Wee Cheng Swee Henry *v* Jo Baby Kartika Polim
[2015] SGHC 140

Case Number : Suit No 1186 of 2013 (Registrar's Appeal No 134 and 136 of 2014)
Decision Date : 25 May 2015
Tribunal/Court : High Court
Coram : Vinodh Coomaraswamy J
Counsel Name(s) : Chelva Retnam Rajah SC and Teng Po Yew (Tan Rajah & Cheah) for the plaintiff; Salem Ibrahim and Iman Ibrahim (Salem Ibrahim LLC) for the defendant.
Parties : Wee Cheng Swee Henry — Jo Baby Kartika Polim

Civil Procedure – Summary judgment

25 May 2015

Vinodh Coomaraswamy J:

Introduction

1 In this action, the plaintiff claims from the defendant: (i) various loans totalling $383,300 which he alleges he made to her between 2011 and 2013; and (ii) possession of, or the value of, a car which he claims she purchased with money that he had advanced to her.

2 The plaintiff in due course applied for summary judgment. The Assistant Registrar entered judgment for the plaintiff on two of the plaintiff's claims and granted the defendant unconditional leave to defend on the rest. The defendant appealed to a judge in chambers against the former order; the plaintiff cross-appealed against the latter order. Both appeals came before me. I have dismissed the defendant's appeal and allowed the plaintiff's appeal, making the defendant's leave to defend conditional on the defendant furnishing security for the remainder of the plaintiff's claim.

3 The defendant has appealed to the Court of Appeal. I therefore set out my grounds.

The parties and their positions

4 The plaintiff and the defendant were in a romantic relationship from October 2007 [note: 1] to October 2013, [note: 2] subject to a break for a few months in the third quarter of 2010. [note: 3] They cohabited at least from June 2011 [note: 4] until October 2013. [note: 5] This action was commenced a few months after the end of their relationship and a few months after the plaintiff learned that the defendant had married another man.

5 The defendant's case is that the plaintiff is falsely alleging that the sums which he claims in these proceedings were loans rather than gifts and has brought this action [note: 6] only because he is angry that the parties' relationship has broken down and that she has left him to marry another man. As she says in her affidavit to show cause: [note: 7]

> I wish to say that the Plaintiff is angry that I left him and married another man. Hence this action has been brought against me. I believe that his object is vengeance for leaving him and to

destroy my current marriage. …

Her basic position is: [note: 8]

I say the Plaintiff should stand up and be an honourable gentleman and withdraw his claim.

The plaintiff's seven claims

6 Be that as it may, the plaintiff's claim for $383,300 comprises seven claims. Six of them are set out in the following table:

No.	Description	Amount
1.	Money lent to the defendant between 10 March 2011 and 1 June 2011 to make part-payment of the purchase price of the property at 15 Kim Yam Road, Langston Ville #04-05, Singapore 239328 ("the Langston Ville unit"). [note: 9]	$212,100
2.	Money lent to the defendant between 8 July 2011 and 26 October 2013 to pay her monthly instalments for the loan on the Langston Ville unit. [note: 10]	$58,200
3.	Money lent to the defendant between 13 August 2012 and 6 November 2012 to make part-payment towards the purchase price of a unit at a development under construction at 5A Shenton Way, Singapore 068814 known as V on Shenton ("the V on Shenton unit"). [note: 11]	$205,000
4.	Money lent to defendant on 7 July 2013 as a personal loan for day to day expenses. [note: 12]	$5,000
5.	Money lent to defendant on 21 August 2013 as a personal loan for day to day expenses. [note: 13]	$5,000
6.	Money lent to defendant on 9 October 2013 as a personal loan for day to day expenses. [note: 14]	$3,000
	Total lent to the defendant between 10 March 2011 and 9 October 2013	$488,300
	Less defendant's repayment on 19 December 2012	($100,000)
	Less defendant's repayment on 27 February 2013	($5,000)
	Balance claimed	$383,300

For convenience, I will refer to each of these claims by the number set out against it in the table above.

7 The plaintiff's seventh claim is for the return of the car [note: 15] or for the sum of $120,000, being the plaintiff's advance to the defendant in March 2013 to enable her to purchase the car. [note: 16]

The plaintiff's evidence

The plaintiff's evidence

8 As evidence of his case on claims 1, 2 and 3, the plaintiff relies on what he says is an admission to that effect by the defendant in her email to him dated 14 October 2013. [note: 17] This is an important email, not just for claims 1, 2 and 3, but also for claim 7. I will set it out in full when I discuss claim 7 at [12] below. It suffices for now to note that the words from that email which the plaintiff relies on as an admission in respect of claims 1, 2 and 3 are these: "As for the LV, and Shenton you said it was a loan right? So, i will pay you back as soon as I am in better financial situation." [note: 18] It is common ground that "LV" is a reference to the Langston Ville unit and that "Shenton" is a reference to the V on Shenton unit.

9 As evidence of his case on claim 4, [note: 19] the plaintiff produces a text message which the defendant sent to him on 7 July 2013. This is the same day on which he advanced the $5,000 to the defendant which forms the subject-matter of claim 4. In this message, the defendant says: "…Why are you treating me so well???.....hmmmm I am speechless…..I know even though it is a loan, still your thoughts and attention never failed to amaze me….". The defendant relies on this text message as the defendant's admission that claim 4 was a loan.

10 As evidence of his case on claim 5, [note: 20] the plaintiff produces another text message from the defendant. The defendant sent this message on 21 August 2013, the same day on which the plaintiff transferred to her account the other $5,000 which forms the subject-matter of claim 5. In this text message, the defendant says: "… thank you for everything, I owe you a lot, sighhh". The plaintiff relies on this text message as the defendant's admission that claim 5 was a loan.

11 The plaintiff has no evidence to support claim 6 other than his own statement to that effect in his affidavit. He relies on the fact that claims 4 and 5 were loans to invite the court to infer that claim 6 also was a loan.

12 Claim 7 arises in this way. On or about 25 March 2013, the plaintiff advanced $120,000 to the defendant by cheque to enable her to buy a Mercedes Benz car. [note: 21] She duly used the advance to purchase the car and registered it in her name. The plaintiff's position is that the defendant is registered as the owner of the car merely as his nominee and therefore the car was and remains his property. As evidence of this, he relies on the same email from the defendant dated 14 October 2013 referred to at [8] above. [note: 22] I now set this email out in full. It is common ground that the references to "snow white" in the third paragraph of this email are references to the car: [note: 23]

> No worries Henry,
>
> Just enjoy your holiday….
>
> I am just thinking it seems you are so bo kam guan with snow white …..I must say snow white is the only luxury I could really enjoy and appreciate right now…
>
> Can you not sell it? It won't make you poor right?
>
> For almost 7 years I was with you, did you not enjoy my company and our togetherness? Have I ever been too much or taking advantage of you all along? Did I ever Bragg about and ask you to buy expensive stuff from you? Perhaps the only expensive thing I ever asked was the pearl earring which you paid for 1500, it was 2200 actually :)

As for the LV, and Shenton you said it was on loan right? So, i will pay you back as soon as I am in better financial situation.

Anyway I will work harder so that I can quickly settle it yah….

Have a blessed Day…

Best Regards,

Jo baby

Sent from my iPhone

The defendant's defence

13 The defendant admits receiving from the plaintiff all of the sums comprised in claims 1 to 7. [note: 24] Her case is that they were all gifts, save for the sum of $105,000 which was indeed a loan and which she has repaid as indicated in the table at [6] above. [note: 25]

The defendant's case on claims 1 to 7

14 On claim 1, the defendant's evidence is that the plaintiff volunteered to pay the down payment and the legal fees for the Langston Ville unit because he foresaw a permanent future with her and wanted her "to be comfortably installed" there. [note: 26]

15 On claim 2, the defendant's evidence is that the plaintiff gave her money towards the monthly instalments for the Langston Ville unit not as loans but in recognition of three factors: (i) that they loved each other and were living together with a view to marriage; (ii) in recognition of the domestic services she was providing to him; and (iii) to cover his share of the accommodation and other expenses of cohabiting with the defendant. [note: 27] The defendant points out that if the plaintiff is correct that the advances of $58,200 comprised in claim 2 were not gifts but were instead loans, it means that the plaintiff expected the defendant to support him financially while they were cohabiting, by paying for his accommodation and all household expenses for him. She says that that would be bizarre [note: 28] and was not the case. [note: 29]

16 On claim 3, the defendant's evidence is that only $105,000 out of the total sum of $205,000 comprised in this claim was a loan, with the remaining $100,000 being a gift from the defendant. [note: 30] I will have more to say about the unsatisfactory nature of the defendant's evidence on this point below at [89]–[94] below. For now, it suffices to note that the defendant's evidence is that the $105,000 she repaid on 19 December 2012 and 27 February 2013 was to discharge this loan. [note: 31] Her case, therefore, is that she has fully repaid the only part of this advance which was in fact a loan.

