

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

[2021] SGHC 225

Suit No 977 of 2020

Between

Wong Kar King

... Plaintiff

And

Lim Pang Hern

... Defendant

Between

Lim Pang Hern

... Plaintiff in counterclaim

And

Wong Kar King

... Defendant in counterclaim

JUDGMENT

[Contract] — [Formation]
[Contract] — [Remedies]

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Wong Kar King

v

Lim Pang Hern

[2021] SGHC 225

General Division of the High Court — Suit No 977 of 2020
Ang Cheng Hock J
19–21 May, 13 August 2021

30 September 2021

Judgment reserved.

Ang Cheng Hock J:

Introduction

1 At issue in this case is the oft-litigated dispute of whether two parties had come to a legally binding agreement in the course of their discussions over a business deal. One party asserts that a binding and complete agreement was concluded, while the other party insists that the parties were only in the stage of negotiations, with no firm agreement having been reached. In such cases, much often turns on the alleged terms of the pleaded agreement, and whether the court can objectively ascertain from all the evidence, particularly the written communications exchanged, that the pleaded agreement had indeed come into existence. What is somewhat different about this case is the almost complete absence of any contemporaneous documentation in relation to the alleged agreement. The court is thus left to grapple with the credibility of the

protagonists’ oral evidence, and to test the inherent probabilities of their various allegations against the objective facts and the conduct of the parties.

Facts

The parties

2 The plaintiff (“Dr Wong”) is the managing director of Advanced Holdings Ltd (“AHL”), a company which he started many years ago.¹ AHL is an engineering company that designs, manufactures and markets a range of technological products and solutions for the oil and gas, and chemical industries.² AHL is listed on the mainboard of the Singapore Exchange.³

3 The defendant (“Mr Lim”) is the majority shareholder and executive director of BD Cranetech Pte Ltd (“BDCT”).⁴ BDCT’s business is in the design and manufacturing of cranes for use at ports.⁵ BDCT wholly owns BD Crane & Engineering Pte Ltd (“BDCE”), which carries on the same business as its parent company, except that it focuses on sales while also doing some engineering work on request.⁶

¹ Wong Kar King’s affidavit of evidence-in-chief (“Wong’s AEIC”) at paras 1 and 3.

² Wong’s AEIC at para 3.

³ Wong’s AEIC at para 3.

⁴ Lim Pang Hern’s affidavit of evidence-in-chief (“Lim’s AEIC”) at para 3.

⁵ Transcript, 19 May 2021, p 24 lines 4–11.

⁶ Transcript, 19 May 2021, p 24 line 30 to p 25 line 5.

Background to the legal proceedings

4 Dr Wong and Mr Lim became acquainted sometime in 2013.⁷ At that time, Dr Wong was exploring the idea of moving some of AHL’s operations to Batam, Indonesia.⁸ He happened to meet Mr Lim at an event in Batam organised by the Business Leaders Alumni Club, a networking group for businessmen.⁹ Mr Lim had experience in setting up manufacturing facilities in Batam.¹⁰ The two men became friends.¹¹

5 Dr Wong invited Mr Lim to visit AHL’s facilities.¹² Mr Lim also agreed to speak to AHL’s management about what would be involved if AHL were to move some of its factories to Batam.¹³ By his own admission, he admired the success that Dr Wong had achieved with AHL.¹⁴ In Mr Lim’s estimation, AHL was a “good match” for BDCT’s crane design and manufacturing business.¹⁵

6 In September 2013, one of the companies in the BDCT group, called BD Corporation Pte Ltd (“BD Corp”), acquired from Dr Wong 17 million shares in AHL. This constituted about 5.6% of the issued share capital of AHL at that

⁷ Lim’s AEIC at para 7.

⁸ Transcript, 21 May 2021, p 25 lines 7–8.

⁹ Lim’s AEIC at paras 6–7; Transcript, 19 May 2021, p 26 line 19 to p 27 line 12.

¹⁰ Lim’s AEIC at para 8; Transcript, 21 May 2021, p 25 lines 7–9.

¹¹ Transcript, 19 May 2021, p 31 line 26 to p 32 line 5; 21 May 2021, p 27 line 20 to p 28 line 6.

¹² Lim’s AEIC at para 11; Transcript, 19 May 2021, p 27 lines 16–18.

¹³ Lim’s AEIC at para 11; Transcript, 19 May 2021, p 29 lines 6–22.

¹⁴ Lim’s AEIC at para 13.

¹⁵ Lim’s AEIC at para 13.

time.¹⁶ Before the sale, Dr Wong, together with his wife, held approximately 47% of AHL.¹⁷ BD Corp paid Dr Wong \$7.14m for the shares, or \$0.42 per share, which worked out to a premium of slightly more than 70% over the traded price of AHL shares at the time of the sale (amounting to \$2,975,000).¹⁸

7 In January 2014, AHL announced that it had entered into a Memorandum of Understanding (the “MOU”) with BDCT in relation to a potential acquisition by AHL of all the shares in BDCE.¹⁹ As part of the proposed deal, BDCT would transfer the entirety of its crane business to BDCE.²⁰ AHL’s announcement expressly stated that the signing of the MOU did not legally oblige the parties to proceed with the acquisition of BDCE, and that the terms of the acquisition, if it were to proceed, were subject to a definitive agreement being executed by AHL and BDCT.²¹ Following this announcement, AHL’s corporate and financial team carried out due diligence on BDCE.²² Eventually, AHL decided not to proceed with the proposed acquisition of BDCE.²³ The MOU expired in or about June 2014.²⁴

8 Then, on or about 8 October 2015, Mr Lim and Dr Wong entered into a loan agreement concerning matters unrelated to the issues in dispute in this

¹⁶ Lim’s AEIC at para 18.

¹⁷ Transcript, 21 May 2021, p 10, lines 3–5.

¹⁸ Lim’s AEIC at para 18.

¹⁹ Agreed Bundle (“AB”) at p 41.

²⁰ AB at p 37, cl 1.1.

²¹ AB at p 41.

²² Wong’s AEIC at para 18.

²³ Wong’s AEIC at para 18.

