Toh Eng Tiah *v* Jiang Angelina
[2020] SGHC 65

Case Number : Suit No 621 of 2017

Decision Date : 01 April 2020

Tribunal/Court : High Court

Coram : Andrew Ang SJ

Counsel Name(s) : Lee Hwee Khiam Anthony, Wang Liansheng and Gursharn Singh Gill (Bih Li & Lee LLP) for the plaintiff; Mahesh Rai and Stephania Wong (Drew & Napier LLC) for the defendant.

Parties : Toh Eng Tiah — Angelina Jiang

Gifts – inter vivos – nature of sums advanced – whether a gift can be converted into a loan

1 April 2020 Judgment reserved.

Andrew Ang SJ:

Introduction

1 This dispute concerns the legal character of certain sums transferred from the plaintiff to the defendant: whether they are gifts or loans. The plaintiff, Mr Toh Eng Tiah ("the Plaintiff"), and the defendant, Ms Angelina Jiang ("the Defendant"), were previously in a romantic relationship. During their time together, the Plaintiff transferred sums of money to the Defendant. The Plaintiff now brings this action in an attempt to recover a total sum of $2m from the Defendant.

2 The main thrust of the Plaintiff's case is that the sums paid at various times were loans and not love gifts. He relies heavily on a Loan Facility Agreement dated 24 March 2017 ("$2m Loan Agreement") in support of this contention. However, in a bid to recover the $2m immediately (rather than pursuant to the terms of the $2m Loan Agreement), the Plaintiff further contends that the $2m Loan Agreement ought to be rescinded on the basis of undue influence, *non est factum*, unilateral mistake, or misrepresentation, among other grounds. The Defendant, however, says that the various sums amounting to $2m were gifts; the parties were more than lovers and there were plans to start a family together. She further contends that the $2m Loan Agreement is a sham document, created for the Plaintiff to negotiate with his wife in respect of an intended divorce, and to obtain financing from the Plaintiff's company. She also counterclaims for an aggregate sum of $335,000 lent to the Plaintiff.

Facts

The parties

3 The Plaintiff is a self-made man and owner of several businesses past and present. He is currently the director and majority shareholder of ST Paper Resources Pte Ltd ("ST Paper Resources"), a company in the business of recycling non-metal waste. [note: 1] The Plaintiff was about 55 years of age when the parties met and was married with three grown children by a previous marriage. [note: 2]

4 The Defendant was previously a Chinese national but became a Singapore citizen in 2014. [note: 3] She was a part-time licensed property agent at ERA Realty Network Singapore and a manager of Sinya Construction and Engineering Pte Ltd at the material time. She was about 30 years of age when the parties met. She was previously married with two children. [note: 4] At the material time, the Defendant was doing well for financially and owned a five-storey apartment at 13 Prome Road ("13 Prome Road").

How the parties met

5 The Plaintiff first met the Defendant sometime in or around November 2016, after he saw an advertisement put up by the Defendant for the sale of a property at 11 Sin Ming Road, #B1-30 ("#B1-30"). The Defendant was the owner of #B1-30. [note: 5] Following their first meeting, the parties continued to meet frequently. He would, on occasion, accompany the Defendant to view properties and learnt that apart from being a real estate agent, the Defendant invested in properties. [note: 6] From their frequent interaction, the parties gradually grew close.

6 According to the Defendant, the Plaintiff had initially sought her out, using his interest in #B1-30 as an excuse to meet her. [note: 7] The Plaintiff eventually asked the Defendant to be his girlfriend on 16 December 2016. She was, however, not interested in a relationship with the Plaintiff at that point in time as he was a married man with children. [note: 8] Nevertheless, the parties continued to meet. She eventually agreed to a relationship with the Plaintiff after intimacy at her apartment. The parties were henceforth in a romantic relationship since 20 December 2016. [note: 9]

7 The sum under the $2m Loan Agreement allegedly owed by the Defendant to the Plaintiff comprises of the following disbursements:

(a) $724, 532 transferred between December 2016 to 6 March 2017, rounded down by the nearest thousand to $724, 000 (at [8] – [9], [46] – [64])

(b) $154, 000, which is the 5% payment towards purchase of a property at 9 Hillcrest Road (at [16], [67] – [82])

(c) $250, 000 towards the purchase of the property at 9 Hillcrest Road (at [17], [83] – [92], [101] – [133], [135] –[136]; and

(d) $872, 000 transferred pursuant to the $2m Loan Agreement (at [19], [83] – [98], [101] – [130], [135] –[136]).

Transfer of monies between December 2016 to March 2017

8 It is undisputed that between December 2016 and March 2017, the Defendant received or had credited to her an aggregate sum of $819,532 from the Plaintiff. [note: 10] The breakdown is as follows: [note: 11]

Date of payment	Mode of payment	Amount
Around 19 December 2016	Cheque	$200,000

28 December 2016	Tele-transfer	$20,000
Around 28 December 2016	Cash	$20,000
29 December 2016	Tele-transfer	$13,000
3 January 2017	Cheque	$10,000
6 January 2017	Cheque	$65,000
6 January 2017	Cash	$35,000
10 January 2017	Cheque	$50,000
12 January 2017	Cheque	$150,000
24 January 2017	Cheque	$82,000
31 January 2017	Cheque	$158,532
6 March 2017	Tele-transfer	$16,000
		Total: $819,532

9 Of the $819,532 received by the Defendant, the Plaintiff claims repayment of the sum of $724,532. This is because, or so the Plaintiff says, the Defendant had repaid a sum of $95,000 out of the $819,532 that was loaned. [note: 12] The Defendant, on the other hand, says that the $95,000 was not a repayment but was in and of itself a loan to the Plaintiff. In any case, the Plaintiff is seeking recovery of $724,532, rounded down to the nearest thousand to $724, 000.

10 I refer to the first item on the list in [7] above. The cheque dated 19 December for a sum of $200,000 was handed to the Defendant pursuant to a loan agreement also dated 19 December 2016 ("$200,000 Loan Agreement") [note: 13]. I need not go into the details of the $200,000 Loan Agreement at this juncture but, in brief terms, this document came into being because the Plaintiff learnt that the Defendant was looking to sell #B1-30 to finance the purchase of a shophouse at 315 Balestier Road ("315 Balestier Road"). [note: 14] According to the Defendant, on 28 November 2016, the Plaintiff offered to lend her $200,000 to help her make up the shortfall for the purchase of 315 Balestier Road. While she initially declined to take up his offer, the Plaintiff persisted, offering the loan of $200,000 on a total of five occasions. She eventually relented and the parties signed the $200,000 Loan Agreement. [note: 15] I note that the parties' pleadings, affidavits and submissions ascribe different dates to the cheque for the sum of $200,000: 19, 20 and 22 December 2016. Nothing turns on this difference. It is clear that the parties are referring to the same cheque bearing a particular serial number. I will adopt the date that is reflected on the cheque itself: 19 December 2016. [note: 16]

11 With respect to the other payments listed in [7] above, suffice it to say for now that the

Plaintiff characterises each of the disbursements above as a loan. According to him, shortly after entering into a romantic relationship with the Defendant, the Defendant began making repeated requests for personal loans from him. On each of these occasions, she had informed him that the loans were needed to repay her personal debts, including credit card debts. [note: 17] The Defendant gives a different account. According to her, since 20 December 2016, they were in a romantic and sexually intimate relationship. The Plaintiff repeatedly proposed to take care of the Defendant and gave her $20,000 a month to pay for her living expenses. He also volunteered to pay her credit card bills. [note: 18] The Plaintiff showered her with gifts of money as he sympathised with her lower earning capacity and wanted to provide for her. [note: 19] The disbursements were therefore love gifts and not loans.

The search for a matrimonial home and the $2m Loan Agreement

12 The parties' relationship eventually reached a milestone. According to the Defendant, on 1 January 2017, the Plaintiff intimated that he wanted to start a family with the Defendant and wished to purchase a matrimonial home. He also told the Defendant that he intended to divorce his wife and asked the Defendant to stop using contraceptives so as to conceive a child with him. [note: 20]

13 The Defendant deposed that on 12 January 2017, the Plaintiff and Defendant went to the Buddha Tooth Relic Temple ("the Temple") and purchased an ancestral tablet and had their names engraved on it. This was to signify their status as husband and wife. Indeed, according to her, the Plaintiff made the following vows to her at the Temple: [note: 21]

(a) he vowed to give the Defendant $20,000 monthly for her expenses;

(b) he vowed to pay off the loans on the Defendant's personal credit accounts and/or credit card accounts.;

(c) he vowed to buy a house for the Defendant and set up a home with her;

(d) he wanted the Defendant to bear him children; and

(e) he vowed to love the Defendant, provide for and grow old with her.

14 The Plaintiff accepted that the parties went to the Temple and that an ancestral tablet was bought. But he denied having treated the Defendant as his wife. He asserted that the Defendant had persuaded him to pay for the tablet first as she had insufficient money and somehow also persuaded him to include his name on the tablet. The Plaintiff further maintained that he never told the Defendant that he intended to divorce his wife nor that he was looking to purchase a matrimonial home with the Defendant. [note: 22]

15 That same day, the Plaintiff decided to purchase a property at 3H Hillcrest Road, Hillcrest Villa ("3H Hillcrest Road"). The price asked for was $2,830,000. The Plaintiff issued the owner of the property a cheque for $28,300 as payment for the 1% option fee. The parties, however, also viewed another property at 9 Hillcrest Road ("9 Hillcrest Road"), which was also part of Hillcrest Villa, the following day. [note: 23] The Plaintiff eventually changed his mind about 3H Hillcrest Road and, on 25 January 2017 decided to purchase 9 Hillcrest Road. The option fee for 3H Hillcrest Road was forfeited. [note: 24] The purchase price for 9 Hillcrest Road was $3,080,000 and, apart from bank financing, a balance capital outlay of approximately $2m was needed. [note: 25] According to the Defendant, the

Plaintiff wanted the property to be in her sole name to shield the asset from matrimonial division when he divorced his wife. [note: 26]

16 The Plaintiff transferred a further sum of $154,000, which was 5% of the purchase price for 9 Hillcrest Road, to the Defendant for the purpose of purchasing the property. With this transfer, the Plaintiff had advanced a total sum of $878,000 (being the sum of $724,532 and $154,000, rounded to the nearest thousand). [note: 27] It goes without saying that this sum is characterised as a loan by the Plaintiff on the basis that the Defendant wanted to purchase 9 Hillcrest Road as an investment property and had sought a loan from him. [note: 28]

17 Apart from the $878,000 already transferred to the Defendant, the Plaintiff avers that the Defendant requested for a further sum of $1.122m to complete the purchase of 9 Hillcrest Road [note: 29]. This eventually led to the drafting of a Loan Facility Agreement dated 24 March 2017 ("$2m Loan Agreement"). On or about 21 March 2017, whilst the $2m Loan Agreement was being negotiated, the Plaintiff transferred a further sum of $250,000 to the Defendant. Together with the previously transferred aggregate sum of $878,000, the Defendant would have received an aggregate of $1.128m by this transfer.

18 In brief, the $2m Loan Agreement provided that: [note: 30]

(a) The Plaintiff agreed to lend $2m to the Defendant. Out of the total loan facility of $2m, the Plaintiff had already advanced $1.128m to the Defendant. The balance of the loan facility, i.e. $872,000 was to be disbursed to the Defendant after execution of the $2m Loan Agreement by way of a cashier's order or cheque (cl 2.2).

(b) There was no interest chargeable on the loan facility (cl 2.3).

(c) The Defendant was to fully repay the loan upon sale of 13 Prome Road or a contractually specified Redemption Date, whichever was earlier. The Plaintiff had the right of first refusal in the event that the Defendant wished to sell 13 Prome Road prior to full repayment of the loan (cl 3.1).

(i) The Redemption Date was defined to be the date falling on the expiry of 10 years from the date of full disbursement of the loan facility or upon the occurrence of a contractually specified Event of Default (cl 1).

