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

[2024] SGHCR 13

Suit No 947 of 2021 (Summons Nos 2175, 2176 and 2399 of 2024)

Between

(1) Tee Kim Leng
(2) Tee Chor Leong
(3) Toh Yew Keat
(4) Lee Kien Han
(5) Tee Yee Koon
(6) Phang Soon Mun
(7) Alvin Lee Sze Chang

… *Plaintiffs*

And

Hong Kah Ing

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure — Striking out — Whether the plaintiffs' claims for breach of contract ought to be struck out for having no reasonable cause of action, being frivolous or vexatious or an abuse of process]
[Civil Procedure — Summary judgment — Whether summary judgment ought to be granted on the plaintiffs' claims]
[Civil Procedure — Costs — Security — Whether the foreign plaintiffs ought to pay security for costs]

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Tee Kim Leng and others
v
Hong Kah Ing

[2024] SGHCR 13

General Division of the High Court — Suit No 947 of 2021 (Summons Nos 2175, 2176 and 2399 of 2024)
Assistant Registrar Gerome Goh Teng Jun
3 October 2024

13 November 2024

Assistant Registrar Gerome Goh Teng Jun:

1 HC/S 947/2021 ("Suit") is the plaintiffs' suit against the defendant for breach of contract arising out of the defendant's failure to transfer 18,000,000 ordinary shares in the issued and paid up share capital of Silkroad Nickel Ltd ("SNL") (the "Repayment Shares") to the first to third plaintiffs in equal proportion.[1]

2 The following applications, HC/SUM 2175/2024 ("SUM 2175"), HC/SUM 2176/2024 ("SUM 2176") and HC/SUM 2399/2024 ("SUM 2399"), were taken out by the parties in this Suit:

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[1] Statement of Claim (Amendment No 1) filed on 23 November 2022 ("SOC") at paras 14 and 15.

(a) SUM 2175 was the defendant's application under O 23 r 1 of the Rules of Court 2014 ("ROC 2014") for the plaintiffs to furnish security for the defendant's costs up to the conclusion of the Suit;

(b) SUM 2176 was the defendant's application under O 18 r 19(1) of the ROC 2014 for the Statement of Claim (Amendment No. 1) filed on 23 November 2022 ("SOC") to be struck out and for the fourth to seventh plaintiffs to be struck out as plaintiffs to the Suit; and

(c) SUM 2399 was the plaintiffs' application under O 14 r 1 of the ROC 2014 for summary judgment against the defendant.

3 Having carefully considered the affidavits filed and the submissions made by the parties, I dismissed SUM 2175, SUM 2176 and SUM 2399 on 3 October 2024.

4 The defendant appealed against my decisions in SUM 2175 and SUM 2176. These are my full grounds of decision.

Background

5 The fourth to seventh plaintiffs, Lee Kien Han, Tee Yee Koon, Phang Soon Mun and Alvin Lee Sze Chang, were partners in Han & Partners ("H&P"), a Malaysian law practice.[2] The defendant, Hong Kah Ing, was a director and majority shareholder of Far East Mining Pte Ltd ("FEM"), a Singapore registered company, from 27 February 2014 to 1 November 2023.[3]

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2 SOC at para 1.

3 SOC at para 2; Defence filed on 15 July 2024 ("Defence") at para 2.

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6 On 16 August 2016, FEM entered into an agreement with Axis Megalink Sdn Bhd ("Axis") pursuant to which Axis was to (amongst others) introduce FEM to China Bearing (Singapore) Limited ("CBL") as one of the potential listed companies which FEM could acquire a controlling stake in ("Engagement Letter").[4]

7 On 7 October 2017, the defendant, FEM and Syed Abdel Nasser Bin Syed ("Nasser") (a director of FEM from 27 February 2014 to 6 May 2024[5]) entered into a written agreement titled "Letter of Undertaking" with H&P ("Letter of Undertaking").[6] The Letter of Undertaking provided for CBL to purchase all the ordinary shares of FEM's wholly owned Indonesian company, PT Anugrah Tambang Sejahtera, in a reverse takeover that would result in FEM obtaining a controlling stake in CBL ("Transaction"). Under the Letter of Undertaking, FEM, Nasser and the defendant undertook to transfer $15,000,000.00 to H&P ("H&P Consideration") upon the completion of the Transaction in consideration of H&P introducing CBL to FEM, Nasser and the defendant. This sum was to be fully settled by the issuance of new ordinary shares of CBL ("H&P Consideration Shares") to H&P and/or H&P's nominee.[7]

8 The Transaction was eventually completed on 5 July 2018. However, the H&P Consideration Shares were not transferred to H&P.[8] CBL was renamed Silkroad Nickel Ltd ("SNL") on 5 July 2018 and SNL was listed on the

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4 Defence at paras 4 and 5.

