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

[2021] SGHC 181

Originating Summons No 1332 of 2020

Between

Quayside Investments Pte Ltd

… *Plaintiff*

And

38 Degrees Pte Ltd

… *Defendant*

JUDGMENT

[Contract] — [Contractual terms] — [Rules of construction]

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Quayside Investments Pte Ltd
v
38 Degrees Pte Ltd

[2021] SGHC 181

General Division of the High Court — Originating Summons No 1332 of 2020
Philip Jeyaretnam JC
12 July 2021

23 July 2021 Judgment reserved.

Philip Jeyaretnam JC:

Introduction

1 By this originating summons the plaintiff seeks a declaration that a deed of rights dated 7 September 2018 between it and the defendant, among others ("deed of rights"), is not a security document as defined in a loan agreement also dated 7 September 2018 between it and the defendant only ("loan agreement"). The defendant says this is an academic question and that there is no dispute for the court to adjudicate, but that if it is nonetheless to be decided, the deed of rights is a security document which is to be released and discharged upon redemption of the loan.

2 If I accept that the question is not merely academic, answering it requires both construction of the loan agreement and consideration of the nature of the deed of rights. For this second aspect, as the deed of rights contains an

arbitration clause, I need to examine how the court should determine the nature of another contract that is subject to an arbitration clause.

3 This last point also presents a Gordian knot. This court, it is said, cannot have regard to the contents of the deed of rights in order to determine its nature, because that task can only be undertaken by an arbitral tribunal appointed in accordance with its arbitration clause. But if that is so then equally that arbitral tribunal could not interpret the loan agreement, specifically what is meant by security document, for that is not a matter arising under the deed of rights. Like most such entanglements, the solution lies not so much in following the twists and turns of the intricate arguments but in finding a sharp blade to cut the knot.

Facts

The parties

4 The plaintiff, Quayside Investments Pte Ltd ("Quayside") is part of a group of companies ("the RB Group") owned and controlled by Mr Raj Kumar and his son, Mr Kishin. It is the latter who, as a director of Quayside, deposed to affidavits in these proceedings.[1]

5 At the time that the loan agreement was entered into, Quayside owned 6.5% of the defendant, 38 Degrees Pte Ltd ("38 Degrees"). Another shareholder of 38 Degrees was Marc Nicholson ("Mr Nicholson"), who held 32.72%, and deposed, as one of its directors, to the affidavits filed by 38 Degrees in these proceedings. The majority shareholder of 38 Degrees was a company called All

[1] Plaintiff's Bundle of Documents ("PBOD") Vol I, at p 8.

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Red Limited. It is controlled by one Luke Jones ("Mr Jones"), who is also a director of 38 Degrees.[2]

6 38 Degrees wholly owned an operating company, 1880 Pte Ltd ("1880"). 1880's business was owning and operating an eponymous private social club, whose premises were in turn rented from RB Corp Pte Ltd, a member of the RB Group.[3]

Background to the dispute

7 By May 2018, 1880 was in substantial arrears of rent and also owed its interior designer substantial amounts. The latter began pressing for payment, threatening winding up proceedings if it was not paid.[4]

8 Quayside and 38 Degrees started negotiating terms for a loan. On 23 August 2018, the loan agreement was signed but left undated. The loan amount was $3,000,000. Its disbursement was subject to several conditions precedent, of which one was satisfactory evidence of 38 Degrees' execution of a contract described as a rights agreement.[5] From the definition of the rights agreement, it was clear that it had not yet been finalised. It was to relate to, among other things, "the use of any brands, trademarks and other intellectual property owned by and/or licensed by the Group, and the sharing of profits of the Group".[6] The

[2] PBOD Vol I, at p 116.

[3] PBOD Vol I, at pp 115–118.

[4] PBOD Vol I, at pp 120–121.

[5] PBOD Vol I, at p 67, Loan agreement cl 5.1(b)(viii).

[6] PBOD Vol I, at p 63, Loan agreement cl 1.1.

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Group referred to 38 Degrees, 1880 and any future subsidiary. The rights agreement had to be "in form and substance satisfactory to [Quayside]".[7]

9 The draft of a document referred to as rights agreement in the cover email but titled deed of rights in the attachment was sent to 38 Degrees on 6 September 2018. It was executed and dated the next day, 7 September 2018. The loan agreement was then dated the same day. The loan was disbursed.