(d) In the event that the Plaintiff passed away at any time prior to the Redemption Date, the loan facility was to be deemed fully repaid and the Defendant's obligations under the agreement fully extinguished. Thereafter, neither party would have any claim against the other whatsoever (cl 4).

19 The Plaintiff eventually handed the Defendant a cheque for the sum of $872,000 on 24 March 2017, the day on which the $2m Loan Agreement was signed. [note: 31] With this advance, the Defendant received a total of $2 million from the Plaintiff.

20 The events surrounding the drafting of the $2m Loan Agreement, and the parties' intention as to the purpose and enforceability of the document are matters in contention. The Plaintiff's case is that the $2m Loan Agreement evidences his intention that the various sums advanced or to be advanced to the Defendant were loans. The Defendant, however, argues that the $2m Loan

Agreement is a sham document meant to be used as a bargaining chip by the Plaintiff for negotiating the division of assets with his wife in relation to their intended divorce [note: 32]. The Defendant also asserts that the Plaintiff had made promises that the $2m Loan Agreement would not be enforced against her [note: 33]. Suffice it to say for now that before the $2m Loan Agreement was signed, the Plaintiff's wife had already discovered the parties' relationship. [note: 34]

The end of the parties' relationship and the Defendant's pregnancy

21 The Defendant claims that on 31 March 2017, the Plaintiff asked the Defendant to lend him a sum of $150,000 so that he could show his wife that the Defendant was willing to give him any amount that he asked for. [note: 35] The Defendant advanced the sum to the Plaintiff. The Defendant testified that her lawyer had advised her to record the loan formally in writing. She eventually asked her lawyer to prepare a Deed of Gift, the first draft of which recorded that the Plaintiff was to repay the $150,000 by 15 May 2017 failing which the $2m Loan Agreement was to be deemed irrevocably a gift to the Defendant. [note: 36] There were two further drafts of the Deed of Gift. None of the drafts was ever signed by the Plaintiff. [note: 37]

22 The Defendant deposes that from 12 April 2017, she was unable to contact the Plaintiff as he had refused to reply to her texts or answer her calls. On 19 April 2017, the Defendant discovered that she was pregnant and informed the Plaintiff. [note: 38] The Plaintiff eventually replied to the Defendant on 25 April 2017. According to the Defendant, the Plaintiff told her on 28 April 2017 that #B1-30 would belong to their child in 10 years' time and that she should be content with all that she had, including the money that she had received from him and the child she was carrying. [note: 39]

23 By 12 May 2017, the Plaintiff had all but disappeared and failed to reply to the Defendant's calls and messages. [note: 40] It was clear that the parties' relationship had ended on 13 June 2017 when the Defendant received a letter from the Plaintiff's solicitors stating that the Plaintiff wished to rescind the $2m Loan Agreement and demanding repayment of $2 million. [note: 41] There were subsequent letters exchanged regarding the Defendant's pregnancy, with the Defendant offering to undergo a DNA test. The Plaintiff took the position that the child was not his. [note: 42] It eventually came to pass that the pregnancy had to be aborted as the child had no heartbeat. [note: 43]

The parties' cases

24 In the interest of brevity, I will set out the parties' respective positions in gist and elaborate where necessary.

Plaintiff's case

25 As stated, the Plaintiff contends that the sum of $2m is a loan. He relies heavily on the $2m Loan Agreement to support his position. According to him, the $2m Loan Agreement was signed as the Defendant needed financing for the purchase of 9 Hillcrest Road. [note: 44] Although the Defendant and he were lovers, there was never an intention to gift the sum to the Defendant. In this connection, the Plaintiff emphasises that: [note: 45]

(a) He did not treat the Defendant as his wife;

(b) He never told the Defendant that he wanted to divorce his wife and marry the Defendant;

(c) He did not intend to purchase property for the Defendant or to set up a home with her. It was the Defendant who wanted to purchase property and decided on 9 Hillcrest Road; and

(d) He did not persuade the Defendant to stop using contraceptives.

26 The Plaintiff submits that the Defendant had herself promised to repay the Plaintiff various sums. [note: 46] He called on his wife to support his testimony on the point. According to the wife, in or around March 2017, after discovering her husband's affair, she chanced upon some text messages on a platform called "WeChat" where the Defendant could be seen discussing property investments with the Plaintiff and referring to the $2m as a loan. She then took pictures of those messages, which are exhibited in both her affidavit of evidence-in-chief ("AEIC") and the Plaintiff's AEIC. [note: 47] The Plaintiff denies that the WeChat messages were fabricated. [note: 48]

27 Given the centrality of the $2m Loan Agreement to his case, the Plaintiff argues that the $2m Loan Agreement is not a sham. [note: 49] That said, as the Plaintiff is seeking immediate repayment of the $2m, it is also his case that the $2m Loan Agreement must be rescinded on the basis of: (a) undue influence; (b) mistake; or (c) misrepresentation. In the alternative, even if the $2m Loan Agreement were not invalid or void, there has been: (a) a breach of the agreement; (b) a breach of trust; or (c) unjust enrichment. Further, the Plaintiff claims a caveatable interest in the Defendant's apartment at 13 Prome Road. [note: 50]

Defendant's case

28 The main thrust of the Defendant's case is that the parties' relationship had advanced to the stage where they were looking to start a family together. It is therefore unsurprising that the Plaintiff would have intended for the $2m to be a gift. The Defendant also relies heavily on a series of WeChat messages wherein the Plaintiff appeared to have declared or regarded various sums as gifts. [note: 51]

29 In relation to the sums advanced prior to the execution of the $2m Loan Agreement, the Defendant argues that they are incapable of forming part of the loan under the $2m Loan Agreement. [note: 52] This is because once given, an *inter vivos* gift is irrevocable. Further, acts done prior to and independent of a promise cannot be regarded as valid consideration for the promise. [note: 53]

30 The Defendant further submits that the $2m Loan Agreement is neither valid nor enforceable as the document was a "sham" to be used to: [note: 54]

(a) convince the Plaintiff's wife to agree to a divorce without taking shares in ST Paper Resources, by providing that the monies given to the Defendant previously were loans; and

(b) obtain the sum of $2m from the accounts department of the Plaintiff's company for the purchase of 9 Hillcrest Road.

31 The Defendant argues that even if the $2m Loan Agreement were valid, the Plaintiff had waived the loans or is estopped from enforcing the document. [note: 55] There is also an alternative argument that the $2m Loan Agreement was varied or discharged by subsequent agreement. [note: 56]

Relevant legal principles

32 For there to be a valid gift *inter vivos* two conditions need to be satisfied:

(a) the intention to gift; and

(b) delivery of the precise subject-matter of the gift.

These two conditions are clear from the authorities: Michael Bridge *et al*, *The Law of Personal Property* (Sweet & Maxwell, 2nd Ed, 2018) at para 17-001; *Lee Hiok Tng (in her personal capacity) v Lee Hiok Tng and another (executors and trustees of the estate of Lee Wee Nam, deceased) and others* [2001] 1 SLR(R) 771 at [35]; *Kumarappa Chettiar Son Of Raman Chettiar of Klang v The Federated Malay States* [1938] MLJ 9.

33 What matters is the intention of the donor. The mere fact that a recipient regards the thing given as a loan and intends to so treat it does not by itself prevent the transaction from being effective as a gift (*Halsbury's Laws of England* vol 52 (LexisNexis, 2014) at 201):

> A gift made between living persons (*inter vivos*) may be defined shortly as the transfer of any property from one person to another gratituously while the donor is alive and not in expectation of death. It is an act whereby something is voluntarily transferred from the true owner in possession to another person with the full intention that the thing shall not return to the donor. It has been said that there must be an intention on the part of the recipient to retain the thing entirely without restoring it to the giver, but it seems that this is incorrect and that a gift is effective when the donor intends to make it a gift and the recipient takes the thing given and keeps it, knowing that he has done so: *the mere fact that the recipient regards the thing given as a loan and intends so to treat it does not by itself prevent the transaction as being effective as a gift*.
>
> [emphasis added]

34 Once given, a donor cannot resile from his position and subsequently seek to convert a gift into a loan. This is because once there has been a voluntary transfer of a gift, and a full intention that the gift shall not return, the donor parts fully with the property: see *Chung Khin Chun K (by her deputy Mok Chiu Ling Hedy) v Yang Yin and others* [2015] 5 SLR 467 at [41]. The gift is no longer his to convert into a loan. As was noted by the English High Court in *Dr Giuseppe Franco v Dr Elena Sciaroni* [2002] 12 WLUK 348 at [79]:

> The fact that she now bitterly regrets having been so generous to the Claimant over so many years is understandable, but that cannot of itself alter the legal basis on which the money was *originally transferred*.

35 The key is to examine the original intention of the donor in transferring the property in question. A change of heart does not change the legal nature of the transaction. The difficulty in every case is in ascertaining the intention of the donor. This is especially so in the context of a romantic relationship. When a relationship comes to an end, it is scarcely surprising that a donor would seek to deny his gifts. But this should not detract from any original intention to gift. To complicate matters, things are often said and done informally in such a relationship and the language used may be imprecise. A court, therefore, has to be perspicacious in assessing the evidence, taking into account:

(a) the nature of the parties' relationship;

(b) the choice of words by the parties;

(c) the frequency of certain promises;

(d) the consistency of the a party's conduct with the promises made; and

(e) a party's means to make good the promises.

36 Can a loan be converted into a gift? It may, subject to certain conditions. As noted above, a loan is essentially a contract under which a sum has been transferred with the expectation that the sum be repaid. Where a loan is forgiven, there is forbearance. It is a waiver of a contractual right for which there must be a clear and unequivocal intention to that effect, along with fresh consideration: see *The Law of Contract in Singapore* (Andrew Phang BL, gen ed) (Academy Publishing, 2012) at para 18.056 and *Sean Wilken QC* and *Karim Ghaly*, *The Law of Waiver, Variation, and Estoppel* (Oxford University Press, 3rd Ed, 2012) at paras 4.28–4.29). Alternatively, where there is a representation that the loan will not be enforced, and the recipient relies on the representation and suffers detriment as a result, the borrower may be estopped from asserting his strict legal rights to the sum (*Aero-Gate Pte Ltd v Engen Marine Engineering Pte Ltd* [2013] 4 SLR 409 at [37]).

Whether gift or loan

37 Before answering this question I should make some observations about the case.

38 The Plaintiff has pleaded a whole host of vitiating factors in respect of the $2m Loan Agreement. If this court comes to the conclusion that the constituent sums in question were gifts, there would be no need to examine the vitiating factors in respect of those sums as the $2m Loan Agreement could not have converted a gift into a loan (see [34] above). Similarly, there can be no *Quistclose* trust if the sum were given as an outright gift. The Plaintiff would have no beneficial interest in the sum then.

39 I should also mention that while the Defendant argues that the Plaintiff is estopped from enforcing his strict legal rights (presumably on account of promissory estoppel), the Defendant did not plead material facts showing detriment. Indeed, the issue of detrimental reliance was not seriously, if at all, pursued at trial. The Defendant made an attempt at addressing detrimental reliance in her closing submissions but this is not enough, the point must be sufficiently pleaded. In any event, I am unpersuaded by her contention. She argues that as she trusted the Plaintiff, she did not insist on having the Plaintiff sign the Deed of Gift and that this constituted detrimental reliance. I fail to see what detriment the Defendant has suffered. The Defendant's decision to trust the Plaintiff was a personal choice. From the foregoing, it is sufficient for me to disregard the Defendant's arguments on estoppel.

Nature of the parties' relationship

40 I begin with a brief description of the parties' relationship as this is the backdrop to the various transactions that constitute the Plaintiff's claim.

