

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

[2021] SGHC 250

Suit No 989 of 2019

Between

Ye Huishi Rachel

... Plaintiff

And

Ng Ke Ming Jerry

... Defendant

JUDGMENT

[Contract] — [Formation] — [Consent]

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Ye Huishi Rachel
v
Ng Ke Ming Jerry

[2021] SGHC 250

General Division of the High Court — Suit No 989 of 2019
Lai Siu Chiu SJ
17–18 March, 30 April 2021

2 November 2021

Judgment reserved.

Lai Siu Chiu SJ:

Introduction

1 In Suit 989 of 2019 (“this Suit”), Rachel Ye (“the Plaintiff”) sued Jerry Ng Ke Ming (“the Defendant”) over an investment in an exotic product called agarwood, after her investment soured and she incurred losses.

2 At the heart of this Suit lies a document recording the Defendant’s agreement to pay the Plaintiff a total of \$1,225,000 in relation to the Plaintiff’s investment (the “Settlement Agreement”). The Settlement Agreement was signed and initialled by both the Plaintiff and the Defendant.

3 The Plaintiff is suing for moneys which she claims are owed to her under the Settlement Agreement. The Defendant, meanwhile, denies that the Settlement Agreement is legally binding.

4 In making their cases, the Plaintiff and the Defendant set out starkly contrasting narratives concerning how the Settlement Agreement came to be signed. It is useful to consider their accounts in detail, to illustrate the depth and extent of this divergence.

The Plaintiff’s version of events

How the Plaintiff met the Defendant

5 In her affidavit of evidence-in-chief (“AEIC”), the Plaintiff, who manages her own family food supply business and is a part-time investor,¹ described how she came to know the Defendant.

6 The Plaintiff deposed that she was interested in general investments and she would therefore sometimes attend seminars and investment talks.² At one such seminar that she attended, the Plaintiff met the Defendant, who was a fellow attendee. They struck up a conversation on investment opportunities, during which the Defendant told the Plaintiff about agarwood, a fragrant wood used in the manufacture of perfumes and incense. He told her agarwood was prized due to the depletion of wild forests and was a protected species of trees in many countries. For those reasons, the supply of agarwood was limited and it was valuable.³

7 According to the Plaintiff, the Defendant advised her agarwood was a good investment as the rate of return was high.⁴ The Plaintiff was convinced by the Defendant and she started investing in agarwood through him. The Plaintiff

¹ Plaintiff’s AEIC at para 4.

² Plaintiff’s AEIC at para 5.

³ Plaintiff’s AEIC at para 6.

⁴ Plaintiff’s AEIC at para 6.

started her investment in agarwood on or around 7 February 2017 with \$10,000, which she credited into a bank account nominated by the Defendant,⁵ who told her the account holder was one “Cedric”^{6, 7}

8 In June 2017, the Defendant returned to the Plaintiff \$13,000, of which \$3,000 represented her profits.⁸ Calculated over a year, the \$3,000 profit equated to an annualised return of 120% ($\$3,000 \div \$10,000 = 30\%$ for one quarter, multiplied by four quarters).

9 Not surprisingly, the Plaintiff was impressed and decided to invest further in agarwood through the Defendant. Hence, in April 2018, the Plaintiff invested \$80,000 with the Defendant. This second investment yielded her a profit of \$20,700 in June 2018 when the Defendant returned to her \$100,700 in cash,⁹ representing a return of 25.875% over two months or an annualised return of 155.25%.

10 Greatly encouraged, the Plaintiff decided to invest even more money with the Defendant. She placed \$100,000 with the Defendant in June 2018 via a platform named “Trello” introduced to her by the Defendant, whom she believed had set it up. Trello enabled the Plaintiff and other persons to invest in agarwood.¹⁰ In December 2018, the Plaintiff invested a further \$843,000 with

⁵ Reply at para 5.

⁶ Whose full name is Cedric Chua Cheng Xun, according to the Defendant’s AEIC at para 9(a).

⁷ Plaintiff’s AEIC at para 7.

⁸ Plaintiff’s AEIC at para 7.

⁹ Plaintiff’s AEIC at para 8.

¹⁰ Plaintiff’s AEIC at para 8.

the Defendant via the Trello platform.¹¹ By early 2019, that sum had ballooned to a total of \$1,225,900.¹²

11 The Plaintiff claims that the Defendant had promised and assured her that she would receive her investment with profits in June 2019. This did not materialise. Pressed by her, the Defendant allegedly told the Plaintiff “many stories” to explain the delay.¹³ The Plaintiff felt uneasy and feared the worst every time the payment deadlines to her were postponed. The Defendant requested that she speak to Cedric and gave her Cedric’s contact number. The Plaintiff appears not to have taken up the Defendant’s suggestion. She claims she did not know Cedric, whom she had only met casually twice, during which meetings no business was discussed (which the Defendant disputes).

The Settlement Agreement and the Consent Letter

12 After several meetings and discussions with the Defendant, the Plaintiff told him she wanted his assurance of re-payment in writing as her investment was too big for verbal assurances. She claims that the Defendant agreed to sign a legal document to confirm the debt and that he told her he could only afford instalment payments to her, to which she agreed.¹⁴

13 The Plaintiff deposed that she requested that an agreement be drawn up, to which the Defendant agreed. However, after two to three weeks, the Defendant had still not done so. When the Plaintiff requested him to get his

¹¹ Plaintiff’s AEIC at para 9.

¹² Plaintiff’s AEIC at para 10.

¹³ Plaintiff’s AEIC at para 10.

¹⁴ Plaintiff’s AEIC at para 11.

lawyer to prepare the agreement, the Defendant gave the Plaintiff the “lame excuse” that he could not afford a lawyer.¹⁵

14 The Plaintiff decided to get a law firm to prepare the agreement. She engaged the services of Ong & Co LLC (“the lawyers”) in June 2019 to prepare the Settlement Agreement.¹⁶ After the Settlement Agreement was prepared and she had approved it, the Plaintiff requested the Defendant to go to the lawyers’ office to sign the document. He did not, and kept giving excuses for his omission.¹⁷ The Plaintiff decided to take matters into her own hands.

15 On 10 June 2019, the lawyers sent a letter of demand¹⁸ on the Plaintiff’s behalf to the Defendant, demanding that he return to her the sum of \$1,225,900, comprising her investment of \$963,000 and 27% (\$262,900) profits not 30% (as the Plaintiff claimed) that he promised her.

16 According to the Plaintiff, she took the Settlement Agreement from the lawyers and handed the document to the Defendant personally. She deposed that she told him to sign the document after he had perused it. About two days after she had handed him the document, the Plaintiff called the Defendant to collect the same. The Defendant used the excuse that he could not find a witness as the reason for not having signed the document. The Plaintiff said she would provide him with a witness if he could not find one himself. According to her, he did not object.¹⁹

¹⁵ Plaintiff’s AEIC at para 12.

¹⁶ Plaintiff’s AEIC at para 13.

¹⁷ Plaintiff’s AEIC at para 14.

¹⁸ Agreed Bundle (“AB”) at p 318.

¹⁹ Plaintiff’s AEIC at para 15.

17 The Plaintiff then arranged to meet the Defendant with her “relative” Yap Khim Chwee (“Yap”), who would be his witness.²⁰ The three of them met at the void deck of the block of flats where the Defendant’s residence was situated. The Defendant signed the Settlement Agreement in the presence of Yap and initialled every page just as the Plaintiff did. The signed agreement was dated 16 July 2019.²¹ The Defendant separately signed a letter of consent dated the same day (“the Consent Letter”). The Consent Letter stated that the Defendant consented to Yap being his witness for the Settlement Agreement, notwithstanding his being the Plaintiff’s elder brother.²²

18 The Plaintiff was described as “the Claimant” and the Defendant as “the Debtor” in the document.²³ Under cl 3A of the Settlement Agreement, the Defendant agreed to pay the Plaintiff as follows:²⁴

1. The sum of \$100,000.00 to be paid on or before the 1st day of August 2019;
2. The sum of \$200,000.00 to be paid on or before the 1st day of September 2019, 1st day of October 2019, 1st day of November 2019, and 1st day of December 2019;
3. The sum of \$325,000 to be paid on or before 1st day of January 2020.

19 Under cl 3D of the Settlement Agreement, the Defendant was given a grace period of seven days to cure any default in instalment payments.²⁵ In the event that the Defendant failed to rectify any default in payment during the grace

²⁰ Plaintiff’s AEIC at para 16.

²¹ AB at pp 320–328.

²² AB at p 329.

²³ AB at p 321.

²⁴ AB at p 323.

²⁵ AB at p 324.

period, or that the cheques he tendered for the instalment payments were dishonoured, the Plaintiff was entitled under cl 3F to demand payment of the entire sum outstanding as at the date of default.²⁶

20 It was the Plaintiff's case that the Defendant signed the Settlement Agreement voluntarily.

21 It should be noted at this juncture that the recitals in the Settlement Agreement were inaccurate, as can be seen below:

A The [Plaintiff] has furnished sums amounting to \$963,000 to the [Defendant] to carry out various investments towards the trading of Agar Wood on various dates.

