

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

[2021] SGHC 112

Suit No 777 of 2019

Between

Teo Yong Soon

... Plaintiff

And

Kwan Yuen Heng

... Defendant

JUDGMENT

[Credit and Security] — [Money and moneylenders] — [Loans of money]

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Teo Yong Soon
v
Kwan Yuen Heng

[2021] SGHC 112

General Division of the High Court — Suit No 777 of 2019
Chan Seng Onn J
15–16 March 2021, 14 April 2021

10 May 2021

Judgment reserved.

Chan Seng Onn J:

1 In this suit, the plaintiff, Teo Yong Soon (“Teo”), claims against the defendant, Kwan Yuen Heng (“Kwan”), in respect of several interest-free loans extended to the defendant on seven occasions totalling \$1,621,000.00.¹

2 Kwan’s main defence is that any loans allegedly advanced are unenforceable under s 14(2) of the Moneylenders Act (Cap 188, 2010 Rev Ed) (“MLA”) as Teo is an unlicensed moneylender and/or is operating as an agent of an unlicensed moneylender.² While Kwan admits to borrowing \$550,000.00 from Teo, he claims to have made a total payment of \$1,497,000.00 in cash to

¹ Plaintiff’s closing submissions dated 30 March 2021 (“PCS1”) at paras 4 and 47.

² Defendant’s closing submissions dated 30 March 2021 (“DCS1”) at paras 22 and 25.

Teo.³ He also claims that the other alleged interest-free loans are Teo’s computation of the compounded interest against him.⁴

3 This is an acrimonious dispute where the versions of events offered by both parties are wildly different. While Teo maintains that he treated Kwan as a “brother” and his relationship with him at the time was better than that with his siblings,⁵ Kwan asserts that Teo had threatened him repeatedly and caused “fear, worries and frantic disillusion[s]” to him and his family.⁶ It falls to this court to determine which of these disparate versions of events is true.

Facts

4 Teo started work as an odd job labourer for several years before starting his business in renovation, construction and goods trading.⁷ His highest education level was primary school.

5 Kwan works in the finance industry.⁸ He has a master’s degree in accountancy.

6 It is undisputed that the parties knew each other from 1997 and became family friends.⁹ Aside from being friends for more than 20 years, the parties also had several commercial dealings with each other.

³ DCS1 at para 1.

⁴ DCS1 at para 10.

⁵ Transcript (15 March 2021) at pp 36, 42, 44, 47, 77.

⁶ DCS1 at p 1.

⁷ Bundle of Affidavits of Evidence-in-Chief Volume 1 (“1PBAEIC”) at p 3.

⁸ Transcript (16 March 2021) at p 20.

⁹ Transcript (15 March 2021) at p 36; Transcript (16 March 2021) at p 83.

7 Kwan had engaged Teo to carry out renovation works on three of his properties: an apartment at Tanjong Rhu in 1999, an apartment in Sentosa in 2007 and a commercial property at The Alexcier in Alexandra Road in 2008.¹⁰

8 Teo and his wife made an investment of \$200,000.00 with Kwan in 2008.¹¹ Within one year, Kwan issued Teo and his wife two cheques of \$3,750.00 and \$285,600.00 in return for their investment.¹²

9 In 2013, an arrangement was reached where Teo would try to broker property deals for Kwan's clients in order to earn commissions.¹³ Teo claims that he was told by Kwan that Kwan had been appointed as a proxy for high net worth individuals and was instructed to acquire hotels and resorts in the region.¹⁴ A company set up by Kwan therefore appointed Teo as the agent under a Buyer Agency Agreement dated 31 May 2017.¹⁵ Teo brought Kwan and Kwan's clients to view properties in Batam, Indonesia, and Vietnam.¹⁶ However, these property deals failed.¹⁷ All the properties for acquisition proposed by Teo were rejected by Kwan.¹⁸

¹⁰ Transcript (15 March 2021) at p 14.

¹¹ Transcript (15 March 2021) at pp 16, 17.

¹² Transcript (15 March 2021) at pp 19, 22.

¹³ 1PBAEIC at pp 4 to 5; Transcript (15 March 2021) at p 30.

¹⁴ 1PBAEIC at p 4.

¹⁵ 1PBAEIC at p 373.

¹⁶ Defence (Amendment No. 1) dated 20 March 2020 at para 9; Transcript (15 April 2021) at pp 27, 35.

¹⁷ Transcript (15 April 2021) at p 27; Defence (Amendment No. 1) dated 20 March 2020 at para 9.

¹⁸ Transcript (15 April 2021) at p 27; 1PBAEIC at p 10.

The parties' cases

10 Teo's case is that he treated Kwan akin to his own brother and considered him his closest friend.¹⁹ It was on this basis that he loaned a total sum of \$1,621,000.00 interest-free to Kwan between 13 November 2014 and 20 October 2017. In support of this, Teo provides bank statements showing cash withdrawals from Teo and/or his wife's bank account (save for Loan No. 3 where Teo clarified that \$2,000.00 in cash had been added to the cash withdrawal of \$53,000.00 from the bank account).²⁰ The details of the seven loans all given in cash are as follows:²¹

Loan No.	Date of loan	Amount loaned given in cash to Kwan	Date of withdrawal from bank account	Cash amount withdrawn from bank account
1	13/11/2014	\$500,000.00	13/11/2014	\$500,000.00
2	16/01/2015	\$400,000.00	16/01/2015	\$400,000.00
3	30/06/2015	\$55,000.00	30/06/2015	\$53,000.00 + \$2,000 (in cash)
4	11/07/2015	\$245,000.00	11/07/2015	\$245,000.00
5	17/12/2015	\$15,000.00	17/12/2015	\$15,000.00
6	07/09/2016	\$372,000.00	07/09/2016	\$372,000.00
7	20/10/2017	\$34,000.00	20/10/2017	\$34,000.00

¹⁹ PCS1 at para 11.

