Ding Leng Kong v Mok Kwong Yue and Others
[2003] SGHC 114

Case Number : Suit 1515/2001

Decision Date : 19 May 2003

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Hee Theng Fong, Lee Cheow Ming Doris Damaris and Tan T'eng Ta' Benedict (Hee Theng Fong & Co) for the plaintiff; Andrew Ee (Andrew Ee & Co) for the first, third and fourth defendants

Parties : Ding Leng Kong — Mok Kwong Yue; Subbarao Pinamaneni; Teamasia Pte Ltd; Teamasia Semiconductor (India) Pte Ltd

Credit and Security – Money and moneylenders – Loans of money – Whether plaintiff a moneylender – Failure to plead exception in s 2(c) of the Moneylenders Act (Cap 188, 1985 Rev Ed) – Presumption of moneylending – Whether presumption rebutted – Whether in business of or carrying on business of moneylending – Moneylenders Act (Cap 188, 1985 Rev Ed) s 3

Credit and Security – Money and moneylenders – Loans of money – Whether sums advanced are loans or investments – Whether plaintiff a moneylender – Whether loans unenforceable

Words and Phrases – "A larger sum being repaid" – Whether phrase in s 3 of the Moneylenders Act (Cap 188, 1985 Rev Ed) confined to repayment in money only

1 The plaintiff in this action is Dr Ding Leng Kong ("Ding"). He is a Singapore permanent resident.

2 There are four defendants named in the action:

(a) first defendant - Mok Kwong Yue ("Mok"), a Singapore citizen

(b) second defendant - Subbarao Pinamaneni ("Subba") a citizen of the United States of America

(c) third defendant - Teamasia Pte Ltd ("Teamasia Singapore"), a company incorporated in Singapore

(d) fourth defendant - Teamasia Semiconductor (India) Pte Ltd ("TSI"), a company incorporated in India and situated in Hyderabad, Andhra Pradesh, India.

3 However, as Ding's solicitors have not been able to effect service of the Writ of Summons on Subba, the trial was in respect of Ding's claims against the other three Defendants only (collectively called "the Defendants").

4 Ding's claims are in respect of monies he had advanced which he alleges was by way of investment. However, the reliefs sought by Ding are not confined to the repayment of the monies, as I shall elaborate below. The receipt of the monies is not disputed. The main defence is that the monies were advanced by way of loans which loans are unenforceable for being in breach of the Moneylenders' Act, Cap 200 ("the Act"), as Ding was and is not a registered moneylender.

5. In this judgment:

A reference to an affidavit of evidence-in-chief will start with "AEIC" and then the page or

paragraph number

A reference to the notes of evidence will start with "NE" and then the page number

A reference to the Plaintiff's Bundle of Documents will start with "PBD" and then the page number.

Background

6 I will go into some detail of the facts as they are slightly convoluted.

7 In 1974 or 1975, Mok met Ding when Mok was a sales manager with Dynacraft International Ltd, a manufacturer of lead frames for the semiconductor assembly industry. Ding was then the purchasing manager of RCA Sdn Bhd.

8 From 1984, Ding was trading as a sole-proprietor under the name of CCD Enterprise ("CCD"). CCD was and is in the business of manufacturing and supplying packaging materials for the semiconductor industry. Subsequently, Ding also became a shareholder of Peridin Pte Ltd ("Peridin"), a company incorporated in Singapore on 9 November 1994. Its principal business is the manufacture and supply of packaging materials for the semiconductor industry.

9 In the meantime, Mok had formed a joint venture company called VGE Pte Ltd ("VGE") in 1993. He was its managing director and biggest shareholder. In 1995, he renewed contact with Subba when Subba was working with National Semiconductor. They became close friends and in 1995 or 1996, they formed a company i.e Teamasia Singapore, to represent their interests with Femnor Minerals, a public-listed company in India with a view to starting a venture in Chennai in Madras. That venture failed.

10 At about that time, Subba and Mok learned that another public-listed company in India, Greaves limited ("GL"), wanted to sell off its analog semiconductor unit. Subba and Mok became interested in the purchase but had to pay about USD1.25m for a 74% stake with an initial payment of USD250,000. The intention was for Teamasia Singapore to take a 95% stake in TSI and TSI would be the vehicle which would acquire a 74% stake in another Indian company Teamasia Greaves Semiconductor Pte Ltd ("Teamasia Greaves") which would acquire the analog semiconductor unit from GL. They calculated that the business of this GL unit would generate sufficient cash which would enable them to pay the balance of the purchase price. So, they looked for parties to join this venture. As it turned out, a mutual friend Kou Aik Boon, who was a remisier servicing both Mok and Ding, "introduced" Mok to Ding. This was around end August 1997 (NE 7).

11 In September 1997, Ding agreed to advance Mok $30,000. The terms of this advance were contained in an agreement dated 18 September 1997. The advance was to be repaid on or before 31 December 1997 with interest at 2% per month. In addition, Ding was given an option to purchase shares in Teamasia Greaves up to a maximum of USD30,000. The option was valid for three years. I was informed during the trial that the intention was that Teamasia Greaves would issue shares to Ding if he exercised the option but this was not clear from the poorly drafted loan agreement. In any event, Ding did not exercise the option.

