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

[2024] SGHC 234

Originating Claim No 71 of 2022

Between

Mface Pte Ltd

… *Claimant*

And

Chin Oi Ching

… *Defendant*

GROUNDS OF DECISION

[Credit and Security — Money and moneylenders — Loans of money]
[Credit and Security — Money and moneylenders — Illegal moneylending]

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v
Chin Oi Ching

[2024] SGHC 234

General Division of the High Court — Originating Claim No 71 of 2022
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15–18 July, 22 August 2024

16 September 2024

Kristy Tan JC:

Introduction

1 In HC/OC 71/2022 ("OC 71"), Mface Pte Ltd ("Mface") claimed against Ms Chin Oi Ching ("Chin"), for the repayment of a loan in the sum of $750,000 (the "Loan") that was extended under a loan agreement made in September 2016 (the "2016 Loan Agreement"). Chin's primary defence was that the 2016 Loan Agreement was unenforceable under s 14(2) of the Moneylenders Act (Cap 188, 2010 Rev Ed) (the "MLA"). Having heard the evidence and considered the parties' submissions, I concluded that Chin had established this defence and, consequently, I dismissed OC 71.

Facts

The parties

2 The claimant, Mface, is a private limited company incorporated in Singapore on 10 October 2014.[1] Its sole director (since 7 April 2015) and sole shareholder (since 8 April 2015) is Mr Lee Kok Choy ("Lee").[2] According to Lee, when Mface was incorporated, its principal activity was stated as website design. Lee acquired Mface in or around April 2015 to use the company for his construction business but did not change the stated principal activity of the company until 2019.[3] In a business profile search conducted on Mface on 23 May 2022, the company's principal activities were described as building construction and real estate development.[4]

3 The defendant, Chin, is married to Mr Jeffrey Yeo See Kay ("Jeffrey"). Chin and Jeffrey run Okayi (S) Pte Ltd ("Okayi Singapore") and Okayi Metals Pte Ltd ("Okayi Metals"). Chin is the sole shareholder and director, and Jeffrey is the company secretary, of both companies.[5]

4 Lee was introduced to Jeffrey sometime in or around 2014 to early 2015 by Mr Jesper Lim Chin Yiong ("Jesper").[6] Jeffrey and Jesper were friends since

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1 Affidavit of Evidence-in-Chief of Lee Kok Choy dated 28 March 2024 ("Lee's AEIC") at p 36.

2 Lee's AEIC at para 1 and pp 37–38; Bundle of Documents dated 1 July 2024 ("BD") at pp 586–587.

3 Certified trial transcript ("Transcript") 15 July 2024 at pp 24:6–10 and 25:27–28.

4 Lee's AEIC at p 36.

5 Affidavit of Evidence-in-Chief of Chin Oi Ching dated 4 April 2024 ("Chin's AEIC") at paras 6(e) and 7.

6 Lee's AEIC at para 7; Chin's AEIC at para 15.

2009.[7] Lee and Jesper are shareholders and directors of G1 Construction Pte Ltd ("G1").[8]

Background to the dispute

Loans extended in 2015

5 It was Lee's position that he personally extended the following four loans to Jeffrey and/or Okayi Metals in 2015 (the "2015 Loans"):[9]

(a) on or around 16 February 2015, a loan in the sum of $300,000 (the "February 2015 Loan");

(b) on or around 9 April 2015, a loan in the sum of $300,000 (the "April 2015 Loan");

(c) on or around 21 May 2015, a loan in the sum of $550,000 (the "May 2015 Loan"); and

(d) on or around 30 June 2015, a loan in the sum of $400,000 (the "June 2015 Loan").

6 Chin's position was that the 2015 Loans were extended by Mface to Jeffrey and herself.[10]

7 It was undisputed that there were no written loan agreements in respect of the 2015 Loans.[11]

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7 Chin's AEIC at para 9.

8 Lee's AEIC at para 7.

9 Lee's AEIC at paras 13 and 22–24.

10 Chin's AEIC at paras 20–21.

11 Lee's AEIC at para 23; Transcript 17 July 2024 at pp 19:28–20:2.

8 The 2015 Loans were secured by the following personal guarantees given by Jeffrey (the "2015 Guarantees"):[12]

(a) a guarantee dated 16 February 2015 in respect of the February 2015 Loan (the "February 2015 Guarantee");[13]

(b) a guarantee dated 10 April 2015 in respect of the April 2015 Loan (the "April 2015 Guarantee");[14]

(c) a guarantee dated 21 May 2015 in respect of the May 2015 Loan (the "May 2015 Guarantee");[15] and

(d) an undated guarantee in respect of the June 2015 Loan (the "June 2015 Guarantee").[16]

9 The February 2015 Guarantee, April 2015 Guarantee and May 2015 Guarantee were addressed to Mface.[17] Lee averred that this was an error, which he did not pick up on at that time.[18] The June 2015 Guarantee was initially addressed to Mface but the typewritten reference to Mface was crossed out by hand and replaced with the handwritten words "Lee Kok Choy", against which the handwritten date "30/6/2015" and the signatures of Lee and Jeffrey appeared.[19]

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12 Lee's AEIC at para 25.

13 Lee's AEIC at p 154.

14 Lee's AEIC at p 155.

15 Lee's AEIC at p 156.

16 Lee's AEIC at p 157.

17 Lee's AEIC at pp 154–156.

18 Lee's AEIC at para 26.

19 Lee's AEIC at para 26 and p 157.

10 All the 2015 Guarantees opened with the following or similar statement:[20]

> WHEREAS *you have granted* a friendly loan of [the relevant amount] free of interest ("the Loan") *to OKAYI METALS PTE LTD ("the Borrower")* pursuant [to] the Loan Agreement dated [the relevant date]. … [emphasis added in italics]

The relevant amount and the relevant date stated in this statement were as set out in [5] above.

11 Chin averred that interest of about 4% per month was in fact paid on the 2015 Loans.[21] Lee disputed that interest was payable on any of the 2015 Loans.[22]

Mface's loans to Astoria Development Pte Ltd

12 Lee admitted that from 6 July 2015 to 28 January 2016, Mface extended loans to Astoria Development Pte Ltd ("Astoria") pursuant to the following loan agreements (the "Mface-Astoria Loans"):[23]

(a) a loan agreement between Mface and Astoria dated 6 July 2015 for the loan of $1,200,000;[24]

(b) a loan agreement between Mface and Astoria dated 23 July 2015 for the loan of $650,000;[25]

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20 Lee's AEIC at pp 154–157.

21 Chin's AEIC at paras 22–23.

22 Lee's AEIC at paras 29–30.

23 Lee's AEIC at para 33.

24 Lee's AEIC at pp 179–180.

25 Lee's AEIC at pp 182–183.

(c) a loan agreement between Mface and Astoria dated 31 July 2015 for the loan of $700,000;[26]

(d) an agreement between Mface and Astoria dated 3 August 2015 and titled "Redemption Land Title : District of Kulaijaya Johore";[27]

(e) a loan agreement between Mface and Astoria dated 10 September 2015 for the loan of $700,000;[28]

(f) a loan agreement between Mface and Astoria dated 23 November 2015 for the loan of $220,000;[29]

(g) a loan agreement between Mface and Astoria dated 4 December 2015 for the loan of $300,000;[30]

(h) a loan agreement between Mface and Astoria dated 7 January 2016 for the loan of $220,000;[31] and

(i) a loan agreement between Mface and Astoria dated 28 January 2016 for the loan of $220,000.[32]

13 Lee further admitted that the Mface-Astoria Loans were the "Mface Loans" referred to in *G1 Construction Pte Ltd v Astoria Development Pte Ltd*

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26 Lee's AEIC at pp 185–186.

27 Lee's AEIC at p 189.

28 Lee's AEIC at pp 190–191.

29 Lee's AEIC at pp 194–195.

30 Lee's AEIC at pp 198–199.

31 Lee's AEIC at pp 200–201.

32 Lee's AEIC at pp 202–203.

and another and other suits [2018] SGHC 225[33] (the "2018 Judgment") at [9].[34] The 2018 Judgment related to, among others, Mface's claim in HC/S 1052/2016 against Astoria and the guarantors of certain Mface Loans for the repayment of $5,868,848.92 pursuant to the Mface Loans (at [12]). Mface had applied for summary judgment on this claim and an Assistant Registrar ("AR") had granted the defendants conditional leave to defend the claim on their provision of a banker's guarantee for, or payment into court of, the sum of $5,868,848.92 by a stipulated date (at [13]). The defendants subsequently filed an appeal ("RA 80") against the AR's decision granting conditional leave to defend (at [3]). They contended that the Mface Loans were illegal moneylending transactions; this sufficed to raise a triable defence; and they should thus have been given unconditional leave to defend the claim (at [24]). Mface countered that it was an excluded moneylender, which rendered the Mface Loans legal (at [42]). The High Court Judge (the "Judge") who heard RA 80 found that the sole issue for determination was whether the Mface Loans were made exclusively to corporations (at [42]). The Judge found that the written agreements recording the Mface Loans showed that the loans were made by Mface to Astoria (a corporation) exclusively (at [43]); the evidence in support of the defendants' assertion that the Mface Loans were in fact personal loans was "very weak"; and the defence that the Mface Loans were illegal moneylending transactions was therefore, at best, "shadowy" (at [44]–[46]). The Judge thus dismissed the defendants' appeal in RA 80 (at [46] and [65]).

14 The 2018 Judgment recorded that Mface "accept[ed] that Mface had entered into loan agreements, and that there was interest charged on the loans at a rate of approximately 5% per month" (at [42]). Notwithstanding some

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33 Lee's AEIC at pp 161–177.

