IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 03

Suit No 763 of 2020 (Summons No 3799 of 2020)

Between

(1) Chen Mingxing
(2) Deng Yuhao
(3) Wu Jiaqi
(4) Huang Hai
(5) Zhu Tao

… *Plaintiffs*

And

(1) Zhang Jian
(2) Zhao Xin
(3) Liu Yunhua
(4) Quak Choon Chai
(5) Deng Rong
(6) Eminence Investment Pte Ltd

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure] — [Injunctions]

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Introduction

1 In this summons, the plaintiffs sought an interim injunction to restrain the 1st to 5th defendants (the "defendants") from disposing of any shares in OEL (Holdings) Limited ("OEL") held in their names and reducing or diluting the share value pending the trial of this action or further order. This included, but was not limited to, voting in favour of any proposed share placement(s) by OEL during any extraordinary or annual general meeting. The plaintiffs claimed that they had paid a sum of $7.7 million to the 1st and 2nd defendants with the intention of investing in OEL's shares, rather than to benefit the defendants.

2 After hearing the parties' submissions, I granted the interim injunction as sought by the plaintiffs on 13 November 2020. On 16 and 17 November 2020, the defendants made a request for further arguments to be heard. I

partially allowed the defendants' request and after considering the parties' submissions, I varied the interim injunction by limiting it to 197,545,000 of the ordinary shares in OEL which were purchased on or around 16 December 2019 by the defendants. The parties were informed of the variation order by way of a registrar's notice dated 7 December 2020. Pursuant to a further clarificatory request, the terms of the draft Order of Court were clarified by a second registrar's notice dated 11 December 2020.

3 The defendants have since filed an application for leave to appeal against my decision. I now set out my grounds of decision in full.

Background

4 The 1st to 3rd plaintiffs are Cambodian citizens, while the 4th and 5th plaintiffs are Chinese citizens. The plaintiffs are private investors and businessmen who work and reside in Cambodia.[1] They were looking for investment opportunities in Singapore sometime around September to October 2019.

5 The 1st defendant is a Chinese citizen and a Singapore permanent resident. He has been the Chairman and Executive Director of OEL since 4 May 2020.[2] He is the single largest shareholder in OEL, a company listed on the Catalist of the Singapore Exchange. The 2nd defendant is a Chinese citizen residing and working in Singapore. Since 20 January 2020, the 2nd defendant has been appointed the Chief Executive Officer and Executive Director of

1 Statement of Claim ("SOC") at paras 3–4

2 Chen Mingxing's 1st affidavit at para 11, p 69

OEL.[3] The 3rd defendant is a Singapore citizen and a business consultant in OEL. The 1st to 5th defendants are all shareholders in OEL. The 6th defendant, Eminence Investment Pte Ltd ("EI"), is a company incorporated in Singapore and is in the business of providing management consultancy and corporate investment services.[4] The 1st defendant is also the Managing Director and Chief Executive Officer of EI, whilst the 2nd defendant was a former Executive Director of EI and the 3rd defendant is the Executive Director and Chief Economist of EI.[5]

6 Ms Wang Jue or "Jess" ("WJ") is a Singapore citizen and a shareholder and director of Hai Sin International Pte Ltd ("HS International").[6] She was the plaintiffs' contact person in Singapore and was allegedly responsible for recommending that they should purchase shares in OEL. WJ was an Executive Director of OEL from 27 February 2020 until 26 June 2020.[7] She continues to be a shareholder in OEL and is also involved in the management of various other business entities.

7 WJ and the defendants entered into a Sales and Purchase Agreement ("SPA") with one Mr Jeffrey Hing Yih Peir ("Mr Hing") on or around 16 December 2019 to purchase a total of 197,545,000 ordinary shares in OEL ("OEL Shares"). Under the SPA, Mr Hing disposed of his entire interest in the share capital of OEL, representing 29.56% of the issued and paid up capital of

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3 Chen Mingxing's 1st affidavit at p 160

4 SOC at paras 5–15; Defence at paras 5–12

5 SOC at para 16; Defence at para 13

6 Wang Jue's 2nd affidavit at para 1

7 Chen Mingxing's 1st affidavit at paras 63, 79

OEL.[8] The proportions in which the OEL Shares were transferred to the 1st to 5th defendants and WJ are set out as follows:[9]

1st defendant	138,331,000 shares
2nd defendant	13,773,000 shares
3rd defendant	10,692,000 shares
4th defendant	10,692,000 shares
5th defendant	10,692,000 shares
WJ	13,365,000 shares

8 The OEL Shares were acquired from Mr Hing at approximately eight times their market price. It was stated in the OEL Board of Directors' response to queries raised by the Singapore Exchange Securities Trading Limited in relation to the acquisition of the OEL Shares that the price was reached on a "willing buyer willing seller basis", with the purchasers taking into consideration that Mr Hing would be giving up his position as the controlling shareholder of OEL.[10]

9 In or around early May 2020, the plaintiffs were allegedly concerned about the 1st and 2nd defendants' disproportionately high salaries. They also found out that OEL had entered into a loan agreement which was secured by, among other things, a first legal mortgage over OEL's leasehold property at 8 Aljunied Avenue 3, Singapore 389933 (the "Property"). Thus, the plaintiffs instructed WJ to request the defendants to execute a share pledge in respect of

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8 Chen Mingxing's 1st affidavit at p 179

9 SOC at para 45

10 Chen Mingxing's 1st affidavit at p 476 (Query 3)

the OEL Shares in favour of the plaintiffs. This request was rejected. The plaintiffs further began to harbour doubts over the 1st defendant's qualifications and capabilities. The plaintiffs eventually proceeded to issue letters of demand including two on 15 July 2020 and 4 August 2020 seeking, *inter alia*, the return of the OEL Shares.[11] The plaintiffs also claimed for the return of monies totalling $1,656,110.72 comprising $1,190,000 which was allegedly used by the 1st defendant to provide a director's loan to OEL and the balance surplus monies. On 18 August 2020, a day before the underlying suit (Suit 763 of 2020) was commenced on 19 August 2020, OEL made an announcement that it had entered into an agreement for the placement of ordinary shares in OEL with 16 subscribers on 17 August 2020 (the "August placement"). The 3rd defendant was one of the subscribers.[12]

10 The focus of the injunction application was on the OEL Shares. The plaintiffs claimed that the defendants held the OEL Shares for them on trust, or that they had been unjustly enriched. In the present summons, the plaintiffs therefore sought an interim injunction to restrain the defendants from disposing of any shares in OEL held in their names and reducing or diluting the share value pending the trial of this action or further order.

The parties' pleaded cases

11 WJ played a pivotal role in the arrangements for both the plaintiffs and the defendants. Both the pleaded cases of the plaintiffs and the defendants in the underlying suit relied heavily on what WJ had purportedly informed them of.

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11 Chen Mingxing's 1st affidavit at pp 520–527; 888–897

12 Chen Mingxing's 1st affidavit at para 107; p 954

12 The plaintiffs pleaded, *inter alia*, that there was a presumed resulting trust whereby the defendants held the OEL Shares on trust for the plaintiffs, or alternatively that the Shares were held on remedial constructive trust for them. As a further alternative, the plaintiffs pleaded that the defendants had been unjustly enriched with the monies spent on purchasing the OEL Shares.

13 According to the plaintiffs, they had paid $7.7 million pursuant to an agreed investment plan involving, *inter alia*, the purchase of the OEL Shares for $6,043,889.28 by the defendants and WJ, and the shares would be held on trust for the plaintiffs. The plaintiffs entered into this arrangement because they did not have CDP accounts and would require the OEL Shares to be held on trust for them until they could set up such accounts.[13] The plaintiffs would pay a further $1,656,110.72 to the 1st and 2nd defendants for use as cashflow for the benefit of the plaintiffs and/or OEL, subject to the plaintiffs' instructions and consent. As part of the plan, WJ, together with the 1st and 2nd defendants, would be appointed to OEL's key management positions and the plaintiffs themselves would be employed by OEL and/or its subsidiaries to assist with the development of the businesses of OEL and/or its subsidiaries. WJ had communicated the plan to the plaintiffs in late November 2019 and informed them that this was the 1st and 2nd defendants' proposal. The plaintiffs agreed to the proposal.

14 The defendants maintained that they had no knowledge of any alleged communications between the plaintiffs and WJ. They contended instead that WJ had coordinated and structured all arrangements with the plaintiffs. The 1st defendant had agreed in October 2019 for WJ to procure investors (*ie*, the

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13 SOC at paras 29(a)–29(b)

plaintiffs) who were looking to invest for residency in Singapore to invest $7.7 million with her or her companies through "Investment Contracts". In turn, through her companies or otherwise, WJ would lend the $7.7 million to EI (the "Loan Agreement"). The loan would be repaid after four years and WJ would be paid a commission or return on investment of $1 million. The OEL Shares were procured as investments by the defendants and WJ in their own personal capacities.[14] In particular, EI had provided loans to the 1st to 3rd defendants for their personal investments, and EI had paid for shares in OEL which were given to the 4th and 5th defendants as well as WJ for their contributions in the acquisition of the OEL Shares.[15]

Issues before the court

15 The criteria for the grant of an interlocutory injunction were not in dispute. The key questions were therefore whether there was a serious issue to be tried and whether the balance of convenience favoured the grant of the injunction sought (*American Cyanamid Co v Ethicon Ltd* [1975] 1 AC 396).

