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

[2026] SGHC(A) 10

Appellate Division / Civil Appeal Nos 98 and 99 of 2025

Between

(1) Chan Swee Lean
(2) Two Buffalo Pte Ltd

… *Appellants*

And

LLS Capital Pte Ltd

… *Respondent*

In the matter of Originating Application No 1177 of 2024 (Summonses Nos 1733 and 2095 of 2025)

Between

LLS Capital Pte Ltd

… *Claimant*

And

(1) Chan Swee Lean
(2) Two Buffalo Pte Ltd

… *Defendants*

Version No 1: 16 Apr 2026 (14:45 hrs)

JUDGMENT

[Credit and Security — Money and moneylenders — Illegal moneylending]
[Civil Procedure — Appeals]
[Abuse of Process — *Henderson v Henderson* doctrine]

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Chan Swee Lean and another
v
LLS Capital Pte Ltd and another appeal

[2026] SGHC(A) 10

Appellate Division of the High Court — Civil Appeal Nos 98 and 99 of 2025
Debbie Ong Siew Ling JAD and See Kee Oon JAD
26 January 2026

16 April 2026

See Kee Oon JAD (delivering the judgment of the court):

Introduction

1 The underlying dispute leading to the present appeals is HC/OA 1177/2024 ("OA 1177") which concerned a loan of about $2.8m ("Loan") which the respondent, LLS Capital Pte Ltd ("LLS") had extended to the second appellant, Two Buffalo Pte Ltd ("TB"). The first appellant, Dr Chan Swee Lean ("Dr Chan"), was the guarantor under the agreement for the Loan between LLS and TB ("Loan Agreement"). The Loan had been further secured by way of a mortgage over a residential property at 1 Holland Avenue ("Property") which Dr Chan owned.

2 As a result of TB's default on its payment obligations under the Loan Agreement, LLS eventually took possession of the Property and proceeded to put the Property up for sale. However, the appellants later obtained an *ex parte*

interim injunction restraining LLS from completing the sale of the Property ("Injunction"). The appellants alleged that the Loan Agreement was illegal as it was in contravention of the Moneylenders Act 2008 (2020 Rev Ed) ("MLA").

3 The present appeals arise from decisions of a Judge of the General Division of the High Court ("Judge") rejecting the appellants' claims of illegality. For the reasons set out below, we dismiss the appeals.

Background facts and procedural history

4 The detailed background facts may be found in *LLS Capital Pte Ltd v Chan Swee Lean* [2025] SGHC 194 ("Judgment"). For present purposes, we outline the salient facts and the procedural history as these are pertinent to our decision to dismiss the appeals.

The loans

5 Mr Wong Kee Chet ("Mr Wong") and Dr Chan are "business associates". In early 2022, Mr Wong secured Dr Chan's agreement to assist in obtaining a loan for his business, MKY Capital Pte Ltd ("MKY"). On 30 March 2022, she entered into a loan agreement with VM Credit Pte Ltd ("VM Credit") to borrow $2.2m ("VM Credit Loan"), secured by way of a mortgage over the Property. Around March 2024, VM Credit started pressuring Dr Chan to repay this loan. Dr Chan sought Mr Wong's assistance to find another creditor to refinance the VM Credit Loan. He then put her in touch with Mr Kenneth Yeo Junyu ("Mr Yeo"), a manager of LLS.

6 According to LLS, Dr Chan first provided to Mr Yeo a signed "Business Proposal" indicating her intent to do "business consultancy". On 8 March 2024, Dr Chan purchased TB from Mr Yeo for $5,000 through a sale

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and purchase agreement ("SPA"), after which she became the sole shareholder and director of TB. On 13 March 2024, Dr Chan obtained a Deed of Indemnity ("DOI") from Mr Yeo as she was concerned about any potential outstanding liabilities which TB might have previously incurred. The DOI was prepared and signed in the presence of Dr Chan's lawyer. That same day, following a Letter of Offer issued by LLS the previous day, LLS and TB entered into the Loan Agreement. This comprised two loan sums of $2.7m and $100,000. Dr Chan also made a statutory declaration ("SD") declaring that "the loan is obtained solely for the business use of Two Buffalo Pte Ltd and not for any other purpose(s)".

