Australian and New Zealand Banking Group Ltd *v* Joseph Shihara Rukshan De Saram [2014] SGHC 250

Case Number	: Suit No 1029 of 2012 (Registrar's Appeal No 106 of 2014)
Decision Date	: 27 November 2014
Tribunal/Court	: High Court
Coram	: Belinda Ang Saw Ean J
Counsel Name(s)	: Toh Wei Yi and Lee Hui Min (Harry Elias Partnership LLP) for the plaintiff; Gopal Perumal (Gopal Perumal & Co) for the defendant.
Parties	: Australian and New Zealand Banking Group Ltd — Joseph Shihara Rukshan De Saram

Civil Procedure – Summary judgment

Civil Procedure – Judgments and orders – Stay of execution

27 November 2014

Belinda Ang Saw Ean J:

Introduction

1 This action involved two residential property term loan agreements dated 9 June 2010 and 12 October 2010 respectively ("the Facility Agreements"). By the Facility Agreements, the plaintiff bank, Australian and New Zealand Banking Group Limited ("the Bank"), granted loans to the defendant borrower, Joseph Shihara Rukshan De Saram ("the Borrower"). The Borrower subsequently defaulted on interest payments due under the Facility Agreements and the Bank terminated the Facility Agreements on 10 September 2012. The Bank sued to recover monies due and owing from the Borrower.

2 On 14 March 2014, the Bank successfully obtained summary judgment against the Borrower. The Assistant Registrar ("AR") who heard the Bank's application for summary judgment (*vide* Summons No 2166 of 2013) ordered the Borrower to pay the following Judgment sums together with contractual interest, default fees and legal costs on a full indemnity basis:

(i) The sum of HK$4,043,424,75;

(ii) The sum of AU$ 480,862.92;

(iii) The sum of US$1,350.00;

(iv) Interest that continues to accrue on the principal sum of HK$3,994,239.20 under Facility 1 at the rate of 1.9017% per annum from 5 December 2012 till the date of full payment;

(v) Interest that continues to accrue on the principal sum of AU$464,000 under Facility 2 at the rate of 4.8454% per annum from 5 December 2012 till the date of full payment;

(vi) Default fees in respect of Facilities 1 and 2 that continues to accrue from 5 December

2012 until the date of full payment; and

(vii) Costs in the sum of $32,000 (inclusive of reasonable disbursements).

3 The Borrower filed Registrar's Appeal No 106 of 2014 ("RA 106") to appeal against the AR's decision. I dismissed the Borrower's appeal at the conclusion of the hearing on 25 July 2014. I also ordered costs of the appeal to be fixed at $7,000. In addition, I declined to stay execution of the summary judgment in the Bank's favour pending trial of the Borrower's Counterclaim.

4 The Borrower has appealed against my decision. I now give my grounds of decision for dismissing RA 106.

Facts underling the dispute

The First Loan Facility

5 By a facility letter dated 7 May 2010, the Bank offered to grant the Borrower a Residential Property Term Loan Facility. The Borrower accepted the facility on 9 June 2010 ("Facility 1"). The Bank's standard terms and conditions ("T&C") were also incorporated into Facility 1. [note: 1]

6 Clause 3 of Facility 1 allowed for funds to be drawn down by the Borrower through the form of a single currency (Australian Dollar) or cross currency (Australian Dollar and Hong Kong Dollar) loan. If the Borrower opted for a single currency loan, he could draw down a maximum sum of AU$668,000. If he opted for a cross currency loan instead, the total amount he could draw down was limited to a maximum sum of AU$584,500 or its equivalent in Hong Kong Dollars at the prevailing exchange rate two banking days before the date of the draw down. [note: 2] In either case, the maximum sum must be drawn down in one tranche within six months from the date of Facility 1.

7 Clause 8 of the Facility 1 provided that the interest periods applicable to the loan facility would be of a duration of either one month or three months subject to any variation by the Bank. Under cl 9 of Facility 1, the interest rate in respect of each interest period was fixed at 1.25% per annum over the Bank's cost of funds which is the cost the Bank would incur in raising deposits for an amount comparable to the loan or any part thereof and in the currency of the loan and for a term equivalent to the relevant interest period in the Singapore interbank market ("the Cost of Funds"). [note: 3] This Cost of Funds would be quoted by the Bank on the second business day before the commencement of each interest period. Clause 9 also provided that interest was payable by the Borrower to the Bank on the last day of each interest period. [note: 4]

8 Under cl 12 of Facility 1, the loan facility was secured by, *inter alia*, a mortgage over 127-129B Brisbane Street, Berwick, Victoria, Australia ("the First Property"). The Bank, pursuant to cl 14 of Facility 1, was entitled to rely on its own assessment of the value of the security pledged by the Borrower under cl 12 in determining the loan/security ratio. [note: 5]

9 A default is defined under cl 5(a)(i) of the T&C to include any failure to make payment for any sum payable when due, such as interest. Clause 5(b) of the T&C entitled the Bank to, upon any such default, terminate Facility 1 and demand for immediate repayment of all amounts owed by the Borrower to it under Facility 1. [note: 6]

10 On 9 July 2010, the Borrower drew down the maximum sum of HK$3,994,239.20 (the equivalent of AU$584,500 at the relevant exchange rate) as a cross currency loan pursuant to cl 3 of Facility 1.

[note: 7]

The Second Loan Facility

11 By a facility letter dated 11 October 2011, the Bank offered to grant the Borrower a second Residential Property Term Loan Facility. The Borrower accepted the facility on 12 October 2010 ("Facility 2"). The Bank's T&C was also incorporated into Facility 2. [note: 8] According to the Borrower's e-mail dated 14 September 2010 to the Bank, Facility 2 was intended to finance the purchase of a property known as 13 Fritzlaff Court, Berwick, Victoria, Australia ("the Second Property").

12 The terms of Facility 2 were largely in *pari materia* with the terms of Facility 1. The only material differences were in relation to cll 3 and 12 of Facility 2. Clause 3 of Facility 2 allowed the Borrower to draw down a maximum sum of AU$464,000 as a single currency loan or a maximum sum of AU$406,500 (or its equivalent in Hong Kong Dollars) as a cross currency loan. [note: 9] Under cl 12, Facility 2 was secured by, *inter alia*, a mortgage of the Second Property. [note: 10]

13 On or about 15 October 2010, the Borrower drew down the maximum sum of AU$464,000 as a single currency loan pursuant to cl 3 of Facility 2. [note: 11]

The Borrower's breaches of the Facility Agreements

14 Pursuant to cl 8 of the Facility Agreements, the interest period applicable to each loan facility was set at three months. According to the Bank, and this was not disputed by the Borrower, there were various occasions where the Borrower was late in making interest payments that gave rise to instances of default, as defined under cl 5(a)(i) of the relevant T&C. The first instance of default occurred when the Borrower, as shown in his Third Affidavit, failed to make timely interest payment *vis-à-vis* the Facility Agreements in January 2011 for the first quarter of 2011. [note: 12] Payment was only made subsequently.

