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

[2023] SGHC 277

Originating Claim No 406 of 2022 (Registrar's Appeal No 78 of 2023)

Between

Wang Piao

… *Claimant*

And

Lee Wee Ching

… *Defendant*

JUDGMENT

[Civil Procedure — Summary judgment]

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v
Lee Wee Ching

[2023] SGHC 277

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Goh Yihan JC
22 May, 4 July, 2 October 2023

3 October 2023 Judgment reserved.

Goh Yihan JC:

1 This is the defendant's appeal against the learned Assistant Registrar Paul Tan's ("the learned AR") decision in HC/SUM 104/2023 ("SUM 104") to grant summary judgment in favour of the claimant in HC/OC 406/2022 ("OC 406").[1]

2 The claimant has characterised his claim as being one for the payment of a contractual sum based on a written agreement between the parties. In response, the defendant says that the claimant had transferred funds to him (the defendant) so that the claimant (or his associates) could "piggyback" on the defendant's transaction to acquire another "Vantage Rapid Thermal Processing Unit" ("Vantage Unit"). I understand the term "piggyback", which the

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[1] HC/ORC 1848/2023 dated 14 April 2023 and extracted 21 April 2023.

defendant uses, to mean that the claimant can make use of the defendant's transaction to acquire one Vantage Unit for the claimant's own benefit. In essence, the defendant is saying that the loan from the claimant is not what it appears to be.

3 After hearing the parties and considering their submissions, I dismiss the appeal and uphold the learned AR's decision in SUM 104. I provide the reasons for my decision in this judgment.

Procedural history

4 I begin with the procedural history behind this appeal. At the initial hearing of this appeal on 22 May 2023, the defendant sought permission to file an application to amend his Defence dated 16 December 2022 ("Defence"). I granted the defendant permission to do so. I thus adjourned the hearing to allow the claimant to file a reply affidavit and for parties to file their submissions in relation to the amendment application. I also asked the parties to file additional submissions for this appeal on the assumption that I allowed the amendment application.

5 I then heard the parties on the amendment application, HC/SUM 1463/2023 ("SUM 1463"), on 4 July 2023. The amendment application was more involved than I had expected. I therefore reserved my decision on that application and did not hear this appeal. After taking some time to consider the amendment application, I dismissed the application on 4 August 2023 in my decision of *Wang Piao v Lee Wee Ching* [2023] SGHC 216. The present appeal was then fixed to be heard on 2 October 2023.

6 Given my decision to disallow the defendant's proposed amendments to his Defence, I will consider only the parties' original pleadings in this appeal.

Background facts leading to SUM 104

7 The background facts leading to SUM 104 can be described briefly. The claimant, the defendant, and one Mr Bryan Tio Geok Hong ("Bryan") were shareholders of Apek Services (Pte) Ltd ("Apek"). Apek is a Singapore-incorporated entity that is involved in the manufacture and repair of process control equipment, as well as related products.[2] The defendant was the sole director of Korbett Pte Ltd ("Korbett"), which is a Singapore-incorporated entity in the business of providing semiconductor products and services.[3]

8 On 22 November 2022, the claimant commenced OC 406 against the defendant, claiming the breach of a loan agreement between the parties (the "Loan Agreement").[4] According to the claimant, the defendant had been interested to purchase two Vantage Units, so that he could refurbish and sell them for a profit. However, the defendant could only afford to purchase one Vantage Unit. As such, in order to finance the purchase of the other Vantage Unit, the defendant asked the claimant for a loan of US$1.1m, which was the approximate purchase price of one Vantage Unit. Pursuant to the terms of the Loan Agreement, the claimant extended a sum of US$1.1m to the defendant. In exchange, the defendant agreed to repay the claimant a sum of US$1.95m within approximately six months. Thus, the claimant's case is premised on the repayment of a sum provided for in the Loan Agreement.[5]

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2 Defence dated 16 December 2022 ("Defence") at para 3(2)(2.1).

3 Statement of Claim dated 22 November 2022 ("SOC") at para 1; Defence at para 3(1).

4 HC/OC 406/2022 dated 22 November 2022.

5 SOC at paras 2–6.

9 On 16 December 2022, the defendant filed his Defence in OC 406. The defendant's case is that, among other arguments: (a) he never received any money under the Loan Agreement because the sum of US$1,099,911.66 that had been transferred to him was to purchase a Vantage Unit on behalf of the claimant, Bryan, and/or Apex;[6] and (b) he does not recall executing the Loan Agreement.[7] In essence, the defendant says that the supposed loan was not really a loan and that even if it was a loan, he does not recall entering into it.