7 Dr Chan's account differed considerably from that of LLS. She claimed that she was instructed by Mr Yeo to acquire TB (of which he was a director at the time) so that LLS could extend a personal loan to her in circumvention of the MLA. In relation to the various documents set out above, Dr Chan's evidence followed a similar pattern. While the signatures appeared genuine (at least in the case of the DOI and the SD), she did not recall signing the documents. As she did not have copies of the documents, she could not disclose them when applying for the Injunction. She believes that the SPA and SD had been given to her by Mr Yeo to sign, and while she did receive a draft of the Business Proposal from Mr Wong in early March 2024, she would only have signed it because LLS required it. Additionally, she was unable to read the documents properly when signing them as she had just undergone two successive cataract surgeries on 27 February and 7 March 2024.

8 The following facts are not disputed. Dr Chan entered into the Loan Agreement, after which LLS's solicitors handed to VM Credit's solicitors a cashier's order of $2,667,977.68 to redeem the VM Credit Loan (*ie*, the original $2.2m loaned plus interest). $70,505 was deducted upfront by LLS as brokerage

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and processing fees. Of the remaining $61,517.32, Dr Chan allowed Mr Wong to withdraw $61,400 for his or MKY's use, while she withdrew the remaining sum of $117.32 for herself. Dr Chan then sought Mr Yeo's help to close TB's corporate account to avoid paying the administrative charge for maintaining the account below the minimum balance.

9 TB defaulted on the Loan repayments soon after the Loan was disbursed. As of 6 November 2024, $3,309,677.82 remained due under the Loan, with the amount in arrears totalling $169,250 and rising.

The proceedings below

10 On 11 November 2024, LLS filed OA 1177, seeking delivery of possession of the Property. Dr Chan filed an affidavit on 31 December 2024 indicating that repayment of the Loan would soon be made. However, this did not occur. On 20 January 2025, the assistant registrar granted an order in terms for OA 1177 after counsel for the appellants confirmed that they were not contesting the application (save as to the issue of costs). The corresponding order, HC/ORC 619/2025 ("ORC 619", or the "Order for Possession") was extracted on 4 February 2025.

11 On 11 June 2025, two days before completion of the sale of the Property, the appellants filed HC/SUM 1629/2025 ("SUM 1629") *ex parte* and obtained the Injunction on 12 June 2025. The appellants alleged that the Loan Agreement was illegal as it was an attempt to circumvent the MLA. They claimed that the illegality had only been brought to their counsel's attention on 24 May 2025. Dr Chan explained that she had not informed her lawyers about the facts surrounding the alleged illegality earlier as she was unaware of their relevance.

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12 Pursuant to a direction by the Judge at the hearing of SUM 1629, the appellants filed HC/SUM 1733/2025 ("SUM 1733") on 20 June 2025, in which they sought, amongst others, the following orders:

(a) that the Order for Possession be set aside, and OA 1177 be converted to an Originating Claim ("Possession Order Setting Aside Application"); or

(b) alternatively, that an extension of time be granted to the appellants to file and serve a notice of appeal against the decision to grant the Order for Possession.

13 On 28 July 2025, LLS filed HC/SUM 2095/2025 ("SUM 2095", or the "Injunction Setting Aside Application") seeking to set aside the Injunction.

14 On 1 September 2025, the Judge heard both SUM 1733 and SUM 2095. On 30 September 2025, the Judge delivered the Judgment and made various orders, with the salient ones being as follows:

(a) SUM 1733, comprising the Possession Order Setting Aside Application and the application for extension of time to file an appeal against the grant of the Order for Possession (see [12(a)] and [12(b)] above), was dismissed.

