

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

[2024] SGHC 330

Originating Claim No 561 of 2023

Between

Chiang Ai Ling (Jiang Ailing)

... Claimant

And

- (1) Tan Kian Chye
- (2) Ang Siew Yan

... Defendants

And Between

Ang Siew Yan

... Claimant in counterclaim

And

- (1) Chiang Ai Ling (Jiang Ailing)
- (2) Tan Kian Chye

... Defendants in counterclaim

JUDGMENT

[Contract — Formation — Whether alleged agreements were sham agreements]

[Tort — Conspiracy — Lawful and unlawful means – Whether claimant suffered loss as a result of the conspiracy]

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Chiang Ai Ling
v
Tan Kian Chye and another

[2024] SGHC 330

General Division of the High Court — Originating Claim No 561 of 2023
Audrey Lim J
7, 8, 10, 14–17, 23 October; 25 November 2024

30 December 2024

Judgment reserved.

Audrey Lim J:

1 In HC/OC 561/2023 (the “Suit”), the plaintiff (“Chiang”) claims the first defendant (“Tan”) had failed to pay her \$13,727,640.25 as consideration for transferring her shares in RYB Engineering Pte Ltd (“RYB”) to him, pursuant to agreements made in 2015 and 2019. Chiang and Tan were married and they divorced in 2007. Tan does not contest Chiang’s claim.

2 The second defendant (“Ang”) is Tan’s current wife. She commenced divorce proceedings in December 2022 in FC/D 5937/2022 (“D 5937”) and interim judgment was granted in May 2023. Ang claims the above agreements are a sham conceived by Chiang and Tan to reduce the matrimonial assets for division in D 5937. Ang further claims a beneficial interest in 24% of shares in RYB registered in her name which she had transferred to Tan for no consideration.

Background

3 Chiang and Tan married in February 1995. On 16 April 1996, RYB was incorporated. Chiang and Tan held 50,000 and 150,000 shares respectively and were its two directors. On 24 March 1997, Chiang resigned as director and Chai Boon Chong (“Chai”) was appointed in place.¹ In early 2000, Tan became romantically involved with Ang.² At the end of 2005, Ang joined RYB as a manager. On 23 March 2006, Tan transferred 120,000 of his 150,000 shares to Ang. By around June 2006, Tan and Ang were living together.³

4 On 15 December 2006, Chiang commenced divorce proceedings against Tan and obtained final judgment on 15 October 2007. On 10 March 2008, Chai resigned as director of RYB, and Ang was appointed in his place. Tan and Ang married on 28 May 2008. However, on 21 December 2022, Ang commenced D 5937 against Tan and interim judgment was granted on 19 May 2023.

5 Tan has a child with Chiang (namely, Kang Wei) and a child with Ang (namely, Xinyi).

6 The shareholding in RYB from its incorporation is as follows (collectively the “Share Movements”):

Date	Share capital	Chiang	Tan	Ang	Remarks
16/04/1996	\$200,000	50,000 (25%)	150,000 (75%)	-	

¹ 2AB 119–120; 7AB 102–103.

² Chiang’s AEIC at [9]; Tan’s AEIC at [10]–[11].

³ Ang’s AEIC at [34], [40], [42] and p 136; 2AB 143; Tan’s AEIC at [29]; 16/10/24 NE 55.

29/03/2006	\$200,000	50,000 (25%)	30,000 (15%)	120,000 (60%)	120,000 shares transferred from Tan to Ang.
21/09/2006	\$250,000	50,000 (20%)	80,000 (32%)	120,000 (48%)	RYB shares increased to 250,000. Tan was allotted the additional 50,000 shares.
13/10/2006	\$500,000	50,000 (10%)	330,000 (66%)	120,000 (24%)	RYB shares increased to 500,000. Tan was allotted the additional 250,000 shares.
28/10/2009	\$1.5m	150,000 (10%)	990,000 (66%)	360,000 (24%)	RYB share capital increased to \$1.5m. Two bonus shares were issued for every existing one share held.

7 Chiang claims that, until the Suit was commenced, she was unaware that her shareholding in RYB had been diluted, although she knew (during her divorce from Tan) that Tan had in 2006 transferred 120,000 shares to Ang.⁴ Tan claims he did not know 120,000 of his shares were transferred to Ang in March

⁴ Chiang's AEIC at [32], [34]; 7/10/24 NE 74–77, 83–84.

2006 as Ang handled the paperwork for the transfer. He claims it was only after the Suit was commenced that he became aware of the Share Movements and of Ang having changed the shareholding in RYB which diluted Chiang's shareholding from 25% in 1996 to 10% in 2006.⁵

8 On 9 and 10 September 2015 respectively, Chiang and Ang transferred the shares held in their names to Tan. On 19 September 2017, Tan entered into a sale and purchase agreement ("SPA") with Chudenko Corporation ("Chudenko") to sell all RYB's shares to Chudenko in two tranches. On around 16 October 2017, Tan sold 70% of the 1.5m shares to Chudenko for \$47.6m ("1st Payment"). In October 2022 Tan exercised the option to sell the remaining 30% of RYB's shares to Chudenko. He received \$7,310,561 on 17 November 2022 ("2nd Payment") for the transfer of the shares to Chudenko.⁶ I will refer to the 1st and 2nd Payments collectively as the "Sale Proceeds".

9 I will further refer to the shares held in Chiang's name (at any time) as "Chiang's Shares" and the shares held in Ang's name (at any time) as "Ang's Shares". This is putting aside the beneficial entitlement to the shares.

Chiang's claim

10 Chiang attests as follows. She was issued 25% of the shares in RYB when it was incorporated, to reflect her "anticipated (and eventual) contribution to RYB" and that she was heavily involved in RYB's start up although she was not paid a salary.⁷

⁵ Tan's AEIC at [18], [66]–[68]; 14/10/24 NE 9–10, 14, 17, 22, 62–63; 15/10/24 NE 52.

⁶ 2AB 215–286; Tan's AEIC at [52], [58].

⁷ Chiang's AEIC at [8] and [66]; 7/10/24 NE 21–24.

11 In August 2015, Tan informed her that he wanted to sell RYB’s shares as there were potential buyers. Chiang supported this as she would gain from cashing out her shareholding. Tan informed her that the potential buyers preferred to deal with a single shareholder to avoid any shareholder disagreements which could scupper the sale. He requested her to transfer her shares to him to consolidate them as the shareholder to front negotiations with potential buyers and said that Ang would also be transferring her shares to him.⁸

12 Hence, in late August 2015, Chiang and Tan orally agreed that in consideration for Chiang transferring all her shares to Tan, he would pay her 25% of the sale proceeds that would be paid by the eventual purchaser for all the shares in RYB (the “2015 Agreement”). Chiang’s Shares were transferred to Tan on 9 September 2015. Chiang claims that at the time of the 2015 Agreement, she assumed she had only 50,000 shares and the agreement to pay her 25% of the sale proceeds was based on her then 25% shareholding in RYB.⁹

13 In 2017, Tan informed Chiang that he had executed an SPA with Chudenko to purchase 70% of RYB’s shares with the right to sell the remaining 30% at a later stage. In October 2017, Chiang discovered from Kang Wei that Tan had received the 1st Payment. From then on, she chased Tan for her share of the sale proceeds.¹⁰ In 2019, when Chiang was chasing Tan for payment, Tan informed her that he could not pay her because all his finances were controlled by Ang and he required Ang’s permission to withdraw the money. He thus requested to pay Chiang the entirety of her 25% share of the sale proceeds

⁸ Chiang’s AEIC at [22]–[25].

⁹ Chiang’s AEIC at [28]–[29]; 7/10/24 NE 58, 75–76.

¹⁰ Chiang’s AEIC at [39], [44].

(“25% Proceeds”) after receiving the 2nd Payment from Chudenko, to which she agreed (the “2019 Agreement”).¹¹

14 When Kang Wei informed Chiang that Tan had received the 2nd Payment, Chiang again repeatedly requested for her 25% Proceeds. As Tan failed to pay Chiang, her lawyers issued a letter of demand on 26 July 2023 (“26/7/23 Demand”) to Tan for the 25% Proceeds amounting to \$13,727,640.25. Tan admitted to the demand but could not release the money to Chiang because of the ongoing proceedings in D 5937. Hence, Chiang commenced the Suit on 30 August 2023 to claim the 25% Proceeds.¹²

Ang’s version of events and counterclaim

15 Ang claims that the 2015 Agreement was a sham agreement conceived by Chiang and Tan to reduce the matrimonial assets liable for division in D 5937, for the following reasons.¹³ There was no evidence that Chiang beneficially owned 25% of the shares in RYB because she had contributed to or was involved in RYB’s business.¹⁴ Moreover, the transfer of Chiang’s Shares to Tan in 2015 represented only 10% of all the shares in RYB; thus Tan could not have agreed to pay Chiang a higher percentage from the Sale Proceeds. The 2015 Agreement was also a sham because Tan had many opportunities after receiving the Sale Proceeds to pay Chiang the 25% Proceeds but he did not.¹⁵ The existence of any such agreement was also only raised for the first time in

¹¹ Chiang’s AEIC at [45]–[47].