15 In this action, the interest repayments under the Facility Agreements were due on 12 July 2012, but the Borrower did not make payment. The interest owed for that relevant period under Facility 1 and Facility 2 were HK$19,010.28 and AU$6,969.19 respectively. [note: 13] The Bank received no payment from the Borrower despite numerous reminders sent by the Bank over the period of 13 July 2012 to 27 August 2012. Although the Bank issued two Notices of Default dated 27 August 2012, the Bank informed the Borrower, on a without prejudice basis, that it would wait until 6 September 2012 for payment failing which it would take action.

16 In light of the failure of the Borrower to make good the default by 6 September 2012, the Bank terminated the Facility Agreements on 10 September 2012 and demanded immediate payment of all sums owed by the Borrower to the Bank pursuant to cl 5(b) of the T&C. [note: 14]

17 As stated, the Bank sued the Borrower on 4 December 2012.

The Borrower's Defence and Counterclaim

18 The Borrower's challenge to the Bank's application for summary judgment was presented by reference to the matters set out in the Borrower's Defence and Counterclaim (Amendment No 1):

(i) The Bank had delayed the processing of the mortgage documents for the First Property and was late in issuing the first facility letter offering Facility 1 to the Borrower ("Triable Issue 1");

(ii) The Bank had caused further delay after the Borrower had accepted and signed Facility 1 such that the draw down only took place on 9 July 2010 ("Triable Issue 2");

(iii) The Bank's appointed valuers had derived "an artificially low valuation for the First Property" which resulted in a lower maximum cap as to the amount the Borrower could have drawn down from Facility 1 ("Triable Issue 3");

(iv) The Bank had unilaterally deducted the stamp duty payable on the Second Property from the amount drawn down by the Borrower under Facility 2 ("Triable Issue 4");

(v) The Bank had "artificially inflated" its cost of funds *vis-à-vis* the interest payable under the Facility Agreements ("Triable Issue 5");

(vi) The Bank had "unilaterally changed" the interest rate payable over the cost of funds under the Facility Agreements from 1% to 1.25% ("Triable Issue 6");

(vii) The Bank had wrongfully terminated the Facility Agreements on 5 June 2012 ("Triable Issue 7");

(viii) The Bank had represented to the Borrower that "it would provide a high level of personal service, as well as internet banking facilities and credit cards" but had failed to do so ("Triable Issue 8"); and

(ix) The Bank had failed to administer the cross currency loan under Facility 1 properly ("Triable Issue 9").

19 The Borrower submitted that the allegations above (at [18]) were *bona fide* triable issues and that he should be given unconditional leave to defend. In the alternative, there existed sufficient reasons upon which there ought to be a trial (see O 14 r 3(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the ROC")). Lastly, the Borrower also sought an order to stay execution of the summary judgment pending the trial of the Borrower's Counterclaim.

Discussion and decision on RA 106

Overview

20 The Borrower put forward several triable issues for the purpose of defending the Bank's application for summary judgment. The Borrower did not specifically address the principal sums drawn down under the Facility Agreements, but he counterclaimed for damages in the sum of CHF 10.4m, and unliquidated damages for breach of the Facility Agreements. The Borrower essentially relied on his Counterclaim as his defence by way of counterclaim to the Bank's claims.

21 The Borrower in his written submissions claimed a right of equitable set-off in respect of his claim for damages against the sums which included his borrowings from the Bank. The Borrower alleged a close connection between the Bank's claims and the Borrower's Counterclaim to argue that it would be manifestly unjust to grant summary judgment without taking into account the Counterclaim.

22 There are several points to note about the defence of equitable set-off. First, the Borrower's defence of equitable set-off was inconsistent with his Counterclaim that sought rectification of the rate of interest of 1.25% per annum over the Bank's Cost of Funds as defined in the Facility Agreements.

23 Secondly, I agreed with counsel for the Bank that the triable issues identified by the Borrower could not be properly characterised as defences against the Bank's claims, and that the origin and the nature of the Borrower's cross-claims (assuming their validity) and their relationship to the Bank's claims were, at best, independent.

24 Thirdly, for the purpose of the defence of equitable set-off, the nature of the Counterclaim and the degree of connection between the Bank's claims and the Counterclaim would have to be examined. In this context, the court would be influenced by the requirements of justice. As Sundaresh Menon JC (as he then was) explained in *Abdul Salam Asanaru Pillai (trading as South Kerala Cashew Exporters) v Nomanbhoy & Sons Pte Ltd* [2007] 2 SLR(R) 856 at [30]–[34], each case would necessarily turn on whether or not the claims were so closely connected that it would offend one's sense of fairness or justice to allow one claim to be enforced without regard to the other.

25 Fourthly, I agreed with the Bank that the Borrower resorted to bare assertions of the Bank's negligence and various breaches of the Facility Agreements without specifying the clauses that were breached. [note: 15] In my view, the triable issues identified by the Borrower were equivocal, lacking in precision, ill-founded and fanciful. In short, there were no issues to be tried for the reasons explained below.

26 Following from the comments above (at [22]–[25]), the AR's decision to enter summary judgment in favour of the Bank was correct. In my view, the rights of the parties were defined by the Facility Agreements. In seeking to recover the unpaid principal sums plus contractual interest and default fees, the bank was doing no more than to exercise its contractual rights. The Bank's loans were repayable and the interests and default fees as claimed in the Statement of Claim were recoverable. This conclusion followed from my view that there were neither arguable defences nor the defence of equitable set-off by way of counterclaim to the Bank's claims.

27 As regards the *Miles v Bull* [1969] 1 QB 258 question supplemented by O 14 r 3(1) of the ROC as to whether "there ought for some other reason to be a trial of that claim or part", I was satisfied there was no other reason for trial of the Bank's claims. The argument that the Borrower needed time to trawl through his computer's metadata to search for evidence to support his complaints against the Bank would not suffice as "some other reason for a trial" (see *Lady Anne Tennant, The v Associated Newspapers Group Ltd* [1979] FSR 298 at 299; *cf Concentrate Engineering Pte Ltd v United Malayan Banking Corp Bhd* [1990] 1 SLR(R) 465).

