

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

[2022] SGHC 283

Suit No 588 of 2020

Between

Lazarus Century Construction Pte Ltd

... Plaintiff

And

SLH Development Pte Ltd

... Defendant

JUDGMENT

[Debt and Recovery — Existence of debt]

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Lazarus Century Construction Pte Ltd
v
SLH Development Pte Ltd

[2022] SGHC 283

General Division of the High Court — Suit No 588 of 2020
Kwek Mean Luck J
24–26 May, 1 August, 18 October 2022

8 November 2022

Judgment reserved.

Kwek Mean Luck J:

Introduction

1 In this action, the plaintiff, Lazarus Century Construction Pte Ltd, claims that it made a loan of \$1.398m (the “Loan”) to the defendant, SLH Development Pte Ltd (“SLH”), and now seeks the return of the Loan.

2 It is undisputed that the defendant received the aggregate sum of \$1.398m between the period of 17 September 2015 to 12 January 2017, through ten cheques from the plaintiff. However, the defendant denies that the \$1.398m was a loan from the plaintiff. Instead, the defendant asserts that the \$1.398m was for the repayment of previous loans extended to the plaintiff from the defendant (the “Defendant’s Loan”).

The Loan

3 Around September 2015, the plaintiff commenced work as the main contractor for a project at No 10 Lorong G Telok Kurau (the “Project”). The defendant is the owner of the Project. The Letter of Award for the Project (“LOA”) is dated 9 April 2015. The final contract sum for the Project, which was fully paid by the defendant, was \$2,422,752.51.¹

4 The Loan was allegedly entered into between two persons. One was Mr James Koh (“James”). The ACRA records indicate that he was a director of the plaintiff from 2 April 2011 to 29 August 2011 and from 29 April 2014 to 21 August 2014 as well as the Chief Executive Officer (“CEO”) of the plaintiff from 4 March 2015 to 1 February 2016.² He was one of the two parties signing on behalf of the plaintiff in respect of the LOA.³ The other party to the Loan was Mr Chan Kok Chuan (“Chan”), the director of the defendant.

5 The plaintiff’s case is that Chan promised James that he would award two other projects to the plaintiff and waive the requirement for the plaintiff to provide a performance bond for the Project and the two other projects, if the plaintiff could grant interest-free loans totalling around \$1.5m to the defendant from time to time, with the defendant repaying the same upon the completion of the projects. Mr Li Dan (“Li”), a General Manager of the plaintiff, testified that Chan promised to repay the Loan upon the confirmation of final accounts. The statement of final accounts was signed by Chan on 12 April 2018.⁴ While the Statement of Claim (“SOC”) (Amendment No 3) stated that the final account

¹ Chan Kok Chuan’s AEIC dated 5 April 2022 (“Chan AEIC”) at [20].

² Agreed Core Bundle (“ACB”) at p 14.

³ Ong Pang Heng Daniel’s AEIC dated 5 April 2022 (“Ong AEIC”) at pp 9–14.

⁴ ACB at p 95.

was agreed on 8 October 2019,⁵ Li testified during cross-examination that the final account was agreed upon by the parties on 12 April 2018 and the loan would consequently, on the plaintiff's case, be repayable then.⁶

6 As James passed away on 18 January 2021⁷, there is no direct testimony from him on the Loan. The plaintiff relies on the statements of Li and Mr Chua Ming Da ("Chua"), a director of the plaintiff. They state that James informed them of the Loan sometime at or around the start of the Project. Li testified that this was around March or April of 2015.⁸ Chua testified that they were told sometime before the start of the Project, around March 2015.⁹

Lack of documentary evidence of the Loan

No documentary evidence of the Loan

7 The burden of proof is on the plaintiff to establish the existence of the Loan. The difficulty that the plaintiff faces, is that none of the plaintiff's witnesses were party to the alleged verbal agreement on the Loan and it is unable to provide any written loan agreement or contemporaneous correspondence evidencing the Loan. Neither is there any document evidencing any requests from the plaintiff to the defendant for the repayment of the Loan, prior to its letter of demand dated 11 May 2020.¹⁰ The defendant asks that an adverse inference be drawn against the plaintiff for its lack of documentary evidence to support its claim. However, I am of the view that the lack of documentary

⁵ Statement of Claim (Amendment No 3) at [6].

⁶ 24 May 2022 Transcript, p 23, lines 5–8.

⁷ ACB at p 259.

⁸ 24 May 2022 Transcript, p 19, lines 17–23.

⁹ 25 May 2022 Transcript, p 15, line 24 to p 16, line 13.

¹⁰ ACB at p 187.

evidence goes towards whether the Plaintiff is able to prove its case, rather than whether an adverse inference should be drawn.

Chua's payment vouchers insufficient to prove the Loan

8 Chua refers to ten payment vouchers signed by him, that describe a loan from the plaintiff to the defendant for certain amounts.¹¹ These payment vouchers are dated between 2015 and 2016. Chua and Ms Wang Jiao (“Wang”), who was then an administrative staff of the plaintiff, testified that these vouchers were prepared by Wang and signed by Chua on or around the dates of these vouchers.¹²

9 However, these payment vouchers have limited value as documentary evidence, as none of them have been counter-signed by the defendant. The section in the payment vouchers stating that the defendant acknowledges receipt is completely blank. Such payment vouchers cannot be said to be any form of acknowledgement by the defendant or Chan of the Loan. Neither is there any good explanation why such payment vouchers were prepared but not counter-signed. In this regard, it is material that Chua conceded during cross-examination that there was “no way to independently verify” that the documents were created on the relevant dates because he did not get Chan to sign them.¹³ On Chua’s evidence, he and the defendant have a good business relationship.¹⁴ Having prepared these payment vouchers, the natural next step for Chua would have been to ask Chan to countersign them, but he did not. Consequently, I do

¹¹ Chua AEIC at [15], pp 9–17.

