

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

**[2023] SGHC 211**

Suit No 118 of 2021

Between

Elcarim Science Pte Ltd

*... Plaintiff*

And

Zhang Yongtai

*... Defendant*

Counterclaim of the defendant

Between

Zhang Yongtai

*... Plaintiff in counterclaim*

And

(1) Elcarim Science Pte Ltd

(2) Dou Suoke

*... Defendants in counterclaim*

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**JUDGMENT**

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[Companies — Directors — Duties]  
[Companies — Directors — Removal]  
[Companies — Directors — Remuneration]  
[Companies — Capital — Share capital]  
[Companies — Shares — Transfer]  
[Contract — Breach]  
[Contract — Formation]

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**This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher’s duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.**

**Elcarim Science Pte Ltd**

**v**

**Zhang Yongtai**

**[2023] SGHC 211**

General Division of the High Court — Suit No 118 of 2021

Hri Kumar Nair J

3, 7–10, 14–17, 20, 23, 24, 27–31 March 2023, 26 May 2023

15 August 2023

Judgment reserved.

**Hri Kumar Nair J:**

**Introduction**

1 This case concerns the aftermath of the fallout between partners of a small business in 2015. The facts are unremarkable, the only distinction being the lack of candour and honesty of the principal witnesses and the failure by both sides to call as witness the one person who could have shed light on most of the issues.

**Facts**

***Parties to the dispute***

2 Elcarim Science Pte Ltd (“**Elcarim**”) is a company incorporated in Singapore involved in scientific research and development, as well as the supply of products within the security industry in Singapore and overseas. Its sole

shareholder is Dou Suoke (“**Dou**”), a Chinese national, who is currently also its director and chief technology officer. Zhang Yongtai (“**Zhang**”), a Singaporean, was previously a director and shareholder of Elcarim.

3 Dou is also the owner and/or directing mind of two foreign companies, Future Digital Science Ltd (“**FDS**”) and Ultra-Array HK Technology Limited (“**UAT**”), which feature heavily in this dispute.

***Background to the dispute***

4 Elcarim was incorporated on 7 August 2012 pursuant to an agreement between Zhang and Dou, the terms of which are disputed. In the beginning, Zhang was Elcarim’s sole director, responsible for its day-to-day management. Dou participated in some decision-making and contributed capital to Elcarim. Zhang held all the shares in Elcarim in his name, with half on trust for Dou. On 1 December 2014, Pang Theng Kin (“**Pang**”) was also appointed a director of Elcarim. Pang is an accountant known to Zhang and, prior to his appointment as director, was Elcarim’s finance manager and corporate secretary. On 1 December 2014, on Dou’s instructions, the shares Zhang held on trust for Dou were transferred to Pang to hold on trust for Dou.

5 Elcarim terminated Zhang’s employment without notice on 10 June 2015. Dou also caused Zhang’s shares in Elcarim to be transferred to himself. Almost six years later, Elcarim commenced this action seeking damages against Zhang, pleading various breaches of his duties as director. Zhang brought a counterclaim against Elcarim, Dou and Pang for moneys he alleged were owed to him by Elcarim and the wrongful transfer of his shares. Prior to the trial, Zhang and Pang mediated their dispute and reached a settlement, the terms of

which were not disclosed. Pang thereafter did not participate in this action, and none of the parties called him as a witness.

### **The parties' cases**

6 The claim and counterclaim raise several causes of action, which I deal with in detail below. I provide a summary here.

#### ***Elcarim's claim against Zhang***

7 Elcarim advanced three causes of action against Zhang.

8 First, Zhang twice breached his duties by failing to procure the necessary permits for the export of restricted equipment by Elcarim around 2 February 2015 and 9 June 2015, as required by Strategic Goods (Control) Act (Cap 300, 2003 Rev Ed) (the “**SGCA**”). This resulted in Elcarim being convicted on two charges: (a) charge no.: DSC-900002-2021; and (b) charge no.: DSC-900003-2021) (the “**SGCA Charges**”) and being fined a total of \$20,000.

9 Second, Zhang misused Elcarim's funds amounting to \$58,288 to repay his personal bank loan.

10 Third, Zhang breached his duties by placing three personal acquaintances, including his wife, on Elcarim's payroll and paying them \$86,255, even though they did not do any work for Elcarim.

11 Zhang denies that he was involved in the export of the goods that gave rise to the SGCA Charges. He also denies misusing Elcarim's funds to repay a personal term loan; he claims the said loan was taken out with Dou's agreement to help Elcarim with its cash-flow issues. The loan proceeds were deposited into Elcarim's bank account, and he then arranged for Elcarim to make most of the

loan repayments. Finally, he claims that the three individuals were employed with Dou's agreement and they did, in fact, do work for Elcarim.

***Zhang's claims against Elcarim and Dou***

12 Zhang's claim deals with four separate matters.

13 First, Elcarim failed to pay Zhang three months' salary in lieu of notice in respect of his termination, amounting to \$54,000.

14 Second, Elcarim failed to pay Zhang the sums of \$18,850 and \$8568.36, being his outstanding salary and Central Provident Fund ("CPF") contributions for the periods of May 2015 and 1–10 June 2015, respectively.

15 Third, Elcarim failed to pay Zhang a sum of \$685,539, being the aggregate sum of loans extended by Zhang to Elcarim as at 30 September 2013 and which has been admitted by Elcarim.

16 Finally, a claim against Dou for delivery up or damages for his loss of shares in Elcarim; Zhang says that the transfer of his 50% shareholding in Elcarim (the "**Shares**") to Dou was unlawful as it was made without his consent.

17 Elcarim's position is that Zhang's written employment agreement was fabricated and the three-month notice period for termination provided therein is therefore ineffective. It also disputes that Zhang's monthly salary was \$18,000 when he was terminated. It further claims that Zhang had been paid his salary and CPF contribution for May 2015 and 1–10 June 2015. Elcarim denies that it owes \$685,539 to Zhang.

18 Elcarim and Dou plead that the transfer of the Shares to Dou (the “**Share Transfer**”) was lawful as it was done pursuant to the exercise by Dou of his rights under a share pledge agreement between Zhang and Dou (the “**SPA**”).

### **Issue 1: the SGCA charges**

#### *Elcarim’s case*

19 Elcarim’s case is that Zhang breached his duties as a director of Elcarim by “failing and/or refusing and/or neglecting to procure [Elcarim’s application] for the permit for strategic goods required under the SGCA”.<sup>1</sup> Zhang oversaw the shipping and receiving of goods by Elcarim, and it was within his responsibilities to ensure that appropriate permits, including those required under the SGCA, were obtained before any goods were shipped or received.<sup>2</sup> Elcarim pleads that, prior to exporting certain restricted equipment around 2 February 2015, Zhang failed, refused or neglected to apply for or procure Elcarim to apply for the necessary permit, causing Elcarim to commit an offence under s 5(1) SGCA.<sup>3</sup> In addition, prior to exporting certain restricted equipment around 9 June 2015, Zhang failed, refused or neglected to apply for or procure Elcarim to apply for the necessary permit, causing Elcarim to commit an offence under s 5(1) SGCA<sup>4</sup> (the equipment that are the subject of the two charges will hereinafter be referred to as the “**SGCA Goods**”).

20 It is Elcarim’s evidence that Zhang was directly involved in the shipment of the SGCA Goods, and, furthermore, the purchase orders in respect of the

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<sup>1</sup> Statement of Claim (Amendment No. 1) at para 10.

<sup>2</sup> Statement of Claim (Amendment No. 1) at para 7.

<sup>3</sup> Statement of Claim (Amendment No. 1) at para 10(d).

<sup>4</sup> Statement of Claim (Amendment No. 1) at para 11(e).

SGCA Goods (the “**SGCA Purchase Orders**”) were addressed to him.<sup>5</sup> In addition, prior to the export of the SGCA Goods, Zhang had told Dou that permits were not necessary for all of Elcarim’s products.<sup>6</sup> In any event, Zhang was in charge of Elcarim’s operations in Singapore and was under a duty to ensure that all laws and regulations were observed,<sup>7</sup> including to ensure that the necessary permits were obtained.<sup>8</sup>

***Zhang’s case***

21 Zhang’s case is that the goods he was involved in exporting did not require an export permit<sup>9</sup> and, more particularly, he neither participated in nor had knowledge of the SGCA Purchase Orders.<sup>10</sup>

22 Zhang’s evidence is that he was responsible for applying for permits only in respect of the goods he was exporting.<sup>11</sup> Zhang claims that from about 2014, he was responsible for purchases made *by* Elcarim and thus would not have processed purchase orders *from customers*, including the SGCA Purchase Orders.<sup>12</sup> Instead, that fell within Pang’s purview. At the material time, Pang was also involved in the logistics and operations of Elcarim.<sup>13</sup>

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<sup>5</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 42 lines 14–24; 3AB at pp 889–891.

<sup>6</sup> Dou’s XX / Certified Transcript (Day 4 / 9 March 2023) at p 17 line 28 – p 18 line 18.

<sup>7</sup> Dou’s AEIC at para 86.

<sup>8</sup> Dou’s XX / Certified Transcript (Day 4 / 9 March 2023) at p 17 lines 24–27.

<sup>9</sup> Defence and Counterclaim (Amendment No. 2) at para 9.

<sup>10</sup> Defence and Counterclaim (Amendment No. 2) at para 11.

<sup>11</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 41 lines 24–27.

<sup>12</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 42 lines 24–28, p 43 lines 5 and 6.

<sup>13</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 41 lines 28–30; Zhang’s AEIC at paras 69 and 70.

***Whether Zhang was responsible for obtaining permits for the SGCA Goods***

23 I find there is insufficient evidence to hold Zhang responsible for the SCGA Charges.

24 First, Elcarim led no direct evidence that Zhang was personally involved in the transactions concerning the SGCA Goods. Crucially, it also did not produce any documents relating to the export of the SGCA Goods, although such documents would have been in the possession or control of Elcarim or FDS (the purchaser of the SGCA Goods), and could not show any documentary evidence of Zhang’s involvement in the exports. Dou’s evidence was unhelpful as he had no personal knowledge of Zhang’s involvement with the SGCA Purchase Orders and the SGCA Goods. Dou claimed otherwise, but when challenged, he merely repeated his assertions regarding what Zhang was purportedly aware of, what Zhang was responsible for, Zhang’s failure to inform him that there were restrictions on the SGCA Goods and an irrelevant account of his experience providing a statement to Singapore Customs.<sup>14</sup> I also note that this is consistent with Elcarim’s case that Dou’s role was limited to providing funds and building clientele, and later the marketing and technological aspects of the business,<sup>15</sup> and not the management, administration<sup>16</sup> and day-to-day running of Elcarim.<sup>17</sup>

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<sup>14</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 77 line 23 – p 78 line 5.

<sup>15</sup> Dou’s AEIC at paras 18 and 19.

<sup>16</sup> Dou’s AEIC at para 21.

<sup>17</sup> Dou’s AEIC at para 19.

25 Second, Zhang’s case is that *Pang* was responsible for the export of the SGCA Goods.<sup>18</sup> Elcarim chose not to call Pang to deal with that assertion, without explaining their reasons. It is not its case that Pang was not available to give evidence.

26 Instead, Elcarim called a former employee, Ms Chen Xiao Lan (“**Ms Chen**”), but her evidence was of limited utility.<sup>19</sup> Ms Chen testified that Zhang was responsible for dealing with the logistics of importing and exporting goods into and out of Elcarim<sup>20</sup> and that she and Zhang were the only persons who did this.<sup>21</sup> It was only after Zhang’s departure in June 2015 that Pang took over the logistics role<sup>22</sup> and, prior to that, she was not aware if Pang was involved in that role.<sup>23</sup> Ms Chen was employed between 18 March 2015 and July 2015,<sup>24</sup> which coincides only with the export of the SCGA Goods in the second charge. Given further that the purchase orders were dated 24 August 2014 and 1 December 2014,<sup>25</sup> for much of the intervening period before the export of the SGCA Goods, Ms Chen was not in Elcarim’s employment. In fact, Ms Chen testified that she did not know anything about the SGCA Charges or

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<sup>18</sup> Defence and Counterclaim (Amendment No. 2) at paras 10 and 12; Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 42 lines 24–28, p 43 lines 5 and 6.

<sup>19</sup> Elcarim and Dou’s Written Closing Submissions at paras 264–266; Zhang’s Written Closing Submissions at paras 238 and 242.

<sup>20</sup> Ms Chen’s SAEIC at para 7.

<sup>21</sup> Ms Chen’s SAEIC at para 12.

<sup>22</sup> Ms Chen’s SAEIC at paras 12 and 14; Certified Transcript (Day 16 / 30 March 2023) at p 20 lines 3–5.

<sup>23</sup> Ms Chen’s XX / Certified Transcript (Day 16 / 30 March 2023) at p 7 lines 14–16.

<sup>24</sup> Ms Chen’s AEIC at para 1.

<sup>25</sup> Dou’s AEIC at para 87(a).

the transactions underlying them.<sup>26</sup> Ms Chen also could not, and did not, speak to how Zhang and Pang had allocated duties between themselves.

27 I note that the distinction Zhang made at trial between the issuance and processing of purchase orders is not made in his AEIC, and this raises doubts about his assertion that he was, therefore, not responsible for handling the SGCA Purchase Orders.<sup>27</sup> I also note that Zhang states in his AEIC that Pang had started handling “purchasing aspects of Elcarim[’s] ... business” and also mentions that Pang was involved with a supplier, Selex – presumably referring to SELEX Galileo Infrared Ltd (“**Selex**”).<sup>28</sup> This is inconsistent with Zhang’s evidence that he, not Pang, handled the issuance of purchase orders to suppliers.<sup>29</sup> Nonetheless, while Zhang’s evidence is unsatisfactory, Elcarim has not met its burden of proof. In the absence of clear documentary or testimonial evidence that Zhang was personally involved in the export of the SCGA Goods, Elcarim’s claim does not get off the ground. There is no evidence of sufficient probity to refute Zhang’s contention that the SGCA Purchase Orders were handled by Pang. In this regard, it was also Dou’s evidence that Pang had been involved in the export of the SCGA Goods together with Zhang.<sup>30</sup> This is fortified by the fact that Pang was prosecuted and convicted for the SCGA Offences and other similar offences.

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<sup>26</sup> Ms Chen’s XX / Certified Transcript (Day 16 / 30 March 2023) at p 15 lines 17–30.

<sup>27</sup> Elcarim and Dou’s Written Closing Submissions at para 267.

<sup>28</sup> Zhang’s AEIC at para 69.

<sup>29</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 42 lines 24–28, p 43 lines 5 and 6. See also Zhang’s AEIC at paras 69 and 70; Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 44 lines 11–17.

<sup>30</sup> Zhang’s Written Closing Submissions at para 256; Dou’s XX / Certified Transcript (Day 4 / 9 March 2023) at p 7 lines 23–25.

28 Elcarim refers to the fact that relevant “delivery orders submitted by FDS”, referring to the SGCA Purchase Orders, were marked for the attention of “Mr Tiger”, which is Zhang’s nickname.<sup>31</sup> But this does not prove that he was responsible for processing the orders and obtaining permits for the export of the SGCA Goods.

29 Elcarim nonetheless argues that even if Zhang was not personally involved in the SGCA Goods, he was ultimately responsible as he oversaw Elcarim’s operations at the material time.<sup>32</sup> But Zhang cannot be responsible for what he did not know about. Further, Pang was also a director at the time arrangements for the export of the SGCA Goods were made. As stated above, it is Zhang’s evidence that Pang was overseeing the export of the SGCA Goods, and no evidence was led that Elcarim’s internal process was such that Zhang must or should have known about the exports in question. Dou’s evidence that “everything was handled by... Zhang”<sup>33</sup> was based on Zhang being “the sole legal person of the company” and had been in correspondence with Singapore Customs. This does not, however, address the issue of who dealt with the SGCA Goods. There is therefore insufficient evidence to support the claim that the SCGA Charges were a result of Zhang acting in breach of his duties to Elcarim.

30 Elcarim submits that Zhang is still liable for breach of his duties as a director to Elcarim “even if [he] was not aware and/or involved [with the SGCA Goods]”.<sup>34</sup> This is, however, not pleaded.<sup>35</sup> I disagree with Elcarim that it

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<sup>31</sup> Elcarim and Dou’s Written Closing Submissions at para 262; 3AB at pp 889–891.

<sup>32</sup> Elcarim and Dou’s Written Closing Submissions at para 263.

<sup>33</sup> Dou’s XX / Certified Transcript (Day 4 / 9 March 2023) at p 7 line 10.

<sup>34</sup> Elcarim and Dou’s Written Closing Submissions at para 274.

<sup>35</sup> Zhang’s Written Closing Submissions at para 264.

suffices to plead that Zhang owed Elcarim a duty to “act bona fide and in good faith in the interest of [Elcarim]” and “use reasonable diligence in the discharge of his duties as director”<sup>36</sup>. It is uncontroversial that Zhang owed such general duties to Elcarim – but Elcarim must plead and prove what his specific duties were, how he had acted in breach of those duties and how that breach caused Elcarim loss in relation to the SCGA Offences. In this regard, Elcarim’s pleaded case is that Zhang failed, refused or neglected to apply for or procure Elcarim to apply for the necessary permits. For the reasons above, the evidence is insufficient to establish this.

31 I therefore dismiss this claim against Zhang.

## **Issue 2: the ANZ loan**

### *Elcarim’s case*

32 Elcarim’s case is that Zhang had “breached his duties to [Elcarim] and/or acted in fraudulent breach of trust” by misusing \$58,288 of Elcarim’s funds to pay his personal term loan with Australian and New Zealand Banking Group (“**ANZ Bank**”) under account number [xxxx xxxx 01] (the “**ANZ Loan Account**” and the “**ANZ Loan**”).<sup>37</sup> It asserts that Zhang had “caused and/or procured” Elcarim’s issuance of 16 cheques, each for the sum of \$3,643.00 “to [Zhang] and/or directly to ANZ Bank”, despite “knowing and/or being reckless” to the fact that there was no agreement or basis for Elcarim to pay “[Zhang] and/or ANZ Bank” and Elcarim had no interest or benefit in repaying the ANZ Loan.<sup>38</sup>

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<sup>36</sup> Elcarim and Dou’s Written Reply Closing Submissions at para 63; Zhang’s Written Reply Closing Submissions at para 73.

<sup>37</sup> Statement of Claim (Amendment No. 1) at para 13.

<sup>38</sup> Statement of Claim (Amendment No. 1) at paras 13(a) and 13(b).

33 Elcarim’s evidence is that Zhang had taken out the ANZ Loan, made Elcarim a guarantor in respect of it, and used Elcarim’s funds to make the loan repayments.<sup>39</sup> It is undisputed that the ANZ Loan was taken in Zhang’s name and \$58,288 of Elcarim’s funds was used towards its repayment.<sup>40</sup>

34 Dou claimed that he only came to know about the ANZ Loan around June 2014,<sup>41</sup> and only found out that Zhang had made Elcarim a guarantor after Zhang’s departure on 10 June 2015.<sup>42</sup>

### ***Zhang’s case***

35 Zhang’s case is that Dou asked him in July 2013 to apply for personal bank loans to help Elcarim with its cash flow,<sup>43</sup> since Dou had not provided capital as agreed.<sup>44</sup> Their agreement, reached over a phone conversation and without documentary evidence,<sup>45</sup> was for Zhang to take out a personal loan and then lend the money to Elcarim.<sup>46</sup> Zhang’s evidence is that Elcarim would not have been able to obtain a loan in its own name since it had an unhealthy cash flow position.<sup>47</sup>

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<sup>39</sup> Dou’s AEIC at paras 92 and 93.

<sup>40</sup> Dou’s AEIC at paras 94–97, Tabs 48–50; Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 2 line 23.

<sup>41</sup> Dou’s AEIC at para 92.

<sup>42</sup> Dou’s AEIC at paras 92 and 93.

<sup>43</sup> Zhang’s AEIC at paras 36–38.

<sup>44</sup> Zhang’s AEIC at para 38.

<sup>45</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 56 line 25, p 65 line 6.

<sup>46</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 56 lines 21, 22 and 25.

<sup>47</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 56 line 29 – p 57 line 3, p 57 line 29 – p 58 line 2, p 70 lines 7, 10–15.

36 Zhang secured the ANZ Loan and deposited the loan proceeds of \$60,000 into Elcarim’s OCBC account number [xxxx xxxx 2001] (“**Elcarim’s OCBC Account**”).<sup>48</sup> This deposit was also recorded as a part of Zhang’s loans to Elcarim in Elcarim’s general ledger for 2013 (“**GL2013**”).<sup>49</sup>

37 Zhang testified that he made the monthly repayments himself for the first six months,<sup>50</sup> after which Dou instructed him to have Elcarim make the remaining repayments.<sup>51</sup>

38 Zhang further pleads that since Elcarim had possession of the ANZ Bank statements and the financial statements and accounts of Elcarim, it was aware of and had consented to Zhang taking out the ANZ Loan.<sup>52</sup>

39 Elcarim denies that Zhang deposited the loan proceeds of \$60,000 into Elcarim’s OCBC Account.<sup>53</sup> Elcarim claimed Zhang took the ANZ Loan to complete the purchase of his property,<sup>54</sup> as he had insufficient cash.<sup>55</sup> Elcarim

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<sup>48</sup> Zhang’s AEIC at para 39 and Tab ZYT-18; Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 58 lines 15–19.

<sup>49</sup> Zhang’s AEIC at para 40.

<sup>50</sup> Zhang’s AEIC at para 41; Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 6 lines 12–17. See also Certified Transcript (Day 1 / 3 March 2023) at p 31 lines 2–5.

<sup>51</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 4 lines 25–28, p 6 lines 14–17.

<sup>52</sup> Defence and Counterclaim (Amendment No. 2) at para 17B.

<sup>53</sup> Elcarim’s Reply and Defence to Counterclaim (Amendment No. 2) at para 31A; Certified Transcript (Day 1 / 3 March 2023) at p 29 lines 28–32, p 111 lines 14–16, p 112 lines 27 and 28, p 113 lines 1 and 2.

<sup>54</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 80 lines 8–11.

<sup>55</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 50 line 21, p 52 lines 26–28.

further asserts that Zhang had promised to return to Elcarim the funds he had used for repayment,<sup>56</sup> but failed to do so.<sup>57</sup>

***Whether the ANZ Loan was deposited in Elcarim’s account***

40 It is not disputed that Zhang applied for and obtained the ANZ Loan in his own name. The first and most important question is: how were the loan proceeds applied?

41 The ANZ Loan comprised two separate loans: a loan of \$30,000 for one year with an interest rate of 5.8% per annum (the “**One-Year Loan**”) and a second loan of \$30,000 for three years with an interest rate of 6.6% per annum (the “**Three-Year Loan**”).<sup>58</sup> Based on the loan documents issued by ANZ Bank, the loans were made to Zhang and disbursed on 22 July 2013.<sup>59</sup> The July 2013 statement of account for Elcarim’s OCBC Account reflects a deposit of \$60,000 on 23 July 2013.<sup>60</sup> This supports Zhang’s evidence that he had deposited the loan proceeds with Elcarim, and therefore his case that he had taken the ANZ Loan for Elcarim’s benefit.

42 When shown the ANZ Loan Account statements, Dou agreed that these were documents issued by ANZ Bank “in relation to [Zhang’s] personal loan”.<sup>61</sup> He added, however, that he did not himself see the loan agreement between

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<sup>56</sup> Dou’s AEIC at para 92.

<sup>57</sup> Dou’s AEIC at para 93.

<sup>58</sup> Defence and Counterclaim (Amendment No. 2) at para 17A(b).

<sup>59</sup> 3AB at p 1094.

<sup>60</sup> Zhang’s AEIC at para 39; Zhang’s AEIC at Tab ZYT-18.

<sup>61</sup> Dou’s XX / Certified Transcript (Day 1 / 3 March 2023) at p 113 lines 8–23.

Zhang and ANZ Bank,<sup>62</sup> and that he had been told that the loan taken out by Zhang from ANZ Bank was for \$80,000 instead;<sup>63</sup> he later conceded that he was not sure.<sup>64</sup> Dou's refusal to seriously consider the documentary evidence produced by Zhang only undermines Dou's credibility.

43 Elcarim's attempts to cast doubt on the clear documentary evidence bordered on the desperate. First, Elcarim says that it was not necessary for the ANZ Loan to have been taken out in two separate tranches of \$30,000 each, with different tenures and different interest rates.<sup>65</sup> It also argues that because the ANZ Loan Account statement states that the term loan had a start date of "22 Jul 2013", end date of "08 Jul 2014" and interest rate of "5.8000% p.a.",<sup>66</sup> only the One-Year Loan was obtained on 22 July 2013 and the Three-Year Loan must have been obtained at some other time.<sup>67</sup> However, the same document suggests that both \$30,000 loans were taken out at about the same time. The second page of the ANZ Loan Account statements dated 7 February 2014, 7 March 2014, 7 April 2014, 7 May 2014 and 8 June 2014,<sup>68</sup> refer to both the One-Year Loan, "\$30,000 INTEREST AT 5.8%PA LOAN ON 1 YEAR TENURE", and the Three-Year Loan "\$30,000 INTEREST AT 6.6%PA LOAN ON 3 YEAR TENURE". At the trial, Elcarim conceded that the Three-Year

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<sup>62</sup> Dou's XX / Certified Transcript (Day 1 / 3 March 2023) at p 113 line 26. See also p 111 lines 14–16 and p 112 lines 29 and 30.

<sup>63</sup> Dou's XX / Certified Transcript (Day 1 / 3 March 2023) at p 114 lines 6–14.

<sup>64</sup> Dou's XX / Certified Transcript (Day 1 / 3 March 2023) at p 115 lines 6–21.

<sup>65</sup> Zhang's XX / Certified Transcript (Day 8 / 16 March 2023) at p 66 lines 6–8.

<sup>66</sup> 3AB at p 1094.

<sup>67</sup> Zhang's XX / Certified Transcript (Day 8 / 16 March 2023) at p 61 lines 1–3, p 62 lines 29–31.

<sup>68</sup> 3AB at pp 1095, 1097, 1099, 1101 and 1103.

Loan was probably taken out in June 2013,<sup>69</sup> which is close to 22 July 2013, the date on which Elcarim accepts the One-Year Loan commenced.<sup>70</sup>

44 I accept Zhang’s evidence that he took out both loans on 22 July 2013, and the loan moneys were deposited into his personal account on the same day.<sup>71</sup> I also accept Zhang’s explanation that he took out two loans in different tranches, with different interest rates and tenures, because he was not certain of Elcarim’s cash flow position and wanted flexibility in repayment.<sup>72</sup>

45 More importantly, Elcarim does not offer any evidence as to the alternative source of the \$60,000 deposited in Elcarim’s OCBC Account.<sup>73</sup> It is insufficient for Elcarim to merely disagree with Zhang’s case, ignore the documentary evidence or diminish their significance by stating that it did not have sight of the documents around the time it was created.

46 Zhang also testified that Pang knew about him paying the loan moneys into Elcarim’s bank account<sup>74</sup> and that Elcarim was paying the instalments to ANZ Bank since Pang prepared at least 14 of the cheques.<sup>75</sup> Elcarim did not call Pang to rebut this.

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<sup>69</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 64 line 30 – p 65 line 2.

<sup>70</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 59 lines 14–16.

<sup>71</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 60 lines 20–27, p 64 lines 1–6, p 64 line 30 – p 65 line 3.

<sup>72</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 66 lines 9–14.

<sup>73</sup> Zhang’s Written Reply Closing Submissions at para 76.

<sup>74</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 1 lines 19–21, 24–26.

<sup>75</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 4 lines 11–14.

47 I therefore find that Zhang had deposited the ANZ Loan proceeds into Elcarim's OCBC Bank Account.

***Whether the ANZ Loan was taken out for Elcarim's benefit***

48 Elcarim's case is that the ANZ Loan was taken out by Zhang to fund the purchase of his own property and, accordingly, not for Elcarim's benefit.<sup>76</sup> Given my finding above, I reject this assertion. I also find that the ANZ Loan was taken out for Elcarim's benefit.

49 First, the fact that Zhang immediately deposited the ANZ Loan proceeds into Elcarim's OCBC Account suggests that they were intended for Elcarim's use. Elcarim has not offered any other reason for Zhang to have done this.

50 Indeed, the evidence suggests that the ANZ Loan was prompted by Elcarim's cash flow position. In this regard, I accept Zhang's evidence that Elcarim would have difficulty borrowing money on its own given that (a) it was a new business, having been incorporated less than a year prior,<sup>77</sup> and had an insignificant track record;<sup>78</sup> and (b) its bank account balance was very low, which suggested an unhealthy cash flow situation.<sup>79</sup> This is evident from the fact that before the deposit of \$60,000 on 23 July 2013, Elcarim only had \$44.81 in Elcarim's OCBC Bank Account.<sup>80</sup>

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<sup>76</sup> Zhang's XX / Certified Transcript (Day 8 / 16 March 2023) at p 80 lines 8–14.

<sup>77</sup> Zhang's XX / Certified Transcript (Day 8 / 16 March 2023) at p 56 line 29 – p 57 line 2.

<sup>78</sup> Zhang's XX / Certified Transcript (Day 8 / 16 March 2023) at p 70 lines 10 and 11.

<sup>79</sup> Zhang's XX / Certified Transcript (Day 8 / 16 March 2023) at p 70 lines 11–13.

<sup>80</sup> 2AB at p 585; Dou's XX / Certified Transcript (Day 2 / 7 March 2023) at p 15 line 19.

51 It is also not Elcarim’s case that the \$60,000 deposited in Elcarim’s OCBC Bank Account was used for purposes unrelated to Elcarim’s business. Elcarim’s case is premised on Zhang using Elcarim’s moneys to pay a personal loan he had taken for his own benefit, which was clearly not the case.

***Whether Zhang took out the ANZ Loan on Dou’s instruction***

52 Given my findings above, it is not necessary for me to determine whether Zhang took out the ANZ Loan on Dou’s instructions. Dou did state that he had on previous occasions asked Zhang to borrow from Zhang’s friends when Elcarim faced cash flow problems,<sup>81</sup> but that the ANZ Loan was not one such instance.<sup>82</sup> In any event, I make the following observations.

53 Dou’s evidence is not satisfactory, which casts doubt on his credibility in so far as he claims that he had neither instructed nor agreed for Zhang to obtain loans for the benefit of Elcarim:

- (a) Dou did not give consistent evidence about when and how he found out about the ANZ loan:<sup>83</sup> at varying points he stated that (i) in June 2014, Pang had informed him that Zhang had taken out the ANZ Loan;<sup>84</sup> (ii) it was only after Zhang had been terminated in June 2015 that Dou realised Zhang had taken out the ANZ Loan;<sup>85</sup> (iii) Zhang had

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<sup>81</sup> Dou’s XX / Certified Transcript (Day 1 / 3 March 2023) at p 111 lines 2–11; Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 79 lines 2–18; Dou’s REX / Certified Transcript (Day 5 / 10 March 2023) at p 85 lines 3–6, 18, 25, 26; 3AB at p 803.

<sup>82</sup> Dou’s XX / Certified Transcript (Day 1 / 3 March 2023) at p 111 lines 9–11.

<sup>83</sup> Zhang’s Written Closing Submissions at paras 285 and 297.

<sup>84</sup> Dou’s AEIC at para 92; see also Dou’s XX / Certified Transcript (Day 2 / 7 March 2023) at p 22 line 16.

