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

[2024] SGHC 253

Suit No 242 of 2021

Between

Xia Zheng

… *Plaintiff*

And

Lee King Anne

… *Defendant*

And Between

Lee King Anne

… *Plaintiff in counterclaim*

And

(1) Xia Zheng
(2) Li Hua

… *Defendants in counterclaim*

JUDGMENT

[Contract — Formation — Intention to create legal relations — Sham interest-free loan documents executed to give false impression of existence of loan agreement where parties never intended to create legal relations involving genuine loan arrangement]

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[Contract — Implied contracts — Quantum meruit — Whether parties entered into contractual arrangement with implied term that nominee shareholder would be paid reasonable remuneration assessed on quantum meruit basis]
[Tort — Misrepresentation — Inducement — Whether representee was induced by false representation of fact to become nominee shareholder in company]
[Trusts — Resulting trusts — Presumed resulting trusts — Presumption of trust arising where moneys advanced to purchase shares registered in legal name of non-paying party]

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Xia Zheng
v
Lee King Anne

[2024] SGHC 253

General Division of the High Court — Suit No 242 of 2021
Chan Seng Onn SJ
19–22, 26–27 December 2023, 15 February, 1 July 2024

7 October 2024 Judgment reserved.

Chan Seng Onn SJ:

Introduction

1 This case concerns two ostensible contractual agreements signed by the plaintiff and the defendant, being the parties to the plaintiff's suit in HC/S 242/2021 (the "Claim") that, on their face, created (or purported to create) an interest-free loan agreement (the "Loan Agreement") between them, and under which moneys were said to have been loaned by the plaintiff to the defendant. Those moneys were then used to purchase shares in a listed company, thereby forming the subject-matter of the present dispute.

2 The Claim is for the repayment of the loaned moneys from the defendant and/or the return of the shares purchased therewith. The defendant resisted repayment by arguing that the purported Loan Agreement was not genuine, but were sham documents created merely to show to and reassure some undisclosed

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Chinese investors that the shares had been purchased for them, when in truth, the real transaction entered into was to have the defendant purchase these shares on behalf of these undisclosed Chinese investors and for the defendant to hold these shares in the defendant's name as a nominee shareholder in order to hide the true beneficial owners of the shares at least for the period of time until the Extraordinary General Meeting ("EGM") of the listed company (involving the voting and selection of the members of the board of directors) was over. Pursuant to that nominee arrangement, the defendant counterclaimed against the plaintiff and her former husband for *inter alia* compensation on a *quantum meruit* basis for her acting as a nominee shareholder coupled with complete indemnification for any losses which flow therefrom (the "Counterclaim"), based on an alleged oral agreement that had been concluded between the defendant, the plaintiff, and/or the plaintiff's former husband.

3 For the reasons which follow, I dismiss the Counterclaim in full and I dismiss the primary relief sought in the Claim – *ie*, for repayment of the moneys allegedly loaned to the defendant by the plaintiff or the return of the shares purchased therewith, pursuant to the terms of their putative Loan Agreement. However, I allow an alternative prayer sought in the plaintiff's Claim – *viz*, a declaration that the defendant holds the shares on trust for the plaintiff. This is because I find, on the totality of the evidence before me, that the true arrangement between the parties was for the defendant to hold the shares on a bare trust as only a nominee shareholder, and not for moneys to be loaned to the defendant to purchase shares for her own benefit and as an absolute owner thereof. I elaborate further on how I arrive at that finding of fact below.

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Factual background

Relevant persons

4 The plaintiff and first defendant in the Counterclaim is Ms Xia Zheng ("Xia") while the defendant and plaintiff in the Counterclaim is Ms Lee King Anne ("Lee") (collectively, "Xia and Lee").[1]

5 The second defendant in the Counterclaim and former husband of Xia is Mr Li Hua (alias Tony) ("Tony").[2] Furthermore, the contracts (or purported contracts) were said by the plaintiff in the Claim to have been entered into between Xia and Lee following communications between three other persons – first, Xia's former husband, Tony; second, Lee's husband to date, Mr Huang Zhi Rong (alias Billy) ("Billy");[3] and lastly, Mr Tanoto Sau Ian (alias Eric) ("Eric"), who was also the Chief Executive Officer, Managing Director, and Executive Director of USP Group Limited (the "Company" or "USP").[4]

6 Although Tony is a party to the proceedings as a second defendant to the Counterclaim, by the time that the trial commenced before me, he was absent and unrepresented throughout. Hence, I shall use the abbreviation the "parties" to refer to Xia and Lee specifically, and to the exclusion of Tony.

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1 Affidavit of Evidence-in-Chief of Xia Zheng dated 16 August 2023 ("AEIC XZ") at para 1; Affidavit of Evidence-in-Chief of Lee King Anne dated 16 August 2023 ("AEIC LKA") at para 1.

2 AEIC XZ at paras 3–14.

3 AEIC LKA at paras 6 and 12; Affidavit of Evidence-in-Chief of Huang Zhi Rong dated 16 August 2023 ("AEIC HZR") at para 1.

4 Affidavit of Evidence-in-Chief of Tanoto Sau Ian dated 20 February 2023 ("AEIC TSI (S 612)") at para 1; Affidavit of Evidence-in-Chief of Tanoto Sau Ian dated 8 December 2023 ("AEIC TSI") at paras 1, 3(b) and 6–12.

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Subject-matter of dispute between the parties

7 At present, Lee is the legal owner of 9,100,817 ordinary shares (the "Shares") in USP, a Singapore-listed company.[5] Lee acquired the legal title to the Shares in two different transactions by purchasing them from two vendors, namely, Bestway Investments Asia Pte Ltd ("Bestway") and Mr Zeng Fuzu ("Zeng") (collectively, the "Vendors"), in or around January–February 2020 for a total consideration sum of $1,856,150.64 (the "Advanced Sum").[6] However, during the trial, it was discovered that the Advanced Sum had in fact been furnished not by any Chinese investors but by Xia in the form of cashier's orders obtained by her and then issued in favour of the Vendors.[7]

8 The crux of the dispute centres on the nature by which Lee holds the Shares. On Xia's case, Lee holds the Shares absolutely and for her *own* benefit because Lee had borrowed the Advanced Sum from Xia and the Advanced Sum was paid out as a loan to Lee, to be repaid by Lee to Xia under their contractual agreements with the terms having been set out in the documents signed by the parties. On Lee's case, she holds the Shares as a trustee for the benefit of Xia *qua* payor, who never loaned the Advanced Sum to her, and to the extent that any purported contractual documents state otherwise, they were mere shams not intended to have any real legal effect.[8]

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5 AEIC LKA at para 5.

6 Statement of Claim (Amendment No 1) redated 18 April 2022 ("SOC") at paras 2–6; Defence and Counterclaim (Amendment No 4) redated 26 December 2023 ("D&CC") at paras 5–7 and 10–11.

7 SOC at para 6(c); D&CC at para 11.

8 Plaintiff's Closing Submissions dated 3 May 2024 ("PCS") at paras 1, 3, 5–6 and 21–29; Defendant's Closing Submissions dated 6 May 2024 ("DCS") at paras 6–8, 24, 30–32, 57 and 64.

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Disputed Documents executed between the parties

9 The true nature by which the Advanced Sum was extended by Xia to Lee turns on the import behind the parties' execution of two documents purporting, on their face, to be contractual agreements. The fact that the parties signed them is not disputed.[9]

10 The two documents are self-styled "Interest Free Loan Agreement[s]", both dated 3 February 2020, and are *in pari materia* (collectively, the "Disputed Documents"). They state as follows:[10]

> INTEREST FREE LOAN AGREEMENT
>
> I, [Lee], hereby agree [*sic*] this loan agreement and acknowledge receipt of a loan of Singapore dollars $ [particulars of the loan amount stated herein together with the details of the respective cashier's orders for Bestway/Zeng], from [Xia], on [date of loan], without any interests [*sic*] whatsoever, to purchase [the Shares in the Company] from [the Vendors], according [*sic*] the S&P between [Lee] and [the Vendors] [in/on] [the dates of the sale and purchase agreements with the Vendors].
>
> I, [Lee], will give one original copy of S&P to [Xia] once it has been signed.
>
> I also sign the Charge, Form 9 of SGX, and Request for Transfer of Securities.
>
> The loan will last for 3 months from the date of this agreement, unless extended by the mutual agreement of both parties.
>
> [Xia] has the right to sell the shares or take over the Shares from [Lee] after 3 months.

9 SOC at paras 2–4; D&CC at paras 5–7.

10 AEIC XZ at pp 70 and 72.

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Commercial background behind the signing of the Disputed Documents by the parties

11 As the genuineness of the Disputed Documents is disputed between the parties, it is relevant to note the commercial background behind them which can shed light on the parties' object and purpose behind their execution in 2020.

12 Based on the relevant affidavits filed or referred to by Tony and Eric – and the areas in which they are corroborated by the affidavits of Xia and Billy – the following facts emerge therefrom.

13 From around October 2019 onwards, Eric was desirous of replacing the existing board of directors of the Company with *inter alia* himself.[11] To that end, he sought to acquire shares in the Company in order to effect that change in the board's composition at an EGM. Both Tony and Billy were involved in Eric's plans in varying capacities.[12]

14 In January 2020, a series of WhatsApp messages were sent in a group chat (called "USP EGM") consisting of Tony and Eric and two lawyers from Lee & Lee. Tony sought Lee & Lee's assistance for the sale and purchase transactions with two then-shareholders in the Company (one of those two was Bestway, being one of the Vendors that sold the Shares to Lee).[13] On 2 January 2020, in response to Tony's query as to whether Lee & Lee could be the lawyer for the purchaser in the sales and purchase transactions, one of the Lee & Lee

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11 AEIC TSI (S 612) at paras 7–12.

12 AEIC TSI (S 612) at paras 7–12 and 19–33; AEIC TSI at paras 6–11; AEIC HZR at paras 16–37; Affidavit–in–Response of Li Hua dated 22 July 2021 ("AIR LH (SUM 3044)") at para 9; Affidavit–in–Response of Xia Zheng dated 22 July 2021 ("AIR XZ (SUM 3044)") at para 15.

13 Agreed Bundle of Documents dated 11 December 2023 ("ABOD") Vol 1 at p 236.

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lawyers replied with: "As long as parties are separate and not acting in concert".[14]

15 On 3 January 2020, one of the Lee & Lee lawyers sent a WhatsApp message to that same group, reading as follows:[15]

> Sorry i thought eric is not entering into the bestway contract?
>
> If he does he may cross 30% with the deemed interest based on his existing transactions?
>
> So a completely separate party shd be the transacting party?

16 On 14 January 2020, a forwarded WhatsApp message originally from Tony stated as follows:[16]

> Chinese investors gave me the money to buy tony wu's [identified by Tony as Bestway's representative in "USP EGM" WhatsApp group on 2 January 2020][17] shares. So we can close the s&p now.

17 Lee concluded her deeds of share purchases with Bestway on 4 February 2020,[18] and with Zeng on 31 January 2020.[19] Xia then had her cashier's orders issued not to Lee as the payee but directly to the two Vendors as payees *vis-à-vis* the Advanced Sum on 29 January (for Zeng) and 3 February 2020 (for Bestway).[20] Zeng acknowledged receipt of the purchase moneys on 3 February 2020.[21]

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14 ABOD Vol 1 at p 240.

15 ABOD Vol 1 at p 245.

16 ABOD Vol 1 at p 300.

17 ABOD Vol 1 at p 239.

18 ABOD Vol 1 at p 47.

19 ABOD Vol 1 at p 28.

20 ABOD Vol 1 at pp 26 and 42.

21 ABOD Vol 1 at pp 41 and 46.

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18 Soon thereafter, on 20 February 2020, an EGM was held by the Company, whereat most of its then-directors were voted out of office and *inter alia* Eric was voted in as a director.[22]

19 After the EGM, Eric, Billy, and Tony were made part of a WhatsApp group (called "Shares"), wherein they had exchanged messages with respect to *inter alia* the EGM and acquisition of shares in the Company therefor. These included a message sent by Tony on 5 November 2020 to that WhatsApp group which reads as follows:[23]

> Ann [*sic*] need to pay the money to Chinese investors. There is no delay. Chinese investors gave me the buyer name yesterday. We will start to transfer the shares tomorrow…
>
> Eric, u need to work with new shareholder. Ask him to support u. I have no choose [*sic*]. I am going to see the new shareholder today. Hope he can support u. Eric, it is more dangerous to write such shares over sms. Be careful.

20 Moreover, on 8 November 2020, Billy sent a WhatsApp message to Tony as follows:[24]

> Tony,
>
> regarding the shares you put with Anne, pls let me know when you are ready to trf.
>
> Anne has held the shares for your investors since Feb 2020., [*sic*] and was potentially exposed to litigation in relation to USP, Eric and you.
>
> She also left her last job as VP, to join and help the Company.
>
> For her role, we are seeking a compensation package of $100k.
>
> Once paid, she will release all the shares to your appointed representative and will also quit immediately from USP, after a proper handover.

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22 AEIC TSI (S 612) at para 59; ABOD Vol 1 at pp 297–299 and 307–308.

23 ABOD Vol 1 at pp 314–315.

24 ABOD Vol 1 at p 319.

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> Pls let me know when you are ready to go ahead with this arrangement.

21 That same day, Tony replied to that message with the following:[25]

> I will pass ur requirements to Chinese investors.
>
> But, I think it is difficult BACS [*sic*] they took risk and no benefits. Ann [*sic*] resigned for staying USP for 4 months as u required. I was ok. Now, Ann [*sic*] has stayed more than 4 months.
>
> Pls think ur requirement over, at the same time.

22 On 30 December 2020, Xia signed and executed a self-styled "Letter of Waiver and Release", pursuant to which she confirmed that Lee's transfer of the Shares into the securities account of Xia "shall be in full and final settlement of the Obligations for the purchase of the aforesaid shares".[26] On the same day, Lee signed and executed a self-styled "Acknowledgement" letter, in which she acknowledged receipt of the "Letter of Waiver and Release" and confirmed that she would take steps to transfer the Shares to Xia's securities account "within three (3) business days".[27] On 31 December 2020, she signed on a Singapore Exchange (SGX) form for "Request for Transfer of Securities", for the Shares to be transferred from her to Xia.[28] The Shares however still remain with Lee to date, although, at that time, Lee wanted to have the Shares transferred to Xia's securities account. Apparently, there were some administrative problems that blocked the finalisation of the transfers.

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25 ABOD Vol 1 at p 320.

26 ABOD Vol 1 at p 60.

27 ABOD Vol 1 at p 61.

28 ABOD Vol 1 at p 124.

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Procedural history

History of Claim and Counterclaim

23 On 9 March 2021, Xia filed her Claim against Lee, seeking (primarily) an order for the Shares to be returned to her on the basis that a valid contract had been entered into between her and Lee on the terms of the Loan Agreement as set out in the Disputed Documents.[29]

24 Lee filed her Defence on 7 April 2021, averring *inter alia* that the Disputed Documents were a sham as the true arrangement between the parties was for Lee to hold the Shares as a nominee shareholder for Tony's "purported Chinese investors".[30] She also filed her Counterclaim for, primarily, compensation and indemnification on the basis of an alleged oral agreement to compensate and indemnify her for standing as the nominee shareholder for Tony's "purported Chinese investors".

25 At first, Lee's Counterclaim was instituted solely against Xia. On 27 December 2021, Lee filed a third-party notice against Tony notifying him that she was filing a claim against him for *inter alia* compensation and indemnification for reasons that were similar to that in the Counterclaim filed against Xia. This was filed pursuant to her summons in HC/SUM 5796/2021 for leave to issue a third-party notice, which was filed on 20 December 2021 and then granted on 27 December 2021.

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29 SOC at p 7 prayer (1); Statement of Claim dated 9 March 2021 at p 3 prayer (1).

30 D&CC at paras 5–6; Defence and Counterclaim dated 7 April 2021 at paras 5(g), 6(e) and 13(a).

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26 Hence, at first, Tony was actively participating in the proceedings. He filed his memorandum of appearance on 14 February 2022 and his defence against the third-party claim on 26 April 2022. He was represented at the time.

27 By the time that Lee's defence and counterclaim was amended and re-dated on 30 November 2022, Tony was not listed as a third party, but as the second defendant to Lee's Counterclaim. By the time that the trial commenced, Tony was unrepresented and was absent throughout the civil trial proceedings. Pertinently, Tony filed a debtor's bankruptcy application in HC/B 1122/2022 on 6 May 2022 and was made a bankrupt on 28 June 2022, with a private trustee being appointed over his estate on 2 August 2022; hence, Lee had to obtain leave to continue her Counterclaim against him.[31] Such leave was granted by the court on 16 August 2022 (see the order in HC/ORC 4222/2022 dated 16 August 2022 and filed on 17 August 2022 in Lee's HC/SUM 2599/2022).

Applications for summary judgment and striking out

28 On 4 May 2021, Xia filed two interlocutory applications. The first was HC/SUM 2109/2021 for Lee's defence and counterclaim to be struck out (the "Striking Out Application"). The second was HC/SUM 2112/2021 for summary judgment to be entered in her favour ordering Lee to transfer the Shares to her (the "Summary Judgment Application").

29 Both applications came up for a hearing before the Assistant Registrar ("AR"). The AR granted the Striking Out Application by striking out the Counterclaim and granted the Summary Judgment Application by rendering an order for the delivery of the Shares by Lee to Xia, on 6 August 2021. It is to be noted that, at this stage, Xia's Summary Judgment Application was to have the

[31] Affidavit of Lee King Anne dated 13 July 2022 at paras 5–32.

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Shares delivered back to her on the basis of the terms of their Loan Agreement as *per* the Disputed Documents, and not for the repayment of any alleged loan.[32] I pause here to highlight that, at the trial before me, Xia has changed her stance to pursue the repayment of the moneys in the alleged loan as her *primary* relief, instead of the return of the Shares bought with the Advanced Sum provided by Xia, which is now sought only in the alternative.

30 On the same day of 6 August 2021, Lee filed two registrar's appeals (see HC/RAs 215/2021 and 216/2021) against the AR's decision to grant the Striking Out Application and the Summary Judgment Application. Both appeals came up for hearing on 24 August 2021 before Tan Siong Thye J (as he then was), who allowed both appeals and gave written grounds in his *ex tempore* judgment: see *Xia Zheng v Lee King Anne* [2021] SGHC 199 ("*Xia Zheng (Civil Procedure)*"). Lee was granted unconditional leave to defend against Xia's Claim. Lee was also allowed to prosecute her Counterclaim against Xia. It is of note that the triable issues raised by Lee at that interlocutory stage cohere with her pleaded case at trial. Particularly, she argued that the Disputed Documents were only signed to show Tony's purported Chinese investors that their moneys had been used to acquire the Shares, which Lee would hold on to on their behalf. Their execution was not intended to create any legal relations (see *Xia Zheng (Civil Procedure)* at [11]–[12]).[33]

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[32] Affidavit of Xia Zheng dated 4 May 2021 at para 12; Summons under O 14 of Xia Zheng filed in HC/S 242/2021 filed on 4 May 2021 at prayer 1.

