

Wang Rui v Yap Chor Peng Freddy
[2013] SGHC 210

Case Number : Suit No 428 of 2012
Decision Date : 18 October 2013
Tribunal/Court : High Court
Coram : Vinodh Coomaraswamy J
Counsel Name(s) : Robert Tock (Rodrigo Tock & Wilson) for the plaintiff; Han Hean Juan Michael and Muhammad Yazid @ Lim Jin Yuan (Hoh Law Corporation) for the defendant.
Parties : Wang Rui — Yap Chor Peng Freddy

Evidence – Weight of evidence

18 October 2013

Judgment reserved.

Vinodh Coomaraswamy J:

Introduction

1 This is an action by the plaintiff to recover a debt of \$330,000 from the defendant. The plaintiff claims she lent the defendant this money on five occasions between 19 May 2010 and 25 January 2011. The defendant's defence is a flat denial that he even received \$330,000 from her.

2 Only the plaintiff and the defendant gave evidence at trial. There was also almost no documentary evidence directly supporting either party's case. My decision therefore comes down to a crucial finding on a fundamental question of fact: did the plaintiff even *transfer* (to use a neutral term) \$330,000 to the defendant? That crucial finding of fact turns on which of the parties I find to be the more credible witness on the balance of probabilities, taking into account the entire tenor of their evidence, the documentation available (minimal though it be) and the inherent probabilities.

3 Having considered the parties' evidence and submissions, I dismiss the plaintiff's case with costs for the reasons which follow.

The relationship between the plaintiff and the defendant

4 The plaintiff and the defendant first met each other towards the end of 2006. They were both then married, but not to each other. In September 2009, the defendant and his wife divorced. [\[note: 1\]](#) The plaintiff never divorced. [\[note: 2\]](#) The plaintiff and defendant commenced a relationship in December 2009. That relationship became an intimate one in May 2010. [\[note: 3\]](#) They treated each other as husband and wife. [\[note: 4\]](#) From April 2011, [\[note: 5\]](#) they started living together. A child was born of their relationship in November 2011. [\[note: 6\]](#) Their relationship ended in difficult circumstances in March 2012. [\[note: 7\]](#) The plaintiff commenced this suit in May 2012.

The plaintiff's case

The loans

5 The plaintiff's evidence was that she lent the defendant the sum of \$330,000 on five occasions over the nine-month period between 19 May 2010 and 25 January 2011 in the following manner: [\[note: 8\]](#)

	Date	Amount	Plaintiff's source of funds
(a)	Between 19 May and 24 May 2010 [note: 9]	\$75,000	Plaintiff's UOB account in Singapore
(b)	Between 19 May and 24 May 2010 [note: 10]	\$25,000	Cash in plaintiff's possession
(c)	Between 25 May and 24 June 2010	\$100,000	Withdrawal in Singapore from the plaintiff's bank account in China
(d)	On 22 October 2010	\$80,000	
(e)	Between 12 January 2011 and 25 January 2011	\$50,000	
	Total	\$330,000	

Her evidence, further, is that she handed over all of this money to the defendant in his car, in cash and in \$1,000 notes. [\[note: 11\]](#)

The source of the plaintiff's funds

6 In her affidavit of evidence in chief, the plaintiff said that the immediate origin of \$255,000 out of the \$330,000 (items (b) to (e) in the table at [0] above) was the plaintiff's personal bank account in China. The Chinese government's currency controls restricted an individual to remitting out of China no more than US\$50,000 annually. So, she said, the defendant showed her a method to get around the currency controls and to withdraw cash from those accounts in Singapore. [\[note: 12\]](#)

7 The method worked as follows. [\[note: 13\]](#) The plaintiff would go to a remittance kiosk at People's Park Complex and tell the teller that she wanted to withdraw money from her bank account in China. The teller would give the plaintiff the number of a bank account in China to which the plaintiff was to transfer the required sum. The plaintiff would then telephone her brother in China to ask him to transfer the money from her bank account in China to the bank account whose number the teller had provided. When the plaintiff's brother informed the plaintiff that the transfer had been carried out, she would inform the teller. The teller would then photocopy the plaintiff's identity card and hand her the cash over the counter, [\[note: 14\]](#) presumably after verifying that the transfer in China had indeed taken place. The whole exercise would be completed within half an hour. [\[note: 15\]](#)