B Such payments have been made by the [Plaintiff] with the [Defendant's] confirmations and promises (thus forming a condition of the trading of Agar Wood) that any investment will be returned to the [Plaintiff] within three months from the relevant Transaction Date with a 30% profit. The Transaction Date is defined as the operative date the [Plaintiff] conveyed the Trading Sum to the [Defendant], with the last being on or about November 2003.

C The [Plaintiff] is therefore entitled to receive the payment of \$1,215,900 (ie \$943,000.00 principal sum + \$282,900.00 profit) from the [Defendant]. The total sum due from the [Defendant] to the [Plaintiff] is \$1,225,900.00 ('the Sum Due').

...

The figure in Recital A did not tally with the figure in Recital C. 30% of \$963,000 is \$288,900. If \$963,000 was the principal sum and not \$943,000, the total amount including 30% profit (\$288,900) would be \$1,251,900 not \$1,225,900.

²⁶ AB at pp 324–325.

The Defendant's version of events

22 The Defendant, however, gave a very different and much more detailed version of events.

How the Defendant met Cedric

23 According to the Defendant, he first met Cedric in 2015 when the latter was in the business of trading car parts in Taiwan.²⁷ They became friends but had no business relationship.²⁸ In mid-2016, the Defendant discovered Cedric was representing a company called Nimbus Technologies. The Defendant engaged Nimbus Technologies to develop a sales deck.²⁹

24 At about that time, the Defendant was indebted in a sum of around \$270,000. He confided in Cedric and expressed fears of being made a bankrupt.³⁰ That was when Cedric told the Defendant about his investment in agarwood from which he made huge profits – by buying agarwood from Taiwanese sellers and selling to buyers in the region.³¹

25 Cedric told the Defendant that he lacked sufficient funds to purchase more agarwood. He told the Defendant that if the Defendant had funds, the Defendant could invest in agarwood and Cedric would give him a profit within two months.³²

²⁷ Defendant's AEIC at para 14.

²⁸ Defendant's AEIC at para 15.

²⁹ Defendant's AEIC at para 16.

³⁰ Defendant's AEIC at para 17.

³¹ Defendant's AEIC at para 18.

³² Defendant's AEIC at para 19.

26 On or about 13 November 2016, Cedric informed the Defendant he was raising funds for a new deal. He inquired if the Defendant was interested; the Defendant declined.³³ Subsequently, the Defendant changed his mind and invested \$7,000 with Cedric in December 2016.³⁴ The Defendant made a profit of 70% from that investment in agarwood. Thereafter, the Defendant continued investing with Cedric and began to recover financially.³⁵ Cedric told the Defendant he would pay the Defendant a commission for anyone whom the Defendant successfully introduced as an investor.³⁶

27 According to the Defendant, many of his friends became interested when they saw how his financial situation had improved with his investment in agarwood. They started investing in agarwood with Cedric through the Defendant. One of these investors was the Plaintiff.³⁷

How the Defendant met the Plaintiff

28 The Defendant deposed that he first met the Plaintiff in or about August 2016 through the introduction of an acquaintance. Both the Defendant and the Plaintiff were then investing in Nanning, China. In fact, the Plaintiff had then approached the Defendant to introduce his friends to an investment scheme there (“the Nanning Scheme”).³⁸

³³ Defendant’s AEIC at para 20.

³⁴ Defendant’s AEIC at para 22.

³⁵ Defendant’s AEIC at para 24.

³⁶ Defendant’s AEIC at para 25.

³⁷ Defendant’s AEIC at paras 26–27.

³⁸ Defendant’s AEIC at para 42.

29 The Defendant himself had already invested in the Nanning Scheme through two persons, Lee and Shanice.³⁹ Although he considered investing in the Nanning Scheme through the Plaintiff, he subsequently changed his mind and informed the Plaintiff on or about 12 November 2016. She immediately demanded that he return a sum of \$2,000 she had lent him.⁴⁰

30 At the material time, the Defendant was working as a loans broker. For every loan that he secured, the Defendant would earn a fee from the borrower.⁴¹ The Plaintiff was one such borrower. Between late 2016 and early 2017, the Defendant assisted the Plaintiff to obtain loans totalling \$521,745 from six banks in Singapore, both local and foreign.⁴² These six banks did not include another bank from whom the Defendant assisted the Plaintiff to borrow a substantial sum in 2017, using a landed property she co-owned as collateral.

31 When the Defendant requested the Plaintiff to pay him some commission for procuring her the substantial loan, the Plaintiff said she could not because of financial constraints but indicated she would invest in agarwood through him so that he could earn some commission. The Plaintiff noticed the Defendant's financial situation had improved and found out the reason was his investments in agarwood through Cedric. The Plaintiff said she was interested to invest in agarwood as well since she was in urgent need of funds.⁴³

³⁹ Defendant's AEIC at para 43.

⁴⁰ Defendant's AEIC at para 45.

⁴¹ Defendant's AEIC at para 47.

⁴² Defendant's AEIC at para 48.

⁴³ Defendant's AEIC at paras 51–53.

32 In or about February 2017, the Defendant told the Plaintiff that Cedric would contact her directly, which Cedric did.⁴⁴ The Plaintiff decided to invest in agarwood and inquired if she could do so directly with Cedric without going through the Defendant; the Defendant agreed.⁴⁵ She also corresponded directly with Cedric.⁴⁶

33 The Defendant disputed the Plaintiff's description of herself as a part-time investor; he asserted that was far from the truth. He alleged the Plaintiff made investment after investment in an attempt to alleviate her financial predicament.⁴⁷ The Defendant surmised it was probably because she hoped Cedric could assist her in this regard that she invested so heavily in agarwood.⁴⁸

34 It should be noted at this juncture that all communications between the Plaintiff, the Defendant and Cedric were almost totally via WhatsApp. The Plaintiff exhibited a number of WhatsApp messages between herself and Cedric in her AEIC, but none at all of those messages between herself and the Defendant. In contrast, the Defendant produced meticulous and extensive records (spanning over three years) of his WhatsApp conversations with the Plaintiff.⁴⁹

⁴⁴ Defendant's AEIC at paras 54–55.

⁴⁵ Defendant's AEIC at paras 58–60.

⁴⁶ Defendant's AEIC at para 63.

⁴⁷ Defendant's AEIC at para 78.

⁴⁸ Defendant's AEIC at para 79.

⁴⁹ Defendant's AEIC at pp 143–299.

The Plaintiff's involvement of other investors

35 In March 2018, the Plaintiff told the Defendant she had two persons who wanted to invest in agarwood. The Defendant told her Cedric was using the Trello system as an investment platform and she needed to create an account. The Plaintiff provided an email address to the Defendant with which he created a Trello account for her (“the Plaintiff’s Trello account”).⁵⁰

36 According to the Defendant, the Plaintiff’s Trello account enabled her to: (i) see Cedric’s track record herself, (ii) monitor which agarwood investment Cedric was seeking funding for and (iii) respond to “cards” which Cedric created to seek funding.⁵¹ With regard to (iii), the Defendant deposed that the Plaintiff responded to a card created by Cedric dated 1 April 2018 where Cedric sought funding of \$250,000. On 10 April 2018, the Plaintiff invested \$80,000 on behalf of herself and other investors using the Plaintiff’s Trello account. She passed \$80,000 cash to the Defendant who passed it in turn to Cedric. The investment matured around 6 June 2018 and she received \$20,700 as profits, as stated earlier at [9].

37 On 23 April 2018, Cedric created another card on Trello seeking funding of \$220,000. The Plaintiff informed the Defendant on 24 April 2018 that she wanted to invest \$100,000 this time in the names of seven persons who included her son Richmond, her mother and her brother.

38 Contrary to the Plaintiff’s claim at [8] that she hardly knew Cedric, the Defendant deposed that at the behest of the Plaintiff and other investors, he arranged for them to meet Cedric on 10 September 2018 at a cigar lounge at

⁵⁰ Defendant’s AEIC at para 80.

⁵¹ Defendant’s AEIC at para 81.

Trengganu Street (“the first meeting”).⁵² The Defendant recalled that the Plaintiff was particularly outspoken at the first meeting and led the discussion.⁵³ She even read Cedric’s fortune then.⁵⁴

39 At the first meeting, Cedric explained his background, how he came to invest in agarwood since 2015 and the reasons for his fundraising.⁵⁵ As a result of the first meeting, the Plaintiff started investing heavily with Cedric and she brought in other investors as well, whom she described as her “personal friends”.⁵⁶ She secured these other investors between September and December 2018.⁵⁷

40 On or about 8 December 2018, Cedric called the Defendant and said some of the deals that were due that December were facing issues.⁵⁸ By late December 2018, the Plaintiff started informing the Defendant that some of her investors wanted to withdraw their investments. She continuously sought updates from the Defendant on Cedric.⁵⁹ She added that she required a pay-out of \$230,000 by 10 January 2019.⁶⁰ The Defendant’s usual response was to forward to the Plaintiff whatever WhatsApp messages he had exchanged with Cedric and inform her he would follow up with Cedric.⁶¹

⁵² Defendant’s AEIC at paras 108–109.