34 Transcript 16 July 2014 at p 14:15–31.

unconvincing attempts at dissembling in the present case (elaborated at [86] below), Lee accepted the accuracy of this statement in the 2018 Judgment[35] and that interest was charged on the Mface-Astoria Loans.[36]

15 Lee claimed that Mface had granted the Mface-Astoria Loans "for investment purposes".[37]

The 2016 Loan Agreement and the Loan

16 In September 2016, the 2016 Loan Agreement, stated to be between Mface (as the "Lender") and Chin (as the "Borrower"), was signed by Lee (on Mface's behalf) and Chin.[38]

(1) Terms of the 2016 Loan Agreement

17 The material terms of the 2016 Loan Agreement were in cll 1 to 9:

> 1. The Lender shall lend to the Borrower and the Borrower shall borrow from the Lender the sum of Singapore Dollars: Seven Hundred Fifty Thousand Only (S$750,000.00) (hereinafter referred to as the "Loan") for a fixed term of three (3) calendar month[s].
>
> 2. The Loan shall be advanced in a one (1) payment by bank draft / cashiers' order *made payable to "Chin Oi Ching"*, which shall be handed over to the Borrower on 22nd September 2016.
>
> 3. The Borrower shall repay to the Lender the loan of S$750,000.00 in one (1) payment by 21st December 2016.
>
> 4. The Borrower's repayment shall be in one (1) payment. Partial repayment is not permitted.

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35 Transcript 16 July 2024 at pp 15:1–17 and 17:17–18.

36 Transcript 16 July 2024 at pp 14:10–12, 15:1–17 and 16:12–17:18.

37 Lee's AEIC at paras 34–37.

38 Lee's AEIC at pp 60–63.

5. As security for the due observance and performance by the Borrower of her obligations under this Agreement, the Borrower shall sign, execute and deliver the following documents:

    a) One (1) cheque for S$750,000.00 each dated 21st December 2016, issued by the Borrower and made payable to MFACE Pte Ltd.

    b) Option to Purchase Form, in the form marked "A", relating to the Borrower's property at [the address of an apartment (the "Address")]. The purchase price shall be S$1,400,000.00 and the loan amount of S$750,000.00 will be considered as **down payment**.

6. The Borrower shall give notice of her intention to make payment by delivering a duly signed written notice, in the form marked "B".

    a) In the event that Lender receives a Repayment Notice on or before 21st December 2016 and upon the presentation of the cheque and all of them being honoured by the bank, the Borrower shall have discharged all of her obligations under this Agreement to the Lender, and Lender shall release the remaining documents held in escrow under clause 5b) to the Borrower.

7. Should the Borrower be in default of her obligations under clause 4, the Lender may exercise his rights [under the] Option to Purchase to acquire the Borrower's property at [the Address].

8. Upon the completion of the Lender's acquisition of the Borrower's property at [the Address] completion being the registration of the Lender and/or her nominee(s) as the new owner, the Lender shall be liable to pay the balance of S$650,000.00 (S$1.4 million less S$750,000.00).

9. After completion of property transfer to new owner(s), within one (1) year from the date of completion, the Borrower can redeem the property at same value S$1,400,000.00 and a delay fee charges impose at S$18,750.00 per month for property redemption. Furthermore, the stamp duty fee for the transaction incurred by the Lender will be borne by the Borrower.

[original emphasis in bold; emphasis added in italics]

(2) Items provided by Chin at the signing of the 2016 Loan Agreement

18 At the time Chin signed the 2016 Loan Agreement, she provided an Option to Purchase the property at the Address ("Chin's Property") issued by Chin to Mface (the "OTP") (pursuant to cl 5(b) of the 2016 Loan Agreement).[39] The OTP stated that the option "shall expire at 4.00pm on the 30th September 2017".[40]

19 It was Mface's pleaded case that Chin also provided "[a] cheque for S$750,000.00 dated 21st December 2016 issued by [Chin] and made payable to [Mface]" pursuant to cl 5(a) of the 2016 Loan Agreement.[41] Not dissimilarly, Chin averred that when she signed the 2016 Loan Agreement, she provided an undated cheque signed by Jeffrey and made out to Mface in the amount of $750,000 (UOB cheque number 496780) (the "Repayment Cheque").[42]

20 Chin further claimed that, at the time the 2016 Loan Agreement was signed, she provided "[s]ix (6) other post-dated cheques", each in the amount of $18,750, made out to Mface and signed by Jeffrey.[43] Chin averred that "[she] understood that [these cheques] were for the interest payable on the Loan".[44] Mface disclosed in this action a scanned copy of six undated cheques made out by Jeffrey to Mface (UOB cheque numbers 496774 to 496779); the amounts

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39 Statement of Claim dated 3 June 2022 ("SOC") at para 6(b); Defence (Amendment No 2) dated 18 July 2024 ("Defence") at para 12; Chin's AEIC at para 36(c); Lee's AEIC at para 8 and pp 64–67.

40 Lee's AEIC at p 64.

41 SOC at para 6(a); Transcript 16 July 2024 at p 53:9–20.

42 BD at p 696; Chin's AEIC at para 36(a) read with Transcript 17 July 2024 at pp 4:32–5:31.

43 Chin's AEIC at para 36(b) and p 95.

44 Chin's AEIC at para 39.

stated on the cheques were unclear in the scanned copy (the "Copy of the 6 Cheques").[45]

21 Lee denied ever receiving or sighting the originals of the six cheques shown in the Copy of the 6 Cheques. He claimed to have received only a one-page hardcopy printout of the Copy of the 6 Cheques "sometime in the second half of 2021 from Jeffrey".[46] He stated that the Loan was an interest-free loan.[47]

(3) Disbursement of the Loan

22 The Loan under the 2016 Loan Agreement was disbursed by way of a cheque issued by Mface to Chin dated 29 September 2016 in the amount of $750,000 (OCBC cheque number 000110) (the "Mface $750,000 Cheque").[48] On 30 September 2016, Chin presented the Mface $750,000 Cheque for payment and received the Loan moneys.[49]

23 Chin argued that the funds for the Loan came from Jesper because:

(a) Jesper had issued a cheque for $750,000 to Mface dated 24 September 2016 (UOB cheque number 507238)[50] which was banked into Mface's bank account with OCBC Bank ("Mface's OCBC bank

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45 Lee's AEIC at p 268; Chin's AEIC at p 95.

46 Lee's AEIC at para 54 and p 268; Transcript 16 July 2024 at pp 41:21–42:14.

47 Lee's AEIC at para 51.

48 SOC at para 7; Defence at para 17; Lee's AEIC at para 10 and p 69.

49 SOC at para 7; Defence at para 17; Lee's AEIC at para 11.

50 Chin's AEIC at p 92.

account") on 28 September 2016,[51] before Mface disbursed the Loan to Chin;[52] and

(b) the Mface $750,000 Cheque was signed by Lee and Jesper.[53]

24 Lee accepted that the $750,000 for the Loan came from Jesper but disagreed that this meant the Loan was made by Jesper.[54] Lee explained that Jesper was a joint signatory on cheques issued by Mface because Jesper was involved in a construction project jointly developed by Mface and G1.[55]

25 It was undisputed that the Loan had not been repaid.[56]

Demands for repayment of the Loan

26 According to Lee:

(a) In late December 2016, as Chin was in default of her obligation to repay the Loan by 21 December 2016 (per cl 3 of the 2016 Loan Agreement), Lee wanted to present for payment the Repayment Cheque which Chin had provided as security for the Loan (see [19] above). However, Jeffrey informed Lee that the Repayment Cheque would be dishonoured upon presentment due to insufficient funds in the bank account.[57]

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51 Lee's AEIC at p 72.

52 Chin's AEIC at para 35.

53 Chin's AEIC at para 40; Lee's AEIC at p 69.

54 Transcript 16 July 2024 at p 25:10–16.

55 Transcript 16 July 2024 at pp 36:2–14 and 68:8–14.

56 Lee's AEIC at para 12; Defence at para 19.

57 SOC at para 10; Transcript 16 July 2024 at pp 53:9–54:13.

(b) Jeffrey pleaded with Lee for Mface not to exercise the OTP as he and Chin were residing at Chin's Property and did not want to sell it. Chin and Jeffrey further reassured Lee that they would raise funds by other means to repay Mface. Lee felt bad for them and did not want them to be without a roof over their heads.[58] The OTP was not exercised.

(c) In 2019, Lee began verbally demanding repayment of the Loan on behalf of Mface during his meetings with Jeffrey.[59]

27 According to Chin, in or around July, September and December 2018, Lee made the following representations to Jeffrey and/or Chin on several occasions ("Lee's Representations"):[60]

> a. The Loan came from Jesper.
>
> b. Lee would not cause [Mface] to sue [Chin] for the S$750,000. Lee would not seek to recover monies, or cause [Mface] to recover monies, that did not belong to them.
>
> c. That [Lee] would refrain from signing over to Jesper 50% of the shareholding in [Mface]. There was supposedly an understanding between Lee and Jesper that they were to be equal shareholders in [Mface], and this understanding was fortified by the fact that the cheque of S$750,000 provided to [Chin] contained both their signatures. Lee also represented that he was doing so to protect Jeffrey and [Chin], as Jesper would cause [Mface] to bring a lawsuit against [Chin] should Jesper become a shareholder in [Mface].

28 On 29 July 2021, Lee sent correspondence addressed to Chin and Jeffrey demanding repayment of the Loan.[61] On 4 August 2021, Lee issued another

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58 Lee's AEIC at para 53.

59 Lee's AEIC at para 57.

60 Chin's AEIC at para 55.

61 Lee's AEIC at para 58 and p 270.

correspondence to Jeffrey demanding repayment of the Loan.[62] On 13 August 2021, Mface's solicitors from PRP Law LLC sent a letter of demand to Chin for repayment of the Loan.[63] On 18 August 2021, Chin replied by letter to PRP Law LLC stating, in the main:[64]

> I have communicated to your client since he decided to claim for the money to no avail.
>
> However, I wish that you can carry this message to your client that we hope he is willing to negotiate fur[th]er for this settlement.

