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

[2023] SGHC 269

Originating Application No 421 of 2023

Between

SCP Holdings Pte Ltd

… *Applicant*

And

I Concept Global Growth Fund

… *Respondent*

Originating Summons (Bankruptcy) No 38 of 2023

Between

Sim Eng Tong

… *Claimant*

And

Liw Chai Yuk

… *Defendant*

GROUNDS OF DECISION

[Insolvency Law — Bankruptcy — Statutory demand]

[Insolvency Law — Winding up]
[Contract — Formation]
[Credit and Security — Money and moneylenders]

TABLE OF CONTENTS

SCP Holdings Pte Ltd
v
I Concept Global Growth Fund and another matter

[2023] SGHC 269

General Division of the High Court — Originating Application No 421 of 2023, Originating Summons (Bankruptcy) No 38 of 2023
Chua Lee Ming J
3 August 2023

26 September 2023

Chua Lee Ming J:

Introduction

1 HC/OA 421 of 2023 ("OA 421") and HC/OSB 38 of 2023 ("OSB 38") were applications to prevent winding-up proceedings and bankruptcy proceedings, respectively, from being commenced or proceeded with, as well as to set aside the statutory demands that had been issued.

2 I dismissed both OA 421 and OSB 38 for the reasons set out below. The applicant in OA 421 and the claimant in OSB 38 have appealed against my decisions.

Facts

3 OA 421 concerned a loan from the respondent, I Concept Global Growth Fund ("ICG") to the applicant, SCP Holdings Pte Ltd ("SCP"). OSB 38 concerned a separate loan from the defendant, Ms Liw Chai Yuk ("Liw") to the claimant, Mr Sim Eng Tong ("Sim").

Loan from ICG to SCP

4 SCP was a majority shareholder of Biomax Holdings Pte Ltd ("Biomax"). Sim was a shareholder of Biomax and a director of both SCP and Biomax.

5 SCP and Biomax were working towards a public listing. In 2020, SCP and Biomax decided to increase their business and funding opportunities in preparation for the public listing exercise.[1] Towards this end, on 8 September 2020, Biomax appointed Avalon Partners Pte Ltd as a consultant ("Avalon"). The consultancy services were to be provided by Avalon through Mr Mark Leong Kei Wei ("Mark").[2]

6 In or around May/June 2021, Mark introduced Sim to Mr Michael Marcus Liew ("Marcus") who was an authorised representative of ICG.[3] On 10 November 2021, SCP and ICG entered into a loan agreement (the "ICG Loan Agreement") under which ICG agreed to lend SCP a term loan of up to $300,000.[4] Interest accrued at three per cent per annum. The loan was repayable

---

1 Sim's 1st affidavit in OA 421, at paras 7–8.

2 Sim's 1st affidavit in OA 421, at pp 39–43.

3 Sim's 1st affidavit in OA 421, at para 19.

4 Sim's 1st affidavit in OA 421, at pp 54–67.

by 10 February 2022, *ie*, three months after the date of the agreement (unless the parties agreed otherwise in writing). The loan amount was disbursed in two tranches, $100,000 on 11 November 2021 and $200,000 on 17 November 2021.[5] The receipt of the funds was not in dispute.

7 By a Deed of Charge dated 10 November 2021, one Zelene Goh Zi Ling ("Zelene") charged ten ordinary shares in SCP to ICG as security for the loan under the ICG Loan Agreement.[6] Zelene was a member of SCP's staff.[7]

8 It was not disputed that SCP did not repay the loan. On 3 April 2023, ICG served a statutory demand on SCP based on the amount outstanding under the ICG Loan Agreement (the "ICG Statutory Demand").[8]

9 On 24 April 2023, SCP filed OA 421, seeking:

(a) an injunction to restrain ICG from presenting and/or proceeding with and/or continuing a winding-up application against SCP; and

(b) further and/or in the alternative, an order that the ICG Statutory Demand be set aside.

