

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

[2022] SGHC(A) 15

Civil Appeal No 68 of 2021

Between

Tan Chin Hock

... Appellant

And

- (1) Teo Cher Koon
- (2) Tan Thiam Chye

... Respondents

In the matter of Suit No 743 of 2019

Between

Tan Chin Hock

... Plaintiff

And

Teo Cher Koon

... Defendant

Civil Appeal No 75 of 2021

Between

Tan Thiam Chye

... Appellant

And

Tan Chin Hock

... Respondent

In the matter of Suit No 1089 of 2020

Between

Tan Thiam Chye

... Plaintiff

And

Tan Chin Hock

... Defendant

JUDGMENT

[Contract — Formation]

[Evidence — Presumptions]

[Evidence — Proof of evidence — Standard of proof]

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Tan Chin Hock
v
Teo Cher Koon and another and another appeal

[2022] SGHC(A) 15

Appellate Division of the High Court — Civil Appeals Nos 68 and 75 of 2021
Belinda Ang Saw Ean JAD, Woo Bih Li JAD and Chua Lee Ming J
7 February 2022

6 April 2022

Judgment reserved.

Woo Bih Li JAD (delivering the judgment of the court):

Introduction

1 The appellant in AD/CA 68/2021 (“CA 68”) is Mr Tan Chin Hock (“TCH”). The respondents in CA 68 are Mr Teo Cher Koon (“Teo”) and Mr Tan Thiam Chye (“TTC”). TTC is also the appellant in AD/CA 75/2021 (“CA 75”), whilst TCH is the respondent. CA 68 and CA 75 are TCH’s and TTC’s appeals against the decisions of the trial judge (“the Judge”) in *Tan Chin Hock v Teo Cher Koon and another suit* [2021] SGHC 175 (“the Judgment”). The Judgment was the Judge’s decisions on two separate suits: HC/S 743/2019 (“Suit 743”) and HC/S 1089/2020 (“Suit 1089”).

- (a) Suit 743 was a claim brought by TCH against Teo for damages for misrepresentation and money owing to him under an indemnity which Teo allegedly gave TCH (“the Alleged Indemnity”).

(b) Suit 1089 was a claim brought by TTC against TCH pursuant to a loan which TTC allegedly gave TCH (“the Alleged Loan”). He claimed for the sum owing under the Alleged Loan, as well as loss of profits and loss of dividends.

2 Both suits were heard one after the other on the basis that the evidence in one would apply to the evidence in the other and vice versa. The Judge dismissed Suit 743 and allowed Suit 1089, finding that the Alleged Indemnity did not exist, but that the Alleged Loan did. She ordered TCH to pay the sum owing under the Alleged Loan to TTC. However, she did not award TTC loss of profits or loss of dividends and ordered interest to run from the date of the writ.

3 Now, both TCH and TTC appeal against the Judge’s decisions. CA 68 is TCH’s appeal against the Judge’s decision that the Alleged Indemnity did not exist, and that the Alleged Loan did. On the other hand, CA 75 is TTC’s appeal against the Judgment in Suit 1089 in so far as she dismissed TTC’s claim for loss of profits and loss of dividends. Alternatively, TTC is appealing against her decision to order interest on the Sum to run from the date of the writ only instead of interest to run from 13 August 2015 (being the date the Alleged Loan was to be repaid).

Background

Relevant facts

4 Teo is the managing-director and president of ISDN Holdings Limited (“ISDN”), a company listed on the Singapore Stock Exchange.¹ TTC is a

¹ JCB(2A) 99.

businessman specialising in the import and export of foodstuffs, and first met Teo in or around 2010. TCH describes himself as a “businessman” and an “investor in the stock market and various business ventures”.²

5 Teo and TTC became acquainted in 2012 at the Riverview Hotel (“the Hotel”). Teo and TCH would meet at the Hotel several times a week from 2012 to 2013.³

6 TCH was also acquainted with the “Goh Brothers”, that is, Goh Yeu Toh (“GYT”) and his younger brother Goh Yeo Hwa (“GYH”).⁴ GYT was the director of a public company, Wee Hur Holdings Limited (“Wee Hur”), although by the time of trial this was no longer the case.⁵ GYH was a shareholder of Wee Hur and was also an executive director and co-founder.⁶ GYH was introduced to Teo and TTC by TCH at the Hotel.⁷

7 In late 2012, TCH was introduced to a project relating to a coal mine in Myanmar (“Myanmar Project”). He told Teo about the Myanmar Project and visited Myanmar on 8 January 2013 to ascertain the viability of the Myanmar Project.⁸

8 From February to September 2013, TCH, his brother (Tan Chin Tuan), and two of his associates, Mr Ho Siow Poh and Mr Tan Ah Ee (collectively,

² JCB(2A) 31, 101.

³ JCB(2A) 31, 216.

⁴ JRA(3P) 57.

⁵ JRA(3P) 56.

⁶ JRA(3M) 69.

⁷ JRA(3M) 75; JCB(2A) 216.

⁸ JCB(2A) 32 to 33.

TCH's "associates"), bought substantial amounts of shares in ISDN. Collectively, their shareholding in ISDN increased from about one million shares in February 2013,⁹ to 43,780,000 by 30 September 2013.¹⁰ During this period, the following occurred:

- (a) On 14 March 2013, ISDN issued 36 million shares at a price of \$0.24 *per* share ("the First ISDN Placement").¹¹
- (b) On 21 March 2013, Teo unloaded 26 million ISDN shares that were held by a company he beneficially owned named Assetraise Holdings Limited ("Assetraise"). This was carried out in two deals ("the 2013 Deals"): (i) 14.5 million ISDN shares were transferred to GYT ("the Goh Deal"); and (ii) 11.5 million ISDN shares were transferred to TTC ("the TTC Deal").¹²
- (c) From 30 March to 1 April 2013, a second trip to Myanmar was undertaken, this time with Teo going.¹³
- (d) On 3 April 2013 ISDN carried out a second share placement ("the Second ISDN Placement") where 23.73 million shares were issued at a price of \$0.45 *per* share.¹⁴

⁹ JCB(2F) 114.

¹⁰ JCB(2F) 118.

¹¹ JCB(2A) 33.

¹² JCB(2A) 34 to 35, 218.

¹³ JRA(3M) 138.

¹⁴ JCB(2A) 38.

(e) From April to June 2013, ISDN made several announcements regarding projects it was going to be involved in (including the Myanmar Project), and consequently, its stock prices increased.¹⁵

9 From September to December 2013, a penny stock crash occurred (“the Penny Stock Crash”), and as a result, ISDN’s share price dropped.¹⁶ During this time, TCH and his associates continued to trade in ISDN shares.¹⁷ However, ultimately ISDN’s plans for the Myanmar Project did not come to fruition.¹⁸

10 From 13 to 17 November 2014, TTC liquidated 8 million ISDN shares at a price of \$0.29 *per* share, receiving sales proceeds of \$2,314,042.23. He did so in three tranches:¹⁹

Date of sale of ISDN Shares	Number of ISDN Shares sold	ISDN Sales Proceeds received by TTC (\$)
13 November 2014	2 million	578,510.55
14 November 2014	3 million	867,765.84
17 November 2014	3 million	867,765.84
Total:	8 million	2,314,042.23

¹⁵ JCB(2A) 39 to 41.

¹⁶ JCB(2A) 41, 101.

¹⁷ JCB(2A) 44.

¹⁸ JCB(2A) 46.

¹⁹ JCB(2A) 222.

