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

[2022] SGHC 13

Suit No 242 of 2019

Between

Hainan Hui Bang Construction Investment Group Ltd

… *Plaintiff*

And

Ma Binxiang

… *Defendant*

JUDGMENT

[Evidence — Admissibility of evidence — Hearsay]
[Conflict of Laws — Choice of law — Contract]

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Hainan Hui Bang Construction Investment Group Ltd
v
Ma Binxiang

[2022] SGHC 13

General Division of the High Court — Suit No 242 of 2019
Chan Seng Onn SJ
28–30 October, 4, 5, 9–12 November 2020, 13–16, 19, 21–23, 26, 27 July 2021, 4 October 2021

18 January 2022 Judgment reserved.

Chan Seng Onn SJ:

Introduction

1 The dispute in the present suit centres on certain moneys transferred to the defendant. The plaintiff company alleges that those moneys were held on trust for it, pursuant to an oral agreement for the defendant to invest these moneys for the plaintiff. The defendant denies this, claiming that in truth, the moneys were remuneration paid to him, pursuant to a broader arrangement between him and a high-ranking person within the plaintiff's corporate structure. The defendant further alleges that this person has orchestrated this suit as retaliation for the defendant's eventual unwillingness to comply with his schemes, and counterclaims for a sum said to be due under one of those schemes.

2 The court must decide which version of events has been proven, and consider the legal consequences flowing therefrom.

The parties

3 The plaintiff is a company incorporated under the laws of the People's Republic of China ("PRC") and is in the business of property development, among other things.[1]

4 The defendant is a PRC national.[2] From October 2010 to March 2018, he was an employee of Weiye Holdings Limited ("Weiye"), a Singapore-incorporated property development company which is principally based in the PRC.[3] Since then, he has been running his own investment company.[4]

5 A key figure in this dispute, though he is not a party named to this suit, is one Zhang Wei ("Zhang"), who was at the material time chairman of Weiye's board of directors and the plaintiff's Supervisor (a position in PRC law which entails exercising supervisory functions over a company's senior management[5]).[6]

The background to the dispute

6 This matter is notable in that the parties have disagreed on virtually every aspect of the factual background underlying this dispute. Around the few

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1 Affidavit of Evidence-in-Chief ("AEIC") of Li Keyi ("Li's AEIC") at para 3.

2 Defendant's AEIC at para 6.

3 Defendant's AEIC at paras 7–8.

4 Defendant's AEIC at para 6.

5 AEIC of Chen Lei ("Prof Chen's AEIC") at paras 62–66.

6 Defendant's AEIC at para 10.

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agreed facts and documents placed before the court, each party has constructed its own narrative, wholly incompatible with the other. Before the issues can be crystallised, it is necessary to recount in some detail each party's version of events.

The plaintiff's version of events

7 The plaintiff identifies the seed of the relationship between itself and the defendant in a friendship between the defendant and one Li Keyi ("Li"). The defendant and Li met in or around 2012, when both of them were working at Weiye.[7] They became good friends, and remained so after Li left Weiye to join the plaintiff as a director in 2013.[8] Consequently, when the plaintiff was looking in early 2015 to invest in foreign stocks in Singapore and/or Hong Kong, Li reached out to the defendant to ask if he could help with the investment.[9]

8 According to the plaintiff, this discussion resulted in an oral agreement between Li (on behalf of the plaintiff) and the defendant sometime in early to mid-2015 (the "Investment Agreement"). The plaintiff was to transfer a principal sum of money (which eventually amounted to a total of S$1,784,350) to the defendant, who would hold it and invest it in equity stocks on stock exchanges in Singapore and/or Hong Kong for and on behalf of the plaintiff. On the plaintiff's demand at any time, the defendant was to fully account for and return to the plaintiff the principal sum, along with all profits, dividends and benefits derived therefrom. The defendant would then be remunerated according to the investment returns, with the quantum of remuneration to be determined after the investment returns had been accounted for. If the

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7 Li's AEIC at para 5.

8 Li's AEIC at paras 6–7.

9 Li's AEIC at paras 7–8.

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investment resulted in losses for the plaintiff, the defendant would not be remunerated.[10]

9 Having entered into the Investment Agreement, the plaintiff now had to transfer the principal sum to the defendant. However, it faced an obstacle in the form of capital control regulations in the PRC.[11] The plaintiff therefore borrowed moneys from various intermediaries with bank accounts outside the PRC, and had them transfer the respective sums borrowed directly to the defendant:[12]

(a) S$339,000 from Li;

(b) S$105,350 from one Liu Hongen;

(c) S$460,000 from one Max Fill International Limited ("Max Fill"); and

(d) S$880,000 from one Well Fai International Limited ("Well Fai").

While these sums were transferred to a UOB Bank account held by the defendant (the "UOB Account"), the plaintiff alleges that the defendant made use of two other accounts in managing the investment, one with China Construction Bank (Asia) Hong Kong (the "CCB Account") and another with KGI Securities (Singapore) Pte Ltd (the "KGI Account").[13] I shall refer to all three accounts collectively as the "Accounts".

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10 Li's AEIC at paras 9–10.

11 Li's AEIC at para 15.

12 Li's AEIC at paras 11 and 15.

13 Statement of Claim ("SOC") at para 5.

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10 The plaintiff did not keep a close eye on this investment.[14] Li explained that this was due, among other things, to the small scale of the investment relative to the plaintiff's usual business within the PRC, and to the fact that the defendant would occasionally update Li, who would pass the information on to the plaintiff's management.[15]

11 Things changed in 2018. In January and March that year, Li received troubling news that the defendant was being investigated by Weiye for misappropriation of funds.[16] After discussing this with the plaintiff's president and legal representative, Wang Xianzhou ("Wang"), the plaintiff decided to terminate the Investment Agreement and retrieve the principal sum and the investment returns from the defendant.[17] However, the defendant demurred, citing certain difficulties in the stock market.[18] Li was therefore tasked to obtain a written document from the defendant to attest to the existence of the Investment Agreement and to the defendant's obligation to return the moneys.[19] This was done on 15 March 2018, with the defendant drafting and executing the following declaration (the "Declaration") himself:[20]

> I, [the defendant,] hereby declare that all the cash deposits and stocks in [the Accounts] are owned by [the plaintiff]. I have no ownership rights and disposal rights to all the assets in the abovementioned accounts. Instead, [the plaintiff] has all ownership rights and disposal rights to all the assets in the abovementioned accounts. The undersigned shall voluntarily

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14 Li's AEIC at para 19.

15 Li's AEIC at paras 19(b) and (d).

16 Li's AEIC at paras 20–22.

17 Li's AEIC at para 23.

18 Li's AEIC at para 23.

19 Li's AEIC at para 24.

20 Li's AEIC at para 29 and p 244.

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> cooperate with [the plaintiff] in completing other operations such as the realization of the accounts, transfer etc.

12 Thereafter, for a time, the defendant appeared to be acquiescing to the plaintiff's desire to terminate the Investment Agreement. In June and July 2018, the defendant indicated to Li that he would be liquidating the shares and securities held in the Accounts.[21] However, in August 2018, prior to undertaking certain procedures he claimed were necessary to transfer the principal sum and the investment returns to the plaintiff, the defendant asked the plaintiff to reimburse him for personal income tax to be incurred in respect of the principal sum and investment returns residing in the Accounts.[22] The plaintiff agreed to this.[23] The defendant thus commissioned the preparation of a tax report, which indicated that he was liable to pay personal income tax of RMB1,189,071.74.[24] The parties then agreed that the defendant would be reimbursed for RMB680,000 first and then the remainder upon the return of the principal sum and the investment returns, for a total of RMB1.18 million of income tax.[25] Accordingly, the first tranche of RMB680,000 was transferred to the defendant's designated recipient company, Hainan Jiaopu Information Technology Co Ltd on 13 September 2018 through Li and a third party.[26]

13 The plaintiff therefore arranged for the defendant to fly to Singapore on 21 September 2018 to complete the necessary transfer procedures.[27] However,

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21 Li's AEIC at paras 35–36.

22 Li's AEIC at para 38.

23 Li's AEIC at para 38.

24 Li's AEIC at para 40.

25 Li's AEIC at para 41.

26 Li's AEIC at para 45.

27 Li's AEIC at para 48.

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although the defendant informed Li at 2pm that day that he had arrived in Singapore, he became uncontactable thereafter.[28]

14 The defendant resurfaced only on 29 September 2018, asking Li to meet him on 3 October 2018 in the PRC.[29] It is Li's evidence that at the meeting, the defendant admitted that he had not entered Singapore on 21 September 2018, and that he was under investigation by the Singapore authorities and would only enter Singapore to complete the necessary transfer procedures after the investigation concluded.[30]

15 In view of the defendant's behaviour, a meeting was arranged between the defendant, Li and Wang in October 2018.[31] Li says that the defendant stormed out of the meeting, and later informed him that he would not return the principal sum and the investment returns to the plaintiff.[32]

16 After taking time to obtain legal advice, Li (on behalf of the plaintiff) sent the defendant a WeChat message demanding immediate payment of the principal sum and the investment returns, failing which HHBC would commence legal proceedings against the defendant to recover the same.[33] The defendant did not respond.[34] Accordingly, the plaintiff began the present action.

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28 Li's AEIC at para 49.

29 Li's AEIC at para 53.

30 Li's AEIC at para 54.

31 Li's AEIC at para 66.

32 Li's AEIC at para 67.

33 Li's AEIC at paras 69–70 and p 354.

34 Li's AEIC at para 70.

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The defendant's version of events

17 The defendant, meanwhile, has painted a starkly different picture, one that centres on alleged interactions with Zhang, who was then the chairman of Weiye's board of directors and the Supervisor of the plaintiff. According to the defendant, the true arrangement that led to the deposit of a total of S$1,784,350 in his UOB Account was not the Investment Agreement for him to undertake investments on the plaintiff's behalf, but rather an arrangement between him and Zhang ("Zhang Wei's Arrangement").