Loan from Liw to Sim

10 On 7 January 2022, Liw and Sim entered into a loan agreement under which Liw agreed to lend $47,725.10 to Sim (the "Liw Loan Agreement"). Interest was payable on the loan at three per cent per annum and the loan was

---

5 Pong Sin Tee, Eugene's 1st affidavit in OA 421, at pp 28–31.

6 Sim's 1st affidavit in OA 421, at pp 68–87.

7 Sim's 1st affidavit in OA 421, at para 34.

8 Sim's 1st affidavit in OA 421, at pp 494–495.

repayable by 7 July 2022, *ie*, six months after the date of the agreement (unless the parties agreed otherwise).[9] It was not disputed that Sim had received the loan amount.

11 It was not disputed that Sim did not repay the loan. On 20 April 2023, Liw served a statutory demand on Sim, based on the amount outstanding under the Liw Loan Agreement (the "Liw Statutory Demand").[10]

12 On 5 May 2023, Sim filed OSB 38, seeking:

(a) an injunction to restrain Liw from presenting and/or proceeding and/or continuing with a bankruptcy application against Sim; and

(b) further and/or in the alternative, an order that the Liw Statutory Demand be set aside.

The parties' cases

SCP's and Sim's case

13 SCP and Sim alleged as follows:[11]

(a) Following discussions with Marcus, "[i]t was eventually agreed orally that parties would enter into two (2) separate convertible loan agreements", one with Sim (the "Sim CLA") and another with Biomax (the "Biomax CLA") (together, the "CLAs").

---

9 Sim's 1st affidavit in OSB 38, at pp 10–21.

10 Sim's 1st affidavit in OSB 38, at pp 23–30.

11 Sim's 1st affidavit in OA 421, at paras 20–28; Sim's 1st affidavit in OSB 38, at paras 8–9.

(b) "As part of the CLAs":

(i) ICG would disburse loans to Biomax and Sim (the "CLA Loans");

(ii) the total value of the loans would be $2m; $1m would be provided pursuant to the Sim CLA and $1m would be provided pursuant to the Biomax CLA;

(iii) ICG would have the right to convert the CLA Loans into an aggregate of up to 20% of the share capital of Biomax, if the total loan amount of $2m was fully disbursed and converted into equity; and

(iv) the CLA Loans would be repaid on a date three years after the date that the CLA Loans were fully disbursed, if ICG did not convert the same to Biomax shares.

(c) It was agreed that "parties would subsequently sign the necessary paperwork to evidence parties' agreement in relation to the CLAs."

(d) However, SCP and its related companies had an urgent need for funds due to the COVID-19 pandemic, and it was apparent that the time needed for the preparation of the documents evidencing the CLAs was too long.

(e) On or about July/August 2021, parties agreed that:

(i) a portion of the CLA Loans would be disbursed first to assist SCP and/or its related companies with their respective financial difficulties; and

(ii) any funds disbursed to SCP, its related companies and Sim would be disbursed pursuant to the CLA Loans and form part of the sums to be disbursed under the CLAs.

Consequently, the ICG Loan Agreement and the Liw Loan Agreement were entered into as part of and pursuant to the CLAs.

14 SCP and Sim submitted that therefore, ICG and Liw had no right to demand payment of the moneys disbursed under the ICG Loan Agreement and the Liw Loan Agreement respectively since ICG had failed, neglected and/or otherwise refused to disburse the full amount of $2m under the CLAs.

15 SCP and Sim further submitted that the CLAs, the ICG Loan Agreement and the Liw Loan Agreement were illegal moneylending transactions that contravened the Moneylenders Act 2008 (2020 Rev Ed) (the "Moneylenders Act").

ICG's case

16 ICG denied having entered into the CLAs and submitted that there was no binding agreement between the parties; at best, the parties only had an agreement to agree.