28 I was further satisfied that a stay of execution of the judgment pending trial of the Counterclaim was not warranted seeing that the Counterclaim was: (a) not closely connected to the Bank's claims (see for *eg*, *Silberline Asia Pacific Inc v Lim Yong Wah Allen and Others* [2006] SGHC 27 ("*Silberline Asia Pacific*") at [3]); and (b) the Counterclaim was ostensibly fanciful (*ie*, there was no arguable triable issues, see for *eg*, *PH Grace Pte Ltd and others v American Express International Banking* Corp [1985-1986] SLR(R) 979 at [5]–[6]). I agreed with the Bank that the Borrower had merely made bare assertions of the Bank's negligence and of its various breaches of the Facility Agreements without specifying the clauses that were breached. As such, there was insufficient material to support any arguable case to advance at trial. With no particulars of the damages, the Borrower's assertion that his cross-claims exceeded the outstanding principal sums was of doubtful

validity. [note: 16]

29 One final observation relates to the history of the loans. It appeared that whilst the Borrower sought rectification of the rate of interest over the Bank's Cost of Funds as defined in the Facility Agreements on the ground of mistake, the Borrower had previously made payments of interest even though he was persistently late (see [14] above). As submitted by counsel for the Bank, the Borrower had made interest payments pegged at 1.25% per annum above the Bank's Cost of Funds on five occasions under the Facility Agreements. Counsel for the Borrower did not dispute this submission. [note: 17] The earlier payments were evidentially telling: (a) they signified the Borrower's affirmation of the principal sums that remained unpaid; and (b) exposed the fallacy of the show cause challenge on the ground of mistake. Evidently, the complaint that the interest rate was not 1.25% per annum, but 1% per annum instead, was an afterthought. The Borrower's previous payment of interest without objections was conduct entirely inconsistent with there being such a *bona fide* issue. As for the principal sums due and owing under the Facility Agreements, the Borrower's obligation to repay the loans remained even if (for the sake of argument) there was something to be said about the Counterclaim. In the event, judgment should be granted leaving the Borrower to pursue his Counterclaim independently seeing that there was no separate application to strike out the Counterclaim.

Discussion

30 I now turn to elaborate on my decision to dismiss RA 106. I will comment on each of the allegations set out in the Borrower's Counterclaim (at [18] above). This approach is more convenient than following the sequence of the Borrower's list of triable issues in his written submissions. I do not think sequence matters and nothing turns on the fact that the Borrower had dealt with "cross currency conversion" as his first triable issue and "cost of funds" as his second triable issue and so on.

Triable Issue 1: Delay in the processing of mortgage documents for the First Property and the late offering of Facility 1.

31 The Borrower, in his Defence and Counterclaim (Amendment No 1), alleged that the Bank had delayed the processing of the mortgage documents for the First Property which resulted in its lateness in offering Facility 1 to the Borrower on 7 May 2010. This complaint pertained to Facility 1 and it could hardly constitute a defence to the Bank's claims under Facility 2. Even if there were delays on the part of the Bank in respect of Facility 1, the Borrower had nonetheless accepted the terms of Facility 1 and borrowed the sum of HK$3,994,239.20. Delay could hardly serve as an excuse *not* to repay the loan borrowed under Facility 1.

32 Besides, the Borrower's allegation of delay was also arguably baseless. According to the Borrower, he submitted a mortgage loan application in or about June 2009, but Facility 1 was only offered a year later on 7 May 2010 because of the Bank's delay in processing his loan application. However, a closer scrutiny of the communications between the Borrower and the Bank disclosed that the Bank had in fact issued a facility letter to the Borrower offering him a Residential Property Term Loan Facility on 29 October 2009 pursuant to his mortgage loan application. [note: 18] That proposed loan facility was to be secured by five properties which included the First Property. [note: 19] It transpired that the Borrower rejected this proposed loan facility and informed the Bank on 18 November 2009 that he only wanted a loan facility that was to be secured against two properties, one of which was the First Property.

33 The Bank then issued a second facility letter on 26 November 2009 offering a Residential Property Term Loan Facility that was to be secured by two properties. The Borrower accepted and signed this November 2009 facility letter on 1 December 2009. [note: 20] However, cl 12 of the loan facility required the Borrower to execute a first registered mortgage over the properties as a condition precedent to funds being made available by the Bank for draw down. [note: 21] Thus, the Borrower was required to submit the original Certificate of Title for the First Property, which he did, but it could not meet the condition precedent of the facility. By way of explanation, the Borrower admitted that the Certificate of Title was still "in the name of the original vendor", Paddington Square Pty Ltd, [note: 22] and that effectively precluded any execution of a first registered mortgage over the First Property to facilitate a draw down under the November 2009 loan facility. That was the state of affairs even though the Borrower said he had forwarded the original Certificate of Title for the First Property to the Bank prior to 11 January 2010.

34 The transfer of the First Property was, in fact, only done on 17 March 2010. [note: 23] The Borrower also accepted the fact that the Certificate of Title in the name of the Borrower was only forwarded to the Bank on 23 April 2010. [note: 24]

35 Before 23 April 2010, the Borrower changed his mind again. This time, he only wanted to mortgage the First Property and required the loan facility to be changed. [note: 25] The Bank accommodated and accordingly forwarded the facility letter offering Facility 1 on 7 May 2010.

36 From the narrative above (at [32]–[35]), the alleged delay concerned a different loan that was eventually "superseded" by Facility 1. [note: 26]

37 I also noted the Borrower's allegation that the Bank caused further delay that resulted in the conclusion of Facility 1 on 9 June 2010. Considering the fact that facility letter was delivered to the Borrower overseas by mail (since the agreement, which had to be signed by both the Borrower in the presence of the Bank's staff or solicitor who must also sign off as a witness, could not be concluded by simply exchanging soft copies of the agreement) [note: 27] the period of time from 7 May 2010 to 9 June 2010 could not be considered as a "delay".

