

GA Machinery Pte Ltd and another v Yue Xiang Pte Ltd and others
[2020] SGHC 264

Case Number : Suit No 932 of 2017
Decision Date : 03 December 2020
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Derek Kang Yu Hsien and Lim Shi Zheng Lucas (Cairnhill Law LLC) for the plaintiffs; Singa Retnam (I.R.B Law LLP) (instructed), Abdul Wahab bin Saul Hamid and Jeremy Chew (A.W. Law LLC) for the defendants.
Parties : GA Machinery Pte Ltd — Solid Mining Pte Ltd — Yue Xiang Pte Ltd — Ho Leong Wah — Tay Jyh Chau (Zheng Zhichao)

Credit and Security – Money and moneylenders – Illegal moneylending

3 December 2020

Judgment reserved.

Choo Han Teck J:

1 This action is the plaintiffs’ claim against the defendants for breach of contract. The contracts in question consist of (a) a series of loan agreements between the first plaintiff (“GA Machinery”) and the first defendant (“Yue Xiang”); and (b) a series of contracts between the second plaintiff (“Solid Mining”) and Yue Xiang which appeared, on their face, to be contracts for the sale and purchase of mining equipment. Both the second defendant (“Ho”) and the third defendant (“Tay”) had personally guaranteed the amounts due and owing by Yue Xiang under these contracts. The central issue in this action is whether these contracts are unenforceable because they were executed in furtherance of illegal moneylending transactions.

2 GA Machinery and Solid Mining are Singapore-incorporated companies controlled by one Jesper Lim Chin Yiong (“Jesper”). The plaintiffs’ case is that GA Machinery and Solid Mining were, at all material times, in the business of machinery trading. This is disputed by the defendants, who allege that GA Machinery and Solid Mining were primarily used as moneylending vehicles.

3 Yue Xiang is a Singapore-incorporated company in the business of mining. At the material time, Yue Xiang was engaged in several iron sand mining projects in Indonesia. Ho is the sole shareholder and director of Yue Xiang. Tay was Ho’s friend and business apprentice at the material time.

4 In or around June 2014, Ho was looking for funders for his iron sand mining projects. He was introduced to Jesper by a Taiwanese individual known as Lee Hua Hsiung (“Lee”). After several meetings and discussions between the parties, Jesper agreed to extend the funds requested by Ho. On 26 June 2014, GA Machinery and Yue Xiang entered into a loan agreement (“the First Loan Agreement”) for GA Machinery to loan the sum of S\$250,000 interest-free to Yue Xiang (“the First Loan”). Ho personally guaranteed Yue Xiang’s payment obligations under the First Loan, which was originally due for repayment on 26 September 2014.

5 On the same day, Solid Mining and Yue Xiang entered into a sales contract (“the First Sales Contract”) for Yue Xiang to pay S\$258,000 to Solid Mining in exchange for mining equipment comprising six sets of magnetic extractors. Pursuant to cl 4 of the First Sales Contract, the purchase

price of S\$258,000 was to be paid by Yue Xiang to Solid Mining by way of 13 post-dated cheques with each payment due on the first day of each month commencing 1 July 2014 until 1 July 2015. By 1 August 2014, Yue Xiang had made payment of S\$20,000 under the First Sales Contract.

6 Subsequently, on 1 September 2014, GA Machinery and Yue Xiang entered into a second loan agreement ("the Second Loan Agreement") for GA Machinery to loan the sum of S\$125,000 interest-free to Yue Xiang ("the Second Loan"). The Second Loan was originally due for repayment on 1 December 2014. Yue Xiang's payment obligations under the Second Loan were jointly and severally guaranteed by Ho and Tay.

7 Four days later, on 5 September 2014, Solid Mining and Yue Xiang entered into a second sales contract ("the Second Sales Contract") for Yue Xiang to pay Solid Mining S\$283,000 in exchange for mining equipment comprising eight sets of magnetic extractors. The Second Sales Contract superseded the First Sales Contract. Pursuant to cl 4 of the Second Sales Contract, the purchase price of S\$283,000 was to be paid by Yue Xiang to Solid Mining by way of ten post-dated cheques with each payment due on the first day of each month commencing 1 March 2015 till 1 December 2015.

