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

[2024] SGHC 33

Suit No 6 of 2022

Between

Lim Swee Joo

… *Plaintiff*

And

(1) Nan Bei Dou Mu Gong
(2) Goh Joo Heng

… *Defendants*

JUDGMENT

[Contract — Breach]
[Contract — Formation — Oral agreement]
[Contract — Formation — Certainty of terms]
[Evidence — Proof of evidence — Onus of proof]
[Restitution — Unjust enrichment]

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v
Nan Bei Dou Mu Gong and another

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5 February 2024 Judgment reserved.

Chan Seng Onn SJ:

Introduction

1 This is a claim by the Plaintiff, Mr Lim Swee Joo, for his purported loans amounting to the sum of $1,011,295.95. The First Defendant is a temple known as Nan Bei Dou Mu Gong and the Second Defendant is Mr Goh Joo Heng ("Mr Goh") (collectively "the "Defendants"). The Plaintiff's claim hinges on an alleged oral loan agreement which resulted from a discussion between the Plaintiff and the Second Defendant. This agreement was purportedly entered into by the Second Defendant on behalf of the First Defendant, which did not yet exist at the time, to fund the setting up of the First Defendant and its proposed events. In response, the Defendants deny that there was any agreement to extend loans to the First Defendant. Instead, any moneys given to the First Defendant were in the nature of donations.

2 Having heard the parties, I accept the Plaintiff's case that he had loaned the First Defendant the sum of $1,011,295.95 and that the First Defendant is required to repay this sum. I set out my reasons below.

Facts

The parties

3 The First Defendant, Nan Bei Dou Mu Gong, is an association that was registered as a society under the Societies Act (Cap 311, 2014 Rev Ed) on 19 September 2016.[1] The stated objects of the First Defendant are, among other things, to worship the Taoist deity known as Kew Ong Yah.[2]

4 At the time of registration, the members of the First Defendant and their roles were as follows:[3]

Name	**Role within the First Defendant**
Lim Swee Joo, Richard (the "Plaintiff")	President
Choo Hong San, Winson ("Mr Choo")	Secretary
Toh Ah Choon, Terry ("Mr Toh")	Treasurer

1 1st Affidavit of Evidence-in-Chief of Goh Joo Heng dated 6 March 2023 ("1AEIC Goh Joo Heng") at para 28.

2 Defence of 1st Defendant (3rd Amendment) dated 21 April 2023 at para 3; 1AEIC Goh Joo Heng at para 25.

3 1AEIC Goh Joo Heng at para 25.

Goh Joo Heng, Eric (the "Second Defendant")	Committee Member
Teo Hock Lye	Committee Member
Lawrence Teo	Committee Member
Chew Keng Peng, Benny ("Mr Chew")	Committee Member
Lim Guang Wei, Robin	Committee Member
Lee Toh Jin ("Mr Lee")	Committee Member
Ong Lye Hock, Joseph ("Mr Ong")	Committee Member
Yu Shuay Yuen, Jane ("Mdm Yu")	Committee Member

5 The Plaintiff (also known informally as Richard Lim) was the former chairman of the First Defendant from 2016 to 2018.[4]

6 The Second Defendant, Mr Goh (also known informally as Eric Goh) is and was at all material times a committee member of the First Defendant.[5]

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4 3rd Affidavit of Evidence-in-Chief of Lim Swee Joo dated 6 March 2023 ("3AEIC Lim Swee Joo") at para 4.

5 3AEIC Lim Swee Joo at para 6.

Background to the dispute

The meeting at an Ang Mo Kio coffee shop between the Plaintiff and the Second Defendant involving the proposed setting up of the First Defendant

7 The Plaintiff's father founded a temple, Ao Shan Jing Zhao Ling Zu Miao ("Ao Shan Jing"), sometime in the 1950s. After the Plaintiff's father's demise, the remaining committee members of Ao Shan Jing suggested that the Plaintiff take over Ao Shan Jing as they were largely already in their 80s. However, the Plaintiff was concerned about taking over Ao Shan Jing as he had never been involved in the running of a temple.

8 Sometime in or around early 2016, the Plaintiff was introduced to the Second Defendant by a mutual friend, Mr Toh. The Second Defendant informed the Plaintiff that he could help the Plaintiff manage Ao Shan Jing as he had many years of experience in running temples, such as the Kim Hong temple, the Kim San Tze temple and the Loyang Tua Pek Kong temple.

9 The Plaintiff took over Ao Shan Jing on the Second Defendant's assurance to the Plaintiff that he would help the Plaintiff manage and run the day-to-day affairs of Ao Shan Jing. The Plaintiff therefore relied on the Second Defendant for the operations and day-to-day affairs of Ao Shan Jing.

10 In the Second Defendant's conversations with the Plaintiff, the Second Defendant suggested that the Plaintiff set up a temple to celebrate the Kew Ong Yah festival, which is widely celebrated in Singapore.[6] The Second Defendant also proposed that the temple be named "Nan Bei Dou Mu Gong".[7]

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6 1AEIC Goh Joo Heng at para 20.

7 1AEIC Goh Joo Heng at para 20.

11 Sometime in or around the end of April 2016 to early May 2016, a meeting was held at a coffee shop at Ang Mo Kio. The persons present included at least the following persons: the Plaintiff, the Second Defendant, Mr Toh, Mr Ong, and Mdm Yu.[8] Besides these persons, Mdm Karen Wong[9] and Mr Choo[10] were also stated to be present.

12 What was discussed at the First Meeting forms one of the key disputes in this trial. On the one hand, the Plaintiff alleges that he had agreed at the First Meeting to the Second Defendant's proposal of setting up the First Defendant and to lend the First Defendant moneys for its startup, the events and the related costs.[11] Therefore, a general understanding was reached during the meeting that whatever amounts the Plaintiff lends to the First Defendant for its start-up, its events and the related costs, the First Defendant would return the Plaintiff's loans from the donations the First Defendant receives and as long as the First Defendant has moneys (the "General Understanding").[12] The Plaintiff relies on this General Understanding amongst those present at the meeting, which the Plaintiff describes as having crystallised into an "Oral Agreement" for his suit against the First and Second Defendants.[13] On the other hand, the Second Defendant takes the position that there was no mention of the Plaintiff lending money to the First Defendant and the First Defendant having to repay him.[14]

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8 Defence of 1st Defendant (3rd Amendment) dated 21 April 2023 at para 21; 3AEIC Lim Swee Joo at para 30; 1AEIC Goh Joo Heng at para 21.

9 1AEIC Goh Joo Heng at para 21.

10 Defence of 1st Defendant (3rd Amendment) dated 21 April 2023 at para 21.

11 3AEIC Lim Swee Joo at para 40.

12 Statement of Claim (Amendment No 3) dated 19 April 2023 ("SOC (Amendment No 3)") at paras 15 and 20.

13 SOC (Amendment No 3) at para 16.

14 1AEIC Goh Joo Heng at para 22.

Thus, the Second Defendant denies making any loan agreement with the Plaintiff, whether on behalf of the First Defendant or in his personal capacity.[15] I will deal with these arguments in greater detail later in this judgment.

Moneys contributed by the Plaintiff to the First Defendant and the First Defendant's purported acknowledgement of the Plaintiff's loan at the AGM on 6 December 2018

13 From 2016 to 2018, the Plaintiff allegedly extended sums amounting to $1,011,295.95 to the First Defendant. A fundamental dispute in this case is whether these sums had been extended under the Oral Agreement (*ie*, with the understanding that they were to be loans and be repaid) or whether they were donations.

14 The particulars of the sums extended by the Plaintiff are allegedly fully set out in a document which bears the heading, "Nan Bei Dou Mu Gong Transaction Detail by Account".[16] The document is described by the parties as the "Transaction details of First Defendant" ("Transaction Details").[17]

15 On 6 December 2018, the First Defendant's Annual General Meeting ("AGM") was held.[18] It was agreed at the AGM that the "loans" owed to the Plaintiff shall be repaid with future collections (the "Loan Acknowledgment").[19] This Loan Acknowledgment was evidenced in the minutes of the First Defendant's Annual General Meeting on 6 December 2018 (the "AGM") which stated the following "The Committee acknowledged that Mr Richard Lim, had

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15 1AEIC Goh Joo Heng at para 22.

16 Core Bundle of Documents ("CBD") at p 11.

17 CBD at p 9.

18 3AEIC Lim Swee Joo at para 7.

19 CBD at p 7.

loan 1,011,295.95 to society. This amount shall repaid with future collection [*sic*]".[20]

16 The First Defendant did not make any payment of moneys to the Plaintiff.[21]

The correspondence regarding the First Defendant's audited financial statements

17 The First Defendant's audited financial statement for the financial year ending on 30 June 2017 was later prepared by the First Defendant's auditors, LW Ong and Associates (the "Audited Financial Statement for YA 2017").[22] This audited financial statement was approved and signed by the Second Defendant, Mr Lee (who took over Mr Toh's role as treasurer following his resignation on 18 October 2016)[23] and the Plaintiff in their capacities as secretary, treasurer and president of the First Defendant respectively.[24] Recorded in the financial statement are "President loans" which are described in the Notes of the Financial Statements as being to enable "the [First Defendant] to meet its obligation on a timely basis and to ultimately attain successfully profitable operations".[25] It is stated that "[i]nterest is not charged on the loan as the president has waived off its interest entitlement to the [First Defendant] during the period".[26] The amount owing to the Plaintiff, as the First

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20 CBD at p 7.

21 3AEIC Lim Swee Joo at para 9.

22 3AEIC Lim Swee Joo at para 153.

23 1AEIC Goh Joo Heng at paras 31 and 33.

24 3AEIC Lim Swee Joo at para 153.

25 3AEIC Lim Swee Joo at p 227.

26 3AEIC Lim Swee Joo at p 227.

Defendant's president, as of 30 June 2017, is recorded at page 6 of the audited financial statements to be $607,336.[27]

18 In an email dated 23 April 2019 at 6.51pm, the Second Defendant forwarded to Mr Lee the unsigned audited statements of the First Defendant for 2017 and 2018 and other documents about the First Defendant's finances for 2017 and 2018.[28]

19 In an email dated 24 April 2019 at 2.02pm, the Second Defendant informed Mr Lee and the Plaintiff that he had submitted the necessary documents to the Registry of Societies (the "ROS") and the First Defendant had "declared the total income and expenditure as per our auditor financial statement account for 2017."[29] In the same email, the Second Defendant requested that Mr Lee and the Plaintiff confirm the First Defendant's annual returns for 2017 and that the First Defendant's new committee would submit the annual returns for 2018 in two weeks.

20 In a subsequent email dated 24 April 2019 at 2.18pm, the Second Defendant emailed Mr Lee and the Plaintiff the signed page for the First Defendant's audited financial statements ending 30 June 2017.[30]

21 By an email dated 25 April 2019 at 11.48am from the Second Defendant to Mr Lee, the Plaintiff and two of the First Defendant's committee members, Mr Seet Kok Heng ("Mr Seet") (in his capacity as chairman of the First Defendant) and Mr Jack Hong Kok Leong ("Mr Hong"), the Second Defendant

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27 3AEIC Lim Swee Joo at para 155 and p 217.

28 3AEIC Lim Swee Joo at para 158 and pp 238–294.

29 3AEIC Lim Swee Joo at para 159 and p 295.

30 3AEIC Lim Swee Joo at para 161 and pp 296–297.

stated that the First Defendant's CorpPass account had been created for the recipients to login and verify the annual returns for the First Defendant.[31] The Second Defendant also stated that the First Defendant would rely on the audited statements for 2017 and 2018 by LW Ong for the ROS once the relevant parties had logged into the CorpPass account and verified the annual returns.[32] The Second Defendant clarified that for the year 2018, he, Mr Seet and Mr Hong, would be responsible for verifying the annual returns.[33]

The parties' cases

The Plaintiff's case

22 The Plaintiff's claims against the First and Second Defendant are essentially premised on the Oral Agreement purportedly made at an Ang Mo Kio coffeeshop in or around April to May 2016. The Plaintiff is seeking recovery of $1,011,295.95, which he claims to have loaned pursuant to the Oral Agreement. The plaintiff denies that the moneys extended were donations.

23 The Plaintiff submits that the documentary evidence and the First Defendant's conduct confirm the Oral Agreement's existence.[34] The terms of this agreement are not plagued with uncertainty so as to be rendered void and/or unenforceable.[35] The complete terms of the Oral Agreement are obtained from a reading of both the Oral Agreement and the Loan Acknowledgment.[36] The

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31 3AEIC Lim Swee Joo at para 162 and p 298.

32 3AEIC Lim Swee Joo at para 163 and p 298.

33 3AEIC Lim Swee Joo at para 164 and p 298.

34 Plaintiff's Closing Submissions dated 10 July 2023 ("PCS") at paras 52–64.

35 PCS at paras 65–87.

36 PCS at para 241; Plaintiff's Written Reply Submissions dated 8 August 2023 ("PWRS") at para 159.

Second Defendant had after that, at various events and/or meetings, assured the Plaintiff, in the presence of some members of the First Defendant, that the Plaintiff would be repaid his loans to the First Defendant.

