intention to mislead, the court will simply construe an

agreement according to the objective intention of the parties (*Chng Bee Kheng* at [52], citing *Yorkshire Railway Wagon Company v Maclure* (1882) 21 Ch D 309 at 318).

33 Furthermore, in relation to the question of whether the Settlement Agreement was a sham, which goes to the *existence* of the contract, the parol evidence rule contained in s 93 and s 94 of the EA does not apply (*Toh Eng Tiah* at [77]) and a wider range of evidence can be considered in determining what the status of the Settlement Agreement was between the parties.

Do the facts disclose a sham?

34 For the following reasons, I find that the topic of the Alexandrite Gemstones was discussed, or at the very least mentioned, by the parties during the private discussion at the Café. However, while the parties anticipated working together to achieve a "comeback" for their respective businesses, such an expectation never extended to the monetisation of the Alexandrite Gemstones being the basis on which their agreement to work together was founded. I therefore reject that the Actual Agreement was reached orally at the Café as put forth by the Defendants. The parties did not agree that Cradle Wealth would be entitled to the Settlement Sum only upon monetisation of the Alexandrite Gemstones. I also find that the Defendants have not discharged the burden of proving that the Settlement Agreement was executed with the common intention that the document was not to create the legal rights and obligations which it gave the appearance of creating.

The topic of the Alexandrite Gemstones was raised during the private discussion at the Café on 28 February 2020

35 I am satisfied that the topic of the Alexandrite Gemstones was discussed, or at the very least mentioned, during the private discussion at the Café. Sylvester's evidence was that there had been "a mention" of the Alexandrite Gemstones, in the sense that Nazarisham had informed the mediator during the mediation that he had certain gemstones which could be monetised to pay Cradle Wealth.[28] When cross-examined, Sathish likewise agreed that Nazarisham had mentioned that there were some gemstones that he could sell. The mediation took place on Friday, 28 February 2020, and the Settlement Agreement was executed on the same day. Four days later, on 3 March 2020, Sylvester proposed in a WhatsApp chat group named "The Comeback" (which included Nazarisham, Sathish, Sylvester, Ishak and Razeez as its members) that he could "help" Nazarisham to monetise the Alexandrite Gemstones:[29]

> 3/3/20, 12:00 PM – Sylvester: Good afternoon Abang Naza, just want to check, are you open if I help to monetise the [Alexandrite Gemstones] for you as well via my private bankers ? I have some contacts that might be able to help.
>
> 3/3/20, 12:00 PM – Sylvester: If we can monetise, everyone wins
>
> 3/3/20, 12:06 PM – [Nazarisham]: Sure why not
>
> 3/3/20, 12:10 PM – Sylvester: Ok Abang, I will float this around and keep everyone here posted

When cross-examined as to this message, Sathish's explanation was that he had been on his way home after the mediation when Sylvester called him to propose that they work together with Nazarisham to monetise the Alexandrite

---

28 AEIC of Ong Zhi Hui Sylvester dated 22 May 2023 at para 16.

29 AB at 74.

Gemstones. According to Sathish, this would allow them to have oversight over the monetisation of the Alexandrite Gemstones. More likely than not, in my view, Nazarisham had informed them either during the mediation or the private discussion at the Café on 28 February 2020 that he was in possession of certain Alexandrite Gemstones, which he could try to monetise.

36 However, what is more critical is whether the parties ever agreed that Cradle Wealth would not be paid *unless* the Alexandrite Gemstones were monetised. I find that they did not, for the following reasons which should be considered cumulatively rather than individually.

Lack of contemporaneous documents reflecting the purported Actual Agreement

37 First, the language used in cl 1(1) of the Settlement Agreement *unequivocally* states that the Defendants were obliged to pay the Settlement Sum by a stipulated date, *ie*, 29 June 2020, "with time being of the essence".[30]

38 The burden of proving a sham lies on the party alleging that a document is a sham. There is a "very strong presumption" that parties intend to be bound by the provisions of an agreement that they enter into (*Chng Bee Kheng* at [51]; affirmed in *Toh Eng Tiah* at [80]). In *Pender Development Pte Ltd and another v Chesney Real Estate LLP and another and another suit* [2009] 3 SLR(R) 1063 it was observed (at [27]) that "[c]ommercial parties do not, in the normal course of events, prepare and execute detailed written contracts that are not what they purport to be". The same applies with greater force in the context of a properly drafted settlement agreement entered into by the parties who have the benefit of

[30] AB at 6.

the advice of legal counsel. One does not readily reach the conclusion that parties who were hitherto at loggerheads in a dispute would collude to create a sham document. Likewise, the language used in cl 1(1) of the Settlement Agreement, in particular the reference to "with time being of the essence", makes little sense if parties had truly intended for the Settlement Agreement to be a sham. In my view, such a clause was more indicative of parties' intention to *ensure* payment.

39 In this context, it is also jarring that the Defendants were wholly unable to produce *any* contemporaneous (even informal) record in writing showing the terms of the purported Actual Agreement. If indeed the parties ever agreed that Cradle Wealth would not be paid unless the Alexandrite Gemstones were monetised, it is reasonable to expect *some* form of contemporaneous record referring to the Actual Agreement as such, especially if it was intended to contradict or vary the written terms of the Settlement Agreement. It is relevant that the Settlement Agreement had been drawn up by Cradle Wealth's lawyers at the mediation, R&T, and a copy was extended to counsel for MTN and Nazarisham at the mediation, Mr Lim Tean, *before* the parties signed the Settlement Agreement.[31] It is undisputed that Mr Lim Tean had "strongly advised" Nazarisham against signing the Settlement Agreement, yet Nazarisham had assured Mr Lim Tean that he was confident that Sathish and Sylvester could be trusted and that the "the whole agreement was [that Cradle Wealth] [was] not going to enforce the agreement but would earn their own commissions from sale of [Nazarisham's] gemstones … from which

[31] AEIC of Nazarisham bin Mohamed Isa dated 16 May 2023 at para 25.

commissions they will then pay off their creditors".[32] Despite Nazarisham's explanation as such, Mr Lim Tean described that he "still felt very uncomfortable with the so called 'settlement agreement'" and when R&T were drawing up the Settlement Agreement he proposed to insert wording to make it clear that there was going to be a partnership between Nazarisham, Sathish and Sylvester *and* that the Settlement Agreement would not be executed by Cradle Wealth.[33] However, according to Mr Lim Tean, this was when Sathish and Sylvester stepped in and told him that for the purpose of pacifying Cradle Wealth's investor-shareholders, they could not have such wording in the Settlement Agreement.[34]

40 Even if this was the case, however, it could hardly explain why the Defendants were unable to produce any contemporaneous record (not even an informal note) which reflected the terms of the purported Actual Agreement as such. Such contemporaneous document could have been recorded on the side and would not need to have been shown to Cradle Wealth's investor-shareholders, which would have protected the Defendants' interest without compromising the alleged purpose of the Settlement Agreement in staving off Cradle Wealth's creditors. Furthermore, Mr Lim Tean did not seek the removal of the entire agreement clause in the Settlement Agreement (*ie*, cl 5). As legal counsel, he would surely have appreciated the significance of the clause in light of Nazarisham's assurances to him that there was a "wider" Actual Agreement between the parties. Again, the removal of this clause would not compromise the alleged purpose of staving off the creditors of Cradle Wealth.