⁵³ Defendant’s AEIC at para 111.

⁵⁴ Defendant’s AEIC at paras 116–117.

⁵⁵ Defendant’s AEIC at paras 111–115.

⁵⁶ Defendant’s AEIC at paras 120–123.

⁵⁷ Defendant’s AEIC at para 126.

⁵⁸ Defendant’s AEIC at para 127.

⁵⁹ Defendant’s AEIC at para 128–130.

⁶⁰ Defendant’s AEIC at para 132.

⁶¹ Defendant’s AEIC at para 133.

41 On or about 13 January 2019, the Plaintiff informed the Defendant that her father was in the intensive care unit of a hospital, and asked for a pay-out of \$80,000.⁶² By 3 February 2019, the Plaintiff started applying more pressure on the Defendant, informing him that her investors were extremely unhappy and she found it very difficult to answer them.⁶³

42 On 7 February 2019, the Plaintiff requested the Defendant to arrange a meeting for her with Cedric which he did on 11 February 2019.⁶⁴ The Defendant planned to attend the meeting but the Plaintiff indicated she preferred to meet Cedric alone.⁶⁵ After the meeting, the Plaintiff informed the Defendant that Cedric had assured her that her investments were safe and had explained to her the reasons for the delay.⁶⁶ She told the Defendant that Cedric had promised her a pay-out on 12 March 2019, on which date she intended to withdraw all her funds.⁶⁷

43 Two days after 11 February 2019, the Defendant informed the Plaintiff that Cedric had met three other investors to whom he promised a pay-out in the first week of March 2019.⁶⁸ In his AEIC, the Defendant set out WhatsApp exchanges he had with the Plaintiff where she clearly stated that she had requested Cedric to start paying her by 27 February 2019, but that Cedric moved the date back to the first week of March 2019.⁶⁹ He also pointed out that her

⁶² Defendant's AEIC at para 135.

⁶³ Defendant's AEIC at paras 138–139.

⁶⁴ Defendant's AEIC at paras 141–144.

⁶⁵ Defendant's AEIC at para 145.

⁶⁶ Defendant's AEIC at para 146.

⁶⁷ Defendant's AEIC at para 147.

⁶⁸ Defendant's AEIC at para 148.

⁶⁹ Defendant's AEIC at para 151.

messages showed that the Plaintiff knew her invested funds were with Cedric and not him.⁷⁰

44 On or about 25 February 2019, the Plaintiff texted the Defendant, stating she urgently needed \$60,000 by 5 March 2019 to pay off her investors and she wanted the rest of the money Cedric had promised her by 12 March 2019.⁷¹

45 On or about 3 March 2019, the Plaintiff forwarded to the Defendant screenshots of her conversations with Cedric.⁷² From the conversations, it was clear therefrom that she was chasing Cedric for her money on 12 March 2019, using as her excuses that the husband of one of her investors had passed away and she needed money for the surgery of her father who was in ICU. She further sent the Defendant a video of her father in hospital.⁷³

46 On 8 March 2019, she requested the Defendant to put pressure on Cedric to make the pay-out using the funeral of her investor's husband and her father's surgery as the reasons for the urgency.⁷⁴ She followed up by sending the Defendant images of her attending the funeral (with a photograph of the deceased in his coffin) as well as a stream of WhatsApp messages.⁷⁵

47 According to the Defendant, it was at this juncture (and again on 14 March 2019) that the Plaintiff requested the Defendant to buy over \$300,000 of

⁷⁰ Defendant's AEIC at para 153.

⁷¹ Defendant's AEIC at para 155.

⁷² Defendant's AEIC at paras 158–160.

⁷³ Defendant's AEIC at para 161.

⁷⁴ Defendant's AEIC at para 162.

⁷⁵ Defendant's AEIC at para 165 and p 307.

her investments.⁷⁶ The Defendant could not buy her out as he had already bought out one or two of his friends in February 2019 and had no funds left.⁷⁷ The Plaintiff made veiled threats to the Defendant that she needed to calm her investors to prevent them from lodging police reports.⁷⁸ The Defendant deposed that he feared police reports not because he had done anything wrong but because he himself had invested \$2m with Cedric; he was worried that if the police came into the picture, Cedric would not be able to complete his deals and none of the investors would recover their monies.⁷⁹

48 The Defendant clarified that he was not aware of what transpired whenever Cedric visited Taiwan for the agarwood investment nor who Cedric's business contacts there were. He only introduced investors to Cedric, passed investors' monies to Cedric and returned to investors their pay-outs from Cedric when those fell due.⁸⁰

49 In mid-March 2019, the Plaintiff made what the Defendant termed a "deceitful proposal":⁸¹ she asked him to have any new investors buy her out instead.⁸² The Defendant ignored her: knowing that the agarwood investments were stuck and facing major problems, he did not want to bring in another investor.⁸³ Notwithstanding this, the Plaintiff continued to pressure the Defendant on 16 March 2019 to promise her that once Cedric paid the

⁷⁶ Defendant's AEIC at paras 166–167 and 172.

⁷⁷ Defendant's AEIC at para 169.

⁷⁸ Defendant's AEIC at para 166.

⁷⁹ Defendant's AEIC at para 170.

⁸⁰ Defendant's AEIC at para 171.

⁸¹ Defendant's AEIC at para 175.

⁸² Defendant's AEIC at para 176.

⁸³ Defendant's AEIC at paras 177–179.

Defendant, he would pass her the money immediately, to pay for her father's and her son's medical bills.⁸⁴

50 On or about 18 March 2019, the Plaintiff inquired of the Defendant what he would do if her father passed on and her family of ten was rendered homeless.⁸⁵ She continued to pressure him for updates on Cedric.⁸⁶ By then the Defendant had gotten into arguments with Cedric because he kept asking Cedric for updates on payment.⁸⁷ The Defendant would also record conference calls he and his investor friends had with Cedric wherein Cedric assured the investors that their monies were safe with Cedric;⁸⁸ the Defendant forwarded four of those videos to the Plaintiff.⁸⁹

51 Early in the morning of 21 March 2019, the Plaintiff threatened the Defendant that if he did not pay her \$500,000 by 5.00pm that day, she would lodge a police report and send debt collectors to his house. When the Defendant failed to respond, the Plaintiff continued to press the Defendant throughout the day for an answer. At about 10.00pm, she told the Defendant that she wanted to withdraw \$1.2m.⁹⁰ The Defendant was terrified by the Plaintiff's threats and lodged a police report on the same day.⁹¹

⁸⁴ Defendant's AEIC at para 180.

⁸⁵ Defendant's AEIC at para 182.

⁸⁶ Defendant's AEIC at para 186.

⁸⁷ Defendant's AEIC at para 185.

⁸⁸ Defendant's AEIC at paras 187–188.

⁸⁹ Defendant's AEIC at para 189.

⁹⁰ Defendant's AEIC at para 190.

⁹¹ Defendant's AEIC at para 197.

52 The Defendant had further exchanges with the Plaintiff between 22 and 26 March 2019, with the Plaintiff badgering/pressurising the Defendant for the return of her money.⁹²

53 At around that time, Cedric informed the Defendant that he would be paying \$200,000 to the investors, of which the Plaintiff's share was \$15,000.⁹³ When the Defendant informed the Plaintiff, she immediately pressed him for the money, which he passed to her.⁹⁴

54 Around this time, the Defendant had become part of a WhatsApp chat group with the Plaintiff and six other investors (the "2019 Chat Group").⁹⁵ The 2019 Chat Group had daily discussions centred on how to recover their monies from Cedric.⁹⁶ In one instance, the Defendant was called to meet with a number of investors from the 2019 Chat Group, namely the Plaintiff, Jason Ang ("Jason") and Siew Wei Quan, Bryan ("Bryan"). Jason insisted that the Defendant call Cedric in their presence.⁹⁷ The Defendant did so, but nothing meaningful resulted from the call. Jason, however, insisted on retaining the Defendant's handphone so that he could communicate directly with Cedric.⁹⁸ A day or two later, at the Defendant's insistence, his handphone was returned to him.⁹⁹ The Defendant discovered therefrom that Jason had sent numerous

⁹² Defendant's AEIC at paras 200–202.

⁹³ Defendant's AEIC at para 203.

⁹⁴ Defendant's AEIC at paras 204 and 206.

⁹⁵ Defendant's AEIC at para 208.

⁹⁶ Defendant's AEIC at para 209.

⁹⁷ Defendant's AEIC at para 210.

⁹⁸ Defendant's AEIC at para 211.

⁹⁹ Defendant's AEIC at para 212.