¹² 25 May 2022 Transcript, p 37, lines 2–12; 25 May 2022 Transcript, p 85 at line 15 to p 86 at line 1.

¹³ 25 May 2022 Transcript, p 37, lines 21–26; 25 May 2022 Transcript, p 38 at lines 9–32.

¹⁴ 25 May 2022 Transcript, p 57, lines 19–21.

not find that these payment vouchers, without more, assist in proving the plaintiff's case that there was a Loan.

Contradictions in plaintiff's written correspondence regarding the Loan

10 More importantly, the plaintiff's case is severely undercut by three sets of written correspondence from the plaintiff to the defendant and by the inconsistencies in the evidence of the plaintiff's witnesses about the Loan.

Winnie's 17 Nov 16 Email and James' certification of Account showing Loan from defendant

11 The first set of written correspondence from the plaintiff is an email dated 17 November 2016 from Ms Winnie Koh ("Winnie") ("17 Nov 16 Email"). Winnie is the daughter of James and was also a director of the plaintiff at the material time. She was mainly in charge of chasing payments and managing the internal accounts for the plaintiff. The 17 Nov 16 Email states:¹⁵

Dear Mr Chan,

For your kind attention for the following attachment "Statement of Accounts for 10 Lorong G.pdf".

Kindly send me a copy of Lazarus Century Construction Pte Ltd **Cash Advanced** from SLH Development Pte Ltd from **Day 1 till now**.

...

[emphasis in original]

12 The 17 Nov 16 Email also enclosed a Statement of Account titled "Repayment for Advance Payment from SLH Development Pte Ltd for Project

¹⁵ Koh Wei Lin, Winnie's AEIC dated 5 April 2022 ("Winnie AEIC") at p 13.

at 10 Lorong G Telok Kurau”¹⁶ (“17 Nov 16 Account”). The 17 Nov 16 Account details ten separate payments from the plaintiff to the defendant amounting to \$1.478m. Crucially, these payments are characterised as repayments to the defendant for advance payments from the defendant. The plaintiff submits that the 17 Nov 16 Account was only a draft for discussion,¹⁷ but there is nothing in the email or the account itself that states that this was only a draft. The 17 Nov 16 Account is signed on each page, dated 17 November 2016 and stamped with the company stamp of the plaintiff.¹⁸ Li, Chua and Winnie accepted that the signature that appeared at the bottom of the 17 Nov 16 Account was James’ signature.¹⁹ Li and Chua agreed that by signing and putting the company stamp, James certified this document to be true and accurate, although they still maintained the plaintiff’s case.²⁰

13 The plaintiff submits that since the plaintiff’s witnesses are not in the position to explain James’ signature, there is no basis for the defendant to rely on the signature and the company stamp as evidence of the correctness of the repayment stated in the 17 Nov 16 Account.²¹ However, the absence of any explanation from the plaintiff does not prevent the defendant from relying on the 17 Nov 16 Account, which as the plaintiff’s witnesses testified, was signed by James. On the contrary, the inability of the plaintiff’s witnesses to explain James’ signature and the company stamp, undermine the plaintiff’s case.

¹⁶ Chan AEIC at [33]–[34] and pp 439–440; Winnie AEIC at pp 14–15.

¹⁷ Plaintiff’s Reply Submission dated 18 October 2022 (“PRS”) at [35].

¹⁸ Chan AEIC at [37] and pp 439–440.

¹⁹ 24 May Transcript 2022, p 86, lines 23–31 (Li); May Transcript 2022, p 139, lines 19–31 (Winnie); 25 May Transcript 2022, p 69, lines 10–13 (Chua).

²⁰ 24 May Transcript 2022, p 66, lines 26–28; 25 May Transcript, p 60, lines 7–10.

²¹ Plaintiff’s Closing Submissions dated 20 September 2022 at [99(b)].

14 The plaintiff has not shown any correspondence from James, whether in the form of emails or phone messages, or any minutes of meetings of the plaintiff, whereby James refuted his certification of the 17 Nov 16 Account.

15 The plaintiff also did not, at any time since the 17 Nov 16 Account was sent out by the plaintiff to the defendant, assert that James was acting beyond his authority in so certifying the 17 Nov 16 Account. Neither has the plaintiff asserted that James' authority in respect of the Project was circumscribed.

16 Li sought to downplay James' role within the plaintiff by asserting that James was his subordinate²² and was merely a project manager.²³ However, it is undisputed that the ACRA records indicate that James was a director of the Plaintiff on the date it was registered and that he was also the plaintiff's CEO from 4 March 2015 to 1 February 2016 (see [4] above).²⁴ Chua also agreed that James was the plaintiff's CEO then and not just a worker.²⁵ Chua also testified that James was authorised to sign the LOA on behalf of the plaintiff as he was the only one with the company's stamp and authorisation letter.²⁶ It is undisputed that James was also the plaintiff's project manager who is in charge of the Project. He would hence be the most familiar, amongst the plaintiff's staff, with what was owing to or owing from the defendant. He would also have the authority to request for cash advances from the defendant on the plaintiff's behalf and repay such cash advances from the plaintiff's account.