Serious issue to be tried

Parties' submissions

16 The plaintiffs submitted that there was a serious issue to be tried as to whether the 1st to 5th defendants held the OEL Shares on resulting trust for the plaintiffs. First, there was evidence that the plaintiffs had transferred $7.7 million to EI's bank account, which was used by the defendants to purchase the OEL Shares. Second, the defendants knew that the monies used for the purchase

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14 Defence at para 22(a)

15 Defence at paras 61–62

of the OEL Shares came from the plaintiffs and that the plaintiffs had transferred these monies with no intention to benefit the defendants.[16]

17 Further, the plaintiffs would not have entered into the purported "Investment Contracts" with WJ and/or her companies to invest for residency in Singapore given that the plaintiffs did not even enter Singapore at all material times. As for the purported Loan Agreement between WJ and/or her companies and EI, it would not be logical for WJ to extend such a sizeable loan in the absence of any written loan agreements, personal guarantees or evidence of such a loan. In relation to the alleged loan agreements between EI and the 1st to 3rd defendants, the loan agreements exhibited by the defendants did not indicate that they were for the purpose of purchasing the OEL Shares. As the defendants had used the $7.7 million from the plaintiffs to purchase the OEL Shares, there was also a serious issue to be tried in respect of whether a presumed resulting trust had arisen over the OEL Shares.[17]

18 The plaintiffs further submitted that there was a serious question to be tried in respect of whether a remedial constructive trust should be imposed over the OEL Shares in their favour. The defendants had known as early as November or December 2019 that the plaintiffs were providing monies for the purchase of the OEL Shares. Even if they were under the mistaken impression that the sum of $7.7 million had been advanced as a loan to EI when the OEL Shares were procured, letters of demand were sent to the defendants demanding that they either return the OEL Shares or provide an undertaking not to dispose

16 Plaintiffs' Skeletal Submissions ("PSS") at paras 58–64

17 PSS at paras 65–75

or dissipate the shares. It should have become clear to them at that point that the shares were bought using the plaintiffs' monies.[18]

19 Conversely, the defendants submitted that there was no serious question to be tried, as the plaintiffs' claim was frivolous and vexatious, and unsupported by documentary evidence. The plaintiffs and the defendants did not know each other or communicate directly at all material times, such that the plaintiffs' claims rested entirely on what they claimed WJ had told them. However, none of the defendants had authorised WJ to make any representations on their behalf.[19] There was also no written agreement or evidence either of the plaintiffs' communications with WJ or of the purported agreement between the plaintiffs and the defendants. The defendants also claimed that the plaintiffs' version of events was not possible, for the following reasons:

(a) the plaintiffs did not know about the existence of the OEL Shares as late as May 2020;

(b) the plaintiffs could have set up their own CDP accounts; and

(c) there was no reason for the defendants to hold the OEL Shares on trust for the plaintiffs for free when they had no prior relationship, and it would have been sufficient for WJ, as the plaintiffs' contact point, to be the only trustee.[20]

20 The defendants further submitted that there was evidence of the "Investment Contracts" entered into between the plaintiffs and WJ and/or her

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18 PSS at paras 76–79

19 Defendants' Written Submissions ("DWS") at paras 37–38

20 DWS at para 43

companies, as well as the Loan Agreement between them and WJ and/or her companies.

21 Finally, the defendants submitted, relying on *Ochroid Trading Ltd and another v Chua Siok Lui (trading as VIE Import & Export) and another* [2018] SLR 363 ("*Ochroid Trading*") at [145], that the principle of stultification would preclude a claim in unjust enrichment if doing so would undermine the fundamental policy that rendered the underlying contract void and unenforceable in the first place".[21] The defendants argued that the plaintiffs had entered into "Investment Contracts" with WJ to procure employment passes with a view to obtaining permanent residency in Singapore, and had also submitted false educational certificates to the authorities. As the conduct of the plaintiffs and WJ was in contravention of the Employment of Foreign Manpower Act (Cap 91A, 2009 Rev Ed) ("EFMA"), the principle of stultification would operate to preclude the plaintiffs' claims in trust or unjust enrichment.

22 In response, the plaintiffs submitted that the defendants' allegations that the "Investment Contracts" between the plaintiffs and WJ and/or her companies were tainted with illegality and/or were void were spurious. Relying on *Baker, Michael A (executor of the estate of Chantal Burnison, deceased) v BCS Business Consulting Services Pte Ltd and others* [2020] 4 SLR 85 ("*Baker*"), the plaintiffs submitted that even if the "Investment Contracts" existed, the illegality alleged was too remote and had limited applicability to an independent cause of action in trust. Further, the defendants were not parties to the "Investment Contracts" and therefore had no standing to raise this defence. In

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21 DWS at paras 104–111

any event, the court should not be resolving such conflicts of fact at this interlocutory stage.[22]

My decision

23 My observations in the present instance were based only on the affidavit evidence before me and the parties' submissions in relation to the application for an interim injunction. Viewing the evidence as a whole, the plaintiffs' claims that the OEL Shares were held by the defendants on trust for them or that the defendants were unjustly enriched by the plaintiffs' monies were not frivolous or vexatious. Accordingly, I found on the facts that there were serious issues to be tried.

Whether the $7.7m received by EI was transferred from the plaintiffs

24 I was persuaded that there was *prima facie* evidence that $7.7 million was paid by the plaintiffs and received by EI. I was of the view that the plaintiffs did not merely park the sum of $7.7 million with WJ and/or her companies so that she could loan this sum to EI.

25 It was undisputed that $7.7 million (less bank charges) was transferred by Hongkong Huaxinxin Trade Co. Limited, HS International, and the 3rd to 5th plaintiffs to EI. The remitting parties which transferred the monies were also undisputed and are set out below:[23]

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22 PWS at paras 80–84

23 Defence at para 22(e); Reply at para 6

S/N	Amount	Date of receipt	Remitting party
1	749,990	6 December 2019	Hongkong Huaxinxin Trade Co. Limited
2	749,990	9 December 2019	Hongkong Huaxinxin Trade Co. Limited
3	790,000	13 December 2019	HS International
4	790,000	13 December 2019	HS International
5	790,000	16 December 2019	HS International
6	750,000	20 December 2019	3rd plaintiff
7	750,000	26 December 2019	4th plaintiff
8	750,000	6 January 2020	5th plaintiff
9	790,000	6 January 2020	HS International
10	790,000	16 January 2020	HS International

(1) Evidence of monies transferred from the plaintiffs to EI

26 According to the plaintiffs, they were informed by WJ in or around December 2019 that the 1st and 2nd defendants had instructed them to pay $7.7 million to EI's bank account. Accordingly, the plaintiffs made payment to EI's bank account in tranches during the period from 4 December 2019 to 16 January

2020.[24] In respect of the five tranches of $790,000 transferred from HS International to EI's bank account, the plaintiffs averred that these were transferred by WJ on their behalf.[25] The two transfers made by Hong Kong Huaxinxin Trade Co. Limited were made on behalf of the 1st and 2nd plaintiffs. The plaintiffs had therefore each paid $1,540,000 to the 1st and 2nd defendants by transferring the monies to EI's bank account.[26] The plaintiffs argued that if they had separate "Investment Contracts" with WJ, they would have transferred the monies to WJ and/or her companies, and not to the 1st and 2nd defendants by transferring the monies to EI as instructed.[27]

27 The fact that some of the monies were transferred through other entities and not directly from the plaintiffs to EI's bank account did raise questions as to why such a mode of channeling the funds was necessary. Nonetheless, there was sufficient *prima facie* objective evidence that the total sum of $7.7 million was paid from the plaintiffs to EI. The plaintiffs had highlighted transfer details reflected in EI's bank account statements, payment vouchers, official receipts and invoices, many of which made reference to the monies having come from the plaintiffs. The evidence adduced in the 1st plaintiff's affidavit in support of the case that the monies transferred to EI came from the plaintiffs is set out below:[28]

S/N	Amount	Purported Source of	Evidence

24 SOC at paras 33–35

25 Chen Mingxing's 3rd affidavit at para 31

26 Chen Mingxing's 1st affidavit at para 47

27 Chen Mingxing's 3rd affidavit at para 34

28 Chen Mingxing's 1st affidavit at para 46; Zhang Jian's 1st affidavit at paras 56–57

		Monies[29]	
1	$749,990, received by EI on 6 December 2019	1st plaintiff (through Hongkong Huaxinxin Trade Co. Limited)	(a) Payment voucher issued from EI to Hong Kong Huaxinxin Trade Co Ltd for payment of $750,000 dated 4 December 2019, with the "Project Name" listed as "Investment Funds from Chen Mingxing" and description stated as "Total of SGD 750,000, in respect of the 'Singapore Listed Companies Investment Management Delegation Agreement' soon to be signed between Chen Mingxing and Eminence Investment";[30] (b) Official receipt issued from EI to Hong Kong Huaxinxin Trade Co Ltd for $750,000 (minus bank charges) dated 6 December 2019, with a remark stating that the sum was "Partial payment in respect of 'Singapore Listed Companies Investment Management Delegation Agreement'…entered into with Chen Mingxing".[31]
2	$749,990, received by EI on 9 December 2019	2nd plaintiff (through Hongkong Huaxinxin Trade Co. Limited)	(a) Payment voucher issued from EI to Hong Kong Huaxinxin Trade Co Ltd for payment of $750,000 dated 5 December 2019, with the "Project Name" stated as "Investment funds from Deng Yuhao" and description stated as "Total of SGD 750,000, in

29 SOC at para 35

30 Zhang Jian's 1st affidavit at p 173

31 Chen Mingxing's 1st affidavit at p 369; Zhang Jian's 1st affidavit at p 169

			respect of the 'Singapore Listed Companies Investment Management Delegation Agreement' soon to be signed between Deng Yuhao and Eminence Investment"[32] (b) Official receipt issued from EI to Hong Kong Huaxinxin Trade Co Ltd for $750,000 (minus bank charges) dated 9 December 2019, with a remark stating that the sum was "Partial payment in respect of 'Singapore Listed Companies Investment Management Delegation Agreement'…entered into with Deng Yuhao"[33]
3	$790,000, received by EI on 13 December 2019	1st plaintiff (through HS International)	(c) Transfer details reflected on EI's bank account statement as "Other Investment Fund – Cheng Ming Xin" [*sic*];[34] (d) Payment voucher issued from EI to HS International for payment of $790,000 dated 5 December 2019, with "Project Name" stated as "For Chen Mingxing Listed Companies Investment Funds";[35] (e) Official receipt issued from EI to HS International for $790,000 dated 13 December 2019, with a remark stating that the sum was "Partial payment in respect of

32 Zhang Jian's 1st affidavit at p 196

33 Chen Mingxing's 1st affidavit at p 353; Zhang Jian's 1st affidavit at p 192

34 Chen Mingxing's 1st affidavit at p 341

35 Chen Mingxing's 1st affidavit at p 378; Zhang Jian's 1st affidavit at p 183

			'Singapore Listed Companies Investment Management Delegation Agreement'…entered into with Chen Mingxing";[36] (f) Invoice dated 6 December 2019 issued from HS International to Chen Mingxing with description stated as "Partial Investment Fund for OEL (Holdings) Limited @ total SGD 1,540,000 (Received on behalf Eminence Investment Pte Ltd and will transfer to EI after fund received);[37] (g) Payment voucher issued from HS International to EI for payment of $790,000 dated 13 December 2019, with description stated as "Payment on behalf – Listed Companies Investment Fund for Chen Mingxing".[38]
4	$790,000, received by EI on 13 December 2019	2nd plaintiff (through HS International)	(a) Transfer details reflected on EI's bank account statement as "Other Investment Fund – Deng Yu Hao";[39] (b) Payment voucher issued from EI to HS International for payment of $790,000 dated 5 December 2019, with "Project Name" stated as "For Deng Yu Hao Listed Companies Investment Funds";[40]

