IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 17

Suit No 1201 of 2016

Between

(1) BEH CHIN JOO
(2) CHONG PAIK LIN

… Plaintiffs

And

CHU KAR HWA, LEONARD

… Defendant

ORAL JUDGMENT

[Contract] — [Formation] — [Oral agreements]

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Beh Chin Joo and another
v
Chu Kar Hwa Leonard

[2018] SGHC 17

High Court — Suit No 1201 of 2016
Tan Siong Thye J
29–30 November; 1 December 2017; 4 January 2018

26 January 2018 Judgment reserved.

Tan Siong Thye J:

Introduction

1 The plaintiffs, Beh Chin Joo ("PW1") and his wife, Chong Paik Lin ("PW2"), brought Suit No 1201 of 2016 ("Suit 1201") against the defendant, Chu Kar Hwa Leonard, their son-in-law at the material time, to recover two sums of $180,000 and $340,000, totalling $520,000. The sum of $180,000 is the balance of an interest-free loan of $300,000, while the other sum of $340,000 is a loan of $170,000 with interest of $170,000 payable over two years. The defendant does not deny having received the sums of $300,000 and $170,000 in 2010 and 2012 respectively. However, he alleges these monies were not loans but were gifts from the plaintiffs to the defendant and his wife for the purchase of their matrimonial home ("the Aspen Heights Property") and an investment property ("the Canne Lodge Property").

2 After hearing the parties' evidence and submissions, I reserved judgment. I now give the reasons for my decision.

Undisputed facts

3 The plaintiffs are Chinese-educated Malaysians who do not know how to speak or write in the English language. They have three daughters.

4 The defendant was married to the plaintiffs' second daughter, Joey Beh Chan Yiing ("DW2"), on 15 November 2009. He was a law graduate from a university in London and was employed as a legal counsel in a major multi-national insurance company from December 2008 to August 2010. DW2 is a medical doctor who specialises in radiology.

5 The defendant had filed a writ of divorce against DW2 on 22 September 2015 in Divorce Suit FC/D 4232/2015 ("the Divorce Proceedings"). Interim judgment was granted on 13 July 2016 and the Divorce Proceedings are currently at the stage of adjudicating their ancillary matters.[1]

6 On 21 January 2010, the defendant emailed the plaintiffs' eldest daughter, Beh Chau Yann (or "Joanne"), copying DW2. The email provided the defendant's and DW2's joint bank account details for a transfer to be made by PW1. On about 17 February 2010, PW2 transferred $300,000 to the defendant's and DW2's joint bank account. This was used to purchase the Aspen Heights Property.[2]

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1 Agreed Statement of Facts, paras 10–12.

2 Agreed Statement of Facts, paras 2–4.

7 On 5 July 2011 and 29 June 2012, the defendant transferred $60,000 to PW2's bank account each time.[3]

8 On 17 May 2012, the defendant again emailed Joanne, copying DW2. The email provided the defendant's own bank account details for a transfer to be made by PW1. On 24 May 2012, PW1 transferred $170,000 to the defendant's account. The amount was used to purchase the Canne Lodge Property.[4]

Parties' cases

The plaintiffs' case

9 The plaintiffs' case is that they had entered into two separate oral loan agreements with the defendant as the latter needed money to purchase the Aspen Heights Property and the Canne Lodge Property. According to the plaintiffs, the defendant needed a loan of $400,000 for the Aspen Heights Property but the plaintiffs could only offered an interest-free loan of $300,000, which they eventually granted ("the First Loan Agreement").[5] About two years later, the defendant asked the plaintiffs for another loan of $170,000 to purchase the Canne Lodge Property for the purpose of investment ("the Second Loan Agreement"). The Second Loan Agreement was not interest-free but had an interest of $170,000 payable over two years.[6]

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3 Agreed Statement of Facts, paras 5–6.

4 Agreed Statement of Facts, paras 7–9.

5 Plaintiffs' submissions, para 27.

6 Plaintiffs' submissions, para 33.

10 In relation to the First Loan Agreement, the plaintiffs originally alleged in their statement of claim that it was entered into on or about 30 January 2010.[7] This position was reflected in the AEICs of PW1,[8] PW2[9] and one Ng Hwa Pin ("PW3"), PW1's business associate who was present at the time of the oral agreement.[10] The plaintiffs subsequently amended their statement of claim on the first day of the trial, changing the date of the First Loan Agreement to "mid-January 2010".[11]

11 Apart from this change, the plaintiffs' position under both the original and amended statement of claim was that the First Loan Agreement was made orally between the plaintiffs and the defendant at their house in Malaysia after dinner in the presence of PW3. According to the plaintiffs, the defendant initially wanted to borrow $400,000 for the Aspen Heights Property, which was to be an investment but would also serve as residence for the defendant and DW2 during the interim period. When asked why he did not borrow the sum from his father, the defendant told PW1 that he was not on good terms with his father, who was a businessman in Hong Kong. PW1 then discussed the matter with PW2. They could only raise $300,000, which they later transferred to the defendant. The loan was to be repaid in full in two or three years' time and the Aspen Heights Property was to be registered in the joint names of the defendant and DW2.[12]

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7 SOC, para 10.

8 AEIC of Beh Chin Joo, para 14.

9 AEIC of Chong Paik Lin, para 14.

10 AEIC of Ng Hwa Pin, para 8.

11 SOC (Amendment No 1), para 10.

12 SOC (Amendment No 1), para 10.

12 The plaintiffs submit that the First Loan Agreement is evidenced by two pieces of evidence. The first is an email from the defendant to Joanne on 21 January 2010 stating the existence of a loan, which is significant because the defendant, as a lawyer, would have appreciated the significance of using the word "loan".[13] Second, the defendant had repaid the plaintiffs a total of $120,000 in two tranches on 5 July 2011 and 29 June 2012 as instalment payments. This showed that the defendant thought that he was under an obligation to repay them.[14] However, the plaintiffs acknowledge that since $120,000 of the initial $300,000 had been repaid, they could only claim the remaining sum of $180,000 under the First Loan Agreement.[15]

13 In response to the defendant's evidence at trial, in which he denied the existence of the First Loan Agreement, the plaintiffs submit that the defendant's testimony that it was the plaintiffs who offered him the sum of $300,000 is unbelievable. This is because the plaintiffs were not familiar with the Singapore property market as they have lived in Malaysia. Thus, they would not have known the property prices in Singapore nor would they have known how much the defendant needed to finance the purchase.[16] Hence, the plaintiffs submit that the defendant's evidence should not be believed.

14 In relation to the Second Loan Agreement, the plaintiffs also amended their statement of claim to correct the date of the agreement. Their original statement of claim and the AEICs of PW1[17] and PW2[18] initially reflected that

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13 Plaintiffs' submissions, paras 90–97.

14 Plaintiffs' submissions, paras 45 and 70.

15 SOC (Amendment No 1), paras 16–17.

16 Plaintiffs' submissions, paras 139–148.

17 AEIC of Beh Chin Joo, para 38.

the Second Loan Agreement was entered into on 10 May 2012. The amended statement of claim subsequently referred to the Second Loan Agreement as having been entered into on or about the dates of "22 to 24 January 2012".[19]

15 Similar to the First Loan Agreement, the remaining terms (apart from the date of the agreement) did not change. The plaintiffs' position is that the defendant borrowed $170,000 from them to buy the Canne Lodge Property as an investment. Under the terms of the Second Loan Agreement, the defendant promised to return a total of $340,000 in two years, being $170,000 as the principal sum and a further $170,000 in interest. Because the defendant has not paid either sum to date, the plaintiffs claim $340,000 under the Second Loan Agreement.[20]

16 Similar to the First Loan Agreement, the plaintiffs submit that the Second Loan Agreement is also evidenced by an email sent by the defendant to Joanne on 17 May 2012 stating that the sum of $170,000 which was to be transferred to him was for an investment, and not as a gift.[21]

17 The plaintiffs also made the following points in response to the defendant's argument that the plaintiffs' case as a whole was contradictory and should not be believed:

(a) In response to the defendant's point that PW1's evidence was inconsistent, the plaintiffs submit that the court interpreter did not

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18 AEIC of Chong Paik Lin, para 38.

19 SOC, para 18; SOC (Amendment No 1), para 18.

20 SOC (Amendment No 1), paras 18–23.

21 Plaintiffs' submissions, paras 71 and 77.

accurately interpret PW1's evidence and therefore some evidence was lost in translation.[22]

(b) In response to the defendant's argument that PW1's and PW2's evidence contradicted DW2's affidavit of assets and means filed in the Divorce Proceedings, the plaintiffs submit that there is no inconsistency. The plaintiffs explained that what DW2 had meant was that the monies were loans because they would not have been advanced if the defendant was not related to the plaintiffs by marriage.[23] The plaintiffs further submit that DW2 did not use the word 'gift' in her affidavit of assets and means, and hence, there was no direct contradiction.[24]

The defendant's case

18 The defendant's case was that there were no Loan Agreements entered into at all and that the sums advanced were gifts. The defendant submits that these gifts were explicable because the plaintiffs shared a tight-knit relationship with both DW2 and him. As DW2's husband, he would frequently join them in Malaysia over the weekends and the plaintiffs would treat him like their own son.

