IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 11

Suit No 714 of 2017 (Registrar's Appeal No 301 of 2017 & Summons No 4882 of 2017)

Between

GOH BEE LAN

… *Plaintiff*

And

(1) YAP SOON GUAN
(2) WENDA NG LI HA

… *Defendants*

GROUNDS OF DECISION

[Civil procedure] — [Summary judgment]

[Contract] — [Duress] — [Economic]

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v
Yap Soon Guan and another

[2018] SGHC 11

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27 November 2017

18 January 2018

Tan Siong Thye J:

Introduction

1 In this Registrar's Appeal No 301 of 2017 ("RA 301"), the Defendants, Yap Soon Guan ("Yap") and Wenda Ng Li Ha ("Ng"), appealed against the decision of the assistant registrar ("AR") who granted the Plaintiff, Goh Bee Lan, summary judgment under O 14 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). Having heard the parties' submissions, I could not find any reason to disturb the AR's decision. Accordingly, I dismissed the appeal. The Defendants have filed an appeal against my decision. I now give my reasons.

Background

2 The Plaintiff had entered into an original loan agreement for the sum of $3.3m, known as the Transaction Agreement, with the Defendants.[1]

Subsequently, the Defendants were unable to repay the original loan and the parties restructured the Transaction Agreement on several occasions. Throughout the transactions, the Plaintiff was represented by her husband, Chua Beng Huat ("Chua").[2]

3 Yap is the founder and controlling shareholder of two companies which run an extensive educational and childcare business. Ng is Yap's business associate who partially owns the business and operates the business together with Yap.[3]

4 The Defendants failed to pay and the parties eventually entered into a Settlement Agreement dated 22 May 2017 for a full and final settlement of the monies owed.[4] For the purposes of negotiating and entering into the Settlement Agreement, the Defendants were advised by solicitors from WongPartnership LLP. With the assistance of their respective lawyers, the parties negotiated the terms of the Settlement Agreement for five weeks before they finally agreed on its terms on 22 May 2017.[5]

5 The Transaction Agreement was entered into between the parties on 25 February 2014. Thereafter, the Transaction Agreement underwent several rounds of substantive restructuring on the Defendants' initiative as they were unable to repay the principal sum of $3.3m. Although the Transaction Agreement had morphed over time into various restructured loan agreements,

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1 Chua Beng Huat's 1st affidavit, p 7.

2 Chua Beng Huat's 2nd affidavit, para 7.

3 Yap Soon Guan's 1st affidavit, paras 13–15.

4 Chua Beng Huat's 1st affidavit, para 5.

5 Chua Beng Huat's 1st affidavit, paras 6–9.

the Plaintiff did not put in more money in those agreements. Any increases in the principal sums of the restructured loan agreements were proposed and computed by the Defendants. The key terms of the Transaction Agreement, the various restructured loan agreements, and the Settlement Agreement are summarised in the following table:[6]

Agreement	Date	Sum	Date Due
Transaction Agreement	25 Feb 2014	$3.3m, 15% interest per annum	31 Mar 2016
First Supplemental Agreement	26 Jun 2015	$4.4m, no interest	31 Dec 2015
Restated Loan Agreement	31 Dec 2015	$4.4m, 7.5% interest per month	29 Feb 2016
Second Supplemental Agreement (March)	7 Mar 2016	1st tranche: $2m 2nd tranche: remaining amount ($2.4m) with 7.5% interest per month, default interest of 3%	15 Mar 2016 (1st tranche) 30 Apr 2016 (2nd tranche)
Second Supplemental Agreement (September)	15 Sep 2016	$4.8m, default interest of 7.5% per month $300,000 on four occasions for a total of $1.2m, default interest of 7.5% per month	30 Sep 2016 ($4.8m) 1 Jan, 1 Apr, 1 Jul, 1 Oct 2017 ($300,000 each time)
Settlement Agreement	22 May 2017	$3.25m, default interest of 5.33% per annum $1.5m, default interest of	30 Jun 2017 ($3.25m) 30 Sep 2017

6 Chua Beng Huat's 2nd affidavit, para 21.

		5.33% per annum	($1.5m)

6 The Plaintiff's statement of claim filed on 3 August 2017 arose from the non-payment of the first sum of $3.25m in the Settlement Agreement that was due on 30 June 2017.[7] The Plaintiff has yet to claim the second sum of $1.5m in the Settlement Agreement which was due on 30 September 2017. The Plaintiff's cause of action was also not premised on the other loan agreements.

7 The AR granted the Plaintiff summary judgment for the sum of $3.25m together with interest of 5.33% per annum and costs in favour of the Plaintiff. The Defendants appealed.

The AR's decision

8 The AR granted summary judgment on the basis that the Defendants did not dispute that they owed the Plaintiff a sum of $3.25m under the Settlement Agreement and that they did not raise any triable issues.

9 The issues of whether Chua was a nominee of the Plaintiff and whether the parties initially wanted the monies to be extended as part of an investment were not relevant since the Defendants did not dispute that they had entered into the various loan agreements and the Settlement Agreement.[8]

10 While the issue of illegitimate economic duress was potentially relevant in that it could vitiate the Settlement Agreement if it was true, the AR found that there was no evidence to support the Defendants' assertion.[9]

7 Chua Beng Huat's 1st affidavit, paras 11 and 13.

8 Transcript of proceedings before the AR, p 20.

9 Transcript of proceedings before the AR, pp 20–21.

(a) The Defendants were represented by legal counsel when they entered into the Settlement Agreement.

(b) The sum of $3.25m claimed by the Plaintiff was not extortionate or unconscionable, since it was lower than the original loan sum of $3.3m. It was not disputed by the Defendants that the original loan sum was $3.3m.

(c) Even if the court looked at all the restructured loan agreements and the Settlement Agreement instead of only the sum claimed by the Plaintiff, the parties' correspondence showed that the Defendants knew what they were doing when they entered into these agreements repeatedly. On each occasion, the Defendants asked for more time and apologised for delays in making repayment. The fact that the Defendants were cash-strapped or even desperate did not mean that they were coerced into entering the agreements.