(b) SUM 2095 (the Injunction Setting Aside Application) was allowed.

(c) The appellants were to pay LLS interest on the balance sale price calculated from the contracted date of completion (of the sale of the Property) to the actual date of completion, at a rate of 5.33% per annum on such sum to be paid from the fortification paid into court

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(the "Interest Order"). This reflected the fact that the Injunction had delayed the sale of the Property.

(d) There was to be an enquiry as to damages suffered by LLS on account of the Injunction, together with interest thereon at the rate of 5.33% per annum to be paid from the fortification paid into court.

15 The Judge's key finding was that the appellants' arguments on illegality were not made out (Judgment at [3]). The appellants then filed the present appeals and also an application for permission to appeal as follows:

(a) AD/CA 98/2025 ("AD 98"): an appeal against the Interest Order (see [14(c)] above).

(b) AD/CA 99/2025 ("AD 99"): an appeal against the whole of the Judge's decision in SUM 1733 – *ie,* the decision to dismiss both the Possession Order Setting Aside Application and the application for an extension of time to file an appeal against the grant of the Order for Possession (see [14(a)] above).

(c) AD/OA 41/2025 ("OA 41"): an application for permission to appeal against the Judge's decision denying an extension of time to appeal against the Order for Possession (see [12(b)] and [14(a)] above).

16 In response, LLS filed striking-out applications in respect of AD 98 and AD 99 in AD/SUM 48/2025 ("SUM 48") and AD/SUM 49/2025 ("SUM 49") respectively, principally on the basis that permission to appeal was required in respect of both appeals, such that the appellants' failure to obtain the same was fatal to the appeals. In SUM 49, LLS further contended that the notice of appeal in AD 99 was technically irregular.

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17 On 26 December 2025, this court dismissed SUM 48, SUM 49 and OA 41. The court held that permission to appeal was not required in respect of AD 98 and AD 99 as they did not concern interlocutory orders within the meaning of s 29A read with para 3(*l*) of the Fifth Schedule of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA"). As for OA 41, permission to appeal was not granted as we found no *prima facie* errors of law or fact in the Judge's determination.

The appeals

The parties' arguments on appeal

18 In AD 98, the appellants appeal against the grant of the Interest Order, which they assert had "no apparent legal basis" since it had not been provided for in either the Loan Agreement or ORC 619. No evidence had been tendered of the alleged sale of the Property or the terms of the sale. Additionally, LLS had not made legal submissions justifying the Interest Order.

19 LLS contends that the Interest Order was a discretionary order made to compensate LLS for the wrongful Injunction, and the Judge had contemplated losses arising from the Injunction when he ordered fortification. LLS further points out that the appellants had never challenged the existence of the sale or its terms – they had applied for the Injunction precisely because a sale was about to take place, and the amount of fortification had been fixed by reference to the sale price.

20 In AD 99, the appellants' arguments centre on the question of whether the Judge had correctly determined that the Loan Agreement was enforceable. The appellants contend as they did below that the Loan was disguised as a personal loan to Dr Chan, and the Loan Agreement was therefore a sham

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agreement which is void and/or unenforceable under the MLA (the "Illegality Argument"). Amongst other things:

(a) the appellants point to alleged discrepancies in the loan documents to support their view that the Loan was a sham;

(b) they also challenge the Judge's finding that the Loan could not have been a *personal* loan as it was for *MKY's* benefit – the appellants stress that it was Dr Chan who would have to bear any consequences of the Loan remaining unpaid;

(c) the appellants submit that an adverse inference should have been drawn against LLS for failing to adduce an affidavit from Mr Yeo to rebut the allegations against him; and

(d) it would shock the conscience of the court to allow an illegal contract to be enforced.

21 Additionally, the appellants seek to appeal against the Judge's decision denying them an extension of time to appeal against the Order for Possession.

