IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 288

Suit No 79 of 2018

Between

Epoch Minerals Pte Ltd

… *Plaintiff*

And

(1) Raffles Asset Management (S) Pte Ltd
(2) AKS Consultants Pte Ltd
(3) Kamil bin Jumat
(4) Gangadhara Brhmendra Srikanth Maroju

… *Defendants*

JUDGMENT

[Tort] — [Conspiracy]
[Tort] — [Conspiracy] — [Dishonest assistance]
[Tort] — [Misrepresentation] — [Fraud and deceit]

Epoch Minerals Pte Ltd
v
Raffles Asset Management (S) Pte Ltd and others

[2021] SGHC 288

General Division of the High Court — Suit No 79 of 2018
Choo Han Teck J
4–7 October, 18 November 2021

17 December 2021 Judgment reserved.

Choo Han Teck J:

1 The plaintiff is a company incorporated in June 2016 in Singapore (with a paid-up capital of S$100,000) as one of the companies known as "The Lotus Group" of companies. The main Lotus companies were incorporated in the United States of America. They are Lotus International Company, and Lotus Resources Corp. PT Lotus Resources ("Lotus Indonesia"), the third company in the group, is an Indonesian company. PW-1, Mr Madan Sharma ("Mr Sharma"), is the CEO and main shareholder of the two American companies. Mr Sharma is an American living in Michigan, PW-2, Mr Amarpreet Singh Paul ("Mr Amarpreet"), is a director and main shareholder of a Lotus company in Indonesia. Mr Amarpreet is British, and lives in Jakarta. He is also the director and sole shareholder of the plaintiff. The main business of the Lotus companies in Indonesia is in coal mining.

2 The undisputed facts as I find are that, the fourth defendant, DW-3, Mr Maroju ("Mr Maroju"), who was then a client manager with Standard Chartered Bank, told Mr Sharma that the first defendant, Raffles Asset Management (S) Pte Ltd ("RAM") could invest (a euphemism for "lend") US$5m to Mr Sharma for his Lotus Group's coal mining business in Indonesia. The plaintiff was incorporated at the suggestion of Mr Maroju in 2016 for the convenience of receiving the loan. The plaintiff was also intended to hold shares in PT Lotus Indonesia. RAM was a S$20 company owned by DW-1, the third defendant, Mr Kamil bin Jumat ("Mr Kamil"), who lives at Pasir Ris. Mr Jumat is also a shareholder and director of the AKS Consultants Pte Ltd ("AKS"), the second defendant.

3 Mr Maroju subsequently represented to Mr Sharma that the investor was willing to increase the loan to US$10m. However, the preconditions were that he, Mr Maroju, wanted US$100,000 as a commission for finding the lender, and he expected the commission to be paid straightaway because, he said that the deal "was as good as secured". Mr Sharma also had to pay US$500,000 as a deposit of good faith. This sum was to be paid to a stakeholder, then identified as the second defendant, AKS. Sharma has also to transfer US$100,000 to be used for the purposes of a due diligence exercise. This sum was also to be paid to AKS. It was suggested that the plaintiff be incorporated because the lender preferred to deal with a Singapore company.

4 The idea thus, was simple and straightforward. Maroju would find a lender to lend US$10m to Mr Sharma (or the Lotus companies) through the plaintiff. Mr Sharma was to arrange a payment of a deposit of US$500,000 to AKS to be held as a stakeholder as "margin money". There is no evidence as to how this margin may be called, but that did not arise as an issue before me.

Another US100,000 was to be paid (and was paid) to Mr Maroju for a job as good as done – but in fact, was not. There was no loan of any amount, and when Mr Sharma eventually asked that his deposit be returned, he was told that the money was no longer with AKS.

5 The payments amounting to US$700,000 to RAM and Mr Maroju were made between 4 October 2016 and 3 November 2016. But sometime in December, Mr Maroju told Mr Sharma that he was unable to obtain the US$10m by the end of the year. A disappointed Mr Sharma wrote to Mr Maroju on 16 December telling him to find a confirmed loan by 19 December. That was when Mr Maroju began a teasing manoeuvre of dangling a "Term Sheet" (eventually described as the "Investment Agreement") before Mr Sharma, a document which they needed to finalise with RAM. At the same time, Mr Sharma was told that AKS was finalising its due diligence report, which, it now seems, was part of the tease to buy time for Mr Maroju, whose "almost as good as done" deal was nowhere near as good or as done. On the Term Sheet dated 2 January 2017, the lender, now revealed by Mr Maroju to Mr Sharma as RAM, proposed to disburse the US$10m in two tranches, one on 31 January 2017 and the second 30 days later. The time-delaying dance thus began, continued as Mr Maroju must have hoped — Mr Sharma found clauses that were contrary to what Mr Maroju had orally promised. Thus, the Term Sheet became the subject of negotiation, but after receiving Mr Maroju's email of 13 January 2017 promising that RAM "will commence the investment process upon receipt of the [Term Sheet]". This was forwarded to Mr Amarpreet by Mr Sharma, and Mr Amarpreet signed the Term Sheet on 13 January 2017. Despite both RAM and the plaintiff signing the Term Sheet, not a cent was advanced by RAM.

