IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 319

Suit No 13 of 2017
(Registrar's Appeal No 248 of 2017)

Between

MA HONGJIN

… *Plaintiff*

And

SCP HOLDINGS PTE LTD

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure] — [Summary judgment]

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Introduction

1 This was a Registrar's Appeal brought by the plaintiff, Ma Hongjin ("the Plaintiff"), against the decision of the learned Assistant Registrar Justin Yeo ("the AR") in respect of the Plaintiff's application for summary judgment under O 14 r 1 of the Rules of Court (Cap 322, R5, 2014 Rev Ed) ("ROC"). I note that whilst unconditional leave to defend was granted, the AR in deciding the appropriate costs order (which was "costs in the cause") stated that the application was not so unmeritorious as to be considered to have been "dismissed".[1]

2 After hearing the parties, I found that the defences raised by the defendant, SCP Holdings Pte Ltd ("the Defendant"), were speculative or

[1] Notes of Evidence ("NE") of hearing on 13 September 2017, p 6.

supported only by bare assertions in the Defendant's affidavits. I allowed the appeal and granted the Plaintiff summary judgment. As the Defendant has appealed against my decision, I shall now give my reasons.

Background facts

Dramatis personae

3 The Plaintiff is a Singapore permanent resident.[2] Her husband, Han Jianpeng ("Han"), is a businessman.[3]

4 The Defendant is a Singapore-incorporated investment holding company. It has a substantial shareholding in Biomax Holdings Pte Ltd ("Biomax Holdings").[4]

5 Biomax Holdings is the sole shareholder of Biomax Technologies Pte Ltd ("Biomax Technologies"), which is in the business of wholesaling agriculture machinery, equipment and supplies, and also of manufacturing fertilisers and nitrogen compounds.[5]

6 Sim Eng Tong ("Sim") is a director and former shareholder of the Defendant, as well as the director and chief executive officer of both Biomax Holdings and Biomax Technologies.[6]

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2 1st affidavit of the Plaintiff dated 21 February 2017, para 8.

3 1st affidavit of Han dated 21 February 2017, para 1.

4 Statement of Claim ("SOC"), para 2; Defence (Amendment No 2) ("Defence"), para 2.

5 Statement of Claim (Amendment No 1) in Suit No 765 of 2016 ("S 765 SOC"), para 3; Defence and Counterclaim (Amendment No 1) in Suit No 765 of 2016 ("S 765 Defence"), para 2.

6 S 765 SOC, para 4; S 765 Defence, para 3; 1st affidavit of Han dated 21 February 2017, para 6.

Dealings between the parties

7 In the second half of 2014, Han and Sim met for the first time at a geomancy shop in Singapore and became acquainted.[7] Han and Sim subsequently entered into discussions regarding Sim's involvement in the Defendant's group of companies and the value of the group's green technology for treating and converting organic waste into fertiliser.[8] There is no dispute between the parties on their first serendipitous encounter at the geomancy shop.

8 On 6 January 2015, the parties entered into a convertible loan agreement ("the CLA") under which the Plaintiff would loan $5m to the Defendant at an interest rate of 10% per annum ("the Loan").

9 Under the terms of the CLA, the Defendant was to repay the $500,000 in interest by 5 January 2016. On the maturity date of 5 January 2017, the Plaintiff was entitled to choose to either have the Defendant:

(a) repay the $5m principal and the $500,000 in interest further accrued ("Option A"); or

(b) transfer 15% of the total shares in Biomax Holdings to the Plaintiff in full and final repayment of the principal and the interest on the Loan ("Option B").[9]

10 On the day the CLA was signed, the Plaintiff and Han visited the Defendant's office and advanced $2.4m in cash to the Defendant, representing the first loan payment.[10] The Plaintiff made further loan payments to the

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7 Defence, para 4A(b).

8 Defence, para 4A; Reply (Amendment No 2) ("Reply"), para 7A(b).

9 Plaintiff's Bundle of Documents ("PBOD"), p 23 at cl 3.2.

Defendant of $1.1m and $1.5m in cash on 14 January 2015 and 30 March 2015 respectively. The three payments totalled $5m, just as the parties had agreed under the CLA.[11]

11 On 16 April 2015, the parties entered into a supplemental agreement to amend the CLA ("the SA"). Option B was amended such that the Plaintiff could choose to have the Defendant transfer 20% (instead of 15%) of the total shares in Biomax Holdings to her in full and final repayment of the Loan. In addition, the Defendant was to pay an additional lump sum "facility fee" of $250,000 along with the first $500,000 in interest by 5 January 2016.[12]

12 On the day the SA was signed, the parties also entered into a Shares Investment Agreement ("the SIA"). The SIA provided for another loan of $5m from the Plaintiff to Biomax Technologies. This loan was interest-free, but Biomax Technologies undertook to transfer to the Plaintiff 45% of its issued and paid-up ordinary shares in a new company which was to be incorporated in Singapore for the purpose of producing organic fertilisers for commercial sale, prior to the listing of Biomax Holdings on the Singapore Exchange.[13] However, it appears that the loan under the SIA was never disbursed.[14]

13 Sometime around April or May 2015, Han requested to move his personal safe into the Defendant's office. Han told Sim that he felt insecure leaving his safe at home as he had no security alarm system installed there. The Defendant's office, on the other hand, was equipped with infrared detectors and

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10 6th affidavit of Sim dated 18 August 2017, para 10.