41 While the parties' relationship did not last long, the Plaintiff accepts that during the time that they were together, the parties cared for and loved each other. [note: 57] He gave evidence that both parties were "wooing" each other. [note: 58] The Plaintiff, however, disputes the Defendant's evidence that the parties treated each other as husband and wife, wanted to start a family together and were looking to buy a matrimonial home. [note: 59]

42 The WeChat messages reveal a different story. Let me reproduce some of these messages to properly characterise the parties' relationship:

(a) On 1 January 2017, the Plaintiff told the Defendant: "I want to start a family with you and you can do many things after that". [note: 60]

(b) On 21 January 2017, in response to the Defendant's declaration that she wanted to be a successful career woman the Plaintiff said: "Yes, I can. I will help you" and added, "500,000 for giving birth to a girl and 10,000 for a boy so you can be a successful career woman". [note: 61]

(c) On 27 January 2017, in response to the Defendant's expressions of her unhappiness and her intention to return all the money the Plaintiff had given her, the Plaintiff told her the following:

(i) At 10.04pm: "My wife, don't be like this. I will give you happiness. Please give me a bit of time."

(ii) At 10.05pm: "Please believe me, okay?"

(iii) At 11.25pm: "You are very important to me. Money is not. Don't trouble your sister. I gave it to you. I love you because you can give me a bright future". [note: 62]

43 These are just some of the many messages exchanged between the parties. It is clear from some of the WeChat messages that the Plaintiff was impressed by the Defendant's success in her career. He thought of her as an intelligent woman who could support him in his own career. The Plaintiff frequently told the Defendant that he wanted to provide for her both financially and emotionally. As the relationship developed, the Plaintiff began addressing the Defendant as his "wife" and the parties often discussed having children together. The Plaintiff wanted to start a family with the Defendant and told the Defendant that he wanted to divorce his wife so that he could be with her. [note: 63]

44 One key point in contention is as to the events that transpired at the Temple and whether marriage vows were exchanged (see [13]). The Plaintiff denies having ever made those vows. This flies in the face of the contemporaneous evidence. On 27 January 2017, the Plaintiff had sent the Defendant the following text messages [note: 64]:

(a) At 11.43pm he said: "I have sworn to the Buddha Tooth Relic Temple. It can be my witness".

(b) At 11.51pm he declared: "I will definitely fulfil our promise".

45 These messages were in Chinese and had to be interpreted. At trial, it was clarified that the correct interpretation of the 11.43pm message is: [note: 65] "I have *sworn*. The Buddha Tooth Relic Temple can be my witness." [emphasis added]. The inference to be drawn from these messages is that the Plaintiff had indeed made vows at the Temple. After being confronted with the relevant WeChat messages during cross-examination, the Plaintiff's denials weakened, calling the vows, "promises". [note: 66] For instance, he accepted that he had "promised" the Defendant that he would set up a home with her. [note: 67] He also suggested that promises were given to the Defendant but not at the Temple. The evidence does not support him. I accept the Defendant's evidence that the

Plaintiff did promise to provide for her and had wanted to start a family with her. I also accept the Defendant's evidence that the Plaintiff had wanted to purchase a matrimonial home. I further find that by 25 January 2017, the Plaintiff had informed the Defendant that he intended to divorce his wife. The Defendant deposed that on 25 January 2017, the Plaintiff informed her that his wife had already engaged a divorce lawyer and asked her to help him find one as well. [note: 68] The Plaintiff initially denied this at trial. [note: 69] However, after further questioning, the Plaintiff eventually accepted the Defendant's evidence. [note: 70]

Sums transferred between December 2016 to March 2017

46 I turn now to consider whether the transfers adding up to the aggregate sum of $724,532 were gifts or loans. For convenience, the dates of the transactions and the amounts disbursed are reproduced below. I have also numbered each item in the table for ease of reference:

No.	Date disbursed	Mode of payment	Amount
1.	Around 19 December 2016	Cheque	$200,000
2.	28 December 2016	Tele-transfer	$20,000
3.	Around 28 December 2016	Cash	$20,000
4.	29 December 2016	Tele-transfer	$13,000
5.	3 January 2017	Cheque	$10,000
6.	6 January 2017	Cheque	$65,000
7.	6 January 2017	Cash	$35,000
8.	10 January 2017	Cheque	$50,000
9.	12 January 2017	Cheque	$150,000
10.	24 January 2017	Cheque	$82,000
11.	31 January 2017	Cheque	$158,532
12.	6 March 2017	Tele-transfer	$16,000
Total			**$819,532**

47 As stated above at [9], the Plaintiff is claiming $724,532 of the $819,532. The Plaintiff has further rounded down the claim amount to $724,000.

48 I find that the sum of $200,000 (item 1) is a loan. The sum was advanced to the Defendant to assist her in the acquisition of 315 Balestier Road. At the Defendant's suggestion, the parties entered into the $200,000 Loan Agreement. This is unsurprising because the parties had just met the month before. Although they met frequently thereafter, the Defendant had not accepted the Plaintiff as her lover yet and was thus unwilling to accept the amount as a gift. The Defendant does not dispute these facts. Her position, however, is that on the night of their first sexual encounter (see [6] above), the Plaintiff told her that the $200,000 was a gift and tore up the $200,000 Loan Agreement. [note: 71] She submits that by his actions, the Plaintiff had unequivocally evinced an intention to waive or discharge the $200,000 loan. [note: 72]

49 I disagree. First, there is some doubt whether the Plaintiff did inform the Defendant that he no longer regarded the $200,000 as a loan. The Plaintiff denies that he had torn up the $200,000 Loan Agreement. [note: 73] Moreover, despite the Defendant's submission that the Plaintiff had discharged the loan on 19 December 2016, [note: 74] in a document written by the Defendant dated 23 February 2017 showing a tabulation of sums received by the Defendant, she still referred to the $200,000 as a loan. [note: 75] . In any event, even assuming that the Plaintiff had indeed torn up the document and told the Defendant that the sum was a gift, no formal step was taken to release the Defendant from her obligations under the $200,000 Loan Agreement.

50 The Defendant further argues that the Plaintiff had elected to waive the $200,000 Loan Agreement as he intentionally chose not to claim the sum from the Defendant when it fell due. [note: 76] The $200,000 Loan Agreement provided that: [note: 77]

(a) The Defendant would repay the Plaintiff $100,000 four months from the date of the agreement (*ie*, 19 December 2016) and upon the sale of her Malaysian landed property.

(b) The balance $100,000 would be repaid "after one year when [the Defendant] sell[s] [#B1-30]".

The Defendant highlights that despite both tranches having fallen due, the Plaintiff took no step to enforce the loan. [note: 78]

51 In my view, the *mere* fact that the Plaintiff did not take *prompt action* to enforce the loan cannot be taken to constitute a waiver. What is required is a clear unequivocal intention that the sum is waived. There must be something more. Further, it is not as if the Plaintiff had completely failed to take any step to enforce the loan. On the Defendant's case, the first tranche of repayment fell due on 19 December 2016, the second tranche, on 9 January 2017. [note: 79] The letter of demand from the Plaintiff seeking the return of the $2m (which includes the $200,000) was sent on 13 June 2017. [note: 80] A period of approximately 6 months had lapsed before the Plaintiff demanded the return of his monies. This is not abandonment of his right to repayment.

52 As regards items 2 to 12, I find that they are gifts.

53 On the Plaintiff's own case, he had "loaned" the Defendant the sums because she needed to repay her "personal debts, including but not limited to her credit card debts". [note: 81] It is clear from the WeChat messages between December 2016 to March 2017 that the Plaintiff had wanted to help the Defendant with her debts (whether credit card arrears, personal loans or otherwise) and pay for her personal expenses. In addition to what I have stated at [42]–[44] above, I make the following points.

54 Around the time the sums were advanced, the Plaintiff consistently made promises of providing for the Defendant financially. Those were not empty promises. A clear example of this is the Plaintiff's WeChat message to the Defendant on 26 December 2016, where he told the Defendant that he would "take care" of her financial troubles. The Plaintiff admitted as much in his own evidence at trial: [note: 82]

Q: Can you take up the defendant's bundle of documents, which is the WeChat messages. … For the record, the messages were sent on 26 December 2016. …

…

Q: Here you are telling Ms Jiang that you will take care of her troubles yes?

A: Yes.

Q: And the troubles here refer to her financial obligations; correct?

A: Yes.

55 In a series of WeChat messages three days later (*ie* 29 December 2016), the Plaintiff asked for the Defendant's Citibank account number. When she refused to give him the account number, the Plaintiff insisted and told her that he would bear her debts as he saw them as a couple: [note: 83] "… I will feel upset if you don't give me. Darling, I will bear your financial debts with you since we are together. Give me your bank number quickly. I am outside the bank now".

56 I should also highlight that on 12 January 2017, the Plaintiff made several vows to the Defendant at the Temple, amongst which was the vow to provide for her financially. These overtures to take care of the Defendant's financial troubles, to bear her "financial debts" and the vows are significant because by 29 December 2016, the Plaintiff had learnt of the Defendant's financial situation. [note: 84]

57 Against the above backdrop, there were no WeChat messages from the Plaintiff where he suggested that the sums advanced to the Defendant were "loans", nor did he ever hint at repayment. Instead, the Plaintiff used words such as "gave" when speaking of money: [note: 85] "You are very important to me. Money is not. Don't trouble your sister. I gave it to you. I love you because you can give me a bright future". The Defendant also highlights various other sums of money that the Plaintiff advanced to her but are not part of the Plaintiff's claims. For instance, she brought up a $10,000 transfer that was made on 27 February 2017. [note: 86] I accept her evidence. One would expect the Plaintiff to track all the transfers he had made to the Defendant, and to distinguish between sums that were to be repaid and sums that were not if it were the case that he had been making loans to the Defendant. But the Plaintiff had not done so. The inference to be drawn is that the Plaintiff had freely and unconditionally gifted the sums. There was no intention to create an obligation to repay.

58 The parties delved into the details of each item and examined the reasons why each sum was advanced. It is not necessary for me to set out the details of each and every transaction. The Plaintiff has not pointed to any evidence deviating from the general tenor of the evidence that the sums were gifts. But in deference to the parties' arguments, I will highlight some of the transactions:

(a) In respect of item 2, the Defendant deposes that the sum of $20,000 was transferred to her on 28 December 2016 for her living expenses and a gift for her family members. [note: 87]

(b) In respect of item 3, the Defendant deposes that the cash sum was given to her on or around 22 December 2016 for her living expenses and to rent a studio apartment. [note: 88] I accept the Defendant's evidence. At the trial, the Defendant drew my attention to photographs she had sent to the Plaintiff on 23 December 2016 of apartments she had viewed. She testified that the money was transferred to her on 22 December 2016, and she went to look for an apartment the day after. [note: 89] The messages exchanged between the parties that day showed a discussion about the search for a "home". [note: 90] The Plaintiff submits that items 2

and 3 were advanced as a loan to help the Defendant pay her credit card dues. [note: 91]

(c) The Defendant deposes that Item 4 was for the purpose of paying off her credit card bills. [note: 92] I am satisfied, based on the analysis, that items 2, 3 and 4 were gifts. There were no WeChat messages from the Plaintiff even hinting at any form of repayment. Critically, item 4 was a transfer made on 29 December 2016. I have referred to the relevant WeChat messages at [55] where the Plaintiff insisted on the Defendant giving him her account details so that he could bear her "financial debts".

(d) In respect of item 5, this was a cheque for $10,000 made out to Savills Residential Pte Ltd. [note: 93] On 29 December 2016, the Defendant sent an audio message to the Plaintiff where, according to the court interpreter, the Defendant had said: "Dear… I had sold my condominium and I still owe them $10,000 in agent's fees. Could you please issue a cheque and send it to them?". [note: 94] This message came after the Plaintiff told the Defendant that he would take care of her financial "troubles" (see message dated 26 December 2016 at [55] above) and wanted to bear her financial debts (see message dated 29 December 2016 at [55] above). Indeed immediately after the Plaintiff's promise to bear the Defendant's "financial debts", the Defendant sent the Plaintiff a list of debts she owed various banks and requested for the $10,000. In the messages that followed, the Plaintiff told the Defendant: "I will help you to pay Citibank $5000 and another $1000. Then I have also paid $5000 for DBS and $3000 for OCBC" [note: 95]. The Plaintiff also asked for the details for the $10,000 payment (such as the payee's name) [note: 96]. In the circumstances, I conclude that the $10,000 was a gift. The Defendant had taken the Plaintiff up on his promise to bear her "financial debts".

