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

[2024] SGHC 101

Originating Claim No 462 of 2023 (Registrar's Appeal No 27 of 2024)

Between

Foo Yong Siang Victor

… *Claimant*

And

Tan Heng Khoon

… *Defendant*

GROUNDS OF DECISION

[Credit And Security — Money and moneylenders — Loans of money]
[Credit And Security — Money and moneylenders — Illegal moneylending]
[Civil Procedure — Summary judgment — Threshold of triable issues]

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v
Tan Heng Khoon

[2024] SGHC 101

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12 April 2024

Kwek Mean Luck J:

Introduction

1 Registrar's Appeal 27/2024 ("RA 27") was an appeal by the defendant against the decision of the learned Assistant Registrar ("AR") in HC/SUM 2928 ("SUM 2928") to grant summary judgment in favour of the claimant in the sum of $451,089. In RA 27, I dismissed the appeal and affirmed the AR's decision to grant summary judgment. I provide here my reasons in full.

Facts

2 The defendant is the sole director and shareholder of a car dealership known as 360 Holdings Pte Ltd ("360 Holdings"). The claimant met the

defendant when the claimant purchased a car from 360 Holdings.[1] Pursuant to an alleged oral agreement that the claimant would invest in a "profit sharing program" from 360 Holdings in return for a monthly return, where the invested sum and unpaid returns would be payable upon demand (the "Company Investment Agreement"),[2] the claimant invested various sums with the defendant over the course of June 2020 to July 2021.[3]

3 The claim proceeded on the basis of a repayment agreement between the parties, entered into on 22 June 2022 (the "Agreement").[4] The Agreement states in its preamble that the defendant had borrowed $288,000 before 2022 and would be requesting for a further $120,000 from the claimant. This brought the total loan amount to $408,000. Clause 1.1 of the Agreement states that the defendant was to pay the claimant $30,000 monthly across a period of 14 months, with the first payment date being 30 June 2022, resulting in a total payment of $420,000.

4 The defendant did not raise any evidence to dispute that he signed the Agreement or its terms. He also did not dispute that he received the monies from the claimant.

5 After signing the Agreement, the defendant delivered to the claimant post-dated cheques, from the Defendant's sole proprietorship 360 VR Cars, each payable to "CASH".[5] The total amount of the post-dated cheques is

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1 Mr Victor Foo Yong Siang's ("Mr Foo") affidavit dated 25 September 2023 ("Mr Foo's affidavit") at paras 5–6.

2 Mr Foo's affidavit at para 7.

3 Mr Foo's affidavit at para 11.

4 Mr Foo's affidavit at pp 40–42.

5 Mr Foo's affidavit at pp 43–47.

$409,000. The Defendant subsequently made partial repayment of $38,000.[6] Most of the post-dated cheques were either dishonoured or could not be cashed as the account had been closed.[7]

6 The claimant sought a total sum of $451,089. This comprised of: (a) the outstanding loan amount of $370,000 ($408,000 minus the $38,000 repaid); (b) interest in the amount of $70,201 based on compounded interest of 3% per month on the unpaid sum, pursuant to cl 2.2. of the Agreement;[8] and (c) debt collector service fees in the amount of $10,888.[9]

Defendant's case on appeal

7 While the defendant raised a range of assertions before the AR in SUM 2928, he narrowed his submission on appeal to a singular issue, involving a smaller component of the overall claim. He submitted that the sum of $288,000 owed under the Agreement arose from unlicensed moneylending by the claimant that is prohibited under the Moneylenders Act 2008 (2020 Rev Ed) ("MLA").[10] As such, the claimant could not sue the defendant for the sum of $288,000.00. As the Agreement involved an illegal transaction, the entirety (or part) of the Agreement is invalid and cannot be enforced against the defendant.

8 The defendant relied mainly on two WhatsApp ("WA") messages. The first WA message is dated 25 April 2020 ("WA 25 April 2020").[11] There, the

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6 Mr Foo's affidavit at paras 36 and 40; Statement of Claim dated 21 July 2023 ("SOC"), at para 8.

