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

[2024] SGHC 88

Originating Claim No 138 of 2023 (Registrar's Appeal No 196 of 2023)

Between

(1) Nimisha Pandey
(2) Deepak Mishra

… *Claimants*

And

Divya Bothra

… *Defendant*

Counterclaim of Defendant

Between

Divya Bothra

… *Claimant in Counterclaim*

And

(1) Nimisha Pandey
(2) Deepak Mishra

… *Defendants in Counterclaim*

JUDGMENT

[Civil Procedure — Summary judgment]

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v
Divya Bothra

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1 March 2024

27 March 2024 Judgment reserved.

Goh Yihan J:

1 This case, HC/RA 196/2023 ("RA 196"), is the appeal by the defendant, Ms Divya Bothra, against part of the decision of the learned Assistant Registrar (the "AR") below to grant summary judgment for the first claimant, Ms Nimisha Pandey, in HC/SUM 1661/2023 ("SUM 1661"). The learned AR granted SUM 1661 in part and ordered the defendant to pay the first claimant a sum of $626,422, being the outstanding purchase price alleged to remain due and owing by the defendant to the first claimant to date (the "Balance Purchase Price") in relation to the property at [address redacted] (the "Property").

2 RA 196 was originally scheduled to be heard in November last year. However, the defendant had applied in HC/SUM 3265/2023 ("SUM 3265") to amend her Defence and Counterclaim (Amendment No 2) (the "DCC 2") and in HC/SUM 3266/2023 ("SUM 3266") to adduce further evidence at the

hearing of RA 196. I heard and allowed SUM 3265 in part but dismissed SUM 3266 entirely (see *Nimisha Pandey and another v Divya Bothra* [2023] SGHC 332 ("*Nimisha Pandey (Amendment of Pleadings)*") at [21]), [32]–[36] and [44]–[45]. The result was that the defendant was allowed to amend the DCC 2 to a limited extent. She then applied for permission to appeal against my decisions, in respect of both SUM 3265 and SUM 3266, to the Appellate Division of the High Court. She was denied such permission. As such, I now hear RA 196 on the basis of the amended DCC 2 (that is, the Defence and Counterclaim (Amendment No 3) (the "DCC 3")) but without any additional evidence from the parties.

3 After hearing the parties and considering their submissions, I dismiss RA 196 for the following reasons.

The background facts

4 I begin with the background facts that led to the learned AR granting summary judgment in SUM 1661. The first claimant is the former owner of the Property.[1] On or about 12 October 2015, the first claimant and the defendant entered into a Sale and Purchase Agreement in respect of the Property (the "SPA"). Pursuant to the SPA, the first claimant agreed to sell the Property to the defendant for the total price of S$4m (the "Purchase Price").[2]

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1 Affidavit of Nimisha Pandey for HC/SUM 1661/2023 dated 5 June 2023 ("NP") at para 7.

2 Claimants' Written Submissions for HC/SUM 1661/2023 and HC/SUM 2119/2023 dated 17 August 2023 ("CWS SUM 1661") at para 3(a); NP at para 13.

5 On 2 July 2016, the registered title to the Property was transferred to the defendant despite the Purchase Price not having been paid.[3] Notwithstanding this transfer, the first claimant expected to be paid the Purchase Price in due course.[4] She had allowed the transfer to take place before being paid because of the close relationship between the parties at the time.[5] After some payments towards the Purchase Price were made by the defendant – as detailed in the table below – the first claimant's position is that the Balance Purchase Price stands at $626,422:[6]

Statement Of Accounts – Balance Purchase Price		
Date	**Details**	**Amount**
	Total Due from Defendant to Claimant:	**4,000,000**
07.05.2018	Direct transfer from Defendant's account to 1st Claimant's account	(1,310,000)
07.05.2018	Direct transfer from Defendant's account to the account of Metro Capital Ltd (which is a company owned by Mr Mishra) as the 1st Claimant's nominee and/or agent	(390,000)
06.08.2018	Cheque issued to Mr Mishra as 1st Claimant's nominee and/or agent	(250,000)
14.07.2021	Direct transfer from Defendant's account to the account of Mr Mishra, as the 1st Claimant's nominee and/or agent	(35,000)
01.09.2022	Direct transfer from Defendant's account to the account of Mr Mishra, as the 1st Claimant's nominee and/or agent	(222,300)
01.09.2022	Direct transfer from Defendant's account to the account of Mr Mishra, as the 1st Claimant's nominee and/or agent	(1,166,278)
	Total Paid by Defendant:	(3,373,578)
	Balance Purchase Price:	**626,422**