17 According to ICG, Biomax had sought urgent injections of cash due to its financial difficulties caused by the COVID-19 pandemic, and ICG had previously extended a loan of $300,000 to Biomax pursuant to a loan agreement dated 29 July 2021 (the "July Loan Agreement") before extending a further loan of $300,000 in November 2021 pursuant to the ICG Loan Agreement.[12]

---

12 Pong Sin Tee, Eugene's 1st affidavit in OA 421, at paras 13–14, 16.

18 ICG's case was that the parties intended the terms of the ICG Loan Agreement to apply until the CLAs were entered into. As the CLAs were never executed, SCP remained liable to repay the loan under the ICG Loan Agreement.

19 ICG also submitted that in any event, SCP could not enforce the CLAs against ICG because SCP was not a party to the CLAs, which (according to SCP and Sim) would have been entered into with Sim and Biomax.

20 Finally, ICG submitted that the ICG Loan Agreement was an arms-length commercial transaction and denied that it engaged in any moneylending business.

Liw's case

21 Liw claimed that she entered into the Liw Loan Agreement on Marcus' request.[13] Like ICG, Liw took the position that Sim remained liable under the Liw Loan Agreement as the CLAs were never entered into.

22 Liw also submitted that the Liw Loan Agreement was arms-length and the parties were legally represented. Liw denied that the Liw Loan Agreement contravened the Moneylending Act.

The issues before me

23 The issues before me were:

(a) Whether there was an oral agreement as alleged by SCP and Sim?

---

13 Liw's 1st affidavit in OSB 38, at para 17.

(b) Whether the ICG Loan Agreement and/or the Liw Loan Agreement contravened the Moneylenders Act?

The law

24 The legal principles applicable to both OA 421 and OSB 38 were similar and well-established. The court will set aside a statutory demand and restrain a winding up or bankruptcy application based on the statutory demand, if the debtor can persuade the court that there are triable issues as to whether the debt is payable: see *Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR(R) 491 at [16]–[17]; *Mohd Zain bin Abdullah v Chimbusco International Petroleum (Singapore) Pte Ltd* [2014] 2 SLR 446 at [16]–[17].

Whether there was an oral agreement as alleged

25 It was clear to me that the oral agreement alleged by SCP and Sim was factually unsustainable.

26 First, in his affidavit filed in OA 421, Sim's description of the alleged oral agreement was that it "was agreed orally that parties *would* enter into" [emphasis added] the CLAs.[14] I agreed with ICG that at best, this was merely an agreement to agree and no legally binding agreement had been reached on the CLAs yet. It is trite that an agreement to agree is not a contract and is unenforceable. The contemporaneous objective evidence bore out the fact that the parties had not reached agreement on the CLAs. For example:

[14] Sim's 1st affidavit in OA 421, at para 21.

(a) On 17 July 2021, Mark reminded Sim that the "lawyers will need a few days to prepare the agreements and after that the parties will have to review and discuss the agreements."[15]

(b) On 11 August 2021, ICG's lawyers informed SCP that they were working on the transaction documents and asked for a copy of the existing shareholders' agreement in respect of Biomax.[16] ICG could not have agreed to the CLAs without his lawyers having reviewed the shareholders' agreement.

(c) On 12 April 2022, Zelene sent Biomax's comments (on the draft Biomax CLA) to ICG's lawyers.[17] Biomax disagreed with several of the clauses in the draft agreement. It was clear from Biomax's comments that the parties were still negotiating the terms of the agreement. Sim himself acknowledged that the "discussions relating to the draft paperwork for the [Biomax CLA] did not result in the paperwork being signed and ICG's solicitors did not prepare any draft paperwork for the [Sim CLA] as well."[18]

27 Second, Sim claimed that one of the reasons why the ICG Loan Agreement was entered into was that the time needed for the preparation of the documents evidencing the CLAs was too long given the business conditions and the urgent need for funds at the material time.[19] This was not only a bare allegation, it was also contradicted by the evidence. There were evidently no

