IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 29

Suit No 557 of 2017
(Summons No 4218 of 2017)

Between

(1) CAPITAL SPRINGBOARD LTD

(2) CAPITAL SPRINGBOARD (SINGAPORE) PTE LTD

(3) ADVANCE GLOBAL CAPITAL (ADVANCE TRADE GROWTH MASTER FUND LTD)

(4) ALVIN HENG WEE LOY

(5) ANDREW SIONG HAN KWA

(6) ARC TRADE FINANCE FUND

(7) BOON HUI TAN

(8) BRUNO PINSON

(9) BUENA MONA LTD

(10) BUENA VENTURE PROPERTIES LTD

(11) CATALYTIC DIVERSIFIED STRATEGIES LIMITED

(12) CHIN CHYE LEOY

(13) CHIU WAI CHOW

(14) CHUN WEI KUAH

(15) DAS PRIVATE CAPITAL PTE LTD

(16) DIRK SCHUYLING VAN DOORN

(17) EASTERN DUNES LIMITED

(18) EXO INVESTMENT LIMITED

(19) FRASER WILLIAM BOYD JAMIESON

(20) GARRETT OH

(21) HERY SUDJONO

(22) JACQUELINE RANKIN

(23) JAMES WILBERT ANDREW JACKSON

(24) JASON GLENN EDWARDS

(25) JINESH PATEL

(26) JORGE JIMMY RODRIGUEZ MORA

(27) JUNCHEN ZHAO

(28) KOK WEE LEE

(29) KOON THO GOH

(30) LANNY LIM

(31) NGAN SENG FONG

(32) NICHOLAS BRINTON

(33) OLAF KASTEN

(34) PCS INTERNATIONAL LIMITED

(35) RAINER TEO

(36) RIAZ MEHTA

(37) **ROGER ALAN CROOK**

(38) **SCOTT DAVID MITCHELL**

(39) **STEPHANE GIROIT**

(40) **STEVEN TEOH**

(41) **THIERRY BOUAN**

(42) **TOMAS URBANEC**

(43) **VIKAS KAWATRA**

(44) **XAVIER BURKHARDT**

(45) **YEW HOCK YEO**

(46) **YEW LAM NEO**

… *Plaintiffs*

And

(1) **VANGARD PROJECT MANAGEMENT PTE LTD**

(2) **CHOY PEIYI**

… *Defendants*

JUDGMENT

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v
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22 November 2017

8 February 2018 Judgment reserved.

George Wei J:

Introduction

1 This is an application for summary judgment under O 14 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"). The plaintiffs brought claims against the 1st defendant for breach of contract and fraudulent misrepresentation, and against the 2nd defendant under a personal guarantee. The plaintiffs paid about $6m in total to purchase the 1st defendant's receivables on an online platform run by the 1st plaintiff,[1] and later found out that the invoices had been fabricated.[2] The defendants have failed to make payment or repurchase the traded debts. In their defence, they mainly contend that the entire arrangement was in substance an illegal moneylending transaction. The defendants do not deny receipt of the monies.[3]

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1 Kuah Chun Wei's 1st affidavit ("Kuah's 1st affidavit"), para 26.

2 Kuah's 1st affidavit, paras 48–51.

2 Having heard the parties, I find that the plaintiffs have succeeded in proving a *prima facie* case and that the defendants have not shown a fair or reasonable probability that they have a *bona fide* defence. Accordingly, I grant summary judgment to the plaintiffs.

Background

The parties

3 The 1st plaintiff, Capital Springboard Ltd, is an Irish company which owns and operates an online peer-to-peer invoice financing platform ("the CS Platform") where small and medium-sized enterprises can sell their receivables to investors.[4]

4 The 2nd plaintiff, Capital Springboard (Singapore) Pte Ltd, is a local company which acts as the collection and administrative agent for investors on the CS Platform.[5]

5 The 1st defendant, Vangard Project Management Pte Ltd, is a local company in the business of providing renovation and interior design services.

6 The 2nd defendant, Choy Peiyi, is the sole director and shareholder of the 1st defendant.[6] She obtained a diploma from the Palin School of Arts and Design in Singapore and thereafter decided to set up her own interior design and renovation business, Vangard Project & Design Pte Ltd ("VPD"), in 2012.[7] She was a director of VPD until she had to step down because of criminal

3 Plaintiffs' submissions, para 37 and Defence, para 28.

4 Kuah's 1st affidavit, paras 5 and 10.

5 Kuah's 1st affidavit, paras 6 and 12.

6 Kuah's 1st affidavit, para 9 and KCW-2.

7 Choy Peiyi's affidavit ("Choy's affidavit"), para 18.

proceedings which had been brought against her (see [29] below).[8] At the material time, the 2nd defendant was also a director and shareholder of another interior design company, Project Creative Pte Ltd ("PCPL").[9]

7 The 3rd to 46th plaintiffs are investors who purchased receivables from the 1st defendant on the CS Platform.[10]

Dealings between the parties

8 Around August 2014, the 2nd defendant saw a marketing e-mail blast from a company named Finaqe Group Pte Ltd ("Finaqe") promoting its services of providing working capital to companies.[11] The 2nd defendant, who was still a director of VPD at the time, was interested in getting a term loan for VPD and reached out to Lee Jun Xiao ("Lee"), the Finaqe broker and contact person named in the marketing e-mail.[12]

9 In late October 2014, Lee e-mailed the 2nd defendant requesting documents to assess VPD's eligibility for a term loan. It turned out that VPD did not qualify for a term loan. The 2nd defendant then enquired with Lee about other available options. According to the 2nd defendant, Lee told her that Finaqe had a new contact, Centurion Group ("Centurion") which could offer an alternative form of financing, and set up a meeting between Centurion and the 2nd defendant on 19 December 2014.[13]

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8 Choy's affidavit, para 17.

9 Chin Lee Jin's 1st affidavit ("Chin's 1st affidavit"), para 13 and CLJ-1.

10 Kuah's 1st affidavit, para 7.

11 Choy's affidavit, para 19.

12 Defence, para 7(a); Choy's affidavit, paras 19–20.

13 Choy's affidavit, paras 20–22.

10 The meeting on 19 December 2014 was attended by the 2nd defendant, Lee and Centurion's Business Development Director, Ginnie Chin Lee Jin ("Chin"). At the meeting, the 2nd defendant entered into written receivables purchase agreements on behalf of VPD and PCPL, with ARC Trade Finance Fund ("ARC") which was owned by Centurion. I will refer to these agreements as the "VPD RPA" and the "PCPL RPA". These agreements governed the sale of receivables by VPD and PCPL to ARC, and both are titled "Receivables Purchase Agreement". ARC was the "Financing Entity" and the sellers were both corporate entities.

11 There is some dispute between the parties about whether Chin orally explained to the 2nd defendant at the meeting how the VPD RPA would work, and that it was an agreement for the sale and purchase of receivables. According to the 2nd defendant, Chin only explained how Centurion would offer VPD business financing if VPD provided its customers' invoices to Centurion. The 2nd defendant also averred that her understanding of the process was that she would be given money upon providing her customers' invoices to Centurion, and then required to repay Centurion with a larger amount of money at a later date.[14]

12 On the other hand, Chin avers that she explained to the 2nd defendant that VPD was ARC's collecting agent for the sale and purchase of receivables, and that VPD was obliged to provide ARC with an undated notice of assignment as VPD would be selling receivables to ARC without disclosing the sale and assignment of the receivables to its debtors (*ie*, on an undisclosed basis). Chin maintains, contrary to the 2nd defendant's averments, that she never told the 2nd defendant that the notice of assignment was to secure the 2nd defendant's borrowing, or that VPD's debtors would not be contacted as long as the 1st

[14] Choy's affidavit, paras 23–24.

defendant repaid the borrowed monies.[15] I note that the terms of the written VPD RPA and PCPL RPA do not suggest that they were in substance loan agreements.[16]

13 I pause to note that the 2nd defendant's position is that she did not understand what or how the VPD RPA and PCPL RPA worked and that she thought the sums were simply loans. To this end, she asserts that she is not familiar or versed in financing and that she did not know how to obtain credit facilities.[17] Nevertheless, it is not disputed that between 2014 and 2016, she submitted some 174 invoices pursuant to the financing arrangement. She avers that these monies were borrowed for the purpose of developing her interior design business. The total sum received by the 2nd defendant/VPD was about $18.3m. A total sum of $19.5m was paid back under the arrangement. The 2nd defendant's position is that interest of $1.5m was paid in respect of the monies advanced on these 174 invoices.[18]

14 The 2nd defendant's assertion that she was naïve and unsophisticated sits rather uneasily with the number of invoices against which she was able to raise $18.3m. Whilst these 174 invoices are not the subject matter of the present dispute, the 2nd defendant submitted that a trial was warranted so that the nature of these 174 invoices could be explored. The point raised was that an examination of the circumstances relating to the 174 invoices together with the 60 invoices in dispute in the present case (see [25] below) would support her case that the transactions were in fact money-lending.[19] In other words, the

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15 Chin's 1st affidavit, paras 18–19.