10 On 13 January 2023, the claimant commenced SUM 104 to seek summary judgment against the defendant. On 14 April 2023, the learned AR granted summary judgment for the claimant in the sum of US$1.95m, together with interest thereon.[8] The learned AR first found that the claimant had made out a *prima facie* case on the basis of the Loan Agreement, which clearly obliged the defendant to repay the sum of US$1.95m. The learned AR then concluded that the defendant did not show that there were any triable issues or that he had a *bona fide* defence. In this regard, the learned AR observed that the defendant had not pleaded that the Loan Agreement was a sham or that it had been forged. Further, the learned AR found that the defendant's attempt to recharacterise the Loan Agreement as not being a loan was incoherent and did not explain how the defendant came to sign the Loan Agreement that was clearly stipulated to be a loan.[9]

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6 Defence at para 3(2)(2.5).

7 Defence at para 3(5).

8 HC/ORC 1848/2023 dated 14 April 2023 and extracted on 21 April 2023.

9 Certified Transcript for HC/SUM 104/2023 dated 14 April 2023 at p 9 line 21 to p 11 line 21.

11 It was against these background facts the defendant filed the present appeal against the learned AR's decision in SUM 104.

The parties' general positions

12 Shorn of the proposed amendments to the defence, the parties largely maintain their positions taken below for this appeal.

13 The claimant submits that the learned AR rightly found that he had established a *prima facie* case against the defendant. More specifically, the claimant argues that he is simply enforcing the Loan Agreement.[10] Indeed, the Singapore courts have consistently found that a *prima facie* case is made out where there is a written agreement in this context.[11] The claimant then submits that the defendant's bare allegations do not raise any triable issues.[12]

14 While the defendant raised a number of defences before the learned AR, he focuses, in this appeal, on there being a triable issue arising from the *purpose* of the transfer of US$1,099,911.66 to the defendant in August 2018.[13] This issue is neatly captured in paragraph 3(2) of his Defence, which I reproduce in full below:

> (2) Save that there had been oral discussions between the [d]efendant and the [c]laimant in 2018 in respect of the Vantage … Units, paragraph 2 of the [Statement of Claim] is denied. The [d]efendant avers as follows:

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10 Claimant's Written Submissions dated 27 June 2023 ("CWS") at paras 7–9.

11 CWS at para 10.

12 CWS at paras 11–54.

13 Defendant's Written Submissions dated 27 June 2023 ("DWS") at paras 34–36.

(2.1) At all material times, the [c]laimant, … Bryan … and the [d]efendant (either directly or indirectly), were shareholders of Apek. …

(2.2) …

(2.3) Sometime in or around June or July 2018, the [d]efendant intended to purchase *one* Vantage … Unit for the purposes of refurbishment and resale for profit.

(2.4) Pursuant to the [p]arties' practice of sharing new business and investment opportunities with one other, the [d]efendant verbally informed Bryan and the [c]laimant of his intention to purchase and profit from the refurbishment and resale of the Vantage … Unit. Arising from this but on a subsequent occasion sometime in August 2018, Bryan and the [c]laimant expressed interest to similarly acquire a Vantage … Unit for refurbishment and resale. The [d]efendant orally informed Bryan and the [c]laimant that the cost of acquiring, deinstallation, transporting, shipping, and storage at Korbett's premises of the Vantage … Unit was about the sum of US[$]1,100,000.00. The [c]laimant and Bryan orally agreed and requested that the [d]efendant, through Korbett, procure an additional Vantage … Unit (the "**Apek Vantage Unit**") on behalf of Apek, Bryan, and/or the [c]laimant.

(2.5) Subsequently, the [c]laimant and/or Apek and/or Bryan procured the transfer of the sum of US$1,099,911.66 (the "**Consideration**") to the [d]efendant, in several tranches in August 2018, as consideration for the [d]efendant's purchase of the Apek Vantage Unit on behalf of Apek, Bryan, and/or the [c]laimant. The Consideration was transferred to the bank account of Trowbridge Universal Corp, the [d]efendant's British Virgin Islands-incorporated entity ("**Trowbridge**") from Thurman Group, Lamont United, and the [c]laimant.

