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

[2023] SGHC 335

Originating Claim No 241 of 2023 (Registrar's Appeal No 202 of 2023)

Between

Mak-Levrion Kah Kay Natasha @
Mai Jiaqi Natasha

… *Claimant*

And

R Shiamala

… *Defendant*

JUDGMENT

[Civil Procedure — Affidavits]
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Mak-Levrion Kah Kay Natasha (alias Mai Jiaqi Natasha)
v
R Shiamala

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Goh Yihan J
16 November 2023

28 November 2023 Judgment reserved.

Goh Yihan J:

1 HC/RA 202/2023 ("RA 202") is the defendant's appeal against the decision of the learned Assistant Registrar (the "AR") below to grant summary judgment for the claimant in HC/SUM 1706/2023 ("SUM 1706"). In SUM 1706, the learned AR ordered the defendant to pay the claimant a sum of $514,200, being the outstanding amount payable under an Acknowledgment of Debt dated 24 June 2021 (the "AOD").

2 At the hearing before me on 16 November 2023, Mr Adrian Kho ("Mr Kho") appeared on behalf of the claimant, whereas the defendant, Ms R Shiamala, appeared in person. One peculiar aspect of this case is that the defendant did not file an affidavit in SUM 1706. This means that the defendant did not adduce any evidence to support her defence. Since the test for whether to grant summary judgment is largely centred on whether a defendant has raised

a *bona fide* defence, this would appear to be fatal to the defendant's appeal in RA 202. However, it must also be remembered that the said test for summary judgment is predicated, first and foremost, on the *claimant* having established a *prima facie* case. For the reasons I will explain below, I allow the defendant's appeal because the claimant has not established such a *prima facie* case in relation to the exact quantum she is claiming from the defendant. Indeed, I provide these reasons also because relatively few cases have focused on the "*prima facie*" limb of the applicable test.

The parties' positions

3 The claimant is an entrepreneur and a director and shareholder in a Singapore-registered company, Ppearl Pte Ltd. The defendant was at the material time a director and the sole shareholder of a Singapore-registered company, Imeta Edu Services Pte Ltd.[1]

4 Reduced to its essence, the claimant's case against the defendant is that, over a period of four years between 2016 and 2019, the claimant made a series of interest-free friendly loans to the defendant. The claimant provided these loans on the understanding that the defendant would repay them upon the claimant's demand for their return. The defendant, among other things, signed four IOUs acknowledging her debts to the claimant, and also made partial repayment to date of a total sum of $17,000.[2] Importantly, on 24 June 2021, both parties signed the AOD, which I reproduce below:[3]

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1 Affidavit of Mak-Levrion Kah Kay Natasha @ Mai Jiaqi Natasha dated 8 June 2023 ("Claimant's Affidavit") at para 4.

2 Claimant's Affidavit at para 13.

3 Claimant's Affidavit at p 80.

ACKNOWLEDGMENT OF DEBT

> I, Ms. R. SHIAMALA (Singapore NRIC No. [redacted]) (the 'Debtor'), hereby confirm and acknowledge to Ms. MAK-LEVRION KAH KAY NATASHA (Singapore NRIC No. [redacted]) (the 'Creditor') that I as the Debtor am indebted to you the Creditor the sum of SGD$525,200.00 (Singapore Dollars Five-hundred and twenty-five and two hundred dollars, 0 cents Only), ("Outstanding Sum") which sum comprises of several interest-free friendly loans made by the Creditor to me, the Debtor in 2015 to 2019 that I have acknowledged as due and owing by me to the Creditor on several occasions and I as the Debtor irrevocably acknowledge and confirm that the Outstanding Sum is due and owing from me, the Debtor to the Creditor and is currently owing, due and payable without demand to the Creditor. I, as the Debtor further acknowledge that I have been given adequate opportunity to seek independent legal advice on my rights prior to signing this acknowledgement of debt and execute it freely, voluntarily and without any pressure whatsoever. I, as the Debtor fully understand the nature and consequences of this acknowledgement of debt and understand, read and write English and confirm that my personal particulars and contact details herein are true and correct. This document is governed by the laws of Singapore.

5 As can be seen, the parties apparently agreed in the AOD that, as of the date of its signing on 24 June 2021, the defendant owed the outstanding quantum of $525,200 to the claimant. The parties' signing of the AOD was witnessed by two witnesses. Indeed, the defendant does not dispute that she signed the AOD. When the defendant did not repay the full sum, the claimant commenced HC/OC 241/2023 ("OC 241") against the defendant. In particular, the claimant's pleaded case in her Statement of Claim ("SOC") is premised on the defendant being:[4]

> … in breach of contract [*sic*] breached the terms of the various loan agreements with the [c]laimant and despite the [c]laimant's demand for repayment of the said agreed Outstanding Sum of S$525,200.00 which sum was agreed in an account stated in

[4] Statement of Claim dated 21 April 2023 at para 20.

