

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

[2022] SGHC 284

Suit No 1048 of 2021 (Registrar's Appeal Nos 187 and 282 of 2022)

Between

Xingang Investment Pte Ltd

... Plaintiff

And

- (1) Tengah Engineering &
Hardware Pte Ltd
- (2) Ong Bok Cheng
- (3) Ng Boon Chwee

... Defendants

FOUNDATIONS OF DECISION

[Civil Procedure — Summary judgment]
[Civil Procedure — Striking out]

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Xingang Investment Pte Ltd
v
Tengah Engineering & Hardware Pte Ltd and others

[2022] SGHC 284

General Division of the High Court — Suit No 1048 of 2021 (Registrar's Appeal Nos 187 and 282 of 2022)

See Kee Oon J

19 August, 19 October 2022

8 November 2022

See Kee Oon J:

Introduction

1 The plaintiff (the respondent in the appeals) commenced proceedings against the first, second and third defendants (the appellants in the appeals) (collectively, “the Defendants”) in HC/S 1048/2021 (“the Suit”) seeking in its primary claim, the repayment of moneys pursuant to two loan agreements coupled with the associated interest, late interest and late payment fees.

2 The appeal in HC/RA 187/2022 (“RA 187”) was the Defendants’ appeal against the learned assistant registrar’s (“AR Tang”) decision in HC/SUM 601/2022 (“SUM 601”) granting summary judgment under O 14 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“ROC”) on the plaintiff’s primary claim following its application for the same. After considering the

parties' arguments, I affirmed AR Tang's decision and dismissed RA 187 on 19 August 2022.

3 After RA 187 was dismissed, the learned assistant registrar ("AR Liew") heard the plaintiff's application to strike out the Defendants' counterclaim in the Suit *vide* HC/SUM 2302/2022 ("SUM 2302"). On 7 September 2022, AR Liew granted the plaintiff's application and accordingly struck out the Defendants' counterclaim. The appeal in HC/RA 282/2022 ("RA 282") was the Defendants' appeal against AR Liew's decision in SUM 2302. On 19 October 2022, I heard the parties and dismissed RA 282.

4 I now provide the full reasons for my decisions in both RA 187 and RA 282.

Facts

The parties

5 The plaintiff, Xingang Investment Pte Ltd, is a company in the business of providing loans to corporations and limited liability partnerships. It is an "excluded moneylender" as defined in s 2 of the Moneylenders Act (Cap 188, 2010 Rev Ed).¹

6 The first defendant, Tengah Engineering & Hardware Pte Ltd, is a company in the business of distributing industrial safety and construction equipment and other related products.² The second and third defendants,

¹ Wang Joo Shi's 1st affidavit dated 15 February 2022 ("1WJS") at para 5.

² Ng Boon Chwee's 1st affidavit dated 13 April 2022 ("1NBC") at para 4.

Mr Ong Bok Cheng and Mr Ng Boon Chwee, are directors of the first defendant.³

Background to the dispute in the Suit

7 On 30 November 2020, the plaintiff and the first defendant entered into a loan agreement for a loan of \$500,000 (the “LA”).⁴ The sums due under the LA had been fully paid by the first defendant.⁵ The LA was thus not the subject of the present dispute.

8 On 9 March 2021, the plaintiff and the first defendant concluded a supplementary loan agreement whereby the plaintiff agreed to lend the first defendant a sum of \$200,000 (the “First Supplementary LA”).⁶ I summarise the relevant terms of the First Supplementary LA as follows:⁷

(a) Clause 4.1: the interest rate payable on the principal loan sum is 2.8% per month between 9 March 2021 and 9 September 2021 (the “Interest Rate”).

(b) Clause 4.2: the interest payable on the principal loan sum (the “Interest”) amounted to \$33,600.

(c) Clause 4.3.1: the principal loan sum and the Interest shall be repaid by the first defendant to the plaintiff in six instalments as follows:

(i) \$38,934 on or before 9 April 2021;

³ 1NBC at para 1; Ong Bok Cheng’s affidavit dated 13 April 2022 at para 1.

⁴ Wang Joo Shi’s 2nd affidavit dated 9 May 2022 (“2WJS”) at Tab 1.

⁵ 2WJS at para 7.3.

⁶ 1WJS at Tab 2, pp 30–40.

⁷ 1WJS at Tab 2, pp 31–33; 1WJS at para 8.

- (ii) \$38,934 on or before 9 May 2021;
 - (iii) \$38,934 on or before 9 June 2021;
 - (iv) \$38,934 on or before 9 July 2021;
 - (v) \$38,934 on or before 9 August 2021; and
 - (vi) \$33,330 on or before 9 September 2021;
- (d) Clause 4.4.1: if the first defendant defaults on any payment under the First Supplementary LA, the first defendant is to pay the plaintiff:
- (i) a late payment fee of \$300 per instalment and/or per month for as long as there are outstanding sums (“Late Payment Fee”); and
 - (ii) additional interest at a monthly rate of 2% on all outstanding sums in addition to the Interest, from the date of default until the date of full settlement of all outstanding sums (“Late Interest”). For clarity, the total interest applicable for late payment(s) shall be 4.8%, being the sum of the Interest Rate and Late Interest.
- (e) Clause 4.4.2: both the Late Interest and Late Payment Fee are to be calculated on a daily basis on all outstanding sums or money due under the First Supplementary LA from the due date of payment to the date of full settlement.

