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

**[2023] SGHC 218**

District Court Appeal No 1 of 2023

Between

Tan Meow Hiang t/a Chip Huat

… *Appellant*

And

Ong Kay Yong t/a Wee Wee Laundry Service

… *Respondent*

In the matter of District Court Suit No 3616 of 2016

Between

Tan Meow Hiang t/a Chip Huat

… *Plaintiff*

And

Ong Kay Yong t/a Wee Wee Laundry Service

… *Defendant*

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# JUDGMENT

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[Courts and Jurisdiction — Jurisdiction — Appellate]
[Contract — Collateral contracts]

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# Tan Meow Hiang (trading as Chip Huat)
# v
# Ong Kay Yong (trading as Wee Wee Laundry Service)

**[2023] SGHC 218**

General Division of the High Court — District Court Appeal No 1 of 2023
Goh Yihan JC
18 July 2023

11 August 2023 Judgment reserved.

**Goh Yihan JC:**

1 The plaintiff is the mother-in-law of the defendant. The plaintiff has two children: a daughter, who is married to the defendant, as well as a son. In DC/DC 3616/2016, the plaintiff brought a claim for: (a) $140,000, being the sum that the defendant had agreed to pay to the plaintiff; or alternatively (b) the ownership of Wee Wee Laundry Service ("WWLS") to be transferred to her. The defendant brought a counterclaim for: (a) $127,500, being the fees payable pursuant to an alleged consultancy agreement between the parties ("the Consultancy Agreement"); and (b) $72,200, being the cost of deploying additional labour to carry out the plaintiff's duties during the period between January 2013 and May 2015, or any such sum to be assessed.

2 In *Tan Meow Hiang t/a Chip Huat v Ong Kay Yong* [2023] SGDC 29 ("GD"), the learned district judge ("DJ") allowed the plaintiff's claim for the ownership of WWLS to be transferred to her, and the defendant's counterclaim

for $72,200 (and interest payable at 5.33% per annum). For the plaintiff's claim, the DJ found that the plaintiff had paid $90,000 to the defendant by way of an agreement to purchase WWLS and therefore ordered the defendant to transfer WWLS to the plaintiff. However, the DJ dismissed the plaintiff's alternative claim for $140,000 because the DJ found that the plaintiff had failed to prove the existence of an agreement for the defendant to buy back WWLS. For the defendant's counterclaim, the DJ found that the plaintiff owed the defendant $72,200 for the cost of deploying additional labour. However, the DJ dismissed the defendant's counterclaim for $127,500 because the DJ found that the plaintiff had paid $90,000 for the sale of WWLS and there was no Consultancy Agreement between the parties. The plaintiff appealed against the DJ's decision to award $72,200 to the defendant, as well as the DJ's order that each party shall bear their own costs.

3 Having heard the parties and considered their respective submissions in the present appeal, I allow the appeal for the reasons I set out below.

**The proceedings below**

4 I turn first to parties' respective cases below.

5 According to the plaintiff, on 5 March 2013, she paid the defendant $90,000 to purchase WWLS from the latter. Despite the payment, the defendant failed to transfer the legal ownership of WWLS to her. The plaintiff claimed that, later in May 2015, the defendant and his wife, Ms Vanessa Ang ("VA") (who is the plaintiff's daughter), approached the plaintiff with a proposal for WWLS to be sold back to the defendant for $140,000. While the plaintiff agreed to this proposal, the defendant eventually reneged on the agreement. As such,

the plaintiff claimed the sum of $140,000 or, in the alternative, for WWLS to be legally transferred to her.

6 In response, the defendant did not dispute that the plaintiff had paid him $90,000 through a company that he was the majority shareholder of. However, by his version of events, the plaintiff had approached the defendant and VA in March 2013 with a proposal for the plaintiff to use WWLS to educate herself and her son on how to run a laundry business for one year. It was under these circumstances that the plaintiff paid the defendant the sum of $90,000, which was actually consultancy fees for the one-year period. Therefore, the defendant's defence against the plaintiff's claim for $90,000 was that the $90,000 was meant to be paid as consultancy fees due to him under the alleged Consultancy Agreement, and not for the purchase of WWLS.