---

32 AEIC of Nazarisham bin Mohamed Isa dated 16 May 2023 at para 25; AEIC of Lim Tean dated 17 May 2023 at para 12.

33 AEIC of Lim Tean dated 17 May 2023 at para 15.

34 AEIC of Lim Tean dated 17 May 2023 at para 16.

Legal pressure exerted on Cradle Wealth by its investor-shareholders

41 The Defendants point to the winding up proceedings and other legal proceedings that had been brought by Cradle Wealth's creditors, most of whom were also its shareholders (see [7] above). They alleged that Cradle Wealth had "twice commenced baseless law suits", *ie*, Suit 612 commenced on 24 June 2019 and Suit 940 commenced on 19 September 2019, against MTN *et al* in order to convince its creditors that Cradle Wealth was taking steps to recover millions of dollars from MTN.[35] The Defendants further submit that Suit 940 itself was a "bogus" claim as the claim in breach of contract was significantly inflated and the claims in fraudulent misrepresentation and conspiracy were brought without a *prima facie* factual basis.[36] In this context, the Defendants submit that Cradle Wealth needed the Settlement Agreement to "stave off" its creditors and that the Settlement Agreement was *therefore* a sham.[37]

42 I am unable to accept the Defendants' characterisation of the matter. First, it is a far stretch to conclude that Suit 612 was a "bogus" claim and "baseless" simply on the evidence relied upon by the Defendants, namely, that Suit 612 had been commenced on the same day that OS 803 was commenced against Cradle Wealth and that Suit 612 had been quickly discontinued by 29 August 2019[38] At trial, Sathish satisfactorily explained that Suit 612 was withdrawn before the writ had been served on the defendants in that Suit, owing

---

35 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 101.

36 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at paras 101(vii), 101(viii).

37 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 98.

38 1DB at 48.

to various inaccuracies in the statement of claim and the computation of the total sum claimed. He attributed these inaccuracies to Cradle Wealth's former solicitors. Cradle Wealth subsequently hired their present solicitors to commence Suit 940.

43 Second, the Defendants' own conduct also gave me reason to doubt their assertion that the claim in breach of contract in Suit 940 for the sum of $7,660,000 was "significantly inflated". It may be recalled that Nazarisham's position is that the actual sum owing in Suit 940 was between $1,000,000 to $2,000,000 (see [10] above). Yet it cannot be disputed that the Defendants did in fact execute the Settlement Agreement by which they were prepared to undertake, at least on paper, liability to repay a sum of US$4,000,000 by 29 June 2020. Even by the Defendants' own case that the Settlement Agreement was merely a sham contract, they were unable to provide a satisfactory explanation as to why they would be willing to undertake liability to repay a sum far in excess of the S$1,000,000 to S$2,000,000 that MTN purportedly owed. It is worth reiterating that the Defendants' case in respect of sham is that there was an Actual Agreement by which parties agreed that the US$4,000,000 payment would be made to Cradle Wealth, except that this would be done only upon successful monetisation of the Alexandrite Gemstones.

44 Third, the fact that Cradle Wealth faced legal pressure from its investor-shareholders is neither here nor there. The Defendants strenuously contend that Cradle Wealth needed the Settlement Agreement to "stave off" its creditors and that the Settlement Agreement was *therefore* a sham.[39] In my judgement, however, these events would have been equally consistent with Sathish's

---

39 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 98.

explanation that the Settlement Agreement was executed precisely because Cradle Wealth faced legal pressure by its investor-shareholders, and therefore the parties fully intended for the Settlement Agreement to be a legally binding instrument. According to Sathish, Cradle Wealth's investor-shareholders had set aside the necessary funds to pursue Suit 940 and it was in Cradle Wealth and the investor-shareholders' best interests to resolve Suit 940 by way of a settlement instead of going through a lengthy and costly trial.[40] This much was conveyed by Sathish to Nazarisham during the private discussion at the Café, and Nazarisham was also informed that Cradle Wealth would be prepared to continue with Suit 940 if a settlement could not be reached.[41] In this context, I am *unable* to agree with the inference sought by the Defendants that the Settlement Agreement was drawn up solely to "stave off" Cradle Wealth's investor-shareholders and was therefore a sham.

45 In my judgement, the fact of legal pressure exerted by Cradle Wealth's investor-shareholders being equivocal, it is more useful to look at whether the totality of the evidence indicates that the parties had a common intention for the Settlement Agreement to be a sham.

Parties' WhatsApp communications and subsequent conduct

(1) Goodwill engendered between the parties by the amicable resolution of Suit 940

46 I find that there was considerable goodwill engendered between the parties immediately after the private discussion at the Café. This was a key feature that characterised the parties' conduct immediately after the Settlement

---

40 AEIC of Sathish s/o Rames dated 17 May 2023 at para 19.

41 AEIC of Sathish s/o Rames dated 17 May 2023 at para 21.

Agreement was entered into and also explained the parties' willingness to collaborate in the subsequent days and months, in terms of taking steps to monetise the Alexandrite Gemstones (and later, as described below, certain emerald stones that Nazarisham had in his possession).

47 The Defendants' counsel in Suit 940, Mr Lim Tean, gave evidence that there was "a spirit of conviviality and brotherly love" among Sathish, Sylvester, Nazarisham, Razeez and Ishak after the private discussion at the Café.[42] When Mr Lim Tean asked Nazarisham why he had agreed to execute the Settlement Agreement, Nazarisham informed him that "Sathish and Sylvester had promised that they would not execute on the settlement agreement" and that Nazarisham was "confident" that Sathish and Sylvester would live up to their promises and work in tandem with him to monetise the Alexandrite Gemstones.[43]

48 The goodwill between parties was also borne out by the contemporaneous evidence at hand. Immediately after the mediation ended at around 7pm on 28 February 2020, Sathish sent the following message into a WhatsApp chat group titled "Cradle Venture" (in which Nazarisham was already a participant):[44]

> 2/28/20, 9:40 PM – [Sathish]: Hi bros
>
> 2/28/20, 9.40 PM – [Sathish]: Monday where and what time shall we meet
>
> 2/28/20, 9.40 PM – [Sathish]: ?
>
> 2/28/20, 9.41 PM – [Nazarisham]: Let's meet in my office first

---

42 AEIC of Lim Tean dated 17 May 2023 at para 14.

43 AEIC of Lim Tean dated 17 May 2023 at paras 12 and 13.

44 AB at 74.

> 2/28/20, 9.41 PM – [Nazarisham]: Then from there we go to the new office
>
> 2/28/20, 9.41 PM – [Nazarisham]: Around 2pm
>
> 2/28/20, 9.42 PM – [Sathish]: Ok sure abang, can

I accept the Defendants' submission that this message suggested that the parties had *already agreed* to meet on Monday, and Sathish was simply trying to fix a time and place. Shortly thereafter, Razeez and Sylvester were added into the same WhatsApp chat group, and the name of the chat group was changed from "Cradle Venture" to "The Comeback". The parties were optimistic that they would "all keep working as one" to "repay the faith and trust of [their] investors".[45]

49 I therefore find that there was considerable goodwill engendered between the parties by the amicable resolution of Suit 940. Parties referred to each other, at least on the face of their WhatsApp correspondence, as "bro" and "brothers". Nazarisham was respectfully referred to as "abang", which he testified means "elder brother" in Malay. Such goodwill is relevant as it formed the background context to the parties' subsequent conduct in collaborating to monetise the Alexandrite Gemstones, to which I turn to discuss.

(2) Parties' subsequent conduct in attempting to monetise the Alexandrite Gemstones

50 There are two aspects of the parties' subsequent conduct which call for elaboration and, at first glance, both aspects would appear to support the Defendants' case. I first set out the two aspects in full, before dealing with the parties' submissions and my consideration on the same.

---

[45] AB at 74.

51 The first aspect is that after the Settlement Agreement had been entered into, Sathish and Sylvester actively worked with Nazarisham to attempt to monetise the Alexandrite Gemstones. In this regard, I find that Sylvester took a more active role in attempting to monetise the gemstones, as compared to Sathish. On Sylvester's part, this continued to well after 29 June 2020, until at least 17 August 2020.

