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

[2023] SGHC 67

Suit No 1234 of 2020

Between

Kwek Hong Lim

… *Plaintiff*

And

Kwek Sum Chuan

… *Defendant*

JUDGMENT

[Contract — Formation — Oral agreement]
[Contract — Formation — Certainty of terms]
[Contract — Intention to create legal relations]
[Evidence — Admissibility of evidence]

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Kwek Hong Lim
v
Kwek Sum Chuan

[2023] SGHC 67

General Division of the High Court — Suit No 1234 of 2020
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23 March 2023 Judgment reserved.

Hoo Sheau Peng J:

Introduction

1 This is, sadly, an action by a son against his father. The plaintiff, Mr Kwek Hong Lim ("the plaintiff"), claims against the defendant, Mr Kwek Sum Chuan ("the defendant"), for 60% of the shareholding in YES Supermarket Pte Ltd ("the Company") and 60% of a property located at 201B Tampines Street 21 #01-1091, Singapore 522201 ("the Property"). This claim is based on an oral agreement allegedly entered into by the parties in late 2011 ("the Alleged Oral Agreement"). The defendant, however, denies the existence of the Alleged Oral Agreement. Having considered the evidence and the parties' submissions, I dismiss the plaintiff's claim. These are my reasons.

Background facts

2 The Company, incorporated in 1999 by the defendant, was in the supermarket business.[1] The defendant owns 85% of its shares (850,000 shares), while the plaintiff owns 8% of its shares (80,000 shares). Of the remaining 7% shareholding, 5% is held by the plaintiff's mother (50,000 shares), and 2% (20,000 shares) by his sister, Ms Kwek Joo Sim ("Ms Kwek").[2] In 2003, the Property was purchased in the name of one of the defendant's companies, Kwek Sum Chuan Holding Pte Ltd ("KSC Holding").[3] The Company used the Property as a supermarket.

3 The plaintiff claims that he had been assisting the Company since its incorporation and started working for the Company from 2000. Based on his contributions towards expanding the supermarket business, he was appointed its chief executive officer ("CEO") in 2004. Under him, the supermarket business boomed.[4] The defendant, however, says that the plaintiff was not substantively involved in setting up the Company in 1999. However, the defendant saw the Company as a family business and wanted all five of his children to be involved in it. The plaintiff only began working for the Company in 2003, after obtaining a Master's degree.[5] Barely a year later, the plaintiff requested to be appointed the CEO, and the defendant agreed to this as he wanted to groom the plaintiff. This continued from 2004 to 2012.[6]

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1 Mr Kwek Hong Lim's AEIC dated 10 September 2021 ("KHL AEIC") at para 3; Mr Kwek Sum Chuan's AEIC dated 15 September 2021 ("KSC AEIC") at para 4.

2 KSC AEIC at 41–42.

3 KHL AEIC at para 10.

4 KHL AEIC at paras 3–5.

5 KSC AEIC at paras 15 and 20.

6 KSC AEIC at paras 17–23.

The Alleged Oral Agreement

4 According to the plaintiff, he was headhunted by a Malaysian company, Pasaraya Wah Seah Maju Sdn Bhd ("Pasaraya"), in late 2011. The plaintiff decided to take up Pasaraya's offer as Pasaraya offered the plaintiff a much higher remuneration than what he was receiving from the Company. As such, the plaintiff tendered his resignation to the defendant. However, upon receipt of the plaintiff's resignation letter, the defendant offered the following to the plaintiff in exchange for his continued employment with the Company:[7]

> (a) "[T]o make [the plaintiff] a director and also a managing director of the Company and to transfer 6% of the shares in the Company to [the plaintiff] by the end of the following year" ("the First Set of Terms"); and
>
> (b) "[T]o give [the plaintiff] at least another 60% of the shares in the Company and 60% of properties, purchased or to be purchased in the name of the Defendant or the Defendant's companies, which are used or to be used for the Company's supermarket business, in 5 years' time when the Defendant would go into retirement" ("the Second Set of Terms").

5 The plaintiff says that he accepted the defendant's offer right away and withdrew his resignation letter by tearing it in the presence of the defendant. Thus, the Alleged Oral Agreement was formed.[8]

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7 KHL AEIC at paras 7–10.

8 KHL AEIC at para 12.

6 On the other hand, the defendant denies having ever made such an offer to the plaintiff or having entered into the Alleged Oral Agreement with the plaintiff. The defendant says he did not receive any resignation letter from the plaintiff and did not receive any indication that the plaintiff wished to resign. In fact, the defendant was not aware of the plaintiff being headhunted by Pasaraya, or any other company.[9]

Alleged performance of the First Set of Terms

7 It is not disputed that on 7 November 2012, the plaintiff was appointed a director of the Company. From the financial statements of the Company for the year ending 2012, in the course of 2012, the plaintiff's shareholding increased by about 6% of the total shareholding (from 20,000 out of 980,000 shares to 80,000 out of 1,000,000 shares). This appears to have been achieved by a transfer of 40,000 shares from the defendant to the plaintiff, and an allocation of an additional 20,000 shares to the plaintiff.[10]

8 These acts, says the plaintiff, were in fulfilment of the First Set of Terms. Indeed, he claims to be appointed not only as a director, but as the managing director of the Company.[11] The plaintiff's beef is that contrary to the Alleged Oral Agreement, the defendant has not performed the Second Set of Terms. According to the defendant, however, he had decided in 2012 that his children should play a larger role in the management of the Company. Therefore, both Ms Kwek and the plaintiff were appointed as directors of the Company at the same time.[12] Around 2012, the defendant says he told the plaintiff about his

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9 KSC AEIC at paras 25–26, 30.

