

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

[2021] SGHC 221

Suit No 1238 of 2019

Between

Ng Kok Teck

... Plaintiff

And

Lu Yuan

... Defendant

JUDGMENT

[Banking] — [Lending and security] — [Stocks and shares]

TABLE OF CONTENTS

INTRODUCTION.....	1
THE FACTS.....	1
THE PLEADINGS	5
THE EVIDENCE	6
<i>(i) The Plaintiff's case.....</i>	<i>6</i>
<i>(ii) The Defendant's case</i>	<i>9</i>
THE ISSUE(S).....	13
THE FINDINGS.....	14

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Ng Kok Teck

v

Lu Yuan

[2021] SGHC 221

General Division of the High Court — Suit No 1238 of 2019
Lai Siu Chiu SJ
9, 10 February, 16 April 2021

27 September 2021

Judgment reserved.

Lai Siu Chiu SJ:

Introduction

1 This suit arose from an unusual business arrangement involving shares listed on the Hong Kong bourse and resulted in Ng Kok Teck (“the Plaintiff”) suing Lu Yuan (“the Defendant”) for over \$14m even though the parties did not have a contractual relationship.

The facts

2 The Plaintiff, a Singaporean, was a shareholder of Ming Lam Holdings Ltd (“Ming Lam”) formerly known as Sino Haijing Holdings Ltd (“Haijing”), a Hong Kong incorporated company that was listed on the Hong Kong Stock Exchange. At the material time, the Plaintiff and his wife owned 890m shares in Ming Lam (“the ML shares”) with the Plaintiff holding 90% and his wife holding 10% thereof.

3 The Defendant who is a Chinese national, is the sister-in-law of one Ding Lei (“Ding”), as she is married to his younger brother. Ding was a business associate of the Plaintiff at the material time. At one time, the Defendant worked with/for the Plaintiff.

4 According to the affidavit of evidence-in-chief (“AEIC”) of Ding,¹ he was approached by the Plaintiff in Hong Kong in or about September 2018 and asked how the Plaintiff could raise cash on an urgent basis using the ML shares.

5 Ding suggested that one option would be for the Plaintiff to engage in margin financing by pledging the ML shares to a securities company and drawing cash based on a percentage of the market value of the pledged ML shares. Ding also informed the Plaintiff that a margin financing account with a securities company can be operated easily online and trading could be done, using a login code and a password.

6 However, Ding told the Plaintiff that there was a drawback on margin financing from securities companies in Hong Kong. It was usually not available to foreigners. Ding advised the Plaintiff that a bank account also needed to be opened in the name of the margin account holder, who would have to pre-sign cheques to enable the Plaintiff to withdraw funds from the bank account.

7 The Plaintiff inquired if Ding could assist him to find a trustworthy Hong Kong local or a Chinese national, who could hold some of the ML shares for him. However, the Plaintiff would operate and control the margin account himself.

¹ Ding Lei’s AEIC affirmed on 7 January 2021 (“Ding’s AEIC”) at paras 6–28.

8 In the course of their discussions, Ding learnt that the Plaintiff was indebted to various creditors and had also furnished personal guarantees to banks in Singapore that had extended loans to his companies in Singapore. One such personal guarantee was for about S\$50m for loan facilities extended to MEP Logistics Pte Ltd (“MEP”).

9 Subsequently, the Plaintiff told Ding he needed someone to hold 300m of the ML shares (“the 300m shares”) for him. Around 20 September 2018, Ding contacted the Defendant and inquired if she could oblige the Plaintiff. Out of goodwill as the Plaintiff was her former employer, the Defendant agreed. As the ML shares would only be held by the Defendant on the Plaintiff’s behalf, it was agreed that no payment would be made by the Defendant to the Plaintiff for the 300m shares.

10 Accordingly, the Defendant signed all the requisite forms and the 300m shares were transferred to her. The Defendant also opened a bank account with HSBC (“the HSBC account”) as required by the Plaintiff.

11 On Ding’s recommendation, the Plaintiff opened an account with Grand China Securities Ltd (“Grand China”) to hold the 300m shares and for margin trading, based on the 300m shares as collateral. Ding was not involved with the account opening process at Grand China, which arrangements were made by the Plaintiff himself, although it was Ding who put the parties in touch. Ding deposed that the internet banking login details and/or bank token and pre-signed books of cheques were delivered to a contact in Hong Kong as instructed by the Plaintiff.

