

Zhang De Long v Tea Yeok Kian
[2013] SGHC 109

Case Number : Suit No 568 of 2011
Decision Date : 20 May 2013
Tribunal/Court : High Court
Coram : Andrew Ang J
Counsel Name(s) : Ng Hweelon (Legal Clinic LLC) for the plaintiff; Leslie Yeo Choon Hsien (Sterling Law Corporation) for the defendant.
Parties : Zhang De Long — Tea Yeok Kian

Contract – Breach

20 May 2013

Andrew Ang J:

1 This suit concerned a loan allegedly given by one Zhang De Long (“the plaintiff”) to Tea Yeok Kian (“the defendant”). The plaintiff sought to recover the outstanding principal and interest thereon from the defendant.

2 At the conclusion of the trial, I gave judgment for the plaintiff with costs to be taxed unless agreed. I ordered that the principal sum of NT\$6,243,972 (Taiwan currency) be repaid with contractual interest at 1.2% per month from 19 July 2008 until repayment. The defendant having appealed, I set out below the grounds of my decision.

Background

3 The plaintiff is a Taiwanese businessman. At all material times, the plaintiff was the general manager of SCT Western (Taiwan) Pte Ltd (“SCT Western”). Although he was beneficially a shareholder of SCT Western, the shares were held on his behalf by his two brothers-in-law, following certain religious advice he had been given. For the same reason, apparently, he was not named as a director. The defendant was the founder and, at the time of the loan, the chief executive officer of Advance SCT Ltd (“Advance SCT”), a company listed on the Singapore Stock Exchange. SCT Western is an associate company of Advance SCT. The defendant is presently chief executive officer of a few private entities. [\[note: 1\]](#) The plaintiff and defendant had business dealings together before eventually becoming personal friends.

4 It is not in dispute that there was an agreement (“Loan Agreement”) signed by the defendant. [\[note: 2\]](#) The terms of the Loan Agreement, translated from Chinese into English, are set out below:

Loan Agreement (also use as IOU Chit)

Whereas Terence Tea, the borrower, (hereinafter referred to as Party B) for purpose of meeting cash flow needs, has approached Zhang De Long, the creditor, (hereinafter referred to as Party A) for a loan, and the parties have agreed to enter into the following clauses for compliance:

1. Party A, using New Taiwan currency as the valuation basis, extended a loan of NT Dollar nine million three hundred and nineteen thousand less a 3-month interest at a monthly rate of 1.2% paid in advance, to Party B, and the full amount of remittance was transferred from Bank SinoPac Account No: xxx to United Overseas Bank Limited, Sim Ai Leng, Account No: [xxx], the account designated by Party B and the amount was received in full.

Mode of calculation for the loan amount and interest is as follows:

Loan amount = NT\$9,319,000/ER30.75 = US\$303,056

Interest deducted in advance = US\$303,056 x 1.2% x 3 months = US\$10,910

Actual loan amount received by the borrower = US\$303,056 – US\$10,910 = US\$292,146 (remitted in 2 separate sums: US\$282,145 and US\$10,000).

2. Loan period: from 19 March 2008 to 18 June 2008, and at the date of its expiry, the full amount shall have to be fully settled (that is NT\$9,319,000) and the creditor return [*sic*] this Chit.

...

5 On 19 and 20 March 2008, two sums in the amount of US\$282,145 and US\$10,000 respectively, were remitted from the Bank SinoPac Account No [xxx] of SCT Western to the United Overseas Bank Ltd ("UOB") Account No [xxx] of one Sim Ai Leng ("Mdm Sim"), the defendant's wife. [\[note: 3\]](#) As provided in the Loan Agreement, this was the account designated by the defendant for the loan amount to be remitted to.

6 On 18 July 2008, a sum of S\$135,000 (then roughly equivalent to US\$100,000) was transferred by the defendant to Daweth Group Incorporation ("Daweth"). [\[note: 4\]](#) A sum of US\$98,606.91 was subsequently transferred from Daweth to SCT Western on 24 July 2008 (the difference being attributable to fluctuations in exchange rate or bank charges). [\[note: 5\]](#)

7 The plaintiff commenced this action on 12 August 2011 after reminders to the defendant to pay the balance went unheeded.