11 The AR therefore found no triable issues and granted summary judgment in favour of the Plaintiff.

Parties' positions

Defendants' case

12 On appeal, the Defendants similarly did not dispute that they owed the Plaintiff the sum of $3.3m.[10] They argued that the Settlement Agreement had been procured by illegitimate economic duress, rendering it unenforceable.[11] The Defendants relied on the following arguments:

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[10] Defendants' submissions, para 81.

(a) In slightly more than three years, the Defendants' debt "swelled" from $3.3m to $4.75m, an increase of $1.45m. The Defendants submitted that this increase was extravagant and unconscionable.[12]

(b) This increase was attributable to Chua. He was unhappy that the Defendants pursued a reverse takeover instead of an Initial Public Offering ("IPO"). Despite knowing that the Defendants could not afford to be engaged in court action as they were financially strapped and were pursuing funding, Chua made the "wholly unreasonable" demand for the return of his money.[13]

(c) Indeed, when Chua made the first demand in May 2015 for the return of the money by the end of 2015, the loan was not even due yet as it was due only on 31 March 2016.[14]

(d) This relentless pressure for the return of the money continued throughout the various loan agreements and culminated in the Settlement Agreement.[15]

(e) There was "no real advantage" to the Defendants by entering into these agreements. They were procured solely by Chua's illegitimate pressure.[16]

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11 Defendants' submissions, para 13.

12 Defendants' submissions, paras 24–27.

13 Defendants' submissions, paras 30–35.

14 Defendants' submissions, para 37.

15 Defendants' submissions, paras 44–72.

16 Defendants' submissions, para 80.

13 While the Defendants acknowledged that the sum of $4.75m under the Settlement Agreement was brought down from $6m in the Second Supplemental Agreement (September), they submitted that $4.75m "remained oppressive and extortionate" as it did not take into account the Defendants' failure in their reverse takeover.[17] The reverse takeover was why the Defendants computed and increased the principal sum of the loan owed from $3.3m in the Transaction Agreement to $4.4m in the First Supplemental Agreement.[18]

Plaintiff's case

14 The Plaintiff submitted that there was no triable issue of illegitimate economic duress for the following reasons:

(a) The Defendants were advised by legal counsel during the negotiations that resulted in the Settlement Agreement.[19]

(b) There was no evidence of illegitimate pressure by the Plaintiff. In the emails that the Defendants relied on, the Plaintiff was unwilling to extend the loan any further due to the Defendants' previous defaults. When the Defendants tried to persuade the Plaintiff that monies were forthcoming as they had an investor who was willing to sign a term sheet with them, the Plaintiff asked for more details of the said investor. The Plaintiff would have withheld enforcement action on the amounts already due and owing under the Second Supplemental Agreement (September) if she had enough details of this alleged investor.[20]

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17 Defendants' submissions, para 73.

18 Defendants' submissions, para 40.

19 Plaintiff's submissions, paras 28–32.

20 Plaintiff's submissions, paras 33–35; Yap Soon Guan's 1st affidavit, p 206.

(c) Even assuming the Plaintiff exerted some pressure on the Defendants, it was for the purpose of seeking recourse to recover the original unsecured loan from the Defendants. This would not constitute illegitimate pressure.[21]

15 The Plaintiff also submitted that in considering these factors, the court should not look at the events leading up to the Settlement Agreement – including the various loan agreements – as it would go against the policy of finality of settlement agreements.[22]

My decision

16 I agree with the AR and found that there was no triable issue of illegitimate economic duress or any other triable issue and dismissed the Defendants' appeal. I shall first set out the law before turning to explain why I rejected the Defendants' submissions.

The law

17 The requirements for illegitimate economic duress were summarised by Quentin Loh J in *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and another (Orion Oil Ltd and another, interveners)* [2011] 2 SLR 232 ("*E C Investment*")[23] after reviewing the relevant authorities (at [48] and [51]):

(a) There must be pressure amounting to compulsion of the will of the victim.

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21 Plaintiff's submissions, paras 37–39, 44–50.

22 Plaintiff's submissions, paras 51–56.

23 PBOA, Tab 2.

(b) The pressure must be illegitimate, which can be inferred from the presence of such manifestly disadvantageous terms to the complainant as to make it unconscionable for the other party to retain the benefit of them.

18 In determining whether there was illegitimate pressure, three caveats must be borne in mind. First, where only lawful pressure was used, it would be a "very rare case" for duress to be found simply because illegitimate economic duress generally requires proof of illegitimate pressure as opposed to mere commercial pressure (*E C Investment* at [47] and [51]). Second, lawful commercial pressure should not be mistaken for unlawful duress because the aim of the courts is to distinguish between agreements that are the result of mere commercial pressure and those entered into because of unfair exploitation (*E C Investment* at [52]). Third, in order to identify such unfair exploitation, the court can refer to the following factors (see *E C Investment* at [44], citing the Privy Council's decision in *Pao On v Lau Yiu Long* [1980] AC 614 at 635–636):

(a) Whether the party alleged to be coerced did or did not protest.

(b) Whether, at the time that he was allegedly coerced, he had an alternative course open to him such as an adequate legal remedy.

(c) Whether he was independently advised.

(d) Whether after entering the contract he took steps to avoid it.

19 That said, I also accepted the Defendants' submissions that illegitimate economic duress can be found even if the victim remains silent. When the victim has no other practical choice open to him but to submit to the pressure, then illegitimate pressure can be found even if the victim does not complain (see

Universe Tankships Inc of Monrovia v International Transport Workers Federation and others [1983] 1 AC 366[24] at 400).[25]

20 In other words, in deciding whether the economic duress was illegitimate, the court must look at the eventual terms that the parties contracted on, whether they were extravagant or unconscionable, as well as the process which the parties used to arrive at those terms. I shall now deal with each in turn.

The sums in the Settlement Agreement were not extravagant or unconscionable

21 The Defendants submitted that the total sums in the Settlement Agreement were extravagant or unconscionable because in a short span of three years they had ballooned from $3.3m to $4.75m. I did not accept these submissions. Although it is true that the absolute sums had increased, this must be seen in the context of three other facts:

(a) First, the sums increased because the Defendants had failed to pay up on any of the loan agreements entered into between the Transaction Agreement and the Settlement Agreement.

