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

**[2019] SGHC 163**

Suit No 980 of 2016

Between

Liew Kum Chong

… *Plaintiff*

And

(1) SVM International Trading Pte Ltd
(2) Feasto Pte Ltd
(3) Mizimegah Pte Ltd
(4) Scarlett Merida Xi Wei Yuan
(5) Pan Jiaying

… *Defendants*

---

# GROUNDS OF DECISION

---

[Contract] — [Sham transaction]
[Contract] — [Mistake] — [Non est factum]
[Contract] — [Unconscionability]
[Credit and Security] — [Money and moneylenders] — [Illegal moneylending]
[Credit and Security] — [Guarantees and indemnities] — [Guarantor]

## TABLE OF CONTENTS

# Liew Kum Chong
# v
# SVM International Trading Pte Ltd and others

**[2019] SGHC 163**

High Court — Suit No 980 of 2016
Chua Lee Ming J
18, 19, 20, 21 March 2019; 22 March 2019

11 July 2019

**Chua Lee Ming J:**

## Introduction

1 The plaintiff, Mr Liew Kum Chong, commenced this action seeking the return of the balance outstanding on loans given to the first defendant, SVM International Trading Pte Ltd ("SVM"), the second defendant, Feasto Pte Ltd ("Feasto") and the third defendant, Mizimegah Pte Ltd ("Mizimegah"). The plaintiff sued the fourth defendant, Ms Scarlett Merida Xi Wei Yuan ("Scarlett") and the fifth defendant, Ms Pan Jiaying ("Pan") as guarantors for the loans. The plaintiff claimed $200,000 against SVM, $100,000 against Feasto, $100,000 against Mizimegah, and $400,000 against Scarlett and Pan on a joint and several basis.

2 The trial proceeded against SVM, Feasto, Mizimegah and Scarlett. The plaintiff was unable to serve the writ on Pan, a Chinese national who was

suspected to in China. The plaintiff did not attempt to effect service on Pan in China. Pursuant to O 21 r 2(5) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), the action against Pan was deemed to have been discontinued on 14 March 2018, *ie* 12 months after the validity of the writ had expired.

3 On 22 March 2019, I entered judgment for the plaintiff against SVM, Feasto, Mizimegah and Scarlett, all of whom have appealed.

**Facts**

4 Mizimegah was incorporated on 3 March 2010, Feasto on 20 December 2011, and SVM on 14 June 2013.[1] At all material times, SVM was owned equally by Scarlett and Pan, Feasto was wholly owned by Scarlett, and Mizimegah was majority owned by Scarlett. At all material times, Scarlett was the sole director of all three companies. SVM and Mizimegah were set up for purposes of "general wholesale trade" whilst Feasto was set up for purposes of "IT design". However, it appeared that the companies had little or no business and were used as investment holding companies instead. It was not disputed that

(a) on 19 September 2012, Feasto bought a unit at 1 Dusun #01-26, One Dusun Residences, Singapore ("the Dusun property");[2]

(b) on 17 June 2013, Mizimegah bought a unit at 1 West Coast Drive #01-32 NEWest, Singapore ("the NEWest property");[3] and

(c) on 18 July 2013, SVM bought a shop unit at 9 King Albert Park #01-44, Singapore ("the KAP property").[4]

5 Scarlett met Pan in October 2012 and the two of them became friends. According to Scarlett, Pan claimed to be an investor with several business

opportunities in China and Pan invited Scarlett to join her (Pan's) business venture in Singapore.[5] On 9 May 2013, a company known as Redpine Capital Private Limited ("Redpine") was incorporated for purposes of the business venture. Pan was a director and shareholder.[6] Scarlett left her then current employment to join Redpine full-time and was appointed as a director of Redpine upon its incorporation.[7] She was also given shares in Redpine.[8] Scarlett ceased to be a director and shareholder of Redpine in February 2014.[9]

6 On 26 September 2013, Scarlett and Pan met up with Mr Tang King Kai ("Tang"), a lawyer practising under the name of M/s Tang & Partners ("the 26 September meeting"). Also present was one Mr Lee Show Sian ("Lester"). Lester knew Pan and Tang, and had been introduced to Scarlett by Pan. The plaintiff, who was a long-time client of Tang, was not present at this meeting.

