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

[2021] SGHC 41

Suit No 578 of 2018

Between

POA Recovery Pte Ltd

…Plaintiff

And

(1) Yau Kwok Seng
(2) Capital Asia Group Pte Ltd
(3) Capital Asia Group Oil Management Pte Ltd

…Defendants

And

(1) Joseph Jeremy Kachu Li
(2) Thomas C C Luong
(3) Lee Hwee Zie Candice
(4) Ngo Chung Hoon
(5) Low Choon Seng
(6) Gunasekaran Santhosh
(7) Yap Kian Ooi Kelvin
(8) Poon Chwin Keng
(9) Gurpreet Kaur
(10) Chan Tai Suan
(11) Lim Chui Teng
(12) Tan Ley Hoon
(13) Choong Su Lin
(14) Tham Yew Cheong
(15) Wong Puie Kuan
(16) Yan Ying Chieh
(17) Loke Yiing Tsen
(18) Heng Yang Teck
(19) Lim Wei Bee
(20) Tan Chee Huat

(21) Jenny Chan May Fong
(22) Foo Peck Lee
(23) Lim Kar Choon
(24) Wong Kok Seng
(25) Kamalavathani a/p Nadarajah
(26) Teoh Su Lim
(27) Lee Pei Yee
(28) Teoh Yeong Sheng
(29) Gai Sik Mei
(30) Thor Mei Ling
(31) Goh Saw Lan
(32) Onn Chok Chiang
(33) Chew Tee Mun
(34) Lim Kai Ying
(35) Ho Swee Yenn
(36) Hoi Yoke Ping
(37) Ong Yuan Siew
(38) Lee Wan Tze
(39) Liew Jer Wey
(40) Gemma Thadeus
(41) Lee Yee Min
(42) Boon Doon Eng
(43) Ding Sing Leong
(44) Ding Sue Yue
(45) Ooi Sau Mei
(46) Ling Peng Min
(47) Jonathan Quek Chin Wei
(48) Tan Siew Lee
(49) Tan Soh Peng
(50) Tan Kien Chee
(51) Ho Jong Yoong
(52) Yeoh Phing Teck
(53) Lee Teng Hau
(54) Yeo Kok Yee
(55) Ng Kai Yun
(56) Chong Yik Ling
(57) Tan Soo Siong
(58) Steve Kwon
(59) Ho Mei Ngor Sandy
(60) Lau Hoi Po
(61) Ng Wai Kwan
(62) Wong Shu Fat

(63) Tsang Chi Chiu
(64) Keiko Suzuki
(65) Siow Chun Weng
(66) Cheang Choon Thoe
(67) Joyce Cheng Ee Teng
(68) How Hock Ann

…Third Parties

JUDGMENT

[Tort] — [Misrepresentation] — [Fraud and deceit]
[Equity] — [Fraud]
[Contract] — [Illegality and public policy]— [Maintenance and champerty]

POA Recovery Pte Ltd
v
Yau Kwok Seng and others
(Joseph Jeremy Kachu Li and others, third parties)

[2021] SGHC 41

General Division of the High Court — Suit No 578 of 2018
Choo Han Teck J
29–30 September, 1–2, 6–9, 13–16, 20–22 October and 3–5 November, 11 December 2020

18 February 2021 Judgment reserved.

Choo Han Teck J:

1 The plaintiff is a Singapore-incorporated private limited company with an issued share capital of just S$1. It claims to represent 1,102 of over 4,000 investors (collectively, "the Investors") from Hong Kong, Macau, Malaysia, and Singapore who were allegedly defrauded into investing in crude oil produced in Canada. By investment, the plaintiff means a scheme whereby the Investors were supposed to purchase physical barrels of crude oil from a Canadian company called Proven Oil Asia Ltd ("POA") and receive returns after POA resold the crude oil at a profit. POA was a subsidiary of Conserve Oil Group Inc ("COGI"), which operated the oil and gas properties from which the crude oil would be sold to the Investors. The plaintiff claims that the Investors paid a total of more than C$175,000,000 for the POA investments from September 2012 until the investment venture ended in October 2015.