9 On the same day, the second and third defendants each executed a personal guarantee in respect of the sums due under the First Supplementary LA

(the “First Supplementary LA Guarantees”).⁸ The first defendant also gave the plaintiff six post-dated cheques for repayment of each of the instalments.⁹

10 The first defendant duly made payments in accordance with the payment schedule at cl 4.3 of the First Supplementary LA, including the payment of Late Interest and the Late Payment Fee, where incurred.¹⁰ However, to date, the first defendant has only made the following payments in respect of the final instalment: (a) \$16,000 on 9 September 2021; (b) \$5,000 on 16 September 2021; and (c) \$1,000 on 15 October 2021.¹¹

11 On 14 June 2021, the plaintiff and the Defendants concluded a second supplementary loan agreement in which the plaintiff agreed to lend a further sum of \$350,000 (the “Second Supplementary LA”).¹² The terms governing the Interest, Late Interest and Late Payment Fee to be paid were materially similar to the terms stated in the First Supplementary LA. Based on the same Interest Rate, the Interest due under the Second Supplementary LA amounted to \$58,800. The payment schedule calculated based on the loan sum and the corresponding Interest is set out at cl 4.3, which I reproduce as follows:¹³

- (a) \$68,134 on or before 15 July 2021;
- (b) \$68,134 on or before 15 August 2021;
- (c) \$68,134 on or before 15 September 2021;

⁸ 1WJS at Tab 3 and Tab 4, pp 61–84.

⁹ 1WJS at para 15.

¹⁰ 1WJS at para 14.

¹¹ 1WJS at para 15.

¹² 1WJS at para 18.

¹³ 1WJS at para 19.2; 1WJS at Tab 7, p 92.

- (d) \$68,134 on or before 15 October 2021;
- (e) \$68,134 on or before 15 November 2021; and
- (f) \$58,330 on or before 15 December 2021.

12 On the same day, the second and third defendants once again each executed a personal guarantee in respect of the sums due under the Second Supplementary LA (the “Second Supplementary LA Guarantees”).¹⁴ The first defendant also gave the plaintiff six post-dated cheques for repayment of each of the instalments (including the Interest).¹⁵

13 The plaintiff to date has only made the following payments under the Second Supplementary LA:¹⁶

- (a) On 14 June 2021, a sum of \$27,300, comprising: (i) an administrative fee of \$17,500; and (ii) first instalment of the Interest of \$9,800. The plaintiff thus made part-payment of the first instalment.
- (b) On 22 July 2021, a sum of \$69,079, comprising: (i) the principal sum due under the first instalment and the corresponding Interest of \$68,134; (ii) Late Interest of \$644.39; and (iii) Late Payment Fee of \$300. The plaintiff thus made full payment of the first instalment.
- (c) On 30 August 2021, a sum of \$5,000, comprising: (i) part-payment of the Interest of \$3,319.18; (ii) Late Interest of \$1,380.82; and (iii) Late Payment Fee of \$300. The plaintiff thus made part-payment of the second instalment.

¹⁴ 1WJS at Tab 8 and Tab 9, pp 105–123.

¹⁵ 1WJS at para 25.

¹⁶ 2WJS at para 11; 1WJS at Tab 13, pp 146–147.

(d) On 31 August 2021, a sum of \$10,000, comprising: (i) part-payment of the principal sum due under the second instalment of \$3,427.13; (ii) remaining payment of Interest of \$6,480.82; and (iii) Late Interest of \$92.05. The plaintiff thus made part-payment of the second instalment.

(e) On 7 September 2021, a sum of \$5,000, comprising: (i) part-payment of the principal sum due of \$4,393.47; and (ii) Late Interest of \$606.53. The plaintiff thus made part-payment of the second instalment.

14 On 15 October 2021, the due date of the fourth instalment payment under the Second Supplementary LA, the plaintiff presented one of the post-dated cheques to the bank. However, this was countermanded by the first defendant.¹⁷

15 The first defendant is the owner of a property located at 37 Kallang Pudding Road #08-05 Tong Lee Building Blk B, Singapore 349315 (“the Property”). Sometime before 15 December 2021, the first defendant entered into a sale and purchase agreement with a third-party for the sale of the Property. The first defendant entered into the agreement to sell the Property in order to discharge the outstanding sums due under the two Supplementary LAs. However, on 15 December 2021, the stipulated date of completion, the first defendant failed to complete the sale.¹⁸

16 Subsequently, on 17 January 2022, the plaintiff presented another five of the post-dated cheques to the bank. However, the said cheques were returned

¹⁷ 1WJS at para 29.

¹⁸ 1NBC at paras 15–19.

and marked as “Payment Stopped”.¹⁹

17 Thus, the plaintiff’s primary claim in the Suit is that the Defendants are liable to repay the following sums under the First and Second Supplementary LAs, collectively, the “Supplementary LAs” (with the first defendant directly liable under the two Supplementary LAs and the second and third defendants liable under the Supplementary LA Guarantees):²⁰

- (a) the outstanding sum of \$355,029.89 (as of 21 December 2021) (“the Outstanding Sum”) comprising: \$13,699.66 (due under the First Supplementary LA) and \$341,330.23 (due under the Second Supplementary LA);
- (b) Interest at the rate of 2.8% per month on the Outstanding Sum from 21 December 2021 until the date of full settlement;
- (c) Late Interest at the rate of 2.0% per month on the Outstanding Sum from 21 December 2021 until the date of full settlement;
and
- (d) Late Payment Fee of \$300 per month from 21 December 2021 until the date of full settlement.

18 The plaintiff’s alternative claim is that the six post-dated cheques issued by the first defendant to the plaintiff dated 15 July 2021, 15 August 2021, 15 September 2021, 15 October 2021, 15 November 2021 and 15 December 2021 for a total sum of \$399,000 (“the Cheques”) were unconditional orders to pay for negotiable instruments pursuant to s 3 of the Bills of Exchange Act

¹⁹ 1WJS at para 28.

²⁰ Statement of Claim (Amendment No 2) dated 15 June 2022 (“SOC2”) at paras 26.1–26.4.