52 As set out at [35] above, on 3 March 2020, Sylvester proposed via the WhatsApp group "The Comeback" that he could "help" Nazarisham to monetise the Alexandrite Gemstones via Sylvester's business contacts. By 5 March 2020, Sylvester updated the group that his private banker could "move something for us" if Nazarisham could provide the banker with certain documents relating to the Alexandrite Gemstones.[46] Shortly thereafter, on 13 March 2020, Sathish and Sylvester made a visit to Vault@268, where the Alexandrite Gemstones were kept, to view the gemstones.[47] Again, it is not disputed that Sathish and Sylvester both met Nazarisham at Golden Landmark building on 3 April 2020 to view the Alexandrite Gemstones.[48] At this meeting, Sathish assisted Sylvester in taking a video of five bags of the Alexandrite Gemstones along with a report that had been generated by the "Gemological Identification Research Laboratory", for the purposes of circulation to potential buyers of the Alexandrite Gemstones.[49]

---

46 AB at 75.

47 AEIC of Sathish s/o Rames dated 17 May 2023 at para 33; AEIC of Ong Zhi Hui Sylvester dated 22 May 2023 at para 20.

48 AEIC of Sathish s/o Rames dated 17 May 2023 at para 41; AEIC of Ong Zhi Hui Sylvester dated 22 May 2023 at para 28.

49 1DB at 12–14; AB at 83.

53 Sathish claimed, in his affidavit of evidence-in-chief, that he did not participate in discussions on the sale of the Alexandrite Gemstones and simply received updates on the progress of the sale or valuation of the Alexandrite Gemstones from the other parties.[50] However, this is not entirely accurate. Under cross-examination, he confirmed that his aunt, one Ms Kunavathi Chinniah, had connections with Sri Lankan gem dealers and that she had introduced him to these connections. In the telephone conversation between Sathish, Sylvester and Nazarisham on 27 June 2020, Sylvester also alluded to a "group of Sri Lankan buyers" who had been "introduced by [Sathish]" and that Sathish had "passed the communication to [Sylvester]".[51] This suggests that Sathish had played some part in the attempts to monetise the Alexandrite Gemstones as well, at least by referring certain contacts to Sylvester. I therefore do not accept that Sathish's conduct could be characterised as merely overseeing Sylvester and/or Nazarisham's efforts to monetise the Alexandrite Gemstones.

54 Nonetheless, I find that Sylvester played a more active role in the attempts to monetise the Alexandrite Gemstones as compared to Sathish. In Sylvester's affidavit of evidence-in-chief, he deposed that he had "liaised with [Nazarisham] on the progress of the sales of the [Alexandrite Gemstones]" and would also arrange with Nazarisham for potential buyers to view the Alexandrite Gemstones.[52] For instance, on 18 April 2020 and again on 22 June 2020, Sylvester arranged to view and collect samples of the Alexandrite Gemstones from MTN's office in order to present them to potential buyers for

---

50 AEIC of Sathish s/o Rames dated 17 May 2023 at paras 33–34.

51 AB at 115.

52 AEIC of Ong Zhi Hui Sylvester dated 22 May 2023 at para 29.

inspection.[53] The WhatsApp correspondence also showed that Sylvester actively and consistently liaised with Nazarisham for the sale of the Alexandrite Gemstones to potential buyers.[54] For instance, by 13 April 2020, Sylvester was able to update Nazarisham that he had "[three] leads on hand now", *ie* three potential buyers who were interested in the Alexandrite Gemstones.[55]

55 The second aspect is that Sylvester and Nazarisham continued to work on monetising the Alexandrite Gemstones well *after* 29 June 2020 (*ie*, the deadline for payment of the Settlement Sum under cl 1(1) of the Settlement Agreement), with no immediate demand for payment of the Settlement Sum being made by Cradle Wealth during this period. Even as late as 17 August 2020, Sylvester displayed efforts toward monetising the Alexandrite Gemstones and asked Nazarisham whether he should "contact the Well Vintage Ventures independently to explore with the [Alexandrite Gemstones]".[56] It is less clear whether Sathish continued, during this period, to work on monetising the Alexandrite Gemstones—he explained in cross-examination that he had by this time instructed his lawyers to commence Suit 781 and also limited his participation in the WhatsApp group titled "The Comeback" as he was feeling frustrated.[57]

---

53 AEIC of Ong Zhi Hui Sylvester dated 22 May 2023 at paras 30–33; AEIC of Nazarisham bin Mohamed Isa dated 16 May 2023 at para 33.

54 AB at 78–102.

55 AB at 86.

56 AB at 102.

57 AB at 126–127.

56 Nonetheless, it is also clear from the telephone conversation between Sathish, Sylvester and Nazarisham on 27 June 2020[58] (*ie*, two days before the Settlement Sum was due under the Settlement Agreement) that *none* of the parties made express reference to the imminent deadline of 29 June 2020. On the contrary, during the telephone call, Sylvester and Nazarisham continued to liaise on arrangements for a group of potential Sri Lankan buyers who were interested in the Alexandrite Gemstones.[59]

57 At first glance, these two aspects of the parties' subsequent conduct would appear to support the Defendants' case. In this regard, the Defendants submit that, right after the mediation, Sathish and Sylvester had taken steps to immediately start working together with Nazarisham to monetise the Alexandrite Gemstones and bring in new investors for MTN's projects.[60] They further submit that the WhatsApp correspondence and the parties' subsequent conduct (at [51]–[56] above) shows that the parties had agreed *during* the mediation that they would work together to monetise the Alexandrite Gemstones.[61] If the parties had fully intended for the Settlement Agreement to be legally binding right from the start, then there would have been no need for Sylvester and Sathish to have worked with Nazarisham to attempt to monetise the Alexandrite Gemstones.[62]

58 However, I accept the explanation put forth by Sathish and Sylvester that they were willing to work with Nazarisham to monetise the Alexandrite

---

58 AB at 115–124.

59 AB at 117; 1DB 20.

60 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at paras 17–32.

61 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 32.

62 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 60.

Gemstones as doing so would indirectly help Cradle Wealth to recover the moneys under the Settlement Agreement expeditiously.[63] There was also the possibility that the parties could indirectly earn commissions from the sale of the Alexandrite Gemstones (see the arrangement as set out at [18] above), in addition to recovering the Settlement Sum. To my mind, it is eminently reasonable that Sathish and Sylvester wanted to ensure that the Defendants would make good on the Settlement Sum and therefore took steps to have more oversight over this process than if they had merely waited until 29 June 2020 with only the option of restarting litigation again (*ie*, by suing on the Settlement Agreement) if the Defendants failed to pay. Furthermore, it must be borne in mind that a distinguishing feature of the present case was the goodwill that had been generated by the amicable resolution of Suit 940 (see [46]–[49] above). This goodwill characterised the parties' subsequent conduct after the mediation and offered a conceivable explanation for why Sathish and Sylvester were willing to work with the Defendants on the monetisation of the Alexandrite Gemstones, despite the parties having previously been at dispute in Suit 940.

59 I therefore do not accept that the parties' subsequent conduct of working to monetise the Alexandrite Gemstones is indicative of the existence of the term of the alleged Actual Agreement as pleaded by the Defendants (namely that the parties had agreed that Cradle Wealth would *only* be entitled to be paid the sum of US$4,000,000 upon monetisation of the Alexandrite Gemstones). My conclusion in this regard is buttressed by Nazarisham's own conduct that suggested that he was cognisant of the looming deadline of 29 June 2020. During the same telephone conversation with Sathish and Sylvester on

---

63 AEIC of Sathish s/o Rames dated 17 May 2023 at paras 30 and 33; AEIC of Ong Zhi Hui Sylvester dated 22 May 2023 at para 15.

