IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 109

Suit No 420 of 2018
(Summonses Nos 3301, 5697, 5706 and 5899 of 2018)

Between

1. CRRC (Hong Kong) Co Limited
2. CRRC HongKong Capital Management Co Limited

… *Plaintiffs*

And

Chen Weiping

… *Defendant*

And

Chew Hwa Kwang Patrick

… *Third Party*

Between

Chen Weiping

… *Plaintiff in Counterclaim*

And

1. CRRC (Hong Kong) Co Limited
2. CRRC HongKong Capital Management Co Limited
3. Chew Hwa Kwang Patrick
4. Guo BingQiang

… *Defendants in Counterclaim*

GROUNDS OF DECISION

[Civil Procedure] — [Summary judgment]
[Civil Procedure] — [Striking out]

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CRRC (Hong Kong) Co Ltd and another
v
Chen Weiping (Chew Hwa Kwang Patrick, third party)

[2019] SGHC 109

High Court — Suit No 420 of 2018 (Summonses Nos 3301, 5697, 5706 and 5899 of 2018)
Woo Bih Li J
24, 26 September 2018, 11 February 2019

29 April 2019

Woo Bih Li J:

Introduction

1 The plaintiffs ("Plaintiffs") claim against the defendant, Chen Weiping ("Chen"), as a guarantor. They applied for summary judgment which I granted on 26 September 2018. Chen then filed an appeal to the Court of Appeal on 4 October 2018. As I was about to release the present grounds of decision, I learned that Chen has filed a Notice of Discontinuance of this appeal on 25 April 2019 (but apparently dated 24 April 2019). Nevertheless, the present grounds of decision will still extend to the Plaintiffs' claim for summary judgment.

2 Subsequent to my decision on 26 September 2018, three other applications were filed on 4 December 2018 and I granted these applications on 11 February 2019. On 11 March 2019, Chen filed two appeals to the Court of Appeal in respect of two of my three decisions regarding his claims against one

Patrick Chew ("PC"). I will elaborate later on the three other applications and my decisions thereon.

Background

3 Both Plaintiffs are Hong Kong incorporated companies which are principal subsidiaries of CRRC Corporation Limited ("CRRC").

4 CRRC is a company incorporated in the People's Republic of China ("PRC"). Its parent company is a central state-owned enterprise. The CRRC group (*ie*, CRRC and its subsidiaries) is the largest rolling stock manufacturer in the PRC, with a monopoly over the manufacture of rolling stocks for high-speed rail in the PRC.

5 Midas Holdings Limited ("Midas") is a company incorporated in Singapore and is listed on the Singapore Stock Exchange ("the SGX"). Its main business is in the manufacture of aluminium alloy extruded products, which is a critical component for the manufacture of rolling stocks. Chen was the executive chairman of Midas from March 2003 to 2 April 2018. He is also the largest shareholder of Midas.

6 The CRRC group is the largest purchaser of Midas' aluminium alloy extruded products in the PRC, and CRRC is the largest client and source of revenue of the Midas group.

7 Sometime in 2016, Chen reached out to CRRC's Xu Hongchun ("Xu") to request a meeting. Sometime later in 2016, Chen informed Xu of his plans to take Midas private and expressed his hope that CRRC and/or the CRRC group would invest in Midas. Thus, it was Chen who initiated contact with CRRC.

8 After 27 September 2016, the Plaintiffs took the view that they should subscribe for notes under Midas' S$500,000,000 Multicurrency Medium Term Note Programme ("the MTN Programme"), which could be reinforced with security arrangements including a personal guarantee from Chen.

9 On or around 23 November 2016, Midas issued US$30m 7% fixed rate notes due 2017 ("the Series 003 Notes") under the MTN Programme. The principal terms of the Series 003 Notes were as follows:

Issue size: US$30m;

Issue price: 100% of the principal amount of the notes;

Interest: 7% per annum; and

Maturity date: one year from the date of issue.