(Cap 23, 2004 Rev Ed). Accordingly, as they were dishonoured and the Cheques remain unpaid, the plaintiff is claiming losses amounting to \$399,000 and interest.²¹

Application for summary judgment in SUM 601

19 By way of SUM 601, the plaintiff applied for summary judgment under O 14 r 1 of the ROC. The plaintiff only sought summary judgment on its *primary claim* (see [17] above), and not its alternative claim (see [18] above).²² The first defendant argued that there were triable issues arising from the facts of the case which made the granting of summary judgment inappropriate.²³ Further, the Defendants had a valid counterclaim against the plaintiff which should be heard together with the claim and decided at trial.²⁴ The second and third defendants similarly resisted the plaintiff’s application contending that the Statement of Claim (Amendment No 1) dated 27 January 2022 (“SOC1”), did not disclose a claim against them as pleaded.²⁵

20 On 23 May 2022, AR Tang heard SUM 601 and granted summary judgment in favour of the plaintiff. She first found that the claims against the second and third defendants had been sufficiently pleaded in SOC1 as there were references made to their respective personal guarantees, amongst other things.²⁶ She went on to observe that the main issue was whether the Defendants

²¹ SOC2 at paras 20–25 and 26.5–26.6.

²² 1WJS at paras 34–38.

²³ Defendant’s submissions in SUM 601 (“DS SUM 601”) at para 8.

²⁴ DS SUM 601 at para 10.4.

²⁵ DS SUM 601 at paras 9.1–9.2.

²⁶ Certified Transcript of SUM 601 dated 23 May 2022 (“CT SUM 601”) at p 14, ln 25–31.

owed the sums due under the primary claim to the plaintiff. Accordingly, many of the issues raised by the Defendants were irrelevant.²⁷ In particular:

(a) Although the Defendants had sought to challenge the calculations of the outstanding sums claimed by the plaintiff, they had not identified any specific error. This was so despite the plaintiff's detailed calculations presented in Mr Wang Joo Shi's second affidavit ("Wang's second affidavit").²⁸

(b) The alleged agreement between the parties for the outstanding sum to be paid out of the sale proceeds of the Property could not be a defence to the fact that the Defendants owed the sum to the plaintiff. Even if this agreement existed, it was apparent that the sum could no longer be paid out of the sale proceeds.²⁹

(c) It was not wrong or improper for the plaintiff to attempt to cash in five of the Cheques on 17 January 2022, when it was apparent that the sale of the Property would not proceed.³⁰

Further, the Defendants' counterclaim for loss and damage suffered to the first defendant's business failed for being implausible. AR Tang did not accept that the plaintiff's mere act of attempting to bank in five of the Cheques and the other acts referred to by the Defendants would lead to such a spiral, when it was apparent that the first defendant had prior issues with other creditors. Thus,

²⁷ CT SUM 601 at p 15, ln 1–4.

²⁸ CT SUM 601 at p 15, ln 9–13.

²⁹ CT SUM 601 at p 15, ln 15–23.

³⁰ CT SUM 601 at p 15, ln 25–32.

AR Tang entered judgment for the plaintiff and found that there was no reason to grant unconditional leave to defend the claim or to grant a stay of execution.³¹

The appeal in RA 187

21 The appeal in RA 187 was the Defendants’ appeal against AR Tang’s decision in SUM 601. The parties largely maintained their arguments in SUM 601. In addition, the Defendants sought leave to adduce further evidence in the form of a second affidavit affirmed by the third defendant by way of HC/SUM 2639/2022 (“SUM 2639”) for the purpose of the appeal.

22 It should be noted that the Defendants have only appealed against my decision in RA 187 and not SUM 2639. Accordingly, I will only set out my reasons pertaining to my decision in RA 187 below. In any event, for completeness, I should state that I dismissed the Defendants’ application in SUM 2639.³² The evidence sought to be adduced by the Defendants could have been obtained earlier with reasonable diligence. Even if this factor was disregarded, the main difficulty with SUM 2639 was that the evidence in the third defendant’s second affidavit was neither relevant nor credible. It did not have an important influence on the appeal. In the overall analysis, it was unnecessary in the interests of justice to admit the further affidavit.

Issues to be determined in RA 187

23 Based on the foregoing, the issues for my determination were:

- (a) whether the claims against the second and third defendants had been sufficiently pleaded in SOC1;

³¹ CT SUM 601 at p 16, ln 1–16.

³² Minute Sheet for HC/RA 187/2022 at p 4, para 2.

- (b) whether summary judgment should be granted in respect of the plaintiff's primary claim. In particular:
 - (i) whether the plaintiff established a *prima facie* case for summary judgment;
 - (ii) whether the Defendants had a *bona fide* defence;
 - (iii) whether there was any other reason why there ought to be a trial; and
- (c) what effect the Defendants' counterclaim should have on an order for summary judgment.

Issue 1: Whether the claims against the second and third defendants had been sufficiently pleaded in the SOC1

24 I first consider the second and third defendants' contention that the plaintiff had failed to sufficiently plead its claims against them in SOC1. At the outset, I note that shortly after SUM 601 was heard by AR Tang, the plaintiff filed Statement of Claim (Amendment No 2) dated 15 June 2022 ("SOC2"). The amendments made in SOC2 are inconsequential for the present analysis and as such any reference to SOC1 may be taken as a reference to SOC2 as well.

