

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

[2021] SGHC 156

Suit No 217 of 2020

Between

Yim Lok Foong Elsie

... Plaintiff

And

1. Asia First Star Capital Pte Ltd
2. Hua Yih Isabel

... Defendants

JUDGMENT

[Contract] — [Misrepresentation]

[Equity] — [Fraud]

[Limitation of Actions] — [Extension of limitation period]

[Tort] — [Conspiracy]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Yim Lok Foong Elsie
v
Asia First Star Capital Pte Ltd and another

[2021] SGHC 156

General Division of the High Court — Suit No 217 of 2020
Choo Han Teck J
27–28 April 2021, 23 June 2021

29 June 2021

Judgment reserved.

Choo Han Teck J:

1 The plaintiff ('Yim') is 49 years old and has been working as a trade and investment manager at the British High Commission for 16 years. Before that she had worked as a franchise manager at the Coffee Club, and also in a couple of other companies, including Bon Food Pte Ltd. She has a Bachelor of Business degree, majoring in property investment. Yim states in her evidence-in-chief that her job at the British High Commission does not involve making or managing investments or loans. She clarified under cross-examination that her job in the trade department is to help UK technology companies that intend to do business in Singapore make the appropriate connections. She is, undoubtedly, an intelligent woman, wiser today than she was in 2008.

2 The first defendant is a company previously known as Sovereign Sands Pte Ltd ("Sovereign Sands"). Sovereign Sands was incorporated on 28 August 2007. It changed its name to Asia First Star Capital Pte Ltd ("Asia First Star

Capital”) on 28 June 2010. Its sole shareholder is one Isaac Koo Kok Kee (“Isaac Koo”), who is also its director. On 18 September 2013, Isaac Koo applied to the Accounting and Corporate Regulatory Authority to deregister the company on the ground that it had not commenced business since its incorporation. It was struck off on 19 February 2014 but reinstated on 7 August 2019 by an order of court, and eventually restored to the register on 3 September 2019.

3 The second defendant (“Hua”) graduated from the Institute of Education as a teacher in 1987. Thereafter, she taught in the Gifted Education Programme of Anglo-Chinese Primary School, but after 10 years teaching there, she was “completely stressed out”, and left the school. In 2006 she became a fulltime tuition teacher. It was around this time that she met Yim when they both enrolled in the “Rite of Christian Initiation for Adults” programme at the Church of the Holy Cross, at Clementi. They became friends. Hua was at the material times a friend and business associate of Isaac Koo.

4 The two friends talked about financial investments and, in my finding, Yim was seeking advice and Hua was her consultant. Prior to the events that constitute this action by Yim, she consulted Hua around May 2007 about investing in placement shares in a company called Global Ariel Limited (“Global Ariel”) which, according to Hua, was going through a reverse takeover at the time. It was not explained why Global Ariel was offering placement shares when it was going through a reverse takeover. Although it is not part of Yim’s action, Hua is relying on the Global Ariel transactions as part of her defence.

5 So far as Global Ariel is concerned, Yim gave Hua two cheques of \$70,000 each on the representation that she would receive \$7,000 on each of the two cheques, and signed two Investment Agreements dated 28 May and 1 June 2007. The Investment Agreements stated that Global Ariel was presently undergoing a reverse takeover and the suspension of trading would be lifted after 11 May 2007, at which time the Investment Manager would sell the shares off at 10% above the share price of the shares. Yim says Hua paid her the full \$154,000 (\$70,000 x 2 plus \$7,000 x 2) in July 2007, but Hua denies paying Yim this sum. Hua also denies having any connections to Global Ariel. This denial cannot have fallen any flatter than what the document itself says. The document states that the ‘Investment Agreement’ is made between Hua and Yim. The first term reads: “The Investor [Yim] invests \$70,000 (Investment Amount) with the Investment Manager [Hua] with effect from 1st June 2007”. It further states that “The Investment will be in the name of the Investment Manager”. I will return to the investment in Global Ariel shortly.

6 In late 2007, Hua learnt that Yim had inherited money from her late father’s estate. Yim claims that Hua then persuaded Yim to invest in Sovereign Sands because the company was buying a coal mine in Kalimantan. Hua told Yim that she herself had invested \$1,000,000 and Hua’s aunt had invested \$400,000. Yim was persuaded and gave Hua two cheques, totalling \$300,000. The first was a cheque from Yim’s OCBC account. It was dated 29 February 2008, in the sum of \$200,000, made payable to Sovereign Sands. The second was a POSB cheque also dated 29 February 2008 from Yim’s mother’s bank account for the sum of \$100,000, also payable to Sovereign Sands.