27 June 2020 (see [56] above), Nazarisham also asked whether Sylvester's potential buyers would be interested in buying several *other* gemstones that Nazarisham had in his possession, namely emerald stones:[64]

> Nazarisham: Ok eh the emerald they want or not?
>
> [Sathish]: Sorry?
>
> Nazarisham: Emeralds they want or not? We still got 3kg you know?

After Sathish and Sylvester indicated their willingness to explore the monetisation of these emeralds, Nazarisham stated that the emeralds "won't get much money", but that this situation was "still ok" as it was still "something".[65] The conversation which continued also made clear that this was the *first time* that Nazarisham had mentioned to Sathish and Sylvester that he had these emeralds which the parties could also attempt to monetise in addition to the Alexandrite Gemstones:[66]

> Sylvester: … Then after that I will check with my side everything because my side here, the funders they did mention. *That's why I thought you didn't have ruby or sapphire but now you mentioned you got emerald, ok good. Let's try also. Just whack.*
>
> [emphasis added]

60 More likely than not, I find that Nazarisham was by this time (*ie*, 27 June 2020) proposing other ways by which the Defendants could find the means to pay the sum owed to Cradle Wealth under the Settlement Agreement. This is evident from the context in which Nazarisham brought up the

---

64 AB at 121.

65 AB at 121.

66 AB at 121

monetisation of the emeralds. *Immediately* after Nazarisham raised this possibility of monetising the emeralds, Sathish replied that the "priority" was "to pay the shareholders first". Nazarisham agreed in response and his reply also suggested that he was more than cognisant of the Defendants' obligation to pay the sum of US$4,000,000 that was owed under the Settlement Agreement:

> [Sathish]: ***Ya I mean whatever we can get to pay the shareholders first, that's the priority.***
>
> Nazarisham: ***Ya correct. Correct.***
>
> Sylvester: Understand bro.
>
> Nazarisham: You see, end of the day [Sathish], if the shareholders [*sic*] we're trying our very best here right, the money is not lost. ***We have the assets right but if they still want to now now now, we mati la, correct or not. We are trying our best you see.***
>
> [Sathish]: *… for me the main goal over here is have to pay back the shareholders* because a lot of them their situation is really very bad. So I mean it's our duty.
>
> Nazarisham: You see, what is our valuation ***and what we need to pay is $4 million correct?*** You see.
>
> …
>
> If let's say pap [*sic*] close $10 million, $4 million pap [*sic*] clear already you see.
>
> …
>
> Correct or not. You see not say we don't want to pay you know. *We have the money we definitely will pay …*
>
> [Sathish]: … sometimes it can be a very frustrating process because my side *the reason why I want this to be done fast like I said it's for the shareholders …*
>
> Nazarisham: No problem. I understand that fully.
>
> [emphasis added]

I agree with Cradle Wealth's submission that Nazarisham's conduct as such (*ie*, proposing on 27 June 2020 to monetise the emerald stones as well) cut across the alleged terms of the Actual Agreement as pleaded by the Defendants (see [16(b)] above), in particular its effect that the Defendants were not obliged to pay Cradle Wealth the sum of US$4,000,000 *if* the Alexandrite Gemstones could not be monetised. From the parties' exchange, it is plain that monetising the Alexandrite Gemstones was a means to an end and that the "main goal" was "to pay the shareholders first" which was more important than monetising the Alexandrite Gemstones *per se*. The parties were therefore open to other alternative means, such as the possibility of monetising the other emerald stones that Nazarisham had in his possession.

61 In a similar vein, Sylvester's continued attempts up until 17 August 2020 to monetise the Alexandrite Gemstones (see [55] above) cannot be viewed in isolation. At the same time, he was also pushing for monetisation of the emerald stones in Nazarisham's possession. For instance, on 16 August 2020, Sylvester asked Nazarisham on the WhatsApp chat group "Comeback Team" that "[Sathish] mentioned to me earlier that you have some emeralds report from Far East as well, can you provide me with some of those?" and stated that "[w]ith the emeralds report from Far East or Nanyang I will be able to push and clear the emeralds more quickly".[67] I find this to be consistent with the explanation (at [58] above) that the overarching motivation—or impetus—was to ensure that the Defendants would make good on the Settlement Sum, and thereby allow Cradle Wealth to recover the moneys under the Settlement Agreement expeditiously. On the other hand, Sathish explained that he had by this time limited his participation in the monetisation of the

67 AB at 127.

Alexandrite Gemstones and instructed his lawyers to commence Suit 781 (see [55] above).

62 For completeness, I address at this juncture the Defendants' submission, relying on the parties' exchange during the 27 June 2020 phone conversation, that the parties had agreed during the day of the mediation to work together to monetise Nazarisham's Alexandrite Gemstones in order for Cradle Wealth and MTN to both stage a "comeback" in their respective businesses.[68] The relevant exchange was ostensibly that Nazarisham had alluded and Sylvester had agreed, during the telephone conversation, that the parties had previously agreed to work "for our comeback":[69]

> Nazarisham: … Hopefully la this one is for our comeback you know. Cradle come back, so [MTN] come back you know. This is what we all agreed upon when we meet the last time round in the mediation you see right?
>
> Sylvester: Yes, bang.

63 I note that whilst Nazarisham referred to "*when we meet the last time round in the mediation*" in the conversation above, it was evident at trial that the parties used the phrase "the mediation" quite loosely, to refer to either or both (a) the mediation (in which the parties, their lawyers and the mediator were present) and/or (b) the private discussion at the Café. It therefore could not be ruled out that Nazarisham was referring to what parties had discussed at the private discussion at the Café.

---

68 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 32.

69 AB at 117; 1DB at 20.

64 The reference to a "comeback" is certainly a factor that could have swung either way, being alluded to in rather general and vague terms by the parties during the telephone conversation. In my view, looking at the exchange, the crucial question is again whether such agreement for a "comeback" extended to parties' *specific* contemplation that the Alexandrite Gemstones must be monetised before the Defendants would become obliged to pay the sum of US$4,000,000. But as I conclude at [70] below, on the totality of the evidence, it is more likely than not that the parties reached no such agreement during the private discussion.

The Deed of Mandate dated 14 March 2020 and the document signed by Mdm Ramai on 14 March 2020

65 In relation to the parties' subsequent conduct, the Defendants further argue that the Deed of Mandate dated 14 March 2020 as well as the document signed by Mdm Ramai on the same date (see [18] above) were both executed as part of the parties' carrying out of the purported Actual Agreement, in which the parties had agreed that Sathish and Sylvester would be entitled to earn commissions from the monetisation of the Alexandrite Gemstones (see the pleaded term at [16(c)] above). In turn, these commissions could be used to pay Cradle Wealth's debts, over and above the US$4,000,000 (*ie*, the Settlement Sum) which Cradle Wealth would become entitled to only upon monetisation of the Alexandrite Gemstones.[70]

66 I do not accept the Defendants' characterisation as such or indeed the Defendants' related contentions that these documents (a) "[acknowledged] that

---

[70] 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at paras 44, 48 and 50.

the receipt of the [US$4,000,000]owed by [the Defendants] required and was dependent on the sale of the Alexandrite [Gemstones], and that any delay in such monetization would mean that the payment from [the Defendants] of the [US$4,000,000] would be likewise delayed" or (b) "[revealed] that the Actual Agreement was that [the Defendants] were not obliged to pay [Cradle Wealth] the [US$4,000,000] until the Alexandrite [Gemstones] were monetized, and that the said payment would be made from the sums received upon such monetisation".[71] These are entirely speculative arguments and the Defendants were unable to provide cogent evidence to support the inferences they sought for the court to draw.

