IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 01

Suit No 425 of 2019 (Registrar's Appeal No 315 of 2019)

Between

Engineering Centre of
Industrial Constructions and
Concrete

… *Plaintiff*

And

(1) EFE (S.E.A) Pte Ltd
(2) Wilfred Quiah

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure] — [Summary judgment]
[Agency] — [Construction of agent's authority] — [Powers of attorney]

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Engineering Centre of Industrial Constructions and Concrete
v
EFE (SEA) Pte Ltd and another

[2021] SGHC 01

High Court — Suit No 425 of 2019 (Registrar's Appeal No 315 of 2019)
Aedit Abdullah J
12 February, 6 March, 15 June, 6, 20, and 23 July 2020

11 January 2021

Aedit Abdullah J:

Introduction

1 This is an appeal against my dismissal of Registrar's Appeal No 315 of 2019 ("RA 315"). RA 315 arose out of an order made by the Assistant Registrar in Summons No 4033 of 2019 ("SUM 4033") granting summary judgment to the Plaintiff against the Defendants pursuant to O 14 of the Rules of Court (Cap 322, R 5, 2014 Ed) ("ROC"). Broadly, I dismissed RA 315 because no triable or *bona fide* defences were raised by the Defendants. Rather, what the Defendants sought to rely on were mere allegations which were unsubstantiated and, in fact, often flatly contradicted by the documentary evidence.

Background

2 The Plaintiff is a Russian-incorporated company with its registered address in Moscow.[1] The first defendant is a Singapore-incorporated company in the business of providing corporate finance advisory services. The second defendant, a Singapore resident, was at all material times the director and sole shareholder of the first defendant.

3 Following a dispute between the Defendants and a company known as Outsourcing & Management Solutions Limited ("OMS"), a settlement agreement was entered into in March 2018 (the "Settlement Agreement") for payment of a settlement sum by the Defendants to OMS.[2] Specifically, the Settlement Agreement provided at [2] that:[3]

> [The Defendants] are jointly and severally liable to pay the sum of USD 2,392,000.00 (the "Settlement Sum") to OMS by 19 April 2018. If the Settlement Sum is not paid in full by 19 April 2018, the Settlement Sum will be increased to the sum of USD 2,592,000.00 which [the Defendants] shall be jointly and severally liable to pay to OMS by 4 May 2018. Parties agree that this will not be construed as a penalty as OMS has agreed to settle its claim on the basis that payment is received by the stipulated deadline.
>
> [Emphasis omitted]

I note for completeness that there does not appear to have been a sealing order made in relation to the terms of the Settlement Agreement.

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1 First Affidavit of Larisa Ershova dated 14 August 2019 ("LE1") from [5] to [7].

2 LE1 at Exhibit LE-2.

3 LE1 at p 21.

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4 The Defendants did not pay the settlement sum of US$ 2,392,000 to OMS by 19 April 2018.[4] The increased settlement sum of US$ 2,592,000 was also not paid, even by 4 May 2018.[5] OMS thus commenced HC/S 486/2018 ("Suit 486") against the Defendants on 9 May 2018 for payment of the increased settlement amount.[6]

5 On 28 December 2018, a debt assignment agreement (the "debt assignment agreement") covering OMS's rights under the Settlement Agreement was entered into between the present Plaintiff and OMS.[7] The debt assignment agreement assigned all of OMS's rights under the Settlement Agreement to the Plaintiff in consideration for a write-down in OMS's debts due to the Plaintiff for the corresponding amount of US$ 2,592,000. OMS's debts due to the Plaintiff were said to have been for various services which had been rendered by the Plaintiff between 2016 and 2018 relating to drafting, design and working documentation on soil stabilisation. Notice of the debt assignment agreement was given to the Defendants in February 2019.[8] The Defendants have not, however, paid the Plaintiff any of the assigned amount.[9]

6 Following the assignment of OMS's rights under the Settlement Agreement to the Plaintiff, Suit 486 was discontinued by OMS on 20 February

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4 LE1 at [11].

5 LE1 at [12].

6 Statement of Claim dated 9 May 2018 in Suit 486.

7 LE1 at Exhibit LE-3.

8 LE1 at [16].

9 LE1 at [17].

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2019.[10] The Suit from which the instant Registrar's Appeal arises, HC/S 425/2019 ("Suit 425"), was then commenced by the Plaintiff on 23 April 2019.[11] Subsequently, on 14 August 2019, the Plaintiff applied for summary judgment in SUM 4033.

7 The central issue between the parties in relation to SUM 4033 was whether the assignment had been properly executed. In particular, the Defendants claimed that OMS was at the time in question under the control of one Ms Ling Li, rather than one Mr Anton Plekhanov ("Mr Plekhanov").[12] It had been Mr Plekhanov who had dealt with the Plaintiff and signed the debt assignment agreement on behalf of OMS. Accordingly, the Defendants contended that Mr Plekhanov did not have the requisite authority to enter into the debt assignment agreement on behalf of OMS, and that the Plaintiff therefore had no entitlement to the sum of US$ 2,592,000 sought. By contrast, the Plaintiff contended that Mr Plekhanov was the beneficial owner of OMS, while Ms Ling Li was just a nominee, and that Mr Plekhanov had, at all material times, proper authority under a power of attorney to enter into the debt assignment agreement.[13] While a number of other arguments were raised (see below at [16] and [17]), this was the central dispute between the instant parties in determining whether or not there were triable or *bona fide* defences raised by the Defendants.