16 See Chin's 1st affidavit, para 22 and CLJ-2.

17 Choy's affidavit, para 18.

18 Choy's affidavit at para 33.

19 Choy's affidavit at paras 44 and 48–49.

disputed 60 invoices and "traded debts" were said to be part of a history of lending that dated back to the 174 invoices.

15 The fact however is that the 2nd defendant does not assert that the 174 invoices were fake or fabricated. To be clear, she appears to advance the argument that the $18.3m was in fact loans secured by the invoices, and that these loans were paid off together with interest of $1.5m. That said, the terms of the written VPD RPA and PCPL RPA are entirely consistent with the plaintiffs' position that they were in fact receivables purchase agreements. I note also that the VPD RPA and PCPL RPA agreements are not the subject matter of this suit and involve different parties.

16 In any event, around late January 2015, the 2nd defendant contacted Chin and requested that the VPD RPA and the PCPL RPA be transferred to her sole proprietorship, Vangard Project ("VP").

17 I pause here to note that Chin asserts that the 2nd defendant informed her that VP had been set up because the 2nd defendant did not wish to continue working with her business partner in VPD and/or PCPL.[20] An enhanced credit bureau search was conducted.[21] Chin was informed that VPD and PCPL's business would be diverted to VP. The 2nd defendant's affidavit does not refer to or give any explanation as to why VP was established or why she did not wish to continue with her business partner. Indeed, this is a matter on which nothing at all is said by the defendants. Their amended defence simply states that in or around August 2014, the 2nd defendant was director of the now defunct VPD[22] and that on 22 January 2015, a new agreement was discussed and executed with the 2nd defendant's newly set-up sole proprietorship, VP.[23]

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20 Chin's 1st affidavit, para 25.

21 Chin's 1st affidavit, CLJ-3.

18 In any case, it is clear that on 22 January 2015, ARC and VP entered into a "written receivables purchase agreement."[24]

19 Around April and May 2016, the 2nd plaintiff took over as the paying and collecting agent for transactions under ARC's receivables purchase agreements. Sellers of receivables were informed through brokers such as Lee that ARC would be migrating its receivables purchase agreements to the CS Platform run by the 1st plaintiff. Another change was that sole proprietorships such as VP would not be permitted to list and sell receivables on the CS Platform. However, in the event that the owner of a sole proprietorship were to incorporate a company to carry on the same business as the sole proprietorship, the 1st plaintiff would allow the said company to list and sell receivables on the CS Platform.[25]

20 The 1st defendant was then incorporated on 10 May 2016. It is disputed as to whether Chin had specifically requested that the 2nd defendant incorporate a company so that the 2nd plaintiff could continue providing financing to VP.[26] In any event, on 18 May 2016 prior to the CS Platform going live, the 1st defendant entered into a written receivables purchase agreement with ARC ("the VPM RPA").

21 On 16 June 2016, Chin informed the 2nd defendant by e-mail that all directors of member companies were required to provide the 2nd plaintiff with a guarantee in the form of a deed poll of guarantee and indemnity ("the

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22 Defence, para 7(b).

23 Defence, para 7(f).

24 Chin's 1st affidavit, para 27 and CLJ-4.

25 Chin's 1st affidavit, para 34.

26 Chin's 1st affidavit, paras 35–40.

Guarantee"). Chin's e-mail reiterated that the arrangement to sell the receivables was on an undisclosed or "non-notified basis" (see [12] above).[27] Chin sent the 2nd defendant a follow-up e-mail on 29 June 2016 reminding her to sign the Guarantee by 8 July 2016.[28]

22 On 1 July 2016, the 2nd plaintiff sent an e-mail to the 2nd defendant containing a hyperlink to view and sign a number of relevant documents for the CS Platform, namely the membership application form, the terms and conditions ("CS T&Cs"), the members' guide (which was known as the Member Guidance), the fee schedule and the privacy notice.[29] These documents constituted the membership agreement, which I will refer to as the "CS Membership Agreement".

23 The 2nd defendant signed the Guarantee on 4 July 2016, guaranteeing payment for the 1st defendant's repurchase obligations under the CS T&Cs.[30] Following that, on 13 October 2016, she filled up the online membership application form acknowledging that she had, on behalf of the 1st defendant, read and accepted the documents mentioned at [22] above which had been incorporated into the membership application form.[31] She signed the form electronically in her capacity as the director of the 1st defendant.[32] The 1st defendant thereby became a member of the CS Platform.

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27 Chin's 2nd affidavit, para 46 and CLJ-6.

28 Chin's 1st affidavit, paras 46–48.

29 Chin's 1st affidavit, paras 49 and 54 and CLJ-8.

30 Kuah's 1st affidavit, para 15 and KCW-2.

31 Chin's 1st affidavit, para 54 and CLJ-8.

32 Chin's 1st affidavit, para 55–56.

24 Under the CS T&Cs, each sale and purchase took effect as an unconditional sale and purchase of the entire legal and beneficial interest in the said receivable, and the seller agreed to assign the receivable to the investor with full title guarantee. The 2nd plaintiff was appointed by the respective investors as the collection and administrative agent to handle matters relating to the receivable in question. If the 2nd plaintiff so required, the seller would perfect the assignment of the receivables to the investors by giving notice to the customers to pay the receivables to the 2nd plaintiff. The seller was obliged to act as the investors' agent to collect payment of the receivables from the customers, and then hold such payment on trust for the investors and remit it to the 2nd plaintiff.[33] A notice of repayment would be issued to the seller, setting out the invoice details and terms upon which the receivable was purchased. Sellers were required to provide the 2nd plaintiff with a notice of assignment for each assignment of a receivable.[34]

25 The 1st defendant subsequently listed 60 receivables ("the Traded Debts") on the CS Platform for sale to investors. The Traded Debts were in respect of 60 tax invoices issued by the 1st defendant to six of its customers ("the Customers"), and were purchased by investors (including the 3rd to 46th plaintiffs) by way of a bidding process.[35] The consideration for the sale of each receivable was 80% of the invoice amount, less an origination fee.[36] The total advance sum paid by the investors in respect of the 60 Traded Debts was $6,885,840.[37] The plaintiffs own a 99.312% share of this sum, which amounts to $6,783,433.86.[38]

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33 Kuah's 1st affidavit, para 20.

34 Kuah's 1st affidavit, paras 23 – 24.

35 Kuah's 1st affidavit, paras 16–19.

36 Kuah's 1st affidavit, para 22.

37 Kuah's 1st affidavit, para 26.

26 The respective payment dates for all 60 Traded Debts have expired. The Traded Debts were not paid by the 1st defendant as required under the CS T&Cs, and thus became "disputed debts" within the meaning of cl 17.1 of the CS T&Cs. The 1st defendant was required under the CS T&Cs to pay the repurchase price and a repurchase fee. The 2nd plaintiff thus issued repurchase demands dated 29 March, 30 March and 7 August 2017 to the 1st defendant in respect of the 60 Traded Debts, requiring the 1st defendant to repurchase them and to pay the stated repurchase price. The 1st defendant has not done so.[39]

27 On 30 March 2017, the plaintiffs' solicitors issued letters to the Customers giving notice of assignment of the Traded Debts, enclosing copies of the notice of assignment and other relevant documents, and demanding payment of the Traded Debts. One of the Customers, Evershine Services Pte Ltd ("Evershine"), responded by e-mail on 30 March 2017 stating that it had never heard of the 1st defendant and had no dealings with it. The 2nd plaintiff then got in touch with four out of five of the other Customers by telephone and was informed by them that they did not have any dealings with the 1st defendant either.[40] Fish & Co Restaurants Pte Ltd ("Fish & Co"), who was one of the four Customers whom the 2nd plaintiff had contacted by telephone, followed up by e-mail on 5 April 2017 stating that it had looked at the purchase orders attached to the notice of assignment of receivables, and concluded that they were falsified documents with fake and duplicated signatures.[41]

28 The plaintiffs' position is that the invoices in respect of Evershine and Fish & Co were fabricated.[42] The plaintiffs further plead that they have reason

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38 Kuah's 1st affidavit, paras 27–28 and KCW-5.

