

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

[2021] SGHC 85

Suit No 410 of 2019

Between

Sinniah Karupaiah

... Plaintiff

And

Kumanaruban Rasiah

... Defendant

JUDGMENT

[Contract] — [Formation]
[Gifts] — [*Inter vivos*]

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Sinniah Karupaiah
v
Kumanaruban Rasiah

[2021] SGHC 85

General Division of the High Court — Suit No 410 of 2019

Lee Siu Kin J

17, 25, 26 August, 1–4 September, 20 November 2020, 15 January 2021

12 April 2021

Judgment reserved.

Lee Siu Kin J:

Introduction

1 This is an action by the plaintiff, Sinniah Karupaiah, against the defendant, Kumanaruban Rasiah, who is the plaintiff's former business partner, for the recovery of sums due under three alleged oral loan agreements. Essentially, the plaintiff claims that he had lent three sums totalling S\$294,053.50 (collectively referred to as the "Sums") to the defendant as loans on account of their close friendship. The Sums comprise a sum of S\$100,000 transferred on 12 May 2015 (the "S\$100,000 Sum"), a sum of S\$62,677.50 transferred on 31 August 2015 (the "S\$62,677.50 Sum"), and a sum of S\$131,376 transferred on 29 June 2017 (the "S\$131,376 Sum"). In contrast, the defendant claims that the Sums were not loans to him and that that they did not share a close friendship. Rather, the S\$100,000 Sum was a gift from a third-party company to him, and the other two sums were capital injections made by

the plaintiff into Univen (S) Pte Ltd (“Univen”), a company in which both parties were directors at one point in time.

Facts

Background to the dispute

2 The facts of the present case are heavily disputed, with each parties’ case drawing support from the perceived nature of their pre-existing relationship. Essentially, the plaintiff claims that the background facts show that: (a) the parties had a pre-existing close friendship, and (b) the defendant was the controlling mind of Univen. The defendant denies both claims and argues that: (a) the parties were not friends and merely shared a commercial relationship, and (b) the plaintiff was the controlling mind of Univen. Wherever possible, I will first set out the agreed facts and then present each parties’ version of the facts. Also, while I have considered both parties’ versions of the facts, parties often delved extensively into facts that are irrelevant to the issues at hand. Where that is the case, I find it unnecessary to set them out in my reasoning here.

3 The plaintiff and the defendant are both businessmen. They were introduced to each other by a mutual acquaintance in 2013.¹ At that time, the defendant was the director and shareholder of Agrocon (S) Pte Ltd (“Agrocon”), which was in the business of trading commodities.² Subsequently, one of the plaintiff’s companies, Boeki Auto & Marine Pte Ltd (“Boeki”), had business

¹ Plaintiff’s Affidavit of Evidence-in-Chief dated 14 July 2020 (“PAEIC”) at para 5; Defendant’s Affidavit of Evidence-in-Chief dated 14 July 2020 (“DAEIC”) at para 88.

² DAEIC at para 88.

dealings with Agrocon.³ The plaintiff was appointed a director of Boeki on 23 February 2004 and he owned half the total shares in Boeki.⁴

Events relating to Agrocon

4 The background facts relating to Agrocon and Agrocon’s business dealings are disputed. The plaintiff claims that Agrocon had owed a debt of about S\$200,000 to Boeki.⁵ The plaintiff contends that, because the defendant needed monies for Agrocon’s business, the defendant requested a loan of S\$160,000 from the plaintiff (the “Alleged S\$160,000 Loan”) sometime in November 2013.⁶ The plaintiff claims that the defendant repaid this loan.⁷ In contrast, the defendant denies having obtained the Alleged S\$160,000 Loan from the plaintiff. Instead, the defendant claims that this sum was the plaintiff’s investment in Agrocon at that time.

5 The plaintiff also claims that the defendant had requested a loan of S\$50,000 (the “Alleged S\$50,000 Loan”) on 5 March 2014 as the defendant needed money for his business in Agrocon, and Boeki granted that loan.⁸ Again, the defendant claims that this sum was the plaintiff’s investment in Agrocon.⁹

³ DAIEC at para 88; PAIEC at para 6.

⁴ Defendant’s Closing Submissions (“DCS”) dated 6 November 2020 at para 58.

⁵ PAIEC at para 7.

⁶ Plaintiff’s Revised Closing Submissions dated 27 November 2020 (“PRCS”) at para 7; DAEIC at para 68.

⁷ PRCS at para 8; DCS at para 68.

⁸ PRCS at para 7; Plaintiff’s Core Bundle of Documents (“PCBOD”) at p 90.

⁹ DAEIC at para 139.

6 In March 2014, the defendant went to Batam for a few months¹⁰. The parties dispute the reason for his trip. The plaintiff claims that the defendant fled to Batam due to Agrocon's debts and legal troubles.¹¹ The plaintiff then went to Batam to help the defendant resolve Agrocon's issues so that he could recover Agrocon's debts owing to Boeki.¹² The defendant denies that he fled to Batam or that he had any financial or legal problems; instead, he claims that he travelled to Batam to attend to his company in Indonesia, PT Maxal Management.¹³ The defendant subsequently returned to Singapore from Batam on 25 August 2014.¹⁴ Parties contest the circumstances of the defendant's return. The plaintiff claims that the defendant was arrested upon his arrival in Singapore. Because of their alleged friendship, the plaintiff purportedly helped the defendant in his bail arrangements and accompanied the defendant to the police station every month.¹⁵ The plaintiff further claims that, because the defendant had asked him for help with finding accommodation in Singapore, the plaintiff arranged for the defendant to stay at a condominium apartment owned by the plaintiff's sister-in-law.¹⁶ The defendant denies that he was arrested upon his arrival in Singapore, that he requested for help in finding accommodation, and that the plaintiff had made the housing arrangements out of goodwill or friendship. In respect of the last point, the defendant claims that

¹⁰ DAEIC at para 89.