²² 24 May Transcript 2022, p 7 lines 26–27.

²³ 24 May Transcript 2022, p 7 lines 10–13.

²⁴ ACB at p 14.

²⁵ 25 May 2022 Transcript, p 11 lines 11–16.

²⁶ 25 May 2022 Transcript, p 15 lines 6–9.

17 Given these circumstances, James’ certification of the 17 Nov 16 Account is greatly damaging to the plaintiff’s case that the \$1.398m was transferred to the defendant, pursuant to the Loan from the plaintiff to the defendant. James’ certification of the 17 Nov 16 Account indicates the contrary of what the plaintiff now claims, and in fact supports the defendant’s case that it was the plaintiff that had taken a loan from the defendant instead.

Winnie’s 15 Feb 17 Email enclosing Account showing Loan from defendant

18 Second, Winnie sent out another email dated 15 February 2017 (“15 Feb 17 Email”), which enclosed a revised Statement of Account, similarly titled “Repayment for Advance Payment from SLH Development Pte Ltd for Project at 10 Lorong G Telok Kurau”²⁷ (“15 Feb 17 Account”). The 15 Feb 17 Account details ten separate repayments from the plaintiff to the defendant, amounting to a reduced aggregate amount of \$1.398m. The plaintiff’s claim in this Suit is for this amount. While the 15 Feb 17 Account was not signed by James, it is substantially similar to the 17 Nov 16 Account, except for one transaction of \$130,000 dated 13 September 2016 in the 17 Nov 16 Account²⁸ which was replaced by another transaction of \$50,000 dated 13 January 2017 in the 15 Feb 17 Account.²⁹

Difficulties with Winnie’s explanations

19 Winnie’s explanation of the 17 Nov 16 and the 17 Nov 16 Account was that she merely followed Chan’s instructions to provide an updated summary

²⁷ Chan AEIC at [40] and pp 443–446.

²⁸ Chan AEIC at p 444.

²⁹ Chan AEIC at p 444.

for the purposes of checking the accounts.³⁰ Her explanation only touched on why she did what she did, but does not detract from James’ certification of the 17 Nov 16 Account.

20 Even then, her explanation raises further questions. Winnie said that she started her inquiry because Wang showed her some transactions from the plaintiff’s bank statements and asked if she knew what they were for. In her affidavit, Winnie testified that she “recognised that these transactions were for the Loan, which prompted [her] to ask Mr. Chan, over a telephone call on or around 17 November 2016, about the Defendant’s plans to repay the Loan”.³¹

21 However, during cross-examination, Winnie said that she was then unaware of what these transactions were for and asked Chua, Li and James, who informed her that they were for the Loan.³² This is inconsistent with what she stated in her AEIC.

22 There are two further aspects of Winnie’s testimony which undermine the credibility of her explanation.

23 First, on Winnie’s evidence, James told her the payments to the defendant were for the Loan.³³ But he was also the one who certified that the 17 November 2016 Account was a repayment for the Defendant’s Loan. His action was the very opposite of what he allegedly told her.

³⁰ 24 May 2022 Transcript, p 134 at lines 5–25.

³¹ Winnie AEIC at [13]–[19].

³² 24 May 2022 Transcript, p 122, lines 15–21.

³³ 24 May 2022 Transcript, p 122, lines 15–21.

24 Second, Winnie claimed that she sent out the 17 Nov 16 Account because Chan asserted on the phone with her that the defendant had provided the Defendant’s Loan.³⁴ Chan asked her to prepare an updated summary of the total amount loaned by the plaintiff to the defendant, and tentatively reflect the amounts as “repayment” and told her that he would produce proof of the alleged Defendant’s Loan in due time.³⁵ Winnie explained that she did so as she did not want to argue with Chan, so she just followed his instructions.³⁶

25 Winnie accepted that Chan’s request should have struck her as odd. She explained that at the time, the plaintiff and the defendant were on good business terms and the plaintiff was expecting the defendant to award 2 more projects to the plaintiff. Hence, she did not think much of his request.³⁷

26 However, on Winnie’s evidence, Chan was asking Winnie for a document that stated the very opposite of the plaintiff’s position, without providing any proof of the Defendant’s Loan. Winnie has an accounting degree from the Royal Melbourne Institute of Technology.³⁸ While she said that she had just graduated,³⁹ I am of the view that it would nevertheless have been clear to her that what she provided was contrary and very detrimental to the plaintiff’s alleged position of the Loan. It would also have been obvious to her that this involved a large sum of money. Moreover, she was the one in charge of handling the plaintiff’s accounts. I find it hard to believe that she would simply follow

³⁴ Winnie AEIC at [14]–[15].

³⁵ Winnie AEIC at [16].

³⁶ 24 May 2022 Transcript, p 134, lines 19–25.

³⁷ Winnie AEIC at [17].

³⁸ Winnie AEIC at [6].

³⁹ 24 May 2022 Transcript, p 136, lines 1–3.