<sup>85</sup> Dou’s XX / Certified Transcript (Day 1 / 3 March 2023) at p 115 lines 8 and 9.

informed Dou of the ANZ Loan before Zhang was terminated;<sup>86</sup> and (iv) Zhang had informed Dou of the ANZ Loan upon Zhang's termination.<sup>87</sup>

(b) Dou repeatedly insisted that Elcarim had guaranteed the ANZ Loan,<sup>88</sup> when it had not. He claimed Pang informed him of the guarantee. I find that evidence incredible. Whether Elcarim had guaranteed the ANZ Loan was something Dou could have easily and independently ascertained, but it appears that Dou took no steps to verify this<sup>89</sup> even after bringing this action against Zhang.

(c) Dou also gave inconsistent evidence on when he allegedly found out that Elcarim was a guarantor for the ANZ Loan: Dou initially stated that he found out that Elcarim was a guarantor only after Zhang's termination<sup>90</sup> but later testified that he found out in November or December 2014.<sup>91</sup>

(d) Further, having testified that he found out in November or December 2014 that Elcarim was a guarantor and was paying for the

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<sup>86</sup> Dou's XX / Certified Transcript (Day 1 / 3 March 2023) at p 112 lines 9 and 10.

<sup>87</sup> Dou's XX / Certified Transcript (Day 1 / 3 March 2023) at p 111 lines 28 and 29, p 112 lines 7–18.

<sup>88</sup> Dou's AEIC at para 92; Dou's XX / Certified Transcript (Day 1 / 3 March 2023) at p 112 lines 1–3, 7, 8, 16–18, 19–21.

<sup>89</sup> Dou's XX / Certified Transcript (Day 2 / 7 March 2023) at p 20 line 8.

<sup>90</sup> Dou's AEIC at para 93; Dou's XX / Certified Transcript (Day 1 / 3 March 2023) at p 111 line 32, p 112 lines 1-3, 7-9; Dou's XX / Certified Transcript (Day 2 / 7 March 2023) at p 20 lines 5 and 6.

<sup>91</sup> Dou's XX / Certified Transcript (Day 2 / 7 March 2023) at p 22 lines 16–18, p 23 lines 14–19.

ANZ Loan,<sup>92</sup> Dou claimed he only instructed Elcarim to stop paying the instalments in 2015.<sup>93</sup>

54 The evidence is clear that Zhang had deposited the proceeds of the ANZ Loan into Elcarim’s OCBC Bank Account for Elcarim’s use. Zhang paid the first six monthly instalments before Elcarim continued the repayments and paid a total of \$58,288. Zhang did not keep this a secret – the repayments were made with the knowledge of Pang.

55 I therefore dismiss Elcarim’s claim that Zhang misused Elcarim’s funds to pay \$58,288 for his personal term loan. I address the ANZ Loan again when considering Zhang’s counterclaim.<sup>94</sup>

### **Issue 3: the three employees**

#### ***Elcarim’s case***

56 Elcarim’s case is that Zhang had placed three individuals, Feng Xue Min (“**Ms Feng**”), Yu De Jun and Yu Meng Shi (the “**Three Employees**”), on Elcarim’s payroll even though they did no work for Elcarim, and thereby wrongfully caused Elcarim to pay a total of \$86,255 in salaries, bonuses and CPF contributions.<sup>95</sup> Ms Feng is Zhang’s wife and the other two are personally

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<sup>92</sup> Dou’s XX / Certified Transcript (Day 2 / 7 March 2023) at p 22 lines 16–18, p 23 lines 14–19.

<sup>93</sup> Dou’s XX / Certified Transcript (Day 2 / 7 March 2023) at p 23 lines 18–22. (Elcarim did not eventually stop paying instalments for the ANZ Loan.)

<sup>94</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 68 line 31, p 69 lines 2–9.

<sup>95</sup> Statement of Claim (Amendment No. 1) at para 14.

known to him. Zhang therefore “fraudulently breached his duties to [Elcarim] and/or acted in fraudulent breach of trust to [Elcarim]”.<sup>96</sup>

57 Dou testified that he understood from Zhang that Elcarim needed to employ more Singaporeans in order to employ foreigners,<sup>97</sup> and approved Zhang’s hiring the Three Employees to undertake marketing, web design and translation work for Elcarim,<sup>98</sup> albeit that he did not know their identities until sometime in October or November 2014.<sup>99</sup> According to Dou, whose evidence was not challenged, Zhang recommended that Ms Feng take the post as a Human Resource Manager.<sup>100</sup> As for the other two, Zhang recommended that they do marketing for Elcarim as their English was good and they were familiar with Singapore.<sup>101</sup> Dou left the matter to Zhang and never met the Three Employees. The issue arose when the Ministry of Manpower made inquiries in May 2021 when looking into a complaint concerning Elcarim’s failure to pay CPF contributions for some of its employees.<sup>102</sup> This prompted Dou to go through Elcarim’s records, whereupon he realised that there were no records in relation to the Three Employees.<sup>103</sup>

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<sup>96</sup> Statement of Claim (Amendment No. 1) at para 14.

<sup>97</sup> Dou’s XX / Certified Transcript (Day 2 / 7 March 2023) at p 36 line 2.

<sup>98</sup> Dou’s AEIC at para 99; Dou’s XX / Certified Transcript (Day 2 / 7 March 2023) at p 36 lines 21–26, p 37 lines 25 and 26.

<sup>99</sup> Dou’s XX / Certified Transcript (Day 2 / 7 March 2023) at p 36 lines 27 and 28.

<sup>100</sup> Dou’s XX / Certified Transcript (Day 2 / 7 March 2023) at p 36 lines 21–23.

<sup>101</sup> Dou’s XX / Certified Transcript (Day 2 / 7 March 2023) at p 36 lines 23–29.

<sup>102</sup> Dou’s AEIC at para 101; Dou’s XX / Certified Transcript (Day 2 / 7 March 2023) at p 37 lines 3–9.

<sup>103</sup> Dou’s AEIC at para 101.

58 Elcarim’s evidence is that the Three Employees did not do any work for Elcarim since (a) there was no record of their designations or roles in Elcarim, employment contracts or email addresses on Elcarim’s server, or any records of emails sent by the Three Employees in relation to Elcarim’s work;<sup>104</sup> and (b) Dou<sup>105</sup> and Elcarim’s other employees, Ms Chen and Mr Chang Yuliang (“**Mr Chang**”)<sup>106</sup> testified that they had not seen the Three Employees at Elcarim’s office or perform work for Elcarim or at social events.

59 Elcarim adduced evidence that it had paid moneys to the Three Employees by way of CPF statements, salary vouchers and cheque stubs.<sup>107</sup>

### ***Zhang’s case***

60 Zhang’s case is that Dou had instructed him to hire the Three Employees<sup>108</sup> to increase the headcount of Singaporean employees<sup>109</sup> so that Elcarim would be able to hire more Chinese employees.<sup>110</sup> He also avers that the payments to the Three Employees were set off against his personal commissions, and so, Elcarim did not suffer a loss.<sup>111</sup> Zhang further pleads that even if he is found to be in breach of his duties, he is entitled to relief under

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<sup>104</sup> Dou’s AEIC at para 101.

<sup>105</sup> Dou’s AEIC at para 101.

<sup>106</sup> Ms Chen’s AEIC at paras 5 and 6; Mr Chang’s AEIC at paras 5 and 6; Mr Chang’s XX / Certified Transcript (Day 6 / 14 March 2023) at p 39 lines 28 and 21, p 40 lines 6–8, p 43 lines 5, 9 and 13; Ms Chen’s XX / Certified Transcript (Day 16 / 30 March 2023) at p 9 lines 29 and 30, p 10 lines 13, 16 and 19.

<sup>107</sup> Dou’s AEIC at Tabs 51, 52 and 53.

<sup>108</sup> Defence and Counterclaim (Amendment No. 2) at para 17D.

<sup>109</sup> Defence and Counterclaim (Amendment No. 2) at para 17D(a).

<sup>110</sup> Defence and Counterclaim (Amendment No. 2) at para 17D(b).

<sup>111</sup> Defence and Counterclaim (Amendment No. 2) at para 17D(c).

“section 391 of the Companies Act to be excused for any negligence, default or breach of duty which the Court may otherwise find [him] liable for”.<sup>112</sup> (Zhang also pleaded a defence of “laches and/or acquiescence”<sup>113</sup> but withdrew this in his opening statement.<sup>114</sup>)

61 To be clear, Zhang accepts that it would be improper and in breach of his duties for him to have “phantom” employees on Elcarim’s payroll. It is his case that the Three Employees did, in fact, do work for Elcarim.<sup>115</sup>

***Whether the Three Employees did work for Elcarim***

62 I find that the Three Employees did not carry out any work for Elcarim, and Zhang breached his duties by including them on Elcarim’s payroll and causing Elcarim to make payments to them.

63 First, the Three Employees were not called to give evidence, and there was no explanation for their absence.<sup>116</sup> There was, therefore, no direct evidence (save for Zhang’s oral testimony) as to what work they performed for Elcarim.

64 Second, there were no documents evidencing the terms of employment of, or any work done by, the Three Employees. Dou’s evidence that there were no employment contracts for the Three Employees<sup>117</sup> was not challenged by Zhang, who also did not give evidence that he had approved such contracts. This

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<sup>112</sup> Defence and Counterclaim (Amendment No. 2) at para 17F.

<sup>113</sup> Defence and Counterclaim (Amendment No. 2) at para 17G.

<sup>114</sup> Defendant’s Opening Statement at para 42.

<sup>115</sup> Certified Transcript (Day 1 / 3 March 2023) at pp 35 and 36.

<sup>116</sup> Elcarim and Dou’s Written Closing Submissions at paras 298 and 299.

<sup>117</sup> Dou’s AEIC at para 101.

absence is telling, given that Zhang was responsible for approving employment contracts, and such contracts were produced for other employees. Further, no documents were produced which reflected their involvement in Elcarim's operations – Zhang accepted there was no documentary evidence of the work done by Yu Meng Shi and Yu De Jun.<sup>118</sup> None of the Three Employees also had an Elcarim email account. I note that Zhang left Elcarim in June 2015 and would probably not have access to its documents when preparing for this action. Nonetheless, he was able to produce numerous other documents in relation to Elcarim in these proceedings. He also does not claim that such documents do, in fact, exist but have not been produced by Elcarim (choosing only to do so in his closing submissions),<sup>119</sup> and instead accepts that there is no documentary evidence of their work.<sup>120</sup> In fact, he advances a further argument that “[n]ot every employee's work required written correspondence”<sup>121</sup> and “although they were not doing the so-called regular work with documentation to evidence that, but they did assist the company”.<sup>122</sup> I find it highly implausible that the Three Employees had performed work for Elcarim for several months with no record or documentation of any of the work done.<sup>123</sup>

65 Zhang submits that Elcarim has implicitly admitted that Ms Feng did some work for Elcarim, on the basis that some of Elcarim's CPF documents showed CPF contributions being paid to Ms Feng for November 2012,

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<sup>118</sup> Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 58 lines 16 and 17.

<sup>119</sup> Zhang's Written Closing Submissions at para 306.

<sup>120</sup> Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 53 line 15.

<sup>121</sup> Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 53 line 19.

<sup>122</sup> Zhang's XX / Certified Transcript (Day 12 / 24 March 2023) at p 9 lines 8–13.

<sup>123</sup> Elcarim and Dou's Written Closing Submissions at para 288; Zhang's Written Closing Submissions at para 307.

December 2012, and January 2013.<sup>124</sup> I note that Elcarim’s claim is in respect of payments made for the period October 2014 to April 2015<sup>125</sup> More importantly, given that Zhang was effectively running Elcarim at the time of the aforesaid CPF contributions, the payments would have been authorised by Zhang, and therefore do not assist his case.

66 Third, and significantly, in his AEIC, Zhang gave no details of the Three Employees: what their qualifications were, how he came to select and hire them or the details of the work they did.<sup>126</sup> He must have known such details would be important, particularly given the pleaded case against him and the complete absence of documents. This omission is telling. Zhang attempted to make up for this deficiency in his cross-examination, where he testified that (a) Yu Meng Shi was a “polytechnic precision engineer” with “ACCA accreditation” or “[a]ccounting knowledge”<sup>127</sup> who gave Zhang suggestions on how to manage Elcarim’s costs;<sup>128</sup> (b) Ms Feng has a bachelor’s and master’s degree in business administration<sup>129</sup> and effectively acted as his personal assistant and assisted him on administrative matters such as applying for visas, booking accommodation and purchasing air tickets for Dou and Elcarim employees;<sup>130</sup> and (c) Yu De Jun was a successful businessman who has a bachelor’s degree in engineering and

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<sup>124</sup> 1AB at p 260; 1AB at p 271; 1AB at p 269.

<sup>125</sup> Statement of Claim (Amendment No. 1) at para 14(a).

<sup>126</sup> Elcarim and Dou’s Written Closing Submissions at para 285.

<sup>127</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 55 lines 21 and 22, p 56 lines 12–13; Zhang’s XX / Certified Transcript (Day 12 / 24 March 2023) at p 9 lines 18 and 19.

<sup>128</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 56 lines 13–15, p 57 lines 3–7.

<sup>129</sup> Zhang’s XX / Certified Transcript (Day 12 / 24 March 2023) at p 9 lines 16–18.

<sup>130</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 53 lines 23–29.

a master's degree in business administration,<sup>131</sup> on whom Zhang relied on for advice from time to time. But he provided no documentary or other evidence supporting these belated assertions.<sup>132</sup> Further, his account of what Yu Meng Shi and Yu De Jun did was completely bereft of any meaningful details.

67 With respect to Yu Meng Shi, Zhang pointed to a fall in Elcarim's gross profit margin, from about 25% in 2014 to around 12% in 2015, after Zhang left.<sup>133</sup> He says this was evidence of his acting on suggestions from Yu Meng Shi on managing costs when Zhang was managing Elcarim. He stated that "[t]o [him], that is documentary evidence of their work."<sup>134</sup> I do not accept this evidence – a fall in gross profit margins could be attributed to numerous factors, and Zhang gave no details of the cost-cutting measures put in place with the help of Yu Meng Shi. It was clear that Zhang was simply making up his evidence in the box. Zhang's evidence concerning the work done by Yu De Jun was that it consisted of weekly phone calls between them and when Yu De Jun was in Singapore, they would "either meet up, chit-chat or meet in office to talk about the issues".<sup>135</sup> Even if true, it is difficult to see how this justifies Yu De Jun receiving a monthly salary of \$4000.<sup>136</sup> More importantly, Zhang was not able to point to anything specific Yu De Jun did.<sup>137</sup> Zhang was similarly unable to produce documentary evidence of the work done by Ms Feng.<sup>138</sup> While he

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<sup>131</sup> Zhang's XX / Certified Transcript (Day 12 / 24 March 2023) at p 8 lines 21 and 22.

<sup>132</sup> Elcarim and Dou's Written Closing Submissions at para 287.

<sup>133</sup> Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 56 lines 19–26, 29–32, p 57 lines 11, 12, 31, 32, p 58 lines 1 and 2.

<sup>134</sup> Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 58 line 19 and 20.

<sup>135</sup> Zhang's XX / Certified Transcript (Day 12 / 24 March 2023) at p 9 lines 3–6.

<sup>136</sup> Statement of Claim (Amendment No. 1) at para 14(b); Dou's AEIC at para 100(b).

<sup>137</sup> Elcarim and Dou's Written Closing Submissions at para 291.

<sup>138</sup> Elcarim and Dou's Written Closing Submissions at para 289.

referred to the GL2013 to point out that bookings at Grand Beach Hotel, Riverview Hotel and Hotel 81<sup>139</sup> and visa processing fees recorded in GL2013<sup>140</sup> for visa applications were allegedly made by Ms Feng, the document does no more than reflect the amounts Elcarim incurred. Again, these were all unsupported assertions made by Zhang for the first time under cross-examination.<sup>141</sup>

68 Furthermore, the work Zhang claimed the Three Employees did was not consistent with Dou's unchallenged evidence of what Zhang told him he was hiring them for, namely marketing, web design and translation work;<sup>142</sup> in particular, Zhang had suggested to Dou that Ms Feng be hired to do human resources work.<sup>143</sup> I also note that Zhang refused to respond relevantly when asked about his failure to give any evidence of the work done by the Three Persons in his AEIC, first giving an irrelevant response,<sup>144</sup> then suggesting that his counsel might have omitted including his evidence in his AEIC,<sup>145</sup> and finally disagreeing before conceding that he did not have documentary evidence.<sup>146</sup> It was clear to me that Zhang was not telling the truth.

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<sup>139</sup> Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 54 lines 3, 21 and 22; 1AB at p 72.

<sup>140</sup> Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 54 lines 24, 25 and 31; 1AB at pp 85 and 86.

<sup>141</sup> Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 55 lines 2–17.

<sup>142</sup> Dou's AEIC at para 99; Dou's XX / Certified Transcript (Day 2 / 7 March 2023) at p 36 lines 21–26, p 37 lines 25 and 26.

<sup>143</sup> Dou's XX / Certified Transcript (Day 2 / 7 March 2023) at p 36 line 22, p 37 line 16.

<sup>144</sup> Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 52 line 28.

<sup>145</sup> Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 53 lines 3 and 4.

<sup>146</sup> Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 53 lines 5–15.

69 Fourth, the evidence is clear that the Three Employees did not work at Elcarim's offices at all. Dou gave evidence that he had never seen them<sup>147</sup> nor communicated with them.<sup>148</sup> Elcarim also called Mr Chang, an engineer who had been employed with Elcarim from 1 December 2014 to sometime in November 2016,<sup>149</sup> who testified that he did not know the Three Employees and had never seen them.<sup>150</sup> The same evidence was given by Ms Chen, who testified that when she was employed by Elcarim<sup>151</sup> between March 2015 and July 2015,<sup>152</sup> she did not come to know of<sup>153</sup> and did not see Yu Meng Shi and Yu De Jun.<sup>154</sup> While she had met Ms Feng in China<sup>155</sup> (she had accompanied Zhang on a business trip and was introduced to Ms Chen as Zhang's wife), she was not told or aware that Ms Feng was employed at Elcarim as Zhang's personal assistant<sup>156</sup> and had never seen Ms Feng in the Elcarim office.<sup>157</sup>

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<sup>147</sup> Dou's AEIC at para 101.

<sup>148</sup> Dou's XX / Certified Transcript (Day 2 / 7 March 2023) at p 36 line 28 and 29.

<sup>149</sup> Mr Chang's AEIC at para 1.

<sup>150</sup> Ms Chen's AEIC at paras 5 and 6; Mr Chang's AEIC at paras 5 and 6; Mr Chang's XX / Certified Transcript (Day 6 / 14 March 2023) at p 39 lines 28 and 21, p 40 lines 6–8, p 43 lines 5, 9 and 13; Ms Chen's XX / Certified Transcript (Day 16 / 30 March 2023) at p 9 lines 29 and 30, p 10 lines 13, 16 and 19.

<sup>151</sup> Ms Chen's XX / Certified Transcript (Day 16 / 30 March 2023) at p 8 lines 7–18.

<sup>152</sup> Ms Chen's AEIC at para 1; Ms Chen's XX / Certified Transcript (Day 16 / 30 March 2023) at p 6 lines 4, 15–17, 20–22.

<sup>153</sup> Ms Chen's XX / Certified Transcript (Day 16 / 30 March 2023) at p 10 line 13.

<sup>154</sup> Ms Chen's XX / Certified Transcript (Day 16 / 30 March 2023) at p 9 lines 29 and 30.

<sup>155</sup> Ms Chen's XX / Certified Transcript (Day 16 / 30 March 2023) at p 10 lines 23, 24, 29 and 30, p 13 lines 5–7.

<sup>156</sup> Ms Chen's XX / Certified Transcript (Day 16 / 30 March 2023) at p 11 lines 2–8.

<sup>157</sup> Ms Chen's XX / Certified Transcript (Day 16 / 30 March 2023) at p 12 lines 30–32.

70 In the circumstances, I find that the Three Employees did not do any work for Elcarim and Zhang had breached his duties by including them on Elcarim’s payroll.

***Whether the payments to the Three Employees were paid out of Zhang’s commissions***

71 Zhang did not challenge the documentary evidence adduced by Elcarim, or Dou’s evidence, that Elcarim had paid the Three Employees the sum of \$86,255.

72 Despite this, Zhang claims that he paid the Three Employees out of the commissions paid to him, to ease Elcarim’s cash flow issues. Zhang produced no documentary evidence of him making such payments.<sup>158</sup> His counsel did, however, rely on a table of commissions paid to Zhang sent by Dou to Zhang on 27 November 2014<sup>159</sup> (the “**Table of Commissions**”),<sup>160</sup> when cross-examining Dou. In my view, the Table of Commissions is insufficient evidence that the Three Employees were paid using Zhang’s commissions.<sup>161</sup> This is because there is nothing which expressly states that the commissions were, in fact, paid to the Three Employees for their work done for Elcarim, and this may only be inferred from the fact that some of the initials on the Table of Commissions correspond to the Three Employees’ initials. Further, even if I accept the Table of Commissions as evidence that Zhang had made some payments to the Three Employees out of his commissions, this only accounts

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<sup>158</sup> Elcarim and Dou’s Written Closing Submissions at para 316.

<sup>159</sup> Dou’s XX / Certified Transcript (Day 2 / 7 March 2023) at p 44 lines 20 and 21, p 49 line 10.

<sup>160</sup> 3AB at p 854; P1 at p 30 and 32; Dou’s XX / Certified Transcript (Day 2 / 7 March 2023) at p 55 lines 15 and 16, p 60 lines 2–6.

<sup>161</sup> Zhang’s Written Closing Submissions at paras 300 and 302.

for *part of the monthly payments* due to the Three Employees and for only *a few months* of their period of the alleged employment;<sup>162</sup> for example, it only accounts for payment of Yu Meng Shi’s monthly salary in the months of October and November 2014. The Table of Commissions does not support Zhang’s case that *all* payments to the Three Employees were made from his commissions. In addition, Zhang wrote in his letter of 3 September 2015 to Elcarim (the “**3 September 2015 Letter**”) that “[he] *found out* that [his] wife’s salary was also deducted from [his] commission”<sup>163</sup> [emphasis added], which suggests that he did not know that Ms Feng’s salary had been paid from his commissions; this is inconsistent with his case.

73 I also agree with Elcarim that Zhang’s evidence in respect of his commission is illogical. Zhang claims the commissions were payable *by Dou*, not Elcarim.<sup>164</sup> If so, it makes no sense for him to set off the payments to the Three Employees against what Dou paid him when it was Elcarim’s liability.

74 I therefore allow Elcarim’s claim against Zhang for \$86,255.

75 Zhang pleads that, if found liable in respect of this claim, he is entitled to relief under section 391 of the Companies Act (Cap 50, 2006 Rev Ed) (the “**Companies Act**”),<sup>165</sup> and explains that there is no evidence that he acted in bad faith for his personal benefit, since the arrangement was agreed on with Dou, benefitted Elcarim, and payments to the Three Employees were made out of

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<sup>162</sup> 3AB at p 854; Elcarim and Dou’s Written Closing Submissions at paras 318 and 322; Zhang’s Written Closing Submissions at para 302.

<sup>163</sup> 3AB at p 871.

<sup>164</sup> Dou’s XX / Certified Transcript (Day 2 / 7 March 2023) at p 71 lines 9–15; Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 59 lines 8–18; Elcarim and Dou’s Written Closing Submissions at paras 314 and 315.

<sup>165</sup> Defence and Counterclaim (Amendment No. 2) at para 17F.

Zhang’s commissions.<sup>166</sup> Zhang is not entitled to relief under s 391 Companies Act: I have found above that the Three Employees did not do any work for Elcarim, Zhang had caused Elcarim to make payments to the Three Employees, and this arrangement was not in the interests of Elcarim.

#### **Issue 4: Zhang’s salary in lieu of termination**

##### ***Zhang’s case***

76 Zhang claims damages for the termination of his employment on 10 June 2015 in breach of his letter of appointment as general manager of Elcarim (“**Zhang’s LOA**”)<sup>167</sup> dated 21 February 2013.<sup>168</sup> He claims damages equivalent to three months’ salary in lieu of notice, amounting to \$54,000,<sup>169</sup> in accordance with clauses 3.0 and 14.2 of Zhang’s LOA.<sup>170</sup>

##### ***Elcarim’s case***

77 Elcarim denies that Zhang was appointed as a general manager and states that Zhang’s LOA was fabricated after Zhang’s departure from Elcarim.<sup>171</sup> Furthermore, Elcarim claims that as of May 2015, Zhang was only entitled to a monthly salary of \$11,000.<sup>172</sup>

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<sup>166</sup> Zhang’s Written Closing Submissions at paras 319 and 320.

<sup>167</sup> Defence and Counterclaim (Amendment No. 2) at paras 20–22.

<sup>168</sup> 1AB at pp 204–207.

<sup>169</sup> Defence and Counterclaim (Amendment No. 2) at para 24.

<sup>170</sup> Defence and Counterclaim (Amendment No. 2) at para 21.

<sup>171</sup> Elcarim’s Reply and Defence to Counterclaim (Amendment No. 2) at para 33.

<sup>172</sup> Elcarim’s Reply and Defence to Counterclaim (Amendment No. 2) at para 38.

***Whether Zhang’s LOA is valid and enforceable***

78 Elcarim does not deny that Zhang was summarily terminated<sup>173</sup> – the letter served on Zhang on 10 June 2015 expressly provides that “Elcarim has decided to terminate the employment of [Zhang] being the director of [Elcarim] with immediate effect from 10 June”.<sup>174</sup> While the letter refers to Zhang as “director”, both parties proceeded on the basis that the termination covered Zhang’s executive duties as well.

79 This issue therefore turns on the terms of Zhang’s employment.

80 I find Zhang’s LOA unenforceable.

81 The evidence is clear that Zhang drafted and approved Zhang’s LOA *on his own*. Zhang’s LOA bears only his signatures, in his capacities as an employee and as a director of Elcarim (*ie*, employer).<sup>175</sup> It is not Zhang’s case that he had the authority to approve his own employment contract. Further, Zhang was clearly in a position of conflict and could not, and should not, have approved Zhang’s LOA without Dou’s consent. Obviously recognising this, Zhang testified that he discussed the terms of Zhang’s LOA with Dou, who approved the same<sup>176</sup> – but this was not pleaded or put to Dou. Zhang also gave inconsistent evidence on this: his AEIC suggests that the LOA was signed sometime after 21 February 2013, but he testified that it was signed in March

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<sup>173</sup> Elcarim’s Reply and Defence to Counterclaim (Amendment No. 2) at para 35.

<sup>174</sup> 2AB at p 256.

<sup>175</sup> 1AB at p 207.

<sup>176</sup> Zhang’s AEIC at para 118; Zhang’s XX / Certified Transcript (Day 7 / 15 March 2023) at p 86 lines 3–14.

2012. Dou denied knowing of or approving Zhang's LOA.<sup>177</sup> I accept Dou's evidence.

82 There is one further aspect of Zhang's position which was troubling and underscores the conflict he was in. Zhang's case, as put to Dou, appeared to be that the similarity in the formats of Zhang's LOA with the letters of appointment for Ms Chen and Pang meant that Zhang's LOA was not a fabrication.<sup>178</sup> I do not find this reasoning convincing as Zhang could have fabricated Zhang's LOA by using the other contracts as a template. Instead, what is telling is that the terms of Zhang's LOA differ markedly from the standard form used for other employees, including Dou's, in ways which are consistently in his favour:

- (a) Zhang gave himself a three-month termination clause,<sup>179</sup> compared to one month in the contracts of the other employees, including Dou;<sup>180</sup> and
- (b) Zhang removed provisions relating to (i) an obligation to refrain from activities which might result in a conflict of interest with the business of Elcarim;<sup>181</sup> (ii) liability for immediate dismissal in the event

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<sup>177</sup> Dou's XX / Certified Transcript (Day 2 / 7 March 2023) at p 71 lines 20–22, p 74 line 27, p 75 lines 17–20; Dou's XX / Certified Transcript (Day 3 / 8 March 2023) at p 10 lines 1–11. See also Dou's XX / Certified Transcript (Day 2 / 7 March 2023) at p 73 lines 31 and 32, p 74 line 1.

<sup>178</sup> Dou's XX / Certified Transcript (Day 2 / 7 March 2023) at p 72 line 30 – p 73 line 16.

<sup>179</sup> 1AB at p 207.

<sup>180</sup> 1AB at pp 201, 211, 216 and 231.

<sup>181</sup> 1AB at pp 201, 206, 211 and 231; Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 74 lines 4–7, 16–24, 30–31.

of misconduct;<sup>182</sup> and (iii) termination of employment for absence without notice,<sup>183</sup> while imposing the same on the others.

83 Even if genuine, the drafting of Zhang’s LOA appears to be a cynical move by Zhang to protect and benefit himself at the expense of Elcarim. Zhang’s responses when queried on this were inconsistent and reflective of his misconduct: he initially affirmed that Zhang’s LOA was a template agreement which was similar to other employment agreements in Elcarim.<sup>184</sup> However, after the differences were brought to his attention, he explained that he removed the above clauses from Zhang’s LOA because they were “not applicable” to him.<sup>185</sup> However, he did not explain why these clauses were inapplicable and why it was only in his case that they were removed.<sup>186</sup> His evidence was plainly self-serving and disingenuous.

84 Nonetheless, Zhang was an employee of Elcarim<sup>187</sup> and was entitled to reasonable notice of termination of his employment. It is not Elcarim’s pleaded case that it had grounds to summarily terminate his employment. Although Zhang did not specifically plead for damages in the event Zhang’s LOA is found to be unenforceable, I exercise my discretion to allow such a claim given that it arises from his pleaded cause of action for termination and Elcarim is not prejudiced by the same.

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<sup>182</sup> 1AB at pp 201, 206, 211 and 231; Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 74 lines 8–12, 16–24, 30–31.

<sup>183</sup> 1AB at pp 201, 206, 211 and 231; Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 74 lines 8–12, 16–24, 30–31.

<sup>184</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 73 lines 19–23.

<sup>185</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 74 line 28.

<sup>186</sup> Elcarim and Dou’s Written Closing Submissions at paras 238–240.

<sup>187</sup> Zhang’s Written Closing Submissions at paras 210, 212 and 213; Zhang’s Written Reply Closing Submissions at para 70.

85 Elcarim submits that it had the right to remove Zhang as a director in the absence of a written shareholders’ resolution because the assent of all shareholders in a company to a particular course of conduct is as binding as a resolution in a general meeting.<sup>188</sup> Its case is that Pang and Dou held a meeting as Elcarim’s shareholders on 19 June 2015 after the Shares had been transferred to Dou, and “decided that either [Zhang] should resign on his own or we should sack him”.<sup>189</sup> This is, however, predicated on the Shares having been validly transferred to Dou, which is in dispute. In any event, this was not part of Elcarim’s pleadings, which stated only that “Dou informed [Zhang] that [Zhang] would cease being a director of [Elcarim] with immediate effect.”<sup>190</sup> This happened on 10 June 2015.