11 Defendant's chronology of material facts, found at Defendant's submissions, pp 12–13 ("Chronology"), nos 4–6; Defendant's Bundle of Cause Papers ("DBCP"), p 286.

12 PBOD, p 32 at cl 2.

13 DBCP, p 113.

14 S 765 Defence, para 6(i).

security cameras. Sim agreed, and Han then moved his safe into the rear room of the Defendant's office. Upon Han's request, Sim arranged for renovation works to be carried out in the rear of the Defendant's office, and as a result, an internal partition and a curtain, among other things, were added to obscure Han's safe.[15]

14 From June to October 2015, the Plaintiff and Biomax Technologies entered into four more loan agreements. I note that these loans to Biomax Technologies ("the BT Loans") do not form part of the subject matter of the present suit, but I briefly describe them here to provide some background on the other transactions which the parties were involved in. The loan monies were disbursed by the Plaintiff to Biomax Technologies by way of cash, cheque and telegraphic transfer. The first loan of $1m was promptly repaid to the Plaintiff in September 2015 along with the 10% interest as agreed. However, the other loans of $2m, $2m and $1m, as well as the 20% interest on each loan, were not repaid promptly. The Plaintiff granted extensions for repayment, but the principals and interest on the BT Loans were still not repaid in full by the final deadline of 2 July 2016.[16]

15 As regards the Loan, the Defendant repaid the $500,000 in interest by the stipulated repayment date of 5 January 2016. However, the $250,000 facility fee under the terms of the amended CLA was not repaid by the Defendant by 5 January 2016.

16 On 12 April 2016, the Plaintiff's solicitors sent the Defendant a letter of demand stating its position that the Defendant was liable to pay a total of

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15 6th affidavit of Sim dated 18 August 2017, paras 11–17; 7th affidavit of Sim dated 21 August 2017, para 11.

16 Chronology, nos 10, 12, 15, 17–20, 23 and 25–27 (see internal citations to relevant documents contained in DBCP).

$750,000 in interest (thus characterising the $250,000 facility fee as interest), and that since the Defendant had only paid $500,000 to date, $250,000 remained due and owing.[17] On the same day, the Plaintiff's solicitors also sent Biomax Technologies a separate letter of demand for the repayment of the BT Loans.[18] The Defendant and Biomax Technologies did not comply.

Procedural history

Suit 765

17 On 15 July 2016, the Plaintiff commenced Suit No 765 of 2016 ("Suit 765") against the Defendant and Biomax Technologies. Against the Defendant, the Plaintiff claimed $250,000 in interest under the Loan. I note that the Plaintiff did not claim the principal under the Loan, which was not yet due to be repaid. Against Biomax Technologies, the Plaintiff claimed the principals (totalling $5m) and interest payable under the outstanding BT Loans.[19]

18 In their defence, the defendants in Suit 765 asserted the following:

(a) First, they claimed that the SA was unenforceable for lack of consideration as the Plaintiff had not performed her obligations under the SIA.[20]

(b) Secondly, they alleged that they had entered into the SA on the basis of a representation by Han in January 2015 that he and the Plaintiff were prepared to support the entry and expansion of one of Biomax

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17 Defendant's Bundle of Relevant Cause Papers in Suit No 765 of 2016 ("S 765 DBCP"); p 181.

18 Defendant's Bundle of Relevant Cause Papers in Suit No 765 of 2016 ("S 765 DBCP"); pp 183-185.

19 S 765 SOC, pp 8–9.

20 S 765 Defence, para 6.

Technologies' products and the defendants' associated businesses. They also alleged that in April 2015, Han had suggested that the monies under the Loan be applied to the construction of a factory for the application of Biomax Technologies' product, and that he or the Plaintiff would subsequently advance $20m to $25m and any further funds required to complete the factory.[21]

(c) According to the Defendants, prior to the BT Loans in July 2015, Han had promised Sim that he would loan Biomax Technologies a further $15m when the need arose.[22]

(d) The defence claimed that Biomax Technologies proceeded to incur costs in connection with the preparatory work for the factory and took steps to expand the business,[23] but the Plaintiff and Han did not advance any further money apart from the BT Loans. As a result, Biomax Technologies was unable to build the factory or expand its business.[24]

(e) The defendants thus took the position that the Plaintiff's and Han's refusal to advance any further loans was a breach of the representations made in January and April 2015 and the oral agreement between Han and Sim in July 2015.[25]

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21 S 765 Defence, para 6(e).