29 Mface commenced OC 71 on 3 June 2022.

The parties' cases

30 As it was undisputed that the Loan was extended but not repaid, it is apt to first summarise Chin's defence followed by Mface's case in response.

Chin's case

31 Chin advanced two lines of defence.

32 First, Chin submitted that the 2016 Loan Agreement was unenforceable under s 14(2) of the MLA as it was a loan by an unlicensed moneylender (the "Illegal Moneylending Defence").[65] In this regard:

> (a) Mface was not an "excluded moneylender" under limb (*e*)(iii)(A) of the definition of the term in s 2 of the MLA (the

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62 Lee's AEIC at para 59 and p 272.

63 Lee's AEIC at para 60 and p 274.

64 BD at p 513.

65 Defendant's Closing Submissions dated 1 August 2024 ("DCS") at paras 12(a) and 14.

"limb (*e*)(iii)(A) definition") as "Lee admitted that loans were disbursed to Jeffrey and to [Chin]", *ie*, not solely to corporations.[66] The Loan was extended to Chin and not to Okayi Singapore.[67]

(b) Mface was not an "excluded moneylender" under limb (*f*) of the definition of the term in s 2 of the MLA (the "limb (*f*) definition") as Mface was actually in the business of moneylending and not construction.[68]

(c) The presumption under s 3 of the MLA (the "s 3 presumption") was triggered because: (i) the Mface-Astoria Loans were to be repaid with interest;[69] (ii) Mface provided the 2015 Loans to Okayi Metals with interest charged;[70] and (iii) the "delay fee charges" under the 2016 Loan Agreement were disguised interest charges for which Chin provided six cheques, each in the amount of $18,750.[71]

(d) There was a system and continuity in the loans granted by Mface. In relation to the 2015 Loans, the system was that Mface provided the loans in exchange for a personal guarantee from Jeffrey. Jeffrey's personal guarantees were "similar to the personal guarantees for the [Mface-Astoria Loans]".[72] In relation to the 2016 Loan Agreement, the OTP, the Repayment Cheque and six cheques, each in the amount of

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66 DCS at para 23.

67 DCS at para 42.

68 DCS at paras 37–41.

69 DCS at para 24.

70 DCS at paras 25–28.

71 DCS at para 29–32.

72 DCS at para 34(a).

$18,750, were provided by Chin in exchange for the Loan.[73] In addition, the source of the funds for the Loan was Jesper.[74]

(e) Mface was ready and willing to lend to all and sundry, as evidenced by the fact that it "provided loans to Astoria, Okayi Metals, Jeffrey and [Chin] as long as they provided security". Lee also admitted that he extended loans to friends and workers with whom he was close.[75]

33 Second, Chin submitted that Mface was estopped from claiming for repayment of the Loan due to Lee's Representations on which Chin had relied to her detriment (the "Promissory Estoppel Defence").[76]

Mface's case

34 In respect of the Illegal Moneylending Defence, Mface submitted that:

(a) Mface was relying *not* on the limb (*f*) definition but on the limb (*e*)(iii)(A) definition of "excluded moneylender".[77] In this regard, Chin had not discharged the burden of establishing that Mface was not an "excluded moneylender":[78] (i) the 2015 Loans were granted by Lee (not Mface), and Okayi Metals (a corporation) was the "true borrower" of the 2015 Loans;[79] (ii) the Mface-Astoria Loans were to a

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73 DCS at para 34(b).

74 DCS at paras 34(c)–35.

75 DCS at para 36.

76 DCS at paras 12(b) and 43–44.

77 Claimant's Closing Submissions dated 1 August 2024 ("CCS") at p 6, footnote 25; Reply (Amendment No 2) dated 18 July 2024 ("Reply") at para 9.

78 CCS at para 11.

79 CCS at paras 18–21.

corporation;[80] and (iii) the Loan was granted by Mface (not Jesper)[81] and the "true borrower" was "Okayi Singapore or companies within the Okayi group" as the Loan was "for the[ir] benefit".[82]

(b) In any event, the s 3 presumption did not arise. The Loan was not lent in consideration of a larger sum being repaid. The "delay fee charges" were payable on a contingency basis. There was no evidence that Chin provided six cheques of $18,750 when executing the 2016 Loan Agreement.[83]

(c) Further yet, Mface was not in the business of moneylending.[84] There was no system and continuity of loans by Mface:

(i) In terms of the number of loans, "for the purposes of determining if there was system and continuity, Mface only ever made 1 loan – the Loan to Chin under the [2016] Loan Agreement".[85] The 2015 Loans were made by Lee (not Mface).[86] Further, since Okayi Metals was the borrower of the 2015 Loans, "the lender would be considered an 'excluded moneylender' and these loans should be excluded from the analysis of whether

80 CCS at para 22.

81 CCS at paras 23–25.

82 CCS at paras 26–29 and 33–34.

83 CCS at paras 35–38.

84 CCS at para 39.

85 CCS at para 40.

86 CCS at paras 41–43.

there was system and continuity of loans by Mface".[87] The Mface-Astoria Loans were to a corporation.[88]

(ii) Mface (through Lee) only verbally demanded repayment of the Loan in 2019, some three years after it fell due.[89]

(iii) There was no reason to doubt that Mface carried on the business of building construction and real estate development.[90]

(d) Mface did not lend to all and sundry. Jeffrey approached Lee for the Loan; Lee never held Mface out as willing to lend money.[91] Lee agreed for Mface to grant the Loan because of "the close business relationship and friendship Lee had with Jeffrey at or around the time the [2016] Loan Agreement was entered into",[92] and on account of Lee's anticipated future business relationship with Jeffrey.[93]

35 As for the Promissory Estoppel Defence, Mface submitted that Lee's Representations were not made.[94] There was also no evidence of reliance and detriment.[95]

36 Mface also argued that the Promissory Estoppel Defence was not pleaded as an alternative to the Illegal Moneylending Defence despite the two

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87 CCS at para 41.

88 CCS at para 44.

89 CCS at paras 45–47.

90 CCS at para 48–50.

91 CCS at para 51.

92 CCS at para 52.

93 CCS at para 53.

94 CCS at paras 56–65.

95 CCS at para 66.

defences being inconsistent. The pleading was therefore bad in law. The court had to reject both defences or reject the Promissory Estoppel Defence *in limine*.[96]

Issues to be determined

37 Two preliminary issues arose for determination:

(a) First, whether the Loan was extended by Mface or Jesper. Chin had suggested in her Affidavit of Evidence-in-Chief ("AEIC") that it was Jesper who had agreed to provide the Loan and who had used Mface as a "vehicle and/or conduit" to do so.[97] She no longer appeared to take this point in her closing submissions and did not contend that Mface had no standing to bring this action. Nevertheless, in the light of Chin's previous positions, the issue of who the true lender of the Loan was should be resolved.

(b) Second, whether Chin's pleadings on the Illegal Moneylending Defence and the Promissory Estoppel Defence were "bad" such that both defences should be rejected at the outset, as Mface contended.

38 The main issues for determination were:

(a) the validity of the Illegal Moneylending Defence; and

(b) the validity of the Promissory Estoppel Defence.

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96 CCS at paras 3–8.

97 See, *eg*, Chin's AEIC at paras 28 and 34.

Preliminary issue regarding the lender of the Loan

39 I found that the Loan was made by Mface and not by Jesper.

40 First, the 2016 Loan Agreement was expressly stated to be made between *Mface* (as the Lender) and Chin (as the Borrower).[98] The OTP, which was provided as security for the Loan pursuant to cl 5(b) of the 2016 Loan Agreement, was also issued by Chin *to Mface*.

41 Second, the source of funds for a loan is not dispositive of who the contracting party (*qua* lender) under an agreement for that loan is. There is no legal requirement that the source of funds for a loan transaction must originate from the lender: *GA Machinery Pte Ltd and another v Yue Xiang Pte Ltd and others* [2020] SGHC 264 ("*GA Machinery*") at [43]. Accordingly, the fact that Jesper provided $750,000 to Mface on or around 28 September 2016[99] and Mface used those funds to disburse the Loan to Chin on 29 September 2016[100] did not detract from Mface being the lender of the Loan.

42 Finally, Chin ran her case on the basis that *Mface* was an unlicensed moneylender such that the 2016 Loan Agreement was unenforceable under the MLA.[101] This defence was premised on and implicitly recognised *Mface* as the contractual lender under the 2016 Loan Agreement. It was not open to Chin to inconsistently contend otherwise.

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98 Lee's AEIC at p 60.

99 Chin's AEIC at p 92; Lee's AEIC at p 72.

100 Lee's AEIC at pp 69 and 72; Transcript 16 July 2024 at p 25:10–12.

101 DCS at paras 12(a) and 15.

Preliminary issue regarding the propriety of Chin's pleadings

43 Mface argued that the Illegal Moneylending Defence and the Promissory Estoppel Defence were inconsistent as the former was premised on the 2016 Loan Agreement being unenforceable under s 14(2) of the MLA whereas the latter "presuppose[d] that Mface has strict legal rights under the [2016] Loan Agreement, but the said rights cannot be enforced in light of a promise not to enforce those rights".[102] While a party has the right to plead inconsistent defences, these should be alleged in the alternative, which Chin did not do.[103]

44 Mface further argued that the facts relied on for each alternative defence must not be mixed up and must be stated separately. Here, Chin asserted that Mface not chasing for repayment was consistent with Lee's Representations. This was "at odds" with Chin's assertion that Mface was in the business of moneylending. Mface's position that there was no system and continuity of loans as there were no demands for repayment for over three years "effectively assist[ed] Chin to establish some part of the Promissory Estoppel Defence". This was "embarrassing and procedurally unfair to Mface".[104]

45 I did not accept these procedural objections. It was clear that Chin's case was that *even if* the 2016 Loan Agreement was not unenforceable under s 14(2) of the MLA, Mface was estopped by reason of Lee's Representations from enforcing the 2016 Loan Agreement. Mface had no difficulty understanding or meeting Chin's case. To the extent that Chin's pleadings could have made this point more expressly, Mface suffered no prejudice from any infelicity in

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102 CCS at para 4.