2 The first defendant, Yau Kwok Seng ("Yau"), is presently the sole shareholder and director of the second defendant, Capital Asia Group Pte Ltd ("CAG"), as well as the sole shareholder and director of the third defendant, Capital Asia Group Oil Management Pte Ltd ("CAGOM"). At trial, Yau asserted that he was holding 20% of the shares in CAG on trust for one Ms Phyllis Fong ("Ms Fong"), who was a business partner of Yau as well as a legal consultant for CAG. I agree that the evidence available is insufficient to prove that Yau held shares on trust for Ms Fong, but in any event, this fact is not relevant to the plaintiff's claims.

3 CAG was appointed by POA as the exclusive marketing agent of the POA investments. It earned commission of between 18–20% of the capital raised by way of the investments. The investments were demarcated by projects, which were named according to the oil fields from which the oil had allegedly come. There were 17 projects in total between 2012 and 2015.

4 CAG appointed two entities, CAG Malaysia and CAG Hong Kong, as sales agents in Malaysia and Hong Kong respectively. These entities in turn appointed marketing companies within their respective regions, known as 'Associate Marketing Companies' ("AMCs"). Counsel for the plaintiff, Mr Danny Ong ("Mr Ong"), submitted that there were three important features of each investment. The first was that each investment was a purchase of physical crude oil. Second, the oil would be resold by POA on behalf of the investors at a profit which would be paid to the investors quarterly at 3% of the purchase price until the end of the investment term. This 3% 'profit' was derived from the onward sale of the crude oil that the Investors had bought. The onward sales were allegedly made by POA to companies such as Shell, BP, Tidal and Nexen. Thus, the aggregate annual return would be 12%, and at the end of the investment period (which ranged between 24 and 36 months), the full purchase

price would be returned to the Investors. By way of illustration, if an Investor bought X amount of crude oil for $Y, he would be entitled to get back up to $Y plus 12% per annum by way of a profit from the resale of the oil he had bought from POA at the end of two or three years. Third, as security for their investment capital, the Investors would receive a first charge over the oil fields in the projects in which they had invested.

5 CAGOM was incorporated in 2012 and ceased operations in 2016. It was set up to hold the leasehold security that was provided by POA in respect of the crude oil investments. CAGOM was the 100% shareholder of CAGOM Canada, a Canadian company which was initially used to hold the freehold security which was provided by POA in respect of the investments. From 20 November 2015 onwards, CAGOM Canada became POA's 99% shareholder.

6 This present action arose because in 2015 POA was unable to pay the 3% returns as well as the investment capital back to the Investors. There was no direct evidence but the parties do not seem to challenge the defendants' assertion that POA and COGI got into financial difficulties in 2015 because of the drastic fall in the price of oil world-wide. The contracts and history of events are a mass of facts, some disputed and some not. Some facts which are disputed may not be relevant to my decision, but are relevant to provide a clearer narrative of this action. I will set out the narrative and point out where the relevant issues of fact are before I set out my findings and reasons so as to render this complicated story with many participants and versions comprehensible. The detailed descriptions of the events which unfolded can be found in the closing submissions of all counsel, Mr Ong for the plaintiff, Ms Melanie Ho ("Ms Ho") for the defendants, and Mr Zhuo Jiaxiang for the third parties, all of which are

clearly and comprehensively set out in under 150 pages each in spite of the voluminous oral and documentary evidence before me.

7 The defendants challenge this action in law and in fact. Although the defendants have set out several 'preliminary legal issues' for the court's consideration, the primary defence in law, as I see it, is that the plaintiff has no legal standing to bring an action because its attempt to sue on behalf of the Investors amounts to the illegal practice of maintenance, that is, an unconnected person lending assistance (*eg*, financial support) to the real aggrieved parties or encouraging them to sue. I will elaborate on this later on in the judgment.

8 The defendants challenge the factual basis of the plaintiff's claim by asserting that the investments were genuine commercial transactions and not a Ponzi scheme as alleged by the plaintiff. The defendants say that after the crisis of the drop in oil prices, POA and COGI or some of their officers might have committed fraud that included forgery against the Investors, but that such fraud (if any) was perpetrated against not only the Investors but also the defendants.