¹² Chiang’s AEIC at [52]–[55], [58]; 11AB 549–550.

¹³ Ang’s Defence and Counterclaim (Amd No. 1) (“Ang’s Defence”) at [3(6)].

¹⁴ Ang’s AEIC at [60]–[61], [71].

¹⁵ Ang’s Defence at [3(6)(a)], [3(6)(d)], [3(6)(e)].

Tan’s affidavit of assets and means dated 18 July 2023 (“Tan’s 18/7/23 AAM”), filed in D 5937.¹⁶

16 Even if the 2015 Agreement were a true agreement, Chiang received \$2m (on 27 October 2017) and \$5m (on 18 November 2022) from the Sale Proceeds via transfers to a bank account held jointly by Chiang and Kang Wei (the “CKW Account”). This constituted sufficient payment for Chiang’s transfer of 150,000 RYB shares to Tan.¹⁷

17 Ang also counterclaimed against Tan as follows. First, she beneficially owned the 360,000 shares held in her name for which she received no consideration before they were transferred to Tan in September 2015. Ang pleaded that Tan had, in March 2006, transferred 120,000 shares to her in consideration of her commitment to build up RYB.¹⁸ Thus, Ang claims that she was beneficially entitled to 24% of the shares in RYB or of the Sale Proceeds. Ang also claims a conspiracy between Chiang and Tan to cause loss to her, by conceiving the sham 2015 Agreement to reduce the matrimonial assets liable for division in D 5937 by some \$13,727,640.25.¹⁹

Tan’s version of events

18 Tan does not contest Chiang’s claim. He pleads that Chiang was allotted shares in RYB due to her crucial contributions to RYB at its inception. Thus, in August 2015 when Chiang agreed to transfer her shares to Tan, Tan agreed to hold 25% of the total sale proceeds that he would obtain for all the shares in

¹⁶ Ang’s AEIC at [183].

¹⁷ Ang’s Defence at [3(6)(f)], [3(6)(i)], [3(7)].

¹⁸ Ang’s Defence at [3(2)(a)], [10].

¹⁹ Ang’s Defence at [12]–[16].

RYB on trust for Chiang and pay her the same after the sale was completed. This was in recognition of Chiang’s initial 25% shareholding in RYB and the crucial role she played in establishing RYB in the early stages and without drawing a salary.²⁰

19 As for Ang’s Shares, Tan claims that Ang was his nominee for the shares. Ang did not play any crucial role in RYB and has been generously remunerated for her work. She also did not provide consideration for the shares. When the 360,000 shares held in her name were transferred to Tan, Ang never asserted any residual rights to them.²¹ Tan (and Chiang) further denies the conspiracy claim.

Preliminary matters

20 I deal first with some material issues pertaining to Chiang’s and Ang’s respective claims, namely: (a) whether Chiang beneficially owned Chiang’s Shares before they were transferred to Tan in 2015; (b) whether Tan knew and approved of the Share Movements (see [7] above); and (c) whether Chiang knew she had 150,000 shares in RYB prior to transferring her shares to Tan.

Whether Chiang was the beneficial owner of the shares held in her name

21 I begin with whether Chiang was the beneficial owner of 25% of RYB’s shares at its incorporation (or any shares thereafter) held in her name, as her pleaded claim is premised on her beneficial entitlement in that regard.²² I find the evidence does not support that she owned any of Chiang’s Shares.

²⁰ Tan’s Defence and Counterclaim (Amendment No. 3) (“Tan’s Defence”) at [2(3)(a)], [2(10)(d)], [2(18)].

²¹ Tan’s Defence at [2(10)(e)] and [2(10)(f)].

²² Chiang’s AEIC at [34]; 7/10/24 NE 58–59, 75–76; 8/10/24 NE 34–35.

22 It is undisputed that Chiang did not pay for Chiang’s Shares. Chiang claims she was beneficially entitled to 50,000 shares (issued to her at RYB’s incorporation) because of her “anticipated (and eventual) contribution to RYB”, particularly in managing RYB’s finance and human resources, and that she was “heavily involved” in RYB’s start-up although she was not paid any salary.²³ Tan’s version coheres largely with Chiang’s.

23 I find the evidence does not support that Chiang was heavily involved in or contributed substantially to RYB, even if she did make some contributions. Other than Chiang’s and Tan’s oral testimony, there is no evidence (*eg*, documentary evidence or testimony from RYB’s staff or former staff) to support Chiang’s assertion. This is despite Chiang’s claim to have been involved in RYB’s management for some 10 years until 2006. In fact, Chiang never sought to obtain from RYB or Tan any documents to support her claim.²⁴

24 On the contrary, the evidence suggests otherwise. Barely a year after RYB’s incorporation, Chiang was replaced by Chai as RYB’s director. This did not sit squarely with her claim to be heavily involved in RYB. Indeed, in court, Chiang admitted she was appointed as RYB’s initial director *at Tan’s instructions* and replaced by Chai also *at Tan’s directions* because she had then given birth to Kang Wei.²⁵ In addition to RYB having an external auditor and accountant (KS Chan & Co), RYB also engaged a company secretary (Tan Ai Sun, an accountant from MCS Management Consultants).²⁶ In court, Chiang claimed she could not recall if she ever prepared RYB’s financial statements on

²³ Chiang’s AEIC at [8] and [66].

²⁴ Chiang’s AEIC at [8]; 7/10/24 NE 39.

²⁵ 7/10/24 NE 27–28, 36, 65.

²⁶ 7/10/24 NE 32, 41–44; 15/10/24 NE 118–119; 2AB 81–83, 113.

a monthly basis, that she was only “initially” involved in RYB’s finance and accounts, and that RYB employed a staff to assist with book-keeping as she had to take care of Kang Wei. There is also no evidence to support that Chiang managed human resources in RYB. She stated that it was Tan who signed off on all documents such as pay slips, employment contracts and staff appraisal.²⁷

25 Next, Chiang’s assertion that she was never paid any salary since RYB’s incorporation (to support her beneficial entitlement to Chiang’s Shares)²⁸ is contradicted by Tan. Tan pleaded that Chiang was paid a salary, albeit not “substantial” (having deleted from his pleadings his initial claim that Chiang was “not paid any salary at all”).²⁹ Tan maintained this in his affidavit of evidence-in-chief (“AEIC”) and admitted in court that Chiang drew a salary even when RYB was incorporated.³⁰

26 Additionally, Chiang relies on the fact that a property previously held jointly with Tan was put up as security to obtain banking facilities for RYB’s business, as supporting her 25% beneficial interest in RYB at RYB’s incorporation. But this is disingenuous. The security for the banking facilities was obtained in October 2015, *after* Chiang had transferred all her shares to Tan.³¹ In any event, whilst Chiang pleaded this event in reliance on her entitlement to the RYB shares (and maintained this in court), she did not mention this in her AEIC.

²⁷ 7/10/24 NE 40–41, 46–48.

²⁸ 7/10/24 NE 49–51; 16/10/24 NE 62–63.

²⁹ Tan’s Defence at [2(3)(a)]; 15/10/24 NE 116.

³⁰ Tan’s AEIC at [8]; 15/10/24 NE 117–118.

³¹ Chiang’s Particulars (dated 21 June 2024) at [1]; 2AB 173–181; 7/10/24 NE 67–70.

27 Indeed, Chiang’s conduct supports that she did not beneficially own Chiang’s Shares and the evidence points to Tan as the beneficial owner instead. Tan had used RYB’s moneys to pay Chiang’s and Kang Wei’s \$5,000 monthly maintenance, pursuant to a court order in July 2007 for ancillary matters in his divorce from Chiang (“25/7/07 AM Order”), despite it being his personal obligation. Chiang knew at all material times that Tan was paying the maintenance disguised as a “salary” from RYB when he should have borne the maintenance personally. I disbelieve that Chiang was afraid the maintenance would cease if she objected.³² She could have easily sought a court order to enforce her rights, as she has done by commencing the Suit to claim the 25% Proceeds. Further, Chiang’s admission in court that she had no control over Tan’s actions in RYB (including his use of RYB’s moneys) and that she followed his instructions even when she was RYB’s director (or employee) point to Tan controlling RYB and Chiang having a limited involvement therein.³³ Thus, Chiang’s justification for ownership over Chiang’s Shares (*ie*, by her substantial contributions to RYB) falls away.