19 Although the plaintiffs testified at trial that the sums were loans, the defendant submits that their evidence should not be believed.

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22 Plaintiffs' submissions, paras 149–160.

23 Plaintiffs' submissions, paras 162–168.

24 Plaintiffs' submissions, paras 171, 174–175.

(a) According to the defendant, the manner in which the plaintiffs and PW3 had amended their evidence in the course of the trial suggests that there was likely to be collaboration between them.[25]

(b) The defendant also takes the position that the plaintiffs' witnesses lack credibility as they came to court to parrot a fixed text rather than to present the court with the truth of the events. In particular, PW1 and PW2 would refuse to answer questions or give vague answers, and DW2 (who was treated as a hostile witness with the court's leave) presented an understanding of the events that was directly contradictory to her affidavit of assets and means.[26]

20 Specifically, in relation to the First Loan Agreement, the defendant submits that the plaintiffs' evidence on the material terms and circumstances surrounding the agreement are inconsistent and unreliable. These inconsistencies include when the defendant approached PW1 to borrow the sum of $400,000, at which point PW1 communicated to the defendant that he was only able to lend him $300,000, and whether PW2 was present.[27] Further, the date of the First Loan Agreement remained uncertain.[28] In contrast the defendant's evidence was reliable and consistent.[29] As to the use of the word "loan" in his email dated 21 January 2010, the defendant's position is that he intended to repay the gift when he had the financial means to do so. He considered it a moral obligation and not a legal obligation to repay.[30] In relation

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25 Defendant's submissions, para 13.

26 Defendant's submissions, paras 14–37.

27 Defendant's submissions, paras 52–56.

28 Defendant's submissions, paras 57–61.

29 Defendant's submissions, paras 64–66.

to the two sums of $60,000, the defendant's position is that they were made out of gratitude.[31]

21 Rather, the defendant's version of events was that he and DW2 initially intended to purchase a two-bedroom apartment at Mirage Tower for about a million dollars after they registered their marriage in November 2009 ("the Mirage Tower Property").[32] It was the plaintiffs who suggested that they purchase a larger matrimonial home and offered to assist them.[33] As a result, the defendant and DW2 viewed the Aspen Heights Property (which cost about $1.65m[34]) sometime in January 2010 and DW2 expressed her interest in the property to the plaintiffs. She requested them to assist in the payment of the purchase price of the Aspen Heights Property. In order to reduce the financial burden on the defendant and DW2 and to allow them to borrow less from the bank, the plaintiffs agreed over the telephone to give a sum of $300,000 to purchase the Aspen Heights Property.[35] According to the defendant, the plaintiffs did not say at any point that the sum was meant to be a loan and the defendant did not consider a gift as out of the ordinary because of their close familial relationship.[36]

22 In relation to the Second Loan Agreement, the defendant's position was that the plaintiffs also gave the $170,000 to him and DW2 as a gift. The

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30 Defendant's submissions, paras 67–71.

31 Defendant's submissions, paras 72–75.

32 AEIC of Chu Kar Hwa, Leonard, paras 23–24.

33 Defence, paras 11(a)–(k).

34 AEIC of Chu Kar Hwa, Leonard, para 24.

35 Defence, paras 11(l)–(o).

36 Defence, paras 11(s)–(t).

defendant similarly submits that the plaintiffs' evidence on the material terms and circumstances is inconsistent and implausible, especially since PW3 essentially conceded that he did not hear the plaintiffs and the defendant enter into the Second Loan Agreement.[37] The defendant further takes the position that PW1's evidence on the overdraft facility was entirely made up since the evidence only shows that PW1 borrowed money from the bank and not that it was an overdraft facility.[38]

23 Instead, the defendant's version of events was that he initially wanted to purchase the Canne Lodge Property for investment in November 2011 together with his friends. When he discussed the idea with DW2, she objected and proposed instead that he purchase the property jointly with her. The defendant acceded to DW2's proposal. DW2 then called the plaintiffs over the phone sometime in December 2011 and requested their assistance. In late December 2011, the plaintiffs told the defendant and DW2 over the phone that they would give them the sum of $170,000, which was later transferred to the defendant on 24 May 2012.[39] Like with the initial sum of $300,000, the defendant similarly avers that the plaintiffs did not intimate that this was to be a loan nor did he consider the gift out of the ordinary.[40]

Issue

24 The sole issue in this case was whether the two transactions of $300,000 and $170,000 were loans or gifts to the defendant.

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37 Defendant's submissions, paras 82–92.

38 Defendant's submissions, paras 93–100.

39 Defence, paras 19(a)–(g).

40 Defence, paras 19(i)–(j).

25 It is not disputed that there were no written documents for these transactions. The parties' evidence and positions were poles apart as regards the purpose of these transactions.

My decision

26 Despite the discrepancies in the plaintiffs' evidence, I accept the plaintiffs' version of events and find that their claim is made out on a balance of probabilities. This is largely based on the objective evidence that is contemporaneous with the transfer of both the $300,000 and $170,000 for which the defendant was unable to provide satisfactory answers. I shall explain my findings in relation to each of the Loan Agreements in turn. But first, given the nature of the evidence, I shall identify the challenges in this case and explain how I dealt with them.

Sieving the truth from untruths and half-truths

27 Before I address my findings in this case, I shall briefly set out the approach that I have taken.

Treating the parties' evidence with caution

28 The outcome of this case depends solely on the parties' testimonies and the reliability of the evidence. I must treat the evidence of the plaintiffs with great care and caution as it is clear that the plaintiffs and the defendant are no longer on good terms. This is because the defendant had instituted the Divorce Proceedings against DW2 to end their marriage of about six years. This is very unfortunate and I am deeply saddened that their marriage was very short as marriage is a lifelong commitment. This suit, Suit 1201, was launched by the

plaintiffs after the defendant commenced the Divorce Proceedings. The relationship between the plaintiffs and the defendant has therefore turned sour.

29 It was also evident in the plaintiffs' testimonies in court that they were very protective of their daughter, DW2, whom they doted on dearly. This was obvious when the defendant's counsel cross-examined them on paras 18(a) and (b) of DW2's affidavit of assets and means that she made in the Divorce Proceedings. DW2's position in her affidavit of assets and means regarding the purpose of the two sums of $300,000 and $170,000 was completely different from the plaintiffs' position and indeed, it is irreconcilable with the plaintiffs' claim. At para 18(a) of her affidavit, she said that these monies were her contributions towards the purchase of the Aspen Heights Property and the Canne Lodge Property, and that the monies were remitted by her parents, the plaintiffs, into the defendant's bank account. However, the plaintiffs claim that these were loans to the defendant. I shall later elaborate these issues further in my judgment. At this point, given the nature of the relationships between the various parties in this case and the importance of their oral testimonies, it is critical that I must exercise prudence and great care when I assess the testimonies of the plaintiffs.

30 I must also exercise great care in evaluating the defendant's evidence. He is also now not on good terms with the plaintiffs and DW2. The Divorce Proceedings on ancillary matters relating to the distribution of matrimonial assets have yet to be finalised. I understand that the outcome of this case will have a significant bearing on their distribution of their matrimonial assets. There are also deep emotions on the part of the defendant. The defendant, in his application to call DW2 as his witness, submitted at para 20 that "his relationship with her [*ie*, DW2] was acrimonious as a result of the matrimonial

proceedings". In these circumstances, it is equally important that great care and caution must also be exercised in considering the defendant's testimony, as the defendant is also determined to deny the plaintiffs' claim.

31 Initially, the defendant vacillated as to whether to call DW2 as his witness. Eventually, the defendant decided to call her as his witness. On the witness stand, it was clear that DW2 was not cooperative and was hostile towards the defendant. Her unfavourable testimony led the defendant's counsel to treat her as a hostile witness and she was subjected to cross-examination with the permission of the court. I found her testimony inscrutable and her answers were often *non sequitur*. I shall deal with these issues in greater details below.

32 To sieve the truth from untruths and half-truths, I searched for corroborative and objective evidence as well as logically convincing facts to ascertain whether I should accept the plaintiffs' or the defendant's version of events. As their versions regarding the purpose of $300,000 and $170,000 are diametrically opposite, both the versions cannot be the truth.

Dealing with discrepancies in the witnesses' testimonies

33 In this case both parties relied heavily on the oral testimonies of their witnesses. I observed that there were discrepancies in the testimonies of both parties' witnesses. In any trial there will often be discrepancies. Discrepancies in the evidence can occur within the same witness or between the witnesses when their testimonies are scrutinised and compared with the testimonies of other witnesses or the evidence. This is largely because different people observe and remember things differently. Thus their recollection of events and evidence will often vary from person to person. The duty of the court is to evaluate the seriousness and reliability of the discrepancies in order to ascertain the truth.