12 In or about the same month of September 1997, Ding also agreed to advance a second sum of USD150,000 this time to Teamasia Singapore to be guaranteed by Mok and Subba. The terms of this advance were also contained in a document. The copy adduced in evidence was undated but its validity was not disputed. Under the terms of that document, the monies were to be repaid within 60

days and, failing that, within 90 days. The purpose of the advance was for Teamasia Singapore to place it as a deposit into an escrow account in London to obtain a term loan from Wellbred Asset Management of Bahamas. If the loan from Wellbred was not forthcoming, the principal sum lent by Ding was to be repaid with interest at 2% per month. If the loan from Wellbred was granted, Ding would be allotted 4% of the equity in Teamasia Greaves in lieu of interest on his loan.

13 This loan of USD150,000, like some other sums, is not one of the sums claimed by Ding. However I mention it, as well as other sums not claimed by Ding, as they should be taken into account in my determination as to whether the sums claimed by Ding were advanced as loans and, if so, whether Ding was a moneylender within the Act.

14 In October 1997, a third sum of USD50,000 was advanced. This was to Teamasia Singapore (PBD 11 and 12) although it is not clear whether this sum was advanced by Ding personally or through his business CCD.

15 In December 1997, a forth sum of USD50,000 or USD55,000 was advanced to Teamasia Singapore (PBD 13, 14 and 15). The party advancing this sum was apparently CCD.

16 Neither of these two sums advanced in October and December 1997 are the subject of Ding's claims. The cheque butt for the sum advanced in December 1997 states "Loan to Teamasia".

17 In June 1998, Ding agreed to advance a fifth sum of USD165,000. This was for Teamasia Singapore to acquire shares in Teamasia Greaves. It is not disputed that this advance was governed by the terms of a deed between Teamasia Singapore, Ding, Mok and Subba ("the Deed") although the copy thereof before me was signed only by Subba and Mok and was undated. The Deed was prepared by Ding's solicitor Lim Tanguy of Chor Pee & Partners. As this sum of USD165,000 is one of the sums claimed by Ding and as Ding is taking the position that the sum was advanced as an investment in and not as a loan to Teamasia Singapore, I set out below its salient provisions:

(a) In the recital, Ding is defined as "the lender".

(b) Clause 1 provides for Ding to "lend" USD165,000, which is defined as "the loan", for the purpose of acquiring shares in Teamasia Greaves.

(c) Clause 2 provides that the total of loans made by Ding is USD365,000 and is to be repaid within four months from the date of the deed. The various loans are defined as "the loans".

(d) Clause 4 provides that "In consideration of the loans", Teamasia Singapore is to acquire and transfer to Ding an 8% stake in Teamasia Greaves free from all encumbrances.

18 In October 1999, Ding advanced a sixth sum of USD250,000. According to him, the USD250,000 is evidenced by a subsequent agreement dated 1 November 1999 ("the November 1999 agreement") and was to assist TSI to acquire a stake in IMP Inc ("IMP"), a company listed on NASDAQ and operating in California.

19 The November 1999 agreement was also prepared by Ding's solicitor but this time he used Helen Tay Hwee Hua from another firm i.e Catherine Lim & Co. This agreement was stated to be between Mok, Subba, Teamasia Singapore, TSI and Teamasia Semiconductor (USA) ("Teamasia USA") on the one hand and Ding on the other hand. I set out below its salient provisions:

(a) Recital C states that the agreement is to consolidate all previous agreements in respect

of funds provided by Ding.

(b) Clause 1.1 defines "Borrowers" to mean Mok, Subba and the TA Companies, and "TA Companies" means Teamasia Singapore, TSI and Teamasia USA.

(c) Under clause 2.1.1, each of the Borrowers acknowledges that Ding has provided funds on various occasions and in consideration of that he is entitled to a 4% stake in the enlarged capital of a holding company of the TA Companies, called "TA Holdings".

(d) Under clause 2.1.2, Ding is to be appointed a director of TA Holdings.

(e) Under clause 2.2, the Borrowers acknowledge the outstanding amount of "the Previous Loans" to be at least USD696,000, subject to further confirmation by Ding. According to Ding, this USD696,000 includes the fifth sum of USD165,000 and the sixth sum of USD250,000 (see Ding's Amended AEIC para 63).

(f) Under clause 3.1, Ding is to provide a further loan of USD500,000, defined as "Further Loan", to the Borrowers upon execution of the agreement.

(g) Under clause 3.2, Ding is entitled to:

3.2.1 another 3% fully paid up shares in the enlarged capital of TA Holdings,

3.2.2 327,868 fully paid up shares in IMP forthwith,

3.2.3 581,222 fully paid up shares in IMP by 5 January 2000

3.2.4 fully paid up shares representing 7% of the capital in Teamasia Singapore

3.2.5 be appointed a director of Teamasia Singapore forthwith

(h) Clause 3.3 provides that the effect of clauses 2.1 and 3.2 is that Ding is entitled to an aggregate number of shares in TA Holdings representing 6% of its enlarged capital. This may have been a typographical error because clause 2.1.1 provides for 4% and 3.2.1 provides for 3%, making an aggregate of 7% of the enlarged capital. However, as one of the reliefs sought by Ding is 6%, and not 7%, of the issued and paid-up capital of TA Holdings, I will assume that 6% is the correct figure.