3 CWS SUM 1661 at para 12; NP at para 15.

4 NP at para 16.

5 CWS SUM 1661 at para 13; NP at paras 15–16.

6 Claimants' Statement of Claim (Amendment No 1) dated 22 May 2023 at para 13.

6 On 3 March 2023, the first claimant commenced the underlying claim, HC/OC 138/2023 ("OC 138"), for the Balance Purchase Price.[7]

The defendant's arguments against summary judgment

7 In RA 196, the defendant now maintains two defences against the claimant's claim for the Balance Purchase Price, namely, (a) the "Time Bar Defence" and (b) the "Set-Off Defence".

8 As a starting point, the defendant argues that since the court had allowed her amendments to introduce these defences, it must be because the court had thought that these defences disclosed reasonable causes of action (see *Nimisha Pandey (Amendment of Pleadings)* at [33]–[35]).[8] The defendant cites, among other cases, the unreported oral judgment of Simon Thorley IJ dated 18 May 2022, sitting in the Singapore International Commercial Court ("SICC"). This oral judgment is exhibited at Annex C of his reported decision of *The Micro Tellers Network Ltd and others v Cheng Yi Han and others* [2023] 5 SLR 280 (at [25]). Thorley IJ held in his unreported oral judgment (at [13]) that it is sufficient that an amendment to pleadings discloses a "reasonable cause of action" for it to be granted, citing the SICC decision of *Mohamed Shiyam v Tuff Offshore Engineering Services Pte Ltd* [2021] 5 SLR 188 ("*Mohamed Shiyam*") at [38] in support of that proposition.

9 In relation to the substantive defences, the defendant argues that the Time Bar Defence is viable because the claimants commenced OC 138 more

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7 Claimants' Statement of Claim dated 3 March 2023 at para 25, 1st Claimant's prayer (1).

8 Defendant's Written Submissions for HC/RA 196/2023 dated 26 February 2024 ("DWS") at paras 10−11.

than six years after the accrual of the cause of action. The cause of action accrued on the completion date of the Property transaction when the full purchase price was payable, that is, 21 June 2016.[9] Since the first claimant only brought her claim on 3 March 2023, that claim is time-barred.

10 As for the claimants' argument that the defendant had made payments that constitute acknowledgement of the Balance Purchase Price as a debt, the defendant argues that the claimants should not be allowed to rely on those payments as they had not pleaded them.[10] In any event, the acknowledgement of a debt must evince a voluntary desire to admit a debt (see the Court of Appeal decision of *Chuan & Company Pte Ltd v Ong Soon Huat* [2003] 2 SLR(R) 205 ("*Chuan*") at [17]).[11] When the defendant's dealings in relation to the Property are looked at holistically, it is clear that she would readily sign off on any property-related matters sent to her by the claimants. Accordingly, it would not be correct to conclude that any particular transaction was an acknowledgement of any debt to which the defendant had applied her mind and agreed in writing.[12]

11 Regarding the Set-Off Defence, the defendant argues that she extended a liquidated and ascertained loan amount of $2,689,052.21 (the "Outstanding Loan Amount") to the claimants and/or their companies on the second claimant's instructions.[13] The moneys making up this Outstanding Loan Amount were drawn from a Standard Chartered Bank Facility that had been

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9 DWS at para 15.

10 DWS at paras 17–18.

11 DWS at para 21.

12 DWS at para 22.

13 Affidavit of Divya Bothra for HC/SUM 3265/2023 & HC/SUM 3266/2023 dated 31 October 2023 ("DB SUM 3265") at paras 23–24.

collateralised against the Property in the form of a mortgage.[14] This comprised:[15] (a) a remittance of $1,634,000 to Metro Capital Ltd in or around 2018, an entity belonging to and/or controlled by the claimants (the "Metro Remittance"); (b) a remittance of $353,446 in or around 2018 to Mystic Serenity Ltd, an entity belonging to and/or controlled by the claimants (the "Mystic Remittance");[16] and (c) half of a remittance of $1,403,212.42 (that is, $701,606.21) to the joint account of the first claimant and the defendant's mother, Mrs Bothra, on 14 February 2018 (the "Joint Account Remittance").[17]