22 In response, LLS submits that the Judge's decision not to set aside the Order for Possession was inherently discretionary and should not be readily overturned. The Loan was for MKY's benefit and the Judge had not erred in finding that the Loan was not illegal. Additionally, the Judge had correctly dismissed SUM 1733 on procedural grounds for being an abuse of process. The appellants had filed SUM 1733 very belatedly and should not be allowed to re-litigate OA 1177.

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23 On the prayer for an extension of time, LLS argues that this point has already been foreclosed by this court's dismissal of OA 41, being the appellants' application for permission to appeal against the Judge's decision not to grant an extension of time to appeal against the Order for Possession.

Our decision

24 We shall address the other ancillary arguments raised in AD 98 and AD 99 before turning to deal with the Illegality Argument.

AD 98 – the Interest Order

25 In relation to AD 98, we are of the view that the appellants' contentions have no merit. The Interest Order was well within the Judge's discretionary powers to order damages for the Injunction, and appears conceptually sound. We agree with LLS that damages in this case would naturally arise from the loss of use of funds which LLS would have received earlier but for the Injunction: *Astro Nusantara International BV v PT Ayunda Prima Mitra* [2016] 2 SLR 737 at [41] (in the context of a Mareva injunction); and that interest on the loss of use of funds is typically awarded at the rate of 5.33% per annum: *Ethoz Capital Ltd v Im8ex Pte Ltd* [2022] SGHC 12 at [99] (appeal allowed in part in *Ethoz Capital Ltd v Im8ex Pte Ltd* [2023] 1 SLR 922 on unrelated grounds). In any case, the appellants were not taken by surprise in view of the following considerations:

(a) In her initial affidavit filed in support of the Injunction, Dr Chan undertook to abide by any court order requiring compensation in the event the Injunction caused loss to LLS.

(b) The Interest Order had been specifically requested at prayer 2 of SUM 2095. However, the appellants do not appear to have raised any

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issue below about the Interest Order, whether in their written submissions or at the hearing of SUM 2095 on 1 September 2025.

26 In the circumstances, we disagree with the appellants' submission that the prayer for the Interest Order was a "free-standing claim for interest that … ha[d] no apparent legal basis" which came out of the blue.

27 We also disagree that there was no evidence adduced as to the terms of sale of the Property. As LLS points out, the appellants' counsel appears to have communicated with LLS' counsel as to the sale price, and the sale price was used to determine the amount of fortification. In any event, as LLS submits, the Interest Order simply provides that interest should be payable on the balance sale proceeds which are to be determined at a later date. There is therefore strictly speaking no need for evidence of the sale price to be adduced at this stage.

28 We also do not think it is relevant that there is no evidence before the court as to the rate of interest payable by LLS *to the potential buyer* as a result of late completion. The potential losses LLS might suffer from a claim by the third-party buyer are covered by the enquiry as to damages which the Judge had ordered (see above at [14(d)]), but which has not been appealed against. The Interest Order covers a separate type of loss – it covers losses LLS would suffer from being kept out of funds, and such losses are not assessed by reference to any interest rate in the loan or sale agreements. As we have sought to explain above (at [25]–[26]), we do not find the Judge's order for interest at the standard rate of 5.33% per annum unreasonable considering that: (a) the appellants had failed to avail themselves of the opportunity to challenge the Interest Order in the proceedings below; and (b) the rate of 5.33% per annum appears to be the standard rate applied in respect of loss of use of funds.

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AD 99 – extension of time

29 Next, we consider the appellants' prayer in AD 99 seeking an extension of time to appeal against the Order for Possession. Once again, we find that the appellants' arguments have no merit.