[33] Defence and Counterclaim dated 7 April 2021 at paras 5–6; Affidavit of Lee King Anne dated 30 June 2021 at paras 20–25.

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Application to set aside interim ex parte *injunction*

31 On 21 June 2021, Xia filed a summons in HC/SUM 2911/2021 for an interim injunction to be rendered on an *ex parte* basis restraining Lee from selling or dealing in the Shares or from exercising any of the rights inhered therein. The interim injunction was granted against Lee on an *ex parte* basis on 23 June 2021 (see HC/ORC 3481/2021 dated 23 June 2021 and filed on 24 June 2021 in Xia's HC/SUM 2911/2021) (the "Interim Injunction").

32 Lee then filed an application to discharge the Interim Injunction in HC/SUM 3044/2021 on 30 June 2021 (the "Setting Aside Application"). She, Billy, and Eric all filed affidavits in support of the Setting Aside Application (collectively, the "Setting Aside Affidavits").

33 The Setting Aside Affidavits averred *inter alia* that the acquisition of the Shares by Lee took place against the backdrop of a takeover attempt to vote out the Company's board of directors at the EGM on 20 February 2020, involving *inter alia* Billy, Eric, and Tony (see [18] above).[34]

34 In response to the Setting Aside Affidavits, both Xia and Tony filed affidavits–in–reply ("Xia's Reply Affidavit" and "Tony's Reply Affidavit", respectively; collectively, the "Reply Affidavits") on 22 July 2021. In Xia's Reply Affidavit, she averred as follows:[35]

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[34] Affidavit–in–Support of Tanoto Sau Ian dated 30 June 2021 ("AIS TSI (SUM 3044)") at paras 58–70; Affidavit–in–Support of Huang Zhi Rong dated 30 June 2021 ("AIS HZR (SUM 3044)") at paras 15–43; Affidavit–in–Support of Lee King Anne dated 30 June 2021 ("AIS LKA (SUM 3044)") at paras 45 and 59–65.

[35] AIR XZ (SUM 3044) at paras 13–17.

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> **B. Requisitioning and voting in the Extraordinary General Meeting ("EGM")**
>
> 13. On 22 January 2020, Eric and one Tan Khoon Yong sent a notice to requisition an EGM for **20 February 2020** in order to vote on resolutions *inter alia*, to remove the 2nd BOD and elect a new one in its stead.
>
> [paragraph 14 omitted]
>
> 15. It was around this time that I was approached to support Eric's intention to ascend to the Director of USP. Since I was already fairly interested in acquiring USP's shares in my own right Tony asked me whether I would be agreeable to purchasing the shares and parking it in the name of the Defendant until the EGM was over, whereupon the shares would be returned to me. I agreed to do so.
>
> **C. First Interest Free Loan Agreement ("IFLA") between myself and the Defendant**
>
> 16. To formalise the relationship between the Defendant and myself, we entered into the first IFLA dated 3 February 2020. I shall detail the salient terms for ease of reference:
>
> [terms omitted]
>
> 17. From the terms of the IFLA above, it is clear that the Defendant was only allowed to hold the Shares in her name for only *three (3) months*. The reason behind the time period is significant – three months was the estimated time period for Eric to table resolutions and replace the 2nd BOD in the EGM, and elect another Board of Directors in their stead. Thereafter and at the end of the three months, the Shares ought to have be [*sic*] transferred back to me. I provided the purchase monies of $1,460,291 to the Defendant on 30 January 2020.
>
> [emphasis in original in bold and italics] [emphasis added in underline]

35 Likewise, Tony's Reply Affidavit averred as follows:[36]

> 9. On or around December 2019 / January 2020, Eric, Billy, and I discussed about whether it was possible or feasible to oust the 2nd Board of Directors of USP as we

[36] AIR LH (SUM 3044) at paras 9–12.

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> felt that the 2nd Board was not doing a proper job. I accept that I actively participated in these discussions. While these discussions were largely verbal, I confirm that I participated in the Whatsapp communications in a groupchat formed between Billy, Eric and me. …
>
> In the course of our discussions, the idea arose that Eric would seek to be appointed to the Board of Directors and if so he would need support in tabling an Extraordinary Meeting [*sic*] (**"EGM"**) in order to oust the 2nd Board of Directors (**"2nd BOD"**). In order to do so, he would need enough support from the shareholders and hence Billy, Eric, and I sought to procure such support in order to place Eric onto the USP Board.

10. Sometime in January 2020, I spoke to my ex-wife, the Plaintiff (**"Xia Zheng"**). If I recall correctly, it was an occasion that I was updating her on what I was doing at that time. I believe I mentioned to her that I was in discussions with Eric and Billy to fulfil Eric's intention to ascend to the Board of USP so that he could turn his fortunes around as he appeared to have good business ideas and a number of contacts. If this plan succeeded then USP could look to better days ahead. I understood from the Plaintiff that if there was a prospect of a decent investment return, she may be willing to invest in USP shares. Sometime in late January, an opportunity for the Plaintiff to acquire shares from Bestway and Zeng Fuzu materialised. As such, the Plaintiff and I spoke about it and the Plaintiff agreed to purchase those shares. I asked the Plaintiff whether she would be agreeable to purchasing the shares and parking it in the name of the Defendant until an EGM to appoint Eric onto the Board was held and after that the shares would be returned to her. She agreed to do so.

11. Accordingly, the Plaintiff agreed to provide the money for the Defendant to buy over Bestway and Zeng Fuzu shares at in [*sic*] January 2020 and February 2020 (i.e. a total sum of $1,856,150.64 (**"Loan Sum"**) for the purchase of T shares (**"the Shares"**) in USP). Before providing the Loan Sum, the Plaintiff reiterated to me that she wanted for the Shares to be returned to her, within 3 months (i.e. after Eric has successfully replaced the 2nd BOD). This was reflected in the Interest Free Loan Agreements (**"IFLAs**"): [terms omitted]

12. The real reason for having the loan agreement without interest is so that the Defendant can acquire the Shares and vote in favour of Eric's resolution. Once that is done,

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> the Defendant can then transfer the Shares back to the provider of the purchase monies, the Plaintiff. …
>
> [emphasis in original in bold] [emphasis added in underline]

36 The court made no order on the Setting Aside Application when it was heard on 10 August 2021.

Civil trial proceedings

37 The civil trial of the Claim and Counterclaim was heard over the course of seven days from 19–22 and 26–27 December 2023 and 15 February 2024. While Xia and Lee were present and represented throughout, Tony (the second defendant in the Counterclaim) was absent and unrepresented for all seven days of the trial. Quahe Woo & Palmer LLC appeared on a watching brief on behalf of the liquidator of Sunmax Global Capital Fund 1 Pte Ltd.

Parties' arguments

Plaintiff's submissions

Claim

38 Xia, in her pleadings, seeks the primary relief of an order for the transfer of the Shares from Lee,[37] and repayment of the Advanced Sum as an alternative relief.[38] In her closing submissions, her position then became to seek the primary relief of the repayment of the Advanced Sum by Lee and the transfer of the Shares in the alternative.[39] Both of these reliefs are premised on Xia's assertion

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37 SOC at p 7 prayer (1).

38 SOC at p 8 prayer (4).

39 PCS at paras 41–44.

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that the Disputed Documents constituted a contractual agreement between the parties, forming the Loan Agreement which Xia seeks to enforce against Lee.[40]

39 Xia's case is that Lee wanted to purchase the Shares for her own benefit but lacked the funds to buy them outright from the two Vendors. In order to complete the sale and purchase transactions, Lee borrowed moneys from Xia. The terms of their Loan Agreement have been reduced into writing as set out in the Disputed Documents. The Loan Agreement imposes an obligation on Lee to repay the Advanced Sum within three months; otherwise, Xia is entitled to take possession of the Shares from Lee.[41]

40 In the alternative, if the Disputed Documents are found to be a sham, then Xia seeks the payment of the Advanced Sum from Lee on the basis that Lee has been unjustly enriched owing to Xia paying the Advanced Sum to the Vendors under an invalid contract where there has been total failure of consideration.[42]

41 Finally, Xia pleads, in the further alternative, for a declaration that Lee holds the Shares on a resulting trust for Xia, on the basis that she paid out the Advanced Sum without a corresponding intention to benefit Lee.[43] For these reasons, Xia is entitled to succeed in her Claim for enforcement of the Disputed Documents and the transfer of the Advanced Sum (primarily) and the Shares (in the alternative) from Lee.

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40 SOC at paras 2–3 and 7.

41 PCS at paras 4–14 and 27–29.

42 SOC at paras 14–18; PCS at paras 45–51.

43 SOC at paras 19–21.

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Counterclaim

42 On Lee's Counterclaim, Xia argues that it should be dismissed. First, she argues that Lee has failed to prove the existence of an oral agreement that Xia or Tony ever agreed to compensate or indemnify Lee for agreeing to be a nominee shareholder of the Shares.[44] There is no objective evidence of such a promise having been made by Tony to Billy to compensate and indemnify Lee, such as that recorded in documentary evidence. In any event, even if it were assumed that Tony made that promise, it is not attributable to Xia as he was never her agent.[45]

43 Next, Xia argues that Lee is not entitled to an indemnity on the basis of a fiduciary relationship between the parties because (a) Lee was never the fiduciary of Xia as their relationship was one of creditor and debtor;[46] and (b) even if Lee held the Shares on trust, to the extent that it is based on either a constructive or resulting trust (as opposed to an express trust), no fiduciary duty is owed by Lee to Xia such as to give rise to an implied equitable obligation to indemnify Lee.[47]

44 Finally, Xia argues that Lee's claim for misrepresentation must also fail because (a) Lee has not shown how she relied on the alleged false statement of fact that the Advanced Sum came from the "Chinese investors" (as opposed to being from Xia);[48] and (b) Lee has failed to prove causation of any of her

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44 PCS at paras 64–65; Plaintiff's Reply Submissions dated 1 July 2024 ("PRS") at paras 30–34.

45 PRS at paras 28 and 35.

46 PRS at para 36.

47 PRS at para 37.

48 PRS at paras 38–40.

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pleaded losses, including the legal costs flowing from Mr Oon Koon Cheng – a shareholder and creditor of the Company[49] – suing *inter alia* Xia, Lee, Tony, Billy, and Eric for tortious conspiracy, owing to the alleged acts of the Company after the change in composition of its board of directors on 20 February 2020, in his HC/S 612/2020 (the "Conspiracy Lawsuit"), which would have happened regardless of whether Lee signed the Disputed Documents or not.[50] Hence, for all these reasons, Xia urges this court to dismiss Lee's Counterclaim in full.

Defendant's submissions

Claim

45 Lee submits that Xia's Claim should be dismissed on the basis that the Disputed Documents do not disclose a true contractual agreement but are sham documents, in which the parties lacked any intention to create any legal relations thereon.[51] The true arrangement between the parties all along, based on communications between Tony and Billy, was for Lee to hold the Shares as nominee shareholder for the payor(s) of the Advanced Sum, whether they be Tony's "Chinese investors" as Lee originally believed at the time, or Xia as she has now come to understand. The context behind their execution was that Tony told Billy that Lee had to sign the Disputed Documents so as to assuage the "Chinese investors" that the Advanced Sum had, in fact, been used to purchase the Shares on their behalf.[52] As such, Xia is not entitled to seek enforcement of the Disputed Documents.

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49 ABOD Vol 1 at pp 309–312; AEIC LKA at para 54.

50 PRS at paras 41–43.

51 DCS at paras 6–8.

52 DCS at paras 22–47.

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46 Moreover, Lee argues that Xia's alternative claim under unjust enrichment should be dismissed. Lee has not been unjustly enriched from the Advanced Sum because she presently holds the Shares on trust for Xia's benefit now that she understands that Xia (and not Tony's "Chinese Investors") had in fact provided the Advanced Sum to purchase the Shares. Lee has also not been enriched at the expense of Xia either as she does not hold the Shares absolutely for her own benefit.[53]

47 Lee concedes that, on her own case, Xia is the beneficial owner of the Shares.[54] However, she highlights that her pleaded position remains that, while she is willing to return the Shares to Xia, this is subject to Xia giving her a comprehensive and irrevocable indemnity in relation to her holding the Shares as nominee shareholder for Xia.[55] For all of these reasons, Lee submits that Xia's Claim should be dismissed.

Counterclaim

48 Lee seeks compensation in the amount of $100,000.00 from Xia and/or Tony for her holding the Shares as nominee shareholder for Xia.[56] Her claim for $100,000.00 is premised on an oral agreement arising out of statements made by Tony to the effect that Lee would be compensated for acting as a nominee shareholder, thereby forming an agreement to that effect with him and/or Xia (with Tony acting as Xia's agent) (the "Oral Agreement").[57] While the exact sum was not agreed, there was an agreement to the effect that Lee would receive

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53 DCS at paras 55–63.

54 DCS at paras 79(c)(i), 84, 95 and 153.

55 DCS at para 65; D&CC at p 28 prayer (1).

56 D&CC at p 28 prayer (2).

57 DCS at paras 74–76 and 120–123.

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reasonable remuneration for her services as a nominee shareholder on a *quantum meruit* basis, be it an express or implied term of the Oral Agreement.[58]

49 In the alternative, Lee invokes the doctrine of promissory estoppel to argue that she is entitled to remuneration for holding the Shares as a nominee shareholder for Xia based on the representations of Tony (acting as the agent of Xia), which she has acted in reliance on.[59]

50 In addition, Lee is entitled to be indemnified for any and all losses flowing from, or which may flow from, her acting as a nominee shareholder for Xia, based primarily on the Oral Agreement contracted with Tony (acting as Xia's agent), who had promised that Lee would be indemnified in her capacity as a nominee shareholder.[60] Alternatively, it arises out of an implied equitable obligation to indemnify Lee as the trustee of Xia holding the Shares for Xia's benefit, as a facet of their fiduciary trustee-beneficiary relationship.[61]

51 Finally, Lee seeks compensation from Xia for misrepresentation, both for fraudulent misrepresentation and under the Misrepresentation Act 1967 (2020 Rev Ed) ("MA 1967").[62] The false statement of fact was that the moneys in the Advanced Sum came from Tony's "Chinese investors" when, in truth, they came from Xia instead.[63] In reliance on that false representation, Lee agreed to hold the Shares as a nominee shareholder only.[64] Lee was induced by the false

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58 D&CC at paras 31–33.

59 DCS at paras 77–80.

60 DCS at paras 160–166.

61 DCS at paras 167–173.

62 D&CC at paras 14D–14E.

63 D&CC at para 14A.

64 D&CC at para 14B.

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representations of Tony that the Disputed Documents were only being signed to inform the supposed "Chinese investors" that their moneys were being used to purchase the Shares to be held on trust for them.[65]

52 And as a result of Lee holding the Shares as Xia's nominee, she was sued in the Conspiracy Lawsuit for acting in an alleged tortious conspiracy with *inter alia* Xia, Billy, Eric, and Tony, for allegedly acting in concert with them as a nominee shareholder in the Company, incurring legal expenses in the process and having to pay out a settlement sum to the plaintiff of that action.[66] These are the consequential economic losses flowing from, and caused by, the actionable misrepresentations of Xia and Tony, for which they are liable.[67]

Issues to be decided

53 It follows that these are the issues which I have to decide –

(a) Did the parties intend to create a contract whereby the plaintiff would loan moneys to the defendant to be repaid to the plaintiff without interest at a later date, *ie*, the Loan Agreement?

(b) Did the parties contract the Oral Agreement for the defendant to be compensated and indemnified by the plaintiff or her former husband for acting as a nominee shareholder in the Company?

(c) Did the defendant suffer losses flowing from a misrepresentation of the plaintiff or her former husband that is actionable in law?

54 I shall address each of these issues in turn.

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65 Defendant's Reply Submissions dated 1 July 2024 ("DRS") at para 39.

66 D&CC at para 41.

67 DCS at para 158; AEIC LKA at para 55.

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Issue 1: Parties did not intend to create a contract whereby the plaintiff provided an interest-free loan to the defendant to be repaid at a later date on the terms of the Disputed Documents

55 I find, on the totality of the evidence before me, that Xia and Lee never intended to create any legal relations between them based on their signing the Disputed Documents. The true arrangement between them was for Lee to hold the Shares, not for her own benefit, but as a nominee shareholder for the person or persons paying the Advanced Sum – which, based on the statements of Tony, she had understood to be the undisclosed "Chinese investors" known to Tony.

56 As such, it follows that Xia is *not* entitled to seek enforcement of the Disputed Documents, which were never intended to create any true contractual relationship between the parties. It also follows that Xia is entitled to the grant of her alternative remedy prayed for in her pleadings, *viz*, "Alternatively, a declaration that the Defendant holds the Shares on trust for the Plaintiff".[68]

57 I arrive at these factual findings upon the totality of the evidence before me, which I analyse as follows.

Admissions of Xia and Tony in their Reply Affidavits

58 First, the admissions of Xia and Tony in their Reply Affidavits clearly demonstrate that the true intention behind the Disputed Documents was not – as the documents suggest, on their face – to extend an interest-free loan to Lee, but rather to have Lee hold the Shares as a nominee shareholder only, for the purposes of the EGM on 20 February 2020, whereat the Company's board was to be replaced (see [34]–[35] above).

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[68] SOC at p 8 prayer (5).

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59 The contents of the Reply Affidavits clearly contradict Xia's case that the Disputed Documents were intended to extend an interest-free loan to Lee. If the Advanced Sum was extended to Lee as a genuine loan, then Lee would own beneficially the Advanced Sum and would be under an obligation to repay Lee an equivalent amount (without interest) within three months. It would follow that Lee would own the Shares absolutely for her own benefit as she would have bought the Shares for herself using the Advanced Sum that she owned beneficially, and she would be entitled to exercise the rights therein – including voting rights – independently and howsoever she wished.