10 KSC AEIC at 68 and para 27.

11 KHL AEIC at para 15.

12 KSC AEIC at para 24.

intention to distribute his assets to his children, including the plaintiff, in the future. This was because the defendant was thinking about succession planning at the Company.[13]

Subsequent discussions

9 Parties agree that on multiple occasions, the plaintiff asked the defendant to put matters into writing. The plaintiff says he wanted the Alleged Oral Agreement to be recorded, while the defendant says he was asked to record his intention to transfer his assets to the plaintiff. In any event, the defendant refused to do so. The defendant explains that he thought that it was unnecessary. He was simply expressing his plans for the future and did not intend to create any legally binding agreement with the plaintiff.[14]

10 One such discussion apparently occurred on 21 December 2015 when the parties met in the Company's office. A video recording of a part of that meeting was adduced by the plaintiff as evidence in support of the Alleged Oral Agreement ("the Video Recording").[15] The defendant, on the other hand, disputes the contents of the Video Recording, and asserts that he has never confirmed the existence of the Alleged Oral Agreement.[16]

11 In December 2016, *ie,* purportedly five years after the formation of the Alleged Oral Agreement, the plaintiff asked the defendant to honour the Second

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13 KSC AEIC at paras 33–35.

14 KSC AEIC at para 36.

15 KHL AEIC at 363–364 and para 18.

16 KSC AEIC at para 29.

Set of Terms under the Alleged Oral Agreement. The defendant, evidently, did not do so.[17]

The fallout

12 Following his appointment as a director of the Company, the plaintiff ran the Company's supermarket business. The defendant's position is that the plaintiff seriously mismanaged the Company, and the Company incurred significant financial losses as a result.[18] The Company's supermarket business ceased to be viable by 2017.[19] Eventually, on 25 May 2018, the defendant and the other shareholders of the Company unanimously resolved to end the Company's supermarket operations.[20]

The buyout discussions

13 According to the defendant, from 2016, rather than be co-operative in facilitating the closure of the Company's supermarket business, the plaintiff made a series of threats and demands against the defendant for the latter's monies and assets. The relationship between father and son deteriorated significantly by March 2018. At that time, the defendant was in the midst of closing the Company's supermarket operations and required certain documents such as the Company's 2017 statement of accounts and various missing supplier invoices. As such, the defendant offered the plaintiff S$3m to buy out his shareholding (*ie*, 8% of the shares in the Company) in the hope that by doing

17 KHL AEIC at para 16.

18 KSC AEIC at paras 37–49.

19 KSC AEIC at para 50.

20 KSC AEIC at 362–363.

so, the defendant would be able to promptly obtain the necessary documents.[21] The defendant made the offer as he hoped to resolve his differences with the plaintiff peacefully and the offer was not an admission of any liability on his part.[22]

14 However, the plaintiff asked for S$15m for him to exit the Company.[23] The defendant rejected this.[24] Subsequently, the plaintiff indicated that he was prepared to accept the initial sum of S$3m for him to exit the Company.[25] The defendant rejected this because he could not accept the other terms in the draft agreement prepared by the plaintiff.[26]

Further alleged threats

15 According to the defendant, subsequently, the plaintiff made more threats. One such threat was made via an email on 30 May 2018, at 4.13pm, in which the plaintiff threatened to commence proceedings against the defendant in the High Court and "if necessary, to bring it all the way to the Court of Appeal". On the same day, the plaintiff sent another email to the defendant at 6.48pm which the defendant understood to be a threat to publicise the family's disputes in the newspapers.[27]

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21 KSC AEIC at paras 61, 75–78.

22 Defence dated 4 February 2021 at para 13(b); Defendant's Opening Statement dated 14 January 2022 at para 18.

23 KSC AEIC at para 82; Agreed Bundle of Documents Volume 2 ("2AB") at 636.

24 KSC AEIC at para 82.

25 KHL AEIC at para 22; KSC AEIC at para 84; 2AB at 637.

26 KSC AEIC at para 85.

27 KSC AEIC at paras 86–90; 2AB at 641–642.

16 Fearing that the plaintiff would carry out his threat of publicising the disputes, the defendant met him on 31 May 2018.[28] During that meeting, the plaintiff was shown a copy of a draft settlement agreement drawn up by the defendant's solicitors wherein the defendant would buy the plaintiff's shares for S$3m.[29] However, the plaintiff rejected the terms of that draft agreement.[30] Parties met again the next day but still could not settle their differences.[31]

17 On 3 June 2018, Shin Min News ran an article about the family's disputes, including the plaintiff's allegation of the existence of the Alleged Oral Agreement ("the Shin Min Article").[32] The defendant says that he only found out about this allegation concerning the Alleged Oral Agreement after reading the Shin Min Article.[33]

DC/DC 1437/2020 and the present action

18 The parties met again a year later, on 11 June 2019. They did not resolve their differences. On 20 June 2020, the plaintiff commenced DC/DC 1437/2020 ("DC 1437/2020") against the defendant.[34] DC 1437/2020 concerned another oral agreement allegedly made in March 2018 between the parties. Under this alleged oral agreement, the defendant supposedly promised to pay S$182,000 owed to the plaintiff by U Singapore Pte Ltd ("U Singapore"), a company

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28 KSC AEIC at paras 92–93.

29 KHL AEIC at para 23.

30 KHL AEIC at para 23; KSC AEIC at para 93(a).

31 KSC AEIC at paras 94–96.

32 KHL AEIC at para 24; KSC AEIC at para 99; 2AB at 586, 590.

33 KSC AEIC at para 99(b).

34 KHL AEIC at para 30; KSC AEIC at para 106; Agreed Bundle of Documents Volume 1 ("1AB") at 408.

owned by the defendant, in exchange for the plaintiff transferring his ownership of one share in U Singapore and turning over U Singapore's unused chequebooks to the defendant.[35] Parties reached a settlement in relation to DC 1437/2020 ("the Settlement Agreement").[36] Less than three months after the settlement, the plaintiff commenced the present action.

The parties' cases

19 As pleaded, the plaintiff's case is simply that parties had entered into a valid and binding contract (*ie*, the Alleged Oral Agreement) by which the defendant is to perform his obligations as set out at [4] above. I should highlight that, as regards properties, the plaintiff only claims for 60% of the Property (and not for any other properties that he is purportedly entitled to under the Second Set of Terms). Moreover, it is the plaintiff's case that the defendant has already performed the First Set of Terms. Therefore, the claim against the defendant is for 60% of the shares in the Company and 60% of the Property, with damages to be assessed by this court in the alternative.[37]

20 The defendant's primary defence is that the Alleged Oral Agreement was never made. Secondly, insofar as the defendant had ever mentioned transferring any assets to the plaintiff, he had done so in a familial context. Accordingly, the defendant had no intention to create legal relations with the plaintiff. Thirdly, the Alleged Oral Agreement, as pleaded, is void for uncertainty of terms. Fourthly, the plaintiff's claim is barred by the extended doctrine of *res judicata* in light of DC 1437/2020. Finally, the plaintiff's claim for the Property fails as the Property is owned by KSC Holding, a distinct legal

35 KHL AEIC at paras 29–30; 1AB at 410–411.

36 1AB at 413–417.