34 The issue of discrepancies in the testimonies of witnesses is often raised in criminal trials. This issue is also germane to the present case as the outcome of this case also depends on the weight to be given to the witnesses' oral testimonies. Therefore, the approaches taken by the judges in dealing with discrepancies of witnesses' testimonies in the context of criminal trials will be useful in this case. I shall now refer to a few criminal cases that explained the reasons for discrepancies in the testimonies of the witnesses and what the court should do when dealing with discrepancies. In *Chean Siong Guat v Public Prosecutor* [1969] 2 MLJ 63, the court explained:

> Discrepancies may, in my view, be found in any case for the simple reason that no two persons can describe the same thing in exactly the same way. Sometimes what may appear to be discrepancies are in reality different ways of describing the same thing, or it may happen that the witnesses who are describing the same thing might have seen it in different ways and at different times and that is how discrepancies are likely to arise. These discrepancies may either be minor or serious discrepancies. Absolute truth is I think beyond human perception and conflicting versions of an incident, even by honest and disinterested witnesses, is a common experience. In weighing the testimony of witnesses, human fallibility in observation, retention and recollection are often recognized by the court. Being a question of fact, what a magistrate need do is to consider the discrepancies and say whether they are minor or serious discrepancies. If, after considering the discrepancies, if a magistrate finds that the discrepancies do not detract from the value of the testimony of the witness or witnesses, it would then be proper for him to regard the discrepancies as trivial and ignore them. On the other hand, if the magistrate finds that the discrepancies relate to a material point which would seriously affect the value of the testimony of the witness or witnesses then it would be his duty to weigh the evidence carefully in arriving at the truth.

35 In relation to the effect of discrepancies, the remarks of Thomson CJ in *Khoon Chye Hin v Public Prosecutor* [1961] 27 MLJ 105 at 107 on discrepancies are also often quoted:

> If a witness demonstrably tells lies on one or two points then it is clear that he is not a reliable witness and as a matter of prudence the rest of his evidence must be scrutinized with great care and indeed with suspicion. To say, however, that because a witness has been proved a liar on one or two points then the whole of his evidence "must in law be rejected" is to go too far and is wrong.

36 These remarks were cited with approval by Yong Pung How CJ in *Osman Bin Ramli v Public Prosecutor* [2002] 2 SLR(R) 959 at [30] as follows:

> First, "innocent" discrepancies must be distinguished from deliberate lies. I have expressed the following opinion in *Lewis Christine v PP* [2001] 2 SLR(R) 131 at [19]:
>
> > ... a flawed witness does not equate to an untruthful witness. The trial judge is entitled to determine which part of the witness's testimony remains credible despite its discrepancies. ...
>
> Therefore, if the discrepancies are innocent, the judge is entitled to rely on those parts of the evidence which are untainted by the discrepancies. However, if the witness has deliberately lied to the court, it is clear that he is not a reliable witness and as a matter of prudence the rest of his evidence must be scrutinised with great care and indeed with suspicion. To say, however, that because a witness has been proved a liar on one or two points then the whole of his evidence "must in law be rejected" is to go too far and is wrong: *per* Thomson CJ *in Khoon Chye Hin v PP* [1961] MLJ 105 at 107.

37 Innocent discrepancies may also arise out of a lapse of time. Here, the direction of Yong CJ in *Public Prosecutor v Gan Lim Soon* [1993] 2 SLR(R) 67 at [7] is relevant:

> As with so many cases, where the lapse of time has caused memories to blur and fade, and result in throwing up many discrepancies in evidence, it is vitally important that courts do not lose sight of the wood for the trees. District judges and magistrates especially would be well advised to sit back sometimes, and decide what the essentials of the case are and in fact what the case is all about. ...

38 The two transactions which are central to this case took place in 2010 and 2012, respectively. These occurred between five and seven years ago. Furthermore, the plaintiffs and PW3 are elderly and this might have affected their memories and recollection. Therefore, I bear these considerations in mind when I evaluate the plaintiffs' evidence. Although the defendant's witnesses were not elderly, I am also mindful that any minor discrepancies in their evidence are to be distinguished from deliberate lies.

39 With these guiding principles in mind, I shall now explain my findings.

The First Loan Agreement: $300,000

The objective evidence

40 On the First Loan Agreement, I accept the plaintiffs' evidence that the $300,000 transferred by PW2 to the defendant's and DW2's joint bank account on 17 February 2010 was for a loan and not a gift. I find that the evidence supports the plaintiffs' case on a balance of probabilities. There were two pieces of strong and cogent evidence that pierced the defendant's case that the $300,000 was a gift:

(a) The contemporaneous email sent by the defendant to Joanne, copying DW2, which referred to the $300,000 as a "loan".

(b) The defendant's repayment of two sums of $60,000 each (totalling $120,000) on 5 July 2011 and 29 June 2012.

I shall examine each of these pieces of evidence in turn.

(1) The defendant's email to Joanne dated 21 January 2010

41 The parties did not dispute that the $300,000 was transferred on or about 17 February 2010 and that prior to this transfer, the defendant had sent an email on 21 January 2010 to Joanne, copying DW2, with an attachment stating the details of the joint bank account of himself and DW2. That email stated:[41]

> Hi Joanne,
>
> Please find attached the details of the bank account *for the transfer of the loan amount from Dad* [*ie*, PW1].
>
> Thanks and regards,
>
> Leonard
>
> [emphasis added]

42 It is highly significant that in January 2010 the defendant referred to the sum of money as a loan. The money had not yet been disbursed at that juncture. It was in the defendant's best interests to accurately portray the sum of money. Indeed, it was the defendant who described the $300,000 as a loan to him on his own accord without any prompting or questioning from Joanne. As a practising lawyer by that time, he would have known the legal difference between a gift and a loan and would not say that the money was a loan if it were in fact only a gift. He would have known that if the $300,000 was a loan, there would be legal obligations of repayment. In contrast, if it was a gift, then there would be no legal obligation to repay the $300,000 as it would be a gratuitous gesture from the plaintiffs. Despite the fact that he must have known the difference, the defendant chose to describe the $300,000 as a "loan" in the email. At that stage the relationship between the plaintiffs and the defendant was positive and this piece of evidence was also untarnished by any negative emotions. This

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[41] AEIC of Beh Chin Joo, p 15.

contemporaneous evidence stacks very highly against the defendant and I accord it full weight. I therefore consider this email *prima facie* evidence that the $300,000 was a loan.

43 The defendant's explanation for this email is that he did not wish to sow discord between Joanne and DW2 by stating in the email that PW1 had made a gift to him and DW2.[42] But it was not necessary for the defendant to indicate in his email to Joanne the nature of the transaction. I also note that this explanation was not raised in the defendant's AEIC, where the only explanation he gave for this email was that he used the words "loan amount" because of his "desire to repay this gift … when [he] had the financial means to do so".[43]

44 I do not accept either explanation. The defendant's explanation in his AEIC was that he used the word "loan" to connote a moral obligation, an explanation which he repeated during cross-examination.[44] The defendant testified that he intended to repay the gift when he had the financial means to do so. That was why he chose to call it a loan. In other words, the defendant would have had the option of deciding whether or not to repay depending on his financial situation. If this was indeed the case, the defendant would not have said to Joanne that it was a "loan amount from Dad". It is in the very nature of a gift that there is no need to repay it whether or not the defendant has the financial means to do so. Furthermore, his subsequent repayments of fixed sums on two different occasions suggest instead that they were fixed repayments (a point that I shall come to subsequently).

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42 Transcript Day 3, p 34, lines 17–29.

43 AEIC of Chu Kar Hwa, Leonard, para 33.

44 Transcript Day 3, p 34 line 17 to p 35 line 6.

45 I also cannot accept the explanation that the defendant gave in his oral testimony. It is unconvincing that the defendant had used the word "loan" in his email merely to avoid sowing discord with Joanne, as he could have simply provided the details of his joint bank account with DW2 without mentioning that it was for either a gift or for a loan. Moreover, his subsequent explanation during his oral testimony undermines his initial explanation in his AEIC (which was also repeated on the stand), as the two reasons are materially different and do not complement one another. Hence, I do not accept both of the defendant's explanations for the email and indeed I find that the differing explanations that he gave diminishes his credibility as a witness.

(2) The defendant's repayments of two sums of $60,000

46 The second piece of corroborative and objective evidence is the defendant's repayment of $60,000 on two occasions (totalling $120,000) on 5 July 2011 and 29 June 2012 which seems to be done annually over two years. The parties do not dispute that these repayments took place. *Prima facie*, the repayments suggest that the $300,000 was a loan. The fact that the sums repaid each time were exactly the same lends credence to the conclusion that they were periodic fixed repayments.