12 In relation to these remittances, the defendant submits that there are triable issues over, including but not limited to: (a) the purpose of the remittances; and (b) whether the Mystic Remittance, in particular, was received by the claimants.[18] As such, the defendant should be given the opportunity to ventilate these matters at trial with the parties undergoing the discovery process and cross-examination of the relevant witnesses. In any case, the defendant is entitled to set-off the Balance Purchase Price against the Outstanding Loan Amount on the basis of a legal set-off, an equitable set-off, or a set-off by judgment.[19] The Set-Off Defence would wholly extinguish the Balance Purchase Price, leaving a net amount payable by the claimants to the defendant.[20]

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14 DWS at para 44; DB SUM 3265 at para 23.

15 DWS at paras 44(a)−44(c).

16 Divya Bothra's Supporting Affidavit for HC/SUM 2119/2023 dated 17 July 2023 ("DB SUM 2119") at para 30.

17 DB SUM 2119 at p 677 (Tab H: DBS Bank Ltd Remittance dated 14 February 2018).

18 DWS at para 49.

19 DWS at paras 51−56.

20 DWS at para 57.

The applicable law

13 Having set out the defendant's arguments briefly, I turn to the applicable law. It is undisputed and trite law that the purpose of the summary judgment procedure under O 9 r 17 of the Rules of Court 2021 (the "ROC 2021") is to enable a claimant to obtain a quick judgment where there is plainly no defence to the claim without trial (see the High Court decision of *Wang Piao v Lee Wee Ching* [2023] SGHC 277 at [16]). However, the purpose of the summary judgment procedure is not to obtain "in effect, an immediate trial of the action" (see *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 14/1/2; see also Jeffrey Pinsler SC, *Singapore Civil Practice* (LexisNexis, 2022) at para 23−6).

14 It is also clear that, in order to obtain summary judgment, a claimant must first show that he has a *prima facie* case for summary judgment. Once the claimant shows that he has a *prima facie* case, the tactical burden then shifts to the defendant who, in order to obtain leave to defend, must establish that there is a fair or reasonable probability that he has a real or *bona fide* defence (see the High Court decisions of *Ritzland Investment Pte Ltd v Grace Management & Consultancy Services Pte Ltd* [2014] 2 SLR 1342 ("*Ritzland Investment*") at [43]–[44] and *M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2015] 1 SLR 325 ("*M2B World*") at [17]). The burden which shifts to the defendant upon a *prima facie* case being shown is the burden on the application for summary judgment, *ie*, a tactical burden, and not the legal or even an evidential burden of proof (see *Ritzland Investment* at [45] and *M2B World* at [18] and [26]).

15 Accordingly, I will first consider whether the first claimant has successfully established a *prima facie* case that she is entitled to the sums

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

My decision: RA 196 is dismissed

The fact that amendments were allowed to introduce the Time Bar Defence and the Set-Off Defence is not determinative

16 To begin with, I do not agree with the defendant's argument that, just because she had been allowed to amend the DCC 2 to introduce the Time Bar Defence and the Set-Off Defence on the basis that they disclosed a reasonable cause of action (or perhaps more aptly, though it was not argued this way, a reasonable defence), the summary judgment entered in favour of the first claimant should be set aside. I conclude thus for the following reasons.

17 First, as a matter of principle, an application to amend pleadings is not the same as an application for summary judgment (or an appeal against the grant of such). As such, whereas the court will consider if the pleadings alone disclose a reasonable cause of action or defence in deciding whether to allow an amendment (see the High Court decision of *SW Trustees Pte Ltd (in compulsory liquidation) and another v Teodros Ashenafi Tesemma and others (Teodros Ashenafi Tesemma, third party)* [2023] SGHC 273 at [35]), the court will necessarily consider other matters in addition to the pleadings in deciding whether to grant a summary judgment. Likewise, in deciding whether a viable defence has been made out against summary judgment, the court will consider other matters in addition to the pleadings, such as (but not limited to) affidavit

evidence. Accordingly, the mere fact that this court had allowed the defendant to amend DCC 2 to introduce the Time Bar Defence and Set-Off Defence says nothing about whether they are sufficiently real or *bona fide* to resist summary judgment.