59 The Plaintiff submits that there were no *specific* WeChat messages from the Plaintiff stating *categorically* that a *particular* payment was a gift. [note: 97] This was a point counsel for the Plaintiff had consistently sought to demonstrate at trial. [note: 98] While the WeChat messages were instructive in shedding light on the extent of the parties' relationship and the intention behind the advances, it is artificial to expect the parties to carefully record each transaction in the form of a text message and categorically label the sum as either a gift or a loan. The general tenor of the WeChat messages was that the sums were gifts. The Plaintiff has not been able to point to any objective evidence otherwise. Unless there is something to indicate that a particular transaction may not be a gift, as in the case of item 1 (*ie*, the $200,000 loan), the inference that the sums are gifts remains unrebutted.

60 I make a simple observation at this point. In the Plaintiff's mind, both parties were actively courting each other. Would a man hot in the pursuit of a lady's heart offer to lend her sums of money or is it more likely that the sums were gifts to win her heart? This is more so when the parties were looking to start a life together. To quote the Hong Kong District Court in *Yeung Nga Lai v Tang Chun Lok* [2018] HKDC 264 at [33]:

> In terms of inherent probabilities, there was not much benefit for the plaintiff to create [a] creditor-debtor relationship with her husband-to-be at the time when they were busily preparing for their forthcoming marriage.

61 The Plaintiff further submits that the Defendant herself had mentioned that she would return the monies to the Plaintiff. [note: 99] Just because the Defendant said that she would return the sum does not mean that this was done pursuant to an obligation to repay. It can equally be said that the Defendant was rejecting the gift. The Plaintiff highlighted three particular messages in his closing

submissions. [note: 100] The first is a message dated 27 January 2017 where the Defendant said: "Don't buy the house anymore. I will return you all the money you gave me within 3 months. Sorry. I am so agonised now." The second is a message also dated 27 January 2017, where the Defendant stated: "I return you the money, I will be relieved." The third is a message dated 28 January 2017, where the Defendant stated: [note: 101] "I will return the money that I owe you as soon as possible. Don't worry."

62 There is a context to the Defendant's messages. In those text messages, the Defendant began expressing doubts and grief about being together with a married man. She threatened to return the monies as a sign of breaking up. In respect of the messages dated 27 January 2017, the Defendant told the Plaintiff that she could not "do this", presumably referring to their relationship, and wanted to return home to her family. [note: 102] In respect of the message dated 28 January 2017, the message highlighted by the Plaintiff was preceded by her saying: "My older sister has already scolded me. I have come to my senses. I can't allow a married couple to hurt me any more. All my words are from the bottom of my heart and they are the truth, unlike you."

63 In this connection, the parties disagreed over the authenticity of certain WeChat messages purportedly photographed by the Plaintiff's wife. Those messages sought to show that the Defendant herself had thought the sums to have been loans or had suggested repayment. While some of the messages appear in the Defendant's phone, the Defendant claims that the rest of the messages were fabricated. Experts were called to testify on the point. In my view, none of that was necessary. Taking the Plaintiff's case at its highest and assuming that the WeChat messages that were photographed were authentic, these messages would not have changed my analysis above. The short point is this – regardless of the Defendant's characterisation of the nature of the various sums, the overwhelming evidence points to the Plaintiff's intention to gift the sums in question to the Defendant. What matters is the donor's intention and not that of the recipient (see [35] above).

64 Finally, the Plaintiff relies heavily on the $2m Loan Agreement to contend that the aggregate sum of $724,532 is a loan. I have already found that item 1 (*ie*, $200,000) is a loan by virtue of the $200,000 Loan Agreement but items 2 to 12 are gifts. To the extent that the Plaintiff is arguing that items 2 to 12 are loans because of the $2m Loan Agreement, the argument must fail. The law is as stated above at [34]. Having freely gifted the sums, the $2m Loan Agreement cannot convert what were originally intended as gifts into loans.

9 Hillcrest Road and the $2m Loan Agreement

65 Apart from the $724,532 (claim rounded down to $724,000) which I have dealt with, there remain the following sums to consider:

(a) the $154,000, equivalent to 5% of the purchase price of 9 Hillcrest Road which the Plaintiff paid in two transactions;

(b) the $250,000 that was advanced to the Defendant during the negotiation of the $2m Loan Agreement; and

(c) the $872,000 that was handed to the Defendant on the day the $2m Loan Agreement was signed.

$154,000 deposit for 9 Hillcrest Road

66 I will now set out the narrative surrounding 9 Hillcrest Road and the $2m Loan Agreement in

greater detail. The Plaintiff's evidence on these matters was scant. Most of the particulars relating to 9 Hillcrest Road and the $2m Loan Agreement came from the Defendant.

67 According to the Plaintiff, the Defendant was looking to invest in property and brought him to view properties she was interested in. The Defendant eventually decided on 9 Hillcrest Road and proposed that he extend a loan of $2m to her for the purchase of the property. The $154,000 was 5% of the purchase price of the property. It was meant to be the deposit. [note: 103]

68 According to the Defendant, the $154,000 was a gift as 9 Hillcrest Road was bought for her and it was intended to be the parties' matrimonial home. As will be recalled, on 25 January 2017, the Plaintiff decided to forfeit the option fee for 3H Hillcrest Road and to purchase 9 Hillcrest Road instead. [note: 104] The purchase price for 9 Hillcrest Road was $3,080,000. [note: 105] It was agreed that 9 Hillcrest Road would be purchased in the Defendant's name as the Plaintiff did not want the property to be part of the matrimonial assets for division in the intended divorce with his wife. [note: 106] On 26 January 2017, the Plantiff issued a cheque for $30,800, this being 1% of the purchase price (the option fee). [note: 107]

69 The purchase, however, did not progress smoothly. The parties had difficulty obtaining the funds to complete the purchase of the property. This was because the Plaintiff's wife had discovered the parties' relationship and had taken steps to prevent the Plaintiff from obtaining loans from his company to fund the purchase. [note: 108] There were several occasions when the Defendant had to speak to the Plaintiff about completing the purchase of the property.

70 On 7 February 2017, the Defendant asked the Plaintiff if he intended to complete the purchase of 9 Hillcrest Road. She suggested that the Plaintiff could loan her a sum of $1m towards the purchase of the property. She proposed repayment to be made in monthly instalments. This suggestion was rejected. According to the Defendant, the Plaintiff rejected the suggestion as he did not want her to owe him any money. [note: 109]

71 On 16 February 2017, the Defendant again asked the Plaintiff if the purchase of 9 Hillcrest Road should continue. If the option were exercised, there remained the 4% of the purchase price to be paid (5% of the purchase price being the deposit). The Plaintiff told her to go ahead with the purchase. As it transpired, the Plaintiff passed a cheque for $123,200 to the Defendant's solicitor who was overseeing the purchase of the property, who in turn handed the cheque to the Defendant. Upon receiving the cheque, the Defendant signed the "Acceptance Copy" of the Option to Purchase for 9 Hillcrest Road. The completion date for the purchase of 9 Hillcrest Road was fixed as 11 May 2017. [note: 110]

72 The aforementioned cheque for $123,200 (dated 16 February 2017) was later sent to the vendor's solicitors. But by a letter dated 22 February 2017, the vendor's solicitors informed the Defendant's solicitor that the cheque for $123,200 had been countermanded. The vendor demanded payment within the next seven days and threatened legal proceedings against the Defendant and/or the Plaintiff. [note: 111]

73 Digressing a little, there were a number of occasions when the Plaintiff's cheques were dishonoured on presentation. Apart from the cheque for $123,200 (dated 16 February 2017), the Plaintiff issued two other cheques for $500,000 (dated 25 January 2017) and $620,000 (2 February 2017). [note: 112] It emerged at trial that the cheques were dishonoured because the Plaintiff's wife

had found out about the relationship. [note: 113] There was some dispute as to when the wife knew of the Plaintiff's relationship with the Defendant. She claimed that her knowledge of the relationship came about only in March 2017. [note: 114] This was an afterthought. The Plaintiff's AEIC states clearly that: [note: 115] " … on or about 27 January 2017, my wife discovered the relationship between the Defendant and I." Further, it is undisputed that the Plaintiff's wife called the Defendant in January 2017, and told the Defendant to leave the Plaintiff. In addition, there was talk about divorce in January 2017, probably because the wife had discovered the relationship [note: 116].

74 On 24 February 2017, the Defendant sought consent from the vendor to change the name of the purchaser. The vendor agreed and so the Defendant suggested to the Plaintiff to change the purchaser's name to one of the Plaintiff's sons, or to the Plaintiff himself. The Plaintiff, however, rejected this suggestion. [note: 117]

75 The Defendant then suggested to convert the Plaintiff's contribution of $2m (*ie*, the balance capital outlay) into a 30% stake in 9 Hillcrest Road and a 20% stake in her apartment at 13 Prome Road. This was so that he could justify taking $2m from his company. The Plaintiff, however, rejected this suggestion, saying that he did not want to be seen as taking advantage of the Defendant. [note: 118]

76 On 27 February 2017, the Plaintiff passed the Defendant a cash cheque for $123,200 to pay the vendor; [note: 119] this being the remaining 4% of the purchase price which together with the 1% option fee would constitute the 5% deposit for exercise of the option.

77 Coming back to the issue at hand, the Plaintiff's claim for $154,000 is for the deposit for the purchase of 9 Hillcrest Road (*ie*, the cheque for $30,800 issued on 26 January 2017 and the cheque for $123,200 issued on 27 February 2017). [note: 120]

78 I do not accept the Plaintiff's evidence that 9 Hillcrest Road was the Defendant's investment property and that she asked for a loan from him. With the exception of the $200,000 loan (the 1st transfer) before the parties became intimate, the various sums transferred have all along been gifts. Nothing in the evidence suggests that the sum of $154,000 is to be regarded as anything but a gift. Further, as stated above, the parties were looking to purchase a matrimonial home at the material time. Indeed, on 24 December 2016 the Plaintiff texted the Defendant the following: "My goal is to buy a house near NTU for you next year". In response, the Defendant said: "Hillcrest Villa, our home". And the Plaintiff said, "Yes". Early next year, on 12 January 2017, the parties went to the Temple and engraved their names on an ancestral tablet. The Plaintiff vowed then to buy a house for the Defendant and to set up a home with her. That same day, they decided to buy a property at 3H Hillcrest Road and paid an option fee for the same. However, they later forfeited the option fee when they chose to purchase 9 Hillcrest Road instead on 25 January 2017.

79 It will be recalled that the Defendant had made several proposals to facilitate the completion of the purchase of 9 Hillcrest Road. This was because the Plaintiff had apparently run into difficulties obtaining the necessary money from his company. The Plaintiff does not dispute the fact that he had rejected at least two of the Defendant's proposals. Notably, he does not dispute that he rejected the Defendant's proposal to convert the Plaintiff's proposed contribution of $2m into a 30% stake in 9 Hillcrest Road and a 20% stake in her apartment at 13 Prome Road as he did not want to be seen as taking advantage of her. Indeed, in a corresponding WeChat message, the Plaintiff had said: "To conclude, I will remain the same towards you". [note: 121] In the circumstances, it is more probable

than not that the payment of the $154,000 deposit was a gift. The Plaintiff did not intend to create a creditor-debtor relationship but had instead intended to purchase a matrimonial home for the Defendant.