Nazarisham's reaction to Cradle Wealth commencing Suit 781 to enforce the Settlement Agreement

67 The Defendants state that Nazarisham had found out on or about 21 September 2020 that Cradle Wealth had commenced Suit 781, following service of the writ of summons on MTN on 18 September 2020. That same day, at around 1.04pm, Nazarisham posted images of the writ of summons and statement of claim in Suit 781 on the WhatsApp chat group titled "Comeback Team" (which included Sathish and Sylvester as its members) and expressed his shock and disappointment with the messages "Another shocker received", "Sigh", "Since it comes to this, let's just follow it through" and "I was just about to share some good news with [you] guys and this got to come".[72] At the same time, in his WhatsApp chat with Sylvester at around 1.33pm, Nazarisham asked

71 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 48.

72 1DB at 28.

Sylvester "But how to share like this bro?", "Win all must win together", "Not lose alone bro" and "If [you] understand where I am coming from".[73]

68 The Defendants submit[74] that these messages express Nazarisham's "shock and disappointment" upon learning of Suit 781, which is consistent with Nazarisham learning that Cradle Wealth had reneged on the purported Actual Agreement between the parties.

69 However, these "shocker" WhatsApp messages are in fact neutral. The messages are arguably consistent with Nazarisham's expectation that the parties could sell the Alexandrite Gemstones or other gemstones in his possession (*eg*, the emerald stones) to satisfy the sums owed without commencing litigation. This is plausible in the context that Sylvester had, as late as 2 September 2020, promised Nazarisham that he was "still working and pushing on other leads" and "[would] give updates immediately when I have them".[75] Furthermore, insofar as the Defendants submit that these messages expressed shock and disappointment, I would observe that Nazarisham's messages did not display any outward expressions of *betrayal* which would have been consistent with Cradle Wealth reneging on an agreement that the USD$4,000,000 was only payable upon the monetisation of the Alexandrite Gemstones. In fact, there was no apparent mention of the purported Actual Agreement at all. In totality, it was more likely than not that the Settlement Agreement was what the parties had intended and agreed upon, and that the payment of the Settlement Sum was not contingent upon the monetisation of the Alexandrite Gemstones.

---

73 AB at 102.

74 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 66.

75 AB at 102.

Conclusion on sham

70 In light of the aforesaid, I consider that whilst the evidence shows that the topic of Nazarisham's Alexandrite Gemstones was at the very least mentioned by the parties during the day of the mediation, and that the parties anticipated working together to achieve a "comeback" for their respective businesses, such an expectation *never* extended to *agreeing* that the Alexandrite Gemstones must be successfully monetised before Cradle Wealth would become entitled to be paid the sum of US$4,000,000. I therefore reject the Defendants' submission that there was an Actual Agreement reached orally during the private discussion at the Café in the terms as put forth by them, or indeed in any terms which differed from what was reduced to writing in the Settlement Agreement. In reaching this conclusion, I reiterate that the factors considered above at [37] to [69] were considered cumulatively rather than individually and I have no difficulty, on this basis, in concluding that the parties never agreed that Cradle Wealth would not be paid unless the Alexandrite Gemstones were successfully monetised.

71 It follows that the Defendants have not discharged the burden of proving that the Settlement Agreement was executed with the common intention that the document was not to create the legal rights and obligations which it gave the appearance of creating. The facts do not disclose that the Settlement Agreement was a sham.

Issue 2: Whether the parties orally agreed as a condition precedent to the Defendants' obligation under cl 1(1) of the Settlement Agreement that the Alexandrite Gemstones must be successfully monetised

Parties' submissions

72 The Defendants submit, in the alternative to sham, that there was an oral agreement between the parties constituting a condition precedent to the Settlement Agreement. According to the Defendants, the parties agreed during the private discussion at the Café that the Alexandrite Gemstones must be monetised before any payment would become due under the Settlement Agreement.[76] At trial, the Defendants sought to rely on s 94(*c*) of the EA to admit extrinsic evidence of the parties' discussions during the mediation and the subsequent conduct of the parties (including such conduct in working to attempt to monetise the Alexandrite Gemstones, and the Deed of Mandate executed on 14 March 2020). As the parties were ultimately unable to monetise the Alexandrite Gemstones, the Defendants contend that they are under no obligation to pay Cradle Wealth the Settlement Sum of US$4,000,000.[77]

73 In response, Cradle Wealth maintains that the Settlement Agreement constitutes the entirety of the agreement between the parties, pointing to the "entire agreement" clause (cl 5) and cl 7 which provides that "[n]o modification or variation of this Agreement shall be effective unless made in writing and signed by or on behalf of the Parties".[78] Furthermore, s 94(*c*) of the EA does not assist the Defendants as the proper interpretation of proviso (*c*) is confined to a

---

76 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at paras 5(c)(i) and 110.

77 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 111.

78 AB at 7-8; Plaintiff's Opening Statement dated 21 June 2023 at para 20.

situation where the condition precedent sought to be proven does not "contradic[t], var[y], ad[d] to, or subtract[t] from" the terms of the Settlement Agreement. The extrinsic evidence is therefore inadmissible for the purposes of proving the alleged condition precedent as pleaded by the Defendants. Notwithstanding Cradle Wealth's position on admissibility, it further submits that parties never agreed to the successful monetisation of the Alexandrite Gemstones constituting a condition precedent to the Settlement Agreement.

The parole evidence rule as statutorily embodied in s 94 of the EA

Whether the Settlement Agreement was intended to contain all the terms of the agreement

74 Section 93 of the EA provides that where the terms of the contract between the parties have been reduced by or by consent of the parties to the form of a document, proof of the contents or terms of the contract is simply the production of the document itself. No evidence extraneous to the document may therefore be relied upon as proof of the terms of the contract (*The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) ("*The Law of Contract in Singapore*") at para 06.026). Section 94 of the EA complements s 93 and is the statutory embodiment of the parol evidence rule (*Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*") at [71]). It provides, subject to certain provisos, that:

> **Exclusion of evidence of oral agreement**
>
> **94.** When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 93, *no evidence of any oral agreement or statement shall be admitted* as between the parties to any such instrument or their representatives in interest *for the purpose of*

> *contradicting, varying, adding to, or subtracting from its terms* subject to the following provisions:
>
> […]
>
> [emphasis added]

75 Nonetheless, it is well-recognised that the rule as statutorily embodied in s 94 of the EA only applies to exclude evidence beyond the four corners of the document *if* the contract was, in the first place, intended by the parties to contain all the terms of their agreement—thereby having no application, for instance, where parties intended for a contract to be partly written and partly oral (*Zurich Insurance* at [112]; *The Law of Contract in Singapore* at para 06.048). The parties' intentions are to be objectively ascertained and the court will therefore consider whether the document appears to be a "true record of the contract" to a party thereto taking a reasonable view of the same (*The Law of Contract in Singapore* at para 06.029, citing *Hutton v Watling* [1948] Ch 398 at 404 and E Peel, *Treitel on the Law of Contract* (Sweet & Maxwell, 13th Ed, 2011) at para 6-014). Additionally, the court may take cognizance of extrinsic evidence or the surrounding circumstances of the contract in order to ascertain whether the parties did in fact intend to embody their entire agreement in the contract (*Zurich Insurance* at [112]).

76 The main hurdle faced by the Defendants' contention that the Settlement Agreement was *not* intended to contain all the terms of the agreement between parties comes in the form of the entire agreement clause, *ie*, cl 5 of the Settlement Agreement (reproduced at [12] above). In this regard, the Defendants submit that cl 5 does not prohibit the court from finding that the oral condition precedent has full force and effect, citing *Lee Chee Wei v Tan Hor Peow Victor and others and another appeal* [2007] 3 SLR(R) 537 ("*Lee Chee*

Wei").[79] In seeking to clarify the principles relating to entire agreement clauses, the Court of Appeal concluded (at [36]) that this genre of clauses can "therefore be … construed as denuding a collateral warranty of legal effect … and/or by rendering inadmissible extrinsic evidence which reveals terms inconsistent with those in the written contract". As a general principle, the effect of an entire agreement clause "*is essentially a matter of contractual interpretation and will necessarily depend upon its precise wording and context*" [emphasis in original] (at [25]). What matters is the construction of the entire agreement clause. If appropriately worded, an entire agreement clause will be "acknowledged and upheld if it clearly purports to deprive any pre-contractual or collateral agreement of legal effect" (at [35]). The Defendants' reliance on the principles expounded in *Lee Chee Wei* therefore does not advance their case very far, unless the Defendants can sustain an interpretation of cl 5 of the Settlement Agreement that would allow recourse to an oral condition precedent.