5 Defence at para 3.

6 Affidavit of Hong Kah Ing dated 2 August 2024 at p 19.

7 SOC at para 4; Defence at para 6.

8 SOC at para 7; Defence at para 10.

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Singapore Exchange Securities Trading Limited's Catalist board on 30 July 2018.[9]

9 The fourth to seventh plaintiffs therefore commenced HC/S 1210/2018 ("Suit 1210") against FEM, the defendant, Nasser and SNL to seek specific performance of the transfer of the H&P Consideration Shares.[10] Parties eventually entered into a settlement agreement and Suit 1210 was discontinued on 5 March 2019. However, the terms of the settlement agreement were disputed by the parties.

10 In this regard, the plaintiffs claimed that an oral settlement agreement was entered into by the fourth plaintiff, acting for and on behalf of the fourth to seventh plaintiffs, and the defendant, for and on behalf of himself, Nasser and FEM on or around 26 February 2019 ("the Oral Settlement Agreement").[11] The alleged terms of the Oral Settlement Agreement were as follows:

(a) the defendant and FEM accepted joint liability to repay, on behalf of H&P, the H&P Consideration to the fourth plaintiff;

(b) the H&P Consideration would be paid partially in cash and the balance amount would be paid by a transfer of 20,689,655 shares to be received and held by the first to third plaintiffs, Tee Kim Leng, Tee Chor Leng and Toh Yew Keat, as H&P's nominees and/or trustees; and

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9 Defence at para 8.

10 SOC at para 8; Defence at para 11.

11 SOC at para 9.

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(c) in consideration of the defendant entering into the Oral Settlement Agreement, the fourth plaintiff agreed on behalf of H&P to discontinue Suit 1210.[12]

11 The plaintiffs claimed that the Oral Settlement Agreement was evidenced and reflected by two written agreements dated 26 February 2019 entered into by the parties:

(a) The first agreement made between FEM, the defendant and the fourth plaintiff ("First Written Agreement")[13] provided that the defendant and FEM would pay a cash portion of $1,130,000.00 plus legal costs to the fourth plaintiff in three tranches, and no later than 1 July 2019. Within three days of the payment, the fourth plaintiff would file a Notice of Discontinuance in Suit 1210.[14]

(b) The second agreement made between the first to third plaintiffs (as nominees for the fourth plaintiff) and the defendant ("Second Written Agreement")[15] provided that the defendant (i) acknowledged the sum of $7,560,000.00 ("Debt") was owed by the defendant to the first to third plaintiffs; and (ii) undertook to repay the Debt in accordance with the Second Written Agreement (see clause 2.1 of the Second Written Agreement). Under the Second Written Agreement, the defendant was obligated to repay the Debt by way of transfer of the

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12 SOC at para 9.

13 Affidavit of Hong Kah Ing dated 2 August 2024 at p 31.

14 SOC at para 10.

15 Affidavit of Hong Kah Ing dated 2 August 2024 at p 36.

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Repayment Shares to the first to third plaintiffs or their nominees in equal proportion.[16]

12 The defendant did not contest the existence of the First Written Agreement and the Second Written Agreement,[17] but denied the existence of the Oral Settlement Agreement.[18] It was undisputed that the defendant made the requisite payments pursuant to the First Written Agreement and Suit 1210 was discontinued.[19]

13 In this Suit, the plaintiffs claimed that the defendant breached the terms of the Oral Settlement Agreement and cl 3.1 of the Second Written Agreement by failing to transfer the Repayment Shares to the first to third plaintiffs in equal proportions between 2 August 2019 and 12 August 2019. The plaintiffs sought an order for specific performance for the transfer of the Repayment Shares and, further or alternatively, damages.[20]

14 The defendant's defence was that the Second Written Agreement was unenforceable for lack of consideration and, in any event, he fulfilled his contractual obligation under the Second Written Agreement to issue the share transfer instruction letter to UOB Kay Hian ("Share Transfer Letter" and "UOB") for the Repayment Shares to be issued to the first to third plaintiffs. Further or alternatively, the defendant denied that the plaintiffs suffered any

16 SOC at paras 12 and 13.

17 Defence at paras 14 to 17.

18 Defence at para 37.

19 Defendant's written submissions dated 30 September 2024 ("DWS") at para 20.

20 SOC at paras 14 and 15.

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damages attributable to any fault of the defendant as a result of the defendant's inability to transfer the Repayment Shares to the first to third plaintiffs.[21]

The parties' cases

SUM 2176

15 In SUM 2176, the defendant sought to strike out the plaintiffs' SOC and the fourth to seventh plaintiffs as plaintiffs in the Suit.

16 The defendant submitted that the plaintiffs had no reasonable cause of action as their claims were plainly unsustainable in fact or in law for the following reasons:

(a) The alleged Oral Settlement Agreement did not exist,[22] and on the assumption that it existed, there was no breach of the Oral Settlement Agreement since parties were only obligated to enter into the First Written Agreement and Second Written Agreement.[23]

(b) The Second Written Agreement was unenforceable for lack of consideration.[24]

(c) If the Second Written Agreement was enforceable, the issuance of the Share Transfer Letter was the defendant's only obligation under the Second Written Agreement and this was performed by the defendant.[25]

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21 Defence at paras 42 and 43.