(i) Under clause 4.1, each of the Borrowers undertake to repay the Previous Loans and Further Loan as follows:

4.1.1 USD630,000 by 8 November 1999

4.1.2 USD566,000 and such further amount as determined by Ding by 31 January 2000.

(j) Under clause 5, the Borrowers are to pay default interest at a certain rate and Ding is entitled to charge further interest representing loss of opportunity.

20 According to Ding, the seventh sum of USD500,000 pursuant to clause 3.1 was advanced on 2 November 1999. Thereafter, an eighth sum of USD299,928.69 was advanced on 14 December 1999. Both these sums are also the subject of his claims.

21 In summary, Ding is claiming:

(a) S$30,000 as evidenced by the loan agreement dated 18 September 1997.

(b) S$276,880 (which is supposed to be the equivalent of USD165,000) which he advanced for the purpose of acquiring the analog semiconductor unit of GL. This is evidenced by the Deed referred to in para 17 above and again in the November 1999 agreement as part of the Previous Loans of at least USD696,000.

(c) USD1,049,928.69 which he advanced to assist TSI to acquire an interest in IMP. This sum comprises:

(i) USD250,000 which is also part of the USD696,000 acknowledged in clause 2.2 of the November 1999 agreement

(ii) USD500,000 advanced pursuant to clause 3.1 of the November 1999 agreement

(iii) USD299,928.69 advanced in December 1999.

22 As I have said, it is not disputed that all the sums claimed have been advanced. Aside from the defence that they were loans and unenforceable under the Act, there was also a late attempt to include a defence that USD300,000 and RM200,000 had been repaid. This was done first by trying to introduce this defence through evidence. At that time I did not allow questions thereon because such a defence was not pleaded. Also, Mr Andrew Ee, Counsel for the Defendants, did not immediately apply for leave to amend their Defences. It was only later that an oral application to amend was made.

23 As the application to include the partial repayment defence was made only on the last day of trial, after Ding's case had been closed, I did not allow the application. I noted that Ding's Counsel had already said during his opening statement that Ding's claims excluded other sums he had advanced. If the monies Ding admittedly received were not applied to pay those other sums, then the Defendants should have raised this point right from the time when the Re-Amended Statement of Claim was served and, having failed to do so, they should have applied for leave to amend their Defences before Ding's case was closed. As it was, I had already granted leave for Mok to amend his Defence on the first day of the trial in respect of a different point.

Were the monies advanced as loans?

24 I note that in the letter of demand dated 2 November 2001 from Ding's previous solicitors Palakrishnan and Partners (see Mok's Amended AEIC p 26 to 28) that the initial demand for repayment was made on the basis that the advances were loans. Again, in Ding's original Statement of Claim, Ding had claimed the subject monies on the basis that he had extended various loans to the Defendants. He then changed his position because the Defendants had raised the Act as a defence.

25 In addition, the claim for the $30,000 was pleaded as a loan. So the nature of this transaction cannot be in issue although Ding sought to describe it in his oral testimony as an investment.

26 Much time was spent by both counsel in their submissions on principles of interpretation. It was not disputed that the nature of the relationship between the parties is to be determined by the substance of the obligations and not the label. However, this did not mean that the words in an

agreement should be ignored.

27 As regards the $276,880 (or USD165,000), the Deed made it clear that USD165,000 was lent by Ding to Teamasia Singapore. The fact that Ding was to get an 8% stake in Teamasia Greaves over and above the repayment of his loan did not change the nature of the transaction. In my view, the 8% stake was in fact in lieu of interest, just as the 4% stake for the second sum of USD150,000 was in lieu of interest (see para 12 above). The only difference is that the 4% stake was expressly stated to be in lieu of interest whereas the 8% was not expressly stated in such terms but "In consideration of the loans".

28 Accordingly, when the November 1999 agreement provides for:

(a) Ding to receive 6% of the enlarged share capital of TA Holdings,

(b) Ding to receive a total of 909,090 shares in IMP (in two tranches),

(c) Ding to receive 7% of the capital of Teamasia Singapore,

these shares were really in lieu of interest, although not expressly stated as such. That is why the November 1999 agreement does not mention any payment of interest on the sums which were advanced as loans, unless there is default in payment. Accordingly, I am also of the view that all of these benefits in kind do not change the nature of the advances by Ding. The fact that Ding is also entitled to be appointed as a director of TA Holdings and Teamasia Singapore also does not change the nature of the advances.

