Associated Development Pte Ltd v Loong Sie Kiong Gerald (administrator of the estate of Chow Cho Poon, deceased) and Other Suits
[2009] SGHC 165

Case Number : Suit 722/2007, 723/2007, 724/2007, RA 473/2008, 474/2008

Decision Date : 14 July 2009

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Ang Cheng Hock SC and Jacqueline Lee (Allen & Gledhill LLP) for the plaintiffs; TPB Menon and Khoo Boo Jin (Wee Swee Teow & Co) for the defendant

Parties : Associated Development Pte Ltd — Loong Sie Kiong Gerald (administrator of the estate of Chow Cho Poon, deceased)

Civil Procedure – Summary judgment – Plaintiffs adducing primary and secondary evidence of indebtedness of deceased and his Estate to them – Defendant alleging that loans not disbursed at all, loans not disbursed to deceased or his Estate and recovery of debts time barred – Test to determine whether summary judgment should be entered – Whether summary judgment should be entered in present case

Limitation of Actions – Particular causes of action – Contract – Plaintiffs' articles of association creating lien over shareholder's shares when plaintiffs advanced moneys to shareholders – Directors of plaintiffs subsequently signing audited accounts stating that loans were unsecured – Plaintiffs obtaining leave of court to commence legal action against Estate for recovery of sums recorded as unsecured – Plaintiffs failing to provide details of shares allegedly subject to lien and inspection of share certificates – Whether loans were secured – Section 21(1) Limitation Act (Cap 163, 1996 Rev Ed)

Limitation of Actions – Particular causes of action – Contract – Plaintiff' articles of association creating lien over shareholder's shares when plaintiffs advanced moneys to shareholders – Directors of plaintiffs subsequently signing audited accounts stating that loans were unsecured – Whether plaintiffs waived right to lien

Limitation of Actions – Particular causes of action – Contract – Plaintiffs' articles of association creating lien over shareholder's shares when plaintiffs advanced moneys to shareholders – Directors of plaintiffs authorising loans to shareholders qua directors – Whether loans were secured – Section 21(1) Limitation Act (Cap 163, 1996 Rev Ed)

Limitation of Actions – Particular causes of action – Contract – Plaintiffs adducing documentary evidence from Estate's trustees confirming Estate's indebtedness to them – Evidence of confirmation undated – Trustee might be in position of conflict when signing documents confirming indebtedness – Whether documents confirming indebtedness were acknowledgments of loans – Section 26(2) Limitation Act (Cap 163, 1996 Rev Ed)

Limitation of Actions – Particular causes of action – Contract – Plaintiffs adducing documentary evidence from Estate's trustees confirming Estate's indebtedness to them – Documents confirming indebtedness addressed to plaintiffs' auditors – Whether acknowledgments made to plaintiffs or their agent – Section 27(2) Limitation Act (Cap 163, 1996 Rev Ed)

14 July 2009 Judgment reserved.

Judith Prakash J:

1 These registrar's appeals arise out of an application filed by the plaintiffs in the consolidated actions for summary judgment in respect of their claims and an application by the defendant for the

various statements of claim to be struck out as disclosing no reasonable cause of action or on the basis that they were frivolous or vexatious. The Assistant Registrar ("AR") who heard the applications dismissed both of them and gave the defendant unconditional leave to defend the claims. The plaintiffs have appealed and have asked for summary judgment to be entered against the defendant whilst the defendant has appealed against the dismissal of his application for the actions to be struck out.

2 Three actions are consolidated in these proceedings namely Suit 722 of 2007 ("S722"), Suit 723 of 2007 ("S723") and Suit 724 of 2007 ("S724"). The plaintiff in S722 is Associated Development Private Limited ("ADPL"), the plaintiff in S723 is Lee Tung Company (Private) Limited ("Lee Tung") and the plaintiff in S724 is Chow Cho Poon (Private) Limited ("CCPL"). ADPL, Lee Tung and CCPL (collectively the "companies") were established by the late Mr Chow Cho Poon ("the Deceased") and during his lifetime, he and his wife, Mrs Grace Chow, were the directors and main shareholders of the companies. The defendant in each of the three actions was sued in his capacity as the Administrator of the Estate of Chow Cho Poon, deceased ("the Estate").

3 In these proceedings, the plaintiffs are seeking the following reliefs:

(i) a declaration that the Estate owes ADPL the sum of S$5,466,980.44;

(ii) an order that the Estate pays to ADPL the sum of S$5,466,980.44;

(iii) a declaration that the Estate owes Lee Tung the sum of S$9,542,716.88;

(iv) an order that the Estate pays to Lee Tung the sum of S$9,542,716.88;

(v) a declaration that the Estate owes CPPL the sum of S$15,321,193.19; and

(vi) an order that the Estate pays to CPPL the sum of S$15,321,193.19.

Background

4 The Deceased died on 3 August 1997. He was survived by his wife and four children to wit his sons Chow Kwok Chi ("Chi"), Chow Kwok Chuen ("Chuen") and Chow Kwok Ching ("Ching"), and his daughter, Mrs Betty Sheares. Pursuant to the provisions of the will of the Deceased dated 12 January 1994, his widow and one Mr Lee Kim Yew ("Mr Lee"), an advocate and solicitor, became the executors and trustees of the Estate. When Mrs Chow died on 1 December 2002 the administration of the Estate had not been completed. Therefore, on 17 February 2003 Mr Lee appointed Chi, Chuen and Ching as co-trustees (together with himself) of the Estate. On 28 October 2003, Mr Lee ceased to be an executor and trustee of the Estate. On 5 October 2005 the defendant was appointed by the High Court to administer the Estate as the three sons were not able to agree on the necessary actions to wind-up the Estate.

5 In other words, the Estate was managed by the following persons during the following times:

Period	Executors and Trustees

1997 to 1 December 2002	Mrs Chow and Mr Lee
2 December 2002 to 16 February 2003	Mr Lee
17 February 2003 to 28 October 2003	Mr Lee, Chi, Chuen and Ching
29 October 2003 to 4 October 2005	Chi, Chuen and Ching
5 October 2005 to date	The defendant

6 The directors of the companies from their respective dates of incorporation up to the time that they were wound up in November 2007 were as follows:

ADPL and CCPL

Period	**Directors**
From incorporation to 15 March 1993	**The Deceased and Mrs Chow**
From 16 March 1993 to 3 August 1997	**The Deceased, Mrs Chow and Ching**
From 4 August 1997 to 19 September 1999	**Mrs Chow and Ching**
From 20 September 1999 to 1 December 2002	**Mrs Chow, Ching, Chi and Chuen**
From 2 December 2002 to 20 September 2005	**Ching, Chi and Chuen**
From 21 September 2005	**Ching, Chi, Chuen and Winston Loong (as alternate director to Chi and Chuen)**

Lee Tung

Period	**Directors**

From incorporation to 4 October 1970	**The Deceased and Mrs Chow**
From 5 October 1970 to 7 February 1971	**The Deceased, Mrs Chow and Ching**
From 8 February 1971 to 3 August 1997	**The Deceased, Mrs Chow, Ching and Chi**
From 4 August 1997 to 19 September 1999	**Mrs Chow, Ching and Chi**
From 20 September 1999 to 1 December 2002	**Mrs Chow, Ching, Chi and Chuen**
From 2 December 2002 to 20 September 2005	**Ching, Chi and Chuen**
From 21 September 2005	**Ching, Chi, Chuen and Winston Loong (as alternate director to Chi and Chuen)**

7 At the time of the Deceased's death, the books of the companies showed that he was indebted to them in various amounts. After his death, other amounts were, allegedly, advanced by the companies to the Estate and as a consequence, the amount of his indebtedness in the various books grew substantially. The Estate did not repay any portion of this alleged indebtedness. In or about November 2005, the companies took steps to try and recover the indebtedness. They did this by purporting to exercise a lien which they claimed to possess over the Estate's shares in them and then by arranging for the sale of those shares and setting off the proceeds of the sale against the indebtedness of the Deceased. The set-offs of the debts were reflected in the companies' audited accounts for the financial year ended 2005.

