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

[2024] SGHC 14

Originating Claim No 362 of 2023 (Registrar's Appeal No 234 of 2023 and Registrar's Appeal No 235 of 2023)

Between

(1) Ang Hong Wei
(2) Ang Chin Fang Sheelia
(3) Ang Pei Ting

… *Claimants*

And

(1) Ang Teng Hai
(2) Ang Keng Been (Hong Qingming)

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Summary judgment]

TABLE OF CONTENTS

Ang Hong Wei and others
v
Ang Teng Hai and another

[2024] SGHC 14

General Division of the High Court — Originating Claim No 362 of 2023
(Registrar's Appeal No 234 of 2023 and Registrar's Appeal No 235 of 2023)
Christopher Tan JC
18, 26 December 2023

19 January 2024

Christopher Tan JC:

1 On 25 August 2023, the Claimants brought HC/SUM 2583/2023 ("**SUM 2583**") for summary judgment against both the 1st Defendant and 2nd Defendant (collectively referred to as "**the Defendants**") for the sum of $496,700, plus interest and costs. The learned Assistant Registrar ("**AR**") below allowed SUM 2583 in part, by granting:

(a) final judgment against the Defendants for the sum of $331,700 (with interest payable on the judgment sum at the rate of 5.33% per annum, from the date of the claim to judgment); and

(b) unconditional leave for the Defendants to defend the claim in respect of the balance sum of $168,300.

2 HC/RA 234/2023 ("**RA 234**") and HC/RA 235/2023 ("**RA 235**") were cross-appeals, filed respectively by the Defendants and Claimants against the AR's decision. Having heard parties on 18 and 26 December 2023, I allowed both RA 234 and RA 235 in part.

Factual backdrop

3 The Claimants are the deputies of one Mdm Poh Gek Eng ("**Mdm Poh**"). The 1st Defendant is Mdm Poh's step-son and the 2nd Defendant is his son.

4 On 20 May 2009, the Defendants entered into an agreement with Mdm Poh to purchase her property at 837 Bukit Timah Road ("**the Property**") for $1 million ("**the Agreement**").[1] The Agreement contained a few key conditions:

(a) Special Condition 1 allowed the Defendants to pay $600,000 of the purchase price to Mdm Poh by way of monthly instalments of $5,000, over the course of ten years and without interest, with the balance of the purchase price paid upfront.

(b) Special Condition 3 stipulated that if the Defendants were to sell the Property within ten years of "completion" of their purchase of the Property from Mdm Poh, they would pay Mdm Poh the difference between:

(i) the price at which they purchased the Property from Mdm Poh (*ie*, $1 million); and

[1] Claimants' Affidavit dated 25 August 2023 ("Claimants' Affidavit") at pp 35–37.

(ii) the price at which they sold the Property within those ten years,

up to a limit of $500,000.

5 It was noteworthy that the Agreement, despite having been drafted by lawyers, omitted to precisely specify various key aspects as to timing. For example, cl 9 of the Agreement stated that the date of "completion" of the sale from Mdm Poh to the Defendants (as per Special Condition 3) was "[t]o be mutually agreed between the parties". The date of "completion" was subsequently agreed between parties, so there was no dispute as to when the ten-year window in Special Condition 3 started to run. More crucially, and this lay at the heart of this appeal, the Agreement was silent as to the timeframe within which the price differential under Special Condition 3 was to be paid by the Defendants to Mdm Poh in the event that they did sell the Property within ten years of completion.

6 The Defendants eventually sold the Property via an en bloc sale in December 2017 at a price in excess of $1.5 million.[2] There was no dispute that:

(a) the sale took place within ten years of completion;

(b) the en bloc sale price exceeded the purchase price at which the Defendants purchased the Property from Mdm Poh (being $1 million) by more than $500,000; and

(c) this consequently triggered the obligation under Special Condition 3 of the Agreement, meaning that the Defendants had to pay

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2 Claimants' Affidavit at para 14.

Mdm Poh the price differential under Special Condition 3 ("**Price Difference**") which, in this case, was capped at $500,000.