(b) Second, it was the Defendants who suggested and agreed to the principal sums of the various restructured loan agreements and the Settlement Agreement.

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24 DBOA, Tab H.

25 Defendants' submissions, para 82–83.

(c) Third, the sum claimed in this case was only $3.25m, which is less than the original loan sum of $3.3m.

22 The first pertinent point to note is that the Defendants had not paid the principal sums of any of the original and restructured loan agreements. The purpose of the various restructured loan agreements was so that the Plaintiff would gain from the interest and additional repayments, while the Defendants would have more time for the repayment of the loans.

23 The second pertinent point is that the precise sum that would be payable under each of the restructured loan agreements was computed and proposed by the Defendants, and not by the Plaintiff. For instance, Yap mentioned in his affidavit that from the principal sum of $3.3m in the Transaction Agreement, he computed that Chua would be able to grow this sum to $4.4m. As a result, $4.4m became the principal sum in the First Supplemental Agreement.[26] Yap explained his computation as follows:

> 45. I did a broad computation of the reasonable amount of what Chua would be able to obtain with his investment if the RTO [*ie*, the reverse takeover] had been successfully concluded.
>
> 46. The amount that I arrived at was S$4.4 million. This was the reasonably best estimate that I could work out for Chua's total return based on his investment of S$3.3 million if the RTO was successful.
>
> 47. I made a representation to Chua based on my computation as explained above and this led to the 1st Supplemental Agreement, entered into on 26.6.15, to make repayment of S$4.4 million within six (6) months, i.e. 31.12.15.

24 Similarly, when it came to the Second Supplemental Agreement (September), an email from Ng to Chua on 30 August 2016 showed that the

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[26] Yap Soon Guan's 1st affidavit, paras 45–47.

Defendants had calculated the sums to be as high as $7.2m, but the Defendants were later able to negotiate this down (a point that I shall come to later):[27]

> Hi Beng Huat,
>
> We are open to sign a new supplementary agreement with you to show our commitment, if it makes things easier for you to satisfy your friend to show a full and final settlement amount, we will do that.
>
> *I have calculated the interest upto end September 2016 as attached for your reference.*
>
> *P+I less $500,000 paid to date, the amount is $7.2m.*
>
> We are not capable to pay this huge amount as it is way too above what we can afford. I know we have not paid in millions to your friend as yet and will be difficult to negotiate with him. But we are sincerely and truthfully working with you to close this episode nicely and please help us to speak with him to come to a reasonable amount. We hope you can consider a reasonable payout so that we can smoothly settle this once and for all by end September.
>
> …
>
> This current fund [*ie*, new investors] can work well with us and we want to make it a success. We do not like to drag this matter with you anymore and hope to settle it also that all of us can move on. *Through the terms that we worked with them, the most we can squeeze to settle your side is $4.8mil in total.* That also we need to find another $500k from somewhere to pay. Hope you can help us and other shareholders on this proposal.
>
> [emphasis added]

25 This email clearly evinced that the Defendants themselves recognised that the sums that Chua was entitled to, because of their repeated delays to pay the original loan sum of $3.3m, was of a figure as high as $7.2m. Having recognised this, the Defendants were later able to negotiate these sums down to $6m (in the Second Supplemental Agreement (September)) and $4.75m (in the Settlement Agreement). Indeed, it was the Defendants themselves who

[27] Yap Soon Guan's 1st affidavit, pp 158–159.

calculated these sums and came up with these figures. This was not disputed. It therefore follows that the Defendants now cannot challenge the sum of $4.75m as extravagant or unconscionable given that it is a *discount* from the sum of $7.2m, which the Defendants themselves calculated was the rightful sum due to Chua and the Plaintiff.

26 The third pertinent point is that the sum claimed by the Plaintiff is only $3.25m from the first failed payment under the Settlement Agreement. As the AR rightly noted, this sum was even *less* than the original loan sum of $3.3m under the Transaction Agreement. The Defendants did not challenge this sum for being unconscionable and even admitted that they owed the Plaintiff $3.3m. Essentially, at these proceedings, the Plaintiff's claim was for $3.25m, which was less than the principal sum of $3.3m. It is irrelevant for this court to speculate whether the Plaintiff would commence court proceedings for the balance of $1.5m in the future as this matter was not before the court.

27 Hence, even at the stage of a summary judgment application, where the Defendants needed only to show that there was a triable issue, I found that there was no triable issue that the sums were extravagant or unconscionable. I would reiterate that it was the Defendants who computed and had come up with the respective sums in the various restructured loan agreements. Given these undisputed facts, it would be extremely difficult for the Defendants to show that there was illegitimate economic duress in this case since the acts that they relied on were lawful means exerted by the Plaintiff to seek legal recourse for the return of her loan. Having set out this background, I shall now examine the facts in this case.

Chua did not apply any illegitimate pressure on the Defendants in entering the Settlement Agreement

28 The Defendants submitted that Chua applied illegitimate pressure on them by (a) threatening to take legal action in situations where he knew that they could not afford the spectre of such legal action, and (b) demanding his money back in situations where he knew that they were financially strapped. The Defendants submitted that this constituted illegitimate economic duress that vitiated the Settlement Agreement.

29 Before addressing the Defendants' submissions, I shall deal first with a preliminary point raised by the Plaintiff, namely, that the court should not take into account events that happened in the lead-up to the other restructured loan agreements in deciding whether there was illegitimate economic duress for the Settlement Agreement (see [15] above). I agreed with the Plaintiff to the extent that the ultimate inquiry was whether there was duress in entering the Settlement Agreement and not the other restructured loan agreements. However, the circumstances in which the other restructured loan agreements had been entered into could be relevant in assessing the context in which the Settlement Agreement was entered into.