17 The defendant accepts in her affidavit that claim 4 was a loan. [note: 32] She initially denied that it was a loan in her defence. [note: 33]

18 On claims 5 and 6, the defendant's evidence is that she never asked the plaintiff for those sums and that he deposited them into the defendant's "bank account spontaneously and of his own

accord". [note: 34] To support her case that the plaintiff did deposit money into her account spontaneously and voluntarily from time to time, she relies on an email which the plaintiff sent to the defendant on 5 August 2009 in which he refers to having deposited funds into her account. In that email, he says: "…Firstly , the cheque is just to pay for some expenses [which] I honestly feel I have on my part to pay, so please keep the funds". [note: 35]

19 The defendant's case on claim 7 is that the plaintiff volunteered to buy the car for her as a gift to stop her from badgering him to marry her, and that he has never before alleged that she held the car merely as his nominee. [note: 36]

The defendant's case on the 14 October 2013 email

20 The defendant also puts before me her evidence on the 14 October 2013 email (see [12] above) which the plaintiff relies on as containing admissions that the sums advanced under claims 1, 2, 3 and 7 were loans and not gifts.

21 The defendant explains that the plaintiff has taken out of context her references in this email to the advances for the Langston Ville unit and the V on Shenton unit as loans. She says that the email was sent in the terminal stages of their relationship when the plaintiff was angry with her. [note: 37] The plaintiff had claimed in anger that the money he had given her for the Langston Ville unit were loans. She responded as she did – by accepting that they were loans and undertaking to pay him back when her financial position improved – in an attempt to shame him into acknowledging the truth as a gentleman. She expected him to respond by rising to the occasion and saying that the money was his gift to her and that he would not ask for it back. [note: 38]

22 As for her reference in this email to the car, she explains that her plea to him not to sell the car was another attempt on her part to shame him into being a gentleman and admitting the truth: that the car was his gift to her and that he did not want the money back. [note: 39]

Defendant claims she has no access to documents

23 In addition to dealing with the plaintiff's specific claims, the defendant also makes an overarching point as to why a trial is necessary. She says that there are many documents which will show that these advances were gifts and not loans, but that only the plaintiff has them. Thus, she claims first that such documents do exist: [note: 40]

> … there will be many relevant documents to show the true nature of the relationship and to debunk the [p]laintiff's claim that the monies he refers to in his statement of claim were loans. In fact the majority of the money were gifts.

24 Then, she goes on to explain why she cannot produce these "many relevant documents". It is because she has deleted all of the text messages and emails she and the plaintiff exchanged during their relationship. She did this when their relationship ended, she says, because she wanted to draw a line under their relationship and move on: [note: 41]

> All the messages and e-mails between the [p]laintiff and myself then in my possession at that time have been deleted as I wanted to close the past. I know that the Plaintiff was angry. However, I did not expect that he would turn around and say that some of the monies he gave me in the course of our relationship were loans.

25 Finally, she alleges that the plaintiff himself has all of these text messages and emails but has selectively disclosed only those which assist his contentions and not those which would prove hers: [note: 42]

> … The Plaintiff has failed to give all the correspondences [sic] generated in course [sic] of the relationship. This evidence would show that the monies he has given me were not loans. He has chosen not to place these before the court as it would be against his contentions.

The plaintiff's affidavit in reply

26 The plaintiff makes five points in his affidavit in reply.

27 First, he denies the defendant's assertion (see [19] and [21] above) that she sent her email to him on 14 October 2013 in response to his angry demand for repayment and as her attempt to shame him into being a gentleman and doing the honourable thing by accepting that his advances to her for claims 1, 2, 3 and 7 were gifts. To do this, he produces his email to her sent on the morning of 14 October 2013 [note: 43] to which she responds in her crucial email sent in the afternoon of 14 October 2013 (see [12] above). His point is that his email to her was not an angry email and did not even touch on claims 1, 2, 3 or 7.

28 The plaintiff also produces further evidence of their communications in or around October 2013 to support his case further that he was not angry with her at or around the time she sent her email of 1 4 October 2013. To this end, he produces copies of 50 text messages they exchanged from 4 August 2013 to 24 September 2013, [note: 44] evidence that that they went to see the Phantom of the Opera as a couple on 30 August 2013, [note: 45] evidence that he had dinner with the defendant and her mother on 28 September 2013, [note: 46] 11 text messages they exchanged from 1 October 2013 to 9 October 2013 [note: 47] and seven text messages they exchanged on 15 October 2013 [note: 48] (the day after the defendant's 14 October 2013 email) and on 26 October 2013. [note: 49] He relies on this evidence to submit that, [note: 50] as at late as 26 October 2013, both the plaintiff and the defendant were behaving entirely normally, as though their romantic relationship was still ongoing. This, he says, shows that her admissions in her 14 October 2013 email should be taken at face value.

29 He complains also that she continued to communicate with him as late as 26 October 2013 as though their relationship was ongoing even though her evidence now is that as early as August 2013, she had decided to end their relationship [note: 51] and that, on 23 October 2013, she underwent in Jakarta a ceremonial marriage to her current husband. [note: 52]

30 The plaintiff's second point is that, although he and the defendant were in a long-term romantic relationship from 2007 to 2013, they always kept their personal affairs separate from their business affairs. [note: 53] The defendant is a property broker. The plaintiff's family company owned a flat at Leonie Towers. To support his second point, the plaintiff produces evidence to show that his family company [note: 54] paid commissions to the defendant's agency totalling more than $64,000 for finding a tenant for this flat on four occasions between 2008 and 2013 [note: 55] and for finding a buyer for this flat when the family company sold it in late 2013. [note: 56] This separation between personal and business affairs, he says, carried through to the various loans he made to the defendant and now claims from her.

31 The plaintiff's third point is that the sums he is seeking to recover in this action do not include sums totalling just under $65,000 which he advanced to the defendant during their relationship and which he accepts were outright gifts, advanced with no expectation or promise of repayment whatsoever. [note: 57] These advances were made to cover food, utilities, maintenance fees for the Langston Ville unit and other household expenses as well as medical, travel and other expenses for the defendant, her friends and her family. [note: 58]

32 The plaintiff's fourth point is that he paid the road tax for the car when it fell due in August 2013 for the first time after the purchase in March 2013. [note: 59] He relies on that to support his case that he owns the car even though the car was registered in the defendant's name.

33 The plaintiff's fifth point is in response to the defendant's point summarised at [23]–[25] above. He asserts that no text messages or emails ever existed which would support the defendant's case. He further volunteers to source and, if the defendant cannot afford it, to pay in the first instance for computer specialists who can recover the text messages and emails [note: 60] from the defendant's devices and accounts which she says she has deleted and which she says will prove her case. [note: 61]

34 This is how the parties' positions stood when the plaintiff's summary judgment application came up for hearing before the Assistant Registrar.

The summary judgment application

Principles on which summary judgment is granted

35 The legal principles governing an application for summary judgment are well-known. The plaintiff must first show that he has a *prima facie* case for summary judgment. If he fails to do that, his application ought to be dismissed with the usual adverse costs consequence (O 14 r 3(1) and r 7 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed)). If the plaintiff does cross that threshold, the defendant then comes under a tactical burden under O14 r 3 to raise "an issue or question in dispute which ought to be tried". It is this concept which is often abbreviated to the well-known phrase, "a triable issue".

36 In order to meet her tactical burden, a defendant must bring forward some grounds which raise a reasonable probability that she has a real or *bona fide* defence in relation to the issues in dispute which ought to be tried: *Goh Chok Tong v Chee Soon Juan* [2003] 3 SLR(R) 32. In that case, the Court of Appeal said the following (at [25]):

> 25 It is a settled principle of law that in an application for summary judgment, the defendant will not be given leave to defend based on mere assertions alone: *Banque de Paris et des Pays-Bas (Suisse) SA v Costa de Naray and Christopher John Walters* [1984] 1 Lloyd's Rep 21 at 23. The court must be convinced that there is a reasonable probability that the defendant has a real or *bona fide* defence in relation to the issues. In this regard, the standard to be applied was well-articulated by Laddie J in *Microsoft Corporation v Electro-Wide Limited* [1997] FSR 580, where he said at 593 to 594 that:
>
> > [I]t is not sufficient just to look at each factual issue one by one and to consider whether it is possible that the defendant's story in relation to that issue is credible. The court must look at the complete account of events put forward by both the plaintiff and the defendants and

> ... look at the whole situation. The mere fact that the defendants support their defence by sworn evidence does not mean that the court is obliged to suspend its critical faculties and accept that evidence as if it was probably accurate. If, having regard to inconsistency with contemporaneous documents, inherent implausibility and other compelling evidence, the defence is not credible, the court must say so. It should not let the filing of evidence which surpasses belief deprive a plaintiff of its entitlement to relief.

