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

[2022] SGHC 260

Suit No 1045 of 2021 (Registrar's Appeal No 172 of 2022 and Summons No 2508 of 2022)

Between

Ho Choon Han

… *Plaintiff*

And

SCP Holdings Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure — Summary judgment]
[Civil Procedure — Pleadings]

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Ho Choon Han
v
SCP Holdings Pte Ltd

[2022] SGHC 260

General Division of the High Court — Suit No 1045 of 2021 (Registrar's Appeal No 172 of 2022 and Summons No 2508 of 2022)

Goh Yihan JC
19 July, 20 July 2022

17 October 2022

Goh Yihan JC:

1 This was the defendant's appeal in Registrar's Appeal No 172 of 2022 ("RA 172") against the decision of the learned Assistant Registrar, Ms Beverly Lim Kai Li ("the AR"), to grant the plaintiff summary judgment against the defendant in Suit No 1045 of 2021 ("the Suit"). After the hearing before me on 19 July 2022, I reserved my judgment and gave my decision to dismiss RA 172 on 20 July 2022. The defendant has since filed a Notice of Appeal against my decision.[1] I therefore set out the full reasons for my decision in respect of RA 172 in these grounds.

2 For completeness, the defendant had also made an application before me in Summons No 2508 of 2022 ("Summons 2508") to adduce further evidence

[1] Notice of Appeal filed on 23 September 2022 in AD/CA 85/2022.

for RA 172. I had also dismissed that application. However, since the defendant has not appealed against my decision in relation to Summons 2508, I will not reproduce my reasons in these grounds for dismissing that application, except as they were relevant to my decision in respect of RA 172 (and indeed, there were overlapping reasons).

Background facts

3 By way of background, the plaintiff is Mr Ho Choon Han. His wife, Ms Ng Sheau Lian ("Ms Ng"), is also a relevant party due to her involvement in the various negotiations. The defendant, SCP Holdings Pte Ltd, is a company incorporated in Singapore. The defendant is the holding company of Biomax Holdings Pte Ltd ("Biomax"). Biomax is involved in the organic waste treatment business. Dr Puah Chum Mok ("Dr Puah") and Dr Sim Eng Tong are directors of the defendant at all material times.

4 Sometime in 2014, Dr Puah contacted Ms Ng about the organic waste treatment technology that Biomax was developing. The defendant was at the time a technology start-up which was looking for investors to expand its business. As such, Dr Puah had hoped to convince Ms Ng to invest in the defendant.

5 Dr Puah subsequently met with the plaintiff and Ms Ng. Both the plaintiff and Ms Ng were keen to invest in the technology. While the defendant alleged that the plaintiff had made his investment without Ms Ng's knowledge, nothing in the present case turned on this. What is material was that the plaintiff entered into a first Convertible Loan Agreement dated 31 May 2014 with the defendant ("the First Agreement"). By way of the First Agreement, the plaintiff agreed to lend the defendant a principal amount of $400,000 ("the Loan").

Clause 3.1 of the First Agreement provides that the interest rate of the Loan shall be 10% per annum.

6 Clause 3.2 of the First Agreement ("Clause 3.2") provided for how the Loan will be repaid. It provides as follows:[2]

> 3.2 Subject to Clauses 4 and 7, the Lender [the plaintiff] shall be entitled to require the Borrower [the defendant] to repay the Loan in the following manner:
>
> (a) On 30th May 2015: To repay the interest accruing up to 30th May 2015 (S$40,000).
>
> (b) On the Maturity Date (30th May 2016):
>
> > i. **<u>Option 1</u>**: Borrower [the defendant] to repay the principal amount of the Loan in full and the amount of unpaid interest accruing up to 30th May 2016 (S$440,000, assuming that the Borrower [the defendant] has repaid the interest accruing up to 30th May 2015 at point (a) above); **OR**
> >
> > ii. **<u>Option 2</u>**: Borrower [the defendant] to procure the transfer of 0.8% of the total number of shares in Biomax – (including both ordinary shares and preference shares as at the date of maturity) (the **"Full Repayment Shares"**) from the Borrower [the defendant] to the Lender [the plaintiff]. For avoidance of doubt, the transfer of the Full Repayment Shares from the Borrower [the defendant] to the Lender [the plaintiff] shall represent the full and final repayment of the principal amount of the Loan and interest on the Loan.
> >
> > [emphasis in original]

For completeness, Clause 3.2 is stated to be subject to Clauses 4 and 7. In this respect, Clause 4 relates to the defendant's right of prepayment, whereas Clause 7 relates to events of default. There was nothing in the case that turned on Clauses 4 and 7.

[2] Affidavit of Ho Choon Han dated 5 May 2022 ("HCH Affidavit") at p 21.