28 Finally, I turn to Chiang’s and Tan’s assertions that as the 25/7/07 AM Order did not deal with their shares in RYB, this showed that she retained the beneficial interest in Chiang’s Shares.³⁴ I disagree. The 25/7/07 AM Order was made by consent when Tan and Ang were cohabiting; and when Chiang’s shareholding in RYB had already been diluted to 10% and which (as will be seen below) Tan knew about. Pertinently, the 25/7/07 AM Order did not mention the RYB shares held by Chiang or Tan. I might have concluded otherwise if the Order had expressly or impliedly dealt with the RYB shares (*eg*,

³² 2AB 489–490; 7/10/24 NE 51–52, 56–58, 65–66.

³³ 7/10/24 NE 60, 65–66.

³⁴ Chiang’s AEIC at [16]–[18]; Tan’s AEIC at [20]; 2AB 489–490.

such as mentioning a division in general of all other matrimonial assets). The parties' variation to the 25/7/07 AM Order on 31 January 2019 was also silent on the RYB shares.³⁵ Thus, that the 25/7/07 AM Order was silent on the division of RYB shares held in Chiang's and Tan's respective names, is not inconsistent with Chiang never having had a beneficial interest in Chiang's Shares. In other words, if Chiang was merely Tan's nominee for Chiang's Shares, the failure to deal with the division of the shares in their divorce would not change that.

29 In sum, I disbelieve that Chiang beneficially owned Chiang's Shares (or 25% of all RYB shares) because of her "anticipated (and eventual) contribution to RYB" and because she was never paid any salary despite being "heavily involved" in RYB's start-up as she claimed (see [22] above). The evidence does not point to Chiang having been heavily involved in RYB and further shows that Chiang was remunerated for her limited contributions thereto. Hence Chiang's assertion that she was given a beneficial interest in RYB (via shares) is not made out. This is supported by my further findings below that it was Tan who approved the allotment and transfer of shares in RYB and had treated RYB as his own, which shows that he beneficially owned Chiang's Shares.

Whether Tan knew and approved of the Share Movements

30 In his AEIC, Tan claims as follows:

- (a) In 2006, he agreed to transfer some of his shares to Ang to allay her insecurities as she was not a shareholder in RYB, unlike Chiang. He left it to Ang to execute the share transfer and he did not know how many shares were transferred to her.³⁶

³⁵ 2AB 508–509.

³⁶ Tan's AEIC at [16]–[18].

(b) In October 2009, Tan instructed Ang to increase RYB’s share capital to \$1.5m to enable RYB to fulfil the Building and Construction Authority’s (“BCA”) Grade L6 registration requirement for a paid-up capital of \$1.5m and left her to sort out the paperwork.³⁷

(c) It was only after the Suit was commenced that Tan discovered that: (i) Ang had in March 2006 transferred 120,000 of Tan’s shares to herself thus making her a 60% shareholder in RYB; and (ii) Ang had arranged for Tan to be allotted 50,000 shares on around 21 September 2006 (the “1st Allotment”) and a further 250,000 shares on around 13 October 2006 (the “2nd Allotment”), both of which caused Chiang’s shareholding to be diluted to 10%.³⁸

(d) At all material times, Tan trusted Ang completely and signed papers on Ang’s request without reading them. Ang also did not inform Chiang of the increase in RYB’s share capital.³⁹

31 I disbelieve Tan and find that he knew the details and approved of the Share Movements, as evident from his signatures on the following documents:

(a) Tan signed a Directors’ Resolution of 29 March 2006 to approve the transfer of 120,000 shares from him to Ang, and signed the Share Transfer Form (of the same date) to transfer the shares to Ang.⁴⁰

(b) Tan signed a Resolution of Shareholders/Directors of 15 September 2006, to authorise RYB’s directors to issue shares as they

³⁷ Tan’s AEIC at [21].

³⁸ Tan’s AEIC at [66]–[68].

³⁹ Tan’s AEIC at [69]–[70].

⁴⁰ 2AB 123, 126; 14/10/24 NE 9; 15/10/24 NE 51.

thought fit. In court, he admitted reluctantly that he was consulted on the 1st Allotment.⁴¹

(c) Tan signed a Directors’ Resolution of 13 October 2006 to increase RYB’s share capital from 250,000 to 500,000 and to allot the additional 250,000 shares to himself. In court, he admitted he had approved the deletion of the words “and he was not consulted on the same by [Ang]” in his amended Defence.⁴²

(d) Tan signed a Directors’ Resolution dated 28 October 2009 to increase RYB’s paid-up capital to \$1.5m; and to allot 1,000,000 bonus shares by distributing two bonus shares for each share held by RYB’s existing shareholders. He had also signed the Minutes of Meeting (purportedly of an extraordinary general meeting held on 28 October 2009) to authorise RYB’s directors to issue shares as they thought fit.⁴³ Tan was aware that with the increase in capital, new shares would be issued which would lead to every shareholder obtaining more shares. In court, he admitted that he was consulted on the allotment of 660,000, 240,000 and 100,00 shares to himself, Ang and Chiang respectively – in his amended Defence, he had deleted the words “without first consulting [Tan] and without [Tan’s] knowledge”.⁴⁴

32 I disbelieve that Tan habitually signed documents blindly at Ang’s behest. He was a seasoned businessman, the issuance and allotment of shares was an important matter which affected the rights of shareholders, and the

⁴¹ 2AB 132; Tan’s Defence at [2(4)]; 14/10/24 NE 13; 15/10/24 NE 134–136.

⁴² 2AB 136; Tan’s Defence at [2(5)]; 15/10/24 NE 136–137.

⁴³ 2AB 146–148.

⁴⁴ Tan’s Defence at [2(6)]; 15/10/24 NE 131–133, 137–138.

documents he signed were brief. It is unbelievable that *Ang* would have *unilaterally increased Tan's* shareholding from 15% (in March 2006) to 66% (in October 2006) and correspondingly reduced her own shareholding from 60% to 24% without Tan's knowledge and directions. It is also unbelievable that Tan was unaware of the 1st and 2nd Allotments made *only to him*. In court, Tan agreed that the number of shares in RYB was increased by 50,000, 250,000 and 1,000,000 on 21 September 2006, 13 October 2006 and 28 October 2009 respectively so that RYB could obtain a higher BCA Grade from L3 to L4, to L5 and then L6.⁴⁵

33 Hence, I find Tan was dishonest in claiming that he was unaware of “the specifics of how [Ang] had changed the shareholding of RYB over the years” (including the dilution of Chiang's shareholding) until the Suit was commenced in August 2023.⁴⁶ As Tan knew of the 1st and 2nd Allotments when they occurred, he would have known they diluted Chiang's shareholding in RYB.

34 Additionally, the terms of the SPA show Tan knew of the Share Movements at the material times. The SPA contained a Special Indemnity whereby Tan would indemnify Chudenko from any disputes in connection with the transfer of the 120,000 shares from Tan to Ang, and the 1st and 2nd Allotments to Tan. Tan agreed that Chudenko required the Special Indemnity as it was concerned over the share transfer and allotments. In fact, draft copies of the SPA (circulated in July and August 2017 to Tan) had contained clauses to deal with the share transfer and allotments. Teoh Chin Yeow (“Teoh”) from Gateway Capital SG Pte Ltd (RYB's financial advisor in the sale of RYB's shares to Chudenko) testified that the condition precedents pertaining to the

⁴⁵ Ang's AEIC at [45]–[49], [55]; 14/10/24 NE 23–27.

