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

[2022] SGHC 41

Suit No 734 of 2018

Between

(1) Alternative Advisors Investments Pte Ltd
(2) Supreme Star Investments Ltd

… *Plaintiffs*

And

(1) Asidokona Mining Resources Pte Ltd
(2) Soh Sai Kiang

… *Defendants*

JUDGMENT

[Contract — Assignment]
[Contract — Illegality and public policy — Statutory illegality]
[Credit And Security — Guarantees and indemnities]
[Damages — Liquidated damages or penalty]

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v
Asidokona Mining Resources Pte Ltd and another

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25 February 2022 Judgment reserved.

Hoo Sheau Peng J:

Introduction

1 In this suit, the first plaintiff, Alternative Advisors Investments Pte Ltd ("AAI"), claims the outstanding sum and interest due and owing from the defendants pursuant to a S$2m loan granted to the first defendant, Asidokona Mining Resources Pte Ltd ("Asidokona"), and personally guaranteed by the second defendant, Soh Sai Kiang ("Mr Soh"). The loan was extended by the second plaintiff, Supreme Star Investments Ltd ("SSI"), in 2016. In 2018, SSI assigned the loan to AAI.

2 The defendants do not dispute receipt of the loan amount and making certain repayments. They resist the claim on numerous grounds. That said, a core aspect of the pleaded defence – that the loan is a personal loan to Mr Soh, and not a corporate loan to Asidokona – was not pursued at the trial. With this

late change in position, many factual disputes fall away. Specifically, allegations attacking AAI's witnesses for forcing Mr Soh into accepting a last-minute increase to the interest rate, and of forgery and fabrication of the corporate loan and personal guarantee documents (after Mr Soh allegedly signed on blank pages merely to effect the personal loan to him), are abandoned. None of AAI's witnesses were cross-examined on such matters. Instead, at the close of AAI's case, the defendants submitted that there is no case to answer and elected not to adduce any evidence.

3 Having considered the parties' submissions and the evidence before me, I grant judgment in favour of the plaintiff. These are my reasons.

Background

The parties and other personalities

4 AAI is a company registered in Singapore. As an independent boutique advisory firm, it is in the business of providing professional services to companies and investors. Mr Wong Joo Wan ("Mr Wong") is the managing director of AAI.[1] Mr Wong is a chartered accountant, and an insolvency practitioner by profession.[2]

5 SSI is an investment holding company incorporated in the British Virgin Islands ("BVI").[3] Ms Lou Swee Lan ("Ms Lou"), also known as Stephanie, is

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1 Wong Joo Wan's Affidavit of Evidence-in-Chief ("AEIC") dated 5 March 2020 ("WJWA") at para 3.

2 Transcript dated 1 September 2021 at p 16, lines 5–6.

3 WJWA at para 4.

the sole shareholder and director of SSI.[4] On 1 November 2019, SSI was struck off the BVI Register of Companies.[5] After SSI was restored to the BVI Register of Companies on 23 July 2021,[6] it did not take any active steps to participate in the action.

6 Ms Lou and her husband, Mr Wong Koon Lup, also known as William ("Mr William Wong"), were clients of Mr Ong Su Aun Jeffrey ("Mr Ong"), the former managing partner of JLC Advisors LLP ("JLC Advisors").[7] SSI was also a client of Mr Ong. According to AAI, in relation to the loan transaction, at all material times, Mr Ong was authorised to act as SSI's solicitor, while Mr Wong was authorised to act as SSI's agent.[8] The defendants, however, dispute the authority of Mr Ong and Mr Wong to represent SSI.

7 Turning to the defendants, Asidokona is a company registered in Singapore and is in the business of mining activities. Mr Soh, also known as Philip, is the sole director and shareholder of Asidokona. He is an experienced banker and businessman.[9] Mr Wong and Mr Soh are old acquaintances.

Circumstances surrounding the loan

8 According to Mr Wong, sometime in or around June 2016, Mr Soh contacted him to ask if he could assist to arrange a loan of S$2m to Asidokona

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4 Lou Swee Lan's AEIC dated 26 July 2021 ("LSLA") at para 1.

5 Wong Joo Wan's Affidavit in HC/SUM 1629/2020 dated 6 April 2020 at para 9.

6 Agreed Bundle of Documents ("AB") (Vol 4) at p 174.

7 Ong Su Aun Jeffrey's AEIC dated 7 July 2021 ("JOA") at para 10.

8 WJWA at paras 2, 9 and 10; Wong Joo Wan's Supplementary Affidavit dated 26 July 2021 ("WJWSA") at para 6.

9 WJWA at paras 5–7.

for the purpose of funding its working capital. Mr Wong informed Mr Soh that he would reach out to Mr Ong as he was aware that Mr Ong had clients who may be willing to extend such a loan to Asidokona.[10]

9 When Mr Wong contacted Mr Ong, he was told that Mr Ong's client, whom Mr Ong described as the "Hong Kong side", was prepared to contribute only 50% of the loan amount, *ie*, S$1m. Further, Mr Ong's client would like to "take charge" of the loan. As for the terms of the loan, it would be for three months with 5% interest per month coupled with security for the loan.[11]

10 Mr Wong decided that he would personally contribute towards the remaining 50% of the loan, *ie*, S$1m. On or around 30 June 2016, Mr Wong updated Mr Soh of the outcome of his discussion with Mr Ong. On or around 4 July 2016, Mr Soh confirmed that he would proceed with the loan.[12] Following Mr Soh's confirmation that Asidokona would proceed with the loan, Mr Wong informed Mr Ong to prepare the necessary documents for the loan.[13]

11 On 18 July 2016, at 5.10pm, Mr Ong sent the following email to Mr Soh (copying Mr Wong) regarding "Project Gold":[14]

> Dear Phillip
>
> Please find attached the draft loan documentation in respect of the $2 million loan for your review and confirmation.
>
> Briefly, the loan is guaranteed by you personally and a share charge shall be lodged against the share capital of [Asidokona]

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10 WJWA at paras 11–12.

11 WJWA at para 13.

12 WJWA at para 14.

13 WJWA at para 16.

14 AB (Vol 1) at p 236.

> and blank share transfer forms shall be held in escrow pending the repayment of the loan.
>
> Kindly let us know should you have any comments.
>
> Regards
> Jeffrey Ong

The documents attached were a power of attorney between Mr Soh and SSI ("Power of Attorney"), a deed of charge between Mr Soh and SSI of the shares in Asidokona ("Deed of Charge"), an instrument of transfer for the transfer of the shares in Asidokona from Mr Soh to a corporate buyer ("Share Transfer Form (corporate buyer)"), an instrument of transfer for the transfer of the shares in Asidokona from Mr Soh to an individual buyer ("Share Transfer Form (individual buyer)"), directors' resolutions in writing passed pursuant to article 90 of Asidokona's Articles of Association ("Board Resolutions") and a personal guarantee between Mr Soh and SSI ("Personal Guarantee").

12 On 19 July 2016 at 8.18am, Mr Soh replied to Mr Ong's email highlighting that the draft loan agreement was not attached.[15] In response, at 10.38am, Mr Ong sent Mr Soh (copying Mr Wong) the draft loan agreement between Asidokona and SSI ("Loan Agreement").[16] On 21 July 2016, Mr Soh decided to "sign off" on 22 July 2016 and confirmed the following with Mr Wong through WhatsApp messages:[17]

Mr Soh:	Shall we sign off tom mrg at 1030am?
Mr Wong:	… *I can't be there and in any event, Jeff is handling. I have to conduct a training* …
…	Spoke to [Jeff]. All ready for tmr. Cheque release tmr after 2 pm.

15 AB (Vol 1) at p 293.

16 AB (Vol 1) at p 293.

17 AB (Vol 2) at pp 130–132 and 135.

> Can I take it that the interest is returned to investors immediately and they only hound me close to 3 mths period?
>
> Mr Soh: Basically. *We will return 2 million based on 1.7 million. If we need to extend after 3 months we will continue to pay the 100k interest.* Extension is up to 3 months.
>
> As per my understanding.
>
> Mr Wong: Yup.
>
> The hope is we get the CB in before 3 mths. No need to waste the interest.
>
> Rather we start the full productions as the earnings is impt.
>
> Mr Soh: *Ok. As what we agreed bro*
>
> …
>
> Can Jeff side do [telegraphic transfer] to us tom?
>
> Mr Wong: Yes
>
> But via cheque
>
> Mr Soh: Use uob cheque. Can?
>
> Mr Wong: They using DBS.
>
> *If u want.. they can release in 2 cheques.. $1.1m and $600k.*
>
> $1.1 m morning ok.
>
> Mr Soh: *Ok. We do it this way. 2 cheques*
>
> [emphasis added]

Thus, the common understanding was that Mr Ong was to transfer only S$1,700,000 as the remaining S$300,000 was to be used for the interest payment for three months at the rate of 5% a month as set out in the draft loan agreement.[18]

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[18] WJWA at para 26.

13 Meanwhile, Mr Ong informed Ms Pok Mee Yau ("Ms Pok"), also known as Karen, that Mr Soh would attend at the JLC Advisors' office to sign the loan documents. Ms Pok was previously a partner of JLC Advisors. She had drafted the documents attached to Mr Ong's emails to Mr Soh dated 18 and 19 July 2016 (as mentioned at [11]–[12]), which I shall refer to collectively as the "Loan Documents". Mr Ong requested Ms Pok to attend to the signing by Mr Soh as he would be occupied then.[19]

14 According to Ms Pok, on 22 July 2016, Mr Soh attended at the JLC Advisors' office in the morning. Ms Pok introduced herself to Mr Soh as a partner of JLC Advisors. During the meeting which took about 25 minutes, Ms Pok flipped through the relevant documents and briefly explained them to Mr Soh. Ms Pok also told Mr Soh that he could take his time to review the documents before signing and he informed her that he was ready to sign. Ms Pok then asked Mr Soh to sign on the execution pages.[20] Mr Soh did so.[21] After Mr Soh had signed the documents, Ms Pok stamped her name and profession and signed in the signature block as the witness for the Loan Agreement, Personal Guarantee, Deed of Charge and Power of Attorney.[22]

15 I should point out that the defendants plead an entirely different version of events. In particular, the defendants aver that, at all times, the loan was meant to be personal to Mr Soh at an interest rate of 3% per month. Mr Ong and Mr

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19 Pok Mee Yau's AEIC dated 17 March 2020 ("PMYA") at paras 1 and 3–6.

20 PMYA at paras 10–12.

21 WJWA at pp 1172–1204 and 1205–1237; pp 1238–1255 and 1256–1273; pp 1274–1300 and 1301–1327; pp 1328–1332 and 1333–1337; pp 1338–1339; and pp 1340–1343.

22 PMYA at para 13.

Wong, who were present at the meeting at JLC Advisors on 22 July 2016, essentially compelled Mr Soh to agree to an increase of the interest rate from 3% to 5% per month. Due to his urgent need for funds, Mr Soh agreed. Further, as Mr Soh was informed by a female staff that the agreements were not ready for his perusal, out of trust, he signed off on blank pages.[23] It is patently clear to me that this account is completely unbelievable. Even if one were to disregard the evidence of Mr Wong, Mr Ong or Ms Pok, the defendants' version is completely undermined by the wealth of objective evidence in the form of the contemporaneous communications between the parties (including some crucial pieces which I have referred to in [11]–[12] above). As I observed at [2] above, at the trial, the defendants dropped these challenges.

The Loan Agreement, Personal Guarantee and the Deed of Charge

16 Turning to the Loan Agreement, the key terms are as follows:[24]

(a) by the preamble read with Item 5 of Schedule 1, SSI is the lender, Asidokona is the "Borrower" and Mr Soh is the "Guarantor";

(b) by cl 2 read with Items 2 and 3 of Schedule 1, the "Principal Amount" of the loan is S$2m for an "Initial Term" of three months from the "Drawdown Date". By cl 1.1, the Drawdown Date is "the date on which the Loan is disbursed, or is to be disbursed by the Lender to the Borrower";

(c) by cl 6.1 read with Items 11, 12 and 13 of Schedule 1, the "Interest" is "5% per month accruing on a daily basis from the

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23 Asidokona's Defence (Amendment No 4) at paras 8–9; Mr Soh's Defence (Amendment No 4) at paras 8–9.