²⁴ AB at p 39, cl 5.2.

case.²⁵ Under this loan agreement, Dr Wong agreed to lend Mr Lim the sum of \$1.4m.²⁶ That borrowed sum was to be repaid by Mr Lim, free of interest, within 12 months.²⁷ Over time, Mr Lim repaid the amount of \$500,000, leaving a balance of \$900,000 that remains outstanding and due to Dr Wong.²⁸

Procedural history

9 After failing to get paid in full, Dr Wong commenced this Suit on 12 October 2020 against Mr Lim to seek recovery of the outstanding balance of \$900,000 due under the loan agreement.²⁹ Mr Lim filed a defence and counterclaim on 29 December 2020. He did not dispute the amount claimed by Dr Wong under the loan agreement.³⁰ However, Mr Lim raised a counterclaim against Dr Wong, the details of which I will come to shortly.

10 Dr Wong applied for summary judgment on his claim for the amount of \$900,000 due under the loan agreement. This was not contested by Mr Lim and judgment was entered on Dr Wong's claim. However, parties agreed that execution on the judgment sum would be stayed pending the trial of Mr Lim's counterclaim.

²⁵ Wong's AEIC at para 21.

²⁶ AB at p 42, cl 1(a).

²⁷ AB at p 42, cl 1(a).

²⁸ Wong's AEIC at para 21.

²⁹ Statement of Claim dated 12 October 2020 at prayer 1.

³⁰ Defence and Counterclaim dated 29 December 2020 ("D&CC") at paras 13–15.

The counterclaim

11 Mr Lim’s pleaded case for his counterclaim is that, in 2013, he and Dr Wong entered into an oral agreement (the “oral agreement”) in relation to Dr Wong’s shares in AHL.³¹ In his testimony in court, Mr Lim explained that the oral agreement was entered into over discussions that took place from June to August 2013.³² The principal terms agreed were that Dr Wong would procure the acquisition of BDCE by AHL for the sum of \$9m, and in return, Mr Lim would purchase a 29% share in AHL from Dr Wong, at a price of \$36m.³³

12 It is also pleaded that, as part of the oral agreement, Mr Lim caused BD Corp to pay the sum of \$7.14m for 17 million shares of AHL (or 5.6% of AHL), then held by Dr Wong (as described above at [6]).³⁴ Mr Lim alleges that it was agreed between the two men that BD Corp would pay the premium of over 70% for the 5.6% stake “in consideration of the anticipated acquisition of BDCE” and the “purchase of the balance of 23.4% AHL shares from [Dr Wong] after the acquisition of BDCE”.³⁵ The figure of 23.4% of AHL shares is arrived at by deducting the 5.6%, already acquired by BD Corp, from the 29% of AHL shares allegedly agreed to be purchased from Dr Wong.

13 Dr Wong did not complete the oral agreement because he did not procure the acquisition of BDCE by AHL.³⁶ Dr Wong also failed to sell his

³¹ D&CC at para 4.

³² Transcript, 19 May 2021, p 46 line 31 to p 47 line 31.

³³ D&CC at para 4.

³⁴ D&CC at para 5.

³⁵ D&CC at para 5.

³⁶ Lim’s AEIC at para 24.

23.4% stake in AHL to Mr Lim in 2017, even though the two men had discussions to finalise the sale then and Mr Lim had the financing available by then to complete the deal.³⁷

14 In his counterclaim, Mr Lim pleaded that this amounted to “a total failure of consideration” on the part of Dr Wong.³⁸ At trial, however, Mr Lim’s counsel instead characterised Dr Wong as having “repudiated” the oral agreement, though this had not been specifically pleaded.³⁹ I accept that the latter argument of repudiation is the real thrust of Mr Lim’s case in the counterclaim. This is because even on Mr Lim’s version of events, there was quite clearly no total failure of consideration in respect of the oral agreement, given that Dr Wong did sell 17 million AHL shares to BD Corp in 2013.

15 In any case, the reliefs that Mr Lim is seeking have remained constant. He seeks an order that Dr Wong repay the premium of \$2,975,000 paid for the 5.6% stake in AHL in 2013. Alternatively, he asserts that he should be entitled to “reverse” the transaction for the purchase of the 5.6% stake in AHL from Dr Wong in 2013, such that Dr Wong be ordered to repay Mr Lim the sum of \$7.14m, and the 17 million AHL shares will be returned to Dr Wong.⁴⁰

³⁷ Lim’s AEIC at paras 27–31.

³⁸ D&CC at para 12.

³⁹ Transcript, 19 May 2021, p 13 lines 1–19.

⁴⁰ D&CC at prayer 2.

The defence to the counterclaim

16 Dr Wong denies that he had made the oral agreement with Mr Lim regarding the sale of a 29% stake in AHL.⁴¹ He says that, if he had entered into such an agreement, he would have been required by the listing rules of the Singapore Exchange to announce such a material event.⁴²

17 Dr Wong denies that BD Corp’s purchase of the 5.6% stake in AHL from him in 2013 had anything to do with any alleged oral agreement with Mr Lim involving the acquisition of BDCE by AHL, or the acquisition of the other shares Dr Wong held in AHL.⁴³ The price which BD Corp paid for the 5.6% stake was negotiated and agreed between Mr Lim and Dr Wong, and it was not linked to any other arrangements between them.⁴⁴ In other words, it was a standalone transaction. Also, that BD Corp agreed to pay a premium over the then traded market price of AHL was a commercial decision made by Mr Lim based on how well AHL was performing financially, as well as AHL’s strong balance sheet.⁴⁵

18 As for BDCE, AHL had made a decision not to proceed with the acquisition after due diligence was carried out in 2014.⁴⁶ There was never any complaint by Mr Lim at the material time that Dr Wong had breached any oral

⁴¹ Reply and Defence to Counterclaim dated 15 January 2021 (“RDCC”) at para 3(b); Wong’s AEIC at para 15.

⁴² Wong’s AEIC at para 15.

⁴³ RDCC at para 4.

⁴⁴ RDCC at para 4.

⁴⁵ Wong’s AEIC at para 14.