39 Kuah's 1st affidavit, paras 29–34 and KCW-6.

40 Kuah's 1st affidavit, paras 48–49 and KCW-10.

41 Kuah's 1st affidavit, para 51 and KCW-10.

to believe that all the underlying tax invoices for the remaining Traded Debts were similarly fabricated.[43] The defendants' pleaded case in this respect is that the allegations are not admitted and that the plaintiffs are put to strict proof.[44] This is a point that I return to below.

29 The 2nd plaintiff filed a police report against the defendants on 2 April 2017. On 6 and 12 April 2017, the 2nd defendant was charged with 60 counts of cheating under s 420 of the Penal Code (Cap 224) in respect of the 60 Traded Debts.[45] These criminal proceedings against the 2nd defendant are currently ongoing.

30 The plaintiffs' solicitors made demands on 6 and 12 May 2017 for the 2nd defendant to pay the repurchase prices to the 2nd plaintiff in respect of the 60 Traded Debts as required under the Guarantee, but the 2nd defendant did not do so.[46]

31 The aggregate sum of the repurchase prices for all 60 Traded Debts was $8,523,456.84 as of 16 August 2017. The plaintiffs' 99.312% share of this sum totals $8,464,740.92.[47]

The present action

32 On 20 June 2017, the plaintiffs commenced the present suit against the defendants. As set out in the amended statement of claim dated 16 August 2017:

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42 Statement of claim, para 38.

43 Statement of claim, para 39.

44 Defence, para 29.

45 Kuah's 1st affidavit, paras 56–59.

46 Kuah's 1st affidavit, paras 38–39.

47 Kuah's 1st affidavit, paras 35–36.

(a) The plaintiffs claim the sum of $8,464,740.92 against the defendants, being the plaintiffs' share of the repurchase prices and repurchase fees in respect of the 60 Traded Debts, and which continues to accrue until the date of judgment.[48]

(b) Alternatively, the plaintiffs seek remedies for the 1st defendant's fraudulent misrepresentation such as rescission, a declaration that the paid sums are held on trust for the plaintiffs, the lifting of the 1st defendant's corporate veil, and/or an order that the defendants return the sum of $6,783,433.86 (see [25] above) to the plaintiffs.[49]

(c) The plaintiffs additionally seek the payment of interest, and costs on an indemnity basis pursuant to cl 14.1(6) of the CS T&Cs.[50]

33 On 13 September 2017, the plaintiffs applied for summary judgment under O 14 r 1 of the ROC.

The law on summary judgment

34 The legal principles on summary judgment under O 14 of the ROC are well-known. In order to obtain judgment, a plaintiff must first show that he has a *prima facie* case for summary judgment. If the plaintiff satisfies this, the burden then shifts to the defendant to show that there is an issue or question in dispute which ought to be tried (O 14 r 3(1) of the ROC; *M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2015] 1 SLR 325 ("*M2B*") at [17]). If the defendant can establish that there is a fair or reasonable probability that he has

48 Amended statement of claim, pp 23–25.

49 Amended statement of claim, pp 23–25.

50 Amended statement of claim, p 25.

a *bona fide* defence, he ought to have leave to defend (*Habibullah Mohamed Yousuff v Indian Bank* [1999] 2 SLR(R) 880 at [21]).

35 *Singapore Civil Procedure 2018* vol 1 (Foo Chee Hock gen ed) (Sweet & Maxwell, 2018) ("*Singapore Civil Procedure*") at para 79/1/8 states that if the defence set up is that the plaintiff is an unlicensed moneylender and a *prima facie* case to that effect exists, unconditional leave to defend the action must be given. *Singapore Civil Procedure* goes on to state that "[w]here only bare allegations of unauthorised moneylending are asserted to resist an application for summary judgment for a loan the borrower may be given only conditional leave to defend".

36 The court will not grant leave "if all the defendant provides is a mere assertion, contained in an affidavit, of a given situation which forms the basis of his defence", or if the assertions in affidavit are equivocal, lacking in precision, inconsistent or inherently improbable (*M2B* at [19]). The proper course is not for the court to assume that every sworn averment is to be accepted as true, or that such an averment may, *ipso facto*, provide a basis for leave to defend (*Abdul Salam Asanaru Pillai (trading as South Kerala Cashew Exporters) v Nomanbhoy & Sons Pte Ltd* [2007] 2 SLR(R) 856 at [38]; *Goh Chok Tong v Chee Soon Juan* [2003] 3 SLR(R) 32 at [25]).

37 Apart from showing the existence of triable issues, the defendant may also avoid summary judgment by showing "that there ought for some other reason to be a trial" (O 14 r 3(1) of the ROC).

The parties' cases

38 The plaintiffs submit that there is a *prima facie* case for judgment on their contractual claim for their share of the aggregate repurchase price in

respect of the 60 Traded Debts.[51] Against the 1st defendant, the plaintiffs' case is that the relevant terms of the CS Membership Agreement, as contained in the key documents such as the CS T&Cs, make clear that the 60 Traded Debts had to be paid by the 1st defendant within 14 days of their respective payment dates. As the 1st defendant did not do so, the 60 Traded Debts became "disputed debts" within the meaning of the CS T&Cs. The plaintiffs submit that the 1st defendant's failure to pay the repurchase prices for the 60 Traded Debts amounts to a breach of the CS Membership Agreement.[52] Further, they contend that the 2nd defendant has breached her express obligations under the terms of the Guarantee by failing to repay the purchase prices owed by the 1st defendant.[53]

39 In support of their alternative claims, the plaintiffs submit that the essential elements of fraudulent misrepresentation or the tort of deceit have been met. The plaintiffs contend that the 1st defendant had knowingly made false representations, warranties and undertakings when listing the 60 fabricated receivables on the CS Platform, with the intention that the investor plaintiffs would rely on such representations and purchase them to their detriment.[54] The plaintiffs also argue that the separate legal personality of the 1st defendant had been abused by the 2nd defendant to commit fraud or deceit against the plaintiffs, thus the corporate veil should be lifted and the 2nd defendant should be held personally liable for fraudulent misrepresentation.[55]

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51 Plaintiffs' submissions, paras 51–52.

52 Plaintiffs' submissions, paras 29 and 39–44.

53 Plaintiffs' submissions, paras 48–50.

54 Plaintiffs' submissions, paras 241–261.

55 Plaintiffs' submissions, paras 262–280.

40 The defendants submit that the present application should be dismissed as they have a *bona fide* defence and there are triable issues. The "main plank" and "crux" of their defence is the illegal moneylending defence.[56] The defendants argue that the "sale of receivables" on the CS Platform in substance amounted to moneylending transactions, as they were advancements of monies in consideration of a larger sum being repaid. They contend that the plaintiffs are unlicensed moneylenders within the meaning of the Moneylenders Act (Cap 188, 2010 Rev Ed), thus the contract between the parties in respect of the 60 Traded Debts is unenforceable and the monies paid by the plaintiffs are not recoverable (see s 14(2) of the Moneylenders Act).

41 The defendants further allude to several other defences in their pleadings, although these were not argued before me during the course of the hearing or in written submissions. These other defences are as follows:

(a) There is no basis to lift the corporate veil of the 1st defendant, as the 1st defendant was purportedly incorporated at Chin's behest.[57]

(b) There were no contractual relations between the parties as the defendants did not know who the investors, specifically the 3rd to 46th plaintiffs, were.[58] Further, the plaintiffs' solicitors have refused to provide copies of the warrants to act, and such evasiveness has led the defendants to believe that the 3rd to 46th plaintiffs did not purchase anything from the CS Platform, which may not even be real.[59]

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56 Defendants' submissions, paras 6, 11 and 32.