8 As stated, on 5 October 2005, the defendant became the independent third party administrator tasked to conduct and complete the administration of the Estate, subject to the supervision of the court. On 27 October 2006, he obtained a court order which set aside all the share transfers that had been made pursuant to the exercise of the liens by the companies. This meant that the set-offs had to be reversed and therefore the alleged debts owing by the Deceased remained unpaid.

9 The next development took place in October 2007. On 18 October 2007, Chuen was granted leave of court pursuant to s 216A of the Companies Act (Cap 50, 2006 Rev Ed) to commence legal proceedings in the name and on behalf of the companies against the Estate for the recovery of the alleged debts owing to the companies. This order of court also gave Chuen the full charge and control of the conduct of such actions. On 14 November 2007, Chuen commenced S722, S723 and S724 in the name and on behalf of the companies for the various reliefs set out in [3] above. These suits were consolidated ("the consolidated suits") pursuant to an order of court dated 4 February 2008. After the companies were wound up, Chuen sought and obtained an order that he should have conduct of the consolidated suits until their final determination or disposal (including any appeal to the Court of Appeal). With the consent of all parties, on 4 November 2008 it was ordered that Chuen should have conduct of the consolidated suits until determination of the companies' applications for summary judgment.

The claims

10 The statements of claim filed by the respective plaintiffs set out the various claims made against the Estate as follows:

(a) by ADPL for the period between 1992 and 2001, a total sum of $5,466,980.44 comprising:

(i) $350,000 loaned to the Deceased during his lifetime; and

(ii) $5,116,980.44 being the expenses incurred by ADPL for and on behalf of the Deceased and the Estate;

(b) by Lee Tung for the period between 1992 and 2005, the sum of $9,542,716.88 comprising:

(i) $8,511,720 loaned to the Deceased during his lifetime; and

(ii) $1,030,996.68 being the total expenses paid by Lee Tung to various parties on behalf of the Estate; and

(c) by CCPL for the period between 1992 and 2004, the sum of $15,321,193.19 comprising:

(i) $14,259,002.40 loaned to the Deceased during his lifetime; and

(ii) $1,062,190.79 being the total expenses paid by CCPL to various parties on behalf of the Estate.

11 The breakdown of these sums and the documentary evidence supporting them are set out in the tables annexed to this judgment as Annex A. The documents set out in the tables comprise payment vouchers, directors' resolutions and bank statements being the primary evidence of the loans advanced or payments made. In addition the companies are relying on secondary evidence of the same in the form of acknowledgements of indebtedness executed at various times after the debts were incurred.

12 In all, there are four types of documents that the companies allege evidence the Deceased's or the Estate's acknowledgement of the debts, or part thereof, owed to the plaintiffs. These are as follows:

(a) documents addressed to the various auditing firms of Ernst & Young, Messrs Chan Kum Chee & Co, Messrs L C Loong & Co and TeoFoongWongLCLoong and signed by Mrs Chow and/or Mr Lee ("the Loan Confirmations");

(b) a letter written by Mr Lee to Chi, Chuen and Ching dated 12 December 2002;

(c) certain detailed proposals prepared by the defendant dated 28 February 2006 and annexed to his 5th affidavit in OS 729/2004 filed on 7 August 2006, suggesting various ways to settle the alleged debts; and

(d) the Estate's application in Summons No 3586 of 2006 filed on 7 August 2007 under OS 729/2004.

13 Details of the Loan Confirmations signed by Mrs Chow or by Mrs Chow and Mr Lee are, in respect of ADPL, set out in the table below.

ADPL (Amount claimed in Statement of Claim: S$5,466,980.44)

Date of Document	Amount Confirmed	Date of Confirmation	Signed by
31 December 1998	S$350.00	31 December 1998	Grace Chow
31 December 1998	S$3,722,085.39	31 December 1998	Grace Chow
31 December 1999	S$350.00	31 December 1999	Grace Chow/ Mr Lee
31 December 1999	S$3,722.085.39	31 December 1999	Grace Chow/ Mr Lee
31 December 2000	S$350,000.00	31 December 2000	Grace Chow
31 December 2000	S$5,109.005.00	31 December 2000	Grace Chow
31 December 2001	S$350,000.00	31 December 2001	Grace Chow
31 December 2001	S$5,145,189.70	31 December 2001	Grace Chow

14 In respect of Lee Tung (amount claimed: $9,542,716.88) Mrs Chow signed two confirmations. The first was for $9,498,120.20 and it was probably signed shortly after 18 June 2001. The second was for $9,516,450.60 and it was probably signed shortly after 3 July 2002.

15 Mrs Chow also signed two Loan Confirmations in respect of CCPL (amount claimed: $15,321,193.19). The first, probably signed shortly after 9 April 2001, was for $14,404,020.36 and the second, probably signed shortly after 5 July 2002, was for $14,643,444.82.

16 The next document that supposedly acknowledged the debts owed by the Deceased and/or his Estate to the companies is a letter written by Mr Lee, dated 12 December 2002, to Chi, Chuen and Ching. The pertinent part of this letter reads as follows:

> Now that your mother has passed away, I would propose that we immediately transfer or notionally sell your late father's shares in the 3 companies to the 3 of you and use the purported proceeds to pay off your late father's debt to the 3 companies. You might want to consider writing off his debt to the 3 companies and divide his shares amongst the 3 of you and your mother's Estate as directed under his will.

17 Further acknowledgement of the debts, the companies contend, could also be evinced from the fact that the defendant had, in OS729/2004, filed Sum 3586/2006 for an order that a particular option in the Detailed Proposals be adopted to resolve the dispute between Ching, on one hand, and Chi and Chuen, on the other. In his supporting affidavit, the defendant had annexed the Detailed Proposals. It is the companies' case that underlying the Detailed Proposals was the assumption that the Debts

were payable.

18 Finally, the companies also alleged that Sum 3586/2006 itself was an acknowledgement that the debts were owed by the Deceased and/or his Estate to the companies since the application, if approved by the court, would effectively settle the debts.

The defence

19 The Estate's defences to all three suits were similar. First, it was denied that the debts, as pleaded by the companies, were owed and payable. Generally, it was suggested that that the loans were not taken out by the Deceased but by Mrs Chow. Certain payments were also disputed as not being made for the purposes of administering the Estate or even disbursed at all.

20 Second, it was argued that even if the debts were found to be owed and payable, the debts incurred before 15 November 2001 were time-barred by virtue of the Limitation Act (Cap 163, 1996 Rev Ed) ("the Limitation Act"). The defendant asserted that the relevant time-bar was that stipulated in s 6 of the Limitation Act because the loans were unsecured. Moreover, the various documents that purportedly acknowledged the loans were not effective for the purposes of s 6 of the Limitation Act. The defendant also pleaded the companies were guilty of prolonged, inordinate and inexcusable delay and/or laches in bringing the action but this line of argument was not pursued in the submissions. This would not have been a fruitful argument as the delay was mainly due to the inability of Chi, Chuen and Ching (who were at the same time the trustees of the Estate) to work together effectively to manage the companies on important issues like the debts.

The decision below

21 The AR refused to grant judgment to the companies for the following reasons:

> …evaluating the evidence before me, I have debts in the Plaintiffs' companies books which are ostensibly supported by resolutions and confirmations. The acknowledgments signed by Mrs Chow are suspect, and indeed, I will state here that the Defendant's allegations are not totally baseless, since there is evidence that after her husband's death, Mrs Chow was inclined to act in total disregard of her duties to the estate. Of course, many of these loans were also confirmed by the beneficiaries themselves when they signed the accounts of the companies. It does appear that the beneficiaries were fully content to let their mother deal with everything while she was alive, and only now do they feel the need to investigate the company's affairs (and the affairs of their father's estate).
>
> Evaluating all the circumstances of the case and the evidence before me, I do not think that summary judgment is appropriate. I will grant the Defendant unconditional leave to defend. Even if Mrs Grace Chow and Mr Dennis Lee are dead, the brothers are still available to give evidence and I think it is in the interests of justice for these bitter factual disputes to be fully ventilated at trial.