12 In his AEIC,² the Plaintiff alleged that he flew to Hong Kong with his wife on or about 21 September 2018. There, Ding obtained blank documents addressed to various securities companies in Hong Kong and asked him to sign them; those companies included Grand China. The Plaintiff added that Ding then arranged for him to meet the representative of the securities companies and for him (and his wife) to open a bank account with the Bank of China (“the Bank of China account”) so that sale proceeds of the ML shares that he sold could be deposited into the account.

13 Subsequently, on or about 2 November 2018, when the Defendant was in Hong Kong, Ding deposed that he received a telephone call from the Plaintiff’s wife who requested that Ding contact the Defendant to remit S\$200,000 from the HSBC account to Singapore as the Plaintiff needed money urgently.

14 Ding did contact the Defendant and inquired if she could effect the remittance requested by the Plaintiff. The Defendant agreed and remitted S\$200,000 (“the remittance”) to the Plaintiff in Singapore. The Plaintiff received S\$199,980 and the shortfall of S\$20.00 was probably due to bank charges deducted from the remittance.

15 It was the Plaintiff’s case³ (which the Defendant and Ding denied), that the remittance represented a part-payment by the Defendant for the 300m shares that the Plaintiff alleged he sold to her. The Plaintiff referred to a contract note⁴ issued by Grand China dated 17 June 2019 which showed that 100m of the 300m

² Ng Kok Teck’s AEIC affirmed on 16 December 2020 (“Plaintiff’s AEIC”) at para 5.

³ Plaintiff’s AEIC at para 8.

⁴ Plaintiff’s AEIC at p 4, Exhibit NKT-1.

ML shares were sold to the Defendant at Hong Kong Dollar (“HKD”) 0.255 per share for HKD 7,650,000.

16 The Plaintiff deposed he found out subsequently that the 300m shares were sold to the Defendant at HKD 0.265 per share for HKD 79,500,000. The Plaintiff used an exchange rate of HKD 1.00 to S\$0.18 to convert the HKD 79,500,000 to S\$14,310,000 (“the purchase price”). The Plaintiff produced no documents to substantiate this allegation.

17 The Plaintiff alleged in his AEIC⁵ that the Defendant failed, neglected and/or refused to pay him the balance of the purchase price amounting to S\$14,110,00 (S\$14,310,000 less the remittance).

18 The Plaintiff claimed he was unaware of any arrangements made between Ding and the Defendant. He further denied there was any agreement made between him and the Defendant to hold any of the ML shares on trust for him.

The pleadings

19 For a claim of the magnitude of S\$14,110,000, the Plaintiff’s statement of claim (“SOC”) consisted of six short paragraphs contained in one page.

20 The Defendant’s defence was slightly longer. The Defendant repeated what Ding said in his AEIC as set out earlier at [4] to [14]. Basically, the Defendant denied the Plaintiff’s allegation that she purchased the 300m shares or owed him the sum he claimed. She contended she merely held the 300m shares on trust for him.

⁵ Plaintiff’s AEIC at para 9.

21 In his Reply, the Plaintiff repeated what was set out earlier at [15] and averred that Ding had agreed to help him sell the ML shares of which 300m were sold to the Defendant.

The evidence

(i) The Plaintiff's case

22 The Plaintiff was the only witness for his case. Like his SOC, the Plaintiff's AEIC was brief. Hence, the court has to look at his oral testimony extracted in the course of his cross-examination and re-examination to obtain more details of his claim.

23 The Plaintiff disclosed that he first became acquainted with Ding in 2016 or 2017 because Ding was an investor in a then listed company, Lorenzo International Ltd ("Lorenzo"), in which the Plaintiff and his partner were shareholders. He claimed that Ding's wife was the majority shareholder of Ming Lam.

24 Despite Ding only being a business acquaintance, the Plaintiff testified he trusted Ding enough to leave ML shares worth HKD 79m with him. Questioned by counsel for the Defendant as well as the court, the Plaintiff was unable or unwilling to explain why he trusted Ding to such an extent.

25 Apart from the contract note in [15] and apart from his bare assertions, the Plaintiff did not produce a single document to evidence the forms he signed with Grand China or any other securities company in Hong Kong. Neither did he produce any document to prove that he opened an account with the Bank of

China bank in Hong Kong. When asked by the court⁶ for his copies of the documents that the securities company asked him to sign and his Bank of China account particulars, the Plaintiff replied he did not produce them because “[m]y lawyer did not ask me to”. This was an absurd/unacceptable answer.