9 The defendants joined 68 individuals as third parties in a third-party action. Notably, the defendants have a separate case against two of the third parties, namely, Joseph Li ("Li") and Thomas Luong ("Luong"). Luong is a Hong Kong businessman who was an Investor. Luong introduced the crude oil investments to Li, a trained accountant and an authorised representative of Luck Hock Watch Company Limited ("Luck Hock") and Enoch International Company Limited ("Enoch"). Li personally invested in the scheme and got Luck Hock and Enoch to become Investors as well. The defendants' claim against Li and Luong is based on the allegation that when the investment failed, Li and Luong financially mismanaged CAGOM Canada and POA, and depleted the underlying assets of the crude oil investments, leaving the Investors with

less than 1% of the principal investment amounts from the crude oil investments. The defendants further assert that, in order to mask their own wrongdoing, Li and Luong became active in galvanising the Investors to take remedial action, both in Canada as well as here in Singapore. The other 66 third parties were joined in this suit on the ground that they were sales agents appointed by AMCs who over-promised or misrepresented the investments to the other Investors. These 66 third parties, like Yau, marketed the investment scheme and also invested their own money in the scheme.

10 It is an undisputed fact that, for the early projects, the Investors were paid the agreed 3% quarterly and obtained full capital refunds after the expiration of each project term. By October 2015, three projects had successfully exited, meaning that the Investors had received both their capital refunds as well as their guaranteed returns. Five projects had partially exited, meaning that the majority of the Investors for those projects had been paid their 3% payments and their exit payments in full. But the 2015 trouble in POA and COGI meant that they could no longer continue to pay the Investors, and so payments of both the 3% returns and the capital invested could not be made.

11 In November 2015, officers from POA including one David Crombie came to Singapore to brief the Investors on the situation in Canada, and assure them that the contracts would be performed. David Crombie was the president of COGI. He was also the president of POA from 2011 until his resignation in March 2016.

12 Unfortunately, COGI's financial troubles in Canada continued when oil prices fell below US$40 per barrel at the end of October 2015. On 26 October 2015, COGI was forced into receivership when its bank creditor, Alberta Treasury Branches, called on COGI's loan. A Canadian court appointed MNP

Ltd as the receiver and manager of COGI. David Crombie notified CAG of COGI's receivership three days later and, according to the defendants' evidence, CAG stopped marketing POA projects immediately. COGI was unable to transfer any money to POA. POA was itself enjoined by an order of a Canadian court on 27 November 2015 from disposing of its oil and gas leases and assets.

13 The receivers of COGI then applied to put POA under receivership. Alarmed, Ms Fong and Tan Choon Hua ("Paul Tan"), the Chief Operating Officer of CAG, went to Canada to instruct lawyers to challenge the application. The COGI receivers failed in their attempt to put POA under receivership, but by this time, there were alarms and frantic action in Canada as well as in Singapore, Malaysia, and Hong Kong among the Investors and the AMCs in the respective countries. CAGOM Canada successfully took over 99% of POA and COGI was left with 1%. Richard Orman ("Rick Orman") and Paul Tan were appointed directors of POA, and they formed a new management team that included one Greg Busby to manage POA in January 2016. Rick Orman was a former Minister of Energy in Alberta, and the chairman of a listed company, WesCan Energy Corp, an oil exploration company.

14 Sometime in June 2016, the POA management team met the Investors in Kuala Lumpur to discuss how the Investors could recover their investments — or as much of them as they could. This led to the formation of the June Agreement ("the June Agreement") in which the Investors were given shares in CAGOM Canada in proportion to the outstanding money due to them under the crude oil investments. In return, the Investors would receive dividends from POA, which was by then 99% owned by CAGOM Canada. It was agreed that any disposal of POA's assets would require the approval of 60% of its shareholders. The investors who signed the June Agreement also agreed to forgo

their rights under the original contracts governing their purchase of crude oil from POA, and accepted that their recourse would lie in their rights as shareholders of CAGOM Canada instead. Since CAGOM Canada was the 99% shareholder of POA, profits from POA's restructuring, if successful, would be distributed as dividends to the signatories *pro rata*. 85% of the Investors signed the June Agreement. The remaining 15% had their rights held in trust for them. That is not an issue in this action.

15 In April 2017, the management and control of CAGOM Canada fell to a new management committee, known as the 'Interim Advisory Board', that included Yau, Luong, Li, and four other Investors. Li was the chairman. In November 2017, the members of the Interim Advisory Board were appointed as full directors of CAGOM Canada and formed CAGOM Canada's 'Executive Board'.

