

Lee Pei-Ru Alice and another v Airtrust (Singapore) Pte Ltd
[2013] SGHC 259

Case Number : Suit No 523 of 2011
Decision Date : 25 November 2013
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Aaron Lee, Clement Julien Tan, Ms Koh En Ying and Ms Seow Wan Jun (Allen & Gledhill LLP) for the plaintiffs; Ms Rajan Menon Smitha, Mohamed Nawaz Kamil and Ms Michelle Neo (WongPartnership LLP) for the defendant.
Parties : Lee Pei-Ru Alice and another — Airtrust (Singapore) Pte Ltd

Contract

25 November 2013

Tay Yong Kwang J:

Introduction

1 This suit concerned alleged oral assurances allegedly made by the late Peter Fong ("Peter") that certain investments made by the first plaintiff, Alice Lee Pei-Ru ("Alice") and the second plaintiff, Fong Wei Heng ("Wei Heng") would be repaid by the defendant, Airtrust (Singapore) Pte Ltd ("Airtrust"). I allowed the claim and ordered the investment sums to be repaid. The defendant has appealed against my decision.

Background

2 Alice is Peter's widow. Wei Heng is the only son of Peter and Alice. When the purported oral assurances were made, Linda Kao ("Linda") was (and continues to be) the managing director of Airtrust while Evelyn Ho ("Evelyn") was Peter's personal assistant. Peter also had daughters from an earlier marriage.

3 Peter was a successful businessman. He had an impeccable reputation of always keeping his word. In 1972, he founded Airtrust, a company with dealings in the power, oil and gas industries. He remained the chairman and a director of Airtrust until he passed away on 25 April 2008. He held a majority of the issued and paid up share capital of Airtrust. On 3 January 2006, Peter transferred 51% of the issued share capital in Airtrust to Fong Foundation Limited ("Fong Foundation"), a public company limited by guarantee to promote charitable, educational and cultural causes, with the intention of having the Fong Foundation run Airtrust after his demise. At the material time from September to December 2006, all the directors and registered shareholders of Airtrust, with the exception of Linda and Evelyn, were members of Peter's family. Peter was practically the *alter ego* of Airtrust.

4 Since 2003, Airtrust was a 40% shareholder in a Belize company named Southern Cross Ltd ("Southern Cross"). Kenneth Cooper ("Cooper") held 40% of the shares in Southern Cross, while Anton Soleiman and Hsien Yoong How ("Hsien") held 17% and 3% respectively.

5 Sometime in 2006, Southern Cross planned a project to purchase and convert a vessel, the *MV Cobalt Transport* ("the *MV Cobalt*") into a barge and accommodation vessel for deployment in charter contracts supporting oil rig operations in remote areas. The total cost for the purchase and conversion of the *MV Cobalt* was initially projected at about USD 8m. However, due to a budget overrun, the total cost escalated to about USD 11m. Southern Cross could not afford this overrun. As the *MV Cobalt* was to be used in a valuable charter project with a Japanese Company, Impex Masela Limited ("the Impex contract"), it was crucial that the conversion be completed before December 2006.

6 Cooper, on behalf of Southern Cross, approached Peter for assistance in procuring an additional USD 2.2m. Aitrust was, however, facing cash-flow problems at that time. Peter agreed to look for additional external investors who, collectively, would be entitled to the following rights:

- (a) 20% of the net profit of the Impex contract, together with a return of the USD 2.2m; or
- (b) Conversion of the USD 2.2m into 20% equity ownership of the *MV Cobalt* after one year of the sum of USD 2.2m being advanced or completion of the Impex Contract, whichever was earlier.

7 Peter approached the following people to invest: Dr Goh Hak Su ("Dr Goh"), Professor Yeoh Kian Hian ("Professor Yeoh"), Henry Lim ("Henry"), Linda and Alice (for herself and Wei Heng, then a minor). Peter also procured the Fong Foundation to invest. All the people approached, save for Linda who declined, initially invested the following amounts in September 2006:

Person(s)	Amount invested in Singapore Dollars
Alice and Wei Heng	863,500
Dr Goh	863,500
Professor Yeoh	431,750
Henry	431,750
Fong Foundation	851,500

8 The money for Alice and Wei Heng's investment was paid by Coronation Housing Pte Ltd ("Coronation Housing"), a company jointly owned by Peter and Alice. Sometime in November 2006, Coronation Housing was repaid S\$863,500, with interest, in the following manner:

- (a) S\$431,750, with interest, was paid by Alice after she received funds from the proceeds of the sale of a property owned by a New Zealand company, Henley Downs Holding Limited. Fong owned 80% of the aforementioned company.
- (b) S\$431,750, with interest, was paid by the Fong Foundation.