80 I further note that the Plaintiff is not claiming repayment of the $28,300 option fee that the parties forfeited when they decided not to proceed with purchasing 3H Hillcrest Road. The fact that the Plaintiff is claiming repayment of the $154,000 deposit for 9 Hillcrest but not the $28,300 for 3H Hillcrest Road is somewhat incongruous. If the Plaintiff had been advancing loans to the Defendant to purchase property for investment, it stands to reason that the sum of $28,300 would also have featured as part of his claims. This is especially so since both $28,300 and $154,000 were paid in respect of properties that were viewed around the same time and were, according to the Plaintiff's statement in his AEIC, part of the Defendant's investment plans: [note: 122] "At the Defendant's request, on or about 12 January 2017, I issued a cheque for $28,300 to the Defendant for her investment in 3H Hillcrest Road." The Plaintiff was queried on this at trial [note: 123]:

MR RAI:	… Coming back to page 20, 96b, is the amount of $28,300. Ms Jiang said you issued that cheque to buy Hillcrest as your common home; right? But you say in your answer earlier that it is a loan. Do you recall that answer?
A:	Yes, and I recall that it was a loan to her.
Q:	In this suit you haven't claimed for this amount; okay? … And that's because this amount was gifted away; correct?
A:	This amount was missed out when the final accounts were settled. It was missed out.

81 The Plaintiff's explanation that the sum was missed out in the final accounts was plainly an afterthought. The Plaintiff's own AEIC highlighted the sum.

82 In conclusion, I find that the $154,000 was not a loan but a gift.

The $2m Loan Agreement and $250, 000 disbursement

83 Continuing with the narrative, the idea of a loan document arose sometime in February 2017. According to the Defendant, in or around February 2017, the Plaintiff told her that his wife was preventing him from taking money from his companies and was also making it difficult for him to divorce her. He also said that his wife had been spreading word in his office that he had been so blinded by love that he had given away large sums of money. She had also insisted that to be fair to her, the Plaintiff had to transfer 10% of his shares in ST Paper to her, failing which she would not agree to an unconstested divorce. [note: 124] The Plaintiff therefore suggested that the parties entered into a written loan agreement. According to the Defendant, the Plaintiff had said that the document would "only be a ploy" to: [note: 125]

(a) show his wife that he had merely lent money to the Defendant;

(b) show the accounts department of his company (presumably ST Paper) to obtain $2m from the company; and

(c) improve his image and standing in front of his family and friends.

84 The Defendant further added that the Plaintiff had assured her that he would not enforce the agreement or sue her for the $2m.

85 On 27 February 2017, the Defendant instructed Mr Christopher Yong ("Mr Yong") of Legal Solutions LLC ("Legal Solutions") to prepare a formal written agreement. This document as amended would later come to be the $2m Loan Agreement. [note: 126] There were several drafts of the $2m Loan Agreement. This is undisputed.

86 The first draft was for a sum of $2m, with no mention of the various sums previously transferred to the Defendant which the Plaintiff now asserts were loans. According to the Defendant, she initially instructed Mr Yong to include the following clauses in the first draft: [note: 127]

(a) the Defendant is to repay the $2m loan free of interest or any capital gain if she were to sell 13 Prome Road;

(b) the Plaintiff is entitled to register as a tenant-in-common of 13 Prome Road if 13 Prome Road were not sold within 5 years from the date of the loan agreement;

(c) the Plaintiff's share in 13 Prome Road will be $2m out of the prevailing market value of the property according to the highest bank valuation obtained at that time;

(d) the sum of $2m will be considered a gift to the Defendant if the Plaintiff did not divorce his wife within one year from the date of the loan agreement;

(e) the sum of $2m will also be considered a gift to the Defendant if the Plaintiff initiated a break-up with her; and

(f) if the Defendant decides to break up with the Plaintiff, the Plaintiff will be entitled to either the immediate repayment of $2m or have his proportionate share in 13 Prome Road Registered in his name, at his election.

87 Terms (d) to (f) were eventually left out of the first draft. On 4 March 2017, the Defendant sent the first draft of the $2m Loan Agreement to the Plaintiff. [note: 128]

88 The Plaintiff appointed Ms Pamela Chong ("Ms Chong") of Infinitus Law Corporation ("Infinitus") to act for him. On 14 March 2017, Ms Chong sent a revised draft of the $2m Loan Agreement (hereinafter referred to as "the 14 March Draft"). The amended clauses include: [note: 129]

(a) the "Redemption Date" which was defined as five years from the date of disbursement or upon the occurrence of an event of default;

(b) clause 2.2 which provided that of the $2m total loan facility, $1m had already been disbursed to the Defendant in 2017;

(c) clause 2.4 which provided that the purpose of the loan was for the purchase of 9 Hillcrest Road;

(d) clause 3.1 which gave the Plaintiff a right of first refusal over the sale of 13 Prome Road;

(e) clause 3.2 which entitled the Plaintiff to be included as a tenant-in-common of 13 Prome Road in the event that the Defendant failed to repay the loan;

(f) clause 3.3 which gave the Plaintiff the right to compel sale of 13 Prome Road to himself if the loan was not repaid; and

(g) clause 3.5 which provided that upon the sale of 13 Prome Road, the sum of $2m would be deducted from the sale proceeds and repaid to the Plaintiff.

89 According to the Defendant, she did not agree to those terms as in effect it would mean that she would only receive $1m from the Plaintiff. Moreover, the $2m Loan Agreement was not meant to reflect the gifted sums. As such, the Defendant spoke to the Plaintiff about it on 20 March 2017. She claims that the Plaintiff told her that: [note: 130]

(a) his wife had found out about the exact amounts of money the Plaintiff had given her through the help of one of the Defendant's tenants at 13 Prome Road;

(b) that tenant was aware of the relationship and had bribed the Defendant's domestic helper to steal the Defendant's bank books to show to the Plaintiff's wife;

(c) the plaintiff's wife was extremely unhappy and/or jealous that despite their marriage of over 10 years, the Plaintiff was only willing to give her $3m and two properties; and

(d) the plaintiff's wife insisted on having 20% of the share capital in ST Paper before she would agree to a divorce, amongst other things.

90 The Plaintiff explained that in order to convince his family, friends and/or employees that her love for him was genuine, the $2m Loan Agreement had to state that the monies given to her previously were part of the $2m loan. [note: 131] The Plaintiff was also said to have assured the Defendant that if she agreed to his proposal, he would: [note: 132]

(a) provide the Defendant with the full sum of $2m before the completion date for the purchase of 9 Hillcrest Road on 11 May 2017 notwithstanding the terms of the $2m Loan Agreement;

(b) transfer $250,000 to the Defendant to deposit into her Citibank account, so that she could upgrade to become a Citigold priority banking customer and obtain a bank loan for $1.54m to complete the purchase of 9 Hillcrest; and

(c) pay the monthly instalments on the housing loan.

91 The Plaintiff thereafter issued a cheque dated 21 March 2017 for $250,000 to the Defendant [note: 133].

92 The Plaintiff's evidence on the sum of $250,000, on the other hand, is that he advanced a sum of $250,000 to the Defendant at her request on or about 21 March 2017. The Defendant informed him that she needed $1m to be deposited in her bank account to obtain a loan to finance the purchase of 9 Hillcrest Road. The Plaintiff informed her that he could only advance $250,000 and would release the remaining sum to her later. Thus, a cheque for the sum of $250,000 was issued in favour of the Defendant. [note: 134]

93 On 21 March 2017, Legal Solutions issued a letter to Infinitus setting out the following (hereinafter referred to as "the Defendant's Proposed Terms"): [note: 135]

(a) of the loan facility, the sum of $1.128m had already been advanced to the Defendant, while the balance sum of $872,000 was to be paid upon signing of the $2m Loan Agreement;

(b) the loan facility was to be repaid within 10 years from the execution of the $2m Loan Agreement;

(c) the Plaintiff was to have the right of first refusal if the Defendant wished to sell 13 Prome Road; and

(d) the purpose of the loan facility was to purchase 9 Hillcrest. The Plaintiff would not be entitled to any income or capital gains on either 9 Hillcrest or 13 Prome Road.

94 On 23 March 2017, Infinitus sent an email to Legal Solutions stating that the Plaintiff was not agreeable to the Defendant's Proposed Terms in the 21 March 2017 letter. Instead, the Plaintiff wanted the Defendant to sign his proposed amended version of the $2m Loan Agreement, which was similar to the 14 March Draft save for the following: [note: 136]

(a) of the loan facility, the sum of $1.128m had already been advanced to the Defendant, while the balance sum of $872,000 was to be paid upon signing of the $2m Loan Agreement; and

(b) there was to be an additional cl 3.6 which gave the Plaintiff the right to lodge a caveat on 13 Prome Road.

The letter also stated that the Plaintiff wanted to have the $2m Loan Agreement signed by 31 March 2017.

95 The Defendant called the Plaintiff and protested that this was not what had been agreed. The Plaintiff explained to her that Ms Chong of Infinitus was simply doing her job as his lawyer and was trying to protect his rights since he had not informed Ms Chong that the $2m Loan Agreement was meant to "assuage" his wife. After some discussion between the parties, it was agreed that the $2m Loan Agreement would contain the Defendant's Proposed Terms and an additional Redemption Clause stating that in the event that the Plaintiff passed away before the Defendant repaid the sum of $2m, the loan facility would be deemed fully repaid. This Redemption Clause was included because the Plaintiff was suffering from stomach cancer and according to the Defendant, the Plaintiff suggested this clause so that his wife would not be able to make any claims against the Defendant in the event of his death. [note: 137] The clause giving the Plaintiff the right to lodge a caveat was left out. [note: 138]

96 Save for the motivations behind the $2m Loan Agreement and the proposed changes in the various drafts, as well as any purported assurances or promises the Plaintiff was said to have made, the Plaintiff does not dispute the events that occurred. Indeed, there was little room for debate in the light of the letters and drafts that were adduced.

97 The $2m Loan Agreement was eventually signed on 24 March 2017. The Plaintiff was unaccompanied by his lawyers. According to the Defendant, when Mr Yong of Legal Solutions told the Plaintiff that he could not communicate with the Plaintiff in the absence of the Plaintiff's lawyers, the Plaintiff informed Mr Yong that he had discharged his lawyers as he considered the $2m Loan

Agreement to be a private matter between the Defendant and himself. [note: 139]

98 Mr Yong told the Plaintiff that he could not act for the Plaintiff or witness the signing because he was already acting for the Defendant. If the Plaintiff wished to sign the Loan Agreement, he could do so before a Commissioner for Oaths. The Plaintiff was therefore brought to a Commissioner for Oaths at JLC Advisors LLP. The Plaintiff was accompanied by the Defendant and Mr Yong's secretary, Ms Ong Hsiao Li ("Ms Ong"). After signing the $2m Loan Agreement, the Plaintiff handed the Defendant a cheque for $872,000. [note: 140].

99 According to the Plaintiff, on the morning of 24 March 2017 before the signing of the $2m Loan Agreement, the Defendant informed him over the telephone that she had instructed her lawyers to incorporate all the terms of the draft loan agreement sent under cover of Ms Chong's email dated 23 March 2017 (see [94] above). He agreed to sign the loan agreement but owing to the shortness of time and in reliance upon the representations made by the Defendant, the Plaintiff claims to have been under the mistaken belief that the loan agreement he signed was what Ms Chong had amended and advised him on. [note: 141] The Plaintiff deposed that he was neither proficient nor conversant in English and could not fully appreciate the terms of the loan agreement that he signed. He placed heavy reliance on what the Defendant told him. [note: 142]

100 In the event, the purchase of 9 Hillcrest Road was never completed. The Defendant appears to give two accounts for this. In one part of her AEIC, the Defendant deposed that on 5 April 2017, the Plaintiff informed her that he was unable to obtain the balance sum of $1.128m (therefore the balance which together with the $872,000 already transferred would add up to $2 million) to pay for 9 Hillcrest Road. The Plaintiff therefore told the Defendant not to proceed with the purchase of 9 Hillcrest Road. [note: 143] In another part of the Defendant's AEIC, she deposed that on or around 26 March 2017, her Citibank agent informed her that the deposit of $250,000 was not enough for her to obtain a loan of $1.54m, and that she would either have to pledge a sum of $880,000 or "show funds of $2.89m". Since the Plaintiff had neither given the Defendant the sum of $2m nor the sum of $2.89m needed for the bank loan, the Defendant could not afford to purchase 9 Hillcrest Road. On 31 March 2017, the Defendant's solicitors therefore wrote to the vendor's solicitors stating that she was unable to proceed with the purchase of the property. [note: 144]

Were the amounts of $250,000 and $872,000 loans or gifts?