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10 Notice of Discontinuance dated 20 February 2019 in Suit 486.

11 Statement of Claim dated 23 April 2019 in Suit 425.

12 Defendants' Written Submissions dated 14 July 2020 ("DWS") from [22] to [25].

13 Plaintiff's Written Submissions dated 16 July 2020 ("PWS") at [7(c)].

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The decision below

8 In SUM 4033, the Assistant Registrar ruled in favour of the Plaintiff, finding that summary judgment ought to be granted.[14] In particular, the Assistant Registrar found that the Plaintiff had established a *prima facie* case for judgment through its reliance on the debt assignment agreement under which the debt owed by the Defendants to OMS under the Settlement Agreement had been assigned.[15] This was found to have been apparent from the face of the documents relied on. The question then turned to whether or not the Defendants were able to establish a fair or reasonable probability that the facts disclosed triable issue(s) and/or a *bona fide* defence(s).

9 The Assistant Registrar considered the various defences raised by the Defendants. She first rejected the Defendants' claim that they had already fully settled the debt owed to OMS under the Settlement Agreement. No credible evidence had been provided in support of this alleged settlement, and no particulars whatsoever had been furnished.[16] The Assistant Registrar then rejected the Defendants' argument that Mr Plekhanov had no authority to enter into the debt assignment agreement, finding instead that there was no basis for the Defendants to contend otherwise. Further, any procedural issues associated with the signing of the debt assignment agreement were not such as to preclude its effectiveness.[17] The Assistant Registrar was also unpersuaded by arguments that (a) rights under the Settlement Agreement could not be assigned, and (b)

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14 Certified Transcript of the hearing of 4 October 2019 before AR Wong Baochen in SUM 4033 ("4 Oct Transcript").

15 4 Oct Transcript at p 2.

16 4 Oct Transcript at pp 3 and 4.

17 4 Oct Transcript at pp 4 and 5.

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the Plaintiff's counsel was disqualified from acting for the Plaintiffs in this Suit.[18] The former argument was not made out on the plain wording of the Settlement Agreement, while the latter argument was tangential to the merits of the present proceedings.

10 Fundamentally, the Assistant Registrar took the view that the Defendants' case had not gone beyond "vague allegation[s]" and that there was, in any event, "insufficient reason[s] for the matter to go to trial".[19] The Defendants appealed.

The Appeal

11 Given the considerable duration which has elapsed between the commencement of SUM 4033 and the present appeal against my decision in RA 315, it may be useful to briefly outline why proceedings have proceeded in such a fashion.

Litigating in person

12 First, some time was taken in the proceedings because of the second defendant trying to act for the first defendant in a series of procedurally irregular ways. The Defendants filed their notice of appeal against the Assistant Registrar's decision in SUM 4033 on 17 October 2019.[20] Thereafter, they discharged their previous solicitors, but did not apply for leave to permit the

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18 4 Oct Transcript at p 5.

19 4 Oct Transcript at p 6.

20 Notice of Appeal in RA 315 dated 17 October 2019.

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second defendant to act on behalf of the first defendant in these proceedings.[21] The requisite leave was belatedly applied for in HC/SUM 5475/2019, albeit with a non-compliant affidavit.[22] This non-compliant affidavit, which was dated 26 November 2019, remained unrectified even by 22 January 2020, despite additional time having been granted for such rectification.[23] I ultimately allowed the second defendant to appear on behalf of the first defendant under O 1 r 9 of the ROC provided sufficient security was given,[24] but the Defendants failed to pay the security for costs ordered by the by the due date of 29 January 2020.[25]

13 Ultimately, as it was, the Defendant's present counsel was brought on board a mere one day before the hearing of RA 315 on 12 February 2020. An adjournment was sought and granted given these circumstances, and the hearing of RA 315 was re-fixed for 6 March 2020.

Further evidence and amendment of the defence

14 On 4 March 2020, two days before the re-fixed hearing date for RA 315, the Defendants filed two applications – the former to adduce further evidence on appeal, and the latter to amend their pleaded defence. Arguments on these applications were heard on 15 June 2020, and I allowed both applications on 22 June 2020. The application to adduce further evidence on appeal centred on email correspondence involving Mr Plekhanov's Hong Kong lawyers, which

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21 PWS at [10]

22 Certified Transcript of hearing of SUM 5475/2019 before AR Miyapan Ramu dated 12 November 2019.

23 Minute Sheet dated 22 January 2020 at p 2.

24 Minute Sheet dated 22 January 2020 at p 3.

25 Correspondence from Court to the Defendants dated 29 January 2020.

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purportedly went towards showing that Mr Plekhanov "may not be the beneficial owner of OMS".[26] As for the application to amend the pleaded defence, the amendments included fresh allegations that the debt assignment agreement was only executed after the power of attorney granted by OMS to Mr Plekhanov had been revoked, *i.e.* that the debt assignment agreement was executed on 7 January 2019, and not on 28 December 2018.[27]

15 Following the amendments and adducing of fresh evidence, the substantive hearing of RA 315 was finally fixed for 6 July 2020, with my decision released to the parties on 23 July 2020.

