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

[2022] SGHC 104

Suit No 872 of 2021 (Registrar's Appeal No 62 of 2022)

Between

Ang Boon Tian

… *Plaintiff*

And

1. Jervois Private Limited
2. Ng Suzanne

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Summary judgment]
[Contract — Contractual terms — Express terms — Meaning of "in any event"]

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v
Jervois Pte Ltd and another

[2022] SGHC 104

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Introduction

1 What does "in any event" mean?

2 The second defendant, Ms Ng Suzanne ("Ms Ng"), agreed to guarantee the repayment of $1.6m that the plaintiff, Mr Ang Boon Tian ("Mr Ang"), had lent – she promised that "in any event full repayment shall be made on or before 30th September 2021". I agreed with Mr Ang that "in any event" means "regardless of what happens", and made an interim payment order that Ms Ng pay Mr Ang the sum of $1.6m with interest thereon from 30 September 2021, and costs. Ms Ng has appealed, and these are my grounds of decision.

Background

The Development

3 On 8 May 2018, Ms Ng obtained an option to purchase land at 38E Jervois Road (the "Option" to purchase the "Land"). The Option was granted to Ms Ng and/or nominee as Purchaser.[1]

4 On 11 May 2018, Ms Ng incorporated the first defendant, Jervois Private Limited ("Jervois"), to own and develop the Land. She was the sole shareholder and director of Jervois.[2]

5 The Option was accepted by Jervois on 28 May 2018, with Ms Ng signing on its behalf.[3]

The loan from Mr Ang

6 In July 2018, Ms Ng agreed with Mr Ang, that Mr Ang would provide financing in the sum of $1.6m for the development of two semi-detached residential houses on the Land (the "Development"). Ms Ng and Mr Ang signed two documents dated 24 July 2018:

(a) a loan agreement dated 24 July 2018 (the "Loan Agreement");[4] and

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1 Affidavit of Ang Boon Tian sworn on 31 December 2021 ("Mr Ang's Affidavit") at pages 26 – 30.

2 Mr Ang's Affidavit at pages 33 – 34.

3 Mr Ang's Affidavit at page 31.

4 Mr Ang's Affidavit at pages 21 – 24.

(b) a personal guarantee dated 24 July 2018 (with Ms Ng as guarantor, in favour of Mr Ang) (the "Guarantee").[5]

7 The Loan Agreement was described as an agreement made between Ms Ng and Mr Ang. It recited, among other things, that:

(a) Ms Ng had been granted the Option (a copy of which was attached);

(b) Ms Ng had incorporated Jervois to own the Land;

(c) Ms Ng had obtained a clearance certificate from the Singapore Land Authority to own the Land (and a copy of the certificate was attached, showing that such clearance had been granted to Jervois);

(d) Ms Ng had prepared a feasibility study for the development of the Land (and a copy of the study was attached);

(e) Ms Ng was the only shareholder in Jervois, and the issued and paid up capital of Jervois stood at S$100,000 (comprising of 100 ordinary shares at S$100 per share); and

(f) Ms Ng invited Mr Ang to provide financing for the development, and Mr Ang accepted the invitation to do so, in accordance with the feasibility study and subject to the terms and conditions of the Loan Agreement.

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5 Mr Ang's Affidavit at page 43.

8 Clause 1 of the Loan Agreement stated that based on the feasibility study, Ms Ng invited Mr Ang to extend an interest free personal loan of $1.6m, and Mr Ang extended that loan to Ms Ng for the Development.

9 By clause 2 of the Loan Agreement, Ms Ng agreed that in consideration of the loan, Mr Ang shall be entitled to 30% of the profit of the Development as narrated in the feasibility study.

10 By clause 3 of the Loan Agreement, Ms Ng agreed that the loan from Mr Ang shall be recorded in the accounts of Jervois as a loan from Mr Ang to Jervois. Ms Ng further agreed that Mr Ang shall be allowed to inspect the accounts and financial documents of Jervois.

11 Clause 4 of the Loan Agreement stated: "SN [Ms Ng] agrees to provide personal guarantee to ABT [Mr Ang] in respect of the Loan extended by ABT to the Company [Jervois]."