57 Defence, para 30.

58 Defence, para 14(a).

59 Choy's affidavit, paras 13 and 63.

(c) The 1st defendant is not a party to the CS Membership Agreement and it did not list any receivables on the CS Platform. The relevant documents regarding the Traded Debts had been submitted to Lee by the 2nd defendant.[60]

(d) The Guarantee is unenforceable as it was not signed, sealed and delivered.[61]

(e) The CS T&Cs are subject to the Unfair Contract Terms Act (Cap 396, 1994 Rev Ed) ("UCTA").[62]

42 In response, the plaintiffs submit that none of the above amounts to a *bona fide* defence.[63] In particular regard to the illegal moneylending defence, the plaintiffs contend that the sale and purchase of receivables, as was the case here, is not a loan transaction and that there is no evidence supporting the defendants' case that the express terms of the VPM RPA and the documents incorporated into the CS Membership Agreement do not represent what was agreed upon between the parties. The plaintiffs accordingly take the position that the Moneylenders Act does not apply to the present case.[64]

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60 Defence, paras 14(b)–(c) and 19.

61 Defence, para 22.

62 Defence, para 26.

63 Plaintiffs' submissions, paras 53–55.

64 Plaintiffs' submissions, paras 131–221 generally.

Whether the plaintiffs have a *prima facie* case for summary judgment

The primary claims under the CS Membership Agreement and the Guarantee

43 I begin with the question of whether the plaintiffs have a *prima facie* case for summary judgment. I find it clear on the basis of the relevant documents constituting the CS Membership Agreement that a *prima facie* case on the plaintiffs' contractual claims has been made out.

44 The CS T&Cs is the document that sets out the terms and conditions governing the sale and purchase of receivables on the CS Platform. I set out the relevant clauses here:[65]

> 2.6 **True sale**: Each Trade will take effect as an unconditional sale of the entire legal and beneficial interest in the Traded Debt to the Purchasing Investor… with us [*ie,* the 1st plaintiff] acting as the purchasing agent and CSSG [*ie*, the 2nd plaintiff] as collection and administrative agent for the Purchasing Investors. The Seller and Investors confirm the intention of any Trade is that it shall constitute a true sale of the Traded Debt and not a security arrangement for any obligations of the Seller.
>
> 2.7 **Investors as Owners**: Upon each Trade, the successful Investor(s) will hold all rights under the Trade, including the Traded Debt, as legal and beneficial owner(s) and CSSG is irrevocably appointed by the Purchasing Investors as collection and administrative agent to handle matters relating to the Trade and the Traded Debt for the owner(s)…
>
> 2.8 **Assignment**: As Seller you agree to assign to the Purchasing Investors, with CSSG as agent for the Purchasing Investors, your future Traded Debts with full title guarantee.
>
> …
>
> 2.10 **Perfection of assignment**: If CSSG requires, as Seller you will promptly and at your expense:
>
> (1) execute, stamp and deliver to us a formal written assignment of any Traded Debt, in the form that CSSG

65 Kuah's 1st affidavit, KCW-2.

> may require, including any assignment in CSSG's name as agent for named Purchasing Investors or undisclosed Purchasing Investors;
>
> (2) take any other action necessary to perfect the assignment to the Purchasing Investors of, or the Purchasing Investors' title to, or the trust in their favour in relation to, any Traded Debt and the Proceeds of the same; and/or
>
> (3) give notice to Customers to pay any Traded Debt, any Non-Traded Debt that cannot be separated from Traded Debt and the Proceeds of the same to the Escrow Agent via the Escrow Account, or to CSSG as agent for the Purchasing Investors.

5.4 **Overdue interest**: Overdue interest on any outstanding amount owing by the Seller to the Purchasing Investor, or to us or to a service provider, shall be charged from the 15th days after the due date of such amount up to the Seller's actual payment date, both days inclusive, at the Default Rate. For the avoidance of doubt, the Discounting Charge will continue to accrue at the Discount Rate for the 14 days after the Expected Payment Date and if unpaid shall itself be subject to overdue interest as aforesaid.

…

6.2 **Agency for collection**: Upon the sale of any Debt, as Seller you will automatically be appointed as CSSG's sub-agent for the purpose of administering, collecting and enforcing the Traded Debt for the Investors and at your own expense…

6.3 **Trust of Proceeds**: Whether or not as Seller you remain as collection agent, if at any time you receive or recover any Proceeds in respect of a Traded Debt, you…

> (3) will hold the Proceeds on trust for the Investors pending receipt of it by CSSG as agent for the Investors or payment into the Escrow Account. This trust will terminate, in relation to any Proceeds, as soon as CSSG receive the same on behalf of the Investors or if the Proceeds are paid into the Escrow Account.

…

10. **REPURCHASE OF DEBTS**

10.1 **Repurchase**: We or CSSG may (but are not obliged to) require a Seller to repurchase a Traded Debt upon or at any time after the occurrence of a Termination Event other than the Customer's Insolvency, or CSSG has grounds to believe that the Debt is or has become or is likely to become a Disputed Debt.

> The Seller must then pay the Repurchase Price and the Repurchase Fee as directed by CSSG.
>
> 10.2 **Repurchase Price**: The Repurchase Price, in respect of any day on which a Traded Debt is outstanding, will be calculated in accordance with the formula:
>
> **[DF + DC + A + RF] – C - E**; where
>
> **DF** is the Discount Fee
>
> **DC** is the outstanding Discounting Charge on such day
>
> **A** is the Advance
>
> **RF** is the Repurchase Fee
>
> **C** is any sum actually received in cleared funds and applied by us in or towards the discharge, in whole or in part, of the Traded Debt
>
> **E** is the Early Payment Incentive on such day.
>
> For the avoidance of doubts, it is hereby declared that the Repurchase Price is a net repurchase price after netting off the balance of the Purchase Price for that Traded Debt and hence the balance Purchase Price for a Traded Debt shall be treated as paid via netting off upon the Seller being required to repurchase a Traded Debt.

45 In summary, the CS T&Cs make clear that the entire legal and beneficial interest in the Traded Debts passed to the investors upon sale. The 1st defendant was responsible for collecting and enforcing payment of the Traded Debts by the Customers, so that the investors could be paid. The 1st and 2nd plaintiffs may require the 1st defendant to repurchase the Traded Debts on the basis that they have become "Disputed Debts" within the meaning of cl 17.1, which provides:

> "**Disputed Debt**" means a Debt (a) payable by a Customer who the Seller knows or ought to know is disputing or is likely to dispute its liability to pay the Debt in full or to pay the Debt by the Expected Payment Date, (b) is not paid within 14 days after the Expected Payment Date except when such non payment is due to the insolvent winding-up or bankruptcy of the Customer, or (c) which will be reduced to be less than its Face Value without the Purchasing Investors' consent

46 As the Traded Debts were disputed by the Customers and not paid within 14 days of the Expected Payment Dates, they became "Disputed Debts", such that the 1st and 2nd plaintiffs were entitled to require the 1st defendant to repurchase them. Although the defendants dispute their liability for the repurchase price generally, they do not contend that the calculations done at [31] by the plaintiffs in accordance with the formula in cl 10.2 are inaccurate.

47 On the basis of the express terms in the CS T&Cs that govern the contractual relationship between the parties, it is clear to me that the plaintiffs have made out a *prima facie* case for judgment against the 1st defendant on the contractual claim.

48 As for the 2nd defendant, she had "irrevocably and unconditionally guarantee[d]" by way of the Guarantee to pay on demand "all present and future payment obligations and liabilities" of the 1st defendant incurred under the CS T&Cs "arising out of any obligation to repurchase any present or future Traded Debt". She had also "irrevocably and unconditionally guarantee[d] the due and punctual performance and observance by the [1st defendant] of its repurchase obligations under the CS T&Cs" to the 2nd plaintiff and each investor.[66] Barring any *bona fide* defence, there is no question that this would cover the repurchase obligations owed by the 1st defendant in respect of the 60 Traded Debts. As such, I find that the plaintiffs have made out a *prima facie* case for judgment against the 2nd defendant as well.

The alternative claims in fraudulent misrepresentation

49 Having found that that the plaintiffs have a *prima facie* case against the defendants for summary judgment, there is strictly no need for me to consider

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66 Kuah's 1st affidavit, KCW-2, pp 84 and 86.

the plaintiffs' alternative claims in fraudulent misrepresentation or the tort of deceit, and its arguments for lifting the 1st defendant's corporate veil. I note that the defences raised by the defendants which apply to the primary claims all apply in equal measure to the alternative claims.[67] I note as well that the sum claimed under the alternative claims (*ie*, $6,783,433.86, being the plaintiffs' share of the advance sum paid for the Traded Debts) is lower than the sum claimed under the primary claims (*ie*, $8,464,740.92 and upwards, being the plaintiffs' share of the aggregate repurchase price payable by the defendants which will continue to accrue until the date of the judgment). That said, I nonetheless state that I also find that the plaintiffs have made out a *prima facie* case in respect of the alternative claims. I will be brief in my reasons on this issue.