18 In December 2014, the defendant was contemplating leaving Weiye to pursue his own ambitions in respect of investing.[35] The defendant informed Zhang of this, and suggested that since he wished to set up his own investment firm to manage investments of about RMB100 million, continuing at Weiye would be akin to giving up commission and returns which he could earn on those sums.[36] Upon hearing this, Zhang made the defendant an offer: if the defendant were to stay on at Weiye, while providing Zhang with investment consultancy and management services, Zhang would pay him a single lump sum of RMB9 million (*ie* a 3% rate of return per annum on RMB100 million, calculated over three years).[37] The defendant accepted this offer.[38] Accordingly, Zhang – and not the plaintiff – caused the sum of S$1,764,350 (being supposedly the Singapore dollars equivalent of RMB9 million) to be transferred into the defendant's UOB Account, through Li, Liu Hongen, Max Fill and Well Fai.[39]

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35 Defendant's AEIC at paras 14–15.

36 Defendant's AEIC at para 16.

37 Defendant's AEIC at para 17.

38 Defendant's AEIC at para 18.

39 Defendant's AEIC at paras 25 and 28.

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19 Thereafter, from around May 2015 to January 2018, the defendant advised Zhang on various investments and executed those investments on his behalf. Over time, these investments mainly consisted of trading in Weiye shares in the stock market and monitoring such trades.[40] In January 2018, Zhang Wei's Arrangement came to a close,[41] and the defendant left Weiye to set up his own investment firm in March 2018.[42] The defendant strenuously denies that his departure was prompted by any sort of investigation at Weiye for misappropriation of funds, as alleged by the plaintiff.[43]

20 This account by the defendant provides an alternative explanation for the entirety of the events set out by the plaintiff, save one: the Declaration executed on 15 March 2018 by the defendant himself. That, the defendant says, was executed in connection with a *separate* agreement, which he terms the "Asset Exchange Agreement". The Asset Exchange Agreement came about from a conversation between the defendant and Li on 12 March 2018, wherein Li conveyed a request from Zhang for the defendant to provide funds from the Accounts (which were outside the PRC) to Weiye for its use outside the PRC. In exchange, an equivalent sum in RMB would be transferred to the defendant's personal bank account in the PRC. The defendant would also be reimbursed for the entirety of the personal income tax he would incur in the PRC as a result of the assets exchanged (which in essence leads to a remittance of the defendant's monies in Singapore currency in Singapore back to China in RMB in exchange for a remittance of the plaintiff's monies in RMB out of China to Singapore in

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40 Defendant's AEIC at para 45.

41 Defendant's AEIC at para 50.

42 Defendant's AEIC at para 58.

43 Defendant's AEIC at paras 55–57.

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Singapore currency).[44] The defendant was happy to oblige, as it would have been cumbersome for him to move his funds in Singapore back into the PRC himself.[45] Thus, Li – on behalf of the *plaintiff* – entered into an agreement on these terms with the defendant.[46] Li further requested that the defendant sign a document which stated that any and all assets held in the Accounts were owned by the plaintiff. In order to show his commitment to the Asset Exchange Agreement, the defendant signed the Declaration.[47] He denies that he drafted the Declaration, and says that it was instead Li who presented him with an unsigned copy to execute.[48]

21 It is out of the Asset Exchange Agreement that the defendant's counterclaim arises. He alleges that pursuant to that agreement, Xu Jingbo ("Xu"), Zhang's secretary at the time, transferred a total of HK$2,785,000 from the CCB Account to Li in August 2018.[49] However, no equivalent sum was transferred to the defendant's bank account in the PRC thereafter.[50] The defendant also agrees that he was transferred RMB680,000 by the plaintiff in September 2018 as reimbursement of part of his income tax, but alleges that he is owed the remaining RMB509,071.74.[51]

22 Around this time, the defendant's relationship with Zhang began to crumble. The defendant claims that he began growing doubtful of the legitimacy

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44 Defendant's AEIC at paras 62–63.

45 Defendant's AEIC at para 63.

46 Defendant's AEIC at para 64.

47 Defendant's AEIC at para 65.

48 Defendant's AEIC at para 66.

49 Defendant's AEIC at para 71.

50 Defendant's AEIC at para 77.

51 Defendant's AEIC at para 78.

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of Zhang's purposes underlying the Asset Exchange Agreement.[52] His October 2018 meeting with Li and Wang was the last straw: when the Declaration was produced and he was asked to return the moneys in the Accounts to the plaintiff, he stormed out of the meeting.[53]

23 It is the defendant's case that the plaintiff's claim has in truth been engineered by Zhang.[54] He alleges that the plaintiff was and is ultimately controlled by Zhang,[55] and that this present suit is Zhang's attempt to claw back the remuneration paid to the defendant and a means of retaliation against him.[56]

Procedural history

24 The plaintiff commenced the present action on 4 March 2019, and the defendant responded with his defence and counterclaim on 6 June 2019. The trial was bifurcated, and the liability stage of the trial was heard before me in two tranches, one in October to November 2020 and the other in July 2021.

25 At the trial, Li and Wang gave evidence as factual witnesses for the plaintiff, while the sole factual witness for the defendant was the defendant himself. The parties also each called an expert witness on PRC law: Professor Chen Lei ("Prof Chen") for the plaintiff and Professor Liu Qiao ("Prof Liu") for the defendant.

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52 Defendant's AEIC at paras 85, 87 and 88.

53 Defendant's AEIC at para 90.

54 Defendant's Closing Submissions ("DCS") at para 6.

55 Defendant's AEIC at paras 10–12.

56 DCS at para 6.

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The parties' cases

26 The plaintiff argues that in failing to carry out his obligation to return the principal sum and the investment returns on demand, the defendant was in breach of the Investment Agreement and is liable for damages. Alternatively, the defendant holds the principal sum, the investment returns and the first tranche of RMB680,000 in income tax – as well as all profits derived therefrom – on trust for the plaintiff. Both the Investment Agreement and the trusteeship are governed by Singapore law. In breaching the Investment Agreement and the duties of his trusteeship, the defendant is liable to the plaintiff for damages and/or an account. Further, neither Zhang Wei's Arrangement nor the Asset Exchange Agreement existed, and the plaintiff therefore has no liability thereunder.

27 The defendant's case is the obverse of the plaintiff's. He argues that neither the Investment Agreement nor the trustee relationship has been proven. Even if the court were to find that either had been proven by the plaintiff, each would be invalid or unenforceable, whether under PRC law or Singapore law. On the contrary, it is the plaintiff who has breached the Asset Exchange Agreement, and the defendant counterclaims for the equivalent in RMB of the HK$2,785,000 transferred by Xu to Li and the balance of his unpaid personal income tax of RMB509,071.74.

Issues to be determined

28 As will be clear by this juncture, the parties' narratives are practically irreconcilable. Any analysis of the parties' rights and obligations must therefore necessarily begin with an evaluation of which account, if any, is to be accepted by the court. In that connection, the court will have to examine whether each of the alleged agreements in this matter (*ie* Zhang Wei's Arrangement, the

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Investment Agreement and the Asset Exchange Agreement) has been proven on the balance of probabilities. As these agreements are each said to be oral, the court is left to consider the surrounding circumstances, the documentary evidence produced and the inherent likeliness of each agreement.

29 Thereafter, the following questions will have to be answered in respect of each agreement or relationship found to be established as a fact on the balance of probabilities:

(a) What the proper law governing that agreement or relationship is;

(b) Whether that agreement or relationship is invalid or unenforceable;

(c) The exact scope of the obligations thereunder and the extent of any breach thereof; and

(d) What the remedy arising therefrom, if any, should be.

The agreements established on the balance of probabilities

Zhang's involvement

30 Before I consider each of the agreements, I must first address the defendant's allegation that in truth, Zhang is the mastermind who has orchestrated matters at every step of the way up to and including this present suit. This is an allegation which permeates every aspect of the defendant's case, and it ought to be dealt with at the earliest juncture.

31 I do not find that the defendant has made out his allegation. None of the reasons given by the defendant for his characterisation of Zhang are

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independently persuasive, and the overall picture that is painted does not rise to the level of control that the defendant alleges.

32 The first reason given by the defendant is that Zhang was a Supervisor of the plaintiff until 15 September 2015.[57] In his affidavit of evidence-in-chief ("AEIC"), the defendant explained that under the laws of the PRC, Zhang, as a Supervisor, would have been in a position to exercise various powers of inspection and supervision over the plaintiff's directors and senior management.[58] However, as Prof Chen explained, a Supervisor is not regarded as senior management under PRC law and is not involved in any of a company's decision-making process.[59] In light of this rebuttal, the defendant could only suggest that it was not impossible for an individual to indirectly exercise control over a company's decision-making.[60] But that reduces the inquiry to an examination of the individual's specific influence over the company's affairs and employees. In other words, the fact of Zhang's appointment as a Supervisor does not stand in and of itself as a reason to regard him as controlling the plaintiff's affairs.

33 The second reason given by the defendant is an allegation that Zhang was in truth the beneficial owner of the plaintiff.[61] The defendant submits that at all material times, the plaintiff's shareholders were all merely nominee shareholders for Zhang.[62] However, as the plaintiff points out, this is nothing

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57 DCS at para 109.