7 The Claimants commenced HC/OC 362/2023 to recover the $500,000, plus interest. In their defence, the Defendants alleged that the 1st Defendant entered into two verbal agreements with Mdm Poh (collectively referred to as the "**VAs**"), which effectively stretched their obligation to pay the Price Difference over very expanded horizons. According to the Defendants:

(a) The 1st Defendant entered into the first verbal agreement ("**1st VA**") with Mdm Poh in October to November 2016, *ie*, slightly over a year *before* the en bloc sale (which happened in December 2017). The 1st VA was thus transacted in anticipation of the en bloc sale of the Property, and thus *in advance* of the Defendants' obligation to pay the Price Difference crystallizing.[3] Under the 1st VA, the 1st Defendant agreed with Mdm Poh that the Price Difference would be paid through monthly payments of $3,300, rather than a lump sum.

(b) Pursuant to the 1st VA, the 1st Defendant proceeded to make monthly payments of $3,300 to Mdm Poh, over the course of **51** months, from December 2016 to February 2021. The Defendants also explained that:

(i) for the first **39** payments from December 2016 to February 2020, each monthly instalment of $3,300 was *split* into a cheque payment of $300 and a cash disbursement of $3,000; and

[3] Defendants' Affidavit dated 7 September 2023 ("Defendants' Affidavit") at paras 14–15.

(ii) for the remaining **12** payments from March 2020 to February 2021, each monthly instalment of $3,300 was disbursed *entirely* in cash.[4]

(c) The 1st Defendant then entered into the second verbal agreement ("**2nd VA**") with Mdm Poh in March 2021 (*ie*, after the 51 monthly payments had been made), under which Mdm Poh allowed the 1st Defendant to cease the monthly payments of $3,300.[5]

Pursuant to the above events, the monthly payments of $3,300 stopped from March 2021 onwards. Mdm Poh has since lost mental capacity and there was some dispute as to whether this had already happened by the time of the 2nd VA.[6]

8 Based on the Defendants' story above, they paid a total of $168,300 (being 51 monthly payments of $3,300, from December 2016 to February 2021) pursuant to the 1st VA. The learned AR below had granted the Defendants unconditional leave to defend for this sum while ordering summary judgment for the remaining sum of $331,700 (*ie*, $500,000 – $168,300).

Parties' submissions

9 The Defendants conceded that there was a gap in the Agreement as to when the Price Difference had to be paid. However, the Defendants contended that this gap was deliberately left there by the contracting parties, with the intention that it be supplemented later. The VAs, argued the Defendants, were

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4 Defendants' Affidavit at para 16.

5 Defendants' Affidavit at para 17; Defendants' Written Submissions dated 1 December 2023 ("Defendants' Written Submissions") at para 12(d).

6 See [5(b)] of the Reply pleaded by the Claimants.

entered into precisely to supplement that gap. To support this contention, the Defendants relied on s 94(*b*) of the Evidence Act 1893 (2020 Rev Ed) ("**Evidence Act**"), which contemplates that evidence of a separate oral agreement may be adduced if it supplements a written contract. The Defendants also cited the case of *Siemens Industry Software v Lion Global Offshore* [2014] SGHC 251 ("***Siemens***") to argue that such a gap does not render the written contract void and that subsequent supplementation is permitted at law.

10 On this, the Claimants took the view that the gap (as to when the Price Difference had to be paid) must be filled by an implied term to the effect that payment of the Price Difference should be within a "reasonable time".[7] The Defendants disagreed, citing *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 ("***Sembcorp Marine***") (at [94]–[96]) for the proposition that a term should only be implied when the gap is inadvertent. In this case, the Defendants argued, the gap was *deliberate*, as demonstrated by the following factors:

(a) Firstly, the tenor of the Agreement showed that it was meant to only set out the broad terms of consensus, with specific details to be discussed further[8] (*eg*, parties were to agree on the date of completion of the sale from Mdm Poh to the Defendants, from which the ten years would run).

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7 Claimants' Written Submissions dated 1 December 2023 ("Claimants' Written Submissions") at paras 41–44.

8 Defendants' Written Submissions at para 12(a).

(b) Secondly, the Agreement was drafted by lawyers, and it was inconceivable that they would have inadvertently left a gap on a term as important as the timing for payment of the Price Difference.[9]

(c) Thirdly, it made sense to have the gap, given that when the Agreement was signed in 2009, several eventualities remained contingent:

(i) The Defendants might ultimately fail to sell the Property within ten years after their purchasing it from Mdm Poh, meaning that their obligation to pay the Price Difference might never materialise.