11 On 17 November 2014, TTC sent a message to Teo informing him that he had sold 8 million ISDN shares through the open market at a price of \$0.29 *per share*. He then asked Teo to “make the public announcement as required”.²⁰

12 TTC transferred almost all of the proceeds, amounting to \$2,314,041.39 (“the Sum”), to TCH and his associates over several tranches from 13–24 November 2014 (“the November 2014 Transfers”).²¹ These transfers were evidenced by payment vouchers issued by TTC (“the Payment Vouchers”) and signed by TCH.²²

Date of payment made by TTC	Name of recipient or cheque payee	Mode of payment	Amount paid (\$)
13 November 2014	TCH	Cash	578,510.55
19 November 2014	Tan Kim Sing	UOB Cheque	350,000.00
20 November 2014	Tan Chin Tuan	UOB Cheque	200,000.00
20 November 2014	TCH	UOB Cheque	317,765.84
24 November 2014	Lee Kwang Hwee	UOB Cheque	300,000.00
24 November 2014	TCH	UOB Cheque	567,765.00
Total:			2,314,041.39

²⁰ JSCB(2) 245.

²¹ JCB(2A) 51, 222.

²² JCB(2F) 81, 85 to 88, 90 to 91.

As can be seen, there is a very slight difference of \$0.84 between the sale proceeds of \$2,314,042.23 and the Sum (of \$2,314,041.39) transferred by TTC to TCH and his associates. There was no explanation for this minor discrepancy which is immaterial for present purposes.

13 Over one year later, TCH's lawyers sent a letter of demand dated 24 November 2015 ("the First LOD") to Teo.²³ In the First LOD, TCH claimed that Teo had represented that investing in ISDN would be a "good investment", and that Teo would "make good on any losses" suffered by TCH as a result of investing in ISDN. He claimed that he had incurred losses amounting to \$8,985,481.85, and after taking into account the Sum paid by TTC on behalf of Teo, a further \$6,671,439.62 was owing to him. After receiving the First LOD, Teo called TTC the next day and told him about it.²⁴

14 Teo then sent TTC a WeChat message on 26 November 2015. The English translation reads as follows:²⁵

I discussed with Kenneth, and he said that he was also helping Tarka boss solve the same problem, all related to that annoying person. He said that as long as you also send a lawyer's letter to claim a repayment from that annoying person, his accusation will collapse. The fact is that you lent him money, but he used it to attack me. Although you did not have a contract with him, this letter proves that he took money from you, and you may still be able to get back the money that you lent him. I'm on a high-speed train now and will talk to you after 11 o'clock.

²³ JCB(2G) 121.

²⁴ JCB(2A) 237; TCH's Case in CA 68 at para 77.

²⁵ JCB(2B) 80.

15 Subsequently, Teo replied to the First LOD on 6 December 2015, addressing TCH's lawyers at the time, M/s Wong Tan & Molly Lim LLC:²⁶

I think that [TCH] is suffering from delusion as he referred to lies as facts.

I verified with [TTC] the contents of the letter and sent a copy of the letter to him. It seems that your client is using the loan from [TTC] as a fact to request repayment from me. In other words, he attempted to blackmail me using legal means. [TTC] went overseas last night but he said that he has sent a letter of demand to your client asking for repayment of his loan. Therefore, please get your facts right before acting for [TCH].

I also reserve the right to a suit as well as submitting your letter to the police as evidence of blackmail.

16 Two weeks later on 20 December 2015, TTC wrote to TCH as well by way of letter.²⁷ The English translation reads:

[Teo] gave me a copy of your letter to him on 5 December, he also asked me when he gave you money through me. I told him this was a loan to you and I have a receipt as proof. I do not understand why you claimed that my loan to you was a repayment from him to you.

You should remember that you pestered me to lend you more than 2 million dollars and said that it was just to temporarily tide you over. Once your contemplated IPO is launched, you would repay me. Even though I was not convinced at that time, I still lent you more than 2 million dollars as I felt sorry for you. Now your IPO has launched and it is time you return me the money.

When will you honour your promise and repay me the full sum?

17 It is undisputed that TCH did not reply to either of the letters sent by Teo and TTC.

²⁶ JCB(2G) 124.

²⁷ JCB(2B) 81 to 82.

18 Almost four years later, TCH’s new lawyers sent a further letter of demand to Teo dated 4 July 2019 (“the Second LOD”).²⁸ The amount claimed by TCH was said to have been “recalculated” such that he only claimed \$2,732,149. The Second LOD expressly rejected the allegation that the November 2014 Transfers were a loan from TTC to TCH.

The parties’ cases

19 On 23 July 2019, TCH commenced Suit 743 against Teo for payment pursuant to the Alleged Indemnity:

(a) TCH’s pleaded case was that Teo had given the Alleged Indemnity in late September 2013 because he wanted TCH to help him prop up the ISDN share price in the wake of the Penny Stock Crash. In return, Teo would indemnify him for any losses incurred from buying the shares. Teo had also represented to him that Teo could instruct TTC to sell off the ISDN shares Teo had parked with TTC and effect payment.²⁹

(b) TCH also claimed that Teo had represented several facts to him to induce him into entering the Alleged Indemnity. These representations pertained mainly to the Myanmar Project and how it was close to being finalised, and that once it was finalised, the ISDN share price would increase.³⁰

(c) TCH tried to prop up the ISDN shares, buying a substantial amount between September 2013 and December 2013. He enlisted the

²⁸ JCB(2G) 125.

²⁹ JCB(2E) 108.

³⁰ JCB(2E) 108 to 109.

help of his associates as he did not have enough funds to buy the number of shares needed. However, by the end of 2013, he had incurred losses of \$5,046,191 as ISDN's share price fell after its plans for the Myanmar Project did not come to fruition.³¹

(d) With regard to the November 2014 Transfers, TCH's position was that these were partial payments pursuant to the Alleged Indemnity. He claimed that in November 2014, he had approached Teo for payment pursuant to the Alleged Indemnity. Teo agreed and instructed TTC to liquidate some of the ISDN shares that TTC was holding for Teo, and then to effect payment to TCH. The payments were only partial payment of the Alleged Indemnity.³² Thus, he claimed for the remaining sum owing under the Alleged Indemnity of \$2,732,149.61.³³

(e) On the other hand, Teo denied the Alleged Indemnity. He denied that TTC was holding ISDN shares on his behalf or that the Sum constituted partial payment by TTC on his behalf pursuant to the Alleged Indemnity.

20 On 11 November 2020, TTC commenced Suit 1089 against TCH for repayment of the Alleged Loan. He alleged that the November 2014 Transfers comprised the Alleged Loan from him to TCH:

(a) TTC claimed that TCH had approached him in early November 2014 and asked for a loan of about \$2.5m because he was in financial difficulty. TTC also alleged that TCH had informed him that he was

³¹ JCB(2E) 109 to 110.

³² JCB(2E) 110.

³³ JCB(2E) 110.

assisting in the listing of a company known as TLV Holdings Limited (“TLV”) and would be able to repay the loan. TTC considered the request and then agreed to extend the loan to TCH.³⁴

(b) TTC’s case was that the loan from him came with two express terms (“the Express Terms”).³⁵ The first was that the repayment date would be within nine months from when the Alleged Loan was given or upon the successful public listing of TLV, whichever was the earlier (“Express Term One”). The second was that the mode of repayment would depend on the ISDN share price at the date of repayment. If the ISDN share price was equal to or lower than the price at which TTC had sold the shares in the first place, TCH would repay the money lent to him. However, if the ISDN share price at the date of repayment exceeded the price that TTC had sold them at, TTC would procure 8 million ISDN shares from the open market and transfer them to TTC (“Express Term Two”).