60 However, that is squarely contradicted by the account given by Xia herself in her own Reply Affidavit, corroborated by that of Tony. Both of the Reply Affidavits made clear that the purpose behind the arrangement with Lee was to support Eric's appointment to the Company's board of directors at the next EGM.[69] In order to achieve this, Xia would extend the Advanced Sum towards "purchasing the [S]hares and parking it in the name of [Lee] until the EGM was over, whereupon the [S]hares would be returned to [Xia]".[70] In other words, their evidence was clear and *ad idem* that Lee was simply a nominee shareholder of the Shares. She did not own the Shares for her own benefit and could not freely exercise its voting rights as she pleased. She was required to vote the way Xia desired – *ie*, in support of Eric's ambitions to be appointed to the Company's board at the next EGM – and then return the Shares to Xia at the end of the three-month period. Such an arrangement is not reconcilable with an interest-free loan, where Lee would thereafter become the beneficial owner of the Advanced Sum she had borrowed, and also of the Shares purchased with the borrowed moneys, in exchange for Lee coming under a corresponding

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69 AIR XZ (SUM 3044) at para 15; AIR LH (SUM 3044) at para 10.

70 AIR XZ (SUM 3044) at para 15; AIR LH (SUM 3044) at para 10.

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obligation to repay the lender, Xia, an equivalent sum of moneys by a stated deadline.

61 I give greater weight to the evidence in the Reply Affidavits as they are made against the makers' own interest. Specifically, for Xia's Reply Affidavit, the evidence therein is against her own interest in so far as it contradicts her pleaded case respecting the Disputed Documents having been intended to create a creditor-debtor relationship between the parties.[71] Likewise, for Tony's Reply Affidavit, the evidence therein is against his own interest in so far as it contradicts his defence to Lee's third-party claim (that was initially brought against him prior to Tony being made the second defendant to Lee's Counterclaim) that Lee did not have the funds to purchase the Shares and borrowed moneys from Xia to effect the purchases, in furtherance of her husband Billy's objective of effecting a change in the board composition of the Company.[72] Tony had specifically pleaded that the Disputed Documents were "not a Sham Document as it truly reflected parties' agreement".[73] Subsequent to the filing of that third-party defence dated 26 April 2022, Tony later became the second defendant to Lee's Counterclaim pursuant to Lee's HC/SUM 3719/2022 to amend her pleadings, to *inter alia* amend her defence and counterclaim to change Tony's status from "Third Party" to "2nd Defendant in Counterclaim",[74] that was granted by the court on 29 November 2022 (see the court's order in HC/ORC 6027/2022 dated 29 November 2022 and filed on 30 November 2022). Lee filed her amended defence and counterclaim on 30 November 2022

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71 AIR XZ (SUM 3044) at paras 10–20; SOC at paras 2–4.

72 AIR LH (SUM 3044) at paras 9–17; Defence of the Third Party dated 26 April 2022 at paras 28–35.

73 Defence of the Third Party dated 26 April 2022 at paras 28(e) and 35(a).

74 Draft Defence and Counterclaim (Amendment No 3) appended to HC/SUM 3719/2022 in HC/S 242/2021 filed 7 October 2022 at p 1.

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and Tony filed no pleadings thereafter. Hence, his pleaded position remains that stated in his third-party defence dated 26 April 2022. Given that Tony's Reply Affidavit contradicts that pleaded position, it is evidence given by him against his interest.

62 Many crucial aspects of the Reply Affidavits contradict Xia's pleaded case that the Disputed Documents reflected a genuine contractual intent of the parties to create an interest-free loan arrangement between them. Far from Lee desiring to purchase the Shares for her own benefit or in furtherance of the plans of her husband Billy, the Reply Affidavits are clear that it was actually Xia who wanted to purchase the Shares for herself to further the plans of Tony and Eric to replace the board of the Company. Xia's Reply Affidavit states that "Eric's plans to inject more business through his contacts appeared promising. If Eric [*sic*] plans came to fruition, the value of USP Shares would increase. As such, I considered it to be a potentially viable investment opportunity *for myself*"[75] [emphasis added], *ie*, the purchase of the Shares was for Xia's *own* benefit and not for Lee's. Xia's Reply Affidavit makes clear that she "was already fairly interested in acquiring USP's shares in [her] own right".[76]

63 Likewise, this evidence is corroborated by Tony's Reply Affidavit, which states (at para 10) that:[77]

> … I believe I mentioned to her [Xia] that I was in discussions with Eric and Billy to fulfil Eric's intention to ascend to the Board of USP so that he could turn his fortunes around as he appeared to have good business ideas and a number of contacts. If this plan succeeded then USP could look to better days ahead. I understood from the Plaintiff [Xia] that if there was a prospect of a decent investment return, she may be

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75 AIR XZ (SUM 3044) at para 11.

76 AIR XZ (SUM 3044) at para 15.

77 AIR LH (SUM 3044) at para 10.

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> willing to invest in USP shares. Sometime in late January, an opportunity for the Plaintiff to acquire shares from Bestway and Zeng Fuzu materialised. As such, the Plaintiff and I spoke about it and the Plaintiff agreed to purchase those shares. …

64 Moreover, Tony's Reply Affidavit explicitly states: "I categorically state that the beneficial and absolute owner of the Shares is the Plaintiff".[78] Hence, the Reply Affidavits make clear that it was Xia who wanted to buy the Shares and not Lee. It was therefore Xia who acquired the beneficial ownership and not Lee. That is inconsistent with a loan whereby Lee would become the beneficial owner of the Advanced Sum and the Shares that were purchased therewith.

65 Likewise, the Reply Affidavits make clear that Lee would only be a nominee shareholder of the Shares. Both employ the language of "parking" the Shares "in the name of" Lee, in order for her to vote in favour of Eric's resolution to change the Company's board at the next EGM, before the Shares were to be returned to Xia.[79]

66 In her cross-examination, Xia attempted to belatedly distance herself from the evidence in the Reply Affidavits. First, she contradicted her affidavit evidence in her Reply Affidavit when she disagreed with the question put to her that "[t]he true reason why you, Xia Zheng, wanted to buy the shares was because you wanted to help Tony use the shares to vote in an EGM to appoint Eric onto the board. Agree or disagree?"[80]

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78 AIR LH (SUM 3044) at para 17.

79 AIR XZ (SUM 3044) at para 15; AIR LH (SUM 3044) at para 10.

80 Notes of Evidence ("NE") of 22 December 2023 at p 44 lines 17–20.

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67 When confronted with the contents of her Reply Affidavit, Xia tried to distance herself from what she had affirmed in her own affidavit evidence by suggesting that she did not know its contents when she swore on it and filed it in opposition to Lee's Setting Aside Application. In her own words: "The lawyer asked me to ask so---sorry, asked me to sign and I signed"[81] and "Sorry, at the time I was---I just started suing Lee King Anne and I didn't know English, I didn't understand the procedures. And that time, the lawyer asked me to sign and I just signed. And this is the first time I am seeing it and I am not very sure about it. And I don't even recognise the names here".[82]

68 I do not accept Xia's attempts to distance herself from the contents of her Reply Affidavit. Xia's Reply Affidavit was filed in opposition to the Setting Aside Application and to preserve the Interim Injunction. It is not believable or credible that Xia swore to an affidavit in these proceedings, in support of her own position at the interlocutory stage, and filed it through her legal counsel without having any awareness of its contents. More likely, Xia swore to and filed the Reply Affidavit because it was the truth and, at the time, supported her interlocutory position to maintain the Interim Injunction against Lee on the basis that Lee had no rights over the Shares. Now, she makes a belated attempt to distance herself from her own Reply Affidavit because it is inconvenient to her pleaded case on the merits – *viz*, that she had loaned the Advanced Sum to Lee to purchase the Shares for Lee's *own* benefit and Lee was therefore *not* a bare trustee of the Shares for her.

69 Moreover, Xia's attempt to downplay her English proficiency by suggesting that she was unable to read the contents of her Reply Affidavit which

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81 NE of 22 December 2023 at p 48 line 30.

82 NE of 22 December 2023 at p 49 lines 14–17.

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were in English (as opposed to it having been interpreted to her prior to her affirming its contents),[83] was also not believable. Having had the benefit of observing Xia in the witness box, I note that she was able to proficiently read and pronounce the words in the Disputed Documents – which were entirely in English – without any difficulty, and she herself admitted to having been able to comprehend its contents.[84] That, too, contradicted Xia's earlier evidence that she had trouble understanding the Disputed Documents because its contents were in English.[85] I find, therefore, that these were self-interested and belated attempts by Xia to give evidence tailored to disown her position in her Reply Affidavit which, as I have found, contradicts her pleaded case. Hence, I accord little weight to Xia's explanations for disavowing the contents of that Reply Affidavit. I totally reject her evidence that she did not know its contents at the time she affirmed her Reply Affidavit which was subsequently filed in court on her behalf in the Setting Aside Application. I find that she was fully aware of the contents that she had affirmed in her Reply Affidavit.

70 As for Tony's Reply Affidavit, Xia also tried to distance herself from his affidavit evidence when confronted with its contents during her cross-examination. Her evidence in response to a series of put questions was that she had never seen that affidavit and disagreed with its contents.[86] The weight and credibility of her evidence on this front stands to be appraised in light of the fact that I have found that she tried to give self-serving evidence on the stand tailored to distance herself from her own prior averments in her Reply Affidavit (see [67]–[69] above), and the contents of which cohere with that of Tony's Reply

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83 NE of 22 December 2023 at p 49 lines 14–15 and p 52 line 24.

84 NE of 26 December 2023 at p 28 lines 1–18.

85 NE of 22 December 2023 at p 76 lines 23–24.

86 NE of 22 December 2023 at p 45 line 4 to p 46 line 30.

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Affidavit. Hence, as a matter of common-sense, that would afford a strong reason to accord little weight to Xia's similar explanations to distance herself from the evidence in Tony's Reply Affidavit.

71 At no point did Xia refute any of the averments in Tony's Reply Affidavit or seek permission of the court to file an affidavit to rebut the claims he made therein, such as when the Setting Aside Application came up for a hearing on 26 July and 10 August 2021. That fact is not without significance. Given that the contents of Tony's Reply Affidavit concerned Xia's *own* alleged actions and squarely contradicted her pleaded case, if they were indeed all untrue, then it is curious that Xia made no attempts to disavow or refute Tony's evidence back then. In fact, as I have found, the contents of Tony's Reply Affidavit actually materially *corroborate* the contents of Xia's Reply Affidavit instead (see [62]–[63] above).

72 For these reasons, I accord little to no weight to Xia's oral evidence wherein she tried to disavow the affidavit evidence in both Reply Affidavits. Instead, I give weight to the evidence in the Reply Affidavits which, as I have found, both contradict Xia's pleaded case of the Advanced Sum having been loaned to Lee to purchase the Shares for her own benefit. They prove that the real arrangement agreed between the parties was for Xia to extend the Advanced Sum in order to 'park' the Shares in Lee's name as a mere nominee shareholder whilst retaining the beneficial ownership of the Shares throughout. The reasons for so doing were that: (a) Xia was too closely related to Tony and would be more readily considered a concert party in the voting at the upcoming EGM if Xia was named as the registered shareholder of these Shares and the threshold for a general offer having to be made for the take-over would be crossed, which was to be avoided; (b) "parking" the Shares with Lee as the registered shareholder of these Shares minimised the risk of discovery of a breach of the

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Singapore Code on Take-overs and Mergers (the "Takeover Code"), since Lee would be less likely to be seen as or considered a related or concert party with Tony or Eric; (c) Lee as the registered shareholder would use the Shares to support the plans of Tony and Eric to vote to change the composition of the Company's board of directors at the next EGM before the Shares would then be returned to Xia thereafter; and (d) Xia was persuaded by Tony that the Shares would appreciate in value after the old board of directors was replaced with the new board of directors led by Eric who would turn the Company around.

Contemporaneous communications between Tony, Eric, and Billy

73 The inference of fact that Xia extended the Advanced Sum to purchase the Shares for her own benefit but then placed it under the legal name of Lee as a mere nominee shareholder is further bolstered by the contents of the various messages exchanged between Tony, Eric, and Billy.

74 On 5 November 2020, Tony sent a WhatsApp message to a group consisting of him, Eric and Billy (see [19] above), which stated that "Ann [*sic*] need to pay the money to Chinese investors. There is no delay. Chinese investors gave me the buyer name yesterday. We will start to transfer the shares tomorrow".[87]

75 This message must be interpreted in tandem with Billy's WhatsApp message to Tony on 8 November 2020 (see [20] above), which stated that: "Regarding *the shares you put with Anne*, pls let me know when you are ready to trf. Anne has *held the shares for your investors since Feb 2020.,* [*sic*] and

[87] ABOD Vol 1 at p 314.

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was potentially exposed to litigation in relation to USP, Eric and you" [emphasis added].[88]

76 Several facts emerge from the messages of 5 and 8 November 2020. First, it is clear that they support the inference of fact that Lee (referred to as "Ann" in the first message and "Anne" in the second message) was never regarded as the absolute beneficial owner of the Shares in her own right. She held the Shares "for" Tony's Chinese investors only. This bolsters the inference of fact that Lee was only a nominee shareholder throughout.

77 Second, the words "the shares you put with Anne" further supports the inference of fact that the Shares were only 'parked' under the legal name of Lee as a nominee shareholder without her ever having true ownership thereof, based on the evidence in the Reply Affidavits that the Shares were meant to be 'parked' in the name of Lee for the purposes of the upcoming EGM of 20 February 2020 to vote to change the board composition of the Company.[89]

78 Third, both messages speak of Lee having to transfer the Shares to a "buyer" whose name would be provided by Tony's "Chinese investors". Lee had no discretion to sell to anyone as she pleased at the highest price (which a true beneficial owner would have). Instead, Lee *had* to transfer those Shares only at the instance of the "Chinese investors" and only to a named "buyer" selected by the "Chinese investors" and at a time unilaterally decided by the "Chinese investors".

79 Viewed in their totality, it is clear that the messages strongly suggest that Lee had no discretion to retain the Shares in the event that she did not want

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88 ABOD Vol 1 at p 319.

89 AIR XZ (SUM 3044) at para 15; AIR LH (SUM 3044) at para 10.

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to sell at all or if she wanted to wait longer for a better price before disposing of the Shares in contradistinction to what Lee would, as a true legal and beneficial owner, be able to do (*ie*, if Lee had in fact borrowed the Advanced Sum from Xia, which I do not accept as being factually correct, in order to buy the Shares for herself to become both the legal and beneficial owner of the Shares, as alleged by Xia). Based on the WhatsApp messages, Lee *must* transfer the Shares at the direction of the "Chinese investors", and Lee was not even asked the price at which she was willing to dispose of or sell these Shares to the "buyer", as would be expected if she was a true beneficial owner of these Shares. Tony's message spoke of how the "Chinese investors gave me the buyer name yesterday. We *will* start to transfer the shares *tomorrow*" [emphasis added]. Clearly, the message was not asking *if* Lee wished to transfer the Shares but spoke of the transfer as an inevitability following the Chinese investors' provision of the name of the "buyer" to whom the Shares were to be transferred. This is supported by Billy, who stated, in relation to "the shares you put with Anne", that: "let me know when you are ready to trf". The abbreviation "trf", looked at in this context, must be a short form for "transfer". This, too, supports the inference of fact that Lee was never an absolute owner of the Shares in her own right but a mere nominee. Hence, she *had* to transfer the Shares at the instance of the true owners thereof, which, in her mind and in that of Billy, and as stated to them by Tony, were Tony's unnamed and undisclosed "Chinese investors".

80 These WhatsApp messages between Tony and Billy make sense only when understood in the following factual context: (a) as far as Lee knew at the time, the "Chinese investors" had provided the moneys to Lee to buy the Shares on their behalf; (b) the mechanism for the transfer of moneys to Lee from the "Chinese investors" was to have Xia act as the conduit for the flow of funds amalgamated from various Chinese investors; (c) Xia would, after collecting the

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moneys from these various Chinese investors, transfer the moneys to Lee as part of that mechanism or Xia could bypass Lee and transfer/pay the moneys directly to the two Vendors of the Shares (which would be more convenient, and also safer, for the Chinese investors, as Lee would not have the chance to handle any of the moneys originating from the Chinese investors); (d) Lee was to purchase the Shares in her own name on behalf of the Chinese investors and become the nominee shareholder for the Chinese investors; (e) the Chinese investors as the true beneficial owners would have the right to sell (and therefore transfer) the Shares at any time to any "buyer" of their choice and at a price to be determined by them; (f) the Chinese investors therefore provided the name of the "buyer" to whom they had ostensibly sold the Shares registered in Lee's name as the nominee shareholder for these Chinese investors; and (g) the named "buyer" would therefore have to pay Lee as the registered shareholder the purchase and sale consideration, and Lee would, in turn, obviously have to transfer to the Chinese investors the sale proceeds that she would subsequently receive after she had transferred the Shares held nominally in her name to the named "buyer". This was how the sale of the Shares by the Chinese investors to the "buyer" was intended to be done and how the flow of the sale proceeds was contemplated to take place, based on the information known to Lee and Billy *at that time*.

81 As such, these WhatsApp messages support the inference of fact that Lee acquired the Shares in her legal name as a mere nominee. That would clearly contradict Xia's pleaded case that the Disputed Documents were intended to create an interest-free loan arrangement between the parties, giving rise to the Loan Agreement between them. If that were the case, Lee would have become the absolute owner of the Advanced Sum, to be used to purchase the Shares, which she too would own outright, in exchange for her taking on a corresponding obligation to repay the Advanced Sum to Xia by a given deadline. That clearly was not the intended or agreed arrangement, given that

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these WhatsApp messages speak of Lee not as the Shares' true owner but a mere nominee thereof.

82 For completeness, I note the possible argument that the wording of "Ann [*sic*] need to pay the money to Chinese investors" *could* be said to support the pleaded case of Xia that Lee took on an obligation to subsequently pay Xia back the moneys that Xia had lent pursuant to a Loan Agreement, whereby Lee had used the Advanced Sum to buy the Shares for herself. The first difficulty with this argument is that the message did not say that "Ann" (*ie*, Lee) needed to pay the money to Xia (*ie*, to repay the loan that "Ann" had allegedly taken from Xia to purchase the Shares for herself). Instead, the message stated that Lee had to pay (or repay) the money to the "Chinese investors", which would not make any sense, unless "Chinese investors" (referred to in the first sentence of Tony's WhatsApp message) had all along been meant to be a reference to Xia herself, which obviously was not the case in the whole series of WhatsApp messages. The second difficulty is that, even if it were to be assumed that the phrase "pay the money" within Tony's message was a reference to Lee's repayment obligations to Xia under the Loan Agreement, as *per* the Disputed Documents, it is not clear why Tony was *also* instructing that Lee must transfer the Shares to a new buyer because his "Chinese investors" (referred to in the second sentence of the WhatsApp message) have apparently found a "buyer", unless the plural phrase "Chinese investors" is again to be taken to mean Xia alone. I do not believe that this is a double typographical error occurring in both sentences made by Tony. Instead, the message is in substance about Lee having to pay the "Chinese investors" as the beneficial owner of the Shares after transferring (and selling) the Shares the next day to the new "buyer" found by the "Chinese investors" and as instructed by the "Chinese investors" through Tony to Billy. All of this is neither consistent with the Disputed Documents nor the Loan Agreement said to be constituted thereunder. The Disputed

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Documents, on their face, do not state that Lee was to pay any moneys within any given deadline. They only state that, after three months, Xia is then entitled to "sell the shares or take over the Shares from [Lee]", but not before the three months have passed. Even if one were to interpret the Disputed Documents to mean that Lee is given a fixed term loan of three months and, failing repayment at the expiry of the period of the loan, Xia is entitled to possess the Shares and to sell them if Xia wished to do so, that would still be irreconcilable with Tony's message, which speaks of *both* the need for Lee to "pay the money" *and* "to transfer the shares tomorrow".