58 Defendant's AEIC at para 10.

59 Prof Chen's AEIC at para 65–66; Transcript, 9 November 2020, p 93 lines 5–19.

60 Transcript, 9 November 2020, p 92 lines 15–18; DCS at para 110.

61 DCS at para 111.

62 DCS at para 111.

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more than pure supposition. The defendant largely bases his allegation on Li and Wang's inability at trial to explain some aspects of certain transfers of the plaintiff's shares.[63] I fail to see how this might found any inferences as to Zhang's beneficial ownership of the plaintiff.

34 Next, the defendant argues that the employees and senior management of the plaintiff are linked to Zhang: for instance, Li and Wang were previously employed by Weiye or Weiye's related companies. From this, the defendant extrapolates that Li and Wang, along with potentially others, had been placed in key positions in the plaintiff by Zhang so that he would have trusted individuals who would carry out his instructions within the plaintiff.[64] Once more, no substantiation is provided for this leap of logic. Li and Wang's past employment histories do not in and of themselves indicate that they were Zhang's puppets. I reject this speculation.

35 The defendant also pointed to specific instances of Zhang's supposed control over the plaintiff's affairs, including signing off on a shareholders' resolution of a subsidiary of the plaintiff as the plaintiff's sole representative, and authorising the issuance of an internal document dealing with salaries for all levels of employees of the plaintiff.[65] However, even if I accept the authenticity and validity of the subsidiary's shareholders' resolution (which the plaintiff appears to contest[66]), the appointment of Zhang as the plaintiff's sole representative at such a meeting does not strike me as indicating, in and of itself, that Zhang had *control* over the plaintiff's affairs. The resolution concerned a

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63 Plaintiff's Reply Submissions ("PRS") at para 128.

64 DCS at para 112(d).

65 DCS at para 113.

66 Plaintiff's Closing Submissions ("PCS") at para 247.

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high-level change of personnel at the subsidiary. I do not think that the conclusion that the defendant draws from the resolution – that Zhang "had the authority to make decisions … on behalf of the Plaintiff"[67] – is warranted: personnel changes are often planned in advance, and Zhang could have signed off merely as the formal representative of the subsidiary's parent company, without having had any input over the substance of the matter. Similarly, even if I accept the authenticity of the salary guide (which the plaintiff strenuously denies[68]), I find that the appearance of Zhang's name as the issuer of the salary guide does not, in and of itself, indicate substantive control, given that part of his role as Supervisor would have been to "[conduct] inspection of the financial issues of the company", in the words of Prof Chen.[69]

36 Finally, the defendant submits that Li and Wang, who were the plaintiff's factual witnesses at trial, are controlled either directly or indirectly by Zhang. In this respect, I find that Li, at least, did have some ties with Zhang. For instance, they are cousins, although some years apart in age and according to Li not very close. A company which Li was involved in was also party to a suit in the PRC with Zhang in recent years, though the court in that case did not make any findings as to any sort of personal relationship between the two individuals. However, once again, I do not find that these facts adduced by the defendant prove to any significant degree that Zhang wielded control over Li and Wang, and that they were at all relevant times mere extensions of his will.

37 In short, I accept that there exists evidence tying Zhang to various companies and parties in this matter. However, the defendant's allegations go

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67 DCS at para 113(b).

68 PCS at para 246.

69 Prof Chen's AEIC at para 63(a).

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further than that: he says that Zhang was and is the mastermind behind various events leading up to and including this suit. Yet, the evidence which the defendant has presented in this regard is at best circumstantial in some respects and is non-existent in others. Accordingly, I do not consider the defendant to have made his case out in this regard.

38 It is also a constant refrain of the defendant, in respect of particular aspects of the plaintiff's conduct or the litigation, that Zhang had directed some specific chicanery. In other words, Zhang was the puppeteer behind the scenes. It suffices to say that the defendant furnishes insufficient evidence to reveal Zhang's unseen hand and to prove these allegations. I therefore make no further mention of Zhang's supposed manipulation.

39 In any event, I observe that Zhang's involvement is ultimately secondary to the question at the core of this matter: was the S$1,784,350 transferred into the defendant's UOB account as *remuneration* for the defendant (pursuant to Zhang Wei's Arrangement), or was it transferred as the *principal sum for investment* on behalf of the plaintiff (pursuant to the Investment Agreement)?

Zhang Wei's Arrangement

40 I begin with Zhang Wei's Arrangement.

41 Before I proceed, I note that the defendant has argued that he ultimately does not bear any legal burden of proving the existence or enforceability of Zhang Wei's Arrangement.[70] This is true in one sense: it is the plaintiff's case that the S$1,784,350 was transferred to the defendant as a principal sum for investment, and if the plaintiff does not prove on the balance of probabilities

[70] DCS at para 27.

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that this was the case – as opposed to any alternative explanations – then its claim will fail. In that sense, the burden of proof in relation to the Investment Agreement rests on the plaintiff and not the defendant. However, in asserting one such alternative explanation that it was to be the defendant's remuneration (instead of an investment) (*ie* Zhang Wei's Arrangement), the defendant bears the burden of proof with regard to that alternative explanation: see s 105 of the Evidence Act (Cap 97, 1997 Rev Ed) (the "EA"). To suggest otherwise is mischievous.

42 To briefly recapitulate, according to the defendant, in December 2014 Zhang agreed to pay him an upfront lump sum of RMB9 million for his future investment consultancy and management services. Zhang therefore caused the S$1,784,350 to be paid into his UOB Account through intermediaries as his remuneration for his future services.

43 The plaintiff argues that this is an inherently unbelievable arrangement.[71] That lump sum of RMB9 million dwarfed the defendant's last drawn monthly salary, which was RMB5,495 per month.[72] The plaintiff points out that the defendant's account would mean that he had been offered approximately 134 years' worth of his salary up front.[73] Further, according to the defendant, he was to be paid the lump sum of RMB9 million *regardless* of the quantum of funds he would ultimately be managing for Zhang and *regardless* of his future performance as a fund manager (*ie* irrespective whether he would turn in meagre profits or worse, massive losses when managing the funds for Zhang).[74]

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71 PCS at paras 210–211.

72 PCS at para 211; Defendant's AEIC at pp 515 and 518.

73 PCS at para 211.

74 PCS at para 210.

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44 The defendant responds that the RMB9 million figure was calculated off opportunity cost,[75] *ie* based on an estimated 3% per annum rate of return from managing a fund of RMB100 million outside of Weiye for three years.[76] It was also simply up to Zhang how he wanted to engage the defendant's services. As a matter of fact, although the defendant was not privy to it at the time, the quantum of funds he would be managing was not the key consideration of his employment, but the specific trades he undertook with respect to Weiye's shares, which enabled Zhang to delist Weiye from the Mainboard of the Singapore Exchange Securities Trading Limited in 2018.[77]

45 I agree with the plaintiff that Zhang Wei's Arrangement is *prima facie* implausible. At the time that the arrangement was purportedly entered into, the defendant was relatively inexperienced: he had never been a professional fund manager, and had never handled investments professionally.[78] It is plainly not believable that Zhang, whom the defendant himself has portrayed as an experienced businessman, would have made such a generous offer to an unproven, fresh-faced young employee. I use "generous" here not merely in the sense that RMB9 million is a large sum, but also that Zhang would have had to be extremely generous of spirit to take the defendant at his word that he could leave Weiye to manage a RMB100 million fund as a fund manager – again, without any prior experience – and to decide to remunerate the defendant handsomely and in advance on that basis and without any proof of his performance as a fund manager yet.

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75 Defendant's Reply Submissions ("DRS") at para 145.

76 Defendant's AEIC at para 17.

77 DCS at para 49; DRS at para 144(c).

78 Transcript, 21 July 2021, p 1 line 21 to p 2 line 2.

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46 Further, the investment consultancy and management services which the defendant professed in his AEIC to have offered Zhang turned out at cross-examination to be as such: "basically Zhang Wei would tell me what shares he wanted to buy and I basically had to obey what he said".[79] Even though he provided Zhang with suggestions and consulting services, Zhang did not accept his suggestions,[80] and only directed him to buy Weiye's shares.[81] The defendant estimated the total value of the Weiye shares thus bought at about HK$30 million.[82] RMB9 million would be, very roughly, 30% of that sum. That would be a remarkable amount to be paying somebody to merely carry out instructions to purchase a single company's shares. I find it hard to believe that the defendant, who was to merely execute Zhang's instructions to buy Weiye's shares, would need to be rewarded RMB9 million by Zhang as remuneration. These appeared to be administrative actions not unlike those of a stock trading remisier in a stock broking firm. Furthermore, based on the transaction records, these purchases were rather infrequent. There was no active trading in Weiye's shares. In other words, even as administrative work, there was hardly any work done as a whole for Zhang over the three years for the defendant to deserve that huge sum of remuneration paid.

47 Finally, I do not find persuasive the defendant's argument that the value of his services lay in allowing Zhang to delist Weiye in 2018. The question is whether it is likely that Zhang would have entered into this arrangement with the defendant in December 2014. It does not make commercial sense that Zhang would have in 2014 considered RMB9 million a reasonable commission, so to

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79 Transcript, 21 July 2021, p 26 lines 11–13.

80 Transcript, 21 July 2021, p 27 lines 21–23.

81 Transcript, 21 July 2021, p 43 lines 15–20.

82 Transcript, 21 July 2021, P 42 lines 8–19.

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speak, to pay someone to buy HK$30 million worth of shares, for a delisting exercise that was to take place four years later in 2018. I find it difficult to believe, in the first place, that Zhang would have foreseen and therefore already planned for a delisting four years in advance, and therefore pay the defendant his full remuneration upfront to assist in that delisting, even if the defendant's future work could be valued as RMB9 million.

