

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

[2024] SGHC 268

Originating Claim No 857 of 2023

Between

Oan Chim Seng

... Claimant

And

Leong Kai Rui (Liang Kairui)

... Defendant

JUDGMENT

[Contract — Formation — Whether oral agreement was entered into]

[Contract — Formation — Terms of agreement]

[Contract — Misrepresentation]

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Oan Chim Seng
v
Leong Kai Rui (Liang Kairui)

[2024] SGHC 268

General Division of the High Court — Originating Claim No 857 of 2023
Kwek Mean Luck J
24 September, 21 October 2024

23 October 2024 Judgment reserved.

Kwek Mean Luck J:

Introduction

1 The Claimant, Mr Oan Chim Seng (“Oan”), claims that the Defendant, Mr Leong Kai Rui (“Leong”), made false representations to induce him to enter into an investment agreement with Leong, and that Leong breached the terms of the investment agreement. Pursuant to this, Oan claims the sum of \$4,700,524.24 from Leong.

Background Facts

2 Oan was acquainted with Leong through Oan's son-in-law, Mr Jerrold Phang ("Jerrold"). Jerrold's evidence is that in 2019, Leong shared some investment opportunities with him. Jerrold then arranged a meeting between Oan and Leong, for Leong to share this opportunity with Oan.

3 Around 8 November 2019, Oan met Leong together with Jerrold (“8 November Meeting”). Oan claims that at this meeting, Leong made certain verbal representations about the investment and Leong orally agreed to manage \$5m of Oan’s funds on the basis of certain terms of agreement (“Investment Agreement”).

4 A WhatsApp (“WA”) group named “Forex Trading [Account]: Oan” was set up by Jerrold on 8 November 2019, involving Oan, Leong and Jerrold.¹

5 On 9 November 2019, Leong sent Jerrold some WA messages (“9 November WA”). According to Oan, the oral terms of the Investment Agreement are evidenced in these messages.

6 Oan subsequently transferred \$5m to the account of Axicorp Limited (“Axicorp”) on 18 November 2019. Trades were conducted with monies from this account.

7 On or about June 2021, Oan made a withdrawal request from the account, for the sum of \$5m. He received \$299,475.76 on 11 June 2021.

8 Oan commenced the present suit, OC 857 of 2023, to recover the remaining sum of \$4,700,524.24. He claims on the basis of: (a) Leong’s breach of the terms of the Investment Agreement; and (b) misrepresentations made by Leong at the 8 November Meeting.

¹ Claimant’s Bundle of Documents filed on 10 September 2024 (“BOD”) at Tab 2.

Breach of Investment Agreement

Oan's Case

9 Oan's main claim is that an oral Investment Agreement was entered into during the 8 November Meeting, and Leong breached the terms of this agreement.

10 Legally, Oan relies on *ARS v ART and anor* [2015] SGHC 78 (“*ARS*”). There, Quentin Loh J (as he then was) distilled at [53] the following guiding principles on the proper approach for determining the existence of an oral agreement:

- (a) in ascertaining the existence of an oral agreement, the court will consider the relevant documentary evidence (such as written correspondence) and contemporaneous conduct of the parties at the material time;
- (b) where possible, the court should look first at the relevant documentary evidence;
- (c) the availability of relevant documentary evidence reduces the need to rely solely on the credibility of witnesses in order to ascertain if an oral agreement exists...

11 Oan's case is that the terms of the agreement are as follows:²

Investment Platform

- (a) The Defendant would create an account for The Claimant on the platform named “**AXI Trader**” (the “**Platform**”) and all investments would be carried out on the Platform;
- (b) The Claimant would execute a **Letter of Authority** in the Defendant's favour for the Defendant to conduct trades on the Claimant's behalf on the Platform, and the Claimant would only have access to a “viewing account” which would allow him to see what trades were being made on the Platform and the status of the account, but did not allow him to make any trades;

² Statement of Claim dated 13 December 2023 at [6].