83 As such, the WhatsApp messages of 5 and 8 November 2020 do not lend any support to the pleaded case of Xia of an arrangement to loan moneys or to lend the Advanced Sum with no interest to Lee for a fixed period of three months, pursuant to the written terms of the Disputed Documents, for her to purchase the Shares for herself. Rather, they lend support for Lee's pleaded case that she was only a mere nominee of the Shares throughout.

Corroborative evidence of Eric

84 Next, I consider that the evidence of Eric further supports the pleaded case of Lee that she was never the absolute owner of the Shares but a mere nominee shareholder of the same.

85 First, I consider the contents of Eric's Affidavit of Evidence-in-Chief ("AEIC") filed in the Conspiracy Lawsuit, which he craved leave to refer to in his supplementary AEIC for *these* proceedings.[90] Eric's evidence there was clear that he wanted to acquire control over the board of directors of the Company.[91]

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90 AEIC TSI at para 3(b).

91 AEIC TSI (S 621) at para 11.

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As part of his plans, he had to acquire control over *more* shares in the Company[92] or get the other shareholders to agree to support his plans and help him to take control of the board of directors of the Company when it was time to vote at an EGM. Tony then informed Eric that he was in contact with "the Chinese Investors" who were willing to acquire the Shares from the two Vendors in support of his plans for the Company.[93] According to Eric, "[t]hese shares were held by Lee King Anne, the 6th Defendant, *as Trustee*" [emphasis added].[94]

86 Eric reiterates that evidence in his AEIC for *these* proceedings. He avers there that Tony arranged a meeting with "the Chinese Investors" who were willing to purchase shares in the Company, with Tony as their liaison for their investments.[95] Then, "Tony informed me that he had asked Billy and his wife, the Defendant and Plaintiff in Counterclaim (**"Anne"**) for their help to *hold shares for the Chinese Investors*" [emphasis in original in bold; emphasis added in italics].[96]

87 I accept Eric's evidence and give weight to it as credible and reliable. He withstood cross-examination and made clear in his evidence that the person chosen to hold the Shares for Tony's "Chinese investors", who came to be aligned with Eric's plans for the Company,[97] had to be someone who would vote the way that the Chinese investors wanted them to vote,[98] "take directions from

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92 AEIC TSI (S 621) at paras 19, 23 and 30.

93 AEIC TSI (S 621) at para 30.

94 AEIC TSI (S 621) at para 30.

95 AEIC TSI at paras 8–9.

96 AEIC TSI at para 10.

97 NE of 26 December 2023 at p 124 lines 19–25.

98 NE of 26 December 2023 at p 124 lines 13–15.

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the Chinese investors",[99] and would not "have a controlling mind of her own, you know, to vote in whatever way she wants, you see".[100] As such, the chosen person to hold the Shares would play the role of being "just a proxy".[101] The person chosen to act as that "proxy" became Lee, Billy's wife. She could be trusted to play the role of that "proxy" because, at least at *that* point in time, Eric, Tony, and Billy were all aligned in their common aim and design to effect a change in the board composition of the Company at the next EGM.[102]

88 In considering the weight to be attributed to Eric's evidence in these proceedings, two important factors have to be taken into account. First, Eric was a neutral, non-partisan witness with no personal incentive or motive to tailor his evidence in favour of either Xia or Lee. Whatever Eric's past dealings with Billy and Tony, and his interest in the Conspiracy Lawsuit, for the purposes of *this* action, Eric has no direct stake or interest in the outcome of the Claim and Counterclaim. He neither gains nor loses in any personal capacity if Xia fails or succeeds in recovering moneys from Lee or if Lee fails or succeeds in receiving compensation and indemnification from Xia. As an unaligned party with no interest in these proceedings, the weight to be attributed to his evidence is accordingly greater than if it were otherwise.

89 More importantly, Eric's evidence on this area is bolstered by the external consistency with the other evidence – particularly, the evidence in the Reply Affidavits and the WhatsApp messages of November 2020, which, as I have found (see [72] and [83] above), all support the inference of fact that Lee

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99 NE of 26 December 2023 at p 124 lines 26–27.

100 NE of 26 December 2023 at p 124 lines 29–30.

101 NE of 26 December 2023 at p 124 line 27.

102 NE of 26 December 2023 at p 127 line 30 to p 128 line 7 and p 131 line 5 to p 134 line 11.

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was meant to be a nominee shareholder of the Shares all along and not the absolute owner thereof. That necessarily bolsters the weight to be attributed to Eric's evidence that Lee was chosen to be the "proxy" holding the Shares for Tony's "Chinese investors" who were backing Eric's plans to take control of the board of directors of the Company.

90 As such, I accept Eric's evidence that Lee was chosen to be a nominee shareholder to own the Shares in furtherance of his plan – supported at the time by Billy and Tony – to replace the then-board of directors at the Company's next EGM. That necessarily means that Lee was never intended to be an absolute owner of the Shares with complete freedom to exercise the rights therein, including the voting rights, howsoever she pleased. Her being a bare trustee of the Shares for concert parties who would back up Eric's plans to replace the then-board of directors of the Company is irreconcilable with the pleaded case of Xia that Lee borrowed moneys from Xia to purchase the Shares for herself because she lacked sufficient funds for the acquisition. Lee being a mere nominee of the Shares is also inconsistent with her *borrowing* the moneys in the Advanced Sum from Xia, which would have involved her acquiring the beneficial ownership of the Advanced Sum, and then the Shares that were purchased therewith, whilst coming under a legal obligation to repay that sum as a result of having borrowed the Advanced Sum for herself from Xia, with the consequence that Lee could not simply "repay" the loan to Xia by returning the Shares (whose total value, based on its traded market price, if not suspended, could well be significantly below the amount of the Advanced Sum at the time of such return) without making up for the shortfall in cash.

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Surrounding commercial circumstances involving the change in the board composition of the Company at the EGM of 20 February 2020

91 Next, I find that the inference of fact that Lee was intended to be a mere nominee of the Shares and not an absolute owner thereof receives further support when one examines the surrounding commercial circumstances at the time, namely, the upcoming EGM of 20 February 2020 and Eric's plans to take over the Company's board of directors, which were supported, in varying capacities, by Tony and Billy at the time (see [13] and [18] above).

92 It is clear that Eric was motivated, at the time, to ensure that the total number of ordinary shares in the Company under his legal name did not exceed the requisite threshold such as to trigger an obligation to make a general offer to *all* members of the Company. That much is clear from the messages sent by Lee & Lee's lawyers in the WhatsApp group called "USP Shares" in January 2020 (see [14]–[15] above). I note, in particular, the 3 January 2020 message from one of the Lee & Lee lawyers, which specifically states that: "i thought eric is not entering into the [B]estway contract? If he does he may cross 30% with the deemed interest based on his existing transactions? So a *completely separate party* shd be the transacting party" [emphasis added].[103] This was a reference to the (then) prospective share purchase agreement to purchase 12.8 million ordinary shares in the Company from the vendor Bestway. At that time, Eric was searching for an appropriate counterparty to buy the Shares from Bestway – one who, in the words of the Lee & Lee lawyer, would be "a completely separate party", and who would not cause Eric to exceed the stated 30% threshold for a mandatory general offer to be triggered pursuant to Rule 14 of the Takeover Code. That was why, as of 3 January 2020, the draft sales and purchase contract with Bestway still had a placeholder for the purchaser thereof,

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103 ABOD Vol 1 at p 245.

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under "[Name of Purchaser]", in the email sent from Lee & Lee to Eric and Tony.[104] They were still searching for an appropriate counterparty who would be "completely separate" and would not appear to be a concert party to avoid hitting the 30% threshold to trigger a mandatory general offer under the Takeover Code.

93 Hence, as Eric stated in his evidence, he did not want to hold the Shares in the Company because "I had already committed myself to about 25.4%, you know, of USP shares and my lawyers advised me that it is not prudent, you know, because, you know, we're *coming really close to the 30%*, you know, and … I didn't want to get myself in that kind of situation, so I rejected Tony Li Hua and I told him that he had to look for someone else" [emphasis added].[105] The legal advice referenced here is the advice given by the Lee & Lee lawyer in the 3 January 2020 WhatsApp message quoted at both [15] and [92] above, as stated in Eric's evidence.[106]

94 The fact that Eric, Billy, and Tony were attempting to find a way to procure the acquisition of the Shares *without* hitting the 30% threshold such as to trigger the mandatory general offer under Rule 14 of the Takeover Code receives additional support from the Setting Aside Affidavits of Billy, Eric, and Lee, all of which also make mention of this consideration. The affidavit of Lee states that when "Eric attempted to enter into a sale and purchase agreement with Bestway, Eric's lawyers then … advised him, that he could not do so without triggering a General Offer to the rest of shareholders of USP as he

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104 ABOD Vol 1 at pp 252–253.

105 NE of 26 December 2023 at p 76 line 26 to p 77 line 2.

106 NE of 26 December 2023 at p 120 line 6 to p 121 line 18.

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would have crossed the 30% threshold".[107] Billy's affidavit states that: "Tony approached me and told me that Eric needed to buy the Bestway Shares to beef up his shares to defeat Ricky. Tony further explained that Eric could not do it as it would cause Eric to cross the 30% threshold and cause a G.O."[108]

95 Moreover, Eric's affidavit states that "at that point in time, as I had already acquired 25.14% of USP shares, I was advised by my then solicitors that I would not be able to buy any more shares. Therefore, I rejected the shareholders' offers to sell to me and offered instead to explore working together instead in the interest of USP".[109] Hence, the Setting Aside Affidavits demonstrate that, at the time, the relevant players had, in their minds as a material consideration, the need to ensure Eric did not hit the minimum 30% threshold to trigger a mandatory general offer, pursuant to the Takeover Code.

96 The fact that Eric was motivated to avoid triggering a mandatory general offer in his acquisition of sufficient shares in the Company to take over its board at the next EGM is relevant in shedding light on why the parties likely arranged the affairs between them in the way that they did. Tony's "Chinese investors" would provide the Advanced Sum to purchase the Shares and they would have to appear as non-concert parties, although they would use these Shares to vote on the side of Tony and Eric at the upcoming EGM of 20 February 2020. The Shares would, however, be held in the name of Lee to make it appear that she was both the legal and beneficial owner, voting in her own right, and hence, her votes at the EGM would not be linked to either Tony or Eric as concert parties voting the same way at the EGM. However, Lee being in fact a mere nominee

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107 AIS LKA (SUM 3044) at para 14.

108 AIS HZR (SUM 3044) at para 25 (NB: "G.O." means General Offer).

109 AIS TSI (SUM 3044) at para 35(e).

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holding the Shares on a bare trust was obligated to vote in accordance with the wishes of the true owner, *ie*, the payor of the Advanced Sum (be it Xia, in truth, or Tony's "Chinese investors", as Lee and Billy believed at the time). As Eric put it in his evidence, because Lee was never the true owner of the Shares, it followed that, in terms of voting at the EGM, she was "only performing an administrative role" and "in this particular instance, [she] is just playing an administrative role".[110] In other words, she was never an absolute owner who could decide, independently, whether she would vote in favour of or against that resolution at the EGM, which right a beneficial owner would have.

97 Since Lee was in fact a nominee shareholder, she could *not* have borrowed the Advanced Sum from Xia to acquire the Shares from the Vendors for herself beneficially. If she had been intended to be a debtor of the Advanced Sum, she would have acquired beneficial ownership of the Advanced Sum and, by extension, the Shares purchased by Lee with the borrowed moneys. The result would have been that Lee would have had complete freedom to vote howsoever she pleased at the EGM and she would not be a nominee shareholder having no such freedom. I find, therefore, that these surrounding commercial circumstances lend further support for the factual inference that Lee was only intended to be a bare trustee of the Shares. That is factually incompatible with an inference that the parties intended for Lee to borrow the Advanced Sum from Xia to purchase the Shares for herself.

Wording of the Disputed Documents themselves

98 Finally, the fact that the parties never intended to create an interest-free loan, with a creditor-debtor relationship between them, giving rise to the Loan

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110 NE of 26 December 2023 at p 145 lines 7–8 and 23.

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Agreement alleged by Xia, receives further support when one considers the curious wording employed in the Disputed Documents themselves. Certain parts of that wording contradict Xia's pleaded case that the parties had intended to contract an interest-free loan based on a creditor-debtor relationship.

99 Although the Disputed Documents are formally labelled "Interest Free Loan Agreement[s]" (see [10] above),[111] and *ex facie* describe Xia extending a "loan" of the Advanced Sum to Lee, in order to purchase the Shares from the Vendors, the actual substantive rights and obligations therein are inconsistent with a creditor-debtor relationship.

100 For one, in a typical loan arrangement, the debtor who borrows moneys becomes the absolute owner with freedom to apply those sums to the purposes he or she deems fit, with a *personal* obligation to repay the sum to the creditor. The creditor does not generally control the moneys themselves once they have been extended to the debtor. Here, however, the Disputed Documents *specify* the destination of the Advanced Sum, *viz*, to "pay to 'Zeng [*sic*] Fuzu …to purchase … USP Group Limited shares (the Shares) from Zeng Fuzu",[112] and likewise for the purchase of the Bestway shares in USP.[113]

101 To be clear, this factor, in itself, is not definitive. Parties are free to tailor and customise their own loan arrangements however they deem fit, in exercise of their freedom of contract. They may add the terms and conditions they desire even if they differ from the usual form of a creditor-debtor relationship. I note, however, that it is unusual for Lee, as the *borrower* of the Advanced Sum, to be

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111 ABOD Vol 1 at pp 43 and 45.

112 ABOD Vol 1 at p 45

113 ABOD Vol 1 at p 43.

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limited or constrained in how she may use the moneys borrowed for a *particular* purpose of purchasing the Shares from Zeng and Bestway. Even if the wording at [100] above is viewed as purely prefatory, it must be considered against the fact that the Advanced Sum was *never* paid to Lee directly for Lee to purchase the Shares for herself (see [17] above). Instead, Xia ensured that the cashier's orders were issued in favour of the Vendors instead of in Lee's favour. This is also not definitive, in itself. It *could* mean that Lee, as the borrower of the Advanced Sum, gave instructions to the creditor to apply the sum directly to the Vendors, to facilitate the acquisition of the Shares. However, it is *a* relevant factor within the factual matrix that I take into consideration. It was an unusual means of structuring a creditor-debtor relationship, since normally a debtor has the complete freedom, as beneficial owner of the borrowed moneys, to apply the sum howsoever he or she wishes, and is at liberty to change his or her mind about where the moneys would go to. Here, however, the Disputed Documents not only *specify* what the Advanced Sum *was* to be applied to, *viz*, as "a loan … to purchase … USP Group Limited shares", but the supposed borrower, Lee, never came into direct possession of the moneys which she ostensibly came to own beneficially in exchange for a corresponding personal liability to repay her supposed creditor, Xia. Rather, these words in the Disputed Documents, coupled with how the acquisition of the Shares was effected, are more naturally congruent with a nominee arrangement in which Xia retained control over the Advanced Sum throughout – including its destination and the object and purpose to which it would be applied – and Lee was but a bare trustee of the same.

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102 More significantly, however, the Disputed Documents do not describe the date when Lee is required to repay the Advanced Sum to Xia. Instead, the dispositive parts of the Disputed Documents state that:[114]

> The loan will last for 3 months from the date of this agreement, unless extended by the mutual agreement of both parties.
>
> Xia Zheng has the right to sell the shares or take over the Shares from Lee King Anne after 3 months.

103 It could be argued, as Xia has, that the language of the loan lasting for "3 months from the date of this agreement" suggests that the repayment date is three months from the date of the Disputed Documents, which are both dated 3 February 2020. Hence, by implication, the repayment date is 3 May 2020.

104 However, the text of the Disputed Documents, on their face, do not state that Xia's right to possession of the Shares is *conditional* on Lee failing to repay the Advanced Sum by any given deadline. Instead, Xia's right to possess the Shares is described in absolute terms – *ie*, as automatically arising "after 3 months". That is clearly inconsistent with a creditor-debtor relationship. In an interest-free loan, the consideration provided by the debtor is the liability to repay the loan by a given date. While a debtor may extend a security interest over assets or properties purchased with the loaned moneys – such as in the case of a mortgage transaction – the purpose of that security is to enable the creditor to recover the loaned sum and *not* to possess the property absolutely.

105 As such, it is curious that the Disputed Documents, on their face, do not impose any limitations on Xia's right to possess the Shares after the period of three months has passed. It is not conditional on Lee's failure to repay the Advanced Sum. More importantly, if the Shares *rise* in market value above the

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114 ABOD Vol 1 at pp 43 and 45.

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quantity that was supposedly loaned out in the Advanced Sum, based on the text alone, Xia has the right to sell the Shares and keep for herself all the excess returns therefrom, without accounting for the excess moneys above the amount borrowed by the debtor, *ie*, Lee. Likewise, there is nothing in the Disputed Documents providing for what would happen if the Shares *declined* in value such that its total sale value dipped *below* the amount ostensibly loaned out in the Advanced Sum. It would appear that there would be no need for Lee to make good the shortfall by paying up the difference to Xia in order to make full repayment of the Advanced Sum allegedly borrowed from Xia.

106 The plain text of the Disputed Documents suggests that the supposed loan to Lee would simply expire after three months have elapsed and Xia's only recourse is to take over and then sell the Shares – even if the sale failed to recoup the full amount loaned out. Lee would *not* owe the outstanding difference to Xia as the supposed loan would have expired on the terms of the Disputed Documents. On the other hand, if the sale of the Shares happens to recoup more than the full amount loaned out, Lee would keep all the sale amount in excess of the outstanding loan, without having any obligation to return the difference to Lee as the borrower. It seems that the text of the Disputed Documents indicates features more akin to that of Lee being nominee shareholder of the Shares transferring the Shares to the beneficial owner, with the beneficial owner bearing all the risks of any fall in the value of the Shares and getting all the benefits of a rise in the value of the Shares between the time of the purchase of the Shares and the time of the transfer of the Shares from Lee to the beneficial owner.