⁴⁶ Tan's AEIC at [18] and [66].

share transfer and allotments (such as obtaining a waiver of pre-emption rights from Chiang for the transfer of Tan’s 120,000 shares to Ang in March 2006) would have been brought to Tan’s attention, and that such conditions were then amended to an “indemnification” clause on Tan’s instructions.⁴⁷

35 I thus disbelieve that Tan did not know, when he executed the SPA in September 2017, of the increase in his shareholding and the consequent dilution of Chiang’s shareholding in RYB. The above showed that even before the SPA was executed, Tan was aware of the number of shares that he, Chiang and Ang were holding. Tan agreed that the SPA was very important to him as he was selling his life’s work to Chudenko for some \$47.6m; and that his lawyers would have explained the terms of the SPA to him at the material time.⁴⁸

36 Finally, in Tan’s 18/7/23 AAM filed in D 5937, Tan had: (a) set out the Share Movements; and (b) stated categorically that Chiang merely held 10% of the shares in RYB when Chiang’s Shares were transferred to Tan in 2015. In court, Tan admitted that before the Suit was commenced, he already knew that Chiang’s shareholding in RYB had been diluted to 10%.⁴⁹

Whether Chiang knew of the share dilution and number of shares transferred to Tan in 2015

37 Next, Chiang claimed that she became aware that her 25% shareholding in RYB had been diluted to 10% only after the Suit was commenced.⁵⁰ But this

⁴⁷ 2nd Defendant’s Bundle of Documents Vol 2 (“2DB2”) at pp 375, 408–409; 16/10/24 NE 11–14, 16–21.

⁴⁸ 2AB 217, 230; 14/10/24 NE 27–30.

⁴⁹ 4AB 27–28 (Tan’s 18/7/23 AAM at [33(2)(iv)] and [33(2)(vi)]); 14/10/24 NE 66.

⁵⁰ Chiang’s AEIC at [31]–[32]; 7/10/24 NE 76–77; 8/10/24 NE 16.

is clearly a lie because the 26/7/23 Demand stated that her shareholding in RYB was reduced to 10% before the shares were transferred to Tan.⁵¹

38 However, I accept that Chiang did not, in 2006, know about the dilution of her shareholding in RYB. This is even if she then knew (during her divorce from Tan) of the transfer of Tan’s 120,000 shares to Ang. Both Tan and Ang did not inform Chiang of the 1st and 2nd Allotments or dilution of her shareholding.⁵² But Chiang’s lack of knowledge at the material times, coupled with Tan’s conduct in procuring the 1st and 2nd Allotments to himself without informing Chiang (when he well knew they would dilute Chiang’s shareholding), merely reinforces my finding that Chiang was not the beneficial owner of any shares held in her name, and that they belonged to Tan who was in control of RYB. Indeed, the 15 September 2006 Resolution (see [31(b)] above) was purportedly made at a general meeting which never took place.⁵³

39 That said, I find Chiang knew that her shareholding had changed by the time of the purported 2015 Agreement; and in particular that she knew she was transferring 150,000 shares to Tan on around 9 September 2015. She signed a share transfer form (dated 9 September 2015) which expressly stated that she was transferring 150,000 shares to Tan.⁵⁴ I disbelieve Chiang that when she signed the form, two sentences (which referred to a consideration of \$150,000 for the 150,000 shares) were not typed in yet.⁵⁵ The entire form was typewritten (save for the date and signatures of Chiang and Tan) with each sentence

⁵¹ 11AB 549–550; 8/10/24 NE 17–18.

⁵² 14/10/24 NE 26; 16/10/24 NE 115.

⁵³ 16/10/24 NE 114.

⁵⁴ 2nd Defendant’s Bundle of Documents Vol 4 (“2DB4”) at p 27; 8/10/24 NE 81, 85.

⁵⁵ Chiang’s AEIC at [29]; 8/10/24 NE 81, 86–87.

uniformly spaced out. It is unbelievable that two crucial sentences were intentionally omitted, and only inserted in between the rest of the contents in the form, after Chiang had signed the form. As Chiang claimed, she would check how many shares she had before she disposed of them.⁵⁶

40 Chiang’s dishonesty in claiming that she did not know how many shares she held in 2015 (when she transferred them to Tan) is supported by my rejection of her claim that she was unaware of the share dilution until the Suit was commenced (see [37] above). If at all, Chiang’s lack of interest in the exact number (and percentage) of shares she held and transferred to Tan was precisely because she knew she was not the beneficial owner. Her disinterest in the number of shares she claimed belonged to her is evident also at the time of her divorce from Tan in 2006, wherein she claimed to have refused to check on the shares she purportedly owned despite being advised by her lawyers to do so and despite knowing that Tan had transferred 120,000 shares to Ang.⁵⁷

Whether the 2015 and 2019 Agreements were sham agreements

The 2015 Agreement

41 I now deal with the 2015 Agreement. I find that it was a sham agreement as Ang alleged. In this regard, I consider the evidence and conduct of Chiang and Tan at the material time and after the purported agreement.

42 In *Simpson Marine (SEA) Pte Ltd v Jiapiro Jiaravanon* [2019] 1 SLR 696 (“*Simpson Marine*”) at [78], the Court of Appeal stated that where the court is ascertaining whether a contract has been formed, evidence of

⁵⁶ 7/10/24 NE 19.

⁵⁷ 7/10/24 NE 82–85.

subsequent conduct has traditionally been regarded as admissible and relevant. Whilst the Court of Appeal in *Simpson Marine* did not reach a firm view on the admissibility, relevance and probative value of subsequent conduct for the purpose of contract formation as the point was not argued (see at [79]), evidence of parties' subsequent conduct was examined to determine if a contract had been formed. In *The "Luna" and another appeal* [2021] 2 SLR 1054 at [30] and [38], and reiterated in *Lim Siau Hing @ Lim Kim Hoe and another v Compass Consulting Pte Ltd and another appeal* [2023] SGCA 39 at [97], the Court of Appeal stated that in cases involving the existence of a contract (as opposed to the interpretation of a contract) there is no restriction on the evidence which the court may consider.

Chiang's conduct and the evidence

43 Chiang's cause of action is premised on contract, *ie*, the 2015 Agreement whereby she transferred all her RYB shares to Tan in consideration for the 25% Proceeds (from the sale of 100% of RYB's shares to a third party).⁵⁸ In court Chiang explained that Tan had offered her 25% of the sale proceeds because she assumed, at the time of the 2015 Agreement, that she had only 50,000 shares and RYB's total issued shares amounted to only 200,000.⁵⁹ Tan similarly attests that when they made the 2015 Agreement, he thought that Chiang held 25% of all shares in RYB whilst he held the remaining 75% (including the shares in Ang's name, which I elaborate below). In his AEIC, Tan claimed he was

⁵⁸ Statement of Claim (Amd No 1) at [5]–[8]; Agreed List of Issues (dated 1 November 2024) at [1]; Chiang's AEIC at [28]; 7/10/24 NE 72; 8/10/24 NE 33–34; 15/10/24 NE 79.

⁵⁹ 7/10/24 NE 75–76.

unaware that Chiang’s shareholding had been diluted to 10% at the time of the 2015 Agreement.⁶⁰

44 But I have earlier found that: (a) Chiang was never the beneficial owner of Chiang’s Shares and the evidence pointed to Tan being the beneficial owner of the same; and (b) Tan knew and approved of the 1st and 2nd Allotments to himself and would have known the allotments diluted Chiang’s shareholding in RYB. These alone are sufficient for me to find that the 2015 Agreement did not exist, as Chiang would have had no beneficial interest in any RYB shares to transfer to Tan for a share of the Sale Proceeds. Additionally, I rely on other evidence to support my finding that the 2015 Agreement was a sham.

45 First, there is no contemporaneous record of the 2015 Agreement. Chiang first claimed the existence of such an agreement in the 26/7/23 Demand issued to Tan (see [14] above).⁶¹ Even so, the 26/7/23 Demand was vague. It did not mention an agreement made in 2015. The 26/7/23 Demand suggested that the agreement between Chiang and Tan was made *after* Chudenko had decided to acquire RYB. This is contradicted by Tan’s testimony that Chudenko was not in the picture when the 2015 Agreement was made, rather it was Wah Loon Engineering Pte Ltd (“Wah Loon”) that wanted to purchase RYB. It is also contradicted by Chiang’s testimony in court that Tan did not in 2015 mention the identity of RYB’s potential buyer and that she first came to know about Chudenko in 2017.⁶² That Chiang could not get her story straight in the 26/7/23 Demand casts doubt on the existence of the 2015 Agreement.

⁶⁰ 14/10/24 NE 21–22; Tan’s AEIC at [39].

⁶¹ 8/10/24 NE 158–159.

⁶² Tan’s AEIC at [35]–[44]; 8/10/24 NE 53–54; Chiang’s AEIC at [39].