(ii) As at the point when the Agreement was signed, parties would not have known what the sale price (in the event of a sale occurring within the next ten years), and hence what the Price Difference payable under Special Condition 3, might be.[10] This was a critical variable without which the appropriate payment horizon for any instalment schedule could not be pinned down.

The Defendants thus argued that there was no scope for implying a term that payment of the Price Difference was to be within a "reasonable time", as parties *deliberately* left the time for payment of the Price Difference open.

11 The Claimants, on their part, suggested that the gap as to the time for paying the Price Difference *was* inadvertent and that a term as to the time for payment should consequently be implied. As alluded to above, they argued that

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9 Defendants' Written Submissions at para 43(a).

10 Defendants' Written Submissions at para 43(b) & (c).

a term should be implied that payment must be within a reasonable time after any sale by the Defendants within the ten-year window in Special Condition 3.[11] As regards the Defendants' reliance on s 94(*b*) of the Evidence Act (for the proposition that the timing for payment need not be implied as the Agreement could always be supplemented with such details later), the Claimants argued that this provision contemplates that evidence of supplementation may not be allowed for contracts having a high degree of formality, such as in this case where the Agreement was drafted by lawyers.

12 On this basis, the Claimants said that the Agreement had fully crystallised as at 2009, supplemented by an implied term that the Price Difference must be paid within a reasonable time. This meant that the VAs, if they even existed, were not *supplements* to the Agreement but rather *variations* of it. While s 94(*d*) of the Evidence Act contemplates that evidence of oral variations of written contracts may be adduced, the Claimants argued that the circumstances surrounding the VAs, as related by the Defendants' evidence, were incredible and should be rejected. In any case, the Claimants argued that the VAs, even if they existed, were void for lack of consideration.[12]

13 As such, the Claimants maintained that the implied term, to the effect that the Price Difference must be paid within a reasonable time after any sale by the Defendants within the ten-year window, stood unvaried. Upon the en bloc sale of the Property by the Defendants, the obligation to pay the Price Difference within a reasonable time would have arisen. Given that six years have lapsed since then and the Price Difference has still not been fully paid, the Claimants

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11 Claimants' Written Submissions at paras 40–41.

12 Claimants' Written Submissions at paras 45–47.

contended that the Defendants must be regarded as being in breach of their obligation by now.

14 For completeness, I should add that the Claimants found records of cheque payments of $300 each, moving from the 1st Defendant's bank account to that of Mdm Poh, up to the month of October 2018. For the purposes of the summary judgment, the Claimants were prepared to accept that there might be a triable issue in respect of 11 of these cheques, issued every month from December 2017 (after the en bloc, when the obligation to pay the Price Difference was triggered) to October 2018. Specifically, the Claimants conceded that there might be a triable issue as to whether these 11 cheques were paid by the Defendants towards the Price Difference. Consequently, the Claimants sought summary judgment only for the sum of $496,700 (being the Price Difference of $500,000 less the 11 cheques amounting to $3,300).

The legal issues in this appeal

15 In light of the Defendants' evidence that they had paid a total of $168,300 (being 51 monthly payments of $3,300 from December 2016 to February 2021), the learned AR took the view that unconditional leave to defend should be granted for this amount.

16 As for the balance of $331,700 (being $500,000 less $168,300), the learned AR granted summary judgment in favour of the Claimants. In doing so, the AR accepted the Claimants' submission that a term should be implied into the Agreement, to the effect that the Price Difference must be paid within a "reasonable time". Consequently, going by the AR's interpretation, the Agreement was largely complete as at the point of signing (having been made whole by the implied term as to the time for payment of the Price Difference),

and the VAs served as variations (and not supplements) to the Agreement. As variations, they would have to be supported by consideration to be valid. In that respect, the learned AR took the view that the VAs were *not* supported by consideration and thus void.

17 There were thus two main legal issues impacting on whether leave should be granted to the Defendants:

(a) Whether the Agreement contained an implied term as to when the Price Difference had to be paid, or whether the timing as to payment of the Price Difference was deliberately left open and supplemented by the 1st VA more than seven years after the Agreement was signed.