8 Yue Xiang requested for an extension for the repayment of the First Loan. Accordingly, on 2 October 2014, Yue Xiang and GA Machinery entered into an agreement ("the First Loan Extension") to extend the deadline for repayment of the First Loan to 26 December 2014. Yue Xiang's payment obligations under the First Loan Extension were jointly and severally guaranteed by Ho and Tay.

9 Subsequently, Yue Xiang sought a further extension for the repayment of the First Loan, as well as an extension for the repayment of the Second Loan. Thus, on 11 February 2015, GA Machinery and Yue Xiang entered into two agreements: (a) an agreement ("the First Loan Further Extension") to further extend the deadline for repayment of the First Loan to 26 June 2015; and (b) an agreement ("the Second Loan Extension") to extend the deadline for repayment of the Second Loan to 1 June 2015. Yue Xiang's payment obligations under both of these agreements were jointly and severally guaranteed by Ho and Tay.

10 According to the plaintiffs, Solid Mining and Yue Xiang subsequently agreed to vary the Second Sales Contract such that Yue Xiang would only purchase four magnetic extractors, which were listed as item number 3 on the Second Sales Contract ("Item No. 3"), for the total price of S\$125,000. The plaintiffs aver that they had delivered Item No. 3 to Yue Xiang by 1 July 2015; this is disputed by the defendants.

11 Yue Xiang was unable to meet its payment obligations under the First Loan Further Extension, the Second Loan Extension, and the Second Sales Contract. Consequently, on 30 June 2015, GA Machinery and Yue Xiang entered into a third loan agreement ("the Third Loan Agreement") to vary the deadlines for the repayment of the First and Second Loans. Pursuant to the Third Loan Agreement, Yue Xiang was to make payment of the First Loan by 26 December 2015, and make payment of the Second Loan by 1 December 2015. In addition, the Third Loan Agreement contained an interest clause ("the Interest Clause") requiring Yue Xiang to pay interest to GA Machinery at a rate of 10% per annum:

- (a) on the First Loan, from 26 September 2014 till the date of full repayment of the First Loan;
- (b) on the Second Loan, from 1 December 2014 until the date of full repayment of the Second Loan.

Yue Xiang's obligations under the Third Loan Agreement were jointly and severally guaranteed by Ho and Tay.

12 On the same day, Solid Mining entered into an extension of credit agreement ("the Credit Agreement") with Yue Xiang for Yue Xiang to pay a sum of S\$105,000 ("the Varied Sale Price"), being the price of Item No. 3 less the sum of S\$20,000 (which Yue Xiang had already paid under the First Sales Contract). Yue Xiang's payment obligations under the Credit Agreement were jointly and severally guaranteed by Ho and Tay.

13 Both the Third Loan Agreement and the Credit Agreement were varied twice, once on 8 April 2016 and again on 30 March 2017, to extend the dates of repayment of the First Loan, the Second Loan and the Varied Sale Price. Sometime in March 2017, GA Machinery and Yue Xiang also agreed to vary the Interest Clause. In lieu of fulfilling the Interest Clause, Yue Xiang agreed to pay fixed compensation fees of S\$160,000 on the First Loan and S\$75,000 on the Second Loan (collectively, "the Fixed Fees") to GA Machinery by 30 June 2017.

14 When Yue Xiang still did not pay the First Loan and the Second Loan (collectively, "the Loans"), the Varied Sale Price and the Compensation Fees, the plaintiffs commenced the present Suit claiming the following sums against the defendants:

- (a) the sum of S\$250,000 for the First Loan;
- (b) the sum of S\$125,000 for the Second Loan;
- (c) the sum of S\$235,000 for the Fixed Fees and/or in the alternative, damages to be assessed pursuant to the Interest Clause; and
- (d) the sum of S\$105,000, being the Varied Sale Price.

15 Crucially, the defendants do not dispute that they have failed to pay the aforementioned sums. The crux of their defence is that the First, Second and Third Loan Agreements were all illegal moneylending transactions that are unenforceable under the Moneylenders Act (Cap 188, 2010 Rev Ed) ("MLA"). Furthermore, the Sales Contracts and the Credit Agreement were not bona fide agreements for the sale and purchase of mining equipment, but sham agreements that were designed to conceal the exorbitant interest charged by Jesper for the illegal loans. Although the defendants admit to taking possession of several magnetic extractors subsequent to the conclusion of the Second Sales Contract, they claim that there were a total of six, not four extractors, and that they had purchased these extractors directly from Lee's Indonesian company, PT Terus Jaya Indonesia ("PT Terus"). The defendants further contend that GA Machinery has no *locus standi* to make a claim for the Loans as the monies for these loans had originated from other companies. Finally, Tay claims that the personal guarantees that he executed can be avoided for misrepresentation.