WhatsApp messages to Cedric which he exhibited in his AEIC; those messages of Jason were unpleasant and threatening in nature.¹⁰⁰

55 Between 19 April and 31 May 2019, the Plaintiff continuously pressed the Defendant to chase Cedric in turn for her monies.¹⁰¹ Around end-May 2019, the Plaintiff told the Defendant that she could not hold off her investors any longer; that one of them had made a police report; and that an officer from the Bedok Police headquarters had allegedly told her that the complainant would not withdraw the police report unless Cedric's debt was repaid.¹⁰²

56 In June 2019, the Defendant deposed, the Plaintiff told him one of her investors was a datuk who wanted to sue him in Singapore and the Defendant should not mess around with him. The Plaintiff told the Defendant another of her investors was a lady who had connections with the forensics department in Singapore and she could "backdoor her way" to recover her \$50,000 with the Plaintiff.¹⁰³

The Settlement Agreement and the Consent Letter

57 On 6 June 2019, the Plaintiff requested the Defendant for a further update, accusing him of dragging his feet.¹⁰⁴ She kept up the pressure on the Defendant until 27 June 2019.¹⁰⁵ That night she told the Defendant that:¹⁰⁶

¹⁰⁰ Defendant's AEIC at pp 328–330.

¹⁰¹ Defendant's AEIC at pp 290–292.

¹⁰² Defendant's AEIC at para 214.

¹⁰³ Defendant's AEIC at para 218.

¹⁰⁴ Defendant's AEIC at para 221.

¹⁰⁵ Defendant's AEIC at pp 292–294.

¹⁰⁶ Defendant's AEIC at para 227.

- (a) her investors were running out of patience and had paid her a visit around February 2019;
- (b) some of her investors were “datuks” from Malaysia, gangsters and individuals who were connected with the police or the forensics department;
- (c) the investors would look for the Defendant as they had his address.

58 In the same call, the Plaintiff said the only way the Defendant could appease the investors and protect himself and her was to sign an agreement. The Defendant responded that he would follow up with Cedric and see what can be done.¹⁰⁷

59 The Plaintiff then suggested that the Defendant sign an agreement so that she could use it to appease her investors, assuring him that she would not enforce it. She said she was desperate and if he assisted her, nothing would happen to the Defendant or to his family.¹⁰⁸ The Defendant told the Plaintiff that Cedric would make some payments in August 2019, but the Plaintiff indicated that was unacceptable. The Plaintiff hung up, but sent the Defendant WhatsApp messages subsequently asking for updates on the situation with Cedric.¹⁰⁹ No mention was made in these WhatsApp messages of any agreement.¹¹⁰

¹⁰⁷ Defendant’s AEIC at para 228.

¹⁰⁸ Defendant’s AEIC at para 229.

¹⁰⁹ Defendant’s AEIC at paras 230–233.

¹¹⁰ Defendant’s AEIC at p 294.

60 On 15 July 2019, however, out of the blue, the Plaintiff texted the Defendant to say that she would meet him at 3.00pm to vet the Settlement Agreement and to sign it at 8.00pm.¹¹¹

61 The Defendant disputed the Plaintiff's assertion that he had agreed to have the agreement drawn up (see [13] above). He contended he neither saw nor discussed the contents of the Settlement Agreement prior to his signing the document. He pointed to the fact that prior to his signing, he did not exchange messages with the Plaintiff on the document.¹¹² The Defendant reproduced his WhatsApp exchanges with the Plaintiff for the period 15–16 July 2019 to support his contention.¹¹³

62 The Defendant's version surrounding the signing of the Settlement Agreement was diametrically different from what was stated in the Plaintiff's AEIC. He deposed that he felt extremely trapped by her relentless pursuit of him.¹¹⁴ She was persistent – there was no let-up on her part even when the Defendant did not take her calls as reflected in his WhatsApp history.¹¹⁵ He deposed that he finally responded to the Plaintiff in the afternoon of 16 July 2019 after avoiding her in the morning as well as the previous day, including the calls she made using his landline number.¹¹⁶

¹¹¹ Defendant's AEIC at para 234.

¹¹² Defendant's AEIC at paras 236–240.

¹¹³ Defendant's AEIC at para 242.

¹¹⁴ Defendant's AEIC at para 247.

¹¹⁵ Defendant's AEIC at para 249.

¹¹⁶ Defendant's AEIC at para 250.

63 When they spoke, the Defendant told the Plaintiff that he would only be home at around 11.00pm.¹¹⁷ Immediately after the call, she messaged him to confirm that she would see him at 11.00pm, adding that it would be better for the Defendant to use his brother as his witness. The Defendant used the excuse that his brother did not end work so early.¹¹⁸ That again did not deter the Plaintiff. At 8.54pm, the Plaintiff told the Defendant she needed a copy of his identity card.¹¹⁹ He did not take her three subsequent calls.¹²⁰ When the Defendant finally returned her call, the Plaintiff told him she was already at the void deck of the block of his residence.¹²¹

64 The Defendant's version of his signing of the Settlement Agreement is as follows:¹²²

- (a) the Plaintiff placed the Settlement Agreement before him;
- (b) she showed him the pages that stated a sum of \$1.2m was owed by him to her and her investors;
- (c) she did not give him an opportunity to check the aforesaid sum to verify the amount that was due from Cedric to her;
- (d) the Plaintiff did not go through the document with him page by page;

¹¹⁷ Defendant's AEIC at para 250.

¹¹⁸ Defendant's AEIC at para 252.

¹¹⁹ Defendant's AEIC at para 258.

¹²⁰ Defendant's AEIC at para 260.

¹²¹ Defendant's AEIC at para 261.

¹²² Defendant's AEIC at para 262.

- (e) the Plaintiff reminded him that if he did not sign and her investors came after her, he would be in trouble as well;
- (f) the Plaintiff assured him that signing the Settlement Agreement was a formality – it was something for her to show to her investors to hold them off, and she would not assert a legal right based on it;
- (g) she instructed him to initial at the bottom of every page and sign the last page;
- (h) he noticed the Plaintiff had already signed the Settlement Agreement;
- (i) neither his signature nor the Plaintiff's signature were witnessed.

65 On the following day, the Plaintiff requested that the Defendant secure a witness. The Defendant reproduced in his AEIC his WhatsApp exchanges with the Plaintiff on 17 July 2019 in this regard.¹²³ The Plaintiff requested that the Defendant's brother be his witness; the Defendant told her at around 7.00pm that his brother declined. She called the Defendant later to say her brother would be his witness. The Defendant told her to come to his residence at 10.15pm, which she did, accompanied by her brother.¹²⁴

66 The Plaintiff had with her the Consent Letter and the last page of the Settlement Agreement.¹²⁵ In accordance with the Plaintiff's instructions, the

¹²³ Defendant's AEIC at para 266.

¹²⁴ Defendant's AEIC at paras 267–270.

¹²⁵ Defendant's AEIC at para 271.

Defendant signed the Consent Letter.¹²⁶ It was dated 16 July 2019 even though it was not signed that day.¹²⁷

The Plaintiff's conduct thereafter

67 Although cl 3A(1) of the Settlement Agreement (see [18] above) purportedly required the Defendant to pay the Plaintiff the first instalment of \$100,000 on 1 August 2019, the Plaintiff did not press the Defendant for the payment. Instead, on 7 August 2019, she messaged him via WhatsApp to inquire if everything was still on track and if a holding company Cedric was incorporating was “settled”. The Defendant replied in the affirmative.¹²⁸ The Plaintiff followed up with the Defendant on 29 August 2019 and again on 10 September 2019. The Defendant responded by sending the Plaintiff screenshots of updates he had received from Cedric.¹²⁹ The Plaintiff made no reference to the Settlement Agreement in any of those messages.¹³⁰

68 Consequently, the Defendant was shocked to receive a letter of demand from the Plaintiff's solicitors dated 16 September 2019 (“the Letter of Demand”).¹³¹ The Letter of Demand stated that the Defendant owed the Plaintiff \$1,215,900 which he had “borrowed as part of an investment scheme”.¹³² The court notes that the statement does not accord with the recital in the Settlement Agreement and the sum demanded was also incorrect (see [21] above).

¹²⁶ Defendant's AEIC at para 272.

¹²⁷ AB at p 329.

¹²⁸ Defendant's AEIC at paras 280–282.

¹²⁹ Defendant's AEIC at paras 283–285.

¹³⁰ Defendant's AEIC at para 287.

¹³¹ AB at p 333.

¹³² AB at p 333.

69 The Letter of Demand stated that the Defendant had defaulted on two instalment payments of \$100,000 and \$200,000 due on 1 August 2019 and 1 September 2019 respectively.¹³³ Consequently, the Defendant was obliged to pay the full sum owed within the five days of the Letter of Demand (namely by 21 September 2019).¹³⁴

70 Notwithstanding the Letter of Demand, the Plaintiff messaged (and tried to call) the Defendant on 1 October 2019 requesting updates from Cedric.¹³⁵ To add to the Defendant’s confusion on her ambivalent attitude, the Plaintiff commenced this Suit on 2 October 2019, the day *after* their communication on 1 October 2019.

71 Consequently, the Defendant messaged the Plaintiff on 7 October 2019 and *inter alia* said:¹³⁶

Sis why are you doing this to me? ... U asked me to help you sign the agreement so that you had something to show to your investors. I also did that to help you when you needed it. Now why are you doing this? You said to me on the phone so many times that it is just a formality to show them and hold only sis

72 The Plaintiff did not respond to the Defendant’s above message. Instead, on 31 October 2019, she inquired of him “Today is 31st Oct. What is the payout status?”¹³⁷

73 The Defendant’s AEIC disclosed that all the investments in agarwood made with Cedric (including his, the Plaintiff’s and his younger brother’s)

¹³³ AB at p 333.

