IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 246

Suit No 17 of 2020
(Registrar's Appeal No 119 of 2020)
(Summons No 1299 of 2020)

Between

Quek Jin Oon

… *Plaintiff*

And

Goh Chin Soon

… *Defendant*

GROUNDS OF DECISION

[Bills of Exchange and Other Negotiable Instruments] — [Summary judgment]
[Civil Procedure] — [Mareva injunctions]

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Quek Jin Oon
v
Goh Chin Soon

[2020] SGHC 246

High Court — Suit No 17 of 2020 (Registrar's Appeal No 119 of 2020, and Summons No 1299 of 2020)
Dedar Singh Gill J
4 August 2020

10 November 2020

Dedar Singh Gill J:

1 The plaintiff's action (the "Suit") is premised upon five post-dated cheques which the defendant drew and delivered to him (the "defendant's cheques"). The said cheques were for a total sum of S$3m and were dishonoured upon presentation. Pending the determination of the Suit, the plaintiff filed the present Summons No 1299 of 2020 ("SUM 1299") for an interim Mareva injunction against the defendant. The plaintiff also successfully applied to the assistant registrar ("AR") below under O 14 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") for summary judgment in respect of his claim for the entire S$3m. The defendant then filed the present Registrar's Appeal No 119 of 2020 ("RA 119") against the AR's decision.

2 At the hearing on 4 August 2020 ("Hearing"), I dealt with both RA 119 and SUM 1299 together and made the following orders:

(a) For RA 119, I granted the plaintiff summary judgment for S$2.5m of his claim. By the parties' consent, I also granted the defendant leave to defend against the plaintiff's remaining claim for S$500,000, on the condition that the defendant furnish security of the same amount by way of a banker's guarantee within two weeks. In the meantime, an undertaking previously given by the defendant not to deal with or dispose of certain assets (the "Undertaking") was to remain in effect. I will elaborate on this Undertaking later below. I also awarded costs of S$6,000 (all-in) to be paid by the defendant to the plaintiff.

(b) For SUM 1299, I made no order on the application.

3 The defendant has appealed my decision of 4 August 2020. I now set out my grounds of decision.

Background

4 The plaintiff and the defendant are private individuals. Between April and November 2019, the plaintiff extended five loans ("the Loans") totalling S$3m to the defendant. The plaintiff disbursed each of the said Loans by way of a cheque (for the loan amount), as set out in the table below:

Loan	**Loan Amount**	**Overseas-Chinese Banking Corporation Limited ("OCBC") Bank Cheque No.**	**Date Disbursed**
1st Loan	S$500,000	Cheque No. 750386 ("plaintiff's 1st cheque")	23 April 2019
2nd Loan	S$1m	Cheque No. 750387 ("plaintiff's 2nd cheque")	30 May 2019

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3rd Loan	S$500,000	Cheque No. 750389 ("plaintiff's 3rd cheque")	11 July 2019
4th Loan	S$500,000	Cheque No. 750395 ("plaintiff's 4th cheque")	21 August 2019
5th Loan	S$500,000	Cheque No. 750406 ("plaintiff's 5th cheque")	27 November 2019

The five aforementioned cheques were all drawn in favour of, duly delivered to, and successfully encashed by the defendant. They are collectively referred to as the "plaintiff's cheques".

5 In exchange for the plaintiff's Loans, the defendant drew the five post-dated defendant's cheques in favour of the plaintiff. As mentioned, the said cheques were also for a total sum of S$3m and delivered to the plaintiff. They are described in further detail in the table below:

S/N	Bank Cheque No.	Amount	Bank	Date of Cheque
1.	Cheque No. 000171 ("defendant's 1st cheque")	S$500,000	Citibank Singapore Ltd ("Citibank")	31 August 2019
2.	Cheque No. 000265 ("defendant's 2nd cheque")	S$1m	Citibank	31 August 2019
3.	Cheque No. 000346 ("defendant's 3rd cheque")	S$500,000	Citibank	31 August 2019
4.	Cheque No. 000366 ("defendant's 4th cheque")	S$500,000	Citibank	31 October 2019

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5.	Cheque No. 005032 ("defendant's 5th cheque")	S$500,000	HSBC Bank (Singapore) Limited ("HSBC")	30 November 2019

6 On 23 December 2019, the plaintiff presented the defendant's cheques to his bank, OCBC, for payment. The following day, all five cheques were dishonoured and returned marked by OCBC. The reason stated for the return was "Refer to Drawer".

7 By way of a letter dated 2 January 2020, the plaintiff's counsel informed the defendant that the defendant's cheques had all been dishonoured. In his defence, the defendant admitted that he had received "due notice of dishonour" in respect of the said cheques.

8 On 7 January 2020, the plaintiff commenced the Suit against the defendant for the payment of S$3m, being the total sum unpaid under the defendant's cheques. The plaintiff's claim in respect of the defendant's 1st to 4th cheques (for S$2.5m) is hereinafter referred to as the "S$2.5m Claim" and his claim in respect of the defendant's 5th cheque (for S$500,000) is referred to as the "Remaining Claim" (collectively, the "Claim"). The plaintiff also sought interest on the S$3m, pursuant to s 57 of the Bills of Exchange Act (Cap 23, 2004 Rev Ed) ("BEA") and/or s 12 of the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA"), as well as costs.

9 On 18 March 2020, pending the determination of the Suit, the plaintiff filed his application in SUM 1299 for an interim Mareva injunction. He sought to restrain the defendant from removing, disposing of, dealing with and/or diminishing the value of any of the latter's assets in Singapore up to the value of S$3m. This prohibition was to include:

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(a) a property at Grange Road ("Grange Road property") of which the defendant was the registered proprietor, or if the said property had already been sold, the net proceeds of sale (after the payment of any mortgages);

(b) the defendant's shares in two companies, one of which was a company in liquidation, Grandlink Group Pte Ltd ("Grandlink"); and

(c) the defendant's Citibank and HSBC bank accounts

(the assets above are collectively referred to as the "Listed Assets").

10 SUM 1299 was first heard by me on 23 March 2020. Although the plaintiff had made the application on an *ex parte* basis, the defendant's counsel was also present at the hearing. I was minded to grant the *ex parte* application as there appeared to be an attempt by the defendant to dissipate his assets. I bore in mind the fact that once the interim Mareva injunction was granted, it would still be open to the defendant to subsequently seek a discharge of the same. The defendant's counsel, however, asked for the matter to be adjourned so that it could be heard on an *inter partes* basis instead. To this end, the defendant gave the Undertaking (mentioned at [2(a)] above) that he would not deal with or dispose of any of the Listed Assets, until SUM 1299 was decided on the aforesaid basis. On the defendant's Undertaking, I adjourned the matter for an *inter partes* hearing.

11 Before the adjourned hearing, the plaintiff applied for summary judgment under O 14, r 1 of the ROC in respect of his entire Claim. As previously stated, the AR below granted the plaintiff's application on 15 June 2020. She also awarded the plaintiff interest on the S$3m under s 12 of the CLA from the date of issue of the writ to the date of judgment or payment, and costs

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of S$10,000. The defendant then filed RA 119 against the whole of the AR's decision. On his part, the plaintiff continued with his application in SUM 1299 in anticipation of the possibility that the defendant might be granted leave to defend the whole or any part of the Suit.

The summary judgment application in RA 119

The plaintiff's case

12 In brief, the plaintiff's account of events was as follows:

(a) The parties have known each other for a long time and were former business associates. Sometime in April 2019, the defendant approached the plaintiff for help with various financial difficulties that the defendant had. These difficulties related, *inter alia,* to outstanding legal fees for divorce and criminal proceedings that the defendant was mired in, as well as outstanding payments on the balance purchase price of two properties that he had. The defendant represented that he would solve these difficulties by end-August 2019 and that he would be put in funds following the settlement of a certain dispute between his company, Grandlink, and the Chinese government ("PRC dispute"). In the meantime, however, the defendant said that he needed a "bridging" loan of S$2m. Out of sympathy, the plaintiff agreed to make the 1st to 3rd Loans, totalling S$2m, to the defendant between April and July 2019. The plaintiff disbursed the said Loans by way of the plaintiff's 1st to 3rd cheques. As security for these Loans, the defendant gave the plaintiff a diamond-studded watch and a "Cartier" bracelet sometime in April 2019.

(b) Subsequently, the defendant continued to seek further loans from the plaintiff. The plaintiff decided to return the watch and bracelet to the

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defendant so that the latter could raise funds with them. This, however, did not put an end to the defendant's requests for further help, which the plaintiff eventually acceded to again in August 2019. At the time, the defendant further assured the plaintiff that the former would soon receive moneys in relation to the PRC dispute. The plaintiff thus extended the 4th Loan of S$500,000, which he disbursed by way of the plaintiff's 4th cheque.

(c) Between August and November 2019, the plaintiff refused to entertain any further requests for financial help by the defendant. However, on 26 November 2019, after the defendant explained his ongoing financial difficulties to the plaintiff in person, the latter once again agreed to help. The plaintiff agreed to extend the 5th Loan of S$500,000 to the defendant and disbursed it by way of the plaintiff's 5th cheque on 27 November 2019.

(d) During this period of time, the defendant also drew and delivered the five defendant's cheques to the plaintiff with a view to repaying the 1st to 5th Loans. Sometime in December 2019, the plaintiff met with the defendant and his lawyer to find out more about the PRC dispute. After the meeting, the plaintiff did not feel confident about the defendant's ability to recover moneys from the PRC dispute. He thus asked the defendant to repay the Loans, but this was to no avail. That was when the plaintiff presented the defendant's cheques for payment, at which point the said cheques were dishonoured.

13 Against the above backdrop, the plaintiff's case was a straightforward one. According to him, he had granted the 1st to 5th Loans personally to the defendant on an "interest-free" basis purely out of goodwill. Contrary to the

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defendant's allegations, as set out in the next sub-section, the plaintiff had not extended the Loans for any mercenary, commercial purposes. The defendant's cheques had been drawn and delivered for the purpose of repaying the Loans. Since the said cheques had been dishonoured upon due presentment, the plaintiff was simply seeking to enforce the defendant's obligations as the drawer. The plaintiff's position was that he was entitled to summary judgment as the defendant had not raised any real defences to his Claim.

The defendant's case

14 The defendant's main defence was as follows. He admitted that the plaintiff had disbursed the Loans totalling S$3m to him by way of the plaintiff's 1st to 5th cheques. However, contrary to being "interest-free" loans made out of goodwill, the Loans had in fact been advanced for two related illegal purposes.

15 As regards the 1st to 4th Loans totalling S$2.5m, and the S$2.5m Claim for the same amount, the defendant claimed that the parties had entered into an oral agreement around April 2019 ("First Agreement"). He pleaded the following particulars regarding the said agreement:

(a) Between April and August 2019, the plaintiff advanced the 1st to 4th Loans to the defendant for the illegal purpose of funding mediation proceedings between the defendant and the Chinese government ("PRC mediation") in relation to the PRC dispute ("first alleged purpose").

(b) Pursuant to this illegal purpose, the defendant was to pay the proceeds of any settlement between him and the Chinese government into a bank account with the Bank of Singapore ("BoS bank account").