107 None of these characteristics are consistent with an interest-free loan or the contracting of a creditor-debtor relationship. Indeed, Tan J (as he then was) made a similar observation in *Xia Zheng (Civil Procedure)* at [55]–[56], as such:

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> 55 At the end of three months, the plaintiff was entitled to sell the Shares or take over the Shares from the defendant. A plain reading of the two IFLAs [*ie*, the Disputed Documents] suggests that the plaintiff could sell the Shares or take over the Shares from the defendant even if the loans were repaid before the three months stipulated in the two IFLAs.
>
> 56 It is important to note that the focus of the two IFLAs seems to be on the USP shares, as opposed to the principal sums. If the loans were not repaid after three months and the market price of the Shares was lower than the principal sums, the two IFLAs are silent on whether the plaintiff could have a recourse against the defendant for the difference. Conversely, if the market value of the Shares was higher than the principal sums, the two IFLAs are also silent on whether the plaintiff should pay the defendant the difference. It is peculiar that these usual terms found in loan agreements are missing in the two IFLAs.

108 I acknowledge that Tan J's observations reproduced above were directed at dismissing Xia's Summary Judgment Application, the standard for which is naturally lower than that for dismissing her Claim altogether. However, I find that the doubts expressed by Tan J have been fortified by the evidence elicited at trial. In fact, the contents of the Reply Affidavits (see [34]–[35] and [58]–[72] above) support the view that the real object of the Disputed Documents was *not* to ensure that Xia was repaid the Advanced Sum but to ensure that she would be able to recover the Shares from Lee after the upcoming EGM was over and Eric was voted onto the board of directors of the Company. As the Reply Affidavits (see [72] above), the WhatsApp messages between Billy and Tony (see [83] above), and the corroborative evidence of Eric (see [90] above) all suggest, the Shares were only being 'parked' temporarily in the legal name of Lee without her being the true absolute owner thereof at any point of time.

109 It therefore makes sense, in that context, that the Disputed Documents are not phrased in such a way as to protect Xia's right to repayment of the full sum of the Advanced Sum from Lee – no more, no less – as would be expected of an interest-free loan arrangement. Rather, the focus of the Disputed

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Documents' language is on securing Xia's right to *possession* of the Shares. That focus is more consistent with an arrangement whereby Lee was a nominee shareholder of the Shares with Xia holding the beneficial ownership thereof. Hence, I find that the language of the Disputed Documents undermines the inference of fact that the parties intended to contract an interest-free loan whilst bolstering the inference of fact that the parties intended a nominee arrangement, in which Lee would be a mere nominee shareholder of the Shares throughout. For clarity, this is not an exercise in contractual interpretation. The question of fact I am concerned with is not the meaning of the Disputed Documents, but whether the parties intended the documents to carry legal contractual effect *at all*. Here, the wording of the Disputed Documents serves as corroboration for the overall finding of fact that the parties' true intentions were *not* to contract an interest-free loan arrangement, as the documents suggest on their face, but to create sham loan documents forming the mere impression of formally executed contracts with the signatures of both parties on them.

110 For completeness, the additional documents signed and executed by Lee (see [22] above) after the Disputed Documents were signed by her are neither here nor there and are neutral at best. They show only that Lee was willing to transfer the Shares to Xia. However, a willingness to transfer could be consistent *either* with a belief that she held no beneficial interest in the Shares *or* a belief that she was obligated to do so under the terms of the Disputed Documents. Hence, I do not place much weight on these executed transfer forms in arriving at my final conclusion of fact.

Conclusion: No Loan Agreement was intended or ever existed as the Disputed Documents were sham documents

111 Hence, on the totality of the evidence as analysed above, I find that the parties did *not* intend to contract an interest-free loan arrangement or enter into

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a creditor-debtor relationship, on the terms of the Disputed Documents, when they were executed. Rather, the common intention was for Lee to be a mere nominee shareholder of the Shares, to be 'parked' temporarily under her legal name for the upcoming EGM in February 2020, to support the takeover of the Company and its board of directors, in which Eric, Billy, and Tony were involved, in varying capacities. It follows that Xia has failed to prove the existence of the Loan Agreement between the parties.

112 Applying the law to the facts as found, it is trite law that a constituent ingredient for the valid formation of a contract is an intention to create legal relations. It is also well-established that "the legal basis for the courts not enforcing a sham agreement lies in the absence of an intention to create legal relations, which is an essential element of finding the existence of a contract" (see *Toh Eng Tiah v Jiang Angelina and another appeal* [2021] 1 SLR 1176 at [76]). Hence, "[t]he essential element of a sham is that the parties did not intend to create legal relations which the acts done or documents executed give the impression of creating … There must be a common subjective intention on the part of all parties to the alleged sham to mislead": *Ivy Ng Soh Peng v Solution Aircon & Engrg Pte Ltd* [2023] 1 SLR 1085 at [14].

113 It is argued by Xia that Lee's 'sham defence' cannot succeed as, on her pleaded case, the parties intended to execute the Disputed Documents in order to assuage Tony's "Chinese investors" that their moneys had been used to purchase the Shares for them (see [45] above). Lee now accepts that Tony's "Chinese investors" likely do not exist after having seen the further evidence revealed in the course of the trial that the origins and the flow of the moneys for the purchase of the cashier's orders eventually used to pay for the purchase price

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of the Shares to the two Vendors,[115] Bestway and Zeng, had been traced to the proceeds of sale of certain properties held in Xia's name. Since Xia was the real and true source of the Advanced Sum to purchase the Shares, it cannot factually be the case that Tony's "Chinese investors" had originally provided the moneys and then transferred them to Xia to be consolidated first to enable Xia to purchase those cashier's orders. Therefore, Xia suggests that Lee's recognition of the unlikely existence of these "Chinese investors" undermines Lee's defence that the Disputed Documents had been executed as shams in furtherance of a common intention of the parties to assuage the "Chinese investors" of Tony, with the consequence that that defence is to be rejected.

114 I do not see how this argument undermines Lee's defence that the Disputed Documents were sham documents in the first place, although I accept that it may have an impact in assessing whether Tony had in fact represented (or, more accurately, misrepresented) to Billy that his "Chinese investors" were the purchasers of the Shares from the two Vendors, Bestway and Zeng, and that Lee was to be their nominee shareholder. But that has more to do with the merits of Lee's Counterclaim based on misrepresentation. If the misrepresentation of the Chinese investors having provided the moneys to buy the Shares had in fact been made, then the further misrepresentation by Tony that the Disputed Documents had to be signed by Lee to assuage Tony's Chinese investors that their moneys had been used to purchase the Shares for them was the inducement that tricked Lee into signing on the Disputed Documents. But these facts, although relevant to the assessment of Lee's Counterclaim for misrepresentation, is not relevant to Lee's 'sham documents' defence in relation to Xia's Claim premised on a purported loan of a total sum of $1,856,150.64 to Lee based on the Disputed Documents.

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115 ABOD Vol 1 at pp 26–27 and 42.

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115 It is important to bear in mind that the essence of a 'sham document' defence is not so much the court's finding of the presence of a common intention to enter into a *different transaction* than that described in the alleged contractual documents as that does not necessarily rule out the existence or non-existence of a common intention to enter into the very transaction as described in the alleged contractual documents. Rather, the essence of a 'sham document' defence is the court's finding of an *absence* of a common intention to create legal relations on the terms as described in the alleged written contract. In other words, it is a finding by the court that no valid contract arose because when the parties supposedly made an 'agreement' by, as here, signing and executing the Disputed Documents, they did *not* intend to form any real legal rights and obligations between them *based on* those Disputed Documents. Even if the parties had divergent intentions as to their real motives behind the signing of the Disputed Documents, provided that they were *ad idem* that the Disputed Documents were not intended to create any real legal relations between them thereon, that suffices to find that the parties lacked an intention to create legal relations, such that no valid contract arose thereon.

116 Based on the evidence before me, it is clear that Tony had held out that Lee was to be a bare nominee shareholder of the Shares, which were being acquired using funds from these "Chinese investors". He refers to such Chinese investors in his WhatsApp messages of 14 January 2020[116] and 5 November 2020[117] (see [16] and [19] above). The 14 January 2020 message describes the Chinese investors as having given him money to "buy tony wu's shares", and Tony Wu had been described as Bestway's representative in a prior WhatsApp

116 ABOD Vol 1 at p 300.

117 ABOD Vol 1 at p 314.

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message sent by Tony on 2 January 2020.[118] Hence, in context, Tony is describing the "Chinese investors" as the true source of the funds for purchasing the Shares at issue. Likewise, the 5 November 2020 message speaks of the Chinese investors giving Tony the name of a "buyer", and consequently, the Shares were to be transferred "tomorrow". The clear implication is that the Shares were being transferred on the instructions and at the direction of the Chinese investors who, by implication, held the true beneficial ownership over them.

117 This is corroborated by the evidence of Eric to the effect that he was also told by Tony that these Chinese investors were the source of the funds for the acquisition of the Shares in support of Eric's ambitions to be appointed to the Company's board of directors.[119] His AEIC in the Conspiracy Lawsuit avers that Tony represented to him that he knew of Chinese investors who were willing to assist Eric's acquisition of shares in the Company to take over the control of its board,[120] and pursuant to that, Eric, Billy, and Tony met with these Chinese investors at the Yotel Orchard Hotel.[121] Hence, Eric was under the impression that these Chinese investors "were also supposedly the ones who bought over shares of Bestway and Zeng Fuzu, as represented by [Tony]. These shares were held by Lee King Anne, the 6th Defendant, as Trustee".[122]

118 Therefore, I accept Lee's pleaded case that, at the time when she had signed the Disputed Documents, she was operating under the misimpression that

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118 ABOD Vol 1 at p 239.

119 AEIC TSI at paras 6–10.

120 AEIC TSI (S 612) at para 28.

121 AEIC TSI (S 612) at para 29; AEIC TSI at para 7.

122 AEIC TSI (S 612) at para 30.

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she was holding the Shares for Tony's "Chinese investors", who had purchased the Shares for themselves. I also accept, however, that these purported "Chinese investors" did not *in fact* pay the Advanced Sum for the purchase of the Shares from the Vendors, a fact that was established after the redacted bank documents were un-redacted at the trial and the true source of the funds were traced back to Xia and not to some undisclosed "Chinese investors". The real payor was Xia (see [113] above). Hence, the parties were not entirely *ad idem* as to why the Disputed Documents were being signed by them. Lee believed the further misrepresentations of Tony that the Disputed Documents had to be signed to assuage the "Chinese investors" of Tony whom she believed she was acting as nominee shareholder for, whereas Xia was signing them in order to ensure that *she* could recover the Shares for herself as the beneficial owner after the Company's EGM, as she herself had averred in her Reply Affidavit against the Setting Aside Application.[123]

119 Nevertheless, the fact that the parties were at subjective cross-purposes when they signed the Disputed Documents does not undermine the fact that they both commonly *did not* intend to form a legal relationship in accordance with what was stated on the Disputed Documents. Neither of them intended to form a creditor-debtor relationship between them nor to contract an interest-free loan. In fact, their different subjective intentions at the time were *both incompatible* with such a transaction. If the Advanced Sum had been loaned to Lee, she would have had beneficial ownership of the Advanced Sum and the Shares purchased therewith. That was plainly contrary to both Lee's intention – that she was a mere nominee of the Shares for Tony's "Chinese investors" – and Xia's intention, which, as described in her Reply Affidavit, was to purchase the Shares

[123] AIR XZ (SUM 3044) at para 15.

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for herself and to recover them from Lee after Eric had taken over the Company, whilst "parking" them under Lee's legal name in the interim period.[124]

120 As such, whatever the differences in their intentions at the time, they never had any common subjective intention to enter into a legal relationship as that which the Disputed Documents had given the impression of having been created. As there was an absence of an intention to create legal relations between them *on the* ***terms*** *of* the Disputed Documents, when they signed them, it follows that no valid contract arises thereon because an essential ingredient of contractual formation in law is absent. In fact, I find that their subjective intentions at the time were the same (*ie*, they had the common subjective intention) in so far as it is confined to having Lee become only a nominee shareholder for the Shares, which is already fundamentally contrary to the legal relations of creditor and debtor based on a purported loan as described in the Disputed Documents. The real difference between Xia and Lee is in their subjective knowledge or belief as to the identity of the true beneficial owner(s) of the Shares that Lee was to be a nominee for.

121 Given that the Disputed Documents were sham documents that did not create any contract between Xia and Lee, it follows that Xia's prayers premised on that ostensible Loan Agreement between the parties must fail. Accordingly, I dismiss her prayers for the transfer of the Shares to her by Lee, incidental restraints on Lee's use of the Shares, damages, and alternatively, the Advanced Sum.[125] These reliefs are premised on Xia's *primary* case that the Disputed

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124 AIR XZ (SUM 3044) at paras 13–17.

125 SOC at pp 7–8 prayers (1)–(4).

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Documents formed a valid contract between the parties.[126] Therefore, they must fail.

Xia's alternative claim for restitution on the ground of unjust enrichment fails

122 It follows from the above that Xia's alternative claim for restitution on the grounds that Lee has been unjustly enriched must also fail.[127] That claim in unjust enrichment is premised on Lee having been enriched at the expense of Xia as a result of Xia extending the Advanced Sum in favour of Lee's acquisition of the Shares from the Vendors for Lee's own benefit.[128] That enrichment was at the expense of Xia *vis-à-vis* the Advanced Sum and the unjust factor is said to be the failure of the basis for that advancement.[129]

123 One of the constituent ingredients for a valid claim in law on the ground of unjust enrichment is *inter alia* that the defendant must have benefitted from or been enriched at the expense of the plaintiff (see *Esben Finance Ltd and others v Wong Hou-Lianq Neil* [2022] 1 SLR 136 at [125]). However, it is not clear how Lee was enriched by the Advanced Sum having been extended by Xia. She holds the Shares on a bare trust as a mere nominee. Therefore, she is not entitled to benefit from or enjoy the Shares as an absolute owner. Lee herself accepts that she is and always had been a mere nominee and not a beneficial owner of the Shares.

124 Moreover, Lee has not been enriched at the *expense* of Xia. This is because, as the funds to purchase the Shares did not originate from Tony's

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126 SOC at paras 2–13.

127 SOC at paras 14–18.

128 SOC at para 16.

129 SOC at para 17.

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"Chinese investors", as Lee may have believed, but from Xia, and it is clear that Xia did not extend the Advanced Sum in order for Lee to acquire the Shares beneficially, they must be held on a bare trust for Xia as the payor of the Advanced Sum to purchase the same. As Xia is the beneficial owner of the Shares, she accordingly did not enrich Lee at her own expense as she still retains the beneficial interest in the Shares (see [128]–[130] below).

125 Accordingly, I also reject Xia's alternative case in unjust enrichment and deny her plea for restitution of the Advanced Sum.[130]

Xia's alternative claim for a declaration recognising that the Shares are held on a resulting trust for her succeeds

126 Finally, I consider Xia's alternative prayer for declaratory relief that Lee holds the Shares on trust for Xia. Based on the facts as I have found, this alternative prayer should be granted. However, I must particularise the basis on which this trust arises.

127 On Xia's pleaded case (in the alternative), Lee holds the Shares on a resulting trust for Xia.[131] It is not specified in her pleadings whether this is an "automatic resulting trust" or a "presumed resulting trust" (see *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 at 708). Xia pleads that she "did not intend to benefit the Defendant by gifting her the total Loan Sum to purchase the Shares".[132] Both categories of resulting trust, however, respond to an absence of an intention for the recipient of the moneys or properties to acquire a beneficial interest in them. In *Chan Yuen Lan*

130 SOC at para 18.

131 SOC at para 21.

132 SOC at para 20.

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v See Fong Mun [2014] 3 SLR 1048 at [44], the Court of Appeal approved of the 'lack of intention' analysis of resulting trusts, described by Lord Millett in the Privy Council case of *Air Jamaica Ltd and others v Joy Charlton and others* [1999] 1 WLR 1399 at 1412, *viz*, that "a resulting trust arises by operation of law, though unlike a constructive trust it gives effect to intention. But it arises whether or not the transferor intended to retain a beneficial interest – he almost always does not – since it responds to the absence of any intention on his part to pass a beneficial interest to the recipient".

128 On the facts that I have found on the totality of the evidence, I find that the present case is an example of a presumed resulting trust. It is established law that "[t]he presumption of resulting trust is based on a traditional common-sense presumption that, outside of certain relationships, an owner of property never intends to make a gift, and, by extension, that a person who provides the money required to purchase a property intends to obtain an equivalent equitable interest in the property acquired": *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") at [36]. Hence, when Xia transferred the Advanced Sum in order to purchase the Shares that allowed the Shares to be acquired in Lee's legal name, a rebuttable presumption of law arose that she did not intend to make a gift of the Advanced Sum – and, by extension, the Shares – to Lee (see *Lau Siew Kim* at [45]–[46]).

129 This presumption is not rebutted whether by way of the presumption of advancement or any positive evidence of an intention to benefit Lee. On the contrary, the facts as I have found them to be, on the totality of all the evidence, positively *prove* the absence of such an intention to benefit Lee, since she was only intended to be a mere nominee shareholder all along. Consequently, it follows that Lee holds the Shares on a presumed resulting trust for the payor of the Advanced Sum required to purchase the Shares – *viz*, Xia.

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130 Hence, I grant Xia's alternative prayer declaring that Lee holds the Shares on a resulting trust for the benefit of Xia.[133]

Issue 2: Parties never entered into any Oral Agreement for Xia or Tony to compensate and indemnify Lee for acting as a nominee shareholder

131 I turn now to consider Lee's Counterclaim against both Xia and her former husband, Tony. First, I consider her contractual claims which are premised on an alleged Oral Agreement formed between her and the defendants in counterclaim to compensate and indemnify her as nominee shareholder of the Shares,[134] before considering her claim in misrepresentation against them.[135]

132 I begin with the observation that Xia's Claim was premised on an alleged contract (*ie*, the Loan Agreement) which she sought to enforce against Lee, while Lee's Counterclaim is premised on another alleged contract (*ie*, the Oral Agreement) which she seeks to enforce against Xia and Tony. As such, while Xia bore the legal burden to prove, on the balance of probabilities, that the Disputed Documents formed a valid contract in law, it is now Lee who bears the same burden to prove the existence of the Oral Agreement (see ss 103(1) & 105 of the Evidence Act 1893 (2020 Rev Ed) and *Loo Chay Sit v Estate of Loo Chay Loo, deceased* [2010] 1 SLR 286 at [14]). I proceed to consider whether the evidence adduced by Lee suffices to discharge her burden of proving the existence of the Oral Agreement upon a balance of probabilities.

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133 SOC at para 21 and p 8 prayer (5).