18 For completeness, the position would be different if, after a court had allowed the amendments, the claimant then applied to strike them out for disclosing no reasonable defence under O 9 r 16(1)(*a*) of the ROC 2021. In that instance, there would be coincidence between the tests for the earlier amendment and the subsequent striking out (see the Court of Appeal decision of *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1990] 1 SLR(R) 337 at [4]). It would therefore be unlikely for a court, having allowed the amendment, to then strike it out for having disclosed no reasonable cause of action or defence *on the basis of the pleadings alone* (see *Mohamed Shiyam* at [38]). This is why the Court of Appeal in *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 held at [21] that a reasonable cause of action is one "which has some chance of success when only the allegations in the pleading are considered. As long as the statement of claim discloses some cause of action, or raises some question fit to be decided at the trial, *the mere fact that the case is weak and is not likely to succeed is no ground for striking it out*" [emphasis added]. However, when considering if a defence is sufficient to resist summary judgment *on its merits*, this necessarily involves a consideration as to whether it is weak or not, even if the defendant is afforded more latitude in this regard (see the High Court decisions of *Goh Chok Tong v Chee Soon Juan* [2003] 3 SLR(R) 32 at [25] and *M2B World* at [19]).

19 Second, the defendant's pleadings in the DCC 3 regarding the Time Bar Defence and the Set-Off Defence are decidedly bare and clearly require further elaboration. For the Time Bar Defence, the defendant merely pleads that "[t]he

Alleged Unpaid Balance Claim would be time barred as at the date the 1st Claimant commenced this action, *ie*, 3 March 2023".[21] As for the Set-Off Defence, the defendant pleads the sums that made up the Outstanding Loan Amount, before asserting that "[e]ven if the Balance Purchase Price remains unpaid (which is denied), the Defendant is entitled to set off the Balance Purchase Price against the Outstanding Loan Amount".[22] Taken alone, these pleadings disclose reasonable defences. But that is not the same as being sufficient to resist summary judgment, in which further affidavit evidence and submissions need to be taken into account.

20 Third, and in any event, while I had allowed the limited amendments in *Nimisha Pandey (Amendment of Pleadings)* at [33]–[35], I had also said in that decision that the substantive merits of the various defences could be dealt with at the appropriate time (see *Nimisha Pandey (Amendment of Pleadings)* at [33]–[34]).

21 Accordingly, I do not think that the defendant is correct that the summary judgment entered in favour of the claimants should be set aside just because she was allowed to introduce the Time Bar Defence and the Set-Off Defence by way of amendments to the DCC 2.

The claimants have established a prima facie *case*

22 It is next clear that the claimants have established a *prima facie* case by virtue of the SPA, in which the first claimant agreed to sell, and the defendant

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21 Defendant's Defence and Counterclaim (Amendment No 3) dated 30 November 2023 ("DCC 3") at para 10.

22 DCC 3 at para 10.

agreed to buy, the Property for the Purchase Price of $4m.[23] While the defendant asserts that the Purchase Price had been paid up at the time of completion or in 2016,[24] she has not been able to point to any payments to that effect. Accordingly, I find that this bare assertion by the defendant does not defeat the claimants' *prima facie* case that the Purchase Price was unpaid at completion or in 2016. In any event, the defendant does not dispute, in her submissions for RA 196, that the claimants have established a *prima facie* case in respect of the Balance Purchase Price. Accordingly, I conclude, and proceed on the basis, that the claimants have established a *prima facie* case in relation to the Balance Purchase Price.

The Time Bar Defence is not a viable defence

23 Next, the defendant's Time Bar Defence can be dealt with shortly. As a preliminary point, contrary to the defendant's argument, it is clear that the claimants have pleaded the relevant facts in their Statement of Claim from which to answer the Time Bar Defence.

24 On the substance of the Time Bar Defence, the starting point is ss 6(1)(*a*), 26(2), 27(1), and 27(2) of the Limitation Act 1959 (2020 Rev Ed) ("Limitation Act"), which I set out below:

> **Limitation of actions of contract and tort and certain other actions**
>
> **6.**—(1) Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:
>
> (*a*) actions founded on a contract or on tort;

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23 NP at p 20 (Exhibit NP-1: Sale and Purchase Agreement dated 12 October 2015 at cl 1).