The case theories

8 The plaintiff's case was primarily based on the Loan Agreement between the parties. [\[note: 6\]](#) He averred that but for the US\$100,000 which the defendant transferred to Daweth as part repayment of the loan on 18 July 2008 at the plaintiff's request, [\[note: 7\]](#) the defendant had failed to repay the loan despite reminders from the plaintiff and his colleague, Lu Shih Tsung ("Lu"). [\[note: 8\]](#) The plaintiff thus sought to recover the balance of the outstanding loan principal and interest thereon.

9 The defendant admitted that the Loan Agreement had indeed been signed by him, but claimed that it was never performed following the plaintiff's withdrawal from it. [\[note: 9\]](#) The money remitted to Mdm Sim's UOB account was not a loan at all but, rather, a repayment to Mdm Sim of moneys previously borrowed by the plaintiff. The repayment was made pursuant to a conversation between Mdm Sim and the plaintiff's wife. [\[note: 10\]](#) He further averred that the US\$100,000 transferred to

Daweth was a loan by him to Daweth at the plaintiff's request and not a partial repayment of the alleged loan principal. [\[note: 11\]](#)

My decision

10 The defendant contended in his Defence that by operation of law and by express and/or implied agreement between the parties, the applicable law was Taiwan law and that the proper forum to decide on any matter or issue arising out of the signed document was the Taiwan court. [\[note: 12\]](#)

11 The defendant's contention on jurisdiction was not raised or argued by counsel for the defendant, Mr Leslie Yeo ("Mr Yeo"), at the trial before me nor before the learned Assistant Registrar or the High Court judge during the striking out application made by the defendant. It is noted that in the case of jurisdiction obtained by service within jurisdiction (as was the case here), the basic principle is that the defendant bears the legal burden of proving that there is an available and clearly more appropriate forum elsewhere, the plaintiff having invoked the jurisdiction as of right: see *Halsbury's Laws of Singapore*, vol 6(2) (LexisNexis, 2009) at para 75.083. The defendant failed to discharge this burden.

12 As regards choice of law, it is trite that foreign law is treated as fact and must therefore be pleaded and proven by the party seeking to rely on it: see *Halsbury's Laws of Singapore*, vol 6(2) (LexisNexis, 2009) at para 75.249. Failing that, Singapore law will apply by default.

13 Thus, the issue to be decided was whether there was a valid loan agreement between the parties in connection with which the plaintiff had lent moneys to the defendant. The parties' dispute was, in the main, in relation to fact and not law. With this, I turn to the evidence.

The Loan Agreement

14 The main piece of evidence adduced by the plaintiff was the Loan Agreement signed by the defendant. He averred that the parties had entered into the Loan Agreement after the defendant and Mdm Sim desperately pleaded with him for an urgent loan to avoid the defendant defaulting on his positions in the stock market. [\[note: 13\]](#) Evidence adduced showed that the price of Advance SCT shares which the defendant held had indeed dropped precipitously around the time of the defendant's request. [\[note: 14\]](#)

15 The defendant admitted that the Loan Agreement was indeed signed by him and did not challenge the authenticity of the document. Under cross-examination, he feigned lack of facility in Chinese [\[note: 15\]](#) or at least disinterest in the contents of the Loan Agreement, [\[note: 16\]](#) but in his affidavit of evidence-in-chief ("AEIC") he averred that he had had discussions with the plaintiff regarding the terms and made changes thereto. [\[note: 17\]](#)

16 As stated earlier, his evidence was that it was never performed. According to him, after he had signed the Loan Agreement, the plaintiff had resiled from it; it was only after Mdm Sim had approached the plaintiff's wife that the moneys were remitted to Mdm Sim's UOB account by way of repayment of moneys which she had lent to the plaintiff.

