IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 62

Suit No 839 of 2017

Between

Choo Ah Sam @ Chu Ah Lan

… *Plaintiff*

And

(1) Kieu Ka Tong
(2) Kieu Kim Sen (Qiu Jinxing)

… *Defendants*

JUDGMENT

[Contract] — [Contractual terms] — [Express terms]
[Contract] — [Discharge] — [Subsequent agreement]

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v
Kieu Ka Tong and another

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30 March 2020 Judgment reserved.

Ang Cheng Hock J:

Introduction

1 This case illustrates how the complexity of relationships within a family can be fertile ground for misunderstandings that lead to mistrust, anger and conflict. It serves as a reminder that litigants who find themselves embroiled in such disputes should perhaps take a step back to examine their own motives and conduct, as well as how they are treating the ones who were once closest to them. They can then better reflect on how such matters may be resolved without the need to mire parties in the hostility and expense of litigation.

Facts

The parties

2 The plaintiff, Choo Ah Sam, is a retiree who is in his 80s. He had a pottery business which he ran with his wife until the mid-1990s. His wife passed away in 1998. He then worked as a stevedore at a port, where he helped in the loading and unloading of containers, until he retired in 2001. He is not literate in English.

3 He has four children, three of whom feature in the disputes that arose and were witnesses in these proceedings. His oldest child is a son by the name of Choo Kia Huat, who is also known as Vincent Choo ("VC"). VC is presently employed as an operations manager at York Launch Service Pte Ltd ("York"), which is the company at the heart of the disputes between the parties.[1]

4 The plaintiff also has three daughters. Choo Siew Eng ("SE") is the oldest of the three. She moved to Bandung, Indonesia in 1994 after she got married. While she lives in Bandung now, SE returns to Singapore several times a year.[2] Choo Siew Hiong ("SH"), also known as Jacqueline Choo, is the middle daughter. She works as an insurance agent. She is married, has her own family, and lives in Singapore.[3] The plaintiff has been living with SH and her family since September 2017. SH and SE played important roles in the lead-up to these legal proceedings, which I will explain in the course of this judgment. The youngest daughter is Choo Siew Tin. She lives in Australia with her husband, and is the only one of the plaintiff's children who did not feature in this trial.

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1 Affidavit of Evidence-in-chief ("AEIC") of VC from [1] to [3].

2 Transcript, Day 1, Page 47, Lines 15 to 24.

3 Transcript, Day 1, Page 49, Lines 17 to 21; Page 50, Lines 4 to 9.

5 The first defendant, Kieu Ka Tong, is the brother-in-law of the plaintiff. He is married to Choo Lian Tee ("LT"), who is the plaintiff's youngest sibling. The first defendant was previously the managing director of York, which was a business he had started with four other shareholders in 1993 that provided boat services.[4] From holding just 8% of York at the start, the first defendant eventually became York's largest shareholder, until he sold all but one of his shares to his son, the second defendant, in 2003. He was York's managing director from 1997 to 2004. LT is a homemaker and never played any role in York's business.[5]

6 The second defendant, Kieu Kim Sen, is the first defendant's son. He became the largest shareholder in York in 2003, and became its managing director in 2004, taking over from his father. Under his charge, York grew significantly in terms of revenue and profitability. From only owning about six vessels in the early 1990s, York now has more than 30 vessels in its operations and a turnover of around S$13 million.[6]

7 There are two other relatives of the plaintiff I should mention who feature in this dispute and were witnesses in the proceedings. The first is Choo Nae Kee ("NK"), the plaintiff's younger brother. He works as a boat carpenter in Banyan Marine Pte Ltd, a company that is owned and controlled by the first and second defendants.[7] The other is Choo Soon They ("ST"), who is the

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4 First defendant's AEIC at [8] to [10].

5 Transcript, Day 5, Page 88, Lines 23 to 25.

6 Second defendant's AEIC at p 214.

7 NK's AEIC at [3].

plaintiff's younger sister. She used to work as a canteen operator selling fruits and juices but is now retired.[8]

Background to the dispute

8 The plaintiff's home from the 1990s until September 2017 was a HDB flat in Jurong West ("the Jurong West flat"). The documentary evidence shows that the downpayment for the Jurong West flat was made by the plaintiff's late wife. It is not in dispute that the monthly instalment payments were made by VC using funds from his Central Provident Fund ("CPF") account. The Jurong West flat was registered only in the names of the plaintiff's late wife and VC. On her passing, VC became the sole registered owner of the Jurong West flat. The Jurong West flat and the dispute in relation to its ownership became enmeshed with the main dispute, as I outline below.

9 According to the plaintiff, in 1995 or 1996, he was approached by the first defendant on two separate occasions, less than six months apart, to invest money in York. He gave the first defendant S$20,000 on the first occasion and S$25,000 on the second occasion, both times in cash. He claimed that the agreement with the first defendant was for him to have a "slightly more than 6%" shareholding in York, which would be held by the first defendant on trust for him.

10 This account is disputed by the first defendant and LT. The first defendant's evidence was that, in 1997, an opportunity arose for him to buy over one of his fellow shareholder's 51% stake in York. However, he did not have the funds even after selling his flat at Pasir Ris. He and LT decided to approach

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8 Transcript, Day 11, Page 71, Lines 2 to 22.

LT's siblings to borrow money. He and LT gave evidence that they approached the plaintiff on one occasion and borrowed about S$45,000 from him. The agreement was that the plaintiff was to receive interest payments until he asked for the return of the principal amount. The amount of interest was left to the first defendant to decide.

11 What is not in dispute is that, from 1997, the plaintiff started receiving monthly payments for his alleged "investment". At that time, VC had already been working in York for a few years. From sometime in 1997 or 1998, after the alleged 'investment', VC would pass the plaintiff S$720 every month in cash. According to VC, the first defendant had initially passed him cash and asked him to pass the cash on to his father. This was for convenience because VC lived at the Jurong West flat with the plaintiff. Thereafter, VC was informed by the first defendant that his salary from York would be increased to include the monthly interest that was due to the plaintiff. He was to withdraw S$720 in cash and pass it to the plaintiff. The first defendant told VC that this was the monthly interest that was owed to the plaintiff for a loan.

12 VC left York in 1998 to set up a business of his own. According to the first defendant, York continued to pay a "salary" to VC, of which S$720 was for VC to hand over to the plaintiff. Sometimes, the first defendant would pass cash directly to the plaintiff when he visited the Jurong West flat.

13 When VC rejoined York in 1999, the practice continued of the plaintiff's monthly payments being credited together with VC's salary. He would dutifully withdraw S$720 every month and hand the cash to his father.

14 VC left York in 2001, returned for a short while, and then left the company again in 2002. Despite no longer being an employee of York, VC's

account continued to be credited with a "salary" every month that included S$720, as above, which sum he duly withdrew in cash and handed over to the plaintiff. This practice continued until the end of 2011. Throughout this period, according to VC, when he handed over the cash to the plaintiff, he would tell his father that the moneys came from the first defendant.

15 The plaintiff disputes VC's account of the monthly payments from 1997 to 2011 in three main respects. First, he denies that VC told him the cash payments were from the first defendant. Instead, he claims that VC had told him that the money was from York. Second, he recalls that the cash payments were about S$600 to S$700, instead of S$720. Third, the plaintiff claims that after initially receiving payments for about three years from 1997, there followed a period of about five to six years where he did not receive any payments at all.

16 From January 2012 to July 2014, the plaintiff received about S$1,030 monthly from his younger brother, NK. The cash was handed to him each time in a sealed envelope. According to the plaintiff, NK told him that the moneys came from York. NK's evidence, on the other hand, was that he told the plaintiff each time when he handed the moneys over that these were interest payments from the first defendant.