Plaintiff did not ask for a written acknowledgment of indebtedness

8 The plaintiff did not ask the defendant for a written acknowledgement of his indebtedness at the time of the loans. She said that this was because of the closeness then of their relationship. [\[note: 16\]](#) However, according to her, on 30 April 2011, [\[note: 17\]](#) the defendant voluntarily wrote in Mandarin and signed in English an acknowledgment of his indebtedness to her in the sum of \$200,000. [\[note: 18\]](#) His reason for acknowledging an indebtedness of only \$200,000 instead of \$330,000 was

because he wanted to set-off the significant sums of money he had spent in wooing her against his indebtedness to her. [\[note: 19\]](#)

9 At some time between April 2011 and November 2011, the plaintiff told the defendant she wanted to end the relationship. She asked the defendant to repay her the \$330,000. [\[note: 20\]](#) His response, according to her, was to kneel in front of her in tears, at his office and in front of seven or eight members of his staff, and to admit that he owed her the money but couldn't repay her. [\[note: 21\]](#)

The defendant's case

10 The defendant's case is very simple: the plaintiff never even *handed over* [\[note: 22\]](#) \$330,000 to him, let alone *lent* \$330,000 to him. The plaintiff never signed any acknowledgment of indebtedness. Indeed, it was the plaintiff who borrowed money from the defendant because she was an inveterate gambler who lost heavily at the casino. [\[note: 23\]](#) He dismissed the plaintiff's claim in its entirety as being a fabrication and fictitious. [\[note: 24\]](#)

My findings

11 For a case which is built on a litigant's word alone to have any chance of being accepted, it must at the very least be internally consistent. It also helps if there is at least some independent evidence which, even though it may not be directly probative of the plaintiff's case, offers some cogent, albeit indirect, support. The plaintiff offered no such evidence at all. Her oral evidence on crucial points was riddled with inconsistencies and improbabilities such that it was in certain respects almost impossible to follow. She adduced independent evidence in support of her case which was not cogent. She failed to adduce independent and cogent evidence which she claimed to have available.

Internal inconsistencies

The source of the money lent

12 The plaintiff's affidavit of evidence in chief was very clear: *all* of the money except for the first \$75,000 was drawn from *the plaintiff's* bank account in China. [\[note: 25\]](#) That meant that that money came from a *single* source, that single source was a *single* bank account in China and that single bank account was in the *plaintiff's* name. The plaintiff's oral evidence in cross-examination on this aspect of her case was inconsistent with this account in nearly every respect.

13 First, her evidence under cross-examination was wholly contradictory. Initially, she said that there were *three* sources, not one, for the money she had lent to the defendant: banks in China, her winnings from the casino in Singapore and money from what she called the "illegal money dens". [\[note: 26\]](#) In the very next breath, however, she corrected herself and said that *all* the money at that point in time came from China. [\[note: 27\]](#)

14 Second, when she was asked in cross-examination for the name of her bank in China she gave the name of *two* banks, [\[note: 28\]](#) not one. And when asked for the account number, she could not provide it. [\[note: 29\]](#) She did not suggest that she knew the number but had forgotten it or that she did not know the number but could obtain it from her documents. She simply said that she did not know the account number.

15 Third, she testified that the money lent to the defendant came from not *one* bank account in China but *three* bank accounts. [\[note: 30\]](#) When asked to name the banks, she first gave the name of two banks: [\[note: 31\]](#) the Construction Bank of China and Bank of China. [\[note: 32\]](#) She even went so far as to say that the money was remitted from *her* bank account at Bank of China in China. [\[note: 33\]](#) Then she said that the accounts at Bank of China were merely temporary accounts. And on one occasion, she even testified that she had an account at DBS in China. [\[note: 34\]](#) Finally, on one occasion when I tried to clarify the confusion by asking her simply and directly at which bank her account was with, her response deflected the question by describing the *process* by which the money was remitted to Singapore. [\[note: 35\]](#)

The acknowledgment of indebtedness

16 The plaintiff's evidence about the defendant's acknowledgment of indebtedness did not make sense. Her evidence was that in March 2011, she lost contact with the defendant. She finally tracked him down to a hotel on 28 April 2011. That was when, she said, the defendant voluntarily drew up and signed the acknowledgment of indebtedness on 30 April 2011. [\[note: 36\]](#) But there was no reason for the defendant to have signed any acknowledgment of indebtedness in April 2011. In April 2011, the plaintiff and the defendant were still in a close relationship. [\[note: 37\]](#) In or about February 2011, the plaintiff became pregnant with the defendant's child. In May 2011, the defendant invited the plaintiff to live with him. It is between these two dates that the plaintiff alleges the defendant signed the acknowledgment of indebtedness. At that time, the plaintiff accepts, the defendant expressed his love for her and took very good care of her. [\[note: 38\]](#) There was no reason for the defendant to volunteer an acknowledgment of indebtedness in April 2011 or for the plaintiff to have accepted it in April 2011.

