

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

**[2021] SGHC 166**

Suit No 242 of 2020 (Registrar's Appeal No 310 of 2020)

Between

Mirae Asset Daewoo Co, Ltd

*... Plaintiff*

And

Sng Zhiwei Joel

*... Defendant*

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**GROUND S OF DECISION**

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[Civil Procedure] — [Summary judgment]

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**Mirae Asset Daewoo Co, Ltd**

**v**

**Sng Zhiwei Joel**

**[2021] SGHC 166**

General Division of the High Court — Suit No 242 of 2020 (Registrar's Appeal No 310 of 2020)

Lai Siu Chiu SJ

13 January 2021

1 July 2021

**Lai Siu Chiu SJ:**

### **Introduction**

1 Sng Zhiwei Joel (“the defendant”) was sued by Mirae Asset Daewoo Co Ltd (“the plaintiff”), a Korean company, in Suit No 242 of 2020 (“this Suit”) for the sum of USD5.1m (“the Claim amount”). The defendant filed his defence as well as a counterclaim to the Claim amount. The plaintiff applied for summary judgment in Summons No 3745 of 2020 (“the summary judgment application”) against the plaintiff, pursuant to O 14 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“the Rules of Court”).

2 The summary judgment application came up for hearing before an Assistant Registrar (“the AR”). The AR granted the defendant unconditional leave to defend the Suit. Dissatisfied with the AR’s decision, the plaintiff appealed in Registrar’s Appeal No 310 of 2020 (“the Appeal”).

3 The Appeal came on for hearing before this court. After hearing the parties’ arguments, I reversed the decision of the AR and awarded final judgment to the plaintiff together with interest and costs. As the defendant is dissatisfied with my decision and has filed an appeal (in Civil Appeal No 15 of 2021) against the same, I now set out the reasons for my decision.

***The facts***

4 The facts set out below are extracted from the pleadings as well as from the affidavits that were filed in this Suit by the parties for the summary judgment application. The affidavits filed exhibited the documents (which included affidavits) filed in Originating Summonses No 981 of 2019 (“OS 981”) and No 105 of 2020 (“OS 105”) (collectively “the OSS”), both of which related to Honestbee Pte Ltd (“Honestbee” or “the Company”). OS 981 was an application filed on 1 August 2019 under s 211B of the Companies Act (Cap 50, 2006 Rev Ed) (“the Companies Act”) by the Company, whilst OS 105 was filed on 24 January 2020 by the Company under s 210 of the Companies Act for the passing and approval of a scheme of arrangement.

5 The plaintiff is in the business of investment banking and stock brokerage.<sup>1</sup> It is the trustee company of DS Sng Hedge Fund (“the Hedge Fund”) and brought this Suit in such capacity for and on behalf of the Hedge Fund.<sup>2</sup>

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<sup>1</sup> 2<sup>nd</sup> Affidavit of Jong Won Kim dated 1 September 2020 (“Jong’s second affidavit”) at para 4.

<sup>2</sup> Jong’s second affidavit at para 1; Statement of Claim dated 16 March 2020 (“SOC”) at para 1.

6 The defendant is a co-founder of Honestbee and was its Chief Executive Officer (“CEO”) from December 2014 to May 2019.<sup>3</sup> He was also a director of Honestbee.<sup>4</sup> Honestbee was a technology/e-commerce company which, before it was wound up on 7 July 2020 in CWU 101 of 2020, operated an online business in the purchase and delivery of groceries and food. It even ventured into online concierge services. By 2017, Honestbee had started providing laundry services. Honestbee expanded overseas into Japan, Hong Kong, Taiwan and other South East Asian countries after its launch in Singapore.<sup>5</sup> It generated considerable publicity on social media in its efforts to compete with “brick and mortar” supermarkets/stores for customers. This court recalls that Honestbee was frequently in the news in its heyday. By October 2018, Honestbee had started a physical grocery and food store in Singapore called “habitat by honestbee”.<sup>6</sup>

7 As with e-commerce start-ups, Honestbee looked for funding to maintain and expand its operations. The court notes from the Company’s list of creditors set out in an affidavit filed by its former CEO Ong Lay Ann (“Ong”) in the OSS, that it attracted many investors in its initial days including Mitsubishi Corporation.<sup>7</sup> The defendant disclosed that by August 2019, Honestbee owed its numerous creditors \$247.7m.<sup>8</sup>

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<sup>3</sup> 4<sup>th</sup> Affidavit of Sng Zhiwei Joel dated 17 September 2020 (“the defendant’s fourth affidavit”) at para 5.

<sup>4</sup> The defendant’s fourth affidavit at para 5.

<sup>5</sup> Defence & Counterclaim (Amendment No 1) dated 22 June 2020 (“D&CC”) at para 13.

<sup>6</sup> 6<sup>th</sup> Affidavit of Sng Zhiwei Joel dated 23 October 2020 (“the defendant’s sixth affidavit”) at p 196.

<sup>7</sup> The defendant’s sixth affidavit at p 239.

<sup>8</sup> D&CC at para 13(m).

8 By an agreement dated 19 July 2018 (“the July SPA”), the plaintiff on behalf of the Hedge Fund agreed to purchase 65,117 shares in Honestbee from the defendant for USD3.2m.<sup>9</sup>

9 By another agreement dated 9 August 2018 (“the August SPA”), the plaintiff again on behalf of the Hedge Fund agreed to purchase 21,748 shares in Honestbee from the defendant for USD1.9m.<sup>10</sup>

10 Under cl 3.1 of the July SPA, the transaction was to be closed on 19 July 2018, the date of execution of the July SPA itself.<sup>11</sup>

11 For the August SPA, the closing of the transaction would take place on 9 August 2018, the date of execution of the August SPA.<sup>12</sup>

12 Under both SPAs, payment to the defendant was provided for under cl 2.3,<sup>13</sup> while cl 3.2 in both documents contained the following provisions:<sup>14</sup>

3.2 Actions at the Closing. At the Closing, the Seller and the Buyer, as applicable, shall take or cause to be taken the following actions (the “Closing Actions”):

3.2.1 Delivery of Stock Certificates. The Seller shall deliver to the Buyer stock certificates in case the Buyer stock certificates is issued by the Company representing the Shares.

3.2.2 Recording of the Transfer of the Subject Shares. The Seller shall cause the Company to register the

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<sup>9</sup> Jong’s second affidavit at pp 30 and 32.

<sup>10</sup> Jong’s second affidavit at pp 46 and 48.

<sup>11</sup> Jong’s second affidavit at p 32.

<sup>12</sup> Jong’s second affidavit at p 48.

<sup>13</sup> Jong’s second affidavit at pp 32 and 48.

<sup>14</sup> Jong’s second affidavit at pp 32 and 48.

transfer of the Shares from the Seller to the Buyer in the shareholders' registry and company records of the Company and to take other actions necessary to affect the transfer of the Shares to the Buyer.

