IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 182

Suit No 920 of 2018

Between

(1) Lim Teng Siang Charles
(2) Tay Mui Koon

… *Plaintiffs*

And

(1) Hong Choon Hau
(2) Tan Kim Hee

… *Defendants*

GROUNDS OF DECISION

[Contract] — [Discharge] — [Rescission] — [Mutual agreement]

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v
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31 August 2020

Mavis Chionh Sze Chyi JC:

Introduction

1 The first plaintiff in this case is a private banker at United Overseas Bank ("UOB"). The second plaintiff is his mother. The first and second defendants are Malaysian businessmen. In these proceedings (which were filed on 22 November 2018), the plaintiffs sued the two defendants for alleged breach of a sale and purchase agreement dated 17 September 2014 ("the SPA"). This was an agreement in which each of the defendants agreed to purchase from the plaintiffs 17.5 million shares in a publicly listed company called PSL Holdings Limited ("PSL") ("the PSL shares").

2 According to the plaintiffs, the total consideration to be paid for the 35 million shares was $10.5 million; and completion of the sale and purchase was to have taken place on 17 October 2014 – but the defendants "wrongfully

failed to and/or neglected to and/or refused" to complete the transaction, though the plaintiffs "were willing, ready and able to complete" the transaction at "all material times"[1]. The plaintiffs sued for the difference between the contract price of $10.5 million and the market price of the PSL shares on the date of issuance of the writ.

3 The defendants, for their part, alleged that the first plaintiff had represented to them that he was the beneficial owner of all 35 million PSL shares, that 35 million shares "would enable the [d]efendants to take control and achieve a reverse takeover of PSL Holdings", and that the share price of the PSL shares "would increase" from the then listed price of $0.17 per share "to "$0.60 per share after the reverse takeover was completed"[2]. The defendants alleged that these were false representations which the first plaintiff had made with the intention of inducing the defendants to sign the SPA; and that the defendants had been induced by these misrepresentations to sign the SPA. The defendants asserted that they were entitled to rescind the SPA due to these fraudulent misrepresentations; alternatively, that they were entitled to counterclaim against the first plaintiff loss and damages allegedly suffered as a result of these misrepresentations. Alternatively, the defendants asserted that the SPA had been "rescinded by mutual agreement" in October 2014, and/or that the plaintiffs were "estopped from relying on their legal rights under the [SPA], if any"[3].

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[1] [5]–[6] of the Statement of Claim (Amendment No. 2).

[2] [5] of the 1st Defendant's Defence & Counterclaim (Amendment No. 1) and [5] of the 2nd Defendant's Defence & Counterclaim (Amendment No. 1).

[3] [10]–[11] of the 1st Defendant's Defence & Counterclaim (Amendment No. 1) and [10]–[11] of the 2nd Defendant's Defence & Counterclaim (Amendment No. 1).

4 At the conclusion of the trial, whilst I found that the defendants' allegations of misrepresentation were not made out, I was satisfied that the evidence showed the parties to have rescinded the SPA by mutual agreement in October 2014. I therefore dismissed both the plaintiffs' claim and the defendants' counterclaim. As the plaintiffs have appealed against my dismissal of their claim, I set out below the reasons for my decision.

The facts

5 I start by summarising the key facts of this case before explaining why I found the SPA to have been rescinded by mutual agreement. As the defendants have not filed any appeal, I will explain briefly my findings on the alleged misrepresentations and other related issues but will not go into any great detail in respect of these findings.

Preliminary issues

6 As a preliminary issue, the defendants refused to admit the authenticity of the two copies of the SPA adduced in evidence by the first plaintiff[4]. It was not disputed that the plaintiffs were unable to produce the originals of the SPA at trial. However, I noted that in refusing to admit the authenticity of the two copies of the SPA, the defendants did not actually deny that the signatures on the last page of each copy were their signatures. Indeed, no allegation of forgery or fabrication was pleaded by the defendants. The defendants themselves had on 24 October 2014 obtained a copy of the SPA from M/s Rodyk & Davidson LLP ("Rodyk"), the law firm which prepared the SPA[5] and which was on record

[4] Pp 44–51 of the 1st Plaintiff's AEIC.

[5] [22] of Liong Wei Kiat Alvin's AEIC.

as having been engaged by the defendants in the matter of the SPA[6]. The copy obtained by the defendants[7] corresponded to the first copy exhibited by the first plaintiff in his affidavit of evidence-in-chief ("AEIC")[8]; and it did not appear that the defendants had at any time raised any query about the appearance – much less, the contents – of this document. The second defendant testified that two documents were signed by the defendants on 17 September 2014[9], and I concluded that in all probability the parties had signed two sets with the same terms and conditions (the second set being the document exhibited at pages 48–51 of the first plaintiff's AEIC). In coming to this conclusion, I noted that the Rodyk partner overseeing the matter – one Low Chai Chong ("Mr Low") – had apparently signed as a witness on both copies of the SPA exhibited in the first plaintiff's AEIC[10]. Mr Low did not suggest – nor was it suggested to him – that his signature on one or other of these copies was a forgery.

7 In short, having considered the evidence before me, I saw no reason to doubt the authenticity of the two copies of the SPA exhibited in the first plaintiff's AEIC.

8 I next considered the defendants' contention that any SPA they had signed must have been vitiated by fraudulent misrepresentations made by the first plaintiff. In this connection, the defendants did not dispute that since they were the parties who had alleged fraudulent misrepresentation and

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[6] [9] of Liong Wei Kiat Alvin's AEIC.

[7] Pp 48–51 of the 1st Defendant's AEIC.

[8] Pp 44–47 of the 1st Plaintiff's AEIC.

[9] See the transcript for 21 November 2019 p 63 lines 9 to 11.

[10] Pp 47 and 51 of the 1st Plaintiff's AEIC.

counterclaimed damages for it, they bore the legal burden and the corresponding evidential burden of proving these allegations.

The events leading up to the signing of the SPA

9 It is not disputed that the two defendants are close associates of another Malaysian businessman known as "Tedy Teow". It is also not disputed that prior to the signing of the SPA on 17 September 2014, the first plaintiff had met with Tedy Teow ("Teow") and had spoken with him about the sale of PSL shares. The defendants asserted that their interest in purchasing PSL shares arose solely because Teow was interested in purchasing agarwood (a type of timber). The second defendant claimed that sometime in early September 2014, he had – at Teow's request – spoken with the first plaintiff over the telephone after one Bernard Lim informed Teow that the first plaintiff had a business proposal to make concerning the supply of agarwood[11]. According to the second defendant, the first plaintiff had represented in the course of their telephone conversation that Bernard Lim had a contact in Myanmar willing to "supply large quantities of agarwood", but only to "large established companies" and not "private companies"[12]. The first plaintiff had explained that this was because the sale of agarwood was tightly controlled by the Myanmar government. It was also the first plaintiff who had purported to identify PSL as a company "likely" to be "acceptable" to the Myanmar government[13]. According to the defendants, he had represented that he owned "a large number of shares in PSL" which he could sell to them to enable them

[11] [5]–[6] of the 2nd Defendant's AEIC.

[12] [6(c)–6(d)] of the 1st Defendant's AEIC; [5]–[7] of the 2nd Defendant's AEIC.

[13] [7] of the 2nd Defendant's AEIC.

to "do a reverse takeover of PSL" and "to gain control of PSL"[14]. After the reverse takeover of PSL was completed, the company "could then be used to buy agarwood from the contact in Myanmar"[15].

10 The first plaintiff denied having represented that the defendants' purchase of his PSL shares would enable Teow to gain control of PSL and to use the company as the vehicle for acquiring agarwood from Myanmar. Instead, the first plaintiff claimed that the SPA was entered into simply because Teow himself "was interested in procuring a substantial stake in a listed company for his business purposes" [16].

11 Having reviewed the evidence, I accepted that Teow – and by extension, the defendants – had wanted to purchase PSL shares from the first plaintiff because they believed this would enable them to gain control of a publicly listed company and to use that company as a vehicle for the acquisition of agarwood in Myanmar. *Inter alia*, I noted that the first plaintiff himself admitted that he had met Teow during a trip to Laos[17]; that he had been invited to Laos by one George Lim to "look at some possible investments" which the latter was "introducing" him to[18]; that he had been shown agarwood trees during this trip[19]; and that George Lim and Teow had been "very excited" about the agarwood and had discussed how valuable it was, how Teow could "make some very good things" from the agarwood to "sell to his 4 million members or 2

[14] [6(d)] of the 1st Defendant's AEIC; [8] and [10] of the 2nd Defendant's AEIC.

[15] [6(e)] of the 1st Defendant's AEIC; [9] of the 2nd Defendant's AEIC.

[16] [13]–[14] of the 1st Plaintiff's AEIC.

[17] See transcript for 14 November 2019 p 70 lines 16 to 19.

[18] See transcript for 14 November 2019 p 70 lines 21 to 27.