7 Although there was no mention of any loan, Yim says that Hua gave two Loan Agreements to Yim a few days later. The Loan Agreements were executed by Isaac Koo on behalf of Sovereign Sands, and were dated 29 February 2008. The crucial term in the Loan Agreements was that Sovereign Sands received \$200,000 and \$100,000 from Yim and would return the sums of \$260,000 and \$130,000 respectively by 31 December 2008.

8 31 December 2008 came and went many years ago but Yim has yet to receive her money. She commenced this action on 9 March 2020 against Sovereign Sands (now known as Asia First Star Capital) and Hua. The claim against Sovereign Sands is for \$390,000 in damages for breach of contract, and alternatively, for restitution of the \$300,000. Yim’s claim against Hua is for damages for fraudulent misrepresentation, alternatively, for breach of warranty of authority, and in the further alternative, for breach of contract for Yim’s forbearance to sue. She is also claiming damages against both defendants for fraudulent misrepresentation and unlawful means conspiracy.

9 Yim’s claims are founded on the conversations she had with Hua. The main representation by Hua that led her (Yim) to hand over \$300,000 was that there would be a guaranteed pay out of the principal sum and 30% of the principal sum. Hua says she told Yim about Sovereign Sands in response to Yim’s enquiry as to whether there were other investment opportunities for her after the successful investment in Global Ariel.

10 Sovereign Sands has entered no appearance and filed no defence. It was, however, initially represented by the same solicitors who now defend Hua. Hua’s defence is a pure denial that she made any representations. She denies that she was an agent of Sovereign Sands, and says that she had ‘no real business

link or nexus’ with it. In the Amended Defence, Hua admitted telling Yim that Sovereign Sands was ‘raising money to purchase a coal mine in East Kalimantan’, but says she would not have told Yim about this if not for Yim asking Hua if she knew of any money-making opportunities.

11 The incontrovertible evidence is that Yim had no direct contact with Sovereign Sands and Isaac Koo. She handed two cheques totalling \$300,000 in favour of Sovereign Sands to Hua. A few days later, Hua gave Yim two Loan Agreements executed on behalf of Sovereign Sands promising to repay a total of \$390,000 by 31 December 2008. Not a cent has been paid. There is substantial other evidence that Hua either denies or says that she has no knowledge of them. In respect of some, she offers alternative explanations. It is to the other evidence that I now turn.

12 The two Loan Agreements purportedly for the \$300,000 taken from Yim were signed by Isaac Koo in the presence of Hua. Yim started asking Hua for her money after 31 December 2008 but her inquiries found only apologies and excuses in reply. This went on for several years. Exchanges of correspondence between Yim and Hua in 2013 and 2014 through WhatsApp evince a desperate Yim trying to find out from Hua why she had still not been paid. Her growing desperation is palpable from the messages she sent. What is important is that Hua, instead of asking what it was all about — as she has done throughout the trial, pleading ignorance of the claims — Hua, instead, by her responses, indicated that she knew what Yim was talking about. In some, she used euphemisms as an evasive technique. For instance, she wrote:

My dear...Will let you know... I would not use the word swindled... However, there were some investment risks when

our money was parked...I have been working at it...give me sometime...

13 In the messages, Hua told Yim that she (Hua) was a victim too, presumably of Isaac Koo. In one message sent on 16 December 2014, she (Hua) wrote “I commit myself to pursue the entity for repayment” and “I will get the company to table a repayment plan. As their key people are not in town in December, I would only be able to get them in January”. However, nothing came of this promise.

14 After sending Hua further messages from 17 December 2014 to 15 February 2015, Yim enlisted the aid of Hua’s brother on 15 March 2015, whose messages show that he had tried to see if Hua could provide better answers to Yim. He also helpfully told Yim that the aunt who Hua said had also invested in the same way was their fifth aunt. Nothing more transpired regarding Hua’s brother save a message from Hua to Yim on 17 March 2015 telling Yim to stop harassing her brother because “his job as a fighter pilot demands his utmost concentration”. Apart from that message, so far as communications went, Hua ceased to respond to Yim after 25 December 2014.

15 Yim’s claim against Hua is for damages based on a number of causes of action as I had mentioned at [8] above. There are separate considerations of law on each of them although there are also overlapping aspects. I will therefore proceed by examining the evidence to see what it reveals to be the primary event, and then I will see if the facts may also fit the other claims.

