IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 81

Suit No 409 of 2014

Between

(1) Viet Hai Petroleum Corporation

… *Plaintiff*

And

(1) Ng Jun Quan
(2) Muhammad Sheia'Rulislam bin Shazali

… *Defendants*

GROUNDS OF DECISION

[Agency] – [Apparent authority]

[Debt and Recovery] – [Account stated]

[Restitution] – [Money had and received]

[Civil Procedure] – [Stay of proceedings] – [Stay of execution]

Viet Hai Petroleum Corp
v
Ng Jun Quan and another and another matter

[2016] SGHC 81

High Court — Suit No 409 of 2014 and Summons No 519 of 2016
Chua Lee Ming JC
8, 9, 15 December 2015; 11 February 2016

26 April 2016

Chua Lee Ming JC:

Introduction

1 The plaintiff, Viet Hai Petroleum Corporation, sued the defendants, Mr Ng Jun Quan and Mr Muhammad Sheia'Rulislam bin Shazali, to recover the sum of US$1,690,874 based on an account stated between the plaintiff and WE Bunker, a partnership in which the defendants were partners at the material time. Alternatively, the plaintiff claimed the sum of US$1,690,874 as money had and received by the defendants for and to the use of the plaintiff, the consideration for which had wholly failed.

2 At the close of the plaintiff's case, the defendants elected not to call evidence and made a submission of no case to answer. I rejected the defendants' submission and entered judgment for the plaintiff. The defendants have appealed against my decision.

The plaintiff's claim

3 The plaintiff is a company incorporated under the laws of Vietnam. Its business includes fuel trading and wholesale of solid, liquefied and gas material and related products including gasoline and crude oil. At all material times, the defendants were partners in WE Bunker, a partnership whose business activities included ship bunkering.[1] These facts were not in dispute.

4 The plaintiff alleged that in an account stated in writing between the plaintiff and WE Bunker, titled "Agreement of Account Balance Finalization" and dated 30 April 2012 ("the Agreement"),[2] WE Bunker acknowledged that it owed the plaintiff US$1,690,874 and promised to pay the amount by 7 May 2012.[3] WE Bunker failed to make payment.

5 The plaintiff further alleged that the Agreement was signed by WE Bunker's Chief Operation Officer ("COO"), Mr Saiful Alam bin Abdul Samad ("Saiful"), and WE Bunker's Vietnam representative, Mr Tran Quang Luong ("Tran"). It was not in dispute that Saiful is the 2nd defendant's uncle.

6 The plaintiff's alternative claim for money had and received was based on the payments made to WE Bunker as set out in the Agreement, and WE Bunker's failure to deliver the goods, including fuel and bunker, to the plaintiff and/or to the vessels or end users designated by the plaintiff.[4]

The plaintiff's evidence

7 Mr Nguyen Du Luc ("Nguyen") is one of the founding shareholders of the plaintiff, holding 60% of its share capital.[5] In February 2011, he met Tran through a business contact.[6] Tran gave Nguyen a business card which described himself as WE Bunker's "Representative in Vietnam". A year later,

around the end of March 2012, Tran introduced Nguyen to Saiful.[7] Saiful gave Nguyen a business card which described himself as WE Bunker's "Chief Operation Officer".[8]

8 Nguyen met Saiful on a number of occasions in March and April 2012. In his Affidavit of Evidence-in-Chief, Nguyen said that the 2nd defendant was present at some of these meetings and that Saiful introduced him to Nguyen as WE Bunker's Chief Accountant.[9] During cross-examination, Nguyen maintained that Saiful had introduced him to the Chief Accountant of WE Bunker, although he could not recall what the Chief Accountant's name was.[10]

9 The plaintiff first bought diesel from WE Bunker in late March 2012. The oral contract for the sale of bunker was concluded at a meeting attended by Nguyen, Saiful, Tran and the 2nd defendant.[11] WE Bunker delivered diesel to one of the plaintiff's vessels, the M/T Viet Anh, at the end of March. The first transaction having been concluded successfully, the plaintiff proceeded to place further orders.