48 It is often said that extraordinary claims require extraordinary evidence. Insofar as a civil claim is concerned, this does not mean a higher standard of proof; rather, a party seeking to establish some farfetched case must produce proportionally strong evidence in order to show that that farfetched case is more likely than not to be true.

49 I turn therefore to consider the evidence produced by the defendant in support of Zhang Wei's Arrangement. The key documents in this regard are:

(a) A document handed to the defendant on 31 December 2014 by one Liu Yang, who was Zhang's secretary then (the "Liu Yang Document");[83]

(b) A letter of undertaking dated 20 March 2015 bearing the seal of "Hainan Huibang Construction Investment Co Ltd" (the "Letter of Undertaking");[84]

(c) Text messages between Zhang and the defendant from August 2015 to January 2016 (the "Text Messages");[85] and

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83 Defendant's AEIC at pp 139–150.

84 Defendant's AEIC at p 153.

85 Defendant's AEIC at pp 289–308.

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(d) Emails from the defendant to Xu (another secretary of Zhang) in 2017 and 2018 (the "Emails").[86]

The Liu Yang Document

50 First, the Liu Yang Document is a short document purportedly containing the details (including usernames and passwords) of several bank accounts under the control of Zhang, which the defendant says was handed to him by Liu Yang shortly after Zhang Wei's Arrangement had been entered into. Although the plaintiff disputes the authenticity of this document,[87] the defendant claims that it contains various pieces of information which he could not have been privy to.[88] For instance, the document contains the telephone number of Li's older brother, which Li confirmed at trial was accurate.[89] Further, Li confirmed at trial that the signatures on the last page of the Liu Yang Document resemble those of Zhang, Liu Yang and the defendant.[90]

51 I find that the Liu Yang Document is probably authentic. It indicates that the defendant was indeed tasked by Zhang with making trades. However, the plaintiff also points out that upon cross-referencing the accounts identified in the Liu Yang Document with bank statements disclosed by the defendant, the account balances in those statements only adds up to about HK$30 million in value of shares and funds.[91] This figure aligns with that given by the defendant at trial, when estimating the value of the Weiye shares he bought for Zhang (see

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86 Defendant's AEIC at p 499; Defendant's List of Documents ("DLOD") at pp 48–61.

87 PCS at para 252.

88 DCS at para 39(a).

89 Transcript, 13 July 2021, p 7 lines 21–22.

90 Transcript, 13 July 2021, p 20 line 23 to p 21 line 13.

91 Li's AEIC at pp 889–892.

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[46] above). To that extent, the Liu Yang Document suggests that the defendant did indeed work for Zhang. What it does not indicate is that Zhang paid him RMB$9 million to do this work; nor does it suggest a quantum of work to manage investment funds much greater than HK$30 million which would justify RMB$9 million of remuneration.

The Letter of Undertaking

52 The second key document which the defendant relies on is the Letter of Undertaking dated 20 March 2015, which states as follows:

> To: [the defendant]
>
> Hainan Huibang Construction Investment Co Ltd (hereinafter referred to as "the Company") hereby makes the following undertaking to [the defendant]: *Henceforth, any money transfer made by the company or any third party entrusted by the Company to any of [the defendant's] foreign bank accounts established outside Mainland China (including Hong Kong, Macau and Taiwan) shall all be for the purposes of remuneration.* In the case of any inconsistent transfer summary, the transfers shall be subject to this Letter of Undertaking.
>
> All legal and economic disputes arising from this Letter of Undertaking shall have nothing to do with [the defendant], and shall be borne by the Company.
>
> [emphasis added]

53 The Letter of Undertaking is said to attest to the defendant's position that the sum of S$1,784,350 deposited in his UOB Account was to be regarded as remuneration.

54 There was once again much debate as to the authenticity of this document. The plaintiff points out that the Letter of Undertaking is stamped with a seal bearing the name "Hainan Huibang Construction Investment Co Ltd". Although this used to be the plaintiff's name, this was no longer the case as of the purported date of the Letter of Undertaking. From 1 November 2013,

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the plaintiff changed its name to "Hainan Hui Bang Construction Investment Group Ltd" (*ie* its current name).[92] Accordingly, the old company stamp bearing the plaintiff's old name was destroyed on 18 November 2013 by the Haikou Municipal Public Security Bureau.[93] Official documents attesting to the destruction of the old company stamp and the registration of the plaintiff's replacement stamp have been adduced.[94] The plaintiff therefore asserts that the Letter of Undertaking must have been fabricated by the defendant.[95]

55 The defendant insists that the Letter of Undertaking is genuine. First, he argues that the plaintiff has no basis for their assertion of forgery, and that any such assertions would be speculative at best.[96] Second, the defendant suggests that perhaps the plaintiff had kept for later usage copies of blank papers pre-stamped with the old company seal.[97] Third, the defendant argues that the plaintiff may have deliberately affixed the old company seal to the Letter of Undertaking, precisely to deny its validity if a dispute were to arise.[98] In connection with this last argument, the defendant has pointed to observations from the apex court of the PRC that "some companies … maliciously affix non-recorded official seals or false official seals when signing the contract".[99]

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92 Li's AEIC at para 104.

93 Li's AEIC at para 105.

94 Li's AEIC at pp 499–504.

95 PCS at para 266.

96 DCS at para 41.

97 Defendant's AEIC at para 22.

98 DRS at para 172.

99 Supplementary AEIC of Chen Lei ("Prof Chen's Supplementary AEIC") at p 256, para 49.

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56 I find that the Letter of Undertaking was indeed most likely fabricated. It is disingenuous for the defendant to argue in the face of the discrepancy in the name and the seal on the Letter of Undertaking that the plaintiff lacks any basis for its assertion. The official documents concerning the destruction of the old company stamp are strong evidence that the seal on the Letter of Undertaking was not genuine. At trial, Li strongly rejected the possibility that papers might have been pre-stamped: he was the legal representative of the plaintiff at the time, and he would have known of such a use of the stamp. I accept Li's evidence in this regard. The defendant's allegation that the plaintiff might have deliberately used the old company seal is pure conjecture; notwithstanding the general observations of the apex court of the PRC, the defendant has not provided any evidence to suggest that in this particular case, the plaintiff undertook such devious actions. I therefore find that the Letter of Undertaking is not genuine, and it provides no support for Zhang Wei's Arrangement.

The Text Messages

57 Third, the defendant relies on the Text Messages as evidence of the work he did for Zhang.[100] These messages are almost entirely one-sided, being largely comprised of updates from the defendant in relation to stock prices and the occasional single-line reply from Zhang.

58 I find that the Text Messages do indicate some relationship between the defendant and Zhang. However, this relationship is not the one portrayed by the defendant, where he had provided advice and consultancy services to Zhang. The vast majority of the texts from the defendant read rather like a stock ticker

100 Defendant's AEIC at pp 289–308.

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instead, containing only raw numbers and information and with very little on top of that. I reproduce one such instance here:[101]

> Dear Boss Zhang,
>
> The positions held by Weiye Holdings Hainan Real Estate Co., Ltd today are as follows: (1) Bohai Leasing: 530,000 shares, average position price: 9.02 yuan, and closing price: 7.09 yuan; (2) Huaren Pharmaceutical: 126,000 shares, average position price: 16.60 yuan, closing price: 10.67 yuan.
>
> As of today, the company holds stock market value of 5,102,120 yuan, of which utilized margin financing and securities lending of 2,617,249 yuan.
>
> Huaren Pharmaceutical continues to suspend trading today.

59 The defendant argues that much of the work which he carried out was not reflected in the Text Messages, as he generally had discussions with Zhang either in person or over telephone calls.[102] However, if the defendant truly did provide services beyond acting as a "human stock ticker", I find it difficult to believe that not a single recommendation or piece of advice was given through the four months of messages produced.

60 The one notable departure from these formulaic updates (apart from some miscellaneous messages where the defendant asked to take leave) is a message dated 25 September 2015 from the defendant:[103]

> Chairman, there is one more thing. I would like to ask you for advice. There remains more than 200,000 yuan in Li Keyi's futures account. I think it would be a pity to leave it idle there. Now I would like to apply for using that money in respect of commodity trading during day and night time, so as to make a money turnover as far as possible. *If there incurs losses, I will make it up for the account and all the profits will attribute to the company.*

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101 Defendant's AEIC at p 298.

102 DCS at para 49(d).

103 Defendant's AEIC at p 304.

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> I want to make more contributions to the company, and I want to push myself, so that I might grow faster. But I don't have too much money here and I'm afraid that I'm not able to make it up.
>
> What do you think, Chairman?
>
> [emphasis added]

61 This proposal is entirely out of keeping with the defendant's narrative concerning Zhang Wei's Arrangement. The defendant alleges that Zhang hired him to provide investment consultancy and management services, and part of the defendant's role in that regard was to make suggestions to Zhang as to how and where to invest. There is nothing in Zhang Wei's Arrangement, as alleged, that the defendant was also to personally cover any losses incurred when his suggestions were followed. This being the case, he could simply have worded his proposal as a suggestion without any offer to make up for the losses. Even accounting for the generally self-effacing tone of the messages, there was no need for him to offer to make up losses to the account.

62 I therefore find that the Text Messages do not support the existence of Zhang Wei's Arrangement as alleged. In fact, in so far as they demonstrate the passivity of the defendant and indicate behaviour inconsistent with the alleged terms of the arrangement, I find that the Text Messages *contradict* the defendant's case as to Zhang Wei's Arrangement.