29 In cross-examination, Mr Hee Theng Fong, Counsel for Ding, mentioned 12 factors to argue that Ding did not advance the monies as loans (NE 76 to 77):

(a) Ding is familiar with the semiconductor industry as he has 20 years of experience in it

(b) Ding does not lend to all and sundry

(c) Ding was to be made a director

(d) Ding was to be given shares

(e) There was synergy between Ding's own business and the investment in the analog project and IMP project

(f) There are investment products in the market with guaranteed return of principal

(g) In one of three "investment" proposals to Ding, Mok had used the word "investment" and "investor" notwithstanding the guaranteed return of principal

(h) Mok consistently gave business plans to Ding

(i) Mok kept Ding updated periodically on the performance of Teamasia Greaves

(j) Mok kept Ding informed of various regulatory approvals and participation by HSBC in the equity of Teamasia Greaves

(k) Were it not for the guaranteed repayment of principal to Ding, Mok was prepared to give

Ding more shares

(l) The November 1999 agreement consolidates some of the terms in three "investment" proposals given by Mok to Ding

30 In Mr Hee's submission, he also relied on the fact that other documents described Ding as one of the promoters of Teamasia Greaves and as a director and investor in TSI and referred to Ding's "stake" in IMP. Mr Hee also submitted that Ding had taken the trouble to go to Hyderabad and California to inspect the businesses acquired or to be acquired.

31 I will now deal with the factors raised by Mr Hee, some of which overlap.

32 In my view, the fact that Ding was familiar with the semiconductor industry and did not lend to all and sundry does not affect the nature of the advances. They may be relevant to the question whether Ding carries on the business of money-lending, but that is a separate issue.

33 The fact that Ding was to be given equity and made a director on top of the repayment of monies advanced also does not change the nature of the advances, as I have already said. If the monies advanced need not be repaid, and Ding had taken a direct equity stake in exchange for his monies, then that would have meant that the monies were not advanced as loans.

34 Again, even if there was synergy between Ding's businesses and the analog project and the IMP project, this does not change the nature of the advances.

35 As for investment products with guaranteed returns of capital, the existence of such products does not in itself mean that the monies advanced by Ding were not advanced as loans. If it were to mean that, then, by analogy, even a loan from a bank is not a loan because there are investment products with guaranteed returns of capital. While there may be some similarity between such investment products and Ding's advances in the sense that return of capital is expected, there may also be differences. For example, not all of such investment products necessarily return 100% of the capital. By "guaranteed return of capital", some mean the return of capital after deduction of a front-end fee. Secondly, units or shares are usually issued in exchange for the "investor's" principal sums. Thirdly, often one can redeem or sell the units or shares quite easily. In Ding's case, there is no deduction from the principal sums. Secondly, the various shares are to be given to him in lieu of interest and not in exchange for the principal. Thirdly, he will not be able to sell the shares easily unless the companies in which he was to have a stake are listed. In any event, it may be that there is indeed an element of lending in respect of products with guaranteed returns of capital. However, it is not necessary for me to venture a view as to whether such products are actually more in the nature of money - lending or not because that is not the issue before me. The issue before me is whether Ding's advances were in the nature of loans.

36 The argument that Mok would have given Ding more shares if not for the repayment of the principal, militates, rather than advances, Ding's position that each principal sum was advanced as an investment.

37 As for three "investment" proposals forwarded to Ding by Mok before the November 1999 agreement was signed (see Ding's Amended AEIC p 195 to 197) two of them did not envisage the return of capital but a direct investment by taking equity. As for the third proposal (at p 197), it is true that it used the words "invest" and "investment" although the principal was to be repaid, but, in my view, the choice of those words was not correct. Besides, all the three proposals were superceded by the November 1999 agreement and the words "invest" and "investment" are not found

in that agreement.

38 As for the argument that the November 1999 agreement incorporated some of the terms from the three "investment" proposals, it is not useful to look at selected terms only as what Mr Hee did. I accept the argument of Mr Ee that Mr Hee was cherry-picking and I do not propose to go through those terms which Mr Hee was relying on. Considered as a whole, the November 1999 agreement made it clear that the monies from Ding were advanced as loans.

39 The fact of the matter is that Ding had been given the opportunity to put in his money as equity. Indeed, he was approached to invest. However, he opted not to do so and instead tried to have the best of both worlds i.e he wanted the monies he advanced to be advanced as loans, but, for his trouble and risk, he wanted some equity in lieu of interest. He is entitled to structure his loans that way but he is not entitled to deny that they were loans.

40 As regards Mr Hee's reliance on documents which refer to Ding as a "promoter", "director" and "investor" and which refer to his "stake", these documents were:

(a) an Introduction of Teamasia Greaves in which Teamasia Singapore is identified as one of the promoters. Ding's name is one of three names stated below the name of Teamasia Singapore (see Ding's Amended AEIC p 104).

(b) In a Confidential Memorandum of September 1999 on TSI, there is a brief profile of the main promoters and Ding is identified as one of the promoters. Moreover, he is also referred to as "Investor", as well as "Director" (see Ding's Amended AEIC p 170 and 171).

(c) In a letter dated 9 November 2001 from Mok to Ding, Mok states:

Dear Dr. Ding,

With the help of yourself, and many others, we, together took over IMP. We still have full intention to make a good return on *these investments*. Our friends continue to support us and I hope you will give us just a little more time to pull this off.