17 The defendant admitted under cross-examination that he was in financial difficulties when he approached the plaintiff for a loan in March 2008. However, he explained that signing the Loan Agreement was a strategem for obtaining repayment from the plaintiff of moneys earlier lent to the latter by Mdm Sim:

... And in fact, when I used the word "lend", I'm trying---because I know him too well. I know that just simply to ask him to repay back the loan, he's not going to do so. So I have to use the word "lend" to try to get the payment, the repayment from him ... [\[note: 18\]](#)

It should be noted that the defendant had made no mention of this strategem in his AEIC. Instead, as noted above, he recounted discussions which he had with the plaintiff regarding the terms of the loan and even averred that it was understood between the parties that Taiwan law would apply and that the Taiwan court would have jurisdiction.

18 Mdm Sim corroborated the defendant's account of what had transpired [\[note: 19\]](#) and re-stated his explanation of the Loan Agreement to her. [\[note: 20\]](#) The plaintiff, on the other hand, denied that he withdrew from the Loan Agreement or that he had refused to advance the loan. [\[note: 21\]](#) He further denied that there was any conversation between the wives after the Loan Agreement was signed. [\[note: 22\]](#)

19 Another bone of contention between the parties was with respect to the date on which the Loan Agreement was signed. The defendant's version of the sequence of events required that the Loan Agreement had already been signed by the defendant before 19 March 2008, when the first remittance was made to Mdm Sim's UOB account. Indeed, both the defendant and Mdm Sim maintained under cross-examination that the defendant had signed the document before 19 March 2008. [\[note: 23\]](#) Under cross-examination, the defendant ventured to estimate the date:

Q: So Mr Tea, when did you sign this document?

A: Few weeks before the---what---few weeks, I think before 7th---17th of March or whatever, those document that he produced ah, the two co---documents that he produced. [\[note: 24\]](#)

20 Although it was the plaintiff's original pleaded case that the said Loan Agreement was signed before 19 March 2008, the plaintiff later corrected his position and stated that the Loan Agreement was not signed until *after* the two remittances referred to in [5] above had been made. The plaintiff pointed to the date stamp of "27 March 2008" on the document when it was faxed to the plaintiff after execution by the defendant. [\[note: 25\]](#) The defendant had no sensible counter to that.

21 Having perused the terms of the Loan Agreement and taking into account the date stamp, on the balance of probabilities, I accepted the plaintiff's evidence that it was signed only *after* the moneys had been remitted to the defendant. If the document had indeed been executed *prior* to the remittances, it seemed unlikely that the parties would have provided for two remittances of US\$282,145 and US\$10,000, the latter sum being relatively insignificant. Certainly, if it was true that the Loan Agreement was signed before the remittances were made, no attempt was made by the defendant to explain why or how the two sums were decided upon. In the absence of such explanation, it is even more unlikely that the parties would have been able to anticipate that the loan principal was going to be remitted in two tranches, on those dates and in those two precise figures.

22 My finding that the defendant signed the Loan Agreement *after* the moneys were remitted to Mdm Sim's UOB account put paid to the defendant's case theory. According to the defendant's case theory, the moneys had been remitted as repayment of past loans made by Mdm Sim to the plaintiff. As such, it was inexplicable that the defendant would sign the Loan Agreement after he had received the remittances. With regard to the defendant's other explanation that he resorted to the stratagem

of asking for a loan when in truth he was seeking repayment of moneys earlier lent by Mdm Sim to the plaintiff, it may likewise be asked why, if that were true, it was necessary for the defendant to continue with that charade when he had already received the remittances.

23 Under cross-examination, both the defendant and Mdm Sim claimed that they were “not ... bothered” by the terms of the Loan Agreement as they viewed the remittances as a repayment. [\[note: 26\]](#) Both of them also claimed an inability to read the traditional Chinese script in which the document was drafted. [\[note: 27\]](#) Their evidence, however, did not convince me. First, notwithstanding the traditional Chinese characters, the “1.2%” figure for interest and the Chinese character “jie” should have alerted them to the fact that the document was a loan agreement. In fact, when questioned by Mr Ng, Mdm Sim conceded that she recognised the character “jie”:

Q: You see this word, what is this word?