86 More importantly, it misunderstands Zhang’s case. Zhang’s claim is for his termination as an *employee*. The fact that the shareholders of Elcarim may have validly removed him as a director is irrelevant. The shareholders of a company do not have the general power or right to terminate employees. In this regard, Elcarim argues that Zhang “was only remunerated as a director of Elcarim”, and since “there is no notice period for [Zhang’s] removal as director of Elcarim”, Zhang is not entitled to any salary in lieu of notice.<sup>191</sup> I disagree. It is undisputed that Zhang exercised executive functions in respect of Elcarim. Furthermore, Elcarim does not deny that Zhang was paid a salary and CPF

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<sup>188</sup> Elcarim and Dou’s Written Closing Submissions at para 250.

<sup>189</sup> Elcarim and Dou’s Written Closing Submissions at paras 251 and 252; Dou’s XX / Certified Transcript (Day 3 / 8 March 2023) at p 58 lines 4–6.

<sup>190</sup> Elcarim’s Reply and Defence to Counterclaim (Amendment No. 2) at para 35.

<sup>191</sup> Elcarim and Dou’s Written Closing Submissions at paras 248 and 253.

contributions – such payments are only applicable to an employee as defined in section 2 of the Central Provident Fund Act (Cap 36, 2013 Rev Ed).<sup>192</sup>

87 The issue remains what a reasonable notice period would be. I disagree with Elcarim’s submission that two weeks is a reasonable period.<sup>193</sup> Section 10(3)(c) of the Employment Act 1968, which Elcarim relies on, does not assist it – that provides that two weeks’ notice is the *minimum* notice period for a person employed under a contract of service of between two and five years. Given Zhang’s senior position within Elcarim, I find that a month’s notice is reasonable. This is supported by the fact that Dou’s contract of employment provides for a one-month notice period,<sup>194</sup> which was agreed by both Dou and Zhang.<sup>195</sup> Given that Dou and Zhang would be expected to be treated the same given their equal ownership of Elcarim, a one-month period for Zhang would be reasonable.

88 The amount of damages payable to Zhang should therefore be equivalent to one month’s salary. However, the quantum of Zhang’s salary as of June 2015 is disputed.

89 Zhang’s case is that his monthly salary as general manager of Elcarim was \$18,000 as of February 2013 by virtue of Zhang’s LOA,<sup>196</sup> and presumably,

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<sup>192</sup> Zhang’s Written Closing Submissions at para 211.

<sup>193</sup> Elcarim and Dou’s Written Closing Submissions at para 254.

<sup>194</sup> 1AB at p 216.

<sup>195</sup> Dou’s XX / Certified Transcript (Day 2 / 7 March 2023) at p 33 lines 7–10.

<sup>196</sup> Zhang’s AEIC at para 118; Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 66 line 30 – p 67 line 4; Dou’s XX / Certified Transcript (Day 3 / 8 March 2023) at p 10 lines 6–11.

this continued until June 2015.<sup>197</sup> For the reasons above, I disregard Zhang's LOA.

90 Zhang also relied on CPF statements for March 2013, which reflected that his salary was \$18,000,<sup>198</sup> as well as CPF statements between April and December 2013 which reflected the same.<sup>199</sup> Given that Zhang was handling Elcarim's day-to-day affairs and would oversee these filings, I placed little weight on them. What was represented to the CPF may not reflect what he was entitled to. In this regard, Zhang has taken inconsistent positions: he claimed that from January 2014, he was entitled to a monthly salary of \$20,000,<sup>200</sup> but due to cash flow issues he would take only \$11,000, and the remaining \$9000 would be regarded as a loan from him to Elcarim.<sup>201</sup> I do not accept this:

- (a) First, Zhang relies on the CPF statements from January to April 2014 to show that he was paid \$20,000 per month,<sup>202</sup> but as indicated above, I have concerns about the veracity of the information submitted by Elcarim to CPF. Dou also denies that he approved the increase in

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<sup>197</sup> Defence and Counterclaim (Amendment No. 2) at para 25(a). (See also Zhang's XX / Certified Transcript (Day 10 / 20 March 2023) at p 6 line 29 – p 7 line 3.)

<sup>198</sup> Dou's XX / Certified Transcript (Day 3 / 8 March 2023) at p 10 lines 12, 13, 31 and 32, p 11 lines 30 and 31; 1AB at p 267.

<sup>199</sup> Dou's XX / Certified Transcript (Day 3 / 8 March 2023) at p 13 lines 17–20, p 14 lines 1–3; 1AB at pp 265–261.

<sup>200</sup> Zhang's XX / Certified Transcript (Day 8 / 16 March 2023) at p 11 lines 12–14; Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 68 lines 4–6.

<sup>201</sup> Zhang's AEIC at para 120; Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 68 lines 13–16.

<sup>202</sup> Dou's XX / Certified Transcript (Day 3 / 8 March 2023) at p 15 lines 1–3.

Zhang's salary to \$20,000<sup>203</sup> and states that he was not aware of the CPF statements.<sup>204</sup>

(b) Second, Elcarim denies that Zhang had taken a reduced salary of \$11,000, with the shortfall regarded as a loan to Elcarim. It relies on Zhang's salary voucher for May 2014, which shows, under the category "EARNINGS", that Zhang had a "Basic salary" of \$6,000, "Allowance" of \$5,000 and "Loan/Advance" of \$9,000; in total, he had "Total Earnings" of \$20,000.<sup>205</sup> This suggests that the \$9,000 was a loan *from* Elcarim to Zhang. Despite confirming that he signed the said voucher,<sup>206</sup> Zhang claimed it must be incorrect since he does not recall taking, and did not take, a \$9,000 loan from Elcarim.<sup>207</sup> Instead, he claimed that the \$9000 should be a repayment from Elcarim to him,<sup>208</sup> and that Pang, who had prepared the voucher, must have made a mistake.<sup>209</sup> But Zhang did not call Pang to give evidence on this.

(c) Third, Zhang's testimony departs from his AEIC, wherein he states, "I believe the difference between my actual salary of \$18,000/- and the reduced amounts that I actually received had been captured and reflected in the General Ledger as loans by me to Elcarim"; this suggests

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<sup>203</sup> Dou's XX / Certified Transcript (Day 3 / 8 March 2023) at p 14 line 29–31.

<sup>204</sup> Dou's XX / Certified Transcript (Day 3 / 8 March 2023) at p 15 lines 7 and 9.

<sup>205</sup> P3.

<sup>206</sup> Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 69 line 16–20.

<sup>207</sup> Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 69 lines 8–10, 12, 14, 22–26, p 70 lines 5–7; Zhang's XX / Certified Transcript (Day 10 / 20 March 2023) at p 4 lines 28–30.

<sup>208</sup> Zhang's XX / Certified Transcript (Day 10 / 20 March 2023) at p 4 lines 29 and 30.

<sup>209</sup> Zhang's XX / Certified Transcript (Day 10 / 20 March 2023) at p 5 lines 15–21.

that his “actual salary”, including the shortfall which was regarded as a loan to Elcarim, was \$18,000,<sup>210</sup> not \$20,000.

91 Most importantly, Zhang did not give any credible evidence of Dou approving his salary increments. In this regard, the evidence is clear that Dou did not approve a salary of \$18,000 per month for Zhang, either at the time Zhang’s LOA was purportedly signed, *ie*, 21 February 2013,<sup>211</sup> or any other time before Zhang’s termination. Instead, Dou’s evidence is that Zhang’s salary last approved by Dou before Zhang’s termination was \$11,000 per month.<sup>212</sup>

(a) Dou gave evidence that Dou and Zhang had discussed Zhang’s salary at the time of termination, which was his director’s remuneration of \$11,000 a month,<sup>213</sup> and there was no mention of his monthly salary of \$18,000 as general manager of Elcarim.<sup>214</sup>

(b) Dou also adduced Zhang’s salary vouchers which showed that at the material time Zhang was earning a monthly salary of \$11,000.<sup>215</sup>

92 I accept Dou’s evidence. In any event, Zhang has failed to discharge his burden of proof that he was entitled to a salary of more than \$11,000 a month. I accordingly award damages to Zhang in the sum of \$11,000.

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<sup>210</sup> Zhang’s AEIC at para 121.

<sup>211</sup> Dou’s XX / Certified Transcript (Day 3 / 8 March 2023) at p 10 lines 6–11.

<sup>212</sup> Elcarim and Dou’s Written Closing Submissions at para 259.

<sup>213</sup> Dou’s AEIC at para 46.

<sup>214</sup> Dou’s AEIC at para 50.

<sup>215</sup> Dou’s AEIC at para 46; Dou’s AEIC at Tab 41 / 1AB at pp 218–227 and 256.

**Issue 5: Zhang’s salary for May and 1–10 June 2015**

93 Zhang initially pleaded that Elcarim had “failed, neglected and or refused to pay all moneys due and payable by [Elcarim] to [Zhang]”, namely, (a) Zhang’s salary for the month of May 2015 amounting to \$18,000 and CPF contribution of \$850; and (b) pro-rated salary for 1–10 June 2015 amounting to \$8,182 and CPF contribution of \$386.36.<sup>216</sup> Elcarim’s case is that Zhang was paid his salary for May 2015 and 1–10 June 2015 and was in any event only entitled to be paid \$11,000 per month as salary.<sup>217</sup>

94 Zhang subsequently accepted that he did receive the sum of \$11,000 as his pay for May 2015, and he therefore reduced his claim by \$18,850.<sup>218</sup>

95 Zhang also accepted that it was possible that Elcarim had paid him his salary for 1–10 June 2015 and stated that he was unsure.<sup>219</sup> Elcarim adduced its CPF statement for June 2015, which showed that Zhang’s “CPF To Be Paid” was \$1,357 and his salary was \$3,666.67, which was about one-third of \$11,000.<sup>220</sup> In response, Zhang drew a distinction between his CPF, which had to be paid, and his salary, which may or may not be paid depending on Elcarim’s cash flow situation, and stated that he was not sure if he received his salary for June 2015.<sup>221</sup> However, he admitted that he did not check if had received his

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<sup>216</sup> Defence and Counterclaim (Amendment No. 2) at para 25(a).

<sup>217</sup> Elcarim’s Reply and Defence to Counterclaim (Amendment No. 2) at para 38.

<sup>218</sup> Zhang’s AEIC at para 123; Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 66 lines 6–13.

<sup>219</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 72 lines 24, 28 and 30.

<sup>220</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 72 lines 13 and 14; Plaintiff’s Bundle of Documents at p 33.

<sup>221</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 72 lines 21–24.

salary for June 2015.<sup>222</sup> This clearly falls short of the standard of proof that Zhang has to meet in proving his claim. Zhang nonetheless submits in his closing submissions that he was not paid his salary and relies on his re-examination responses, which merely insist that he was not paid his pro-rated June salary without addressing or explaining his admission during cross-examination that he did not verify if he had been paid.<sup>223</sup>

96 Zhang has not discharged his burden of proof and his criticism of Elcarim’s lack of evidence does not assist him.<sup>224</sup> I therefore dismiss his claim.

#### **Issue 6: Zhang’s loans to Elcarim**

97 At the start of the trial, the parties agreed on a list of disputed payments (“**P2**”), the majority of which are transactions Zhang alleges were instances of his extending loans to Elcarim and for which he has not been reimbursed. I shall refer to P2 and the serial numbers of the payments therein.

#### ***Zhang’s case***

98 Zhang seeks repayment of \$685,539 (the “**685K Loan**”), which he claims he extended (in aggregate) as a loan to Elcarim *as at 30 September 2013*.<sup>225</sup> Zhang does not, however, plead the individual components that make up the 685K Loan. Instead:

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<sup>222</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 73 line 1.

<sup>223</sup> Zhang’s Written Closing Submissions at para 221.

<sup>224</sup> Zhang’s Written Closing Submissions at para 220.

<sup>225</sup> Defence and Counterclaim (Amendment No. 2) at para 25(b).

(a) save for (c) below, Zhang gives no particulars of the 685K Loan, including how it is made up, when it was extended, the circumstances in which it was given or its terms;

(b) Zhang pleads that he “will refer to and rely on an admission of the said loan which was in the Financial Statement for financial year 2012 to 2013 prepared and filed by Pang for (Elcarim)”. The said financial statement (“**FS2013**”) reflects a loan owed to a director in the sum of \$685,539.<sup>226</sup> Zhang relies on “similar further admissions” in Elcarim’s financial statements for the subsequent years, including 2017;<sup>227</sup> and

(c) The only specific payments he pleads as part of the 685K Loan are at s/n 2, s/n 8, and s/n 12 of P2 (the sums of US\$34,000, GBP148,000 and GBP10,000, respectively), which he claims were discretionary commissions paid by Dou to him, which he then loaned to Elcarim.<sup>228</sup>

99 Zhang relies on his evidence on GL2013 as a record of the individual transactions that made up the 685K Loan. Under the “DUE TO DIRECTOR – ZHANG YONGTAI” category of GL2013, the majority of the transactions are not titled on the leftmost column and simply state “BANK – OCBC”. I refer to these below as cash deposits. The last five rows of GL2013 are titled “Director’s a/c- Zhang YT”; “DRECTOR’ REMUNERATION”; “SALARY”; “GST

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<sup>226</sup> Defence and Counterclaim (Amendment No. 2) at para 25(b); Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 35 lines 1–5.

<sup>227</sup> Defence and Counterclaim (Amendment No. 2) at para 25(b); Zhang’s AEIC at paras 43, 79 and 96.

<sup>228</sup> Reply to Defences to Counterclaim (Amendment No. 3) at para 4(a)(ii).

INPUT TAX” and “TRAVELLING EXPENSES” – these are the individual heads that make up the 685K Loan.

100 Zhang gave more details in evidence as to what the 685K Loan comprises:

- (a) loans he made to Elcarim:<sup>229</sup>
  - (i) by redirecting his commissions to Elcarim:<sup>230</sup> specifically, sums of US\$35,000<sup>231</sup> and GBP147,804.84;<sup>232</sup> and
  - (ii) by making cash deposits, including paying \$2000 to open an account with OCBC bank<sup>233</sup> (totalling, along with forgone portions of his salaries, \$33,285.95 – see [192] below).<sup>234</sup>
- (b) the ANZ Loan for a sum of \$60,000;<sup>235</sup>
- (c) unpaid salaries;<sup>236</sup>

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<sup>229</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 20 lines 4–8.

<sup>230</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 36 lines 12–15.

<sup>231</sup> Further and Better Particulars to Reply to Defences in Counterclaim at para 19(c); Zhang’s AEIC at paras 88(a), 88(b), 89 and 90; Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 42 lines 18–23.

<sup>232</sup> Zhang’s AEIC at paras 88(c), 89 and 90.

<sup>233</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 78 line 26 – p 79 line 2; 8AB at p 1969, 1AB at pp 68 and 70.

<sup>234</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 73 lines 1 and 2.

<sup>235</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 68 line 31, p 69 lines 2–9.

<sup>236</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 20 lines 4–8, p 34 lines 4–17, 22–25, 30–32.

(d) expenses Zhang incurred on behalf of Elcarim amounting to \$104,337.70,<sup>237</sup> including those incurred using his credit card to pay for Elcarim's expenses;<sup>238</sup>

(e) payments Zhang made on behalf of Elcarim for GST Input Tax, which amount to \$12,183.62;<sup>239</sup> and

(f) payments for travelling expenses amounting to \$8,474.12.<sup>240</sup>

101 There are several difficulties with Zhang's pleaded case. I highlight two.

102 First, the 685K Loan is the amount in aggregate allegedly loaned by Zhang to Elcarim *as at 30 September 2013*. But on Zhang's own evidence, this is *not* an accurate amount owed to him by Elcarim as he did, after that date, receive payments from, and extend further loans to, Elcarim. I return to this later.

103 Second, as stated above, Zhang did not plead the components of the 685K Loan. However, the loan is qualified by reference to his pleaded case at paragraph 4(g) of his Defence and Counterclaim (Amendment No. 2):

(a) Zhang's pleading at paragraph 25(b) of his Defence and Counterclaim (Amendment No. 2) regarding the 685K Loan states as follows:

*The Defendant repeats paragraph 4(f) of the Defence herein and avers that he had extended to the Plaintiff an*

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<sup>237</sup> Zhang's XX / Certified Transcript (Day 8 / 16 March 2023) at p 20 lines 4–8.

<sup>238</sup> Zhang's AEIC at para 82, ZYT-23 and ZYT-24.

<sup>239</sup> Zhang's XX / Certified Transcript (Day 11 / 23 March 2023) at p 69 lines 1–3.

<sup>240</sup> Zhang's XX / Certified Transcript (Day 11 / 23 March 2023) at p 69.

*aggregate loan of S\$ 685,539 (the said Loan) which the Plaintiff had acknowledged to be repayable on demand. The Defendant will refer to and rely on an admission of the said loan which was in the Financial Statement for financial year 2012 to 2013 prepared and filed by Pang for the Plaintiff. The Defendant will further refer to and rely on similar further admissions of the said debt owed to the Defendant in the Plaintiff's subsequent years of Financial Statement, even up to at least the Financial Statement of 2017.*<sup>241</sup>

[emphasis added]

(b) Paragraph 4(f) does not speak of any loans, and Zhang presumably made an error and intended to refer to paragraph 4(g) instead, which is reproduced below:

However, Dou failed to provide the initial capital as agreed. Instead, *the Defendant was requested by Dou from time to time to extend loans to the Plaintiff, citing the reason that Dou was faced with cash flow difficulties. The Defendant will elaborate on the loans extended to the Plaintiff in the counterclaim herein.*<sup>242</sup>

[emphasis added]

(c) Zhang's claim is, therefore, in respect of loans which he was requested by Dou to extend to Elcarim. But, as will be seen later, it is not Zhang's case that *all* the components of the 685K Loan were extended at Dou's request. I disagree with Zhang's submission that loans made for other reasons are not material facts that need to be pleaded.<sup>243</sup> In other words, if he wanted to recover loans he purportedly made otherwise than at the request of Dou, these should have been specifically pleaded. I shall return to this when I deal with the individual components below.

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<sup>241</sup> Defence and Counterclaim (Amendment No. 2) at para 25(b).

<sup>242</sup> Defence and Counterclaim (Amendment No. 2) at para 4(g).

<sup>243</sup> Zhang's Written Reply Closing Submissions at paras 42–44.

***Elcarim's case***

104 Elcarim denies the 685K Loan.<sup>244</sup> Elcarim's case is that Dou had provided capital for Elcarim by (a) procuring transfers from UAT through Zhang to Elcarim; (b) procuring transfers from UAT to Elcarim; and (c) procuring transfers from FDS to Elcarim.<sup>245</sup> However, Pang was not aware that the source of funds transferred to Elcarim was Dou and/or his companies, and had thus recorded \$685,539 as a loan from Zhang to Elcarim instead.<sup>246</sup>

105 Elcarim also argues that there is no admission of the 685K Loan as:

(a) it was not clear how GL2013 was prepared,<sup>247</sup> and mistakes were made in recording transfers from Dou to Elcarim as loans from Zhang;<sup>248</sup>

(b) FS2013 was not audited;<sup>249</sup>

(c) errors in FS2013, including the 685K Loan, were simply carried forward into subsequent financial statements;<sup>250</sup>

(d) Zhang did not have the financial ability to extend loans to Elcarim;<sup>251</sup>

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<sup>244</sup> Elcarim's Reply and Defence to Counterclaim (Amendment No. 2) at paras 6 and 39.

<sup>245</sup> Elcarim's Reply and Defence to Counterclaim (Amendment No. 2) at paras 6(a), 6(b) and 6(ba).

<sup>246</sup> Elcarim's Reply and Defence to Counterclaim (Amendment No. 2) at para 6(c).

<sup>247</sup> Dou's AEIC at para 78.

<sup>248</sup> Dou's AEIC at para 79.

<sup>249</sup> Dou's AEIC at para 80.

<sup>250</sup> Dou's AEIC at para 81.

<sup>251</sup> Dou's AEIC at para 78(a).

(e) it was possible that Pang had mistakenly recorded transfers to Elcarim which were procured by Dou, whether made directly or indirectly via Zhang, as part of the 685K Loan;<sup>252</sup> and

(f) the fact that Zhang had never demanded payment of the 685K Loan until the commencement of this action supports its case that no loans were in fact extended.<sup>253</sup>

106 Both parties called accounting experts to opine on Elcarim’s financial documents. Elcarim’s accounting expert was Mr Tan Wei Cheong, who is both a Chartered Accountant and Public Accountant and who has provided investigation services and litigation support.<sup>254</sup> Zhang engaged Mr Tan How Choon, who has experience in fraud investigation and forensic accounting.<sup>255</sup>

107 I first deal with the evidentiary value of FS2013 and GL2013, as these form the main evidence Zhang relies on.

***Whether the entry in FS2013 amounts to an admission***

108 Save for the three specific payments identified at [98(c)] above, Zhang’s pleaded case on the 685K Loan is based on the alleged “admission” in FS2013. Zhang’s case is that FS2013 was signed by Dou and specifically acknowledges that it owes him the 685K Loan.

109 The Court of Appeal in *Chuan & Company Pte Ltd v Ong Soon Huat* [2003] 2 SLR(R) 205 highlighted that an admission of debt should be clear and

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<sup>252</sup> Dou’s AEIC at para 79.

<sup>253</sup> Dou’s AEIC at para 78(b).

<sup>254</sup> Mr Tan Wei Cheong’s AEIC at Tab 1.

<sup>255</sup> Mr Tan How Choon’s AEIC at Appendix 9.

plain (at [28]) (see also *Pegaso Servicios Administrativos SA de CV and another v DP Offshore Engineering Pte Ltd and another* [2019] SGHC 47 at [78]).

110 More relevantly, in *Gobind Lalwani v Basco Enterprises Pte Ltd* [1998] 3 SLR(R) 1019 (“**Gobind Lalwani**”), the court found that “an account stated by way of letter dated 28 February 1994” reflected that the records of Basco Enterprises Pte Ltd (“**Basco**”) showed the amount of money due to Gobind Lalwani (“**Lalwani**”), and it was an unequivocal statement of a debt owed by Basco to Lalwani (*Gobind Lalwani* at [13]). I further note that in that case, the burden of disproving what was stated in the account shifted to Basco upon the production of the audit confirmation letter (*Gobind Lalwani* at [17] and [24]).

111 I find that there is no admission by Elcarim of the 685K Loan.

112 First, it is undisputed that Pang was acting on the instructions of Zhang when he prepared FS2013 (and GL2013) and would have relied on what Zhang informed him with respect to the nature of the moneys being paid by Zhang to Elcarim. In this regard, as I will elaborate later, I do not accept Zhang’s evidence that several payments made by him to Elcarim were loans from him. Zhang cannot rely upon as an admission against Elcarim a statement that he effectively caused and which the evidence shows to be incorrect.

### *GL2013*

113 Second, FS2013 was unaudited, and its accuracy is highly doubtful. In the first place, FS2013 was prepared based on GL2013, which accuracy is also highly questionable. Further, there are several inconsistencies between FS2013 and GL2013, which were both prepared by Pang.

114 It is undisputed that GL2013 was prepared by Pang<sup>256</sup> and is a record of various transactions and includes various debit and credit accounts. Elcarim disputes the accuracy of GL2013.<sup>257</sup> I thereby assess the accuracy and, consequently, the evidentiary value of GL2013.

115 I first note the following:

(a) Zhang’s evidence is that he did not have any documents relating to the 685K Loan, and these documents had been submitted to Pang, who “had dutifully posted the entries in [GL2013] upon his being satisfied with [their] authenticity and correctness”.<sup>258</sup> While Zhang gave some evidence on specific transactions reflected in GL2013, these cannot be said to prove the truth of GL2013. Against the backdrop of his own lack of personal knowledge as to how GL2013 was prepared and, in some instances, failure or inability to produce other evidence to prove the accuracy of GL2013, Zhang’s refusal to call Pang as a witness was detrimental to his case.

(b) Elcarim’s evidence is that GL2013 is inaccurate because all information would be provided to Pang by Zhang, and Zhang “did not provide Pang the correct purpose for the moneys”.<sup>259</sup> Further, Pang would not have verified the information provided by Zhang before including it in GL2013.<sup>260</sup> However, on Dou’s own case, he did not have

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<sup>256</sup> Zhang’s AEIC at para 80; Dou’s AEIC at para 78.

<sup>257</sup> Elcarim and Dou’s Written Closing Submissions at para 176.

<sup>258</sup> Zhang’s AEIC at para 81.

<sup>259</sup> Dou’s XX / Certified Transcript (Day 4 / 9 March 2023) at p 73 lines 25, 26, 30 and 31; Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 65 lines 29 and 30.

<sup>260</sup> Dou’s XX / Certified Transcript (Day 4 / 9 March 2023) at p 74 lines 24–26.

any personal knowledge of how Pang prepared GL2013.<sup>261</sup> Elcarim could have called Pang to give evidence as to the accuracy of GL2013 but it declined to do so.

116 Nonetheless, it is clear from the evidence that GL2013 and FS2013 were inconsistent in material respects, and GL2013 contained several wrong or inaccurate entries. Given that Zhang’s counterclaim is almost entirely premised on the accuracy of GL2013, these inaccuracies undermine his case.

117 I raise several examples of the inconsistencies between FS2013 and GL2013 below:

(a) Elcarim’s CPF statement for March 2013 records salaries paid to six persons, but GL2013 only records salaries paid to three persons.<sup>262</sup>

(b) GL2013 records “Trade Receivables” of \$0,<sup>263</sup> but FS2013 records it as \$1,973,604.<sup>264</sup> When brought to Zhang’s attention, he explained that he was unsure why there was a difference and suggested that Pang might be able to explain.<sup>265</sup>

(c) Elcarim’s “cash bank” of more than \$11,000 recorded in FS2013 was not recorded in the GL2013.<sup>266</sup>

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<sup>261</sup> Dou’s XX / Certified Transcript (Day 4 / 9 March 2023) at p 74 line 4.

<sup>262</sup> Elcarim and Dou’s Written Closing Submissions at paras 179 and 180; Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 66 line 25 – p 68 line 16.

<sup>263</sup> 1AB at p 62.

<sup>264</sup> 1AB at p 92; Elcarim and Dou’s Written Closing Submissions at paras 182 and 183.

<sup>265</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 76 line 15 – p 77 line 30.

<sup>266</sup> Certified Transcript (Day 14 / 28 March 2023) at p 77 lines 21–23; 1AB at p 92.

(d) GL2013 reflects retained earnings of zero but FS2013 states a figure of \$142,297.<sup>267</sup>

(e) GL2013 records the “trade payables” sum as \$1,565,918.31<sup>268</sup> but FS2013 records a sum of \$1,973,604.<sup>269</sup> Zhang’s accounting expert noted this discrepancy<sup>270</sup> but was unable to provide an explanation.<sup>271</sup>

(f) When asked about the inconsistencies identified by Elcarim’s accounting expert, Zhang’s accounting expert did not offer a contrasting view, and his position was unclear: “completeness may not be there. But the reliability as up to ... certain standard, we can accept.”<sup>272</sup> In fact, Zhang’s accounting expert later resiled from commenting on the reliability of GL2013 generally, and stated that he could only comment on the individual transactions highlighted to him.<sup>273</sup> Elcarim’s accounting expert further testified that he had “reservations about relying on the” financial statements because the underlying entries in the GL2013 were disputed.<sup>274</sup>

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<sup>267</sup> Certified Transcript (Day 14 / 28 March 2023) at p 77 lines 24 and 25; 1AB at p 92. See also Elcarim and Dou’s Written Closing Submissions at paras 182 and 183.

<sup>268</sup> 1AB at p 68.

<sup>269</sup> 1AB at p 92; Elcarim and Dou’s Written Closing Submissions at paras 182 and 183.

<sup>270</sup> See also Elcarim and Dou’s Written Closing Submissions at paras 182 and 183.

<sup>271</sup> Certified Transcript (Day 14 / 28 March 2023) at p 92 lines 5–18.

<sup>272</sup> Certified Transcript (Day 14 / 28 March 2023) at p 78 lines 10 and 11.

<sup>273</sup> Certified Transcript (Day 14 / 28 March 2023) at p 92 lines 29–32.

<sup>274</sup> Certified Transcript (Day 14 / 28 March 2023) at p 68 lines 21–29.

(g) Both accounting experts agreed that GL2013 was incomplete.<sup>275</sup> Zhang also conceded this.<sup>276</sup>

118 In addition, Zhang himself acknowledges that the GL2013 wrongly records the sums of \$4,500, \$5,000 and \$50,000 as loans by him to Elcarim – (the first two sums are recorded as s/n 1,<sup>277</sup> s/n 3<sup>278</sup> of P2; all three sums are recorded in GL2013, and s/n 3, s/n 4 and s/n 15 of a table prepared by Zhang which links bank statements to entries in GL2013 (“D4”) respectively) and agreed that they should be excluded from the 685K Loan claim.

*Payments after September 2013*

119 Third, even if the 685K Loan was accurately reflected in FS2013, Zhang accepts that that figure no longer represents what is owed to him because of payments between him and Elcarim *after* September 2013. Zhang was involved in Elcarim for a further two years until he was terminated on 10 June 2015. Zhang himself gave evidence of payments he received which would have reduced the quantum of the loan, namely, repayments made by Elcarim to him of \$35,508.46 and \$60,588.72.<sup>279</sup> Zhang argues that payments after September 2013 should be disregarded because he is claiming a sum which is accurate as

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<sup>275</sup> Certified Transcript (Day 14 / 28 March 2023) at p 54 lines 7 and 8, p 96 lines 4 and 5, p 108 lines 28–30, p 129 lines 9 and 10; Elcarim and Dou’s Written Closing Submissions at para 188.

<sup>276</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 77 lines 13–20; Elcarim and Dou’s Written Closing Submissions at para 186.

<sup>277</sup> Zhang’s SAEIC at para 10; Zhang’s XX / Certified Transcript (Day 10 / 20 March 2023) at p 21 line 32 and p 22 line 6.

<sup>278</sup> Zhang’s SAEIC at para 10; Zhang’s XX / Certified Transcript (Day 10 / 20 March 2023) at p 22 lines 3 and 6.

<sup>279</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 81; 2AB at p 661; 1AB at p 192.

at September 2013.<sup>280</sup> Zhang’s explanation for this approach appears to be that he is unable to “verify if... figures in the financial statement [after 2013] are authentic”<sup>281</sup> as he did not have the general ledgers and bank statements for the financial years after 2013.<sup>282</sup>

120 I reject this submission. Zhang’s pleaded case is based on an admission. But, on his own evidence, that “admission” is no longer applicable or effective as the amount owed has since changed. It is wrong in law for him to simply sue on an historical figure on the basis that it was previously admitted and ignore all payments received after that admission.

121 For completeness, I deal with Zhang’s argument that his pleaded claim includes moneys he loaned Elcarim *after* September 2013, relying on the (italicised portion of) the pleaded relief: “the sum of \$685,539 being the loan admitted by (Elcarim) as due and owing to (Zhang) *or such other sum as the Honourable Court may deem fit.*” This is plainly flawed. Zhang’s pleaded cause of action is specifically for the aggregate sum of \$685,539, which he (allegedly) loaned to Elcarim as at September 2013, and not amounts he may have loaned after that date. The portion italicised above allows the Court to award a different sum arising out of the amount claimed, which is established by the evidence, but not to expand the cause of action to include *other* loans. Zhang argues that he is unable to plead the payments after September 2013 as Elcarim refused to give discovery of its ledgers and documents after GL2013. He applied for the discovery of those documents but was refused because of the way he had

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<sup>280</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 81 lines 9–13, p 85 lines 22 and 23.

<sup>281</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 86 lines 19–20.