24 As against the First Defendant, the Plaintiff submits that the First Defendant has become liable to repay the loans under the Oral Agreement because it has ratified this agreement by its conduct.[37] The relevant conduct proving such ratification is as follows:[38]

(a) Signing of the Loan Acknowledgment by various of the First Defendant's committee members during the First Defendant's AGM.

(b) Signing of the Transaction Details by various of the First Defendant's committee members during the First Defendant's AGM.

(c) Signing of the First Defendant's Audited Financial Statements evidencing the Plaintiff's loans therein.

(d) Sending of emails from the Second Defendant to the First Defendant's committee members containing the First Defendant's audited financial statements and confirmation that those will be the First Defendant's accounts.

(e) Signing of the First Defendant's subsequent audited financial statements for the years of assessment 2020 and 2021 which were subsequently filed with both the ROS and the Inland Revenue Authority of Singapore (the "IRAS").

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37 PCS at paras 88–225.

38 PCS at paras 88–225.

25 Alternatively, the Plaintiff claims for the restitution of the moneys from the First Defendant under the doctrine of unjust enrichment, as the moneys had been unjustly received by the First Defendant at the Plaintiff's expense.

26 As against the Second Defendant, the Plaintiff advances two alternative claims:

(a) The Second Defendant is personally liable for the sum of $1,011,295.95 that the Plaintiff lent to the First Defendant. This claim is based on the contention that the Second Defendant had contracted personally with the Plaintiff under the Oral Agreement.[39]

(b) The Second Defendant has breached his warranty of authority for representing to the Plaintiff that the First Defendant would repay the loans.[40] The Plaintiff relied on those representations to lend money to the First Defendant, but the First Defendant failed to meet its repayment obligations.

The First Defendant's case

27 The First Defendant denies the Plaintiff's claim. The financial contributions made by the Plaintiff were donations, not loans. The First Defendant avers that the Plaintiff had assured the founding members that money was not an issue and he would pay the bills and underwrite any shortfall.

28 The First Defendant also avers that it was non-existent at the time of the alleged Oral Agreement[41] such that the Oral Agreement could not have been

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39 PCS at paras 256–263. SOC (Amendment No 3) at para 45.

40 PCS at paras 264–271. SOC (Amendment No 3) at para 46.

41 1st Defendant's Closing Submissions dated 28 June 2023 ("1DCS") at para 25.

made between the Plaintiff and the First Defendant. Any oral agreement was made between the Plaintiff and the Second Defendant.[42] This being the case, the First Defendant submits that it did not ratify this agreement between the Plaintiff and the Second Defendant.[43]

29 The First Defendant refutes the Plaintiff's submission that the Loan Acknowledgment and Transaction Details show that the First Defendant had ratified this loan. It was the understanding that these documents were not meant to have legal effect and were merely prepared to placate the Plaintiff's wife[44] because the Plaintiff's wife was unhappy with his generosity in donating to the First Defendant, which led to intense acrimony in the Plaintiff's home. The Plaintiff requested assistance to placate his wife, which was when the Second Defendant suggested that the donations or gifts be disguised as loans.[45] This was the actual reason why the Loan Acknowledgment and Transaction Details came to be signed. Even then, not all the Committee Members were willing to sign, and only three of them signed, besides the Chairman.[46] These three Committee Members lacked the authority to ratify the Oral Agreement.[47] Furthermore, the AGM was not even properly convened. This irregularity means that the First Defendant could not have ratified the Oral Agreement.[48]

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42 1DCS at para 27.

43 1DCS at paras 29–88.

44 1DCS at para 41.

45 1DCS at para 42.

46 1DCS at para 53.

47 1DCS at para 55.

48 1DCS at para 52.

30 The terms of the Oral Agreement that repayment is to be made "so long as the Temple has monies" and that it was "to be repaid with future collections" are too vague and uncertain.[49]

31 In any case, the Plaintiff's claim under the Oral Agreement is premature because he did not ascertain whether the First Defendant has moneys.[50]

32 Even if there is an Oral Agreement and the terms are enforceable, the Plaintiff had failed to prove the quantum of the loans.[51] The Plaintiff relies on the Acknowledgement and the Transaction Details to prove the quantum of his loans. Both documents are inadmissible because they cannot be considered admissions under s 18 of the Evidence Act 1893 (2020 Rev Ed) (the "EA") by the First Defendant as there is no authority for three of the Committee members to sign these documents.[52] They are also inadmissible hearsay evidence because the Plaintiff did not call the auditors to present their testimony.[53] Even if the Acknowledgment and Transaction Details are admissible, the First Defendant submits that the Court may exercise its discretion to exclude them because it would not be in the interests of justice to treat these documents as relevant under s 32(3) of the EA. Among other things, the figures in both documents cannot be reconciled with the figures of the auditors, as evidenced by the auditors' financial statements.[54] Also, the auditors may not be as thorough in its audit given its relationship with the Plaintiff.[55]

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49 1DCS at paras 97, 100, 102–103.

50 1DCS at para 104.

51 1DCS at paras 65–88.

52 1DCS at para 68.

53 1DCS at para 70.

54 1DCS at para 72(b).

55 1DCS at para 72(c).

33 Furthermore, the Plaintiff's claim that sums extended to the First Defendant by Mr Lim Swee Chong and Mr Gary Chen Chin Wu ("Mr Chen") were loans by the Plaintiff himself ought to be rejected.[56] These were loans owed directly to Mr Lim Swee Chong and Mr Chen, not the Plaintiff.[57] Moreover, an amount purportedly due to Choon Hin Iron Works Pte Ltd should also be excluded from the Plaintiff's claim because this remains an unpaid debt for which the Plaintiff has not made any payment.[58]

34 The First Defendant denies that it was unjustly enriched by the Plaintiff's money. The First Defendant relies on the change of position defence.[59] The First Defendant had *bona fide* changed its position due to the Plaintiff's assurances to cover the expenses with his donations or gifts. Relying on these assurances, the First Defendant had organised the Kew Ong Yah celebrations. Considering the huge costs of these celebrations, the First Defendant would not have proceeded "but for" the donations or gifts in the form of monetary contributions by the Plaintiff.[60]

The Second Defendant's case

35 The Second Defendant denies personal liability under the Oral Agreement.[61] The Second Defendant is not personally bound under the Oral Agreement as there was no intention for the Plaintiff to lend money to the

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56 1DCS at paras 77–84.

57 1DCS at paras 77–84.

58 1DCS at paras 85–86.

59 1DCS at para 111.

60 1DCS at para 111.

61 Second Defendant's Closing Submissions dated 28 June 2023 ("2DCS") at para 6.

Second Defendant on a personal basis.[62] The funds provided by the Plaintiff were either directly deposited into the First Defendant's OCBC bank account or used for the expenses of the First Defendant. There is no evidence to suggest that the Second Defendant received any of that money as a personal loan.[63] Based on the terms of the Oral Agreement, the First Defendant was specifically identified as the entity to which the Plaintiff was lending money.[64] Furthermore, substituting the First Defendant for the Second Defendant under the Oral Agreement renders the agreement unworkable since the Second Defendant does not receive personal donations.[65] Hence, the Oral Agreement was made with the First Defendant. Since the First Defendant was non-existent at the time, the agreement is void.[66] In any case, the Plaintiff testified that the written loan acknowledgment replaced the Oral Agreement, thereby relieving the Second Defendant from personal liability.[67]

36 Even if the Second Defendant is found to be personally bound under the Oral Agreement, the terms of the Oral Agreement cannot be enforced against the Second Defendant.[68] The Second Defendant does not possess the funds necessary to repay the Plaintiff. Hence, the necessary condition for repayment under the Oral Agreement remains unfulfilled.[69]

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62 2DCS at para 8.

63 2DCS at paras 9 and 55–65.

64 2DCS at para 44.

65 2DCS at paras 72.

66 2DCS at para 45.

67 2DCS at paras 66–70.

68 2DCS at para 11.

69 2DCS at para 76.

37 The Second Defendant is not liable for breach of warranty of authority. The Plaintiff does not plead that when entering into the Oral Agreement, the Second Defendant represented that he had the authority to act for the First Defendant. This is a necessary element of a claim for breach of warranty of authority.[70] Instead, the Plaintiff claims to rely on a representation by the Second Defendant that the First Defendant would repay him before he entered into the Oral Agreement.[71] In any case, the claim for breach of warranty of authority is unsustainable on the facts. The Plaintiff knew that the First Defendant was not registered and did not physically exist at the time the Oral Agreement was allegedly made.[72] Therefore, the Plaintiff knew that the Second Defendant could not have acted with the authority of the non-existent First Defendant at that time.[73]

Issues to be determined

38 The primary issue to be determined is, first, whether the Plaintiff is entitled to recover the moneys which he has extended to the First Defendant as debt. Second, if there is no valid basis, the question would then be whether the Plaintiff is entitled to recover his moneys on the grounds of unjust enrichment. Third, I will address the Plaintiff's remaining claims against the Second Defendant in his personal capacity.

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70 2DCS at para 81.1.

71 2DCS at para 85.

72 2DCS at para 90.

73 2DCS at para 91.

The claim in debt

39 The Plaintiff's case against the First Defendant is that the First Defendant is liable to him for his loans amounting to $1,011,295.95,[74] particulars of which are set out in the Transaction Details.[75] As against the Second Defendant, the Plaintiff's case is that should the First Defendant not be liable for the said loan, the Second Defendant is personally liable under the Oral Agreement to repay the Plaintiff any loans that the Plaintiff had extended to the First Defendant.[76] In response to the Plaintiff's case that his monetary contributions were given as loans, the First Defendant does not appear to dispute that it had actually *received* moneys from the Plaintiff.[77] According to the Second Defendant, the funds provided by the Plaintiff were either directly deposited into the First Defendant's OCBC bank account or used for the expenses of the First Defendant. Instead, the Defendants' case is that the Plaintiff's monetary contributions were given not as loans but as gifts or donations.[78]

40 Given that the First Defendant had actually received moneys from the Plaintiff, this raises the question of whether a presumption could arise that such moneys were meant to be repaid as loans. On this point, there is no presumption that an obligation to repay arises from mere receipt of a sum of money: *PT Bayan Resources TBK and another v BCBC Singapore Pte Ltd and another* [2019] 1 SLR 30 ("*PT Bayan*") at [144]; *Tan Chin Hock v Teo Cher Koon and*

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74 SOC (Amendment No 3) at para 4.

75 SOC (Amendment No 3) at para 40.

76 SOC (Amendment No 3) at para 16.

77 1DCS at para 17.

78 Defence of 1st Defendant (Amendment No 3) at para 17; Defence of Second Defendant (Amendment No 2) at para 15.6.

another and another appeal [2022] 2 SLR 314 at [66]. In so far as *Seldon v Davidson* [1968] 1 WLR 1083 ("*Seldon*") held that a payment of money to a stranger gives rise *prima facie* to an implied obligation to repay the money, the Court of Appeal in *PT Bayan* observed at [140]–[144] that *Seldon* had been wrongly decided. The court noted that in *Seldon*, the defence denied the essential ingredient in the alleged loan and denied incurring any debt. Thus, there could be no presumption of such a debt being incurred. Similarly, in the present case, both the First and Second Defendants deny that the money had been given as a loan.[79] Accordingly, there can be no presumption that the extension of the sum of $1,011,295.95 to the First Defendant was by way of loans.

41 In the absence of any presumption that the moneys transferred to the First Defendant were by way of loans, the Plaintiff bears the burden of proving that loans amounting to the sum of $1,011,295.95 had been made to the First Defendant. The task of this Court is to assess whether the evidence shows that it was more likely than not that the moneys extended to the First Defendant were not gifts or donations but were given in the form of loans.

42 In my view, having considered the totality of the evidence tendered, I am satisfied that the Plaintiff has proven that the moneys he had extended were given in the form of loans, and not as gifts or donations.

43 Before examining the key pieces of evidence which weigh the most heavily in my mind, I address first the Plaintiff's reliance on the Oral Agreement as the basis for his purported loans.

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[79] Defence of 1st Defendant (Amendment No 3) at para 18(a); Defence of Second Defendant at paras 15.2 and 15.6.

The Oral Agreement is not a valid legal basis for the Plaintiff's claim in debt

44 In my view, I do not consider the parties to have reached a valid and enforceable Oral Agreement between the parties present at the Ang Mo Kio coffee shop meeting such that the Oral Agreement can form a valid legal basis *in and of itself* for the Plaintiff's claim in debt.