30 In response to LLS's objection to the appellants continuing to argue for an extension of time (see [23] above), the appellants take the position that they have not been precluded from doing so by this court's decision to dismiss OA 41. They claim that OA 41 had been filed concurrently with AD 99 because there was uncertainty as to whether permission to appeal was required for the prayer for an extension of time. The appellants submit that this court had dismissed OA 41 because permission to appeal was *not required*, but even if permission to appeal had been required, no *prima facie* error of law or fact in the Judge's decision had been disclosed.

31 We find the appellants' position to be somewhat equivocal. Their written submissions for OA 41 had, in the same breath, questioned whether permission to appeal was required in respect of the prayer for an extension of time, and immediately thereafter answered the same by submitting that permission to appeal was *required*:

> 2. As the Applicants seek to file a Notice of Appeal against a prayer for an extension of time to file their Notices of Appeal against ORC 619, there is some question as to whether a decision refusing to grant an extension of time for the Applicants to file their Notices of Appeal against an order of court granted in respect of an Originating Application would be considered an "interlocutory" application for the purposes of paragraph 3(l) of the Fifth Schedule of the [SCJA].
>
> …
>
> 5. Based on a strict reading of the *Bozson* Test, *the Applicants respectfully submit that leave to appeal is required for the [extension of time prayer]* as it does not dispose of the parties'

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> substantive rights in OA 1177 and may, therefore, be considered an interlocutory application for the purposes of paragraph 3(l) of the SCJA.
>
> [emphasis and references in original omitted; emphasis added in italics]

32 We take this opportunity to state in no uncertain terms that by this court's decision of 26 December 2025, we had *accepted* the appellants' submission that permission to appeal was required for the extension of time prayer. Permission to appeal had not been granted for the purposes of OA 41 itself. We found that the appellants had not met any of the grounds to obtain permission to appeal for OA 41. Thus, it is no longer open to the appellants to canvass this point again in AD 99.

AD 99 – the Illegality Argument

33 We turn to the Illegality Argument which forms the crux of AD 99. As alluded to above (at [20]), the appellants canvass their arguments along the following broad lines. They submit that the Judge erred in making a conclusive finding that there was no illegality, as such a finding could not be supported by the evidence. In particular, the Judge erred in finding that the "true borrower" of the Loan was MKY and not Dr Chan because MKY was not legally liable to repay the loan. The issue of illegality premised on LLS having given a *de facto* personal loan through a sham loan agreement (*ie*, unlicensed lending to an individual and not a corporation) should be fully ventilated at trial.

34 We begin by noting that under the Loan Agreement, LLS would legally be looking to TB as the stated borrower or primary obligor, with Dr Chan bearing secondary liability as the guarantor if the Loan is unpaid. *Ex facie*, this is what the Loan Agreement provides for, and LLS did commence OA 1177 against both TB and Dr Chan. The primary enquiry before us is therefore

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whether there was credible evidence to support Dr Chan's Illegality Argument, and whether the Judge had misdirected himself in finding that there was not.

35 The procedural history is important in assessing the credibility of Dr Chan's claims. In the present case, the allegation of illegality was never "pleaded", let alone surfaced at all until 11 June 2025 when Dr Chan's affidavit in support of SUM 1733 was filed, nearly four and a half months after ORC 619 was extracted. Although there is no technical "pleading" requirement in an Originating Application, one would expect Dr Chan to have raised the Illegality Argument in her first affidavit of 31 December 2024 after OA 1177 was filed, if the circumstances surrounding the Loan were indeed consistent with her present narrative. She did not do so. Instead, she asserted in that affidavit that the Loan would be "repaid in [*sic*] shortly in due course". OA 1177 was not even contested to begin with, thus leading to ORC 619 being issued.