46 In fact, Chiang had numerous opportunities to put on record with Tan the 2015 Agreement (or her share of the Sale Proceeds) even after the purported event, such as by a simple WhatsApp reminder to Tan. It would have been especially opportune for her to do so: (a) when Chiang allegedly discovered from Kang Wei that Tan had in 2017 received the 1st Payment and she then purportedly pestered Tan repeatedly until 2019 for payment; and (b) even after finding out (again from Kang Wei) that Tan had received the 2nd Payment and again refused to pay her when she repeatedly chased him for payment. In court, Chiang admitted that she was in 2017 already concerned when Tan rebuffed her regarding her share from the 1st Payment and agreed that she should have recorded the 2015 Agreement at that point.⁶³

47 Likewise, Chiang admitted that by June 2022, Tan was unwilling to return the shares or give her cash in consideration for them. Yet she did not see fit to remind Tan in writing about the 2015 Agreement. Chiang’s assertion that it was not important to have a written record cannot be believed especially when she claimed that, by this time, her concerns regarding Tan’s conduct were “very heightened” and she even told Kang Wei to protect a property (at Lorong Kismis) which was purchased in Kang Wei’s name with moneys from Tan.⁶⁴

48 I disbelieve that Chiang never recorded the 2015 Agreement as she trusted Tan to fulfil his end of the bargain and she was afraid he would be angry and cease paying her maintenance if she did so.⁶⁵

⁶³ 8/10/24 NE 114–118.

⁶⁴ 8/10/24 NE 122–129; 12AB 164.

⁶⁵ Chiang’s AEIC at [30] and [47]; 8/10/24 NE 102–103, 109.

(a) Chiang’s purported “trust” in Tan was at odds with her feelings of betrayal by him in having an affair with Ang (whom he subsequently married) and his continued betrayal when she discovered he had a child with Ang whilst married to Chiang.⁶⁶ Her “trust” in Tan inherently contradicts her claim that she did not in 2015 press Tan regarding the sale price of RYB’s shares as she was afraid to jeopardise the monthly maintenance that Tan was then paying her and Kang Wei.⁶⁷ If Chiang trusted Tan on money matters,⁶⁸ there was no reason to feel that way.

(b) It is unbelievable that Chiang was on one hand afraid that Tan would not comply with a court order (to pay monthly maintenance of some \$5,000) but on the other hand not fearful that Tan would not honour the 2015 Agreement for the 25% Proceeds worth millions and which was oral. Chiang subsequently claimed that she was already fearful in 2015, that Tan would not keep to his end of the bargain.⁶⁹

49 Further, despite Chiang knowing that Tan then dissipated a portion of the 1st Payment to purchase a property for Xinyi in around May 2018 (“Xinyi’s Property”) and a property in Ang’s mother’s name in June 2021, Chiang did not quickly record the terms of the 2015 Agreement or take legal action, despite claiming to be concerned over Tan’s use of the moneys. In fact, Chiang even facilitated the purchase of Xinyi’s Property by acting as the property agent.⁷⁰

⁶⁶ Chiang’s AEIC at [9] and [14]; 8/10/24 NE 103–104.

⁶⁷ Chiang’s AEIC at [26].

⁶⁸ 8/10/24 NE 104, 107.

⁶⁹ 8/10/24 NE 109–112.

⁷⁰ Ang’s AEIC at [166] and Exhibit 59; 8/10/24 NE 147–148, 155–157; 15/10/24 NE 91; 16/10/24 NE 100–101; 12AB 132, 163.

50 Chiang’s credibility left much to be desired. I find her failure to record the 2015 Agreement or take concrete action against Tan even after she knew he had used the 1st Payment to benefit Ang and Xinyi (see [49] above), was not because she feared Tan would be upset and refuse to pay her the 25% Proceeds, but rather because the 2015 Agreement never existed. Indeed, far from refusing to give Chiang money from the Sale Proceeds, Tan caused \$2m and \$4m from the Sale Proceeds to be transferred to the CKW Account in October 2017 and April 2018 respectively (the “\$2 Million” and “\$4 Million”).⁷¹ Notably, the \$2 Million was transferred to the CKW Account about 10 days after Chudenko made the 1st Payment.

Tan’s conduct

51 It is clear even from Tan’s testimony, that the 2015 Agreement did not exist at the material time. Tan asserts that he did not pay Chiang (after receiving the 1st Payment) although she pressed for payment on multiple occasions, because Ang would have been displeased with Tan doing so and that Ang “controlled the purse strings” including what Tan could withdraw from his sole accounts and joint accounts with Ang.⁷²

52 I find Tan’s assertion above to be preposterous. By his own assertion, Tan owned 75% of RYB’s shares (including Ang’s Shares) prior to their sale to Chudenko. It is unbelievable that Ang controlled the purse strings and could override Tan’s decisions pertaining to how he spent his money. Tan’s assertion is directly contradicted by the fact that a total of \$6m (from the 1st Payment) was transferred to the CKW Account after he received the 1st Payment (see [50]

⁷¹ 8/10/24 NE 154; 15/10/24 NE 105.

⁷² Tan’s AEIC at [56]–[57]; 14/10/24 NE 57–58; 15/10/24 NE 93.

above) and another \$5m was transferred to the CKW Account (the “\$5 Million”) from the 2nd Payment shortly after receiving that payment from Chudenko.⁷³ In court, Tan conceded that he had on one occasion made a withdrawal of \$30m from his joint account with Ang, he had free use of the funds as he pleased, and he had moved the funds without Ang’s knowledge or permission.⁷⁴ Further, Tan’s assertion that Ang would have been upset if he were to give part of the Sale Proceeds to Chiang is incongruent with Ang’s act of signing the cheque for the \$4 Million in favour of Kang Wei. It beggars belief that that Ang would have been upset if Tan had distributed the Sale Proceeds to Chiang but was happy for him to do the same for Chiang’s son.⁷⁵ The evidence thus showed that Tan (and not Ang) controlled the purse strings in his relationship with Ang.

53 In sum, I find that the reason Tan never paid Chiang the 25% Proceeds was because the 2015 Agreement never existed, and not because he was afraid to upset Ang or that Ang controlled Tan’s finances.

The 2019 Agreement

54 I likewise find the 2019 Agreement to be a sham. Having found the 2015 Agreement did not exist, it must follow that the 2019 Agreement (which was to defer Tan’s payment obligation to Chiang pursuant to the 2015 Agreement) similarly did not exist. To begin with, as with the 2015 Agreement, there was no contemporaneous documentary evidence to support its existence.

⁷³ Chiang’s AEIC at [102]; Tan’s AEIC at [77]; 14/10/24 NE 55–56; 15/10/24 NE 16–17.

⁷⁴ 14/10/24 NE 77; 15/10/24 NE 143–145; 5AB 57.

⁷⁵ 15/10/24 NE 108–109.

55 I have also found that Tan’s story as to what led to the 2019 Agreement (*ie*, that Ang controlled his finances and he therefore could not release any of the Sale Proceeds to Chiang) cannot be believed (see [52] above). Indeed, Tan had caused the \$2 Million and \$4 Million from the Sale Proceeds to be paid to Chiang and/or Kang Wei before the purported 2019 Agreement, which thus demolished his story.

56 Tan even claimed that when Chiang requested for payment in December 2022, he refused to pay her because he “did not want to risk being unfairly accused of dissipating [his] assets”.⁷⁶ But this was clearly untrue because within a day of receiving the 2nd Payment in November 2022, he transferred the \$5 Million to the CKW Account. This was at a time when his relationship with Ang had broken down, as Ang had, in May 2022, left their matrimonial home and filed a personal protection order (“PPO”) against Tan.⁷⁷

57 Pertinently, Chiang benefitted from the \$5 Million which emanated from the 2nd Payment. She purchased two insurance policies for her benefit. She also transferred \$1.5m to her bank account and placed them in fixed deposits with instructions for the principal and interest to be deposited into her account on maturity. She did this so that she could help withdraw the money as and when *Tan needed it*. She further used the moneys to make payments for Tan’s benefit.⁷⁸ Such conduct, *including assisting Tan by using the Sale Proceeds*, is incongruent with Chiang purportedly asking Tan repeatedly for her 25% Share because Tan refused to pay her. It is evident from these transactions that Tan

⁷⁶ Tan’s AEIC at [59].

⁷⁷ 2AB 510 and 549; 8/10/24 NE 132; 14/10/24 NE 43, 53–54.

⁷⁸ Chiang’s AEIC at [102]–[103], [112]–[114]; 10/10/24 NE 35–43.

was able to, and did, give Chiang substantial amounts from the Sale Proceeds, contrary to their assertions that Tan was prevented from so doing by Ang.