22 DWS at paras 58 to 62.

23 DWS at paras 37.

24 DWS at paras 33 to 35.

25 DWS at paras 39 to 42.

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(d) If the defendant was obligated to assist with the transfer of the Repayment Shares, the defendant validly tendered performance only to be prevented by the actions (or inaction) of the plaintiffs.[26]

The plaintiffs' claims were frivolous or vexatious because they were "obviously unsustainable" or "wrong" and an abuse of process in light of the defendant's various attempts to effect the transfer of the Repayment Shares.[27]

17 Further, as no Oral Settlement Agreement was entered into between the parties or the Oral Settlement Agreement was only an "agreement to agree", the fourth to seventh plaintiffs ought to be struck out as plaintiffs since there would be no common question of law or fact, relief claimed under the same transaction and they would have no reasonable causes of action since they were not parties to the Second Written Agreement.[28]

18 The plaintiffs submitted that all the relevant facts establishing breaches of the Second Written Agreement (vis-à-vis the first to third plaintiffs) and/or the Oral Settlement Agreement (vis-à-vis the fourth to seventh plaintiffs) have been fully pleaded and established reasonable causes of action against the defendant.[29] The plaintiffs' claims were neither frivolous, vexatious or an abuse of process.[30] Further, the fourth to seventh plaintiffs should not be struck out as plaintiffs in the Suit as the Letter of Undertaking, First Written Agreement and

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26 DWS at paras 43 to 55.

27 DWS at paras 67 to 74.

28 DWS at paras 65 to 66.

29 Plaintiffs' written submissions dated 30 September 2024 ("PWS") at para 52.

30 PWS at paras 53 to 56.

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Second Written Agreement were inextricably linked and they had an interest in seeking enforcement of the terms of the Second Written Agreement.[31]

SUM 2175

19 In SUM 2175, the plaintiffs sought summary judgment against the defendant. The plaintiffs submitted that they had established a *prima facie* case that the defendant was liable for damages quantified by the Debt for breaching the terms of the Second Written Agreement[32] and for breaching the terms of the Oral Settlement Agreement.[33] Further, the defendant had no good faith defence for the following reasons:[34]

(a) The fact that the defendant owed the Debt to the first to third plaintiffs was stated in cl 2.1 of the Second Written Agreement.[35]

(b) The consideration provided by the first to third plaintiffs in refraining from enforcing their claim on the Debt and/or their forbearance from claiming interest on the Debt as stated in cl 2.1 of the Second Written Agreement.[36]

(c) The defendant's obligation under the Second Written Agreement was to repay the Debt by transferring the Repayment Shares to the first to third plaintiffs and the issuance of the Share Transfer Letter was

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31 PWS at para 59.

32 PWS at paras 15 to 24.

33 PWS at para 25.

34 PWS at paras 26 to 29.

35 PWS at para 31.

36 PWS at para 34.

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merely one of the steps the defendant had to undertake in order to transfer the Repayment Shares.[37]

20 The defendant submitted that he had a good faith defence for the reasons stated at [15] above. He also submitted that the court would generally be cautious in granting summary judgment on a disputed oral agreement.[38]

SUM 2399

21 In SUM 2399, the defendant submitted that the court had jurisdiction to order security for costs since the plaintiffs were ordinarily out of jurisdiction and the first to third plaintiffs were the fourth plaintiff's nominees.[39] The court ought to exercise its discretion to order security since the plaintiffs did not have assets in Singapore[40] and the plaintiffs' claims did not have a reasonably good prospect of success.[41] The defendant sought security for costs of the sum of $200,000 comprising $70,000 for pre-trial work, $100,000 for an estimated eight days of trial, and $30,000 for post-trial work.[42]

22 The plaintiffs did not dispute that the court's discretion to order security for costs had been invoked.[43] However, they submitted that the court should not order security for costs because of the plaintiffs' strong case, the history between the parties, the significant expense incurred by the plaintiffs to enforce

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37 PWS at para 39.

38 DWS at para 78.

39 DWS at para 84.

40 DWS at paras 87 to 91.

41 DWS at para 92.

42 DWS at para 93.

43 PWS at para 63.

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their rights, and the bilateral enforcement regime between Singapore and Malaysia.[44] If the court was inclined to order security for costs, the sum of $25,000 would be appropriate for pre-trial work and it would be premature to award security for trial and post-trial work.[45]

Issues to be determined

23 The central issues to be determined were:

(a) whether the plaintiffs' claims ought to be struck out;

(b) whether summary judgment ought to be granted on the plaintiffs' claims; and

(c) whether security for costs should be ordered.

My decision

Whether the plaintiffs' claims ought to be struck out

24 Under O 18 r 19(1) of the ROC 2014, the court may strike out any pleading on the ground that it: discloses no reasonable cause of action; is scandalous, frivolous or vexatious; may prejudice, embarrass or delay the fair trial of action; or is otherwise an abuse of process of the court.

Reasonable cause of action

25 A reasonable cause of action is one which has some chance of success when only the allegations in the pleadings are considered. As long as the statement of claim discloses some cause of action, or raises some question fit to

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44 PWS at paras 70 to 75.