[19] See transcript for 14 November 2019 p 71 lines 11 to 24.

million members"[20]. From the first plaintiff's own admissions, it was evident that the meeting arranged by George Lim was centred on Teow's interest in acquiring agarwood. It was also the first plaintiff's evidence that during the same meeting in which George Lim and Teow had discussed the value of agarwood, he himself had "just told [Teow] that [there was] a list co that [he was] holding on has cash and … no major shareholder …"[21]. The first plaintiff further admitted that he brought this up because he had the "intention of selling [his] shares" to Teow[22].

12 Given the first plaintiff's admissions, I did not believe his assertion that his proposal to sell PSL shares to Teow was made on the spur of the moment, with no connection whatsoever to Teow's interest in acquiring a supply of agarwood. Clearly, having observed Teow's interest in getting hold of a supply of agarwood, the first plaintiff saw the opportunity to use that interest as a springboard to pitch the sale of PSL shares to Teow. It is not disputed that by September 2014, the first plaintiff had purchased 9.755 million PSL shares using his mother's (*ie*, the second plaintiff's) UOB Kay Hian account[23] and another 5.735 million PSL shares using his wife's (Seow Ee Fun Yvonne's, "Yvonne"'s) account[24]. On the first plaintiff's own evidence, several of his private banking clients also held a considerable number of PSL shares thanks to

[20] See transcript for 14 November 2019 p 84 lines 1 to 29.

[21] See transcript for 14 November 2019 p 85 lines 12 to 21.

[22] See transcript for 14 November 2019 p 85 lines 24 to 29.

[23] [4] of the 2nd Plaintiff's AEIC.

[24] [3] of Yvonne's AEIC.

him: Chung Sook Yin ("Dr Chung") held not less than 4 million PSL shares[25] and Tan Seung Yuen ("Tan SY") held not less than 15.51 million PSL shares[26].

13 In my view, the first plaintiff's admissions supported the inference that Teow's (and by extension, the defendants') interest in the PSL shares arose not because of any real interest in the company *per se*, but because it was suggested as a potential vehicle for facilitating the acquisition of agarwood. Teow then got his brother-in-law (*ie*, the second defendant) to follow up with the first plaintiff on his business proposal. The second defendant did so by phoning the first plaintiff sometime in September 2014[27]. It was in this telephone conversation that the first plaintiff spoke about Bernard Lim having a contact in Myanmar who was able to supply agarwood but only to "large established companies", and about PSL being potentially a suitable vehicle for that purpose – should the defendants acquire control of it.

14 *However*, I did not find that the evidence went far enough to prove that in this telephone call, the first plaintiff had represented that he "owned" all the PSL shares he was proposing to sell and/or that the purchase of "his" shares *per se* would enable the defendants to gain control of PSL via a "reverse takeover".

15 In respect of the alleged representation as to the ownership of the PSL shares to be sold, given that PSL was a publicly listed company and not some closely-held private company, there was no reason why Teow and the defendants should have been so anxious about whom the true owner of the

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[25] [3] of Dr Chung's AEIC.

[26] [4] of Tan SY's AEIC.

[27] [6] of the 2nd Defendant's AEIC.

shares was – and therefore no reason why the first plaintiff should have needed to represent that he was the owner of all the shares.

16 In respect of the alleged representation about the "reverse takeover" of PSL, the second defendant was very hazy about what a "reverse takeover" meant: he was only able to say that he thought it meant "controlling" a company "with a large amount of shares"[28], but he could not say what percentage of the shares in PSL they would have needed to purchase in order to achieve such control[29]. Moreover, the parties were agreed that the 35 million shares to be sold pursuant to the SPA would not have been enough to enable the defendants to achieve a "reverse takeover" of PSL. PSL being a publicly listed company, it would not have been difficult for Teow and/or the defendants to verify the total number of shares issued by PSL and thus the number of shares required to achieve a "reverse takeover": the first plaintiff would have had no way of knowing whether they would conduct such checks. In the circumstances, I was of the view that even if the notion of a "reverse takeover" of PSL had been mentioned during the telephone call between the first plaintiff and the second defendant, it was unlikely that the first plaintiff would have so boldly *represented as a fact* the defendants' ability to achieve a "reverse takeover" of PSL with the number of shares he was selling them. As I alluded to at [13] earlier, it seemed likely that in speaking to Teow and subsequently to the second defendant, the first plaintiff must have suggested PSL as an appropriate vehicle for facilitating the purchase of the Myanmar agarwood – should the defendants gain control of it. It also seemed likely that he must have talked up the large number of shares he could sell them to aid an attempt at gaining control.

[28] See transcript for 21 November 2019 p 27 lines 1 to 25.

[29] See transcript for 21 November 2019 p 39 lines 18 to 27.

However, the evidence fell short of proving that he must further have *represented as a fact* their ability to gain control via a "reverse takeover" *solely with the shares he was selling them*.

The signing of the SPA

17 Following the telephone conversation between the first plaintiff and the second defendant, Bernard Lim informed the defendants that the first plaintiff had arranged for Singaporean lawyers to prepare an agreement for the sale and purchase of the PSL shares and to represent the defendants in the matter. Bernard Lim requested that the defendants fly to Singapore on 17 September 2014 to sign the SPA. The draft SPA was forwarded to the first defendant by Bernard Lim on 16 September 2014[30]; and the following day, both defendants travelled to Singapore, where they were brought by the first plaintiff to the Rodyk office. The first defendant's personal assistant, Lang Cheah Yean ("Carrie"), and Bernard Lim also came along. They were met by Mr Low and his associate Liong Wei Kiat Alvin ("Alvin").

18 In this connection, it should be noted that although the plaintiffs sought to portray the defendants as having been advised and represented by Rodyk throughout the transaction, Mr Low's testimony revealed that it was actually the first plaintiff who had asked him "for a draft sale and purchase agreement … [as] he wanted to sell some PSL Holdings Ltd shares"[31]. Mr Low had never met nor spoken to the defendants until they turned up at his office on 17 September 2014. While the plaintiffs sought to make much of the letter of engagement signed by the defendants and the Rodyk invoice showing "work done" and

[30] [12] of the 1st Defendant's AEIC.

[31] See transcript for 20 November 2019 p 19 lines 20 to 29.

"professional services rendered" to the defendants[32], Mr Low testified that all he really did was[33]:

> … I asked [the defendants] if they are … agreeable to me acting for them. I asked for their ICs. I asked for their particulars. I confirm with them the number of shares and the sale and purchase price. I told Alvin to make the changes … The only thing I remember was the request that I provide the letter that if they should put money into my client's account to complete the purchase, I would only release the monies on their instructions. So I dictated the letter to Alvin. He prepared that and then subsequently got that signed. That … is my recollection.

19 Mr Low's recollection was that the meeting at Rodyk ("the Rodyk meeting") was "short"[34]. He did not have "any particular recollection" of what the first plaintiff said at the meeting[35]. Alvin too did not remember very much about the meeting[36]. His evidence was that based on the documentary records, the lawyers' understanding of the transaction was that it was a sale by the plaintiffs of 35 million PSL shares for a total consideration of $10.5 million[37]. When asked if there was any "discussion where the transaction involved the crossing of a 30% shareholding limit which would trigger a general offer for PSL Holdings", Alvin testified that he did not remember such a discussion, and that if such a matter had been "discussed between the parties and agreed to be part of the documentation", he "would have drafted it in … as per an agreement between the parties"[38].

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[32] Exhibits P2 and P3 respectively.

[33] See transcript for 20 November 2019 p 23 line 27 to p 24 line 4.

[34] See transcript for 20 November 2019 p 20 lines 29 to 30.

[35] See transcript for 20 November 2019 p 23 line 27.

[36] See transcript for 26 November 2019 p 55 lines 16 to 18.

[37] See transcript for 26 November 2019 p 55 lines 12 to 32.

[38] See transcript for 26 November 2019 p 56 lines 1 to 15.

20 Mr Low and Alvin appeared to me to be objective witnesses: neither had any ties to any of the parties, and both impressed me as endeavouring to give evidence as accurately as they could based on their recollection. Their evidence of the Rodyk meeting was completely at odds with the defendants' account of the meeting, in which – according to the defendants – the first plaintiff had spoken at length on how they would achieve a "reverse takeover" of PSL with the shares they were buying from him and how they would be able to nominate directors to the PSL board once they effected the takeover[39].

21 In so far as Carrie's notes of the Rodyk meeting were concerned[40], I accepted that these notes were authentic and genuine. The notes of the meeting were recorded by hand in a notebook and sandwiched between other handwritten notes about unrelated matters. It did not appear to me likely that Carrie would have falsified an entire notebook just for the purpose of enabling the defendants to introduce into evidence a few pages of notes. Indeed, it was not put to Carrie in cross-examination that she must have fabricated or falsified the notes. *However*, whilst I accepted the authenticity of her notes of the meeting, these notes merely showed that there was some reference to matters such as a reverse takeover during the meeting. These notes did not actually prove that the first plaintiff had made the alleged representations of fact during the meeting. In this connection, I would reiterate the observations I made at [16]. I would also add that given the weighty consequences of the alleged representations about a reverse takeover of a publicly listed company, if they had indeed been made in all seriousness by the first plaintiff, it would have been

[39] See, *eg*, [18] and [22] of the 1st Defendant's AEIC.