37 Statement of Claim at 6.

personality, and not the defendant. KSC Holding is not a party to the present suit.[38]

Issues to be determined

21 Arising from the parties' cases, these are the issues for the court's determination:

(a) Whether the Alleged Oral Agreement exists.

(b) Whether parties had any intention to create legal relations in discussions concerning transfer of assets to the plaintiff.

(c) Whether the Alleged Oral Agreement, as pleaded, contains terms which are sufficiently certain as to be enforceable.

(d) Whether the plaintiff's claim is barred by the extended doctrine of *res judicata* in light of DC 1437/2020.

(e) Whether the plaintiff can claim a 60% share in the Property as against the defendant who does not own the Property.

Whether the Alleged Oral Agreement exists

The applicable legal principles

22 The guiding principles on the proper approach for determining the existence of an oral agreement are well established: see *ARS v ART and another* [2015] SGHC 78 at [53]. I summarise some key aspects. First, the court will consider the relevant documentary evidence and contemporaneous conduct of

[38] Defendant's Closing Submissions dated 16 December 2022 ("DCS") at para 18.

the parties at the material time. In this connection, while the testimony of witnesses is pertinent, relevant documentary evidence and the contemporaneous conduct of the parties at the time of contract formation are generally preferred as more reliable than subsequent witness testimony. Second, where the witnesses are not legally trained, as is the case here, the court should not place undue emphasis on the choice of words. Finally, it should be noted that the fact that there is little to no documentary evidence does not preclude the court from finding the existence of an oral agreement. The court will examine the precise factual matrix to ascertain if there is an oral agreement concluded between the parties. With this framework in mind, I now turn to the plaintiff's evidence.

The plaintiff's evidence

23 The plaintiff's account of how the Alleged Oral Agreement was entered into is set out at [4] above. The plaintiff acknowledges that there were no other witnesses to the meeting between the parties when the Alleged Oral Agreement was purportedly made, and he also accepts that no written evidence of the agreement exists.[39] However, the plaintiff claims that various pieces of supporting evidence, including the conduct of the parties, prove that the parties entered into the Alleged Oral Agreement in late 2011. In particular, he relies on the Video Recording – asserting that there was an admission by the defendant of the existence of the Alleged Oral Agreement.

24 For convenience, I will discuss these pieces of evidence in chronological order of the events as follows: (i) a letter of offer by Pasaraya dated 14 November 2011 ("the Letter of Offer"); (ii) the alleged performance of the First Set of Terms by the defendant in late 2012; (iii) the Video Recording (which

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[39] Plaintiff's Closing Submissions dated 16 December 2022 ("PCS") at para 20.

was a recording of a meeting on 21 December 2015); (iv) the plaintiff's 19 April 2018 letter and various emails to the defendant; (v) the Shin Min Article (published on 3 June 2018); and (vi) the pleaded Defence. Thereafter, I will return to consider the overall matrix of the case, and the plaintiff's testimony.

The Letter of Offer

25 In support of his version of events, the plaintiff relies on Pasaraya's Letter of Offer.[40] As set out at [4]–[6] above, it is the plaintiff's evidence that the Alleged Oral Agreement was entered into because the defendant wanted to retain the plaintiff to work for the Company. This was against the background of the plaintiff being headhunted to work for Pasaraya. However, this version is flatly denied by the defendant. In relation to the Letter of Offer, the defendant challenges its authenticity, and objects to its admissibility. In any event, the defendant submits that it does little to prove the existence of the Alleged Oral Agreement, much less its terms.[41]

(1) Whether the Letter of Offer is admissible

26 In relation to authenticity of evidence, as observed by Coomaraswamy J in *CIMB Bank Bhd v Italmatic Tyre & Retreading Equipment (Asia) Pte Ltd* [2021] 4 SLR 883 ("*Italmatic Tyre*") at [68]:

> Authenticity is a *necessary condition* of admissibility … *until authenticity is established, admissibility has no meaning.* Evidence which has been fabricated is no evidence at all: it is incapable of proving anything other than, perhaps, the very fact that it has been fabricated.
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> [emphasis in original]

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40 KHL AEIC at 360 and para 7; PCS at para 6; DCS at para 44.

41 DCS at para 45; Defendant's Notice of Non-Admission of Documents dated 29 April 2021.

Accordingly, a document can only be admitted into evidence after its authenticity has been established. Even after a document has been established as authentic, the truth of its contents must still be proved by admissible evidence: *Italmatic Tyre* at [69].

27 Under O 27 r 4(1) of the Rules of Court (2014 Rev Ed) ("the 2014 ROC"), a party is deemed to admit the authenticity of a document in his opponent's list of documents unless he shows that he had issued a notice of non-admission within the stipulated time: *Jet Holding Ltd and others v Cooper Cameron (Singapore) Pte Ltd and another and other appeals* [2006] 3 SLR(R) 769 at [73]; *Italmatic Tyre* at [71]. Here, the defendant had duly filed a Notice of Non-Admission on 29 April 2021. Thus, the plaintiff was adequately warned that he would be required to prove the authenticity of the Letter of Offer at trial.

28 The defendant submits that the plaintiff has failed to prove the Letter of Offer's authenticity because he did not call any witness to do so. In particular, the plaintiff failed to call the maker of the Letter of Offer, Mdm Yew M H ("Mdm Yew"), Pasaraya's Head of Human Resource, to testify. Alternatively, the plaintiff could have called Mdm Yong Li Li ("Mdm Yong"), the Managing Director of Pasaraya, who was named in the Letter of Offer, or any other officer of Pasaraya who might have been able to give evidence regarding the letter's issuance. The plaintiff did not do these as well.[42]

29 The plaintiff's explanation for his failure to call any officer from Pasaraya to testify is that Pasaraya had ceased being a going concern and that, in light of the COVID-19 pandemic, the plaintiff was of the view that it was unlikely that the relevant witnesses would be able or willing to come to

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42 DCS at paras 47–50.