47 The defendant gave two explanations for these transfers, neither of which are convincing.

(a) The defendant explained in his AEIC that these repayments were also gifts to the plaintiffs, made out of goodwill and in appreciation of the plaintiffs' generosity and kindness. He noted that DW2 would "inform the [plaintiffs] each time after these transfers were made, and would let them know how appreciative we were of their gift to us".[45]

This is a bare assertion and the defendant did not adduce any evidence or call any witness to support this assertion. In fact, the defendant's own case in relation to the Second Loan Agreement contradicts this explanation. The second repayment was in June 2012. On 3 February 2012, which was before the second repayment, the defendant was in need of funds (of at least $170,000) as he wanted to purchase Canne Lodge Property for his investment. If the $300,000 was a gift and there was no legal obligation to repay the plaintiffs the said sum, it beggars belief that he would have made the second repayment out of appreciation since he would have been short on funds at that time. Instead, the defendant's own case is that he needed the money to purchase the Canne Lodge Property, which was why he approached the plaintiffs for $170,000 (which he also asserts is a gift). He would not have made that second repayment but would have used the $60,000 towards the payment for the Canne Lodge Property instead. Accordingly, I am unable to give weight to this assertion.

(b) The defendant also said in his AEIC that PW2 had queried him on "one of these occasions [*ie*, one of the transfers]" as to: "Why on earth are you transferring his money to me?"[46] When queried as to when exactly this took place, the defendant said that this was after the second sum of $60,000 had been transferred, and not after the first sum.[47] I find this testimony to be illogical. If it were true that PW2 was not expecting repayment at all, one would expect her to have objected or to have

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45 AEIC of Chu Kar Hwa, Leonard, para 36.

46 AEIC of Chu Kar Hwa, Leonard, para 36.

47 Transcript Day 3, p 60 line 24 to p 61 line 3; p 77, lines 8–18.

> queried the defendant on the very first occasion that the money was transferred. While PW2 could certainly also have questioned the defendant *again* when the second sum was transferred, what is conspicuous is the defendant's evidence that she did not do so the first time. I find the plaintiffs' testimonies more convincing when they said that they had been chasing the defendant for the repayment of the $300,000 as this was their hard-earned money.[48]

48 For these reasons, I find that the objective evidence supports the plaintiffs' claim that the $300,000 is a loan and not a gift. The defendant provided no convincing explanation against this objective evidence.

The defendant's unconvincing version of events

49 I also find the defendant's own version of events pertaining to the $300,000 untenable. The defendant had stated in his AEIC that:[49]

> … Contrary to the Plaintiffs' account of events, I did not approach them to request to borrow the sum of S$400,000. In fact, as far as I am aware, there was never any discussion of the sum of S$400,000.

50 This reference to the sum of $400,000 came about because it was the plaintiffs' evidence that the defendant had initially asked for $400,000. But the plaintiffs had said that they did not have that much money and therefore only agreed to loan the defendant $300,000.[50]

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48 Transcript Day 2, p 64, lines 3–11.

49 AEIC of Chu Kar Hwa, Leonard, para 26.

50 AEIC of Beh Chin Joo, paras 15–19; AEIC of Chong Paik Lin, paras 15–19.

51 During the defendant's oral testimony, he was queried as to who suggested the initial sum of $400,000 or the subsequent sum of $300,000. Initially, the defendant maintained that it was the plaintiffs.[51] But he subsequently took a different stance and conceded that "it is accurate to say that [he] would have told [the plaintiffs] the same information [*ie*, information about how much financing was needed]".[52] I find that the defendant must have made this concession because he must have realised that his initial position (that the plaintiffs had offered the sum of $400,000) was not tenable. The defendant and DW2 were the ones who went to view the Aspen Heights Property. Only they would have known how much money was needed to complete the transaction. Indeed, the evidence shows that when the defendant first exercised the Option to Purchase on 29 January 2010,[53] he had paid about $82,000 as a deposit for and to exercise the Option, but still needed to pay off the additional sum of $215,964.17[54] by the completion date of 26 March 2010.[55] There were also miscellaneous payments which included, amongst other things, stamp duties of $44,100[56] and further mortgage payments for the Aspen Heights Property.[57] These details would not have been known to the plaintiffs. It would have been the defendant (and DW2) who would have known of these details; and indeed when the court asked the defendant during his oral testimony as to whether anything less than $300,000 would be sufficient to pay off the sums for the

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51 Transcript Day 3, p 23 lines 1–5.

52 Transcript Day 3, p 22 line 24.

53 2ABD631.

54 AEIC of Chu Kar Hwa, Leonard, para 34; 1ABD36, para 41.

55 1ABD36, paras 39–41.

56 1ABD36, para 40.

57 AEIC of Chu Kar Hwa, Leonard, para 34.

Aspen Heights Property, the defendant clarified that anything less would not have been enough. In fact, when the court suggested a figure of $100,000 to the defendant, he replied that the amount would not be sufficient for him to purchase the Aspen Heights Property.[58] At that time, the defendant and DW2 had two options: the Mirage Tower Property, which cost about a million dollars, or the Aspen Heights Property, which was about $1.65m. The Aspen Heights Property was the preferred choice and if the defendant could not raise at least $300,000, he would have to be content with the Mirage Tower Property.

52 Hence, I find that contrary to the defendant's version of the events in his AEIC (and the position which he initially took at trial), the fact that the sum of money advanced was just enough to pay the amounts needed at the completion date suggests that it was the defendant who approached the plaintiffs and asked for the relevant sum. Contrary to the defendant's position, it could not have been the plaintiffs who suggested the sum to him as they would not have known how much money the defendant required to purchase the Aspen Heights Property. The defendant must have informed them of the desired amount. Whilst this by itself does not conclusively show that the $300,000 was transferred as a loan, it supports the plaintiffs' claim that it was a loan. This also undermines the defendant's credibility as a witness as his evidence cannot be believed.

The defendant's objections to the plaintiffs' version of events

53 Having established that the objective evidence supports the plaintiffs' claim and that the defendant's own version of events is untenable, I now turn to address three of the main objections that the defendant raised against the plaintiffs' case.

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[58] Transcript Day 3, p 76, lines 27–32.

(a) The plaintiffs amended their statement of claim to change the date of the First Loan Agreement after they had seen the defendant's passport during discovery which directly contradicts their case and shows that there was likely to have been collaboration between the witnesses as to their evidence.[59] In the same vein the defendant also submits that the testimonies of the plaintiffs' witnesses similarly reek of collaboration and a failure to disclose the truth.

(b) The plaintiffs' oral testimonies contained material contradictions.

(c) The plaintiffs' claim contradicts DW2's affidavit of assets and means filed on 6 September 2016 in the Divorce Proceedings, where she states that the $300,000 for the Aspen Heights Property, and the further $170,000 for the Canne Lodge Property (which I shall come to later) were her direct financial contributions to the matrimonial home, which can only be consistent with a gift from the plaintiffs.[60]

While these arguments may be relevant to the defendant's case, I find that they are insufficient to tilt the scales in his favour.

(1) The plaintiffs' amendment to the date of the First Loan Agreement

54 On the first point of the plaintiffs' amended statement of claim, the plaintiffs initially alleged that the First Loan Agreement was formed on or about 30 January 2010. The amended statement of claim changed this date to mid-January 2010. The defendant's argument is that the plaintiffs sought the

[59] Defendant's submissions, para 13.

[60] Defendant's submissions, paras 31–37, 62–63.

amendment after seeing the defendant's exhibited passport entries[61] and realised that their claim was unsustainable as the defendant was not in Malaysia at that time.

55 I accept that the plaintiffs had amended the date of the First Loan Agreement upon seeing the defendant's passport entries, but I do not consider this to be significant. Although the defendant's passport entries show that he was not in Malaysia on 30 January 2010, the same passport entries show that he was in Malaysia in mid-January 2010 – from 16 to 18 January 2010. PW1 explained during his oral testimony that he did not specifically record when the discussion took place and could only recall that it had taken place when the defendant had returned to Malaysia to attend the funeral procession of PW1's mother.[62] Initially, the statement of claim (and the plaintiffs' AEICs) had stated that the First Loan Agreement was formed on or about 30 January 2010 because that was when the plaintiffs had thought the funeral procession had taken place. Subsequently, the obituary of PW1's mother was discovered, which indicated that she had died on 13 January 2010 and that the funeral procession was to be held on 17 January 2010.[63] This was why the plaintiffs decided to amend the statement of claim,[64] and the amended date of mid-January 2010 is consistent with the defendant's passport entries, which indicate that he was in Malaysia from 16 to 18 January 2010.[65]

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61 AEIC of Chu Kar Hwa, Leonard, para 52.