10 On or around 23 November 2016, Midas also issued US$30m 7% fixed rate notes due 2018 ("the Series 004 Notes") under the MTN programme. The principal terms of the Series 004 Notes were as follows:

Issue size: US$30m;

Issue price: 100% of the principal amount of the notes;

Interest: 7% per annum; and

Maturity date: two years from the date of issue.

11 On 21 November 2016, each of the Plaintiffs had subscribed for US$15m of the Series 003 Notes and US$15m of the Series 004 Notes. Together, the Plaintiffs owned the entire US$30m of both the Series 003 Notes and the Series 004 Notes which were issued.

12 Also, on 21 November 2016, Chen issued a deed of guarantee ("the Guarantee") in favour of the Plaintiffs. The Guarantee was in the English language.

13 About one year later, on or around 15 November 2017, Midas requested that the maturity date for the Series 003 Notes be extended from 23 November 2017 to 23 November 2018 ("the Extension"). In the afternoon of 15 November 2017, the Plaintiffs, Midas and Chen came to some agreement on the terms of the Extension. The terms were written in the Chinese language and signed by the Plaintiffs, Midas and Chen. The Plaintiffs referred to this document as "the Extension MOU" while Chen described it as "the Chinese Extension Agreement". For convenience, I will also refer to it as "the Chinese Extension Agreement". The Plaintiffs said that this agreement was subject to approval and consent of their headquarters. No lawyers attended the afternoon meeting although lawyers attended a meeting in the morning of that day.

14 In any event, the Chinese Extension Agreement was followed by another document dated 21 November 2017 which was in the English language. It was signed by Midas and Chen and addressed to the Plaintiffs which the Plaintiffs accepted. The Plaintiffs referred to this document as "the Letter Agreement" and for convenience, I will use the same description.

15 Under the Letter Agreement, Midas was to procure the following from Chen:

> (a) execution of a securities charge agreement over 100 million shares ("the Charged Shares") owned by Chen in Midas in favour of the Plaintiffs;

(b) execution and delivery of a confirmation and amendment of the Guarantee ("the Guarantor Confirmation") in favour of the Plaintiffs; and

(c) payment of the US dollar equivalent of RMB10m ("the Performance Deposit") into the first Plaintiff's account as a performance deposit in relation to the obligations under the Series 003 Notes and the Series 004 Notes.

16 Chen performed the following:

(a) signed a securities charge over the Charged Shares on 22 November 2017 ("the Securities Charge");

(b) signed the Guarantor Confirmation on 22 November 2017; and

(c) paid the Performance Deposit on 22 November 2017.

17 Pursuant to cl 3.10 of the Letter Agreement, Midas was obliged to make an early redemption of the Series 003 Notes on 22 March 2018 unless the Plaintiffs otherwise agreed.

18 Midas failed to make an early redemption on 22 March 2018. On 29 March 2018, Midas issued an announcement stating, *inter alia*, that it had not received any waiver or agreement otherwise from the Plaintiffs in relation to the early redemption.

19 On 4 April 2018, the Plaintiffs' solicitors issued a notice to Chen stating that Midas was obliged to make an early redemption of the Series 003 Notes in full on 22 March 2018 but had not done so. As an Event of Default had occurred,

the Plaintiffs were making a demand for payment from Chen pursuant to the Guarantee.

20 Also, by a letter dated 4 April 2018 to Chen, the Plaintiffs' solicitors demanded that Chen take certain steps in respect of the Charged Shares.

21 On 5 April 2018, Midas requested a conference call to discuss the early redemption of the Series 003 Notes. The call took place on 9 April 2018. During the call, Midas' chief financial officer, Liaw Kok Feng, informed the Plaintiffs' representatives that a new board of directors of Midas had been formed and for the time being, the board was unable to provide any proposal to the Plaintiffs in respect of the early redemption of the Series 003 Notes.