7 At the 26 September meeting, several things happened.

(a) Scarlett and Pan signed a Deed of Guarantee dated 26 September 2013 ("the Guarantee").[10] The Guarantee was stated to be in consideration of the plaintiff "advancing to [SVM] the sum of S$400,000.00, [Feasto] the sum of S$200,000 and to [Mizimegah] the sum of S$200,000 … as friendly loans … at [Scarlett's and Pan's] request". Under the Guarantee, Scarlett and Pan jointly and severally guaranteed the payment of the loans.

(b) Scarlett and Pan signed Options to Purchase ("the OTPs") on behalf of SVM, Feasto and Mizimegah for the KAP property,[11] the Dusun property[12] and the NEWest property[13] respectively. All three OTPs were dated 26 September 2013 and given in favour of the plaintiff. Each OTP was stated to be in consideration of $100 "as Option Fee …

and of [the plaintiff's] loan" of $400,000, $200,000 and $200,000 to SVM, Feasto and Mizimegah respectively.

(c) Tang handed the following cheques to Scarlett and Pan:[14]

(i) UOB cheque no. 517413 for the sum of $400,000 drawn payable to SVM;

(ii) UOB cheque no. 517411 for the sum of $200,000 drawn payable to Feasto; and

(iii) UOB cheque no. 517412 for the sum of $200,000 drawn payable to Mizimegah.

All three cheques were issued by the plaintiff and dated 26 September 2013. According to the plaintiff, these cheques represented the disbursement of the loans which he had orally agreed to give to SVM, Feasto and Mizimegah.

(d) Scarlett handed over the original options to purchase and sale and purchase agreements (signed by SVM, Feasto and Mizimegah when they purchased the properties) and the certificates of stamp duty (collectively, "the Title Deeds") to Tang, on the understanding that the Title Deeds would be returned upon repayment of the loans in full.

8 Scarlett deposited the three cheques into the respective bank accounts of SVM, Feasto and Mizimegah. Shortly thereafter, the monies were withdrawn from the accounts. According to Scarlett, the monies were withdrawn and handed to Pan in Lester's presence.

9 Sometime in middle to late October 2013, the plaintiff attended a dinner at Putien restaurant at 127 Kitchener Road together with Tang, Lester, and Pan. Scarlett was not present at the dinner. According to the plaintiff, Pan hosted the dinner to thank him for extending the loans to SVM, Feasto and Mizimegah.

10 It was the plaintiff's case that the loans were repayable within "2 to 3 months".[15] In her oral testimony, Scarlett said that it was agreed at the 26 September meeting that the loans would be for two months.[16] Sometime in early December 2013, after the plaintiff began chasing for payment, Pan issued a cheque (post-dated to 18 December 2013) for $800,000 drawn in favour of Tang.[17] The cheque was drawn on Redpine's account.

11 On 20 December 2013, Tang presented the Redpine cheque for payment. However, the cheque was dishonoured.

12 On 1 January 2014, in a text message from Scarlett to Tang sent at 11.33pm, Scarlett said that she "[had] now received $400k from Ms Pan" and would "return part of the $800k loan to [the plaintiff]", provided that the plaintiff agreed that this repayment would allow her to redeem two of the three properties (*i.e.* the Dusun and NEWest properties).[18] In another message to Tang on 3 January 2014, Scarlett described the $400,000 as having been given by Pan "as part payment of the $800k loan".[19] Scarlett also said that Pan would pay the balance of the loan on 8 January 2014. Scarlett asked for the three properties to be "released" upon "full payment to the lender Mr Liew" and requested Tang to arrange a meeting on 8 January 2014.