37 Alternatively, the defendant may attempt to show that there ought to be a trial for some other reason, even though there is no reasonable probability of a real or *bona fide* defence in relation to the issues in dispute which ought to be tried. A defendant who chooses to pursue this latter argument bears both the legal burden of proof and the evidential burden on it.

38 At the conclusion of the application for summary judgment, having considered all the evidence, the court will enter judgment against the defendant only if the plaintiff has satisfied the court that there is no reasonable probability that the defendant has a real or *bona fide* defence in relation to the issues in dispute which ought to be tried and (only if the defendant raises this point) that there is no other reason why there ought to be a trial: *Ritzland Investment Pte Ltd v Grace Management & Consultancy Services Pte Ltd* [2014] 2 SLR 1342 at [43] to [47].

The Assistant Registrar's decision

39 The Assistant Registrar entered judgment against the defendant in the sum of $105,000. He did so because he held that she had shown no probability of a real or *bona fide* defence to claims 3 and 4. On claim 3, he rejected the defendant's assertion that, of the $205,000 which the plaintiff had advanced the defendant towards the purchase of the V on Shenton unit, only the $105,000 which she had repaid was a loan, with the unpaid balance of $100,000 being a gift. [note: 62] On claim 4, he accepted that the defendant had admitted in the text message dated 7 July 2013 (see [9] above) that the plaintiff's advance of $5,000 to her on the same day was indeed a loan. [note: 63] Those two sums – $100,000 and $5,000 – make up the sum for which the Assistant Registrar entered judgment against the defendant.

40 The Assistant Registrar gave the defendant unconditional leave to defend the remainder of the plaintiff's claims. He gave two reasons for not relying on the 14 October 2013 email (see [12] above) as the defendant's admissions on claims 1, 2, 3 and 7. First, the email was not contemporaneous with any of the advances comprised in those four claims. [note: 64] Second, the defendant's statements which the plaintiff relied on as admissions were in fact open to interpretations which were not limited to the literal reading that the plaintiff sought to put upon those statements. [note: 65] The Assistant Registrar therefore held that the meaning to be put upon the 14 October 2013 email was a difficult area of fact which ought to be tried.

41 Both parties appealed to a judge in chambers against the Assistant Registrar's decision. The defendant prayed that the judgment for $105,000 be set aside and that she be granted unconditional leave to defend claims 3 and 4. The plaintiff prayed that the order giving the defendant unconditional leave to defend claims 1, 2, 5, 6 and 7 be set aside and that summary judgment be entered in his favour on all seven of his claims.

Prima facie case

42 The plaintiff has established a *prima facie* case on each of his claims. The starting point is that the defendant does not dispute receiving any of the sums claimed. The only dispute between the

parties pertains to the basis on which the defendant received the sums: was each advance a loan or a gift?

43 The plaintiff asserts on oath that the defendant received the sums as loans. But he does not rely only on his own self-serving statement to make out a *prima facie* case. As evidence that claims 1, 2 and 3 were loans, he relies on the defendant's characterisation in the 14 October 2013 email (see [12] above) of all the money advanced under those claims as loans. On claims 4 and 5, he relies on the text messages of 7 July 2013 and 21 August 2013 (see [9] and [10] above) as evidence that those two advances for $10,000 were also loans. On claim 7, he relies on the 14 October 2013 email as evidence that the defendant acknowledged his ownership of the car.

44 The plaintiff also makes two points of general application. First, he relies on the fact that the defendant is not in any category of relationship to him which can give rise to any presumption that these advances were gifts. Second, he submits that the fact that the defendant accepts that $105,000 out of his advances to her was a loan is circumstantial evidence that all of the remaining sums he claims were also loans. The plaintiff does not accept the defendant's appropriation of her repayment of $105,000 to claim 3. He submits that there is no clear or obvious distinction between what the defendant accepts was a loan and what she denies was a loan, whether that question is looked at in the context of claim 3 alone or in the context of all seven claims.

45 All of this is more than sufficient to make out a *prima facie* case and to cast the tactical burden on the defendant to bring forward some grounds to show that there is a reasonable probability that she has a real or *bona fide* defence in relation to the issues in dispute which ought to be tried or that there is some other reason for which there ought to be a trial.

Triable issues raised by the defendant

Points of pleading raised are not triable issues

46 The defendant in her submissions relies on a number of points of pleading said to give rise to triable issues. The points of pleading rely principally on what is said to be the plaintiff's failure to plead – properly or at all – whether the loan agreements were oral or in writing, whether there was one loan agreement for all the advances or a separate loan agreement for each advance and to furnish particulars of the loan agreements. All of these points, it is said, raised triable issues.

47 These points might have some merit if this had been a claim where the plaintiff alleged that he advanced money to the defendant as loans and the defendant admitted that they were indeed loans but disputed the precise dates and terms on which those loans were made. But that is not this case. The defendant asserts that all the advances claimed – save for $105,000 – were not loans at all but outright gifts.

48 The entire dispute between the parties therefore turns only on a single question of fact: whether the advances were loans or gifts. The dates, terms and other particulars of the loans cannot be triable issues because there is no dispute on those issues. The defendant simply denies that the bulk of the advances were loans at all. In these circumstances, I do not see how these points of pleading could conceivably be a reason for the plaintiff's claim to go to trial, whether by way of showing a reasonable probability of a real or *bona fide* defence or by showing some other reason for trial.

49 The defendant also raised a pleading point on claim 7, on the basis that the claim relied a resulting trust which had not been sufficiently pleaded. This argument was not presented with any

force. In any event, it appears to me that the plaintiff's claim is pleaded in sufficiently broad terms to encompass a claim to recover the car or, in the alternative, to recover damages for its unlawful detention in the tort of detinue. The plaintiff need not rely on any trust at all to advance this claim. He may simply rely on the principle in *Hilti Far East Pte Ltd v Tan Hup Guan* [1991] 1 SLR(R) 711 that the owner of a car at law is the person who funds its purchase and not the person who is registered as its owner (at [21] – [23]).

50 In taking these pleading points, the defendant is simply putting the plaintiff to proof on his case. That does not even begin to meet the defendant's tactical burden on a summary judgment application. It is little wonder, therefore, that counsel for the defendant did not advance these points of pleading with any great enthusiasm in his oral submissions to me.

The proper interpretation of the parties' communications

51 The only real issue raised by the defendant – either as showing a reasonable probability of a real or *bona fide* defence which ought to be tried or as being some other reason for a trial – is a single issue of fact. That issue is that the text messages and emails upon which the plaintiff relies to seek summary judgment are open to many interpretations and must be read in the contemporaneous context in which they were made. In particular, the defendant's submission is that the court must bear in mind that the parties were in a long-term romantic relationship and that that relationship was in its terminal stages when the defendant sent the 14 October 2013 email. That contemporaneous context, the defendant submits, can be investigated only at trial. She says it is unsafe for the court to draw any inferences from these communications on affidavit evidence alone. Thus she claims to be entitled to defend at trial not only claims 1, 2, 5, 6 and 7 (for which the Assistant Registrar gave her unconditional leave to defend) but also claims 3 and 4 (for which the Assistant Registrar entered judgment in the sum of $105,000 against her).

52 I accept the defendant's argument, but only on claims 1, 2, 5, 6 and 7, and even then, only up to a point.

The 14 October 2013 email: very probably admissions

53 I begin my analysis by considering more closely the central document in this case: the 14 October 2013 email. This is the primary evidence that the plaintiff relies on to support his oral evidence with regard to claims 1, 2, 3 and 7. I place great weight on this email and therefore analyse it first, before considering the plaintiff's claims one by one.

54 It appears to me that the 14 October 2013 email is on its face a clear admission that claims 1, 2 and 3 were loans and not gifts and, in respect of claim 7, that the plaintiff is entitled to control the disposal of the car.

The defendant's purpose in sending the email

55 I begin my analysis of the 14 October 2013 email by noting that it is obviously preceded by a request by the plaintiff to sell the car. The defendant's sole purpose in this email is to plead with the plaintiff not to sell the car – which the defendant endearingly calls "snow white" – but for him to let her keep it instead. Her plea to the plaintiff not to sell the car is, on its face, an acknowledgment that the plaintiff has the right to decide whether and when to sell it. The clear inference from that is that he, and not she, is the owner of the car as at 14 October 2013.

56 Further, the defendant would not have to plead with the plaintiff in this way at all if what the

defendant says is true: that the plaintiff made a gift to her of the $120,000 he advanced to her to purchase the car in March 2013. What she is doing in this email is pleading with him to make a gift of the car to her at the date of the email, 14 October 2013. That is necessary only if she is proceeding on the basis that he did not make a gift of it to her in March 2013.

57 The defendant then makes three points in this email to support her plea that the plaintiff now make a gift of the car to her. All three of these points are presented, not as points in their own right, but as subsidiary to and supportive of her sole purpose.

