

Max Sources Pte Ltd v Agrocon (S) Pte Ltd and another
[2015] SGHCR 11

Case Number : Suit No 1155 of 2014 (Summons No 174 of 2015)
Decision Date : 21 April 2015
Tribunal/Court : High Court
Coram : Colin Seow AR
Counsel Name(s) : Mr Mohammad Haireez (Haridass Ho & Partners) for the plaintiff; Mr Ong Ying Ping (OTP Law Corporation) (instructed) and Mr Thangavelu (Thangavelu LLC) for the defendants.
Parties : Max Sources Pte Ltd — Agrocon (S) Pte Ltd and another

Contract – Compromise – Settlement Agreement – Formation

Contract – Consideration – Forbearance

Civil Procedure – Summary Judgment

21 April 2015

Judgment reserved.

Colin Seow AR:

Introduction

1 This is an application for summary judgment (“O 14 application”) taken out by Max Sources Pte Ltd (“the Plaintiff”) against Agrocon (S) Pte Ltd (“the 1st Defendant”) and Mr Ramiah Kumanaruban (“the 2nd Defendant”), on the basis of an alleged settlement agreement entered into between the parties.

Background

2 The Plaintiff and the 1st Defendant are Singapore-incorporated companies engaged in the business of general wholesale trade. The 2nd Defendant is at all material times the sole director and sole shareholder of the 1st Defendant.

3 The Plaintiff has commenced Suit No 1155 of 2014 against both the Defendants claiming a sum of \$378,578.87 (before interest and costs), being the amount due and payable by the Defendants pursuant to an alleged settlement agreement (“the alleged Settlement Agreement”) entered into between the parties sometime in March 2014. The alleged Settlement Agreement reads as follows:

MAX SOURCES PTE LTD

61 Bukit Batok Crescent Hex 02-05

Heng Loong Building Singapore 658078

Date:- 03/03/2014

I, Kumanaruban (Director of Agrocon (S) Pte Ltd), [identity number redacted] confirm hereby that I owe Max sources pte ltd SGD378578

(three hundred seventy eight Thousand five hundred and seventy eight dollars Only).

I am issuing my company Agrocon S pte ltd cheques to Max sources pte ltd. I will pay to Max sources as per mentioned here under.

30th March 2014 SGD15000 OCBC Chq number 875949

25th April 2014 SGD 20,000 OCBC Chq number 875950

20th May 2014 SGD 65000 OCBC Chq 875951 or 5c supply of 5% broken rice IR64 at the rate mutually agreeable. As soon as cargo arrive and released to Max sources account, Max sources will issue SGD20,000 cheque to Agrocon S pte ltd, Cheque will only be issued once cargo is released to Max sources account.

20th June 2014 SGD65000 ocbc chq 875952 or 5c supply of 5% broken rice IR64 at the rate mutually agreeable.

20 July 2014 SGD65000 ocbc chq875953 or 5c supply of 5% broken rice IR64 at the rate mutually agreeable.

28 August 2014 SGD65000 Ocbc chq 875954 or 5c supply of 5% broken rice IR64 at the rate mutually agreeable.

20 September 2014 SGD 65000 ocbc chq875955 or 5c supply of 5% broke swarna or IR 64 at the rate mutually agreeable.

15th October 2014 SGD18,578.00 OCBC Chq 875956.

Cheques will be kept as guarantee till cargo is supplied of acceptable quality. Once cargo is supplied cheques will be returned back to Kumanaruban and/or Agrocon S pte ltd. Incase cargo is not supplied to max sources, Max sources will reserve right to bank in cheque and onus goes to Kumanaruban and/or Agrocon S pte ltd to clear the cheques. One week grace period will be given if necessary to Agrocon before on the date of cheque due date to honour cheque and keep sufficient balance into their bank account. In the Event Cargo is not supplied and/or Cheques are also not honoured Max sources pte ltd has right to claim this legally along with interest as per Singapore regulation.

Its Upto Max sources pte ltd whether they want cheque or supply of commodity rice and/or sugar.

Cargo will be supplied before 15th of each month and cheque to be dated also of the same date every month 15th of that particular month.

Thanks & Regards

[signed]

Rasia Kumanaruban

[identity number redacted]

Shareholder/Director/Personal capacity.

4 The Defendants have denied the Plaintiff's claim in its entirety. Before me, Mr Ong Ying Ping who is instructed counsel for the Defendants has sought to resist the O 14 application by casting doubts over the Plaintiff's case that the alleged Settlement Agreement was a genuine and valid settlement agreement between the parties. In doing so, Mr Ong has advanced broadly four strands of argument which may be summarised as follows.