¹¹ PAEIC at paras 9 to 10.

¹² PAEIC at para 11; DAEIC at para 139.

¹³ DAEIC at para 92.

¹⁴ DCS at para 28; PAEIC at para 13.

¹⁵ PRCS at para 18.

¹⁶ PAEIC at para 14; DAEIC at para 100.

the plaintiff had insisted that he rent the apartment and he had to pay rent in any case.¹⁷

Incorporation and management of Univen

7 On 3 October 2014, Univen was incorporated. At the time of incorporation, the plaintiff was both a director and a shareholder of Univen (holding one of two shares) and the defendant was a director with no shareholding in Univen.¹⁸ The defendant's wife was a director and a shareholder (holding one of two shares).¹⁹ Like Agrocon, Univen was in the business of trading commodities.²⁰

8 Parties dispute the motive behind the setting up of Univen. The plaintiff claims that the defendant had proposed to set up a business so that he could be gainfully employed and to earn money to pay off his existing debts.²¹ The plaintiff asserts that, because of their friendship and trust, he agreed to set up Univen with the defendant.²² The defendant claims instead that the purpose of incorporating Univen was so that the plaintiff could channel funds that were meant to go to Agrocon into Univen, so that Agrocon could evade paying its creditors.²³ In this way, Boeki could recoup their loss of investment in Agrocon, and to profit from this new business venture.²⁴

¹⁷ DAEIC at para 100.

¹⁸ DAEIC at para 6.

¹⁹ DAEIC at para 125.

²⁰ PAEIC at para 19; DAEIC at para 104.

²¹ PAEIC at para 15.

²² PAEIC at para 15.

²³ DCS at para 70.

²⁴ DAEIC at paras 103 and 107.

9 Parties vigorously dispute who the controlling mind of Univen was. In this regard, parties seek to introduce a voluminous amount of background facts.

10 The plaintiff claims that, despite the defendant not being a shareholder of Univen, the defendant had total control of Univen and had ran its day to day operations.²⁵ In support of this claim, the plaintiff claims that “[a]ll the material Univen cheques issued were signed by the Defendant”, and referred the court to three sums that were “applied to resolve the Defendant’s dealings”.²⁶ I pause to note that it is unclear as to what the plaintiff meant, and in any case, the evidence referred to by counsel was only Univen’s bank account transaction details without more. The plaintiff also relies on the testimony of two witnesses to corroborate his claim that the defendant was the controlling mind of Univen. Firstly, Mark Sivaraj (“Mark”) testified that the defendant had interviewed and hired him as an operations executive of Univen in 2015.²⁷ Mark stated that he reported to the defendant and took instructions from him. Secondly, Nikhil Singh (“Nikhil”) testified that as the head trader of Gautam Vanijya Private Limited (“Gautam”), he dealt with the defendant on the basis that the defendant had represented to him that the defendant was the sole controlling mind and sole representative of Univen.²⁸ The plaintiff further seeks to rely on the defendant’s admission that Univen had paid for the loan instalments of a car (SKP1319K) that the defendant had used, but which was owned by Wang Lai Construction Engineering Pte Ltd (“Wang Lai”).²⁹

²⁵ PAEIC at para 16.

²⁶ PRCS at para 53.

²⁷ Bundle of AEICs (Volume 1) at 80.

²⁸ Nikhil Singh’s Affidavit of Evidence-in-Chief dated 20 July 2020 at para 15..

²⁹ PRCS at para 53; Transcript of 3 September 2020 at p 30, ln 11–p 31, ln 24.

11 Unsurprisingly, the defendant denies that he was the controlling mind of Univen and contends instead that he merely executed the plaintiff's instructions in Univen, despite being a director in name.³⁰ The defendant raises the following points in support.³¹ Firstly, the plaintiff was a director of Univen during the period in which the Sums were transferred, from 2015 to 2017. Secondly, during this period, the plaintiff had increased his shareholding to 299,999 shares, with the remaining one share being held by the defendant's wife. Thirdly, the plaintiff went on multiple overseas business trips for Univen, which was confirmed by Chiu Chee Beng ("Chiu"), a former business development manager of Univen, and Mark. Lastly, the plaintiff had interviewed Chiu and offered him a job in Univen, which evidences his control of Univen.

12 The plaintiff further alleged that the defendant had set up other corporate entities that begin with the letter "U", and in all these entities, the defendant had managed these businesses despite not being a shareholder.³² Accordingly, Univen, being a similar company beginning with the letter "U", was also managed by the defendant. The defendant points out that the plaintiff did not specify what the other such entities are. In any case, the defendant claims that: (a) there are only two other such entities, (b) the plaintiff was also involved in their incorporation, and (c) the plaintiff was both a director and a shareholder of these entities while the defendant was merely a director.³³

³⁰ DAEIC at paras 108 to 109.

³¹ DCS at para 25.

³² PRCS at para 52.

³³ Defendant's Reply Submissions dated 4 December 2020 ("DRS") at para 69.