Fraudulent misrepresentation

50 In *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14], the Court of Appeal summarised the elements of the tort of deceit as follows:

> … First, there must be a representation of fact made by words or conduct. Second, the representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff. Third, it must be proved that the plaintiff had acted upon the false statement. Fourth, it must be proved that the plaintiff suffered damage by so doing. Fifth, the representation must be made with knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true.

51 The defendants' position on whether the 60 invoices are fabricated is odd to say the least. They do not affirmatively plead that the 60 invoices are genuine. Then again, they do not admit that the invoices were in fact fabricated. Instead, as noted at [28] above, what is pleaded is merely that the allegations

67 See Defendants' submissions, para 55.

are not admitted, and the plaintiffs are put to strict proof. The responses in evidence of Evershine and Fish & Co however make clear that the invoices in their names were fabricated or false. Indeed, the 2nd defendant is now facing 60 charges of cheating under the Penal Code in respect of the 60 trades. Whilst this court is aware that the 2nd defendant has not been convicted of any of the charges, the equivocal pleadings of the defendants as to whether the 60 invoices are genuine or false or fabricated is disturbing. These invoices are from the 1st defendant which operates under the control of the 2nd defendant.

52 The inescapable conclusion is that these invoices were fabricated by the 1st defendant and listed on the CS Platform so that they would be purchased by investors. In so doing, the 1st defendant made a wilfully false representation with the intention that it be acted upon by the plaintiffs and other investors. The plaintiffs who purchased the Traded Debts acted upon this false representation to their detriment. This satisfies all elements of the tort and establishes a *prima facie* claim for the return of the plaintiffs' share of the advance sum paid to the 1st defendant in respect of the 60 Traded Debts.

53 I briefly remark that if the 60 invoices are in fact genuine trade receivables as the plaintiffs have been led to believe, then as I will discuss below, there would be no viable defence of moneylending. On the other hand, if the 60 invoices are fake or fabricated, this would not affect the plaintiffs' position as purchasers of the Traded Debts, unless the VPM RPA was a sham and the plaintiffs, in particular the 1st and 2nd plaintiffs, were aware of and a party to an elaborate sham. There is nothing however that supports or tends to that conclusion. I will turn to this point again later.

Lifting of the corporate veil

54 I also consider it appropriate for the 1st defendant's corporate veil to be lifted, such that the 2nd defendant should be held personally liable in fraudulent misrepresentation. There appears to be no question that the 2nd defendant, the sole director and shareholder of the 1st defendant, was the one who had submitted the fabricated documents (the 60 invoices) and perpetrated the entire fraudulent scheme. The parties do not dispute that the very purpose of incorporating the 1st defendant was so that VP could list its receivables on the CS Platform (see [19] above), regardless of whether the incorporation of the 1st defendant had in fact been pursuant to suggestions made by Chin or anyone else.

55 In these circumstances, there is at least a *prima facie* case for the corporate veil to be pierced so as to prevent the abuse of corporate personality by the 2nd defendant as the 1st defendant's true controller, and so that the court will not lend its aid to a fraudulent scheme (see *Dynasty Line Ltd (in liquidation) v Sia Sukamto and another* [2013] 4 SLR 253 at [103], citing *Walter Woon on Company Law* (Tan Cheng Han gen ed) (Sweet & Maxwell, 2009) at paras 2.50–2.51).

56 Gary Chan Kok Yew and Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) at pp 772– 775 sets out a helpful summary of the situations whereby a director incurs personal liability for the tort of a company. One situation is where the director authorised, directed or procured the company's tort (at para 18.044). This also applies here.

57 In any case, the liability of the 2nd defendant does not rest solely on her liability as the sole director and shareholder and her role in the deceit. The 2nd

defendant is in any case directly liable under the personal guarantee which she had entered into.

Whether the illegal moneylending defence amounts to a *bona fide* defence

58 The burden now shifts to the defendants to show that they have a *bona fide* defence in order to resist summary judgment. As the defendants put it, they "rely on a singular defence to show cause why the Plaintiffs' present application should be dismissed, on the basis of the illegal moneylending defence".[68] In essence, the defendants contend that the sale and purchase of the Traded Debts constitute loans that are unenforceable under the Moneylenders Act, while the plaintiffs deny this.

Relevant provisions in the Moneylenders Act

59 I begin with the relevant provisions in the Moneylenders Act. Section 5(1) provides that:

> (1) No person shall carry on or hold himself out in any way as carrying on the business of moneylending in Singapore, whether as principal or as agent, unless —
>
> (a) he is authorised to do so by a licence;
>
> (b) he is an excluded moneylender; or
>
> (c) he is an exempt moneylender.

Section 2 in turn defines "excluded moneylender" to include, *inter alia*, any person who lends money solely to corporations (s 2(*e*)(iii)(A)). The parties are in agreement that the 1st and 2nd plaintiffs are not authorised by licence to lend money, nor are they exempt moneylenders within the meaning of the Moneylenders Act.

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68 Defendants' submissions, para 55.

60 Section 3 sets out the presumption that "[a]ny person, other than an excluded moneylender, 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."

61 Section 14 on "Unlicensed moneylending" provides that the contravention of s 5(1) is a criminal offence. Section 14(2) then reads:

> (2) Where any contract for a loan has been granted by an unlicensed moneylender, or any guarantee or security has been given for such a loan —
>
> > (a) the contract for the loan, and the guarantee or security, as the case may be, shall be unenforceable; and
> >
> > (b) any money paid by or on behalf of the unlicensed moneylender under the contract for the loan shall not be recoverable in any court of law.

62 The Court of Appeal in *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 ("*Sheagar*") at [75] summarised the principles to be adopted in relation to s 14(2) as follows:

> (a) To rely on s 14(2) of the MLA [*ie*, Moneylenders Act], the borrower must prove that the lender was an "unlicensed moneylender";
>
> (b) If the borrower can establish that the lender has lent money in consideration for a higher sum being repaid, he may rely on the presumption contained in s 3 of the MLA to discharge this burden;
>
> (c) The burden then shifts to the lender to prove that he either does not carry on the business of moneylending or possesses a moneylending licence or is an "exempted moneylender";
>
> (d) However, if there is an issue as to whether the lender is an excluded moneylender, the legal burden of proving that he is not will fall on the borrower.

It follows from the first principle in (a) that if the purported borrower cannot prove that the purported lender was an "unlicensed moneylender", s 14(2) is inapplicable.

Whether the sale and purchase of the Traded Debts amounts to moneylending

63 I agree with the plaintiffs that a sale and purchase of receivables is not generally to be regarded as a loan transaction. The "purchase of debts … for the purpose of providing finance, or relieving the seller from administrative tasks or from bad debts or for any or all of such purposes" is also known as "factoring" (Noel Ruddy, Simon Mills & Nigel Davidson, *Salinger on Factoring* (Sweet & Maxwell, 4th ed, 2006) ("*Salinger on Factoring*" at para 1-04). While the object and commercial purpose of a factoring facility may be similar to that of a loan facility, it is not a loan facility at least in form (see *SAL Industrial Leasing Ltd v Hydtrolmech Automation Services Pte Ltd and others* [1997] 3 SLR(R) 676 at [53]).

