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

[2022] SGHC 94

Suit No 682 of 2020

Between

Urip Cahyadi

… *Plaintiff*

And

Henry Surya

… *Defendant*

JUDGMENT

[Contract — Formation — Oral agreement]

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Urip Cahyadi
v
Henry Surya

[2022] SGHC 94

General Division of the High Court — Suit No 682 of 2020
Kwek Mean Luck J
15–18, 22–23 February 2022, 6 April 2022

29 April 2022 Judgment reserved.

Kwek Mean Luck J

Introduction

1 The plaintiff, Mr Urip Cahyadi, claims for breach of an oral agreement made with the defendant, Mr Henry Surya. The alleged oral agreement was made between the plaintiff's daughter, Ms Joanne Cahyadi ("Joanne") (acting on his behalf) and the defendant, at the defendant's house in Jakarta, Indonesia on 7 May 2020.

2 The alleged oral agreement is that the defendant agreed to pay IDR150,534,661,958 to the plaintiff in exchange for the plaintiff granting a Power of Attorney to Adjie Wibisono Legal Practice.

3 The defendant disputes the existence of the alleged oral agreement.

Undisputed Facts

4 Between 2018 and 2020, the plaintiff placed 22 time deposits (also known as "bills"), totalling IDR149,920,000,000, with Korperasi Simpan Pinjam Indosurya ("KSP Indosurya"). The bills were in his own name and in the names of Joanne and his son Timothy Cahyadi ("Timothy") on his behalf. With the interest accrued, the bills were worth IDR150,534,661,958 in total ("Loan Amount").[1]

5 The defendant founded KSP Indosurya in 2012, and was chairman until he stepped down in 2016. KSP Indosurya bears his family name, "Surya".[2]

6 In February 2020, there were rumours about KSP Indosurya's solvency. On 17 February 2020, Joanne texted the defendant via WhatsApp ("WA") to arrange a meeting between him and the plaintiff. They met on 21 February 2020.[3]

7 In a WA message on 28 February 2020, Joanne asked the defendant to help with the approval for the withdrawal of two of the plaintiff's one-month bills amounting to IDR10bn. The defendant responded on the same day, stating "[w]e try to complete it in March, because we're trying to raise the funds" and that he "[w]ill definitely prioritize [the plaintiff's withdrawal] next month". Joanne replied to him that "we have in total 150 billion", reminding him of the total Loan Amount. On 1 March 2020, the defendant told Joanne via WA that

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1 Plaintiff's AEIC at para 6.

2 Defendant's AEIC at paras 4–6.

3 Joanne's AEIC at para 8.

"[w]e are trying to get cashflow and once we do we will definitely prioritize yours first".[4]

8 On 10 March 2020, Joanne sent the following WA message to the defendant, requesting him to personally settle KSP Indosurya's debt to the plaintiff:[5]

> "[s]ince our previous conversation, we really need the funds (10 billion first). But this past week, we heard that Indosurya don't have any funds. Before the situation gets worse, could you please settle my money with your personal account? I trust this 150 billion is a very small portion for you and you are able to do it."

9 In a WA message to Joanne on 23 March 2020, the defendant proposed that nine of his Singapore properties be used to pay the Loan Amount. He said that his nine properties consisting of "7 units of office strata" which were valued at around $14m and his "2 units commercial bigger units" that were worth around $10m should "settle it", taking into account the outstanding loans on the properties of around $7m and $3m respectively.[6] For context, the Singapore Dollar equivalent of the Loan Amount is around $14m to $15m, depending on the exchange rate.[7]

10 That same day, Joanne responded that the plaintiff was agreeable to receiving payment with the defendant's Singapore assets. Joanne asked if the defendant could "give [both herself and the plaintiff] the list and contact person

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4 Joanne's AEIC at p 59.

5 Joanne's AEIC at p 59.

6 Joanne's AEIC at p 63.

7 15 February Transcript, p 160 lines 20–25.

in Singapore? For appraisal etc".[8] She was referring to the list of properties that the defendant was offering to settle KSP Indosurya's debt.[9] Later that day, the defendant said to Joanne via WA that the "most important point is that you have not registered a PKPU".[10] The defendant was referring to the postponement of debt repayment proceedings in Indonesia in respect of KSP Indosurya ("PKPU Proceedings").

11 On 6 April 2020, Joanne asked the defendant: "Henry, is it okay if [you] settle our portion first? At this point in time, we need to use the money ... Hope you can understand and give us the list."[11]

12 On 22 April 2020, Joanne said to the defendant that based on the information provided by him so far, she was only able to obtain an estimated value of the properties. Joanne asked him for the outstanding loans and size of the units or, alternatively, for the contact details of the defendant's lawyers in Singapore who could provide more precise information. The defendant asked if Joanne wanted to "settle it fast" and Joanne replied that "[y]es of course [she]'d like to settle it fast. That's why [she and the plaintiff] need the lawyer's contact number, so [they] don't have to go back and forth". When the defendant said "[l]et's try to settle it next week then", Joanne responded to him that it would not be so fast because the plaintiff and herself needed to know a number of points including "[v]aluation", "[o]utstanding loan", and "[n]et asset value". Alternatively, Joanne told the defendant that he "can give [them] the cash". The

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8 Joanne's AEIC at p 64.

9 Joanne's AEIC at p 67.

10 Joanne's AEIC at p 64.

11 Joanne's AEIC at p 65.

defendant replied that he would not be offering to settle with assets if he had the cash to do so.[12]

13 On 30 April 2020, Joanne sent a WA message to Mr Hendra Widjaya ("Hendra"), the lawyer acting for KSP Indosurya in the PKPU Proceedings. Joanne requested Hendra to "please help [her]" find out from the defendant details of the properties (such as the outstanding loans and size of the units) proposed by the defendant.[13]

14 On 4 May 2020, Joanne asked the defendant via WA whether they could meet. On 5 May 2020, the defendant proposed to Joanne to meet on 7 May 2020 over dinner at his residence. She agreed. On 7 May 2020, there was a dinner at the defendant's house in Jakarta, Indonesia ("7 May Dinner").[14] The defendant, Joanne and Hendra attended.[15]

15 Both parties dispute what was said at the 7 May Dinner. What is undisputed is that Joanne produced a letter that she had prepared, dated 5 May 2020 ("5 May Letter"). This a single page document. The key parts of it state:[16]

> May 5, 2020
> We herewith:
> Name: Henry Surya, known as the BORROWER
> And

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12 Joanne's AEIC at p 72.

13 Joanne's AEIC at p 210.

14 Joanne's AEIC at p 74.

15 Joanne's AEIC at para 28.

16 Joanne's AEIC at p 450.

> Name: Urip Cahyadi, known as the CREDITOR
>
> LOAN BALANCE of: IDR 150,534,661,958
>
> This letter serves as a formal agreement between The Borrower and The Creditor. The intent is to repay loan in Indonesia in exchange with assets in Singapore.
>
> The borrower has agreed to settle the loan balance with the following assets in Singapore. However, if the below assets do not suffice the loan outstanding, further negotiations will be carried out:
>
> [the next two paragraphs contain a short list of 7 properties at PS100 and 2 properties at Oxley Tower]
>
> …

I will refer to the nine properties referred to in the 5 May Letter as the "9 Properties".