22 The Plaintiffs commenced the present suit on 23 April 2018. Chen filed his Defence and Counterclaim on 23 May 2018. On 18 July 2018, the Plaintiffs filed Summons No 3301 of 2018 for the following reliefs:

(a) final judgment against Chen for US$31,173,698.53 ("the Outstanding Amount") or such sum as the court deems fit;

(b) interest on the Outstanding Amount at the rate of 9% per annum from 23 March 2018 until 3 April 2018;

(c) interest on the Outstanding Amount at the rate of 12% per annum from 4 April 2018 until the date of full payment;

(d) an order for specific performance by Chen of the Securities Charge, in particular, cl 3.4 of the Securities Charge;

(e) costs on an indemnity basis; and

(f) such further or other relief as the court deems fit.

23 I heard the application on 24 September 2018 and 26 September 2018. On 26 September 2018, I granted final judgment against Chen for the Outstanding Amount, *ie*, US$31,173,698.53 and interest on the Outstanding Amount and ordered him to specifically perform cl 3.4(c) of the Securities Charge by signing and lodging Form 9 under the Securities and Futures Act (Cap 289, 2006 Rev Ed) within seven days from the date that the Plaintiffs or their solicitors require Chen to do so in writing, with a consequential order if he failed to do so.

24 I also granted the Plaintiffs costs of the application and action on an indemnity basis fixed at $50,000 plus disbursements to be agreed or fixed by the court.

Issues

25 Chen raised two sets of defences to dispute his liability as guarantor. They involved two different time frames. The first is on or around 21 November 2016. The second is between 15 November 2017 to 22 November 2017.

26 For his first set of defences, Chen alleged that before he signed the Guarantee on 21 November 2016, PC (mentioned at [2] above) had made certain representations to him. Although four were mentioned by Chen, I need to focus on two only, *ie*:

(a) that the Guarantee was a mere formality and would only form part of the Plaintiffs' internal processes; and/or

(b) that the Plaintiffs would not call on and/or enforce the Guarantee

(collectively "the Representations"; see paras 9(c) and 9(d) of the Defence and Counterclaim).

27 Chen also relied on *estoppel* and *non est factum* in his first set of defences.

28 Chen's second set of defences was that the Plaintiffs had subsequently agreed on or about 15 November 2017 to cancel the Guarantee. He also alleged that there were unauthorised variations to the principal agreement between the Plaintiffs and Midas which discharged him from liability under the Guarantee.

First set of defences

29 It is important to bear in mind that PC was not an officer of either of the Plaintiffs. Instead, PC was at all material times an executive director and the chief executive officer ("CEO") of Midas until his resignation from his positions with effect from 22 March 2018. According to Chen, PC was responsible for the operations and finance as well as the day-to-day management of the Midas group.

30 As for Chen himself, he was an executive director and the executive chairman of Midas at all material times until his resignation from his positions with effect from 2 April 2018. Chen alleged that during his tenure with Midas, he was responsible for the business development and strategies of the Midas group. However, he was not involved in the finances of Midas, the preparations

of Midas' financials and/or finance or accounting documents. Those matters were left to PC.

31 Chen alleged that in the light of the longstanding friendship and working relationship between PC and him, he reposed significant trust and confidence in PC.

32 Nevertheless, Chen's position was that PC was acting as the Plaintiffs' agent when PC made the Representations because, although Chen had met or spoken to a representative from CRRC before, he had not dealt with the Plaintiffs on the Guarantee. His allegation that PC was acting as the Plaintiffs' agent was based on the following:

(a) the Plaintiffs had never met or communicated with Chen in relation to the intended guarantee before Chen signed it;

(b) the Plaintiffs had relied on PC to handle all communication with Chen in relation to the intended guarantee;

(c) the Plaintiffs had communicated only with PC in relation to the intended guarantee and had obtained Chen's particulars through PC; and

(d) the Plaintiffs had furnished PC with the intended guarantee for him to forward it to Chen and obtain Chen's signature.

33 Chen alleged that on or around 21 November 2016, PC furnished him with a document in English and advised him that this was the Guarantee required by the Plaintiffs. PC informed him that the Plaintiffs required the Guarantee to be signed and returned to them urgently given that the Series 003 Notes and the Series 004 Notes were to be issued on 23 November 2016.