¹³⁴ AB at p 333.

¹³⁵ Defendant’s AEIC at para 289.

¹³⁶ Defendant’s AEIC at pp 298–299.

¹³⁷ Defendant’s AEIC at pp 299.

remain stuck. Cedric had not paid them a single cent. He concluded his AEIC with the following two paragraphs:¹³⁸

In the light of the foregoing, it is apparent that the Plaintiff has spun a web of lies to trap me. It is unconscionable for the Plaintiff to attempt to renege on a bad investment by attempting to make me, a mere introducer, liable for her and all her investors. We had both taken a risk by entering into the Agar Wood investments and should likewise bear the rotten fruits of the same.

I humbly urge this Honourable Court to see through the Plaintiff's atrocious web of lies and dismiss the Plaintiff's application with costs to be awarded to myself.

The parties' cases

74 Based on her version of events, the Plaintiff's case is as follows. As the Defendant repeatedly dishonoured multiple promises to pay her, the Plaintiff wanted written confirmation of his intentions to pay to which the Defendant agreed.¹³⁹ The instalment plan and other terms in the Settlement Agreement were reached by mutual consent.¹⁴⁰ She had retained the lawyers to draft the document based on the terms agreed to by the Defendant.¹⁴¹ The Defendant took the document from her on 16 July 2019 to read, and she had a tough time getting the Settlement Agreement signed the next day, as the Defendant was elusive and kept making excuses.¹⁴² Ultimately, the Defendant signed the Settlement Agreement voluntarily and the Plaintiff had not used any threats on him.¹⁴³ The Defendant did so knowing that he would be liable to pay the Plaintiff.¹⁴⁴ As a

¹³⁸ Defendant's AEIC at paras 294–295.

¹³⁹ Reply at para 18.

¹⁴⁰ Reply at para 19.

¹⁴¹ Reply at para 19.

¹⁴² Reply at para 19.

¹⁴³ Reply at para 19.

¹⁴⁴ Reply at para 19.

consequence of his failure to pay her pursuant to the Settlement Agreement, the Defendant owes her the sum of \$1,225,900.00, along with costs and interests.¹⁴⁵

75 The Defendant, meanwhile, denies any liability to the Plaintiff as claimed.¹⁴⁶ His defence against the Plaintiff's claim based on the Settlement Agreement is premised on the following:

- (a) He had been induced to sign the Settlement Agreement by the undue influence of and under duress from the Plaintiff;¹⁴⁷
- (b) In any event, the settlement agreement was void, as there was no intention by the parties to create legal relations;¹⁴⁸ and
- (c) Further, the settlement agreement was null, void and unenforceable due to the doctrine of *non est factum*.¹⁴⁹

The trial

76 Given the vivid disparities between the narratives of the Plaintiff and the Defendant, it was vital for these narratives to be tested against each other. The trial offered precisely this opportunity.

The witnesses

77 The Plaintiff was the only witness for her case. She did not call on Yap to testify, even though he might have been able to shed light on the events

¹⁴⁵ Statement of Claim at paras 1–7.

¹⁴⁶ Defence (Amendment No. 1) at para 37.

¹⁴⁷ Defence (Amendment No. 1) at para 33.

¹⁴⁸ Defence (Amendment No. 1) at para 34.

¹⁴⁹ Defence (Amendment No. 1) at para 35.

around the signing of the Settlement Agreement and the Consent Letter. When queried about this, she said that Yap had assaulted her mother in September 2020 and on subsequent occasions, and that an Expedited Order had been granted against Yap. Hence, she was not on speaking terms with him.¹⁵⁰

78 The Defendant, meanwhile, had two other witnesses who were agarwood investors. He tried but could not get Cedric to be his witness. The Defendant produced in court correspondence from his solicitors to Cedric as well as his own text messages, showing the efforts he made to persuade Cedric to attend the trial as a witness. The Defendant had also applied for leave¹⁵¹ to file a supplementary AEIC (“the Defendant’s Supplementary AEIC”), which was granted by the court (with the Plaintiff’s consent) on 11 March 2021.

79 In his Supplementary AEIC, the Defendant deposed that soon after he obtained unconditional leave from court to defend the Plaintiff’s claim, he had contacted Cedric around April 2020 to say he may need Cedric to attend court as his witness to which Cedric agreed.¹⁵² However, when he contacted Cedric around 16 October 2020 via WhatsApp to say he needed Cedric to attend the trial as his witness, Cedric rebuffed him.¹⁵³ In response to the letter from the Defendant’s solicitors dated 11 December 2020 requesting his attendance at trial as the Defendant’s witness,¹⁵⁴ Cedric messaged the Defendant to say he did not wish to be disturbed or involved.¹⁵⁵

¹⁵⁰ Transcript, 18 March 2021, p 188 line 29 to p 190 line 19.

¹⁵¹ HC/SUM 1119/2021.

¹⁵² Defendant’s Supplementary AEIC at para 4.

¹⁵³ Defendant’s Supplementary AEIC at para 6.

¹⁵⁴ AB at pp 452–453.

¹⁵⁵ AB at p 457.

The Plaintiff's evidence at trial

80 During the Plaintiff's cross-examination, the Plaintiff tried to downplay her investment experience. She would not admit that she was an active investor in the Nanning Scheme in China. She was also not forthright and prevaricated when questioned whether the Nanning Scheme was profitable (it was) until the court pressed her for an answer.¹⁵⁶ She would not even admit that it was her investment, trying to distance herself from it by claiming her long-time accountant Shanice requested her to invest \$50,000 and leave it to Shanice, who would "take care of everything".¹⁵⁷ Her evidence was contrary to the WhatsApp messages exhibited in the Defendant's AEIC that showed the Plaintiff's heavy involvement in the Nanning Scheme.¹⁵⁸ The court accepts the Defendant's characterisation that the methodology of the Nanning Scheme was that of a "Ponzi" or multi-level marketing scheme.¹⁵⁹ It appears, in fact, the Plaintiff recruited the Defendant as her "downline" in that scheme.¹⁶⁰

81 The Plaintiff's scheming in that project extended to her not wanting the Defendant and Shanice to meet while they were in Nanning.¹⁶¹ This was most likely because she did not want Shanice to get to know the Defendant and find out she had recruited him as her "downline".

¹⁵⁶ Transcript, 17 March 2021, p 18 line 4 to p 19 line 17.

¹⁵⁷ Transcript, 17 March 2021, p 22 line 12 to p 24 line 11.

¹⁵⁸ Defendant's AEIC at pp 144

¹⁵⁹ Defendant's AEIC at para 44.

¹⁶⁰ Transcript, 17 March 2021, p 29 lines 18–25.

¹⁶¹ Defendant's AEIC at p 148.

82 It was evident from those WhatsApp messages that the Plaintiff first communicated with the Defendant on 29 August 2016,¹⁶² well before the period she began investing in agarwood, which she had claimed in her AEIC was when she first met him.¹⁶³ She had also omitted mention in her AEIC of the fact that Cedric was in direct communication with her by 6 February 2017.¹⁶⁴ She was shown to have directly transferred funds to Cedric for her first investment,¹⁶⁵ contrary to her claim that her fund transfers were always made through and/or by the Defendant.

83 The Plaintiff's cross-examination¹⁶⁶ also revealed that it was Cedric who provided his bank account particulars to the Plaintiff, not the Defendant, as pleaded in her Reply.¹⁶⁷

84 It was during cross-examination that the Plaintiff disclosed she first met Cedric on or about 17 February 2017, when the Defendant introduced him at her restaurant at Punggol Settlement.¹⁶⁸

85 The Plaintiff did not disclose in her AEIC that while she was chasing the Defendant, she was simultaneously chasing Cedric for payment. This could be seen in the WhatsApp messages the Defendant exhibited in his AEIC.¹⁶⁹

¹⁶² AB at p 143.

¹⁶³ Plaintiff's AEIC at para 7.

¹⁶⁴ Defendant's AEIC at p 175; Transcript, 17 March 2021, p 43 lines 15–21.

¹⁶⁵ Defendant's AEIC at p 179; Transcript, 17 March 2021, p 45 line 31 to p 46 line 7.

¹⁶⁶ Transcript, 17 March 2021, p 45 lines 3–27.

¹⁶⁷ Reply at para 5.

¹⁶⁸ Transcript, 17 March 2021, p 35 line 7 to p 36 line 4.

¹⁶⁹ Defendant's AEIC at pp 304–305.