(b) If such a term was implied, with the result that the Agreement was complete as at the point of its signing, whether the VAs (being variations of the Agreement) were supported by consideration.

Was there an implied term as to when the Price Difference had to be paid?

18 To recapitulate, the Defendants maintained that the Agreement was only meant to set out the broad terms of agreement and, to that end, contained *deliberate* gaps. This was consistent with the informality typical of contracts between family members. Specific details, such as timelines for payment, were to be agreed upon at a later point.[13]

19 I could not agree with the Defendants' submissions on this. In my view, the Agreement's silence as to the time for paying the Price Difference created a gap that the parties did *not* contemplate:

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[13] Defendants' Written Submissions at para 36.

(a) Firstly, while there was an express clause in the Agreement which explicitly alluded to the completion date (from which the ten-year window would run) as something that would be agreed upon later, there was no similar clause allowing parties to discuss the timing for the payment of the Price Difference.

(b) Secondly, the payment horizon for the Price Difference *in the event* that the contingency (*ie*, sale of the Property by the Defendants within ten years of completion of purchasing the same from Mdm Poh) did materialise must surely have been a critical term to be provided for. Parties could not possibly have intended for the timing to be left completely open and subject to the vagaries of discussions years down the road. That would mean that there was nothing to stop the Defendants from insisting on paying (as an example) $10 a month over a horizon of more than four millennia, with Mdm Poh having nothing more than the goodwill of the Defendants when endeavouring to secure a shorter payment horizon. I had asked the Defendants' counsel if parties could possibly have intended to place Mdm Poh in such an invidious position. The Defendants' counsel conceded that it was not the defence's case that no term could be implied but nevertheless suggested that it should not be implied at this stage of the proceedings. In my view, this did not address the concern. Having scrutinised the entirety of the affidavit evidence, the only way to avoid such a perverse outcome would be to imply a term that payment of the Price Difference must be within a reasonable time. This is an established approach in contract law, as stated in *Chitty on Contracts* vol 1 (Hugh G Beale gen ed) (Sweet & Maxwell, 34th Ed, 2021) (at para 24–013):

> Where a party to a contract undertakes to do an act, the performance of which depends entirely on itself, and the

> contract is silent as to the time of performance … the law implies an obligation to perform the act within a reasonable time having regard to all the circumstances of the case.

These principles were recently endorsed by the Appellate Division in *Liu Shu Ming & anor v Koh Chew Chee & anor matter* [2023] 1 SLR 1477 (at [82]–[83]). Any officious bystander, if asked whether such a term must be implied, would surely reply: "*but of course!*" (as per [101(c)] of *Sembcorp Marine*).

20 The Defendants cited the case of *Siemens* to argue that the law does allow for a contract to leave certain obligations open, which gaps could then be supplemented later. In *Siemens*, Chan Seng Onn J (as he then was) was hearing an appeal from a decision where summary judgment had been granted for sums owing by the defendant under a software purchase agreement. One of the triable issues which the defendant purported to raise on appeal was whether the software purchase agreement was unenforceable, given that the time for payment of the software had been left open. Chan J was referred to the case of *T2 Networks Pte Ltd v Nasioncom Sdn Bhd* [2008] 2 SLR(R) 1 ("***T2 Networks***"), where Judith Prakash J (as she then was) found a settlement agreement to be legally unenforceable for uncertainty. In so ruling, Prakash J observed that the settlement agreement failed to define the payment schedule, notwithstanding that the schedule for payment was vital to the receiving party. Prakash J also declined to save the settlement agreement by implying a term that payment was to be made within a reasonable time, remarking (at [44]):

> … it is hard to determine what a reasonable time is in a situation where the creditor is desperate for money and the debtor has been stringing out payment for a long time. It was also clear to me from the evidence that all along what [the receiving party] wanted from [the paying party] was immediate payment.