The Emails

63 Finally, the defendant relies on the Emails from the defendant to Xu in 2017 and 2018, which comprise:

(a) Three emails dated 7 January 2017, 9 February 2017 and 13 April 2017 respectively, to which the defendant appended spreadsheets

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setting out the positions of various bank accounts, including the accounts set out in the Liu Yang Document;[104] and

(b) An email dated 12 March 2018 (around the time of the defendant's departure from Weiye), in which the defendant handed over various accounts.[105]

64 I do not find that the Emails support the existence of Zhang Wei's Arrangement. As with the Liu Yang Document and the Text Messages, the Emails indicate that the defendant was perhaps performing some work for Zhang (which appears here to be more auditing/accounting work rather than that of an investment adviser). Nothing in the Emails supports the defendant's pleaded case that he was remunerated RMB9 million in advance for such work. I therefore find that the Emails do not support the existence of Zhang Wei's Arrangement.

Conclusion

65 It appears likely that Zhang had indeed tasked the defendant to carry out some work, as seen from the Liu Yang Document and the Text Messages. However, it is equally apparent – not least from the evidence of the defendant himself – that the work done by the defendant was very much limited in scope and scale.

66 It seems unlikely to me that in 2014, Zhang, upon hearing that the defendant might leave Weiye to manage about RMB100 million of funds (despite his apparent lack of experience as a fund manager), jumped to offer the

104 DLOD pp 48–61.

105 DLOD pp 63–68.

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defendant RMB9 million to retain his services. Had he indeed done so, as the defendant alleges, then surely he must have had great trust in the defendant's acumen and judgment, and would have desired to exploit the defendant's services for maximum returns on that initial remuneration. Yet, instead of being provided with a commensurate level of funds to invest as he would, the defendant was kept strictly to a tight mandate executing trades for HK$30 million of Weiye shares on Zhang's instructions. None of the evidence proffered by the defendant provided any support for this commercially unlikely state of affairs. I therefore find that Zhang has failed to prove his case on Zhang Wei's Arrangement on the balance of probabilities – specifically, that the RMB9 million was paid as a lump sum in advance to the defendant as his remuneration for his fund management services to be performed over the next three years.

67 It is pertinent at this juncture to note that the allegation that the payment of S$1,784,350 was the Singapore dollars equivalent of RMB9 million implies an exchange rate of approximately S$1:RMB5.0438. However, a quick check from the historical records of the exchange rate for the period in December 2014 shows that the market exchange rate was approximately S$1:RMB4.7 instead.[106] If so, the sum of RMB9 million would translate to S$1,914,893, a much larger amount. I do not think that the defendant would be inclined to accept and suffer a shortfall of S$130,543 in his promised remuneration to be paid to him in Singapore dollars. Another puzzle is why the defendant would want his remuneration to be paid in Singapore dollars when he is domiciled in China. All these serve to weaken the defendant's assertion that the RMB9 million or equivalent of S$1,784,350 was in fact paid to him as a lump sum remuneration for his future services for the next three years.

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106 Exhibit "P7".

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The Investment Agreement

68 I turn now to the plaintiff's explanation for the transfer of the S$1,784,350 into the UOB Account – *ie* the Investment Agreement – which it in turn must prove on the balance of probabilities in order to found its claim. In short, that explanation is that the plaintiff borrowed the S$1,784,350 from various intermediaries (*ie* Li, Liu Hongen, Max Fill and Well Fai), and then had those intermediaries transfer those sums to the UOB Account as a principal sum for the defendant to invest on its behalf.

69 I do not agree with some of the defendant's arguments as to why the Investment Agreement is inherently absurd. First, the defendant suggests that he would not have agreed to manage the plaintiff's investments without any assurance of remuneration.[107] However, the terms of the Investment Agreement as pleaded by the plaintiff do provide for the defendant's remuneration following the conclusion of the investment, based on the returns generated by the defendant.[108] I accept that three to four years (from 2015 to 2018) is a long time for the defendant to be doing work for the plaintiff without immediate or ongoing remuneration. Nonetheless, as seen in the text message highlighted above at [60], the defendant was keen to develop his investment skills, to the point where he offered to Zhang to cover any losses incurred through his trading. Further, both Li and the defendant agree that they were friends in early 2015, when the Investment Agreement was said to have been made. I do not think it inherently unlikely that Li approached the defendant with an offer to invest on behalf of the plaintiff, and that the defendant accepted that he would be remunerated based on the performance of the investment.

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107 DCS at para 105.

108 SOC at para 3.4.

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70 The defendant also states that it would have been senseless for the plaintiff to transfer investment moneys to an account wholly controlled by the defendant. Instead, the plaintiff could have given the defendant access to accounts under its own control.[109] However, I do not think the defendant has demonstrated why this might have made a difference. Both arrangements would have resulted in the defendant having access to the plaintiff's moneys. It is not clear that the arrangement put forth by the defendant as the sensible thing to do would have resulted in greater security for the plaintiff. In any event, I accept Li's evidence that he reposed a great deal of trust in the defendant, stemming from their friendship.[110] Given the informality that characterised much of the interactions between the various actors in these proceedings – as is apparent even on the defendant's account – I do not find it unlikely that Li and the defendant came to such an arrangement.

71 However, one aspect of the Investment Agreement gives me pause. Li's evidence at trial was that the plaintiff borrowed the principal sum from the various intermediaries at an interest rate of 12% per annum (though this was not corroborated by any of the evidence before me).[111] I accept Li and Wang's evidence that such an interest rate of 12% per annum for unsecured loans is considered to be a fairly usual rate of interest in the PRC.[112] However, Li also testified on cross-examination that he did not, prior to or in entering the Investment Agreement, confirm with the defendant that it would be possible to

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109 DCS at para 103.

110 Li's AEIC at para 19(a).

111 Transcript, 4 November 2020, p 17 lines 9–12.

112 Transcript, 4 November 2020, p 36 lines 12–21; 15 July 2021, p 153 line 22 to p 154 line 6.

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obtain a greater rate of return through his investments.[113] Notwithstanding the trust that Li had in the defendant's ability to manage the investment successfully, it strikes me as rather optimistic of Li to think that the investment return would be likely to be greater than 12% per annum.

72 In short, I shall have to examine more carefully the likelihood of the Investment Agreement. I thus turn to the objective evidence adduced, to see if it supports the existence of the Investment Agreement.

73 The plaintiff has adduced three categories of documentary evidence in this regard:

(a) Contemporaneous documents attesting that the plaintiff procured the transfer of the moneys making up the principal sum to the UOB Account;

(b) Statutory declarations executed in July 2021 certifying that the transfers were loans; and

(c) The Declaration (*ie* the document executed by the defendant on 15 March 2018 stating *inter alia* that the cash deposits and stocks in the Accounts were owned by the plaintiff).

Contemporaneous documents relating to the transfer

74 In his AEIC, Li exhibited two sets of contemporaneous documents relating to the transfer. One was a set of letters of authorisation dated from March to May 2015 from the plaintiff to each of the intermediaries (the

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113 Transcript, 4 November 2020, p 28 lines 5–9.

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"Letter(s) of Authorisation").[114] Each Letter of Authorisation stated that the plaintiff was entrusting the intermediary to transfer a sum of money to the UOB Account. The second was a set of notices from each of the intermediaries to the plaintiff confirming that they had transferred the requested sums to the UOB Account (the "Transfer Notices").[115]

75 I give no weight whatsoever to the Letters of Authorisation. The plaintiff's solicitors have admitted that the Letters of Authorisation exhibited in this suit are not the original versions prepared in 2015, but were rather "re-executed" after the originals were lost.[116] Li confirmed this on the stand, saying that after a round of mediation in 2020, the plaintiff "wanted to make something to put in the record", in case it were asked by the defendant's solicitors to provide the Letters of Authorisation.[117] In these circumstances, I fail to see how the plaintiff can expect me to rely on these "re-executed" Letters of Authorisation as objective evidence of any sort. At best, they are records of what the plaintiff in 2020 *recalled* to be the contents of the original Letters of Authorisation. They are not fit for purpose as contemporaneous evidence of the transfer.

76 On the other hand, I find that the Transfer Notices do provide some contemporaneous support for the plaintiff's version of events. Each of the Transfer Notices is unequivocal about the respective intermediary's transfer to the UOB account as being on the plaintiff's behalf. The defendant objects that the originals of the Transfer Notices were not adduced for inspection, and

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114 Li's AEIC at pp 165–184.

115 Li's AEIC at pp 208–223.

116 Defendant's AEIC at p 284.

117 Transcript, 5 November 2020, p 11 line 18 to p 12 line 13.

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speculates that "in truth, these Transfer Notices … were created for these proceedings to artificially bolster the Plaintiff's case".[118] However, no proof has been furnished by the defendant for his conjecture, which I reject.

Statutory declarations

77 Apart from the sets of documents mentioned above, the plaintiff also adduced two statutory declarations: one from Liu Hongen,[119] and one from one Chan Siu Mat, an employee of both Max Fill and Well Fai.[120] Each statutory declaration confirms that the respective intermediaries transferred sums to the UOB Account, as pleaded by the plaintiff, and states that the respective intermediaries have claims only against the plaintiff, but not the defendant. In addition, Chan Siu Mat's statutory declaration contains directors' resolutions from Max Fill and Well Fai ratifying their respective transfers to the defendant and confirming that these were loans to the plaintiff. These resolutions are signed by Zhang.

78 The defendant points out that neither Liu Hongen nor any representative of Well Fai or Max Fill were called as witnesses, and submits that these statutory declarations constitute mere hearsay and are therefore inadmissible.[121] I do not think so. The plaintiff attempted to contact Liu Hongen, Well Fai and Max Fill to give evidence at the trial.[122] They did not agree to do so. The fact that these parties are outside Singapore and that they are unwilling to attend is sufficient to satisfy s 32(1)(*j*)(iv) of the EA, which allows for the admission of statements

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118 DCS at para 84(c).