12 Clause 6 of the Loan Agreement stated:

> SN agrees that she shall manage the Development in accordance with the Feasibility Study prepared for the Development and the Loan shall not be deployed for other business or other purpose without ABT's consent in writing. SN undertakes the Development be completed and sold within the timeline imposed by IRAS on the Sites for Development of Four or Less Units of Housing Accommodation as contained below
>
> https://www.iras.gov.sg/irashome/Other-Taxes/Stamp-Duty-for-Property/Claiming-Refunds-Remissions-Reliefs/Remissions/Sites-for-Development-of-Four-or-Less-Units-of-Housing-Accommodation/

13 Clause 11 of the Loan Agreement stated: "Both parties agree to exercise diligence and best effort on the Development for mutual benefit and in the event

of dispute both parties agree to proactively seek resolution to minimise adverse effect on the Development."

14 Clause 12 of the Loan Agreement stated: "Both parties agree that in the event terms and conditions of this agreement are in conflict with the memorandum and article of association of the Company, the terms and conditions hereto shall prevail."

Ms Ng's Guarantee

15 As stipulated in clause 4 of the Loan Agreement (see [11] above), Ms Ng provided Mr Ang with a personal guarantee, which was in the following terms:[6]

> Re: Jervois Pte Ltd (201816189D)
>
> Personal Guarantee of the S$1,600,000 interest free loan extended by you to Jervois Pte Ltd
>
> ---
>
> In consideration of you granting an interest free loan of S$1,600,000 pursuant to the Agreement dated 24 July 2018 [the Loan Agreement], I hereby irrevocably guarantee the repayment of the said S$1,600,000 to you upon receipt of the sale proceeds of the development of 38E Jervois Road or by 28th May 2021, whichever is later (subject to the completion of the option to purchase exercised by the potential buyer and in any event full repayment shall be made on or before 30th September 2021).
>
> I undertake to be liable for all legal costs pertaining to any recovery proceedings that may be commenced by you, if any, in the event the S$1,600,000 is not repaid in full to you for any reasons whatsoever.
>
> Unless and until S$1,600,000 is fully repaid to you, I shall not be discharged from the obligation of the guarantee hereto.
>
> This guarantee shall be binding upon me and my estate, administrator, successor etc.

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6 Mr Ang's Affidavit at page 43.

Mr Ang's demands for repayment

16 On 9 September 2021, Mr Ang and Ms Ng met together with certain others, including:[7]

(a) Mr Ang's colleague, Mr Lim Keng Boon ("Mr Lim"), who was assisting Mr Ang because of Mr Ang's impending travel; and

(b) Mr Andy Goh who had witnessed Ms Ng's signature on the Loan Agreement and the Guarantee,[8] and evidently had some involvement with the Development.

17 Following the meeting, Mr Lim sent an e-mail the same day to Ms Ng, Mr Ang and others, stating:[9] "The deadline to repay Mr Ang's $1.6m interest free loan is 30 September 2021." and "As mentioned in the meeting, the default position to Mr Ang's loan is that it is due and payable by the end of this month [*ie*, 30 September 2021] and therefore unless both parties have formally agreed otherwise based on mutually acceptable terms and conditions, the default position shall apply."

18 On 24 September 2021, Ms Ng replied to Mr Lim's 9 September 2021 e-mail.[10] She did not dispute Mr Lim's assertion that the deadline to repay Mr Ang's loan of $1.6m was 30 September 2021.

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7 Mr Ang's Affidavit at paras 18 – 19.

8 Mr Ang's Affidavit at pages 24 and 43.

9 Mr Ang's Affidavit at pages 63 – 64.

10 Mr Ang's Affidavit at pages 65 – 66.

19 Instead, Ms Ng put forward two options for the disposal of the two units involved in the Development (which had yet to be sold):

(a) Option A was to accept any offers made before 27 November 2021 that were within stated target price ranges.

(b) Option B was, in the event that the units were not sold before 27 November 2021 at the target price ranges, to purchase the units internally, *ie*, for Ms Ng and Mr Ang each to purchase one unit – a possibility that was envisaged in clause 10 of the Loan Agreement.[11]

20 Ms Ng went on to say that additional funds of $1.2m were needed for the Development, and suggested an additional capital injection of $360,000 from Mr Ang, and $840,000 from herself. She asked to know how Mr Ang and Mr Lim wished to proceed.

21 Mr Lim replied on 26 September 2021 to say:[12]

(a) Mr Ang's position on Option A was that he was in favour of the units being sold for a total of $16.1m, there and then.

