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

**[2021] SGHC 199**

Suit No 242 of 2021 (Registrar's Appeal Nos 215 and 216 of 2021)

Between

Xia Zheng

… *Plaintiff*

And

Lee King Anne

… *Defendant*

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# *EX TEMPORE* JUDGMENT

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[Civil Procedure] — [Summary judgment]
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# v
# Lee King Anne

**[2021] SGHC 199**

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24 August 2021

24 August 2021

**Tan Siong Thye J (delivering the judgment of the court *ex tempore*):**

## Introduction

1 The present two appeals arose from two applications filed by the plaintiff, Ms Xia Zheng, against the defendant, Ms Lee King Anne, in Suit No 242 of 2021 ("Suit 242"). The first application, Summons No 2109 of 2021 ("SUM 2109"), is for summary judgment against the defendant. The second application, Summons No 2112 of 2021 ("SUM 2112"), is for the striking out of the defendant's counterclaim. In the proceedings below, the learned Assistant Registrar ("AR") allowed both applications.[1] Dissatisfied, the defendant then commenced Registrar's Appeal No 215 of 2021 ("RA 215") and Registrar's Appeal No 216 of 2021 ("RA 216") against the AR's decisions in SUM 2109 and SUM 2112, respectively.

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[1] HC/ORC 4607/2021 and HC/ORC 4608/2021.

## The parties' cases

### *The plaintiff's case*

2 On 3 February 2020, the plaintiff and the defendant entered into two Interest Free Loan Agreements ("the two IFLAs").[2]

3 In the first Interest Free Loan Agreement ("the First IFLA"), the plaintiff extended an interest-free loan to the defendant for the sum of $1,460,291 to enable the defendant to purchase 7,301,455 shares in USP Group Limited ("USP") from Bestway Investments Asia Pte Ltd ("Bestway").[3] The terms of the First IFLA are reproduced here:[4]

> I, Lee King Anne NRIC No. [xxx], hereby agree this loan agreement and acknowledge receipt of a loan of Singapore dollars $1,460,291 (the cash order # 285191, pay to "BESTWAY INVESTMENTS ASIA PTE LTD, which copy is attached here) from Xia Zheng, NRIC No. [xxx], on 30 Jan 2020, without any interests whatsoever, to purchase 7,301,455 USP Group Limited shares (the Shares) from Bestway Investments Asia Pte Ltd (UEN. [xxx]) according [to] the S&P between Lee King Anne and Bestway Investments Asia Pte Ltd in Feb 2020.
>
> I, Lee King Anne, will give one original copy of S&P to Xia Zhen [*sic*] once it has been signed.
>
> I also sign the Charge, Form 9 of SGX, and Request for Transfer of Securities.
>
> The loan will last for 3 months from the date of this agreement, unless extended by the mutual agreement of both parties.
>
> Xia Zheng has the right to sell the shares or take over the Shares from Lee King Anne after 3 months.

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2 Statement of Claim ("SOC") at paras 2 and 3.

3 SOC at para 2.

4 1st Affidavit of Xia Zheng at p 12.

4 In the second Interest Free Loan Agreement ("the Second IFLA"), the plaintiff extended a loan to the defendant for the sum of $395,859.64 to enable the defendant to purchase 1,799,362 shares in USP from one Zeng Fuzu ("Mr Zeng").[5] The terms of the Second IFLA are reproduced here:[6]

> I, Lee King Anne NRIC No. [xxx], hereby agree this loan agreement and acknowledge receipt of a loan of Singapore dollars $395,859.64 (the cash order # 285057, pay to "Zeng Fuzu, which copy is attached here) from Xia Zheng, NRIC No. [xxx], on 3 Feb 2020, without any interests whatsoever, to purchase 1,799,362 USP Group Limited shares (the Shares) from Zeng Fuzu (his IC # is [xxx), according [to] the S&P between Lee King Anne and Zeng Fuzu on 3 Feb 2020.
>
> I, Lee King Anne, will give one original copy of S&P to Xia Zhen [*sic*] once it has been signed.
>
> I also sign the Charge, Form 9 of SGX, and Request for Transfer of Securities.
>
> The loan will last for 3 months from the date of this agreement, unless extended by the mutual agreement of both parties.
>
> Xia Zheng has the right to sell the shares or take over the Shares from Lee King Anne after 3 months.

5 Subsequently, the defendant executed and delivered to the plaintiff the duly signed Form 9 for each of the two IFLAs.[7] The defendant then entered into two sale and purchase agreements. The first agreement was with Mr Zeng on 31 January 2020 for the purchase of 1,799,362 USP shares at $395,859.64 (the "Zeng Shares"). The second agreement was on 4 February 2020 with Bestway for the purchase of 7,301,455 USP shares at $1,460,291 (the "Bestway

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5 SOC at para 3.

6 1st Affidavit of Xia Zheng at p 16.

7 SOC at para 6(a) and Defence and Counterclaim ("DCC") at para 9.

Shares").[8] I shall refer to the total number of USP shares in these two agreements collectively as "the Shares".

6 The plaintiff then furnished the loan sums under the First IFLA and the Second IFLA totalling $1,856,150.64 via cashier's orders to Bestway and Mr Zeng (the "Total Loan Sum"). The plaintiff claims that the cashier's orders were given to the defendant who then tendered them to Bestway and Mr Zeng.[9]

7 The plaintiff claims that the Total Loan Sum under the two IFLAs were not repaid by the defendant. Pursuant to the terms of the First IFLA and the Second IFLA, the plaintiff is entitled to have the Shares transferred to her immediately.[10]

8 The plaintiff also claims that the defendant signed an acknowledgment on 30 December 2020 in which she confirmed, *inter alia*, that she would take steps to transfer the Shares to the plaintiff's securities account within three business days from the date of signing.[11]

9 Accordingly, the plaintiff claims that in light of the evidence before the court, the defendant has no real defence against her claim pursuant to O 14 r 1 of the Rules of Court (Cap 332, R 5, 2014 Rev Ed) ("ROC").

10 The plaintiff also claims that the defendant's counterclaim should be struck out under O 18 r 19(1)(a) of the ROC as: (a) it discloses no reasonable

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8 DCC at para 10(a).

9 SOC at para 6(c).

10 SOC at paras 7 and 12.

11 SOC at para 8.

cause of action; (b) it is scandalous, frivolous, or vexatious; (c) it will prejudice, embarrass or delay the fair trial of the action; and (d) it is an abuse of the process of the court.