13 On 8 January 2014, at 8.36am, Tang sent a message to Scarlett, saying that the three properties would be returned to Scarlett and Pan upon payment of

the loan of $800,000 in full.[20] Tang also said that "[w]e can meet today to do the exchange and redemption once you confirm that you have all the money".

14 In the event, there was no meeting on 8 January 2014. Pan did not make any payment towards the loan on that day; neither did Scarlett pay the plaintiff the $400,000 that she had received from Pan.

15 By way of three letters dated 20 February 2014, the plaintiff demanded repayment of $400,000, $200,000 and $200,000 from SVM, Feasto and Mizimegah respectively.[21] Between 24 February 2014 and 2 June 2014, Pan made part payments to the plaintiff on behalf of SVM, Feasto and Mizimegah, amounting to $400,000 in total. The plaintiff applied the repayments proportionally across the three loans to SVM, Feasto and Mizimegah. Accordingly, the balance amounts outstanding were:

(a) $200,000 from SVM;

(b) $100,000 from Feasto; and

(c) $100,000 from Mizimegah.

16 By way of a letter dated 9 June 2014 under the letterhead of Tang & Partners, Tang informed Scarlett that Pan had paid $400,000 to the plaintiff, and enclosed copies of the receipts of the payments made by Pan.[22] The receipts were either in Tang's name or in his name "for and on behalf of" the plaintiff. In the same letter, Tang asked Scarlett to pay the balance of $400,000 which she had previously received from Pan (see [12] above).

17 However, Scarlett refused to pay the balance of $400,000. In her message dated 16 June 2014 to Lester, Scarlett denied that the $400,000

received from Pan had been "entrusted" to her as part payment of the plaintiff's loan, and that "Tang should go and get the $400k from [Pan] instead".[23] Under cross-examination, Scarlett denied that the $400,000 received from Pan was intended by Pan to be paid to the plaintiff, and claimed that that amount was to repay other loans that Pan had taken from her.[24]

18 On 14 September 2016, the plaintiff filed the present action. I should emphasise that the plaintiff's claim was only for the amounts outstanding on the loans to SVM, Feasto and Mizimegah. The plaintiff had not exercised any of the OTPs and all the OTPs had expired. The plaintiff only relied on the OTPs as evidence of the loans.

**The defences**

19 SVM, Feasto, Mizimegah and Scarlett (together, "the Defendants") raised four defences:

(a) The loans to SVM, Feasto and Mizimegah were sham transactions; the true borrower was Pan.

(b) The Guarantee should be set aside on the ground of unconscionability.

(c) The Guarantee should be set aside on the ground of *non est factum*.

(d) The loans and the Guarantee were not enforceable under the Moneylenders Act (Cap 188, 2010 Rev Ed) ("MLA").

20 The Defendants' respective defences could have been clearer but to the extent that they alleged that the OTPs were invalid or unenforceable, that was irrelevant since the plaintiff did not seek to enforce the OTPs in this action. The OTPs remained relevant as evidence of the loans unless Scarlett could prove that she was not aware of their contents. As will be seen below, Scarlett knew what the effect of the OTPs was and she clearly knew that the loans were being given to SVM, Feasto and Mizimegah.

***Whether the loans were sham transactions***

21 The agreements for the loans to SVM, Feasto and Mizimegah were not reduced to writing. The Defendants accepted that the OTPs and the Guarantee were evidence that the borrowers were SVM, Feasto and Mizimegah. However, they argued that the true borrower was Pan and that the loans to the three companies were sham transactions. In their closing submissions, the Defendants contended that the Guarantee and the OTPs were devices used to hide the underlying loan to Pan as well as to obtain security for the loan to Pan.[25] I rejected the defence.

22 To show that the transactions were a sham, the Defendants had to show that the documents were not intended to create legal relationships, and the parties did not act according to the apparent purpose and tenor of the documents: *Orix Capital Ltd v Personal Representative(s) of the Estate of Lim Chor Pee (deceased)* [2009] 4 SLR(R) 1062 at [56]. In my judgment, the Defendants failed to prove their case.