10 Between 14 April and 25 April 2012, the plaintiff paid a total of US$4,785,000 to WE Bunker for the purchase of diesel and petrol. However, as of 30 April 2012, WE Bunker had only made two deliveries worth a total amount of US$1,544,126. As a result, the plaintiff had to source for fuel from two other suppliers. At the plaintiff's request, WE Bunker made two payments totalling US$1,550,000 to these two suppliers.[12] WE Bunker did not fulfil its contractual obligations in respect of the remaining sum of US$1,690,874.

11 On or about 30 April 2012, Nguyen, Tran, and Saiful met at the Hyatt Hotel in Singapore. Nguyen was accompanied by his niece, Ms Dang Thi Bich Hanh ("Dang"), who acted as his interpreter. Saiful acknowledged that a total

amount of US$4,785,000 had been received by WE Bunker and that US$1,690,874 was due to the plaintiff. Saiful agreed that WE Bunker would pay the plaintiff the sum of US$1,690,874 by 7 May 2012.[13]

12 The agreement was reduced to writing by Dang. Dang first handwrote the agreement and the handwritten agreement was signed by Nguyen, Saiful and Tran.[14] Following the meeting, at Nguyen's request, Saiful arranged for the Agreement to be typed out. The three signatories met again at Hyatt Hotel on or about 2 May 2012 and signed the Agreement.[15] The contents of the Agreement and the handwritten agreement were identical. In both documents:

(a) Nguyen signed on behalf of "Viet Hai Petroleum Joint Stock Company";

(b) Saiful signed on behalf of WE Bunker; and

(c) Tran signed as "Representative of WE Bunker in Vietnam".

However, in the handwritten agreement, Saiful was described as "COO" and Nguyen was described as "CEO". These two signatories' designations were omitted in the Agreement.

13 Although Nguyen signed on behalf of "Viet Hai Petroleum Joint Stock Company", Dang gave evidence that the reference to "Viet Hai Petroleum Joint Stock Company" was a mistake in translation and that it was intended to refer to the plaintiff.[16] This was not challenged by the defendants.

14 The Agreement

(a) described its contents as "the finalization on account transaction … between: Viet Hai Petroleum Joint Stock Company and WE Bunker";

(b) set out a list of 12 payments "transferred/paid by Viet Hai Petroleum JSC to WE Bunker". The total amount was US$4,785,000;

(c) set out a list of amounts which "WE Bunker paid to Viet Hai Petroleum JSC" in the form of cargo delivered by WE Bunker to the "AP07" and the "SEA DRAGON", and monies paid by WE Bunker to "TELEEK" and "Platform" on behalf of Viet Hai Petroleum JSC. The total amount was US$3,094,126;

(d) contained an acknowledgement that "WE Bunker still owes Viet Hai Petroleum JSC" the balance amount of US$1,690,874; and

(e) contained a confirmation that "WE Bunker will have responsibility to T/T back to Viet Hai Petroleum JSC the balance of US$1,690,874… latest by next Monday 7 [M]ay 2012".

The law on a submission of no case to answer

15 It is settled law that a submission of no case to answer will succeed if the plaintiff's evidence, taken at face value, does not establish a case in law, or if the evidence led by the plaintiff is so unsatisfactory or unreliable that it has not discharged its burden of proof: see *Bansal Hemant Govindprasad v Central Bank of India* [2003] 2 SLR(R) 33 ("*Bansal*") and *Lena Leowardi v Yeap Cheen Soo* [2015] 1 SLR 581 ("*Lena Leowardi*") at [23].

16 Three implications flow from a submission of no case to answer (*Lena Leowardi* at [24]):

(a) First, the plaintiff only has to establish a *prima facie* case as opposed to proving its case on a balance of probabilities.

(b) Second, in assessing whether the plaintiff has established a *prima facie* case, the court will assume that any evidence led by the plaintiff is true, unless it is inherently incredible or out of common sense.

(c) Third, if circumstantial evidence is relied on, it does not have to give rise to an irresistible inference as long as the desired inference is one of the possible inferences.

17 The defendant's silence may strengthen the plaintiff's case if he can reasonably raise evidence in rebuttal but does not do so: *Bansal* at [15]; *Singapore Court Practice 2014* vol 1 (Jeffrey Pinsler gen ed) (LexisNexis, 2014) ("*Singapore Court Practice*") at para 35/4/10.