10 The loan agreement contained a provision that upon full redemption Quayside would "forthwith, at the request and cost of [38 Degrees] release, reassign or discharge (as appropriate) the assets of the Obligors … which are subject to the Transaction Security".[8] Obligor was defined as 38 Degrees "and any person (except [Quayside]) party to any Security Document".[9]

11 "Transaction Security" was defined in terms of two other defined terms, namely as "the Security created or expressed to be created in favour of [Quayside] pursuant to the Security Documents".[10]

12 "Security" was defined as "any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect."[11]

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[7] PBOD Vol I, at p 60, Loan agreement cl 1.1.

[8] PBOD Vol I, at pp 70–71, Loan agreement cl 8.3.

[9] PBOD Vol I, at pp 61, Loan agreement cl 1.1.

[10] PBOD Vol I, at p 63, Loan agreement cl 1.1.

[11] PBOD Vol I, at p 62, Loan agreement cl 1.1.

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13 The term "Security Documents" was defined as the following: (a) "the Share Charge (Borrower – ARL)"; (b) "the Share Charge (Borrower – MHTN)"; (c) "the Share Charge (Company – Borrower)"; (d) "the Mortgage"; (e) "the Options"; and (f) "any other Security granted in favour for [Quayside] in connection with this [Loan] Agreement and/or the Facility Documents".[12]

14 On 15 October 2020, 38 Degrees fully redeemed the loan and, pursuant to it, called for the release and discharge of "the assets of all the Obligors (as defined in the Loan Agreement)", which I have reproduced at [10].[13] This was followed up on 10 November 2020 with, among others, the specific demand that the deed of rights be discharged, together with specific forms of release and discharge.[14]

15 There followed correspondence between solicitors that resulted in the release of the documents specifically listed as security documents but with parties unable to agree on the release of the deed of rights.[15]

Procedural history

16 In view of the disagreement over the release of the deed of rights, Quayside commenced these proceedings seeking a declaration that the deed of rights is not a security document under the loan agreement.

17 38 Degrees made a counterclaim seeking a declaration that the deed of rights be set aside on grounds of duress, undue influence and unconscionability.

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[12] PBOD Vol I, at p 63, Loan agreement cl 1.1.

[13] PBOD Vol I, at pp 14–15.

[14] PBOD Vol I, at pp 16–31.

[15] PBOD Vol I, at pp 32–55.

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18 Quayside applied to stay the counterclaim in favour of arbitration as the deed of rights contains an arbitration clause.[16] 38 Degrees applied to convert these proceedings into a writ action on the basis that there was likely to be a substantial dispute of facts.[17] Quayside was successful in staying the counterclaim, while 38 Degrees failed in its application for conversion, and I upheld these decisions on appeal.[18]

19 Consequently, the present originating summons is before me, to be determined on the affidavit evidence.

The parties' cases

20 Quayside contended that it is a straightforward matter of construction of the express terms of the loan agreement to determine that the deed of rights is not a security document.[19] Quayside also argued that the requirements for grant of a declaration are satisfied.[20]

21 38 Degrees in its written submissions took the view that:[21]

> … the only issue … that arises for determination …, if it can be done without reference to the contents of the Deed of Rights, is whether, based on an interpretation and/or true construction of the terms of the Loan Agreement, the Deed of Right is in fact a Security Document as that phrase is defined in the Loan Agreement.

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[16] HC/SUM 724/2021.

[17] HC/SUM 730/2021.

[18] HC/RA 99/2021 and HC/RA 100/2021.

[19] Plaintiff's Written Submissions dated 5 July 2021 ("PWS") at para 13.

[20] PWS at para 40.

[21] Defendant's Written Submissions dated 5 July 2021 ("DWS") at para 19.

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However, during oral arguments, counsel for 38 Degrees also contended that the question was academic and did not address the real dispute between parties.

Issues to be determined

22 I will consider the issues in the following order:

(a) whether the requirements for declaratory relief are met; and

(b) if so, whether on a true construction of the loan agreement the deed of rights is a security document as defined in it.