²⁰ 1PBAEIC at p 8.

²¹ PCS1 at para 47; 1PBAEIC at pp 28, 33 to 48, 56.

Total	\$1,621,000.00		\$1,619,000.000 (withdrawn from bank account) + \$2,000 (in cash) = \$1,621,000.00
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11 For most of the loans, the reason Kwan gave was that he needed to repay investors who had pulled out of the projects he was working on.²² The only exceptions were (a) the fifth loan when Kwan told Teo that he needed the money to pay his employee's salaries; and (b) the seventh loan when Kwan told Teo that he needed the money to pay legal costs.²³ All the loan monies were given in cash because Kwan had specifically requested for it.²⁴ There was never any documentation for the loans or any loan agreements.²⁵

12 Throughout the duration that Teo was giving loans to Kwan, Kwan gave numerous assurances that he would immediately make repayment once he found new investors, liquidated his properties or completed a particular project.²⁶ According to Teo, he was convinced that Kwan could repay his loans because of the following:

- (a) Kwan told Teo that he had set up a company, Suisse Landbank (S) Pte Ltd ("Suisse Landbank"), to undertake the acquisition of hotels and resorts in Vietnam for a buyer.²⁷

²² PCS1 at paras 12, 16, 19, 21.

²³ PCS1 at paras 22, 34.

²⁴ PCS1 at para 65.

²⁵ PCS1 at para 15.

²⁶ PCS1 at paras 13, 22.

²⁷ PCS1 at para 32; 1PBAEIC at p 12 (para 52).

(b) Kwan showed Teo documents incorporating Suisse Landbank showing that it had a paid-up capital of \$2,000,000.00 invested from his high net worth investor.²⁸

(c) By appointing Teo as an agent (see [9] above), this arrangement would allow Teo to make millions of dollars in commissions.²⁹

(d) Kwan showed Teo an email enclosing a letter from Citibank stating that funds belonging to his investors, amounting to USD\$5,000,000,000.00, had been transferred to a Philippine Citibank account which would be used for the construction of hotels and resorts.³⁰

13 Kwan also issued a total of six cash cheques to Teo totalling \$1,621,000.00 but told Teo not to bank in the cash cheques until he was informed that there were sufficient funds in Kwan's account.³¹ Teo testified that Kwan gave these cash cheques to him in repayment of the loans totalling \$1,621,000.³² The details of the cash cheques are as follows:

Cheque No.	Date	Amount
1	13/11/2016	\$300,000.00
2	18/07/2017	\$10,000.00
3	22/07/2017	\$77,000.00
4	12/10/2017	\$757,000.00

²⁸ PCS1 at paras 33, 35.

²⁹ PCS1 at para 32.

³⁰ PCS1 at para 40.

³¹ PCS1 at paras 38, 39.

³² 1PBAEIC at pp 11 and 14; Transcript (15 March 2021) at pp 5 and 36.

5	10/11/2017	\$226,000.00
6	10/12/2017	\$251,000.00
Total		\$1,621,000.00

14 When Kwan continued to approach Teo for loans after end 2017, Teo informed Kwan that he was no longer able to extend any more loans to Kwan since he had no more reserve monies available.³³ At Kwan's insistence, Teo asked his Malaysian friends who were loan sharks to loan Kwan a sum of \$800,000.00 (the "Malaysian Loan").³⁴ Teo stood as guarantor for the Malaysian Loan and informed Kwan that Kwan needed to repay the Malaysian Loan since Teo would be held personally liable if he did not. From then on, Kwan stopped contacting Teo for loans. However, since Teo was worried about the Malaysian Loan, he continually updated Kwan about the status of the loans that were taken out.³⁵ Till date, Kwan has not made any repayment to Teo. It should be noted that Teo is not claiming anything in relation to the Malaysian Loan in this suit.

15 Kwan's case is that any loans allegedly advanced are unenforceable under s 14(2) of the MLA as Teo is an unlicensed moneylender and/or is operating as an agent of an unlicensed moneylender.³⁶ Kwan also disputes the quantum of the loans, that the loans were interest-free and that he made no repayment till date. While Kwan admits to borrowing \$550,000.00 from Teo, he denies the rest of Teo's alleged loans. For the first \$250,000.00 loan granted

³³ PCS1 at para 41; Transcript (15 March 2021) at p 67.

³⁴ PCS1 at para 42; Transcript (15 March 2021) at p 69.

³⁵ 1PBAEIC at pp 18 to 19.