Profit Sharing

- (c) Any profits earned from the Investment Funds would be shared between the Claimant and the Defendant (with the Claimant being entitled to **30%** of all profits and the Defendant being entitled to **70%** of all profits (“**Profit Sharing**”);
- (d) The profits would be calculated on every last day of the month, and the Defendant’s **70%** share of the profits will be paid on the **5th day of every month**;

Risk/Loss Management

- (e) The Defendant would ensure that the floating losses in relation to the trading activities would not exceed more than 30% of the total Investment Funds;
- (f) In the event that there are losses made in the course of the Defendant’s investments, the Defendant would be given **60 trading days** to restore the Investment Funds to their original value of **\$5,000,000.00** (the “**Recovery Period**”);
- (g) During the Recovery Period, the Claimant and the Defendant would not be entitled to Profit Sharing;
- (h) Should the Defendant be unable to restore the Investment Funds to their original value of **\$5,000,000.00** within the Recovery Period, the Defendant undertook to restore the Investment Funds to their original value of **\$5,000,000.00** at his own expense; and

Refund of Investment Funds

- (i) Should the Claimant wish to withdraw any amount of the Investment Funds, the Defendant would comply with such request within **45 trading days** (a “**Withdrawal Request**”), and make payment of the refund to the Claimant’s bank account.

[emphasis in original]

12 Oan submits that the documentary evidence supporting the existence of the oral Investment Agreement and its terms, is the 9 November WA sent by Leong to Jerrold. This states:³

³ Oan Chim Seng’s Affidavit of Evidence-in-Chief dated 26 June 2024 at pp 24-25.

[9/11/19, 16:20:40] Leong Kai Rui Hp Ns: Yo bro. **As per mentioned yesterday in the meet up.** Please keep this message private and confidential too. Cheers

1) **We have received the information from Mr Oan and we will proceed to create his personal trading account with the relevant brokerage firm.**

2) Upon completion of creation for trading account (2-4 working days), we will advise you on the procedure for funding from your bank account to your trading account.

3) Once funded in, we will guide you to download the application used to view the trading account for your reference.

[9/11/19, 16:29:54] Leong Kai Rui Hp Ns: The profit sharing offer as mentioned:

1) **The profit sharing based on equity: 30% to Mr Oan and 70% to us**

2) our 70% will be passed to us via cash notes only

3) we will calculate the profit based on every last month of the day. And profit will passed us on every 5th of the month. (Cash Notes only)

4) **Risk drawdown will be at 20% not exposing more than 30%**

4a) **In the event of risk exposed at mentioned, we will required maximum of 60 trading days to recover back to 100%**

4b) During the event of recovery in timeline, both parties will not received profit sharing based on equity.

4c) **After 60 trading days, if there any lapse of the fund. We will provide the "gapped" fund accordingly.**

5) In the event if Mr Oan would like to withdraw any amount of the based amount, we will required 45 trading days to liquidate back to his bank account.

[emphasis added]

13 Oan submits that this contemporaneous document is reliable as Leong sent this of his own volition just one day after the 8 November Meeting. Jerrold,

the recipient of this WA message, was also at the 8 November Meeting where the oral agreement was reached. He confirmed that the terms in the WA message accurately recounted the terms of the oral Investment Agreement.

14 Jerrold also repeated these terms to Leong in his WA message on 6 March 2020. Leong did not dispute the terms in the WA message.⁴

15 In respect of the key term in the Investment Agreement, *ie*, the term at [4] of the 9 November WA, Oan points out that there is a difference in the choice of words used by Leong for the recovery period and the restoration of funds:

- (a) Leong says at [4(a)] that “we will required maximum of 60 trading days to **recover** back to 100%” in relation to the recovery period. [emphasis added]
- (b) Leong then says at [4(c)] that “[a]fter 60 trading days, if there any lapse of the fund. We will **provide** the ‘gapped’ fund accordingly” in relation to the restoration of funds. [emphasis added]

16 Clearly, the parties intended for the recovery period and the restoration of funds to be different. The recovery period would be redundant if the parties’ intention were to continue trading as per normal to recover the “gapped” funds after the 60 trading days had passed.