103 CCS at para 6.

104 CCS at paras 5 and 6.

pleading. I also disagreed that Chin's pleadings "mixed up" the facts relied on for the Illegal Moneylending Defence and the Promissory Estoppel Defence. It was an undisputed fact that Lee did not demand repayment of the Loan until a few years after it was due. It was for the parties to make what they would of this fact and to reconcile this fact with their respective case theories and narratives.

The Illegal Moneylending Defence

The law

46 Under s 14(2) of the MLA, where any contract for a loan has been granted by an unlicensed moneylender, (a) the contract shall be unenforceable; and (b) any money paid by or on behalf of the unlicensed moneylender under the contract shall not be recoverable in any court of law.

47 Under s 2 of the MLA, "moneylender" means a person who "carries on or holds himself out in any way as carrying on the business of moneylending, whether or not he carries on any other business, but does not include any excluded moneylender". An "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". It was undisputed that Mface was not a licensee or an exempt moneylender.

48 The s 3 presumption provides:

> Any person, *other than an excluded moneylender*, who lends a sum of money in consideration of a larger sum being repaid

> shall be presumed, until the contrary is proved, to be a moneylender. [emphasis added]

49 The definition of "excluded moneylender" is set out in s 2 of the MLA. Mface relied on the limb (*e*)(iii)(A) definition, *ie*, any person who lends money solely to corporations.[105]

50 In *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 ("*Sheagar*"), the Court of Appeal laid down the following analytical framework where a defence of illegal moneylending under s 14(2) of the Moneylenders Act 2008 (Act 31 of 2008) (which contains the same provisions as those in the MLA set out at [46]–[49] above) is raised (at [75]):

> (a) To rely on s 14(2), the borrower must prove the lender was 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 this 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 "exempted moneylender".
>
> (d) However, if there is an issue as to whether the lender is an excluded moneylender, the legal burden of proving that he is not will fall on the borrower.

51 Implicit in *Sheagar* at [75(a)]–[75(b)], where a borrower is unable to rely on the s 3 presumption, he can nevertheless *prove* that a person is a "moneylender" (and, where that person is also neither a licensee nor an exempt moneylender, an "unlicensed moneylender"). As stated in *Sheagar* (albeit in a slightly different context), the MLA is only engaged if it is established that the

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105 Reply at para 9.

lender is a "moneylender" within the meaning of the term in s 2 of the MLA (at [68]). Mface agreed that where the s 3 presumption does not apply, a borrower may nevertheless *prove* that the lender is in the business of moneylending and hence an "unlicensed moneylender".[106]

52 It is established law that there are two tests to determine whether a person is in "the business of moneylending" within the definition of "moneylender" (see *North Star (S) Capital Pte Ltd v Yip Fook Meng* [2022] 1 SLR 677 ("*North Star*") at [36], citing *Mak Chik Lun and others v Loh Kim Her and others and another action* [2003] 4 SLR(R) 338 ("*Mak Chik Lun*") at [11]):

(a) The first test is whether there was a system and continuity in the transactions (the "System and Continuity Test").

(b) If the first test is answered negatively, the court applies the second test, *viz*, 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 (the "All and Sundry Test").

Observations on the definition of "unlicensed moneylender" in s 2 of the MLA

53 While the proposition stated at [51] above is, in my view, established law, I observe that, somewhat curiously, limb (*a*) of the definition of "unlicensed moneylender" under s 2 of the MLA does not expressly refer to a person *proved* to be a moneylender:

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106 Claimant's Opening Statement dated 1 July 2024 ("COS") at paras 24(b) and 29; CCS at para 39.

> "unlicensed moneylender" means a person –
>
> > (*a*) who is presumed to be a moneylender under section 3; and
> >
> > …

54 This definition remains in the Moneylenders Act 2008 (2020 Rev Ed).

55 The definition of "unlicensed moneylender" was first introduced in the Moneylenders Act 2008 (Act 31 of 2008), which repealed and re-enacted with amendments the Moneylenders Act (Cap 188, 1985 Rev Ed) (the "MLA 1985"). In the MLA 1985, the term "unlicensed moneylender" was not defined; where a borrower was unable to raise the s 3 presumption, he could *prove* that a person was a "moneylender" and unlicensed to act as such (see *Mak Chik Lun* at [12]). There is no indication that Parliament intended to change this position with the 2008 amendments.

56 However, facially and based on its literal wording, limb (*a*) of the definition of "unlicensed moneylender" in s 2 of the MLA might appear to embrace only a person *presumed* (under s 3) to be a moneylender and not a person *proven* (by the borrower) without the aid of the presumption to be a moneylender. In my judgment, such an interpretation of limb (*a*) of the definition of "unlicensed moneylender" would be unduly and inexplicably restrictive. Rather, limb (*a*) of the definition of "unlicensed moneylender" must be interpreted to mean a person "who is presumed to be a moneylender under section 3 *or otherwise proven to be a moneylender*", with the italicised words impliedly included in the definition. Adopting this interpretation accords with legal principle, as I explain.

57 Where the court is satisfied that the statutory text admits of two or more plausible interpretations, the court applies the three-step framework set out in

Tan Cheng Bock v Attorney-General [2017] 2 SLR 850 at [37]–[53] to purposively interpret the statutory provision in question. In gist, the court: (a) first, ascertains the possible interpretations of the provision, having regard to its text and context; (b) second, ascertains the legislative purpose or object of the provision; and (c) third, compares the possible interpretations of the text against the purposes or objects of the statute and prefers the interpretation that advances those purposes or objects over one that does not.

58 Here, the competing possible interpretations of limb (*a*) of the definition of "unlicensed moneylender" are: (a) it is restricted to a person *presumed* (under s 3) to be a moneylender ("Interpretation 1"); or (b) it refers to either a person *presumed* (under s 3) to be a moneylender *or* a person otherwise *proven* to be a moneylender ("Interpretation 2").

59 As regards the legislative purpose of the provision, it is, in my view, aligned with the wider purpose of the MLA, which has been expressed by the Court of Appeal in *Lena Leowardi v Yeap Cheen Soo* [2015] 1 SLR 581 ("*Lena Leowardi*") as follows (at [26]):

> The Act was enacted in 1959. It was intended as "a scheme of social legislation designed to regulate rapacious and predatory conduct by unscrupulous unlicensed moneylenders" … **Although amendments were made to the Act in 2008 and 2012 to de-regulate commercial borrowing and clarify certain provisions, it appears that the original purpose underlying the Act in protecting the interests of *borrowers* from the conduct of unscrupulous moneylenders still remains relevant today**. …
>
> [emphasis in original in italics; emphasis added in bold]

60 In my judgment, Interpretation 2 would more fully (as compared to Interpretation 1) advance the purpose of the provision (and the MLA) in

protecting the interests of borrowers from the conduct of unlicensed moneylenders. Interpretation 2 should therefore apply.

61 In any event, there was no dispute between the parties in the present case that if Chin was unable to raise the s 3 presumption, she could nevertheless seek to prove that Mface was in the business of moneylending and hence an "unlicensed moneylender" (see [51] above).

62 I turn to the application of the legal principles in the present case.

Whether Mface was an "excluded moneylender"

63 The legal burden of proving that Mface was not an "excluded moneylender" rested on Chin. If Chin was able to prove that she was the true borrower of the Loan, that would suffice to establish that Mface did *not* lend money solely to corporations and was *not* an "excluded moneylender".

64 In examining this issue, the substance of the transaction and not its form would be determinative, although in most if not all cases, the form of the transaction would *prima facie* reflect its substance: *Sheagar* at [79]–[81]. Evidence regarding who bore the obligation of repaying the Loan would be instructive: *North Star* at [23].

65 I was satisfied that Chin had established that she was, in both form and substance, the true borrower of the Loan.

66 First, the 2016 Loan Agreement expressly named Chin as the "Borrower". Clause 2 of the Loan Agreement even stipulated that the Loan "shall be advanced … by bank draft / cashiers' order made payable to 'Chin Oi

Ching' …".[107] In accordance with cl 2, the cheque disbursing the Loan was issued by Mface to Chin.[108] Mface pleaded that Okayi Singapore was the true borrower of the Loan.[109] However, Chin and Okayi Singapore are separate legal entities and no convincing reason was provided as to why the parties had stipulated in legal documentation that Chin was the borrower of the Loan if that were not in fact the case. Indeed, in resisting Chin's assertion that the Loan came from Jesper, Mface relied on "the clear terms of the [2016] Loan Agreement which refer[red] to [Mface] as the 'Lender' and expressly provide[d] for the repayment of the Loan to [Mface]".[110] In my view, that logic applied with equal force when it came to the named "Borrower" in the 2016 Loan Agreement. Mface and Chin should both be held to the express terms of the 2016 Loan Agreement naming them as the "Lender" and "Borrower" respectively of the Loan.

67 Second, based on Lee's own evidence, it was his *calculated decision* to make the Loan to (and enter into the 2016 Loan Agreement with) Chin as opposed to Okayi Singapore. As he vehemently explained in cross-examination:[111]

> A Because Astoria has assets, has things, that's why I signed agreement with Astoria, and then I got these individuals to provide their personal guarantees as security for the loan. *As for the company, Okayi Singapore, it has nothing, no assets. How to sign the agreement with Okayi Singapore?* ***That's why I need to catch hold of her*** *or him.* Because for this Astoria, it has more than 10 million worth of assets. So, with the added layer of security from the personal guarantees.