58 First, she tells him that she will lose a great deal if the car is sold: it is her only luxury. Second, she points out that he will not lose a great deal if the car is not sold: giving it to her will not make him poor. Finally, and most importantly, she makes the point that her request to him to make a gift of the car to her is the first time in the course of their relationship that she is asking him for a lavish gift of any type. She reminds him that she never took financial advantage of him by playing on their relationship to persuade him to buy her lavish gifts at any time during the entirety of their seven-year relationship.

59 It is at this juncture – while presenting her case to be gifted the car in October 2013 as the only lavish gift she has ever asked for – that the defendant refers to the sums which the plaintiff advanced to her under claims 1, 2 and 3. She uses the fact that these sums are loans and not gifts, and that she *accepts* them to be loans and not gifts, as evidence of her point that she has never before sought such a lavish gift from him as she now seeks and as support for her plea for him to make *this* lavish gift to her.

The 14 October 2013 email does not appear to be taken out of context

60 The defendant's point that this email is taken out of context is extremely weak. The context, she says, is that the parties were then engaged in a cold war, or a civilised argument, as their relationship was coming to an end. There are two difficulties with this explanation.

61 The first difficulty is that the contemporaneous text messages and emails in September 2013 and October 2013 which the plaintiff has produced bear no trace of a cold war or a civilised argument, let alone of a relationship that was over or all but over. The defendant appears to accept this point, but invites the court to observe that the parties adopted a far less affectionate tone in these communications in September 2013 and October 2013 than in other communications between the parties which she produces. But these other communications took place when the parties first met in 2007 and when they resumed their relationship after their break in 2010. It is not surprising that by September and October 2013, the parties' ardour had cooled from the heady days when they were falling in love in 2007 or falling in love again in 2010. That to my mind is a convincing explanation why the communications in September 2013 and October 2013 were more mundane and less overtly affectionate than the earlier communications upon which the defendant relies. But that is the most that can be said of them. It cannot be said that they evidence in any way a cold war or a civilised argument.

62 Most importantly to my mind, the actual email to which the defendant was responding in her 14 October 2013 email, and which sets the immediate context for her two admissions, is a mundane and innocuous email from the plaintiff simply updating the defendant on his holiday in Indonesia with his ex-wife and his daughter. The text messages exchanged by the parties the day after the 14 October 2013 email are equally mundane and entirely civil. None of these communications – immediately before, on and immediately after 14 October 2013 – show any trace of a civilised argument, let alone anger, giving rise to a subtext or a context which would warrant the defendant's admissions in that

crucial email being interpreted anything but literally.

63 It cannot be said either that the plaintiff has offered a window into the parties' communications limited to immediately before and immediately after 14 October 2013. He has put in a broad range of communication from the end of August 2013 until October 2013. All of it contradicts the defendant's assertion that the 14 October 2013 email cannot be read literally because it was sent in the context of a cold war or a civilised argument.

64 The second difficulty with the defendant's cold war explanation is that even if that argument is true, it would give the defendant's admissions in the 14 October 2013 email more weight, not less. If it were indeed true that the parties were engaged in a cold war when the defendant sent her email of 14 October 2013, and if it were indeed true that she was responding to the plaintiff's false allegation that the sums advanced under claims 1, 2, 3 and 7 were loans and not gifts, it is to my mind far more likely that she would have responded by *rejecting* his false assertion rather than by *adopting* the false assertion as an artifice to get him to withdraw it and to acknowledge the truth. A party to a relationship which is still good has a clear emotional motive to dissemble and to be less than plainspoken. A party engaged in an argument, even if it is civilised and especially when it comes at the end of an intimate relationship, no longer has any reason to dissemble and has every reason to be plainspoken. If a party makes an admission in that context, it carries far more weight than one made when their relationship is good.

An admission need not be contemporaneous

65 The defendant's argument that her statements in this email come after the fact and are not contemporaneous with the advances which underlie claims 1, 2, 3 and 7 is not to the point. The plaintiff relies on this email as *evidence* of a loan (for claims 1, 2 and 3) or as *evidence* of ownership (for claim 7) and not as an agreement to borrow, an undertaking to repay or an undertaking to return the car.

66 These statements are evidence in support of the plaintiff's claim because they are admissions. The evidential force of an admission does not come from how close in time the admission is to the facts which are being admitted. The evidential force of an admission comes from the fact that it is a statement against the maker's interests. Indeed, it could even be said that the longer the period between the facts in question and the admission of those facts, the more weight the admission has. If a length of time elapses between the facts and the admission, that suggests more strongly that the admission ought to be taken at face value. The lapse of time tends to show that the statement is a considered one, made with time to reflect on its subject matter.

67 I now turn to consider each of the plaintiff's claims. I take them in two groups: claims 1, 2 and 7 first, followed by claims 3 and 4 then claims 5 and 6.

The plaintiff's claims: judgment or leave to defend?

Claims 1, 2 and 7: leave to defend, not judgment

68 For the reasons set out at [53]–[65] above, I accept that the 14 October 2013 email contains the defendant's admission that the plaintiff's advances under claims 1, 2 and 7 were loans. On claim 7, I also find it telling that the plaintiff paid the road tax for the car – something which only an owner would be likely to do – when it fell due.

69 I am mindful, however, that the submissions I have heard and the conclusions I have formed

come on a summary judgment application and not at the end of a trial. The defendant has, in her affidavits, offered at least *some* explanation of the basis on which she asserts the plaintiff intended the advances under claims 1, 2 and 7 to be gifts to her. Although I find that explanation difficult to accept in the light of her admissions in the 14 October 2013 email, I cannot say now that her explanation is inherently incredible. I bear in mind particularly the intimate nature of the parties' relationship. I bear in mind also that the relationship endured for seven years and was a marriage in all but name. While I consider that I can construe the *text* of the 14 October 2013 email on the material before me now, I consider equally that the circumstances of this case make oral evidence and cross-examination necessary to understand fully the *subtext* and the *context* of the 14 October 2013 email before arriving at a final determination of the parties' rights and obligations.

70 For this reason, I consider that the defendant is entitled to leave to defend on claims 1, 2 and 7. I consider at [80] below precisely what form that leave to defend should take.

Claims 3 and 4: judgment for the plaintiff

Claim 3: the advances for the V on Shenton unit

71 For the reasons set out above, I accept that the 14 October 2013 email contains the defendant's admission that the plaintiff's advances under claim 3 also were loans. Despite the point I make at [69] above, however, I am satisfied that the plaintiff is entitled to judgment on this claim. I say this for two reasons.

72 First, the defendant has not supplied any context in her affidavit to indicate why her admission in her email dated 14 October 2013 should not be read literally as far as the money advanced for the *V on Shenton unit* is concerned. It will be recalled that the defendant said the following in her 14 October 2013 email: "As for the LV, and Shenton you said it was on loan right? So, i will pay you back as soon as I am in better financial situation." The defendant's explanation in her affidavit of the underlying context to this statement is confined to the *Langston Ville unit*. [note: 66] In other words, the defendant has not even asserted on oath that she made this statement in her 14 October 2013 in connection with the *V on Shenton unit* in an attempt to shame the plaintiff into rising to the occasion as a gentleman and acknowledging that the money he had advanced her towards the purchase price of the *V on Shenton unit* was a gift. There is therefore no evidential basis on which to read the admission in the 14 October 2013 email as regards the *V on Shenton unit* anything other than literally.

73 Second, taking the defendant's case at face value, she has offered absolutely no basis, rational or otherwise, to explain why the plaintiff would have advanced her a total sum of $205,000 towards the purchase price of the V on Shenton unit, but would have classified only $105,000 of that advance as a loan and the remaining $100,000 as a gift. This is all the more puzzling given that the plaintiff advanced the money for the V on Shenton unit to the defendant in three tranches of $50,000 on 13 August 2012, $5,000 on 21 August 2012 and $150,000 on 6 November 2012. [note: 67] The defendant's repayments of $100,000 on 19 December 2012 and $5,000 on 27 February 2013 bear no relationship to any of these tranches, whether as to amounts or as to dates, and whether taken alone or in combination.

74 For these reasons, I consider that the Assistant Registrar was correct in entering judgment against the defendant for the balance sum of $100,000 owing on the loan for the V on Shenton unit. I therefore leave his decision on this claim undisturbed.

Claim 4: advance of $5,000 on 13 July 2013

75 The defendant admits that claim 4 was indeed a loan. Although the path from this claim to judgment on it was not smooth (see [87]–[88] below), the Assistant Registrar was sufficiently satisfied on this point to enter judgment against her for this sum of $5,000 on 4 April 2014.

76 The defendant repaid the plaintiff this sum of $5,000 on 18 June 2014, after judgment had been entered against her, conceding that it was by then due and payable. [note: 68] Claim 4 has therefore not only been admitted and adjudicated, it has been satisfied. I therefore need say nothing further about it.