16 At this juncture, I pause from the largely undisputed narrative of the story to elaborate on the nature of CAG's role in the crude oil investments, which I will loosely refer to as 'the scheme'. As mentioned at [3] above, CAG was the exclusive marketing agent for POA and COGI. It sells the investments by getting each interested buyer to sign a 'Buyer's Purchase Order' ("BPO"). CAG earns a commission from POA for each BPO it procures for POA. CAG also enlists sub-agents from its AMCs such as 'Blessed One'. These agents are themselves Investors who were minded to play a role in marketing the scheme so that they too could earn a portion of the commissions that POA paid. Some of those Investors, including Luong, Li, Chan Tai Suan and Candice Lee, were invited to POA and COGI installations in Alberta, Canada to see their rigs and production lines. These witnesses returned satisfied with what they saw, and passed on what they had observed not just by word of mouth, but also by producing a video of their trip. All this added to the hype of the scheme. The

full list of Investors who travelled to Canada at various times can be found in Annex D of Ms Ho's closing submissions.

17 One of the allegations made by the plaintiff is that CAG fraudulently received secret commissions from POA. At the trial, many of the plaintiff's witnesses complained that they had not been apprised of the fact that CAG's commissions were deducted upfront from the capital raised from the Investors, with only about 80% of the Investors' capital going upstream to POA. In my view, these allegations are without merit. As the defendants point out, it is both legally and commercially acceptable for sales agents to operate on a commission basis; indeed, the AMCs and sales agents also received commissions for their sales of the crude oil investments. In so far as the plaintiff takes issue with CAG's non-disclosure of (a) the quantum of its commissions as well as (b) the mode of their distribution, these were both matters that were strictly between POA and CAG. CAG did not have a legal obligation to report either of these matters to the Investors.

18 I now refer to the Statement of Claim since the action proceeds from what is pleaded there. The Statement of Claim contains too much evidence, and if the plaintiff had just pleaded those facts it intended to prove, its claims would have been clearer. The only clear causes of action are those based on fraud and fraudulent misrepresentations. As the plaintiff did not plead that the allegedly fraudulent representations constituted terms of a contract between the Investors and CAG, the plaintiff has no action in breach of contract.

19 The plaintiff also pleaded that by the matters set out before paragraph 16 of the Statement of Claim, the defendants "stood as fiduciaries and/or trustees" of the Investors "in relation to the Crude Oil Investments, the funds remitted by the [Investors] to the POA Subsidiaries for the Crude Oil Investments, the

Security Interests and/or any security in respect of the Crude Oil Investments that were held by CAGOM SG on trust for the [Investors]". The plaintiff went on to plead, at paragraph 33.1 of the Statement of Claim, several actions by the defendants which purportedly show that they had "acted fraudulently and/or in breach of trust and/or their fiduciary duties". However, this paragraph is not specific enough since fraud, breach of trust and breach of fiduciary duty are all distinct causes of action with different elements. On the whole, I find that the plaintiff's claims for breach of trust and fiduciary duty are not adequately pleaded.

20 Furthermore, the plaintiff pleaded most of its causes of action, strangely, right at the end, at paragraph 33 of the Statement of Claim, under the heading 'Liability of the Defendants'. In this way, many causes of action were slipped in almost by the way. For example, at paragraph 33.8 the plaintiff pleaded "further and/or alternatively, the Defendants breached their duty to the [Investors] to take reasonable care to ensure that the Scheme was conducted in accordance with the Marketing Representations". This appears to be a reference to the tort of negligence. The plaintiff also pleaded at paragraph 33.3 that the defendants had "wrongfully, and with intent to injure the [Investors] and/or to cause loss to [the Investors] by unlawful means, conspired and combined together to defraud [the Investors]". Had the plaintiff wanted to plead negligence and unlawful means conspiracy as causes of action, it ought to have done so clearly at the start. Nonetheless, the case pursued during the trial was based primarily on the defendants' fraudulent misrepresentations and their participation in a fraud in tandem with POA and COGI. I will thus focus on these claims in my analysis below.