17 The plaintiff also added considerable embellishment in cross-examination to her evidence in chief about the circumstances in which the defendant signed the alleged acknowledgment of indebtedness in April 2011. [\[note: 39\]](#) None of these embellishments were found in her affidavit of evidence in chief. Her explanation was that her lawyer had told her only to put the relevant points in her affidavit of evidence in chief. [\[note: 40\]](#) I accept that. But the first 15 paragraphs of the plaintiff's affidavit of evidence in chief consisted of wholly irrelevant material about her personal relationship with the defendant. I therefore do not accept the plaintiff's explanation as to why this additional material was left out of her affidavit.

Independent evidence produced was not cogent

18 The plaintiff was able to produce *some* independent evidence to support her case on only the first of the alleged loans. This was in respect of the alleged loan of \$75,000 which the plaintiff claims to have extended to the defendant between 19 May 2010 and 24 May 2010 (item (a) in the list at [0] above). But that independent evidence was not cogent and therefore did not take her case very far.

19 The documentary evidence which the plaintiff relied on to support her case on the first loan was a statement of account for her UOB account. The plaintiff produced statements for this account covering the period from January 2010 to December 2010. She relied in particular on the statement for the period from 1 May 2010 to 31 May 2010. [\[note: 41\]](#) That statement showed that on 19 May 2010, the plaintiff withdrew the sum of \$75,000 in cash from this account. But it showed no more than that. In particular, it did not show where the cash went. This is a particularly significant gap in the plaintiff's case. It appears from the bank statements which the plaintiff produced that her

preferred mode of financial dealings was cash. During the period covered by the statements – January 2010 to December 2010 – she made 83 withdrawals from this account. All of these withdrawals save for one was a cash withdrawal. The one exception was an electronic funds transfer transaction at the point of sale on 5 July 2010. The plaintiff's cash withdrawals from this account ranged in quantum from \$50 to \$75,000. It is true that the cash withdrawal of \$75,000 on 19 May 2010 is the single largest cash withdrawal from this account during this period. But eight of her cash withdrawals during this period were for significant sums of over \$10,000. There is therefore no basis for me to attach any especial significance to the withdrawal of \$75,000 on 19 May 2010 simply because of the quantum involved.

20 The result is that I find no basis in the bank statements which the plaintiff has produced to draw the inference that the plaintiff's purpose in withdrawing \$75,000 from her account on 19 May 2010 was to lend that sum to the plaintiff on or around that date. If this were the only gap in an otherwise credible case, I might have been prepared to draw the inference which the plaintiff urges upon me on the weight of her evidence alone. But this was not the only gap in the plaintiff's case.

21 On the remaining four of the plaintiffs' alleged loans to the defendant, the plaintiff was not even able to put forward the type of tangential evidence she relied on to support her case on the first loan. The result is that the plaintiff's case on the first loan rests *principally* on her word and her case on the remaining four loans rests *entirely* on her word. But her word was thoroughly confused and not worthy of belief, for the reasons I have set out above.

Cogent evidence referred to but not produced

22 Further, the plaintiff's testimony was that she had independent and cogent evidence to support her case. Inexplicably, she chose not to produce that evidence.

23 She did not produce in evidence the acknowledgment of indebtedness which she said the defendant volunteered in April 2011. Her evidence was that she kept the acknowledgement of indebtedness in a box and last saw it on 26 January 2012 [\[note: 42\]](#) but could no longer find it again when she looked for it on 5 March 2012. [\[note: 43\]](#) She did not explain where the box was. She did not attempt to offer any explanation as to what might have happened to it. I do not accept that this acknowledgment of indebtedness exists.

24 The plaintiff said that she had a recording of what was said when the plaintiff signed the alleged acknowledgment of indebtedness. [\[note: 44\]](#) The recording was not produced.

25 The plaintiff's evidence was that her brother in China arranged the transfers from her bank account in China to the bank account provided by the remittance kiosk. The plaintiff further volunteered in cross-examination that her brother could give evidence on her behalf. [\[note: 45\]](#) Oral evidence from her brother that those transfers in China had indeed taken place and the details of the transfers – for example, dates and amounts – would at least provide some tangential support for the plaintiff's case. Yet, the plaintiff did not call her brother as a witness. I draw the inference that the plaintiff's brother's oral evidence would not have supported the plaintiff's case.