³⁶ DCS1 at paras 22, 24 and 25.

in June 2015,³⁷ he claims that the interest was \$25,000.00 per month and that he paid the interest in cash to Teo at different locations dictated by Teo.³⁸ For the next \$300,000.00 loan in November 2015,³⁹ Kwan claims that the interest rate was higher at 15% per month and he only received \$245,000.00 after deducting the first month of interest and another \$10,000.00 that was taken by Teo as coffee money.⁴⁰

16 According to Kwan, the remaining loans were simply Teo's computation of the accumulated compounded interest against Kwan.⁴¹ Whenever Kwan did not have enough money to pay interest to Teo, Teo would purport to grant a new loan to him and compel Kwan to issue more cheques to Teo as collateral.⁴² These cheques were stipulated to be cash cheques.

17 Kwan claims that upon appointing Teo as the agent for his potential acquisition of hotels or resorts on behalf of his buyers, Teo expected Kwan to turn a blind eye while doing due diligence in the evaluation process and was enraged after repeated rejections by Kwan.⁴³ Upon Kwan's rejection of a project in Vietnam, Teo forced him to return all the loans and interest outstanding. Teo then continually threatened him and his family and even went down to his house.⁴⁴

³⁷ Transcript (16 March 2021) at p 60.

³⁸ Transcript (16 March 2021) at pp 60 and 65; 2PBAEIC at p 383.

³⁹ Transcript (16 March 2021) at pp 30 and 55.

⁴⁰ Transcript (16 March 2021) at p 60.

⁴¹ Transcript (16 March 2021) at p 103.

⁴² Transcript (16 March 2021) at p 63.

⁴³ Transcript (16 March 2021) at p 13.

⁴⁴ Bundle of Affidavits of Evidence-in-Chief Volume 2 ("2PBAEIC") at p 384; Transcript (16 March 2021) at p 14.

18 In total, Kwan claims to have repaid \$1,497,000.00 in cash to Teo.⁴⁵ The payments are as follows:⁴⁶

S/No	Date	Amount repaid
1	July to September 2015	\$75,000.00
2	December 2015	\$60,000.00
3	January 2016	\$120,000.00
4	February 2016	\$60,000.00
5	March 2016	\$23,200.00
6	April 2016	\$56,000.00
7	June 2016	\$63,000.00
8	July 2016	\$41,000.00
9	August 2016	\$56,000.00
10	September 2016	\$56,500.00
11	November 2016	\$61,500.00
12	December 2016	\$62,500.00
13	January 2017	\$63,000.00
14	February 2017	\$72,800.00
15	August 2017	\$139,500.00
16	April 2018	\$487,000.00
Total		\$1,497,000.00

⁴⁵ 2PBAEIC at p 382.

⁴⁶ 2PBAEIC at p 382.

Issues to be determined

19 Based on the parties' submissions, four main issues arise for my determination:

- (a) the quantum of the loans extended by Teo to Kwan;
- (b) whether the loans were interest-bearing;
- (c) whether Kwan made any repayment to Teo; and
- (d) whether Teo is an unlicensed moneylender under the MLA.

Issue 1: The quantum of the loans extended by Teo to Kwan

20 I turn first to determine the true quantum of the loans. While it is undisputed that Teo loaned at least \$550,000.00 to Kwan, parties dispute the total quantum of the loans. Teo submits that he had loaned to Kwan a total sum of \$1,621,000.00 on seven occasions. Kwan, however, submits that the total loan was only \$550,000.00 given on two occasions.

21 On the evidence before me, Teo's version of events is clearly more probable than Kwan's version of events for the following reasons.

22 First, I note that Teo's version of events is supported by objective documents adduced by Teo such as the bank statements of Teo and his wife, and the cash cheques (which I have set out at [13] above) issued by Kwan and given to Teo.⁴⁷ While the bank statements showing only cash withdrawals (totalling \$1,619,000.00) from Teo and/or his wife's bank account do not, *ipso facto*, show that the loans (totalling \$1,621,000.00) were given to Kwan, it

⁴⁷ Agreed Bundle of Documents, Volume 1 ("1AB") pp 7 to 28.

provides some support for the fact that the dates and quantum of the loans were not simply invented by Teo without any basis. The important evidence that points towards Kwan's actual receipt of these cash withdrawals (plus \$2,000 cash which Teo had in hand for Loan No. 3) is the subsequent issuance of cash cheques many months later by Kwan to Teo, the total sum of which very coincidentally matches the same total loan quantum of \$1,621,000.00 as claimed by Teo. The objective evidence here points towards an intended repayment by Kwan *vide* several post-dated cash cheques of an aggregate loan of \$1,621,000.00 that he had taken from Teo. These cash cheques could also be viewed as a form of assurance to Teo that the whole loan of \$1,621,000.00 would be repaid in due course once Kwan had found the money to fund his bank account to meet the liabilities of the cash cheques he had issued to Teo.

23 However, Kwan claims that this is simply a “backward construction of facts”.⁴⁸ He contends that since the date of the first cheque (*ie*, 13 November 2016) was two years after large sums of money had allegedly been loaned to Kwan, it is not possible for Teo to have loaned such large sums without asking for any collateral or agreement at that time but only two years later.⁴⁹ In my view, this does not logically follow. It is not unbelievable that Teo did not ask for any written loan agreement or documentation initially because of the goodwill Teo had towards Kwan. It is Teo's consistent and uncontradicted evidence that he treated Kwan as a very close friend that he had known for over twenty years and had regarded Kwan as his “brother”. Further, I accept that he had grounds to be assured of Kwan's creditworthiness because Kwan owned multiple properties, paid Teo to renovate his properties, invested for Teo's wife successfully and was even proxy for several high net worth investors(see [7]–

⁴⁸ Transcript (16 March 2021) at p 15.