107 Lee's AEIC at p 61.

108 Lee's AEIC at p 69.

109 Reply at para 9.

110 COS at para 13.

111 Transcript 16 July 2014 at p 59:19–25.

> *Okayi has nothing, how to sign agreement with this company?*
>
> [emphasis added in italics and bold italics]

68 In other words, Lee did not want to enter into a loan agreement with Okayi Singapore in 2016 as he felt it had no assets. He wanted to "catch hold" of Chin instead. Chin could provide security for the Loan in the form of the OTP over Chin's Property, which is wholly owned by Chin.[112] It was therefore Lee and Mface's *deliberate choice* to extend the Loan to Chin as the borrower.

69 Third, while Chin and Jeffrey explained that they sought the Loan "due to cashflow issues that [their] Okayi businesses were facing",[113] their impetus for seeking the Loan and the purpose to which the Loan moneys were put should not be conflated with and did not detract from the fact that Chin was the borrower of the Loan (as the legal documentation and Lee's own intent plainly made clear: see [66]–[68] above). In *GA Machinery*, the court found that the loans had, in substance, been extended to the sole director and shareholder of a company *personally*, even though the loans had not been for his own domestic or social expenses and were intended to fund iron sand mining projects undertaken through his company (at [24]). In *SVM International Trading Pte Ltd and others v Liew Kum Chong* [2020] SGCA 63 ("*SVM*"), it was argued that loans made to three companies should be regarded as sham transactions because the funds were ultimately to be used by one Ms Pan. The Court of Appeal found that it was the prerogative of the borrowers to decide how the funds from the loans would be deployed, and if they decided that all the funds would be handed over to Ms Pan for her use, that alone could not raise any issue about the legitimacy of the loans (at [5]). Although the foregoing decisions in *GA*

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112 Chin's AEIC at para 30.

113 Chin's AEIC at para 27; Transcript 18 July 2024 at pp 47:7–49:11.

Machinery and *SVM* were made with respect to contexts slightly different from the present, the underlying point holds that how or for whose benefit loan moneys are used is not determinative of who the true borrower of the loan is.

70 Fourth, when Mface procured its solicitors from PRP Law LLC to issue a letter of demand for the Loan on 13 August 2021, the letter of demand was issued to Chin at her home address; referred to the 2016 Loan Agreement as an agreement between Mface and Chin; stated that the solicitors were instructed that the Loan was advanced to Chin; and demanded repayment of the Loan from Chin. Absolutely no mention was made of Okayi Singapore or any Okayi entity.[114] In a similar vein, when Mface commenced OC 71 against Chin, no mention was made in Mface's Statement of Claim of *any* Okayi entity, much less was it alleged that Chin was not the true borrower of the Loan. It was only in Mface's Reply that Mface belatedly alleged that the "true borrower" of the Loan was an Okayi entity.[115] Mface's solicitors' letter of demand and Statement of Claim, which would have been prepared on legal advice, showed that Mface looked solely to Chin for the repayment of the Loan. This was consistent with Mface treating Chin as the true borrower of the Loan.

71 I therefore found that Mface did not lend money solely to corporations and was not, on that count, an "excluded moneylender". This finding was not affected by the decision in the 2018 Judgment, as the only loans made by Mface that were before the Judge at the time of the 2018 Judgment were the Mface-Astoria Loans.

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114 Lee's AEIC at p 274.

115 Reply at paras 4(c) and 9.

72 Given that it was *not* Mface's case that it was an "excluded moneylender" under the limb (*f*) definition (see [34(a)] above), it was unnecessary to consider Chin's arguments on this point (see [32(b)] above).

Whether the s 3 presumption was raised

73 As Mface was not an "excluded moneylender", it was possible for Chin to invoke the s 3 presumption. However, in order to raise the s 3 presumption, the burden lay on her to establish that Mface had "len[t] a sum of money in consideration of a larger sum being repaid" (see [48] above).

The Loan

74 I found that it was "not proved" (within the meaning of s 3(5) of the Evidence Act 1893 (2020 Rev Ed), *ie*, neither proved nor disproved) that Mface had extended the Loan in consideration of a larger sum being repaid.

75 First, under the terms of the 2016 Loan Agreement, upon default of Chin's obligation to repay the Loan by 21 December 2016, Mface had the *option* to acquire Chin's Property by exercising the OTP (cl 7). *If* the OTP were exercised, Mface had to pay a further $650,000 to acquire Chin's Property (cl 8). Thereafter, Chin *could choose* to "redeem the property" within one year from the date of the completion of Mface's acquisition of the property (cl 9). *If* Chin chose to "redeem the property", she would have to pay "delay fee charges … at S$18,750.00 per month for property redemption" (cl 9). Chin accepted in cross-examination that based on the terms of the 2016 Loan Agreement, her obligation to pay "delay fee charges" of $18,750 per month was a contingent liability that would arise only if Mface acquired Chin's Property and Chin

sought to buy back the property.[116] Chin did not suggest that there was any common intention between the parties that the terms of the 2016 Loan Agreement were not to apply. In fact, Chin was prepared to and did provide the OTP to Mface, as required under the terms of the 2016 Loan Agreement. Based on the aforesaid terms, there was no obligation for Chin to repay a larger sum than the Loan as the "delay fee charges" were stated to be payable on a contingent basis (see *Lena Leowardi* at [56]).

76 Second, while I accepted Chin and Jeffrey's evidence that six cheques, each in the amount of $18,750, were handed over to Lee at the time the 2016 Loan Agreement was signed, this was not determinative that interest was charged on the Loan.

77 I first explain why I accepted that six cheques, each in the amount of $18,750, were handed over the Lee at the time the 2016 Loan Agreement was signed. According to Chin, Jesper had told her she would need to provide a cheque in the amount of $750,000 and six cheques, each in the amount of $18,750, in exchange for the loan of $750,000.[117] The documentary record showed that Jeffrey signed the following documents: (a) the Repayment Cheque, *ie*, an undated cheque to Mface in the amount of $750,000 (UOB cheque number 496780);[118] and (b) six undated cheques to Mface (UOB cheque numbers 496774 to 496779).[119] Jeffrey testified that each of these six cheques was in the amount of $18,750, and that these cheques and the Repayment

116 Transcript 17 July 2024 at pp 38:17–39:19.

117 Transcript 17 July 2024 at pp 34:27–31, 35:6–9, 35:18–20 and 36:4–6.

118 BD at p 696.

119 Lee's AEIC at p 268.

Cheque were handed over when the 2016 Loan Agreement was signed.[120] Lee, but not Jesper, was present at the signing of the 2016 Loan Agreement.[121] While the Repayment Cheque was undated (as opposed to post-dated), I found that this was the "post-dated" cheque for $750,000 that both Lee and Chin said was provided to Mface as security for the Loan.[122] While Lee initially attempted to deny that he had received the Repayment Cheque,[123] he eventually conceded, after being shown Mface's pleadings which admitted that Chin had provided a cheque for $750,000 to secure the Loan,[124] that the Repayment Cheque had been provided to Mface as security for the Loan.[125] His attempt to vacillate after that concession by claiming he "can't be certain because that was too long ago"[126] was not to his credit. Given that the Repayment Cheque was meant to be security for the Loan, I found it more likely than not that the Repayment Cheque was handed over to Lee at the time the 2016 Loan Agreement was signed. In turn, given that the cheque numbers of the six cheques and the Repayment Cheque were in running sequence and that the former preceded the latter, I found it more likely than not that the six cheques were issued at the same time as the Repayment Cheque and also handed over to Lee at the time the 2016 Loan Agreement was signed. I rejected Lee's allegation that he was only provided with the Copy of the 6 Cheques by Jeffrey sometime in the second half of 2021.[127] The Copy of the 6 Cheques was disclosed in OC 71 by Mface and not

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120 Transcript 18 July 2024 at pp 76:21–25 and 82:6–17.

121 Transcript 18 July 2024 at pp 76:31–77:10.

122 SOC at para 6(a); Transcript 16 July 2024 at p 53:9–20; Chin's AEIC at para 36(a) read with Transcript 17 July 2024 at pp 4:32–5:31.

123 Transcript 16 July 2024 at pp 43:4–12 and 52:21–53:3.

124 SOC at para 6(a).

125 Transcript 16 July 2024 at p 53:9–27.

126 Transcript 16 July 2024 at p 53:28–30.

127 Lee's AEIC at para 54.

Chin.[128] It would have been to Chin's advantage to disclose the Copy of the 6 Cheques if she had the same in her possession or control. That she was unable to disclose the Copy of the 6 Cheques accorded more with her having handed over the (original) six cheques shown in the Copy of the 6 Cheques to Lee when the 2016 Loan Agreement was signed. While the amounts stated in the six cheques were not discernible because of the poor quality of scanning and/or copying in the Copy of the 6 Cheques, I accepted Jeffrey's evidence that each cheque was in the amount of $18,750,[129] given that his evidence on the provision of the Repayment Cheque and the six cheques at the time of the signing of the 2016 Loan Agreement was consistent and credible.

78 On one view, the fact that six cheques, each in the amount of $18,750, were handed over to Lee at the time the 2016 Loan Agreement was signed (before the OTP was even exercised), together with Lee's disingenuous attempts to deny receipt of the six cheques, were suggestive that the Loan was to be repaid along with the payment of these additional sums. On the other hand, however, it was not entirely clear that these cheques were necessarily meant for interest payments or that interest was chargeable on the Loan.

(a) Chin's evidence, taken at its highest, was that *Jesper* told her to provide the six cheques,[130] and she "understood" that the cheques were for the interest payable on the Loan.[131] I have found, however, that *Mface* was the lender extending the Loan. While Jesper was a co-signatory of cheques issued by Mface at that time because Mface and G1 had been

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128 BD index s/n C153.

129 Transcript 18 July 2024 at p 82:12.

130 Transcript 17 July 2024 at 91:4–30.

131 Chin's AEIC at para 39.

jointly developing a project,[132] he was neither a director nor a shareholder of Mface. Chin did not show what understanding *Mface / Lee* had in respect of the six cheques or that the parties to the 2016 Loan Agreement had a common understanding that interest was payable on the Loan through the six cheques.

