

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

[2021] SGHC 175

Suit No 743 of 2019

Between

Tan Chin Hock

... Plaintiff

And

Teo Cher Koon

... Defendant

Suit 1089 of 2020

Between

Tan Thiam Chye

... Plaintiff

And

Tan Chin Hock

... Defendant

JUDGMENT

[Contract] — [Formation]
[Tort] — [Misrepresentation]

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Tan Chin Hock
v
Teo Cher Koon and another suit

[2021] SGHC 175

General Division of the High Court — Suit No 743 of 2019 and Suit No 1089 of 2020

Lai Siu Chiu SJ

22–26 Feb, 8–12, 22 March, 4 June 2021

12 July 2021

Judgment reserved.

Lai Siu Chiu SJ:

1 Both these cases turn on one question: Why did Tan Thiam Chye transfer S\$2,314,041.39 (“the Sum”) to Tan Chin Hock, and other persons as directed by Tan Chin Hock, in November 2014?

2 In Suit 743 of 2019 (“Suit 743”), Tan Chin Hock (“TCH”) who is the plaintiff says that Tan Thiam Chye (“TTC”) made the transfer on the instructions of Teo Cher Koon (“Teo”), as partial compensation to TCH for his investment losses pursuant to an indemnity given by Teo. TCH now claims the balance sum of S\$2,732,149.61 from the defendant Teo.¹ He also claims damages for alleged misrepresentations made by Teo.

¹ Tan Chin Hock’s Statement of Claim (Amendment No. 1) for Suit 743 dated 28 January 2020 (“TCH SOC”) at para 22.

3 In Suit 1089 of 2020 (“Suit 1089”), TTC as the plaintiff says that he lent the Sum to TCH who failed to repay him on the due date of 13 August 2015. He sues TCH for repayment of the loan.

The facts

The parties

4 Teo is the managing-director and president of ISDN Holdings Limited (“ISDN”), a company listed on the Singapore Stock Exchange (“SGX”).² TCH describes himself as a “businessman by occupation”, and an “investor in the stock market and various business ventures” for “the last 20 years or so”.³ TTC is a businessman specialising in the import and export of foodstuffs. He first met Teo in or around 2010 in an event organised by ISDN.⁴

5 While they are not parties to the present suits, the two other key persons involved are Goh Yeu Toh (“GYT”) and Goh Yeo Hwa (“GYH”). GYH is GYT’s younger brother.⁵ GYT was previously a director of a public company, Wee Hur Holdings Limited (“Wee Hur”), although he was no longer one at the time of the trial.⁶ GYH is a shareholder of Wee Hur and also its executive director and co-founder.⁷ GYH was introduced to Teo and TTC by TCH.⁸

² Teo’s Affidavit-of-Evidence-in-Chief (“AEIC”) for Suit 743 dated 21 January 2021 (“TCK 743 AEIC”) at para 1.

³ Tan Chin Hock’s AEIC for Suit 743 dated 21 January 2021 (“TCH 743 AEIC”) at para 8.

⁴ Tan Thiam Chye’s AEIC for Suit 743 dated 21 January 2021 (“TTC 743 AEIC”) at paras 1 and 3; Transcript, 26 February 2021 at pp 464, 477.

⁵ Transcript, 12 March 2021 at p 459, lines 2–4.

⁶ Transcript, 12 March 2021 at p 458 line 22–p 459 line 1.

⁷ Transcript, 24 February 2021 at p 275, lines 4–8 and 23–25.

⁸ Transcript, 24 February 2021 at p 281, lines 16–24.

Background to the dispute

6 Teo and TTC were introduced to TCH in 2012 through mutual acquaintances via a meeting at the Riverview Hotel (“the Hotel”). From 2012 to 2013, the three of them would meet several times a week usually at the Hotel. On most occasions, a few of their business associates would join the meetings. During these meetings, TCH claims he was “frequently briefed” about Teo’s plans for ISDN, including expansion overseas.⁹

7 In late 2012, TCH was introduced to a potential investment opportunity involving a coal mine company in Myanmar, by one Sng Thiam Hock (“Sng”) a broker with DMG & Partners. The coal mine company was Tun Thwin Mining Co Ltd (“Tun Thwin Mining”). Sng told TCH that Tun Thwin Mining was an excellent company with good coal mines and was looking for investors to help them with a potential IPO. TCH informed Teo in turn of this opportunity – Teo requested to go to Myanmar with TCH to meet Tun Thwin Mining.

January to March 2013: The Myanmar trips, placements, and Married Deals

8 On or about 8 January 2013, TCH, GYH (then a director of Wee Hur), and some of their associates made a three-day trip to Myanmar to visit Tun Thwin Mining to explore the viability of a coal-related energy venture (the “Myanmar Energy Project”).¹⁰

9 On 14 March 2013, ISDN announced that it had entered into a private placement agreement with UOB Kay Hian Pte Ltd (“UOB Kay Hian”) to issue

⁹ TCH 743 AEIC at paras 9–11.

¹⁰ TCH 743 AEIC at paras 14–17; Transcript, 24 February 2021 at p 281, lines 5–15.

36 million placement shares at S\$0.24 per share (“First Placement”).¹¹ GYH and his family members subscribed to the First Placement.¹²

10 On 21 March 2013, Teo sold 26 million ISDN shares held by Assetraise Holdings Limited (“Assetraise”), a company that he beneficially owned. 14.5 million shares were transferred to GYT, in a deal negotiated by GYH (“the Goh Yeu Toh Deal”) while 11.5 million shares were transferred to TTC (“Tan Thiam Chye Deal”).¹³ The nature of these transactions (the “March 2013 Married Deals”) is disputed. Teo says that these were both genuine deals.¹⁴ TCH however claims that the deals were for Teo to “park” his ISDN shares with the Goh brothers and TTC so that it would be more convenient for Teo to sell the shares when the ISDN share price increased. TCH says he knew this because Teo had asked TCH’s broker to assist him.¹⁵

11 There was a second trip to Myanmar from 30 March to 1 April 2013, involving Teo, TCH and TTC.¹⁶ Teo says he found the Myanmar Energy Project “quite promising” and discussed funding for the project with TCH who suggested arranging a second share placement. ISDN announced on 31 March 2013 that it was halting the trade of ISDN shares.¹⁷ On 3 April 2013, ISDN announced that it had entered into another private placement agreement with

¹¹ TCH SOC at para 5; Agreed Bundle of Documents for Suit 743 (“1AB 743”) at p 17.

¹² Transcript, 24 February 2021 at p 282 line 19–p 283 line 10.

¹³ TCH 743 AEIC at para 23; Transcript, 24 February 2021 at pp 304–306.

¹⁴ TCK 743 AEIC at para 40.

¹⁵ TCH 743 AEIC at paras 21–22.

¹⁶ Transcript, 25 February 2021 at p 336; Transcript, 26 February 2021 at pp 568–569.

¹⁷ Transcript, 25 February 2021 at p 376, lines 5–12.

UOB Kay Hian to issue up to 23.73 million shares at S\$0.45 per share (“Second Placement”).¹⁸

April to June 2013: ISDN’s announcements

12 From April to June 2013, ISDN announced that on the following dates it and/or its subsidiaries, had entered into several Memorandums of Understanding (“MOU(s)”) and Joint Venture Agreements (“JVA(s)”):

(a) 5 April 2013: MOU dated 5 April 2013 between ISDN and China Huadian Engineering Co Ltd (“Huadian”) to collaborate on energy-related projects in Southeast Asia.¹⁹

(b) 3 May 2013: MOU dated 1 May 2013 between ISDN and its subsidiaries, and Tun Thwin Mining, to form a joint venture company to invest in, develop, construct and manage a coal-fired power plant in Myanmar (“Power Plant”), and to acquire concession rights for a Burmese coal mine (“the Coal Mine”).²⁰

(c) 22 May 2013: JVA dated 20 May 2013 between ISDN Myanmar Energy Pte Ltd, a wholly-owned subsidiary of ISDN, and Tun Thwin Mining, to form a joint venture company to acquire concession rights to the Coal Mine and develop it for coal production.²¹

(d) 1 June 2013: JVA dated 30 May 2013 between ISDN Myanmar Power Pte Ltd, a wholly-owned subsidiary of ISDN, and Tun Thwin

¹⁸ TCH 743 AEIC at para 30; 1AB 743 at p 52.

¹⁹ 1AB 743 at p 66.

²⁰ 1AB 743 at p 69.

²¹ 1AB 743 at p 73.

Mining, to form a joint venture company to engage in the business of investment, development, construction, operation and management of the Power Plant.²²

(e) 5 June 2013: MOU dated 4 June 2013 between ISDN and IDI Infrastructures Inc (“IDI”), to collaborate on energy projects in Southeast Asia.²³

13 ISDN’s share price increased during the period of the above announcements.²⁴ TCH testified that from February to September 2013, he and other associates who attended the meetings at the Hotel bought hundreds of millions of ISDN shares because Teo and TTC kept telling them “how good the company was”.²⁵ In July 2013, TCH and his associates bought close to 50 million shares with TCH being the third largest single buyer in that month.²⁶

September to December 2013: The penny stock crash

14 When the penny stock crash occurred around late September to early October 2013, ISDN’s share price began to drop.²⁷ According to TCH’s statement of claim in Suit 743, around late September 2013, he met with Teo and TTC on at least two occasions (the “September 2013 Meetings”). At the September 2013 Meetings, Teo allegedly made the following statements to TCH

²² 1AB 743 at p 77.

²³ 1AB 743 at pp 81–85.

²⁴ TCK 743 AEIC at para 49.

²⁵ Transcript, 22 February 2021 at p 97 line 19–p 98 line 4.

²⁶ Transcript, 22 February 2021 at p 90, lines 14–19; p 91, lines 14–24.

²⁷ TCK 743 AEIC at para 8; 1AB 743 at p 719.

to induce him to buy ISDN shares and prop up the share price so as not to jeopardise the Myanmar Energy Project:²⁸

- (a) ISDN needed more time to finalise the Myanmar Energy Project, which was near the verge of being finalised (“Representation 1”);
- (b) if the share price of ISDN continued to drop, then this may jeopardise the Myanmar Energy Project and the other expansion plans of ISDN (“Representation 2”);
- (c) due to the placement agreements, married deals and announcements made by ISDN, ISDN was a good investment prospect and its share price would rise once the Myanmar Energy Project was concluded (“Representation 3”);
- (d) TCH would be able to sell his ISDN shares and liquidate his investment once the Myanmar Energy Project had concluded and the ISDN share price increased (“Representation 4”);
- (e) if TCH should suffer any loss from his investment in ISDN, Teo promised to personally make good those losses and hold TCH “harmless for any losses” he might suffer as a result of investing in ISDN shares (the “Alleged Indemnity”); and
- (f) it was within Teo’s power to request TTC to sell ISDN shares that were in the name of TTC to make good the Alleged Indemnity (“Representation 5”).

15 TCH says that, in reliance on Representations 1–5 (the “Alleged

²⁸ TCH SOC at para 15; Plaintiff’s Closing Submissions for Suit 743 dated 4 May 2021 (“PCS 743”) at para 41.

Representations”) and the Alleged Indemnity, he acquired 20.49 million ISDN shares in September to December 2013 for S\$13,396,201.85.²⁹ The shares were bought and sold across that period but at no point did he own more than 5% of ISDN’s total shareholding (for which he would have been required to disclose under the Securities and Futures Act (Cap 289, 2006 Rev Ed)). According to him, he did not have enough money to buy the requisite number of ISDN shares to prop up the share price, so he asked his brother, Tan Chin Tuan, and two friends, Tan Ah Ee and Ho Siow Poh (collectively the “Third Parties”), if he could use their accounts to buy shares. He told the Third Parties that any losses they suffered would be covered by Teo pursuant to the Alleged Indemnity since TCH was the one using their accounts. He says Teo was aware that he was buying shares on the Third Parties’ accounts and that Teo would be responsible for any losses incurred on their accounts.³⁰ He claims from Teo the losses of the Third Parties in Suit 743.³¹

16 TCH says that two announcements made by ISDN in October 2013 reinforced his belief that the Alleged Indemnity and the Alleged Representations were reliable:³²

- (a) 18 October 2013: ISDN issued a press release announcing that it expected its coal and hydropower ventures to require “a capital injection” of approximately S\$150 million from ISDN. From ISDN’s recent issuance of warrants, it expected a cash inflow of approximately S\$111 million if the warrants were exercised within five years, up to

²⁹ TCH SOC at para 16.

³⁰ TCH 743 AEIC at paras 45–50.

³¹ Transcript, 10 March 2021 at p 255, lines 20–24.

³² TCH 743 AEIC at para 41.

2018.³³ The conversion price of the warrants was S\$0.60.³⁴ ISDN stated that it would need US\$80 million for seven hydropower plant projects in Indonesia, and that the development of the “540 MW coal-fired power plant” was expected to cost about US\$1.1 billion.³⁵

(b) 23 October 2013: ISDN announced it had signed a second MOU with IDI for the development of “540 megawatt coal-fired power plant in North West Myanmar”.³⁶ Teo testified that this was for a “different project” from the Power Plant mentioned in ISDN’s 1 June announcement, as this concerned a “specific 450 megawatt” power plant.³⁷

17 TCH claims that both Teo and TTC were aware of TCH’s arrangements with the Third Parties, the Alleged Indemnity and the Alleged Representations. To this end, Teo regularly sent TCH the updated lists of ISDN’s shareholders and warrant holders from 3 December 2013 to 26 May 2014 so that TCH could monitor any changes to the list of shareholders and warrant holders.³⁸ TCH’s evidence was that Teo wanted him to “have confidence in the company” and “to understand that the number of shares held by the major shareholders did not give rise to big changes”.³⁹

³³ 1AB 743 at p 87.