24 Plaintiff's Bundle of Documents Volume 1 ("1PBD1") at pp 1–66.

commencement of the Initial Term" to be paid on the last day of each Interest Period (being one month) beginning from the Drawdown Date;

(d) by cl 7.1, if the Borrower does not pay any amount it is obliged to when it is due, the Borrower shall pay interest on the unpaid amount outstanding "for the period beginning on its due date and ending on the date the Lender receives it, both before and after judgment". Item 14 of Schedule 1 provides that such "Default Interest" is "6% per month accruing on a daily basis";

(e) by cl 3 read with Item 9 of Schedule 1, the "Security Documents" comprise of a charge on shares (the "Charged Shares"), share transfer forms in respect of the Charged Shares, a power of attorney, personal guarantee, and three cheques for certain amounts for the repayment of the loan; and

(f) by cl 3 read with Item 8 of Schedule 1, the Charged Shares comprise 500,000 ordinary shares, representing 100% of the issued and paid up capital of Asidokona.

17 In the Personal Guarantee furnished by Mr Soh, pursuant to cl 1.1 read with cl 2.1(b), Mr Soh guaranteed that should Asidokona not pay any amount when due under or in connection with the Loan Agreement, Mr Soh would immediately on demand pay that amount to SSI as if he was the principal obligor up to the secured amounts, being the principal sum of S$2m, "all legal costs and other costs, charges and expenses whatsoever (on a full indemnity basis) and interest" accrued on the same. By cl 3, should Mr Soh not make any payment of any sum due and owing under the Personal Guarantee, he shall, to the extent permitted by law, pay interest on such amount due from and including the due

date to the date of actual payment (whether before or after judgment) at 6% per month accruing on a daily basis.[25]

18 As for the Deed of Charge, by cll 1.1 and 2, as well as the Recital (D) of the Preamble, Mr Soh agreed to charge 100% of the entire shareholding in the issued and paid-up capital of Asidokona to SSI by way of a first fixed charge for due performance and discharge of all his obligations arising under the Loan Agreement. By cl 4, Mr Soh is to deliver to SSI the share certificates for the Charged Shares, together with two share transfer forms executed in blank, and a certified true copy of the Register of Members of Asidokona duly noting that the shares are subject to the charge.[26]

Disbursement of the loan and contributions towards the loan amount

19 On 22 July 2016, the S$2m loan was fully disbursed by DBS cheques dated the same date for S$1.1m and S$590,000 to Asidokona. Apart from the actual disbursement of S$1.69m, interest for three months of S$300,000 and transaction expenses of S$10,000 under cl 9.2 of the Loan Agreement were accounted for.[27]

20 Of the S$2m principal sum, Mr Wong contributed a total of S$1m to SSI.[28] Mr Wong contributed S$500,000 of his own money, and approached

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25 1PBD at pp 67–102.

26 1PBD at pp 103–156.

27 AB (Vol 1) at pp 205–206; WJWA at paras 57–58.

28 WJWA at para 68.

some other people to extend personal loans to him to raise the remaining S$500,000 as follows:[29]

(a) S$200,000 from Lee Thiam Seng, a director in Ecowise Holdings Limited which has an office located one floor above AAI's office;

(b) S$100,000 from Aveline Chen, a tenant in Mr Wong's office;

(c) S$100,000 from Wilson Chua, Mr Wong's colleague in AAI; and

(d) S$100,000 from Mr Yong Chor Ken ("Mr Yong"), Mr Wong's colleague, director and shareholder of AAI.

Due to the time constraints, Mr Wong told the four parties to make payments directly to the JLC Advisors' clients' account. Mr Wong has since repaid everyone for the full sums except for Mr Yong's S$100,000.[30] As for Mr Ong's client, the "Hong Kong" investor contributed the remaining sum of S$1m. More will be said about this from [27] below.

Asidokona's default in repaying the loan

21 As the loan was disbursed on 22 July 2016, the Initial Term of the loan expired on 21 October 2016. This was the common understanding among Mr Wong, Mr Soh and Mr Ong. According to Mr Wong, in accordance with cl 2 read with Item 3 of Schedule 1, Asidokona was granted an extension of the loan

29 WJWA at paras 64–65.

30 WJWA at paras 67 and 69.

by a further three months to 21 January 2017. Thereafter, Mr Wong alleged that Asidokona unilaterally extended the loan on multiple occasions.[31]

22 In October 2016, via a series of WhatsApp exchanges with Mr Wong, Mr Soh confirmed that he would renew the Loan Agreement on a "month to month basis". As regards the interest payment, Mr Soh also agreed with Mr Wong's confirmation that the interest payment liable would be S$100,000.[32] Mr Soh stated that "[w]e will still pay interest. 5 per cent per month".[33] Further, on 5 March 2017, Mr Soh also confirmed that "[i]n terms of interest … [w]e will not dispute. Sin 100k …" and that he was of the view that "[they] should be [paying off the loan] by mid March as paper work delay due to [his] hospitalisation".[34]

23 According to AAI, during the period between July 2016 and May 2017, Asidokona made various interest payments to SSI aggregating S$900,000.[35] The defendants do not dispute making payments amounting to S$900,000. However, they plead that these were repayments towards the loan (not interest), and that the repayments were not made to SSI.

24 In any event, Asidokona failed to comply fully with its payment obligations under the Loan Agreement.[36] As of 15 May 2017, Asidokona failed to redeem the loan and SSI issued a statutory demand (through its solicitor Mr

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31 WJWA at para 73.

32 AB (Vol 2) at pp 156–157; AB (Vol 1) at pp 341–342.

33 AB (Vol 2) at p 186.

34 AB (Vol 2) at pp 252–253.

35 WJWA at para 134; AB (Vol 4) at p 90.

36 WJWA at para 73.

Ong) to Mr Soh for the sum of S$2,128,904 on the same date.[37] Between the period from end June 2017 to March 2018, Mr Soh reassured Mr Wong that Asidokona would repay the loan and interest. However, nothing materialised.[38] Thus, SSI's position is that it is clear from the correspondence that Mr Soh had "repeatedly admitted Asidokona's liability under the Loan Agreement".[39]

The assignment of SSI's rights to AAI

25 According to Mr Wong, in and around March 2018, Mr Ong expressed to Mr Wong SSI's disappointment and frustration with the empty promises made by the defendants. As the loan was referred to SSI by Mr Wong, Mr Wong decided to arrange for AAI to take over the loan from SSI to "manage the direction forward in recovering the loan debt". Since Mr Wong had personally invested moneys to fund the loan for Asidokona and Mr Yong had indirectly contributed to the loan (as mentioned at [20] above), both Mr Yong and Mr Wong have an interest in the repayment of the loan. Thus, Mr Yong and Mr Wong decided that their company, AAI, would be the assignee of the Loan Agreement, Personal Guarantee and Deed of Charge. In that respect, Mr Wong "irrevocably assigned [his] interest of S$1,000,000 from SSI to AAI". The arrangement pursuant to the assignment was that after the payment of costs, any sums recovered from the present proceedings are to be repaid to AAI and SSI in equal proportions. Thus, there is "no avenue for AAI to profit from these proceedings".[40]

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37 AB (Vol 4) at pp 85–88; WJWA at para 109.

38 WJWA at paras 114–120.

39 WJWA at para 122.

40 WJWA at paras 128–129.

26 On 30 March 2018, all rights under the Loan Agreement and the Personal Guarantee were assigned from SSI to AAI (the "First Deed of Assignment"), notice of which was given to Asidokona and Mr Soh on 28 August 2018.[41] However, due to an oversight, the Deed of Charge was not assigned from SSI to AAI under the First Deed of Assignment. The Deed of Charge was assigned only on 15 November 2018 (the "Second Deed of Assignment"), notice of which was likewise given on the same date.[42] In relation to the two deeds of assignments which I shall refer to as the "Deeds of Assignments", Mr Wong signed on behalf of SSI and Mr Yong signed on behalf of AAI.

The source of the remaining S$1m

27 According to Mr Wong, it was also only "during the assignment that [Mr Wong] found out from [Mr Ong] that the Hong Kong investor is [Ms Lou]". At the time of signing the Loan Agreement, Mr Wong did not know the identity of the "Hong Kong" investor (see [9] above).[43] As such, Mr Wong referred to the other funder for the loan as the "HK" lender in his communications with Mr Soh at the material time.[44]

28 After Mr Wong became aware that the Hong Kong investor was in fact Ms Lou, Mr Wong called up Mr William Wong (*ie*, Ms Lou's husband) sometime in June or July 2018. During that call, Mr William Wong confirmed that SSI had sufficient moneys in July 2016 to fund the loan, that Mr Wong

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41 Plaintiff's Core Bundle ("PCB") at pp 1–5; AB (Vol 1) at pp 232–233.

42 PCB at pp 6–11; AB (Vol 1) at pp 232–233.

43 WJWA at para 70.

44 See, *eg*, AB (Vol 2) at pp 123–124, 301, 318.

could sign off on the Loan Documents on behalf of SSI, and that Mr Wong could initiate a suit against the defendants.[45]

29 Indeed, on 22 July 2016, when Mr Soh signed the Loan Documents, SSI did not execute them. Around the time of the assignment from SSI to AAI, this was discovered by Mr Wong. Based on what Mr William Wong communicated, Mr Wong executed the Loan Documents on behalf of SSI.[46] This was witnessed by Mr Ong.[47]

30 Mr Ong's evidence is broadly consistent with Mr Wong's account. In particular, Mr Ong also referred to Ms Lou as the "Hong Kong" investor.[48] According to Mr Ong, he referred to Ms Lou as such because "Mr William Wong and [Ms Lou] preferred to remain anonymous" behind SSI. Mr Ong remained the "point of contact" at all material times between Mr Wong and SSI. Ms Lou wanted to be a "'sleeping' contributor" and was "content to have the [l]oan administered by [Mr Wong] and/or his nominees" for SSI. In that regard, Ms Lou and SSI had "expressly authorised [Mr Wong] to act as SSI's principal and agent".[49] In his testimony, Mr Ong clarified that Mr William Wong was "the primary person who is in charge of the group of funds and William is based in Hong Kong". Ms Lou and Mr William Wong were "often in Hong Kong" and they "often remit funds from Hong Kong".[50] Mr Ong confirmed that the remaining sum of S$1m extended to Asidokona was deducted from the pool of

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45 WJWSA at para 10–11.

46 Transcript dated 1 September 2021 at p 21, lines 13–21.

47 JOA at para 28.

48 JOA at para 16.

49 JOA at paras 16–17.

50 Transcript dated 3 September 2021 at p 18.

funds which Mr William Wong and Ms Lou maintained in JLC Advisors' client account.[51]

31 In an interesting twist, Ms Lou denied that she knew about the Loan Documents or that SSI had authorised the same to be entered into at the material time. In a slightly incoherent fashion, she nevertheless said that she understood that Mr Ong was acting for SSI in relation to the Loan Documents.[52] Ms Lou deposed that since she had "no idea of the Loan Agreement at the material time", the issue of the source of funds for the same is "best answered by Mr. Jeffrey Ong".[53] In due course, I shall discuss Ms Lou's evidence in more detail.

The proceedings

AAI's claim

32 On 20 July 2018, this action was filed by AAI in its capacity as the equitable assignee of the loan, and as the only plaintiff in the action.[54] AAI's claim against the defendants is straightforward. While there was one round of amendments to the Statement of Claim on 8 February 2019 (the "Amended Statement of Claim"), the case remained substantially unchanged.

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51 Plaintiff's Closing Submissions at para 84; Transcript dated 3 September 2021 at p 27, lines 1–18.

52 LSLA at para 9.

53 LSLA at para 12.

54 WJWSA at paras 10–12.

33 In essence, AAI avers that Asidokona is "in default of its payment obligations under the Loan Agreement". Therefore, AAI claims against Asidokona for:[55]

(a) the outstanding principal sum due under the Loan Agreement;

(b) the interest due under the Loan Agreement payable under cl 6.1 of the Loan Agreement (read with Schedule 1);

(c) the default interest due under the Loan Agreement payable under cl 7.1 of the Loan Agreement (read with Schedule 1);

(d) alternatively, interest assessed pursuant to s 12 of the Civil Law Act 1909 (2020 Rev Ed) ("CLA") on such sums as may be found payable to AAI; and

(e) costs on an indemnity basis pursuant to cl 10 of the Loan Agreement.

34 Based on the Personal Guarantee and the Deed of Charge, AAI claims against Mr Soh for:

(a) the outstanding principal sum due under the Loan Agreement;

(b) the interest due under the Loan Agreement payable under cl 6.1 of the Loan Agreement (read with Schedule 1);

(c) the default interest due under the Loan Agreement payable under cl 7.1 of the Loan Agreement (read with Schedule 1) from 22 June 2017;

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55 Statement of Claim (Amendment No 1) at para 27 and pp 23–24.