Summary of the Appellant's Arguments

16 The primary argument relied on by the Defendants (the appellants in RA 315) concerned the Settlement Agreement and the debt assignment agreement. It was argued that it was in fact Ms Ling Li who had authority and control over OMS, and not Mr Plekhanov. Mr Plekhanov thus had no authority or power to enter into the debt assignment agreement with the Plaintiff.[28]

17 It was also argued that there was a prohibition of such an assignment, and that Mr Plekhanov had an interest in the Plaintiff. A further argument raised was that there was a conflict of interest on the part of the solicitors acting for the Plaintiff because of their prior involvement in this dispute.

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26 Affidavit of Wilfred Quiah in HC/SUM 1069/2020 dated 3 March 2020 at [15(b)].

27 Affidavit of Wilfred Quiah in HC/SUM 1070/2020 dated 3 March 2020 at [15].

28 DWS at [29].

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Summary of the Respondent's Arguments

18 The Plaintiff (the respondent in RA 315) maintained that it had made out a *prima facie* case, based on the evidence it had adduced through its affidavits and documents, that the sum of US$ 2,592,000 was due and owed by the Defendants. The payment-creating obligation in the Settlement Agreement was pointed to, as was the clause assigning OMS's rights to the Plaintiff in the debt assignment agreement.

19 It was further asserted that no triable issues were made out. First, no settlement had been reached between OMS and the Defendants which extinguished the debt created by the Settlement Agreement. Second, there is no evidence that Mr Plekhanov had no authority to execute the debt assignment on behalf of OMS. Third, the Settlement Agreement did not prevent or prohibit any such assignment. Fourth, there was no conflict of interest on the part of the solicitors acting for the plaintiff.

20 In addition, no triable issue arose as to the allegation, raised only on appeal, that the debt assignment agreement was executed only in January 2019. This assertion was raised in the context of further arguments by the Defendants that Mr Plekhanov may not have been the beneficial owner of OMS, that he had a personal interest in the Plaintiff's claim, and that he was, even as late as in December, continuing to negotiate with Ms Ling Li. Whether or not Plekhanov was the beneficial owner of OMS was immaterial, and was not supported by the evidence in any event. Similarly, any interest that Plekhanov had in the Plaintiff's claim was irrelevant and unfounded. The allegation that the debt assignment could only have been signed after January 2020 was not supported either.

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The Decision

21 I was satisfied that no real or *bona fide* defence was raised. As alluded to above, the primary arguments raised were:

(a) that the debt assignment agreement could not have been executed when it was said to have been;

(b) that the claim had already been settled;

(c) that Mr Plekhanov did not have the requisite authority to sign the assignment on behalf of OMS; and

(d) that the contract prohibited assignment.

22 I found that none of these raised any triable issues.

The Applicable Law

23 In *Akfel Commodities Turkey Holding Anonim Sirketi v Townsend, Adam* [2019] 2 SLR 412 ("*Akfel Commodities*") at [30], the Court of Appeal, citing its earlier decision in *Habibullah Mohamed Yousuff v Indian Bank* [1999] 2 SLR(R) 880 at [21], stated that unconditional leave to defend should be granted if a defendant shows that he has a fair case for a defence, reasonable grounds for setting up a defence, or a fair probability that he has a *bona fide* defence. The Court of Appeal also referred to the formulation in *Goh Chok Tong v Chee Soon Juan* [2003] 3 SLR(R) 32 at [25] that leave would not be granted where the court could not find that there was a reasonable probability that the defendant had a real or *bona fide* defence. At [41] of *Akfel Commodities*, the Court of Appeal synthesised the approach as follows:

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> … If the judge is satisfied that the plaintiff has shown a *prima facie* case for judgment but is also satisfied that the defendant has demonstrated a fair probability of a *bona fide* defence, unconditional leave to defend should be granted. In determining whether such a demonstration has been made by the defendant, factual assertions made by the plaintiff and not disputed by the defendant may be taken into account by the court. But where what the defendant has shown does not amount to a fair probability of a *bona fide* defence, but only that the defence raised is not hopeless, it is warranted for the court to impose conditional leave to defend.

24 It is not sufficient for the Defendant to throw up factual assertions without more. The Court must assess whether the defence put up is equivocal, lacking in precision, inconsistent with undisputed contemporary documents or inherently improbable: *Bank Negara Malaysia v Mohd Ismail* [1992] 1 MLJ 400 ("*Bank Negara Malaysia*"). In *M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2015] 1 SLR 325 at [19], Judith Prakash J (as she then was) cited with approval the following passage from *Bank Negara Malaysia:*

> Under an O 14 application, the duty of a judge does not end as soon as a fact is asserted by one party, and denied or disputed by the other in an affidavit. Where such assertion, denial or dispute is equivocal, or lacking in precision or is inconsistent with undisputed contemporary documents or other statements by the same deponent, or is inherently improbable in itself, then the judge has a duty to reject such assertion or denial, thereby rendering the issue not triable. …
>
> [Emphasis omitted]

I note that this specific proposition of law has been expressly approved and applied in several cases, including at [6] and [7] of *Wayne Burt Commodities Pte Ltd v Singapore DSS Pte Ltd* [2017] SGHC 70.