16 Based on the foregoing, the following issues arise for my determination:

- (a) whether the First, Second and Third Loan Agreements are illegal moneylending transactions that are unenforceable under the MLA;
- (b) whether the Sales Contracts are sham agreements that were executed in furtherance of the illegal moneylending transactions;
- (c) whether GA Machinery has *locus standi* to make a claim for the Loans; and

- (d) whether the personal guarantees executed by Tay can be avoided for misrepresentation.

As the first two issues are interconnected, I will discuss my findings on them collectively.

17 The law relating to illegal moneylending transactions is established under s 14(2) of the MLA which provides:

- (2) Where any contract for a loan has been granted by an unlicensed moneylender, or any guarantee or security has been given for such a loan —

(a) the contract for the loan, and the guarantee or security, as the case may be, shall be unenforceable; and

(b) any money paid by or on behalf of the unlicensed moneylender under the contract for the loan shall not be recoverable in any court of law.

18 Section 2 defines a “moneylender” as a person who, whether as principal or agent, carries on or holds himself out in any way as carrying on the business of moneylending, whether or not he carries on any other business, “but does not include any excluded moneylender”. Thus, in order to rely on s 14(2) of the MLA, the burden lies on the borrower to prove:

(a) First, that the lender is not an “excluded moneylender” (see *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 (“*Sheagar*”) at [73]). An excluded moneylender includes, *inter alia*, any person who lends money solely to corporations (see limb (e) of the definition of “excluded moneylender” under s 2 MLA).

(b) Second, that the lender is in the business of moneylending (see *Sheagar* at [75]).

19 Counsel for the plaintiffs, Mr Derek Kang, argues that GA Machinery is an excluded moneylender because the Loans were furnished to Yue Xiang, a corporate entity, and there is no evidence that GA Machinery had ever furnished any loans to individuals. This is disputed by counsel for the defendants, Mr Singa Retnam, who argues that although the contracting parties for the Loans were commercial entities, the Loans were in essence personal loans that were extended by Jesper to Ho.

20 In ascertaining whether the excluded moneylender exception applies, it is not enough to show that the borrower is a corporation (see *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and another (Orion Oil Ltd and another, interveners)* [2011] 2 SLR 232 (“*E C Investment*”) at [139(b)]). The question is one of substance and not of form, although the form of the transaction would *prima facie* reflect the substance of the transaction (see *Sheagar* at [81]).

21 In my view, the interpretation and application of the MLA must be guided by its underlying legislative intent. As observed by the Court of Appeal in *Donald McCarthy Trading Pte Ltd and others v Pankaj s/o Dhirajlal (trading as TopBottom Impex)* [2007] 2 SLR(R) 321 (at [6] and [9]), Parliament intended the MLA to be a social legislation designed to protect individuals who, being unable to borrow money from banks and other financial institutions, have to turn to unscrupulous unlicensed moneylenders who prey on people like them. Conversely, the MLA was not intended to prohibit or impede legitimate commercial intercourse between commercial persons. Thus, although “[i]t would... be wholly inappropriate to apply the MLA to commercial transactions between experienced business persons or entities... the position could be quite different if the parties had wilfully attempted to structure a transaction so as to evade the application of the MLA” (*City Hardware Pte Ltd v Kenrich Electronics Pte Ltd* [2005] 1 SLR(R) 733 at [22]).

22 Turning to the facts of the present case, Ho's evidence was that when he had first sought funding from Jesper, "this funding was discussed as a personal loan from Jesper Lim". It was only later on that Jesper had informed him that the loan ought to be structured as an inter-company loan so as to avoid "moneylending behaviour". This was disputed by Jesper, who claimed GA Machinery had "a lot of used machinery to transfer or sell to Yue Xiang", and because GA Machinery, Yue Xiang and PT Terus might "en[d] up with a three-party joint venture", GA agreed to help Yue Xiang by lending money directly to Yue Xiang. Jesper did not provide any further explanation of how this convoluted transaction might work.