26 Questioned by the court,⁷ the Plaintiff claimed he was not even sure that he signed any documents until he was confronted by counsel for the Defendant with his signature on a sale note dated 9 October 2018 (“the Sale Note”) stating he had sold 300m Haijing shares to the Defendant at HKD 0.265 and the consideration paid was HKD 79,500,000.⁸ The Plaintiff then claimed that he was in Singapore on 9 October 2018 and he had pre-signed the Sale Note. He added that the sale note was probably “part of a pile of documents that the securities company gave [him] to sign”.⁹ He said he left the signed blank documents in Ding’s office.

27 The Plaintiff testified that when he was not paid for the 300m shares, he chased Ding, looked for him in Hong Kong and was told by Ding to look for the buyer. That was the reason the Plaintiff sued the Defendant.

28 It was also during cross-examination that the Plaintiff disclosed¹⁰ the Defendant was not his subordinate in MEP but a fellow director.

⁶ Transcript, 9 February 2021, at p 19.

⁷ Transcript, 9 February 2021, at p 18.

⁸ Defendant’s supplemental bundle of documents marked 3AB (“3AB”) 4.

⁹ Transcript, 9 February 2021, at p 19.

¹⁰ As reflected in the Defendant’s Bundle of Documents marked 2AB (“2AB”) 6; Transcript, 9 February 2021, at p 22.

29 However, it was only during re-examination¹¹ that the true position of the Plaintiff's relationship with Ding came to light. Apparently, the Plaintiff used to own a company called Manufacture Element Prefabricate Pte Ltd ("MEPPL") of which MEP was a subsidiary. He claimed he wanted to sell MEPPL as it had a lot of assets (which claim is not credible, see below at [Error! Reference source not found.]) and approached Ding who was his fellow shareholder in Lorenzo.

30 Ding suggested that the Plaintiff sell MEPPL to Ding's wife's company, Ming Lam and which the Plaintiff did. The sale price was S\$90m which included Ming Lam's taking over and repaying MEPPL's loan from United Overseas Bank Ltd ("UOB") of around S\$50m ("the UOB loan") of which the Plaintiff was a personal guarantor. However, the Plaintiff did not receive cash for the net sale price of S\$40m. Instead, he was paid in shares of Haijing (before its name change to Ming Lam). Hence, the Plaintiff ended up with 890m ML shares.

31 After the Plaintiff sold off his MEPPL shares to Ding, the latter became the company's major and controlling shareholder. Ding then appointed the Defendant to the board of its subsidiary MEP.

32 Saddled with 890m shares in a Hong Kong listed company by Ding or Ding's wife, the Plaintiff not surprisingly wanted to liquidate the said shares for cash. That transaction was the genesis for the Plaintiff's turning to Ding for help.

¹¹ Transcript, 9 February 2021, at pp 30–34.

(ii) The Defendant's case

33 Unlike the dearth of documents on the Plaintiff's part, the Defendant produced copious documents to support her version of the facts/events. The documents included (a) the account opening forms and standing authority letters (two such letters) of Grand China dated 27 September 2018¹² that she signed; (b) the settlement instructions form of Grand China dated 9 October 2018; (c) numerous HSBC statements; and (d) a statement of Grand China of the Defendant's margin account for the period 2 January 2018 to 18 June 2019.¹³ In addition, there was a letter from Grand China dated 18 June 2019¹⁴ addressed to the Defendant demanding payment of HKD 624,400.81 that it was owed by her.

34 It is noted from Grand China's account opening form¹⁵ that the Defendant's annual income exceeded HKD 1m (approximating S\$172,413, at the conversion rate of HKD 5.80 to S\$1.00). However, as the Defendant herself pointed out,¹⁶ a person of her means is unlikely to be able to afford to purchase shares worth HKD 79m.

35 The Defendant's AEIC mirrored her defence. In addition, the Defendant deposed to the following additional facts:

- (a) In accordance with what Ding told her, she was contacted by someone when she was in Hong Kong and the person accompanied her on 27 September 2018 to Grand China's office and to HSBC's branch

¹² 2AB4–23.

¹³ 2AB63–64, with translation at 2AB65–66.

¹⁴ 2AB61–62.

¹⁵ 2AB8.

¹⁶ Lu Yuan's AEIC affirmed on 11 January 2021 ("Defendant's AEIC") at para 23.