45 In the first place, the First Defendant was not yet in existence when the alleged Oral Agreement had been entered into. Thus, as of the meeting, the First Defendant was not a legal entity capable of entering into an agreement.[80] When asked about the legal status of the First Defendant, the Plaintiff claimed ignorance of this fact. This is contrary to his Affidavit of Evidence-in-Chief, where he refers to the new temple and that he had agreed to the suggestion that the new temple be named Nan Bei Dou Mu Gong.[81] From these statements, the Plaintiff must have known that the First Defendant was not registered at the time of the purported Oral Agreement. After lengthy cross-examination, the Plaintiff conceded that the First Defendant was not registered at the time of the oral agreement.[82] Even the Plaintiff accepts that the Oral Agreement was purportedly made between the Plaintiff and the First Defendant at a time when the First Defendant had yet to be registered with the ROS.[83] This necessarily means that the Oral Agreement is void, as an agreement cannot be made with a non-existent party. The non-existence of the First Defendant was a fact which the Plaintiff himself knew at the time when the alleged Oral Agreement was made.

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80 1st Defendant's Reply Written Submissions dated 7 August 2023 ("1DRWS") at paras 15–16.

81 3AEIC Lim Swee Joo at para 44.

82 1DCS at para 23.

83 SOC (Amendment No 3) at para 16.

46 Accordingly, the non-existence of the First Defendant at the time of the Ang Mo Kio meeting prevents the formation of any valid agreement with the First Defendant.

47 The terms of the Oral Agreement as pleaded also appear to be uncertain and/or incomplete.

48 The pleaded terms of the Oral Agreement are as follows:[84]

> ... whatever amounts the Plaintiff loans to the First Defendant for its start up, its events and the related cost, the First Defendant would return the Plaintiff's loans from the donations the First Defendant receives and as long as the First Defendant has monies ...

49 The First Defendant avers that the Oral Agreement faces the problem of vagueness and uncertainty.[85] This uncertainty arises in two aspects.

(a) First, the term that the First Defendant makes repayment "as long as the [First] Defendant has monies" is too vague and uncertain. The method, timing and quantum of repayment are left open.[86] Examples of questions which arise from the open-ended term of the Oral Agreement include, among others, whether there is a minimum sum of repayment, how much of the alleged Loan could be repaid each time a donation or collection is made,[87] how much money the First Defendant must have before the obligation to repay arises, and whether the First Defendant is allowed to retain some moneys for contingency and future expenses

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84 SOC (Amendment No. 3) at para 16.

85 1DCS at para 97.

86 1DCS at paras 100, 101.

87 1DRWS at para 21.

before repayment is made.[88] In support of its point that the lack of certainty as to the timing and quantum of repayment is sufficient to render a contract unenforceable, the First Defendant relies on the cases of *Dynasty Line Limited (in liquidation) v Sukamto Sia and another and another appeal* [2014] 3 SLR 277 ("*Dynasty Line Limited*") and *T2 Networks Pte Ltd v Nasioncom Sdn Bhd* [2008] 1 SLR(R) 1 ("*T2 Networks*").

(b) Second, even assuming that the term repayment can be obtained by reading the Oral Agreement together with the Loan Acknowledgement, the provision that the loans are "to be repaid with future collections" nonetheless remains too uncertain to be enforceable.[89] It is not clear what constitutes future collections. Further questions arise over how long into the "future" this term contemplates, whether "collections" refers to nett collections to allow for the First Defendant to first spend on its expenses, and what is the frequency of the repayment, be it as and when received, weekly, monthly or yearly.[90]

50 The Plaintiff's main response to the problem of uncertainty is multi-pronged. It submits that the Court is generally reluctant to hold a contract void for uncertainty and instead prefers to balance uncertainty against putting a fair meaning on the terms used.[91] The Plaintiff submits that there is no ambiguity in the quantum, timing and repayment method under the Oral Agreement.

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88 1DCS at para 100.

89 DWS at paras 102–103.

90 DWS at para 103.

91 PCS at para 66; PWRS at para 115.

51 I agree with the Plaintiff that the cases of *Dynasty Line Limited* and *T2 Networks* are distinguishable from the present case.[92] The case of *Dynasty Line Limited* involved a contract for the payment of Shares in a Share Purchase agreement. The case of *T2 Networks* concerned a settlement agreement that rode on a commercial contract. These are commercial contracts, which is not the nature of the agreement entered into in our present case. In the context of commercial contracts, the timing and scheduling of the payments are vital to ensure certainty of repayment where the failure to do so could affect parties' obligations to other parties (*eg*, in the form of back-to-back contracts), which would undermine commercial efficacy or create absurd results inconsistent with mercantile or commercial practice. However, the Oral Agreement, in our case, was not founded on a purely commercial premise. It was always intended to be more in the form of a friendly loan, a point that is bolstered by the fact that the Plaintiff claims zero interest on his purported loans. The timing or the schedule of payment was, therefore, not contemplated by the parties to be a material term of the Oral Agreement such that any uncertainty or incompleteness of these terms would render the entire agreement invalid.

52 While the Plaintiff relies on my earlier decision in *Siemens Industry Software Pte Ltd v Lion Global Offshore Pte Ltd* [2014] SGHC 251 ("*Siemens Industry*") at [34] in support of its case that agreements entered outside the commercial context in a more friendly context cannot be expected to be drafted with the utmost precision, *Siemens Industry* does not strictly support the Plaintiff's proposition as the case does not even concern an agreement entered in a friendly context. Instead, it concerned the issue of whether a licensed software designation agreement entered between two companies was void for

92 PWRS at para 124.

uncertainty. The issue arose in a commercial context. There, I had made the following observation:

> 34 Clearly, it is not always the case that the non-inclusion of the mode or time for payment of a sale renders a contract unenforceable for uncertainty. In *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at para 03.148, the learned authors rightly noted that:
>
> > … the courts do not expect commercial documents to be drafted with the outmost precision and certainty. To take such an approach would strike down bargains legitimately reached by two parties who might not have been so astute as to legal precision or uncertainty. …

53 That said, I am prepared to accept that the proposition that "the courts do not expect *commercial* documents to be drafted with the outmost precision and certainty [emphasis added]" similarly applies in the context of agreements made in a non-commercial and friendly context, if not with greater force.

54 The Plaintiff submits that the *contra proferentem* rule applies in relation to any term considered to be ambiguous in the Oral Agreement against the interests of the party that created or introduced the clause.[93] However, I am not persuaded that the *contra proferentum* rule is of assistance to the Plaintiff. This rule exclusively applies to written contracts, not oral agreements.[94] The Plaintiff's reliance on the case of *Tay Eng Chuan v Ace Insurance Ltd* [2008] 4 SLR(R) 95[95] in support of this proposition pertains to the interpretation of dispute resolution clauses in a written insurance policy and not an oral agreement. As the Court of Appeal stated in *Tay Eng Chuan v Ace Insurance Ltd* [2008] 4 SLR(R) 95, citing *Tam Wing Chuen v Bank of Credit and*

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93 PCS at para 82.

94 Second Defendant's Reply Submissions dated 7 August 2023 ("2DRS") at para 7.

95 PCS at para 83.

Commerce Hong Kong Ltd [1996] 2 BCLC 69 at 77 *per* Lord Mustill ("*Tam Wing Chuen*"), the *contra proferentum* rule is intended to apply in the following situation:

> [A] person who puts forward the wording of a proposed agreement may be assumed to have looked after his own interests, so that if the words leave room for doubt about whether he is intended to have a particular benefit there is a reason to suppose that he is not.

55 I agree with the Second Defendant that there is no authoritative precedent supporting the application of the *contra proferentum* rule to an oral agreement.[96] Evidently, there are no such "wording of a proposed agreement" with which to apply the *contra proferentum* rule. As the Second Defendant rightly points out,[97] the application of *the contra proferentem* rule is complicated by the absence of specific evidence regarding the exact words spoken during the meeting at the Ang Mo Kio coffeeshop, where the parties conversed in a mixture of Mandarin and Hokkien. The Plaintiff's own evidence indicates that the Oral Agreement resulted from a dialogue between the Plaintiff and the Second Defendant, rather than a situation where the Second Defendant had unilaterally dictated the terms. Notably, the Plaintiff even affirmed that he himself had "specifically informed the Second Defendant again that [the Plaintiff] would have to be paid back whatever loans [the Plaintiff] extend[ed] to the First Defendant".[98] Given the state of the evidence, it cannot be argued, to borrow the words of Lord Mustill in *Tam Wing Chuen*, that the Second Defendant was the one who has put forward the wording of a proposed agreement and who may be assumed to have looked after his own interests.

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96 2DRS at para 7.

97 2DRS at para 8.

98 3AEIC Lim Swee Joo at para 41.

56 In any case, even if I agree with Plaintiff that the issues surrounding the open-ended nature of the timing, quantum and method of repayment do not render the Oral Agreement void for uncertainty, the Oral Agreement cannot form the *sole* basis for the Plaintiff's claim in debt. This is because the agreement ultimately provides no clarification on what the term "loans" means. To recapitulate, the pleaded terms of the Oral Agreement are as follows:[99]

> ... whatever amounts the Plaintiff *loans* to the First Defendant for its start up, its events and the related cost, the First Defendant would return the Plaintiff's *loans* from the donations the First Defendant receives and as long as the First Defendant has monies ...
>
> [emphasis added]

57 I note that no provision is made for the quantum of the Plaintiff's loan within the Oral Agreement itself, a fundamental element of a loan. The Oral Agreement provides merely that "whatever amounts the Plaintiff loans" to the First Defendant while providing no criteria by which the Court is able to assess whether moneys extended by the Plaintiff at each subsequent occasion was to be considered a loan. To determine what is a "loan", this necessarily requires the Court to undertake a *separate* assessment for each occasion whether the Plaintiff has extended moneys to the First Defendant in fact as a loan or otherwise. This must be so given that it is not the case that the Oral Agreement is stating that *every* instance of moneys being extended by the Plaintiff to the First Defendant would necessarily be treated as a loan. The Plaintiff accepts that he had on at least one occasion donated $50,000 to the First Defendant as recorded in a donation slip dated 2 December 2016.[100]

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99 SOC (Amendment No. 3) at para 16.

100 3AEIC Lim Swee Joo at para 86.

58 It follows from the above that the essential task for this Court, really, is to determine whether subsequent moneys given by the Plaintiff to the First Defendant were given in the form of a "loan". This is the point to which I now turn.

The Plaintiff has discharged his burden of showing that the sum of $1,011,295.95 was a loan and not a gift to the First Defendant

59 The invalidity of the Oral Agreement does not, however, mean that the Plaintiff's case that the moneys he had extended to the First Defendant as loans thereby fails in its entirety. I am persuaded based on the totality of the documentary and oral evidence adduced, that the moneys given to the First Defendant were in fact given by way of loans, rather than as a gifts or donations. The following considerations point firmly to the conclusion that the Plaintiff had loaned the First Defendant the sum of $1,011,295.95:

(a) The initial plans made at the Ang Mo Kio meeting for the financial arrangements to fund the formation and the activities of the First Defendant when formed, which constitute the general consensus reached by the persons at the meeting.

(b) The Loan Acknowledgment and the Transaction Details, which set out the total quantum and particulars of the Plaintiff's loans as well as the manner of repayment. The Transaction Details refer to descriptions such as "Total Amt owing to Richard", "Loan from Richard Lim Swee Joo", "As per client confirmed, loan from Richard" and "Richard Lim Borrow from director".

(c) The First Defendant's audited financial statements in which various loans by the Plaintiff were stated. These financial statements were filed and submitted to the ROS and/or IRAS.

(d) The fact that the payments by the Plaintiff were not recorded in donation slips, unlike the usual practice of the First Defendant for donations.

60 In reaching my conclusion that the Plaintiff has made out his claim in debt, I consider the Plaintiff's point that he was thanked in various meetings for extending loans to the First Defendant to be inconclusive.

61 I deal with these considerations in turn.

A general consensus was reached at the Ang Mo Kio meeting for the Plaintiff to lend the First Defendant moneys for its start-up, its events and other related costs

62 Notwithstanding my disagreement with the Plaintiff that an enforceable Oral Agreement had been validly formed at the Ang Mo Kio meeting, I accept, at the very least, that the discussion at the Ang Mo Kio coffee shop meeting had resulted in a consensus among the persons present who were interested in building a new temple and who were laying the necessary financial groundwork for the establishment of the new temple in the future. In other words, a general consensus had, in fact, been reached among the parties regarding the Second Defendant's proposal of setting up the First Defendant and the Plaintiff's willingness to lend the First Defendant moneys for its startup, the events and the related costs. However, I do not think that the persons present at the Ang Mo Kio coffee shop had intended for the formation of any binding agreement at that point in time, which would thereby immediately bind all the parties present henceforth.

63 The evidence of the parties present at the Ang Mo Kio meeting is divided on whether the parties had discussed the topic of the Plaintiff lending moneys

to the First Defendant to be formed. The parties present included the Plaintiff, the Second Defendant, Mr Toh, Mr Ong and Mdm Yu. On the one hand, the Second Defendant,[101] Mr Ong[102] and Mdm Yu[103] rejected any suggestion that there was any mention by the Plaintiff of loans to be made to the First Defendant or that the Plaintiff was to be repaid. On the other hand, the Plaintiff[104] and Mr Toh[105] stated that the topic of the loans was discussed and that the Second Defendant had expressly informed the Plaintiff that the latter would be repaid whatever amounts he had lent to the First Defendant from the donations made to the First Defendant as long as the First Defendant has the moneys.