The appeal

22 In dealing with the appeal against the above decision, there is no need for me to expound at length on the legal principles applicable to an application for summary judgment as these are well known. Suffice it to say that in order to obtain judgment, a plaintiff has first to show that he has a *prima facie* case for judgment. Once he has done that, the burden shifts to the defendant who, in order to obtain leave to defend, must establish that there is a fair or reasonable probability that he

has a real or *bona fide* defence. (See *Goh Chok Tong v Chee Soon Juan* [2003] 3 SLR 32). I would also note that where no triable issues of fact can be found but only triable issues of law are brought up, the Supreme Court Practice 1999 at para 14/4/12 states:

> Where the court is satisfied that there are no issues of fact between the parties, it would be pointless to give leave to defend on the basis that there is a triable issue of law, and this is so even if the issue of law is complex and highly arguable.

Does each of the plaintiffs have a prima facie case?

23 The companies produced a great deal of documentary evidence in support of almost all of the loans and payments made to or on behalf of the Deceased or the Estate. Most of these are set out in the tables in Annex A. The documents comprised companies' resolutions, audited accounts for the financial years ended 31 December 1995 to 31 December 2004, bank statements and payment vouchers. The payment vouchers are *prima facie* evidence of the disbursement of the loans. The Loan Confirmations signed by Mrs Chow also established, on a *prima facie* basis, the indebtedness in the amounts stated in the various Confirmations. In addition, for the bulk of the loans made to the Deceased during his lifetime, the companies' resolutions showed that they were authorised by Mrs Chow, Ching or Chi. There were also authorisations by the Deceased himself. In addition to authorising loans to himself, the Deceased by letter authorised Mrs Chow to withdraw $2.5m and $350,000 from CCPL and ADPL respectively as gifts from him to her.

24 In respect of the debts that were incurred after the death of the Deceased, the documentation clearly established that most of these were loans to the Estate and expenses paid by the companies to various parties on behalf of the Estate. These included estate duties which the Estate had to pay the Commissioner of Estate Duty, the Deceased's funeral expenses and the Deceased's unpaid income tax.

25 The amounts owing from the Estate to the companies from time to time were also documented in the companies' audited accounts for the financial years ended 31 December 1995 up till 31 December 2004. Up to the death of Mrs Chow, Mrs Chow herself together with Ching, as the only other director of ADPL and CCPL, signed the audited accounts of these two companies confirming that those accounts gave a true and fair view of the state of affairs of the respective companies as at the end of the respective financial years. Thereafter, all three brothers signed the audited accounts of ADPL and CCPL and gave the same confirmation for the financial year ended 31 December 2001.

26 The significance of this is that the respective audited accounts of ADPL for the financial years ending between 31 December 1995 and 31 December 2004 show the following:

(a) that a loan of $350,000 was made to the Deceased;

(b) that a loan of $3,722,085 being the first payment of estate duties was made to the Estate;

(c) that a loan of $1,386,920 being the second payment of estate duties was made to the Estate; and

(d) that as of 31 December 2004, a loan of $6,174,395 had been made to the Estate.

27 The audited accounts of CCPL for the year ended 31 December 2001 signed by all three brothers show that a loan of $14,643,445 had been made to the Estate whilst the audited accounts

for the year ended 31 December 2004 (signed by Chi and Chuen) show that the loan made to the Estate had by then reached the amount of $17,275,415.

28 In respect of Lee Tung, the audited accounts between 1995 and 1996 signed by the Deceased and Mrs Chow show that an interest free unsecured loan of $8,511,720 had been made to a director. The audited accounts for the year ended 31 December 2000, signed by Mrs Chow, Ching and Chi, show that a loan of $9,498,120 had been made to the Estate. Further, all three brothers signed the 2001 accounts which show that a loan of $9,516,451 had been made to the Estate. By the end of 2004, as shown by the accounts signed by Chi and Chuen, this loan had increased to $10,730,336.

29 On the basis of the documentary evidence, practically all the debts claimed for have been established on a *prima facie* basis. There are, however, certain payments claimed by Lee Tung and CCPL which have not been proved to have been made. This is because there are no payment vouchers or any receipts showing that the sums in question were actually disbursed for the account of the Estate. These debts total $90.90 in the case of Lee Tung and $4,118.98 in the case of CCPL. The amounts which I consider have not been proved on a *prima facie* basis are marked with an asterisk in Annex A. It should be noted that although there were a number of sums paid by CCPL in August 1997 which were not supported by vouchers, I am satisfied these relate to the Deceased's funeral expenses and must be borne by the Estate.

30 It should be noted that the defendant did not expressly deny the validity of any of the loans. What he did was to put the plaintiffs to strict proof only. The defendant omitted to put forward any positive case to establish that the loans had not or could not have been made. I am satisfied on the evidence that apart from the small sums mentioned in [29] above, the plaintiffs have discharged their burden of *prima facie* proof. The documentary proof was voluminous and was contemporaneous and/or independent. It covered many years and the documents were documents that were produced in the ordinary course of business long before there was any question of a challenge to the validity of the loans. The onus therefore falls on the defendant to establish a triable issue in respect of the various claims. I will now consider the defendant's attempts to do so.

Were the loans taken out by Mrs Chow?

31 First, the defendant raised two factual issues. He contended that some of the loans were not taken out by the Deceased but were instead borrowed by Mrs Chow. This argument was based on an affidavit filed by Ching in these proceedings in April 2008 in which he stated:

> (9) It is my firm belief that [the Deceased] did not take the purported loans from the 3 Plaintiffs… Instead, it was my late mother, Mrs Grace Chow, deceased, who had withdrawn funds from the 3 Plaintiffs… but had caused them to be recorded as loans to my late father.
>
> (37) [Mrs Chow] wrote a letter to [Chi, Chuen & Ching] on 31 July 2001 [after the Deceased's death] informing us that she would take money from the 3 [Plaintiffs] to pay for her living expenses and record them as loans by [the Deceased's Estate].

It should be noted that the above assertions and similar ones made by Ching in affidavits filed in other proceedings (including assertions that the Deceased's signature on some of the payment vouchers was different from his signature on his will) were bare assertions without any supporting evidence. Ching did not specify the precise loans that were taken by Mrs Chow instead of the Deceased and did not produce any evidence that she had taken moneys from the companies which she thereafter caused to be wrongly recorded in the companies' books as being loans to the Deceased.

32 In July 2001, Mrs Chow wrote to her sons and made the following statement:

> My living expenses have been supported by your late father before he passed away. Needless to say, I would like to maintain the same standard of living as before, thus all my living expenses will be debited to the Estate of your late father.
>
> As my filial sons, I am sure all of you would agree to this arrangement so that my living expenses can be properly taken care of as before in lieu of receiving a salary or taking dividends from the companies.

That letter was asserted to be some evidence supporting Ching's contention. I do not read the letter as such. Whilst the Deceased may have paid Mrs Chow's expenses from money borrowed from the companies, this cannot mean that the loans were taken out by Mrs Chow rather than her husband. It should be remembered that at all material times he had a legal obligation to support her. In my judgment, there can be no inference taken from the letter that loans taken out during the Deceased's lifetime were actually borrowed by Mrs Chow.

33 In respect of the period after his death, after Mrs Chow sent out this letter, Mr Lee, her co-executor, wrote to her advising her against using money from the companies to pay for her living expenses and record them as loans taken out by the Estate. There is no evidence that she disregarded this advice and actually took out loans from the companies in the name of the Estate. There is no documentary evidence either to support such a contention. The record showed that each loan to the Estate was made by the relevant plaintiff paying for a specific item on behalf of the Estate. If the loan allegedly taken out by Mrs Chow was made under the guise of payment to another entity instead of to the Estate directly, the Estate would know since it would be able to point out those payments which did not settle its own liabilities. The Estate, however, did not point to any specific payments that had been made for its account to a third party and wrongly debited against its account because it did not owe such third party the amount paid.

34 Secondly, there were assertions that the signatures on payment vouchers varied and did not look like the Deceased's usual signatures. This argument too seems to me to be a shot in the dark without substantiation. The defendant did not specify which signatures on which payment vouchers were suspicious. Ching had alleged that as early as January 1994, the Deceased could only sign his will using a thumbprint but that thereafter, there were many vouchers purportedly bearing his handwritten signature. This is an argument not evidence. The will may have been executed with a thumbprint but there was no reason given as to why if the Deceased had wanted to he could not have signed it in the normal way. There was no medical evidence that the Deceased was incapable of writing his name or initialling vouchers in or after January 1994 and it appears to me that the defendant is relying without much thought on Ching's baseless suspicions to make his case.