Triable Issue 2: Further delay that resulted in the draw down taking place only on 9 July 2010

38 The Borrower referred to further delays after the First Loan Facility was concluded on 9 June 2010. The complaint was that the delay resulted in him only being able to draw down the sum of HK$3,994,239.20 on 9 July 2010. He indicated that he had meant to draw down the loan in the first two weeks of June 2010 and that the delay had caused him a cash flow deficit of AU$500,000 that resulted in him and third parties having to expend personal time to resolve. [note: 28] This allegation could not serve as a defence to the Bank's claims. I also noted that the purported delay was due to the Borrower's late compliance with a condition precedent required to be satisfied before any draw down could take place under cl 13(c) of Facility 1. In particular, the Borrower was late in providing the Bank with "a certified extract of the Trustees' Resolution approving the execution, delivery and performance of this Facility letter". [note: 29] The document was only certified to be true on 30 June 2010, and the Bank subsequently received the respective certified document on 6 July 2010. [note: 30] The Bank thereafter allowed the Borrower to draw down on 9 July 2010.

Triable Issue 3: Undervaluation of the First Property

39 The Borrower also alleged that the First Property was undervalued by the Bank's appointed registered valuers. The First Property was valued by the registered valuers at AU$835,000. [note: 31] Significantly, the Borrower was fully aware of the valuation on 6 May 2010 [note: 32] and this was before he accepted Facility 1. The Borrower signified his acceptance of the valuation by signing Facility 1. These events overtook his initial suggestion made on 13 April 2010 that another valuation be done given his belief that the property should be valued at AU$950,000. [note: 33] I agreed with the Bank that the Borrower was aware that the maximum draw down amounts in cl 3 were derived from the AU$835,000 valuation.

40 Furthermore, by accepting Facility 1, the Borrower also agreed to cl 14 of Facility 1, described above (at [8]), which entitled the Bank to rely on its own valuation of the First Property. In any event, this undervaluation allegation was undeniably a bare and unfounded assertion on the part of the Borrower.

Triable Issue 4: Unilateral reduction of stamp duty in respect of the Second Property

41 The Borrower also alleged that the Bank was not entitled to deduct the stamp duty payable on the Second Property from the loan amount that was to be otherwise disbursed in full under Facility 2. His contention in his written submissions was that he had specifically allocated the whole of the loan amount upon its draw down to meet his "transactional arrangements". [note: 34]

42 I agreed with the Bank that the Borrower had not adduced any evidence of his alleged "transactional arrangements". The allegation that he had to close out his UBS facility was a bare assertion.

43 The Bank contended that Facility 2 was a residential term loan to finance the purchase of the Second Property. Under the terms of the relevant T&C, which was incorporated into the Second Loan Facility, the Bank was entitled to make the deduction from the loan amount. In any case, the amount deducted was for the purpose of satisfying the Borrower's own payment obligations as the buyer of the Second Property.

44 Clause 14(b) of the T&C clearly included "stamp duties" amongst the fees which were for the account of the Borrower. [note: 35] The Bank could therefore rely on cl 15(b)(ii)(c) of the T&C, which explicitly gave it the "right to debit the Borrower's account to cover … any fees … payable by the Borrower", [note: 36] to deduct the stamp duty payable on the Second Property from the Borrower's account under Facility 2.

45 Furthermore, the Borrower was promptly informed of the deduction on 14 October 2010 [note: 37] and his only complaint then, as reflected in his e-mails on 17 October 2010 and 18 October 2010, was that he had three months to pay stamp duty and that the Bank was not required to deduct stamp duty from his account immediately. [note: 38] Evidently, the Borrower had simply disagreed with the timing of the deduction rather than the deduction itself.

46 For these reasons, I agreed with the bank that there was no triable issue in relation to the deduction of the stamp duty.

Triable Issue 5: Artificial inflation of cost of funds

47 This complaint is applicable to both loans. The Borrower alleged that the Bank had overcharged

him by way of interest payments due to its "unilateral inflation" of the Cost of Funds. The Borrower had not substantiated his claim that the Bank's Cost of Funds rates were higher than other banks nor adduced any evidence on how the bank manipulated and/or artificially inflated the rate of the Cost of Funds. In particular, the Borrower had not quantified the amount by which he had ostensibly overpaid the Bank.

48 By cl 9 of the Facility Agreements, the interest payable included the Cost of Funds and the Bank was entitled to fix the interest rate at 1.25% per annum over the Bank's cost of Funds as quoted by the Bank.

49 Clause 9 further defined Cost of Funds as: [note: 39]

> The term "Cost of Funds" is the cost to the [Bank] of raising deposits for an amount comparable to the loan or any part thereof and in the currency of the loan and for a term equivalent to the relevant Interest Period in the Singapore interbank market.

50 In the present case, the Borrower's allegation of inflated Cost of Funds and overpayment of interest was entirely speculative and argumentative. As stated in [47] above, the Borrower did not adduce any evidence as to what the Cost of Funds chargeable should have been and how much the Bank had inflated the Cost of Funds by. The Borrower only referred to the Bank's letter to the Borrower dated 7 June 2012 which explained the Cost of Funds charged by the Bank: [note: 40]

> In regard to your allegation in relation to "deceptive business practices", and your subsequent comments in regard to the Bank's Cost of Funds (COF) rate applied to your Loan Facility, we refer you to the Facility Letter pertaining to your Loan. The "Cost of Funds" applicable to your Facility is indicated as the cost to ANZ, to raise comparable funds in the Singapore interbank market, to provide an advance in relation to your Loan Facility.
>
> For clarity, such cost consists of (i) rate of relevant benchmark and tenor to the currency of your Facility in the Singapore interbank market, (ii) costs to ANZ Group to raise deposits and utilise the same and (iii) costs to ANZ to maintain liquidity in accordance with ANZ Group's regulatory obligations.
>
> Such rate is, of course, also subject to the prevailing conditions evident within that particular market, and the global financial markets generally.

51 The Borrower then contended without more that factors (i), (ii) and (iii) listed in the Bank's letter above should not have been considered by the Bank in the computation of the Cost of Funds. He argued that the factors listed fell outside the scope of the definition found in cl 9. His assertion was simply without any basis since the three factors were clearly constituents of the Cost of Funds defined under cl 9 of the Facility Agreements.

52 The first factor related to the cost of raising the amount loaned by the Borrower in the context of the rate of lending ("relevant benchmark") over a period of time ("tenor") in respect of the currency of the loan ("currency of your Facility") in the Singapore interbank market. Such costs were clearly encapsulated by the definition of Cost of Funds under cl 9 of the Facility Agreements.

53 The second factor related to the costs incurred by the Bank specifically in raising deposits, such as administrative costs, which are not related to the lending rate identified under the first factor. Such costs constitute part of the Cost of Funds of the Bank in the form of "cost to the [Bank] of raising deposits".