9 A spate of withdrawals then occurred. The exact circumstances surrounding the withdrawals were contentious and shall be examined further below.

10 Sometime in November 2006, Alice approached Peter to halve her and Wei Heng's investment in the *MV Cobalt*. Peter procured the Fong Foundation to take over the half share by paying S\$431,750 to Alice. Dr Goh approached Peter in December 2006 to withdraw his investment and Peter got Alice

to take over the entirety of Dr Goh's investment. The \$863,000 that was used to repay Dr Goh ultimately came from a trust account meant for Wei Heng. Henry approached Peter in October 2007 to withdraw his investment. Peter arranged for Airtrust to repay Henry in full. After Peter passed away, Professor Yeoh approached Linda sometime in October 2008 to withdraw his investment. Similarly, Airtrust repaid Professor Yeoh in full.

11 Thus, after October 2008, Alice and Wei Heng together with the Fong Foundation were the only investors remaining. They had by then invested a total of S\$1,295,250 and S\$1,283,250 respectively. Unfortunately, the *MV Cobalt* project became, and is still currently, engaged in contentious litigation in Indonesia.

12 On 28 July 2011, the plaintiffs filed this suit, seeking repayment of the sum of S\$1,295,250 from Airtrust. This suit is one of the many legal battles that currently plague the late Peter's family and businesses. Due to the legal strife, receivers and managers were appointed by consent on 17 January 2012 to manage Airtrust.

The respective cases

13 The plaintiffs asserted that Peter was confident about the *MV Cobalt* and represented to investors that their investments in the *MV Cobalt* were without risk. Peter was the controlling mind and will of Airtrust. Peter, for and on behalf of Airtrust, had covenanted with the investors that they could terminate and exit their investments at any time by looking to Airtrust to repay their advances. Further and/or in the alternative, Peter (for and on behalf of Airtrust) had assured the Plaintiffs and Henry that their investments were without risk and agreed to indemnify them and keep them indemnified for any loss or damage to their investments.

14 The defendant asserted that Peter did not represent to Alice that the plaintiffs' investment could be terminated at any time and that the sums advanced would be repaid by Airtrust. Peter also did not commit to Airtrust indemnifying the plaintiffs' investment. If there was any assurance given by Peter to Alice, it was, at most, a personal assurance that the investment was safe and that he would support it. There was no intention to create legal relations. Even if Peter had undertaken a legally binding obligation to repay the investment sum upon request, this was done in his personal capacity and not on behalf of Airtrust. There was thus no obligation on the part of Airtrust to pay the plaintiffs the sums claimed.

The issues raised

15 Accordingly, the issues raised were as follows:

- (a) Did Peter make representations to Alice to the effect that the plaintiffs would be able to exit their investments at any time and would be repaid and/or be indemnified by Airtrust for any loss or damage to their investments?
- (b) If such representations were made, were they of any legal effect? If they were of legal effect, were they made by Peter in his personal capacity or on behalf of Airtrust?

The plaintiffs' evidence

16 With respect to the plaintiffs' initial investment, Alice averred in her affidavit of evidence-in-chief ("AEIC") that:

Peter Fong told us that if we advanced money to Airtrust, it would be without risk as Airtrust would underwrite it. Wei Heng and I could terminate our investment arrangement at any time by asking Airtrust to repay the principal sum advanced by us, in full and final settlement against both Airtrust and Southern Cross.

Similarly, with regard to the plaintiffs' second investment, where Alice took over Dr Goh's investment, she averred in her AEIC that:

Peter said that I would have the same investment terms as Dr Goh.

Under cross-examination, Alice said that:

I have the same terms as myself, the first investment, and that is I have the right that this investment is without risk, I have the right to exits [*sic*], and Airtrust will pay me back.

Documentary evidence

17 A key document corroborating the plaintiffs' version of events was an email from Linda to Alice sent on 31 March 2009 ("the 31 March email"). Due to the importance of this email, I shall set it out in full below (Wei Heng is referred to as Wei Wei in the email):

Hi Alice,

I would like to recap what we discussed on Sunday and give you my views.