(at East Ocean Centre) to open accounts (she did not date Grand China's forms);

(b) the email address and mobile phone number stated in her account opening forms with Grand China did not belong to her (in cross-examination, the Defendant could not say who they belonged to);¹⁷

(c) while she was on holiday in Hong Kong with her family in November 2018, she received Ding's message on or about 2 November 2018, requesting her to send money to the Plaintiff via telegraphic transfer, which she did. Apart from that one transaction, none of the other transactions in the HSBC account were carried out by her;

(d) apart from the fact that there was no sale and purchase agreement between them, the Plaintiff did not state when the alleged purchase price of HKD 79m was supposed to be paid by the Defendant; and

(e) she believed the value of the ML shares the Plaintiff pledged to Grand China must have plummeted leading the company to liquidate all his shares and leaving a shortfall of HKD 624,400.81 (between the Plaintiff's margin loan(s) and the sale proceeds) which Grand China sought to claim from her (see above at [33]).

36 In cross-examination,¹⁸ the Defendant disclosed why she did not question Ding and/or the Plaintiff when she was approached for help. She explained that the three of them had a very good relationship and if they did not

¹⁷ Transcript, 9 February 2021, at p 47.

¹⁸ Transcript, 9 February 2021, at pp 43–44.

tell her, she would not ask them anything as she considered both of them as her bosses. She trusted both of them unquestioningly. According to what Ding told her, she believed that the Plaintiff wanted the margin trading account to hide the ML shares from UOB because of his personal guarantee to the bank.

37 In cross-examination, the Defendant revealed that she did not insert her income details in the account opening forms and she certainly did not have a net worth of HKD 15m as stated therein.¹⁹ Neither did she have liquid assets of HKD 1m to 5m.²⁰ It appeared that the Defendant neither read nor understood what she signed at the office of Grand China. However, she recalled that when she signed the Bought Note²¹ as transferee, only the Plaintiff's signature was on the document but not his name. There were no entries or stamps on the document and her name was not inserted.

38 As for the bank statements she received from HSBC, the Defendant explained she did not pay attention to the transactions stated therein as Ding told her she was not responsible for those transactions. Similarly, she ignored the statements sent to her by Grand China until she received its letter in [33] demanding payment from her of HKD 624,400.81. When she asked Ding about it, he said he had no idea.

39 As Ding's AEIC was in line with the Defendant's, the court turns to his testimony adduced during cross-examination. Ding testified he did tell the Plaintiff that selling the ML shares was difficult; it would be a long and tedious

¹⁹ 2AB8.

²⁰ 2AB8.

²¹ 3AB3.

process and the Plaintiff could only go through securities companies to obtain margin financing.

40 Ding stated that apart from recommending certain securities companies to the Plaintiff, he left it to the Plaintiff to make direct contact with the securities companies which the Plaintiff did. Further, after telling Grand China (when he was contacted and asked) that the account would be opened in the name of the Defendant, Ding was not aware of the specifics and what sort of account was opened until much later. Neither was Ding aware of who controlled the account that the Defendant opened at Grand China as that was an agreement between the Plaintiff and Grand China. In addition, it was only after the Defendant had opened the HSBC account that Ding became aware of the same (the Defendant had testified someone (whom she could not identify) accompanied her to HSBC to open the account).

41 Notwithstanding the Sale and Bought Notes, Ding said there was no sale transaction regarding the ML shares. Ding who seemed to be fairly familiar with the Hong Kong securities industry, explained that a purported sale and purchase was the only method in Hong Kong²² by which the Defendant could hold shares on the Plaintiff's behalf.

42 Ding confirmed that the *modus operandi* as regards bank accounts for margin financing purposes was to have the person who opened the margin account and related bank account to relinquish all rights and control over the margin and bank accounts in favour of the beneficial owner by signing standing letters of authority, settlement instruction forms listed at [33], pre-signing cheques and handing over bank tokens and login passwords for internet

²² Transcript, 10 February 2021, at pp 72–73.

banking, to either the beneficial owner or his authorised representative or the securities company with which the margin account was opened.

43 Ding insisted that the 300m shares were held by the Defendant on behalf of the Plaintiff and she never bought those shares. He accused the Plaintiff of lying in contending otherwise. He was aware that the Defendant never traded on the ML shares. In fact, she had never purchased or traded in any shares. Ding denied he told the Plaintiff to go after the buyer of his shares when the Plaintiff allegedly chased him for payment. He said he could not, as the Defendant is his sister-in-law and in trying to help the Plaintiff, he got her into trouble.