….

….

….

Three full years had gone by. What do we have?

1. The new investor group (including *your stake*) injected 6m. in June/July 2001, and the new share issues will be completed this month. The schedule to divest a portion of our stake will have to be completed before March 2002.

2. ….

3. ….

4. ….

5. ….

We are requesting you give us a little more time to complete the above activities that are in final critical stages, so that all of us can recover *our investment* and proceed to finally enjoy the "profits" that will come. Please hold off until end Nov. when we will have a firm and realistic schedule. Can I meet up to fully brief you on details? I have been calling you but unable to reach you. My telephone is 98323984.

[Emphasis added]

As can be seen, the letter not only refers to Ding's stake but also describes it as part of the overall investments made.

41. In my view, these documents are not inconsistent with the existence of the loans which Ding made. One must remember that the original intention of Mok was for Ding to be an investor. From these documents, it appears that the intention originally was also for Ding to be a promoter. However, Ding decided not to participate directly in equity but indirectly through his loans where the equity was given to him in lieu of interest. His entitlement to the equity made him an investor which resulted in him having a stake beyond the mere repayment of his loans. Likewise, the fact that Ding was given business plans and updated on regulatory approvals and on the performance of Teamasia Greaves and the fact that Ding had gone to Hyderabad and California to inspect the businesses are not inconsistent with the fact that he was to acquire an equity stake indirectly.

Was Ding a moneylender as defined in the Act?

42 It is common ground that if Ding is a moneylender as defined in the Act, any agreement to repay him monies which he has lent would be unenforceable as stated in s 15 of the Act, as he does not have a licence under the Act.

43 It is also common ground that even if Ding's advances were actually loans, this in itself would not make him a moneylender as defined in the Act. Sections 2 and 3 of the Act state:

Interpretation

2. In this Act, unless the context otherwise requires -

"moneylender" includes every person whose business is that of moneylending or who carries on or advertises or announces himself or holds himself out in any way as carrying on that business whether or not that person also possesses or earns property or money derived from sources other than the lending of money and whether or not that person carries on the business as a principal or as an agent but does not include -

(a) any body corporate, incorporated or empowered by a special Act of Parliament or by any other Act to lend money in accordance with that Act;

(b) any society registered under the Cooperative Societies Act;

(c) any person bona fide carrying on the business of banking or insurance or bona fide carrying on any business not having for its primary object the lending of money in the course of which and for the purposes whereof he lends money;

(d) any pawnbroker licensed under the provisions of any written law in force in Singapore relating to the licensing of pawnbrokers; and

(e) any finance company licensed under the Finance Companies Act.

Certain persons and firms presumed to be moneylenders.

3. Save as excepted in paragraphs (a) to (e) of the definition of "moneylender" in section 2, any person who lends a sum of money in consideration of a larger sum being repaid shall be presumed until the contrary is proved to be a moneylender.

44 In my view, the reference to "a larger sum being repaid" in s 3 is not confined to repayment in money only. If the repayment is in kind or partly in cash and in kind, it may still constitute a "larger sum" for the purpose of s 3. Otherwise it would be easy to circumvent s 3.

45 In the present case, I have found the subject sums advanced by Ding to be loans. There is no dispute that if I should reach that conclusion, Ding was lending the sums in consideration of larger sums being repaid in view of the fact that he was to be repaid the principal in full and some equity.

46 The next question should be whether Ding comes within exception (c) in s 2. However, as Mr Ee has rightly submitted, Ding has not pleaded that if his advances were loans, exception (c) would apply i.e. that Ding's loans were made by Ding bona fide carrying on a business not having for its primary object the lending of money in the course of which and for the purposes whereof Ding had lent the monies. A general denial that Ding is a moneylender or that the Act applies is, in my view, not sufficient.

47 However, even if Ding may avail himself of exception (c), the question is whether he has made out a case under exception (c).

48 Of the two businesses that Ding initially had, one is a company i.e. Peridin and the other, a sole-proprietorship i.e. CCD.

49 In addition, Ding asserted in his Amended AEIC that Mok was willing to transfer VGE (in which there were other shareholders) to Ding if Ding was prepared to invest in the purchase of the Greaves' analog semi-conductor unit (Ding's Amended AEIC para 25). Ding also asserted that he thought he could develop a strategic alliance between Teamasia Greaves and CCD and Peridin in that he could supply Teamasia Greaves with semiconductor products such as supplies of "sticky mat" and "tape reels" which were used in the manufacture of analog semi-conductor products (Ding's Amended AEIC para 26). Ding added that in or about February 1998, Mok had informed him that Teamasia Greaves had been incorporated under the laws of Hyderabad and at this point in time, CCD and Peridin commenced business relations with TSI (Ding's Amended AEIC paras 33 and 34). However, the alleged copies of invoices which Ding had exhibited in his Amended AEIC to support his contention were not invoices from CCD or Peridin but from HSin Semiconductor Pte Ltd and Teck International (Pte) Ltd, although some of the exhibits were purchase orders from Teamasia Singapore to CCD or Peridin. Furthermore, even if all these documents do demonstrate that there had been some dealings between Teamasia Singapore and CCD or Peridin, I am of the view that they fell far short of establishing that Ding's loans were in the course and for the purposes of the business of CCD or Peridin.