5 First, Mr Ong submits that there is no reference to any dispute between the parties to be found in the alleged Settlement Agreement. Speaking from his experience as a lawyer who has dealt with a fair number of compromise agreements in practice, Mr Ong points out that this is unusual and should accordingly be taken into consideration by the court in determining whether a settlement agreement truly exists in the present case.

6 Second, in the Statement of Claim, the Plaintiff claims that the alleged Settlement Agreement had arisen out of a dispute in relation to an oral profit-sharing agreement ("the Underlying Oral Agreement") which was entered into between the Plaintiff and *both* the Defendants for the execution of the sale and purchase of white long grain rice between Singapore and Batam, Indonesia. [\[note: 1\]](#) However, the Defendants in their Defence allege that the Underlying Oral Agreement was a sham transaction created by one Mr Ravi Shankar (a director of the Plaintiff) ("Ravi") in order for him (Ravi) to deceive his wife and co-director, one Mdm Tilokani Bharti Murlidhar ("Bharti"), into "thinking [that] the profit-sharing transactions were made with the 1st Defendant" when "[i]n fact, the transactions were made between [Ravi] and other parties in Batam, Indonesia, including a company known as PT Maxal Management". [\[note: 2\]](#) In other words, the Defendants are asserting that the 2nd Defendant was never involved in his personal capacity in any business transactions under the Underlying Oral Agreement. As such, Mr Ong argues that there is no reasonable explanation as to "why the 2nd Defendant should issue [the alleged Settlement Agreement] in his "*personal capacity*" (emphasis in original) unless he was providing a personal guarantee to the Plaintiff, which Mr Ong adds is "incredibly curious" in the present case. [\[note: 3\]](#)

7 At this juncture, I should also add that the 2nd Defendant has raised some further allegations in the present O 14 application with the intent to impugn the alleged Settlement Agreement. In the 2nd Defendant's first show cause affidavit, it was alleged, *inter alia*, that:

(a) the 2nd Defendant signed the alleged Settlement Agreement because Bharti had threatened the safety of him and his family; [\[note: 4\]](#) and

(b) in any event, the 2nd Defendant was under the impression that he was signing the alleged Settlement Agreement only on behalf of the 1st Defendant. [\[note: 5\]](#)

8 The third pillar of Mr Ong's submission is that the amount claimed pursuant to the alleged Settlement Agreement fails to tally with the documentary evidence of the invoices disclosed so far in the proceedings. As such, Mr Ong contends that this constitutes yet another anomalous factor surrounding the alleged Settlement Agreement that raises a triable issue as to whether the alleged

Settlement Agreement is in fact a genuine compromise arrived at by the parties.

9 Lastly, Mr Ong argues that even if this court is not persuaded that any triable issue has been raised in the present case, the case should nonetheless still proceed to trial under the alternative limb provided in O 14 r 3(1) of the Rules of Court (Cap 322, R 5) ("Rules of Court"), viz. on the ground that "there ought for some other reason to be a trial". To support this argument, Mr Ong refers to the English authority of *Miles v Bull* [1969] 1 QB 258 at 265-266 which has been applied locally by the High Court in *Concentrate Engineering Pte Ltd v United Malayan Banking Corp Bhd* [1990] 1 SLR(R) 465; and in reference to the present case, Mr Ong argues that (a) there has been certain unconscionable practices on the part of Ravi and/or the Plaintiff in undercutting the selling price of the rice under Underlying Oral Agreement, [\[note: 6\]](#) and (b) "[t]o allow the Plaintiffs to obtain judgment after such unconscionable behavior – which effectively prevented [*inter alia*] the Defendants [...] from selling the rice would be unjust, and would fall under "for some other reason to be trial of that claim" under Ord 14 r 3(1)". [\[note: 7\]](#)

10 Against the Defendants' submissions, counsel for the Plaintiff, Mr Mohammad Haireez, submits, *inter alia*, that the Defendants are making an impermissible attempt to revisit the merits of the underlying dispute between the parties, as the parties have already agreed to settle their dispute via the alleged Settlement Agreement. Mr Mohammad Haireez also argues that the 2nd Defendant's allegations of duress and misimpression with respect to his signing of the alleged Settlement Agreement (see [7] above) should be disregarded in this O 14 application because these are matters not previously pleaded in the Defence. It is also submitted that the unpleaded allegations are devoid of merit in any event.

Issues before the court

11 In the course of submissions, it became apparent to me that the following are the issues pertinent to the present O 14 application:

- (a) whether the Plaintiff has successfully established a *prima facie* case that the alleged Settlement Agreement is a valid settlement agreement, and if so whether sufficient cause has been shown by the Defendants as to why summary judgment should not be entered against them;
- (b) if the alleged Settlement Agreement has not been established as such, whether summary judgment could still be entered against the Defendants on the basis that the alleged Settlement Agreement nevertheless represents an admission of liability by the Defendants; and
- (c) if leave to defend is ultimately granted in favour of the Defendants, whether such leave to defend should be conditional or unconditional.