Are the loans time barred?

35 The other issues that the defendant sought to raise are legal issues connected with the assertion that the claims are time-barred.

36 The defendant noting that the sums claimed in the consolidated suits were loans which were not subject to any particular repayment term contended that they were subject to s 6(1)(a) of the Limitation Act which rendered them irrecoverable after the expiration of six years from the date that they were made. He pointed out that the amounts claimed by ADPL were lent before 15 November 2001 which was more than six years before the commencement of S722 on 14 November 2007. Hence, the entire claim amount of $5,466,980.44 was time barred. As far as Lee Tung and CCPL were

concerned, the amounts lent before 15 November 2001 (*ie* the bulk of the alleged indebtedness to these two plaintiffs) would also be irrecoverable as S723 and S724 were also commenced on 14 November 2007.

37 The plaintiffs responded that s 6 of the Limitation Act is not applicable for two reasons:

(a) the debts were secured by the liens which the companies had over the Deceased's shares and therefore the applicable limitation period was 12 years pursuant to s 21(2) of the Limitation Act; and

(b) even if s 6 was applicable, the limitation period of six years had not expired before the suits were commenced because of the acknowledgements by the Deceased and/or representatives of the Estate of the debts or part thereof and therefore under s 26(2) of the Limitation Act, the various rights of action would have accrued on the dates of acknowledgement rather than on the dates on which the respective loans were made.

Were the loans secured?

38 I will deal first with the argument relating to s 21(1) of the Limitation Act. This section provides:

Limitation of actions to recover money secured by mortgage or charge to recover proceeds of sale of land

21.-(1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on land or personal property or to enforce such mortgage or charge, or to recover proceeds of the sale of land or personal property after the expiration of 12 years from the date when the right to receive the money accrued.

39 The plaintiffs' case is premised on the argument that the debts owed to them are secured by a lien and charge over all the shares registered in the name of the Deceased. This is provided for in Article 23, Article 20 and Article 30 of ADPL's, Lee Tung's and CCPL's Memoranda and Articles of Association, respectively. These articles are reproduced as follows:

ADPL's Article 23

The Company shall have a first and paramount lien and charge on all the shares registered in the name of a Member (whether solely or jointly with others) for all moneys due to the Company from him or his estate, either alone or jointly with any other person, whether a Member or not, and whether such moneys are presently payable or not…

Lee Tung's Article 20

The Company shall have a first and paramount lien and charge on all the shares registered in the name of a Member (whether solely or jointly with others) for all moneys due to the Company from him or his estate, either alone or jointly with any other person, whether a Member or not, and whether such moneys are presently payable or not, the Company's lien (if any) on a share shall extend to all dividends payable thereon.

CCPL's Article 30

The Company shall have a first and paramount lien upon all shares registered in the name of each

member (whether solely or jointly with others), and upon the proceeds of sale thereof, for his debts, liabilities and engagements solely or jointly with any other person, to or with the Company, whether the period for the payment, fulfilment, or discharge thereof shall shave actually arrived or not, and no equitable interest in any share shall be created… The registration of a transfer of shares shall not of itself, operates as a waiver of the Company's lien, if any, on such shares.

40 Accordingly, the plaintiffs claim that, pursuant to section 21(1) of the Limitation Act, the right to enforce the plaintiffs' claims would only expire 12 years from the date when the right to receive the money accrued. Since the suits were commenced on 14 November 2007, all debts incurred after 14 November 1995 would not be time-barred. According to the plaintiffs, this means that debts worth S$5,116,980.44, S$1,030,996.68 and S$1,062,190.79 owed to ADPL, Lee Tung and CCPL respectively would not be time-barred.

41 The defendant attempted to rebut this argument in various ways. First, he argued that s 21(1) is not applicable because the sums allegedly due are clearly unsecured loans. He asserted that at various times between 1996 and 2005, the Deceased, Mrs Chow, Chi, Chuen and Ching had confirmed this status in the following way:

(a) in their capacity as directors of ADPL when they signed the audited accounts of ADPL which contained a statement that the loans were unsecured;

(b) in their capacity as directors of Lee Tung when they signed the audited accounts of Lee Tung which contained a statement that the loans were unsecured; and

(c) in their capacity as directors of CCPL when they signed the audited accounts of CCPL which contained a statement that the loans were unsecured.

In addition, Chuen himself as a director of the plaintiffs had confirmed in an affidavit filed in court that the sums due from the Deceased/Estate to the plaintiffs were unsecured.

42 I cannot accept the defendant's argument that the legal character of the obligations that the Deceased owed the plaintiffs has to be ascertained solely from a statement in the companies' audited accounts or from an assertion made by Chuen in an affidavit. The nature and extent of the legal rights conferred on the companies when the Deceased borrowed money from them have to be ascertained from the terms of the parties agreement and the characterisation of such rights is a matter of law and is to be determined by the court. In *Goode on Legal Problems of Credit and Security* (4th Ed, Sweet & Maxwell), it is stated at para 1-33:

In characterising any transaction the court has to perform two tasks. The first is to ascertain the intention of the parties from the terms of their agreement. The second is to determine the legal effect of what they have agreed. Whether what they have agreed produces a given legal effect is a matter of law and does not depend on intention. Thus in deciding whether or not an agreement has created a security interest the court looks not to whether that was intended by the parties but whether the nature of the rights they intended their agreement to confer is such as to constitute the agreement an agreement for security.

43 In this case, at all material times when the plaintiffs made loans or paid expenses on behalf of the Deceased/the Estate, the moneys were paid to or advanced on behalf of a shareholder of the relevant company. In the absence of any express contractual terms in relation to each advance that would modify the previously agreed contractual arrangement contained in the articles, those articles dealing with the lender's rights in respect of advances made to a borrowing shareholder would apply.

It is clear from each of the articles cited above that the contract provided for the automatic creation of a lien over its shareholder's shares when each of the companies concerned advanced moneys to such shareholder. Thus, the agreement which came into existence when a shareholder borrowed money from the company would be an agreement that constituted an agreement for security. Whilst the directors might subsequently have signed statements that said that the loans were "unsecured", such statements could not by themselves have the effect of making the loans unsecured. To change the status of the loans, there would have to be clear evidence that the companies with full knowledge of their rights intended to forego the same. There was no such evidence. On the contrary, the very fact that the companies, on the direction of two of the directors who had previously signed the audited accounts which described the loans as "unsecured", subsequently purported to enforce the liens, was an indication that the companies had not intended to forego their rights over the shares and had not realised that their accounts might be read as having that effect.

44 The defendant also argued that because the order of court dated 18 October 2007 granted Chuen leave to commence legal action against the Estate "for the recovery of sums recorded in the books of [the plaintiffs]", Chuen's authority to pursue legal action on behalf of the plaintiffs was limited to sums as recorded in the account books. Chuen was not authorised to take positions which directly contradicted the plaintiffs' audited accounts. I do not accept this limitation. The authorisation given to Chuen was to recover the amounts which the companies' books showed to be the debts owing to the companies by the Deceases/the Estate. It was an authorisation that related to the amount of the debts and not to their nature. The character of the debts as secured debts did not arise from the manner in which they were recorded in the companies' books but arose from the companies' articles. The companies in taking action to recover the debts are entitled to rely on their legal rights and are not precluded from doing so by mistaken statements in the audited accounts.

45 The defendant noted that apart from the articles of the various plaintiffs there was no evidence to support the existence of the alleged lien and charge. Further, the plaintiffs had failed to provide details of the shares that were allegedly subject to the lien and charge in the plaintiffs' favour, failed to state where the share certificates were and failed to provide inspection of the share certificates. These comments of the defendant are not relevant. The liens and/or charges created by the articles were not dependent on there being actual physical possession by the companies of the share certificates representing the Deceased's shares in the companies. The details of the shares subject to the lien were not required because the lien affected *all* the shares. The relevant article for each company did not in any way indicate that only some of a borrowing shareholder's shares would be charged when the loan was taken. Quite the reverse: it is plain from the wording that the automatic lien/charge that arises would cover the total shareholding that the borrower had in the company at the time of the borrowing. I also agree with the plaintiffs' argument that production of the share certificates would be irrelevant because the defendant and Ching have never disputed that the Deceased/the Estate has shares in the companies. Ching himself has also acknowledged on several occasions in court proceedings what those shareholdings amount to.