> the [AOD], the [d]efendant has failed, refused and / or neglected to repay the said sum or any part thereof to the [c]laimant and the [c]laimant has suffered loss and damage in consequence thereof.

Given the manner in which the claimant has framed her case, it is incumbent upon her to refer to and prove each and every of the "various loan agreements", which make up the sum of $525,200, regardless of whether they are oral or written.

6 The defendant did not file any affidavits or submissions in SUM 1706 despite being given multiple opportunities to do so. The defendant's pleaded case in her Defence in relation to the AOD is that she had signed the AOD on the claimant's representation that it was "just to shut [the claimant's] husband's mouth and she will not use this against [the defendant]".[5] To avoid any trouble, since the defendant's husband was at home and she did not want him to come down, the defendant signed the AOD in a hurry.[6] Further, the defendant alleges that the claimant messaged her many times "to settle 400k only",[7] which I take to mean that, at least from the defendant's perspective, the claimant had told her that the outstanding sum was $400,000, and that she disputes the quantum of the outstanding sum.

The learned AR's decision

7 Against this background, the learned AR entered summary judgment in favour of the claimant for the sum of $514,200. This figure is lower than the pleaded figure of $525,200 in the SOC because the claimant took into account

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5 Defence dated 12 May 2023 at para 13.

6 Defence dated 12 May 2023 at para 13.

7 Defence dated 12 May 2023 at para 15.

a sum of $11,000 that the defendant had repaid her. The learned AR reached her decision on three primary grounds.

8 First, the defendant has acknowledged a debt owing to the claimant. The learned AR found that this was not only substantiated by the AOD but by "the voluminous documentary evidence in the WhatsApp messages exchanged between the parties, and even in the hearing today".[8] In fact, at the hearing before her, the learned AR recorded that the defendant repeatedly admitted owing the claimant money and her request was really for more time to respond to the claim against her. Second, the learned AR found that there was simply nothing on affidavit to substantiate the defendant's pleaded case: (a) that the quantum she allegedly owes is wrong; and (b) regarding the circumstances in which the AOD was signed.[9] Third, even if the defendant's allegations were on affidavit, the learned AR held that the defendant's challenges to the sum were unsupported by evidence. According to the learned AR, the defendant borne the burden to raise a triable issue. As such, the defendant's mere assertion that the sum is incorrect is insufficient.[10]

My decision: the defendant's oral application for an extension of time to file an affidavit is refused

9 I come now to the present appeal. To begin with, the defendant has still not filed any affidavits or submissions. Before me, the defendant explained that she could not afford a lawyer, nor could she find someone to help her with the necessary paperwork. However, she has now found someone who can help her

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8 Certified Transcript 11 September 2023 at p 8 lines 27–32.

9 Certified Transcript 11 September 2023 at p 9 lines 1–5.

10 Certified Transcript 11 September 2023 at p 9 lines 7–12.

but would require two weeks to do so. Having considered the defendant's oral application to seek an extension of time to file an affidavit, I refuse to grant the application.

10 To begin with, while the defendant is a self-represented party ("SRP"), and the court may show greater indulgence to such a party, this indulgence is not to be expected as a matter of entitlement (see the Court of Appeal decision of *BNP Paribas SA v Jacob Agam and another* [2019] 1 SLR 83 at [103]). Indeed, in considering the degree of indulgence to be shown, such as in relation to compliance with procedural rules, a key consideration must be that "the absence of legal representation on one side ought not to induce a court to deprive the other side of one jot of its lawful entitlement" (see the High Court of Australia decision of *Nobarani v Mariconte* (2018) 359 ALR 31 at [47]). To this, one might also consider the SRP's own conscious decisions taken along the way.

11 More specifically, the Singapore courts have laid down the following guiding principles regarding the duties of an SRP.

(a) An SRP may not use their status to conduct a case in an unreasonable manner and yet remain immune from adverse costs orders. For instance, in so far as counsel may not give evidence from the bar or continually disrupt other counsel or witnesses, *even if allowance is made for an SRP's inexperience and lack of objectivity,* an SRP may not act in such a manner so as to cause the other parties in the litigation to incur unnecessary costs (see the High Court decision of *Ong Chai Hong (executrix of the estate of Chiang Chia Liang, deceased) v Chiang Shirley and others* [2016] 3 SLR 1006 at [40]; see also the High Court

decision of *Foo Jee Boo and another v Foo Jhee Tuang and others* [2016] SGHC 260 at [227]).

(b) Although an SRP should be given the opportunity to present their case and pursue their claims, the court cannot give such aid or indulgence that it tilts the scale in favour of one or the other. In the interests of the administration of justice, *pro se* litigants may need to be moved along, or on other occasions, cut off (see the High Court decision of *VYR v VYS* [2023] 3 SLR 1370 at [29]).