17 Then, for a period of about a year from August 2014 to September 2015, monthly cheques from York in the amount of S$1,039 were made out to the plaintiff and banked directly into his UOB account. Thereafter, VC re-joined York in October 2015 and the practice *vis-à-vis* payments to the plaintiff reverted to the earlier arrangement: VC would hand around S$1,000 in cash every month to the plaintiff. This went on until July 2017, when the payments stopped. This was because, by that time, the plaintiff was no longer on speaking

terms with the first defendant. How that transpired will be explained below.

18 VC married for the third time in 2014. He wanted to add his wife, who was referred to by the witnesses as "Lili", as a co-owner of the Jurong West flat. VC was of the view that he did not need the plaintiff's consent since he was the sole owner of the Jurong West flat. But, he thought he should inform the plaintiff out of respect since the plaintiff also lived there and treated the Jurong West flat as the family home. VC raised the topic with SE, which was an indirect way of telling his father. He knew that SE would tell the plaintiff of his intention to register Lili as a co-owner of the Jurong West flat.

19 The plaintiff's evidence was that he was not happy with the idea of Lili being a co-owner of the Jurong West flat. He felt that he owned an interest in the Jurong West flat. He claimed that he had given his late wife S$17,000 in cash and that she then used her CPF funds to pay for the downpayment, which was for the same amount. The plaintiff also claimed to have paid another S$17,000 for renovations for the flat when it was first purchased.

20 As he was getting on in years, the plaintiff had started discussing with SE and SH on how he would distribute his interest in the Jurong West flat after his passing. According to VC, SH started telling him in May 2017 that the plaintiff was claiming that he owned a 50% interest in the Jurong West flat and that part of this interest would be distributed to his daughters when he died. VC disagreed with this because his position was that the Jurong West flat had been paid for entirely by his late mother and him.

21 SH and VC started bickering about the issue of the ownership of the Jurong West flat. In the course of their dispute over the Jurong West flat, SH told VC that the plaintiff also owned shares in York and that these shares were

being held by VC on trust for the plaintiff. SH wanted to know how many shares VC held in York and where his share certificates were.

22 The history to SH's allegation about VC holding shares in York on trust for the plaintiff must be explained. SH gave evidence that the plaintiff had told her about his investment in York made in the 1990s and his agreement with the first defendant. The plaintiff had also told her that her uncle, NK, had said to him that his shares in York were being held by VC.

23 NK's evidence was that, sometime in 2009, when he was chatting with his sister, LT, the topic of VC came up. LT had mentioned that VC was then working in China and spending quite a bit of time there. LT also said that the plaintiff had some shares in York to the tune of 5% of the company, and that his shares were in VC's name. Subsequently, when he met the plaintiff for tea, NK recounted this conversation with LT to him.

24 VC's evidence was that he was upset with SH's accusation that his shares in York were not owned outright by him, which he knew not to be true. His unchallenged evidence on how he acquired his shares in York is this. He joined York in 1994. In 1997, the first defendant gave him 27,360 shares in York, amounting to 3% of the company's shareholding at that time. He believed that this was because of his hard work in the company. The first defendant never told him that the shares given to him belonged to the plaintiff.

25 Then, in mid-1999, VC bought over 35,568 shares in York from another shareholder, Florina Wong. He had an arrangement with the first defendant for the purchase of these shares. The first defendant paid S$33,000 to Florina Wong for the shares, and then VC was to repay him (the first defendant) in instalments of S$369 per month. But, after one to two years, the first defendant told VC

that there was no need to continue with the instalment payments and hence he never paid for the shares in full. He agreed with the first defendant then that, if he wanted to sell the shares, he would sell them back to the first defendant at half price.

26 The last tranche of 12,072 shares was acquired by VC in 2011 when there was a rights issue. This was fully paid for by the second defendant because he wanted to reward VC for his contributions over the years. As such, this last tranche of shares was a gift to VC.

27 Hence, VC was adamant that the shares in his name were not held on trust for the plaintiff. SH and SE did not believe him, and this led to the deterioration of their relationship. Throughout the quarrelling, the plaintiff remained silent and never once told VC that he was making a claim to ownership of the shares in VC's name. He let SH and SE do the talking for him.

28 On or around 7 June 2017, the plaintiff, SH, SE and VC had a meeting about the plaintiff's claims to the Jurong West flat and VC's shares in York. The latter issue could not be resolved, but as for the Jurong West flat, one suggestion was for the plaintiff to buy over the flat from VC. The plaintiff was prepared to pay S$160,000 to buy over the Jurong West flat, but VC wanted S$200,000. In the end, no agreement was reached.

29 On the issue of the plaintiff's claim to VC's shares in York, several phone calls were placed to LT during that same meeting to ask her to shed light on what she had said to NK about the plaintiff's shares being placed with VC. SE and SH both gave evidence that LT had first said that the York shares in VC's name belonged to the plaintiff, but had backpedalled in a later call on what she had said. LT's and VC's evidence was that LT had told VC not to argue

with his sisters over this issue, and just tell them that the plaintiff's shares were with him.[9] LT wanted VC to avoid getting into a conflict with SH and SE.[10]

30 After this incident, VC decided that he did not want the shares that he held in York to be a source of contention with SE and SH. He went to see his cousin, the second defendant, and told him that he wanted to sell all the shares that he held in York. VC was also thinking then of leaving Singapore for China, where he had worked for a number of years when he was not working for York.

31 After some discussion, VC agreed on or around 7 June 2017 to sell all his shares in York to the second defendant at the price of S$31,464. The second defendant issued VC a cheque on 9 June 2017 for this amount, which VC forgot to bank in until some time later. But, that was not the end of the matter.

32 On 11 June 2017, SE called for a meeting with the first defendant and LT. This meeting was to take place at the Jurong West flat. VC, Lili, SH, the plaintiff, NK and ST were also present. By all accounts, this was a fractious affair, with accusations being hurled about and much shouting taking place. SH was one the main protagonists. She accused LT of flip-flopping on the issue of whether the shares in VC's name belonged to the plaintiff. The first defendant intervened in the argument and said that VC owned his shares, and, in the course of the meeting, explained that the plaintiff had no shares in York because he had only given a loan.

33 As things got increasingly acrimonious, it was decided that the plaintiff would speak privately in one of the bedrooms with his sister, LT. Their siblings,

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9 VC's AEIC at [56], and LT's Supplementary AEIC ("SAEIC") at [15].

10 LT's SAEIC at [15].

NK and ST, also joined them in the room, although ST left after a short while because there was a loud quarrel in the living room between VC and Lili on one side, and SH and SE on the other. ST wanted to calm things down.

34 In the bedroom, the plaintiff asked LT for S$50,000 so that he could top up his own funds and buy over the Jurong West flat from VC. LT agreed. The plaintiff also asked LT to continue with the monthly payments so that he could pay for his living expenses. They argued about how much the monthly payments should be. Eventually, LT agreed to pay the plaintiff S$800 monthly for the rest of his life. The plaintiff then said that SH and SE wanted half of VC's shares. LT then asked VC, SH and SE to come into the bedroom and she asked VC whether he would give up half of his shares to his two sisters. VC stayed silent for a while. He did not tell LT or the plaintiff that he had already sold all of his York shares to the second defendant. VC then nodded and walked off. LT's evidence was that all these proposals and agreements were an attempt by her to keep the peace and resolve the disputes in the family.

35 That night, after the events of that day, LT told the first and second defendants separately what had transpired in the bedroom at the Jurong West flat.[11] They were upset at her. The first defendant told her that she had no authority to make any decisions about VC's shares, and the second defendant told his mother that VC's shares in York did not belong to the plaintiff. LT then called VC to explain that she had acted under pressure from the plaintiff. VC told her that she had been taken advantage of.

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11 LT's AEIC at [51] and [52].