22 S 765 Defence, para 14.

23 S 765 Defence, para 13.

24 S 765 Defence, para 26.

25 S 765 Defence, paras 12, 13 and 25.

(f) In addition, the defendants argued that the Plaintiff and Han were not genuinely interested in Biomax Technologies' business and intended to use this as a premise to extend loans at extortionate interest rates.[26]

(g) Finally, the defendants sought to argue that the loans to them were not investments but were instead prohibited moneylending transactions under the Moneylenders Act (Cap 188, 2010 Rev Ed).[27]

19 Biomax Technologies thus counterclaimed damages, losses of profit and wasted expenses arising from its inability to complete construction of the factory.[28]

20 The Plaintiff applied for summary judgment under O 14 r 1 of the ROC. On 16 November 2016, without explaining his reasons, the Registrar granted the defendants unconditional leave to defend Suit 765.[29] The Plaintiff did not appeal the Registrar's decision.

The present suit

21 On 9 January 2017, *after* the repayment of the principal under the Loan fell due, the Plaintiff brought the present suit against just the Defendant. The facts alleged in the statement of claim were substantially similar to those pleaded in Suit 765 on the CLA and the Loan.

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26 S 765 Defence, para 27.

27 S 765 Defence, para 27.

28 S 765 Defence, para 40.

29 NE of hearing on 16 November 2016 in respect of Summons No 4562 of 2016.

22 The Plaintiff claimed the $5m principal under the Loan; interest at the rate of 10% per annum accruing on and after 6 January 2016; and damages in the alternative.[30]

23 In the defence, the Defendant stated its position, *inter alia*, that:

(a) The SA was unenforceable for lack of consideration as the Plaintiff had not performed her obligations under the SIA.[31]

(b) The Plaintiff breached the terms of the CLA by disbursing the Loan in three tranches on 6 January 2015, 14 January 2015 and 30 March 2015, when the monies should have been advanced in full on 6 January 2015.[32]

(c) The CLA (along with its amendments pursuant to the SA) was an illegal contract in that the Plaintiff was seeking to launder money through the Defendant ("the money laundering defence").[33] The Defendant pointed to the following undisputed facts in support of this allegation:

(i) The Plaintiff had made all payments of the Loan in cash, even though the CLA provided that the monies were to be disbursed by telegraphic transfer or cheque.[34]

(ii) In July 2015, Han informed Sim that Han had to return to China to meet the authorities due to an investigation over

30 SOC, p 4.

31 Defence, para 3.

32 Defence, para 4.

33 Defence, para 4A.

34 Defence, para 4A(e).

monies that had gone into his company which was subsequently paid out to the son of a public official. On 22 April 2015, the International Criminal Police Organisation (or INTERPOL) ("Interpol") had issued a red notice stating that Han was wanted by the judicial authorities of the People's Republic of China ("the PRC") in respect of a "charge" for the "crime of non-state functionaries taking bribes" ("the Red Notice").[35]

(iii) Around August and September 2015, the Plaintiff gave the Defendant a copy of a letter from the Hong Kong and Shanghai Banking Corporation dated 23 July 2015 ("the HSBC letter"). The letter was addressed to Han as a bank customer, stating that "the Bank [was] currently unable to allow operation of [Han's] account / conduct the transaction [he had] instructed". The letter provided the contact details of a Detective Senior Inspector with the Financial Investigations, Narcotics Bureau of the Hong Kong police, with whom Han could get in touch for more information.[36]

(d) The CLA (along with its amendments pursuant to the SA) was unenforceable because the Loan was prohibited by s 14 of the Moneylenders Act and s 31(2) of the Business Names Registration Act (No 29 of 2014) ("the moneylending defence"). According to the Defendant, the Plaintiff had loaned money to at least one individual named "Ron Sim." No further details were pleaded about the alleged loan to Ron Sim.[37] I shall return to this pleaded point below.

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35 Defence, para 4A(m); DBCP, p 287.

36 Defence, para 4A(n); S 765 DBCP, p 274.

37 Defence, paras 12A–12C.

24 In its Reply, the Plaintiff clarified that no charges had been brought against Han, whether in the PRC or Hong Kong. Han had no criminal record in the PRC, and was permitted to travel in and out of the country without restrictions.[38] The investigation by the Hong Kong authorities concluded in 2016, and no charges were brought against any person.[39] The Plaintiff averred that the monies disbursed to the Defendant under the Loan were all legitimately earned from business in the PRC and were not the benefits of any criminal conduct or money laundering activity.[40] Further, the Plaintiff denied having made any loan to a Ron Sim and stated that she was unaware of any such person.[41]

25 The Plaintiff applied for summary judgment under O 14 r 1 of the ROC, this time in respect of the present suit. I note that this suit and Suit 765 have not been consolidated.