86 Counsel for the Defendant Mr Netto also showed the Plaintiff the number of messages she deleted very frequently, from around 13 March and 26 May 2019 and suggested it was because the Plaintiff had things to hide.¹⁷⁰ The Plaintiff's response was that she had deleted them at the time, to avoid any misunderstandings.¹⁷¹

The Defendant's evidence at trial

87 As pointed out at [77] above, the Defendant had two other witnesses apart from himself. His witnesses were Lim Shi Fu ("Shi Fu") and Bryan. Shi Fu used to introduce investors to Cedric¹⁷² while Bryan was one of the investors in agarwood.¹⁷³

88 In her AEIC, the Plaintiff alluded to the Defendant's bankruptcy,¹⁷⁴ which undoubtedly was designed to cast him in a bad light. In answer to the court's questions, the Defendant revealed that the Plaintiff was the indirect cause of his bankruptcy in mid-2017.¹⁷⁵

89 Apparently, through the Nanning Scheme that the Plaintiff promoted, the Defendant became acquainted with two Singapore participants, Ng Cheng Kwee David ("Ng") and Lee Lai Leng ("Lee"). They made him a director and proposed that the Defendant join their business. The Defendant unfortunately believed and trusted them, to the extent that he signed as a guarantor for loans

¹⁷⁰ Transcript, 17 March 2021, p 114 line 25 to p 119 line 21.

¹⁷¹ Transcript, 17 March 2021, p 115 lines 2–5 and p 119 lines 26–29.

¹⁷² Lim Shi Fu's AEIC at para 7.

¹⁷³ Siew Wei Quan, Bryan's AEIC at para 1.

¹⁷⁴ Plaintiff's AEIC at para 7.

¹⁷⁵ Transcript, 18 March 2021, p 224 line 26 to p 226 line 6.

taken out by the business from three banks, totalling over \$200,000. Ng and Lee then apparently disappeared along with the banks' loans. The banks then looked to the Defendant as the guarantor to repay the loans and when he could not, he was made bankrupt.

90 It was at this juncture that he met Cedric and was drawn into investing in agarwood, believing that the 10% commission which Cedric would pay for introducing investors would be a way out of his bankruptcy.¹⁷⁶ Indeed, the Defendant managed to repay the banks' loans and annul his bankruptcy, using his earnings from Cedric.¹⁷⁷ The Defendant was impressed with Cedric's lifestyle of changing motorcars multiple times.¹⁷⁸ However, he clarified he did not aspire to have the same lifestyle, but rather wanted to have funds to launch his own start-up, hoping it would be as successful as Elon Musk's Tesla Motors, Mark Zuckerberg's Facebook and Singaporean Tan Min-Liang's Razer.¹⁷⁹

91 The Defendant disclosed that when the Plaintiff was hounding him relentlessly, he was already under great stress as he was being questioned by the police arising out of his association with Ng and Lee.¹⁸⁰ Apparently, they were involved in a syndicate's cheating scam involving \$40m of SkillsFuture funds.¹⁸¹ In re-examination, the Defendant's counsel clarified it was in fact the Defendant who lodged a police report against Ng and Lee.¹⁸²

¹⁷⁶ Transcript, 18 March 2021, p 226 line 11 to p 227 line 10.

¹⁷⁷ Transcript, 18 March 2021, p 227 line 25 to p 228 line 3.

¹⁷⁸ Transcript, 18 March 2021, p 232 lines 23–25.

¹⁷⁹ Transcript, 18 March 2021, p 232 line 29 to p 233 line 13.

¹⁸⁰ Transcript, 18 March 2021, p 236 line 20 to p 240 line 5.

¹⁸¹ Transcript, 18 March 2021, p 229 lines 21–23.

¹⁸² Transcript, 18 March 2021, p 274 lines 4–5.

92 Arising out of the police investigations that followed the Defendant’s police report, charges were brought against Ng and Lee and resulted in the Defendant being charged as a co-conspirator. Ng and Lee were also charged with cheating the banks over the loans they obtained. Counsel for the Defendant informed the court that Ng and Lee would be pleading guilty to the cheating charges regarding the SkillsFuture funds but the Defendant had claimed trial to the charge of being a co-conspirator.

93 What emerged from the Defendant’s additional evidence obtained in cross-examination was confirmation of the court’s disbelief that the Plaintiff’s investors were only members of her immediate family as she insisted. The Defendant testified that the Plaintiff’s pool of outside investors exceeded ten in number. When the investors like the Plaintiff became “stuck” at end-2018, the Plaintiff pooled all their names under her own name. Hence, when she pressurised the Defendant for payment, it was on behalf of the Plaintiff’s investors as well as herself.¹⁸³

94 Nothing turns on the testimony of either Shi Fu or Bryan. Shi Fu was an “introducer” of investors to Cedric and deposed in his AEIC that his 30-odd investors are owed about \$3.6m by Cedric.¹⁸⁴ Although all remain unpaid to-date, none of them have sued Shi Fu, as they well knew that their investments were made with Cedric using the Trello platform.¹⁸⁵

95 Shi Fu also deposed that he met the Plaintiff at the first meeting where Cedric, the Defendant and three other investors were present.¹⁸⁶ He recalled the

¹⁸³ Transcript, 18 March 2021, p 253 lines 1–13.

¹⁸⁴ Lim Shi Fu’s AEIC at para 8.

¹⁸⁵ Lim Shi Fu’s AEIC at para 10.

¹⁸⁶ Lim Shi Fu’s AEIC at paras 13–14.

Plaintiff reading Cedric's fortunes then.¹⁸⁷ The second occasion he met the Plaintiff was at Cedric's office in the presence of the Defendant after problems with the agarwood investment arose.¹⁸⁸ He disclosed his investors did not lodge police reports against Cedric, although the Defendant's investors did.¹⁸⁹

96 Shi Fu testified that the Defendant had mentioned to him that his (the Defendant's) investor was trying to get him to sign a settlement agreement and to use it to appease her investors. Shi Fun said he strongly discouraged the Defendant from doing so. Subsequently, after the Defendant had signed the document, the Defendant told Shi Fun that he was quite stressed and was pressured into signing the document.¹⁹⁰

97 The Defendant's other witness Bryan was an investor introduced to Cedric by the Defendant.¹⁹¹ Unlike the Plaintiff, he attributed no blame to the Defendant for his failed investment,¹⁹² which amounted to about \$300,000.¹⁹³ Bryan was also present at the first meeting where the Plaintiff and Cedric were present and she read Cedric's fortunes.¹⁹⁴

98 Bryan deposed that he was a member of the 2019 Chat Group¹⁹⁵ (see [54] above). He confirmed the Defendant's account of the incident where a member

¹⁸⁷ Lim Shi Fu's AEIC at paras 15–16.

¹⁸⁸ Lim Shi Fu's AEIC at paras 17.

¹⁸⁹ Transcript, 18 March 2021, p 294 lines 19–28.

¹⁹⁰ Transcript, 18 March 2021, p 292 lines 17–25.

¹⁹¹ Siew Wei Quan, Bryan's AEIC at para 1.

¹⁹² Siew Wei Quan, Bryan's AEIC at paras 19–22.

¹⁹³ Transcript, 18 March 2021, p 300 lines 21–24.

¹⁹⁴ Siew Wei Quan, Bryan's AEIC at paras 11–12.

¹⁹⁵ Siew Wei Quan, Bryan's AEIC at paras 13–14.

of the 2019 Chat Group, Jason, took away the Defendant's handphone. Contrary to the Plaintiff's claim that she was not involved, Bryan testified that all of the 2019 Chat Group members present that day – *ie* Jason, Bryan and the Plaintiff – had provided input to the Defendant when they insisted that he call Cedric (who was then in Taiwan) and make threats.¹⁹⁶ The aim was for the group to recover their investments from Cedric; they did not succeed.

The issues

99 The main issue the court has to determine is whether the Settlement Agreement is valid and enforceable (as the Plaintiff contends) or a sham document not meant to create any legal intentions (as the Defendant asserts). A secondary and related issue is whether the Plaintiff invested with Cedric as the Defendant and his two witnesses claim, or with the Defendant as the Plaintiff asserts.

The Plaintiff's submissions

100 Before the court makes its finding, it would be appropriate to look at the closing submissions filed by the parties.

101 The Plaintiff's submissions contained a misreading of the evidence before the court. Her statement¹⁹⁷ that the Defendant is facing criminal charges on the SkillsFuture scam does not set out the full picture, which this court did at [91]–[92] above.

¹⁹⁶ Siew Wei Quan, Bryan's AEIC at paras 16–17; Transcript, 18 March 2021, p 299 lines 5–28.

¹⁹⁷ Plaintiff's closing submissions at para 5.

102 The Plaintiff ignored the history of how she and the Defendant became acquainted. Her submissions were focused entirely on the Settlement Agreement, the terms of which she argued were not unfair as the Defendant had signed the document voluntarily. The Plaintiff submitted that the Defendant’s silence amounted to acquiescence to the contents of the Settlement Agreement and his protests only surfaced after he filed his defence.¹⁹⁸

103 The Plaintiff added that a tenet of common law dictates that courts should exercise deliberate caution in the interests of upholding the autonomy of contracting parties and their freedom to contract. The sanctity of a signed agreement between two willing parties should not be set aside on trivial grounds.¹⁹⁹

104 In respect of procedural unfairness, the Plaintiff argued that it had not surfaced in evidence whatsoever that the Plaintiff had conducted herself in such a reprehensible manner towards the Defendant such as to render the Settlement Agreement void. The Defendant’s will had not been overborne.²⁰⁰

105 In the Plaintiff’s submissions, the only reference to her failure to call her brother to testify was in passing. She described his absence as “unfortunate” but excused herself submitting it was “valid given the extenuating circumstances in her household”. On the other hand, she criticised the Defendant’s failure to get Cedric to be his witness. She added that the Defendant’s calling Shi Fu and Bryan as witnesses served only to emphasis the Defendant’s curious omission to bring Cedric as a party to these proceedings.²⁰¹

¹⁹⁸ Plaintiff’s closing submissions at para 16.