(c) Given that the finality of legal proceedings is not a mere logistical concern but one with profound implications for access to justice by the large number of other litigants, an SRP may not rehash arguments that have been considered and rejected on appeal with impunity (see the High Court decision of *Muhammad Hisham bin Hamzah v Public Prosecutor* [2022] SGHC 171 at [19]).

(d) The extent of leeway given to SRPs may differ depending on whether they are experienced litigants and not "legal babe-in-the-words" (see the High Court decision of *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2009] 1 SLR(R) 642 ("*Lee Hsien Loong*") at [158]). For instance, it is relevant that the SRP is intelligent with a good command of English and has the capacity to put forward their case (see *Lee Hsien Loong* at [158]). It is also relevant that an SRP "is not unfamiliar with legal proceedings" and acted in various proceedings in the High Court, Family Justice Courts, and the District Courts (see the Court of Appeal decision of *Pradeepto Kumar Biswas v Sabyasachi Mukherjee and another* [2019] SGCA 79 at [25]). In the same vein, Judith Prakash J (as she then was) observed, in relation

> to an SRP who did not explain why he did not file the Defence and Counterclaim in time or apply to court for an extension of time, that "the plaintiff was fully cognisant of the facilities available to help [SRPs] such as himself" and "indeed, he availed himself of them" (see the High Court decision of *ADJ v ADK* [2014] SGHC 92 at [26]).

12 In the present case, I am satisfied that the defendant was given multiple opportunities to file an affidavit in SUM 1706 but decided not to do so. First, at the case conference on 20 June 2023, the defendant said that "I don't want to challenge [the application for summary judgment] as I do not want to incur costs. I don't intend to file an affidavit. I couldn't pay the lawyer the $10k to engage them". Second, at the subsequent case conference on 18 July 2023, the defendant was asked whether she would like to file an affidavit. To this, the defendant first said "I don't know", but then said "I don't want to incur the cost. I want to settle the matter". I take that to mean that the defendant did not want to file an affidavit because of the associated costs.

13 Given that the defendant was fully notified of her right to file an affidavit but chose not to do so, I do not think it is right for me to allow her an extension of time to do so on an appeal from a summary judgment against her. While the defendant is an SRP, she should be subject to the same timelines as any other litigant. It would not be fair to the claimant, who has now shown her cards in her affidavits and submissions, for this court to allow the defendant to file an affidavit belatedly. Moreover, the defendant has not taken out a formal application for an extension of time despite being notified by an Assistant Registrar that she should have done so. For all these reasons, I refuse the defendant's oral application for an extension of time to file an affidavit.

My decision: the defendant's appeal against the grant of summary judgment is allowed

The applicable law

14 I turn now to the appeal and begin with the applicable law on summary judgment. Preliminarily, while the specific wording of O 9 r 17 of the Rules of Court 2021 (the "ROC 2021") is not the same as that found in O 14 of the Rules of Court (2014 Rev Ed) (the "ROC 2014"), I do not think that the applicable principles under the ROC 2021 are now different. Indeed, as I said in the High Court decision of *Horizon Capital Fund v Ollech David* [2023] SGHC 164 (at [58]), there is nothing in the *Civil Justice Commission Report* or the *Report of the Civil Justice Review Committee* (2018) (Chairperson: Indranee Rajah SC) that suggests otherwise. Thus, the earlier decisions that have guided the application of O 14 of the ROC 2014 continue to be applicable under the ROC 2021.

15 In this regard, it is well-established that the purpose of the summary judgment procedure is to enable a claimant to obtain judgment without trial, if they can prove their claim *clearly*, and if the defendant is unable to set up a *bona fide* defence (see *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) ("*Singapore Civil Procedure 2021*") at para 14/4/2) [emphasis added]. Accordingly, if the defendant's only suggested defence is a point of law and the court can see at once that the point is misconceived (or, if arguable, can be shown shortly to be plainly unsustainable), then the claimant is entitled to summary judgment (see *Singapore Civil Procedure 2021* at para 14/1/2). However, this is predicated on the *claimant* having established a *prima facie* case in the first place. This is an important point because while most of the cases have turned on whether the defendant has raised a *bona fide*

defence, that must necessarily be *after* the claimant has shown a *prima facie* case. Put differently, before the court may examine if the defendant has raised a *bona fide* defence, the anterior question to be analysed is whether the claimant has established a *prima facie* case. The claimant bears the burden of establishing such a *prima facie* case.