17 In addition to documentary support from the 9 November WA, Leong’s conduct is also consistent with Oan’s case that Leong agreed to guarantee the capital under the Investment Agreement. Leong was the one who sent the 9

⁴ BOD at pp 40–41.

November WA containing the capital guarantee term. Leong had the opportunity to clarify or dispute its interpretation from the time he sent the WA on 9 November 2019 till when Oan brought his claim on 13 December 2023. However, Leong chose not to. In or about August 2023, Leong also agreed to enter into a loan agreement with Oan. This indicates that Leong effectively accepted responsibility for the trading losses.

18 In respect of Leong’s evidence, Oan submits that Leong is not a credible witness, as his testimony on the stand is inconsistent with his Affidavit of Evidence-in-Chief (“AEIC”). Notably, Leong’s concessions are consistent with Oan’s pleaded case.⁵

Leong’s defence

19 Leong stated the following in his AEIC.

20 As the account holder, Oan had full control over the trades that were conducted in his own account, as Oan retained the master password of the said account. Trades done by Leong were conducted with Oan’s express consent and through Oan’s grant of access to his trading account.⁶ Oan had at all material times full access to the account, which he could use in its entirety to make trades, withdraw funds and view the current state of accounts. Leong denied that Oan only had access to a “viewing account”.⁷

⁵ Oan’s Closing Submissions dated 8 October 2024 at [10]-[23].

⁶ Leong Kai Rui’s Affidavit of Evidence-in-Chief dated 26 June 2024 (“Leong AEIC”) at [9] and [12].

⁷ Leong AEIC at [18].

21 Oan would easily be an accredited investor under the Securities and Futures Act (“SFA”) by virtue of the size of the Axicorp investment alone. Oan would therefore have the financial appetite to appreciate the risks associated with such trades.

22 The draft terms that were sent between Leong and Jerrold were only suggestions of a potential investment agreement, which was only entered into orally in a subsequent meeting in November 2019.⁸ These draft terms also did not constitute a proper offer and acceptance, because they were conveyed by WA and were not signed.⁹

23 The meaning of “gapped” in the 9 November WA from Leong to Jerrold, was intended to mean that Leong will continue trading with the actual equity left in the account in an attempt to reach the original equity or the “gapped” amount. During this period, profit sharing will be paused. Leong had never intended to provide a personal guarantee of any loss of the funds in the course of trading.¹⁰

24 In Leong’s written submissions, he also highlights the case of *Xia Zheng v Lee King Anne* [2024] SGHC 253 (“*Xia Zheng*”), where the court noted at [134] that pure assertions made in pleadings or AEICs are insufficient to prove the existence of oral agreements where they are unsubstantiated by objective evidence.¹¹

⁸ Leong AEIC at [20].

⁹ 24 September Transcript p 71 lines 3-5.

¹⁰ Leong AEIC at [21].

¹¹ Leong’s Closing Submissions dated 8 October 2024 at [7].

Leong's evidence at the trial

25 During the trial, Leong admitted to the following evidence, several of which are materially different from the positions he took in his AEIC and directly support Oan's pleaded case:

- (a) Leong met Oan on 8 November 2019. There:
 - (i) Leong represented to Oan that he was an experienced forex trader and that Oan could rely on him;¹²
 - (ii) they agreed that Oan would create a personal trading account;¹³ and
 - (iii) they agreed that on completion of the creation of the trading account, Oan would be advised on the procedure for funding the trading account.¹⁴
- (b) Leong was aware that an accredited investor simply means someone who earns beyond a certain salary scale or has certain amount of liquid assets for investment, and that just because someone is an accredited investor, it does not mean that he is experienced in trading. Oan relied on Leong because of his experience in carrying out the trades.¹⁵
- (c) Leong gave instructions on 8 November 2019 to someone to help open Oan's trading account.¹⁶

¹² 24 September Transcript p 49 lines 4-11.