26 The plaintiff's case was that the immediate source of \$255,000 out of the \$330,000 she lent the defendant was the plaintiffs' bank account (in her evidence in chief) or accounts (in cross-examination) in China. If true, records showing those withdrawals from her bank or banks in China would offer some tangential support for her case. She claimed on four occasions [\[note: 46\]](#) that she indeed had contemporaneous remittance slips to prove the withdrawals from her bank accounts in

China. And she testified that she had some other supporting documents. [\[note: 47\]](#) None was produced.

27 The plaintiff's evidence, further, was that in July 2013 she attempted to secure documentary records from her bank in China for use as evidence in this action. She said she was told that because her accounts were by then dormant, these records had been migrated to a new server and that it would take the bank three months to a year to retrieve them. [\[note: 48\]](#) She then testified that she had made an application for the bank to retrieve those records. But she claimed she could not produce the application form because she had left it with her brother in China. [\[note: 49\]](#) But within a few minutes, she asserted there was no such application form. [\[note: 50\]](#)

28 The plaintiff testified that the customer relations manager from her bank in China could provide an affidavit or a notarised statement to support the plaintiff's case. [\[note: 51\]](#) If there was such a person and if that person had relevant evidence to assist me, I would have expected the plaintiff to produce that evidence at trial rather than to tell me about it at trial.

29 The plaintiff testified in cross-examination that she had – literally – in her bag in the witness stand with her [\[note: 52\]](#) some original documents which evidenced withdrawals from her bank accounts in China. She said further that she had given copies of these documents to her lawyer. [\[note: 53\]](#) No such documents were part of the material properly in evidence before me. To be fair to the plaintiff, after the plaintiff was re-examined but before I released her as a witness, I offered counsel for the plaintiff an exceptional opportunity to put in further evidence through the plaintiff. He said he did not wish to put any further documents in evidence. [\[note: 54\]](#)

30 The plaintiff said that she had a witness to testify as to the defendant's need for a loan of \$200,000 to tide his business over some financial difficulties, but alleged that that witness could not come to give evidence. [\[note: 55\]](#) She also said on another occasion that she had witnesses to support her case. [\[note: 56\]](#) I do not accept that there were any such witnesses.

31 The plaintiff could also have called any one of the seven or eight employees before whom the defendant confessed his indebtedness and his inability to repay her (see [9] above). It was not the case that the plaintiff was a complete stranger to the defendant's workplace: the plaintiff worked as the purchasing manager in the defendant's company from September 2008. [\[note: 57\]](#)

Conclusion

32 I bore in mind (i) that the plaintiff was from China; (ii) that she was agitated and under stress during cross-examination; (iii) that she was operating in a forensic environment, an environment alien to most people; and (iv) that she gave her evidence in Mandarin through an interpreter. I considered very carefully whether any of these factors could be the cause of the serious shortcomings in the plaintiff's evidence which I have identified above. In particular, I considered whether any of these factors might have contributed to a failure to communicate between her and her lawyer before trial or between her and cross-examining counsel or the court during trial. I was satisfied beyond the balance of probabilities that none of these factors could have been the cause of the plaintiff's difficulties. The plaintiff's case and her evidence just did not have the ring of truth to it. The plaintiff failed to discharge her burden of proof on the balance of probabilities.

33 For the reasons given above, I dismiss the plaintiff's claim with costs to be taxed if not agreed.

[\[note: 1\]](#) Affidavit of evidence in chief of Yap Chor Peng Freddy at para 4.

[\[note: 2\]](#) Transcript, 7 August 2013, page 6, line 10 to 14.

[\[note: 3\]](#) Affidavit of evidence in chief of Wang Rui, para 9.

[\[note: 4\]](#) Affidavit of evidence in chief of Wang Rui, para 9 and 20.

[\[note: 5\]](#) Transcript, 7 August 2013, page 10, line 29 to 31.

[\[note: 6\]](#) Affidavit of evidence in chief of Wang Rui, para 11.

[\[note: 7\]](#) Transcript, 7 August 2013, page 8, line 25 to 28.

[\[note: 8\]](#) Affidavit of evidence in chief of Wang Rui, para 16(a) to (d).

[\[note: 9\]](#) Further and Better Particulars of the Statement of Claim dated 12 November 2012, para 1(1) (d).

[\[note: 10\]](#) Further and Better Particulars of the Statement of Claim dated 12 November 2012, para 1(1) (d).

[\[note: 11\]](#) Affidavit of evidence in chief of Wang Rui, para 16.

[\[note: 12\]](#) Transcript, 7 August 2013, page 17, line 28 to 31.

[\[note: 13\]](#) Affidavit of evidence in chief of Wang Rui, para 17.

[\[note: 14\]](#) Transcript, 7 August 2013, page 25 line 10 to 11; page 27 line 4 to 5.