21 In *Siemens*, Chan J distinguished *T2 Networks* and decided that the software purchase agreement before him was *not* unenforceable, despite the time for payment being left open. Chan J held (at [36]):

> In the present case, there is ***nothing whatsoever*** in Mr Ng's affidavit ***that shows that the time of payment was vital to the transaction***. On the contrary, it is clear from Mr Ng's own affidavit that the ***timing of the payments is not one of the main terms of the contract***. Unlike in *T2 Networks*, ***there is also no indication that a term of payment within a reasonable time could not be implied***. In any event, it is not necessary for me to determine the exact scope of the implied term. All I have to determine is whether, in the absence of any express term as to payment, the [software purchase agreement] is unenforceable for uncertainty. On the face of the [software purchase agreement] alone, the quantity of products to be purchased, the method of delivery, and the price of sale have been determined. These are sufficient for the [software purchase agreement] to be valid and binding. ***Although the time of payment was not stated, it was merely a minor term that could be worked out***. The Second Alleged Triable Issue is therefore not a triable issue.

22 The Defendants relied on *Siemens* to argue that gaps in a contract as to time for payment need not be plugged by way of an implied term (that payment be within a reasonable time) and can always be left open for supplementation later. In my view, *Siemens* did not support the sweeping proposition advanced by the Defendants.

23 Firstly, by way of preliminary observation, Chan J's characterisation of the timing for payment as being "*merely a minor term that could be worked out*" could not be imported to the facts of the appeal before me. The Price Difference constituted *half* the total purchase price at which Mdm Poh sold the Property to the Defendants in 2009. As explained above, leaving this gap unplugged would expose Mdm Poh to a potential holding out by the Defendants for an indefinite period, effectively depriving her of a vast proportion of the benefit that she was supposed to receive under the Agreement.

24 Secondly, as can be seen from the extract above at [21], Chan J clearly contemplated that on the facts of the case before him, a term for payment within a reasonable time *could* be implied as, unlike in *T2 Networks*, there was nothing preventing him from implying such a term. However, Chan J took the view that it was not necessary to determine the exact scope of the implied term, as the immediate issue before him was whether the lack of an *express* term as to payment rendered the software purchase agreement unenforceable for uncertainty. It would therefore be incorrect to interpret *Siemens* as standing for the proposition that the timing for payment, particularly in a case such as the present where the payment relates to a substantial proportion of the entire consideration, can simply be left open without being addressed by an implied term as to timing for payment.

25 I thus agreed with the decision of the learned AR below that the Agreement was subject to an implied term that the Defendants would have a "reasonable time" within which to pay the Price Difference. This was the only sensible interpretation of the Agreement. In my view, the terms of the Agreement had fully crystallised in 2009, as supplemented by that implied term. The 1st VA was thus not a supplement to the Agreement, but a variation of it.

26 The argument that the 1st VA was a variation (and not a supplement) applied with *even greater force* to the 2nd VA. Assuming I had accepted the Defendants' premise that there was no need to imply a term that payment be made within a reasonable time, on account of the time for payment being finalised (ex-post) by the 1st VA, this would have meant that the terms of the Agreement had fully crystallised by October to November 2016 (when the 1st VA was allegedly entered into). Thus, even on the Defendants' own view of the case, there was no longer any "gap" for the 2nd VA to supplement. Any gap in the Agreement pertaining to when payment should be made would at the very

latest have been fully plugged by the 1st VA, which dictated that the Defendants pay $3,300 a month (over a span of about 12 years).

Were the VAs supported by consideration?

27 Given the trite proposition that variations of a contract must be supported by consideration (see *Ma Hongjin v SCP Holdings Pte Ltd & anor appeal* [2021] 1 SLR 304 at [4] and [60]), it was necessary to determine if the 1st and 2nd VAs were in fact supported by consideration.

28 I begin with the 1st VA. On the issue of consideration, I reached a different conclusion from the learned AR below.[14] I agreed with the Defendants that the 1st VA *was* potentially supported by consideration. The 1st VA allowed Mdm Poh to receive monthly instalments from December 2016 onwards, *ie*, over a year *before* the en bloc sale. The monthly stream of cash was thus payment *in advance*, which Mdm Poh would otherwise *not* have received under the terms of the Agreement. The 1st VA thereby conferred a practical benefit which may qualify as good consideration: *Teo Seng Kee Bob v Arianecorp Ltd* [2008] 3 SLR(R) 1114 ("***Teo Seng Kee***") (at [90]–[91]). I made this finding on the back of the law's recognition that the modern approach in contract law requires very little to find the existence of consideration: *Chwee Kin Keong and others v Digilandmall.com Pte Ltd* [2004] 2 SLR(R) 594 (at [139]) ("***Chwee Kin Keong***"); *Teo Seng Kee* (at [92]).