1. Investment in MV "Cobalt" in Southern Cross is still recorded in the books of Southern Cross and protected by the asset (MV "Cobalt"). Lawyers are still fighting the cases with Indonesian creditors. If amicable solution can be found, we will still pursue to complete the vessel for sale/charter. There is no definite time line for settlement but it is not a hopeless case.
2. I can understand the need of Wei Wei's maintenance cost and I share with you that renting out the Peak may be a reasonable course of action.
3. **I can also agreed that Mr. Fong had assured all of us that the investment was without risk and would be supported by Airtrust as a last resort.** However, to involve Airtrust in "re-financing" Wei Wei's investment, I see only 2 alternatives:
 - Airtrust to take over the investment (in which case, I am not in a good position to decide for Airtrust, in the capacity of managing director)
 - Airtrust to extend a personal loan to Wei Wei as a shareholder (with the pledge of Wei Wei's investment in MV "Cobalt"). This is allowed by IRAS. You can decide whether it would look better if Wei Wei pays a small interest (say 0.5% p.a.) as a token.
 - However, in both alternatives above, it will need to involve a director resolution to approve (due to the substantial amount involved). Even though the M&A of Airtrust allows majority to approve such resolution, it does not prevent Carolyn (is she is kept out of the signing) from wanting to researching into the sources of funds that Wei Wei used to invest. I do not know if this is what you would desire.

- In the event of company loan to Wei Wei, I would also propose to make it in 4-6 monthly instalments so that it does not impact on company's cash flow immediately.

Pls review the above and let me know what you decide.

[emphasis added]

The plaintiffs submitted that this was Linda, as managing director of the defendant, acknowledging that the investment sums had to be repaid based on what both Peter and Alice had told her.

18 Another piece of documentary evidence concerns an email from Chia Quee Khee ("Chia"), who was Peter's and Airtrust's solicitor, to Alice and Wei Heng sent on 13 April 2009 ("the 13 April email"). It stated:

I confirm my telecon with Alice just now, in which I informed Alice that Airtrust will not be able to fund Wei's purchase of the subject property. Among the reasons are that the Cobalt has, for the last 2 years or so, been the subject of litigation in Indonesia, and it was arrested by plaintiffs in some legal suits ; consequently Wei's investment in the vessel is no longer of the same value, and until the suits are finally resolved, the Cobalt's value is very difficult to determine. **In these circumstances, it will not be prudent for Airtrust to advance Wei any funds, based on his original investment value. It will open Airtrust to queries, and it will be difficult to defend the advance.**

[emphasis added]

Testimony and conduct

19 The plaintiffs also averred that Peter had, just prior to his death, given instructions to Evelyn that Alice's investment in the *MV Cobalt* had to be repaid. This was what Evelyn said in her AEIC:

Sometime in early April 2008 when I visited Peter Fong in the hospital, he told me that Alice Lee (who is the 1st Plaintiff) had made advances to the *MV Cobalt Transport* investment. He did not know where she took the fund from and he mentioned that it had to be paid back to Alice Lee. He told me to inform Chia Quee Khee ("Mr Chia") to check with Alice Lee on where she took the fund from.

Under cross-examination, Evelyn further elaborated that she "believe[d] he was going to give instructions after that, after whatever Mr Chia is supposed to check on that."

20 The plaintiffs averred that Dr Goh, Henry, Linda and Professor Yeoh gave unequivocal and cogent evidence that Peter had made representations similar or substantially similar to those given to Alice. Dr Goh and Henry Lim were both independent witnesses who had no vested interest in the suit. Both Dr Goh and Henry also testified that they would not have invested in the *MV Cobalt* without the assurances given by Peter. In particular, Professor Yeoh, a witness subpoenaed by the defendant, gave evidence that Peter had assured him that he would be reimbursed if he wanted to exit from his investment.

21 Peter also had a habit of not documenting things in writing. Although there was a board of directors in Airtrust, he was accustomed to making decisions for and on behalf of Airtrust without consulting the other board members. Linda stated that for the 30-over years that Peter Fong was active in Airtrust, there were no physical board of directors meetings. The other Airtrust directors

simply acquiesced in Peter's decisions. Chia stated that Peter had the final say in business decisions and those decisions would be implemented by Linda and Evelyn. Persons within Airtrust could only document matters to the best of their knowledge but this was often incomplete or outdated. In particular, according to Linda Kao, even when Peter made a serious commitment (like a corporate guarantee or other financial obligation) on behalf of Airtrust, he would sometimes only tell the staff of Airtrust about this at a very late stage and provided he wanted to tell them in the first place. Peter had "more than one time delayed in telling his decision for [Airtrust] to implement" and would only tell Linda in the end "if that needed to be implemented". An example of this was in 2006 when Peter committed S\$6m for the purchase of shares in Chinese shipyards. The instructions to Linda and her staff were given only sometime in the middle of 2007.