3.2.3 Payment of Purchase Price. The Buyer shall pay the Seller the Purchase Price as set forth in Section 2.2.

13 Under both SPAs, there were termination clauses in identical terms under cl 7.10, which states:<sup>15</sup>

7.10.1 Prior to the Closing, this Agreement may be terminated and the Transaction contemplated hereby abandoned:

(a) by the mutual consent of the Buyer and the Seller as evidenced in a writing signed by each of the Buyer and the Seller;

(b) by the non-breaching Party with a written notice of termination if there has been a material breach by the other Party (the "Breaching Party") of any terms and conditions of this Agreement and such breach is incapable of being cured or has not been cured by the Breaching Party within ten (10) days after written notice thereof from the non-breaching Party;

7.10.2 Termination by Notice. If any Party desires to terminate this Agreement pursuant to Section 7.10.1, a written notice (the "Termination Notice") shall be delivered to the other Party. This Agreement shall be terminated without further actions of the Parties upon receipt of the Termination Notice by the other Party.

7.10.3 Effect of Termination. In the event of termination and abandonment of this Agreement pursuant to Section 7.10.1, this Agreement shall forthwith become null and void and have no effect, and the obligations of the Parties under this Agreement shall terminate, except that Section 7.4, Section 7.7, and Section 7.10.4 shall survive termination of this Agreement.

7.10.4 Damages. If the Agreement is terminated due to any material breach or default by the Breaching Party of its obligations contained in this Agreement, the Breaching Party shall be liable for damages arising out of or relating to any material breach or default by the Breaching Party of its obligations contained in this Agreement.

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<sup>15</sup> Jong's second affidavit at pp 32 and 48.

14 Pursuant to cl 3.2.3 of the July and August SPAs, the plaintiff paid to the defendant USD3.2m and USD1.9m on 19 July 2018 and 9 August 2018 respectively.<sup>16</sup> The defendant admitted that he received these sums.<sup>17</sup>

15 It was the plaintiff’s case that the defendant breached cl 3.2.1 in respect of both SPAs. In regard to the July SPA, he failed to deliver stock certificates for 65,117 shares in Honestbee by 19 July 2018 and in regard to the August SPA, he failed to deliver stock certificates for 21,748 shares in Honestbee by 9 August 2018.<sup>18</sup> (Henceforth, the 86,865 shares (65,117 + 21,748) purchased by the plaintiff from the defendant will be referred to collectively as “the Shares”.)

16 Further, the plaintiff alleged that the defendant also breached cl 3.2.2 in respect of both SPAs, by failing to cause Honestbee to register the Shares in the plaintiff’s name in the shareholders’ register and company records of Honestbee. Under s 126(3) of the Companies Act, no transfer of shares in a private company can take effect until the electronic register of members of the company is updated. The plaintiff alleged that the defendant failed to take all necessary action to effect the transfer of the 86,865 shares to the plaintiff that were purchased from him.<sup>19</sup>

17 Between September and December 2018, the plaintiff wrote to the defendant on numerous occasions to demand his compliance with his obligations under the July and August SPAs.<sup>20</sup> In his responses, the defendant

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<sup>16</sup> SOC at paras 8 and 11.

<sup>17</sup> D&CC at paras 8 and 10.

<sup>18</sup> SOC at paras 9.1 and 12.1.

<sup>19</sup> SOC at paras 9.2–9.4 and 12.2–12.4.

<sup>20</sup> Jong’s second affidavit at pp 62, 83, 85, 86 and 88.



did not deny his obligations.<sup>21</sup> Instead, on 27 December 2018, the plaintiff received a share certificate in its name dated 30 September 2018 for the Shares signed (only) by the defendant (“the Share Certificate”).<sup>22</sup> However, the Share Certificate was insufficient to transfer the Shares to the plaintiff as the plaintiff was not registered as a shareholder with the Accounting and Corporate Regulatory Authority of Singapore (“ACRA”).

18 Consequently, on 16 January 2020, the plaintiff’s solicitors issued a notice to the defendant terminating the July and August SPAs under cll 7.10.1 and 7.10.2 for material breaches or default of his obligations. The notice of termination included a demand for return of the Claim amount.<sup>23</sup>

19 By a letter dated 3 March 2020, the defendant’s solicitors denied that the defendant signed the July and August SPAs, but made no mention of returning the plaintiff the Claim amount.<sup>24</sup>

20 The plaintiff responded by commencing this Suit, setting out in its statement of claim the facts enumerated earlier.

21 In his Defence and Counterclaim Amendment No 1 (“D&CC”), the defendant made numerous allegations. First, the defendant contended he did not sign the July and August SPAs and disputed the authenticity of those documents.<sup>25</sup>

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<sup>21</sup> Jong’s second affidavit at pp 84 and 87.

<sup>22</sup> Jong’s second affidavit at p 90.

<sup>23</sup> Jong’s second affidavit at pp 123–124.

<sup>24</sup> Jong’s second affidavit at p 125.

<sup>25</sup> D&CC at para 5(a).

22 The defendant next alleged that the two documents were structured and executed by one Bon Woong Koo (said to be commonly known as “Brian Koo”),<sup>26</sup> whom he applied to court subsequently to join as the second defendant in his counterclaim against the plaintiff. Brian Koo was the defendant’s successor as CEO of Honestbee, following the defendant’s stepping down in May 2019.<sup>27</sup>

23 The defendant alleged that at all material times the plaintiff communicated with and dealt with Brian Koo in relation to the two SPAs.<sup>28</sup> The defendant averred that he was only notified of the July and August SPAs after the documents were executed and he did not append his signature to either document.<sup>29</sup>

24 Leaving aside his contention that the two documents are not authentic, the defendant averred that he had complied with his obligations stipulated under cl 3.2 of both SPAs as he had notified Honestbee of the SPAs and requested Honestbee to register the share transfers.<sup>30</sup> However, despite the defendant’s repeated requests, Honestbee did not give notice of the sale of shares to Honestbee’s shareholders nor register the share transfers.<sup>31</sup>

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<sup>26</sup> D&CC at para 5(a)(i).

<sup>27</sup> The defendant’s fourth affidavit at para 6.

<sup>28</sup> D&CC at para 5(a)(ii).

<sup>29</sup> D&CC at para 5(a)(iii).

<sup>30</sup> D&CC at para 11.

<sup>31</sup> D&CC at para 11(b).