77 The principles in *Lee Chee Wei* were applied in *Wen Wen Food Trading Pte Ltd v Food Republic Pte Ltd* [2019] SGHC 60 ("*Wen Wen Food Trading*"), which was an appeal against the decision of the Assistant Registrar to strike out the plaintiff's claim in its entirety on the ground that the claim was legally unsustainable and therefore "frivolous or vexatious". The plaintiff's claim was based in misrepresentation and wrongful repudiation of the food stall license agreement between the parties, alleging that the defendant had made a specific representation that the plaintiff would be able to operate in the defendant's food-court for a period of at least six years, despite the license agreement stating that the license period was two years. The High Court considered, in addition to the express wording of the license agreement as such, that the license agreement

[79] 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 112.

contained an entire agreement clause (cl 30.1) which clearly identified the written agreement as the only source of the parties' rights and obligations and prevented the plaintiff from contradicting the document with extrinsic evidence: *Wen Wen Food Trading* at [21]–[23]. On appeal, the plaintiff's appeal in CA/CA 16/2019 was dismissed by the Court of Appeal (with no written grounds of decision rendered). It is relevant for present purposes that the Court of Appeal noted that whilst the facts as pleaded might possibly have given rise to a claim based on an oral collateral contract provable under s 94(*b*) of the EA, such a claim would be precluded by the entire agreement clause in the license agreement which effectively deprived any pre-contractual or collateral agreement of legal effect. Whilst the principles in *Lee Chee Wei* have hitherto not been considered specifically in relation to the interaction between a claim (or defence) based on an oral condition precedent under s 94(*c*) of the EA and an entire agreement clause, I see no reason in principle why it should not likewise apply given that the guidance given in *Lee Chee Wei* was of general application (see *Lee Chee Wei* at [24]).

78 In the present case, the Defendants submit that what they considered to be the context and circumstances under which cl 5 was drafted in the Settlement Agreement should be taken into account in construing its effect:[80]

> (a) Clause 5 was introduced by Cradle Wealth's lawyers when they were drafting the Settlement Agreement and was not discussed by the parties during the private discussion at the Café.

---

80 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at paras 132–133.

(b) There was no discussion or negotiation between the parties or their lawyers on whether such an "entire agreement" clause should be included or how it should be worded.

(c) There was no discussion of the scope and effect of cl 5 of the Settlement Agreement.

(d) Clause 5 was introduced as a "common form boiler-plate provision" that was inserted into the Settlement Agreement just before the agreement was signed.

There was therefore no meeting of minds and the parties did not intend for cl 5 to prevent the Defendants from relying on the orally agreed condition precedent to the Settlement Agreement.[81]

79 I am unable to agree. For the following reasons, I find that the Defendants are unable to rebut the presumption expressed in *Zurich Insurance* at [40] and [132(b)] that a contract which is complete on its face was intended to contain all the terms of the parties' agreement. Moreover, the language of cl 5 clearly precludes a defence based on a separate oral agreement constituting a condition precedent under s 94(*c*) of the EA. The Defendants are unable to sustain an interpretation of cl 5 that would allow recourse to an oral condition precedent.

80 First, the Defendants bizarrely submit that their counsel, Mr Lim Tean, had not in fact reviewed the terms of the Settlement Agreement.[82] However, it

---

81 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 134.

82 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at paras 127–128.

cannot be disputed that Nazarisham had received the benefit of legal advice before signing the Settlement Agreement. This was exactly what Nazarisham had affirmed in his affidavit of evidence-in-chief:[83]

> 25 When the agreement was drawn up by the Plaintiff's lawyers ***and a copy extended to my lawyer Mr Lim Tean he looked at it and told me that I could not sign this because it was a one sided agreement.*** I explained to him that the whole agreement was as above where they were not going to enforce the agreement but would earn their own commissions … I told Mr Lim Tean that [I] could trust them and I had been treating all of them as an extended part of my family […]
>
> 26 ***Despite Mr Lim Tean's misgivings which he made it very loud to me, I executed the Settlement Agreement*** in the knowledge that the settlement agreement was far wider than what was agreed …
>
> [emphasis added in bold italics]

Mr Lim Tean also confirmed in his affidavit of evidence-in-chief and under cross-examination that he had reviewed the terms of the draft Settlement Agreement and advised Nazarisham not to sign the agreement. I make no observations on the *quality* of the legal advice rendered by Mr Lim Tean in reviewing the draft Settlement Agreement nor the evident lapses therein, for instance, as Mr Lim Tean himself admitted in hindsight under cross-examination, that he ought to have sought for the entire agreement clause to be removed.

81 Second, as to the Defendants' various contentions (at [78(a)–(d)] above) as well as Nazarisham's claim that he was never specifically advised on the precise scope and effect of cl 5,[84] none of these are sufficient to contradict the express words of cl 5. I would observe that the plain language of cl 5 itself is

---

83 AEIC of Nazarisham bin Mohamed Isa dated 16 May 2023 at paras 25–26.

84 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 130.

clear. Furthermore, Nazarisham himself admitted under cross-examination that he had read and *understood* cl 5 before signing the Settlement Agreement, although he claimed that he had gone on to sign the Settlement Agreement because of his belief that the agreement was a sham and that parties in fact agreed to the successful monetisation of the Alexandrite Gemstones constituting a condition precedent to the Defendants' obligation to pay.[85] Additionally, cl 7 provides that "[n]o modification or variation of this Agreement shall be effective unless made in writing and signed by or on behalf of the Parties". These are self-explanatory and plain words which would have been reasonably understood even by persons who may have no more than a rudimentary understanding of commercial contracts.

82 Moreover, I observe that what the Defendants are essentially seeking to do is to admit extrinsic evidence to aid in the construction of cl 5. This much is clear from the nature of the extrinsic evidence which the Defendants rely on (*ie*, the context and circumstances under which cl 5 was drafted in the Settlement Agreement), as well as the Defendants' reliance on *CIFG Special Assets Capital Ltd v Ong Puay Boon* [2018] 1 SLR 170 in support.[86] That case concerned the application of the legal principles in *Zurich Insurance* on the contextual approach to contractual interpretation under s 94(*f*) of the EA (the "*Zurich Insurance* principles") to the *true construction* of a general indemnity clause in the set of agreements between the parties. In the present case, the proposed interpretation of cl 5 by the Defendants is essentially that its effect should be nullified. In so doing, however, the Defendants have ignored the *Zurich Insurance* principles—critically, it is not permissible to use extrinsic evidence

85 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 129.

86 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at paras 118-122.

to advance a construction that is well *outside* the scope of the meaning that the actual words of the clause can reasonably bear, much less one that directly contradicts the express words of the clause (*Zurich Insurance* at [123] and [132(f)].

83 In my view, cl 5 is a clause that clearly purports to deprive any pre-contractual or collateral agreement of legal effect. Clause 5 states that the Settlement Agreement contains the parties' entire agreement "with regard to the matters set forth herein". It explicitly states that any "agreements, oral or otherwise" which are not contained in the Settlement Agreement shall be devoid of any force or effect. The alleged condition precedent as pleaded by the Defendants is therefore caught by cl 5, since it is related to the matters covered by the Settlement Agreement and was ostensibly reached by oral agreement. The Court of Appeal in *Wen Wen Food Trading* had found that any claim based on an oral collateral contract provable under s 94(*b*) of the EA would be precluded by the entire agreement clause in that case. I find in the present case that any claim based on a separate oral agreement constituting a condition precedent provable under s 94(*c*) of the EA is likewise precluded by the entire agreement clause (cl 5) in the Settlement Agreement. The Defendants are therefore precluded from asserting an oral condition precedent to the effect that the Alexandrite Gemstones must be monetised before any payment would become due under the Settlement Agreement.