54 The third factor then related to a more specific form of cost incurred when raising a deposit given that banks are required to maintain a certain degree of liquidity based on its available funds which would be affected by the raising of a deposit.

55 In the premises, there was no real basis for the Borrower to object to the three factors.

56 The Borrower also argued that the Cost of Funds should not have been affected by the "prevailing conditions within the particular market, and the global financial markets generally". This argument was entirely flawed. Given that particular mention was made to the Singapore interbank market in relation to the Cost of Funds under cl 9 of the Facility Agreements, it must be the case that the prevailing conditions within the Singapore interbank market ("the particular market") would affect the Cost of Funds. Additionally, such a market would also be affected by the global financial market generally, and consequently, the Cost of Funds would be affected by the global financial market.

57 The Borrower therefore failed to raise any triable issue since its allegation that the Cost of Funds was artificially inflated by the Bank was clearly a bare assertion.

58 The Borrower was given an indication on 13 April 2010 of the interest payable, including the cost of funds, prior to entering Facility 1. The amounts provided then (inclusive of 1.25% interest over the Cost of Funds) were 6.05% and 1.55% for an Australian Dollar and Hong Kong Dollar loan respectively. [note: 41] The Borrower did not object to those rates. The Borrower also enquired as to the prevailing interest rates on the Facility Agreements on 11 July 2011 and was informed that they were 6.2829% and 1.6664% for Facility 2 (in Australian Dollars) and Facility 1 (in Hong Kong Dollars) respectively. [note: 42] The Borrower did not object to those rates as well. In addition, the Bank submitted that the Borrower's allegation of an artificially inflated Cost of Funds was raised for the first time in a letter dated 7 June 2012 after he had made interest payments for over 2 years based on the interest rate of 1.25% per annum over the Bank's Cost of Funds. [note: 43] The Borrower's previous payments of interest without any objections amounted to conduct entirely inconsistent with there being such a *bona fide* issue (see [29] above).

59 Lastly, the Bank had also issued two Conclusive Certificates [note: 44] which dealt with, *inter alia*, the Bank's Cost of Funds pursuant to cl 20 of the T&C, a conclusive evidence clause, which provided that: [note: 45]

> A certificate of the [Bank], as to the [Bank's] cost of funds, any outstandings (including but not limited to principal and/or interest) and contingent or other liabilities due to the [Bank], any losses suffered by the [Bank] and/or which the [Borrower] is liable for, shall be conclusive and binding on the [Borrower], save for manifest error or fraud.

60 As stated by Judith Prakash J in *RBS Coutts Bank Ltd v Shishir Tarachand Kothari* [2009] SGHC 273 at [8]:

> It is axiomatic that a certificate or statement issued pursuant to a conclusive evidence clause is, in the absence of fraud or manifest error on the face of the certificate, *determinative of the amount due*. In *Bache & Co (London) Ltd v Banque Vernes et Commercials De Paris SA* [1973] 2 Lloyd's Rep 437 ("*Bache*") Lord Denning MR said at p 440:
>
> > I would only add this: this commercial practice (of inserting 'conclusive evidence' clauses) is only acceptable because the bankers or brokers who insert them are known to be honest and reliable men of business who are most unlikely to make a mistake. Their standing is so high

> that their word is to be trusted. So much so that a notice of default given by a bank or a broker must be honoured. It ranks as equivalent to, if not higher than, the certificate of an arbitrator or engineer in a building contract. As we have repeatedly held, such a certificate must be honoured, leaving any cross-claims to be settled later by an arbitrator. So if a banker or broker gives a notice of default in pursuance of a 'conclusive evidence' clause, the guarantor must honour it, leaving any cross-claims by the customer to be adjusted in separate proceedings.

The above articulation of the rationale underlying the legal acceptance of conclusive evidence clauses was approved in *Bangkok Bank Ltd v Cheng Lip Kwong* [1989] SLR 1154 ("*Bangkok Bank*") where Yong Pung How J stated at [18]–[19]:

> The widespread use by banks of 'conclusive evidence' clauses has arisen simply because of the dictates of commerce, and has been supported by the assumption that money institutions, which are themselves closely regulated by the law, are completely honest and reliable … What is significant is that, in the absence of fraud or obvious error on the face of it, a certificate issued under a 'conclusive evidence' clause is conclusive of both the liability and the amount of the debt.

[emphasis in original]

61 As the Bank submitted, the Borrower did not point to any hint of manifest error or fraud in respect of the certificates issued by the Bank. The Borrower also did not raise any issue as to the propriety of the Bank's demands under the certificates—a challenge which may be brought regardless of a conclusive evidence clause (see *Standard Chartered Bank v Neocorp International Ltd* [2005] 2 SLR(R) 345 at [25]). The Borrower therefore had no basis to challenge the Bank's computation of its Cost of Funds and its complaint in this regard was patently unmeritorious. The Cost of Funds stated by the Bank in the two Conclusive Certificates were conclusive and binding on the Borrower from 17 April 2013 to the date of full repayment.

Triable Issue 6: Unilateral increase of interest rate payable from 1% over the cost of funds to 1.25% over the cost of funds

62 The Borrower's next allegation related to the fact that the interest rate payable under the Facility Agreements should have been 1% per annum over the Cost of Funds. This complaint was without merit as well. In short, there was no issue for trial.

63 The Borrower based his allegation on the fact that there were earlier discussions with the Bank in July 2009 and September 2009 whereby the Bank suggested an interest rate of 1% per annum over the Cost of Funds. He also pointed out that the loan facility offered to him by the Bank on 26 November 2009 also provided for an interest rate of 1% per annum over the Cost of Funds.

64 According to the Bank's evidence, the Facility Agreements, which were concluded at a much later date, provided for an interest rate of 1.25% per annum over the Cost of Funds under cl 9. The Borrower was aware of the new rate of 1.25% per annum over the Cost of Funds. The Bank had in fact specifically informed the Borrower that the interest rate would be 1.25% per annum over the Cost of Funds on 13 April 2010 prior to the Borrower signing the respective facility letters and the Borrower had also acknowledged this on the same day. [note: 46]

65 The Borrower must be taken to have accepted such an interest rate when he signed the respective facility letters. Notably, no particulars were pleaded in support of the Borrower's allegation

that he was mistaken about the rate of interest when he signed the Facility Agreements. The allegation of a unilateral increase in the interest rate was raised for the first time in the Defence and this plea was contrary to the Borrower's previous interest repayments based on the rate of 1.25% per annum over the Cost of Funds as mentioned at [29] above. [note: 47] As the Bank pointed out, the Borrower's previous payment of interest without objections was conduct entirely inconsistent with there being such a *bona fide* issue.