62 Transcript Day 1, p 78 line 8 to p 79 line 3.

63 Exhibit P1.

64 Transcript Day 1, p 74 line 22 to p 75 line 3.

65 AEIC of Chu Kar Hwa, Leonard, p 48.

56 I accept that at the time of the discussion relating to the loan of $300,000, the plaintiffs would not have thought to record the precise date of the discussion given that the plaintiffs and the defendant at that time were in a good relationship. In January 2010, the defendant had just married DW2 for barely three months. Thus the idea of the defendant not honouring the loan would have been furthest away from the plaintiffs' mind. Naturally, the loan transaction was done informally and orally without the legal formalities that one would expect if the loan agreement were between business associates. Moreover, this discussion had happened a few years before the plaintiffs sued the defendant in 2016. Thus it is understandable that the plaintiffs would not have been able to recall the precise date. Given that the date of the defendant's passport entries corroborated with the demise of PW1's mother and that the defendant had attended her funeral in Malaysia (as evidenced by her obituary, which is objective evidence), I find that the amendment does not undermine the plaintiffs' case.

57 Furthermore, the defendant did not deny that he had spoken to the plaintiffs, particularly PW1, prior to the remittance of the $300,000 into his joint bank account with DW2. It is the purpose of these transactions that is hotly contested. Given the nature of the defendant's defence and the undisputed facts, this further supports my view that the plaintiffs' amendment does not undermine their case.

(2) Material contradictions in the plaintiffs' oral testimonies

58 The defendant also submits that the plaintiffs' oral testimonies contained material contradictions that could not be resolved. Specifically, these contradictions related to:[66]

(a) when the defendant approached PW1 to borrow the sum of $400,000;

(b) the point in time in which PW1 communicated to the defendant that he was only able to lend the defendant $300,000; and

(c) whether PW2 was present at this conversation referred to above at (b).

59 On the first point, the defendant referred to a passage where PW2 had said that the defendant asked PW1 for a $400,000 loan over the phone.[67] This was then contrasted to the evidence of PW1 and PW3, who testified that the defendant had asked PW1 for the sum in person.[68] The defendant's point was presumably that these accounts contradicted one another.

60 I do not think that there is a contradiction between both accounts. PW1 and PW3 had testified that only the two of them were present and that PW2 was not present. Obviously, this meant that PW2 could not have given evidence that she was present when the conversation at the plaintiffs' garden (in their house) took place. But this does not mean that her testimony that the defendant had asked for the $400,000 initially over the phone was inaccurate. Instead, in all likelihood, the defendant had spoken first to PW1 and PW2 over the phone and then when he had gone to the plaintiffs' house, he spoke with PW1 in person and PW3 was also present at this meeting. Indeed, this is consistent with the defendant's own testimony, where he confirms that he (together with DW2) had

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66 Defendant's submissions, paras 54–55.

67 Transcript Day 2, p 61, lines 1–4.

68 Transcript Day 1, p 85, lines 22–26; Transcript Day 2, p 73 line 26 to p 74 line 2.

spoken to the plaintiffs over the phone regarding the purchase of the Aspen Heights Property, and that the plaintiffs had agreed to transfer to him the sum over the phone.[69] This is further consistent with PW1's AEIC, where he notes that the physical meeting was not the first time that the defendant had expressed his intention to borrow money from the plaintiffs; there were regular phone calls prior to the physical meeting.[70]

61 The second point that the defendant contests is when the plaintiffs allegedly informed him that they were only able to transfer to him $300,000 instead of $400,000. PW1's evidence was that he could not recall whether the plaintiffs had informed the defendant of this on the day that the defendant had physically met the plaintiffs to propose the sum of $400,000, or whether it was on another day.[71] PW3's evidence was that it happened on the same day.[72] In this connection, the defendant relied on a specific passage in PW1's testimony to make the point that PW1's evidence was not that he could not remember, but that the plaintiffs had informed the defendant that they could only transfer to him $300,000 on a different day (which would contradict PW3's account):[73]

> Q: … So, when did you tell the defendant that you were only able to lend him $300,000.00? Was it on the same day you discussed with your wife or after that? A different day?
>
> A: Well, I'm not able to recall whether it---this took place on the … same day or another day and whether this---the discussion took place over the phone.
>
> Q: I see.

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69 Transcript Day 3, p 21 line 4 to p 22 line 31.

70 AEIC of Beh Chin Joo, para 23.

71 Transcript Day 1, p 87 line 5 to p 88 line 14.

72 Transcript Day 2, p 74 line 24 to p 75 line 7.

73 Transcript Day 1, p 88, lines 3–18.

> A: But I do recall that there was on one occasion when I was having tea that they came over and talked to me.
>
> Q: No, hang on. Is this a different occasion from the one we are seeing in your affidavit? Because I've been very fair. I've taken you to the affidavit.
>
> A: That took place on another day.
>
> Q: On another day? Okay. Right. So, okay. You see, I'm just going to put it to you that this $300,000 was not a loan but a gift to both Leonard and Joey. Do you agree or disagree?
>
> A: I disagree.

62 Admittedly, PW1's evidence in this extract is not easy to follow. He first says that he could not remember whether the conversation took place on the same day the defendant asked for the loan or on a different day and whether this took place over the phone. After that he referred to another occasion when he was having tea that the defendant approached him. While PW1 did say that this other occasion happened on a different day, it was unclear whether he was still referring to the conversation where the plaintiffs informed the defendant that they would only be able to provide $300,000. The defendant's counsel chose not to follow up on this point but instead chose to move to another point. As such, I do not think that this extract assists the defendant's argument that there was a material contradiction in PW1's and PW3's evidence. Even if this were a contradiction, it is not material .

63 The final point that the defendant makes in relation to the plaintiffs' oral testimony is that it was unclear whether PW2 was present at the above conversation when the defendant discussed the loan with PW1. PW3's evidence was that when this conversation took place, PW2 was not present.[74] In contrast, PW2 agreed during cross-examination that she and PW1 told the defendant

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[74] Transcript Day 2, p 75 line 16 to p 76 line 9.

about the loan of $300,000 "face to face".[75] I note that PW1's AEIC stated that they "later told the Defendant that [they] were only able to lend him $300,000.00",[76] although as noted above PW1 could not recall during his oral testimony when this happened.

64 Even if there were a contradiction, it is not material. It is not disputed by the parties that the $300,000 was transferred and that the plaintiffs had agreed to transfer this sum to the defendant. What is disputed was the purpose of the transfer (whether it is a loan or a gift). The truth could very well be the version of events suggested by PW3 in his oral testimony, where he noted that although the conversation in the garden only took place between himself, PW1 and the defendant, there could have been other discussions happening either prior or after that conversation between PW1, PW2 and the defendant.[77] In the final analysis, even if I accept the defendant's submission that PW2 and PW3 had presented conflicting testimonies on this point (although I note that their testimonies could potentially both be true), I do not find this to be material.

(3) DW2's affidavit of assets and means in the Divorce Proceedings

65 Regarding DW2's affidavit of assets and means in the Divorce Proceedings, the defendant submits that this contradicts the plaintiffs' claim. In her affidavit, DW2 had stated that the total sum of $470,000 ($300,000 from the First Loan Agreement and $170,000 from the Second Loan Agreement) was "remitted by [her] parents into [the defendant's] bank account on [her] behalf being [her] contribution towards the purchase of both properties [*ie*, the Aspen

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75 Transcript Day 2, p 62, lines 12–14.

76 AEIC of Beh Chin Joo, para 19.

77 Transcript Day 2, p 76, lines 10–15.

Heights and Canne Lodge Properties]".[78] The defendant submits that this is inconsistent with the plaintiffs' claim that the sum was a loan.

(A) THE PLAINTIFFS' REACTION TO DW2'S AFFIDAVIT OF ASSETS AND MEANS

66 When confronted with DW2's affidavit, PW1 initially stated that it was the first time that he had seen this affidavit and that he did not understand its contents.[79] The defendant then tendered three affidavits that had previously been filed in these proceedings: one by the defendant dated 12 January 2017,[80] and the other two by PW1 dated 27 January 2017.[81] DW2's affidavit of assets and means was referred to in all three affidavits, and the defendant's counsel put to PW1 that these affidavits meant that he must have been aware of DW2's affidavit of assets and means at least as of January 2017.[82]. As for PW2, she repeatedly gave vague answers to questions as to whether she understood paras 18(a) and (b) of DW2's affidavit of assets and means.[83] I accept the defendant's submissions that both the plaintiffs appear to have been difficult in relation to questions about DW2's affidavit.[84] Their evidence is inconsistent and they were unable or unwilling to deal with the questions that had been asked of them. Accordingly, I find that their testimonies pertaining to paras 18(a) and (b) of DW2's affidavit unreliable and cannot be accepted. I am also unable to give any

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78 2ABD1110, para 18(a).

79 Transcript Day 1, p 66, lines 28–32.

80 Exhibit D4.

81 Exhibits D5 and D6.

82 Transcript Day 2, p 27 line 23 to p 28 line 24; p 29 line 27 to p 30 line 11; p 31 lines 7–12.

83 Transcript Day 2, p 60, lines 17–27.

84 See *eg*, plaintiffs' submissions, para 20.

weight to DW2's explanation on her averment at paras 18(a) and (b) of her affidavit which I shall now turn to.