30 But even looking at the circumstances in totality, I did not agree with the Defendants that there was evidence of illegitimate pressure to form a triable issue. To begin with, I did not think that the Plaintiff or Chua had exerted any illegitimate pressure on the Defendants although Chua might have been anxious to get the money back. It is understandable that Chua was concerned since the Defendants had not paid any sum over the last three years although the parties had entered into various restructured loan agreements culminating in the Settlement Agreement. To the contrary, the evidence suggests that the

Defendants were the ones that boldly asserted their wishes in the dealings between the parties.

The Transaction Agreement

31 The Transaction Agreement appeared to have come about as Chua seemed interested in the Defendants' business. At the very least, Chua had envisioned that the Defendants' company would attempt an IPO in the near future.[28] The parties disagreed as to whether the Defendants also wanted an IPO or whether it was Chua's unilateral wish[29] but for present purposes I did not think that it made a difference. The parties took several rounds of negotiations to eventually arrive at the Transaction Agreement dated 25 February 2014, by which the loan sum of $3.3m, with interest of 15% per annum, could be repaid by $2.5m in convertible shares and the remaining $800,000 exchanged into existing shares.[30] The maturity date of the Transaction Agreement was 31 March 2016. At this point, it appeared that neither party was unhappy with the situation, and indeed, the terms of the Transaction Agreement were carefully negotiated between them.[31]

The First Supplemental Agreement

32 Problems first arose between the parties in September 2014 when they disagreed on the appointment of a new Chief Financial Officer.[32] Chua's initial wish for an IPO was also not realised as the Defendants sought to pursue a

28 Chua Beng Huat's 2nd affidavit, paras 35–37.

29 Yap Soon Guan's 1st affidavit, paras 19–27.

30 Yap Soon Guan's 1st affidavit, pp 49–51.

31 Yap Soon Guan's 1st affidavit, pp 29–35.

32 Yap Soon Guan's 1st affidavit, pp 59–60.

reverse takeover instead.[33] At that time, Chua began to exert financial pressure on the Defendants especially when he knew that the Defendants' business had too many financial commitments. Therefore, the Defendants had no choice but to appeal to Chua to work out an alternative arrangement in the First Supplemental Agreement dated 26 June 2015, where the Defendants proposed that the loan sum be increased from $3.3m to $4.4m.[34] This was despite the fact that, when the First Supplemental Agreement was entered into on 26 June 2015, the original loan sum of $3.3m was not yet due (it was only due on 31 March 2016).

33 The Defendants' explanation for this increase was that Chua wanted to exert financial pressure on the Defendants, despite knowing that he could not yet claim the original loan sum of $3.3m. In their written submissions, the Defendants referred to an email that Chua had sent in May 2015 which unreasonably demanded for the sum to be delivered before the end of 2015, despite the principal sum only being due on 31 March 2016.[35] The Defendants took the position that this pressure "culminated" in the First Supplemental Agreement.[36] This argument is entirely mistaken. That email, which was sent in May 2015, spoke of the $4.4m that was rightly due under the First Supplemental Agreement by 31 December 2015. It was not about the Transaction Agreement.

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33 Yap Soon Guan's 1st affidavit, paras 28–36.

34 Yap Soon Guan's 1st affidavit, paras 46–50.

35 Defendants' submissions, paras 34–38.

36 Defendants' submissions, para 39.

34 Instead, as I have earlier noted, it appeared that the Defendants volunteered the sum of $4.4m to be what Chua should have gotten from his investment at the time the First Supplemental Agreement was entered into (see [23] above). Hence, the Defendants cannot now complain that the sum of $4.4m was extravagant or unconscionable when they were the ones who had calculated and then volunteered that sum.

Chua became a guarantor in a loan agreement that involved a Taiwanese lender

35 It should be noted that in the meantime, Chua stood as a guarantor for a loan agreement on 7 December 2015 between a Taiwanese lender, Clement Yang ("the Taiwanese lender") and Kenmooreland Pte Ltd for the sum of $2.4m payable not later than two months from the date of the drawdown. Subsequently, the borrower faced difficulty in the payment of this loan. Thus the Taiwanese lender chased Chua, the guarantor, for the payment of the loan and Chua in turn looked towards the Defendants for the repayment of the various restructured loan agreements.

The Restated Loan Agreement

36 The Defendants attempted to weave a similar story when it came to the Restated Loan Agreement. They took the position that while they were still pursuing a reverse takeover of a listed company in late November to early December 2015, Chua had strategically timed his demand for repayment of the loan to exert "maximum pressure".[37] The Defendants said that Chua, knowing that any litigation would have adverse effects on their attempts to secure funding, consciously used the threat of litigation to force them to enter into the

[37] Yap Soon Guan's 1st affidavit, para 56.

Restated Loan Agreement which imposed "very steep rates" of 7.5% interest per month.[38]

37 The evidence did not support the Defendants' characterisation of the situation. In an email from Chua to Yap and Ng (amongst others) on 30 November 2015 at 11.24am, Chua stated:[39]

> Sam/Wenda,
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> So it's an RTO (as we've advised) AND not VSA after all! You have lost lead time. Anyway, gentle reminder of payment 31st Dec. Koh mentioned that its NOT necessary to send a DD letter which wud set you back by additional $5k (min) as the funds are ready, so I'm just sending an email reminder for payment 30 days later!

38 This email showed that Chua did not seem bothered by the fact that the Defendants were carrying out a reverse takeover. The Defendants' reply to this email was not to protest or to inquire why Chua was making such demands (which would be significant as an indicator that Chua was exerting illegitimate pressure on them, see [18(a)] above), but was rather to thank Chua for his reminder:[40]

> Hi Beng Huat,
>
> *Thanks for your reminder*. It is indeed a RTO structure deal. … So our commitment to your payment *has always been in our working schedule as well*. …
>
> [emphasis added]

39 Contrary to how the Defendants attempted to paint the correspondence, Chua did not appear to be making a threat. Instead, he merely reminded the

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38 Yap Soon Guan's 1st affidavit, paras 61, 68, and 76.