29 As for the 2nd VA, my view was that this was not supported by any consideration. At the hearing of the appeal before me, counsel for the Defendants stated that the consideration for the 2nd VA was "keeping the family

[14] Minute Sheet (13 October 2023) at p 13, para 15.

peace". I found this explanation somewhat difficult to follow. The 1st Defendant had averred to the following in his affidavit:[15]

> The monthly payment of S$3,300.00 ceased only after Tsu-Tsu [Mdm Poh's biological daughter and primary caregiver] passed away in March 2021. It appeared that after Tsu-Tsu passed away, there were disagreements between Mdm Poh and other members of Mdm Poh's family, including the Claimants on the one hand and Tsu-Tsu's husband on the other hand. Due to the unhappiness within the family, sometime in or around March 2021, Mdm Poh verbally informed me to cease payment of the monthly sum of S$3,300.00 for the time being. She was concerned that the monthly payments may create more unhappiness regarding financial matters within her family.

Presumably, the Defendants were suggesting that given the unhappiness over money matters within the family, continuation of the monthly payments of $3,300 might worsen the internal strife. By stopping the payments, family peace was preserved.

30 I was not satisfied that this constituted good consideration. Despite my observations above on how the common law courts today require very little to find the existence of consideration, a conclusion that the 2nd VA was supported by consideration would simply be taking this too far. While "*the courts in several common law jurisdictions have gone to extraordinary lengths to conjure up consideration*" (see *Chwee Kin Keong*, at [139]), it is reasonable to postulate that one must conjure consideration out of something, and not out of nothing. In this respect, consideration must flow from the promisee: *Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 (at [66]). Based on the affidavit evidence, there was nothing that the Defendants could proffer as consideration flowing from them in exchange for their cessation of performance, other than the very cessation of performance itself. Until the

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15 Defendants' Affidavit at para 17.

courts abolish the requirement for consideration, I remain of the view that the Defendants' position could not pass muster.

Whether leave to defend should be granted

31 Following from the analysis above, I then considered whether the appeal against the learned AR's decision below should be allowed.

32 The principles pertaining to summary judgments are well settled – the law implies a two-stage test which was recently canvassed in *Asian Eco Technology Pte Ltd v Deng Yiming* [2023] SGHC 227 (at [8]–[9]):

> (a) A claimant must first show that he or she has a *prima facie* case for judgment.
>
> (b) If the claimant crosses this threshold, the burden shifts to the defendant who, to obtain leave to defend, must establish that there is a fair or reasonable probability that he or she has a real or *bona fide* defence. In this regard, the defendant needs only to show that there is a triable issue or question.

33 I was satisfied that the Claimants had shown a *prima facie* case for judgment. They had proven the Agreement, under which the Defendants were indisputably obliged to pay Mdm Poh the Price Difference of $500,000. The Claimants had also successfully demonstrated, at least at a *prima facie* level, the absence of any documentary records evidencing payment by the Defendants towards the Price Difference, save for some monthly cheque payments of $300, which collectively added up to only a very small fraction of the Price Difference. Even for these cheques, there was no documentary evidence linking the payments with the Defendants' obligation to make good the Price Difference.

34 In light of the *prima facie* case established by the Claimants, the next step was to assess if the VAs gave rise to a triable issue or question warranting leave to defend.

The 1st VA

35 I found that the Defendants had crossed the threshold for showing triable issues, at least in respect of whether the 1st VA did in fact exist:

(a) I have already explained why I disagreed with the learned AR on the point about consideration. The 1st VA, if it existed in the form as alleged by the Defendants, was supported by *some* consideration.

(b) Apart from the Defendants' assertions on affidavit, there was also *some* documentary evidence of the cheque payments of $300 each, which was not inconsistent with the Defendants' version of the mode by which the monthly payments of $3,300 would have been made, assuming the 1st VA existed.