46 It may also be helpful in this connection to remember the comments made in *In re National Bank of Wales, Limited* [1898] 2 Ch 629 and *Re Tan Keng Tin and Re Chop Soon Bee* [1932] MLJ 134 ("*Re Tan Keng Tin*"). In the first case, Lindley MR had to interpret article 15 of the bank's articles, which was an article similar to ADPL's article 23, CCPL's article 30 and Lee Tung's article 20. Article 15 of the bank's articles provided that:

> The Company shall have a first and paramount lien available at law upon all the shares of every shareholder, whether held by him solely or jointly with any other person, for all his debts, liabilities and engagements of what nature or kind soever, either solely or jointly with any other person, to the said company, and, in case of non-payment of any such debt, liability or engagement as

aforesaid for two months after written demand thereof, … the board may absolutely sell (either by public auction or private contract) all the shares registered solely in such shareholder's name, and all his interests in any shares registered in his name jointly with that of any other or others, or such portion thereof as shall be sufficient to discharge or satisfy such debts, liabilities or engagements to the company …

47 In relation to article 15, Lindley MR said (at p 675 and 676 of his judgment):

> **The lien given by art. 15 came into existence automatically, and gave the company an equitable charge on the shares, with a power of sale, which is very important. It certainly constitutes a security**: *In re General Exchange Bank …* We do not overlook the fact that their value depends on the value of the company lending its money on them. This renders care and deliberation all the more necessary, whether the borrower was a shareholder or a director. But in either case we are of opinion that shares in the bank might be accepted as security, if the board considered them sufficient as regards value. Suppose the board considered a proposed advance, and, being satisfied that the shares would sell for considerably more than the sum advanced, authorized an advance upon them, and obtained a deposit of the share certificates of the borrower as security. We do not think they would have failed in their duty, even if the borrower were a director. This being so, **we cannot hold the board liable in point of law for omitting to obtain the certificates; for their lien and power of sale under art. 15 would not be defeated by the absence of the certificates, and we do not understand that any loss has been sustained by the bank by reason of the absence of certificates**. [Emphasis added]

48 Terrell J in the second case, *Re Tan Keng Tin*, accepted *In Re National Bank of Wales, Limited* as authority for the proposition that the absence of possession of share certificates does not deprive the lien-holder of the lien over shares. Terrell J stated at p 135 that it was settled law in England that "a lien attaches to shares registered in the name of a director of a banking company even though the shares are not deposited with the Bank".

49 Next, noting the plaintiffs' argument that the articles of association constitute a binding contract between a company and its members, the defendant relied on the well-established legal principle that any term of a contract can be waived. He argued that ADPL's own audited accounts strongly suggested that even if article 23 was a term of the contract between ADPL and the Deceased at the time of ADPL's incorporation in 1976, that term was waived when the alleged loans were made by ADPL to the Deceased and his estate between 1995 and 2001. Hence, ADPL's audited accounts stated that the sums purportedly due from the Estate were unsecured. Similar inferences of waiver could be drawn from the audited accounts of Lee Tung and CCPL in respect of the amounts that those companies lent the Deceased/his estate which were also described as "unsecured".

50 I cannot accept the above argument because there was insufficient evidence of any intention on the part of the companies to waive their rights to a lien on the shares on each and every occasion when they advanced money to the Deceased/the Estate. The audited accounts are not sufficient evidence of an intention to waive such rights as a waiver must be clear cut and unequivocal and made with full knowledge of the rights waived. There is no evidence that in signing the audited accounts, the directors concerned addressed their minds to the implications of the word "unsecured" in relation to the debts among all the other matters set out in the audited accounts which they had to consider before certifying that the audited accounts offered a fair view of the financial condition of the companies. In any case, the audited accounts were signed by persons who were in positions of conflict of interest. The Deceased himself signed some audited accounts. He surely could not validly agree as director of the companies to waive the companies' liens over his own shares. Subsequently, his widow, Mrs Chow and his sons all inherited interests in his shares as part of the Estate and

therefore they too were in conflict when they signed the audited accounts as directors and could not bind the companies to a waiver of the security interest.

51 The other substantial argument made was that the lien did not attach because the alleged loans were approved by the plaintiffs as loans to a *director* and **not** as loans to a *shareholder* as could be seen from the various resolutions passed by the companies from time to time. The defendant argued that this was significant because "*the articles do <u>not</u> constitute a contract between the company and a member in respect of rights and liabilities which he has in a capacity other than that of member*" [the defendant's emphasis] (see *Halsbury's Laws of England* Vol 7(1) p 219 para 377). He noted that the articles do not constitute a contract or agreement between the company and its director in his capacity as director, even though he is also a member of the company (see *Beattie v E & F Beattie Ltd* [1938] Ch 708). The defendant therefore argued that since the alleged loans were approved by the plaintiffs as loans to a director, the plaintiffs' articles of association were not intended to and did not apply to the alleged loans. This was confirmed by the description of the loans as unsecured in the audited accounts.

52 I do not find the attempted distinction between the Deceased in his capacity as shareholder and the Deceased in his capacity as director to be justifiable. To me, it is irrelevant for the purpose of the creation of the liens that the company resolutions described the Deceased as a director. They had to do so because he was a director of the company and that was a salient fact for consideration in approving the loans. The fact that he had this capacity, however, did not detract from his other capacity as shareholder and his contractual obligations to each company as contained in the relevant articles of association. Since he was a shareholder once he borrowed from the companies, the relevant articles took effect and the lien was created automatically. None of the articles contains any language which would differentiate a loan granted to a shareholder *qua* shareholder from a loan granted to a shareholder *qua* director for the purpose of creation of a lien. Further, there is nothing in the law that prevents the companies from contracting with its shareholders in their capacity as shareholders that any loans made to them in any capacity would be secured by a lien and charge over all the shares held by such shareholders in the company.

53 I also note that this argument would only apply to the loans given directly to the Deceased during his lifetime. They would not apply to the expenses paid on behalf of the Estate after the Deceased died and ceased to hold the capacity of director of the companies.

54 For the reasons given above, I find that pursuant to s 21(1) of the Limitation Act, all debts accruing after 14 November 1995 are secured loans by virtue of the application of articles 23, 20 and 30 of ADPL's, Lee Tung's and CCPL's respective articles of association.

Were the Loan Confirmations acknowledgements of the loans?

55 The plaintiffs put forward another line of argument to refute the defendant's contention that the plaintiffs' claims were time-barred by s 6(1) of the Limitation Act. This argument was that the time-bar was extended by virtue of the fact that the debts were acknowledged. The plaintiffs relied on s 26(2) of the Limitation Act which reads as follows:

> (2) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefore acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgement or the last payment.

In this regard, the plaintiffs' most substantial point was that the Loan Confirmations constituted acknowledgements of the debts for the purpose of s 26(2) of the Limitation Act.

56 In response, the defendant asserted the Loan Confirmations were not effective as acknowledgements for the purposes of s 26(2) of the Limitation Act for three reasons. First, the Loan Confirmations were undated. Hence, it is unclear when the various acknowledgements were made. Second, the Loan Confirmations were not addressed or sent to the plaintiffs. Finally, the Loan Confirmations were signed only by Mrs Chow. Since Mrs Chow was in a position of conflict between her fiduciary duties as director of the plaintiffs and her duties as executrix and trustee of the Estate, her confirmation did not constitute a valid acknowledgement of the debts.

57 Strictly speaking, only 4 Loan Confirmations were undated – those relevant to Lee Tung and CCPL. Furthermore, that the Loan Confirmations were undated is no obstacle to the Loan Confirmations being valid and effective acknowledgements for the purposes of s 26(2) of the Limitation Act. However, the date is important to ascertain when the limitation period should run. The plaintiffs, while conceding that Mrs Chow did not specify the dates on which she confirmed the loans for the Loan Confirmations relevant to Lee Tung and CCPL, relied on the dates provided by the auditors. This meant they relied on the dates which the auditors put on their various letters to the companies asking for confirmation of the outstanding amounts of indebtedness.