22 The plaintiffs submitted that this was further corroborated by the events that unfolded. Dr Goh, Henry and Professor Yeoh were all repaid their investment sums. In particular, Henry said, during cross-examination, that Peter had said words to the effect of "[y]es, I arrange, I get Airtrust to repay you as promised" and "[o]kay, I will get Airtrust repay you as what we agree earlier, as I promised you".

23 The plaintiffs also averred that Dr Goh and Henry had unequivocally stated that Peter represented to them that they could look to *Airtrust* for repayment of their investment sums. Linda was also told by Peter that if she invested in the *MV Cobalt*, the investment would be supported by Airtrust. While Professor Yeoh said that he could not recollect if Peter had mentioned that it was Airtrust that was the entity bound, Professor Yeoh never had any intention or desire to ascertain exactly who owed him the obligation as it was enough for him that Peter, a trustworthy and honourable man, was the individual he was dealing with. It was significant that he approached Linda and not anyone else for repayment (including Alice, whom he knew). The logical inference was that Peter had told him the repayment would come from Airtrust. In this aspect, Linda also said that "Peter Fong had instructed me to refund Professor Yeoh's principal investment sum to Professor Yeoh if he ever approached the Defendant for said refund". The bottom-line was that *Airtrust* repaid Henry and Professor Yeoh upon request.

24 The plaintiffs also submitted that Alice's conduct, since September 2006, had all along been consistent with the existence of a contractual obligation on the part of the defendant to repay the investment sums. Alice had in fact (partially) exercised her right to exit in November 2006, when her initial investment was halved from S\$863,500 to S\$431,750.

25 Chia, in a statutory declaration, stated that he met Alice for lunch at the Singapore Cricket Club on 11 April 2008 to discuss, among other matters, the plaintiffs' investments. This was subsequently confirmed by both Chia and Alice under cross-examination. This was Chia's response on the stand:

Q: During your discussion with Alice, she didn't assert that Airtrust had to pay her back 863,000 she paid to Dr Goh, correct?

A: She might not have said that, but what I do recall is that she said, "I want my money back.:

Alice's response was similar:

Q: I asked you, did you ask Peter for your money back? You're saying, from your answer, that's a question?

A: Yes. Can I just said [*sic*] he said "Yes", and "Everything is in order".

Q: Did you tell Mr Chia this? Did you tell Mr Chia, "I want my money back. I told Peter, Peter says everything is in order. Give me my money back." You didn't tell Mr Chia of this?

A: I'm sorry. I cannot remember the exact words.

Q: Do you remember telling Mr Chia —

A: **That I wanted my money back, that Airtrust owed me that sum of money that I paid on behalf of Airtrust.**

Q: So you told — your position is that you told Mr Chia — you demanded your money back from Airtrust, okay, maybe "demand" is a strong word, but you told Mr Chia that you wanted Airtrust to pay you back.

A: Can I just check? Not the exact words, But I told Peter — I told Mr Chia that Airtrust had an obligation to pay you when they asked?

Q: No, when you say "need to pay", are you saying that Airtrust — you told Mr Chia that Airtrust had an obligation to pay you when they asked?

A: Yes.

Q: Or are you saying that you told Mr Chia, "I want my money back, I'm actually calling on that obligation"? Which is it?

A: It could be both.

Q: I'm not asking what it could be, I'm asking what it was, at this Cricket Club lunch with Mr Chia?

A: **I told Mr Chia that I needed — I wanted the money back, and I needed to have the money back.**

[emphasis added]

The plaintiffs accordingly submitted that it was both Chia and Alice's evidence that Alice asked for repayment of the plaintiffs' investment during their lunch on 11 April 2008.

26 Linda also testified in court that Alice first informed her about the assurances in May 2008 after Peter's memorial service. With regard to the 31 March email (see [17] above), Alice and Linda both confirmed on the stand that they met on 29 March 2009 and discussed certain matters. Alice said that:

Q: So it is a year later. I'm asking you, in that conversation did you bring up —

A: Yes.