16 It is also undisputed that the defendant signed the 5 May Letter. Before he did so, he made two handwritten amendments to it:[17]

a. adding the term "MOU" to the first paragraph such that it reads "formal *MOU* agreement" (the "Insertion"); and

b. striking through the line "However, if the below assets do not suffice the loan outstanding, further negotiations will be carried out" in the second paragraph (the "Deletion").

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17 Joanne's AEIC at para 30.

17 The defendant signed against each of his handwritten amendments.[18] The defendant handed the letter that he signed on an affixed stamp with his handwritten amendments ("Amended 5 May Letter") to Joanne.[19]

18 On 8 May 2020, the plaintiff signed a Power of Attorney in favour of Adjie Wibisono Legal Practice ("POA") ("AWLP").[20] The POA provides, among others, the right for AWLP to represent and defend the legal rights and interests of the plaintiff as a creditor of KSP Indosurya in the PKPU Proceedings.[21] Joanne and Timothy signed similar POAs.[22]

19 Following the 7 May Dinner, there was a series of WA correspondence between Joanne and the defendant, whereby the defendant made certain offers, which Joanne said were too small in terms of the NAV compared to the Loan Amount. I will examine the WA correspondence in detail below.

20 In a creditors' meeting on 9 July 2020, the majority of KSP Indosurya's creditors approved a plan under which KSP Indosurya would repay them in accordance with a schedule based on a "Reconciliation Plan Proposal" (the "Reconciliation Plan"). The signed POAs of the plaintiff, Joanne and Timothy were used at this creditors' meeting. On 20 July 2020, judgment was given in the PKPU Proceedings by the Indonesian Court, approving the Reconciliation Plan ("PKPU Judgment").[23]

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18 Joanne's AEIC at para 31.

19 Joanne's AEIC at para 32.

20 Joanne's AEIC at paras 35–37.

21 Joanne's AEIC at p 454.

22 Joanne's AEIC at para 39.

23 Joanne's AEIC at para 74.

21 Discussions between Joanne and the defendant regarding his Singapore assets continued after the PKPU Judgment was obtained. The defendant, however, never transferred any assets to the plaintiff. On 29 July 2020, the plaintiff commenced this action to recover the Loan Amount from the defendant.

Parties' cases

Plaintiff's case

22 The plaintiff was not at the 7 May Dinner. He relies on the testimony of Joanne, who was. Her evidence is that during the dinner, Hendra produced the POA and passed it to the defendant. The defendant passed it to Joanne and said that the plaintiff was a creditor of KSP Indosurya with a "big amount". The defendant also requested that Joanne hand the POA to the plaintiff to sign, and for the plaintiff to "bantu bantu KSP" which means "help help KSP" in English.[24]

23 Joanne took the POA and showed the defendant and Hendra the 5 May Letter. She said she would get her father to sign the POA but the defendant must also "settle the 150" (referring to the Loan Amount, which is in the ballpark of IDR150bn).[25] She then asked the plaintiff to sign the 5 May Letter.[26]

24 Joanne's evidence is that she queried the defendant about the Deletion and asked what would happen if the 9 Properties were not enough to satisfy the Loan Amount. The defendant responded that they were enough. The defendant also

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[24] Joanne's AEIC at para 29.

[25] Joanne's AEIC at para 30.

[26] Joanne's AEIC at para 35.

agreed to give her the loan information to ascertain if the value was really enough.[27]

25 The plaintiff's case is thus that, at this meeting, an oral agreement was reached whereby the defendant promised to pay the plaintiff the Loan Amount in exchange for the plaintiff signing the POA ("Oral Agreement").

Defendant's case

26 The defendant's case is that he was only prepared out of goodwill to take over the Loan Amount owed by KSP Indosurya to the plaintiff, by transferring to the defendant the 9 Properties, with the existing loans on the same (the "Goodwill Offer").[28] This was consistent with his discussions with Joanne leading up to the 7 May Dinner. He also told Joanne that the Goodwill Offer was made only in view of their friendship, as he had no personal obligations to settle the plaintiff's claim, which was against KSP Indosurya.[29]

27 The defendant wanted to make clear that his agreement to transfer the assets was not a contract of any sort, but a goodwill offer. Hence, he inserted the term "*MOU*" into the 5 May Letter.[30] The defendant made the Deletion to reiterate that his Goodwill Offer would only extend to the 9 Properties, and that they would be transferred along with their existing loans.[31] In his WA

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27 Joanne's AEIC at para 31.

28 Defendant's AEIC at para 40.

29 Defendant's AEIC at para 41.

30 Defendant's AEIC at para 43.

31 Defendant's AEIC at para 44.

correspondence with Joanne leading up to the 7 May Dinner, he did not identify any properties other than the 9 Properties, as part of the Goodwill Offer.

28 Thus, he never entered into the Oral Agreement.

The Law

29 In *OCBC Capital Investment Asia Ltd v Wong Hua Choon* [2012] 4 SLR 1206, the Court of Appeal held at [41] that "the first port of call for any court in determining the existence of an alleged contract and/or its terms would be the relevant *documentary* evidence." The applicable approach to determine the existence of an oral agreement was summarized by the court in *ARS v ART & another* [2015] SGHC 78 ("*ARS*") at [53]:

> a. The Court will consider the relevant documentary evidence (such as written correspondence) and contemporaneous conduct of the parties at the material time.
>
> b. Where possible, the court should look first at the relevant documentary evidence.
>
> c. The availability of relevant documentary evidence reduces the need to rely solely on the credibility of witnesses in order to ascertain if an oral agreement exists.
>
> d. Oral testimony may be less reliable as it is based on the witness' recollection and it may be affected by subsequent events (such as the dispute between the parties).

e. Credible oral testimony may clarify the existing documentary evidence.

f. Where the witness is not legally trained, the court should not place undue emphasis on the choice of words.

g. If there is little or no documentary evidence, the court will nevertheless examine the precise factual matrix to ascertain if there is an oral agreement concluded between the parties.

30 These principles have since been adopted and applied in other High Court decisions (see for example *Day, Ashley Francis v Yeo Chin Huat Anthony and others* [2020] 5 SLR 514 at [32]). I similarly adopt the principles set out in *ARS* and start with the relevant documentary evidence, before considering the credibility of the witnesses.

My decision

The oral agreement itself

31 It is important to first identify the nature of the Oral Agreement that the plaintiff seeks to establish. I make two observations about it.

32 First, the Oral Agreement is one whereby the defendant will pay the Loan Amount to the plaintiff in exchange for the plaintiff signing the POA.

33 A party taking on personal liability for the Loan Amount in such circumstances, would likely expect to be entitled to take over the rights as the creditor against KSP Indosurya. This appears to be the defendant's expectation. He testified that he entered into agreements with other parties, whereby he gave

them properties in exchange for them transferring their certificates of deposit to him, giving him their rights as creditors against KSP Indosurya.[32]

34 However, this is not an explicit element of the Oral Agreement. On the plaintiff's case, the explicit exchange for the defendant paying the Loan Amount, was for the plaintiff signing the POA.

35 Second, there are some substantial differences between the Oral Agreement and the Amended 5 May Letter.

a. Under the Amended 5 May Letter, "[t]he borrower has agreed to settle the loan balance with the following assets in Singapore", that is with the 9 Properties. Under the Oral Agreement, the defendant's liability is to pay the Loan Amount. There is no mention in the Oral Agreement that the payment is to be settled only with the 9 Properties.

b. The Amended 5 May Letter makes no mention of the POA, whereas the POA is a key part of the Oral Agreement.