(b) Mr Ang was not interested to acquire a unit as proposed by Ms Ng under Option B; if the units were not sold per Option A, then he would like his loan to be repaid along with "cost of fund equivalent to the interest rate paid to the bank for land and construction loan, whichever is higher".

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11 Mr Ang's Affidavit at page 23.

12 Mr Ang's Affidavit at page 67.

(c) The default position regarding Mr Ang's loan of $1.6m was that it shall be repaid by 30 September 2021 unless all parties have agreed to an extension.

(d) "In the absence of a written agreement regarding Option A and B by 30 Sept 2021, the default position of Mr Ang's loan on the matter shall apply and he would like to receive his loan of $1.6m within 1 month from 30 Sept 2021."

22 Ms Ng only replied on 6 October 2021.[13] Again, she did not dispute that Mr Ang's loan of $1.6m was due to be repaid by 30 September 2021. She reiterated that additional capital was required to complete the project: she said that $1,249,416.73 was required, and that 30% of the additional capital ($374,825.02) should come from Mr Ang.

23 Mr Ang did not agree to any extension of time, or further financing. On 15 October 2021, his lawyers sent demand letters to Jervois and Ms Ng, demanding repayment of the loan of $1.6m.[14] Mr Ang did not receive any payment.

The suit

24 On 25 October 2021, Mr Ang sued Jervois and Ms Ng for, among other things, the sum of $1.6m.[15] On 4 January 2022 Mr Ang applied for summary judgment under O 14 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), not

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13 Mr Ang's Affidavit at pages 69 – 70.

14 Mr Ang's Affidavit at paras 38 – 39.

15 Statement of Claim ("SOC") at para 25.

only for the principal sum of $1.6m pursuant to the Loan Agreement and the Guarantee, but for other claims besides.[16]

25 At the hearing of the application on 4 March 2022, however, Mr Ang's counsel informed the assistant registrar that he was only proceeding with the application in relation to the sum of $1.6m (together with interest and costs).[17] The assistant registrar granted both Jervois and Ms Ng unconditional leave to defend Mr Ang's claim for $1.6m, interest and costs.[18]

26 The matter then came before me on Mr Ang's appeal against that decision.

Decision

Jervois' position, as compared to Ms Ng's

27 In relation to Jervois, I decided not to disturb the assistant registrar's decision to grant unconditional leave to Jervois to defend Mr Ang's claim. Jervois' position was that it was not a party to the Loan Agreement – it contended that the Loan Agreement was an agreement just between Ms Ng and Mr Ang.[19] In particular, it argued that Ms Ng had not entered into the Loan Agreement on behalf of Jervois as its agent;[20] that Jervois had not acknowledged that it had borrowed the $1.6m from Mr Ang (although the sum had been paid

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16 HC/SUM 18/2022, Summons under Order 14

17 HC/SUM 18/2022, Minute Sheet, 4 March 2022, page 2, lines 16 – 25.

18 HC/SUM 18/2022, Minute Sheet, 4 March 2022, page 4, lines 19 – page 5, line 11.

19 Defendant's Written Submissions dated 18 March 2022 ("DWS") at paras 20 – 34.

20 Affidavit of Ng Suzanne affirmed on 20 January 2022 ("Ms Ng's Affidavit") at para 9.

to Jervois);[21] and that the express written terms of the Loan Agreement indicated that the parties to the Loan Agreement were Mr Ang and Ms Ng only.[22]

28 I queried how the receipt of the money had been recorded in Jervois' accounts, as that was not evident from the material before me. The defendants' counsel said, he did not know.[23] If Jervois had recorded the receipt of $1.6m as a loan from Mr Ang (which was how Ms Ng had agreed it would be recorded per clause 3 of the Loan Agreement (see [10] above)), that would go against Jervois' position that the parties to the Loan Agreement were Mr Ang and Ms Ng only. However, if Jervois had recorded the receipt of $1.6m as a loan from Ms Ng, that would support its position that it did not regard Mr Ang as having lent it the money, and that it was not a party to the Loan Agreement. It was in those circumstances that I upheld the assistant registrar's decision granting Jervois unconditional leave to defend Mr Ang's claim.

29 In relation to Ms Ng, however, I concluded that she was liable to Mr Ang for at least $1.6m plus interest from 30 September 2021 (the date by which – in any event – the $1.6m ought to have been repaid to Mr Ang). For Mr Ang's claim against Ms Ng for $1.6m and interest thereon, there was no fair or reasonable probability that she had a real or *bona fide* defence, or any other reason for trial. Accordingly, I made an interim payment order against her. Rather than entering judgment, I ordered interim payment to avoid complications that might arise from Mr Ang's cause of action merging into the judgment. My analysis of Ms Ng's liability to Mr Ang follows.