¹³ 24 September Transcript p 59 lines 3-9.

¹⁴ 24 September Transcript p 59 line 3 to p 60 line 1.

¹⁵ 24 September Transcript p 48 lines 3-17.

¹⁶ 24 September Transcript p 79 lines 8-22; p 99 lines 15-18.

- (d) Leong was controlling Oan's trading account and the password generation for the trading account.¹⁷
- (e) Leong changed the password from time to time. When he changed the password, Oan could not access the account. Jerrold had to ask Leong for the updated password.¹⁸ This is inconsistent with Leong's initial position that Oan had at all times full and unrestricted access to the account.¹⁹
- (f) Leong was the one that did the trading for Oan's trading account, not Oan.²⁰ This is inconsistent with Leong's initial evidence that only Oan could trade in his own account²¹ and that Oan conducted various trades in foreign currencies.²²
- (g) Leong did not check with Oan for approval first before executing a specific trade. He would trade first and update Oan at the end of the month as to how much was made.²³
- (h) In the first six months after Oan opened his trading account, there were profits of about \$3m. Leong took 70% of the profits, which is about \$2.1m. He gave 5% of this \$2.1m to Jerrold.²⁴ This is consistent with Oan's pleaded case that Leong was entitled to 70% of the profits under the Investment Agreement. Leong

¹⁷ 24 September Transcript p 89 line 2 to p 90 line 3; p 91 line 1-19.

¹⁸ 24 September Transcript p 100 lines 3-17.

¹⁹ Defence dated 23 January 2024 at [11] and Leong AEIC at [18].

²⁰ 24 September Transcript p 52 lines 7-17.

²¹ Leong AEIC at [12].

²² Leong AEIC at [13].

²³ 24 September Transcript p 80 line 19 to p 81 line 8.

²⁴ 24 September Transcript p 53 line 13 to p 54 line 2.

testified on the stand that the sums received were gifts, which Leong accepts was not in his AEIC.²⁵

- (i) By about August 2020, there was about \$3.5m in the trading account. It is possible that by November 2020, Leong had lost \$3.2m from trading.²⁶ According to Leong, this was due to “market phenomenon” and the “market just dropped”.²⁷ He did not inform Oan about these losses.²⁸
- (j) There was eventually only \$299,475.76 left in Oan’s trading account.²⁹
- (k) When Leong used “we” in the 9 November WA for the sentence “[w]e will provide the ‘gapped’ fund accordingly”, this referred to Leong.³⁰

Decision

26 The following facts are not in dispute:

- (a) Oan and Jerrold met Leong on 8 November 2019. Jerrold set up a WhatsApp group named “Forex Trading [Account]: Oan” on 8 November 2019, involving the three of them.
- (b) Leong had a meeting with Oan where they reached an oral agreement relating to Oan’s investment of \$5m. This sum was

²⁵ 24 September Transcript p 73 lines 1–9.

²⁶ 24 September Transcript p 97 lines 8-12.

²⁷ 24 September Transcript p 94 line 23 to p 95 line 11.

²⁸ 24 September Transcript p 95 lines 11-13; p 97 line 13 to p 98 line 8.

²⁹ 24 September Transcript p 94 lines 18-22.

³⁰ 24 September Transcript p 64 lines 6-15.

then transferred into the Axicorp account. Leong assisted Oan in setting up this account. Trades were made using monies from this account.