34 Chen's position was that as he was induced by and acted in reliance upon the Representations and the apparent urgency of the matter, he signed the Guarantee in the presence of PC and his then secretary, one Melisa Wong, without first obtaining:

(a) a translation of the Guarantee from English to Chinese; or

(b) any independent legal advice on the Guarantee,

although he is not a native English speaker and had not reviewed the Guarantee.

35 Chen also argued that the Plaintiffs were estopped from saying that the Guarantee was enforceable. As this argument was based on allegations which overlapped with those pertaining to the argument about PC being an agent of the Plaintiffs when PC made the Representations, it met the same fate as that argument and I did not treat it as a discrete argument.

36 Chen also relied on the defence of *non est factum*. He said that he thought that the Guarantee was just that and not an indemnity. If the Guarantee was in truth an indemnity, then he was not liable thereunder. He had intended his obligations to arise only in the event of a default by Midas.

37 I will deal with the *non est factum* argument first. It was undisputed that, in any event, Midas had defaulted in its obligations in respect of the Series 003 Notes.

38 Secondly, in *Mahidon Nichiar bte Mohd Ali and others v Dawood Sultan Kamaldin* [2015] 5 SLR 62, the Court of Appeal set out two requirements for the defence of *non est factum* to apply (at [119]):

> … Two requirements need to be established for this doctrine to apply, as may be gathered from the leading decision of the House of Lords in *Saunders v Anglia Building Society* [1971] AC 1004 … (see also *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at paras 10.239–10.245). First, there must be a radical difference between what was signed and what was thought to have been signed. Second, the party seeking to rely upon the doctrine must prove that he took care in signing the document, that is, he must not have been negligent.

39 As regards the first requirement, in my view, there was no radical difference between a guarantee and an indemnity in so far as the present circumstances were concerned. Furthermore, it was clear to this court that it mattered not to Chen as to whether the Guarantee he signed was in the nature of an indemnity or not. He wanted the funds from the Plaintiffs for Midas at the material time and it did not matter to him whether the Guarantee was really an indemnity.

40 This brings me to the second requirement. In my view, Chen did not consult lawyers because he chose not to do so. His insinuation that he did not consult lawyers because he was rushed to sign the Guarantee was a sham allegation. Importantly, he never alleged that he had asked PC for time to consult lawyers or that PC had told him that there was no time to do so. Furthermore, if Chen truly wanted his lawyers to vet the Guarantee and did not do so, then he was obviously negligent. I add that Chen did not say specifically that if his lawyers had advised him that the Guarantee was in substance an indemnity, he would not have signed the Guarantee. As already mentioned, it was clear that it did not matter to him whether it was in substance an indemnity or not.

41 I add that Chen's subsequent conduct, after the Guarantee had been executed, showed that he was content for other documents to refer to the Guarantee without even once asking his lawyers to check the terms of the Guarantee even after he had signed it. I will elaborate later on his subsequent conduct.

42 The defence of *non est factum* was a disingenuous argument which failed.

43 I come back to Chen's argument that PC had made the Representations and PC was the Plaintiffs' agent at the time the Representations were made. It was clear to me that PC was not an agent of the Plaintiffs. They were not liable in respect of the Representations, if made, which PC denied he had made in any event.

44 Chen was the one who had approached Xu to invest in Midas. Chen was also the one who had asked Xu to pass the contact details of Xu's colleague to PC.

45 Furthermore, PC was the CEO and an executive director of Midas and not the Plaintiffs at all material times. He was a trusted lieutenant of Chen and not the Plaintiffs. It was absurd of Chen to raise the agency argument. It merely demonstrated how desperate his defence was.

46 I add that as regards Chen's allegation that he is not a native English speaker and had not reviewed the Guarantee, this was a red herring. His defence was that PC had made the Representations and he had relied on them. Therefore, it would not have mattered if he had read or reviewed the Guarantee himself.