45 PWS at paras to 78 to 81.

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be decided at the trial, the mere fact that the case is weak and is not likely to succeed is no ground for striking it out (*Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 ("*Gabriel Peter*") at [21]). The court must be mindful that a claim should only be struck out in plain and obvious cases. The claim must be obviously unsustainable, the pleadings unarguably bad and it must be impossible, not just improbable for the claim to succeed before the court will strike it out (*Singapore Civil Procedure 2020 vol 1* (Chua Lee Ming gen ed) (Sweet & Maxwell, 10th edition, 2020) at para 18/19/6. Further, for a striking out application based on the ground of no reasonable cause of action, the pleaded facts are generally presumed to be true in favour of the plaintiff (*Tan Eng Khiam v Ultra Realty Pte Ltd* [1991] 1 SLR(R) 844 at [29]) and no evidence shall be admissible on that application (see O 18 r 19(2) of the ROC 2014).

26 Preliminarily, I observed that the plaintiffs' claims against the defendant were advanced on two grounds. First, the first to third plaintiffs claimed against the defendant for breach of cl 3.1 of the Second Written Agreement. Second, the fourth to seventh plaintiffs as partners of H&P claimed against the defendant for breach of the Oral Settlement Agreement since the fourth plaintiff entered into the Oral Settlement Agreement for and on behalf of H&P. The plaintiffs claimed that the defendant breached the Second Written Agreement and the Oral Settlement Agreement by failing, refusing and/or neglecting to transfer the Repayment Shares or repay the Debt to the first to third plaintiffs.

27 In this regard, the defendant argued that the SOC did not contain a prayer for relief for damages arising out of the breach of the Second Written Agreement simpliciter but only damages for the breach of the Oral Settlement Agreement. While I agreed that prayer (b) of the relief section in the SOC appeared slightly unclear in stating "damages for breach of the second part of the Oral Settlement

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Agreement as evidenced and reflected by the [Second Written Agreement]", I proceeded on the basis that the pleadings were broad enough to cover a prayer for damages arising from breaches of *both* the Second Written Agreement and the Oral Settlement Agreement. This was from reading the prayers of relief coherently with paragraphs 14 and 15 of the SOC which alleged that the defendant failed to transfer the Repayment Shares to the first to third plaintiffs in breach of the Oral Settlement Agreement *and* clause 3.1 of the Second Written Agreement.

28 As summarised at [15] above, the defendant's case as regards the first to third plaintiffs' case of breach of the Second Written Agreement was that the Second Written Agreement was unenforceable for lack of consideration and, even if it was enforceable, the only obligation was to issue the Share Transfer Letter and this was done. Alternatively, the defendant had fully tendered performance. The defendant's case as regards the fourth to seventh plaintiffs' case of breach of the Oral Settlement Agreement was that the Oral Settlement Agreement did not exist, and even if it existed, it was not breached since parties were only obligated to enter into the First Written Agreement and Second Written Agreement.[46]

29 I was of the view that the plaintiffs' claims were reasonable causes of action. Turning to the first to third plaintiffs' case of breach of the Second Written Agreement, I rejected the defendant's argument that the Second Written Agreement ought to have been struck out for not having a reasonable cause of action on the basis of lack of consideration in light of cl 2.1 of the Second Written Agreement. Clause 2.1 sets out the defendant's acknowledgment that the Debt was owed by the defendant to the first to third plaintiffs:

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46 DWS at paras 37.

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> In consideration of [the defendant] at the request of the [first to third plaintiffs] entering into the [First Written Agreement] with [the fourth plaintiff], [the defendant] acknowledges that the sum of **SGD7,560,000.00** (the "**Debt**") is owed by [the defendant] to the [first to third plaintiffs] and undertakes with the [first to third plaintiffs] to repay or discharge the Debt in accordance with the terms of this Agreement when it becomes due for repayment or discharge. The [first to third plaintiffs] agree that no interest shall be paid on the Debt and [the defendant] shall repay the Debt in full to the [first to third plaintiffs] by 12 August 2019.

30 Consideration signifies a return recognised in law which is given in exchange for the promise sought to be enforced. A valuable consideration may consist either in "some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other" (*Gay Choon Ing v Loh Sze Ti Terence Peter* [2009] 2 SLR(R) 332 at [66]–[67] citing *Currie v Misa* (1875) LR 10 Exch 153 at 162 which was affirmed in *Misa v Currie* (1876) 1 App Cas 554).

31 In my view, forbearance by the first to third plaintiffs to sue on the Debt (as acknowledged in cl 2.1) constituted, on a *prima facie* basis, sufficient consideration. Furthermore, clause 2.1 expressly provided for the first to third plaintiffs' agreement that no interest shall be paid on the Debt and this too was likely to constitute sufficient consideration.