<sup>282</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 87 lines 23–24.

pleaded his case. But Zhang did not amend his claim or appeal that refusal. In the circumstances, I can only decide the case as pleaded, and it is clear that it is only in respect of the 685K Loan extended as at September 2013.

*Financial statements after 2013*

122 Fourth, the entries in Elcarim’s financial statements for the subsequent financial years do not assist Zhang as they are unreliable. Elcarim engaged Mr Ho Chee Kong Donald (“**Mr Ho**”) in 2018 to prepare its financial statements for the financial years ending 2014, 2015, 2016 and 2017.<sup>283</sup> Mr Ho gave evidence that he faced difficulties in reconstructing the financial statements arising from (a) transactions evidenced by invoices and payments vouchers *etc.* which were not reflected in bank statements; (b) a lack of supporting documents to explain certain transactions; (c) transactions which were not recorded on “Elcarim’s internal spreadsheet”; and (d) transactions in the said spreadsheets for which little detail was given.<sup>284</sup> Mr Ho also gave evidence of assumptions he made in preparing the financial statements, including that moneys withdrawn using Elcarim’s cash cards were presumed to have been taken out by a director and thus presumed to be incurred by a director on behalf of Elcarim.<sup>285</sup> He also testified that moneys moving out of Elcarim’s bank account are presumed to have been incurred by directors on behalf of Elcarim, and moneys coming into the said account are presumed to be moneys lent by directors to Elcarim.<sup>286</sup> I therefore do not place any weight on FS2014, FS2015, FS2016 and FS2017. Given the manner and context in which these

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<sup>283</sup> Mr Ho’s AEIC at para 5.

<sup>284</sup> Mr Ho’s AEIC at paras 8–13.

<sup>285</sup> Mr Ho’s XX / Certified Transcript (Day 7 / 15 March 2023) at p 44 line 26 – p 45 line 7.

<sup>286</sup> Mr Ho’s XX / Certified Transcript (Day 7 / 15 March 2023) at p 45 lines 18–25.

financial statements were prepared, the fact that Dou signed off on them as being true and accurate is not probative of their accuracy. When Dou took over control of Elcarim, the financial statements for the preceding few years had not been prepared, and there were documents missing, and Elcarim faced penalties due to the said late filing of financial statements.<sup>287</sup> After Mr Ho reconstructed the financial statements, Dou signed them. I also note that the amounts said to be “owed to director” in these financial statements are different and not \$685,539.06.

123 Accordingly, I turn to consider the evidence in respect of the different components of the 685K Loan. As stated above, Zhang accepts that three deposits were wrongly recorded in GL2013 as loans from him and should therefore be excluded from the 685K Loan claim.

- (a) \$4,500 (s/n 1<sup>288</sup> of P2, recorded in GL2013 as s/n 3 of D4);<sup>289</sup>
- (b) \$5,000 (s/n 3<sup>290</sup> of P2, recorded in GL2013 and s/n 4 of D4);<sup>291</sup>  
and
- (c) \$50,000 (recorded in GL2013 and s/n 15 of D4).<sup>292</sup>

In the sections below, I deal with the heads of the 685K Loan.

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<sup>287</sup> Mr Ho’s XX / Certified Transcript (Day 7 / 15 March 2023) at p 29 lines 11–28.

<sup>288</sup> Zhang’s SAEIC at para 10; Zhang’s XX / Certified Transcript (Day 10 / 20 March 2023) at p 21 line 32 and p 22 line 6.

<sup>289</sup> Reply to Defences to Counterclaim (Amendment No. 3) at para 4(b).

<sup>290</sup> Zhang’s SAEIC at para 10; Zhang’s XX / Certified Transcript (Day 10 / 20 March 2023) at p 22 lines 3 and 6.

<sup>291</sup> Reply to Defences to Counterclaim (Amendment No. 3) at para 4(b).

<sup>292</sup> Zhang’s XX / Certified Transcript (Day 10 / 20 March 2023) at p 22 lines 7–21.

***Redirected commissions***

124 Zhang testified that he advanced the following loans to Elcarim by redirecting commissions he received from Dou. Zhang tendered a table showing entries in GL2013 (*ie*, D4):

S/n on D4	(all references made to the section “DUE TO DIRECTOR – ZHANG YONGTAI” in GL2013) <sup>293</sup>			Reference in P2 (if any)
	Date	Credit amount	Description	
74	4 October 2012	US\$20,000	Zhang YongTai	Related to s/n 2
75	4 October 2012	US\$13,500	Zhang YongTai	
76	12 December 2012	GBP147,804.84	Zhang YongTai	Related to s/n 8
39	6 May 2013	\$2,000	CASH DEPOSIT	Related to s/n 12
42	28 May 2013	\$11,000	MALAYAN BANKING BHD	

***Whether there was an agreement for Zhang to receive discretionary commissions***

125 Zhang testified that Dou had a practice of offering him, at Dou’s discretion, commissions of 15% or more of the purchase price of equipment acquired by Elcarim. He claimed that Dou would sometimes pay him a commission without even discussing it with him.<sup>294</sup> Zhang refers to these as “discretionary commissions”. He claimed that the payments set out at [98(c)] above were such commissions, which he then loaned to Elcarim on account of its cash-flow issues. Dou denies that he ever agreed to pay Zhang commissions

<sup>293</sup> 1AB at pp 68–70.

<sup>294</sup> Zhang’s AEIC at para 15; Dou’s XX / Certified Transcript (Day 1 / 3 March 2023) at p 92 lines 24–29.

as alleged.<sup>295</sup> Instead, Dou would pay commissions to Zhang after they had a discussion on it.<sup>296</sup>

126 I do not accept Zhang’s evidence.

127 First, apart from Zhang’s bare assertion, there is no evidence of any agreement between Dou and Zhang that Dou would pay Zhang commissions in the manner alleged by Zhang. Indeed, Zhang’s evidence is not credible. He testified that:

[t]hrough [Dou’s] oral instructions *over the course of dealings*, [Zhang] came to the understanding with [Dou] that if [Dou] did not indicate to [Zhang] [Dou’s] specific purpose for the payment, [Zhang] could take the payments that are made to [him] directly to be part of the discretionary ‘commission’ that [Dou] intended for [him].<sup>297</sup>

128 But this is a highly implausible way of conducting business – it cannot be that Zhang could decide himself, whenever Dou transfers money to him, that the said moneys were for his commissions. This is especially as Zhang does not dispute that Dou would make payments for Elcarim’s capital and business operations by transferring money through Zhang to Elcarim;<sup>298</sup> it is unlikely that Dou would agree to a practice which effectively allowed Zhang to decide, unilaterally, what he receives from Dou to be his commission.

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<sup>295</sup> Dou’s XX / Certified Transcript (Day 1 / 3 March 2023) at p 74 lines 16–25.

<sup>296</sup> Dou’s XX / Certified Transcript (Day 1 / 3 March 2023) at p 75 lines 10 and 11; Dou’s XX / Certified Transcript (Day 3 / 8 March 2023) at p 36 lines 6–8, 16–19.

<sup>297</sup> Zhang’s AEIC at para 16.

<sup>298</sup> Eg, Reply to Defences to Counterclaim (Amendment No. 3) at para 4(a)(i); Zhang’s AEIC at paras 22, 24 and 25.

129 Second, Zhang did not give evidence of Dou and him *reaching an agreement* on the payment of discretionary commissions to him.<sup>299</sup> I note that Zhang pleads the following:

1. Dou’s general offer of a discretionary commission (bonus) of up to 15% or more was first made by Dou on or around March 2012 when Zhang met Dou in Singapore and they were discussing their intended joint venture.
2. Zhang orally accepted the offer at that time.
3. Thereafter, as and when Zhang secured or otherwise played a role to the satisfaction of Dou in a business deal for [Elcarim], Dou would in his discretion pay the bonus that Dou decides to give to Zhang by paying the bonus into Zhang’s personal account either directly or via one of his companies or wife.<sup>300</sup>

At trial, it was clarified by Zhang’s counsel that Zhang’s case was that Dou and Zhang reached the aforesaid agreement in March 2012, and their conduct thereafter was merely performance of the agreement.<sup>301</sup> This is at odds with Zhang’s testimony that he “came to the understanding”, “over the course of dealings” that he was entitled to discretionary commissions. Further, Zhang did not plead that it was for him to decide whether the amounts paid into his account were for his commissions.

130 Third, Zhang’s case is inconsistent with, albeit not entirely contradicted by,<sup>302</sup> the objective evidence that there were instances where Dou expressly informed Zhang that he would be paid a commission. Zhang himself adduced evidence of Dou expressly informing Zhang that he would be receiving a

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<sup>299</sup> Elcarim and Dou’s Written Closing Submissions at para 132.

<sup>300</sup> Further and Better Particulars to Reply to Defences in Counterclaim at para 1.

<sup>301</sup> Certified Transcript (Day 2 / 7 March 2023) at p 5 lines 18–24.

<sup>302</sup> See also Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 35 lines 3–5.

commission, including an email from Dou to Zhang stating, “Your personal commission confirm 15% of Vendors value: USD10,710... is it Ok?”<sup>303</sup> and an email from Dou to Zhang which subject reads, “RE: Attachment for Income and payout list” and includes the Table of Commissions, which is described by Zhang as “listing the various commissions [Dou] had given [Zhang]”.<sup>304</sup> These are more consistent with Dou’s case that, where a commission was paid by Dou to Zhang, there would be a statement that it was a commission<sup>305</sup> and it would have been agreed between Dou and Zhang that there would be a commission paid to Zhang.<sup>306</sup> The two emails Zhang adduces to prove the discretionary commissions relate to commissions not in dispute, *ie, not* s/n 2, s/n 8 or s/n 12 of P2.<sup>307</sup>

131 Fourth, Zhang gave inconsistent evidence as to the quantum of the discretionary commissions agreed with Dou,<sup>308</sup> which casts doubt on the credibility of his case. At various points, he stated that commissions were fixed at 15% of the purchase value of a particular transaction;<sup>309</sup> or that it could be “15% or more”;<sup>310</sup> “about 15% or more”;<sup>311</sup> and “up to 15% or more”:<sup>312</sup>

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<sup>303</sup> Zhang’s AEIC at para 15(a) and ZYT-2.

<sup>304</sup> Zhang’s AEIC at para 15(f) and ZYT-7.

<sup>305</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 42 lines 3–5.

<sup>306</sup> Dou’s XX / Certified Transcript (Day 3 / 8 March 2023) at p 36 lines 6–8, 16–19.

<sup>307</sup> Elcarim and Dou’s Written Closing Submissions at para 151.

<sup>308</sup> Elcarim and Dou’s Written Closing Submissions at para 136.

<sup>309</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 3 lines 12 and 13.

<sup>310</sup> Dou’s XX / Certified Transcript (Day 1 / 3 March 2023) at p 92 lines 17 and 29.

<sup>311</sup> Zhang’s XX / Certified Transcript (Day 7 / 15 March 2023) at p 82 line 16.

<sup>312</sup> Further and Better Particulars to Reply to Defences in Counterclaim at para 1; Dou’s XX / Certified Transcript (Day 1 / 3 March 2023) at p 74 lines 24 and 25; Zhang’s XX / Certified Transcript (Day 7 / 15 March 2023) at p 82 lines 15, 16, 24–28.

(a) Zhang wrote in his 3 September 2015 Letter that “[his] commissions should be more than S\$2.25 million on a 15% calculation basis”.<sup>313</sup>

(b) In his Statement of Claim against Dou in DC/DC 2618/2015 (the “**DC Suit**”), Zhang said that Dou would pay him a 15% commission in respect of thermal detectors.<sup>314</sup>

(c) In his Further and Better Particulars to Defence and Counterclaim (Amendment No. 1) dated 28 March 2022, when asked about the commissions he claimed to be entitled to, Zhang said that there was a verbal agreement with Dou for him to be “paid a commission based on 15% of the purchase value of the thermal detectors that the Plaintiff would purchase”.

(d) In his Further and Better Particulars to Reply to Defences in Counterclaim dated 24 February 2023, Zhang stated that Dou made him a “general offer of a discretionary commission (bonus) of up to 15% or more”.

(e) On 3 March 2023, Zhang’s case, as explained by his counsel, was that he was entitled to a commission of “up to ... 15% or more”,<sup>315</sup> but Zhang’s counsel also said that Zhang’s commission could be “15% or more”.<sup>316</sup>

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<sup>313</sup> 3AB at p 871.

<sup>314</sup> Plaintiff’s Bundle of Documents at p 47.

<sup>315</sup> Dou’s XX / Certified Transcript (Day 1 / 3 March 2023) at p 74 lines 24 and 25.

<sup>316</sup> Dou’s XX / Certified Transcript (Day 1 / 3 March 2023) at p 92 lines 17 and 27–29.

(f) Zhang testified on 15 March 2023 that “[Dou] would give [him] a bonus of about 15% or more”,<sup>317</sup> before then testifying that it could also be “15% or less” and that it was “up to [Dou’s] discretion”.<sup>318</sup>

132 Further, the term “up to 15% or more” is not meaningful at all given that it could refer to any amount. When confronted with these inconsistencies, Zhang’s explanations were that there might have been a miscommunication with his lawyers in the DC Suit and he meant “around 15%”,<sup>319</sup> and that it was simpler to state that the discretionary commissions were fixed at 15% of the purchase price rather than clarifying that they were “around 15%”.<sup>320</sup> Neither reason is convincing. I also note that this was not the only time Zhang would blame his lawyers when he had difficulty explaining his evidence. The clear impression I formed was that Zhang did not want to commit to a specific percentage as he could not otherwise explain the amounts he was claiming as discretionary commissions.

133 Fifth, in the 3 September 2015 Letter, Zhang not only claimed that the commissions were fixed at 15%, he also claimed that they were payable by *Elcarim*. This was entirely inconsistent with the case he ran in this action, which was that his commissions were payable by Dou.

134 Sixth, Zhang testified that he did not declare the alleged commissions as his personal earnings or pay income tax on the same. He claimed that he did not do so since they were “overseas incomes ... paid overseas and not paid in

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<sup>317</sup> Zhang’s XX / Certified Transcript (Day 7 / 15 March 2023) at p 82 line 16.

<sup>318</sup> Zhang’s XX / Certified Transcript (Day 7 / 15 March 2023) at p 82 lines 27 and 28.

<sup>319</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 4 lines 23–28.

<sup>320</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 5 lines 7–17.

Singapore”.<sup>321</sup> This explanation does not make sense. On his own case, Zhang was earning a commission in his capacity as an employee of Elcarim (a Singapore company) and for doing work in Singapore on behalf of Elcarim. His commissions were part of his incentive structure which he discussed and agreed with Dou when they agreed to establish Elcarim. He received the sums in his Singapore account. His failure to declare these payments as earnings and pay tax on them is inconsistent with his case in these proceedings.

135 I therefore find that there was no agreement between Dou and Zhang that Dou would pay discretionary commissions to Zhang of “up to 15% or more” of the relevant purchase price without prior agreement on specific transactions. This disposes of Zhang’s case that the three payments at [98(c)] were his funds which he loaned to Elcarim. I nonetheless deal with the specific payments. The evidence fortifies my rejection of Zhang’s case.

*Zhang’s alleged loans of US\$20,000 and US\$13,500 extended on 4 October 2012*

136 Zhang’s case is that he had received US\$34,000 as commission from Dou (via UAT) from a purchase from Selex,<sup>322</sup> and he thereafter used these funds to advance a loan to US\$33,500 to Elcarim<sup>323</sup> as Elcarim needed funds to make a payment to its supplier, Opgal Optronics Industries Ltd (“**Opgal**”).<sup>324</sup>

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<sup>321</sup> Zhang’s XX / Certified Transcript (Day 12 / 24 March 2023) at p 40 lines 16–23.

<sup>322</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 27 lines 27–29, p 27 line 31 – p 28 line 1; Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 36 lines 2–8.

<sup>323</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 42 lines 21–23.

<sup>324</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 28 lines 17–20.

137 Elcarim, on the other hand, states that this was Dou’s contribution to the capital of Elcarim<sup>325</sup> for the purpose of making a down payment to Opgal.<sup>326</sup> Dou had procured UAT to transfer US\$34,000 to Zhang for Zhang to transfer the sum to Elcarim. I accept Elcarim’s case.

138 First, for the reasons above, I do not accept Zhang’s case that the US\$34,000 was received from Dou as a commission.

139 Zhang seeks to rely on a purchase order issued by Elcarim to Selex dated 12 October 2012,<sup>327</sup> specifically, the “part description: ... E3771 (Merlin MW)”, to show that Selex was related to UAT<sup>328</sup> to assert that there was a reason for Zhang to be paid a commission in relation to the said purchase order.<sup>329</sup> However, this does not at all prove that Zhang had received this sum as a commission – all it shows is that Elcarim issued a purchase order to Selex for the purchase of “E3771 (Merlin MW)” which had a unit price of GBP32,000. In addition, if it is Zhang’s case that he received US\$34,000 as commission in relation to the said Selex purchase order, there was no reason for Zhang not to have pleaded this or included it in his AEIC.<sup>330</sup>

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<sup>325</sup> Elcarim’s Reply and Defence to Counterclaim (Amendment No. 2) at para 6(a). See also Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 27 lines 27–30, p 28 lines 17–21.

<sup>326</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 28 lines 8–12.

<sup>327</sup> Defendant’s Bundle of Documents at p 181.

<sup>328</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 36 lines 2–8.

<sup>329</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 35 lines 27–30, p 36 lines 2 and 3. See also Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 27 lines 27–29.

<sup>330</sup> Elcarim and Dou’s Written Closing Submissions at para 143.

140 Zhang submits that Dou fails to explain why, if the US\$34,000 was for Elcarim’s working capital, Dou did not pay it directly into Elcarim’s account.<sup>331</sup> I do not think this is a deficiency in Elcarim’s case: Dou had made several other payments through Zhang’s personal account which Zhang accepts were for Elcarim’s use.

141 Dou testified that US\$34,000 was remitted to Zhang in order to “purchase ... a gadget for the camera ... procured ... from the Israeli company Opgal”.<sup>332</sup> I note that in the agreed bundle of documents, there is a “Purchased Order” dated 12 September 2012 and with purchase order number UAT\_ES-01/SO1200486 from UAT to Elcarim for 15 units of “ES\_EYE R25 ENGINE DIGITAL”, for which a deposit payment of US\$34,000 was required, and which was annotated, “by T/T; (NOTE: 2012/9/27, Remited Yongtai’s HSBC Singapore Branch)”.<sup>333</sup> Notwithstanding the lack of signatures on this document, it appears to have been acted upon: there is a transaction certificate which shows that a transfer of US\$34,000 was made to Zhang on 27 September 2012,<sup>334</sup> and Elcarim’s bank statements which show Zhang made the transfers of US\$20,000 and US\$13,500 to Elcarim on 4 October 2012.<sup>335</sup> Dou testified that the US\$20,000 and US\$13,500 relate to “15 units of parts” known as “EYER25” purchased by Elcarim from Opgal.<sup>336</sup> The name of the part is similar to the parts that are the subject of the said purchase order and the number of units purchased are the same, although it is not clear whether Elcarim purchased these parts from

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<sup>331</sup> Zhang’s Written Closing Submissions at para 39; Zhang’s Written Reply Closing Submissions at para 38.

<sup>332</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 28 lines 8–13.

<sup>333</sup> Report of Elcarim’s Accounting Expert at Appendix 8c.

<sup>334</sup> 2AB at p 384.

<sup>335</sup> 2AB at p 453.

<sup>336</sup> Dou’s XX / Certified Transcript (Day 4 / 9 March 2023) at p 45 lines 2–6.

UAT or Opgal. Nevertheless, there was a reference in Elcarim’s cash flow chart to this purchase order.

142 Elcarim also points out that in its cash flow chart, prepared and sent by Zhang to Dou<sup>337</sup> and which records “main expenses”, the US\$34,000 is described as, “UAT HSBC T/T USD34,000 to Yongtai Account SO1200486 deposit USD31,477/5 (OPGAL)”,<sup>338</sup> which does not suggest that the US\$34,000 was a loan from Zhang.<sup>339</sup> The cash flow chart records a revenue of US\$34,000 on 27 September 2012 – this matches with the transfer from UAT to Zhang. Zhang also testified that the remarks on the cash flow chart “indicate how [Zhang] received the money and what the money was eventually used for”.<sup>340</sup> The remarks here indicate that the US\$34,000 was deposited into Elcarim in relation to a deposit relating to Opgal. Significantly, the “SO1200486” stated in the cash flow chart matches the purchase order number in the purchase order discussed above. I also agree with Elcarim’s submission that had Zhang extended these loans to Elcarim, one would expect him to record them accurately in the cash flow chart.<sup>341</sup> All these suggest that the US\$34,000 was transferred to Zhang for the purposes of making an onward transfer to Elcarim. Finally, the closeness in time and quantum of the transfer of US\$34,000 to Zhang, the transfer of US\$33,500 by Zhang to Elcarim and the transfer of US\$31,447.50 by Elcarim to Opgal is no coincidence. It is also relevant that, if not for the US\$33,500 transferred to Elcarim, Elcarim would not have been able

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<sup>337</sup> Zhang’s XX / Certified Transcript (Day 10 / 20 March 2023) at p 13 lines 16–21, 28 and 29; 8AB at p 1973.

<sup>338</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 45 lines 1–11; 8AB at p 1969.

<sup>339</sup> Elcarim and Dou’s Written Closing Submissions at paras 149(a) and 150.

<sup>340</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 45 lines 7–11.

<sup>341</sup> Elcarim and Dou’s Written Closing Submissions at para 150.

to make the transfer to Opgal.<sup>342</sup> All these support the conclusion that the payment by Dou to Zhang was to finance Elcarim's operations.

143 Second, Zhang pleaded substantively different cases on the purpose of the US\$34,000 which was transferred to him. Zhang initially indicated that the US\$34,000 had been paid to him<sup>343</sup>

for purchases of thermal camera equipment to be [sold] by external companies through [Elcarim] to Dou's companies... Dou had instructed [Zhang] to arrange for the said purchases through Elcarim... and transferred the said amounts to [Zhang] for onward transmission through [Elcarim] to the external companies for the purchases[.]<sup>344</sup>

However, in a later amendment, Zhang stated instead that it had been paid to him

for mixed purposes and not all for Dou's contributions to capital.

...

As elaborated below at paragraph 5C, the sums of US\$34,000..., GBP148,000... and GBP10,000... were paid to [Zhang] directly as his discretionary bonus from Dou which the [Zhang] then advanced to [Elcarim] for cashflow...<sup>345</sup>

The reference to paragraph 5C leads to a newly added paragraph in the later amendment, which is reproduced below:

Pursuant to Dou's offer of a discretionary commission (bonus) which was accepted by the [Zhang], Dou had made payments of the discretionary commission (bonus) to [Zhang] personally from time to time in recognition of the [Zhang]'s efforts in

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<sup>342</sup> Dou's AEIC at Tab 9 / p 100.

<sup>343</sup> See also Elcarim and Dou's Written Closing Submissions at paras 118–122.

<sup>344</sup> Reply to Defences to Counterclaim (Amendment No. 2) at para 4(a).

<sup>345</sup> Reply to Defences to Counterclaim (Amendment No. 3) at paras 4(a) and 4(a)(ii).

securing successful business deals of Elcarim Science. [Zhang] had paid some of these discretionary bonus to [Elcarim] to help ease the cashflow issues faced by [Elcarim] and these would have been recorded by Pang at the material time as part of the Director’s Loan to [Elcarim].<sup>346</sup>

144 Zhang explained that he was (a) “blindsided by [his] preoccupation with denying the specific allegation by [Elcarim] and Dou that the payments were part of Dou’s... capital injections into [Elcarim]”; (b) confused with the payments referred to in the original paragraphs as being similar to payments referred to in other paragraphs; and (c) was only alerted to the errors in his pleadings after seeing the accounting experts’ reports.<sup>347</sup> None of these are convincing explanations. I also note that Zhang’s accounting expert’s report does not conclude on the purpose of the US\$34,000 payment to him and his payment of the US\$33,500 to Elcarim. It appears that Zhang, upon reading his accounting expert’s report, capitalised on that uncertainty to claim that he had diverted his commissions into Elcarim as a loan. Elcarim rightly points out that the purposes of the payments were matters within Zhang’s personal knowledge, and Zhang had not merely clarified but had changed his position.<sup>348</sup>

145 In view of the above, I find that Zhang did not receive the US\$34,000 as a commission from Dou and did not extend the sums of US\$20,000 and US\$13,500 as loans to Elcarim.

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<sup>346</sup> Reply to Defences to Counterclaim (Amendment No. 2) at para 5C.

<sup>347</sup> Zhang’s affidavit dated 17 January 2023 in support of Reply to Defences to Counterclaim (Amendment No. 3) at paras 4–6, 28.

<sup>348</sup> Elcarim and Dou’s Written Closing Submissions at paras 125 and 126.

*Zhang's alleged loan of GBP147,804.84 on 12 December 2012*

146 Zhang's case is that Dou paid him a discretionary commission of GBP148,000<sup>349</sup> on account of a sale of equipment worth US\$1.29m from Elcarim to Miller and Bokia,<sup>350</sup> from which Zhang made a GBP147,804.84 loan to Elcarim.<sup>351</sup> Elcarim's case is that the transfer of GBP148,000 from UAT to Zhang was procured by Dou as his contribution to Elcarim's capital.<sup>352</sup> It was from this sum that Zhang transferred GBP147,804.84 to Elcarim, and it was therefore not a loan from Zhang.<sup>353</sup> The transfers from UAT to Zhang and thereafter Zhang to Elcarim are not disputed.

(1) Whether GBP148,000 was a commission given by Dou to Zhang

147 Over and above the reasons given above, I do not accept that this payment was a commission paid to Zhang.

148 First, Zhang does not provide sufficient evidence that the GBP148,000 was a commission from Dou. The only documentary evidence Zhang relies on is an email by which Dou instructed one of his staff to transfer the sum of

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<sup>349</sup> Reply to Defences to Counterclaim (Amendment No. 3) at para 4(a)(ii); Zhang's AEIC at paras 78 and 89; Zhang's SAEIC at Table A.

<sup>350</sup> Further and Better Particulars to Reply to Defences in Counterclaim at para 19(d); Zhang's AEIC at paras 78 and 90; Zhang's SAEIC at para 15 and ZYT-27 (see also 3AB at p 766).

<sup>351</sup> Reply to Defences to Counterclaim (Amendment No. 3) at paras 4(a)(ii) and 5C; Zhang's SAEIC at para 16; Zhang's XX / Certified Transcript (Day 11 / 23 March 2023) at p 42 lines 24–26.

<sup>352</sup> Elcarim's Reply and Defence to Counterclaim (Amendment No. 2) at para 6(a)(x); Dou's AEIC at para 16(a)(iv); Dou's SAEIC at paras 6(b) and 8.

<sup>353</sup> Elcarim's Reply and Defence to Counterclaim (Amendment No. 2) at para 6(a)(x); Dou's AEIC at para 16(a)(iv).

GBP148,000,<sup>354</sup> and Zhang’s case appears to be that this was a commission he received in relation to “the Miller and Bokia deal that he had helped to secure by going to Thailand at that time, in December 2012”.<sup>355</sup> But this email does not support Zhang’s case. In that email, Dou directs, “Please T/T GBP148,000 to above account number [referring to Zhang’s HSBC bank account] tomorrow... Bank Message mark ‘PO NO. MBC1212001. Goods deposit Payment instead of Miller & Bokia Co. Ltd’”. The postscript to the transfer certificate also states the same.<sup>356</sup> There is no express or implied reference to a commission to Zhang.<sup>357</sup> On the contrary, it suggests that the GBP148,000 was transferred for a “Goods deposit Payment”.

149 Second, Zhang’s case is that Dou had informed him via a telephone call that the payment of GBP148,000 was a commission to him<sup>358</sup> and had suggested that Zhang lend the said sum to Elcarim.<sup>359</sup> Dou denies this.<sup>360</sup> I do not believe Zhang’s evidence. Zhang did not mention this alleged call in his pleadings or his AEIC. GBP148,000 is a significant sum, and it is difficult to believe that Dou would simply decide to pay that sum to Zhang and not evidence that in writing. As I have found above (at [135]), Zhang’s evidence with respect to discretionary commissions payable to him was simply not credible. My finding is fortified by the matters discussed below.

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<sup>354</sup> Zhang’s SAEIC at para 15 and ZYT-27 (see also 3AB at p 766).

<sup>355</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 29 lines 20–23.

<sup>356</sup> 3AB at p 767; Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 37 line 27 – p 38 line 9.

<sup>357</sup> Elcarim and Dou’s Written Closing Submissions at para 144.

<sup>358</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 30 lines 26 and 27. See also Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 35 lines 3–5.

<sup>359</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 30 lines 30 and 31.

<sup>360</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 30 lines 26–32.

(2) Whether Zhang made a loan of GBP147,804.84 to Elcarim

150 Since the GBP148,000 did not belong to Zhang, he could not have extended it to Elcarim as a loan. Further, the evidence does not support Zhang's assertion that he made a loan to Elcarim.

151 Elcarim points out that the cash flow chart supports that Zhang did not extend a GBP147,804.84 loan to Elcarim since the remarks column does not indicate that the deposit was pursuant to a loan extended by Zhang.<sup>361</sup> In support of this, Elcarim relies on Zhang's earlier confirmation that another deposit in the cash flow chart without any remarks had been for a capital contribution paid by Dou.<sup>362</sup> I agree that this suggests that the payment was not a loan to Elcarim.

152 Zhang argued that, if not for the loan, Elcarim would have been unable to make a payment of GBP159,990 to SELEX,<sup>363</sup> which was made a few days after the making of the alleged loan.<sup>364</sup> But this does not prove it was a loan. It is consistent with the payment to Zhang being made for Elcarim's operational requirements.

153 I therefore find that Zhang did not receive a commission of GBP148,000 from Dou and that the sum of GBP147,804.84 he paid to Elcarim was not a loan from him.

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<sup>361</sup> Zhang's XX / Certified Transcript (Day 11 / 23 March 2023) at p 52 lines 10–13, 26–29; Elcarim and Dou's Written Closing Submissions at paras 149(b) and 150.

<sup>362</sup> P2; Zhang's XX / Certified Transcript (Day 11 / 23 March 2023) at p 30 lines 16–19, p 52 line 30 – p 53 line 7.

<sup>363</sup> Zhang's Written Closing Submissions at para 49.

<sup>364</sup> 2AB at p 477; Certified Transcript (Day 14 / 28 March 2023) at p 62 line 27 – p 63 line 10; Certified Transcript (Day 5 / 10 March 2023) at p 32 lines 27–31.

*Zhang's alleged loans of \$2,000 and \$11,000 on 6 and 28 May 2013, respectively*

154 Zhang's claims that he received a discretionary commission of GBP10,000<sup>365</sup> from Dou's wife in relation to a deal made with AIM Infrarot-Module GmbH ("AIM"),<sup>366</sup> which he used to make loans to Elcarim<sup>367</sup> of \$2,000 and \$11,000.<sup>368</sup> Elcarim denies this, and its case is that Dou procured his wife to transfer GBP10,000 to Zhang for onward transfer to Elcarim towards Elcarim's capital.<sup>369</sup> However, Zhang failed to do so<sup>370</sup> and instead procured a transfer of \$18,947 (the equivalent of GBP10,000) from Elcarim's OCBC bank account number [xxxx xxxx 0201] (GBP) to Elcarim's OCBC bank account number [xxxx xxxx 200] (SGD) on 5 June 2013.<sup>371</sup> I do not accept Zhang's case.