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This BoS bank account had been opened by the defendant in his own name, with the assistance of the plaintiff's relationship manager from the bank, Mr Max Yeo. Mr Yeo had been introduced to the defendant by the plaintiff. Unknown to the defendant, however, the plaintiff had entered into a secret arrangement ("referral arrangement") with the Bank of Singapore. Pursuant to the said arrangement, the plaintiff would earn an undisclosed referral fee in the event that the BoS bank account was successfully funded with any settlement proceeds from the PRC dispute.

(c) Around early April 2019, the parties also agreed that "the [p]laintiff's performance of the first alleged purpose was to be secured" by the defendant's 1st to 4th cheques. The plaintiff's encashment of the said cheques was, however, conditional on the proceeds of any settlement being paid into the designated BoS bank account (the "first condition precedent").

16 In respect of the 5th Loan of S$500,000 and the Remaining Claim for the same amount, the defendant's response was as follows. Sometime in November 2019, it became clear that the PRC mediation was not going to lead to a settlement. The plaintiff then attempted to persuade the defendant to vary the First Agreement. The terms of the new proposed agreement (the "Proposed Second Agreement") were pleaded as follows:

(a) The plaintiff would extend a sum of $500,000 to the defendant for the illegal purpose (the "second alleged purpose") of funding a proposed arbitration between the defendant and the Chinese government ("PRC arbitration") in relation to the PRC dispute.

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(b) The plaintiff would incorporate a special purpose vehicle to take control of the proposed PRC arbitration by designating and instructing the lawyers who would act in the arbitration proceedings.

(c) The sum to be recovered by the defendant in the proposed PRC arbitration was to be no less than RMB 1bn, and the net proceeds were to be shared between the plaintiff and defendant in a proportion to be agreed upon.

(d) The plaintiff's performance of this second alleged purpose was to be "secured" by the defendant's 5th cheque drawn in favour of the plaintiff. The encashment of the said cheque was, however, conditional on the conclusion of the proposed PRC arbitration and the division of the proceeds thereof in the proportion to be agreed upon ("proposed second condition precedent").

This Proposed Second Agreement was, however, never entered into.

17 In light of the above, the defendant pleaded that the First and Second Proposed Agreements are void and unenforceable because they are illegal and/or contrary to public policy. First, the Agreements involved illegal third-party litigation funding ("Illegal Litigation Funding Defence"). Alternatively, the Agreements involved the plaintiff lending the defendant a sum of money in consideration of a larger sum being repaid. This larger sum was to be obtained in the form of:

(a) the secret referral fee that the plaintiff would earn from the Bank of Singapore in the case of the First Agreement; and

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(b) the proportion of the proceeds that the plaintiff would receive from the proposed PRC arbitration under the Proposed Second Agreement.

Thus, the plaintiff was said to be acting illegally as an unlicensed moneylender under the Moneylenders Act (Cap 188, 2010 Rev Ed) ("MLA") ("Illegal Moneylending Defence").

18 Assuming that the First Agreement and Proposed Second Agreement (collectively, the "Agreements") were not illegal and unenforceable, the defendant also raised a secondary defence. Specifically, he pleaded that the first condition precedent and proposed second condition precedent had not been fulfilled, and the plaintiff was therefore not entitled to encash the defendant's cheques ("Condition Precedent Defence").

19 The defendant took the position that his defences (as set out above) raise triable issues. He thus sought unconditional leave to defend against the plaintiff's entire Claim.

The applicable law and issues to be determined

20 The legal principles which govern the grant of summary judgment under O 14, rr 1 and 3 of the ROC are well-settled. As Judith Prakash J (as she then was) held in *M2B World Asia Pacific Pte Ltd V Matsumura Akihiko* [2015] 1 SLR 325 ("*M2B*") (at [17]–[18]):

(a) The burden lies on the plaintiff to first show that he has a *prima facie* case for summary judgment. If he fails to discharge this burden, his application will be dismissed.

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(b) If, however, the plaintiff establishes a *prima facie* case, the "tactical burden" then shifts to the defendant to establish that there is a fair or reasonable probability that he has a real or *bona fide* defence. A complete defence need not be shown; the defendant need only show that there is a triable issue or question or that, for some other reason, there ought to be a trial.

21 It is trite law that a court will not grant leave to defend if all the defendant provides is a mere assertion, contained in an affidavit, of a given situation which forms the basis of his defence (*M2B* at [19], citing Prakash J, as she then was, in *Prosperous Credit Pte Ltd v Gen Hwa Franchise International Pte Ltd* [1998] 1 SLR(R) 53 at [14]). As explained by Sundaresh Menon JC (as he then was) in *Abdul Salam Asanaru Pillai (trading as South Kerala Cashew Exporters) v Nomanbhoy & Sons Pte Ltd* [2007] 2 SLR(R) 856 (at [39]), whilst a summary judgment application is not to be dealt with as if it were a trial on affidavits, it does not mean that anything stated in the affidavits is to be accepted without rational consideration to determine if there is a fair or reasonable probability of a real defence. The court does not have to treat every affidavit filed in summary judgment proceedings as truthful and take them at face value when perhaps every probability and circumstance might point to the contrary (*Singapore Civil Procedure 2020, vol 1* (Chua Lee Ming editor-in-chief) (Sweet & Maxwell, 2019) at para 14/4/5).

22 The defendant's position must accordingly be articulated with "sufficient particularity and supported by cogent evidence" (per Simon Thorley IJ in *B2C2 Ltd v Quoine Pte Ltd* [2018] 4 SLR 1 at [5]). If the assertions in the affidavit are equivocal, lacking in precision, inconsistent with undisputed contemporary documents or other statements from the same deponent, or

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inherently improbable in themselves, the court will not grant leave to defend (*M2B* at [19], citing *Bank Negara Malaysia v Mohd Ismail* [1992] 1 MLJ 400).

23 Having set out the applicable legal principles above, the issues to be decided in RA 119 were as follows:

(a) Whether the plaintiff had a *prima facie* case ("**Issue 1**").

(b) Whether the defendant had raised any triable issues such that he should be granted leave to defend ("**Issue 2**").

(c) Whether the defendant should be granted conditional or unconditional leave to defend ("**Issue 3**").

Issue 1: Whether the plaintiff had a prima facie case

24 I was satisfied that the plaintiff had established a *prima facie* case in respect of his entire Claim, which is premised on the defendant's dishonoured cheques. It is well-settled that a bill of exchange constitutes a separate contract, and creates obligations for the drawer and rights for the drawee that are independent of any underlying transaction pursuant to which the bill is issued. Hence, the payee is entitled to frame its claim as resting on the bill alone. As stated by the Court of Appeal in *Wong Fook Heng v Amixco Asia Pte Ltd* [1992] 1 SLR(R) 654 (at [13]):

> … It is the general rule that a bill of exchange evidences a contract separate and distinct from the original and underlying contract in pursuance of which the bill is executed. It does not depend for its enforcement on the performance of the original contract. **A bill of exchange, once given, is to be treated as cash and 'is to be honoured unless there is some good reason to the contrary'** (*per* Lord Denning MR in *Fielding & Platt Ltd v Selim Najjar* [1969] 1 WLR 357 …
>
> [emphasis in bold added]

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The statement, emphasised in bold above, is known as the cash equivalence principle.

25 Bearing in mind the above principles, I set out the relevant provisions of the BEA which apply to cheques:

> **Bill of exchange defined**
>
> **3.**—(1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to, or to the order of, a specified person, or to bearer.
>
> (2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.
>
> …
>
> **Delivery**
>
> **21.**— …
>
> **(3) As between immediate parties,** and as regards a remote party other than a holder in due course, **the delivery** —
>
> (a) in order to be effectual must be made either by or under the authority of the party drawing, accepting or indorsing, as the case may be;
>
> **(b) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill**.
>
> …
>
> **Presumption of value and good faith**
>
> **30.— (1) Every party whose signature appears on a bill is prima facie deemed to have become a party thereto for value**.
>
> …
>
> **(3) If in an action on a bill** it is admitted or proved that **the acceptance, issue, or subsequent negotiation of the bill is affected with** fraud, duress, or force and fear, or **illegality, the burden of proof is shifted**, **unless the holder proves that,**

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subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

…

Liability of drawer or indorser

55.—(1) **The drawer of a bill, by drawing it** —

(a) engages that **on due presentment it shall be accepted and paid according to its tenor**, and that **if it be dishonoured, he will compensate the holder** or any indorser who is compelled to pay it, **provided that the requisite proceedings on dishonour be duly taken**;

(b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

…

Measure of damages against parties to dishonoured bill

57. Where a bill is dishonoured, the measure of damages, which shall be deemed to be a liquidated amount, shall be as follows:

(a) the holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser —

(i) the amount of the bill;

(ii) interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case;

…

…

Cheque defined

73.—(1) A cheque is a **bill of exchange drawn on a banker payable on demand**.

(2) **Subject to this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque**.

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[emphasis in bold added]

26 As stated in s 73(1) of the BEA, a cheque is a type of bill of exchange. The provisions in the BEA that apply to a bill of exchange payable on demand also apply to a cheque (see s 73(2)). This is subject to the modifications in Part III of the BEA, none of which are relevant for our present purposes.

27 On their face, the defendant's cheques satisfy the statutory definition of a cheque set out in s 73(1) read with s 3 of the BEA. Given that the defendant's signature appears on each of the defendant's cheques, he is *prima facie* deemed to have become a party thereto for value (see s 30(1) of the BEA).

28 Following s 55 of the BEA, upon drawing the defendant's cheques, the defendant engaged that on due presentment, the cheques would be accepted and paid according to their tenor, and that if they be dishonoured, he would compensate the holder (*ie,* the plaintiff). For the plaintiff to enforce this statutory engagement, however, the defendant's cheques must also have been unconditionally delivered to him (see s 21 of the BEA). In this regard, the defendant's Condition Precedent Defence is relevant. By the aforesaid defence, it appeared to me that the defendant was in effect contending that the *delivery* of the defendant's cheques (and not just their "encashment") was *conditional* on the fulfilment of the first condition precedent and the proposed second condition precedent (see s 21(3)(b) of the BEA). If this contention is correct, then as long as the said condition precedents have not been fulfilled, the plaintiff would not have title to the defendant's cheques or the right to sue on them.

29 In *Millennium Commodity Trading Ltd v BS Tech Pte Ltd* [2017] SGHC 58 ("***Millennium Commodity***") (at [69]–[70]), Vinodh Coomaraswamy J set out the following views (with which I respectfully agree):

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> 69 … **[T]he fundamental question under s 21(3)(*b*) [of the BEA] is in my view whether a transferor intends without qualification to confer title to the cheque upon the transferee**.
>
> 70 **A transferor must also communicate this intention clearly to the transferee**: *Yeow Chern Lean* at [43]; *Byles* ([32] *supra*) at para 9–005. This is an objective test to be satisfied by the party who claims that such an intention exists. Whether a communication is sufficiently clear will depend on the circumstances of the case. **But as a general rule, strong evidence will need to be shown to demonstrate that the transferor of a bill of exchange did not intend for title to the bill to pass to the transferee with delivery. These strict requirements are necessary to preserve commercial efficacy, in service of which the principle of cash equivalence exists.** …
>
> [emphasis added]

30 I was not convinced that the Condition Precedent Defence prevented the plaintiff from *prima facie* establishing his right to sue on the defendant's cheques. Nor was I persuaded that the said defence had raised any triable issues. Bearing in mind the reasoning of the High Court in *Millennium Commodity*, I took the following views:

(a) In relation to the S$2.5m Claim, where the defendant alleged that the first condition precedent was part of the First Agreement, there was insufficient evidential basis supporting the existence of the First Agreement and the first condition precedent for all the reasons discussed at [44]–[58] below.