25 As for Brian Koo, the defendant had a laundry list of grievances against him in his counterclaim, including:<sup>32</sup>

- (a) that Brian Koo and he used to be partners in a fund management company called Koosng Pte Ltd (“Koosng”), and that after the defendant agreed to sell his shares in Koosng to Brian Koo and left the company, the defendant was not paid for his shares;
- (b) that Brian Koo issued the defendant a promissory note dated 1 October 2018 (“the PN”) under which Brian Koo represented that:
  - (i) he would arrange a fundraising exercise for Honestbee with the plaintiff and another Korean trust company Alpen Route Matterhorn (“Alpen”);
  - (ii) the plaintiff and Alpen would only invest in Honestbee if the defendant sold his shares in Honestbee to them at a discount;
  - (iii) Brian Koo would be wholly responsible to ensure that the shares transfers were in good order and compliant; and
  - (iv) that the defendant’s shares would be subject to a buy-back transaction whereby the plaintiff and Alpen would sell back to the defendant the shares he sold. This was evidenced in a guarantee provided by Brian Koo in the PN.
- (c) that, arising from Brian Koo’s fundraising exercise, the plaintiff acquired the Shares from the defendant while Alpen acquired another 14,880 shares from the defendant;

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<sup>32</sup> D&CC at paras 29–33; the defendant’s fourth affidavit at paras 8–11; Jong’s second affidavit at pp 217–218.

(d) in reliance on Brian Koo’s representations, the defendant notified Honestbee of the share transfers to Alpen and requested Honestbee to register the share transfers;

(e) in breach of his obligations under the PN, Brian Koo failed, refused and/or neglected to ensure that the share transfers were registered; and

(f) as a result, the defendant was sued by the plaintiff in this Suit and the defendant therefore sought an indemnity from Brian Koo.

26 As an alternative defence, the defendant alleged that the plaintiff and Brian Koo conspired to injure him by lawful means (“the Conspiracy”) in that:<sup>33</sup>

(a) Brian Koo, while CEO of Honestbee, caused Honestbee not to register the share transfers under the July and August SPAs;

(b) the plaintiff then relied on the non-registration of the share transfers as a ground for seeking full restitution of the Claim amount paid under the July and August SPAs;

(c) at the material time, Brian Koo and the plaintiff were aware that the defendant had channelled all of the Claim amount into funding Honestbee’s operations as the Company was in serious financial trouble;

(d) the predominant motive of the Conspiracy was to cause damage to the defendant by enabling the plaintiff to escape a bad bargain and compel the defendant to return the Claim amount;

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<sup>33</sup> D&CC at paras 38–41.

(e) in furtherance of the Conspiracy, Brian Koo caused Honestbee to ignore requests made by the plaintiff to register the share transfers; and

(f) the plaintiff then issued a notice of termination dated 16 January 2020 purporting to terminate the two SPAs, followed by the commencement of this Suit.

I should point out that in his defence to the defendant's counterclaim, Brian Koo denied all the defendant's allegations, including signing the PN.

27 The defendant also raised the defence of acquiescence against the plaintiff's claim on the basis that the plaintiff took no steps after its receipt of the Share Certificate on 27 December 2018 which it acknowledged. Consequently, the defendant averred that the plaintiff, having affirmed the July and August SPAs after having notice of the non-registration of the share transfers, is not entitled to rely on the non-registration of the share transfers to terminate the July and August SPAs.<sup>34</sup>

28 As a further alternative, the defendant alleged that the plaintiff's conduct had induced the defendant into believing that the plaintiff had acquiesced to any failure in the performance of the defendant's purpose obligations under the July and August SPAs. He alleged that the plaintiff was guilty of inordinate and inexcusable delay in bringing this Suit.<sup>35</sup>

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<sup>34</sup> D&CC at paras 13–16.

<sup>35</sup> D&CC at para 17.

### **The summary judgment application**

29 In September 2020, the plaintiff filed the summary judgment application against the defendant. As stated at [2] to [3] above, the AR dismissed the same and allowed the defendant unconditional leave to defend, which decision this court reversed.

30 The plaintiff filed three affidavits by Jong Won Kim (“Jong”), a director of DS & Partners LLC, an affiliated company of DS Asset Management Co Ltd which is the manager of the Hedge Fund. On his part, the defendant filed two affidavits to oppose the application: one on 17 September 2020 (“the defendant’s fourth affidavit”) and the other on 23 October 2020 (“the defendant’s sixth affidavit”).

31 The court will now review the affidavits filed for the summary application.

### ***The plaintiff’s affidavits***

32 In Jong’s affidavit filed on 2 September 2020 (“Jong’s second affidavit”), he deposed that it was Brian Koo, who at the material time was also the CEO from the venture capitalist firm called Formation Group, who approached the plaintiff to say that the defendant was looking to sell his shares in Honestbee at a discount to raise funds. Brian Koo inquired if the plaintiff was interested to be the purchaser, which the plaintiff indicated it was.<sup>36</sup>

33 To that end, Brian Koo provided to Jong by email on 17 July 2018 the defendant’s HSBC bank account particulars, as well as a scanned copy of the

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<sup>36</sup> Jong’s second affidavit at paras 6–7.

defendant's passport. Both items were sent by the defendant to Brian Koo, who forwarded them in turn to the plaintiff.<sup>37</sup>

34 Thereafter, the parties entered into the two SPAs. As requested by the defendant, payment of the Claim amount by the plaintiff was remitted directly to his HSBC account. For both SPAs, Jong deposed that the execution pages were forwarded by Brian Koo to the defendant, who signed and emailed them back to Brian Koo, who forwarded them in turn to the plaintiff.<sup>38</sup>

35 Not having received the share certificates for its purchase under the two SPAs, Jong emailed the defendant on 3 September 2018 (copied to Brian Koo) to request the documents.<sup>39</sup> As there was no response from the defendant, the plaintiff sent the defendant another email on 17 October 2018.<sup>40</sup>

36 The defendant finally responded on 18 October 2018 with a non-committal answer.<sup>41</sup> The defendant stated that he had spoken to Brian Koo, who would "[work] together with [the plaintiff] ... on an appropriate resolution".<sup>42</sup>

37 Since he did not hear further from the defendant subsequently, Jong wrote to the defendant on 17 December 2018 to request an update.<sup>43</sup> He received

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<sup>37</sup> Jong's second affidavit at para 8.

<sup>38</sup> Jong's second affidavit at paras 11 and 14 and pp 41 and 57..

<sup>39</sup> Jong's second affidavit at p 62.

<sup>40</sup> Jong's second affidavit at p 83.

<sup>41</sup> Jong's second affidavit at p 84.

<sup>42</sup> Jong's second affidavit at p 84.