25 In my view, AR Tang was correct in finding that the plaintiff had clearly pleaded and established the second and third defendants' liabilities under the Supplementary LA Guarantees in SOC1.³³

26 First, the plaintiff had specifically pleaded the existence of the Supplementary LA Guarantees, the relevant terms and their relationship with

³³ CT SUM 601 at p 14, ln 25–31.

the two Supplementary LAs. Crucially, the plaintiff had pleaded the obligations of the second and third defendants under their respective Supplementary LA Guarantees to “unconditionally and irrevocably [guarantee], as a continuing obligation, the proper and punctual payment by [the first defendant] of the Guaranteed Amounts” and where the first defendant “for any reason and at any time and from time to time... [did] not make payment of any amount of the Guaranteed Amounts, the [second and third defendants] shall pay the amounts not so paid upon first written demand by the [plaintiff]”.³⁴

27 Second, the plaintiff had also pleaded the first defendant’s defaults in breach of both the Supplementary LAs.³⁵

28 Third, as AR Tang pointed out, the plaintiff had made clear reference in SOC1 to notice given to all the Defendants of the default under the Supplementary LAs (in respect of the first defendant) and the Supplementary LA Guarantees (in respect of the second and third defendants), and consequent demand for repayment of the outstanding sums.³⁶

29 It was therefore indubitably clear that the first defendant’s defaults under the two Supplementary LAs would necessarily trigger the second and third defendants’ obligations under the corresponding Supplementary LA Guarantees. To my mind, the plaintiff’s claims against the second and third defendants were thus sufficiently pleaded.

³⁴ SOC1 at paras 6.1, 8.1, 13.1 and 15.1.

³⁵ SOC1 at paras 9 and 16.

³⁶ SOC1 at para 18.

Issue 2: Whether summary judgment should be granted in respect of the plaintiff's primary claim

30 The legal principles concerning the grant of summary judgment under O 14 of the ROC are well-established. It would suffice for me to adopt the summary in *Panircelvan s/o Kaliannan and others v Ee Hoong Liang* [2022] SGHC 190 at [10]:

... The plaintiff must first show that he has a *prima facie* case for summary judgment. If the plaintiff crosses that threshold, the defendant then bears the burden of raising 'an issue or question in dispute which ought to be tried'. In doing so, the defendant must bring forward some ground which raises a reasonable probability that he or she has a real or *bona fide* defence in relation to the issues in disputes which ought to be tried: *Goh Chok Tong v Chee Soon Juan* [2003] 3 SLR(R) 32 at [25]. Alternatively, the defendant may attempt to show that there ought to be a trial for some other reasons, even though there is no reasonable probability of a real or *bona fide* defence which ought to be tried. The court will enter judgment against the defendant only if the plaintiff has satisfied the court that there is no reasonable probability that the defendant has a real or *bona fide* defence and there is no other reason why there ought to be a trial: *Ritzland Investment Pte Ltd v Grace Management & Consultancy Services Pte Ltd* [2014] 2 SLR 1342 at [43]–[47].

Whether the plaintiff established a prima facie case for summary judgment

31 It was not disputed that the Defendants did not repay in full the sums due under the two Supplementary LAs. The sums paid by the Defendants to the plaintiff were also undisputed.³⁷ There was thus no apparent quarrel over whether the plaintiff had established a *prima facie* case for summary judgment. As such, I found that the plaintiff had in fact done so.

³⁷ 1NBC at paras 8, 11–12; 1WJS at paras 14–15 and 27; 2WJS at para 11.

Whether the Defendants had a bona fide defence

32 The defence against the plaintiff's primary claim took the form of two main challenges: (a) that the plaintiff's calculation of the sums due under the First Supplementary LA was incorrect;³⁸ and (b) that there was an agreement between the parties that that the plaintiff would hold in abeyance the repayment of the balance of the instalments, all Late Payment Fees and Late Interests under the Second Supplementary LA pending the sale of the Property.³⁹

(1) Calculation of the sums due under the First Supplementary LA

33 As stated above, it is undisputed that the Defendants had failed to make full payment of the final instalment due under the First Supplementary LA (see [10] above). However, the Defendants argued that the plaintiff's calculation of the outstanding balance due in respect of the final instalment was erroneous and misleading with reference to paras 9.6 and 9.7 of Wang's second affidavit.⁴⁰ For ease of reference, I set out the relevant paragraphs of Wang's second affidavit:

9.6 On 16 July 2021, the Defendants had paid a sum of SGD38,934.00. After setting off this amount against the outstanding Interest of SGD5,600, Late Interest of SGD368.23 and Late Payment Fee of SGD300, there was a balance of SGD33,334.77 which was credited towards repayment of the principal. As the instalment sum [for the July instalment] was only SGD33,334.00, there was therefore, an excess of SGD0.77.

9.7 The Defendants paid the August 2021 instalment in full and therefore, the excess of SGD0.77 from the July 2021 instalment was credited to the September instalment. Accordingly, the outstanding balance as of 20 December 2021 is SGD13,699.66, as seen in the Statement of Account ...

³⁸ DS RA 187 at para 5.

³⁹ DS RA 187 at paras 9.10–9.11 and 9.13–9.14.

⁴⁰ DS RA 187 at para 5; INBC at para 26.1.

34 The Defendants noted that the sums set out in para 9.6 of Wang’s second affidavit did not tally. They pointed out that if a sum of \$38,934 had been paid, after setting off this amount against the outstanding Interest of \$5,600, Late Interest of \$368.23 and the Late Payment Fee of \$300 incurred, the balance credited to repayment of the principal loan sum for the July instalment should be \$32,665.77, and *not* \$33,334.77 as indicated.⁴¹ Based on the Defendants’ calculations, the outstanding balance due under the First Supplementary LA should thus be \$11,330 (or \$12,296.60 after factoring in the Late Payment Fee and 2% interest on the outstanding sum) and not \$13,699.66 as claimed.⁴² I make two observations in respect of the Defendants’ purported defence.

35 First, it is plain that this was not a *complete* defence to the plaintiff’s primary claim in respect of the sums due under the First Supplementary LA. The Defendants merely contested the calculation of the total amount due and not that moneys were due in the first place.