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21 DWS at paras 25 – 27.

22 DWS at paras 28 – 29.

23 HC/RA 62/2022 and HC/RA 65/2022, Minute Sheet, 21 March 2022, pages 1 and 3.

Ms Ng's defence

30 Ms Ng did not disavow either the Loan Agreement or the Guarantee, both of which she had signed.

31 Her position was, she alone was liable under the Loan Agreement, and she alone was liable under the Guarantee.[24] She did not plead that if she was the sole borrower under the Loan Agreement, that would somehow render the Guarantee ineffective (although her counsel submitted that her liability might just rest on one agreement – the Loan Agreement – and that it might well be that the Guarantee falls away).[25]

32 Ms Ng's defence was simply "that the overarching condition precedent for the repayment of the loan was that the 2 units in the Development must first be sold",[26] and "[a]s the said 2 units have not been sold, the present action [was] premature and ought to be struck out for want of a cause of action."[27]

Ms Ng's liability under the Guarantee

33 The Guarantee referred to the loan as a loan extended by Mr Ang to Jervois – that was stated both in the caption, as well as in the first paragraph of the Guarantee.[28] That was also how the loan was described in clause 4 of the Loan Agreement, by which Ms Ng had agreed to provide a personal guarantee

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24 DWS at para 29; HC/RA 62/2022 and HC/RA 65/2022, Minute Sheet, 21 March 2022, pages 2 – 3.

25 HC/RA 62/2022 and HC/RA 65/2022, Minute Sheet, 21 March 2022, page 3.

26 Defence and Counterclaim ("DCC") at para 18; DWS at paras 35, 49 – 65.

27 DCC at para 19.

28 Mr Ang's Affidavit at page 43.

to Mr Ang (see [11] above). Ms Ng had moreover agreed that the loan would be recorded in Jervois' accounts as a loan from Mr Ang to Jervois (per clause 3 of the Loan Agreement (see [10] above)).

34 Notwithstanding all this, Jervois' position was that Mr Ang had not lent it the money.[29] Jervois pointed to clause 1 of the Loan Agreement which describes the loan as an interest free personal loan extended by Mr Ang to Ms Ng for the Development, and contended that it was Ms Ng who had borrowed the money from Mr Ang (and presumably that Ms Ng had in turn lent the money to Jervois).

35 Whatever may be the merits of Jervois' contentions, I did not think it was open to *Ms Ng* to seek to dispute liability under the Guarantee on the basis that she was the sole borrower, not Jervois. The Guarantee Ms Ng signed stated that the loan was one from Mr Ang to Jervois, and that Ms Ng agreed to guarantee repayment of the loan to Mr Ang. Having done so, Ms Ng could not turn around and deny liability as guarantor by arguing that she (and not Jervois) was the borrower, and so she could not guarantee her own obligation to repay the loan. Moreover, she did not plead this as a defence.

36 Even if it were open to Ms Ng to seek to avoid liability under the Guarantee by contending that she was the sole borrower, that contention would still not have worked. If Ms Ng were the sole borrower, it would follow that the Guarantee was not a true guarantee (in the legal sense of the word "guarantee", whereby one assumes a secondary obligation based on the primary obligation of another). But that did not make the Guarantee ineffective: Ms Ng agreed to

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[29] DWS at paras 28 – 29.

"guarantee the repayment of the [$1.6m]" to Mr Ang on the terms set out in the Guarantee, *ie*, to pay Mr Ang the sum of $1.6m if Jervois did not do so. That applied both to the scenario where Jervois *was not* obliged to pay Mr Ang anything (because Ms Ng was the sole borrower), and to the scenario where Jervois *was* obliged to pay Mr Ang the sum of $1.6m (because Jervois had borrowed that from Mr Ang). By agreeing to "guarantee the repayment" of that sum to Mr Ang, Ms Ng agreed that she would pay him the sum of $1.6m if Jervois did not – she remained obliged to do so whether or not the Guarantee was a true guarantee.