7 While this was not argued before the AR, I directed the parties to address me on Clause 13.1 during the hearing. Clause 13.1 provides as follows:[3]

> 13.1 Any notice, communication or demand required to be given, made or served under this Agreement shall be in writing in the English language and delivered by hand or sent by registered post or by facsimile or electronic mail to the intended recipient thereof at the address or fax number or electronic mail address as set out below (or as [may be] notified by one Party to the other Parties from time to time) and marked for the attention of the person (if any), from time to time designed at that Party to the other Parties for the purpose of this Agreement:
>
> **Lender**
>
> **HO CHOON HAN:** [Address and email address]
>
> **Borrower**
>
> **SCP Holdings:** [Address, telephone number and facsimile number]
>
> [emphasis in original]

8 Sometime after the First Agreement was concluded, the plaintiff contacted Dr Puah again to make additional investments in the defendant. This resulted in the plaintiff and the defendant entering into a second Convertible Loan Agreement dated 22 December 2015 ("the Second Agreement"), whereby the plaintiff agreed to lend the defendant a principal amount of $75,000.

9 Clause 3.1 of the Second Agreement ("Clause 3.1") replicated Clause 3.2 of the First Agreement, save for the tenure of the agreement and the applicable interest rate. Thus, Clause 3.1 provides as follows:[4]

> 3.1 Subject to Clauses 4 and 7, the Lender [the plaintiff] shall be entitled to require the Borrower [the defendant] to repay the Loan in the following manner:
>
> (a) On the Maturity Date (21st December 2016):

[3] HCH Affidavit at p 24.

[4] HCH Affidavit at p 33.

> i. **<u>Option 1</u>**: Borrower [the defendant] to repay the principal amount of the Loan in full and the full amount of interest calculated at 5% per annum up to 21st December 2016. Total loan and interest repayment amount shall be S$78,750. There shall not be any pro-rated interest prior to the maturity due date or in the event that the Company files for a Public Listing prior to the maturity due date; **OR**
>
> ii. **<u>Option 2</u>**: Borrower [the defendant] to procure the transfer of 0.15% of the total number of shares in Biomax – (including both ordinary shares and preference shares as at the date of maturity) (the **"Full Repayment Shares"**) from the Borrower [the defendant] to the Lender [the plaintiff]. For avoidance of doubt, the transfer of the Full Repayment Shares from the Borrower [the defendant] to the Lender [the plaintiff] shall represent the full and final repayment of the principal amount of the Loan and interest on the Loan.
>
> [emphasis in original]

Similar to the First Agreement, Clause 3.1 is stated to be subject to Clauses 4 and 7. Like the First Agreement, Clause 4 relates to the defendant's right of prepayment, whereas Clause 7 relates to events of default. There was nothing in the case that turned on Clauses 4 and 7.

10 Finally, similar to the First Agreement, Clause 13.1 in the Second Agreement is identical to Clause 13.1 in the First Agreement (save for a change in the defendant's address).

11 It was undisputed that the defendant has not repaid the plaintiff any amount under the First or Second Agreements. However, the parties disputed what happened after they had entered into the Agreements. According to the defendant, the plaintiff had informed Dr Puah around June or July 2016 that he and Ms Ng would like to exercise the option of receiving shares instead of

having their capital returned with interest.[5] In other words, the plaintiff had elected to exercise "Option 2" under both Clause 3.2 of the First Agreement and Clause 3.1 of the Second Agreement. The defendant alleged that this verbal discussion had taken place during one of the regular meetings between the plaintiff and Dr Puah at or near the defendant's office.[6]

12 Consequent to this supposed election to receive shares, the defendant alleged that Dr Puah started to interact more closely with the plaintiff. For example, the defendant stated that Dr Puah started a WhatsApp chat with the plaintiff to provide him with more information about the operations and business of the defendant and its subsidiaries.[7] However, it was undisputed that the defendant never issued any of Biomax's shares to the plaintiff. Also, in or around mid-2019, the defendant alleged that Dr Puah shared with the plaintiff the defendant's plan to be listed in an initial public offering ("IPO") sometime in 2024.[8] Following this exchange, the defendant stated that the plaintiff and Ms Ng agreed to keep to their decision to receive shares, provided that the listing in an IPO happened by 2024.[9] According to the defendant, there were further meetings between the plaintiff and Dr Puah in 2021, during which the plaintiff was briefed on the defendant's new business model adopted in response to the COVID-19 pandemic.[10] There was also allegedly a meeting on 12 March 2021 between the plaintiff, Ms Ng and Dr Puah, where Ms Ng threatened Dr Puah that she would publicise the defendant's financial difficulties and

[5] Defendant's Written Submissions dated 12 July 2022 ("DWS") at [18].

[6] DWS at [18].

[7] DWS at [19].

[8] DWS at [22].

[9] DWS at [22].

[10] DWS at [25].