The decision below

26 At the hearing before the AR, the Defendant relied on the moneylending and money laundering defences to show that it had a *bona fide* defence.[42] The Plaintiff's key arguments were that the Plaintiff was an "excluded moneylender" under s 2 of the Moneylenders Act, and that the Defendant's money laundering allegation was bald, misconceived and raised only in the "eleventh-hour amendment of its pleadings".[43] The AR agreed that these defences raised triable issues.[44]

38 Reply, para 7A(f).

39 Reply, para 7A(g).

40 Reply, para 7A(h).

41 Reply, para 12B(b).

42 NE of hearing on 24 August 2017, p 3.

43 NE of hearing on 13 September 2017, paras 4–5.

27 For the moneylending defence, the AR held that the question of whether the Plaintiff was an "excluded moneylender" cannot be determined on the basis of the affidavit evidence before him.

28 As for the money laundering defence, the AR held that the factual circumstances in the present case gave rise to triable issues and suggested that there was "some other reason" for trial.[45]

(a) First, the AR found that the issue of whether Han was a proxy for the Plaintiff was a matter to be determined at trial.[46]

(b) Second, the AR was troubled by the fact that $5.7m in loans was disbursed in cash, and that the only explanation was the Plaintiff's disputed assertion that it was Sim who had requested for payment in cash.[47]

(c) Third, although nothing emerged from the Interpol and Hong Kong investigations, the AR noted that the existence of these investigations added to the "somewhat suspicious circumstances surrounding this matter".[48]

29 For these reasons, the AR granted the Defendant unconditional leave to defend, with costs of the application to be in the cause.[49] The Plaintiff appealed.

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44 NE of hearing on 13 September 2017, para 7.

45 NE of the hearing on 13 September 2017, para 6.

46 NE of the hearing on 13 September 2017, para 6(a).

47 NE of the hearing on 13 September 2017, para 6(b).

48 NE of the hearing on 13 September 2017, para 6(c).

49 NE of the hearing on 13 September 2017, p 6.

The legal principles on summary judgment

30 As the legal principles on summary judgment under O 14 of the ROC are well-known, I will set them out briefly.

31 In order to obtain judgment, a plaintiff must first show that he has a *prima facie* case for summary judgment. If the plaintiff satisfies this, the burden then shifts to the defendant to show that there is an issue or question in dispute which ought to be tried (O 14 r 3(1) of the ROC; *KLW Holdings Ltd v Straitsworld Advisory Ltd and another* [2017] SGHC 35 ("*KLW*") at [16]). If the defendant can establish that there is a fair or reasonable probability that he has a *bona fide* defence, he ought to have leave to defend (*Habibullah Mohamed Yousoff v Indian Bank* [1992] 2 SLR(R) 880 at [21]).

32 However, a court will not grant leave "if all the defendant provides a mere assertion, contained in an affidavit, of a given situation which forms the basis of his defence" (*M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2015] 1 SLR 325 ("*M2B*") at [19]), or if the assertions in affidavit are equivocal, lacking in precision, inconsistent or inherently improbable (*KLW* at [16]; *M2B* at [19]). The case law makes clear that the proper course is not for the court to assume that every sworn averment is to be accepted as true, or that such an averment may, *ipso facto*, provide a basis for leave to defend (*Abdul Salam Asanaru Pillai (trading as South Kerala Cashew Exporters) v Nomanbhoy & Sons Pte Ltd* [2007] 2 SLR(R) 856 ("*South Kerala Cashew*") at [38]; see also *Goh Chok Tong v Chee Soon Juan* [2003] 3 SLR(R) 32 at [25]).

33 Apart from showing the existence of triable issues, the defendant may also avoid summary judgment by showing "that there ought for some other reason to be a trial" (O 14 r 3(1) of the ROC). In *Concentrate Engineering Pte*

Ltd v United Malayan Banking Corp Bhd [1990] 1 SLR(R) 465 ("*Concentrate Engineering*") at [12], Chan Sek Keong J (as he then was), following *Miles v Bull* [1969] 1 QB 258 at 266A–C, held that there would be "some other reason" for a trial if the defendant is able to satisfy the court that there are circumstances that ought to be investigated, especially where most or all of the relevant facts are under the plaintiff's control. The defendant must be able to show clear justification for this; vague allegations that a case needs to be investigated in the absence of good reason would *not* constitute some other reason for trial (*KLW* at [57], citing Jeffrey Pinsler, *Principles of Civil Procedure* (Academy Publishing, 2013) at p 267).

Whether the Plaintiff was precluded from applying for summary judgment in the present suit

34 As a preliminary issue, I note that the Defendant argued that allowing the Plaintiff to apply for summary judgment in the present suit would be tantamount to giving her a second bite of the cherry, after the court had already granted unconditional leave to the defendants to defend Suit 765. The Defendant contended that this might result in conflicting interpretations of the same contract by different fora. I found that the Defendant's contentions were unwarranted in this regard.