⁴⁶ Wong’s AEIC at para 18.

agreement, or that he had failed to live up to any promise to procure AHL to proceed with the deal involving BDCE.⁴⁷

19 While it is true that Mr Lim and Dr Wong had engaged in discussions in 2017 about a potential sale of Dr Wong's remaining stake in AHL, the talks never progressed beyond a preliminary stage.⁴⁸ As such, there was never any binding agreement, whether in 2013 or 2017, for Dr Wong to sell a 29% stake in AHL to Mr Lim.⁴⁹

The issues

20 The central issue that I have to decide is whether, in 2013, the parties had orally agreed that Dr Wong would sell a 29% shareholding in AHL to Mr Lim at the price of \$36m. If so, I also have to decide what the terms of this oral agreement were. Did it include a term that Dr Wong had to procure the acquisition of BDCE by AHL? Also, was BD Corp's purchase of a 5.6% stake in AHL from Dr Wong part of this alleged oral agreement?

21 Further to this, if the oral agreement as pleaded is found to exist, the other issues that will arise for determination are whether Mr Lim is entitled to the remedies that he seeks, including the primary relief sought of an order that the premium of \$2,975,000, paid by BD Corp for the purchase of the 5.6% stake in AHL, be repaid by Dr Wong. Alternatively, should the court order that the transaction involving the purchase of the 5.6% stake be "reversed"?

⁴⁷ Wong's AEIC at para 21.

⁴⁸ Transcript, 21 May 2021, p 27 line 17 to p 29 line 15.

⁴⁹ Wong's AEIC at paras 23–25.

The oral agreement in 2013

22 Let me start by pointing out my concern that there has been no contemporaneous documentary evidence of any sort produced by the parties that would shed light on whether the oral agreement was indeed reached in 2013. There is no evidence before me of any letters or emails exchanged, or any other form of electronic communications such as text or WhatsApp messages, that would support a finding as to the existence, or otherwise, of the oral agreement.

23 I do not think that it is at all unrealistic to expect that, if a deal had indeed been discussed at length and concluded orally in 2013, there would exist some written record of the parties' discussions, the terms negotiated or the consensus reached. After all, this would have been a deal in the magnitude of \$36m, which, according to Mr Lim, was the agreed consideration for Dr Wong's stake in AHL. As the burden of proof is ultimately on Mr Lim to establish the existence of the oral agreement on a balance of probabilities, the complete absence of any written evidence is a factor that weighs against his case on the counterclaim.

24 The accounts by Mr Lim and Dr Wong as to what transpired from June to August 2013 are, not unexpectedly, quite different. Mr Lim's version is that Dr Wong told him about his desire to retire and his willingness to hand AHL over to a successor.⁵⁰ The parties then entered into discussions about a sale of Dr Wong's AHL shares, which culminated in the oral agreement.⁵¹ The convoluted structure of the deal was because Mr Lim did not have sufficient

⁵⁰ Lim's AEIC at para 12.

⁵¹ Lim's AEIC at para 14; Transcript, 19 May 2021, p 31 line 26 to p 32 line 15; p 46 line 22 to p 47 line 31.

funds to buy the whole of the 29% stake in AHL in one transaction, and did not know when he would be able to raise the necessary funds. Notwithstanding this, Mr Lim testified that Dr Wong's response was that he would wait for Mr Lim to raise the funds. However, Dr Wong wanted a "deposit" to be paid. As such, Mr Lim agreed to buy the 5.6% stake first, and it was agreed that there was no fixed time frame for Mr Lim to complete his purchase of the remaining 23.4% stake.⁵² On the other hand, Dr Wong's version is that while he and Mr Lim did discuss Mr Lim's interest in acquiring a stake in AHL,⁵³ he never agreed to sell a 29% shareholding in AHL to Mr Lim.⁵⁴ Each of these two contrasting versions must be evaluated for their internal plausibility, and tested against the rest of the evidence before the court.

25 Mr Lim's account gave me pause in three respects. First, it was not pleaded, nor raised in his affidavit of evidence-in-chief, that the purchase of the 5.6% stake was a "deposit", which would have suggested that what was paid by Mr Lim *might* be refundable if the complete acquisition of Dr Wong's AHL shares did not proceed. Rather, it was pleaded that this purchase was the first leg of the deal to acquire a 29% stake in AHL from Dr Wong.⁵⁵ As such, I reject this belated attempt to add to the reasons Mr Lim felt entitled to a "reversal" of the transaction involving the 5.6% AHL stake.

26 Second, while Mr Lim testified that the oral agreement was made sometime from June to August 2013, he was unable to specify the exact date on

⁵² Lim's AEIC at para 17; Transcript, 19 May 2021, p 66 line 30 to p 69 line 17.

⁵³ Transcript, 21 May 2021, p 13 line 20 to p 14 line 24.

⁵⁴ Wong's AEIC at para 15; Transcript, 21 May 2021, p 14 line 25–28.

⁵⁵ D&CC at paras 4–5.

which it was made.⁵⁶ It is trite that, for an agreement to come into being, there has to be a single point in time when the necessary consensus *ad idem* is reached (*Likpin International Ltd v Swiber Holdings Ltd and another* [2015] 5 SLR 962 at [42]; *Day, Ashley Francis v Yeo Chin Huat Anthony and others* [2020] 5 SLR 514 (“*Day, Ashley Francis*”) at [40]–[49]). As was noted in *Day, Ashley Francis* at [49] by Aedit Abdullah J:

... As the plaintiff rightly pointed out, continuing negotiations can be complicated, making it difficult to ascertain the subjective intentions of parties, which is precisely why the requirement of a precise point of agreement is needed to provide certainty as to when a court will find a negotiation to have crystallised into an agreement. It provides more certainty for the court to draw a clear line, and for parties to strive to meet that standard, than for the court to have such a flexible standard that parties never know when it is met in each case.

Mr Lim was adamant that the oral agreement was “discussed ... and settled on one occasion”,⁵⁷ and therefore avoided the deeper error of asserting that an agreement had been concluded over a period of time. However, his inability to identify a precise point of agreement does not assist his case.

27 Finally, I do find it hard to believe, from a commercial perspective, that these two rather experienced men of business would have agreed to a legally binding commitment in relation to such a large block of AHL shares, without agreeing to *when* the purchase would actually take place. This is particularly in light of the fact that Mr Lim, by his own admission, did not have the funds to purchase the shares straight away, and also did not know when he would be able to raise the necessary funds.⁵⁸ What is far more likely is that the parties had

⁵⁶ Transcript, 19 May 2021, p 46 line 31 to p 47 line 31.

⁵⁷ Transcript, 19 May 2021, p 47 lines 11–17.