36 The plaintiff proceeds in his claim on the basis of the Oral Agreement. He does not base his claim on the Amended 5 May Letter. The main relevance of the Amended 5 May Letter is the light it sheds on the intention of the parties at the 7 May Dinner, which is relevant in determining whether the Oral Agreement exists.

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32 Defendant AEIC at paras 53–57.

Documentary evidence

37 Other than the Amended 5 May Letter, the documentary evidence in this case is primarily the WA messages between the parties. This correspondence usefully reflects the contemporaneous conduct of the parties, at a few key times: before, during and after the 7 May Dinner.

Before the 7 May Dinner

38 On 17 March 2020, Joanne told her father via WA that she would request a meeting with the defendant as a friend and that this was a "[f]riend's favour".[33]

> [17/03/20 09.48.05] Joanne C: Dad, I think I'll call HS this afternoon to find out the situation. I want to request a meeting as a friend.
>
> [17/03/20 09.48.44] Joanne C: Friend's favour
>
> [17/03/20 09.51.42] Urip Cahyadi: That's OK. Because we also don't know if he'll provide the asset in Singapore.

39 She said on the stand that what she meant by this was that the meeting, and not the payment of the full Loan Amount, was a friend's favour.[34] The fact that Joanne considered the defendant agreeing to a meeting, which is a far less substantial commitment than paying the Loan Amount, to be a "[f]riend's favour", suggests that she must have known that it would not be straightforward to get the defendant to agree to pay the Loan Amount. Her father expressed similar sentiments.

40 Joanne's WA correspondence with the plaintiff on 4 May 2020, a few days before the 7 May Dinner, shows the preparation they undertook before the

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33 ABD 6; Joanne's AEIC at p 126.

34 15 February Transcript, p 48 lines 1–13.

dinner. The plaintiff suggested that Joanne ask the defendant to write a letter stating his agreement to pay the Loan Amount. Joanne said that she would prepare a letter and ask the defendant to sign it when they met. She also expressed her concern that the defendant may not be agreeable if they ask him to draft the letter:[35]

> [04/05/20 09.07.20] Urip Cahyadi: Jo. I think you send a WhatsApp to HS, and ask him to write us a letter, stating that he agrees to pay back our loan amounting to Rp 160 Billion, which will be paid with assets in Singapore and for the transaction we can contact his lawyer and also provide his lawyer's name and address. Tell him that without this letter, our lawyer cannot proceed and cannot do the transaction.
>
> [04/05/20 09.08.24] Joanne C: I'll prepare one and ask him to sign when we meet.
>
> [04/05/20 09.08.47] Joanne C: If we ask him to do this or do that, I don't think he'll do it.

41 On 5 May, the plaintiff told Joanne that she should meet the defendant and "[p]retend to be close". At this point, the plaintiff thought that it was a good idea for Hendra to be there, so that he could be a witness to what happened at the 7 May Dinner:[36]

> [05/05/20 15.20.26] Joanne C: Ask Endang to come. Do you want to meet him?
>
> [05/05/20 15.21.15] Urip Cahyadi: You should meet him. Pretend to be close.
>
> [05/05/20 15.29.52] Joanne C: Ask Hendra to come along
>
> [05/05/20 15.30.11] Urip Cahyadi: [two thumbs up signs]
>
> [05/05/20 15.30.26] Urip Cahyadi: As witness.

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35 ABD 24; Joanne's AEIC at p 137.

36 ABD 25; Joanne's AEIC at p 138.

Hendra was later called as the defendant's witness in this Suit and the plaintiff has sought to discredit him as a witness.

42 Following this correspondence, Joanne drafted the 5 May Letter. The plaintiff testified that "[e]verything is under my instruction" and that Joanne would consult with him first on important matters.[37]

43 Both the plaintiff and Joanne have been involved in running their family businesses, the main operation of which is in manufacturing consumer products. The plaintiff heads the business while Joanne serves as a controller in the business.[38] They did not deny that they have business and negotiation experience. The plaintiff testified that he is an experienced businessman with experience in negotiations, and that in commercial negotiations it is important to choose words carefully.[39] The plaintiff agreed that he very carefully looked at the language of the 5 May Letter to decide if it was acceptable.[40] This can also be seen from the 5 May Letter itself. The plaintiff took care to insert the phrase "This letter serves as a formal agreement between…" into the 5 May Letter. He also took care to insert the caveat "However, if the below assets do not suffice, the loan outstanding, further negotiations will be carried out".

44 Thus, a few points are clear from the pre-7 May Dinner correspondence between Joanne and the plaintiff. First, the plaintiff and Joanne appreciated that it would not be easy to convince the defendant to agree to pay them the Loan Amount with his Singapore assets. They are commercially experienced people,

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37 16 February Transcript, p 6 line 24 – p 7 line 11.

38 15 February Transcript, p 171 line 5.

39 16 February Transcript, p 6 line 1 – line 10.

40 16 February Transcript, p 30 line 24 – p 31 line 2.

and likely recognised that they would have to offer something valuable to the defendant to get him to agree. In addition, they were careful to prepare a written record of a possible agreement. Second, the plaintiff and Joanne appreciated that the specific terms of any agreement were important. This is why they included the important caveat in the 5 May Letter that further negotiations would be carried out if the defendant's assets were insufficient to satisfy the Loan Amount.

The 7 May Dinner

(1) The dinner itself

45 There is no documentary evidence as to what was said between Joanne and the defendant at the 7 May Dinner. But it is undisputed that Joanne presented the 5 May Letter to the defendant and he made two amendments to it, namely the Insertion and the Deletion. Thereafter, the defendant signed the Amended 5 May Letter.

46 The defendant's case is that the insertion of the term "MOU" was an expression of his intention that he should not be bound by the Amended 5 May Letter.[41] It is consistent and uncontroverted that this was his intention.

47 Joanne denied that the defendant's insertion of "MOU" rendered the Amended 5 May Letter non-binding. She said that in her work, she has come across both binding and non-binding MOUs.[42] However, this evidence means that she would have known that the insertion of "MOU" would have at the very

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41 Defendant AEIC at para 43 and 17 February Transcript, p 180 lines 1–11 and p 184 lines 21–22.

42 15 February Transcript, p 66 lines 7–8.

least opened up the risk that the Amended 5 May Letter was not binding. Yet, she did not contest the insertion of "MOU" by the defendant.

48 Joanne testified that she did not agree to the Deletion.[43] She recognised that because of the Deletion, the Amended 5 May Letter provided that the Loan Amount would be settled with just the 9 Properties, regardless of the outstanding loans on the properties and their NAVs.[44]

49 Joanne says that she nevertheless did not contest the Deletion, as the defendant told her that the value of the 9 Properties would be "enough". The defendant confirmed on the stand that he told Joanne at the 7 May Dinner that the NAV of the 9 Properties was sufficient to meet the Loan Amount. He explained that his valuation at that point was that the 9 Properties would be sufficient to come up to about $14m.[45]

50 The plaintiff submits that this admission, taken with the defendant's pleadings and the documentary evidence, irrefutably points to the defendant making the Oral Agreement.[46] This is because, in agreeing to provide properties which had a NAV equivalent to the Loan Amount, the defendant effectively agreed to take on liability for the Loan Amount. I do not find this to be so, as the defendant has maintained that this was conveyed as a goodwill offer. He also maintained that he never agreed to take on liability beyond the 9 Properties, regardless of their NAVs.