Chan’s instructions, when it was directly contradictory and harmful to her own company’s position, without proof from Chan of the Defendant’s Loan. She herself accepted that such behaviour was not logical.⁴⁰ She also accepted that James, who signed off on the 17 Nov 16 Account, would have known what the payments were for as the person-in-charge.⁴¹

27 Chan’s account provides a more credible explanation for the 17 Nov 16 Email and the 17 Nov 16 Account. According to Chan, sometime around November 2016, he was concerned about recording the Defendant’s Loans. He made an appointment with James. He met with James and Winnie at the plaintiff’s office on 17 November 2016. Chan and James discussed and recorded the Defendant’s Loans and the repayments made by the plaintiff to the defendant up to that date. This led to Winnie’s 17 November 2016 email enclosing the Statement of Account.⁴²

28 The 17 Nov 16 Email did contain a request to Chan to “send [her] a copy of Lazarus Century Construction Pte Ltd Cash Advanced from SLH Development Pte Ltd from Day 1 till now”. Winnie testifies that even by 15 February 2017, she had not received satisfactory proof.⁴³ It is all the more puzzling then that she would send the 15 Feb 17 Account, essentially reiterating in black and white for a second time, a statement of account that indicated that the monies were repayments from the plaintiff to the defendant for loans from the defendant, the very opposite of what the plaintiff now alleges.

⁴⁰ 24 May 2022 Transcript, p 138, lines 5–12.

⁴¹ 24 May 2022 Transcript, p 140, lines 1–3.

⁴² Chan AEIC at [30]–[34].

⁴³ 24 May 2022 Transcript p 142, lines 8–21.

29 Winnie’s explanation for this is that Wang prepared the updated summary on the same template and Winnie did not open the attachment from Wang before she sent it to Chan, as she was then overseas.⁴⁴

30 I do not find this to be a satisfactory explanation. There was nothing stopping Winnie from doing the simple task of opening up the attachment sent to her from Wang, to verify that it was the correct document that stated the correct information. In any event, Wang herself testified that Winnie did not give her any instructions to change the template that was being used, which characterised the payments from the plaintiff as repayments to the defendant. Winnie only asked Wang to change the figures and nothing else. Hence, Wang simply updated the figures on the existing template, and sent it to Winnie.⁴⁵

31 As such, I find that Winnie has failed to provide an explanation that would counter what the 17 Nov 16 Email, 17 Nov Account, 15 Feb 17 Email and 15 Feb 17 Account objectively indicate, which is that the plaintiff made the payments to the defendant, as repayments for loans from the defendant, and not as part of the Loan.

James’ email and letter to Chan dated 21 July 2017

32 The third correspondence from the plaintiff that undermines the plaintiff’s case is an email and letter that James wrote to Chan on 21 July 2017.⁴⁶ They reinforce the fact that, as far as James was concerned, he did not take the view that there were monies owed by the defendant to the plaintiff. James wrote to Chan in the email saying: “We hope that you can help my company to

⁴⁴ Winnie AEIC at [23]–[26].

⁴⁵ 25 May 2022 Transcript, p 99, lines 21–25.

⁴⁶ Chan AEIC at [42] and pp 447–448.

overcome this matter. Regarding the repayment, the money will be deducted from the claim.”⁴⁷ James’ email enclosed a letter from him to the defendant, to the attention of Chan. The letter used the plaintiff’s letterhead and was signed off by James as the manager of the plaintiff. The letter is titled “Requesting for Advance Loan to complete the project above”. It starts off by listing items that are still outstanding to pay the plaintiff’s suppliers for the Project. These include aircon, doors, fire-rated doors, charcoal and timber flooring. The total amount outstanding to the suppliers is stated as \$59,589.13. James then writes:⁴⁸

Lazarus Century Construction Pte Ltd is having some tough financial difficulties. We wish that Mr. Chan would loan us this \$50,000 to overcome this matter.

Sorry for the inconvenience caused and thank you for your understanding.

33 It is puzzling why James would ask for a loan of \$50,000 from Chan to pay the plaintiff’s suppliers for the Project, if indeed the defendant was then owing the Plaintiff \$1.389m. He could instead have asked for repayment of part of the Loan. Li testified that the terms of the Loan was such that the Loan was only repayable after the completion of final accounts, and that had not taken place as of 21 July 2017.⁴⁹ Even if this was accepted, the fact remains that when James asked for \$50,000, he asked for a “loan” from Chan, rather than early repayment of the plaintiff’s loan to the defendant.

34 Moreover, Chua testified that prior to this email, Winnie had asked Chan in November 2016 about the defendant’s plans to repay the Loan.⁵⁰ If the

⁴⁷ Chan AEIC at p 447.

⁴⁸ Chan AEIC at p 448.

⁴⁹ 24 May 2022 Transcript, p 74, lines 5–28.

⁵⁰ Chua’s AEIC at [16].

repayment of the Loan had already been discussed with Chan by the time of this request, there is no explanation why James would not ask for early repayment or ask Chan when he could make repayment of the Loan. That James instead asked for a loan of \$50,000 from Chan, is in fact contrary to this and reinforces that there was no Loan from the plaintiff to the defendant. Neither Li nor Winnie is able to explain why James would do this. They simply say that it was James who asked. But it is also accepted by them that James was the one in charge of the Project, on behalf of the plaintiff.

35 James’ letter dated 21 July 2017 to Chan poses another difficulty for the plaintiff’s case. In his letter, James said that the plaintiff was in “tough financial difficulties”.⁵¹ Winnie also said that by July 2017, the plaintiff found itself in financial difficulties which posed a problem for the plaintiff to make the necessary payments to its suppliers.⁵² This naturally raises the question of whether the plaintiff had the financial strength to make an interest free loan to the defendant of \$1.398m which was not repayable, even in part, for around three years. If the plaintiff was indeed in financial difficulty, it is questionable why it did not call on the defendant to make repayment of the Loan.