(1) Whether GBP10,000 was a commission given by Dou to Zhang

155 I find that Zhang did not receive the sum of GBP10,000 as a commission.

156 First, Zhang took contradictory positions as to whether the GBP10,000 was a discretionary commission. In Zhang's pleadings, he says this was an instance where Dou did not inform him it was a commission, but in his

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<sup>365</sup> Reply to Defences to Counterclaim (Amendment No. 3) at paras 4(a)(ii) and 4(a)(iii).

<sup>366</sup> Dou's XX / Certified Transcript (Day 5 / 10 March 2023) at p 33 lines 15–17.

<sup>367</sup> Reply to Defences to Counterclaim (Amendment No. 3) at paras 4(a)(ii) and 5C.

<sup>368</sup> Dou's XX / Certified Transcript (Day 5 / 10 March 2023) at p 35 line 9, p 37 lines 21, 22, 24, 25 and 30; 2AB at pp 559 and 561; Zhang's XX / Certified Transcript (Day 11 / 23 March 2023) at p 42 lines 27–30, p 43 line 18.

<sup>369</sup> Elcarim's Reply and Defence to Counterclaim (Amendment No. 2) at para 6(a)(v); Dou's AEIC at para 16(a)(v); Dou's SAEIC at paras 9(a)–9(c).

<sup>370</sup> Dou's SAEIC at para 9(d).

<sup>371</sup> Dou's SAEIC at para 9(e).

testimony, he claimed Dou verbally informed him that he would be given a commission of GBP10,000 for securing Elcarim’s purchase of goods from AIM under a purchase order dated 10 April 2013.<sup>372</sup>

157 Second, it is curious why Dou would pay Zhang a commission for this purchase, especially as it was not a transaction which involved UAT or FDS. When this was put to him, Zhang testified that “all the purchase of detectors from AIM are used for UAT or FDS”<sup>373</sup> – an assertion he provides no evidence for, nor was this put to Dou.

158 Third, Zhang did not refer to the AIM deal in his pleadings or his AEIC but only raised this during the trial.<sup>374</sup> Further, the documents Zhang referred to do not say anything about Zhang’s entitlement to a commission. He then asserted that the transactions would appear in FS2014 – which did not make sense as an individual transaction would not be recorded in a financial statement – as well as the general ledger of 2014,<sup>375</sup> which he did not pursue the production of. Zhang was opportunistically referring to documents he knew were not before the Court.

159 Fourth, Zhang gave contrived evidence to support his claim. He provided the following explanation, referring to the application form for the fund transfer of GBP10,000:

If you look at the box below box 70, there is, on the right-hand side, a box that says “Transaction Remark”. And there are two Chinese characters there---

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<sup>372</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 33 lines 15–17, 24–26; Defendant’s Bundle of Documents at p 186.

<sup>373</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 36 lines 23–28.

<sup>374</sup> Elcarim and Dou’s Written Closing Submissions at para 145.

<sup>375</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 36 lines 26–30.

...

*The two Chinese characters stand for “Education”. It is very difficult for me to link education and what is stated in box 70, “Market and setup charge”. So my understanding is that this amount was paid to me as commission. As for how it is paid or what remarks is stated, that is up to whoever Mr Dou Suoke had arranged to transfer this.*<sup>376</sup>

[emphasis added]

This evidence is nonsensical. Zhang later submitted that the aforesaid remarks “are meant for facilitating the remittance out of money but does not usually mean they represent the nature of the purpose between the remitter and the receiver”.<sup>377</sup> Not only was this not the case Zhang ran at trial, his denunciation of the remarks in his submissions also contradicts his testimony quoted above. He was again making up his case as he went along.

160 Dou stated that the payment of GBP10,000 to Zhang was “related to the [GBP533,000] contract between Elcarim... and [Selex]” and was “in relation to training fees”.<sup>378</sup> This is consistent with the “Education” remark in the application form for fund transfer.<sup>379</sup> This application also states “Remittance Information: market and setup charge”.<sup>380</sup> It is not clear, however, how the said “training fees” are related to “market and setup charge”, and this was not explained. Elcarim further submits that the description “market and setup charge” is similar to the descriptions for other payments made directly to

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<sup>376</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 39 lines 1–16; 2AB at p 406.

<sup>377</sup> Zhang’s Written Closing Submissions at para 51.

<sup>378</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 33 lines 27–29.

<sup>379</sup> Elcarim and Dou’s Written Closing Submissions at para 146.

<sup>380</sup> Dou’s AEIC at para 16(a)(v); Tab 16; Dou’s SAEIC at para 9(b).

Elcarim,<sup>381</sup> specifically, s/n 9 and s/n 11 on P2. I prefer Dou's evidence on this issue, as it is more consistent with the documentary evidence.

161 Finally, Zhang's pleaded case on why he was given the GBP10,000 was inconsistent, and he did not justify this (see [143] and [144] above), which further casts doubt on his claims that this was a commission to which he was entitled.

162 I therefore find that Zhang did not receive the sum of GBP10,000 as a commission to him and that it was intended for onward payment to Elcarim. My finding is also supported by the matters below.

(2) Whether Zhang made loans of \$2,000 and \$11,000 to Elcarim

163 Zhang's allegation that he used the GBP10,000 commission to make loans to Elcarim by making a cash deposit of \$2,000 and a cheque deposit of \$11,000 was raised for the first time during trial.<sup>382</sup> Zhang provides no explanation for setting out these foundational aspects of his case at such a late stage in the proceedings.<sup>383</sup> Given my finding that the GBP10,000 payment was not intended for him, his claim that he loaned the moneys to Elcarim necessarily fails.

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<sup>381</sup> Elcarim and Dou's Written Closing Submissions at para 146.

<sup>382</sup> Dou's XX / Certified Transcript (Day 5 / 10 March 2023) at p 35 line 9, p 37–39; Zhang's XX / Certified Transcript (Day 11 / 23 March 2023) at p 42 lines 27–30, p 43 line 18.

<sup>383</sup> Zhang's XX / Certified Transcript (Day 11 / 23 March 2023) at p 36 lines 18–22, p 37 lines 1–4.

164 Nonetheless, I highlight a further aspect of Zhang’s submissions, which evidences the shifting nature of his case. In his closing submissions, Zhang changed tack and submitted that:

Zhang did not transfer this sum of GBP10,000 as a loan to Elcarim. Zhang did thereafter advance the sums of S\$2,000 and S\$11,000 on 6 May 2013 and 28 May 2013 respectively (see S/Ns 39 & 42 of Exhibit D4) but that came from his own general funds of which the GBP10,000 is already part of.<sup>384</sup>

This was not the case that Zhang ran at trial, which is that he advanced some of his commissions to Elcarim as a loan.<sup>385</sup> The submission was obviously made to circumvent the evidential difficulties with his case, and I reject the same.

165 I also note that the only evidence Zhang can rely on to show that these were loans by him to Elcarim is GL2013,<sup>386</sup> which records these as credit entries under the “DUE TO DIRECTOR – ZHANG YONGTAI” category in GL2013<sup>387</sup> (s/n 39 and s/n 42 in D4). But, as stated above, these entries would have been made on Zhang’s instructions, and it is not his evidence that Pang had independent knowledge that these were his loans. Zhang’s reliance on a cheque stub dated 28 May 2013 evincing a cheque deposit of \$11,000 to Elcarim<sup>388</sup> also does not take his case much further – it does not clarify whether this was extended as an onward transfer or a loan.

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<sup>384</sup> Zhang’s Written Closing Submissions at para 54.

<sup>385</sup> Reply to Defences to Counterclaim (Amendment No. 3) at paras 4(a)(ii) and 5C.

<sup>386</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 44 lines 8–12.

<sup>387</sup> 1AB at p 69.

<sup>388</sup> D7; Zhang’s XX / Certified Transcript (Day 7 / 15 March 2023) at p 76 lines 13–22; Zhang’s Written Closing Submissions at para 81.

166 In conclusion, I find that Zhang has not proven his claim that he extended a loan of \$13,000 to Elcarim.

167 Zhang refers to *Low Sing Khiang v LogicMills Learning Centre Pte Ltd* [2023] SGHC 124 (“**Low Sing Khiang**”) to argue that his reliance on GL2013 and bank statements to prove the said loans should be accepted.<sup>389</sup> I do not accept this argument. First, the loan sought to be proven in *Low Sing Khiang* by relying on a general ledger and bank statements was properly pleaded (see *Low Sing Khiang* at [11], [18] and [89], in particular, notes 17 and 35). Second, there was no dispute in that case about the *accuracy* of the general ledger after its *authenticity* was established (*Low Sing Khiang* at [95]–[97]). On the contrary, the accuracy of GL2013 is heavily contested in this case.<sup>390</sup> Furthermore, the crucial question in this case was whether a deposit made by Zhang to Elcarim was merely a transfer (*ie*, Zhang was to act as a conduit for the moneys to Elcarim) or a loan. This distinction is not readily observable from GL2013 both because it was inaccurate and because it was prepared *on Zhang’s instruction*.

### ***The ANZ Loan***

168 I have accepted (at [47] above) that Zhang did, in fact, loan the \$60,000 he obtained pursuant to the ANZ Loan to Elcarim. It therefore properly forms part of the 685K Loan claim. I note that Zhang is not claiming the interest he incurred in respect of the ANZ Loan.<sup>391</sup>

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<sup>389</sup> Zhang’s Written Closing Submissions at para 82.

<sup>390</sup> Elcarim and Dou’s Written Reply Closing Submissions at para 21.

<sup>391</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 1 lines 27–29, 33 and 34, p 2 lines 1, 2 and 14.

169 However, Zhang cannot claim the entire amount from Elcarim. Zhang accepts that Elcarim made repayments directly to ANZ Bank amounting to \$58,288,<sup>392</sup> which is consistent with Elcarim’s case that it had made 16 repayments of \$3,643 in respect of the ANZ Loan.<sup>393</sup>

170 In the circumstances, the amount payable to Zhang in respect of the \$60,000 loan is \$1,712.

### ***Forgoing salaries***

171 Zhang claims that part of the 685K Loan was from “the unpaid salaries for that year from the company”,<sup>394</sup> presumably referring to the following sums in GL2013:<sup>395</sup>

S/n on D4	(all references made to the section “DUE TO DIRECTOR – ZHANG YONGTAI” in GL2013) <sup>396</sup>		
Date	Credit amount	Description	
78	30 September 2013	\$32,997.50	DIRECTOR’ REMUNERATION DUED
79	30 September 2013	\$28,709.50	SALARY PAID ON BEHALF

172 I reject Zhang’s claim under this head.

<sup>392</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 2 line 23, p 4 lines 12–14.

<sup>393</sup> Statement of Claim (Amendment No. 1) at para 13(a).

<sup>394</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 20 line 5; Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 31 lines 26–31, p 34 lines 22–25; Certified Transcript (Day 3 / 8 March 2023) at p 15 lines 12–14, 19, 20, 30, 31, p 18 lines 12–17, p 19 lines 3–8.

<sup>395</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 63 lines 13 and 14; 1AB at p 70.

<sup>396</sup> 1AB at pp 68–70.

173 Zhang did not specifically plead this claim.<sup>397</sup> He also did not state in his AEIC that he agreed to this (alleged) short-payment of his salary at Dou’s request. At trial, he stated:

it is mentioned that I had extended personal loan to the company at Mr Dou’s request. And this part of the loan is recorded in the company’s---amount due to director account, so that is just one part. And in this amount due to director account, there are also other sums of money that was due to me by the company but which was not paid to me. The unpaid salaries also one part.<sup>398</sup>

However, he later stated that, when his pleadings were drafted, he did not know that unpaid salaries were part of the 685K Loan.<sup>399</sup> It follows that Zhang could not have included this specific claim in his pleadings. Zhang eventually recognised that he did not include this in his pleadings.<sup>400</sup> That disposes of this head of claim. I nonetheless consider the evidence below.

174 Zhang provides insufficient evidence for his allegation that Elcarim had failed to pay him salaries and that he had extended loans to Elcarim by forgoing his salary. Zhang testified that although CPF statements might record that Elcarim had paid him his salary, whether he actually received a salary depended on whether Elcarim had sufficient funds to pay him.<sup>401</sup> His evidence was that “all the salaries that [Elcarim] did not pay [Zhang] would be recorded under the ‘Due to director’ portion”.<sup>402</sup> However, when asked where in GL2013 it was recorded that there were moneys owing to him as his salary, he stated, “I believe

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<sup>397</sup> Elcarim and Dou’s Written Closing Submissions at paras 107–111, 114(d) and 114(e).

<sup>398</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 15 lines 19–24.

<sup>399</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 16 lines 9–14, 28–30.

<sup>400</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 34 line 13.

<sup>401</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 62 lines 12–16.

<sup>402</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 62 lines 15 and 16.

that in this GL[2013], there is a high probability that J5 or J7 records the salaries that the company owes me”<sup>403</sup> and “I feel that it is recorded”.<sup>404</sup> Zhang’s “belief” and reliance on a “probability” does not rise to the level of proof required to make out his claim. GL2013 does not provide the breakdown for or details of these two sums alleged by Zhang to be loans due to him (at [175] and [176] below).

175 Furthermore, the sum of \$32,997.50 allegedly owed to Zhang as director’s remuneration (s/n 78 in D4) has a reference to “J/5”. “J/5” traces to a debit entry under the category of “DIRECTOR’S REMUNERATION” in GL2013 and seems to be CPF paid to Zhang<sup>405</sup> – this appears to refer to remuneration that has already been paid. This therefore has nothing to do with Zhang’s monthly salary, and certainly does not suggest that Zhang was not paid the said salary.<sup>406</sup>

176 With regard to the sum of \$28,709.50 (s/n 79 in D4), Zhang gave evidence that these were salaries he paid on behalf of Elcarim to some

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<sup>403</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 63 lines 13 and 14; 1AB at p 70.

<sup>404</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 63 line 28.

<sup>405</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 63 lines 15–20; 1AB at pp 70 and 76.

<sup>406</sup> In addition, while the \$32,997.50 debit entry under the category of “DIRECTOR’S REMUNERATION” is also labelled “CPF” (1AB at p 76), there is no corresponding entry in the category of “CPF” with the same “J/5” reference (1AB at p 75; Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 64 lines 4–6). This is unlike a \$10,009.50 debit entry under the category of “DIRECTOR’S REMUNERATION” which is also labelled “CPF” and has a “J/4” reference (1AB at p 76), which can be traced to a debit entry for the same sum in the category of “CPF” with the same “J/4” reference (1AB at p 75; Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 63 line 29 – p 64 line 5).

employees.<sup>407</sup> GL2013 appears to record \$28,709.50 as a loan extended by Zhang to Elcarim and the reference for that transaction, “J/7” traces to the “SALARY” category in GL2013, where there is a debit entry for the same sum,<sup>408</sup> which together suggests that Elcarim had paid out these sums as salaries to employees with moneys loaned to Elcarim by Zhang. However, this is inconsistent with Zhang’s case that s/n 79 recorded the *salaries that Elcarim failed to pay him*, which were thus regarded as a loan by Zhang to Elcarim.<sup>409</sup> Zhang himself acknowledged at trial that it is not clear from GL013 what comprises the sum of \$28,709.50.<sup>410</sup>

177 Further, Zhang relies entirely on GL2013 to prove this claim; he neither testified about instances where he forwent his salary, or paid the salaries of others.

178 In the circumstances, I find that Zhang is not entitled to repayment of these sums.

### ***Office expenses***

179 Zhang’s case is that he had extended loans to Elcarim by paying for Elcarim’s office expenses in the sum of \$104,337.70 (s/n 77 on D4).

180 This is again not specifically pleaded. Neither is it Zhang’s case that he incurred these expenses at Dou’s request. While Zhang initially insisted that he

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<sup>407</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 67 lines 18–21, 26–28.

<sup>408</sup> 1AB at pp 70 and 82.

<sup>409</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 63 lines 13 and 14; 1AB at p 70.

<sup>410</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 66 line 24.

had pleaded these because “these expenses were already included in the \$685,593”,<sup>411</sup> he later conceded that he had not included it in his pleadings but insisted that he was entitled to claim these sums.<sup>412</sup> Nonetheless, I go on to consider the evidence.

181 Elcarim does not dispute that Zhang did, from time to time, personally pay for Elcarim’s expenses. Dou testified that Zhang used his personal credit card to pay Elcarim’s expenses.<sup>413</sup> However, Dou also said that he had no knowledge of the company’s accounts and was informed of this practice by Pang.<sup>414</sup> Zhang’s evidence is that Dou authorised Zhang to make payments with his credit card,<sup>415</sup> which is supported by:

- (a) an email exchange wherein Dou acknowledged Zhang’s email stating, “I have asked them to charge the payment to my credit card”, the payment being for a sum “over SGD7000”;<sup>416</sup>
- (b) a message exchange where Zhang states, “then use my credit card, easier” and Dou replying “Ok”;<sup>417</sup> and
- (c) an email from Dou to Zhang stating, “This order will be covered the following expense from advance your Credit Card”,<sup>418</sup> which

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<sup>411</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 20 lines 25 and 26.

<sup>412</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 34 lines 8–25.

<sup>413</sup> Dou’s XX / Certified Transcript (Day 3 / 8 March 2023) at p 23 line 30 – p 24 line 3.

<sup>414</sup> Dou’s XX / Certified Transcript (Day 3 / 8 March 2023) at p 25 line 10.

<sup>415</sup> Zhang’s AEIC at paras 82 and 83, ZYT-23 and ZYT-24.

<sup>416</sup> Zhang’s AEIC at ZYT-23.

<sup>417</sup> Zhang’s AEIC at ZYT-23.

<sup>418</sup> Zhang’s AEIC at ZYT-24.

presumably means that the expenses listed therein were paid using Zhang's credit card. The expenses are reproduced below:

SELEX: GST38,024.20;  
SELEX: GST7685.94  
SELEX: GST9,038.7  
OPGAL RangSec 640 GST: SGD16,748.66  
Sight Line order payment: USD13,300

TOTAL Value: SGD88,541.44

However, Zhang does not link these exchanges to transactions in the GL2013, which is the basis for the 685K Loan. I also note that [181(b)] and [181(c)] above were exchanges which occurred on 29 December 2014 and 20 February 2014, respectively, meaning these expenses would not be recorded in GL2013. Furthermore, in respect of [181(a)], assuming Zhang was referring to a sum between \$7,000 and \$7,999, there does not appear to be such a credit entry in the "DUE TO DIRECTOR-ZHANG YONGTAI" category in GL2013.

182 While the aforesaid shows that there were instances where Zhang paid Elcarim's expenses using his credit card at Dou's request, it is not clear how much of the 685K Loan Zhang alleges was incurred in this way.

183 I dismiss Zhang's claim that he should be repaid for loans made to Elcarim by way of paying for Elcarim's office expenses, given that it was not pleaded and insufficient evidence was led to explain this claim.

### ***GST Input Tax***

184 During the trial, Zhang asserted that he had extended loans to Elcarim by paying for "GST Input Tax". Zhang does not plead the payments of GST

Input Tax specifically as part of the 685K Loan he purportedly extended to Elcarim. He did not provide evidence of this in his AEIC, nor was Dou cross-examined on it. Nor was it put to Dou that Zhang had made these (alleged) loans at Dou’s request.

185 In any case, I find that Zhang cannot recover this portion of the 685K Loan, which amounts to \$12,183.62.<sup>419</sup> The only basis advanced by Zhang for his recovering this sum is that “what is recorded inside [FS2013] is the amounts I loaned to the company. So of course I must claim what the company owes me”.<sup>420</sup> He did not testify that he had paid these sums or provide any details of the relevant transactions, neither did he provide any documentary evidence of his doing so. Furthermore, Zhang testified that the sum of \$12,183.62 is not a consolidated sum but rather was “just one of the impose GST amounts that I have paid on behalf of the company”, so other figures recorded in GL2013 are unhelpful in providing more details about this sum.<sup>421</sup>

186 In so far as Zhang relies completely on FS2013, which was prepared based on GL2013, I need only say that the accuracy of GL2013 is disputed, and Zhang has made no effort to prove the accuracy of GL2013 (see [114]–[116] and also [167] above).

187 I therefore dismiss this claim on the ground that it was not adequately pleaded, and insufficient evidence was led.

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<sup>419</sup> 1AB at pp 66 and 70.

<sup>420</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 69 lines 1–3.

<sup>421</sup> Zhang’s XX / Certified Transcript (Day 12 / 24 March 2023) at p 36 lines 11–19.

***Travelling expenses***

188 Zhang seeks repayment of loans he extended to Elcarim by paying for travelling expenses, which amount to \$8,474.12 (s/n 81 on D4).

189 First, this was not specifically pleaded by Zhang.<sup>422</sup> Nor was it put to Dou that he had asked Zhang to pay these expenses on behalf of Elcarim. Elcarim's witnesses were furthermore not cross-examined on this issue and thereby did not have a chance to respond. I note that this is also significant because some of the travel expenses alleged to be part of the 685K Loan appear to have been made for Dou's benefit, and Dou should have been given the opportunity to respond to Zhang's case.

190 Elcarim primarily takes issue with the fact that Zhang failed to produce documentary evidence to show that he had paid the travelling expenses.<sup>423</sup> However, Zhang testified that he provided those documents to Pang for him to update the financial records of Elcarim.

191 I dismiss Zhang's claim for travel expenses since it was not properly pleaded, and there is insufficient evidence to support the same.

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<sup>422</sup> Elcarim and Dou's Written Closing Submissions at paras 107 and 114(c).

<sup>423</sup> Zhang's XX / Certified Transcript (Day 11 / 23 March 2023) at p 69 lines 26, 27, 31 and 32, p 70 lines 22–26.

**Cash deposits**

192 Zhang's case is that the 685K Loan<sup>424</sup> includes loans to Elcarim made by way of cash deposits.<sup>425</sup> Zhang's evidence is that he made these loans on account of Elcarim's cash flow difficulties.<sup>426</sup> I note at the outset that Zhang does not anywhere state *how much* of the 685K Loan was allegedly made through cash deposits. In the circumstances, the closest approximation I can use is by deducting from \$685,539 the value of other quantified heads and wrongly recorded entries, leaving a sum of \$33,285.95 (see below). But the difficulty with this is that Zhang also gave evidence of another unquantified head of 685K Loan, namely, the loans extended by way of forgone portions of his salary (see [198]–[202] below). It is unclear how the balance sum of \$33,285.39 is to be allocated between the two categories, and this only underscores the lack of clarity with which Zhang ran his case.

Item	Quantum
Loan purportedly owed by Elcarim to Zhang	\$685,539
Wrongly recorded in GL2013 as loans to Elcarim	\$4,500
	\$5,000
	\$50,000
Commissions redirected as loans to Elcarim	\$24,400
	\$16,470
	\$292,180.61
	\$2,000
	\$11,000
ANZ Loan	\$60,000

<sup>424</sup> Zhang's XX / Certified Transcript (Day 8 / 16 March 2023) at p 20 lines 4–8.

<sup>425</sup> This section does not deal with the \$60,000 cash deposit pursuant to the ANZ Loan – which has been dealt with above – or the cash deposits which Zhang says were loans made out of his commissions, as these have also been dealt with above.

<sup>426</sup> Zhang's AEIC at para 32.

Forgone salaries	\$32,997.50
	\$28,709.50
Office expenses	\$104,337.70
GST Input Tax	\$12,183.62
Travelling expenses	\$8,474.12
Total deductions	\$652,253.05
Loans extended by way of cash deposits and forgone portions of Zhang's salary	\$33,285.95

193 Zhang did not plead that he had extended loans to Elcarim by making cash deposits into the company as part of his case, and he thus fails on this claim (see [98] above).

194 Zhang also did not give evidence that these cash deposits were made *at the request* of Dou (see [103(b)] above).

195 Zhang only gave evidence with respect to two cash deposits. Zhang testified that he made two \$1000 cash deposits from his personal bank account into Elcarim to open two bank accounts (s/n 2 and s/n 73 on D4).<sup>427</sup> He also testified that he sometimes used cash to make purchases for Elcarim, which were “not convenient ... to be put into the company’s record [and] can only be handled personally”.<sup>428</sup> However, he does not explain which cash deposits which formed part of the 685K Loan were done pursuant to such an arrangement.

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<sup>427</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 78 line 26 – p 79 line 2.

<sup>428</sup> Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 74 line 29 – p 75 line 10.

196 Therefore, apart from the two cash deposits of \$1,000 each, the only basis for Zhang’s assertion of the loans he made by way of cash deposits is GL2013. For the reasons explained above (at [114]–[116] and [167]), I do not accept GL2013 as sufficient evidence that Elcarim owes Zhang the portion of the 685K Loan made by way of cash deposit. Furthermore, I have found that Zhang was not truthful in relation to other cash deposits, which he claimed were his commissions which he had extended as loans to Elcarim. I am therefore not prepared to simply accept his assertion with respect to these cash deposits without more.

197 I therefore find that Zhang extended loans to Elcarim by making the two cash deposits amounting to \$2,000. However, I find that Zhang’s claim fails as this was not part of his pleadings.

***Forgoing portions of his salary***

198 Zhang’s case is that he had made loans to Elcarim by accepting a shortfall in his salary.<sup>429</sup> I dismiss this part of Zhang’s claim.

199 First, Zhang did not plead that his (alleged) shortfall of salary payment was part of the 685K Loan. He also did not include this in his AEIC. It was only during trial that Zhang asserted this.

200 Second, Zhang merely asserted that there was an agreement between him and Dou for him to collect a lower monthly salary than he was entitled to, with the shortfall to be regarded as a loan from Zhang to Elcarim.<sup>430</sup> He provides

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<sup>429</sup> Dou’s XX / Certified Transcript (Day 3 / 8 March 2023) at p 15 lines 19, 20, 30 and 31.

<sup>430</sup> Dou’s XX / Certified Transcript (Day 3 / 8 March 2023) at p 15 lines 12–14, 19 and 20, p 16 line 31 – p 17 line 3.

no further details of the said agreement and adduces no objective evidence to support this. Zhang’s reliance on his CPF statement for May 2014, which states that Zhang was drawing a monthly salary of \$11,000, is not helpful<sup>431</sup> as it says nothing about whether the reduction in his salary was regarded as a loan to Elcarim. More importantly, I have found (above at [92]) that Zhang was entitled to a salary of only \$11,000 a month, and there is, therefore, no question of Zhang loaning any shortfall to Elcarim.

201 Third, and crucially, Zhang’s evidence concerning his short-paid salaries is inconsistent with the position he takes on the 685K Loan, specifically, that he is asking for repayment his loans extended to Elcarim *as at 30 September 2013* (see [15] above). While Zhang states that he had “refrain[ed] from collecting [his] salary (in full or in part)”<sup>432</sup> and that “the difference between [his] actual salary of \$18,000/- and the reduced amounts that [he] actually received had been captured and reflected in the General Ledger as loans by me to Elcarim”,<sup>433</sup> the time period he referred to when making these statements is between May 2014 and June 2015, which, on Zhang’s own case, is not part of the 685K Loan.

202 I, therefore, find that Zhang did not extend any loans to Elcarim by way of the shortfall in monthly salaries he was paid, and he is not entitled to repayment for these sums.

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<sup>431</sup> 2AB at p 287; Dou’s XX / Certified Transcript (Day 3 / 8 March 2023) at p 17 lines 12–14.

<sup>432</sup> Zhang’s AEIC at para 32.

<sup>433</sup> Zhang’s AEIC at para 121.

***Deductions from the 685K Loan***

203 Elcarim claims that even if Zhang establishes the 685K Loan claim or any part thereof, it should be reduced by the sums of \$35,508.46 and \$60,588.72, which are sums that Zhang has admitted to receiving from Elcarim.<sup>434</sup> While Zhang acknowledges that he received these payments, he disagrees that the 685K Loan should be reduced as they were repaid after 30 September 2013. For the reasons explained above, I disagree with Zhang. It is not his pleaded case that he extended loans after 30 September 2013, and even if he did, any payments he received should first be applied towards the earlier loans extended by him. Elcarim should therefore be given credit for these payments.

204 Elcarim also asserts that the following deductions should be made from the sums allegedly owed by Elcarim to Zhang:

Page on P6	Date	Sums
1	14 October 2014	\$546
		\$851.92
		\$1,075.23
		\$134.90
2	6 February 2015	\$121.43
		\$3,683.37
		\$11,320.79
		\$227.86
		\$32

Zhang confirmed at trial that he received these payments, and as stated above, he does not attribute these to loans he extended to Elcarim after 30 September 2013.<sup>435</sup>

<sup>434</sup> Elcarim and Dou's Written Closing Submissions at paras 206 and 207.

<sup>435</sup> Zhang's XX / Certified Transcript (Day 11 / 23 March 2023) at p 84 line 23 – p 85 line 7.

205 The total payments from Elcarim to Zhang after 30 September 2013 therefore amount to \$114,090.68.

206 In the circumstances, in so far as I have allowed any sums in respect of the 685K Loan, these have been extinguished by these repayments.

207 I therefore dismiss the 685K Loan claim.

### **Issue 7: transfer of Elcarim shares**

#### ***The parties' cases***

208 Zhang brings a claim against Dou asking for the delivery of the Shares, in the alternative, damages to be assessed.<sup>436</sup> Zhang pleads that on 11 June 2015, after his termination from Elcarim, he discovered that the Shares had been transferred to Dou without his authority. Zhang claims that Dou promised to value and pay him for the Shares, but Dou did not do so.<sup>437</sup>

209 Dou's case is that the Shares were transferred from Zhang to Dou pursuant to the SPA dated 28 February 2015. This arose because:

- (a) Zhang suggested, around the end of September 2013, that the share capital of Elcarim be increased to \$1.5m, which would require the shareholders to pay up the relevant share capital in proportion to their shareholdings. At the time, Dou had already paid about \$750,000 as capital for Elcarim. Since Zhang did not have the ability to pay for the increase in share capital, Dou arranged a further capital injection of \$750,000 into Elcarim on Zhang's behalf as a loan to him.

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<sup>436</sup> Defence and Counterclaim (Amendment No. 2) at the last paragraph.

<sup>437</sup> Defence and Counterclaim (Amendment No. 2) at paras 29–34.

(b) Around April 2014, Pang and Zhang had a disagreement concerning the selection of a delivery service company. Pang informed Dou of this.<sup>438</sup>

(c) Around January 2015, after a further disagreement between Pang and Zhang, Zhang threatened to wind up Elcarim. Pang suggested that Zhang and Dou enter the SPA.<sup>439</sup>

(d) On 28 February 2015, Zhang and Dou entered the SPA.<sup>440</sup>

210 Dou’s case is that under the SPA, Zhang pledged the Shares to Dou as collateral for the sum of \$750,000, which Dou loaned to Zhang,<sup>441</sup> and entitled Dou to transfer the Shares at any time.<sup>442</sup> On the same day, the following documents were also prepared: an undated share transfer form for the transfer of the Shares to Dou signed by Dou and Zhang (the “**Share Transfer Form**”); an “undated extraordinary general meeting” (the “**Share Transfer EGM Notice**”) signed by Pang; and an undated directors’ resolution to approve the transfer of the Shares to Dou signed by Zhang and Pang (the “**Share Transfer Director’s Resolution**”)<sup>443</sup> (collectively, the “**Share Transfer Documents**”).