⁴⁹ DCS1 at para 4.

[9] above). Therefore, the fact that the total sum of all the cash cheques received by Teo from Kwan as intended repayment or assurance of repayment is the same as Teo's claim as to the total loan quantum [given by him], namely \$1,621,000.00, is probative of Teo's version of events.

24 Second, on Teo's version of events, he loaned a sum of \$245,000.00 on 11 July 2015 to Kwan (see Loan No. 4 in the table provided at [10]). Teo submits that, in this particular instance, Kwan deposited the cash into his Citibank account two days later on 13 July 2015. Kwan's Citibank account statement shows a previous balance of \$3,174.31 on 1 July 2015 and a cash deposit of \$250,000.00 on 13 July 2015.⁵⁰ As such, this lends credence to Teo's version of events.

25 When cross-examined, Kwan could not proffer a good explanation for this cash deposit. On his own version of events, there was only one loan of \$250,000.00 given in June 2015 and another loan of \$300,000.00 given in November 2015 (see [15] above). Interestingly, Kwan does not assert that he had kept the \$250,000.00 given in June 2015 and only deposited it on 13 July 2015. Instead, he claims that the \$250,000.00 loan given in June 2015 was spent on salaries and payments for housing loans, and the cash deposit on 13 July 2015 was not from Teo.⁵¹ But he does not explain how he had gotten such a huge sum of money at that time or say who he had borrowed it from. On balance, I accept that it is more likely that the \$250,000.00 deposit came from Teo's Loan No. 4 of \$245,000.00 given in cash to Kwan two days earlier. As such, this is corroborative of Teo's version of events.

⁵⁰ Agreed Bundle of Documents, Volume 2 ("2AB") at p 378.

⁵¹ Transcript (16 March 2021) at pp 88 to 90.

26 Third, Kwan’s own version of events is riddled with inconsistencies. It is contradicted by his own police report against Teo dated 25 June 2018.⁵² In that report, he stated that the first time he borrowed money from Teo was “one and a half year[s] ago sometime in end 2016” and the sum was \$200,000.00. He also stated that “[on] and off, I still borrowed money from him and in total I have received a total of SGD\$800,000.00 from him”. However, on Kwan’s own version of events, his first loan from Teo was \$250,000.00 in June 2015 and he maintains that he had only taken two loans from Teo which amount to \$550,000.00. Not only are there clear contradictions, what he stated in his police report clearly suggests that there were other loans given to him by Teo other than the two loans he admits to.

27 These inconsistencies are stark especially since Kwan claims to have an excel spreadsheet recording the cash loans given to him and the repayments in cash.⁵³ As such, there should be no reason for him to give an inaccurate version of the loans and repayments to the police when he could have easily checked and/or made the spreadsheet available to the police to support his allegations.

28 In his police report dated 25 June 2018, he said the following:

On and off, I still borrowed money from him and in total I have received a total of SGD\$800,000 from him. Till date, I have paid an interest amounting to about SGD\$500,000. In addition, I have paid him a lump sum of SGD\$481,000 on 08/04/2018. *In total, I have repaid over SGD\$900,000 to him.* However, he

⁵² 2AB at pp 668 to 669.

⁵³ Transcript (16 March 2021) at pp 26 to 27.

demanded me to pay SGD\$4.5 million. In addition, *he forced me to write him a cheque amounting to \$500,000 for interest.*

[emphasis added]

29 This again materially contradicts Kwan’s version of events. According to his account before the court, he had paid a total of \$1,497,000.00 by April 2018 (see [18] above). Yet, he informed the police that he had in total repaid over \$900,000.00 which is substantially lower than the sum that he now claims to have repaid. Additionally, while Kwan claimed in his police report to have been forced to write a \$500,000.00 cheque to Teo, Teo has not adduced or included any cheque of \$500,000.00 in making out his claim (see [13] above). If Teo had indeed received the cheque, there is no reason why Teo would not have produced the cheque and increased his claim amount.

30 Under cross-examination, Kwan’s answer to these inconsistencies is that he was emotional at the time of making the police report because he was worried about his family since “Teo and his people [were] already at [his] house” and his wife had called him and was crying very badly.⁵⁴ However, I find this explanation a convenient afterthought and unbelievable. In the police report, Kwan stated the following:

As long as I don’t pay him, he will threaten that he will send people down to my house, send letters to my neighbors, reminding me that he knows where my daughter study and when my wife leave the house. The latest threat that he gave me

⁵⁴ Transcript (16 March 2021) at p 32.

was that he informed me that it is very cheap to get people down from Malaysia and do something to me.

I would also like to state that he has not harassed my house, my family members and my neighbors as of now.

31 It is inconceivable that, if Kwan’s wife had truly called him and was crying very badly with Teo outside the door, Kwan would have withheld that crucial piece of information from the police and not asked for immediate assistance. His use of the words “the latest threat he gave me” implied that up to the material time Kwan was making the police report, this was the most egregious act by Teo. He also clearly stated of his own volition in his police report that there was no harassment of his house or family members up to that point in time.