³⁴ Transcript, 25 February 2021 at p 414, lines 2–7.

³⁵ 1AB 743 at p 88.

³⁶ 1AB 743 at p 91.

³⁷ Transcript, 25 February 2021 at p 428, lines 2–8.

³⁸ TCH 743 AEIC at paras 52–53.

³⁹ Transcript, 11 March 2021 at p 353, lines 4–12.

18 However, TTC's version is that the shareholders' lists were sent to him and TCH by Teo because in October and November 2013, TCH and TTC had obtained non-recourse loans from Equities First Holdings LLC ("the EFH loans") by pledging ISDN shares, and they wanted to monitor the ISDN share movements to ensure there would not be unauthorised disposal of the ISDN shares by the said lender.⁴⁰ In October and November 2014, both himself and TCH defaulted on the EFH loans, resulting in all their pledged ISDN shares being forfeited.⁴¹

19 ISDN did not finalise the Myanmar Energy Project by end 2013, and the share price fell further. TCH claims to have lost S\$5,046,191 as a result.⁴²

Events of 2014: TTC's payments to TCH

20 TCH says he asked Teo in early 2014 to make good on his losses, pursuant to the Alleged Indemnity. Teo told him to be patient. TCH says that, by November 2014, he was "in extreme need for cash" and pressed Teo for at least partial repayment. He claims that Teo made partial repayment of S\$2,314,041.39 to him from 13 to 24 November 2013 by instructing TTC to sell 8 million ISDN shares belonging to Teo (that were held in TTC's account) and to transfer the proceeds to TCH.⁴³

21 TTC does not dispute that he sold 8 million ISDN shares and transferred the proceeds to TCH (and other persons as directed by TCH) in November 2014, but he says this was a loan to TCH (the "Alleged Loan Agreement"), who was

⁴⁰ Transcript, 8 March 2021 at p 96, lines 14–20.

⁴¹ Tan Thiam Chye's AEIC for Suit 1089 dated 17 February 2021 ("TTC 1089 AEIC") at para 16, pp 211–216.

⁴² TCH SOC at paras 18–19.

⁴³ TCH 743 AEIC at paras 56–57.

in financial difficulty at the time.⁴⁴ He claims TCH told him that he was assisting in a public listing of TLV Holdings Limited (“TLV”), and would be able to repay the loan to TTC.⁴⁵ I set out the details of the sale of the 8 million ISDN shares below:⁴⁶

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

22 TTC then transferred S\$2,314,041.39 to TCH and to other persons identified to receive the sums, in the following manner:⁴⁷

Date of payment made by Tan Thiam Chye	Name of recipient or cheque payee	Mode of payment	Amount paid (SGD)
13 November 2014	TCH	Cash	578,510.55 ⁴⁸

⁴⁴ Tan Thiam Chye’s Statement of Claim dated 11 November 2020 for Suit 1089 (“TTC SOC”) at para 2(1).

⁴⁵ TTC SOC at para 2(3).

⁴⁶ TTC SOC at para 4; Plaintiff’s Core Bundle of Documents for Suit 1089 dated 24 February 2021 (“PCB 1089”) at pp 290–292.

⁴⁷ TTC SOC at para 5.

⁴⁸ PCB 1089 at p 289.

19 November 2014	Tan Kim Sing	UOB Cheque	350,000.00 ⁴⁹
20 November 2014	Tan Chin Tuan	UOB Cheque	200,000.00 ⁵⁰
20 November 2014	TCH	UOB Cheque	317,765.84 ⁵¹
24 November 2014	Lee Kwang Hwee	UOB Cheque	300,000.00 ⁵²
24 November 2014	TCH	UOB Cheque	567,765.00 ⁵³
Total			2,314,041.39

23 The six transfers from TTC were recorded in six payment vouchers (the “Payment Vouchers”), signed by both TCH and TTC. With regards to the sale of the first 2 million ISDN shares on 13 November 2014, TTC says (which TCH accepts) that he transferred his own money to TCH, pending the former’s receipt of the sale proceeds of S\$578,510.55.⁵⁴ On 13 November 2014, TTC asked his broker, Peter Liaw (“Liaw”), of DBS Vickers Securities (S) Pte Ltd (“DBS Vickers”), the exact sum he would be receiving so he could record this in the payment voucher.⁵⁵ The other payments were only effected when TTC received the sale proceeds of the ISDN shares.

⁴⁹ PCB 1089 at pp 294–295.

⁵⁰ PCB 1089 at pp 296–297.

⁵¹ PCB 1089 at pp 296, 298.

⁵² PCB 1089 at pp 299–300.

⁵³ PCB 1089 at pp 299, 301.

⁵⁴ Transcript, 24 February 2021 at p 212, line 8–p 213 line 2.

⁵⁵ TTC 1089 AEIC at para 24; p 285.

24 For completeness, it should be noted that there is a difference of S\$0.84 between the sale proceeds and money transferred by TTC because, according to TTC, TCH had agreed that the shortfall be waived when he collected the last cheque issued on 24 November 2014, since TTC had already issued the cheque.⁵⁶

25 After the 8 million ISDN shares were sold, TTC sent Teo a WhatsApp message on 17 November 2014 informing him of the sale and requesting that Teo assist to “make public announcement as required”.⁵⁷

26 TTC claims it was a term of the Alleged Loan Agreement that, immediately upon the successful public listing of TLV or within 9 months from the date of the Alleged Loan Agreement, whichever was earlier, TCH would repay S\$2,314,041.39 to TTC if the price of the ISDN shares at the repayment date remained at or fell below the price at which they were sold by TTC. If the price of the ISDN shares at the repayment date exceeded the price at which they were sold by TTC, TCH would procure 8 million ISDN shares from the open market and transfer them to TTC (the “Agreement Terms”). On 17 September 2015, TLV was publicly listed. Pursuant to the Agreement Terms, the loan should have been repaid to TTC on 13 August 2015, 9 months from the date of the Alleged Loan Agreement.⁵⁸

⁵⁶ TTC SOC at para 6.

⁵⁷ TTC 1089 AEIC at para 25; p 288.

⁵⁸ TTC SOC at paras 3, 8.

Events from November 2015: Tan Chin Hock's Letters of Demand

27 TCH denies the existence of the Alleged Loan Agreement.⁵⁹ On 24 November 2015, TCH sent a letter to Teo (the “First Letter of Demand”).⁶⁰ In the First Letter of Demand, TCH’s solicitors demanded payment of S\$6,671,349.62, on the basis of Teo’s representation to TCH that it would be a good investment to acquire shares in ISDN and Teo’s promise to make good on any losses suffered by TCH as a result of investing in ISDN shares.

28 Teo called TTC on 25 November 2015 to inform him of the First Letter of Demand.⁶¹ In a WeChat message from Teo to TTC on 26 November 2015, Teo wrote:⁶²

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

29 TTC says he was overseas on a business trip at the time, and only received a hard copy of the First Letter of Demand from Teo when he returned to Singapore around 5 December 2015.⁶³ In cross-examination, he explained that Teo had called him on 25 November 2015 and sent him a soft copy of the First Letter of Demand over WhatsApp the same day, but he did not include this in his AEIC as it was no different from the hard copy he received from Teo on

⁵⁹ Transcript, 12 March 2021 at p 438.

⁶⁰ TCH SOC at para 24(c)(i); TTC 1089 AEIC at p 393.

⁶¹ TTC 1089 AEIC at para 33.

⁶² TTC 1089 AEIC at pp 400–401.

⁶³ TTC 1089 AEIC at para 37.

5 December 2015.⁶⁴ On 6 December 2015, Teo replied to the First Letter of Demand (“6 December 2015 Letter”), stating:⁶⁵

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

30 On 20 December 2015, TTC wrote a letter to TCH to refute his allegations and to demand repayment of the loan (“20 December 2015 Letter”), It was sent by registered mail on 28 December 2015.⁶⁶ The letter stated:

[...] I do not understand why you claimed that my loan to you was a repayment from him to you.

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

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

TCH says he did not receive the 20 December 2015 Letter.⁶⁷

31 Almost four years later, on 4 July 2019, TCH’s solicitors sent Teo a second letter claiming a sum of S\$2,732,149 (the “Second Letter of Demand”),

⁶⁴ Transcript, 8 March 2021 at p 136, lines 15–17; p 139, lines 12–20; Transcript, 9 March 2021 at p 169, lines 14–22; Plaintiff’s Bundle of Documents in Suit 1089 dated 6 March 2021 (“PB 1089”) at p 28.

⁶⁵ TCK 1089 AEIC at pp 201–202.

⁶⁶ TTC 1089 AEIC at para 38; pp 407–409.

⁶⁷ Transcript, 23 February 2021 at p 184, lines 15–18.

as recalculated by TCH on their advice. This letter also referred to the 6 December 2015 Letter.⁶⁸ On 23 July 2019, TCH’s solicitors filed Suit 743.

32 On 31 January 2020, Teo sent TTC a WhatsApp message asking if the loan that he extended to TCH was “more than six years old”, and TTC replied saying that the six years would “be due” in “November 2020”. On 14 October 2020, TTC and Teo exchanged emails, copying Teo’s solicitors, with Teo requesting TTC to provide him with information concerning the Tan Thiam Chye Deal in March 2013.⁶⁹ TTC’s solicitors filed Suit 1089 on 11 November 2020.

Issues to be determined

33 On 12 January 2021, in Summons 5632 of 2020, this court ordered Suit 1089 to be tried shortly after Suit 743, on the basis that the evidence adduced in one suit would apply to the other. Consequently, the evidence adduced at both trials is taken into consideration in this consolidated judgment for both suits.

34 The following issues arise for the court’s determination:

- (a) Was the Alleged Indemnity given by Teo to TCH?
- (b) Did Teo make the Alleged Representations to TCH?
- (c) Were the payments by TTC to TCH made pursuant to the Alleged Loan Agreement or were they for some other purpose?

⁶⁸ TCK 1089 AEIC at paras 28–29; p 204.

⁶⁹ TCK 1089 AEIC at pp 192–195.

Was the Alleged Indemnity given by Teo to TCH?

The parties’ cases

35 Counsel for TCH in Suit 743, Mr Low Chai Chong (“Mr Low”), argues that the contemporaneous documents and conduct of the parties corroborate TCH’s position that Teo gave him the Alleged Indemnity in September 2013.⁷⁰ His key arguments are as follows:

(a) First, Teo had good reason to want to keep ISDN share prices high and give TCH the Alleged Indemnity. Teo was the largest single shareholder and had the most to gain, and Teo had to convince the market that ISDN was able to raise enough money for its energy projects.⁷¹

(b) Second, the March 2013 Married Deals were not genuine deals but were intended for Teo to “park” his shares with the Goh brothers and TTC. The shares parked with GYT were only sold on Teo’s instructions, with the proceeds transferred to parties linked to Teo.⁷² As for the Tan Thiam Chye Deal, the documents raise more questions than answers as they contain patent errors any trained lawyer would be highly unlikely to make. It would not make sense for TTC to pay millions to Teo for a non-controlling stake in ISDN, at exact market price, just days after the announcement of the First Placement on 14 March 2013.⁷³

⁷⁰ PCS 743 at para 127.

⁷¹ PCS 743 at paras 133–135.

⁷² PCS 743 at paras 167, 172.

⁷³ PCS 743 at paras 183, 186.

(c) Third, the documentary evidence, the parties' conduct and correspondence corroborate TCH's position that the Alleged Indemnity was granted. The parties routinely entered into oral agreements without any written records, and also regularly discussed and entered into business deals at the Hotel.⁷⁴ Teo and TTC presented TCH with the ISDN shareholders and warrant lists so that he could monitor any changes in the shareholdings and warrant holdings.⁷⁵ The Payment Vouchers do not indicate that the payments were a loan, and the Agreement Terms are merely an afterthought as they were not mentioned earlier and they do not make commercial sense for TTC.⁷⁶ The WhatsApp message sent to Teo by TTC on 17 November 2014 shows that the latter was accounting for the proceeds disbursed to TCH pursuant to the Alleged Indemnity, and the message from Teo on 26 November 2015 shows he was giving TTC instructions to draft the 20 December 2015 Letter and fabricate the Alleged Loan Agreement.⁷⁷

36 On the other hand, counsel for Teo in Suit 743, Mr Sarjit Singh Gill SC ("Mr Gill"), argues that the Alleged Indemnity is a pure fabrication by TCH. He submits that the court should draw an adverse inference against TCH under Section 116 of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act") for failing to call material witnesses like Tan Ah Ee, Ho Siow Poh and Robert Lim.⁷⁸ His key arguments are as follows:

⁷⁴ PCS 743 at paras 193–195.

⁷⁵ PCS 743 at paras 200, 204.

⁷⁶ PCS 743 at paras 213–215.

⁷⁷ PCS 743 at paras 217(d), 218.

⁷⁸ Defendant's Closing Submissions for Suit 743 dated 4 May 2021 ("DCS 743") at para 35.