37 Leaving aside the words in the brackets in para 1 of the Guarantee, Ms Ng had agreed to guarantee the repayment of the said $1.6m to Mr Ang "upon receipt of the sale proceeds of the [Development] or by 28th May 2021, whichever is later". That meant:

(a) if the sale proceeds were received on or before 28 May 2021, Mr Ang would only need to be repaid the $1.6m by 28 May 2021; and

(b) if the sale proceeds were only received after 28 May 2021, Mr Ang would only need to be repaid the $1.6m when the sale proceeds were received.

38 However, this was qualified by the words in the brackets: "subject to the completion of the option to purchase exercised by the potential buyer and in any event full repayment shall be made on or before 30th September 2021".

39 The first phrase, "subject to the completion of the option to purchase exercised by the potential buyer" purports to make repayment of the $1.6m to Mr Ang contingent on "the completion of the option to purchase exercised by

the potential buyer". However, there was some debate in the hearing before me, as to what that meant.

40 It was, however, the next phrase that was crucial for present purposes: "and *in any event* full repayment shall be made on or before 30th September 2021" (emphasis added). That meant that whether the sale proceeds had been received, whether there had been "completion of the option to purchase exercised by the potential buyer", and indeed whether any option had been granted (or any units sold), Mr Ang was to be repaid the $1.6m on or before 30 September 2021. I agreed with Mr Ang that "in any event" means "regardless of what happens".[30]

41 Ms Ng's counsel contended that if the $1.6m had to be repaid to Mr Ang by 30 September 2021 regardless of what happens, that would render otiose the preceding words "upon receipt of the sale proceeds of the [Development]" and "subject to the completion of the option to purchase exercised by the potential buyer".[31] That was incorrect. Those phrases were not rendered otiose by the stipulation that "*in any event* full repayment shall be made on or before 30th September 2021" (emphasis added). Rather, repayment of the $1.6m upon the receipt of the sale proceeds and completion of the option to purchase, was *subordinated* to the obligation to repay the $1.6m by 30 September 2021 *in any event*.

42 Ms Ng's contention, that the overarching condition precedent for repayment of the $1.6m was the sale of the Development and receipt of the sale

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30 Plaintiff's Written Submissions dated 17 March 2022 ("PWS") at para 39.

31 DWS at paras 49 and 50.

proceeds,[32] went against what is stated in the Guarantee – that in any event Mr Ang was to be repaid by 30 September 2021. Ms Ng's contention would render meaningless the stipulation of payment by 30 September 2021 in any event.

43 Ms Ng never disputed Mr Lim's repeated assertions in September 2021 that the default position was that Mr Ang's loan of $1.6m had to be repaid by 30 September 2021 (see [18] and [22] above). If she considered that she could defer payment indefinitely until the units were sold, she would have said so in her e-mail responses on 24 September 2021 and 6 October 2021, upon being reminded that repayment of the loan was due by 30 September 2021.

44 Even if repayment of the loan were contingent on the sale of the units, it was never the agreement or understanding between the parties that the sale of the units (and consequently, the repayment of the $1.6m) could be deferred indefinitely.

45 Clause 6 of the Loan Agreement (see [12] above) was a stipulation to the contrary. That clause stated that Ms Ng undertook that the Development would be completed and sold within the timelines imposed by IRAS, citing a link to IRAS' website. That link, if accessed today, redirects one to the current webpage: https://www.iras.gov.sg/taxes/stamp-duty/for-property/appeals-refunds-reliefs-and-remissions/common-stamp-duty-remissions-and-reliefs-for-property/sites-for-development-of-four-or-less-units-of-housing-accommodation.

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[32] DWS at paras 35, 49 – 55.

46 That webpage (as at 19 January 2022, 5.42pm) is exhibited at pages 66–71 of Ms Ng's affidavit. It is a commentary on the conditions for housing developers (of four or less units) to get remission of Additional Buyer's Stamp Duty ("ABSD"). It states that extensions of the commencement, completion and sale timelines were variously announced on 6 May 2020, 8 October 2020, and 28 June 2021, in view of the impact of the COVID-19 pandemic. At the time of the Loan Agreement (24 July 2018), however, these extensions had yet to happen.