***The defendant's case***

*Defence*

11 The defendant submits that there are real triable issues at hand, so summary judgment should not have been granted in favour of the plaintiff.

12 The defendant's case, in essence, is that Mr Tony Li Hua ("Mr Li"), the ex-husband of the plaintiff told Mr Billy Huang ("Mr Huang"), the husband of the defendant, that the defendant was merely holding the Shares on behalf of Chinese investors who were interested in investing in USP (the "Purported Chinese Investors"). In this regard, the defendant claims that the two ILFAs were only to show the Purported Chinese Investors that their monies were indeed used to purchase USP shares from Bestway and Mr Zeng.[12] Hence, the two IFLAs are sham agreements entered into without any intention to create legal relations.[13] Her case relies on a series of background events, which are important to understand her case. These are as follows.

(1) Mr Li's Share Acquisition Plan

13 The defendant claims that sometime in October 2019, Mr Li requested the USP's current director and Chief Executive Officer, Mr Tanoto Sau Ian ("Mr Tanoto"), to acquire sufficient shares in USP to requisition an

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12 DCC at paras 5(c)(iii) and 6(b).

13 Defendant's Written Submissions ("DWS") at paras 7(g)(i) and 12(b).

extraordinary general meeting to replace USP's board of directors. At that time, the board of directors was controlled by a former director of USP, Mr Yin Kum Choy ("Mr Yin") ("the Share Acquisition Plan").[14]

14 According to the defendant, the Share Acquisition Plan was as follows:[15]

(a) Mr Tanoto would acquire 5 million shares in USP from one Ms Pan Huiqin (the "Pan Shares").

(b) Mr Tanoto would acquire 4,900,000 shares in USP from one Mr Joshua Huang Thien En (the "Joshua Shares").

(c) Mr Tanoto would acquire 12.8 million shares in USP from Sunmax Global Capital Fund 1 Pte Ltd (the "Sunmax Shares"). Mr Li is also the sole director of Sunmax.

(d) Mr Tanoto would acquire 7,301,455 shares in USP from Bestway.

15 Pursuant to Mr Li's Share Acquisition Plan, Mr Tanoto acquired the Pan Shares on or around 20 December 2019, the Joshua Shares on or around 10 January 2020, and the Sunmax Shares on or around 10 January 2020. As a consequence, Mr Tanoto purportedly holds 25.14% of the shares in USP.[16]

16 However, Mr Tanoto was unable to acquire the Bestway Shares, which constituted about 5.54% of the voting rights in USP. If Mr Tanoto were to do

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14 DCC at para 13(c)(ii).

15 DCC at para 13(c)(iii).

16 DCC at para 13(c)(iv).

so, he would have held 30% or more of the voting rights of USP, thereby triggering an obligation on Mr Tanoto's part to make a Mandatory Offer to the shareholders of USP, pursuant to r 14.1 of the Singapore Code on Take-overs and Mergers ("the Code").[17] Rule 14.1 states as follows:

> **14.1 When mandatory offers are triggered**
>
> Except with the Council's consent, where:-
>
> (a) any person acquires whether by a series of transactions over a period of time or not, shares which (taken together with shares held or acquired by persons acting in concert with him) carry 30% or more of the voting rights of a company; or
>
> …
>
> such person must extend offers immediately, on the basis set out in this Rule, to the holders of any class of share capital of the company which carries votes and in which such person, or persons acting in concert with him, hold shares. In addition to such person, each of the principal members of the group of persons acting in concert with him may, according to the circumstances of the case, have the obligation to extend an offer.

17 To circumvent a possible breach of r 14.1, Mr Li needed an "independent third party" to acquire the Bestway Shares and the Zeng Shares to avoid triggering a Mandatory Offer, while simultaneously garnering sufficient voting rights in USP to oust the board of directors led by Mr Yin. Mr Li, therefore, devised an alternative plan in which he would procure a third party to hold the Shares, on the pretext that Mr Li had Chinese investors who were interested in investing in USP and were the purchasers of the Shares, *ie*, the Purported Chinese Investors. Mr Li would then request this third party to allow him to nominate a proxy for the Shares to vote in the impending extraordinary

[17] DCC at para 13(c)(v).

general meeting and replace the board of directors that was controlled by Mr Yin.[18]

(2) The two IFLAs

18 Pursuant to Mr Li's Share Acquisition Plan, Mr Li persuaded Mr Huang to make the defendant the nominee of the 5.54% of the USP shares. The defendant was, however, unaware of the Share Acquisition Plan that was executed between Mr Li and Mr Tanoto at the time she signed the two IFLAs.[19]

19 In respect of the First IFLA, the defendant claims that, sometime in early January 2020, Mr Li requested her or Mr Huang, to hold 7,301,455 USP shares from Bestway as a nominee shareholder for and on behalf of the Purported Chinese Investors.[20] Mr Li offered to compensate Mr Huang and/or the defendant for their assistance in holding the 7,301,455 USP shares and made the following representations:[21]

> (a) The consideration for the purchase of the said USP shares from Bestway would be paid by the plaintiff and the defendant would not have to make any payment of the USP shares. The defendant claims that the cashier's order was handed over directly to Bestway and Mr Zeng by the plaintiff.[22]

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18 DCC at para 13(c)(vi).

19 DCC at para 13(c)(ix).

20 DCC at para 5(a).

21 DCC at para 5(c).

22 SOC at para 11.

(b) The Purported Chinese Investors would eventually purchase the said USP shares from Mr Huang and/or the defendant.

(c) The plaintiff, through Mr Li, told the defendant that the First IFLA was necessary to show the Purported Chinese Investors that the sum of $1,460,291 was indeed used to purchase the 7,301,455 USP shares from Bestway, which the defendant would hold for and on behalf of the Purported Chinese Investors.

20 The defendant relied on these representations and eventually agreed to act as a nominee shareholder and held the 7,301,455 USP shares from Bestway for and on behalf of the Purported Chinese Investors. However, she was only willing to do so on the understanding that she would be indemnified and that Mr Li and/or the plaintiff was indeed representing Mr Li's Purported Chinese Investors. The defendant was also agreeable to being compensated at a later date for her assistance in holding the shares for and on behalf of Mr Li's Purported Chinese Investors. The defendant's consent to Mr Li's request was conveyed to Mr Li through Mr Huang.[23]

21 In respect of the Second IFLA, the defendant claims that, sometime in late January 2020, Mr Li requested the defendant to hold 1,799,362 USP shares from Mr Zeng as a nominee shareholder for and on behalf of the Purported Chinese Investors. Mr Li also represented to the defendant that the consideration for the purchase of the said USP shares from Mr Zeng would be paid by the plaintiff.[24]

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23 DCC at paras 5(d) and 5(f).