(b) As for the Remaining Claim, the Condition Precedent Defence was not tenable on account of the points made at [59]–[60] below. Essentially, the proposed second condition precedent was alleged to be part of the Proposed Second Agreement. Both parties, however, accepted that the said agreement was *never even entered into*, and *neither party was seeking its enforcement*. As such, the question of

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whether the proposed second condition precedent existed (but was not yet fulfilled) did not even arise for consideration. In any event, the proposed second condition precedent did not feature in any of the documentary evidence adduced (as discussed at [63]–[70] below). From an evidential perspective, it had no prospect of succeeding either.

Accordingly, I accepted that the defendant's delivery of the defendant's cheques to the plaintiff was unconditional.

31 When the defendant's cheques were dishonoured by non-payment upon presentment, an "immediate right of recourse" against the defendant accrued to the plaintiff (see s 47 of the BEA). As I stated earlier, the defendant admitted that he had received due notice of dishonour (which the plaintiff was required to give under s 48 read with s 49 of the BEA). Pursuant to s 57 of the BEA, the plaintiff was thus *prima* facie entitled to liquidated damages of S$3m, being the total amount of the defendant's cheques.

Issue 2: Whether the defendant raised any triable issues such that he should be granted leave to defend

32 An application for summary judgment on a dishonoured cheque will succeed, unless the defendant raises an arguable case of fraud, illegality or a total or quantified partial failure of consideration (see *Millennium Commodity* at [58]). In the present case, the defendant raised the Illegal Moneylending Defence, as well as the Illegal Litigation Funding Defence. These defences sought to establish that the defendant's cheques were affected by illegality, and that under s 30(3) of the BEA, the burden ought to be on the plaintiff to show that value had in good faith been given for the said cheques. I discuss the two defences in turn.

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(1) Illegal Moneylending Defence

33 I start with the defendant's Illegal Moneylending Defence in relation to both (a) the plaintiff's 1st to 4th Loans and the S$2.5m Claim; as well as (b) the plaintiff's 5th Loan and the Remaining Claim. I was of the view that this defence raised no triable issues in relation to either claim.

34 The relevant provisions of the MLA are set out below:

> **Interpretation**
>
> **2.** In this Act, unless the context otherwise requires —
>
> "**excluded moneylender**" means —
>
> …
>
> (f) any person carrying on any business not having for its primary object the lending of money in the course of which and for the purposes whereof he lends money;
>
> …
>
> "**moneylender**" means a person who, whether as principal or agent, carries on or holds himself out in any way as carrying on the business of moneylending, whether or not he carries on any other business, but does not include any excluded moneylender;
>
> …
>
> "**unlicensed moneylender**" means a person —
>
> (a) who is presumed to be a moneylender under section 3; and
>
> (b) who is not a licensee or an exempt moneylender.
>
> …
>
> **Persons presumed to be moneylenders**
>
> **3.** Any person, other than an excluded moneylender, who lends a sum of money in consideration of a larger sum being repaid shall be presumed, until the contrary is proved, to be a moneylender.
>
> …
>
> **Unlicensed moneylending**

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> **14**.— …
>
> (2) Where any contract for a loan has been granted by an unlicensed moneylender, or any guarantee or security has been given for such a loan —
>
> (a) the contract for the loan, and the guarantee or security, as the case may be, shall be unenforceable; and
>
> (b) any money paid by or on behalf of the unlicensed moneylender under the contract for the loan shall not be recoverable in any court of law.

35 The defendant's argument was as follows. The Agreements involved the plaintiff lending the defendant "a sum of money in consideration of a larger sum being repaid". Thus, under s 3 of the MLA, the plaintiff was presumed to be a "moneylender". Since the plaintiff had failed to show that he was an excluded, licensed or exempt moneylender, he fell within the definition of an "unlicensed moneylender" in s 2 of the MLA. Pursuant to s 14(2) of the MLA, the plaintiff having granted the Loans as an "unlicensed moneylender", the said Loans were unenforceable and the moneys lent were not recoverable. Presumably, the plaintiff was therefore precluded from suing on the defendant's cheques, since they had been drawn and delivered in repayment of the unenforceable Loans.

36 In my judgment, the defendant's argument was based on a misunderstanding of how the statutory mechanisms in the MLA were intended to function. Specifically, the defendant was mistaken in applying the presumption in s 3 of the MLA to the plaintiff. On its own wording, the presumption is inapplicable to an "excluded moneylender". As explained by the Court of Appeal in *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 (*"**Sheagar**"*), it is the borrower (*ie,* the defendant) who bears the burden of proving that the lender is *not* an "excluded moneylender". At [71]–[75], the Court of Appeal stated:

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71 … [I]t is significant that **the presumptive provision in s 3 of the MLA contains an express exclusion in the words "other than an excluded moneylender". This is pertinent because, *prima facie*, it appears to suggest that an excluded moneylender will therefore never fall to be an "unlicensed moneylender" as defined in s 2 of the MLA, for the purposes of s 14(2) of the MLA.**

72 **If, the concept of an excluded moneylender under the MLA is to be regarded**, as in the *Neptune Oil* case, **as a proviso** rather than as a true definitional exception, **it would mean that a borrower could invoke the presumption even in relation to a lender who, as it might later turn out, was an excluded moneylender and the burden would then fall on the lender to prove that he was an excluded moneylender and that the presumption therefore does not apply. This seems untenable to us for two reasons:**

> (a) **To so hold would render the exclusionary words entirely otiose**. The presumption could simply have said that any person who lends money for reward shall be presumed to be a moneylender. The lender would then have to rebut this by showing that he was not within the definition of a "moneylender" either because he was not carrying out such a business or because he was an excluded moneylender. This is because, as we have noted at [68] above, the definition of a "moneylender" in s 2 of the MLA has an express exclusion in respect of an "excluded moneylender".
>
> (b) We would be hesitant even in ordinary circumstances to construe words in a statute as otiose but it is all the more so in a case such as the present where **it is evident from the whole scheme of the MLA that it was not to apply to an excluded moneylender. It would thus be anomalous if a borrower could invoke the disabling provision under s 14(2) of the MLA and the presumptive provision under s 3 of the MLA without showing, in the first place, that the lender fell within the regulatory ambit of the MLA**.

73 … [W]e are satisfied that **the burden of proving that a lender is *not* an excluded moneylender falls on the borrower**…

74 For completeness, we would observe that this does not place an unreasonable burden on the borrower. In most instances, the relevant information would be available from public record; or within the borrower's own knowledge as to whether or not it is itself within the class of borrowers to whom an excluded moneylender may lend money; or capable of being established

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> by the straightforward administration of interrogatories or discovery.
>
> 75 For the avoidance of doubt, **we summarise the principles to be adopted in relation to s 14(2) of the MLA**.
>
> > **(a) To rely on s 14(2) of the MLA, the borrower must prove that the lender was an "unlicensed moneylender".**
> >
> > **(b) If the borrower can establish that the lender has lent money in consideration for a higher sum being repaid, he may rely on the presumption contained in s 3 of the MLA to discharge this burden.**
> >
> > **(c) The burden then shifts to the lender to prove that he either does not carry on the business of moneylending or possesses a moneylending licence or is an "exempted moneylender".**
> >
> > **(d) However, if there is an issue as to whether the lender is an excluded moneylender, the legal burden of proving that he is not will fall on the borrower**.
>
> [emphasis in bold added]

37 In the present situation, whether the plaintiff is an "excluded moneylender" under s 2 of the MLA is a contested issue. The plaintiff said that he is, because he does not carry on a business whose primary object is the lending of money. The defendant asserted otherwise, but produced no evidence at all to discharge his burden of proving so. Accordingly, the defendant had no basis for saying that the plaintiff was an "unlicensed moneylender" and that the Loans were unenforceable under s 14(2) of the MLA. The Illegal Moneylending Defence was hence a non-starter.

38 In the case of the First Agreement, I also found the defendant's argument that the plaintiff had lent him "a sum of money in consideration of a larger sum being repaid" (within the meaning of that phrase in s 3 of the MLA) to be highly questionable. To recapitulate, in exchange for the 1st to 4th Loans, the plaintiff was purportedly to obtain a "larger sum" in the form of the secret referral fee that he would earn from the Bank of Singapore when any settlement proceeds

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from the PRC mediation were placed into the BoS bank account. Upon such placement, the plaintiff would apparently also be entitled to encash the defendant's 1st to 4th cheques to recover the principal sum of S$2.5m under the 1st to 4th Loans.

39 The plaintiff himself admitted that the Bank of Singapore had a scheme whereby existing customers (such as himself) could earn a fee if they referred new customers to the bank, and the new customers then opened and funded a bank account. He explained, and I accepted, that such a referral arrangement was not unusual and was run by many other private banks as well. He denied, however, that the referral arrangement had anything to do with the 1st to 4th Loans.

40 To trigger the presumption in s 3 of the MLA, the wording of the provision requires the loan in question to have been made *in consideration of* a larger sum being repaid. In a typical case, this means that the debtor would have to repay a larger sum in the form of interest, in addition to the principal sum. In the present situation, however, it is undisputed that the defendant *himself* was to repay only the exact amounts lent (*ie,* S$2.5m under the 1st to 4th Loans). I recognised that it could not be ruled out that a loan might be structured in such a way that a lender would obtain a "larger sum" by receiving payments from a party other than the borrower. Even then, however, there must still be some nexus between (a) the loan extended by the lender to the borrower; and (b) the payment of the larger sum by the third party to the lender.

41 I was unable to see how such a nexus was present here. The defendant himself said that he had nothing to do with the "secret" referral arrangement between the plaintiff and the Bank of Singapore at the relevant time. As between the plaintiff and the Bank of Singapore, there is no evidence that the bargain

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between them was for the former to earn a referral fee specifically *in exchange for* granting the 1st to 4th Loans to the defendant, *and* the defendant depositing any settlement proceeds from the PRC mediation into the BoS bank account. This is notwithstanding the defendant's many assertions to that effect (which I discuss further at [45]–[49] below). Unlike the usual referral schemes run by banks, such a bargain would be particular to the special circumstances of the plaintiff and the defendant, and ought to have been supported by cogent evidence, which was not available. If the referral fee was to be paid simply upon the BoS bank account being *funded* (as is far more likely), there would be no connection between (a) the plaintiff granting the 1st to 4th Loans to the defendant; and (b) the plaintiff earning the referral fee from the Bank of Singapore. Accordingly, even putting aside the defendant's failure to prove that the plaintiff was not an "excluded moneylender", it was difficult to see how the presumption in s 3 of the MLA applied to the plaintiff insofar as the 1st to 4th Loans were concerned. This reinforced my view that the Illegal Moneylending Defence to the S$2.5m Claim was not arguable.

