

IN THE SUBORDINATE COURTS OF THE REPUBLIC OF SINGAPORE

[2007] SGDC 214

District Court – Suit No. 4524 of 2006 P
RAS No. 69 of 2007 E

Between

LAU ENG KHOON
(NRIC NO. S0245184J)

... Plaintiff (s)

And

1. LIM HUA NAM
(NRIC NO. S1079859J)
2. WONG CHOON HENG STEPHEN
(NRIC NO. S0230838Z)
3. TEO CHIN LEE ANDREW RICK
(NRIC NO. S0237124C)

...Defendant (s)

FOUNDATIONS OF DECISION

LAU ENG KHOON
V
1. LIM HUA NAM
2. WONG CHOON HENG STEPHEN
3. TEO CHIN LEE ANDREW RICK

[2007] SGDC 214

District Court No. 4524 of 2006 P

RAS No. 69 of 2007 E

2, 3 July, 2 August 2007

2 August 2007

District Judge Leslie Chew:

Introduction

1. This is an Order 14 Appeal against the decision of the Deputy Registrar, in this case, granting unconditional leave to defend to the Defendants. In this appeal the Plaintiff seeks to have me reconsider the matter and to set aside the order dated 22 May 2007 of the learned Deputy Registrar and to grant him summary judgment in respect of his action. In these situations it is trite law that sitting as a District Judge in chambers I am not strictly, exercising an appellate function as it were. The matter being heard within the structure of the District Courts is a case of a District Judge exercising confirmatory powers by rehearing the matter – see Singapore Court Practice, Pinsler at para [55B/1/5]. I therefore heard this matter *de novo*. At the end of the hearing I granted the Plaintiff summary judgment on his claim. I now give my reasons.

2. The case concerns monies advanced to the Defendants, which the Plaintiff said was a loan to the Defendants. The Plaintiff's action is to recover the balance of the monies which he says is now due. The Defendants on the other hand claimed that while they accepted that the Plaintiff had advanced certain monies to them the real issue concerns the terms of that advance or loan. The Defendants' case briefly stated is that the advance of monies to them by the Plaintiff was not a case of a simple loan but rather that there were certain terms attached to it and specifically a particular term with respect to the Defendants' repayment obligation.

The Factual Background

3. At the hearing before me, Counsel for the Plaintiffs tendered his written submission of 29 June 2007 ("Plaintiff's Written Submission"). In the Plaintiff's Written Submission, Plaintiff's Counsel argued as follows:

- a. There is no dispute that there was a contract for a loan from the Plaintiff to the Defendants for the amount of \$100,000.00 – see affidavit of Plaintiff of 19 March 2007 ("Plaintiff's Affidavit").
- b. The Plaintiff's Affidavit also set out his position with respect to the loan extended to the Defendants. Essentially, the Plaintiff said that on or about 26 January 2006, the 2nd Defendant an old friend of his, had approached the Plaintiff requesting a loan of \$100,000.00 to help the Defendants start up a new business venture involving certain energy and fuel saving products.
- c. As security for such a loan, the 3rd Defendant had offered 2 jade pieces.

- d. The Plaintiff agreed to extend the loan and to secure the loan he accepted the 2 jade pieces. However, as the Plaintiff was doubtful as to the value of the 2 jade pieces he also required the Defendants to jointly and severally guarantee the loan he was about to advance to them.
- e. In addition and as a perk or incentive for the Plaintiff to make the loan the Defendants had agreed that if the business venture they were about to start, was to ‘take off’, the Plaintiff would be entitled to share in the profits. Up to this point, the Defendants do not dispute the Plaintiff’s position and view of the matter – see paragraph 3 of the Defence filed by the Defendants on 8 February 2007.
- f. The Defendants did however refer to additional terms of the loan. Specifically, the Defendants asserted in the Defence that as part of the loan arrangement, the Plaintiff was to participate in the business by being entitled to 20% of the profit from the business and that he would also be invited to be part of a new joint venture business to be entered between the Defendants. I-Telecom Pte Ltd and KME Pwer-Tech Sdn Bhd – see paragraph 3 (iv) and (v) of the Defence.
- g. The Defendants also alluded to a Memorandum of Understanding dated 28 February 2006 (“the MOU”) which they say contain the above-mentioned terms.
- h. Where the two parties parted company with respect to the factual matrix of the dispute is as follows:
 - (i) The Plaintiff’s position was that he extended a loan to the Defendants for which he said there was already a payment term which the Defendants failed to adhere to.