64 Based on the testimony of the participants of the meeting alone, it is certainly difficult to determine one way or another, whether the topic of loans to the First Defendant had been discussed. However, as in the usual course of determining whether a fact exists, regard must be had to all the circumstances of the case. In this context, documentary evidence often serves as a probative reference point to guide the court's assessment of such points of fact. In my view, the documentary evidence that has been placed before me supports the Plaintiff's case that there was, in fact, a general consensus reached between the parties at the Ang Mo Kio coffee shop meeting for the Plaintiff to provide loans to the First Defendant to assist in the setting up of the latter and to fund its activities. As I will consider in greater detail below at [66]–[93], such

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101 1AEIC Goh Joo Heng at para 22.

102 Affidavit of Evidence-in-Chief of Joseph Ong Lye Hock dated 24 February 2023 at para 6.

103 Affidavit of Evidence-in-Chief of Yu Shuay Yuen dated 6 March 2023 ("AEIC Yu Shuay Yuen) at para 7.

104 3AEIC Lim Swee Joo at para 33.

105 Affidavit of Evidence-in-Chief of Terry Toh Ah Choon dated 6 March 2023 at para 12.

documentary evidence include: (a) the Loan Acknowledgment and Transaction Details; (b) the First Defendant's Audited Financial Statement for YA 2017; (c) emails from Second Defendant to First Defendant's committee members containing the First Defendant's audited financial statements and the confirmation that those will be the First Defendant's accounts; and (d) the First Defendant's audited financial statements for years of assessment 2020 and 2021. It suffices for me state at this juncture that the documentary evidence shows at the very least that the Plaintiff had, in fact, extended significant sums of moneys to the First Defendant as loans. In my view, this is best explained by the fact that the parties had at least discussed and reached a general consensus at the Ang Mo Kio coffee shop meeting regarding the willingness of the Plaintiff to loan the necessary funds for the establishment of the First Defendant and for its operations.

65 Furthermore, I consider it material that the Loan Acknowledgment contains an acknowledgment that the Plaintiff had loaned the substantial sum of $1,011,295.95. This is aligned with the parties having reached a general consensus for the Plaintiff to loan the First Defendants the necessary funds cover the expenses of the latter's starting up, its activities and other related costs. The Loan Acknowledgment states that "[t]his amount shall be repaid with future collection". While this is not exactly stated in the same precise terms as the General Understanding as pleaded by the Plaintiff (*viz*, the "First Defendant would return the Plaintiff's loans from the donations the First Defendant receives and as long as the First Defendant has monies"), I accept that the Loan Acknowledgment does at least cohere with the fact that there was a general consensus between the parties present for the Plaintiff to loan the First Defendants the necessary funds to cover the expenses of the latter's starting up, its activities and other related costs.

Loan Acknowledgment and Transaction Details

66 The most important evidence pointing in favour of the transactions as recorded in the Transaction Details as being loans is that the First Defendant had expressly acknowledged, via the Loan Acknowledgment, the existence of loans from the Plaintiff during the AGM on 6 December 2018 and agreed that the moneys shall be repaid to the Plaintiff from its future collections. This is buttressed by the initial plans made at the Ang Mo Kio meeting which constitute the General Understanding that any loans extended by the Plaintiff would be repaid "from the donations the First Defendant receives and as long as the First Defendant has monies". I am satisfied that the Transaction Details sets out an accurate record of the various transactions where the Plaintiff had extended moneys to the First Defendant and that *each and every one* of these transactions were *separate and distinct* loans provided to the First Defendant as and when the Plaintiff was notified of the First Defendant's need for funds. On its face, the Transaction Details and Loan Acknowledgment provide probative evidence of the loans totalling $1,011,295.95 that the Plaintiff had extended to the First Defendant.

67 I do not consider the fact that the Acknowledgment and Transaction Details had only been signed by the Plaintiff, the Second Defendant, Mr Seet and Mr Wong Yong Hwa ("Mr Wong") to mean that the documents do not therefore accurately set out the loans which the Plaintiff had dispensed to the First Defendant. The reason these documents had only been signed by the Plaintiff and three other committee members was because the Second Defendant had told the other committee members that those signatures alone would be sufficient. It is not because these other committee members had objected to the First Defendant owing any debts to the Plaintiff. Having reviewed the evidence, I find that the committee members who had been present at the AGM had, in

fact, agreed to the loans which were presented by Mr Chen in the Transaction Details. As I will explain below, I reject the First Defendant's claim that the Loan Acknowledgment and Transaction Details had been signed only to placate the Plaintiff's wife (see below at [78]). Furthermore, according to Mr Chen, the reason only Mr Seet, Mr Wong, the Second Defendant and the Plaintiff signed the Loan Acknowledgment and Transaction Details was that it was the Second Defendant who had said the Plaintiff and three of the First Defendant's committee members' signatures would have sufficed. Mr Gary Chen also testified during the trial that after he explained the Transaction Details and the Plaintiff's loans contained therein to the parties present, he had specifically asked whether anyone has any objections, and no one raised any objections.[106] As the person tasked with presenting the transactions on the Transaction Details to the committee members, I accept Mr Chen's testimony to be accurate. In any case, Mr Chen has not been challenged on his testimony that he had asked the committee members present if anybody had any objections to the loans from the Plaintiff and that there had been no objections.

68 Mr Chen's testimony is supported by Mr Wong, who had confirmed that the committee members present during the AGM had agreed to the Plaintiff's loans as presented by Mr Gary Chen in the Transaction Details. However, only the Plaintiff, the Second Defendant, Mr Seet and Mr Wong had signed both sets of documents because the Second Defendant had stated that the three of them signing would have been sufficient.[107] Mr Wong also testified during the trial that he was not forced to sign the Loan Acknowledgment and that he had signed the Loan Acknowledgment voluntarily.[108]

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106 Certified Transcript 4 May 2023 at p 47 lines 14–25 and p 48 lines 18–24.

107 Certified Transcript 12 May 2023 at p 125 lines 9–17.

108 Certified Transcript 12 May 2023 at p 99 lines 19–24 and p 101 lines 1–4.

69 According to the First Defendant, the Loan Acknowledgment and Transaction Details were not meant to have legal effect. They were merely prepared to placate the Plaintiff's wife.[109] The First Defendant avers that the Plaintiff was known to have an unhappy relationship with his wife, which was caused by the donation of substantial sums to the First Defendant.[110] The Plaintiff had allegedly been abused and even kicked out of his own home. In these circumstances, the Plaintiff requested assistance to appease his wife, upon which the Second Defendant suggested that the donations or gifts be disguised as loans.[111] This thus led to the signing of the Loan Acknowledgment and Transaction Details.[112]

70 Section 105 of the EA provides that the "burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence". The burden of proving that the Loan Acknowledgment and Transaction Details were prepared to appease the Plaintiff's wife thus lies on the First Defendant's shoulders.

71 The First Defendant cannot point to any objective evidence, be it in the form of documentary evidence or otherwise, supporting its assertion that the Loan Acknowledgment and Transaction Details were meant to placate the Plaintiff's wife. I note that several of the Defendants' witnesses had given evidence that at the AGM on 6 December 2018, the Plaintiff had requested for an acknowledgment that the moneys he donated were loans, that the acknowledgment was to placate his wife, and that it would not be used to make

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109 1DCS at para 41.

110 1DCS at para 42.

111 1DCS at para 42.

112 1DCS at para 42.

a claim against the First Defendant.[113] However, the material inconsistencies between their testimonies at trial and their evidence in their Affidavits of Evidence-in-Chief ("AEICs") meant that it was difficult to accept their evidence that the Plaintiff had specifically requested for the acknowledgment to be signed as a means to placate his wife.[114] I list down the relevant inconsistencies below.

(a) *Mr Seet*: He had confirmed that the Plaintiff kept quiet during the whole meeting.[115] However, in his written AEIC, he claimed that during the AGM, the Plaintiff had repeated his request for an acknowledgment that the moneys he donated were loans instead.[116] As the Plaintiff points out,[117] when Mr Seet was cross-examined on this inconsistency, he testified that this was an error in his affidavit and that the Plaintiff had actually kept quiet during the AGM.[118] This inconsistency, to my mind, calls into question whether the Plaintiff had even requested for an acknowledgment that the moneys he donated were loans instead.

(b) *Mr Wong*: He had testified during the trial that the Plaintiff kept quiet during the entire meeting.[119] However, this stands in stark contrast

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113 Affidavit of Evidence-in-Chief of Alvin Wong Yong Hwa dated 24 February 2023 ("AEIC Alvin Wong Yong Hwa") at para 13; Affidavit of Evidence-in-Chief of Seet Kok Heng dated 24 February 2023 ("AEIC Seet Kok Heng") at paras 27–28; AEIC Yu Shuay Yuen at para 18; Affidavit of Evidence-in-Chief of Jack Hong Kok Leong dated 24 February 2023 ("AEIC Jack Hong Kok Leong") at para 10; Affidavit of Evidence-in-Chief of Benny Chew Keng Peng dated 17 February 2023 ("AEIC Benny Chew Keng Peng") at paras 12–13.

114 PCS at paras 126–134.

115 Certified Transcript 11 May 2023 at p 146 lines 8–10.

116 AEIC Seet Kok Heng at para 27.

117 PCS at para 127.

118 Certified Transcript 12 May 2023 at p 7 lines 18–23.

119 Certified Transcript 12 May 2023 at p 103 lines 10–12.

to his AEIC where he states that the Plaintiff had repeated his request for an acknowledgment that the moneys he donated were loans, that the acknowledgment was to placate his wife and would not be used to make a claim against the First Defendant.[120]

(c) *Mdm Yu*: During the trial, she had initially claimed that the Plaintiff spoke during the AGM but subsequently agreed that the Plaintiff was silent throughout the entire AGM,[121] and it was the Second Defendant who had said that the Plaintiff was asking for a loan acknowledgment to placate the Plaintiff's wife.[122] However, this contradicts her written AEIC where she claimed that during the AGM, the Plaintiff had asked the First Defendant to issue a written loan acknowledgment for him to placate his wife and that the Plaintiff had "assured us that he would not enforce the loan acknowledgment."[123]

(d) *Mr Hong*: When he was questioned during trial whether the Plaintiff said anything during the AGM, Mr Hong testified that "[h]e did not. He only said one or two sentences after the acknowledgment was signed, and then he left."[124] Again, Mr Hong's testimony at trial as set out above is inconsistent with the evidence in his AEIC, where he had claimed in his AEIC the Plaintiff requested for an acknowledgment that the moneys he donated were loans, that the Plaintiff stressed it was to

120 AEIC Alvin Wong Yong Hwa at para 13.

121 Certified Transcript 16 May 2023 at p 41 lines 22–25 to p 42, line 1.

122 Certified Transcript 16 May 2023 at p 43 lines 1–9.

123 AEIC Yu Shuay Yuen at para 18.

124 Certified Transcript 16 May 2023 at p 163 lines 17–19.

placate his wife and would not be used to make a claim against the First Defendant.[125]

(e) *Mr Chew*: His testimony at trial is similarly inconsistent with the evidence in his AEIC. Mr Chew claimed in his AEIC that it was the Plaintiff himself who had requested for an acknowledgment that the moneys he donated were loans, that the loan acknowledgment was to placate his wife and would not be used to make a claim against the First Defendant.[126] However, this contradicts his testimony during trial that he was seated about 15 feet away from Mr Seet, Mr Wong, the Plaintiff and the Second Defendant and could not even see what they were writing.[127] Mr Chew claimed that he "overheard" the Second Defendant "talking about 1 million", but that he did not respond to it at that time.[128] It was only after the Plaintiff and Mr Chen had left that he asked the Second Defendant about the "1 million".[129] Mr Chew went on to state that it was only then that the Second Defendant told him that it was to help the Plaintiff salvage his marriage.[130]

72 From the above, it was highly strange to me that *all* the witnesses stated above had displayed the *same* inconsistency between their testimony at trial and their AEICs on whether the Plaintiff had requested for an acknowledgment at the AGM that the moneys he donated were loans, and whether the Plaintiff had stressed that said acknowledgement was meant to placate his wife and would

125 AEIC Jack Hong Kok Leong at para 10.

126 AEIC Benny Chew Keng Peng at para 12.

127 Certified Transcript 17 May 2023 at p 74 lines 16–20.

128 Certified Transcript 17 May 2023 at p 68 lines 1–6.

129 Certified Transcript 17 May 2023 at p 72 lines 21–25.

130 Certified Transcript 17 May 2023 at p 71 line 24 to p 72 line 2.

not be used to make a claim against the First Defendant. This was a critical point going to the heart of the First Defendant's claim that the Loan Acknowledgment and Transaction Details had been signed only to placate the Plaintiff's wife. That the witnesses had displayed the *same* about-face under cross-examination on the critical point of whether the Plaintiff had asked for an acknowledgement to placate his wife and had given his assurance that he would not enforce the acknowledgment leads me to question the veracity of the First Defendant's case that the Plaintiff had requested for the Loan Acknowledgment and Transaction Details to placate his wife. In fact, as can be seen from Mr Chew's updated testimony in court, at the time of the AGM, Mr Chew had merely "overheard" the Second Defendant "talking about 1 million" but did not respond to it at that time.[131] It was only after the Plaintiff and Mr Gary Chen had left had he asked the Second Defendant about the "1 million" and that Mr Chew was told by the Second Defendant that it was to help the Plaintiff salvage his marriage.[132] Therefore, there was *no* explanation for why Mr Chew had stated in his AEIC that the Plaintiff had requested at the AGM for an acknowledgment that the moneys he donated were to be treated as loans, that this was to placate his wife and that the acknowledgment would not be enforced against the First Defendant. The inference to be drawn then is that this is untrue.