(c) A monthly payment schedule of $3,300 would translate into a repayment horizon of over 12 and a half years, *ie*, $500,000 ÷ ($3,300 per month × 12 months in a year), which was not inconsistent with the ten-year window over which the Defendants agreed to pay Mdm Poh the $600,000, being part of the price for which the Defendants purchased the Property from Mdm Poh in 2009 (see [4(a)] above). While I harboured doubts about the credibility of the Defendants' account of the 1st VA (I will say more on this below), I was not satisfied that the Defendants' story had reached the point of being "inherently improbable": *M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2015] 1 SLR 325 (at [19]).

36 The Claimants cited the case of *Ling Yew Kong v Teo Vin Li Richard* [2014] 2 SLR 123, where the High Court granted summary judgment as: (a) there was no evidence supporting the defendant's assertion that there was an unrecorded/undocumented oral contract or understanding; and (b) in any case, the alleged oral understanding was clearly inconsistent with the written terms of the settlement agreement in that case. In my view, that case could be distinguished from the present factual scenario. At the time the Agreement was signed, the timing for payment of the Price Difference hinged on various inchoate factors over which the parties had little visibility, such as whether the Defendants would even manage to sell the Property within the ten-year window stipulated by Special Condition 3 and, in the event that they did, what the sale price might be. Instead of making the necessary provision for these contingencies, the Agreement left the conditions for payment of the Price Difference in Special Condition 3 vague and open-ended, to the point that a "reasonable time" for payment had to be implied. In my view, the circumstances surrounding the gaps in the Agreement left slightly more wiggle room for the Defendants to argue that the implied duration of repayment had been varied by the 1st VA.

The 2nd VA

37 As for the 2nd VA, I saw no triable issues on the evidence.

38 To recapitulate, the 2nd VA could not have been a supplement to the gap in the Agreement (pertaining to when and how the Price Difference was to be paid), given that this gap would already have been plugged by the 1st VA, which (if it existed), dictated a monthly instalment of $3,300. The 2nd VA, which purportedly brought about the cessation of the monthly instalments, would thus have been a variation of the Agreement and had to be supported by

consideration. As alluded to above, I found that the 2nd VA was not supported by any consideration, and therefore invalid. For completeness, I should also add that it was not the Defendants' case that reliance on the 2nd VA gave rise to any detriment as to found an estoppel.

39 As an aside, I also observe that the Defendants' account of the 2nd VA defied belief. If there was indeed strife within the family over finances, the Defendants must have surely realised the necessity of securing the relevant documentary records of Mdm Poh's concession allowing them to cease payment of the monthly instalments, lest they too be ensnared by accusations over money. Yet, there was glaringly no documentary record of the 2nd VA.

40 Based on the Defendants' own account of the facts, had payments not ceased from March 2021 (in purported reliance on the 2nd VA), there would have been a further 33 monthly instalments of $3,300 to date, adding up to a total of $108,900. Given my finding that the 2nd VA was invalid, there was no legal justification for the Defendants to cease the monthly payments of $3,300. I thus granted **summary judgment in favour of the Claimants for $108,900**, plus interest at the rate of 5.33% per annum from the date of the claim to the date of judgment.

Imposing conditions on leave to defend

41 Given my finding that the Defendants had raised triable issues as to the existence of the 1st VA, **I gave leave to defend for the balance of the claim of $387,800** (*ie*, $496,700 less $108,900). **Nevertheless, I ordered that leave to defend be conditional**.

42 Under the Rules of Court (2014 Rev Ed), the court will impose conditions when granting leave to defend in the face of a summary judgment

application when the defence, though not hopeless, gives rise to such doubts that necessitate these conditions. In *Abdul Salam Asanaru Pillai (trading as South Kerala Cashew Exporters) v Nomanbhoy & Sons Pte Ltd* [2007] SGHC 42 ("***Abdul Salam***"), Sundaresh Menon JC (as he then was) observed (at [43]–[44]):

> 43 However, the question then was whether I should impose a condition. There is a multitude of terms that have evolved over the years to express the circumstances in which this would be appropriate. These include such terms as "a real doubt about the defendant's good faith", "shadowy", "sham", "suspicious", "hardly of substance" and so on.
>
> 44 These terms are somewhat pejorative and this may obscure the true principle. In my judgment, a condition is appropriate when the court has the sense that although it cannot be said that the claimed defence is so hopeless that, in truth, there is no defence, the overall impression is such that some demonstration of commitment on the part of the defendant to the claimed defence is called for. …