- (ii) The fact that the loan permitted him to participate in the business by receiving 20% of the profits and also to be invited to participate in the other joint venture business, did not detract from the case being one of a loan and nothing more than that.
- (iii) Indeed there was agreement that the loan was to be repaid within 10 months from the date the sales under the Defendants' business commenced – see paragraph 4 of the Plaintiff's Written Submission.
- (iv) The Defendants, on the other hand claimed that the loan was not simply a loan. They asserted that the sum of \$100,000.00 advanced by the Plaintiff was "...really a business investment cum loan..." – see paragraph 5 of the Defence.
- (vi) Accordingly, the loan was repayable in instalments commencing on the date when the KME business (the intended investment by the Plaintiff) venture had become "...fully operative and profits were being earned" – see paragraph 9 of the Defence.
- (vii) The Plaintiff's overall position was that the loan was to be repaid by the Defendants within 10 months (in 10 monthly instalments) when the sales under the business venture in respect of which he had made the loan had commenced and this, the parties had agreed to be in April 2006 – see paragraph 13 of the Plaintiff's Affidavit.

- (viii) It was against the above backdrop that the Plaintiff launched his action to recover the balance sum of \$90,000.00 from the Defendants. Apparently a sum of \$10,000.00 was paid by the Defendants on 30 April 2006. According to the Defendants, this payment was not an instalment repaid as claimed by the Plaintiff but rather it was paid to allay the concerns of the Plaintiff when the business venture had failed to commence as quickly as the Defendants and the Plaintiff had contemplated – see paragraph 13 of the Defence.

The Evidence

4. Against the factual matrix which I have set out in the preceding paragraphs, at the hearing I had to consider the affidavit evidence and of course the arguments put forward by both parties.

5. The evidence for both sides consisted of the affidavits filed by the Plaintiff on 19 March 2007 and 26 April 2007 (“the Plaintiff’s 2nd Affidavit”) and those of the Defendants filed on 12 April 2007 by the 1st and 3rd Defendants and the affidavit also of the same date filed by the 2nd Defendant, all of which I collectively refer to as the Defendants’ Affidavits.

6. It is perhaps convenient to refer as a start, to the Plaintiff’s Affidavit. It is also apposite to do so since, this is the affidavit upon which the Plaintiff had sought and continue to seek summary judgment against the Defendants in these proceedings.

7. In the Plaintiff’s Affidavit, he exhibited two documents which, in my judgment represented the crucial evidence touching this dispute. These documents are marked as Tab A and Tab B.

8. I first deal with the document in Tab A. This was a document which is hand-written and contained what parties agree are the notes of the discussions between them on 25 February 2006, when they first discussed the \$100,000.00 advance to be made by the Plaintiff to the Defendants. Significantly, this is the only document to which all the parties from both sides of the dispute had subscribed their respective signatures. In this document, the Plaintiff's name appears as 'William Lau' – this was not disputed.

9. The salient and in my view, crucial points of agreement recorded in this note in Tab A comprised the following:

- a. It bore the title "Loan with view for Investment for KME product".
- b. Amount: S\$100,000.00
- c. Repayment & Profit: For sales of KME product
 - 20% profit per monthly sales
 - Repayment monthly instalment. 10 months or earlier at \$10,000.00 per month once sales start
 - Once Repayment will commence. Sales around April 20[06]
- d. Once payment completed, could consider to invest into KME product Co any amount up to \$500,000.00 for % to be negotiated.