Singapore to testify on his behalf. Moreover, the plaintiff could not subpoena the relevant witnesses as they were based in Malaysia.[43]

30 As elaborated by the Court of Appeal in *CIMB Bank Bhd v World Fuel Services (Singapore) Pte Ltd and another appeal* [2021] 1 SLR 1217 at [57], the maker of a document should generally be called as a witness to prove its authenticity since direct evidence would usually be the strongest evidence available. That said, the failure to adduce direct evidence where it is available does not necessarily demolish a party's case that a document is authentic. Much would depend on all the relevant facts and circumstances, including the reasons proffered by the relevant party for not adducing direct evidence, and the strength of the circumstantial evidence adduced to prove the document's authenticity.

31 In my judgment, the plaintiff has not managed to prove the authenticity of the Letter of Offer. I agree with the defendant that the plaintiff has failed to provide any satisfactory explanation for his failure to call material witnesses. The plaintiff alluded to the COVID-19 border restrictions between Singapore and Malaysia when explaining why he thought it unlikely that the relevant witnesses from Malaysia would be able or willing to come to Singapore to testify on his behalf. However, the plaintiff testified at trial that he knew the COVID-19 travel restrictions between Singapore and Malaysia had already been lifted by the time of the trial.[44] Even if I were to accept that the relevant witnesses from Malaysia were unable or unwilling to come to testify, the fact remains that the plaintiff did not even *attempt* to contact Mdm Yew, Mdm Yong, or any other relevant witnesses to testify on his behalf.[45]

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43 KHL AEIC at para 13.

44 Transcript, 25 October 2022, at 130, ln 1 to ln 7.

45 Transcript, 25 October 2022, at 131, ln 6 to ln 26.

32 The plaintiff further argues that it is unrealistic to expect him to contact Pasaraya given that he had ceased communication with them since 11 November 2011,[46] and it is his unchallenged evidence that Pasaraya had ceased operations.[47] However, at trial, the plaintiff alluded to one "Ms Teo", a friend's wife, who recommended him to Pasaraya.[48] More significantly, it is the plaintiff's testimony that Ms Teo knew Mdm Yong.[49] Even if I were to agree that it is acceptable for the plaintiff to not contact Pasaraya or its officers, there is no reason why the plaintiff could not have attempted to contact Ms Teo.

33 In the premises, I find that, on balance, the plaintiff has failed to discharge his burden of proving the authenticity of the Letter of Offer. As such, the letter is inadmissible.

(2) Evidentiary weight if admissible

34 Even if the Letter of Offer is admissible, it does little to assist the plaintiff's case. The Letter of Offer mentions an offer of the position of chief executive officer at an annual remuneration ranging from "RM900,000 to RM1,200,000 depending on the company performance." Further incentives are promised based on the meeting of his "KPI".

35 In my judgment, at the highest, the Letter of Offer supports the plaintiff's contention that he had an opportunity to move out of the Company. However, it does not go very far to establish that the plaintiff met the defendant in late 2011 to discuss the matter, that the plaintiff had sought to resign from the

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46 Plaintiff's Reply Closing Submissions dated 10 January 2023 ("PRCS") at para 6.

47 PRCS at para 6; KHL AEIC at para 13.

48 Transcript, 25 October 2022, at 128, ln 10 to ln 32.

49 Transcript, 25 October 2022, at 127, ln 9.

Company, and especially that the defendant offered the terms in the Alleged Oral Agreement which the plaintiff purportedly accepted. In particular, I note that allegedly, by the Second Set of Terms, the defendant promised to generously reward the plaintiff in five years' time to stay with the Company. Even if the Company wished to entice the plaintiff to stay on, it remains questionable whether the defendant would readily offer such a generous package. In sharp contrast to the Letter of Offer, for all that it purportedly promised, the Alleged Oral Agreement makes no mention of the performance expected from the plaintiff in that five-year period. I shall return to this at [66] below. Accordingly, even if the Letter of Offer is admissible, it is of limited assistance in supporting the plaintiff's case.

Alleged performance of the First Set of Terms

36 Next, the plaintiff argues that the defendant had performed the First Set of Terms under the Alleged Oral Agreement in 2012. The plaintiff submits that the defendant "has not explained **at all** why he transferred 6% of the shares in the Company to the Plaintiff, if not to comply with the [Alleged Oral Agreement]" [emphasis in original].[50]

37 The defendant's explanation is that at that juncture, he made the plaintiff a director because he wanted his children to play a bigger role in the Company's business. In fact, on that same day, the defendant also made Ms Kwek a director of the Company.[51] In relation to the shareholding of the Company, as analysed above at [7], in 2012, the plaintiff's shareholding increased by about 6%.[52] However, the defendant does not specifically provide the reasons for giving the

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50 PCS at para 20(a).

51 KSC AEIC at paras 24–26.

52 KSC AEIC at 68 and para 27.

plaintiff more shares. Notwithstanding this gap in the defendant's evidence, in my view, the increase in the shareholding remained generally in line with the defendant's position that the plaintiff was to take on a bigger management role in the Company at that time. It provides scant support for the Second Set of Terms that the plaintiff is seeking to enforce.

The Video Recording

38 I deal next with the Video Recording. According to the plaintiff, the Video Recording shows the defendant confirming the existence of the Alleged Oral Agreement. At the outset, I note that the Video Recording is a recording of a *part* of the meeting between parties on 21 December 2015 at the Company's office; the *entire* meeting was approximately two hours long, but the duration of the Video Recording is only about 4 minutes and 38 seconds.[53]

39 In relation to the Video Recording, Mr He Xuejun ("Mr He"), an employee of U Singapore which provided CCTV services to the Company, retrieved the video recording of the meeting between the parties for the plaintiff.[54] As the parties conversed in Teochew, the plaintiff, through his solicitors, handed the Video Recording over to Mr Yeo Jia Sheng, Jonathan ("Mr Yeo"), for translation and transcription into English ("Mr Yeo's Transcript").[55] In response, the defendant contends that the Video Recording and Mr Yeo's Transcript are inadmissible or should be accorded no weight.

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53 KHL AEIC at 363–364.