36 Chen Mingxing's 1st affidavit at p 375; Zhang Jian's 1st affidavit at p 179

37 Chen Mingxing's 1st affidavit at p 352

38 Chen Mingxing's 1st affidavit at p 387

39 Chen Mingxing's 1st affidavit at p 341

40 Chen Mingxing's 1st affidavit at p 356; Zhang Jian's 1st affidavit at p 204

			(c) Official receipt issued from EI to HS International for $790,000 dated 13 December 2019 with a remark stating that the sum was "Partial Payment in respect of 'Singapore Listed Companies Investment Management Delegation Agreement'…entered into with Deng Yuhao";[41] (d) Invoice dated 1 December 2019 issued from HS International to Deng Yuhao with description stated as "Partial Investment Fund for OEL (Holdings) Limited @ total SGD 1,540,000 (Received on behalf Eminence Investment Pte Ltd and will transfer to EI after fund received);[42] (e) Payment voucher issued from HS International to EI for payment of $790,000 dated 13 December 2019, with description stated as "Payment on behalf – Listed Companies Investment Fund for Deng Yuhao".[43]
5	$790,000, received by EI on 16 December 2019	3rd plaintiff (through HS International)	(a) Transfer details reflected on EI's bank account statement as "Other Investment Fund – Wu Jia Qi";[44] (b) Payment voucher issued from EI to HS International for payment of $790,000 dated 12 December

41 Chen Mingxing's 1st affidavit at p 364; Zhang Jian's 1st affidavit at p 202

42 Chen Mingxing's 1st affidavit at p 345

43 Chen Mingxing's 1st affidavit at p 388

44 Chen Mingxing's 1st affidavit at p 341

			2019, with "Project Name" stated as "For Wu Jia Qi Funds for investing in listed companies";[45] (c) Official receipt issued from EI to HS International Pte Ltd for $790,000 dated 16 December 2019 with a remark stating that the sum was "Partial payment in respect of 'Singapore Listed Companies Investment Management Delegation Agreement'…entered into with Wu Jiaqi";[46] (d) Invoice dated 14 December 2019 issued from HS International to Wu Jiaqi with description stated as "Partial Investment Fund for OEL (Holdings) Limited @ total SGD 1,540,000 (Received on behalf Eminence Investment Pte Ltd and will transfer to EI after fund received);[47] (e) Payment voucher issued from HS International to EI for payment of $790,000 dated 16 December 2019, with description stated as "Payment on behalf – Listed Companies Investment Fund for Wu Jiaqi".[48]
6	$750,000, received by EI on	3rd plaintiff	Official receipt issued from EI to Wu Jiaqi for receipt of $750,000 dated 20 December 2019, stating in

45 Chen Mingxing's 1st affidavit at p 358; Zhang Jian's 1st affidavit at p 219

46 Chen Mingxing's 1st affidavit at p 367; Zhang Jian's 1st affidavit at p 217

47 Chen Mingxing's 1st affidavit at p 366

48 Chen Mingxing's 1st affidavit at p 389

	20 December 2019		remarks that the sum was "Partial payment in respect of 'Singapore Listed Companies Investment Management Delegation Agreement'…entered into with Wu Jiaqi".[49]
7	$750,000, received by EI on 26 December 2019	4th plaintiff	-
8	$750,000, received by EI on 6 January 2020	5th plaintiff	-
9	$790,000, received by EI on 6 January 2020	4th plaintiff (through HS International)	(a) Transfer details reflected on EI's bank account statement as "Other Investment Fund- Huang Hai"; [50] (b) Invoice dated 26 December 2019 issued from HS International to Huang Hai with description stated as "Partial Investment Fund for OEL (Holdings) Limited @ total SGD 1,540,000 (Received on behalf Eminence Investment Pte Ltd and will transfer to EI after fund received);[51] (c) Payment voucher issued from HS International to EI for payment of $790,000 dated 6 January 2020,

49 Zhang Jian's 1st affidavit at p 214

50 Chen Mingxing's 1st affidavit at p 343

51 Chen Mingxing's 1st affidavit at p 383

			with description stated as "Payment on behalf – Listed Companies Investment Fund for Huang Hai".[52]
10	$790,000, received by EI on 16 January 2020	5th plaintiff (through HS International)	(a) Transfer details reflected on EI's bank account statement as "Other Investment Fund – Zhu Tao";[53] (b) Invoice dated 12 December 2019 issued from HS International to Zhu Tao with description stated as "Partial Investment Fund for OEL (Holdings) Limited @ total SGD 1,540,000 (Received on behalf Eminence Investment Pte Ltd and will transfer to EI after fund received);[54] (c) Payment voucher issued by HS International to EI for payment of $790,000 dated 16 January 2020, with description stated as "Payment on behalf – Listed Companies Investment Fund for Zhu Tao".[55]

28 In response, the defendants submitted that the bulk of the $7.7 million was transferred by HS International to EI pursuant to the Loan Agreement between WJ and/or her companies and EI. The three tranches of payments made by the plaintiffs were made pursuant to WJ's instructions.[56] The monies for the

52 Chen Mingxing's 1st affidavit at p 390

53 Chen Mingxing's 1st affidavit at p 343

54 Chen Mingxing's 1st affidavit at p 357

55 Chen Mingxing's 1st affidavit at p 391

56 DWS at para 59

purchase of the OEL Shares were therefore transferred pursuant to the Loan Agreement and did not come from the plaintiffs.[57] In relation to the references to "Investment Fund" on the bank transfer details, the defendants argued that WJ and the 1st defendant had initially discussed entering into an investment immigration business plan, which involved facilitating the investments of Hong Kong residents into Singapore.[58] Pursuant to this plan, HS International and EI entered into an Investment Consultant Collaboration Contract dated 13 September 2019[59] and an Investment Based Immigration Collaboration Framework Agreement dated 3 October 2019,[60] and also prepared slides to be shown to potential investors. However, the investment immigration business plan was never executed, such that the two agreements and the slides were never used or acted upon.[61] Instead, the investment immigration business plan was converted into "something that was essentially a loan agreement whereby [the defendants] would just return the loaned monies [to WJ and/or her companies] after [four] years".[62]

29 As for the payment vouchers drawn up by WJ or HS International, the defendants argued that they were inaccurate, as seen from the fact that the vouchers stated that the payments were made for a "Listed Companies Investment Fund", which did not exist. The plaintiffs had themselves admitted that they did not sign any "Singapore Listed Companies Investment

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57 DWS at paras 64–65

58 Zhang Jian's 2nd affidavit at paras 15–16

59 Zhang Jian's 2nd affidavit at para 24; pp 190–196

60 Zhang Jian's 2nd affidavit at para 31; pp 267–279

61 Zhang Jian's 2nd affidavit at para 36

62 Zhang Jian's 2nd affidavit at para 95

Management Delegation Agreements" which were reflected on several of the official receipts and payment vouchers issued by EI and that they were not aware of such agreements.[63] Finally, the invoices sent from HS International to the plaintiffs stating that their monies were "received on behalf" of them were all created by WJ to support the present proceedings.[64]

30 However, these assertions and explanations given by the parties, including why contracts which did not exist were reflected on these documents, were disputes of fact that had to be tested with further evidence. On the face of the contemporaneous documents exhibited by the plaintiffs, multiple documents directly made reference to the plaintiffs and suggested that the monies were being transferred by them in relation to some palpable form of investment. Several invoices also stated that monies were being received on behalf of the plaintiffs to be transferred to EI, and several payment vouchers stated that monies had been transferred on the plaintiffs' behalf. The defendants also had no real answer to why some $2.25m worth of the remittances to EI were made directly by the 3rd to 5th plaintiffs.

31 The text messages highlighted by the plaintiffs further supported the conclusion that there was *prima facie* evidence that the monies paid to EI had come from the plaintiffs. I noted that the defendants had argued that the plaintiffs had misinterpreted, cherry-picked or taken certain messages out of context to support their case.[65] It was apparent that the contexts of the messages relied upon by both parties were frequently unclear and the interpretations of

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63 Chen Mingxing's 3rd affidavit at para 30

64 Zhang Jian's 1st affidavit at para 138

65 DWS at para 45

these messages subject to debate. However, they nevertheless pointed to there being some evidence in support of the plaintiffs' version of events. It was not at all plain and obvious that the defendants' account was more plausible or had to be preferred.

32 The plaintiffs highlighted multiple examples where the 1st and 2nd defendants had acknowledged the payment of monies from the plaintiffs, and where the defendants had sent chasers which were conveyed to WJ for subsequent tranches of payment which were expected from the "investors". These acknowledgements were extracted from messages in a "Dr Zhang" WeChat group chat, which consisted of WJ and the 1st and 2nd defendants.[66] Examples of such acknowledgements and chasers are as follows:

(a) On 14 December 2019 at 9.28pm, the 2nd defendant sent a message in the group chat stating:[67]

> Good Afternoon Jess [*ie,* WJ]!
>
> May I trouble you to speed up and confirm the following matters with the intermediary:
>
> 1. The proof of payment and identify which investor it is for.
>
> 2. Currently, I've only received 2 investors' payments, I don't know if the third investor's payment of $750,000 has been transferred, may I trouble you to confirm this.
>
> 3. Have the remaining 2 investors' monies been transferred?

(b) On 17 December 2019, the 2nd defendant sent a message

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66 Chen Mingxing's 1st affidavit at para 41

67 Chen Mingxing's 1st affidavit at para 49(f); pp 413–414

stating:[68]

> Jess, please acknowledge receipt of the payment vouchers that need to be filled up by the Hong Kong intermediary:
>
> 1. From: them (Full Name)
>
> 2. To EI (Full Name)
>
> 3. Amount and details
>
> 4. For which investor
>
> 5. Bank receipt serial number of the bank where payment is from
>
> 6. Sign
>
> After collecting it back, our company will sign the payment vouchers and scan it back. At the same time, we will send the receipt.