⁵⁸ Lim’s AEIC at para 17; Transcript, 19 May 2021, p 66 lines 30–31.

some discussions about a potential sale of Dr Wong's stake in AHL, but then agreed simply to enter into more detailed discussions on the potential sale at some later date, when Mr Lim had sorted out his funding issues. In my judgment, Mr Lim would have fully appreciated the commercial realities of the situation, and he could not have honestly believed that Dr Wong had already made a legal commitment to sell his remaining stake in AHL. While I also accept that it is likely that the impression given by Dr Wong to Mr Lim in their discussions must have been that he was prepared to relinquish control of his shares in AHL, this does not change the analysis as to whether the two men had concluded a binding agreement.

28 Mr Lim seeks to buttress his account with the evidence of his then business partner, Mr Ng Kok Teck ("Mr Ng"). In his affidavit of evidence-in-chief, Mr Ng explained that in 2013, Mr Lim had told him about his meetings with Dr Wong:⁵⁹

Sometime in 2013, [Mr Lim] discussed with me a plan to acquire the shares and management control of a main board listed company known as Advanced Holding Ltd ('AHL'). He told me that he had met [Dr Wong], who is the boss of AHL and they had discussed a plan whereby we could park our BD business in AHL and acquire 29% of the stake in AHL. We would be able to upgrade our business from our existing operations.

29 However, I do not find Mr Ng's evidence to be of assistance to Mr Lim. First, Mr Ng's account is second-hand. At best, it serves as evidence of Mr Lim's subjective impressions as relayed to Mr Ng, and not as an objective record of the discussions between Mr Lim and Dr Wong. Indeed, Mr Ng confirmed in the course of his cross-examination that he had not participated directly in any discussions with Dr Wong relating to the purchase of AHL

⁵⁹ Ng Kok Teck's affidavit of evidence-in-chief ("Ng's AEIC") at para 4.

shares.⁶⁰ Second, even in Mr Ng’s account, the language used is tentative. In the passage quoted above, Mr Ng speaks of discussions and plans, but not of agreements. For these reasons, I find that Mr Ng’s evidence offers no support for the existence of the alleged oral agreement.

The subsequent conduct of the parties

30 I turn now from the parties’ own accounts to the rest of the evidence before the court, which – in the aforementioned absence of contemporaneous documentary evidence – revolved around the parties’ conduct subsequent to the alleged oral agreement. This evidence spans four aspects of the parties’ subsequent conduct: (a) the September 2013 purchase by BD Corp of the 5.6% stake in AHL from Dr Wong; (b) AHL’s proposed acquisition of BDCE in 2014; (c) Mr Lim’s attempt to purchase Dr Wong’s remaining 23.4% stake in AHL in 2017; and (d) the loan from Dr Wong to Mr Lim in 2015 and Mr Lim’s responses to Dr Wong’s subsequent attempts to obtain repayment.

31 As noted by the Court of Appeal in *Simpson Marine (SEA) Pte Ltd v Jiacipto Jiaravanon* [2019] 1 SLR 696 at [78], “where the court is ascertaining whether a contract has been formed, evidence of subsequent conduct has traditionally been regarded as admissible and relevant” [emphasis in original omitted]. While the Court of Appeal noted that there is some instability in this rule, it was satisfied that the subsequent communications and conduct raised in that case was, at least in part, an aid in objectively ascertaining the existence of an agreement, as “[t]here [was] no reason to doubt that they were candidly expressed and undertaken” (at [78]–[79]). In similar fashion, I find it useful to consider whether the subsequent conduct canvassed by the parties in this matter

⁶⁰ Transcript, 20 May 2021, p 16 lines 8–10.

was consistent with the supposed existence of the oral agreement. In doing so, I note that this conduct took place before the emergence of the dispute between the parties, and was therefore unlikely to have been undertaken with an eye to buttressing either party's position in this Suit.

The September 2013 purchase of the 5.6% AHL stake

32 The first aspect of the parties' subsequent conduct, the September 2013 purchase by BD Corp of the 5.6% AHL stake from Dr Wong, is the subject of Mr Lim's main contention in his submissions. Mr Lim states that he would *not* have caused BD Corp to pay more than 70% over the traded price of AHL shares in this transaction *if* Dr Wong had not already committed to (a) ensuring that AHL acquired BDCE, and (b) selling a further 23.4% stake in AHL to Mr Lim.⁶¹ It is argued that it "beggars belief" that Mr Lim would pay such a high price if the purchase of the 5.6% stake was a "stand alone" deal.⁶²

33 From my analysis of the evidence, in particular the oral testimony of Mr Lim elicited under cross-examination, I am unable to conclude that the premium paid by BD Corp necessarily proves the existence of the oral agreement. From his evidence, it is plainly clear to me that, since 2013, Mr Lim had been quite keen to acquire a controlling stake in AHL. I accept his evidence that he had discussions with Dr Wong about this.⁶³ I also accept his evidence that he would not have been satisfied with holding just a 5.6% stake, which though significant, would not have given him the ability to exert control over AHL.⁶⁴ I find that Mr

⁶¹ Defendant's closing submissions dated 21 July 2021 ("DCS") at para 4.

⁶² DCS at para 5.

⁶³ Lim's AEIC at para 12; Transcript, 19 May 2021, p 30 line 21 to p 32 line 5.

⁶⁴ Transcript, 19 May 2021, p 59 line 28 to p 61 line 23; 20 May 2021, p 3 lines 13–27.

Lim's procurement of BD Corp's purchase of this 5.6% stake was, in his mind, the first step in his plan of trying to acquire a controlling stake in AHL. It is likely that in proceeding with this purchase at a premium, Mr Lim wanted to demonstrate to Dr Wong his sincerity and commitment, and to show that he was serious about wanting to acquire, eventually, a controlling stake in AHL.