32 Aside from the police report, I note that inconsistencies also exist in Kwan’s version of events in his defence dated 9 September 2019, his affidavit evidence-in-chief dated 1 September 2020 and his evidence at trial. In his defence, he claims that the actual amounts borrowed were \$225,000.00 in May 2016 and \$245,000.00 in November 2016. In his affidavit evidence-in-chief, he claims that the actual amounts borrowed were \$250,000.00 in June 2015 and \$245,000.00 in November 2015. At trial, he claims that the actual amounts borrowed were \$250,000.00 in June 2015 and \$300,000.00 in November 2015.

33 When cross-examined on these inconsistencies, Kwan explains that while he borrowed \$250,000.00 in June 2015 and \$300,000.00 in November 2015, he only received cash of \$225,000.00 in June 2015 and \$245,000.00 in November 2015. For the June 2015 loan, Teo deducted the first month of interest of \$25,000.00 from the loan amount of \$250,000.00. For the November 2015 loan, Teo deducted the first month of interest of \$45,000.00 and

\$10,000.00 as coffee money for the loan amount of \$300,000.00.⁵⁵ However, if that is the case, it is inexplicable why Kwan recorded the sum of \$250,000.00 for the June 2015 loan (including the \$25,000.00 interest) but recorded the sum of \$245,000.00 for the November 2015 loan (excluding the \$45,000.00 interest and \$10,000.00 coffee money) in his affidavit evidence-in-chief. In the light of his background in the finance industry and given that Kwan purportedly has an excel sheet recording all these transactions, I find these inconsistencies and his explanations for the inconsistencies damaging to his credibility.

34 Given the foregoing, I find on a balance of probabilities that Teo's version of events is true and that Teo had granted seven loans (as set out at [10] above) with an aggregate amount of \$1,621,000.00 to Kwan (the "Loans").

Issue 2: Whether the loans were interest-bearing

35 I turn next to the issue of whether the Loans were interest-bearing. This has a significant bearing on Kwan's main defence that the Loans are unenforceable under the MLA. Teo maintains that the Loans were given on an interest-free basis while Kwan asserts that he had to pay interest for the Loans.

36 On balance, I accept Teo's submission that the Loans were given on an interest-free basis.

37 Kwan primarily relies on a series of WhatsApp messages with Teo to assert that Teo had continually demanded for interest payments.⁵⁶ These messages show Teo providing periodic updates on what seems to be the

⁵⁵ Transcript (16 March 2021) at pp 55 to 56.

⁵⁶ DCS1 at paras 12 to 13; 2AB at pp 524 to 525, 528, 530, 582.

quantum of an outstanding loan and details of required interest payments to Kwan. An example of the content of one such message from Teo is as follows:⁵⁷

Bro your account from 10th to 13rd is S\$ 131,800 for
18th : S\$3400, 22nd: S\$7700 and 27th : S\$13,000.
Please try to meet me up so that if anything I still around
if not I don't know how for other people ac la. Thanks

38 Such a message, seen in isolation, may suggest that Teo was seeking interest payments from Kwan. For instance, the above message could be interpreted as Teo informing Kwan that his account balance outstanding was \$131,800.00 and that Kwan needed to pay interest payments of \$3,400.00, \$7,700.00 and \$13,000.00 on those specified dates. But as I explain below, that is far from the true picture.

39 While Teo does not dispute that he had sent those messages, his case is that the content of all those messages were from the Malaysian loan sharks in relation to the Malaysian Loan.⁵⁸ It was Kwan who requested Teo to relay the information from the Malaysian loan sharks to him in written form through WhatsApp messages. Since the Malaysian loan sharks were Teo's friends and Teo acted as a guarantor for the Malaysian Loan, Teo's explanation is that he was only acting as a middleman between Kwan and the Malaysian loan sharks.

40 I note that Kwan disputes the existence of the Malaysian Loan. Kwan claims that he has never been introduced by Teo to any Malaysian loan sharks.⁵⁹ He denies borrowing money from any such Malaysian party. He also alleges that if any Malaysian loan sharks existed, it was Teo who guaranteed or took on the loan himself and marked up the interest to earn the difference for himself.

⁵⁷ 2AB at p 526.

⁵⁸ Transcript (15 March 2021) at p 56.

⁵⁹ DCS1 at para 13.

Alternatively, Teo could have been working together with the Malaysian loan sharks.⁶⁰

41 However, on a closer scrutiny of the WhatsApp messages, Kwan must have known that he had borrowed money from a third party. In Teo's messages to Kwan, there were numerous references to a third party whom Teo had to speak to on Kwan's behalf.⁶¹ At multiple points, Teo referred to the fact that he was put in a very difficult position because Kwan was not making repayments when he was supposed to.⁶² Most explicitly, in response to one of the messages when Kwan wrote "I know you as my very good friend and for that I will not play you out. [J]ust needed you to let me overcome this hurdle so that I can repay whatever I owe you", Teo immediately replied "[n]ot me you owe is them you owe and they are not as good like me".⁶³ In the face of all this contrary evidence, I cannot accept Kwan's assertions that he did not know of the existence of any third party. It is clear to me that the third party in the WhatsApp messages being referred to was the Malaysian loan sharks.