...

A: “Jie”.

Q: “Jie”?

A: Yah.

Q: What does “jie” mean?

A: “Jie” means “loan”. [\[note: 28\]](#)

Second, their careless attitude towards the Loan Agreement which was clearly intended to be legally binding and whose terms were diametrically opposed to what they averred to be the defendant’s true intention, was completely at odds with what a reasonable person would do, especially an experienced businessman like the defendant.

24 Both the plaintiff and Lu testified that the defendant had been reminded by phone calls and e-mail messages to repay the loan. Lu testified that, under instructions from the plaintiff, he had chased the defendant for repayment via e-mail messages and phone calls up until 15 October 2008 and possibly even later, albeit over the phone only. [\[note: 29\]](#) Copies of e-mail messages sent to the defendant between 13 and 15 October 2008 requesting repayment were tendered to the court. [\[note: 30\]](#)

25 When questioned about the e-mail messages sent by Lu, the defendant’s answer was evasive, to say the least. He first stated that he could not recall having seen them but later changed his position to not having bothered to reply. [\[note: 31\]](#) I disbelieved his evidence. If indeed no loan was owing to the plaintiff, the defendant, like any normal person, would not have kept silent. In my view, his silence then spoke more eloquently than his denials in court.

The source of the funds loaned

26 The express terms of the Loan Agreement provided that the “creditor” was the plaintiff and the “borrower”, the defendant (see above at [4]). The defendant, however, pointed to the fact that the moneys were remitted from SCT Western’s bank account and not the plaintiff’s own bank account.

Mr Yeo submitted in closing that this was clear evidence that the plaintiff was not the actual lender and had no right to bring the claim. [\[note: 32\]](#)

27 For a start, two observations came to mind. First, the submission by Mr Yeo that SCT Western was the lender ran counter to the defendant's contention that the remittances were repayment by the plaintiff of moneys earlier lent by Mdm Sim to him. Second, in the face of a clear statement in the Loan Agreement acknowledging the plaintiff as the creditor, it was audacious of the defendant to contend that the plaintiff was not the lender just because the remittances were from SCT Western's bank account.

28 The plaintiff explained that when the defendant first approached him for a loan he initially declined as he had used his savings to purchase a property in Shenzhen. However, he later relented because the defendant said he would be ruined financially if the plaintiff did not help. He therefore instructed SCT Western to remit the two sums on 19 and 20 March 2008 on his personal undertaking, thereby making himself liable to SCT Western for the repayment.

29 Initially, a loan agreement confirming the loan was drafted with SCT Western as the creditor and the defendant as the borrower. However, the defendant told the plaintiff that it would be inappropriate for him to borrow from SCT Western in view of his position (as the chief executive officer) in Advance SCT. (Parenthetically, although no further explanation was given why it would be inappropriate, such an agreement – between the chief executive officer of a listed company and its associate company – would be an "interested person transaction" under the Listing Manual of the Singapore Stock Exchange requiring disclosure by way of an announcement on the Stock Exchange or approval by the shareholders of the listed company, if it reached certain prudential limits.)

30 The Loan Agreement was then drafted with the plaintiff as a creditor. Even though the loan moneys were remitted from SCT Western's bank account, this was carried out pursuant to the plaintiff's instructions as he had arranged for a loan of the principal from SCT Western to himself by pledging shares in SCT Western (held by his brothers-in-law on his behalf) as security. [\[note: 33\]](#) The Loan Guarantee ("Guarantee") entered into between the plaintiff and SCT Western, with his brothers-in-law named as guarantors, was evidence of this loan arrangement between the plaintiff and SCT Western. [\[note: 34\]](#) A Repayment Certificate ("Certificate") issued by SCT Western evidencing the plaintiff's partial repayment of the loan from SCT Western consequent upon the defendant's remittance of moneys to Daweth was also adduced. [\[note: 35\]](#) Lu confirmed the plaintiff's account under cross-examination. [\[note: 36\]](#)