34 However, the above only speaks to Mr Lim's intentions at the time. Dr Wong's evidence is that he regarded his AHL shares as being more valuable than what the traded price indicated, and that he was thus insistent on a premium over that traded price before he was prepared to part with his AHL shares.⁶⁵ I find this to be a credible and perfectly sensible explanation for what the premium meant to Dr Wong, and therefore why he agreed to the sale of a 5.6% stake in AHL in September 2013 only when such a premium was on the table. There is no objective evidence that Dr Wong expressed agreement with Mr Lim's intentions even *generally*, with regard to the latter's desire to ultimately acquire a controlling stake in AHL. There is also certainly *not* enough evidence which would allow the court to find *specifically*, on a balance of probabilities, that Dr Wong had agreed sometime in June to August 2013 to eventually sell a 29% stake in AHL to Mr Lim at the price of \$36m, and that BD Corp's purchase of the 5.6% stake was a first step in this overarching agreement. The only conclusion that can be drawn about the basis of this transaction is from its objective terms – the transfer of a 5.6% stake from Dr Wong to BD Corp in exchange for \$7.14m – and Mr Lim's intentions cannot, in the absence of supporting evidence, change that complexion.

⁶⁵ Transcript, 21 May 2021, p 18, lines 6–20.

AHL's proposed acquisition of BDCE in 2014

35 An examination of the subsequent conduct of the two men in 2014 also militates against any finding of an oral agreement on the terms alleged by Mr Lim. According to Mr Lim, the terms of the oral agreement *required* Dr Wong to procure AHL to acquire BDCE for the sum of \$9m.⁶⁶ Based on the pleaded case, this was *not* simply an obligation on Dr Wong to endeavour, or use his best efforts, to procure AHL to purchase BDCE. Put another way, Dr Wong would *prima facie* be in breach of the oral agreement if, despite his best efforts, AHL did not proceed with the acquisition of BDCE.

36 The first thing I would observe is that the terms of the January 2014 MOU between AHL and BDCT squarely contradict Mr Lim's position. The express terms of the MOU provide that the two companies would use "their best endeavours to negotiate and enter into a definitive sale and purchase agreement" in relation to the proposed acquisition.⁶⁷ The MOU also makes clear that the deal is subject to, *inter alia*, satisfactory due diligence by AHL on BDCE, and also the necessary approvals of the board of AHL.⁶⁸ More significantly, clause 6 of the MOU provides that:

6. Legal Effect

a. This MOU sets out the indicative principles relating to the Proposed Acquisition and is not intended to be exhaustive, and none of the Parties have the intention that the preliminary understandings set out herein represent the final agreement as to the transactions contemplated herein. Save for Clauses 4, 5, 6, 7 and 8 which shall be legally binding, this MOU is not intended to have legal and binding effect and is subject to the negotiation and execution of the SPA.

⁶⁶ D&CC at para 4.

⁶⁷ AB at p 37, cl 1.3.

⁶⁸ AB at p 38, cl 3.

- b. The provision of confidential information or the holding of any discussion or the execution of this MOU shall not in any way be construed to obligate any Party reach or execute any agreement with the other Party. [sic]

37 Given the terms of the MOU, I find it unlikely that, by the time the MOU was executed on 17 January 2014, an oral agreement already existed between Mr Lim and Dr Wong on terms that included, *inter alia*, an obligation on the latter to cause AHL to acquire BDCE for \$9m. I also find Mr Lim's evidence in relation to this term to be somewhat inconsistent. As he was at pains to explain in his oral evidence, he did not have the funds in 2013 to immediately proceed with the purchase of the full 29% stake in AHL from Dr Wong. He could only raise around \$7m in cash, which BD Corp then used to purchase the 5.6% stake in AHL. He gave evidence that his bankers were willing to lend him about \$20m, but he was still short of funds to the tune of about \$9m, which he needed to pay the full consideration of \$36m for the 29% stake in AHL from Dr Wong. As such, to Mr Lim, AHL's acquisition of BDCE was a critical part of his deal with Dr Wong. It would provide him the needed cash to proceed with the purchase of the remaining 23.4% stake in AHL.⁶⁹

38 Yet, Mr Lim's conduct at the material time betrays the true state of affairs. After AHL decided not to proceed with the acquisition of BDCE sometime in the middle of 2014, Mr Lim did not react as one would have expected him to, if indeed there had been an oral agreement with Dr Wong which included the latter's undertaking to cause AHL to proceed with BDCE's acquisition. There is no evidence that Mr Lim had even told Dr Wong that he had failed to comply with his obligations under the oral agreement. While Mr Lim belatedly stated under cross-examination that he did eventually confront

⁶⁹ Transcript, 19 May 2021, p 48 line 1 to p 50 line 18; p 65 line 8 to p 67 line 2.

Dr Wong about AHL's decision not to proceed with the acquisition,⁷⁰ there is nothing in terms of objective evidence that supports this. As already mentioned, he produced no contemporaneous letters, emails or messages which would even hint that he had, prior to this counterclaim, taken the position that Dr Wong had not lived up to his promises. I note as well that Mr Lim appeared unable to give a clear answer as to when exactly his supposed confrontation with Dr Wong took place: while he initially said that this occurred in 2015,⁷¹ he backtracked almost immediately and put the confrontation in 2014,⁷² and not 2015.⁷³

39 A closer examination of Mr Lim's evidence is rather revealing. When questioned about whether, following AHL's failure to proceed with the acquisition of BDCE, he thought Dr Wong was in breach of the oral agreement, he claimed that he was "mesmerised" by Dr Wong and did not "pay attention to the details", such as whether Dr Wong had breached the oral agreement.⁷⁴ This is difficult to believe; after all, if the oral agreement had been concluded, it would not have been a mere "detail" but rather the entire basis for the acquisition of BDCE in the first place. It is quite implausible that the oral agreement would not have crossed his mind then. This indicates to me that the truth is that Dr Wong had never promised him that AHL would definitely acquire BDCE. Therefore, it is clear that the true position is as set out in the MOU. In fact, in another part of his evidence under cross-examination, Mr Lim admitted that Dr Wong had told him, when the proposed acquisition of BDCE was discussed,

⁷⁰ Transcript, 19 May 2021, p 72 line 15 to p 75 line 30.

⁷¹ Transcript, 19 May 2021, p 74 lines 18–21.

⁷² Transcript, 19 May 2021, p 74 lines 27–29.

⁷³ Transcript, 19 May 2021, p 75 lines 8–13.

⁷⁴ Transcript, 19 May 2021, p 75 lines 24–30.

that it was up to AHL's board to decide whether to proceed with the deal.⁷⁵ This again contradicts his pleaded case that the oral agreement required Dr Wong to procure AHL to acquire BDCE.