24 DCC at para 6.

22 The defendant was informed by Mr Li that the Second IFLA was necessary to show the Purported Chinese Investors that the sum of $395,859.64 was indeed used to purchase the 1,799,362 USP shares from Mr Zeng which the defendant would hold for and on behalf of the Purported Chinese Investors. Again, Mr Li offered to compensate the defendant for her assistance in holding the 1,799,362 USP shares and made the following representations:[25]

(a) The consideration for the purchase of the said USP shares from Mr Zeng would be paid by the plaintiff and the defendant would not have to make any payment of the USP shares. The defendant claims that the cashier's order was handed over directly to Bestway and Mr Zeng by the plaintiff.[26]

(b) The Purported Chinese Investors would eventually purchase the said USP shares from the defendant.

(c) The plaintiff through Mr Li told the defendant that the Second IFLA was necessary to show the Purported Chinese Investors that the sum of $395,859.64 was indeed used to purchase the 1,799,362 USP shares from Mr Zeng which the defendant would hold for and on behalf of the Purported Chinese Investors.

23 However, the defendant was only willing to help Mr Li on the understanding that she would be indemnified and that Mr Li and/or the plaintiff was indeed representing Mr Li's Purported Chinese Investors. The defendant was also agreeable to being compensated at a later date for her assistance in

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25 DCC at para 6(b) and 6(c).

26 SOC at para 11.

holding the shares for and on behalf of Mr Li's Purported Chinese Investors. The defendant's consent to Mr Li's request was conveyed to Mr Li through Mr Huang.[27]

24 The defendant relied on these representations and eventually agreed to act as a nominee shareholder to hold the 1,799,362 USP shares for and on behalf of the Purported Chinese Investors.[28]

25 In the circumstances, the defendant claims that the plaintiff is not entitled to have the Shares transferred to her. She claims that the plaintiff is estopped from claiming her entitlement to the Shares because of the above representations made to the defendant through Mr Li.

*Counterclaim*

26 The defendant's counterclaim is premised on two main points.

(1) Real risk of enforcement measures

27 As stated above, the defendant claims that she was unaware of the Share Acquisition Plan executed between Mr Li and Mr Tanoto at the time when she signed the two IFLAs. At that time, she and Mr Huang were also unaware that the plaintiff might be the beneficial owner of the Shares and not Mr Li's Purported Chinese Investors.[29]

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27 DCC at para 6(c).

28 DCC at para 6(d) and 6(e).

29 DCC at para 13(c)(ix).

28 In February 2021, the defendant came to understand why Mr Li needed her to be the nominee of the Shares for the Purported Chinese Investors as otherwise Mr Tanoto's combined shareholding, including the Shares, would have thus exceeded the 30% threshold under r 14.1 of the Code and he would have been obliged to extend a Mandatory Offer to the shareholders of USP. However, the problem here is that, unknown to the defendant at the time that she signed the two IFLAs, Mr Tanoto was Mr Li's nominee. The defendant subsequently realised in February 2021 that she was holding onto the Shares on behalf of the plaintiff. The plaintiff is a person "acting in concert" with Mr Li under r 14.1, so Mr Li would therefore be "deemed"[30] to have the plaintiff's shareholding in USP (which the defendant holds in name) since the time that the two IFLAs were executed. Hence, Mr Li's combined shareholding would have indeed exceeded the 30% threshold under the r 14.1 after the defendant had signed the two IFLAs. Accordingly, the defendant claims that she was and continues to be exposed to a real risk of enforcement measures undertaken by the Securities Industry Council ("SIC") for being a person acting in concert.[31] Hence, she presently seeks a declaration that the beneficial owners of the Shares are the Purported Chinese Investors, so that she could avoid such measures by the SIC. The defendant is also now uncertain as to who are the actual beneficial owners of the Shares, *ie*, the plaintiff or the Purported Chinese Investors as represented to her by Mr Li through Mr Huang.

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30 DCC at para 13(c)(ix): "a deemed interest of about 10% through the Plaintiff who is the spouse of Tony".

31 DCC at para 20.

(2) Breach of oral agreement

29 As alluded to above, the defendant claims that sometime in January 2020, an oral agreement was entered into between the defendant and Mr Li, whereby it was agreed that the defendant would act as a nominee shareholder to hold the Shares for and on behalf of Mr Li's Purported Chinese Investors for a consideration sum to be agreed on a later date ("the Oral Agreement").[32]

(3) Relief sought

30 As stated earlier (see [28] above), to prevent incurring possible penalties from the SIC, the defendant seeks a declaration that the beneficial owners of the Shares are the Purported Chinese Investors and a declaration of their identity and details.[33]

31 The defendant also claims that she suffered loss and damage of $100,000 with accrued interest from (a) being exposed to the real risk of enforcement measures undertaken by the SIC and (b) Mr Li's breach of the Oral Agreement.[34]

**Issues to be determined**

32 There are two main issues to be determined in the present case:

(a) Should the summary judgment be upheld in favour of the plaintiff?

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32 DCC at para 22.

33 DCC at para 21.

34 DCC at para 29.

(i) Does the plaintiff have a *prima facie* case?

(ii) Has the defendant raised triable issues?

(b) Should the defendant's counterclaim which was struck out be upheld?

(i) Does the present case fall under any of the grounds listed under O 18 r 19(1) of the ROC?

(ii) Is it plain and obvious that the defendant's counterclaim should be struck out?

## My decision

### *Summary judgment*

*The applicable law*

33 It is trite that under O 14 r 1 of the ROC, the plaintiff may apply to the court for judgment against the defendant on the ground that the defendant has no defence to the claim in the writ.

34 The legal principles on summary judgment are succinctly summarised in *Ma Hongjin v SCP Holdings Pte Ltd* [2018] 4 SLR 1276 at [31]–[33], and are set out below:

> 31 In order to obtain judgment, a plaintiff must first show that he has a *prima facie* case for summary judgment. If the plaintiff satisfies this, the burden then shifts to the defendant to show that there is an issue or question in dispute which ought to be tried (O 14 r 3(1) of the ROC; *KLW Holdings Ltd v Straitsworld Advisory Ltd* [2017] SGHC 35 ("*KLW*") at [16]). If the defendant can establish that there is a fair or reasonable probability that he has a *bona fide* defence, he ought to have leave to defend (*Habibullah Mohamed Yousuff v Indian Bank* [1999] 2 SLR(R) 880 at [21]).