31 The defendant challenged the authenticity of the Guarantee and Certificate and alleged that they had been fabricated in order to "fill up the obvious *lacunae* in the Plaintiff's case". [\[note: 37\]](#) The defendant raised in cross-examination several suspicious circumstances which, he contended, cast doubt on the authenticity of both the Guarantee and the Certificate:

(a) No mention of the Guarantee was made at the various hearings before the Assistant Registrar or the High Court judge in respect of the defendant's application to strike out the plaintiff's claim. It was only when the parties were filing their AEICs that the Guarantee surfaced. [\[note: 38\]](#)

(b) No documentary evidence was adduced of any approval by the Board of Directors of SCT Western to lend the loan amount to the plaintiff or of any loan agreement between SCT Western and the plaintiff.

(c) Although both the plaintiff and his witness Lu confirmed under cross-examination that the plaintiff had repaid his loan from SCT Western by 2009, [\[note: 39\]](#) this important detail was omitted from the plaintiff's AEIC (albeit not from Lu's AEIC). More critically, no documentary evidence was adduced of this full repayment either by way of receipt from the company or by release from the Guarantee. [\[note: 40\]](#)

(d) The Guarantee and Certificate were printed with a letterhead different from what was typically used by SCT Western. [\[note: 41\]](#)

32 I accepted the plaintiff's explanation as to how it came about that the remittances were from SCT Western's bank account. Although he himself may not have appreciated the significance of his evidence that the defendant had said that he did not want to borrow from SCT Western because of his position in Advance SCT, there is, in my view, a ring of truth to this evidence because of the reasonable inference that the defendant might have been concerned about the Listing Manual being applicable to such an "interested person transaction".

33 It seemed to me the defendant was clutching at straws when he raised the allegedly suspicious circumstances. In my opinion, the Guarantee and Certificate adduced by the plaintiff were authentic company documents. I was persuaded by the plaintiff's explanation, supported by documentary evidence [\[note: 42\]](#) that the so-called difference in letterheads could be attributed to the fact that those documents (the Guarantee and Certificate) were to be used in Taiwan only. [\[note: 43\]](#) Assuming *arguendo* that the Guarantee and Certificate were prepared belatedly in order to bolster the plaintiff's case, the plaintiff's case should still succeed as I believe the plaintiff's evidence as to how he had arranged to become liable to the company as borrower when the defendant indicated that he could not borrow from SCT Western. Whether or not a resolution was passed by the directors of SCT Western was purely a governance issue that did not concern the borrower. Whether or not the plaintiff had repaid SCT Western was also of little relevance.

The loans from Mdm Sim

34 I return to the defendant's case that the money remitted at the behest of the plaintiff to the defendant was not a loan at all but a repayment. Both the defendant and Mdm Sim stated that the loans to the plaintiff and his family were made by Mdm Sim. [\[note: 44\]](#) The issue of set-off was correctly, in my view, not pleaded by the defendant. This is because the alleged loans made by Mdm Sim were, by their own admission, time-barred. Secondly, such loans by Mdm Sim could not be set-off against loans made by the plaintiff to a wholly different party, namely, the defendant.

35 Evidence of the alleged loans made by Mdm Sim was adduced only to show that it was the parties' intention that the alleged loan by the plaintiff be a repayment to Mdm Sim. However, as noted previously at [27] above, this argument ran counter to the defendant's argument that the lender was SCT Western. More importantly, it ignored the fact that the defendant acknowledged himself to be the borrower under the Loan Agreement and that he had designated Mdm Sim's UOB bank account to receive the moneys.