- (c) Leong conducted all the trades on Oan's behalf. He gave monthly updates to Oan.
- (d) There were occasions when Leong changed the password to Oan's account. When this happened, Oan could not access the account. Jerrold had to approach Leong for the new passwords.
- (e) The terms conveyed by Leong in the 9 November WA to Jerrold were in relation to this investment by Oan, although parties dispute whether the 9 November WA was conveyed after the Investment Agreement was reached or prior to such agreement.
- (f) After the first six months of trading, Oan took 70% or about \$2.1m, out of \$3m of trading profits made from Oan's account. This is consistent with one of the terms in the alleged Investment Agreement, which entitles Leong to 70% of the trading profit.

27 I will begin by addressing the following submissions from Leong, which in my view, have absolutely no merit:

- (a) Leong states that Oan would qualify as an accredited investor under the SFA and would thus: (i) be able to exercise his own judgment in arriving at a decision to enter into any potential investment scheme,³¹ and (ii) have the financial appetite to appreciate the risks involved in

³¹ Leong AEIC at [7].

such trades.³² However, the definition of an accredited investor under the SFA takes into account the size of an individual's assets or income, and has no bearing on that individual's trading experience or knowledge. Leong acknowledged this on the stand.³³

(b) Leong cites the Deed of Arrangement ("Deed"), which contains a capital guarantee clause. Oan had prepared this for Leong to acknowledge his liabilities. Leong emphasizes that he did not sign or agree to the Deed.³⁴ However, Oan is not relying on the Deed to advance his claim. Hence, it is not material that Leong did not agree to the Deed.

(c) Leong contends that Oan's monies were not transferred to him but to Axicorp.³⁵ This is not disputed. However, Oan's claim is not based on Leong receiving the monies himself, but on Leong promising to provide capital guarantee in the event of losses from trading. Notably, the evidence is that: (a) such trading was carried out by Leong himself, (b) Leong would be entitled to 70% of the trading profits on the alleged terms in the Investment Agreement; and (c) Leong did take 70% of the profit from the first six months of trading, in the amount of \$2.1m.

(d) Leong cites the exclusion of liability clauses in the terms and conditions governing the account with Axicorp.³⁶ However, this is not relevant to Oan's claim, since he is not proceeding against Axicorp. Neither is Leong able to rely on the terms of Oan's agreement with

³² Leong AEIC at [14].

³³ 24 September Transcript p 48 lines 3-11.

³⁴ Leong AEIC at [22].

³⁵ Leong AEIC at [8]-[9].

³⁶ Leong AEIC at [14]-[15].

Axicorp, as part of his defence against Oan's claim based on their own and separate Investment Agreement.

28 The main issue in Oan's claim for breach of the Investment Agreement, is thus the interpretation of what Leong meant when he conveyed to Oan in the 9 November WA, that “[a]fter 60 trading days, if there any lapse of the fund. We will provide the ‘gapped’ fund accordingly”.

29 This raises the following sub-issues:

- (a) First, whether the oral Investment Agreement was reached at the 8 November Meeting, such that the contents of the 9 November WA serve as evidence of the terms of the oral agreement.
- (b) Whether it is material that the 9 November WA was sent by Leong to Jerrold, and not directly to Oan.
- (c) What is meant by Leong's promise in the 9 November WA at clause 4(c) that “[w]e will provide the ‘gapped’ fund accordingly”.

30 I will deal first with whether oral agreement on the Investment Agreement was reached at the 8 November Meeting or at a later meeting.

- (a) Leong submits that Oan's allegations regarding the terms of the oral agreement are unsubstantiated and that Oan has insufficient proof, citing *Xia Zheng*. Leong's case is that the 9 November WA was, at that stage, only suggestions of the terms of a potential investment agreement. The agreement was only entered into subsequently, in a later meeting in November 2019.³⁷

³⁷ Leong AEIC at [20].

(b) Oan on the other hand relies on *ARS* at [53], where the court held that when ascertaining the existence of an oral agreement, where possible, the court should look first at relevant documentary evidence. If the oral agreement was reached on 8 November 2019, then the 9 November WA would serve as evidence of the terms agreed to orally at the 8 November Meeting.