The 2nd defendant then proceeded to attach two payment vouchers titled "Payment voucher – HK – Deng Yuhao.pdf" and "Payment Voucher – HK – Chen Mingxing.pdf" in relation to the 1st and 2nd plaintiffs for use as "benchmarks".[69]

(c) On 26 December 2019 at 9.10pm, the 2nd defendant sent a message in the group chat stating:[70]

> With regards to the payment situation for the 6 investors:
>
> 1. I've already received the full payment of 1.54m/ person for 3 of the investors (Chen Mingxing, Deng Yuhao, Wu Jiaqi) * May I trouble you to prepare all the payment voucher details for Wu Jiaqi's 1.54m

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68 Chen Mingxing's 1st affidavit at para 49(j); pp 426–427

69 Chen Mingxing's 1st affidavit at p 427

70 Chen Mingxing's 1st affidavit at para 49(l); p 435

> 2. I've already received Huang Hai's 750k payment *Please prepare the payment voucher details for Huang Hai *Please transfer the 790k for Huang Hai tonight. 25% deposit and 540k special investment amount
>
> 3. With regards to Zhu Tao's funds, I've yet to received it *Please assist by rushing …

33 The plaintiffs argued that these messages showed that the 1st and 2nd defendants were expecting to receive monies from the plaintiffs and not from WJ.[71] I agreed that these messages suggested that the plaintiffs had transferred monies for the acquisition of the OEL Shares. The 1st and 2nd defendants had also specifically asked for information on the identities of each "investor" who had made payment. On the available evidence, an inference could reasonably be drawn that the plaintiffs had transferred monies to the 1st and 2nd defendants for the purpose of an investment in some tangible form.

(2) Existence of the purported "investment contracts"

34 The defendants further exhibited "Singapore Equity Investment Immigration Service Delegation Contracts" which they claimed were the contracts entered into between the plaintiffs and WJ and/or her companies. However, the existence of these contracts was a disputed issue of fact. I return to these contracts at [55] and [57] below.

35 The defendants further referred to a voice message sent by WJ to the 2nd defendant on 21 May 2020, wherein she stated:[72]

> Because among these things, I do not want EI and my company to be mentioned. *The reason being, because currently those intermediaries are a little suspicious, because they saw the*

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71 Chen Mingxing's 3rd affidavit at para 33

72 Zhang Jian's 2nd affidavit at paras 96–97; p 353

> *public notice, they are a little suspicious as to whether we took their money to buy our own shares. Therefore, I am of the view that, EI to appear at a later stage with regard to this matter,* because I feel that…maybe…if things cannot work out when the time comes, I will not let them meet first, but instead sign first. After signing, as long as we provide them with a guarantee, that's good enough. I will think of a way to explain to them. And after explaining to them, if they can accept the explanation, for the next step, when they come to the office, introduce them to you and Dr.. And if they want to invest again, that will be their own business, that's my thoughts. For that, I have no obligations or responsibilities.
>
> [emphasis added]

36 According to the defendants, this message showed that WJ did not want the plaintiffs to know about EI or her companies, and that there therefore had to be a separate arrangement between WJ and the plaintiffs.[73] Further, this message showed that even the "intermediaries" who introduced the plaintiffs to WJ did not know about the acquisition of the OEL shares as at May 2020.[74] The 1st defendant maintained that whatever WJ or the intermediary had informed the plaintiffs of regarding their transfer of monies, it had nothing to do with the OEL Shares.[75]

37 However, the defendants' interpretation of the message could not be accepted without more. To begin with, there was no evidence of who the "intermediaries" referred to in the message were. The defendants suspected that one such "intermediary" was one Evelyn Peh whom they claimed had introduced the plaintiffs to WJ, but this was nothing more than mere

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73 Zhang Jian's 2nd affidavit at paras 96–99

74 Zhang Jian's 2nd affidavit at para 104

75 Zhang Jian's 2nd affidavit at para 105

speculation.[76] There were at least two other messages where reference was made to an "intermediary", and in those messages, the "intermediary" appeared to be an entity that assisted with fund transfers (see [32(a)] and [32(b)] above). To compound the difficulty in relying on the message, it could arguably also have been wrongly translated. The context of the message which referred to taking "their money" could suggest that the "intermediaries" were the investors themselves who were the source of the funds, and not the conduit through which these funds flowed to EI.

38 Further, if there were "Investment Contracts" between WJ and/or her companies and the plaintiffs that were entirely separate from the Loan Agreement as the defendants claimed, it would be illogical for WJ to seek to introduce the "intermediaries" or the investors to the 1st or 2nd defendants, or to provide them with a guarantee that involved the 1st or 2nd defendants. WJ's statement that she would have "no obligations or responsibilities" in the future was also inconsistent with the plaintiffs having invested with WJ separately pursuant to "Investment Contracts".

39 I noted that there were anomalies and inconsistencies in both parties' pleaded cases and the affidavit evidence. The fact that there was no written agreement setting out any of the purported investment arrangements that the plaintiffs had arranged through WJ with OEL was undoubtedly questionable. There were other matters which both the plaintiffs and defendants had not fully explained. For example, it was unclear why WJ appeared not to have told the plaintiffs that their funds were to be used for the immediate purpose of the

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[76] Zhang Jian's 2nd affidavit at para 103; Certified Transcript (11 November 2020) at p 47 ln 19–26

defendants' purchase of the OEL shares from Mr Hing. I elaborate on this observation further at [84] and [85] below.

(3) Existence of the purported Loan Agreement

40 The defendants argued that there was evidence of the Loan Agreement between WJ and/or her companies and EI and that the monies were transferred from the former to EI. In support of their case, the defendants first referred to messages or transcripts of "WeChat" voice recordings where WJ made reference to returning the "investors" their monies after four years. According to the defendants, "investors" in the aforementioned messages referred to the plaintiffs, and the reference to four years was made because EI was due to return the loan amount to WJ and/or her companies after four years.[77] The defendants had surmised, based on the WeChat messages, that WJ and/or her companies only had to return the plaintiffs' investment monies to them after the loan amount was repaid from EI to WJ and/or her companies.[78] An example of one such voice recording was sent by WJ to the 2nd defendant on 21 May 2020, where WJ said (as transcribed and translated):[79]

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77 DWS at para 57

78 Zhang Jian's 2nd affidavit at para 119

79 Zhang Jian's 2nd affidavit at para 94; p 352

> I understand this, I will think of a way to…er…I will also send my contract to the lawyer to have a look. … And in doing so, when they read it, they will feel better. *My objective is, as long as, when the time comes, we return them the money 4 years later, all will be good.* Actually, the other things don't matter, because I do not wish to…that is…you were aware of about what had happened to me earlier, all along I am of the view that, if they are willing to accept, if ultimately everything was completed in a reasonable manner, then it is okay.
>
> [emphasis added]

41 On the same day, WJ also said to the 2nd defendant:

> Eminence's contract, actually, at that time…er…that…I did prepare one, but because I drafted it myself, it was a badly drafted contract. If that contract has to be used for the benefit of Eminence, I actually don't mind. My main thinking is, must be accountable to the investor, it's that simple, must provide the investor with guarantee. *When the investor asks for the return of the monies 4 years later*, how to…let him know right now that he is very well-protected, because otherwise, when they…now… when signing the contract, will be asking a lot of question. Also, because ultimately our thinking is very good, we were of the view that we will not owe them money, we will return them, just to provide them with a reasonable explanation and guarantee, that's it.
>
> [emphasis added]

42 The defendants argued that these messages showed that the initial investment immigration business plan had been altered into a plan where they would simply return WJ and/or her companies the loan after four years.[80] However, the contexts of these messages were unclear and much of the content in these messages was unexplained. For example, it was unclear what "Eminence's contract" WJ was referring to and what contract WJ was contemplating getting the "investors" to sign. These messages did not clearly

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80 Zhang Jian's 2nd affidavit at para 95

and identifiably show that there was a Loan Agreement between WJ and/or her companies with EI.

43 Second, the defendants pointed to transfers amounting to $750,000 made to WJ's companies, which they claimed was part payment for WJ's commission of $1 million under the Loan Agreement.[81] In relation to the balance sum, a personal loan of $250,000 had been extended to WJ as EI did not have sufficient funds at that point in time and WJ had expressed an urgent need for the monies[82]

44 WJ did appear to have benefited from her role in securing the necessary funds for the purchase of the OEL Shares. However, it was not apparent from the face of the payment vouchers, cheques and transaction advice documents of monies transferred from EI to WJ's companies that there was a Loan Agreement pursuant to which commission was being paid to WJ. For example, the payment voucher issued from EI to Indulgence Loyalty Pte Ltd ("Indulgence" – a company in which WJ was a director[83]) merely stated that $200,000 had been paid to Indulgence pursuant to an "EI & Indulgence Investment Consultant Collaboration Contract (Chen Mingxing)- 200,000 Consultancy Fee".[84] The payment vouchers issued to Imperial Onyx Capital Pte Ltd ("Imperial") and Top Asia (also companies in which WJ was a director[85]) similarly indicated that sums were paid pursuant to an 'Investment Consultant Collaboration Contract'.[86] As

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81 Zhang Jian's 1st affidavit at para 60; pp 164–168; 187–191; 210–211; 226–227

82 Zhang Jian's 1st affidavit at paras 59–61

83 Zhang Jian's 1st affidavit at p 57

84 Zhang Jian's 1st affidavit at p 164

85 Zhang Jian's 1st affidavit at pp 54, 61

86 Zhang Jian's 1st affidavit at pp 187–191; 210–211

the 1st defendant himself had stated (see [28] above), the Investment Consultant Collaboration Contract signed between HS International and EI was not acted upon. It was not clear why this contract was reflected on the payment vouchers and what the payments were in fact for.

45 As for the UOB transaction advice from EI to HS International, the transaction details indicated that $150,000 was paid as "commission" pursuant to a "service agreement".[87] Again, there was insufficient evidence of which "service agreement" was being referred to, and the existence of such an agreement suggested that the relationship between WJ and EI extended beyond that of the provision of a loan. Similarly, the documents evidencing bank transfers amounting to $250,000 made to WJ's bank account did not reveal the purpose of the said transfers,[88] and could not therefore clearly evidence a personal loan extended to WJ due to EI not having sufficient funds to pay WJ for the commission at the material time (see [43] above). .

46 Other available objective evidence also gave rise to the inference that the monies were not transferred to EI pursuant to a mere Loan Agreement between WJ and/or her companies and EI. WJ had exhibited slides titled "Eminence Investment's Cash Flow Strategy for Acquiring OEL" dated 6 December 2019 which stated that WJ was "responsible for EP applications and shell capital injection".[89] I noted that apart from authorising WJ to take charge of these matters, the slides referenced having to pay six investors substantial salaries of $15,000 per month and the need to provide for a budget

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87 Zhang Jian's 1st affidavit at pp 226–227

88 Zhang Jian's 1st affidavit at para 62, pp 228–230

89 Wang Jue's 2nd affidavit at para 30; p 281

that would "last about three years" for the six investors' salaries.[90] It was in fact undisputed that it was initially envisaged that the plaintiffs would work for OEL and/or its subsidiaries.[91] The defendants argued that while the agreements between WJ and the plaintiffs were separate from the Loan Agreement, WJ had proposed that the plaintiffs be employees of OEL and/or its subsidiaries to contribute to the business.[92] However, it was unclear why the defendants and/or OEL would agree to employing the plaintiffs if their agreement was solely with WJ.