Issue 1: Requirements for declaratory relief

23 In *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112, the Court of Appeal set out at [14] the following requirements for the court to grant declaratory relief:

(a) the court must have the jurisdiction and power to award the remedy;

(b) the matter must be justiciable in the court;

(c) as a declaration is a discretionary remedy, it must be justified by the circumstances of the case;

(d) the plaintiff must have *locus standi* to bring the suit and there must be a real controversy for the court to resolve;

(e) any person whose interests might be affected by the declaration should be before the court; and

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(f) there must be some ambiguity or uncertainty about the issue in respect of which the declaration is asked for so that the court's determination would have the effect of laying such doubts to rest.

24 In *Singapore Shooting Association and others v Singapore Rifle Association* [2020] 1 SLR 395 at [121], the Court of Appeal, citing *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 at [72], recapitulated these requirements in terms of the following three propositions:

(a) the applicant must have a "real interest" in bringing the action;

(b) there must be a "real controversy" between the parties to the action for the court to resolve; and

(c) the declaration sought must relate to a right which is personal to the applicant and which is enforceable against an adverse party to the litigation.

25 38 Degrees' contention was that there was no real controversy between the parties, and that the determination whether the deed of rights was a security document as defined in the loan agreement was merely academic.

26 In large measure, counsel for 38 Degrees was repeating arguments previously pressed before me, when resisting the stay of 38 Degrees' counterclaim and seeking conversion into a writ, that the real dispute was whether the deed of rights was enforceable at all. The simple flaw in this argument is that while the enforceability of the deed may indeed also be in dispute, it is not the only dispute.

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27 The controversy at issue in this originating summons is whether 38 Degrees was entitled to require the release and discharge of the deed of rights upon full redemption of the loan. As I have described at [14] and [15] above, that is what they had demanded, and what Quayside had refused. 38 Degrees had expressly relied on the cl 8.3 of the loan agreement. Whether cl 8.3 applies to the deed of rights depends on whether it is a security document. If it is, then cl 8.3 applies and 38 Degrees may compel its discharge and release. If it is not, then cl 8.3 does not apply and 38 Degrees must seek relief elsewhere, including, for example, by the claim that the deed of rights is unenforceable because it was obtained by duress or fraud, a claim that it may pursue in arbitration.

28 I therefore conclude that, so long as 38 Degrees seeks the discharge and release of the deed of rights on the basis that the loan has been fully redeemed, then there is a real controversy before me, and this originating summons is not academic. I specifically reconfirmed with counsel for 38 Degrees during the oral arguments that he wanted me to hold that the deed of rights is a security document under the loan agreement. Immediately after saying that this was his position, he repeated his submission that there is no dispute for the court to adjudicate. I did not accept this submission.

29 Moreover, this dispute concerns the parties' respective rights and obligations under the loan agreement. It is to be decided by construction of the loan agreement.

Issue 2: True construction of the loan agreement

30 The principles relating to contractual interpretation are settled. They have recently been summarised by the Court of Appeal in *Kam Thai Leong Dennis v Asian Infrastructure Ltd* [2020] SGCA 87 at [29], as follows:

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(a) the starting point is to look to the text which the parties have used;

(b) the court may have regard to the relevant context so long as the relevant contextual points are clear, obvious and known by the parties;

(c) the court has regard to the relevant context to place itself in the best possible position to discern the parties' objective intentions by interpreting the expressions used by the parties in their proper context; and

(d) generally, the meaning ascribed to the terms of the contract must be one which the expressions used by the parties can reasonably bear.

Context

31 Before I turn to the text of the loan agreement, there is a difference between counsel on the relevant context that needs to be considered. This difference concerned whether context could include the contents of the deed of rights, given first that it contains an arbitration clause, and secondly that there was not even a draft of it shared between the parties as of 23 August 2018 when the loan agreement was signed.

32 Both prongs of 38 Degree's argument rest on the principle that any contextual points must be clear, obvious and known to both parties at the time of entry into the contract.[22]

33 Starting with the first prong, I agree that if the content or interpretation of a contract other than the one which is the subject of construction is disputed

[22] PWS at para 22; DWS at paras 23 and 41.