42 Importantly, it is conceded by Kwan that all the WhatsApp messages adduced by him were during end 2017 and 2018.⁶⁴ These WhatsApp messages were sent *after* the seventh and final loan of \$34,000.00 was given on 20 October 2017 to Kwan (see above at [10]). Teo submits that the fact that there were no WhatsApp messages showing any demands by him for interest payments *before* end 2017 (even though the first loan of \$500,000 was given by

⁶⁰ DCS1 at para 20.

⁶¹ 2AB at p532.

⁶² 2AB at pp 543, 550, 564, 571.

⁶³ 2AB at p 577.

⁶⁴ Transcript (16 March 2021) at p 92.

him on 13 November 2014), shows that the WhatsApp messages only related to the Malaysian Loan and not the Loans.⁶⁵ Kwan's explanation for this is that most of the communications between Kwan and Teo before end 2017 were done through phone calls and while there were similar messages, he was not able to recover them.⁶⁶

43 I accept Teo's submission on this point. If Teo had charged interest beginning with the first loan in 2014, there would likely be WhatsApp messages between Teo and Kwan showing Teo constantly reminding Kwan of the repayment dates and amounts of interest accruing from time to time as Kwan borrowed more and more money from Teo. There is no explanation given by Kwan as to why Teo would change his dominant mode of communication from phone calls before end 2017 to WhatsApp messages after end 2017. If Kwan's case is accepted, it stands to reason that there must have been some similar messages requesting for interest payments after November 2014. However, Kwan has not adduced any such evidence. It is conspicuous that only messages for end 2017 and 2018 were adduced. Further, I find it hard to accept Kwan's assertion that he was not able to recover messages from 2015 to end 2017. From the words "TODAY" or "YESTERDAY" present on the screenshots of many of the WhatsApp messages, it is apparent that Kwan had the presence of mind to screenshot the WhatsApp messages on the day the messages were sent to him or the next day.⁶⁷ This is confirmed by Kwan under cross-examination.⁶⁸ Thus, it is more likely that Teo's explanation is true. On Teo's case, the answer to this is simply that there were no such messages prior to end 2017 either stating the

⁶⁵ PCS1 at para 111.

⁶⁶ Transcript (16 March 2021) at p 61.

⁶⁷ 2AB at pp 524, 526, 530, 563, 579, 582, 583, 587.

⁶⁸ Transcript (16 March 2021) at pp 91 to 92.

amount or demanding payment of the accrued interest because the Malaysian Loan had not come into existence at that time and the Loans to Kwan were given interest-free.

44 It is also telling that the figures in the WhatsApp messages do not correspond at all to either parties' account of the quantum of the various loans extended at various times from Teo to Kwan. This makes Teo's case more believable since the seventh and final loan took place on 20 October 2017 (see above at [10]) and the Malaysian Loan came into existence only after that when Teo no longer had money to lend to Kwan.

45 In several of the messages, Teo made references to his position as guarantor for the Malaysian Loan. In one message, he said "Bro look at it. I'm still better than your uncle tat is because **I'm putting my neck for you till today**".⁶⁹ In another message, he said "You told me you can return all then you said 50% then now notting. Bro I really can't thinks a way to tell them" and "I just getting [f—] from them and they have just said that on Monday wanted to have a meeting with me. Bro I don't what they up too. Please please please one thousands please help me up this time".⁷⁰ These messages undermine Kwan's case that the messages were evidence of Teo chasing Kwan for interest payments for the Loans.

46 Finally, I note that Teo is able to give detailed and vivid evidence as to how the transaction relating to the Malaysian Loan took place. On questioning, he recounts that cash of \$800,000.00 constituting the Malaysian Loan was handed over by the Malaysians who were on motorcycles behind the hawker

⁶⁹ 2AB at p 592.

⁷⁰ 2AB at p 571.

centre near the Singapore Customs to Kwan through his side of the window.⁷¹ Kwan and Teo were at that time seated in the car. After Kwan passed to them 12 pieces of cheques bearing his signature, the Malaysians looked at them before riding off subsequently. I note that these 12 pieces of cheques correspond to one of Teo's WhatsApp messages to Kwan stating "Bring along your chq book which have more than 12 pcs of chq. Also copy both you and Cat I.c fort and back total 4 sets each for both of you. Ask Cat to write her own name, ic number and sign by her self including you do the same. Thanks".⁷² It is clear that this request was in the context of the documents required for the Malaysian Loan. It is inconceivable that Teo would suddenly request for such detailed documentation when it is Kwan's own evidence that the loans taken by him in June and November 2015 were given in cash with no documentation. It is unlikely that Teo would suddenly request for such documentation in 2018 for no reason. However, Teo's WhatsApp messages can be adequately explained by the existence of the Malaysian loan sharks since the granting of the Malaysian Loan by them would very likely be conditional upon such documentation.

47 In the premises, I accept Teo's evidence that the Malaysian Loan exists and are separate from the Loans. The WhatsApp messages relied on by Kwan concern only the interest payments for the Malaysian Loan. They have nothing to do with Teo's Loans.

48 Apart from Teo's testimony that the Loans were interest-free, I also rely on the fact that the total principal sum for the Loans based on the relevant cash withdrawals (which total \$1,619,000.00) from Teo and/or his wife's bank

⁷¹ Transcript (15 March 2021) at pp 69 to 71.