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Analysis

Prima facie case

25 As submitted by the Plaintiff, a prima facie case had been made out on the basis of the documents that there was a sum of US$ 2,592,000 owed to the Plaintiff. Clause 2 of the Settlement Agreement (set out above at [3]) unequivocally creates an obligation on the part of the Defendants to pay the sum of US$ 2,592,000 to OMS. Similarly, cl 1.1 of the debt assignment agreement expressly provides that:

> [OMS] hereby assigns, transfers and sets over unto [the Plaintiff] the Debt together with all advantage and benefit to be derived therefrom including the right to claim the Debt from the [Defendants] by all applicable means.

As found by the Assistant Registrar, the Debt Assignment Agreement is sufficient evidence that the money owed by the Defendants to OMS had been, on the face of it, assigned to the Plaintiff.

26 The Defendants did not seriously take issue with the Plaintiff's case in this regard: there was no assertion that the debt assignment agreement did not exist; rather, the primary controversy was that it did not have any legal effect because of Mr Plekhanov's lack of authority of to execute that document at the relevant time.

Mr Plekhanov's authority to enter into the debt assignment agreement

27 One central pillar of the Defendants' case is that Mr Plekhanov lacked the authority to enter into the debt assignment agreement. This runs into the clear and obvious difficulty that a power of attorney was in fact issued by OMS

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in Mr Plekhanov's favour on 20 December 2018.[29] The salient terms of the said power of attorney expressly granted Mr Plekhanov the following powers:

> 1. To perform and manage all the necessary acts and deeds … For this purpose he is given the width to sign, act, change, enter into or cancel any Contracts, and to be the only person effecting payments, receive money and manage any other financial operations for the Company.
>
> …
>
> 3. To accept, register and dispose of, with or without covenants or warranty of title on behalf of the Company an[y] kind of property, moveable or immovable and to sign all the necessary documents.
>
> …
>
> 5. To make payments with Depositaries, Registries, Brokers, Banks and other natural and legal persons on behalf of the Company.
>
> …
>
> 8. To let and/or sale and/or mortgage any moveable and immoveable properties and goods on behalf of the Company.
>
> …
>
> 11. To take any legal action against any person … and further to settle any case out of Court or tribunal whether as plaintiff or defendant and to sign any such documents of settlement.
>
> …
>
> 13. This power of attorney is valid for one year until the date of expiry.
>
> 14. Generally to do all acts necessary or expedient in the interests of the Company or its business …

28 What is fairly evident from the extract above is the very broad and wide-ranging powers conferred under the 20 December 2018 power of attorney, which I should add was *in pari materia* with previous powers of attorney Mr

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[29] Second Affidavit of Larisa Ershova dated 13 September 2019 ("LE2") at pp 39 to 41.

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Plekhanov had received from OMS (see, for instance, the power of attorney dated 12 December 2018).[30] The powers conferred under the 20 December 2018 power of attorney clearly sufficed to robe Mr Plekhanov with the authority to enter into the debt assignment agreement. In any event, it was not contested by the Defendants that the terms of the power of attorney would give Mr Plekhanov the authority to enter into the debt assignment agreement.

29 What the Defendants instead argued was that Ms Ling Li had not in fact signed the powers of attorney purportedly issued by OMS in Mr Plekhanov's favour dated 12 and 20 December 2018 respectively. It is in fact alleged by Ms Ling Li, and the Defendants, that Ms Ling Li had "*never* granted Mr Plekhanov *any* power of attorney after the [revocation of an earlier power of attorney on 28 May 2018]" (emphasis original).[31] Ms Ling Li further claims that it only "later came to [her] attention that there were two (2) power of attorneys [*sic*] dated 12 December 2018 and 20 December 2018 that were allegedly issued by [her]".[32] In other words, therefore, Ms Ling Li was alleging that those two powers of attorney were forgeries. However, this runs into clearly insurmountable difficulties:

(a) First, one would have expected her to have raised some alarm about the potential forgery or improper procurement of the powers of attorney. Instead, Ms Ling Li appears to have been remarkably blasé about forgeries being made in her name. All she did was to send a letter

30 See for example, LE2 at pp 35 to 37.

31 Affidavit of Ling Li dated 20 September 2019 ("LL") at [14].

32 LL at [15].

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dated 7 January 2019 to "revoke" the two powers of attorney.[33] Merely revoking those two instruments would seem to show that she must have signed those powers of attorney, and her letter revoking the powers of attorney is telling in that regard:[34]

> …
>
> 2. We revoke the Power of Attorney dated 12th of December 2018 and the Power of Attorney dated 20th of December 2018 in which we appoint[ed] Anton Plekhanov … to be attorney of [OMS].
>
> 3. We declare that all power and authority conferred by the Power of Attorney is now revoked and withdrawn.

This letter, dated 7 January 2019, is striking in that it makes no allegations whatsoever of fraud or impropriety in the procurement of the powers of attorney. In fact, there is a tacit admission that the powers of attorney had the effect of "appoint[ing]" Mr Plekhanov, and that those instruments had in fact "conferred" power and authority on him. This allegation of fraud is wholly untenable, and reflects poorly on Ms Ling Li's credibility.

(b) Second, and strikingly, despite initially claiming that Ms Ling Li had "*never*" signed "*any*" (emphasis in original] powers of attorney after 28 May 2018,[35] the Defendants made a complete and unabashed *volte-face* to claim that she had in fact signed and issued the two powers of

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33 LL at [16].