16 Accordingly, to obtain summary judgment, a claimant must discharge his burden of showing that he has a *prima facie* case for his claims. If he fails to do that, his application ought to be dismissed. In this regard, Mr Kho suggested before me that the expression "*prima facie*" suggests a lower threshold to cross compared to the usual civil standard of balance of probabilities before the claimant is deemed to have a viable case. I respectfully disagree for four reasons. First, "*prima facie*" is defined to mean "at first sight" or "on first appearance but subject to further evidence or information" (see Bryan Garner, *Black's Law Dictionary* (Thomson Reuters, 11th Ed, 2019) ("*Black's Law Dictionary*") at p 1441). Similarly, a "*prima facie* case" is defined to mean "a party's production of *enough evidence* to allow the fact-trier to infer the fact at issue and rule in the party's favour" (see *Black's Law Dictionary* at p 1441) [emphasis added]. This does not connote a lower standard. Second, it is unclear to me how this "lower threshold" can be different from the normal civil standard of proof. Mr Kho did not substantiate this suggestion with any authority. Third, the premise of the summary judgment procedure is that the claimant is entitled to such a judgment because he has such a clear case, *and* the defendant has no viable defence against that clear case. Thus, if the claimant does not have a clear case, then it must follow that the court need not even consider the defendant's defence. Fourth, and more substantively, the label "*prima facie*" is used in this context only because the claimant's case is considered on its own, *without* considering the defendant's

defences. Thus, the claimant's case is "*prima facie*" viable only because his case is considered on its face, without considering any counterarguments. While this has not been expressly set out in any decision, this is clear from the courts' approach to summary judgment applications, where the courts first assess the claimant's case on its own. Only after the claimant has established a *prima facie* case, do the courts proceed to evaluate the defendant's case.

17 Once the claimant shows that he has a *prima facie* case, the tactical burden then shifts to the defendant who, in order to obtain permission to defend, must establish that there is a fair or reasonable probability that he has a real or *bona fide* defence (see the High Court decision of *M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2015] 1 SLR 325 ("*M2B World*") at [17], citing the High Court decision of *Ritzland Investment Pte Ltd v Grace Management & Consultancy Services Pte Ltd* [2014] 2 SLR 1342 at [43]–[47]). The tactical burden which shifts to the defendant is the burden to provide further evidence to rebut an inference that would otherwise be drawn from the evidence provided by the claimant. The court will not grant permission to defend if the defendant only provides a mere assertion, contained in an affidavit, of a given situation which forms the basis of his defence (see *M2B World* at [19], citing the High Court decision of *Prosperous Credit Pte Ltd v Gen Hwa Franchise International Pte Ltd* [1998] 1 SLR(R) 53 at [14]). If the defendant cannot satisfy this tactical burden, the claimant would be entitled to summary judgment.

18 With the applicable law in mind, I turn to explain why I find that the claimant has not established a *prima facie* case simply by reading her pleadings and affidavits filed in SUM 1706. To my mind, in the absence of any binding authority, a *prima facie* case must, at the very least, mean a case that is:

(a) supported by the claimant's *own* evidence; (b) internally consistent; and (c) not inherently unbelievable without good explanation. As I will now explain, the claimant's case does not satisfy these requirements of a *prima facie* case.

The claimant has not established a* prima facie *case in relation to the quantum

The prima facie *case which the claimant needs to establish*

19 As a preliminary point, it is important to define precisely *what* the claimant's *prima facie* case is. In this regard, as I alluded to above, the claimant's pleaded case in her SOC is that the defendant is "in breach of contract breached the terms of the various loan agreements with the [c]laimant and despite the [c]laimant's demand for repayment of the said agreed Outstanding Sum of S$525,200.00 which sum was agreed in an account stated in the [AOD]".[11]

20 As such, the claimant must establish a *prima facie* case that: (a) the defendant owes her $525,200; and (b) that this figure can be substantiated not only by the AOD but also "the terms of the various loan agreements". As I will now explain, I do not think that the claimant has succeeded in doing so. The claimant is unable to show that the defendant owes her $525,200, because this figure is not supported by the AOD, and neither is this figure supported by the other alleged loan agreements.

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[11] Statement of Claim dated 21 April 2023 at para 20.

The AOD is ambiguous on its face and inconsistent with the claimant's evidence

21 To begin with, the AOD is ambiguous on its face. In this regard, the words that spell out the outstanding sum (*ie*, "Singapore Dollars Five-hundred and twenty-five and two hundred dollars, 0 cents Only") is not consistent with the numerical figure of "SGD$525,200.00"). While it might be surmised that there is a missing word "thousand" in the expression, the claimant has not explained this obvious inconsistency in her affidavit. Mr Kho also did not make any submission before me to rectify the AOD to correctly reflect the parties' common intention. There is, in any event, no evidence from the claimant as to whether this was a mistake and what the correct position ought to be. As such, in the absence of such evidence and submissions, I am compelled to conclude that the AOD is ambiguous as to the exact amount that the claimant says the defendant owes her. Above all, it must be remembered that the whole essence of summary judgment is that the claimant has a *clear* case upon which it is safe to enter judgment after considering the defendant's defences. The text of the AOD clearly does not establish such a case.