119 Li's Supplementary AEIC at pp 7–14.

120 Li's Supplementary AEIC at pp 16–23.

121 DCS at paras 87–88.

122 Agreed Bundle Vol 3 1499–1513.

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made by persons who, being competent but not compellable to give evidence on behalf of a party desiring to give the statements in evidence, refuse to do so (see *The "Bunga Melati 5"* [2015] SGHC 190 at [124]–[125]).

79 The defendant further submits that I should exercise the court's discretion under s 32(3) of the EA to exclude the statutory declarations, as they are unreliable, lack good faith, and are liable to cause prejudice.[123] In particular, he highlights Li's testimony that the statutory declarations and the directors' resolutions were obtained by informing Zhang and Liu Hongen that if they produced the necessary documents, they would not be involved in the lawsuit.[124] There are valid concerns here: if such documents were to be simply accepted, overseas witnesses might choose to selectively participate in litigation in Singapore, by furnishing statements and documents while being safe in the knowledge that they cannot be cross-examined. However, the proper approach in this regard is not to exclude the statutory declarations under s 32(3) of the EA, but to admit them while according them less weight. As stated in *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 at [109], "[t]he court should not normally exercise its discretion to exclude evidence that is declared to be admissible by the EA".

80 In the circumstances, while I do not accord the statutory declarations full weight, they do state, plainly and simply, that the transfers from Li, Max Fill and Well Fai to the UOB Account were made on behalf of the plaintiff, pursuant to loan agreements between those intermediaries and the plaintiff. I therefore do consider the statutory declarations to corroborate the plaintiff's version of events to some degree.

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123 DCS at paras 94–96.

124 Transcript, 27 July 2021, p 154 lines 11–22 and p 156 lines 20–22.

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The Declaration

81 Lastly, the plaintiff relies heavily upon the Declaration and the clear statement therein that the defendant did not own any of the cash deposits and stocks in the Accounts. I accept Li's evidence that the plaintiff obtained the Declaration from the defendant on 15 March 2018, over concerns that the defendant was being investigated by Weiye for breaches of corporate financial management policies. The plaintiff has adduced text messages from the defendant to Li from January 2018, wherein the defendant shared that he was currently under investigation.[125] While the defendant's solicitors have suggested that the contents of the investigation were irrelevant to the suit and did not involve any wrongdoing on the defendant's part,[126] that is immaterial. Faced with the prospect that the defendant *might* have been engaged in financial wrongdoing, it was reasonable for the plaintiff to be prudent and to try to hold the defendant to written confirmation that the sums in the Accounts belonged to it.

82 Turning to the Declaration itself, the defendant argues that if it had truly been meant as a written record of the Investment Agreement, then the text of the Declaration would have referred to the existence of the Investment Agreement.[127] But hindsight is perfect. Even in the defendant's own account, the parties involved were businessmen who apparently thought it prudent to enter multimillion-dollar agreements on nothing but their word. I do not find it incongruous for such parties to have subsequently drafted and executed a declaration making no reference to the underlying transaction. What would have

125 Li's AEIC at pp 233–234.

126 DRS at para 41.

127 DCS para 72.

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mattered to the plaintiff at the time would have been recording that the moneys in the Accounts belonged to it and not the defendant, and that the defendant would cooperate in transferring the moneys to the plaintiff. This is recorded clearly in the Declaration. While completeness would have entailed a mention of the Investment Agreement as well, it is not unlikely that the parties simply did not think to include it.

83 In contrast, it is the defendant's explanation of the Declaration that is difficult to believe. The defendant says that the Declaration was executed to show his commitment to upholding his end of the Asset Exchange Agreement.[128] But the terms of the Declaration are fundamentally different from the alleged terms of the Asset Exchange Agreement. First, although the defendant has explained that the Asset Exchange Agreement entailed giving Zhang and/or Weiye the freedom to withdraw assets from the Accounts,[129] the Declaration makes no mention of Zhang or Weiye, and refers to the plaintiff instead. Second, the Declaration does not mention a freedom to withdraw assets, or access to the Accounts, but instead unequivocally states that the contents of the Accounts are *owned* by the plaintiff. Third, the Declaration is strictly one-sided: it does not describe any accompanying obligation on the part of Zhang or Weiye or even the plaintiff to reimburse the defendant. Yet this reimbursement was a key part of the Asset Exchange Agreement. If the Declaration had indeed been meant to reflect the Asset Exchange Agreement, the omission of the reimbursement would surely have been extremely troubling.

84 All this is to say that it is difficult to believe that the Declaration had anything to do with the Asset Exchange Agreement as pleaded by the defendant,

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128 Defendant's AEIC at para 65.

129 Defendant's AEIC at para 63.

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and that if it did, it is surprising – to say the least – that the defendant was willing to sign it. I find the plaintiff's explanation for the Declaration far more likely, *ie* that the defendant was responsible for the plaintiff's moneys, and executed the Declaration to assuage the plaintiff's worries that the defendant might misappropriate the moneys in the Accounts.

Conclusion

85 In conclusion, while there is one aspect of the Investment Agreement which gives me pause – concerning the fixed interest rate of 12% per annum for the loan – the objective evidence both around the time of the Investment Agreement and thereafter coheres to and supports the plaintiff's version of events. I therefore find that it is the plaintiff's explanation for the *purpose* of the transfer of the S$1,784,350 into the UOB Account – *ie* for investment purposes under the Investment Agreement, and not as a lump sum remuneration of RMB9 million for future services to be provided by the defendant over the next three years under Zhang Wei's Agreement – that has been proven on the balance of probabilities.

The Asset Exchange Agreement

86 My consideration of the Declaration leads me directly to the final agreement to be considered: the Asset Exchange Agreement. The defendant alleges that the purpose of the Asset Exchange Agreement, as far as Zhang was concerned, was so that Zhang could have access to funds outside of the PRC.[130] In the defendant's telling, Zhang was apparently desperate: he agreed to pay the *entirety* of the defendant's personal income tax in respect of the assets in the

130 Defendant's AEIC at para 62.

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Accounts;[131] and in September 2018, Li, as Zhang's agent, begged the defendant to continue with the Asset Exchange Agreement.[132] It was as part of this agreement that the sum of RMB680,000 was paid to him through the plaintiff in September 2018.

87 I find that the picture painted by the defendant makes no sense. In the first place, on the defendant's account, there is no apparent connection between his personal income tax and the Asset Exchange Agreement. This was not disputed by the defendant: when this issue was raised to him on cross-examination, the defendant simply testified that it was a condition which he put to Zhang, in exchange for his acquiescence to the Asset Exchange Agreement.[133] But why, then, would Zhang agree to pay what amounted to a significant premium? Even on the defendant's own case, Zhang had his own access to funds outside of the PRC: after all, he was allegedly able to transfer, through various actors and agents, the S$1,784,350 to the UOB Account in 2015. There was no indication that Zhang had to pay any additional expenses in the form of "income tax" then. The sum which was allegedly withdrawn from the CCB Account in connection with the Asset Exchange Agreement – HK$2,785,000 – is far smaller. Hence, even taking the defendant at his word, I fail to see why Zhang could not simply have routed RMB sums equivalent to that HK$2,785,000 out of the PRC, without having to beg the defendant for assistance and, most importantly, without having to be concerned with paying a very substantial income tax gratuitously on behalf of the defendant, which would have added considerably and unnecessarily to Zhang's cost of simply remitting RMB out of China to Singapore.

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131 Defendant's AEIC at para 63.

132 Transcript, 22 July 2021, p 93 lines 15–16.

133 Transcript, 22 July 2021, p 87 line 7 to p 88 line 1.

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88 The defendant's explanation for this is that the channels for such movement of funds out of the PRC no longer existed in 2018.[134] However, even if I were to accept this, I find it highly unlikely that the defendant was the only person to whom Zhang could turn to who had access to funds outside of the PRC. If Zhang's reach and influence were as extensive as the defendant alleges, he must have been able to find someone else who would not demand such a significant premium.

89 In truth, the characterisation of the RMB680,000 as income tax strikes me as being far more consonant with the Investment Agreement. I accept Li's evidence that the plaintiff was ready, as a matter of principle, to compensate the defendant for any costs he might incur arising from the Investment Agreement.[135] In this light, the plaintiff's payment of any personal income tax the defendant might incur in respect of the assets in the Accounts makes far more sense. I consider the defendant's explanation for this sum to be a poor attempt at reconciling the incontrovertible fact of the RMB680,000 payment from the plaintiff to him with his narrative that he owed the plaintiff no obligations of any sort.

90 In short, I consider the Asset Exchange Agreement to be inherently unlikely. Further, this improbable state of affairs is not supported by any objective evidence. The main documentary evidence cited for the defendant's case in this regard is the Declaration, which I have already dealt with. Accordingly, I find that the Asset Exchange Agreement has not been proven on the balance of probabilities. It follows that the defendant's counterclaim thereunder is a non-starter.

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134 DRS at para 186(i).

135 Li's AEIC at para 38.

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91 For completeness, I note that even on the defendant's pleaded case – that the Asset Exchange Agreement was made between him and Zhang, through Li and the plaintiff as conduits – the defendant's counterclaim should have been made not against the plaintiff, but against Zhang instead. For that reason, the defendant's counterclaim would fail even if I were to accept the existence of the Asset Exchange Agreement.

Conclusion on version of events

92 In conclusion, I find that the plaintiff has proven the existence of the Investment Agreement on the balance of probabilities. The defendant, on the other hand, has not proven either Zhang Wei's Arrangement or the Asset Exchange Agreement on the balance of probabilities.