18 It was common ground that in deciding whether the plaintiff has established a *prima facie* case, the court may also consider (a) any admission in the defence of any part of the plaintiff's case, and (b) any assertion in the defence that has been admitted by the plaintiff in its reply. In my view, this must be correct since these facts constitute agreed facts before the court. However, the defendants submitted that the court may not take into consideration documents in an agreed bundle, the authenticity of which has been agreed. I disagreed with the defendants. Documents included in an agreed bundle without qualification stand as evidence in the case: *Singapore Court Practice* at para 34/3A/13. The court would be entitled to take such evidence into consideration. The weight to be given to documents in the agreed bundle is of course a separate matter. In the present case, there was no agreed bundle marked specifically as such. However, at the start of the trial,

the parties agreed to the authenticity of most of the documents in each other's bundle of documents.

The defendants' submissions on the claim for account stated

19 The defendants submitted as follows:

(a) The burden of proof was on the plaintiff to show a *prima facie* case that there were underlying transactions from which the account stated was derived and the plaintiff failed to discharge this burden.

(b) The plaintiff failed to show a *prima facie* case that Saiful and/or Tran had the authority to bind WE Bunker when they signed the Agreement.

(c) The plaintiff failed to show a *prima facie* case that it had legal capacity to bring this action.

Whether the plaintiff had to show there were underlying transactions from which the account stated was derived

20 The defendants accepted that an account stated is a cause of action distinct from the original debt, and that it creates an independent obligation without extinguishing or superseding the original debt. However, they submitted that to rely on an account stated, the plaintiff had to also show that there were underlying transactions from which the account stated was derived.[17] I disagreed with the defendants' submission.

21 The expression "account stated" can mean any one of the following:

(a) A *mere account stated* is an absolute acknowledgement by a defendant of a debt owed to the plaintiff. There is no need for the

plaintiff to communicate its acceptance of the acknowledgement to the defendant. The plaintiff may sue on the account as an independent cause of action. The defendant's promise to pay is not binding as it is not supported by consideration but the plaintiff can rely on the defendant's admission as evidence of the debt. The defendant is entitled to challenge the debt.

(b) A *real account stated* is an agreement between two parties on the debts owing to each other, how the debts on each side are to be set off against each other and the balance payable. The consideration for the promise by the defendant to pay the balance is the discharge of the debts which have been set off. A real account stated is therefore a binding agreement between the parties in which there is an enforceable promise to pay. The plaintiff has to prove the agreement but need not prove the underlying debts. The defendant is entitled to show that the agreement is not binding on him on any of the grounds upon which an agreement can be set aside at law.

(c) An *account stated for valuable consideration* is also a binding agreement between the parties in which there is an enforceable promise to pay. It is different from a real account stated in that (a) the debts are on one side only, and (b) the consideration is extrinsic, *eg*, consent to wait for payment or a reduction in the amount of the claim (unlike a real account stated where the consideration is in the discharge of the debts on both sides). As with a real account stated, the plaintiff has to prove the agreement but does not have to prove the underlying debts. The defendant is entitled to show that the agreement is not binding on him on any of the grounds upon which an agreement can be set aside at law.

See: *Gobind Lalwani v Basco Enterprise Pte Ltd* [1998] 3 SLR(R) 1019 ("*Basco")* at [7] – [10]; *Siqueira v Noronha* [1934] AC 332 at 337 – 338; *Harris and another v Charalambous* [2013] EWHC 1317 at [15]; *Atkin's Encyclopaedia of Court Forms in Civil Proceedings* vol 12(2) (LexisNexis, 2nd Ed, 2013 Issue) ("*Atkin's Court Forms*") at paras 70 – 71.

22 Insofar as the burden of proof is concerned, the general principle remains that the person who asserts the existence of certain facts has the burden of proving that those facts exist. Therefore,

> (a) where a plaintiff sues on a mere account stated, he has the burden of proving the account stated. This means he has to prove the defendant's absolute acknowledgement of the debt. A defendant who challenges the debt has the burden of proving that he is not liable for the debt; and
>
> (b) where a plaintiff sues on a real account stated or an account stated for valuable consideration, the plaintiff has to prove the parties' agreement to the account stated. A defendant who challenges the agreement bears the burden of proving that he is entitled to set aside the agreement.

The plaintiff does not bear the burden of proving that the underlying debts exist where he sues on an account stated.