Whether the Defendants can rely on s 94(c) of the EA

84 For completeness, I am also satisfied that a similar conclusion would have been reached even if I did not consider that cl 5 of the Settlement Agreement precludes recourse to an alleged oral condition precedent.

85 As alluded to above, the parties dispute the proper interpretation of the exception encapsulated in proviso (*c*) to s 94 of the EA which was sought to be relied upon by the Defendants. Cradle Wealth submits that proviso (*c*) is confined to a situation where the condition precedent sought to be proven does not "contradict[t], var[y], ad[d] to, or subtract[t] from" the terms of the Settlement Agreement. In other words, proviso (*c*) is *subject to* the restriction in the chapeau to s 94 as such. Notwithstanding that this interpretation of proviso (*c*) is not supported by any case law, Cradle Wealth submits that its interpretation is consistent with illustration (*b*) to s 94 of the EA which provides as follows:

> (*b*) *A* agrees absolutely in writing to pay *B* $1,000 on 1st March 1893. The fact that at the same time an oral agreement was made that the money should not be paid till 31st March cannot be proved.

(1) Rationale behind the parol evidence rule

86 In an illuminating passage from Sir James Fitzjames Stephen's *Digest*, the drafter of the EA observed (in relation to s 92 of the Indian Evidence Act of 1872 which is *in pari materia* with s 94 of the Singapore EA) (see, Sir James Fitzjames Stephen, *An Introduction to the Indian Evidence Act: The Principles of Judicial Evidence* (Thacker, Spink & Co, 2nd Impression, 1904) at pp 176–177):

> *One single principle* runs through all the propositions relating to documentary evidence. *It is that the very object for which writing is used is to perpetuate the memory of what is written down, and to furnish permanent proof of it.* In order that full effect may be given to this, two things are necessary, namely, […] and that if [the document] purports to be a final settlement of a previous negotiation, as in the case of a written contract, it shall be treated as final, and shall not be varied by word of mouth […] If the second rule were not observed people would never know when a question was settled, as they would be able to play fast and loose with their writings …

> [emphasis added]

He further affirmed:

> … By bearing these leading principles in mind the details and exceptions will become simple. Their practical importance is indeed as nothing in comparison to the importance of the rules which they qualify.

87 In a similar vein it was observed that the rationale for the parol evidence rule is "grounded on the objective theory of contract and (on a practical level) the attendant promotion of certainty as well as ensuring that only the best evidence possible is admitted" (see Andrew B L Phang & Goh Yihan, *Contract Law in Singapore* (Wolters Kluwer Law & Business, 2012) at para 993), cited by the Court of Appeal in *Toh Eng Tiah* at [3]).

88 Bearing these guiding principles in mind, I turn to the proper interpretation of proviso (*c*) to s 94.

(2) My consideration

89 In my judgement, the plain reading of proviso (*c*) to s 94 in context does not support Cradle Wealth's contended interpretation. The principal rule as set out in the chapeau to s 94 (*ie*, against admitting extrinsic evidence "for the purpose of contradicting, varying, adding to, or subtracting from" the terms of the written agreement) is *subject to* provisos (*a*) to (*f*). In other words, derogation from the principal rule in s 94 is permitted where the circumstances described in one or more of the six accompanying provisos are satisfied (see also, *Zurich Insurance* at [71]–[74]). The operation of proviso (*c*) is therefore not subject to the restriction that the evidence sought to be admitted of a condition precedent must not be "for the purpose of contradicting, varying, adding to, or subtracting from" the terms of the written agreement.

90 Furthermore, adopting Cradle Wealth's contended interpretation would otherwise render the exception in proviso (*c*) otiose—or indeed, any of the other exceptions in provisos (*a*) to (*e*) (putting aside from consideration, proviso (*f*) which is of a different nature, being not really an exception to s 94 but a fundamental rule of interpretation: *Zurich Insurance* at [72]). Simply put, I am unable to see how *any* extrinsic evidence sought to be adduced by a party under provisos (*a*) to (*e*) would *not* have one of the four effects of contradicting, varying, adding to or subtracting from the terms of a written agreement. In this regard, I would keep in mind the rule of construction that Parliament is presumed not to have intended an unworkable or impracticable result, so an interpretation that leads to such a result would not be regarded as a possible one (*Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [38], affirming *Hong Leong Bank Bhd v Soh Seow Poh* [2009] 4 SLR(R) 525 at [40]).

91 My conclusion on the interpretation of proviso (*c*) is buttressed by the following. Parties agreed that proviso (*c*) is the statutory embodiment of the rule in *Pym v Campbell* (1856) 6 E & B 370 ("*Pym*") in which the plaintiff produced at trial an agreement for sale of a machine signed by the defendant. The defendant gave evidence that the parties had negotiated the purchase and it had been arranged that they and a third person, one "Abernethie", should meet. If Abernethie approved of the machine, they would make a bargain on these terms. Abernethie could not then be found. It was then proposed that, as the parties were all present and might find it troublesome to meet again, an agreement should be then drawn up and signed, which, if Abernethie approved of the machine, should be the agreement, but if Abernethie did not approve, should not be one. Abernethie did not approve of the invention when he saw it and the defendants contended that there was no bargain.

92 In holding that the defendant's evidence as such was admissible, Erle J reasoned (at 904–905):

> … The production of a paper purporting to be an agreement by a party, with his signature attached, affords a strong presumption that it is his written agreement; and, if in fact he did sign the paper animo contrahendi, the terms contained in it are conclusive, and cannot be varied by parol evidence: ***but in the present case the defence begins one step earlier****: the parties met and expressly stated to each other that, though for convenience they would then sign the memorandum of the terms, yet they were not to sign it as an agreement until Abernethie was consulted.* I grant the risk that such a defence may be set up without ground; and I agree that a jury should therefore always look on such a defence with suspicion: but […] ***The distinction in point of law is that evidence to vary the terms of an agreement in writing is not admissible, but evidence to shew that there is not an agreement at all is admissible***.
>
> [emphasis added]

Similarly, Lord Campbell CJ stated (at 905) that "[n]o addition to or variation from the terms of a written contract can be made by parol: *but in this case the defence was that there never was any agreement entered into*. Evidence to that effect is admissible; and the evidence given in this case was overwhelming" [emphasis added].

93 Under the common law position, it therefore appeared that the prevalent view was to treat such an "exception" to the parol evidence rule (*ie*, to prove that parties did not intend their contract to take effect until some condition precedent was fulfilled) as, in reality, issues raised of general contractual validity and enforceability to which the parol evidence rule has no application (see also, UK Law Commission, *Law of Contract: The Parol Evidence Rule* (Law Com No 154, January 1986) D W at paras 2.30–2.31). Insofar as proviso (*c*) to s 94 of the EA now statutorily embodies the rule in *Pym*, I am satisfied that the circumstances stipulated in proviso (*c*) are not intended to be

read subject to the qualifying words "for the purpose of contradicting, varying, adding to, or subtracting from its terms" in the chapeau.