⁷² 2AB at p 559.

account as stated in the bank statements *largely matched* the aggregate amount of the cash cheques (which total \$1,621,000.00) issued by Kwan and given to Teo as repayment or an assurance of repayment of the Loans. The difference of \$2,000.00 exists because Teo averred in his affidavit⁷³ that he withdrew \$53,000.00 cash by way of a cash cheque and added his own cash of \$2,000.00 to make up the third loan of \$53,000.00 that he granted to Kwan on 30 June 2015 (see [10]). This further demonstrates that the Loans were free of interest. If the Loans were interest-bearing, then the aggregate amount of the cash cheques issued by Kwan for repayment or assurance of repayment would have to be much greater than the total principal sum of the Loans based on the bank statements furnished by Teo, which is not the case.

49 Therefore, I find that Teo did not charge any interest for the Loans he gave to Teo.

Issue 3: Whether Kwan made any repayment to Teo

50 The only remaining factual issue is whether any repayment has been made by Kwan to Teo. Kwan claims that he has repaid a sum of \$1,497,000.00 in cash over 16 repayments (see [18] above) while Teo has maintained consistently that Kwan has not made any repayment till date (see [14] above). In such a situation, the court must rely on the trite principle that he who asserts a fact must prove it. The burden of proof lies upon Kwan to adduce evidence to corroborate his version of events.

51 After considering both parties' accounts, I find that Kwan has failed to show that he had made any repayments to Teo.

⁷³ 1PBAEIC at p 8.

52 Kwan relies on his bank account statements to show that he had withdrawn specific amounts and claims that those amounts had been repaid to Teo.⁷⁴ For the final alleged repayment of \$487,000.00 in April 2018, Kwan also relies on a WhatsApp message where he told Teo “the money I got immediately from the sales of the condo I immediately return and the fund didn’t even stay extra day in my account”.⁷⁵

53 However, none of these support his case. As I recognise (at [22] above), the presence of such bank statements do not show that the amounts withdrawn had in fact been paid to the recipient. There must be other corroborating evidence to show that. In so far as Kwan’s case is that the WhatsApp messages do show Teo’s demands for repayment, it bears noting that none of the figures in the WhatsApp messages actually match the amounts of Kwan’s alleged repayments (see [18] above).⁷⁶

54 As regards the particular WhatsApp message that Kwan relies on, I have found that all the WhatsApp messages relate to the Malaysian Loan and not the Loans. Therefore, this does not assist Kwan. Even with respect to this specific message, the reply to that message contradicts Kwan’s case. In response, Teo replied as follows:

Ya I know this is what we have Agree if not I will not going around ask the Casio side to load you. But now it look like is not work of your plan that you have. Which I have ask you and you said

⁷⁴ 2PBAEIC at pp 394 to 396.

⁷⁵ 2PBAEIC at p 398.

⁷⁶ 2AB at pp 524 to 530.

100% no problem. Bro you have keep promise me and at the end is notting happen.

Why not in this way your house or condo just sell to *them* so that you have no problem I also no problem right. Went you do that I thanks you 1 million time.

[emphasis added]

55 Teo's reply clearly suggests that the repayment of \$487,000.00 was made not to Teo but to the Malaysian loan sharks and even that was not enough. Therefore, Teo recommended to Kwan to sell another one of his properties so that Kwan could repay the Malaysian Loan. The two messages, viewed together, do not support Kwan's contention that he had repaid Teo a sum of \$1,497,000.00 in cash over 16 repayments.

56 For completeness, I note that Kwan's police report mentions that he had paid about \$500,000.00 in interest and another lump sum of \$481,000.00 to Teo (see [27] above). However, Kwan has not adduced any evidence to corroborate those assertions. Even Kwan's account of his own repayments does not include either sum of \$500,000.00 or \$481,000.00 (see [18] above). While the latter sum of \$481,000.00 may plausibly be a reference to the sum of \$487,000.00 from Kwan's sale of his property, I have earlier found that it was made in repayment of the Malaysian Loan and not the Loans.

57 In the premises, I find that Kwan has not shown that he has made any repayment to Teo for the Loans.

Issue 4: Whether Teo is an unlicensed moneylender under the MLA

58 Given my factual findings above, I turn now to address the final issue on whether Teo is an unlicensed moneylender under the MLA. It is trite that the MLA prohibits the business of moneylending rather than the mere act of lending

money. It was intended to be “... a scheme of social legislation designed to regulate rapacious and predatory conduct by unscrupulous unlicensed moneylenders” (see *City Hardware Pte Ltd v Kenrich Electronics Pte Ltd* [2005] 1 SLR(R) 733 (“*City Hardware*”) at [47]).

59 Section 14(2) of the MLA sets out the unenforceability of loans granted by unlicensed moneylenders:

(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 a 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.

60 The terms “unlicensed moneylender” and “moneylender” are defined in s 2 of the MLA as follows:

“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.

61 The statutory presumption of a moneylender is stated in s 3 of the MLA:

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.

62 As the Court of Appeal in *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 summarised at [75], the applicable principles in relation to s 14(2) of the MLA are as follows:

(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 license 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.