134 D&CC at paras 5–6.

135 D&CC at paras 14A–14E.

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Lee fails to discharge her legal burden of proving the existence of the Oral Agreement to compensate and indemnify her

133 Lee's pleaded case that an Oral Agreement was formed that she would be compensated and indemnified for acting as nominee shareholder of the Shares, based on the oral promises of Tony to Billy, which she acted on, is based largely on her evidence and that of Billy.[136] Turning to the AEIC evidence of Lee, she avers that Tony promised Billy that she would receive compensation for agreeing to be a nominee shareholder for his Chinese investors.[137] Billy relayed the promises to Lee, who indicated that she would only agree to act as nominee shareholder if she was "fully indemnified" in that capacity and "compensated with payment of a reasonable sum on a quantum meruit basis at a later date for [her] assistance".[138] Likewise, Billy's evidence was that Tony made a request for his wife (*ie*, Lee) to hold the Shares as a nominee shareholder for Tony's Chinese investors, which Billy relayed to Lee, to which she agreed.[139] Then, Billy stated that: "Tony said he was grateful and would compensate the Defendant for her help although we did not ask for anything in return at that time".[140]

134 I find that the AEIC evidence of Lee and Billy, by themselves, are insufficient to discharge Lee's burden of proving the existence of the Oral Agreement on a balance of probabilities. They are self-serving and self-interested bare assertions of a promise to compensate and indemnify which are not corroborated or substantiated. There is no written record, contemporaneous

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136 D&CC at paras 5(e), 6(c) and 14(a); DCS at paras 133–134.

137 AEIC LKA at para 38(e).

138 AEIC LKA at paras 39(c), 39(d), 41(c) and 41(d).

139 AEIC HZR at paras 39–44.

140 AEIC HZR at para 45.

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communication, or any other objective evidence which proves that Tony represented that Lee would receive compensation and indemnification for her acting as a nominee shareholder. Moreover, given the supposed importance that Lee and/or Billy attached to the receipt of such compensation and indemnification at the time,[141] it is not believable that Lee and/or Billy did not insist on some written record of an agreement to compensate or indemnify Lee, such as a simple WhatsApp message to that effect, or at a minimum, perhaps Billy could have easily sent a short WhatsApp message at that time to Tony to thank him for agreeing to compensate and indemnify Lee for acting as a nominee for Tony's Chinese investors. The absence of any contemporaneous written record pointing towards the likely existence of the Oral Agreement is striking when one considers all the other WhatsApp messages available to prove that Lee was intended to be a mere nominee of the Shares or that the moneys to purchase them were said by Tony at the time to originate from the "Chinese investors" (see [16] and [19]–[21] above). Hence, I accord little to no weight to such self-serving evidence of theirs.

135 Lee has sought to rely upon the WhatsApp correspondence between Billy and Tony dated 8 November 2020 (see [20]–[21] above) to bolster her pleaded case that the Oral Agreement exists.[142] I do not find that that WhatsApp exchange lends any support for Lee's case as to the existence of the Oral Agreement. While Billy's message states, "For her role, we are seeking a compensation package of $100k",[143] there is no indication from Tony that such a request for compensation was ever acceded to. Rather, Tony responds that he

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141 AEIC LKA at paras 39 and 41.

142 DCS at para 135.

143 ABOD Vol 1 at p 319.

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"will pass ur requirements to Chinese investors",[144] which suggests that they are under consideration, not accepted outright. Tony also makes statements which implied that the request for compensation might *not* be acceded to, *eg*, "I think it is difficult BACS [*sic*] they took risk and no benefits" and the request to "Pls think ur requirement over, at the same time".[145] The very fact that Tony was asking Billy at that time to *rethink* the requested requirements militates *against* the inference of fact either (a) that Tony had subsequently mentioned to Billy that his Chinese investors had agreed to compensate and/or indemnify Lee for acting as a nominee shareholder for them; or (b) that Tony had later made a promise that he would *personally* compensate and/or indemnify Lee for agreeing to act as a nominee shareholder for Tony's Chinese investors.

136 Moreover, at no point in this WhatsApp exchange or any subsequent WhatsApp correspondence did Tony ever put in writing, in a message, that he or his Chinese investors had agreed to compensate or indemnify Lee. As I stated at [134] above, that is striking in light of the WhatsApp correspondence evidencing the nominee arrangement in which Lee held the Shares as a nominee shareholder for Tony's "Chinese investors" (see [16] and [19]–[21] above). There is only an equivocal remark from Tony that "[w]e talked it just on the phone", with no indication whatsoever as to *what* Tony or his "Chinese investors" had talked about and agreed to *vis-à-vis* Billy and Lee.[146]

137 Billy's AEIC evidence on the WhatsApp messages is revelatory. He states only that:[147]

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144 ABOD Vol 1 at p 320.

145 ABOD Vol 1 at p 320.

146 ABOD Vol 1 at p 320.

147 AEIC HZR at para 51.

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> 51. In fact, over a WhatsApp message to Tony on or around November 2020, I initiated the discussion regarding the transfer of shares to Tony's Chinese investors. In that same message, I explained to Tony that she [Lee] has left her last job as VP to join and help USP and that we were seeking a compensation package of S$100,000.00 for holding the shares. Now shown to me and exhibited as **TAB 12** of "**HZR-1**"is [*sic*] a screenshot of the WhatsApp text message between Tony and I.
>
> [emphasis in original in bold]

138 Strikingly absent from the above AEIC evidence is any indication that Tony ever replied to the effect that he or his Chinese investors *acceded* to the requested compensation package of $100,000.00 or had even made a counterproposal to offer any compensation on different terms. The inference to be drawn is simply that no such accession or counterproposal was forthcoming because Tony never agreed personally or on behalf of his Chinese investors that Lee would be compensated as a nominee shareholder. Hence, this evidence militates *against* the inference that the Oral Agreement existed.

139 This is confirmed in Billy's oral evidence in cross-examination, in which he was asked about the request for $100,000.00 in compensation, to which he replied:[148]

> A … No, I explain to you why we wanted to return the shares. The opportunity came when there was a turning point where he---he himself mentioned that the Chinese investors got a buyer. We say, "Oh, wow. Good. Then we don't have to hold these shares anymore. Let's---let's do it, you know. But I have a price for you to pay me for all my help." That's what I meant.
>
> Q So on this price---
>
> A Yah, for me, it's---
>
> Q ---on this price, you say, it's $100,000, right?

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148 NE of 15 February 2024 at p 136 lines 11–25.

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> A *It was a* [sic] *asking price. I didn't expect to get 100.* I expect him to counteroffer being the businessman he is. But *instead of counteroffer, he get a lawyer to sue my wife*---no, to---to write to my wife, 1.8 million it was. So to counter my---my proposal or pay me something, what he did is he just get his lawyers to say, "Eh, you owe me 1.8 million, you know. You better return the share or you pay me 1.8 million." That's what Tony did. …
>
> [emphasis added]

140 Hence, Billy's testimony makes clear that Tony never agreed to his requests for Lee to receive compensation for her acting as a nominee shareholder for his "Chinese investors". Billy also testified subsequent to that that the idea of asking Tony for $100,000.00 before Lee transferred the Shares was Billy's idea and based solely on his own notions of what is fair and "not pursuant to any contract".[149]

141 As such, it is clear that the existence of the Oral Agreement would hinge entirely on the self-interested, uncorroborated bare assertions of Lee and Billy in their AEICs that such requirements were agreed to on the part of Tony in exchange for Lee holding the Shares as a nominee (see [133]–[134] above). I do not accord much weight to such evidence. The result is that Lee has failed to discharge her legal burden of proving the existence of the Oral Agreement, on a balance of probabilities, based on the evidence she has adduced (*ie*, the assertions of herself and her husband, Billy). Therefore, Lee's case of an Oral Agreement for remuneration on a *quantum meruit* basis would fail, whether it is framed as an express or implied term of that agreement,[150] as I have found that the Oral Agreement was never formed to begin with. For clarity, I have found that (a) there was no express agreement that Lee would be compensated and/or indemnified because it has not been proved that Tony or Xia agreed to provide

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149 NE of 15 February 2024 at p 138 lines 1–18.

150 D&CC at para 39; DCS at paras 133–144.

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any such compensation and/or indemnity; and (b) there was also no *implied* term that Lee would receive remuneration on a *quantum meruit* basis because, while Lee agreed to be a nominee shareholder for Tony's unnamed Chinese investors, her receipt of such remuneration was not strictly *necessary* for such a nominee arrangement to be practicable. It is trite in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 at [100]–[101] that the standard for a term to be implied is a "high one" and is one of *necessity*. It cannot be said to be *necessary* that Lee had to receive remuneration in order to be a nominee shareholder whose legal name was being 'borrowed' to 'park' the Shares under her name. Such remuneration cannot be said to be necessary for business efficacy and obvious to the parties if it had been suggested by an officious bystander at the time. However, as I have held that the Oral Agreement was not proved *at all*, Lee's case for both compensation and indemnification fails whether it is framed as an express or implied term of such an alleged contract.

142 For completeness, I observe that there is no inconsistency between this finding of fact and my finding of fact that Lee's pleaded case that she was to hold the Shares on a bare trust for Tony's "Chinese investors", based on Tony's representations to that effect to Billy, is *true* on the balance of probabilities (see [116]–[118] above). The inference of fact that Lee had agreed to hold the Shares on trust for Tony's "Chinese investors" is *not* based on the self-serving bare assertions of Lee and Billy *alone*. Rather, they are based on all of the objective evidence I have analysed above, which together support the overall inference that Lee had agreed to hold the Shares as a mere nominee. These include Xia's and Tony's Reply Affidavits (see [72] above), the WhatsApp messages exchanged in January and November 2020 (see [83] and [116] above), the evidence of Eric (see [90] above), the commercial circumstances regarding Eric's plan to take over the Company's board and the roles that Billy and Tony

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played therein (see [91]–[97] above), and the wording of the Disputed Documents themselves (see [109] above).

143 The fact that the contemporaneous WhatsApp messages between Billy and Tony allude to a request for monetary compensation of a suggested amount of $100,000.00, even though there is no evidence of that request being acceded to, is nevertheless still *consistent* with my finding that Lee had acted and provided her services as a nominee shareholder, for which such compensation was therefore sought. The *existence* of that request for monetary compensation of $100,000.00 is, however, *totally inconsistent* with Xia's alleged factual position of a three months' interest-free loan because Lee as a borrower would have been extremely audacious and brazen to the point of being ridiculous to have dared to ask for $100,000.00 in compensation from the lender Xia for having granted her an interest-free loan. What is the compensation for if it were in fact true that Xia had lent moneys to Lee on an interest-free basis? I cannot imagine any possible reason for a lender to compensate a borrower who gets an interest-free loan from the lender. I think that, in that scenario of Lee receiving an interest-free loan of a large sum of $1,856,150.64 from Xia (which forms the primary basis for Xia's Claim), it is far likelier that Lee would have been extremely thankful to Xia. Instead, the contemporaneous WhatsApp messages show that a request for compensation had in fact been made, which therefore does not logically fit Xia's case whatsoever of an interest-free loan. On the contrary, it logically fits very well with Lee's case that Lee had in fact performed useful services for Tony and Tony's Chinese investors by acting as a nominee shareholder for the Shares for Tony's Chinese investors and by voting at the EGM in support of Tony and Eric, for which a request for compensation in the amount of $100,000.00 was consequently made to Tony by Billy on behalf of Lee. Whether it was acceded to is a different matter altogether.

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144 Returning to the question whether there was an Oral Agreement to compensate Lee for holding the Shares as a nominee shareholder and for voting at the EGM in support of Eric and Tony, I find that there is no such objective corroborative evidence supporting the inference that Tony had ever represented to Billy that Lee would either receive compensation or be indemnified if she agreed to act as a nominee shareholder for his "Chinese investors". There are *only* the self-interested bare assertions of Lee and Billy to that effect in their AEICs, which – as I have found (see [134] and [141] above) – are not *ipso facto* sufficient to discharge Lee's burden of proof in this regard.

145 Given that Lee has failed to show that Tony made any promises that she would be compensated and indemnified as nominee shareholder, I do not have to go on to consider whether Tony acted as an agent of Xia or had apparent authority to contract on her behalf.[151] Nothing would turn on such a finding, since, in either event, no such contractual promises were ever shown to have been made by Tony in the first place to be attributed to Xia. It follows that, in either scenario, the Oral Agreement is not proved to have been contracted between Lee, on the one hand, and Xia and/or Tony, on the other.

146 In conclusion, I find that Lee has failed to discharge her legal burden of proving the existence of the Oral Agreement. I dismiss all her prayers which are premised on the Oral Agreement, namely, for an indemnity, $100,000.00 in compensation, and, in the alternative, compensation on a *quantum meruit* basis, whether as an express or implied term of this alleged Oral Agreement.[152]

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151 DCS at paras 124–130 and 133–134; DRS at paras 48–50.

152 D&CC at paras 5–6 and 31–39 and pp 28–29 prayers (1)–(4).

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Lee's alternative claim for compensation for acting as nominee shareholder on the basis of promissory estoppel also fails

147 Lee has argued in her submissions that she is entitled to claim compensation for acting as nominee shareholder on the basis of the doctrine of promissory estoppel.[153] I do not accept that argument because the claim was never pleaded by Lee in her defence and counterclaim.

148 While Lee did invoke the doctrine of estoppel in her pleadings, she did *not* do so in order to claim compensation for acting as nominee shareholder. Rather, she pleaded that Xia "is estopped from claiming her entitlement to the transfer of the Shares, by reason of the express representations and/or promise(s) made by the Plaintiff through Tony (as an agent of the Plaintiff or alternatively, in his personal capacity), with the intention that the Defendant should act on such representations and/or promise(s) which the Defendant did in fact do",[154] and also that Xia is "estopped from making a restitutionary claim against the Defendant".[155]

149 In other words, Lee pleaded the doctrine of estoppel for the purposes of *preventing* Xia from prosecuting her Claim against Lee on the terms of the Disputed Documents or restitution for unjust enrichment. She did *not* plead the doctrine of estoppel in order to mount her Counterclaim for *inter alia* compensation against Xia and Tony, which was based on their alleged Oral Agreement to compensate and indemnify.[156]

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153 DCS at paras 77–80.

154 D&CC at para 14.

155 D&CC at para 20.

156 D&CC at paras 31–40.

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150 For completeness, I note that Lee's particulars of her invocation of estoppel include the claim that Xia and/or Tony made representations to Lee that she would be compensated if she acted as nominee shareholder over the Shares,[157] but these were the *particulars* of her claim that Xia is "estopped from claiming her entitlement to the transfer of the Shares"[158] and *not* for compensation based on the doctrine of promissory estoppel. This coheres with the orthodox principles of promissory estoppel that equity acts as a shield and not as a sword, and although it may have the *effect* of enabling a cause of action to be prosecuted with success where it otherwise could not be (see *Amalgamated Investment & Property Co Ltd (in liquidation) v Texas Commerce International Bank Ltd* [1982] QB 84 at 131–132 and *Baird Textiles Holdings Limited v Marks & Spencer plc* [2001] EWCA Civ 274 at [87]–[91]), it does not found a cause of action in itself. Thus, in *Combe v Combe* [1951] 2 KB 215 at 219, the plaintiff wife there could *not* invoke promissory estoppel to sue to enforce the defendant husband's promise to pay her maintenance of £100 a year free of tax, as estoppel "does not create new causes of action where none existed before. It only prevents a party from insisting upon his strict legal rights, when it would be unjust to allow him to enforce them, having regard to the dealings which have taken place between the parties". Indeed, the very case cited by Lee in her submissions,[159] *viz*, *Tong Seak Kan and another v Jaya Sudhir a/l Jayaram* [2016] 5 SLR 887 at [9]–[10] and [23]–[24], involved a defendant raising the doctrine of promissory estoppel to *defend* against a contractual claim on the basis of an alleged representation that the contractual documents would not be enforced, and *not* to ground a positive cause of action for compensation based on an alleged representation to compensate.

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157 D&CC at para 14(a).

158 D&CC at para 14.

159 DCS at para 78.

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151 Here, I do not have to consider whether Xia was estopped from either seeking a transfer of the Shares pursuant to the Disputed Documents or from instituting a restitutionary claim against Lee because I have rejected both those parts of Xia's Claim on their merits (see [121] and [125] above). Thus, the question whether Xia is estopped from making those claims does not arise for my consideration. The key point, however, is that Lee never pleaded the doctrine of estoppel as a basis for her claim for *compensation* in her Counterclaim, nor the supporting factual particulars for the same, as she now seeks to do in her written submissions, *viz*, that "[a]s all the elements of promissory estoppel are satisfied, the Defendant is entitled to compensation for holding the shares as a nominee shareholder".[160]

152 It is trite law that parties are bound by their pleadings in an adversarial system of civil litigation (see *Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 at [128]–[131], *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 at [94], and *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [34]–[38]). There being no reason of fairness to permit Lee to depart from her pleaded case here, I decline to grant Lee compensation on the basis of promissory estoppel either. In any event, her claim is not legally meritorious, resting as it does on an erroneous understanding of how the doctrine of estoppel operates in equity (see [150] above). Moreover, as I rejected the existence of the Oral Agreement, as the evidence did not prove that Tony made any promises to Lee (through Billy) that she would be compensated (see [144]–[146] above), it would follow that *even if* such representations of Tony to compensate Lee *could* have formed the basis of an enforceable promissory estoppel, none were made here anyway.

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160 DCS at paras 79–80.

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Lee's alternative claim for indemnification based on an implied equitable duty also fails as Lee is not a fiduciary for Xia

153 Finally, as an alternative to Lee's primary claim for an indemnity based on the alleged Oral Agreement,[161] Lee submits that there is an implied equitable obligation for Xia to indemnify Lee based on the nature of their fiduciary relationship as trustee-beneficiary.[162]

154 Again, I note that nowhere in Lee's defence and counterclaim did she plead that Xia owed her an implied duty in equity to indemnify her for all losses sustained by Lee in her capacity as a nominee shareholder. In fact, nowhere does Lee even plead that she was a fiduciary of Xia or that they stood in a fiduciary relationship. The only particulars in her pleadings as to the basis of this indemnity is the averment at para 5(e) that "the Defendant was only willing to help Tony on the basis that she would be indemnified, and that Tony and the Plaintiff was indeed representing Tony's purported Chinese investors. The Defendant was also agreeable to being compensated with payment of a reasonable sum on a quantum meruit basis at a later date for her assistance in holding the shares for and on behalf of Tony's purported Chinese investors and voting according to their instructions to ensure that USP remained profitable".[163] In other words, her pleaded basis for an indemnity was the Oral Agreement, which I have rejected (see [144]–[146] above). This is hence another attempt by Lee to depart from her pleadings and to mount unpleaded claims for relief against Xia, *ie*, for indemnity on the basis of an implied equitable duty. For the same reasons as at [152] above, I do not permit Lee to do so.