36 For what it was worth, Mdm Sim particularised the sums owed to her by the plaintiff as follows:

(a) Transfers totalling S\$70,008.76 into the plaintiff's share account for the purchase of Advance SCT shares. [\[note: 45\]](#)

- (b) Miscellaneous loans totalling S\$111,771. [\[note: 46\]](#)
- (c) S\$242,340 loan remitted to WST Western Co Ltd (as SCT Western was formerly known) for the purchase of copper balls on 22 June 2004. [\[note: 47\]](#)
- (d) S\$30,000 loan for the plaintiff's "shabu shabu" business. [\[note: 48\]](#)
- (e) S\$557,496.36 loan remitted to SCT Western on 21 June 2004. [\[note: 49\]](#)

37 The plaintiff's reply to Mdm Sim's allegations were as follows:

- (a) The share account was totally under Mdm Sim's control and he was unaware of any funds being remitted into it. This was also the case with regard to the share account in his wife's name. [\[note: 50\]](#)
- (b) He could not comment on the so-called loans to his wife [\[note: 51\]](#) and Mr Tu Ji-Sheng [\[note: 52\]](#), but he had repaid Mdm Sim in full for the moneys she spent on his children. [\[note: 53\]](#)
- (c) The S\$30,000 was an investment in the plaintiff's "shabu shabu" venture and not a loan. [\[note: 54\]](#)
- (d) SCT Western had indeed received the sums of S\$242,340 and S\$557,496.36 but those sums had been accounted for. The latter sum had been transferred to Singapore Copper Technologies Pte Ltd at Mdm Sim's request. [\[note: 55\]](#) The plaintiff could not be sure about the former but stated under cross-examination that various sums would be remitted back to Mdm Sim or the defendant's company at Mdm Sim's request. [\[note: 56\]](#)

I noted that it was Mdm Sim's own evidence under cross-examination that the plaintiff had repaid her between \$300,000 and \$400,000 in 2008 although evidence of this repayment was not adduced. [\[note: 57\]](#)

38 I preferred the plaintiff's evidence over that of Mdm Sim's as her evidence lacked credibility on several counts. First, no documentary evidence of any loan agreement between herself and the plaintiff was adduced, only bank statements and cheque butts showing the transfers of alleged loan amounts. When questioned why the alleged loan of S\$557,496.36 was never stated in her AEIC but only raised in the midst of trial, she claimed that she had forgotten about this loan. [\[note: 58\]](#) I found it difficult to understand how Mdm Sim, though apparently a wealthy person, could not only fail to obtain written acknowledgment of such loans but also fail to remember that she was owed a sum in excess of half a million dollars.

39 Second, Mdm Sim claimed under cross-examination that she waited four years to seek recovery of a loan amount of nearly three quarters of a million dollars from the plaintiff as he and the defendant were in an ongoing business relationship which the defendant and she did not want to jeopardise. [\[note: 59\]](#) In order to explain away such liberality, she gave evidence that she freely loaned similar sums to friends: [\[note: 60\]](#)

Court: You borrowed money from the bank to buy a house but you, instead of paying the bank, were lending money – larger sums than this three-quarter million – to other people. Is that

right?

Witness:Yah, yes, but to us, the house mortgage is not so---the quantum is not very high. So we have free flow of cash in our bank. So we would not think of paying off the bank loan. Because we are doing business, we need some cash on hand to roll our business.

Court:Yes, but instead of using the cash to do your business, you were lending it away.

Witness:Yah because our friend is in need of money ... [\[note: 61\]](#)

I found Mdm Sim's alleged liberality farfetched. Further, although the defendant and Mdm Sim claimed to have finally attempted to recover their loans from the plaintiff, they strangely chose not to seek recovery of loans of nearly half a million dollars each extended to three former senior executives who had left the company and were no longer in an ongoing business relationship with the defendant and Mdm Sim. [\[note: 62\]](#)

40 Finally, even if I was persuaded that items (c) and (e) of Mdm Sim's claims set out in [36] above were genuine, the loans were made to SCT Western and not the plaintiff himself. The appropriate debtor from whom Mdm Sim should have sought repayment was therefore SCT Western.