36 The second defendant then called for another meeting of the family and his relatives on 24 June 2017 at the Jurong West flat. SE could not attend as she had already gone home to Bandung. The second defendant announced at the start of the meeting that the plaintiff held no ownership interest in York, and then he had only given a loan to the first defendant, for which he had been regularly receiving interest for many years. He also told those present that he had bought over VC's shares in York. This caused much consternation to SH, who began to raise her voice and make accusations against LT. The plaintiff remained silent and let SH speak for him.

37 The second defendant and the plaintiff then had a private discussion in one of the bedrooms. To resolve matters, he offered to pay the plaintiff S$50,000 as a one-off lump sum, and S$800 a month for five years. The plaintiff did not accept his offer, but said that he needed to talk things over with SH. It was agreed that SH and the second defendant would get in touch, on behalf of the plaintiff and the first defendant respectively, and discuss to see if matters could be resolved.

38 Thereafter, and until early August 2017, the second defendant and SH exchanged WhatsApp messages on a possible settlement. On 26 June 2017, the second defendant repeated the terms of settlement that he had conveyed to the plaintiff on 24 June 2017. By a return message on the same day, SH confirmed that the plaintiff "will accept the offer". Drafts of a settlement agreement were prepared by the second defendant and sent over to SH and the plaintiff. SH gave detailed comments to the second defendant, and chased for the agreement to the finalised and signed. By 10 August 2017, the terms of the agreement had been agreed. SH sent a message on that date stating that the plaintiff would sign the settlement agreement the following week.

39 However, while the first and second defendants proceeded to execute the settlement agreement, the plaintiff did not do so. Instead, less than two weeks later, on 23 August 2017, the plaintiff's solicitors sent a letter to the first defendant threatening legal proceedings if the first defendant did not transfer to the plaintiff the shares in York which purportedly belonged to him, or pay the "reasonable current value" of such shares.

Procedural history

40 The plaintiff commenced these legal proceedings against the first defendant as the sole defendant in September 2017. The matter was fixed before me for trial in August and September 2018. But, shortly before the trial, the first defendant suffered a stroke and was incapacitated for a period of time. In light of this, I vacated the trial dates despite the objections of the plaintiff.

41 Thereafter, the plaintiff amended his pleadings to add the second defendant as a defendant. New trial dates were fixed and the matter was heard by me in September and October of 2019. By then, the first defendant had recovered somewhat, although he is now confined to a wheelchair and could barely speak audibly when giving evidence.

Parties' cases

The plaintiff's case

42 The plaintiff's case is that he had invested S$45,000 in York through the first defendant to become a shareholder in York. He claimed that he had agreed with the first defendant that the first defendant would hold the plaintiff's shares in York on trust for him. This was by way of an oral agreement with the first defendant, which took place when the latter approached him to invest in York.

43 According to the plaintiff, he was informed by the first defendant at the time that his investment represented "slightly more than 6%" of the shareholding in York at that time.

44 The plaintiff claims that the amounts that he received monthly over the years since his investment were distributions to him as his "share of profits on his investment in the equity" of York.

45 As such, the plaintiff's case is that the first defendant held shares in York based on an express trust, or alternatively, a resulting trust, for him.

46 The first defendant is therefore alleged to have breached his duties as a trustee by transferring the plaintiff's shares to the second defendant. The plaintiff argues that the second defendant did not provide consideration for those shares and that the second defendant would, in any event, have had notice of the plaintiff's interest in those shares. As such, it is claimed that the plaintiff's shares can be traced into the hands of the second defendant. Further, the second defendant is also alleged to be liable as a constructive trustee because he knew or ought to have known that his father was acting in breach of trust by transferring the York shares to him.

47 Finally, the plaintiff denies that he had agreed to a compromise of his rights in August 2017 when SH negotiated a settlement of the dispute on his behalf with the second defendant. According to the plaintiff, any settlement reached was subject to the execution of an agreement in writing by him and this was never done.

The defendants' case

48 The first defendant's case is that his arrangement with the plaintiff was a loan agreement. He had borrowed moneys from the plaintiff to enable him to buy over the shares of one of the shareholders of York. It was agreed that the first defendant would pay the plaintiff monthly interest on the loan, as long as the principal amount was not repaid. It was left to the first defendant to decide how much interest to pay.

49 The first defendant then duly paid the plaintiff interest each month starting from a few months after he received the loan amount of S$45,000 from the plaintiff. This went on until July 2017 when the plaintiff started making claims that he had shares in York. Thus, the first defendant denies the plaintiff's claim that there is any trust arrangement, or that the first defendant had acted in breach of trust. The first defendant does accept though that he is liable to repay the principal amount of S$45,000 if the plaintiff demands repayment.

50 The second defendant's case is that he had purchased all of the first defendant's shares in York in November 2003, save for one, and thereafter held about 50% of the shares in York. While he did not make full payment of the stated purchase consideration of S$364,000, the second defendant made part-payment of the amount owed to his father over a period of eight years. The second defendant also paid for the stamp duty for the transfer of the shares.

51 The second defendant also claims that he was informed by the first defendant that the plaintiff had given him a loan. He had no reason to disbelieve his father, or otherwise think that the plaintiff might have a claim to ownership of the shares that his father held in York. As such, the second defendant denies that he is liable to the plaintiff as a constructive trustee.

52 It is also pleaded by the defendants that, in any event, they had entered into a settlement agreement with the plaintiff which compromised the plaintiff's claim to ownership of any shares in York. This settlement agreement was purportedly reached on 10 August 2017 when SH communicated to the second defendant that the plaintiff was agreeable to the terms of settlement proposed and would sign a written agreement to record that settlement. It was not relevant that the agreement in writing was not executed by the plaintiff since it was a mere formality. As such, the plaintiff cannot maintain these legal proceedings against the defendants.

Issues to be determined

53 The main issues before me are as follows:

(a) First, what was the nature of the arrangement between the plaintiff and the first defendant in relation to the S$45,000 handed over by the former to the latter?

(b) Second, if the first defendant was a trustee, whether under an express or resulting trust, can the shares beneficially owned by the plaintiff be traced into the hands of the second defendant? Allied to this issue is also the question of whether the second defendant is liable to the plaintiff as a constructive trustee.

(c) Third, did the plaintiff and the two defendants settle their dispute over the plaintiff's claim to ownership of shares in York such that the plaintiff's claim has been compromised?

54 The third issue above should logically be decided first, given that it may be potentially provide a complete answer to the plaintiff's claim, regardless of its merits. However, this issue of possible compromise only arose through an

amendment to the pleadings late in the day during the course of the trial, and only after much of the evidence had been led. Further, given my conclusions on that third issue of possible compromise (see [131] to [134] below), I am of the view that it would flow more naturally as a narrative if I deal with that issue later.

55 It will also be immediately apparent that I will only have to decide the second issue if I find that the arrangement between the plaintiff and the first defendant was in the nature of a trust. Much of the evidence at the trial was centred on showing what the more likely arrangement between the parties was by reference to their conduct over the years. There was also reliance on the testimonies of various persons, other than the plaintiff and the first defendant, who claimed to have heard directly from the two of them about the nature of the arrangement. This issue was thus clearly the central focus of the parties' dispute, and it is to that which I now turn.

Was it a loan or trust arrangement?

The oral discussions between the plaintiff and the first defendant

56 Both the plaintiff and the first defendant were clear that what they had agreed on in relation to the sum of S$45,000 was entirely oral. Neither party saw fit to record their agreement either contemporaneously or over the years in writing. As such, my findings on this issue will, to a large degree, turn on my assessment of the credibility of the plaintiff and the first defendant.

57 The plaintiff's evidence was that he was approached by the first defendant on two separate occasions, around six months apart, to invest in York. He could not say when precisely this had taken place, save that it was sometime in 1995 or 1996. On the first occasion, the plaintiff claimed that the first

defendant had told him moneys were needed to "invest in repairs of ships and to employ workers", and also for the "expansion of the business". He did not ask any questions, but simply agreed and handed the first defendant the sum of S$20,000 in cash.