93 I thus proceed to consider only the Investment Agreement and the issues arising thereunder.

The Investment Agreement

94 In considering the Investment Agreement, I shall examine (a) the governing law of the Investment Agreement; (b) whether it is valid under the governing law; (c) the obligations thereunder; (d) the extent of any breach of those obligations; and (e) the remedies flowing therefrom.

Governing law

95 The parties agree that in respect of the governing law of the Investment Agreement, the three-stage approach to determining the governing law of a contract set out in *Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR(R) 491 ("*Pacific Recreation*") at [36] should be applied:

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(a) The court first considers whether the contract itself states expressly what the governing law should be.

(b) In the absence of an express provision, the court considers whether the intention of the parties as to the governing law can be inferred from the circumstances.

(c) If the court cannot derive such an inference, it then determines the system of law with which the contract has its closest and most real connection; that system would be taken, objectively, as the governing law of the contract.

96 It is not disputed that there was no express choice of law when the Investment Agreement was entered into.[136] This brings us to the second stage of inferring the parties' intentions. Given that the Investment Agreement was oral in nature, with few contemporaneous documents that might shed light on the intention of the parties as to the choice of law, I do not think that it will be fruitful to dwell too much on this stage (see, in this regard, *Las Vegas Hilton Corp v Khoo Teng Hock Sunny* [1996] 2 SLR(R) 589 ("*Las Vegas Hilton*") at [40]).

97 I therefore proceed directly to the third stage: determining objectively the system of law with which the contract has its closest and most real connection. Another way of characterising this analysis is the "objective test of the reasonable man" (*Pacific Recreation* at [49], citing *Law Vegas Hilton* at [42] and *The Assunzione* [1954] P 150 at 179):

> [O]ne must look at all the circumstances and seek to find what just and reasonable persons ought to have intended if they had thought about the matter at the time when they made the

136 PCS at paras 85–88; DCS at para 118.

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> contract. If they had thought that they were likely to have a dispute, I hope it may be said that just and reasonable persons would like the dispute determined in the most convenient way and in accordance with business efficacy.

98 In this inquiry, many factors may be taken into account, including the place of contracting, the place of performance, the places of residence or business of the parties respectively, and the nature and subject matter of the contract (*Las Vegas Hilton* at [45]).

99 I agree with the defendant that the factors in the present case indicate, on balance, that PRC law is the system of law bearing the closest and most real connection to the Investment Agreement. As he points out,[137] both parties are ordinarily based in the PRC, and the Investment Agreement was entered into in the PRC. The commercial purpose and place of performance of the Investment Agreement (namely, to invest in equity stocks on stock exchanges in Singapore *and/or Hong Kong*) do not indicate a strong connection to Singapore *exclusively*. Further, there is no suggestion that the parties sought legal advice as to Singapore law prior to entering the Investment Agreement. I think that a just and reasonable person in the parties' positions would hesitate greatly before jumping feet first into unfamiliar legal waters; taking such a plunge does not strike me as an approach likely to result in the most convenient and efficacious way to resolve any future disputes. Although the principal sum transferred to the defendant was denominated in Singapore dollars, I do not think that that, weighed against the other factors, is sufficient to indicate that just and reasonable persons would have intended for Singapore law to apply.

100 I turn, therefore, to a consideration of the formation and validity of the Investment Agreement under PRC law.

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137 DCS at para 118.

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Formation and validity

101 The plaintiff's position is that under PRC law, the Investment Agreement gave rise to what is known in PRC law as a "contractual entrustment" or a "mandate contract", "whereby the principal and the agent agree that the latter shall handle the affairs of the former".[138] Both parties' expert witnesses agree that a contractual entrustment may be concluded orally.[139]

102 The plaintiff's expert witness, Prof Chen, explains that there are two elements which must be shown in order for a valid oral contractual entrustment to be established: first, a written acknowledgment that the money does not belong to the agent, and second, evidence of the transfer of funds from the principal to the agent.[140] This proposition is not disputed by the defendant.[141]

103 I consider both elements to be satisfied in the present case. As stated above at [81]–[84], I find that the Declaration was made in respect of the Investment Agreement (and not the Asset Exchange Agreement as alleged by the defendant); the Declaration states unambiguously that the moneys in the Accounts belongs to the plaintiff and not the defendant. Meanwhile, the Transfer Notices (see [76] above) provide evidence that the plaintiff borrowed the principal sum from intermediaries and had those intermediaries transfer those moneys to the defendant.

104 Much was made by the defendant as to PRC case law on contractual entrustments, and the strength of the evidence present in cases in which the PRC

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138 PCS at para 112.

139 Transcript, 26 July 2021, p 12 lines 1–3.

140 Transcript, 23 July 2021, p 117 line 10 to p 119 line 9.

141 DRS at para 86.

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courts have found contractual entrustments to have arisen. The defendant submits that the strength of the evidence in the present case has not reached comparable levels, and that I therefore should not find that a contractual entrustment had arisen between the parties.[142] I do not think that this is a relevant argument. As stated in *Dicey, Morris and Collins on the Conflict of Laws* vol 1 (Lawrence Collins gen ed) (Sweet & Maxwell, 15th Ed, 2012) at para 7-022:

> '*The law of evidence*,' it has been said, '*is the lex fori which governs the courts.* Whether a witness is competent or not; whether a certain matter requires to be proved by writing or not; *whether certain evidence proves a certain fact or not*; that is to be determined by the law of the country where the question arises, where the remedy is sought to be enforced and where the court sits to enforce it.' … Thus the lex causae generally determines what are the facts in issue; and it may do so by providing that no evidence need, or may, be given as to certain matters, for instance as to compliance, or failure to comply with, certain formalities of a marriage ceremony. Such provisions are substantive. On the other hand, *as a general rule, the lex fori determines how the facts in issue must be proved.*
>
> [emphasis added]

105 It follows that I am not bound to follow the practice of the PRC courts in respect of the standard of proof as to the elements of a contractual entrustment. Instead, the applicable standard of proof here is that of civil cases in Singapore, *ie* the balance of probabilities. Accordingly, I find that the Declaration and the Transfer Notices satisfy the two elements as explained by Prof Chen, and that the Investment Agreement therefore constituted a contractual entrustment.

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142 DCS at paras 125–133.

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106 The defendant further argues that the Investment Agreement is nonetheless invalid under PRC law. In this respect, he cites Art 52 of the Contract Law of the PRC (the "PRC Contract Law"), which provides that:

> A contract shall be null and void under any of the following circumstances:
>
> (1) a contract is concluded through the use of fraud or coercion by one party to damage the interests of the State;
>
> (2) malicious collusion is conducted to damage the interests of the State, a collective or a third party;
>
> (3) an illegitimate purpose is concealed under the guise of legitimate acts;
>
> (4) damaging the public interests;
>
> (5) violating the compulsory provisions of laws and administrative regulations.

107 The defendant also raises Art 30 of the PRC's Administrative Measures for Personal Foreign Exchange (the "Administrative Measures"):

> Where a domestic individual engages in foreign exchange trading or any other transaction involving foreign exchange, he/she shall handle the business through a domestic financial institution that has obtained the corresponding business qualification according to law.

108 The argument made by the defendant is as follows. Li admitted at trial that as one of the four intermediaries engaged by the plaintiff, in order to remit moneys to the defendant, he first converted a sum in renminbi into foreign currency through an underground bank (*ie* someone not properly qualified to handle such a transaction).[143] This was a breach of Art 30 of the Administrative Measures, which, being damaging to the public interests of the PRC, constitutes

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143 Transcript, 14 July 2021, p 109 lines 4–12.

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a violation of Art 52(4) of the PRC Contract Law as well, rendering the Investment Agreement null and void.[144]

109 The plaintiff correctly identifies two difficulties with this argument. First, Prof Chen explained that the Administrative Measures apply only to natural persons,[145] which is not disputed by the defendant. In such a case, the defendant's case must necessarily be premised on some form of attribution *to the plaintiff* of the damage caused by *Li* to the PRC's public interests, such that a contract between *the plaintiff and the defendant* should be invalidated. However, the defendant has not explained how this mechanism of attribution might function in PRC law, or whether it even exists. The defendant has not even shown that the contravention of Art 30 of the Administrative Measures by a natural person can result in the invalidation of a related contract to which he is not a party. Second, the defendant's own expert witness, Prof Liu, gave evidence that the notion of "public interests" in Art 52(4) of the PRC Contract Law is "ill-defined", and that the invalidation of a contract for contravening that ground is only rarely granted.[146]

110 On cross-examination, Prof Liu sought to clarify his position. He stated that notwithstanding the general lack of clarity in this area, contravention of Art 30 of the Administrative Measures stands as a relatively clear category of cases where invalidation is likely to be granted.[147] In support of this, he cited two PRC cases which were exhibited in his AEIC, one from the Shanghai High People's

144 DCS at paras 140–143 and 146.

145 Prof Chen's Supplementary AEIC at para 39.

146 6th Affidavit of Tan Yi Fan at p 26, para 42.

147 Transcript, 27 July 2021, p 85 line 10 to p 87 line 21.

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Court and another from the Supreme People's Court.[148] However, a closer examination of the two cases shows that both involved the contravention of Art 30 of the Administrative Measures by a natural person, and the consequent invalidation of agreements which those natural persons had entered into.[149] In other words, even if I were to accept that these two cases demonstrate that invalidation of an individual's agreement is likely to be granted where that individual has violated Art 30 of the Administrative Measures, they do not indicate that such a violation would result in the invalidation of a third party's agreement.