31 I find that oral agreement on the Investment Agreement was reached at the 8 November Meeting. This is supported by:

(a) Leong's own admission that at the 8 November Meeting, Leong and Oan agreed that Oan would create a personal trading account, and on completion of the creation of the trading account, Leong would arrange for Oan to be advised on the procedure for funding the account.³⁸

(b) The 9 November WA starts with Leong saying “[a]s per mentioned yesterday in the meet up”. This would be a reference to the 8 November Meeting. The WA states that Leong has received the information from Oan and will proceed to create Oan's trading account. In other words, there was sufficient agreement at the 8 November Meeting for Leong to take these steps.

(c) There is a WA showing that Leong had already added someone else to the WA group “Forex Trading [Account]: Oan” and given instructions to that person on 8 November 2019 to open Oan's trading account.³⁹ He would have no reason to do so, if no agreement on the investment had been reached by then.

³⁸ 24 September Transcript p 59 line 3 to p 60 line 1.

³⁹ BOD at p 107.

32 Leong's position is also undermined by the lack of specificity about when the alleged subsequent meeting took place, and the lack of explanation as to why he took active steps to create Oan's trading account on 8 November 2019, if as he claims, no agreement had yet been reached.

33 Consequently, I find that the terms conveyed by Leong in the 9 November WA, serve as evidence of the terms of the Investment Agreement reached orally on 8 November 2019.

34 Second, I find that the fact that the 9 November WA was sent by Leong to Jerrold and not to Oan, does not affect the reliability or weight of the WA message, as evidence of the terms of the oral Investment Agreement reached on 8 November 2019, for the following reasons:

- (a) It is undisputed that Jerrold had been serving as the intermediary between Oan and Leong. He was the party who is acquainted with Leong and who introduced Leong to Oan regarding the investment opportunity.
- (b) The WA messages are not relied on by Oan to prove that an agreement was reached via the 9 November WA (between Oan and Leong). Hence, it does not go to the issue of whether they properly constitute offer and acceptance, which was one of Leong's earlier contentions. Rather, the 9 November WA is relied on to serve as evidence of the terms of an oral Investment Agreement that was already reached at the 8 November Meeting.
- (c) Leong himself took steps that are consistent with the terms conveyed by him to Jerrold in the 9 November WA. He proceeded to activate Oan's trading account. He also took a 70%

share of the profits from the trading done in the first six months through Oan's trading account, in line with the profit-sharing arrangement he indicated in the 9 November WA.

(d) At the hearing of Oan's application for summary judgment in Summons 496 of 2024 ("SUM 496"), counsel for Leong did not disagree that the 9 November WA, is the best evidence of what was in fact agreed between Oan and Leong.⁴⁰

35 Third, I accept Oan's interpretation of the phrase "if there any lapse of the fund. We will provide the 'gapped' fund accordingly", set out in the 9 November WA, and reject Leong's interpretation of this phrase. The key extracts of the WA are set out below:

...

- 4) Risk drawdown will be at 20% not exposing more than 30%
- 4a) In the event of risk exposed at mentioned, we will required maximum of 60 trading days to recover back to 100%
- 4b) During the event of recovery in timeline, both parties will not received profit sharing based on equity.
- 4c) After 60 trading days, **if there any lapse of the fund. We will provide the "gapped" fund accordingly.**

[emphasis added]

36 The learned Assistant Registrar hearing SUM 496 noted that Leong had been inconsistent with respect to the interpretation of "gapped". At the first hearing of the application for summary judgment, Leong stated that he had forgotten what he meant in the message. After being directed to file a supplementary affidavit, he stated that he was able to remember the meaning of "gapped".

⁴⁰ SUM 496 Transcript at p 4 ln 9-19.