7 In respect of his counterclaim, the defendant further claimed that, pursuant to the alleged Consultancy Agreement between the parties, an extension of the consultancy period would entail the plaintiff paying additional consultancy fees. According to the defendant, the plaintiff did not return control of the business after one year. Instead, the plaintiff continued to run WWLS, including operating its bank account. As such, the defendant counterclaimed for: (a) further consultancy fees for the period between January 2014 and May 2015 at the rate of $90,000 per year, which amounted to $127,500; and (b) the cost of deploying additional labour to carry out the plaintiff's duties during the period between January 2013 and May 2015, which amounted to $72,200.

8 Since the plaintiff's appeal before me is mainly in relation to the defendant's counterclaim of $72,200, it is useful to examine how the defendant pleaded this counterclaim. In the Defence & Counterclaim (Amendment No. 2),

the defendant pleaded the following facts that gave rise to the claim for the $72,200:

> 32. For the entire period of the consultancy, the Defendant employed a driver to make house calls for delivery and collection of items whilst Vanessa assisted with the administrative and logistical duties including answering telephone calls, all of which the Plaintiff and Felix had agreed to be responsible for but neglected, refused and/or otherwise failed to carry out.
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> 33. For the period between January 2013 and December 2014 (both months inclusive), the Plaintiff failed to pay the Defendant the salaries for the driver employed by the Defendant. For the period January 2015 to May 2015 (both months inclusive), the salary of the driver was deducted from the cash collections before the cash was handed over to the Plaintiff.
>
> 34. The Plaintiff failed to pay the salary for Vanessa for the entire period from January 2013 to May 2015 (both months inclusive).
>
> 35. The Defendant now counterclaims against the Plaintiff the sum of S$72,200.00 being the cost of employing the said driver for the 24 months from January 2013 to December 2014 (both months inclusive) as well as salary payable to Vanessa for time spent on the Wee Wee Laundry Service business for the 29 months from January 2013 to May 2015, particulars of which are below:- …

9 I add for completeness that the defendant's pleaded terms of the Consultancy Agreement state nothing about who is to be responsible for the additional labour costs, *ie*, the sum of $72,200. However, as I will set out below, the defendant in the present appeal says that the claim for $72,200 is separate from the Consultancy Agreement.

**The DJ's decision**

10 In the GD, the DJ identified three issues for determination, namely: (a) whether the plaintiff's payment of $90,000 was for the sale of WWLS, or fees for a one-year consultancy on how to run a laundry business; (b) whether

there was a subsequent agreement for the defendant to buy back WWLS from the plaintiff at $140,000; and (c) whether the plaintiff was liable for payment of the salaries of the WWLS staff, namely, the drivers and VA.

11 The DJ's conclusions on these issues were as such. First, the DJ found that the plaintiff's payment of $90,000 was for the purchase of WWLS and not for consultancy services as the defendant had alleged. Among other findings, the DJ found that the plaintiff's conduct after handing over the sum of $90,000 was consistent with her being the *de facto* owner of the business. Indeed, the plaintiff had full control of WWLS's finances, which the defendant had ceded to the plaintiff. Moreover, the DJ observed that WWLS's business was relatively simple, and it was thus not believable that the plaintiff would want to use it to learn how to run a laundry business. As such, the DJ found that the alleged Consultancy Agreement did not exist and accordingly dismissed the defendant's counterclaim for the further consultancy fees of $127,500.

12 Second, the DJ found that the plaintiff had not shown that there was an agreement for the defendant to buy back WWLS. The DJ thought that it did not make sense for the plaintiff to sell WWLS back to the defendant for the higher sum of $140,000 if the plaintiff's intention was to help her daughter, VA. As the DJ found that there was no subsequent agreement for the defendant to buy back WWLS from the plaintiff, the DJ ordered that the legal ownership of WWLS be transferred to the plaintiff.