Triable Issue 7: Wrongful termination of the Facility Agreements on 5 June 2012

66 Triable Issue 7 was not intended to invalidate the Bank's termination in September 2012. The complaint in Triable Issue 7 was another instance of the unhappy banking relationship between the Borrower and the Bank's Mr Mitchell Lobb ("Mr Lobb"), an associate director of the Bank (see [71]–[75] below). Mr Lobb was the relationship manager assigned to the Borrower sometime after September 2010.

67 The incident in question related to the Borrower's late payments of interest under the Facility Agreements which were due on 12 April 2012. As a result of the Borrower's failure to pay on the due date, Mr Lobb sent a text message to the Borrower that purported to terminate the Facility Agreements on 5 June 2012. In this present action, the Borrower's allegation was that Mr Lobb's text message had caused "business disruptions". In my view, the alleged "business disruption", if any, would have to have been from the short period of 5 June 2012 to 7 June 2012. In any case, the Borrower's alleged consequential damages flowing from the "business disruptions" were not particularised in the pleadings and were vague. [note: 48]

68 Reverting to the facts as alleged, the contention was that Mr Lobb had earlier informed the Borrower on 5 June 2012 that the Bank would terminate the Facility Agreements "once the arrears hits 60 days" (starting from the date of default, 12 April 2012), with the Borrower being 54 days in arrears on that day. [note: 49] The Borrower therefore argued that this amounted to a premature termination of the Facility Agreements.

69 It must first be noted that, pursuant to cl 5(b) of the T&C incorporated into the Facility Agreements, the Bank was entitled to terminate the Facility Agreements upon any incident of default, which included a failure to pay interest on time as defined under cl 5(a)(i) of the T&C. This would mean that the Bank was entitled to terminate the Facility Agreements back in June 2012. Mr Lobb's reference to the additional time period granted to the Borrower in the form of 60 days was not intended to be an unequivocal suspension of the Bank's strict legal rights. In any event, according to the Bank, it was entitled to terminate the Facility Agreement having issued an Event of Default notice on 28 May 2012 for the Borrower's failure to pay interest payments due on 12 April 2012. In addition, in the Event of Default notice sent to the Borrower by the Bank, the Bank clearly reserved its right to terminate the Facility Agreements: [note: 50]

> For the avoidance of doubt, all the [Bank's] rights in respect of this matter are strictly reserved. No failure or delay by the [Bank] in exercising any right, power, privilege or remedy under the Facility shall impair any such right, power, privilege or remedy under the Facility or operate as a waiver thereof or preclude any other or further exercise thereof.

70 The Bank was therefore entitled to terminate the Facility Agreements on 5 June 2012. But the Bank did not terminate the Facility Agreements. In fact, it clarified with the Borrower on 7 June 2012 that the Facility Agreements had not been terminated. [note: 51] The Borrower acknowledged receipt of this letter [note: 52] and must be taken to have accepted the Bank's clarification on 7 June 2012 as

he proceeded to make payment of the interest due on 12 April 2012. He also acknowledged the continued existence of Facility Agreements by acknowledging the Bank's reminders sent after the incident to make interest payments due on 12 July 2012 under the Facility Agreements. [note: 53] Therefore, this was not a claim for wrongful termination in the legal sense, but rather a mere complaint against the conduct of Mr Lobb, which would not give rise to a triable issue as explained at [67] above.

Triable Issue 8: Unhappiness with other personal services provided by the Bank

71 The Borrower was also unhappy with other aspects of services provided to him by the Bank. Those services included credit card and internet banking services. He also had complaints in relation to the refinancing of another loan in relation to another property not covered by the Facility Agreements. These complaints were entirely unrelated to the Facility Agreements and were not connected with the Bank's claims at all. They could not amount to a defence to the Bank's claims in any way.

72 The Borrower was also unhappy with the services provided by Mr Lobb. His complaints were that Mr Lobb: [note: 54]

(i) provided incorrect account information to the Borrower in respect of making payment towards the facility, which resulted in penalties for the Borrower;

(ii) failed to convey facility payment dates in a timely and/or competent manner;

(iii) failed to execute instructions provided by the Borrower in an accurate and timely manner; and

(iv) failed to provide adequate and complete explanations and advice with regard to investment opportunities that he had personally communicated to the Borrower.

73 As regards the first complaint against Mr Lobb, the Borrower alleged that he had omitted the bank and branch codes when providing him with banking details on 31 January 2011 and that the banking details were also different from that provided for under the T&C. The Borrower argued that this had caused his late payment of interest under the Facility Agreements for the first quarter of 2011. [note: 55] This could not have been the case. The Borrower had in fact admitted in his Third Affidavit that he was already late in making payment by 31 January 2011 and that this lateness related to his second complaint against Mr Lobb which I will deal with below at [74]. [note: 56] In any event, the details provided by Mr Lobb were an alternative method of transfer different from that stipulated under the T&C which did not require bank and branch codes to be provided. It was also implausible that the Borrower, who had already been making interest payments to the Bank since 2010, would suddenly be unaware as to how to make such payments in January 2011.

74 The second complaint revolved around the fact that Mr Lobb was sending documents, such as payment reminders, to the Borrower's mailing address in Bahamas when he was actually in Singapore. [note: 57] Although the Borrower had informed Mr Lobb of his presence in Singapore at certain points in time, he had never indicated any change to his mailing address which was required of him under cl 16(b) of the T&C. [note: 58] The Bank was only informed of this change on 5 March 2012. [note: 59] It was therefore clearly the fault of the Borrower rather than Mr Lobb *vis-à-vis* the mailing address problem raised by the Borrower.

75 As for the other two complaints, they related to services provided by Mr Lobb in other aspects not concerned with the Facility Agreements. They were therefore not defences to the Bank's claims.