The payment to Daweth

41 As mentioned above at [8], it was the plaintiff's evidence that the defendant's remittance of roughly US\$100,000 to Daweth was a part repayment of the loan advanced to him. When questioned by the court as to why he requested that the part repayment of the loan be made to Daweth, the plaintiff explained:

Because, Your Honour, to my knowledge in 2008 ... the internal operations of Advance SCT were in a mess. The internal operation were in a huge mess so the defendant, the---the other party, that is Sim Ai Leng said that it would be a little sensitive to remit the money directly. Also, this amount was remitted in the name of [defendant] ... Initially, he said that it would be sensitive for western to remit the money to him because he was the CEO, so it would have been all the more sensitive for him to remit the money to Western. That was why he asked me to provide another company for him to make the remittance to. [\[note: 63\]](#)

It is noted that the plaintiff's evidence under cross-examination on why he requested payment to Daweth differed from that at para 17 of his AEIC. I was, however, of the view that the evidence in the plaintiff's AEIC and his explanation under cross-examination were not completely irreconcilable since the plaintiff had indeed requested that the moneys be transferred to Daweth, for the reasons he gave in court.

42 Moreover, the plaintiff's evidence was corroborated by the e-mail messages sent by Lu referred to at [24] and [25] above). In those e-mail messages, the amount due was stated to be NT\$6,600,849, a figure lower than the full amount of NT\$9,319,000. The payment of US\$100,000 by the defendant to Daweth had therefore been accounted for and reduced the amount owing to the plaintiff.

43 In contrast, I had great difficulty accepting the defendant's contention that his remittance to Daweth was yet another loan to the plaintiff. [\[note: 64\]](#) First, the defendant admitted, when questioned by the court, that he did not know what the loan was for or who Daweth was. However,

he was willing all the same to lend the large sum of money with no documentation whatsoever. [\[note: 65\]](#) This was inexplicably slapdash on the part of the defendant, an experienced businessman. The defendant's alleged loan of US\$100,000 was all the more unbelievable in light of the fact that Mdm Sim and he had, with great difficulty, only just received some repayment of Mdm Sim's previous loans to the plaintiff, a man whom the defendant described as "certainly not a good borrower". [\[note: 66\]](#)

44 The defendant's alleged liberality continued with his failure to counterclaim for the return of this alleged US\$100,000 loan from the plaintiff. Under cross-examination, the defendant first stated that such a thought never crossed his mind [\[note: 67\]](#) but he later changed his position when further questioned by the court and explained that he had indeed sought his counsel's advice on the matter but the counterclaim was not pursued. [\[note: 68\]](#) Here again, I found his evidence difficult to believe.

Conclusion

For the reasons given above, I allowed the plaintiff's claim and ordered that the principal amount of NT\$6,243,972 (Taiwan currency) be repaid with interest at 1.2% per month from 19 July 2008 until repayment. I also ordered costs to the plaintiff be taxed unless agreed.

[\[note: 1\]](#) CT: 15 Oct 2012, p 5.

[\[note: 2\]](#) AB.10-11 (Agreed Bundle of Documents).

[\[note: 3\]](#) AB.1-4.

[\[note: 4\]](#) AB.9.

[\[note: 5\]](#) AB.5-7.

[\[note: 6\]](#) 1AEIC Tab B, pp 3-4 at [10]-[12] (Bundle of Affidavits of Evidence-in-Chief, vol 1).

[\[note: 7\]](#) *Ibid*, p 5 at [17].

[\[note: 8\]](#) *Ibid*, p 7 at [21].

[\[note: 9\]](#) 1AEIC Tab D, p 3 at [7].

[\[note: 10\]](#) 1AEIC Tab D, p 3 at [10]; 1AEIC Tab E, p 2 at [4].

[\[note: 11\]](#) 1AEIC Tab D, p 4 at [12].

[\[note: 12\]](#) BP.10 at [6] (Bundle of Pleadings).

[\[note: 13\]](#) 1AEIC Tab B, pp 3-4 at [10].

[\[note: 14\]](#) Exhibits P.9 and P.10.

[\[note: 15\]](#) CT: 15 Oct 2012, pp 26 and 47.