39 Yap Soon Guan's 1st affidavit, p 66.

40 Yap Soon Guan's 1st affidavit, p 68.

Defendants of the date for the repayment of the loan. The Defendants' reply was consistent with this. In response to a further email where Chua noted that he would be overseas and asked the Defendants to contact his lawyer should they wish for the letter of demand to be served on a different address if necessary,[41] Ng replied that "[i]f there is anything, I will contact you or Danny [*ie*, Chua's lawyer] please".[42] Hence, contrary to the Defendants' submissions that Chua applied pressure on them to enter into the Restated Loan Agreement, I found that the Defendants had been expecting such demands for repayment and had assured Chua that this was well within their working schedule.

40 The Restated Loan Agreement appeared to only have been entered into because the Defendants could not meet their own payment obligations under the First Supplemental Agreement by 31 December 2015. Despite thanking Chua for his reminder in end November 2015, by 21 December 2015 it seemed that the Defendants had no way of paying the $4.4m due under the First Supplemental Agreement. Chua therefore said that he could assist the Defendants and later sent an email to his solicitor, Wong Gang from Shook Lin & Bok LLP, asking him to "stop work on the Letter of Demand and Litigation" but instead to work on a Restated Loan Agreement with the requisite collateral.[43] Chua assured the Defendants that "[a]s long as the loan and interests are repaid, everything wud be returned to the rightful owner" and that this was "the best [he could] do at such difficult times and at such short notice".[44]

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41 Yap Soon Guan's 1st affidavit, p 70.

42 Yap Soon Guan's 1st affidavit, p 72.

43 Yap Soon Guan's 1st affidavit, p 88.

44 Yap Soon Guan's 1st affidavit, p 90.

41 The Restated Loan Agreement appeared to be an extension of the original loan from Chua to the Defendants. Chua continued to press the Defendants for the repayment of the loan. The Defendants were unable to provide the collateral that Chua initially asked for. Hence, they suggested increasing the interest rates to 7.5% for a one month period ending 31 January 2016[45] which was later extended to 29 February 2016 to give flexibility to the Defendants.[46] Like the earlier loan agreements, far from the Defendants being forced to enter into the Restated Loan Agreement, this agreement was an olive branch extended to them by Chua. The Defendants themselves negotiated the interest rate upwards to make up for the shares that they could not pledge. Having negotiated the terms, the Defendants could not now complain about them.

The Second Supplemental Agreement (March)

42 The Restated Loan Agreement was later restructured into the Second Supplemental Agreement (March) when the Defendants again failed to pay. It should be noted that the Plaintiff did not sign the Second Supplemental Agreement (March). The Defendants also attempted to characterise this Second Supplemental Agreement (March) as containing "onerous and oppressive terms" that Chua imposed by the spectre of legal action hanging over the Defendants. This alleged threat was made by Chua in an email dated 22 February 2016 in which he proposed an extension until 15 March 2016 with $2m to be paid in the first tranche and the remainder by April 2016, with all interest continuing at 7.5% per month and a further additional default interest of 3% on outstanding amounts after 30 April 2016.[47]

45 Yap Soon Guan's 1st affidavit, pp 102–103.

46 Yap Soon Guan's 1st affidavit, p 102.

43 Again, the Defendants' position did not align with the objective evidence. The parties' correspondence instead showed that the Defendants had, once again, been unable to pay up on the sum in the Restated Loan Agreement by end February 2016 and again began to negotiate with Chua for an extended loan period. The following correspondence bears this out:

(a) On 26 January 2016, Chua sent an email to Yap and Ng inquiring about the repayment as there was "radio silence" since the last promise of repayment by the Defendants. One day later, Ng replied to say that the Defendants were "working on a full payment with the funds coming in anytime now to mid Feb" and that the "interest shall follow and prorate till the full amount is cleared".[48]

(b) On 15 February 2016, Chua followed up with another email inquiring about payment.[49] The parties appeared to have conversed over the phone on 16 February 2016, during which Ng had informed Chua that the Defendants were unable to pay. Chua therefore responded in a text message on 17 February 2016 that the Taiwanese lender wanted to see "half the loan" and interest paid by end February 2016 or legal action would be taken.[50]

(c) On the same day, Ng replied that the Defendants could not commit to half the promised amount, to which Chua asked her to at least "[p]ut something on the table". After some back-and-forth between

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47 Yap Soon Guan's 1st affidavit, paras 78–83.

48 Yap Soon Guan's 1st affidavit, pp 119–120.

49 Yap Soon Guan's 1st affidavit, p 124.

50 Yap Soon Guan's 1st affidavit, p 126.

Chua and Ng, Ng said that the Defendants would "work toward paying you, our promise" but also added that they were "v familiar with A&G after using their top senior counsel for 3 good years for Cherie Hearts case, so hope we don't need a lawyer for resolution".[51]

(d) On 22 February 2016, Ng initiated a text message to Chua and stated that "our partial payment can come in mid March. Hope your fren [*sic*] is smart enough not to start any writ as this will jeopardise our fund raising for you".[52] Eventually, after the Taiwanese lender brought in KhattarWong LLP to enforce repayment, Chua again noted that he would, on the Defendants' behalf, intercede with the Taiwanese lender and "propos[e] an extension till mid March (15th Mar) for a min repayment of S$2m and a penalty of 3% if NO repayment of balance on 30th Apr".[53]

(e) It appeared that throughout this new arrangement with the Taiwanese lender (*ie*, the Second Supplemental Agreement (March)), Chua had paid the relevant legal fees.[54]

44 Based on the above correspondence, Chua was not the one threatening legal action against the Defendants. Instead, Chua helped to intercede to extend the loan repayment period for the Defendants' benefit and even paid the relevant legal fees. It was *Ng* who had suggested that the payment could be due by mid-March 2016. Finally, far from being intimidated by the potential lawsuit, Ng

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51 Yap Soon Guan's 1st affidavit, p 126.

52 Yap Soon Guan's 1st affidavit, p 126.

53 Yap Soon Guan's 1st affidavit, pp 123–124.

54 Yap Soon Guan's 1st affidavit, p 122.

had fired back that the Defendants were also familiar with senior legal counsel, having engaged their services for lawsuits in the past. This was not the behaviour of a party who was being pressured into entering yet another loan agreement. The evidence suggests that the Defendants stood firm in their inability to pay and Chua was the one left scrambling to help both the Defendants and the Taiwanese lender.