36 Second, it was clear to me that any error lay not in the calculation of the sums due under the final instalment of the First Supplementary LA; but in a typographical error made by the plaintiff in para 9.6 of Wang’s second affidavit. Although it was stated at para 9.6 that the Defendants had paid a sum of \$38,934 on 16 July 2021, this was in all likelihood a typographical error made by the plaintiff having regard to the plaintiff’s statement of accounts exhibited at Tab 6 of Mr Wang Joo Shi’s first affidavit (“Wang’s first affidavit”).⁴³ From the statement of accounts, it was apparent that the Defendants had paid a sum of

⁴¹ DS RA 187 at para 5.

⁴² Defence and Counterclaim (Amendment No 1) dated 9 May 2022 (“D&CC”) at para 12.1; 1NBC at paras 8–9.

⁴³ 1WJS at Tab 6, p 88.

\$39,603 on 16 July 2021 instead. If the sum of “SGD38,934.00” is replaced with the correct sum of \$39,603, the plaintiff’s calculations as stated in paras 9.6 and 9.7 are correct. The plaintiff explained in detail how the outstanding balance of \$13,699.66 due under the First Supplementary LA was calculated, which I summarise as follows:⁴⁴

(a) On 16 July 2021, the Defendants paid a sum \$39,603 (as opposed to the incorrectly stated sum of \$38,934 in para 9.6 of Wang’s second affidavit). After setting off this amount against the outstanding Interest of \$5,600, Late Interest of \$368.23 and the Late Payment Fee of \$300, there was a balance of \$33,334.77 which was credited toward the repayment of the principal sum due of \$33,334 for the July 2021 instalment. There was thus an excess of \$0.77.

(b) As the Defendants paid the August 2021 instalment in full, the excess \$0.77 from the July 2021 instalment was credited to the final instalment in September 2021.

(c) The final instalment of \$33,330 was due on 9 September 2021 under the First Supplementary LA.

(d) The Defendants paid \$16,000 on 9 September 2021, \$5,000 on 16 September 2021 and \$1,000 on 15 October 2021. The total amount paid in respect of the final instalment was \$22,000.

(e) Due to the failure of the Defendants to pay the final instalment in full on 9 September 2021, the following Interests, Late Interests and

⁴⁴ 2WJS at para 9.

Late Payment Fee were imposed (as of 21 December 2021) amounting to \$2,370.43:

(i) Interest and Late Interest on 16 September 2021: \$191.43.

(ii) Interest and Late Interest on 15 October 2021: \$586.73.

(iii) Interest and Late Interest on 20 December 2021: \$1,292.27.

(iv) Late Payment Fee on 10 September 2021: \$300.

(f) Thus, adding the principal sum outstanding under the final instalment of \$11,330 and the corresponding Interests, Late Interests and Late Payment Fee of \$2,370.43 (see [36(e)] above), and subtracting the excess \$0.77 (see [36(a)]–[36(b)] above), the total outstanding sum due under the First Supplementary LA was \$13,699.66 (as of 21 December 2021).

I was satisfied that this calculation was sound.

37 As the Defendants did not raise any other challenge to the sum claimed by the plaintiff under the First Supplementary LA, I was of the view that the Defendants had no *bona fide* defence against the plaintiff's claim in respect of the First Supplementary LA.

(2) Agreement for the plaintiff to hold payments under the Second Supplementary LA in abeyance pending sale of Property

38 The second facet of the Defendants' defence was based on a purported oral agreement concluded between the parties. According to the Defendants, under the alleged oral agreement, the plaintiff agreed to hold in abeyance the

payment by the Defendants of the balance of the instalments, all Late Payment Fees and Late Interests, if the first defendant agreed to sell the Property and use the sales proceeds to discharge the Second Supplementary LA.⁴⁵

39 On the evidence before me, I could not accept that there was any such agreement as alleged by the Defendants. The Defendants had simply failed to provide a single shred of evidence to support the purported terms of the agreement.

40 Even if I accepted that there was such an agreement, it was clear that as the Defendants had failed to complete the sale of the Property by December 2021 in breach of the alleged agreement, the plaintiff was thereafter wholly entitled to pursue its claims for repayment in the present action. Indeed, the Defendants had admitted that it would not be possible to complete the sale of the Property as to do so would require the first defendant to “fork out an additional sum of S\$401,274.35 in cash” which it did not have.⁴⁶

41 Further, for completeness, although the Defendants contested the calculation of the sums payable under the Second Supplementary LA,⁴⁷ no alternative manner of calculation was proposed. There was no credible basis for the Defendants’ challenge in view of the plaintiff’s comprehensive calculations set out on affidavit in its statement of accounts.⁴⁸ For the reasons above, I found that the Defendants had no *bona fide* defence against the plaintiff’s claim in respect of the Second Supplementary LA.

⁴⁵ D&CC at para 17.6; INBC at paras 17 and 26.2; DS RA 187 at paras 9.10–9.11 and 9.13–9.14.

⁴⁶ DS RA 187 at para 9.12.

⁴⁷ D&CC at para 12.2.

⁴⁸ 1WJS at Tab 13, pp 146–147.

Whether there was any other reason why there ought to be a trial

42 The Defendants also submitted that there were two related factual issues to be determined which constituted reasons why there nevertheless ought to be a trial. In this regard, the Defendants noted that the questions of whether the plaintiff had in fact coerced them to sell the Property and whether the plaintiff was entitled to lodge a caveat in respect of the Property should be determined at trial.⁴⁹

43 In my judgment, both these issues bore no relation whatsoever to the plaintiff's primary claim. I agreed with the AR that the main dispute in the present proceedings was whether the Defendants owed the plaintiff the sums in the primary claim.⁵⁰ Questions concerning whether the plaintiff had coerced the Defendants into selling the Property and the plaintiff's entitlement to lodge a caveat in respect of the Property were plainly irrelevant to this dispute. They were but red herrings relied upon by the Defendants for the sole purpose of devising triable issues to stymie the grant of summary judgment.