47 Further, WJ had exhibited a signed and backdated agreement between HS International and EI which was submitted to OCBC Bank when the bank queried HS International as to why it had transferred more than $3 million to EI. WJ averred that this agreement was drafted pursuant to the 1st defendant's instructions. The agreement stated that HS International was an agent "in a position to refer potential clients/ customers" to EI. The responsibilities of HS International included "[providing] referral service and related work for the investment services, merger and acquisition, company restructuring and asset management" and "[receiving] the investment fund on behalf and [transferring] the payment to [EI's] designated bank account".[93] The 1st defendant claimed that it was WJ who suggested putting together the agreement and backdating it so as to provide the bank with an explanation. Both parties were aware that the signed

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90 Wang Jue's 2nd affidavit at p 270

91 Zhang Jian's 2nd affidavit at para 80

92 Zhang Jian's 1st affidavit at paras 26–27

93 Wang Jue's 2nd affidavit at para 35; pp 223–225

agreement was not intended to have any legal effect and was only used to "pacify" the bank.[94]

48 This agreement gave rise to further doubts as to the veracity of the defendants' claims. Regardless of the 1st defendant's attempts to distance himself from the contents of the agreement, I noted that the agreement was signed by him with the knowledge that it was backdated. It was accepted by both WJ and the 1st defendant that the document was created to provide an explanation to OCBC for the transfer of large sums of money and it was not clear why the contents in the agreement would have been fabricated. That said, it was also not entirely clear precisely what the parties meant when they explained that the letter was crafted only to "pacify" the bank.

49 Based on the documents adduced and the contemporaneous messages sent, there was some evidence that WJ had collaborated with the 1st and 2nd defendants and had not merely provided a loan to EI. Moreover, as the plaintiffs contended, WJ stood to gain nothing by disclaiming the existence of the purported loan agreement. On the totality of the evidence available at the present stage of the proceedings, I was satisfied that there was *prima facie* evidence to show that $7.7 million was paid from the plaintiffs to EI. Disputed issues of fact such as whether the plaintiffs transferred monies to WJ and/or her companies pursuant to purported "Investment Contracts" and whether the monies were transferred to EI from WJ and/or her companies pursuant to the purported Loan Agreement were issues that should be determined at trial. At present, sufficient evidence had been adduced to attribute the transfer of $7.7 million to EI to the plaintiffs. Notwithstanding that the plaintiffs' evidence may have revealed

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94 Zhang Jian's 2nd affidavit at paras 91–92

various gaps and deficiencies, the defendants were not forthcoming as to the true extent of their knowledge and involvement as well.

Whether the defendants were aware of the source of the monies

50 It was not disputed that the funds paid to EI were in turn used, *inter alia*, to finance the defendants' purchase of OEL shares from the then-controlling shareholder Mr Hing. On the defendants' own case, the receipt of the loan amount paid from WJ and/or her companies to EI under the purported Loan Agreement was necessary for the payment of the OEL Shares and was "why [EI] and [WJ and/or WJ's companies] entered into the Loan Agreement in the first place".[95]

51 Mr Hing's controlling stake of 29.56% in OEL was acquired at a considerable premium (see [8] above). The clear inference was that the defendants knew that the plaintiffs would be involved as "investors". Numerous references to the plaintiffs as "investors" were made in the contemporaneous documents and group chat messages. The defendants suggested that the term was used loosely and simply meant that they were "investors" with WJ instead,[96] but the objective evidence was inconclusive on this score.

52 The 1st plaintiff also exhibited messages sent in a WeChat group titled the "AJJ" group chat, consisting of the 1st to 5th defendants, WJ and four others,[97] including a message sent by the 2nd defendant on 9 December 2019 stating:[98]

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95 Zhang Jian's 1st affidavit at para 51

96 Zhang Jian's 1st affidavit at para 50

97 Chen Mingxing's 1st affidavit at para 38

98 Chen Mingxing's 1st affidavit at para 51(a); p 408

> Please take note, our cost for acquisition of OEL is: 7,470,000.00 (from the investors' payments that we have received) + 2,660,000 (Second installment [*sic*] of payment)

The plaintiffs submitted that these messages showed that the defendants must have been aware that the monies for the OEL Shares came from the plaintiffs, as all five defendants were part of the "AJJ" group chat.[99]

53 Taking the defendants' case at its highest, the plaintiffs were "investors" with WJ. Notwithstanding that, it was uncontroversial that the plaintiffs' role was primarily to inject funds into EI to enable the acquisition of Mr Hing's shares. The defendants were therefore well aware of the source of the funds and what they were intended for. I was conscious that it was highly unusual that no written documentation existed setting out the plaintiffs' alleged investment arrangement. Nevertheless, the plaintiffs' claim that there was an investment seemed rather more plausible than an unsecured "interest-free loan" scenario (*ie*, a loan from WJ to EI for the $7.7 million), also without any documentation whatsoever, as postulated by the defendants. On the available evidence, it would also not seem plausible that the plaintiffs would have agreed to entrust such substantial funds with WJ without any expectation of return on their investment, but only repayment of the money in four years' time. At any rate, the defendants had neither offered any cogent reasons nor raised any concerns as to why the plaintiffs might have been prepared to extend an undocumented and unsecured interest-free loan of $7.7 million through WJ. The defendants were evidently happy to be on the receiving end of funds. On a related note, the plaintiffs had highlighted the 1st and 2nd defendants' high monthly remuneration of $49,220 and $15,600 respectively. Their combined annual basic salary would be

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99 Chen Mingxing's 1st affidavit at para 51

$777,840, while OEL was experiencing poor cashflow and had recorded revenue of only $180,000 for the financial year ending December 2019.

The defendants' submissions on illegality

54 Notwithstanding the defendants' allegations pertaining to contravention of the EFMA, WJ and the plaintiffs had stopped short of directly addressing the issue of the Employment Pass ("EP") applications for the plaintiffs and the provenance of the various distance learning college degrees.

55 The defendants had exhibited documents which they argued were the "Investment Contracts" entered into between the plaintiffs and WJ and/or her companies, through which the plaintiffs were investing for the purpose of obtaining residency in Singapore. These were the "Singapore Equity Investment Immigration Service Delegation Contracts" which the plaintiffs and HS International purportedly agreed to.[100] These contracts provided for payment to be made in four instalments: $174,000 for the first instalment, $251,000 for the second, $40,000 for the third and $20,000 for the fourth, as well as for EPs to be obtained by the plaintiffs as part of the agreement.[101] The defendants argued that the sums stated on the invoices issued from HS International to the plaintiffs matched the amounts the plaintiffs were required to pay under the contracts.[102]

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100 CT (11 November 2020) at p 30 ln 5 to p 32 ln 16; Defendants' Core Bundle of Documents ("DCB") at Tabs 24–28

101 DCB at p 84 (Chen Mingxing), p 95 (Deng Yu Hao), p 106 (Wu Jia Qi), p 117 (Huang Hai), p 128 (Zhu Tao)

102 DCB at pp 142–143 (Chen Mingxing- first instalment), pp 144–145 (Deng Yu Hao- first instalment), pp 146–147 (Wu Jia Qi- first instalment), pp 148–149 (Huang Hai- first instalment), pp 158–159 (Zhu Tao- first instalment), pp 150–151 (Chen Mingxing- second instalment), pp 152–153 (Deng Yu Hao- second instalment), pp 154–155 (Wu Jia Qi- second instalment), pp 156–157 (Huang Hai- second instalment), pp 160–161 (Zhu Tao- second instalment), pp 162–163 (Chen Mingxing- third instalment), pp 164–

Imperial's ledger and the account statements of HS International also showed that some payments had been made by the plaintiffs in sums matching that required under the contracts.[103] The defendants argued that the plaintiffs had entered into these contracts to "purchase" EPs and ultimately to obtain permanent residency in Singapore.

56 The defendants further submitted that the 1st, 3rd and 5th plaintiffs had acquired false educational certificates from institutes of higher learning and made false declarations to the Ministry of Manpower to procure the EPs. The defendants pointed to the 5th plaintiff's purported certificate, college transcript, resume and employment pass application which stated that he had obtained a bachelor's degree from Sheldon Jackson College located in Alaska in the United States for which the period of study was from 2005 to 2008.[104] However, the invoice issued from HS International to the 5th plaintiff, which stated that the latter paid USD35,000 for an "Application for study in Sheldon Jackson College", was dated much later only on 4 October 2019.[105] This showed that the educational certificate must have been falsified. A similar argument was made in relation to the 3rd plaintiff's educational certificate, purportedly also from Sheldon Jackson College, Alaska for the period of study from 2006 to 2010.[106]

57 In response, the plaintiffs argued that the "Singapore Equity Investment Immigration Service Delegation Contracts" which were purportedly prepared

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165 (Deng Yu Hao- third instalment), pp 166–167 (Wu Jia Qi- third instalment), pp 168–169 (Zhu Tao- third instalment), pp 170–171 (Huang Hai- third instalment)

103 See, *eg*, DCB Tab 53 and Tab 57 (both referring to Cheque 696 from Huang Hai)

104 CT (11 November 2020) at p 34 ln 8 to p 35 ln 15; DCB at pp 224, 225, 229, 234

105 DCB p 237

106 DWS at para 96

for them by WJ were unsigned and that they had never seen these contracts before. They had also never issued or received the invoices exhibited by the defendants.[107] WJ in turn averred that the contracts were merely drafts prepared by her secretary, one Ong Mei Yeng ("Ong") during the initial stages of discussions relating to the business plan. These drafts were never issued and later abandoned.[108] She further averred that the invoices were prepared by Ong, who did so for her own working convenience. However, WJ later realized that the plaintiffs did not require EPs in Singapore as they were running their own businesses in Cambodia. As such, these draft invoices were never issued.[109]

58 The plaintiffs also averred that their investment in OEL had nothing to do with acquiring residency in Singapore.[110] They exhibited multiple emails sent in June and July 2020 by the 2nd defendant and one Martina Binte Suratman inviting the plaintiffs to interviews with a view to offering them employment in Singapore, which the plaintiffs did not respond to.[111] The plaintiffs averred that if they had invested in order to obtain employment passes, they would have replied to these emails. However, they did not do so as they had lost trust in the 1st and 2nd defendants and no longer wished to work with them.[112] Their EPs were thereafter cancelled.