<sup>43</sup> Jong's second affidavit at p 85.

no response.<sup>44</sup> Consequently, on 21 December 2018, Jong wrote to the defendant to inform him that the plaintiff would commence legal proceedings against him.<sup>45</sup> The defendant replied on the same day with an apology for the plaintiff not receiving the originals and said “it was done”.<sup>46</sup>

38 Jong sent a reminder to the defendant on 24 December 2018.<sup>47</sup>

39 On 27 December 2018, the plaintiff finally received the Share Certificate, which was numbered 2300, signed by the defendant and which stated that the plaintiff held 86,865 preference shares. In Jong’s second affidavit, he had exhibited a courier slip of EMS that purportedly showed that Brian Koo’s personal assistant Lae Jang had sent the Share Certificate from San Francisco, California, to the plaintiff’s Seoul office.<sup>48</sup> In his defence, Brian Koo denied that Lae Jang was the sender.<sup>49</sup> Brian Koo pleaded that he moved to South Korea in July 2020 from California, the United States. Hence, he could not have been the sender of the Share Certificate.<sup>50</sup> It would appear that even the alleged courier slip was not genuine.

40 It should be noted at this juncture that the Share Certificate cannot be genuine in any case, as a search in ACRA records conducted on the plaintiff’s behalf on 7 August 2020 revealed that Honestbee had only issued 13,725

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<sup>44</sup> Jong’s second affidavit at para 22.

<sup>45</sup> Jong’s second affidavit at p 86.

<sup>46</sup> Jong’s second affidavit at p 87.

<sup>47</sup> Jong’s second affidavit at p 88.

<sup>48</sup> Jong’s second affidavit at p 91.

<sup>49</sup> 2<sup>nd</sup> Defendant-in-Counterclaim’s Defence to the Counterclaim dated 8 January 2021 (“DCC”) at para 12(f).

<sup>50</sup> DCC at para 5.



preference shares.<sup>51</sup> I find therefore that the Share Certificate was in all likelihood fabricated.

41 I should also point out that in Brian Koo's defence to the defendant's counterclaim, he stated he had also received a copy of the Share Certificate from an unknown email address but thought nothing of it, thinking it was either sent by or on behalf of the defendant.<sup>52</sup>

42 Upon receipt of the Share Certificate, Jong wrote to the defendant as well as to Roger Koh, Honestbee's then head of finance, to request acknowledgment of the plaintiff as a shareholder, as well as a list of Honestbee's shareholders reflecting the plaintiff as a shareholder.<sup>53</sup>

43 As there was no response from Honestbee for three months, the plaintiff wrote to the defendant on 8 April 2019 to again request for the Company's shareholders' list reflecting the transfer of shares to the plaintiff and that the plaintiff is a registered shareholder.<sup>54</sup> There was no response to the plaintiff's said letter.<sup>55</sup>

44 The plaintiff wrote to the defendant and other individuals in the Company on 15 April 2019, forwarding copies of the SPAs, remittance advices showing the plaintiff transferred the Claim amount to the defendant as well as a

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<sup>51</sup> Jong's second affidavit at p 126.

<sup>52</sup> DCC at para 12(b).

<sup>53</sup> Jong's second affidavit at p 89.

<sup>54</sup> Jong's second affidavit at p 92.

<sup>55</sup> Jong's second affidavit at para 28.

scanned copy of the defendant's passport.<sup>56</sup> There was still no response from the defendant.<sup>57</sup>

45 Consequently, on 16 January 2020, the plaintiff's solicitors sent a letter of demand to the defendant.<sup>58</sup> It drew a response from the defendant's solicitors, who, in their letter dated 3 March 2020, denied that the defendant had signed the SPAs and contended that the defendant did not affix his signature to either SPA.<sup>59</sup>

46 The plaintiff's response was to file this Suit and, after the defendant had filed his D&CC, file the summary judgment application.

***The defendant's affidavits***

47 In opposing the summary judgment application, the defendant in essence blamed Brian Koo for all his ills and repeated the allegations he had levelled against Brian Koo (and also the plaintiff) in his D&CC (set out earlier at [25] to [26]).

48 In his fourth affidavit, the defendant went further to say that it was on Brian Koo's advice that he ignored the plaintiff's emails and directed them to Brian Koo. Brian Koo had informed him that he (Brian Koo) and the plaintiff had other ongoing deals and they had an agreement whereby the defendant's shares would be returned to the defendant.<sup>60</sup>

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<sup>56</sup> Jong's second affidavit at pp 93–119.

<sup>57</sup> Jong's second affidavit at para 31.

<sup>58</sup> Jong's second affidavit at pp 123–124.

<sup>59</sup> Jong's second affidavit at p 125.

<sup>60</sup> The defendant's fourth affidavit at para 19.

49 As against the plaintiff, the defendant denied he had executed either SPA.<sup>61</sup> He repeated his defence against the plaintiff set out at [21] to [24] and [26] to [28] above.

50 The defendant's fourth affidavit listed and/or repeated the triable issues that precluded the plaintiff from obtaining summary judgment against him as follows:

(a) The SPAs are not authentic.<sup>62</sup> All that the plaintiff has are (i) an email from Brian Koo forwarding to the plaintiff an email he had sent with an image of a signed page on 19 July 2018; and (ii) an email from Brian Koo to the plaintiff with a scanned image on 9 August 2018.<sup>63</sup>

(b) Contrary to what Jong stated in his second affidavit, the defendant did not in his emails of 18 October 2018 and 21 December 2018 (or at any other time) confirm he was aware of any obligation under the SPAs and assure the plaintiff that he would comply with the same.<sup>64</sup>

(c) If the SPAs are not authentic, the plaintiff cannot rely on the terms therein nor can the defendant be said to be in breach of contract.<sup>65</sup>

(d) Contrary to the plaintiff's/Jong's assertion, the defendant maintained he was not inconsistent in contending (i) on the one hand that the SPAs are not authentic and (ii) on the other hand in stating he

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<sup>61</sup> The defendant's fourth affidavit at para 31.

<sup>62</sup> The defendant's fourth affidavit at para 31.

<sup>63</sup> The defendant's fourth affidavit at para 32.

<sup>64</sup> The defendant's fourth affidavit at para 33.

<sup>65</sup> The defendant's fourth affidavit at para 35.

had performed his obligations thereunder. It was only in the event the court found at trial that the SPAs are authentic, that the defendant's alternative defence of his compliance with the terms would apply.<sup>66</sup>

(e) On the plaintiff's alternative claim for restitution of the Claim amount based on failure of consideration, the defendant's defence was that of affirmation or acquiescence by the plaintiff to the defendant's purported failure to perform his obligations under the SPAs. The defendant pointed out that between 27 December 2018 (when the plaintiff acknowledged receipt of the Share Certificate) and 15 January 2020, the plaintiff took no action against him in regard to his alleged breach of the SPAs.<sup>67</sup>

(f) The defendant has an alternative equitable defence of laches to the plaintiff's claim.<sup>68</sup>

51 The defendant surmised that because the Shares are now worthless, the plaintiff is taking action against him to improve its position in the Company's insolvency by seeking full recovery of its investment.<sup>69</sup> He deposed that it would be inequitable and unjust to allow the plaintiff to recover the Claim amount as he had channelled the sum into funding the operations of Honestbee.<sup>70</sup> This statement is untrue, as will be explained at [55] below.