10. Then I considered the second document at Tab B of the Plaintiff's Affidavit. This was the MOU which was not signed as yet by the Plaintiff but bore the signatures of the Defendants. It did not, however appear to be a complete or finalized document since it did not bear the signature of the Plaintiff, as I said, and it contained numerous hand-written amendments some apparently initialed by the Defendants and others that were not. It appeared to me to be a document still under discussion.

11. For the purposes of the hearing before me, the following were important matters contained in the MOU:

- a. Clause 1.2 of the MOU states that, “As promptly as possible after the execution of this Memorandum, the parties will continue to work towards the preparation and execution of a definitive agreement or agreements, with such additional terms, covenants, conditions and provisions usual for transactions of this nature all of which shall be, as to form and substance, mutually satisfactory and acceptable to the Parties to this Memorandum.
- b. Clause 2.4 states that, “Party A (the Defendants) shall repay the said loan of S\$100,000.00 in ten (10) monthly instalments (i.e. S\$10,000.00 per month). Notwithstanding the said repayment period of ten (10) months, Party A is at liberty to repay the said sum of S\$100,000.00 in full in less than the stipulated period of ten (10) months.
- c. In respect of the abovementioned Clause 2.4, immediately after the figure of ‘S\$100,000.00’ there appeared as an insertion in handwriting the words ‘starting from April 2006’.

The Arguments

12. Based on the evidence which I have set out above, Plaintiff’s Counsel argued that there was a clear agreement for a loan that was repayable in 10 months commencing from April 2006. Counsel argued that although the document in Tab A did not specifically state the repayment was to commence in April 2006 nevertheless, that was what parties intended since it was not disputed that the repayment was to start from the date ‘sales commence’ in respect of the business – see document at Tab A. It was clear that sales was to commence in April 2006. The fact that sales was to commence under the business in April 2006, I should point out at this juncture, was a point conceded by Counsel for the Defendants. Counsel for the Defendants of course, argued that the Defendants did not agree that the repayment of the loan was to commence in April 2006.

13. Plaintiff’s Counsel also argued the following:

- a. The two documents in Tab A and Tab B of the Plaintiff's Affidavit represented a contract between the parties.
- b. Clause 1.2 did not make the contract any less binding. It referred to other terms but the material terms of the contract were not in dispute.
- c. The contemporaneous documents showed that the loan was to be repaid by the Defendants in 10 monthly instalments commencing April 2006.
- d. That the repayment was to commence from April 2006 was the clear intention of the parties borne out by the contemporaneous document in Tab A because parties had agreed that repayment was to commence when sales in the business commenced and it was not disputed, that it would have commenced in April 2006. That was the intention of the parties although in the event, sales did not commence by April 2006 as the business the Defendants ventured into did not 'take off'.
- e. Any other interpretation of the agreed terms as to the repayment of the loan would result in absurdity. Thus, if as the Defendants allege, the loan was to be repayable "...only when the said business takes off and profits are generated..." – see paragraph 9 of the Defence – it would lead to the absurd conclusion that the Defendants need not repay the loan if there were no profits generated from the business. This Counsel argued, would be in conflict with the obligation to repay the loan which is not disputed by the Defendants and the obligation of the Defendants to 'unconditionally guarantee' the repayment of the loan.
- f. In support of his contention as above, Counsel referred me to *Schuler v. Wickman Machine Tools* [1974] AC 235 where Lord Reid at 251,

"The fact that a particular construction leads to a very unreasonable result must be a relevant consideration. The more unreasonable the result the more unlikely it is that the parties can have intended it, and if they do intend it the more necessary it is that they shall make that intention abundantly clear."

Applying the above principle in *Schuler*, Plaintiff's Counsel argued that to construe the contract and terms of the loan such that the Defendants could defer repayment of the principal indefinitely if the business never took off or if there

were no sales or profits would lead to a very unreasonable result. If the Defendants intended so, they should have made it abundantly clear but they did not. The parties intended repayment to commence when sales commenced and it was parties intention that sales would have commenced in April 2006, hence repayment was intended to commence in April 2006.