54 Mr He Xuejun's AEIC dated 27 August 2021 ("HXJ AEIC") at para 3; Transcript, 26 October 2022, at 78, ln 2 to ln 6.

55 Mr Yeo Jia Sheng, Jonathan's AEIC dated 14 September 2021 ("Yeo AEIC") at para 3.

(1) Whether satisfactorily proved and admissible

40 I first deal with the defendant's contention that the Video Recording is inadmissible.[56] Similar to the Letter of Offer, the defendant also objects to the Video Recording's admissibility in its Notice of Non-Admission filed on 29 April 2021. Thus, the plaintiff is required to prove the authenticity of the Video Recording at trial.

41 I agree with the defendant that, on balance, the plaintiff has not proved the authenticity of the Video Recording. First, during cross-examination, Mr He repeatedly maintained that he had provided the *entire* video recording of the meeting (approximately 2 hours long) to the plaintiff.[57] In contrast, the plaintiff's consistent testimony is that after viewing the entire video recording of the meeting, he had asked Mr He to truncate a relevant portion of the video recording. Mr He duly did so and passed the Video Recording (4min 38sec) to the plaintiff. The plaintiff also testified that he did not receive the entire video recording of the meeting.[58] These are troubling inconsistencies in the plaintiff's case, with regard to what was handed by Mr He to the plaintiff.

42 Second, while Mr He confirmed that he was the one who retrieved the video recording of the meeting,[59] the video recording was not tendered in Mr He's AEIC. As such, there is doubt as to whether the Video Recording tendered to the court is a continuous extract truncated from the video recording of the meeting retrieved by Mr He (as contended by the plaintiff).

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56 Defendant's Notice of Non-Admission of Documents dated 29 April 2021.

57 Transcript, 26 October 2022, at 84, ln 29, to 85, ln 18, and 87, ln 27.

58 KHL AEIC at para 20; Transcript, 26 October 2022, at 5, ln 10 to ln 27.

59 HXJ AEIC at paras 2–4.

43 Third, there is a serious mismatch between the audio and video feeds of the Video Recording. For instance, during a portion of the Video Recording, multiple bouts of coughing were heard, but persons in the video were not seen coughing.[60] During cross-examination, Mr Yeo accepted that the audio feed of the recording does not match its video feed.[61] The plaintiff provided no explanation of the mismatch despite having been given ample time and opportunity to do so.

44 Given the above, there are serious lingering doubts about the Video Recording's authenticity which the plaintiff has failed to account for satisfactorily. Accordingly, I hold that the Video Recording is inadmissible.

(2) Weight to be accorded to the Video Recording if admissible

45 In any case, even if the Video Recording is admissible, I am of the view that it should be accorded limited weight in proving the existence of the Alleged Oral Agreement for two main reasons. First, as I have found at [43] above, there is a serious mismatch of the audio and video feeds of the Video Recording which remains unexplained. Secondly, the video tendered (4min 38sec long) is but a recording of a small portion of the entire meeting between parties which lasted for about 2 hours. Accordingly, it is unsafe for me to simply rely on the Video Recording without having the benefit of having the video recording of the entire meeting between parties as evidence before the court. More might have been said that may contradict or give context to anything said in the Video Recording.

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60 Transcript, 26 October 2022, at 60, ln 26 to 61, ln 21.

61 Transcript, 26 October 2022, at 61, ln 24 to ln 26.

(3) Weight to be accorded to Mr Yeo's Transcript

46 I now turn to Mr Yeo's Transcript. As it is based on the Video Recording, its evidentiary weight must be minimal given my discussion above regarding the problems with the Video Recording. Even if I were to disregard these issues, I am of the view that little weight should be placed on the transcript.

47 At the outset, I note that the plaintiff maintains that Mr Yeo is an expert witness (as opposed to a factual witness),[62] despite my observation at trial that Mr Yeo did not appear to be an expert.[63] In the premises, I proceed, as parties have,[64] on the basis that Mr Yeo is meant to be an expert witness.

48 Order 40A of the 2014 ROC provides for the requirements concerning an expert witness and their testimony. The failure to comply with any of the requirements under O 40A may result in the expert's testimony being accorded little or no evidentiary weight and adverse cost orders for the party who engaged that expert: *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 at [89].

49 In my judgment, Mr Yeo's evidence falls far short of what is typically expected of evidence of this nature for the following reasons. First, I agree with the defendant that Mr Yeo has failed to comply with the requirement under O 40A r 3(2)(*a*) of the 2014 ROC because Mr Yeo did not exhibit a *curriculum vitae* or any documentary evidence in his AEIC that may point towards his purported expertise in translating Teochew to English. Mr Yeo exhibited a

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62 Transcript, 25 October 2022, at 182, ln 14 to ln 18 and 183, ln 18 to ln 19; Plaintiff's Lead Counsel Statement dated 25 October 2021 at 1 and Annex A.

63 Transcript, 25 October 2022, at 182, ln 8 to ln 21.

64 DCS at paras 87–88.

Diploma in Business from Temasek Polytechnic dated 20 August 2001 in his AEIC.[65] With respect, I am unable to see how Mr Yeo's Diploma in Business relates to his translation expertise in any way.

50 Mr Yeo also stated in his AEIC that he had been speaking Teochew to his parents since birth.[66] Mr Yeo also exhibited his birth certificate which states that he belongs to the Teochew dialect group.[67] However, I am of the view that these are plainly insufficient to constitute details of Mr Yeo's expert qualifications within the meaning of O 40A r 3(2)(*a*) of the 2014 ROC.

51 Furthermore, Mr Yeo testified during cross-examination that his full-time work involves marketing; he is not a full-time translator or transcriber.[68] More significantly, Mr Yeo's evidence is that he would *engage* translators when translation is required during his marketing business.[69] These further highlight Mr Yeo's lack of expertise in translation.

52 At trial, counsel for the plaintiff, Mr Lim, sought to excuse the above deficiencies by explaining to the court that the plaintiff was unable to find any certified Teochew translator.[70] As I pointed out to Mr Lim, I am not satisfied with the bald assertion that the plaintiff could not find a translator in Teochew in Singapore.[71] Given the above, I find that Mr Yeo has failed to comply with the requirement under O 40A r 3(2)(*a*) of the 2014 ROC.

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65 Yeo AEIC at 5.