23 As there was no contemporaneous evidence of the circumstances surrounding the Loan Agreements, my findings on this issue turn primarily on the parties' testimonies. Despite the presence of several discrepancies between his affidavits, Ho struck me as a candid and forthright witness. I accept that Ho had readily entered into the Loan Agreements despite knowing that they were moneylending transactions because he had been facing severe cash-flow problems and was desperate to secure additional funding on short notice. By contrast, Jesper's explanation that GA Machinery and Yue Xiang might eventually form a joint venture seems contrived. Despite its obvious significance, this explanation had not been raised in any of Jesper's affidavits and had only emerged for the first time at trial. I therefore prefer Ho's account of the events which had transpired between Jesper and himself.

24 Admittedly, this was not a case where the Loans had been granted to Ho for his own domestic or social expenses. Rather, as Ho himself conceded during cross-examination, the loans were intended to fund Ho's iron sand mining projects (which, presumably, he was undertaking through Yue Xiang). However, it is important to note that Ho was, at all material times, the sole director and shareholder of Yue Xiang. The evidence suggests not only that Ho was the only person behind Yue Xiang, but also that he treated Yue Xiang as an extension of himself. It did not matter to Ho whether the Loans were extended to Yue Xiang or to himself personally. In fact, but for Jesper's insistence that the Loans be furnished to Yue Xiang instead of Ho in order to circumvent the MLA provisions, it is likely that the Loans would have been structured as personal loans. Therefore, although the Loans may have been commercial loans in form, I am satisfied that they are personal loans in substance. I thus reject the plaintiffs' argument that GA Machinery was an excluded moneylender under the MLA.

25 I now proceed to determine whether GA Machinery was "in the business of moneylending". Although the burden of proving this fact lies on the borrower, s 3 of the MLA provides that "[a]ny person, other than an excluded moneylender, who lends a sum of money in consideration of a larger sum being repaid shall be presumed, until the contrary is proved, to be a moneylender".

26 It is undisputed that the Loans were, on their face, interest-free. According to Ho, however, Jesper told him that the interest on the Loans was 4% per month, and that the amounts of interest due each month were set out under the payment schedules of the Sales Contracts. Thus, were the Sales Contracts sham agreements that did not reflect genuine sales of machinery by Solid Mining to Yue Xiang?

27 According to the defendants, the four magnetic extractors which Yue Xiang took possession of in 2014 were purchased directly from PT Terus, and not from Solid Mining as alleged by the plaintiffs. After the commencement of this action, Jesper had requested for Ho sign a backdated letter acknowledging receipt of Item No. 3, as well as a backdated delivery order for Item No. 3. However, Ho had not signed these documents as he believed their contents to be untrue. There is therefore no evidence whatsoever evidencing the delivery of equipment under the Sales Contracts.

28 In response, the plaintiffs argue that Ho had expressly stated in his AEIC dated 25 January 2018 ("the 2018 Affidavit") that the four magnetic extractors were purchased under the Second Sales

Contract as Item No. 3. Additionally, there was no evidence of the purported sales contract between Yue Xiang and PT Terus.

29 The state of the evidence before me is certainly not satisfactory, but I am inclined to accept the defendants' account. First, although there were clear inconsistencies between the 2018 Affidavit and Ho's testimony at trial, I am of the view that these inconsistencies are not fatal to the defendants' case. The context of the 2018 Affidavit must be borne in mind. At the time, the plaintiffs had obtained a default judgment against Ho, and the plaintiffs' solicitors had procured Ho to depose the 2018 Affidavit on matters of fact relating to the proceedings between the plaintiffs and Tay. Although the plaintiffs' solicitors' actions were not incorrect in law, Ho was not represented at the material time and was, it seemed to me, not fully apprised of the significance of the 2018 Affidavit and the statements therein. I caveat, however, that my view is that the discrepancies in the 2018 Affidavit were likely the product of Ho's own ignorance, and not (as counsel for the defendants claim) the result of any misconduct or negligence on the plaintiffs' solicitors' part.