32 Proceeding on the basis that the Second Written Agreement was enforceable, I found the defendant's argument that his sole obligation under the Second Written Agreement was to issue the Share Transfer Letter to UOB to be wholly without merit. This argument was contradicted by the plain wording of cl 3.1 of the Second Written Agreement which provided that:

> **3. TERMS OF REPAYMENT/DISCHARGE OF THE DEBT**
>
> 3.1 **Repayment of Debt in Shares**

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> 3.1.1 Parties agrees that [the defendant] is obligated to repay the Debt to the [first to third plaintiffs] only by way of transfer of 18,000,000 ordinary shares in the issued and paid up share capital of [SNL] (the **"Repayment Shares")** from [the defendant] to the [first to third plaintiffs] or the [first to third plaintiffs'] nominee(s) in equal proportion. In the event that the Debt is settled through Repayment Shares, [the defendant] will issue [the Share Transfer Letter to UOB] in the form as attached in Appendix A.
>
> 3.1. 2 Parties agree that the repayment of the Debt in accordance with Clause 3.1.1 shall take place after 1 August 2019 but in any event, no later than 12 August 2019.
>
> 3.1.3 Parties agree that repayment in accordance with this Clause 3.1.1 and 3.1.2 shall fully, irrevocably and unconditionally discharge [the defendant] of all obligations to pay the Debt, irrespective of the market value of the Repayment Shares at the time of transfer.

While cl 3.1.1 sets out the defendant's obligation to repay the Debt through the transfer of the Repayment Shares to the first to third plaintiffs and provided for the defendant to issue the Share Transfer Letter to UOB, it was noteworthy that cl 3.1.2 mandated that the repayment of the Debt through the transfer of shares "*shall* take place after 1 August 2019 and no later than 12 August 2019" [emphasis added]. It is apparent that the Second Written Agreement envisaged the defendant being obligated to transfer the Repayment Shares to the first to third plaintiffs *by no later than 12 August 2019*. To say that the only obligation under the Second Written Agreement was for the defendant to issue the Share Transfer Letter would be, in my view, an erroneous interpretation of the plain wording of cl 3.1 of the Second Written Agreement.

33 I noted that the words "[i]n the event that the Debt [was] settled through Repayment Shares" in cl 3.1.1 indicated that the Second Written Agreement also envisaged the possibility that the Debt could be settled through some other means despite it being clear that the parties' primary intention that the Debt was

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"only by way of transfer of [the Repayment Shares]". The possibility that the Debt could be settled through some other means (presumably if for some reason the transfer of Repayment Shares was not possible) made clear that the defendant's obligation under the Second Written Agreement extended to repaying the Debt to the first to third plaintiffs. It therefore could not have been the parties' intention for the defendant to only be obligated to execute the Share Transfer Letter without needing to ensure that the Repayment Shares were transferred to the first to third plaintiffs before 12 August 2019.

34 In this regard, I agreed with the plaintiffs that the issuance of the Share Transfer Letter was merely one of the steps that the defendant was to undertake in order to effect the transfer of the Repayment Shares in repayment of the Debt. This interpretation was fortified by cl 4.1 of the Second Written Agreement which stated:

> 4.1 [The defendant] as legal and beneficial owner hereby mortgages, charges and assigns as a first equitable mortgage, fixed charge and assignment in favour of the [first to third plaintiffs], and agrees to mortgage, charge and assign in favour of the [first to third plaintiffs], free from any security, all of [the defendant]'s present and future rights, benefits, title and interest in, under and arising out of 18,790 ordinary shares in the issued and paid up share capital of Far East Mining Pte. Ltd. (the "**Security Shares**"). [The defendant] hereby undertakes not to sell, contract to sell, offer, realise, transfer, assign, grant any option or right to acquire, directly or indirectly, or otherwise dispose of any of the Security Shares prior to repayment of the Debt in accordance with Clause 3.1 above.

Clause 4.1 envisaged that the first to third plaintiffs were to hold shares of FEM as security and that the defendant undertook not to sell or dispose of those shares prior to repayment of the Debt in accordance with cl 3.1 of the Second Written Agreement. As it was undisputed that the Repayment Shares were not transferred to the first to third plaintiffs, the first to third plaintiffs showed a

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prima facie case that the defendant breached cl 3.1 of the Second Written Agreement.

35 As for the fourth to seventh plaintiffs' claim against the defendant for breach of the Oral Settlement Agreement, I was also satisfied that there was a reasonable cause of action against the defendant for breach of the Oral Settlement Agreement for the defendant's failure to transfer the Repayment Shares to the first to third plaintiffs.

36 The plaintiffs pleaded that the fourth plaintiff entered into the Oral Settlement Agreement on behalf of the fourth to seventh plaintiffs as partners of H&P (see [5] above). The plaintiffs also pleaded that the Defendant and FEM accepted joint liability and responsibility to repay to the fourth plaintiff, on behalf of H&P, the H&P Consideration and this was to be repaid by way of a cash settlement and a transfer of the Repayment Shares to the first to third plaintiffs as H&P's nominees and/or trustees. In consideration for the defendant entering into the Oral Settlement Agreement, the fourth plaintiff, on behalf of the partners of H&P, would discontinue Suit 1210 (see [10] above).[47]

37 Proceeding on the assumption that these pleadings were true, I saw no reason why there would not be a reasonable cause of action against the defendant. The defendant's contention that the Oral Settlement Agreement did not exist merely raised a factual dispute to be determined and did not establish that there was no reasonable cause of action. As for the defendant's alternative argument that parties were only obligated under the terms of the Oral Settlement Agreement to enter into the First Written Agreement and Second Written

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47 SOC at para 9.