(b) Any alleged term for the payment of interest was also uncertain. For example, the Loan was to be repaid by 21 December 2016 (cl 3 of the 2016 Loan Agreement), approximately three months after the Loan was disbursed. It was unclear why *six* cheques of $18,750 were provided.

79 Third, there was no or insufficient basis to infer from the 2015 Loans that Mface charged interest on the Loan under the 2016 Loan Agreement. It was only put to Lee that interest of $11,000 was paid on the $550,000 May 2015 Loan.[133] Chin's counsel did not put to Lee that interest was paid on any of the other 2015 Loans. Lee did not dispute that a cheque dated 21 May 2015 for $11,000 issued by Okayi Metals to Mface was deposited into Mface's OCBC bank account, but claimed to be unclear as to why this was so.[134] He disputed the assertion that it was an interest payment on the May 2015 Loan.[135] The difficulty for Chin was that even if the $11,000 payment was for interest on the May 2015 Loan, that was not determinative of whether Mface had charged Chin interest on the Loan in 2016.

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132 Transcript 16 July 2024 at pp 36:2–14 and 68:8–14.

133 Transcript 16 July 2024 at pp 56:4–7 and 57:10–12.

134 Lee's AEIC at para 30.

135 Transcript 16 July 2024 at p 56:4–7.

80 Fourth, there was no or insufficient basis to infer from the loan extended by KJ Construction Pte Ltd ("KJ") to Chin in October 2014 that interest was payable on the Loan extended by Mface in 2016. KJ was a company in which Jesper, and not Lee, was involved.[136] Chin disclosed two drafts, both unsigned, of a Loan Agreement dated October 2014 between KJ (as the "Lender") and Chin (as the "Borrower").[137] In both drafts, in default of Chin's obligation to make repayment of the loan, KJ had the right to acquire Chin's shares in Jay Capital Pte Ltd, with an option for Chin to redeem the shares within one year from the completion of such acquisition (cl 9).[138] However, one draft provided for "delay fee charges … at $40,000.00 per month for shares redemption"[139] while the other draft contained no such provision.[140] It was unclear which document constituted the operative loan agreement with KJ. Chin also admitted that she had not provided any documentary evidence of her having paid interest on the loan from KJ.[141] More fundamentally, given that the Loan was extended by *Mface*, the practice of KJ would not be determinative of whether Mface had charged interest on the Loan.

81 Ultimately, I found that it was not proved (*ie*, neither proved nor disproved) that Mface had extended the Loan in consideration of a larger sum being repaid.

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136 Chin's AEIC at para 10(i); Transcript 16 July 2024 at pp 28:26–27, 30:15 and 33:28.

137 BD at pp 706–715; BD index s/n C-157.

138 BD at pp 708 and 713.

139 BD at p 708.

140 BD at p 713.

141 Transcript 17 July 2024 at p 77:19–26.

The Mface-Astoria Loans

82 In my view, however, this was not the end of the inquiry under s 3 of the MLA in this case. The syntax of s 3 is such that once a person has been established *not* to be an "excluded moneylender", the provision presumes him to be a moneylender if he "lends a sum of money in consideration of a larger sum being repaid". The plain wording of s 3: (a) does *not* restrict its application to only the loan which is the subject of the claim; and (b) does *not* exclude loans to corporations from the inquiry. The rationale for the s 3 presumption is that it might be difficult for a defendant-borrower to show, without the aid of any presumption, that a lender is in the business of moneylending by virtue of the system and continuity in his moneylending transactions; the scope of the lender's business operations would be a matter within the lender's knowledge and the burden placed on the lender (on the application of the s 3 presumption) to show that he is not in the business of moneylending would not be an unduly onerous one: *Sheagar* at [38]–[39]. This rationale holds regardless of *which* loan the defendant-borrower is able to show has been made in consideration of a larger sum being repaid (once it is established that the lender is not an "excluded moneylender"). I therefore accepted Chin's argument that the Mface-Astoria Loans and the interest charged thereon should be considered in determining if the s 3 presumption was raised.[142]

83 In this regard, I found, first of all, that the Mface-Astoria Loans were indisputably loans. There were written loan agreements for the Mface-Astoria Loans (see [12] above) and Lee himself referred to these as "loans to Astoria".[143]

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142 DCS at para 24.

143 Lee's AEIC at para 31.

84 Lee attempted to characterise the Mface-Astoria Loans as "an investment" in a building project that was being developed by Astoria (the "Sycamore Tree Project"). In his words:[144]

> 34. These loan agreements were in fact an investment in a residential project involving the development of a five-storey private condominium in Joo Chiat ("Sycamore Tree Project") which was being developed by Astoria. I will explain.
>
> 35. *Towards the end of 2015 and early 2016*, Astoria was in financial difficulty and struggling to continue financing the Sycamore Tree Project. Jesper and I agreed to invest in the Sycamore Tree Project *by way of a Main Construction Agreement … and a collateral agreement to the Main Construction Agreement …* both dated 14 December 2015. *Pursuant to these agreements*, monies were advanced to Astoria to provide funding for the construction of the project, with profits from the project being shared between Mface and G1 Construction who would also take on the role of main contractor. I am advised that such a collaboration is not unusual in the construction industry. This arrangement is further evidenced by a Letter of Agreement dated 14 December 2015 between Mface and G1 Construction …
>
> 36. Ultimately, Astoria was placed into judicial management and construction of the Sycamore Tree Project was left uncompleted in or around 2018. …
>
> 37. Mface had granted loans to Astoria for investment purposes. In any event, these were not loans to an individual.
>
> [emphasis added in italics]

85 I rejected Lee's characterisation of the Mface-Astoria Loans as being an "investment" in the Sycamore Tree Project:

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144 Lee's AEIC at paras 34–37.

(a) First, on Lee's own case, he and Jesper had agreed to invest in Astoria only "[t]owards the end of 2015" at the earliest.[145] This was confirmed by Jesper, who testified that Mface and G1 only became involved in Astoria's Sycamore Tree Project *in December 2015*.[146] However, multiple Mface-Astoria Loans were advanced from *July 2015 through to the start of December 2015* (see [12(a)]–[12(g)] above), prior to the alleged "investment" by and involvement of Mface in the Sycamore Tree Project. This indicated that the Mface-Astoria Loans were a separate matter from the alleged "investment".

(b) Second, the loan agreements for the Mface-Astoria Loans said nothing about the Sycamore Tree Project. In fact, in one of the loan agreements dated 3 August 2015, the loan was expressly stated to be for the redemption of a property in the District of Kulaijaya Johore.[147] There was no ostensible connection between this and the Sycamore Tree Project.

(c) Third, on Lee's own case, the funding he provided for the Sycamore Tree Project was provided pursuant to a Construction Agreement dated 14 December 2015 between Astoria (as the "Developer") and G1 (as the "Contractor")[148] (the "Main Construction Agreement"), and a Collateral Agreement dated 14 December 2015 between Astoria (as the "Developer") and G1 (as the "Contractor")[149]

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145 Lee's AEIC at para 35.

146 Transcript 18 July 2024 at p 36:5–15.

147 Lee's AEIC at p 189.

148 Lee's AEIC at pp 205–209.

149 Lee's AEIC at pp 211–212.

(the "Collateral Agreement");[150] and *not* pursuant to the loan agreements for the Mface-Astoria Loans. Under the Main Construction Agreement, Astoria engaged G1 as the main contractor for the Sycamore Tree Project, in replacement of Astoria's previous main contractor. Under the Main Construction Agreement and the Collateral Agreement, G1 was to provide construction services as the main contractor in exchange for Astoria's payment of a contract price. To the extent that G1 incurred costs in connection with the construction, these were to be paid by Astoria to G1 (see cl 2 of the Main Construction Agreement). The supposed connection between these matters and the Mface-Astoria Loans allegedly being for "investment purposes"[151] was not borne out by the documents.

(d) Fourth, as for the "Letter of Agreement" dated 14 December 2015 between Mface and G1 (the "Letter Agreement"), this stated vaguely that: "Parties agree that the apportionment of the shares shall be in the percentage proportion of 50% ("Mface") and 50% to ("G1Construction Pte Ltd") after cost and any fees incurred upon completion [of the Sycamore Tree Project]".[152] Jesper testified that this meant that he and Lee would share profits.[153] Again, the supposed connection to the Mface-Astoria Loans allegedly being for "investment purposes"[154] was not borne out by the Letter Agreement.

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150 Lee's AEIC at para 35.

151 Lee's AEIC at para 37.

152 Lee's AEIC at p 213.

153 Transcript 18 July 2024 at pp 17:25–18:14.

154 Lee's AEIC at para 37.

86 Next, I found that interest was payable on the Mface-Astoria Loans. On this point, Lee first expressly, emphatically and without reservation (a) admitted that interest was charged on the Mface-Astoria Loans and (b) agreed with the statement in the 2018 Judgment that "there was interest charged on the [Mface Loans] at a rate of approximately 5% per month" (at [42]).[155] When he was asked to confirm that this meant that, despite the loan agreements stating that the Mface-Astoria Loans were "free of interest",[156] interest *had* indeed been charged, he then attempted to backtrack and gave inconsistent answers ranging from "[s]ome will charge interest… [s]ome will not charge interest" to "I can't be certain", before conceding again that "[i]f the [2018 Judgment] says that interest was charged, then for sure interest were charged".[157] I rejected Lee's disingenuous (and in any event, equivocal) latter attempts to walk back from his admission that interest was charged on the Mface-Astoria Loans.

87 As interest was indubitably charged on the Mface-Astoria Loans, the s 3 presumption was raised, and the burden lay on Mface to prove that it did not carry on the business of moneylending. Even if I am wrong that the s 3 presumption could be and was raised by virtue of Mface having made the interest-bearing Mface-Astoria Loans, it would not make a practical difference to the analysis that follows of whether Mface carried on the business of moneylending. Regardless of whether the burden of proof lay on Chin to prove that Mface was in the business of moneylending (assuming the s 3 presumption was not raised) or on Mface to prove the contrary (if, as I have found, the s 3 presumption was raised), the strength of the evidence in the present case was such as to firmly establish, with reference to the System and Continuity Test

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155 Transcript 16 July 2024 at pp 14:10–12 and 15:1–17.