36 Chua, Winnie and Li’s explanation was that the financial difficulties were only in relation to the project account for the Project and the plaintiff was financially healthy overall.⁵³ Chua said that he did not want to pump more money into the Project.⁵⁴ However, even if their evidence on this is accepted, it would mean that James was correct in saying that the plaintiff was in “tough

⁵¹ ACB at 198.

⁵² Winnie AEIC at [32]–[33].

⁵³ 24 May 2022 Transcript, p 72, line 14 to p 73 line 2; 24 May 2022 Transcript p 155, lines 10–17; 25 May Transcript, p 65, lines 4–9.

⁵⁴ 25 May Transcript, p 65, lines 6–7.

financial difficulties”, at least in relation to the Project and that this was the reason he needed to borrow money from Chan for the Project. This reinforces the defendant’s case, which is that the Defendant’s Loan was extended to the plaintiff on James’ request, because he needed money to pay off the plaintiff’s contractors.

37 In summary, there is no documentary evidence from the plaintiff that supports the existence of the Loan. On the contrary, the documentary evidence from the plaintiff shows that the plaintiff took a loan from the defendant and that the payments for \$1.398m were repayments from the plaintiff for advances made by the defendant.

Inconsistencies in Plaintiff’s case

Plaintiff’s inconsistent positions in its claim

38 In addition to the correspondence from James and Winnie, the plaintiff’s case is also undermined by inconsistencies in the evidence of the plaintiff’s witnesses about its claim.

39 The plaintiff’s case on the alleged agreement has been markedly inconsistent. In its first SOC dated 29 June 2020, it claimed an outstanding balance of \$1.19m that was unpaid from the defendant out of the agreed contract sum of \$2.42m.⁵⁵ In Li’s affidavit filed in support of HC/SUM 727/2021 dated 10 March 2021, the plaintiff alleged that the payments were made to the defendant as a security deposit. In its amended SOC dated 28 April 2021, the plaintiff changed its case to there being a loan of \$1.398m to the defendant.⁵⁶

⁵⁵ Statement of Claim dated 29 June 2020 at [5].

⁵⁶ Statement of Claim (Amendment No 1) dated 28 April 2021 at [4].

There was no change of personnel, since Li said he was involved in the Project from the beginning and was also in charge of the conduct of this Suit. There is no satisfactory explanation for the three different bases of claims made by the plaintiff.

40 Neither is there any good explanation for why the plaintiff would have considered there to be a security deposit placed with the defendant. It is the plaintiff's case that Chua and Li knew of the Loan in early 2015. It is also Chua's evidence that he prepared ten payment vouchers in 2015 and 2016, at around the time the monies were transferred from the plaintiff to the defendant, which were described as "Company loan to SLH Development", although they were not counter-signed by Chan. It is also Winnie's evidence that around November 2016, Chua, Li and James had told her that the monies transferred to the defendant were part of the Loan and not repayments for the Defendant's Loan.

41 Yet despite their alleged awareness of the existence of the Loan since early 2015, and despite Chua's claims that he took concrete steps in 2015 and 2016 to record the Loan, the plaintiff did not pursue its initial claim against the defendant on the basis of the Loan. Instead, the plaintiff first sought \$1.19m from the defendant as payment of unpaid amounts from the agreed contract sum. It then asserted that there was a security deposit placed with the defendant, that should be repaid to the plaintiff. In March 2021, Li testified in his affidavit filed in response to the Defendant's application to set aside default judgment which had been entered in this matter, that:⁵⁷

... The Plaintiff confirms that the payments were made to the Defendant as a security deposit. The common industry conduct

⁵⁷ Li's affidavit dated 10 March 2021 at [32].

is that an unconditional performance bond needs to be issued to the Owner. In the project, both parties had a mutual agreement that in order to save cost, the Plaintiff will pay a security deposit of \$1,190,000.00 to the Defendant and the same amount will be paid back to the Plaintiff upon completion of the project.

42 This is wholly inconsistent with the plaintiff's evidence that Chua and Li knew of the Loan since early 2015. It begs the question: Why would the plaintiff initiate a claim against the defendant on the basis of the return of a security deposit, when it allegedly knew since 2015 that the monies were the subject of the Loan, especially given that Chua had recorded vouchers in that vein and Winnie had asked Chan in November 2016 for repayment of this Loan?⁵⁸

43 Li's explanation was that in his mind then, a security deposit is the same as the Loan. However, this explanation is also inconsistent with the plaintiff's case and Li's own evidence, that the plaintiff gave the Loan, *inter alia*, because the defendant would waive the need for a \$1.5m security deposit or performance guarantee.⁵⁹ In other words, the plaintiff's case is that by providing the Loan, there would be no need for the plaintiff to provide a security deposit. It is thus hard to believe that Li would regard a security deposit as being the same as the Loan when the plaintiff initiated its claim.

Plaintiff's inconsistent evidence on why it did not seek return of Loan

44 The plaintiff's case is also undermined by inconsistencies in the evidence of the plaintiff's witnesses about why it did not seek the return of the Loan.

⁵⁸ PBA 85 at [14].