Subsequent alleged loan of S\$84,000

13 The plaintiff claims that apart from the Sums (which the plaintiff claims are loans to the defendant), the Alleged S\$160,000 Loan, and the Alleged S\$50,000 Loan, the defendant had requested a loan of S\$84,000 on 10 November 2016 from the plaintiff (“Alleged S\$84,000 Loan”).³⁴ The plaintiff asserts that he granted this loan but the defendant had subsequently repaid this loan.³⁵

14 Again, the defendant disputes that this Alleged S\$84,000 Loan was a personal loan granted by the plaintiff to him. The defendant claims that this sum was disbursed by the plaintiff to Univen and was applied solely for Univen’s business.³⁶ The defendant had merely helped the plaintiff to cash out the cheque of S\$84,000 and to deposit the cash into Univen’s bank account.³⁷

Alleged friendship

15 As set out above, the plaintiff claims that he and the defendant were close friends, which was why he had: (a) arranged for the defendant’s bail arrangements upon his return to Singapore from Batam, (b) accompanied the defendant to the police station, (c) set up Univen for the defendant, and (d) had a prior history of granting personal loans to the defendant, viz, the Alleged S\$160,000 Loan, the Alleged S\$50,000 Loan, and the Alleged S\$84,000 Loan. In response, the defendant rejects these points as being factually inaccurate and claimed that there was no such friendship.

³⁴ PAEIC at paras 31 and 32.

³⁵ PAEIC at para 31.

³⁶ DCS at para 114.

³⁷ DCS at para 114.

16 In addition to the above disputed points, the plaintiff and the defendant raise further facts in support of their arguments regarding whether they had a pre-existing friendship. Again, I note only the relevant facts. Among other things, the plaintiff claims that, on 1 May 2015, the defendant had invited him and his wife to attend the defendant's child's baptism.³⁸ The defendant does not dispute this. Conversely, the defendant claims, *inter alia*, that when the defendant was married on 25 March 2014, he did not invite the plaintiff to his wedding and the plaintiff did not know about the wedding.³⁹ The plaintiff admits that this was the case.⁴⁰

The S\$100,000 Sum

17 On 12 May 2015, a cash cheque of S\$100,000 was signed on behalf of Wang Lai. The defendant needed to transfer this S\$100,000 Sum urgently on that day to Thangavelu LLC, the law firm of the defendant's former solicitor, as the sum was required for one of the defendant's legal proceedings.⁴¹ The transfer was done on that day. Save for a payment voucher that the plaintiff adduces, there are no written documents evidencing a loan agreement.⁴² These facts are not disputed.

18 However, parties dispute the circumstances before and after the transfer of the S\$100,000 Sum and the motive for the transfer of the sum.

³⁸ PRCS at para 84; Transcript of 25 August 2020 at p 51, ln 10.

³⁹ DCS at para 28.

⁴⁰ Transcript of 25 August 2020 at p 17, ln 7–9.

⁴¹ PAEIC at para 21; DCS at para 72.

⁴² DCS at para 3; Agreed Bundle of Documents ("ABOD") vol 4 at para 108.

19 The plaintiff claims that the defendant had asked him for a loan of S\$100,000 and the plaintiff granted him the S\$100,000 Sum as a personal loan, on account of their friendship.⁴³ The plaintiff avers that he signed the cash cheque of S\$100,000 on behalf of Wang Lai, as one of Wang Lai's authorised signatories.⁴⁴ The plaintiff claims that the defendant's then solicitor, Mr Thangavelu from Thangavelu LLC, had contacted him on the morning of 12 May 2015 and told him that the \$100,000 Sum had to be transferred to Thangavelu LLC's client account by 12.00pm.⁴⁵ Given the urgency of the matter, the plaintiff used Wang Lai to effect the transfer of S\$100,000 Sum because he knew that both Wang Lai and Thangavelu LLC had United Overseas Bank ("UOB") accounts,⁴⁶ and such an intra-bank transfer would be faster.⁴⁷ The plaintiff also claims that he personally effected the transfer of the S\$100,000 Sum at a UOB branch, and his staff member, Ms Cuevas Annabelle Molina ("Ann"), prepared a payment voucher.⁴⁸ Subsequently, the plaintiff transferred S\$100,000 from his personal bank account to Wang Lai's bank account.⁴⁹

20 The defendant rejects the above narrative and presents the following version of events. The S\$100,000 Sum was a gift by Wang Lai that does not have to be repaid.⁵⁰ The transfer of this S\$100,000 Sum was allegedly arranged

⁴³ PAEIC at para 24.

⁴⁴ PRCS at paras 50 and 51.

⁴⁵ PAEIC at para 22.

⁴⁶ PAEIC at para 25.

⁴⁷ PAEIC at para 25.

⁴⁸ PAEIC at para 25.

⁴⁹ PRCS at para 87; Plaintiff's Reply Submissions filed on 4 December 2020 ("PRS") at para 95.