50 The loans were made by Ding as an alternative to making direct investments. He saw an opportunity to make money initially through the interest he was charging, and then, through the equity stake he was to get in lieu of interest. Ding was getting into a separate venture although, by the way, he sought to gain some benefit for Peridin or CCD.

51 Therefore, I am of the view that Ding has in any event not made out a case under exception (c) and there is a presumption that Ding is a moneylender. The next question is whether Ding has rebutted the presumption. This in turn involves the question whether Ding is in the business of or carrying on the business of moneylending as the other limbs in the definition of "moneylender" do not apply. As Chan Sek Keong J (as he then was) said in *Subramaniam Dhanapakiam v Ghaanthimathi* (1991) SLR 432:

> The settled law is that what is prohibited by the Act was not moneylending but the business of moneylending (see page 434 at G of the report).

52 Mr Ee submitted that Ding would be in or carrying on the business of moneylending if there was a "certain degree of system and continuity about the transactions" as mentioned by Justice Walton in *Newton v Pyke* (1908) 25 TLR 127 and apparently accepted by Chan J in the case of *Subramaniam*. Mr Ee submitted that the number of loans made by Ding necessarily means that there was a certain degree and continuity to make Ding a moneylender. In my view, this is not necessarily the case. The existence of a number of loans does not necessarily mean that the lender is a moneylender. For example, in *Litchfield v Dreyfuss* (1906) 1 KB 584, the lender had made various loans to various friends. However, the court concluded that he was not a moneylender.

53 In the case before me, Ding's loans were to the same entity or a group of entities. Furthermore, the loans were for a similar purpose i.e. to acquire shares of a business or businesses that were in an industry which he had some familiarity with. He did not lend to all and sundry.

54 In addition, when Mok approached Ding initially, through the mutual remisier friend, it was to persuade Ding to invest and not so much to lend money. It was Ding who wanted to advance monies by way of loans with repayment of the loans and payment of interest initially and, later, payment in the form of equity in lieu of interest. That aspect of Ding's agreeing to accept equity in lieu of interest demonstrated that Ding had more interest in the businesses to be acquired than an ordinary moneylender.

55 The points mentioned in paras 53 and 54 above suggest to me that Ding is not a moneylender under the Act. On the other hand, I have noted the high interest rate he had charged. For example:

(a) for the $30,000 loan, he was charging interest at 2% per month in 1997,

(b) for the second sum of USD150,000 (which is not the subject of his claim) Ding was charging interest also at 2% per month if the loan from Wellbred was not forthcoming (see para 12 above).

There was no or little evidence as to how the equity stake in lieu of interest was actually calculated or derived.

56 While I agree with various pleaded Defences that Ding had taken advantage of the situation, that does not necessarily make him a moneylender within the Act. Neither does it make Ding's actions so unconscionable as to deny him the reliefs he seeks. The transactions were at arms-length between commercially-minded persons. After all, Ding was taking the risk that he might not be re-paid even the principal, a risk which has become more real as developments have shown.

57 In all the circumstances, I am of the view that Ding has rebutted the presumption of being a moneylender under the Act.

Who is liable for the loans?

58 While there is no dispute that Ding is the lender, there is some uncertainty as to the basis of the liability of the Defendants for some of the loans.

59 For the $30,000 loan, it is clear that Mok is the borrower and only he is liable to pay Ding for this loan, subject to a counterclaim of Mok's which I will come to.

60 For the other four sums which are the subject of Ding's claims, paras 28 and 30 of the Re-Amended Statement of Claim state:

> **CLAIM AGAINST THE DEFENDANTS FOR LOANS**
>
> 28. In the alternative, the Plaintiff avers that the amounts paid by him on the following dates as investments were by way of loans rendered and guaranteed by the respective parties as indicated as follows:
>
> **Particulars**
>
> | | Date of Loan | Amount | Loan Recipient | Guarantors |
> |---|---|---|---|---|
> | (i) | 3rd June 1998 | S$276,880 (US$153,822.22) | 3rd Defendant | 1st and 2nd Defendants |
> | (ii) | 11th October 1999 | US$250,000 | 4th Defendant | 1st and 3rd Defendants |
> | (iii) | 2nd November 1999 | US$500,000 | 4th Defendant | 1st and 3rd Defendants |
> | (iv) | 14th December 1999 | US$299,928.60 | 4th Defendant | 1st to 3rd Defendants |
> | | Total | US$1,203,750.91 | | |
>
> 29. ….
>
> 30. The 1st to the 4th Defendants acknowledged the loans and their liability to repay the loans in the Agreement dated 2nd November 1999, referred to in paragraphs 14 and 21 herein.