77 The Assistant Registrar was correct to have entered judgment against the defendant for claim 4. I therefore leave his decision on this claim undisturbed.

Claims 5 and 6: conditional leave to defend

78 The evidence which the plaintiff relies on to support claim 5 is the defendant's text message she sent to the plaintiff on the day of the transfer. In that text message she says: "… thank you for everything. I owe you a lot, sighhh". The plaintiff invites me to construe this as a specific admission of a *financial* and *legal* debt of $5,000 to the plaintiff, and not merely as a general allusion to a *moral* or *social* debt which she owes him. I accept the defendant's submission that this text message is not an unequivocal admission that the sum advanced by the plaintiff to the defendant on that day is a loan. In the absence of anything which can be construed as an admission on its face in relation to this claim, I accept that the plaintiff's case on claim 5 comes down to a direct conflict of oral evidence. The plaintiff has no evidence other than his own self-serving statement to support claim 6. It is one which therefore ought to go to trial in the ordinary way.

79 For this reason, I consider that the defendant is entitled to leave to defend claims 5 and 6.

Conditional leave to defend

Why impose a condition

80 I now consider the form of the leave to defend which I should grant the defendant on claims 1, 2, 5, 6 and 7.

81 The classic formulation is that conditional leave to defend is the appropriate order when the defendant has succeeded in showing a reasonable probability of a real or *bona fide* defence which ought to be tried, but that defence is shadowy. Characterising a defence as shadowy is as much a matter of impression as it is of analysis. If one tries to capture that characterisation in words, one can say that a defence is shadowy if the defendant's evidence is barely sufficient to rise to the level of showing a reasonable probability of a *bona fide* defence. Alternatively, one can say a defence is shadowy if the evidence is such that the plaintiff has very nearly succeeded in securing judgment.

82 The modern English approach to this question is drawn from paragraph 4 of Practice Direction 24 which accompanies Part 24 of the Civil Procedure Rules 1998 (SI 1998 No 3132) (UK) ("CPR"). Part 24 of the CPR is the successor to Order 14 of the Rules of the Supreme Court 1965 (SI 1965 No 1776) (UK), from which our Order 14 is taken. Paragraph 4 reads as follows: "Where it appears to the court possible that a ... defence may succeed but improbable that it will do so, the court may make a conditional order ...". It is true that Part 24 of the CPR is considerably different from both the old English Order 14 and our Order 14, not least because there is no longer a concept of leave to defend under the CPR. It is also true that there is no express basis for the modern English approach in our own Rules of Court or Practice Directions. However, I consider that the words of O 14 r 4(1) and the

very wide discretion that it confers are more than wide enough to accommodate the modern English approach as a useful alternative to the more conventional "shadowy defence" formulation.

83 On claims 1, 2 and 7, I consider it appropriate to impose a condition on the defendant's leave to defend. In my view, the plaintiff has a strong case on these three claims in light of the defendant's admission on the face of her 14 October 2013 email read with the substantial documentary evidence of its subtext and context that the plaintiff has produced. That makes it appear to me that, while there is a possibility that the defendant will succeed at trial in showing – whether through oral evidence or through discovery – a different subtext or context to her admissions, it seems to me improbable that she will do so. Nothing I say now about the possibility or the probability of the defendant succeeding at trial should, of course, be taken as pre-empting the outcome of that trial. I have said what I have said simply to explain why it appears to me just to grant the defendant, whom I have found to have succeeded in raising a triable issue, conditional rather than unconditional leave to defend.

84 On claim 5 and 6, I also consider it appropriate to impose a condition on the defendant's leave to defend. I say this because I have serious difficulties with the overall credibility of the defendant which lead me to doubt her bare denials of these two claims. I summarise these difficulties at [85]–[88] below. These difficulties leave me with the overriding impression that the defendant's defences on claims 5 and 6 – and indeed also on claims 1, 2 and 7 – are shadowy.

Defendant's credibility is suspect

The defendant admits only what she is compelled to admit

85 It appears to me that the defendant is playing a tactical game of admitting only what she is forced to admit. She has done this on at least two occasions.

86 First, in her defence, she pleads that all of the sums advanced by the plaintiff to her were gifts, save for the $105,000 which she has repaid. She offers no rational basis in her defence, in her affidavits or in her submissions as to why this sum of $105,000 – which she accepts is a loan – is distinguishable from the rest of the sums which the plaintiff advanced to her. The inference I draw is that the true distinction is nothing more than the fact that the defendant has repaid these sums and that the defendant's pleaded admission comes about not because she wishes to be candid with the court, but because she realises that she cannot plausibly deny that the amount she has repaid was a loan.

87 Second, the defendant denies in her defence that the sum of $5,000 advanced under claim 4 was a loan. [note: 69] But when the plaintiff applied for summary judgment and filed his affidavit in support, he exhibited her admission by text message that this sum was indeed a loan. The defendant then accepted in her affidavit in response [note: 70] that this sum was a loan, contradicting her pleadings.

88 That was not, however, the end of the defendant's changes of position on claim 4. At the hearing of the summary judgment application on 2 April 2014, the defendant through counsel accepted unequivocally that the sum of $5,000 comprised in claim 4 was a loan and indicated unequivocally that the defendant was prepared for judgment to be entered against her in that amount. However, when the parties next appeared before the Assistant Registrar just two days later on 4 April 2014, the defendant's position had changed yet again. Now, she took the position through counsel that although she had admitted in her affidavit that this advance was a loan, she had not admitted in her affidavit that the loan was *due and payable*. The allegation that claim 5 comprised a

loan which was not due and payable was a point which she had never raised in her defence or in her affidavit and appeared to be one which had occurred to her between 2 April 2014 and 4 April 2014. As a result, her counsel's instructions on 4 April 2014 were that, because she had never admitted that the loan was due and payable, she was unequivocally opposed to judgment being entered against her for this amount. [note: 71] The Assistant Registrar nevertheless entered judgment against her for this amount. She eventually repaid the loan on 18 June 2014, asserting as I have said, that she accepted that it had then become due and payable. [note: 72]

The defendant amends her affidavit to withdraw an admission

89 The defendant has also attempted to withdraw a critical admission on claim 3. In paragraphs 25 and 26 of her first affidavit, the defendant admitted that the entire sum of $205,000 comprised in claim 3 was a loan: [note: 73]

> 25. The Plaintiff knows that I have every intention of paying back the sum of $205,000 for the acquisition of the V on Shenton Unit.
>
> 26. In fact, I had made a repayment of $100,000 on 19 December 2012 and $5,000 on 27 February 2013. This was admitted by the Plaintiff in paragraph 6 of his Statement of Claim, and at paragraph 13 of his 1st affidavit.

90 The defendant then withdrew this admission in her supplementary affidavit filed a week before her summary judgment application was heard. In her supplementary affidavit, she characterises the admission in paragraph 25 of her first affidavit as "a typographical error" and says that paragraph 25 should be amended by replacing the figure "$205,000" with "$105,000". The effect of that amendment, of course, is to confine herself to admitting only that she took a loan of $105,000 (not $205,000) and asserting that she has repaid it in full (not in part only).

91 Paragraph 25 of the defendant's first affidavit as amended does not sit well with paragraph 26 of that affidavit. As originally drafted, these two paragraphs read together make perfect sense. The defendant admits that the entirety of claim 3 is a loan, asserts that she has every intention of repaying all of the $205,000 lent and deposes that she has in fact made a part repayment of $105,000 out of that $205,000 long before the litigation commenced.

92 The amendment to these paragraphs is intended to make them refer to a loan of only $105,000 which has been fully repaid. But they do not read that way easily or naturally. As amended, the first paragraph speaks of the defendant's *present intention* to repay $105,000 to the plaintiff. A present intention to repay can only be in respect of a *future* repayment. One cannot have a present intention to repay that which has already been repaid. But paragraph 26 then speaks of a repayment of $105,000 which has already taken place.

93 The plaintiff submits that what happened is this. The defendant's initial strategy was to admit only what could be proved. So she took the position in her defence that she borrowed only as much as she had repaid. The defendant then saw the plaintiff's affidavit. She realised that he had proof, in the form of her admission in the 14 October 2013 email, that the advance of $205,000 for the V on Shenton unit was a loan. Consistent with her strategy, she decided to accept that the entire amount comprised in claim 3 was a loan and said so in her affidavit. She then realised that she could rely on the context to the 14 October 2013 email as a plausible basis on which to deny that the admissions should read literally and as a convenient pretext for trial. So she had a change of heart and changed her position again. I have no way to determine on affidavits alone whether the plaintiff's theory is

indeed what happened.