[40] Pp 18–20 of Carrie's AEIC.

extremely odd for Mr Low and Alvin to take no note at all of such representations.

22 As to the alleged representation regarding the first plaintiff's beneficial ownership of all the shares to be sold, whilst the preamble to the SPA did refer to the "Vendors" as "the legal and/or beneficial owner [of] 35,000,000 ordinary shares of [PSL]", I did not think that the defendants were induced by such a statement to enter into the SPA. I would reiterate the observations I made at [15]: namely, that given that PSL was a publicly listed company and not some closely-held private company, there was no reason why the defendants should have found it so important to chase down the real beneficial owner(s) of the shares being sold under the SPA. Moreover, as Mr Low pointed out in his testimony, it was the first plaintiff who would need to arrange for the transfer of the shares, either by presenting the requisite documentation at the Central Depository or by getting a broker to arrange for a married deal[41]. There was no need, in other words, for the defendants to worry about whom the beneficial owner(s) of the shares were.

23 As to the first plaintiff's alleged representation that the share price of PSL "would increase to $0.60 per share once the reverse takeover was completed"[42], I did not find the allegation proven on the basis of the evidence before me. Whilst the first plaintiff would likely have exaggerated what an attractive buy the PSL shares were, "mere praise by a man of his own goods or undertaking is a matter of puffing and pushing and does not amount to

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[41] See transcript for 20 November 2019 p 46 lines 10 to 23. There is a typographical error in the transcript in that the reference to "married deal" was erroneously transcribed as "merit view".

[42] See, *eg*, [17(c)] of the 1st Defendant's AEIC.

representation"[43]. I did not think it believable that the first plaintiff would have made such bold and specific representations as to what the price of PSL shares would be following a reverse takeover. In any event, a statement as to the future price of the PSL shares – being a statement as to a future state of affairs – "can in itself be neither true nor false", since "the future cannot be foretold": per Saville J in *Bank Leumi le Israel BM v British National Insurance Co Ltd* [1988] 1 Lloyd's Rep 71 at 75. For a statement to be actionable, the statement must relate to a matter of fact either present or past: *Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 at [21]. As such, even if the first plaintiff had made statements about the future price of PSL shares, such statements would not have amounted to actionable representations. In the interest of completeness, I should add that having regard to the defendants' pleaded case and the evidence available, there was also no basis for me to find any representation by the first plaintiff that he possessed an "honest belief … based on reasonable grounds" that the future price of PSL shares would "turn out as forecasted" (*Tan Swee Wan and another v Johnny Lian Tian Yong* [2018] SGHC 169 at [260]).

24 I also did not find it believable that the first plaintiff would have promised the defendants he would "arrange for the issuance or transfer of additional PSL shares" to them "for no additional cost"[44] ("the Free Shares"). There was simply no reason for him to make such a generous promise. Moreover, assuming the first plaintiff had indeed made such a generous promise, it seemed unbelievable that the defendants would not have asked for

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[43] Per Chao Hick Tin J (as he then was) in *Bestland Development Pte Ltd v Thasin Development Pte Ltd* [1991] SGHC 27, cited in *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at para 11.048.

[44] See, *eg*, [17(b)] of the 1st Defendant's AEIC.

this to be documented – especially since (according to them) the first plaintiff had promised that the issuance or transfer of the Free Shares would be "recorded in an addendum agreement (the "Addendum Agreement")[45]. Neither Mr Low nor Alvin gave any evidence that they were instructed by the defendants to document such a promise or statement made by the first plaintiff.

25 The defendants argued that since the market price of the PSL shares was $0.17 per share at the time of the Rodyk meeting, they would not have agreed to pay the first plaintiff $0.30 per share had he not made the alleged representations[46]. I did not accept this argument. In my view, bearing in mind the large number of shares which the defendants were purchasing under the SPA, I did not think it unreasonable or improbable that they would have agreed to pay a premium above the market price. After all, as a matter of common sense, if they had attempted to purchase 35 million shares in the market, it was highly unlikely that they would have been able to acquire all 35 million shares at one go, or for that matter, all 35 million shares at $0.17 per share.

26 I should stress that while I did not find the evidence sufficient to prove the specific misrepresentations pleaded by the defendants, I did not believe the first plaintiff's assertion that he had never spoken with the defendants about getting control of PSL and/or using PSL as the vehicle for acquiring agarwood from Myanmar. As I alluded to earlier (at [12]), it appeared to me the first plaintiff had latched on to Teow's interest in acquiring agarwood to present to him – and the defendants – a proposal for how a supply source for agarwood could be secured using PSL as the vehicle. If (as the first plaintiff claimed) the

[45] [17(b)] of the 1st Defendant's AEIC.

[46] See, *eg*, [21] of the 1st Defendant's AEIC.

defendants had simply wanted to come up with a story about misrepresentations in order to justify repudiating the SPA, there was simply no need for them to come up with a complicated story involving diverse elements such as the acquisition of agarwood and the takeover of PSL. Carrie's notes of the Rodyk meeting (which I found to be authentic and genuine) also supported the inference that there was some mention of a reverse takeover of PSL during the meeting. I reiterate that in my view, and having regard in particular to the premium which the defendants were paying, the first plaintiff would very likely have talked up how the shares he was selling them would aid them in any attempt to gain control of PSL – just as he would very likely have talked up the possibility of an upside to the PSL share price.

27 On the other hand, the defendants were quite open about not having checked up on the size and composition of PSL's shareholding *prior to* entering into the SPA. In the circumstances, while I accepted that they appeared to have thought the 35 million shares would enable them to effect a reverse takeover of PSL, it seemed to me possible – perhaps even likely – that this impression resulted from their own misunderstanding or misapprehension of the discussions with the first plaintiff. At any rate, as I have noted, the evidence was just not enough to prove that the first plaintiff had made the specific misrepresentations pleaded, or that the defendants were induced by these alleged misrepresentations to enter into the SPA.

28 I should add that in respect of the second plaintiff, the parties were agreed that the defendants never met her and that she was not present at the Rodyk meeting on 17 September 2014. Mr Low testified that she was brought

to the Rodyk office by the first plaintiff on 18 September 2014 and that she signed the SPA in his presence[47].

Key SPA terms

29 It is apposite at this point to set out some of the key terms of the SPA. These were as follows:

> 1. DEFINITIONS AND INTERPRETATIONS
>
> 1.1 In this Agreement, unless the context otherwise requires:
>
> "Completion" means the completion of the sale and purchase of the Sale Shares pursuant to clause 4;
>
> "Completion Date" means 17 October 2014 (or such other date as the parties may agree in writing);
>
> …
>
> 3. CONSIDERATION
>
> 3.1 The aggregate consideration for the purchase of the Sale Shares shall be the sum of Singapore Dollars S$10,500,000 (the "Consideration").
>
> 4. COMPLETION
>
> 4.1 Subject as hereinafter provided, Completion shall take place at such place as the Parties may mutually agree on the Completion Date.
>
> 4.2 On the Completion Date, the Vendors shall transfer or procure the transfer of the Sale Shares from the Vendors' account to the account of the Purchasers

[47] See transcript for 20 November 2019 p 25 lines 25 to 26 and p 26 line 27 to p 27 line 1.

and/or his nominee's account in respect of the Sale Shares.

4.3 The Purchasers shall pay the Consideration by instructing their lawyers M/s Rodyk & Davidson LLP to issue a Cashiers' Order in favour of the Vendor. The Purchasers confirm that the Consideration will be deposited to M/s Rodyk & Davidson LLP's clients account within five (5) working days from the date of this Agreement.

…

7. TIME OF THE ESSENCE

7.1 Time shall be of the essence in this Agreement as regards all the times, dates and periods mentioned herein.

…

9. WAIVER

9.1 Any waiver of a breach of any of the terms of this Agreement or any default hereunder shall not be deemed a waiver of any subsequent breach of default and shall in no way affect the other terms of this Agreement.

9.2 No failure to exercise and no delay on the part of any party in exercising any right, remedy, power or privilege of that party under this Agreement and no course of dealing between the Parties shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege. The rights and remedies provided by this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

…

The events following the signing of the SPA

30 The defendants testified that upon the signing of the SPA, the first plaintiff was to arrange for them to open bank accounts with UOB, which accounts would then be used to make payment for the shares[48]. This was not disputed by the plaintiffs. It was also not disputed that although clause 1.1 of the SPA stated that completion was to take place on 17 October 2014, the first defendant's UOB account was only opened on 24 October 2014, whereas the second defendant's account had not yet been opened as at that date[49].