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43 15 February Transcript, p 68 lines 13–16.

44 15 February Transcript, p 69 lines 5–11 and p 71 line 2 to p 72 line 12.

45 17 February Transcript, p 208 line 25 to p 209 line 10.

46 PRS [3].

51 This is supported by his amendments to the 5 May Letter. The Insertion indicates clearly that there was no intention on his part for his offer of the 9 Properties to be binding. The Deletion makes clear that he had no intention to take on liability for the full Loan Amount beyond the value of the 9 Properties.

52 It is questionable if the defendant, who before signing the Amended 5 May Letter, took care to make a deletion to limit his liability to the 9 Properties and insert the term "MOU" to avoid making a binding agreement, would at the same time enter into the Oral Agreement that was binding and extended his liability beyond the 9 Properties. Such a course of conduct would be inconsistent.

53 It is also worth noting that the Amended 5 May Letter did not contain anything about defendant's side of the bargain. This is despite the fact that the defendant was under no pre-existing legal obligation to provide the 9 Properties to the plaintiff. Specifically, there is no mention of the POA, which is what the plaintiff alleges was the benefit conveyed to the defendant in the Oral Agreement. Given the care that the defendant took with the two amendments to the 5 May Letter, it is striking that he did not record the POA in the same, when the plaintiff asserts that the POA was very important to the defendant, and was what he wanted in exchange for taking on personal liability for the Loan Amount.

(2) Update from Joanne to plaintiff

54 The day after the 7 May Dinner, the plaintiff asked Joanne for an update via WA:[47]

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47 ABD 30-31; Joanne's AEIC at 142–143.

> [08/05/20 01.40.14] Joanne C: I've just finished bathing. I came back from his house at 1 o'clock. Talk nonsense.
>
> [08/05/20 04.33.31] Urip Cahyadi: Why no report on whether he wants to sign the letter or not?
>
> …
>
> [08/05/20 11.32.31] Urip Cahyadi: Why did he cross out that one?
>
> [08/05/20 11.34.54] Joanne C: He's sure the property is sufficient.
>
> [08/05/20 11.35.14] Joanne C: After that, I talked, he talked, I talked again and he talked again.
>
> [08/05/20 11.36.18] Joanne C: Finally I said I hope the net asset can reach 150.
>
> [08/05/20 11.37.07] Joanne C: He just crossed it. I already said if it's not sufficient, how? I can't pay back the loan.

55 Noticeably, Joanne did not inform the plaintiff that the defendant agreed that the NAV of the properties provided would match the Loan Amount, or that she was sure that the defendant had promised to meet the Loan Amount. There was no mention of the Oral Agreement itself in the WA update. The plaintiff was clearly concerned about the Deletion, yet Joanne did not mention that there was nothing to worry about, because a separate Oral Agreement had been reached whereby the defendant agreed to exactly what he deleted: to take on liability for the full Loan Amount. Instead, she said: "Finally I said I *hope the net asset can reach 150*. He just crossed it. I already said if it's not sufficient, how? I can't pay back the loan" [emphasis added].

56 It is also pertinent that in the same WA update, Joanne did not mention the POA to the plaintiff. She did not mention that the defendant wanted the

plaintiff to sign the POA as part of the exchange. Joanne's evidence is that she told this to the plaintiff verbally when she saw him later.[48]

57 The plaintiff submits that Joanne did not mention the POA in her WA update as she was merely responding to the plaintiff's queries to the Amended 5 May Letter.[49] However, this is not a satisfactory explanation. Joanne would have known that the plaintiff's fundamental concern was not the amendments to the 5 May Letter, but what had been agreed at the 7 May Dinner and whether the defendant agreed to take on personal liability for the Loan Amount. Yet when the plaintiff pressed her for a report, Joanne did not mention the POA, even though the plaintiff's signing the POA was the alleged *quid pro quo* for the defendant taking on personal liability for the Loan Amount. At this point, the POA had not been signed, and its signing would therefore have been immediately important to the plaintiff so that the Oral Agreement was cemented.

After the 7 May Dinner

58 I will focus on five aspects of the correspondence between parties after the 7 May Dinner.

(1) No mention of the POA in WA correspondence

59 There is no mention of the POA in the WA correspondence after the 7 May Dinner, whether between Joanne and the defendant or between Joanne and the plaintiff. Neither did Joanne or the plaintiff include any mention of the POA

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48 15 February Transcript, p 140 lines 4–19.

49 PCS at para 95.

in the Amended 5 May Letter, when Joanne sent it to the defendant on his request, on 29 June 2020.

60 The plaintiff submits that Joanne did not appreciate the need to include the POA in the Amended 5 May Letter because she was not legally trained and under Indonesian law there is no legal requirement for consideration.[50]

61 However, this is not a matter of appreciating legal requirements. The entire thrust of the plaintiff's case is that the plaintiff's signing of the POA was his *quid pro quo* in the Oral Agreement. The plaintiff and Joanne were careful enough to have the 5 May Letter drafted for the defendant to sign at the 7 May Dinner. The plaintiff testified that the language of the 5 May Letter was carefully crafted.[51] It would have been much more consistent with such behaviour, for them to also safeguard their interests by adding the POA into the Amended 5 May Letter when Joanne sent it to the defendant by WA on 29 June 2020. But they did not.

62 It is also notable that the POA was not mentioned in the discussions that followed the 7 May Dinner despite the defendant's offer never coming close to the full Loan Amount. In a WA message on 21 June 2020, Joanne conveyed to the plaintiff that the defendant was offering to settle at only $13m instead of the full Loan Amount:[52]

> [21/06/20 00.20.45] Joanne C: So he bought at 23 million. Less the loan 8 million, it means 13 million. I said insufficient, must top up. He said he doesn't want to.

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50 PCS at para 93.

51 16 February Transcript p 30 line 24 to p 3 line 2.

52 ABD 37; Joanne's AEIC at 149.

63 As a further example, in a WA message from Joanne to the defendant on 24 June 2020, Joanne said:[53]

> [24/06/20 16.21.45] Joanne C: Hi Henry, The total market value of 9 units is SGD 14.8 million. The total loan value of 9 units is SGD 11.6 million (78% loan) NAV SGD 3.2 million
>
> …
>
> Even if we take all 12 units … NAV SGD 5.4 million
>
> This is still far from SGD 15 million, and there is no way we can finance the loan."

64 The plaintiff stresses that, on the other hand, the defendant's denial of his liability to pay the Loan Amount is equally absent from the documentary evidence. Rather than denying his liability, he made various offers to the plaintiff.[54] However, this ignores the fact that throughout the WA correspondence, the offers made by the defendant were never close to the full Loan Amount. The plaintiff' also submits that it was only late in the day, around 20 July 2020, that the defendant first intimated to Joanne that he would like the plaintiff to accept less than the Loan Amount.[55] This does not accord with the objective documentary evidence in the WA correspondence, as illustrated above. As early as 24 June 2020, Joanne was responding to an offer from the defendant which was less than even half of the Loan Amount.