21 In a long, rambling Defence, the defendants returned favour to the plaintiff by pleading evidence and submissions in their defence. In summary, their key contentions are as follows:

(a) the plaintiff has no legal standing to commence this action;

(b) this action should be struck out for being contrary to public policy;

(c) the defendants are not parties to any fraud;

(d) the defendants are not liable for the alleged fraudulent misrepresentations; and

(e) the Investors entered into valid and proper contracts in a commercial venture that failed.

22 I now continue with the plaintiff's case. The plaintiff claims that the Investors were misled by the misrepresentations (set out in paragraphs 13 and 14 of the Statement of Claim) into signing the contracts to purchase crude oil from POA. Many of the alleged misrepresentations sound like promotion puffs. One example is found in paragraph 13.1: "COGI is one of the fastest growing oil and gas companies in Canada". Some may be serious representations of fact but have not be proven to be false, such as the claim (at paragraph 13.2) that COGI "manages over 70,000,000 barrels of oil equivalent, and has oil reserves and resources in excess of CAD7 billion". Aside from these, the two primary alleged misrepresentations are (a) first, the giving of a guarantee that the Investors would receive their annualised returns for the duration of the contract with repayment of the full amount of their investment capital on expiry of the contract, and (b) second, the representation that the Investors were buying crude oil.

23 I first address the plaintiff's claims that the defendants acted fraudulently by (a) permitting or procuring the Investors' moneys to be applied for purposes other than the purchase of crude oil; and (b) permitting or procuring the security that CAGOM and CAGOM Canada held over the oil fields on behalf of the Investors to be discharged.

24 The BPOs signed by the Investors with POA are, by their express wording, contracts for the sale and purchase of crude oil. Each BPO is headed 'Barrels of Crude Oil – Buyer's Purchase Order'. The contract itself provides specifically for the sale, purchase, and storage of crude oil. However, the evidence does not convince me that POA could only use the Investors' money to buy oil and not for any other purposes. Clause 7 of each BPO explicitly provided that POA could allocate the Investors' monies "for development and purchase of oil and gas leases/assets". Thus, even if the Investors' moneys had been used to purchase oil and gas assets instead of crude oil, this was a legitimate means of raising money to fulfil POA's contract obligations, and is not evidence of fraud *per se*. The scheme was unlike a Ponzi scheme in which the fraudster uses the investment monies to pay other investors.

25 Furthermore, there can be no dispute that POA and COGI were genuinely in the oil-producing business. Ms Ho says that COGI was the largest oil producing company in Alberta prior to it being placed under receivership. This was not disputed by Mr Ong. It appears quite clear to me that COGI was a legitimate oil producing company in Canada; only the claim that it was the largest may be in doubt.

26 The plaintiff also alleges fraud in respect of the discharge of the security that CAGOM and CAGOM Canada held over the oil fields for the benefit of the Investors. There is some unchallenged evidence that in the chaos that followed

COGI's receivership, the securities were discharged, but, in my view, there is nothing to show that the authorisation for the discharge had anything to do with the defendants. There is evidence that there might even have been a forgery of the signature authorising the discharge, but that points to Karen Dowling, POA's and COGI's landman.

27 Important witnesses who might have been able to explain the transactions and history more clearly and fully were not called to testify. No one from POA or COGI testified to explain how their BPOs really worked. No one asked for the audited accounts of POA and COGI to see how these contracts appeared, nor to see what COGI's normal business practices were. Reference was made to a similar scheme in Germany known as the 'German Investment', but no detailed evidence was led on that. The lawyers involved in structuring and executing the documents were not called. Karen Dowling and David Crombie were also not called even though they could have been material witnesses as regards the plaintiff's allegation that documents had been forged leading to the discharge of the Investors' security in Canada. Rick Orman, who was a former Minister of Energy, was certainly a material witness given that he had come to meet the defendants and some of the Investors. But he, too, was not called to testify. Finally, Robin Chan, who was appointed POA's accountant after its collapse, was also not called by the plaintiff to testify even though the plaintiff had initially listed him as one of its witnesses. Ms Ho argued that Robin Chan would have shown that the wrongdoings, if any, lay with POA's old management and not with the defendants.