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<sup>438</sup> Dou’s Defence to Counterclaim (Amendment No. 4) at para 18(d); Elcarim’s Reply and Defence to Counterclaim (Amendment No. 2) at para 11(d).

<sup>439</sup> Dou’s AEIC at paras 32 and 33.

<sup>440</sup> Dou’s Defence to Counterclaim (Amendment No. 4) at para 18(f); Elcarim’s Reply and Defence to Counterclaim (Amendment No. 2) at para 11(f).

<sup>441</sup> Dou’s Defence to Counterclaim (Amendment No. 4) at para 18(h); Elcarim’s Reply and Defence to Counterclaim (Amendment No. 2) at para 11(g).

<sup>442</sup> Dou’s Defence to Counterclaim (Amendment No. 4) at para 18(i); Elcarim’s Reply and Defence to Counterclaim (Amendment No. 2) at para 11(h).

<sup>443</sup> Dou’s Defence to Counterclaim (Amendment No. 4) at para 19; Elcarim’s Reply and Defence to Counterclaim (Amendment No. 2) at para 12.

211 Following a disagreement between Dou and Zhang in May 2015, Dou decided to remove Zhang from Elcarim.<sup>444</sup> Dou therefore exercised his rights under the SPA and transferred the Shares to himself on 10 June 2015 (the “**Share Transfer**”),<sup>445</sup> and procured Elcarim to terminate Zhang (see above).

212 Zhang states that the agreement he had with Dou was for Dou to be solely responsible for contributing capital to Elcarim;<sup>446</sup> he did not suggest an increase in Elcarim’s share capital;<sup>447</sup> and the payments which Dou made to Zhang were not loans to him but Dou’s capital contributions to Elcarim.<sup>448</sup> Zhang also denies that he signed any documents for the transfer of the Shares, including the SPA, and that his signatures on those documents were forged.<sup>449</sup>

***The burden and standard of proof***

213 The main issue in dispute is a factual one: did Zhang execute the SPA and the Share Transfer Documents? Zhang pleads in the alternative that even if he did sign the said documents, the SPA was void for failure of consideration.

214 It is settled law that the burden of proof for establishing fraud or forgery is not more onerous than the ordinary civil standard – see *Alwie Handoyo v Tjong Very Sumito* [2013] 4 SLR 308 (“*Alwie Handoyo*”) at [159] and [160];

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<sup>444</sup> Dou’s AEIC at paras 40 and 41.

<sup>445</sup> Dou’s Defence to Counterclaim (Amendment No. 4) at para 21; Elcarim’s Reply and Defence to Counterclaim (Amendment No. 2) at para 14.

<sup>446</sup> Reply to Defences to Counterclaim (Amendment No. 3) at para 5B; Zhang’s AEIC at para 106.

<sup>447</sup> Reply to Defences to Counterclaim (Amendment No. 3) at para 6.

<sup>448</sup> Reply to Defences to Counterclaim (Amendment No. 3) at para 6A; Zhang’s AEIC at paras 106(a), 106(b) and 107; Zhang’s XX / Certified Transcript (Day 11 / 23 March 2023) at p 54 lines 8 and 9.

<sup>449</sup> Reply to Defences to Counterclaim (Amendment No. 3) at para 5.

and that in so far as proof of fraud or forgery is concerned, the distinction lies in the sphere of practical application rather than in the legal standard of proof: *Chua Kwee Chen v Koh Choon Chin* [2006] 3 SLR(R) 469 at [39].

215 It is also a fundamental aspect of litigation that the legal burden to prove an allegation lies on the party making the assertion: *Alwie Handoyo* at [157]. The legal burden, therefore, lies on Zhang to prove that his signatures on the SPA and the Share Transfer Documents were forged, as he asserts.

216 However, the legal and evidentiary burden on each party should not be conflated or confused. The Court of Appeal held in *Britestone Pte Ltd v Smith & Associates Far East Ltd* [2007] 4 SLR(R) 855 (at [60]) that:

... at the start of the plaintiff's case, the legal burden of proving the existence of any relevant fact that the plaintiff must prove and the evidential burden of adducing some (not inherently incredible) evidence of the existence of such fact *coincide*. Upon adduction of that evidence, the *evidential burden shifts to the defendant, as the case may be, to adduce some evidence in rebuttal*. If no evidence in rebuttal is adduced, the court may conclude from the evidence of the plaintiff that the legal burden is also discharged and making a finding on the fact against the defendant. If, on the other hand, evidence in rebuttal is adduced, the evidential burden shifts back to the plaintiff. If, ultimately, the evidential burden comes to rest on the defendant, the legal burden of proof of that relevant fact would have been discharged by the plaintiff.

[emphasis added]

Similarly, the Court of Appeal in *Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank International), Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63 recognised that ss 103 and 105 of the Evidence Act (Cap 97, 1997 Rev Ed) place the burden of proving a fact on the party who asserts the existence of any fact in issue or relevant fact; the

burden may then shift to the other party to contradict, weaken or explain away the evidence led (at [30]).

217 In this case, both Dou and Zhang have given directly contradicting evidence as to whether Zhang signed the SPA and the Share Transfer. Dou's evidence is corroborated by Mr Yan Hui ("**Mr Yan**"), who claimed to have witnessed Zhang signing the documents. Both Zhang and Dou also called experts, who also gave diametrically opposite evidence as to the genuineness of Zhang's signatures on the documents. Whether Zhang has discharged the legal burden on him, therefore, turns on a close examination of the relevant evidence.

218 I deal first with the factual evidence, as I consider that to have the more direct and important bearing on the issue. In this regard, I have expressed serious doubts about the honesty and credibility of both Dou and Zhang on some of the issues discussed above. I am therefore cautious of accepting any unsupported assertions made by either of them and will give more weight where their respective testimonies are supported by, or consistent with, the objective evidence.

### ***The factual evidence***

#### *The parties' cases*

219 Dou's evidence is that, on 28 February 2015, he and Zhang signed three to four copies of the SPA and the Share Transfer Documents in the presence of Mr Yan,<sup>450</sup> and Pang signed them the next day.<sup>451</sup> Dou testified that the said

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<sup>450</sup> Dou's AEIC at paras 34 and 36.

<sup>451</sup> Dou's AEIC at para 38.

documents were signed in the evening,<sup>452</sup> in the living room of an apartment, at #08-69 Neptune Court, rented by Elcarim.<sup>453</sup> This was corroborated by Mr Yan.<sup>454</sup>

220 Zhang claims that he did not sign the SPA and Share Transfer and first saw them only after this action was commenced.<sup>455</sup> He claims he discovered that the Shares had been transferred on 30 July 2015.<sup>456</sup> He asked for copies of the transfer documents in the 3 September 2015 Letter but did not receive a response. In this regard, it is not Dou's evidence that copies of the documents were given to Zhang prior to their being disclosed in this action.

221 There are several difficulties with Dou's case.

*The terms of the SPA*

222 It is Dou's evidence that the SPA was drafted by Pang. Although this is not pleaded by Dou, in his AEIC, Dou claimed that there was a discussion between himself, Zhang and Pang in February 2015 where Pang suggested that Dou and Zhang enter into the SPA.<sup>457</sup> Pang then drafted and prepared the SPA

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<sup>452</sup> Dou's XX / Certified Transcript (Day 5 / 10 March 2023) at p 56 lines 25–26.

<sup>453</sup> Dou's XX / Certified Transcript (Day 5 / 10 March 2023) at p 56 lines 26–31, p 57 lines 16–20.

<sup>454</sup> Mr Yan's XX / Certified Transcript (Day 6 / 14 March 2023) at p 16 line 25, p 21 lines 5–8.

<sup>455</sup> Notice to Produce Document Referred to in Pleading or Affidavit dated 31 May 2021; Notice Where Documents May Be Inspected dated 8 June 2021; Reply to Defences to Counterclaim (Amendment No. 3) at para 5; Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 66 lines 14, 25–29.

<sup>456</sup> Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 38 line 7.

<sup>457</sup> Dou's AEIC at paras 32 and 33.

“in accordance with what was discussed at the said meeting”.<sup>458</sup> Dou’s failure to call Pang undermines Dou’s case. I shall elaborate on this below.

223 The SPA is a poorly drafted and confusing document. Its preamble provides as follows:

For value received, the Pledgor hereby deposits and pledges with the Pledgee, the 750,000 (SEVEN HUNDREDS AND FIFTY THOUSANDS) Ordinary Shares of Singapore Dollar One (S\$1-00) only each (Total value ”SGD SEVEN HUNDREDS AND FIFTY THOUSANDS), in the undertaking call the ELCARIM SCIENCE PTE. LTD. (UEN: 201219519Z), collateral security described below to secure the payment of the following:

750,000 (SEVEN HUNDREDS AND FIFTY THOUSANDS) Ordinary Shares of Singapore Dollar One (S\$1-00) only each, in the undertaking called the ELCARIM SCIENCE PTE. LTD. (UEN: 201219519Z).

The personal property that is pledged as collateral includes the followings:

A sum of money of Singapore Dollars SEVEN HUNDREDS AND FIFTY THOUSANDS Only and;

A sum of money representing the total assets in the most updated financial statements of the undertaking called ELCARIM SCIENCE PTE. LTD. (UEN:201219519Z).<sup>459</sup>

224 Amongst other things, it is unclear what the SPA means by the sum of \$750,000 being the “personal property that is pledged as collateral”. There is also no reference in the SPA to Dou lending Zhang the sum of \$750,000. Furthermore, on the face of it, the preamble of the SPA suggests that a sum of \$750,000 and the value of the total assets of Elcarim were pledged as collateral for the Shares, which is inconsistent with Dou’s case that the Shares were

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<sup>458</sup> Dou’s AEIC at para 33.

<sup>459</sup> Dou’s AEIC at Tab 38.

security for his loan to Zhang of \$750,000.<sup>460</sup> Nonetheless, it is not Zhang’s pleaded case that the SPA is void or unenforceable for uncertainty, or its terms are ineffective to pledge the Shares in favour of Dou.

225 Clauses 3 and 4 of the SPA provide for various events of default and the remedies for such default. The remedies for default include Dou doing the following (clause 4 of the SPA does not state if these are alternatives or if Dou may do one or more of the following):

- (a) declaring “the obligations” immediately due and payable “with demand, presentment, protest or notice to [Zhang], all of which [Zhang] expressly waives”;
- (b) enforcing against Zhang payment of \$750,000 and, in addition, another sum of money equivalent to the total assets of Elcarim;
- (c) at Dou’s option and without notice to Zhang, transfer the Shares to Dou or his nominees.

226 The relevant term is Clause 5 of the SPA, which allows Dou, as and when he thinks fit, to transfer Zhang’s shares to himself or his nominees. Clause 5 is reproduced below:

If the Pledgee has reasonable grounds to believe that the Pledgor is unable to oblige the duties under this agreement, or as and when the [Pledgee] thinks fit, he may transfer and register and Collateral [defined in the preamble reproduced at [223] above] in his name or the name of his nominees.

Dou relied on Clause 5 to transfer the Shares to himself. Clause 5 does not provide what happens to Zhang’s other obligations in that event. Unlike a

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<sup>460</sup> Zhang’s Written Reply Closing Submissions at paras 14 and 15.

transfer in the event of default as provided under Clause 4, Clause 5 does *not* provide that Dou may effect the transfer without notice to Zhang.

227 Dou says he left it to Pang to draft the SPA.<sup>461</sup> But Dou did not call Pang to give evidence to explain why or how the SPA came to be drafted in this manner (see also [295]–[301] below).

228 On any view, the SPA imposes very onerous terms on Zhang: he stood to lose the Shares at any time of Dou’s choosing<sup>462</sup> and thereby lose his interest in the business he helped build. Further, if there is an event of default, he is liable to pay not just the sum of \$750,000 but a sum equivalent to the total assets of Elcarim. No explanation was given by Dou as to why Zhang needed to pay this additional sum or how this term was arrived at. Dou claims that these terms are in accordance with what was discussed between him and Zhang<sup>463</sup> but, crucially, this alleged discussion was not put to Zhang.

229 The question then arises as to why Zhang would agree to such onerous terms. Dou’s evidence as to the circumstances leading to the SPA does not account for this. I deal with this in detail below.

*Dou’s alleged loan to Zhang*

230 The SPA was (purportedly) intended to secure the loan of \$750,000 to Zhang to finance his contribution to Elcarim’s share capital. This, in turn, raises

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<sup>461</sup> Dou’s AEIC at para 33; Dou’s XX / Certified Transcript (Day 3 / 8 March 2023) at p 42 lines 14 and 15; Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 55 line 31 – p 56 line 5.

<sup>462</sup> Zhang’s Written Closing Submissions at para 125; Zhang’s Written Reply Closing Submissions at paras 10–13.

<sup>463</sup> Dou’s AEIC at para 33.

questions of whether (a) it was agreed between Dou and Zhang that Zhang would pay for his 50% interest in Elcarim; and (b) Dou agreed to and did, in fact extend, a loan of \$750,000 to Zhang?

- (1) Did Zhang have an obligation to pay half of the capital contribution in Elcarim?

231 I find that Zhang was not obliged to contribute half of Elcarim’s capital. This contradicts Dou’s case regarding the genesis of the SPA and casts doubt on the authenticity of the SPA.

232 First, Dou’s original pleaded case does not assert that Zhang was required to pay for the Shares. In his Defence and Counterclaim, Zhang pleads that Dou would provide the “initial capital” notwithstanding that Zhang held 50% of the shares in Elcarim.<sup>464</sup> In response, Dou pleads that Zhang told him he did not have the financial ability to run a company in Singapore and that Dou told Zhang that Dou could provide the necessary financial support.<sup>465</sup> Dou also pleads that he agreed with Zhang that he and/or his Hong Kong companies would inject the necessary funds for Elcarim’s business operations as and when required, and Zhang would handle the management of Elcarim and hold 50% shares and the other 50% on trust for Dou.<sup>466</sup> Prior to an amendment made late in the proceedings on 23 January 2023 (dealt with in the next paragraph), Dou did not plead that Zhang was obliged to pay for his 50% interest in Elcarim.

233 Second, the way Dou’s advanced his case is suspicious. On 23 January 2023, Dou amended his Defence and Counterclaim to include a new paragraph

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<sup>464</sup> Defence and Counterclaim (Amendment No. 2) at para 4(f).

<sup>465</sup> Dou’s Defence to Counterclaim (Amendment No. 4) at para 5.

<sup>466</sup> Dou’s Defence to Counterclaim (Amendment No. 4) at para 6.

which referred to a “2012 Contract”,<sup>467</sup> which he claims was signed by both parties in August 2012 to “formalise the terms of the agreement referred to in paragraph six” (the “**2012 Contract**”).<sup>468</sup> The 2012 Contract expressly provides that both Dou and Zhang were to fund their own respective contributions and/or investments in Elcarim. The terms of the 2012 Contract are reproduced in full below:

In August 2012, Mr. Dou Suoke (Passport No: [xxxxxxxx]) and Singaporean Mr. Zhang Yongtai (ID:[xxxxxxxx]) have reached the agreement in Beijing, China, as follows:

1. In respect of ELCARIM SCIENCE PTE LTD , a company founded by Mr. Zhang Yongtai in Singapore in August 2012, both parties each hold 50% of the company’s shares.
2. The 50% company shares owned by Mr. Dou Suoke are placed under the name of Mr. Zhang Yongtai, and Mr. Zhang Yongtai holds these 50% company shares on behalf of Mr. Dou Suoke.
3. The registered share capital of the company are contributed by both parties. Mr. Zhang Yongtai is obliged to ensure that the funds remitted by Mr. Dou Suoke (or Dou Suoke’s company) through Mr. Zhang Yongtai’s personal account are solely allocated as investment from Mr. Dou Suoke into ELCARIM SCIENCE PTE LTD. for the purposes of share capital as well as company development.
4. Mr. Zhang Yongtai holds position as representative of the company. Monthly salary is SGD10,000. This shall be effective from September 2012.

234 Zhang disputes the authenticity of the 2012 Contract in his Reply to Defences to Counterclaim,<sup>469</sup> and claims he only saw the 2012 Contract for the first time in Dou’s AEIC filed on 27 January 2023. Zhang states that the terms

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<sup>467</sup> Dou’s AEIC at Tab 6.

<sup>468</sup> Dou’s Defence to Counterclaim (Amendment No. 4) at para 6A.

<sup>469</sup> Reply to Defences to Counterclaim (Amendment No. 3) at para 3A.

of their joint venture were never reduced into writing<sup>470</sup> and testified that he did not sign the 2012 Contract.<sup>471</sup>

235 The 2012 Contract is, on its face, a material document evidencing the terms of the agreement between the parties. Dou is relying on the 2012 Contract and therefore bears the legal burden of proving that Zhang signed the same. However, the authenticity of the 2012 Contract is doubtful.

236 First, Dou did not offer a good explanation as to why the 2012 Contract was produced so late.<sup>472</sup> He claimed it was found by his employee, Ms Zhang Hui (“**Ms Zhang**”), only in November 2022 after a search of the offices of Liontime in Beijing.<sup>473</sup> But he offered two different versions of how that search was initiated:<sup>474</sup>

(a) In his affidavit of 9 February 2023, Dou claimed that his accounting expert from Deloitte had requested that Elcarim provide supporting documents for his review, including any loan agreements between Zhang and Dou that were made in 2012 and 2013. Dou stated that he “could not recall whether such loan agreements existed” and

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<sup>470</sup> Zhang’s AEIC at para 11.

<sup>471</sup> Zhang’s XX / Certified Transcript (Day 7 / 15 March 2023) at p 101 lines 1–9; Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 66 lines 26–29.

<sup>472</sup> Zhang’s Written Closing Submissions at paras 180 and 184.

<sup>473</sup> Dou’s affidavit dated 9 February 2023 in support of Elcarim’s Reply and Defence to Counterclaim (Amendment No. 3) and Dou’s Defence to Counterclaim (Amendment No. 4) at para 8.

<sup>474</sup> Zhang’s Written Closing Submissions at paras 200–202.

when he asked Ms Zhang, she “recalled vaguely that [Dou] had previously signed one such agreement”;<sup>475</sup>

(b) In his cross-examination, Dou stated twice that when he had been asked by Deloitte if there was anything in writing in relation to the joint venture in Elcarim, *he* had remembered that there was an agreement in 2012 and had instructed his staff in Beijing and Hong Kong to look for it. It was following these searches that they “found the [2012 Contract]” within the reimbursement file of the finance department”.<sup>476</sup>

Dou could not explain this inconsistency and merely reiterated that when Deloitte asked for documents, he “vaguely [did] remember having such a document but at that point in time, [he could not] confirm [it]”, and asked Ms Zhang about it.<sup>477</sup>

237 Second, if all that was required to trigger Dou’s memory was his expert asking him if there were documents evidencing his agreement with Zhang, it is surprising that that question would not have been asked or contemplated when he was preparing his pleadings in this action.<sup>478</sup> It is also curious that Dou testified as follows:

I did not think that it was an important document in 2012. It was until 2022 when Deloitte questioned us as to whether there were any written documents because that would be important to me. And frankly speaking, before that, I’ve never thought that such a document is important. It’s upon their reminder that I started to try to recall the existence of such document. And

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<sup>475</sup> Dou’s affidavit dated 9 February 2023 in support of Elcarim’s Reply and Defence to Counterclaim (Amendment No. 3) and Dou’s Defence to Counterclaim (Amendment No. 4) at paras 7 and 8.

<sup>476</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 48 lines 16–30.

<sup>477</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 51 lines 22–26.

<sup>478</sup> Zhang’s Written Closing Submissions at paras 198 and 203.

before this actually I had no impression of such a document at all.<sup>479</sup>

Dou’s effort to downplay the significance of the 2012 Contract to explain the delay in producing it contradicts its purported significance to his case as the only written record of the terms of the joint venture between him and Zhang.

238 Third, even if Dou had forgotten about the 2012 Contract, he would not have forgotten an important term that Zhang was to pay for his own shares.<sup>480</sup> However, as noted above, this was not pleaded in paragraph 6 of his Defence to Counterclaim (Amendment No. 4), which in fact gave a contrary impression.

239 Fourth, the terms of the 2012 Contract are unusual. It did not “formalise the agreement” pleaded<sup>481</sup> but introduced other terms.<sup>482</sup> Over and above Zhang’s obligation to pay for his own shares, it stated that Zhang was obliged to ensure that Dou’s funds remitted to Zhang’s personal bank account would be used exclusively for Elcarim’s registered share capital and business development. It is odd that a term as specific as that would be discussed at the inception of the joint venture and put in writing, and Dou did not explain in his AEIC or at trial why that term was included or even discussed.<sup>483</sup> Zhang was also not cross-examined on what was discussed at the meeting and whether they were accurately recorded in the 2012 Contract.

240 Indeed, when Dou was cross-examined on this, he said that he did not know, prior to August 2013, that he could transfer moneys for his share capital

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<sup>479</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 49 lines 6–11.

<sup>480</sup> Zhang’s Written Closing Submissions at paras 186–189.

<sup>481</sup> Dou’s Defence to Counterclaim (Amendment No. 4) at para 6.

<sup>482</sup> Zhang’s Written Closing Submissions at para 186.

<sup>483</sup> Zhang’s Written Closing Submissions at paras 190–196.

contribution directly to Elcarim.<sup>484</sup> He testified that Zhang had suggested that Dou transfer moneys meant for Elcarim's capital to Zhang, for him to then transfer to Elcarim's account,<sup>485</sup> and it was only after around August 2013 that Pang informed Dou that he could pay such funds directly to Elcarim.<sup>486</sup> I note that, somewhat confusingly, Dou also testified as follows:

Q The reason why it has to be paid into Zhang Yongtai's personal account – the 172,500 – is because it's meant for capital contribution. *And since Mr Zhang Yongtai was a registered 100% shareholder, he has to be seen as the one who is paying into the capital.* You agree or disagree? That's the whole reason why it's paid into Zhang Yongtai's account. Agree or disagree?

A I definitely disagree.

[emphasis added]

If Dou did not believe that his capital contributions to Elcarim had to be routed through Zhang, then it is inexplicable why he had begun and continued with such an arrangement for some time and even after August 2013. Specifically, on 30 September 2013, 12 November 2013 and 14 November 2013, Dou made payments to Zhang which were intended to be capital contributions to Elcarim.<sup>487</sup>

241 Dou called expert evidence to support his assertion that Zhang's signature on the 2012 Contract was genuine. For reasons I will give later, I place very little weight on that evidence. In any event, it does not displace the strong inference from the evidence above that the 2012 Contract is not a genuine document.

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<sup>484</sup> Dou's XX / Certified Transcript (Day 4 / 9 March 2023) at p 93 lines 6–29.

<sup>485</sup> Dou's XX / Certified Transcript (Day 4 / 9 March 2023) at p 92 lines 7–10.

<sup>486</sup> Dou's XX / Certified Transcript (Day 4 / 9 March 2023) at p 93 lines 15–18.

<sup>487</sup> P2.

242 By virtue of the foregoing, I do not accept the 2012 Contract as persuasive evidence that Zhang was obliged to provide 50% of Elcarim’s capital.

243 Third, save for the 2012 Contract, there is no documentary evidence, including any emails, evidencing Zhang’s obligation to contribute to Elcarim’s share capital. If Zhang did owe an obligation to make capital contributions and failed to do so from 2012 until the alleged signing of the SPA on 28 February 2015, it is strange why Dou would not have made any requests for Zhang to either repay Dou or make capital injections into Elcarim, or recorded in writing the sums which he had loaned to Zhang. In contrast, Dou was careful to record a loan of \$90,000 made by FDS to Zhang (according to Dou’s own evidence in the DC Suit)<sup>488</sup> and prepare a written acknowledgment by Zhang of a personal loan of \$7,000 from Dou.<sup>489</sup> As shown earlier, even commission payments to Zhang were evidenced in writing. Yet, there is no documentary evidence of a much larger loan to Zhang.<sup>490</sup>

(2) Agreement between Dou and Zhang to increase Elcarim’s share capital

244 Dou pleads that around the end of September 2013, Zhang suggested to him that Elcarim’s share capital be increased to \$1,500,000 “to reflect Elcarim’s higher earnings”.<sup>491</sup> Zhang denies this.<sup>492</sup> Dou pleads that his contributions to Elcarim, whether done personally or through his companies, as at September

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<sup>488</sup> 4AB at pp 1124, 1159 and 1160 (Dou’s AEIC in the DC Suit).

<sup>489</sup> 4AB at p 1316.

<sup>490</sup> Zhang’s Written Closing Submissions at paras 132 and 133.

<sup>491</sup> Dou’s Defence to Counterclaim (Amendment No. 4) at para 18(a).

<sup>492</sup> Reply to Defences to Counterclaim (Amendment No. 3) at para 6; Zhang’s AEIC at paras 102 and 106.

2013 was approximately \$1m,<sup>493</sup> and Dou’s position is that as at October 2013, Elcarim had a paid-up share capital of \$800,000.<sup>494</sup> Dou claims he procured his companies to make the following payments to Zhang’s personal HSBC account as loans to Zhang for Zhang’s capital contribution of \$750,000,<sup>495</sup> and to increase the capital of Elcarim to \$1.5m:<sup>496</sup>

- (a) on 30 September 2013, UAT transferred a sum of GBP100,000 (s/n 18 on P2);
- (b) on 30 September 2013, FDS transferred a sum of GBP 150,000 (s/n 19 on P2);
- (c) on 12 November 2013, FDS transferred a sum of EUR150,000 (s/n 21 on P2); and
- (d) on 14 November 2013, FDS transferred a sum of EUR 150,000 (s/n 23 on P2).

(collectively, the “**Payments**”)

245 Zhang admits that Dou made the above payments to his personal HSBC account, which he then transferred to Elcarim but maintained that these were

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<sup>493</sup> Dou’s Defence to Counterclaim (Amendment No. 4) at para 18(b).

<sup>494</sup> Zhang’s SAEIC at para 11; Zhang’s Written Closing Submissions at para 103.

<sup>495</sup> Dou’s Defence to Counterclaim (Amendment No. 4) at paras 18(a)–18(c)(iv); Elcarim’s Reply and Defence to Counterclaim (Amendment No. 2) at paras 11(a)–11(c)(iv).

<sup>496</sup> Dou’s Defence to Counterclaim (Amendment No. 4) at paras 18(ca)–18(cc); Elcarim’s Reply and Defence to Counterclaim (Amendment No. 2) at para 11(cb).

intended as Dou's injection of capital into Elcarim.<sup>497</sup> He further claimed that these moneys were, in any event, routed back to Dou.<sup>498</sup>

246 Dou's case is not supported by the evidence.

247 First, it is not logical that Zhang would suggest an increase in capital which would require him to provide funds which he did not have. Even on Dou's case, Dou needed to loan moneys to Zhang to make this payment. As stated above, it is also Dou's own pleaded case that Zhang informed him that he did not have the financial ability to run a company in Singapore.<sup>499</sup> It is even more unlikely that Zhang would impose such a heavy financial commitment on himself when Elcarim was only about a year into its operations.

248 Second, as noted above (at [243]), although Dou claims to have lent large sums of money to Zhang, there is no documentary evidence that these payments were loans to Zhang.

249 Third, and importantly, Dou confirmed in cross-examination that Zhang did not speak to him about increasing Elcarim's share capital to \$1.5m and that he did not reach an agreement with Zhang on this:<sup>500</sup>

Court: Listen to the question carefully. Was there any agreement between you and Mr Zhang that the paid up capital of Elcarim should be 1.5 million.

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<sup>497</sup> Reply to Defences to Counterclaim (Amendment No. 3) at paras 5B, 5D and 6A; Zhang's AEIC at para 106.

<sup>498</sup> Reply to Defences to Counterclaim (Amendment No. 3) at paras 6A and 6C; Zhang's AEIC at para 106.

<sup>499</sup> Dou's Defence to Counterclaim (Amendment No. 4) at para 5.

<sup>500</sup> Zhang's Written Closing Submissions at para 117.

[Dou]: I did not agree to this. Neither has he spoke to me about this before.<sup>501</sup>

This completely undermines Dou’s pleaded case.<sup>502</sup> I also note that Zhang was not cross-examined about the purported agreement to increase the share capital in Elcarim to \$1.5m.

250 Fourth, based on the relevant exchange rates at the time, the four payments referred to above totalled about S\$1m, and not S\$750,000, which Dou claimed he was lending Zhang.<sup>503</sup> Dou does not explain this discrepancy. Perhaps realising this difficulty, Dou sought to conceal it by amending his pleadings:

(a) Dou’s Defence to Counterclaim (Amendment No. 3) reads:

As the Plaintiff did not have the financial ability to pay for the increase in share capital, the 2nd Defendant lent the Plaintiff money in order that the Plaintiff could pay for his share of the capital contribution to Elcarim. The 2nd Defendant therefore procured *a transfer of approximately S\$750,000 to Elcarim* the following transfers to Elcarim directly and/or indirectly on the Plaintiff’s behalf.<sup>504</sup>

[emphasis added]

(b) Dou’s Defence to Counterclaim (Amendment No. 4) reads:

As the Plaintiff did not have the financial ability to pay for the increase in share capital, the 2nd Defendant lent the Plaintiff money in order that the Plaintiff could pay for his share of the capital contribution to Elcarim. The 2nd Defendant therefore procured *the following*

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<sup>501</sup> Dou’s XX / Certified Transcript (Day 4 / 9 March 2023) at p 94 lines 23–27.

<sup>502</sup> Zhang’s Written Closing Submissions at para 117.

<sup>503</sup> Zhang’s Written Closing Submissions at paras 99 and 100.

<sup>504</sup> Dou’s Defence to Counterclaim (Amendment No. 3) at para 18(c).

*transfers to Elcarim* directly and/or indirectly on the Plaintiff's behalf.<sup>505</sup>

[emphasis added]

(c) The listed transfers remain consistent in both versions.

When confronted with this inconsistency, Dou's explanation was that his lawyers had misunderstood what he said, and Zhang's lawyers had given them timelines that were too short.<sup>506</sup> I do not accept this explanation.

251 The incongruence between the agreed loan of \$750,000 and the sums sent to Zhang casts doubt on Dou's case that the Payments were extended *specifically* as "transfers to Elcarim directly and/or indirectly on [Zhang's] behalf".<sup>507</sup>

252 Fifth, it is Dou's evidence that he was only aware of Elcarim's registered capital as at 2013 *in 2021*:

A I got to know that the company's registered capital in 2013 was this figure only in April 2021, so how am I supposed to agree? So if you're asking if I agree, are you asking if I agree to it today or prior to April 2021?

Q I put it to you that it's *not true that you didn't know* because paying up capital is something that you have always been liaising with Zhang and with Pang. And you know that ACRA record is being updated.

A No.<sup>508</sup>

...

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<sup>505</sup> Dou's Defence to Counterclaim (Amendment No. 4) at para 18(c).

<sup>506</sup> Dou's XX / Certified Transcript (Day 5 / 10 March 2023) at p 46 line 29 – p 47 line 16.

<sup>507</sup> Dou's Defence to Counterclaim (Amendment No. 4) at para 18(c).

<sup>508</sup> Dou's XX / Certified Transcript (Day 5 / 10 March 2023) at p 19 lines 10–16.