(d) alternatively, interest assessed pursuant to s 12 of the CLA on such sums as may be found payable to AAI;

(e) an order for delivery up of:

(i) all share certificates representing the Charged Shares;

(ii) two share transfer forms duly executed by Mr Soh, in blank, in respect of the Charged Shares; and

(iii) a certified true copy of the Register of Members of Asidokona duly annotated by the company secretary of Asidokona to note that the Charged Shares are the subject of a charge in favour of AAI; and

(f) costs on an indemnity basis pursuant to cl 2.1 of the Personal Guarantee.

The defendants' original Defences, and the first and second round of amendments

35 The defendants made four rounds of amendments to their original Defences, on 30 August 2018, 22 February 2019, 18 September 2020 and 22 July 2021 respectively.

36 From the outset, the defendants deny that the loan was between SSI and Asidokona. Instead, they aver that the loan was between Mr Wong and Mr Soh in their personal capacities only "for a short term" at an interest of only 3% per month.[56] In that regard, payments made (totalling S$900,000) in repayment of

[56] Asidokona's Defence (Amendment No 4) at para 8; Mr Soh's Defence (Amendment No 4) at para 8.

the principal amount and/or interest were *never* made to SSI and one payment of S$50,000 was made to Mr Ong's personal bank account.[57] It was only at the signing on 22 July 2016 at the office of JLC Advisors that Mr Wong insisted for the interest to be increased to 5% per month.[58]

37 The defendants contend that AAI/SSI is in breach of s 3 of the Moneylenders Act 2008 (2020 Rev Ed) (the "MLA"), as AAI/SSI "seeks to claim a sum … which is significantly larger than the sum … 'lent'". Also, AAI/SSI is not an "excluded moneylender" under s 2 of the MLA as it lent the money to Mr Soh, and not Asidokona. Relying on ss 2, 3, 5 and 14, the defendants contend that the Loan Agreement and Personal Guarantee fall foul of the MLA and are unenforceable.[59] This is the "Illegal Moneylending Defence".

38 Further, the interest rates under the Loan Agreement are unconscionable, and the interest clauses are unenforceable penalty clauses at law. Consequently, the interest provisions of the Personal Guarantee and Deed of Charge are also unenforceable.[60] I shall refer to this as the "Penalty Clause Defence".

39 In any event, the defendants also plead that default interest should only take effect after March 2018 (and not from 22 June 2017). This is based on

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57 Asidokona's Defence (Amendment No 4) at para 13; Mr Soh's Defence (Amendment No 4) at para 13.

58 Asidokona's Defence (Amendment No 4) at para 9(b); Mr Soh's Defence (Amendment No 4) at para 9(b).

59 Asidokona's Defence (Amendment No 4) at paras 16–17; Mr Soh's Defence (Amendment No 4) at paras 17–18.

60 Asidokona's Defence (Amendment No 4) at para 18; Mr Soh's Defence (Amendment No 4) at para 19.

AAI's position that "SSI was not agreeable to any further extension … beyond March 2018" of the loan.[61]

40 In the first round of amendments, in support of the Illegal Moneylending Defence, the defendants introduced their version of what happened at the meeting on 22 July 2016 at the office of JLC Advisors.

41 In the second round of amendments, the defendants allege that the First Deed of Assignment, *ie*, the assignment of the Loan Agreement and the Personal Guarantee, is unenforceable as it falls foul of s 5A(2) of the CLA in that it savours maintenance and champerty.[62] This is the "Maintenance and Champerty Defence".

The third round of amendments to the Defences

42 On 26 November 2018, AAI applied under O 15 r 6 of the Rules of Court (2014 Rev Ed) ("ROC") to join SSI as the second plaintiff to the action. This was to meet the defendants' objection that as an equitable assignee, AAI may not proceed with the action without the presence of SSI. This application was granted on 7 February 2019, and SSI was joined as co-plaintiff to the action.

43 By about mid-2019, Mr Ong had run into trouble with the law. At the time of the trial, he was in remand for a range of criminal charges, *inter alia*, involving misappropriation of clients' funds.[63]

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61 Asidokona's Defence (Amendment No 4) at para 19; Mr Soh's Defence (Amendment No 4) at para 20.

62 Asidokona's Defence (Amendment No 4) at para 12; Mr Soh's Defence (Amendment No 4) at para 12.

63 AB (Vol 4) at pp 169–172.

44 On 27 September 2019, the defendants applied for specific discovery against the plaintiffs for communications between Mr Wong and the fellow contributors towards the loan, including Ms Lou. The plaintiffs were ordered to provide further discovery by 5 November 2019. As set out above at [5] above, on 1 November 2019, SSI was struck off the BVI Register of Companies.[64] Upon the defendants' application, on 17 March 2020, an unless order was made against the plaintiffs that the claim be struck out unless they comply with the specific discovery order by 7 April 2020.

45 One particular issue raised in the application was whether Mr Wong's affidavits *bound* SSI. On 21 March 2020, Mr Wong sent a WhatsApp message to Ms Lou to explain the developments in the proceedings, including the question of his authority to act for SSI, and offered Ms Lou three options in respect of the action:[65]

> … At the assignment, Jeff passed me the loan agreement with the borrower. While the borrower side was signed, the lender being [SSI] was not. So I asked Jeff why do. He said that the HK side didn't even know the details of the loan and have authorised me to sign off. The second document was the assignment of the loan to [AAI]. The agreement was that I would fund the litigation to recover the loan and when we succeed, half of the loan recovered less cost would be returned to SSI. I then enquired who is the owner of SSI. That was the first time I was told that you were the sole owner and sole director.
>
> I did at Jeff's disclosure, call [Mr William Wong]. I asked him 3 things, namely does SSI have the funds to do the loan (in July 2016), I informed him that I signed the documents and lastly, I would commence the suit against the borrower. He replied that SSI should have sufficient funds to do this and ok to the other 2.

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64 Wong Joo Wan's Affidavit in HC/SUM 1629/2020 dated 6 April 2020 at para 9 and Exhibit WKW–49 at p 10.

65 AB (Vol 3) at pp 511–517.

> With that a suit was commenced. Initially the plaintiff was Alternative Advisors Investment (my company). During the initial discovery process, the borrower challenged the assignment. So i instructed the lawyers to add SSI as the plaintiff. At no point was I even looking for cost from SSI and was prepared to fund this action.
>
> The hearing is fixed for May 2020. After 2 years of going thru discovery etc. The last hearing, the borrower challenged my authority of SSI.
>
> …
>
> *… the judge during the discovery asked me to either confirm that I have authority to act for SSI or for the owner to file an affidavit to confirm SSI has no other documents requested. … along the way, I even asked [Mr William Wong] to keep SSI alive simply because SSI is a plaintiff and shouldnt be disposed.*
>
> …
>
> My lawyers have essentially said there are 3 options:
>
> *1. If you as director or if u authorise [Mr William Wong] and he then authorise me, can confirm or rectify that I had the authority, the suit can continue. And also confirm that SSI has no other documents.*
>
> *2. If u maintain that u knew nothing about the loan and I acted without authority, I respect your position … So if that is your position, I would discontinue the suit. But in doing so, both my lawyer and I would need your authority to file the notice of discontinuance. I will be liable for legal cost of the borrower.*
>
> *3. If I cannot get your authority, then I can only file the notice of discontinuance for AAI but not SSI.*
>
> …
>
> It is not my intention to have troubled u. It appears I trusted Jeffrey too much and relied on his representations. But I did check with William somewhat.
>
> [emphasis added]

46 By 31 March 2020, Ms Lou replied to Mr Wong, "Joo Wan, thank you for your note. I want to help you and I believe our lawyers are meeting to work out how I can help you".[66]

47 Meanwhile, on 6 April 2020 (*ie*, just one day prior to the ordered deadline of 7 April 2020), AAI filed an appeal against the unless order. AAI submitted "it would have been impossible to comply with the 31 March 2020 Unless Order" given that SSI "had been struck off" by that point.[67] On 18 June 2020, the appeal was allowed. Justice Choo Han Teck held in *Alternative Advisors Investments Pte Ltd and another v Asidokona Mining Resources Pte Ltd and another* [2020] SGHC 125 that Mr Wong's affidavits "expressly state that they were made on behalf of both plaintiffs and confirm that both plaintiffs do not have in their possession, custody or power the documents which the defendants seek". Thus, it was not necessary to order that Ms Lou confirm that she and/or SSI are bound by Mr Wong's affidavits, or that they do not have the relevant documents in their possession, custody or power (at [9]). As against AAI, the unless order was set aside (at [10]). Therefore, AAI's claim survived.

48 On 18 September 2020, in the third round of amendments, the defendants allege for the first time that Mr Wong "had no authority to sign the Loan Agreement, the Personal Guarantee, [and] the Deed of Charge" on behalf of SSI.[68] Prior to that, the defendants previously admitted that Mr Wong was

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66 AB (Vol 3) at p 518.

67 AAI's Written Submissions in HC/RA 80/2020 dated 4 June 2020 at para 4.

68 Asidokona's Defence (Amendment No 4) at para 9(l); Mr Soh's Defence (Amendment No 4) at para 9(l).

"SSI's principal".[69] The defendants aver that SSI did not authorise the Loan Agreement and Deeds of Assignments. I shall refer to this as the "Lack of Authority Defence".

49 Relatedly, the defendants aver that the Loan Agreement and Personal Guarantee are tainted with illegality as part of the moneys used to disburse the loan were illegally obtained.[70] In that regard, Ms Lou, the sole director and shareholder of SSI at all material times, did not advance S$1m to JLC Advisors. As such, the money used to fund the loan were other client moneys from JLC Advisors' client accounts which was misappropriated by Mr Ong.[71] I refer to this as the "Illegality Defence".

50 Further, the defendants deny that the Deeds of Assignments are valid under s 4(8) of the CLA by reason of AAI's and/or SSI's failure to give written notice for the assignment to the defendants and are thus ineffectual. The defendants plead that AAI, as equitable assignee, cannot carry on the action when SSI is no longer a party to the action.[72] I shall refer to this as the "*Locus Standi* Defence".

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69 Asidokona's Defence (Amendment No 2) at para 4; Mr Soh's Defence (Amendment No 2) at para 4.

70 Asidokona's Defence (Amendment No 4) at para 14; Mr Soh's Defence (Amendment No 4) at para 15.

71 Asidokona's Defence (Amendment No 4) at para 14; Mr Soh's Defence (Amendment No 4) at para 15.

72 Asidokona's Defence (Amendment No 4) at para 12(c); Mr Soh's Defence (Amendment No 2) at para 12(c).

The fourth round of amendments to the Defences

51 In early 2021, the parties applied for interrogatories against Ms Lou. In response to AAI's interrogatories, Ms Lou stated that she had never appointed JLC Advisors to act for her or SSI. Ms Lou also stated that she was not the "HK investor" and was Singaporean.[73] Ms Lou's position was that SSI did not contribute to the loan to Asidokona[74] and that she never maintained a pool of funds in JLC Advisors' client account in her sole name or in joint names with her husband.[75]

52 Subsequently, on 22 July 2021, the defendants introduced the fourth round of amendments to the Defences, and expressly disputed that SSI appointed JLC Advisors to act as SSI's solicitors and that SSI authorised any moneys for the loan.[76] Up to the defendants' third amendment to the Defences on 18 September 2020, the defendants averred that JLC Advisors "were the appointed solicitors of SSI at the material time" and the partner "assigned to SSI's case was [Mr] Ong".[77] I shall include this as another aspect of the Lack of Authority Defence.

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73 Defendants' Bundle of Relevant Cause Papers at p 282 (Ms Lou's Answer to Interrogatories dated 3 March 2021 at para 4(a)).

74 Defendants' Bundle of Relevant Cause Papers at p 278 (Ms Lou's Answer to Interrogatories dated 3 March 2021 at para 1(a)(iii)).

75 Defendants' Bundle of Relevant Cause Papers at p 288 (Ms Lou's Answer to Interrogatories dated 19 April 2021 at para 1(a)).