(2.6) On or around 16 August 2018, the [d]efendant, through Korbett, purchased two Vantage … Units at a total cost price of US[$]1,900,000.00 from IM Flash Technologies. One Vantage … Unit was purchased for Korbett, and the Apek Vantage Unit was procured by Korbett for and/on behalf of Apek, on the instructions of the [c]laimant and/or Bryan. At all material times, the beneficial ownership of the Apek Vantage Unit vested with the [c]laimant and/or Bryan and/or Apek.

> (2.7) The Apek Vantage Unit was, at the [c]laimant and/or Bryan's request, stored in Korbett's business premises for and on behalf of the [c]laimant, Bryan and/or Apek.
>
> (2.8) Sometime in late March 2020, Bryan, for and on behalf of the [c]laimant and Apek, and pursuant to their beneficial ownership of the Apek Vantage Unit, orally instructed the [d]efendant to procure the shipment of the Apek Vantage Unit to HLK Technology Limited ("**HLK**"), a Taiwanese entity. On or around 23 March 2020, pursuant to the instructions of Bryan, Korbett shipped the Apek Vantage Unit to HLK. The costs of shipping the Apek Vantage Unit to Taiwan was to be borne by Apek.

[emphasis in original]

15 To summarise the above, the defendant alleges that the sum of US$1,099,911.66 was transferred to enable the defendant to purchase a Vantage Unit on behalf of the claimant, Bryan, and/or Apek. Therefore, although the Loan Agreement states there is a loan, there is, *in fact*, no loan. The defendant further explains in his First Affidavit dated 6 February 2023 that his account of the facts is supported by the objective evidence, including: (a) the fact that the claimant and Bryan were interested in purchasing a Vantage Unit for themselves;[14] (b) emails that substantiated the fact that the claimant, Bryan, and/or Apek claimed ownership over the Vantage Unit concerned;[15] (c) a tax invoice and commercial invoice which showed that payment for the shipment of the Vantage Unit was paid for by Apek and not the defendant;[16] (d) bank account transfers showing that the sum of US$1,099,911.66 was transferred not just from the claimant's bank account but also from other bank accounts;[17] and

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14 1st Affidavit of Lee Wee Ching dated 6 February 2023 ("LWC's affidavit") at para 71.

15 LWC's affidavit at paras 64 and 71–72.

16 LWC's affidavit at paras 68–69.

17 LWC's affidavit at paras 39 and 43.

(e) the fact that the claimant remained silent and did not ask for repayment well after the due date.[18] Ultimately, the defendant points out that he did not receive any benefit from the disposal of the Vantage Unit to HLK Technology Limited ("HLK").[19]

The applicable law

16 In terms of the applicable principles, it is trite law that the purpose of the summary judgment procedure under O 9 r 17 of the Rules of Court 2021 (the "ROC 2021"), which was previously O 14 rr 1 and 3 of the Rules of Court (2014 Rev Ed) (the "ROC 2014"), is to enable a claimant to obtain a quick judgment where there is plainly no defence to the claim without trial (see the High Court decision of *Ling Yew Kong v Teo Vin Li Richard* [2014] 2 SLR 123 at [30], citing *Singapore Civil Procedure 2013* (G P Selvam gen ed) (Sweet & Maxwell, 2013)). However, it is important that such proceedings "should not be allowed to become a means for obtaining, in effect, an immediate trial of the action" (see *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 14/1/2, as well as Jeffrey Pinsler SC, *Singapore Civil Procedure* (LexisNexis, 2022) at para 23-6).

17 Accordingly, to obtain summary judgment, a claimant must first show that he has a *prima facie* case for summary judgment. If he fails to do that, his application ought to be dismissed. However, once the claimant shows that he has a *prima facie* case, the tactical burden then shifts to the defendant who, in order to obtain leave to defend, must establish that there is a fair or reasonable probability that he has a real or *bona fide* defence (see the High Court decisions

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18 LWC's affidavit at paras 56–58.

19 LWC's affidavit at para 73.

of *Ritzland Investment Pte Ltd v Grace Management & Consultancy Services Pte Ltd* [2014] 2 SLR 1342 ("*Ritzland Investment*") at [43]–[44] and *M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2015] 1 SLR 325 ("*M2B World*") at [17]). The court will not grant leave to defend if the defendant only provides a mere assertion, contained in an affidavit, of a given situation which forms the basis of his defence (see *M2B World* at [19], citing the High Court decision of *Prosperous Credit Pte Ltd v Gen Hwa Franchise International Pte Ltd* [1998] 1 SLR(R) 53 at [14]). The burden which shifts to the defendant upon a *prima facie* case being shown is the burden on the application for summary judgment, *ie*, a tactical burden, and not the legal or even an evidential burden of proof (see *Ritzland Investment* at [45]).