44 Moreover, I also did not see fit to consider the factual issues raised by the Defendants in respect of the plaintiff's alternative claim. As mentioned above at [19], the plaintiff's application for summary judgment in SUM 601 was brought solely in relation to its primary claim.

Issue 3: What effect the Defendants' counterclaim should have on an order for summary judgment

45 In *Kim Seng Orchid Pte Ltd v Lim Kah Hin (trading as Yik Zhuan Orchid Garden)* [2018] 3 SLR 34 ("*Kim Seng Orchid*") at [97]–[98], the High Court set

⁴⁹ DS RA 187 at para 9.5–9.9.

⁵⁰ CT SUM 601 at p 15, ln 1–3.

out a practical framework to guide the court's determination on when summary judgment ought to be ordered where there is a subsisting counterclaim. In brief, the recommended framework comprises four steps:

(a) Step 1: whether the counterclaim is plausible – this involves the court considering whether it is reasonably possible for the counterclaim to succeed at trial. If the counterclaim is not plausible, then its presence ought not to stand in the way of the plaintiff obtaining summary judgment of its whole claim, without any stay pending the determination of the counterclaim, and the court should so rule. If the court finds that the counterclaim is plausible, then Step 2 follows.

(b) Step 2: whether the plausible counterclaim amounts to a defence of set-off – this involves the court determining whether the counterclaim that it has found to be plausible amounts to a defence of set-off, whether legal or equitable. If it is so found, then unconditional leave to defend should be granted in respect of the whole of the claim. On the other hand, if the counterclaim does not amount to a defence of set-off, then the court may proceed to Step 3.

(c) Step 3: whether the plausible counterclaim is sufficiently connected to the claim – this involves the court considering whether there is a connection between the claim (for which summary judgment is sought) and the counterclaim which it has considered to be plausible. If there is no connection between the claim and the counterclaim, *etc*, the court should generally grant summary judgment of the whole claim, without a stay pending the determination of the unconnected counterclaim. If the court is satisfied of the degree of connection between the claim and counterclaim, it may proceed to Step 4.

(d) Step 4: whether there are grounds for a stay of execution in the light of the connected and plausible counterclaim – this involves the court examining, *inter alia*, the degree of connection between the claim and counterclaim, the strength and quantum of the counterclaim and the ability of the plaintiff to satisfy any judgment on the counterclaim. The exercise of the discretion to grant or to refuse to grant a stay of execution of the whole or a portion of the judgment sum pending trial of a plausible and connected counterclaim will ultimately depend on whether the defendant is able to show that it would be fair and just in all the circumstances of the case to stay the immediate enforcement of the whole or a portion of the judgment sum due to the pending trial of the counterclaim. In this regard, the burden lies on the defendant.

46 In the present action, the Defendants’ counterclaim comprises the following three claims (collectively the “Counterclaim”):

(a) Claim for loss and damage arising from the plaintiff’s deliberate act of banking in five of the post-dated Cheques at the same time on 17 January 2022 (despite the first defendant’s instructions not to do so), which resulted in the first defendant’s access to its UOB account being blocked by the bank (“the First Counterclaim”).⁵¹

(b) Claim for loss and damage arising from the legal proceedings brought by the purchaser of the Property against the first defendant for the delay in the completion of the sale of the Property (“the Second Counterclaim”).⁵²

⁵¹ D&CC at para 26.1.

⁵² D&CC at para 26.2.

(c) Claim for loss and damage by the purported persistent and constant harassment by the plaintiff's collection staff causing disruption to the first defendant's business which resulted in a severe drop in its revenue ("the Third Counterclaim").⁵³

47 The Defendants submitted that applying the practical framework set out in *Kim Seng Orchid*, the Counterclaim was plausible⁵⁴ and amounted to a set-off. As such, unconditional leave to defend should be granted under Step 2.⁵⁵ In the alternative, they argued that the Counterclaim was sufficiently connected to the plaintiff's claim on the facts under Step 3.⁵⁶ Further, based on the degree of connection between the claim and Counterclaim, the strength and quantum of the Counterclaim and the ability of the plaintiff to satisfy any judgment on the Counterclaim, a stay of execution of the whole portion of the judgment sum pending trial of the plausible and connected Counterclaim should be granted under Step 4.⁵⁷

48 I had a number of difficulties with the Defendants' submissions. To begin with, the Defendants failed to apply the practical framework in *Kim Seng Orchid* to each individual counterclaim. The Defendants merely dealt with them collectively. This was unhelpful and inadequate.

49 In relation to the First Counterclaim, the Defendants failed to plead any particulars in their Defence and Counterclaim (Amendment No 1) dated 9 May 2022 ("D&CC") as well as in the second and third defendants' affidavits

⁵³ D&CC at para 26.3.

⁵⁴ DS RA 187 at para 12.3(i).

⁵⁵ DS RA 187 at para 12.3(ii).

⁵⁶ DS RA 187 at para 12.3(iii).

⁵⁷ DS RA 187 at para 12.3(iv).

concerning the purported blocking of the first defendant's UOB bank account. It was unclear *when* the UOB bank account had been blocked or even *if* it had been blocked.⁵⁸ The Defendants had only asserted (without any factual basis) that the alleged blocking of the said bank account was caused by the plaintiff's attempt to bank in five of the Cheques at the same time in January 2022. The First Counterclaim was thus entirely speculative and implausible.