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and that dispute is subject to an arbitration clause, then the court cannot resolve the dispute so as to place reliance on one or other of the competing versions or interpretations of the other contract as part of the context for the contract being construed. There are two aspects to this negative proposition. First, the court may be unable to discern a clear and obvious contextual point known to both parties because of the dispute concerning the interpretation of that other contract. Secondly, while in appropriate cases, the court may be able to resolve that dispute itself, and decide for example that in truth both parties held one particular interpretation of the other contract at the material time such that the other contract so interpreted may be taken to form the relevant context, it may be precluded from doing so where the parties have agreed in the other contract that such disputes must be referred to arbitration. Even if done for the limited purpose of interpreting the contract properly before it, for the court to resolve a dispute over interpretation of a contract that is subject to arbitration would be to usurp the role of the arbitral tribunal to be appointed under that other contract. This follows from the principle of party autonomy, as discussed, for example, in the decision of the Court of Appeal in *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Sock Co)* [2020] 1 SLR 1158 at [75] and [78]. Even a decision by the court limited to interpreting the contract subject to arbitration for the purpose of considering it as a contextual point could raise an issue estoppel in any subsequent arbitration in relation to that other contract. I leave open the possibility that in appropriate cases the question, although involving another contract, could be framed purely as a matter of construction of the contract before the court.

34 In this case, however, the court does not need to resolve any disputed point of interpretation concerning the deed of rights in order to refer to it as part of the context. This is because counsel for 38 Degrees accepted that the deed of

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rights included provisions that survived full redemption of the loan. He confirmed that, on its face, cl 3 of the deed of rights continues in force after redemption of the loan. Clause 3 granted Quayside or its nominee a 40% economic interest in its business, with the percentage being reduced to 33% if the loan was fully redeemed within a stipulated period. The relevant parts read:[23]

> 3.1 Subject to Clause 3.2 below, [38 Degrees and the other parties] agree that [Quayside] or such entity nominated by [Quayside] from time to time (the "RB Representative") shall be entitled to 40% of the economic interest ("Economic Interest") in any and all establishment, operation and expansion of the Business in Singapore and any country outside of Singapore from the date of this Deed and in any manner whatsoever …
>
> 3.2 In the event the loan made pursuant to the Loan Agreement and all payments required to be paid to [Quayside] pursuant to the Loan Agreement have been fully repaid to [Quayside] within 20 months from the date of disbursement of such loan, [38 Degrees and the other parties] agree that Clause 3.1 shall apply *mutatis mutandis* save that the references to "40%" shall be "33%" instead.

35 Moreover, Mr Nicholson put before the court an email dated 6 September 2018[24] from Mr Jones to, among others, Mr Kishin, that impliedly admitted that the deed of rights would survive repayment of the loan. The subject of the email was "Rights Agreement" and the email was in response to the draft deed of rights. That the subject of the email was "Rights Agreement" while the attachment was the draft deed of rights shows that both expressions referred to the same thing. Mr Nicholson requested "that all parties agree that we will renegotiate this agreement to be somewhat less onerous and one-sided once we have repaid the loan to you". His reference to "this agreement" can only have been to the single document called at different points in the course of its coming into existence a rights agreement or a deed of rights. Requesting that it be renegotiated after repayment of the loan presupposes that he understood

[23] PBOD Vol I, at p 94.

[24] PBOD Vol IV, at p 1636.

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that it would not be released or discharged upon redemption of the loan, and would continue to have force and effect.

36 It is obvious that if the deed of rights expressly provides for its operation after redemption of the loan it could not be a security document that is subject to release and discharge upon redemption.

37 That explains counsel for 38 Degrees' concern to exclude consideration of the contents of the deed of rights. While he did not contend that it did not provide for survival post-redemption, he contended that as there was a dispute whether the deed of rights was obtained by duress or fraud that would be determined by the arbitral tribunal, I could not treat the presence of such provisions as a clear and obvious contextual point.

38 The flaw in this argument is that regardless of how the dispute concerning duress and fraud (or any other vitiating factor) is subsequently decided, this will not affect the question whether the provisions in the deed of rights were drafted to continue in force regardless of redemption of the loan. If 38 Degrees succeed in setting aside the deed of rights on those grounds, the deed of rights will not be enforceable. But success on those grounds will not mean that the deed of rights was released or discharged upon redemption of the loan by virtue of provisions in the loan agreement. They are entirely separate issues.

39 This leaves the second prong, that context must ordinarily be limited to the point in time when a contract is executed, even if it is subsequently dated later. It is obvious as a matter of logic, and is settled law, that the relevant context must be the background knowledge of the parties *at the time of the contract*: (see *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and*

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another appeal [2013] 4 SLR 193 at [33]–[34]; *Tuitiongenius Pte Ltd v Toh Yew Keat and another* [2021] 1 SLR 231 at [43]–[44]).