> 32 However, a court will not grant leave "if all the defendant provides a mere assertion, contained in an affidavit, of a given situation which forms the basis of his defence" (*M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2015] 1 SLR 325 ("*M2B*") at [19]), or if the assertions in affidavit are equivocal, lacking in precision, inconsistent or inherently improbable (*KLW* at [16]; *M2B* at [19]). The case law makes clear that the proper course is not for the court to assume that every sworn averment is to be accepted as true, or that such an averment may, *ipso facto*, provide a basis for leave to defend (*Abdul Salam Asanaru Pillai v Nomanbhoy & Sons Pte Ltd* [2007] 2 SLR(R) 856 … at [38]; see also *Goh Chok Tong v Chee Soon Juan* [2003] 3 SLR(R) 32 at [25]).
>
> 33 Apart from showing the existence of triable issues, the defendant may also avoid summary judgment by showing "that there ought for some other reason to be a trial" (O 14 r 3(1) of the ROC). In *Concentrate Engineering Pte Ltd v United Malayan Banking Corp Bhd* [1990] 1 SLR(R) 465 … at [12], Chan Sek Keong J, following *Miles v Bull* [1969] 1 QB 258 at 266A–C, held that there would be "some other reason" for a trial if the defendant is able to satisfy the court that there are circumstances that ought to be investigated, especially where most or all of the relevant facts are under the plaintiff's control. The defendant must be able to show clear justification for this; vague allegations that a case needs to be investigated in the absence of good reason would *not* constitute some other reason for trial (*KLW* at [57], citing Jeffrey Pinsler, *Principles of Civil Procedure* (Academy Publishing, 2013) at p 267).
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> [emphasis in original]

35 As stated in *Wiseway Global Co Ltd v Qian Feng Group Ltd* [2015] SGHC 85 at [20], the threshold for raising a triable issue is low. In this regard, the court elaborated that: "[i]t is well established that, where there are conflicts as to fact, summary judgment is ordinarily not granted: *Singapore Civil Procedure 2015* (G P Selvam gen ed) (Sweet & Maxwell, 2014) … at [14/4/5]".

36 In determining whether summary judgment is to be ordered where there is a subsisting counterclaim, the court in *Kim Seng Orchid Pte Ltd v Lim Kah Hin (trading as Yik Zhuan Orchid Garden)* [2018] 3 SLR 34 ("*Kim Seng Orchid*") has set out a practical framework at [97]–[99]:

97 In my view, the following principles can be gleaned from the case law on the proper approach to be taken when determining whether summary judgment ought to be ordered where there is a subsisting counterclaim. It is useful to try to amalgamate and reconcile where possible these principles and place them within a practical framework for easy reference and application.

98 The recommended framework is as follows.

(a) **Step 1: whether the counterclaim is plausible** – the court should first consider whether the counterclaim is plausible, *ie*, whether it is reasonably possible for the counterclaim to succeed at trial (or in the slightly tortured formulation adopted in [*Sheppards & Co v Wilkinson & Jarvis* [1889] 6 TLR 13 ("*Sheppards*")], whether the counterclaim is "so far plausible that it [is] not unreasonably possible for it to succeed if brought to trial"). If the counterclaim is *not* plausible, then its presence ought not to stand in the way of the plaintiff obtaining summary judgment of its whole claim, without any stay pending the determination of the counterclaim, and the court should so rule. If the court finds that the counterclaim *is* plausible, then **Step 2** follows.

(b) **Step 2: whether the plausible counterclaim amounts to a defence of set-off** – the court should then determine whether the counterclaim that it has found to be plausible amounts to a defence of set-off, whether legal or equitable. If it finds that the plausible counterclaim *does* amount to a defence of set-off, then unconditional leave to defend should be granted in respect of the whole of the claim. The reason for such a result is that when the court reaches such a conclusion, it has found in essence that the defendant has shown reasonable grounds of a real defence, and therefore leave to defend should, on the usual principles, be granted. On the other hand, if the counterclaim does *not* amount to a defence of set-off, then the court may proceed to **Step 3** below.

(c) **Step 3: whether the plausible counterclaim is sufficiently connected to the claim** – the court may then consider whether there is a connection between the claim (for which summary judgment is sought) and the counterclaim which it has considered to be plausible. If that counterclaim arises out of quite a separate and distinct transaction or it is wholly foreign to the claim or there is no connection between the claim and

counterclaim, the court should generally grant summary judgment of the whole claim, without a stay pending the determination of the unconnected counterclaim.

If the court is satisfied of the degree of connection between the claim and counterclaim, it may proceed to **Step 4**.

(d) **Step 4: whether there are grounds for a stay of execution in the light of the connected and plausible counterclaim** – if the court considers that there is really no defence to the claim and that as a consequence the plaintiff would be put to needless expense in proving its claim, the court should generally grant summary judgment of the whole of the claim. This is the default position where there are no triable issues under the usual approach (*ie*, no fair or reasonable possibility that there is a real or *bona fide* defence, whether that of setoff or otherwise).

But, in the exercise of its discretion, where the court also finds (through an application of **Steps 1 and 3** above) that there is *a connected and plausible counterclaim*, this may provide grounds for the court to stay execution of the whole judgment (or a portion thereof) pending the determination of the connected and plausible counterclaim. A qualification applies in the situation where the quantum of the judgment exceeds that of the quantum of the counterclaim: in such circumstances, there should not be any stay of execution of the quantum of the judgment that is in excess of the counterclaim.

Beyond the above qualification, whether or not a stay of the whole or a part of the judgment should be granted is ultimately a matter for the court's discretion, to be exercised according to established principles. The degree of connection between the claim and counterclaim, the strength and quantum of the counterclaim and the ability of the plaintiff to satisfy any judgment on the counterclaim are some of the considerations which the court may take into account in the exercise of its discretion on whether to grant a stay: see *Singapore Civil Procedure 2016* at para 14/4/10; and [*United Overseas Bank Pte Ltd v Tru-line Beauty Consultants Pte Ltd* [2011] 2 SLR 590 ("*Tru-line*")] ([84] *supra*) at [45]. The exercise of the discretion to grant or to refuse to grant a stay of execution of the whole or a portion of the judgment sum pending trial of

> a plausible and connected counterclaim will ultimately depend on whether the defendant is able to show that it would be fair and just in all the circumstances of the case to stay the immediate enforcement of the whole or a portion of the judgment sum due to the pending trial of the counterclaim. The burden lies on the defendant to prove that the stay is justifiable having regard to all the circumstances of the case.