Dr Puah's name all over social media if she was not repaid the principal sum and interest.[11]

13 In contrast, the plaintiff's version of events was quite different. He said that a day after the parties' acrimonious meeting on 12 March 2021, Dr Puah apologised to the plaintiff and Ms Ng for his behaviour the previous day by way of WhatsApp communication. Ms Ng then met Dr Puah in person once more on 17 March 2021, where Ms Ng purported to exercise, on the plaintiff's behalf, the option for the plaintiff to be repaid both the principal sum and interest under the Agreements.[12]

14 In response, Ms Ng said that Dr Puah asked Ms Ng to email him with her formal request for repayment. Thus, on 17 March 2021, Ms Ng emailed Dr Puah on the plaintiff's behalf, to demand for the immediate repayment of the principal amount with all unpaid interest accrued under the First and Second Agreements as of 17 March 2021.[13] Dr Puah responded on 23 March 2021 to request for a deferment of three months to make the repayment.[14] Ms Ng responded on behalf of the plaintiff that they would require additional security, such as a personal guarantee, for them to agree to a deferment of three months.[15] On 30 March 2021, Dr Puah replied to again ask for a deferment of three months but without agreeing to Ms Ng's request for additional security.[16] On 31 March 2021, Ms Ng replied to express her and the plaintiff's disappointment at

[11] DWS at [26].

[12] Affidavit of Ng Sheau Lian dated 23 March 2022 ("NSL Affidavit") at [11].

[13] NSL Affidavit at p 13.

[14] NSL Affidavit at p 14.

[15] NSL Affidavit at p 15.

[16] NSL Affidavit at p 17.

Dr Puah's reply and insisted on repayment once again.[17] To this, Dr Puah replied on 8 April 2021 to explain that the defendant was unable to repay the sums owing under the First and Second Agreements because of the uncertainties surrounding its business.[18]

15 Finally, on 30 April 2021, the plaintiff, through its solicitors, issued a letter of demand ("the Letter of Demand") claiming for the immediate repayment of the principal amount with all unpaid interest accrued under the First and Second Agreements as of 17 March 2021. Importantly for present purposes, the Letter of Demand was sent to the defendant's physical address as stated in Clause 13.1 in the First Agreement.

16 Having set out the relevant background facts, I turn to consider the applicable principles in relation to the grant of summary judgment.

The applicable principles

17 In terms of the applicable principles, it is trite law that the purpose of the summary judgment procedure under O 14 of the Rules of Court (2014 Rev Ed) is to enable a plaintiff to obtain a quick judgment where there is plainly no defence to the claim without trial (see the High Court decision of *Ling Yew Kong v Teo Vin Li Richard* [2014] 2 SLR 123 at [30]). However, the O 14 proceedings should not be allowed to become a means for obtaining, in effect, an immediate trial of the action (see *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) ("*White Book 2021*") at para 14/1/2).

[17] NSL Affidavit at p 18.

[18] NSL Affidavit at p 19.

18 To obtain summary judgment, a plaintiff must first show that he has a *prima facie* case for summary judgment. If he fails to do that, his application ought to be dismissed. However, once the plaintiff shows that he has a *prima facie* case, the burden then shifts to the defendant who, in order to obtain leave to defend, must establish that there is a fair or reasonable probability that he has a real or *bona fide* defence (see the High Court decisions of *Ritzland Investment Pte Ltd v Grace Management & Consultancy Services Pte Ltd* [2014] 2 SLR 1342 ("*Ritzland Investment*") at [43]–[44] and *M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2015] 1 SLR 325 ("*M2B World*") at [17]). The court will not grant leave to defend if the defendant only provides a mere assertion, contained in an affidavit, of a given situation which forms the basis of his defence (see *M2B World* at [19]). The burden which shifts to the defendant upon a *prima facie* case being shown is the burden on the application for summary judgment, *ie*, a tactical burden, and not the legal or even an evidential burden of proof (see *Ritzland Investment* at [45]).

19 Accordingly, in the present case, I had to first consider whether the plaintiff successfully established a *prima facie* case that he was entitled to the principal amount with all unpaid interest accrued under the First and Second Agreements as of 17 March 2021. If so, then the tactical burden turned to the defendant to show that there is a triable issue or a *bona fide* defence or that for some other reason there ought to be a trial, but a complete defence need not be shown (see *M2B World* at [19], citing *Bank Negara Malaysia v Mohd Ismail* [1992] 1 MLJ 400). If the defendant could not do this, the plaintiff would be entitled to summary judgment.

The parties' general cases

20 In applying these principles, it was helpful to refer to the parties' *general* cases, leaving their *specific* cases in relation to particular issues to be discussed at the appropriate juncture. Casting away the various allegations by both sides, the parties' respective cases in the Suit can be put simply.

21 The plaintiff's case was that he entered into the First and Second Agreements with the defendant. Pursuant to Clause 3.2 of the First Agreement and Clause 3.1 of the Second Agreement, the plaintiff made an election in writing on 17 March 2021 by way of email for the repayment of the principal sum with interest. The plaintiff therefore argued that he was entitled to summary judgment on this basis.