Q: — about how you wanted your money back?

A: Yes, I wanted my money back, and that was why Linda mentioned that the investments were safe.

This was corroborated by Linda:

Q: ... was Alice Lee asking for her money back from this investment? This is slightly different from talking about the personal guarantee or indemnity, but was she actually asking for money back from the investment?

A: Yes, your Honour, I believe in the conversation Alice did suggest selling back Wei Heng's investment back to Airtrust.

...

Q: In this way, could you clarify why you earlier told the court that you did not recall that even in March 2009 that Alice did not ask for her money back? Would you like to clarify?

A: Yes. To me, selling the investment and asking for money back, to me, is somewhat different.

27 Under cross-examination, Chia also confirmed that during his discussions with Alice (see [18] above) on 13 April 2009, she had essentially said that she wanted her money back:

Q: ... During your discussion with Alice, she didn't assert that Airtrust had to pay her back 863,000 she paid to Dr Goh, correct?

A: She might not have said that, but what I do recall is that she said, "I want my money back."

The defendant's evidence

28 In closing submissions, the defendant did not seriously dispute the fact that assurances were made. The defendant's position was that Peter did not commit Airtrust to pay the plaintiffs the sums advanced in respect of the *MV Cobalt* investment.

29 It would have been irrational for Peter to have committed Airtrust to repay the sums. This would have meant exposing Airtrust to a USD 2.2m liability. In particular, Linda had said on the stand that "the cash flow was really tight" and that there were negative cash flow positions of S\$2.7m and S\$13m respectively in 2006 and 2007. Moreover, according to Hsien, sometime in August 2006, in discussions among Peter, Cooper and Hsien, Peter had stated that he would not agree for Airtrust "to contribute further to the additional funding required for MV Cobalt" and since Cooper was not willing to dilute his shareholding by issuing more shares in Southern Cross, the decision was made to seek external investors to raise the requisite USD 2.2 million. Since Airtrust was not going to provide additional funding, it followed that Peter was acting in his personal capacity. A delay in completing the *MV Cobalt* would not have spooked Peter enough to the extent of exposing Airtrust to fresh financial liabilities.

30 It was not in dispute that Peter was associated with various companies other than Airtrust. In fact, Peter had used entities and persons other than Airtrust to refund some investors. When Alice halved the plaintiffs' investment in Cobalt in November 2006, Peter did not arrange for Airtrust to take over half of the investment but instead got the Fong Foundation to do so. When Dr Goh asked to exit in December 2006, Peter gave instructions to Alice to use the money in Wei Heng's trust account to repay Dr Goh. If Peter had truly committed Airtrust, he would surely have used Airtrust's funds alone to repay the investors.

31 Furthermore, Henry under cross-examination said that he would not have cared if the

repayment of the investment sum had come from an entity other than Airtrust (including Peter himself). Dr Goh also said that he did not care who paid him back as long as he got his money back. He went on:

He also said that to me that this is a no risk investment, because at any time I could withdraw under what - - any circumstances. Even when **Airtrust** has no money at all, he would find money to pay me back for what I've put in. And he told me also that he has a very - - he has a **Peter Fong Foundation** which is quite rich and that will be able to pay me back if there's no other avenues. ...

Professor Yeoh similarly said that:

If he was going to reimburse me, where is he reimbursing me from? I have no interest and it is not my concern.

The defendant submitted that this was logical because a personal assurance from Peter (which entails Peter having access to all of the assets and resources under his control) would be more attractive than an assurance solely from Airtrust. This would be even more so with regard to the plaintiffs, who were the wife and the son of Peter. It would be more credible for Peter to have said that he would take care of the plaintiffs' investment as opposed to saying that Airtrust would repay Alice at any time that she wanted to terminate her investment.

32 Peter also did not inform Linda, Chia or Evelyn that Airtrust had an obligation to repay the plaintiffs for their advances. This is significant as Peter had given Linda instructions in October 2007 to repay Henry and Professor Yeoh but did not mention anything about repaying the plaintiffs then. Additionally, in an internal meeting on 28 December 2006 among Linda, Peter and Hsien, the problems with regard to the *MV Cobalt* were discussed but the minutes did not record that Airtrust was potentially exposed to the plaintiffs.