22 In addition, the AOD is also inconsistent with the claimant's own evidence. First, the AOD refers to "several interest-free friendly loans made … in 2015 to 2019".[12] However, this is not consistent with the claimant's *own* evidence that she first met the defendant in early 2016. It is therefore impossible for the claimant to have made any loan to the defendant in 2015. While Mr Kho attempted to brush this off as an inconsequential error, this undermines the claimant's own case to some extent when considered with other inconsistencies. Second, the AOD refers to "several interest-free friendly loans made by the

12 Claimant's Affidavit at p 80.

[claimant] to [the defendant]".[13] Again, this is contradicted by the claimant's own evidence. As I pointed out to Mr Kho, I found at least two instances in the claimant's own evidence where there was interest paid, as indicated by the use of the word "int". For completeness, I reproduce the text from two relevant documents, which are IOUs between the parties. The first document is a handwritten IOU dated 18 March 2016 and 25 April 2016:[14]

> 18/3/16
>
> I, R. SHIAMALA has [*sic*] taken a Loan from NATASHA on 18/3/16 of $50,000 [NRIC No. redacted] AND TO BE RETURN [*sic*] IN JUNE END [NRIC No. redacted]
>
> …
>
> 25/4/16 NEW LOAN $6,000 To be return [*sic*] on June End
>
> AND AND A int of 5% to be Paid
>
> [underlined text in original]

23 The second document is a handwritten IOU dated 15 October 2016:[15]

> 1) Payment int $15,000 (23/10/16
>
> (24/10/16
>
> 2) Nov 16th – $45,000 (2nd payment
>
> 3) Dec 15th – $60,000 (3rd payment
>
> BAL: 112,000 (with int) will confirm By Nov-End
>
> 24/9/16 – Taken – $8,000
>
> 26/9/16 – [Taken] – $15,000 int
>
> 15/10/16

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13 Claimant's Affidavit at p 80.

14 Claimant's Affidavit at p 90.

15 Claimant's Affidavit at p 128.

24 In an attempt to explain this difficulty away, Mr Kho explained that when the defendant prepared the IOUs, she offered to pay interest on the loans to the claimant. However, as I pointed out to Mr Kho, even from a cursory glance at these two documents, it is clear that the handwritings are different. Thus, there must have been at least two persons who prepared the IOUs, and it cannot be definitively said that the defendant prepared both of them. Moreover, Mr Kho was clearly providing evidence from the Bar, as the claimant has not provided such an explanation in her affidavit.

25 These inconsistences on the face of the AOD are significant. Therefore, I do not think the present case is similar to the cases cited by the claimant for the proposition that where there is an AOD or a similar document, the courts will usually find that the claimant has not only established a *prima facie* case but is also entitled to summary judgment. For instance, in the High Court decision of *Otto Systems Singapore Pte Ltd v Greenline-Onyx Envirotech Phils, Inc* [2006] 4 SLR(R) 924 (at [11]), the court held that where there was a clear admission of debt, there was no reason for the court not to grant judgment on the acknowledged sum. But, as the court observed (at [21]), the admission by the defendant was "unmistakeable, clear and unequivocal", because among other reasons: (a) it was made by attorneys who had authority to represent the defendant; and (b) the defendant also admitted in affidavit that the debt matched the defendant's own accounting of its obligations to the plaintiff. Similarly, in the Court of Appeal decision of *Greenline-Onyx Envirotech Phils, Inc v Otto Systems Singapore Pte Ltd* [2007] 3 SLR(R) 40 (at [16]), the court held that "[g]iven the clear words of admission of a debt by the appellant, there was no reason why the respondent should not be allowed to rely on the appellant's own admission of the amounts owing to it". Also, in the Federal Court decision of *Queensland Insurance Co Ltd v Lee Brothers Organisation* [1965-

1967] SLR(R) 676 (at [16]), because of the "clear and unconditional acknowledgment that a sum … was due and owing by the defendants to the plaintiffs", the court granted judgment in favour of the plaintiffs.

26 In all those cases, the AOD or similar document were clear. The same cannot be said of the present case, where the AOD is both internally ambiguous as well as inconsistent with the other documents. Accordingly, I do not think that the AOD, in itself, suffices to discharge the claimant's burden to prove a claimant's *prima facie* case.

The AOD, which refers to underlying loans, is inconsistent with the records of those loans

27 Further, as I explained to Mr Kho, I am entitled to look beyond the AOD because it expressly refers to "several interest-free friendly loans" as constituting the sum of $525,200. As such, in considering whether the claimant has a *prima facie* case, I need to be satisfied that the underlying loans all amount to $525,200. This is also consistent with how the claimant has pleaded her case, which is that the "various loan agreements", in essence, added up to the "agreed Outstanding Sum of S$525,200". However, when I looked deeper into the evidence, I found even more inconsistencies.