30 Second, the plaintiffs did not tender any documentary evidence to prove that a delivery (or deliveries) had taken place under the Second Sales Contract. In contrast, the defendants adduced various documents showing that Yue Xiang had remitted monies to various parties for its purchase of the four magnetic extractors from PT Terus. These include (a) a transfer slip showing that Yue Xiang had made a S\$63,318.06 remittance to an entity called Unibest Shipping and Logistics Co ("Unibest"), and (b) a transfer slip showing that Yue Xiang had remitted NTD 150,000 to a Taiwanese bank account belonging to an individual called Yu Chi Han ("Yu"). There was also a WhatsApp conversation between Ho and Tay dated 11 January 2018 which I reproduce below for convenience:

Ho: I told [Jesper] how to sign [the backdated letter acknowledging receipt of the magnetic extractors]? He said is true I took the machines.

Tay: But the machines not from him

Tay: Not he sold you

Ho: Both know from Lee.

31 Admittedly, the defendants' evidence is not without problems. Aside from Ho's and Tay's testimonies, there is no evidence to show that Yu was, as the defendants claim, Lee's wife. Nor is there any documentary evidence to show that Unibest was a company that was owned by or related to Lee. The WhatsApp conversation must also be treated with circumspection given that it is not contemporaneous with the purchase of the magnetic extractors. Nevertheless, and as stated at [23] above, I am satisfied that Ho is a more credible witness than Jesper. I find it incredible that Solid Mining does not have even a shred of evidence to prove that delivery had taken place under the Sales Contracts. Overall, the weight of the evidence leans in the defendants' favour. Furthermore, the absence of documentary evidence belies the simple fact that Ho was in need of money urgently. In the broader context, this supports the defendants' case as it demonstrates that Ho was the type of vulnerable and inexperienced victim contemplated by the MLA.

32 Finally, the timing of the Loan Agreements and the Sales Contracts supports the defendants' claims that they were in fact related. Tellingly, the First Loan Agreement and the First Sales Contract were signed on the very same day. The Second Sales Contract was signed just four days after the Second Loan Agreement was signed. When asked about this coincidence of dates during cross-examination, Jesper's explanation was as follows:

A: This is part of the commercial negotiation to extend the loan for the cash flow without interest so that we can dispose of my machine, my mining equipment to sell it to [Ho] so that he can have it for the operation. So it's part and parcel of the commercial decision.

Q: What decision?

A: Commercial decision.

Q: What decision?

A: Commercial decision that I extend to him the loan, he promise to buy my equipment.

33 This explanation, like Jesper's clarification that he had wanted to form a joint venture with Yue Xiang, only surfaced at trial. There were no records whatsoever, *eg* in the form of correspondence or meeting minutes, documenting the alleged "commercial negotiation" between Jesper and Ho. Given Jesper's apparent tendency to embellish his evidence, it appeared to me that this "commercial negotiation" was simply another excuse which Jesper had devised to avoid liability under the MLA.

34 In the premises, I am satisfied that Ho did not take possession of Item No. 3, and is therefore not obliged to pay the Varied Sale Price to Solid Mining. I also find that the Sales Contracts were not bona fide contracts for the sale and purchase of mining equipment, but sham agreements that were designed to conceal the interest that Jesper (through GA Machinery) was charging for the Loans.

35 I acknowledge that the payment schedules in the Sales Contracts appear to disclose a substantially higher monthly interest rate than the 4% alleged by Ho. Under the First Sales Contract, Yue Xiang was required to pay Solid Mining instalments of S\$10,000 from 1 July 2014 to 1 September 2014, and instalments of S\$22,800 per month from 1 October 2014 to 1 July 2015. This works out to an interest rate of 4% per month for the first three months, and 9.12% per month for the next ten months, on a loan of S\$250,000. Under the Second Sales Contract, Yue Xiang was required to pay Solid Mining instalments of S\$22,800 per month from 1 March 2015 to 1 July 2015, and instalments of S\$33,800 per month from 1 August 2015 to 1 December 2015. This works out to an interest rate of 6.08% per month for the first five months, and 9.01% for the next five months, on a loan of S\$375,000 (*ie*, the combined value of the First and Second Loans).

36 Notwithstanding the inconsistency, I accept Ho's testimony that the Loans were not disbursed interest-free, and that the amount of interest payable regardless of whether it was 4% per month or 9.12% per month or more was fixed at an exorbitant rate. Thus, the presumption under s 3 of the MLA applies and the burden shifts to the plaintiffs to prove that GA Machinery was not in the business of moneylending.