7 Mr Foo's affidavit at pp 48–60.

8 Mr Foo's affidavit at p 62.

9 SOC at p 7; Mr Foo's affidavit at p 61.

10 Defendant's Written Submissions dated 1 April 2024 ("DAS") at paras 6 and 16.

11 Mr Foo's affidavit at p 18.

defendant informed the claimant of a "cashless profit sharing program" from the defendant's company, "for 2 months", with 6% return per month. The defendant submitted that certain sums, totaling $50,000, transferred from the claimant to the defendant after 25 April 2020, would accrue 6% monthly interest for two months, and that the defendant was to pay the claimant the principal sums and interest accrued at the end of each month.[12]

9 The second WA message is dated 2 May 2020 ("WA 2 May 2020").[13] There, the defendant informed the claimant that the defendant's "side demand for scrap car is going up" and "some of the high end cars that [are] under our sales portfolio also considering to let go". The "profit sharing is 12% for 2 months". The defendant submitted that following this message, the claimant transferred further sums of $50,000 to the defendant, and parties agreed on a 9% monthly interest for two months on the transferred sums.[14]

10 The defendant submitted that further loans were then made, with monthly interest to be paid.[15] Prior to the signing of the Agreement, the claimant had loaned the defendant $259,000. The sum of $288,000 stated to be the sum borrowed before 2022 in the Agreement already included both the principal sums of $259,000 and the interest accrued under the various loan arrangements.[16]

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12 DAS at para 8.

13 Mr Tan Pheng Khoon's ("Mr Tan") affidavit dated 1 April 2024 at pp 7–8.

14 DAS at paras 9–10.

15 DAS at paras 11, 12, 14 and 15.

16 DAS at para 15.

11 The defendant further submitted that the AR had erred in placing too much weight on cl 1.3 of the Agreement, which gave the claimant the discretion to reduce the total loan amount, to find that the presumption that the claimant is a moneylender does not arise.[17]

12 In summary, the defendant submitted that the loan transactions prior to 2022 were entered into under the claimant's alleged unlicensed moneylending business, raising the triable issue of whether the loans arose out of an unlicensed moneylending business, rendering them unenforceable. The defendant resisted the grant of summary judgment on this ground.

Claimant's case on appeal

13 The claimant submitted that he did not lend money to the defendant in consideration for a larger sum being repaid.[18] Under the Agreement, interest only accrued where the defendant defaulted on his repayments.[19] This arose when the post-dated cheques were dishonoured. As such, the presumption in s 3 of the MLA does not arise.

14 The claimant submitted that even if the court found that the presumption under s 3 of the MLA arose, he was not a moneylender within the definition of s 2 of the MLA. There was no system nor continuity in the moneylending. There was no fixed interest rate on the quantum loaned. The 3% monthly interest did not apply in the absence of default. This interest rate was proposed by the defendant and was not fixed based on his creditworthiness or past conduct.

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17 DAS at para 17.

18 Claimant's Written Submissions for RA 27 dated 19 February 2024 ("CAS") at para 50(c).

19 CAS at para 50(d).

There was no continuity as this involved a single loan. The claimant had not granted loans to other persons and was not in the business of moneylending.[20]

Decision

The law on summary judgment

15 It is trite that in an application for summary judgment, the claimant has to show that he has a *prima facie* case for summary judgment, following which the burden shifts to the defendant to show that there is a fair or reasonable probability that he has a real or *bona fide* defence: *M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2015] 1 SLR 325 ("*M2B*") at [17]. Summary judgment will only be granted if the court is satisfied that all the defences raised by the defendant to resist the application are "wholly unsustainable": at [1]. Leave to defend would ordinarily be granted where there are triable issues or questions militating in favour of a full evaluation of the evidence and arguments: *Lim Oon Kuin and others v Ocean Tankers (Pte) Ltd (interim judicial managers appointed)* [2022] 1 SLR 434 at [1]. However, mere assertions by a defendant which are equivocal, or lacking in precision, or are inconsistent with undisputed contemporary documents or other statements, or are inherently improbable would not be sufficient for a court to grant leave to defend: *M2B* at [19].

The law on unenforceable moneylending contracts

16 The MLA functions as "a scheme of social legislation designed to regulate rapacious and predatory conduct by unscrupulous unlicensed moneylenders…": *City Hardware Pte Ltd v Kenrich Electronics Pte Ltd*

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[20] CAS at paras 52–53.

[2005] 1 SLR(R) 733 at [47]. The MLA prohibits the carrying on of the business of moneylending, pursuant to s 5 of the MLA. Section 19(3) of the MLA renders unenforceable any contract for a loan which has been granted by an unlicensed moneylender.

17 Section 2 of the MLA prescribes the following definitions:

> **2**. In this Act, unless the context otherwise requires —
>
> …
>
> "moneylender" means a person who, whether as principal or agent, carries on or holds himself, herself or itself out in any way as carrying on the business of moneylending, whether or not the person carries on any other business, but does not include any excluded moneylender;
>
> …
>
> "unlicensed moneylender" means a person —
>
> (*a*) who is presumed to be a moneylender under section 3; and
>
> (*b*) who is not a licensee or an exempt moneylender.