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<sup>66</sup> The defendant's fourth affidavit at para 36.

<sup>67</sup> The defendant's fourth affidavit at para 39.

<sup>68</sup> The defendant's fourth affidavit at para 40.

<sup>69</sup> The defendant's fourth affidavit at para 40(c).

<sup>70</sup> The defendant's fourth affidavit at para 41.

52 The defendant's fourth affidavit rehashed the allegation he levelled against the plaintiff and Brian Koo in his D&CC on conspiracy to injure him by lawful means.<sup>71</sup> It would not be necessary to repeat those allegations as the same have already been set out at [26] above.

53 Nothing turns on Jong's third affidavit filed on 6 October 2020 that was filed in reply to the defendant's allegations.

54 In his sixth affidavit, the defendant repeated the triable issues he had listed in his fourth affidavit and his accusations against Brian Koo. He went further in his sixth affidavit to compare his signatures in various documents exhibited in the OSS against his purported signatures in the SPAs.<sup>72</sup> He contended that his signatures in the SPAs were different and supported his challenge of the authenticity of the SPAs.<sup>73</sup>

55 As alluded to at [51] above, the defendant was untruthful in his statement that he ploughed the Claim amount into Honestbee. According to para 50 of his sixth affidavit, the defendant disclosed he had utilised S\$3,623,691.38 of the Claim amount on 15 October 2018 to redeem the mortgage for his property at No 34, Jalan Jintan, Singapore 229021. He claimed he did the redemption in order to re-mortgage his property to ValueMax for a loan of S\$4m to advance to Honestbee (for which no evidence was provided).

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<sup>71</sup> The defendant's fourth affidavit at para 21(b).

<sup>72</sup> The defendant's sixth affidavit at para 29.

<sup>73</sup> The defendant's sixth affidavit at para 30.

56 The defendant also claimed to have lent Honestbee a total of S\$6,912,524.01.<sup>74</sup> This statement is again untrue. The defendant's HSBC bank statements (which were heavily redacted) exhibited in his sixth affidavit showed that the Company repaid him S\$4m on 9 October 2018.<sup>75</sup> Even if he did advance S\$6,912,524.01 to Honestbee, the defendant had been repaid 58% thereof. He was much better off than the other and larger creditors of the Company, who were unable to recover their monies in the liquidation of Honestbee.

57 In the defendant's sixth affidavit, he dwelt at length upon the plaintiff's investments in the Company *vis-à-vis* other creditors of Honestbee. This court does not know whether the defendant's action was designed to confuse the court. At best, the facts he deposed to are a distraction and at worse, they are irrelevant.

***The hearing in the court below***

58 Before the AR, the defendant's argument that he had raised triable issues was accepted.<sup>76</sup> The AR was of the view that the background to the SPAs was relevant – it was part of a larger fund-raising scheme involving Brian Koo and the defendant. The AR felt that the background to the signing of the SPAs would be important, given the defendant's claim that all the monies had been channelled back to Honestbee (which this court has already noted is untrue). The AR added that as at the dates of the hearings before him of the summary judgment application (on 24 November and 3 December 2020 respectively), Brian Koo had yet to file his defence to the defendant's counterclaim. That was

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<sup>74</sup> The defendant's sixth affidavit at para 51.

<sup>75</sup> The defendant's sixth affidavit at p 372.

<sup>76</sup> Certified transcript for hearing on 3 December 2020 at p 2 line 24 to p 3 line 3.

not the position before this court, as Brian Koo did file the document on 8 January 2021 before the Appeal was heard.

59 I should point out at this juncture that Brian Koo was never an ordinary but only a preference shareholder of Honestbee holding 3,119 preference shares.<sup>77</sup> He was also an investor in Honestbee.<sup>78</sup> It should also be noted that the plaintiff's direct investment of USD4m<sup>79</sup> in Honestbee has nothing to do with this claim. The defendant conflated that investment in Honestbee with the plaintiff's personal claim against him in this Suit.

60 In his defence to the defendant's counterclaim, Brian Koo denied that he had agreed to buy the defendant's shares in Koosng and/or that he had issued the PN to the defendant which authenticity he denied. He further disavowed his signature therein.<sup>80</sup>

61 The PN supposedly dated 1 October 2018 contained *inter alia* the following provisions:<sup>81</sup>

3. [The plaintiff] has acquired in two transactions
  - 1) 65,117 ordinary shares - July 19, 2018
  - 2) 21,748 ordinary shares - August 9, 2018
- [Alpen] has acquired in one transaction
  - 1) 14,880 ordinary shares – August 10, 2018
- [...]

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<sup>77</sup> DCC at para 9(b).

<sup>78</sup> DCC at para 9(c).

<sup>79</sup> See exhibit JS-6 in the defendant's sixth affidavit, which is Brian Koo's affidavit filed 24 Sep 2019 in OS 981.

<sup>80</sup> DCC at paras 6–8.

<sup>81</sup> Jong's second affidavit at p 217.

6. [The defendant] hereby acknowledges the sale of his ordinary shares to [the plaintiff] and [Alpen] by [Brian Koo].

7. As a follow on transaction, [Brian Koo] has structured a buy back of 100% of [the defendant's] ordinary shares sold by [the defendant] to [the plaintiff] and [Alpen]. The ordinary shares will be transferred back to [the defendant] in full.

62 Brian Koo added that the SPAs as well as the transactions between the defendant and Alpen were *not* for the purpose of fund-raising for Honestbee as the defendant claimed but for the defendant's personal benefit.<sup>82</sup> In that connection, Brian Koo stated that the defendant authorised him to structure share sale transactions with third parties on the defendant's behalf.<sup>83</sup>

63 Brian Koo further disclosed that after receipt of the Claim amount, the defendant sought to avoid his obligations under the SPAs and to conceal them from Honestbee's shareholders and management.<sup>84</sup> Brian Koo alleged that the defendant then embarked on an elaborate ruse to:<sup>85</sup>

- (a) make Brian Koo think he had transferred the Shares to the plaintiff;
- (b) deceive the plaintiff into thinking it was the holder of the Shares; and
- (c) make it seem like Brian Koo had the obligation to ensure that the transfers for the Shares were registered in the plaintiff's name.

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<sup>82</sup> DCC at para 9.

<sup>83</sup> DCC at para 9.

<sup>84</sup> DCC at para 12.

<sup>85</sup> DCC at para 12.