28 First, in her affidavit, the claimant exhibits a spreadsheet containing her claims against the defendant.[16] It is a comprehensive spreadsheet. The total sum owing, without accounting for any repayment, is $487,700. After accounting for the defendant's repayment of $17,000 up to 18 January 2023, the outstanding sum owed to the claimant stood at $470,700. When I compare the figure of

16 Claimant's Affidavit at pp 84–88.

$487,700 with the figure of $525,200, there is a discrepancy of $37,500. While the claimant has explained that the $37,500 comprised other unrecorded loans, that explanation undermines her case that the defendant is in breach of "various loan agreements", which the claimant is obliged to prove. Also, given that the claimant has exhibited various withdrawals from her bank accounts in respect of the other sums, I find it difficult to believe that there is no record of her withdrawing a relatively large sum of $37,500 from her accounts. Either that, or she has $37,500 in cash on hand. Yet, the claimant has said nothing on affidavit as to *how* this sum came to be unrecorded.

29 Second, I pointed Mr Kho to another document dated 30 June 2016 signed by both parties, which I reproduce below:[17]

> 30 June 2016
>
> I, Mak-Levrion Kah Kay Natahsa, [NRIC No. redacted], of [address redacted], have extended a friendly loan to R. Shiamala, [NRIC No. redacted], of [address redacted], the amount of S$524,790.00 (four hundred sixty-one thousand, seven hundred and ninety dollars).
>
> I, R. Shiamala, [NRIC No. redacted], of [address redacted], agree that if this amount is defaulted, this document serves in a court of law, and legal action can and will be taken based on this document.
>
> We have agreed that this sum of money will be duly settled by 31 December 2017.

30 Leaving aside the fact that the claimant does not explain what this document is in her affidavit, there is a glaring inconsistency between this document and the evidence. This document, so far as I understand it, provides that there is an outstanding sum of $524,790 as of 30 June 2016. Again, leaving aside the fact that it is unbelievable how a person can loan half a million dollars

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17 Claimant's Affidavit at p 81.

to another person in a non-commercial transaction without three months of knowing each other, this figure does not match up with the claimant's own spreadsheet that I alluded to above. There is also an inconsistency within this document – although the numerical figure stated is $524,790, the words that spell out the outstanding sum do not match this ("four hundred sixty-one thousand, seven hundred and ninety dollars"). The claimant does not explain this discrepancy in her affidavit.

31 In fact, when the relevant figures before 30 June 2016 are tallied up from the spreadsheet, the total outstanding sum is $194,800. While this is undoubtedly a large sum, it is still less than half of the purported $524,790 owed to the claimant as of 30 June 2016. Mr Kho attempted to explain this away by bringing me through statements of the various withdrawals from the claimant's bank accounts. But when I pointed out to him that these withdrawals do not come anywhere near $524,790, Mr Kho then suggested that this document dated 30 June 2016 must have been a mistake. However, there was no basis in the claimant's affidavit for this suggestion. Be that as it may, this again undermines the claimant's case because it shows that her own records are inaccurate. It is also surprising that the claimant is not aware of all these inconsistencies in her own case.

32 Third, I pointed Mr Kho to yet another document in the claimant's affidavit, which I reproduce below:[18]

> 19 October 2019
>
> I, Mak-Levrion Kah Kay Natasha, [NRIC No. redacted] of [address redacted], have extended a friendly loan to R. Shiamala, [NRIC No. redacted] of [address redacted], the

[18] Claimant's Affidavit at p 93.

> amount of S$533,290.000 (five hundred, three hundred and thirty three thousand, two hundred and ninety dollars)
>
> I, R. Shiamala [NRIC No. redacted] of [address redacted], agree that this document supercedes and replaces all other loan documents I have signed with Natasha Kah Kay Mak-Levrion. I also agree that if this amount is defaulted, this document serves in a court of law and legal action can and will be taken based on this document.
>
> I agree to settle this amount of S$533,290.000 in totality with Natasha Kah Kay Mak-Levrion.

33 From what I understand of this document, the parties agreed that, as of 19 October 2019, there was an outstanding sum of $533,290 owing from the defendant to the claimant. Yet, this again undermines the claimant's own case. This is because the claimant's own spreadsheet, the record of which runs beyond 19 October 2019, and up to 18 January 2023, recorded a *maximum* outstanding sum of $487,700 without accounting for the defendant's repayments.[19] More specifically, based on the spreadsheet, as of 19 October 2019, the maximum outstanding sum was $482,700 after accounting for the defendant's repayments. As such, this is yet another inconsistency within the claimant's own evidence as to how much the defendant actually owes her.