40 There is nonetheless an open question whether the time of the contract necessarily ends upon signing, or whether it could be said instead that the meeting of minds continues up until the later dating of the contract. The latter might be the case where there is a suite of documents to be executed, with the actual dates of signing by different parties dependent on practical considerations, and with a single later date chosen for the purpose of dating the documents as a whole. Whether this is the case in respect of any particular contract is a question of fact. As this is an originating summons for construction of a contract, where there is no cross-examination of witnesses, I prefer not to decide this point in respect of the loan agreement and instead proceed on the basis that any fact relied on as context must have existed at the earlier date of signature.

41 Turning then to what was clearly and obviously known by both parties when the loan agreement was signed on 23 August 2018, it was known and agreed that there would be a contract (described as a rights agreement) that would have to be executed before disbursement of the loan. It was also known that the rights agreement would include two aspects, namely the use of certain intellectual property owned or licensed by 38 Degrees or 1880 and the sharing of profits of 38 Degrees and 1880. Moreover, it was known by both parties that if Quayside did not find that document satisfactory in form and substance it would not disburse the loan.

42 This fact known to both parties does not depend on what was eventually agreed. It is unaffected by the dispute over whether what was eventually agreed was procured by fraud or duress. Consequently, it undoubtedly forms part of the

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relevant context. I will return to the significance of this description of the rights agreement contained in the loan agreement at [57] below.

Text

43 I turn now to the text of the loan agreement. Counsel for Quayside made a simple argument comprising two steps. First, the deed of rights is the same as the rights agreement that is described in the loan agreement and defined separately from the phrase "security documents". Secondly, the rights agreement is not listed as a security document.

44 Counsel for 38 Degrees does not deny that the list of security documents does not expressly include either the deed of rights or the rights agreement. Instead, he argues that the deed of rights comes within the general sweep up provision that is the last limb of the definition, namely "any other Security granted in favour of [Quayside] in connection with the Loan Agreement and/or the Facility Documents".[25]

45 However, he did not answer clearly whether in his submission the deed of rights was the rights agreement or a different document. By the end of oral arguments, I was still waiting to understand how if it was the same document by another name, it could be said that it was a security document. I also did not hear any argument that the deed of rights was something distinct from the rights agreement mentioned in the loan agreement.

46 In fact, Mr Nicholson had affirmed that the deed of rights flowed from the loan agreement's mention of rights agreement, although he described it as having "morphed" and containing "terms that were highly complex and highly

[25] DWS at paras 34–35.

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restrictive and vastly different from what [Mr Jones, Mr Nicholson and Mr Kishin] had discussed".[26]

47 Given Mr Nicholson's evidence, summarised by me at [35] and [46] above, together with the absence of any suggestion that there was any other document that answered the description of rights agreement, I hold that the deed of rights that was executed to fulfil the condition precedent under the loan agreement of what was described therein as the rights agreement. Both labels unsurprisingly refer to the same thing. Nor are the labels that dissimilar. A deed is an agreement under seal, while using the possessive preposition to qualify the word "rights" instead of just using the word "rights" on its own is a distinction without a difference.

48 It follows from a simple textual analysis of the loan agreement that the deed of rights is not a security document. If the rights agreement were intended to be a security document, it would have been listed as a security document so that it would be included within cl 8.3 as a document to be released or discharged upon full redemption. The rights agreement is specifically identified and defined on the same page as the definition of security documents. There is also no basis for placing it within the sweep up provision when it could so easily have been expressly listed.

49 I pause here to note that Mr Nicholson has specifically attested that the reference to the rights agreement in the loan agreement was only included in the execution version of the loan agreement, and so was not reviewed by their lawyer.[27] However, no argument was made to me relying on this evidence, and

[26] PBOD Vol I, at p 142.

[27] PBOD Vol I, at pp 134–136.

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at the earlier hearing before me on the applications for stay and conversion, I had specifically checked with counsel for 38 Degrees whether rectification was sought, and he had confirmed that only the question of construction was being raised.[28]

50 Notwithstanding my conclusion from the textual analysis, I also consider the argument that the deed of rights is within the sweep up provision. There is a preliminary point concerning whether this argument remained open to 38 Degrees given the position it took previously. When counsel for Quayside had said before the assistant registrar on the stay and conversion applications that 38 Degrees was not arguing that the deed of rights fell within the sweep up provision, counsel for 38 Degrees did not correct him.[29] While there was an elusive fluidity to 38 Degrees' contentions, I do not exclude it but consider it on its merits.