Conclusion on the 2015 and 2019 Agreements

58 Clearly, Chiang and Tan attempted to align their stories pertaining to the alleged 2015 Agreement, after Ang commenced D 5937 on 21 December 2022. The writ of divorce was served on Tan on or around 2 January 2023 and interim judgment on D 5937 was granted on around 19 May 2023.⁷⁹ It was only in Tan’s 18/7/23 AAM that he first claimed the 150,000 shares in Chiang’s name belonged to her and that she could deal with them as she saw fit.⁸⁰ This was followed by the 26/7/23 Demand whereby Chiang asserted for the first time the existence of an agreement that she would receive the 25% Proceeds in consideration for transferring all her shares to Tan. But I have found the 26/7/23 Demand was vague and did not cohere with the purported 2015 Agreement as the 26/7/23 Demand suggested that any purported agreement was made after Chudenko had decided to acquire RYB (see [45] above). The timing between Tan’s 18/7/23 AAM and the 26/7/23 Demand (issued barely *one week* after Tan’s 18/7/23 AAM and about seven months after D 5937 was commenced) could not have been more fortuitous. Indeed, when Chiang issued the 26/7/23 Demand, she knew that Tan was undergoing divorce proceedings with Ang.⁸¹

59 Chiang’s story, that the 2015 Agreement was made based on Tan informing her of *Chudenko* being the potential buyer *in 2015*, was reiterated in her initial Statement of Claim filed in August 2023. However, her story changed when she amended her pleadings in June 2024 to claim that in 2015 Tan merely

⁷⁹ 15/10/24 NE 105.

⁸⁰ 4AB 27 (Tan’s 18/7/23 AAM at [33(2)(iv)]); 14/10/24 NE 63–66, 68.

⁸¹ 8/10/24 NE 157–158.

informed her that there were “potential buyer(s)”. Chiang made this amendment after her lawyers informed her in June 2024, that Tan was amending his Defence to state the same, when he had pleaded in his original Defence that he had informed Chiang in 2015 of Chudenko as the potential buyer.⁸² Even if Tan had misstated in his original Defence that he had conveyed the name “Chudenko” to Chiang in 2015, it is suspicious that Chiang would have made the same mistake and realised the mistake only when her lawyers informed her that Tan was amending his Defence. In court, Chiang admitted that if Tan had not corrected his mistake, she would likewise not have done so.⁸³

60 Even so, Chiang and Tan could not align their story regarding the 2015 and 2019 Agreements. Chiang claims the 2015 Agreement was purely contractual – Tan agreed to pay her a stated sum for her RYB shares. She claims likewise for the 2019 Agreement, where the parties agreed to Tan deferring the payment of the 25% Proceeds to Chiang until he received the 2nd Payment. However, Tan pleaded (and reiterated in his AEIC) that they agreed that he would hold 25% of the total sale proceeds “on trust” for Chiang.⁸⁴ This was at odds with Chiang’s understanding that it was a purely contractual claim.

61 Oddly enough, in court Chiang then claimed that she remained the beneficial owner of Chiang’s Shares even after they had been transferred to Tan, so long as they had not been sold to a third party; that she could not recall if Tan had said “on trust” to her in 2015 (as these words were not mentioned in her pleaded case or AEIC); and that Tan did subsequently inform her in 2019 that he would hold Chiang’s Shares “on trust” for her until he received the 2nd

⁸² 8/10/24 NE 54–58; 2DB2 at p 491; Tan’s Defence at [2(10)(d)]; 2DB2 at pp 491–518.

⁸³ Tan’s AEIC at [46]; 8/10/24 NE 54–58.

⁸⁴ Tan’s Defence at [2(10)(d)]; Tan’s AEIC at [39].

Payment.⁸⁵ In re-examination, Chiang then stated that Tan had informed her in 2019 that he would hold the 25% Proceeds on trust for her after he obtained the 2nd Payment, and that was the basis of their 2019 Agreement.⁸⁶ Tan, on the other hand, then stated the opposite in court – that his case was not based on a trust, but rather that he told Chiang in 2015 to “trust [him]” that he would pay her the 25% Proceeds once he closed the deal to sell RYB’s shares.⁸⁷ I find Chiang’s and Tan’s explanations in court, which morphed along the way, were contrived in an attempt to align their version of events.

62 In sum, I find the evidence points to the 2015 and 2019 Agreements being sham agreements which were conceived after Ang commenced divorce proceedings against Tan. I thus dismiss Chiang’s claim against Tan for the sum of \$13,727,640.25 or any amount pertaining to Chiang’s Shares.

63 Having found the 2015 and 2019 Agreements were sham agreements, there is no need to deal with Ang’s pleaded case that, if the court accepted the agreements to be genuine, then Chiang had obtained sufficient consideration from the \$2 Million and \$5 Million paid into the CKW Account.⁸⁸

Whether Ang was the beneficial owner of the shares held in her name

64 I turn to Ang’s counterclaim, that she was beneficially entitled to the 120,000 shares that were transferred to her in March 2006 and eventually the 360,000 shares (which included 240,000 bonus shares) held in her name (see [6] above). Tan claims that Ang held all the shares as his nominee. I find that

⁸⁵ 8/10/24 NE 34–36, 93–95, 97, 100.

⁸⁶ 10/10/24 NE 67.

⁸⁷ 15/10/24 NE 75–76, 81.

⁸⁸ Ang’s Defence at [3(7)].

Ang has failed to prove that Ang's Shares beneficially belonged to her, and I agree with Tan that she held the shares as his nominee.

65 It is undisputed that Ang obtained Ang's Shares for no consideration. In particular, the 120,000 shares were transferred to Ang when Tan was still married to Chiang. Ang has not pleaded, nor claimed in her AEIC, that Tan intended to *gift* the 120,000 shares to her in March 2006.⁸⁹ Indeed, Ang's reasons to support her claim to a beneficial entitlement, were inherently contradictory and in any event unsupported by evidence. I elaborate.

66 Ang pleaded that in March 2006 Tan transferred 120,000 shares to her in consideration of her commitment to build up RYB which she was asked by Tan to join in 2005.⁹⁰ This was the same reason stated in her affidavit of assets and means dated 20 July 2023 ("Ang's 20/7/23 AAM") filed in D 5937.⁹¹ But this reason is unsupported by evidence.

(a) Ang commenced employment in RYB for a mere few months as a manager, before the 120,000 shares were transferred to her in March 2006.⁹² It was inconceivable that Tan would have agreed to give Ang 120,000 (out of 150,000) of his shares, thus making Ang a 60% shareholder in RYB and reducing Tan to a minority shareholder. This is given that Tan was the main person who had built up RYB. Ang was not even made RYB's director until March 2008 (over two years after she joined RYB).

⁸⁹ 17/10/24 NE 50–52.

⁹⁰ Ang's Defence at [3(2)(a)].

⁹¹ 3AB 17–53; 17/10/24 NE 39–41.

⁹² Ang's AEIC at [42]–[44].

(b) I accept that Ang did subsequently play a significant role in RYB. Teoh (Tan’s witness) attested that Ang was involved substantially in the due diligence and other matters for the sale of RYB to Chudenko and observed Ang to be an integral staff of RYB.⁹³ But this did not *per se* support her claim that she was beneficially entitled to the 120,000 shares. It is undisputed that Ang was remunerated throughout for her role in RYB. Her starting salary as manager was \$5,000 per month, which was higher than her salary of \$4,200 in her previous job. She was remunerated as a director of RYB – the evidence showed that in April 2013 she was paid \$12,000 per month, and this increased to \$30,000 per month in July 2013.⁹⁴

67 Importantly, Ang’s pleaded reason to support her beneficial entitlement to Ang’s Shares (*ie*, as consideration for her commitment to build up RYB) was not the same reason she gave in her AEIC. Ang conceded that in her AEIC she attested to a completely different account,⁹⁵ as follows. She claimed Tan had transferred 120,000 shares to her to thwart Chai from registering a share transfer form (which Tan had signed) to transfer 100,000 of Tan’s shares to Chai (the “Form”). This was because Tan’s relationship with Chai became strained in 2005 when Chai discovered that Tan had misappropriated moneys from an entity in which they were shareholders. She subsequently discovered Chai had also misappropriated moneys from RYB.⁹⁶ Tan had showed Ang the Form, which Chai had yet to register. Given their strained relationship, Tan wanted to prevent Chai from obtaining the shares and thus, sometime before 1 March

⁹³ 16/10/24 NE 22–32, 35.

⁹⁴ Ang’s AEIC at [74]–[75]; 2DB1 at p 51; 17/10/24 NE 104–106, 109.

⁹⁵ 17/10/24 NE 41–42.

⁹⁶ Ang’s AEIC at [26]–[29].