156 *Eg*, Lee's AEIC at pp 179, 182, 185, 190, 194, 198, 200 and 202.

157 Transcript 16 July 2024 at pp 16:12–17:18.

and the All and Sundry Test, that Mface was in the business of moneylending. I turn to the analysis of these matters.

Whether the System and Continuity Test was satisfied

88 In *Ng Kum Peng v Public Prosecutor* [1995] 2 SLR(R) 900 ("*Ng Kum Peng*"), the court explained that the requirement of continuity means that the loans must be part of an ongoing and routine series of transactions made by the alleged moneylender (at [38]). The requirement of system means that there must be an organised scheme of moneylending, "[s]ome indicators" of which 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]). To establish the requirement of system and continuity, evidence of loans made by the lender before or after the date of the relevant transaction may be relied on (*Mak Chik Lun* at [14]).

89 I found, on a balance of probabilities, that the System and Continuity Test was satisfied in respect of Mface's moneylending activities, when the Mface-Astoria Loans, the April 2015 Loan, the May 2015 Loan and the Loan were viewed in conjunction. I elaborate.

Whether the Astoria Loans, the April 2015 Loan and the May 2015 Loan may be considered in the System and Continuity Test

90 A preliminary issue arose from Mface's argument that loans made by Mface to corporate borrowers should be "excluded from the analysis of whether there was system and continuity of loans by Mface" because "the lender would be considered an 'excluded moneylender'".[158] Mface made this argument without citing any authority for its proposition.

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158 CCS at para 41.

91 In my view, Mface's argument was misconceived as it conflated two separate inquiries. The entire scheme of the MLA does not apply to an "excluded moneylender": *Sheagar* at [57]. Therefore, before the inquiry into whether a lender is in the business of moneylending is undertaken, it should first be established that the lender is *not* an "excluded moneylender". Under the limb (*e*)(iii)(A) definition (which was the definition engaged in the present case), an "excluded moneylender" is a moneylender who lends solely to corporations. The lender would not satisfy this definition if the persons he lent to comprised *entirely* individuals or comprised a *mix* of individuals and corporations. Once it has been established that the lender is *not* an "excluded moneylender", whether by reason of lending solely to individuals or by reason of lending to a *mix* of individuals and corporations, the scheme of the MLA *would* apply to him, and all the loan transactions he entered into as a lender should be considered in ascertaining whether he is carrying on the business of moneylending, including under the System and Continuity Test. The MLA exempts an "excluded moneylender" and not "excluded loans" from restrictions on unlicensed moneylending; indeed, there is no concept of "excluded loans" under the MLA. There is no reason in principle to exclude the loans made to corporations in the conduct of this holistic assessment of the lender's moneylending activities. Therefore, the Astoria Loans, the April 2015 Loan and the May 2015 Loan may be considered in the System and Continuity Test (as well as the All and Sundry Test) and I proceeded to do so.

The Mface-Astoria Loans

92 I have found that the Mface-Astoria Loans were truly in the nature of interest-bearing loans (see [83]–[86] above). Another feature of these transactions was that the Mface-Astoria Loans were usually secured by personal

guarantees provided to Mface.[159] In respect of the loan for the redemption of a property in the District of Kulaijaya Johore, the "original land title" to the property was provided to Mface as security.[160] In my judgment, the Mface-Astoria Loans evidenced a system and continuity in Mface's moneylending by virtue of (a) the significant number and regularity of the loans, (b) the interest charged on the loans, and (c) for the most part, the requirement for security for the loans.

The 2015 Loans

93 There were no written loan agreements in respect of the 2015 Loans. The 2015 Guarantees opened with the statement "WHEREAS you have granted a friendly loan of [a stated amount] … to [Okayi Metals] pursuant [to] the Loan Agreement dated" 16 February 2015, 9 April 2015, 21 May 2015 and 30 June 2015 respectively (see [10] above).[161] The February 2015 Guarantee, April 2015 Guarantee and May 2015 Guarantee were addressed to Mface.[162] The June 2015 Guarantee was addressed to Mface before this addressee was crossed out and replaced with "Lee Kok Choy".[163]

94 I leave aside, for the time being, the February 2015 Loan and February 2015 Guarantee, since Lee did not become a director and shareholder of Mface until 7 and 8 April 2015 respectively (see [2] above).

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159 Lee's AEIC at para 33 and pp 181, 184, 187, 188, 192, 193, 196 and 197.

160 Lee's AEIC at p 189.

161 Lee's AEIC at pp 154–157.

162 Lee's AEIC at pp 154–156.

163 Lee's AEIC at p 157.

95 I found that the April 2015 Loan and the May 2015 Loan were made by Mface to Okayi Metals, according to what the April 2015 Guarantee and May 2015 Guarantee reflected. Lee claimed that these loans were advanced by him personally and that these guarantees had been addressed to Mface (instead of to him personally) in error.[164] I did not accept his contentions.

(a) First, I accepted Jeffrey's evidence that the guarantee documentation had been provided by Lee to Jeffrey to sign.[165] I rejected Lee's contention that the guarantee documentation had been provided by Jeffrey[166] as it was not credible that a borrower would be left to prepare, as he saw fit, the security documentation for the loan he was taking. In my view, this was an attempt by Lee to distance himself from the fact that he had named Mface as the addressee / lender in the 2015 Guarantees. Given my finding that the guarantee documentation was prepared at Lee's end, I considered it more likely than not that Lee had decided to name Mface as the addressee / lender in the 2015 Guarantees. This would have been an odd decision if Lee had not intended *Mface* to be treated as the lender.

(b) Second, while Lee deleted the reference to Mface in the June 2015 Guarantee and replaced that with his own name on 30 June 2015 (against which Lee and Jeffrey signed in acknowledgment),[167] all that showed was that Lee intended and the parties concurred that the June 2015 Loan was to come from Lee personally. It did not follow that the *other* 2015 Loans were extended by Lee personally as well,

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164 Lee's AEIC at paras 22 and 26.

165 Transcript 18 July 2024 at pp 83:11–18, 84:11–23, 84:26–85:1 and 85:31–86:6.

166 Transcript 15 July 2024 at p 30:1–12.

167 Transcript 18 July 2024 at p 86:9–19.

especially when no correction to Mface being named as the addressee / lender in the other 2015 Guarantees was ever made. I did not accept that, as a shrewd businessman, Lee had not noticed the reference to Mface in the earlier three 2015 Guarantees. Indeed, in the May 2015 Guarantee, the handwritten word "pay" and Lee's signature beside it appeared at the bottom of the document,[168] indicating that Lee had occasion to revisit the document and even then did not correct the reference to Mface as the addressee / lender in the May 2015 Guarantee. This reinforced that where Mface was reflected as the addressee / lender, this was intended by Lee.

(c) Third, that the 2015 Loans were disbursed by cheques issued by Lee to Okayi Metals did not preclude Mface from being the lender of the April 2015 Loan and the May 2015 Loan. To illustrate, after G1 and Mface became involved as partners in the Sycamore Tree Project pursuant to their Letter Agreement (see [85(d)] above), Lee apparently paid some construction costs on G1's behalf with cheques issued by him in his personal capacity.[169] It appeared that Lee made no distinction between whether the source of funds emanated from him directly or from Mface. According to Jesper, when it came time for G1 to make reimbursement to Mface, Jesper paid $750,000 to Mface.[170] As another example, Lee made payment of an invoice issued to Mface using funds from his personal bank account.[171] In effect, because Mface was essentially Lee's company (Lee being Mface's sole shareholder and

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168 Lee's AEIC at p 156.

169 Transcript 18 July 2024 at p 19:1–29; *eg*, Supplementary Bundle of Documents dated 18 July 2024 at pp 1, 10, 11, 13, 14 and 15.

170 Chin's AEIC at p 92; Transcript 18 July 2024 at pp 21:3–22:6.

171 Lee's AEIC at pp 42 and 150; Transcript 16 July 2024 at p 20:2–30.

director), the flow of funds between Lee and Mface was fluid. However, when it came to deciding who would be the contractual party to agreements, Lee was clear when he intended for Mface to be the contracting party. Therefore, in respect of the April 2015 Loan and the May 2015 Loan, there was no reason to depart from what the April 2015 Guarantee and the May 2015 Guarantee expressly reflected – Mface was the lender of those loans.

(d) Fourth, I was cognisant that, in respect of the February 2015 Loan and the February 2015 Guarantee, Lee had not yet, at that time, become a shareholder or director of Mface. I therefore left this loan out of my consideration in determining whether Mface was in the business of moneylending. However, I did not think the fact that the February 2015 Guarantee was addressed to Mface detracted from my findings at [(a)]–[(c)] above. This was because Lee's evidence was that a friend had asked him if he was interested in taking over Mface;[172] he started considering whether to acquire Mface in end-2014;[173] and his friend eventually transferred the company to him.[174] In these circumstances, I did not rule out that Lee *had* meant to use Mface to lend money to Okayi Metals in February 2015 (as reflected in the February 2015 Guarantee) even before Lee formally became the owner and controller of Mface in April 2015.

96 Next, I found that it was not proved whether interest was charged and paid on the April 2015 Loan and the May 2015 Loan. It was not put to Lee in

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172 Transcript 15 July 2024 at p 25:3–5.

173 Transcript 16 July 2024 at p 64:19–20.

174 Transcript 15 July 2024 at p 25:3–5.

cross-examination that interest was payable on the April 2015 Loan. While it was put to him that interest of $11,000 had been paid on the May 2015 Loan, I found the evidence on this point inconclusive (see [79] above). However, the presence of fixed interest rates is but one indicator of a system of moneylending.