16 Yim’s claim is a straightforward one. She gave \$300,000 in two cheques to Hua to hand to Sovereign Sands as her investment, in return for what Hua had represented as a fixed return of \$90,000. Yim did not receive the returns nor

her capital. The parties have used the word “guarantee” although it is not found on any document except the WhatsApp messages between Yim and Hua. It seems to me that this was used in a colloquial rather than a legal sense, but for the purposes of this case, I am of the view that it is not relevant because I find that the representation made to Yim was that there would be a fixed return of \$60,000 and \$30,000 for the two Loan Agreements, or investments as Yim thought they were. There is no dispute that this is what the two Loan Agreements that Hua handed to Yim say, although Hua is now disputing that she had any connections with the Loan Agreements, and that it was a transaction between Isaac Koo and Yim.

17 If we accept, as I do, that Yim’s evidence is true, then Hua’s evidence must be examined against Yim’s to see if it is capable of either exonerating her from the allegations of fraudulent intent on her part, or alternatively, that she was an innocent go-between who was exploited by Isaac Koo.

18 After several exasperating minutes at trial, Mr Joseph, counsel for Yim, finally understood that I wanted to see the original Loan Agreements for the \$100,000 and \$200,000. Mr Joseph then informed the court that Yim was only given photocopies of the two Loan Agreements (exhibits P1 and P2). Mr Selvaraj, counsel for Hua, leapt up and protested that he had all along assumed that Yim had the original Loan Agreements. Confusion erupted because it was not clear then what agreements were signed and who had them. Considering the evidence as a whole, I am now convinced that confusion arose because Hua was making up a story on the witness stand.

19 Distilled, Hua’s evidence under cross-examination by Mr Joseph and my questions to understand the evidence, is as follows. Hua met Yim on Friday,

29 February 2008, at Hua’s house. She was surprised that Yim brought not one cheque but two. Hua had only one Loan Agreement and so she asked Yim to sign that. Hua also signed it and then kept this for Isaac Koo to sign as well. Next, Hua told Isaac Koo that Yim had brought two cheques. Isaac Koo, who was living in the same condominium as Hua, then went to Hua’s house with another Loan Agreement. Hua made a photocopy of this. She then had to ‘blanco’ that photocopy, which does not have Yim’s signature. By that, she meant that she erased the typewritten amount of \$100,000 so that \$200,000 could be handwritten on it, because all of Isaac Koo’s agreements were “standard” for \$100,000. She and Isaac Koo then signed on the Loan Agreements. She then gave these two Loan Agreements, signed only by Isaac Koo and Hua, to Yim several days later. Both Loan Agreements were issued to Yim. The first Loan Agreement, with Yim’s wet-ink signature, was kept by Isaac Koo/Sovereign Sands.

20 A host of questions arose from Hua’s evidence here that were unanswerable and thus unanswered. If Hua’s evidence at trial is true, then why did Hua previously say in her Amended Defence that she handed over the two Loan Agreements to Yim on the evening of 29 February 2008? And why did she say in her evidence-in-chief that the two Loan Agreements given to Yim were two new Loan Agreements given to her by Isaac Koo, when she said at trial that they were photocopies? Did Hua intend the court to believe that Yim left her two cheques for a total of \$300,000 on 29 February 2008 and was given nothing as proof of receipt? If Isaac Koo went down to Hua’s place that night, why did she not ask Yim to wait? If Isaac Koo’s agreements were all ‘standard’ for \$100,000, why was the return of \$130,000 for the \$100,000 Loan Agreement handwritten and not typed like the rest of the agreement? Why did Hua have to

give Yim the photocopied Loan Agreement and the Loan Agreement brought down by Isaac Koo when she could have given Yim two signed duplicates of the Loan Agreements? Hua gave an unconvincing answer as to why she did not issue a single Loan Agreement to Yim for \$300,000. Since Hua denies knowing that the \$100,000 cheque was from Yim's mother (though the cheque is clearly under Yim's mother's name) and issued both the Loan Agreements in Yim's name, she could have issued one Loan Agreement for \$300,000 instead since she had plenty of time.

21 When further pressed, and confronted with the exchange of WhatsApp messages, Hua began to conflate the two Loan Agreements with the previous transactions concerning Global Ariel. Nothing in the evidence supports her claim that the 'investment money' in the messages refers to Global Ariel and not the two Loan Agreements. It is clear to me that Yim was pressing Hua for her (Yim's) \$300,000 and profits, and not money due from the Global Ariel transactions which had been paid. Yim also referred to her mother's money in the WhatsApp messages, which could only have been in relation to Sovereign Sands, but Hua unpersuasively insisted at trial that she did not know Yim's mother had invested and thought that it was 'just a polite excuse' for Yim to ask Hua for her Global Ariel investment.