Triable Issue 9: Failure to administer the cross currency loan properly

76 The Borrower's final allegation related to Facility 1. It was alleged that the Bank had failed to administer the cross currency loan properly. According to the Borrower, he was entitled to convert the HK$3,994,239.20 drawn down as a cross currency loan under Facility 1 to Australian Dollars. This was provided for under cl 5 of Facility 1 which applied for a cross currency loan only: [note: 60]

> Subject to the [Bank's] availability of funding as determined at its absolute discretion, the above Facility may be converted into any one of the following currencies viz AUD and HKD on interest payment dates provided that advance written notice is given to the [Bank] at least 7 business days prior to the required value date of the foreign exchange transaction. The spot foreign exchange rate will have to be booked with the [Bank] to enable the conversion to be effected on the agreed value date which should coincide with the interest payment date.
>
> If a conversion is to be carried out on a non interest payment date, the [Borrower] shall be liable for any additional costs, expenses and/or liabilities sustained or incurred by the [Bank] as a result of having to break the funding deposit required for the loan. All procedures as described above in this clause shall also apply. The necessary notice period as described above for conversion of the loan shall also apply. The [Bank] reserves the right to review frequency of currency conversions if, in the opinion of the [Bank], the borrower is switching currency for speculative purposes.

According to the Borrower, he had requested the HK$3,994,239.20 loan to be convered to Australian Dollars twice and the Bank failed to adhere to his wishes on both occasions.

77 The Bank did not dispute the fact that the HK$3,994,239.20 could be converted to Australian Dollars pursuant to cl 5 of Facility 1. The Bank, however, pointed out that the Borrower had only detailed in his Third Affidavit one such request made on 18 October 2010.

78 The Borrower explained that, in light of the Australian Dollar appreciating against the Hong Kong Dollar, he had requested the HK$3,994,239.20 loan to be converted to Australian Dollars so that he might draw down more Australian Dollars under Facility 1. In his request, he had also wanted to draw down the difference between the limit of AU$668,000 applicable to a single currency loan under cl 3 Facility 1 and the respective amount of Australian Dollars he would have had after the conversion of the HK$3,994,239.20 he had initially drawn down as a cross currency loan. [note: 61]

79 This request was not in accordance with the terms of Facility 1 on two grounds. First, the draw down limit of AU$688,000, which was pegged at 80% of the valuation of the First Property stated above (at [39]), was only applicable to a single currency loan. Under a cross currency loan, the draw down limit was set at AU$584,500—70% of the valuation of the First Property. Although the Borrower could convert the HK$3,994,239.20 he had drawn down under a cross currency loan to Australian Dollars only, this did not allow him to convert the cross currency loan to a single currency loan so as to allow him to be subjected to a higher draw down limit. He would still have been subjected to the 70% draw down limit of AU$584,500.

80 Secondly, cl 7 of the First Loan Facility clearly provided that a draw down had to be made "in a maximum of 1 tranche within 6 months from the date of this Facility Letter". [note: 62] This meant that the Borrower would not be able to draw down any more monies after he had drawn down the

HK$3,994,239.20 on 9 July 2010. Even if conversion of HK$3,994,239.20 would have given rise to an amount in Australian Dollars lower than AU$584,500, he would still have been unable to draw down up to the AU$584,500 limit because he had already exhausted the one draw down tranche he was permitted under cl 7. A draw down to reach the limit of AU$688,000 as requested by the Borrower was hence entirely out of the question. The second point was in fact explained to the Borrower by Mr Lobb in an e-mail rejecting the Borrower's request. [note: 63]

81 Therefore, what the Borrower, under his own misapprehension as to the terms of Facility 1, was attempting to do was to take advantage of the appreciation of the Australian Dollar against the Hong Kong Dollar so that he could draw down more Australian Dollars under Facility 1. Counsel for the Borrower, however, also argued that the Bank should have nonetheless converted the HK$3,994,239.20 to Australian Dollars despite the fact that the Borrower could not have drawn down any further amount of Australian Dollars after that. Such an argument is flawed for two reasons. First, the exercise would have been be pointless (or even costly) if the Borrower was not allowed to make such a draw down and this was the case given that he was not permitted to do so pursuant to cl 7 of Facility 1. Secondly, the Borrower therefore very predictably acknowledged Mr Lobb's explanation as to his inability to draw down without any objections and made no further request to convert the HK$3,994,239.20 he had already drawn down. [note: 64] It was therefore reasonable for the Bank to have done nothing following such an acknowledgement since the onus was on the Borrower to further clarify that he would like to have the HK$3,994,239.20 converted to Australian Dollars nonetheless.

82 The Borrower was therefore in no position to complain about the Bank not acceding to his request on 18 October 2010. The Bank was entitled to refuse his request in accordance with the terms of Facility 1. The Borrower's allegation in this regard was therefore without merit as well. The Borrower could not show that the refusal of his request by the Bank gave rise to a triable issue.

Summary judgment in the Bank's favour

83 For the reasons above, I rejected all of the allegations raised by the Borrower. They were either without merit or were not in the nature of a defence to the Bank's claims. The Borrower had also failed to raise any issue of manifest error, fraud or impropriety of claim *vis-à-vis* the two Conclusive Certificates, which detail the Bank's claims, issued by the Bank in accordance with the conclusive evidence clause under cl 20 of the T&C (see [59]–[61] above). Even if the allegations could give rise to certain matters counterclaimed, they were separate cross-claims and the Bank should not be put to the trouble and expense of proving its own claims. I therefore agreed with the AR's decision in SUM 2166/2013 to grant the Bank summary judgment.

No stay of execution

84 As regards the Borrower's application to obtain a stay of execution of the summary judgment, I was of the opinion that no such stay should be ordered. As was stated in *Silberline Asia Pacific* at [3], a court, when exercising its discretion in relation to the ordering of a stay of execution of a summary judgment, must have regard to the following factors:

(i) Degree of connection between the claim and counterclaim;

(ii) Merits of the counterclaim;

(iii) Financial ability of the plaintiff to satisfy any judgment on the counterclaim; and

(iv) Whether a stay of execution will effectively require a successfully plaintiff to wait for its

money.

85 As mentioned above, the Borrower's Counterclaim was not directly (and hence not closely) connected to the Bank's claims. Furthermore, an analysis of the Borrower's complaints above (some of which constitute grounds of the Borrower's Counterclaim) showed that they were plainly without merit.

86 The Borrower counterclaimed the total sum of CHF10.4m. Even though the sum of CHF10.4m (approximately S$14m) was a large sum, the Borrower omitted to particularise his claim and had failed to specify how it was derived. The Borrower only vaguely explained that CHF8.9m was losses which "have accumulated by virtue of my personal time wasted as well as disruptions to business" caused by the "cumulative failures of Mr Lobb and [the Bank]". [note: 65] The Borrower did not explain how the alleged wasted personal time and disruptions to business were eventuated and how the sum of CHF8.9m was derived. The Borrower had only provided a very brief table which showed that he was to be compensated for, *inter alia*, 700 additional "Hours Worked" at a rate of CHF16,707 per hour (approximately S$22k per hour). [note: 66] The Borrower gave no indication as to how he derived the 700 "Hours Worked" and his hourly rate of CHF16,707. Furthermore, the sum tabulated pursuant to the table was also not the CHF8.9m counterclaimed.