73 Furthermore, as stated above at [67], Mr Gary Chen had expressly explained the Transaction Details to the persons present at the AGM and he had specifically asked whether anyone has any objections. No one raised any objections.[133] In circumstances where the Plaintiff had said nothing during the AGM, where Mr Chen had expressly explained the Transaction Details to the

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131 Certified Transcript 17 May 2023 at p 68 lines 1–6.

132 Certified Transcript 17 May 2023 at p 71 line 24 to p 72 line 2.

133 Certified Transcript 4 May 2023 at p 47 lines 14–25 and p 48 lines 18–24.

persons present, and where nobody voiced an objection to the transactions, it was more likely than not that the persons present had agreed that the loans as recorded within the Transaction Details and the Loan Acknowledgment were representative of the true state of affairs regarding the loans owed by the First Defendant to the Plaintiff.

74 I pause here to add that the fact that the Transaction Details and Loan Acknowledgment depict the loans owed by the First Defendant is also supported by the Second Defendant's signing of the Audited Financial Statement for YA 2017, a document dating to a time before the AGM had occurred on 6 December 2018. This audited financial statement was also submitted to the ROS. Based on the Second Defendant's evidence during trial, he confirmed that he was not forced to sign the Audited Financial Statements for YA 2017.[134] What is critical is that the loans to the Plaintiff as of 30 June 2017 were clearly recorded as amounting to $607,336.[135] This approximately tallies with and is consistent with the Transaction Details which states that the balance of loans owing to the Plaintiff as of 30 June 2017 stood at $607,335.97. The differences in figures may be reasonably explained by the fact that the figure in the Transaction Detail had been rounded up from $607,335.97 to the sum of $607,336 as reflected in the Audited Financial Statements for YA 2017.

75 The weakness of the First Defendant's claim that the documents were created merely to placate the Plaintiff's wife is bolstered by the fact that when I had queried the Second Defendant whether the Plaintiff's wife had ever gone to

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134 Certified Transcript 11 May 2023 at p 6 lines 6–14.

135 CBD at p 39.

the premises of the First Defendant to cause trouble, his was answer was in the negative. This is seen from the exchange below:[136]

> Court: The wife of Richard Lim, has she at any time come to the temple to rave about the husband's donations to the temple? Make noise or make trouble. Has she ever come to the temple or to come and see you or any of the committee members to make a lot of noise and make a nuisance of herself because of her husband's huge donations to the temple?
>
> A: Your Honour, his wife has never came to the temple. I can remember one incident around 2017 or 2018, I forgot the exact year, I was at Richard Lim's office and I saw Robert once. Robert is the younger brother of Richard Lim's. He was also not very happy that Richard Lim donated such a -- so much money. He said something to the effect that, "Do you really want to be a BBM? Stop donating". That was once I heard there. Not long after, I heard Gary telling me that Robert brought a $150,000 cheque to him. I don't know when was that. It was conveyed that boss, that is, Richard Lim, will not -- he was saying that boss, that is Richard Lim, will not donate any more to the temple. As for his wife coming to the temple to make noise, no, that did not happen, your Honour. During the frequent calls with Richard Lim, he did said -- he did say that that happened, but physically she did not come to the temple.
>
> Court: So this lady who is Richard Lim's wife has not come to make trouble at the temple, but only make trouble for the husband? A very strange lady, I must say.

76 As the Plaintiff points out,[137] if the Plaintiff's wife had indeed been unhappy with the Plaintiff's "donations", the Plaintiff's wife would likely have at least raised this issue with the First Defendant. However, as the Second Defendant accepts, not once did the Plaintiff's wife show up at the premises of the First Defendant. While it may be indeed be *possible* that the Plaintiff had been upset with the Plaintiff and that this was the reason why the Plaintiff had procured the signing of the Loan Acknowledgment and Transaction Details, this, again, is ultimately the burden of the First Defendant to show. The First

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136 Certified Transcript 10 May 2023 at p 56 lines 19–25 and p 57 lines 1–18.

137 PCS at para 113.

Defendant has adduced no objective evidence of the purportedly unhappy state of affairs between the Plaintiff and his wife in support of its case. It was no insignificant matter for the committee members of the First Defendant to sign onto the Loan Acknowledgment and Transaction Details as it would have exposed the First Defendant to a liability to pay a debt of over a million dollars to the Plaintiff. In these circumstances, one would have expected there to have been records of the purported scheme between the Plaintiff and the First Defendant to prepare the false loan acknowledgment and that this was not intended to have any legal effect. Such records could have come in the form of chat messages between the Plaintiff and the Second Defendant or other committee members of the First Defendant. There are simply no such records, as the Second Defendant himself accepted under cross-examination.[138] Furthermore, when the Second Defendant was questioned on whether there was any written acknowledgment from the Plaintiff that he would not enforce the Loan Acknowledgment, the Second Defendant's answer was "no":[139]

> Q: Was there any written acknowledgement from the plaintiff that he would not enforce the loan acknowledgement, "yes" or "no"?
>
> A: No.
>
> Q: Do you agree that without any written acknowledgement, what we have today is merely your oral assertion that the plaintiff said he would not enforce this acknowledgement, yes?
>
> A: With regard to this, it was verbalised by Mr Lim that he would not enforce it.
>
> Q: You agree that what we have today is only your oral assertion that the plaintiff said he would not enforce? We do not have any written acknowledgement on this, do you agree?
>
> A: I will agree on this.

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138 Certified Transcript 11 May 2023 at p 51 lines 21–24.

139 Certified Transcript 9 May 2023 at p 73 lines 6–20.

77 As mentioned above, it was no insignificant matter for the committee members of the First Defendant to sign onto the Loan Acknowledgment and Transaction Details as it would have exposed the First Defendant to a liability to pay a debt of over a million dollars to the Plaintiff. If the Second Defendant's version of events is accurate, basic prudence would have called for the procurement of at least a written acknowledgment from the Plaintiff indicating that he would not, in no uncertain terms, enforce the Loan Acknowledgment against the First Defendant. The fact that there is no such written acknowledgment weighs heavily against the First Defendant's case.

78 For the reasons stated above, I do not accept the First Defendant's explanation that the Loan Acknowledgment or the Transaction Details were prepared only to placate the Plaintiff's wife and were not meant to have legal effect or to be enforceable.

79 For completeness, I turn to address the other arguments raised by the First Defendant in objection to the Loan Acknowledgment and the Transaction Details.

80 The First Defendant submits that the signing of the Loan Acknowledgment and the Transaction Details were invalid under the First Defendant's constitution given that the AGM of 6 December 2018 was not convened in accordance with procedural requirements stipulated within the First Defendant's constitution.[140] I reject this submission. It is important to be clear that the basis for the Plaintiff's claim in debt does *not* arise ipso facto from the Loan Acknowledgment or the Transaction Details. Neither does it stem from the Oral Agreement, a finding which I have reached above at [56], although I

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140 1DRS at paras 31–39.

accept that the General Understanding was likely to have been reached by the persons present as part of the initial discussions, plans and financial arrangements made (as would be expected) prior to the formation of the First Defendant. Rather, the basis for the Plaintiff's claim in debt lies in the *discrete* loans made by the Plaintiff *each and every time* he had extended moneys as loans to the First Defendant. The Loan Acknowledgment and Transaction Details are relevant only insofar as they provide *evidence* on the existence of these loan transactions. The General Understanding is relevant as *evidence* of the background that led to the later disbursements of the discrete loans by the Plaintiff to the First Defendant. Accordingly, the First Defendant's objections that the Loan Acknowledgment and Transaction Details had been signed contrary to the First Defendant's constitution and are therefore invalid, are strictly speaking, besides the point.

81 I also do not find merit in the First Defendant's argument that the Loan Acknowledgment and Transaction Details are inadmissible hearsay. The documents had been signed by the First Defendant's committee members comprising Mr Seet, Mr Wong, the Second Defendant and the Plaintiff. As I have found above at [67], all committee members present at the AGM where the documents were signed had agreed that the loans as recorded within the Transaction Details and the Loan Acknowledgment were representative of the actual state of affairs. The fact that the documents were signed by only Mr Seet, Mr Wong, the Second Defendant and the Plaintiff did not mean that the documents were not assented to by the First Defendant.[141] To the contrary, the evidence points to them having been conferred with the implied authority to assent to the Loan Acknowledgment by signing it. The Second Defendant had told the other committee members that those signatures alone would be

[141] 1DCS at para 68.

sufficient. The Transaction Details and the Loan Acknowledgment thus amount to admissions by the First Defendant of the quantum of the loans owing to the Plaintiff under s 17(1) of the EA.

82 Next, I disagree with the First Defendant's fall-back argument that the Loan Acknowledgment and Transaction Details, if admissible, should be excluded for being against the interests of justice under s 32(3) of the EA. The First Defendant has questioned the correctness of some of the calculations in the documents, pointing out in particular that the sum of $1,011,295.95 as stated in the Loan Acknowledgement does not tally with the figures contained in the financial statements dated 30 June 2017 ($607,336) and 30 June 2018 ($740,885). The First Defendant also avers that there may have been a concern that the auditors tasked with the preparation of the Transaction Details may not be as thorough in its audit in view of its relationship with the Plaintiff. Therefore, the First Defendant submits that it would not be in the interests of justice to admit the documents without the opportunity of the auditors being cross-examined on the methodologies used and the basis of their findings, which would undermine the reliability of the documents and their accuracy.[142] Again, it bears emphasis that Mr Gary Chen had shared with the parties present during the AGM that the amount owing to the Plaintiff was $1,011,295.95. The parties present at the AGM did not raise any queries or objections to the figures that were presented to them. Again, I have found above at [67] that the committee members present were aware of and had in fact agreed to the existence of the Plaintiff's loans. Whatever inaccuracies there might have been in the figures (*eg*, whether they tallied with the First Defendant's financial statements), these could have and should have been raised at the AGM. This was not done. Accordingly, I do not find this to be a proper case to exercise this Court's

142 1DCS at para 76.

discretion to exclude the Loan Acknowledgment and the Transaction Details in the interests of justice under s 32(3) of the EA.

83 Finally, the First Defendant submits that the loan of $150,000 by Mr Lim Swee Chong, a loan of $50,000 recorded under the name of Mr Chen, and a loan of $25,881.64 due to Choon Hin Iron Works Pte Ltd should be excluded from the loans owed by the First Defendant.[143] I reject this argument. Mr Chen had explicitly shared with the parties present during the AGM the particulars of the loans as stated in the Transaction Details. In the process of doing so, Mr Chen would have explained the existence of the loan of $150,000 from Mr Lim Swee Chong,[144] the loan of $50,000 from Mr Gary Chen recorded in the Transaction Details,[145] the loan of $46,456.19 due to Choon Hin Iron Works Pte Ltd[146] and the loan of $25,881.64 due to Choon Hin Iron Works Pte Ltd.[147] More crucially, the purported loan sum of $1,011,295.95 which the First Defendant acknowledged was owed to the Plaintiff under its Loan Acknowledgment is, in fact, derived from the summation of these figures which can be obtained from

143 1DCS at paras 77–88.

144 CBD at p 11.

145 CBD at p 15.

146 CBD at p 12.

147 CBD at p 14.

the Transaction Details (*ie*, $738,958.12[148] + $150,000[149] + $50,000[150] + $46,456.19[151] + $25,881.64[152]).

The First Defendant's audited financial statements

84 I considered the following documents to support the Plaintiff's case that he had extended an aggregate sum of $1,011,295.95 to the First Defendant:

(a) The First Defendant's Audited Financial Statement for YA 2017;

(b) Emails from Second Defendant to First Defendant's committee members containing the First Defendant's audited financial statements and confirmation that those would be the First Defendant's accounts; and

(c) The First Defendant's audited financial statements for years of assessment 2020 and 2021.

(1) The First Defendant's Audited Financial Statement for YA 2017

85 Apart from the signed Loan Acknowledgment and the Transaction Details, it is undisputed that the Second Defendant had signed the First Defendant's Audited Financial Statement for YA 2017. The loans to the Plaintiff as of 30 June 2017 were expressly recorded as amounting to

148 CBD at p 11 (figure obtained from the entry labelled "Total Amt owing to Richard").

149 CBD at p 11 (figure obtained from the entry described as "Deposit 42927 Lim Swee Chong Fund to Nan Bei Dou Mu Gong").