2006, consulted Chew Whye Lee (“Chew”) (the “Consult”), whose firm was engaged as RYB’s external accountant and corporate secretary. Chew informed Tan that Chai could be prevented from registering the share transfer if Tan had less than 100,000 shares in RYB. Hence, Tan decided to transfer the shares to Ang rather than to Chai, and instructed Chew to prepare a share transfer form to transfer 120,000 shares to her. On around 29 March 2006, Tan transferred 120,000 shares to Ang.⁹⁷ In court, Ang reiterated that the purpose of transferring the shares to her was to prevent Chai from becoming a shareholder in RYB.⁹⁸

68 I find Ang’s story to be a fabrication. Her explanation as to how she had obtained the 120,000 shares is unsupported by evidence. She did not produce evidence of the Form or call Chew to testify to the Consult. It is also inconceivable that Tan had even intended to transfer 100,000 of his 150,000 shares (*ie, two-thirds* of his shares) to Chai; that Tan would have taken about a month to cause the transfer of his shares to Ang, when Chai had possession of the Form which he could have registered anytime; and that Chai did not take any action during that period to register the Form and obtain the shares. Further, if Tan had reneged on the purported agreement to give Chai 100,000 shares (which then represented 50% of RYB’s shares), it is strange that Chai never took legal action against Tan. Instead, Chai remained as RYB’s director for some two years (after 120,000 shares were transferred to Ang) until March 2008.⁹⁹ These matters suggest that Tan and Chai did not have a strained relationship, nor that Tan had initially intended to transfer 100,000 shares to Chai, as Ang alleged.

⁹⁷ Ang’s AEIC at [38], [43]; 17/10/24 NE 7, 32.

⁹⁸ 17/10/24 NE 39, 47.

⁹⁹ 17/10/24 NE 12–13, 30–31, 36–37.

69 Additionally, it does not make sense for Tan to have transferred 120,000 shares to Ang to thwart Chai from becoming RYB’s shareholder. Ang’s account is that Tan never intended for her to be a majority shareholder of RYB. If so, Tan merely had to transfer 50,001 shares to Ang (based on the purported Consult with Chew) and he would have remained the majority shareholder whilst achieving the goal of preventing Chai from becoming a shareholder. Instead, on Ang’s account, Tan went through a convoluted process of transferring 120,000 shares to her, making her a 60% shareholder of RYB for a few months, then diminishing her shareholding a few months later via the 1st and 2nd Allotments to become the majority shareholder again.¹⁰⁰ In court, Ang admitted that the 1st and 2nd Allotments were to enable RYB to obtain progressively higher BCA gradings (see [32] above) and not for the purpose of enabling Tan to become RYB’s majority shareholder again. This is even if the resulting effect of the allotments was that Tan obtained more shares.¹⁰¹

70 I add that it is also inconceivable that Ang did not object to Tan diluting her 60% shareholding in RYB to only 24% (with the 1st and 2nd Allotments), following which Ang even claimed she was “happy with [her] 24% share”,¹⁰² unless Ang was holding the shares as Tan’s nominee.

71 Indeed, when Ang was cross-examined on her inconsistent reasons for the transfer of 120,000 shares to her (*ie*, whether it was to obtain her commitment to build up RYB or to prevent Chai from becoming RYB’s shareholder), she then claimed it was *both*. I reiterate that the latter reason was, however, not pleaded and her pleaded position was not mentioned in her

¹⁰⁰ Ang’s AEIC at [45]–[50].

¹⁰¹ 17/10/24 NE 56–59.

¹⁰² 17/10/24 NE 66–68.

AEIC.¹⁰³ Ang's attempt to reconcile her inconsistent positions cast doubt on her veracity.

72 Pertinently, even if I were to accept that shares were transferred to Ang to prevent Chai from obtaining shares in RYB, Ang has not mentioned in her AEIC (or pleaded case) that Tan had intended an outright gift of the 120,000 shares to her.¹⁰⁴ In court, Ang conceded that the mere transfer of the shares to her (to prevent Chai from obtaining shares in RYB) does not support her claim that she was beneficially entitled to them.¹⁰⁵ In a last ditch attempt to save her case, Ang then claimed in court that Tan had told her "I gift it to you" in relation to the shares, but conceded that she had never stated as such in her AEIC.¹⁰⁶

73 Finally, I turn to Ang's assertion that she was forced to transfer Ang's Shares to Tan on 10 September 2015 on Tan's threats (made on the same day) that he would get a divorce, and crush the company and make the shares worthless, if she did not do so ("Tan's threats").¹⁰⁷ But Ang's narrative is at odds with earlier narratives on the purported threats, and shows that she is an untruthful and unreliable witness.

(a) In Ang's 20/7/23 AAM, she claimed that Tan's threats occurred in *October* 2015, when they were in discussions with Wah Loon, *Takaisha Ltd and Chudenko* to sell RYB.¹⁰⁸ This was at odds with her claim in the Suit that Tan's threats occurred in September 2015. Further,

¹⁰³ 17/10/24 NE 41–42, 47–48.

¹⁰⁴ 17/10/24 NE 44, 50–52.

¹⁰⁵ 17/10/24 NE 48.

¹⁰⁶ 17/10/24 NE 67, 69.

¹⁰⁷ Ang's AEIC at [147]–[148].

¹⁰⁸ 3AB 26 (Ang's 20/7/23 AAM at [12]).

Takaisha Ltd and Chudenko came into the picture only in late 2016 or early 2017.¹⁰⁹ Ang’s explanation in court, that she had named the three entities together merely as “information” and did not specifically mention the timeframe for the discussions with the three entities,¹¹⁰ is at odds with Ang’s 20/7/23 AAM wherein she had specifically stated the timeframe as October 2015, and when she had personal knowledge pertaining to the time the discussions with the three entities were held as she claimed to have been involved in the discussions.¹¹¹

(b) In Ang’s application for a PPO against Tan filed in May 2022, she had stated that Tan’s threats were made in 2017 when RYB was acquired.¹¹² Even if I accept Ang’s explanation in court, that she was not in the right state of mind when she made the PPO application and thus might have confused the year of Tan’s threats,¹¹³ this did not explain why Ang would again give a narrative in Ang’s 20/7/23 AAM that was still inconsistent with her testimony in the Suit.

74 Further, Ang’s narrative of Tan’s threats is not supported by independent and objective evidence. Ang claimed that Tan drove her to Chew’s office and instructed Chew’s staff to prepare the documents to transfer Ang’s Shares to him. She was in tears when Chew’s employees brought the documents for her to sign. After signing, Tan informed Chew to file the forms immediately, whereupon Ang broke down again.¹¹⁴ But Ang did not call Chew or his staff to

¹⁰⁹ Ang’s AEIC at [92]–[93].

¹¹⁰ 17/10/24 NE 75–76.

¹¹¹ Ang’s AEIC at [85]–[93]; 17/20/24 NE 77.

¹¹² 2AB 516; 17/10/24 NE 83, 85–86.

¹¹³ 17/10/24 NE 86.

¹¹⁴ Ang’s AEIC at [150]–[151]; 17/10/24 NE 124.

attest to the truth of this event to bolster her claim, although she claimed they had witnessed this event. Instead, she called her sister (“ASL”) to corroborate her testimony, *ie*, that after she had left Chew’s office, she informed ASL of what had transpired at the office.¹¹⁵

75 I find ASL’s testimony does not support Ang’s claim of a beneficial interest in Ang’s Shares. ASL did not have personal knowledge of the event at Chew’s office or of Tan’s threats. There was also no documentary evidence to show that Ang had told ASL about Tan’s threats.¹¹⁶ Even if Ang had informed ASL that she was given two options (to transfer her shares to Tan or that Tan would divorce her),¹¹⁷ this does not in itself show that Ang beneficially owned Ang’s Shares in the first place. Notably, ASL did not attest that Ang had ever informed her that she beneficially owned Ang’s Shares, including during the purported conversation between Ang and ASL on 10 September 2015.

76 In this regard, I mention briefly Tan’s statement in his affidavit filed in reply to Ang’s PPO application in May 2022 (see [73(b)] above). In his affidavit, Tan stated that Ang had transferred her “22% shares in [RYB] to [him]. The transfer ... was necessary to facilitate the completion of the sale of [RYB] to the acquiror ... Subsequently, [RYB] was sold ... It is extremely clear that there was no intention on [Tan’s] part to unfairly demand the transfer of [Ang’s] shares or siphon away moneys belonging to her, given that the sale proceeds were received in [their] bank account jointly owned by [Tan and Ang].” Mr Wah (Ang’s counsel) submitted that this conduct by Tan was the clearest indication that Ang beneficially owned 24% of RYB’s shares because

¹¹⁵ Ang’s AEIC at [152]–[153].