58 I had some difficulty with this aspect of the plaintiff's evidence. While his case is that the arrangement was one where the first defendant would hold shares on trust for him, he did not ask the first defendant on this first occasion how many shares or what percentage of shareholding in York he would get for this initial investment of S$20,000. This is most puzzling. If it were true that the plaintiff was to become a shareholder in York, surely he would want to know *how much* of the shareholding in York he would get for his S$20,000 investment.

59 According to the plaintiff, it was only when the first defendant approached him around six months later asking for more moneys and he handed over a further S$25,000 that he was told by the first defendant that S$45,000 represented "slightly more than 6%" of the total shareholding in York. This perhaps would make some sense if the plaintiff was aware at the time of the first meeting that the first defendant would be coming back to ask him for more funds to invest in York. But, that was not the plaintiff's evidence. Rather, his evidence was that the first defendant simply "approached [him] again". The plaintiff did not know at the time of the first meeting that this would happen. Given that, it made little sense to me that the plaintiff would not have discussed with the first defendant his percentage ownership of York when he was agreeing to his initial S$20,000 "investment".

60 When confronted on this in his cross-examination, the plaintiff's only answer was that he was expecting to receive shares after his "investment" of

S$20,000, but he did not ask the first defendant about how many shares he would get. His explanation, which he repeated more than once, was that he trusted the first defendant. He also claimed that the first defendant had already approached him a few times earlier to be an investor in York. I discounted this evidence because it was not stated in his affidavit of evidence-in-chief. In any event, this evidence does not assist the plaintiff because it made it all the more odd that he did not discuss the size of his stake in York or the size of the potential investment on all those previous occasions. In my view, the only satisfactory explanation is that the first defendant had merely borrowed money from the plaintiff, and had not asked the plaintiff to invest in York. That would explain why the topic of the size of the plaintiff's stake in York never came up during that first discussion, or in the purported earlier discussions.

61 In contrast, the first defendant's evidence about his approach to the plaintiff is more precise, logical and consistent with the events concerning York at that time. The first defendant says that he approached the plaintiff in 1997 and not 1995 or 1996 as the plaintiff claimed. This was because, in 1997, Madam Tan Lye Chee ("Mdm Tan") wanted to retire from the business and sell her shares in York. She was the largest shareholder with 465,121 shares, which represented 51% ownership of York. The first defendant saw this as an opportunity to take control of York. He sold his flat at Pasir Ris to raise funds. He also borrowed moneys from relatives like the plaintiff.

62 The first defendant gave evidence that he went to visit the plaintiff at the Jurong West flat and explained that he needed to borrow money so that he could buy over Mdm Tan's shares. LT accompanied him to the flat and was present at the discussion. In fact, LT had phoned the plaintiff several times prior to the visit to explain the purpose of the visit. After listening to the first defendant,

the plaintiff agreed to give him a loan of S$45,000, and this was handed over in cash at a subsequent visit.

63 The first defendant agreed to pay the plaintiff interest every month, although the two of them did not discuss the exact rate of interest. The plaintiff left it to the first defendant to decide how much interest to pay. He agreed that the plaintiff trusted him completely.

64 The plaintiff argues that the transaction cannot be a loan given that the interest rate was not determined. I am unable to agree. Given the close and trusting nature of the relationship which the plaintiff and first defendant shared, I can see how the parties may have just left it to the first defendant to decide what was an appropriate amount of interest to pay.

65 The plaintiff also points to the fact that, based on the consideration that the first defendant paid to Mdm Tan which he claims he only discovered in the course these legal proceedings, the sum of S$45,000 was equivalent to about 6.1% of York in 1997. The plaintiff argues that he could not possibly have known this in 1997, and hence it shows that there is truth to his claim that the first defendant and him had agreed that the plaintiff would have "slightly more than 6%" of York's shareholding.

66 I cannot accept this evidence as being persuasive. First, there are a number of ways that the plaintiff or his advisers could have found out that the sum of S$45,000 worked out to be about 6.1% of York in 1997, including by a carrying out a search of York's changes in shareholding over the years, and/or working backwards from information as to how much the first defendant paid for the shares he acquired from Mdm Tan. Second, and more likely the case, the first defendant could very well have told the plaintiff during the course of

their discussions in 1997 about how much he was paying to Mdm Tan to buy her shares and that his contribution of S$45,000 helped the first defendant acquire a "slightly more than 6%" stake in York. It would have been entirely natural for the two of them to have discussed this in the course of the first defendant explaining why he needed to borrow money from the plaintiff.

67 As for LT, she gave evidence that was consistent with the first defendant's as to what happened at this meeting. While I accept the submission of the plaintiff that LT's evidence should be treated with some level of caution given that she is the first defendant's wife, I also found the first defendant's evidence to be consistent with objective evidence concerning the changes of shareholding in York in 1997. The register of members shows that all but one of Mdm Tan's shares in York were transferred to the first defendant, Kieu Ka Siong (the first defendant's brother), VC and Florina Wong that year. The first defendant thus became the largest shareholder in York, holding around 50% of its shares. This would suggest that the first defendant had indeed used the moneys obtained from the plaintiff to acquire Mdm Tan's shareholding and not, as the plaintiff claimed, to "invest in repairs of ships and to employ workers". The share transfer is consistent with the defendant's account that he wanted to use the money he received from the plaintiff to buy shares in York.

68 The question also arises as to why, if the plaintiff is to be believed, the first defendant would have told the plaintiff something quite different as to the intended use of the moneys. The plaintiff claimed that the first defendant had told him that the moneys were needed for the repair of ships, employment of new workers and expansion of business, but this does not appear to be borne out given the use of the moneys to purchase Mdm Tan's shares in York. I find it difficult to accept that the first defendant and LT would have told the plaintiff something quite different about the intended use of the moneys given the

undisputed evidence that they were all quite close at that time. Also, the plaintiff's son, VC, was working in York and would have been able to inform the plaintiff if the moneys were indeed needed for the repair of ships, employment of new workers and expansion of business. It would not make sense then for the first defendant to have lied to the plaintiff about that.

69 The plaintiff also points to the fact that LT admitted to having told VC, during the phone call on or around 7 June 2017, to tell his sisters that the shares in the company were with him. It was therefore submitted that LT would not have said this if the plaintiff had only extended a loan to the first defendant, and had not actually invested in York and became a shareholder.

70 My assessment of the evidence shows that this is a misplaced submission by the plaintiff. There are important nuances to the evidence that the plaintiff has not considered. LT was never involved in the business of York. She did not know when York was incorporated, and only had a rough idea of who the directors or shareholders of the company were. She did not even go to York's premises. She was a homemaker. She would not know the reason VC had been given 3% of York in 1997, since it does not appear that either VC or the first defendant had told her why. In fact, there was no evidence whatsoever showing that LT had been told the reason for the first defendant's gift of shares to VC in 1997, and it also does not appear that LT was aware that VC paid for the tranche of 35,568 shares he acquired from Florina Wong in 1999. In my view, LT appeared to *assume* that all the York shares that VC held had been generously *given* by the first defendant to VC, presumably for the benefit of the plaintiff and his family. She therefore appeared to also assume that the shares could be taken back from VC at any time.

71 With that frame of mind, LT appears to have felt that it was within her prerogative to tell VC on 7 June 2017 that the shares held by him were for his father so as to keep the peace between VC and his sisters. In the same vein, she probably also thought that the 5% of York shares held by VC belonged to the plaintiff's family, and therefore told SE and SH that those shares belonged to the plaintiff. In fact, it was VC's evidence that he had to *explain* to LT on the phone on 7 June 2017 that his York shares were his and that he had bought York shares from Florina Wong. With her misapprehension, LT also felt that she could, at the meeting of 11 June 2017 at the Jurong West flat, ask VC to give up half of his shares to his sisters. In my judgment, it was LT's misunderstanding as to the status of VC's shares that caused much of the grief between the plaintiff, his daughters and VC.