31 Around the same period, the first defendant and the first plaintiff also had several discussions about reducing the number of shares to be purchased by the defendants under the SPA[50]. The first defendant had discovered that his bank in Malaysia (Bank Negara Malaysia) "imposed certain limits on the quantum of investments in foreign currency assets which could be made in one year"[51]. Moreover, according to the first defendant, he had gone "online to do checks" and had "realised that [the first plaintiff] was not one of the top 20 shareholders" of PSL[52]. At this stage, Teow and the defendants "were starting to have doubts on whether [the first plaintiff] had 35 million shares"[53]. The first defendant testified that sometime before his text message to the first plaintiff on 23 October 2014[54], he had already spoken to the first plaintiff about

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[48] [22] of the 1st Defendant's AEIC and [24] of the 2nd Defendant's AEIC.

[49] See text message from the 1st Defendant to the 1st Plaintiff on 23 October 2014 chasing up on the opening of the UOB account and the reply from the 1st Plaintiff to the 1st Defendant on 24 October 2014, at pp 37–38 of the 1st Defendant's AEIC.

[50] [28] of the 1st Defendant's AEIC and [29] of the 2nd Defendant's AEIC.

[51] [28] of the 1st Defendant's AEIC.

[52] See transcript for 22 November 2019 p 39 lines 4 to 31.

[53] See transcript for 22 November 2019 p 33 lines 13 to 17.

[54] P 37 of the 1st Defendant's AEIC.

"cancellation" of the SPA[55]. The first plaintiff had not wanted the SPA cancelled but was willing to consider a reduction in the number of shares to be sold[56]. The first defendant therefore texted the first plaintiff on 23 October 2014 to ask him[57]:

> The total need my boss help u how many share ?

32 The first defendant explained that by "my boss", he was referring to Teow; and that he was seeking to find out from the first plaintiff in this text message how many shares the latter needed Teow to buy[58]; a negotiation, in other words, for a reduced number of shares. For his part, the first plaintiff denied having spoken with the first defendant between 17 October 2014 and 22 October 2014 about cancelling the SPA and/or reducing the number of shares to be sold under the SPA. His position was that there was "radio silence" from the defendants in the period between 17 October 2014 and 22 October 2014[59]. It should be noted, however, that his reply to the first defendant's text query ("*The total need my boss help u how many share?*") was[60]:

> 17,000,000 shares at $0.30 (last time 35,000,000)

33 On 24 October 2014, the first defendant informed the first plaintiff of a new problem: Teow's son was apparently raising objections to the purchase price of $0.30 per share[61]:

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[55] See transcript for 22 November 2019 p 33 lines 18 to 29.

[56] See transcript for 22 November 2019 p 46 lines 21 to 28.

[57] P 37 of the 1st Defendant's AEIC.

[58] [29] of the 1st Defendant's AEIC.

[59] [44] of the 1st Plaintiff's AEIC.

[60] P 37 of the 1st Defendant's AEIC.

[61] P 37 of the 1st Defendant's AEIC.

> My boss son disagree to buy share because price too high. Pls call my boss. I am can't said [*sic*] so much.

34 There followed further text messages between the first defendant and the first plaintiff on 24 October 2014 after the latter complained that he was unable to get hold of Teow and the former urged him to "settle" with Teow[62]:

> First defendant: U better settle with him [*ie*, Teow]. Am also pening .
>
> First plaintiff: Bro , ur name is in the thing also … Pls help me … Thanks
>
> First defendant: He don't want , how I help .
>
> First plaintiff: Tell him the legal implications on u as a director in Malaysia

35 In cross-examination, the first defendant explained that "pening" was a colloquial term meaning "dizzy" – which was how he felt, "stuck" in the middle between his "boss" Teow on the one hand and the first plaintiff on the other[63]. By 25 October 2014, it appeared that parties had yet to come to any firm resolution: the first defendant received an email from Mr Low stating that he had "received a message from [the first plaintiff]"[64]:

> Dear Jim Hong [*ie*, the first defendant],
>
> I received a message from [the first plaintiff] that you wish to amend the Sale & Purchase Agreements. Can you please call me at 91996668, and let me know what you require.

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[62] P 39 of the 1st Defendant's AEIC.

[63] See transcript for 22 November 2019 p 43 lines 1 to 21.

[64] Pp 53–54 of the 1st Defendant's AEIC.

36 To this, the first defendant replied that he needed to "wait" to see "how much money [he could] bank in to [his] uob bank account within 1 week"[65]. It would appear that at this point, parties were still discussing a possible reduction in the number of shares to be purchased by the defendants: on 27 October 2014, Mr Low emailed the first defendant again stating[66]:

> Dear Jim [*ie*, the first defendant],
>
> I just received a call from [the first plaintiff] saying that you wish to amend the SPA, such that you will purchase half the original amount? Is this correct?

37 The first defendant replied that it still depended on "how much money" he could bank into his "new uob account within 1 week"[67]. However, an amended agreement for a reduced number of shares did not eventually materialise. Instead, sometime between 28 October 2014 and 31 October 2014[68], the first defendant came across announcements made by a listed company in Singapore (Nordic Group Limited, "Nordic") from which he discovered that[69]:

> … Nordic and Chang [*ie*, Nordic's executive chairman and controlling shareholder Chang Yeh Hong] essentially had, from March 2014 to 26 June 2014, the power to force Sudirman [one Sudirman Kurniawan who had entered into agreements with Nordic and Chang] to purchase from them a total of 60 million shares of PSL (representing a 15.52% shareholding) at $0.30 per share. Crucially, this meant that contrary to [the first plaintiff's] representations to [the second defendant] and me, the 35 million PSL shares he was going to sell us would not allow [the second defendant] and me to achieve a reverse takeover of PSL. These announcements made me become

[65] P 53 of the 1st Defendant's AEIC.

[66] P 53 of the 1st Defendant's AEIC.

[67] P 53 of the 1st Defendant's AEIC.

[68] [38] of the 1st Defendant's AEIC.

[69] [40] of the 1st Defendant's AEIC.

> doubtful about [the first plaintiff's] representation that he owned 35 million shares in PSL. I also became suspicious about the Addendum Agreement [the first plaintiff] mentioned relating to the Free Shares. [The first plaintiff] never sent the Addendum Agreement to me following the Rodyk Meeting.

38 As noted earlier, by this time the first defendant had also discovered from PSL's annual reports for 2014 and 2015 that the first plaintiff was not named in the annual lists of PSL's 20 largest shareholders[70]. This added to his suspicion that the first plaintiff did not actually own 35 million PSL shares. What happened thereafter formed the main bone of contention – factually speaking – between the plaintiffs and the defendants.

The defendants' version of the events from late October 2014 onwards

39 On the defendants' account, the first defendant spoke to the first plaintiff over the telephone on 31 October 2014, essentially to confront him with the Nordic announcements. The first defendant could not recall the exact words that were spoken, but he was clear that in that tele-conversation, he had come to an agreement with the first plaintiff that the SPA signed by the defendants "was cancelled and would no longer be effective"[71]. At the same time, the first defendant also mentioned to the first plaintiff, firstly, that "there was still interest in agarwood and any other business deals he [*ie*, the first plaintiff] may have", and that parties "should pursue such other business opportunities"; secondly, that both defendants would "continue to appoint [the first plaintiff] as

[70] [41] of the 1st Defendant's AEIC.

[71] [42] of the 1st Defendant's AEIC.

[their] relationship manager for the private wealth accounts that [they] had opened with UOB". The first defendant's evidence was that[72] –

> [The first plaintiff] agreed to call the SPA off and agreed to continue being relationship manager for [the second defendant] and me. In fact, he was eager to hear from me about other business opportunities. [The first plaintiff] also said he would continue to find a supply of agarwood.

40 As for the second defendant, although he did not speak directly to the first plaintiff after the contractually stipulated completion date of 17 October 2014, he was kept informed by the first defendant of all relevant developments, including the discovery of the Nordic announcements[73]. The second defendant testified that the first defendant had informed him "there were problems" with their proposed purchase of PSL shares after seeing the Nordic announcements, and that he had authorised the latter to agree with the first plaintiff on the cancellation of the SPA[74]. His assertion about having authorised the first defendant to agree on his behalf to the cancellation of the SPA was not refuted.

41 It should be noted that the defendants' position was that the mention of future business opportunities did not amount to a binding promise to provide the first plaintiff with any specific business deal. The second defendant, for example, testified that as far as he was concerned, the first plaintiff was not promised anything for the cancellation of the SPA[75]. The first defendant testified that although the first plaintiff had said that he would propose "other business deals" in place of the SPA, he (the first defendant) "did not promise

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[72] [42] of the 1st Defendant's AEIC.

[73] [43] of the 2nd Defendant's AEIC.

[74] See transcript for 21 November 2019 p 93 lines 9 to 28.

[75] See transcript for 21 November 2019 p 94 lines 24 to 31 and p 95 lines 17 to 19.

that [he] must accept the deals": it "would have to depend on whether the deals were attractive."[76]

42 As far as the defendants were concerned, they heard nothing more of the SPA from the first plaintiff after October 2014; and he continued to serve as their relationship manager at UOB. They were shocked, therefore, when on 3 May 2018 – nearly four years later – they received a letter from the plaintiffs' solicitors demanding that they complete the transaction under the SPA[77].