50 In relation to the Second Counterclaim, there was no basis for the Defendants' allegation that the plaintiff had coerced the Defendants into selling the Property. The Defendants had not provided any particulars demonstrating this. As the plaintiff pointed out, the Defendants did not provide "any details on whom, how or when the alleged coercions were made".⁵⁹ In addition, the Defendants themselves acknowledged that the reason why the completion date for the sale of the Property was deferred was because they were unable to make the payments required for successful completion.⁶⁰ It would lie ill in their mouths to now pin the blame for unsuccessful completion on the plaintiff. I thus found that the Second Counterclaim for loss and damage arising from the legal proceedings faced by the first defendant for the delay in the completion of the sale of the Property was also implausible.

51 In relation to the Third Counterclaim, the Defendants once again only made bare assertions that the plaintiff's staff had caused disruption to the first defendant's business which they alleged was the *cause* of the first defendant's purported severe drop in revenue. First, there was no evidential basis to support the Defendants' assertion of any such purported drop in revenue. Second, it was

⁵⁸ PS SUM 601 at para 88.

⁵⁹ PS SUM 601 at para 67.

⁶⁰ 1NBC at para 19.

unclear how the plaintiff's staff had harassed the second and third defendants at the first defendant's premises. Third, in any event, it was clear that the first defendant's business losses could not be solely attributed (if at all) to the plaintiff's employees purported harassment of the first defendant and its staff. Indeed, as the Defendants conceded, the COVID-19 pandemic had caused the first defendant business difficulties.⁶¹

52 Therefore, I found that the Defendants' Counterclaim was not plausible. Nevertheless, I made clear at the hearing that my finding on the Defendants' Counterclaim for the purpose of the plaintiff's summary judgment application was made without prejudice to the submissions that the parties may put forward in the pending SUM 2302 in respect of the plaintiff's application to strike out the Defendants' Counterclaim.⁶²

The appeal in RA 282

53 As mentioned earlier at [3], the plaintiff had also applied to strike out the Defendants' Counterclaim under O 18 r 19 of the ROC and/or the inherent jurisdiction of the court *vide* SUM 2302.

54 At the outset, it bears noting that during the hearing of SUM 2302 before AR Liew, the Defendants sought to limit the ambit of their Counterclaim and noted that they were only pursuing the First Counterclaim (see [46(a)] above).⁶³ To this end, the Defendants stated that the crux of the First Counterclaim was that "there was an agreement for the Plaintiff not to bank in the cheques which

⁶¹ INBC at para 12.

⁶² Minute Sheet dated 19 August 2022 at p 4 (Oral remarks at para 3).

⁶³ Certified Transcript of SUM 2302 dated 7 September 2022 ("CT SUM 2302") at p 7, Annex A (Oral Remarks) at para 21.

were given to them as security only for the loans which they issued to the 1st Defendant”.⁶⁴ Despite this alleged agreement, the plaintiff had deposited five of the Cheques in January 2022, which caused the first defendant’s UOB bank account to be blocked leading to the collapse of its business, thereby causing loss and damage in excess of \$100m.⁶⁵

55 On 7 September 2022, AR Liew ordered that the Defendants’ First Counterclaim be struck out. In brief, she held that:

(a) The Defendants’ First Counterclaim was factually unsustainable. No evidence was produced of the alleged oral agreement between the parties that the Cheques were not to be presented for payment.⁶⁶

(b) The Defendants’ First Counterclaim was legally unsustainable. The Defendants attributed the cause of the collapse of the first defendant’s business to the presentation of five of the Cheques which led to the freezing of its UOB bank account resulting in estimated losses of \$100m. However, it was only a bare assertion that the bank had frozen the first defendant’s bank account after the cheques were presented. Moreover, it was the first defendant’s own evidence that it had suffered losses due to the challenging operating environment brought about by the COVID-19 pandemic. Therefore, it was unclear that the first defendant could attribute any of its business losses to the plaintiff’s actions.⁶⁷

⁶⁴ Defendants’ submissions in SUM 2302 dated 23 August 2022 at para 6.

⁶⁵ Defendants’ submissions in RA 282 dated 18 October 2022 (“DS RA 282”) at para 7.

⁶⁶ CT SUM 2302 at pp 3-5, Annex A (Oral Remarks) at paras 10–14.

⁶⁷ CT SUM 2302 at p 5, Annex A (Oral Remarks) at para 15.

(c) There did not appear to be any counterclaim by the second and third defendants against the plaintiff and as such, if they were making any such counterclaim, the counterclaim should be struck out for not disclosing any reasonable cause of action.⁶⁸

Any counterclaim brought by the second and third defendants should be struck out

56 The Defendants appeared to suggest that the First Counterclaim was a joint counterclaim brought by all three defendants. However, it was plain from the D&CC as pleaded in paras 25 and 26 that the First Counterclaim was framed solely in respect of losses and damages suffered by the first defendant. Accordingly, I agreed with AR Liew that any counterclaim purportedly brought by the second and third defendants should be struck out under O 18 r 19(1)(a) of the ROC for disclosing no reasonable cause of action.

The First Counterclaim was factually unsustainable

57 In my view, AR Liew was justified in finding that the First Counterclaim was factually unsustainable.⁶⁹ Despite the Defendants' recognition that the Cheques were presented to the plaintiff *as security* for the loan sum due under the Second Supplementary LA, the Defendants concurrently claimed that there was an oral agreement between the parties prohibiting the plaintiff from enforcing this security even when the loan sum remained unpaid.⁷⁰ This argument was unconvincing.

⁶⁸ CT SUM 2302 at p 5, Annex A (Oral Remarks) at para 16.

⁶⁹ CT SUM 2302 at pp 3-5, Annex A (Oral Remarks) at paras 10–14.

⁷⁰ DS RA 282 at para 6.