111 The defendant also refers to a supposed contravention of Art 17 of the PRC's Foreign Exchange Control Regulations (the "Control Regulations") by the plaintiff. Article 17 of the Control Regulations reads:[150]

> A domestic institution or individual that makes direct investment or issues or trades negotiable securities or derivative products overseas shall handle the registration formalities at the foreign exchange administrative department of the State Council. If the relevant state provisions require it/him to get the approval of the competent department or archive the issue with the competent department, it/he shall do so before handling the registration formalities.

112 The defendant argues that Art 17 of the Control Regulations was breached by the Investment Agreement, which effectively involved investments by the plaintiff in shares outside of the PRC without the requisite formalities.[151]

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148 Transcript, 27 July 2021, p 87 lines 13–21.

149 6th Affidavit of Tan Yi Fan at pp 157 and 165.

150 6th Affidavit of Tan Yi Fan at p 28, para 50.

151 DCS at para 184.

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113 However, this did not assist the defendant. Prof Liu himself explained that:[152]

> [E]ven if the Plaintiff is shown to have been in breach of Article 17, this may not lead to the invalidation of the agreement since Article 17 may be characterised as an administrative rather than validity mandatory rule. … The Defendant is thus unlikely to invalidate the agreement on this basis.

114 In the circumstances, I find that the defendant has not demonstrated that the Investment Agreement is invalid under PRC law.

Obligations

115 At this juncture, it is useful for me to consider the exact obligations that arose between the parties under the Investment Agreement. I accept that the defendant undertook to invest the principal sum on behalf of the plaintiff, and had an obligation to return the principal sum and the investment returns to the plaintiff. The defendant's obligation to account for the principal sum and the investment returns also comports with Prof Chen's evidence that under a contractual entrustment, an agent has an obligation to report to his principal on his handling of the entrusted affairs[153] and an obligation to hand over to the principal any asset acquired in his handling of the entrusted affairs.[154]

116 On the plaintiff's part, I accept that the plaintiff was obliged to provide reasonable remuneration to the defendant for his efforts upon the termination of the Investment Agreement, as is the case even on the plaintiff's own account. I also find that the plaintiff must reimburse the defendant for any expenses he might have incurred in the process of carrying out his duties. This is in

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152 6th Affidavit of Tan Yi Fan at p 28, para 50.

153 Prof Chen's AEIC at para 50(c).

154 Prof Chen's AEIC at para 50(d).

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accordance with Art 398 of the PRC Contract Law (as exhibited by the plaintiff), which states that "[t]he principal shall prepay the expenses for handling the entrusted affairs. The necessary expenses incurred by the agent for handling the entrusted affairs shall be reimbursed by the principal plus the interest accrued thereon."[155] I consider the plaintiff's undertaking to reimburse the defendant's personal income tax (if levied) in respect of the assets in the Accounts to be an expression of this obligation.

Breach

117 The question then is whether – and to what extent – the defendant breached his obligation to return the principal sum and the investment returns to the plaintiff. The plaintiff pleads that the defendant has to-date "failed, refused and/or neglected to return any of the Investment Returns".[156] While I accept that the defendant has shown a great deal of reluctance to perform this obligation, I find that it cannot be said that he has *entirely* failed to comply with it. The issue here is the sum of HK$2,785,000 which was transferred from the plaintiff's CCB Account to Li in August 2018. The defendant's own case on this sum does not quite assist him: he says that it was transferred pursuant to the Asset Exchange Agreement, an explanation I have already rejected. However, the plaintiff itself has admitted through Li's AEIC[157] and in its closing submissions[158] that "the sum of HK$2,785,000 was transferred from the CCB Account for and on behalf of [the plaintiff] pursuant to [the defendant's] obligations under the [Declaration]". There can be no reading of this other than

155 Prof Chen's AEIC at pp 61–62.

156 SOC at para 13.

157 Li's AEIC at para 149.

158 PCS at para 351.

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as a concession that the defendant did, in fact, return some of the assets owed to the plaintiff.

118 Nonetheless, I find that in failing to return the remainder of the principal sum and the investment returns, the defendant has breached the Investment Agreement.

119 I turn therefore to the reliefs to which the plaintiff is entitled as a result of the defendant's breach.

Reliefs

120 The plaintiff claims the following reliefs:

(a) The sums of S$1,784,350 (being the principal sum of the Investment Agreement) and RMB680,000 (the first tranche of its payment to the defendant in respect of the income tax he incurred);

(b) The sum of S$1,113,161.05 or alternatively damages to be assessed in respect of the investment returns; and

(c) As an alternative to the reliefs sought above, an inquiry into any and all sums, profits, dividends, assets, benefits and/or titles derived from the sums of S$1,784,350, S$1,113,161.05 and RMB680,000, and an account of the same.

121 I accept Prof Chen's evidence that under PRC law, the function of contractual remedies is to place a promisee who has suffered the consequences of a contractual breach in as good a position as he would be in if the promisor

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had performed.[159] I also accept that the plaintiff is entitled to demand from the defendant the return of the principal sum and the investment returns.[160] I therefore order, in respect of the principal sum, that the defendant is to return to the plaintiff the sum of S$1,784,350.

122 In respect of the investment returns, the defendant argues that the plaintiff bears the burden of proving that the sum of $1,113,161.05 was specifically derived from the principal sum. I find this to be a sensible point. The figure of $1,113,161.05 appears to have been derived from the tax report prepared by the defendant in August 2018, wherein this figure was listed as the defendant's dividend income in Singapore dollars for the period from 1 January 2018 to 31 August 2018.[161] It is not clear to me why this particular figure ought to represent the investment returns from the Investment Agreement. For one, I would have expected the dollar value of the investment returns to have been calculated over the full period of the Investment Agreement instead. Moreover, the tax report indicates a further dividend income obtained in Hong Kong of HK$420,600;[162] was this also income derived from the investments? These gaps, and others, in the characterisation of the investment returns mean that I do not consider the sum of $1,113,161.05 to be a suitable figure to affix to the investment returns at this juncture. I therefore order that there be an inquiry as to the quantum of the investment returns procured by the defendant from the underlying principal sum of S$1,784,350, and that the defendant return the investment returns to the plaintiff upon the conclusion of the inquiry.

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159 Prof Chen's AEIC at para 51.

160 Prof Chen's AEIC at para 53.

161 Defendant's AEIC at p 587.

162 Defendant's AEIC at p 587.

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123 However, as I have already found, the defendant has already returned HK$2,785,000 to the plaintiff. Accordingly, this sum of HK$2,785,000 is to be set off against his obligation to return the principal sum of S$1,784,350 and the assessed investment returns to the plaintiff.

124 As for the sum of RMB680,000, the defendant argues that he is entitled to retain this sum as part of the expenses he incurred in the course of his duties.[163] I accept that the plaintiff was under an obligation to reimburse the defendant for such expenses (plus interest accrued thereon in accordance with Art 398 of the PRC Contract law), and that personal income tax which the defendant had or would have incurred through the performance of his duties would fall into that category of expenses. However, the defendant has not provided evidence to show that he did, in fact, pay the PRC tax authorities any of the income tax which he purportedly owed according to his 2018 tax report. Indeed, when cross-examined on whether he had done so, the defendant was evasive.[164] I therefore order that the RMB680,000 be repaid to the plaintiff. Nonetheless, I decline to make a conclusive finding at this stage as to whether the defendant had in fact paid any income tax. In my view, the justice of the case demands that a broader accounting of the defendant's expenses be taken. I order that an assessment of the expenses incurred by the defendant be undertaken at the following stage of the trial, and that the total amount assessed, including any tax he has in fact paid or will have to pay to the PRC tax authorities as a result of his performance of his duties under the Investment Agreement, be set off from any sums owing to the plaintiff.

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163 DRS at para 97.

164 Transcript, 22 July 2021, p 99 lines 16–24.

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125 The defendant further submits that he should be entitled to set off his remuneration, which was to be agreed between the parties upon the conclusion of the Investment Agreement, against any sums owing to the plaintiff as well.[165] The plaintiff has accepted that ultimately, under PRC law, the defendant's remuneration is to be accounted for in determining the sums to be returned to the plaintiff.[166] I therefore order that the defendant's remuneration is to be assessed at the following stage of this trial, and that the amount assessed is to be set off from any sums owing to the plaintiff.

Conclusion

126 I find that the plaintiff has proven its account on the balance of probabilities: namely, that it entered into the Investment Agreement with the defendant. The Investment Agreement is governed by PRC law, and is valid thereunder. The defendant has breached his obligations under the Investment Agreement. Consequently, the defendant is to return the principal sum of S$1,784,350, the RMB680,000 payment, and the investment returns – which are to be assessed – to the plaintiff, less the HK$2,785,000 which has already been returned. Against these sums owing to the plaintiff, the defendant is entitled to set off both his reasonable remuneration and his actual expenses (inclusive of (a) any tax he has in fact paid or will have to pay to the PRC tax authorities as a result of his performance of his duties under the Investment Agreement and (b) any interest accrued on these expenses, in accordance with

165 DRS at para 98.

166 PCS at para 143.

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Art 398 of the PRC Contract law). Both his remuneration and his expenses are to be assessed.

127 The costs of this stage of the trial shall be reserved to the following stage of the trial as well.

Chan Seng Onn
Senior Judge of the High Court

Boey Swee Siang, Lin Yuankai and Toh Yunyuan Selina (Premier Law LLC) for the plaintiff and the defendant in counterclaim;
Foo Yuet Min, Koh Boon Hao Samuel, Beatrice Wee and Tan Yi Fan (Drew & Napier LLC) for the defendant and the plaintiff in counterclaim.

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