23 The defendants referred me to two American cases – *Baltimore County, Maryland v Archway Motors, Inc*. 370 A.2d 113 (1977) ("*Baltimore County*") and *Gurney, Becker & Bourne*, *Inc. v Benderson Development Company, Inc*. 47 N.Y.2d 995 (1979) ("*Gurney*") – in support of their proposition that the plaintiff had the burden of showing a pre-existing

obligation to pay by the defendants. The defendants relied on statements in those cases to the effect that there can be no liability on an account stated if there is no existing debt. In my view, these two cases did not support the defendants' argument.

24 In *Baltimore County*, the account stated was a letter from the plaintiff requesting payment by the defendant. The plaintiff argued that the defendant's failure to object to the request for a year "constituted an admission of liability for an existing debt" (at 117). It was held that the plaintiff could not recover on an account stated because the defendant never became liable under the agreement pursuant to which the request for payment had been made. This was because a condition precedent in that agreement had not been fulfilled. In *Gurney*, the account stated was a letter from the plaintiff (a real estate agent) to the defendant (a landlord) for payment of commission in respect of a tenancy. The letter contained a notation that additional commission was payable if the tenant renewed the tenancy. It was held that an account stated could not arise because no commission was due on the renewal option which had not been exercised at the date of the letter.

25 Neither *Baltimore County* nor *Gurney* discussed whether the burden was on the plaintiff to prove the existing debt in addition to the defendant's admission of the debt. The evidence before the court in both cases showed that the debt did not exist. The accounts stated in *Baltimore County* and *Gurney* were in the nature of mere accounts stated. As discussed at [21(a)], the defendant is entitled to challenge the underlying debt in the case of a mere account stated. It is a defence to an action on a mere account stated that the account was stated in respect of a debt not then due, or not in existence, or for which the defendant is not liable: *Atkin's Court Forms* at para 71. Therefore, the fact that the defendants in both *Baltimore County* and *Gurney* could not be

liable on an account stated because the debt did not exist is consistent with the nature of a mere account stated.

26 In my opinion, the Agreement in the present case was a mere account stated. The Agreement set out the amounts paid by the plaintiff to WE Bunker and the balance amount outstanding after deducting (a) the value of bunker delivered by WE Bunker to two vessels (the "AP07" and the "SEA DRAGON"), and (b) payments made by WE Bunker on the plaintiff's behalf to two suppliers ("TELEEK" and "Platform"). In the Agreement, WE Bunker unequivocally admitted that it owed the plaintiff the balance amount of US$1,690,874.

27 The plaintiff merely had to show a *prima facie* case that the Agreement was signed by someone who had the authority to bind WE Bunker (and consequently, the defendants as partners in WE Bunker). This would be *prima facie* proof of the defendants' acknowledgement of the debt. The plaintiff did not have to show a *prima facie* case that the underlying debts existed. Instead, the defendants bore the burden of proving that the underlying debts did not exist or were not enforceable against them. The present case was similar to *Basco*, where the court held that it did not matter that the plaintiff in that case could not show how the amount stated in the account stated was arrived at; on the production of the account stated, the burden of disproving what was stated therein shifted to the defendant (at [24]). The defendant in that case made a submission of no case to answer and did not give evidence to dispute the debt. Judgment was therefore entered for the plaintiff (at [25]).

28 Nguyen was cross-examined extensively on the underlying debts and payments which the plaintiff said it made to WE Bunker.[18] Nguyen said that the plaintiff did not have records of the payments made to the WE Bunker's

bank account and that these payments were made in third-party names because the plaintiff used a remittance agent.[19] Nguyen's evidence in this regard may have been less than satisfactory. However, it was not inherently incredible. In my view, the defendants' cross-examination of Nguyen was not sufficient to rebut the plaintiff's evidence that the payments had been made to WE bunker and that WE Bunker owed the plaintiff the amount stated in the Agreement. As the defendants did not adduce any evidence, they did not, in my view, discharge the burden of proving that they were not liable for the debts.

Whether Saiful and/or Tran had the authority to bind WE Bunker when they signed the Agreement

29 This was the main issue in this case. There was no question that the plaintiff had shown a *prima facie* case that the Agreement was signed by Saiful as COO of WE Bunker, and by Tran as WE Bunker's Vietnam representative. The question was whether the plaintiff had shown a *prima facie* case that Saiful and/or Tran had the necessary authority to sign the Agreement on behalf of WE Bunker; otherwise, the Agreement would not be binding on the defendants who were the partners in WE Bunker.