- g. The Plaintiff's Counsel also drew my attention to the fact that the Defendants in fact made the first instalment payment of \$10,000.00 in April 2006. This is consistent with the Plaintiff's assertions as to the term for repayment.
- h. The Plaintiff also submitted that the Defendants had by their letter of 13 October 2006 which was in response to their lawyers' letter of demand of 6 October 2006, admitted to payment 'being due or payable commencing April 2006'.

14. The Defendants' Counsel also submitted a written submission. He relied on the same submission dated 21 May 2007 ("Defendants' Submission") which he had tendered before the learned Deputy Registrar".

15. The Defendants' position which they relied on to resist the summary judgment application was as follows:

- a. Clearly there was no final agreement between parties such that there was agreement on the terms respecting the repayment of the loan.
- b. More importantly, the loan was not simply a loan. It was loan cum investment hence repayment was not fixed to a specific time as the Plaintiff now claims.
- c. The repayment was as the document in Tab A shows premised on 'sales of the business commencing and when the same had generated profits'.
- d. The letter of 13 October 2006 was marked 'without prejudice' and its proper legal status should not be decided at this stage but rather at trial. In any event, being a without prejudice communication, it

cannot be relied upon by the Plaintiff to evidence admission on the Defendants' part of the alleged repayment schedule.

- e. It is clear from the above, that there are many triable issues and the court should order trial.

My Decision

16. As this was an Order 14 application, I had to look at the evidence in the context of Order 14 of the Rules of Court. It is clear that so far as the Rules of Court go, I am only to give summary judgment to the Plaintiffs if 'there is no reasonable doubt' that the Plaintiffs ought to have summary judgment – see *Habibullah Mohamed Yousuff v Indian Bank* [1999] 3 SLR 650 at 21. Conversely, if the Defendants could show that looking at the whole situation they had raised issues or questions that ought to be tried or that for some other reason there ought to be a trial or that there is a reasonable probability of the Defendants having a real or bona fide defence, then summary judgment ought not to be granted to the Plaintiff – see O 14 r 2(3) and *Goh Chok Tong v. Chee Soon Juan* [2003] 3 SLR 32 as well as *Lee Kuan Yew v. Chee Soon Juan* [2003] 3 SLR 8.

17. Looking at the situation as a whole, I found that the parties had indeed entered into an agreement for the Plaintiff to advance a loan of \$100,000.00 ("the Loan") to the Defendants. However, I did not agree with the Plaintiff that the Loan was based on the written agreement contained in the MOU.

18. In my judgment, the combined effect of the documents at Tab A – the handwritten note (see para [9c] above) and Tab B – the MOU (see para [11] above), was that the Plaintiff and the Defendants had a contract for the advance of the Loan from the Plaintiff to the Defendants and this was evidenced by the hand written note and the MOU. It was not as the Plaintiff attempted to argue a written contract. It was nevertheless a contract that was evidenced by memoranda represented by the hand written note and the MOU. There was

also performance of the contract on the part of the Plaintiff – there is no dispute that the sum of \$100,000 was loaned to the Defendants.

19. The question was then what precisely did the parties agree to in particular the nature of the loan and the repayment terms.

20. I accepted Plaintiff's argument that the Defendants' submission that to interpret the hand written notes especially the notation referred to in paragraph 9 (c) above, to mean that the Loan was only to be repaid when sales of the business commenced and only if there were profits as the Defendants argued in paragraph 9 of the Defence would lead to absurdity. Accordingly, unless the terms were abundantly clear as to such intention on the part of parties then these notations should not be so interpreted – see *Schuler* at page 251.

21. It would have been quite unacceptable and indeed illogical to accept the Defendants' submission that the Loan was repayable only when 'the said KME business becomes fully operative and profits are being earned' – see paragraph 9 of the Defence. Taken to its logical conclusion it would mean in effect that the Defendants would not have to repay the Loan if the business never commenced or that more crucially if profits were not earned. It was clear to me that this sort of absurdity was the type Lord Reid had in mind when he laid down the principle referred to at page 251 in *Schuler*.