6 On 26 and 27 January 2017, Mr Kamil visited Lotus Indonesia's offices in Jakarta on the pretext of conducting due diligence. No due diligence report was in fact produced. By March 2017, the loan had still not been made, so Mr Sharma asked Mr Maroju to cancel the purported funding promised under the Term Sheet and demanded for a refund of the margin money. Mr Maroju subsequently told Mr Sharma that the transaction was cancelled, and their margin money would be refunded. Separately, in a letter dated 17 March 2017 from RAM, Mr Kamil informed Mr Amarpreet that they were unable to proceed with the investment because they were "unable to arrive at a favourable conclusion to the due diligence process". From the e-mail communications from March 2017 onwards, it was clear that Mr Sharma and Mr Amarpreet persisted in seeking a refund, albeit in vain.

7 By an e-mail dated 4 April 2017, Mr Kamil claimed that the principal was an iron ore mining company operating in Switzerland, but this principal had not refunded the margin. In the course of discovery, AKS disclosed an agreement with one Clear Point Enterprises Inc ("Clear Point"), under which Clear Point agreed to pay AKS a sum of US$1.75m per week for 40 weeks in return for AKS transferring US$500,000 to an escrow agent named Michael J Schiff ("Schiff"), under the auspices of a "Humanitarian Project Program" ("the Humanitarian Contract"). Mr Kamil signed off on the Humanitarian Contract on behalf of AKS on 4 November 2016. Monies were transferred from ASK to Schiff on 9 November 2016. In January 2017, AKS entered into a separate contract with Clear Point and a Swiss Company, named Salt Lake Ore AG ("SLO"), under which AKS and Clear Point would transfer US$500,000 to secure up to US$13.5m funding from SLO. This time, the "escrow agent" was one "H. Cy Schaffer Attorney at Law" ("Schaffer"). The margin money was therefore transferred from Schiff to Schaffer around January

2017. All this transpired without the knowledge or consent of the plaintiff, Mr Sharma, or Mr Amarpreet.

8 The purpose for paying the US$600,000 to AKS was therefore untrue. It also appears that the untruth was based on a lie. Where there is a lie, there is a liar. Who is he (or they if there were more than one)? The plaintiff's claim is based on a conspiracy to defraud. The plaintiff has to show that first, there was a combination of two or more persons to do certain acts; secondly, the conspirators had the intention to cause damage or injury to the plaintiff by those acts; thirdly, those acts were unlawful; fourthly, the acts were performed in furtherance of the agreement; and lastly, the plaintiff suffered loss as a result of the conspiracy: *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 at [112].

9 The plaintiff's case is that the defendants conspired to induce the plaintiff to transfer a total sum of US$700,000 to AKS and Mr Maroju by giving the plaintiff the false impression that RAM's principal would provide funding of US$10m to the plaintiff, causing the margin money of US$500,000 to be transferred out of AKS's custody for their wrongful use. Mr Kamil carried out a cursory question and answer session with Mr Amarpreet which he later claims to be a due diligence exercise, followed up by some requests for documents. Thereafter, pretending that the margin money would be placed with the escrow agent to divert liability from himself and the other defendants. The other causes of action pleaded by the plaintiff include fraudulent misrepresentations by the defendants, breach of trust or breach of contract by Mr Kamil, RAM and AKS as trustees of the margin money, dishonest assistance by Mr Kamil, RAM and Mr Maroju to assist AKS in the breach of its fiduciary duties, and the breach of duties owed by Mr Maroju as an agent of the plaintiff.

10 Neither Mr Sharma nor Mr Amarpreet knew what the defendants were doing in the background. All they knew was the promise of a US$10m loan and all that they needed to do was to incorporate the plaintiff and deposit US$600,000 with AKS, and pay US$100,000 outright to Mr Maroju. They knew no principal funding the plaintiff. The defence of all the defendants is that some crook somewhere took the money and none of the defendants, essentially, just Mr Kamil and Mr Maroju, knew anything about it. They say that they have nothing to do with the crook.