⁵⁹ Li AEIC [13].

45 During cross-examination, Li was queried why the plaintiff did not put in writing to the defendant that it had also promised two other projects in return for the Loan, and why after the Loan became repayable on 12 April 2018, the plaintiff did not write to Chan to seek repayment of the Loan.⁶⁰

46 Li’s explanation was that Daniel Ong (“Ong”) prevented the plaintiff from communicating directly with the owner of the Project, Chan, throughout the Project. Li sought to characterise Ong as an intermediary for the defendant and initially denied that Ong was an employee of the plaintiff. Li testified that his understanding of an employee was someone with an employment contract, had a regular salary, and attended the workplace regularly.⁶¹ Ong had none of those things. However, Li admitted that the plaintiff paid CPF contributions to Ong, and eventually admitted that the plaintiff considered Ong as its employee on a casual basis until February 2017.⁶²

47 Thus, on the evidence, Li’s testimony was that the plaintiff’s casual employee, Ong, prevented the plaintiff from directly communicating with Chan. Instead, the plaintiff had to communicate through Ong.⁶³ Li said that if the plaintiff wrote to Chan directly, Ong may feel he is undercut.⁶⁴

48 However, Winnie communicated with Chan directly in November 2016 and March 2017, despite the concerns expressed by Li about bypassing Ong. Winnie also testified that she was not told that she could not contact Chan

⁶⁰ 24 May 2022 Transcript, p 55, lines 20 to p 60 line 2.

⁶¹ 24 May 2022 Transcript, p 84, lines 29–31.

⁶² 24 May 2022 Transcript, p 93, line 29–31.

⁶³ 24 May 2022 Transcript, p 15, lines 16–23.

⁶⁴ 24 May 2022 Transcript, p 40 line 31 to p 41 line 6; 24 May 2022 Transcript, p 95 line 23 to p 96 line 3.

directly.⁶⁵ She said that she called Chan in November 2016, because Ong was not contactable then.⁶⁶ On Winnie’s evidence, she also met Chan directly in the plaintiff’s office in March 2017. This was without Ong. She testified that she did not contact Ong after November 2016.⁶⁷

49 Winnie’s direct contact with Chan, on two occasions, without any seeming concern about undercutting Ong, runs contrary to Li’s evidence that the plaintiff could not contact Chan directly but had to do so through Ong.

50 Li’s evidence that communication had to go through Ong, is also inconsistent with the plaintiff’s own Further and Better Particulars. The plaintiff in response to a query on when and where the defendant made requests for the Loan, had replied that: “[T]he Defendant’s Mr. Chan made the request by way of telephone correspondence to the Plaintiff’s late Mr. James Koh.”⁶⁸

51 Li asserted on the stand that the plaintiff’s reply in its Further and Better Particulars is not correct and maintained that communication was only between Ong and Chan.⁶⁹ However, by Li’s own evidence, the plaintiff had provided untruthful replies in its Further and Better Particulars. His willingness to deny the truth of the plaintiff’s particulars in pleadings, raises doubts about the veracity of the evidence alleged by the plaintiff.

52 This is compounded by Li’s willingness to assert a position that is plainly contradicted by documentary evidence. Li asserted that he had

⁶⁵ 24 May 2022 Transcript, p 166, lines 19–22.

⁶⁶ 24 May 2022 Transcript, p 127, lines 9–18.

⁶⁷ 24 May 2022 Transcript, p 16, lines 1–5.

⁶⁸ Set Down Bundle (“SDB”) at p 53.

⁶⁹ 24 May 2022 Transcript, p 36 line 26 to p 37 line 18.

documentary proof that the plaintiff chased Chan for the return of the Loan before 2018 and that this is evidenced in Winnie’s email to Chan in November 2016.⁷⁰ However, neither Winnie’s email nor her attachment makes such a demand. On the contrary, her attachment, which is the 17 Nov 16 Account, is a schedule of repayments by the plaintiff to the defendant for cash advances made by the defendant. This is clear from the title of the 17 Nov 16 Account, which states “Repayment for Advance Payment from SLH”. Li’s willingness to assert a position that is plainly contradicted by the wording of a document from the plaintiff, together with his willingness to deny the truth of what the plaintiff had provided in its Further and Better Particulars, in my view, calls for more care in assessing the credibility of his evidence.

53 There is, hence, no satisfactory explanation why the plaintiff did not ask for the return of the Loan. The plaintiff also explained that it remained hopeful that the defendant would award it with the other two projects.⁷¹ However, on the plaintiff’s evidence, the Project had completed on 12 April 2018, and the Loan became due then. By 2019, about a year would have gone by without payment and indication of the two additional projects. The plaintiff has not indicated on what basis they remained hopeful, such that they did not ask for repayment of the Loan or any updates about the additional two projects. Moreover, Li testified that as of 2019, it appeared that Chan was no longer intending to honor his agreement.⁷² Yet, the plaintiff did not make any attempt to convert the verbal agreement to written form or send a demand for repayment. Instead, the plaintiff waited till 11 May 2020, when it issued a letter of demand to the defendant.

⁷⁰ 24 May 2022 Transcript, p 50 line 29 to p 51 line 32.

⁷¹ PBA 8 at [20] and PBA 90 at [36].

⁷² PBA 27 at [25].