13 Third, the DJ held that the plaintiff was liable for the sum of $72,200 to the defendant for the following reason (see the GD at [27]):

> As I had found that the oral agreement was for sale of Wee Wee to the plaintiff and the plaintiff agreed that she was the running the business [*sic*] beyond December 2013, it followed that the plaintiff would be liable for payment of salaries of the workers;

> namely, the drivers and Vanessa Ang. This finding would be consistent with [8c] of the plaintiff's AEIC in which she stated that 45% of the business daily collection was used to pay OKY Pte Ltd for their laundry washing services and 55% was to pay salaries of Wee Wee's employees and other expenses.
>
> [reference omitted]

I pause to observe that while the DJ found that the plaintiff was liable to pay the salaries of the drivers and VA, it is not immediately clear why the DJ found that the plaintiff would be so liable to the *defendant*. While the plaintiff did state at paragraph 8(c) of her affidavit of evidence in chief ("AEIC") that "[t]he remaining 55% of Wee Wee Laundry's daily collection will be used to pay the salaries of employees of Wee Wee Laundry and the other expenses of Wee Wee Laundry",[1] this still does not make clear why the plaintiff is liable to the *defendant* in respect of these expenses.

14 For completeness, I should mention that the DJ examined the documentary evidence adduced by the defendant in respect of the sum of $72,200 and was satisfied that the evidence showed that the defendant had paid the sum to the drivers and VA. As such, the DJ found that the plaintiff "was liable to pay the defendant for salaries for 29 months from January 2013 to May 2015 totalling $72,200" (see the GD at [29]). However, this also does not make clear why the plaintiff would be liable to the defendant in respect of the payment of these salaries.

**The parties' cases before me**

15 The plaintiff's appeal before me centres on the DJ's decision to award the defendant the sum of $72,200, being the amount paid to the drivers and VA

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[1] AEIC of Tan Meow Hiang dated 14 April 2022 at para 8(c).

as salaries from January 2013 to May 2015. The plaintiff advances three reasons in support of her case. First, since the DJ had found that the Consultancy Agreement did not exist, the defendant's counterclaim for $72,200, which was founded on the said Agreement, must fail.[2] Second, the DJ had incorrectly accepted the defendant's claim of having employed the drivers and VA as employees of WWLS.[3] Third, the DJ had incorrectly accepted the documentary evidence adduced by the defendant as sufficient to prove that the defendant actually incurred the sum of $72,200.[4]

16 In response, the defendant makes three arguments. First, the defendant submits that this court should be slow to interfere with the decision below, especially where the matter is particularly fact-sensitive and involves the DJ's exercise of discretion after considering the totality of the evidence.[5] In particular, the defendant says that, while the present appeal is not limited by s 21(1) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA"), in that there is no need to seek permission to appeal as the claim amount of $72,200 is above the statutory threshold of $60,000, the "considerations on granting permission to appeal are relevant and instructive".[6] This is especially so because the amount in question, $72,200, "narrowly meets the statutory minimum amount".[7]

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2 Appellant's Written Submissions dated 17 April 2023 ("AWS") at para 11(a).

3 AWS at para 11(b).

4 AWS at para 11(c).

5 Respondent's Case dated 17 April 2023 ("RC") at para 16.

6 RC at para 20.

7 RC at para 20.

17 Second, the defendant argues that the plaintiff has conflated the defendant's claim for the consultancy fee of $127,500 with the defendant's claim for $72,200.[8] This is because the claim for $72,200 is not dependent on the obligation to pay consultancy fees. Instead, the defendant states in his written submissions that "the said sum was paid out of necessity, as the Appellant had neglected her obligations to pay for the salaries of Wee Wee's staff", and that "the dismissal of the claim for further consultancy fees in the sum of $127,500 had nothing to do with the [defendant's] separate claim for $72,200".[9] Despite this, the defendant argues that there must have been an agreement between the parties in relation to the responsibility for the salaries of WWLS's staff. In this regard, the defendant points out, as the DJ did below, that the plaintiff stated at paragraph 8(c) of her AEIC that she had made an oral agreement that 55% of the daily takings "will be used to pay the salaries of employees of Wee Wee".[10]

18 Third, the defendant argues that the DJ was correct in accepting the documentary evidence adduced by him to prove his payment of the $72,200 to WWLS's staff.[11]

**My decision: the appeal is allowed**

19 With the parties' cases in mind, I allow the appeal for the following reasons.

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8 RC at para 23.