63 The application of the presumption in s 3 of the MLA was explained by Belinda Ang J (as she then was) in *Mak Chik Lun and others v Loh Kim Her and others and another action* [2003] 4 SLR(R) 338 at [11]–[12]:

11 To prove that a person is in the business of moneylending, the easiest way is to show that the rebuttable presumption in s 3 of the Act is applicable to the facts of the case. If the borrower can show that a person lends a sum of money in consideration of a larger sum being repaid, the person is presumed to be a moneylender. Once a *prima facie* presumption is raised, it is for the lender to rebut the presumption by showing that it does not apply. He has to bring himself within one of the exceptions in s 2 or show that he is not a moneylender within the terms of the definition in s 2. In rebutting the presumption, the claimant, for instance, has to show that there was neither system nor continuity in moneylending. The local test of whether there is a business of moneylending is whether there was a system and continuity in the transactions. If no system or continuity is displayed, the alternative test (the [*Litchfield v Dreyfus* [1906] 1 KB 584 (“*Litchfield*”)] test) of whether the alleged moneylender is one

who is ready and willing to lend to all and sundry provided that they are from his point of view eligible is used ...

12 In the case where the borrower is unable to raise the presumption in s 3, the burden is then on him to prove the business of moneylending through the two tests mentioned.

64 As I have found that the Loans were interest-free (at [49] above), Kwan cannot rely on the presumption in s 3 of the MLA. The burden is thus on Kwan to prove that Teo is in the business of moneylending by either showing that “there was a system and continuity in the transactions” or that Teo is “one who is ready and willing to lend to all and sundry provided that they are from his point of view eligible”.

65 In considering whether there is a “system or continuity in the transactions”, the court asks whether the loans are part of an ongoing and routine series of transactions made by the alleged moneylender (see *Neville, Guy v Andrla, Dominic* [2017] SGHC 295 at [15(b)]). It is not intended to apply to persons “who lend money as an incident of another business or to a few old friends by way of friendship” (see *City Hardware* at [19], citing *Litchfield* at 590). The following guidance from Yong Pung How CJ (as he then was) in *Ng Kum Peng v PP* [1995] 2 SLR(R) 900 at [38] is instructive:

All the authorities indicate that there *must be more than occasional loans*. This is what is meant by continuity. *The loans must be part of an ongoing and routine series of transactions made by the alleged moneylender*. The requirement of system on the other hand has not been explicitly clarified. But it is evident that the *need for system shows that there must be an organised scheme of moneylending*. Some indicators of such a scheme would be fixed rates, the rate of interest being dependent on the creditworthiness and past conduct of the borrower and a clear and definite repayment plan. Such factors

distinguish organised moneylending from occasional loans,
which would be outside the mischief of the Act.

[emphasis added]

66 To my mind, it is clear that there is no system to the Loans. Not only is there no interest charged, there is no evidence of Teo constantly hounding Kwan to make repayments according to any definite repayment plan for the Loans. In terms of continuity, the existence of a number of loans does not necessarily mean that the lender is a moneylender (see *Ding Leng Kong v Mok Kwong Yue and others* [2003] 4 SLR(R) 637 at [52]). Thus, just because the Loans were made on seven occasions (see [10] above), this does not necessarily mean that there is the requisite degree of continuity to make Teo a moneylender. The facts do not show an ongoing and routine series of transactions. To the contrary, they show that the Loans were given occasionally by Teo to Kwan as per Kwan’s requests on account of their very close friendship.

67 Since there is no system or continuity in the transactions, I turn to consider whether Teo is “one who is ready and willing to lend to all and sundry provided that they are from his point of view eligible”. Teo has given evidence that while he has lent small sums of \$1,000.00 to \$2,000.00 to his friends, workers and subcontractors, he has not charged interest and has even forgiven their debts if they did not repay him.⁷⁷ He has not lent more than \$2,000.00 to \$3,000.00 to them⁷⁸ Kwan has not adduced any evidence to show that Teo has been always willing to lend to all and sundry so long as they are eligible. Since Teo’s evidence on this point is uncontradicted, I accept that apart from Kwan, Teo had lent money occasionally to his friends, workers and subcontractors but

⁷⁷ Transcript (16 March 2021) at p 4.

⁷⁸ Transcript (16 March 2021) at p 4.

he is not one who can be described as “ready and willing to lend to all and sundry provided that they are from his point of view eligible”.

68 For the foregoing reasons, I find that Teo is not an unlicensed moneylender under the MLA. As such, the Loans are enforceable as against Kwan.

69 I note that Kwan has also raised s 14(3A)(a) of the MLA to argue that Teo had assisted in a contravention of s 5(1) of the MLA by collecting or demanding payments of a loan on behalf of a person whom Teo knows or has reasonable grounds to believe is carrying a business in contravention of s 5(1) of the MLA.⁷⁹ As these provisions deal with criminal liability, they are not relevant to the dispute before me. I say no more on this.

Judgment sum and interest

70 In the circumstances, I grant Teo judgment for the sum of \$1,621,000.00 with the usual interest from the date of the judgment to the date of payment.

71 I will hear the parties on costs if these cannot be agreed.

Chan Seng Onn
Judge of the High Court

Uthayasurian s/o Sidambaram (Phoenix Law Corporation) for the
plaintiff;

⁷⁹ DCS1 at para 24.

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The defendant in person.