¹⁹⁹ Plaintiff’s closing submissions at para 17.

²⁰⁰ Plaintiff’s closing submissions at paras 19 and 21.

²⁰¹ Plaintiff’s closing submissions at para 37.

The Defendant's submissions

106 The Defendant's submissions not surprisingly accused the Plaintiff of making him a scapegoat for her losses in the agarwood investment, although she knew the mastermind was Cedric, who has disappeared.²⁰²

107 The Defendant submitted that the Plaintiff's claims are incongruent with contemporaneous documents and her evidence adduced at trial was inherently incredible and fraught with contradictions. The Defendant on the other hand had discharged his burden and proved that the Plaintiff obtained Settlement Agreement unconscionably by way of duress and/or undue influence.²⁰³

108 In support of his submission that the Plaintiff was an unreliable and untruthful witness, the Defendant referred to extracts from the court transcripts. The Defendant cited many instances where the Plaintiff lied.²⁰⁴ The court will only highlight those aspects of her evidence relating to the Settlement Agreement which were highly unsatisfactory and cast doubts on her veracity:

(a) There were inconsistencies in the Plaintiff's account of events between 14 and 17 July 2019 – she gave four different versions of whether there were witnesses present and how the signing of the Settlement Agreement transpired;²⁰⁵

(b) Her insistence that she and the Defendant had agreed to all the terms of the Settlement Agreement and that she had provided him with

²⁰² Defendant's closing submissions at para 3.

²⁰³ Plaintiff's closing submissions at para 5.

²⁰⁴ Plaintiff's closing submissions at paras 14–27.

²⁰⁵ Plaintiff's closing submissions at para 86.

a copy two days before the signing was contradicted by her own evidence;

(c) She expected the court to believe that the lawyers would amend the draft Settlement Agreement of their own volition on 5 July 2019 and not on her instructions;²⁰⁶ and

(d) Notwithstanding the fact that she had the draft Settlement Agreement for 12 days (5–16 July 2019) she did not provide the Defendant with a copy before she made him sign the document.

109 Further, there were inconsistencies between the Plaintiff's Reply, her reply affidavit for her unsuccessful application for summary judgment, and her oral testimony:²⁰⁷

(a) In the Reply, the Plaintiff alleged that the Defendant refused to attend at the lawyers' office so the Plaintiff took the Settlement Agreement to him for signature on 16 June 2019. She told him they would sign it the following day after he had read the document and the Defendant took the copy back with him. She averred that she had a tough time getting the document signed the next day as the Defendant was elusive and made repeated excuses of not having a witness, resulting in the Plaintiff having to use her relative to witness his signature;²⁰⁸

(b) In her summary judgment reply affidavit, the Plaintiff averred that the Defendant signed the Settlement Agreement at the void deck

²⁰⁶ Defendant's closing submissions at para 25(k).

²⁰⁷ Defendant's closing submissions at para 87.

²⁰⁸ Reply at para 19.

of the block where he resides, in the presence of his witness and herself, and that he was untruthful in stating there was no witness. She added that he had the document with him for two days before he signed it in the presence of the witness;²⁰⁹

(c) In court, she admitted (after prevaricating) that only she and the Defendant were present when he signed the Settlement Agreement on 16 July 2019.²¹⁰

110 The Defendant pointed out that whenever the Plaintiff was confronted with her lies, her convenient excuses were (i) her version of events took place over the telephone (and were thus unrecorded);²¹¹ (ii) she did not understand the questions asked by counsel for the Defendant;²¹² or (iii) her English is poor.²¹³

111 The Defendant highlighted that the Plaintiff lied to the extent that she claimed that whenever she referred to “my investors” in her WhatsApp messages, she was referring to herself and or her family members like her brother and mother, giving numerous illogical explanations in the process.²¹⁴

112 On the other hand, the Defendant submitted, his version of events was consistent with contemporaneous documents and withstood the rigours of cross-

²⁰⁹ Plaintiff’s affidavit dated 23 January 2020 at para 21.

²¹⁰ Transcript, 17 March 2021, p 158 line 26 to p 162 line 25.

²¹¹ See transcript, 17 March 2021, pp 46, 47, 69, 96, 101, 102, 106, 116–118, 134, 141–142 as non-exhaustive examples.

²¹² See transcript, 17 March 2021, pp 144, 155, 164 and 168.

²¹³ See transcript, 17 March 2021, pp 16, 17, 77 and 100.

²¹⁴ Transcript, 17 March 2021, p 61 lines 20–32, p 75 lines 1–11, p 79 lines 1–19, p 93 lines 9–21, p 94 line 16 to p 95 line 12, p 104 line 29 to p 105 line 25 and p 109 lines 14–32.

examination. He submitted that he had successfully proved on a balance of probabilities that:²¹⁵

- (a) the Plaintiff had invested in agarwood on behalf of other investors;
- (b) the Plaintiff was heavily in debt and struggled to hold off her investors;
- (c) the Plaintiff knew Cedric was liable to return the agarwood investment and not the Defendant who only acted as a middleman or commission earner;
- (d) the Plaintiff exerted illegitimate pressure and/or undue influence on the Defendant over a long period of time;
- (e) the Settlement Agreement was a sham agreement that was meant to deceive and/or buy more time from the Plaintiff's investors;
- (f) the Defendant signed the Settlement Agreement under duress or undue influence on 16 July 2019.

113 The Defendant added that the complete absence of any reference by the Plaintiff in her WhatsApp messages to the Settlement Agreement *subsequent* to its signing, coupled with her failure to demand payment from him in accordance with its terms as well as her failure to respond to the Defendant's 7 October 2019 message (see [71] above), lent credence to his claim that the Settlement Agreement was simply meant to be a sham document to appease the Plaintiff's

²¹⁵ Defendant's closing submissions at para 8.

investors.²¹⁶ Such omissions were to be contrasted with the Plaintiff's repeated references to Cedric in those messages starting from 7 August 2019 when she inquired about Cedric's holding company (see [67] above).

114 In regard to his defence that the Settlement Agreement was a sham document, the Defendant cited in support, the Court of Appeal decision in *Toh Eng Tiah v Jiang Angelina and another appeal* [2021] 1 SLR 1176 ("*Toh Eng Tiah*") which the court will return to later (see [131] below).

115 The Defendant requested that the court draw an adverse inference against the Plaintiff under s 116, illustration (g) of the Evidence Act (Cap 97, 1997 Rev Ed) ("the EA") for her failure to call her brother to testify.²¹⁷

The court's findings

116 The court did not form a favourable impression of the Plaintiff at all when she was in the witness stand. She changed her testimony faster than a chameleon changes its colour, whenever she was caught lying or found to have given inconsistent testimony.

117 The Plaintiff would not even concede to facts that were undisputed (such as that she was a member of the Trello platform) without being pressed by the court.²¹⁸ Even then, she attempted to make herself look more passive than she actually was. While she would not admit that she used the platform to decide whether to invest or not, she agreed that she used it to track her investments in agarwood. She alleged that it was the Defendant who would call her if there

²¹⁶ Defendant's closing submissions at para 138.

²¹⁷ Defendant's closing submissions at paras 31–32.

²¹⁸ Transcript, 17 March 2021, p 61 lines 20–32.

were investment opportunities.²¹⁹ This, however, was contradicted by her own police report made on 3 February 2019 against a Mokuzai Pte Ltd and the Defendant, where she displayed clear knowledge of the workings of the Trello platform and indicated that the Defendant was merely recording her investments.²²⁰

118 Despite all the overwhelming evidence before the court pointing to her attempts to recover her invested sums *from* Cedric, the Plaintiff had no compunctions in lying throughout her oral testimony as well as in her AEIC, repeatedly asserting that her money was invested with the Defendant and he was liable for her losses. As examples, the Plaintiff’s WhatsApp messages dated 31 May 2019, 2 June 2019, 20 June 2019 and 27 June 2019 clearly stated she wanted Cedric to return all her money.²²¹

119 Further, the Plaintiff could not point to a single message in the voluminous WhatsApp messages the Defendant placed before the court that supported her case that the terms in the Settlement Agreement were negotiated with or consented to by the Defendant (see [74] above).

120 The Plaintiff’s lack of candour extended to her AEIC – she did not state that it was her brother rather than “a relative” who signed the Settlement Agreement purportedly as the witness to the Defendant’s signature (which was not true in any event). She could not give any answer let alone a satisfactory one when the court questioned whether her omission was because she intended to mislead the court.²²²

²¹⁹ Transcript, 17 March 2021, p 65 lines 1–16.