101 The Plaintiff relies on the $2m Loan Agreement to contend that both sums (*inter alia*) were loans made to the Defendant. According to him, the $2m Loan Agreement came about because the Defendant wanted to purchase 9 Hillcrest Road for investment purposes. The Defendant, on the other hand, says that the $2m Loan Agreement was a sham and that the parties had come to a separate private arrangement regarding the financing for 9 Hillcrest Road.

102 As noted earlier at [83] and [84], the Defendant alleged that when the idea of a loan agreement was first brought up by the Plaintiff, he had said that the document would be "only a ploy" (to show his wife that he had merely lent money to the Defendant) and that he would not sue her for the $2 million. Under cross-examination, the Plaintiff denied that it was a "ploy" but agreed that there was an understanding between the parties that he would not enforce the $2m Loan Agreement against her [note: 145].

103 What are we to make of the $2m Loan Agreement which appears complete on its face?

104 The principles to be applied in the interpretation of contracts are well-established. One starts by looking at the text of the written agreement, but it is permissible to consider the relevant context if it is clear, obvious and known to both parties: *CIFG Special Assets Capital I Ltd (formerly known as Diamond Kendall Ltd) v Ong Puay Koon and others and another appeal* [2018] 1 SLR 170 at [19].

105 The purpose of reference to such context is so that the court is placed in the best possible position to ascertain the parties' objective intentions by interpreting the expressions used by the parties in the agreement in their proper context: *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 at [72].

106 Reference to such context is admissible not only to resolve ambiguity but so as to establish whether there is ambiguity to begin with: *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR (R) 1029 at [52] and [114] to [121]. Note however, the important caution in [122] where the CA stated:

> "One qualification to our endorsement of the contextual approach, must, however, be made. In the light of the continued robustness of the parol evidence rule in our law, the courts must remain ever vigilant to ensure that, in interpreting a contract, extrinsic evidence is only employed to illuminate the contractual language and not as a pretext to contradict or vary it."

107 The plain language of the $2m Loan Agreement supports the Plaintiff's contention. It refers to the parties as "Lender" and "Borrower". Clause 2 refers to the "Loan Facility of Singapore Dollars Two Million" out of which "the Lender has advanced…(S$1,128,000)" and the balance of which "will be disbursed to the Borrower after the execution of this Agreement….for the amount of….(S$872,000)". It appears complete on its face and there is no suggestion of any ambiguity [note: 146].

108 It is important to note that the parties were legally represented in the preparation of the $2m Loan Agreement. Proposals and counter-proposals of terms in seeming earnest through solicitors would not have been necessary if the $2m Loan Agreement was intended to be only a "ploy". This context is clear, obvious and known to both parties and it favours an objective interpretation of the $2m Loan Agreement according to its plain meaning.

109 The parties' intention is thus to be found in the language of the $2m Loan Agreement; evidence of their actual intentions or expectations before or at the time of the contract cannot be adduced to contradict the written document save where rectification is sought. The parol evidence rule begins with s93 of the Evidence Act (Cap 97, 1997 Rev Ed) (the "Evidence Act"). Section 94 further provides that where the contract is reduced to writing such that s93 applies, no evidence of any oral agreement or statement can be relied upon by the parties "for the purpose of contradicting, varying, adding to, or subtracting from its terms subject to provisos (a) to (f)".

110 The Defendant's evidence that the $2m Loan Agreement was just a "ploy" is difficult to believe. How such an agreement could have been thought capable of achieving the alleged objectives set out in [83] is doubtful, to say the least.

111 In any event and more importantly, such evidence cannot be allowed to contradict the terms of the $2m Loan Agreement.

112 I should add that the objective ascertainment of the parties' intentions is especially important where a third party has to rely on its terms. We have seen that clause 4 of the $2m Loan Agreement provides that if the Lender should die before the Redemption Date, the loan shall be deemed fully repaid. This is so that the Plaintiff's estate (likely represented by his widow) will not be able to

proceed against the Defendant. If the Plaintiff were to die after the Redemption Date, or after the Defendant had sold her property at 13 Prome Road, repayment would fall due under Clause 3.1 of the $2m Loan Agreement and the Plaintiff's estate would be entitled to full repayment. The widow would not be privy to the alleged intention of the parties that the $2m Loan Agreement was only a ploy and a sham. In the words of Doherty J.A. in *Dumbrell v The Regional Group of Companies Inc* 85 OR(3d) 616 at [50]:

> "… emphasis on subjective intention denudes the contractual arrangement of the certainty that reducing an arrangement to writing was intended to achieve. This is particularly important where, as is often the case, strangers to the contract must rely on its terms. They have no way of discerning the actual intention of the parties, but must rely on the intent expressed in the written words."

113 Even if it was argued that the understanding between the parties (that the Plaintiff would not enforce the $2m Loan Agreement against her) was a collateral agreement, this would not assist the Defendant. Since evidence of such a collateral agreement would be inconsistent with the terms of the $2m Loan Agreement, it would be inadmissible under s 94*(b)* of the Evidence Act:see *Latham Scott v Credit Suisse First Boston* [2000] 2 SLR(R) 30 at [21]; also see *Ng Lay Choo Marion v Lok Lai Oi* [1995] 3 SLR(R) 77 at [14] and [15]. Neither does it fall within s94*(d)* because the alleged collateral agreement would have arisen before and not subsequent to the $2m Loan Agreement.

114 The Defendant raised a further submission that the outstanding loan under the $2m Loan Agreement was a gift by subsequent agreement relying upon certain WeChat messages the Plaintiff sent her after the $2m Loan Agreement was signed.

115 First, there was a message on 25 April 2017, in which the Plaintiff texted [note: 147] :

> "I am fine, don't worry. Please tell Lawyer Yong to cancel the agreement for the $2 million. I will sign when I return."

116 After receipt of the above message, the Defendant instructed Mr Yong on 27 April 2017 to amend a 1st draft of a Deed of Gift, which he had earlier prepared on her instructions after she had lent $150,000 to the Plaintiff. (That earlier draft was meant to record her loan of $150,000 to the Plaintiff but had an additional provision that if he defaulted in repaying the same, then all of the loan facility of $2 million under the $2m Loan Agreement would be deemed irrevocably a gift to the Defendant.) In my view, implicit in this draft was an admission that the facility under the $2m Loan Agreement was indeed in relation to a loan.

117 The same admission is evident in an audio recording sent by the Defendant to the Plaintiff on 3 April 2017 in which she informed him of her intention to prepare a formal agreement recording her loan of $150,000 to him. In that recording, she told the Plaintiff [note: 148] :

> "One thing at a time, you promised you will return $150,000 to me by 15 May, so you have to make an oath to say that you will return $150,000 to me in May. If not, the [contract where you lent me $2 million previously] will be gone."
>
> [emphasis added]

118 The 2nd draft of the Deed of Gift provided an outright gift of $1,850,000, after setting off the $150,000 that the Defendant had lent to the Plaintiff against the $2m loan under the $2m Loan

Agreement [note: 149].

119 The Defendant gave further instructions yet again after she received the 2nd draft and told Mr Yong to prepare a 3rd draft which provided an outright gift of $2m under the $2m Loan Agreement, with no account being taken of the $150,000 she had lent [note: 150].

120 Coincidentally, on the same day (27 April 2017) that she gave instructions for preparation of the 3rd draft, the Plaintiff sent her another WeChat message stating [note: 151]:

> "I have given you $2 million as a gift, don't talk about it anymore."

121 None of the three drafts of the Deed of Gift was ever executed by the Plaintiff [note: 152]. I disagree with the Defendant's submission that this omission was immaterial. For the Plaintiff to be bound by his declaration that he would not enforce his rights there has either to be consideration furnished by the Defendant or else the Plaintiff's promise must be made under seal. This must have been the intent behind the drafts of the Deed of Gift. (I will deal with the question of consideration later).

122 I would go on to observe that the fact that drafts of the Deed of Gift were prepared is evidence that the Defendant herself recognised that in the absence of such Deed, the Loan Agreement was enforceable. In particular, recital B of the 3rd draft stated [note: 153]:

> "As at the date of this Deed, the [Plaintiff] desires to gift the entire Loan Amount of S$2,000,000 to the [Defendant]…."
>
> [emphasis added]

Clause 1 accordingly provided:

> "The Donor hereby gifts…."
>
> [emphasis added]

123 Therefore, unless and until the Deed was executed, the loan remained extant and undischarged.

124 Unlike the Defendant, I place no weight on Mr. Yong's curious statement that the 3rd draft of the Deed of Gift accurately reflected the parties' intention at the time the Loan Agreement was entered into [note: 154], not least because of the parol evidence rule.

125 I now return to the question of consideration.

126 Counsel for the Defendant sought to contend that the Defendant had furnished consideration for gift by subsequent agreement in a short paragraph in the closing submissions as follows [note: 155]:

> "The subsequent mutual agreement between the parties was supported by consideration of:
>
> (a) The Defendant foregoing(sic) the transfer of the remaining sum of S$1,128,000 from

the Plaintiff to herself; and/or

(b) The Defendant's pregnancy with the Plaintiff's child."

127 Item (b) can be shortly dealt with. On the Defendant's own evidence in her AEIC [note: 156], a reward of $2 million would be given to her for giving birth to a daughter. Contrary to what her counsel submitted, the reward was not for a pregnancy but for the birth of a daughter. This did not happen as she had a miscarriage.

128 As regards (a), the reasoning behind the paragraph in the Defendant's closing submissions set out at [127] is somewhat convoluted. The evidence of the Defendant, as set out in [90] was that in the course of persuading her to execute the $2m Loan Agreement, the Plaintiff had assured her that if she agreed to his proposal:

(a) he would provide her with the full sum of $2 million before the completion date for the purchase of 9 Hillcrest Road notwithstanding what was said in the $2 million Loan Agreement; and

(b) he would give her $250,000 to deposit into her Citibank account so that she could be upgraded to a Citigold membership and obtain a bank loan for $1.54 million to complete the purchase of the property.

129 I doubt the Defendant's evidence in this regard. As I observed earlier, the effort put into preparation of the $2m Loan Agreement gives the lie to this account. In any event, such evidence in [91] above is inadmissible under the parol evidence rule as its purport is to convert what is clearly a loan of $872,000 under the $2m Loan Agreement into a gift of that amount with a balance of $1,128,000 yet to be given. Accordingly, the alleged forgoing of the $1,128,000 cannot constitute consideration for the discharge of the loan by subsequent agreement.

130 In conclusion, the $872,000 was lent pursuant to the $2m Loan Agreement and remains outstanding as a loan.

131 What about the $250,000 that was transferred to the Defendant by cheque dated 21 March 2017? It will be recalled that this was in the midst of parties' solicitors exchanging drafts of the $2m Loan Agreement and that the execution of the said Agreement was on 24 March 2017.

132 As recounted in [92] the Plaintiff's evidence was that he advanced the $250,000 to her at her request. She informed that she needed $1m to be deposited in her bank account to obtain a bank loan to finance the purchase of 9 Hillcrest Road. The Plaintiff informed her that he could only advance $250,000 and would release the remaining sum to her later. The Defendant's evidence is set out in [90] and [91].