72 The reaction of the first and second defendants on hearing from LT that she had told VC on 11 June 2017 to give up half of his shares in York to his sisters is also telling. The first defendant knew that the first 3% of York shares had been given to VC to reward him for his hard work. It was not intended as a gift to the plaintiff or the Choo family. The second defendant had paid for the tranche of 12,072 shares acquired by VC in the rights issue in 2011 as a gift to VC for his contributions to York, and not as a gift to the Choo family. That was why both defendants reacted angrily to LT's suggestion that VC give half of his shares to his sisters, and told her that she could not tell VC what to do with the shares that belonged to him.

73 In the circumstances, I do not find that LT's statements in June 2017 about the ownership of VC's shares, whether to VC or his sisters, carry much weight in my determination of whether the plaintiff actually owned shares in York.

Loan from ST to the first defendant

74 As mentioned earlier, to finance his purchase of Mdm Tan's shares, the first defendant had borrowed moneys from his relatives. Apart from the plaintiff, the first defendant also approached ST, who is the sister of LT and the plaintiff, to borrow moneys.

75 ST gave evidence that, in 1997, the first defendant phoned her and asked whether she would provide him with a loan. She agreed to lend him S$22,500, which was the available cash that she had. LT and the first defendant then came over to her home to collect the cash.

76 ST's evidence was that the first defendant promised to pay her interest, but there was no discussion on the rate of interest. She started receiving S$360 monthly in cash from LT a few months later. LT told her that this was the interest on the loan. The interest was sometimes handed over in cash by LT when she was playing mahjong at the Jurong West flat. But, on most occasions, it was VC who came by her workplace, which was a canteen at Bukit Batok, to pass her the monthly interest. VC's evidence corroborated this.

77 ST continued to receive monthly interest until sometime in 2002 when she asked for the return of the loan principal. She needed the moneys to pay for her daughter's university fees. LT returned the sum of S$22,500 to her.

78 I accept ST's evidence as being truthful. It was not suggested to me that ST had anything to gain or lose by giving evidence for the defendants against her own brother. Also, her evidence was consistent with that given by the first defendant, LT and VC about the giving of the loan and the making of the interest payments. That being the case, this suggests to me that the arrangement between the first defendant and the plaintiff was also similar. There was no

credible reason put forward as to why the first defendant would have decided to invite the plaintiff to invest in York as a shareholder, but to only take a loan from ST. Further, both the plaintiff and ST received monthly payments thereafter, and it is difficult for me to accept that ST received monthly interest payments whereas the plaintiff received payments of a different nature.

79 In fact, on this point, ST also gave evidence that she was aware that the plaintiff was receiving S$720 in monthly interest payments. This was because the plaintiff had mentioned this to her from time to time when she was playing mahjong at the Jurong West flat. From this, ST gathered that the plaintiff had also made a loan to the first defendant.

80 The precise ratios of the loan and interest payable for both ST and the plaintiff are also perhaps instructive. ST testified that, having made a S$22,500 loan, she received monthly interest payments of S$360. The plaintiff provided S$45,000, and received monthly payments of S$720. Tellingly, in the same way the S$45,000 provided by the plaintiff was exactly *twice* the S$22,500 which ST lent, the monthly amount which he received was, at least initially, also exactly *twice* of what ST received monthly. The coherence between the loan and repayment arrangements for both ST and the plaintiff suggests that the arrangements for both individuals are entirely comparable. This buttresses my conclusion that the S$45,000 transferred by the plaintiff to the first defendant was pursuant to a loan agreement akin to that entered into with ST, and not an investment.

81 Quite clearly, ST's evidence was damaging to the plaintiff's case that he had invested in York and was receiving payments which were distributions of his share of profits. The plaintiff submitted that I should discount ST's evidence because she is "in [*sic*] good terms with" LT. I am unable to accept such a

submission that is bereft of any supporting evidence. There is nothing to suggest to me that ST was closer to LT than to the plaintiff. The plaintiffs and his siblings were once a close-knit family, and I accept ST's evidence that she had a good relationship with the plaintiff up to the time this dispute arose and she decided to come forward to say what she knew.

VC's evidence

82 VC was working in York as an operations supervisor at the time that the plaintiff entered into the arrangement with the first defendant in relation to the sum of S$45,000. His evidence was that, shortly thereafter, he learnt that his father, the plaintiff, had given a loan to the first defendant. This was because the plaintiff had told him so. The plaintiff also told VC that the first defendant would be paying monthly interest and that these interest payments would be passed to VC to be handed over to him. VC's evidence is that he remembers this conversation with the plaintiff clearly and that it had taken place when they were both at home at the Jurong West flat.

83 I find that VC's evidence has a ring of credibility because the plaintiff would have been keen to ensure that VC was aware that he would be receiving moneys from the first defendant which were not intended for him personally, but for the plaintiff. What VC was told by the plaintiff is also consistent with the fact that he was then tasked by the first defendant to hand over monthly payments of cash to the plaintiff.

84 The plaintiff submits that I should reject VC's evidence because the two of them have a dispute over the ownership of the Jurong West flat. Also, it is submitted that VC will be partial to the defendants because both he and his wife, Lili, are working at the defendants' companies. Having assessed VC's evidence, his demeanour while he was on the witness stand, and the way he

answered questions while being cross-examined, I found VC to be an honest and credible witness. He appeared genuinely troubled and saddened by the way his siblings and his father have treated him. He explained that he did not want his father to move out of the Jurong West flat, and had assured his father that he could stay in the Jurong West flat for the rest of his life. VC also said that he was prepared to execute any documents required to assure his father that he could carry on staying at the Jurong West flat. But, it appeared that SH had urged the plaintiff to move out of the Jurong West flat in September 2017, and the plaintiff did in fact do so.

85 To me, it was obvious why this had happened. The plaintiff was about to commence legal proceedings against the first defendant to claim that he held a stake in York, and his case initially was that the first defendant had entrusted part of the plaintiff's York shares with VC. SH had strongly supported her father seeking to vindicate the legal rights she believed were his, as the plaintiff has himself acknowledged. As such, SH obviously did not want the plaintiff to be living under the same roof as VC, which would run the risk of the plaintiff discussing the dispute with VC without her presence and/or the presence of the plaintiff's solicitors.

86 In my assessment, I found that VC answered the questions posed to him in cross-examination directly, candidly and without hesitation. He appeared resigned to the fact that his family had fallen apart and wanted to explain the circumstances as to why this had come to pass. By contrast, his two sisters, SH and SE, appeared more intent on advocating the plaintiff's version of events while being cross-examined, despite the fact that many of the things they said in their evidence were not within their personal knowledge.

87 VC's conduct of selling his shares in York to the second defendant in June 2017 also showed that he did not want to be a source of discord within the family. Even though VC felt that his sisters had been unjustifiably egging the plaintiff to lay claim to those shares, which rightfully belonged to him, VC preferred to dispose of the shares and sell them rather than resist a potential claim by his father.

88 On this point, there was another troubling aspect of the plaintiff's case. From the start of the proceedings up until the trial, the plaintiff claimed that the shares given by the first defendant to VC in 1997, which amounted to 3% of York, belonged beneficially to him. However, by the end of the trial, the plaintiff had abandoned this part of his case and instead claimed that the first defendant had always held all of the plaintiff's shares on trust, until they were transferred to the second defendant in 2003. There was no explanation provided for this drastic change in the plaintiff's case. I can only conclude that the plaintiff was being opportunistic and had changed tack as a result of the quality of the oral evidence that arose at trial.

NK's evidence

89 NK testified that, in 1998 or 1999, the plaintiff had told him that he had lent the first defendant the sum of S$45,000 sometime in 1997. The plaintiff also told NK that the first defendant was paying him monthly interest of S$720. NK remembers that this conversation with the plaintiff took place during Chinese New Year.