⁵⁰ DCS at para 24.

by Mookkiah Rajanayagam (“Mookkiah”), a director of Wang Lai since its incorporation.⁵¹ On 12 May 2015, Mookkiah called the defendant to collect the cheque from Wang Lai’s office, and the defendant did so. The plaintiff did not sign the cash cheque for the S\$100,000 Sum.⁵² Thereafter, the defendant, not the plaintiff, went to UOB to deposit the cheque into Thangavelu LLC’s client account. After doing so, the defendant immediately took a photograph of the deposit slip and emailed it to Mr Thangavelu on the same day at 1.47pm. The defendant then went to Wang Lai’s office to pass the original carbon copy of the deposit slip to a staff member. The defendant alleges that this gift was motivated by a pre-existing **“good and mutually beneficial business relationship, which existed even before Univen’s incorporation”** [emphasis in original] between the defendant and Wang Lai.⁵³

The S\$62,677.50 Sum

21 On 31 August 2015, the plaintiff issued a cash cheque for the sum of S\$62,677.50.⁵⁴ The cheque was prepared by Ann and passed to the defendant.⁵⁵ Ann also prepared a payment voucher dated on the same day.⁵⁶ There were no written documents evidencing a loan agreement. These facts are not disputed.

22 Parties dispute the purpose of issuing the cash cheque for the S\$62,677.50 Sum.

⁵¹ DCS at para 77.

⁵² DRS at para 67.

⁵³ DCS at para 89.

⁵⁴ PAEIC at para 29; Cuevas Annabelle Molina’s Affidavit of Evidence-in-Chief (“Ann’s AEIC”) dated 14 Jul 2020 at para 18.

⁵⁵ PAEIC at para 29; DCS at para 14; DAEIC at para 25.

⁵⁶ PAEIC at para 29; DCS at para 115.

23 The plaintiff claims that sometime earlier in August 2015, the defendant requested for the plaintiff to loan him funds to carry out business transactions. The plaintiff then agreed to lend the S\$62,677.50 Sum to the defendant.⁵⁷

24 The defendant claims that the S\$62,677.50 Sum was not a personal loan, but a capital injection into Univen so that Univen could pay one of its suppliers in Vietnam, Vinafood. On 29 July 2015, the defendant sent an email titled “Vietnam Suppliers link” to the plaintiff, which contained a link that purports to be Vinafood’s website.⁵⁸ Univen then placed an order with Western Union for the electronic transfer of US\$44,375, equivalent to S\$62,677.50.⁵⁹ According to the defendant, the breakdown of the S\$62,677.50 was as follows: the amount due from Univen to Vinafood was US\$44,375, which was equivalent to S\$62,657.50, and there was additional S\$20 fee charged by Western Union for the transfer.⁶⁰ Subsequently, the plaintiff then instructed the defendant to cash out the cheque for the S\$62,677.50 Sum on 1 September 2015 and to deposit the cash into Univen’s bank account on the same day.⁶¹

The S\$131,376 Sum

25 On 29 June 2017, the plaintiff issued a cheque in his own name to the defendant for the sum of S\$131,376.⁶² Ann issued a payment voucher for that

⁵⁷ PAEIC at paras 29 and 30.

⁵⁸ DCS at paras 104 and 113.

⁵⁹ DCS at para 109.

⁶⁰ DAEIC at para 29.

⁶¹ DAEIC at paras 25 and 26.

⁶² DAEIC at para 35; DAEIC at p 161.

sum on the same day.⁶³ There were no written documents evidencing a loan agreement. These facts are not disputed.

26 Parties dispute the purpose of issuing the cheque for the S\$131,376 Sum.

27 The plaintiff claims that on or about June 2017, the defendant requested for a personal loan of S\$131,376 for him to “carry on business transactions”.⁶⁴ The plaintiff then agreed to lend the defendant the S\$131,376 Sum.

28 The defendant claims that the S\$131,376 Sum was a capital injection into Univen to finance its business expenses, and not a loan to the defendant. After the S\$131,376 Sum was deposited into Univen’s bank account, multiple payments were made as follows:⁶⁵

(a) On 30 June 2017, S\$6,945.00 was paid to SS Modern Rice Industry, Univen's supplier in India.⁶⁶

(b) On 30 June 2017, S\$6,945.00 was paid to Bentre Food Company, Univen's supplier in Vietnam.⁶⁷

(c) On 30 June 2017, S\$6,945.00 was paid to S S Exports, Univen's supplier in India.⁶⁸

⁶³ PRS at para 29; PAEIC at para 34; DAEIC at p 162.

⁶⁴ PAEIC at para 33.

⁶⁵ DCS at para 124; DAEIC at para 38.

⁶⁶ DCS at para 124.

⁶⁷ DCS at para 124.

⁶⁸ DCS at para 124.

(d) On 30 June 2020, S\$6,336.22 was used to reimburse hotel and flight payments for Univen's business trips overseas.⁶⁹

(e) On 30 June 2017, S\$3,240.00 was paid to one of Univen's brokers, D Brileint Pte Ltd.⁷⁰

(f) Payments were made for Univen's staff members' salaries in June 2017.⁷¹

The plaintiff's case

29 The plaintiff's case is that in respect of each of the Sums, there was an oral loan agreement concluded between the parties. A term of the agreement was that the defendant would repay the loan amount at some time in the future. The loans have since fallen due and the defendant thus owes the total amount of S\$294,053.50 to the plaintiff. Accordingly, the plaintiff claims for this amount as debt.

30 I note that in the plaintiff's Reply Submissions filed on 4 December 2020, the plaintiff seeks to adduce evidence of the defendant's other lawsuits.⁷² The plaintiff submits that such similar fact evidence ought to be admissible⁷³ to show that the various similar lawsuits demonstrates the defendant's propensity to: (a) make empty promises of payment and to default on judgments⁷⁴ and (b) run businesses and to make empty promises to third parties, including the

⁶⁹ DCS at para 124.