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161 D&CC at paras 5(e) and 6(c); DCS at paras 162–163.

162 DCS at paras 167–170.

163 D&CC at para 5(e).

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155 In any event, there is no merit to this unpleaded claim either. Lee relies on the authority of *Goh Sin Huat Electrical Pte Ltd v Ho See Jui (trading as Xuanhua Art Gallery) and another* [2012] 3 SLR 1038 at [60] for the legal principle that an indemnity can arise from contract, express or implied, or by conduct, or where the parties' relationship is such that there is an obligation on one party to indemnify the other.[164] As I have already rejected Lee's claim that the Oral Agreement existed, I also reject the claim that there was any express or implied contractual term that Lee would be indemnified by Xia or by Tony for acting as nominee shareholder. That leaves only whether one can be said to arise from their relationship,[165] *viz*, it is based on "the very nature of this fiduciary relationship that … the Plaintiff has an equitable obligation to indemnify the Defendant".[166]

156 I do not find that Xia and Lee ever stood in a fiduciary relationship. The reasoning in *Tan Juay Pah v Kimly Construction Pte Ltd and others* [2012] 2 SLR 549 ("*Tan Juay Pah*") at [44] is instructive in this regard:

> The principles for determining when an equitable "assumed promise" to indemnify may be found can be gleaned from a brief examination of the aforesaid authorities. *Eastern Shipping* [*Company, Limited v Quah Beng Kee* [1924] AC 177] recognised (at 182–183) that an obligation to indemnify, apart from arising from contract, could also arise from statute or from an equitable duty to indemnify stemming from "*an assumed promise by a person to do that which, under the circumstances, he ought to do*" [emphasis added] (see *Eastern Shipping* at 182). This equitable duty to indemnify may be found where the parties stand in a relationship of trustee and *cestui que trust* to each other (see *Birmingham and District Land Company v London and North Western Railway Company* (1886) 34 Ch D 261 at 271). In such cases, the trustee may claim an indemnity from the *cestui que trust*, and *vice versa* (see *Eastern Shipping* at 182–

164 DCS at para 160.

165 DCS at paras 169–171.

166 DCS at para 173.

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> 184). The notion that such an equitable obligation can be imposed when one party stands in a fiduciary relationship to another was expanded in *Checkpoint Fluidic Systems International Ltd v Marine Hub Pte Ltd* [2009] SGHC 134, which was an appeal to the High Court against a district judge's finding that an equitable right to indemnity had arisen in favour of the respondent against the appellant in view of the fact that the transaction in question had been entered into by the respondent for the appellant's benefit. This finding was upheld by the High Court. While [*Hygeian Medical Supplies Pte Ltd v Tri-Star Rotary Screen Engraving Works Pte Ltd* [1993] 2 SLR(R) 411] neither cited *Eastern Shipping* nor explicitly mentioned the doctrine of the equitable "assumed promise" to indemnify, there is arguably implicit recognition of this doctrine in the finding in that case that the third party was to indemnify the defendant.
>
> [emphasis in original]

157 It is clear that the doctrinal basis for such an implied equitable duty to indemnify is the "assumed promise" arising from a fiduciary relationship, such as *inter alia* a trustee-beneficiary relationship. Indeed, the Court of Appeal in *Tan Juay Pah* at [45] stated that "the presence of a fiduciary relationship is one of the touchstones for the imposition of an equitable 'assumed promise' to indemnify".

158 That being the case, the question is whether Lee was a fiduciary of Xia, bearing in mind that Lee never pleaded that she was a fiduciary nor the factual particulars giving rise to any such fiduciary-principal relationship. While I have found that Lee holds the Shares on trust for Xia, it is not without significance that that finding was based on a presumed resulting trust and not an express trust (see [128]–[130] above). That is because, while it is not impossible for a resulting trustee to be a fiduciary (see, *eg*, *Cheong Soh Chin and others v Eng Chiet Shoong and others* [2019] 4 SLR 714 ("*Cheong Soh Chin*") at [102]), it is unusual. As the Court of Appeal observed in *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 ("*Tan Yok Koon*") at [196]: "As a matter of principle, the idea that a fiduciary relationship is possible sits

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uncomfortably with the fact of a resulting trust. The latter is imposed by law whereas the former is voluntarily undertaken. It is certainly *not* the case that *every* resulting trustee is subject to a fiduciary relationship. However, in the rare case, it may well be that the *facts and circumstances* leading to the imposition of a resulting trust may also disclose an undertaking by the trustee – whether *express* ***or*** *implied* – to act in a certain way" [emphasis in original]. Indeed, *Cheong Soh Chin* at [103]–[113] took pains to find evidence in the parties' relationship showing that the Engs had, as an essential hallmark of their relationship with the Wees, an obligation to act in the best interest of the Wees, and the dependence and trust reposed by the Wees in the Engs. This is based on the principle in *Tan Yok Koon* at [194] that fiduciary relationships are voluntarily undertaken, arising from a fiduciary voluntarily placing themselves in a position whereby an intention to undertake fiduciary obligations may be objectively discerned.

159 Based on these principles, I cannot agree with Lee that she was ever a fiduciary for Xia. I agree with the reply submissions of Xia that, even in the event that Lee is a resulting trustee, she does not stand in the position of a fiduciary *vis-à-vis* Xia.[167] The Court of Appeal in *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655 ("*Turf Club*") at [42] noted "growing judicial support" for the formulation of a fiduciary as one "who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence" (quoting *Snell's Equity* (John McGee gen ed) (Sweet & Maxwell, 33rd Ed, 2015) at para 7–005). The question whether parties stand in a fiduciary relationship cannot be answered based on the class of relationship they fall into but "depends, ultimately, on the nature of their

[167] PRS at para 37.

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relationship and is not simply a question of whether their relationship can be shoe-horned into one of the settled categories (*eg*, a partnership) or into a non-settled category (*eg*, a joint venture or quasi-partnership)": *Turf Club* at [43].

160 It is clear that the role Lee objectively agreed to undertake here was not a fiduciary. It is a far cry from the scenario in *Cheong Soh Chin* at [103]–[113] where the resulting trustees there had undertaken an obligation to act in the best interest of the beneficiaries under all the circumstances, especially in light of their position of ascendancy and influence and the relative financial expertise between them, such that the beneficiaries were in a position of vulnerability and dependence upon the resulting trustees there. Here, however, the role envisaged for Lee, based on all the evidence, was an extremely limited one. As stated by Xia and Tony in their Reply Affidavits, the whole conceit of the nominee arrangement was merely to use Lee's name to 'park' the Shares under her legal name, until the EGM was concluded and Eric was voted to the board of directors of the Company thereat, before Xia was to retake legal title and possession of the Shares thereafter.[168]

161 The tenor of Eric's evidence was similar on this. He had described the role envisaged for Lee as that of "just a proxy"[169] and "[s]he doesn't have a controlling mind of her own, you know, to vote in whatever way she wants, you see".[170] He agreed with the question that she had to vote the way Tony's "Chinese investors" wanted because she was "just a proxy for the Chinese investors who were aligned with you [Eric], who want you [Eric] to be on the

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168 AIR XZ (SUM 3044) at para 15; AIR LH (SUM 3044) at para 10.

169 NE of 26 December 2023 at p 124 line 27.

170 NE of 26 December 2023 at p 124 lines 29–30.

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… board as the CEO",[171] as she was "only performing an administrative role";[172] hence, while it is Tony's "Chinese investors" who are "exercising their rights as shareholders and investors", Lee is "just playing an administrative role" for them.[173]

162 It is clear, therefore, that Lee never objectively undertook, by her words or conduct, the duties and obligations of a fiduciary. She never undertook to act in anyone else's best interest in her holding of the Shares. Her role was a far more limited one – namely, as a nominee shareholder, whose name was being 'borrowed' for use as the official holder of the Shares, to vote the way that she was required, and then return the Shares after that role had been performed. In the circumstances, I cannot agree that Lee was a fiduciary for Xia at any point in time. She is a resulting trustee by virtue of operation of law and an unrebutted presumption that Xia did not intend to confer a beneficial estate over the Shares when she extended the Advanced Sum to pay for their purchase. There was no obligation to safeguard Xia's best interest nor any trust and confidence reposed in Lee under the circumstances. Instead, equity merely *imposes* a resulting trust on Lee's holding of the Shares in order to prevent her from beneficially enjoying the Shares on her own accord, as absolute owner, without regard to the ownership rights of the true beneficiary, *ie*, Xia.

163 As Lee cannot show that she was a fiduciary for Xia, it follows that Xia never owed any implied duty in equity to indemnify Lee arising from an assumed promise to do so, under the circumstances, on account of them standing in the fiduciary relationship of trustee and beneficiary (see *Eastern Shipping*

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171 NE of 26 December 2023 at p 145 lines 3–7.

172 NE of 26 December 2023 at p 145 lines 7–8.

173 NE of 26 December 2023 at p 145 lines 13–23.

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Company, Limited v Quah Beng Kee [1924] 1 AC 177 at 182–183; see also *Tan Juay Pah* at [43]–[45]). Consequently, I reject Lee's prayer for an indemnity from Xia,[174] on the alternative (unpleaded) basis of an implied equitable duty to do so.

Issue 3: Lee's Counterclaim in actionable misrepresentation against both Xia and Tony is dismissed

164 Finally, I consider Lee's Counterclaim for damages on the basis of actionable misrepresentations from Xia and/or Tony, based on both fraudulent misrepresentation and liability under the MA 1967. First, as I have found at [116] above, the WhatsApp correspondence of Tony in January and November 2020 clearly show that Tony had represented to Billy that his "Chinese investors" were the source of the funds for the purchase of the Shares and that Lee would be holding the Shares as a nominee for their benefit. This is bolstered by Eric's evidence that Tony made similar statements to him about the "Chinese investors" and that Eric and Billy were taken to meet the supposed "Chinese investors" by Tony (see [117] above). As Billy relayed those proposals to Lee, who accepted them, it follows that Lee was led to believe (through Tony and Billy) that Tony's "Chinese investors" were the ones who paid for the Shares and whom she was acting as the nominee shareholder for. This was a false statement of fact. The real source of the funds was Xia herself, as evidenced by the cashier's orders in the record (see [113] above) and the evidence at trial that the moneys in the Advanced Sum were derived from the sale of her matrimonial properties.[175] I am given to understand that in the divorce proceedings, Tony gave his entire share of the matrimonial properties to Xia

174 D&CC at p 28 prayer (1).

175 NE of 19 December 2023 at p 109 lines 4–16 and p 111 line 7 to p 112 line p 121 line 31; NE of 20 December 2023 at p 9 line 24 to p 14 line 20.

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and hence Xia owned all the matrimonial properties after the divorce. The divorce apparently took place prior to Tony being made a bankrupt. During the trial, Lee wanted to raise the issue that the divorce between Tony and Xia was a sham divorce and adduce the evidence of a private investigator to establish that. Later, Lee's counsel decided not to pursue that issue, and I say no more about it.

165 Based on the totality of the evidence, I find that Tony's statements that the "Chinese investors" were the ones purchasing the Shares to be placed in Lee's name was a false representation of fact. A reasonable person apprised of the relevant facts and context on the receiving end of Tony's representation that the "Chinese investors" were the source of the funds for the acquisition of the Shares would not have understood him to be saying that his ex-wife, Xia, was the one paying for the Shares. They would naturally have been given the reasonable impression by Tony that the "Chinese investors" were *other* persons in a business relationship with Tony as opposed to a close family member of Tony or Tony's ex-wife, Xia, when taking an objective construction of Tony's representations as a whole (see *Trans-World (Aluminium) Ltd v Cornelder China (Singapore)* [2003] 3 SLR(R) 501 at [63]–[85]; *Audi Construction Pte Ltd v Kian Hiap Construction Pte Ltd* [2018] 1 SLR 317 at [61]; and *Broadley Construction Pte Ltd v Alacran Design Pte Ltd* [2018] 2 SLR 110 ("*Broadley*") at [28]–[29]).

166 Lee's Counterclaim for misrepresentation is against both Tony and Xia, even though, on her pleaded case, Xia never made any *direct* representations to Lee. The attributability of Tony's representations to Xia would depend *inter alia* on whether Tony was Xia's agent. In the circumstances, however, I do not have to decide the agency issue. Nothing in the outcome of the Counterclaim turns on that question. That is because I have found that Lee has failed to satisfy

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two further ingredients necessary for an actionable misrepresentation in law – first, she has not shown that she was *induced* by Tony's false representation of fact (see *Broadley* at [32]–[34]); second, she has not shown that any loss was caused to her *owing to* Tony's false representation of fact (see *Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 at [2] and [21]–[22] and *Axis Megalink Sdn Bhd and another v Far East Mining Pte Ltd* [2024] 1 SLR 524 ("*Axis*") at [126]–[127]). These difficulties with Lee's pleaded case on actionable misrepresentation are intertwined. The result is that her claim for damages for misrepresentation, whether for fraud and deceit or statutorily under the MA 1967, necessarily fails.

167 Lee has not shown that she was induced by Tony's falsity – *ie*, that the source of the Advanced Sum and the identity of the beneficial owner of the Shares were his "Chinese investors" as opposed to Xia – into entering into the nominee arrangement whereby she would become a nominee shareholder of the Shares.

168 First, I note that Lee argues that she was induced by Tony's statements to the effect that the Disputed Documents had to be signed in order to assuage the "Chinese investors" that their moneys were being used to buy the Shares for them. Hence, it follows that, if not for Tony's misrepresentation that the "Chinese investors" were the persons purchasing the Shares, she would not have signed the Disputed Documents.[176]

169 The difficulty with this argument is that, in order to succeed in her claim, Lee must go further than to merely prove that she was induced by the representation into signing the Disputed Documents. She must go further to

[176] DCS at paras 93–101.

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show that she was induced to *enter into* ***the nominee arrangement*** to hold the Shares as nominee. That is because the pleaded losses allegedly caused by the misrepresentations of Tony (ostensibly as Xia's agent) are the legal costs incurred as a result of her being sued in the Conspiracy Lawsuit.[177] That lawsuit had nothing to do with the Disputed Documents. According to Lee's own AEIC evidence:[178]

> 8. Xia Zheng was a defendant in HC/S 612/2021 (" **612**") [*sic*] where she and other defendants are being sued for more than $7 million and another $670,000.00 in costs and damages under a separate head of claim in S 612. The Plaintiff in S 612, Oon Koon Cheng, had alleged that Xia Zheng had conspired with Tony, Tanoto Sau Ian and others to hurt his interests, namely, to thwart his claim against Tony in HC/OS 904/2019 [*sic*]. …
>
> …
>
> 54. In fact, due to the fact that I had held these shares for the purported Chinese investors, I was sued in S 612 for an amount of nearly $8 million by the shareholder Ricky [Oon Koon Cheng] for hurting his interests. In the suit, Ricky had shown that he had sued Tony for about $7.6 million for breaching an agreement to buy back his shares (HC/S 904/2019 ("**S 904**")). Ricky claimed that I had conspired with Xia Zheng and Tony to stage the EGM to overthrow his nominated Board and also had participated in the conspiracy to help Tony avert a judgment against him by Ricky in S904 [*sic*].
>
> 55. Due to the evidence against Tony and Eric for being members of a concerted party in the EGM, and the fact that Xia Zheng did not even enter any appearance in S612 [*sic*], I had no choice but to settle this matter by paying Ricky $280,000. I had also incurred nearly $200,000 in legal fees to defend against the claims in S612 [*sic*]. I was added as a party in S612 [*sic*] *because I had been tricked by Tony and Xia Zheng into holding these shares for some purported Chinese investors*.

[emphasis in original in bold; emphasis added in italics]

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177 D&CC at para 41.

178 AEIC LKA at paras 8 and 54–55.

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170 Hence, in Lee's own words, the reason she incurred the losses in the Conspiracy Lawsuit was not because she signed the Disputed Documents but because she was "tricked by [Tony] and [Xia] into holding [the Shares] for some purported Chinese investors". Therefore, it is not enough for Lee to prove that the representations of Tony as to the identity of the beneficial owners of the Shares induced her to sign the Disputed Documents – she must show that that representation also induced her to agree to become a nominee shareholder of the Shares.

171 Lee's AEIC avers that she was deceived by Xia and Tony into holding the Shares as a nominee because she was misled as to the alleged independence of the beneficial owners whom she was holding the Shares as nominee for. In particular, she avers that she "had believed and was tricked into believing that [she] was holding these shares for an independent party (Chinese investors) who were not involved in the planning of the EGM",[179] and that "Tony had tricked [her] to hold the shares for Xia Zheng instead of for the purported Chinese Investors in order to conceal Xia Zheng acting in concert for the EGM".[180] In sum, Lee's AEIC appears to suggest, impliedly, that the fact of Xia being the real beneficial owner of the Shares, as opposed to Tony's "Chinese investors", was *material* to her decision to become a nominee shareholder because it made a difference as to whether she would be perceived as a concert party of Xia and Tony. According to her, she was tricked into believing that she was holding the Shares "for an independent party (Chinese investors)" instead.

172 This claim is further supplemented by Lee's oral evidence in cross-examination at trial. There, she testified that "it was represented to me, through

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179 AEIC LKA at para 50.

180 AEIC LKA at para 52.

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Billy, that Tony told him that I am holding shares for independent Chinese investors who I am [*sic*] not part of the planning for the EGM to take over the USP",[181] and that Billy had told her that:[182]

> He say that he trusted Tony, and then we---we are holding the shares on behalf of some Chinese investors who are independent. They are not---they are not part of this plan for whatever reason. For---for---they are independent. That's all I know. Independent people. So he persuaded me after Tony persuaded him I have to hold the shares.

173 It bears mentioning that Billy's AEIC made no mention of such alleged representations from Tony to him that his "Chinese investors" were independent and "not part of this plan" to replace the board of directors of the Company. That includes the portion of his AEIC on the representations Tony made to him at the time to persuade him to persuade Lee to hold the Shares as a nominee.[183] That incongruence casts doubt on Lee's evidence that Billy allegedly told her that he was told by Tony that his "Chinese investors" were "independent". In fact, Billy's AEIC evidence was that, when he, Tony, and Eric met with Tony's "Chinese investors", "[t]he Chinese investors stated that they were pleased with Eric's plans and that they would liaise with Tony for their investment into USP".[184] When read in conjunction with Billy's AEIC evidence as to the plans of Tony and Eric to replace the Company's board,[185] this evidence, in context, shows to the contrary that Billy was under the impression that Tony's "Chinese investors" were actually *aligned* with Eric and Tony's plans as opposed to being independent parties.

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181 NE of 27 December 2023 at p 35 lines 15–18.