18 Accordingly, I will first consider whether the claimant has successfully established a *prima facie* case that he is entitled to the sums claimed. If he has, the tactical burden shifts to the defendant who must show that there is a triable issue or a *bona fide* defence or that for some other reason there ought to be a trial, but a complete defence need not be shown (see *M2B World* at [19], citing *Bank Negara Malaysia v Mohd Ismail* [1992] 1 MLJ 400). If the defendant cannot do this, the claimant will be entitled to summary judgment.

My decision: the appeal is dismissed

The claimant has established a prima facie *case for judgment*

19 Applying these principles, I find that the claimant has established a *prima facie* case for summary judgment in his favour. To begin with, the claimant has exhibited a written agreement dated 6 August 2018 that was entered into between the parties, which I have referred to above as the "Loan Agreement". The Loan Agreement is stated to be a "Personal Loan between

Individuals".[20] It also provides that the "Lender" is the claimant and the "Borrower" is the defendant. It further states that in exchange for the claimant extending to the defendant a loan in the sum of US$1.1m (described as the "Loan Amount"), the defendant is to repay the sum of US$1.95m (described as the "Equipment Sale Price") to the claimant in accordance with a prescribed schedule (described as the "Repayment Schedule"). The Repayment Schedule provides for repayment to be made in three tranches between December 2018 and March 2019.

20 It is not disputed that the claimant had paid the Loan Amount to the defendant. It is also not disputed that the defendant has failed to make any repayment to the claimant. The claimant has therefore made out a *prima facie* case for judgment since the defendant is in breach of his obligation to repay the Equipment Sale Price. This is similar to many cases in which the courts have found a *prima facie* case and entered summary judgment on the basis of signed loan documents. For example, in the High Court decision of *Lek Peng Lung v Lee Investments (Pte) Ltd and others* [1991] 2 SLR(R) 635 ("*Lek Peng Lung*"), the plaintiff sued the defendants for moneys that her late husband had lent to the defendants' pawnshop. The plaintiff produced two receipts which were signed by the third defendant on behalf of the pawnshop that stated that "[t]his is a receipt for a loan, not a deposit". Warren L H Khoo J dismissed the defendants' appeal against summary judgment. Khoo J had decided so on the basis that, among other reasons, the defendants had not discharged their burden of showing why the receipts, which clearly stated that the sums were loans and not deposits, should be treated as deposits instead (see *Lek Peng Lung* at [21]–[23]). Similarly, in the High Court decision of *DBS Bank Ltd v Lam Yee Shen and*

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[20] 1st Affidavit of Wang Piao dated 13 January 2023 ("WP's affidavit") at p 14.

another [2021] 5 SLR 1202, Aedit Abdullah J found that the plaintiff had established a *prima facie* case with its documentation showing the existence of a mortgage, as well as account statements proving that the defendants had defaulted on their monthly instalments (at [16]). Abdullah J's decision was upheld by the Appellate Division of the High Court (the "AD") in *Lam Yee Shen and another v DBS Bank Ltd* [2022] 1 SLR 671.

21 Accordingly, I find that the claimant has established a *prima facie* case for summary judgment against the defendant.

The defendant has not shown that there is a fair or reasonable probability that he has a real or* bona fide *defence

22 Given that I have found that the claimant has established a *prima facie* case for summary judgment, the tactical burden shifts to the defendant. In order to obtain leave to defend, the defendant must establish that there is a fair or reasonable probability that he has a real or *bona fide* defence (see above at [17]). In this regard, the defendant raises a number of arguments. As I have said above, the defendant's primary argument is that the claimant's and Bryan's intentions to purchase the Vantage Unit for themselves evince the true nature of the Loan Agreement. Second, the defendant says that the claimant's conduct prior to the commencement of OC 406 (and subsequent to the purchase of the Vantage Unit) has superseded the Loan Agreement in its entirety.[21] As Mr N Sreenivasan SC ("Mr Sreenivasan"), who appeared for the defendant, explained at the hearing before me, such conduct, which includes the defendant's shipping of the Vantage Unit to HLK, should be construed as a

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[21] Defendant's Written Submissions for SUM 104 dated 10 April 2023 ("SUM 104 DWS") at paras 84–101.

repayment of the loan under the Loan Agreement, if I were not with him on the Loan Agreement not being what it is. Third, in SUM 104, the defendant challenged for the first time in OC 406 that the Loan Agreement is not authentic.[22] At the very least, the defendant had originally said in his Defence that he does not recall executing the Loan Agreement.