28 There are unanswered questions and absent witnesses from all sides, but the issues and the respective cases for the parties are clear. The evidence though incomplete is sufficient for me to make the necessary finding of facts. I believe that the absent witnesses were not called for strategic purposes or for practical

reasons (*eg*, the Canadian witnesses may have been unwilling to testify), and not as a result of neglect by counsel, all of whom had run very tight, lucid cases for the respective parties. Rick Orman's evidence-in-chief was admitted without challenge, and although his evidence might not have been of much interest to the plaintiff, his standing, experience, and account of the events in the aftermath of October 2015 support my finding that this is not a case of fraud, but a failed investment.

29 I now turn to the plaintiff's claim for fraudulent misrepresentation. The defendants demur that they had used whatever information they had been given by POA and COGI without embellishment, and had represented accurately what they were told. Much of the information can be found in a bound document called the 'Crude Oil Bible'. The defendants say that the Investors who were authorised to sell the crude oil investments could also access, and in fact used the same Crude Oil Bible. Many Investors also started selling the crude oil investments because they would receive commissions for each sale, over and above the 3% quarterly returns on their own purchases. This is why some of these Investors are named as third parties in this action (see [9] above).

30 On the evidence, I am satisfied that CAG Singapore, which was responsible for training the sales agents in Singapore, Malaysia and Hong Kong, had clearly and unambiguously informed the sales agents that they could not inform potential buyers that the capital returns for the investments were guaranteed. Other than the assertions by some of the witnesses that Yau had guaranteed the capital refunds, the evidence inclines me to find that at most, Yau had only assured some of the early Investors that the investments were reliable. Assurances of this sort are not a guarantee in law that can found a cause of action. In any event, by the time those Investors visited the COGI oil fields, they had convinced themselves that they were in a good deal, and themselves

became evangelists of the same cause. I thus find that if individual Investors, especially those from Malaysia and Hong Kong (who made up about 90% of the Investors) had been misled by what they claim to be the promises of capital protection, the promises were made by the sales agents and not by the defendants.

31 The only remaining criticism one might possibly make is that POA had dressed up the BPOs as contracts for the purchase of crude oil when they were in fact a little more sophisticated, namely, contracts that are more like investments in the commercial ventures of POA in which POA promises to reward the investors with a return of 12% per annum. In this regard, Mr Danny Ong submitted (at paragraph 96 of the plaintiff's closing submissions) that:

> The Crude Oil Investment was, in reality, an investment into acquisition and development of oil properties. In order to meet the returns required to be paid to the investors, additional capital would be injected to develop the property, in the hope of raising its market value.

32 However, even if the defendants had falsely represented that the Investors' moneys would only be allocated towards the purchase of actual crude oil, there is no evidence that the Investors had relied on this representation in entering into the BPOs.

33 The BPOs specified that if the Investors wanted delivery of oil, that could be done on the terms set out in the contracts, but those terms were not put to the test because none of the Investors had opted to take delivery of the crude oil. That also shows that so far as the Investors are concerned, they were only interested in getting their capital refund and 12% profit. None wanted the barrels of oil, nor is it likely that they would have known what to do with them.

34 Furthermore, evidence was led that numerous Investors had visited the COGI oil fields and returned fully satisfied with what CAG was offering them (see [16] above). They passed on their experience to other interested buyers who relied on their recommendations and purchased the investments with or through them accordingly. Some of those who went on those verification trips to Canada even made a video of what they had observed.

35 The evidence of the witnesses from all sides shows that no one was interested in buying the actual crude oil. They were all focused on the 12% annual returns. The BPOs were not all executed at once but over the years, and the early BPOs had shown promise because they were being performed, and the promises kept.

36 The ideas of fraud and fraudulent misrepresentation only came to mind much later, by which time, the story had become more complicated and messier, by reason of the activities of Li and Luong (which I will elaborate upon shortly). Until then, the Investors had been working with Yau in trying to recover their investments. Yau was, initially, taking the lead not only because he was the person who had introduced the investment to the early Investors, but also because he was himself an investor in the scheme. There is also evidence from the email of Alex Gramatzki (the Vice-President of POA at the material time) that shows that the Canadians were trying to control the damage without alarming the Investors, but eventually, the loss was too great and nothing could be done but for everyone to roll over and give up — except for Li and Luong whose story I now proceed to narrate.