47 On 28 May 2018 (when Jervois accepted the Option, thus acquiring the Land), the applicable rules were the Stamp Duties (Non-Licensed Housing Developers) (Remission of ABSD) Rules 2015 (No S 764/2015) (the "Remission of ABSD Rules") then in force. Under rule 3(2)(*b*) of the Remission of ABSD Rules, remission of ABSD was subject to the condition that "the housing developer completes the housing development, and sells all the units of housing accommodation that are the subject of the development within 3 years starting from the date of execution of the instrument [*ie*, acceptance of the Option]". That was also the position on 24 July 2018 when the Loan Agreement was executed (as the amendments to the Remission of ABSD Rules of 6 July 2018 did not affect rule 3(2)(*b*)).

48 To obtain remission of ABSD, the units in the Development thus had to be completed within 3 years starting from the date Jervois accepted the Option. That deadline would appear to be 28 May 2021, computed in accordance with s 50(*a*) of the Interpretation Act (Cap 1, 2002 Rev Ed) (see also *Suresh s/o Suppiah v Jiang Guoliang* [2016] 4 SLR 645).

49 For completeness, the timelines for completion and sale to obtain ABSD remission have since been extended from 3 years (for both completion and sale) to 4.5 years for completion and 3.5 years for sale – the new timelines are thus: completion by 28 November 2022 and sale by 28 November 2021 (see IRAS' website at [45] above). The parties were evidently mindful of the timelines to be adhered to for remission of ABSD, for there were references to selling the units by 27 November 2021 to avoid paying ABSD in the e-mail correspondence between the parties in September 2021.[33] It was also pleaded as part of Jervois' counterclaim, that additional stamp duties will be incurred if the units are not sold by 26 November 2021.[34]

50 Contrary to what Ms Ng appeared to suggest, the parties never contemplated that Jervois and/or Ms Ng could take as long as they wished, to sell the units. By clause 6 of the Loan Agreement, Ms Ng had undertaken to manage the Development in accordance with the feasibility study (see [12] above). Avoiding payment of ABSD was integral to the bargain between the parties – the feasibility study made no provision for ABSD;[35] and if ABSD were required to be paid, that would adversely affect the profit earned from the Development (and Mr Ang's share of that profit). Thus, clause 6 contained Ms Ng's undertaking to complete and sell the units within the timelines imposed by IRAS for remission of ABSD, *ie*, completion and sale by 28 May 2021 (based on the timelines prevailing at the time of the Loan Agreement).

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33 Mr Ang's Affidavit at pages 63 – 64 (Mr Lim's e-mail dated 9 September 2021), page 65 (Ms Ng's e-mail dated 24 September 2021), and page 67 (Mr Lim's e-mail dated 26 September 2021).

34 DCC at para 37(d)

35 Ms Ng's Affidavit at page 26 (specifically Section A: Full Project Costing).

51 I did not need to decide whether Ms Ng would still have complied with her undertaking in clause 6 of the Loan Agreement, if the units were not completed and sold by the original deadline of 28 May 2021, but were completed by the extended deadline of 28 November 2022 and sold by the extended deadline of 28 November 2021. The point was: this was never a project whereby Jervois and/or Ms Ng could indefinitely defer selling the units, and thus indefinitely defer repaying Mr Ang's $1.6m loan. (For completeness, I note that even by the extended deadline of 28 November 2021 to sell the units, the units had not been sold.)

52 The original IRAS deadline of 28 May 2021 for completion and sale of the units, was also a date mentioned in the Guarantee, whereby Ms Ng guaranteed repayment of the $1.6m to Mr Ang "upon receipt of the sale proceeds of the [Development] or by 28th May 2021, whichever is later". Defining Ms Ng's obligation under the Guarantee with reference to the date of 28 May 2021 was consonant with the parties expecting the units to be completed and sold by that date, to avoid payment of ABSD. As I stated above at [37], if the units had duly been sold by 28 May 2021 but the sale proceeds had yet to be received as at 28 May 2021, repayment of the $1.6m to Mr Ang would be deferred until the sale proceeds were received, and "subject to the completion of the option to purchase exercised by the potential buyer". However, all this was subject to the long-stop date of 30 September 2021 by which Mr Ang would have to be repaid, for Ms Ng promised that "in any event full repayment shall be made on or before 30th September 2021".

53 The 28 May 2021 date in the Guarantee also accorded with the feasibility study, which provided "Return of Investment" figures and

percentages for two scenarios: a "2 year Project", and a "3 year Project".[36] The feasibility study did not contemplate a scenario where the project would take more than 3 years, and that was consistent with the units having to be completed and sold within 3 years to avoid payment of ABSD (a payment that the feasibility study did not provide for).[37] Under clause 6 of the Loan Agreement, Ms Ng not only undertook that the Development would be completed and sold within the IRAS timelines for remission of ABSD; she agreed to manage the Development in accordance with the feasibility study, which made no reference to the project taking more than 3 years.