133 I accept the Plaintiff's evidence that the $250,000 was lent to the Defendant. The parties were in the midst of negotiations on the terms of the $2m Loan Agreement when the $250,000 was transferred. Unlike the earlier gifts, there is nothing to show that the Plaintiff intended it as a gift. The Defendant exhibited a handwritten note from the Plaintiff to her [note: 157] which she said detailed the gifts he had previously given to her. I observe that in that handwritten note, the Plaintiff did mention a figure of $250,000 but did not aggregate it with gifts that had been made. Instead it appeared under the balance that was to be lent. However, I do not make too much of this. More significantly, in the absence of any indication on his part that he intended to make a gift of the $250,000 and the transfer having taken place on the cusp of the loan signing, I find it more likely than not that it was a loan.

134 It may be asked if my findings here are inconsistent with my earlier finding that the sum of $154,000 paid as a deposit was a gift. In my view, the distinction is this – the sums adding up to $154,000 were not transferred pursuant to the terms of the $2m Loan Agreement, nor was a loan agreement then on the horizon. Instead the $154,000 was paid pursuant to a promise by the Plaintiff to buy the Defendant a matrimonial home. In contrast, the sum of $250,000 was transferred at the time the $2m Loan Agreement was being negotiated. Objectively understood, the parties had changed their arrangement as regards the outstanding financing for 9 Hillcrest Road.

135 In the result, I find that the sums of $200,000, $250,000 and $872,000 are loans whereas all the other sums are gifts. As the sum of $200,000 is long overdue, I hold that the Plaintiff is entitled to repayment forthwith. As for the sums of $250,000 and $872,000, repayment must be in accordance with the terms of the $2m Loan Agreement. In this regard, the $2m Loan Agreement provides the following: [note: 158]

> 3. TERMS OF REPAYMENT
>
> 3.1 The Loan Facility shall be fully repaid upon the sale of the Borrower's Property or on Redemption Date, whichever is the earlier date Provided ALWAYS that if the Borrower at any time during the period of this Loan Facility Agreement and prior to the full repayment of the Loan Facility wishes to offer the Borrower's Property for sale, it is a condition that the Borrower shall first offer the the Borrower's Property for purchase by the Lender at a price to be mutually agreed with reference to the prevailing market rate, and only in the event that the offer is not accepted by the Lender shall the Purchaser offer the Borrower's Property for sale to any other party. …

136 The "Borrower" refers to the Defendant. The "Borrower's Property" refers to 13 Prome Road. The "Redemption Date" is the date falling on expiry of 10 years from the date of full disbursement of the Loan Facility or upon the occurrence of an Event of Default. [note: 159] Hence, unless the Defendant sells 13 Prome Road or an Event of Default occurs, the Defendant will only be entitled to repayment 10 years from 24 March 2017.

137 The Plaintiff has sought a declaration of a caveatable interest in 13 Prome Road. Whether the Plaintiff may lodge a caveat in respect of 13 Prome Road depends on whether the Plaintiff has any proprietary interest in the property. The $2m Loan Agreement creates no such interest. The Plaintiff has not pointed to any other instrument giving rise to any proprietary interest in the property. I therefore reject the Plaintiff's claim for a declaration of a caveatable interest in 13 Prome Road.

Vitiating factors and *Quistclose* trust

138 To obtain repayment of the loan forthwith rather than to wait until the Redemption Date under the $2m Loan Agreement, the Plaintiff pleaded undue influence, mistake and misrepresentation in an attempt to vitiate the $2m Loan Agreement. I dismiss these claims. The Plaintiff might have been smitten, but there was certainly nothing to suggest that he could not appreciate the document that was before him. The Plaintiff is a seasoned business man who is accustomed to entering into loan agreements. [note: 160] He had access to counsel and could easily have sought clarification of the terms of the $2m Loan Agreement even at the last minute before signing the document: [note: 161]

> Q: … When they reach JLC Advisors, this is a second lawyer now, his name is Mr Vincent Lim, and that was the lawyer that you attended before at JLC Advisors; correct?

A: Yes.

…

Q: And then Mr Lim asked you whether you were ready to sign the loan agreement, whether you understood it, and you said "Yes". Correct?

A: Yes.

139 More crucially, the $2m Loan Agreement went through various iterations with the Plaintiff's own input and the advice of his solicitors (save in respect of the engrossment of the $2m Loan Agreement where he decided to dispense with their services). It is clear from the changes with each draft that the Plaintiff himself took steps to protect his own interests. I do not accept the suggestion that the Plaintiff was labouring under the alleged vitiating conditions when he entered into the $2m Loan Agreement.

140 I should also add that according to Ms Ong's testimony, the Plaintiff had read the terms of the $2m Loan Agreement before he signed the document and asked questions of the Commissioner for Oaths at various points. [note: 162] I have found her to be a truthful witness.

141 The Plaintiff next argues that the loaned sum is held upon trust in his favour by way of a *Quistclose* trust. Much has been written on the nature of a *Quistclose* trust, the discussions revolving around the views adopted in *Barclays Bank Ltd v Quistclose Investments Ltd* [1968] 3 WLR 1097 ("*Quistclose*") and *Twinsectra Ltd v Yardley and others* [2002] 2 AC 164 ("*Twinsectra*"). It is not necessary that I enter the fray. The authorities converge on a core set of requirements for finding the existence of a *Quistclose* trust, and the present case is not one that lies within the penumbra.

142 According to Lord Millet in *Twinsectra*, whether a *Quistclose* trust arose depended on the intention of the parties collected from the terms of the arrangement and the circumstances of the case. There had to be, at minimum, a specified purpose as to how the property was to be applied. But over and above that, there also had to be an intention to restrict the disposal of the property by the recipient. Further, there had to be an intention to create a trust (at [69]–[73]).

143 Lord Hoffmann in *Twinsectra* considered the *Quistclose* trust to be an express trust in favour of the donor, subject to the power of recipient to apply the property towards the agreed purpose(at [13]–[16]). In terms of the requirements for finding that there was a trust, Lord Hoffmann took the view that it was key for there to be a stated purpose and an intention to restrict the recipient's disposal of the transferred property (at [12]).

144 Notwithstanding differing views as to the nature of the trust, for a Quistclose trust to arise there must at the very least be a specified purpose for which the property was advanced and a restriction on the recipient's disposition of the property. As Lord Millett observed (*Twinsectra* at [73]–[74]):

> 73 A *Quistclose* trust does not necessarily arise merely because money is paid for a particular purpose. A lender will often inquire into the purpose for which a loan is sought in order to decide whether he would be justified in making it. He may be said to lend the money for the purpose in question, but this is not enough to create a trust; once lent the money is at the free disposal of the borrower. Similarly payments in advance for goods or services are paid for a particular purpose, but such payments do not ordinarily create a trust. The money is intended to be at the free disposal of the supplier and may be used as part of his cashflow. Commercial life would be

impossible if this were not the case.

74 The question in every case is whether the parties intended the money to be at the free disposal of the recipient: *In re Goldcorp Exchange Ltd* [1995] 1 AC 74, 100 per Lord Mustill. His freedom to dispose of the money is necessarily excluded by an arrangement that the money shall be used *exclusively* for the stated purpose …

[emphasis in original]

145 While cl 2.4 of the $2m Loan Agreement does provide that "[t]he purpose of the [$2m Loan Agreement] is for the purchase of [9 Hillcrest Road]", there is no agreement that the Defendant is restricted from having free disposition of the amount advanced. In contrast, in *Twinsectra* there was an express undertaking that the loaned sum was to be "solely for the acquisition of property *and no other purpose*" [emphasis in original]: at [75]. Similarly in *Quistclose*, there was an exclusive purpose to the loan as expressed in the terms of a letter (see [58]). The Plaintiff has not pointed to any express term restricting the Defendant's disposition of any sum advanced under the $2m Loan Agreement. Neither has the Plaintiff shown a mutual understanding that the Defendant was not to have free disposition of the sum advanced under the $2m Loan Agreement. In the circumstances, no *Quistclose* trust can arise.

The Defendant's counterclaim

Sum sought under the counterclaim

146 I now turn to the Defendant's counterclaim. According to the Defendant, the Plaintiff had sought loans from her on several occasions. As noted at [9], the Defendant claims that a sum totalling $95,000 was advanced to the Plaintiff as a loan. [note: 163] The Defendant further claims that she had advanced a sum of $150,000 on 31 March 2017 at the Plaintiff's verbal request for a short-term loan. [note: 164]

147 Apart from the loans, the Defendant is also seeking compensation for the termination of the purchase of 9 Hillcrest Road as well as other personal and medical expenses. I reproduce the salient portions of the counterclaim:

49A. As a consequence of the termination of the purchase of 9 Hillcrest Road, on or about 21 May 2017, the Defendant paid a sum of $60,000.00 to the vendor of 9 Hillcrest Road as compensation. In the premises, the Defendant has suffered loss and damage.

49B. In reliance on the Plaintiff's Vows to love and take care of her for the rest of her life, the Defendant also incurred the following sums:

a) S$20,000.00 as medical expenses for her pregnancy, the DNA tests and her subsequent miscarriage; and

b) S$10,000.00 for deposits and rental payments for two units at The Centris Condominium, namely units #06-13 and #12-43, as the Plaintiff had initially wanted to rent these condominium apartments but subsequently changed his mind and decided against it.

148 The Defendant is therefore seeking a total sum of $335,000 from the Plaintiff in her counterclaim.

The Compensation Sums

149 I begin with the compensation sums (*ie*, $60,000, $20,000 and $10,000). These claims are dismissed.

150 As regards the sum of $60,000, the Defendant is essentially seeking an indemnity from the Plaintiff for the compensation she had to pay as a result of her terminating the purchase of 9 Hillcrest Road. It is unclear what the basis for this claim is. The Defendant is the contracting party with the vendor. While there was an arrangement as to the financing of 9 Hillcrest Road, there is no separate binding agreement between the Plaintiff and Defendant to indemnify her. And even if the Plaintiff had mentioned that he would pay for the compensation in the event the purchase was terminated, this would have been a gratuitous promise. The Defendant cannot enforce that promise against him.

151 As regards the sums of $20,000 and $10,000, it is similarly unclear what the cause of action is. The Defendant pleads her "reliance" on the Plaintiff's vows. This appears to be an attempt at reaching for some species of estoppel. But the court is unable to second guess the Defendant's cause of action. Insofar as the counterclaim is premised on promissory estoppel, the Defendant is effectively using the doctrine as a sword and not as a shield. This is without legal basis. In any event, there is no evidence showing detriment as a result of the Defendant's reliance on the vows.

The Loaned sums.

152 Turning then to the loaned sums, the Defendant stated that on 31 March 2017, she transferred $150,000 to the Plaintiff at his request. This is because the Plaintiff wanted to prove to his wife that the Defendant's love for him was genuine and that she was not simply after his money. [note: 165] In my view, regardless of the motivations for the transference, the evidence is clear – this sum is a loan, and I so find.

153 In a series of WeChat messages dated 4 April 2017, the Plaintiff repeatedly assured the Defendant that he would repay her the sum: [note: 166] "I will definitely give you the $150,000 on the 23rd of April. You don't have to make an oath at the law firm. My credit rating has always been very good. Don't worry, I am just not trustworthy for relationships." During cross-examination, the Plaintiff similarly accepted that the sum was a loan from the Defendant: [note: 167]

> Q: … Do you agree that this was a loan of $150,000 from Ms Jiang to you?
>
> A: Yes.
>
> Q: Do you agree that you promised to repay that amount?
>
> A: Yes.
>
> Q: And, unlike when you were giving Ms Jiang money, this time round, in your message, the both of you used the term "borrow" and "repay", correct?
>
> A: Yes, "borrow" and "repay".