(2) Illegal Litigation Funding Defence

42 I will examine the Illegal Litigation Funding Defence in relation to the S$2.5m Claim and the Remaining Claim separately. This was the defence that the First Agreement and the Proposed Second Agreement were illegal and unenforceable at common law on the ground that they involved third-party litigation funding. In *Ochroid Trading Ltd and another v Chua Siok Lui* [2018] 1 SLR 363 (at [29]), the Court of Appeal observed that it is an established head of public policy at common law that contracts prejudicial to the administration of justice, including contracts savouring of maintenance and champerty, are illegal and unenforceable. As set out in *Lim Lie Hoa v Ong Jane Rebecca* [1997]

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1 SLR(R) 775 at [23] (citing *Halsbury's Laws of England* vol 9 (4th Ed) at para 400):

> Maintenance may be defined as the giving of assistance or encouragement to one of the parties to litigation by a person who has neither an interest in the litigation nor any other motive recognised by the law as justifying his interference. Champerty is a particular kind of maintenance, namely maintenance of an action in consideration of a promise to give the maintainer a share in the proceeds or subject matter of the action.

43 According to the defendant, the plaintiff had granted the Loans to assist him in bringing a claim against the Chinese government. The plaintiff had no justifiable interest in the matter, and had done so in order to obtain a share of the proceeds of the PRC dispute. The defendant argued that the Agreements thus savoured of maintenance and champerty, and could not be enforced. Although s 5B(2) of the CLA contains a limited exception under which third-party litigation funding is permitted, the defendant contended that the exception does not apply to the plaintiff as the latter was not a "qualified Third-Party Funder" (as defined in the legislation). Hence, it is said that the plaintiff should not be allowed to claim the sums under the defendant's cheques, which had been drawn and delivered pursuant to the illegal Agreements (and the first and second alleged purposes).

(A) S$2.5M CLAIM

44 As far as the plaintiff's 1st to 4th Loans and the S$2.5m Claim were concerned, I was not persuaded that the Illegal Litigation Funding Defence raised any triable issues. According to the defendant, the parties had orally entered into the First Agreement, pursuant to which the plaintiff had disbursed the 1st to 4th Loans, for the first alleged (illegal) purpose of funding the PRC

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mediation. There was, however, scant evidence supporting the existence of the First Agreement and the first alleged purpose.

45 The main evidence which the defendant relied upon was the fact that the plaintiff had a referral arrangement with the Bank of Singapore. The plaintiff's admission as to the existence of a referral arrangement, and his position that the arrangement had nothing to do with the 1st to 4th Loans, has already been set out at [39] above. It was unknown how much the plaintiff would have earned in referral fees if any settlement proceeds from the PRC mediation were placed in the defendant's BoS bank account. Nevertheless, the defendant implied that the fees would have been sufficiently large to have motivated the plaintiff into entering the First Agreement.

46 The defendant asserted that after opening his BoS bank account, the bank's relationship manager, Mr Yeo, followed up closely with him regarding the PRC dispute. At the behest of the plaintiff, Mr Yeo apparently flew to China to participate in negotiations between the defendant, his lawyers and Chinese officials relating to the PRC dispute. The defendant alleged that the plaintiff had continued to receive updates on what Mr Yeo had done, and argued that this pointed "clearly to the [plaintiff's] keen interest in profiting from the opening of the account". Furthermore, the plaintiff had supposedly met the defendant's lawyer for the PRC dispute on a regular basis to "get updates" on the PRC mediation.

47 The plaintiff's version was quite different. According to the plaintiff, the defendant had said that he had difficulties operating his bank account due to his ongoing divorce proceedings, and wanted to open a new one into which any settlement proceeds from the PRC dispute could be channelled. It was at the defendant's own request that the plaintiff recommended Mr Yeo to him. Any

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follow-up that Mr Yeo conducted with the defendant was part of the Bank of Singapore's due diligence exercise, which the plaintiff had nothing to do with. Contrary to the impression given by the defendant, the "meetings" between the plaintiff and the defendant's lawyer were in fact social gatherings that the defendant had organised. The plaintiff's interactions with the defendant's lawyers were limited to "casual [social] chats", during which the defendant sometimes "rehash[ed] the 'injustice' [he had] suffered by PRC officials". There was, however, no detailed discussion of the PRC dispute, and certainly no discussion of its funding.

48 I note that on the defendant's own account, the referral arrangement between the plaintiff and the Bank of Singapore was not part of the alleged First Agreement between the parties. The defendant's case thus depended entirely on what he said were the unilateral intentions of the plaintiff. In this respect, however, the defendant had only bare assertions that the plaintiff had entered into the First Agreement in order to profit from the secret referral fee. He produced no evidence at all to substantiate his allegations as set out in [45]–[46] above, which the plaintiff generally denied. Neither Mr Yeo nor the defendant's lawyer for the PRC dispute filed an affidavit in the proceedings before me. The only matter which was certain was the existence of the referral arrangement that the plaintiff admitted to. But the existence of such an arrangement, in itself, did not show that the First Agreement and/or the first alleged purpose existed. To my mind, the alleged connection between the referral arrangement and the first alleged purpose was simply unsubstantiated.

49 Furthermore, if the defendant's account was indeed true, it was altogether very strange that he had adduced no evidence to show how the S$2.5m extended to him by way of the 1st to 4th Loans had actually been put towards funding the PRC mediation. There were no documentary records of

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how the moneys were expended, nor a satisfactory explanation on affidavit to that effect. Surely in a commercial, third-party litigation funding contract such as the First Agreement, such evidence would have been readily available.

50 Quite apart from a lack of evidential basis, the defendant's case was also problematic in that it did not sit well with the evidence that was available. First, it is undisputed that the defendant had provided a watch and bracelet to the plaintiff sometime around April 2019 as "security". The defendant never clarified what obligations the items were meant to secure, whilst the plaintiff said that they were meant to secure the defendant's obligation to repay the 1st to 3rd Loans. Although the exact value of the items was not known, at the first hearing of SUM 1299, the defendant's counsel pitched their value at S$2m. The plaintiff himself apparently accepted them as security for loans totalling S$2m. The items must thus have been of substantial value. An obvious question then arose as to why these valuable items had been handed over. If we were concerned only with straightforward "interest-free" loans, as the plaintiff contended, there would not be anything unusual about the provision of such security. According to the defendant, however, the parties' bargain was for the plaintiff to disburse S$2.5m to fund the PRC mediation. This was purportedly in exchange for the defendant placing any settlement proceeds into the designated BoS bank account and issuing the 1st to 4th cheques (with the first condition precedent attached). Under this alleged arrangement, however, there was *no reason* at all for the two valuable items to be provided as security, on top of the defendant's 1st to 4th cheques. Even at the Hearing before me, no explanation was given on this aspect. To my mind, this was especially problematic for the defendant, given that on his own counsel's characterisation, we were dealing with a commercial transaction between "men of commerce".

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51 Second, the existence of the First Agreement and/or the first alleged purpose was also not supported by the parties' correspondence relating to the 1st to 4th Loans, and the defendant's repayment of the same by way of the defendant's 1st to 4th cheques. On 5 September 2019, the defendant sent a letter to the plaintiff to request for the encashment of the defendant's 1st to 4th cheques to be delayed until 30 November 2019. The said letter is reproduced below:

> Date : 05 September 2019
>
> To:
>
> ATTN : MR QUEK JIN OON
>
> **REQUEST TO EXTEND PAYMENT DATES ON CHEQUES TO YOU**
>
> Dear Mr. Quek
>
> **I, write to request you to allow me to extend the dates of the below 4 cheques payable to you** to 30 November 2019.
>
> The mentioned cheques are as follows :
>
> Citibank Chq No: 000346 dated 31/08/2019 for $ 500,000.00
>
> Citibank Chq No: 000265 dated 31/08/2019 for $1,000,000.00
>
> Citibank Chq No: 000171 dated 31/08/2019 for $ 500,000.00
>
> Citibank Chq No: dated 31/10/2019 for $ 500,000.00
>
> Your kind acceptance for my request will be much appreciated.
>
> Regards
>
> [signed]
>
> Goh Chin Soon
>
> S1160229J
>
> [emphasis in bold added]

52 Conspicuously, the letter makes no mention of *any* details relating to the PRC mediation, the alleged First Agreement or the first alleged purpose. In

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particular, if the plaintiff's encashment of the defendant's 1st to 4th cheques was actually subject to a condition that had not yet been met (*ie,* the first condition precedent), one would have expected such an important matter to have been stated. The omission of these facts was thus difficult to understand. Far from suggesting that the defendant had any contractual grounds for delaying the plaintiff's encashment of the cheques, the language used indicated that the defendant was merely seeking the indulgence of the plaintiff regarding the same.

53 Subsequent to the above letter, further developments took place with respect to the plaintiff's involvement in the proposed PRC arbitration. These developments will be elaborated on later below in relation to the plaintiff's 5th Loan and the Remaining Claim. For present purposes, it suffices to note that on 19 November 2019, the defendant asked his associate to pass a message to the plaintiff. The WhatsApp message from the defendant's associate to the plaintiff that day reads:

> Good morning boss. I am told by [the defendant] to send this to you. **This is his proposal on this morning's meeting with regards to Grandlink claims against PRC** and **reinstatement of grandlink from liquidation.**
>
> **1 arbitration against China.**
>
> 5% of total amount claim upon filing arbitration which we call step 1
>
> 2 on step 2 which valuation and case study before jurisdiction you will get 10% of total amount claimed.
>
> 3 on step 3 when jurisdiction starts you will get 15% on total amount claim
>
> 4 on step 4 and 5 that is after jurisdiction you will get 20% of total amount claimed.
>
> On reinstatement of grandlink you will be responsible on all debts and expenses incurred in the reinstatement.

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> **On the 3 million that [the defendant] owes you. [The defendant] will pay you on 31 march 2020 with interest**.
>
> [emphasis added in bold]

After receiving the above message, the plaintiff clarified with the defendant's associate that the defendant only owed him S$2.5m at the time (*ie,* as at 19 November 2019), since the 5th Loan had not yet been made.

54 As can be seen, the earlier paragraphs of the message concern two matters – the proposed PRC arbitration and the "reinstatement of [G]randlink from liquidation". What is immediately obvious is that nothing was said of the alleged First Agreement or the first alleged purpose, which relate to the *PRC mediation*. This was despite the fact that the last paragraph of the message referred to the S$3m (which amount the plaintiff had clarified should be S$2.5m) currently in dispute. The defendant acknowledged (through his associate) that he "owe[d]" the plaintiff the said sum and would pay it by a certain date (presumably by ensuring that the defendant's cheques would be honoured upon presentment). Such payment was not expressed to be subject to any condition precedents. In my view, this acknowledgement was plainly inconsistent with the defendant's account of the First Agreement and the first alleged purpose, and how the repayment of the 1st to 4th Loans was subject to the first condition precedent (which had not yet been fulfilled).

55 Finally, on 4 December 2019, the plaintiff sent the following WhatsApp message to the defendant, to which the latter did not reply:

> Ricky [*ie,* the defendant], today we met with your lawyer Wai Cheong. He has explain to us your claim with China. He has also given the syndicate members your counter proposal

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> **The counter proposal has not been accepted and since they [*sic*] is no agreement, we will not be proceeding**. Mr Furouk n Nikko called Tam at 5.05pm n promise to file tomorrow.
>
> I believe Daniel n your various members will be flying to Beijing for negotiations next week. My advice is to accept whatever offer.
>
> **I have always express to you no interest in your China claim. At your request for help, I have advance you 2 million dollars on terms which you have defaulted. The next advance of 500,000 dollars is also due. As for the last 500,000 dollars, after exchanging the cheque, what you promised to me, you have conveniently forgotten.** I'm not a bank. **Kindly make arrangements to repay my loan of 3 million immediately.**
>
> Thank you
>
> Andrew
>
> [emphasis added in bold]

For context, the above message was sent after the 5th Loan had already been granted and disbursed to the defendant by way of the plaintiff's 5th cheque.