22. The Defendants' Counsel had also referred me to clause 2.4 of the MOU in which the hand-written notation 'starting from April 2006' with reference to the repayment of the Loan, was added. Counsel argued that is no evidence on behalf of the Plaintiff that, these words were added with the Defendants' agreement because it was inserted by him but as the document at Tab B shows, it was not initialed against by the Defendants to signify their acceptance of the same. This he argued, was to be contrasted from the other handwritten notations which were made to Clause 2.5 where the Defendants clearly accepted because they had initialed against those amendments.

23. To the above argument I noted that in any event the Defendants had signed the signature portion of the MOU. It was my judgment that notwithstanding the abovementioned submission and though it had some merit, the signature of the Defendants at the signature portion of the MOU tendered to point to the other direction. It indicated to me that the Defendants accepted the amendments made to the MOU including the insertion by the Plaintiff of the commencement date of the repayment of the Loan referred to above in respect of clause 2.4 of the MOU. Granted the Plaintiff did not sign the draft MOU with all the hand written amendments. However, the inference from this document must be, so far as I was concerned, one in which the substance with all the hand written notations/amendments was accepted by the Defendants.

24. There is one other piece of evidence which the Plaintiff relied upon to support their case for summary judgment. This has to do with the Defendants' response to their lawyers' letter of demand of 6 October 2006. In response to that demand, the Defendants had responded by their letter of 13 October 2006 in which the Defendants had, amongst other things, stated thus, "First and foremost, we would like to extend our sincere apologies to your clients that the business venture did not work out as expected and for failing to meet the instalment payments as per the abovementioned MOU."

25. The Plaintiff argued that the above was an admission that the Loan was repayable from April 2006. I agreed with the Plaintiff. Let me explain.

26. I should first state that the Defendants' Counsel had argued that this letter was inadmissible because it was marked 'without prejudice'. The fact that a letter is marked 'without prejudice' does not automatically make it a privileged document that cannot be admitted as evidence unless the privilege is waived by the maker – see *Lim Tjoen Kong v A-B Chew Investments Pte Lte* [1991] SLR 188. Privileged documents are referred to and dealt with in s 23 of the Evidence Act (Cap. 97). The rationale behind s 23 of the Evidence

Act has been explained in the case of *Mariwu Industrial Co (S) Pte Ltd v. Dextra Asia Ltd* [2006 4 SLR 807, a Court of Appeal decision referred to by the Counsel for Plaintiffs. In *Mariwu* at [24] the court explained that the words in section 23 of the Evidence Act “contemplate two different situations that invoke the underlying rationales of the “without prejudice” rule. The first situation where there is an express condition that any admission made by either party in the context of negotiations to settle the dispute is not to be “given”, i.e. admissible in evidence against the party making the admission. The situation applies to all communications made expressly “without prejudice”.

27. I was therefore confronted with the situation described above by the Court of Appeal in *Mariwu*. However, as the Court of Appeal pointed out in *Mariwu* at [29] to [30], the public policy protecting communications made ‘without prejudice’ cannot be invoked where the communications were made in the context when there was no dispute. In *Mariwu*, even though the relevant correspondence were marked ‘without prejudice’, the Court of Appeal concluded that they were not protected with privilege because no dispute existed between the parties.

28. Following *Mariwu*, a decision which I am bound to follow, it was clear to me that the letter of 13 October 2006 could not be said to be protected by privilege. This is because, the contents of the letter contained a concession on the part of the 1st and 3rd Defendants (the 2nd Defendant did not sign the 13 October letter) that ‘they had fail[ed] to meet the instalment payments as per the above-mentioned MOU. It also contained the statement that the 1st and 3rd Defendants were “...considering settling the said loan with the [Plaintiff]...”. Accordingly, rather than evidencing a dispute the letter of 13 October tended to show an admission that at least the Defendants were liable to pay the debt in accordance with the scheme of repayment, commencing April 2006, as asserted by the Plaintiffs. There being no dispute as to liability, the letter could not be seen in the context of negotiations to settle which would have attracted protection from the principle of privilege.