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Agreement,[48] I did not find this interpretation of the plaintiffs' pleadings on the Oral Settlement Agreement to be persuasive. The plaintiffs' case on the Oral Settlement Agreement as pleaded sets out substantive obligations for the defendant to repay the H&P Consideration by way of a cash settlement and a transfer of the Repayment Shares to the first to third plaintiffs as H&P's nominees and/or trustees.

38 Finally, the defendant argued that he had validly tendered performance only to be prevented by the inaction of the plaintiffs on at least three occasions:[49]

(a) The first occasion arose in or around 11 June 2020 when the defendant assisted the fourth plaintiff to contact a representative of UOB (known as "Mr Wong") in an attempt to facilitate the transfer of the Repayment Shares but the Repayment Shares ultimately could not be transferred to the first to third plaintiffs as they had failed UOB's "know your client" ("KYC") and anti-money laundering ("AML") checks.[50]

(b) The second occasion arose in or around June to July 2021 when the defendant made a second attempt to transfer the Repayment Shares to the first to third plaintiffs through UBS AG ("UBS"). However, UBS declined to effect any transfer of shares to the first to third plaintiffs in the light of the first to third plaintiffs' inability to satisfy UBS' internal policy and compliance regulations.[51]

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48 DWS at para 37.

49 DWS at para 43.

50 DWS at para 46.

51 DWS at para 47.

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(c) The third occasion arose in June to July 2024 when the defendant wrote to the first to third plaintiffs to request that they sign the share transfer forms executed by Horowitz Capital Pte Ltd ("Horowitz"), the present holder of 100% of the ordinary shares in SNL, in favour of the first to third plaintiffs, provide copies of their passports and discontinue this Suit with no orders as to costs. The plaintiffs refused to do so.[52]

39 In contrast, the plaintiffs submitted that none of these attempts could be regarded as genuine attempts at all:

(a) In relation to the first occasion, the plaintiffs submitted that the Repayment Shares could have been transferred to the first to third plaintiffs' share trading accounts with other banks. The purported KYC or AML issues related to the opening of share trading accounts with UOB instead of the transfer of the Repayment Shares.[53]

(b) In relation to the second occasion, the plaintiffs submitted that there were no KYC or AML issues with UBS. Instead, UBS had asked the defendant to send the share transfer instruction on 7 July 2021 and reminded the defendant on 8 July 2021 but the defendant refused to do so.[54]

(c) In relation to the third occasion, the plaintiffs submitted that the defendant's act of transferring all the Repayment Shares to Horowitz was an act of bad faith. Further as SNL had been delisted and renamed to Silkroad Nickel Pte Ltd on 10 November 2022, the Repayment Shares

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52 DWS at para 53.

53 PWS at para 45.

54 PWS at para 46.

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had become illiquid and could not be freely traded. In this regard, the plaintiffs argued that the Second Written Agreement contained implied terms that the Repayment Shares were to be transferred while SNL was still a public listed company and (ii) if SNL were delisted, repayment of the Debt by transferring the Repayment Shares would not be available ("Implied Terms"). Thus, the defendant's act on the third occasion could not be considered an attempt to tender performance.[55]

40 As can be seen from the foregoing, the plaintiffs disputed all three occasions in which the defendant claimed to have tendered performance. While it was not appropriate to resolve these factual disputes at the interlocutory hearing of these summonses, it was clear to me that the defendant's alleged performance was not such a clear defence that would justify striking out the plaintiffs' claims for having no reasonable cause of action. In my judgment, the plaintiffs' claims were not obviously unsustainable, the pleadings were not unarguably bad and it was not impossible for the claims to succeed.

Frivolous, vexatious or an abuse of process

41 A frivolous and vexatious action is one which is plainly or obviously unsustainable or wrong. This could refer to a legally unsustainable claim in which the plaintiff would not be entitled to the remedy sought even if the plaintiff succeeded in proving all the facts asserted or a factually unsustainable claim in which the factual basis of the claim is fanciful and entirely without substance (*The "Bunga Melati 5"* [2012] 4 SLR 546 at [39]). An action brought in abuse of the court's process is an improper use of the court's machinery and will as a means to vex and oppress the counterparty or a collateral purpose. This

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55 PWS at para 47.

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is a largely factually-intensive exercise involving the examination of the good faith of the plaintiff's claim alongside considerations of public policy and the interests of justice (*Gabriel Peter* at [22]).

42 For the reasons above at [26]–[40], I also rejected the defendant's argument that the plaintiffs' claims were frivolous, vexatious or an abuse of process.

Whether the fourth to seventh plaintiffs ought to be struck off as plaintiffs in the Suit

43 Similarly, as I have found at [35]–[40] and [42] above that the fourth to seventh plaintiffs' claim against the defendant for breach of the Oral Settlement Agreement was a reasonable cause of action and not frivolous, vexatious or an abuse of abuse, I declined to strike off the fourth to seventh plaintiffs as plaintiffs to the Suit. There were clearly common questions of fact between the first to third plaintiffs' claim of breach of the Second Written Agreement and the fourth to seventh plaintiffs' claim of breach of the Oral Settlement Agreement which made it just and convenient for these issues to be determined in this Suit with the fourth to seventh plaintiffs as plaintiffs to this Suit. Accordingly, I dismissed SUM 2176 in its entirety.