90 In January 2012, the first defendant passed NK a sealed envelope at his workplace at Banyan Marine Pte Ltd. The first defendant told NK that the envelope contained cash that was the monthly interest payment for the plaintiff.

NK was asked to pass the envelope to the plaintiff because they lived near each other.

91 When NK handed over the envelope as instructed, he told the plaintiff that this was the interest payment from the first defendant. He also asked the plaintiff how much was in the envelope, and was told that it contained about S$1,000.

92 This arrangement of NK making deliveries of the cash to the plaintiff carried on for about a year or so. Each time, NK handed over the cash before the fifth day of each month, and he would tell the plaintiff that these were the first defendant's interest payments. This arrangement stopped when the first defendant started getting York to bank the moneys directly into the plaintiff's account.

93 NK also recalls being informed by ST during a Chinese New Year gathering that she had lent S$22,500 to the first defendant but had since been repaid, and was therefore no longer receiving any interest.

94 The plaintiff urges me to reject NK's evidence as not being impartial because, as a 69-year-old boat carpenter working for Banyan Marine Pte Ltd, a company that is controlled by the defendants, he "would have difficulty in finding similar or alternative employment elsewhere and is therefore likely to be beholden to the defendants".[12] I did not think that this was sufficient basis to reject NK's evidence wholesale for several reasons. First, as NK explained in his oral evidence, he was already at retirement age, and it did not matter if the defendants decided to terminate his employment. To him, it did not matter

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12 Plaintiff's Closing Submissions at [4].

whether he worked or not. Second, he gave evidence that he was not particularly close to the first defendant's family. Instead, he maintained a close relationship with his older brother, the plaintiff, through the years. It was only after this dispute arose that he contacted the plaintiff much less. Even then, NK gave unchallenged evidence that he had visited the plaintiff at the Jurong West flat for Chinese New Year in 2018, even a*fter* the legal proceedings had been commenced. Third, the plaintiff did not adduce any evidence to show that NK *needed* the work or would have been in financial difficulty otherwise. Weighing all the circumstances, I did not think that NK would be incentivised to give false testimony against his own brother simply because he might lose his job.

95 Further, I also found NK to be an honest and candid witness who was prepared to admit that he had unwittingly played a significant role in the breakdown of the relationship between the parties. Let me explain.

96 NK testified that, in 2009, he was carrying out some renovation works at LT's home. He had been chatting with his sister when the topic of VC, their nephew, came up. LT mentioned that VC was working in China at that time. She also volunteered that VC had 5% of the shareholding in York. NK got the impression from what LT said that these shares actually belonged to the plaintiff, but were held in VC's name.

97 A few months later, when NK met the plaintiff for tea, he mentioned what LT had said. In my judgment, this incident was what gave the plaintiff the impression that he had been given shares in York, and that these shares had been placed in VC's name. That explains why, in early June 2017, when the plaintiff, SH, SE and VC were having an argument over whether VC's shares actually belonged to the plaintiff, the plaintiff had asked SH and SE to go over to NK's flat to ask the latter to confirm the ownership of VC's shares. When SH and SE

visited NK on the night of 7 June 2017, he told them of his discussion with LT all those years ago, which was also what he had told the plaintiff. SH and SE thus left NK's home, reinforced in their belief that the plaintiff held shares in York and that these shares were held by VC on the plaintiff's behalf.

98 With the benefit of hindsight, NK now realises that he might have misunderstood the true position as to VC's shares. This was no doubt contributed to by LT's careless words and her own misunderstanding as to whether VC truly owned the shares that had been gifted to him (see [70] to [73] above).

99 NK testified that, at the 11 June 2017 family meeting, he tried to explain what he knew, but things were too heated by then. LT also said that the matter had nothing to do with him.

100 In my overall assessment of the evidence, I accepted NK's testimony to be truthful and credible. In my judgment, the plaintiff has not shown NK's evidence about their conversations concerning the loan and interest payments to be fabricated.

SE's evidence

101 While SE had no personal knowledge of the arrangements between the plaintiff and the first defendant, she gave evidence of her various interactions with members of the first defendant's family which she suggested would shed light on the issue of whether there was a trust or loan agreement.

102 First, she claimed that, not long after the plaintiff handed over the sum of S$45,000 to the first defendant, her father had told her that he had invested

that sum in York and that he would be receiving a share of profits when the company became profitable.

103 I have my concerns as to credibility of this evidence given by SE. I saw no reason why the plaintiff would tell SE about his arrangements with the first defendant. SE had moved to Bandung, Indonesia after she got married in 1994 and only visited Singapore three to five times a year. Unlike VC and NK, both of whom had jobs at the first defendant's companies, and were also involved at various times in handing over the monthly cash payments to the plaintiff, SE was not involved in York's business or the handing over of any cash payments to the plaintiff.

104 Second, SE claimed that, during a social gathering at the Jurong West flat in 1996 or 1997, LT and the first defendant had volunteered the information that her father had invested S$45,000 in York, which amounted to "slightly more than 6%" of its shareholding, and that his shares were held by VC. Then, at that same gathering, LT and the first defendant offered SE the "opportunity to invest" in York, in the amount of S$20,000 to S$25,000, and that she would get a share of profits just like her father. LT and the first defendant both denied in their evidence that they had ever asked SE to invest in York or that they had approached SE to borrow money. As LT explained, they would never have approached someone from the younger generation to borrow money.

105 On balance, I find it difficult to accept SE's evidence in this regard. Again, I do not find it likely that the first defendant would have volunteered information about his arrangements with the plaintiff to SE, who had no connection with York and was not involved in any way with the handing over of the monthly cash payments to the plaintiff. Also, it does not appear to me credible that SE would have been invited to enter into a business arrangement

with the first defendant at a social gathering, when there were other persons present. It is undisputed that, in the case of the plaintiff and ST, the first defendant and LT had approached and discussed with them privately on the proposed business arrangement. As such, I find that SE's evidence in this regard lacks credibility.

106 Third, SE gave evidence that, during "family gatherings", she learnt from the first defendant and LT that they had arranged for the plaintiff's shares in York to be registered in the name of VC. If the fact of VC holding the plaintiff's shares had been brought up at "family gatherings", it would mean that there should have been no doubt in the minds of the plaintiff and VC that the latter's shares were beneficially owned by the former. After all, the Choo family was a close knit one, and it would be fair to assume that VC would have been present at some of these "family gatherings" or would have been told by his family members the purported reason he was initially given some shares in York.

107 However, this account by SE does not sit well with other parts of her evidence. She gave evidence that, in May 2017, she had arranged a meeting with SH and VC to discuss the ownership of the Jurong West flat. In the course of this discussion, SH had brought up the fact that their father wanted to distribute the shares of York held in VC's name. According to SE, this caused VC to be angry and he threw some documents at SH. In his evidence, VC does not dispute that he was upset when he heard this because his view is that he beneficially owned his shares in York. In my judgment, I find that VC would not have behaved the way that SE described if it was true that the issue of the plaintiff's shares in York being held by VC had been regularly brought up at "family gatherings" as she claimed. There would have been no reason for VC to be shocked or angry if that claim had been previously raised.

108 For the above reasons, I cannot accept the evidence of SE as being a truthful account of her interactions with the first defendant, LT and the plaintiff.

SH's evidence

109 Like SE, SH gave evidence that the plaintiff had told her about being approached by the first defendant and having agreed to invest in York. She also gave evidence that the plaintiff had told her about receiving payments in cash over the years and that these were his share of profits from his investment in York.