59 The plaintiffs further argued that the defendants' allegation that WJ had assisted the 1st, 3rd and 5th plaintiffs to obtain false educational certificates to

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107 Chen Mingxing's 3rd affidavit at para 51

108 Wang Jue's 2nd affidavit at para 52

109 Wang Jue's 2nd affidavit at para 24

110 Chen Mingxing's 3rd affidavit at para 46

111 Chen Mingxing's 3rd affidavit at para 47; pp 242–264

112 Chen Mingxing's 3rd affidavit at paras 47–48

procure the said employment passes in Singapore was baseless.[113] The 1st plaintiff did not even use his purported falsified degree to apply for the employment pass because it was not compulsory to have a degree certificate.[114] The invoice issued by HS International for the 1st plaintiff's purported application for study also did not match the name of the institute on the 1st plaintiff's purported educational certificate.[115]

60 However, the plaintiffs' averments stopped short of explaining why they had extended these distance learning college degree certificates to WJ and the circumstances behind their procurement. The discrepancy in the invoice date and period of study in relation to both the 3rd and 5th plaintiffs did raise real doubt as to whether their certificates from Sheldon Jackson College were genuine. It was not disputed that this degree qualification was declared in the 3rd and 5th plaintiff's EP forms submitted to the Ministry of Manpower.[116] The plaintiffs and WJ also did not explain the circumstances leading to the EP applications being made for the plaintiffs and what employment opportunities were envisaged for the plaintiffs at OEL and/or its subsidiaries. They also did not provide an explanation for why payments appeared to have been made from the plaintiffs to WJ for matters relating to EP applications.

61 There were also patent irregularities on the face of the documents. Given the emphasis on illegality in the defendants' submissions, I queried whether the defendants had lodged any formal complaint with the authorities pertaining to

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113 Chen Mingxing's 3rd affidavit at para 52

114 Chen Mingxing's 3rd affidavit at para 52; Zhang Jian's 1st affidavit at p 117

115 Chen Mingxing's 3rd affidavit at para 52; Zhang Jian's 1st affidavit at pp 367, 369

116 Zhang Jian's 1st affidavit at pp 373, 382

the alleged contravention of the EFMA. I was informed that they had drafted a complaint but had yet to lodge it, ostensibly because they wished to conduct further investigations and checks. I found the defendants' posture difficult to reconcile with their strenuous claims of illegality in the present case. A plausible explanation for their restraint might lie in the defendants' consciousness that they could be found to be complicit or at least to have acquiesced; the defendants could not distance themselves completely from these matters since there was some objective evidence of their knowledge or involvement. The defendants were aware that in-principle approvals ("IPAs") were obtained for the plaintiffs' EP applications to work at OEL or AJJ Health Care Management Pte Ltd ("AJJ"), a subsidiary of OEL.[117] As can be seen from the emails sent to the plaintiffs (see [58] above), the defendants had envisaged that the plaintiffs would work in OEL and/or its subsidiaries and were aware of their EP applications. The IPA letters for the 1st and 2nd plaintiffs (with OEL) were issued on 2 December 2019;[118] for the 3rd and 4th plaintiffs (with AJJ) on 9 April 2020;[119] and for the 5th plaintiff (with OEL) on 9 December 2019.[120]

62 The plaintiffs also exhibited a "WeChat" message sent by the 1st defendant on 27 November 2019 in the "AJJ" group chat, wherein he stated:[121]

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117 Chen Mingxing's 1st affidavit at p 140

118 Chen Mingxing's 1st affidavit at pp 274, 285

119 Chen Mingxing's 1st affidavit at pp 298, 311

120 Chen Mingxing's 1st affidavit at para 43; p 324

121 Chen Mingxing's 1st affidavit at paras 38–39; p 265

> … We've already completed the SPA draft yesterday and submitted it to the other party's lawyer. For now, we need to do the best on our own part, please take note and carry out the following work:
>
> Jess: *As the final date for signing the SPA is 6th January 2020, and we've already completed EP applications for the 6 investors yesterday, we expect that there will be results in approximately 2 weeks.* I'll give you one week's time!!! This includes completing all the administrative procedures required to receive the funds. Hence, we need to begin work ahead of time, that is for all the discussions with investors, the fund remittance and injection, the preparation of the draft legal documents ([the 2nd defendant] and I will cooperate with you) and other indispensable preparatory work. In simpler terms, to do all work in advance! Remember: If we don't fulfill the terms by the final signing date of the SPA, we will face the major risk of being sued!!!
>
> …
>
> [emphasis added]

63 On 3 December 2019, the 2nd defendant sent a message in the "Dr Zhang" group chat, stating:[122]

> Jess [*ie*, WJ], as long as there are 4 EPs approved and the contracts are signed, once the money arrives in Singapore we can immediately sign the SPA.

64 These messages suggested that there was some perceptible link between the EP applications and procurement of funds for the acquisition of the OEL shares, and that the 1st and 2nd defendants were aware of this.

65 There was also some evidence that the defendants were involved in the process of applying for IPAs for the plaintiffs. On the "Dr Zhang" group chat, the 2nd defendant wrote:

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122 Chen Mingxing's 1st affidavit at para 41; p 338

> Dec 4, 2019 10.56[am][123]
>
> [2nd defendant]: Good morning Jess!
>
> Mr Deng's side has already come out with an EP approval, while the other is still pending. I am currently retrieving the IPA letter from Mr Deng, I'll send it to you once I've received it, just to let you know!
>
> Dec 4, 2019 [1.19pm]
>
> 2nd defendant: Good afternoon Jess!
>
> May I trouble you to acknowledge receipt of Wu Jiaqi's IPA letter.
>
> (IPA Wu Jiaqi – 04122019.pdf) (Sent PDF File)
>
> Dec 9, 2019 [2.11pm][124]
>
> [2nd defendant]: Mr Deng is currently requesting the other party to send an email to me. Once I've received it, I'll forward the IPA to you.
>
> Dec 9, 2019 [2.23pm]
>
> (IPA- Huang Hai- 09122019.pdf) (Sent PDF File)
>
> Dec 9, 2019 [3.03pm]
>
> Jess, the document attached above is the IPA letter for Mr Deng's M&E Company's second EP.
>
> Also, OEL's third EP has been approved,
>
> Once I've received the IPA letter, I'll forward it to you.
>
> Just to inform you!

66 It was not entirely clear which IPA letters these were, since the 3rd and 4th plaintiffs' IPAs with AJJ were issued at a later date on 9 April 2020. The

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123 Chen Mingxing's 1st affidavit at p 392

124 Chen Mingxing's 1st affidavit at pp 402-403

application date reflected on their IPAs was also a later date of 10 March 2020.[125] In the 1st defendant's 2nd affidavit, it was acknowledged that the 2nd defendant had helped WJ with the EP applications, but that she was doing so only to help WJ out.[126] Nevertheless, it could be discerned from the messages that there appeared to have been some involvement on the part of the 1st and 2nd defendants in the process of the EP applications. At the least, they knew that the applications were ongoing.

67 The case law relied upon by the parties, *Ochroid Trading* and *Baker*, sets out the present state of the law. The Court of Appeal in *Ochroid Trading* considered but did not come to a definitive conclusion on whether the principle of stultification would apply to an independent cause of action in trust premised on the plaintiff's property or title in situations where the underlying contract had been prohibited (*Ochroid Trading* at [161] and [168]; *Baker* at [274]). It would not be appropriate to determine at this interlocutory stage whether the underlying "Investment Contracts" (if they existed) were void and unenforceable by virtue of being prohibited by the EFMA or otherwise tainted with illegality, and whether allowing a claim in unjust enrichment or in trust would undermine the fundamental policy that rendered those contracts unenforceable. For present purposes, it was arguable that the submissions on illegality raised by the defendants were not too remote but sufficiently proximate to the plaintiffs' allegations that there was an investment in OEL. But these were among the various issues of fact that were contested. They were not capable of being resolved at this stage in the proceedings.

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125 Chen Mingxing's 1st affidavit at pp 298, 311

126 Zhang Jian's 2nd affidavit at paras 77–80

Summary

68 In my view, the plaintiffs' pleaded causes of action premised on a presumed resulting trust or remedial constructive trust, or unjust enrichment in the alternative, were not plainly frivolous or vexatious. The defendants could not be said to be holding on to the shares on trust "for free" for the plaintiffs, since it was only on account of the plaintiffs' injection of funds that the OEL share acquisition and the eventual appointments of the 1st defendant, 2nd defendant and WJ to OEL could materialise.

69 To sum up, the evidence appeared to disclose an investment plan which the defendants were aware of, and indeed had benefited from. No doubt there remained unanswered questions and facts in contention, *eg,* over what the plaintiffs and defendants truly knew or intended, or what WJ had in fact communicated to them. But the disputed factual issues should be left to the trial judge to determine. I was persuaded that the plaintiffs had shown that there were serious questions to be tried in relation to their pleaded case.

Adequacy of damages and balance of convenience

Parties' submissions

70 Turning next to whether damages would be an adequate remedy, the plaintiffs submitted that damages would not be an adequate remedy as the plaintiffs had wanted to obtain a controlling stake in OEL. It would be impossible to quantify the monetary loss arising from the plaintiffs' loss of the controlling stake in OEL, and the dilution of their shareholding would be irreversible.[127] The plaintiffs also claimed that the defendants were not likely to

127 Wu Jiaqi's 5th affidavit at para 11

have sufficient financial means to pay for damages. The plaintiffs submitted that, even on the defendants' own case, the 1st to 3rd defendants had taken loans from EI and would therefore be liable to EI for substantial sums (excluding interest) of $3,560,031, $235,980 and $183,000 respectively.[128]

71 The plaintiffs further submitted that granting the interim injunction would merely preserve the status quo as the defendants would be holding the OEL shares under their own names till the determination of the suit. The defendants would still be able to vote on matters relating to OEL's key business decisions, apart from matters relating to share placements.[129] The plaintiffs exhibited a letter issued by OEL to its shareholders dated 31 October 2020, in relation to (a) the proposed disposal of the Property; and (b) the proposed issue and allotment of shares to the 1st and 2nd defendants (the "Proposed Placement"), and the transfer of controlling interest in the company to the 1st defendant as a result of the Proposed Placement.[130] OEL would receive proceeds from the disposal of the said Property and there was also no reason why OEL had to restrict its fund-raising mechanisms to dilutive share placements.[131] The defendants also did not purchase the OEL Shares with their own monies. Further, the 1st and 2nd defendants are foreigners who could liquidate the OEL Shares and dissipate their assets before leaving Singapore thereafter.