The courts' general approach

64 In *City Hardware Pte Ltd v Kenrich Electronics Pte Ltd* [2005] 1 SLR(R) 733 ("*City Hardware*") at [24]–[25], the learned V K Rajah J (as he then was) articulated the courts' general approach to determining whether a transaction constitutes moneylending:

> 24 … What constitutes lending must of course remain a question of fact in every case. Careful consideration has to be given to the form and substance of the transaction as well as the parties' position and relationship in the context of the entire factual matrix. It is axiomatic that if there has been no lending there can be no moneylending.
>
> 25 It ought to be stressed, however, that the court ought not to be overzealous in analysing or deconstructing a

> transaction in order to infer and/or conclude that the object of the transaction was to lend money…

65 Rajah J (at [25]) went on to cite and endorse Lord Devlin's decision in *Chow Yoong Hong v Choong Fah Rubber Manufactory* [1962] AC 209 at 216:

> … There are many ways of raising cash besides borrowing. One is by selling book-debts and another by selling unmatured bills, in each case for less than their face value. Another might be to buy goods on credit or against a post-dated cheque and immediately sell them in the market for cash. Their Lordships are, of course, aware, as was Branson J., that transactions of this sort can easily be used as a cloak for moneylending. The task of the court in such cases is clear. It must first look at the nature of the transaction which the parties have agreed. If in form it is not a loan, it is not to the point to say that its object was to raise money for one of them or that the parties could have produced the same result more conveniently by borrowing and lending money. But if the court comes to the conclusion that the form of the transaction is only a sham and that what the parties really agreed upon was a loan which they disguised, for example, as a discounting operation, then the court will call it by its real name and act accordingly.

In short, while factoring arrangements and the sale of book debts are not moneylending in form, the court will take a pragmatic approach by looking to the nature of the transaction and consider whether the arrangements are in fact a sham to disguise what was really a loan transaction.

66 Reference was made in *City Hardware* (at [26] and [27(a)]) to the English case of *Olds Discount Co Ltd v John Playfair Ltd* [1938] 3 All ER 275 ("*Olds Discount*"), where it was held that the sale of book debts is not a moneylending transaction. Rajah J also quoted the following passage in *Olds Discount* at 280:

> Unless there was evidence upon which it would be proper for the court to act that the parties had deliberately entered into those documents knowing that they did not represent what had been agreed between them, but that what had been agreed between them was something quite different, it seems to me that the proper course for the court to take is to accept the

> formal agreements between the parties, and to decide their rights according to those agreements.

Analysis of the arguments raised by the defendants

67 In these circumstances and on the basis of the documents constituting the CS Membership Agreement, I see no reason to doubt that the sale and purchase of the Traded Debts were genuine sale transactions of book debts and not disguised loan transactions. To show otherwise, the defendants raise a number of arguments, but I do not find them to be persuasive for the reasons stated below.

68 First, the defendants place reliance on the fact that the Traded Debts, as well as the receivables previously traded under the VPD RPA, were purchased at a discounted rate of 80% of the invoice value.[69] However, this discount is fully consistent with the nature of a sale and purchase of receivables. The plaintiffs cite *Welsh Development Agency v Expert Finance Co Ltd* [1992] BCC 270 at 283, in which the English Court of Appeal explained that the "essence" of a factoring transaction is that the sale price is "necessarily discounted from the full aggregate face value of the debts". This is primarily "because the trader will be getting an immediate payment, while the finance company will have to wait for the debts to come in from the debtors and they may well not be presently payable" (see also *Salinger on Factoring* at para 3-35).

69 On a related note, the defendants seek to rely on the statutory presumption in s 3 of the Moneylenders Act that "[a]ny person, other than an excluded moneylender, 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."[70] The defendants highlight that the discounted sums were paid

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69 Choy's affidavit, para 51; Defendants' submissions, para 52(a).

out in consideration of larger sums being repaid. This may be true, but it misses the point that the presumption in s 3 requires the *lending* of money in the first place, which is not the case in a true sale of receivables. As Rajah J remarked in *City Hardware* at [24], "[i]t is axiomatic that if there has been no lending there can be no moneylending". In this case, without some indication that the factoring of any of the Traded Debts or past receivables was in substance a loan transaction, the presumption in s 3 does not apply. Moreover, I add that it is expressly stated that s 3 does not apply to an "excluded moneylender", and I will address this issue at [81] below.

70 Next, and also related to the above point regarding the discount rate, the defendants complain that the "interest rates" charged by the 1st and 2nd plaintiffs were exorbitant, this being about 7.9% to 10% of the advance sums paid to the 1st defendant. Further, there was a 2% processing fee imposed for each transaction.[71] Again, the fact of a discount or processing fees, even if "exorbitant" as the defendants claim, does not *ipso facto* suggest that these were interest charges or that the sale of the Traded Debts were loans. As *Salinger on Factoring* states at para 3-35, "as opposed to interest which accrues from day-to-day, a discount is fixed as a deduction from the purchase price at the time of the purchase". Further, although this was not specifically argued by the defendants, I agree with the plaintiffs that the imposition of some interest for overdue payment under the CS T&Cs does not suffice to change the overall nature of the transactions involving the Traded Debts from factoring into loans.[72]

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[70] Defendants' submissions, paras 37–38.

[71] Defendants' submissions, para 52(b).

[72] Plaintiffs' submissions, paras 209–210.

71 The defendants further argue that the 1st defendant's invoices were simply security for lending.[73] This contention is at odds with the CS T&Cs, which provide that each sale and purchase took effect as an unconditional sale and purchase of the entire legal and beneficial interest in the said receivable (see [44] above). There is nothing to suggest that any invoice was meant to be held as a security interest. Nor do I find that the notices of assignment were held as security for lending. Even if Chin had previously told the 2nd defendant that Centurion would hold onto the notices of assignment "just in case" VPD failed to pay, this was done to facilitate the collection and enforcement of the receivables from VPD's customers. The same applies for the 2nd plaintiff and the 1st defendant in respect of the Traded Debts; cl 6.1 of the CS T&Cs provides for the 2nd defendant's right to do so.[74] *Salinger on Factoring* explains at para 3-19 that in confidential invoice discounting, as was the case here, "notices to the debtors of the assignments of the debts is not required except in the case of a serious breach of the agreement by the client or its insolvency". Here, the notices of assignment were only sent to the Customers on 30 March 2017 upon the 1st defendant's failure to repurchase the Traded Debts (see [27] above). There is no basis upon which the court may infer that the invoices or the notices of assignment were being held by the 1st or 2nd plaintiffs as security for payment by the 1st defendant.

72 The 2nd defendant's affidavit made mention of two other arguments which I deal with briefly.

(a) First, it was said that the obligation of payment always remained on the defendants, and that the 2nd plaintiff had no interest in whether the Customers had made payment.[75] But by providing for the 2nd

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73 Defence, para 14(f).

74 Kuah's 1st affidavit, KCW-2, p 50.

defendant's right to collect and enforce the payment of the Traded Debts by the Customers, cl 6.1 of the CS T&Cs shows that the 2nd defendant's argument in this regard is inaccurate. Clause 6.2 confirms that the 1st defendant is merely the 2nd plaintiff's sub-agent to administer, collect and enforce the Traded Debts *vis-à-vis* the Customers.[76]

(b) Second, it was contended that the presence of contractual recourse provisions in favour of the 2nd plaintiff meant that the risk of ownership remained with the 1st defendant, and would have passed onto the 2nd plaintiff instead if it had been a true sale agreement.[77] In my view, it was entirely open to the 2nd plaintiff to contractually provide for the right to require the 1st defendant to repurchase the Traded Debts, and this does not necessarily indicate that the relevant transactions ought to be treated as loans. Indeed, such recourse provisions proved vital in protecting the interests of the plaintiffs, considering the events which precipitated following the sale of the Traded Debts.

73 The defendants produced correspondence which they argue is consistent with their characterisation of the arrangement as loan transactions. Specifically, there was an instant messaging chat transcript between the 2nd defendant and Lee in December 2014, wherein Lee referred to Chin or Centurion as the "lender".[78] Lee was not a representative of ARC, Centurion or any of the plaintiffs, but a broker from Finaqe that was assisting VPD with procuring capital at the time. The context was that in late 2014, Lee was in contact with the 2nd defendant to assess VPD's eligibility for a term loan, and to help VPD

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75 Choy's affidavit, para 52.

76 Kuah's 1st affidavit, KCW-2, p 50.

77 Choy's affidavit, para 53.

78 Choy's affidavit, para 55(a) and p 191.

find alternative financing solutions. Considering this isolated use of the term "lender" by a third party in context, this does not suffice to create a triable issue. I also place little significance on the use of the words "repay", "repaid" or "repayment" in certain contractual documents and correspondence between the parties,[79] as I do not think that this necessarily points towards the existence of a loan.