33 The defendant also relied on the fact that the plaintiffs claimed S\$863,000 in their first letter of demand dated 30 March 2011 and only demanded the additional amount of S\$431,750 a few months later on 3 June 2011. In particular the first letter asked for documents in order to enable the plaintiffs to "make a meaningful and informed choice between their available options" for the initial investment.

34 The defendant also pointed out that Linda testified that Alice first spoke to her about the *MV Cobalt* investments after Peter's memorial service sometime in May 2008 but Alice did not give any evidence about this purported conversation in either her AEIC or her evidence on the stand.

35 The 31 March email only dealt with "re-financing" Wei Heng's investment. If Alice had indeed informed Linda of the alleged repayment obligation, it would be illogical for Linda to respond with "re-financing" options which required board approval. Alice also did not reply to the email to allege that Linda was wrong and that there was already a pre-existing obligation on Airtrust to repay the plaintiffs. A repayment of the investment sums upon request is different from having to negotiate a sale and purchase of the investment. The plaintiffs were seeking repayment and not specific performance of any alleged agreement that Airtrust would purchase the shares from the plaintiffs.

36 Even if Peter had given legally binding assurances to Dr Goh, Henry and Professor Yeoh, who had used their own funds, it did not follow that assurances made to the plaintiffs would also be legally binding, as they were essentially using family funds for their investments. Alice accepted that it was Peter who directed the funds to be used for the *MV Cobalt* investment. It is therefore unlikely that Alice could have reasonably believed Peter intended to bestow on the plaintiffs the right to sue

Airtrust to seek repayment of the sums invested in the *MV Cobalt*.

My decision

Representations were made

37 There was ample evidence to support a finding that Peter did make representations to Alice that the plaintiffs would be able to exit their investments and be repaid at any time. The evidence included the following:

- (a) Peter had told Alice, Dr Goh, Henry and Professor Yeoh substantially the same thing: that their investments were safe and would be repaid at any time upon request. In this respect, the evidence of Dr Goh, Henry and in particular Professor Yeoh (who was subpoenaed) corroborated Alice's evidence that Peter had made the representations to her;
- (b) The fact that Dr Goh, Henry and Professor Yeoh were actually repaid their investment sums. In addition, Evelyn also gave evidence that Peter had told her that Alice's investments in the *MV Cobalt* had to be repaid to her. This corroborated Alice's and Chia's evidence that they met at the Singapore Cricket Club on 11 April 2008 and Alice wanted her money back; and
- (c) The 31 March email, wherein Alice expressly stated that "Mr Fong had assured all of us that the investment was without risk".

The representations bound Airtrust

38 This was, however, not the end of the enquiry. The plaintiffs must also show that Peter had intended for the representations to bind Airtrust. In this respect the evidence is more equivocal. The evidence in support of the plaintiffs included:

- (a) Henry and Professor Yeoh were repaid by Airtrust, with the plaintiffs taking over Dr Goh's investment (purportedly on the same terms);
- (b) Peter telling Evelyn, who was his personal assistant at Airtrust, that Alice had to be repaid; and
- (c) The 31 March email, wherein Alice expressly stated that the investment "would be supported by Airtrust as a last resort". Alice also talked about the possibility of Airtrust "re-financing" Wei Heng's investment in one of two ways:
 - (i) Airtrust taking over the investment; or
 - (ii) Airtrust extending a personal loan to Wei Heng, with Wei Heng pledging the *MV Cobalt* investment as collateral.

39 There was however evidence which did not support the plaintiffs' case. This included:

- (a) The fact that Peter had used two other sources to repay investment sums:
 - (i) The Fong Foundation repaid half of Alice's initial investment; and
 - (ii) Wei Heng's trust account, which was the source of the funds used to pay Dr Goh and which resulted in the plaintiffs taking over Dr Goh's investment;

(b) Dr Goh, Henry and Professor Yeoh all testified that the identity of the entity which should repay them was not important as long as they got their money back;

(c) The 13 April email, wherein Chia (who was Airtrust's solicitor) expressly stated that "it would not be prudent for Airtrust to advance Wei any funds" as it would "open Airtrust for queries, and it would be difficult to defend the advance", hence suggesting that there was no pre-existing obligation to repay the plaintiffs.