23 First, the Guarantee and the OTPs clearly stated that the loans were given to SVM, Feasto and Mizimegah (see [7(a)] and [7(b)] above). It was not disputed that Scarlett signed these documents. Scarlett admitted that she knew

she was signing three OTPs and a Deed of Guarantee.[26] She also admitted that she knew what the effect of the OTP was and what a guarantee meant.[27] I rejected Scarlett's assertion that she did not read the OTPs and that she could not recall whether she saw the references to SVM, Feasto and Mizimegah in the Guarantee. Scarlett was intelligent and well educated; she graduated at the top one percent of her class for both her Bachelor's degree and her Master's degree. She gave her evidence in English and did not appear to have a problem with the English language. She also appeared to me to be a careful person. In any event, Scarlett admitted that she knew that the loans were being made to the three companies.[28] After all, she had collected the cheques issued by the plaintiff to SVM, Feasto and Mizimegah and deposited them in the accounts of the three companies.

24 Second, the evidence showed that the plaintiff gave the loans to SVM, Feasto and Mizimegah because he wanted collateral for the loans and these companies owned the properties (albeit uncompleted then) that could be and were used as the collateral. The plaintiff's witnesses, Tang and Lester, corroborated the plaintiff's evidence in this regard. Scarlett's own evidence also confirmed that she was told that the properties owned by the three companies were needed as collateral.[29] More importantly, the Defendants' own case supported the plaintiff's case. In their closing submissions, the Defendants submitted that the loans were given to the three companies "for the purposes of security".[30]

25 In the circumstances, even if it was Pan who needed the loan, the parties had a legitimate reason for structuring the loan as loans to the three companies instead of to Pan, and clearly intended the three companies to be the borrowers and to provide the collateral. The loans to SVM, Feasto and Mizimegah could

not be sham transactions. The fact that the three companies in turn loaned the monies to Pan was an entirely separate matter altogether. Indeed, SVM did regard itself as having loaned monies to Pan. SVM's lawyers sent a letter of demand dated 17 February 2014 to Pan demanding that Pan repay the sum of $400,000 that Pan had borrowed from SVM.[31]

26 It was also not surprising that Scarlett would have agreed to SVM, Feasto and Mizimegah being the borrowers. At the time the loans were given to the three companies, Scarlett had left her employment to join Pan's business venture as her business partner (see [5] above). According to Scarlett, her relationship with Pan deteriorated only after Pan failed to repay the loans taken from the plaintiff.[32]

27 Finally, during oral closing submissions, the Defendants submitted that the loans were structured as loans to the three companies instead of to Pan, in order to evade the prohibition against unlicensed moneylending under the MLA.[33] As discussed in greater detail in [35]–[42] below, the prohibition against unlicensed moneylending under the MLA does not apply to persons who lend money solely to corporations. I rejected the Defendants' submission.

28 None of the Defendants had specifically pleaded that the loans to the three companies were a sham for this reason. Scarlett did not make this specific allegation in her affidavit of evidence-in-chief either. This allegation was made only during oral closing submissions and had not been put to the plaintiff or his witnesses in cross-examination. In my view, it was not open to the Defendants to argue, in closing submissions, that the loans to the three companies were a sham for this reason. In any event, this argument would not have succeeded. As stated in [24] above, the evidence showed that the plaintiff gave the loans to

SVM, Feasto and Mizimegah because he wanted collateral for the loans and these companies owned the properties that could be and were used as the collateral.

***Whether the Guarantee should be set aside on the ground of unconscionability***

29 To rely on the defence of unconscionability to vitiate an agreement, it must be shown that one party was suffering from an infirmity that was exploited by the other party: *BOM v BOK* at [142]. Scarlett claimed that she was led to believe that Tang was her lawyer and acting in her and the companies' interests, and this constituted an infirmity sufficient to invoke the doctrine of unconscionability. I rejected the defence.