56 In the last paragraph of the message, the plaintiff unequivocally claimed that the defendant had "defaulted" on the 1st to 3rd Loans (totalling S$2m), and that the next S$500,000 under the 4th Loan was also "due". He then asked for the repayment of the entire S$3m under the Loans. I agreed with the plaintiff's counsel that in the face of this demand for repayment, the natural response would have been for the defendant to clarify that the sums were not yet due in accordance with the First Agreement, since the first condition precedent had not yet been fulfilled. Yet, no such reply (or any reply at all) was given. This supported the inference that the defendant's version of events was simply untrue. Although I accepted that silence may in some cases be equivocal, the inference I drew here was reinforced by my preceding observations at [45]–[54] above.

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57 In light of the foregoing, I was not convinced that there was a fair or reasonable probability that the Illegal Litigation Funding Defence to the S$2.5m Claim was real or *bona fide.* The defendant's bare allegations on affidavit as to the existence of the alleged First Agreement or the first alleged purpose were not remotely substantiated by the available evidence (see the legal principles set out at [21]–[22] above). For that reason, I did not consider there to be any serious conflict as to the facts surrounding the claim. Indeed, if the said agreement and purpose existed, it was improbable that they were not mentioned even once during the parties' correspondence during the entire period from April to December 2019. This was especially so if the First Agreement was a "shrewd and calculated" commercial transaction, as the defendant suggested. I further observed that the defendant had repeatedly sought to muddy the waters by dealing with (a) the First Agreement and the first alleged purpose, and (b) the Proposed Second Agreement and second alleged purpose, together. Once the different matters were properly disentangled, however, the paucity of evidence behind the former two matters stood in stark contrast to the documents and correspondence adduced in relation to the latter two matters, as discussed below.

58 I was hence of the view that the Illegal Litigation Funding Defence to the S$2.5m Claim had no reasonable prospect of succeeding. For this defence, I was prepared to accept that, in appropriate circumstances, it is arguable that the common law rule against maintenance and champerty can apply to mediation proceedings. However, the point remains that the defendant has failed to sufficiently establish an evidential basis for his defence.

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(B) REMAINING CLAIM

59 I now turn to the plaintiff's 5th Loan of S$500,000 and the Remaining Claim for the same amount. Initially, I had difficulties understanding the Illegal Litigation Funding Defence to the Remaining Claim, as pleaded by the defendant (see [16]–[17] above). Based on my reading of the defence, the "contract" that the defendant was seeking to impugn was the Proposed Second Agreement. It was, however, not the plaintiff's case that the Proposed Second Agreement (with all its terms relating to the funding of the proposed PRC arbitration) ought to be enforced. In fact, it was common ground that the said agreement had *never* even been entered into. This begged the question as to why the defendant was denying its enforceability in order to resist the Remaining Claim.

60 At the Hearing before me, the defendant's counsel clarified the defendant's position. Counsel characterised the contract to be impugned as the *plaintiff's 5th Loan*, rather than the entire Proposed Second Agreement. He argued that the 5th Loan had been made for the illegal second alleged purpose of funding the proposed PRC arbitration, and was therefore unenforceable. Having reviewed the pleadings, I was satisfied that the material facts upon which this position was premised were sufficiently pleaded, albeit in a somewhat confusing manner. The confusion resulted from the defendant's broad pleading that the entire Proposed Second Agreement was illegal. Ultimately, however, the Proposed Second Agreement had been defined (in the defence) to cover all the material facts relating to the extension of the 5th Loan and the "illegal" second alleged purpose (see [16(a)] above). From this, the nub of the defendant's case, as just described, was sufficiently discernible. I thus did not consider the defendant to have gone beyond the four corners of his pleadings

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or to have caused substantial prejudice to the plaintiff. In fact, the plaintiff's counsel took no objection on this point.

61 Framed in the manner just described, I was of the view that the defendant's Illegal Litigation Funding Defence to the Remaining Claim was at least arguable at law. As the Court of Appeal in *Ting Siew May v Boon Lay Choo and another* [2014] 3 SLR 609 ("***Ting Siew May***") (at [44]–[46]) recognised, there is a category of contracts which are *themselves* not prohibited by statute or common law, but are entered into for an illegal purpose. This includes contracts (*ie,* valid loans) entered into with the object of using the subject-matter of the contract (*ie,* the loan money) for an illegal purpose. In respect of this category of contracts, the courts will apply the principle of proportionality to determine whether the contract in question is enforceable.

62 In the present case, impugning the plaintiff's 5th Loan on the ground that it is a contract entered into for the illegal second alleged purpose appeared to be a valid line of argument for the defendant to pursue. The second alleged purpose, if it existed, would involve the plaintiff assisting a party to bring a claim against another (presumably in return for a share in the proceeds of the action). On that basis, if the plaintiff had no justifiable interest in the matter, it was arguable that the second alleged purpose would offend the common law rule against maintenance and/or champerty (as set out at [42] above). As the Court of Appeal has recognised in *Otech Pakistan Pvt Ltd v Clough Engineering Ltd and another* [2007] 1 SLR(R) 989 (at [38]), the law of champerty applies to arbitration proceedings in the same way that it applies to litigation proceedings. I agreed with the defendant's counsel that in order to raise this defence, it was arguably not necessary for the defendant to show that the Proposed Second Agreement had actually been executed in order to put the second alleged purpose of the Loans into effect. Given the Court of Appeal's remarks in *Ting*

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Siew May, it would arguably be sufficient for the defendant to show that such a purpose existed.

63 In this regard, the defendant was able to point to sufficient evidence to raise a triable issue as to the existence of the Proposed Second Agreement (excluding the proposed second condition precedent), and the second alleged purpose. The plaintiff's 5th Loan was disbursed by way of the plaintiff's 5th cheque on 27 November 2019. The parties' correspondence before and after that date show that discussions relating to the plaintiff's potential funding of the PRC arbitration did take place.

64 The parties do not dispute that on 19 November 2019, prior to the disbursement of the 5th Loan, they had met (together with other individuals) to discuss the potential funding of the PRC arbitration. This was corroborated by the WhatsApp message dated 19 November 2019 (as reproduced at [53] above) from the defendant's associate to the plaintiff. The said message clearly refers to the parties' meeting regarding the funding of the proposed PRC arbitration earlier that day.

65 Subsequently, on 3 December 2019, the plaintiff's corporate adviser emailed the defendant and the defendant's lawyer, copying the plaintiff, a draft agreement ("**draft Framework Agreement**") relating to the funding of the proposed PRC arbitration. This draft agreement was targeted for signing the following day. It was to be entered into by the defendant and a special purpose vehicle controlled by a "syndicate" of investors including the plaintiff. Many of the terms pleaded by the defendant (as set out at [16] above) to have formed part of the Proposed Second Agreement were also reflected (although not always in identical terms) in the draft Framework Agreement – see, for example, cll 2.3.2,

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2.3.5, and 2.3.6 of the latter agreement. Crucially, the fourth and fifth recitals of the draft Framework Agreement read as follows:

> WHEREAS:
>
> …
>
> (4) The Parties have agreed to enter into a transaction with several phases (the "Transaction") with the ultimate purpose of allowing the Company [*ie,* Grandlink] and its related entities and/or subsidiaries to commence, proceed with and/or continue (whether by negotiation or arbitration) with its claim against the Chinese government ("PRC Claim");
>
> (5) On or around 27 November 2019, a sum of $500,000 was paid on behalf of the SPV by [the plaintiff] to [the defendant] in consideration of and in furtherance of this collaboration;

66 Read together, the two recitals show that the parties had envisaged that the plaintiff's 5th Loan to the defendant (which was disbursed on 27 November 2019) would be put towards the second alleged purpose of funding the proposed PRC arbitration.

67 Finally, the earlier paragraphs of the plaintiff's WhatsApp message of 4 December 2019 (see [55]–[56] above) also confirm that discussions relating to the funding of the PRC arbitration had taken place. By that date, the defendant had rejected the draft Framework Agreement and made a counterproposal to the "syndicate" of investors, which was also not accepted. Although the message confirms (as the parties do) that no agreement relating to the funding of the PRC arbitration was eventually entered into, this was not fatal to the defendant's case for the reasons already given at [61]–[62] above. More importantly, the plaintiff's demand for the repayment of the 5th Loan in the last paragraph of the message and the defendant's corresponding silence were also not necessarily inconsistent with the defendant's case. Specifically, it remained plausible that *at the time* the 5th Loan was made (*ie,* on 27 November 2019), the loan was granted for the second alleged purpose. However, *after* the attempts to put the

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second alleged purpose into effect by way of a contract had failed, the plaintiff saw it fit to ask for the return of his 5th Loan.

68 In the plaintiff's affidavit, he squarely admitted to having participated in discussions regarding the funding of the proposed PRC arbitration. However, his version was that the parties had discussed "potentially *'re-purposing'* [the 5th Loan] to be part of a funding arrangement for the PRC Arbitration" as well as "whether this S$500,000 could be taken to be [the plaintiff's] pre-payment for an investment into Grandlink…with a view to taking Grandlink out of liquidation" (emphasis added). In other words, *at the time* the 5th Loan was granted, the plaintiff claimed that its purpose was not to fund the proposed PRC arbitration.

69 In support of this contention, the plaintiff relied on a message sent to him by the defendant on 3 September 2019 (*ie,* after the 1st to 4th Loans had already been disbursed). In the said message, the defendant acknowledged that the plaintiff had assisted him in dealing with "CDL" to extend the "completion of [the defendant's] 2nd house" and said that he had promised "CDL" that he would "pay them all the interest for this extension". He then told the plaintiff "You also promised to lend me $500,000 to pay for the above interest when I am back from China negotiations". The plaintiff's counsel submitted that this showed that the plaintiff's grant of the 5th Loan was not intended for the second alleged purpose of funding the proposed PRC arbitration.

70 Whatever the parties' intentions as at 3 September 2019 may have been, however, it is plainly arguable from their correspondence between November and December 2019 that those intentions had subsequently changed by the time the 5th Loan was actually granted. The defendant's case that the plaintiff's 5th

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Loan had been made for the second alleged purpose remained plausible based on the evidence it had laid out.

71 The plaintiff also raised a different, more general argument as to why the Loans could not have been granted to fund the proceedings relating to the PRC dispute. According to the plaintiff, he had granted the Loans to the defendant *personally.* The PRC dispute was, however, between the company, Grandlink, and the Chinese government. The defendant had not shown or pleaded that he had any authority to act on behalf of Grandlink, which had been in compulsory liquidation since 2001. As such, the defendant could not have contracted with the plaintiff to use the Loans to fund Grandlink's proceedings against the Chinese government. If the defendant had indeed given the loan moneys to Grandlink for the purposes of the proceedings relating to the PRC dispute, it would have been the defendant himself (and not the plaintiff) who had funded the said proceedings.