36 Dr Chan's belated change in her position from not contesting OA 1177 to raising the Illegality Argument reflects a clear afterthought on her part. LLS suggests that this was likely a reaction to the impending sale of the Property. The reason Dr Chan offered for her prevarication was that she had only brought the facts relevant to the Illegality Argument to her counsel's attention in May 2025, after they had sought to clarify the factual background with her: Judgment at [19]. Prior to that, Dr Chan had apparently not realised the relevance of Mr Yeo allegedly instructing her to acquire TB, or that she could avail herself of the Illegality Argument. The Judge was rightly not convinced. The true circumstances surrounding the Loan and their relevance would have been known to Dr Chan all along. We find it unlikely that Dr Chan would have failed to see the relevance of mentioning to her solicitors her dealings with Mr Yeo, or the fact that she had been (allegedly) asked to purchase TB for the purpose of facilitating the Loan. Yet, for reasons best known to her, it appears

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that she chose not to disclose them but to wait and see what LLS would do by way of enforcement.

37 Dr Chan now claims that the Loan Agreement is unenforceable for being in breach of the MLA, as she was the "true borrower" and LLS could not lawfully grant a loan to her as an individual. The appellants rely as they did below on the propositions set out in *Edler v Auerbach* [1950] 1 KB 359 ("*Edler*") at 371 ("*Edler* Propositions"), as discussed in *North Star (S) Capital Pte Ltd v Yip Fook Meng* [2022] 1 SLR 677 ("*North Star*"). In *North Star*, this court had observed that even where illegality is not explicitly pleaded, a court may invoke illegality of its own motion where one or more of the *Edler* Propositions are satisfied (at [11]):

> … [F]irst, that, where a contract is ex facie illegal, the court will not enforce it, whether the illegality is pleaded or not [the '***First Edler Proposition***']; secondly, that, where … the contract is not ex facie illegal, evidence of extraneous circumstances tending to show that it has an illegal object should not be admitted unless the circumstances relied on are pleaded [the '***Second Edler Proposition***']; thirdly, that, where unpleaded facts, which taken by themselves show an illegal object, have been revealed in evidence (because, perhaps, no objection was raised or because they were adduced for some other purpose), the court should not act on them unless it is satisfied that the whole of the relevant circumstances are before it [the '***Third Edler Proposition***']; but, fourthly, that, where the court is satisfied that all the relevant facts are before it and it can see clearly from them that the contract had an illegal object, it may not enforce the contract, whether the facts were pleaded or not [the '***Fourth Edler Proposition***'].
>
> [emphasis added by the court in *North Star* in bold italics]

38 However, the Judge had rightly found that none of the *Edler* Propositions applied in the present case. Having regard to the third proposition, the burden is on the appellants to adduce all relevant evidence pertaining to the alleged illegality before the court so that the "whole of the relevant circumstances are before [the court]". As the appellants are the ones seeking to

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rely on the *Edler* Propositions, it strikes us as only fair that the appellants should have ensured that the court could satisfy itself that all the relevant facts were before it: see generally, *Fan Ren Ray v Toh Fong Peng* [2020] SGCA 117 at [13]–[15]. We are in full agreement with the Judge's view that the appellants have not done so despite having had ample opportunity. The Judge had in his Judgment duly considered all four affidavits filed by Dr Chan. It is not open to the appellants to shift the burden to LLS, by claiming that LLS bore the onus of calling Mr Yeo to place all the relevant facts before the court, failing which an adverse inference should be drawn against LLS. As the Judge observed (Judgment at [35]), it was open to the appellants themselves to adduce an affidavit by Mr Yeo. We note that the appellants did not even attempt to procure Mr Yeo's evidence or to explain why they might face difficulty in doing so.