34 LL at p 30.

35 LL at [14].

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attorney. The Defendants' written submissions dated 14 July 2020 are instructive in this regard:[36]

> 44. Ms. Li Ling eventually provides the [power of attorney] on 12.12.18 at 9.34 pm. She did again on 20.12.18 at 4.08 pm.
>
> …
>
> 48. After she granted the POAs on 12.12.18 and 20.12.18, she had been chasing Hong Kong solicitors …

What the Defendants quite implausibly appear to be claiming is therefore that Ms Ling Li signed the powers of attorney dated 12 and 20 December 2018, but also had never signed any powers of attorney after 28 May 2018. This flat contradiction is inexplicable, and I did not accept the Defendants' attempted rationalisation that the powers of attorney had been properly signed, but had been procured by misrepresentations from Mr Plekhanov. After all, Ms Ling Li had categorically stated that she had "*never*" signed "*any*" powers of attorney after 28 May 2018 (emphasis original).

Given what I can only describe as a somewhat cavalier relationship with the truth illustrated by these issues, the argument that Ms Ling Li or OMS did not issue a power of attorney on 20 Dec 2018 is totally incapable of belief.

30 Accordingly, I rejected the Defendants' submission that Mr Plekhanov lacked the authority to enter into the debt assignment agreement because the power of attorney dated 20 December 2018 was forged.

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36 DWS at [44] and [48].

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The date of execution of the debt assignment agreement

31 A further tier of the Defendants' case is an argument that the debt assignment agreement was executed on or after 7 January 2019. This is significant because by that time, the power of attorney granted by OMS to Mr Plekhanov would have been revoked, pursuant to a letter of revocation dated 7 January 2019 from Ms Ling Li. In the alternative, the Defendants argue that the debt assignment agreement was not executed at all. The Defendants' argument is that there was a delay in the Plaintiff issuing its notice of assignment, and that Mr Plekhanov had in fact continued to negotiate with Ms Ling Li about reissuing the requisite power of attorney and transferring the ownership of OMS to him in December. The crux of the Defendants' reasoning here is that, given that the assignment had supposedly occurred on 28 December 2018 (the date the debt assignment agreement was signed), it was odd that the Plaintiff only gave notice to the Defendants of the assignment of the debt in February 2019.[37] Accordingly, the Defendants asserted that the debt assignment agreement must only have been executed sometime in January 2019, closer to when the Plaintiff started demanding payment.

32 However, this contention was not supported by anything concrete, and was founded really on speculation as regards Mr Plekhanov's supposed power and authority at the time. This was not substantiated on the documentary evidence and did not, to my mind, raise any triable issue.

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37 DWS at [89].

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33 Quite simply, and somewhat unsurprisingly, the Plaintiff pointed to the fact that the debt assignment agreement was signed by Mr Plekhanov for OMS and the Plaintiff, and that such signing was dated 28 December 2018.

34 I accept the Plaintiff's arguments that any lapse of time or delay in issuing the notice of assignment did not assist the Defendants in raising a triable issue. There are many possible reasons for a delay of that nature, and it is within the rights of the Plaintiff to issue the notice of assignment when it deems fit: it takes its risks of a late notice. A two-month gap is not the sort of delay that would trigger alarm bells; it may not be prompt, but it was not dilatory. I did not see that delay as in any way indicative of the assertion which the Defendants had made. In any event, the tenuous inference the Defendants invited me to draw was simply inadequate when contrasted with the fact that the debt assignment agreement was signed and dated 28 December 2018.

35 The Plaintiff put forward the explanation for the two-month delay that the time was taken to ensure that the risk of Ms Ling Li disrupting the transaction would be minimised, particularly as she had revoked a number of powers of attorney given to Mr Plekhanov, and made allegations that the dispute had been settled between OMS and the Defendants.[38] Put simply, the time was given for Mr Plekhanov to try to resolve the matters and disputes he had with Ms Ling Li concerning her compensation and payment. As this was not, however, achieved by February, the Plaintiff declined to wait any further and decided to issue the notice then.

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38 Third Affidavit of Larisa Ershova dated 27 March 2020 ("LE3") at [22].

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36 The explanation put forward by the Plaintiff appears to be reasonable, and when take against the backdrop of the point considered above – that any lapse in the giving of the notice was not dilatory – any inference that the assignment was not in fact signed on the date stated is very weak. The inference could not support the Defendants' contentions and the Defendants had no substantive evidence in support at all. I did not see even the fair probability of a *bona fide* defence or triable issue being raised.

37 Aside from the signed document, there was also the affidavit evidence of Ms Larisa Ershova ("Ms Ershova") for the Plaintiff, which was not really disputed. Ms Ershova's evidence was that, *inter alia*, pursuant to a personal dispute between Ms Ling Li and Mr Plekhanov, Ms Ling Li had resigned as trustee over Mr Plekhanov's shares in OMS. However, she had taken no steps to vest legal ownership of the shares in OMS back to Mr Plekhanov or step down as a director of OMS, and this formed the substantive background against which the dispute between Mr Plekhanov and Ms Ling Li arose.[39]

38 In any event, as argued by the Plaintiff, there was also nothing whatsoever raised by OMS even after it had been clearly alleged by the Plaintiff that the debt assignment agreement had been entered into on 28 December 2018. No intervention or any other action of that nature was raised by OMS, nor was there even any surprise expressed at the fact that, on the Defendants' own case, the debt assignment agreement had been backdated or had not even been executed altogether. These allegations were, after all, only raised by the Defendants on appeal, and counsel for the Defendants did concede that the

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[39] LE3 at [22] and [32].