9 RC at para 24.

10 RC at para 27.

11 RC at paras 31–42.

***The level of appellate intervention in a District Court Appeal***

20 As a preliminary point, I address the defendant's argument that I should be slow to interfere with the decision below because, among other reasons, the amount under contention only slightly exceeds the statutory threshold of $60,000 in s 21(1) of the SCJA, without which permission to appeal would be needed. I disagree with this argument. It does not make sense to say that because a claim amount is close to the statutory threshold, an appellate court should be more circumspect in its consideration of the appeal. This is a problematic argument because it invites the unanswerable question of how close to the statutory threshold the disputed claim amount must be for such a restrictive approach to kick in. Indeed, the very reason for drawing bright lines is to preclude such arguments. I therefore reject, as a starting point, that an appellate court should be more circumspect in its approach when the disputed amount only slightly exceeds the statutory threshold, without which permission to appeal is needed.

21 Be that as it may, it is clear that an appellate court should be reluctant to overturn findings made by the trial judge as the appellate court is in a less advantageous position compared to the trial judge who has the benefit of hearing the evidence of the witnesses and observing their demeanour (see the Court of Appeal decision of *Lo Sook Ling Adela v Au Mei Yin Christina and another* [2002] 1 SLR(R) 326 at [37]). This is made clear in the High Court decision of *Chai Kwok Seng Anthony v CCM Group Limited* [2013] SGHC 208 in the context of a district court appeal hearing (at [38]):

> 38 In determining the appeal, this court is reminded that an appeal to the High Court from the decision of the District Court is by way of rehearing: see s 22(1) Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) and O 55, r 2(1) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed). Indeed, it is noted that under O 55, r 6(3) the court enjoys the "power to draw any

> inferences of fact which might have been drawn in the proceedings out of which the appeal arose." That said, it bears repeating that the High Court judge *does not have the benefit of observing the demeanour of the witnesses who gave evidence at the District Court and that due deference should be given to the inferences of facts as drawn by the district judge*.
>
> [emphasis added]

22 However, the deference accorded does not mean that an appellate court should shy away from overturning findings of fact when necessary. Where it can be established that the trial judge's assessment is plainly wrong or against the weight of the evidence, the appellate court can and should overturn any such finding. This principle is also attenuated where a particular finding of fact is not based on the credibility of the witness, but instead, an inference drawn from facts. This is elaborated upon in the Court of Appeal decision of *Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 (at [41]):

> **Basis for review by an appellate court of a trial judge's findings of fact**
>
> 41 Given that this appeal largely involves the evaluation of the Judge's finding of facts below, it is apposite that we remind ourselves of an appellate court's role with respect to the finding of facts made in the course of a trial. The appellate court's power of review with respect to finding of facts is limited because the trial judge is generally better placed to assess the veracity and credibility of witnesses, especially where oral evidence is concerned (*Seah Ting Soon v Indonesian Tractors Co Pte Ltd* [2001] 1 SLR(R) 53 at [22]). However, this rule is not immutable. Where it can be established that the trial judge's assessment is plainly wrong or against the weight of the evidence, the appellate court can and should overturn any such finding (see *Alagappa Subramanian v Chidambaram s/o Alagappa* [2003] SGCA 20 at [13] and *Jagatheesan s/o Krishnasamy v PP* [2006] 4 SLR(R) 45 at [34]–[36]). Furthermore, where a particular finding of fact is not based on the veracity or credibility of the witness, but instead, is based on an inference drawn from the facts or the evaluation of primary facts, the appellate court is in as good a position as the trial judge to undertake that exercise (*Tan Chin Seng v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 at [54] and *Ho Soo Fong v Standard Chartered Bank* [2007]

> 2 SLR(R) 181 at [20]). In so doing, the appellate court will evaluate the cogency of the evidence given by the witnesses by testing it against inherent probabilities or against uncontroverted facts (*Peh Eng Leng v Pek Eng Leong* [1996] 1 SLR(R) 939 at [22]).

23 Also, in the High Court decision of *Public Prosecutor v Wang Ziyi Able* [2008] 2 SLR(R) 61 (at [94]), the court set out two situations where an appellate court has access to the same material as the trial judge and so is in as good a position as the trial court to draw inferences from facts in order to assess the veracity of the witness's evidence. The two situations are where the assessment of the witness's credibility is based on inferences drawn from: (a) the internal consistency in the content of the witness's evidence; and (b) the external consistency between the content of the witness's evidence and the extrinsic evidence.