The Second Supplemental Agreement (September)

45 Under the Second Supplemental Agreement (March), the Defendants had to pay the first tranche of $2m by 15 March 2016 and the remaining amounts by 30 April 2016. The Defendants again did not make any such payment. They claimed that they had tried to do so but were reeling from the pressure that Chua had put on them, although they alleged that they eventually managed to pay $500,000 by August 2016. Despite this, Chua continued to exert intense pressure on them, which culminated in the even more onerous terms of the Second Supplemental Agreement (September) which the Defendants had no choice but to sign.[55]

46 The evidence again did not bear this out. On 9 March 2016, Chua began to remind Ng through a series of text messages about the first tranche of $2m due on 15 March 2016. Ng replied the next day when Chua brought up the possibility of a demand letter as Ng did not respond to his initial text message. Ng said that the Defendants could only pay $880,000 by 15 March and the balance of $1.12m by the end of March, but at the same time tried to extract a promise from Chua that there would be no demand letter, otherwise the $880,000 would not be paid:[56]

[55] Yap Soon Guan's 1st affidavit, paras 110–111.

> Beng Huat, you said your words are your [bonds] right. Can we have this promise from you, after we pay this $880k, there wouldn't be any writ pls.
>
> If you fren is still going ahead to issue writ, then we can forget about the Chq.
>
> Reason I asked is we try v hard to raise this amount n if writ is issued, we can all forget about the remaining amount.
>
> Can I have this assurance pls?"

47 Chua replied, expressing incredulity at Ng's request given that Ng was the borrower, not the lender, and had in fact failed to pay a single cent to date. Nevertheless, Chua expressed a willingness to accommodate Ng's request if Ng put some money "on the table".[57]

> Wenda, my word is my bond. What abt yours? The deadlines were proposed and agreed by us. U kept moving the goal posts. U talked abt paying early and asked me to tell my fren to cap int. The truth is we have NOT received a $ todate. And I have to bear part of your legal fees! U shouldn't be asking me the abv when u have failed me ALL these while. Have we failed u? They have ALL rights as per agreement signed by ALL. It's a NO win for everyone so don't make such threats cos you are NOT in a position to nego. My fren won't lose a cent. I wud pay him overtime. I wud be down BUT should be able to take the hit. BUT H2 and your team? To be fair my fren has given u a lot of leeway! If u can find alternative financing u won't come to us! Be fair! You are the borrower NOT him. Put the $ on the table then talk! Once the chq is sighted tom, I wud push for end Mar for 1.12m and end Apr the balance. This is final.

48 To this, Ng said that she would pass Chua the cheque the next day to be cleared, and would be dated 15 March 2016.[58]

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56 Yap Soon Guan's 1st affidavit, p 151.

57 Yap Soon Guan's 1st affidavit, p 151.

58 Yap Soon Guan's 1st affidavit, p 152.

49 As it turned out, the cheque was not cleared the next day. When Chua expressed his horror at the situation because he had already shown the cheque to the Taiwanese lender, Ng took the opportunity to push for a promise of no litigation:[59]

> Chua: I was told u wanted chq back! I havw oredi shown my fren. Pls don't play me like that!
>
> Ng: I just spoke to Gwen. Sam [*ie*, Yap] just wanted a confirmation from you that no legal action so that we can proceed to second payment. Can you just give us this agreement?
>
> Chua: Wenda, tell your husband. It's chicken and egg. I have NOT failed. He fails everytime. The chq has to clear then we talk. If chq don't clear u expect my fren to sit there and wait? If u pay as per agreed timeline why serve writ? It's upto u guys! I thot I was very clear yest?
>
> Chua: I am amazed. Really. Don't know whether to be angry or what. U guys are champion. Do what u want. I don't care.
>
> Chua: My fren thot I have the chq and has stopped the injunction if that is what u want to know. If I tell him that u want it back or chq didn't clear the writ wud come. Just 2 days later. Is this what u want?
>
> Chua: Be fair lah. U r the borrower and u defaulted after lender gave u extensions after extensions and u want them to agree to your terms?

50 This exchange again showed that Chua, far from exerting pressure on the Defendants, was trying to balance the rights of the Taiwanese lender on one hand and the needs of the Defendants on the other. Instead, it was the Defendants who were using the spectre of non-payment to extract promises from Chua and the Taiwanese lender.

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[59] Yap Soon Guan's 1st affidavit, p 152.

51 But despite these repeated promises and the Defendants getting their way with their terms, the Defendants had not paid up by 14 March, 16 March, 21 March, 26 March,[60] 31 March,[61] and 27 April 2016.[62] On each occasion, Ng expressed regret for the non-payment, attributed it to the fault of some third party and asked for an extension of time. On each occasion Chua granted that extension. Eventually it appears that the Defendants paid up one sum of $250,000 on 4 May 2016[63] and sent another cheque to Chua for a further $250,000 on 6 May 2016 but which could not be cleared.[64] It was unclear what the first sum of $250,000 went towards, but Chua's position was that this sum was not related to any of the agreements reached between the parties.[65] On the other hand, the Defendants alleged that the $250,000 was paid towards the loan. What is important is that from May through August 2016, the parties continued negotiating about payments under the Second Supplemental Agreement (March). Each time, Ng promised that the Defendants would be able to pay but no further payments were ever made.[66] It should be noted that under the Second Supplemental Agreement (March), full payment of all sums was due by 30 April 2016. Hence, during this period of negotiations from May to August 2016, the Defendants had already failed to pay.