30 The defendants first submitted that the plaintiff had not pleaded facts showing that the office of a COO or Vietnam representative carries with it the authority to enter into an account stated[20] and that the Statement of Claim ("SOC") made no reference to any representation made by the defendants.[21] I found that although the pleadings could have been clearer, it was apparent from paragraph 3 of the SOC that the plaintiff's case was that Saiful and Tran signed the Agreement as WE Bunker's agents. Paragraph 3 of the SOC states:

> In an account stated in writing titled Agreement of Account Balance Finalization duly signed by the Defendants' Chief Operation Officer, Saiful Alam (full name Saiful Alam Bin Abdul Samad) and the Defendants' Vietnam representative,

> Tran Quang Luong dated 30 April 2012, it was agreed that the Defendants owed the Plaintiffs the sum of US$1,690,874.00 which the Defendants promised to pay by 7 May 2012.

31 It was evident from this paragraph that the plaintiff was relying on Saiful's authority as WE Bunker's COO, and on Tran's authority as WE Bunker's Vietnam representative. It would also have been clear to the defendants that this was the plaintiff's case.

32 There was no evidence Saiful and Tran had actual authority to bind WE Bunker. The question then was whether Saiful or Tran or both of them had apparent authority to bind WE Bunker.

33 Apparent authority arises from representations made by the principal to a third party. Representations may be express or implied from acquiescence or inactivity: *Viknesh Dairy Farm Pte Ltd v Balakrishnan s/o P S Maniam and others* [2015] SGHC 27 at [55]. The principal's conduct as a whole must be considered in determining whether it made any representation to the third party: *Sigma Cable Co (Pte) Ltd v NEI Parsons Ltd* [1992] 2 SLR(R) 403 at [29].

34 The defendants submitted that they could not have made any representation to Nguyen that could have given rise to any apparent authority on the part of Saiful and/or Tran. During cross-examination, Nguyen admitted that the defendants never spoke to him.[22] However, the plaintiff's case was not based on any direct representation by the defendants. Express communication by the principal is not essential. In fact, it is the most infrequent instance of apparent authority because such an express communication is likely to give rise to *actual* authority: Tan Cheng Han, *The Law of Agency* (Academy Publishing, 2010) at para 5.022.

35 There is ample support for the proposition that "[a] business card that is genuine and gives an agent's status may… be an adequate representation": *Bowstead & Reynolds on Agency* (Peter G Watts gen ed) (Sweet & Maxwell, 20th Ed, 2014) at para 8-018. Hence, a name card stating that the particular person is a "Financial Adviser" is a representation by the insurance group that this person has authority to give advice in relation to the sale of insurance: *Martin and another v Britannia Life Ltd* [1999] All ER (D) 1495 ("*Martin*") at [5.3.4]. A name card stating that a person is a "Director" or "Manager" of a mortgage-managing company is a representation that this person has authority to enter into contracts for the investment of funds: *Heperu Pty Ltd & Ors v Morgan Brooks Pty Ltd & Ors (No 2)* [2007] NSWSC 1438 ("*Heperu*") at [83] – [84] (reversed on other grounds: *Perpetual Trustees Australia Ltd v Heperu Pty Ltd* [2009] NSWCA 84). In both these cases, the business card bore the principal company's logo and address, and the agent's designation, telephone and fax numbers: see *Martin* at [4.14] and *Heperu* at [26] respectively.

36 The name card given by Saiful bore WE Bunker's logo, its address, Saiful's designation and his contact numbers. There was no reason for Nguyen to doubt the authenticity of Saiful's card, especially since this was the second time he was receiving a name card from a WE Bunker employee. Nguyen had received Tran's name card earlier in February 2011, when he had gotten to know Tran. The name cards of both Saiful and Tran were identical in design, down to the colour scheme and type of paper used. As the defendants did not give evidence, it was clear that the plaintiff had shown a *prima facie* case that Saiful's name card was genuine.