99 I make one observation regarding **Step 4**. In my view, where there is no real defence to the claim and therefore summary judgment ought, according to the usual principles, to be granted, the appropriate effect of a connected and plausible counterclaim not amounting to a defence should *only* be that of a *stay of execution* pending determination of the counterclaim, rather than that of *unconditional leave to defend*. In other words, summary judgment ought to be granted in respect of the *whole* of the claim, rather than merely the part of the claim exceeding that of the counterclaim (with unconditional leave to defend the balance of the claim), in situations where the size of the claim exceeds that of the counterclaim. The reason is that the grant of summary judgment in respect of the part of the claim exceeding that of the counterclaim would lead to no reduction in the trouble and expense that the plaintiff would be put to at trial. In order to pursue the remaining part of the claim for which the defendant has been granted unconditional leave to defend, the plaintiff would still have to head to trial and lead – in all likelihood – *the very same type and amount of evidence* that he would have needed to lead if his application for summary judgment had utterly failed in the first place and he therefore had to prove the entirety of his claim. The only benefit he obtains from his success in the summary judgment application is immediate entitlement to the quantum of the claim exceeding that of the counterclaim. The problem is made even more evident when the size of the counterclaim exceeds that of the claim. In such a situation, it would be perverse for unconditional leave to be granted to defend the whole of the claim, even in the absence of any triable issues in the claim; the correct response when there is really no real defence – as pointed out in *Sheppards* ([91] *supra*) – is surely that of summary judgment subject only to a stay at the court's discretion. Any other approach would lead to a wastage of costs and the time of the court, the litigants and the witnesses.

[emphasis in original]

*My findings*

(1) Whether the defendant's pleadings were defective

37 As a preliminary issue, I shall address the plaintiff's allegation that the defendant has only pleaded one defence, *viz*, estoppel by representation.[35] The plaintiff claims that this defence is not a *bona fide* one that raises triable issues. The plaintiff raises several arguments in support of this claim.

38 The plaintiff alleges that the defendant's pleaded position is that Mr Li was the one who made all the representations that the defendant purportedly relied on in entering into the two IFLAs.[36] The plaintiff asserts that the defendant has not pleaded that Mr Li allegedly made these representations as agent of the plaintiff. Thus, the defendant cannot raise estoppel by representation. This argument has no merit as the defendant clearly pleaded in her defence and counterclaim that she had relied on the "representations made by the [p]laintiff *through* [Mr Li]" [emphasis added].[37]

39 The plaintiff also argues that the defendant relies on representations that concern future intentions, which would fail to qualify as requisite representations under estoppel by representation.[38] These pleaded representations are that (a) the defendant was "agreeable to being compensated at a later date" and that (b) the consideration sum was "to be agreed on a later date".[39] In my view, this argument concerns only those representations

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35 Plaintiff's Written Submissions ("PWS") at para 42.

36 PWS at para 44.

37 DCC at para 13(c).

38 PWS at para 58.

39 PWS at para 60.

regarding the defendant's *compensation* for holding the Shares for and on behalf of the Purported Chinese Investors. In contrast, the defendant's main argument is that she was represented by Mr Li that she would hold the Shares for the benefit of the Purported Chinese Investors. In this regard, Mr Li's representation that the defendant was to hold the Shares as the Purported Chinese Investors' nominee does *not* concern future intentions. The issue of compensation is then an ancillary one founded on this main argument: the defendant alleges that Mr Li informed her, through Mr Huang, that Mr Li would later compensate the defendant when the defendant became the nominee of the Shares.

40 In any case, the defendant is not relying solely on estoppel by representation. In her defence and counterclaim, she pleads that she signed the two IFLAs based on Mr Li's representation that they were for the purposes of assuaging the Purported Chinese Investors' concerns over the use of their funds.[40] The defendant asserts that the two IFLAs are sham agreements as these were not genuine loan agreements sought by her. The defendant was only assisting Mr Li to be a nominee for Mr Li's Purported Chinese Investors.

(2) Whether the defendant has raised triable issues

41 From the framework in *Kim Seng Orchid* (see [36] above), this court should first consider whether the counterclaim is plausible, *ie*, whether it is reasonably possible for the counterclaim to succeed at trial. In this case, the defendant's defence and counterclaim are premised on the same narrative and are interdependent.

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[40] DWS at para 7(g)(i); DCC at paras 5(c)(iii) and 6(b).

42 In my view, the plaintiff has shown a *prima facie* case for summary judgment if the court accepts that the two IFLAs are genuine. On the face of the terms of the two IFLAs, they show that the plaintiff is entitled to the Shares since the defendant has failed to repay the Total Loan Sum. Moreover, it is undisputed that: (a) the plaintiff had paid for the purchase price of the Shares; and (b) the defendant does not claim that she has any beneficial interest in the Shares.

43 However, the defendant has raised triable issues in the present case. She has adduced evidence in support of her claim regarding the Share Acquisition Plan and the Purported Chinese Investors.

44 The defendant has adduced correspondence to show that in January 2020 (*ie*, one month before she entered into the two IFLAs): (a) Mr Tanoto had unsuccessfully attempted to enter into a share purchase agreement with Bestway because he would cross the 30% threshold for making a mandatory offer to the other USP shareholders; and (b) Mr Li had approached Mr Huang for his help to hold shares on behalf of the Purported Chinese Investors. For (a), the following extract of WhatsApp messages is relevant:[41]

> **Extract No. 3**
>
> **WhatsApp Chat Group tilted 'USP EGM'. Members of group are Tony, Eric and 2 lawyers from Lee & Lee (Adrian and Liane):**
>
> ***Date/Time: 3 Jan 2020 @ 11.25 am***
>
> [Liane]: Sorry I thought [Mr Tanoto] is not entering into the bestway contract?
>
> If he does he may cross 30% with the deemed interest based on his existing transactions?

41 1st Affidavit of Lee King Anne at pp 8 to 9.

> So, a completely separate party shd be the transacting party?
>
> [Mr Li]: Yes. Sorry he forgot this.