34 Having heard all of my concerns, Mr Kho rightly acknowledged that the claimant's evidence is "messy" and "inconsistent", and explained that this was because the parties are laypersons. Be that as it may, that does not lighten the claimant's burden of proving her case against the defendant on a *prima facie* standard. Mr Kho then suggested that I could consider limiting summary judgment to two other figures: (a) $470,700, being the amount indicated as outstanding in the spreadsheet; or (b) $400,000, being the amount that the defendant allegedly admitted to being liable for before the learned AR below. I

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19 Claimant's Affidavit at pp 84–88.

reject these two figures for the primary reason that this is not the claimant's pleaded case. The claimant's case is that the defendant owes her $525,200 as derived from the AOD, which is in turn based on various other loans. Thus, it would not be fair to the defendant for the claimant to suddenly change her pleaded case in the middle of an appeal, especially in favour of an alternative unpleaded case that she deems to be more advantageous.

35 Moreover, apart from the fact that the claimant's spreadsheet is her own unilateral (and potentially inaccurate) record of an alleged debt of $470,700 to the defendant, I do not see how it can be said that the defendant admitted to owing $400,000 before the learned AR below. In this regard, Mr Kho directed me to the relevant parts of the hearing below:[20]

> I did not make her give me the money. She sent me to the guruji. I had a marriage that I lost. My amount still stands at $400,000. I took her word for granted. I trusted her and I signed. I asked her three times not to use this against me. She messaged me afterwards, $400,000. I also have it. If I had the money and the lawyer, I would have printed out everything. I asked for mediation so I can speak the truth. He says it is the same story – yes, because it is the truth. I will pay up by 2024. I do not want to go to Court. I just want to settle.

However, a plain reading of this passage does not convince me that the defendant has unequivocally admitted liability for $400,000. If at all, the defendant said that her amount "still stands at $400,000", which is ambiguous in meaning. Also, it seems that the claimant had asked the defendant if she would settle at $400,000. All in all, it would not be safe to rely on this as the defendant's admission to liability for $400,000.

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[20] Certified Transcript 11 September 2023 at p 10 lines 11–18.

36 More broadly, Mr Kho's shifting numbers further amplify the point that the claimant is unsure what the quantum is. From a pleaded figure of $525,200, Mr Kho suggested I go with the spreadsheet figure of $470,700 before alluding to a supposed "admission" of $400,000. I do not think that the claimant should throw around numbers when the former has been rejected. The fact is that the claimant does not even know what her own case is.

37 As such, I conclude that the claimant has not established a *prima facie* case for $525,200. For this reason alone, I allow the appeal. I do not need to refer to the defendant's defences because my decision is premised on the inadequacy of the claimant's own case, which she bears the burden of establishing. In any event, the defendant has consistently pleaded that she disputes the quantum concerned. While she has not provided evidence in this regard, I would have been willing to consider such a defence because this defence can be tested against the claimant's own evidence.

The claimant's case is inherently unbelievable in certain aspects

38 Apart from these inconsistencies in the claimant's own case, I also find that her case is inherently unbelievable in certain aspects. I raise only three examples.

39 First, by the claimant's own evidence, she first met the defendant in early 2016 before meeting her a second time in April 2016. Yet, looking at the claimant's own spreadsheet, in March 2016, the claimant had already extended a loan of $74,800, spread across three amounts, to the defendant after just one meeting.[21] This strikes me as inherently difficult to believe. Also, if the claimant

[21] Claimant's Affidavit at p 84.

says she met the defendant "for the second time" in or around mid-April 2016, and that she had withdrawn this sum of $74,800 in cash or cash cheque, it is not clear to me how the claimant could have passed the physical cash and cash cheque to the defendant in March 2016 without having met her between their initial meeting in "in or around early 2016" and their second meeting in or around mid-April. The claimant clearly could not have mailed the cash to the defendant. To be fair, the claimant avers in her affidavit that she met the defendant on 18 March 2016 to pass her a loan of $50,000 in cash. However, this contradicts the claimant's own evidence that she only met the defendant "for the second time" in April 2016, since she had met the defendant prior to 18 March 2016. Moreover, the claimant provides no explanation as to how she passed a cash cheque of $15,000 on 14 March 2016 (which is inconsistent with her spreadsheet that indicated this as "cash") and a cashier's order of $9,800 on 18 March 2016 to the defendant, if she did not meet up with her. In sum, the claimant's own evidence contradicts how she could have made these loans to the defendant. Or, at the very least, her evidence is self-contradictory on a material issue, that is, the total loan quantum.