54 It was not Ms Ng's case that the extension of the IRAS timelines for remission of ABSD gave her more time to comply with her obligations under the Guarantee. Moreover, the Guarantee made no reference to the IRAS timelines – in particular, the long-stop date of 30 September 2021 was simply stated as such. Again, Ms Ng's only defence was that she did not need to pay Mr Ang until the units have been sold. However, I found that on the terms of the Guarantee, she could not delay repayment beyond 30 September 2021 even if the units had not been sold by then.

Ms Ng's liability under the Loan Agreement

55 My analysis above has focused on Ms Ng's liability under the Guarantee. For completeness, I also considered what Ms Ng's liability might be under the Loan Agreement – on the assumption that she (and not Jervois) was the borrower of the $1.6m from Mr Ang.

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36 Ms Ng's Affidavit at pages 25 – 28 (specifically page 28).

37 Ms Ng's Affidavit at page 26 (specifically Section A: Full Project Costing).

56 The Loan Agreement on its face did not state a specific date by which the $1.6m loan was to be repaid. There were two possibilities:

(a) The repayment date of the loan should be reckoned with reference to the Guarantee – which was referred to in clause 4 of the Loan Agreement, and was executed together with it. Moreover, para 1 of the Guarantee referred to the Loan Agreement.

(b) The Loan Agreement and Guarantee should be read separately, and there was simply no repayment date specified in the Loan Agreement.

57 Reckoning the repayment date with reference to both the Loan Agreement and the Guarantee had the attraction that the same two persons (Ms Ng and Mr Ang) had signed both documents, and the documents referred to each other: reading both documents together would therefore better reflect their intention. This was my preferred approach.

58 On this basis, it was implicit in Ms Ng guaranteeing repayment by certain dates (or upon certain events occurring) under the Guarantee, that under the Loan Agreement, Mr Ang should be repaid the $1.6m by the same dates (or upon the same events occurring). That would be (see [37]–[43] above):

(a) upon receipt of the sale proceeds or by 28 May 2021, whichever is later, subject to the completion of the option to purchase exercised by the potential buyer; and

(b) in any event, on or before 30 September 2021.

59 If Ms Ng were liable under the Loan Agreement, rather than under the Guarantee, that would thus make no difference as to *when* she had to repay the $1.6m to Mr Ang – at the latest, she would have needed to do so by 30 September 2021.

60 If, however, the two documents ought to be interpreted independently of each other, it would follow that no repayment date had been specified in the Loan Agreement. In view of clause 6, the parties would still expect the project to be completed and sold within 3 years, *ie*, by 28 May 2021 (see [44] – [50] above). It might be argued that Mr Ang could not expect repayment until 28 May 2021, or a reasonable time thereafter for the proceeds to be received; but that did not improve Ms Ng's position. The units were not sold by 28 May 2021, and moreover, it was well past that date by the time Mr Ang (through Mr Lim) demanded repayment of the $1.6m by 30 September 2021 via e-mails sent on 9 and 26 September 2021,[38] and then Mr Ang sued in October 2021.

61 Of course, the lack of a specific repayment date did not mean that the loan never has to be repaid. As stated in *Halsbury's Laws of Singapore* vol 12 (LexisNexis, 2022 Reissue) at para 140.755: "Unless expressly or implied agreed upon otherwise, money lent, whether by way of a loan or overdraft, is repayable on demand."

62 If a demand were required, that was either made at the meeting on 9 September 2021,[39] or by Mr Lim (as Mr Ang's representative) in his e-mails

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38 Mr Ang's Affidavit at pages 64 and 68.

39 Mr Ang's Affidavit at paras 18 and 22.

of 9 and 26 September 2021, reiterating that the deadline for repayment was 30 September 2021.