18 Section 3 of the MLA provides that "[a]ny person, other than an excluded moneylender, who *lends a sum of money in consideration of a larger sum being repaid* is presumed, until the contrary is proved, to be a moneylender" [emphasis added].

19 In *Sheagar s/o T M Veloo v Belfield International (Hong Kong)* [2014] 3 SLR 524 ("*Sheagar*"), the Court of Appeal set out a framework for considering claims that a contract is unenforceable under the MLA at [75]:

> (a) To rely on the MLA to render a contract unenforceable, the borrower must prove that the lender is an "unlicensed moneylender".

(b) If the borrower can establish that the lender has lent money in consideration for a higher sum being repaid, he may rely on the presumption contained in s 3 of the MLA to discharge his burden.

(c) The burden then shifts to the lender to prove that he either does not carry on the business of moneylending or possesses a moneylending licence or is an exempt moneylender.

20 In *Subramaniam Dhanapakiam v Ghaanthimathi* [1991] 1 SLR(R) 164 ("*Subramaniam*") at [10], Chan Sek Keong CJ said with reference to the MLA, that the "settled law is that what is prohibited by the Act was not moneylending but the business of moneylending." Sundaresh Menon CJ also emphasised in *Sheagar* at [68] that "the MLA is only engaged if it is established that the lender is a "moneylender" within the meaning of the term in s 2 of the MLA. It is not engaged simply because a person lends money or is in the business of making loans."

21 The authorities have used the requirement of system and continuity to distinguish the business of moneylending from the act of moneylending: *Mak Chik Lun and others v Loh Kim Her and others and another action* [2003] 4 SLR 338 ("*Mak Chik Lun*") at [11].

22 By continuity, there must be more than occasional loans. The loan must be part of an ongoing and routine series of transactions made by the alleged moneylender. Where the transactions are so numerous as to require a system and business of moneylending was carried on, then the definition in the MLA is fulfilled: *Edgelow v MacElwee* [1918] 1 KB 205 at 206; *Ng Kum Peng v PP* [1995] 2 SLR(R) 900 ("*Ng Kum Peng*") at [36]–[38].

23 The requirement of system shows that there must be an organised scheme of moneylending. Some indicators of such a scheme would be fixed rates, the rate of interest being dependent on the creditworthiness and past conduct of the borrower and a clear and definite repayment plan: *Ng Kum Peng* at [38]; *Ochroid Trading Ltd and another v Chua Siok Lui (trading as VIE Import & Export) and another* [2018] 3 SLR 617 at [196] and [205].

24 If no system or continuity is displayed, the alternative test of whether the alleged moneylender is one who is ready and willing to lend to all and sundry, provided that they are from his point of view eligible, is used: *Mak Chik Lun* at [11] and *Agus Anwar v Orion Oil Ltd* [2010] SGHC 6 at [9] and [11].

The claimant is presumed to be a moneylender unless the contrary is proven

25 On the facts of this case, the presumption in s 3 of the MLA is triggered as the claimant has lent "a sum of money in consideration of a larger sum being repaid".

26 The claimant submitted that: (a) under the Agreement interest only applied where there is default in repayment; and (b) that the post-dated cheques provided by the defendant only amounted to around $408,000. The claimant's evidence is that an additional sum of $1,000 had been added in the last post-dated cheque from the defendant as his token of appreciation.

27 However, what is clear is that on the face of the Agreement, the defendant borrowed $408,000 and would be paid a total of $420,000 in return. While the total amount of post-dated cheques provided by the defendant amounted to only around $409,000 and the claimant has the right under cl 1.3 of the Agreement to reduce the total loan amount at his discretion, this does not

change the fact that at the time of the Agreement, on its face, the claimant has lent a sum of money in consideration of a larger sum being repaid.

28 Furthermore, it is the claimant's own evidence that in relation to the sum of $288,000, he had only invested $250,000 and $38,000 was his returns for the investment. The claimant testified that he invested $250,000 over 8 occasions between 26 April 2020 and 22 July 2021. By December 2021, the defendant's company had failed to make payments of various monthly returns based on the Company Investment Agreement between the parties, amounting to $36,000.[21] The amount owed totaled $286,000, after taking into account the $36,000 in unpaid returns. The claimant also testified that the defendant had proposed that 360 Holdings would pay a further sum of $2,000 in addition to $286,000, so that the claimant would accept payment of $288,000 instead of his full entitlement under the Company Investment Agreement.

29 Hence, the defendant was entitled to rely on the presumption in s 3 of the MLA. The burden was then on the claimant to rebut the presumption that he is a "moneylender". As set out above, this involved the consideration of whether, on the facts, the claimant was carrying on the business of moneylending.

The claimant was not in the business of moneylending

30 The evidence, on the whole, indicated that the claimant was not in the business of moneylending, as there was no system and continuity in the moneylending.