22 In contrast, the defendant's case was that the plaintiff had made an *earlier* election in June or July 2016, pursuant to Clause 3.2 of the First Agreement and Clause 3.1 of the Second Agreement, to be "repaid" by way of shares in Biomax. In short, the defendant's case was that the plaintiff had chosen to be repaid by way of shares pursuant to "Option 2" in the Agreements. The plaintiff therefore could not renege on this choice and then elect for the repayment of the principal sum with interest. Further, the defendant argued that parties came to an agreement in mid-2019 that the plaintiff would only elect for the repayment of the principal sum with interest if the defendant did not successfully list in an IPO by 2024.

Whether the plaintiff was entitled to summary judgment

23 For reasons that I will now explain (and which I had explained in my oral reasons given to parties on 20 July 2022), I decided that the plaintiff was

entitled to summary judgment in respect of the principal amount with all unpaid interest accrued under the First and Second Agreements as of 17 March 2021.

Whether the plaintiff had established a **prima facie** *case for summary judgment*

24 First, I concluded that the plaintiff had established a *prima facie* case for summary judgment on the basis of the First and Second Agreements. This turned on whether the plaintiff had made a valid election to be repaid the principal amount with all unpaid interest under Clause 3.2 of the First Agreement and Clause 3.1 of the Second Agreement.

The parties' arguments

25 During the hearing, counsel for both parties spent some time arguing whether the plaintiff had made a valid election to be repaid the principal amount with all unpaid interest. Indeed, given that a *communication* of election is required under Clauses 3.2 and 3.1 of the First and Second Agreements, respectively, it is clear that until the plaintiff formally exercised his option in writing in accordance with Clause 13.1 of the Agreements, he has not made a legally binding election.

26 Counsel for the defendant, Mr Too Fang Yi ("Mr Too"), argued that the parties had engaged in a course of conduct that showed that they were willing to depart from the express terms of the contract and deal in an informal manner. Mr Too highlighted that the plaintiff's own pleaded case showed that he elected for the option to be repaid the principal amount with all unpaid interest on 17 March 2021 by way of email, as opposed to April 2021 when the Letter of Demand was sent to the defendant's physical address. Mr Too argued that the plaintiff's purported election on 17 March 2021 was invalid because it did not

comport with the notice requirements under Clause 13.1. Clause 13.1 provides that the notice must be "delivered by hand or sent by registered post or by facsimile or electronic mail to the intended recipient thereof *at the address or fax number or electronic mail address as set out below* …" [emphasis added]. However, only the physical address of the defendant is provided for in Clause 13.1 and not any email address. Thus, Mr Too submitted that the email sent on 17 March 2021 to Dr Puah's email address was a defective notice.

27 When I asked counsel for the plaintiff, Ms Rebecca Chia ("Ms Chia"), whether it remained the plaintiff's case that the plaintiff had only made the election on 17 March 2021, she candidly said it remained so. In fact, Ms Chia also submitted that the Letter of Demand sent by the plaintiff's lawyers on 30 April 2021 was based on the election that took place on 17 March 2021. Ms Chia, however, argued that the election on 17 March 2021 was not defective because the words in the parentheses in Clause 13.1 (that is, "or as maybe [*sic*] notified by one Party to the other Parties from time to time") allowed the parties to inform each other of an alternate intended recipient at an alternative address, fax number, or electronic mail address. Ms Chia said this was done when Dr Puah informally asked Ms Ng to email him. When pressed on whether the word "notified" in the relevant sentence requires the parties to fulfil the technical requirements of Clause 13.1 in so "notifying", Ms Chia urged me to adopt a "relaxed" interpretation of this part of the Clause.

28 Unsurprisingly, Mr Too argued that this proved the defendant's case that the parties had a course of conduct between them to depart from the strict wording of the Agreements where it suited them. In relation to Summons 2508, he therefore argued that the road was open for the defendant to adduce evidence showing the plaintiff's *conduct* which showed he behaved as an investor. In respect of RA 172, I understood Mr Too to have argued that, even on the

existing evidence, the plaintiff should therefore be taken to have elected to receive shares instead of being paid the principal amount with all unpaid interest.

My decision: the plaintiff had made a valid election to be repaid the principal amount with all unpaid interest

29 While Mr Too's argument had some initial attraction to it, I ultimately decided not to agree with him. In my judgment, when one takes a step back, the facts demonstrated that the plaintiff had made a valid election to be repaid the principal amount with all unpaid interest, either in March or April 2021. It would be unjust to deny him summary judgment on the basis of a technicality that I did not think accords with the commercial purpose of the Agreements and the parties' overall behaviour. I decided so for the following reasons.