For (b), the defendant adduces an email dated 7 January 2020 from Mr Li to Mr Huang, in which Mr Li forwarded an agreement for the sale and purchase of 3,650,000 USP shares held by Bestway.[42] The email states as follows:[43]

> Hi Billy [*ie*, Mr Huang]
>
> 1. Please see the attached as a draft of Deed of Share Sales.
>
> 2. Eric and I will meet at CDP at 10am tomorrow. Then can we meet you at raffles place at 1am?
>
> …

On the same day, Mr Huang replied to Mr Li, stating that he was not interested. The email states:[44]

> Tony [*ie*, Mr Li]
>
> I think it is best you use that friend of yours for this matter.

The defendant claims that, despite Mr Huang's rejection, Mr Li nevertheless approached Mr Huang at his office to seek his help. Mr Huang then explained Mr Li's situation to the defendant, who eventually agreed to help.[45]

45 In fairness to the plaintiff, I note that the quantum of the USP shares held by Bestway that was proposed to be held by Mr Huang in the above discussions (3,650,000 shares) differ from the Bestway Shares held by the defendant pursuant to the First IFLA (7,301,455 shares). Notwithstanding this

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42 1st Affidavit of Lee King Anne at para 17 and pp 86 to 99.

43 1st Affidavit of Lee King Anne at para 17 and pp 85.

44 1st Affidavit of Lee King Anne at para 19 and p 101.

45 1st Affidavit of Lee King Anne at para 20.

discrepancy, the above evidence still suggests that there were discussions for USP shares held by Bestway to be transferred to Mr Huang and/or the defendant to hold as a nominee as requested by Mr Li. Moreover, these USP shares were to be held for the benefit of Mr Li's *friend*, which *prima facie* supports the defendant's claim that they are the Purported Chinese Investors.

46 Furthermore, the defendant has also adduced WhatsApp messages by Mr Li which shows explicit references to Chinese investors. She claims that on or before 8 November 2020, approximately 9 months after entering into the two IFLAs, she asked Mr Huang if it was possible for her to return the Shares to the Purported Chinese Investors. She felt uncomfortable about holding onto the Shares for so long, especially in light of an ongoing litigation commenced by USP against Mr Li and Mr Tanoto.[46] The material portions of the said WhatsApp messages are reproduced below:[47]

> [Mr Huang]: Tony, regarding *the shares you put with Anne*, pls let me know when you are ready to trf. Anne has held the shares for *your investors* since Feb 2020., and was potentially exposed to litigation in relation to USP, Eric and you. She also left her last job as VP, to join and help the Company. For her role, we are seeking a *compensation package of $100k*. Once paid, she will release all the shares to your appointed representative and will also quit immediately from USP, after a proper handover. Please let me know when you are ready to go ahead with this arrangement.
>
> [Mr Li]: I will pass [your] requirements to *Chinese investors*. But I think it is difficult BACS they took risk and no benefits. Ann resigned for staying USP for 4 months as [you] required. I was ok. Now, Ann has stayed more than 4 months. Please think [your] requirements over, at the same time.

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46 1st Affidavit of Lee King Anne at para 35.

47 1st Affidavit of Lee King Anne at p 124.

[emphasis added]

It is plausible that the plain wording of these messages supports her narrative. Specifically, the messages suggest that Mr Li affirmed that the defendant was holding onto the Shares for and on behalf of some Chinese investors. They also suggest that she sought compensation of $100,000, which is the quantum of damages that she now seeks in her counterclaim.

47 The plaintiff submits that the reference to the Chinese investors in the above messages was to a different set of Chinese investors who are not connected with the present dispute, *viz*, investors from Sunmax. The parties referred to the excerpts of the WhatsApp messages between Mr Li and Mr Huang below:[48]

**4 November 2019**

[Mr Li]: This Thursday, I need a lawyer to represent me to talk to an investor. Tks.

[Mr Huang]: Regarding Sunmax?

[Mr Li]: yes. I will tell you her background when we meet or by call. This lady was forced me to sign something before two years ago. So I do not want to meet her. Tks.

…

**5 November 2019**

[Mr Li]: Ur Email address?

[Mr Li]: The below files are:1) the S$17m-judgement statement from Singapore high Court [*sic*].2) Asset list, total is S$20m. Right now *Sunmax* has total 17 investors (I privately settled or simi-settled 9 people). Left 8 People with S$1.27 each, total is about S$10m.4) Fund needs to a lawyer to negotiate with *Chinese investors* to give fund

[48] Mr Li's Affidavit at pp 10 to 12 (para 21) and pp 29 to 33.

> max.2-years. Can you give me recommendation? Or any ideas?
>
> …
>
> **26 April 2020**
>
> [Mr Li]: The company is too small however the boss has money to buy Joshua and *Chinese Investors'* shares?
>
> …
>
> **30 September 2020**
>
> [Mr Huang]: I hv a mtg at PLQ at 5.30pm. Maybe we can meet at 4.30pm at PLQ.
>
> [Mr Li]: The amount is many months ago when the *Chinese investors* asked for repayment. I told the Malaysia MP, the boss of the a Malaysia listco to borrow many. Then their Singapore manager privately took the project. Now the *Chinese investors* rejected such payment schedule.
>
> [emphasis added]

In response, the defendant submits that these WhatsApp messages regarding Sunmax were exchanged in 2019, *ie*, before the two IFLAs were entered into. In contrast, the WhatsApp messages concerning the Purported Chinese Investors in the present case were exchanged in late 2020 (see [46] above). Hence, the plaintiff cannot definitively claim that both sets of WhatsApp messages refer to Sunmax instead of the Purported Chinese Investors.

48 Hence, having considered both parties' submissions, I find that the issue of whether the reference to the Chinese investors in these messages are the Purported Chinese Investors is one that should be tried.

49 The defendant has also shown evidence that she was concerned about breaching the Code. On 5 February 2021, she wrote an email to Ms Nah Ee Ling ("Ms Nah"), the former Chief Financial Officer of USP:[49]

> "Hi Ee Ling,
>
> Since you mentioned , I do have a concern to discuss.
>
> I have been told that I may be accused of being a party to a "concerted party" transaction bv holding these shares for Xia Zheng , who is Li Hua 's wife.
>
> Previously I was told that these shares were bought by some Chinese investors who were introduced by Tony and that they had forwarded the money to Xia Zheng for the transaction. That was why I agreed to help out as I thought that the shares were really bought by some Chinese investors.
>
> Li Hua is/was the representative of Sunmax and its shares.
>
> Together, the shares I held and Sunmax shares, were all used to vote against the previous Board.
>
> I want to be safe. I do not want to be accused of being a member of any concerted party.
>
> Please advise.
>
> Thank you.
>
> Anne"

Ms Nah then replied to state that the defendant should consider seeking independent legal advice.[50] In my view, the above correspondence provides *prima facie* support for the defendant's concern about possibly breaching the Code by holding the Shares for and on behalf of the Purported Chinese Investors. Hence, this evidence should be tested at trial.