74 As the defendants describe, there was "a system and continuity to the financial arrangements to the parties". According to the defendants, the contractual documents and agreements entered into by the parties and their predecessors were all meant "to facilitate, and provide a veneer of authenticity to, the arrangement between the parties which were, in essence, moneylending transactions". The defendants seek to rely on the 174 invoices (which I have referred to above at [13]) submitted between 2014 and 2016 pursuant to a financing arrangement between Centurion and the 1st defendant's predecessors, and highlight that "the total sum repaid was higher than the total sum that was advanced". But again, the defendants do no more than to simply assert that the differences between the discounted price and face value of the invoices amount to exorbitant "interest" payments,[80] which gives me little cause to draw a different conclusion about the nature of these previous arrangements than I did at [70] above in respect of the sale of the Traded Debts.

75 Finally, the defendants annexed to their submissions a list of factual disputes which they submit give rise to triable issues.[81] I have already expressly dealt with some of these purported disputes (*eg*, the relevance of the 174 past invoices and the nature of the parties' relationship as evidenced by

79 See Choy's affidavit, para 55 and pp 194–203.

80 Choy's affidavit, paras 32–34 and pp 181–185.

81 Defendants' submissions, Annex A.

correspondence), whereas some others (*eg*, the defendants' awareness of the 3rd to 46th plaintiffs and whether the CS Platform was real) will be dealt with later on in the judgment. The remaining questions raised by the defendants are as follows:

(a) who introduced Chin to Finaqe;

(b) whether Chin explained to the 2nd defendant at the 19 December 2014 meeting how the VPD RPA would work and the purpose of the notice of assignment; and

(c) whether the 1st defendant was incorporated upon Chin's suggestion.

76 However, even supposing that these amounted to factual disputes, they are not legally significant facts for the determination of this case. Even if I accept that Chin had, as the defendants allege, (i) been introduced to Finaqe by the plaintiffs' solicitors; (ii) failed to orally explain the VPD RPA and the notice of assignment to the 2nd defendant; and (iii) suggested that the 2nd defendant incorporate the 1st defendant to be eligible to list the shares on the CS Platform, these facts do not go any way towards establishing a *bona fide* defence for the defendants. In relation to (ii), I note in particular that the VPD RPA and the documents constituting the CS Membership Agreement expressly set out the arrangements concerning the sale of invoices. Considering the elaborate scheme of fabricated invoices and the high-value transactions that the 2nd defendant had previously entered into on the behalf of the companies she was a director of, I am also sceptical of the defendants' characterisation of her as a naïve and unsophisticated retail borrower,[82] and the suggestion that she would not have been able to understand even the key terms in the relevant agreements.

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[82] Defendants' submissions, para 17.

77 I find that there are no triable issues as to whether the transactions in question were really loans in substance. On the face of the documents constituting the CS Membership Agreement, the sale and purchase of receivables was intended by the parties. Although the defendants cite the case of *Ochroid Trading Limited (formerly known as Orion Trading Ltd) and another v Chua Siok Lui (trading as VIE Import & Export) and another* [2017] SGHC 56 ("*Ochroid Trading (HC)*") affirmed on appeal at *Ochroid Trading Limited (formerly known as Orion Trading Ltd) and another v Chua Siok Lui (trading as VIE Import & Export) and another* [2018] SGCA 5 ("*Ochroid Trading (CA)*"), there was evidence in that case that the wife of the 2nd plaintiff had insisted on the fabricated invoices to mask the true nature of the agreements in question (at [91]). On the facts, the High Court found that the sums claimed were not investments in the defendants' wholesale food business (registered in the first defendant's name) but were in fact loans. Further, the plaintiffs were unlicensed moneylenders and the exception in s 5(1)(*b*) of the Moneylenders Act (lending exclusively to corporations; see [81] below) did not apply.

78 In the present case, the defendants do not seriously allege that the plaintiffs were in any way complicit to the fabrication of the invoices, nor do they make any supportable allegation that the true nature of the relevant agreements was being masked.

79 In *iTronic Holdings Pte Ltd v Tan Swee Leon and another suit* [2016] 3 SLR 663, the High Court at [63], citing Neuberger J (as he then was) in *National Westminister Bank plc v Rosemary Doreen Jones* [2001] BCLC 98 at [59], held that "[t]he crux of a sham is a common intention to mislead" and that "there is a strong presumption that parties intend to be bound by the provisions of agreements which they have entered into".

80 I see no basis upon which this presumption can be rebutted in the present case. Apart from the bare assertions of the defendants, there is also no basis upon which the court may find that the parties entered into the CS Membership Agreement knowing that the documents did not represent what had been agreed between them. In such cases, the proper course for the court is to accept the formal agreements between the parties (*Olds Discount* at 280). The defendants cannot create a triable issue in this regard simply by making unsupported assertions about the nature of the transactions.

Whether the Moneylenders Act applies to the plaintiffs in any event

81 Even if I am wrong in finding that there are no triable issues as to the nature of the factoring transactions, I note that s 5(1)(b) of the Moneylenders Act creates an exception for "excluded moneylenders", which is defined in s 2(*e*)(iii)(A) to include any person who lends money solely to corporations (see [59] above). The defendants do not allege that the 1st and 2nd plaintiffs themselves loaned money to any specific entity or person apart from corporations. Based on the 1st and 2nd plaintiffs' requirement that only corporations could list receivables on the CS Platform, this does not appear to be the case either. Although the defendants allege that Centurion and ARC had disbursed funds to "all and sundry, and not just corporations",[83] this would require me to consider transactions that had been entered into by Centurion and ARC as being imputable to the 1st and 2nd plaintiffs. Given their separate legal personalities and the fact that the contracting parties to the various agreements were different, I would be hesitant to do so. That said, I reiterate that this is not a point upon which my decision turns.

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[83] Defendants' submissions, para 35(c)(ii).

82 I note also that there is no suggestion or assertion by the defendants that the monies advanced were in fact loans extended to the 2nd defendant as opposed to the 1st defendant. Instead, the defence is that the monies were in fact loans to the 1st defendant. The question is, why would it be necessary to structure loans to the 1st defendant as transactions for the sale and purchase of receivables? After all, the Moneylenders Act does not catch loans to corporations. Whilst the Moneylenders Act does apply to cases where a person lends money to individuals (and non-corporate entities), it does not catch the sale and purchase of receivables for the reasons discussed earlier.

83 Regardless, on the basis that the sale and purchase of the Traded Debts do not amount to moneylending, the defendants have not satisfied their burden of showing that they have a *bona fide* defence of illegal moneylending against the plaintiffs' claims.

Whether the defendants have any other defence that is *bona fide*

84 For completeness, I will briefly deal with the other arguments raised in the defence (see [41] above), even though they were not canvassed in the defendants' written or oral submissions.

Whether there was a contractual relationship

85 First, I reject the defendants' argument that no contractual relationship existed between the parties. It does not matter that the defendants did not know the identities of the 3rd to 46th plaintiffs. It suffices that the 1st defendant listed its receivables on the CS Platform while knowing that they would be purchased by investors.

Whether the investors, transactions and the CS Platform were genuine

86 The defendants even seek to cast doubt on whether the CS Platform was real and whether any investors had actually purchased any invoices from the CS Platform. The 2nd defendant points to the plaintiffs' "evasiveness" in providing the warrants to act (from the investor plaintiffs) as support for the belief that the investors may have purchased nothing at all from the "so-called platform."[84]

87 The defendants' contentions regarding the 3rd to 46th plaintiffs are contradicted by the documents exhibited by the plaintiffs, such as the copies of the membership applications signed by the 3rd to 46th plaintiffs as potential investors[85] and e-mail correspondence between the 2nd plaintiff and some of the other plaintiffs.[86] The identities of the 3rd to 46th plaintiffs were, in any event, made known to the 1st defendant in the 45 repurchase demands issued by the 2nd plaintiff on 29 and 30 March 2017.[87] While I would have preferred to have supporting affidavits from at least a few of the 3rd to 46th plaintiffs before me, and for the plaintiffs' solicitors to have been more forthcoming with producing the warrants to act when requested to do so by the defendants' solicitors, I nonetheless see no reason to doubt that the investors and the transactions involving the Traded Debts were in fact genuine. The defendants, on the other hand, have not provided any evidence or material to support their bare assertion that the CS Platform is not real.

88 Indeed, I note that Kuah Chun Wei ("Kuah"), in his capacity as a director of the 2nd plaintiff, avers that the 2nd plaintiff had since January 2017 made

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84 Choy's affidavit, para 63.