37 There are two tests to determine whether a person is in the business of moneylending (*E C Investment* at [135]). The first is whether there is a certain degree of system and continuity in the moneylending transactions. If the answer is no, the court applies the second test, which is whether the alleged moneylender is one who is willing to lend to all and sundry provided that they are from his point of view eligible.

38 I accept that there was no system and continuity in the transactions. In this case, only two loans were made, and it does not appear that the loan amounts, the interest amounts or the methods of disbursing the loans were fixed or organised in a systematic manner. The defendants' claims that Jesper had set up various companies to conduct moneylending transactions under the guise of dealing in machinery are entirely speculative. Moreover, the plaintiffs have disclosed the bank statements of

GA for May to June 2014 which do not reveal any routine series of loans, whether to Yue Xiang or otherwise.

39 Nonetheless, I accept the defendants' argument that Yue Xiang was, for all intents and purposes, "all and sundry". Jesper and Ho had barely known each other at the time of the relevant transactions and, as stated at [23] above, I disbelieve Jesper's evidence that he had intended for GA Machinery to enter into a joint venture with Yue Xiang. In my view, Jesper had procured GA Machinery to extend the Loans to Yue Xiang because he foresaw an opportunity to make a profit therefrom. Ho had no choice but to agree to the exorbitant interest rates because of his desperate need for money. This was precisely the kind of transaction that the MLA was designed to prevent.

40 I therefore find that GA Machinery is a "moneylender" for the purposes of s 2 of the MLA, and that the Loans and the Fixed Fees are not recoverable pursuant to s 14(2) of the MLA.

41 Although it is no longer necessary for me to deal with the defendants' final two contentions, I will address them briefly for completeness.

42 I turn first to the defendants' submission that GA Machinery lacks the *locus standi* to make a claim for the First and Second Loans. According to the defendants, the monies for the First Loan had been provided by a company called J Lim Piling Pte Ltd ("J Lim"), and the monies for the Second Loan had been provided by a company called Jay Machinery Pte Ltd ("Jay Machinery"). As such, GA Machinery is not the proper party to recover the First and Second Loans since it has not suffered any loss therefrom.

43 I agree with the plaintiffs that this argument is bound to fail. It is undisputed that the monies for the Loans were transferred by J Lim and Jay Machinery to GA Machinery, which then disbursed these sums to Yue Xiang directly. There is no legal requirement that the source of funds for a loan transaction must originate from the lender in question. There is accordingly no doubt that GA Machinery, being the party with which Yue Xiang, Ho and Tay contracted, has the standing to bring the present claim.

44 Nonetheless, the fact that monies were freely transferred between GA Machinery, J Lim and Jay Machinery □ companies that Jesper has admitted to having either full or partial ownership of □ further shows that the Loans were really transactions between Jesper to Ho, the true moneylender and the true borrower respectively.

45 Finally, I turn to the issue of whether the personal guarantees executed by Tay in respect of the Loans can be avoided for misrepresentation. I note at the outset that this aspect of the defendants' case was not entirely clear. The defendants originally pleaded that Tay had executed the personal guarantees because he was under the false impression that the Loans were interest-free loans. No specific vitiating factors (eg misrepresentation or mistake) were pleaded. At trial, Tay raised the new (and hitherto unpleaded) allegation that he had signed the guarantee under the Third Loan Agreement because he had incorrectly believed Yue Xiang's obligations under that contract were secured by an existing mortgage on Ho's property ("the Hillview property"). Curiously, this allegation was abandoned again in the defendants' closing submissions, where it was clarified that Tay sought to avoid the personal guarantees on the basis that GA Machinery had misrepresented to him that the Loans were interest-free.

46 I agree with the plaintiffs that there is no merit in this submission. The fundamental flaw in Tay's claim is that the defendants have not proven that the representation in question emanated from the plaintiffs. It is clear that Ho himself was fully aware that the Loans were not interest-free,

as the interest payable had been disguised in the form of the sham Sales Contracts. There is nothing to suggest that Jesper or any of the plaintiffs' agents had intentionally or unintentionally concealed this fact from Tay. Moreover, Tay's knowledge of the terms of the First and Second Loan Agreements was entirely derived from Ho.

47 Nevertheless, for the reasons stated at [17]–[40] above, the plaintiffs' claim is dismissed in its entirety. I will hear parties on costs at a later date.

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