¹¹⁶ 23/10/24 NE 7–9.

¹¹⁷ ASL’s AEIC at [23].

Tan had stated in that affidavit that RYB was Tan and Ang's joint business and its success was attributable to them jointly.¹¹⁸

77 I did not find the above statement by Tan, in itself, sufficient to tilt the balance in Ang's favour. Tan was likely making a self-serving statement to defend himself against Ang's claim of *violence* by him. As I had earlier found, Ang's case is not that Tan had transferred to her 120,000 shares in consideration of her contributions to RYB; rather, she had stated in her AEIC that the transfer of the shares was to prevent Chai from obtaining any shares in RYB.

78 The evidence thus leads to the inference that Ang was holding Ang's Shares as nominee for Tan. Ang did not provide consideration for any of the shares and there is no evidence that Tan had gifted them to her. She was also remunerated considerably for her work in RYB. She drew a monthly salary and benefitted substantially from RYB such as by a "dividend" payment of \$500,000 in July 2014.¹¹⁹ I have also found Ang's reason for the transfer of 120,000 shares to her (*ie*, to prevent Chai from becoming RYB's shareholder) to be unbelievable. The change in the version of events from her pleaded case further casts doubts on her veracity. Pertinently, Ang did not object when Tan subsequently caused the 1st and 2nd Allotments to himself which reduced Ang's RYB shareholding from 60% to 24%.

79 In conclusion, I find that Ang's claim that she was beneficially entitled to 24% of RYB's shares (or any shares for that matter) is not made out. I thus dismiss Ang's counterclaim pertaining to Ang's Shares.

¹¹⁸ 2AB 526; Ang's Closing Submissions at [228]–[229].

¹¹⁹ 2AB 61; 16/10/24 NE 128.

Whether there was a conspiracy between Chiang and Tan

80 Ang further claims that there was a conspiracy by lawful and unlawful means, *ie*, that Chiang and Tan had conceived the sham 2015 and 2019 Agreements and for Chiang to commence this Suit against Tan based on the Agreements, to defraud Ang by reducing the matrimonial assets liable for division in D 5937. I dismiss Ang’s claim on conspiracy. To succeed in a claim in conspiracy (whether by lawful or unlawful means) it must be shown that the conspirators, *inter alia*, had caused loss to the claimant: *Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others and other appeals* [2013] 1 SLR 374 at [62] citing *Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637 at [45].

81 I accept that Chiang and Tan had colluded to conceive the sham 2015 and 2019 Agreements with the intention of reducing the value of Tan’s assets when they knew Tan was going through a divorce with Ang. But there is no loss or damage to Ang arising from the sham agreements unless I had found the agreements to be genuine and had then ordered Tan to pay Chiang some \$13,727,640.25 with the result of potentially reducing the overall assets which might have been liable for division in D 5937. It is not Ang’s pleaded case that the matrimonial assets (liable for division in D 5937) have *already* been dissipated by virtue of Chiang commencing the Suit based on the 2015 and 2019 Agreements, but rather that it would be dissipated only if Chiang were to succeed in the Suit and obtain \$13,727,640.25 from Tan (*ie*, a potential loss).

82 As for Ang’s claim that the “loss” in her conspiracy claim would include the costs of dealing with the fictitious claim advanced in the Suit, legal fees that can be recovered as costs cannot constitute an actionable loss or damage in the tort of conspiracy if they are in substance the type of expenses that would be incurred in preparation for litigation and would be recoverable as costs in any

action that may be brought (*Singapore Shooting Association and others v Singapore Rifle Association* [2020] 1 SLR 395 (“SSA”) at [92]). Whilst *SSA* dealt with the tort of unlawful means conspiracy, I am of the view that the principle applies equally to the tort of lawful means conspiracy, as the rationale for the principle is equally applicable in both (see *SSA* at [99]). In particular, “allowing solicitors’ fees that are recoverable as costs to be recovered as damages instead would subvert the costs regime put in place to regulate the recoverability of such fees” (*SSA* at [94]).

83 Although the Court of Appeal in *SSA* did not rule out that some fees may constitute actionable loss or damage if, for some reason, they cannot be recovered as costs instead, the burden is on the party claiming a loss/damage in conspiracy to make the case that “*on the facts* of a particular dispute, the legal fees which it incurred in investigating the conspiracy against it are of a sort that cannot be recovered by way of a costs order” [emphasis in original]. However, the Court of Appeal further cautioned that for a party to succeed on such an argument, it will have to offer “cogent proof that its lawyers truly performed a discrete investigative function, instead of merely gathering such evidence, facts and information as would typically precede the giving of legal advice or the commencement of litigation” (see *SSA* at [97]).

84 Apart from legal fees that could be recoverable as costs (and which I will hear parties on subsequently) Ang has not elaborated on, nor adduced any evidence of, any other costs she has incurred. Hence, I dismiss Ang’s claim against Chiang and Tan for conspiracy.

Final observations

85 The evidence shows that all the shares in RYB were all along beneficially owned by Tan (even if some of the shares were held in Chiang’s and Ang’s names), and that he was the directing mind and will of RYB.

86 It is not disputed that Tan had set up and developed RYB’s business. Indeed, Tan claimed in court that RYB “belong[ed] to [him]”.¹²⁰ Chiang and Ang never paid for the shares that they held. Further, Tan approved the Share Movements (including the 1st and 2nd Allotments to himself), which subsequently adversely affected the shareholding held by Ang and Chiang. Tan also used RYB’s moneys for his personal purposes, such as to pay Chiang’s and Kang Wei’s maintenance and classifying such payments as “salary” in RYB’s books. Chiang and Ang knew of this practice but did not interfere with Tan’s actions.¹²¹ Substantial moneys were also paid to Tan (and Ang) and reclassified as “dividends” in RYB’s books and Tan even claimed that such “dividends” which Chiang would have been rightfully entitled to were all paid out to him.¹²²

87 Then, when Tan received the Sale Proceeds from Chudenko, he utilised the moneys as he saw fit. He caused the \$2 Million, \$4 Million and \$5 Million to be paid to the CKW Account; he bought properties for Kang Wei and Xinyi and even a property in Ang’s mother’s name; and he used substantial amounts to gamble. He placed \$30m from the Sale Proceeds into a bank account in his sole name and admitted that he had free use of the funds as he pleased.¹²³

¹²⁰ 14/10/24 NE 16.

¹²¹ 7/10/24 NE 56–58, 66; 14/10/24 NE 52–53; 16/10/24 NE 66.

¹²² 15/10/24 NE 126; 16/10/24 NE 128–132.

¹²³ 14/10/24 NE 75–77; 15/10/24 NE 11–14.

88 Indeed, Chiang agreed that she left it to Tan to decide how RYB's moneys would be utilised and that she followed Tan's instructions even when she was RYB's director. Even a substantial amount of some \$3.367m from the \$5 Million transferred to the CKW Account was utilised for Tan's benefit, with Chiang's help.¹²⁴ Ang's conduct shows similarly that Tan was in charge. For instance, she claimed that she assisted Tan to issue a \$10m cheque from the Sale Proceeds to himself which she did without questioning. She did not object to Tan diluting her shareholding in RYB via the 1st and 2nd Allotments, even claiming that she was happy with her reduced 24% shareholding.¹²⁵

Conclusion

89 In conclusion, I make the following orders.

- (a) I dismiss Chiang's claim, as I find the 2015 and 2019 Agreements were sham agreements.
- (b) I also dismiss Ang's counterclaims: (i) that she was beneficially entitled to 24% of the shares in RYB or the sale proceeds thereof; and (ii) for conspiracy.
- (c) Having found the 2015 and 2019 Agreements to be sham agreements, I grant Ang's prayer for a declaration that the agreements do not bind her or affect the division of matrimonial assets in D 5937.

¹²⁴ 7/10/24 NE 60 and 65–66; Chiang's AEIC at [97].

¹²⁵ 16/10/24 NE 142; 17/10/24 NE 68–69.

90 I will hear parties on costs.

Audrey Lim J
Judge of the High Court

Kevin Kwek Yiu Wing, Gina Tan and Charmaine Elizabeth Ong
Wan Qi (Legal Solutions LLC) for the claimant and first defendant in
counterclaim;
Tan Chau Yee, Ho Jiaxin and Cheong Yi Ern Ernest (Harry Elias
Partnership) for the first defendant and second defendant in
counterclaim;
Wah Hsien-Wen Terence, Suchitra Ragupathy and Zhang Weihao
(Dentons Rodyk & Davidson LLP) for the second defendant and
claimant in counterclaim.