35 While both suits involve substantially the same facts, similar contractual arrangements and almost the same parties (with the exception of Biomax Technologies), the claims made in each suit were different.

36 Suit 765 was brought by the Plaintiff in respect of, *inter alia*, the $250,000 in interest or facility fees that was allegedly due from the Defendant under the Loan, whereas the present suit involves the $5m principal and interest accruing on and after 6 January 2016 (see [17] and [21] above). Suit 765 also

involves the repayment of the BT Loans (see [17] above), which does not form part of the subject matter of the present suit.

37 The defences pleaded in each suit are different as well, even though certain defences such as the moneylending defence do overlap. For instance, a substantial part of the defence in Suit 765 related to the enforceability of the SA and the terms which were added to the amended CLA (see [18] above). The same defence was not pleaded in the present suit, ostensibly because the principal and interest claimed in the present suit are part of the original CLA and therefore not contingent upon the enforceability of the SA.

38 In granting summary judgment in Suit 765, the Registrar did not provide an indication as to which issue or issues he considered to be triable. The defendants in Suit 765 may very well have been granted unconditional leave to defend on the basis of issues, claims and defences that do not arise in the present suit. There was therefore no basis to conclude that the present application for summary judgment is barred by *res judicata* or otherwise improper.

39 The Registrar did not make any determination on the interpretation of any contract in Suit 765, and nor will my decision in respect of the current application. The Defendant's concerns about the risk of there being conflicting interpretations of the same contract were thus similarly unwarranted. Accordingly, I move on to consider the substantive defences raised by the Defendant.

The moneylending defence

40 The Defendant essentially advanced the same arguments as it did below, by asserting that the moneylending and money laundering defences were *bona fide* and raised triable issues. I will begin with the moneylending defence.

41 It was not disputed by the parties that the Loan was in fact a loan made in consideration of a larger sum being repaid, and that the Plaintiff was not a licensed or exempt moneylender within the meaning of ss 5(1)(*a*) and 5(1)(*c*) of the Moneylenders Act respectively. In my view, the moneylending defence turned on one critical point: whether the Plaintiff was an "excluded moneylender" within the definition stated in s 2 of the Moneylenders Act. If so, the Plaintiff's loans would not be illegal under s 5(1)(*b*) of the Moneylenders Act. Section 2 defines "excluded moneylender" to include any person who lends money solely to corporations, as well as "any person carrying on any business not having for its primary object the lending of money in the course of which and for the purposes whereof he lends money".

42 The Defendant's case was that the Plaintiff was not an "excluded moneylender" as she had lent money to an individual named Ron Sim through Han (see [23(d)] above). Sim later elaborated in his affidavit that he had been told by Han that Han had lent $8m to Ron Sim of OSIM International Ltd ("OSIM") for his personal investment in the tea business.[50] In response, the Plaintiff asserts that neither she nor Han knew of or extended loans to any such person (see [24] above).

43 The reference to Ron Sim was pleaded in just one line of the defence.[51] It was completely bereft of particulars. The assertion in Sim's affidavit was also bare, and supported only by way of another bare assertion that Han had said that he had been introduced to Ron Sim by a relationship manager at DBS Bank Ltd.[52] These allegations were roundly rejected in Han's affidavit.[53] Cases such

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50 D's closing submissions, para 23.

51 Defence, para 12C(a)(iii).

52 Sim's 4th affidavit, para 24.

53 Han's 3rd affidavit, para 19.

as *KLW*, *M2B* and *South Kerala Cashew* make it abundantly clear that bare assertions without good reason will not *ipso facto* form a basis for leave to be granted to be defend (see [32] above).

44 Further, I note that these assertions were not made in the defence to Suit 765, even though it was already pleaded that the Plaintiff and Han did not fall within the exceptions to the definition of "moneylenders" in s 2 of the Moneylenders Act. The bare pleading mentioning Ron Sim was only introduced belatedly by way of an amendment to the defence in the present suit. Although I was cognisant of the Defendant's explanation for the delay that it had changed its solicitors multiple times and therefore did not accord significant weight to this point, the belatedness of the amendment nevertheless suggested that the reference to Ron Sim was an afterthought.

45 Finally, I accepted that it was at least improbable – even if not implausible – that Ron Sim of OSIM would have borrowed $8m from Han or the Plaintiff. According to a Forbes profile search exhibited by the Plaintiff,[54] Ron Sim's net worth as of 20 June 2017 was estimated to be around $1.17bn. In contrast, the Defendant's submissions based on Ron Sim's interest in the tea business and his involvement in protracted litigation were entirely speculative.[55] As stated in *M2B* at [19], the court will not grant leave to defend solely on the basis of mere assertions that are lacking in precision or inherently improbable. The improbability of the Defendant's bold and unsupported allegation was yet another factor that weighed on my analysis on this issue.