37 Li and Luong, and perhaps a couple of the other members of the Interim Advisory Board, after gaining control of CAGOM Canada, sold off a valuable POA asset known as the 'Joffre' asset without the requisite 60% shareholders'

approval, and in spite of express objections to the sale. By the time Li and Luong reported that the sale was complete, nothing could be done and they proceeded to inform CAGOM Canada shareholders that they were getting a final distribution of 1%. Luong and Li have not provided proof of the sale. That itself is extraordinary. The buyer was not named; the sale price was not disclosed.

38 A second allegation against Li and Luong concerned what was known as the 'Spurs Investment', which entailed drilling wells in the Whitford/Vilna region in Alberta. Briefly, Rick Orman told the Interim Advisory Committee on 20 May 2017 that there was a good investment opportunity available, and that if POA (through CAGOM Canada) managed to get into it, this would help POA recover. On 27 May 2017 the Interim Advisory Board was presented with the Spurs Investment, but it took Li two weeks to disclose it to the Investors, leaving them only three days to decide if they wanted to take up the investment. In the end, only six investors, five of which were represented by Li and Luong, took up the offer. Neither Li nor Luong persuaded me that this allegation by Yau (the details of which were put to them at trial and can be found at paragraphs 396–413 of Yau's AEIC) was untrue.

39 An individual named Vincent Murphy and a company named Poker Chip Exploration Ltd ("Poker Chip") are complicit in the third adventure of Li and Luong. In December 2017, Li brought in a hitherto unknown person by the name of Vincent Murphy whose company, Poker Chip, bought over an asset known as 'Provost' (that was originally offered to POA) for a mere C$1 by a series of machinations and whilst keeping the shareholders in the dark. When questions were raised against Li, Vincent Murphy sent a remarkable confession that he had obtained Provost under false pretences. His confession was sent to Alex Gramatzki, the Vice President of CAGOM Canada. Vincent Murphy then disappeared from the scene. Li made no attempt to pursue Vincent Murphy even

though he was the one most likely to find him because he had brought Vincent Murphy to CAGOM as a consultant. At trial Li denied, most unconvincingly, having anything to do with Vincent Murphy, Poker Chip, or Provost. And I do not believe him.

40 At best, Li and Luong have not accounted for the questionable conduct of CAGOM Canada. At worst, they have secretly profited from their fiduciary positions as directors of CAGOM Canada at the expense of the Investors whose interests CAGOM Canada was meant to protect. Although the Investors lost money from the misfortunes of COGI, I am satisfied, having regard to the evidence before me, that they could have recovered more than the 1% Li and Luong achieved, although the precise value of their loss is hard to quantify with precision. Since Li's and Luong's activities in Canada were channelled through dark avenues, only they would know the true extent of what CAGOM Canada could have recovered. The other Investors, the defendants and the court are left none the wiser since Li and Luong deny any wrongdoing or misconduct on their part.

41 Based on the above, it is obvious to me that any action which Li and Luong had carried out to recover POA's assets was undertaken purely for their own benefit (for they, as well as their principals, were major investors in the scheme). Indeed, they had hoped to recover even more by instituting this action. They also had the novel idea of shielding themselves from potential loss through the payment of party and party costs by herding the Investors into POA Recovery Pte Ltd — the S$1 plaintiff company — to sue the defendants. That seemed like a master stroke that is unfortunately, blunted by the sharper stroke of law. And it is to the defendants' legal defence that I finally turn.

42 Ms Ho described the plaintiff as a 'shell company' incorporated only for the purposes of commencing this suit. I agree with this characterisation. In my view, the plaintiff's action necessarily fails in law because the agreements for the assignment of the Investors' rights to litigate to the plaintiff ("the Assignment Agreements") are void for being contrary to the doctrine of maintenance.

43 According to *Re Vanguard Energy Pte Ltd* [2015] 4 SLR 597 ("*Re Vanguard Energy*") at [43]–[44], it is contrary to the doctrine of maintenance for individual plaintiffs to assign their bare rights to litigate to a special purpose vehicle, unless (a) it is incidental to a transfer of property, (b) the assignee has a legitimate interest in the outcome of the litigation, or (c) there is no realistic possibility that the administration of justice may suffer as a result of the assignment.