54 There are also inconsistencies in Winnie’s evidence about the repayment of the Loan. Winnie said that she requested Chan for repayment when she called him around November 2016, but she acknowledged that in her 17 November 2016 email, she did not make such a request.⁷³ Neither did she do so in any of her subsequent written communication with Chan. The plaintiff submits that there was no point for Winnie to do so, as she was in the midst of giving Chan an opportunity to prove his allegations.⁷⁴ Yet, even after he failed to do so, and despite her alleged misgivings about the lack of proof of the defendant’s advances to the plaintiff, she still did not send any written communication to follow up to ask for the proof of advances.

55 The above examination of the plaintiff’s evidence shows that the plaintiff’s evidential case is very weak, even before the defendant’s evidence is examined.

The defendant’s evidence

56 The plaintiff makes three main submissions regarding the defendant’s evidence. First that the Defendant’s Loan is not believable. Second, that Chan was an evasive witness. Third, Chan’s evidence should be scrutinised because of his alleged perjury. I now turn to examine the defendant’s evidence.

The Defendant’s Loan

57 The plaintiff submits that its case is more believable, as there are doubts about the veracity of the Defendant’s Loan. The plaintiff relies on the following grounds to challenge the credibility of Chan’s testimony:

⁷³ 24 May 2022 Transcript, p 137 lines 4–9.

⁷⁴ PRS at [22].

- (a) Chan was not sure of the quantum of the loan. He did not keep proper records, when a reasonable person giving such a large loan would have done so.
- (b) There were discrepancies between Chan's payment vouchers and the repayment schedule sent by Winnie to Chan.
- (c) It is hard to believe that Chan would disburse loans in cash to James without any acknowledgement.
- (d) Chan's evidence that he was willing to write off the remainder of what he loaned the Plaintiff was not believable given the large amount written off.
- (e) The defendant's financial statement should have reflected the Defendant's Loan but it did not.
- (f) On Chan's evidence that it was a personal loan from him to James, the repayment made to the defendant cannot be treated as a repayment of the loan to the defendant.
- (g) It is not inconceivable that Ong received the monies documented in Chan's payment vouchers rather than James, given the close relationship between Ong and Chan.

58 Chan's evidence is that the Defendant's Loan arose because Ong and James had approached him for it. It was James who asked for the cheques to be cash cheques, as he said that he needed to pay contractors and he could not wait. Chan, as signatory of the defendant's bank account, would prepare a cash cheque for the requested amount. Ong and Chan would proceed to a United Overseas Bank branch to cash the cheque in. James would then receive the cash.

The plaintiff would at the same time issue a cheque to the defendant for a certain amount, with which it would be able to repay Chan. The plaintiff would raise a Project Claim after works were done. After the defendant made payment of the Project Claim, the defendant would bank in the cheque that had been issued by the plaintiff, as partial payment of the aggregated loan amounts.⁷⁵ Chan testified that he was initially a little uneasy giving cash and was also concerned about whether the cash advances would be repaid. However, as he was given a cheque by the plaintiff in return, this served as a set-off of the advances he gave against the progress claims.⁷⁶ He also became more assured after the first repayment cheque cleared and thus continued to make the cash advances. He did not keep proper records as the defendant only comprised of him, and he did not have any staff. He did however ask James for a record of the advances made, which resulted in the 17 Nov 16 Email and the 17 Nov 16 Account.

59 Chan testified that James later helped him with the renovation for his bungalow. While the value of that work did not equate with the remainder of the debt, he appreciated James' willingness to work towards repayment of the debt. He also testified that he was conscious that the plaintiff's bid was lower than other main contractors who had tendered for the Project.⁷⁷ He accordingly treated James' work on the bungalow as sufficient repayment of the remainder of the Defendant's Loan.

60 I find that Chan's explanation satisfactorily addresses the questions posed by the plaintiff about his mode of providing the loans to James. It is undisputed that Chan operated without assistance. He had his own system of

⁷⁵ Chan AEIC at [25].

⁷⁶ Chan AEIC at [26].

⁷⁷ 1 August 2022 Transcript, p 21, line 29 to p 22 line 9.

organising things, and his own approach to checks and balances. The plaintiff submits that Chan's claims are not credible as he did not keep proper record of the loans he made, but on Chan's evidence, he had asked James for a list of the loans made to the plaintiff. This led to Winnie's email enclosing the 17 Nov 16 Account, which was signed by James and contained the plaintiff's company stamp. This serves effectively as Chan's record of the loan. While the transfers in Chan's payment vouchers do not entirely match the payments reflected in the repayment schedule sent by Winnie, the fact that almost every transfer matches, supports Chan's evidence that he had provided such monies as a loan to the plaintiff. As set out above, it is also important that James himself, who was the person in charge on the plaintiff's side, had signed off and put the company stamp on the 17 Nov 2016 Account that Winnie emailed to Chan. In doing so, the plaintiff was affirming that the repayments were for a loan made to the plaintiff.

61 The plaintiff highlights that the defendant's financial statements for 2015 to 2017 do not indicate any loans from the defendant to the plaintiff and submits that this supports the plaintiff's case that there was no Defendant's Loan. Chan's explains that the loan monies "came from company accounts from director account", *ie*, that it was from his own money which does not belong to the company.⁷⁸ He also testified that the payment vouchers that he signed, did relate to the Defendant's Loan.⁷⁹ Documentary evidence shows that cash advances had been made out of the defendant's bank account, and not Chan's personal bank accounts.⁸⁰ It is undisputed that the defendant is a company that is wholly owned by Chan. It is dependent ultimately on personal funding by

⁷⁸ 1 August 2022 Transcript, p 47, lines 12–13.