94 As against this, the defendant's counsel explained before the Assistant Registrar that the change came about because of a typographical error on his firm's part. Coming from counsel, I readily take that explanation at face value. But that explains only why the figure originally read "$205,000" rather than "$105,000". It is for the defendant to go on and explain what precisely she meant in the following paragraph, given the disconnect I have identified above caused by changing the figure in paragraph 25. No such explanation was forthcoming or foreshadowed.

95 For this reason too, I consider the defendant's credibility suspect.

No basis to appropriate the $105,000 repayment as the defendant does

96 The defendant has offered no basis whatsoever for appropriating her repayment of $105,000 to the loan for the V on Shenton unit. I have made the point above that the amounts of the two repayments which the plaintiff made cannot be matched to the amounts of the three tranches in which the plaintiff advanced funds for the V on Shenton unit. The plaintiff makes the point that these sums were referable, not to the loans for the V on Shenton unit, but to the overall state of the defendant's indebtedness to the plaintiff. The fact of the repayments is then circumstantial evidence that the defendant thereby acknowledged a larger debt to the plaintiff. There is force in the plaintiff's submission.

97 This is yet another instance in which the defendant's case raised questions rather than dispelling them, thereby contributing to the overall impression that her defence is shadowy.

The defendant has access to documents

98 The defendant asserts that there are "many relevant documents" (see [23] above) to prove her case which she does not have because she has deleted them. She asserts also that the plaintiff *does* have these documents but is suppressing them. [note: 74] There are four reasons why these assertions are not credible.

99 First, there are no obvious signs in the documents which the plaintiff has produced that there are other documents unfavourable to his case which he has suppressed.

100 Second, if what the defendant says is true, she should at least be able to *describe* one or more of these "many relevant documents", even if she cannot produce the documents because she has deleted them. But the defendant does not even do that. Bereft of any such details, the defendant's assertion that such documents exist, let alone have been suppressed, is of little weight.

101 Third, despite her claim that she no longer has possession of any such documents, the defendant has been able to produce and exhibit in her affidavit: (i) a card from the plaintiff to her dated 22 November 2007; [note: 75] (ii) an email from the plaintiff to her dated 5 August 2009; [note: 76] and (iii) another card from the plaintiff to her dated 25 November 2010. [note: 77] Her blanket assertion that she has deleted "*all* the messages and emails" therefore rings somewhat hollow.

102 Fourth, as I have mentioned above, the plaintiff offered to source and pay, in the first instance, for computer specialists who could recover her deleted text messages and emails. [note: 78] The defendant failed entirely to respond to this offer.

Defendant alludes to further oral evidence but does not produce it

Defendant alludes to further oral evidence but does not produce it

103 It is for a defendant who wishes to meet her tactical burden on a summary judgment application to bring forward all the evidence necessary to support the grounds on which she says she should be granted unconditional leave to defend. Evidence in this sense includes not just documentary evidence but also the defendant's own evidence given on oath or affirmation in her affidavits. That type of evidence is still evidence, even if it will be slight weight if uncorroborated and unsupported by documents. Weight is an entirely separate issue. But if that evidence is not adduced at all, it can carry no weight at all.

104 A defendant cannot hope to secure unconditional leave to defend by saying simply that she has oral evidence to give which will defeat the plaintiff's claim, but that she will give that oral evidence at trial once she has been granted unconditional leave to defend. That is to put the horse after the cart. That is precisely what the defendant does. In her first affidavit, she says this: [note: 79]

> There are many events in our relationship which when heard, I say will show that the monies he claims were not loans. This will be oral evidence. After all, the relationship spanned over 6 years.

105 If the defendant has oral evidence to give at trial about these "many events" which show that the plaintiff's advances to her were not loans but were gifts, she should set that oral evidence out in detail in her affidavits opposing the plaintiff's summary judgment application. She cannot manufacture a triable issue by making a cryptic allusion to unspecified oral evidence in her affidavit while holding back the oral evidence itself for trial and asking the court to wait and see what it is.

106 The fact that the defendant has taken this approach, in itself, undermines her credibility.

Approach to determining the condition to be imposed

Purpose of the condition

107 For all of these reasons, I consider that the defendant should have only conditional leave to defend claims 1, 2, 5, 6 and 7. I now turn to consider what the condition should be.

108 Order 14 r 4(1) allows the court "to give a defendant ... leave to defend the action ... on such terms as to giving security or time or mode of trial or otherwise as it thinks fit". This gives the court a wide discretion as to the type of condition to impose on a grant of leave to defend to ensure that justice is done in any particular case. As O 14 r 4(1) anticipates, however, the condition imposed typically requires the defendant to provide security in one form or other for all or part of the plaintiff's claim.

109 There is no starting point for the exercise when the court considers how to exercise its discretion as to the quantum of security to require of a defendant who is to be granted conditional leave to defend under O 14 r 4(1). As the Court of Appeal said in *Mohd Zain bin Abdullah v Chimbusco International Petroleum (Singapore) Pte Ltd and another appeal* [2014] 2 SLR 446 ("*Chimbusco*") at [39]:

> … The court's discretion … under O14 r 4(1) of the Rules of Court … is unqualified and widely framed. A starting point would detract from the latitude which these provisions seek to grant the court. Further, the court may impose any condition which it sees fit and need not confine itself to ordering that security be provided. We are therefore of the view that the court ought not to begin with any starting point in mind in determining the amount of security to be provided, and

should therefore instead exercise its discretion flexibly to meet the needs of the case before it.

110 Requiring a defendant whose defence is shadowy or improbable to furnish security for the claim as a condition of securing leave to defend serves two purposes. First, it requires the defendant to show some degree of commitment to the defence she has advanced before she can have her day in court. That ensures, to the extent that it is possible to do so, that she is not stringing the plaintiff and the court along by advancing shadowy or improbable defences merely to gain the many advantages which accrue to a debtor from delay.

111 The second purpose of requiring a defendant to furnish security as a condition is to preserve the claimant's position, to the extent that it is possible to do so, pending trial: *Chimbusco* at [20]. Security which is provided pursuant to court order is security in the true sense of the word. The secured party has access to that source of payment in priority to all other creditors in the event of the opposing party's insolvency. That is so whether the security is provided to comply with a condition of leave to defend (*Re Ford; ex parte the Trustee* [1900] 2 QB 211) or as security for costs (*Cheng Lip Kwong v Bangkok Bank Ltd* [1992] 1 SLR(R) 941).

The factors to bear in mind in fixing the condition

112 The quantum of the security to be required of a defendant must be fixed with the following two factors in mind:

(a) Doing justice to the plaintiff in light of the strength of the plaintiff's case and the uncertainties attached to the defendant's defences; and

(b) Doing justice to the defendant in light of her financial means.

113 In *MV Yorke Motors (a firm) v Edwards* [1982] 1 WLR 444 ("*Yorke Motors*"), the House of Lords considered the proper approach to the second of these two factors. In that case, the defendant raised a triable issue, but it was one which had extremely remote prospects of success (at 448G). The case went through all four tiers of the English system. The Master gave the defendant unconditional leave to defend. The judge in chambers granted the defendant leave to defend on condition that he pay £12,000 into court. The Court of Appeal reduced the amount to be paid into court to £3,000. The House of Lords left the Court of Appeal's decision undisturbed and dismissed the defendant's final appeal.

114 The defendant appealed to the House of Lords on the basis that requiring him to give security for the plaintiff's claim violated the following principle (at 449B):

> ...if the sum ordered to be paid as a condition of granting leave to defend is one which the defendant would never be able to pay, then that would be a wrongful exercise of discretion, because it would be tantamount to giving judgment for the plaintiff notwithstanding the court's opinion that there was an issue or question in dispute which ought to be tried.

The House of Lords accepted this principle (at 449C), but held on the facts that requiring the defendant to give security did not violate it.

115 The evidence in *Yorke Motors* showed that the defendant had been granted a legal aid certificate with nil contribution, did not own his own home, was unemployed, was in receipt of benefits from the state and could not afford to pay £12,000 into court. The evidence also showed that the defendant was engaged in buying and selling motor vehicles for cash, *ie* that he had a

source of income.

116 Lord Diplock considered all of this evidence and said the following at 449H:

> ... as Brandon L.J. pointed out:
>
> > "The fact that the man has no capital of his own does not mean that he cannot raise any capital; he may have friends, he may have business associates, he may have relatives, all of whom can help him in his hour of need."
>
> All that [the defendant] himself had sworn was: "I do not have £12,000 nor is there any likelihood of my raising that *or any similar sum*" (my emphasis). I can see no reason why the Court of Appeal should not be entitled to infer that, although it might be difficult, it would not be impossible for [the defendant] to find security, if his defence were put forward in good faith; nor do I see any ground on which this House could interfere with the way in which the Court of Appeal exercised the discretion ... by fixing £3,000 as the appropriate amount of security".