22 Hua's conflation of the \$390,000 due under the two Loan Agreements with Sovereign Sands with the \$154,000 under Global Ariel is intentionally made to explain Hua's admissions in the WhatsApp messages. The problem was that if Hua was under the impression that Yim was pressing her for the \$154,000 and not the \$390,000, it follows that this was an admission that the \$154,000, on Hua's own evidence, had not been paid. That is why, in my view, Hua claims

that she only knew that Yim was claiming in respect of the Sovereign Sands Loan Agreements and not Global Ariel when she (Hua) was at the police station in 2015. I do not believe her at all. Yim might have been fooled into thinking there was money to be made investing in a company investing in a coal mine, but I do not think that she was that foolish to part with \$300,000 when she had not been paid the \$154,000.

23 It is also not disputed that Yim never met Isaac Koo. Hua, on the other hand, was close to him on her own admission, though she claimed a few minutes after saying he was a ‘good friend’ that she had not called him as her witness as they had fallen out. They had known each other when they were teachers and had registered several companies together. Hua was involved in the transactions that Yim had with Isaac Koo and Sovereign Sands, at the very least, as Isaac Koo’s or Sovereign Sands’ agent. Was her involvement more than that? That is the question I will now consider.

24 Hua knew at all times that Yim does not know either Isaac Koo or Sovereign Sands. Yim has no information other than what Hua told her. No one hands over \$300,000 for no reason, and yet Hua denies that she had anything to do with the transaction evidenced by the two documents purporting to be Loan Agreements. If, as I have found, Yim’s evidence is true, then I would expect at least a plausible explanation for what Hua did. None was given.

25 Hua’s evidence is not only incoherent at times, it is also unconvincing. Her denial that Yim was asking for the \$390,000 in her WhatsApp chat with Hua, and her attempt to change that into a conversation about the Global Ariel transactions, seems very much an act of desperation. I will not repeat Hua’s unconvincing follow-up act claiming that by ‘funds’ Yim meant the Global

Ariel investments, save to make one more point. Under cross-examination, Hua said that the moment Yim mentioned investments, “I knew straightaway that “Yes, it’s Global Ariel”, because this is the only investment I signed with her”. Later on, she was confronted with the inconvenient truth that if Yim was asking for the Global Ariel money, it must mean that the \$154,000 had not been paid. That was when Hua tried to extricate herself by saying that it was only at the police station in 2015 that she realised that Yim had been paid. I am unable to give any credence to Hua’s evidence. She is, now that she has been caught out, less wily today than she was in 2008.

26 Yim’s account requires at least a modicum of honest, plausible explanation from Hua for me to dismiss Yim’s claim against Hua for fraudulent misrepresentation. However, Hua has not only failed to help herself by offering that, but has offered evidence that only fortifies Yim’s claims.

27 First, Hua claims she went to the police station in 2015 and only then learned that Yim’s messages all concerned Sovereign Sands. Yet, she did not immediately call Yim to clarify their WhatsApp correspondence, despite her insistence that, in her mind, ‘everything [was] about Global Ariel’. She said at trial that she only spoke to Isaac Koo about this, before repeating she had nothing to do with the Sovereign Sands Loan Agreements. She also claims the investigating officer at the police station had ‘pull[ed] out a cheque’ to show her that Yim made money from Global Ariel. If that were true, Hua would certainly have been able to say who the payor was, given that she insists it is not her. Second, when Yim’s solicitors wrote a letter of demand to Hua dated 6 April 2015 claiming \$390,000, they did not even mention Sovereign Sands, Asia First Star Capital or any Loan Agreements. However, Hua’s lawyers replied on

7 April 2015, saying that Hua merely collected the cheques on behalf of Sovereign Sands. They did not object and say that Yim’s only investment with Hua was her \$140,000 investment in Global Ariel, ask what \$390,000 sum Yim’s solicitors were referring to, or correct Yim’s solicitors to say it was a loan, rather than an investment. Clearly, Hua always knew exactly what Yim was talking about.

28 The transactions were ostensibly with Sovereign Sands and thus, in so far as a contract claim is concerned, neither Hua nor Isaac Koo would be liable for breach. It is possible that Hua acted merely as an innocent go-between for Isaac Koo; however, if that were the case, she would have joined him as a third party, but she did not. She continued to shield him from having to face legal action. As for Yim, it is a mystery why, having pleaded conspiracy, she had not joined Isaac Koo as a defendant, despite referring to him in her Statement of Claim. In her evidence-in-chief, she says that Isaac Koo was declared bankrupt in 2017 and so she was “denied the opportunity to make any meaningful claim” against him for his part in the conspiracy. But his evidence would have been highly relevant to this suit.