23 In my judgment, the defendant has not shown that there is a fair or reasonable probability that he has a real or *bona fide* defence.

The claimant did not intend to purchase a Vantage Unit for himself

24 First, as to the defendant's argument about the claimant's and Bryan's intentions to purchase a Vantage Unit for themselves, the defendant exhibited email correspondence between his company, Korbett, and Macquarie Equipment Trading ("Macquarie"), which purportedly shows that the claimant had such an intention.[23] The correspondence between Korbett and Macquarie is relevant because Macquarie was the seller of the Vantage Unit. The defendant's case is that the claimant (or his associates) had "piggybacked" on his transaction to acquire a Vantage Unit for himself, *ie*, the claimant. Therefore, the evidence shows that the defendant was only invoiced for one Vantage Unit, as opposed to two. Ultimately, the defendant submits that since the claimant's intention to purchase a Vantage Unit is a factual dispute, that impacts the true nature of the Loan Agreement and this issue merits further examination at trial.[24]

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22 SUM 104 DWS at paras 44(b) and 45.

23 LWC's affidavit at paras 88–102.

24 DWS at para 83.

25 I disagree with this argument. In the first place, the defendant's allegation that the claimant intended to purchase a Vantage Unit for himself is contradicted by a document exhibited by the claimant, being an invoice from Macquarie dated 1 June 2018 that invoiced Korbett for *two* Vantage Units.[25] The defendant attempts to counter this evidence by exhibiting what he has termed the "Similar Macquarie Invoice" that also shows the prices for two Vantage Units.[26] I understand the defendant to be saying that this shows that he continually monitors the prices of Vantage Units, so it is no surprise that there would be an invoice from Macquarie showing the price for two of such machines. However, there is a crucial difference between the "Similar Macquarie Invoice" and the document exhibited by the claimant – the "Similar Macquarie Invoice" is marked as being a "Quotation", whereas the document exhibited by the claimant is marked as an "Invoice". Thus, the document exhibited by the claimant does show the defendant being invoiced for *two* Vantage Units. This effectively counters the defendant's argument that the claimant had intended to purchase one of the Vantage Units by "piggybacking" on the transaction since, in that scenario, the defendant would have been invoiced for only one Vantage Unit.

26 Moreover, even if the claimant had intended to "piggyback" on the defendant's purchase of Vantage Units by having the defendant own the two units legally but hold one of them on trust for the claimant, this account fails to explain the Loan Agreement. This is because the Loan Agreement clearly obliges the defendant to *repay* the Equipment Sale Price to the claimant. If the defendant were holding one of the Vantage Units on trust for the claimant, then

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[25] WP's affidavit at paras 21–23 and pp 20–21.

[26] LWC's affidavit at para 92 and pp 1879–1883.

it is inexplicable why the defendant would owe the purchase price of one unit to the claimant. Instead, the defendant would simply have been obliged to transfer the legal title of the Vantage Unit concerned to the claimant.

27 In any event, the defendant's own evidence in this regard is inconsistent. In his Defence, the defendant states that the claimant and Bryan apparently "expressed interest to similarly acquire a Vantage Equipment Unit" "sometime in August 2018".[27] However, in his affidavit filed in SUM 104, the defendant alleged that "[t]here was an oral discussion between [the defendant,] the [c]laimant and Bryan, where they told [the defendant] that they wanted to purchase 1 Vantage Tool [*ie*, what I have termed as "Vantage Unit"]".[28] Subsequent to this purported oral discussion, the defendant alleged that he then "instructed Samuel [*ie*, the general manager of Korbett] to enquire on the possibility of acquiring the two Vantage Units … Samuel did so on *31 May 2018*" [emphasis added].[29] As can be seen, the defendant's account in his Defence is that the claimant expressed an interest in purchasing a Vantage Unit in August 2018. However, this is contradicted by his affidavit where he said that he reached out to Samuel in May 2018, in furtherance of the claimant's supposed interest. In fact, the defendant's counsel admitted at the hearing of SUM 104 that the defendant's evidence was inconsistent in this regard.[30] In my view, this shows that the defendant's account of events is unreliable.