⁷⁰ DCS at para 124.

⁷¹ DCS at para 124.

⁷² PRS at para 86; DRS at para 2.

⁷³ PRS at para 86.

⁷⁴ PRS at para 77.

plaintiff.⁷⁵ In response, the defendant argues that the plaintiff has breached the rule in *Browne v Dunn* (1893) 6 R 67 by not putting these evidence to the defendant during cross-examination, and in the alternative, that the facts asserted are irrelevant.⁷⁶ I agree with the defendant that the plaintiff is not entitled to make this submission as those matters were not put to the defendant in breach of the rule in *Browne v Dunn*. Furthermore, I do not see the relevance of the plaintiff's submissions and I find that, in any case, the plaintiff's evidence is insufficient to prove the facts alleged.

The defendant's case

31 The defendant's primary case is that there were no oral loan agreements concluded between the parties for each of the Sums:

- (a) For the S\$100,000 Sum, the defendant argues that it was an *inter vivos* gift by Mookkiah to him, made through Wang Lai.
- (b) For the S\$62,677.50 Sum and the S\$131,376 Sum, the defendant argues that they were capital injections into Univen.

Accordingly, the defendant does not owe the plaintiff the Sums.

32 In respect of the S\$100,000 Sum, the defendant initially argued in the alternative that, should the court find that it is a loan, the defendant had already repaid the sum owed.⁷⁷ In that regard, he avers that he had issued several

⁷⁵ PRS at para 83.

⁷⁶ Defendant's Further Reply Submissions dated 15 January 2021 ("DFRS") at paras 13 and 17.

⁷⁷ DAEIC at para 20; Further and Better Particulars ("F&BP") of the Defence dated 4 July 2019 at para 9.

cheques and made a cash payment, all of which add up to an amount of S\$100,000. However, in closing submissions, the defendant appears to abandon this argument.

33 Nevertheless, I shall address the defendant's alternative argument for completeness. At the outset, I find that the defendant's submission is illogical: the defendant's position can only be that there *is* a loan or there *is not* a loan. The defendant cannot eat his cake and have it as well. In any case, I find that the evidence adduced in support is insufficient. To begin with, the defendant asserts that there was a cash payment of S\$5,000 that was paid on an *unknown date*.⁷⁸ Moreover, evidence was only given of various cheques without any indication that the cheques were made with the purpose of repaying a loan. Hence, I dismiss the defendant's submission on this point.

34 In respect of the S\$100,000 Sum, the defendant also argues that the plaintiff was not the proper plaintiff to claim the sum.⁷⁹ On the defendant's view, the S\$100,000 Sum was transferred by Wang Lai to the defendant, not the plaintiff. Wang Lai is a company and therefore has a separate legal personality from the plaintiff. Hence, even if the S\$100,000 Sum was indeed a loan to the defendant, it was an oral contract between Wang Lai and the defendant; thus, it is for Wang Lai to make a claim against the defendant. Accordingly, the plaintiff is not entitled to make a claim for the S\$100,000 Sum. The defendant submits that the above follows from the application of the proper plaintiff rule in

⁷⁸ DAEIC at para 20; Further and Better Particulars ("F&BP") of the Defence dated 4 July 2019 at para 9.

⁷⁹ DCS at para 95.

Foss v Harbottle (1843) 2 Hare 461; 67 ER 189 and, separately, the doctrine of privity of contract.⁸⁰

35 Again, I pause to note that the defendant’s submission on the above point is unmeritorious. Neither the proper plaintiff rule nor the doctrine of privity of contract is applicable on the facts. The plaintiff’s case is that he made the loan of the S\$100,000 Sum to the defendant by using Wang Lai’s bank account, and then reimbursing Wang Lai the same amount from his own bank account.⁸¹ Although the loan, if proven, was effected by transferring the money *through* Wang Lai, it is patently clear that the oral loan agreement remains as between the plaintiff and the defendant.

My decision

36 The only relevant issues in this case are whether there were oral loan agreements concluded in respect of each of the Sums.

Was the S\$100,000 Sum a loan or a gift?

37 Parties do not dispute the law applicable to the formation of contract or to *inter vivos* gifts. The present dispute is simply one of fact: was the S\$100,000 Sum a loan by the plaintiff to the defendant or a gift from Mookkiah to the defendant?

Circumstances prior to the transaction

38 I find that it is highly improbable that Mookkiah had given as a gift, the S\$100,000 Sum to the defendant through Wang Lai.

⁸⁰ DCS at para 98.

⁸¹ PRCS at para 87.

39 In the first place, it is rather implausible that Mookkiah would give a huge sum of S\$100,000 to the defendant unless they were very good friends or Mookkiah had some deep gratitude to the defendant.

40 Also, the defendant's submissions oddly do not concern his relationship with *Mookkiah*. Instead, they concern his relationship with *Wang Lai*: the defendant argues that **“Wang Lai Construction and the Defendant used to have a good and mutually beneficial business relationship, which existed even before Univen's incorporation”** [emphasis in original] and “[i]t was because Wang Lai Construction and the Defendant had a close and profitable relationship” that the defendant was gifted the S\$100,000 Sum.⁸² *Ex facie*, his submissions are patently irrelevant. It is plain that: (a) the defendant cannot be friends with a company and (b) since the S\$100,000 Sum must flow from one or more of Wang Lai's directors, the defendant's case can only be buttressed by a good relationship with one or more of them.