A It's not a matter of whether I agree or disagree. Of course, I would disagree, *but the fact was I--I'm not aware of this. I knew nothing about this prior to May 2021. [I started] reading the company's financial statements in 2021 and discovered this figure. It was then that I got the accountants to try and explain---give an explanation for this amount.*

Q I put it to you that it's definitely not true that you only know of all this in 2021 because *by 2018, you already asked your accountant, Donald Ho, to do up the accounts for you for whatever reason.*

A *I disagree.*<sup>509</sup>

...

Q Are you telling us that you know nothing about the payment of capital into Elcarim Science until May of 2021?

A Sometime in October 2012, Zhang Yongtai told me that the 172,000 that I have transferred to him would be used towards the company's registered capital. *And I am not aware of anything else. And I happened to see the financial statements in May 2021. And we found the general ledger for 2013 in early 2022.*<sup>510</sup>

[emphasis added]

253 If this is true, how did Dou know how much to lend to Zhang as Zhang's share of the capital contributions?<sup>511</sup> Dou did not explain.

254 I therefore find that Zhang did not suggest the increase of Elcarim's share capital to \$1.5m and that there was no agreement between them that Dou would loan moneys to Zhang to fund his share of that increase.

(3) How the moneys were used

255 The following table sets out the movement of funds:

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<sup>509</sup> Dou's XX / Certified Transcript (Day 5 / 10 March 2023) at p 20 lines 11–19.

<sup>510</sup> Dou's XX / Certified Transcript (Day 5 / 10 March 2023) at p 22 lines 12–17.

<sup>511</sup> Zhang's Written Closing Submissions at paras 113–116.

Sum and date of transfer to Zhang	Movement of funds (left to right)			
GBP100,000 30 September 2013	UAT	Zhang (s/n 18 on P2)	Elcarim (s/n 20 on P2)	
GBP150,000 30 September 2013	FDS	Zhang (s/n 19 on P2)		
EUR150,000 12 November 2013	FDS	Zhang (s/n 21 on P2)	Elcarim	EUR270,000 to UAT (s/n 22 and 24 on P2)
EUR150,000 14 November 2013	FDS	Zhang (s/n 23 on P2)	Elcarim	EUR30,000 to Elcarim's SGD account

256 I deal first with the first two of the Payments. Zhang pleads that they were “meant for capital injection to [Elcarim] and later forwarded to the suppliers in the UK and Europe or returned to Dou”,<sup>512</sup> but does not plead specifically *how* the first two Payments were returned to Dou; and did not give any evidence that the first two Payments were routed back to Dou or his companies.<sup>513</sup> The evidence does not assist in determining whether the first two Payments were Dou’s contributions to Elcarim’s share capital or Dou’s loan to Zhang as Zhang’s contributions.

257 The evidence, however, suggests that the third and fourth Payments were intended as payments for specific transactions. This suggests that Dou had more likely made the two Payments for those purposes and, therefore, not as loans to Zhang. It is undisputed that upon receiving the third and fourth Payments from FDS, Zhang transferred to same amounts to Elcarim’s OCBC

<sup>512</sup> Reply to Defences to Counterclaim (Amendment No. 3) at para 6C.

<sup>513</sup> Report of Elcarim’s Accounting Expert at paras 4.12, 4.18 and 4.20; 2<sup>nd</sup> Supplemental Report of Elcarim’s Accounting Expert at para 6.2.

account on the same day. It is evident that most of the moneys sent, namely EUR270,000, was then paid by Elcarim to UAT<sup>514</sup> and that these payments to UAT would not have been possible but for the injection of funds (originally) from FDS.

258 Zhang’s evidence was that Dou was “round-tripping” his moneys and there was, in effect, no increase in the share capital and, therefore, no consideration for the SPA.<sup>515</sup>

259 Dou’s evidence was that Elcarim had paid UAT the sum of EUR270,000 pursuant to a legitimate transaction, namely that Elcarim was paying UAT for equipment it had purchased to supply its customer, Miller and Bokia Company Limited (“**Miller**”).<sup>516</sup> Dou relied on a purchase order issued by Elcarim to UAT dated 18 October 2012 for the contract sum of US\$1,028,000, of which 35% was to be paid as a downpayment after the equipment had passed the evaluation test (the “**18 October 2012 PO**”).<sup>517</sup> Dou claimed that the sum of EUR270,000 was for the said downpayment, and had been paid in Euros (instead of US\$) as the exchange rate then was favourable.<sup>518</sup>

260 Even accepting Dou’s case that the payment to UAT was a legitimate business transaction, the immediacy of the transfer from FDS to Zhang, from

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<sup>514</sup> Zhang’s AEIC at para 106(b); Dou’s AEIC at Tab 35 (Dou’s AEIC at pp 245 and 246) / 2AB at pp 649 and 650.

<sup>515</sup> Reply to Defences to Counterclaim (Amendment No. 3) at paras 6A, 6B and 6C; Zhang’s AEIC at paras 25, 106(b) and 107 (see also Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) p 11 lines 15–19, p 13 lines 8–12, p 14 lines 19–22).

<sup>516</sup> Dou’s SAEIC at paras 13, 14, 16 and Tab 1.

<sup>517</sup> Plaintiff’s Bundle of Documents at pp 6 and 7.

<sup>518</sup> Dou’s SAEIC at para 14; Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 12 lines 11–14.

Zhang to Elcarim, and finally from Elcarim to UAT suggests that Dou was sending funds to Elcarim to enable it to meet its obligation to UAT. This makes it less likely that the third and fourth payments were loans to Zhang.

*Events leading to the SPA*

261 It is Dou’s pleaded case that the SPA was prompted by two events:

(a) a disagreement between Zhang and Pang in April 2014 over which delivery company Elcarim should engage, which Dou managed to resolve;<sup>519</sup> and

(b) another disagreement in January 2015 between Zhang and Pang over “company affairs”, during which Zhang threatened to wind up Elcarim. Dou testified that he did not know why Zhang and Pang quarrelled.<sup>520</sup> Dou informed Zhang that he had invested substantial sums in Elcarim and that Zhang should either (i) return the loans he had made to Zhang, or (ii) he and Zhang should enter the SPA. Zhang chose the latter.<sup>521</sup>

262 Zhang denied the above. In particular, he denied having any arguments with Pang.

263 I note that Dou’s evidence with respect to the cause of Zhang’s first quarrel with Pang – the change of delivery company – is not supported by the

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<sup>519</sup> Dou’s Defence to Counterclaim (Amendment No. 4) at para 18(d); Elcarim’s Reply and Defence to Counterclaim (Amendment No. 2) at para 11(d).

<sup>520</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 54 lines 22–24.

<sup>521</sup> Dou’s Defence to Counterclaim (Amendment No. 4) at para 18(e); Elcarim’s Reply and Defence to Counterclaim (Amendment No. 2) at para 11(e); Dou’s AEIC at paras 29–32.

evidence. Dou claimed under cross-examination that Zhang's insistence on using his personal credit card to pay Elcarim's expenses prevented Elcarim from changing the delivery company to Speedmark because "Speedmark had refused the use of a personal credit card to pay for GST, and [required] that [Elcarim's] account must be directly linked to the Customs account".<sup>522</sup> The explanation was incoherent. It is unclear why Speedmark would refuse the use of Zhang's credit card, nor what a "Customs account" is and why it must be linked to Elcarim's account for Speedmark to be engaged. Zhang's evidence is that there was no issue with meeting Speedmark's requirement,<sup>523</sup> and Dou does not adduce any evidence to support that Speedmark could not be engaged due to the abovementioned problems.

264 More importantly, Dou gives no details of the second quarrel between Zhang and Pang, although this allegedly caused Zhang to threaten to wind up Elcarim, and triggered the execution of the SPA. It is surprising that Dou did not appear to have asked Pang about the reason for the argument.

265 Dou did not call Pang to give evidence. He instead called Mr Chang, who testified that he had witnessed Zhang and Pang having a heated argument in Elcarim's office sometime before Chinese New Year in 2015 and that he had informed Dou of this.<sup>524</sup> I do not place much weight on this evidence – Mr Chang testified that he could not hear the contents of the argument as it was

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<sup>522</sup> Dou's XX / Certified Transcript (Day 5 / 10 March 2023) at p 81 lines 12–28, p 82 lines 6–8, 20–23.

<sup>523</sup> Dou's XX / Certified Transcript (Day 5 / 10 March 2023) at p 82 lines 17–19, 25, p 83 lines 4–9.

<sup>524</sup> Mr Chang's XN / Certified Transcript (Day 6 / 14 March 2023) at p 34 lines 4–20; Mr Chang's XX / Certified Transcript (Day 6 / 14 March 2023) at p 36 lines 15–19.

behind a closed door.<sup>525</sup> Further, he was and continues to be effectively Dou's employee who had been transferred by Dou from Dou's company in China to work in Elcarim.<sup>526</sup>

266 Further, it is highly improbable that Zhang would threaten to wind up Elcarim, a business he was principally responsible for building and from which he was receiving a salary. This is especially as its business was improving in 2015. In this regard, Elcarim's revenue between 2014 and 2015 increased three-fold.<sup>527</sup>

267 Even more unlikely was the fact that Zhang would then agree to onerous terms under the SPA (see above at [222]–[228]), and put the Shares in jeopardy over a threat which (according to Dou) Zhang himself made (*ie*, to wind up Elcarim). It would be a bizarre act of self-sabotage which a reasonable person would not likely make.

#### *Execution of the SPA*

268 I find Dou's evidence in relation to the execution of SPA not credible.

269 Dou gave inconsistent evidence in relation to the execution of the SPA, including where it was signed and how many copies were executed:

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<sup>525</sup> Certified Transcript (Day 6 / 14 March 2023) at p 48 lines 16–22.

<sup>526</sup> Mr Chang's AEIC at paras 1 and 3; Mr Chang's XX / Certified Transcript (Day 6 / 14 March 2023) at p 37 lines 6–14; Dou's XX / Certified Transcript (Day 1 / 3 March 2023) at p 72 line 23 – p 73 line 1.

<sup>527</sup> Defendant's Bundle of Documents at p 87.

(a) In relation to the number of copies of SPA which were signed,<sup>528</sup> Dou first pleaded that it was one copy<sup>529</sup> before changing it to five copies;<sup>530</sup> at trial, his evidence was that “at least three to four copies” were signed.<sup>531</sup>

(b) The number of copies of Share Transfer Form(s), Share Transfer EGM Notice(s), and Share Transfer Director’s Resolution(s) which were signed also varied from one<sup>532</sup> to three<sup>533</sup> and finally to five.<sup>534</sup> He testified that “at least three to four copies” were signed.<sup>535</sup>

(c) Dou was also inconsistent as to where the documents, including the SPA, had been signed.<sup>536</sup> He initially pleaded that they were signed at Zhang’s apartment located at #18-73 Neptune Court,<sup>537</sup> but in his AEIC and at trial said that the documents were signed at Elcarim’s apartment at #08-69 Neptune Court.<sup>538</sup> At trial, Dou also testified that the documents had been signed at the “lobby of [Zhang’s] apartment”.<sup>539</sup>

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<sup>528</sup> Zhang’s Written Closing Submissions at para 129.

<sup>529</sup> Dou’s Defence to Counterclaim at para 18(g).

<sup>530</sup> Dou’s Defence to Counterclaim (Amendment No. 2) at para 18(g).

<sup>531</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 57 lines 29 and 30.

<sup>532</sup> Dou’s Defence to Counterclaim at para 19.

<sup>533</sup> Dou’s Defence to Counterclaim (Amendment No. 1) at para 19.

<sup>534</sup> Dou’s Defence to Counterclaim (Amendment No. 4) at para 19.

<sup>535</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 57 lines 29 and 30.

<sup>536</sup> Zhang’s Written Closing Submissions at para 131; Elcarim and Dou’s Written Reply Closing Submissions at para 41.

<sup>537</sup> Further and Better Particulars in relation to Dou’s Defence to Counterclaim at para 5(ii).

<sup>538</sup> Dou’s AEIC at para 34; Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 56 lines 29–31, p 57 lines 16–20.

<sup>539</sup> Dou’s XX / Certified Transcript (Day 3 / 8 March 2023) at p 42 lines 17–19.

(d) Dou also gave inconsistent evidence as to when Pang signed on the SPA and the Share Transfer Form as a witness, as well as the Share Transfer EGM Notice and Share Transfer Director's Resolution:<sup>540</sup> he first pleaded that Pang signed the SPA, Share Transfer EGM Notice and Share Transfer Director's Resolution, on 28 February 2015 at the same meeting attended by Zhang, Dou and Mr Yan.<sup>541</sup> However, this was later amended to state that Pang signed the SPA on 28 February 2015, but the Share Transfer EGM Notice and Share Transfer Director's Resolution on 1 March 2015.<sup>542</sup> Dou's AEIC states that Pang was not present at the meeting on 28 February 2015 and had instead signed the SPA, Share Transfer Form and Share Transfer Director's Resolution the next day.<sup>543</sup>

These changes cannot be adequately explained by lapses of memory.<sup>544</sup> I therefore doubt the credibility of Dou's account of the signing of the SPA.<sup>545</sup>

270 Dou's evidence that Zhang had signed the SPA and Share Transfer was corroborated by Mr Yan. According to Mr Yan, he was paying Dou a personal visit in Singapore and agreed to witness the execution of the documents at Dou's request.<sup>546</sup> He testified that he was aware of what these documents were as he had glanced at them, and Dou had explained the context to him. He recalled that

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<sup>540</sup> Zhang's Written Closing Submissions at para 130.

<sup>541</sup> Dou's Defence to Counterclaim (Amendment No. 3) at paras 18(g), 19(b) and 19(c). See also Further and Better Particulars in relation to Dou's Defence to Counterclaim at para 6(iii)(c).

<sup>542</sup> Dou's Defence to Counterclaim (Amendment No. 4) at paras 18(f), 18(g), 19(b) and 19(c).

<sup>543</sup> Dou's AEIC at paras 34 and 38.

<sup>544</sup> Elcarim and Dou's Written Reply Closing Submissions at para 39.

<sup>545</sup> Elcarim and Dou's Written Closing Submissions at para 36.

<sup>546</sup> Mr Yan's AEIC at para 7.

the signing took place at Elcarim’s apartment at Neptune Court,<sup>547</sup> which is consistent with Dou’s AEIC and his (final) position under cross-examination.

271 I do not place much weight on Mr Yan’s evidence.<sup>548</sup> He is Dou’s close friend, having known him since 2000.<sup>549</sup> While he did not waver in his evidence with respect to the execution of the documents, that does not necessarily mean it is accurate or truthful as his evidence was not complicated. I note that Mr Yan became less certain and volunteered evidence helpful to Dou when asked about other matters:

(a) Dou pleaded that it was understood and agreed between Zhang and himself that the Share Transfer Form, Share Transfer EGM Notice and Share Transfer Director’s Resolution could be dated any time when Zhang’s shares were to be transferred to Dou.<sup>550</sup> When asked to provide particulars, Dou pleaded that the said agreement and understanding were orally reached on 28 February 2015 at Elcarim’s offices in the presence of Zhang, Pang, Mr Yan and himself.<sup>551</sup> Dou did not put this to Zhang at trial.

(b) When Mr Yan was shown the particulars provided by Dou, he initially testified that he did not know any of these things. He said he could not remember this as it was a long time ago and that he never

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<sup>547</sup> Mr Yan’s AEIC at paras 6 and 7.

<sup>548</sup> Elcarim and Dou’s Written Closing Submissions at paras 36–38; Elcarim and Dou’s Written Reply Closing Submissions at para 50.

<sup>549</sup> Mr Yan’s XX / Certified Transcript (Day 6 / 14 March 2023) at p 10 lines 7–14; Elcarim and Dou’s Written Closing Submissions at para 38.

<sup>550</sup> Dou’s Defence to Counterclaim (Amendment No. 4) at para 20.

<sup>551</sup> Further and Better Particulars in relation to Dou’s Defence to Counterclaim at paras 6(i) and 6(iii).

attended or participated in any meeting in Elcarim's offices.<sup>552</sup> As noted above, this agreement and understanding was also not put to Zhang.

(c) Perhaps realising that his answer was not helpful to Dou, Mr Yan then changed his evidence and said that he may have been present at the meeting but was drinking tea at the back of the room and did not participate in the discussions or pay attention to what was being said.<sup>553</sup>

(d) I found it incredible that having first claimed that he could not remember attending any meeting at Elcarim, Mr Yan was then able to say what beverage he was consuming at a meeting at Elcarim.

272 Dou's case regarding the execution of the SPA and Share Transfer Documents is therefore suspicious and calls into question the legitimacy of the Share Transfer.

*Events after the execution of the SPA*

273 I find that incidents after the (alleged) execution of the SPA also suggest that Zhang did not sign the SPA.

(1) Ultimatum given by Dou just before June 2015

274 Dou gave details of another argument, this time between Zhang and himself, which had led to him deciding that Zhang should leave Elcarim. Dou claimed that Zhang had insisted on using his personal credit card to make Elcarim's GST payments to IRAS and procuring Elcarim to reimburse him by

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<sup>552</sup> Mr Yan's XX / Certified Transcript (Day 6 / 14 March 2023) at p 14 lines 3, 14 and 17.

<sup>553</sup> Mr Yan's XX / Certified Transcript (Day 6 / 14 March 2023) at p 19 lines 28–30, p 20 lines 5–8.

paying Elcarim Group Pte Ltd (“**Elcarim Group**”), an unrelated company owned by Zhang.<sup>554</sup> Dou claimed that these payments could make Elcarim’s account “messy” and created difficulties for Elcarim, and therefore objected to it. When Zhang refused to stop this practice, he gave Zhang an ultimatum, directing him to stop this practice or leave Elcarim.<sup>555</sup> When Zhang did not respond by the deadline set by Dou, Dou decided to exercise his rights under the SPA and transferred the Shares to himself on 10 June 2015,<sup>556</sup> and terminated Zhang.<sup>557</sup> When asked why Zhang would insist on using his credit card, Dou said that Zhang had stated that he wanted to earn reward points on his credit card<sup>558</sup> but later said he was unsure.<sup>559</sup> Zhang’s evidence is that there was no such disagreement between him and Dou in May or June 2015.<sup>560</sup>

275 I found Dou’s account far-fetched. First, Dou did not explain why making reimbursements to the Elcarim Group would make things “messy”, or why this was so serious a problem as to warrant giving an ultimatum to, and finally removing, Zhang.<sup>561</sup> Dou’s evidence that it was Pang who highlighted the accounting difficulties to him,<sup>562</sup> but he did not call Pang to explain or

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<sup>554</sup> Dou’s AEIC at paras 39 and 40; Dou’s XX / Certified Transcript (Day 3 / 8 March 2023) at p 38 lines 16–26; Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 81 lines 22 and 23.

<sup>555</sup> Dou’s AEIC at para 40; Dou’s XX / Certified Transcript (Day 3 / 8 March 2023) at p 38 lines 12–15, 28–30; Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 64 line 21 – p 65 line 6.

<sup>556</sup> Dou’s AEIC at paras 40 and 41.

<sup>557</sup> Dou’s AEIC at paras 41–43; Dou’s XX / Certified Transcript (Day 3 / 8 March 2023) at p 39 lines 12–14.

<sup>558</sup> Certified Transcript (Day 5 / 10 March 2023) at p 77 lines 8–16.

<sup>559</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 81 lines 17 and 18.

<sup>560</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 41 lines 4–7.

<sup>561</sup> Zhang’s Written Closing Submissions at para 139.

<sup>562</sup> Dou’s XX / Certified Transcript (Day 3 / 8 March 2023) at p 24 line 10 – p 25 line 10.

corroborate this. Second, when cross-examined, Dou changed his evidence and said that the reimbursement was made to Zhang personally and not Elcarim Group, although Zhang apparently transferred the money to Elcarim Group.<sup>563</sup> This makes his case on the accounting issues even more difficult to understand.<sup>564</sup> Third, no evidence was given as to the quantum of payments to IRAS allegedly being made by Zhang using his credit card. There were, therefore, no details as to whether the “difficulties” were even material, and what benefit Zhang derived, if any, for defying Dou. Fourth, there is nothing in writing evidencing the “ultimatum” Dou gave Zhang or the “deadline” he gave, although this was a serious matter. Further, Dou proceeded to transfer the Shares to himself despite not hearing from Zhang. Fifth, and importantly, on Dou’s case, Zhang would know that Dou could exercise his rights at any time under the SPA, and he would consequently lose the Shares, his job and everything he helped build. It is bizarre that Zhang would risk all that over something as petty as the use of his credit card or would keep silent in the face of the “ultimatum” allegedly given.

276 The more likely explanation is that Dou simply wanted to get rid of Zhang and had contrived a disagreement over the use of Zhang’s credit card to explain his conduct after the fact.<sup>565</sup> This by itself does not necessarily mean that the SPA is invalid, but it does suggest that Dou was laying the groundwork for Zhang’s eventual removal and the confiscation of the Shares.

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<sup>563</sup> Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 81 lines 20–23.

<sup>564</sup> Zhang’s Written Closing Submissions at para 140.

<sup>565</sup> Zhang’s Written Closing Submissions at para 144; Elcarim and Dou’s Written Reply Closing Submissions at para 49.

(2) Meetings on 10 and 11 June 2015

277 As stated above, Dou procured the Shares to be transferred to himself on 10 June 2015. It is undisputed that Zhang and Dou met on 10 June 2015 at Elcarim’s offices, where Dou asked Zhang to choose between resigning or being terminated by Elcarim. Zhang refused to resign and was terminated.<sup>566</sup> In his AEIC, Zhang only stated he was terminated and did not mention that he was given a choice to resign.<sup>567</sup> I find that omission immaterial as there is no dispute that he was terminated.

278 What is more revealing is that it is not either party’s evidence that Zhang was informed that the Shares had been transferred to Dou. Indeed, Dou’s AEIC makes no mention of him informing Zhang that he had enforced his rights under the SPA and taken the Shares. This is odd, given that such a transfer would be a significant event. Further, the parties would also have to address the issue of the substantial loans which Dou claimed he had furnished to Zhang. Yet, according to Dou, he did not deal with or mention any of this. This suggests that there were no loans to discuss.

279 Dou also said that he met with Zhang the next day to discuss “some matters outstanding from his departure”, including Zhang’s salary, reimbursement for expenses and the return of Elcarim’s property.<sup>568</sup> Again, there was no mention of the Share Transfer or Zhang’s loans.<sup>569</sup> While Dou may

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<sup>566</sup> Dou’s AEIC at paras 41–43; Dou’s XX / Certified Transcript (Day 3 / 8 March 2023) at p 58 lines 13–22; Dou’s XX / Certified Transcript (Day 5 / 10 March 2023) at p 66 lines 30–32; Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 24 lines 2–5, p 26 lines 25–32.

<sup>567</sup> Zhang’s AEIC at para 49.

<sup>568</sup> Dou’s AEIC at para 44.

<sup>569</sup> Dou’s AEIC at para 51.

argue that these were not “outstanding” given the exercise of his rights under the SPA, Zhang would not have known that.

280 Zhang’s evidence was that he was “traumatised” by his dismissal and nothing substantive was discussed on 10 June 2015. At the meeting on 11 June 2015, Dou informed him that he had some urgent matters to attend to and would later work out the sums owed to Zhang as well as the value of his shares.<sup>570</sup> According to Zhang, Mr Yan and Pang were at both these meetings.<sup>571</sup> Zhang claimed that it was only on 30 July 2015 that he found out that his shares had already been transferred.<sup>572</sup> When no payment was received from Elcarim and Dou, Zhang sent a letter of demand and filed two police reports (see below at [286]–[294]).

281 There are some inconsistencies in Zhang’s account.

282 First, although Zhang’s evidence is that he found out about the transfer of the Shares on 30 July 2015,<sup>573</sup> he pleads that he discovered this on 11 June 2015.<sup>574</sup> When confronted with this discrepancy, Zhang insisted that he found out about the transfer on 30 July 2015.<sup>575</sup> I also note that in the police report filed by Zhang on 23 December 2015, Zhang stated that he found out about the transfer on 10 June 2015.<sup>576</sup> When confronted with this, Zhang merely disagreed

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<sup>570</sup> Zhang’s AEIC at paras 50 and 100.

<sup>571</sup> Zhang’s AEIC at paras 49 and 50.

<sup>572</sup> Zhang’s AEIC at para 101; Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 37 lines 18–20.

<sup>573</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 37 lines 18–20.

<sup>574</sup> Defence and Counterclaim (Amendment No. 2) at para 32; Elcarim and Dou’s Written Closing Submissions at paras 47–50.

<sup>575</sup> Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 38 lines 5–7, 19–23.

<sup>576</sup> 3AB at p 896.

that this suggested he already knew about the transfer as at 10 June 2015 but did not provide an explanation.<sup>577</sup> I did not consider these inconsistencies material, particularly given Dou's own evidence that he did not inform Zhang that he had transferred the Shares to himself.

283 Second, it was not put by Zhang to Mr Yan that Mr Yan was present at the meetings on 10 and 11 June 2015.<sup>578</sup> Dou highlights Mr Yan's evidence that he did not attend any meetings at Elcarim.<sup>579</sup> This is strictly not accurate given that Mr Yan vacillated on this issue.<sup>580</sup> In any event, I do not consider this material as it is not Zhang's pleaded case or evidence that Mr Yan played any role in the meetings or had said anything.

284 Third, Zhang put to Dou that Dou had called Zhang asking to meet on 11 June 2015 for the purpose of transferring a telephone line and that Zhang raised the issue of Dou buying the Shares and accounting for the alleged loan made by Zhang to Elcarim.<sup>581</sup> Dou points out that these matters were not in Zhang's AEIC; Zhang acknowledged that what he said in his AEIC was incorrect and that what was put by his counsel to Dou was accurate.<sup>582</sup> Zhang also acknowledged that paragraph 50 of his AEIC contained an error in that his meeting with Dou on 11 June 2015 was at Parkway Parade and without

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<sup>577</sup> Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 38 line 29 – p 39 line 22; Elcarim and Dou's Written Closing Submissions at paras 50–51.

<sup>578</sup> Elcarim and Dou's Written Closing Submissions at paras 56 and 57.

<sup>579</sup> Elcarim and Dou's Written Closing Submissions at para 51.

<sup>580</sup> Mr Yan's XX / Certified Transcript (Day 6 / 14 March 2023) at p 14 lines 3, 14 and 17, p 19 lines 28–30, p 20 lines 5–8.

<sup>581</sup> Dou's XX / Certified Transcript (Day 3 / 8 March 2023) at p 61 lines 9–32.

<sup>582</sup> Zhang's XX / Certified Transcript (Day 9 / 17 March 2023) at p 24 lines 13–30.

Mr Yan<sup>583</sup> (both of which Dou agreed). I do not consider these inconsistencies to be material to Zhang’s evidence.

285 I find that the parties’ accounts of the meetings on 10 and 11 June 2015 do not shed much light on the legitimacy of the SPA or the Share Transfer, save for the failure of Dou to inform Zhang of the transfer of the Shares to himself (see above).

(3) Zhang’s demands in the 3 September Letter and the DC Suit

286 Dou highlights that Zhang did not assert his claim in relation to the Shares in the 3 September 2015 Letter and the DC Suit and argues that Zhang must have believed that the Share Transfer was not wrongful. I do not accept this submission.

287 First, in the 3 September 2015 Letter, which was sent to Elcarim and addressed to Pang, Zhang asked Pang to “provide [him] with a copy of the equity transfer agreement that [Dou] took over all my 50% of the company’s shares as his own on 11 June, 2015”.<sup>584</sup> Dou argues that this necessarily means that Zhang was aware of the existence of the SPA and did not challenge the validity of the Share Transfer.<sup>585</sup> I do not accept this. It was not unreasonable for Zhang to assume that there must have been some transfer document evidencing the said transfer. This was, in fact, what happened when Dou’s trust shares were

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<sup>583</sup> Zhang’s XX / Certified Transcript (Day 7 / 15 March 2023) at p 69 lines 6–9.

<sup>584</sup> 3AB at p 871; Zhang’s AEIC at para 53.

<sup>585</sup> Zhang’s XX / Certified Transcript (Day 8 / 16 March 2023) at p 43 lines 26 and 27; p 44 lines 4 and 5, p 46 lines 7–11; Dou’s AEIC at paras 58 and 62; Elcarim and Dou’s Written Closing Submissions at para 40; Elcarim and Dou’s Written Reply Closing Submissions at para 45.

transferred from Zhang to Pang in December 2014.<sup>586</sup> Paragraph 5 (and paragraph 6) of the 3 September 2015 Letter is simply a request to see all the relevant documents and not evidence that Zhang knew of the existence of the SPA. It could, however, be argued that Zhang ought to have clearly asserted that he did not consent to the transfer if he truly did not sign any documents.<sup>587</sup> However, I accept Zhang's explanation that he wanted to see the documents first before making any accusations.<sup>588</sup>

288 More importantly, the context of the letter is important. Zhang was concerned about what he was told by a third party that his signature had apparently been used on Elcarim's import documents without his knowledge or consent and demanded that Elcarim cease such conduct. He was also demanding the unpaid salaries, commissions and expenses which he claimed he was promised.<sup>589</sup>

289 On the contrary, neither Elcarim nor Dou has explained why Zhang was not provided with copies of the SPA and the Share Transfer Documents, although he had asked for the same in his letter of 3 September 2015.<sup>590</sup> If the documents were in their possession, they could have easily furnished them. Dou gave evidence that he did not know of the 3 September 2015 Letter until the

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<sup>586</sup> Zhang's Written Reply Closing Submissions at para 22.

<sup>587</sup> Zhang's XX / Certified Transcript (Day 8 / 16 March 2023) at p 43 lines 26 and 27; p 44 lines 4 and 5, p 46 lines 7–11; Elcarim and Dou's Written Closing Submissions at paras 42 and 53.

<sup>588</sup> Zhang's XX / Certified Transcript (Day 8 / 16 March 2023) at p 44 lines 4–15, p 45 lines 3–11; Zhang's Written Reply Closing Submissions at para 23.

<sup>589</sup> 3AB at pp 870–872; Zhang's XX / Certified Transcript (Day 8 / 16 March 2023) at p 44 lines 6–15.

<sup>590</sup> Zhang's AEIC at para 56.

commencement of the present suit.<sup>591</sup> Notwithstanding this, Dou could have called Pang to explain Elcarim's failure to provide the documents sought by Zhang, but he did not do so.

290 Second, Dou points out that Zhang did not include a claim for the Shares in the DC Suit, where Zhang sued Dou for the sum of \$1,172,828.65 for commissions allegedly not paid to him.<sup>592</sup> Zhang explained that he had been advised that a claim for his shares could only be brought in the High Court and he could not afford the legal fees and expenses involved in bringing such an action.<sup>593</sup> This is not an unreasonable explanation. Further, Zhang points out that his claim against Dou in the DC Suit was for an indemnity and only for the sums of US\$90,000 and EUR112,250. Also, despite demanding his unpaid salaries, loans and expenses in September 2015, Zhang only brought an action for these via a counterclaim in this action only after Elcarim commenced these proceedings. The fact that Zhang delayed bringing a claim for the Shares, therefore, does not necessarily point to such a claim being contrived.

291 I thus disagree with Dou's submission that the 3 September 2015 Letter and the DC Suit constitute evidence that Zhang believed the SPA and Share Transfer to be validly executed.

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<sup>591</sup> Dou's AEIC at para 54; Dou's XX / Certified Transcript (Day 3 / 8 March 2023) at p 63 line 14 – p 64 line 8.

<sup>592</sup> Plaintiff's Bundle of Documents at pp 49 and 61; Elcarim and Dou's Written Closing Submissions at paras 43–46.