(1) The plaintiff made a valid election in March 2021 pursuant to the proper interpretation of Clause 13.1

30 First, when one looks at Clause 13.1 against the rest of the Agreements, it is clear it is not meant to apply to *all* kinds of notice, communication, or demand. For convenience, I reproduce Clause 13.1, which is identical across both Agreements except for the addresses stipulated:

> 13.1 Any notice, communication or demand required to be given, made or served under this Agreement shall be in writing in the English language and delivered by hand or sent by registered post or by facsimile or electronic mail to the intended recipient thereof at the address or fax number or electronic mail address as set out below (or as maybe notified by one Party to the other Parties from time to time) and marked for the attention of the person (if any), from time to time designed at that Party to the other Parties for the purpose of this Agreement:
> …

In particular, Clause 13.1 refers to "[a]ny notice, communication or demand *required* to be given, made or served under this Agreement" [emphasis added].

This contemplates that Clause 13.1 is *only* meant to apply to formal notices, communications or demands that go to the substance of the agreement, such as the election to take shares or be paid with the principal sum. These are the notices, communications or demands that are *required* or *needed* to be given. This conclusion is fortified when one looks at the words in the parentheses, which seem to contemplate a different, more informal kind of communication.

31 I therefore agreed with Ms Chia that the words in the parentheses show that the formal requirement under Clause 13.1 is not meant to apply to every notice, communication, or demand. In particular, the words in the parentheses of Clause 13.1 say "as *maybe* [*sic*] notified by one Party to the other Parties *from time to time*" [emphasis added]. The words "may be" and "from time to time" seem to contemplate a more informal kind of communication, such as a notification of an alternate intended recipient or address to send any formal notice to. In this regard, I was satisfied on the balance of the affidavit evidence that Dr Puah had informally asked Ms Ng to email him with the plaintiff's formal request to be repaid by way of the principal sum with interest. In my view, Dr Puah's notification of an alternate email address to send the plaintiff's formal election to is a type of communication that does not need to fulfil the formal requirement in Clause 13.1. Indeed, it would not make logical sense for the parties to contemplate a notification to change contact or address details to be sent to the presumably old address set out in the two Agreements. Accordingly, I found that Dr Puah had effectively notified Ms Ng to send the plaintiff's formal election to his email address. It therefore followed that the plaintiff had made a valid election to be repaid with the principal sum with interest on 17 March 2021 for both Agreements, in accordance with Clause 3 read with Clause 13.1, through the email that Ms Ng had sent on his behalf to Dr Puah at the email address that Dr Puah had identified.

(2) Alternatively, the plaintiff made a valid election in April 2021 pursuant to the Letter of Demand

32 Second, and in the alternative, I found that the plaintiff had made a valid election to be repaid the principal amount with all unpaid interest via the Letter of Demand sent on 30 April 2021. Although Ms Chia maintained that the Letter of Demand was not a valid election, it was my view that the court retains the ultimate discretion to pronounce on the *legal consequence* of a document. I now explain the basis for my view.

(A) THE COURT CAN PRONOUNCE ON THE LEGAL CONSEQUENCES OF A DOCUMENT EVEN IF NOT ARGUED

33 In my view, the court can determine the legal consequences of a matter that was not argued by a party, so long as it was sufficiently pleaded. The starting point is that a party need only plead the material facts which it relies upon, but the legal conclusions to be drawn from them need not be (see *White Book 2021* at para 18/7/9). Further, claims which were defectively pleaded can still be considered by the court as it is not required to adopt an overly formalistic and rule-bound approach, and these points can be considered where no prejudice was caused to the other side, or where it would clearly be unjust for the court not to do so (see the decision of the Court of Appeal in *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [39]–[40]). Thus, in the High Court decision of *Day, Ashley Francis v Yeo Chin Huat Anthony and others* [2020] 5 SLR 514, even though the pleadings were defective in the sense that the date of formation of the contract was not stated with reasonable certainty, the court could still decide if the contract had been formed at certain points in time. This was also the case in the High Court decision of *Gardner Smith (SE Asia) Pte Ltd v Jee Woo Trading Pte Ltd* [1998]

1 SLR(R) 950 (at [15]), where the court was entitled to find that no contract had been concluded even though neither party had pleaded that there was a failure to agree to an essential term:

> 15 … Reluctant as I am to come to such a conclusion, it seems to me that in fact no contract had been reached at all by reason of the failure to agree an essential term. *Neither party has pleaded this*, as each asserts claims of breaches against the other. However, since it is the court that has to interpret the contract, if it finds it impossible to give any sensible meaning to an essential term, *the court is entitled*, or bound, *to find that no contract had been concluded even though neither party has pleaded the point.*
>
> [emphasis added]

34 Indeed, the principle was also elaborated upon by the Court of Appeal in *Development Bank of Singapore Ltd v Bok Chee Seng Construction Pte Ltd* [2002] 2 SLR(R) 693 (at [26]). Only the material facts need to be pleaded, but not propositions or inferences of law. In that case, the English Court of Appeal decision of *Drane v Evangelou* [1978] 1 WLR 455 was referred to as an illustration of how a judge can of his own volition rule upon the legal effect of a matter that was based on the material facts:

> 26 The third instructive case is *Drane v Evangelou* [1978] 1 WLR 455, where a tenant sued a landlord for breach of covenant on quiet enjoyment. The County Court judge, ***in his own volition***, held that the ***facts were sufficient to found a claim in trespass***, even though ***that was not the pleaded claim***, and awarded exemplary damages of £1,000 to the tenant-plaintiff. The defendants appealed contending that the plaintiff was not entitled to exemplary damages as he did not plead a claim in trespass. Lord Denning said (at 458):
>
> > The first point taken on behalf of the landlord was a pleading point. The particulars of claim alleged that the landlord 'had interfered with the right of the [tenant] and his de facto wife Ann Watts to quiet enjoyment of the said premises by unlawfully evicting them from the said premises on Tuesday 14th October 1975'. Counsel for the landlord submitted that that claim was for breach of a covenant for quiet enjoyment. He cited a passage from *Woodfall* (27th Ed, 1968) para 1338: 'Since the claim is

> in contract, punitive or exemplary damages cannot be awarded.' ***The judge at once said: 'What about trespass? Does the claim not lie in trespass?*** Counsel for the landlord ***urged that trespass was not pleaded***. The judge then said: '***The facts are alleged sufficiently so it does not matter what label you put on it***.' ***The judge was right***. The tenant in the particulars of claim gave details saying that three men broke the door, removed the tenant's belongings, bolted the door from the inside; and so forth. Those facts were clearly sufficient to warrant a claim for trespass. As we said in *Re Vandervell's Trusts* [1974] 3 All ER 205 at 213; [1974] Ch 269 at 321–322:
>
>> It is sufficient for the pleader to state material facts. He need not state the legal result. If, for convenience, he does so, he is not bound by, or limited to, what he has stated. He can present, in argument, any legal consequence of which the facts permit.
>
> [emphasis added in bold italics]

35 Similarly, in the Court of Appeal decision of *MK (Project Management) Ltd v Baker Marine Energy Pte Ltd* [1994] 3 SLR(R) 823 ("*Baker Marine*"), the issue there was whether consideration was pleaded such that there was a valid contract. In that case, the statement of claim by the appellants did not refer to "consideration" as such, but did state the allegation of fact that the quantum of the commission had been varied and reduced by agreement. The Court of Appeal found (at [27]) that "it was sufficient for the appellants to plead the material fact that the quantum of the commission had been reduced and it was no defect that they did not then aver that this constituted consideration for the oral agreement". Although the appellants did not go on to explicitly characterise the reduction of commission as "consideration", it was clear that this was not necessary (at [26]). Rather, "the practice of the courts has been to consider and deal with the legal result of pleaded facts, though the particular legal result alleged is not stated in the pleadings" (see *Baker Marine* at [26], citing the

English Court of Appeal decision of *Lever Brothers, Limited v Bell* [1931] 1 KB 557 at 582–583).

36 Perhaps more pointedly to the question at hand, the High Court decision of *Chua Tian Chu and another v Chin Bay Ching and another* [2011] SGHC 126 ("*Chua Tian Chu*") is instructive. The relevant issue there was whether the defendants were precluded from relying on the equitable remedy of time being set at large because they did not raise or plead it. It was found that while the defendants did not raise the defence that time was set at large by reasons of the plaintiffs' actions, the material facts relied upon to support such a conclusion were pleaded (at [100]). Further, the High Court in that case gave "direction that the parties were instructed to consider the issue of time being set at large" and the "plaintiffs were afforded the opportunity to address this latent legal characterisation of the existing material facts, as were the defendants" (at [101]). Thus, there was no unfair prejudice caused by the "delayed re-characterisation of the material facts" (at [101]). Ultimately, the court possesses the discretionary power to pronounce upon the legal effect of a matter based on pleaded facts (at [103]):

> 103 In any event, ***this court is vested with the discretionary power to re-characterise the legal issues from the pleaded facts***. As Buckley LJ said in *Belmont Finance Corporation Ltd v Williams Furniture Ltd* [1979] Ch 250 at 269: the '... court ***must have jurisdiction to grant any relief that it thinks appropriate to the facts as proved***.' In *Lever Brothers Ltd v Bell* [1931] 1 KB 557, at 582–583, cited with approval in *Multi-Pak Singapore v Intraco* [1992] 2 SLR 793, Scrutton LJ declared:
>
>> ... The practice of the Courts has been to consider and deal with the legal result of pleaded facts, though the particular legal result alleged is not stated in the pleadings, except in cases where to ascertain the validity of the legal result claimed would require the investigation of new and disputed facts which have not been investigated at trial. ...