72 I accepted that the plaintiff's argument had force. The defendant's assertions on affidavit that the PRC dispute was between himself and the Chinese government was contradicted by the WhatsApp message from his associate (dated 19 November 2019) and the draft Framework Agreement. However, even if the party to the PRC dispute was indeed Grandlink, I did not think that this was fatal to the defendant's challenge against the enforceability of the 5th Loan. This was because the plaintiff could arguably be regarded as funding the proceedings relating to the PRC dispute, *without* contracting with Grandlink directly. Specifically, the plaintiff may have granted the 5th Loan to the defendant personally *on the basis* that the defendant would thereafter channel the loan moneys to Grandlink to fund the PRC dispute. If the plaintiff had done so, he would arguably have assisted a party in bringing a claim against

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another, which would potentially trigger the common law rule against maintenance and champerty (see [42]–[43] above).

73 In fact, the draft Framework Agreement itself appears to envisage such an arrangement. In particular, the recitals of the draft agreement refer to the 5th Loan *to the defendant* as having been made in furtherance of a collaboration, whose "ultimate purpose" was to "[allow Grandlink to] proceed…with its claim against the Chinese government"(see [65] above). Structured in this way, it would not have been necessary for the defendant to have been acting *on behalf of* Grandlink at the relevant time. Accordingly, there remained a triable issue (of fact and law) as to the existence and terms of the Proposed Second Agreement and the second alleged purpose. This is subject to the qualification mentioned at [30(b)] above – namely, that there is no triable issue of fact or law as to the existence or enforceability of the *proposed second condition precedent* (which specifically relates to the Condition Precedent Defence). For completeness, there also remained no triable issues as to the existence of the First Agreement and the first alleged purpose, for the reasons already given at [44]–[58] above. There was insufficient evidence to even substantiate their existence, much less the structuring of the First Agreement in the specific manner just described.

74 I thus reached the view that the disputes of law and fact raised by the Illegal Litigation Funding Defence to the Remaining Claim (as canvassed in [59]–[73] above) were all matters that ought to be determined at trial. Given the conflicting evidence adduced by both parties, it could not be said that either party's version was obviously more credible than the other.

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(3) Sub-conclusion

75 Having found that the defendant's Condition Precedent, Illegal Moneylending, and Illegal Litigation Funding Defences raised no triable issues in respect of the S$2.5m Claim, I entered summary judgment for the plaintiff for the same. The analysis for the S$2.5m Claim therefore did not proceed to Issue 3.

76 As for the Remaining Claim, having taken the view that the Illegal Litigation Funding Defence raised triable issues, it followed that the defendant ought to be given leave to defend. The remaining question was whether any conditions should be imposed on the grant of leave.

Issue 3: Whether the defendant should be granted conditional or unconditional leave to defend the Remaining Claim

77 On the question of whether conditional or unconditional leave to defend should be granted, the applicable legal principles are helpfully canvassed by Coomaraswamy J in *Wee Cheng Swee Henry v Jo Baby Kartika Polim* [2015] 4 SLR 250 (at [81]):

> **The classic formulation is that conditional leave to defend is the appropriate order when the defendant has succeeded in showing a reasonable probability of a real or *bona fide* defence which ought to be tried, but that defence is shadowy**. Characterising a defence as shadowy is as much a matter of impression as it is of analysis. If one tries to capture that characterisation in words, one can say that a defence is shadowy **if the defendant's evidence is barely sufficient to rise to the level of showing a reasonable probability of a *bona fide* defence. Alternatively, one can say a defence is shadowy if the evidence is such that the plaintiff has very nearly succeeded in securing judgment.**
>
> [emphasis in bold added]

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78 I did not find the defendant's Illegal Litigation Funding Defence to the Remaining Claim to be so weak that it could be described as "shadowy". As discussed at [61]–[70], there was contemporaneous correspondence between the parties, as well as a draft Framework Agreement (prepared by the plaintiff's own corporate adviser), which supported the defendant's case. Accordingly, I indicated to counsel at the Hearing that I was prepared to grant the defendant unconditional leave to defend against the Remaining Claim. As stated earlier, however, a different outcome was eventually reached. Specifically, the parties decided to consent to the defendant being granted *conditional* leave to defend instead. The reasons for this are closely intertwined with that for my decision on SUM 1299. I therefore move onto a discussion of SUM 1299 first, after which the reasons for this consent order will become clear.

The interim Mareva injunction application in SUM 1299

79 Although I was of the view that the defendant ought to be granted unconditional leave to defend the Remaining Claim, I nevertheless considered that there were also good reasons to grant the interim Mareva injunction sought by the plaintiff in SUM 1299 (subject to certain modifications). The two key requirements for the grant of a Mareva injunction are that:

(a) the plaintiff has a good arguable case on the merits of his claim; and

(b) there is a real risk that those assets may be dissipated so as to frustrate the enforcement of an anticipated judgment of the court.

80 As to the first requirement, the plaintiff has a "good arguable case on the merits" of the Remaining Claim if his case is "more than barely capable of serious argument, but not necessarily one which the judge considers would have

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a better than 50 per cent chance of success" *(Bouvier, Yves Charles Edgar v Accent Delight International Ltd* [2015] 5 SLR 558 ("***Bouvier***") at [36]). It was clear to me that the plaintiff had fulfilled this requirement for the same reasons that he had a *prima facie* case, as articulated at [24]–[31] above.

81 Turning to the second requirement, the overarching test is whether there is objectively a real risk that a judgment may not be satisfied because of a risk of unjustified dealings with assets (*JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] 2 SLR 159 ("***JTrust***") at [64]). The plaintiff must produce "solid evidence" to demonstrate this risk, and not just raise bare assertions of fact *(Bouvier* at [36]). Haddon-Cave LJ, sitting in the English Court of Appeal in *Lakatamia Shipping Company Limited v Toshiko Morimoto* [2019] EWCA Civ 2203 ("***Lakatamia***"), has also recently affirmed (at [34(2)]) that "[t]he risk of dissipation must be established by solid evidence; mere inference or generalised assertion is not sufficient". In *Lakatamia,* the learned judge went to explain (at [35]–[36] and [38]) that a plaintiff need only show a plausible evidential basis sufficient to establish a good arguable case that there is a risk of dissipation, which is not a particularly onerous test to meet. I found the learned judge's exposition of the law in this area to be apposite, and I gratefully adopt the same. At [33]–[37] of *Lakatamia*, he stated:

> **THE LAW**
>
> 33. The basic legal principles for the grant of a [world-wide freezing order ("**WFO**")] are well-known and uncontroversial and hardly need re-stating. It nevertheless is useful to remind oneself of the succinct summary of the test by Peter Gibson LJ in *Thane Investments Ltd v Tomlinson (No 1) [2003] EWCA Civ 1272* at [21] where he stated that, before making a WFO, the court must be satisfied that:
>
> > "… the applicant for the order has a good, arguable case, that there is a real risk that judgment would go unsatisfied by reason of the disposal by the defendant of his assets, unless he is restrained by the court from disposing of them, and that it would be just and

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> convenient in all the circumstances to grant the freezing order."

34. I also gratefully adopt (as the Judge did) the useful summary of some of the key principles applicable to the question of risk of dissipation by Mr Justice Popplewell (as he then was) in *Fundo Soberano de Angola v dos Santos [2018] EWHC 2199 (Comm)* (subject to one correction which I note below):

> (1) The claimant must show a real risk, judged objectively, that a future judgment would not be met because of an unjustified dissipation of assets. In this context dissipation means putting the assets out of reach of a judgment whether by concealment or transfer.
>
> (2) The risk of dissipation must be established by solid evidence; mere inference or generalised assertion is not sufficient.
>
> (3) The risk of dissipation must be established separately against each respondent.
>
> (4) It is not enough to establish a sufficient risk of dissipation merely to establish a good arguable case that the defendant has been guilty of dishonesty; it is necessary to scrutinise the evidence to see whether the dishonesty in question points to the conclusion that assets [may be][*] dissipated. It is also necessary to take account of whether there appear at the interlocutory stage to be properly arguable answers to the allegations of dishonesty.
>
> (5) The respondent's former use of offshore structures is relevant but does not itself equate to a risk of dissipation. Businesses and individuals often use offshore structures as part of the normal and legitimate way in which they deal with their assets. Such legitimate reasons may properly include tax planning, privacy and the use of limited liability structures.
>
> (6) What must be threatened is unjustified dissipation. The purpose of a WFO is not to provide the claimant with security; it is to restrain a defendant from evading justice by disposing of, or concealing, assets otherwise than in the normal course of business in a way which will have the effect of making it judgment proof. A WFO is not intended to stop a corporate defendant from dealing with its assets in the normal course of its business. Similarly, it is not intended to constrain an individual defendant from conducting his personal

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> affairs in the way he has always conducted them, providing of course that such conduct is legitimate. If the defendant is not threatening to change the existing way of handling their assets, it will not be sufficient to show that such continued conduct would prejudice the claimant's ability to enforce a judgment. That would be contrary to the purpose of the WFO jurisdiction because it would require defendants to change their legitimate behaviour in order to provide preferential security for the claim which the claimant would not otherwise enjoy.
>
> (7) Each case is fact specific and relevant factors must be looked at cumulatively.
>
> ([*] Note: I have replaced the words "are likely to be" in sub-paragraph (4) with "may be").

Test for 'good arguable case'

35. **The test for 'good arguable case' in the context of freezing injunctions is not a particularly onerous one** (Gee on Commercial Injunctions (6th edn, 2016) at [12-026]).

36. **An applicant for a freezing order does not need to establish the existence of a risk of dissipation on the balance of probabilities. It is sufficient for the applicant to prove a danger of dissipation to the 'good arguable case' standard**. As Mustill J observed in *Third Chandris Shipping Corp v. Unimarine SA [1979] QB 645* at *652*:

> "Mr. Howard argues that the plaintiff must show a likelihood that his claim will prove fruitless if an injunction is refused. If likelihood involves the idea of "more likely than not," I consider that the level is pitched too high. In most cases the plaintiff cannot produce affirmative proof to this effect. **All he can show is that a danger exists, and this is all that it seems to me the reported cases require**".

37. There has been much discussion of the meaning of the 'good arguable case' test since Mustill J's well-known observation in *Ninemia Maritime Corp v Trave Schiffahrtsgesellschaft GmbH (The Niedersachsen)* [1983] 2 Lloyd's Rep 600 at 605, namely that a good arguable case is a case "which is more than barely capable of serious argument, and yet not necessarily one which the judge believes to have a better than 50% chance of success".

38. The 'good arguable case' test was the subject of a comprehensive review by the Court of Appeal recently in *Kaefer v. AMS* [2019] 3 All ER 979 in the context of jurisdictional gateways. Green LJ (who gave the leading judgment, Davis and Asplin LJ concurring) conducted a magisterial analysis of the

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> recent authorities, including *Brownlie v. Four Seasons Holdings* [2017] UKSC 80 and *Goldman Sachs International v. Novo Banco SA* [2018] UKSC 34. He observed at [59] that a test intended to be straightforward "had become befuddled by 'glosses', glosses upon gloss, 'explications' and 'reformulations'". **The central concept at the heart of the test was "a plausible evidential basis"** (see paragraphs [73]-[80]).
>
> [emphasis added in bold]

In *TYN Investment Group Pte Ltd v ERC Holdings Pte Ltd and another* [2020] SGHC 157 (at [25]), Coomaraswamy J opined that he did not consider there to be "a material difference between the 'solid evidence' to which *Bouvier* refers and the 'plausible evidential basis' to which *Lakatamia* refers". I respectfully share his view.