58 I agree with the plaintiffs' contention that the dates stated by the auditors can be used for the purposes of s 26(2). Although such dates were not the dates on which Mrs Chow confirmed the amount of the debts, such dates must be, at the very least, dates prior to the dates on which Mrs Chow signed the Loan Confirmations. Hence, adopting these dates would not prejudice the defendant and would still be fair to the plaintiffs since it would not be fair to them to ignore the Loan Confirmations altogether simply because the actual date of signing cannot be ascertained. There is no doubt that the Loan Confirmations were signed and therefore they must be given effect to as long as an approximate date of signing date can be inferred.

59 Next is the argument arising from the fact that the Loan Confirmations were not addressed to or sent to the plaintiffs, the creditors. The defendant asserted that as the Loan Confirmations were obtained by virtue of an order or court for discovery, they did not constitute an acknowledgement of the debts within the meaning of s 26(2), Limitation Act. In this regard, the defendant cited the case of *Chuan & Company Pte Ltd v Ong Soon Huat*, [2003] 2 SLR 205 ("*Chuan*").

60 Here, s 27(2) of the Limitation Act is apposite:

> **Formal provisions as to acknowledgments and part payments**
>
> (1) Every such acknowledgment as is referred to in section 26 shall be in writing and signed by the person making the acknowledgment.
>
> (2) Any such acknowledgment or payment as is referred to in section 26 may be made by the agent of the person by whom it is required to be made under that section, and **shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged** or, as the case may be, in respect of whose claim the payment is being made.
>
> [Emphasis added.]

I agree with the submission made by the plaintiffs that in this case the Loan Confirmations complied with s 27(2) because they were sent or addressed to the plaintiffs' auditors, who were acting as

agents for the plaintiffs. As such, the Loan Confirmations were adequately addressed to the plaintiffs.

61 The case of *Chuan* is distinguishable from the present case. In *Chuan*, the appellant company loaned moneys to one Ong Toh, the founder of the company. After he passed away, the respondent, acting as executor of Ong Toh's Estate, filed an estate duty affidavit which declared that the sums withdrawn by Ong Toh were debts owed to the company. The Court of Appeal held (at [16]) that the affidavit did not constitute an acknowledgement under s 27(2) because it was not sufficiently addressed to the company or its agent:

> Here, the estate duty affidavit was not "made to" Chuan or its solicitors. It was addressed to the Commissioner of Estate Duties. It was never received by Chuan or its solicitors. The executor even refused to give a copy of it to Chuan's solicitors when requested. Chuan only secured a copy by virtue of an order of court obtained in the present action. Such a delivery, by compulsion of an order of court, can hardly suffice to constitute an acknowledgment.

62 Unlike the case of *Chuan*, the Loan Confirmations were indeed addressed to the plaintiffs' auditors, acting as their respective agents. Furthermore, these Loan Confirmations were provided by the companies as annexes to Chuen's third affidavit. No order of court was necessary to procure their production in evidence.

63 The defendant's argument that Mrs Chow, when signing the Loan Confirmations, put herself into a position in which she had conflicting fiduciary duties also holds no water. First, it is not at all clear that by acknowledging debts actually due from the Estate to the plaintiffs, Mrs Chow put herself into a position of conflict. As an executrix and trustee, her duty would have included the obligation to settle all legitimate claims that the Estate owed to other parties. By acknowledging such claims, Mrs Chow was only carrying out this duty. It must be remembered that the applicable limitation period being 12 years in view of the secured status of the loans, at the dates Mrs Chow signed the confirmations none of the debts had been time-barred.

64 Even if she was in a position of conflict, she would only, in my view, have breached her fiduciary duty to the Estate, as executrix and trustee, in making the acknowledgements. Such a breach of fiduciary duty had no bearing on the present case and does not impinge upon the validity of the acknowledgements. This is unlike the case of *In re Transplanters (Holding Company) Ltd*, [1958] 1 WLR 822 cited by the defendant. In that case, the applicant, in making the acknowledgement of indebtedness was acting against the interests of the company and in breach of his fiduciary duties to the company since the debt acknowledged was a debt due from the company to the applicant. As such, Wynn-Parry J did not allow the applicant to utilise acknowledgements procured by a breach of the applicant's fiduciary duties to the company. In the present case, however, the plaintiffs are not attempting to use acknowledgements which they procured by breaching any duty they owed to the Estate. Rather, it was Mrs Chow who provided the acknowledgements. If there was any breach on her part, the Estate should pursue a claim against her (or her estate). The plaintiffs should not be disadvantaged because a third party (Mrs Chow) breached her duties to the Estate.

65 I therefore hold that the Loan Confirmations were acknowledgements of the loans within the meaning s 26(2) of the Limitation Act. Having reached this conclusion, it is not necessary for me to examine the other grounds on which the plaintiffs argued that their claims were not time barred because since the indebtedness has been found to have been duly acknowledged, recovery is not time barred regardless of whether the six or 12 year limitation period is used.

Conclusion

66 The plaintiffs have proved their case except for some small amounts. The defendant has not been able to raise any triable issues of fact and the triable issue of law which he raised has been determined against him. Accordingly, the appeals of the plaintiffs must be allowed and judgment must be entered for them for the amounts as claimed, less only $90.90 in the case of Lee Tung and $4,118.98 in the case of CCPL. The defendant shall have leave to defend Lee Tung's claim to the extent of $90.90 and CCPL's claim to the extent of $4,118.98. As a necessary corollary to my decision on the Order 14 appeals, the defendant's appeal against the dismissal of his application to strike out the plaintiffs' claims must itself be dismissed.

67 I will hear the parties on costs.

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Associated Development Pte Ltd v Loong Sie Kiong Gerald (administrator of the estate of Chow Cho Poon, deceased) and Other Suits
[2009] SGHC 165

Reference in ADPL's Statement of Claim	Description	Date	Amount	Evidence that loan was approved by ADPL	Evidence that loan was disbursed
Para 6	Loan to Deceased	October 1995	S$350,000	Deceased's letter to ADPL, dated 2 October 1995.[1] Directors' Resolution, dated 9 October 1995[2]	Nil
Para 7(ii)	Payment to Commissioner of Estate Duties	2 February 1998	S$3,722,085.39	Shareholders' Resolution, dated 31 January 1998[3]	Payment voucher, dated 2 Feb 98[4]
Para 7 (iii)	Payment to Commissioner of Estate Duties	28 February 2000	S$1,382,550.76	Shareholders' Resolution, dated 31 January 1998[5]	Payment voucher, dated 28 February 2000[6]

[1] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 611.

[2] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 612 and 613.

[3] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 616 and 617.

[4] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 618.

[5] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 616 and 617.

[6] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 619.

Para 7(iv), Schedule 1	Payment to Messrs Chan Kum Chee & Co	15 January 2001	S$10,344.29	Nil	Payment voucher, dated 15 January 2001[7]
Para 7(iv), Schedule 1	Payment to Investors' Secretarius Pte Ltd	16 April 2001	S$2000	Nil	Payment voucher, dated 16 April 2001[8]
		Total	**S$5,466,980.44**		

Reference in Lee Tung's Statement of Claim	**Description**	**Date**	**Amount**	**Evidence that loan was approved by ADPL**	**Evidence that loan was disbursed**
Para 6(ii)	Loan to Deceased	16 December 1992	S$250	Directors' Resolution, dated 27 August 1993[9]	Nil
Para 6(iii)	Loan to Deceased	23 December 1992	S$5,500,000	Directors' Resolution, dated 27 August 1993[10]	Payment voucher, dated 23 December 1992[11]

[7] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 620.

[8] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 627.

[9] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 629 and 630.

[10] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 632 and 633.