41 Viewed in this light, since the defendant did not adduce any evidence to support a finding of a close relationship with Mookkiah, I find that there is no reason for Mookkiah to gift the defendant such a huge sum of money.

42 I am satisfied on the basis of the above analysis that the defendant did not share a close relationship with Mookkiah. Nevertheless, I also state for completeness that even if I were to read his submissions as supporting a claim of a close relationship with *Mookkiah*, the defendant has not proven the existence of such a relationship. I set out my reasons below.

⁸² DCS at paras 89 and 92.

43 Firstly, the defendant submits that he was the named driver in the insurance policy for a car (SKP1319K) that was registered under Wang Lai's name and used as Univen's company car (see [10] above).⁸³ However, there is no evidence to suggest that Mookkiah had procured this arrangement. Even if Mookkiah did do so, since the car is Univen's company car, that suggests that the defendant does not have exclusive use of the car. Again, even if the defendant has exclusive use of the car, I do not see how this one minor benefit evidences such a close relationship that would explain why Mookkiah would be so inclined to gift the defendant such a large amount of money.

44 Secondly, the defendant submits that there were various payments by Univen to Wang Lai, which were allegedly "payments for commission in transactions involving Wang Lai Construction", and a deposit by Wang Lai into Univen's account.⁸⁴ In this regard, the only evidence of the alleged payments between Wang Lai and Univen are merely bank account statements. There is nothing to suggest that the payments were made in contemplation of, or in response to, the defendant having helped (a) Mookkiah directly or (b) Univen in some way such that Mookkiah was grateful to the defendant.

45 Lastly, the defendant also submits that he had helped Wang Lai "negotiate credit facilities with UOB Bank for a betelnut shipment transaction that Wang Lai Construction was involved in".⁸⁵ Yet, there is no evidence to indicate that Mookkiah was grateful for the defendant's assistance in this transaction. Even if that were the case, the defendant's evidence does not show that he had conducted the purported negotiation. From the email correspondence

⁸³ DCS at para 90.

⁸⁴ DCS at para 91.

⁸⁵ DCS at para 91.

between the defendant and UOB, there is a strong indication that the defendant was taking instructions from the plaintiff. Further, even if the defendant was crucial in negotiating this particular transaction, there is simply no evidence to indicate that he would be remunerated to such a large extent for his role. In any case, this would merely be one transaction and is therefore plainly insufficient to evidence a close relationship between the defendant and Mookkiah.

46 Hence, even on the most charitable reading of the defendant's submissions, his evidence still does not support a finding of a close relationship between him and Mookkiah.

47 Accordingly, I find that there was no reason for Mookkiah to make the gift of the S\$100,000 Sum to the defendant.

Circumstances during the transaction

48 I find that the evidence pertaining to the transaction show, on balance, that the plaintiff was indeed involved in transacting the S\$100,000 Sum.

49 At the outset, I find that the documentary evidence shows that the S\$100,000 Sum flowed from the plaintiff and not Mookkiah.

50 Firstly, the plaintiff adduces an image of a cheque of S\$100,000 that he signed on behalf of Wang Lai.⁸⁶ His signature is clearly visible. Yet, while the defendant disputes the cheque's authenticity,⁸⁷ he does not dispute the fact that the plaintiff is authorised to sign cheques on behalf of Wang Lai.⁸⁸ The

⁸⁶ Transcript of 3 September 2020 at p 2, ln 12–16; Plaintiff's Core Bundle of Documents ("PCBOD") at p 86.

⁸⁷ DRS at para 67.

⁸⁸ DRS at para 68.

defendant was given the opportunity to show why the image of the cheque is not genuine, but he simply denies having seen the cheque before.⁸⁹ Conversely, the plaintiff adduces a document submitted to UOB requesting for that cheque's image, which was identified by that cheque's number.⁹⁰

51 Secondly, the plaintiff tenders an image of the payment voucher for the S\$100,000 Sum, which states "Payment for the case matter of Kumanaruban Rasiah (G6254310N)". Ann testified that she had prepared this payment voucher on the plaintiff's instructions.⁹¹ Although the defendant submits that the description of this document, like other documents relating to the transfer of the S\$100,000 Sum, does not state that the transfer was for the purposes of a loan,⁹² his submission does not defeat a finding that the S\$100,000 Sum flowed from the plaintiff.

52 Next, I find that the plaintiff's conduct was consistent with his explanation as to why Wang Lai was used as a vehicle to effect the transfer of the S\$100,000 Sum. The plaintiff claims that he used Wang Lai for the transaction because (a) the plaintiff knew that the S\$100,000 Sum had to be transferred to Thangavelu LLC urgently, (b) Wang Lai and Thangavelu LLC both used UOB accounts, and (c) an intra-bank transfer was faster.⁹³

53 I pause to note that the plaintiff attempts to adduce a document purporting to be a board resolution of Wang Lai that approved the transfer of

⁸⁹ Transcript of 3 September 2020 at p 3, ln 4–15; DRS at para 67.

⁹⁰ PCBOD at p 84.

⁹¹ Ann's AEIC at paras 13-14.

⁹² DCS at para 75.