82 The Court of Appeal in *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157 ("***Guan Chong Cocoa***") identified (at [20]) a number of factors which the court generally considers relevant in assessing whether there is a real risk of dissipation. These include the following:

(a) The nature of the assets which are to be the subject of the proposed injunction, and the ease with which they could be disposed of or dissipated.

(b) The nature and financial standing of the defendant's business, and the length of time the defendant has been in business.

(c) The defendant's past or existing credit record. A history of default in honouring other debts may be a powerful factor in the plaintiff's favour. On the other hand, persistent default in honouring debts, if it occurs in a period shortly before the plaintiff commences his action, may signify nothing more than the fact that the defendant has

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fallen upon hard times and has cash-flow difficulties, or is about to become insolvent.

(d) The defendant's behaviour in response to the plaintiff's claims (including a pattern of evasiveness, or unwillingness to participate in the litigation or arbitration, or raising thin defences after admitting liability, or total silence).

The relevance of these factors has recently been affirmed by the Court of Appeal in *JTrust* (at [65]). There, the Court of Appeal added that the existence of good grounds for alleging that the defendant has been dishonest may also be relevant.

83 In the present case, the plaintiff submitted that there was a real risk of dissipation of assets based on the following grounds:

(a) First, the defendant's only asset of substantial value (which the plaintiff could identify) was the Grange Road property. A land title search of the property dated 28 February 2020 indicated that a mortgage had been lodged in respect of the property on 5 September 2019 in favour of "VM Credit Pte Ltd" ("**VM Credit**"). More importantly, it transpired that on 13 February 2020, an option to purchase the property was exercised and the sale was completed soon after on 1 April 2020. This sale took place *very shortly* after the plaintiff had unsuccessfully presented the defendant's cheques for payment on 23 December 2020, given notice of dishonour on 2 January 2020 and commenced the Suit on 7 January 2020. At the time of sale, the defendant would thus have been aware of the legal proceedings against him. The timing of the sale was thus suggestive of an attempt by the defendant to dissipate the asset.

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(b) Second, the defendant does not hold many assets in his own name. His assets are instead held through his ex-wife and/or corporate vehicles, which may potentially be difficult to trace and are out of the plaintiff's reach even if his Claim succeeds. In particular, the plaintiff discovered the following:

(i) In a land title search for the Grange Road property on 2 January 2020, the defendant's address was stated to be another property along the same road ("**Unit 34-01**"). Unit 34-01 was owned by a company, Pearl Properties III Pte Ltd, whose sole director was the defendant's ex-wife and whose sole shareholder was yet another company, De Li Investment Pte Ltd. The sole director and shareholder of this latter company was also the defendant's ex-wife.

(ii) Another property along the same road, ("**Unit 35-01**") was owned by a company, Pearl Properties IV Pte Ltd. The sole director of this company was the defendant's ex-wife, and the sole shareholder was again De Li Investment Pte Ltd.

(c) Third, the defendant was facing two other lawsuits (filed in July and December 2019) for the sums of approximately S$2.5m and S$145,000. This showed that the defendant had significant financial exposure, and that "he may ultimately not be good for his money".

(d) Fourth, the defendant had previously acted in a way which demonstrated that his probity was not to be relied upon. Specifically, the defendant had been charged with, and convicted of, several immigration and passport-related offences relating to his use of a counterfeit passport to enter and exit Singapore multiple times. According to the court, the

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defendant was an undischarged bankrupt at the relevant time, and had paid US$250,000 for the counterfeit passport which he used to evade the Official Assignee's control of his travel movements. This demonstrated the defendant's willingness to engage in dishonest conduct to suit his own purposes, as well as his disregard for his legal obligations as an undischarged bankrupt, which in turn showed a real risk of dissipation.

84 The defendant responded as follows:

(a) As to the sale of the Grange Road property, the defendant had originally exercised an option to purchase the said property in 2017. The total purchase price was about S$6.3m, with a 20% deposit to be paid upon signing the option, and the balance purchase price of about S$5m to be paid upon completion in July 2019. The defendant was, however, unable to pay the balance purchase price by the due date because he had cash flow difficulties at the time, owing to his protracted negotiations with the Chinese government over the PRC dispute. To raise the requisite funds, the defendant thus obtained a loan from VM Credit, which was secured by a mortgage over the Grange Road property. The defendant was, however, subsequently unable to resolve the PRC dispute before the loan expired. As a result, he had no choice but to sell the property to repay the loan. The sale was not intended to dissipate the asset.

(b) Second, the defendant's use of third parties and/or corporate vehicles to hold his assets is irrelevant to the issue of whether there is a real risk of dissipation. Units 34-01 and 35-01 were purchased after the defendant had been discharged from bankruptcy, and before the commencement of the Suit.

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(c) Third, the two lawsuits against the defendant (which were mentioned by the plaintiff) are pending before the court and have no bearing on the risk of dissipation by the defendant.

(d) Fourth, cross-appeals had been filed in respect of the criminal matter and were still undecided (at the time the defendant's counsel had prepared his submissions).

85 I begin by noting that the plaintiff had clearly made reasonable inquiries as to the financial resources of the defendant, but came up mostly against a blank wall. The defendant appeared to hold very few assets in his own name, and even the Listed Assets that the plaintiff managed to locate were mostly of uncertain value. This was especially true of the defendant's shares in Grandlink, which had been in liquidation since 2001. In fact, the Grange Road property was the only asset that the plaintiff could identify as belonging to the defendant which appeared to have substantial value.

86 In respect of the Grange Road property, I agreed with the plaintiff that the sale of the property occurred suspiciously soon after the commencement of the Suit, and that this called for an explanation. The defendant's explanation was as mentioned at [84(a)] above. It was not disputed that during the relevant period (*ie,* from mid-2019 until after the commencement of the Suit in early-2020), the defendant was facing financial difficulties and the PRC dispute was still ongoing. The defendant's claim that he had obtained a loan during that period was supported by loan documents that he adduced. These documents showed that the defendant had indeed obtained a S$5m loan from VM Credit in August 2019 ("**VM loan**"), which was to be secured by a mortgage over the Grange Road property. The stated tenure of the VM loan was nine months, and the minimum commitment period was six months. On the face of things, I

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accepted it was possible, as the defendant claimed, that he was indeed unable to pay off the VM loan due to the financial difficulties caused by the failure to resolve the PRC dispute in time, and he therefore had "no choice" but to sell the property.

87 However, the question then naturally arose as to where the proceeds of the sale of the Grange Road property (which took place between February and April 2020) had gone. This question proved more difficult to answer than one would expect. I observed that between the first hearing of SUM 1299 (on 23 March 2020) and the Hearing (on 4 August 2020), a lengthy period of about four months had elapsed. During this period, the plaintiff had asked the defendant in April 2020 for information as to the amount and whereabouts of the sale proceeds of the Grange Road property. The defendant, however, refused to provide the said information. In submissions, the defendant's explanation was that prior to the plaintiff obtaining an interim Mareva injunction and the ancillary disclosure orders, he was under no obligation to disclose his confidential information to the plaintiff unless the court ordered otherwise.

88 To my mind, this was a rather disingenuous response. At the first hearing of SUM 1299, I had indicated to counsel that I was prepared to grant the interim Mareva injunction, which grant would have been accompanied by the necessary disclosure orders. It was only upon the defendant's Undertaking that I agreed to adjourn the matter for an *inter partes* hearing. In these circumstances, the defendant's refusal to allow the plaintiff to verify whether the Undertaking was being complied with in the intervening four months did not appear very reasonable. At the Hearing, the defendant's counsel finally confirmed that the proceeds of the sale of the Grange Road property were still with the defendant. Even then, however, the amount of the said proceeds remained unknown to the court and the plaintiff.

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89 I accepted that absent any disclosure orders, the defendant may not have had any legal obligation to disclose the whereabouts and the amount of the sale proceeds. However, the defendant came across as unusually coy about his dealings with the Grange Road property, and this was a factor which was relevant to my assessment of whether there was indeed a risk of unjustified dealings with the defendant's assets.

90 Turning to the defendant's behaviour in respect of the plaintiff's Claim, I recognised that some aspects of the defendant's case (insofar as the Remaining Claim was concerned) were supported by some evidence. I was, however, troubled by the glaring lack of evidential basis for many other aspects of his case. These aspects related, *inter alia,* to the alleged First Agreement, the elaborate scheme allegedly concocted by the plaintiff to obtain a "secret" referral fee from the Bank of Singapore, and the "conditional" encashment of all the defendant's cheques. As mentioned, many of the allegations made by the defendant were also inconsistent with the available evidence (for example, the parties' correspondence relating to the plaintiff's 1st to 4th Loans, and the security of the watch and bracelet). Taken as a whole, the entire volley of unsupported allegations made by the defendant appeared to be a desperate attempt to stave off an anticipated judgment against him using whatever means he could find. In my view, this went towards showing that there might be a risk of unjustified dealings with his assets.

91 As for the plaintiff's allegation that the defendant held his assets through third parties and/or corporate vehicles, the defendant issued a bare denial of its relevance. It was rather telling, however, that the defendant did not deny that he did in fact hold *his* assets in such a manner. This was despite the fact that the assets being referred to (*ie,* Units 34-01 and 35-01) were not even in his name at all. Importantly, the plaintiff's land title searches of Units 34-01 and 35-01

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showed that on 5 July 2019, the defendant had filed a caveat against each of them. The "interest claimed" under both caveats was stated as an "[i]nterest other than purchaser/mortgagee/charge/equitable/beneficial owner". The nature of this interest was, however, unknown as the defendant remained tight-lipped about it. I also noted that, according to the defendant himself, these assets were purchased after he was discharged from bankruptcy. I was not prepared to go so far as to infer solely from the manner of the defendant's holdings that he was seeking to pre-emptively put his assets out of the reach of existing and future creditors. Nonetheless, contrary to the defendant's bare assertion, this was a relevant factor for me to take into account when forming an overall impression of the defendant, and assessing the risk of dissipation. The fact that the defendant had structured his holdings in such a manner also meant that there was little left within the reach of a potential judgment creditor. As such, my concerns relating to the defendant's dealings with the Grange Road property (as set out in [86]–[89] above) remained squarely at the forefront.

92 Next, I also considered the defendant's financial track record and standing. He had previously been made a bankrupt in 2001, and was discharged only a few years ago. Apart from the present action, and the long-running PRC dispute which began in 2017, the defendant also faced two other lawsuits filed in July and December 2019. Few details of the said lawsuits were provided, save that they were for the approximate sums of S$2.5m and S$145,000. The argument was presumably that the additional financial exposure would give the defendant a stronger incentive to put his assets out of the reach of any potential judgment creditor. In my view, the mere fact that the defendant faced other lawsuits did not in itself show a risk of dissipation, but it was still relevant to my assessment of the said risk.