Para 6(vi)	Loan to Deceased	5 October 1993	S$11,470.20	Nil	Nil
Para 6(viii)	Loan to Deceased	20 January 1994	S$1,000,000	Directors' Resolution, dated 17 January 1994[12]	Payment vouchers, dated 20 January 1994[13]
Para 6(ix)	Loan to Deceased	1 February 1994	S$2,000,000	Directors' Resolution, dated 17 January 1994[14]	Payment vouchers, dated 1 February 1994[15]
Schedule 1	Payment to Rice Finance Limited	13 September 1999	S$654,720.00	Nil	HSBC bank statement[16]
Schedule 1	Payment to Rice Finance Limited	16 November 1999	S$64,750.81	Nil	HSBC bank statement[17]
Schedule 1	Payment to Rice Finance	30 May 2000	S$156,430.00	Nil	HSBC bank statement[18]

[11] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 635.

[12] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 637 and 638.

[13] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 639 - 648.

[14] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 637 and 638.

[15] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 649 – 668.

[16] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 672.

[17] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 673 and 674.

[18] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 675.

	Limited				
Schedule 1	Payment to Rice Finance Limited	16 August 2000	S$110,720.00	Nil	HSBC bank statement[19]
Schedule 1	Payment to the Commissioner of Stamp Duties	31 January 2001	S$1,315.40	Nil	Payment voucher, dated 30 August 2001[20]
Schedule 1	Payment to Investors' Secretarius Pte Ltd	16 April 2001	S$2,000.00	Nil	Payment voucher, undated[21]
Schedule 1	Payment to Yeo-Leong & Peh LLC	27 August 2002	S$3,000.00	Nil	Payment voucher, dated 27 August 2002[22]
Schedule 1	Payment to Messrs Lee & Lee	15 October 2002	S$15,666.37	Nil	Payment voucher, dated 15 October 2002
Schedule 1	Payment to Standard Chartered Bank	21 October 2002	S$494.40	Nil	Payment voucher, dated 21 October 2002[23]

[19] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 676.

[20] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 677 and 678.

[21] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 683.

[22] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 685.

Schedule 1	Payment to Standard Chartered Bank	13 May 2003	S$124.80	Nil	Cash voucher, dated 13 May 2003[24]
Schedule 1	Payment to LCL Management Consultants Pte Ltd	10 December 2003	S$550.00	Nil	Payment voucher, dated 10 December 2003[25]
Schedule 1 *	Payment to Kim Eng Securities Pte Ltd	26 May 2004	S$20.88	Nil	Nil
Schedule 1 *	Payment to Kim Eng Securities Pte Ltd	12 August 2004	S$6.30	Nil	Nil
Schedule 1	Payment to Standard Chartered Bank	21 September 2004	S$504.00	Nil	Cash voucher, dated 21 September 2004[26]
Schedule 1 *	Payment to Immigration and Checkpoints Authority	3 December 2004	S$32.22	Nil	Nil

[23] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 690.

[24] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 692.

[25] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 694.

[26] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 696.

Schedule 1 *	Payment to Kim Eng Securities Pte Ltd	2 February 2005	S$12.60	Nil	Nil
Schedule 1	Payment to Standard Chartered Bank	11 May 2005	S$126.00	Nil	Cash voucher, dated 11 May 2005[27]
Schedule 1	Payment to Standard Chartered Bank	13 October 2005	S$504.00	Nil	Cash voucher, dated 13 October 2005
Schedule 1 *	Payment to Kim Eng Securities Pte Ltd	16 November 2005	S$18.90	Nil	Nil
Schedule 1	Reimbursement to Rice Management Ltd	28 November 2005	S$20,000.00	Nil	Cash voucher, dated 28 November 2005[28]
		Total	**S$9,542,716.88**		

[27] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 698.

[28] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 701.

Reference in CCPL's Statement of Claim	Description	Date	Amount	Evidence that loan was approved by ADPL	Evidence that loan was disbursed
Para 6(ii)	Loan to Deceased	23 July 1992	S$700,000.00	Shareholders' Resolution, dated 27 August 1992[29] (Blanket resolution)	Payment voucher, dated 23 July 2002[30]
Para 6(iii)	Loan to Deceased	7 August 1992	S$450,000.00	Shareholders' Resolution, dated 27 August 1992[31] (Blanket resolution)	Payment voucher, dated 7 August 1992[32]
Para 6(iv)	Loan to Deceased	11 August 1992	S$600,000.00	Shareholders' Resolution, dated 27 August 1992[33] (Blanket resolution)	Payment voucher, dated 11 August 1992[34]

[29] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 703 - 705.

[30] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 707.

[31] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 703 - 705.

[32] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 708.

[33] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 703 - 705.

[34] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 709.

Para 6(v)	Loan to Deceased	2 December 1992	S$9,002.40	Directors' Resolution, dated 27 August 1993[35]	Payment voucher, dated 2 December 1992[36]
Para 6(vii)	Loan to Deceased	11 May 1993	S$2,500,000.00	Directors' Resolution, dated 27 August 1993[37] Deceased's letter to CCPPL, dated 3 May 1993[38]	Payment vouchers, dated 11 May 1993[39]
Para 6(x)	Loan to Deceased	31 March 1994	S$5,000,000.00	Directors' Resolution, dated 28 March 1994[40]	Payment vouchers, dated 31 March 1994[41]
Para 6(xii)	Loan to Deceased	4 February 1995	S$5,000,000.00	Directors' Resolution, dated 11 January 1995[42]	Payment vouchers, dated 4 February

[35] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 712.

[36] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 711.

[37] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 712.

[38] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 715.

[39] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 716 - 718.

[40] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 720.

[41] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 721 - 725.

					1995[43]
Schedule 1	Payment to SCCO Funeral Services	7 August 1997	S$2,873.70	Nil	Nil
Schedule 1	Payment to Kong Meng San Phor Kark See Monastery	7 August 1997	S$4,415.00	Nil	Nil
Schedule 1	Payment to Ah Yat Abalone Forum Restaurant	7 August 1997	S$1,253.28	Nil	Nil
Schedule 1	Reimbursement of coins used for funeral matters	14 August 1997	S$42.00	Nil	Nil
Schedule 1	Payment to OG Pte Ltd, Bee Hock Guan Seng Kee, Pips Trading Co, Keng Yick Seng Trading and Talent Arts Gallery & Frame Maker	14 August 1997	S$51.70	Nil	Payment voucher, dated 14 August 1997[44]
Schedule 1	Further payment to SCCO Funeral Services and Kong Meng San Phor Kark	14 August 1997	S$450.00	Nil	Nil

[42] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 727.

[43] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 729 - 733.

[44] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 735.

	See Monastery				
Schedule 1	Advertisement expenses	14 August 1997	S$1,918.99	Nil	Nil
Schedule 1	Payment to Singapore Casket Co Pte Ltd	14 August 1997	S$11,141.80	Nil	Nil
Schedule 1	Payment to Mrs Betty Sheares	26 August 1997	S$1,000.00	Nil	Nil
Schedule 1 *	Payment to Unimax Copy Centre Pte Ltd	26 August 1997	S$17.00	Nil	Nil
Schedule 1 *	Reimbursement of transport expenses	27 August 1997	S$2.75	Nil	Nil
Schedule 1	Payment of the Deceased's personal income tax for the year of assessment 1997	12 September 1997	S$3,441.15	Nil	Payment voucher, dated 12 September 1997[45]
Schedule 1 *	Payment to Unimax Copy Centre Pte Ltd	14 October 1997	S$5.00	Nil	Nil
Schedule 1 *	Transport expenses	31 October 1997	S$3.00	Nil	Nil
Schedule 1 *	Payment to Unimax Copy Centre Pte Ltd	6 November 1997	S$10.70	Nil	Nil

[45] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 737.

Schedule 1	Payment to Knight Frank Pte Ltd	5 November 1997	S$14,420.00	Nil	Payment voucher, dated 1997[46]
Schedule 1 *	Payment to City-Link International Pte Ltd	28 November 1997 and 8 December 1997	S$30.00	Nil	Nil
Schedule 1	Payment to Chan Kum Chee & Co	31 December 1997	S$7,210.00	Nil	Payment voucher, dated 14 January 1998[47]
Schedule 1	Payment to Ernst & Young	31 December 1997	S$5,150.00	Nil	Payment voucher, dated 17 January 1998[48]
Schedule 1	Part payment to Messrs Lee & Lee	18 March 1998	S$26,107.70	Nil	Payment voucher, dated 18 March 1998[49]

[46] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 739.