(c) TTC’s explanation of the November 2014 Transfers was that, pursuant to the Alleged Loan, TTC sold 8 million ISDN shares between 13 November 2014 and 17 November 2014 at a price of \$0.29 *per* share. He then disbursed the proceeds to TCH and other recipients as directed by TCH (see [10] and [12] above).³⁶ It was also TTC’s case that the first payment of \$578,510.55 to TCH on 13 November 2014 was done with his own money, as TCH was urgently in need of money.³⁷

³⁴ JCB(2E) 115 to 116.

³⁵ JCB(2E) 116.

³⁶ JCB(2E) 116 to 118.

³⁷ JCB(2E) 118.

(d) TTC claimed that the Sum became due on 13 August 2015 (being nine months from the date of the Alleged Loan). The closing price of ISDN's share price on this date was \$0.23 *per* share which was lower than the price of \$0.29 at which he had sold his shares. Thus, pursuant to Express Term Two, TCH owed him the Sum. However, TCH did not repay the Sum.³⁸

(e) Aside from the Sum, TTC also claimed for loss of profit and or dividends, as he claimed that he intended to repurchase the ISDN shares from the open market with the Sum. Alternatively, he claimed for interest that would have been earned on the Sum from the due date of repayment.³⁹

(f) On the other hand, TCH denied the loan. As already alluded to, his position was that the Sum was paid by TTC on Teo's behalf pursuant to the Alleged Indemnity.

The Judge's decision

21 As mentioned, the Judge dismissed Suit 743 and allowed Suit 1089. She found that the Alleged Indemnity was not proved, whilst accepting that TTC gave TCH the Alleged Loan. The Judge also rejected TCH's misrepresentation claim as she found that Teo had not made the representations regarding ISDN, and even if he had, they would not be actionable and TCH did not act upon those representations.⁴⁰

³⁸ JCB(2E) 119 to 120.

³⁹ JCB(2E) 120.

⁴⁰ Judgment at [85].

22 With regard to the Alleged Indemnity, the Judge first found that the documentary evidence did not conclusively disprove the existence of the Alleged Indemnity. She thus found it necessary to review the oral testimony to clarify the documentary evidence.⁴¹ She was of the view that TCH was not a credible or reliable witness due to his demeanour as well as the inconsistencies in his evidence and thus placed no reliance on his oral testimony.⁴² On the other hand, she assessed Teo to be a “far more credible witness”.⁴³ She also found that the Alleged Indemnity was “commercially absurd”, and that there was no reason for Teo to enter into such an arrangement.⁴⁴ She then moved on to consider TCH’s buying of ISDN shares, ultimately finding that his trading behaviour did not seem consistent with someone who had been given an indemnity, and rather, it showed TCH trying to create market activity for his own benefit.⁴⁵ Accordingly, the Judge found that the Alleged Indemnity was not established. Further, she found that even if it was established that Teo had promised TCH to make good on his losses, this promise would not have been given with the intention to create legal relations.⁴⁶

23 In relation to the Alleged Indemnity, the Judge considered whether Teo had represented to TCH that TTC was holding on to Teo’s ISDN shares and that TTC could sell these to make partial repayment pursuant to the Alleged Indemnity. The focus of the Judge’s reasoning on this point was a consideration of the 2013 Deals (see [8(b)] above). She found that the Goh Deal was an

⁴¹ Judgment at [43].

⁴² Judgment at [44] and [52].

⁴³ Judgment at [53].

⁴⁴ Judgment at [59] to [60].

⁴⁵ Judgment at [66] and [68].

⁴⁶ Judgment at [69] to [70].

arrangement facilitated by GYH whereby Teo had parked 14.5 million ISDN shares with GYT. This finding was based on evidence that showed that the Goh Brothers only sold the ISDN shares they received in the deal on Teo's instructions.⁴⁷ However, she did not find that the TTC Deal was also a share parking arrangement. She noted that the legal documentation in the two deals were different, and that there was no evidence of Teo having control over TTC's sale of ISDN shares in the same way as with the Goh Deal.⁴⁸

24 Having rejected the Alleged Indemnity and TCH's case that Teo had parked shares with TTC, the Judge then went on to consider the Alleged Loan. She first considered correspondence between the parties, finding that it was consistent with the testimony of TTC and the Alleged Loan.⁴⁹ She then considered that TTC had used his own money to make the first payment to TCH on 13 November 2014, which was more consistent with the Alleged Loan than the Alleged Indemnity.⁵⁰ The Judge rejected TCH's assertion that the Alleged Loan was a construct used to bolster Teo's defence in Suit 743.⁵¹

25 Accordingly, she ordered that TCH repay the Sum to TTC. However, she declined to award TTC's further claims for loss of profits and/or dividends, as she found that TTC was unable to prove that he would have repurchased the ISDN shares immediately had he been repaid on 13 August 2015, and neither had he proved that he would have held on to the shares, thus earning dividends

⁴⁷ Judgment at [95] to [102].

⁴⁸ Judgment at [104] and [109].

⁴⁹ Judgment at [123] to [125].

⁵⁰ Judgment at [127].

⁵¹ Judgment at [128].

from them.⁵² She further ordered interest to run from the date of the writ only, reasoning that TTC had been unable to explain his delay in bringing Suit 1089.⁵³

Issues on appeal

26 On appeal, the parties' cases did not change for the most part. TTC appeals against the Judge's decision to only award him the Sum, and her decision to allow interest to run only from the date of the writ in Suit 1089.

27 TCH maintains his claim for the sum owing under the Alleged Indemnity but has dropped his claim for misrepresentation. Counsel for Teo, Mr Sarjit Singh Gill SC ("Mr Gill") argued that this was an admission that the representations (including the Alleged Indemnity) never happened. We did not think this was necessarily true. Indeed, Mr Zhulkarnain Bin Abdul Rahim ("Mr Zhulkarnain"), counsel for TCH, suggested that TCH had only dropped that claim, but did not necessarily agree that the misrepresentations had not been made. Presumably, this was due to the Judge's finding that the representations (other than the Alleged Indemnity), were not actionable in law.

28 This leaves two claims before us: TCH's claim for money owing under the Alleged Indemnity, and TTC's claim for the Sum owing under the Alleged Loan (as well as his further claims for loss of profits and/or dividends or alternatively, interest from the due date of repayment). In both cases, the question is simply whether either of the oral agreements pleaded by the respective parties was established on the evidence. This however, raised a preliminary issue which we turn to now.

⁵² Judgment at [139].

⁵³ Judgment at [142] to [143].

Preliminary issue: the “binary” choice

29 The Judge observed that since she found that the November 2014 Transfers were not pursuant to the Alleged Indemnity, the next question was whether they were pursuant to the Alleged Loan, or “some other purpose”.⁵⁴ TCH submits that it was “artificial for the Judge to undertake the process of ascertaining if the payments were made for *a purpose other than pursuant to* [the Alleged Loan]. The reality was that given the state of the pleadings, that was the *only* possible purpose following the Judge’s finding against the existence of [the Alleged Indemnity]” – in other words, it was a “binary decision”.⁵⁵

30 We originally understood this to mean that our decision could only result in one of two outcomes: either only the Alleged Indemnity existed, or only the Alleged Loan existed. However, we had misgivings over such an approach and clarified this point with the parties. At the hearing of the appeals, it was accepted by Mr Zhulkarnain that the choice was not binary in the sense that we had understood it. Importantly, he agreed that it could be that neither the Alleged Loan nor the Alleged Indemnity was established on the balance of probabilities. Teo and TTC also took the same position.

31 This must be correct. A plaintiff in a civil suit must prove his case on the balance of probabilities. A plaintiff proves his case “on the balance of probabilities” when he shows that his case is more probably true than not true: *Clarke Beryl Claire (personal representative of the estate of Eugene Francis Clarke, deceased) and others v SilkAir (Singapore) Pte Ltd* [2002] 1 SLR(R)

⁵⁴ Judgment at [116].