24 DCC 3 at para 9.

> …
>
> **Fresh accrual of action on acknowledgment or part payment**
>
> **26.**— …
>
> (2) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment.
>
> …
>
> **Formal provisions as to acknowledgements and part payments**
>
> **27.**—(1) Every such acknowledgment as is referred to in section 26 shall be in writing and signed by the person making the acknowledgment.
>
> (2) Any such acknowledgment or payment as is referred to in section 26 may be made by the agent of the person by whom it is required to be made under that section, and shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.

The essence of these provisions, for present purposes, is that the limitation period in respect of a claim founded in contract can be extended by either an acknowledgement or part payment of the underlying debt.

25 In this regard, it seems clear that the defendant made a final part-payment to the claimants on 31 August 2022. This is documented in an instruction from the defendant to Standard Chartered Bank for the transfer of $1,166,278:[25]

[25] NP at p 76 (Exhibit NP-1: Letter to Standard Chartered Bank dated 31 August 2022).

> 31st August 2022
>
> Standard Chartered Bank
>
> Singapore
>
> Attn: Janni Chi/ KV Deepak
>
> Dear Janni/ Deepak
>
> **Account [redacted]**
>
> Value today, kindly transfer **SGD1,166,278/-** from my above mentioned E$aver account and transfer to :-
>
> Beneficiary : Deepak Mishra
>
> Account : [redacted]
>
> Bank : Standard Chartered Private Bank, Singapore
>
> Purpose : Property consideration payment
>
> Thank you.
>
> Yours sincerely,
>
> [signed by the defendant]
>
> *Ps: Kindly disregard previous instruction to transfer SGD1,202,278 – amount should be per this letter.*
>
> [text in bold and italics in original]

26 Pursuant to s 26(2) of the Limitation Act read with the other sections above, this would mean that the claimants' cause of action for the Balance Purchase Price only accrued on 31 August 2022. The defendant's counterargument, in essence, is that any supposed acknowledgement of the Balance Purchase Price from her should not be taken as such because she does not mean what she signs in transactions dealing with the Property. Mr Vikram Nair, who appeared for the defendant, further argued before me that, in any event, the supposed acknowledgement (a) does not clearly acknowledge the

Balance Purchase Price and is ambiguous, and (b) is addressed to the second claimant as opposed to the first claimant, to whom the Balance Purchase Price is due. Therefore, pursuant to s 6(1)(*a*) of the Limitation Act, the claimants' cause of action accrued on the date of completion, which was 21 June 2016.

27 In my judgment, this is a plainly unsustainable defence in light of the clear documentary evidence. It is sufficient to refer to the instruction above dated 31 August 2022, where the defendant expressly authorised a payment of $1,166,278 for the stated purpose of "Property consideration payment". The defendant had signed off on the instruction that clearly bears details such as being addressed to the second claimant, the amount to be transferred, the beneficiary, and the purpose. This satisfies the requirements of it being an acknowledgment under s 27(1) of the Limitation Act. The defendant cannot now claim that she does not mean what she signed for in this document. She was above 21 years old at the time of her signing. She should be responsible for the documents that she has signed, especially documents that set out clearly what she is signing for.

28 More specifically, on her claim that she was simply "rubber stamping" documents that the claimants had asked her to sign, she has not pleaded that she was somehow coerced into signing the documents involuntarily due to duress or the like. Indeed, in as much as the defendant relies on *Chuan* to argue that her acknowledgement of debt was somehow not voluntary, this is premised on a misreading of the case. Indeed, when the Court of Appeal referred to the need for "a voluntary desire to admit a debt" in that case (at [17]), this was to reject the argument that a letter written to a complete third party, but which admitted to a debt to a creditor, would amount to an acknowledgement of the debt to the creditor if the latter came into possession of the letter. In that case, the acknowledgement would clearly not be "voluntary" in the sense that the debtor

never intended for the letter to reach the creditor. This is quite different from the present case, where the defendant voluntarily signed the documents that were clearly meant for the claimants or for their benefit. It cannot thus be said that the defendant's acknowledgment of debt was not voluntary by any measure.

29 Also, in so far as the defendant argues that the words "Property consideration payment" are ambiguous, I find that they are not. They clearly can only refer to the Property because the alternative interpretation advanced by the defendant, that they refer to incoming consideration from the on-sale of the Property, is unsupported by any affidavit evidence. Finally, while the acknowledgement is made out to the second claimant, s 27(2) of the Limitation Act makes clear that the acknowledgment can be made to the agent of the claimant, and it is not disputed that the second claimant, being the first claimant's husband, is authorised to receive payments on her behalf.