110 This evidence is not quite consistent with the evidence given by the plaintiff. In his first affidavit of evidence-in-chief, the plaintiff had initially claimed that he had been regularly receiving dividends from York.[13] This was despite the fact that he admitted, under cross-examination, that he did not know what "dividends" meant. Then, in his supplementary affidavit of evidence-in-chief, the plaintiff now claimed that the cash payments made to him were the "share of [his] profits" or "returns of [his] investment" in York.[14] Again, under cross-examination, the plaintiff was not able explain this change in position or what he meant by these descriptions. When confronted with the commonsensical question as to how he could be regularly receiving payments of similar amounts, month after month, when at the same time he accepted that York would sometimes make losses, the plaintiff could not answer the question.

111 Given the plaintiff's wavering position on what he understood to be the nature of the regular cash payments to him, I find it unlikely that he would have

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13 Plaintiff's AEIC at [10] and [18].

14 Plaintiff's SAEIC at [7] and [13].

told SH that the payments he received every month were distributions of his "share of profits". Also, like in the case of SE, SH was not involved in York's business or the handing of the cash payments to the plaintiff at all. That being the case, as with SE, I find it difficult to believe that the plaintiff would have volunteered information to SH about his business arrangements with York and the moneys he was receiving.

112 In this regard, I have two further observations about the plaintiff and SH which reinforce my findings as to the lack of truthfulness of their evidence. First, on the one hand, I found the plaintiff to be rather reticent person by nature. As VC aptly described him, the plaintiff was a man of few words. By all accounts, even during the family meetings in May and June 2017, when things got heated, the plaintiff said very little and kept his feelings to himself. That being case, I find it difficult to accept that he would have told SE or SH the nature of his financial arrangements with the first defendant in such detail.

113 Second, and on the other hand, SH struck me as a very outspoken person who would have had little hesitation in speaking up for her father and ensuring that his rights were safeguarded. She was an insurance agent, and had been helping to manage her father's savings since 2005 or 2006. If it was indeed true that she had been told by the plaintiff in 1995 or 1996 that he held "over 6% in York" as she claimed, I find it highly surprising that she would not have insisted at an earlier stage that the plaintiff ask for his share certificates from the first defendant and for the shares to be registered in the plaintiff's name. SH did not strike me at all as someone who would have left things as they were for so many years.

114 For the above reasons, I did not accept SH's evidence as to what the plaintiff had told her.

The payments to the plaintiff over the years

115 Both the plaintiff and defendants spent much time in these proceedings focused on the payments that the plaintiff had received over the years to support their respective cases on the nature of the arrangement between the parties.

116 As has already been explained, the plaintiff's case initially was that these payments were dividends from York. He later shifted his case to claim that these payments were distributions of his share of profits or returns on his investment in York. The plaintiff claims that he received regular monthly payments from 1997 to 1999, and then again from 2012 to 2017. In addition, he received outright two payments from LT around Chinese New Year in 2005 and 2006, which he also claimed were distributions of profits. On his account, there were no regular monthly payments for at least "5 to 6 years" between 2000 and 2010.[15] In total, the plaintiff claims to have received S$84,072.

117 On the other hand, the defendants claim that the plaintiff received regular monthly interest payments from 1997 to 2017, and that the amount paid increased over time. The defendants deny that the payments given by LT for Chinese New Year in 2005 and 2006 were part of the interest payments, but argued that they were simply gifts in the form of "red packets". In total, the defendants claim to have paid the plaintiff interest totalling S$192,472 over the years.

118 The plaintiff's case that these payments were dividends, distributions of profits or returns on investment can be dealt with shortly. The law in this area is fairly well established. In this regard, Steven Chong J, as he then was, found

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15 Plaintiff's AEIC at [12].

the following principles to be uncontroversial in *Cost Engineers (SEA) Pte Ltd and another v Chan Siew Lun* [2016] 1 SLR 137 at [20]:

> (a) First, a shareholder generally has no direct right to the profits of a company or to compel a company to divide the whole of its profits amongst its shareholders: *Burland v Earle* [1902] AC 83 at 95.
>
> (b) Second, a shareholder only has a right to receive money from the company when dividends are declared by the company in accordance with its articles of association: *Bond v Barrow Haematite Steel Co* [1902] 1 Ch 353 at 362, *Walter Woon on Company Law* (Tan Cheng Han gen ed) (Sweet & Maxwell, Rev 3rd Ed, 2009) at paras 12.84–12.89.
>
> (c) Third, unless the articles of the company state otherwise, the company generally has no obligation to declare dividends: *Lim Kok Wah v Lim Boh Yong* [2015] 5 SLR 307 at [145].
>
> (d) Fourth, the decision to declare dividends is a commercial decision of the company which the courts are reluctant to interfere with unless bad faith or improper purposes are demonstrated: *Lim Chee Twang v Chan Shuk Kuen Helina* [2010] 2 SLR 209 at [114].

119 It is trite law that a company can only distribute its profits to its shareholders by way of dividends. Further, dividends can only be declared if the company has booked a profit in its accounts: s 403(1) of the Companies Act (Cap 50, 2006 Rev Ed).

120 On our facts, it is not in dispute that York had never declared any dividends from the time of its incorporation in 1993 up to its financial year ending 31 December 2015. York declared a dividend for the first time in its history for the financial year ending 31 December 2016. The amount declared was S$100,000. That being the case, I could not accept the submission of the plaintiff that the regular monthly payments that he was receiving were in the nature of dividends or distributions of profits.

121 The plaintiff attempts to counter this difficulty by arguing that the defendants might have been managing the finances of York in a manner such that "profits" were distributed as payments to the shareholders and booked into the accounts as salaries, directors' fees or other payments. But, I am constrained from making any findings in this regard because the plaintiff made no attempt to identify which payments in York's accounts constituted the distribution of "profits" to the shareholders. Further, even if I were to accept that the defendants had acted as such, the plaintiff was unable to credibly explain how it can be the case that he could receive regular payments every month, from year to year, regardless of how well or badly York was doing financially.

122 I note for completeness that the plaintiff also appears to have argued that he had not used the term "dividend" in any technical sense, and that it should simply be understood as an apportionment of profits. I am of the view that this is neither here nor there – even as an apportionment of profits, the monthly payments are inexplicable given that they stayed constant (and even increased) *even when York was making losses*.

123 In my judgment, the regularity of the payments, which did not appear to be tied in any way to the financial performance of York, indicates that the nature of the payments to the plaintiff was *not* in the nature of a distribution of a share of profits. Instead, the payments were more likely to be interest payments on a loan that had been made.

124 The plaintiff further argues that the fact that quantum of the monthly payments increased over the years suggests that, as York started doing better, the amount of profits distributed to the plaintiff became larger. Also, the plaintiff contends that an increase in the quantum of the monthly payments is inconsistent with a loan with a fixed rate of interest. I do not think that the fact

that the quantum of the monthly payment increased for example, from S$720 in 1998 to around S$1,000 in 2016, necessarily indicates that this was a distribution of profits. In the first place, the plaintiff has not shown me how the increase in quantum of monthly payments correlates with the profitability of York. Second, and more importantly, it appears that, like in the case of ST, the arrangement between the parties was for the first defendant to decide the rate of interest. There is nothing that unusual about such an arrangement. After all, this was an arrangement between close relatives and there was a high degree of trust between them. I note for example that, when VC lent a sum of S$200,000 to the second defendant in 2007, there was no agreement as to the rate of interest, and it was agreed that it was for the second defendant to determine what the appropriate rate of interest to pay was.