65 Despite the defendant's offers consistently falling short, Joanne never used the POA as leverage in their discussions. The absence of any mention of POA in her correspondence with the defendant is especially striking because

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53 ABD 179; Joanne's AEIC at 201.

54 PRS at para 4.

55 PRS at para 18.

she testified on the stand that if the defendant had ever said that he would not give her the Loan Amount, she would say "I gave you POA, you have to give me [the Loan Amount]".[56]

(2) No mention of the Oral Agreement in WA correspondence

66 It is also notable that there is no reference to the Oral Agreement in any of Joanne's post 7 May Dinner WA exchanges with the defendant.

67 The language used by Joanne in her communications with the defendant is revealing. On 25 June 2020, she asked the defendant "can you give us property with no loan or less loan. Then we can move forward."[57] She did not refer to a promise that had already been made. She was asking.

68 As highlighted above at [63], in Joanne's WA to the defendant on 24 June 2020, she mentioned that the properties he offered only had a total NAV of $3.2m or $5.4m. She then said, "I hope you can give us properties with less loan".[58] It is framed in aspirational terms, as a "hope". When asked about the use of "hope", Joanne replied that was because which properties the defendant could offer is "up to him".[59]

69 The plaintiff's explanation of this correspondence is thus that there was an agreement to pay the Loan Amount, but disagreement as to the mode of such

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56 15 February Transcript, p 164 lines 18–23.

57 Joanne's AEIC at p 90.

58 Joanne's AEIC at p 89.

59 15 February Transcript, p 99 lines 10–25.

payment, such as which properties would be used towards the payment.[60] However, this is not what the WA correspondence bears out.

70 The defendant was not discussing whether to pay $14m with properties, cash or other assets. That would have been a discussion about the mode of payment or how to pay. The recurrent issue in the defendant's WA correspondence with Joanne, was how much to pay. In this regard, it is clear from the post-7 May Dinner correspondence, that all the offers made by the defendant were never close to the Loan Amount. Additionally, the language that Joanne used, such as "hope" you can give us, rather than for example, you "promised to", suggests that there was no Oral Agreement.

71 Joanne did not refer to the Oral Agreement or the POA, even when the defendant told her she misunderstood if she thought that he would pay more. On 28 June 2020, Joanne informed the defendant via WA that they would take the 12 properties and asked the defendant "How do you want to settle the balance?" The defendant replied on 29 June 2020: "I think there is misunderstanding. We want to settle the properties at 24 million. Not at the valuation of the banks. Can negotiate to lower price but not at 16 million." Joanne replied "Hmm can we meet this week? With [the plaintiff]." Joanne would have been aware from this exchange that the defendant did not share the same understanding as her. Yet, she did not remind him of the alleged Oral Agreement. Instead, she asked to meet.[61]

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60 PCS at paras 96 and 98.

61 Joanne's AEIC at p 90.

72 On 29 June 2020, the defendant asked Joanne, by WA, to send him the letter "[w]hatever sign". Joanne sent the Amended 7 May Letter without any changes to it.[62] At this point Joanne and the plaintiff had the opportunity to either tell the defendant that the Amended 5 May Letter was superseded by the Oral Agreement or include a reference to the Oral Agreement in the Amended 5 May Letter, but they did not do so.

73 In the plaintiff's reply submissions, the plaintiff explains that there was correspondence between the lawyers on the same day where the defendant's lawyer said that the properties were valued at $24m and sufficient to satisfy the Loan Amount. Hence, Joanne did not hesitate to send the Amended 5 May Letter to the defendant without any caveats.[63]

74 However, when she was asked about her sending the Amended 5 May Letter to the defendant, Joanne did not mention such lawyers' correspondence as influencing her.[64] In any event, the WA correspondence between her and the defendant, as highlighted above, would have made it sufficiently clear to Joanne that the defendant was not making an offer close to the Loan Amount. In fact, the defendant had explicitly told her that there was a "misunderstanding". This casts doubt on Joanne's explanation that, in her mind, the defendant had already agreed to pay the Loan Amount. Such a perception was very much at odds with the defendant's correspondence and behaviour up to that point of time, and certainly unrealistic.

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62 Joanne's AEIC at p 91.

63 PRS at para 58.

64 15 February Transcript, p 140 line 24 to p 142 line 17.

75 On 6 July 2020, in their WA exchange, the defendant made a proposal saying: "We are ready to settled with 9 commercial plus 2 other commercial so total of 11 properties…" and "so with that in mind will be settled all 152[bn]".[65] The excel spreadsheet that Joanne had earlier circulated to the defendant shows a NAV of only around $5.4m for these 11 properties.[66] Thus, when the defendant used the phrase "settled" twice here, it would have been clear to Joanne that he was not settling at the Loan Amount by providing assets of equal value.

76 Yet, Joanne did not say in response: this is not what you agreed to under the Oral Agreement. Instead, she continued to negotiate with counter offers, and ended by saying that she hoped that the defendant could accept.[67]

77 Joanne's testimony on her understanding of the defendant's phrase "settled" in his 6 July 2020 WA message, is revealing. Despite the full context of the WA exchange clearly being that the defendant was proposing to "settle" with assets valued at less than the Loan Amount, Joanne maintained that she still understood him to be saying that he would provide assets valued at the Loan Amount.[68]

78 This calls into question whether she similarly misunderstood the conversation at the 7 May Dinner. Her testimony is that she told the defendant that he must also "*settle the 150*", and he said "ok".[69] She understood this as him agreeing to take on full liability for the Loan Amount. It may have been that by

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65 Joanne's AEIC at p 92.

66 Joanne's AEIC p 115.

67 Joanne's AEIC at p 92.

68 15 February Transcript, p 106 lines 3–22.

69 Joanne's AEIC at para 30.

"settle", the defendant simply meant that he would satisfy the Loan Amount with the 9 properties, and Joanne misunderstood him as she did on 6 July 2020 over WA.

79 On 7 July 2020, Joanne sent a WA text to the defendant saying "…[w]e just need the agreement or fulfilment of SGD 15 million." Notably she said, "We just need the agreement" and not, we had an agreement on the "fulfilment of SGD 15 million". She explained that by this, she meant that she needed the defendant's agreement on which properties to take and not an agreement to pay $15m. However, that is not what the WA message says.[70] The failure to mention the Oral Agreement in these circumstances is telling.

(3) No mention of POA or Oral Agreement in lawyer's correspondence

80 The exchanges between the parties' lawyers also do not mention the POA or the alleged Oral Agreement. The plaintiff argues that there has never been a dispute between the parties' lawyers that the defendant owed the plaintiff the Loan Amount. This is why there was no need for the plaintiff's lawyers to mention the POA or Oral Agreement.[71]

81 However, the correspondence between the lawyers also do not show that there was an offer from the defendant that met the Loan Amount.

82 The plaintiff refers to the defendant's lawyers, Sim Mong Teck and Partners' ("SMTP") e-mail of 29 June 2020, where the defendant valued his properties at $24m. This yields a balance of about $15m after deducting the

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70 ABD 183; Joanne's AEIC at p 93.

71 PCS at para 97.

housing loans of about $8m. The plaintiff submits that this shows the defendant's acknowledgment of his liability to pay the full Loan Amount.[72]

83 It is useful to look at this series of correspondence, including the correspondence leading up to the SMTP e-mail of 29 June 2020, in more detail.