12 I will address each of these issues in sequence.

The decision

Whether the Plaintiff has successfully established a prima facie case that the alleged Settlement Agreement is a valid settlement agreement

13 From the outset, I thought I should first address the Plaintiff's contention that the Defendants should not be allowed in the present proceeding to revisit the merits of the underlying dispute between the parties, given the existence of the alleged Settlement Agreement (see [10] above).

14 In determining an O 14 application where a settlement agreement exists, it is true that a court will generally not look beyond the four corners of the settlement agreement since the settlement agreement alone would govern the legal rights and obligations between the parties thereto. In *Ling Yew Kong v Teo Vin Li Richard* [2014] 2 SLR 123 at [89] ("*Ling Yew Kong v Teo Vin Li Richard*"), George Wei JC has outlined an analytical framework in this regard as follows:

89 I pause now to take stock and emphasise the principles of law, and propose a suitable framework to analyse them in. Drawing from the cases I have discussed above, I find that these principles are helpful in deciding whether or not a party should be allowed to impugn a settlement agreement:

(a) Where parties have agreed to resolve their dispute amicably by way of a validly formed settlement, the settlement agreement *alone* governs the parties' legal relationship in the absence of [...] vitiating factors [...]

(b) Because the settlement agreement *alone* governs the parties' legal relationship, *prima facie*, parties should not be allowed to rely on anything outside of this legal relationship in attempting to impugn the settlement agreement. This would mean any disputed legal issues (supposedly settled) would have no, or at the most little, bearing on the legality or formation of the settlement agreement.

(c) A settlement agreement is ultimately premised on the law of contract. There is a *limited* scope for the court to determine whether the terms of the compromise are fair and reasonable in deciding whether the settlement agreement should not be enforced. This limited scope includes grounds by which normal contracts are usually challenged, such as because of duress, illegality, *etc.*

(d) Therefore, a party arguing to set aside or challenge the settlement agreement must satisfy the court that such grounds exist, before the settlement agreement will be set aside.

[emphasis in original]

15 However, as can be gleaned from [89(a)] of the learned Judicial Commissioner's holding in *Ling Yew Kong v Teo Vin Li Richard*, the analytical framework seems to be predicated on there being a "validly formed settlement" in the first place. This means that it might have been envisaged that whenever a case arises in which the *formation* of an alleged settlement agreement is being challenged, the party raising the challenge may rely on factors not strictly falling within the four corners of the alleged settlement agreement – although I imagine that if this were indeed to be the correct position to take, the reliance on such factors must only be to such extent as is relevant and necessary for that party to advance its case for that special and specific purpose. In this connection, I will further add that in every such case an appropriate adverse costs order would almost invariably be made by the court if the challenge is shown to be frivolous or vexatious. This is so as to properly compensate the party seeking to enforce the compromise for any prejudice it might have suffered as a result of the conduct of the party raising the challenge.

16 With that, I turn to consider whether in the present O 14 application a *prima facie* case has been made out that there exists a valid settlement agreement between the Plaintiff and the Defendants.

17 In my judgment, I do not think it to be an overstatement to say that the alleged Settlement

Agreement relied upon by the Plaintiff does seem to lack in some respect a resemblance to the types of written compromise agreements commonly encountered in practice (see [5] above). This however does not necessarily mean that no valid settlement agreement actually exists *in substance* between the parties. In my view, the question as to whether a valid settlement agreement in fact exists is one that calls for a much more involved assessment of the finer details in the evidence of the present case, such that the question is better suited to be answered by a Judge in a trial as opposed to in an O 14 proceeding. This is notwithstanding that some semblance of a promise by the 1st Defendant and/or the 2nd Defendant to take responsibility for and to make good a debt constituting the subject of an ongoing dispute between the Plaintiff and the Defendants appears to be discernible from a facial reading of the alleged Settlement Agreement (see [3] above), because until such time as fuller evidence are tendered and tested under the rigours of a trial, doubt remains as to why such a promise might have come about in the first place (see [6] above).

18 Furthermore, from a contract law perspective, it is not entirely clear whether there was sufficient consideration provided by all the relevant parties in order to support the formation of a compromise agreement between the parties. In the seminal text of David Foskett, *The Law and Practice of Compromise* (7ed, Sweet & Maxwell, 2010), the learned author wrote (at para 3-01):

Since a compromise is merely a contract, the ordinary principles of contract law apply with as much force as in other contractual contexts. Under the ordinary law a contract will not be found to have arisen unless:

- (i) *consideration exists;*
- (ii) an agreement can be identified which is complete and certain;
- (iii) the parties intend to create legal relations; and
- (iv) in some cases, certain formalities have been observed.