63 In this regard, the defendants misread Mr Lim's e-mail of 26 September 2021 as imposing a repayment deadline of 30 October 2021 (rather than 30 September 2021).[40] Mr Lim had said in the concluding paragraph of that e-mail: "In the absence of a written agreement regarding Option A and B by 30 Sept 2021, the default position of Mr Ang's loan on the matter shall apply and he would like to receive his loan of $1.6m within 1 month from 30 Sept 2021."[41] That "default position" was set out by Mr Lim two paragraphs earlier: "Please be reminded again that the default position regarding Mr Ang's loan of $1.6m is that it shall be repaid by 30 Sept 2021 …" Mr Lim had said the same about the "default position" in his earlier e-mail of 9 September 2021.[42]

64 The deadline for repayment was 30 September 2021; Mr Ang had simply indicated that he would like to receive the $1.6m within 1 month thereafter. When Mr Ang sued on 25 October 2021 (following correspondence earlier that month), he was entitled to do so, claiming what was due to him as at 30 September 2021.

No stay of execution

65 Ms Ng sought a stay of my order for interim payment, but I declined to grant a stay.

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40 DCC at paras 37(b) and (c).

41 Mr Ang's Affidavit at page 68.

42 Mr Ang's Affidavit at page 64.

66 A stay was sought based on the submissions in paras 66 to 81 of the defendants' written submissions. Those submissions invoked Jervois' counterclaim against Mr Ang for an alleged breach of clause 11 of the Loan Agreement.[43]

67 However, that was *Jervois'* counterclaim, under which only Jervois claimed relief against Mr Ang. Furthermore, the losses said to have arisen from Mr Ang's alleged breach of clause 11 of the Loan Agreement were Jervois' losses, not Ms Ng's – Jervois would be the one paying ABSD and/or selling the units at a lower value. Ms Ng did not raise a counterclaim, nor did she did claim any relief against Mr Ang. In the circumstances, Jervois' counterclaim was not a basis on which to stay execution of an interim payment order against Ms Ng.

68 Furthermore, the counterclaim was contingent on a finding that the Loan Agreement was binding between Mr Ang and Jervois, and I did not make such a finding at this stage. The premise of the counterclaim was explained as follows, in para 66 of the defendants' written submissions: "In the event that the Agreement [the Loan Agreement] was found to be binding between the 1st Defendant [Jervois] and the Plaintiff [Mr Ang], the 1st Defendant would also have a valid counterclaim against the Plaintiff for a breach of Clause 11 of the Agreement." I did not make any finding that Jervois was a party to the Loan Agreement; I simply upheld the assistant registrar's decision granting Jervois unconditional leave to defend Mr Ang's claim for the $1.6m (see [27]–[28] above).

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[43] DCC at paras 35 – 40.

69 It bears further noting that the counterclaim was based *solely* on an alleged breach of clause 11 of the Loan Agreement (set out at [13] above) – no breach of the Guarantee by Mr Ang was alleged, nor was it alleged that Mr Ang had committed any other wrongful acts that resulted in Jervois or Ms Ng being unable to repay Mr Ang the $1.6m by 30 September 2021. The crux of the counterclaim was that the publicity of the litigation commenced by Mr Ang had made it difficult for the Development to be sold, such that it might even have to be sold at a loss. However, Mr Ang was justified in commencing proceedings to recover the $1.6m loan as he had done:

(a) Ms Ng was obliged to repay Mr Ang $1.6m by 30 September 2021, having guaranteed repayment of the $1.6m by that date "in any event";

(b) Mr Ang was entitled to demand payment of that sum by 30 September 2021;

(c) by 25 October 2021, Ms Ng was already in default of her obligation to guarantee repayment of the $1.6m to Mr Ng by 30 September "in any event"; and

(d) Mr Ang was therefore entitled to sue on 25 October 2021 and maintain the suit, having received no payment by 30 September 2021.

70 Granting a stay of the interim payment order would have been inconsistent with Ms Ng having agreed to guarantee repayment of Mr Ang's $1.6m loan by 30 September 2021 "in any event" (see [40]–[43] above). If Ms Ng had any grievances to pursue against Mr Ang, she should still repay the $1.6m loan to Mr Ang first.

Conclusion

71 Ms Ng agreed to guarantee the repayment of Mr Ang's loan of $1.6m, promising that "in any event full repayment shall be made on or before 30th September 2021." However, she did not pay him anything by 30 September 2021, or indeed by the time the matter came before me on 21 March 2022, almost six months later. I thus made an interim payment order requiring her to pay Mr Ang the sum of $1.6m, with interest from 30 September 2021, and costs.

Andre Maniam
Judge of the High Court

Ng Yuen (Malkin & Maxwell LLP) for the plaintiff;
Vijai Dharamdas Parwani (Parwani Law LLC) for the defendants.