(a) First, there is no documentary evidence or contemporaneous records of the Alleged Indemnity.⁷⁹ Nothing in the Payment Vouchers supports TCH's assertions that the transfers to him were made on Teo's instructions. The only evidence is TCH's unreliable testimony that the Tan Thiam Chye Deal was not genuine, but he could not produce evidence to support this assertion and even said he did not have personal knowledge of the deal.⁸⁰ TCH was emailed the lists of ISDN shareholders and warrant holders in the context of the EFH loans.⁸¹

(b) Second, TCH's subjective evidence is completely unreliable and untrustworthy. He was vague and evasive on the stand and became "difficult and aggressive" when confronted with inconsistent or misleading evidence.⁸²

(c) Third, the factual matrix does not support the existence of this "commercially absurd" Alleged Indemnity. There was no personal benefit Teo could derive from giving this unlimited personal indemnity, and in fact it would be hugely detrimental to him.⁸³ TCH was trading substantial amounts of ISDN shares from February to September 2013, and there was no reason for Teo to suddenly offer the Alleged Indemnity to him in September 2013 to induce him to invest further.⁸⁴ In fact, TCH significantly reduced the volumes of his trades from 30 September 2013 onwards, which is inconsistent with the behaviour of someone who has

⁷⁹ DCS 743 at para 44.

⁸⁰ DCS 743 at paras 50, 79.

⁸¹ DCS 743 at paras 86–88.

⁸² DCS 743 at paras 60, 63.

⁸³ DCS 743 at paras 100, 110.

⁸⁴ DCS 743 at paras 119, 123.

just been given an unlimited indemnity. The more probable explanation is that TCH's trading of ISDN shares between September and December 2013 was solely influenced by the penny stock crash.⁸⁵

(d) Finally, there was no intention to create legal relations between TCH and Teo. There was no discussion on the terms of the Alleged Indemnity and no documentation of the arrangement.⁸⁶ The distinctively social setting of the Hotel, where the parties' meetings took place, shows that such meetings were of a casual nature.⁸⁷

The law

37 The approach to determining the existence of an oral agreement was set out by the High Court in *ARS v ART and another* [2015] SGHC 78 ("*ARS v ART*") at [53]:

- (a) the court will consider the relevant documentary evidence (such as written correspondence) and contemporaneous conduct of the parties at the material time;
- (b) where possible, the court should look first at the relevant documentary evidence;
- (c) the availability of relevant documentary evidence reduces the need to rely on the credibility of witnesses in order to ascertain if an oral agreement exists;

⁸⁵ DCS 743 at paras 124–128.

⁸⁶ DCS 743 at para 134.

⁸⁷ DCS 743 at paras 138, 144.

- (d) oral testimony may be less reliable as it is based on the witness' recollection and may be affected by subsequent events (such as the dispute between the parties);
- (e) credible oral testimony may clarify the existing documentary evidence;
- (f) where the witness is not legally trained, the court should not place undue emphasis on the choice of words; and
- (g) if there is little or no documentary evidence, the court will nevertheless examine the precise factual matrix to ascertain if there is an oral agreement concluded between the parties.

38 In business and commercial arrangements, it is presumed that the parties do intend to create legal relations. In social and domestic arrangements, there is a presumption that parties do not intend to do so (*Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 at [72]).

Applying the law to the facts

Documentary evidence

39 The court will first consider the relevant documentary evidence. This comprises (i) the Payment Vouchers (and corresponding cheques) (ii) the correspondence between TTC and Teo, and (iii) the emails received by TCH with lists of ISDN shareholders and warrant holders (the "Shareholder List Emails").

40 It is the court's view that the Payment Vouchers do show that the proceeds from the sale of ISDN shares were transferred by TTC to TCH and

other parties in November 2014. However, there is no indication on the Payment Vouchers as to the purpose of the payments and they do not, on their own, prove the existence of the Alleged Indemnity. The same observation would equally apply to the Shareholder List Emails.

41 However, the correspondence between TTC and Teo supports Teo’s version of events. The WhatsApp message sent by TTC to Teo on 17 November 2014 states that the former “sold 8 million shares of ISDN thru open mkt at the price of 0.29” and requested Teo to “assist to make public announcement as required”. This message does not mention anything about repayment on Teo’s behalf pursuant to the Alleged Indemnity. If the sale had been done pursuant to Teo’s instructions and TTC was expected to account to him, it is more likely than not that TTC would mention this in the message. It is unlikely that the message was fabricated in anticipation of litigation given that it was sent about a year *before* TCH sent the First Letter of Demand. On its face, this message was sent solely for regulatory compliance with SGX rules, and not for TTC to account to Teo for the sale of ISDN shares.⁸⁸

42 The WeChat message between TTC and Teo on 26 November 2015 would also support Teo’s case. While TCH is not named in the message, this message was sent shortly after TCH sent the First Letter of Demand, and the “annoying person” referred to there, in context, is TCH. The letters sent by Teo and TTC in response to TCH’s First Letter of Demand also indicate that both were surprised by TCH’s claims. Their correspondence in January and October 2020, before the trial of Suit 743, is consistent with that position. This court

⁸⁸ Plaintiff’s Reply Submissions for Suit 1089 dated 4 June 2021 (“PRS 1089”) at para 19.

finds it hard to believe that they would have persistently fabricated all of such correspondence just to refute TCH's claims.

43 Even so, the documentary evidence does not conclusively disprove the existence of the Alleged Indemnity. It is therefore necessary to review the oral testimony to clarify the documentary evidence.

Oral testimony

44 It is this court's assessment that TCH was not a credible or reliable witness, based on both his demeanour as well as the inconsistencies in his evidence (see *Ng Chee Chuan v Ng Ai Tee (administratrix of the estate of Yap Yoon Moi, deceased* [2009] 2 SLR(R) 918 at [14]). He repeatedly prevaricated and was unable to give a consistent account of events.

45 In this regard, it would be useful to first set out some of the inconsistencies in TCH's evidence. One example concerned the circumstances of the Alleged Indemnity. In his Statement of Claim, TCH said that the Alleged Indemnity and Alleged Representations had been orally given to him by Teo in the September 2013 Meetings, at which TTC was also present. In his Further and Better Particulars in Suit 743 ("the S 743 F&BP") dated 13 March 2020, he stated that he could not recall the exact dates and times of the September 2013 Meetings, but said that only himself, TTC and Teo were present at the meetings.⁸⁹ Next, in his Further and Better Particulars of his defence dated 30 November 2020 for Suit 1089 ("the Suit 1089 F&BP"), TCH claimed that Teo had told him in the September 2013 Meetings that "you need to try your best to help me support" to which TCH replied "I can help you support, but if there are losses, you need to be responsible", to which Teo said, "You are helping me, I

⁸⁹ TCK 743 AEIC at p 41.

definitely will be responsible.” It is noteworthy that the S 743 F&BP preceded the S 1089 F&BP by eight months. Yet, TCH could recall in November 2020 what he could not recall in March 2020.

46 TCH was also unable to recall further specific details of those meetings in the documents filed before the trial. He then testified for the first time during the trial that Teo had called him around 8am on 30 September 2013 and told him that “[i]f the share price falls further, the funds from IDI will not be able to go into his company, which would result in the Myanmar project failing”. Teo thereafter made further subsequent representations to him at the Hotel.⁹⁰ TCH then testified that Teo had given him the Alleged Indemnity to make good his losses during this 8am telephone call, but he had not asked Teo how many shares Teo wanted him to buy.⁹¹ Finally, TCH explained:

At 8-plus am in the morning, Mr Teo called me. He said, “Mr Tan, can you help me? I need your help to support the share price”. I asked him why. He said, “Because if the share price continues to fall, IDI may not come in and it may cause the Myanmar project to fail. So I need your help to support the shares and not to let the share price fall so rapidly”. So I thought about it and I told him I will try my best to prop up the price. So that was the first call. Subsequently, many times at the Riverview Hotel, he said this many times, but not the exact same thing. He just said he needed my help then to help prop up the price, and he said, “After this is over, you will not lose money, but if you do, I will compensate you”.⁹²

It is odd that TCH could recall the specific details of the 8am telephone call on 30 September 2013 at the trial but did not include them in his AEIC, his Statement of Claim or F&BP. His explanation during the trial was that he had only recently seen the documents pertaining to the share transactions for that

⁹⁰ Transcript, 23 February 2021 at p 126, lines 1–16, lines 21–22.

⁹¹ Transcript, 23 February 2021 at p 132, lines 13–19.

⁹² Transcript, 23 February 2021 at p 157, lines 2–16.

period.⁹³ The court accepts Mr Gill's submission that this explanation is not satisfactory let alone convincing because TCH would have seen such documents before the trial.⁹⁴

47 Other similar inconsistencies in TCH's position became apparent during the trial. For instance, TCH listed the announcements made by ISDN in May to June 2013 in his AEIC for Suit 743, and he also stated that ISDN's announcements about the Myanmar Energy Project in October 2013 "further reinforced his belief" that the Alleged Representations and Alleged Indemnity from Teo were reliable.⁹⁵ This gave the impression that he had read those announcements. However, during the trial, he revealed that he did not actually read any of these announcements and was informed of them by Teo and TTC, who just repeated the announcements to him, including the cautions.⁹⁶

48 TCH's tendency to prevaricate and make excuses when confronted with the inconsistencies in his evidence reinforced this court's assessment that he was not a credible witness. This can be seen from the examples listed below.

49 First, TCH deposed in his AEIC for Suit 743 that the sale proceeds of TTC's Mirach Energy shares on 13 November 2014 were not given to him by TTC.⁹⁷ However, under cross-examination he acknowledged that this was not possible when the Mirach Energy shares were sold at a contra loss. When the court inquired if he was trying to mislead the court by this red herring, he

⁹³ Transcript, 24 February 2021 at p 226, lines 17–24.

⁹⁴ DCS 743 at para 68.

⁹⁵ TCH 743 AEIC at para 41.

⁹⁶ Transcript, 22 February 2021 at p 82, lines 4–7; p 83, lines 3–16.

⁹⁷ TCH 743 AEIC at para 59(d).

insisted that he had no intention of lying to the court but was unable to provide any explanation for the false statement in his AEIC.⁹⁸

50 Second, during the trial, TCH testified that TTC told him that Teo had agreed to make the partial repayment, and it was TTC who said that Teo had asked him to sell the ISDN shares and pay him the sale proceeds. When asked why this information was not in his AEIC for Suit 1089, his excuse was that this was his first time in court and he did not know the procedure, even though when asked by the court, he acknowledged that the AEIC had been interpreted to him in Mandarin.⁹⁹ He further contradicted himself when pressed on whether he had personal knowledge of Teo's direction to TTC to sell the ISDN shares. He said during cross-examination that he did. However, when confronted with the Suit 1089 F&BP (where he had said he had no personal knowledge) he complained that he was actually being asked a different question. Finally, he said that he was verbally told about Teo's direction by both Teo and TTC.¹⁰⁰

51 Similarly, when asked why he had not said in his defence for Suit 1089 that TTC was holding cash on behalf of Teo and only said this at the trial, he replied "I don't know what you are trying to get at", and only answered the question after the court instructed him not to prevaricate.¹⁰¹

52 Given the many instances of TCH's inconsistent evidence coupled with his evasive demeanour, the court does not find him to be a credible witness. In this regard, the court agrees with Mr Gill's submission that TCH's explanations

⁹⁸ Agreed Bundle of Documents for Suit 1089 dated 24 February 2021 ("1AB 1089") at p 1782; Transcript, 10 March 2021 at pp 310–312.

⁹⁹ Transcript, 10 March 2021 at pp 269–271.

¹⁰⁰ Transcript, 10 March 2021 at p 288 line 22–p 289.

¹⁰¹ Transcript, 10 March 2021 at p 281, lines 9–18.

were most likely an afterthought.¹⁰² No reliance can be placed on his oral testimony.

53 On the other hand, Teo is a far more credible witness. He was more direct and forthright in his answers and did not attempt to evade questions (*ARS v ART* at [82]). Mr Low argued that Teo was evasive and refused to answer relevant questions relating to ISDN and its decisions (*eg*, by giving non-committal answers about ISDN’s intention to raise capital), hid the manner in which the shareholder lists were circulated, gave contradictory evidence and was not honest about his relationships with the various parties.¹⁰³ He similarly argues that TTC is not a credible witness and has tailored his evidence to synchronise his position with Teo.¹⁰⁴ Mr Low’s key arguments are as follows:

- (a) Giving “commercially unsustainable” answers: Mr Low submits that Teo changed his evidence when he said doing a placement might take a month, but then said the Second Placement was conceived shortly after 30 March 2013 and announced by 3 April 2013, although ISDN’s directors were briefed one or two days before the ISDN trading halt on 31 March 2013. When being tested on his evidence, Teo then said he cannot remember and made excuses that he could not speak for ISDN. Mr Low’s point is that the March 2013 Married Deals were completed between the First Placement and Second Placement, and it made no sense for Teo to enter those deals at S\$0.32 when Teo would have known that the Second Placement (at S\$0.45) was around the corner.¹⁰⁵ The court returns to this issue at [108] below, but, suffice it to say, this

¹⁰² DCS 743 at para 69.

¹⁰³ PCS 743 at paras 78–82, 84–90, 91.

¹⁰⁴ PCS 743 at para 109.

¹⁰⁵ PCS 743 at para 149.

does not affect Teo’s credibility – it is not a point that is material to his case, unlike the inconsistencies in TCH’s evidence.