150 CBD at p 15 (figure obtained from the entry labelled "Deposit 22/11/2017 Chen Chin Wu Fund to Nan Bei Dou Mu Gong").

151 CBD at p 12 (figure obtained from the entry labelled "Total MegaCity Pte Ltd").

152 CBD at p 14 (figure obtained from the entry labelled "Total Choon Hin Iron Works Pte Ltd").

$607,336.[153] This serves as supporting evidence that substantial loans, rather than gifts of up to $607,336 had, at the very least, been given by the Plaintiff to the temple as of 30 June 2017. As explained at [74] above, the fact that this approximately tallies with the Transaction Details, which states that the balance of loans owing to the Plaintiff as of 30 June 2017 stood at $607,335.97, serves as confirmatory evidence of the *accuracy* of the Transaction Details in recording the Plaintiff's loans to the First Defendant. Furthermore, the Plaintiff's loans as recorded in the First Defendant's drafted audited financial statement for the financial year ending 30 June 2018 stood at $740,885.[154] This aligns closely with the balance of the loans to the Plaintiff as recorded in the Transaction Details where the outstanding loan is stated to be $738,958.12 as of 30 June 2018.[155] In my view, the minor discrepancies in values in both documents does not detract from the inference that the Transaction Details appears to be an accurate record of the Plaintiff's loans to the First Defendant.

86 I accept the Plaintiff's case that in signing the Audited Financial Statement for YA 2017, the Second Defendant was well aware of the Plaintiff's loans recorded therein and had not taken any issues with the contents.[156] In his attempts to explain away the damning evidence in the form of the Audited Financial Statement for YA 2017, the Second Defendant had claimed during the trial initially that at that time:[157] (a) he did not see the figure of $607,336 contained in the Audited Financial Statement for YA 2017; (b) he only flipped through the Audited Financial Statement for YA 2017 to confirm the date; (c)

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153 CBD at p 39.

154 Agreed Bundle Of Documents dated 27 April 2023 ("ABOD") Vol 5 at p 136.

155 ABOD Vol 1 at p 129.

156 PCS at para 180.

157 PCS at para 172.

he could not recall submitting the Audited Financial Statement for YA 2017 to the ROS; and (d) he did not think he had submitted audited financial statements to the ROS. However, as the Plaintiff points out, none of the Second Defendant's explanations hold water. When the Second Defendant was cross-examined, his evidence conveniently changed on the stand where he not only admitted to submitting the Audited Financial Statement for YA 2017 to the ROS, but he had even used the figures contained in the Audited Financial Statement for YA 2017 for purposes of submission to the ROS.[158] When I further queried the Second Defendant on whether he knew that the document he submitted to the ROS would contain a statement to the ROS that there was a president's loan, the Second Defendant confirmed that he did.[159] The Second Defendant also confirmed that he was aware that there is a big difference between a donation and a loan.[160] To my mind, the sudden shift in the Second Defendant's testimony strongly points towards his untruthfulness and the fact that he was well aware of the Plaintiff's loans and had not taken any issues with the contents of the Audited Financial Statement for YA 2017. This best explains why the Second Defendant had been content to submit the First Defendant's Audited Financial Statement for YA 2017 reflecting the Plaintiff's loans to the ROS.

87 The First Defendant's primary objection to the audited financial statements is that the statements did not have legal effect as they were unauthorised and thus cannot be admitted as an admission under s 17(1) of the EA.[161] I do not accept this argument. It is not in dispute that the Second

158 PCS at para 173.

159 Certified Transcript 10 May 2023 at p 7 lines 17–25 and p 8 lines 1–10.

160 Certified Transcript 10 May 2023 at p 8 lines 20-25 and p 9 lines 1–11.

161 1DCS at paras 67–68; 1DRS at para 40.

Defendant signed the First Defendant's Audited Financial Statement for YA 2017 as of 30 June 2017 in his capacity as the secretary of the First Defendant, together with the Plaintiff in his capacity as the Chairman of the First Defendant and Mr Lee as the treasurer of the First Defendant.[162] This document was subsequently submitted to the ROS.[163] Given that the loans to the president had carried forward into the financial statements of subsequent years[164] which have since been similarly submitted to the ROS, it is too late to allege that the financial statements have not been authorised.

(2) Emails from the Second Defendant to the First Defendant's committee members containing the First Defendant's audited financial statements and confirmation that those will be the First Defendant's accounts

88 Apart from the Audited Financial Statement for YA 2017, both the First Defendant's committee members, Mr Seet and Mr Hong, received an email dated 25 April 2019 from the Second Defendant to the Plaintiff, Mr Lee, Mr Seet and Mr Hong ("Second Defendant's Email of 25 April 2019") (see above at [21])[165] where the Second Defendant had informed the parties that the First Defendant would be relying on the audited statements for 2017 and 2018 prepared by LW Ong for the ROS once the relevant parties have logged into the CorpPass account and verified the annual returns.[166] The Second Defendant clarified that for the year 2018, the annual returns would be verified by him, Mr Seet and Mr Hong.[167]

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162 PWRS at para 101.

163 PWRS at para 104.

164 See *eg*, ABOD Vol 1 at p 181.

165 ABOD Vol 1 at p 209.

166 3AEIC Lim Swee Joo at para 163 and p 298.

167 3AEIC Lim Swee Joo at para 164 and p 298.

89 Mr Seet confirmed receiving the Second Defendant's Email of 25 April 2019.[168] Mr Seet had also testified that he did not raise any objections, did not even speak to the Second Defendant on the email, and left it as it was. Mr Seet had claimed that as he had only intended to be a temporary chairman then, he did not bother to look into so many things. By the time it became known to him that he would be the permanent chairman, Mr Seet maintained that he still did not bother to look when he stated "Yeah, I have missed out after the confirmation".[169] I find Mr Seet's explanation hard to believe. When considered with Mr Seet's own evidence that even after the First Defendant's new auditors, JP Auditor, informed him of the Plaintiff's loans in the audited financial statements, Mr Seet did nothing about these purportedly false loans and simply allowed the Plaintiff's loans to be carried forward to the audited financial statements for the following year. Since the purportedly false loans were of a very significant amount, I would have expected Mr Seet to do something about them. The more likely inference was that Mr Seet did not object to the Second Defendant's Email of 25 April 2019 because he was well aware of the Plaintiff's loans, particularly when Mr Seet was the one of the committee members who had signed on both the Loan Acknowledgment and the Transaction Details during the AGM.

90 Turning then to Mr Hong's evidence, he had similarly confirmed receiving the Second Defendant's Email of 25 April 2019 at that time. However, Mr Hong claimed that he merely skimmed through the Second Defendant's Email and did not even bother clarifying with the Second Defendant. As with Mr Seet, I am satisfied that the more likely reason why Mr Hong did not object to the Second Defendant's Email of 25 April 2019 was that he was well aware

168 Certified Transcript 12 May 2023 at p 40 lines 18–22.

169 Certified Transcript 12 May 2023 at p 45 lines 10–14.

of the Plaintiff's loans and that the First Defendant had even provided the Plaintiff with the Loan Acknowledgment during the AGM.[170]

(3) The First Defendant's subsequent audited financial statements for years of assessment 2020 and 2021.

91 Finally, I consider it material that even after the Plaintiff ceased his involvement with the First Defendant, the First Defendant had carried on filing its audited financial statements for the years of assessment 2020 and 2021, which contained a record of the Plaintiff's loans, with both the ROS and IRAS. During the trial, the First Defendant's treasurer, Mr Hong, gave evidence that the First Defendant's committee members, Mr Seet, the Second Defendant and himself had signed the audited financial statements for the year ending 2020 ("Audited Financial Statements for YA 2020").[171] The same individuals appear to have also signed the audited financial statements for the year ending 2021 ("Audited Financial Statements for YA 2021").[172]

92 It is curious that they have also never sought to inform the ROS and IRAS of any mistakes contained in these audited financial statements over the years. If the recording of the Plaintiff's loan had indeed been a false depiction of the actual state of affairs and that any loans were merely fabricated in an attempt to placate the Plaintiff's wife (a point I have rejected above at [78]), it is difficult to see why the First Defendant was content to continue with the façade year after year, long after the Plaintiff had ceased his involvement with the First Defendant.

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170 PCS at para 189.

171 Certified Transcript 16 May 2023 at p 177 lines 5–12.

172 Certified Transcript 16 May 2023 at p 182 lines 5–7.

93 I am not convinced by Mr Hong's attempts at explaining away the First Defendant's Audited Financial Statements for the years of assessment 2020 and 2021 on the basis that the figures were merely carried forward figures from previous years and hence were not indicative of the Plaintiff's loans.[173] I note that Mr Hong had initially testified that he did not see the Plaintiff's loans recorded in the Audited Financial Statements for YA 2020 and that he had signed the Audited Financial Statements for YA 2020 without looking at the contents.[174] This contrasts starkly with his concession under cross-examination shortly thereafter that when he signed the First Defendant's Audited Financial Statements for years of assessment 2020 and 2021, he was well aware of the Plaintiff's loans as stated within.[175] In attempting to explain his position, Mr Hong claimed that if the Plaintiff's loans were not carried forward, there was no way the First Defendant could have submitted the audited financial statements to the ROS and IRAS.[176] As I had difficulty accepting his explanation, I followed up with a query on whether he had even inquired with the First Defendant's accountants on whether the Plaintiff's loans stated therein could be corrected. Mr Hong answered that he did not.[177] When I probed Mr Hong Kok Leong further on who had told him that the Plaintiff's loans, if wrong, should still be carried forward and whether this was told to him by the accountants, Mr Hong admitted that it was his own thinking and agreed that his failure to rectify the carried forward figures was made in error.[178] I do not believe that this was the true explanation for why the Plaintiff's loans had been carried forward in

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173 See also 1DRWS at para 43.

174 Certified Transcript 16 May 2023 at p 177 lines 18–25 and p 178 line 1.

175 Certified Transcript 16 May 2023 at p 183 lines 5–8.

176 Certified Transcript 16 May 2023 at p 183 lines 12–15.

177 Certified Transcript 16 May 2023 at p 184 lines 14–19.

178 Certified Transcript 16 May 2023 at p 185 lines 17–21.

the audited financial statements despite Mr Hong's misgivings about the existence of these loans. Given the substantial documentary evidence supporting the Plaintiff's loans in the form of the Loan Acknowledgement, Transaction Details and the financial statement for the YA 2017, the more likely explanation for the carrying forward of the Plaintiff's loans is that these loans did exist in fact, and this was known to Mr Hong. Contrary to Mr Hong's claims, he did not contest the existence of these loans and had been content for the loans to be left recorded within the Audited Financial Statements for the years of assessment 2020 and 2021.

The fact that the payments were not recorded in donation slips, unlike the usual practice

94 As the First Defendant's bank account was only set up after the First Defendant's first Kew Ong Yah event, the Plaintiff had on various occasions passed cash to either Mr Wong, Mr Lee or Mr Chen, such that they could make such miscellaneous payments to the various third-party suppliers during the Kew Ong Yah event. I accept that it was more likely than not that the Plaintiff had expressly informed them that unless stated otherwise, his monetary contributions to the First Defendant were to be treated as loans to the First Defendant, with such contributions being unrecorded on any donation slip.[179] Were it otherwise, they would most likely have issued the Plaintiff a donation slip for every donation he had made. This is all the more likely given the Plaintiff's evidence that where he had expressly intended to make a donation, he would have informed them accordingly to ensure that this was recorded in a donation slip.[180] For instance, the Plaintiff had donated $50,000 as seen from a

179 3AEIC Lim Swee Joo at para 93.

180 3AEIC Lim Swee Joo at para 87.

donation slip of 2 December 2016.[181] Therefore, it is more likely that moneys not recorded in the donation slips were intended to be loans (and not gifts or donations) to the first Defendant by the Plaintiff and to be treated as such. The First Defendant cannot point to any donation slips for the numerous purported donations as recorded in the Transaction Details.[182] As such, this is an additional consideration pointing towards the transactions listed in the Transaction Details as loans and not gifts or donations.

95 I do not accept the First Defendant's submission that the Plaintiff's failure to keep records of the alleged loans despite his experience as a businessman should point instead to the conclusion that the money were not, in fact, loans.[183] Again, this submission is a non-starter given my finding that the Plaintiff had expressly informed them that unless stated otherwise, his monetary contributions to the First Defendant were to be treated as loans to the First Defendant. In any case, it is inaccurate to say that the Plaintiff did not attempt to keep records of his loans. The Plaintiff's primary case is that he had not only ensured that his loans were recorded in the First Defendant's accounts, but that he had also procured documentary proof from the First Defendant of his loans in the form of the Loan Acknowledgment and the Transaction Details.[184]

It is inconclusive whether the Plaintiff was thanked in various meetings for extending loans to the First Defendant

96 The Plaintiff alleges that the existence of the Plaintiff's loans is supported by the fact that at the various meetings, the Second Defendant had

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181 3AEIC Lim Swee Joo at para 87 and p 120.