Whether summary judgment ought to be granted on the plaintiffs' claims

44 Turning to the plaintiffs' application for summary judgment, I was satisfied, in respect of both aspects of the plaintiffs' claims, that the defendant showed triable issues which deserved to be ventilated at trial. I accepted that the defendant raised triable issues regarding whether he could rely on the defence of tender of performance. To this end, the defendant contended that he had already taken all steps within his ability to transfer the Repayment Shares to the

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first to third plaintiffs on three occasions but was unable to do so because of the lack of cooperation of the first to third plaintiffs (see [38] above). As I have noted at [40] above, parties disputed the three separate occasions of alleged performance and why the transfer of the Repayment Shares ultimately did not occur.

45 I was of the view that the factual disputes raised were triable issues which ought to be ventilated at trial for the following reasons:

(a) For the first occasion with UOB, the fourth plaintiff averred that he proposed to provide UOB with the first to third plaintiffs' account numbers from other financial institutions for the transfer of the Repayment Shares but the defendant did not reply until a year later despite several reminders and the defendant transferred the Repayment Shares to UBS instead.[56] The fourth plaintiff also raised a factual dispute on whether the defendant had even sent UOB the Share Transfer Letter.[57] However, the defendant said that the Repayment Shares could not be transferred to the first to third plaintiffs because the first to third plaintiffs failed UOB's KYC and AML checks.[58]

(b) For the second occasion with UBS, the plaintiffs averred that all the relevant documents were provided to UBS but the defendant did not send the Share Transfer Letter to UBS. In this regard, the plaintiffs relied on emails dated 7 July 2021 and 8 July 2021 from one Darmawan Dita, who was the defendant's relationship manager at UBS, requesting the

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56 Affidavit of Lee Kien Han dated 22 August 2024 at para 24.

57 Affidavit of Lee Kien Han dated 22 August 2024 at para 24.2.

58 Affidavit of Hong Kah Ing dated 2 August 2024 at para 26.

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defendant to send her the share transfer instruction.[59] There was no email response by the defendant. However, the defendant said that this was superseded by later phone calls with UBS and the reason for the failed attempt was that the first to third plaintiffs could not satisfy UBS' internal policy and compliance regulations and did not provide them with documents.[60]

(c) For the third attempt with Horowitz, the plaintiffs denied that this could be considered an attempt since SNL had been delisted and the Repayment Shares were illiquid and devalued.[61] Further, the issue of whether there was a gap in the contemplation of parties such that the Implied Terms (see [39(c)] above) should be implied in the Second Written Agreement was also a factually intensive inquiry.

As these factual disputes would require the evidence of material witnesses to be scrutinised at trial, I was of the view that it would be unsuitable to allow summary judgment on these claims.

46 For the fourth to seventh plaintiffs' case of breach of the Oral Settlement Agreement, the defendant denied the existence of the Oral Settlement Agreement.[62] He submitted that cl 1.3 of the First Written Agreement was an entire agreement clause which implied that there was no Oral Settlement Agreement. Further, the First Written Agreement and Second Written Agreement did not make reference to and contradicted the terms of the Oral

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59 Affidavit of Lee Kien Han dated 22 August 2024 at para 25.

60 Affidavit of Hong Kah Ing dated 2 August 2024 at paras 27 to 29.

61 Affidavit of Lee Kien Han dated 22 August 2024 at paras 26 to 27.

62 Defence at para 37.

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Settlement Agreement.[63] Even if there was an oral agreement, it was only an "agreement to agree".

47 I note that Judith Prakash J (as she then was), in *M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2015] 2 SLR 325 at [24], accepted the view that where an oral contract is sued upon and its terms are in dispute, summary judgment should generally not be granted unless the court is satisfied that the plaintiff is entitled to judgment even on the defendant's version of the facts or that the defendant's version is not truthful or capable of belief. I could not say that the defendant's assertions were unbelievable and ought to have been dismissed outright on the basis of affidavit evidence. The determination of these issues required evidence from material witnesses on the conversations between the parties when they allegedly entered into the Oral Settlement Agreement. The evidence ought to be scrutinised through cross-examination and ultimately subject to the court's fact-finding process at the end of trial. I found that the defendant raised triable issues of whether the Oral Settlement Agreement existed and, if it existed, what the terms were.

48 Thus, I dismissed the plaintiffs' application for summary judgment in SUM 2399.

Whether the plaintiffs ought to be ordered to pay security for costs

49 O 23 r 1 of the ROC 2014 created a two-stage test, consisting of the jurisdiction stage and the discretion stage. It is only if the applicant can show that the court has jurisdiction to order security against the plaintiff under one of the four grounds set out in O 23 rr 1(1)(*a*)–(*d*) that the court would then proceed

63 DWS at paras 58 to 62.

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to consider whether it would, in the circumstances, exercise its discretion to order security in favour of the defendant if it thinks it just to do so (*Tjong Very Sumito and others v Chan Sing En and others* [2011] 4 SLR 580 at [20]).