(B) DW2'S EXPLANATION FOR THE SERIOUS CONTRADICTION BETWEEN HER AFFIDAVIT AND THE PLAINTIFFS' CLAIM

67 I disregard DW2's evidence in her oral testimony as it was clear that she was shifting her position in her oral testimony away from what she had stated in her affidavit. The defendant's counsel referred DW2 to her affidavit of assets and means during her oral testimony. She stood by her affidavit evidence that the sum of $300,000 for the Aspen Heights Property (and also the $170,000 for the Canne Lodge Property, which I shall come to subsequently) were her direct financial contributions towards both Properties in the sense that the plaintiffs, her parents, remitted the sums on her behalf.[85] She was then asked to comment on the plaintiffs' claim that the $300,000 and $170,000 were loans to the defendant.[86] DW2 agreed with the plaintiffs' position and continued to maintain that those sums were loans to the defendant, who would have to repay the sums to the plaintiffs.[87] When questioned on the apparent contradiction between the two positions, DW2 took an enigmatic and unreasonable stand. She repeatedly insisted that there was no contradiction between her two positions. She said that although the sums were loans, these were also her 'contributions' in the sense that the defendant would not have been given the loans by the plaintiffs if the defendant had not been married to her.[88] When questioned further, DW2 was

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85 Transcript Day 3, p 86, lines 2–24; p 89, lines 5–14.

86 Transcript Day 3, p 93, lines 8–19.

87 Transcript Day 3, p 93 line 20 to p 94 line 24.

88 Transcript Day 3, p 97 line 26 to p 98 line 22.

very evasive and tried to use the excuse that she was not well-versed in the English language and could not fully understand the difference.[89]

68 I am unable to accept DW2's answers. She had spent five years studying medicine in the United Kingdom with English as the medium of communication and was also fluent in English.[90] She had also made those statements in paras 18 (a) and (b) of her affidavit with the assistance of her lawyer who acted for her in the Divorce Proceedings.[91] The plain reading of those relevant portions of her affidavit clearly contradicted her testimony in court. Because of DW2's incomprehensible and illogical explanation of her affidavit on the stand, I conclude that she is highly unreliable as a witness. I therefore find it unsafe to rely on her evidence. Her testimony was obviously tainted with bias in favour of the plaintiffs. She took two irreconcilable and untenable positions at the same time. First, that the $300,000 and $170,000 were loans given to the defendant for the purchase of the Aspen Heights and Canne Lodge Properties. Second, that those sums were her direct contributions towards the purchase of these properties. In my view it is best to totally disregard her evidence.

PW3's evidence supports the plaintiffs' claim

69 Finally, the plaintiffs' position was also supported by the testimony of PW3, whose evidence was not weakened by the cross-examination of the defendant's counsel. He testified that he was present when the defendant asked the plaintiffs for the loan to purchase the Aspen Heights Property.[92] Similar to

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89 Transcript Day 3, p 99, lines 15–21.

90 Transcript Day 3, p 92 line 21 to p 93 line 8.

91 Transcript Day 3, p 99, lines 11–14.

92 Transcript Day 2, p 73 line 26 to p 74 line 15.

the plaintiffs, he noted that it was the defendant who had proposed to borrow $400,000, but eventually the plaintiffs only transferred $300,000 to him as they could only raise that sum.[93]

Did the plaintiffs loan the $300,000 to the defendant or to the defendant and DW2?

70 For completeness, should the court address the issue of whether the loan of $300,000 was for the defendant and DW2 since this loan was for the purchase of their matrimonial home? I am of the view that it is not necessary for the court to consider this issue for two reasons. First, this issue was not in the pleadings of the parties. Second, the evidence does not suggest that the plaintiffs loaned the $300,000 to both the defendant and DW2.

Conclusion on the First Loan Agreement

71 In summary, I accept the plaintiffs' case that the First Loan Agreement was entered into for a sum of $300,000 (and that $120,000 of that sum had been repaid) because:

(a) there is corroborative and convincing objective evidence which showed that the defendant believed that the sum was disbursed as a loan as he had told Joanne in his email to her. This explains the repayment of two equal sums of $60,000 in July 2011 and June 2012;

(b) the defendant's request for the loan was witnessed by PW3;

(c) the defendant's version of events, that he had not approached the plaintiffs for money at all and it was the plaintiffs who had volunteered

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93 AEIC of Ng Hwa Pin, paras 8–11; Transcript Day 2, p 74, lines 16–32.

the sum, was not credible given that only he, and not the plaintiffs, would know about the sum that he needed; and

(d) the defendant's sole witness, DW2, was completely unreliable although she seemed to support the plaintiffs' case.

The Second Loan Agreement: $170,000

The objective evidence

72 I also accept the plaintiffs' case that the $170,000 remitted to the defendant was a loan. Under this Second Loan Agreement, PW1 lent the defendant $170,000 with an interest of an additional $170,000 repayable within two years – *ie*, 50% of the principal sum per annum. I come to this conclusion based on both the objective evidence as well as the circumstances surrounding the events leading to the transfer of the $170,000. I shall examine this evidence before turning to address why the defendant's arguments (that the money was a gift) do not assist his case.

(1) The defendant's email to Joanne dated 17 May 2012

73 I again start with the objective and contemporaneous evidence which supports the plaintiffs' claim. On 17 May 2012, one week before the money was eventually transferred, the defendant again sent an email to Joanne (copying DW2) with the details of his own personal bank account:[94]

> Hi Joanne,
>
> *As regards the investment* which I spoke to Dad about, my bank account details are as follows:

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94 AEIC of Beh Chin Joo, p 21.

> …
> Thanks.
> Best Regards,
> Leonard
> [emphasis added]

74 It is not disputed by the parties that the $170,000 was advanced for the purchase of the Canne Lodge Property as an investment. This email, like the previous email pertaining to the First Loan Agreement, is a very important piece of evidence as it was contemporaneous and was crafted by the defendant without being prompted. At that time, the parties would not have expected that the email would be used in these proceedings. It can therefore be relied upon as a candid reflection of what the defendant would have thought to be the nature of the transaction.

75 In this email, the defendant was silent as to whether he thought of the $170,000 as a gift or as a loan. This silence is significant in light of the fact that the money would be used for an investment. If the $170,000 were a gift, the defendant would not have had any obligation to repay it, essentially giving him a free $170,000 in capital and the profits that come with it from the investment. In contrast, if the money had been a loan, he would not only have had to repay the principal sum but also any interest. The difference between the two situations is so stark that if the money was a gift, the defendant would likely have wanted to confirm that it was in his email to Joanna as he was a practising lawyer and was fully aware of the legal implications between a gift and a loan. I have previously come to the conclusion that the earlier $300,000 was a loan and the defendant had also called it a loan in his email to Joanne. Therefore, if the $170,000 was indeed a gift from the plaintiffs the defendant would have certainly mentioned it in his email to Joanne. The gift would have assisted the

defendant financially since in 2012 he was already heavily indebted as a result of his purchase of the Aspen Heights Property. All things considered, the defendant would have mentioned in his email to Joanne that the plaintiffs would be remitting the $170,000 to him as a gift for the investment to confirm that he was not legally obliged to repay the plaintiffs. However, he did not do so.

(2) The circumstances in which the $170,000 was transferred to the defendant

76 The plaintiffs' claim that the $170,000 was a loan is also supported by the circumstances in which the $170,000 was transferred. PW1's evidence was that in May 2012 his own account was in the red and he did not have any money to lend the defendant, unlike the situation in 2010 when he lent the defendant the $300,000 for the Aspen Heights Property. Nevertheless, PW1 could still loan the $170,000 from his "overdraft monies".[95] The defendant said that the plaintiffs did not inform him of the source of the $170,000. Hence, he did not know that the $170,000 was drawn from PW1's overdraft facility.[96]

77 Regardless of whether PW1 had informed the defendant of the source of his funds, I find it extremely unlikely that the plaintiffs would advance this sum either as a gift or as an interest-free loan given that PW1 had to draw on a bank overdraft facility to do so. If the Canne Lodge Property was the matrimonial home of the defendant and DW2, it might have been possible that the plaintiffs would offer them an interest-free loan to help them to set up their home despite having to draw on PW1's overdraft facilities. But the purpose of the $170,000 was for an investment – the defendant and DW2 already had a

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95 AEIC of Beh Chin Joo, para 42.

96 AEIC of Chu Kar Hwa, Leonard, para 45.

matrimonial home in the Aspen Heights Property. It would only make sense to the plaintiffs if the defendant offered attractive returns better than the charges incurred from the bank for the use of the overdraft facilities. Indeed, as I shall later explain, the evidence shows that the defendant offered to double the principal sum in two years. This was good enough reason for the plaintiffs to lend him the sum of $170,000.[97] At that time in 2012, there was no reason to doubt the defendant's ability to repay as he had already repaid the plaintiffs $60,000 on 5 July 2011 for the first loan agreement.