30 In any event, I also find that the instruction on 31 August 2022 clearly constitutes a part payment of the Balance Purchase Price to the second claimant as agent for the first claimant. Pursuant to s 26(2) read with s 27(2) of the Limitation Act, this likewise extends the limitation period in respect of the Balance Purchase Price.

31 On this basis alone, I find that the defendant clearly acknowledged the Balance Purchase Price as late as 31 August 2022, which means that OC 138 is not time-barred. The Time Bar Defence therefore falls away and is not a viable defence with which to resist summary judgment.

The Set-Off Defence is not a viable defence

32 Finally, the defendant's Set-Off Defence can also be dealt with shortly. In my judgment, the defendant cannot even show that the alleged components of the Outstanding Loan Amount are, in fact, loans.

(a) One, as to the Metro Remittance, it is clear from an email from the second claimant's secretary dated 12 February 2018 that this was a sum transferred from Fareast Distribution and Logistics Private Limited ("FEDL") to Metro Capital Ltd ("Metro"), an entity belonging to the second claimant, for the purpose "[t]o repay loan".[26] Thus, far from being a loan extended by the defendant to the claimants, this sum appears to be FEDL repaying a loan owed to the claimants. Evidently, the defendant has completely mischaracterised the nature of this transaction. Moreover, it is clear from an Account Statement of Metro dated 28 February 2018, evidencing the transfer from FEDL, that the Metro Remittance concerned a "Contract no.: 405 - 0013486", which is consistent with it being a repayment to the claimants.[27] At the very least, there is no evidence that the Metro Remittance is a loan to the claimants. Furthermore, the defendant had earlier characterised the Metro Remittance as an overpayment towards the Purchase Price but now has changed this suddenly to being a loan to the claimants. The defendant's habit of changing her characterisation of documents shows the lack of *bona fides* in this defence.

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26 1st Claimant's Written Submissions for HC/RA 196/2023 dated 26 February 2024 ("CWS RA 196") at paras 37−39.

27 CWS RA 196 at para 41.

(b) Two, on the Mystic Remittance, it is clear that the claimants do not own Mystic Serenity Ltd.[28] Indeed, the defendant has not adduced any further evidence to show that this remittance somehow constituted a loan from her to the claimants.

(c) Three, on the Joint Account Remittance, it is not true that the defendant had transferred this amount, being half of $1,403,212.42, to the joint account of the first claimant and Mrs Bothra. In fact, the documentary evidence is clear that the amount of $1,403,212.42 was remitted by FEDL, which is unconnected to the defendant, to the said joint account.[29] Regardless of whether this sum was to discharge the mortgage over another property, which the parties refer to as the "Berth Penthouse", it is clear that this remittance had nothing to do with the defendant. It is not right for the defendant to now allege that half of this amount was a loan she made to the first claimant.

33 Since the defendant cannot even establish that the alleged components of the Outstanding Loan Amount are in fact loans made by her to the claimants, there is no need for me to consider if she satisfies the constituent elements of a legal set-off, an equitable set-off, or a set-off by judgment. The defendant has no viable claim in the form of the Outstanding Loan Amount to mount any kind of set-off defence.

34 I therefore find that the Set-Off Defence is not a viable defence with which to resist summary judgment.

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28 CWS RA 196 at para 44.

29 DB SUM 2119 at p 677.

Conclusion

35 For all of the reasons above, I find that the defendant has not advanced a real or *bona fide* defence against the first claimant's claim in OC 138. It follows that I agree with the learned AR that summary judgment should be entered against the defendant and in favour of the first claimant in respect of the Balance Purchase Price. I therefore dismiss RA 196.

36 Unless the parties are able to agree, they are to submit their respective written submissions on the appropriate costs order for this appeal, limited to seven pages each, within seven days of this decision.

Goh Yihan
Judge of the High Court

Prakash Pillai, Koh Junxiang and Ng Pi Wei (Clasis LLC)
for the claimants;
Vikram Nair, Foo Xian Fong and Liew Min Yi Glenna
(Rajah & Tann Singapore LLP) for the defendant.