44 Ding also denied that Ming Lam is owned by his wife as a majority shareholder, contrary to what the Plaintiff claimed. His wife owned less than 20% of Ming Lam's shares and does not control Ming Lam. Ding alleged that when Ming Lam bought over MEPPL, the Plaintiff hid a lot of his own debts from Ming Lam. The Plaintiff had by then defaulted on the UOB loan and could not even afford to pay the interest. That was why the Plaintiff was in a hurry to transfer that debt to someone else. The court was therefore sceptical of the Plaintiff's claim that he sold off MEPPL as it had a lot of assets (see above at [29]). It seems more likely than not that the company was debt-ridden. A shareholder of a company which is asset rich is highly unlikely to want to get rid of it as the Plaintiff did in regard to MEPPL.

The issue(s)

45 The only issue the court has to decide in this case is, did the Plaintiff sell 300m of the ML shares to the Defendant as he alleges or, did she merely hold the shares on his behalf as she and Ding contend?

The findings

46 It was very telling that during cross-examination, the Plaintiff disclosed he no longer held the balance 680m of the ML shares after allegedly selling 300m to the Defendant. He was sure those shares were sold²³ but he did not receive the sale proceeds nor was he aware where those shares went.

47 The Plaintiff's evidence of a Bank of China account should also be contrasted with the Defendant's claim that an account with HSBC was opened on his behalf in Hong Kong. While the Defendant produced the HSBC statements, the Plaintiff had nothing to corroborate his testimony that he opened a Bank of China account.

48 As noted earlier at [25], the Plaintiff disclosed only one document and even then, selectively. There was unquestioningly deliberate withholding of documents by him as, if he had disclosed the documents he had, they would not have supported his case/claim.

49 Earlier, the court had (at [33]) referred to documents which the Defendant produced. One was Grand China's statement of account.²⁴ The *gravamen* of the Plaintiff's case was that he sold 300m of the ML shares to the Defendant and he denied she was holding the said shares on his behalf. Yet this statement showed that after her alleged purchase of the 300m shares, the Defendant periodically delivered blocks of the ML shares ranging from 34.32m to 50m. No doubt those ML shares were delivered by Grand China for sales made for the Plaintiff, pursuant to the authorisation documents the Defendant had signed at the time the margin account was opened.

²³ Transcript, 9 February 2021, at p 28.

²⁴ 2AB63–64, with translation at 2AB65–66.

50 Further, there were repeated fund withdrawals according to the statement of account coupled with substantial amounts such as HKD 2.9m and HKD 2.47m being deposited into the HSBC account in October 2018²⁵ which the Defendant was not aware of. Even more significant was the fact that the last traded price of ML shares on 19 November 2018 was HKD 0.041824, a drastic drop of HKD 0.208 from its previous price of HKD 0.25 on 7 November 2018. These entries corroborated the version of facts put forward by the Defendant and Ding.

51 The court finds that the Defendant's account with Grand China was opened on behalf of the Plaintiff and it was a margin trading account. The Plaintiff had pledged the ML shares to Grand China and when he could not pay and/or top up the account with cash when the price of ML shares fell, Grand China liquidated all his remaining shares that it held. That explained why the Plaintiff as he testified, revealed that all his ML shares were sold but he did not know at what price nor did he receive the sale proceeds (see above at [46]). The shares had been force-sold by Grand China leaving an outstanding debit balance of HKD 618,302.41 that with interest amounted to HKD 624,400.81, which Grand China was claiming from the Defendant as the nominal account holder.

52 Foolish and clueless as the Defendant was, the court found her to be an honest witness. Questioned by the court²⁶ as to why she was so foolish as to agree with Ding to do the favour that he asked not for himself but for a third party, the Plaintiff, the Defendant reiterated she trusted both men as Ding is her brother-in-law while the Plaintiff was her fellow director. Her blind/misguided

²⁵ See 2AB54.

²⁶ Transcript, 9 February 2021, at p 63.

trust resulted in her being saddled with a claim for HKD 624,400.81 which she is unable to pay.

53 On the other hand, the court entertains no doubts that the Plaintiff was an untruthful witness. He was deliberately vague, sometimes contradictory. in his testimony and withheld documents which would have shown the true state of the relationship between himself, the Defendant and Grand China.

54 Consequently, the Plaintiff's claim is dismissed with costs to the Defendant to be taxed on a standard basis unless otherwise agreed.



Lai Siu Chiu
Senior Judge

Tan Cheng Kiong (CK Tan Law Corporation) for the plaintiff;
David Nayar (David Nayar and Associates) for the defendant.