97 In my judgment, the April 2015 Loan and the May 2015 Loan to Okayi Metals added to the picture of the regularity with which Mface was extending loans and the organised manner in which security was required for the loans (in this case, by way of personal guarantees from Jeffrey, similar to how personal guarantees were required to secure many of the Mface-Astoria Loans). This reinforced the system and continuity in Mface's moneylending activities.

The Loan

98 In my judgment, the Loan was part of the system and continuity of Mface's moneylending:

(a) It added to the regularity with which Mface was extending loans.

(b) It was secured by the OTP granted by Chin to Mface over Chin's Property. This bore similarity to how the Mface-Astoria Loan for the redemption of a property in the District of Kulaijaya Johore was secured by the provision of the "original land title" to the property to Mface.[175]

(c) While I have found that it was not proved that interest was charged on the Loan (see [74] above), I considered this to be a neutral factor in the overall circumstances of the case, since the presence of fixed interest rates is but one indicator of a system of moneylending.

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175 Lee's AEIC at p 189.

(d) On Lee's own evidence, it was not the case that the Loan was not expected to be repaid on the due date stated in the 2016 Loan Agreement. According to Lee, when the Loan was not repaid on the due date for repayment, "Jeffrey had approached [Lee] to plead for Mface not to exercise the OTP".[176] Lee also claimed that he did not present the Repayment Cheque for payment when Chin defaulted on repayment of the Loan because Jeffrey had informed Lee that the cheque would be dishonoured upon presentment due to insufficient funds in the bank account[177] (see [26(a)] above). In other words, it was not that Mface had not expected timely repayment; Mface was prevented from collecting on the Loan on the repayment date due to Chin's lack of funds. While Lee did not appear to have chased for repayment thereafter until 2019,[178] I did not think this factor on its own sufficed to displace all the other factors (see [92], [97] and [(a)]–[(b)] above) pointing to the system and continuity in Mface's moneylending transactions.

Conclusion on the System and Continuity Test

99 I concluded, therefore, that there was system and continuity in Mface's moneylending activities. The System and Continuity Test was satisfied, and accordingly, Mface was in the business of moneylending and was a "moneylender" within the meaning of the MLA.

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176 Lee's AEIC at para 53.

177 SOC at para 10; Transcript 16 July 2024 at pp 53:31–54:13.

178 Lee's AEIC at para 57.

Whether the All and Sundry Test was satisfied

100 Further and/or alternatively, I found that the All and Sundry Test was satisfied.

101 First, very shortly after Lee took over Mface, Mface began making loans: for example, the April 2015 Loan to Okayi Metals and the Mface-Astoria Loans commencing in July 2015.

102 Second, there was no objective evidence of the state of the relationship between Mface and Astoria when the Mface-Astoria Loans were first made. The reasonable inference was that the Mface-Astoria Loans were granted because Mface considered Astoria to be an eligible borrower.

103 Third, the parties agreed that Lee only came to know Jeffrey (through Jesper's introduction) sometime between 2014 to 2015.[179] The February 2015 Loan was granted (be it by Mface or Lee) very early on in their relationship, followed shortly by the April 2015 Loan from Mface. I did not accept that a "close friendship" had (as alleged by Lee[180]) sprung up between Lee and Jeffrey by 2015. The 2015 Loans were, in my view, not granted on account of friendship. Nor did I accept Lee's allegation that the 2015 Loans were granted on account of his "business relationship" with Jeffrey.[181] Lee adduced evidence of only two transactions, one in September 2015 and another in December 2015, in which Lee Yeong Kham Building Sub Contractor ("LYK") (Lee's late father's business) had provided supplies to Okayi Singapore for a security

179 Lee's AEIC at para 7; Chin's AEIC at para 15.

180 Lee's AEIC at para 22.

181 Lee's AEIC at para 22.

fencing project.[182] These transactions significantly post-dated the commencement of the 2015 Loans.

104 Fourth, I similarly did not accept that the Loan was granted in 2016 because of Lee's alleged "close relationship" with Jeffrey.[183]

(a) One, Mface structured the Loan such that Chin had to provide an OTP over her home as security for the Loan. Under the terms of the 2016 Loan Agreement, Mface had the right to exercise the OTP and acquire Chin's Property if she defaulted on repayment of the Loan. If the OTP were exercised, Chin would be turned out of house and home. The structuring of the loan transaction in this manner struck me as *coldly commercial* and not reflective of any close personal friendship.

(b) Two, I accepted Jeffrey's evidence that he and Lee became close friends only in 2018 as they went about exploring the galvanizing business.[184] This cohered with Lee's own evidence that the two men began travelling together only in late 2017.[185] I found that it was not to Lee's credit that he purported to be on close personal terms with Jeffrey back in 2015 and 2016.

(c) Three, by September 2016, there had been only two transactions between LYK and Okayi Singapore in late 2015 (see [103] above), which was hardly sufficient basis on which to stake a claim of either a close personal or business relationship between Lee and Jeffrey.

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182 Lee's AEIC at para 18 and pp 74–79.

183 Lee's AEIC at para 42.

184 Transcript 18 July 2024 at pp 69:11–70:3.

185 Lee's AEIC at para 46.

(d) Four, that Chin helped Lee, *after* the Loan had been extended, to apply for a visa for one Ms Wang Xiaodan to come to Singapore was neither here nor there.[186] While I could accept that Chin was doing Lee a favour by doing so, I did not consider that a favour of this administrative nature was indicative of close friendship.

105 Fifth, I did not accept Mface's submission that Lee agreed for Mface to grant the Loan to Chin on account of "Lee's anticipated future business relationship with Jeffrey".[187]

(a) One, Lee alleged that sometime in 2015, Jeffrey began asking Lee to invest in Okayi Metals, which Lee and Jeffrey "only revisited sometime between 2016 and 2017".[188] Even if it was true that Jeffrey had made such a request, I found it very unlikely that Lee had any intention of investing in Okayi Metals at the time Mface granted the Loan to Chin in 2016. At the trial of OC 71, Lee candidly made disparaging remarks that Okayi Singapore had "nothing" and "no assets", for which reason he decided that Mface should make the Loan to Chin personally (see [67] above). Nothing suggested that his assessment of Okayi Metals in 2016 was any different. That being so, it was not credible that Lee had anticipated any investment in Okayi Metals in 2016, much less that Mface had granted the Loan to Chin on account of such an allegedly anticipated investment.

(b) Two, the business trips, collaborations and discussions cited by Lee took place only from 2017 onwards, *after* the Loan had already been

186 CCS at para 52(d).

187 CCS at para 53.

188 CCS at para 53(a).

made.[189] The evidence did not show that these were the impetus for Lee's decision for Mface to grant the Loan.

106 Mface's loans to Astoria, Okayi Metals and Chin showed that Mface was prepared to lend to all and sundry so long as Mface considered them eligible borrowers. I therefore found that the All and Sundry Test was satisfied, and on this count too, Mface was in the business of moneylending and was a "moneylender" within the meaning of the MLA.

Conclusion on the Illegal Moneylending Defence

107 There was no dispute that Mface was not licensed to be a moneylender. Accordingly, Mface was an "unlicensed moneylender" under the MLA, and pursuant to s 14(2) of the MLA, the 2016 Loan Agreement was unenforceable and the Loan was not recoverable. I therefore dismissed Mface's claim in OC 71.

108 Mface fell foul of the restrictions on unlicensed moneylending under the MLA and must bear the consequences. It was no answer to allege that Chin was a "seasoned" and regular borrower of money.[190] As the Court of Appeal emphasised in *Ochroid Trading Ltd and another v Chua Siok Lui (trading as VIE Import & Export) and another* [2018] 1 SLR 363, the MLA extends not just to the rogue "loan shark" who preys on the poor and vulnerable, but to anyone who engages in *the business of moneylending* within the meaning of the MLA without license (at [206]). The MLA fulfils an important *regulatory purpose* in regulating transactions which fall outside of what the Act permits (at [208]).

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189 CCS at paras 53(b)–(d).

190 COS at para 2.

The Promissory Estoppel Defence

109 My decision at [107] above disposed of the action in OC 71. Nevertheless, for completeness, I briefly address Chin's defence based on promissory estoppel. To establish this defence, Chin had to prove three elements: (a) a clear and unequivocal promise by the promisor (in the present case, Mface's representative, Lee); (b) reliance by her on the promise; and (c) detriment suffered by her as a result of the reliance (*Gulf Petrochem Pte Ltd v Petrotec Pte Ltd and others* [2018] SGHC 83 at [176]). In my view, this defence was not established.

110 First, Lee's Representations (see [27] above) were not proved because Chin's counsel did not, in cross-examination, even challenge Lee on Lee's denial in his AEIC of the alleged representations.[191]

111 Second, the element of reliance was not established. On Chin's own case, the earliest time that Lee's Representations were made was in July *2018*.[192] However, repayment of the Loan was due on 21 December 2016, and the Loan was not repaid. It was clear that Chin's decision, from 21 December 2016 through to July 2018, not to repay the Loan could not possibly have been due to the alleged representations (which were non-existent, on her own case, during that period). I did not think it was logical that her *continued* failure to repay the Loan from July 2018 onwards was due to Lee's Representations having allegedly been made.

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191 Lee's AEIC at para 63.

192 Chin's AEIC at para 55.

112 Third, the element of detriment arising from the alleged reliance was not established.

Conclusion

113 I dismissed OC 71, and, having considered the parties' submissions on costs, ordered costs fixed at $80,000 and specified disbursements to be paid by Mface to Chin.

Kristy Tan
Judicial Commissioner

Pradeep Pillai and Wong Yong Min (PRP Law LLC) for the claimant;
Abdul Wahab bin Saul Hamid, Muhammad Hasif bin Abdul Aziz and Roy Paul Mukkam (AW Law LLC) for the defendant.