(b) Shareholder List Emails: Mr Low submits that Teo gave contradictory evidence on his requests for the shareholder lists and when he became aware that TTC had pledged his shares to EFH. However, the court’s reading of Teo’s evidence is that he became aware that TTC had pledged shares with EFH around October 2013, but TCH began requesting the ISDN shareholder lists from Teo around 3 December 2013.¹⁰⁶ Teo’s testimony is consistent with the documentary evidence, which shows the first email being sent from Teo to TTC on 3 December 2013 with the list of shareholders dated 30 September 2013, and then forwarded from TTC to TCH on the same day;¹⁰⁷ Teo was not contradicting himself.

(c) Inconsistent evidence about when he cut ties with TCH: this is dealt with at [125] below. Suffice it to say, this does not show Teo is not a credible witness.

(d) Teo was not honest on the true nature of his relationships with TCH, GYH and TTC: with respect, this submission is overblown. Teo agreed that he considers himself and TTC friends, though perhaps not “good friends”.¹⁰⁸ As for his relationship with TCH, he said that he viewed TCH as an acquaintance. This is not inconsistent with Teo wanting to tap on TCH’s network to assist ISDN in gathering more investors. In any event, being an “acquaintance”, a “friend” or a “good

¹⁰⁶ Transcript, 26 February 2021 at pp 489–490, 497.

¹⁰⁷ 1AB 743 at p 92.

¹⁰⁸ Transcript, 25 February 2021 at p 373, lines 7–8.

friend” is a subjective assessment.¹⁰⁹ Lastly, the court does not agree that Teo tried to downplay his relationship with the Goh brothers. He was frank in explaining his dealings with the Goh brothers and the events leading up to the share swap in March 2013.¹¹⁰

54 In the light of this court’s assessment of Teo and TCH, the court moves next to consider if any of the documentary evidence is clarified by the oral testimony. It is this court’s view that the oral testimony does not affect its interpretation of the Payment Vouchers one way or the other, since, on their face, the documents do not indicate the purpose of the payments.

55 However, the oral testimony on the Shareholder List Emails supports TTC’s explanation (see [18] above) that the lists were meant for him and TCH to monitor ISDN share movements to ensure there would not be unauthorised disposal of the ISDN shares under the EFH loans. TCH testified that the lists were sent to him to “convince” him to “support” ISDN shares pursuant to the Alleged Indemnity.¹¹¹ Apart from the fact that this evidence is not in his AEIC for Suit 743 (which only says that the lists were for him to monitor changes to the list of shareholders and warrant holders), the court notes that the first list was forwarded to him by TTC on 3 December 2013. However, if he had been given the Alleged Indemnity around 30 September 2013 and was already buying ISDN shares since, it does not make sense for the shareholder lists to be sent to him two months after that. Second, TCH claimed to have stopped buying ISDN

¹⁰⁹ Transcript, 25 February at p 355, lines 7–10.

¹¹⁰ Transcript, 25 February 2021 at pp 335–336, 455.

¹¹¹ Transcript, 11 March 2021 at p 352, line 25–p 353, line 6.

shares pursuant to the Alleged Indemnity around December 2013. This does not explain why the last email was sent in May 2014, more than five months later.¹¹²

56 Third, TCH sought to distance himself from those emails during the trial, saying that his wife opened the emails for him, that he could not read them, that he did not know how to open the attachments, and that he did not know why TTC sent the Shareholder List Emails to him. He also claimed that, while he was shown the shareholder lists, those were different lists on a “big piece of paper” and not the lists as shown in the emails.¹¹³ This contradicts his AEIC where he acknowledged receiving the emails from 3 December 2014 to 26 May 2014, and stated that they were sent to him to monitor any changes to the list of shareholders and warrant holders.¹¹⁴

57 Lastly, the emails are consistent with the documentary evidence, as the Shareholder List Emails were only sent after TTC and TCH had entered into their EFH loan agreements in October and November 2013. It is to be noted that TCH asserted for the first time at trial that he had used the money from the EFH loan to support ISDN shares.¹¹⁵ The court accepts Mr Gill’s submission that TCH could not satisfactorily explain why he did not disclose the letter from Ice Miller LLP (counsel for EFH) dated 27 October 2014 in Suit 743 showing that the ISDN shares he pledged for the EFH loan taken in November 2013 had been forfeited due to his default.¹¹⁶ This would have supported his case on the Alleged Indemnity, or, at the least, was certainly relevant. The court finds that the

¹¹² DCS 743 at para 86.

¹¹³ Transcript, 11 March 2021 at pp 350–352.

¹¹⁴ TCH 743 AEIC at para 53.

¹¹⁵ DCS 743 at para 90; Transcript, 23 February 2021 at p 195, lines 17–18.

¹¹⁶ 2AB 743 at p 218.

Shareholder List Emails are better explained by the EFH loans, and they do not support the existence of the Alleged Indemnity.

58 There is other documentary evidence which pertains to the March 2013 Married Deals which will be addressed at [87] below.

Precise factual matrix

59 The next issue to be considered is whether the precise factual matrix supports the existence of the Alleged Indemnity. In this regard, the court agrees with Mr Gill’s submission that Teo would not have entered into such a “commercially absurd” arrangement. The reasons are as follows.

60 First, the MOU between IDI and ISDN does not state that the share price being maintained at a certain level was a condition precedent to the investment.¹¹⁷ There was therefore no reason for Teo to give an unlimited or open-ended indemnity out of his desperation to maintain the share price at a certain level. Nor did any of the public announcements made by ISDN in 2013 refer to ISDN share prices being maintained at a certain level as a condition for the Myanmar Energy Project – in fact, as observed earlier, ISDN even advised its shareholders in some of these announcements to exercise caution when trading or dealing in their ISDN shares as there was no assurance of the projects proceeding.

61 The fact that some of the announcements specifically included the cautions also explains why Teo did not seem particularly concerned about raising capital for the projects and he repeatedly said during the trial that were

¹¹⁷ Transcript, 23 February 2021 at p 130, line 23–p 131, line 4; p 150, lines 1–9.

many ways to “skin a cat”, *ie*, many ways to raise capital.¹¹⁸ It was clear that there was no guarantee the projects would proceed, and shareholders were expressly advised to be cautious in buying and selling their ISDN shares. It is not believable that Teo was desperate to raise capital at the time.

62 Even if Teo wanted to raise capital to ensure investor confidence and ensure that the Myanmar Energy Project would not attract negative publicity, it is hard to believe that he would rely on the actions of a few investors, at such a high risk to himself. As Teo said at trial:¹¹⁹

I don't understand how can any sensible person, all right, open an open-end chequebook and give it to someone to rob him. All right. This type of statement, he use it as an indemnity, as a representation against me, and to claim me for the losses for his trading, not even investing. It is he is trading the stock, buy and sell and buy and sell. And what do I gain? Why should I give him this indemnity and give him in assurance? I, being a publicly listed company boss for 2005 until now, I have never signed a personal guarantee on behalf of the company. I am just one of the shareholder. All right? Why should I give him this assurance, or this promise or this indemnity or guarantee, you call it, just to maintain the share price for this project? It doesn't make logical sense to me.

63 Finally, as Teo said in his AEIC for Suit 743, if he had really wanted to raise capital, the most logical move would be for him to buy the ISDN shares himself and make a public announcement to show other investors he was confident in ISDN's financial performance.¹²⁰ The court therefore does not agree with Mr Low that Teo was attempting to mislead the court by “giving a false impression” about how ISDN was being managed.¹²¹

¹¹⁸ Transcript, 25 February 2021 at p 392, lines 4–5.

¹¹⁹ Transcript, 25 February 2021 at p 443, lines 4–19.

¹²⁰ TCK 743 AEIC at para 36(b).

¹²¹ PCS 743 at para 79.

Conduct of the parties

64 In any case, the contemporaneous conduct of the parties does not support the existence of the Alleged Indemnity. First, TCH acknowledged that he and his associates had already been “heavily buying” ISDN shares from February 2013, months before the Alleged Indemnity was purportedly given. There was no reason for Teo to induce TCH to invest further in ISDN shares by giving him the Alleged Indemnity, especially since there was no indication that TCH was intending to stop.¹²² In fact, there was a drop in the volume of his trading after 30 September 2013, the date he says he was given the Alleged Indemnity.¹²³ Such behaviour is inconsistent with his having been given an unlimited indemnity.

65 Second, at the trial it was noted that TCH was buying shares in December 2013 and making losses on every purchase.¹²⁴ TCH explained that he told Teo in the first week of December 2013 that he did not want to continue helping Teo to prop up the ISDN share price, but because there were “still many shares on hand”, he would “reduce the number slowly and not throw all of them out at once into the market”, as that would “cause the share price to fall rapidly”.¹²⁵ TCH did this because Teo asked him to “end it slowly” and TCH said that since they were good friends, he would not “stop immediately and throw everything out”.¹²⁶ The court is unable to follow this logic. If TCH did not want to continue propping up the ISDN share price and was confident that he had the Alleged Indemnity under which he could claim back all his investment

¹²² Transcript, 23 February 2021 at p 155, line 25–p 156, line 20.

¹²³ DCS 743 at para 124; 2AB 743 at pp 222–236.

¹²⁴ Transcript, 23 February 2021 at p 180, lines 12–24.

¹²⁵ Transcript, 23 February 2021 at p 177, lines 3–12; p 180, lines 5–9.

¹²⁶ Transcript, 23 February 2021 at p 181, lines 3–13.

losses, he could have just sold his ISDN shares and stopped trading entirely rather than incur further losses through buying shares. It was not clear why TCH would be so charitable to Teo at this time, when he himself had already lost money.

66 TCH denied having a further agreement with Teo to continue trading, and claimed to be doing this as a favour to Teo.¹²⁷ Taking his case at its highest, he was gradually reducing his ISDN shareholding rather than selling all his shares at once so that the ISDN share price would not drop or drop drastically as a favour to Teo, and he was banking on the Alleged Indemnity to cover any losses he incurred. However, a more straightforward and plausible explanation for TCH's continued buying and selling of ISDN shares from September to December 2013 was to "create market activity" for his own benefit at a time when the ISDN counter was thinly traded, and to "slowly reduce [his] shareholding without incurring too much loss".¹²⁸ His trading behaviour at the time reflected his attempt to cut his own losses from the penny stock crash, rather than as a purported favour to Teo. Moreover, if TCH was really banking on the Alleged Indemnity, there is no explanation for why he did not demand compensation from Teo shortly after he incurred losses at the end of 2013 and only waited until 24 November 2015 to send the First Letter of Demand. In fact, on Teo's evidence, TCH continued to communicate with Teo up until September 2014 and even introduced Teo to an investment opportunity with Trittech at the start of 2014.¹²⁹

¹²⁷ Transcript, 23 February 2021 at p 181, lines 14–18.

¹²⁸ DCS 743 at paras 127–128.

¹²⁹ TCK 743 AEIC at para 27.

67 Lastly, Mr Low submits that the parties and the Goh brothers routinely entered into oral agreements to support share prices and did not keep written records, and this is consistent with the terms of the Alleged Indemnity.¹³⁰ This is not a persuasive submission. First, there is no evidence that the oral agreements to support share prices were intended to be legally binding. Second, even if the parties did not normally keep written records, the fact that there are written records here (the Payment Vouchers) supports TTC's position that the payments were made pursuant to the Alleged Loan Agreement and the parties intended this to be legally binding.

68 It is the court's view that the parties' contemporaneous conduct does not support the existence of the Alleged Indemnity.

No intention to create legal relations

69 Finally, even if *arguendo*, Teo had promised TCH that he would make good his losses (see [45]–[46] above), the court does not find that there was an intention to create legal relations. First, the meetings were social in nature. TCH himself said they would stay at the Hotel to “chit-chat, have tea and play Chinese chess”.¹³¹ Second, although admittedly the attendees at the Hotel meetings discussed business ideas and investment opportunities, they did not intend to enter legally binding arrangements at those meetings. For example, Teo testified that he discussed the First Placement with TCH at one of these meetings. TCH recommended the appointment of UOB Kay Hian, and subsequently, Teo went to the UOB Kay Hian office to speak with the share placement agent directly.¹³² This shows the parties would discuss business at

¹³⁰ PCS 743 at para 192.

¹³¹ Transcript, 24 February 2021 at p 221, lines 18–23.

¹³² Transcript, 25 February 2021 at p 328, lines 17–21; DRS 743 at para 47(a)(i).

those meetings, but would then take steps afterwards to formalise the arrangements. They did not intend to create legal relations with each other during the meetings.

70 Lastly, TCH was unable to explain the terms of his arrangement with Teo, such as the number of shares he needed to buy,¹³³ and the limit of Teo's liability for his losses under the Alleged Indemnity.¹³⁴ It is highly unlikely that Teo, an experienced businessman, would have undertaken such an onerous legal obligation as the Alleged Indemnity in a primarily informal setting with no prior negotiations or agreement on the specific terms (*Oei Hong Leong and another v Chew Hua Seng* [2020] SGCA 78 at [20]).

Third Parties

71 For completeness, Mr Gill submits that insofar as TCH is attempting to recover trading losses in the Third Parties' accounts, this was not pleaded or particularised in his Statement of Claim.¹³⁵ Tan also acknowledged during trial that Teo did not ask him to request the Third Parties to buy ISDN shares or allow him to give counter indemnities to the Third Parties.¹³⁶ Consequently, TCH's claim in this regard is unsustainable since this was not pleaded nor were the Third Parties joined to Suit 743.

¹³³ Transcript, 23 February 2021 at p 132, lines 17–19.

¹³⁴ Transcript, 23 February 2021 at p 134, lines 8–18.

¹³⁵ DCS 743 at para 38.