78 If we were to accept the defendant's version that the $300,000 in February 2010 was a gift to finance the purchase of their matrimonial home at Aspen Heights, then it is not plausible that the plaintiffs would offer the defendant another gift of $170,000 just two years later for the purpose of his *own* investment. This purported gift would have further increased PW1's debts to the bank with no benefit to him but with every benefit to the defendant alone. This made the second purported gift improbable.

79 I note at this point that the defendant took the position during the trial that it was unclear whether the sum of $170,000 that was advanced from the bank to PW1 was pursuant to an overdraft facility or pursuant to a simple loan. Either way, it does not change the outcome as the analysis I have just explained pertains to the implausibility of PW1 incurring debts on his own behalf which would only benefit the defendant with no benefit to PW1 whatsoever.

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[97] AEIC of Ben Chin Joo, paras 43–44.

The defendant's objections to the plaintiffs' version of events

80 Having considered the objective evidence and the circumstances surrounding the transfer of the $170,000, I turn now to address the defendant's objections to the plaintiffs' version of events.

(a) It was implausible that the defendant would have agreed to an "astronomical" interest of $170,000.[98]

(b) It was also implausible that the plaintiffs would extend to the defendant a second loan when he had not repaid the first in full.[99]

(c) The plaintiffs' claim contradicts DW2's affidavit of assets and means in the Divorce Proceedings.

(d) The plaintiffs' amendment of their statement of claim to change the date of the Second Loan Agreement suggests that their claim was either fabricated or an afterthought, since the amendment was only made after the defendant's passport entries show that he was not in Malaysia during the initial alleged date of 10 May 2012.

(e) The plaintiffs' oral testimonies contained material contradictions.

I shall address each in turn.

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98 AEIC of Chu Kar Hwa, Leonard, para 56.

99 AEIC of Chu Kar Hwa, Leonard, para 46.

(1) "Astronomical" interest

81 First, starting with the interest of $170,000 repayable over two years, I accept that this interest rate appears high. However, the context is important in determining whether the interest rate is so prohibitively high that it makes it highly unlikely that the defendant would have sought a loan from the plaintiffs. By 2012, the defendant had already taken a huge bank loan for the Aspen Heights Property – which had cost some $1.65m – and it is highly unlikely that he had the financial gearing to be able to obtain another large bank loan for another property purely for investment purposes. Despite being heavily in debt, the defendant was eager to venture into property investment as he was of the view that the property prices in 2012 were relatively low and that he could gain from a potential uptrend in the market.[100]

82 The defendant had initially planned to ask his friends to invest $170,000 in the Canne Lodge Property.[101] But he later abandoned this idea when DW2 proposed that she be included in the investment instead through asking the plaintiffs for money. Before the defendant exercised his Option to Purchase the Canne Lodge Property on 3 February 2012, he was convinced that he could obtain the desired amount that he needed from the plaintiffs. The consistent evidence of PW1, PW2 and PW3 is that the defendant was confident of getting good returns of more than $170,000 within two years (which would come from not only the increased value of the Property, but also from the income from renting it out). He had said to the plaintiffs that he expected to make a profit from buying and subsequently selling the Property. He asked the plaintiffs how much they expected to earn from the $170,000[102] and proposed to double the

100 Transcript Day 3, p 58 line 22 to p 59 line 2.

101 AEIC of Chu Kar Hwa, Leonard, para 39.

plaintiffs' initial investment if they would lend him $170,000.[103] Seen in this light, the interest payable to the plaintiffs for the loan of $170,000 at 50% per annum is realistic as he had to entice the plaintiffs to part with their money despite already being in the red.

(2) Implausible that the plaintiffs would extend a second loan when the defendant had not fully repaid the $300,000

83 Second, the defendant also submits that the plaintiffs would not have lent him a second sum as he had not repaid the first sum in full at this point. But by this time, the defendant had already paid the first repayment of $60,000 in July 2011. There was no reason for the plaintiffs to believe that he would not continue to make such payments in relation to the First Loan Agreement as the defendant was a lawyer and DW2 was a medical doctor, both with well-paying jobs. There was also no apparent acrimony between the defendant and DW2 at this time that would cause the plaintiffs – her parents – to suspect that an additional loan would not be paid back, especially if it were to be used for an investment that would supposedly yield great returns.

(3) DW2's affidavit of assets and means contradicted the plaintiffs' case

84 Third, the defendant further submits that the plaintiffs' claim was contradicted by DW2's affidavit of assets and means in the Divorce Proceedings. For the reasons stated above (see [65]–[67] above), I completely reject DW2's evidence as it is highly unreliable. DW2's affidavit therefore does not affect the plaintiffs' case.

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102 Transcript Day 1, p 93, lines 4–7; Day 2, p 36, lines 5–11.

103 AEIC of Beh Chin Joo, paras 43–45; AEIC of Chong Paik Lin, paras 42–44; AEIC of Ng Hwa Pin, paras 16–19.

(4) The plaintiff's amendment to the date of the $170,000 transaction

85 Fourth, the defendant submits that the plaintiffs' amendment of their statement of claim at such a late stage and only after having seen the defendant's passport entries shows that the plaintiffs' claim was fabricated. The plaintiffs' original statement of claim stated that the Second Loan Agreement was entered into on 10 May 2012, but this was later amended to read "22 to 24 January 2012". The defendant's passport entries show that he was in Malaysia during the latter time period but not the former.[104]

86 Similar to the First Loan Agreement, I find that the plaintiffs' amendment does not assist the defendant's case. It was not disputed that the defendant intended to purchase the Canne Lodge Property for investment. The defendant felt that the property market at that time was bullish and that property was a good investment with high returns. It was also not disputed that he told PW1 of this investment.

87 Given this backdrop, the timeline of events leading up to the transfer becomes significant. The defendant was granted the Option to Purchase for the Canne Lodge Property on 7 January 2012. He eventually exercised the Option on 3 February 2012. Regardless of whether he had received the $170,000 from PW1 as a loan or a gift, it is likely that the defendant had come to an agreement with PW1 on the matter in between these two dates. It would otherwise have been unlikely for the defendant to have exercised the Option without first being assured that he had the funds to complete the purchase.

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104 AEIC of Chu Kar Hwa, Leonard, p 51.

88 The plaintiffs' version of events in the amended statement of claim – that the Second Loan Agreement was entered into between 22 and 24 January 2012 – corroborates this timeline. It was not disputed that the defendant visited the plaintiffs in Malaysia during the Chinese New Year period from 22 to 24 January 2012. This was when the defendant had received the Option to Purchase but had not yet exercised it. Therefore, it is likely that the defendant had asked PW1 for the loan of $170,000 during this visit. Hence, the plaintiffs' amendment is consistent with the defendant having received an assurance from the plaintiffs between the dates that he received the Option and when he exercised it. I find that the amendment does not undermine the plaintiffs' case.

89 In relation to the amendment, the defendant also submits that since his email to Joanne (containing his personal bank account details) was only sent on 17 May 2012, it would not make sense for the email to be sent five months after the discussion, if the discussion indeed took place in January 2012.[105] But the defendant's own position in his AEIC is that it was in late December 2011 that PW1 had called DW2 and him to inform them that he would provide the sum of $170,000 for the Canne Lodge Property as a gift.[106] So regardless of whether the conversation occurred in December 2011 or January 2012, the critical point here is that both versions are consistent with the fact that the defendant exercised the Option for the Canne Lodge Property only after he received the commitment from PW1.

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105 Witness Statement in Response to Amendments to SOC dated 29 November 2017, para 18.

106 AEIC of Chu Kar Hwa, Leonard, para 41.

(5) Material contradictions in the plaintiffs' oral testimonies

90 Similar to the First Loan Agreement, the defendant also submits that there were material contradictions in the plaintiffs' oral testimonies relating to the Second Loan Agreement. In particular, these contradictions pertain to:[107]

(a) when and where the Second Loan Agreement was entered into; and

(b) whether the Second Loan Agreement required 100% interest.

91 On the first point of when the Second Loan Agreement was entered into, the defendant's point was essentially that the plaintiffs had contradicted themselves. In the plaintiffs' amended statement of claim, they stated that the loan was entered into in January 2012. But in their oral testimonies they had conceded that the loan was only entered into after the defendant had brought them to view the Canne Lodge Property, which by their own evidence was in March 2012.[108] Although the plaintiffs' evidence was somewhat confusing in the way they responded to the phrase "agree to lend [the defendant] the money", when viewed in context, it becomes clear that what they had meant was that they had only agreed to *transfer* the money quickly in May 2012 despite having agreed to grant the loan in January 2012. This can be seen from the following extract in PW1's oral testimony:[109]

> Q: Okay. So let me understand your evidence. Your daughter hurt her finger, Leonard drives you out to see the property, says it's a good investment. After that, you agreed to lend him $170,000. Is that the correct sequence?

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107 Defendant's submissions, paras 84–86.