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27 Defence at para 3(2)(2.4).

28 LWC's affidavit at para 99.

29 LWC's affidavit at para 100.

30 Certified Transcript for HC/SUM 104/2023 dated 14 April 2023 at p 4 lines 5–7 and p 6 lines 5–7, 11–12, and 16–17.

There is nothing wrong with the claimant's conduct subsequent to the Loan Agreement

28 Second, as to the defendant's argument about the claimant's conduct prior to the commencement of OC 406, this is really about the claimant's conduct *subsequent* to the Loan Agreement. In this regard, the defendant first says that if the Loan Agreement was really a loan between the parties, then it is inexplicable why the claimant remained silent for four years, since the repayment was due before the claimant subsequently pursued a claim.

29 In my view, this is not a credible defence. In the first place, the defendant is not alleging, nor has he particularised, that the parties had entered into a subsequent contract which either varied or superseded the Loan Agreement. At its highest, the defendant's case is that there was an implied contract that arose by virtue of the parties' subsequent conduct and the effect of this contract was to vary the Loan Agreement. Because of this variation, the claimant cannot enforce the Loan Agreement. I disagree even on this characterisation of the defendant's case because it is well established that contracts will not be lightly implied (see the High Court decision of *Higgins, Danial Patrick v Mulacek, Philippe Emanuel and others and another suit* [2016] 5 SLR 848 at [52], citing the Court of Appeal decision of *Eng Chiet Shoong and others v Cheong Soh Chin and others and another appeal* [2016] 4 SLR 728 at [29]). Therefore, given the lack of any particularisation as to how this implied contract was even formed, I do not think that the defendant has established a triable issue. More broadly, the correct approach to take in relation to the claimant's silence for four years is that, subject to the relevant limitation period, it is entirely up to a claimant whether he wishes to pursue a claim. As such, I disagree that the mere fact that the claimant here did not raise a claim for four years shows that the claimant did not think that the Loan Agreement is a loan.

30 For completeness, I deal with two cases which the defendant raises in support of his argument that the claimant's silence after the Loan Agreement ought to be given weighty consideration. The first of these is the High Court decision of *Thong Soon Seng v Magnus Energy Group Ltd* [2023] SGHC 5 ("*Thong Soon Seng*"), where Vinodh Coomaraswamy J considered the plaintiff's conduct in the run up to the litigation (at [33]). This was one of the learned judge's considerations in deciding that the sum of $4m that the plaintiff paid to the defendant was not for the purpose of the alleged loans. However, *Thong Soon Seng* can be easily distinguished because the alleged loan agreements were orally made. Unlike the present case, there was no written contract in that case. In those circumstances, it is entirely understandable why the High Court attributed more weight to the parties' conduct, including any inaction. In stark contrast, the Loan Agreement here is written and bears the unmistakable hallmarks of being a loan on its face. Similarly, the second case which the defendant relies on, being the AD decision of *Tan Chin Hock v Teo Cher Koon and another and another appeal* [2022] 2 SLR 314, was also based on an alleged *oral* loan agreement. There is no need to repeat myself save to say that it is entirely understandable why the AD placed greater weight on the respondent's long delay in filing his action (at [103]).

31 Moving on, the defendant also says that in March 2020, the claimant (or his associates) had arranged for one of the Vantage Units to be shipped to HLK. In support of this, Mr Sreenivasan referred me to, among other documents, a tax invoice which Korbett issued to Apek on 19 March 2020 for the associated shipping costs.[31] This was supposedly done pursuant to the claimant's beneficial ownership of the Vantage Unit. This is, therefore, so the defendant argues,

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[31] Agreed Bundle of Documents ("ABOD") at p 2086. See also ABOD at p 2079.

consistent with his narrative that the claimant had purchased one of the Vantage Units and had transferred money to the defendant to do just that. The defendant also relies on the claimant's instructions as being an assertion of ownership over the Vantage Unit concerned, which should be construed as the defendant repaying the loan under the Loan Agreement.