40 Mr Lim's evidence, which suggests an uncomplaining acceptance of AHL's decision not to proceed with the BDCE acquisition, also does not cohere with the commercial reality that, without the acquisition proceeding, he would not receive the funds that would enable him to go ahead and perform his part of the oral agreement, *ie*, the purchase of the remaining 23.4% stake in AHL from Dr Wong. That would effectively mean that Dr Wong had repudiated the oral agreement, which would have put an end to Mr Lim's plans to take a controlling stake in AHL. Also, it would mean that, from Mr Lim's perspective, BD Corp had paid a premium of \$2,975,000 for Dr Wong's 5.6% stake in AHL for no real purpose. Despite all this, the evidence showed no protest at all by Mr Lim.

41 When cross-examined about this state of affairs being inconsistent with the oral agreement, Mr Lim's explanation was that Dr Wong had, upon the falling-through of the acquisition of BDCE, told him that he would wait for Mr Lim to raise the funds to proceed with the purchase of the 23.4% stake in AHL. There was no time frame agreed for these funds to be raised. According to Mr Lim, Dr Wong promised that, if he had not sold this 23.4% stake in AHL by the time funds were raised, whenever that might be, he would sell those shares to Mr Lim.⁷⁶ If this were all true, that would mean that the oral agreement had been varied by the parties, *after* AHL decided not to proceed with the

⁷⁵ Transcript, 19 May 2021, p 53 lines 10–15.

⁷⁶ Transcript, 19 May 2021, p 67 line 6 to p 69 line 2.

acquisition of BDCE. Yet, this alleged variation of the oral agreement was not pleaded by Mr Lim, or even raised in his affidavit of evidence-in-chief.

42 In summary, I find Mr Lim's evidence in relation to the failed BDCE acquisition to be incongruent with his pleaded case on the alleged oral agreement with Dr Wong, and also quite strained as a matter of logic. His evidence on this issue appears to have deviated from his case that Dr Wong was obliged to cause AHL to acquire BDCE. I must also emphasise once more the difficulty of accepting, as a matter of commercial reality, that these two experienced businessmen would have reached a legally binding agreement that would effectively be open-ended as to when the purchase of the 23.4% stake in AHL held by Dr Wong would take place.

The discussions in 2017

43 Another aspect of the parties' subsequent conduct brought up by Mr Lim was his 2017 attempt to proceed with the acquisition of Dr Wong's shares in AHL. Mr Lim's evidence is that, in 2017, he was in a position to raise funds to do so.⁷⁷ However, after some discussions with Dr Wong, which involved Mr Lim and his professional advisors, the matter did not proceed further.⁷⁸ This was because Dr Wong said that he had made an agreement with an Indonesian party.⁷⁹ In this regard, Mr Lim's counsel submits that Dr Wong had "reneged" on the oral agreement, and Mr Lim is thus entitled to either a refund of the

⁷⁷ Lim's AEIC at para 28.

⁷⁸ Lim's AEIC at para 29–31.

⁷⁹ Lim's AEIC at para 31.

premium paid for the 5.6% stake in AHL that BD Corp purchased in 2013, or alternatively, a “reversal” of that transaction.⁸⁰

44 Given my finding that Mr Lim has not made out his case that the oral agreement with Dr Wong was entered into in 2013, I do not have to delve into the details of the evidence given by Mr Lim and Dr Wong as to what transpired in 2017. It suffices for me to say that the evidence of the two men are consistent in that, while there were some discussions in 2017 about the sale of Dr Wong’s 23.4% stake in AHL, nothing concrete came out of those discussions.⁸¹ From Mr Lim’s perspective, this was a repudiatory breach of the oral agreement reached in 2013, as his counsel stated in his opening remarks at trial.⁸² From the viewpoint of Dr Wong, he was always quite prepared to listen to what Mr Lim had to offer,⁸³ but in the end – contrary to Mr Lim’s evidence as to the involvement of an Indonesian party – Dr Wong decided not to sell his AHL shares either to Mr Lim or to anyone else.⁸⁴

45 I think it is more fruitful to focus on the testimony of the witnesses called by Mr Lim, *ie* the two advisors whom he engaged for the discussions in 2017 with Dr Wong. I will examine whether their testimony can lend any support to Mr Lim’s case that there already existed an oral agreement in place between him and Dr Wong by the time the discussions took place in 2017.

⁸⁰ DCS at paras 18, 23 and 24; D&CC at prayers 1 and 2.

⁸¹ Lim’s AEIC at paras 28–31; Transcript, 21 May 2021, p 27 line 17 to p 28 line 11.

⁸² Transcript, 19 May 2021, p 12 line 22 to p 13 line 13.

⁸³ Transcript, 21 May 2021, p 27 line 17 to p 28 line 6; p 33 line 3 to p 34 line 12.

⁸⁴ Transcript, 21 May 2021, p 30 line 25 to p 31 line 4.

46 The first advisor who gave evidence for Mr Lim was Rohit Sen (“Mr Sen”), the managing director of Tardis Capital (Singapore) Private Limited, a mergers and acquisitions advisory business.⁸⁵ In 2017, Mr Lim approached Mr Sen for advice on the acquisition of Dr Wong’s stake in AHL.⁸⁶ Mr Sen testified that he and Mr Lim met Dr Wong a few times.⁸⁷ According to Mr Sen, at those meetings, the price of acquiring Dr Wong’s AHL shares and the terms on which this was to be done were eventually agreed upon.⁸⁸ After the two principals reached agreement on these commercial terms, Mr Sen was instructed to draft the acquisition agreement.⁸⁹

47 From Mr Sen’s evidence, I think it is quite clear that no oral agreement, as pleaded by Mr Lim, was ever concluded in 2013. If it already existed, there would have been no need for Dr Wong, Mr Lim and Mr Sen to have discussions about the price of the shares and other commercial terms. Mr Sen’s evidence indicates to me that, even up to 2017, the discussions between Mr Lim and Dr Wong about the purchase of the latter’s shares were preliminary in nature, with no binding commitment having been entered into. In my view, the fact that Mr Sen was instructed to proceed with the drafting of the acquisition agreement makes it quite clear to me that all the discussions between the two men up to then had been “subject to contract”, so to speak.

48 Mr Sen’s oral evidence was consistent with such a conclusion. His impression, from his involvement with the discussions with Dr Wong and Mr

⁸⁵ Rohit Sen’s affidavit of evidence-in-chief (“Sen’s AEIC”) at para 1.