The plaintiffs' version of the events from late October 2014 onwards

43 Not surprisingly, the first plaintiff denied the defendants' version of the events from mid-October 2014 onwards. In particular, he denied having agreed to the cancellation of the SPA during a tele-conversation with the first defendant on 31 October 2014. For that matter, he denied even having had a tele-conversation with the first defendant on 31 October 2014[78]. According to the first plaintiff, "[o]ver the course of October 2014 to around May 2018", he "tried to contact the [d]efendants both directly and indirectly through either George Lim or Bernard Lim, to chase them to complete the sale transaction set out in the [SPA]"[79]. He claimed that the defendants were "non-committal" and "requested for multiple extensions of time" to "take instructions" from Teow. The defendants also allegedly "offered to get [him] involved in business deals/opportunities as a way of compensation for the delay in the completion",

[76] See transcript for 22 November 2019 p 52 line 14 to p 53 line 17.

[77] See, *eg*, [43]–[45] of the 1st Defendant's AEIC.

[78] See transcript for 19 November 2019 p 31 lines 22 to 26.

[79] [61] of the 1st Plaintiff's AEIC.

but no details were furnished of any such deals or opportunities; and in any event, he "certainly did not agree to this"[80].

44 The first plaintiff also claimed that in 2017, he discovered that Teow was being investigated in Malaysia for offences such as money laundering and the promotion of a pyramid scheme. He then concluded that "[g]iven Tedy Teow's criminal record", it was "more likely than not that Tedy Teow and his associates, namely the [d]efendants, did not have a genuine intention of honouring their obligations under the [SPA], and their requests for more time were merely delay tactics"[81]. However, he was only able to seek legal advice in "early 2018" when he managed to obtain sufficient funds from the sale of his property[82].

45 As for the second plaintiff, apart from confirming that the 9.755 million PSL shares in her UOB Kay Hian account were purchased by the first plaintiff and that he was the beneficial owner of these shares[83], she also testified that she had never met nor spoken with the defendants; that she had left the SPA transaction entirely to the first plaintiff to handle; and that she did not know what was set out in the SPA[84]. The first plaintiff did not deny that he was handling the SPA transaction on behalf of the second plaintiff.

On whether there was rescission of the SPA by mutual agreement

The applicable legal principles

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[80] [61] of the 1st Plaintiff's AEIC.

[81] [63]–[64] of the 1st Plaintiff's AEIC.

[82] [65] of the 1st Plaintiff's AEIC.

[83] [3]–[5] of the 2nd Plaintiff's AEIC.

[84] See transcript for 20 November 2019 p 112 lines 4 to 12.

46 On the issue of rescission by mutual agreement, the parties were agreed on the applicable legal principles. Locally, these have been summarised in a number of High Court judgments. In *Kensteel Engineering Pte Ltd v OSV Engineering Pte Ltd* [2005] 2 SLR(R) 253 ("*Kensteel*"), for example, the plaintiff alleged, *inter alia*, that it was entitled to rescind its contracts with the defendant (its subcontractor for certain works on a project known as "the Conoco-Belanak Project"), assume responsibility for the defendant's work, and recover the expenses and losses incurred. The defendant argued that the contracts had simply been varied by agreement, as opposed to having been rescinded. Andrew Ang JC (as he then was) found (at [43]) that "there was a rescission by mutual agreement or – in other words – a mutual abandonment of existing rights": the plaintiff was able to take over the works which it otherwise would not have been entitled to, while the defendant was released from further performance of its obligations under the contract. In so finding, Ang JC cited (at [42]) the following well-known passage from *Chitty on Contracts* vol 1 (Sweet & Maxwell, 29th Ed, 2004) at para 22-025:

> Where a contract is executory on both sides, that is to say, where neither party has performed the whole of his obligations under it, it may be rescinded by mutual agreement, express or implied. A partially executed contract can be rescinded by agreement provided that there are obligations on both sides which remain unperformed. Similarly, a contract which has been fully performed by one party can be rescinded provided that the other party returns the performance which he has received and in turn is released from his own obligation to perform under the contract. The consideration for the discharge in each case is found in the abandonment by each party of his right to performance or his right to damages, as the case may be.

The same passage from *Chitty on Contracts* (albeit this time from the 2008 edition) was also cited by Lee Seiu Kin J in *Uncharted Business Pte Ltd v Asiasoft Online Pte Ltd* [2009] SGHC 188 (at [21]).

47 In the present case, it was clear that neither the plaintiffs nor the defendants had performed the whole of their respective obligations under the SPA. As at 31 October 2014, the plaintiffs had yet to transfer any PSL shares to the defendants, and the defendants had yet to transfer any funds to the plaintiffs in payment of the total purchase price of $10.5 million. Having considered the evidence, I found that there was in fact a rescission by mutual agreement of the SPA. My reasons for arriving at such a conclusion were as follows.

No notice to complete served between October 2014 and May 2018

48 Firstly, it was not disputed that prior to May 2018, the plaintiffs had never served on the defendants a notice to complete the sale transaction. This was significant because the completion date had clearly been set at 17 October 2014 (clause 1.1 of the SPA); and pursuant to clause 7 of the SPA, "[t]ime shall be of the essence in this Agreement as regards all the times, dates and periods mentioned herein". The failure to serve any notice of completion in the period post 17 October 2014 up till May 2018 supported the defendants' assertion that by end-October 2014, the parties had agreed on "a rescission by mutual agreement or – in other words – a mutual abandonment of existing rights" (per *Kensteel* at [43]) under the SPA.

No evidence to support the alleged attempts by the first plaintiff to "chase" the defendants to complete the transaction under the SPA

49 Secondly, whilst the first plaintiff claimed that he had "[o]ver the course of October 2014 to around May 2018 … *tried to contact the [d]efendants both directly and indirectly* through either George Lim or Bernard Lim, to chase them

to complete the [SPA]"[85] [emphasis added], there was no evidence at all of any such communications – no emails, for example, and not even any text messages. Assuming there had really been attempts on the first plaintiff's part at "chasing" the defendants "both directly and indirectly" to complete the SPA transaction, it was inconceivable that he should not have been able to produce any evidence of such attempts. As their relationship manager at UOB, the first plaintiff would have had the defendants' contact details – as well as Carrie's contact details. Indeed the evidence showed that he was able to contact them directly during the period of October 2014 to May 2018. Thus, for example, on 13 April 2016, he had emailed the first defendant directly (copying Carrie), to inform him that UOB had approved his request for credit facilities to the tune of $15 million[86] ("*Hi Jim* [*ie*, the first defendant] – *Finally the bank approved*"). He also conceded that during this period, he had communicated with the first defendant via WhatsApp. Yet, incredibly, there was no evidence of his communicating with either defendant to "chase them to complete the [SPA]". Nor was there any evidence of his contacting either George Lim or Bernard Lim for their help in chasing the defendants to complete the sale and purchase.

Major inconsistencies in the first plaintiff's account of events between October 2014 and May 2018

50 Thirdly, not only was the first plaintiff's story about his attempts to chase the defendants to complete entirely unsupported by any objective evidence, he could not keep his story straight. Instead, whenever confronted in cross-examination about some odd or troubling aspect of his version of events,

[85] [61] of the 1st Plaintiff's AEIC.

[86] Pp 259–277 of the 1st Defendant's AEIC.

he would come up with a new version – usually one that had never been ventilated either in his pleadings or in his AEIC.

51 Thus, for example, when cross-examined about his uncorroborated assertion that he had sought George Lim's and Bernard Lim's help to contact the defendants, the first plaintiff suddenly came up with a new story about having asked Teow's personal assistant (one Charles Ng, "Ng") to "talk to [the defendants] to complete the [SPA]"[87]. The first plaintiff even claimed that he had asked Ng to talk to the defendants because Ng was "very close to them"[88]. This was despite the fact that "Charles Ng" was not even mentioned anywhere in his AEIC or in his testimony during the first two days of the trial. He asserted that George Lim and/or Bernard Lim "did ask" the defendants[89], but when questioned further about this, he claimed that George Lim had told him he "can't find [the defendants], can't contact them" – and that was why he had asked Ng for help[90]. When pressed about his alleged attempts to get George Lim to contact the defendants, he changed his story again, this time claiming that George Lim had not even replied[91]. When it was pointed out by defence counsel that he had only minutes earlier stated that George Lim had told him he "can't find [the defendants], can't contact them", he said that "George says can't get them *or* there's no reply from George"[92] [emphasis added]. When it was pointed

[87] See transcript for 19 November 2019 p 32 lines 10 to 13 and p 33 lines 5 to 30.

[88] See transcript for 19 November 2019 p 34 lines 22 to 23.

[89] See transcript for 19 November 2019 p 34 line 22.

[90] See transcript for 19 November 2019 p 34 lines 25 to 31.