30 I was not satisfied that Scarlett had relied on Tang as her lawyer. This was just a bare allegation. There was no evidence that Tang or Lester had said or done anything that would have led her to believe that Tang was acting for her at the 26 September meeting. On the contrary, the facts suggested otherwise. The plaintiff was not even present at the meeting. Clearly, Tang was representing the plaintiff at the meeting. Tang was also the one who handed the plaintiff's cheques to Scarlett.

31 In any event, in my view, Scarlett's alleged reliance on Tang as her lawyer was not an "infirmity" for the purposes of the defence of unconscionability. While a person need not be poor and ignorant to invoke the ground of unconscionability, any infirmity relied upon must be of sufficient gravity as to have acutely affected that party's ability to protect his interests: *BOM v BOK* at [141]. Scarlett was not under such an infirmity.

32 Further, even assuming that she was under an infirmity when she signed the Guarantee, there was no evidence of exploitation of that infirmity by Tang as the plaintiff's agent. Scarlett was a well-educated, reasonably experienced businesswoman, and a careful person. She knew she was signing a guarantee and what a guarantee meant. She also knew the loans were being given to the three companies and that the Guarantee was for these loans. In my view, she signed the Guarantee willingly.

***Whether the Guarantee should be set aside on the ground of non est factum***

33 The defence of *non est factum* was easily disposed of. It is well-accepted that two requirements must be satisfied before one can invoke this doctrine: first, there must be a radical difference between what was signed and what was thought to have been signed, and second, the party relying on the doctrine must prove that he was not negligent in signing the document: *Mahidon Nichiar bte Mohd Ali v Dawood Sultan Kamaldin* [2015] 5 SLR 62 at [119].

34 Scarlett confirmed under cross-examination that she knew the document was titled "Deed of Guarantee", and that she understood what a guarantee meant. However, she claimed that the Guarantee was not explained to her and she did not read it. The law is clear that in these circumstances, the defence of *non est factum* is not available to her. In *Kuek Siew Chew v Kuek Siang Wei* [2015] 1 SLR 396 ("*Kuek Siew Chew*"), the court held that a deed of consent was binding on a signatory who had knowledge of the general nature and effect of the deed prior to signing it, even though the signatory had not read the document and its terms were not explained (at [58]–[60]). Like the signatory in *Kuek Siew Chew*, Scarlett clearly knew the effect of the Guarantee prior to signing it. There was no radical difference between what she signed and what

she believed herself to be signing. Accordingly, the defence of *non est factum* failed.

**Whether the loans were unlicensed moneylending transactions under MLA**

35 The final defence, and the main plank of the Defendants' case, was that the plaintiff was an unlicensed moneylender. Unlicensed moneylending is prohibited under s 5 of the MLA. If the loans to SVM, Feasto and Mizimegah were unlicensed moneylending transactions, the result would be that both the loans and the Guarantee would be unenforceable under s 14(2) of the MLA.

36 Under s 3 of the MLA, a person is presumed to be a moneylender if he "lends a sum of money in consideration of a larger sum being repaid". The Defendants argued that the plaintiff had charged interest and that therefore the presumption of moneylending under s 3 of the MLA applied. Consequently, the burden would fall on the plaintiff to rebut the presumption by proving that he was not carrying on the business of moneylending: *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2015] 3 SLR 524 at [38].

37 There was some evidence that the plaintiff had charged interest. In her text message to Scarlett, sometime in December 2013, Pan stated that she had paid $40,000 to the plaintiff as interest, apparently in connection with obtaining an extension of the loan duration until 23 December 2013.[34] The plaintiff denied having charged interest. He claimed that the loans were given using the proceeds from the sale of his house at Mount Sinai and were not extended for any financial gain.