<sup>593</sup> Zhang's XX / Certified Transcript (Day 8 / 16 March 2023) at p 45 line 30 – p 46 line 2; Zhang's Written Reply Closing Submissions at para 24.

(4) Zhang’s police reports

292 Zhang filed two police reports on 16 November 2015 and 23 December 2015.

293 The 16 November 2015 report primarily dealt with the issue of Zhang’s signature allegedly being forged on Elcarim’s business documents, while the 23 December 2015 report dealt with the transfer of the Shares.<sup>594</sup> However, in both reports, Zhang did mention the transfer of the Shares, claiming that he had been told by Dou and Mr Yan on 10 June 2015 that his shares had been “taken over” or transferred to Dou without his consent. In the second report, he said that he discovered from an ACRA search of Elcarim on 30 July 2015 that his shares had been transferred on 10 June 2015. He also stated that Pang had informed him that Pang had seen, *inter alia*, a share transfer form bearing Zhang’s signature, which Zhang reported was forged.

294 I make two observations: first, the police reports show that Zhang’s present position that the SPA was forged had been made as early as the end of 2015 and not only advanced when he was sued in this action; second, Zhang’s assertion in both police reports that he was told on 10 June 2015 by Dou and Mr Yan that he was no longer a shareholder of Elcarim is at odds with his evidence in this action<sup>595</sup> and Zhang did not explain this inconsistency. But I consider this immaterial as it is not the evidence of either party that Zhang was told at the 10 June 2015 meeting that the Shares had been transferred.

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<sup>594</sup> Zhang’s AEIC at para 57 and ZYT-21 / 3AB at pp 893–896.

<sup>595</sup> See also Zhang’s XX / Certified Transcript (Day 9 / 17 March 2023) at p 41 lines 8–11.

*Failure to call Pang*

295 According to Dou, Pang played a key role in the events leading to the execution of the SPA and the Share Transfer because:

- (a) one of the main reasons for Dou terminating Zhang was Zhang's deteriorating relationship with Pang;
- (b) Pang proposed the SPA to protect Dou's interests;
- (c) Pang was present when Dou and Zhang discussed and agreed on the terms of the SPA;
- (d) Pang prepared the SPA based on the said discussions, as well as the Share Transfer Documents;
- (e) Pang was supposed to have attended the execution of the documents and witnessed Zhang's signature but did not turn up – for reasons not explained in Court – but he was still reflected as having witnessed Zhang's signature; and
- (f) Dou gave the signed documents to Pang the next day.

296 Pang was, therefore, a key witness on the issue of the SPA and the Share Transfer. In particular, if Pang was present when Dou and Zhang discussed and agreed on the terms of the SPA, and he reflected those terms in the documents he drafted, that would entirely corroborate Dou's case and completely undermine Zhang's evidence.

297 Dou argues that the burden was not on him to call Pang as Zhang had the legal burden to prove that his signature was forged.<sup>596</sup> This confuses the legal and evidentiary burdens (see [216] above), as well as the obligation to call witnesses.

298 The starting point of the analysis is s 105 of the Evidence Act 1893: “The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact is to lie on any particular person.” This is a codification of the maxim that “he who asserts a fact must prove it”.

299 In this case, it is Dou who is asserting all the facts with respect to the genesis of the SPA and the Share Transfer. Zhang’s case is that he has no knowledge of these matters at all. The evidentiary burden therefore lies with Dou to prove these matters. I stress that Dou’s failure to prove these facts does not necessarily mean that Zhang has discharged the legal burden on him – that turns on an analysis of all the relevant evidence.

300 There is no doubt that Pang is a key figure with respect to the material facts asserted by Dou. Pang’s (alleged) involvement was not pleaded by Dou and only surfaced in Dou’s AEIC. It is Dou’s case that Pang would corroborate his evidence. There is no obligation in law on Zhang to call Pang to disprove Dou’s assertions. It was, therefore, Dou’s obligation to call Pang. Dou’s decision not to call Pang without offering a good reason compels me to draw an adverse inference against Dou that Pang’s evidence would not have been favourable to him – see s 116 of the Evidence Act 1893, *illus (g)*. Even absent the adverse inference, given my findings above, the evidential burden had

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<sup>596</sup> Elcarim and Dou’s Written Reply Closing Submissions at para 53.

shifted to Dou to prove that Zhang had signed the SPA, and it would have been necessary for him to call Pang to support his case.

301 Dou alternatively argues that Pang was not a material witness as he did not witness the signing of the SPA and Share Transfer, and no adverse inference should therefore be drawn against him for not calling Pang.<sup>597</sup> This is incorrect. As stated above, it is Dou’s case that Pang, *inter alia*, drafted the SPA based on discussions between Dou and Zhang to which Pang was privy. If true, Pang would have testified that Zhang had agreed to the terms of the SPA, which would have entirely contradicted Zhang’s case. Further, according to Dou, Pang was involved in, and intimately connected with, all the material events leading to the execution of the SPA and the Share Transfer. Pang was plainly a material witness for Dou.

#### *Conclusion on the factual evidence*

302 For the reasons set out above, I find, on the balance of the factual evidence, that Zhang did not execute the SPA and the Share Transfer. I now consider the evidence of the experts.

#### *The expert evidence*

303 In *R Mahendran v R Arumuganathan* [1999] 2 SLR(R) 166 at [16], the Court of Appeal observed that the opinions of handwriting experts “should be approached with extreme caution and relied on to decide an issue of this importance only in the absence of other credible evidence”. Handwriting experts are attesting to the likelihood of a question of fact, of which the best evidence is really from lay witnesses. The question of whether someone had written or

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<sup>597</sup> Elcarim and Dou’s Written Reply Closing Submissions at para 54.

signed on a particular document is best answered by that person himself and those present when the words or signature were purportedly written. The evidence of handwriting experts should, therefore, not supplant or be given greater weight than the relevant facts relating to the writing of the document and the credible evidence of the factual witnesses. This is particularly so as handwriting analysis “may lack the precision and certainty of other forensic sciences” – see *Sudha Natrajan v The Bank of East Asia Ltd* (“**Sudha Natrajan**”) [2017] 1 SLR 141 at [44]. However, as noted by the Court of Appeal in *Sudha Natrajan*, this limitation is no bar to the admissibility of evidence of this nature. I, therefore, consider the expert evidence led by the parties.

304 Both parties called handwriting experts – Zhang called Ms Chang Yun-Chih (“**Ms Chang**”), who worked for the Taiwanese criminal investigation bureau for nearly 30 years and has assisted on more than 7000 cases requiring document examination.<sup>598</sup> Dou’s expert was Mr Pang Chan Kok William (“**Mr Pang**”), who has provided document-examination services to lawyers in various jurisdictions since 2003.<sup>599</sup>

305 Mr Pang issued three reports,<sup>600</sup> and Ms Chang issued two reports.<sup>601</sup> Ms Chang did not analyse, and provide a report on, Zhang’s purported signature on the 2012 Contract. As explained above, the 2012 Contract was only produced

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<sup>598</sup> Ms Chang’s AEIC at CYC-1 (“**Report of Ms Chang**”) at paras 1 and 2.1.

<sup>599</sup> Mr Pang’s AEIC at PCKW-1 Tab 1.

<sup>600</sup> Mr Pang’s AEIC at PCKW-1 Tab 2 (“**Report of Mr Pang**”); Mr Pang’s AEIC at PCKW-1 Tab 4 (“**Second Report of Mr Pang**”); Mr Pang’s SAEIC at PCKW-2 Tab 2 (“**Third Report of Mr Pang**”).

<sup>601</sup> Report of Ms Chang; Ms Chang’s AEIC at CYC-2 (“**Second Report of Ms Chang**”).

on 27 January 2023,<sup>602</sup> well after Ms Chang had issued her two reports on 4 and 31 May 2022.<sup>603</sup> She explained that she was engaged in Brunei to certify a laboratory when the 2012 Contract was produced and did not have the time and opportunity to carry out a proper analysis of it prior to the trial.<sup>604</sup>

306 Both experts compared the signatures allegedly made by Zhang (the “**Questioned Signatures**”) – on the SPA, as well as the Share Transfer Director’s Resolution and Share Transfer Form (the “**Questioned Documents**”) – against signatures made by Zhang (the “**Specimen Signatures**”) on other documents (the “**Specimen Documents**”)<sup>605</sup> over a period of five years between 2012 and 2017. They gave diametrically different opinions. Mr Pang observed fundamental and significant similarities between the Questioned Signatures and the Specimen Signatures, as well as a lack of inexplicable differences other than natural variations, and concluded that Zhang had signed the SPA.<sup>606</sup> Ms Chang, on the other hand, observed different consistent characteristics between the Questioned Signatures and Specimen Signatures, and concluded that the Questioned Signatures were probably not made by Zhang.<sup>607</sup>

307 I reject Mr Pang’s conclusion as it lacked proper foundation and analysis. Ms Chang’s analysis and views were more considered and coherent, although there were some aspects which are not entirely satisfactory.

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<sup>602</sup> Dou’s AEIC at para 11 and p 47.

<sup>603</sup> Report of Ms Chang at p 20; Second Report of Ms Chang at p 12.

<sup>604</sup> Certified Transcript (Day 17 / 31 March 2023) at p 44 lines 13–17.

<sup>605</sup> Report of Mr Pang at Appendix A; Report of Ms Chang at Appendix 1.

<sup>606</sup> Report of Mr Pang at para 7.

<sup>607</sup> Report of Ms Chang at paras 7.1–7.3.

*Samples analysed*

308 Both experts agreed that they were given sufficient samples of Specimen Signatures to conduct a proper comparative analysis with the Questioned Signatures. They also employed the same techniques in examining the signatures – using micro-magnification and side-light techniques to assess indentations, pen pressure and shading, and the overlay technique.

*Different methodologies*

309 However, they adopted wholly different methodologies in assessing the data and arriving at their conclusions.

310 In summary, Mr Pang compared the Specimen Signatures and Questioned Signatures and listed the similarities he found.<sup>608</sup> In his view, stacking all the similarities together enabled him to determine that the writer of the Specimen Signatures and Questioned Signatures were the same person. He did note that there were differences between the Specimen Signatures and Questioned Signatures but attributed these to “natural variations”,<sup>609</sup> which he defined as variations affected by internal and external factors.

311 Ms Chang testified that Mr Pang’s approach was flawed. She explained that:

the existence of similarities between signatures should not, by itself, lead to a conclusion that a signature is genuine. Rather, in order [to properly] verify that a signature is genuine, it is not only necessary to identify stable /consistent similarities, but also to rule out (or alternatively, properly account for): (i) the

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<sup>608</sup> Report of Mr Pang at para 6.7.

<sup>609</sup> Eg, Second Report of Mr Pang at pp 4 and 5; Certified Transcript (Day 15 / 29 March 2023) at p 14 lines 17–31.

existence of stable/consistent differences; and (ii) the existence of features which are indicative of simulation.<sup>610</sup>

312 Ms Chang cited academic writings to support her approach, including Jan Seaman Kelly and Brian S. Lindblom, *Scientific Examination of Questioned Documents* (CRC Press, 2006).<sup>611</sup>

313 Ms Chang first examined the Questioned Signatures and then the Specimen Signatures separately to work out the writers' habits and patterns. She set out in detail her analysis of the respective habits and patterns of the writers of both sets and highlighted several examples of variations between the two.<sup>612</sup> She then tried to determine if those variations were natural or not. She concluded that the Questioned Signatures were not written by Zhang.

314 I agree with Ms Chang's opinion that Mr Pang's approach was flawed. As she pointed out, Mr Pang simply relied on random characteristics of the Questioned Signatures and Specimen Signatures<sup>613</sup> without first determining the stable or consistent characteristics of the Questioned Signatures and Specimen Signatures, and therefore the habits or patterns of the writers.<sup>614</sup> In contrast, Ms Chang's approach was consistent with the literature she cited and with logic. Without first determining what the consistent habits and patterns of the writer of the Question Signatures, Mr Pang would not have an appropriate or reliable reference to make a meaningful comparison with the Specimen Signatures.

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<sup>610</sup> Second Report of Ms Chang at para 5.8.

<sup>611</sup> Report of Ms Chang at p 12.

<sup>612</sup> Report of Ms Chang at paras 5–7.

<sup>613</sup> Report of Mr Pang at paras 6.7(i) – 6.7(viii); Certified Transcript (Day 17 / 31 March 2023) at p 18 lines 18–26.

<sup>614</sup> Second Report of Ms Chang at para 5; Zhang's Written Closing Submissions at para 171(b).

When confronted with Ms Chang’s criticisms of his approach, Mr Pang did not give a helpful response.<sup>615</sup> Dou submits that Ms Chang’s approach wrongly “assumes that the writer of the Specimen Signatures [*ie*, Zhang] is consistent and displays ‘consistent writing habits’ that can be meaningfully compared with the ‘writing habit’ shown in the Questioned Signatures”.<sup>616</sup> However, no explanation was given as to why I should find that Zhang did not have a consistent writing habit.<sup>617</sup> Indeed, neither expert made that assertion. As things stand, I can only proceed on the basis that the respective writers of the Questioned Signatures and Specimen Signatures both had consistent writing habits.

315 The lack of rigour in Mr Pang’s analysis is illustrated by his comparing, and relying on, the upward incline of signatures in both sets.<sup>618</sup> He found a “consistent and significant similarity” between the two sets of signatures in that they were inclined upwards *ie*, written in an ascending manner, and that this was “definitely a very consistent habit, and it’s nothing to do with natural variation”<sup>619</sup>. Ms Chang did not find this feature significant as it is not uncommon for signatures to be written that way. According to her, what would make it significant would be where the signatures were consistently angled at a certain degree or within a certain range of incline: in that regard, Ms Chang pointed out that the Questioned Signatures were consistently angled more than 20 degrees from the baseline, while the Specimen Signatures exhibited no such

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<sup>615</sup> Certified Transcript (Day 17 / 31 March 2023) at p 17 line 20 – p 23 line 12.

<sup>616</sup> Elcarim and Dou’s Written Closing Submissions at para 72.

<sup>617</sup> Certified Transcript (Day 15 / 29 March 2023) at p 85 line 20 – p 86 line 26.

<sup>618</sup> P14 at s/n 12; Report of Mr Pang at para 6.7(vi); Second Report of Ms Chang at paras 6.9–6.11.

<sup>619</sup> Certified Transcript (Day 17 / 31 March 2023) at p 30 line 31 – p 31 line 9.

consistency – only two were measurable, and one was more, and the other less, than 20 degrees.<sup>620</sup> Mr Pang only response was that there was one example of a Specimen Signatures with an incline of more than 20 degrees.<sup>621</sup> I accept Ms Chang’s view that Mr Pang’s analysis was flawed, and in my view, superficial. Mr Pang simply latched on to an imprecise characteristic – an ascending signature – that the Questioned Signatures and *two* examples of the Specimen Signatures exhibited and said this supported the conclusion that they were both written by the same person. He did not use stricter criteria, such as the angle of the slant, or determine the consistent pattern of the writer(s) of both sets before comparing those patterns. He was simply comparing characteristics in isolation. To be complete, Ms Chang did not rely on the slant of the signatures in her analysis as there were only two Specimen Signatures where the angle of slant could be measured, and that was not enough to form a view as to the habits of the writer. She had only raised the issue of the incline to explain why Mr Pang’s analysis was unreliable.<sup>622</sup>

316 I also find that Mr Pang was not thorough in his analysis. His first report comprised him comparing just five features found on five out of 19 Questioned Signatures<sup>623</sup> against eight out of 29 Specified Signatures. As far as Mr Pang was concerned, so long as the same features were found on *some* signatures in both sets, he regarded that as evidence supporting his conclusion that both sets were written by the same person. There was no analysis as to whether the features he highlighted were consistent within each set of Questioned Signatures

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<sup>620</sup> Second Report of Ms Chang at para 6.10 and Appendix 7; Certified Transcript (Day 17 / 31 March 2023) at p 36 line 1 – p 41 line 18.

<sup>621</sup> Certified Transcript (Day 17 / 31 March 2023) at p 34 lines 1–21.

<sup>622</sup> Certified Transcript (Day 17 / 31 March 2023) at p 42 lines 10–16.

<sup>623</sup> Report of Mr Pang at paras 6.7(i)–6.7(viii) and pp 13–15; Zhang’s Written Closing Submissions at para 172.

and Specified Signatures. The first report of Mr Pang goes on to state that more examples of signatures with the five identified features could be found in Appendix B, but Appendix B simply identified all the specimens he examined without making any form of comparison.

317 Ms Chang did not deny the similarities between the Questioned Signatures and Specimen Signatures Mr Pang observed. She made it clear, however, that her emphasis was on whether there were differences in stable or consistent characteristics and whether the said differences could be explained away by natural variations, which are brought about by external factors and which are not repeatable or consistent.<sup>624</sup> She testified that an expert cannot simply attribute such differences to natural variation.<sup>625</sup>

318 This is apparent from the following examples of analysis done by Ms Chang:

(a) Ms Chang pointed out that there was an “absence of noticeable variations in writing speed and stroke thickness of the Questioned Signatures.”<sup>626</sup> Since there were noticeable variations between the Specimen Signatures, the Questioned Signatures were therefore not likely done by Zhang, who indisputably made the Specimen Signatures.<sup>627</sup> She pointed out, using red arrows, sections of the respective Specimen Signatures which are thinner, which suggest that

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<sup>624</sup> Second Report of Zhang's Accounting Expert at paras 5.4; Certified Transcript (Day 15 / 29 March 2023) at p 15 lines 12–23.

<sup>625</sup> Elcarim and Dou's Written Closing Submissions at para 73.

<sup>626</sup> Report of Ms Chang at para 5.4.

<sup>627</sup> Report of Ms Chang at Appendix 3-2 / p 27.

the writer had slowed down.<sup>628</sup> However, there was no evidence of the writer slowing down for the same portions of the Questioned Signature, which suggested a different writing style. Mr Pang's reports did not deal with this difference. When Mr Pang was asked to comment on Ms Chang's evidence, he struggled to give a response, only remarking that he did not know why Ms Chang only selected those sections to highlight.<sup>629</sup>

(b) Ms Chang observed heavy horizontal and vertical strokes on certain sections of the Specimen Signatures but the horizontal strokes were absent on the Questioned Signatures, which only had heavy *vertical* strokes.<sup>630</sup> This meant that the writer of Questioned Signatures did not apply pressure on horizontal strokes, while the writer of the Specimen Signatures exerted pressure on both horizontal and vertical strokes, thus suggesting both writers had different styles. Mr Pang again did not carry out a similar analysis for his reports. His only response at trial was to say that he did observe this from the images. When it was put to him that he was in no position to agree or disagree with Ms Chang because he did not analyse pen pressure, his response was that he could not comment because the images of the signatures were poor.<sup>631</sup> However, he did not explain why Ms Chang analysis, and the conclusions she drew therefrom, were wrong.

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<sup>628</sup> Certified Transcript (Day 16 / 30 March 2023) at p 115 lines 11–19; Report of Ms Chang at Appendix 3-2.

<sup>629</sup> Certified Transcript (Day 16 / 30 March 2023) at p 116 lines 1–4.

<sup>630</sup> Report of Ms Chang at para 5.3 and Appendix 3-1.

<sup>631</sup> Certified Transcript (Day 16 / 30 March 2023) at p 102 line 24 – p 103 line 7.

(c) Mr Pang stated he observed similar pen pressure for both the Specified Signatures and the Questioned Signatures and was of the opinion that the Questioned Signatures were fluently written with similar speed and pressure as the Specified Signatures, thus supporting the conclusion that they were written by the same person.<sup>632</sup> Ms Chang however noted a significant difference in pen pressure in the Questioned Signatures when compared to the Specified Signatures in that there was an absence of noticeable variation in pen pressure on the Questioned Signatures, which was different from variations observed on the Specified Signatures. In this regard, Ms Chang pointed out that Mr Pang did not analyse the range of pen pressure marks and shading on the reverse side of the original documents.<sup>633</sup>

319 I also highlight that while Mr Pang did note that there were differences between the Questioned Signatures and the Specimen Signatures, he simply dismissed them as “natural variations” without explaining why. For example, both experts noted the presence of stroke features below the letters “tai” in the signatures. Ms Chang highlighted that the stroke features for the Questioned Signatures contained a consistent “dot” style but for most of the Specified Signatures, the features show two horizontal short strokes. This, she says, amounts to a critical difference in the writing formations in the Questioned Signatures and Specified Signatures.<sup>634</sup> On the other hand, Mr Pang did not appear to have appreciated the difference between the “dots” and the “dashes” in the Questioned Signatures and Specified Signatures. He simply highlighted that two dashes were observed in some of the Questioned Signatures and

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<sup>632</sup> Report of Mr Pang at para 6.5.

<sup>633</sup> Second Report of Ms Chang at para 4.5.

<sup>634</sup> Report of Ms Chang at para 5.1.4 and Appendix 2.4.

Specified Signatures: one dash was observed in one signature of the Questioned Signatures (Q6-2) and in three signatures in Specified Signatures (S1-1, S1-2 and S20).<sup>635</sup> He explained all these differences as natural variations.<sup>636</sup> This again highlights the issue with Mr Pang’s approach – he did not examine the Questioned Signatures and Specified Signatures to determine if both sets exhibited a consistent writing style. Instead, he simply looked at whether features in the Questioned Signatures were found in some or any signature in the Specified Signatures, regardless of whether that was the consistent style of the writer. So long as a feature in the Questioned Signatures appeared in one of the Specified Signatures, he regarded it as evidence supporting the conclusion that they were written by the same person. I accept Ms Chang’s evidence that it is meaningless to simply compare features in this way.

*Ms Chang’s observations*

320 As stated above, I accepted Ms Chang’s methodology, and there was no question that she was diligent in her analysis of the signatures. She found that the Specified Signatures and the Questioned Signatures had three significant differences: (a) whether the third letter of Zhang’s signature “n” appeared as “n” or “u”;<sup>637</sup> (b) whether the last letter of Zhang’s signature “i” showed two consistent writing patterns;<sup>638</sup> and (c) whether the stroke feature below Zhang’s signature showed a consistent “dot” style or two horizontal short strokes.<sup>639</sup> She further supplemented her analysis and conclusions by examining evidence such as pen pressure and stroke thickness (see above).

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<sup>635</sup> Report of Mr Pang at para 6.6(viii).

<sup>636</sup> Report of Mr Pang at para 7.

<sup>637</sup> Report of Ms Chang at para 5.1.2; Zhang’s Written Closing Submissions at para 167.

<sup>638</sup> Report of Ms Chang at para 5.1.3; Zhang’s Written Closing Submissions at para 167.

<sup>639</sup> Report of Ms Chang at para 5.1.4; Zhang’s Written Closing Submissions at para 167.

321 Dou argues that Ms Chang also cannot assume that differences observed between Questioned Signatures and Specified Signatures are not natural variations, and Ms Chang was, therefore, wrong to have concluded that the writers of both sets were different persons.<sup>640</sup> Dou has misunderstood Ms Chang’s evidence. She explained that natural variations *are not repetitive* as they are caused by external forces.<sup>641</sup> As she pointed out, the Specified Signatures and Questioned Signatures exhibited repetitions of certain features within their own set, which make up the pattern or habit of the writer. The different patterns between both sets suggested that the writers of the Questioned Signatures and Specified Signatures are different. The differences between the two sets are, therefore, not natural variations.

322 Nonetheless, Ms Chang’s assessment that the Questioned Signatures are conclusively a forgery may be overstated.

323 First, Ms Chang noted, and Mr Pang did not dispute, that the Specimen Signatures exhibited a far greater range of variation compared to the Questioned Signatures.<sup>642</sup> This suggested to Ms Chang that the person signing the Questioned Signatures was careful not to depart from his “model”, hence resulting in a smaller range of variation.<sup>643</sup> She testified that genuine signers would be less concerned about the consistency of their signatures, leading to more variations. But this may also depend on two factors which Ms Chang did not consider:

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<sup>640</sup> Elcarim and Dou’s Written Closing Submissions at paras 73–76.

<sup>641</sup> Certified Transcript (Day 15 / 29 March 2023) at p 15 lines 5–18; Certified Transcript (Day 16 / 30 March 2023) at p 53 lines 30 and 31.

<sup>642</sup> Certified Transcript (Day 15 / 29 March 2023) at p 62 lines 10 and 11.

<sup>643</sup> Certified Transcript (Day 16 / 30 March 2023) at p 92 lines 3, 4, 22–25, p 93 lines 10–16.

(a) The Questioned Signatures, based on Dou's case, were executed at the same time in one sitting, and this could explain the smaller range of variation; on the other hand, the Specimen Signatures had been executed over a period of about five years in different circumstances and conditions and with different pens, which may lead to more variations.<sup>644</sup> Ms Chang accepted that as a possibility.<sup>645</sup> However, I reject Dou's submission that because of this consideration, Ms Chang's *methodology* is less useful.<sup>646</sup> For the reasons stated above, the comparison of consistent patterns, as opposed to similarities, is more logical and preferable.

(b) The way the person signs may depend on the importance he places on the document. The Questioned Signatures related to the pledge and transfer of the Shares – they were important documents, and it is reasonable that the person signing would be more careful and deliberate in executing his signatures. On the other hand, the Specimen Signatures were made on different types of documents, including employment contracts for Ms Chen and Mr Chang and a directors' resolution for the opening of a bank account for Elcarim, where Zhang may have given less thought and time in appending his signatures. Ms Chang acknowledged this.<sup>647</sup>

324 Second, some of Ms Chang's observations did not consider relevant factors. For example, in Appendix 3-2 of her report analysing the ink and stroke

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<sup>644</sup> Elcarim and Dou's Written Closing Submissions at paras 68–71.

<sup>645</sup> Certified Transcript (Day 15 / 29 March 2023) at p 52 lines 16–21, p 193 line 25 – p 104 line 9, p 105 lines 2–6, 26–30, p 106 lines 4–10, 19–26.

<sup>646</sup> Elcarim and Dou's Written Closing Submissions at paras 70 and 71.

<sup>647</sup> Certified Transcript (Day 16 / 30 March 2023) at p 93 line 20 – p 94 line 6.

thickness of the “ong” part of the Questioned and Specified Signatures, which she claimed is evidence of the variation in the force and the writer’s writing habit, Ms Chang noted there was no noticeable variation in ink and stroke thickness in the Questioned Signatures, while there were noticeable differences in the Specimen Signatures.<sup>648</sup> But Mr Pang countered that this observation is misleading as Ms Chang had failed to take into account various factors such as:

(a) the type of pen used: ink in a ballpoint is a paste-like substance of high viscosity, which contrasted with the fluid ink used in roller ball and porous tip pens.<sup>649</sup> Mr Pang noted that the Specimen Signatures had been written by a ballpoint pen, while the Questioned Signatures appear to have been written with a porous tip pen, which had made the stroke thickness more uniform as the ink was water soluble and spread more easily on paper.<sup>650</sup> Ms Chang did not disagree that this is a relevant consideration, but explained that differences between the Questioned and Specified Signatures could not be assumed to be a consequence of the difference in types of pen used;<sup>651</sup>

(b) the surface on which the different signatures were written *eg.* whether or not the paper was placed on top of a writing pad or on a hard surface such as a piece of glass<sup>652</sup> – all of which were unknown to the experts; and

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<sup>648</sup> Report of Ms Chang at Appendix 3-2.

<sup>649</sup> Second Report of Mr Pang at p 6; Certified Transcript (Day 16 / 30 March 2023) at p 81 lines 27–29.

<sup>650</sup> Certified Transcript (Day 16 / 30 March 2023) at p 106 lines 13–17.

<sup>651</sup> Certified Transcript (Day 16 / 30 March 2023) at p 118 lines 17–23.

<sup>652</sup> Second Report of Mr Pang at pp 5 and 6; Certified Transcript (Day 16 / 30 March 2023) at p 66 line 20 – p 67 line 1, p 101 lines 13–16, p 103 line 19 – p 104 line 4. (I have noted a possible error on the Certified Transcript for 30 March 2023 on pp 103

(c) the relative positions of the writer<sup>653</sup> (presumably referring to a writer's stance) – which were also unknown to the experts. Ms Chang did not dispute that these are relevant factors.

325 In any event, even if the conclusion reached by Ms Chang is doubtful, the expert evidence overall did not assist Dou and was certainly not sufficient to overcome the evidential difficulties with his case as set out in my assessment of the factual evidence above. I, therefore, find, on a balance of probabilities, that Zhang did not sign the SPA and the Share Transfer Documents, and Dou had improperly transferred the Shares to himself.

326 For the same reasons, I also do not accept Mr Pang's conclusion that Zhang had signed the 2012 Contract. His conclusion was based on the same flawed methodology,<sup>654</sup> and that flaw was aggravated by the fact that he only used one signature as a comparator.<sup>655</sup> As stated above, the factual evidence in relation to the 2012 Contract suggests that the 2012 Contract is not a genuine agreement. Mr Pang's evidence is not sufficient for Dou to discharge the burden on him to prove the authenticity of the 2012 Contract.<sup>656</sup>

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and 104: some sections of Ms Chang's testimony are reflected as being said by Mr Pang.)

<sup>653</sup> Second Report of Mr Pang at p 6.

<sup>654</sup> Third Report of Mr Pang at paras 5 and 7; Zhang's Written Closing Submissions at para 173.

<sup>655</sup> Third Report of Mr Pang at para 2 and p 10; Zhang's Written Closing Submissions at para 173.

<sup>656</sup> Elcarim and Dou's Written Reply Closing Submissions at paras 33–35.

## **Conclusion**

327 I therefore allow the following claims:

- (a) Elcarim’s claim in relation to the Three Employees: Elcarim is entitled to damages for a sum of \$86,255;
- (b) Zhang’s claim for wrongful termination: he is entitled to damages of \$11,000; and
- (c) Zhang’s counterclaim in respect of the Shares: he is entitled to damages to be assessed for his loss of the Shares based on their value as at 10 June 2015.

328 All other claims by both parties are dismissed.

329 With regard to Zhang’s relief concerning the Share Transfer, he sought “Delivery up of the Defendant’s 50% shares owned in the Plaintiff and in the alternative, damages in respect of the Defendant’s 50% shares owned in the Plaintiff, to be assessed” in his pleadings.<sup>657</sup> However, his pleaded cause of action was “the loss of [his] 50% shareholding *in conversion*” [emphasis added]<sup>658</sup> which draws only the remedy of damages (*Clerk & Lindsell on Torts* (Sweet & Maxwell, 23rd Ed, 2020) at para 16-90), and in his closing submissions he asked for “Dou to pay Zhang damages to be assessed for Zhang’s 50% shares that Dou had converted in lieu of delivery”.<sup>659</sup> Accordingly, Zhang is entitled to damages to be assessed.

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<sup>657</sup> Defence and Counterclaim (Amendment No. 2) at the last paragraph.

<sup>658</sup> Defence and Counterclaim (Amendment No. 2) at para 35.

<sup>659</sup> Zhang’s Written Closing Submissions at para 335.

330 I will hear the parties separately on costs.

Hri Kumar Nair  
Judge of the High Court

Tham Wei Chern, Ling Yuanrong and Samuel Ang Rong En  
(Fullerton Law Chambers LLC) for the plaintiff and the first and  
second defendants in counterclaim;  
Quek Mong Hua and Tan Jin Yong (Lee & Lee) for the defendant  
and the plaintiff in counterclaim.