11 Almost immediately after the US$500,000 was deposited into AKS (by 3 November 2016) it was transferred out, first to a Mr Schiff on 9 November 2016, less than a week later, and from him to a Mr Schaffer, on 17 April 2017. Schaffer was described as a lawyer in the United States of America, acting as an escrow agent. Incredibly, none of the defendants could find out where Schaffer (and the money) had gone. This Schiff-Schaffer sleight of hand was just a way of adding more layers to the onion of fraud.

12 AKS, and the two individual defendants, Mr Kamil and Mr Maroju are all separately represented. RAM was not represented because the plaintiff did not proceed against it on the ground that they were bound by an arbitration clause in the "the Term Sheet". AKS is represented by Mr Andrew Goh. Mr Kamil is represented by Mr Derek Kang and Mr Ashok Rai, and Mr Maroju is represented by Mr Christopher Chong and Mr Josh Tan. Mr Jeremy Gan and Mr Kevin Tan are counsel for the plaintiff.

13 Mr Maroju, an Indian national, who lives in Hyderabad, was working as a private banker with the Standard Chartered Bank when this US$10m loan opportunity came up. Mr Chong, his counsel may be hoping to turn a vice into

a virtue when he submitted that it is absurd for the plaintiff to suggest that a Standard Chartered private banker would have breached his duties as agent, commit conspiracy, and assisted in a breach of trust for merely US$100,000. One of the pleasures and challenges of a litigation lawyer is the opportunity to investigate facts and chase down suspicious claims. Checking with the Standard Chartered Bank regarding Mr Maroju's role in this financial transaction might have yielded useful information, especially when he says in his affidavit of evidence-in-chief that he often gets requests such as the plaintiff's, to connect them with other clients. We do not know the position the Standard Chartered Bank takes in these situations, or for their private bankers to be engaged in other companies. But we need not digress over what might have been.

14 I find the plaintiff's witnesses, Mr Sharma and Mr Amarpreet to be intelligent, rational, and both impressed me as experienced businessmen. If they had anything to hide, I did not detect it. Given that the US600,000 was being held by a stakeholder, and that the US$100,000 commission to Mr Maroju was paid on the claim by him that the deed was "as good as done" — a claim that Mr Maroju, having taken the money, could not dispute that he made — I am of the view, that a fraud had been committed. The issue in this trial is whether one or more of the defendants can be found liable for the fraud on the basis that they had conspired to induce the plaintiff to transfer the sum of US$700,000. For that, we need to examine what the defendants have to say.

15 AKS claims in its defence that Mr Maroju was the plaintiff's agent, and it was therefore not privy to the representations allegedly made by Mr Maroju to the plaintiff. AKS claims that it had disclosed to Mr Maroju that the margin money was always going to escrow agents of the "ultimate principals of RAM". AKS claims that the plaintiff was not the beneficial owner of the money paid

because the funds originated from Lotus Resources, and the plaintiff was, therefore, "not entitled to claim lack of knowledge of AKS transfer of the said funds to the escrow agents" — a defence so palpably incomprehensible and absurd, it requires no further comment. Finally, AKS stands by the defence that a due diligence had been carried out by Mr Kamil and therefore the US$100,000 fee for due diligence had been earned.

16 Any self-respecting corporate lawyer and businessman will know that that is not how a due diligence is carried out, especially for a US$10m loan. There was not a single accountant or corporate lawyer in sight. Mr Kamil had a Masters degree in business from the Curtin University. He was the director and sole owner of RAM. He was also a director, and a 20% shareholder of AKS. The remaining 80% of AKS belonged to the wife of DW-2, Mr Veerapan Subramaniam ("Mr Veerapan"), who lives at Circuit Road. The wife did not testify because, it seems, she was totally uninvolved in the business of AKS. Mr Veerapan himself, from the evidence, appears to be only a bit player, passing messages on behalf of Mr Kamil and Mr Sharma. But there is an important connection linking him to the main perpetrators. He was introduced to Mr Maroju in 2014, the same year Mr Maroju met Mr Sharma. Mr Veerapan freely let Mr Kamil use his wife's company, AKS for the transaction, having let Mr Kamil become a minority shareholder and director of AKS. There are two closely connected companies: ANB Holdings Pte Ltd and ANB Venture Partners. Furthermore, Mr Maroju is a 27% shareholder of both companies through an entity called SVAAB, which is beneficially owned by Mr Maroju, Mr Kamil is an 18% shareholder of these companies, and AKS, Mr Veerapan's wife's company of which Mr Kamil is a 27% shareholder, holds 18%. So, contrary to the efforts to distance themselves from each other in the plaintiff's case, the three men, RAM and AKS are commercially connected. Their personal

relationships can be inferred from this connection and the parts each played individually and in harmony insofar as the offer of the US$10m to the plaintiff was concerned.