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documents which he relied upon to show that the debt assignment agreement was backdated had been in the Defendants' possession since 2018.[40] If there had in fact been some impropriety on the part of the Plaintiff in dating the debt assignment agreement inaccurately, then the Defendants' silence in not pointing that out is simply deafening. To make matters worse for the Defendants, they were so unconcerned about the date stated on the debt assignment agreement, and were so completely prepared to accept it at face value, that they did not even bother inspecting the original debt assignment agreement when it was made available for inspection.[41] Rather, the Defendants only requested a copy for their reference. This is illustrative of how unperturbed the Defendants were regarding the date the debt assignment agreement had been entered into. It is only now, on appeal, that they assert, on the basis of documents which they concede were already in their possession even in 2018, that the debt assignment agreement must have been backdated or not even executed at all. This belated assertion is unconvincing.

39 Given what is on the face of the documents, the Defendants could not take issue with the timing of the assignment. The email exchanges relied upon by the Defendants appear to relate primarily to the underlying dispute between Mr Plekhanov and Ms Ling Li, and did not indicate that the debt assignment agreement had been backdated.[42] The evidence suggesting that the debt assignment agreement had been backdated was so ephemeral and tenuous that

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40 LE3 at [39], See also Minute Sheet dated 6 March 2020 for HC/SUM 5642/2019 at pp 1 and 2.

41 LE3 at [41].

42 See, for example, Plaintiff's Bundle of Defendants' New Evidence dated 11 June 2020 ("PBDNE") at Tabs 2 to 7.

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it suggested that this argument was not being raised *bona fides*, and I was unpersuaded by the Defendants' attempts to rely on correspondence which had minimal bearing on the date of the debt assignment agreement's execution to support conjecture and speculation on this point.

40 I have noted that the Defendants argued that while the Plaintiff claimed that Suit 486 was discontinued after the debt assignment agreement was entered into, such a claim was not pleaded and, even if it had been pleaded, would contradict [15] of the Reply.[43] I did not find the Defendants' claim in this regard to be at all founded. The Reply itself notes the discontinuance of Suit 486, and that is part of the substratum on which the pleadings rest.[44] I cannot see that there can be any issue here. Furthermore, whether the discontinuance occurred is a matter of record and need not be proven. I did not see any contradiction between [15] of the Reply and the Plaintiff's claim that Suit 486 was discontinued after the debt assignment agreement had been entered into. All that [15] of the Reply indicates is that sometime after 8 January 2019 and the receipt of a letter directing that Oon & Bazul LLP discontinue Suit 486, Mr Plekhanov had also instructed Oon & Bazul LLP to discontinue that Suit. There was no suggestion that Mr Plekhanov's instruction did not stem from the assignment of the debt, nor was there anything which indicated that Mr Plekhanov's instructions were influenced by or pursuant to the receipt of the earlier letter.

41 The allegations that the debt assignment agreement was backdated or had not been signed at all were not supported by any evidence before me, and therefore did not establish any valid defence that would have called for a trial.

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43 DWS at [78].

44 Reply at [15].

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Mr Plekhanov's ownership of OMS

42 The Defendants also claimed that Mr Plekhanov lacked authority to enter into the debt assignment agreement because he was not the beneficial owner of OMS.[45] This was, as argued by the Defendants, a distinct ground of defence from that considered above. This present ground goes towards Mr Plekhanov's overall beneficial ownership of OMS, as compared to whether or not his signing the debt assignment agreement was covered by the power of attorney granted to him by OMS on 20 December 2018.

43 I had considerable difficulty with this submission by the Defendants. Mr Plekhanov's beneficial interest in OMS was not, after all, seriously challenged by Ms Ling Li. As pointed out by the Plaintiff, there did not appear to be any direct evidence form Ms Ling Li asserting ownership displacing or in place of Mr Plekhanov. Instead, Ms Ling Li accepted that the shares of OMS belonged to Mr Plekhanov, and that she held these on trust for him. She expressly states that "there was a point in time where the shares in OMS were held by [her] on trust for Mr Plekhanov pursuant to a declaration of trust dated 18 February 2016".[46] This declaration of trust, which Ms Ling Li herself exhibited, clearly provides as follows:[47]

> 1. I am the registered holder (hereby referred to as the Holder) of 10,000 shares now standing in my name in the Register of Outsourcing and Management Solutions Limited.
>
> 2. These shares do not belong to me but belong solely to Mr Anton Plekhanov … who is the ultimate Beneficiary of these shares and all related rights[.]

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45 DWS at [70] and [73].

46 LL at [18].

47 LL at Exhibit LL-5.

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> 3. I hold the said shares as a nominee for the Beneficiary[.]
>
> …

It was thus clearly and unequivocally acknowledged by the Defendants from the very beginning, as well as by Ms Ling Li, that Mr Plekhanov was in fact the beneficial owner of all of the shares in OMS. Ms Ling Li points out that she resigned as trustee, but that is a conceptually separate matter from whether or not Mr Plekhanov retains the beneficial interest in the shares.