52 Despite the repeated promises, no full payment was forthcoming even by August 2016. Chua expressed that he needed the Defendants to show some

60 Yap Soon Guan's 1st affidavit, pp 152–153, 155.

61 Yap Soon Guan's 1st affidavit, p 176.

62 Yap Soon Guan's 1st affidavit, pp 175–176.

63 Yap Soon Guan's 1st affidavit, p 175.

64 Yap Soon Guan's 1st affidavit, pp 169, 172–174.

65 Chua Beng Huat's 2nd affidavit, para 23.

66 Yap Soon Guan's 1st affidavit, pp 165–170.

"sincerity" by paying at least $250,000 by end August, failing which the Taiwanese lender would proceed with legal recourse.[67] On 30 August 2016, Ng sent Chua the following email in relation to the Second Supplemental Agreement (September):[68]

> Hi Beng Huat,
>
> We are open to sign a new supplementary agreement with you to show our commitment, if it makes things easier for you to satisfy your friend to show a full and final settlement amount, we will do that.
>
> I have calculated the interest upto end September 2016 as attached for your reference.
>
> P+I less $500,000 paid to date, the amount is $7.2m.
>
> We are not capable to pay this huge amount as it is way too above what we can afford. I know we have not paid in millions to your friend as yet and will be difficult to negotiate with him. But we are sincerely and truthfully working with you to close this episode nicely and please help us to speak with him to come to a reasonable amount. We hope you can consider a reasonable payout so that we can smoothly settle this once and for all by end September.
>
> …
>
> This current fund [*ie*, new investors] can work well with us and we want to make it a success. We do not like to drag this matter with you anymore and hope to settle it also that all of us can move on. Through the terms that we worked with them, the most we can squeeze to settle your side is $4.8mil in total. That also we need to find another $500k from somewhere to pay. Hope you can help us and other shareholders on this proposal.

53 Chua responded and expressed amazement that the Defendants were so "sharp and clear" in tabling a settlement figure unlike previous communications where he had to chase the Defendants for payment. Nevertheless, he expressed that if these were all the Defendants could do, then he would do them "one last

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67 Yap Soon Guan's 1st affidavit, pp 161–162.

68 Yap Soon Guan's 1st affidavit, pp 158–159.

favour" by forwarding the email to the lender's lawyer.[69] The terms of the Second Supplemental Agreement (September) were eventually set out in an email from Yap to Chua on 31 August 2016:[70]

> Dear Beng Huat,
>
> Good morning.
>
> *Our proposal for settlement* is as follows-
>
> 1) S$4.8mil to be settled end of September 2016.
>
> If there is any slight delay, we will furnish MOU or Term sheet to show that final works are in process.
>
> 2) Another S$1.2mil to be paid by installments of S$300,000 on Jan 2017, Apr 2017, Jul 2017 and Oct 2017.
>
> Kindly keep this private and confidential.
>
> If fine, please proceed with settlement agreement, we will pay. Please keep cost low.
>
> Much appreciated.
>
> Sam
>
> [emphasis added]

54 What is clear from the above correspondence is that the Defendants had consistently refused to pay. Instead they apologised and asked for extensions of time from Chua and the Taiwanese lender, blaming their misfortunes on third parties. Whenever the payment on the loan agreements became imminent, the Defendants would drag out the payment and urged Chua and the Taiwanese lender not to take legal action. They would entice Chua with favourable restructured loan agreements so as to prolong the repayment period. The negotiations for repayment could drag on for months on end by the Defendants

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69 Yap Soon Guan's 1st affidavit, p 158.

70 Yap Soon Guan's 1st affidavit, p 158.

but would only result into another restructured loan agreement and not any repayment.

55 I therefore did not accept the Defendants' submissions that they were coerced into entering the Second Supplemental Agreement (September).

The Settlement Agreement

56 I turn finally to the Settlement Agreement itself. Although, as I have mentioned above, the crux of the issue before me was whether the Settlement Agreement (and not all the other loan agreements) was entered into by illegitimate economic duress (see [29] above), I have chosen to set out the parties' dealings in the lead-up to the Settlement Agreement for several reasons. First, to show that Chua did not exert illegitimate economic pressure on the Defendants in the events that led to the Settlement Agreement. This makes it even more unlikely that there could be a build-up of illegitimate pressure that culminated in the Defendants having no practical choice but to enter into the Settlement Agreement (see [19] above). Second, to show that Chua was not the aggressor. Third, the Defendants' pattern of behaviour revealed that they had repeatedly taken advantage of Chua's goodwill in order to delay the repayment of the loan. These findings are significant when assessing whether Chua had exerted illegitimate economic duress and/or illegitimate pressure in the signing of the Settlement Agreement with the Defendants. I shall now focus on the Settlement Agreement.

57 The Defendants' position was that the Settlement Agreement was a culmination of a series of loan agreements, in which the Plaintiff had, through Chua, "imposed unconscionable terms including, extortionate interest rates and amounts with continuing threats of legal action, which [Chua] knew would

totally destroy [Yap]".[71] Specifically, the Settlement Agreement required the Defendants to pay a ballooned sum of $4.75m (an increase from the original loan sum of $3.3m), and the Settlement Agreement itself was extracted from the Defendants by illegitimate pressure exerted on account of their vulnerable financial position.[72]

58 On the other hand, Chua submitted that the Defendants had misled him and the Taiwanese lender for three years with promises of repayment from incoming funds from investors. In good faith, the Defendants were allowed further extensions of time and were allowed to negotiate terms for repayment.[73] The Settlement Agreement was not extravagant or unconscionable since it was for a lesser sum than the Second Supplemental Agreement (September).[74] The increased sum of $4.75m reflected a reasonable position in terms of both quantum and interest for an unsecured loan extended more than three years ago.[75]

59 I have already explained that the sums in the Settlement Agreement were not in themselves extravagant or unconscionable even on a triable issue basis (see [21]–[27] above). I have gone through the prior restructured loan agreements and found that Chua had not exerted any illegitimate pressure on the Defendants. Hence, the Defendants' allegations of illegitimate economic duress, if any, must come from evidence of the events that occurred between the Second Supplemental Agreement (September) and the Settlement Agreement.