37 The defendants tried to challenge the plaintiff's reliance on the name card by pointing to a letter dated 18 April 2011 from WE Bunker to Nguyen

which was signed by Saiful as "Export Manager".[23] This, in their submission, contradicted the plaintiff's case that Saiful was COO.[24] This letter was dated 18 April 2011 and bore the WE Bunker letterhead. It stated that WE Bunker was ready and able to supply 5000 metric tons of diesel within four days of receiving payment. Nguyen said that the date on the letter was wrong and that the letter was given to him by Tran in April 2012.[25] The reference number on the letter – "GL-0006-2012" – seemed to support Nguyen's assertion. The defendants also pointed out that the letter was addressed to Nguyen as "buyer" and the WE Bunker logo was different from that on the name cards that Nguyen received from Saiful and Tran. Nguyen explained that he had not noticed the different logo or Saiful's title on the letter when he received the letter.[26] Nguyen's explanations about this letter were not entirely satisfactory. However, in the absence of evidence by the defendants, I was satisfied that the plaintiff had shown a *prima facie* case that

(a) Saiful's and Tran's name cards were authentic and authorised or permitted by WE Bunker and that the plaintiff had relied on these cards; and

(b) these name cards were representations by WE Bunker that Saiful and Tran were WE Bunker's COO and Vietnam representative respectively.

It was not inherently incredible that Nguyen did not register the fact that the logo and Saiful's title on the letter were different from those on Saiful's name card.

38 However, were Saiful's title as COO and/or Tran's title as representative in Vietnam sufficient representation that either or both of them had the necessary authority to enter into the Agreement on behalf of WE

Bunker? In my view, Saiful's title as COO was a representation that he had a sufficiently senior appointment that carried with it the authority to bind WE Bunker. This representation would also have been affirmed by the fact that the first transaction was concluded successfully (see [9]). It bears reminding that, as pointed out by the Court of Appeal in *Lena Leowardi*, the plaintiff only has to establish a *prima facie* case as opposed to proving its case on a balance of probabilities.

39 However, I did not think that Tran's designation as WE Bunker's representative in Vietnam was sufficient to clothe him with apparent authority to bind WE Bunker. Tran's role was to act as liaison between the plaintiff and WE Bunker for the purchase of oil. Nguyen would transfer the money and inform Tran, who would then issue a bill.[27] Tran also acted as the interpreter at the previous meetings between Saiful and Nguyen.[28] Nevertheless, it did not matter that Tran did not have apparent authority to bind WE Bunker; it was sufficient that Saiful did.

40 I therefore concluded that the Agreement was binding on WE Bunker.

Whether the plaintiff had legal capacity to bring the action

41 The defendants referred to the legal opinion provided by the plaintiff's witness, Mr Nguyen K Do, a certified lawyer in Vietnam, which stated that according to Article 161 of the Civil Procedure Code of Vietnam, "any individual, body or organization shall have the right to initiate by itself or by its legal representative a legal proceeding to petition a competent court to protect its lawful rights and interests".[29] The defendants submitted that only the legal representative of the company would have the legal capacity to represent the plaintiff in these proceedings.[30] They argued that Nguyen was

not the legal representative of the plaintiff although he was the majority shareholder. In my view, the legal opinion did not support the defendants' submission. The legal opinion merely said that an organization could initiate legal proceedings either by itself or its legal representative. The defendants did not cross-examine Mr Nguyen K Do. In the absence of any contrary evidence on Vietnamese law by the defendants, there was a *prima facie* case that the plaintiff had the legal capacity to bring this action.

Plaintiff's alternative claim for money had and received

42 In my view, the plaintiff also succeeded in its alternative claim for money had and received.

43 The underlying basis for a claim for money had and received is subsumed under the rubric of unjust enrichment: *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 (at [125]). As the Court of Appeal went on to observe, unjust enrichment is the event and restitution the response to that event (at [126]). So to say one has "an action for money had and received" means that one claims restitution of money paid on the ground that there has been unjust enrichment. One such instance of unjust enrichment is "total failure of consideration".

44 As already discussed, the plaintiff has shown a *prima facie* case that Saiful had apparent authority to bind WE Bunker when he signed the Agreement. The Agreement was therefore evidence of WE Bunker's admission of the amounts received from the plaintiffs. Taken together with the plaintiff's evidence that WE Bunker failed to fulfil its obligations in respect of the balance amount of US$1,690,874, the Agreement was *prima facie*

evidence of the plaintiff's claim for money had and received. The defendants did not challenge whether the failure of consideration was total.