94 Finally, I consider that Cradle Wealth could not rely on illustration (*b*) as being "on all fours" with the present case. Illustration (*b*) in fact addresses the situation of an oral collateral contract (*ie*, an independent contract from the written agreement) and, together with illustration (*g*), are examples of the application of s 94(*b*). Illustration (*g*) pertains to the situation in which evidence is admissible of any oral agreement of a warranty, if the document is silent on this matter and the oral agreement is not inconsistent with its terms. Illustration (*b*) is the converse situation in which the evidence pertains to an oral agreement that is inconsistent with an express term of the written agreement. In the present case, the Defendants rely on s 94(*c*) which is clearly confined to evidence of a condition precedent to the written contract.

95 I am therefore satisfied that the extrinsic evidence sought to be adduced by the Defendants to prove the oral condition precedent would have been admissible, but for the entire agreement clause. However, for the following reasons, I find in any event that the facts do not disclose the oral condition precedent as pleaded by the Defendants.

Do the facts disclose that the monetisation of the Alexandrite Gemstones was a condition precedent?

96 In *Romar Positioning Equipment Pte Ltd v Merriwa Nominees Pty Ltd* [2004] SGCA 44 the Court of Appeal affirmed (at [22]) that the words "condition precedent" in the context of contracts can be "used to describe a condition which does not prevent the existence of a binding contract, but which suspends performance of it until fulfilment of the condition", citing Kim

Lewison's *The Interpretation of Contracts* (3rd Ed, 2004) at para 15.02. The courts will be slow to construe an oral agreement as a condition precedent where "the written agreement [has] already become binding and [has] been performed" (*Wen Wen Food Trading* at [32]). Cradle Wealth had performed its part of the bargain under the Settlement Agreement by its discontinuance of Suit 940 on 2 March 2020.

97 Owing to the significant factual overlap between the Defendants' case premised on sham and their *alternative* case premised on condition precedent (see [28] above), and given that the Defendants in fact relied on *the exact same* extrinsic material in seeking to prove the terms of the alleged Actual Agreement and the existence of the alleged condition precedent,[87] I considered that much of my findings above at [34]–[70] after considering the totality of the evidence were equally applicable to the latter question of condition precedent. I therefore repeat my finding that whilst the topic of Nazarisham's Alexandrite Gemstones was at the very least mentioned by the parties during the day of the mediation, and the parties anticipated working together to achieve a "comeback" for their respective businesses, such an expectation *never* extended to agreeing that the Alexandrite Gemstones must be successfully monetised before Cradle Wealth would become entitled to be paid the sum of US$4,000,000 under the Settlement Agreement. In other words, parties never intended for cl 1(1) of the Settlement Agreement to not take effect until the fulfilment of some condition precedent as pleaded by the Defendants.

98 In the circumstances, this is sufficient to dispose of the Defendants' case premised on condition precedent. There is no such condition precedent as

---

87 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 110.

pleaded by the Defendants and, as I have found, cl 5 of the Settlement Agreement clearly precludes recourse to an oral condition precedent.

Issue 3: Whether the Deed of Mandate superseded the Settlement Agreement and rendered it null and void

99 The Defendants also submit, in the alternative, that the Deed of Mandate dated 14 March 2020 superseded the Settlement Agreement and rendered it null and void, relying on the entire agreement clause (cl 12) in the Deed of Mandate which states:[88]

> 12 … The Parties agree that this Agreement and all Schedules annexed to the same constitute the entire agreement between them with respect to the subject matter of this Agreement and that it supersedes all prior or contemporaneous proposals, agreements, negotiations, representations, warranties, understandings, correspondence and all other communications (whether written or oral, express or implied) or arrangements *entered into between the Parties prior to this Agreement* in respect of the matters dealt with in it. No promise, inducement, representation or agreement other than as expressly set forth in this Agreement has been made to or by the Parties.
>
> [emphasis added]

The problem with this submission is that the Deed of Mandate was entered into between entirely *different* parties (*ie*, between Nazarisham, Fides Assets and Mdm Ramai) and neither MTN nor Cradle Wealth were named therein or privy thereto. The Defendants nevertheless submit that the Deed of Mandate was designed to benefit Cradle Wealth and the said benefit outweighed Cradle Wealth's entitlement pursuant to the Settlement Agreement.[89] In this regard, the Defendants argue that "it would not have made any commercial sense" for

---

88 AB at 195.

89 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 147.

Nazarisham to execute such a Deed of Mandate indirectly giving Cradle Wealth (via the arrangement with Mdm Ramai) "the potential to earn millions of dollars in commissions over time" in addition to what it was entitled to receive under the Settlement Agreement.[90]

100 I am unable to agree with the Defendants' submissions. The Deed of Mandate clearly defines that it is a "mandate contract of legal representation between the abovementioned Client [*ie*, named as Nazarisham] and the stated Mandatee [*ie*, named as Fides Assets]", with Mdm Ramai further named as the "bridging party".[91] Under cross-examination, Nazarisham conceded as much, that MTN and Cradle are not parties to the Deed of Mandate. I therefore reject that the Deed of Mandate superseded the Settlement Agreement and rendered the latter null and void.

Issue 4: Whether Cradle Wealth is estopped from relying on the Settlement Agreement

101 Further and in the alternative, the Defendants assert the doctrine of promissory estoppel as a defence to Cradle Wealth's claim.[92] The Defendants assert that Sathish and Sylvester had during the private discussion at the Café on 28 February 2020 promised Nazarisham that the Settlement Agreement would not be enforced by Cradle Wealth until the Alexandrite Gemstones were successfully monetised by way of a collaborative effort between the Defendants, Sathish and Sylvester. Relying on this promise, Nazarisham signed the Settlement Agreement on 28 February 2020. The parties later abandoned all

---

90 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 147.

91 AB at 193–195.

92 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at para 149.

efforts to monetise the Alexandrite Gemstones and Cradle Wealth commenced Suit 781 to enforce the Settlement Agreement. Since then, the Alexandrite Gemstones have also come under a prohibition order issued by the Singapore Police Force such that Nazarisham is unable to access or deal with the gemstones. If Cradle Wealth is allowed to resile from its promise, the Defendants submit that they will suffer detriment because they cannot pay the sum of US$4,000,000 without the successful monetisation of the Alexandrite Gemstones. Under these circumstances, it would be inequitable for Cradle Wealth to resile from its promise.[93]

102 Promissory estoppel is a legal defence to restrict the enforcement by the promisor of *previously existing* rights against the promisee. The Defendants cited *Orchard Central Pte Ltd v Cupid Jewels Pte Ltd (Forever Jewels Pte Ltd, non-party)* [2013] 2 SLR 667 ("*Orchard Central*") at [44] in which this court stated that the traditional elements of promissory estoppel are well-established, *viz*, representation, reliance and detriment, but the precise ambits of each element are ambiguous. As to the first element, *viz*, representation, the representation or promise must have been clear and unequivocal (*Orchard Central* at [45]). There is a further overarching requirement that it must have been *inequitable* in all the circumstances for the promisor to resile on his promise.

103 I find that the Defendants cannot rely on promissory estoppel. For the same reasons as set out above at [34]–[70], I find that there was no promise or representation that the Alexandrite Gemstones must be successfully monetised

93 1st and 2nd Defendants' Closing Submissions dated 14 July 2023 at paras 152–157.

before Cradle Wealth would become entitled to be paid the sum of US$4,000,000 under the Settlement Agreement.

Conclusion

104 In conclusion, Cradle Wealth has succeeded in its claim against MTN and Nazarisham. The Defendants are ordered to pay Cradle Wealth the sum of US$4,000,000.00 plus pre- and post-judgment interest at 5.33% *per annum* from the date of the Writ (*ie*, 24 August 2020), with costs to be agreed or taxed.

Lee Seiu Kin
Judge of the High Court

Choo Zheng Xi, Chew Di Shun Dickson and Carol Yuen Ai Zhen (Remy Choo Chambers LLC) for the plaintiff;
Joseph Ignatius and Suja Susan Thomas d/o B Thomas (Ignatius J & Associates) for the first and second defendants.