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93 The plaintiff also raised the fact that the defendant had been convicted of immigration and passport-related offences. In this regard, I was cognisant of the Court of Appeal's guidance in *Bouvier*, where it was said (at [93]) that the alleged dishonesty must be of such a nature that it has a real and material bearing on the risk of dissipation. In other words, an allegation of dishonesty does not in itself form a substitute for an examination of the degree of risk of dissipation, unless that allegation is of such a nature or characteristic that sufficiently bears upon the said risk. Here, the defendant's use of a counterfeit passport did not have a direct bearing on the risk of dissipation. The defendant's disregard of the authority of the Official Assignee and his legal obligations as an undischarged bankrupt could not in itself justify an inference that he was also willing to deal with his assets so as to frustrate the enforcement of an anticipated judgment. That said, although this factor was plainly insufficient in itself, it was still relevant to my overall assessment of the evidence.

94 All in all, I recognised that the defendant had offered some sort of response for each of the individual points raised by the plaintiff, which points varied in merit. Ultimately, however, the assessment of whether there was a real risk of dissipation is a holistic one for which I had to take all the evidence into account. This was a defendant whose only substantial asset, as far as one could tell, was the Grange Road property. That asset had now been sold soon after the commencement of the Suit. Whilst I accepted that there was a possible explanation for the sale, the whereabouts of the sale proceeds were not known for several months until the Hearing before me, and even as at that hearing, the quantum remained a mystery. Importantly, the sale proceeds of the Grange Road property were far easier to dissipate than the original asset itself. It appeared that the defendant had no other substantial assets exposed to creditors, given that he had, since his discharge from bankruptcy, chosen to hold various assets through third parties and corporate vehicles. All other inquiries by the plaintiff

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into the financial resources of the defendant had come up empty. In the background lay the fact that (a) the defendant was a former bankrupt, now mired in multiple legal proceedings against him; and (b) the defendant had made numerous, unsubstantiated allegations against the plaintiff in an apparent attempt to stave off an anticipated judgment of the court.

95 As the English Court of Appeal in *Lakatamia* stated (at [36], citing Mustill J in in *Third Chandris Shipping Corp v. Unimarine SA* [1979] QB 645), all that is required is for the plaintiff to show that there is a danger of dissipation. In light of all the evidence just described, I took the view that there was a plausible evidential basis to support the existence of such a danger, especially in relation to the only known substantial asset of the defendant (*ie,* the sale proceeds of the Grange Road property). To use the language of the Court of Appeal in *JTrust,* I was satisfied that there was a risk that the defendant would engage in unjustified dealings with his assets.

96 Notwithstanding this, the defendant further argued that the interim Mareva injunction ought not to be granted, because the plaintiff had misrepresented and/or suppressed material facts in his application. The defendant argued, *inter alia,* the following:

> (a) As to the issue of the risk of dissipation in SUM 1299, the plaintiff knew that the defendant had cash flow difficulties and thus had to obtain the VM loan which was secured by a mortgage over the Grange Road property. In fact, it was the plaintiff who had introduced the defendant to VM Credit for the purposes of obtaining a short-term loan in August 2019. The plaintiff also knew that if the PRC dispute remained unresolved before the expiry of the said loan, the defendant would be unable to pay the loan and would have no choice but to sell the property.

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Yet, the plaintiff elected to disclose the sale of the property without providing the surrounding context in order to mislead the court into finding that there was a real risk of dissipation.

(b) In relation to the Suit, the plaintiff had concealed, *inter alia,* his active involvement in the PRC dispute, the "secret" referral arrangement he had with the Bank of Singapore, and the discussions relating to the funding of the PRC arbitration (which included the proposal of the draft Framework Agreement).

97 The Hearing for SUM 1299 was held on an *inter partes* basis and the defendant had sufficient opportunity to respond to all the allegations made by the plaintiff. Despite having been given the said opportunity, however, the defendant also appeared to be arguing that the court nonetheless ought not to grant the injunction because the plaintiff had not come to court with clean hands. This was presumably on the basis that the plaintiff had still misrepresented and/or suppressed material facts in his original supporting affidavit for the *ex parte* application. I was not quite convinced for the following reasons.

98 First, I deal with the alleged non-disclosure by the plaintiff of the matters relating to the risk of dissipation. The key point in time to be considered was the period between the plaintiff's discovery of the sale of the Grange Road property in February 2020 and his filing of SUM 1299 on 18 March 2020. The question was whether, during that period, the plaintiff *knew* (but deliberately concealed) the fact that:

(a) the defendant had obtained the VM loan, and the loan was secured by a mortgage over the Grange Road Property; and

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(b) the reason for the sale of the property was that the defendant had been unable to resolve the PRC dispute before the expiry of the VM loan, and was thus unable to pay the loan and had "no choice" but to enter into the sale.

I had difficulty in finding that this was actually the case. On his part, the plaintiff said that he did not know about the terms of the VM loan.

99 I noted that in the plaintiff's original supporting affidavit for SUM 1299 (dated 17 March 2020), he stated (in relation to the merits of the Suit) that he had been told by the defendant in April 2019 of (a) the defendant's financial difficulties; (b) the ongoing PRC dispute; and (c) the defendant's inability to pay the balance purchase price of the Grange Road property. In relation to the risk of dissipation, the plaintiff mentioned that a land title search of the Grange Road property had revealed the sale of the property in February 2020, as well as a mortgage in favour of VM Credit. There was, however, no specific statement that the sale of the Grange Road property was *due to* the reason stated in [98(b)] above.

100 In his reply affidavit for SUM 1299 (dated 28 May 2020), the plaintiff explained that around August 2019, he had returned the watch and bracelet to the defendant so that the defendant could raise funds with the items. The plaintiff admitted that he had suggested that the defendant could borrow money from VM Credit to alleviate his cash flow difficulties. The plaintiff's "thinking" was that the defendant could "then pawn the valuable items he had" and stop asking the plaintiff for more loans. Instead, what the defendant did was to obtain a loan secured by a mortgage over the Grange Road property. The plaintiff was, however, "unaware of the terms of the [VM loan]".

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101 In rebuttal, the defendant pointed to a message that he sent to the plaintiff on 3 September 2019, where he acknowledged that the plaintiff had "helped" him on "Valuemax [*ie,* VM Credit] which assist[ed]…in [the defendant's] house completion". I failed to see how this message undermined the plaintiff's account, given that there was no mention of any *mortgage* over the Grange Road property at all. The message was entirely consistent with the plaintiff's "thinking" that the defendant would simply obtain a loan from VM Credit by pawning his items. That the defendant had gone on to use the loan money for the "house completion" did not change this. I thus accepted that at the time (*ie,* in end-2019), the plaintiff genuinely did not know about the terms of the VM loan, including that the loan had been secured by a mortgage over the Grange Road property.

102 However, by the time that the plaintiff filed SUM 1299 in March 2020, he had discovered from the land title search of the Grange Road property that there was a mortgage in favour of VM Credit. The issue was whether the plaintiff had inferred from this discovery, as well as the individual facts he knew (as listed in [99(a)-(c)] and [100] above), the matters stated at [98(a)-(b)] above. On balance, I did not think that the aforementioned matters were so obvious that it could be said that the plaintiff must have inferred them. The relevant point that remained was this. There was still no evidence that the plaintiff knew the terms of the VM loan, especially the loan amount, the repayment instalments or that the loan had an expiry date. Not being aware that the VM loan had an expiry date, it followed that the plaintiff could not have known of the defendant's need to sell the Grange Road property if the PRC dispute was not resolved by the expiry of the loan. It was thus not sufficiently clear that the plaintiff had actually perceived that the sale of the Grange Road property was due to the reasons stated at [98(b)] above. I was accordingly not prepared to refuse the interim

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Mareva injunction on account of the defendant's allegation of the plaintiff's non-disclosure of the abovementioned reasons.

103 As for the matters relating to the Suit, I have already observed earlier that the defendant's allegations regarding the plaintiff's 1st to 4th Loans and the S$2.5m Claim were by and large unsubstantiated. In respect of the plaintiff's 5th Loan and Remaining Claim, I accepted that the discussions relating to the funding of the PRC arbitration were material. The plaintiff did, however, disclose in his original supporting affidavit for SUM 1299 that these discussions had taken place and gave his account of events, albeit a brief one. His omission to adduce the draft Framework Agreement itself in evidence was, in my view, not a sufficient reason to disallow SUM 1299.

104 For the foregoing reasons, I was inclined to grant the interim Mareva injunction. That said, it was necessary to modify the terms of the injunction being sought, as I had already granted summary judgment for the S$2.5m Claim, and the value of the disputed Remaining Claim was only S$500,000. Counsel, however, encountered difficulties in identifying which of the Listed Assets needed to be enjoined, as there was uncertainty regarding the value of each of the said assets. The plaintiff's counsel was prepared to have only the sale proceeds of the Grange Road property, and not the other Listed Assets, enjoined if the said proceeds amounted to at least S$500,000. As mentioned, however, there was no confirmation from the defendant that the proceeds met this minimum sum. At the same time, the defendant's counsel asked for the defendant to have the flexibility to "set aside S$500,000 arising from any of [the Listed Assets]", as opposed to having all of them enjoined.

105 Eventually, counsel agreed that the preferable course would be for the defendant to simply be granted leave to defend the Remaining Claim under RA

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119, on the condition that he furnish security in the sum of S$500,000 by way of a banker's guarantee. This helped to assure the plaintiff that any eventual judgment obtained in his favour could be enforced, and his uncertainty about the value of the individual Listed Assets was no longer an issue. On the defendant's part, he would have greater flexibility compared to the situation where some or all of the Listed Assets were enjoined. I note in passing that the defendant would also be relieved of the obligation to file an affidavit disclosing the whereabouts and value of his assets, which obligation would have been imposed in the ancillary orders to an interim Mareva injunction.

106 The above thus explains why the parties (in particular, the defendant) had consented to the terms of the order as set out at [2(a)] above, despite me having indicated that I was prepared to give the defendant unconditional leave to defend the Remaining Claim. Given that the plaintiff had obtained the protection he sought by virtue of the consent order in RA 119, it was no longer necessary for him to seek the interim Mareva injunction. I accordingly made no order on SUM 1299.

107 As it turned out, subsequent to my decision of 4 August 2020, the defendant failed to fulfil the condition upon which he had been granted leave to defend the Remaining Claim (under the court order he had consented to). Although this is not material to my present grounds of decision, I note that final judgment for the plaintiff has been entered on 24 September 2020 in respect of the Remaining Claim. In adopting his litigation strategy (of offering the Undertaking at the first hearing of SUM 1299 and consenting to the grant of conditional leave to defend the Remaining Claim in RA 119), the defendant has effectively avoided being subject to an interim Mareva injunction and the ancillary disclosure orders.

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Costs

108 Finally, I deal with the issue of costs. As mentioned earlier, I made no order as to costs for SUM 1299. For RA 119, the defendant's counsel submitted that the defendant should pay costs to the plaintiff in the sum of S$1,500. The plaintiff asked for S$10,000. Neither specified whether their proposed figures included disbursements. Given that the plaintiff had succeeded in defending RA 119 in relation to a substantial part of his S$3m claim, I awarded the plaintiff costs of $6,000 (all-in) to be paid by the defendant.

Dedar Singh Gill
Judge

Boaz Chan and Adrian Koh Shang Yong (Incisive Law LLC) for the plaintiff;
Choo Zheng Xi and Ng Bin Hong (Peter Low & Choo LLC) for the defendant.

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