45 Further, in their defence, the defendants admitted to having received certain amounts (albeit from parties who were not the plaintiff) and having paid certain amounts to third parties.[31] I noted the coincidence between the amounts shown in the Agreement as having been paid to WE Bunker and some of the amounts which the defendants admitted to having received. I also noted the coincidence between the amounts credited to WE Bunker in the Agreement and some of the amounts which the defendants admitted to having paid. These supported the plaintiff's case that the defendants did receive the payments and called for an explanation by the defendants. The defendants chose not to adduce evidence.

Conclusion

46 A submission of no case to answer is a high-risk strategy. As long as there is "some *prima facie* evidence that supports the essential limbs of the plaintiff's claim(s)", the failure by the defendants to adduce evidence on their own behalf would be fatal: *Lim Swee Khiang and another v Borden Co (Pte) Ltd and others* [2006] 4 SLR(R) 745 at [6]. In this case, the Agreement was strong evidence of the defendants' liability to the plaintiff for the judgment sum once a *prima facie* case was shown that Saiful was clothed with the authority to sign the Agreement and bind WE Bunker. The defendants had to give evidence if they disputed Saiful's authority. They did not.

47 As the defendants' submission of no case to answer failed, I entered judgment for the plaintiff and awarded costs to the plaintiff fixed at $80,000 plus reasonable disbursements to be agreed or taxed.

Defendants' application for stay of proceedings

48 On 1 February 2016, the defendants filed Summons 519 of 2016 for a stay of execution of the judgment. I heard the application on 11 February 2016 and ordered a stay of all execution proceedings on the condition that the defendants paid US$1 million into court within 21 days. The defendants have appealed against my decision granting a conditional stay.

49 It is trite that while a successful plaintiff should not be deprived of its fruits of litigation, the court should also see that the defendant's appeal, if successful, is not rendered nugatory. To balance these competing interests, a stay will only be granted where special circumstances so require. This is usually the case where the appellant satisfies the court that if damages and costs are paid, there is no reasonable probability of getting them back in the event the appeal succeeds: *Lee Sian Hee (trading as Lee Sian Hee Pork Trader) v Oh Kheng Soon (trading as Ban Hon Trading Enterprises)* [1991] 2 SLR(R) 869 at [5].

50 The defendants submitted that the judgment should be stayed pending appeal for the following reasons:

(a) First, the plaintiff had threatened bankruptcy proceedings against the defendants. In the defendants' submission, the prejudice from being adjudged bankrupt would be irreversible even if the appeal succeeded.[32]

(b) Second, the plaintiff is a foreign company unregistered in Singapore. The defendants argued that they have limited information about the plaintiff and that the plaintiff appears to conduct its business "in a manner that is highly questionable and unreliable".[33] For these

reasons, the defendants feared being unable to recover their money in the event of a successful appeal.

51 The defendants' first ground leaned in favour of a stay. It has been held that granting a stay against a judgment creditor who is pursuing the winding-up of the judgment debtor ensures that the appeal is not rendered nugatory: *Cathay Theatres Pte Ltd v LKM Investment Holdings Pte Ltd* [2000] 1 SLR(R) 15 at [15].

52 However, in my view, the defendants' second ground was insufficient to warrant a stay. That the judgment creditor is a foreign company, making it inconvenient or expensive to seek recovery outside jurisdiction, is not a special circumstance warranting a stay: *Strandore Invest A/S and others v Soh Kim Wat* [2010] SGHC 174 at [13]; *Denis Matthew Harte v Tan Hun Hoe and Another* [2001] SGHC 19 at [64]. The defendants alleged that the plaintiff's conduct of its business lacked accountability due to the absence of proper record keeping. The defendants' main contention was that the plaintiff has "displayed an astounding lack of accountability in the manner they conducted their business transactions through their absence of paper documentation of such transactions".[34] In my view, whilst the plaintiff's record keeping could have been better, the defendants' description overstated the matter. In any event, I did not agree with the defendants' submission that this meant that there was a risk that they would be unable to recover their money should the appeal succeed.

53 As the plaintiff was agreeable to a stay on condition that the defendants pay $1m into court, I made an order in those terms. The order addressed the defendants' concerns and ensured that the plaintiff would not be deprived of its judgment sum if the defendants failed in their appeal. As the defendants

failed in their application for an unconditional stay, I awarded costs of the application to the plaintiff fixed at $1,500 inclusive of disbursements.