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49 1st Affidavit of Lee King Anne at para 43 and p 128.

50 1st Affidavit of Lee King Anne at para 44 and p 128.

50 The defendant also claims that it would be absurd for her to purchase the Shares at a premium of 20 cents per share when the prevailing market rate then was allegedly only 5 cents per share.[51] The truth of this assertion is a matter that requires the assistance of expert evidence, which should then be tested at trial.

51 From the above evidence, I am satisfied that the defendant has shown that there are substantive triable issues in the present case. These issues include:

(a) Whether the plaintiff, through Mr Li, made the alleged representations regarding the Share Acquisition Plan and the circumstances then, which the defendant relied on when she entered into the two IFLAs.

(b) Whether the plaintiff or the Purported Chinese Investors are the beneficial owners of the Shares.

(c) Whether the two IFLAs were genuine loan contracts or sham agreements that embodied no intention to create legal relations.

(d) Whether the plaintiff agreed to compensate the defendant for holding the shares for and on behalf of the Purported Chinese Investors.

52 I reiterate that the threshold for raising a triable issue is low and summary judgment is generally not granted where there are conflicts as to fact (see [35] above). Here, the evidence that the defendant has adduced suggest a different but plausible narrative in contradistinction to the plaintiff's simple and straightforward one, which was premised on the plain terms of the two IFLAs.

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[51] 1st Affidavit of Lee King Anne at para 33.

The issues raised by the defendant's plausible narrative should be tried and her evidence adduced should be tested at trial.

53 As I have stated earlier, the defendant's defence and counterclaim are premised on the same facts (see [(1)] above). Hence, I also find that her counterclaim is plausible, which satisfies Step 1 of the framework in *Kim Seng Orchid*. I do not find that the counterclaim amounts to a defence of set-off under Step 2, especially since the defendant is seeking a declaration that the plaintiff is not entitled to the Shares. Hence, I proceed to Step 3. The counterclaim is clearly sufficiently connected to the plaintiff's claim, as both arise out of the issue of the beneficial ownership of the Shares. Under Step 4, I find that the defendant has a real defence to the present claim. Thus, there is insufficient basis to order summary judgment and a stay of execution pending the determination of the counterclaim which should be allowed (see [67] below).

(3) Analysis of the two IFLAs

54 In the two IFLAs, the plaintiff agreed to loan two sums to the defendant for specific purposes. In the First IFLA, it was to loan the defendant $1,460,291 without interest to purchase 7,301,455 USP shares from Bestway. In the Second IFLA, the plaintiff loaned to the defendant $395,859.64 without interest to purchase 1,799,362 USP shares from Mr Zeng. These interest-free loans to the defendant were only to purchase USP shares from the two different entities specified in the two IFLAs.

55 At the end of three months, the plaintiff was entitled to sell the Shares or take over the Shares from the defendant. A plain reading of the two IFLAs suggests that the plaintiff could sell the Shares or take over the Shares from the

defendant even if the loans were repaid before the three months stipulated in the two IFLAs.

56 It is important to note that the focus of the two IFLAs seems to be on the USP shares, as opposed to the principal sums. If the loans were not repaid after three months and the market price of the Shares was lower than the principal sums, the two IFLAs are silent on whether the plaintiff could have a recourse against the defendant for the difference. Conversely, if the market value of the Shares was higher than the principal sums, the two IFLAs are also silent on whether the plaintiff should pay the defendant the difference. It is peculiar that these usual terms found in loan agreements are missing in the two IFLAs.

57 It is also interesting that the plaintiff's Statement of Claim is not seeking for the return of the principal sums of the two IFLAs but for the Shares. I would have thought that the logical focus of the claim should have been for the principal sums and not for the Shares.

58 The above observations suggest that there could be some truths in the defendant's case as there could be more to the IFLAs than meets the eyes. Therefore, it is unsafe to dismiss the appeal and allow the plaintiff to enter summary judgment without the rigor of a trial to ascertain the truths of the present disputes.

(4) Parol evidence rule

59 I should also add that the above evidence is not excluded by the operation of the parol evidence rule under s 94 of the Evidence Act (Cap 97, 1997 Rev Ed).

60 Section 94 of the Evidence Act provides as follows:

> **Exclusion of evidence of oral agreement**
>
> 94. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been *proved according to section 93*, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to, or subtracting from its terms subject to the following provisions:
>
> …
>
> [emphasis added]

Hence, where s 93 of the Evidence Act applies, the general rule provided under s 94 is that no evidence of any oral agreement or statement can be admitted to contradict, vary, add to, or subtract from the terms of the written contract.

61 In *Toh Eng Tiah v Jiang Angelina and another appeal* [2021] 1 SLR 1176 at [77] ("*Toh Eng Tiah*"), the Court of Appeal held that:

> … where the ***allegation is that the agreement was a sham***, this is a question that ***goes to the very existence of the contract*** – if proved, the existence of a sham means that the agreement was not intended to create enforceable legal obligations but was intended to deceive third parties. It follows, therefore, that the issue of whether there is a sham is *prior to* and *will necessarily not engage* s 93 and, ***accordingly, s 94 of the [Evidence Act]***.
>
> [emphasis in italics in original; emphasis in bold italics added]

Hence, s 94 of the Evidence Act does not apply where there is an allegation that the contract at hand is a sham agreement. This is distinguished from the operation of the exception provided under s 94(*a*), which states as follows:

> **Exclusion of evidence of oral agreement**
>
> **94.** When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 93, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to, or subtracting from its terms subject to the following provisions:
>
> > (*a*) any fact may be proved which would invalidate any document or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, the fact that it is wrongly dated, want or failure of consideration, or mistake in fact or law;
> >
> > …

The Court of Appeal in *Toh Eng Tiah* clarified (at [71]) that s 94(*a*) of the Evidence Act applies where *there is a contract in the first place* which has been reduced to a document. Where there is an allegation that the purported contract is a sham agreement, the logical inquiry would be whether *there was even a contract in the first place*. In such a scenario, as indicated above, s 93 of the Evidence Act does not apply; accordingly, neither does s 94.