The Rules of Court 2021 now use the word "dubious" in O 9 r 17(7)(*d*). This word is almost synonymous with some of the descriptors that our courts have employed (some of which are listed in the extract from *Abdul Salam* cited above) when granting conditional leave to defend under O 14 r 4 of the Rules of Court 2014. In my view, the principles undergirding the case law on granting conditional leave to defend under the Rules of Court 2014 are equally useful when deciding whether to impose conditions for granting leave to defend in summary judgment applications under the Rules of Court 2021. To that end, I respectfully adopted the approach in *Abdul Salam* – if the defence is dubious to the point that some commitment needs to be shown by the defendant, before he is granted leave to defend at trial, conditions should be imposed. Rather than lacquering the term "dubious" with any additional linguistic veneers, I will only say that the assessment of whether a defence is dubious is likely to be quite fact-specific.

43 Reverting to the present case, the Defendants' account of how payments were purportedly made pursuant to the 1st VA was, by any measure of the term, dubious. In arriving at this conclusion, I noted the following circumstances:

(a) Given that the Agreement was formally prepared by lawyers and signed by parties, one would have expected any variations (or supplements, if one accepted the Defendants' characterisation of the VAs) to the Agreement to similarly be in writing. I found it highly unusual (and convenient) that there was no written record whatsoever of the 1st VA (and indeed, of the 2nd VA).

(b) Critically, there was a complete absence of documentary records pertaining to the 39 monthly cash payments of $3,000 by the Defendants from December 2016 to February 2020, and the 12 monthly cash payments of $3,300 from March 2020 to February 2021. This was highly suspicious. $3,000 is no small sum of money. For that amount to be *repeatedly* withdrawn in cash every month, for 51 times and over a span exceeding four years, one would expect the Defendants to at least have *some* bank statements to reflect this. Yet, the Defendants produced nary a wisp of a paper trail to evidence the cash outflow of $3,000–$3,300 from their bank account every month.

(c) The Defendants had also failed to explain the highly odd arrangement where Mdm Poh would be paid a *small fraction* of the $3,300 by way of a cheque for $300, with the lion's share of the instalment (*ie*, $3,000) being disbursed in cash. The Defendants' avowed intention in making these payments was to facilitate the

payment of Mdm Poh's daily expenses,[16] but it was mystifying as to why the entire amount could not be paid by cheque.

(d) The Defendants also claimed that after February 2020, they stopped paying the $300 by way of cheque, and started paying the full $3,300 in cash. They explained that the cheque payments stopped because the 1st Defendant's wife, who allegedly oversaw the family expenses, had passed away. However, this explanation made no sense, given that all of the prior cheques for $300 were drawn by the 1st Defendant, and not his wife.[17] Why his wife's death had any bearing on the mode of payment was not explained in the affidavits.

The dubious payments in this case amounted to a total of $153,000, comprising 51 monthly cash payments of $3,000, for which there was absolutely no paper trail. I thus imposed a condition that the Defendants provide either a banker's guarantee or a solicitor's undertaking, for the sum of $153,000. The size of this condition was proportionate – rather than being bluntly pegged at the entire balance of the claim, the amount was bespoke to target the *specific* facets of the defence which I found to be dubious.

44 In *Abdul Salam*, the court cautioned (at [44]) that the condition must not be one which the defendant would find impossible to meet. In this case, the Defendants had confirmed that they were able to furnish the condition.

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16 Defendants' Affidavit at para 16.

17 Claimants' Written Submissions at paras 83–84.

45 Finally, I ordered for the costs order below to be reduced to $4,500 (all-in) in the Claimants' favour and for the costs of the appeal to be awarded to the Defendants, fixed at $2,800 (all-in).

Christopher Tan JC
Judicial Commissioner

Koh Kok Kwang and Kenii Takashima (CTLC Law Corporation) for the claimants;
Aw Wen Ni and Ho Wei Jie Vincent (WongPartnership LLP) for the defendants.