⁷⁹ 1 August 2022 Transcript, p 65, lines 7–9 and 16–18.

⁸⁰ ACB at pp 126–184.

Chan. Where he provides loans to facilitate the business of the defendant, it is within his power to subsequently reclaim such monies from the defendant. In my view, Chan has provided an acceptable explanation for why he did not record the Defendant's Loans on the defendant's financial statements. That James chose to make the repayments back to the defendant (rather than Chan personally) and titled the 17 Nov 16 Account as repayment for advances made to the plaintiff in relation to the Project, reinforces Chan's evidence of the Defendant's Loan.

62 The plaintiff also submits that the relationship between Ong and Chan is suspicious, and it is likely that Ong took the monies advanced by Chan, rather than James or the plaintiff. Ong denies ever having taken loans from Chan. Chan also asserts that he has never provided personal loans to Ong. During cross-examination of Ong, the plaintiff referred Ong to a schedule of payment titled as "Ong Pang Heng Daniel Personal Loans". Wang testified that this schedule was prepared by her. She did not know if there were loans from the defendant to Ong. She simply saw that the monies in the transactions in this schedule was not received by the plaintiff, and the payment vouchers showed that Ong received the monies, so she grouped them into another table. The schedule titled "Ong Pang Heng Daniel Personal Loans" hence does not constitute documentary evidence that Ong took personal loans. There is thus no evidence that Ong took the monies documented in Chan's payment vouchers, beyond the plaintiff's pure speculation.

Whether Chan was an evasive witness

63 The plaintiff submits that Chan is not a reliable witness as he tends to be evasive and tailor his evidence. I do not find this to be so. Chan is 76 years old and is hard of hearing. He uses a hearing aid. Counsel for the defendant had

highlighted this before the cross-examination began and asked that questions be put to Chan slowly and clearly.⁸¹ There were many occasions where Chan was unable to understand what was being asked of him by counsel for the plaintiff or was confused by the questions.

Alleged perjury of Chan

64 The plaintiff also submits that Chan’s evidence should be scrutinised because of Li’s allegation that Chan committed perjury. Li said that he witnessed Chan and Ong discussing the case at the entrance of the court building before trial resumed on 26 May 2022.⁸² For context, Ong had completed his evidence on the stand the day before. However, Chan testified that he did not speak with Ong that morning.⁸³ Li thus filed a police report. As of the date of the parties’ closing submissions, no charges or legal proceedings has been brought against Chan.

65 The defendant takes the position that Chan had not perjured himself at trial. Any inconsistencies in his responses to counsel for the plaintiff’s questioning about the alleged perjury is explainable by Chan’s elderly age and hearing disability, as well as his clear confusion by the questions, as seen from the transcript.

66 Even if the plaintiff’s case on this is taken at its highest, and Chan is eventually found guilty of the alleged perjury, I find that it does not affect the assessment of the evidence regarding the plaintiff’s case.

⁸¹ 26 May 2022 Transcript, p 2, lines 7–13.

⁸² 26 May 2022 Transcript, p 12, lines 7–14.

⁸³ 26 May 2022 Transcript, p 17, lines 6–32.

67 Preliminarily, the fact that a witness has lied on one or two points does not mean that all of their evidence must be rejected. The court's task is to sieve the evidence and ascertain which parts of it may be accepted: *Public Prosecutor v Singh Kalpanath* [1995] 3 SLR(R) 158 at [55]. In the present case, I find that Chan's evidence regarding the existence of the Defendant's Loan and the absence of the Loan is strongly supported by the plaintiff's own documentary evidence.

68 More importantly, even if Chan perjured in respect of whether he saw Ong or spoke to him on the morning of the hearing, that does not mean that the Loan existed. Even before Chan's evidence is considered, I find that the plaintiff's case is already substantially undermined by its own documentary evidence. This is further compounded by the inconsistencies in the evidence of the plaintiff's witnesses about its claim and the Loan.

Conclusion

69 Assessing the evidence on the whole, I find that the plaintiff has not proven that it extended the Loan to the defendant. Instead, the evidence clearly shows that the payments from the plaintiff were a repayment to the defendant for monies advanced to the plaintiff from the defendant. Consequently, the issue of a presumed resulting trust, raised by the plaintiff, does not arise.

70 The plaintiff had garnished the defendant's bank account, for the total sum of \$86,355.33. The plaintiff's position is that in the event the plaintiff's claim is dismissed, the sums of \$86,355.33 and \$300 (bank charges) should be returned to the defendant.⁸⁴ In light of my findings above, I order that these sums be returned to the defendant.

⁸⁴ Plaintiff's Scotts Schedule S/No 3.

71 In conclusion, I dismiss the plaintiff's claim. The garnished sum of \$86,355.33 and the sum of \$300 for bank charges are to be returned to the defendant.⁸⁵ Parties are to agree on costs or file their submissions on costs within seven days of this judgment.

Kwek Mean Luck
Judge of the High Court

Ashok Kumar Rai and Yeo Wei Ying Jolyn (Cairnhill Law LLC) for
the plaintiff;
Yong Shu Wei Christopher and Fong Lin Elizabeth (Legal Solutions
LLC) for the defendant

⁸⁵ Defence and Counterclaim (Amendment No 4) at [15].