54 As stated earlier, the defendants have appealed against my decision to grant a conditional stay pending their appeal against my decision in the main action. I note that the Court of Appeal has concurrent jurisdiction to grant a stay of execution pursuant to O 57 r 15(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules"). O 57 r 15(1) provides as follows:

> 15.—(1) Except so far as the Court below or the Court of Appeal may otherwise direct —
>
> (*a*) an appeal shall not operate as a stay of execution or of proceedings under the decision of the Court below; and
>
> (*b*) no intermediate act or proceedings shall be invalidated by an appeal.

The application must be made in the first instance to the High Court: s 35 Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed); O 57 r 16(4) of the Rules.

55 It is clear that if I had refused to grant a stay outright, the defendants would not have had to file an appeal but could make a fresh application to the Court of Appeal: *Singapore Civil Procedure 2016* vol 1 (Foo Chee Hock JC gen ed) (Sweet and Maxwell, 2016) ("*SCP 2016*") at para 57/15/7.

56 Should an applicant who is dissatisfied with the grant of a conditional stay file an appeal or make a fresh application to the Court of Appeal? It seems to me that the concurrent jurisdiction of the Court of Appeal under O57 r 15(1) extends to *all* cases where the applicant does not succeed in obtaining *the stay order that he sought* from the High Court. It should not matter whether the High Court refused a stay outright or granted a conditional stay. From the perspective of a defendant seeking an unconditional stay, a

conditional stay order means that his application for an unconditional stay has been refused. In the present case, for example, the defendants are in fact seeking an order from the Court of Appeal for an unconditional stay, which is the same application they would have made if I had refused a stay outright. It seems to me that the procedure should be the same in both instances.

57 An appeal is needed only where the judgment creditor is challenging a stay order (whether conditional or unconditional): *SCP 2016* at para 57/15/9.

58 This issue does not seem to have been decided by our courts. Guidance from the Court of Appeal would be helpful.

Chua Lee Ming
Judicial Commissioner

Tang Gee Ni (G N Tang & Co) for the plaintiff;
Mohamed Baiross, Rebecca Chia and Anand George (I.R.B. Law LLP) for the defendants.

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[1] Statement of Claim ("SOC") at paras 1 – 2.
[2] Annexed to the SOC.
[3] SOC at para 3.
[4] SOC at para 5.
[5] Affidavit of Evidence-in-Chief ("AEIC") of Nguyen at para 5.
[6] Notes of Evidence, Day 1 ("NE1") at p 26; AEIC of Nguyen at para 12(a).
[7] NE1 at p 38, line 26.
[8] AEIC of Nguyen at para 12.
[9] AEIC of Nguyen at para 12(d).
[10] NE1 at p 27, line 12 – 21.
[11] NE1 at p 38, line 27 to p 39, line 21.
[12] AEIC of Nguyen at para 12(i).

[13] AEIC of Nguyen at paras 12(k) – (l).
[14] AEIC of Dang at pp 7 – 8.
[15] AEIC of Nguyen at para 12(q).
[16] AEIC of Dang at para 13.
[17] Defendant's Submissions dated 14 December 2015 at paras 24 – 26.
[18] NE1 at p 22, line 9 – 12 and line 15 – 18.
[19] NE1 at p 56, line 28 – 31.
[20] Defendant's Submissions dated 14 December 2015 at para 17.
[21] Defendant's Submissions dated 14 December 2015 at para 18.
[22] NE1, p 69 at line 7 – 10.
[23] Exhibit P39.
[24] NE1 at p 53, line 9 – 14.
[25] NE1 at p 48, line 15.
[26] NE1 at p 51, line 14.
[27] NE1 at p 26, line 1 – 5.
[28] AEIC of Nguyen at para 12(d).
[29] AEIC of Nguyen K Do at p 11.
[30] Defendant's Submissions dated 14 December 2015 at para 104.
[31] Defence at paras 20 and 23.
[32] Defendant's Submissions dated 11 February 2016 at paras 15 – 18.
[33] Defendant's Submissions dated 11 February 2016 at para 20.
[34] Defendant's Submissions dated 11 February 2016 at para 33.