182 NE of 27 December 2023 at p 75 lines 1–5.

183 AEIC HZI at paras 43–44.

184 AEIC HZI at para 40.

185 AEIC HZI at paras 35–38.

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174 Billy sought to clarify that aspect of his AEIC in oral evidence, where he testified as follows:[186]

> Q Okay, so probably January 2020, right? Okay, so at this point in time, were you familiar with the concept of concert party?
>
> A I was, I was. I was. But I didn't think it would re---I didn't think it will apply to Chinese investors because for my limited understanding of concert party, because I don't deal with listed company in terms of management or work inside. My understanding is basically they are independent investors. They are interested in the programmes suggested by impending new board. They have no role after that. They did not plan this EGM. All they did is buy shares *so they can support by voting*. In my mind, that is not concert party. …The Chinese investors are independent of the planning, the EGM. Although they heard the plan, *they want to support it*. That doesn't mean they---they cannot *buy shares to vote*, otherwise a lot of people who vote are all concert party.
>
> [emphasis added]

175 Billy clarified that, to his mind, even an investor who purchased shares in the Company in order to vote in favour of Eric's ascension to the board would not be a concert party, provided that they were "not involved in the planning of the EGM" or "[p]lanning of EGM or in the process of it".[187] Likewise, Lee gave evidence that she held a similarly narrow understanding of the concept of the "Chinese investors" being independent:[188]

> Q So if Tony and the Chinese investors are together in one camp, they can't possibly be independent, right?
>
> A The independent---
>
> Q The Chinese investors and Tony are together; they're aligned. They are not independent because, according to

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186 NE of 15 February 2024 at p 73 lines 17–31.

187 NE of 15 February 2024 at p 74 lines 1–5.

188 NE of 27 December 2023 at p 76 lines 6–31 and p 77 line 1.

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you, Tony is an agent of the Chinese investors. So they are one and the same, is it not?

A No, I---I disagree. I think this statement, what you say is---is not what I understand, okay? They are---

Q Okay, what do you understand?

A The Chinese investors are independent people who doesn't want to surface their name, so they want to appoint somebody to hold the shares for them. They don't want to surface because they are from China and they won't be, you know, deemed as if they have a fight or anything. So this is what I meant. But if you say Tony and investors, then it won't be independent, it's---it's not the same. Because---

Q The fact---you are---this is your own pleadings.

A ---the independence is on the Chinese investor.

Q How can the Chinese investors be independent of Tony? They are together, as you say.

A Yah, but---

Q Tony is the agent---

A Yah.

Q ---for the Chinese investors. They are one camp.

A He's recommending them to---to me and say that they are independent. So they are not---they *won't be involved in EGM planning*.

Q Well---

A Because *they're independent*.

[emphasis added]

176 Hence, Billy and Lee's evidence at trial was that they believed Tony's "Chinese investors" to be independent because, notwithstanding that they were aligned with Tony's plans at the upcoming EGM, they were not involved in the actual planning of the EGM process itself. The question is whether this nuanced distinction in the meaning of an 'independent' party played a material role in inducing Lee, in terms of her subjective state of mind, into agreeing to become the nominee owner of the Shares in or around February 2020.

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177 It bears repeating that Lee bears the burden of proving, on the balance of probabilities, that the ingredient of inducement is made out so as to succeed on her Counterclaim for misrepresentation. She must adduce evidence showing, in particular, the role that this aspect of Tony's "Chinese investors" which Lee was allegedly misled into believing – *ie*, that they were independent in the more limited sense of *not being* ***involved*** in the planning of the EGM, despite being aligned with Tony at the upcoming EGM – played in Lee's mind at the time that she agreed to become a nominee shareholder in USP. In particular, she must show that that factor "played a real and substantial part and operated in [her mind]" at the time that she so agreed (see *Axis* at [136]–[140]; see also *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [23] and *Liberty Sky Investments Ltd v Aesthetic Medical Partners Pte Ltd and other appeals and another matter* [2020] 1 SLR 606 at [9]).

178 I cannot agree that Lee has discharged her burden of proof to show that the ingredient of inducement is made out, on the evidence before me. First, Lee's own description of her decision-making process *at* ***that*** *time* is telling. She states that: "Both Billy and I had acted purely out of goodwill and concern for Billy's clients who appeared to be acting in good faith to save USP from liquidation and to preserve the jobs of hundreds of workers. That moved me to help them".[189] Her decision to help Tony was hence mainly motivated by a desire to help her husband, Billy, and to support his ambitions and designs. She was persuaded on the merits of the alleged prospective business plans that would be put into place after the change in the composition of the Company's board.[190] Bearing in mind that the focus of the inquiry must be on Lee's thought process *at the time* she agreed to become a nominee shareholder and not any

189 AEIC LKA at para 42.

190 AEIC LKA at paras 34 and 42.

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subsequent date with the benefit of hindsight on her part (see [177] above), Lee has not given any evidence as to how the independence of the "Chinese investors" – as *she* allegedly understood that concept, *ie*, to mean that they were not involved in the planning of the EGM as opposed to not being aligned with the voting intentions of Tony at that EGM (see [175] above) – played on her mind and influenced her decision to become a nominee shareholder. It is not clear, logically, why that factor would have been material to her, at the time.

179 It is crucial to appreciate the circumstances that *were* known to Lee, at the time. First, she knew, broadly, that there would be an upcoming EGM to change the composition of the board of the Company. Specifically, she testified at trial that:[191]

> Q … So tell me. You don't know the details, but I want to know exactly what you know.
>
> A It was just---I---I---I know that there's a EGM coming and they need votes. They need more votes.
>
> Q For what? For who?
>
> A For the person that Tony and---Tony is planning with to---to take over the board.
>
> Q … That person is Tanoto [*ie*, Eric], right? Why don't you come out and say it?
>
> A Yah.
>
> Q No need to hide. There's no need to hide.
>
> A Tony and Tanoto.
>
> Q So who is the person who is going to oust the board and become the CEO?
>
> A Tanoto. It was Tanoto in the end.
>
> Q Exactly. Tanoto, right? So no need to be cagey about this sort of thing, Ms Lee.
>
> A I am not.

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191 NE of 27 December 2023 at p 88 line 8 to p 89 line 11.

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Q You did know.

A I am not.

Q You did know that on---

A That---

Q ---20th February 2020, there was going to be a EGM, and Tanoto was going to oust the board---second board of USP at this EGM. You knew that at least, agree?

A I know that they---he needs more shares.

Q Yes or no? Yes, right? *You knew that Tanoto had this plan to oust the second board. Correct or not?* This is the share acquisition plan.

A *Yah*. In a---in a simple way, that's what---

Q Okay, okay. Simple way. I know you don't know the details, but you do know that. You do know that Tanoto had---

A That *there's a EGM coming and they need more shares*.

Q Yes. To do what?

A To vote.

Q To vote who?

A *For Tanoto…*

[emphasis added]

180 For completeness, it is clear that Lee's evidence reproduced above was regarding her state of knowledge *at the time* that she agreed to become a nominee shareholder as opposed to subsequently discovered facts. We know this as counsel's question was specifically directed at a portion of Lee's own pleadings,[192] in which she had averred that she did not know "the details of the Share Acquisition Plan" *at the time* that she signed the Disputed Documents,[193] *ie*, back in 3 February 2020.[194] Xia's counsel hence sought to establish (and did

192 NE of 27 December 2023 at p 87 lines 24–30 and p 88 line 7.

193 D&CC at para 14(c)(ix).

194 ABOD Vol 1 at pp 43 and 45.

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establish) in her questioning that, while Lee did not know the "details" of the plan, she knew the broad and general information about the upcoming EGM and what it was for. Therefore, she knew, *at the time*, that there was an upcoming EGM and its purpose was to replace the composition of the board in furtherance of the plans of *inter alia* Eric and Tony.

181 Second, she knew that the "Chinese investors" who were being brought on by Tony as new investors into USP would naturally be aligned with Tony's goals at the upcoming EGM. Clearly, she knew that these "Chinese investors" brought in by Tony would not be "independent" in that they would be acting in concert with Tony and Eric during the voting at the EGM. This is because she was aware that the whole reason Tony was bringing the "Chinese investors" into the Company was precisely in order to assist him and Eric in the upcoming voting at the EGM. Her own AEIC evidence averred as follows:[195]

> 36. According to Billy, despite Billy's rejection, Tony was adamant and proceeded to look for Billy at his office to plead for his help. Tony emphasised the purported urgency of the matter and explained that if there was any long delay in this matter, the Chinese investors would lose interest. Tony further stated that *should that happen, their votes would not be enough to vote out the 2nd Board during the impending EGM* which Eric had called for. *Tony then asked Billy if I could help hold these shares*. Tony told Billy that he trusted Billy due to their relationship, and there were few others he could trust to hold such a big lot of shares for his friends, the Chinese investors.
>
> 37. Hearing this, Billy explained Tony's "predicament" to me. I felt sorry for Tony and eventually agreed to help out by holding the Bestway shares which, Tony had represented, were to be paid for by the Chinese investors.
>
> [emphasis added]

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195 AEIC LKA at paras 36–37.

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182 In other words, Lee's own evidence is clear that she knew, at the time (through Billy, who conveyed Tony's statements to her) that the purpose of her being a nominee shareholder for Tony's "Chinese investors" was specifically connected to the upcoming EGM where a vote would be held to seek to replace the Company's board. She knew that her holding of these Shares for the "Chinese investors" would assist Tony in winning that vote while her refusing to hold the Shares for him would hurt Tony's plans for the same. It follows that Lee must have known – and I find, as a matter of fact, that she *did* know – that the reason that her holding the Shares for the "Chinese investors" would help Tony at the upcoming EGM was precisely because Tony's "Chinese investors" had agreed to vote in favour of Tony's desired resolution to replace the board at the EGM, *ie*, they were aligned with Tony's voting intentions at the EGM from the start and were *not* independent of his plans thereat.

183 That being the case, I cannot agree that it is, on balance, more likely than not that the fact of the real identity of the beneficial owner being Xia, as opposed to Tony's "Chinese investors" (whom Lee knew to be aligned with Tony's goals at the upcoming EGM), made a material difference to Lee's decision to agree to hold the Shares as a nominee. Her arguments as to her desire to avoid liability under the Takeover Code are a *non sequitur* as, under the Takeover Code's definition of parties "Acting in Concert", it provides that: "Persons acting in concert comprise individuals or companies who, *pursuant to an agreement or understanding (whether formal or informal), co-operate*, through the acquisition by any of them of shares in a company, to *obtain or consolidate effective control* of that company" [emphasis added]. As such, based on that definition in the Takeover Code, considered against Lee's state of knowledge respecting the upcoming EGM and combined with the role of Tony's "Chinese investors" thereat, Tony's "Chinese investors" would have been persons "acting

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in concert" with Tony, even on Lee's version of events, as she believed them to exist at the time.

184 In any event, this Counterclaim does not turn upon the niceties of the Takeover Code's definition of persons "Acting in Concert" but rather the subjective state of mind of Lee at the time that she had agreed to be a nominee shareholder. She has to prove that the identity of the beneficial owner *induced* her to make the decision to hold the Shares as a nominee shareholder, and by extension, she bears the burden of showing *why* that is so. She cannot convincingly argue, on her own evidence, that this fact was material to her decision-making due to her fear of being regarded as a "concert party" *vis-à-vis* Tony since, on her own account, based on her understanding of the role of the "Chinese investors" *vis-à-vis* Tony, they too would have been a "concert party" of Tony as well. In fact, even before Billy and Lee learnt that Xia was the true beneficial owner of the Shares, Billy had expressed to Tony in a WhatsApp message dated 8 November 2020 that Lee was being exposed to a risk of legal action in respect of the Shares that she was holding for his "Chinese investors" (see [20] above). More specifically, he wrote: "Anne has *held the shares for your investors since Feb 2020.,* [*sic*] and *was potentially exposed to litigation in relation to USP, Eric and you*" [emphasis added]. This message was sent *prior* to Billy and Lee learning that the real source of the Advanced Sum was actually Xia, as evidenced by Tony's reply of the same day, which still makes mention of his "Chinese investors" (see [21] above). The clear inference from Billy's message is that, to his mind, Lee was being exposed to a risk of legal action corresponding to her being a concert party *vis-à-vis* Eric and Tony with regards to the Shares, notwithstanding that he believed that she was holding the Shares for the "Chinese investors" and not for Xia. While the subjective states of mind of Billy and Lee are certainly not coterminous or interchangeable, Lee's own evidence has been that she relied on Billy's representations of Tony's

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proposal in arriving at her decision on whether to become a nominee shareholder in the Company.[196] Hence, Billy's message of 8 November 2020 is yet another fact that adds to the overall analysis that, more likely than not, Lee was not influenced by the real beneficial owner being represented as Tony's "Chinese investors" as opposed to Xia. In either event, there was a perceived risk of legal repercussions owing to Lee being linked to Tony and, by extension, Tony and Eric's plans with regards to their takeover of the Company.

185 Moreover, her personal understanding of the "Chinese investors" having a quality of "independence", at the time, was a more limited concept, *ie*, that they were simply not involved in the process of planning the EGM, even if they had *still* acquired the Shares in the Company to support Tony's ambitions at the EGM and to vote in his favour thereat (see [175] above). Indeed, if that is so, it is even less clear why such a characteristic would have mattered to Lee, either way, at the time. Lee has not shown why, to her mind, she would have placed such significance on the fact of a party specifically being involved in the administrative process of putting together an EGM (as opposed to being aligned with Tony at the voting at the EGM). She has adduced no evidence to show how that factor played a "real and substantial part" in her mind when she decided to become a nominee shareholder of the Shares (see *Axis* at [138]) or was "actively present" in her mind at that time (see *Axis* at [139]; see also *Loreley Financing (Jersey) No 30 Ltd v Credit Suisse Securities (Europe) Ltd and other companies* [2023] EWHC 2759 (Comm) at [421]–[422]). Indeed, as was pointed out to Lee in cross-examination (and not contradicted by her), she did not believe and had no reason to believe that Xia was involved in the planning of the EGM, either.[197]

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196 AEIC LKA at paras 34–46.

197 NE of 27 December 2023 at p 77 lines 10–12.

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186 All in all, Lee has not discharged her burden of proof of showing how she was induced by the misrepresentation of fact that the real beneficial owner was Xia instead of Tony's "Chinese investors". If, as she claims, she feared being seen as a concert party of Tony and would have placed weight on the connection between Tony and Xia (as former spouses), as she implies when she describes the two of them as "one body",[198] that explanation is unconvincing as I have held that, based on Lee's own state of knowledge at the time, she knew that Tony's "Chinese investors" were already aligned with Tony's interests at the EGM as well (see [182] above), and consequently could not objectively be regarded as parties independent of Tony, yet she still agreed to be a nominee shareholder for them despite her knowing such circumstances. Thus, I do not agree that it would have made a material difference, to her mind, whether the real owner of the Shares was Xia as opposed to Tony's "Chinese investors".

187 If, indeed, the real identities of these beneficial shareholders were so important to Lee, I am surprised that she did not ask Billy to ascertain from Tony at that time who exactly these Chinese investors were, in order for her to take a firm stand that, if their identities were not disclosed by Tony, she would refuse to be their nominee shareholder. Instead, Lee was agreeable to become a nominee shareholder for unnamed and unknown persons, who were Tony's so-called "Chinese investors". The inference to be drawn is that their identities were simply not a weighty or influential factor in Lee's subjective decision-making process at the time. Although "representees are not obliged to test the accuracy of the representations made to them", there being no rule of law that a misrepresentation is not actionable if the representee could have discovered the truth (see *Broadley* at [36]), that does not mean that a representee's conduct at the time is *factually* irrelevant to the analysis of whether there was or was not

198 NE of 27 December 2023 at p 77 line 12.

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an inducement. The question of reliance on an inducement is a context-specific, fact-sensitive inquiry, looking at all the evidence and circumstances to discern if the representation had indeed acted upon the will of the representee (see *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 at [43]–[45]; see also *Zurich Insurance Co plc v Hayward* [2017] AC 142 at [63]–[71] (*per* Lord Toulson JSC)). Here, I find that, in all the circumstances, the identity of the beneficial owner(s) of the Shares did *not* operate upon the mind and will of Lee at the time.

188 For all these reasons, I find on the totality of the evidence that Lee has not discharged her legal burden of proving all elements of her Counterclaim for actionable misrepresentation. She has not shown that she was induced to become a nominee shareholder by Tony's false statement of fact that the identity of the payor of the Advanced Sum, and the beneficial owner of the Shares, was his "Chinese investors", when in truth it was Xia. She has not shown, and I do not believe, that that fact was ever material to her decision to agree to become a nominee shareholder of the Shares. Her decision to agree to become a nominee shareholder of the Shares was mainly motivated by her desire to help her husband, Billy, and to support his ambitions and designs (see [178] above). Moreover, given that the losses flowing from the Conspiracy Lawsuit are based on Lee allegedly having colluded with Tony, Billy, and Eric to injure one of the Company's creditors and shareholders (see [44] above), which on Lee's own AEIC evidence arose out of her being a nominee shareholder of the Shares (see [169] above), it follows that Lee failed to discharge her burden of proving that her losses were caused by Tony's representations, as she has not shown that his representations made a difference to her willingness to become a nominee shareholder of the Shares. Therefore, even assuming that Tony's representations were attributable to Xia, Lee's Counterclaim for misrepresentation against both

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of them fails, in any event, as neither inducement nor causation of loss has been demonstrated.

189 Hence, I also dismiss the reliefs prayed for in Lee's Counterclaim that are premised on an actionable misrepresentation of Xia and/or Tony.[199] In light of the prayers that I dismissed at [146], [152] and [163] above, I hereby dismiss Lee's Counterclaim *in toto*.

Conclusion

190 In conclusion, I find that Xia's Claim should be allowed in part while Lee's Counterclaim should be dismissed in whole. More specifically, I grant the declaration sought by Xia that Lee holds the Shares on a resulting trust for her.[200] I dismiss all the other reliefs prayed for by the parties in both the Claim and the Counterclaim. I shall hear the parties on costs if not agreed between them.

Chan Seng Onn
Senior Judge

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199 D&CC at p 29 prayers (3) and (4B).

200 SOC at p 8 prayer (5).

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Goh Seow Hui and Chong Kar Yee Cristel (Bird & Bird ATMD LLP) for the plaintiff and first defendant in counterclaim;
Luo Ling Ling and Joshua Ho Jin Le (Luo Ling Ling LLC) for the defendant and plaintiff in counterclaim;
The second defendant in counterclaim absent and unrepresented;
Nadine Victoria Neo Su Hui (Quahe Woo & Palmer LLC) for the liquidator of Sunmax Global Capital Fund 1 Pte Ltd (watching brief).

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