24 Further, in a situation where the appellate court does not have to rely heavily on the evidence of the witnesses during cross-examination, then it is as well placed to make determinations of fact as the court below. For instance, in the Court of Appeal decision of *Ng Chee Chuan v Ng Ai Tee (administratrix of the estate of Yap Yoon Moi, deceased)* [2009] 2 SLR(R) 918, the sole issue of fact was whether there was an oral agreement between the parties relating to the transaction for shares in exchange for monthly payment. That court was able to refer to documentary evidence objectively showing the existence of an agreement, and in this context, commented (at [19]) that "the availability of contemporaneous documents in this case reduced the need to rely on the testimony of the witnesses on the stand as much of the evidence was, in fact, not disputed, *eg*, the amount of payments made, the dates of the payments, the signing of the deeds, *etc*". It was also noted that given that the court had access to the same objective evidence as the trial judge, it was "just as well placed" to draw inferences from the empirical facts (at [19]).

25 In summary, as to findings of fact, the trial judge is generally better placed to assess the veracity and credibility of witnesses, and the appellate court should only overturn such findings where the trial judge's assessment is "plainly wrong or against the weight of the evidence" (see the Court of Appeal decision of *Sandz Solutions (Singapore) Pte Ltd and others v Strategic Worldwide Assets Ltd and others* [2014] 3 SLR 562 at [37]–[41]). As to inferences of fact, however, the appellate court can engage in a *de novo* review since an appellate judge is as competent as any trial judge to draw necessary inferences of fact. An appellate judge is in as good a position as the trial judge to assess a witness's credibility where such assessment is based on inferences drawn from the internal consistency of the witness's testimony and the external consistency between the witness's evidence and extrinsic evidence.

26 It should also be remembered that at the end of the day, the appellate court's duty is to do justice by correcting plainly wrong decisions. The appellate court can overturn findings of fact, especially with the advent of technology such as the availability of verbatim transcripts (see the Court of Appeal decision of *Thorben Langvad Linneberg v Leong Mei Kuen* [2013] 1 SLR 207 at [14], citing the Court of Appeal decision of *Goh Sin Huat Electrical Pte Ltd v Ho See Jui (trading as Xuanhua Art Gallery) and another* [2012] 3 SLR 1038 at [49] and [55]).

***There is no cause of action to support the claim of $72,200***

27 While an appellate court should be more circumspect in overturning findings of fact made with the benefit of assessing witnesses, it should be less so when examining the legal basis of the lower court's decision. As I will now explain, I allow the appeal because the DJ had, with respect, erred in implicitly finding that there was a legal basis to support the defendant's claim of $72,200.

28 As the Court of Appeal held in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112 (at [13]), "[i]t is a fundamental rule that in every case where a plaintiff claims relief against a defendant, his claim must be founded on a reasonable cause of action". Otherwise, the claim is liable to be struck out or, I should add, be dismissed if the opposing party did not apply to strike it out. While it is not necessary to plead the exact cause of action, it is necessary for a plaintiff (or a defendant in a counterclaim) to plead every essential element of a known cause of action. This is to furnish the defendant with sufficient particulars so as to have reasonable notice of the case he has to meet (see the High Court decision of *Chandra Winata Lie v Citibank NA* [2015] 1 SLR 875 at [34]–[35]). Thus, as Lord Pearson explained in the English Court of Appeal decision of *Drummond-Jackson v British Medical Association and others* [1970] 1 All ER 1094, albeit in the context of an application to strike out for lack of a reasonable cause of action, this connotes a cause of action which has some chance of success when only the allegations in the pleadings are considered. It must follow that if the pleadings disclose no facts in support of a known cause of action in respect of a claim, then the claim must necessarily fail for lack of any legal basis.

29 With these principles in mind, I turn to the defendant's counterclaim for the sum of $72,200. In my view, the defendant has not pleaded any essential element of a known cause of action to support this claim.