29. An added factor which I found supported Plaintiff's submission as to when repayment was to commence, is the fact that the Defendants made one payment of \$10,000. Significantly, this was made on 30 April 2006 – see paragraph 19 of Plaintiff's Affidavit. Although Defendants' Counsel argued that this payment was made merely to allay the fears of the Plaintiff and not because of any agreement to commence repayment in April 2006, the timing of the repayment seemed too coincidental to me.

30. In respect of Defendants' Counsel submission that in view of the issue of privilege and admissibility of the letter of 13 October 2006, I ought to order a trial as summary judgment was not the appropriate stage for such a matter to be resolved. I did not agree. On the contrary it is clear that issues of law are matters which can be dealt with summarily. The Court of Appeal in *Tokyo Investment Pte Ltd and Another v. Tan Chor Thing* [1993] 3 SLR 170, said at [3]:

“33 Before concluding we would like to touch on a point of procedure. This appeal arose out of O 14 decision. The fact that a point of law or points of law were raised in an O 14 application did not necessarily mean that leave to defend must be given as was urged upon us by the appellants: see *European Asian Bank AG v. Punjab & Sind Bank (No 2)* at page 516 and *Carter (RG) Ltd v Clarke* at 213. To our mind the answers to the legal issues raised in this appeal were clear. There was an arguable defence to the respondent's claim to possession of the shares. A decision on the legal issues would finally decide the rights as between the parties. There was no point in granting leave to defend merely on the ground that there was a triable legal issue or were several triable issues of law. That was so even if the issues of law were of some complexity. The High Court was correct in hearing arguments on the issues of law and deciding them. To grant leave to defend in circumstances such the present would not serve any useful purpose; instead it would only cause unnecessary delay course which the courts should certainly not countenance.”

31. In view of the Defendants' arguments before me, I did consider the possibility that I could be wrong in my interpretation of the various amendments of the MOU as well as the correct import of the hand written note in Tab A of the Plaintiff's Affidavit.

32. I therefore considered the other possibility. If I was wrong in my interpretation of the notes in Tab A of the Plaintiff's Affidavit then at best it seemed clear to me that while the parties had entered into an agreement where not all the terms of which were clear, nevertheless, there was agreement between them as to the fact of the Loan. True the precise nature of the Loan was not clear – whether it was one which included an investment to be undertaken by the Plaintiff or a straightforward loan – yet, what was not disputed by the Defendants was that the Loan (as distinct from any investment which the Plaintiff was to participate in) was repayable. The only question was when that loan was to be repaid.

33. Seen in that way, I took the view that at best from the Defendants' point of view, there was no agreement as to when the Loan was to be repaid. Put in another way, the parties had not reached any specific agreement as to when the Loan was to be repaid. The draft MOU with its amendments was relied upon by the Plaintiff to show that by their proposed amendment to clause 2.4, the intention was for the Loan to be repaid from April 2006 a date which the parties thought sales in the business would commence – the Defendants also clearly contemplated that sales would commence in April 2006 – see paragraph 12 of 1st and 3rd Defendants' affidavit of 12 April 2007. It is important to recall that Counsel for the Defendants himself conceded that the date when sales in the business would have commenced was accepted by his clients to be in April 2006 i.e. parties envisaged that. The Defendants on the other hand, maintained that the Loan was only to be repaid when the KME business had become fully operative and profits are being earned.

34. On the above basis, I found that the repayment term being unexpressed or not agreed to, the Loan may be said to be silent on the time for repayment. That being the case it is trite law that where a Loan is given without an express repayment term then, the Loan is

repayable on demand – see for example *Tang Ivy v. Tay Joyce* [1992] 1 SLR 893 at [8] and *Wee Kah Lee v. Silverlake Investments Pte Ltd* [2000] 4 SLR 429 at [42].

35. That being so, there was in this case a clear demand for payment of the balance of the Loan on 6 October 2006 when the Plaintiff's lawyers issued their letter of demand. At the very latest, by the time when the writ was issued in this action the Plaintiff clearly recalled the Loan. Consequently, the Loan became repayable either when the letter of demand was issued on 6 October 2006 or when writ was issued by the Plaintiff on 28 November 2006.