117 In the course of his judgment, Lord Diplock endorsed as correct the following three propositions advanced by the plaintiff (at 449C):

> (i) Where a defendant seeks to avoid or limit a financial condition by reason of his own impecuniosity the onus is upon the defendant to put sufficient and proper evidence before the court. He should make full and frank disclosure. (ii) It is not sufficient for a legally aided defendant to rely on there being a legal aid certificate. A legally aided defendant with a nil contribution may be able to pay or raise substantial sums. (iii) A defendant cannot complain because a financial condition is difficult for him to fulfil. He can complain only when a financial condition is imposed which it is impossible for him to fulfil and that impossibility was known or should have been known to the court by reason of the evidence placed before it.

118 From *Yorke Motors*, I distil the following three principles which guide me in considering the second of the two factors I have identified at [112] above:

> (a) Having decided to grant a defendant leave to defend, it is wrong in principle to impose a condition on that leave which the defendant would find impossible – as opposed to merely difficult – to comply with;
>
> (b) The defendant bears the burden, in every sense of the word, of showing that it would be impossible – as opposed to merely difficult – to comply with a condition which the court proposes to impose on the leave to defend;
>
> (c) In discharging that burden, the defendant has a duty fully and frankly to disclose her financial position to the court; and
>
> (d) In considering whether it is impossible – as opposed to merely difficult – for the defendant to comply with the condition, it is legitimate to have regard not just to the defendant's own financial resources, but also to the financial resources of those who might reasonably be expected to extend financial assistance to her in her hour of need.

119 I also note from the facts of *Yorke Motors* just how high the burden on the defendant is to show that the condition imposed is impossible, as opposed to being merely difficult. If the defendant in that case was unable to show that the condition imposed was impossible as opposed to merely

difficult, all but the utterly impecunious will find it extremely difficult to do so.

120 The approach in *Yorke Motors* was approved by the Court of Appeal in *Chimbusco* at [20]. It has also been followed in a number of first instance cases including *International Bank of Singapore Ltd v Bader* [1989] 1 MLJ 214; and *Citibank NA v Lim Soo Peng and Another* [2004] SGHC 266. I adopt it in this case.

The defendant should furnish security for the entire claim

121 In the circumstances of this case, I consider it just that the defendant ought, as a condition of obtaining leave to defend, secure the plaintiff for the entirety of his claim. The value of the plaintiff's unadjudicated claim is $398,300. This is the total value of claims 1, 2, 5, 6 and 7. I have left claim 3 out of account because I have not allowed the defendant any sort of leave to defend that claim, adjudging her liable to pay this sum. I have left claim 4 out of account because the defendant no longer contests that claim and, indeed, has satisfied it in full.

122 In the procedural history of this case, I actually arrived at this decision on two separate occasions. The first occasion was immediately after hearing the parties' submissions on the appeal against the Assistant Registrar's decision. At that time, the defendant had not placed any material before me about her financial means. The second occasion was after acceding to a request by the defendant to present further arguments to me as to why her leave to defend should not be subject to conditions. I explain the grounds for my decision at each point in time.

My initial order

123 I arrived at my initial order for the following reasons. On the first of the two factors, as I have said, I had serious doubts about the credibility of the defendant's bare denials of the entirety of the plaintiff's remaining unadjudicated claims. In addition, I came very close to granting the plaintiff judgment on claims 1, 2 and 7. To my mind, the plaintiff had fallen just short of securing an immediate judgment in his favour for very nearly the full sum of $398,300.

124 As for the second factor, it is true that I did not have before me at that time any evidence on which to assess the defendant's financial means. But the defendant's counsel did not ask me to defer my decision in order for her to have an opportunity to place any such evidence before me. And I did not consider that the defendant was taken by surprise by an order for conditional leave. The plaintiff had put the defendant on notice at the hearing before the Assistant Registrar that he would seek an order for conditional lave to defend if he did not succeed in securing judgment [note: 80] (*cf Anglo-Eastern Trust Limited & Anor v Roohallah Kermanshahchi* [2002] EWCA Civ 198 at [41] *per* Park J and [70] *per* Brooke LJ).

125 On the merits of the second factor, I did not, in making my initial decision, consider that a condition that the defendant secure the entirety of the plaintiff's unadjudicated claim would be impossible – as opposed to be merely difficult – for her to fulfil for four reasons. First, the amount of the security, $398,300, did not appear to be a large sum when compared to the other sums that defendant dealt in. This included the sum of $105,000 which the defendant had, by her own admission, borrowed from and repaid to the plaintiff within a matter of months. This included also the defendant's financial commitment in contracting to purchase the V on Shenton unit. Second, there was evidence before me that the defendant is a property agent and earning an income of the same order of magnitude as the security I was to order (see [30] above). Third, it appeared to me to be reasonable to expect the defendant to be able to turn at least to her new husband for assistance in fulfilling the condition. Finally, I was prepared to give the defendant the option of returning the car to

the plaintiff and providing security reduced in value by $120,000.

126 Bearing all of the above in mind, and applying the principles distilled from *Yorke Motors*, I considered it only just that the defendant show her commitment to her defence by providing security for the full amount of the plaintiff's unadjudicated claim so that the plaintiff would not be prejudiced by the inevitable delay in proceeding to trial on a claim which, on my assessment, he was likely to succeed in. I did, however, provide that if the defendant restored the car to the plaintiff's possession, she need furnish security only for $278,300, *ie* for the unadjudicated claim of $398,300 less the value of the sum advanced for the car.

My initial order stands despite further arguments

127 Following my order granting the defendant conditional leave to defend, the defendant sought an opportunity to present further arguments on the condition imposed and sought to leave to place evidence of her financial position before me. I acceded to both requests.

128 The defendant submits that the evidence she has placed before me shows that it is impossible – and not merely difficult – for her to comply with the condition which I have attached to her leave to defend. To support her submissions, she gives evidence to the following effect:

(a) Her assets and liabilities are such that, assuming that she sells both the Langston Ville unit and the V on Shenton unit within 6 months, her net asset position will be only $205,602.96 at the end of that period. That is substantially less than the amount of security she needs to provide in order to defend the claim. [note: 81]

(b) Her income and expenditure is such that her income [note: 82] is far less than her monthly expenditure of $10,668.83. [note: 83]

(c) Her husband, relatives and friends are all unable to help her financially. [note: 84]

129 Having considered the defendant's evidence and both parties' submissions, I decline to vary my original order. I come to this decision for the following reasons.

130 First, the plaintiff underlines her lack of credibility by revealing only at this late stage that she sold the car for $108,700 [note: 85] on 6 March 2014. That was two weeks after the plaintiff filed his summary judgment application, well before the plaintiff's summary judgment application came up for hearing before the Assistant Registrar and long before the parties' appeals came up for hearing before me. Yet, the plaintiff failed to inform her counsel of this important fact and permitted him to make his submissions to the Assistant Registrar and to me on the basis that she was still in possession of the car and in a position to return it if ordered to do so.

131 Second, the defendant claims monthly expenditure of almost $11,000. But her evidence, if true, means that she is sustaining this level of expenditure with no visible means of support. She cannot be sustaining it out of income. Her solicitors' letter seeking an opportunity to present further arguments asserts that she earned only $15,104 in the first six months of 2014. [note: 86] It is equally clear that she is not sustaining this level of expenditure out of savings. The only bank account which she has disclosed which is in credit is a single account with POSB said to have a balance of only $5,605. [note: 87] Even then, she produces no bank statements for this account to show movements in it since the litigation began. There is also no explanation of how she is funding her legal fees for this action.

Those sums are not included in her monthly expenditure of almost $11,000 per month. [note: 88] It appears to me that the defendant must have, on the balance of probabilities, a source of income, a source of savings or a source of credit, if not all three, that she has not revealed and which is sustaining her level of expenditure.

132 Third, the defendant has not explained what has happened to all the income she has earned over the years. Her income tax notice of assessment for income earned in the calendar year 2012 shows that she earned over $72,000 in that year. [note: 89] She also produces a table prepared by her employer, Carence Pte Ltd, showing that she earned over $106,000 in commissions on real estate transactions in the nine months between February and November 2013. [note: 90] She has not produced an income tax notice of assessment for the calendar year 2013. She offers no explanation for not producing this notice of assessment. I have no way of knowing whether that is all the income that she earned in the calendar year 2013 or what has become of the money.

133 Fourth, on 21 May 2013, the defendant committed to a housing loan to purchase the V on Shenton unit at a price of $1.027m. [note: 91] The quantum of the loan was 60% of the purchase price. The plaintiff advanced $205,000, or approximately 20% of the purchase price, to the defendant between August and November 2012. The implication is that when she committed to this loan on 21 May 2013, she either had the balance 20% – approximately $205,000 – or she was confident of being able to raise that money to fund the progress payments until she could draw down on the loan. But she offers no explanation as to why she says it is impossible for her to raise any funds at all to satisfy the condition attached to the leave to defend I have extended to her.