47 I further add that according to PC, Chen is an astute businessman with more than 30 years of management and business experience. Chen holds a Bachelor's degree in Economics from Jilin Finance and Trade College as well as a Master's degree in Economics from Jilin University.

48 PC also alleged that Chen was granted Singapore permanent residency in 2002 and has been a naturalised Singapore citizen for more than ten years. Chen had in the past, in his capacity as executive chairman or executive director, signed various documents in the English language without the use of a Chinese translation or independent legal advice. These included board minutes and resolutions, audit confirmations and audit reports, banking documents and documents relating to his purchase of real property and cars.

49 Chen's response was that notwithstanding that he had been granted Singapore permanent residency in 2002 and has been a naturalised Singapore citizen for more than ten years, he is not a native English speaker.

50 As for Chen's signing of corporate documents like board minutes and resolutions, audit confirmations and audit reports, Chen said that these were tabled for signing at board meetings and had been explained by PC to Chen or by other directors to Chen. Furthermore, the other directors had also signed the documents and Chen saw no reason to disagree with their decision to sign.

51 For simple banking documents and documents for the purchase of cars, Chen said that these were easily explained by a bank officer or car salesperson to him.

52 For more complex documents like mortgages and documents to purchase real property, Chen said that he would execute these documents in the

office of a law firm such that there would be a lawyer who would explain the documents to him.

53 It was not necessary for me to reach a conclusion on the extent of Chen's familiarity and understanding of the English language as the defence based on the Representations failed simply because PC was not an agent of the Plaintiffs when he allegedly made the Representations.

54 Furthermore, as I elaborate later, I also concluded that PC did not make the Representations.

Second set of defences

55 I come now to the second set of defences which involved a second time frame. As already mentioned, on or about 15 November 2017, Midas sought an extension of the maturity date of the Series 003 Notes.

56 Following negotiations, Midas and Chen agreed to execute share pledges or charges in favour of the Plaintiffs in exchange for the Extension. Chen alleged that he requested at one of the meetings on 15 November 2017 that the Guarantee be cancelled even though the Guarantee was meant to be a mere formality only. He alleged that one Guo Bingqiang ("Guo"), a director of the Plaintiffs, agreed to this. This was part of Chen's second set of defences. Unsurprisingly, Guo denied this allegation.

57 As mentioned above, the Chinese Extension Agreement was signed later that day. Chen said that he was unaware that later when he signed the Letter Agreement dated 21 November 2017 and the Guarantor Confirmation dated 22 November 2017 (referred to at [14]–[16] above), that they contained terms

different from the Chinese Extension Agreement as these two documents were in the English language. Hence, he alleged that he was not bound by the Letter Agreement or the Guarantor Confirmation.

58 Chen also alleged that these two documents included variations to the principal agreement between the Plaintiffs and Midas which he did not agree to, and hence he was discharged from liability under the Guarantee.

59 However, the difficulty for Chen was that there was no mention of the cancellation of the Guarantee even in the Chinese Extension Agreement. If he had truly gone to the extent to specifically seek Guo's agreement to the cancellation of the Guarantee, then he would have ensured that the cancellation was mentioned in the Chinese Extension Agreement. This demonstrated that Guo did not agree to any alleged cancellation.

60 There was also no mention of any such cancellation in the Letter Agreement. As for the Guarantor Confirmation, it confirmed Chen's liability under the Guarantee instead.

61 Indeed, as mentioned, the Letter Agreement required Chen to:

(a) provide the US dollar equivalent of RMB10m as a performance deposit; and

(b) execute a share pledge or charge over the Charged Shares.

62 Significantly, the Performance Deposit was not mentioned in the Chinese Extension Agreement but in the Letter Agreement and Chen did provide both the Performance Deposit and the Charged Shares, *ie*, the Securities

Charge. It was therefore not open to him to say that he did not understand the Letter Agreement or for that matter, the Guarantor Confirmation.

63 Any argument that Chen did not understand English documents or did not seek legal advice then was again a sham. The short point was that he could have obtained legal advice before signing the Letter Agreement or the Guarantor Confirmation if he had really wanted to.