76 Asidokona's Defence (Amendment No 4) at para 13A; Mr Soh's Defence (Amendment No 4) at para 14.

77 Asidokona's Defence (Amendment No 3) at para 14(d); Mr Soh's Defence (Amendment No 3) at para 15(d).

The ratification, AAI's Reply and SSI's Rejoinder

53 AAI disputes all of defences raised by the defendants.

54 On 23 July 2021, SSI was restored to the BVI Register of Companies.[78] Shortly thereafter, SSI passed certain director's resolutions (*ie*, signed by Ms Lou) on 26 July 2021 ratifying and adopting in entirety the Loan Documents, the Deeds of Assignments, AAI's commencement of the action, and the execution of the Loan Documents and Deeds of Assignments by Mr Wong on SSI's behalf (the "Ratification").[79] A deed of undertaking was entered into between AAI, SSI and Ms Lou (the "Deed of Undertaking") to provide for the arrangements for the Ratification, the funding of the action and the conduct of the action.[80]

55 In response to the defendants' contention that Mr Wong and Mr Ong lacked the authority to act for SSI, AAI relied on the Ratification.[81] SSI's ratification is "sufficient, in and of itself, to dispose of the [d]efendants' averments that SSI did not authorise the execution and assignment of the Loan Documents".[82]

56 In this regard, the defendants aver that SSI's Ratification is invalid.[83] I shall refer to this as the "Invalid Ratification Defence".

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78 AB (Vol 4) at p 174.

79 AB (Vol 4) at pp 179–180.

80 AB (Vol 4) at pp 341–345.

81 Plaintiff's Reply Closing Submissions at para 11.

82 Plaintiff's Closing Submissions at para 65.

83 Asidokona's Rejoinder at para 3; Mr Soh's Rejoinder at para 3.

Issues to be determined

57 As AAI highlights, AAI has clearly established that Asidokona took a loan of S$2m sometime in July 2016, Mr Soh personally guaranteed Asidokona's obligation to repay the loan, and the defendants have not repaid the loan and interest in full to the present date.[84] The defendants have essentially not adduced any evidence to dispute the above.

58 To deny liability for the claim, the defendants raise seven grounds. AAI challenges each one of them. Therefore, the issues to be determined are as follows:[85]

(a) the *Locus Standi* Defence – whether AAI, as the equitable assignee, may proceed with the action against Asidokona and Mr Soh when SSI, the equitable assignor, is no longer a party to the action;

(b) the Lack of Authority Defence – whether SSI authorised the Loan Agreement and Deeds of Assignments (which turns on whether Mr Wong or Mr Ong possessed the requisite authority from SSI to do so);

(c) the Invalid Ratification Defence – whether the Ratification is valid in the circumstances so as to cure any lack of authority on the part of Mr Wong and or Mr Ong;

(d) the Illegality Defence – whether AAI's claim is tainted by illegality on the basis that part of the funds used to finance the

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84 Plaintiff's Reply Closing Submissions at para 2.

85 Defendants' Closing Submissions at para 24.

loan were in fact misappropriated client moneys from JLC Advisors' client accounts (and thus illegal funds);

(e) the Maintenance and Champerty Defence – whether the Deeds of Assignments contravene s 5A(2) of the CLA on the basis that they savour maintenance and champerty;

(f) the Illegal Moneylending Defence – whether the loan is an illegal moneylending transaction under the MLA; and

(g) the Penalty Clause Defence – whether the interest clauses under the Loan Agreement amount to penalty clauses in law, which are unenforceable.

The applicable legal principles upon a submission of "no case to answer"

59 I will deal with the applicable law in relation to the issues in due course. At this juncture, I set out the legal principles where the defendants submit that there is no case to answer.

60 In relation to any cause of action pleaded by the plaintiff, the legal burden of proof lies on the plaintiff, and will only be discharged if the court is satisfied that the plaintiff has proved its pleaded case against the defendant on a balance of probabilities.

61 It is, however, always open to a defendant, having heard the evidence adduced on behalf of the plaintiff, to elect to call no evidence on the basis that the evidence put forth by the plaintiff is insufficient to transfer the evidential burden onto the defendant so that the plaintiff has failed to prove its case. Hence the expression, "no case to answer" (O 35 r 4(3) and O 110 r 3(1) of the ROC). While the legal burden rests on the plaintiff throughout the proceedings as the

party making the claim against the defendant, the evidential burden can shift as the civil trial progresses. That evidential burden rests on the party on whom the responsibility lies to contradict, weaken or explain away the evidence that has been led (*Ma Hongjin v SCP Holdings Pte Ltd* [2021] 1 SLR 304 ("*Ma Hongjin*") at [28]).

62 Crucially, the establishment of a *prima facie* case by the plaintiff on a particular point on which it bears the legal burden denotes the point at which the evidential burden will shift to the defendant (*Ma Hongjin* at [30]). Following any shift in evidential burden at the point that a *prima facie* case against the defendant is established, the plaintiff would have succeeded in proving the case on a *balance of probabilities* since there is simply no evidence forthcoming from the defendant to disprove the plaintiff's position or otherwise weaken the case against it (*Ma Hongjin* at [31]).

63 The *threshold* to succeed on a "no case to answer" submission is a *high* one. In *Lena Leowardi v Yeap Cheen Soo* [2015] 1 SLR 581 at [23]–[24], the Court of Appeal held that it is established law that a submission of "no case to answer" will only succeed if the evidence led by the plaintiff, at face value, does not establish a case in law or is so unsatisfactory or unreliable that the plaintiff has not discharged its burden of proof. If circumstantial evidence is relied on, it does not have to give rise to an irresistible inference as long as the desired inference is one of the possible inferences.

64 Bearing in mind the foregoing applicable principles, I turn to consider the issues.

Whether AAI, as an equitable assignee, may proceed with the action against the defendants when SSI, the equitable assignor, is no longer a party

The parties' arguments

65 I turn to address the *Locus Standi* Defence. Assuming that the Deeds of Assignments are valid, it is undisputed by the parties that the assignments of the Loan Agreement, Personal Guarantee and Deed of Charge pursuant to the Deeds of Assignments are not legal but equitable assignments. As the defendants argue, the statutory requirements for a legal assignment are found in s 4(8) of the CLA. In particular, express notice in writing to the obligor is necessary.[86]

66 Contrary to such requirement, AAI did not give written notice of the assignments to Asidokona and Mr Soh before the commencement of the action. As such, the defendants submit that the Deeds of Assignments are equitable assignments such that the equitable assignor (*ie*, SSI) must remain a party to the proceedings for AAI to proceed.[87]

67 The defendants argue that AAI had effectively realised "the fatality in its action", and thus applied to add SSI as a co-plaintiff in November 2018. The order was made on 7 February 2019. Thus, the facts are similar to the case of *Parkway Hospitals Singapore Pte Ltd (trading as Mount Elizabeth Hospital) and another v Sandar Aung* [2007] 1 SLR(R) 227 ("*Parkway*"). As such, "SSI as the named lender and the alleged assignor, is required to be added as a party" and "failing which, [AAI's] claim fails". However, SSI "has been struck off"

86 Defendants' Closing Submissions at paras 223–224.

87 Defendants' Closing Submissions at para 225.

from the action pursuant to the unless order.[88] In this connection, *Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank International), Singapore Branch v Motorola Electronics Pte Ltd* [2010] 3 SLR 48 ("*Cooperatieve Centrale*") "makes it clear that the "***procedural bar***" is still in place in Singapore" [emphasis in original].[89]

68 AAI does not dispute that it is an equitable assignee but disputes the requirement for SSI to remain a party in the unique circumstances of the present case. AAI submits that the requirement of joining an equitable assignor to an action for recovery of the debt is "only a procedural one".[90] In that regard, the rationale for the procedural rule is to prevent double recovery by the equitable assignor. Relying on *Yongnam Development Pte Ltd v Springleaves Tower Ltd and anor* [2004] 1 SLR(R) 348 ("*Yongnam*") at [68], AAI contends that the court has the discretion to dispense with the procedural requirement that assignor be joined as party to a claim by an assignee. Since Ms Lou has confirmed on affidavit that SSI will not be commencing any further action against the defendants in relation to the Loan Agreement, the Personal Guarantee and the Deed of Charge in view of the assignments of the same to AAI,[91] "there is absolutely no risk of the [d]efendants facing a claim in double recovery". As such, AAI can, and should, be allowed to claim against the defendants.[92]

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88 Defendants' Closing Submissions at paras 228–232.

89 Defendants' Closing Submissions at paras 234–235.

90 Plaintiff's Reply Closing Submissions at para 120.

91 LSLA at para 11.

92 Plaintiff's Reply Closing Submissions at paras 112–114 and Plaintiff's Reply Closing Submissions at paras 120–122. See also the oral submissions on 14 February 2022.

Analysis and findings

69 Based on the parties' arguments, the issue is whether the claim of an equitable assignee (*ie*, AAI) against the obligor(s) (*ie*, Asidokona and Mr Soh) fails because the equitable assignor (*ie*, SSI) is no longer a party to the action.

70 The starting point is *Parkway*, where Judith Prakash J (as she then was) held that the argument that "the assignee cannot sue in his own name and the assignor must be made a co-plaintiff" is a valid one (at [12]–[13]). Nonetheless, Prakash J granted an application to add the assignor as the second plaintiff "as "*the problem was a technical one which could have easily been averted had notice of the assignment been given* to the [obligor] before the commencement of the action *or had [the equitable assignor] been made a co-plaintiff* at the beginning" [emphasis added in italics] (at [13]).

71 In *Total English Learning Global Pte Ltd and another v Kids Counsel Pte Ltd and another suit* [2014] SGHC 258 ("*Total English*"), Tay Yong Kwang J (as he then was) observed, *obiter*, that "an equitable assignment would *generally* require the assignee to join the assignor to the action" [emphasis added] (at [51]). Then, in *Cooperatieve Centrale*, Lai Siu Chiu J (as she then was) made similar remarks. In particular, Lai J held that one rationale for the requirement of recovering a debt in the name of the equitable assignor is "to protect the debtor from being exposed to double action for the same debt" (at [49]) and that the statutory assignment was created under s 4(8) of the CLA to "counter this procedural bar of having to add the assignor as a party to the action to recover the debt" (at [50]).

72 One consistent point made by the cases is that the requirement of joining an equitable assignor as a co-plaintiff is a procedural requirement. Indeed, this

is common ground between AAI and the defendants. The reason is to protect the obligor from the risk of double recovery (*ie*, by the equitable assignor and equitable assignee alike) arising from essentially the same obligation. In that sense, the rationale for such procedural requirement is both practical and protective of the interests of all the parties involved.

73 Given that this is a procedural requirement, it seems to me that the court may dispense with it altogether in the appropriate circumstances. Indeed, in *Halsbury's Laws of Singapore* vol 7 (LexisNexis, 2019) at para 80.446, it is stated that:

> Although actions founded on an assignment in equity *may no longer have to be brought in the name of the assignor*, the assignor may still have to be joined in the action, as co-plaintiff if he is willing to co-operate, and as co-defendant if not. … Even though the courts are now fused, a court hearing the issue would require that the assignor be joined so that it is bound by the judgment given in favour of the assignee. *Without this procedural requirement, the debtor could subsequently still be sued by the assignor of the legal chose in action …*
>
> … However, the need for joinder may be *waived* by the debtor or *by the court.*
>
> [emphasis added]

74 Similarly, *Snell's Equity* (Sweet & Maxwell, 32nd Ed) at 3–023 states:

> This requirement is *only procedural* however and proceedings will not be treated as a nullity where the assignor and assignee are not both joined. The court may at any stage remedy the defect by ordering that a party be added as a party. *In special circumstances (e.g. where it is clear that the assignor has no further interest in the matter), the court may even dispense with the requirement that both assignor and assignee are joined.*
>
> [emphasis added]

75 In *Yongnam*, the court likewise accepted that "the court has a discretion to dispense with the requirement that both assignor and assignee be joined as

parties" at [68], referring to the same excerpt from *Snell's Equity* reproduced above. However, as the defendants highlighted, the court in that case declined to exercise its discretion in the circumstances of that case. In my judgment, even if SSI is no longer a party to the action, the totality of the circumstances would, unlike the case in *Yongnam*, justify the exercise of discretion in favour of AAI for the following reasons.

76 First, AAI had in fact added SSI as co-plaintiff to the action. Second, while SSI has not chosen to participate in these proceedings after it was restored to the BVI Register of Companies, SSI has "adopted and ratified" the Loan Agreement, Personal Guarantee, Deed of Charge, Deeds of Assignments, and the commencement of the action by AAI.[93] Third, Ms Lou has confirmed on affidavit that "SSI will not be commencing any further action against Asidokona or [Mr Soh] in relation to the Loan Agreement, the Personal Guarantee and the Deed of Charge, given the assignment to AAI".[94] Thus, I accept that the action is determinative of the subject matter of this action such that SSI cannot bring a fresh suit in respect of the same. There is no risk of double recovery in the circumstances. Fourth, the defendants' defences (or lack thereof in respect of failing to repay AAI or SSI, as mentioned at [57]) would not change (whether or not SSI is a party to the action).