⁹³ PAEIC at paras 25 to 27.

the S\$100,000 Sum to the defendant.⁹⁴ This purported resolution was signed by the plaintiff and Selvarajan, directors of Wang Lai at the material time. However, as the defendant rightly submits, this document has been struck out in Summons No 3367 of 2020 and the plaintiff is precluded from re-filing this document.⁹⁵

54 Nevertheless, I am persuaded by the plaintiff's submission that he used Wang Lai as a vehicle to transfer the S\$100,000 Sum to Thangavelu LLC, in satisfaction of that sum due to the defendant. The plaintiff's conduct is consistent with his submission: after Wang Lai had transferred the S\$100,000 Sum to Thangavelu LLC, the plaintiff transferred S\$100,000 from his personal bank account to Wang Lai.⁹⁶ He adduces strong evidence in this regard: Wang Lai's bank account statement shows a withdrawal and a subsequent deposit of S\$100,000 on 12 May 2015, *ie* on the same day.⁹⁷ Hence, the plaintiff's conduct shows that it was highly likely that the \$100,000 Sum flowed from him, through Wang Lai, to Thangavelu LLC, as a loan to the defendant.

55 Furthermore, I find the defendant's attempts at disputing the plaintiff's arguments above unconvincing.

56 On the defendant's view, to begin with, it would have been easier for the plaintiff to use Boeki's UOB bank account instead of Wang Lai's.⁹⁸ The defendant argues that the plaintiff's narrative is therefore suspect and that the

⁹⁴ PCBOD at pp 85-86.

⁹⁵ DRS at para 86; Court Order of 17 August 2020 for Summons No 3367 of 2020.

⁹⁶ PRCS at para 87.

⁹⁷ PCBOD at pp 82-83.

⁹⁸ DCS at para 83.

better explanation is that Wang Lai had intended to gift the S\$100,000 Sum to the defendant. In my view, even if it was the case that the plaintiff could have procured the transaction more easily through Boeki, I do not agree with the defendant's far-fetched conclusion.

57 Next, the defendant submits that the plaintiff falsely testified that he had called Mr Thangavelu to ask him about the purpose of S\$100,000 Sum. The plaintiff's testimony is unsupported by Mr Thangavelu's testimony and in any event, the purpose of the S\$100,000 Sum was protected by solicitor-client privilege.⁹⁹ This submission is irrelevant since it stops short of claiming that the plaintiff did not or could not have known of the S\$100,000 Sum's purpose. The plaintiff could have known of it by other means, *eg* from the defendant. Moreover, the defendant's point on solicitor-client privilege is irrelevant: it is sufficient for the plaintiff to have known, in broad terms, that the S\$100,000 Sum was needed urgently for a legal purpose.

58 Parties also submit on whether the plaintiff or the defendant was the one who went to UOB to deposit the cash cheque for the S\$100,000 Sum.¹⁰⁰ I find that this issue is simply irrelevant to the present matter.

59 Having considered the evidence in totality, I am of the view that the only probable explanation is that the plaintiff had loaned the S\$100,000 Sum to the defendant. Having found that Wang Lai has no reason to gift the defendant the S\$100,000 Sum (see above at [46]), the defendant's case that the S\$100,000 Sum was a gift by Wang Lai is highly improbable. By extension, it follows that none of Wang Lai's directors, including both Mookkiah and the plaintiff, has

⁹⁹ DCS at paras 81-82.

¹⁰⁰ PAEIC at para 25; PRCS at para 50; DCS at para 79.

reason to gift the defendant the S\$100,000 Sum, on account of Wang Lai's allegedly close relationship with the defendant. Given that the defendant himself disavows any friendship between him and the plaintiff (see above at [15]), it is also even more unlikely that the plaintiff had gifted the defendant the S\$100,000 Sum through Wang Lai. Furthermore, on top of the sheer improbability of the defendant's narrative, the documentary evidence supports the plaintiff's version of events. Hence, on balance, the inexorable conclusion must be that the S\$100,000 Sum was a loan by the plaintiff to the defendant.

60 I therefore find that on 12 May 2015, the plaintiff did orally contract with the defendant to loan the S\$100,000 Sum to the defendant.

Was the S\$62,677.50 Sum a loan or a capital injection?

61 The plaintiff claims that the defendant requested a loan of the precise amount of S\$62,677.50 in order to carry out business transactions.¹⁰¹ The plaintiff tenders a payment voucher prepared by Ann as evidence.¹⁰² The payment voucher states under the "Pay to" section as "Cash – Kumanaruban Rasiah (G6254310N)" and states under its description, "Univen (S) Pte Ltd Loan", for the amount of S\$62,677.50.

62 The defendant argues that the S\$62,677.50 Sum was not a loan, but a capital injection from the plaintiff into Univen to pay Vinafood, one of Univen's suppliers. In advancing his case, the defendant tenders evidence of the email correspondence with the plaintiff that mentioned Vinafood, and Univen's bank account statement, and a Western Union document evidencing an outgoing

¹⁰¹ PAEIC at para 29.

¹⁰² PCBOD at p 96.

payment confirmation for the sum.¹⁰³ The defendant submits that the documents show that on 1 September 2015, he cashed out the cheque and deposited S\$62,677.00 into Univen's UOB bank account. He was unable to deposit fifty cents as the cash deposit machine did not accept coins. On the same day, various sums totalling S\$62,677.50 was transferred out. The Western Union document further shows that the payment was made to "VINAFOOD 1-MEKONG DELTA BRANCH".