[emphasis added in bold italics]

37 With that said, there are, of course, limits to this power of re-characterisation. In *Blenwel Agencies Pte Ltd v Tan Lee King* [2006] SGMC 15 ("*Blenwel Agencies*"), the case of *Baker Marine* was cited by the plaintiff for the proposition that a cause of action need not be articulated in the statement of claim, but that it could be inferred or implied from the facts already set out (at [12]). It was thus argued that it was not necessary to plead whether they relied on a contractual claim or a tortious claim, and in fact, the causes of action relied upon by the plaintiff were "simply not enunciated or made known" at all. This argument was immediately rejected (and rightly so) by the court as the power does not provide the court with a *carte blanche* to cherry-pick the causes of action which may fit the particular facts as it deems appropriate (at [14]).

(B) APPLICATION TO THE PRESENT FACTS

38 Turning to the present case, while I appreciated Mr Too's point that it was not the plaintiff's position that the election was made on 30 April 2021, I was of the view that, in accordance with the principles discussed above, this did not preclude me from pronouncing such a legal effect (the election being on 30 April 2021) on the basis of the pleaded facts before me.

39 First, I had sent a letter to parties in advance of the hearing requesting the parties to consider whether a particular mode of exercising the option was found within the First and Second Agreements (akin to what was done in *Chua Tian Chu*), with express reference being made to Clause 13.1. This should already have alerted the parties to the issue that some form of written communication may be required for a valid election, which would include looking at the Letter of Demand. Indeed, I should add that the parties had quite

obviously known of the Letter of Demand all along and should not be surprised by its potential relevance.

40 Second, it was clear that the *facts* pertaining to the Letter of Demand being sent on 30 April 2021 were pleaded in the Statement of Claim. Whether the Letter of Demand possesses the legal consequence of a valid election is thus within the province of the court to pronounce. More specifically, looking at paragraph 16 of the Statement of Claim, it is stated in the relevant part that: "[s]ometime on or about 30 April 2021, the Plaintiff's solicitors sent a letter of demand to the Defendants seeking for repayment of the principal amount of the Loan with all unpaid interest accrued as at 30 April 2021 in the total sum of S$755,571.92 …" [emphasis added]. Notably, this paragraph was put under the heading which was titled "Exercise of option 1 of the First and Second agreements". Surely, a plain reading of paragraph 16 of the Statement of Claim, combined with the fact that the court had already intimated to parties the relevance of Clause 13.1, meant that I could then proceed to deal with the legal consequences of whether the Letter of Demand amounted to a valid election.

41 Third, this was unlike a situation in *Blenwel Agencies* where the court was being asked to "cherry-pick" the causes of action for the plaintiff from a blank slate which would have caught the defendant entirely by surprise. Rather, this was a determination of a sub-point within the plaintiff's overall argument that a valid election to seek repayment had been made.

42 Accordingly, I was of the view that the Letter of Demand sent on 30 April 2021 could also constitute the valid and formal exercise of the option as it was correctly sent to the defendant's address as stipulated in Clause 13.1 of the First Agreement.

43 However, this finding was only made in relation to the First Agreement. While not apparent from the above at [7] (as the address had been redacted), I noted that in respect of the Second Agreement, Clause 13.1 had provided for a different address for the defendant, and the Letter of Demand was not sent to that address. Nevertheless, given my findings above at [31] that a valid election was already made in March 2021 in respect of the First *and* Second Agreements via email, the outcome remained unchanged.

Conclusion in relation to whether the plaintiff established a prima facie case for summary judgment

44 Regardless of whether the election took place in March or April 2021, the point remained that the plaintiff had validly exercised his option to be repaid by way of the principal sum with interest in a manner prescribed by the Agreements. As such, considering the terms of the two Agreements, it was clear that the plaintiff had established a *prima facie* case for summary judgment.

Whether the defendant had established a* bona fide *defence or raised a triable issue

45 Given that the plaintiff had established a *prima facie* case in favour of summary judgment, the tactical burden therefore shifted to the defendant to establish a *bona fide* defence or raise an issue against the claim which ought to be tried, in order to secure leave to defend.

The defendant's arguments

46 The defendant raised several possible defences or triable issues. When stripped of the extraneous allegations, the defendant's arguments could be condensed into three arguments. First, the defendant argued that the plaintiff had exercised the option to take shares under the First and Second Agreements

in 2016. The defendant argued that this was supported by the plaintiff's conduct and correspondence, which showed that he believed he was an investor or someone who owned shares in Biomax. Second, I understood the defendant to have argued that the parties had verbally varied the Agreements in 2019 such that the plaintiff would only demand for a return of the principal sum with interest if there was no IPO by 2024. Third, the defendant also argued that the defendant had accepted the plaintiff's election under duress.