84 On 5 June 2020, the plaintiff's lawyers, Morgan Lewis Stamford ("MLS") e-mailed SMTP stating, among others, that "your client and ours have signed the attached loan acknowledgement in English with a proposal to exchange 9 commercial properties of your clients in settlement of the outstanding loan that your client owed our client".[73]

85 On 9 June 2020 at 2.00pm, SMTP sent an e-mail to MLS stating:[74]

> "We had spoken to our client (i.e. the defendant) this morning and are instructed as follows:- 1. The loan acknowledgment in English as forwarded in your email of 5 June 2020 was only a draft and not conclusive. Notwithstanding, our client proposes in settlement of the outstanding loan owed by our client to your client [Option A involving 8 properties in Singapore or Option B involving 9 properties in Singapore] … In this connection, please let us know which option will be elected by your client for the settlement of the loan."

The "loan acknowledgment" in SMTP's e-mail is a reference to the Amended 5 May Letter. Option B is the 9 Properties mentioned in the Amended 5 May Letter.

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72 PCS at para 97(d).

73 Joanne's AEIC at p 279.

74 Joanne's AEIC at p 277.

86 Thus, when SMTP referred in their e-mail of 29 June 2020 to the "outstanding loan owed by [their] client to [the plaintiff]", this was a reference to the Amended 5 May Letter and the 9 Properties mentioned therein, not the Oral Agreement.[75] Moreover, on 9 June 2020, SMTP had already informed MLS that "the loan acknowledgement in English as forwarded in your e-mail of 5 June 2020 was only a draft and not conclusive. Notwithstanding, our client proposes in settlement… an option of the following properties…"[76] In addition, there was already WA correspondence between the defendant and Joanne then, to indicate that the value of the 9 Properties did not meet the value of the Loan Amount. The defendant had on 29 June 2020 at 10.39am told Joanne: "I think there is misunderstanding" after she told him on 26 June 2020 that the "NAV is still far from our loan.[77]

87 Thus, SMTP's e-mail of 29 June 2020 does not help to establish that the Oral Agreement was made. Indeed, throughout the correspondence between the lawyers, both parties did not arrive at a valuation close to the Loan Amount. That being the case, it is odd that the plaintiff's lawyers would not make reference to the Oral Agreement or POA to push the defendant's lawyers towards offering properties that add up to the Loan Amount. This puts the existence of the Oral Agreement in doubt.

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75 Joanne's AEIC at p 262.

76 Joanne's AEIC at p 277.

77 Joanne's AEIC at p 90.

(4) No use of the POA as leverage

88 By early July 2020, there were several exchanges whereby the defendant's offer fell significantly short of the Loan Amount which the plaintiff claimed the defendant had promised to pay in exchange for the plaintiff signing the POA.

89 Yet, despite this, there is no evidence that the plaintiff and Joanne made any effort to exercise their rights as principals under the POA to vote in the PKPU Proceedings against the Reconciliation Plan, or that they even considered doing so. Joanne would have had AWLP's e-mail address by 9 July 2020, the date of the creditors' meeting. One Mr Palhala Sirait, sent it to her via WA on 14 May 2020.[78] But there is no evidence that Joanne e-mailed AWLP any time prior to the creditors' meeting, or that she and the plaintiff considered terminating the POA. There is no evidence that Joanne and the plaintiff were concerned at all about the POA or its use, even when the defendant's offers were consistently falling short of what they say he agreed to.

90 The plaintiff's case is that as AWLP was hired by KSP Indosurya, it would be working in the interests of KSP Indosurya and its beneficial owner. AWLP, as the lawyers appointed by KSP Indosurya, would have the full authority to cast votes during the creditors' meeting without the need to consult or receive instruction from the creditors.[79] The plaintiff also submitted that he had agreed for the defendant to have control over the voting rights and it would be contrary to the Oral Agreement for him to act against that promise.[80]

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78 Joanne's AEIC at p 248.

79 PRS at para 75.

80 PRS at para 35.

91 However, the plaintiff's case is not that the Oral Agreement required him to cede control of his voting right in the PKPU Proceedings. He simply had to sign the POA.

92 The POA itself does not transfer the plaintiff's voting right to the defendant. The POA specifically gives the agent (being AWLP) the right to exclusively "[r]epresent, defend and maintain the legal rights and legal interests of the Principal in his position as the other Creditor…".[81] In other words, it involves a principal-agent relationship, whereby the creditor is the agent, and the plaintiff is the principal.

93 The plaintiff submits that the POA does not require AWLP to take instructions from the plaintiff before they exercise the legal rights and legal interests of the principal.[82] However, the wording of the POA makes clear that the authority of AWLP as agent is only to perform legal actions that are in the interest of the principal. Both the plaintiff and the defendant's experts agreed that if the principal instructed the lawyer under the POA to vote against the reconciliation, the lawyer as the agent would have to carry out such instructions. The plaintiff's expert, Mr Haryanto, further testified that there is an "ethical obligation" on the agent-lawyer to always seek the necessary consent or approval from the principal named in the POA.[83]

94 There is no evidence that the plaintiff sought to instruct the lawyers under the POA on how to vote, even though the POA gave him that power.

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81 Joanne's AEIC at p 454.

82 PRS at para 75.

83 23 February Transcript 2022, p 80 lines 13–16.

95 The plaintiff was careful enough to have the 5 May Letter prepared and have Joanne get the defendant to sign it at the 7 May Dinner. Even when the plaintiff, Joanne and the defendant met up on 3 July 2020, the plaintiff and Joanne were careful enough to have Joanne write a set of minutes ("3 July Minutes") and have parties, including the defendant, sign on it. The extent of their carefulness is seen from their evidence that the plaintiff told Joanne to cancel out the line "[w]e will settle the loan with the above 11 units" from the 3 July Minutes, as he was not sure if the NAV of those properties would match the Loan Amount.

96 Thus, the plaintiff was clearly careful and thoughtful in approaching the engagements with the defendant, whether at the 7 May Dinner or the 3 July Meeting. In light of this, it is unlikely that he would not, at the very least, have considered or discussed with Joanne the possibility of using the POA as leverage, when the defendant was clearly failing to deliver his end of the alleged Oral Agreement.

(5) Continued offers after PKPU judgment

97 On 20 July 2020, judgment was given in the PKPU proceedings for the Reconciliation Plan, which had secured sufficient votes from creditors. Any vote that would be taken through the POA would have been taken by then. In other words, the substantial benefit to the defendant, as alleged by the plaintiff, would have been taken by then.

98 Nevertheless, the defendant continued to discuss with Joanne about their settlement, and even provided a further offer. On 21 July 2020, the defendant offered to provide the plaintiff with a total of ten properties as compared to the

initial 9 Properties.[84] The fact that the defendant continued making offers after the voting in the PKPU proceedings had taken place, and judgment had been issued, calls into question whether the POA was really the benefit that he sought in these discussions, as alleged by the plaintiff.