44 Indeed, the fact that there was any dispute between Ms Ling Li and Mr Plekhanov as to the ownership of the shares in OMS is immaterial: There was no suggestion or evidence that Ms Ling Li disavowed the assignment, and, in any event, Mr Plekhanov was authorised under the relevant power of attorney to enter into the debt assignment agreement (see above at [27]). Indeed, as argued by the Plaintiff, Ms Ling Li accepted that she held the shares on trust for Mr Plekhanov. In fact, the dispute between Ms Ling Li and Ms Plekhanov appears to have been focused on the proper compensation and benefits due to Ms Ling Li, and what should be given to her before she transferred legal title to the shares back to Mr Plekhanov.[48] There was no allegation that the shares did not belong to Mr Plekhanov, or that they belonged to her entirely, or that there was someone else who held ownership.

45 None of the various factual matters raised by the Defendants pointed to any difficulties with Mr Plekhanov's ownership as such, including the fresh evidence raised on appeal. Neither the correspondence relating to Ms Ling Li's unwillingness to sign off on various documents, nor the fact that OMS's

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[48] See for instance, PBDNE at Tab 7.

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solicitors had dealings with her, could be said to be decisive or even indicative of Ms Ling Li's beneficial ownership of OMS.

46 In comparison, the documentary evidence that Mr Plekhanov is the beneficial owner of OMS is very strong. While the Defendants argued that there were emails showing that Plekhanov was trying to buy OMS from Ms Ling Li, that is a clear misreading of the emails. Rather, those emails were clearly concerned with the question of Ms Ling Li's trusteeship, and this dovetails with the fact that Ms Ling Li herself accepted that she held the shares on trust until her unilateral resignation as trustee on 28 May 2018. This account then ties into Ms Ershova's account (see [37] above) of Mr Plekhanov trying to get Ms Ling Li to transfer those shares back.

47 The Plaintiff has also correctly argued that a fresh defence that is not pleaded cannot be relied upon: *Olivine Capital Pte Ltd and another v Chia Chin Yan and another matter* [2014] 2 SLR 1371 at [43]. The Court of Appeal specifically observed that:

> …a fresh defence that has not been pleaded cannot be relied on by the defendant in O 14 proceedings *unless* the defence is amended *or* unless the case is an exceptional one where the court concerned is of the view that there are good reasons to permit reliance on such a fresh defence (for instance, if the fresh defence strikes at the heart of the court's powers …
>
> [Emphasis original]

The Defendants did not plead that Mr Plekhanov was not the owner of OMS, and did not do so even after having been granted leave to amend its pleadings. They had already been granted their second bite of the cherry, and I do not see good reasons why a third should be permitted. The fresh defence does not strike at the heart of the Court's powers, and the Defendants in fact voiced no

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objection, all the way until their more recent written submissions, to the claim that Mr Plekhanov beneficially owned OMS.

48 In sum on this point, no substantial defence could be raised by the Defendants on the back of the dispute between Ms Ling Li and Mr Plekhanov. It was not at all tenable for the Defendants to seek to impugn Mr Plekhanov's beneficial ownership of OMS given Ms Ling Li's admissions on affidavit, the signed declaration of trust dated 18 February 2016 (see above at [43]), and the fact that the Defendants had not even pleaded that Mr Plekhanov did not beneficially own OMS. In any event, these contentions ultimately did not assist the Defendants at all since the basis of the assignment of the US$ 2,592,000 to the Plaintiff – the power of attorney dated 20 December 2018 – was not at all impugned or undermined by these arguments, which went instead towards Mr Plekhanov's beneficial ownership of OMS.

Mr Plekhanov' s interest in the Plaintiff

49 The Defendants took issue with Mr Plekhanov having an interest in the Plaintiff as a further argument for resisting summary judgment.[49] I did not see how this point assisted the Defendants. The Plaintiff has categorically denied, on affidavit, that Mr Plekhanov has an interest in or is an executive of the Plaintiff. All the Defendants rely on in substantiating this claim is a bare assertion in an email dated 4 November 2019 from one Mr Shafiqul Islam to the second defendant claiming that Mr Plekhanov is an executive of the Plaintiff.[50] This bare assertion is insufficient. Not only has this assertion not been made on

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49 DWS at [53].

50 PBDNE at Tab 9.

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affidavit, it is essentially just a bare assertion. Further, (a) Mr Shafiqul Islam has had prior dealings with the second defendant, (b) it is unclear what Mr Islam meant by describing Mr Plekhanov as an "executive" of the Plaintiff, and (c) Mr Islam's assertion was made only after litigation had commenced between the present parties.[51]

50 In any event, whether or not Mr Plekhanov has an interest in the Plaintiff is really irrelevant to the existence or otherwise of a defence. It would seem that the Defendants were essentially trying to insinuate that there was something untoward taking place, and that Mr Plekhanov was behaving in a self-serving manner. However, nothing of that nature was found in the evidence. More significantly, I did not see how Mr Plekhanov having an interest in the Plaintiff in any way precluded him from being able to enter into the debt assignment agreement given his very broad powers under the 20 December 2018 power of attorney. There also does not appear to be any pleading to that effect.