44 The first and second exceptions in *Re Vanguard Energy* do not apply here. I disagree with Mr Ong's contention that the plaintiff has a legitimate interest in the assignment simply because it has no separate purpose apart from pursuing the Investor's claims. The present case may be distinguished from a situation whereby a company assigns a bare cause of action (or the fruits of such actions) to its shareholders. Such shareholders can be said to have a legitimate interest in the assignment since they would have benefitted from the spoils of a successful litigation in any event (see *Re Vanguard Energy* at [48]). Likewise, I am not persuaded that the plaintiff can avail itself of the third exception. I agree with Ms Ho that structuring the action in this manner is also contrary to public policy in that the defendants would have no one to look to for costs except the solitary shareholder of a S$1 shell company. Beyond the security for costs paid up to the filing of affidavits, the defendants will be chasing shadows across Hong Kong, Malaysia, and Singapore, for the bulk of their costs.

45 The Investors must comply with the law if they wish to pursue their rights in court. This means that they had to (a) sue individually, and agree to proceed with one suit with the others stayed (since the issues and witnesses involved are common to all), (b) file a representative action under O 15 r 12 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"), or (c) join the parties and consolidate their actions under O 15 r 4 and O 4 r 1 of the ROC respectively. If the Assignment Agreements are held to be valid, the Investors would be able to pursue their actions without having to satisfy all of the procedural and substantive requirements set out under these provisions. For reference, I set out the relevant provisions of the ROC below:

> **Consolidation, etc., of causes or matters (O. 4, r. 1)**
>
> **1.**—(1) Where 2 or more causes or matters are pending, then, if it appears to the Court —
>
> > (*a*) that some common question of law or fact arises in both or all of them;
> >
> > (*b*) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions; or
> >
> > (*c*) that for some other reason it is desirable to make an order under this Rule,
>
> the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them.
>
> […]
>
> **Joinder of parties (O. 15, r. 4)**
>
> **4**.—(1) Subject to Rule 5(1), 2 or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where —
>
> > (*a*) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions; and

> (*b*) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.
>
> […]
>
> **Representative proceedings (O. 15, r. 12)**
>
> **12**.—(1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in Rule 13, the proceedings may be begun, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.
>
> […]

46 By reason of the foregoing, I find that the Assignment Agreements should be declared void, with the effect that the plaintiff has no standing to bring the present action.

47 Mr Ong presented a formidable case in the opening stages — not unlike the charge of King Edward II's cavalry at Bannockburn. But once the 12-foot pikes of the Scots in their schiltron formation were thrust forward, the charge collapsed. The action in this suit falls because its procedural foundation cannot support it; much the same way horses get bogged down by heavy armour in the swamps of Bannockburn.

48 For the reasons above, the plaintiff's claim is dismissed. I now come to the defendants' action against the third parties. In relation to the third-party action against Luong and Li, I have accepted the defendants' claim that Luong and Li financially mismanaged CAGOM Canada in the aftermath of the 2015 oil crisis and that the Investors could have recovered more than 1% of their investment capital if not for Luong's and Li's questionable dealings: see [37]–[40] above. In relation to the third-party action against the sales agents, I have found that on balance, and upon examining the marketing materials and

testimonies of the various sales agents, that the defendants are right: see [30] above. Yau had been careful to avoid the promise of a guaranteed return. His training instructions were consistent with this stand. Although the only order I need to make in respect of the third-party action is an order for costs, I should point out that it has transpired from the evidence adduced that not all third parties are the same. Li and Luong may have more to answer for than the others, but that is an internal matter among the third parties. I will hear arguments on costs at a later date.

- Sgd -
Choo Han Teck
Judge of the High Court

Ong Tun Wei Danny, Chow Chao Wu Jansen, Ng Hui Ping Sheila, Teo Jason, Lim Tiong Garn Jason, Chan Kit Munn Claudia and Chen Lixin (Rajah & Tann Singapore LLP) for the plaintiff;
Ho Pei Shien Melanie, Lim Xian Yong Alvin, Neo Jia Cheng Gavin and Khoo Kiah Min Jolyn (WongPartnership LLP) for the defendants;
Zhuo Jiaxiang and Loo Yinglin Bestlyn (Providence Law Asia LLC) for the 1st–8th, 10th–24th, 26th–35th and 37th–68th third parties.