46 In the light of these reasons, I found no reasonable defence on the basis of the allegations that the Plaintiff was any illegal moneylender or that the Loan

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54 Han's 3rd affidavit, HJP-1.

55 See D's closing submissions, para 126.

was a prohibited moneylending transaction under the Moneylenders Act. Because of this finding, there was no need to consider the further questions of whether Han acted as a proxy for the Plaintiff such that any prohibited loans given by Han be imputed to the Plaintiff, whether the Plaintiff carried on the business of moneylending under s 5(1) of the Moneylenders Act, or whether any of these amounted to triable issues. To be clear, on the face of the documents, the Loan and the CLA were between the Plaintiff and the Defendant. I see no reasonable defence or triable issue as to whether the Plaintiff is an excluded moneylender.

The money laundering defence

47 Next, I turn to the Defendant's money laundering defence. The Defendant relied on the following facts in support of this defence:

(a) the Red Notice issued against Han by Interpol (see [23(c)(ii)] above);

(b) the HSBC letter in respect of Han's bank account (see [23(c)(iii)] above); and

(c) the fact that the Loan was disbursed in cash (see [23(c)(i)] above).

48 The Plaintiff tendered documentary evidence in order to show that Han had a clean criminal record in the PRC. According to an article dated 27 June 2017 published on the websites of the Communist Party of China's Central Commission for Discipline Inspection and the Jieyang City government website, Han had reported voluntarily to the authorities in the PRC on 9 July 2015 to assist in the investigations against him.[56] This was after the Red Notice

[56] Ma's 2nd affidavit, pp 39–41.

had been issued against him on 22 April 2015 (see [23(c)(ii)] above). Later, notarial certificates issued in Hebei Province of the PRC stated that Han "had no criminal record during his period of residence" in the PRC as of 28 August 2015 and 21 June 2017.[57] Han's passport records also showed that he had been travelling freely in and out of China between 2016 and 2017.[58] I was satisfied that no convictions resulted from the investigations or charges (if any) against Han in the PRC.

49 In the same vein, I accepted that no charges had been brought against Han in Hong Kong. The Plaintiff exhibited a letter from the Drug Investigation Bureau of the Hong Kong Police dated 19 December 2016. The letter stated that the Hong Kong Police had "finished investigating [Han's money laundering] case", and that "no one was arrested in this case" due to "insufficient evidences [*sic*]". The letter added that investigations had ceased on 9 May 2016.[59]

50 It was therefore clear on the basis of the documentary evidence that the circumstances underlying the Red Notice and the HSBC letter did not ultimately result in criminal convictions. All that was left was the fact that these investigations had begun in the first place, as well as the disbursement of the Loan in large amounts of cash.

51 Although the cash payments did give me some pause, I considered that there was no evidence of any criminal investigations in Singapore in respect of the Plaintiff or Han.

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57 Han's 3rd affidavit, HJP-2.

58 Ma's 2nd affidavit, para 18(d).

59 Ma's 2nd affidavit, p 51.

52 Furthermore, money laundering statutory provisions such as ss 44 and 47 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("CDSA") (for assisting another to retain the benefits of criminal conduct, and for acquiring, possessing, using, concealing or transferring benefits of criminal conduct, respectively) make clear that there must be a predicate criminal offence. However, the Defendant did not make any pleadings or averments about any such predicate offence.

53 The parties cited *Ang Jeanette v PP* [2011] 4 SLR 1 ("*Ang Jeanette*"), a case in which the appellant was charged with and convicted of five counts of an offence under s 44 of the CDSA.

(a) The charges in *Ang Jeanette* related to funds fraudulently transferred from the United States to bank accounts in Singapore. The appellant's received sums of monies in cash totalling over $2m, which she subsequently sent on to other individuals in a variety of ways, including by remittance through a money-changer and by handing over sums in cash. The appellant argued that the Prosecution had not satisfied the requirement of producing a foreign certificate in order to prove the commission of a serious foreign offence from which the monies were derived.

(b) V K Rajah JA held at [58] that whilst it was not necessary to impose on the prosecution "the heavy and impractical burden of proving beyond reasonable doubt the crime or class of crime that may constitute the predicate offence", it was necessary to at least adduce particulars of the commission of the predicate offence or a class thereof. At [59]–[60], Rajah JA explained that this could be done by leading evidence pertaining to the criminal conduct that took place outside Singapore, or

in appropriate cases, by producing a certificate issued by or on behalf of the government of the foreign jurisdiction stating the offence in question. I note with caution, however, that *Ang Jeanette* was a criminal case which involved a different standard of proof and rather different issues before the court.

54 Reference may also be made to the decision of the Court of Appeal in *WBL Corp Ltd v Lew Chee Fai Kevin* [2012] 2 SLR 978 ("*WBL*").