30 First, the defendant's claim for $72,200 cannot be based on the alleged Consultancy Agreement. However, as counsel for the plaintiff, Ms Jheong Siew Yin, helpfully pointed out in oral submissions, the defendant's claim for $72,200 was, in fact, premised on the existence of the Consultancy Agreement. In this regard, the defendant pleaded in the Defence & Counterclaim (Amendment No. 2) that "[i]n breach of the Consultancy Agreement, the

[plaintiff] failed to run the day-to-day business of [WWLS]",[12] which resulted in the defendant incurring the sum of $72,200. In other words, the defendant pleaded that the damages arising from the plaintiff's breach of the alleged Consultancy Agreement, by not paying the salaries of the drivers and VA, amounts to $72,200. However, the DJ found that the alleged Consultancy Agreement did not exist. Therefore, the defendant's claim for $72,200 cannot be founded on the alleged Consultancy Agreement. In so far as the defendant bases his claim on the Consultancy Agreement, it must fail.

31 Second, the defendant's claim for $72,200 cannot be sustained on any other basis in the pleadings. In this regard, in the relevant paragraphs of the Defence & Counterclaim (Amendment No. 2), the defendant has simply pleaded that the plaintiff failed to pay the salaries of the drivers and VA.[13] However, the defendant has not pleaded any fact, such as the existence of an agreement between the parties on this matter, to explain *why* the plaintiff is liable to the *defendant* for the sum of $72,200 that makes up these salaries. Although the defendant in his submissions before me asserts that "it would be a fiction to suggest that *no* agreement between the parties existed in relation to the responsibility for the salaries of [WWLS]'s staff" [emphasis in original],[14] this is a bare assertion without any substantiation found within the pleadings.

32 Third, I reject the defendant's belated attempt before me to argue that there was a "collateral agreement" between the plaintiff and the defendant for the former to be responsible for the relevant salaries. In this regard, the

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12 Defence and Counterclaim (Amendment No. 2) at para 30.

13 Defence and Counterclaim (Amendment No. 2) at paras 33–34.

14 RC at para 27.

defendant argued that the DJ's decision "does not preclude the existence of the … *collateral* agreement to pay the salaries … and 45% of the takings" [emphasis in original].[15] During oral submissions, counsel for the defendant, Mr Julian Sebastian Lim ("Mr Lim"), referred to several paragraphs in the pleadings to substantiate this argument, but I do not accept that they are sufficient to establish the existence of this collateral agreement. For instance, Mr Lim referred to paragraph 29 of the Defence & Counterclaim (Amendment No. 2), which states that "[i]t was agreed that the [plaintiff] would bear all costs and expenses associated with the running of [WWLS]". However, paragraph 29 states this agreement is "pursuant to the Consultancy Agreement" and "during the period of consultancy". It therefore cannot substantiate the defendant's claim that there is a collateral agreement *outside* of the Consultancy Agreement between the parties in relation to the payment of salaries for the drivers and VA. Perhaps the only pleading that may be relevant is paragraph 32 of the Defence & Counterclaim (Amendment No. 2), which states that "the [plaintiff] and [her son] had agreed to be responsible for [certain tasks] but neglected, refused and/or otherwise failed to carry out". However, I do not find this sufficient to establish why the plaintiff is liable to the *defendant* for the sum of $72,200 that the latter spent to deploy additional labour to carry out the plaintiff's tasks. In sum, as I pointed out repeatedly to Mr Lim during the hearing, there is nothing in the pleadings that can substantiate the defendant's claim of $72,200 independent of the Consultancy Agreement.

33 Fourth, I also reject the defendant's belated attempt to argue that there was a "collateral agreement" between the parties because this case was simply not put to the plaintiff during the trial below. Although Mr Lim took the position

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[15] Respondent's Skeletal Arguments dated 15 July 2023 at para 12.

that the plaintiff was not taken by surprise because this point had been put to the plaintiff during trial,[16] I find that the point that was put to the plaintiff was that 55% of the daily collection of WWLS would be used to pay the salaries of the workers, instead of the point that the parties had entered into an agreement that the plaintiff would be liable to the defendant for that sum. In short, the plaintiff was not given a fair chance below to respond to the allegation that there had been a collateral agreement between the parties, which existed independently of the alleged Consultancy Agreement, for the plaintiff to pay the salaries of the drivers and VA.