⁸⁶ Lim’s AEIC at para 28; Sen’s AEIC at para 4.

⁸⁷ Sen’s AEIC at para 8.

⁸⁸ Sen’s AEIC at para 8.

⁸⁹ Sen’s AEIC at para 8.

Lim, was that there was no binding consensus reached yet, and that there was still a risk that either party might choose not to proceed with the transaction.⁹⁰ He also testified that, even in August 2017, when the acquisition agreement was being drafted, negotiations between Mr Lim and Dr Wong on certain terms were still ongoing, because the latter wanted to understand certain proposals in more detail.⁹¹

49 Mr Lim’s second advisor in relation to the 2017 negotiations was Mr Soh Chun Bin (“Mr Soh”),⁹² a solicitor introduced to him by Mr Sen.⁹³ Mr Soh’s evidence is that he did not recall seeing any signed term sheet between Mr Lim and Dr Wong.⁹⁴ He also recalled speaking on the phone with Mr Loo Choon Chiaw, who was the solicitor advising Dr Wong,⁹⁵ but no deal eventually transpired. The draft acquisition agreement that Mr Soh worked on was never finalised.⁹⁶ In short, the effect of Mr Soh’s evidence is consistent with Mr Sen’s, in that he too had the impression that there did not appear to have been any concluded agreement between the two principals in their prior dealings in 2013. Quite clearly, up to 2017, the parties were still in discussions.

50 As such, I find that the evidence from Mr Lim’s professional advisors on the state of affairs in 2017 did not at all advance his case on the counterclaim that an oral agreement had been reached in 2013.

⁹⁰ Transcript, 20 May 2021, p 34 line 24 to p 35 line 28.

⁹¹ Transcript, 20 May 2021, p 37 lines 3–24.

⁹² Transcript, 20 May 2021, p 47 lines 1–11.

⁹³ Soh Chun Bin’s affidavit of evidence-in-chief at paras 5–7.

⁹⁴ Transcript, 20 May 2021, p 47 lines 12–15.

⁹⁵ Transcript, 20 May 2021, p 47 lines 21–29.

⁹⁶ Transcript, 20 May 2021, p 48 lines 1–8.

The loan agreement

51 As I recounted earlier (see [8] above), Dr Wong had extended a loan of \$1.4m to Mr Lim sometime in October 2015. Under the terms of the loan agreement, the interest-free loan of \$1.4m had to be repaid by October 2016.⁹⁷ Eventually, Mr Lim only repaid the sum of \$500,000, and Dr Wong had to resort to starting this legal action.⁹⁸ The reasons for the loan are not relevant to Mr Lim’s counterclaim. What is relevant though is that, in the entire period of time from the end of the parties’ discussions in 2017 until the commencement of these legal proceedings by Dr Wong in October 2020, Mr Lim never once asserted that he did not have to repay the outstanding loan amount to Dr Wong because the latter had “reneged” on the oral agreement, and was liable to repay Mr Lim the premium of \$2,975,000 BD Corp paid for the 5.6% stake in AHL.⁹⁹ In fact, the first time Mr Lim ever asserted such a claim against Dr Wong was when his solicitors filed his defence and counterclaim in these proceedings on 29 December 2020.¹⁰⁰

52 There has been no explanation at all by Mr Lim for this failure to raise the prospect of his claim against Dr Wong at an earlier stage. This is particularly when Mr Lim’s claim for the return of the premium of \$2,975,000 far exceeds the amount that remained due under the loan agreement, which was \$900,000. Quite to the contrary, Mr Lim gave evidence that, when Dr Wong chased him for the repayment of the loan during the period from 2017 to 2020, he told Dr

⁹⁷ AB at p 42.

⁹⁸ Wong’s AEIC at para 21.

⁹⁹ Wong’s AEIC at para 21.

¹⁰⁰ Wong’s AEIC at para 21.

Wong that he needed time to raise funds.¹⁰¹ There was no attempt to explain why he did not simply raise his claim for the refund of \$2,975,000, as a set-off against Dr Wong's claim for the outstanding loan. Given these circumstances, while it is certainly not determinative of the issue, I find that Mr Lim's conduct adversely affects the credibility of his evidence that there was an oral agreement between him and Dr Wong.

Conclusion

53 In sum, I find that Mr Lim's counterclaim faced difficulties from the very outset, being unsupported by contemporaneous documents of any sort. His account of the alleged oral agreement was beset by implausibility and a lack of clarity. None of the instances he raised of the parties' subsequent conduct successfully advanced his counterclaim; on the contrary, some of these instances undermined it, and suggested that there had been no oral agreement between him and Dr Wong as alleged. Consequently, I find that Mr Lim has not proven his counterclaim on a balance of probabilities.

The legal basis of the reliefs sought

54 Given my analysis and findings above, it is strictly not necessary for me to deal with the legal reliefs sought by Mr Lim. However, I think it behoves me to make the following observations about whether the prayed-for reliefs may be sustained as a matter of law, to perhaps serve as some guidance for other litigants and counsel, who may find themselves dealing with similar issues in the future.

¹⁰¹ Transcript, 19 May 2021, p 82 line 31 to p 83 line 14.

55 As I have already mentioned, the primary relief sought by Mr Lim for the breach of the alleged oral agreement is that the court order Dr Wong to refund him the premium of \$2,975,000 for the transaction involving the purchase of the 5.6% stake in AHL. What appears to have been glossed over is the fact that it was *not* Mr Lim who acquired the 5.6% stake in AHL from Dr Wong. It was BD Corp, a company in which Mr Lim held 55% at the material time in September 2013, that purchased the 17 million shares from Dr Wong.¹⁰²

56 BD Corp was not the alter ego of Mr Lim in September 2013. Apart from Mr Lim, there was another substantial shareholder in the form of Mr Ng, who was Mr Lim's partner in the crane design and manufacturing business.¹⁰³ Mr Ng, together with his wife, held 45% of BD Corp in September 2013.¹⁰⁴ As was made clear by Mr Ng's evidence, it was Mr Lim and he who together decided to proceed with the purchase of the 17 million shares from Dr Wong at the price of \$7.14m. Mr Ng was aware that this price amounted to a premium over the market price of AHL shares,¹⁰⁵ but decided to go along with Mr Lim's wishes.¹⁰⁶

57 Since BD Corp is the entity that purchased the 5.6% stake from Dr Wong in 2013, there is simply no legal basis for Mr Lim, personally, to seek recovery of any premium paid by BD Corp, even if he was able to establish the existence of the oral agreement and that Dr Wong had breached such an agreement. The alleged loss, in the form of the overpayment for the 5.6% stake in AHL, was

¹⁰² AB at p 6.