37 Leong's explanation is that "gapped" means that he will continue trading with the actual equity left in the account in an attempt to reach the original equity or the "gapped" amount. He said:⁴¹

The meaning of "gapped" in the WhatsApp message was intended to mean that I will continue trading with the actual equity left in the account in an attempt to reach the original equity or the "gapped" amount ... The purpose of this term was to provide a mechanism to recover "gapped" funds by way of continuing to trade with equity left in the account. Any recovery of the "gapped" funds by continuing to trade with the equity in the account would accordingly be provided to the Claimant.

38 I find Oan's interpretation of "gapped" to be far more credible and coherent than Leong's, for the following reasons:

- (a) Leong's explanation of "gapped" relates to what cl 4(a) of the 9 November WA refers to. Oan describes this as the "recovery mechanism". If Leong's interpretation is accepted, it would mean that the cl 4(a) which he had communicated to Oan, would be otiose.
- (b) On the other hand, Oan's case is that since under their arrangement, Leong was entitled to 70% of the profits without having to provide any capital, it would not have made sense for Oan to enter into the investment without some other form of benefit, which was the capital protection offered by Leong. I find this to be more credible and believable. It also coheres more with the nature of the Investment Agreement and the language of cl 4(a) and 4(c).

⁴¹ Leong AEIC at [21].

39 I also find Oan's evidence on the other aspects of the investment to be far more credible and consistent than Leong's. For example:

(a) Oan testified that Leong was trading on his behalf. Leong denied this in his AEIC.

(i) However, Leong himself admits in his AEIC that he trades for Oan with the remaining equity to reach the original equity position.⁴² There are also WA messages between Leong and Jerrold, where Jerrold is asking Leong for progress updates on the investment.⁴³ This would not be necessary if Oan was doing his own trades.

(ii) Leong subsequently admitted during cross-examination that he conducted all the trades for Oan.

(b) Oan testifies that he only had a viewing account. Leong denied this. Oan provided screenshots of a new account opened on the Platform. The screenshots do not show any ability to trade.⁴⁴ Leong did not provide any counter evidence.

(c) Oan testifies that he did not have full control of the Axicorp account because he had to constantly, through Jerrold, ask for the password to the account. Leong denied this in his AEIC.

(i) However, there are WA messages between Jerrold and Leong, where Jerrold is asking for the password from Leong.⁴⁵

⁴² Leong AEIC at [21].

⁴³ BOD at pp 42, 89, 99, 101,105.

⁴⁴ BOD at pp 232-234.

⁴⁵ BOD at pp 26, 36, 45, 50, 56, 60-61.

(ii) Leong subsequently admitted on the stand, that he controlled Oan's trading account, that Oan could not access the account when Leong changed the password and that Jerrold had to ask him from time to time for the password.

40 Therefore, assessing the evidence on the whole, I find that:

- (a) The terms communicated by Leong to Jerrold via the 9 November WA, evidence the terms of the oral agreement reached by Leong and Oan at the 8 November Meeting, regarding the Investment Agreement.
- (b) By the term “[w]e will provide the ‘gapped’ fund accordingly”, Leong had agreed that if there was still a gap after 60 days of trading by Leong, between the actual equity and the original equity invested by Oan, Leong would provide the difference.

41 Consequently, I hold that Leong is obliged under the terms of the Investment Agreement, to provide the difference between the \$5m invested and the actual equity position. Leong accepted that the actual equity position was \$299,475.76. He is therefore obliged to return to Oan the difference between this sum and the \$5m invested, which is the sum of \$4,700,524.24. I therefore allow Oan's claim against Leong for this sum.

Misrepresentation

42 As Oan has succeeded on his main claim, he does not need to rely on his alternative claim based on misrepresentation. I would only briefly state the following for completeness.

43 A claim for misrepresentation requires the satisfaction of various elements, which differ slightly depending on the type of misrepresentation proceeded on. Nevertheless, a common foundation stone for misrepresentation claims, is the finding that the alleged representations were indeed made.