182 3AEIC Lim Swee Joo at para 87.

183 1DCS at paras 18–20.

184 PWRS at para 6.

stated to the Plaintiff that the Plaintiff would be repaid his loans.[185] In particular, the Plaintiff was publicly thanked at these meetings for extending the loans to the First Defendant. This is disputed by the First Defendant, who avers that the public announcements made at the various meetings were to thank the Plaintiff for his generosity for the donations.[186]

97 I set out below the various meetings in which the Plaintiff alleges the Second Defendant had expressly referred to the Plaintiff's loans and that the First Defendant would repay this sum to the Plaintiff. The Plaintiff also alleges that the Second Defendant had thanked the Plaintiff in front of the parties present at these meetings for his generosity in extending the loans.

(a) *Meeting at the Metta School on 22 May 2016*: A meeting was held at the Metta School along Simei Street 1 on 22 May 2016.[187] At least 17 people were in attendance, including the Plaintiff, the Second Defendant, Joseph Liew, Mr Choo, Mr Ong and Mr Lee.[188] The Second Defendant announced that the First Defendant's Kew Ong Yah event was to be held from 30 September 2016 to 10 October 2016 at the open field outside Eunos MRT station.[189] The Second Defendant confirmed that Plaintiff had "pledged" $50,000 for the First Defendant's initial set-up costs and the advance orders of goods and materials from China. The proceedings at the meeting were recorded in the meeting minutes.[190] The parties dispute whether the Second Defendant had expressly stated that

185 PCS at para 35(ii); SOC (Amendment No 3) at paras 19, 23 and 31.

186 1DCS at para 33.

187 1AEIC Goh Joo Heng at para 23.

188 3AEIC Lim Swee Joo at para 29, p 15.

189 3AEIC Lim Swee Joo at para 30, p 15; 1AEIC Goh Joo Heng at para 23.

190 3AEIC Lim Swee Joo at pp 105–107.

the First Defendant would repay this sum to the Plaintiff.[191] The Plaintiff also alleges that the Second Defendant had thanked the Plaintiff in front of the parties present for agreeing to loan the starting expenses of the First Defendant and that the First Defendant would repay the Plaintiff's loans from the donations it received as long as the First Defendant had moneys.[192]

(b) *Meeting at Gim Tim restaurant sometime in or around May 2016*: Sometime in or around May 2016, there was a further meeting held at a restaurant, Gim Tim Restaurant. In attendance were the Plaintiff, the Second Defendant, Mr Chew, Mr Wong, Mr Toh and Mdm Yu.[193] The Second Defendant informed the Plaintiff that they were experienced in running temples and could assist with the running of the First Defendant.[194] Mr Chew, Mr Wong, Mr Toh and Mdm Yu subsequently became committee members of the First Defendant.[195]

At the meeting, the Second Defendant also invited one Tan Kim Chui and various associations.[196] The Second Defendant told the Plaintiff that these supporters could assist with the annual Kew Ong Yah's event.[197]

During this meeting, the Second Defendant updated the parties present on the setting up of the First Defendant, stating that the Plaintiff was to be the chairman of the First Defendant. The Plaintiff alleges that the

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191 3AEIC Lim Swee Joo at para 31, pp 15–16.

192 3AEIC Lim Swee Joo at para 34, p 16.

193 1AEIC Goh Joo Heng at para 24.

194 3AEIC Lim Swee Joo at paras 45–46.

195 3AEIC Lim Swee Joo at para 46.

196 3AEIC Lim Swee Joo at para 47.

197 3AEIC Lim Swee Joo at para 47.

Second Defendant had also informed the parties that the Plaintiff had kindly agreed to loan moneys for the starting expenses of the First Defendant and its Kew Ong Yah event and that the First Defendant would pay back the loans to the Plaintiff from the donations it received as long as the First Defendant had moneys.[198] The Plaintiff also alleges that he was thanked in front of all parties present by the Second Defendant for his generosity in extending his loans.[199]

It is disputed whether the moneys extended had been described at the meeting to be loans. It is also disputed whether the Second Defendant had thanked the Plaintiff for the provision of the loans and that he had informed the persons present that the First Defendant would return Plaintiff's loans from the donations it received as long as the First Defendant had moneys.[200]

(c) *Meeting at Lorong 16 Geylang on or around 14 June 2016*: On or around 14 June 2016, the Second Defendant organised a committee meeting for the First Defendant at Lorong 16 Geylang #05-01. The parties present included the Plaintiff, the Second Defendant, Mr Toh, Mr Chew, Mr Lee, Mr Chen, Mdm Yu, Mr Lawrence Teo and "Ah Piow".[201] The minutes of the meeting were recorded.[202]

The Plaintiff alleges that at this meeting, the Second Defendant thanked the Plaintiff in front of all the parties present for his generosity in

198 3AEIC Lim Swee Joo at para 48.

199 3AEIC Lim Swee Joo at para 49.

200 Defence of 1st Defendant (3rd Amendment) dated 21 April 2023 at para 26.

201 3AEIC Lim Swee Joo at para 52.

202 1AEIC Goh Joo Heng at GJH-2; 3AEIC Lim Swee Joo at pp 109–117.

extending the loans to allow the First Defendant to be set up and for the First Defendant's Kew Ong Yah event.[203] The Plaintiff also alleges that the Second Defendant had stated that the First Defendant would return the loans from the donations it received as long as the First Defendant had moneys.[204] The Second Defendant disputes this, stating that there was no mention of the Plaintiff loaning money to the First Defendant for the Kew Ong Yah event or of the attendees thanking him for lending money.[205]

According to the Plaintiff, the First Defendant also requested for the parties present to come up with "upfront cash" for the Kew Ong Yah event and confirmed that any "upfront cash" made for the Kew Ong Yah event would be returned to the parties who came up with the "upfront cash".[206] It was also allegedly confirmed during the meeting that the Plaintiff had already settled the upfront cash and his upfront cash would subsequently be returned to him by the First Defendant.[207] This upfront cash loan from the Plaintiff consisted of a $3,000 payment to Geylang Serai CCC CDWF on or around 13 May 2016 and a $50,000 payment to Megacity Pte Ltd for the purchase of various items for the First Defendant, including a Goddess statute, sedan chairs, clothes for the sedan chairs holders, the dragon dance troops and the supporters of the event.[208]

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203 3AEIC Lim Swee Joo at para 53.

204 3AEIC Lim Swee Joo at para 53.

205 1AEIC Goh Joo Heng at para 26.

206 3AEIC Lim Swee Joo at para 56.

207 3AEIC Lim Swee Joo at para 60.

208 3AEIC Lim Swee Joo at para 60.

(d) *Meeting at the Bullion Park condominium on or around 4 September 2016*: Sometime on or around 4 September 2016, a meeting was held at the function room of the Bullion Park condominium. Around 30 to 40 people attended this meeting.[209] The parties who participated in this meeting included the Plaintiff, the Second Defendant, Mr Choo, Mr Toh, Mr Chew, Mdm Yu, Mr Wong and various third parties whom the Second Defendant claimed could assist with the Kew Ong Yah event.[210] The parties dispute whether mention was made of the Plaintiff's loans and whether the Plaintiff was thanked for extending such loans.[211]

(e) *Meeting during Kew Ong Yah event on or around 5 October 2016*: Sometime on or around 5th October 2016, during the middle of the Kew Ong Yah event (which was held sometime in October 2016 for about ten days), at the event site near Eunos MRT station, the First Defendant held a meeting, and the parties present included the Plaintiff, the Second Defendant, Mdm Yu and Mr Chen.[212]

The Plaintiff alleges that the Second Defendant once again thanked the Plaintiff for his generosity in coming up with the funds to set up the First Defendant and for the First Defendant's Kew Ong Yah event.[213] The Second Defendant had also allegedly assured the Plaintiff that the First Defendant would repay him his loans from the donations received by the First Defendant as long as the First Defendant had moneys.[214]

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209 1AEIC Goh Joo Heng at para 27.

210 3AEIC Lim Swee Joo at para 62.

211 1AEIC Goh Joo Heng at para 27; 3AEIC Lim Swee Joo at para 65.

212 3AEIC Lim Swee Joo at para 69.

213 3AEIC Lim Swee Joo at para 70.

214 3AEIC Lim Swee Joo at para 70.

(f) *Meeting at Riverview hotel on or around 21 October 2016*: Sometime on or around 21 October 2016, the First Defendant organised an appreciation dinner for the volunteers of the Kew Ong Yah event. The persons in attendance included the Plaintiff, the Second Defendant, Mdm Yu, Mr Lee, Mr Ong, Mr Chen and Mr Chew.[215] The Plaintiff alleges that the Second Defendant once again thanked the Plaintiff for his generosity in loaning the funds to set up the First Defendant and for the First Defendant's Kew Ong Yah event.[216]

(g) *Meeting at Ubi on or around early 2017*: Sometime on or around early 2017, the First Defendant held a meeting at the First Defendant's premises at Ubi, where there was a de-briefing session of the Kew Ong Yah event.[217] The First Defendant's committee members were in attendance, including the Plaintiff, the Second Defendant, Mr Chew, Mr Ong, Mr Chen and Mdm Yu.[218] The Plaintiff alleges that the Second Defendant informed the parties present that the Kew Ong Yah event was successful due to the Plaintiff's generosity in loaning moneys to the First Defendant.[219]

98 Having reviewed the evidence concerning the meetings above, I agree that there would have been nothing unusual in the Second Defendant thanking the Plaintiff for providing financial assistance to the First Defendant. After all, the Plaintiff's financial assistance was essential to fund the initial set up costs and the subsequent events of the First Defendant. However, I agree with the

215 3AEIC Lim Swee Joo at para 74.

216 3AEIC Lim Swee Joo at para 75.

217 3AEIC Lim Swee Joo at para 76.

218 3AEIC Lim Swee Joo at para 77.

219 3AEIC Lim Swee Joo at para 78.

First Defendant that the evidence does not go so far as to show on a balance of probabilities that the Plaintiff had been thanked for the *specific reason* that the Plaintiff had extended loans to the First Defendant. The evidence of the parties present at these meetings is divided. In the absence of documentary proof such as minutes recording of these expressions of thanks and that they were given in response to the Plaintiff's loans, it is difficult to determine, even on a balance of probabilities, the precise scope of the Second Defendant's expression of thanks. The expression of thanks could be explained by the Plaintiff's generous donations just as well as it could be explained by the Plaintiff's loans to the First Defendant. I would add that it would be unusual for the Plaintiff to be thanked on so many different occasions for his loans and that he would be repaid his loans, particularly in such a public setting. In any event, it is ultimately immaterial whether the Plaintiff had indeed been thanked for his loans at these meetings, as I do not rest my finding that the Plaintiff had indeed made loans aggregating to the sum of $1,011,295.95 on the purported expression of gratitude at these meetings. As explained above at [59], I prefer to rest my finding that the Plaintiff has made out his claim in debt on objective, documentary evidence in the form of the Loan Acknowledgment, Transaction Details and the audited financial statements of the First Defendant.

The loans are repayable on demand

99 Having found that the Plaintiff has made out his case that he had made loans amounting to $1,011,295.95 to the First Defendant, a question arises as to the repayment terms for such loans. In this regard, I am guided by the statement of law in *Ang Boon Tian v Jervois Pte Ltd and another* [2022] SGHC 104 at [61], citing *Halsbury's Law of Singapore* vol 12 (LexisNexis, 2022 Reissue) at para 140.755 that "[u]nless expressly or implied agreed upon otherwise, money lent, whether by way of a loan or overdraft, is repayable on demand." Thus,

even though no specific repayment dates were stipulated for the loans as stated in the Loan Acknowledgment and the Transaction Details, the Plaintiff's loans are repayable on demand. In any case, it appears that the loans were expressly stipulated to be repayable on demand as can be seen from the First Defendant's audited financial statements which record the amounts owing to the Plaintiff (then President of the First Defendant) as being "repayable on demand".[220] As the Plaintiff had previously sent a demand letter on 25 September 2019 giving the First Defendant seven days' notice to repay Plaintiff's loans, the loans became due and payable by the end of the seven days' notice. Hence, the First Defendant is liable to pay the total sum of $1,011,295.95 to the Plaintiff.

Payments made by the Plaintiff before the registration of the First Defendant

100 For completeness, I note that the Plaintiff's claim in debt can be analysed in two parts: (a) loans extended *before* the registration of the First Defendant; and (b) loans extended *after* the registration of the First Defendant. As for the loans extended after the registration of the First Defendant on 19 September 2016, the Plaintiff relies on the Loan Acknowledgment and the Transaction Details as proof that the Plaintiff gave the sum of $1,011,295.95 as loans. From the face of the Transaction Details, the earliest record of these purported loans is dated 26 September 2016. Therefore, these loans occurred *after* the registration of the First Defendant, which was done on 19 September 2016. Again, the Plaintiff has made out its claims for $1,011,295.95 as recorded in the Loan Acknowledgement and the Transaction Details.