17 There was no accounting of a due diligence, yet the US$100,000 paid for the purposes of a due diligence was also gone. Mr Kamil paid a visit to Mr Amarpreet's office in Jakarta on 26 and 27 January 2017. It was, again in retrospect, part of the delaying tactics of Mr Maroju and Mr Kamil, after the plaintiff had transferred the margin money earlier in October 2016. All that seemed to have achieved in those two days, according to Mr Amarpreet, a man whose evidence I have no hesitancy in accepting over any of the defendants, was that Mr Kamil wanted to know how the plaintiff could be worth US$150m. This was flipped by the defendants at trial to be the visit in which Mr Kamil performed the due diligence. Counsel did not think it odd that Mr Kamil was purportedly doing a due diligence on 26 and 27 January after the Term Sheet had already been signed– not that the Term Sheet had stipulated a requirement for a due diligence as a pre-condition to funding, only that it is a pre-condition for completion. In my view, he was pretending to bolt the barn door after the horse had bolted.

18 The sincerity in which the defence counsel all accepted Mr Kamil's due diligence exercise, leads me to think that they are either not conversant with such matters, or that they are merely advancing the desperate position that their clients instruct them on. There was not only no due diligence, but the fact that Mr Maroju took US$100,000 as his commission and joined Mr Kamil in advancing the Jakarta visit as an exercise in due diligence, in fact, portrays their deep connections and common purpose.

19 For the reasons given above, I find that no due diligence had been carried out. This sum was part of the entire fraud. The defendants' subsequently cited an excuse that the plaintiff had not fulfilled the due diligence requirement as the reason for not proceeding with the transaction; this is just another smoke screen. There is no evidence that the alleged principals, either Clear Point or SLO, ever required a due diligence exercise to be carried out on the plaintiff or the Lotus companies. The Humanitarian Contract made no reference to the plaintiff or the plaintiff's business, and the SLO contract was stated to be for the purpose of "real estate related investments". None of these contracts related to the plaintiff's business in mining, nor made it clear that due diligence on the plaintiff was a pre-condition for funding. There is also not a shred of evidence of any discussion between Mr Kamil and the alleged principal regarding conditions to be imposed.

20 Mr Kamil was the connecting tissue between the plaintiff, Mr Sharma, Mr Amarpreet, RAM, AKS, Mr Veerapan, and Mr Maroju. He was thus in the thick of the entire transaction. In a sense, the plaintiff continued to be played by the defendants' fraudulent moves because it accepted that because of the arbitration clause in the Term Sheet, it could not proceed against RAM for the time being. The defendants, on the other hand, claim that the proper recourse for the plaintiff lies in RAM, and not any of the defendants. This is a feeble defence. A company is a separate entity from its shareholders, but where the company has only one director and one shareholder, and has been used as an instrument of fraud, the company and its human director and shareholder are one and the same. The fraud so obvious in this case can scarcely be concealed behind the corporate veil. RAM is Mr Kamil and vice versa. That the action against RAM is stayed because of the arbitration clause is not an impediment for the plaintiff to proceed against the conspirators.

21 That is not the main story though. Mr Kamil might have more speaking parts in connecting all the parties in this action, he may not be the sole brain, for that, he is enjoined at the stem with Mr Maroju.

22 Before I continue with my view as to Mr Maroju's role, I should refer to the long story of Clear Point and SLO. Mr Kamil's evidence was that it was RAM's intention all along to lend the plaintiff the US$10m from money it receives from Clear Point. So, according to Mr Kamil, when the time came, AKS transferred the margin money to Clear Point so that Clear Point would reciprocate by funding the principal loan. Instead, as the story goes, Clear Point changed its mind, and suggested that RAM goes to SLO for the loan instead. And so, the money went from Clear Point to SLO, explained simply by Mr Kamil as, "Mr Schiff then transferred the USD 500,000- margin sum to Mr Schaffer". Just like that. Mr Kamil was able to make such statements only if the plaintiff, Mr Sharma, or Mr Amarpreet had consented, but the evidence shows that none of them knew about Clear Point, Mr Schiff, SLO, or Mr Schaffer. No due diligence was done on them either. I do not find it necessary or useful to discuss how Clear Point and SLO were meant to deliver the US$10m because even if that were a bona fide intent, it would have been between them and the defendants. In my view, either Clear Point and SLO were the partners in crime with the defendants, or this was just a case of the karma of the greedy falling prey to the greedier. What issues there might be between them are of no concern of this court since neither Clear Point nor SLO is a party here.