64 Brian Koo alleged that the defendant needed to conceal the SPAs from Honestbee’s shareholders because the Shareholders’ Agreement between the Company’s shareholders *inter se* contained certain rights of first refusal as well as tag-along rights for the defendant’s fellow shareholders. The defendant could not sell the Shares to the plaintiff without first offering them to Honestbee’s existing shareholders. Moreover, the shareholders could also offer to sell their shares to the plaintiff based on the tag along rights.<sup>86</sup>

65 Although the defendant made no reference to it at all, the court surmises that the reason for the defendant’s attempt to disavow and renege on the SPAs even though he received the Claim amount is to be found in a clause in the PN (which Brian Koo denied signing) headed “Expiration” and which states:<sup>87</sup>

This note will expire on 1 October 2021 and if [Brian Koo] fails to make full payment in the return of the ordinary shares due under this note within 7 calendar days, [Brian Koo] agrees to pay back [the defendant] full value of the shares at the convertible note valuation of US\$330m.

66 As part of his submissions at the Appeal, counsel for the defendant pointed out that there was no due diligence done prior to the execution of the two SPAs and there was a complete lack of interaction between the plaintiff and the defendant. Counsel argued that these in themselves gave rise to triable issues and the defendant was entitled to avail himself of the processes of discovery, interrogatories and cross-examination to resolve the factual disputes.<sup>88</sup> With respect, it is of no concern to the defendant and it certainly does not give rise to a triable issue, that the plaintiff was prepared to take the risk of buying the

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<sup>86</sup> DCC at para 12(a)(i).

<sup>87</sup> Jong’s second affidavit at p 218.

<sup>88</sup> Certified transcript for hearing on 13 January 2021 at p 16 lines 16–21.

Shares and parting with USD5.1m without undertaking the standard due diligence exercise. Further, why was there a need for interaction between the parties when the defendant had expressly appointed Brian Koo as his fundraising agent?

67 In the euphoria created by Honestbee's rapid (and successful) expansion in its early days, the defendant (and perhaps Brian Koo as well) held an overly optimistic (and I dare say unrealistic) view of the Company's prospects and its valuation. If indeed Honestbee was worth USD330m as stated in the PN, one can understand the defendant's reluctance to part with 86,865 shares by selling them to the plaintiff for USD5.1m unless there was a buy-back arrangement with Brian Koo (which the defendant pleaded there was). The search from ACRA (see [40] above) showed that Honestbee had issued 311,863 ordinary shares.<sup>89</sup> A valuation of USD330m for Honestbee equated to a value of USD1,058.16 per share ( $\text{USD330m} \div 311,863$ ) or USD91,916,803.21 for 86,865 shares. That meant that the plaintiff had apparently purchased 86,865 shares for a song at USD58.71 per share ( $\text{USD5,100,000.00} \div 86,865$ ).

## **The Appeal**

### ***The plaintiff's submissions***

68 The plaintiff submitted that none of the defences raised by the defendant had any merit. The plaintiff pointed out that until February 2020, the defendant had not disputed the authenticity of the SPAs despite receiving copies of the same from the plaintiff and Honestbee on three separate occasions. Instead, by his conduct, the defendant had ratified the SPAs. The defendant had admitted

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<sup>89</sup> Jong's second affidavit at p 126.

receiving the Claim amount from the plaintiff and he did not at any time suggest that the sum was received on any basis other than under the two SPAs.<sup>90</sup>

69 The plaintiff further submitted that the defendant must also satisfy the court that his evidence is reasonably capable of belief.<sup>91</sup> A mere assertion in an affidavit of a given situation does not *ipso facto* provide leave to defend. Equally, it is not sufficient for the defendant to show a mere logical possibility. He must adduce some evidence, direct or indirect, to support his bare assertions. If the defence is found not to be credible after having regard to its consistency with contemporaneous documents, its inherent plausibility, and other compelling evidence, the court will not deprive the plaintiff of its entitlement to summary judgment: *Kim Seng Orchard Pte Ltd v Lim Kah Hin (trading as Yik Zhuan Orchid Garden)* [2018] 3 SLR 34 at [37].

70 The court will return to the plaintiff's submissions later.

### ***The defendant's submissions***

71 The defendant argued that the SPAs cannot be viewed in vacuo and must instead be considered against the backdrop of Brian Koo's role in structuring fundraising exercises for Honestbee of which the SPAs were a part.<sup>92</sup>

72 The defendant reiterated that he did not have sight of the SPAs *prior* to execution, was only notified of the completion of the transactions *after* the SPAs had been executed and he did not affix his signature to the two documents.<sup>93</sup> He

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<sup>90</sup> Plaintiff's written submissions dated 8 January 2021 ("PWS") at para 4.

<sup>91</sup> PWS at para 36.

<sup>92</sup> Defendant's written submissions dated 7 January 2021 ("DWS") at para 7.

<sup>93</sup> DWS at para 13.

claimed that he had adduced undisputed evidence to demonstrate that the signatures found on the SPAs are different from his signatures on other documents (see [54] above).<sup>94</sup> As the defendant's various signatures did not look any different to the court without expert evidence, this argument did not advance the defendant's case.

73 The defendant added (which argument the AR apparently accepted) that what transpired between Brian Koo and him gave rise to triable issues. This court disagrees (see [81]–[82] below).

74 In answer to the AR's question at the hearing below,<sup>95</sup> counsel for the defendant confirmed that the defendant did not deny receiving the Claim amount from the plaintiff but "his case is that the funds were transferred back to Honestbee as part of fund-raising exercise".<sup>96</sup> When the AR further inquired of counsel if the plaintiff is entitled to a full refund, the latter's response was "the plaintiff is not entitled to a full refund or any refund at all",<sup>97</sup> an answer this court finds to be devoid of any merit.

75 The defendant repeated the equitable defences of acquiescence and laches in his submissions. He added that he had a counterclaim against the plaintiff and Brian Koo which in a nutshell, was founded on conspiracy.

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<sup>94</sup> DWS at para 19.

<sup>95</sup> Certified transcript for hearing on 24 November 2020 at p 6 line 28.

<sup>96</sup> Certified transcript for hearing on 24 November 2020 at p 6 line 30.

<sup>97</sup> Certified transcript for hearing on 24 November 2020 at p 7 lines 1–5.

76 Notwithstanding that the SPAs are in writing, counsel for the defendant submitted at the Appeal hearing that the plaintiff must prove what the terms of the agreements are.<sup>98</sup> This court does not accept the submission.

### ***The law***

77 Before going into the reasons for the court’s ruling, it would be useful to revisit the law on summary judgment. Order 14 r 1 of the Rules of Court states:

1. Where a statement of claim has been served on a defendant and that defendant has served a defence to the statement of claim, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.

78 As the plaintiff correctly pointed out,<sup>99</sup> once the plaintiff establishes a *prima facie* case for summary judgment, the burden is on the defendant to satisfy the court that he has a reasonable probability of showing a real or *bona fide* defence, or that there are triable issues in relation to the identified issues (see *Ritzland Investment Pte Ltd v Grace Management & Consultancy Services Pte Ltd* [2014] 2 SLR 1342 at [43]–[44]).