77 Indeed, I find the remarks of the House of Lords in *Performing Right Society Ltd v London Theatre of Varieties Ltd* [1924] AC 1 particularly helpful and applicable. Lord Sumner remarked (at p 31):

> If the assignor … was not made a party, he would not be bound; was it not possible that the debtors … might be exposed to

93 LSLA at para 9.

94 LSLA at para 11.

> claims by him or his trustee in bankruptcy? [The assignor], however, had already been settled with and the [debtors] held his receipt. … *The respondents admitted that what they wanted was not the presence but the absence of the assignor, and that they did not propose to pay the assignor but desired to pay nobody, and this mere non-joinder of parties was not allowed to relieve them.*
>
> [emphasis added]

Likewise in the present case, the defendants in effect seek the absence of SSI and thereby deny liability for the repayment of the loan. In such circumstances, the defendants should not be allowed to succeed on the *Locus Standi* Defence and thereby escape any liability entirely.

78 Before I leave this issue, I should add that in the first place, I have some reservations about the parties' position that SSI is no longer a party to the action. Pursuant to AAI's application made under O 15 r 6 of the ROC, SSI was joined as a party on 7 February 2019 (see [42] above). There has not been any specific order for SSI to cease being a party. If SSI has "for any reason ceased to be a proper or necessary party" to the action, such an order can be sought and made under O 15 r 6 of the ROC. Certainly, no such order has been made and counsel for the parties confirmed that no such order had been sought. In my view, the effect of the striking out of the action is not that SSI is removed as a party. SSI is simply unable to proceed with the action. However, from the time of the joinder, SSI did not seek any relief under the Statement of Claim. Its presence was, and is, for the purpose of satisfying the technical requirement so that SSI's action may be sustained. Notwithstanding the subsequent developments, it seems to me that the procedural requirement has been met.

79 Be that as it may, I have dealt with the arguments as raised by the parties. By all of the above, I find that AAI is able to sustain the claim against the defendants.

Whether SSI authorised the Loan Agreement and Deeds of Assignments and whether the Ratification is valid

80 The Lack of Authority and Invalid Ratification Defences are related, and I propose to deal with the Invalid Ratification Defence first. Specifically, even if the defendants could prove on the evidence that Mr Wong and Mr Ong lacked the requisite authority at all material times, the argument would be moot if the Ratification is valid. Indeed, it bears reminding that it was subsequent to Ms Lou's unexpected stance on the loan that the defendants mounted challenges regarding the authority of Mr Wong and Mr Ong to act for SSI. These were contained in the third and fourth rounds of amendments to their Defences. In response, SSI ratified the various matters. Thereafter, the defendants plead in the Rejoinders that the Ratification is not valid.

The parties' arguments

81 The defendants allege that any ratification (of the Loan Agreement, Personal Guarantee, Deed of Charge, and Deeds of Assignments) is invalid as: (a) SSI did not have full knowledge of the material facts pertaining to the unauthorised actions of Mr Wong at the time of the Ratification; (b) the Ratification did not take place within reasonable time and thus would unfairly prejudice the defendants; and (c) AAI should not be allowed to rely on the Ratification as it has acted in abuse of process.[95] The defendants submit that the Ratification is an abuse of process because "despite knowing from the very

95 Defendants' Closing Submissions at paras 70–71.

outset of the identity of SSI's sole director and shareholder and his lack of authority to act on behalf of SSI, [Mr Wong] deliberately concealed the above material facts from the Court" throughout the pre-trial hearings. As early as AAI's first amendment on 8 February 2019, when SSI was added as the second plaintiff, AAI pleaded that the "authorised Attorney for SSI is [Mr Wong]".[96] Furthermore, Mr Wong filed "eight (8) affidavits … on SSI's behalf wherein he expressly claimed he had authority to file the respective affidavits on SSI's behalf" despite him knowing "from at least March 2018 that, SSI had not authori[s]ed him as SSI's agent".[97]

82 AAI submits that the defendants' allegation that the Ratification is invalid or is otherwise an abuse of process is simply without basis. In particular, AAI submits that: (a) the Ratification was made within a reasonable time;[98] (b) the Ratification was made in full in respect of all of the Loan Documents as well as the legal proceedings;[99] and (c) the Ratification is not an abuse of process.[100]

Analysis and findings

83 As mentioned at [81], the defendants merely challenge the validity of the Ratification but did not dispute the effect of a valid ratification. In that regard, ratification "is akin to an assent by the principal to the transaction entered into by the unauthorised agent by adopting the agent's otherwise

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96 Statement of Claim (Amendment No 1) at para 1.

97 Defendants' Closing Submissions at para 112(iii).

98 Plaintiff's Closing Submissions at paras 69–72; Plaintiff's Reply Closing Submissions at para 42.

99 Plaintiff's Closing Submissions at paras 73–74; Plaintiff's Reply Closing Submissions at para 43.

100 Plaintiff's Reply Closing Submissions at para 45.

unauthorised acts" (*Cavenagh Investment Pte Ltd v Kaushik Rajiv* [2013] 2 SLR 543 at [31]). This is to say that if the Ratification is valid, SSI will be accordingly bound by the acts of Mr Wong and Mr Ong. In that regard, and as mentioned at [80], any lack of authority on the part of Mr Wong and Mr Ong to act on behalf of SSI as alleged by the defendant would be of no legal significance if their acts were so ratified by SSI. Significantly, the defendants' Lack of Authority Defence would also fall away. The parties' disagreements on this issue turn on the facts, to which I now turn.

84 First, I am not convinced that SSI did not have full knowledge of the material facts pertaining to the unauthorised actions of Mr Wong at the time of the Ratification (*ie*, on 26 July 2021) as the defendants submit.[101] Such submission is plainly contradicted by the defendants' own pleadings that from "around March 2020", Ms Lou "knew of" the action and the Loan Agreement that was commenced and entered into "on behalf of SSI without SSI's authority".[102] If that is so, it cannot be seriously disputed that by March 2020 (*ie*, when there was the WhatsApp exchange between Mr Wong and Ms Lou as set out at [45]–[46] above), Ms Lou had full knowledge of the material facts on which Mr Wong and Mr Soh had acted. That same WhatsApp message by Mr Wong also confirmed that lawyers were on board to determine how Ms Lou could help Mr Wong in the action. The defendants' submission is thus a mere afterthought that is, in any case, contrary to their own pleadings.

85 The second allegation (*ie*, that the Ratification was not made within a reasonable period of time) is also linked to the first allegation. The defendants

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101 Defendants' Closing Submissions at paras 77–81.

102 Asidokona's Rejoinder at para 3; Mr Soh's Rejoinder at para 3.

plead that, despite Ms Lou's knowledge of the action from as early as March 2020 and that SSI's action had been struck off in March 2021, it was only on 26 July 2021 that the Ratification was made. At first blush, there appears to be a considerable lapse in time. However, all of the circumstances must be borne in mind in determining the question. It is undisputed that SSI was struck off the BVI Register of Companies on 1 November 2019 (as mentioned at [5]) and was restored to the same only on 23 July 2021. Thus, the Resolution was passed a mere three days after it was restored to the BVI Register of Companies. Seen in that light, the Ratification can hardly be said not to have been made within a reasonable time.

86 Thirdly, I disagree that the Ratification is an abuse of process. As mentioned at [81], the defendant's complaint is essentially that Mr Wong had represented himself to be SSI's authorised agent despite knowing that he was not (thus misleading the court). In my judgment, such a factual submission is not supported by the evidence. As described at [45] above, having set out the background of matters to Ms Lou, Mr Wong explained in his WhatsApp message of 21 March 2020 to Ms Lou that he only found out that Ms Lou was the sole owner and director of SSI during the assignment (*ie*, March 2018). Mr Wong has consistently maintained that position (see [27]). In that regard, Mr Wong candidly admitted in his WhatsApp message that he had "trusted [Mr Ong] too much and relied on his representations". In relation to the authority to act for SSI, Mr Wong testified:[103]

> In the context leading up to March 2020 and the unless order, *there was no doubt in my mind that I had authority to act for SSI and that was also the accepted defence*---defendant's position. It was only at the unless order or at that point that when the AR ordered the two things, either Nicholas Narayanan files an

[103] Transcript dated 1 September 2021 at p 87, lines 11–18.

> affidavit or Mdm Lou, that I then reached out to William again *in late February*. And it was at that stage that William disclosed the full name of Mdm Lou Swee Lan to me.
>
> [emphasis added]

87 The defendants have not produced any evidence that Mr Wong knew that he was not authorised by SSI at all material times. In this connection, I also accept AAI's submission that in fact, the parties had, at all material times leading up to the time of the assignment, understood that both Mr Wong and Mr Ong were authorised to act on SSI's behalf.[104] As such, I do not find that the Ratification is an abuse of process.

88 For the foregoing reasons, I find that the Ratification is valid. For completeness, I should address the defendants' pleading that the Ratification "has not been made in full".[105] The director's resolutions passed by SSI plainly ratified and approved the Loan Agreement, Personal Guarantee, Deed of Charge, Deeds of Assignments, AAI's commencement of the action and the joinder of SSI to the action.[106] For present purposes, the Ratification suffices. Having ruled the Invalid Ratification Defence in favour of AAI, it is not necessary for me to deal with the Lack of Authority Defence.

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104 Plaintiff's Reply Closing Submissions at para 45.

105 Asidokona's Rejoinder at para 3(x); Mr Soh's Rejoinder at para 3(x).

106 AB (Vol 4) at pp 179–180 (Written Resolutions of the Sole Director of SSI dated 26 July 2021).

Whether AAI's claim is tainted with illegality

The parties' arguments

89 Turning to the Illegality Defence, it is not seriously disputed that a partial sum of S$1m used to finance the loan to Asidokona was contributed by Mr Wong (albeit with initial assistance from other persons including Mr Yong).[107] It is also not disputed that the loan amount was then disbursed out of funds from JLC Advisors' client account.[108] The thorny issue is in respect of the remaining S$1m used to finance the loan. In this regard, the defendants contend that the money was not from SSI/Ms Lou (*ie*, the "Hong Kong" investor) but instead comprised money misappropriated from other clients of JLC Advisors, thus tainting AAI's claim with illegality.[109] The defendants submit that Ms Lou could not have been the "Hong Kong" investor as she had denied maintaining any pool of funds in JLC Advisors' client account or contributing S$1m to the same.[110]

90 In response, AAI submits that AAI has "adduced evidence to establish that the said partial sum of S$1m did belong to [Ms Lou]" which disproves the defendants' "bare allegation" that the money was misappropriated from other clients.[111] To begin with, Mr Ong deposed that at the material time, Mr William Wong and Ms Lou were his "regular clients" who "regularly appointed JLC Advisors to act for them and/or their many offshore corporate entities in various

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107 Plaintiff's Closing Submissions at para 76.

108 Defendants' Closing Submissions at para 120.

109 Defendants' Closing Submissions at para 128.

110 Defendants' Closing Submissions at paras 123–129.

111 Plaintiff's Closing Submissions at para 80; Plaintiff's Reply Closing Submissions at paras 69–70.

commercial deals" such as SSI. Arising from such course of dealing, there was an existing client account of which Mr Wong and Ms Lou were the beneficial owners.[112]

91 Pertinently, Mr Ong's testimony is corroborated by the objective documentary evidence. As early as 14 April 2016 (*ie*, before the loan was disbursed), JLC Advisors' finance manager, Ms Michelle Chan, informed him by email that SSI had made a transfer of S$1m into the JLC Advisors' client account.[113] Even after the loan money was disbursed, SSI maintained and actively funded its client account with JLC Advisors. Other substantial funds were also credited into the JLC Advisors' client account from SSI accounts: HKD1.5m on 8 December 2016 and S$30,000 on 19 July 2017.[114]

92 More crucially, Mr Ong unequivocally confirmed that the remaining sum of S$1m extended to Asidokona was deducted from the pool of funds which Mr William Wong and Ms Lou maintained in JLC Advisors' client account.[115] As mentioned at [30], Mr Ong also confirmed that Mr William Wong was "the primary person who is in charge of the group of funds". According to Mr Wong, Mr William Wong also represented to him that money from SSI was used to fund the loan. Mr Wong's evidence was as follows:[116]

> I then called William and I asked William. Maybe this translation may not be an accurate translation in English, but I asked him in Hokkien, I say, "*Ah Hia*, SSI *wu ze eh lui zo ze*

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112 JOA at paras 8–10.