Prior settlement

51 The Defendants also asserted that there had been an earlier settlement of the US$ 2,592,000 debt created by the Settlement Agreement such that there was no outstanding debt remaining to be paid to the Plaintiff.[52]

52 This defence was entirely incapable of belief. There was an utter dearth of particulars or specifics beyond a bland assertion that the debt had already been settled. Nothing in the Defendants' pleadings, arguments, or affidavits

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51 Bundle of Defendants' New Evidence dated 3 March 2020 at pp 138, 139 and 142.

52 DWS at [1(a)].

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provides any details of this alleged settlement. Details as basic as the (a) date of the settlement, (b) quantum paid, (c) proof of payment, (d) date of payment, and (e) whether the settlement was oral or in writing were all not provided.

53 There has been ample opportunity for the Defendants to have provided these particulars; indeed, they were granted the opportunity to amend their pleadings, but nonetheless conspicuously failed to provide any of the particulars concerning this alleged settlement. This concern had been repeatedly flagged to the Defendants, even at the very first pre-trial conference for these proceedings on 12 June 2019.[53] Yet, absolutely nothing was done about it.

54 The Defendants' stunningly convenient excuse for why no details were provided was that the details of the settlement were confidential. This is not only strikingly self-serving, it is also implausibly convenient. It is entirely open to the Defendants to seek to seal the case file or to apply for the relevant orders of the Court to maintain the confidentiality of the alleged settlement's terms. Further, the Defendants had no qualms disclosing details of its settlement in Suit 486 in its pleaded defence. At [8] and [9] of the Defendants' defence in Suit 486, the Defendants had no issues whatsoever with the plaintiff in that suit setting out entire clauses from the Settlement Agreement, and in fact went on to make specific reference to those terms themselves.[54] By contrast, the Defendants appear now to have suddenly developed such remarkably strong convictions about the need to keep this alleged settlement confidential that they refuse to disclose any details about it even after having had summary judgment entered against them in SUM 4033.

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53 Minute Sheet of Pre-trial Conference dated 12 June 2019.

54 Defence in Suit 486.

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55 Even taking the Defendants' case at its highest, their pleaded defence in Suit 486 states at [10] that the only alleged "settlement" was an agreement to allow for an extension of time.[55] No allegation of complete settlement was even raised in that Defence. It is only now, in Suit 425, that such an allegation has mysteriously spawned. In the circumstances, the Defendants' wilful refusal to provide sufficient details renders this alleged settlement wholly illusory and little more than a bare assertion which should be rejected.

Contractual prohibition against assignment.

56 The final strand of the Defendants' Defence is that cl 7 of the Settlement Agreement renders it incapable of being assigned. This point was not seriously engaged with by both parties in their oral submissions, but is present in the Amended Defence dated 2 July 2020.[56] The argument by the Defendants is that the wording of cl 7 of the Settlement Agreement prohibits OMS from validly assigning any debt owed to it pursuant to the Settlement Agreement to any other party.

57 Clause 7 of the Settlement Agreement reads:[57]

> This Agreement contains the entire agreement and supersedes any prior understandings, negotiations and agreements with respect to the subject matter hereof. There is absolutely no agreement to make payment or do any act or thing other than herein expressly stated.

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55 Defence in Suit 486 at [10].

56 Defence (Amendment No 1) dated 2 July 2020 at [23].

57 LE1 at p 23.

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58 Put simply, cl 7 could not be read in the way relied on by the Defendants. The assignment of the chose in action to the Plaintiff, particularly given that the obligation to pay remains unchanged, is not precluded by cl 7's plain language. Critically, cl 7 does not found a defence insofar as it only limits the parties' obligations and not their rights – including the right of assignment.

59 The plain words of the section do not prohibit assignment. As counsel for the Defendants should be entirely aware, cl 7 contains a fairly standard entire-agreement clause which deals with the scope of the agreement and the obligations created under the Settlement Agreement between OMS and the Defendants. The Plaintiff was thus entirely correct, in the context of the agreement in question, to characterise cl 7 as merely delimiting the scope of the agreement between the parties. It does not on its face prohibit the assignment of the debt, and I cannot see why it should be interpreted in that way.

60 The Defendants were unable to refer to any authorities or, in actuality, any real argument in favour of their interpretation. In any event, this argument was rightly abandoned in their oral submissions.

Conflict of interest

61 As a final point, I note that the Defendants alluded to the solicitors acting for the Plaintiff being in a position of conflict of interest as they had previously acted for OMS. However, there did not appear to be any real conflict here given that OMS was not party to this action and has not taken any contrary position at all. But even setting that issue aside, I did not see how any alleged impropriety on the part of the Plaintiff's solicitors affected the viability or *bona fides* of the Defendants' pleaded defences.

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Conclusion

62 In sum, the Defendants' pleaded defences were wholly untenable, and several of them were propped up solely by bare and unfounded assertions. Where there were contemporaneous documentary records, they spoke with one voice against the Defendants' case. Even the affidavits relied upon by the Defendants were riven with blatant contradictions that, try as they might, could not be explained away.

63 For the above reasons, I dismissed RA 315.

Aedit Abdullah
Judge

Bazul Ashhab bin Abdul Kader, Ashvin Shanmugaraj Thevar, and Chan Cong Yen, Lionel (Chen Congren) (Oon & Bazul LLP) for the plaintiff;
Vasantha Kumar s/o N K Perumal (Vas Kumar & Co) for the defendants.

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