²²⁰ AB at p 300.

²²¹ See Defendant’s AEIC at pp 292–293.

²²² Transcript, 17 March 2021, p 158 lines 1–24.

121 Based on the evidence adduced, the court has no doubt the Plaintiff lied in court, in her AEIC and in her previous affidavit filed for the purpose of her unsuccessful summary judgment application against the Defendant.

122 Despite her denials, the court finds that the Plaintiff did pressure the Defendant into signing the Settlement Agreement by chasing him relentlessly coupled with threats of going to the police and/or procuring gangsters or debt collectors to pursue him. He did not, as she claimed, sign the document willingly. If indeed the Defendant did sign the Settlement Agreement willingly along with the Consent Letter, it was because she lied to him, that she would not enforce the terms therein and she only wanted it to show to her investors to appease them.

123 In re-examination, the Plaintiff had sought to suggest that it was the Defendant who came up with the idea of an agreement.²²³ The evidence adduced in particular from the WhatsApp exchanges between the parties on 15–17 July 2019²²⁴ completely refutes this incredible suggestion – the Defendant was trying to avoid her at all costs. Equally incredible was the Plaintiff’s testimony that the Defendant agreed with her on 17 July 2019 by telephone to sign the Consent Letter.²²⁵

124 It is telling that the Plaintiff did not refer to the Settlement Agreement at all in her communications with the Defendant *after* it was signed. Even more telling was the fact that the Plaintiff failed to have her brother Yap, who was the supposed witness to the Defendant’s signature, testify to corroborate her

²²³ Transcript, 17 March 2019, p 210 line 16 to p 211 line 2.

²²⁴ Defendant’s AEIC at pp 294–295.

²²⁵ Transcript, 17 March 2019, p 212 lines 18–26.

evidence. The court rejects the Plaintiff's explanation for not calling Yap, namely that Yap was unwilling to speak to her after he had assaulted her mother and had an Expedited Order granted against him. The court's attention was not drawn to any documentary evidence which supported the Plaintiff's claims, such as a police report or the Expedited Order itself. Indeed, even though the initial assault had purportedly taken place in September 2020, the Plaintiff's lawyers indicated to the Defendant's counsel on 20 November 2020 that Yap would be appearing as the Plaintiff's witness.²²⁶ When cross-examined as to why she did not subpoena Yap, she quickly cycled through a number of excuses: that she did not know about subpoenas²²⁷ (notwithstanding that she was legally advised); that she did not dare consult her lawyers;²²⁸ and that this present matter only came to light after her mother had been hurt²²⁹ (notwithstanding that she initiated this Suit in 2019, and that her mother was only allegedly hurt thereafter). The court considers this to be yet another example of the Plaintiff's evasiveness and duplicity, and finds the more likely explanation for the Plaintiff's failure to call her brother to be that she knew that his version of events would not sit well with hers. In other words, the court accepts the Defendant's submission that an adverse inference should be drawn against the Plaintiff for not calling her brother to testify, pursuant to s 116, illustration (g) of the EA.

125 The Plaintiff's failure to call her brother to testify is to be contrasted with the efforts made by the Defendant and his counsel to persuade Cedric to be his witness as set out earlier at [78]–[79].

²²⁶ Transcript, 18 March 2019, p 188 lines 16–26.

²²⁷ Transcript, 18 March 2019, p 190 lines 7–8.

²²⁸ Transcript, 18 March 2019, p 190 lines 13–14.

²²⁹ Transcript, 18 March 2019, p 190 lines 14–19.

126 The court earlier noted (at [71] above) that the Plaintiff did not respond to the Defendant's 7 October 2019 WhatsApp message asking why she had sued him on the Settlement Agreement reneging on her word she would not. In re-examination, her incoherent and incredible explanation was that she did not know how to respond to him and was afraid if her response was wrong, he would not pay back her money.²³⁰

127 In regard to the quantum of her claim, the Plaintiff had conceded during cross-examination that she had not taken into account and deducted therefrom, the \$15,000 that she received from Cedric through the Defendant (see [53] above)²³¹. Even when (according to her) her investors were hounding her, the Plaintiff was still motivated by greed, as can be seen from recital C of the Settlement Agreement set out at [21]. Despite her WhatsApp messages to the Defendant requesting him to buy her out or find an investor to buy her out for \$300,000, the Plaintiff wanted to recoup from the Defendant her *entire* investment *plus* profits of 30% in her claim for \$1,225,900 encapsulated in recital C. The court further notes that in the Plaintiff's police report (see [117] above), she had estimated that between April and November 2018, she had received \$100,000–150,000 from her agarwood investment.²³² No credit was given to those payments either in the Settlement Agreement.

128 The court further entertains no doubts that the WhatsApp messages that the Plaintiff deleted (see [86] above) more likely than not were adverse to her case – either because they showed she looked to Cedric as the person liable for her investments, or they related to assurances she gave to the Defendant on

²³⁰ Transcript, 18 March 2021, p 218 lines 13–28.

²³¹ Transcript, 18 March 2017, p 197 lines 13–28.

²³² AB at p 302.

using the Settlement Agreement to appease her investors and that she would not enforce it against the Defendant.

129 Turning next to the Defendant’s testimony, it is to be noted that unlike the Plaintiff, the Defendant did not prevaricate or was evasive during cross-examination. He answered questions readily and candidly even when it did not help his case. Indeed, when the court questioned why he signed the Settlement Agreement, albeit after considerable pressure from the Plaintiff, the Defendant explained it was because the Plaintiff told him many times it was to show to her investors to appease them and he was still trying to help her as a friend.²³³ Foolishly he trusted her, to his detriment.

130 The court concludes that the Plaintiff deceived the Defendant into signing the Settlement Agreement by falsely assuring him that she would not enforce the terms therein as the document was only meant to be shown to her investors to appease them. That was why the Defendant did not protest until the Plaintiff sued him.

131 Turning now to the issue as to whether the Settlement Agreement was a sham document, it would be instructive at this juncture, to look at *Toh Eng Tiah*, which was cited by the Defendant. In that case, the Court of Appeal (at [73]) adopted Diplock LJ’s classic definition of a sham in *Snook v London and West Riding Investments Ltd* [1967] 2 QB 786 at 802C–802E:

... I apprehend that, if [the term ‘sham’] has any meaning in law, it means acts done or documents executed by the parties to the ‘sham’ which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create. But

²³³ Transcript, 18 March 2021, p 282 line 27 to p 283 line 5.

one thing, I think is clear in legal principle, morality and the authorities ..., that for acts or documents to be a 'sham,' with whatever legal consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. ...

132 The appellate court went on to say at [74]–[77]:

74 Put another way, the essential element of a sham is that the parties did not intend to create the legal relations that the acts done or documents executed give the impression of creating. ...

77 That being the case, where the allegation is that the agreement was a sham, this is a question that goes to the very *existence* of the contract – if proved, the existence of a sham means that the agreement was not intended to create enforceable legal obligations but was intended to deceive third parties. ...

[emphasis in original]

133 The court accepts the Defendant's evidence that the Plaintiff told him (and which he unfortunately believed) that the Settlement Agreement was only meant to be shown to the Plaintiff's investors to appease and thereby deceive them into thinking that the Defendant would be paying them back, to take pressure off the Plaintiff until (as she hoped) her investors received their payments from Cedric. The Plaintiff reneged on that understanding by suing the Defendant. The document was never meant to create enforceable legal obligations.

134 Consequently, the court dismisses the Plaintiff's claim with costs to the Defendant.

Costs

135 The court was informed by counsel for the Plaintiff that the Defendant had made an Offer to Settle (“OTS”) on 22 December 2020 on the following terms:

- (a) The Defendant would pay the Plaintiff \$50,000 in full and final settlement of all matters in this Suit;
- (b) if the Plaintiff accepted the OTS within 14 days of its service, each party would bear its own legal costs.

136 On 30 December 2020, the Plaintiff’s solicitors indicated to the Defendant’s solicitors that she would not accept the OTS.

137 Order 22A r 9(3)(b) of the Rules of Court (2014 Rev Ed) states:

- (3) Where an offer to settle made by a defendant —

...

- (b) is not accepted by the plaintiff, and the plaintiff obtains judgment not more favourable than the terms of the offer to settle,

the plaintiff is entitled to costs on the standard basis to the date the offer was served and the defendant is entitled to costs on the indemnity basis from that date, unless the Court orders otherwise.

138 Here, the court dismissed the Plaintiff's claim. That being the case, the Defendant is entitled to costs on a standard basis up to the date the OTS was served namely 22 December 2020 and from 23 December 2020 onwards, he is entitled to his costs on an indemnity basis. Such costs are to be taxed unless otherwise agreed.

Lai Siu Chiu
Senior Judge

Prabhakaran s/o Narayanan Nair and Anne Wong (Karan Nair and
Co) for the plaintiff;
Luke Anton Netto and Chiam Jia-An (Netto & Magin LLC) for the
defendant.