66 Yeo AEIC at para 2.

67 Yeo AEIC at 4.

68 Transcript, 26 October 2022, at 49, ln 20 to 50, ln 7.

69 Transcript, 26 October 2022, at 49, ln 30 to 50, ln 11.

70 Transcript, 25 October 2022, at 182, ln 20 to ln 30.

71 Transcript, 25 October 2022, at 182, ln 24 to ln 25.

53 Second, I turn to O 40A r 3(2)(*h*) of the 2014 ROC which required Mr Yeo's AEIC to include a statement that he understood that in giving his report, his duty is to this court and that he has complied with said duty. That statement is nowhere to be found in Mr Yeo's AEIC. More significantly, Mr Yeo admitted during cross-examination that he was completely unfamiliar with the duties of an expert witness.[72] In the premises, I am not persuaded that Mr Yeo had complied with the relevant duties when he prepared the transcript and affirmed his AEIC.

54 In light of Mr Yeo's failure to comply with the basic requirements of an expert witness under the 2014 ROC, Mr Yeo's Transcript should be accorded minimal weight.

(4) Whether Mr Yeo's Transcript supports the plaintiff's case

55 Further to the above, I note that the defendant disputes the accuracy of Mr Yeo's Transcript. Indeed, the professional translator engaged by the defendant, Mr Poon Yu Da, observed that the quality of the Video Recording was poor, and from what he could hear, he provided a vastly different transcript from that furnished by Mr Yeo.[73]

56 Leaving aside the dispute as to the accuracy of Mr Yeo's work which I shall not delve into, upon a perusal of Mr Yeo's Transcript, it is my view that the Video Recording does not prove the existence of the Alleged Oral Agreement. The only portion of the transcript that could possibly assist the plaintiff's claim is as follows:[74]

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72 Transcript, 26 October 2022, at 50, ln 13 to 51, ln 4.

73 Mr Poon Yu Da's AEIC dated 15 September 2021 at 11–12.

74 KHL AEIC at 376.

> Defendant: … My thinking is you are in charge of YES, and when it makes money, your *share* is minimum 60 to 70 percent, confirm will be yours
>
> Plaintiff: Don't put it this way, it is…..
>
> Defendant: If it loses, you will have to lose your *share* of 60 to 70 percent or even lose everything, that is it. The matter has to be said this way
>
> [emphasis added]

57 I agree with the defendant that the ordinary meaning of "share" within "when it makes money, your *share* is minimum 60 to 70 percent" [emphasis added] seems to refer to the Company's *profits*, rather than *shares* of the Company, as the plaintiff claims. Along the same vein, "[i]f it loses, you will have to lose your share of 60 to 70 percent or even lose everything" seems to mean that should the Company lose money, the plaintiff should expect to lose his share of the *profits,* and not expect to have any gains. There would be no reason for the plaintiff to lose his *shares* in the Company should the Company not turn in a profit. Moreover, nothing in the Video Recording and Mr Yeo's Transcript alludes to the Property at all, and accordingly, the Video Recording cannot lend support to the plaintiff's claim of 60% of the Property. I also agree with the defendant that the defendant's alleged statements in Mr Yeo's Transcript refer to statements of future intent which cannot possibly be evidence of an Alleged Oral Agreement formed four years before.

58 Based on the above, I am of the view that the Video Recording and Mr Yeo's Transcript, even if considered, do not support the existence of an Alleged Oral Agreement between parties entered into in late 2011.

The plaintiff's 19 April 2018 letter and various emails to the defendant

59 The plaintiff also seeks to rely on his letter dated 19 April 2018 and various other emails to the defendant to establish the existence of the Alleged

Oral Agreement. I first deal with the 19 April 2018 letter. The material parts of that letter are as follows:[75]

> Owing to your empty promises made to me pertaining the rewards to the building up of your empire … we hereby are negotiating a deal for my amicable exit from the company via Mr Kwek Theng Swee as the mediator …
>
> In view of your constant changing of mind … since end of November 2017 till now, it will be of all parties' interests to have it pen down. The below was the most recent offer made by you to me via our mediator on 29th March 2018, and it stands as
>
> > *1. S$3million for the return of the 8% share I hold in Yes Supermarket Pte Ltd.*
> >
> > *2. Get the 2017 accounts audited, supplier invoices to date and the retrenchment of the existing staffs in order due to the cessation of the supermarket operations.*
> >
> > …
>
> … To simplify matters, find below for my counter offer formally.
>
> > *1. S$15 million for my amicable exit and I am open to negotiation on the type of payment, i.e. part cash and/or in kind of equivalent value.*
> >
> > *2. To get the 2017 accounts ready for audit reasonably able to qualify in the eye of a third party fully certified CPA (Chartered Professional Accountant).*
> >
> > *3. To provide all the supplier invoices to date and to facilitate the existing staffs' contract of service, including the payment of their retrenchment benefits whenever applicable.*

60 I am unable to see how this letter assists the plaintiff. The letter was written in the context of negotiations for the defendant to buy the plaintiff's 8% shareholding in the Company. As is clear from the text above, the letter relates to the plaintiff's counteroffer of S$15m to the defendant's offer of S$3m for the plaintiff to amicably exit the Company. If there was an Alleged Oral Agreement, with the Second Set of Terms, the letter says nothing about it.

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75 2AB at 636.

61 I now turn to the various emails sent by the plaintiff to the defendant.[76] It is unnecessary for me to set out all of them in full. They concern the Company's affairs at a time when its business was failing. For instance, the plaintiff's email dated 24 June 2017 concerns the return of some of the Company's premises to HDB, while the email dated 30 May 2018 relates to parties' negotiations for the defendant to buy the plaintiff out. Again, the pertinent observation to make is that, like the 19 April 2018 letter, the emails are silent on the Alleged Oral Agreement, particularly the Second Set of Terms. They do not help the plaintiff's case.