87 In any event, the Borrower did not adduce evidence that the Bank, as a financial institution, would not be able to satisfy any judgment on the counterclaim. For these reasons and those given above, I decided that no stay of execution of the summary judgment should have been ordered.

Outcome of RA 106

88 For these reasons, I dismissed the Borrower's appeal with costs fixed at $7,000.

[note: 1] Maya Lim's Second Affidavit, pp 2–3 at [8]–[10].

[note: 2] Maya Lim's Second Affidavit, Tab ML-1, pp 29–30.

[note: 3] Maya Lim's Second Affidavit, Tab ML-1, p 31.

[note: 4] Maya Lim's Second Affidavit, Tab ML-1, p 31.

[note: 5] Maya Lim's Second Affidavit, Tab ML-1, pp 32–33.

[note: 6] Maya Lim's Second Affidavit, Tab ML-2, p 40.

[note: 7] Maya Lim's Second Affidavit, p 11 at [14].

[note: 8] Maya Lim's Second Affidavit, p 11 at [16]–[17].

[note: 9] Maya Lim's Second Affidavit, Tab ML-5, p 56.

[note: 10] Maya Lim's Second Affidavit, Tab ML-5, p 59.

[note: 11] Maya Lim's Second Affidavit, p 12 at [20].

[note: 12] Joseph Shihara Rukshan De Saram's Third Affidavit, pp 43–44 at [128].

[note: 13] Maya Lim's Second Affidavit, Tab ML-9, pp 97 and 99.

[note: 14] Maya Lim's Second Affidavit, Tab ML-15, p 129.

[note: 15] Bank's Submissions dated 8 May 2014, p 20 at para 58(b).

[note: 16] Bank's Submissions dated 8.5.14 at para 58(b).

[note: 17] Notes of Arguments, pp 4–5.

[note: 18] Maya Lim's Third Affidavit, Tab ML-38.

[note: 19] Maya Lim's Third Affidavit, Tab ML-38, p 101.

[note: 20] Maya Lim's Second Affidavit, Tab ML-16.

[note: 21] Maya Lim's Second Affidavit, Tab ML-16, p 135.

[note: 22] Borrower's Submissions dated 25.7.14, p 29 at [64].

[note: 23] Maya Lim's Third Affidavit, Tab ML-35.

[note: 24] Joseph Shihara Rukshan De Saram's Third Affidavit, pp 24–25 at [67(a)].

[note: 25] Maya Lim's Second Affidavit, Tab ML-17, p 177.

[note: 26] Maya Lim's Second Affidavit, para 40(g).

[note: 27] Joseph Shihara Rukshan De Saram's Third Affidavit, Tab 13, p 143.

[note: 28] Borrower's Submissions para 66.

[note: 29] Maya Lim's Second Affidavit, Tab ML-1, p 33; Maya Lim's Third Affidavit, Tab ML-36, pp 67 and 74–76.

[note: 30] Maya Lim's Third Affidavit, Tab ML-36, pp 84–87.

[note: 31] Maya Lim's Second Affidavit, Tab ML-18, p 181.

[note: 32] Maya Lim's Second Affidavit, Tab ML-18, p 184.

[note: 33] Joseph Shihara Rukshan De Saram's Third Affidavit, Tab 53, p 316.

[note: 34] Borrower's Submisisons paras 67 and 68.

[note: 35] Maya Lim's Second Affidavit, Tab ML-2, p 43.

[note: 36] Maya Lim's Second Affidavit, Tab ML-2, p 44.

[note: 37] Maya Lim's Second Affidavit, Tab ML-19, p 188.

[note: 38] Maya Lim's Second Affidavit, Tab ML-19, pp 189 and 191.

[note: 39] Maya Lim's Second Affidavit, Tab ML-1, p 31.

[note: 40] Maya Lim's Second Affidavit, Tab ML-32.

[note: 41] Maya Lim's Second Affidavit, Tab ML-21, p 215.

[note: 42] Maya Lim's Second Affidavit, Tab ML-22, p 219.

[note: 43] Bank's Submissions, paras 93 & 94.

[note: 44] Maya Lim's Second Affidavit, Tab ML-20, pp 208–209.

[note: 45] Maya Lim's Second Affidavit, Tab ML-2, p 49.

[note: 46] Maya Lim's Second Affidavit, Tab ML-24, pp 224–225.

[note: 47] Bank's Submisisons para 110.

[note: 48] Defence and Counterclaim (Amendment No 1), pp 8–10 at [7B].

[note: 49] Joseph Shihara Rukshan De Saram's Third Affidavit, Tab 31, pp 233–235.

[note: 50] Maya Lim's Second Affidavit, Tab ML-8. pp 95.

[note: 51] Maya Lim's Second Affidavit, Tab ML-23, p 222.

[note: 52] Joseph Shihara Rukshan De Saram's Third Affidavit, p 41 at [118].

[note: 53] Maya Lim's Second Affidavit, Tab ML-11.

[note: 54] Defence and Counterclaim (Amendment No 1), pp 9–10 at [9(d)].

[note: 55] Joseph Shihara Rukshan De Saram's Third Affidavit, pp 43–44 at [128].

[note: 56] Joseph Shihara Rukshan De Saram's Third Affidavit, p 43 at [128].

[note: 57] Joseph Shihara Rukshan De Saram's Third Affidavit, pp 42–43 at [124]–[127].

[note: 58] Maya Lim's Second Affidavit, Tab ML-2, p 46.

[note: 59] Maya Lim's Third Affidavit, Tab ML-40, pp 124–125.

[note: 60] Maya Lim's Second Affidavit, Tab ML-1, p 30.

[note: 61] Joseph Shihara Rukshan De Saram's Third Affidavit, Tab 6, p 109.

[note: 62] Maya Lim's Second Affidavit, Tab ML-1, p 31.

[note: 63] Maya Lim's Third Affidavit, Tab ML-30, p 24.

[note: 64] Maya Lim's Third Affidavit, Tab ML-30, p 23.

[note: 65] Joseph Shihara Rukshan De Saram's Third Affidavit, p 46 at [138].

[note: 66] Joseph Shihara Rukshan De Saram's Third Affidavit, Tab 39A.