### ***The decision***

79 It is to be first noted that Brian Koo’s defence to the defendant’s counterclaim supported the plaintiff’s version of events leading to the signing of the SPAs.

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<sup>98</sup> Certified transcript of hearing on 13 January 2021 at p 16 lines 8–9.

<sup>99</sup> PWS at para 35.

80 The plaintiff’s case is straightforward – it wanted to be refunded the Claim amount due to a total failure of consideration as the defendant did not transfer to the plaintiff the Shares that it paid for.<sup>100</sup> It is settled law that “[f]ailure of consideration occurs when one party has not enjoyed the benefit of any part of what it bargained for. In the determination of this question, one has to judge it from the perspective of the payor plaintiff ... For a plaintiff to succeed in a claim for a refund there must be a *total* failure of consideration” (*per* Chao Hick Tin JA in *Ooi Ching Ling v Just Gems* [2003] 1 SLR(R) 14 at [43]–[44]; emphasis original). It can hardly be disputed that in this case, the plaintiff received nothing in return from the defendant for its payment to him of the Claim amount.

81 It appeared to this court that the defendant and the AR conflated the plaintiff’s claim with the alleged fundraising exercise for Honestbee (which Brian Koo refuted in any case) and other matters extraneous to the plaintiff’s claim. Any fundraising arrangement/agreement between Brian Koo and the defendant is a red herring. The plaintiff was not involved in Brian Koo’s dealings with the defendant. Any dispute arising therefrom including the PN and the defendant’s counterclaim against Brian Koo, can go to trial but it has no relevance to the plaintiff’s claim. The court therefore does not accept the defendant’s argument that there are factual disputes surrounding the plaintiff’s claim. The factual disputes if any were between Brian Koo and the defendant. What then are the triable issues between the plaintiff and the defendant? The court can see none.

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<sup>100</sup> SOC at para 22.

82 Courts should take a robust approach when considering summary judgment applications (*per* GP Selvam J in *Hua Khian Ceramics Tiles Supplies Pte Ltd v Torie Construction Pte Ltd* [1992] 1 SLR 884 (“*Hua Khian*”) at [21]–[22]). This court agrees and adopts the approach here. Instead of being distracted by the defendant’s irrelevant facts and arguments, this court separated the wheat from the chaff to determine the plaintiff’s claim based on relevant and undisputed facts. In this regard, there are major flaws in the defendant’s case which are set out below at [88]. Hence, this court saw no triable issues that warranted this Suit going to trial.

83 The court in *Hua Khian* had also said (at [23]):

... If there is no defence to a claim other than a plausible counterclaim then judgment must be entered on the claim and the cross-claim should proceed to trial with a stay of execution so that the defendant is not unjustly injured.

The above comment is equally pertinent here since the defendant joined Brian Koo to this suit.

84 The defendant’s denial of the authenticity of the SPAs does not sit well with the facts that were extracted from the documents exhibited or affirmations made in the five affidavits referred to at [30].

85 First, as the plaintiff said in its submissions,<sup>101</sup> the defendant’s alternative defence to the plaintiff’s claim (that he had fulfilled his obligations under the SPAs) is diametrically opposite to his primary defence that he did not sign the SPAs. His alternative defence is unsustainable. The defendant cannot on the one hand deny signing the SPAs and in the next breath contend that he

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<sup>101</sup> Certified transcript for hearing on 13 January 2021 at p 9 lines 10–18.

performed his obligations thereunder. It has to be one or the other, not both. He cannot, as the plaintiff pointed out, hedge his bets.

86 Brian Koo's defence as well as the emails exhibited in Jong's second affidavit showed the likely sequence of events to be as follows:

- (a) The defendant authorised Brian Koo as his agent to source for a buyer urgently for his shares in Honestbee. The defendant was in urgent need of funds, having borrowed money from a moneylender at a very high interest rate;
- (b) Brian Koo found a buyer for the defendant's shares in the plaintiff;
- (c) The SPAs were executed in a hurry to accommodate the defendant's urgent need for funds;
- (d) The defendant authorised Brian Koo to execute the SPAs on his behalf but Brian Koo forwarded soft copies of the SPAs to the defendant to execute instead. The defendant emailed to Brian Koo the execution pages of both documents that he had signed which Brian Koo then forwarded in turn to the plaintiff. The defendant has not denied the relevant emails.
- (e) Having received the Claim amount, the defendant deliberately refused and/or failed to comply with cl 3 of the SPAs (see [12] above) to effect a transfer of the Shares to the plaintiff because he knew (although the plaintiff did not) that there were transfer restrictions in the shareholders' agreement(see [64] above).



87 Even if *arguendo*, this court erred in its above surmise of how events transpired, Brian Koo was the defendant's fundraising agent, by the defendant's own admission. As such, Brian Koo was authorised to act for the defendant in any event.

88 The court notes that the defendant blamed Brian Koo for not registering the share transfers under the SPAs.<sup>102</sup> However (as was pointed out in the plaintiff's submissions<sup>103</sup>), this is a self-serving argument. The defendant was himself the CEO of Honestbee from July 2018 to May 2019 when the Company was not in any financial trouble (as reflected in Honestbee's repayment to the defendant of S\$4m of his loan(s) in October 2018 (see [56] above)). Brian Koo by contrast was only the interim CEO of Honestbee from 2 May 2019 to 15 July 2019 before Ong took over. Further, Brian Koo was a director of Honestbee for four months between 2 May 2019 and 12 September 2018. He was however a creditor of the Company for SGD24,104,214.90 (USD17,854,974) representing 8.28% of the secured and unsecured debts of the Company.

89 Given Brian Koo's short tenure as CEO of Honestbee as compared with the defendant's, the court is mystified by the defendant's self-righteous and unreasonable contention that Brian Koo, not him, had the duty/responsibility to ensure the defendant transferred the Shares to the plaintiff. Why did the defendant himself not effect the transfer(s) during his (longer) tenure as CEO? In any case, no transfers could have taken place as the defendant did not obtain the consent of his fellow shareholders to waive in favour of the plaintiff, their first right of refusal to buy the Shares. Even if he wanted to, Brian Koo could

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<sup>102</sup> D&CC at paras 38 and 41.

<sup>103</sup> PWS at para 53.

not have arranged for the transfer of the Shares without the approval of the other shareholders.

90 At this juncture, I need to digress. The defendant had in his D&CC claimed that:

- (a) he was only notified of the completion of the transactions after the July and August SPA had been executed;<sup>104</sup>
- (b) he had performed his obligations as stipulated in cl 3.2 of the July and August SPA by notifying and requesting Honestbee to register the share transfers;<sup>105</sup> and
- (c) Brian Koo “caused Honestbee to ignore purported requests [of] [the plaintiff] to register the share transfers”.<sup>106</sup>

Yet when requested by the plaintiff to provide Further and Better Particulars (“F&BP”) of the above allegations, the defendant was unable to do so.