39 Even if the *Edler* Propositions cannot be satisfied at this juncture, the appellants nonetheless submit, on the authority of *Liau Beng Chye v Chua Wei Jiea* [2025] SGHC 226 ("*Liau Beng Chye*"), that the court should convert this matter into an Originating Claim so that the Illegality Argument can be properly investigated at trial. We are not persuaded that it is appropriate for this matter to proceed to trial. In this regard, we adopt the observations of the Court of Appeal in *Rainforest Trading Ltd v State Bank of India Singapore* [2012] 2 SLR 713 (at [42]):

> … While it was stated by this court in *Woon Brothers* ([23] *supra*) at [30] that a writ action is usually more appropriate when allegations of fraud are made, *it cannot be the case that a conversion must be ordered the moment allegations of fraud are made by a defendant, for this would allow defendants to unnecessarily prolong and complicate otherwise straightforward and legitimate claims made against them*, which is precisely the case here. Mr Chacko is wrong to cite *Woon Brothers* for the overly broad proposition that an originating summons must be converted the moment there are allegations of substantial disputes of fact, allegations of fraud or both. *The alleged disputes of fact as well as allegations of fraud must be*

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> *accompanied by the existence of at least a credible matrix of facts* and must be relevant to the dispute at hand, which was not the case here.
>
> [emphasis in original omitted; emphasis added in italics]

40 It is not enough for the appellants to simply *allege* a dispute of fact without more. This would open the floodgates to abuse. For reasons we will discuss below (at [45]–[49]), we are of the view that the Judge was entitled to make a positive finding that there was no illegality. *A fortiori*, the appellants have failed to establish a "credible matrix of facts" such that the court can conclude that there is a real and substantial dispute of fact which might warrant conversion of this matter to an Originating Claim.

41 For completeness, we do not think *Liau Beng Chye* assists the appellants as the facts of that case are distinguishable. The court's decision to order a re-trial in that case was largely motivated by the fact that an initial loan of $250,000 had ballooned into tens of millions of dollars due to the accumulation of interest and alleged late payment fees – a situation which "shock[ed] the conscience" of the court (at [27]). Additionally, the borrower had been self-represented at the trial below (at [29]). By contrast, there is no suggestion that the terms of the Loan Agreement in the present case give rise to a similar situation which would shock the conscience of the court. Moreover, the appellants were represented at all material times, and as we note below at [48], it appears that Dr Chan had signed some of the documents in the presence of her own lawyer. The present facts simply do not arouse the same concerns which had called for the court's intervention in *Liau Beng Chye*.

42 Our decision is further buttressed by the procedural context we have outlined above. It would be contrary to the rule in *Henderson v Henderson* (1843) 3 Hare 100 ("*Henderson*") to allow the appellants to rely on the Illegality

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Argument now. The extended doctrine of *res judicata* propounded in *Henderson* applies on the present facts. The Judge correctly observed that SUM 1733 was an abuse of process, since the Illegality Argument could and should have been made in OA 1177: see also *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2024] 2 SLR 654 at [25]. We echo the Judge's sentiment that "[i]t surely cannot be right that an ill-advised party (or a party who had instructed her counsel poorly) should be allowed to re-litigate a matter": Judgment at [62]. The Judge was fully entitled to find that there was an abuse of process as Dr Chan was essentially seeking further bites of the cherry.

43 The Judge's decision was founded on both procedural grounds (with reference to *Edler* and *Henderson* as discussed above) and substantive grounds. We turn to consider the substantive grounds, for which he offered two reasons: first, the appellants had not adduced credible evidence to support the Illegality Argument (Judgment at [38]–[40]), and second, the available evidence suggested that the Loan was for MKY's benefit rather than a personal loan for Dr Chan as the "true borrower" (Judgment at [41]–[51]). Of these two reasons, it is clear that the former was the Judge's main consideration.

44 Taking the appellants' case at its highest and assuming that the Judge was wrong to even consider the "true borrower" argument, we do not see how this would materially assist their case or affect the outcome. An attempt to rely on the "true borrower" argument obscures the more fundamental enquiry, which is whether the appellants had adduced all relevant evidence that is sufficiently credible to support the Illegality Argument. As explained above (at [38]), we agree with the Judge that the appellants had failed to satisfy the court that all relevant evidence on the Illegality Argument was before it.