108 AEIC of Beh Chin Joo, para 38.

109 Transcript Day 1, p 93 line 19 to p 94 line 9.

> …
>
> Q: Then you had another discussion because Leonard said it's a good investment, correct?
>
> A: He mentioned that on more than one occasions---
>
> Q: Okay.
>
> A: ---on many occasions.
>
> Q: So did you agree to lend him the money when you were in Singapore or did you only agree to lend him the money after you went back to Malaysia?
>
> A: We had a few discussions when we were in Malaysia and then---and we also discussed the issue during the Chinese New Year.
>
> Q: What I'm trying to understand is when did you agree to lend him the money? Was it after he took you---after the visit to Singapore where he took you to see the property? Or was it before you even came to Singapore?
>
> A: I only agree to lend him the money after he had set out the terms after we had seen the property.

92 Although PW1 had said that he only agreed to lend the defendant the money after he had seen the property (sometime in March 2012 on PW1's own evidence), this must be seen in the context of PW1 noting that they had multiple discussions. PW1 was not well-versed in English and in all likelihood he had meant that they had agreed to transfer or disburse the money only after they had seen the Canne Lodge Property. This is consistent with PW2's evidence, which the defendant also contests:[110]

> Q: Then why did you still transfer 170,000 to Leonard in May 2012?
>
> A: Well, over the telephone conversation, he told my husband and I that he wanted to borrow money. So in---during Chinese New Year in January, he came to our house for meals. And I also raised the issue of borrowing money. Yes, when my daughter injured her fingers and when her fingers got infected,

[110] Transcript Day 2, p 64 line 17 to p 65 line 22.

> my husband and I did come to Singapore. Leonard then reminded us to transfer the money to him. He had also drove us to see an old high-rise apartment saying that it was a good time to invest. Can I continue?
>
> …
>
> Q: Mdm Chong, you earlier said that you came down to see your daughter when she had the finger infection. Is that correct?
>
> Court: Yes.
>
> Q: And you also stated that at that time, Leonard would remind you to transfer the money to him. Is that correct?
>
> Court: Yes.
>
> …
>
> Q: Earlier, Mr Beh said that he recalled agreeing to lend Leonard the monies after Leonard drove him to see the property, and this was when Joey had her finger infection. Is Mr Beh, correct?
>
> A: Yes.
>
> Q: So did you agree to lend him the 170,000 when you were in Singapore? Or did you remind him to transfer the monies when you were in Singapore? Which version is it?
>
> A: Well, when we reached Singapore and after having taken a look at the finger and the property, he did ask us to quickly transfer the money to him.
>
> Q: Was it then that you agreed to lend him the monies?
>
> A: Yes, because he kept pressing us for the money for investment. And these are hard-earned monies. These are hard-earned monies.

93 From this exchange it is clear that what PW2 had meant was that the Second Loan Agreement had been reached in January 2012, although the plaintiffs only eventually transferred the sum of $170,000 in May 2012 after the Canne Lodge Property was viewed and after the defendant pressed them to do so. I do not think that there is a contradiction between the two. The plaintiffs

appear to have used "agree to loan" in two different senses and this was not clarified by the defendant's counsel in cross-examination.

94 I would set out PW3's testimony, which the defendant also submits is contradictory. The defendant's counsel had cross-examined PW3 on what exactly PW1 had said during the meeting in January 2012 but PW3 could not recall precisely what he said:[111]

> Q: Sorry, so you're saying that when---during the Chinese New Year period, he didn't---Mr Beh didn't expressly agree to lend the monies?
>
> A: Well, he said that it was alright, but he will needed---he needed some time to think it over.
>
> Q: When you say he needed some time to think it over, did he say, "Yes" expressly to Leonard? And did he say he will loan the monies to Leonard?
>
> A: Verbally, he had already agreed verbally.
>
> Q: But what do you mean by when you---so what did Mr Beh eg---say exactly? Because you said that, "He said okay, but he had to think about it". So what did Mr Beh say, to the best of your recollection?
>
> A: I'm not very sure.

95 The defendant's counsel had questioned PW3 about what precisely PW1 had said during a conversation some five years ago. I am not surprised that PW3 was unable to recall specifically. But more importantly, PW3's account does not materially contradict the account presented by PW1's and PW2's oral testimonies as I have set out above.

96 On the second point of whether the loan required 100% interest, the defendant relied on a passage in which PW3 had stated that he did not know

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111 Transcript Day 2, p 77, lines 22–32.

whether the defendant expressly agreed to repay $340,000 to the plaintiffs.[112] Presumably, the defendant's point is that because PW3 was unsure, hence PW1's evidence stands uncorroborated. However, that answer from PW3 must be seen in its entire context:[113]

> Q: Right, "sometime in January". At paragraph 15, you say that the 1st defendant---sorry, the 1st plaintiff told the defendant that he has a sum of 170,000, being overdraft monies but it was meant for his own business use.
>
> A: Yes.
>
> Q: And at paragraph 17, you say that the defendant then proposed that he'll be able to make profits from buying and subsequently selling the property.
>
> A: Yes, I also heard this.
>
> Q: And then at paragraph 19, you say that the defendant agreed to return the sum of 340,000.
>
> A: Well, he said that this---his Singapore property would double, as such---and that it will double within 2 years. As such, I stated the amount as $340,000.
>
> Q: Did Leonard ever expressly agree to pay 340,000?
>
> A: I do not know.
>
> Q: Thank you. Was Mdm Chong present when, at paragraph 19, you confirm that he agreed to return the sum of 340,000?
>
> A: Yes.

97 So although the defendant did not *expressly* state that he would repay $340,000, PW3 was clear that in his view the defendant had agreed to repay the plaintiffs a total of $340,000, and that PW2 was present when he said this. Neither PW1 nor PW2 was cross-examined on this point. In the circumstances, I do not think that the defendant has shown enough to diminish the overall

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112 Defendant's submissions, p 61.

113 Transcript Day 2, p 77, lines 1–16.

evidence of the plaintiffs (and their witnesses) that there was a loan for $170,000 and with an additional $170,000 repayable as interest in two years' time.

Conclusion on the Second Loan Agreement

98 Accordingly, I find that the $170,000 was transferred on the basis of the Second Loan Agreement between the parties. I do not accept the defendant's position that PW1 would have advanced the money as a gift especially given the circumstances surrounding the transfer. Although there were some discrepancies in the plaintiffs' evidence, these are not fatal to their position and I find that the plaintiffs have made out their claim on a balance of probabilities.

The presumption of joint gifts

99 For completeness, I shall deal with the defendant's submissions that there is a "presumption that financial contributions made by parents to a matrimonial home are intended to be joint gifts for the spouses".[114] For this proposition the defendant referred to *Ang Teng Siong v Lee Su Min* [2000] 1 SLR(R) 908 ("*Ang Teng Siong*"), *ANZ v AOA* [2014] SGHC 243, and *TSI v TSJ* [2016] SGFC 91. These are matrimonial cases and in each of these cases, one of the spouses in the distribution of the matrimonial assets proceedings alleged that the parents gave the property solely to their child and not to both spouses. The court in those cases held that in the absence of clear and credible evidence to the contrary, a parent's contribution towards the purchase of the child's matrimonial home is presumed to be for the benefit of both spouses (see *Ang Teng Siong* at [28]; *ANZ v AOA* at [14]; *TSI v TSJ* at [34]). I would note that since this presumption applies only to matrimonial assets and not

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114 Defendant's submissions, para 39.

investment properties, at its highest it would only apply to the Aspen Heights Property and not the Canne Lodge Property, and indeed the defendant's counsel accepted as much during his oral submissions.

100 This common law presumption does not assist the defendant's case in relation to the Aspen Heights Property for two reasons. First, the central issue in this case is not about whether the plaintiffs gave the monies to DW2 solely or to the defendant and DW2 jointly for the purchase of the Aspen Heights Property as their matrimonial home. Rather, the pivotal issue in this case pertains to whether the sums in question were loans or gifts. Hence, the presumption does not apply. Second, for the reasons I have given above, I have found that the $300,000 was a loan. Therefore, the presumption is not relevant in this case.

Conclusion

101 My findings are summarised as follows:

(a) The plaintiffs transferred $300,000 interest-free to the defendant as a loan for the Aspen Heights Property which was to be the matrimonial home of the defendant and DW2. Since the defendant has only paid back $120,000 of that sum (in two tranches of $60,000 each), the defendant is now liable for the remaining sum of $180,000.

(b) The plaintiffs further transferred $170,000 to the defendant as a loan for the Canne Lodge Property, which was an investment. The fact that PW1 had to draw on a bank overdraft and that the initial $300,000 was transferred as a loan made it implausible that this sum of $170,000

was a gift. The defendant is liable to the plaintiffs for this sum together with the interest of $170,000.

102 I shall now hear the parties on costs.

Tan Siong Thye
Judge

Lazarus Nicholas Philip and Toh Yee Lin Jocelyn (Justicius Law Corporation) for the plaintiffs;
Thio Shen Yi, SC and Nanthini d/o Vijayakumar (TSMP Law Corporation) for the defendant.