91 This court was of the view that the defendant’s denial of signing the SPAs is unsustainable for the following reasons:

- (a) He did not disavow the Share Certificate (noted to be fabricated at [40] above); indeed, his silence is telling. The defendant’s signature appears on the document. Although the document is not authentic, it

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<sup>104</sup> D&CC at para 5(a)(iii).

<sup>105</sup> D&CC at para 11.

<sup>106</sup> D&CC at para 41(a).

referred to the number of shares the plaintiff purchased under the two SPAs.

(b) Prior to his solicitors' letter dated 3 March 2020, the defendant did not at any time deny he had signed the SPAs despite receiving numerous requests/reminders between September and December 2018 from the plaintiff to comply with cl 3 thereof.

(c) Clause 3 of the PN (see [61] above) states:

3. [The plaintiff] has acquired in two transactions

1) 65,117 ordinary shares - July 19, 2018

2) 21,748 ordinary shares - August 9, 2018

It therefore does not lie in the defendant's mouth to deny execution of the SPAs when the Share Certificate (albeit fabricated) refers to the number of shares the plaintiff purchased as does the PN upon which he relies. Further, the PN refers to the SPAs.

92 Moreover, in his fourth affidavit, the defendant exhibited his email dated 22 May 2019 to Heidi Jon Jagoda, the senior legal counsel of Honestbee wherein he stated:<sup>107</sup>

[...]

Heidi,

As part of my rights as a former director and a major shareholder, I will also like to receive a copy of

1) shareholders agreement;

2) the documentation for my share sale to Alpen Route;

3) *the documentation for my share sale to ds*

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<sup>107</sup> The defendant's fourth affidavit at p 32.

4) the updated cap table

[...]

[emphasis added]

The reference to “ds” in (c) above can only be to the plaintiff. Yet the defendant came to court disclaiming knowledge and signing of the SPAs. At the same time, he had pleaded inconsistently that he had performed his obligations under the SPAs.<sup>108</sup>

93 It bears remembering that Brian Koo had denied signing the PN. In the absence of any explanation from the defendant, the court can only assume that the document emanated from the defendant. Other than the defendant’s bare assertion, he did not produce an iota of evidence (including emails) that would support his contention that Brian Koo not only knew of, but also signed, the PN. The court’s doubts on the authenticity of the PN is reinforced by the defendant’s refusal or inability to produce the original document when the plaintiff requested its inspection a year ago (see [98] below. That said, the PN is a document that has nothing to do with the plaintiff’s claim.

94 The defendant had raised the defences of affirmation and/or acquiescence to the plaintiff’s claim. These defences are wholly unmeritorious. Citing *Genelabs Diagnostics Pte Ltd v Institut Pasteur and another* [2000] 3 SLR(R) 530 (“*Genelabs*”) at [78], the plaintiff submitted (which this court accepts) that in order to be able to invoke the doctrine, the defendant must show that the plaintiff had stood by in such a manner as to induce the person committing the act (*ie* the defendant) and who might otherwise have abstained from it, to believe that the plaintiff consented to it being committed. The emails

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<sup>108</sup> D&CC at para 11.

in Jong’s second affidavit showed that the plaintiff repeatedly pressed the defendant for the share certificates for the Shares, conduct which is inconsistent with the plea of acquiescence.

95 Moreover, the defendant must – but failed to – show that his position had changed on account of the acquiescence (see *Genelabs* at [78]). Here, as in *Koh Wee Meng v Trans Eurokars Pte Ltd* [2014] 3 SLR 663, the plaintiff never indicated to the defendant that it would not enforce its rights.

96 The defendant had also argued that the plaintiff’s silence (between December 2018 and January 2020) and failure to sue constituted acquiescence. The short answer to this argument is that at law, mere silence is not tantamount to acquiescence. “To succeed in the defence, the defendant must prove that the plaintiff, by ‘standing by’, has made some representation or given some indication to the defendant that he does not intend to insist on his legal rights” (*per* Vincent Hoong J in *Eller, Urs v Cheong Kiat Wah* [2020] SGHC 106 at [106]).

97 If the defendant’s defences of affirmation and/or acquiescence are not made out, what more his other defence of laches?

98 In the course of the Appeal hearing, the court was informed that on 25 June 2020, the plaintiff requested inspection from the defendant of eight (8) documents he had referred to in his D&CC filed on 22 June 2020, including the PN. As at the date of the hearing of the Appeal, those documents were not produced by the defendant. The defendant’s omission was telling – the plaintiff’s request related to the defendant’s *own pleaded case* set out at [25] above.

99 Although this court has dismissed the PN as being irrelevant to the plaintiff's claim (at [93] above), it should be noted that the defendant's refusal or inability to produce the PN is another damning factor. It can only lead one to surmise that the PN never existed as Brian Koo asserted in his defence to the defendant's counterclaim. What the defendant probably did was to copy and paste Brian Koo's signature from documents in his possession onto the alleged PN. The defendant can do that with the soft copy of a document sent via email. He cannot *paste* a signature onto the hard copy of an unsigned document.

100 As alluded to at [90] above, it is telling that the defendant is unable to provide any F&BP of his pleadings and of his counterclaim on conspiracy, even when ordered by the court.

101 I had at [51] above referred to the defendant's surmise that because the Shares are now worthless, the plaintiff is taking action against him to improve its position in the Company's insolvency. The court finds that the position is the reverse. Because Honestbee (prior to its liquidation) was not/never worth USD330m or anywhere near that valuation, the defendant's dreams of perhaps becoming a Jack Ma (of e-commerce giant Alibaba) never came to fruition. Having expended the Claim amount and realised his shares in Honestbee are now worthless, the defendant decided to dispute liability under the SPAs and conjured up unmeritorious defences to the plaintiff's claim.

102 This court would add that the defendant's counterclaim is unsustainable as the requirements of a conspiracy to injure are not satisfied. However, it is unnecessary to address the counterclaim as it was not part of the Appeal before this court. Equally, this court does not see the need to deal with the plaintiff's other submissions over and above those already referred to earlier.

103 It was clear to this court that the defendant had not raised any triable issues that warranted the plaintiff's claim going to trial. Hence, final judgment was awarded to the plaintiff with interest and costs.

Lai Siu Chiu  
Senior Judge

Nandakumar Ponniya Servai and Danitza Hon Cai Xia (Wong & Leow LLC) for the plaintiff and first defendant in counterclaim;  
Yeo Lai Hock Nichol and Qua Bi Qi (Solitaire LLP) for the  
defendant and plaintiff in counterclaim;  
Teo Jia Hui Veronica (Focus Law Asia LLC) for the second  
defendant in counterclaim (watching brief).

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