85 Charanjit Kaur's affidavit ("Kaur's affidavit"), pp 51–236.

86 Kaur's affidavit, pp 238–246.

87 Kuah's 1st affidavit, KCW-6, pp 819–869.

repeated requests of the 2nd defendant to provide updated bank statements and financial documents of the 1st defendant as part of the ongoing due diligence conducted on all sellers on the CS Platform. This assertion is supported by an email dated 8 February 2017 sent by Kuah to Lee explaining that the origination fee of 2% was being imposed (previously waived for the 1st defendant) to bring it in line with what was charged to the other sellers. Further, Kuah's email stated that the cost of servicing the 1st defendant's account had increased due to the need to answer investor queries, reimburse investors for interest discrepancies and follow up with latest bank and financial statements which the 2nd defendant had yet to receive.[88]

Whether the 1st defendant is a party to the CS Membership Agreement and listed receivables on the CS Platform

89 The defendants then argue that the 1st defendant is not a party to the CS Membership Agreement. It is clear that the 2nd defendant signed the membership application form in her capacity as the sole director of the 1st defendant, and filled in the 1st defendant's details such as its address and registration number.[89]

90 The 1st defendant also denies having listed any receivables on the CS Platform as the 2nd defendant had handed the relevant documents to Lee. The 1st defendant's claim that it was unaware of having listed its receivables on the CS Platform is plainly disingenuous. This process was consistent with cl 2.1(1) of the CS T&Cs, which provides that "the Seller will List the Debt through CS Broker",[90] the said broker being Lee. Following the sale and purchase of each Traded Debt on the CS Platform, a notice of repayment was sent to the 1st

88 Kuah's 2nd affidavit, paras 107–108; Choy's affidavit, pp 192–193.

89 Kuah's 1st affidavit, KCW-2, p 40.

90 Kuah's 1st affidavit, KCW-2, p 44.

defendant setting out details regarding the listing and purchase of the Traded Debt (see [24] above).[91] Moreover, the 2nd defendant states at [59] of her affidavit that:

> Whenever the 2nd Defendant wished to raise funds on the security of the invoices from the 2nd Defendant (or its related entities) to its customers, I would contact [Lee] so that he could come by my office and pick up the required documents. Thereafter, I would leave it to [Lee] to liaise with the representatives from the 2nd Plaintiffs and/or its related entities for the administrative aspects of the advancements.

It is abundantly clear that the 2nd defendant submitted the invoices to Lee and that these related to customers.

Whether the Guarantee is enforceable

91 The defendants further plead that the Guarantee is unenforceable as it was not signed, sealed and delivered. I note however that the Guarantee expressly states above the 2nd defendant's signature that it was executed as a deed poll and delivered by the 2nd defendant (as the guarantor) in the presence of a named witness.[92] In any case, consideration was furnished by the plaintiffs in the form of their purchases of the Traded Debts and by allowing the 1st defendant to list its receivables on the CS Platform. The Guarantee is thus enforceable.

92 Contrary to the defendants' arguments, UCTA is inapplicable to the CS T&Cs. The plaintiffs do not rely on the CS T&Cs to exclude or restrict any liability, nor to render substantially different or no contractual performance, thus it does not matter whether it is a standard form contract as the defendants point out (see s 3 of UCTA).

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91 See Choy's affidavit, p 186.

92 Jason Ng's affidavit, p 19.

Whether the defendants have a defence to the alternative claims

93 Reference was made earlier to the plaintiffs' alternative claims against the 1st defendant for fraudulent misrepresentation and deceit as well as the 2nd defendant's liability for the same through a lifting of the veil of incorporation. The defendants make certain arguments in respect of the alternative claims in particular.

(a) First, they read *Ochroid Trading (HC)* as standing for the proposition that a "trial court would necessarily have to examine the evidence in the form of documentary evidence and oral witness testimony, to come to a finding on whether the tort of fraudulent misrepresentation could be made out".[93] This is inaccurate. It was simply the case in *Ochroid Trading (HC)* that the claim for fraudulent misrepresentation was not made out on the facts. As observed at [77] above, the facts here are easily distinguishable. It does not appear that the plaintiffs were aware that the invoices were fabricated, and the 2nd defendant's conduct in contacting the Customers and filing a police report was entirely consistent with this.

(b) Second, they argue that there is no basis to lift the corporate veil of the 1st defendant, as it was purportedly incorporated at Chin's behest. In the same way that I found at [75] above that this dispute of fact was not legally significant in the context of the illegal moneylending defence, it does not detract from a finding that the corporate veil should be lifted. I reiterate that it was not seriously contended that the plaintiffs or Chin knew about the fabricated invoices. Even if Chin had made the initial suggestion that the 2nd defendant should incorporate a company

93 Defendants' submissions, para 57.

to list VP's receivables on the CS Platform, this does not change the fact of the 2nd defendant's intention to use the 1st defendant as an instrument to further her fraudulent scheme.

Concluding Observations

94 The plaintiffs had entered into what they thought were genuine contracts for purchase of account receivables of the 1st defendant: a company that was set up and run by the 2nd defendant. There is no dispute that the 1st defendant received and accepted considerable sums of money pursuant to the agreement. So far as the plaintiffs are concerned, the intention was to enter into a binding contract with the 1st defendant for the purchase of receivables. The defendants, on the other hand, took the position that the documents were a sham intended to mask the fact that the arrangement in substance was illegal moneylending, but failed to provide any support for their bare allegations in this regard.

95 In summary, the defendants have not established that there is a fair or reasonable probability that they have a *bona fide* defence to the plaintiffs' claims. I add that I do not see any other reason for a trial (see O 14 r 3(1) of the ROC).

96 In *Ochroid Trading (CA)*, the Court of Appeal observed at [2] that "the primary issue arising from the appellants' claim in contract is legally straightforward, albeit factually intensive – whether the claim fails because the agreements were illegal moneylending contracts which are unenforceable under the Moneylenders Act". This is similar to the present case. In coming to my decision, I am aware that *Ochroid Trading (HC)* was decided at first instance after a full trial. I am also cognisant of the Court of Appeal's clear statement in *Ochroid Trading (CA)* at [206] that the Moneylenders Act extends not just to the rogue loan shark who preys on the poor and vulnerable, but to anyone who

engages in the business of moneylending within the meaning of the Moneylenders Act without licence. There is no doubt that the Moneylenders Act fulfils an important regulatory purpose. That said, for my reasons at [77] and [93(a)] above, the present case is clearly distinguishable.

97 Finally, it will be recalled *Singapore Civil Procedure* states at para 79/1/8 that if a bare allegation of moneylending is asserted to resist summary judgment, "the borrower *may* be given only conditional leave to defend" [emphasis added]. Nevertheless, it does not follow that the court must grant conditional leave just because a bare allegation of illegal moneylending has been made. Whether it is appropriate to do so (and on what conditions, such as payment into court of some, or all, of the amount claimed) must depend on the usual principles as discussed in *Singapore Civil Procedure* at para 14/4/12. In the circumstances, whilst I do not see fit to grant the defendants conditional leave to defend, a very substantial payment would have been appropriate if I had been of the view that a case for conditional leave to defend was merited.

Conclusion

98 For the above reasons, I grant summary judgment for the plaintiffs.

99 I allow the plaintiffs' claim against the defendants for their share of the repurchase prices and repurchase fees in respect of the 60 Traded Debts, accruing until the date of this judgment.

100 Under cl 14.1 of the CS T&Cs, the 1st defendant agreed to compensate and indemnify the 1st plaintiff "in full for all losses, actions, proceedings, costs, claims, demands, awards, fines, orders, expenses and liabilities (including legal fees on an indemnity basis) incurred" in respect of any breach of the 1st defendant's obligations under the CS Membership Agreement (cl 14.1(1)) or as

a result of the 1st defendant's "fraud or wilful misconduct" (cl 14.1(6)).[94] Although I am aware that these contractual obligations strictly only apply between 1st defendant and the 1st plaintiff, I consider it appropriate under these circumstances to order that the costs of these proceedings to be agreed or taxed on an indemnity basis, and paid by the defendants to the plaintiffs.

George Wei
Judge

Ang Wee Tiong and Katie Lee Shih Ying (Chris Chong & C T Ho LLP) for the plaintiffs;
Vikram Nair and Chee Fei Josephine (Rajah & Tann Singapore LLP) for the defendants.

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[94] Kuah's 1st affidavit, KCW-2, pp 59–60.