64 There is a third time frame which is also material. This is from 12 December 2017 to 22 December 2017. On 12 December 2017, Midas issued an announcement in English and in Chinese while Chen was still Midas' executive chairman. The announcement stated:

> The Guarantor had on 22 November 2017 entered into a charge over 100 million shares (free of security) owned by the Guarantor in the Company, representing not less than 5.26% of the total paid share capital of the Company (the 'Share Charge'), as security in respect of his obligations under the guarantee he had provided in relation to the Company's obligations under the Notes.

65 On 22 December 2017, Midas responded to an SGX query to state that:

> … The Guarantor is of the view that his entry into the Share Charge is aligned with his commercial interest in maintaining the value of the stake he holds in [Midas].

66 Chen did not dispute that the announcement and the response to SGX acknowledged the existence of the Guarantee and his liability thereunder.

67 Both these documents were issued under the authority of Midas' directors. Chen was still holding office in Midas then. Significantly, Chen did not deny that he was one of the directors who had authorised or approved the issuance of either or both of these documents. His excuse was that he no longer

had access to the documents of Midas and so he could not be certain whether he was one of the directors who in fact authorised or approved the issuance of either or both of these documents.

68 However, there was another point against him. The announcement was made to the public. Chen did not deny that he was aware of it. Yet he did not take any step then to correct the announcement and say that he was not a guarantor. Instead, he was content to let the Plaintiffs and the public believe that the Guarantee was valid and enforceable against him.

69 This announcement effectively laid to rest all his arguments about the Representations from PC and Guo's agreement to cancel the Guarantee or that he was no longer liable because of unauthorised variations to the principal agreement between Midas and the Plaintiffs.

70 In the circumstances, I granted the Plaintiffs summary judgment and other reliefs, mostly in line with their application, except for minor differences on the interest periods which I need not elaborate on.

71 Subsequently, three more applications were filed on 4 December 2018, *ie*, Summonses Nos 5697, 5706 and 5899 of 2018. I decided them on 11 February 2019.

Summons No 5697 of 2018

72 In response to the Plaintiffs' claim against Chen, Chen had filed a counterclaim against four defendants in counterclaim. The Plaintiffs are the first and second defendants in counterclaim and Guo is the fourth defendant in counterclaim. PC is the third defendant in counterclaim.

73 Summons No 5697 of 2018 was filed by the Plaintiffs and by Guo to strike out Chen's counterclaim against them.

74 Chen's counterclaim was to seek two primary reliefs. The first was to seek a declaration that the guarantee documents which the Plaintiffs were relying on were void and unenforceable. The second was to claim damages.

75 In my view, the declaration sought in the counterclaim was unnecessary if Chen succeeded in his defence. As for the counterclaim for damages, Chen's lawyer explained that this was for the cost of investigation pertaining to the guarantee documents and other costs in detecting an alleged unlawful conspiracy between the Plaintiffs, PC and/or Guo to injure Chen. The conspiracy allegation was based on the same or similar allegations as in the defence, *ie*, the Representations, how Chen had been led to believe subsequently that the Guarantee would be cancelled, how Chen was not provided with the guarantee documents in the Chinese language and the allegation that he was not advised to obtain legal advice.

76 Chen did not dispute that in the light of my earlier decision to grant the Plaintiffs summary judgment against Chen, it would follow that his counterclaim against the Plaintiffs and Guo would be struck out.

77 Indeed, it seemed to this court that when the Plaintiffs initially applied for summary judgment, they should also have filed an application at the same time to strike out the counterclaim against them and Guo as the outcome of the summary judgment application would apply to the counterclaim as well.

78 In any event, I struck out the counterclaim against the Plaintiffs and Guo.

Summonses Nos 5706 and 5899 of 2018

79 I now elaborate on Summonses Nos 5706 and 5899 of 2018.

80 Summons No 5706 was PC's application to strike out the counterclaim by Chen against him.

81 Summons No 5899 was PC's application to set aside a Third Party Notice and to strike out a Third Party Statement of Claim filed by Chen against PC.