36. It should be recalled also that in the present case, the Defendants did not at any time deny liability for repayment of the Loan. They merely say that repayment was premature and their liability had yet to arise.

37. I now turn to the possibility that what the Defendants have maintained in these proceedings are indeed true, namely that the Loan was only to be repaid when the business for which the Loan was obtained had become fully operative and profits were being earned.

38. Assuming the above to be the true state of affairs between parties so far as the repayment of the Loan was concerned, I considered the present state of matters. It is clear, it seemed to me, that at this stage or even at the time the 13 October Letter was written by the 1st and 3rd Defendants, the Defendants conceded 'the business venture did not work out as expected'. What it meant therefore was that even if the Loan was in the context of a loan plus investment in a business, the business had failed to take off and by their letter of 13 October 2006, the Defendants had effectively admitted that the parties, Plaintiff (as investor) together with the Defendants could no longer expect to proceed with the business venture hence, their intimation to have the loan settled and to redeem the jade pieces held by the Plaintiff as collateral. (The 1st and 3rd Defendants' affidavit (11 April 2007) was confirmed by the 2nd Defendant in his affidavit).

39. This, in my judgment, would have been a repudiatory breach by the Defendants of the contract for the Plaintiff to advance a loan and to invest in the Defendants' proposed business venture. – see *Chua Chay Lee & Ors v. Premier Properties Pte Ltd* [2000] 4 SLR 177 at [17] to [26]. In *Chua Chay Lee*, the case concerned a long delay. The present case, in my judgment, is a clearer case of 'anticipatory breach' assuming the 'real' contract between parties was a 'loan cum investment'. In such a case, the Plaintiff's institution of the present action, constituted an acceptance of the Defendants' repudiation of any contract that there was between parties. The acceptance of such repudiation in turn, would have resulted in the Loan being repayable and certainly upon the demand of the Plaintiff on 6 October 2007 or at any rate from the date this action was instituted – see *Brown Noel Trading v. Donald & Mc Carthy Pte Ltd* [1997] 1 SLR 1 at [28] to [30].

40. For all the reasons I have set out in the preceding paragraphs I found that there were no issues or questions that ought to be tried or that the Defendants had a reasonable probability of having a bona fide defence.

41. I am conscious that I did examine the Defendant's arguments/submissions in some detail. I would hasten to add however that in doing so I was not delving into the merits as such. However, this was a case where, in my judgment, the court ought to examine the assertions of the Defendants to see if their assertions showed "a fair or reasonable probability of the Defendants having a real or bona fide defence" and not simply accept them as valid defences – see *Prosperous Credit Pte Ltd v. Gen Hwa Franchise International Pte Ltd* [1998] 2 SLR 649. Finally it seemed to me that it would have been simple enough for this court to take the easier path as it were and order a trial. However, taken as a whole, it was my judgment that to order trial would have been to abdicate from the responsibility of this court to assiduously examine and to decide on the affidavit evidence (as indeed it could) in a case where a trial with its attendant requirement for oral testimony, and the accompanying cost implications, was not necessary nor expedient in the circumstances – see *Abdul Salam Asanaru Pillai v. Nomanbhoy & Sons Pte Ltd* [2007] 2 SLR 856 at [37]. I am

also fortified in this approach by the High Court decision of *Hua Khian Ceramics Tiles Supplies v. Torje Construction* [1992] 1 SLR 884.

42. I accordingly allowed the Plaintiff's application and granted summary judgment to the Plaintiff in the following terms:

1. Judgment for \$90,000.00
2. Interest at the rate of 5.33% per annum from the date of the Writ of Summons till judgment.

43. I also ordered costs fixed at S\$5,000.00 as well as disbursements at the agreed amount of \$1150.90 to be paid by the Defendants to the Plaintiffs.

Leslie Chew
District Judge

Mr Conrad Campos/Ms Chua Wen Xiu (M/s Robert Wang & Woo LLC) for the Plaintiff
Mr Anthony Bevin Netto (M/s Netto & Magin LLC) for the Defendants