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220 See *eg*, CBD at p 39 (for the year of assessment ending 30 June 2017); ABOD Vol 5 at pp 136, 149 (for the year of assessment ending 30 June 2018).

101 As for the loans extended before the registration of the First Defendant, there were three of such payments referred to in the Plaintiff's evidence and his Statement of Claim:

(a) A $3,000 cheque was made payable to "Geylang Serai CCC CDWF" on 13 May 2016;[221]

(b) A $50,000 cheque was made payable to "Megacity Pte Ltd" on 14 June 2016;[222] and

(c) A $15,000 cash cheque was issued on 25 August 2016.[223]

According to the plaintiff, these payments were considered loans as part of his "upfront cash" given to the First Defendant. For instance, the payment of $50,000 to Megacity Pte Ltd dated 14 June 2016 was made for the purchase of various items for the First Defendant, including a Goddess statue, sedan chairs, clothes for the sedan chairs holders, the dragon dance troops and the supporters of the event etc.[224] In my view, the Plaintiff has not shown on a balance of probabilities that these sums had been paid to the Second Defendant as loans. Unlike the Plaintiff's claim for the sum of $1,011,295.95, for which the Loan Acknowledgment and Transaction Details provide objective proof that these were intended to be loans, the same cannot be said for the payments made *before* the registration of the First Defendant. Had these sums been intended to be loans, the Plaintiff would have logically ensured they were recorded within the Transaction Details. There is little reason why this could not have been done

221 SOC (Amendment No 3) at para 40(i).

222 SOC (Amendment No 3) at para 40(ii).

223 3AEIC Lim Swee Joo at para 94 and p 122.

224 3AEIC Lim Swee Joo at paras 60, 88.

given that the Transaction Details sets out a detailed list of loans made by the Plaintiff to the First Defendant. In these circumstances, I find that the Plaintiff has not made out his claim that the three payments referred to at [101] above were given in the form of loans.

The claim in unjust enrichment

102 Given my finding that the Plaintiff has made out its claim in debt against the First Defendant on the basis that the sum of $1,011,295.95 was loaned to the First Defendant, the issue of unjust enrichment no longer arises.

The remaining claims against the Second Defendant

103 Finally, I turn to address the Plaintiff's claims against the Second Defendant.

The Second Defendant is not personally liable under the Oral Agreement

104 Continuing from the analysis above that the First Defendant is not liable under the Oral Agreement, I turn to address a related issue raised by the Plaintiff. Since an agreement could not have been formed with the non-existent First Defendant, is it the case that the Second Defendant would thus have made any agreement in his own personal capacity?[225] My answer to this question is "no" for two reasons.

105 First, as I have stated above, the Plaintiff has made out its claim that the First Defendant is liable to repay the loan of $1,011,295.95. In these circumstances, no question of liability on the part of the Second Defendant arises.

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225 1DRWS at para 17.

106 Second, even if I am wrong on this and that the Plaintiff has, in fact, failed to make out its case on the loans, I add that I would not have considered the Second Defendant to be personally liable for the purported loans to the First Defendant.

107 According to the Plaintiff, when asked if an agreement was made "with the temple to be proposed or was it with Mr. Eric Goh?" the Plaintiff replied that "[i]t was Eric Goh, because the temple was yet to be registered at that time."[226] However, I am not persuaded that an agreement had been formed with the Second Defendant personally as the Plaintiff has alleged. The fact that the Second Defendant did not receive any portion of the purported loans fortifies my conclusion that the Second Defendant is not personally liable under the Oral Agreement. There is no evidence to suggest that the Second Defendant received any portion of the loan amount as a personal loan from the Plaintiff.[227] All the funds were either directly deposited into the First Defendant's bank account or used for the First Defendant's purposes. The Plaintiff's testimony during cross-examination confirms that he lent money to the First Defendant by paying suppliers directly or depositing funds into the First Defendant's bank account. Again, there is no evidence that any of the Plaintiff's loans were handed to the Second Defendant for his personal use. There is also no evidence of any intention on the part of the Plaintiff to lend moneys to the Second Defendant or any intention on the part of the Second Defendant to borrow any moneys from the Plaintiff.

108 I further observe that the Plaintiff and the Second Defendant, including some others at the Ang Mo Kio coffee shop meeting, were all parties interested

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226 1DCS at para 26.

227 2DCS at para 55.

in setting up the First Defendant. There is no specific reason why the Second Defendant should be the *only* one identified by the Plaintiff to be made personally liable since these persons at the meeting (including the Second Defendant) were all parties equally interested in setting up the First Defendant. They were promoters of the temple to be set up. I do not believe that the Second Defendant was the one solely interested in setting up the temple for himself, which was to be registered subsequently. The rest including the Plaintiff himself who subsequently became the chairman of the First Defendant was just as interested in setting up the temple. There is no basis therefore for the Plaintiff to pick the Second Defendant as the one who is to be made personally liable should the First Defendant not be set up subsequently for whatever reason. In any event, the First Defendant was subsequently set up, and therefore, the personal liability of the Second Defendant does not appear to arise on the facts.

109 As the Second Defendant rightly points out, there is no absolute rule of law to the effect that where a person contracts on behalf of a non-existent principal, he is himself automatically liable on the contract.[228] The Plaintiff relies on the case of *Quah Poh Hoe Peter v Probo Pacific Leasing Pte Ltd* [1992] 3 SLR(R) 400 ("*Probo Pacific*") to submit that the Second Defendant remains personally liable under the Oral Agreement even though it was made between the Plaintiff and the then-non-existent First Defendant. According to the Plaintiff, the Court of Appeal in *Probo Pacific* had considered the issue of whether an agent purporting to act for a non-existent principal would be personally bound by the contract and held at [18] that "[s]ince the second defendant in the present case entered into the *Elke* lease for and on behalf of CMCS which is non-existent, we are of the opinion that he would also be

228 2DCS at para 21.

personally bound by the lease under the principle in *Kelner v Baxter* [(1866) LRCP 174]."

110 In my view, *Probo Pacific* does not assist the Plaintiff. In *Probo Pacific*, the lease agreement involved a purported company under the Companies Act 1967 (2020 Rev Ed) (the "CA") that was non-existent. The First Defendant was never intended to be a registered company in the present case.[229] Consequently, the statutory provision relied upon in *Probo Pacific*, namely s 41 of the CA, is inapplicable, and there is no similar provision under the Societies Act. The Second Defendant, therefore, cannot be treated as being personally bound under the Oral Agreement by operation of statute. Furthermore, the Court of Appeal had imputed personal liability on the purported agent in *Probo Pacific* by way of an unrebutted presumption after considering that the agent had signed the *Elke* lease *for and on behalf of* the non-existent company.[230] On the facts of that case, the yacht had been physically leased out and the rent of $8,438 was payable monthly in advance for six years commencing 14 May 1983. However, as the Second Defendant notes, *Probo Pacific* starkly contrasts with the present case. The Second Defendant is not mentioned in the Oral Agreement. The purported loan by the Plaintiff was specifically intended for the setting up of the First Defendant, which is consistent with the borrower being the First Defendant itself rather than an individual such as the Second Defendant. Indeed, the repayment terms specifically pertain to features which make sense only in relation to the First Defendant, such as donations, and that repayment is contingent upon the First Defendant's financial capacity, rather than being due on demand or on a fixed date.[231] Hence, while substituting the purported agent

229 2DCS at para 50.

230 2DCS at para 51.

231 2DCS at para 52.

for the non-existent company was feasible on the facts of *Probo Pacific* given that it concerned a straightforward lease agreement, the same cannot be said for the present case. Substituting the Second Defendant for the First Defendant under the Oral Agreement would lead to an unworkable and absurd contract.[232]

111 The absurdity of replacing the First Defendant under the Oral Agreement with the Second Defendant is laid bare when one attempts to substitute the First Defendant for the Second Defendant. The original terms of the Oral Agreement are as follows:

> Whatever amounts I loan to the new temple for its start up, its events and the related cost, this new temple will return my loans from the donations the new temple receives as long as the First Defendant has monies.

112 The revised terms of the Oral Agreement with the First Defendant being substituted for the Second Defendant:

> Whatever amounts I loan to the Second Defendant for the Second Defendant's start up, the Second Defendant's events and the related cost, this Second Defendant will return my loans from the donations the Second Defendant receives as long as the Second Defendant has monies.

113 Applying the substituted terms of the Oral Agreement, as claimed by the Plaintiff, would render the contract unworkable because the Second Defendant does not receive personal donations. It was not even suggested during the cross-examination of the Second Defendant that he regularly receives personal donations, which would have been absurd in any case.

114 I deal then with the Plaintiff's attempt to correct the alleged terms of the Oral Agreement where in response to my question on the precise framing of the

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232 2DCS at para 53.

terms of the Oral Agreement, the Plaintiff had stated that the use of the word "donations" in the terms of the Oral Agreement was not entirely accurate, and that the more appropriate term would be "collections".[233] This term would encompass funds received by the First Defendant from various sources, including the sale of auctioned items, and not solely strict monetary donations.[234] I agree with the Second Defendant that while it is understandable to say that a temple "receives collections", it is uncommon to say that an individual person "receives collections" or "collects money", unless in specific contexts such as that of a toll collector.[235] No evidence was adduced regarding what "collections" would mean when specifically applied to the Second Defendant. This matter was left unclarified, and the Second Defendant was not cross-examined on this point. The fact that the Plaintiff only provided examples of "collections" that were specific to the First Defendant, *ie*, monetary donations and proceeds from auctions at temple events, strongly suggests that the Oral Agreement was never intended to be enforced against, and is indeed unenforceable against, the Second Defendant personally.

115 Even if, for the sake of argument, the original terms were applied, namely that repayment is to be made from the donations or collections received by the First Defendant, the Second Defendant cannot be personally liable under such terms simply because he has no legal entitlement over the funds received by the First Defendant such that he could even return them to the Plaintiff.[236]

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233 2DCS at para 73.

234 Certified Transcript 2 May 2023 at p 82 lines 17–25, p 83 lines 1–25, and p 84 lines 1–14.

235 2DCS at para 74.

236 2DCS at para 75.

116 Accordingly, I find that the Second Defendant is not personally liable for the loans to the Plaintiff.

The Second Defendant is not liable for breach of warranty of authority when parties were fully aware of the non-existence of the First Defendant at the time of the Oral Agreement

117 Finally, I also dismiss the Plaintiff's claim against the Second Defendant for breach of warranty of authority. This issue does not arise in light of my finding that the Plaintiff has made out its case that $1,011,295.95 was loaned to the First Defendant. In any event, I do not think the Plaintiff's claim that the Second Defendant is liable for breach of warranty of authority would have been sustainable. It is a general principle that every person acting as an agent is deemed to represent that they have the necessary authority to act unless the other contracting party is aware of the true nature and extent of the agent's authority. In other words, if the contracting party is aware of facts that indicate the agent lacks authority, a claim for breach of warranty of authority cannot be upheld. In the present case, the Plaintiff was aware that the Defendant had not been registered and that there was no physical temple in existence when the Oral Agreement was made:[237]

> Q: When you met at the Ang Mo Kio coffee shop, there was no physical temple. That's what you said yesterday. Correct?
>
> A: Do you mean Nan Bei Dou Mu Gong, yes, there was no physical temple.
>
> Q: And the 1st defendant had not yet been registered. Correct?
>
> A: Yes.
>
> Q: And you were aware of that?
>
> A: Yes.

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[237] Certified Transcript 3 May 2023 at p 66 lines 3–12.

118 Given those facts, the Plaintiff could readily infer that the Second Defendant did not have the authority to act on behalf of the First Defendant, as the First Defendant was then non-existent. Furthermore, according to the Plaintiff's own evidence, the meeting at the Ang Mo Kio coffeeshop was the first time the Second Defendant proposed the establishment of the First Defendant. The Plaintiff's own admission that the First Defendant did not yet exist and would only come into existence in the future undermines any argument that he believed the Second Defendant was acting on behalf of the First Defendant when entering into the Oral Agreement.[238]

119 In these circumstances, I find the Plaintiff's claim for breach of warranty of authority unsustainable.

Conclusion

120 In conclusion, I find that the Plaintiff has made out his claim in debt against the First Defendant for the loan of $1,011,295.95. Accordingly, the First Defendant is to pay the Plaintiff the sum of $1,011,295.95 along with interest calculated at 5.33% per annum from the date of the writ on 5 January 2022[239]

238 2DCS at para 93.

239 SOC (Amendment No 3) at p 17.

until full payment of the judgment sum. The Plaintiff's claim against the Second Defendant is dismissed.

121 If no agreement can be reached on costs, the Plaintiff is to write in within two weeks for a date to be fixed for me to hear the parties on the issue of costs.

Chan Seng Onn
Senior Judge

Jenson Lee Xiancong (JL Law Chambers LLC) for the claimant;
Steven Seah Seow Kang and Nicole Huang Wantian (Seah Ong & Partners LLP) for the first defendant;
Too Xing Ji (Too Xing Ji LLC) for the second defendant.