99 The 19 and 20 July 2020 WA exchanges between Joanne and the defendant continue to suggest the lack of an Oral Agreement. When Joanne referred to a balance $2m in relation to a proposal involving 11 properties valued at $13m, the defendant replied "I don't think we will reach agreement if it is like that". Joanne did not reply to him saying that they already had an agreement or that that was not their agreement. She again made no reference to the Oral Agreement or the POA. Instead, she sought to persuade him not to give such a large haircut:[85]

> [19/07/20 17.30.09] Joanne C: Hi Henry ... You want to settle with 11 commercials. But 11 commercials are with the total of SGD 13 million. How do you want to settle the balance of SGD 2 million? I propose we start the transfer of the 11 commercial with the value of SGD 13 million. Meanwhile, you think about the balance SGD 2 million."
>
> [19/07/20 08.23.29] HS New Number: I don't think we will reach an agreement if it is like that.
>
> …
>
> [19/07/20 11.05.51] Joanne C: By the way Henry, so do you mean, we cut loss SGD 2 million? From 15 million to 13 million?
>
> [19/07/20 11.07.59] HS New Number: Because already give all the prime property to you without any gain also from the price I bought and the taxes also not factored in
>
> [19/07/20 11.08.12] HS New Number: So basically I lose out

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84 Joanne's AEIC at p 96.

85 Joanne's AEIC at pp 95–96.

> [19/07/20 11.08.45] HS New Number: Opportunity cost to settle with other clients they are willing to haircut up to 50 percent
>
> …
>
> [20/07/20 12.03.05] Joanne C: By the way if other people already did haircut 50%, you don't cut us too, that's why we are friend, because from our side, we have potential loss of 5 million. We surely cannot hold all of the properties, we will need to sell.

100 On 3 September 2020, Joanne sent the defendant the following WA:[86]

> [03/09/20 11.49.00] Joanne C: By the way Henry, I talked to my dad. My dad said you do not want to suffer loss, and we also do not want to suffer loss. So it's difficult for us to make a deal. Then all along you have changed your opinion, no certainty. I think it's better if we settle it in court, it's certain. Unless you want to pay cash? So both parties are not suffering loss."

101 She did not say that the defendant broke the deal. Instead, she said "it's difficult for us to make a deal". Her emphasis that all along he changed his opinion and that there was no certainty, also goes against her claim that the defendant made the Oral Agreement. The plaintiff submits that this exchange too, is a reference to just the defendant changing his opinion over the mode of payment rather than the quantum of payment.[87] However, the exchange was not merely over the mode of payment, but also the quantum to be paid. In this particular exchange, the phrase "it's difficult for us to make a deal" reveals the gaps between both parties in arriving at an agreement.

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86 Joanne's AEIC at pp 98–99.

87 PRS at para 51.

(6) Conclusion on correspondence after 7 May Dinner

102 On 30 September 2020, after the plaintiff had served court documents on the defendant, Joanne proposed four options to the defendant. The defendant replied: "I don't think this will work as the negotiation is back to nothing and to the beginning".[88] Plaintiff's counsel put it to the defendant that this was him referring to negotiations to pay cash only. The defendant disagreed and said that this exchange was clear that there never was an agreement at the beginning.

103 I find that the plain wording of his WA message supports the defendant's position that he meant that this was a negotiation and there was no agreement at the beginning.

104 The WA messages in the five areas analysed above, clearly evince an ongoing negotiation rather than discussions about a prior agreement.

The value of the POA

105 The plaintiff relies on a series of circumstantial evidence in support of his case that the POA was part of the alleged Oral Agreement. He argues that the POA was valuable to the defendant because of his interest in securing approval for the Reconciliation Plan in the PKPU proceedings. This, he argues, explains why the Oral Agreement was reached.

106 The plaintiff refers to a WA message that the defendant sent to Joanne on 23 March 2020 stating that "[t]he most important point is that you have not

[88] Joanne's AEIC at p 103.

registered a PKPU". Joanne replied "[o]k Henry. We have not registered a PKPU … No benefit".[89]

107 The defendant testified that he cannot recall why he said it then, but what he meant is that it is important that the plaintiff had not cast his vote in the PKPU Proceedings.[90] The experts' view on registration for PKPU proceedings supports the defendant's testimony. Both experts agreed that before a creditor can vote on a reconciliation plan, he has to first register his claim.[91]

108 What the defendant's WA message shows at the most, is that in making his offer of help as of 23 March 2020, the defendant thought it important that if he settled with the plaintiff and acquired his rights as creditor, the defendant would not be bound as to which way to vote in the PKPU Proceedings. It is very likely that the plaintiff would have supported the restructuring of KSP Indosurya as opposed to its bankruptcy. He testified that KSP Indosurya bears his family name, that their family business is in finance where trust is important, and that the KSP Indosurya crisis was not good for maintaining such trust.

109 However, the defendant's interest in having KSP Indosurya restructured, does not necessarily lead to the inference that he agreed to take on personal liability for the Loan Amount in exchange for the plaintiff signing a POA. He could have acquired the voting right associated with the Loan Amount, simply by taking on personal liability for the Loan Amount, without the POA. Indeed, this WA message from the defendant on 23 March 2020 does not make any reference to a POA.

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89 Joanne's AEIC at p 64.

90 17 February Transcript, p 101 lines 19–23.

91 23 February Transcript, p 73 lines 1–8.

110 The plaintiff also submits that the timing of the POA, which was prepared on 5 May 2020 and signed by the plaintiff on 8 May 2020, suggests that the POA arose out of the 7 May Dinner.[92] This is speculative. The defendant submits that these facts, at the highest, might only suggest that the POA was discussed at the 7 May Dinner. I agree with the defendant's submission. These timings do not lead ineluctably to the inference that the Oral Agreement was made at the 7 May Dinner and that the POA was part of it.

111 The plaintiff also suggested that the defendant was motivated to have the plaintiff sign the POA, because the defendant wanted to secure a PKPU reconciliation settlement to help him obtain "restorative justice" in criminal proceedings against him in Indonesia.[93] However, the plaintiff is unable to provide any evidence in support of this and has to rely on speculation.

112 The plaintiff points to Hendra's message to Joanne on 24 April 2020 where he said "[the defendant is] having a hard time, disturbed by many people. The Court, the Police" and asked Joanne to "please support us so that it can move forward smoothly".[94] There is however nothing in this message that goes so far as what the plaintiff seeks to impute.

113 In court, the plaintiff also pointed to a news article that states that the defendant submitted the PKPU Judgment to the Police. The defendant explains that the PKPU Judgment was requested by the Police, and hence submitted by his lawyers. The defendant denied that he was using the reconciliation settlement to obtain restorative justice, or that he will.

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92 PCS at para 81.

93 PCS at para 105.

94 Joanne's AEIC at p 208.

114 Leaving aside that there is no evidence that the defendant was motivated by the desire to obtain restorative justice, both experts also agreed that based on the Indonesian Police operational guidelines on restorative justice, Perkap 8/2021, that the plaintiff surfaced, the Police would only apply restorative justice to minor crimes.[95] It is the plaintiff's case that the KSP Indosurya case involves one of the biggest frauds in Indonesia's history, involving IDR14.6 trillion and 5,700 customers. An offence of such nature would hardly be a minor crime.

115 In any event, there is no doubt that the defendant wanted a reconciliation settlement in KSP Indosurya's PKPU proceedings. It is his own case that KSP Indosurya bears his family name, and that their family business is in finance, where trust is important. He would clearly prefer for KSP Indosurya to obtain a reconciliation for this reason, leaving aside any restorative justice considerations.