[47] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 742.

[48] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 744.

[49] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 746.

Schedule 1 *	Payment to City-Link International (S) Pte Ltd	8 May 1998	S$15.00	Nil	Nil
Schedule 1	Payment to Standard Chartered Bank	8 September 1998	S$442.90	Nil	Payment voucher, undated[50]
Schedule 1	Payment to Kim Eng Securities Pte Ltd	19 November 1998	S$227.00	Nil	Payment voucher, dated 19 November 1998[51]
Schedule 1	Payment to Kim Eng Securities Pte Ltd	26 November 1998	S$22.30	Nil	Payment voucher, dated 26 November 1998[52]
Schedule 1	Payment of a demand draft for resealing the grant of probate in Malaysia	30 December 1998	S$451.00	Nil	Nil
Schedule 1	Payment to Unimax Copy Centre Pte Ltd	8 January 1999	S$4.20	Nil	Payment voucher, dated 8 January 1999[53]

[50] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 748.

[51] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 749.

[52] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 751.

Schedule 1	Payment to Standard Chartered Bank	21 April 1999	S$103.00	Nil	Payment voucher, dated 21 April 1999[54]
Schedule 1	Charges for photocopying valuation report properties in Hong Kong	2 August 1999	S$1.20	Nil	Nil
Schedule 1	Sale of Car No EH7878L	5 August 1999	(S$500)	Nil	Nil
Schedule 1	Payment to Standard Chartered Bank	6 September 1999	S$442.90	Nil	Payment voucher, dated 6 September 1999[55]
Schedule 1	Purchase of bank draft for shares of the Estate to be deposited with the Securities Commission, Malaysia	28 September 1999	S$178.00	Nil	Nil
Schedule 1 *	Wreath stand for the Deceased	11 October 1999	S$30.00	Nil	Nil

[53] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 752.

[54] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 754.

[55] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 756.

Schedule 1	Payment to the Department of Justice, Civil Division, Debt Collection Unit, Hong Kong	30 December 1999	S$7,948.18	Nil	Payment voucher, dated 30 December 1999[56]
Schedule 1 *	Payment to HSBC Limited	31 March 2000	S$58.18	Nil	Nil
Schedule 1 *	Pinetree Club subscription fee for April 2000	24 April 2000	S$125.00	Nil	Nil
Schedule 1 *	Pinetree Club subscription fee for June 2000	6 June 2000	S$128.75	Nil	Nil
Schedule 1	Payment to Standard Chartered Bank	29 June 2000	S$103.00	Nil	Payment voucher, dated 29 June 2000[57]
Schedule 1 *	Pinetree Club subscription fee for July 2000	6 July 2000	S$128.75	Nil	Nil
Schedule 1	Payment of courier of the demand draft to Department of Justice, Civil Division, Debt	24 July 2000	S$12.00	Nil	Nil

[56] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 759.

[57] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 762.

	Collection Unit, Hong Kong				
Schedule 1	Payment to the Government of Hong Kong Special Administrative Region	24 July 2000	S$8,137.75	Nil	Payment voucher, dated 24 July 2000[58]
Schedule 1 *	Pinetree Club Subscription fee for August 2000	12 August 2000	S$128.75	Nil	Nil
Schedule 1	Payment to Standard Chartered Bank	13 September 2000	S$442.90	Nil	Payment voucher, dated 13 September 2000[59]
Schedule 1 *	Pinetree Club subscription fee for September 2000	13 September 2000	S$128.75	Nil	Nil
Schedule 1 *	Pinetree Club subscription fee for October 2000	11 October 2000	S$128.75	Nil	Nil
Schedule 1	Payment to Specialist Stationery Pte Ltd	20 October 2000	S$11.70	Nil	Payment voucher, dated 20 October

[58] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 764.

[59] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 766.

					2000[60]
Schedule 1 *	Pinetree Club subscription fee for November 2000	8 November 2000	S$128.75	Nil	Nil
Schedule 1 *	Charges for photocopying Knight Frank Pte Ltd valuation report	30 November 2000	S$0.50	Nil	Nil
Schedule 1 *	Pinetree Club subscription fee for December 2000	12 December 2000	S$128.75	Nil	Nil
Schedule 1 *	Transport expenses	12 December 2000	S$3.10	Nil	Nil
Schedule 1	Payment of tax for the year of assessment 1998	19 December 2000	S$2,729,39	Nil	Payment voucher, dated 9 December 2000[61]
Schedule 1	Payment of City-Link International (S) Pte Ltd	20 December 2000	S$15.00	Nil	Payment voucher, dated 20 December 2000[62]

[60] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 767.

[61] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 769.

Schedule 1	Payment to Knight Frank Pte Ltd	30 December 2000	S$8,240.00	Nil	Payment voucher, dated 30 December 2000[63]
Schedule 1	Payment to Allen & Gledhill (Malaysia)	5 March 2001	S$3,542.27	Nil	Payment voucher, dated 5 March 2001[64]
Schedule 1	Payment to LCL Management Consultants Pte Ltd	8 March 2001	S$2,000.00	Nil	Payment voucher, dated 8 March 2001[65]
Schedule 1 *	Pinetree Resort subscription fee for March 2001	8 March 2001	S$128.75	Nil	Nil
Schedule 1	Payment to Messrs Lee & Lee	29 March 2001	S$209,269.94	Nil	Payment voucher, dated 29 March 2001[66]

[62] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 770.

[63] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 773.

[64] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 775.

[65] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 779.

[66] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 782.

Schedule 1	Payment to Investors' Secretarius Pte Ltd	16 April 2001	S$2,000.00	Nil	Payment voucher, dated 16 April 2001[67]
Schedule 1 *	Pinetree Resort subscription fee for April 2001	23 April 2001	S$128.75	Nil	Nil
Schedule 1 *	Pinetree Resort subscription fee for June 2001	14 June 2001	S$128.75	Nil	Nil
Schedule 1	Payment to LCL Management Consultants Pte Ltd	14 June 2001	S$500.00	Nil	Payment voucher, dated 14 June 2001[68]
Schedule 1	Payment to Standard Chartered Bank	14 June 2001	S$123.60	Nil	Payment voucher, dated 14 June 2001[69]
Schedule 1 *	The American Club subscription fee for June 2001	25 June 2001	S$130.00	Nil	Nil

[67] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 787.

[68] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 789.

[69] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 791.

Schedule 1	Payment to Knight Frank	26 July 2001	S$3,090.00	Nil	Payment voucher, dated 26 July 2001[70]
Schedule 1 *	Pinetree Resort subscription fee for July to October 2001	1 August 2001 to 18 October 2001	S$515.00	Nil	Nil
Schedule 1	Payment to Standard Chartered Bank	21 September 2001	S$442.90	Nil	Payment voucher, dated 21 September 2001[71]
Schedule 1	Payment to Standard Chartered Bank	1 November 2001	S$51.50	Nil	Payment voucher, dated 1 November 2001[72]
Schedule 1 *	Pinetree Resort subscription fee for November 2001	19 November 2001	S$128.75	Nil	Nil
Schedule 1 *	Pinetree Resort subscription fee for December 2001	14 December 2001	S$128.75	Nil	Nil

[70] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 795.

[71] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 793.

[72] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 797.

Schedule 1 *	Pinetree Resort subscription fee for January 2002	10 January 2002	S$128.75	Nil	Nil
Schedule 1	Payment of tax imposed on the legal personal representatives of the Estate	27 February 2002	S$698,440.26	Nil	Nil
Schedule 1	Payment to Standard Chartered Bank	19 June 2002	S$123.60	Nil	Payment voucher, dated 19 June 2002[73]
Schedule 1 *	Sentosa Golf Club subscription fees for March to December 2001	17 March 2003	S$1,500.00	Nil	Payment voucher, dated 17 March 2003[74]
Schedule 1	Interim repayment for disbursement to Rice Management Ltd	17 December 2004	S$30,000.00	Nil	Payment voucher, dated 17 December 2004[75]
		Total	**S$15,321,193.19**		

[73] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 811.

[74] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 820.

[75] See 2nd Affidavit of Chow Kwok Chuen, filed on 19 February 2008, p. 821.