(a) Lew, a senior executive of WBL Corporation Ltd ("WBL"), was granted share options to purchase WBL shares under an employee share option scheme. After acquiring confidential, price-sensitive information, Lew sold a quantity of WBL shares and used the proceeds to exercise his share options. WBL, suspecting that insider trading had occurred, made a Suspicious Transaction Report and thereafter declined to issue the shares on the due date on the basis that Lew was using the proceeds of the insider trading transaction. In short, WBL's defence to Lew's claim against it for specific performance for the issuance of the shares was that it was not in breach of its obligations under the share option scheme, because it would have been illegal to issue the shares (i) under common law and (ii) under ss 44 and 47 of the CDSA (at [2]).

(b) Andrew Phang JA, writing for the Court of Appeal, stated at [39] that "[p]erformance of a contract is illegal if it would be illegal for either party to perform because the contract itself is prohibited, and the innocent party is entitled to refuse performance on that basis even if performance would be legal on its part" [emphasis omitted]. In this regard, the Court of Appeal added that "an important threshold issue is whether or not there was any criminal conduct in the first place". To this

end, it was necessary to show that Lew's claim for specific performance to issue the shares was premised upon an illegality (at [41]).

(c) The Court of Appeal rejected WBL's submission that the performance of its obligations would have been illegal and caught by s 44 of the CDSA. This was because under s 40, by filing the Suspicious Transaction Report, WBL would have been exonerated from any offence under s 44 (at [21]). Even if s 40 did not preclude the application of s 44 CDSA, it was still not illegal for WBL to issue the shares to Lew. Section 44 only applied if the proceeds of the insider trading used to exercise the share options were the "benefits of criminal conduct". No criminal proceedings had been brought. Instead, the Public Prosecutor simply "permitted" the Monetary Authority of Singapore to commence civil proceedings against Lew (at [32]). Section 47, which concerns the benefits of criminal conduct, also did not apply on the facts for the same reason, namely, that no criminal proceedings had been brought against Lew.

(d) It followed that the common law defence of illegality also failed: WBL could not show that Lew's claim for specific performance of its contractual obligation was premised on an illegality (at [41]). Whilst it may have been that at the due date for performance (*ie*, the issuance of the shares) the Public Prosecutor had not yet made the decision of whether to bring criminal proceedings or to allow MAS to bring civil proceedings, this made no difference to the parties' obligations under the contract as no defence of "wait and see" had been expressly provided for in the contract (at [44]).

(e) The Court of Appeal further noted that in the event the Public Prosecutor were to subsequently prosecute Lew for insider trading, it

> would be for the Public Prosecutor to follow up on the consequences of any criminal conduct, for example, by applying for an order to confiscate the benefits of criminal conduct under Part II of the CDSA (at [44]).

55 Returning to the present case, the Defendant did not even make any Suspicious Transaction Report to the police before (and indeed, despite) having now made these allegations of money laundering. As the Plaintiff argued, the Defendant had a statutory obligation under s 39(1) of the CDSA to make such a report if it truly had reasonable grounds to suspect that the Loan represented or was used in connection with criminal conduct.[60] I agreed that the fact that the Defendant had not done so was indicative of a lack of *bona fides* in their own assertions about money laundering.

56 Even if the money laundering allegation could be proved at trial, the Defendant would nonetheless still be obliged under the CLA to repay the Loan and the outstanding interest claimed in this suit (see *WBL* at [41]). Moreover, it would *ex hypothesi* be for the Public Prosecutor to follow up on the consequences of any criminal conduct (see *WBL* at [44]). It was not for the Defendant to raise this as a defence in the present suit to avoid repayment of the Loan. Accordingly, I found that the money laundering defence was not *bona fide* or reasonable.

57 It bears repeating that there was no evidence that Han had been charged, let alone convicted of any offence in the PRC or elsewhere. As noted at [48] above, even though the Defendant referred to the Red Notice, the HSBC letter and the investigations in Hong Kong concerning Han, the fact remains that as at the hearing before me, Han had not been convicted and appeared to be able to travel freely. Indeed, the investigation by the authorities in Hong Kong

[60] NE of hearing on 5 October 2017.

concluded in 2016 without any charges brought. There was also no evidence of any investigation for any offence carried out by the authorities in Singapore. The allegation that the sums paid over to the Defendant were the proceeds of or derived from some foreign offence is vague and unsubstantiated to say the least.

58 What the facts do establish is that the Plaintiff has loaned a considerable sum of money to the Defendant. There is no doubt at all that the Defendant received the monies under the CLA. Whilst the Defendant makes much of the fact that the Loan was disbursed in three tranches of cash, it cannot be nor is it denied that these sums were in fact received by the Defendant without complaint or query at the time. Even though the CLA referred to disbursement of the loan by telegraphic transfer, the Defendant clearly accepted the disbursement by means of the three cash tranches. Any assertion that there is no obligation to repay the loan (which was freely accepted) and interest because of the above is extraordinary. I shall return to this point below.