¹⁰³ Lim's AEIC at para 15; Ng's AEIC at paras 2, 3 and 5.

¹⁰⁴ AB at p 6.

¹⁰⁵ Ng's AEIC at para 6.

¹⁰⁶ Ng's AEIC at para 5.

suffered by BD Corp, and not Mr Lim himself. At the very least, BD Corp should have been joined as a party to the action. Since this was not done, Mr Lim would not have been entitled to his primary relief even if he had been able to establish liability on the part of Dr Wong in respect of the counterclaim.

58 The alternative relief sought by Mr Lim is a “reversal” of the transaction involving the 5.6% stake in AHL.¹⁰⁷ While not specifically explained in his closing submissions, I take it that Mr Lim is seeking to rescind the transaction, in the sense that he is asking the court to unravel the transaction by ordering Dr Wong to refund the consideration he received of \$7.14m, and for BD Corp to transfer the 17 million shares back to Dr Wong. In my judgment, this prayed-for relief of rescission suffers from several insurmountable problems.

59 First, as in the case of the primary relief, it is not one that is available to Mr Lim, since he was not the person who acquired the shares from Dr Wong. For rescission to be even theoretically available, BD Corp should have been made a party to this action.

60 Second, as a general rule, rescission *ab initio* is not available as a remedy for a claim in breach of contract. For such claims, the usual remedy is instead an award of damages, which seeks to place the innocent party, so far as money can do so, in the same position as if the contract had been performed. This was clearly elucidated by the Court of Appeal in *Hong Fok Realty Pte Ltd v Bima Investment Pte Ltd and another appeal* [1992] 2 SLR(R) 834 at [24]:

There was a patent confusion of thought when reference was made to *restitutio in integrum* in the sense of restoring the parties to their respective positions as if the contract had not been made, or the *status quo ante* as it was put. It is quite

¹⁰⁷ D&CC at prayer 2.

inappropriate in a case like the present where the rescission is not on the footing that the contract was void *ab initio* because of some vitiating factor like fraud or mistake, but on the footing that the other party had been guilty of repudiatory breach and that repudiatory breach had been accepted by the innocent party. In this type of situation, the innocent party is entitled to treat the contract as having come to an end and to sue for damages. The object of the award of damages in this type of situation is not to restore the parties to their respective positions as if the contract had not been made, but rather, in recognition of the existence of the contract and the subsequent breach, to compensate the innocent party, as far as money can do so, for the loss, damage and injury which he has suffered as a result of the breach. It is to place the innocent party, so far as money can do so, in the same position as if the contract had been performed. It is clear that any argument about placing both parties in their respective positions as if the contract had not been made is entirely out of place.

61 Mr Lim’s case is that Dr Wong has committed a repudiatory breach of the oral agreement. It would therefore be “inappropriate”, as the Court of Appeal put it, for rescission *ab initio* to be ordered. Even if Mr Lim had established liability on the part of Dr Wong, he would have been restricted to damages as his relief, and to quantify such damages, he would also have had to prove the loss that he suffered from that repudiatory breach of contract.

62 Third, it emerged during Mr Lim’s evidence on cross-examination that the interest in some of the AHL shares acquired by BD Corp had been transferred to other parties, or otherwise encumbered. Mr Lim’s evidence was that, in the course of the period from 2013 to 2017, some portion of the acquired AHL shares were pledged to a bank and later to a securities brokerage firm.¹⁰⁸ Also, about 15 million of the acquired AHL shares were sold to one Chiang Tin Tiah (“Mr Chiang”) in 2017.¹⁰⁹ In the same breath – and without further

¹⁰⁸ Transcript, 19 May 2021, p 38 line 19 to p 40 line 22.

¹⁰⁹ Transcript, 19 May 2021, p 42 lines 12–13.

elaboration – Mr Lim also claimed that Mr Chiang held the AHL shares on trust for him.¹¹⁰ To complicate things further, Mr Lim claimed that he converted about 670,000 AHL shares into scrip, and handed them over to Dr Wong’s sister as security for the outstanding amount owed under the loan agreement with Dr Wong.¹¹¹ Mr Lim also claimed that he executed blank share transfer forms in respect of these 670,000 shares, and he did not know in whose name the shares might now be registered.¹¹² This issue was not taken up by counsel for Mr Lim when Dr Wong was being cross-examined.

63 Neither party addressed me on the impact of these transactions on the availability of rescission. I would therefore simply observe that rescission may be barred where third party rights have intervened and title has passed to an innocent third party purchaser for value (see *Liberty Sky Investments Ltd v Goh Seng Heng and another* [2020] 3 SLR 335 at [100], which was upheld on appeal in *Liberty Sky Investments Ltd v Aesthetic Medical Partners Pte Ltd and other appeals and another matter* [2020] 1 SLR 606), and that it is not clear whether the 17 million shares in AHL purchased by BD Corp can be restored to Dr Wong.

Conclusion

64 For the reasons set out above, I find that Mr Lim has failed to establish his counterclaim. He has not been able to prove, on a balance of probabilities, that he and Dr Wong had entered into an oral agreement in 2013 for the acquisition of a 29% stake in AHL from Dr Wong, and that Dr Wong then failed

¹¹⁰ Transcript, 19 May 2021, p 43 lines 1–14.

¹¹¹ Transcript, 19 May 2021, p 44 line 4 to p 45 line 2.

¹¹² Transcript, 19 May 2021, p 45 lines 9–22.

to perform his obligations under the agreement. Even if he had been able to prove as much, the reliefs that he is seeking cannot be granted. As such, Mr Lim's counterclaim is dismissed.

65 I will deal separately with the issue of costs.

Ang Cheng Hock
Judge of the High Court

Yeo Kan Kiang Roy (Sterling Law Corporation) for the plaintiff;
Tan Cheng Kiong (CK Tan Law Corporation) for the defendant.