⁵⁵ TCH’s Case in CA 68 at para 101.

1136 at [58]. He does not meet this burden by showing his case is a “better explanation” for certain events than the defendant’s. This means that a trier of fact is not bound to prefer one of the parties’ assertions. A third alternative is available where the state of the evidence is unsatisfactory: the judge may simply find that the plaintiff has failed to discharge his burden: *Wee Yue Chew v Su Sh-Hsyu* [2008] 3 SLR(R) 212 at [8] citing *Popi M* [1985] 1 WLR 948.

32 An example may explain this. Take for instance, a case where a plaintiff is suing a defendant for negligence causing a fire. In that case, the key factual issue would be the cause of the fire. However, due to any number of factors, the state of the evidence is dismal, and parties are unable to offer a reasonable or believable explanation as to the cause of the fire. In such a case, the trier of fact does not have to prefer the less incredible explanation. He may simply make no finding of fact and hold that the plaintiff is unable to discharge his burden.

33 We pause to stress that these principles apply even if the facts are within the personal knowledge of the parties. In the above example, the cause of the fire may not be within the personal knowledge of the parties – they can only piece together the cause from physical and expert evidence. However, even where the facts of the case are within the personal knowledge of the parties, a trier of fact is not obliged to accept one of the parties’ version of events. The reason for this is that parties may, for reasons best known to themselves, be less than forthcoming with the *true* facts of the case.

The indemnity claim

34 The main thrust of the indemnity claim was the Alleged Indemnity, *ie*, that Teo had promised TCH that he would indemnify him for any losses arising out of TCH’s trading in ISDN shares. This was in the context of Teo asking

TCH to help him prop up the ISDN share price following the Penny Stock Crash in 2013.⁵⁶ A secondary part of the case was that Teo had told TCH that he could instruct TTC to liquidate ISDN shares that TTC was holding on to for him and effect payment pursuant to the Alleged Indemnity. TCH’s case was that he believed this representation from Teo because the TTC Deal was a share parking arrangement (“the Share Parking Allegation”).⁵⁷

The relevance of the Share Parking Allegation

35 TCH’s case as regards the Share Parking Allegation was that Teo had parked his shares effectively with the Goh Brothers and also with TTC on 21 March 2013 by way of the 2013 Deals.⁵⁸ The Judge had found that the Goh Deal was a share parking arrangement, whilst the TTC Deal was not. On appeal, TCH argues that the Judge was correct in finding that the Goh Deal was a share parking arrangement, and uses it as evidence of the TTC Deal also being a share parking arrangement.⁵⁹ Teo argues that the Judge had erred in finding that the Goh Deal was a share parking arrangement,⁶⁰ but that she was correct in finding that the TTC Deal was *not* a share parking arrangement.⁶¹ Of course, TTC aligns himself with Teo and takes the position that the TTC Deal was a legitimate purchase of shares.⁶²

⁵⁶ JCB(2A) 42 and 43.

⁵⁷ JCB(2A) 38; JRA(3R) 65 to 66.

⁵⁸ TCH’s Case in CA 68 at para 39.

⁵⁹ TCH’s Case in CA 68 at para 38.

⁶⁰ Teo’s Case in CA 68 at para 29.

⁶¹ Teo’s Case in CA 687 at para 18.

⁶² TTC’s Case in CA 68 at para 69.

36 On appeal, TCH appears to attach immense significance to the Share Parking Allegation, having spent considerable time and effort in making submissions on this point.⁶³ Similarly, the Judge also spent a considerable amount of time considering the Share Parking Allegation in her decision.

37 Despite this, we are of the view that it is unnecessary to make a finding on whether the Goh Deal or even the TTC Deal was a share parking arrangement. This is because, even if the TTC Deal was a share parking arrangement, it does not necessarily mean that Teo gave TCH the Alleged Indemnity. Whether Teo parked his shares with TTC, and whether he agreed to indemnify TCH are two separate matters. Neither would a finding that Teo had parked shares with TTC necessarily assist in TCH's defence against TTC's loan claim.

38 The difficulty with TCH's reliance on the Share Parking Allegation is that it assumes that the 11.5 million shares allegedly parked with TTC were the *only* ISDN shares TTC had owned at the material time. However, as *per* the 2013 annual report of ISDN, as at 17 March 2014, TTC owned 32,794,000 ISDN shares.⁶⁴ There has been no assertion by TCH that all of these shares were parked with TTC by Teo. As such, even if Teo had parked shares with TTC, there is no evidence to show that the 8 million shares subsequently liquidated in November 2014 were specifically those parked shares. Thus, successfully proving the Share Parking Allegation would not aid TCH's defence against TTC either.

⁶³ TCH's Case in CA 68 at pp 14 to 28.

⁶⁴ JRA(3H) 168.

The Alleged Indemnity

39 This brings us back to the Alleged Indemnity. For the reasons that follow, we find that the Judge was correct to find that TCH had not proven the Alleged Indemnity.

The lack of specificity and consistency in TCH's case

40 A key flaw in TCH's case on the Alleged Indemnity was that it lacked specificity and consistency on material points.

41 To begin, TCH's position on *when* Teo gave him the Alleged Indemnity was inconsistent. In his statement of claim ("SOC"), TCH averred that Teo had contacted him in late September 2013 and asked to meet. They then met on at least two occasions, where Teo made several representations including the Alleged Indemnity.⁶⁵ In TCH's Further and Better Particulars ("F&BP") dated 13 March 2020, he stated that he could not recall the exact dates and times of the September 2013 meetings. TCH's affidavit of evidence-in-chief ("AEIC"), did not mention that Teo had contacted him. Instead, TCH deposed that the Alleged Indemnity was given during "meetings from late September 2013 to October 2013" at the Hotel.⁶⁶ Whilst there is some inconsistency between the two, the difference is not irreconcilable. In both accounts, the representations and the Alleged Indemnity were given in meetings, and at least some of these meetings were in late September 2013.

42 However, TCH's version materially changed at trial. Under cross-examination, TCH suddenly remembered that the Alleged Indemnity was the

⁶⁵ JRA(2) 35 to 36.

⁶⁶ JCB(2A) 42.

first representation given to him by Teo, and that Teo had given him this representation during *a phone call* at around 8am on 30 September 2013.⁶⁷ When confronted with the fact that this phone call was not in his AEIC, TCH's explanation was that it was the *other* representations that had been made at the Hotel.⁶⁸ The Judge found that the omission of this specific detail of the phone call from the AEIC, the SOC and the F&BP undermined the credibility of TCH.⁶⁹ We agree with this assessment – TCH had contradicted himself on a material point.

43 A further inconsistency was the context in which Teo had given the Alleged Indemnity. TCH's case was that Teo had asked TCH to help him prop up the share price of ISDN, and that he would indemnify him for any losses incurred. However, in paragraph 2(i) of the First LOD, it was asserted that Teo had represented that it “would be a good investment to acquire shares in [ISDN]” and that he “had further promised to make good on any losses suffered by [TCH] as a result of investing in [ISDN].”⁷⁰ There was no mention of Teo's plan to prop up the ISDN share price. This inconsistency is critical.

44 It was also troubling that TCH's case on the Alleged Indemnity failed to particularise certain material details. First, there was no mention of the quantity of ISDN shares that TCH was meant to purchase, nor was there any mention of the price at which he was meant to purchase them. Surely, if Teo had asked TCH to prop up the ISDN share price in exchange for the Alleged Indemnity, he would have given directions on these aspects otherwise it would open him

⁶⁷ JCB(2C) 118 line 23 to 119 line 16.

⁶⁸ JCB(2C) 119 lines 21 to 22.

⁶⁹ Judgment at [46].