113 JOA Exhibit JO–1 at p 16.

114 JOA Exhibit JO–2 at pp 18–19 and pp 20–21.

115 Plaintiff's Closing Submissions at para 84; Transcript dated 3 September 2021 at p 27, lines 1–18.

116 Transcript dated 1 September 2021 at p 87, line 26 to p 88, line 1.

> *eh* loan *boh*?" In direct translation, it's I said, "Eh, brother, did SSI have the funds to do this loan?" Right? In no sense am I saying that it could have been just SSI's loan or monies. It could have been that they also had art---some other investors, so I don't know. So William's---confirm to me, he says, "Yes". It was at that stage when I---when I spoke to William that he said that this is SSI's funds.

93 In that regard, even Ms Lou herself admitted that she would unquestionably follow her husband's instructions when transferring moneys to the JLC Advisors' client account:[117]

> A As I said, this money was asked by my husband to transfer to JLC. I trust my husband, I don't question him. And I do not ask what the money was for and where the money go to.
>
> Q So your husband told you to take the money from SSI and send to JLC?
>
> A Yes.
>
> Q And you followed those instructions?
>
> A Correct.
>
> Q You didn't query it?
>
> A No.

94 Mr Ong likewise testified that Ms Lou agreed with her husband's decision to fund part of the loan:[118]

> … The loan was discussed with [Ms Lou] and with William Wong. Of course, it is correct that William Wong was the--- *William was the one who was---would lead the discussions and would give instructions.* That is correct. *But she was aware of it, and she did not disagree when William gave the confirmation to go ahead with the loans.*
>
> [emphasis added]

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117 Transcript dated 2 September 2021 at p 84, lines 14–22.

118 Transcript dated 3 September 2021 at p 6, lines 14–18.

Analysis and findings

95 As AAI highlights, the evidence of Mr Wong, Mr Ong and the objective evidence showed that the sum of S$1m belonged to SSI, and was forwarded by Ms Lou to JLC Advisors, and that the sum was contributed by SSI towards the loan. Against such *prima facie* evidence of a loan extended partially using funds of SSI, the "only evidence" relied on by the defendants to support their assertions that not only did SSI not contribute the money, but also that the money was misappropriated from other clients, is merely Ms Lou's equivocal evidence that neither she nor SSI had contributed any money to the loan.[119]

96 In this connection, I should mention that by 20 October 2020, Mr William Wong (then Chairman, CW Group Holdings Limited) was named as a co-conspirator of Mr Ong in charges of conspiracy to cheat CW Group Holdings Limited.[120] Against this backdrop, I assess that Ms Lou had sought to distance herself from any dealings with Mr Ong. This explains her somewhat inconsistent, evasive and unhelpful evidence in court.

97 Seen in that light, I am not satisfied that Ms Lou's testimony in and of itself is sufficient to undermine AAI's claim that SSI contributed the sum of S$1m towards the loan (much less support the defendants' positive assertion that the said sum was misappropriated from other clients). Ms Lou's answers to interrogatories were that "SSI did not place a sum of S$1,700,000 in M/s JLC Advisors LLP's client account at the material time" and that "SSI never owned or beneficially owned a pool of funds in JLC Advisors' client account" (see [51]

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119 Plaintiff's Reply Closing Submissions at para 77.

120 AB (Vol 4) at pp 169–172.

above).[121] Ms Lou also testified at the trial that she did not know about the loan until about March 2020 and that she did not use S$1m from the pooled funds to finance the loan.[122] The defendants rely on the foregoing evidence, among other similar statements made by Ms Lou, in support of their contention.

98 However, other parts of Ms Lou's testimony contradict the above. In particular, Ms Lou expressly acknowledged the remittance of S$1m by SSI. Her explanation was that "[she] made the transaction. [Her] husband asked [her] to make the transfer".[123] In that regard, Ms Lou had simply trusted her husband, Mr William Wong, and did not ask him what the S$1m was to be used for.[124] Ms Lou also confirmed that, in SSI's accounts, she simply recorded the remittance as "transfer to JLC".[125] As such, the defendants' position is plainly not substantiated by the totality of Ms Lou's evidence.

99 Further, Ms Lou confirmed that the S$1m never came back to SSI.[126] In my judgment, this is a crucial fact which suggests that the S$1m was transferred out of the JLC Advisors' client account. Based on the totality of Ms Lou's evidence before me, a reasonable inference to be drawn is that the S$1m was used to finance part of the loan to Asidokona pursuant to the Loan Agreement. Furthermore, such inference is supported by other corroborative evidence such as Mr Wong's WhatsApp message to Ms Lou on 21 March 2020 wherein Mr

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121 Defendants' Bundle of Relevant Cause Papers at Tab 12 (Lou Swee Lan's Answers to Interrogatories dated 3 March 2021 at para 4(d)) and Tab 13 (Lou Swee Lan's Answers to Interrogatories dated 19 April 2021 at para 1(b)(ii)).

122 Transcript dated 2 September 2021 at p 28 line 30 to p 29 line 4 and p 43, lines 21–30.

123 Transcript dated 2 September 2021 at p 44 line 24 to p 45 line 7.

124 Transcript dated 2 September 2021 at p 45, lines 14–18.

125 Transcript dated 2 September 2021 at p 70, lines 9–11.

126 Transcript dated 2 September 2021 at p 70, lines 14–17.

Wong stated that Mr William Wong confirmed that "SSI [had] the funds to do the loan (in July 2016)" (see [45] above).

100 Thus, taking the defendants' case at its very highest, even if Ms Lou had transferred S$1m from SSI's account to JLC Advisors' client account at the instruction of Mr William Wong without knowing the purpose of such transfer, I am satisfied that the money was *prima facie* used to finance the loan to Asidokona. However, I also note that, if it is true that Ms Lou was completely oblivious as to the purpose of the remittance (which itself is doubtful based on her testimony), one might argue that this would result in the question of whether SSI's funds in the JLC Advisors' client account were otherwise misused. Nevertheless, I am satisfied that no such issue arises on the facts in light of the Ratification whereby SSI ratified the Loan Agreement entered into between SSI and Asidokona. Based on the foregoing, I reject the Illegality Defence.

Whether the Deeds of Assignments savour maintenance and champerty

The parties' arguments

101 Parties do not dispute the applicable test for whether an assignment savours maintenance and champerty. In *Lim Lie Hoa and another v Ong Jane Rebecca* [1997] 1 SLR(R) 775 ("*Lim Lie Hoa*"), the Court of Appeal (at [36]) followed the principles as redefined and stated in the classic case of *Trendtex Trading Corporation and another v Credit Suisse* [1982] AC 679 ("*Trendtex*"). In particular, the Court of Appeal cited with approval the following passage by Lord Roskill in *Trendtex* at 702–703 as follows:

> My Lords, just as the law became more liberal in its approach to what was *lawful* maintenance, so it became more liberal in its approach to the circumstances in which it would recognise the validity of an assignment of a cause of action and not strike down such an assignment as one only of a bare cause of action.

> *Where the assignee has by the assignment acquired a property right and the cause of action was incidental to that right, the assignment was held effective. Ellis v Torrington* [1920] 1 KB 399 is an example of such a case. Scrutton LJ stated, at pp 412–413, that the assignee was not guilty of maintenance or champerty by reason of the assignment he took because he was buying not in order to obtain a cause of action but in order to protect the property which he had bought.
>
> …
>
> *The court should look at the totality of the transaction. If the assignment is of a property right or interest and the cause of action is ancillary to that right or interest*, or if the assignee had a genuine commercial interest in taking the assignment and in enforcing it for his own benefit, *I see no reason why the assignment should be struck down as an assignment of a bare cause of action or as savouring of maintenance.*
>
> [emphasis in italics]

102 The parties rely on both cases.[127] In particular, the parties dispute whether the assignments in the present case are of property rights or bare causes of action, or whether AAI has any genuine commercial interest in the assignments.[128]

103 AAI submits that the Deeds of the Assignments (and in particular, cl 2.1 read with Recital (C) and Recital (D) for the First Deed of Assignment and Second Deed of Assignment respectively) expressly provide that the assignments are for all of AAI's rights, title and interest in the Loan Agreement, Personal Guarantee and Deed of Charge. As such, SSI's property rights (for the debt due and owing from the defendants, as well as the Charged Shares) were assigned, and not bare causes of action to sue the defendants.[129] Also, AAI

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127 Plaintiff's Closing Submissions at paras 104–105; Defendants' Closing Submissions at paras 186–187.

128 Defendants' Closing Submissions at para 189.

129 Plaintiff's Closing Submissions at para 106.

submits that it is not a disinterested party, but has a genuine commercial interest in the assignments. The controlling shareholder and director of AAI (*ie*, Mr Wong) contributed towards half of the loan, and there is evidence by way of two cheques to show that AAI had already given SSI a sum of S$500,000 for the assignment of the loan.[130]

104 The defendants contend that AAI seeks to profit from the present action and ought to be prohibited from doing so. In that regard, AAI agreed to, *inter alia*, pass on half of the monies which it recovers from the action, having deducted all of its own costs and expenses, to SSI. This is pursuant to cll 3.4 to 3.5 of the Deed of Undertaking.[131] The defendants also allege those same clauses incentivised SSI and Ms Lou into executing the Ratification.[132] Such circumstances must be taken into account in assessing the assignments.

Analysis and findings

105 In my judgment, the Maintenance and Champerty Defence is unmeritorious.

106 It is plain from the Deeds of Assignments that the assignments are not over bare causes of action. The fact that the Deeds of Assignments also incidentally conferred causes of action does not mean that the assignments savour maintenance and champerty. In particular, Recital (C) of the First Deed of Assignment read with cl 2.1 clearly provides that:[133]

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130 AB (Vol 4) at pp 91–92.

131 Defendants' Closing Submissions at paras 206–212.

132 Defendants' Closing Submissions at paras 98–100.

133 Plaintiff's Core Bundle at pp 1–2 (First Deed of Assignment dated 30 March 2018).

> (C) The Assignor has agreed to assign all its *legal and beneficial right, title and interest* in the Debt and the Loan Agreement and the Guarantee to the Assignee on the terms and conditions set out below.
>
> …
>
> **2.1 Assignment of rights**
>
> Subject to the terms of this deed, the Assignor *unconditionally, irrevocably and absolutely assigns to the Assignee all of the Assignor's rights, title, interest and benefits in and to*:
>
> 2.1.1 the Debt;
>
> 2.1.2 the Loan Agreement; and
>
> 2.1.3 the Guarantee,
>
> with effect from the Assignment Date.
>
> [emphasis in bold in original; emphasis added in italics]

107 Recital (D) of the Second Deed of Assignment read with cl 2.1 likewise clearly provides that:[134]

> (D) The Assignor has agreed to assign all its *rights, title, interest and benefits* under the Deed of Charge to the Assignee on the terms and conditions set out below.
>
> …
>
> **2.1 Assignment of rights**
>
> Subject to the terms of this deed, the Assignor *unconditionally, irrevocably and absolutely assigns to the Assignee all the Assignor's rights, title, interest and benefits in and to* the Charged Shares under the Deed of Charge, with effect from the Assignment Date.
>
> [emphasis in bold in original; emphasis added in italics]

108 As stated in *Lim Lie Hoa* and *Trendtex,* where the assignee has by the assignment acquired a property right and the cause of action is incidental to that right, the assignment is effective. Based on the Deeds of Assignments, it is

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134 Plaintiff's Core Bundle at p 6 (Second Deed of Assignment dated 15 November 2018).

patently clear that SSI assigned to AAI its property rights (*ie*, the debt due and owing from the defendants and the Charged Shares), and not bare causes of action. In this regard, the defendants do not argue (nor do I think it would be tenable to argue) that debts and shares do not constitute property. Thus, the assignments are effective.

109 I deal briefly with the contentions in relation to the Deed of Undertaking. An arrangement where the assignor and assignee "share the recovered sums … if the suit succeeds" does not *ipso facto* savour maintenance and champerty. In this regard, the court must be careful to look at "the totality of the transaction" (*Trendtex* at 703). By the Deed of Undertaking, AAI, SSI and Ms Lou agreed that upon a successful recovery of the sum by AAI from Asidokona and/or Mr Soh in the action, the sum shall first be used to reimburse AAI for all of its costs and expenses. The remaining balance shall be shared equally by AAI and SSI (*ie*, in a 50:50 split). As pointed out by AAI, there is "nothing sinister in AAI's transfer of half of the monies recovered in the [action] to SSI". Such an arrangement is "consistent with AAI's case all along" that the monies loaned to Asidokona were contributed by Mr Wong and Ms Lou equally.[135] In fact, Ms Lou agreed that the arrangement under the Deed of Undertaking was the same one from the very beginning of the loan to Asidokona.[136] In my view, the arrangement, which is in line with the respective parties' interests at all material times, only buttresses AAI's case rather than defeats it.