---

15 Sim's 1st affidavit in OA 421, at p 48.

16 Sim's 1st affidavit in OA 421, at p 104.

17 Pong Sin Tee, Eugene's 1st affidavit in OA 421, at pp 96–103.

18 Sim's 1st affidavit in OA 421, at paras 52(c)–(d).

19 Sim's 1st affidavit in OA 421, at para 25.

problems preparing and signing the ICG Loan Agreement and the Deed of Charge on an urgent basis (since SCP was in urgent need of funds). Neither was there any problem preparing and signing the earlier July Loan Agreement. SCP and Sim could not offer any reason as to why the necessary documentation for the CLAs could not have been prepared and signed *if, as SCP and Sim claimed, they had been agreed*. In my view, the evidence shows that the documentation for the CLAs took time because the terms were being negotiated and Biomax needed the approval of its preference shareholders before it could enter into the Biomax CLA (see [28] below).

28 Third, under the terms of a shareholders' agreement,[20] Biomax required the approval of its preference shareholders before it could enter into the Biomax CLA. Yet, it was not a term of the alleged oral agreement (see [13] above) that the Biomax CLA would be subject to the approval of the preference shareholders of Biomax. It was highly implausible that ICG would have agreed to enter into the Biomax CLA without such a term. In addition, I also agreed with ICG that it would not have agreed to enter into the Sim CLA without involving Biomax since ICG was being given the option to convert the loan into shares in Biomax.

29 Fourth, both the ICG Loan Agreement and the Liw Loan Agreement made no reference whatsoever to the alleged oral agreement or the CLAs. The ICG Loan Agreement was drafted by ICG's lawyers and reviewed by SCP's lawyers who had even proposed changes to the agreement.[21] It was incredulous that there was no reference to the oral agreement or the CLAs if, as SCP and Sim claimed, the loans under the ICG Loan Agreement and the Liw Loan

---

20 Pong Sin Tee, Eugene's 1st affidavit in OA 421, at pp 33–77.

21 Sim's 1st affidavit in OA 421, at pp 93–94.

Agreement would form part of the sums to be disbursed under the CLAs. The inescapable conclusion was that the parties had not reached agreement on the CLAs.

30 Fifth, according to Sim, the CLA Loans would be repaid three years after the CLA Loans ($2m) were fully disbursed, if ICG did not convert the loans into shares in Biomax (see [13(b)(iv)] above). Yet, the ICG Loan Agreement expressly stated that the repayment date for the loan was three months from the date of the agreement. The Liw Loan Agreement provided for repayment to be made six months from the date of the agreement. These repayment dates clearly contradicted the repayment terms under the CLAs. SCP and Sim offered no explanation for the inconsistency. This was strong evidence that the parties had not reached agreement on the CLAs.

31 SCP and Sim referred me to various email exchanges.[22] Those emails were consistent with the fact that the loans under the ICG Loan Agreement and the Liw Loan Agreement were interim loans which would probably have been subsumed under the CLAs upon the CLAs being agreed and concluded. However, they were either (a) consistent with the fact that the parties were still negotiating the terms of the CLAs, or (b) equivocal as to whether the agreement on the CLAs had been reached as alleged by SCP/Sim.

32 In my view, there was no triable issue as to whether the alleged oral agreement existed. It plainly did not. The alleged oral agreement was nothing more than an afterthought.

---

22 Sim's 1st affidavit in OA 421, at paras 34–56.

Moneylenders Act

The ICG Loan Agreement

33 In its submissions, SCP alleged that the ICG Loan Agreement contravened the Moneylenders Act. No such allegation was made in Sim's affidavit in OA 421. In my view, the submission was also an afterthought.

34 In any event, I agreed with ICG that the ICG Loan Agreement did not contravene the Moneylenders Act.

(a) Even by SCP's own account, the ICG Loan Agreement was an interim loan that was related to ICG's intention to invest in Biomax via the CLAs (see [13(e)] above). Clearly, the ICG Loan Agreement was a commercial transaction between experienced business entities, made in a commercial context. It was wholly inappropriate to apply the Moneylenders Act to such transactions: *City Hardware Pte Ltd v Kenrich Electronics Pte Ltd* [2005] 1 SLR(R) 733 at [22]; see also *Donald McArthy Trading Pte Ltd and others v Pankaj s/o Dhirajlal (trading as TopBottom Impex)* [2007] 2 SLR(R) 321 at [9]. The Moneylenders Act was not intended to stifle the flow of credit in the business domain: *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 ("*Sheagar*") at [66]. I noted as well that the interest payable under the ICG Loan Agreement was just three percent per annum.