50 In this case, parties agreed that the court's jurisdiction to order security for costs had been invoked under O 23 r 1(*a*) given that the plaintiffs were ordinarily resident out of jurisdiction in Malaysia.[64] It was trite, however, that this was a necessary but insufficient requirement to order security for costs. In exercising the court's discretion to order security for costs, the following non-exhaustive factors would be considered (*SW Trustees Pte Ltd (in compulsory liquidation) and another v Teodros Ashenafi Tesemma and others (Teodros Ashenafi Tesemma, third party)* [2023] 5 SLR 1484 ("*SW Trustees*") at [15]–[18]):

(a) The good faith of the plaintiff's claim;

(b) the plaintiff's financial standing;

(c) the ease of enforcing any judgment for costs against the plaintiff;

(d) the relative strengths of the parties' cases;

(e) lateness in taking out the application

(f) whether the application for security for costs has been taken out oppressively;

(g) whether there was an admission by the defendant on the pleadings or elsewhere that money was due; and

64 DWS at para 84; PWS at para 63.

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(h) whether the claim and counterclaim are co-extensive.

51 Goh Yihan JC (as he then was) observed in *SW Trustees* at [19] that there are three purposes behind the provision of security for costs, namely: (a) to protect the defendant, who cannot avoid being sued, by enabling him to recover costs from the plaintiff out of a fund within the jurisdiction in the event that the claim against him by the plaintiff proves to be unsuccessful; (b) to ensure, within the limits of protecting the defendant, that the plaintiff's ability to pursue his claim is not stifled; and (c) to maintain a sense of fair play between the parties even amidst the cut-and-thrust of civil litigation.

52 The plaintiffs accepted that there was no evidence of them having any fixed or permanent assets in Singapore apart from the receivables arising out of the judgment sums and costs owed to Axis and the fourth plaintiff by FEM. To that extent, I accepted that enforcing any judgment for costs against the Plaintiffs in Malaysia would be more difficult and would incur more inconvenience for the defendant should he succeed in defending the Suit. This was, however, mitigated to some extent because there was reciprocal enforcement of judgments between Singapore and Malaysia. In this regard, I was guided by the Court of Appeal's observations in *Creative Elegance (M) Sdn. Bhd v Puay Kim Seng & anor* [1999] 1 SLR(R) 112 at [33] that the fact that the party desiring security could enforce an order for payment of costs against the other party in Malaysia was clearly a factor that should be taken into account.

53 The plaintiffs argued that FEM's conduct in not complying with the court order to pay the costs orders to Axis and the fourth plaintiff should be taken into account because the defendant was a director of FEM at the material time of the signing of the Engagement Letter and the defendant's daughter

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remained a shareholder of FEM which showed that the defendant still had considerable say in FEM's affairs.[65] I disagreed with the plaintiffs that the conduct of FEM ought to be imputed to the defendant because at the time the costs orders were made (*ie*, 10 May 2024),[66] the defendant had long ceased to be a director of FEM (since 1 November 2023). It was also speculative if and to what extent the defendant had any influence over FEM through his daughter.

54 However, on the face of the materials before me, I was of the view that the plaintiffs' claims were made in good faith. The plaintiffs' claim was instituted essentially to obtain the Repayment Shares which the defendant was obligated to transfer to the first to third plaintiffs more than five years ago according to cl 3.1 of the Second Written Agreement or under the Oral Settlement Agreement. It was striking that the defendant did not even deny that the Repayment Shares ought to have been transferred under the Second Written Agreement but for disputed reasons, this has not been done till date. As such, I considered there to be good reasons for the plaintiffs' claim and that the plaintiffs had a strong case relative to the defendant's defence.

55 While I did not think that SUM 2175 was an abuse of process or had been taken out oppressively to stifle the action, I noted that the fourth to seventh plaintiffs were partners of a law firm and there was no evidence that the plaintiffs were impecunious. There was also no indication that the plaintiffs conducted themselves in a manner that they would not voluntarily comply with an order for costs.

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65 PWS at para 71.

66 Affidavit of Lee Kien Han dated 22 August 2024 at pp 81 to 82.

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56 Considering all the circumstances in the round, I found it fair not to exercise my discretion to order security for costs and dismissed SUM 2175 accordingly.

Conclusion

57 In sum, I dismissed SUM 2175, SUM 2176 and SUM 2399. Having considered parties' submissions on costs, I made no order as to costs for SUM 2176 and SUM 2399 and fixed costs and disbursements (all-in) for SUM 2175 at $2,800.00 to be paid by the defendant to the plaintiffs.

Gerome Goh Teng Jun
Assistant Registrar

Joshua Ang Zhao Neng (Hong Zhaoneng), Koong Len Sheng and Chan Wai Yee Rachel (David Lim & Partners LLP) for the plaintiffs;
G Kiran, Chng Zi Zhao Joel (Zhuang Zizhao), Felicia Soong Wanyi and Qiu Ziyun Joanna (WongPartnership LLP) for the defendant.

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