¹³⁶ Transcript, 23 February 2021 at pp 162–163, 165.

Adverse inference against Tan Chin Hock

72 Mr Gill submitted that the court should draw an adverse inference against TCH under Section 116(g) of the Evidence Act for failing to call Tan Ah Ee, Ho Siow Poh and Robert Lim to testify.¹³⁷ Section 116(g) states:

Court may presume existence of certain fact

116. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

Illustrations

The court may presume — [...]

- (g) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it [...]

73 The court accepts the submission. If TCH claims that Tan Ah Ee and Ho Siow Poh had allowed him to use their accounts to buy ISDN shares and knew about the Alleged Indemnity, he should have called them as corroborative witnesses. The fact he did not do so means that their evidence if called would have been unfavourable to him.

74 Similarly, TCH failed to call Robert Lim, who communicated with him regarding the EFH loans and who, according to TCH, also knew about the Alleged Indemnity.¹³⁸ When the court inquired of him why he did not call Robert Lim, he gave a nonsensical answer:¹³⁹

A: I asked them if they would come to court and they said they were, and that is why we subpoena them. If they

¹³⁷ DCS 743 at para 35.

¹³⁸ PCB 1089 at p 561, para 9.

¹³⁹ Transcript, 10 March 2021 at p 322.

are not willing to come, then there is no need to subpoena them.

Ct: Who is the “they”?

A: Robert.

Ct: His answer doesn’t make sense: I asked them if they will come to court and they said they will, and that is why we will subpoena them, which is exactly what I told you to do. If they are not willing to come, then there is no need to subpoena them. That is the other way around. If they are willing to come, witnesses don’t have to be subpoenaed. If they are not willing to come to court, as you say Robert Lim is not, you subpoena them. It is the other way around.

A: Because we are all friends, if they are not willing to come to court, I do not wish to subpoena them.

TCH’s answer is all too similar to excuses that this court has rejected in other cases (*Mann Holdings Pte Ltd and another v Ung Yoke Hong* [2018] SGHC 69 at [88]–[89]). The court therefore draws an adverse inference against TCH for not calling the Third Parties as witnesses.

Did Teo make the Alleged Representations to TCH?

The parties’ cases

75 Mr Low submits that TCH was incapable of reading English and was reliant on Teo to update him about the announcements made by ISDN. TCH’s testimony that Teo told him what was already in the announcements made by ISDN should be taken with “a pinch of salt” as TCH was likely stating his belief that what Teo told him was in line with the announcements, but he has no way of confirming the same. TCH understood Representation 1 to mean that the Myanmar Energy Project would be finalised very quickly, and not in the time frame of 24 months as stated in the ISDN announcement. TCH therefore believed he had to support the ISDN share price to prevent the project being affected until IDI was ready to come on board. Together with the Alleged

Indemnity, Mr Low submits that TCH was induced into supporting the share price of ISDN.¹⁴⁰

76 Mr Gill submits that there is no evidence of Teo making the Alleged Representations, apart from TCH's subjective testimony. Even if they were made, they were not false statements of fact. Rather, they were statements of opinion, commendatory statements or forecasts about ISDN's performance or the Myanmar Energy Project. Finally, he argued that TCH is a sophisticated trader and could not have relied on any of the Alleged Representations. Tan's claim under Section 2(1) of the Misrepresentation Act (Cap 390, 1994 Rev Ed) ("Misrepresentation Act") is unsustainable because the Alleged Representations did not lead to any contract or agreement being concluded between TCH and Teo.

The law

77 An actionable misrepresentation is a false statement of existing or past fact made by one party before or at the time of making the contract, which is addressed to the other party and which induces the other party to enter into the contract (*Lim Koon Park and another v Yap Jin Meng Bryan and another* [2013] 4 SLR 150 at [38]). Section 2(1) of the Misrepresentation Act does not alter the common law as to what constitutes a misrepresentation, although it reverses the burden of proof in that the party who made the misrepresentation must show he had reasonable grounds to believe the fact represented was true (*Tradewaves Ltd and others v Standard Chartered Bank and another suit* [2017] SGHC 93 ("*Tradewaves*") at [68]).

¹⁴⁰ PCS 743 at pp 138–140.

78 The following elements must be made out for the tort of fraudulent misrepresentation (*Panatron Pte Ltd v Lee Cheow Lee* [2001] 2 SLR(R) 435 (“*Panatron*”) at [14]):

- (a) first, there must be a representation of fact made by words or conduct;
- (b) second, the representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff;
- (c) third, it must be proved that the plaintiff had acted upon the false statement;
- (d) fourth, it must be proved that the plaintiff suffered damage in doing so; and
- (e) fifth, the representation must be made with knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true.

Applying the law to the facts

79 The court will address Representations 1–4 before separately dealing with Representation 5 in relation to the March 2013 Married Deals. First, the court will consider whether the evidence supports Representations 1–4 being made in the first place. In this regard, the court accepts Mr Gill’s submission that there was no evidence of such. The court has already found at [44] that TCH was not a credible witness. Apart from the fact that this aspect of TCH’s case was not seriously explored at the trial, it is not likely that Teo, a seasoned businessman running a public company, would make such representations

concerning the Myanmar Energy Project when ISDN's announcements stated there was "no assurance" and "no guarantee" that the projects would materialise and had even advised shareholders to exercise caution when trading or dealing in ISDN shares.¹⁴¹

79 Even if Teo had made those statements to TCH, Representations 1–4 are not actionable.

80 Representation 1 was that ISDN needed more time to finalise the Myanmar Energy Project, which was near the verge of being finalised. This is not a false statement of fact. Teo was giving his opinion that ISDN would need more time to finalise the project, as stated in ISDN's 2013 announcements. Similarly, the statement that the project was "near the verge of being finalised" was not a statement of fact. In the context of ISDN's announcements (with the cautions), and Teo's understanding that the project could have taken at least five years, with one to two years for due diligence, this statement was merely Teo's prediction on the project progressing to its next stage.¹⁴² He was not guaranteeing to TCH that such an event would happen and was merely expressing his honest belief as to what would happen next. Therefore, he did not subjectively believe that this statement was false (*Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 at [37]).

81 Representation 2 was that if the share price of ISDN continued to drop, then this might jeopardise the Myanmar Energy Project and the other expansion plans of the Company. This was Teo's then opinion as to how a drop in ISDN's

¹⁴¹ 1AB 743 at pp 70, 72, 76, 80 and 85.

¹⁴² Transcript, 25 February 2021 at p 415, lines 17–19; p 436, lines 1–7.

share price might negatively affect the Myanmar Energy Project. It is not a statement of fact. Nor is it false – if a company’s share price drops, it is true that this could affect investor confidence and the company’s ability to raise funds for future projects.¹⁴³

82 Representation 3 was that, with reference to the placement agreements, married deals and announcements by ISDN, ISDN was a good investment prospect and its share price would rise once the Myanmar Energy Project was concluded. Saying that something is a “good” investment is a statement of opinion or a mere puff, which is not actionable (*Tradewaves* at [82]). As for the statement about the share price rising on conclusion of the Myanmar Energy Project, this is Teo’s reasonable prediction of what would happen in the future, which was borne out by TCH’s own evidence on the increase in ISDN share price when the news of the project was leaked.¹⁴⁴

83 Representation 4 was that TCH would be able to sell the shares and liquidate his investment once the Myanmar Energy Project was concluded and ISDN’s share price increased. The first part of this representation is merely a suggestion to TCH about his next course of action once the Myanmar Energy Project is concluded. It is not a false statement of fact. The second part of this representation about ISDN’s share price increasing is, like Representation 3, Teo’s prediction on how the company’s share price will be affected by the Myanmar Energy Project.

84 Finally, even if the statements are actionable misrepresentations, the evidence adduced does not show that TCH acted upon these statements or relied

¹⁴³ DCS 743 at para 182.

¹⁴⁴ TCH 743 AEIC at para 29.

on them (*Panatron* at [14]). First, it is this court’s finding that TCH is an experienced businessman, having assisted in the listing of other companies before such as Geo Energy Resources Limited and having acted as a introducer between Mirach Energy and RCL Kelstar Sdn Bhd.¹⁴⁵ And, on his own evidence, he introduced the Myanmar Energy Project to Teo. It is not likely that he would have simply taken Teo’s word at face value without doing his own research. Second, TCH’s trading behaviour from September to December 2013 is better explained by his desire to cut his losses following the penny stock crash, rather than by the Alleged Representations, especially since he reduced his trading volume after the Alleged Representations were supposedly made.

85 In conclusion, the court finds that Teo did not make Representations 1–4 to TCH. Even if Teo did, they are not actionable representations and TCH did not act upon those statements.

The March 2013 Married Deals

86 Next the court turns to the March 2013 Married Deals. TCH’s position is that Teo and TTC represented to him that TTC was holding Teo’s ISDN shares, and these could be sold to make partial repayment to TCH (*ie* Representation 5). TCH claimed he believed Representation 5 because he had seen Teo “park” his ISDN shares with two other people via the March 2013 Married Deals.¹⁴⁶

¹⁴⁵ Transcript, 22 February 2021 at p 45 line 24–p 46 line 21.

¹⁴⁶ PCS 743 at paras 150–151; TCH 743 AEIC at para 27.

What the deals entailed

87 With regards to the Goh Yeu Toh Deal, Teo and GYT signed three documents on 21 March 2013. One was a Sale and Purchase Agreement (“SPA”) for the sale of 14.5 million ISDN shares from Assetraise to GYT for S\$4.64 million.¹⁴⁷ The next was a second SPA for the sale of 9.28 million Wee Hur shares from Wee Hur to Assetraise, also for S\$4.64 million.¹⁴⁸ Finally, there was a third document where both parties agreed to set off the consideration payable by each party against the other (the “Payment Set-off Agreement”).¹⁴⁹

88 GYH testified that TCH asked him to do the Goh Yeu Toh Deal with Teo, and that he (*ie*, GYH) negotiated the transaction with Teo and told GYT to sign the agreement.¹⁵⁰ The substance of the deal was that Teo and GYT would park Wee Hur and ISDN shares with each other.¹⁵¹ Although GYH testified in Suit 743 that this was done by way of married deal, his evidence in Suit 1089 was that he was previously mistaken and that it was actually via open market transactions arranged by TCH.¹⁵²

89 With regards to the Tan Thiam Chye Deal, TTC testified that he regretted not subscribing to the First Placement and called Teo to ask if he could have “a bite on the placement”.¹⁵³ He wanted to buy ISDN shares to diversify

¹⁴⁷ 2AB 743 at p 237.

¹⁴⁸ 2AB 743 at p 248.

¹⁴⁹ 2AB 743 at pp 258, 261.

¹⁵⁰ Transcript, 24 February 2021, at p 304, lines 15–23.

¹⁵¹ Transcript, 24 February 2021, at p 288, lines 20–24.

¹⁵² Transcript, 24 February 2021, at p 289, line 19–p 290, line 5; Goh Yeo Hwa’s AEIC in Suit 1089 dated 19 March 2021 (“GYH 1089 AEIC”) at paras 17, 20.

¹⁵³ Transcript, 26 February 2021 at p 577, lines 16–20.

his investment.¹⁵⁴ On 17 March 2013, he agreed with Teo that he (TTC) would buy 11.5 million ISDN shares at the prevailing price on 21 March 2013. He did not buy shares from the open market on 17 March 2013 because, if he bought that quantity of shares from the market, “the price will shoot up like a rocket”.¹⁵⁵ On 21 March 2013, Teo and TTC negotiated and signed the SPA in their lawyers’ office.¹⁵⁶ Enclosed with the SPA was a letter (“Additional Letter”) stipulating that the amount of S\$3.68 million was to be paid by a cheque for S\$1,472,000, followed by seven monthly equal instalments of S\$315,428.57 from April 2013. There are handwritten notes below the printed text in the Additional Letter recording the payments made. The Additional Letter was signed by TTC, but not Teo.¹⁵⁷

90 TTC paid S\$1,472,000.00 by cheque to Assetraise on 26 March 2013, which was credited into Assetraise’s UBS account on 1 April 2013. Subsequently, a total of S\$1,307,500 was withdrawn from TTC’s bank account and paid to Assetraise by cheque in May, June and October 2013.¹⁵⁸ Teo says that he received the remaining S\$900,500 from TTC in cash but it was not deposited into any bank account.¹⁵⁹ TCH’s position is that these transactions are fake.¹⁶⁰

91 Subsequently, GYH’s evidence was that between June 2013 and January 2014, Teo instructed him to sell various quantities of the 14.5 million ISDN

¹⁵⁴ Transcript, 26 February 2021 at p 591, lines 10–11.

¹⁵⁵ Transcript, 26 February 2021 at p 581; p 582, lines 23–24.

¹⁵⁶ Transcript, 8 March 2021, at p 24, lines 9–10.

¹⁵⁷ TTC 743 AEIC at p 32.

¹⁵⁸ 1AB 743 at pp 621–628.

¹⁵⁹ TCK 1089 AEIC at para 31(c).

¹⁶⁰ Transcript, 22 February 2021 at p 112, lines 15–16.

shares parked with GYT and to issue cheques from the sale proceeds to different recipients, including TTC, on Teo's instructions.¹⁶¹ Sometime after 20 December 2013, Teo then gave instructions to unwind the parking of the ISDN shares via market transactions. A certain block of ISDN shares would be sold and a corresponding block of Wee Hur shares of a similar number would be bought on the same day.¹⁶² This continued until the transactions were fully "unwound" in January 2015.