72 Finally, there was a real risk that the defendants would dissipate the OEL shares. First, the defendants had been unwilling to provide a letter of

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128 PWS at para 88; Zhang Jian's 1st affidavit at paras 69, 74

129 PWS at para 94

130 Wu Jiaqi's 4th affidavit at p 14

131 PWS at para 95

undertaking that they would not sell and/or dispose the OEL shares. Second, the share placements that the defendants engaged in previously had diluted the plaintiffs' shareholding in OEL.[132] The plaintiffs submitted that the OEL Shares represented 26.49% of OEL's existing and paid-up capital of 745,802,074 shares. The plaintiffs claimed that upon completion of the August placement, their shareholding dropped to approximately 21.15% of the enlarged issued and paid-up capital of OEL.[133] The sale price of $0.0126 per placement share[134] offered and accepted for the August placement was also considerably lower than the price of $0.030595 per share[135] which the plaintiffs had paid for the OEL Shares.[136] Third, the 1st and 2nd defendants were the controlling minds of OEL who were able to singlehandedly cause the dilution of the plaintiffs' shareholding in OEL and channel $550,000 of the August share placement proceeds[137] towards the 1st defendant in purported repayment of what should have been the plaintiffs' loan to OEL.[138] The plaintiffs also pointed out, in response to the defendants' seventh head of further argument (see [82(g)] below), that the 1st and 2nd defendants' votes at OEL's 2020 Annual General Meeting constituted 86.28% of the total votes cast. The 1st and 2nd defendant were therefore largely responsible for passing the resolution giving OEL's directors the mandate to issue shares.[139] An injunction should be granted to

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132 PWS at para 103

133 Chen Mingxing's 1st affidavit at para 109

134 Chen Mingxing's 1st affidavit at p 954

135 Chen Mingxing's 1st affidavit at p 476

136 Chen Mingxing's 1st affidavit at para 110

137 Chen Mingxing's 1st affidavit at p 962

138 PWS at paras 104–105

139 Plaintiffs' response to request for further arguments dated 19 November 2020 at para 39; Wu Jia Qi's 4th affidavit at p 68; Wu Jia Qi's 5th affidavit at para 10

prevent the defendants from further dealing with an asset in which the plaintiffs assert a proprietary interest. If the defendants were allowed to sell, dispose of or dissipate the shares, certain causes of action brought by the plaintiffs would be rendered nugatory.[140] The plaintiffs submitted that they remained, collectively, the largest single shareholder, but this position could be jeopardised by further dilution of their shares.[141]

73 In contrast, the defendants submitted that damages would be an adequate remedy for the plaintiffs, as there was no supporting evidence that the plaintiffs had wanted a controlling stake in OEL to begin with.[142] The plaintiffs, on their own case, were looking for investment opportunities which could be valued in monetary terms.[143] In any event, OEL shares are publicly traded on the open market, and their values would fluctuate in accordance with market forces. Therefore, having a controlling stake would not enable the plaintiffs to control the value of OEL Shares.[144] The defendants also averred that the issuance of placement shares would not lower OEL's share value; even if it did, the plaintiffs' losses could be quantified.[145] Further, the plaintiffs had not proven that the defendants would be unable to pay damages.[146]

74 The defendants claimed that damages would not be an adequate remedy for them as they would be deprived of their rights to vote. As the 1st and 2nd

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140 PWS at para 102

141 Chen Mingxing's 3rd affidavit at para 21

142 DWS at para 114

143 DWS at para 117

144 DWS at para 119

145 DWS at para 122

146 DWS at para 127

defendants held management positions in OEL, the grant of an interim injunction would negatively impact OEL's business.[147] Although the plaintiffs had stated that they were prepared to give an undertaking as to damages, such an undertaking was of little value as the plaintiffs were foreigners.

My decision

75 The 1st to 5th defendants have not denied, and indeed they *cannot* deny, that the OEL Shares were not purchased with their own money. I agreed with the plaintiffs that it is uncertain whether the defendants would have sufficient financial means to pay for damages. The evidence suggested that the plaintiffs' payments were meant as investments through the acquisition of OEL shares (as structured by WJ) and not necessarily because they had wanted all along to secure a controlling stake in OEL. However, the plaintiffs had pleaded that the OEL shares were being held by the defendants on trust for them. If the injunction was not granted and the defendants were at liberty to dispose of the shares, it would render this cause of action nugatory and cause irreversible damage to the plaintiffs.

76 For the same reason, the defendants' shareholding should not be diluted by share placements or reduced by sale to third parties pending the resolution of the plaintiffs' claim. The defendants could be adequately compensated in damages and the plaintiffs were ready to give an undertaking as to damages. Other than the fact that the plaintiffs were resident outside of jurisdiction, the defendants had not pointed to any cogent reason why the plaintiffs would not be in a financial position to compensate them if required. On the other hand, as the plaintiffs rightly pointed out, the 1st and 2nd defendants are Chinese citizens

147 DWS at para 131

who could conceivably leave Singapore any time after liquidating the OEL Shares and dissipating their assets to defeat any potential judgment against them. In any event, if I have erred in my determination that the plaintiffs would not be adequately compensated by damages, the balance of convenience weighed in favour of granting the plaintiffs an interim injunction.

77 I accepted the plaintiffs' submission that there was evidence of a real risk of dissipation of the shares unless the injunction was granted to preserve the status quo ante. Two share placements had taken place in February and August 2020, and another further placement had been proposed in OEL's October announcement. The OEL Shares had already been subjected to dilution and possible reduction in value; there was thus evidence of dissipation through fragmentation or dispersal of the shares through share placements. The sale price of the shares in the August placement was significantly lower than what was paid to Mr Hing for the OEL Shares, and there was evidence that the 1st and 2nd defendants were able to substantially influence the passing of resolutions (including for the issuance of shares) despite there being other shareholders in OEL. Share placements were also not the only fundraising options available to OEL as I further explain at [97] and [98] below. Moreover, the 1st to 5th defendants had refused to provide any undertaking not to sell and/or dispose of the OEL Shares, or even to confirm whether any of the shares had been sold, despite the objective evidence which the plaintiffs adduced of high trading volumes in the shares in OEL in July and August 2020.

78 The evidence thus far indicated that the status quo ante should be preserved to prevent the defendants from further diluting the value of the OEL shares and/or from reneging on their implied undertaking to return the monies to the plaintiffs. There was a real risk of both events occurring. This was evident from the defendants' steadfast denial of the plaintiffs' involvement as financiers

or, in a loose sense, "investors" in the acquisition of the OEL shares from Mr Hing, facilitating the takeover of Mr Hing's majority stake in OEL.

79 There was *prima facie* evidence pointing strongly to the defendants being enabled to acquire the OEL shares only as a result of the plaintiffs' injection of funds. The defendants claimed in the face of this evidence not to be aware of how the plaintiffs were involved, on the main premise that they did not know one another. They pointed instead to the funds ostensibly flowing from WJ or her companies. Viewing the totality of the evidence in perspective, the defendants' denial appeared highly suspect.

80 Accordingly, I granted an injunction to restrain the disposal of the OEL shares held by the defendants and reduction or dilution of the share value pending the trial of this action or further order, as sought by the plaintiffs.

Request for further arguments

81 Further arguments were subsequently requested by the defendants. I acceded partially to this request and considered further arguments in relation to the scope of the interim injunction which was ordered on 13 November 2020.

The seven heads of further arguments

82 The defendants sought to canvass seven heads of further arguments. These were:[148]

148 Defendants' Requests for Further Arguments ("RFA") by letters dated 16 and 17 November 2020

(a) First, that the court had misapprehended the facts in finding that there was *prima facie* evidence that $7.7 million was paid by the plaintiffs and received by EI.

(b) Second, that the plaintiffs did not just park the sum of $7.7 million with WJ and/or her companies so that the latter could loan the sum to EI, as the plaintiffs were engaged in a scheme to buy employment passes so as to obtain permanent residency in Singapore.

(c) Third, that the court had acknowledged that the plaintiffs had not explained why WJ did not inform them that their funds were used for the immediate purchase of the OEL Shares, and that it was therefore not possible for the court to draw an inference that the plaintiffs were involved as investors to acquire the OEL Shares ("the third argument").

(d) Fourth, that the plaintiffs had not adduced any evidence which indicated that the defendants intended to sell or otherwise dispose of the OEL Shares.

(e) Fifth, the balance of convenience lay in favour of not granting the injunction.

(f) Sixth, order 1(a) of the original interim injunction order was too wide as it covered any OEL shares held by the defendants and ought to be limited only to the 197,545,000 ordinary shares in OEL purchased from Mr Hing ("the sixth argument").

(g) Seventh, order 1(b) should be set aside or varied as the scope of the injunction was also too wide and would have a crippling effect on OEL ("the seventh argument").

83 In the defendants' letter of 17 November 2020, they canvassed additional submissions in respect of the sixth and seventh arguments and reiterated the contention that the plaintiffs could not be said to be investors. I allowed the request for further arguments only for the sixth and seventh arguments, relating to the scope of the injunction. I did not have the benefit of hearing full arguments on these areas from the parties during the hearing on 11 November 2020. As for the remaining heads and the additional argument in the letter dated 17 November, I saw no reason to accede to the request. Except for the third argument, substantially the same points had already been canvassed at the hearing before me on 11 November 2020.

84 The third argument was a responsive argument to a comment made in my oral remarks that WJ appeared not to have told the plaintiffs about the intended purchase of the OEL Shares *from Mr Hing* from the outset. I made this comment because the plaintiffs' pleaded case omitted any specific reference to purchasing the shares *from Mr Hing*. I did note that in paragraph 31 of the 1st plaintiff's first affidavit, he stated that he was informed about the purchase *from Mr Hing* by WJ, and WJ had affirmed this in her affidavit. However, this fact was not pleaded from the beginning and it would appear that there was presently no contemporaneous independent evidence to support the 1st plaintiff's claim. This tied in to my observation (see [75] above) that it was not necessarily clear that the plaintiffs had intended to obtain a controlling stake in OEL by purchasing Mr Hing's shares in OEL.

85 In putting forth their further arguments under the third argument, the defendants had missed out the reference to Mr Hing which I had made in my oral remarks, and hence misunderstood the context of my comment. The arguments the defendants sought to address did not affect how I would have decided in any case.