32 However, I fail to see how this argument affects the characterisation of the Loan Agreement. Even if the defendant is correct that the claimant had intended to own one of the two Vantage Units, that still does not explain why the parties had entered into the Loan Agreement which clearly provides for the defendant to *repay* the claimant the Equipment Sale Price. While the defendant may have other claims arising from this alleged transfer, I am not convinced that the defendant has raised any real defence that is particular to the Loan Agreement.

It is too late for the defendant to argue that the Loan Agreement is not authentic

33 Third, as to the defendant's argument below that the Loan Agreement is not authentic, I agree with the claimant that the defendant has left it too late to raise this challenge. However, to be fair to the defendant, this is not a point that he is pressing in this appeal.

34 As the Court of Appeal held in *Olivine Capital Pte Ltd and another v Chia Chin Yan and another matter* [2014] 2 SLR 1371 (at [42]–[43]), a defendant cannot rely on a fresh defence that has not been pleaded in his defence to resist summary judgment, unless the defence is amended or the case is an exceptional one. To my mind, if the Loan Agreement was really forged, then the defendant would surely have raised such an important matter in his Defence. Indeed, it is important to emphasise that the defendant intentionally stated in his

Defence that he does not recall signing the Agreement.[32] This is deliberately framed. As the High Court held in *Super Group Ltd v Mysore Nagaraja Kartik* [2019] 4 SLR 692 (at [117]), saying that one did not sign a document is quite different from saying that one does not recall signing a document. This is because the former disavows the signature completely whereas the latter leaves open the possibility that the signature is genuine but the signor has forgotten about it. In the present case, the defendant's careful framing in his Defence leaves open the possibility that he had signed the Loan Agreement. The corollary of this is that the defendant cannot dispute the authenticity of the Loan Agreement.

35 Further, even if I were to allow the defendant to amend his Defence to say that the signature is forged (albeit he did not include this proposed amendment in SUM 1463), I would also have concluded the same that he has not shown a plausible defence. In this regard, the defendant says that his signature on the Loan Agreement does not have the distinctive "circle" in his real signature,[33] but the claimant has exhibited other documents indisputably bearing the defendant's signature that do not contain the "circle" as well.[34] Therefore, the lack of the "circle" in the defendant's signature on the Loan Agreement is not dispositive of the authenticity of his signature, let alone the authenticity of the Loan Agreement.

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32 LWC's affidavit at para 81.

33 LWC's affidavit at para 82.

34 2nd Affidavit of Wang Piao dated 27 February 2023 at para 13 and pp 14–15.

Other defences do not raise triable issues

36 For completeness, I should also say that the Defence raises a number of other miscellaneous points, which I do not think raises any real defence. First, the defendant says that it is implausible that he would have agreed to a repayment sum that is so much higher than the loan amount, especially given the price of one Vantage Unit.[35] However, it is clear that the courts do not refuse to enforce an agreement just because it is uncommercial. Indeed, the courts will not usually inquire into the commercial bearings of an agreement, and this case is no exception.

37 Second, the defendant complains that the claimant has not clarified the provenance of the funds that the claimant disbursed to the defendant pursuant to the Loan Agreement. However, even if this is a disputed fact, I cannot see how it is relevant to the dispute at hand, which concerns the characterisation and existence of the Loan Agreement between the parties.

38 I accordingly conclude that the defendant has not shown that there is a fair or reasonable probability that he has a real or *bona fide* defence. In essence, the defendant has not raised any real or *bona fide* defence against a claim for moneys extended to him but which he has not repaid under a written loan agreement.

Conclusion

39 For all these reasons, I dismiss the defendant's appeal and affirm the learned AR's decision below. In closing, I record my thanks to

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[35] LWC's affidavit at paras 59–62.

Mr Sreenivasan and Mr Edmund Kronenburg, for all their helpful submissions, which were always advanced reasonably and fairly.

40 Unless the parties can agree on the costs for this appeal, as well as for HC/SUM 1479/2023, 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

Kronenburg Edmund Jerome, Lim Yanqing Esther Candice, Tang Kai Qing and Chan Yu Jie (Braddell Brothers LLP) for the claimant;
Narayanan Sreenivasan SC, Jerrie Tan Qiu Lin and Partheban Pandiyan (K&L Gates Straits Law LLC) (instructed), Thrumurgan s/o Ramapiram, Tan Lai Tian Timothy, Mohamad Hasbu Haneef bin Abdul Malik and Lokman Hakim bin Mohamed Rafi (Trident Law Corporation) for the defendant.