62 In contrast, I note that where the plaintiff had specific points to make, including threats of legal action, he did not shy away from formally making those points known to the defendant (sprinkling legalese along the way). For example, extracts of the plaintiff's email dated 30 May 2018 at 4.13pm read:[77]

> In view of the above said agreement has since expired and I have yet to receive the signed copy from you, I deem the said agreement is *null and void* … The content is conclusive as it is a total contrary to the offer you made to me on 29th March 2018 and the agreement we have reached previously. Hence, it is irrefutable that you have once again changed position.
>
> I am now working with my lawyers to *file and to serve on you a writ of summons in the High Court, if necessary to bring it all the way to the Court of Appeal with all the facts and video evidence I have collected since the incorporation of the company.* Also I have been approached by several affected parties particularly the company staffs to bring their grievances to the attention of the MOM labour court or to any other channels *I may deem fit.*
>
> [emphasis added]

63 In my view, given the plaintiff's willingness to make his position known to the defendant, it is odd that up till end May 2018, the plaintiff made no

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76 2AB at 630, 639–640.

77 2AB at 641.

mention of the Alleged Oral Agreement at all in his communications with the defendant.

The Shin Min Article

64 Indeed, it was probably the Shin Min Article which first set out the Alleged Oral Agreement. As the defendant did not engage with the press, the article was based entirely on the plaintiff's version of events. Pertinently, the article was published on 3 June 2018, well after the relationship between father and son had soured, and well after the letter and emails referred to above were written. It is entirely self-serving for the plaintiff to now rely on the article to establish the existence of the Alleged Oral Agreement.

The pleaded Defence

65 In inviting this court to infer the existence of the Alleged Oral Agreement, the plaintiff also submits that the defendant has admitted, in his Defence, that he did not dispute the plaintiff's allegations of the Alleged Oral Agreement.[78] This is entirely unmeritorious. What the defendant pleads is that he did not make any statements to the press at all because he did not wish to publicise his family disputes. The defendant's failure to respond to the press does not amount to an admission of the Alleged Oral Agreement's existence.

The overall matrix, and the plaintiff's testimony

66 To round up, the supporting evidence relied on by the plaintiff does not advance his case. With that, I return to the Alleged Oral Agreement. I make two points on the alleged contents. First, by the Second Set of Terms, the plaintiff stands to gain substantial financial benefits by 2016, *ie,* five years of entry into

[78] PCS at para 20(d).

the agreement. Second, despite the generous rewards, there does not seem to be any specific conditions imposed on the plaintiff in running the Company. The plaintiff does not mention any terms relating to his performance. I accept the plaintiff's assertion that by 2011, he was much valued by the Company. However, even if the defendant needed to entice the plaintiff to stay on, the terms of the Alleged Oral Agreement are, in my view, unusually favourable to the plaintiff. The plaintiff describes the defendant as "a very shrewd businessman".[79] This does not seem to be a "shrewd" move.

67 Notwithstanding the importance of the Alleged Oral Agreement to him, over the years, the plaintiff *never* once put the agreement or its terms into writing. This much was acknowledged by the plaintiff during cross-examination.[80] The plaintiff has a Master's degree. By 2011, he was an experienced businessman. Although he says he asked the defendant many times to put the agreement into writing, those were all *verbal* requests. Even if the defendant had refused to do so, the plaintiff could have followed up with a *written* request. There was none.

68 I accept that while the father-son relationship was strong, the plaintiff might not have wished to make things difficult for the defendant. However, strangely, the plaintiff also has no other *personal* written record of the Alleged Oral Agreement. As evident from the 19 April 2018 letter and the emails, the plaintiff is well capable of formally setting out important matters in writing. However, even in the 19 April 2018 letter and the emails, he did not mention the Alleged Oral Agreement. One would have thought that the Second Set of

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79 KHL AEIC at para 38.

80 Transcript, 25 October 2022, at 60, ln 7 to ln 8, 62, ln 13 to ln 22, 67, ln 25 to 68, ln 17, and 93, ln 19 to ln 22.

Terms could have assisted the plaintiff in the buyout negotiations. There is complete silence on the part of the plaintiff.

69 At the end of the day, it would have been reasonable to expect some form of documentation on the part of the plaintiff. However, as discussed above, there is nothing that points to the existence of the Alleged Oral Agreement. The Video Recording was meant to be the strongest piece of objective evidence to capture the Alleged Oral Agreement, but it failed dismally to do so.

70 With that said, I return to the plaintiff's testimony. Having observed the plaintiff and having considered his evidence against the surrounding facts and circumstances, I do not find the plaintiff a credible witness. The plaintiff has shown a tendency to exaggerate facts. Despite his threat that he has collected "all the facts and video evidence … since the incorporation of the [Company]" to support his case (see [62] above), nothing cogent has been produced at the trial. In fact, the many unsatisfactory aspects surrounding the Video Recording cast doubt on his credibility. I also think he has overstated his contributions to the Company, especially in the years of 1999 to 2003 when he was still pursuing his undergraduate and post-graduate studies, so as to bolster his case. Notwithstanding this, as I have stated, I do agree that by 2011, the plaintiff had become essential to the Company's operations. Still, I reiterate that it remains incredible that the defendant would resort to giving the plaintiff so much by way of the Second Set of Terms to retain his services.

71 For the foregoing reasons, I am unable to accept the plaintiff's testimony of the existence of the Alleged Oral Agreement.

The defendant's evidence

72 Turning briefly to the defendant's evidence, I note that the defendant admits that he wished to give the plaintiff a larger role in the Company by appointing him as a director in 2011. In my view, in line with that, around that time, the plaintiff was also given 6% more of the Company's shares. As for any other of his assets, the defendant's version is that he has merely discussed succession plans with the plaintiff, including giving away his assets to his five children in the future. Given that the defendant has four other children, with Ms Kwek being a director of the Company, his account is reasonable.

Conclusion

73 Accordingly, I find that the plaintiff has not proved the Alleged Oral Agreement on a balance of probabilities. While the determination of the first issue is sufficient for me to dismiss the plaintiff's claim in its entirety, I shall briefly deal with the closely related matters raised by way of the second and third issues. It is not necessary for me, however, to discuss the fourth and fifth issues, and I shall not be doing so.

Whether parties had any intention to create legal relations

74 I address the requirement of an intention to create legal relations between parties for a binding and enforceable agreement to arise. At law, there is a presumption that parties in a domestic context have no intention to create legal relations: *Ong Wui Teck (personal representative of the estate of Chew Chen Chin, deceased) v Ong Wui Swoon and another and another appeal* [2019] SGCA 61 ("*Ong Wui Teck*") at [45]. This presumption is triggered here as the parties are father and son. The burden is, therefore, on the party seeking to

enforce an agreement (*ie*, the plaintiff) to rebut the presumption by proving that parties did in fact intend to create legal relations: *Ong Wui Teck* at [46].