40 Second, I find it curious why the claimant persisted in dealing with cash and cash cheques, such that there is no proper record of her loans to the defendant. While I can accept that this may happen on occasion, I find it difficult to believe that the claimant would continue with this practice all the way until 2017 when she started to transfer funds to the defendant's bank account, therefore belatedly creating a record trail. Also, as a matter of evidence, while the claimant has exhibited records of her withdrawals of these amounts from her bank account, that only goes to show that she *withdrew* the moneys, but does not prove that the moneys went to the defendant.

41 Third, by the claimant's own case, her relationship with her husband and her own financial situation suffered because of her loans to the defendant. More specifically, the claimant attests that in or around "early 2017", she started experiencing financial difficulties due to the loans she extended to the defendant.[22] She also had multiple expenses, such as her daughters' international school fees, housing loan payments, and household expenses.[23] If this were indeed the case, I find it hard to believe that the claimant would *continue* to lend money to the defendant, all the way until May 2019. And to do so, the claimant would take funds from her daughters' savings accounts and her company's account.[24] In fact, it is also unbelievable that the claimant actually borrowed money from her father in 2017 to pay for her daughters' international school fees but continued to lend money to the defendant until 2019.[25] In fact, it is even more unbelievable that, despite the defendant's alleged broken promises to repay the claimant, the claimant borrowed money from her friends to lend to the defendant.[26]

42 While Mr Kho brought me through numerous WhatsApp messages between the parties to show how the claimant was pestered by the defendant to extend these loans, the utility of these messages diminishes when considered against other evidence. In particular, the claimant's supposed conduct of lending large sums of money to a non-relative, with no proper record and mainly through cash and cash cheques, despite being in dire financial straits, makes

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22 Claimant's Affidavit at para 56.

23 Claimant's Affidavit at paras 57–58.

24 Claimant's Affidavit at para 58.

25 Claimant's Affidavit at para 63.

26 Claimant's Affidavit at para 90.

little sense. In any case, even if I were to accept that the WhatsApp messages show the claimant to be a gullible person, the real legal significance of those messages, which the claimant did not fully particularise, is whether and to what extent the defendant had admitted to her debt in those messages. However, I do not need to rely on this point to allow the appeal.

It is inappropriate to enter judgment for liability because liability is directly tied to the quantum

43 In the end, I recognise that the defendant has acknowledged that she owes the claimant money. The question is how much. While I can enter judgment in favour of the claimant in terms of liability and leave damages to be assessed, I do not think that is appropriate in this case. This is because the present case concerns liquidated damages, in that the defendant's liability is directly tied to the quantum of damages due to the claimant. Also, there are, according to the claimant's case, numerous loan agreements. As such, it would not be right to find that the defendant is liable for these loan agreements when the claimant has not properly particularised what these loan agreements are. Neither has the claimant matched the supposed admissions by the defendant in the voluminous WhatsApp messages to the quantum of the various loans. That would have been helpful but would not be determinative in this appeal.

44 Ultimately, while Mr Kho points to the AOD as the primary document that the claimant relies on, I do not think it helps the claimant in this case. As I have explained, this is because: (a) the AOD on its face is ambiguous and inconsistent; and (b) the AOD, having referred to underlying loan documents, is inconsistent with those documents. This is therefore a very different case from the routine case where there is a properly drafted AOD or similar document.

Conclusion

45 For all of the reasons above, I allow the defendant's appeal in RA 202, and grant the defendant unconditional leave to defend the claim against her in a full trial. Going forward, I would urge the defendant to adhere to all prescribed timelines. As I said above, the defendant will not be given too much additional leeway simply because she is an SRP. Additionally, it would be helpful if the claimant can provide fuller details of the various alleged loan agreements and connect them with the defendant's supposed acknowledgement in specific WhatsApp messages between them. The claimant should also be prepared to explain all the inconsistencies in her case. As I also said above, it is surprising that the claimant is seemingly unaware of these inconsistencies until I asked Mr Kho about them during the hearing.

46 In the final analysis, this case shows the need to scrutinise the relevant documents even when there appears to be an obvious admission of liability in an AOD or a similar document. It is important that a court does not enter summary judgment simply because there is apparently an acknowledgement of debt and certainly not when, as in the present case, that very acknowledgement is ambiguous on its face as to the loan quantum. Also, there is a need to remember that a summary judgment is denied not only because the defendant has raised a *bona fide* defence but also because the claimant has not even established a *prima facie* case. Indeed, if a claimant wishes for a quick resolution of their claim in their favour, then it is incumbent on them to advance their case clearly and consistently.

47 Unless the parties are able to agree, they are to submit their respective written submissions on the appropriate costs order for this appeal and the hearing below, limited to seven pages each, within 14 days of this decision.

Goh Yihan
Judge of the High Court

Arul Andre Ravindran Saravanapavan and Adrian Kho Ngiat Sun
(Arul Chew & Partners) for the claimant;
The defendant in person.