110 Having ruled in favour of AAI as stated above, I do not see it necessary to deal further with the question of whether AAI has any genuine commercial

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135 Plaintiff's Reply Closing Submissions at para 63.

136 Transcript dated 2 September 2021 at p 99, lines 9–20.

interest in the assignments. Thus, I move on to the Illegal Moneylending Defence.

Whether the loan is an illegal moneylending transaction under the Moneylenders Act

111 I begin by setting out the applicable legal principles. Section 5(1) of the MLA prohibits a person from carrying on the business of moneylending in Singapore as follows:

> A person must not carry on or hold out in any way that the person is *carrying on the business of moneylending* in Singapore, whether as principal or as agent, *unless* the person —
>
> (*a*) is authorised to do so by a licence;
>
> (*b*) *is an excluded moneylender*; or
>
> (*c*) is an exempt moneylender.
>
> [emphasis added]

112 In *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 ("*Sheagar*") at [30], the Court of Appeal remarked that to put this in positive terms, the "business of moneylending" may be carried out by those who are licensed to do so, or by excluded or exempt moneylenders.

113 The consequences of unlicensed moneylending are set out in s 19(3) of the MLA as follows:

> Where any contract for a loan has been granted by an unlicensed moneylender, or any guarantee or security has been given for such a loan —
>
> (*a*) the contract for the loan, and the guarantee or security (as the case may be) is unenforceable; and
>
> (*b*) any money paid by or on behalf of the unlicensed moneylender under the contract for the loan is not recoverable in any court of law.

114 In *Sheagar*, the Court of Appeal summarised the framework in relation to s 14(2) of the Moneylenders Act 2008 (Act 31 of 2008) (which is *in pari materia* with s 19(3) of the MLA) as follows (at [75]):

> (a) To rely on s 19(3) of the MLA, the borrower must prove that the lender was an "unlicensed moneylender".
>
> (b) If the borrower can establish that the lender has lent money in consideration for a higher sum being repaid, he may rely on the presumption contained in s 3 of the MLA to discharge this burden. For completeness, s 3 provides that "[a]ny person, other than an excluded moneylender, who lends a sum of money in consideration of a larger sum being repaid is presumed, until the contrary is proved, to be a moneylender."
>
> (c) The burden then shifts to the lender to prove that he either does not carry on the business of moneylending or possesses a moneylending licence or is an "exempted moneylender".
>
> (d) However, if there is an issue as to whether the lender is an excluded moneylender, the legal burden of proving that he is not will fall on the borrower. In this regard, by s 2 of the MLA, an "excluded moneylender" includes "any person" who "lends money solely" to "corporations" (under s 2(*e*)(iii)(A) of the MLA).

115 I should add that in *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and another (Orion Oil Ltd and another, interveners)* [2011] 2 SLR 232 ("*E C Investment*") at [135], two tests were put forth to determine if a person is carrying on the business of moneylending. The first is "whether there was a

certain degree of system and continuity in the transactions" (the "Continuity Test") and, if the answer is no, then the second is whether the alleged moneylender is one who is ready and willing to lend to all and sundry provided that they are from his point of view eligible" (the "All and Sundry Test").

The parties' arguments

116 As set out at [37] above, the Illegal Moneylending Defence relied on particulars which essentially alleged that the loan was *de facto* made to Mr Soh personally.[137] Therefore, SSI was not an "excluded moneylender". At the trial, counsel for the defendants confirmed that they were no longer pursuing the defence that the loan was made to Mr Soh in his personal capacity. Nonetheless, the defendants maintain their position that the presumption under s 3 of the MLA that SSI is a moneylender applies in the present case as the "amount to be allegedly repaid" by the defendants "far exceeds the alleged loan amount".[138]

117 Having already relied on s 3 of the MLA to presume SSI to be a moneylender, in a slightly confusing manner, the defendants argue that both the Continuity Test and the All and Sundry Test are satisfied, and the loan amounts to "illegal money lending".[139] The defendants submit that the Continuity Test is satisfied because, during the course of the present proceedings, "it has become evident that SSI has been used as a front in respect of a 'series of transactions' mirroring an 'organised scheme of moneylending'" which has been revealed by AAI's "own evidence". For example, SSI was also involved in an "alleged loan

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137 Asidokona's Defence (Amendment No 4) at para 17; Mr Soh's Defence (Amendment No 4) at para 18.

138 Defendants' Closing Submissions at para 219(a).

139 Defendants' Closing Submissions at paras 219(c)–(d).

between SSI and JC Global Concepts Pte Ltd … ("JC Global")"[140] and Mr Ong also deposed that SSI was allegedly involved in "various commercial deals".[141] Also, the defendants submit that the All and Sundry Test is satisfied. In that regard, the defendants submit that SSI lent moneys to ""all and sundry", even to parties such as the [d]efendants and/or JC Global, that [Ms Lou] … had no knowledge of".[142]

118 In response, AAI argues that the defendants have essentially "abandoned their entire pleaded position in relation to the [l]oan being a sham corporate loan" and as such, there is "no longer any basis" for the defendants to pursue the Illegal Moneylending Defence.[143] In arguing that the Continuity Test and the All and Sundry Test are satisfied, the defendants seek to "advance a case on an issue that is not pleaded" and furthermore, the "factual allegations" underpinning such submission are not pleaded.[144] In any event, the present loan cannot be rendered void under s 19(3) read with ss 2 and 5(1) of the MLA.[145] AAI submits that SSI has not been shown, on the evidence, to have been in the business of moneylending[146] or that SSI is otherwise not an excluded moneylender under s 2(*e*)(iii)(A) of the MLA.[147] In that regard, the loan was

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140 Defendants' Closing Submissions at para 219(c); JOA at para 13.

141 JOA at para 10.

142 Defendants' Closing Submissions at para 219(d).

143 Plaintiff's Reply Closing Submissions at para 101.

144 Plaintiff's Reply Closing Submissions at para 103.

145 Plaintiff's Reply Closing Submissions at paras 104–107.

146 Reply (Amendment No 5) to the Defence of the First Defendant (Amendment No 4) at para 14; Reply (Amendment No 5) to the Defence of the Second Defendant (Amendment No 4) at para 15; Plaintiff's Reply Closing Submissions at para 108.

147 Reply (Amendment No 5) to the Defence of the First Defendant (Amendment No 4) at para 15; Reply (Amendment No 5) to the Defence of the Second Defendant

made to *Asidokona* and is thus a loan to a corporation which falls squarely within the definition of an "excluded moneylender".

Analysis and findings

119 I turn to apply the framework which the Court of Appeal set out in *Sheagar*. To prove that SSI is a moneylender, the defendants rely on s 3 of the MLA since the amount to be repaid by the defendants "far exceeds" the loan amount.[148] Thereafter, the pertinent issue is whether SSI is an "excluded moneylender" under the MLA. If so, then it does not matter whether SSI could be said to be a moneylender carrying out a business of moneylending in Singapore. Consequently, s 19(3) of the MLA would likewise not apply so as to render the contract, the guarantee, and the security for the loan unenforceable.

120 On the evidence before me, SSI's loan in the present case is extended only to a corporation (*ie*, Asidokona, which is a company registered in Singapore). As such, the evidence points to SSI falling squarely within the definition of an "excluded moneylender". To reiterate, the defendants have abandoned their initial allegation that the loan is made to Mr Soh personally and not to Asidokona.

121 As stated in *Sheagar*, the legal burden of proving that SSI is not an excluded moneylender falls on the defendants. In my judgment, the defendants fall far short of doing so. In fact, the defendants do not address the question of whether SSI falls within the definition of an excluded moneylender under s

(Amendment No 4) at para 16; Plaintiff's Reply Closing Submissions at paras 113–115.

148 Defendants' Closing Submissions at para 219(a).

2(*e*)(iii)(A) of the MLA at all. Instead, the defendants submit that there were "suspicious and dubious circumstances" surrounding the loan which "points towards an illegal moneylending transaction" such as: (a) Ms Lou denying that SSI entered into the loan transaction or disbursed any moneys; (b) Mr Ong using "SSI as a front to funnel illegal [moneys] from JLC Advisors' account"; (c) that the *modus operandi* adopted by Mr Ong was "similarly also adopted in at least one other case which has been disclosed in the course of the proceedings"; and (d) the interest rates imposed are "exorbitant".[149]

122 In my judgment, none of these factors were relevant in determining the crucial issue of whether SSI is an "excluded moneylender" under the MLA. I elaborate. As regards Ms Lou's initial denial, I have already dealt with the same factual contention in respect of the Illegality Defence and the Ratification Issue above and need not say more. The defendants' related allegation that Mr Ong used SSI as a front to funnel moneys from the JLC Advisors' account thus also falls away.

123 Further, Mr Ong's evidence does not support the contention that there was a *modus operandi* whereby SSI was used as a front for an organised scheme of moneylending. Taken in context, Mr Ong simply mentioned that Mr William Wong and Ms Lou "regularly appointed JLC Advisors to act for them and/or their many offshore corporate entities in various commercial deals".[150] In any event, the "one other case" uncovered in the proceedings which is an alleged loan between SSI and JC Global. Again, this alleged loan was to a corporation, and did not take SSI outside the ambit of "excluded moneylender".

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149 Defendants' Closing Submissions at para 220.

150 JOA at para 10.

124 Finally, the interest rate does not aid the defendants' case any further. While there might be some link between the contractual interest rate in establishing whether SSI is a moneylender, it is altogether unhelpful in dealing with the issue of whether SSI is an excluded moneylender.

125 Thus, I reiterate that the defendants fail to discharge their burden of proof and I accept that SSI is an "excluded moneylender" under the MLA. This is sufficient to dispose of the defendants' Illegal Moneylending Defence. Nevertheless, I note that Quentin Loh J (as he then was) made a short remark in *E C Investment*, leaving open the question of whether the excluded moneylender exception would always apply if the borrower is a corporation (at [139(b)]). In this regard, Loh J commented:

> … the [Moneylenders Act (Cap 188, 2010 Rev Ed)] introduced a new concept of "excluded moneylender" which is defined, *inter alia*, as a party who lends money solely to corporations: s 2(*e*)(iii)(A). … If a literal interpretation of the Moneylenders Act is taken, even if the transaction was in substance a loan to the [Ridout Residence Pte Ltd], [E C Investment Holding Pte Ltd] would be an "excluded moneylender" under the Moneylenders Act. The result would be the same if a purposive interpretation was adopted. *However I must not be taken to say that so long as a borrower is a corporation, no matter what the circumstances or nature of shareholding, the excluded moneylender exception would apply. Depending on the facts and circumstances, it may.*
>
> [emphasis added]

126 In my view, Loh J was careful to express that *E C Investment* should not be interpreted to stand for the proposition that the "excluded moneylender" exception would necessarily always apply so long as a borrower is a corporation no matter what the circumstances or the nature of the shareholding. The opposite, however, must also be true in that *E C Investment* does not set out any further requirements in addition to that set out under the MLA which must be satisfied before a person may be considered to be an "excluded moneylender"

under the MLA. Indeed, Loh J's holding was precisely that the loan in that case was made to a corporation such that the plaintiff was an "excluded moneylender". In that regard, reading Loh J's remarks in context, *E C Investment* should be understood as an expression of caution – the court should consider the substance of the loan in question (for example, by considering "the circumstances or nature of shareholding") to consider who the actual borrower of the particular loan in question is.

127 In any case, the issue does not arise here since the defendants have abandoned their allegation that the loan was *de facto* made to Mr Soh and not Asidokona. Having concluded that SSI is an "excluded moneylender", I reject the Illegal Moneylending Defence. With that, I turn to the defendants' final defence, the Penalty Clause Defence.

Whether the interest clauses under the Loan Agreement are enforceable

The parties' arguments

128 It is undisputed that under the Loan Agreement, the contractual interest rate is 5% a month while the contractual default interest rate is 6% a month.[151] This amounts to S$100,000 and S$120,000 a month respectively based on the outstanding principal amount of S$2m.