75 The plaintiff's case is that the parties intended to create legal relations for two main reasons. First, the plaintiff argues that the parties entered into a valid and enforceable Settlement Agreement with respect to DC 1437/2020. In fact, the defendant has duly paid the plaintiff a settlement sum of S$182,000 without alleging that the parties did not intend to create legal relations in respect of the Settlement Agreement. As such, it is untrue that the parties did not intend the Alleged Oral Agreement to be legally binding.[81]

76 Secondly, when the Settlement Agreement was made, the defendant had in mind the Alleged Oral Agreement. This was admitted by the defendant during cross-examination. If the discussions were not intended by the defendant to be legally binding, he would not have had the Alleged Oral Agreement in mind when he made the Settlement Agreement.[82]

77 On the other hand, the defendant submits that parties did not intend to create any legal relations. First, the defendant's consistent testimony is that insofar as he had ever made statements concerning the distribution of his assets to his children, they were all made in a domestic context, as part of succession planning.[83] Secondly, the plaintiff's involvement in the Company was very much a familial as opposed to commercial affair. All the defendant's children, including the plaintiff, were paid salaries and CPF contributions even when they were studying. The plaintiff was also able to become CEO of the Company a

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81 PCS at para 20(e).

82 PCS at para 20(f).

83 DCS at para 124.

mere three years after his graduation from university, at a time when he was still learning the ropes.[84]

78 In my judgment, the plaintiff has not managed to rebut the legal presumption that the parties did not intend to create legal relations. First, the plaintiff has no basis for contending that parties had the requisite intention to create legal relations out of discussions regarding the two sets of terms purportedly contained in the Alleged Oral Agreement by virtue of the existence of the Settlement Agreement. The Settlement Agreement was made on a without prejudice basis after DC 1437/2020 was brought.[85] Clearly it had to be a binding agreement to resolve the disputes. This is quite different from the context of the discussions in 2011.

79 Secondly, I cannot agree with the plaintiff's contention that the defendant had in mind the Alleged Oral Agreement when the Settlement Agreement was drawn up. The defendant had admitted that "related disputes" included the dispute over the Alleged Oral Agreement.[86] That was precisely what he had in mind; the *disputes* arising from the plaintiff's claim based on a purported agreement. There was no concession that any legally binding agreement exists.

80 Therefore, in relation to any such discussions concerning the transfer of the shares or the properties, I am not convinced that the parties had intended to create legal relations. Any such conversations would have been, in my view, of a non-binding nature. The presumption would not be rebutted.

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84 DCS at para 125.

85 1AB at 415 (Clause 6 of the Settlement Agreement).

86 Transcript, 27 October 2022, at 27, ln 14 to 28, ln 8.

Whether the terms alleged are sufficiently certain

81 Next, I turn to the defendant's submission that, even if parties had entered into the Alleged Oral Agreement, as pleaded, its terms are so uncertain as to be legally unenforceable.[87]

82 It is trite that for a contract to be valid and enforceable, its terms must be sufficiently certain. Accordingly, a contract may be unenforceable for want of certainty even though there has otherwise been both offer and acceptance between contracting parties: *Chan Tam Hoi (alias Paul Chan) v Wang Jian and other matters* [2022] SGHC 192 ("*Chan Tam Hoi*") at [100], citing *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) at p 162. That said, the courts will generally endeavour to uphold a contract as enforceable where possible and be slow to hold a contract as unenforceable for want of certainty of terms: *Chan Tam Hoi* at [101].

83 In my view, the Second Set of Terms are uncertain in three main aspects.

84 First, it is not possible to determine the exact number of shares of the Company in which the plaintiff is supposedly entitled to receive, as the term provides "*at least* another 60% of the shares in the Company" [emphasis added]. If the phrase "at least" is read with "60% of properties", the same uncertainty exists. As pleaded, the plaintiff's entitlement falls within a range of 60% to possibly 100%.

85 Secondly, it is also unclear what "60% of the properties" mean, and it is not possible to determine how the plaintiff will receive the properties as

87 DCS at para 127.

described in the Second Set of Terms. It is unclear if the plaintiff is entitled to (i) at least a 60% share of *each* property falling within the description; (ii) several properties that are at least 60% of the total *number* of properties falling within the description; or (iii) some properties that represent at least 60% of the *value* of all the properties in the description.

86 Thirdly, the description of the properties in the Second Set of Terms represents an indeterminate class as they also concern future properties, but no clear method exists to determine what these future properties are or will be.

87 Where a term or agreement is uncertain, and where there is no objective or reasonable method of ascertaining how the term or agreement is to be carried out, the term or agreement is unworkable (*Foley v Classique Coaches Ltd* [1934] 2 KB 1 at 13; *Rudhra Minerals Pte Ltd v MRI Trading Pte Ltd (formerly known as CWT Integrated Services Pte Ltd)* [2013] 4 SLR 1023 ("*Rudhra Minerals Pte Ltd*") at [32]). Indeed, while a contractual term may provide for a range of options, such a term is uncertain if there is no agreed method to decide on an option within that range (*Harwindar Singh s/o Geja Singh v Wong Lok Yung Michael and another* [2015] 4 SLR 69 at [20]; *Rudhra Minerals Pte Ltd* at [26]). Despite the uncertainties with the Second Set of Terms, the plaintiff has not pleaded, or proved, any mechanism to resolve them. I should add that by claiming the *minimum* of 60% of the Company's shares and 60% of the Property, the plaintiff seems to be seeking to skirt the problems. Even if this may resolve the deficiency in relation to the shares, the other issues as regards the properties remain.

Conclusion

88 To conclude, I find that the plaintiff has failed to prove the Alleged Oral Agreement's existence, and I dismiss the plaintiff's claim based on the Alleged Oral Agreement. Parties are to file costs submissions within two weeks of this judgment.

Hoo Sheau Peng
Judge of the High Court

Lim Chee San (TanLim Partnership) for the plaintiff;
Lok Vi Ming SC, Qabir Singh Sandhu and Law May Ning (LVM Law Chambers LLC) for the defendant.