82 Apparently, Chen had taken out third party proceedings against PC as well as included PC as a defendant in Chen's counterclaim.

83 Chen accepted that in the light of my earlier decision to grant summary judgment against Chen, his counterclaim against PC would not succeed. However, he took the position that he could maintain his third party claim against PC.

84 The third party claim against PC was for:

(a) fraudulent or negligent representations made by PC to Chen in respect of the Guarantee: these were the same as the Representations relied on in the defence against the Plaintiffs' claim save that, here, Chen was not alleging that the Representations were made by PC as an agent of the Plaintiffs; and

(b) fraudulent or negligent representations made by PC to Chen or omission by PC to ensure that the execution papers sent on 21 November 2017 to Chen to sign, only reflected the terms of the Chinese Extension

Agreement or were only necessary to effect the share pledges under the Chinese Extension Agreement; and the claim also alleged misrepresentation by PC that the Guarantee was cancelled on or around 15 November 2017.

85 I will address first Chen's allegations against PC on the Representations and on the other representation that the Guarantee was cancelled.

86 It was clear to me for the reasons given in respect of the Plaintiffs' claim for summary judgment, and especially Midas' announcement to SGX, that PC did not make the Representations or the other representation that the Guarantee was cancelled. That was why there was no objection by Chen to Midas' subsequent announcement referring to him as a guarantor.

87 Indeed, PC also pointed to more documents which Chen had signed referring either to the Letter Agreement or the Guarantor Confirmation or both, or to his obligations under these documents:

(a) Chen had signed a Guarantor Confirmation dated 22 November 2017. Clause 8 referred to his obligation to pay the US dollar equivalent of RMB10m which was in turn stated in cl 3.2 of the Letter Agreement. This was the Performance Deposit already mentioned above and was consistent with Chen's continuing obligation as a guarantor. Clause 3.2 also referred to the Guarantor Confirmation.

(b) Chen had signed a Deed of Undertaking with Midas relating to the Performance Deposit and extension fees dated 12 December 2017. This was the same date as Midas' announcement to SGX (referred to at

[64] above). Chen was described as "the Guarantor" and Recital (B) referred to the Letter Agreement.

88 If it were true that Chen did not understand the documents that he had signed on or about 22 November 2017 and that he really wanted to seek legal advice but for representations from PC, he had had plenty of time after 22 November 2017 to seek such advice (and ask for copies of those documents if he had not retained them) before the 12 December 2017 announcement. He did not do so. Neither did he suggest that he attempted to do so. As a shrewd businessman, he must have known that he could not simply rely on representations which were contrary to the nature of the documents he was signing. This, plus his sham defences against the Plaintiffs' claim, made it clear to me that he lacked credibility. He knew what he was doing when he signed the Letter Agreement and the Guarantor Confirmation.

89 Accordingly, I was of the view that Chen's other allegations against PC that Chen thought what he was signing on or about 21 November 2017 was the English equivalent of the Chinese Extension Agreement only and/or documents to give effect to that agreement were a sham.

90 In the circumstances, it was unnecessary for me to decide on a legal argument raised by PC as to whether Chen could claim an indemnity against PC in third party proceedings.

91 Accordingly, I struck out Chen's counterclaim against PC and set aside the Third Party Notice and struck out the Third Party Statement of Claim against PC.

Woo Bih Li
Judge

Ajinderpal Singh, Lee Wei Alexander, Ng Guo Xi and Zoe Pittas (Dentons Rodyk & Davidson LLP) for the plaintiffs and first, second and fourth defendants in counterclaim;
Wong Hin Pkin Wendall, Chen Jie'An Jared, Ang Xin Yi Felicia and Loo Quan Rung Alexis (Drew & Napier LLC) for the defendant and plaintiff in counterclaim;
Aaron Lee Teck Chye and Chong Xue Er, Cheryl (Allen & Gledhill LLP) for the third party and third defendant in counterclaim.