My decision: the defendant had not established a bona fide *defence or raised a triable issue*

(1) The plaintiff did not exercise his option to take shares

47 The defendant's main defence is that the plaintiff had exercised his option to take the shares rather than be repaid the principal sum with interest. I did not see this as a plausible defence at all. As canvassed above, Clause 3 of the First and Second Agreements gives the plaintiff the free choice, subject to Clauses 4 and 7, to choose between repayment by way of shares or being repaid the principal sum with interest. And as I have explained above, Clause 13.1 of the Agreements provides that "[a]ny notice, communication or demand required to be given, made or served under this Agreement shall be in writing in the English language and delivered by hand or sent by registered post or by facsimile or electronic mail to the intended recipient thereof".

48 Given that a *communication* of election is required under Clause 3, it is clear that the plaintiff had not made a legally binding election until he had formally exercised his option in writing in March or April 2021. Thus, the defendant's allegation, that the plaintiff had *orally* informed at a meeting sometime in June or July 2016 that he wished to receive shares instead, did not hold water. For completeness, even if the plaintiff appeared to have exercised

his option in mid-2016 via the various WhatsApp communications, this is not a valid mode of giving notice pursuant to Clause 13.1. Also, unlike the case of Dr Puah asking Ms Ng to email the plaintiff's formal election to his email address, there was no evidence of the parties ever agreeing to such formal election taking place through WhatsApp communications.

49 Further, the defendant's argument that it did not admit to agreeing with the plaintiff that it would repay the principal sum with interest is not relevant to the plaintiff's claim. The defendant is not at liberty to refuse once the plaintiff has validly exercised his option, and this followed from the unilateral nature of an option. It was wholly immaterial, contrary to the defendant's arguments, whether the defendant treated the plaintiff like an investor, or whether the plaintiff behaved like an investor.

(2) The parties did not verbally vary the Agreements in 2019

50 Turning to the point on whether the parties had verbally varied the Agreements in 2019 such that the plaintiff would only demand for a return of capital with interest if there was no IPO by 2024, the defendant did not dispute that there was no written and signed variation of the Agreements as required by the no oral modification clause in Clause 9.3. Clause 9.3 provided that "[n]o amendment or variation of this Agreement shall be effective unless so amended or varied in writing and signed by each of the Parties". The defendant seemed to argue that the no oral modification clause was impliedly dispensed with by agreement of both parties (in line with the decision of the Court of Appeal in *Charles Lim Teng Siang and another v Hong Choon Hau and another* [2021] 2 SLR 153). I did not accept that argument as there was a lack of compelling evidence that there was such an agreement to do away with Clause 9.3.

(3) The argument of duress was not relevant

51 The defendant also raised the point that the defendant had accepted the plaintiff's election under duress. However, this point had taken a backseat since the pleadings stage. In my view, this was not a sustainable defence for two reasons.

52 First, it is trite law that duress can void a contract. However, as pointed out by the plaintiff, the relevant duress (if any) is at the point of contracting. The key question is always whether a party had *entered* into a contract because of a wrongful or illegitimate threat or pressure (see the High Court decision of *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and another (Orion Oil Ltd and another, interveners)* [2011] 2 SLR 232 at [42]). In the present case, there was no suggestion by either party that the First and Second Agreements were *entered* into under duress, but rather, the complaint only concerned the election made by the plaintiff *subsequently* when exercising his rights under the contracts.

53 Moreover, pursuant to the Agreements, it is up to the plaintiff to decide how he would like to be repaid – whether by repayment of the principal sum with interest or by shares. The defendant does not have a choice once the plaintiff has so elected. It was therefore irrelevant whether the defendant "agreed" under duress or not; properly considered, there is no scope for the defendant to "agree" to the plaintiff's election.

54 Second, even if duress was somehow relevant, it is again trite law that the threshold for duress to succeed is very high (as is the case with other vitiating factors). I do not consider the defendant's allegations of duress to meet that threshold so as to amount to a plausible defence.

Conclusion in relation to whether the defendant established bona fide *defence or raised a triable issue*

55 Accordingly, I did not find that the defendant had established a *bona fide* defence or raised a triable issue. It therefore followed that I affirmed the AR's decision to give summary judgment in favour of the plaintiff.

Conclusion

56 For all these reasons, I concluded that the plaintiff was entitled to summary judgment in respect of the principal amount with all unpaid interest accrued under the First and Second Agreements as of 17 March 2021. Ultimately, when one takes a step back, this was a simple case of the plaintiff exercising his option to be repaid with the principal sum and interest. His exercise of the option may not have been overly formal, but I found that it was sufficiently formal so as to have legal effect. As such, I did not think that the defendant should be allowed to obscure a clear-cut exercise of such an option by alluding to peripheral facts that did not satisfactorily point to the plaintiff asking to be repaid by shares. That, in my view, would not be in accordance with the overall rationale of the grant of summary judgment and would commit both parties to an unnecessary trial. I thus dismissed the defendant's appeal in RA 172 with costs.

57 In closing, I would like to record my gratitude to Mr Too and Ms Chia for their able advocacy and assistance in the hearing before me.

Goh Yihan
Judicial Commissioner

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