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[21] Mr Foo's affidavit at paras 11–12.

31 First, from the defendant's own evidence, it was the defendant who approached the claimant and invited him to take part in what the defendant called a "cashless profit sharing program" from the defendant's company. This can be seen from the 25 April WA message.

32 Second, it was the defendant's own evidence, that this was a commercial investment opportunity. He certainly positioned it as such to the claimant, as seen from the following:

(a) In addition to the 25 April WA message, the defendant explained in the 2 May 2020 WA message, that his "side demand for scrap car is going up" and that "some of the high end cars [may be] let go". He stated that this "is a rare opportunity for scrap and export cars".

(b) In the defendant's own affidavit, he testified that the $288,000 was an amount loaned to 360 Holdings, and that the cash transfers were all to 360 Holdings.[22] This further underlines the commercial investment nature of the transaction. The defendant later took on personal liability through the Agreement.

(c) It is also clear from the claimant's WA reply to the defendant on 2 May 2020 that in his mind, he was making an investment and not a loan, as he had said "[m]y folks are interested to invest $50k based on the same terms and same payout period as what I have".[23]

(d) Later messages underscored that the claimant treated this as an investment. After the defendant shared with the claimant about more

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22 Mr Tan's affidavit dated 29 December 2023 at para 5.

23 Mr Tan's affidavit dated 1 April 2024 at p 8.

> allocations being available for an "export program funds" by WA on 20 July 2021, the claimant replied that he would check with his folks "if they want to invest". He sent a WA to the defendant on 21 July 2021, asking if there were still slots and that he was thinking of investing another $50,000.[24]

33 Third, while the transfer of the $250,000 took place over 8 occasions, they arose out of the same set of commercial transactions, which was to invest in the profit-sharing program from the defendant's company, which the Claimant refers to as the Company Investment Agreement. It could not be said that there was a continuity of loans involving an ongoing and routine series of transactions. On the evidence, the transfers of money took place on an *ad hoc* opportunistic basis, after the defendant's sharing of investment opportunities.

34 Fourth, in so far as there appeared to be certain fixed rates of returns, these were positioned by the defendant himself in his WA messages as returns from a "profit sharing program" in his company, rather than as interest payments for loans. In addition, on the defendant's own evidence, this rate of return was clearly not tied to his creditworthiness or his past conduct. Moreover, these were rates proposed by the defendant himself. As noted by Yong Pung How CJ in *Ng Kum Peng* at [35], Chan Sek Keong J (as he then was) had granted summary judgment in *Subramaniam* in a situation where the plaintiff had lent money to the defendant who paid interest of her own accord and at rates determined by her. A defence that the plaintiff was in the business of moneylending was not accepted by Chan J in *Subramaniam*. It is noteworthy that in this case, the offer of interest payment and the payment rates also came from the defendant borrower, and not the lender.

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[24] Mr Tan's affidavit dated 1 April 2024, pp 20–21.

35 Fifth, the defendant submitted orally that the rates of return proposed by the defendant were "astronomical", so as to suggest that the transfer of money were more than a mere investment. This was particularly so given that the claimant was well-versed in investments and managing funds. There is however no evidence from the defendant that suggests that the rates of return were indeed "astronomical". In any event, this was not the defendant's position in his affidavit, and such evidence arose merely as submissions from the Bar. The WA messages adduced by the defendant plainly show him making the offer of commercial investment in his company's profit sharing program. Furthermore, the fact that the rate of return on an investment is high does not mean or suggest that the transaction arises in the course of the business of moneylending.

36 Sixth, there was no evidence that the defendant lent money to any persons other than the claimant, nor that the defendant would have been willing to lend money to all and sundry under *Mak Chi Lun* at [11]. Neither was it contended that the claimant was doing so or that the claimant was holding himself out as carrying on the business of moneylending.

37 From the evidence adduced by the defendant and the other undisputed evidence, the claimant was clearly not in the business of moneylending as defined by the MLA and the authorities. There was neither continuity nor system in the defendant's moneylending activities. The evidence sufficed to rebut the presumption in s 3 of the MLA. The claimant was *not* an unlicensed moneylender under the MLA. The Agreement was enforceable in full. There were no triable issues which necessitate a full trial.

Conclusion

38 I therefore dismissed the appeal. Costs of the appeal were awarded to the claimant in the amount of $9,000 inclusive of disbursements.

Kwek Mean Luck
Judge of the High Court

David Nayar (David Nayar and Associates) for the claimant;
Koh Weijin Leon (Xu Weijin), Elsie Lim Yan (Lin Yan) and Chng He Han (N S Kang) for the defendant.