154 As regards the sum of $95,000, I similarly find that this was a loan. This sum of $95,000 comprised various transfers made between January and February 2017. Apart from her own affidavit and oral evidence that the transfers were loans, the Defendant has adduced WeChat messages

showing that the Plaintiff had indeed sought a loan for some of the transfers. On the other hand, the Plaintiff characterised the sum of $95,000 as part-repayment for the $819,532 transferred between December 2016 to March 2017 (see [9] above). I have found that apart from the sum of $200,000 (*ie*, item 1), the rest of the sums were gifts. The Plaintiff has also not demonstrated that the Defendant's transfer of $95,000 to him was repayment of the $200,000 debt. In the circumstances, I find that the $95,000 was a loan.

155 Overall, the Defendant is entitled to repayment of $245,000.

Conclusion

156 I allow the Plaintiff's claim for $200,000, $250,000 and $872,000. While the Plaintiff is entitled to the sum of $200,000 forthwith, his entitlement to the sums of $250,000 and $872,000 must follow the terms of the $2m Loan Agreement, namely cl 3. I also allow the Defendant's counterclaim for a total of $245,000. The Defendant has pleaded for a set-off of sums due to her against sums due to the Plaintiff. I therefore hold that the Defendant is entitled to $45,000. I am not inclined to award any interest.

157 I will hear parties on costs.

[note: 1] 1AEIC of Toh Eng Tiah, para 5; AEIC of Angelina Jiang, para 6.

[note: 2] Defence and counterclaim (amendment no 2), paras 8(a)–(b).

[note: 3] Transcript 21 August 2019, p 67 ln 22-25, p 68 ln 1–7.

[note: 4] AEIC of Angelina Jiang, paras 3 and 10; Defence and counterclaim (amendment no 2), paras 8(c)

[note: 5] 1AEIC of Toh Eng Tiah, paras 6–8.

[note: 6] AEIC of Angelina Jiang, paras 33, 60 and 73.

[note: 7] AEIC of Angelina Jiang, para 57.

[note: 8] AEIC of Angelina Jiang, paras 50 and 56.

[note: 9] AEIC of Angelina Jiang, paras 80–81.

[note: 10] Defence and counterclaim (amendment no 2), para 9(g).

[note: 11] PCS, para 17.

[note: 12] 1AEIC of Toh Eng Tiah, paras 14, 26; Statement of claim (amendment no 2), para 9A.

[note: 13] AEIC of Angelina Jiang, Tab 17 and Tab 18 AJ-7.

[note: 14] AEIC of Angelina Jiang, paras 31 and 32.

[note: 15] AEIC of Angelina Jiang, paras 36–37, 56 and 64–65.

[note: 16] AEIC of Angelina Jiang, Tab 18 AJ-7.

[note: 17] 1AEIC of Toh Eng Tiah, para 13.

[note: 18] AEIC of Angelina Jiang, paras 81 and 100.

[note: 19] AEIC of Angelina Jiang, para 98.

[note: 20] AEIC of Angelina Jiang, paras 86–88, 126–129 and 160.

[note: 21] AEIC of Angelina Jiang, paras 92, 95.

[note: 22] 1AEIC of Toh Eng Tiah, para 12.

[note: 23] AEIC of Angelina Jiang, paras 130–131.

[note: 24] AEIC of Angelina Jiang, paras 135–137.

[note: 25] AEIC of Angelina Jiang, para 138.

[note: 26] AEIC of Angelina Jiang, paras 128–129.

[note: 27] 1AEIC of Toh Eng Tiah, para 36.

[note: 28] 1AEIC of Toh Eng Tiah, para 12.

[note: 29] 1AEIC of Toh Eng Tiah, para 37

[note: 30] 1AEIC of Toh Eng Tiah, Tab 14.

[note: 31] 1AEIC of Toh Eng Tiah, paras 53 – 63.

[note: 32] DCS at para 188

[note: 33] DCS at para 190

[note: 34] Transcript 21 August 2019, p 23.

[note: 35] AEIC of Angelina Jiang, para 238.

[note: 36] AEIC of Angelina Jiang, paras 252–253.

[note: 37] AEIC of Angelina Jiang, para 266–267.

[note: 38] AEIC of Angelina Jiang, paras 255–256.

[note: 39] AEIC of Angelina Jiang, paras 259–264.

[note: 40] AEIC of Angelina Jiang, para 268.

[note: 41] AEIC of Angelina Jiang, para 284; Tab 77 AJ-7.

[note: 42] AEIC of Angelina Jiang, paras 285–290.

[note: 43] AEIC of Angelina Jiang, para 292.

[note: 44] PCS, paras 1 and 2(a)–(b).

[note: 45] 1AEIC of Toh Eng Tiah, para 12.

[note: 46] PCS, para 76.

[note: 47] AEIC of Chong Lee Yee, paras 5–7 and Exhibit CLY–1; PCS, paras 76–78.

[note: 48] PCS, paras 253–256.

[note: 49] PCS, paras 114–116.

[note: 50] PCS, paras 145–146.

[note: 51] DCS paras 1–3

[note: 52] DCS, para 142.

[note: 53] DCS, para 145.

[note: 54] DCS, para 188.

[note: 55] DCS, paras 183–184.

[note: 56] DCS, paras 223 and 225.

[note: 57] Transcript 19 August 2019, p 30.

[note: 58] Transcript 19 August 2019, p 28.

[note: 59] Transcript 19 August 2019, p 31 ln 21 – p 33 ln 8.

[note: 60] DBOD, p 56.

[note: 61] DBOD, p 108.

[note: 62] DBOD, p 129.

[note: 63] See *eg*, DBOD, pp 6, 10, 60, 65, 108 and 136; see also Transcript 19 August 2019, pp 56–58.

[note: 64] DBOD, p 130

[note: 65] Transcript 19 August 2019, p 44.

[note: 66] Transcript 19 August 2019, pp 41–42, 45–47.

[note: 67] Transcript 19 August 2019, p 47.

[note: 68] AEIC of Angelina Jiang, para 163.

[note: 69] Transcript 20 August 2019, p 26.

[note: 70] Transcript 20 August 2019, p 29.

[note: 71] AEIC of Angelina Jiang, para 79.

[note: 72] DCS, paras 115–116.

[note: 73] Transcript 19 August 2018, p 81.

[note: 74] DCS, para 115.

[note: 75] 1AB, p 215; Transcript 22 August 2019, pp 55–56.

[note: 76] DCS, para 117.

[note: 77] DCS, para 117(a); AEIC of Angelina Jiang, Tab 17.

[note: 78] DCS, para 117 (b)–(e).

[note: 79] DCS, paras 117(b)–(c).

[note: 80] 1AEIC of Toh Eng Tiah, para 84.

[note: 81] 1AEIC of Toh Eng Tiah, para 13(a)

[note: 82] Transcript 20 August 2019, pp 1–5.

[note: 83] DBOD, pp 22–23.

[note: 84] DBOD, p 19; AEIC of Angelina Jiang, paras 75–78; Transcript 19 August 2019, p 81.

[note: 85] DBOD, p 129.

[note: 86] AEIC of Angelina Jiang, para 187.

[note: 87] AEIC of Angelina Jiang, para 105; DCS para 123..

[note: 88] AEIC of Angelina Jiang, para 104; DCS para 122.

[note: 89] Transcript 22 August 2019, pp 5–6.

[note: 90] 6AB, 2737.

[note: 91] PCS, para 29.

[note: 92] DCS, para 124.

[note: 93] AEIC of Angelina Jiang, Tab 25.

[note: 94] Transcript 22 August 2019, p 18 ln 19–23.

[note: 95] DBOD, p 24.

[note: 96] DBOD, pp 24–25

[note: 97] PCS, para 27.

[note: 98] Transcript 22 August 2019, pp 37–38.

[note: 99] PCS, paras 26, 38, 40–41.

[note: 100] PCS, paras 38, 40–41.

[note: 101] DBOD, p 131.

[note: 102] DBOD, p 129.

[note: 103] 1AEIC of Toh Eng Tiah, paras 29–30.

[note: 104] AEIC of Angelina Jiang, para 135.

[note: 105] AEIC of Angelina Jiang, paras 138–139.

[note: 106] AEIC of Angelina Jiang, paras 128–129.

[note: 107] AEIC of Angelina Jiang, para 141.

[note: 108] AEIC of Angelina Jiang, para 153.

[note: 109] AEIC of Angelina Jiang, para 142–143.

[note: 110] AEIC of Angelina Jiang, paras 144–148.

[note: 111] AEIC of Angelina Jiang, para 151; Transcript 22 August 2019, pp 51–53.

[note: 112] AEIC of Angelina Jiang, para 140.

[note: 113] Transcript 22 August 2019, p 47 ln 8–19.

[note: 114] Transcript 21 August 2019, pp 21–23.

[note: 115] 1AEIC of Toh Eng Tiah, para 24.

[note: 116] Transcript 21 August 2019, pp 21–23.

[note: 117] AEIC of Angelina Jiang, paras 154–155; Transcript 22 August 2019, pp 55–57.

[note: 118] AEIC of Angelina Jiang, para 156.

[note: 119] AEIC of Angelina Jiang, para 157 and Tab 41 AJ-7.

[note: 120] 1AEIC of Toh Eng Tiah, paras 27 and 30.

[note: 121] Transcript 20 August 2019, pp 35–39.

[note: 122] 1AEIC of Toh Eng Tiah, para 38.

[note: 123] Transcript 19 August 2019, p 63

[note: 124] AEIC of Angelina Jiang, para 177.

[note: 125] AEIC of Angelina Jiang, paras 180–181.

[note: 126] AEIC of Angelina Jiang, paras 184–185.

[note: 127] AEIC of Angelina Jiang, para 190.

[note: 128] AEIC of Angelina Jiang, paras 191–193, Tab 49 AJ-7.

[note: 129] 1AB, pp 270–275.

[note: 130] AEIC of Angelina Jiang, para 198.

[note: 131] AEIC of Angelina Jiang, para 199.

[note: 132] AEIC of Angelina Jiang, para 200.

[note: 133] AEIC of Angelina Jiang, para 202

[note: 134] 1AEIC of Toh Eng Tiah, para 45.

[note: 135] AEIC of Angelina Jiang, para 208.

[note: 136] AEIC of Angelina Jiang, paras 212–214.

[note: 137] AEIC of Angelina Jiang, paras 215–218.

[note: 138] AEIC of Angelina Jiang, para 219.

[note: 139] AEIC of Angelina Jiang, para 223.

[note: 140] AEIC of Angelina Jiang, paras 225–228; Transcript 20 August 2019, p 64.

[note: 141] 1AEIC of Toh Eng Tiah, para 52.

[note: 142] 1AEIC of Toh Eng Tiah, para 57.

[note: 143] AEIC of Angelina Jiang, para 250.

[note: 144] AEIC of Angelina Jiang, paras 269–272.

[note: 145] Transcript 20 August 2019, p 55

[note: 146] 1AEIC of Toh Eng Tiah, Tab 14 TET-1.

[note: 147] DCS, para 168

[note: 148] DCS, para 166

[note: 149] AEIC of Angelina Jiang, para 262.

[note: 150] AEIC of Angelina Jiang, para 266.

[note: 151] DCS, para 170

[note: 152] DCS, paras 173–174.

[note: 153] AEIC of Angelina Jiang, Tab 70 AJ-7.

[note: 154] DCS, at para 172

[note: 155] DCS, at para 228

[note: 156] AEIC of Angelina Jiang, para 241

[note: 157] AEIC of Angelina Jiang, Tab 51 AJ-7.

[note: 158] 1AEIC of Toh Eng Tiah, p 202.

[note: 159] 1AEIC of Toh Eng Tiah, p 201.

[note: 160] Transcript 19 August 2019, p 27 and Transcript 20 August, p 63

[note: 161] Transcript 20 August 2019, pp 65–66.

[note: 162] Transcript 10 September 2019, pp 37–38.

[note: 163] Defence and counterclaim, para 49 (amendment no. 2)

[note: 164] Defence and counterclaim, para 44 (amendment no. 2)

[note: 165] DCS, para 260.

[note: 166] DBOD, p 273.

[note: 167] Transcript 20 August 2019, p 79.