29 Nonetheless, the evidence showing that Hua was colluding with Isaac Koo is sufficiently strong, and without any evidence to the contrary, I find that she and Isaac Koo acted in conspiracy to deprive Yim of her \$300,000 with no intention of paying her that or the \$90,000 interest (or profit). However, since Yim did not join Isaac Koo as a defendant, I cannot make an order against him to pay her damages. Sovereign Sands/Asia First Star Capital did not enter an appearance or file its defence. I thus find Yim’s claim against the first defendant as proved. In summary, I hold that Hua is liable for fraudulent misrepresentation

and unlawful means conspiracy, and I hold that Asia First Star Capital is liable for breach of contract, fraudulent misrepresentation, and unlawful means conspiracy. As both Hua and Asia First Star Capital caused the “same and indivisible damage” to Yim, I hold that they are jointly and severally liable to Yim for damages of \$390,000 (*Crest Capital Asia Pte Ltd and others v OUE Lippo Healthcare Ltd (formerly known as International Healthway Corp Ltd) and another and other appeals* [2021] 1 SLR 1337 at [180], [183]). I will now deal briefly with Hua’s defence on the law.

30 Mr Selvaraj argues that Yim is trying to circumvent the 6-year limitation period under Section 6(1)(a) of the Limitation Act (Cap 163, 1996 Rev Ed) (“Limitation Act”). He submits that Yim discovered the fraud in December 2008 but chose not to commence legal proceedings till 9 March 2020, more than 11 years later.

31 Yim’s claim for breach of contract against the first defendant accrued on 31 December 2008, when the payment under the two Loan Agreements was due, and would ordinarily have been time-barred on 31 December 2014. However, I hold that Yim’s claim against the first defendant is not time-barred.

32 First, the first defendant has not specially pleaded limitation as a defence since it did not even file a defence. Thus, nothing in the Limitation Act shall operate as a bar to Yim’s action (Section 4 of the Limitation Act).

33 Second, the High Court ordered on 7 August 2019 that the period from 19 February 2014, the date Sovereign Sands was struck off, up to the date it was restored to the register (3 September 2019) shall not be taken into account for the purpose of determining any applicable limitation period for Yim’s claims in

relation to the first defendant. Thus, her claim is still within the limitation period.

34 Third, Hua acknowledged the debt on behalf of the first defendant in her WhatsApp message to Yim on 16 December 2014, saying she would get the company to table a repayment plan (Section 26(2) of the Limitation Act). These WhatsApp messages sent by Hua to Yim satisfy the signed writing requirement under Section 27(1) of the Limitation Act (*Anuva Technologies Pte Ltd v Advanced Sierra Electrotech Pte Ltd and another suit* [2020] 4 SLR 569 at [34]). In my judgment, Hua was acting as the first defendant's agent when she sent this message (Section 27(2) of the Limitation Act). Even if she did not have actual authority to act as the first defendant's agent on this date, since it had been struck off on 19 February 2014, Yim had no knowledge of the first defendant's striking off and Hua persisted in holding herself out to Yim as its agent. Thus, Yim's claim would only be time-barred on 16 December 2020.

35 In the alternative, I find that Section 29(1)(b) of the Limitation Act applies, because Hua, by her fraud, has concealed Yim's right of action. Hua's vague and evasive WhatsApp messages to Yim, especially Hua's message on 16 December 2014 promising the tabling of a repayment plan, caused Yim to wait till January 2015 and exceed the 6-year limitation period. In my judgment, the earliest Yim could have discovered Hua's fraud with reasonable diligence was when she sought legal advice on 21 March 2015, was told the limitation period for her claims had expired and then filed a police report. Thus, Yim's claim would only be time-barred on 21 March 2021. This reasoning also applies to Yim's claims against both the first defendant and Hua for fraudulent misrepresentation and unlawful means conspiracy. Since Yim succeeds on her

primary claims, it is unnecessary for me to make any findings on her alternative claims against the first defendant for restitution, and against Hua for breach of warranty of authority and breach of contract for forbearance to sue.

36 In conclusion, I hold that Hua and the first defendant are jointly and severally liable to Yim for \$390,000, with interest of 5.33% per annum from the date of judgment to the date judgment is satisfied (O 42 r 12 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), read with para 77 of the Supreme Court Practice Directions). I will hear parties on costs at a later date.

- Sgd -
Choo Han Teck
Judge of the High Court

Joseph Ignatius and Suja Susan Thomas d/o B Thomas (Ignatius J &
Associates) for the plaintiff;
The first defendant absent and unrepresented;
Chidambaram Selvaraj (Column Law Chambers LLC) for the second
defendant.