61 It seems to me that Ding's solicitors had used the words "Loan Recipient" in para 28 of the Re-Amended Statement of Claim to mean "Borrowers" although the latter expression is preferable so as not to confuse borrowers with recipients of the loan monies. After all, recipients of loan monies are not necessarily the borrowers. Indeed, the November 1999 agreement makes the situation confusing by failing to distinguish clearly between (a) borrowers, (b) parties who have the benefit or use of the loans and (c) guarantors, if any.

62 Thus, recital (A) of the November 1999 agreement states that at the request of Mok and

Subba, Ding has and will be providing funds for the use of the TA Companies (as defined therein). Recital (C) states that the November 1999 agreement consolidates all previous agreements "in respect of funds provided by Ding (either directly or indirectly through Mok and/or Subbarao or otherwise) to or on behalf of the TA Companies". Then, suddenly, in the definition section, clause 1.1 states '"Borrowers" means Mok, Subbarao and the TA Companies.'

63 As for Ding's entitlement to shares in various companies, clauses 2.1, 3.2 and 3.3 of the November 1999 agreement do not make it clear who is liable to transfer the shares or procure the transfer of shares to Ding. While the provisions also suggest that Ding is entitled to 7% of the shares in Teamasia Singapore and 909,090 shares (from 327,868 + 581,222 shares) in IMP in addition to 6% of the enlarged capital in TA Holdings, there is no clarification of the actual share structure in these three companies. For example, since TA Holdings, which I have been told has not been incorporated yet, is supposed to be the holding company, then presumably it is supposed to hold all the shares in Teamasia Singapore and IMP for the Mok and Subba group, although I accept that this is not necessarily the case. If TA Holdings is to hold all such shares, then Ding should not be given shares in Teamasia Singapore and IMP as well because that would be double-counting. Even if TA Holdings is not supposed to hold all the shares in Teamasia Singapore and IMP for the Mok and Subba group, this still raises the question as to how many shares, of these two companies, TA Holdings is supposed to hold and how many are supposed to be held by Mok, Subba and Ding individually.

64 It is bad enough that the November 1999 agreement does not make these points clear. Worse still, neither side sought to adduce or elicit evidence to clarify the situation before or during the trial and by the time the Defendants had closed their case, it was too late for further evidence to be adduced. As a result, in response to my queries, the Defendants are taking the position that there is some overlap or double-counting while Ding is taking the position that there is no overlap or double-counting.

65 The matter is made more confusing because para 28 of the Re-Amended Statement of Claim asserts liability against Mok for the four sums stated therein as guarantor. It also asserts liability against Teamasia Singapore as guarantor for three of the four sums therein. However, there is no mention of a guarantee in the November 1999 agreement. On the contrary, Mok, Subba and the TA Companies (as defined therein) are, as I have said, defined as "Borrowers". Furthermore, from clauses 4 and 5 of the November 1999 agreement regarding re-payment of the loans and interest, it appears that each of the "Borrowers" has principal liability and not liability as guarantor.

66 In the circumstances, I am not inclined to make a finding of liability against Mok or Teamasia Singapore as guarantor in respect of all the four sums except for one qualification. In para 9 of Mok's Amended Defence, read together with para 3.1 of the same, Mok has admitted that he stood as surety in respect of the sum of $276,880 which was for the use of Teamasia Singapore, meaning Teamasia Singapore was the borrower. However, even if I were to hold Mok liable for the $276,880 as guarantor, there is an added complication i.e which of the shares which Ding is supposed to receive under clause 2.1 of the November 1999 agreement is actually in lieu of interest on the $276,880? In view of the vague terms of the November 1999 agreement and the lack of evidence on this point, I am not able to make a finding as to which and how many shares Ding was supposed to receive for the $276,880 loan. Likewise, I am unable to find whether Ding's intended appointment as a director of TA Holdings under clause 2.2 of the same agreement is attributable solely for the loan of this sum.

67 As for other shares which Ding claims, clauses 3.1 and 3.2 of the November 1999 agreement state that in consideration of the further loan of USD500,000, Ding is entitled to:

(a) an additional 3% of the enlarged capital of TA Holdings

(b) 909,090 shares in IMP

(c) 7% of the shares in Teamasia Singapore, and

(d) be appointed a director of Teamasia Singapore.

Accordingly, if I am minded to grant judgment in respect of these shares and directorship, I will do so against the pleaded borrower only i.e TSI as TSI does not dispute that it was the borrower of these sums.

68 There is also one other dispute in respect of the shares which Ding claims. Mr Ee submits that Ding must pay for them. However, this is not pleaded. Indeed, in para 7.6 of the Amended Defence, there is an admission that the 909,090 shares in IMP were to be transferred gratis to Ding. In any event, it is clear to me that Ding does not have to pay for the shares claimed as there is no suggestion of such payment in the November 1999 agreement. These shares were really in lieu of interest, as I have said.

69 In the circumstances, I grant judgment to Ding as follows:

(a) Mok is to pay Ding $30,000 forthwith with contractual interest thereon at 2% per month from 1 January 1998 until judgment (since contractual interest is claimed until judgment only).