[91] See transcript for 19 November 2019 p 39 lines 19 to 27.

[92] See transcript for 19 November 2019 p 39 line 19 to p 40 line 27.

out to him that George saying he could not find the defendants and George not replying were two different things, he came up with yet another new answer[93]:

> … what George tell me, he says he … don't want to get involved, yah.

52 In my view, the first plaintiff's inability to keep his story straight on this critical issue of his attempts to "chase" the defendants to complete the sale and purchase demonstrated that he was making up his evidence as he went along. As another example, although he claimed in his AEIC that he had between October 2014 and May 2018 tried to "chase" the defendants to complete and that they had kept requesting extensions of time in order to "take instructions" from Teow[94], in cross-examination he contradicted himself by admitting[95] that there had in fact been no discussion with the defendants about completion of the SPA transaction after 2014 until the issuance of the letter of demand by his lawyers in May 2018. He obviously realised that this admission was unfavourable to his case, because when next asked to confirm that he had not even asked to complete the sale and purchase in 2016, he suddenly produced the purported explanation that he had been "waiting for money to come in" to the defendants' UOB accounts[96]. When pressed further, he offered another new explanation: he said that he had been "afraid to lose [his] banking job" should he "take legal action" or "chase [the defendants] to complete that [SPA]"[97]. Yet even this new explanation rang hollow because he proceeded to reveal that he had obtained clearance from his "bosses" prior to bringing the present

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[93] See transcript for 19 November 2019 p 40 line 10 to p 41 line 11.

[94] [61] of the 1st Plaintiff's AEIC.

[95] See transcript for 19 November 2019 p 32 lines 25 to 27.

[96] See transcript for 19 November 2019 p 32 line 28 to p 33 line 8.

[97] See transcript for 19 November 2019 p 37 lines 15 to 19.

proceedings against the defendants[98]; and it did not appear that he had encountered any great difficulty in doing so. Nor did it appear that he had suffered job-wise from bringing these proceedings, for it was not disputed that at the time of the trial (a year after launching these proceedings), he was still employed by UOB as a relationship manager.

First plaintiff's account of events between October 2014 and May 2018 contradicted in material aspects by evidence from his own witnesses and evidence of his own conduct

53 Fourthly, the first plaintiff's account of his attempts to get the defendants to complete the SPA transaction between October 2014 and May 2018 was squarely contradicted by other evidence. Thus, for example, he claimed that he had asked Mr Low to get the defendants to complete the sale and purchase. Perhaps realising that no documentary evidence existed of any such request by him to Mr Low, he then glibly asserted that what he had done was to ask Mr Low "to ask whether they want to reduce the number of shares"[99]. This appeared to me to be a nonsensical statement – and one which directly contradicted his own assertion in his AEIC that he "did not agree to any amendment of the [SPA]" to reduce the number of shares[100]. In any event, the first plaintiff's tortured description of how he had sought to get the defendants to complete the sale and purchase by asking Mr Low to ask if they "want to reduce number of shares" was contradicted by Mr Low's testimony. In cross-examination, Mr Low's unequivocal evidence was that in a tele-conversation he had with the first plaintiff on 27 October 2014, the latter had told him "the purchasers wish to

[98] See transcript for 19 November 2019 p 37 lines 19 to 21.

[99] See transcript for 19 November 2019 p 37 lines 1 to 11.

[100] [56]–[57] of the 1st Plaintiff's AEIC.

amend the SPA such that they were buying half the original amount"[101]. In other words, Mr Low was simply instructed that the defendants wanted to amend the SPA so as to halve the number of shares being bought. Mr Low was not asked "to ask whether [the defendants] want to reduce the number of shares". This would explain why Mr Low's email to the first defendant on 27 October 2014 stated that he had "just received a call from [the first plaintiff] saying that [the defendants] wish to amend the SPA, such that [they] will purchase half the original amount"[102]. Tellingly, Mr Low also testified that nobody had even brought to his attention the significance of 17 October 2014 as the completion date: he "wasn't asked to chase, [he] wasn't asked to delay, [he] wasn't asked to abort"[103]. As far as Mr Low could remember, he had no further involvement in the matter of the SPA after 27 October 2014[104].

54 When pressed about the apparent absence of any attempt on his part to give notice of completion, the first plaintiff claimed for the first time that this was because he had been "waiting for [the defendants] to put money into" their UOB accounts. He even claimed that he had been "waiting patiently" despite "various excuses" given by the first defendant as to why he could not do "big transfer"[105]. At one point, he also sought to give the impression that the defendants had not managed to retain funds in their accounts for any appreciable period of time: he claimed for instance that although money had come into the second defendant's account, the money was only "in transit" because the latter

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[101] See transcript for 20 November 2019 p 50 lines 16 to 28.

[102] P 53 of the 1st Defendant's AEIC.

[103] See transcript for 20 November 2019 p 48 lines 21 to 25.

[104] See transcript for 20 November 2019 p 31 line 29 to p 22 line 2.

[105] See transcript for 15 November 2019 p 133 lines 5 to 19.

had "used the money to buy some durian plantation"[106]. However, the objective evidence available gave the lie to his story. Financial records produced by the second defendant showed, for example, that he was the 100% shareholder of a company known as Wind Air Development Limited ("Windair")[107]; that the first plaintiff had helped him open a UOB account for Windair[108]; and that between October 2016 and December 2016, Windair had maintained a balance between US$7.5 million and US$8.103 million in its account[109]. While it was true that the second defendant had subsequently used some of the funds to purchase a durian plantation in January 2017[110], it could not be denied that these funds had remained in his UOB account for three months beforehand. If the first plaintiff had really been waiting for the defendants to be put in funds before broaching the issue of completion, there was no reason for him to remain silent during that time. Moreover, the inflow of such substantial cash amounts would have shown the first plaintiff that the second defendant had access to sources of funding. Even if the latter had used some of the cash to buy a durian plantation, there was nothing to suggest that he could not get hold of more funding if he needed it to complete the SPA transaction – and yet, unaccountably, the first plaintiff never asked.

55 As for the first defendant, his evidence – which was not refuted – was that the first plaintiff had also helped him to open both personal and corporate

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[106] See transcript for 19 November 2019 p 32 line 28 to p 33 line 2 and p 71 lines 4 to 29.

[107] See transcript for 21 November 2019 p 9 lines 14 to 16.

[108] See transcript for 21 November 2019 p 12 lines 22 to 26.

[109] See transcript for 21 November 2019 p 10 line 27 to p 11 line 25; Vol 2 Defendants' Bundle of Documents pp 26–38.

[110] See transcript for 21 November 2019 p 14 lines 12 to 19.

bank accounts with UOB[111]; that he had deposited US$2 million into his personal account from the outset, which amount remained in his personal account even at the time of the trial[112]; and that he had further maintained between US$5 million and US$10 million in his corporate account[113]. Again, therefore, in so far as the first plaintiff claimed he needed to "wait" for the defendants to be in funds before asking for completion, there was no reason for him to remain silent *vis-à-vis* the first defendant. Yet, once again, he never asked. Indeed, at one point he admitted that despite being aware of the funds available in the first defendant's account, he had not asked the first defendant to pay for the PSL shares because *he knew that the defendants* "*have no intention to pay*"[114] [emphasis added]. This admission strongly suggested that the first plaintiff already knew – well before May 2018 – that the sale of the 35 million PSL shares was off. This would appear to support the defendants' assertion that by late October 2014, the parties had already agreed to call off the transaction.

56 In short, the first plaintiff's story about having to "wait" for the defendants to be in funds before seeking completion was contradicted by the objective evidence of the state of the defendants' bank account balances during the relevant periods. The entire story appeared to me to be a pack of lies. It would appear even the first plaintiff realised how weak this story sounded – because he proceeded to trot out several new explanations for his apparent inaction prior to May 2018. First, he said that there was a "conflict of interest" because he "can't be seen as pursuing [his] clients to buy shares from …

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[111] See transcript for 22 November 2019 p 4 lines 3 to 13.

[112] See transcript for 22 November 2019 p 5 lines 20 to 30.

[113] See transcript for 22 November 2019 p 5 lines 10 to 14.

[114] See transcript for 19 November 2019 p 74 lines 8 to 11.

[him]"[115]. When it was pointed out to him that the SPA had been entered into *before* the defendants became his private banking clients, he quickly switched tack and said that he had not known his "rights" prior to consulting lawyers in early 2018[116]. It was then pointed out to him that his statement about not knowing his "rights" until he met his lawyers appeared at odds with his earlier testimony that he had not asked the defendants to proceed with completion prior to 2018 because he knew the SPA was "valid for 7 years" and he "reserve the right"[117]. At this point, he switched tack again and claimed instead that he had wanted to "get rid of [his] mortgage" before he could "pursue this case"[118]. I found it very disturbing how quickly he came up with these various responses. It was plain that he had no regard for the truth and would simply offer whatever response he thought was required to get him off the hook.