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45 Turning to the evidence, we are of the view that the Judge was entitled to find substantively that there was no illegality. The Judge had placed weight on the fact that the overall documentary evidence (*ie,* the presence of the Business Proposal, the SPA, the DOI, and the SD) would suggest a genuine business arrangement: Judgment at [48]. While the appellants have pointed to various inconsistencies and discrepancies in the documents, we proceed to explain why these do not affect the cogency of the documentary evidence. Additionally, we note that Dr Chan's belated shift in her position materially affects the credibility of her attempts to distance herself from the objective documents.

46 Notwithstanding the poorly drafted Business Proposal and its use of imperfect English, it is noted that on the appellants' own case, this document was not prepared by Dr Chan herself but purportedly by a third-party consultant and given to her by Mr Wong. The evidence indicates that she had signed it. In the Business Proposal, Dr Chan expressed in writing her intention to "do business consultancy especially on the property selling and buying" and requested funds to "expand [her] business." Her attempt to disavow this document is a bare and self-serving denial at best.

47 There is also the SD in which Dr Chan declared under oath that the Loan was "obtained solely for the business use of [TB] and not for any other purpose(s)." Much as one may be inclined to speculate as to why the SD was necessary, there is no reason why the SD should not speak for itself as cogent evidence of her intent in relation to the Loan. In addition, Dr Chan had obtained (at Wong's suggestion) the DOI from Mr Yeo as to protect herself from potential liabilities which TB may have incurred prior to her taking over. This would appear to be consistent with a genuine business arrangement.

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48 We are satisfied that the Judge was correct to have found Dr Chan's bare claims of ignorance or lack of comprehension of the documents incredible. It is undisputed that she holds a PhD and was formerly an academic at a major local university, but she claimed not to have read, or to be unable to recall signing the multiple documents. While she claimed not to be a savvy businesswoman with any interest in starting a business, she had described Mr Wong in her first affidavit as her "business associate". Dr Chan had also initially claimed that her vision was affected by cataract operations (see [7] above). As the Judge noted (Judgment at [48(e)]), there is no evidence that her cataract operations did in fact affect her eyesight. This argument was conspicuously missing from her written submissions for the appeals. Dr Chan asserted that she did not have copies of the Business Proposal, SPA, DOI and SD, and that she did not understand the contents of the documents. However, the DOI had been witnessed by Dr Chan's own lawyers, while the SD had been witnessed by a Commissioner for Oaths: Judgment at [48(c)].

49 Dr Chan's claims suggest lack of candour rather than genuine confusion. The only direct evidence that she provided to support the Illegality Argument apart from her own bare assertions were certain WhatsApp messages she had exchanged with Mr Yeo. However, we agree with the Judge that these messages do not actually support her claims that Mr Yeo instructed her to acquire TB to circumvent the MLA: Judgment at [38].

Conclusion

50 To sum up, the Judge was entitled in our view to make a positive finding on the available evidence that there was no illegality. The burden of proving illegality was not discharged by the appellants, nor did they raise a sufficient dispute of fact to warrant having the matter proceed to trial. We dismiss both

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AD 98 and 99 as the Judge's decision was not plainly wrong or against the weight of the evidence.

51 LLS has asked for combined costs of both appeals to be fixed at $35,000 all-in on the standard basis, along with a further uplift on the basis of (a) Clause 10.1 of the Loan Agreement which provides that LLS' costs of enforcing the Loan (including legal fees on a solicitor-and-client basis) should be borne by the appellants; and (b) the appellants' alleged poor conduct in misconstruing the Judgment and bringing what it says are frivolous appeals.

52 We do not see why any uplift in costs is warranted. Whether and how LLS wishes to enforce the indemnity contained in Clause 10.1 of the Loan Agreement is a separate matter unrelated to the party-and-party costs to be awarded here. The appellants' conduct is not so egregious as to require further costs to be awarded. We think that costs on the standard basis at $23,000, inclusive of disbursements, would suffice. The usual consequential orders will apply.

Debbie Ong Siew Ling
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

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