34 Fifth, it is also not sufficient for the defendant, as he appears to be doing now, to rely on the plaintiff's pleaded oral agreement pursuant to which she had paid the sum of $90,000 to purchase WWLS. Indeed, the DJ had alluded to paragraph 8(c) of the plaintiff's AEIC, where the plaintiff had said that, pursuant to the oral agreement for her to purchase WWLS, she (the plaintiff) also agreed that "[t]he remaining 55% of the Wee Wee Laundry's daily collection will be used to pay the salaries of employees of Wee Wee Laundry and the other expenses of Wee Wee Laundry". In the first place, in the Defence & Counterclaim (Amendment No. 2), the defendant had denied the existence of any agreement for the plaintiff to purchase WWLS for the sum of $90,000. Having done this, it must follow that the defendant cannot rely on the plaintiff's own case about an oral agreement for the same in his counterclaim. In any event, even if the defendant can rely on the plaintiff's statement in paragraph 8(c) of the plaintiff's AEIC, that still does not explain why the plaintiff is liable to the *defendant* for the salaries. This is because the

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[16] Notes of Evidence (15 August 2022) at p 32 lines 21–29 (Record of Appeal ("ROA") at p 1459); p 35 lines 3–17 (ROA at p 1462); p 36 lines 6–11 (ROA at p 1463).

beneficiaries of the salaries are not the defendant but third parties such as the drivers and VA. While a plausible argument might be mounted based on the defendant's suing for damages arising from the infringement of his performance interest (see the High Court decision of *Motor Insurers' Bureau of Singapore and another v AM General Insurance Bhd (formerly known as Kurnia Insurans (Malaysia) Bhd) (Liew Voon Fah, third party)* [2018] 4 SLR 882 at [118]), the defendant never pleaded any material facts relating to such a cause of action, nor did he advance any such arguments.

35 Finally, I do not think that reasons of "policy" or "practicalities" can be used by the defendant to justify its claim for $72,200. While Mr Lim suggested that the DJ was being "practical" in allowing the defendant's claim of $72,200 so that the drivers and VA did not need to sue the plaintiff directly, I do not think that that is a good reason for allowing the claim. In the first place, and with respect, it is not sufficient for the DJ to have concluded that the plaintiff was liable for $72,200. This begs the question of liable *to whom*? As I said above, the DJ had concluded that the "plaintiff would be liable for payment of salaries of the workers" (see the GD at [27]), but this does not answer the question of why the plaintiff should be liable to the defendant. Indeed, in the absence of any pleaded agreement dealing with the matter, if the plaintiff was liable to pay the salaries as she had been in control of WWLS, then the proper persons to sue her would be the drivers and VA. It is not clear to me why the defendant has any standing to sue her, even if he had paid the salaries. Above all, as I have said above, reasons of "policy" and "practicalities" cannot excuse the need for parties to advance their cases in a legally and conceptually sustainable manner. There is, in every case, the *legal* requirement that a reasonable cause of action must underlie every claim. There is simply none in this case with regard to the defendant's claim for $72,200.

36 In summary, flowing from the above, it does not follow that because the defendant had paid the salaries (even if I accept this as correct), the plaintiff becomes liable to pay the defendant the salaries. At the risk of repetition, there is nothing pleaded by virtue of any agreement between the parties that the plaintiff is to, for example, reimburse the defendant for these salaries. Thus, even if I can accept that the plaintiff is responsible for paying these salaries, it does not flow legally that just because the defendant did so, the plaintiff must pay back the defendant. There is no legal basis for asserting this. In so far as the defendant now asserts a collateral agreement between the parties to sustain his claim for $72,200, I find that this was never pleaded, and that the plaintiff was not accorded a fair chance at defending against such an allegation at the trial below.

**Conclusion**

37 As such, I find that there was no cause of action pleaded in support of the defendant's counterclaim of $72,200. I allow the appeal on this basis.

38 Unless the parties are able to agree on the appropriate costs order, they are to write in with their submissions on costs within 14 days of this decision, limited to seven pages each.

Goh Yihan
Judicial Commissioner

Jheong Siew Yin (Constellation Law Chambers LLC) for the appellant;

Lim Huat Sing Julian Sebastian and Tay Sheng Xiang Kesmond (JLim Law Corporation) for the respondent.

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