Credibility of the defendant

116 On the stand, the defendant gave testimony which was against his AEIC. For example, he stated in his AEIC that he returned the Amended 5 May Letter to Joanne and told her to get it signed by the plaintiff.[96] However, he testified on the stand that the letter was already signed by the plaintiff when he signed it at the 7 May Dinner. This change in the defendant's evidential position supports the plaintiff's case, as it confirms this aspect of the plaintiff's version of events.

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95 23 February Transcript, p 96 lines 19–22 and p 97 lines 15–16.

96 Defendant's AEIC at para 45.

117 Thus, while the defendant was not always able to remember details, he did not come across as a calculating witness seeking to carefully keep to his pleaded case. Most importantly, I found the defendant's evidence that he did not make the Oral Agreement, to be consistent with the objective documentary evidence. On the whole, I did not find reason to doubt his credibility as a witness.

Credibility of Hendra Widjaya

118 Hendra is the lawyer who acted for KSP Indosurya in the PKPU Proceedings. While the plaintiff had earlier thought that it would be a good idea for Hendra to be at the 7 May Dinner so that he could be a witness, he was called as the defendant's witness in this Suit.

119 Some of Hendra's oral testimony contradicted his AEIC. His evidence negatively affected both the plaintiff's and the defendant's cases. For example, by testifying that he did not hear much of the conversation between Joanne and the defendant during the 7 May Dinner, Hendra retracted the parts of his AEIC that said that he witnessed the defendant communicating caveats about the 5 May Letter to the plaintiff.[97] This was detrimental to the defendant's case. At the same time, he also said that he did not see the defendant pass the POA to Joanne.[98] This would be against the plaintiff's case.

120 Hendra appeared to be a reluctant witness. I found that his evidence could not be said to reliably support or detract from either parties' case.

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97 22 February Transcript, p 81 lines 6–18.

98 22 February Transcript, p 85 lines 6–9.

Adverse Inference

121 The plaintiff submits that an adverse inference ought to be drawn against the defendant for failing to produce communications between the defendant and Hendra.[99] These communications would elucidate the defendant's intention with respect to the settlement of the Loan Amount referenced in Joanne's WA message with Hendra and could also shed light on whether the POA was sought from the plaintiff to support KSP Indosurya's reconciliation.

122 The defendant stated during the discovery process that in August 2020 he sold off his phone to a second-hand mobile phone retailer. The plaintiff submits that it is unbelievable that a businessman of the defendant's standing would sell his phone to a second-hand retailer. The plaintiff also alleges that the timing of such sale is uncanny as it was soon after the plaintiff communicated his intention to commence legal proceedings against the defendant in Singapore.

123 The defendant submits that the plaintiff has not adduced any evidence in support of the suggestion that he intentionally sold his mobile phone around the time of the lawsuit to evade his discovery obligations.[100] This suggestion should be disregarded as it is baseless.

124 The defendant has testified that he has sold his mobile phone. Beyond the unsupported suggestions made by the plaintiff, there is nothing to show that the defendant did so to avoid producing evidence of his WA messages with Hendra.

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99 PCS at paras 20–24.

100 DRS at para 38.

125 The plaintiff further submits that an adverse inference should be drawn because the defendant never asked Hendra for their WA messages, despite Hendra swearing three affidavits and appearing as a witness on his behalf.

126 The defendant notes that when Hendra was cross-examined on his alleged communications with the defendant with respect to the resolution of the Loan Amount, Hendra gave evidence that he did not know what was discussed between Joanne and the defendant.[101] Hendra's evidence is also that he was told that Joanne had gotten the POA from KSP Indosurya.[102] The defendant submits that Hendra's evidence on these points were not credibly challenged at trial.

127 I find that there is no basis to draw an adverse inference against the defendant for not asking Hendra for his WA messages in respect of the Oral Agreement or the POA. In *The "Posidon" and another matter* [2018] 3 SLR 372 ("*The Posidon*") at [92], the court held that "[a] party seeking to draw adverse inference must have a case to answer on the issue sought to be strengthened by the drawing of the inference", that is, "there must be a substratum of evidence that establishes a *prima facie* case because the court's ability to draw an adverse inference cannot displace a party's legal burden of proof". In this case, the documentary evidence includes the 5 May Letter, the Amended 5 May Letter, the POA, the WA correspondence between the main parties to the Oral Agreement (Joanne, the plaintiff and the defendant) in the lead up to and after the 7 May Dinner, as well as correspondence between their lawyers. The sheer weight of the documentary evidence indicates that there was no Oral Agreement reached between the plaintiff (through Joanne) and

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101 22 February Transcript 2022, p 17 line 4–14.

102 22 February Transcript 2022, p 50 line 5–6.

defendant. The plaintiff has not established the substratum of evidence for a *prima facie* case. As was held in *The Posidon*, the court's ability to draw an adverse inference cannot displace a party's legal burden of proof.

Misrepresentation

128 The plaintiff submits that if it is found that there was an agreement between the parties on the terms of the Amended 5 May Letter, there was a misrepresentation from the defendant that the NAV of the 9 Properties would be sufficient to meet the Loan Amount. In such an event, the plaintiff claims for the damages for such misrepresentation, being the difference between the NAV of the Properties and the Loan Amount.[103]

129 The defendant inserted "MOU" into the 5 May Letter. His stated intention was to make the letter a non-binding agreement. Joanne agreed to this insertion on the plaintiff's behalf. The plaintiff's position is also that he did not agree to the Deletion and hence he did not agree to accept only the 9 Properties in satisfaction of the Loan Amount. The plaintiff based his claim on the Oral Agreement instead of the Amended 5 May Letter. I find that the evidence indicates an objective intention of the parties that the Amended 5 May Letter was not an agreement. Consequently, the issue of misrepresentation in relation to the Amended 5 May Letter does not arise.

Conclusion

130 Assessing the evidence as a whole, including:

a. the conduct of the parties before and after the 7 May Dinner;

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[103] PCS at paras 118–122.

b. the defendant's and Joanne's behaviour in relation to the Amended 5 May Letter at the 7 May Dinner;

c. the complete absence of any mention of the Oral Agreement and the POA in the Amended 5 May Letter;

d. the tenor and content of the WA exchanges between the parties;

e. their lawyers' correspondence;

f. the contrast between the care that the plaintiff and Joanne took in relation to the 5 May Letter and the 3 July Minutes as opposed to their conduct in relation to the Oral Agreement and the POA; and

g. the questionable value of the POA to the defendant,

I find that the plaintiff has not proven, on the balance of probabilities, that the defendant agreed to take on the liability for the Loan Amount in exchange for the plaintiff signing the POA. The plaintiff's claim is consequently dismissed.

131 I am grateful to both counsels, Mr Choo and Ms Wendy Tan, for their effective assistance. Ms Tan, counsel for the plaintiff, put in a sterling effort to marshal the evidence in support of the plaintiff's case. The documentary evidence was however, overwhelmingly against the plaintiff.

132 I will hear parties on costs.

Kwek Mean Luck
Judge of the High Court

Tan Poh Ling Wendy, Kelley Wong Kar Ee and Lerh Guan Wei Terrence (Morgan Lewis Stamford LLC) for the plaintiff;
Choo Zheng Xi, Ashley Yeo SiHui and Yong Shi Qian (Peter Low & Choo LLC) for the defendant.