134 Fifth, the defendant fails to explain what has become of substantial sums of money which on her own evidence she has received. She offers no explanation of what has become of the $108,700 which she collected upon the sale of the car in March 2014. Her own evidence also shows that, in or about November 2013 and February 2014, she drew close to $100,000 in two tranches from an unsecured credit facility with her bank. [note: 92] She offers no explanation also as to what has become of this sum. Her counsel suggested in submission that the money from the sale of the car was used to fund her day to day expenses and that the money drawn from the bank's credit facility was drawn to fund an imminent payment for the V on Shenton unit. But there is nothing in the defendant's own affidavit to support these submissions.

135 Sixth, the defendant includes in her statement of liabilities full provision for the almost $100,000 in loans she has drawn down on her unsecured line of credit. But the bank statements she has produced show that these loans are not immediately due and repayable but are repayable by monthly instalments over 5 years. There is therefore no reason for her to deduct them in full from her assets. Doing so shows an artificially depressed net asset position.

136 Her decision to treat the entire amount of these loans as a liability that is immediately due and repayable despite the bank's instalment payment plan amounts to her statement that she would prefer to pay that sum of money to her bank than to use it towards showing her commitment to her defence in these proceedings. That indicates neither difficulty nor impossibility in complying with the condition. It indicates rather a conscious choice to allocate her financial resources so as to present the picture that it is impossible for her to be able to do so.

137 Seventh, the defendant makes a bare assertion that her husband, relatives and friends are all unable to help her: [note: 93]

> I have also asked my husband, relatives and friends for help. They are limited financially and are

unable to provide me with the sums to meet the financial conditions imposed on me by the honourable court.

I note specifically that the defendant's assertion is that all of these people are *unable* to help her, not that they are *unwilling* to do so.

138 I give this bald assertion no weight for three reasons. First, I would have expected to see an affidavit from the defendant's husband (at the very least) to explain why he is unable to render financial assistance to his wife. After all, if her commitment to her defence is well founded, the security will be at no risk at all. In the absence of an affidavit from her husband, I would have expected to see an explanation from the defendant why she could not obtain such an affidavit. I have neither before me. Second, the defendant gives no details whatsoever of her attempts to secure funding either from her husband or from her friends and relatives. Third, the doubts I already entertained about the defendant's credibility when I made my initial order were reinforced by her subsequent disclosure to me that she had sold the car in March 2014. That meant that she had been far less than straightforward with the court, and even with her own counsel, when the matter was initially argued. For these reasons, the defendant's bald assertion that her husband, friends and relatives are unable to help her carries no weight.

139 Finally, the defendant gives evidence that, after my initial decision, she satisfied the judgment in favour of the plaintiff on claim 3 by paying him the sum of $100,000. [note: 94] She does not explain where this money came from. I note also that she paid this amount – like the $5,000 – only when judgment was entered against her for it. She also does not explain how her ability to pay this amount is consistent with her disclosed financial position and with her assertion that her husband and her friends and relatives are all unable to assist her.

140 For all these reasons, I find that the defendant has failed to make the requisite full and frank disclosure of her financial position. I find also that the defendant has failed to satisfy me on the balance of probabilities that it is impossible – as opposed to merely difficult – for her to furnish security to the plaintiff in the sum of $398,300.

Conclusion

141 For all these reasons, I have dismissed the defendant's appeal against the judgment entered by the Assistant Registrar on claims 3 and 4. I have allowed the plaintiff's appeal and granted the defendant conditional leave to defend claims 1, 2, 5, 6 and 7, the condition being that she furnish security to the plaintiff for the amount of $398,300 by a banker's guarantee or solicitors' undertaking within 30 days. Not knowing when I made the order that the defendant had sold the car, I have also given the defendant the alternative of returning the car to the plaintiff and furnishing security to the plaintiff in the reduced amount of $278,300.

[note: 1] Plaintiff's 1st affidavit filed on 21 February 2014 ("P1"), paragraph 4; Defendant's 1st affidavit filed on 7 March 2014 ("D1") paragraph 6.

[note: 2] P1, paragraph 7; D1, paragraph 8.

[note: 3] D1, paragraph 8; Plaintiff's 2nd affidavit filed on 21 March 2014 ("P2"), paragraph 6.

[note: 4] D1, paragraph 17.

[note: 5] P1, paragraph 6; D1, paragraph 10.

[note: 6] D1, paragraph 16.

[note: 7] D1, paragraph 37.

[note: 8] D1, paragraph 40.

[note: 9] P1, paragraph 9.

[note: 10] P1, paragraph 9.

[note: 11] P1, paragraph 10.

[note: 12] P1, paragraph 11.

[note: 13] P1, paragraph 11.

[note: 14] P1, paragraph 11.

[note: 15] Plaintiff's statement of claim, prayer (iii).

[note: 16] Plaintiff's statement of claim, prayer (iv).

[note: 17] P1, paragraph 16.

[note: 18] P1, page 16.

[note: 19] P1, paragraphs 14 and 15.

[note: 20] P1, paragraphs 14 and 15.

[note: 21] P1, paragraph 17 and page 18.

[note: 22] P1, paragraph 18.

[note: 23] P1, page 16.

[note: 24] Defence, paragraph 3; P1, paragraph 12.

[note: 25] Defence, paragraph 4.

[note: 26] D1, paragraph 15.

[note: 27] D1, paragraphs 19, 20 and 38.

[note: 28] D1, paragraph 38.

[note: 29] D1, paragraph 20.

[note: 30] D1, paragraph 25 read with D2, paragraph 5.

[note: 31] D1, paragraph 26.

[note: 32] D1, paragraph 27.

[note: 33] Defence, paragraph 4.

[note: 34] D1, paragraph 28.

[note: 35] D1, paragraph 30.

[note: 36] D1, paragraphs 33 and 34.

[note: 37] D1, paragraph 23

[note: 38] D1, paragraph 24.

[note: 39] D1, paragraphs 35 and 36.

[note: 40] D1, paragraph 7.

[note: 41] D1, paragraph 12.

[note: 42] D1, paragraph 22.

[note: 43] P2, paragraphs 24 to 26 and pages 43 to 45.

[note: 44] P2, paragraph 14 and pages 26 to 34.

[note: 45] P2, paragraph 15 and page 36.

[note: 46] P2, paragraph 17 and page 38.

[note: 47] P2, paragraph 22 and pages 40 to 41.

[note: 48] P2, paragraphs 27 to 28 and pages 47 and 48.

[note: 49] P2, paragraphs 30 to 32 and pages 50 to 53.

[note: 50] P2, paragraph 34.

[note: 51] D1, paragraph 10; P2, paragraph 12.

[note: 52] D1, paragraph 11.

[note: 53] P2, paragraphs 37 and 44.

[note: 54] P2, paragraph 39.

[note: 55] P2, paragraph 40.

[note: 56] P2, paragraph 42.

[note: 57] P2, paragraph 51.

[note: 58] P2, paragraph 49.

[note: 59] P2, paragraph 55.

[note: 60] P2, paragraph 35.

[note: 61] D1, paragraph 12.

[note: 62] NE 4 April 2014, page 8 line 4 to 16.

[note: 63] NE 4 April 2014, page 7 line 24 to 29.

[note: 64] NE 4 April 2014, page 8 line 28 to 30.

[note: 65] NE 4 April 2014, page 8 line 30 to 32.

[note: 66] D1, paragraph 24.

[note: 67] P1, paragraph 10.

[note: 68] Defendant’s skeletal submissions dated 19 June 2014, Annex A.

[note: 69] Defence, paragraph 4.

[note: 70] D1, paragraph 27.

[note: 71] NE 4 April 2014, page 3 line 4 to 18.

[note: 72] Defendant’s skeletal submissions dated 19 June 2014, Annex A.

[note: 73] D1, paragraph 25.

[note: 74] D1, paragraph 7.

[note: 75] D1, paragraph 6.

[note: 76] D1, paragraph 30.

[note: 77] D1, paragraph 15.

[note: 78] P2, paragraph 35.

[note: 79] D1, paragraph 37.

[note: 80] NE, 4 April 2014, page 3.

[note: 81] Defendant's 3rd affidavit, filed on 12 August 2014, paragraph 5.

[note: 82] D3, page 71, 72, 74 and 75.

[note: 83] D3, paragraph 7.

[note: 84] D3, paragraph 10.

[note: 85] Defendant's 4th affidavit filed on 14 August 2014 ("D4"), page 2.

[note: 86] D3, page 8, paragraph 9.

[note: 87] D3, paragraph 5, item 5.

[note: 88] D3, paragraph 11.

[note: 89] D3, page 75.

[note: 90] D3, page 74.

[note: 91] D3, page 46.

[note: 92] Defendant's 3rd affidavit filed on 12 August 2014 ("D3"), page 70.

[note: 93] D3, paragraph 10.

[note: 94] D3, paragraph 5, item 6 in the table.