(b) Teamasia Singapore, as borrower, and Mok, as guarantor, are to pay Ding $276,880 forthwith. I am not granting judgment in respect of the shares and directorship stated in clauses 2.1.1 and 2.1.2 of the November 1999 agreement as it is uncertain whether and how much of the 4% of the shares in TA Holdings and whether the appointment of Ding as a director of TA Holdings are attributable to the sum of $276,880 only.

(c) TSI, as borrower, is to pay Ding USD250,000, USD500,000 and USD299,978.60 forthwith. I am not granting judgment against Mok or Teamasia Singapore in respect of these three sums since the claims against them for these sums were on the basis that they were guarantors and they are not guarantors.

(d) TSI, as borrower, is to pay Ding damages in lieu of specific performance for the shares and directorship mentioned in para 67 above. The damages are to be assessed by the Registrar of the Supreme Court. I do not think that specific performance is appropriate since TA Holdings is not even incorporated yet and it is uncertain if and when it will ever be incorporated. Moreover, whether there is overlapping or double-counting is to be determined by the Registrar. Again, I am not granting judgment against Mok or Teamasia Singapore in respect of the damages because the shares are in lieu of interest and Mok and the third defendant are not liable as guarantors.

70 I am not ordering default interest to be paid to Ding under clause 5.1 and 5.2 of the 1999 Agreement as the interest rate claimed is 3% above Citibank's prime rate for American dollars and no evidence was given on the prime rate of Citibank for American dollar loans. In addition, although clause 5.3 of the 1999 Agreement provides for further interest for loss of opportunity, this was not sought in the Re-Amended Statement of Claim. In any event, the interest for loss of opportunity might well have been duplicitous in view of the claim for default interest.

Counterclaim by Mok against Ding for alleged sale of shares in VTE

71 It is common ground that Mok has transferred 75,000 shares in VGE to Mok.

72 Mok alleges that this was pursuant to an agreement with Ding that Ding was to pay him 40 cents per share resulting in a total of $30,000. Mok therefore counterclaims $30,000 from Ding. Ding disputes this claim.

73 It is also common ground that the other shareholders of VGE had also transferred their shares to Ding and Ding was supposed to pay 40 cents per share for their shares. There is some confusion as to how many shares were transferred to Ding from the other shareholders. For example, in NE 8, Mr Ee mentioned Mok's 75,000 shares and another 75,000 shares from another shareholder, making a total of 150,000 shares. Then, at NE 29, Mr Ee said he was instructed that the other shareholders had 125,000 shares (including Mok's 75,000 shares, this would make a total of 200,000 shares). On the other hand, para 1(a) of Mok's Re-Amended Statement of Claims states that Mok purchased a total of 180,000 shares in VGE. Fortunately, it is immaterial how many shares the other shareholders had. It is also immaterial whether these other shareholders have in fact been paid by Mok, since they are not making a claim for payment. Also, whether Ding had lied about his payment to the other shareholders by way of a set-off is also immaterial because, even if he did lie, it does not necessarily mean that he also lied about the 75,000 shares from Mok being a gift to him.

74 However, given that Ding had been supposed to pay for the shares of the other shareholders at 40 cents per share, I asked myself why Mok should have given his shares to Ding for free given that Mok and his companies were in need of money as is evidenced by the loans from Ding. It was only in re-examination (at NE 41) that Ding said that Mok's shares were transferred to him free because VGE was not doing well, Mok wanted to concentrate on his new project and it was also an incentive to Ding to invest in Mok's new project regarding the acquisition of the Greaves analog semi-conductor unit.

75 In addition, I refer again to para 1(a) of the Re-Amended Statement of Claim in which Mok alleged that he had purchased a total of 180,000 shares in VGE (which must include Mok's 75,000 shares). It was after Mok made a counter-claim for the purchase price for his shares that Ding asserted in his Amended Reply that Mok's shares were to be transferred free to him. However, Ding forgot to amend his Re-Amended Statement of Claim. I am not saying that Ding is bound by para 1(a) of the Re-Amended Statement of Claim since his Amended Reply does make his position clear. Nevertheless, I am entitled to and have taken into account the fact that Ding himself had asserted initially that he had purchased, apparently, all the shares in VGE.

76 I am aware that one argument in favour of Ding on this issue is that Mok had transferred his shares to Ding without receiving payment first and he would not have done so unless Mok's shares were to be transferred free of charge. However, exhibit P5, which is a memo dated 14 May 1998 from Mok to VGE's shareholders and directors, demonstrates that Mok was rushing all shareholders of VGE to transfer their shares to Mok without waiting for payment.

77 Mr Ee also raised the argument that the consideration stated in the transfer form for Mok's shares was $30,000. However, I did not give any weight to this argument as the point was not explored in cross-examination and the consideration could have been inserted only to facilitate the assessment and payment of stamp duty.

78 In the circumstances I will allow Mok's counterclaim and grant him judgment for $30,000 against Ding. This is to be set-off against Ding's loan to Mok of $30,000 with effect from the date of

my judgment so that interest on Ding's loan will stop running. I am not granting interest to Mok as none was claimed by him.

79 I will hear the parties on costs.

Plaintiff's claims allowed to the extent stated.
First defendant's counterclaim allowed.