The parties' cases

92 The court will now elaborate on the parties' cases, which have been summarised at [35(b)] and [36(a)] above.

93 Mr Low submits that Teo has not offered any credible explanation for the March 2013 Married Deals.¹⁶³ With regards to the Goh Yeu Toh Deal, he argues that the contemporaneous documentary evidence shows that all the transactions were carried out on Teo's instructions.¹⁶⁴ As for the Tan Thiam Chye Deal, it is inconceivable that Teo would enter this deal for S\$0.32 per share, when there was a substantial increase in the price of the ISDN shares just around the corner due to the Second Placement being in the works.¹⁶⁵ It also did not make sense for TTC to pay millions to Teo for a non-controlling stake in ISDN at market price just days after the First Placement had been announced on 14 March 2013, and his sudden alleged investment into ISDN does not make

¹⁶¹ Transcript, 22 March 2021 at p 519, lines 17–23; 2AB at pp 240–242.

¹⁶² GYH 1089 AEIC at paras 13–14.

¹⁶³ PCS 743 at para 154.

¹⁶⁴ PCS 743 at para 179.

¹⁶⁵ PCS 743 at para 155(h).

sense in the light of his previous trading behaviour and his lack of money.¹⁶⁶ Lastly, Mr Low argues that the terms of payment in the SPA were not complied with and the Additional Letter is unreliable as it contains patent errors that any trained lawyer would be unlikely to make.

94 Mr Gill submits that TCH's reliance on the Goh brothers' evidence resembles similar fact evidence insofar as the alleged unwinding of the Goh Yeu Toh Deal is intended to render the existence of a similar unwinding of the Tan Thiam Chye Deal probable by reason of certain purported general resemblance. Besides the fact that both deals were executed by the relevant parties on 21 March 2013, there was no resemblance in the nature of or the identity of the parties to the transactions which gave probative value to the Goh brothers' evidence insofar as whether TTC held 11.5 million ISDN shares on trust for Teo.¹⁶⁷ Mr James Chai ("Mr Chai"), counsel for Tan Thiam Chye in Suit 1089, argues that TCH would not know the payment method used by TTC and only made unsubstantiated allegations in cross-examination that the transactions were fake.¹⁶⁸

The Goh Yeu Toh Deal

95 The court finds that the Goh brothers' testimony was consistent with the documents adduced in court and showed that Teo had indeed parked 14.5 million ISDN shares with them.¹⁶⁹ It is true that GYH changed his evidence during the trial to say that the shares belonged to GYT and acknowledged that

¹⁶⁶ PCS 743 at paras 186–189.

¹⁶⁷ DCS 743 at paras 26–27.

¹⁶⁸ Plaintiff's Closing Submissions for Suit 1089 dated 4 May 2021 ("PCS 1089") at para 73.

¹⁶⁹ Plaintiff's Reply Submissions for Suit 743 dated 4 June 2021 ("PRS 743") at para 21.

he made a mistake in Suit 743 on how the transactions were unwound, but he explained in his AEIC for Suit 1089 that this was because he had located the various documents and given them to TCH around 1 March 2021.¹⁷⁰ In any event, the court finds that GYH was consistent on the key fact that Teo had “parked” the ISDN shares with the Goh brothers and they were only sold on Teo’s instructions.

96 First, the two SPAs and the Payment Set-Off Agreement showed that GYT and Teo exchanged ISDN and Wee Hur shares for the exact same value of S\$4.64 million, and no amounts of money had to be paid to the other. On its own, this does not definitively show that Teo had “parked” ISDN shares with the Goh brothers and these were only to be sold on his instructions, but it is at least consistent with GYH’s testimony that the parties engaged in a “share swap”.¹⁷¹

97 The rest of the documentary evidence shows that the Goh brothers only sold the ISDN shares on Teo’s instructions. After the share swap on 21 March 2013, the 14.5 million ISDN shares belonging to Teo were kept in GYT’s CDP account. From June 2013 to January 2014, GYT sold 4.5 million of these shares on Teo’s instructions and gave the proceeds to recipients as instructed by Teo. This is evidenced by the Goh brothers’ handwritten notes, CDP statements and cheques issued by GYT. A summary of these transactions shows:¹⁷²

- (a) 3 June 2013: 300,000 of the 14.5 million ISDN shares were sold for S\$320,149.90 to offset dividends issued by both Wee Hur and ISDN.

¹⁷⁰ GYH 1089 AEIC at paras 19–20.

¹⁷¹ GYH 1089 AEIC at para 5.

¹⁷² 2AB 1089 at pp 240–242; Defendant’s Closing Submissions for Suit 1089 dated 4 May 2021 (“DCS 1089”) at para 148.

According to GYH's AEIC, Wee Hur had declared a dividend of S\$0.03 per share in May 2013, amounting to S\$278,400 for the 9.28 million Wee Hur shares in Teo's name. ISDN had declared a dividend of S\$0.005 per share in June 2013, amounting to S\$71,000 for the remaining 14.2 million ISDN shares in GYT's name. The balance amount to be transferred to GYT was S\$112,797. These calculations are evidenced in a handwritten note on the Hotel letterhead dated 6 June 2013.¹⁷³ GYT's handwritten notes on his SGX tax invoice dated 3 June 2013 state in Mandarin that Teo sold 300,000 shares and are consistent with these calculations.

(b) 21 June 2013: 300,000 ISDN shares were sold. The sale proceeds of S\$424,871.84 were disbursed via two cheques dated 27 June 2013, with one S\$400,000 cheque from UOB issued in favour of Alpha Gold International Limited and one S\$24,871.84 cash cheque from OCBC issued to GYT. GYT's OCBC and UOB chequebooks from 2013 records these payments on 27 June 2013, with handwritten notes indicating "ISDN Teo Cher Koon" or "Teo Cher Koon". GYT's SGX account statement dated 30 June 2013 also contains a handwritten note "Teo 13900,000" which corroborates the remaining number of Teo's ISDN shares after the first two transactions.¹⁷⁴

(c) 29 October 2013: 200,000 ISDN shares were sold for S\$127,661.03. A handwritten note on GYT's SGX account statement dated 31 October 2013 states in Mandarin "30/10/13 sell off 200,000", and a handwritten "13700,000" corresponds to the number of ISDN

¹⁷³ 2AB 1089 at p 57.

¹⁷⁴ 2AB 1089 at p 20.

shares remaining after this sale.¹⁷⁵ Further handwritten notes state that this was the third time selling, which GYT testified referred to selling off shares for Teo for the third time, state “offset to settle warrants \$11,338.97”, and indicate that S\$11,338.97 has to be returned to GYT.¹⁷⁶ In his AEIC, GYH said this sale was done on Teo’s instructions to offset the cost of buying 6.95 million ISDN warrants, which were also bought on Teo’s instructions. As the warrants cost S\$139,000, more than the sale proceeds, the difference of S\$11,338.97 had to be returned to GYT.

(d) 2 December 2013: 1 million ISDN shares were sold for S\$513,746.36. A S\$500,000 cheque dated 7 December 2013 was issued in favour of Star Treasure Enterprises Limited (“Star Treasure”), and the remaining S\$13,746.36 was issued in a cash cheque on the same date that was likely not cashed. This is supported by handwritten notes on GYT’s CDP contract statement dated 2 December 2013.¹⁷⁷ Tan Chin Tuan’s evidence is that he owned Star Treasure and the S\$500,000 was given to him on behalf of Teo and TTC as they were investors in a “marble project”.¹⁷⁸

(e) 5 December 2013: 1.06 million ISDN shares were sold for S\$518,135.65. A S\$500,000 cheque dated 11 December 2013 was issued in favour of TTC. There was also a blank cheque on that same date for S\$31,882.01 (being the S\$13,736.36 remainder from the 2 December transaction added to the remainder from the 5 December

¹⁷⁵ 2AB 1089 at p 21.

¹⁷⁶ 2AB 1089 at pp 80–81; Transcript, 12 March 2021 at p 472, line 15.

¹⁷⁷ 2AB 1089 at p 86.

¹⁷⁸ Transcript, 11 March 2021 at p 389, lines 9–15.

transaction). This is supported by handwritten notes on GYT's CDP contract statement dated 5 December 2013.¹⁷⁹

(f) 20 December 2013: 700,000 ISDN shares were sold for S\$463,919.95. Two UOB cheques dated 31 December 2013 were issued in favour of TTC, one for S\$400,000 and one for S\$63,919.95. GYT's UOB bank statement for January 2014 shows the withdrawal of the sums of S\$400,000 and S\$63,919.95 as cheque and cash on 2 and 3 January 2021 respectively.¹⁸⁰ Therefore, the S\$63,919.95 cheque was presented for payment and cash was withdrawn; however, as the cheque was neither crossed nor were the words "or Bearer" deleted, anyone could have presented the cheque to UOB for payment. It is therefore not clear whether TTC in fact received this payment. TTC's position is that, even though the S\$63,919.95 cheque was issued in his name, he did not receive this cheque nor any cash from the payment. In GYT's UOB chequebook, there is a handwritten note in Mandarin besides the entry for S\$63,919.95 indicating "ISDN boss".

(g) 7 January 2014: 940,000 ISDN shares were sold for S\$590,758.43. Two cheques of S\$300,000 each (*ie* a total of S\$600,000), dated 14 January 2014, were issued in favour of TTC. S\$600,000 is more than the sale proceeds. GYT made a handwritten note in Mandarin that he (*ie*, GYT) was owed the excess S\$9,241.57.¹⁸¹ GYT's UOB bank statement for January 2014 shows the withdrawal of S\$590,758.43 on 10 January 2014, with a handwritten note "ISDN 940000" above it, matching the number of ISDN shares sold.

¹⁷⁹ 2AB 1089 at p 85.

¹⁸⁰ PCS 743 at Annex A, p 47.

¹⁸¹ 2AB 1089 at p 97.

98 At this juncture, the Goh brothers had 10 million ISDN shares left. Between May 2014 and January 2015, the Goh brothers exchanged these shares for 9.28 million Wee Hur shares in six tranches. This is evidenced by both Assetraise's and GYT's Securities Account Movements.¹⁸² The transactions are as follows:

- (a) May 2014: On 14 May, GYT sold 400,000 ISDN shares and bought 300,000 Wee Hur shares. On 19 May, Assetraise bought 400,000 ISDN shares, the same date that the sale of GYT's ISDN shares was completed.
- (b) June 2014: On 2 June, GYT sold 400,000 ISDN shares and bought 397,000 Wee Hur shares. On 5 June, Assetraise bought 400,000 ISDN shares, the same date that the sale of GYT's ISDN shares was completed.
- (c) June 2014: On 3 June, GYT sold 300,000 ISDN shares and bought 329,000 Wee Hur shares. On 6 June, Assetraise bought 300,000 ISDN shares, the same date that the sale of GYT's ISDN shares was completed.
- (d) June 2014: On 9 and 10 June, GYT sold two tranches of 400,000 ISDN shares each. On 12 June, Assetraise bought 342,000 shares. This is close to the number of 400,000 for one of these tranches and corresponds to the date the sale of the first tranche of 400,000 ISDN shares was completed.
- (e) 8 October 2014: GYT sold 4,000,000 ISDN shares and bought 4,000,000 Wee Hur shares.

¹⁸² 2AB 1089 at pp 246, 249.

- (f) 19 January 2015: GYT sold 4,100,000 ISDN shares and bought 4,254,000 Wee Hur shares.

99 For completeness, it should be noted that the detailed handwritten notes of GYT concerning the 14.5 million ISDN shares, are consistent with the above transactions.¹⁸³ As for the S\$63,919.95 which TTC claims he did not receive and which he says was not deposited in his bank accounts, it is more likely than not that he did receive it, given that he acknowledges receiving the S\$400,000 cheque issued on the same day.¹⁸⁴ And, if it was withdrawn in cash, he may not necessarily have deposited it into his bank accounts.

100 All the evidence reviewed earlier indicates that Teo had indeed “parked” ISDN shares with the Goh brothers, with GYH arranging for his older brother, GYT, to receive the ISDN shares from Teo. Teo gave the Goh brothers instructions on selling the shares and on how to distribute the sale proceeds. The sums owed for each sale and purchase of ISDN shares and Wee Hur shares were regularly set off against each other, which shows that Teo and the Goh brothers had to account to each other for the shares that they held on the other’s behalf. The Goh brothers’ detailed records, particularly their handwritten notes that refer to ISDN and Teo, are also consistent with GYH’s testimony that he and his brother never thought of selling Teo’s shares for profit, as they were helping Teo with the parking of his shares and would need to account to Teo.¹⁸⁵

101 Mr Gill submits that Teo had already disclosed his reduction in shareholding when he sold the 26 million ISDN shares in 2013. Such public

¹⁸³ 2AB 1089 at pp 38–39.

¹⁸⁴ Transcript, 22 March 2021 at p 510, lines 11–14.

¹⁸⁵ Transcript, 22 March 2021 at p 573, lines 15–22.

announcements would not have been made if the shares were still beneficially owned by Teo, since Teo would still have a deemed interest in such shares. Thus, TCH's case that Teo hatched a scheme to enter this share swap arrangement to allow him to sell ISDN shares without making public announcements is a figment of Tan's imagination.¹⁸⁶ This submission is rejected. The public announcements were made by Teo in 2013 because GYT indeed became the owner of the ISDN shares. However, there was an understanding between Teo and the Goh brothers that the Goh brothers would only sell those shares and distribute the sale proceeds accordingly on Teo's instructions. These subsequent sales did not require Teo to make public announcements since he was not the one selling the shares. Granted, as Mr Gill submits, it might have been more straightforward for Teo to transfer the shares to GYT without going through an elaborate share swap,¹⁸⁷ but that does not change the court's assessment of the objective evidence adduced in court.