51 The argument requires finding that the deed of rights granted security in favour of Quayside in connection with the loan agreement. To do so, the court must once again consider the deed of rights. This time, it is to see whether it answers the description in the sweep up provision. Ironically, it is now 38 Degrees which is asking the court to look at what was eventually agreed.[30]

52 Counsel for 38 Degrees did not dispute that cl 3 of the deed of rights on its face survives redemption of the loan. His argument is a different one. His contention is that, regardless of what cl 3 of the deed of rights says, the deed of rights comes within "other security interest securing any obligation of any

[28] Notes of Evidence ("NE"), 26 April 2021, p 4, lines 14 to 17.

[29] NE, 31 March 2021 p 5, line 19 to p 6, line 22.

[30] DWS at para 40.

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person or any other agreement or arrangement having similar effect".[31] He contended that the rights granted to Quayside under the deed of rights are "security interests because they are not purely personal rights but identifiable and transferable rights of [38 Degrees]".[32]

53 This contention fails. That rights are not purely personal, and are identifiable and transferable, does not speak to whether they are being granted by way of security or absolutely. Security in connection with a loan means something provided by the borrower to which the lender may have recourse in case of default in repayment of the loan. Counsel for 38 Degrees did not suggest that the rights granted under the deed of rights were only for the purpose of recourse in case of default.

54 Even though arguments were put to me on 38 Degrees' behalf concerning the nature of the deed of rights, 38 Degrees also ran the argument that the court could not determine the nature of the deed of rights because of the presence in it of the arbitration clause. According to 38 Degrees, the arbitral tribunal must first determine the nature of the deed of rights before I may consider whether it matches the description in the sweep up provision.

55 This is the Gordian knot with which this judgment opened. Without quite putting it so bluntly, counsel for 38 Degrees effectively invited the court to admit defeat, and make no order on the originating summons until after the conclusion of any arbitration in relation to the deed of rights.

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[31] DWS at para 28.

[32] DWS at para 32.

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56 There is some force in 38 Degrees' contention. I can envisage situations where the nature of a contract is in dispute and for the same reasons I have referred to at [33] above, that dispute might have to be resolved first by the arbitration process chosen by the parties to that contract.

57 But that is not the situation here. In this matter, there is a simple answer that cuts through the Gordian knot. It is enough for the court to consider the description of the rights agreement contained in the loan agreement. The court need not look at the text of the deed of rights in order to construe the loan agreement. To recap, the description in the loan agreement is that the rights agreement will include provisions on use of intellectual property and profit sharing. While it does not say that the use of intellectual property and profit sharing will survive redemption, it also does not say that such use and profit sharing is by way of security. I hold that on an objective reading of the description the rights to be granted under the rights agreement were not by way of security but were to be granted absolutely, subject to such terms and conditions as might be satisfactory to Quayside. The description makes clear that the rights agreement was not intended to be security for the loan, but instead was part of the consideration for the loan. To put it simply, a lender is entitled to make his willingness to lend money conditional on the borrower doing something else, including giving the lender an enduring right to share profits in the borrower's business. That is how I interpret cl 5.1(b)(viii) of the loan agreement.

58 Thus, even if I exclude from consideration the deed of rights itself, on the assumption that a dispute has been raised in relation to its true nature that must be determined in accordance with the arbitration process agreed under it, I find on the true construction of the loan agreement that the rights agreement as described within it was not a security document. I further find that the deed

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of rights factually flowed from the rights agreement, and accordingly hold that the deed of rights is not a security document under the loan agreement.

Conclusion

59 I make the declaration sought that the deed of rights is not a security document as that phrase is defined in the loan agreement.

60 Quayside has succeeded. I award costs to Quayside on a standard basis, to be fixed by me if not agreed within 14 days.

Philip Jeyaretnam
Judicial Commissioner

Jaikanth Shankar, Tan Ruo Yu and Stella Ng Yu Xin (Davinder Singh Chambers LLC) for the plaintiff;
Narayanan Sreenivasan SC, Raja Bose and Tan Kai Ning Claire (K&L Gates Straits Law LLC) for the defendant.

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