(b) In any event, SCP failed to show that ICG was an "unlicensed moneylender" under the Moneylenders Act:

(i) The prohibition against unlicensed moneylending in s 5(1) of the Moneylenders Act applies to a person carrying on

the business of moneylending in Singapore. SCP did not show that ICG was in the business of moneylending.

(ii) Under s 2 of the Moneylenders Act, the term "moneylender" does not include an "excluded moneylender". The term "excluded moneylender" is defined to include any person who lends solely to corporations. The loan under the ICG Loan Agreement was a loan to a corporation. The burden of proof fell on SCP to prove that ICG was not an excluded moneylender (see *Sheagar* at [73]; *North Star (S) Capital Pte Ltd v Yip Fook Meng* [2022] 1 SLR 677 ("*North Star*") at [34]), but SCP did not adduce any evidence to do so.

(iii) The presumption of being a moneylender in s 3 of the Moneylenders Act does not apply to an excluded moneylender.

The Liw Loan Agreement

35 I agreed with Liw that the Liw Loan Agreement did not contravene the Moneylenders Act.

(a) As with the ICG Loan Agreement, the Liw Loan Agreement was also an interim loan that was related to ICG's intention to invest in Biomax via the CLAs (see [13(e)] above). It was not disputed that the Liw Loan Agreement was arranged by ICG/Marcus.[23] Clearly, the Liw Loan Agreement was also a commercial transaction, made in a commercial context. It was similarly wholly inappropriate to apply the Moneylenders Act to such transactions. I also noted that the interest payable was just three percent per annum.

---

[23] Sim's 1st affidavit in OSB 38, at para 9(d); Liw's 1st affidavit in OSB 38, at para 21.

(b) Further, there was no evidence that Liw was carrying on the business of moneylending in Singapore. There are two tests to determine whether a person is in the business of moneylending: the first is whether there was a system and continuity in the transactions, 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 (see *North Star* at [36]; *E C Investment* at [135]). There was no system and continuity to the Liw Loan Agreement. Liw was an entrepreneur involved in the medical, healthcare, agricultural and F&B sectors, and she was not in the business of moneylending. There was also no evidence that the Liw Loan Agreement was part of an ongoing and routine series of moneylending transactions made by Liw: see *Ang Eng Thong v Lee Kiam Hong* [1998] SGHC 64 at [19]. Further, there was a lack of evidence to suggest that Liw was ready and willing to lend to all and sundry. She provided the loan to Sim at Marcus' request, which she agreed to on account of her friendship with Marcus.[24] Sim referred to the fact that Liw had also entered into an interim loan agreement with a Malaysian company, Blu Bio (M) Sdn Bhd for the sum of RM600,000 (the "Blu Bio Loan"). However, the Blue Bio Loan was also made at Marcus' request and was related to ICG's intention to invest in Biomax via the CLAs.[25]

(c) In these circumstances, although the presumption in s 3 of the Moneylenders Act applied to Liw, in my view, the evidence was sufficient to rebut the presumption.

---

24 Liw's 1st affidavit in OSB 38, at paras 20–21.

25 Liw's 1st affidavit in OSB 38, at para 21.

Conclusion

36 For the above reasons, I dismissed OA 421 and OSB 38.

37 I ordered SCP and Sim to each pay costs fixed at $5,000 plus disbursements to be fixed by me, if not agreed.

Chua Lee Ming
Judge of the High Court

Too Fang Yi (Dentons Rodyk & Davidson LLP) for the applicant in OA 421 and the claimant in OSB 38;
Tan Yi Lei (Virtus Law LLP) for the respondent in OA 421 and the defendant in OSB 38.