71 Yap Soon Guan's 1st affidavit, para 5.

72 Yap Soon Guan's 1st affidavit, paras 130(k)–(l).

73 Chua Beng Huat's 2nd affidavit, paras 24–25.

74 Chua Beng Huat's 2nd affidavit, para 56.

75 Chua Beng Huat's 2nd affidavit, para 71.

60 I found that there was no such illegitimate economic duress to even raise a triable issue. At this stage, Chua submitted that he had stopped communicating directly with the Defendants.[76] I find this to be true. The communications exhibited by the Defendants relating to the Settlement Agreement only contained emails between the parties' solicitors and Yap. Chua was not involved. Therefore, this makes it even more unlikely that there was illegitimate economic duress at this stage, since both parties were dealing at arms' length with the benefit of legal advice (see [18(c)] above). Chua had also stopped communicating directly with the Defendants. Thus the Defendants needed to show that Chua had exerted such illegitimate pressure *through his lawyers*, which was an extremely high bar.

61 No such evidence was shown. The emails that were exhibited pertained to the Defendants' lawyers and Chua's lawyers negotiating over whether a term sheet and the signed investment agreement between the Defendants and third party investors could be disclosed to Chua's lawyers given the sensitive nature of the information within.[77] Although Chua's lawyers eventually had sight of the documents, the Defendants provided no other evidence to show its effect on the Settlement Agreement. The only other document that was exhibited by the Defendants in relation to the Settlement Agreement was a letter from Yap to Chua's current lawyers on 2 August 2017, stating that Yap was agreeable to provide collateral to Chua and the Plaintiff in the form of his residence and a percentage of shares in the Defendants' company.[78] Chua submitted that he and his lawyers had never seen this letter.[79] Whether this letter is genuine is of no

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76 Chua Beng Huat's 1st affidavit, para 17.

77 Yap Soon Guan's 1st affidavit, pp 192–212.

78 Yap Soon Guan's 1st affidavit, p 216.

relevance here because even if it had been sent and received, it was sent on 2 August 2017 which is after the writ of summons was filed. It has no relevance to whether the Settlement Agreement was entered into by illegitimate economic duress.

62 Instead, the contrary was shown by a series of messages exhibited by Chua. In an exchange on 20 June 2017, ten days before the first tranche of $3.25m was due under the Settlement Agreement, Yap seemed to have apologised for the Defendants' inability to make payment yet again. And in another message sent on 19 July 2017, after the $3.25m was due but had not been paid, Yap acknowledged the need to make payments in order for any further extensions to even be considered.[80] While I note that these messages were also after the Settlement Agreement had been entered into, they are significant in that the Defendants' attitude was not that they had been forced into the Settlement Agreement by illegitimate pressure amounting to illegitimate economic duress, but that they were apologetic for their failure to meet the obligations that they had agreed upon.

63 Accordingly, I found that there was insufficient evidence to raise even a triable issue of illegitimate economic duress or any other triable issues.

64 Finally, I shall address a case that the Plaintiff cited, *Real Estate Consortium Pte Ltd v East Coast Properties Pte Ltd and another* [2011] 2 SLR 758 ("*Real Estate Consortium*").[81] This case is highly relevant as the factual matrix is very similar to the present case. The dispute in *Real Estate Consortium*

79 Chua Beng Huat's 2nd affidavit, paras 68–69.

80 Chua Beng Huat's 2nd affidavit, p 48.

81 PBOA, Tab 5.

arose from a convertible bond agreement entered into by the plaintiff and the two defendants. The defendants were unable to repay the principal amount and the parties entered into negotiations. After the negotiations the parties entered into a settlement agreement. The defendants delivered four post-dated cheques for the amounts owed pursuant to a payment schedule in the settlement agreement, but the defendants defaulted on three of those cheques. At the trial, the defendants argued that they entered into the settlement agreement under illegitimate economic duress as they were concerned with the threat of legal proceedings allegedly made by the plaintiff.

65 Andrew Ang J found that there was not an iota of evidence of illegitimate economic duress for the following reasons (*Real Estate Consortium* at [44]–[50]):

(a) *Prima facie* the threat of legal action to enforce one's legal rights is not a wrongful threat.

(b) The defendants were the ones who initiated the offer to settle and until the commencement of the action, the defendants had never disputed the plaintiff's rights under the settlement agreement. Indeed, the defendants' actions were inconsistent with a plea of illegitimate economic duress; instead of protesting that the settlement agreement was made under duress, the defendants actually requested an extension of time to make the repayments.

(c) The defendants had the benefit of independent legal advice throughout the process of negotiating the terms of the settlement.

66 All these features can be found in the present case. Furthermore, there was not an iota of evidence of illegitimate economic duress here. The plea of illegitimate economic duress in the present case is even weaker than *Real Estate Consortium*, because the Defendants did not protest in the negotiations of the Settlement Agreement and the various restructured loan agreements over the long period of three years. Similarly, I found that the Defendants had not satisfied the court that there was a triable issue of illegitimate economic duress or any triable issue.

Conclusion

67 In summary, I dismissed the appeal against the AR's decision and rejected the Defendants' plea that there was a triable issue of illegitimate economic duress for the following reasons:

(a) The sums in the Settlement Agreement were not extravagant or unconscionable as the Defendants were the ones who had calculated and volunteered these sums. The sum of $3.25m that the Plaintiff claimed was also lower than the original loan sum of $3.3m, and this figure was not contested by the Defendants.

(b) Chua did not exert illegitimate pressure amounting to illegitimate economic duress in the process of negotiating the loan agreements and the Settlement Agreement. If anything, it was the Defendants who used the spectre of non-payment to extract promises of non-litigation from Chua and the Taiwanese lender.

(c) The Defendants had the benefit of independent legal advice. Further, at the point of negotiating the Settlement Agreement, Chua had stopped communicating with the Defendants directly and had done so

only through his lawyers. This made it even more unlikely that the Defendants were under illegitimate economic duress.

68 In my view, this appeal is completely unmeritorious. It is a further attempt by the Defendants to delay repayment of the loan to the Plaintiff.

69 I ordered fixed costs at $10,000 to the Plaintiff (inclusive of disbursements) for RA 301. As for Summons No 4882 of 2017, which is a summons for a stay of execution of the AR's order, it was no longer necessary considering the orders that I have made in RA 301. I made no costs order for this summons.

Tan Siong Thye
Judge

Reshma Nair and Benjamin Niroshan Bala (TSMP Law Corporation) for the plaintiff;
Liew Teck Huat and Anand George (Niru & Co LLC) for the defendants.