[\[note: 15\]](#) Transcript, 7 August 2013, page 25, line 4 to 8.

[\[note: 16\]](#) Transcript, 7 August 2013, page 11, line 8 to 10; page 13, line 25 to 26.

[\[note: 17\]](#) Affidavit of evidence in chief of Wang Rui, para 21.

[\[note: 18\]](#) Transcript, 7 August 2013, page 7, line 18 to 25.

[\[note: 19\]](#) Transcript, 7 August 2013, page 9, line 31 to page 10, line 11; page 45, line 8 to 11.

[\[note: 20\]](#) Transcript, 7 August 2013, page 7, line 31 to page 32.

[\[note: 21\]](#) Transcript, 7 August 2013, page 7, line 32 to page 8, line 11.

[\[note: 22\]](#) Defence, para 1; Affidavit of evidence in chief of Yap Chor Peng Freddy, para 16, 19, 22 and 25.

[\[note: 23\]](#) Affidavit of evidence in chief of Yap Chor Peng Freddy, para 7.

[\[note: 24\]](#) Affidavit of evidence in chief of Yap Chor Peng Freddy, para 16, 19, 22 and 25.

[\[note: 25\]](#) Affidavit of evidence in chief of Wang Rui, para 16(b), 16(c), 16(d), 17(a), 18 and 19.

[\[note: 26\]](#) Transcript, 7 August 2013, page 21, line 1 to 6.

[\[note: 27\]](#) Transcript, 7 August 2013, page 21, line 5 to 6.

[\[note: 28\]](#) Transcript, 7 August 2013, page 18, line 3.

[\[note: 29\]](#) Transcript, 7 August 2013, page 17, line 26 to 31.

[\[note: 30\]](#) Transcript, 7 August 2013, page 32, line 6.

[\[note: 31\]](#) Transcript, 7 August 2013, page 17, line 20 to 25.

[\[note: 32\]](#) Transcript, 7 August 2013, page 18, line 3.

[\[note: 33\]](#) Transcript, 7 August 2013, page 21, line 9 to 23.

[\[note: 34\]](#) Transcript, 7 August 2013, page 30, line 8 to 10.

[\[note: 35\]](#) Transcript, 7 August 2013, page 22, line 4 to 19.

[\[note: 36\]](#) Transcript. 7 August 2013, page 7, line 18 to 30.

[\[note: 37\]](#) Transcript, 7 August 2013, page 11, line 8 to 10.

[\[note: 38\]](#) Transcript, 7 August 2013, page 11, line 6 to 7.

[\[note: 39\]](#) Transcript, 7 August 2013, page 7, line 8 to page 8, line 11.

[\[note: 40\]](#) Transcript, 7 August 2013, page 15, line 9 to 12.

[\[note: 41\]](#) PB7.

[\[note: 42\]](#) Transcript, 7 August 2013, page 8, line 30 to 32; Affidavit of evidence in chief of Wang Rui, para 22.

[\[note: 43\]](#) Transcript, 7 August 2013, page 9, line 3 to 5.

[\[note: 44\]](#) Transcript, 7 August 2013, page 13, line 14 to 16.

[\[note: 45\]](#) Transcript, 7 August 2013, page 29, line 25 to 27.

[\[note: 46\]](#) Transcript, 7 August 2013, page 22, line 15; page 24, line 15 and line 28; page 31, line 22 to 24.

[\[note: 47\]](#) Transcript, 7 August 2013, page 33, line 29 to page 34 line 9.

[\[note: 48\]](#) Transcript, 7 August 2013, page 32 line 9 to 21.

[\[note: 49\]](#) Transcript, 7 August 2013, page 32, line 23 to 30.

[\[note: 50\]](#) Transcript, 7 August 2013, page 33, line 11.

[\[note: 51\]](#) Transcript, 7 August 2013, page 29, line 27 to 28.

[\[note: 52\]](#) Transcript, 7 August 2013, page 30, line 11 to 19.

[\[note: 53\]](#) Transcript, 7 August 2013, page 18 line 6 to 16; page 30 line 13; page 31, line 4; page 34, line 2 to 9.

[\[note: 54\]](#) Transcript, 7 August 2013, page 49, line 14 to 27.

[\[note: 55\]](#) Transcript, 7 August 2013, page 9, line 22.

[\[note: 56\]](#) Transcript, 7 August 2013, page 35, line 31.

[\[note: 57\]](#) Transcript, 7 August 2013, page 44, line 2; Affidavit of evidence in chief of Yap Chor Peng Freddy at para 4.

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