59 I also did not see any "other reason for a trial". The facts of *Concentrate Engineering*, which the Defendant pointed to, are easily distinguishable. *Concentrate Engineering* involved forged cheques that had been paid out from the plaintiffs' account. In respect of the forgery, there were ongoing police investigations and the police had already arrested a person. Two persons who were responsible for the cashing of the disputed cheques had already been convicted for the offence of cheating. There was an expert report concluding that the cheques were in fact forged. Even though the defendant bank was unable to point to any specific defence under the law at the time, Chan Sek Keong J (as he then was) observed at [18] that it was still possible for the bank to show that the plaintiff was complicit in the forgeries, depending on how the evidence unravelled at trial.

60 In contrast, the allegations of money laundering in the present case were largely speculative, with no sign of any Suspicious Transaction Report made or any local criminal investigations underway. Moreover, unlike in *Concentrate Engineering*, any new facts proved with regard to the money laundering defence would not have affected the Defendant's liability under the claim. There was no reason for a civil trial to proceed in this suit on these grounds.

Other potential defences

61 For completeness, even though the parties focused on the moneylending and money laundering defences before me and below, I will briefly address other defences which arose in the Defendant's pleadings in this suit:

(a) First, in relation to the moneylending defence, the Defendant asserted that the loans given by the Plaintiff were for "exorbitant interest".[61] The Defendant did not explain the effect of this assertion anywhere in its pleadings. As there is no evidence of the Plaintiff's not qualifying as an "excluded moneylender" under s 5(1)(b) of the Moneylenders Act, the Loan was not the kind of transaction that the Moneylenders Act was meant to prohibit (see *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and another (Orion Oil Ltd and another, interveners)* [2011] 2 SLR 232 at [138]–[139], where Quentin Loh J held that in the circumstances, a loan at an interest rate of 72% per annum was not prohibited by the Moneylenders Act). Moreover, the interest on the Loan claimed in this suit was at a rate of 10% per annum (see [8] above). I do not see how any *bona fide* defence can arise from this, even when the Loan is considered in totality alongside the facility fee and the BT Loans which are not part of the subject matter of this suit.

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61 Defence, para 12C(b); D's closing submissions, paras 27(c)–(d).

(b) Related as well to the moneylending defence, the Defendant briefly argued that "the system and continuity" in which loans were made to the Defendant and Biomax Technologies evinced that the Plaintiff was carrying on an unregistered "business", thus the loans ran afoul of s 31(2)(*a*) of the Business Names Registration Act 2014 (Act 20 of 2014).[62] Section 31(1) however makes clear that s 31(2) only applies when a person carries on a business under a business name. Even if the Plaintiff were carrying on a business of moneylending, s 4(1)(*a*) makes clear that an individual proprietor carrying on business under her own name is not required to be registered. There was no reasonable possibility of this defence succeeding.

(c) Third, it was pleaded in the defence that the SA was unenforceable for lack of consideration as the Plaintiff had not performed her obligations under the SIA.[63] As stated at [35] above, this suit does not involve any claims in respect of terms added by the SA. The Plaintiff's claims here were only in respect of the $5m principal and interest accruing on and after 6 January 2016, which were provided in the terms of the original CLA.

(d) Finally, the Defendant, as mentioned briefly above, contended that the Plaintiff had breached the terms of the CLA by disbursing the Loan in three tranches on 6 January 2015, 14 January 2015 and 30 March 2015, when the monies should have been advanced in full on 6 January 2015.[64] The Defendant's conduct in accepting the second and third tranches of the Loan (and not repaying it even until this date), and

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62 D's closing submissions, para 29.

63 Defence, para 3.

64 Defence, para 4.

in repaying the first $500,000 of interest under the CLA, made it beyond apparent that they had elected to affirm the contract in spite of any purported breach (see *Woo Kah Wai and another v Chew Ai Hua Sandra and another appeal* [2014] 4 SLR 166 at [113]–[114] and *Aero-Gate Pte Ltd v Engen Marine Engineering Pte Ltd* [2013] 4 SLR 409 at [41]–[42] on the doctrine of waiver by election). Taking the Defendant's case at its highest, it might only be able to avoid paying some of the interest accrued between 6 January 2015 and 30 March 2015, which had already been paid (at least in part) and did not in any event form part of the subject matter in this suit.

62 It was clear that none of these arguments amounted to *bona fide* and reasonable defences, raised any triable issues or provided any other reason for trial.

Conclusion

63 For the above reasons and with due respect to the learned AR's decision, I allowed the appeal and granted summary judgment for the Plaintiff.

64 I ordered that costs here and below be fixed at $25,000 inclusive of disbursements, and paid by the Defendant to the Plaintiff.

George Wei
Judge

Tan Chau Yee and Seet Yao Dong (Eversheds Harry Elias LLP) for the plaintiff;
Tan Teng Muan and Loh Li Qin (Mallal & Namazie) for the defendant.