23 Mr Chong presents Mr Maroju's defence along the same vein as the other defence counsel, namely, that there is insufficient evidence to prove the plaintiff's case in law, and that Mr Maroju was not the plaintiff's agent and owed no duties to the plaintiff. The only way that Mr Maroju may escape

liability is if he was acting as the plaintiff's agent. In many ways, he was an agent in the sense of someone who acted as a go-between, but an agent in law has more defined features. Mr Maroju was a co-conspirator who placed himself as the parties' intermediary. He was not an agent with the authority to negotiate on behalf of the plaintiff. In this case, if Mr Maroju was acting as an agent, the evidence shows that he was acting, so far as the transaction was concerned, as an agent, if not partner-in-fraud, of the other defendants. Insofar as the commission he took from the plaintiff was concerned, he acted as a principal for himself. Whether he shared that as part of the overall loot, we do not know, but as I find that the plaintiff succeeds against all the defendants in the tort of conspiracy to injure, and providing dishonest assistance in aid of the breach of trust by AKS, they are all jointly and severally liable to the plaintiff, not only for the US$500,000 margin money, but also the US$100,000 commission to Mr Maroju, and the US$100,000 for the so-called fee for due diligence. However, Mr Maroju, in acting as a principal for the commission, is obliged to return the commission on account of a failure of consideration because the deal that was as good as done, was not done.

24 So far as the US$500,000 margin money is concerned, the evidence is incontrovertibly clear that AKS acted in breach of trust, and by so doing, had dragged Mr Kamil and Mr Maroju along with it for they were all tied to the same line. It is clear that a trust arose when the margin money was transferred to AKS to be used as eventual payment towards the US$10m funding, or alternatively, a *Quistclose* trust arose where the money was transferred for the specific purpose. The margin money was, instead, transferred, first to Schiff, then to Schaffer, for AKS' purported investments promising bigger gains. There is no evidence at all, contrary to what counsel submits, that Mr Sharma or Mr Amarpreet, or anyone from the plaintiff, knew that AKS was only an escrow

agent's escrow agent. From Mr Sharma and Mr Amarpreet's evidence, AKS was represented to be an independent custodian of the margin money, who turned out not to be so independent after all given its connections to RAM and Mr Kamil who was the common director and shareholder.

25 I accept the evidence of Mr Sharma as to how the RAM transaction came about. His was the only consistent and rational version, that fits with all the evidence that had been admitted into trial. I believe his account as to the representations made by Mr Maroju that led to his incorporating the plaintiff for the purpose. Seen in the overall evidence, contrary to the strenuous efforts of Mr Chong, Mr Maroju was not the person most remote from the action. He was the lead actor, the man at the heart of the fraud. Once he had Mr Sharma cranked up, he left it to Mr Kamil and, to a lesser extent, Mr Veerapan, to complete the scam. The scheme was designed so that the stolen money cannot be traced. Mr Maroju was fully aware that the margin money was transferred from AKS to Schiff, and from Schiff to Schaffer, as the e-mail communications from Schiff and Schaffer to AKS were forwarded to him. Mr Maroju's explanations on the stand that he thought this e-mail referred to another proposed financing transaction by AKS, or that he was too busy and did not pay attention to those e-mails, is utterly lacking in credibility. Reason and the obvious require little explanation or embellishment; the unusual and the absurd do. I have heard Mr Maroju, Mr Kamil, and Mr Veerapan, and I do not believe any one of them. Their moves were not professional so far as a corporate transaction of this size was concerned, but they were clever and managed to deceive Mr Sharma into parting with the money just before the tocsin sounded. And when it did, Mr Sharma found out the truth a wee bit late.

26 For the reasons above, there will be judgment against the second, third, and fourth defendants for a total of US$700,000. The first defendant would have been liable had the plaintiff pursued it with the appropriate cause of action here. I will deal with the question of costs at a later date.

- Sgd -
Choo Han Teck
Judge of the High Court

Jeremy Gan Eng Tong, Kevin Tan Eu Shan and Glenna Liew Min Yi (Rajah & Tann Singapore LLP) for the plaintiff;
Goh Kim Thong Andrew (De Souza Lim & Goh LLP) for the second defendant;
Derek Kang Yu Hsien and Ashok Kumar Rai (Cairnhill Law LLC) for the third defendant;
Christopher Chong Chi Chuin, Tan Lee Jane, Calvin Lee Boon Hui and Josh Tan (Drew & Napier LLC) for the fourth defendant.