40 I regarded the lack of formal documentation (especially at Airtrust's end) regarding the alleged representations made by Peter to be a neutral factor. It was common ground that Peter did not have the habit of putting things in writing. It was also not challenged that Airtrust did not hold any physical board meetings when Peter was at the helm. The lack of formality and documentary evidence in this regard cannot be taken to be detrimental to the plaintiff's case. I also put no weight on the fact that the plaintiffs had initially only claimed \$863,000 in their first letter of demand. The same letter went on to state that, with regard to the initial advance of S\$431,750, the plaintiffs were requesting documents showing the full account of net profits in order to make an informed choice between their available options "including an exit from the agreement through a return of the principal sum advanced." There was no reason why the plaintiffs could not demand the repayment of the money in the second investment first.

41 I did not regard the fact that Linda's characterisation of the assurance as one involving "re-financing" and, more specifically, Airtrust re-purchasing the investment, as sharply different from a repayment of the investment sums involved. The investors involved were laypersons and were dealing with an undocumented investment. Peter had assured the investors that there would be no risk involved. The other investors all testified also that they did not care about the details of the investments as long as they got their money back. Looked at in this context, it would be unrealistic to examine Peter's assurances in a highly legalistic manner. This was, broadly, a case whereby certain benefits were promised if certain amounts of money were advanced, with the all-important assurance that the investors could call back their investments at any time.

42 The defendant's case theory drew a dichotomy between Peter having given the assurances in his personal capacity and having given them on behalf of Airtrust. It must be reiterated that Peter was practically the alter ego of Airtrust. The defendant's unstated premise was that an assurance given in a personal capacity excludes, by implication, the same assurance being given in the capacity of an agent. However, the two may not be mutually exclusive. *Chitty on Contracts* vol 2 (H Beale, gen ed) (Sweet & Maxwell, 31st ed, 2012) at para 31-085 makes it clear that an agent may be concurrently liable on the contract with her principal:

When the agent does contract personally, the scope of the contract which he makes requires careful analysis. He may undertake sole liability to the exclusion of his principal; he may undertake joint or joint and several liability on the main contract together with his principal. He may act as surety for his principal, or enter into a collateral contract with its own terms. The possibilities shade into one another, and there is no general rule.

43 The fact that Peter used monies from other sources did not destroy the plaintiffs' case. The key analysis should be whether Peter had bound Airtrust to be primarily liable. In this respect, Henry testified that Peter had told him that Airtrust would be instructed to repay him (see [22] above) while Dr Goh said that "[e]ven when Airtrust has no money at all, he would find money to pay me back for what I've put in" (see [31] above). Further, there was the 31 March email in which Linda stated that the investment "would be supported by Airtrust" (see [17] above).

44 The plaintiffs have therefore shown, on a balance of probabilities, that Peter had indeed bound Airtrust to be primarily liable to repay both amounts of money advanced by them.

There was an intention to create legal relations

45 There were indications that the parties intended to create legal relations despite their good relationship as spouses at the material time. Firstly, the second tranche of investment money resulted in the plaintiffs taking over Dr Goh's investment — in effect, an assignment of Dr Goh's rights to the plaintiffs. It would be ludicrous for such rights to suddenly transmute into something unenforceable simply because Peter's wife was now involved. Secondly, the same representations were made to Alice, Dr Goh, Henry and Professor Yeoh. It would not be logical to differentiate the representations made to Alice from those made to the rest of the investors simply because she was Peter's wife.

46 The defendant's contention that the money used for the investment sums was family money was not relevant to the enquiry whether there was an intention to create legal relations. What the defendant appeared to be submitting was that the money (at the point of investment) did not belong to the plaintiffs and they were thus not entitled to repayment because it was not their money to begin with. That is, however, a matter between the estate and the plaintiffs and not something between the plaintiffs and the defendant.

47 In my view, there was an intention to create legal relations when Peter made the representations to Alice.

Conclusion and costs

48 Peter did make representations to Alice to the effect that the plaintiffs would be able to exit their investments at any time and would be repaid and/or be indemnified by Airtrust for any loss or damage to their investments. The representations were intended to have legal effect and were made by Peter on behalf of Airtrust.

49 I therefore allowed the plaintiffs' claim and ordered the defendant to repay the plaintiffs the amounts of S\$431,750 and S\$863,000, with interest thereon from the date of the writ.

50 An offer to settle dated 1 April 2013 was made by the plaintiffs to the defendant. The judgment obtained by the plaintiffs was more favourable than the terms of the said offer. I therefore ordered costs to be payable to the plaintiffs on the standard basis from the date of the writ to 14 April 2013 (allowing for 14 days for the defendant to accept the offer) and on the indemnity basis from 15 April 2013 onwards.

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