⁷⁰ JCB(2G) 121.

up to enormous and unknown personal liability, assuming the Alleged Indemnity existed. We elaborate on this point at [55]–[59] below.

45 More importantly, at no point in the proceedings has TCH been able to particularise how he calculated his claimed loss of \$5,046,191 incurred from trading ISDN shares. In his SOC, he did not set out any calculations of this loss, and when asked for further and better particulars, he declined to elaborate.⁷¹ In his AEIC for Suit 743, he simply asserts that he had incurred “significant losses”.⁷²

46 Yet, when TCH was cross-examined on how he came to this number, he was unable to give a satisfactory reply. At trial, Mr Gill referred TCH to the First LOD,⁷³ where the claim was for \$6,671,439.62. When asked why this number had become \$5,046,191, TCH was only able to say that the calculations were done by his lawyers.⁷⁴ It is telling that TCH has been unable to offer any calculations showing how he arrived at the figure of \$5,046,191. It is all the more unbelievable that he was unable to explain this given that he claims his occupation is an investor in the stock market. Surely, he would understand how to calculate losses incurred from share trading.

TCH’s pattern of buying ISDN shares

47 Next, we turn to the issue of TCH’s pattern of buying ISDN shares from September 2013 to December 2013.

⁷¹ JRA(2) 61.

⁷² JCB(2A) 46 at para 55.

⁷³ JCB(2G) 121 to 122.

⁷⁴ JRA(3L) 183 to 187.

48 TCH's case was that the Alleged Indemnity came about when Teo asked him to help prop up the share price of ISDN in the aftermath of the Penny Stock Crash. TCH alleges that he then approached his associates to help him as he did not have enough funds to purchase the required volume of ISDN shares. He claimed that he told them about the Alleged Indemnity and that they agreed to let him use their share accounts to trade shares. Accordingly, the ISDN shares were purchased either on his own accounts, or their accounts.⁷⁵

49 The Judge found that TCH's pattern of buying and selling of ISDN shares was not consistent with this story. Instead, she accepted Teo's argument that the more plausible explanation was that TCH was trying to create market activity for his own benefit and trying to cut his own losses.⁷⁶

50 We agree with the Judge's analysis. Teo produced a table showing the various trades made by TCH and his associates from 30 September 2013 to late December 2013.⁷⁷ This was compiled from statements, buy-sell orders and contract notes.⁷⁸ This table shows TCH and his associates consistently buying *and selling* ISDN shares during this period. In other words, it shows a pattern of *trading* rather than a pattern of TCH trying to prop up the ISDN share price by buying only.

51 This finding is also supported by fluctuations in TCH's and his associates' shareholding in ISDN.⁷⁹ As of 30 September 2013 (the date that the

⁷⁵ JCB(2A) 43 to 44.

⁷⁶ Judgment at [66].

⁷⁷ JRA(3F) 291 to 295.

⁷⁸ JRA(5B) 254 to 300; JRA(5C) 4 to 29.

⁷⁹ JCB(2F) 114 to 128.

Alleged Indemnity was given), they collectively held 43,780,000 ISDN shares. This went up to 49,200,000 on 31 October 2013. However, it dropped sharply to 37,048,000 on 11 November 2013, and 31,810,000 on 29 November 2013. The total number of ISDN shares owned by them was maintained at around 30 million until at least 7 February 2014.

52 This does not square with TCH’s case. First, the fact that TCH and his associates, on average, collectively held *less* ISDN shares after 30 September 2013 does not support his narrative that he had been buying shares to prop up the ISDN share price.

53 Second, it runs counter to TCH’s assertion that he had told Teo in December 2013 that he would slowly sell off his ISDN shares. At trial, TCH asserted that he had a conversation with Teo in the first week of December 2013 at the Hotel where he told Teo that he was going to stop propping up the ISDN share price, but because he was holding so many shares, he would not throw them all out at once into the market as this would cause the share price to fall rapidly. Thus, instead, he would “end it slowly”.⁸⁰

54 However, by November 2013, he had already reduced his shareholding significantly from the previous month (see [51] above). If TCH’s testimony on the December 2013 conversation is to be believed, TCH would have only reduced his shareholding after December 2013. Read with the fact that the conversation with Teo in December 2013 was never mentioned in TCH’s AEIC, this casts doubt on the credibility of TCH’s story.

⁸⁰ JRA(3L) 189 to 190, 192 to 194.

The “commercial absurdity” of the Alleged Indemnity

55 We now turn to Teo’s argument that the Alleged Indemnity was “commercially absurd”.

56 To reiterate, the Alleged Indemnity was that Teo told TCH that if he suffered any loss from his investment in ISDN, Teo would personally make good those losses, and hold TCH “harmless”.⁸¹ This representation as pleaded by TCH, gave him a broad and almost unlimited indemnity from Teo. Below, the Judge found this to be “commercially absurd” as there was “no reason for Teo to give an unlimited or open-ended indemnity out of his desperation to maintain the share price at a certain level”. She came to this conclusion as none of the memorandums of understanding or public announcements made by ISDN in 2013 referred to a requirement that ISDN’s share price be maintained at a certain level.⁸²

57 On appeal, TCH contends that, regardless of the Judge’s findings, Teo would be motivated to maintain the ISDN share price at a certain level. In support, he points out that Teo held 50% of ISDN’s shares and thus his personal worth was tied to ISDN; and further, ISDN required substantial funding for projects and a sharp decline in its share price would deter funders.⁸³

58 However, even if we accept that Teo had an interest in maintaining the share price of ISDN, this does not necessarily mean that Teo would have given such a wide and unlimited indemnity. The Alleged Indemnity as pleaded would open Teo up to huge and unknown personal liability. There was no reason for

⁸¹ JRA(2) 36; JCB(2A) 42.

⁸² Judgment at [59] to [60].

⁸³ TCH’s Case in CA 68 at paras 113 to 116.

Teo to give such a blanket indemnity. Related to this, on TCH's case, Teo did not give him any instructions on the amount of ISDN shares to buy, and at what price to buy and sell them (see [44] above). This essentially meant that Teo was giving free rein to TCH whereby TCH could end up incurring significant losses that Teo would eventually have to cover.

59 Thus, we would agree with the Judge that the Alleged Indemnity, as pleaded by TCH, was a "commercially absurd" arrangement.

TCH's own delay in bringing an action

60 Finally, it is relevant that it took almost five years for TCH to commence an action against Teo for the sum owed under the Alleged Indemnity. In defending against the loan claim, TCH argues that TTC's delay in claiming the Sum owing under the Alleged Loan shows that TTC's action is not in good faith. However, this logic must cut both ways.

61 On TCH's own case, the Alleged Indemnity would have come to an end around December 2013, by which point he had suffered huge losses in propping up ISDN's share price. Yet, he only sought and received partial payment in November 2014 (the November 2014 Transfers). Even if we look past this initial delay, TCH then waited another year before the First LOD dated 25 November 2015 was sent. Then, after the First LOD did not result in any further payment to him, he waited a further three and a half years before the Second LOD dated 4 July 2019 was sent. This delay of three and a half years casts doubt on the *bona fides* of TCH's indemnity claim, especially considering the amount of money he is claiming.

Conclusion on the indemnity claim

62 TCH’s case was inconsistent, commercially absurd, and his conduct in buying ISDN shares did not support the claim on the Alleged Indemnity. We are of the opinion that TCH has not shown that the Judge erred in finding that TCH had failed to meet his burden in proving the Alleged Indemnity. In the circumstances, it is unnecessary for us to address the point whether there would have been an intention by Teo to create legal relations if he had given the Alleged Indemnity.