63 In response, the plaintiff points out that the Western Union document was dated 21 August 2015. Hence, the plaintiff argues that the payment to Vinafood was made on that date and not 1 September 2015.¹⁰⁴ The defendant submits that the earlier date shown on the Western Union document was because Univen had made a forward booking of a favourable exchange rate for the transfer of funds to Vinafood.¹⁰⁵

64 The defendant also submits that S\$62,677.50 is a specific amount and it is odd for one to request for a loan for such an amount instead of a round figure.¹⁰⁶ Hence, the defendant submits that it is more plausible that such an exact amount was for business expenses rather than a loan. In response, the plaintiff argues that for a substantial sum of S\$62,677.50, the defendant ought to have procured a trade bill from Vinafood instead of simply emailing a link to the plaintiff.¹⁰⁷

¹⁰³ DCS at para 103; DAEIC at paras 29 to 30.

¹⁰⁴ DCS at para 110; PRS at para 25.

¹⁰⁵ DCS at para 110.

¹⁰⁶ DCS at para 214.

¹⁰⁷ PRS at para 25.

65 The defendant further submits that the manner in which the plaintiff had allegedly instructed the defendant to deposit the S\$62,677.50 Sum was similar to the previous instances concerning the alleged S\$84,000 Loan and the S\$131,376 Sum.¹⁰⁸ According to the defendant, the plaintiff had a practice of instructing the defendant to deposit cheques issued to the defendant in Univen's account, so as to circumvent certain banking restrictions.¹⁰⁹

66 On balance, I am persuaded that the S\$62,677.50 Sum was a capital injection into Univen. I am satisfied that the documentary evidence supports the defendant's narrative. At the outset, on the plaintiff's own evidence, the payment voucher states that the cheque was issued to Univen. I also accept the defendant's explanation of why the Western Union document was dated earlier than the date on which the S\$62,677.50 Sum was transferred. I also place much weight on the fact that it is unusual and thus unlikely for one to request for a loan of such a specific amount.

67 Hence, I find that the S\$62,677.50 Sum was not a loan by the plaintiff to the defendant.

Was the S\$131,376 Sum a loan or a capital injection?

68 Similar to the S\$62,677.50 Sum, the plaintiff claims that the defendant requested for a personal loan of S\$131,376 so that he could "carry on business transactions".¹¹⁰ The plaintiff tenders an image of the cheque for the S\$131,376 Sum, showing that it was issued to the defendant.¹¹¹ The plaintiff also tenders a

¹⁰⁸ DCS at para 25.

¹⁰⁹ DAEIC at para 45.

¹¹⁰ PAEIC at para 33.

¹¹¹ PCBOD at p 99.

payment voucher prepared by Ann as evidence.¹¹² The payment voucher states under the “Pay to” section as “Rasiah Kumanaruban” for the amount of S\$131,376. Importantly, as the defendant noted, the description of the payment voucher is left blank, so it does not state that the sum was a loan to the defendant.¹¹³

69 The defendant submits that the S\$131,376 was used for Univen’s various business expenses. In this regard, he tenders Univen’s UOB bank account statement for June 2017 as evidence.¹¹⁴ I note that the descriptions for the various transactions in the bank account statement do state that some were for paying Univen’s staff member’s salaries, which are clearly business expenses. I also note that the bank account statement also shows the names of the recipient business entities, and their names suggest that these entities trade in commodities. Given that Univen trades in commodities, I find that it is likely that these were indeed business expenses.

70 The defendant submits that, like the S\$62,677.50 Sum, the S\$131,376 Sum is a specific amount and it is odd for one to request for a loan for such an amount instead of a round figure.¹¹⁵ Again, the defendant submits that it is more plausible that such an exact amount was for business expenses rather than a loan.

¹¹² PCBOD at p 98.

¹¹³ DCS at para 3.

¹¹⁴ DCS at para 124; ABOD vol 2 at p 207–218.

¹¹⁵ DCS at para 216.

71 The defendant also submits that the plaintiff used the same practice described above at [65] in making this capital injection into Univen.¹¹⁶ This practice explains why the cheque for the S\$131,376 Sum was issued to the defendant and not to Univen.

72 I am convinced by the defendant's submissions that the S\$131,376 Sum was a capital injection into Univen. I find that, on balance, the documentary evidence shows that the S\$131,376 Sum was used for Univen's business expenses. Hence, there was a good reason for the plaintiff to procure the defendant to deposit this amount in Univen's bank account. I also place weight on the fact that the amount was rather specific, just like the S\$62,677.50 Sum.

73 Hence, I find that the S\$131,376 Sum was not a loan by the plaintiff to the defendant.

Conclusion

74 For the reasons above, I allow the plaintiff's claim in part. Because I find that only the S\$100,000 Sum was a loan, the plaintiff is only entitled to the payment of that amount. Although the plaintiff's claim in his statement of claim ("SOC") was initially only for the aggregate amount of S\$294,053.50, I have granted him leave in Summons No 5318 of 2020 to amend his SOC to claim for the remedy of "such other sum or sums of the aggregate amount claimed".¹¹⁷ Hence, I order the defendant to repay the plaintiff the sum of S\$100,000, which has fallen due. I also order the defendant to pay interest on this sum, at 5.33% per annum from 17 April 2019, the date on which the writ was filed.

¹¹⁶ DCS at para 25.

¹¹⁷ HC/ORC 63/2021; Statement of Claim (Amendment No. 1) dated 28 December 2020.

75 I will hear counsel on the issue of costs.

Lee Seiu Kin
Judge of the High Court

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for the plaintiff;
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