57 Tellingly, several material aspects of the first plaintiff's version of events were also contradicted by evidence from his wife and evidence of his own conduct. In his AEIC, the first plaintiff sought to convey the impression that he had always been ready and willing to complete the SPA transaction: despite the defendants' alleged "radio silence" from 17 October 2014 to 22 October 2014, he had made numerous efforts to contact them about completion[119]; and he had not even been willing to agree to amending the SPA so as to reduce the number of shares to be sold[120]. In other words, as far as the

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[115] See transcript for 19 November 2019 p 78 lines 13 to 16.

[116] See transcript for 19 November 2019 p 78 lines 17 to 27.

[117] See transcript for 19 November 2019 p 37 lines 31 to 32.

[118] See transcript for 19 November 2019 p 79 lines 6 to 8.

[119] [44] of the 1st Plaintiff's AEIC.

[120] [57] of the 1st Plaintiff's AEIC.

first plaintiff was concerned, despite there having been no completion of the sale and purchase on 17 October 2014, he had not considered the deal in the SPA to be "off". In contrast, his wife Yvonne testified in cross-examination that sometime around the completion date, she had asked him whether they were "going to transact anything" and "how is the deal"[121]. According to Yvonne, the first plaintiff had told her "[t]here's no deal"[122]. This portion of Yvonne's testimony was inconsistent with the first plaintiff's evidence. Her testimony was not refuted in re-examination.

58 Not only was this portion of Yvonne's testimony inconsistent with the first plaintiff's evidence, her evidence also tended to support certain aspects of the defendants' version of events. As noted earlier at [31], the first defendant's evidence in cross-examination was that he had discovered from "online checks" sometime between 17 October 2014 and 24 October 2014 that "[the plaintiff] was not one of the top 20 shareholders" of PSL[123]. Teow became reluctant to proceed with the SPA because they "were starting to have doubts on whether [the first plaintiff] had 35 million shares"[124]. According to the first defendant, sometime before his text message to the first plaintiff on 23 October 2014 (in which he had asked "*The total need my boss help u how many share?*"[125]), he had spoken to the first plaintiff about "cancellation" of the SPA: the first plaintiff had not wanted the SPA cancelled, which was why the first defendant

[121] See transcript for 19 November 2019 p 152 lines 7 to 27.

[122] See transcript for 19 November 2019 p 152 line 15 to p 153 line 1.

[123] See transcript for 22 November 2019 p 39 lines 4 to 25.

[124] See transcript for 22 November 2019 p 32 line 25 to p 33 line 17.

[125] P 37 of the 1st Defendant's AEIC.

had then "asked him how many shares did he need [Teow] to help him with"[126]. In short, according to the first defendant's version of events, sometime before his text message on 23 October 2014, the first plaintiff would already have been made aware that the defendants were at the very least reluctant to complete the agreement for their purchase of 35 million shares. Yvonne's evidence – that she had been told by the first plaintiff sometime around the completion date that there was "no deal" – appeared to me to support the first defendant's version of events.

59 It should be added that the first plaintiff's reply to the first defendant's query ("*17,000,000 shares at $0.30 (last time 35,000,000)*"[127]) further supported the latter's version of events and not his own version. As alluded to above, the first plaintiff's position per his AEIC was that there had been "radio silence" from the defendants between 17 October 2014 and 22 October 2014. However, if there really had been "radio silence" from the defendants during that period, one would have expected the first plaintiff to protest on 23 October 2014 that he had no idea what the first defendant's query ("*The total need my boss help u how many share?*") was about. That he responded to the query by suggesting a reduced number of shares supported the first defendant's assertion that they had already spoken about cancelling the SPA prior to 23 October 2014 and that they had discussed reducing the number of shares when the first plaintiff indicated reluctance to cancel.

60 It should also be added that although the first plaintiff took the position in his AEIC that he did not agree to the SPA being amended to reduce the

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[126] See transcript for 22 November 2019 p 33 lines 1 to 3.

[127] P 37 of the 1st Defendant's AEIC.

number of shares, in cross-examination he contradicted himself by claiming that he had actually been ready to agree to a reduced number. He even claimed that this was what he had told Mr Low[128]:

> I spoke to Mr Low if they come back with a number above 17 million, I will have accepted, full stop.

61 This startling claim was not borne out when Mr Low took the witness stand. Mr Low said nothing about having been told by the first plaintiff that he would accept any offer by the defendants to purchase "above 17 million" shares. In fact, he was not even asked in examination-in-chief about such a conversation with the first plaintiff.

62 Other evidence relating to the first plaintiff's own conduct also tended to support the defendants' case regarding the rescission by mutual agreement of the SPA in late October 2014 – and conversely, to contradict the plaintiffs' claims about having been ready to complete the agreement from October 2014 up till May 2018. Thus, for example, although the plaintiffs claimed that the second plaintiff's 9.755 million shares were to make up part of the 35 million PSL shares to be sold under the SPA[129], the evidence showed that in the period between October 2014 and May 2018, the first plaintiff continued to trade in his mother's PSL shares – to the extent that the number of PSL shares in her account fell below 9.755 million from 2016 to March 2017[130]. When questioned about this, the first plaintiff conceded that he had not even been aware at the material time that the number of PSL shares in his mother's account had fallen below

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[128] See transcript for 15 November 2019 p 146 lines 28 to 29.

[129] [20] of the 1st Plaintiff's AEIC and [6] of the 2nd Plaintiff's AEIC.

[130] See transcript for 19 November 2019 p 87 line 9 to p 88 line 6; also Vol 2 Plaintiffs' Bundle of Documents pp 92 to 128.

9.755 million. By way of an attempt at explaining his dealings in the shares in her account, he claimed that he was selling off some of her shares because he had promised to "buy [PSL shares] from Dr Currie Chiang and Tan [Seung Yuen] and Dr Chung"; that he needed to "make good [his] promise to them"[131]; and that he was "trimming" his own position so as to be able to buy from them[132]. However, his explanation about "*trim some to buy some*"[133] flew in the face of the evidence which showed that apart from selling off part of his mother's 9.755 million PSL shares, he had also continued to purchase more PSL shares[134]. Moreover, even if he had intended to make up any shortfall in the number of his mother's PSL shares by buying more shares from his private banking clients, he would have needed at least to keep track of the number of shares he was selling off from his mother's account versus the number of shares left in that account. The fact that he was not even aware when the number of shares in her account fell below 9.755 million[135] indicated that he was not keeping track of the numbers at all.

63 In short, the first plaintiff's conduct in trading in his mother's PSL shares in the period post October 2014 and in apparently failing to keep track of the number of shares in her account was inconsistent with his assertion that even post October 2014, he remained bound to sell the defendants 35 million shares, including his mother's 9.755 million shares.

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[131] See transcript for 19 November 2019 p 88 lines 7 to p 89 line 10.

[132] See transcript for 19 November 2019 p 89 lines 4 to 10.

[133] See transcript for 19 November 2019 p 90 line 6.

[134] See transcript for 19 November 2019 p 89 line 10 to p 90 line 9.

[135] See transcript for 19 November 2019 p 92 lines 21 to 27.

On the issue of rescission of the SPA by mutual agreement: Summary

64 To sum up, therefore: this was a case in which – despite the SPA having provided for time to be of the essence – no notice of completion was ever served by the plaintiffs for nearly four years after the contractually scheduled completion date had passed.

65 This was also a case where the first plaintiff's story of his attempts to "chase" the defendants about completion was contradicted by the evidence of other witnesses, documentary evidence, and the evidence of his own conduct following the completion date. Instead, much of the evidence available supported the defendants' case of a rescission by mutual agreement of the SPA.

66 Finally, this was a case where the first plaintiff's story of his attempts to "chase" for completion of the SPA transaction was rife with material internal inconsistencies. In this connection, I should make it clear that having had the opportunity to observe the first plaintiff in the witness stand over three days, I did not think the lamentable state of his evidence was the result of confusion and/or anxiety about testifying in court. In the first place, whilst it would be natural for any witness to feel some anxiety about testifying in court, the first plaintiff did not strike me as being in any way cowed or intimidated by the occasion. When he wanted to, he was capable of responding boldly, even defiantly, to defence counsel's questions. For example, when it was pointed out to him that his AEIC contained no mention of his asking Ng to contact the defendants, he told defence counsel that counsel "can call Charles Ng to come to Singapore"[136].

[136] See transcript for 19 November 2019 p 35 lines 20 to 23.

67 More importantly, I formed the distinct impression that the first plaintiff was only too aware of the anomalies and flaws in his case, and his stratagem when confronted with these anomalies or flaws was to prevaricate and obfuscate. Instead of answering a question directly, he would often stall by offering a response that failed to answer the question. Then, when reminded of the question, he would offer multiple responses, only to disavow these responses by ending with the declaration that he did not know or did not remember. For example, when he was asked whether he had spoken to Mr Low after 27 October 2014 about the completion of the sale and purchase, his first response was that he "was waiting for [the first defendant] to reply" to Mr Low's email query about amending the SPA. When he was reminded of the question, he continued to talk about the first defendant ("I think there was no reply"). When reminded yet again to answer the question, he first said he did not think he had spoken to Mr Low – only to negate that reply in the very next minute by declaring that he actually could not remember[137]. With respect, it appeared to me that this slippery manner was a ploy to avoid being pinned down to a potentially unfavourable position.