The loan claim

63 We now come to TTC’s claim against TCH which rested on an oral loan agreement. To reiterate, according to TTC, TCH had approached him for a loan in November 2014. As TTC did not have the cash to make the loan, TCH proposed that TTC sell some of his ISDN shares and use the net sale proceeds to make the loan. TTC agreed and sold 8 million ISDN shares in the open market at \$0.29 *per share* from 13 to 17 November 2014 (see [10] above). From the sale proceeds, the Sum (\$2,314,041.39) was then paid to TCH and his associates from 13 to 24 November 2014 in six tranches (see [12] above).

The importance of the November 2014 Transfers

64 It is undisputed that the November 2014 Transfers occurred. This raised the question of whether we were entitled to presume that it was meant to be repaid. In the case of *Power Solar System Co Ltd (in liquidation) v Suntech Power Investment Pte Ltd* [2018] SGHC 233 (“*Power Solar*”), Mavis Chionh Sze Chyi JC (as she then was), held that once a plaintiff proves payment (in the absence of circumstances justifying a presumption of advancement or any other plausible explanation as to why the sum of money was advanced), the

court is entitled to infer that the sum of money was meant to be repaid, *ie*, a presumption of an obligation to repay arises. The question then is whether the circumstances surrounding the payment of money would disentitle the plaintiff from asking the court to draw such an inference: at [103(d)].

65 In making this proposition, she relied on the English decision of *Seldon v Davison* [1968] 1 WLR 1083 (“*Seldon*”). In *Seldon* the plaintiff had advanced the defendant a sum of money to purchase a house. The defendant admitted to receiving the money but asserted that it was a gift from the plaintiff. The English Court of Appeal held that the defendant bore the burden of proving that the payment was a gift. However, the Court of Appeal in *PT Bayan Resources TBK and another v BCBC Singapore Pte Ltd and another* [2019] 1 SLR 30 observed that *Seldon* was wrongly decided: see [140]–[144]. The court noted that in *Seldon*, the defence denied the essential ingredient in a loan, *ie*, the defendant did not admit that he had incurred a debt. Thus, it could not be presumed that such a debt had been incurred.

66 Similarly, in this case, TCH has denied ever incurring a debt. His position is that the November 2014 Transfers were the partial payment of the Alleged Indemnity by Teo through TTC (see [19(d)] above). Thus, the proposition in *Seldon* and *Power Solar* cannot apply in the present case either.

67 Thus, although it is undisputed that TTC made payments of the Sum to TCH or persons nominated by TCH, the burden is still on TTC to prove the purpose of the payments, as mentioned in *Choo Cheng Tong Wilfred v Phua Swee Khiang and another* [2022] SGHC(A) 5 at [15]. In other words, the court will not infer that the purpose is a loan just by the mere receipt of the Sum.

The existence of the Alleged Loan

68 We now move to consider whether TTC has proved the Alleged Loan. However, before going into the evidence, we consider two preliminary points.

69 The first point relates to the manner in which the burden of proof is discharged. We note that initially the Judge did not assume that because she had dismissed the indemnity claim, this would necessarily mean that TTC’s loan claim would be successful. She went on to find on the evidence that TTC had proved the loan claim. However, it appears that she was much influenced by a comparison of the two allegations. She found that TTC’s explanation of a loan for the payment of the Sum was a “better explanation” for the parties’ conduct and the documents before the court than TCH’s explanation that the payment was pursuant to an indemnity from Teo. She then concluded that the payment was pursuant to a loan as claimed by TTC.⁸⁴ In so doing, the Judge was effectively applying a binary approach. With respect, we do not think that such an approach is correct. The Judge should have considered that perhaps neither explanation was established on the evidence (as noted at [31] above).

70 On a related note, we note that the Judge took into account the fact that TTC had paid cash of \$578,510.55 as the first of the six payments even before TTC had received the net sale proceeds of his first sale of ISDN shares. To her, this pointed more to a loan rather than an indemnity as TTC would have waited for the sale proceeds rather than pay from his own pocket if TTC was paying on behalf of Teo.⁸⁵ In our view, that might support her conclusion that there was no indemnity but, as explained, it is not a binary situation.

⁸⁴ Judgment at [129].

⁸⁵ Judgment at [127].

71 As a second preliminary point, it bears emphasizing that TTC's position is that the Alleged Loan was an oral agreement between himself and TCH; no other witnesses were present. This is key as the Judge had relied on the communications between Teo and TTC as support for her finding that the Alleged Loan existed.⁸⁶ Leaving aside TCH's argument that these communications contained fabrications of a loan, on which we address later, we do not agree that the communications were strong proof of the existence of the Alleged Loan. Teo did not have personal knowledge of the Alleged Loan. Thus, any reference to it in his communications with TTC was essentially hearsay.

72 This means that whether the Alleged Loan exists would be based largely on the competing evidence of and from TTC and TCH. The Judge had found that TCH was not a credible witness, and this may have played a part in her deciding that the Alleged Loan did exist. We are aware that an appellate court should be slow to disturb findings of fact by a trial judge, especially when such findings concern the credibility of a witness. However, appellate intervention is warranted in certain situations, for example where the trial judge's determination of the witness's credibility leaves untouched other evidence which requires separate evaluation: *Ernest Ferdinand Perez De La Sala v Compañia De Navegación Palomar, SA and others and other appeals* [2018] 1 SLR 894 at [131] citing [68] of *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983. For the reasons elaborated below, we are of the view that such evidence did exist.

⁸⁶ Judgment at [123].

The pre-action correspondence

73 We first consider the pre-action correspondence between the three men. To recapitulate, the pre-action correspondence between the three men was as follows (see [13]–[18] above):

- (a) On 24 November 2015, the First LOD was sent to Teo demanding payment pursuant to the Alleged Indemnity;
- (b) On 25 November 2015, Teo called TTC and they discussed the First LOD;
- (c) On 26 November 2015, Teo sent a message over WeChat to TTC, where he stated that “[t]he fact [was] that [TTC] lent [TCH] money, but [TCH] used it to attack [Teo]”;
- (d) On 6 December 2015, Teo replied to the First LOD, rejecting the existence of the Alleged Indemnity, and averring that TCH had actually received a loan from TTC;
- (e) On 20 December 2015, TTC replied to TCH by way of letter, stating that since the “IPO has launched”, it was time for TCH to return TTC the Sum. TTC explained that he only replied on this date as he was away from Singapore at the material time.⁸⁷
- (f) It is undisputed that TCH did not reply to (d) or (e) above;
- (g) Then, on 4 July 2019, the Second LOD was sent by TCH to Teo. It claimed only \$2,732,149 from Teo, and expressly rejected the existence of the Alleged Loan.

⁸⁷ JCB(2D) 116 lines 3 to 15; JRA(3N) 287.

74 A few points arise from the above chronology and correspondence.

75 First, TCH did not promptly deny the allegation that he had taken a loan from TTC. As noted above, Teo and TTC had averred in their letters, on 6 December 2015 and 20 December 2015 respectively, that TCH had taken a loan from TTC. It is also undisputed that he did not reply to either. With regard to the 20 December 2015 letter, TCH's position was that he had not received the letter.⁸⁸ However, with regard to the 6 December 2015 letter, the Judge observed that there was no response from TCH's lawyers at that time to dispute the loan allegation which would logically be expected if TCH genuinely disputed the existence of the Alleged Loan. She considered this to be against TCH's denial of the loan.⁸⁹

76 To be fair to TCH, the Second LOD, sent on 4 July 2019, *did* refer to Teo's earlier letter dated 6 December 2015 and rejected the suggestion that payments from TTC (to TCH) were a loan. However, this was almost four years after the reply from Teo on 6 December 2015. Thus, we agree that the Judge was entitled to take into consideration the absence of a *prompt* objection to the suggestion of a loan by TCH's first set of lawyers.