125 The plaintiff also argues that the source of the payments to the plaintiff came from York, and not from the first defendant. The plaintiff therefore argues that this shows that the plaintiff was receiving a return on his investment in York and not payment of interest for a loan to the first defendant. It is true that the moneys that were paid to the plaintiff originated from York. In fact, the evidence showed that they were booked into York's accounts as part of the monthly salary of VC for several years. VC was, for several years, tasked with the responsibility of drawing out the cash from his account and then handing it over to the plaintiff. However, in my view, this again does not show that the plaintiff's arrangement with the first defendant was for the former to own shares in York. The fact that regular monthly payments were made to the plaintiff with cash that came from York is explicable on the basis that the first defendant, who was by that time in effect running York (given his shareholding), had simply treated York as an extension of himself. In my judgment, there is nothing unusual about such arrangements involving closely-held private companies, especially when the majority of the shareholding is in the hands of a family or

relatives. It was therefore unsurprising to me that the first defendant would use the moneys of the company for his own purposes, where he deemed fit. At the time the relevant payments were made, I am not convinced that there was a bright-line distinction between York's money and that of the first defendant, much less one which was scrupulously adhered to. This practice then carried on when the second defendant took over the reins of York as its managing director in 2004. The second defendant allowed moneys from York to be used to pay interest on the loan made by the plaintiff to his father, the first defendant. This must have been because the Kieus treated York as their own company. In my judgment, the fact that the source of the payments was York and not the plaintiff is not determinative of the *nature* of those payments.

126 Finally, the plaintiff also argues that it makes no sense, whether on the plaintiff's or defendants' calculations as to the total amount of interest paid, for the first defendant to have paid interest *in excess* of the principal loan amount of S$45,000. According to the plaintiff, if the parties had a loan arrangement, the first defendant would want to ensure that the principal amount was paid off promptly so that the interest payments could come to an end sooner rather than continue to accrue. I accept the logic of the plaintiff's argument. However, this ignores the familial relationship between the parties and the particular circumstances of this case as shown by the evidence before me.

127 The plaintiff was close to retirement at the time when the first defendant approached him for a loan in 1997 or 1998. Since then, the first defendant's business has grown steadily and become successful. In my judgment, it is obvious that the first defendant was grateful to both the plaintiff and ST for extending their assistance to him at a time of need. That assistance allowed him to take control of York. As such, it appears to me that the first defendant was quite content to continue paying the plaintiff and ST a monthly interest payment

for as long as they wanted. The payments of interest to the plaintiff were also a means of giving him a monthly income to sustain his living expenses. In the case of ST, the payments served to supplement the income that she was earning as a canteen operator selling fruits and juices. For ST, she eventually needed the principal amount to be repaid for her daughter's further studies. When this was repaid, the interest payments stopped.

128 Overall, I do not think that the fact that the first defendant has paid the plaintiff more interest than the principal amount of S$45,000 is, on the particular facts of this case, evidence that the parties were not in a lender-borrower relationship. Ultimately, the resolution of this issue depends more on the direct evidence of the plaintiff, the first defendant and LT, all of whom were present during the discussions regarding the sum of S$45,000. I have already given my views and set out my findings as to this evidence. These other items of evidence concerning the quantum of monthly payments, source of moneys for the repayments, and the conduct of the parties not directly party to the initial agreement, while certainly relevant, are ultimately circumstantial in nature and do not have as much probative value as the direct evidence of the parties who were directly involved. On a holistic assessment of the evidence, I find that the plaintiff has not established his case on a balance of probabilities.

129 I should add that I make no finding on whether the amount of interest paid to the plaintiff over the years was S$84,072 as he claimed, or S$192,472 as claimed by the first defendant, because it is unnecessary for me to do so to decide the disputes between the parties. The plaintiff's evidence is that he did not receive any interest payments for a period of five to six years, probably starting from 2000 or 2001, but did not ask the first defendant or LT as to why the payments had stopped. I will only say that I find this to be a rather unlikely scenario. As LT pointed out, the plaintiff would not have sat by silently for

such a long time if he was not getting paid. He would most certainly have approached LT or the first defendant to ask about what happened to his interest payments given that he needed money, as shown by what he said privately to LT during the meeting on 11 June 2017 when he wanted the interest payments to continue so as to pay for his living expenses. Also, I had the evidence of VC that he dutifully paid the plaintiff the interest payments which had been credited as his salary throughout the period from 2002 to 2011.

130 For all the above reasons, I find that the plaintiff's claim that he had entered into an arrangement with the first defendant to invest in York as a shareholder fails. I find, instead, that the plaintiff and the first defendant had entered into a loan arrangement. As such, there is no necessity for me to deal with the claims that the defendants held shares of York on express, resulting and/or constructive trust.

Did the parties compromise their rights by way of a settlement?

131 The defendants pleaded that the parties had entered into an agreement on or around 10 August 2017 in full and final settlement of the parties' dispute over the plaintiff's claim to ownership of the York shares. As such, the defendants argue that the plaintiff's rights have been compromised, and that the plaintiff is limited to his claim under the settlement agreement, which is for the first defendant to pay the plaintiff a lump sum of S$50,000 and the sum of S$800 per month for a period of five years.

132 It is true that after the family meeting on 11 June 2017, the plaintiff and the first defendant had designated SH and the second defendant respectively to discuss things further and try to reach a satisfactory resolution of the dispute. SH and the second defendant discussed matters on 24 June 2017. They then exchanged a series of WhatsApp messages which appear to indicate that, by 26

June 2017, the plaintiff had accepted the defendant's offer of a lump sum payment of S$50,000 and S$800 per month for five years. The two of them then proceeded to try to document the agreement in writing by way of a written agreement. Drafts of the agreement were sent by the second defendant, and SH provided her comments. Eventually, on 10 August 2017, SH sent a WhatsApp message indicating that the terms of the documented agreement, which were no different in substance to what had already been agreed on 26 June 2017, were satisfactory, and that the plaintiff would be ready to execute the settlement agreement the next day. This did not materialise.

133 The sole issue before the Court on this alternative defence is whether the parties had intended to bind themselves to a settlement *only* when the written agreement was executed by the parties. In this respect, the evidence of the parties makes the answer clear. The plaintiff's evidence is that, as far as he was concerned, there was not to be any settlement until he had signed the written agreement. The first defendant's evidence is to the same effect. He testified under cross-examination that it was expected that there would be no settlement until the written agreement was signed by both parties. He thus agreed with the plaintiff's counsel's suggestion that there was no settlement reached. It was only the second defendant who claimed that there was a binding settlement because the written agreement was only a formality to record what parties had already agreed through the WhatsApp exchanges.

134 In my judgment, given that two of the principal parties to the purported settlement are clear that their intention was to have a binding settlement only upon the execution of the written agreement, I am compelled to find that the plaintiff had not compromised his rights by entering into a settlement agreement on or around 10 August 2017. In *Norwest Holdings Pte Ltd (in liquidation) v Newport Mining Ltd and another appeal* [2011] 4 SLR 617 at [29], the Court of

Appeal cited with approval the decision of the Malaysian High Court in *Low Kar Yit v Mohamed Isa* [1963] MLJ 165 at 173 that:

> [E]ven where there is nothing in the agreement to suggest that the parties contemplate that the subsequent contract shall contain any new or different terms, nevertheless if it appears that the parties do not intend to bind themselves contractually by the agreement but only by the subsequent contract if and when they should enter into it, there will be no contract.

The clear and unequivocal evidence of both the plaintiff and first defendant is that they did not intend to bind themselves contractually by the agreement reached over WhatsApp by SH and the second defendant. It appears clear, given the fraught state of relations by the time the settlement was being negotiated, that the plaintiff and first defendant were expecting to be bound only by a *future* and *subsequent* signing of the agreed terms. Accordingly, I do not accept that the agreement reached by SH and the second defendant in the course of negotiations is binding. It follows that the defence of compromise raised by the defendants is not sustainable.

Conclusion

135 For the reasons set out in this judgment, I find that there is no merit to the plaintiff's claim that he owns shares in York. As such, the plaintiff's claim is dismissed.

136 I will deal with the issue of costs separately.

Ang Cheng Hock
Judge

Ranvir Kumar Singh and Lai Swee Fung (UniLegal LLC) for the plaintiff;
Isaac Tito Shane, Lee Koon Foong Adam Hariz and Lum Rui Loong Manfred (Tito Isaac & Co LLP) for the defendants.