102 The Goh Yeu Toh Deal was carried out to enable Teo to "park" his ISDN shares with the Goh brothers, and pursuant to this arrangement, Teo instructed them to sell the ISDN shares and distribute the proceeds to various recipients.

The Tan Thiam Chye Deal

103 However, the court accepts Mr Gill's submission that the Goh Yeu Toh Deal does not have probative value in relation to the Tan Thiam Chye Deal. Even if Teo parked shares with the Goh brothers, this does not mean he did the same thing with TTC. The mere fact that both deals were agreed on 21 March 2013 does not mean that the transactions were for the same purpose. Unlike the

¹⁸⁶ Defendant's Reply Submissions for Suit 743 dated 4 June 2021 ("DRS 743") at para 7.

¹⁸⁷ DRS 743 at para 8.

Goh Yeu Toh Deal, there was no evidence in respect of the Tan Thiam Chye Deal that there had been a share swap between ISDN and TTC, nor was there evidence that TTC had ever sold his ISDN shares at Teo's request and disbursed the sale proceeds to various recipients, like the Goh brothers did.

104 Mr Low's case hinges on attacking the legal documentation used in the Tan Thiam Chye Deal, as well as TTC's credibility. It should first be noted that the legal documentation of the Tan Thiam Chye Deal and Goh Yeu Toh Deal already indicates the differences in the transactions. Unlike the Goh Yeu Toh Deal, there was only one SPA in the Tan Thiam Chye Deal, and there was no corresponding SPA for TTC to swap shares with Teo, nor was there any similar payment set-off agreement.

105 Second, there was documentary evidence for most of the payments received by Teo from TTC, and Teo confirmed in his AEIC that he received the S\$900,500 cash payment. TCH has not provided a better explanation for these payments, other than his bald assertions that the payments were fake and part of a "parking exercise". That is not a persuasive argument. For one, TCH asserted that Teo had asked TCH's broker to assist him in the parking exercise. However, he admitted that he was not present when Teo was instructing the broker to park shares with TTC and only heard it subsequently from TTC and Teo.¹⁸⁸ He therefore did not have personal knowledge of this arrangement.

106 Next, when shown the documents for the Tan Thiam Chye Deal as well as proof of the payments made by TTC, TCH said that he did not know about these documents or transfers.¹⁸⁹ He also admitted that he had no personal

¹⁸⁸ Transcript, 22 February 2021 at p 103, lines 7–16.

¹⁸⁹ Transcript, 22 February 2021 at p 109, line 4.

knowledge to speculate that Teo, who was the beneficial owner of Assetraise, was not entitled to keep the S\$900,500 he received.¹⁹⁰ Since he had no knowledge about the documents, he had no basis to assert that the transactions were fake. When pressed on this at the trial of Suit 1089, he claimed that he knew from the start that the transactions were not genuine because Teo personally asked him and TTC to find reliable people to “park [Teo’s] shares in”, shifting from his earlier evidence in Suit 743 that Teo had instructed the broker to do it.¹⁹¹ However, there was no evidence of this discussion that he allegedly had with TTC and Teo and it is not credible. Lastly, TCH admitted at the trial that TTC could not have pledged shares to EFH that did not belong to him.¹⁹² This weighs against the Tan Thiam Chye Deal being a “parking exercise” for Teo’s benefit, as it is unlikely Teo would allow TTC to run this risk with Teo’s shares.

107 Third, Mr Low submits that it made no sense for the lawyers to draft the Additional Letter instead of amending the SPA payment terms. The Additional Letter also had typographical errors, was not signed by Teo and was not issued on an official letterhead. However, this in itself does not prove that the SPA was therefore “fake” or designed to conceal Teo’s true intentions of parking shares with TTC. Parties may choose how to record the terms of their agreement. Similarly, just because there are errors in the Additional Letter does not conclusively prove that it was fake.

108 Fourth, Mr Low submits (see [53(a)] above) that it was not possible for Teo to arrange the Second Placement in three days, and it would most likely

¹⁹⁰ DRS 743 at para 35; Transcript, 22 February 2021 at p 112, lines 1–16.

¹⁹¹ Transcript, 10 March 2021 at p 264.

¹⁹² Transcript, 12 March 2021 at pp 425–426, p 429 lines 3–12.

have been in the works, at the very earliest, two weeks before the trip to Myanmar on 30 March 2013. It therefore did not make sense for Teo to arrange this deal for S\$0.32 per share when he knew that the Second Placement was already in the works for a price of S\$0.45. It also did not make sense for TTC to buy ISDN shares from Teo just days after the First Placement had been announced on 14 March 2013, as he could have got a better price if he had bought shares from the open market instead.

109 The court finds Teo’s evidence on the Second Placement not plausible because, as he testified, a placement will typically take one month.¹⁹³ Therefore I accept Mr Low’s submission that the Second Placement must have been in the works, or at least was being discussed, soon after the First Placement on 14 March and before the Myanmar trip on 30 March 2013. However, that does not mean that it was illogical for Teo to enter the Tan Thiam Chye Deal on 21 March, as ISDN may not have finalised the exact price of S\$0.45 for the Second Placement at that date. Second, as Mr Gill submits, TTC had good reason not to buy 11.5 million ISDN shares from the open market as such a quantity was near the daily average of shares being traded at that time, and this would have easily caused the price to “shoot up”.¹⁹⁴ Similarly, if Teo had sold 11.5 million ISDN shares in the open market, that could cause the overall share price to decrease.¹⁹⁵ Further, TTC may not have been able to negotiate with a seller from the open market for him to pay in instalments, as he was able to with Teo. Third, even if it was not the best deal for both Teo and TTC, it does not follow that the transaction must have been “fake” or designed for Teo to “park” shares with

¹⁹³ Transcript, 25 February 2021 at p 331, lines 8–11.

¹⁹⁴ DRS 743 at para 37; Plaintiff’s Bundle of Supplementary Documents for Suit 743 dated 25 February 2021 at p 40, rows 1834–1839.

¹⁹⁵ Transcript, 8 March 2021 at p 34, line 21–p 35, line 2.

TTC. There is no evidence of Teo having control over TTC's sale of ISDN shares in the same way as with the Goh brothers.

110 Lastly, Mr Low submits that TTC did not own a single ISDN share in his own name from February 2012 to March 2013, and only owned an average of S\$1,099,021.16 worth of shares in the months leading up to the Tan Thiam Chye Deal. It is therefore inconceivable that TTC would, on a whim, decide to pay S\$3.68 million for 11.5 million ISDN shares from Teo.

111 However, even if TTC never owned ISDN shares before March 2013, that does not mean it is “inconceivable” that he wished to own ISDN shares after March 2013. Around this time, he already knew of the Myanmar Energy Project and was regretting missing out on the First Placement. Nor was this done on a whim – as he said during the trial, he was prepared to walk away from the deal on 21 March 2013 if he was not able to negotiate better terms for himself.¹⁹⁶ As Mr Gill submits, TTC was entitled to make his own investment decisions and increase his investment in ISDN in 2013 if he believed in ISDN's potential.¹⁹⁷ Mr Low also argues that it is “disconcerting” that TTC did not have the money to pay for the ISDN shares and had to rely on credit. However, even if TTC had to “draw down” on his credit line, this does not mean that the transaction is fake.¹⁹⁸

112 The evidence adduced does not support TCH's position that the Tan Thiam Chye Deal was for Teo to “park” his ISDN shares with TTC. TCH has not offered a satisfactory alternative explanation for the documentary evidence

¹⁹⁶ Transcript, 8 March 2021 at p 22, lines 13–18.

¹⁹⁷ PRS 743 at para 38.

¹⁹⁸ PRS 1089 at para 13.

of the Tan Thiam Chye Deal, nor has he adduced any evidence to show how it is similar to the Goh Yeu Toh Deal, apart from the fact that the SPAs were signed on the same day.

113 If Teo did not “park” ISDN shares with TTC as this court finds, there are two possible explanations. The first explanation is that Teo did make Representation 5 to TCH and lied that he had parked his ISDN shares with TTC. TCH, relying on Teo’s and TTC’s assurances, and his own inferences about the Tan Thiam Chye Deal, went along with buying ISDN shares. The second explanation is that Teo never made Representation 5 to TCH and the latter is simply bringing up the Tan Thiam Chye Deal to cast aspersions on Teo and complicate matters.

114 If the first explanation is right, this requires the court to accept that Teo: (a) took the trouble to engage lawyers and sign legal documents in March 2013; (b) conspired with TTC to fake various payments throughout 2013, with no conceivable benefit to either of them; and (c) conspired with TTC to lie to TCH in September 2013 to induce him to invest in ISDN. These scenarios are hard to accept. There was no reason for Teo to go to all that trouble. The second explanation is simpler and more plausible. Representation 5 was never made to TCH.

115 In conclusion, the court finds that TCH has not proved that the Alleged Indemnity and Alleged Representations were made to him by Teo.

Were the payments made by TTC to TCH pursuant to the Alleged Loan Agreement or for some other purpose?

116 Since I find that there was no Alleged Indemnity, the payments by TTC to TCH and other persons could not have been a repayment pursuant to the

Alleged Indemnity. The next question is whether I accept TTC's claim – that the sum he gave to TCH was pursuant to the Alleged Loan Agreement, or whether the payments were for some other purpose.

The parties' cases

117 Mr Chai, counsel for TTC in Suit 1089, first argues that TCH is an evasive and unreliable witness, who has not produced any cogent evidence to substantiate his allegations that the March 2013 Married Deals were not genuine (which, in any event, has no bearing on the Alleged Loan Agreement).¹⁹⁹ TCH also gave inconsistent testimony concerning the Alleged Indemnity, his demand for payment from Teo, his allegations that TTC held shares and cash on behalf of Teo, and Teo's direction to TTC to sell ISDN shares.

118 Second, Mr Chai argues that there is sufficient evidence of the Alleged Loan Agreement from the Payment Vouchers and the parties' contemporaneous conduct, especially their messages to each other after the First Letter of Demand.²⁰⁰ TTC did not write the word "loan" on the Payment Vouchers because he did not know if TCH was going to repay him in the form of shares or cash. Finally, TTC contemplated taking legal action against TCH between 2015 and 2019 to recover the unpaid loan but was hesitant to pursue such an expensive course of action as he believed TCH was impecunious.²⁰¹

119 Mr Low, who is also counsel for TCH in Suit 1089, argues that there is no documentary proof of the Alleged Loan Agreement. The Payment Vouchers did not state that it was a loan agreement, and the only mention of a loan was in

¹⁹⁹ PCS 1089 at paras 72, 75.

²⁰⁰ PCS 1089 at para 102.

²⁰¹ PCS 1089 at para 52.

the 20 December 2015 Letter, which TCH did not receive at the time. TTC also could not provide a cogent explanation on the exact circumstances leading up to and after the Alleged Loan Agreement, and it took TTC 13 months to recall and depose on affidavit the express terms of the Alleged Loan Agreement. His witnesses, Yap Xi Ming (“Yap”) and Foo Say Fong (“Foo”), have no personal knowledge of the Alleged Loan Agreement.²⁰² Teo also gave contradictory evidence as to when he first knew about the Alleged Loan Agreement, as he said at trial he was aware of it from 2014 but said in his AEIC that he was aware of it in November 2015, after the First Letter of Demand. The contemporaneous documents and parties’ conduct show that Teo had given TCH the Alleged Indemnity in consideration for investing in ISDN, and the sale of ISDN shares and payments by TTC to TCH were on Teo’s instructions.

120 In considering whether the evidence supports the existence of the Alleged Loan Agreement, the same test set out at [37] above was applied here.

Applying the law to the facts

121 First, the court agrees with Mr Low’s submission that Yap and Foo’s testimony have no probative value to the suits, given that neither has personal knowledge of the Alleged Loan Agreement. The same applies to Tan Chin Tuan, who testified that he only knew what his brother (*ie*, TCH) told him.²⁰³

Documentary evidence

122 Hence, it is necessary to consider the relevant documentary evidence and the parties’ contemporaneous conduct. As stated earlier, the Payment

²⁰² DCS 1089 at para 79.

²⁰³ Transcript, 24 February 2021 at p 261–262; p 264, lines 15–17.

Vouchers do not, on their own, support the existence of the Alleged Indemnity or the Alleged Loan Agreement. However, the fact that the payments were recorded in Payment Vouchers shows that there was a degree of formality in this arrangement (see [67] above). Had the payments been, for example, a gift to TCH, it is unlikely that TTC would have recorded them in such detail.

123 Second, the correspondence between Teo and TTC supports the existence of the Alleged Loan Agreement. As stated at [41], the WhatsApp message dated 17 November 2014 from TTC to Teo supports Teo's version of events. The WeChat conversation between them on 26 November 2015 also supports TTC's position as it refers to the loan agreement. Mr Low submits that, through the latter message, Teo was giving TTC instructions to draft the 20 December 2015 Letter to fabricate the Alleged Loan Agreement and compromise TCH's claim against Teo.²⁰⁴ But, as stated earlier, it is hard to believe that the parties would have fabricated messages in anticipation of litigation.