77 This brings us to another point. While the Judge was correct to find that TCH's lack of prompt rejection of the Alleged Loan weighed against him, she appeared to have overlooked the importance of a significant discrepancy in TTC's 20 December 2015 letter. In demanding repayment of the Sum, TTC

⁸⁸ JCB(2A) 52.

⁸⁹ Judgment at [126].

wrote that it was time for TCH to return him the Sum as the “IPO has launched”.⁹⁰

78 It will be recalled that according to Express Term One (see [20(b)] above), the deadline for repayment of the Alleged Loan was the *earlier* of (a) nine months from the date that the Alleged Loan was given, or (b) after the public listing of TLV. With regard to (a), according to TTC, the loan was orally agreed on 12 November 2014 and the nine months would have expired on 13 August 2015. It seems to us that 12 August 2015 may be the correct date, but as nothing material turns on this, for present purposes, we will adopt 13 August 2015 as the appropriate nine-month repayment date. With regard to (b), it was not disputed that TLV was listed on 17 September 2015.

79 Thus, on TTC’s case, the relevant deadline should be 13 August 2015 and *not* the 17 September 2015 public listing date of TLV (also referred to as the Initial Public Offering date or the “IPO date” for short). For completeness, we mention that on 13 August 2015, the closing price of ISDN shares was below \$0.29 *per* share. Hence, TCH was to repay the Sum in cash according to the terms of the Alleged Loan.

80 TTC’s 20 December 2015 letter was inconsistent in that it referred to the IPO date but not the nine-month repayment date as the deadline for repayment. Indeed, the letter referred to the IPO date twice. This was not just a case of TTC omitting to state all the Express Terms. As per Express Term One, the IPO date was no longer relevant – the applicable date was the nine-month repayment date of 13 August 2015. TTC must have known this if the Alleged Loan and the Express Terms were genuine. Yet, instead, he referred to a repayment date that

⁹⁰ JCB(2B) 81 to 82.

was no longer applicable – this was a *glaring inconsistency* in TTC’s case. This suggested that as at the date of this letter, TTC was making up a case about the Alleged Loan and its terms, perhaps at the instigation of Teo (see [97] below).

81 This inconsistency was repeated by TTC in an affidavit filed on 8 January 2020 in support of Teo’s attempt to strike out Suit 743. Paragraph 10 of that affidavit once again emphasises the IPO date as being the date of repayment, stating:⁹¹

10. In response, I informed [TCH] that I too was affected by the Crash and therefore did not have the extra cash to lend him. [TCH] then asked me about the Company’s shares that I owned at the time. Eventually, I agreed to liquidate some of the Company’s shares that I owned and lend the proceeds to [TCH]. [TCH] agreed to repay me after he obtained the benefits for his involvement in the Initial Public Offering of TLV Holdings Limited, which was listed on the SGX on 17 September 2015.

82 The Judge rationalised that the affidavit was only made in support of Teo’s application to strike out Suit 743. Thus, since TTC was not a defendant in that suit, he could not be expected to disclose every relevant detail of his claim which he had yet to commence.⁹² Hence, she did not place much weight, if any, on the omission to state the nine-month repayment date in that affidavit.

83 With respect, it was not simply a question of TTC omitting to state all the Express Terms – it was, once again, an *inconsistency* in TTC’s case. It would be different if paragraph 10 had remained entirely silent on the date of repayment. However, the fact remains that it mentioned a repayment event/date that was *no longer relevant* instead of mentioning the correct one, *ie*, the same discrepancy in TTC’s 20 December 2015 letter. There was no logical reason for

⁹¹ JCB(2A) 199.

⁹² Judgment at [133].

this discrepancy to be repeated and it reinforces the view that TTC was still making up a case about the Alleged Loan and the Express Terms even at that late stage.

84 It was only in his AEICs for both Suit 743⁹³ and Suit 1089⁹⁴ that TTC took the position that the Sum was repayable on 13 August 2015 since TLV only publicly listed on 17 September 2015. However, even then, he did not stick to 13 August 2015 consistently as the correct repayment date. While under cross-examination, he agreed that, on his own case, the IPO date was the date when TCH was obliged to repay the loan even though he had accepted that the correct date should have been 13 August 2015.⁹⁵

85 Most tellingly, TTC's position in the 20 December 2015 letter that the IPO date was the applicable repayment date did not gel with his own evidence. In his AEICs in both Suit 743 and Suit 1089, he had alleged that in February 2015, TCH had approached him for additional financial support. However, he declined the request and reminded TCH about his obligation to repay the loan that was falling due in August 2015.⁹⁶ If this were true, it would mean that TTC was fully aware of the 13 August 2015 deadline. Yet, as mentioned, he referred to the wrong deadline in the 20 December 2015 letter and in his affidavit filed in Suit 743. This again suggests that TCH had been fabricating the Express Terms.

⁹³ JCB(2A) 223 at para 24.

⁹⁴ JCB(2A) 236 at para 30.

⁹⁵ JRA3(O) 64.

⁹⁶ JCB(2A) 223 at para 26; JCB(2A) 236 to 237.

The Payment Vouchers

86 We next consider the Payment Vouchers that TTC had issued as evidence of the November 2014 Transfers, and which TCH had signed in acknowledgment.⁹⁷

87 The Judge noted that the Payment Vouchers did not on their own support the existence of the Alleged Loan.⁹⁸ Yet, on the other hand, she also said that the written records (meaning the Payment Vouchers) supported the loan claim.⁹⁹ This was internally inconsistent. We are also of the opinion that the Payment Vouchers actually *weighed against* the existence of the Alleged Loan.

88 The Payment Vouchers¹⁰⁰ contained a date, the number of ISDN shares sold and the net sale proceeds which were then paid to TCH. On each voucher, there was an acknowledgment by TCH of the sum paid. However, each voucher did not mention or allude to a loan. In other words, each voucher was silent on the purpose of the payment and did not mention either of the Express Terms. Neither did each voucher mention the sale price of the shares sold even though the sale price was important for the purpose of Express Term Two. The fact that the sale price could be determined by reference to the contract note issued for each sale was a separate point. In our opinion, the lack of reference to the Alleged Loan and its terms in the Payment Voucher is inexplicable.

⁹⁷ JCB(2A) 232.

⁹⁸ Judgment at [122].

⁹⁹ Judgment at [67].

¹⁰⁰ JCB(2F) 81, 85 to 88, 90 to 91.

89 The Judge noted that the Payment Vouchers indicated some formality in the transaction and this in turn militated against any suggestion of a gift.¹⁰¹ However, this did not adequately address the question why, if there was some formality, the Payment Vouchers were silent on the purpose of the payments and on the Express Terms and on the sale price. For present purposes, we focus on the purpose of the payments and the Express Terms.

90 TTC's explanation was that he did not mention a loan in the Payment Vouchers due to the contingent nature of the Express Terms.¹⁰² The Judge understood TTC's evidence to mean that since repayment might be in kind, he was not certain whether to call the transaction a loan, and she then seemingly accepted this explanation.¹⁰³

91 Even if we accept TTC's explanation for not mentioning a loan in the Payment Vouchers, this did not explain why the Payment Vouchers did not mention the Express Terms. TTC's explanation was that the vouchers were small pieces of paper and his standard of English was not so good.¹⁰⁴ In our view, these explanations did not stand up to scrutiny in light of the other evidence.

92 In TTC's AEIC in Suit 743, he said that he had not given a guarantee for Teo's indemnity to TCH, explaining that if there was such a guarantee, they (meaning Teo, TCH and him), as "experienced businessmen", would have ensured that it be reduced into writing. TTC also added that it would have been

¹⁰¹ Judgment at [67].