[\[note: 16\]](#) *Ibid*, pp 45 and 47.

[\[note: 17\]](#) 1AEIC Tab D, pp 2-3 at [6] and [11].

[\[note: 18\]](#) CT: 15 Oct 2012, p 22.

[\[note: 19\]](#) *Ibid*, pp 107-108.

[\[note: 20\]](#) *Ibid*, p 104.

[\[note: 21\]](#) CT: 12 Oct 2012, pp 42 and 45.

[\[note: 22\]](#) *Ibid*, p 45.

[\[note: 23\]](#) CT: 15 Oct 2012, pp 46 and 105.

[\[note: 24\]](#) *Ibid*, p 46.

[\[note: 25\]](#) 1AEIC Tab B, p 4 at [12]; CT: 12 Oct 2012, p 40.

[\[note: 26\]](#) CT: 15 Oct 2012, pp 45 and 103.

[\[note: 27\]](#) *Ibid*.

[\[note: 28\]](#) *Ibid*, p 103.

[\[note: 29\]](#) CT: 11 Oct 2012, pp 71 and 73.

[\[note: 30\]](#) 1AEIC Tab C, pp 7-8.

[\[note: 31\]](#) CT: 15 Oct 2012, pp 56 and 59.

[\[note: 32\]](#) Para 7, Defendant's Skeletal Submissions.

[\[note: 33\]](#) 1AEIC Tab B, p 5 at [15].

[\[note: 34\]](#) PBD.3-4

[\[note: 35\]](#) PBD.12-13

[\[note: 36\]](#) CT: 11 Oct 2012, p 41.

[\[note: 37\]](#) Para 8, Defendant's Skeletal Submissions.

[\[note: 38\]](#) Para 7, Defendant's Skeletal Submissions.

[\[note: 39\]](#) CT: 11 Oct 2012, pp 43 and 55.

[\[note: 40\]](#) Para 9, Defendant's Skeletal Submissions.

[\[note: 41\]](#) Exhibits D.1 to D.3.

[\[note: 42\]](#) P.11-12.

[\[note: 43\]](#) CT: 16 Oct 2012, p 6.

[\[note: 44\]](#) CT: 15 Oct 2012, p 21; 1AEIC Tab E, pp 1-2 at [2]-[3].

[\[note: 45\]](#) 2AEIC p 2 at [4].

[\[note: 46\]](#) *Ibid.*

[\[note: 47\]](#) D.4, p 1.

[\[note: 48\]](#) 1AEIC Tab E at [3].

[\[note: 49\]](#) D.4, p 1.

[\[note: 50\]](#) CT: 12 Oct 2012, pp 7-8.

[\[note: 51\]](#) *Ibid*, p 8.

[\[note: 52\]](#) *Ibid*, p 8.

[\[note: 53\]](#) *Ibid*, p 9.

[\[note: 54\]](#) *Ibid*, p 11.

[\[note: 55\]](#) CT: 16 Oct 2012, p 22; P.13, P.16(T) and P.17(T).

[\[note: 56\]](#) CT: 16 Oct 2012, p 22; P.14; P.18(T) and P.19(T).

[\[note: 57\]](#) CT: 15 Oct 2012, p 87.

[\[note: 58\]](#) CT: 16 Oct 2012, p 90.

[\[note: 59\]](#) CT: 15 Oct 2012, p 86.

[\[note: 60\]](#) CT: 19 Nov 2012, p 18.

[\[note: 61\]](#) *Ibid*, pp 28-20.

[\[note: 62\]](#) CT: 15 Oct 2012, p 52.

[\[note: 63\]](#) CT: 12 Oct 2012, pp 64-65.

[\[note: 64\]](#) CT: 15 Oct 2012, p 33.

[\[note: 65\]](#) *Ibid*, pp 34-35.

[\[note: 66\]](#) *Ibid*, p 39.

[\[note: 67\]](#) *Ibid*, pp 39-40.

[\[note: 68\]](#) *Ibid*, pp 43-44.

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