129 AAI submits that it is for the defendants to show that the contractual default interest rate amounts to a penalty clause. As the defendants cannot prove that the default interest is extravagant and unconscionable in comparison with the greatest loss that could conceivably be proved to have followed from the

[151] Defendants' Closing Submissions at para 240; Plaintiff's Reply Closing Submissions at para 131.

breach, the defendants cannot prove that it amounts to a penalty clause and thus unenforceable. AAI also distinguishes the present case from that of *E C Investment* as the security provided in the two cases are very different.[152]

130 The defendants submit that both interest rates are clearly extortionate, especially in the light of the fact that there is no evidence that it is a genuine pre-estimate of AAI's losses. In that regard, the defendants submit that it is for AAI to prove that the interest claimed is a reasonable estimate of their loss. The defendants also rely on *E C Investment*, where Loh J found that a monthly interest rate of 6% "can be considered extortionate or usurious" (at [138]). Thus, the respective interest rates are penal in nature and ought to be rendered enforceable.[153]

Analysis and findings

131 I set out the legal principles applicable to the issue as follows:

(a) the rule against contractual penalties (the "Penalty Rule") applies only to secondary obligations (*ie*, obligations which arise upon a breach of contract) and not primary obligations: *Leiman, Ricardo and another v Noble Resources Ltd and another* [2020] 2 SLR 386 at [100];

(b) where parties stipulate in a contract the sum to be paid in the event of a breach, it is for the party being sued on the agreed sum to show that the term is a penalty: *CLAAS Medical Centre Pte Ltd v Ng Boon Ching* [2010] 2 SLR 386 at [63]; and

152 Plaintiff's Closing Submissions at paras 90–103.

153 Defendants' Closing Submissions at paras 239–247.

(c) the test for penalty clauses is whether the sum stipulated for is extravagant and unconscionable in amount in comparison with the greatest loss that could conceivably be proved to have followed from the breach: *Dunlop Pneumatic Tyre Co, Ltd v New Garage and Motor Co, Ltd* [1915] AC 79 at 87, affirmed in *Denka Advantech Pte Ltd and another v Seraya Energy Pte Ltd and another and other appeals* [2021] 1 SLR 631 ("*Denka*").

132 To elaborate, the Court of Appeal held in *Denka* that the rule against penalties "applies *only* where there has first been a ***breach*** *of contract*" [emphasis in original] (at [99]). As explained by the Court of Appeal, "the utilisation of breach of contract as a prerequisite is not a mere arbitrary drawing of a legal line but is related to the objective of the Penalty Rule in regulating ***secondary*** (and *not* primary) obligations" [emphasis in original] (at [100]). Such prerequisite ensures that the Penalty Rule is "*confined to the sphere of* ***secondary*** *obligations* ***only*** – specifically, the obligation on the part of the defendant to *pay damages to the plaintiff*", such that the "***primary*** *obligations* between contracting parties are ***not*** *interfered with at all*" [emphasis in original] (at [92]).

133 As the Penalty Rule applies only to secondary obligations, I accept AAI's argument that it "cannot even be engaged" on the contractual interest rate of 5% per month since that "concerns a primary obligation to repay the [l]oan, and is **not** one which comes into effect only upon a breach of the Loan Agreement" [emphasis in original].[154] I note that this specific point is not addressed by the defendants. In particular, the defendants persist in their

[154] Plaintiff's Closing Submissions at para 96; Plaintiff's Reply Closing Submissions at para 133.

submissions that both the contractual interest and default interest clauses are unenforceable as they are penalty clauses without more.[155] The defendants' position is not legally tenable.

134 Next, the defendants have no evidence to show that such rates are "extravagant and unconscionable in amount in comparison with the greatest loss that could conceivably be proved to have followed from the breach". In that regard, the defendants merely assert that the interest rate of 6% per month is "clearly" extortionate (relying on *E C Investment*) and contend that it is for AAI to show that the clauses are reasonable estimates of its losses.[156]

135 Again, the defendants' position is not legally tenable since the burden of proof falls on the defendants (see [131(b)]). I note that Mr Soh is an experienced banker and businessman. From the communications produced before me, when he entered into the Loan Agreement, Mr Soh was well aware of the applicable interest rates. Once again, I reiterate that Mr Soh has dropped his allegations that the bargaining process was imbalanced, he was pressured into accepting the high interest rates, and that the interest rate was meant to be 3% per month. Certainly, it is not for the court to question the commercial decision made by parties. It could be that, depending on the totality of the circumstances (such as the principal sum concerned, the urgency of the loan, and the type and nature of security for the loan, if any), such a default interest clause with such a default interest rate may amount to a penalty clause. Indeed, I note that in *E C Investment,* the loan of S$1.5m for 60 days was secured by real property worth S$29m, and it was in view of such circumstances that Loh J found the interest

155 Defendants' Closing Submissions at para 239.

156 Defendants' Closing Submissions at paras 244–246.

on the loan at 6% per month "can be considered extortionate or usurious" (at [138]). Here, the short-term loan was secured only by Mr Soh's personal guarantee, and Mr Soh's shares in Asidokona which is a private company incorporated a year prior to the loan. The defendants have simply failed to adduce evidence to show that the interest rate of 6% per month (which is 1% above the applicable interest rate of 5% per month) is extravagant and unconscionable.

Commencement of default interest

136 Having found that the default interest clause is valid and enforceable, a further issue arises as to when default interest should start running.

137 According to Mr Wong, as at 5 March 2020, the balance sum due under the Loan Agreement (deducting the payments already made of S$900,000) as set out at [23] above is calculated to be as follows:[157]

Particulars		
S/N	**Item Description**	**Outstanding Amount / S$**
1.	Loan Principal Amount	2,000,000
2.	Interest payable under cl 6.1 of the Loan Agreement	200,000
3.	Default interest payable under cl 7.1 of the Loan Agreement (calculated from 22 June 2017 to 20 July 2018)	1,554,410.96

[157] WJWA at para 137.

4.	Default interest payable under cl 7.1 of the Loan Agreement (calculated from 21 July 2018 to 5 March 2020)	2,335,092.75
Total		6,089,503.71

138 Mr Wong explained that the loan was extended until 21 January 2017 only (see [21] above). Even though Asidokona is liable for default interest from 22 January 2017 onwards, on a goodwill basis, AAI calculated default interest from 22 June 2017 onwards at 6% per month of S$2m being S$120,000 per month.[158]

139 Indeed, in the Amended Statement of Claim, the table after paragraph 22 shows a tabulation of default interest from 22 June 2017 to 20 July 2018 (being the date of the Statement of Claim). However, I note that at paragraphs 11, 14 and 15 of the Amended Statement of Claim, AAI states that the parties agreed to three extensions of the Loan Agreement until 21 January 2017, 31 August 2017 and 30 September 2017 respectively. For each of these extensions, AAI pleads that the loan may be extended thereafter on a month-to-month basis at the discretion of AAI. At paragraph 19 of the Amended Statement of Claim, AAI pleads that "[a]s a result of the repeated delays and failure on the part of the [d]efendants to repay the Loan, SSI was not agreeable to any further extension of the Loan beyond March 2018".

140 In response, the defendants plead that in any event, the default interest should only take effect after March 2018. This is based on AAI's position that

158 WJWA at para 136.

"SSI was not agreeable to any further extension… beyond March 2018."[159] However, at the trial, the defendants appeared to have conceded the point. The defendants accepted the calculations set out at [138] above, and made no mention of this in the closing submissions.[160] Upon the issue being raised with the parties, the defendants retracted the concession, and maintains that the calculation of default interest should, in any event, commence on 1 April 2018.[161]

141 In my view, AAI cannot claim what has not been clearly and consistently pleaded. Despite the table after paragraph 22 of the Amended Statement of Claim setting out the calculation of default interest from 22 June 2017, the other paragraphs state AAI's position to be that the Loan Agreement was extended to the end of March 2018 (apparently on the same basis as the very first extension to 21 January 2017 – which AAI does not dispute is based on the interest rate of 5% per month). Indeed, AAI does not plead that the second and third extensions were on terms different from the first extension. Further, from Mr Soh's WhatsApp messages set out at [22] above, it appears to me that the parties' understanding was that such extensions on a month-to-month basis would be based on the interest of $100,000 per month, *ie*, interest of 5% per month and not default interest of 6% per month. Therefore, I am of the view that default interest should only run from 1 April 2018.

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159 Asidokona's Defence (Amendment No 4) at para 19; Mr Soh's Defence (Amendment No 4) at para 20.

160 Transcript dated 7 September 2021 at p 4, lines 24–30.

161 Oral Submissions of 14 February 2022.

Conclusion

142 To conclude, on the evidence before me, I am satisfied that AAI has proven its case against both defendants. I am also of the view that the defendants' grounds for disputing the claim are not made out on the law and evidence before me. As such, I grant judgment in favour of AAI against the defendants for the principal amount of the loan of S$2m, with interest payable under cl 6.1 of the Loan Agreement at 5% per month to be calculated from 22 July 2016 to end March 2018, and default interest under cl 7.1 of the Loan Agreement at 6% per month from 1 April 2018 to date of payment. AAI is to give credit to the defendants for payment of the sum of S$900,000 which I accept to be made towards the interest on the Loan Agreement only (and not the principal amount). In my judgment, it is plain from the objective contemporary communications from Mr Soh to Mr Wong that the money set aside (being the initial sum of S$300,000) and subsequent payments of S$900,000 were intended for the payment of interest (see [12] and [22] above).

143 Pursuant to cl 4 of the Deed of Charge, Mr Soh is also to deliver to AAI (a) all share certificates representing the Charged Shares; (b) two share transfer forms duly executed in respect of the Charged Shares; and (c) a certified true copy of the Register of Members of Asidokona duly annotated by the company secretary of Asidokona to note that the Charged Shares are the subject of a charge in favour of AAI.

144 In relation to costs, AAI submits that the defendants should be ordered to pay costs on an indemnity basis for two reasons. First, it is contractually provided for at cl 10 of the Loan Agreement, as well as cl 2.1 of the Personal Guarantee. Second, this is an appropriate course for the present case given the

defendants' conduct of pursuing an entirely unmeritorious defence.[162] The defendants "vehemently deny and oppose" this submission, and argue that they have "only raised legitimate issues that have arisen over the course of the proceedings, specifically through [Ms Lou]".[163]

145 Where there is a contractual agreement between parties prescribing that, in the event of a dispute, legal costs are to be paid by one party to another on an indemnity basis, the court "must have the power to override the parties' agreement as to costs in order to preserve the integrity of the administration of justice" such that "where the claim for costs on the basis of a contractual provision is manifestly unjust, the court can and should intervene to disallow the claim in the exercise of its discretion" (*Abani Trading Pte Ltd v BNP Paribas and another appeal* [2014] 3 SLR 909 ("*Abani*") at [93]). In that regard, "in the absence of manifest injustice, the court will tend towards upholding the contractual bargain entered into by both parties" (*Abani* at [93]).

146 On all the circumstances of the present case, I see no reason to depart from the contractual agreement that the defendants pay costs on an indemnity basis. No "manifest injustice" can be said to arise in the circumstances to justify the court exercising its discretion to override the parties' agreement for indemnity costs. Such costs order should be unsurprising, given that the defendants had agreed to indemnity costs under the Loan Agreement and the Personal Guarantee. This is sufficient to dispose of the defendants' objection to paying costs on an indemnity basis. Nevertheless, since both parties also submitted on the defendants' conduct, I make the following remarks.

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162 Plaintiff's Closing Submissions at paras 116–119.

163 Defendants' Closing Submissions at para 248.

147 This should have been a straightforward claim for the recovery of the loan. To support the Illegal Moneylending Defence, the defendants made many bare allegations contrary to the objective contemporaneous evidence, including unwarranted and unnecessary allegations against Ms Pok. In particular, the allegation that Mr Soh signed blank pages flies in the face of clear WhatsApp messages and emails exchanged at the material time. Indeed, the communications clearly show that at all material times, Mr Soh was fully aware that the loan was meant to be granted to Asidokona, with Mr Soh as the guarantor. Having made these unsubstantiated allegations, Mr Soh elected (unsurprisingly) not to testify to substantiate his assertions. Further, after Mr Ong's legal troubles in 2019, Ms Lou began distancing herself from the loan transaction. In my view, the defendants capitalised on the situation and introduced a number of unmeritorious defences so as to evade liability. Accordingly, I have no hesitation in awarding costs to AAI on an indemnity basis against the defendants. Such costs are to be taxed (if not agreed).

Hoo Sheau Peng
Judge of the High Court

Narayanan Sreenivasan SC, Rajaram Muralli Raja and Tan Si Xin Adorabelle (K&L Gates Straits Law LLC) for the plaintiff;
Mulani Prakash P and Ruelia Nesaranjini d/o Ravindran Rufus (M & A Law Corporation) for the first and second defendants.