68 For the reasons given in [48] to [63], I was satisfied that the SPA was rescinded by mutual agreement of the parties; namely, by the first plaintiff and the first defendant coming to such an agreement during their tele-conversation on 31 October 2014. I was satisfied as well that in coming to such an agreement, the first plaintiff and the first defendant were also acting on behalf of the second plaintiff and the second defendant respectively, with the latter two's authorisation.

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[137] See transcript for 19 November 2019 p 25 line 10 to p 26 line 17.

69 Further, I accepted that the first defendant's mention of future business opportunities did not amount to a binding promise by the defendants to provide the first plaintiff with any specific business deal. From what I could see, the first defendant's vague mention of possible future opportunities was really intended as a salve to any feelings of disappointment on the first plaintiff's part. This would explain why no details were given of any particular business opportunity, and why no timeframe or deadline for providing such opportunities was ever mentioned.

70 This did not mean that the first plaintiff would have been left entirely unmoved by the mention of possible future deals. After all, on his own evidence, the first plaintiff was aware that Teow was a wealthy individual with extensive business dealings. It would not have been surprising for him to have imagined that other opportunities for making money off (or with) Teow would soon present themselves. Although the first plaintiff denied[138] having had a tele-conversation with the first defendant on 31 October 2014 in which they had agreed to rescind the SPA and the latter had mentioned the possibility of future deals, he admitted that after 2014, he had "brought deals to Tedy"[139]. It was telling that in terms of timing, the first plaintiff's decision in early 2018 to pursue the enforcement of the SPA came about after the following two incidents. First, a "hotel deal" relating to the Hatten Group which he had brought to Teow fell through, apparently because the latter made a lowball offer ("300 million they … want to buy 150 million, no deal")[140]. Second, he made the discovery in 2017 that Teow and his businesses had run into trouble

[138] See transcript for 19 November 2019 p 30 line 21 to p 31 line 26.

[139] See transcript for 19 November 2019 p 29 lines 6 to 22.

[140] See transcript for 19 November 2019 p 127 line 27 to p 128 line 23.

involving, *inter alia*, investigation for money laundering and other offences[141]. I inferred that these inauspicious developments must have persuaded the first plaintiff that he was not going to profit from further deals with Teow.

Final observation

71 In light of my finding as to the issue of rescission by mutual agreement of the SPA, I did not find it necessary to make further findings on the defendants' alternative argument of equitable estoppel.

72 There is one final observation I should put on record. This concerns the plaintiffs' claim for the entire difference between the price of $10.5 million for all 35 million PSL shares and the market price of the same number of shares as at the date of issuance of the writ. I found the manner in which this claim was presented to be disturbing in its lack of candour and/or veracity.

73 In the Statement of Claim, the plaintiffs did not explain the basis on which they were making the claim in respect of all 35 million shares. In his AEIC, the first plaintiff said that leaving aside his mother's and Yvonne's shares, he had reached an "oral agreement" with Tan SY in September 2014 "that approximately 15.51 million of [Tan SY's] shares in [PSL] would constitute a part of the 35 million shares to be sold to potential buyers, i.e. the [d]efendants"[142]. He said he had a similar "oral agreement" with Dr Chung that "4 million of her shares in [PSL] would constitute a part of the 35 million shares to be sold to potential buyers, i.e. the [d]efendants"[143]. Oddly, he said nothing

[141] [63] of the 1st Plaintiff's AEIC.

[142] [80] of the 1st Plaintiff's AEIC.

[143] [80] of the 1st Plaintiff's AEIC.

else about the other terms of these "oral agreements": he did not even specify whom the buyer of Tan SY's and Dr Chung's shares was to be under these "oral agreements". It was only in cross-examination that he appeared at one point to claim that he was the one who had to buy over Dr Chung's (and Dr Currie Chiang's) shares[144]. He also claimed that Tan SY had applied "some pressure" on him[145]; and that both Tan SY and Dr Chung had "agreed to withhold legal action against [him] thus far as [he had] agreed to take the [d]efendants to [c]ourt to enforce the [SPA]"[146]. In fact, he claimed that Tan SY had called him in 2015, 2016 and 2017 to ask "what is happening", to which he had responded by asking Tan SY to "give [him] some time"[147].

74 The first plaintiff's evidence about his "oral agreements" with Tan SY and Dr Chung was contradicted by the two witnesses themselves. Tan SY could only recall the first plaintiff telling him that he had found a buyer willing to pay $0.30 per share for Tan SY's 15.51 million shares: the first plaintiff had not told him whom the buyer was, nor had the first plaintiff told him anything else about the SPA[148]. Tan SY testified that he was not updated by the first plaintiff at all about what had happened to the sale of his shares: he only found out "quite some time later" that the sale had not materialised[149]. The first plaintiff had said he would "do something" about it, but Tan SY did not ask any questions and simply left it to him to handle the matter[150]. Tan SY also testified that the first plaintiff

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[144] See transcript for 19 November 2019 p 88 lines 11 to 13 and p 89 lines 6 to 8.

[145] See transcript for 19 November 2019 p 59 lines 3 to 4.

[146] [78] and [82] of the 1st Plaintiff's AEIC.

[147] See transcript for 19 November 2019 p 59 lines 18 to 31.

[148] See transcript for 20 November 2019 p 87 line 20 to p 90 line 1.

[149] See transcript for 20 November 2019 p 90 lines 5 to 31.

[150] See transcript for 20 November 2019 p 91 line 1 to p 92 line 4.

had told him to "wait", though that had been a "[l]ong time ago"; and as at the date of the trial he was still "waiting for [the first plaintiff's] advice"[151].

75 As for Dr Chung, she recalled the first plaintiff telling her that he had "some agreement with … some other people who would agree to … buy the shares"[152]. At one point in her testimony, she said she did not know whom the buyers were nor could she remember how much the sale price was[153]. Subsequently she said her understanding was that she would "just sell to [the first plaintiff] and he would … go ahead and .. do whatever is necessary"[154]. She realised sometime later that the sale had not materialised, but like Tan SY, she had not questioned the first plaintiff and had "just left him to … do whatever he could"[155]. Her own understanding was that the first plaintiff would still be helping her to sell her shares[156]. It was only in October 2019 that she found out the first plaintiff had commenced legal proceedings[157].

76 Tan SY's and Dr Chung's evidence thus contradicted various aspects of the first plaintiff's. In particular, it was plain that neither of them had a common understanding with the first plaintiff as to the existence – and the terms – of any alleged "oral agreement". It was also plain that far from having "agreed to withhold legal action against [the first plaintiff] thus far" upon his agreeing "to take the [d]efendants to [c]ourt to enforce the [SPA]", both Tan SY and Dr

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[151] See transcript for 20 November 2019 p 93 lines 1 to 28.

[152] See transcript for 20 November 2019 p 69 lines 3 to 9.

[153] See transcript for 20 November 2019 p 69 lines 7 to 17.

[154] See transcript for 20 November 2019 p 81 lines 15 to 18.

[155] See transcript for 20 November 2019 p 74 line 31 to p 75 line 9.

[156] See transcript for 20 November 2019 p 81 lines 15 to 28.

[157] See transcript for 20 November 2019 p 77 lines 25 to 32.

Chung had been content to leave the first plaintiff to handle the matter as he saw fit; and neither appeared to have even contemplated legal action against him. This was such a drastically different picture from that presented by the first plaintiff that I could not help but question the basis upon which he had constructed the claim put forward in the present proceedings. The material inconsistences between the first plaintiff's version of events and that of his own witnesses added to the deep overall doubts I had about his credibility.

77 I should also note for the record that whilst the first plaintiff made various allegations about having had to pay Dr Currie Chiang for her PSL shares, he did not call her as a witness (despite having originally listed her as one of his witnesses). There was also no objective evidence produced of these alleged payments to her; nor were these payments ever pleaded as part of the plaintiffs' claim.

Conclusion

78 At the conclusion of the trial, I rejected the plaintiffs' claims that the defendants had committed repudiatory breach of the SPA which they had accepted. I accepted instead the defendants' defence of rescission of the SPA by mutual agreement whilst rejecting their counterclaims against the first plaintiff for misrepresentation. In light of the outcome, I decided that the fairest thing to do about costs would be to order each party to bear his (or in the second plaintiff's case, her) own costs of the proceedings; and I made the order accordingly.

Mavis Chionh Sze Chyi
Judicial Commissioner

Daryl Ong Hock Chye and Valerie Seow (LawCraft LLC) for the plaintiffs;
Woo Yin Loong Christopher, Ng Yuan-Ming Joel and Sujesh Anandan (Quahe Woo & Palmer LLC) for the defendants.