¹⁰² JCB(2A) 232, 235.

¹⁰³ Judgment at [137].

¹⁰⁴ JCB(2D) 100 to 101; JRA(3N) 271 to 272.

crucial that the terms of such a guarantee were clear and that his potential secondary obligations to TCH were limited.¹⁰⁵

93 It seems to us that this was an important piece of evidence which the Judge had overlooked. TTC, in his own words, was not someone who decried formality for important commercial matters, but quite to the contrary. His oral evidence about not having enough space to record the Express Terms on small pieces of paper and a poor standard of English was contradicted by the evidence in his AEIC for the need to properly document important commercial matters, especially for a sum which was not small. In the circumstances, the absence of any mention of a loan or any of the Express Terms in the Payment Vouchers and the absence of any other documentary evidence thereon suggested that the Alleged Loan and its Express Terms did not exist.

TCH's new points on appeal

94 We also mention some interesting points raised by TCH on appeal. The Payment Vouchers only mentioned the net sums paid to TCH. They excluded the costs of the sales to TTC, *ie*, the brokerage commission and the exchange fee. While these were not large sums, it did not make sense for TTC to exclude them in his computation of the loan amount as they constituted a cost to him for procuring the Sum for TCH. Furthermore, there was no mention of TCH having to repay or make up any dividend lost by TTC during the period before the loan was repaid. Logically, that would also have been included in a genuine loan. However, as TTC was not cross-examined on these points at trial, it was too late for TCH to raise them in argument before us. Hence, we give no weight to them.

¹⁰⁵ JRA3(H) 11 to 12.

TTC's delay in seeking repayment

95 Finally, we consider TTC's delay in seeking repayment and suing TCH. It is undisputed that TTC only began legal action against TCH for the loan claim almost six years after the Alleged Loan was given.

96 The delay is incongruous with TTCs' claim for loss of profits and dividends. Aside from the Sum, TTC had claimed that he would have immediately repurchased the 8 million ISDN shares after repayment. Since he did not repurchase the shares because he had not been repaid, he had been deprived of profits from the increased value of the shares and had also been deprived of the dividends from those shares. Thus, on his own case, he was seeking to repurchase the shares as soon as he could. Given this urgency, it seems strange that he did not chase TCH for repayment sooner.

97 It is also concerning that the first letter from TTC to TCH to seek repayment of the loan was TTC's 20 December 2015 letter to TCH. This was sent only after Teo had told TTC about the First LOD from TCH (see [73(a), 73(b) and 73(e)] above). TCH argues that Teo was "dictating" what TTC needed to say so that Teo could thwart TCH's claim against him.¹⁰⁶ There is some force in this submission. As we have noted above, the repayment date for the Alleged Loan was 13 August 2015, and TTC would have been fully aware of this. Yet, there is no objective evidence of his trying to contact TCH between August and December 2015 for repayment. It was only after his conversation with Teo in November 2015 that TTC began to seek repayment.

¹⁰⁶ TCH's Case in CA 68 at paras 84(b) and 106.

98 If TTC had gone on to pursue the loan claim soon after the 20 December 2015 letter, it may be a different story. However, after his 20 December 2015 letter, there is also no objective evidence of any further attempts by TTC to seek repayment from TCH.¹⁰⁷ According to TTC, the delay was because he had believed that TCH was impoverished and he did not want to throw good money after bad. It was only after he learned in 2019 that TCH had commenced action against Teo, he then believed that TCH might be able to meet his claim.¹⁰⁸

99 However, putting aside TTC's reasons for believing that TCH was impoverished, this explanation does not hold water. TTC was aware of Suit 743 as early as 14 October 2019 when Teo emailed him and asked him to provide information in support of Teo's defence against TCH's indemnity claim.¹⁰⁹ TTC replied the same day with some elaboration.¹¹⁰ Yet, even after this, he did not immediately commence action against TCH.

100 In fact, TTC did not commence Suit 1089 until almost a year later, on 11 November 2020. TTC sought to explain this further delay, stating that he had sought legal advice in March 2020 but had held off filing the action for some time because of the COVID-19 pandemic which hit Singapore in 2020.

101 This explanation once again does not stand up to scrutiny. First, it is not clear how the COVID-19 pandemic deterred TTC from filing an action for more than half a year. Further, on TTC's own evidence, it was Teo who had galvanised him into action. TTC deposed that on 31 January 2020 Teo asked

¹⁰⁷ JRA(30) 64.

¹⁰⁸ TTC's Case in CA 75 at para 31; JCB(2A) 240 to 241.

¹⁰⁹ JCB(2G) 119.

¹¹⁰ JCB(2G) 120.

him when the limitation period of six years to file an action would expire and he replied to Teo to say that it would expire in November 2020.¹¹¹ It was only after this conversation with Teo that TTC sought legal advice in March 2020. Again, it was Teo who was effectively reminding TTC about the limitation period for TTC's loan claim.

102 It is clear from the above that TTC had been dilatory in his pursuit of the loan claim, and his explanation for such conduct was unsatisfactory. It is noteworthy that the Judge did not accept TTC's explanations for his delay. However, this was in the context of TTC's argument that he should be awarded interest on the Sum running from when the date that the Sum became due (*ie*, 13 August 2015).¹¹²

103 It seems to us that the long delay by TTC to file his action earlier suggested that he knew that the loan claim was not *bona fide*. More weight should have been placed on the promptings by Teo to TTC about TTC's loan. On the latter point, the Judge was of the view that it was hard to believe that Teo and TTC would fabricate messages between them in anticipation of litigation¹¹³ but it seems to us that she was too sanguine in her views of Teo's and TTC's motivations.

104 While we accept that mere delay in taking action may not in itself carry any adverse inference, the circumstances before us go beyond a mere delay. In our opinion, the delay, read with how TTC would only take action after

¹¹¹ JCB(2G) 118.

¹¹² Judgment at [142].

¹¹³ Judgment at [123].

prodding from Teo, was another reason for doubting the existence of the Alleged Loan.

Conclusion on the loan claim

105 Therefore, although the Judge found TCH not to be a credible witness, we are of the view that the Judge had erred in finding that the Alleged Loan existed. For all the reasons mentioned above, TTC has failed to discharge his burden of proof.

Conclusion

106 In summary, both the indemnity claim and the loan claim have failed. Accordingly, we allow part of CA 68 which is that part of TCH's appeal against the Judge's decision that the Alleged Loan existed, by setting aside that part of the Judgment which ordered him to pay the Sum to TTC with interest. It follows that CA 75, which is TTC's appeal against the Judge's decision to (a) not award him loss of profits and/or dividends and (b) not order interest on the Sum to run from 13 August 2015, is dismissed. Accordingly, we vary the costs orders made by the Judge with regard to the trial below: (a) with regard to the costs of Suit 743, we uphold the Judge's decision to award costs to Teo on a standard basis to be taxed unless otherwise agreed; and (b) with regard to the costs of Suit 1089, we set aside the Judge's order that TTC be awarded costs. Instead, TCH is awarded costs on a standard basis to be taxed unless otherwise agreed.

107 With regard to the costs of the two present appeals, we make the following orders: (a) TCH is to pay Teo the costs of TCH's appeal against the dismissal of his indemnity claim which we fix at \$40,000 all in; and (b) TTC is to pay TCH the costs of TCH's successful appeal in setting aside that part of the Judgment which ordered him to pay the Sum to TTC with interest and the costs

of TTC's own unsuccessful appeal. Costs are fixed at \$40,000 all in. The usual consequential orders apply.

Belinda Ang Saw Ean
Judge of the Appellate Division

Woo Bih Li
Judge of the Appellate Division

Chua Lee Ming
Judge of the High Court

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