124 As for the 20 December 2015 Letter, sent shortly after the First Letter of Demand, this supports the existence of the Alleged Loan Agreement, given that TTC refers to the "loan" and the launch of TCH's "contemplated" IPO. The letter is reproduced here for ease of reference:

[...] I do not understand why you claimed that my loan to you was a repayment from him to you.

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

²⁰⁴ PCS 743 at para 218.

125 It is this court’s finding that the 20 December 2015 Letter is consistent with Teo’s testimony at trial that he had stopped going to the Hotel to see TCH because in 2014, TCH “already start borrowing money” from TTC.²⁰⁵ Consequently, this court rejects Mr Low’s submission that this contradicts Teo’s AEIC where he stated that he first became aware of the Alleged Loan Agreement around 24 November 2015.²⁰⁶ Teo was not saying that he became aware of this specific Alleged Loan Agreement in 2014, but rather, that he had stopped going to the Hotel at the end of 2014 because TCH was “pestering” and attempting to borrow money from everyone, including TTC, and their relationship “went sour” around the beginning of 2015 when TCH tried to “chase” him and TTC for money.²⁰⁷ This is consistent with Teo’s AEIC for Suit 743 where he said he continued to be in communication with TCH until around September 2014, and was even introduced to another investment opportunity by TCH at the start of 2014.²⁰⁸

Conduct of the parties

126 TCH claims that he did not receive the 20 December 2015 Letter as he did not sign the posting receipt to acknowledge he had received it. As explained to him at trial, this letter was not sent by AR registered mail, but by registered mail, which does not require an acknowledgement of receipt.²⁰⁹ Nonetheless, even if he did not receive the 20 December 2015 Letter (which this court does not believe), TCH did not deny receiving the 6 December 2015 Letter from Teo (which was also referenced in the First Letter of Demand), where Teo said he

²⁰⁵ Transcript, 26 February 2021 at p 484, lines 10–11.

²⁰⁶ DCS 1089 at para 92.

²⁰⁷ Transcript, 26 February 2021 at p 480.

²⁰⁸ TCK 743 AEIC at para 27.

²⁰⁹ Transcript, 23 February 2021 at p 186, lines 16–25.

had contacted TTC and confirmed that the money TTC transferred to TCH was a loan. Thus, he would have been aware of TTC's position that the payments were a loan which he had to repay. However, TCH could not explain why he did not instruct his lawyers at that time to respond to Teo's letter to demand an explanation on what loan TTC was talking about.²¹⁰ If there really was no Alleged Loan Agreement, one would expect him to swiftly respond to refute this claim.

127 Mr Low suggested at the trial that TTC delayed in sending the 20 December 2015 Letter to TCH despite hearing about it from Teo in November 2015, because he could not be bothered until he was "prodded" by Teo to do something. TTC's explanation was that he went on another trip with his family after the business trip and had to attend to his son, who had muscle cramps, after that.²¹¹ In my view, one month is not a particularly long delay. In any event, Mr Low's submission also does not explain why TTC used his own money to make the first payment to TCH on 13 November 2014, a fact that TCH accepts (see [23] above). Had the payment really been a repayment on Teo's instructions pursuant to the Alleged Indemnity rather than a loan, TTC would have waited for the sale proceeds rather than paying TCH out of his own pocket. There was no reason for TTC to be so charitable on Teo's behalf even if they are friends.

128 TCH said in his AEIC that TTC's claim was made in a desperate attempt to bolster Teo's case. Mr Low also said at the trial that TTC had no urgency or desire to make a case against TCH until he realised he had to come forward as a witness in Suit 743, which resulted in a flurry of activities before the trial in

²¹⁰ DRS 743 at paras 50–51; Transcript, 23 February 2021 at p 187, lines 18–22.

²¹¹ Transcript, 8 March 2021 at p 135.

Suit 743.²¹² As this court said at the trial, this argument is hard to accept. It is difficult to believe that someone would commence a suit and incur thousands of dollars in costs thereon, simply because he had to come forward as a witness in another suit.

129 The Alleged Loan Agreement is a better explanation for the parties' conduct and the documents before the court than the Alleged Indemnity. This court therefore accepts TTC's evidence that he sold his 8 million ISDN shares and paid the sale proceeds to TCH pursuant to the Alleged Loan Agreement.

Amount owed to Tan Thiam Chye

130 The next issue to consider is how much TCH owes to TTC under the Alleged Loan Agreement. TTC claims for the loss of profit on the 10,061,049 ISDN shares which he could have purchased from the open market at S\$0.23 per share had the loan amount of S\$2,314,041.39 been repaid to him, which amounts to S\$4,829,303.52. He calculates this based on the difference in the price of ISDN shares on 13 August 2015 (S\$0.23) and on 4 February 2021 (S\$0.71).²¹³ He also claims for the loss of dividends he would have earned from 2015 to 2019, amounting to S\$281,709.38, in respect of the 10,061,049 ISDN shares he could have bought had the loan been repaid.²¹⁴ In the alternative, he claims for loss of the bank interest he would have earned on this sum since 13 August 2015 to the date of payment.

131 The court should first consider whether the Agreement Terms were part of the Alleged Loan Agreement. There is no documentary evidence of the

²¹² Transcript, 9 March 2021 at p 173.

²¹³ PCS 1089 at para 110; 1AB 1089 at pp 879, 881.

²¹⁴ PCS 1089 at para 113.

Agreement Terms, apart from a reference to the “contemplated IPO” in the 20 December 2015 Letter, which is consistent with TTC’s explanation. The Payment Vouchers also do not record the Agreement Terms or the fact it was a loan, although they record the ISDN shares sale proceeds and the sums transferred to TCH.

132 First, Mr Low submits that it took TTC 13 months to recall and depose the Agreed Terms on affidavit. He points to the first affidavit of TTC filed in Suit 743 dated 8 January 2020 (although it was affirmed on 17 October 2019), where the Agreed Terms were not mentioned (the “TTC Striking Out Affidavit”), and his AEIC for Suit 1089 dated 17 February 2021 where the Agreed Terms were mentioned.²¹⁵ Given the large sum allegedly lent to TCH, this is inconsistent with the behaviour of a lender who was facing financial difficulties.

133 The court does not think it is not accurate to say that TTC only recalled the Agreed Terms when he filed his AEIC for Suit 1089. His Statement of Claim dated 11 November 2020 for Suit 1089 already refers to the Agreed Terms. Second, the TTC Striking Out Affidavit is an affidavit filed in support of Teo’s application for striking out in Summons 5724/2019 for Suit 743. TTC was not the defendant in that suit. It cannot be expected that he would disclose every detail relevant to his own suit which he had yet to commence.²¹⁶

134 Second, Mr Low said at trial that the preparation for the listing of TLV (incorporated on 22 June 2015) only started in June 2015 and there was no way TCH could have assured TTC that TLV was going to list in 9 months as of

²¹⁵ DCS 1089 at para 64.

²¹⁶ Transcript, 9 March 2021 at p 160, lines 10–12.

November 2014.²¹⁷ The court rejects that argument. Although TLV was incorporated on 22 June 2015, TTC had explained at the trial there are considerable preparations and negotiations before an IPO is launched, including how the company is to be structured. It is therefore not implausible that an IPO was being discussed even before the incorporation of TLV. Second, TCH was not assuring TTC that TLV was going to list in 9 months. The Agreed Terms merely contemplate that the loan is to be repaid to TTC either when TLV was publicly listed, or within 9 months from the date of the Alleged Loan Agreement (*ie*, 13 August 2015), whichever is the earlier. Even if TLV failed to list publicly, TTC would still be entitled to the return of his money on 13 August 2015.

135 Third, TTC’s testimony better explains the 20 December 2015 Letter and the Payment Vouchers than TCH’s testimony. First, the 20 December 2015 Letter shows that TCH was to repay the loan once his “contemplated IPO is launched”. Granted that TTC would not have included the date of the IPO as the only due date for the loan repayment given that at the trial, he testified that an IPO could take years.²¹⁸ Moreover, there is no guarantee that an IPO will be successful. If it failed, he might not get back his money. Therefore, the court accepts that he would have provided a separate, definite timeline to protect himself in case the intended IPO did not materialise. This court also accepts that he did not refer to shares in the 20 December 2015 Letter because there was no reason to ask for a return of the shares when the ISDN price was below S\$0.29 (*ie*, the price at which he sold the shares in November 2014).²¹⁹

²¹⁷ 2AB 1089 at p 225; Transcript, 9 March 2021 at p 164.

²¹⁸ Transcript, 9 March 2021 at p 164, lines 4–10.

²¹⁹ Transcript, 9 March 2021 at p 161, lines 17–19.

136 The court is also of the view that TTC’s testimony better explains the Payment Vouchers. If the loan was only “with reference to money”, he would not have needed to include the number of shares sold in the Payment Vouchers. As TTC explained at the trial, he recorded the payments as the sale proceeds from ISDN shares so the parties could determine on the due date whether TCH was to pay in shares or in cash.²²⁰ The court accepts that it is reasonable for TTC to have included this term in order to protect himself from losing money should the share price drop at the time for repayment, and to benefit therefrom should the share price rise. In contrast, TCH was unable to produce his own copies of the Payment Vouchers and changed his evidence on how the Payment Vouchers were signed.²²¹

137 For completeness, it should be noted that TTC said that he not indicate the word “loan” in the Payment Vouchers as he could not determine whether TCH would return him the loan in shares or in cash, due to the “contingent nature” of the Agreed Terms.²²² The court understands his evidence to mean that, in ordinary parlance, the word “loan” generally refers to a loan of money. He therefore did not write the word “loan” on the Payment Vouchers as the Alleged Loan Agreement contemplated that he could be repaid in shares instead.

138 This court therefore accepts TTC’s position that the Agreement Terms were part of the Alleged Loan Agreement and that he was owed the sum of S\$2,314,041.39 as of 13 August 2015.

²²⁰ Transcript, 8 March 2021 at p 114, lines 4–9; p 118, lines 9–25.

²²¹ PCS 1089 at para 42; Transcript, 10 March 2021 at p 276, lines 3–10.

²²² PCS 1089 at para 43.

139 The court turns next to TTC's claim for the loss of profit and loss of dividends on the ISDN shares he would have bought. This court declines to make this award – it cannot be said that TTC would have bought ISDN shares immediately had the money been repaid on 13 August 2015. Even if he would have done so, the court is not persuaded that he would have retained those shares from 2015 to 2019 to earn dividends, nor up to 4 February 2021 to earn the profits he claims.

140 As for TTC's claim for interest from 13 August 2015 to the date of judgment pursuant to s 12 of the Civil Law Act (Cap 43, 1999 Rev Ed), Mr Chai has not provided any argument in support of this beyond citing *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd and another* [2008] 2 SLR(R) 623 at [102]–[103].²²³ This case states that the general rule is to award interest on damages from the date of the accrual of the loss in question, though the court might choose to award interest from a later date in some cases, *eg*, where there was an unjustifiable delay on the claimant's part in bringing his action to trial.

141 TTC commenced Suit 1089 on 11 November 2020, more than five years after the accrual of the action on 13 August 2015. He says he contemplated taking legal action between 2015 and 2019 but was hesitant to do so as he thought TCH was impecunious. As TCH was staying in rented accommodation, TTC was worried of the risk of not being able to recover the sum from him. He only realised TCH was not impecunious when he became aware of Suit 743 in 2019. He then sought legal advice in March 2020 but was hesitant to take action due to the pandemic. He only filed Suit 1089 in November 2020 when he feared the 6-year limitation period would be expiring.²²⁴

²²³ PCS 1089 at para 119.

²²⁴ TTC 1089 AEIC at paras 43–47.

142 This court is of the view that his explanation for his delay is not reasonable. First, TTC has not explained why he thought TCH was impecunious, apart from his belief that in his interactions with TCH, he understood that the latter was heavily indebted and unable to pay his debts. The court does not see the relevance of TCH staying in a rented house. Second, TTC became aware of Suit 743 at least by October 2019, when he affirmed the TTC Striking Out Affidavit. He did not explain why he only sought legal advice on his claim in March 2020 which was about five months later. Third, he did not explain why the pandemic made him hesitant to take action. He had been kept out of his money by sitting on his claim for five years. There is no reason for TCH to compensate him for his own delay (*Nirumalan V Kanapathi Pillay v Teo Eng Chuan* [2003] 3 SLR(R) 601 at [48]–[49]).

143 I therefore only award TTC interest from the date of the writ on the judgment sum (*Friis and another v Casetech Trading Pte Ltd and others* [2000] 2 SLR(R) 511 at [48]–[49]; para 77 of the Supreme Court Practice Directions).

144 For completeness, it should be noted that TTC argues in the alternative that TCH was unjustly enriched by the payment while TCH contended that TTC is estopped from reclaiming the Sum. As the court finds that the Alleged Loan Agreement exists, it is not necessary to consider the unjust enrichment claim which would have been rejected in any event because TTC has not explained the relevant unjust factor. The defence of estoppel is also rejected as the evidence does not show that TTC made any clear and unequivocal representation to TCH that he would not enforce his strict legal rights.

Conclusion

145 For the reasons given earlier, this court dismisses with costs TCH's claim in Suit 743 and awards judgment with costs to TTC in Suit 1089. For Suit

1089, TCH is to pay TTC S\$2,314,041.39 with interest at 5.33% per annum from the date of the writ (*ie*, 11 November 2020) until payment.

146 The costs awarded to Teo in Suit 743 and to TTC in Suit 1089 are on a standard basis to be taxed unless otherwise agreed.

Lai Siu Chiu
Senior Judge

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