38 I found it hard to believe that the plaintiff, a retiree of some 20 years, would have agreed to lend a substantial sum of $800,000 to three companies owned by persons who were strangers to him, without charging interest for the risk he was taking. The plaintiff claimed that he simply wanted to pay back to society. I could not see how lending to strangers for commercial purposes could be said to be paying back to society. Indeed, the fact that the plaintiff had extracted onerous terms in the OTPs to secure the loans, contradicted his altruistic claims. Under the terms of the OTPs, not only would the plaintiff have the option of taking over the purchase of the companies' uncompleted units at a substantially reduced price, the loans extended to the three companies would still be repayable upon exercise of the OTPs.[35] This, in my view, was an unusually harsh term to impose for someone claiming that he only wanted to help others.

39 However, it was not necessary for me to make a finding on whether interest was in fact charged on the loans. Neither s 3 nor s 14(2) applies to an "excluded moneylender". Section 3 expressly excludes an excluded moneylender from its scope, as does the definition of the term "moneylender" in s 2. An "excluded moneylender" refers, *inter alia*, to any person who lends money solely to corporations.

40 In the present case, the loans were made to three corporations. There was no evidence that the plaintiff was in the business of making loans to any non-corporate entities. In fact, there was no evidence that the plaintiff had made any other loans at all. The plaintiff was therefore an excluded moneylender and as such did not fall within the definition of a "moneylender" in s 2 of the MLA, and the presumption of moneylending under s 3 also did not arise.

41 In their closing submissions, the Defendants submitted that the plaintiff was not an excluded moneylender because the loans were made to Pan.[36] This submission could not succeed since I had found that the loans to SVM, Feasto and Mizimegah were not sham transactions (see [21]–[28] above).

42 The defence of unlicensed moneylending therefore failed.

**Conclusion**

43 For the foregoing reasons, I entered judgment for the plaintiff in the sum of $200,000 against SVM, $100,000 against Feasto, $100,000 against Mizimegah and $400,000 against Scarlett.

44 I awarded costs to the plaintiff fixed at $90,000 to be paid by SVM, Feasto and Mizimegah. As for Scarlett, the Guarantee contained an undertaking to indemnify the plaintiff against all costs incurred. I therefore ordered Scarlett to pay costs to the plaintiff fixed at $120,000. Disbursements were to be fixed by me if not agreed.

Chua Lee Ming
Judge

Tang Shang Wei and Gavin Neo (WongPartnership LLP) for the plaintiff;
A Rajandran (A. Rajandran) for the first to fourth defendants;
The fifth defendant absent.

---

[1] Bundle of Agreed Documents ("AB") 47–52.
[2] AB 110–144.
[3] AB 146–178.
[4] AB 70–107.
[5] Scarlett's Affidavit of Evidence-in-Chief ("AEIC"), paras 32–35.
[6] AB 297–300.
[7] NE, 20 March 2019, 102:8–105:16; AB 446–447.
[8] NE, 20 March 2019, 111:11–16 and 113:5–6; AB 446–447.
[9] AB 447.
[10] AB 53–55.
[11] AB 56–59.
[12] AB 60–63.
[13] AB 64–67.
[14] AB 68.
[15] Plaintiff's Closing Submissions, para 11(c).
[16] NE, 20 March 2019, at 159:9–22.
[17] AB 226.
[18] AB 244.
[19] AB 244–245.
[20] AB 245.
[21] AB 253–255.
[22] AB 270–274.
[23] AB 247–248.
[24] NE, 20 March 2019, at 174:4–175:18 and 176:6–32; NE, 21 March 2019, at 8:14–23.
[25] Defendants' Skeletal Submissions, para 36d.
[26] NE, 20 March 2019, 140:10–20.
[27] NE, 20 March 2019, 138:13–27.
[28] NE, 20 March 2019, 158:3–26.
[29] Scarlett's AEIC, paras 41–43.
[30] Defendants' Skeletal Submissions, paras 50–51.
[31] AB 250.
[32] Scarlett's AEIC, para 36.
[33] NE, 22 March 2019, 58:19–23.
[34] AB 231.
[35] AB 56, 60 and 64.
[36] Defendants' Skeletal Submissions, para 91.