58 The existence of this oral agreement was but another bare assertion unsupported by any evidence. I agreed with AR Liew that the Defendants did not plead essential particulars such as when the oral agreement was entered into, or who were the representatives who had entered into the said agreement.⁷¹

59 Moreover, the e-mail exchanges between the first defendant and the plaintiff⁷² did not in any way assist the Defendants. On 14 July 2021, a representative from the first defendant sent an e-mail to the plaintiff requesting that the plaintiff “not drop in the cheque [*ie*, UOB Cheque No 196532] *tomorrow*” [emphasis added], which was the due date of the first instalment payment under the Second Supplementary LA.⁷³ Following this, the first defendant made payment of the first instalment on 19 July 2021. Subsequently, on 10 August 2021, a representative from the first defendant sent another e-mail to the plaintiff requesting that the plaintiff “not drop in the cheque for 15/08/21 [*ie*, UOB Cheque No 196533]” and for an extension of two weeks to make payment under the second instalment. The plaintiff responded informing the first defendant that it could “withhold payment for *1 week* but late charges [would] be levied on the account” [emphasis added].⁷⁴ It was clear that any arrangement between the parties was for the plaintiff not to present two of the Cheques to the bank, namely UOB Cheque Nos 196532 and 196533, only for a *specified* date or period. There was no undertaking given by the plaintiff that it would not present the Cheques for payment at a later date to enforce its security should the loan sum remain unpaid. The e-mail exchanges were thus entirely inadequate to evidence the purported oral agreement between the parties that

⁷¹ CT SUM 2302 at p 3, Annex A (Oral Remarks) at para 11.

⁷² Tabs 2 and 3 of Exhibit NBC-1 of 1NBC at pp 19 and 24–25.

⁷³ Tab 2 of Exhibit NBC-1 of 1NBC at p 19.

⁷⁴ Tab 3 of Exhibit NBC-1 of 1NBC at p 24.

the plaintiff was to withhold the presentation of the Cheques. Even taking the Defendants' case at its highest, the correspondence produced only related to *two* of the five Cheques which the Defendants alleged were subject of the purported oral agreement.

The First Counterclaim was legally unsustainable

60 In addition, I agreed with AR Liew that the First Counterclaim was also legally unsustainable.⁷⁵

61 First, the Defendants did not furnish any particulars in the D&CC or in the second and third defendants' affidavits concerning the purported blocking of the first defendant's UOB bank account. As stated above at [49], it was unclear *when* the UOB bank account had been blocked or even *if* it had been blocked. The Defendants had once again only asserted, without any factual basis, that the alleged blocking of the said bank account was caused by the plaintiff's attempt to present five of the Cheques.

62 Second, even assuming *arguendo* that the first defendant's UOB bank account had been blocked because of the plaintiff's attempt to bank in five of the Cheques, it was unclear if the first defendant's business losses could be attributed to the plaintiff's actions. Indeed, the Defendants conceded that the COVID-19 pandemic had caused difficulties for the first defendant's business.⁷⁶ More importantly, AR Liew rightly observed that based on the first defendant's bank statement, at the time the Defendants had instructed the bank to cease payment on the Cheques, the first defendant's bank account was *already in*

⁷⁵ CT SUM 2302 at p 5, Annex A (Oral Remarks) at para 15.

⁷⁶ 1NBC at para 12.

overdraft.⁷⁷ In the circumstances, the Defendants had plainly not showed that the losses it claimed to have sustained were caused by the plaintiff's actions.

63 Third, particulars of the precise loss allegedly sustained by the first defendant were also lacking. The Defendants had only baldly claimed that the loss and damage suffered by the first defendant amounted to more than \$100m.⁷⁸ In this regard, the Defendants sought to rely on a forecast document dated 9 August 2021.⁷⁹ This forecast document indicated that the first defendant was “[t]argeting quantum leap in sales revenues to \$100 million annually within the next 3 years” and that it was “poised to register [a revenue] of S\$100 million in ... FY2024”.⁸⁰ It is relevant to point out that a projected revenue of \$100m does *not* equate to profits earned of \$100m as the figure does not include expenses. Therefore, the amount of the alleged loss sustained was plainly inaccurate. In any event, I did not accord much weight, if any, to this forecast document as it was highly speculative and based solely on the first defendant's own internal projections.

64 In summary, as the First Counterclaim was both factually and legally unsustainable, I was of the view that there was ample basis for AR Liew's decision to strike it out.

Conclusion

65 In my assessment, in RA 187, the plaintiff had established a *prima facie* case for summary judgment on its primary claim and the Defendants did not

⁷⁷ Tab 7 of Exhibit NBC-1 of 1NBC at p 44.

⁷⁸ 1NBC at para 30.

⁷⁹ Tab 1 of Exhibit NBC-1 of 1NBC at pp 13–16.

⁸⁰ Tab 1 of Exhibit NBC-1 of 1NBC at pp 13–14.

raise a *bona fide* defence to answer the claim. Neither did the Defendants demonstrate any other reason why there ought to be a trial of the primary claim. The Defendants' Counterclaim was not plausible for the purpose of the summary judgment proceedings and accordingly I affirmed AR Tang's decision to grant summary judgment of the plaintiff's primary claim and dismissed the appeal. Consequently, I awarded the costs of the appeal to the plaintiff at \$8,000 including disbursements for RA 187.

66 In respect of RA 282, I was satisfied that: (a) in respect of the second and third defendants, the D&CC disclosed no reasonable cause of action on their part against the plaintiff; and (b) the First Counterclaim brought by the first defendant was clearly factually and legally unsustainable. I thus affirmed AR Liew's decision and dismissed the appeal. I awarded the costs of the appeal to the plaintiff at \$6,000 including disbursements.

See Kee Oon
Judge of the High Court

Lim Tong Chuan (Excelsior Law Chambers LLC) for the plaintiff;
Lim Tean (Carson Law Chambers) for the defendants.