44 Oan's case is that Leong made two representations at the 8 November Meeting which were false, namely: (a) Leong and his investment scheme were backed by a CMS licensed company (i.e. a company holding a Capital Markets Services Licence); and (b) Leong's investment opportunities were also backed by an entity known as Prime Asia Asset Management ("Prime").

45 Leong denies that he made such representations at the meeting.

46 The burden of proof is on Oan, to prove that such representations were made. Jerrold, who was at the meeting, testifies that Leong made these representations. However, Oan does not have any other evidence to support his case, beyond his and his son-in-law's bare claims.

47 Oan refers to a WA exchange Jerrold had with Leong on 25 November 2019, where Jerrold asks him whether his company is registered under the Monetary Authority of Singapore ("MAS"). Leong replies that he has two companies, and that both are registered under MAS, one of which "is CMS".⁴⁶

48 I do not find that this WA exchange supports Oan's case that Leong represented to him that his investment would be backed by a CMS licensed company:

⁴⁶ BOD at pp 15-16.

- (a) This WA exchange took place on 25 November 2019, several weeks *after* the alleged representations were made on 8 November 2019.
- (b) In this WA, Leong was only stating that one of his companies “is CMS”. This is not directly related to whether Oan’s investment would be backed by a CMS licensed company.
- (c) The nature of Jerrold’s question in the WA suggests that he was unaware if Leong’s company was a CMS licensed company. It is unlikely that Jerrold would have needed to make this query on 25 November 2019, if indeed Leong had represented on 8 November 2019 that Oan’s investment would be backed by a CMS licenced company. This is particularly since Oan’s case is that he relied on this representation.

49 In relation to the alleged representation that Leong’s investment opportunities were backed by Prime, Oan refers to a WA exchange between Leong and Jerrold, where Prime was mentioned.⁴⁷ However, Prime was mentioned here in a completely different context. Leong was referring to a presentation deck on “Finamatrix”, which is managed and backed by Prime. Counsel for Oan also acknowledged during the trial that this may not be linked to the deal at hand.⁴⁸

50 Therefore, beyond the bare claims of Oan and Jerrold, there is no other evidence that suggests or supports Oan’s claim that the alleged representations were made.

⁴⁷ BOD at 40.

⁴⁸ 24 September Transcript p 49 line 15 to p 50 line 16.

51 Oan suggests that it would be illogical for him to enter into the investment, where he provided the capital and allowed Leong 70% of the trading profits, without any safeguard, and that such safeguard was Leong's representation that the investment was backed by CMS or Prime. However, it is also Oan's case in relation to his claim pursuant to the Investment Agreement, that clause 4(c) of the 9 November WA regarding the provision of "gapped" fund, is effectively a capital guarantee clause and that this was a safeguard that he relied on.

52 In addition, while I have found Oan to be a more credible witness compared to Leong in relation to the conduct of the investment and its terms, this is insufficient. There is no basis to similarly find Leong lacking in credibility with respect to his denial of the alleged representations.

53 Weighing the evidence on the whole, I find that Oan has not satisfied his burden of proof that the alleged representations were made. I would therefore have dismissed his alternative claim based on misrepresentation.

Conclusion

54 For the reasons stated above, I find that Leong has breached the terms of the Investment Agreement and Oan is entitled to his claim of \$4,700,524.24 against Leong. Oan is entitled to interest on this sum at the rate of 5.33% per annum pursuant to s 12 of the Civil Law Act, starting from the date of the filing of this claim, that is 13 December 2023. If parties are unable to agree on costs,

they are to file written submissions on costs, of not more than seven pages, within a week of this Judgment.

Kwek Mean Luck
Judge of the High Court

Lam Kuet Keng Steven John (Templars Law LLC) for the claimant;
Leong Kai Rui (Liang Kairui) the defendant in-person.