62 On the present facts, the defendant's case is that the two IFLAs are sham agreements (see [12] above). Her narrative is that she had only signed these agreements to show the Purported Chinese Investors that their monies were being used to purchase Shares. Indeed, the defendant's narrative is diametrically opposed to that of the plaintiff's case, which the plaintiff acknowledges in her submissions. The plaintiff argues that because the representations alleged by the defendant are directly contradictory to the terms of the two IFLAs, the AR's finding that paragraphs 5(c) to 5(f) of the defendant's defence "cannot hold

water in light of the parol evidence rule" should not be disturbed.[52] In my view, it is *precisely* because the defendant's narrative is so different from the plaintiff's that the parol evidence rule does *not* apply. Here, the defendant alleges the two IFLAs are sham agreements while the plaintiff alleges that the two IFLAs are valid agreements. As held in *Toh Eng Tiah*, the allegation of a sham agreement goes to the existence of a valid contract, which excludes the operation of s 93 of the Evidence Act. By extension, s 94 will not apply and the defendant's evidence is thus admissible.[53] In any case, even if the defendant's case was not premised on the two IFLAs being sham agreements and s 93 of the Evidence Act is thus applicable, this case would come under the exception in s 94(*a*) of the Evidence Act as there was an allegation of fraud that may invalidate the two IFLAs.

(5) Conclusion on summary judgment

63 I am satisfied that the defendant has raised triable issues in the present case and that there is a fair or reasonable probability that she has a *bona fide* defence. I therefore grant the defendant unconditional leave to defend the claim in Suit 242.

***Striking out***

*The applicable law*

64 Under O 18 r 19(1) of the ROC, the court may strike out a pleading if:

52 PWS at paras 48 to 49.

53 DWS at 13.

(a) it discloses no reasonable cause of action or defence, as the case may be;

(b) it is scandalous, frivolous, or vexatious;

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the court.

65 The principles behind each of the four grounds for striking out are well-established. I set out the court's succinct summary in *Tan Swee Wan and another v Lian Tian Yong Johnny* [2016] SGHC 206 ("*Tan Swee Wan*") at [39]:

> …
>
> (a) O 18 r 19(1)(a): "it discloses no reasonable cause of action". This involves an action which does not even have "some chance of success when only the allegations in the pleading are considered": *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 ("*Gabriel Peter*") at [21].
>
> (b) O 18 r 19(1)(b): "it is scandalous, frivolous or vexatious".
>
> (i) A matter is "scandalous" where it does not even have a "tendency to show" the truth of any allegation material to the relief sought: *Lai Swee Lin Linda v AG* [2006] 2 SLR (R) 565 at [67], citing *Christie v Christie* (1872-1873) LR 8 Ch App 499 at 503.
>
> (ii) "Frivolous or vexatious" means "obviously unsustainable" or "wrong". A case that is "plainly and obviously unsustainable" is one which is either legally or factually unsustainable. A case is *legally unsustainable* if "it may be clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks". *A case is factually unsustainable* if it is "possible to say with confidence before trial that the factual basis for the claim is fanciful because it is entirely without substance, [for example, if

> it is] clear beyond question that the statement of facts is contradicted by all the documents or other material on which it is based": *The "Bunga Melati 5"* [2012] 4 SLR 546 at [39].
>
> (iii) O 18 r 19(1)(b) could also apply to a case where the party bringing an action is not acting *bona fide* and merely wishes to annoy or embarrass his opponent, or where there was a lack of purpose or seriousness in the party's conduct of proceedings: *The "Osprey"* [1999] 3 SLR(R) 1099 at [8].
>
> (c) O 18 r 19(1)(c): "it may prejudice, embarrass or delay the fair trial of the action". Pleadings which could be struck out on this ground include those which are unnecessary, which include improper or irrelevant details, or where allegations unrelated to the issues were made for the purpose of embarrassing or vexing the opposing party: see Jeffrey Pinsler SC, *Principles of Civil Procedure* (Academy Publishing, 2013) at para 9.008.
>
> (d) O 18 r 19(1)(d): "it is otherwise an abuse of the process of the Court". An abuse of process of court means using the court machinery as a means of vexation and oppression in the process of litigation. For example, where a claim is brought not for the purposes of relief but for some other collateral or ulterior motive: *Gabriel Peter* at [22].
>
> [emphasis in original]

66 The court should only exercise its power to strike out in "plain and obvious cases", which is a high threshold. The question of whether a point is plain and obvious does not depend on the duration it takes to be argued, but whether it is plain and obvious that it yields only one result when argued: *Her Majesty's Revenue & Customs v Hashu Dhalomal Shahdadpuri and another* [2011] 2 SLR 967 at [37], citing *Bank of China v Asiaweek Ltd* [1991] 1 SLR(R) 230 at [6]. In the present case, it means that the defendant's counterclaim is so plainly and obviously weak that it discloses no cause of action and striking out is warranted. Hence, the court should not carry out a "minute and protracted examination of the documents and the facts of the case in reaching [its] decision: *Tan Swee Wan* at [40], citing *Gabriel Peter &*

*Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR (R) 649 at [18] and *The "Osprey"* [1999] 3 SLR(R) 1099 at [6].

*My findings*

67 I have stated earlier that the defendant's counterclaim is premised on the same facts that she relies on in her defence (see [41] and [53] above). I have also found that summary judgment should not be entered in favour of the plaintiff (see [63] above). Given that the threshold for a striking out application (*ie*, a plain and obvious case) is higher than that for an application for summary judgment, *a fortiori*, the plaintiff's application for striking out cannot stand. Furthermore, the defendant has raised a *prima facie* case for her counterclaim against the plaintiff.

**Conclusion**

68 For the reasons above, I allow the defendant's appeal in RA 215 and RA 216 and grant the defendant unconditional leave to defend in Suit 242. I also set aside the costs order for SUM 2109 and SUM 2112 of $12,000 (all-in).[54]

69 I shall now hear parties on the issue of costs for these appeals.

Tan Siong Thye
Judge of the High Court

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[54] HC/ORC 4607/2021 and HC/ORC 4608/2021.

Daryl Ong Hock Chye and Muhammad Fikri Yeong Bin Iskandar Shah (LawCraft LLC) for the plaintiff-respondent;
Luo Ling Ling, Noor Heeqmah Binte Wahianuar and Sharifah Nabilah Binte Syed Omar (Luo Ling Ling LLC) for the defendant-appellant.

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