86 In relation to the sixth argument, order 1(a) provided that the defendants would not sell or otherwise dispose of any shares in OEL held in their names pending trial or further order. The defendants submitted that the order should be limited only to the 197,545,000 ordinary shares in OEL purchased from Mr Hing, as the plaintiffs' claim in resulting trust was limited only to those shares.[149] In addition, the injunction should not extend to, or cover, shares acquired from open market transactions.[150]

87 In response, the plaintiffs submitted that order 1(a) was reasonable and in line with the plaintiffs' prayers for an order for an account of trust properties and a tracing order. Further, the defendants' request was telling of their intention to sell and/or dispose of their shares in OEL. If not for the plaintiffs' monies, the defendants would not have been able to purchase the OEL Shares and the 1st and 2nd defendants would not have been appointed to their positions in OEL and therefore able to propose share placements.[151] The defendants in turn argued that the plaintiffs had conflated their claim based on trust with their prayer for accounts and a tracing order.[152]

88 In relation to the seventh argument, order 1(b) provided that the defendants would not reduce the value of or dilute the percentage of the rights attached to any shares in OEL held in their names pending trial or further order.

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149 RFA dated 16 November 2020 at para 28

150 RFA dated 17 November 2020 at para 14

151 Plaintiffs' response to RFA dated 19 November 2020 ("Plaintiffs' response to RFA") at paras 31, 33

152 Reply to plaintiffs' response to RFA dated 24 November 2020 ("Reply to plaintiffs' response to RFA") at para 8

The defendants submitted that the scope of the injunction was too wide.[153] The injunction would cripple OEL's ability to raise public funds, and OEL would be deprived of its right to utilise its general mandate to issue shares. OEL's access to funds would therefore be limited to loans at a crucial time when injection of funds was pertinent to facilitate OEL's expansion plans. This would be prejudicial to the rights and/or interests of OEL and its near to 4,000 shareholders.[154]

89 In response, the plaintiffs submitted that OEL had already raised funds through the disposal of the Property, as the relevant resolutions for the sale had been successfully passed without the votes of the 1st and 2nd defendants. Since it was the defendants' position that the 1st and 2nd defendants did not control OEL's Board of Directors, the interim injunction would not impact the running of OEL's day-to-day operations. It was also not logical that the only way OEL could raise funds was through share placements.[155]

90 The defendants in turn argued that the disposal of the Property was the last fund-raising avenue for OEL and that all of OEL's business decisions would be seen as linked to the 1st and/or 2nd defendants. The plaintiffs had also purportedly made baseless allegations to a "reputable local bank" that OEL had breached certain rules in obtaining a facility loan, causing the bank's in-principle approval of the loan to be scuttled. As such, OEL was also unable to raise funds through secured loans, which led to it having no choice but to

153 RFA dated 16 November 2020 at para 30

154 RFA dated 17 November 2020 at para 16

155 Plaintiffs' response to RFA at paras 37, 38

undertake the August placement at a discount to raise urgently needed funds for working capital and to fund its expansion into new business areas.[156]

My decision on the sixth and seventh arguments

91 It would appear to be incontrovertible that the defendants would not have been in any position to acquire the shares from Mr Hing without the plaintiffs' funds of $7.7 million. From the available evidence, the defendants could not credibly deny knowledge of the plaintiffs' involvement as "investors" for the purpose of acquiring the OEL shares. The subsequent private share placements in February and August 2020 which resulted in further allotment of shares and the defendants' aggregate shareholding exceeding the OEL shares purchased from Mr Hing could not be viewed in isolation from their December 2019 acquisition.

92 However, the plaintiffs' primary objective was to obtain a declaration that the 1st to 5th defendants hold the OEL shares on trust for them, and an order that the OEL Shares be transferred to the plaintiffs or their nominees. On their own pleaded case, the plaintiffs essentially sought, *inter alia*, either a transfer or return of the OEL Shares which were acquired or a return of their funds (the bulk of which were used for the purchase of the shares) in the alternative. The plaintiffs did not contend that the defendants were trustees in relation to the *funds* used for the purchase of the shares, but only in relation to the *shares*, the value of which may fluctuate according to market conditions. *Prima facie*, it was thus logical that the only shares which should be covered by the injunction were the OEL Shares which the plaintiffs claimed to be the subject of a potential resulting trust or remedial constructive trust.

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156 Reply to plaintiffs' response to RFA at paras 11, 19

93 It was also logical that the risk of the OEL shares being devalued would be higher if the OEL Shares were progressively diluted through share placements or issues. The plaintiffs pointed to indications that the share value had in fact already started to decline as OEL underwent two rounds of private placements in six months which increased the aggregate shareholdings. It was noteworthy however that in the February 2020 round of placements, the plaintiffs raised no objections to the share placements as the present dispute had not surfaced then. The plaintiffs would therefore reasonably have expected that private share placements and allotments which might result in consequential dilution of their shareholding and which were likely to affect share value could take place. Equally, the plaintiffs ought reasonably to have foreseen that additional shares could be acquired by the defendants from the open market. It did not follow from the plaintiffs' submissions based on account of trust properties and tracing that *all* the shares presently held by the defendants had to be covered by the injunction.

94 The defendants argued that the plaintiffs had conflated their causes of action in trust with their prayer for accounts and tracing but even if this were objectionable, it overlooked the plaintiffs' alternative pleaded case of unjust enrichment. If the plaintiffs succeed ultimately under this alternative cause of action, it would be open to them to seek a tracing order pertaining to the funds which the defendants had allegedly been unjustly enriched with.

95 It was not clear whether the defendants currently hold any shares that have been acquired from the open market or from off market transactions with third parties. Equally it was not clear whether they had any intention or capacity to acquire additional shares by such means. It would appear that any additional shares they now hold over and above the OEL shares had arisen mainly if not entirely from the February and August 2020 share placements. It was not

patently obvious at this point that these additional shares must fall outside the scope of any tracing order or account of trust properties. Nevertheless, I was of the view that limiting the scope of order 1(a) of the injunction to the OEL shares was more consistent with the plaintiffs' pleaded case and the circumstances at hand.

96 The seventh argument regarding order 1(b) had in fact been addressed at the hearing on 11 November 2020. The defendants' submissions at para 135 and the 1st defendant's 1st affidavit at paras 148 to 154 made the point that the defendants would not be able to raise funds if an injunction were to be granted, and that their business expansion plans would be impacted. However even if "any shares in OEL" were amended to "197,545,000 shares", on the defendants' own case, "any issuance of shares to parties other than the defendants will result in a dilution of the defendants' shareholding interests in OEL". If the defendants were allowed to freely complete further share placements, thereby diluting the value of the shares and/or the plaintiffs' purported shareholding in OEL, the effect of the injunction would be very much watered down.

97 In my assessment, the seventh argument was not sustainable since the defendants' core argument was that the injunction would affect OEL's ability to raise further funds. As the plaintiffs submitted, share placements or issues were not the only fundraising options. OEL had already gone ahead to sell the Property which was valued at approximately $8.3m. OEL appeared to have made plans to diversify and aggressively expand its business, but this would rely on securing additional funding. Given the present litigation and the questions and doubts already raised, it may arguably be prejudicial as well to OEL's shareholders for these expansion plans to proceed wholly unchecked.

98 OEL's alleged difficulty in obtaining secured loans reflected its own financial capacity and business fundamentals. I noted with some irony that the defendants had deemed it necessary to highlight in their further arguments[157] their belief that a "reputable local bank" was somehow misled by the Ps' allegedly "baseless, unsubstantiated and erroneous allegations" into withdrawing its in-principle approval for a loan of $4m to OEL. With respect, the more reasonable and plausible inference to my mind is that the said (unnamed) bank, in keeping with its reputation, must have done the necessary due diligence and formed its own independent and objective risk assessment before concluding that the loan was not viable.

99 Having considered the further arguments, order 1(a) of the interim injunction was varied by replacing the words "any shares" with "the 197,545,000 ordinary shares" in OEL. It followed that a similar variation ought to be made in order 1(b) and it was so ordered accordingly.

100 In the defendants' reply to the plaintiffs' submissions in respect of the sixth and seventh arguments, they also sought to adduce a further affidavit (the 1st defendant's 3rd affidavit)[158] which exhibited a Shareholders' Agreement ("SHA") made between OEL and the defendants, WJ, one Wong Chau Farn ("Wong"), one Hu Ling Yan ("Hu") and one Cai Xiao Yue ("Cai"). The plaintiffs objected to this further affidavit.

101 This further affidavit was technically inadmissible as it was filed without leave of court. As such, I disregarded its contents. Even if I did have to consider

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157 See Reply to plaintiffs' response to RFA at para 19

158 Annex F to Reply to plaintiffs' response to RFA

its contents, I would have attached minimal weight to them. In particular, the SHA was not signed by Wong and it was therefore unclear if the SHA was properly executed and had taken effect to begin with. Further, the SHA states that the shareholders "desire[d] to enter into [the SHA] and that the execution and delivery of [the SHA was] a condition to the Closing under the Sales and Purchase Agreement to be entered into". However, as stated earlier, the SPA entered into for the acquisition of the OEL Shares was between the defendants, WJ and Mr Hing. It was therefore also unclear how Wong, Hu and Cai had come into the picture.

102 The adduction of the SHA did not change the present state of the evidence. While Clause 2 of the SHA states that "[n]o holder of Shares shall grant any proxy or become party to any voting trust or other agreement that is inconsistent with, conflicts with or violates any provision of this Agreement", which appears to be inconsistent with the OEL Shares being held on trust for the plaintiffs, there is no evidence that the plaintiffs had known of the existence of this SHA even if it had been properly executed. I had found earlier that there were gaps in both parties' cases but that there was sufficient evidence put forth by the plaintiffs such that their claims were not frivolous or vexatious.

Conclusion

103 For the reasons I have set out above, the injunction as sought by the plaintiffs was granted with a limitation as to its scope to 197,545,000 of the ordinary shares in OEL which were purchased from Mr Hing on or around 16 December 2019.

104 The plaintiffs' submission on costs included the costs for Summons 4793 of 2020, for which costs was reserved.[159] I noted that the hearing before me had taken slightly over three and a half hours. Considering the submissions on costs by both parties as well as the costs guidelines set out in Appendix G of the Supreme Court Practice Directions, I ordered costs to the plaintiffs to be fixed at $10,000, with reasonable disbursements to be agreed.[160]

105 I made no order as to the costs of the further arguments, but invited parties to make submissions on costs if any. Parties did not object to there being no order as to costs by the stipulated deadline.

See Kee Oon
Judge

Quek Wen Jiang, Gerard, Ramachandran Doraisamy Raghunath, Feng Zhuo and Tey Jijie, Louis (PD Legal LLC) for the plaintiffs; Heng Gwee Nam Henry, Loh Hui-Qi Vicki, Charmaine Elizabeth Ong Wan Qi and Charanpreet Kaur (Legal Solutions LLC) for the defendants.

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159 Certified Transcript (13 November 2020) at p 9

160 Certified Transcript (13 November 2020) at p 10