[emphasis added]

19 On the requirement of consideration, the learned author continued (at paras 3-02, 3-11 and 3-12):

The usual approach to consideration under the general law is to define it as the accrual of some benefit to one party or the suffering of some detriment by the other. Consideration may consist of the exchange of mutual promises or the performance by one party of an act in return for a promise by the other to do some act. In standard terminology, consideration must “move from the promisee”.

[...]

From the authorities already referred to, it would seem that a forbearance from pursuing a claim (a) known by the claimant to be baseless; or (b) which is vexatious or frivolous would constitute no consideration for a compromise based upon it. Equally, a forbearance to pursue an illegal claim, for example, one made illegal by statute, would represent no consideration. So too a forbearance which itself is prohibited by law or is contrary to public policy is no consideration.

[...]

The general law of contract provides that past consideration is no consideration unless given at the request of the promisor. *It has already been noted that an actual forbearance to sue will constitute consideration only if afforded at the request of the debtor. Thus, an actual abstention from pursuing an existing debt will be good consideration for some promise of the debtor, for example, to give security for it, only if it results from some express or implied request therefor.*

[emphasis added]

20 In the present case, it appears that the Plaintiff is asserting that the consideration it has provided came in the form of its *actual* forbearance to sue the Defendants. The material part of the Plaintiff's Statement of Claim reads as follows: [\[note: 8\]](#)

In full and final settlement of the underlying dispute arising out of the Contract *and in consideration of the Plaintiffs forbearing to sue forthwith*, parties agreed to settle on or about 3 March 2014 [by way of the alleged Settlement Agreement]. [emphasis added]

21 However, there is nothing concrete that can be drawn from the evidence gathered so far which indicates that the Plaintiff's forbearance to sue was in fact afforded *at the request of the Defendants* (see [19] above). In my opinion, it would not be safe for this court to make any positive finding either way on whether the requirement of consideration in respect of the alleged Settlement Agreement has in fact been met. If anything at all, I am of the view that such a finding should rightly be reserved for determination by a Judge at trial after all relevant evidence are disclosed.

22 In sum, I find that the Plaintiff has failed to establish a *prima facie* case of a valid settlement agreement so as to shift the burden over to the Defendants to show cause as to why summary judgment should not be entered in the present case.

Whether summary judgment could still be entered against the Defendants on the basis that the alleged Settlement Agreement represents an admission of liability by the Defendants

23 It was mentioned earlier that the alleged Settlement Agreement does appear to evince some promise made by the 1st Defendant and/or the 2nd Defendant to take responsibility for and to make good a debt that was due and owing to the Plaintiff (see [17] above). To that extent, I am prepared to accept that the Plaintiff appears to have a *prima facie* case against the Defendants on the basis of an admission of liability. The question that thus needs to be addressed is whether judgment may be entered against the Defendants on that basis.

24 For good measure, it should be noted that O 27 r 3 of the Rules of Court provides for judgment to be entered against a party to an action on the basis of an admission of fact, and in that regard an admission by way of a letter before or after an action is brought may fall within the scope of O 27 r 3 of the Rules of Court (see *Singapore Civil Procedure 2015* vol I (GP Selvam gen ed) (Sweet & Maxwell Asia, 2014) at para 27/3/4). O 27 r 3 provides:

Judgment on admission of facts (O.27, r.3)

3. Where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just.

25 In the course of his submissions, Mr Mohammad Haireez has hinted at the possibility of a judgment being entered in the alternative on the basis of the admission reflected in the alleged Settlement Agreement, although I do not recall him making specific reference to O 27 r 3 of the Rules of Court. The reason for his not doing so, I can only surmise, may well be that he saw no practical distinction to be drawn between O 14 and O 27 r 3 for the purposes of the present proceeding, since an order entering judgment pursuant to one would effectively achieve the same result as an order entering judgment pursuant to the other.

26 On the part of the Defendants on the other hand, perhaps in an effort to pre-empt this potential alternative ground for entering judgment in the Plaintiff's favour, the 2nd Defendant has included some allegations in his show cause affidavit to raise questions pertaining to his state of mind during the signing of the alleged Settlement Agreement. In this last regard, it has been noted that the 2nd Defendant stated in his affidavit that he has signed the alleged Settlement Agreement under threat (see [7(a)] above), and that in any event he was under the impression that he was signing the alleged Settlement Agreement only on behalf of the 1st Defendant (see [7(b)] above). Against this, Mr Mohammad Haireez in his submissions contends that since these allegations have not been pleaded in the Defence, they should not be taken into account by the court in deciding the outcome of the present application (see [10] above). I agree.

27 It is the settled position in Singapore that, subject to very limited exceptions, a fresh defence that has not been pleaded cannot be relied on by a defendant in an O 14 proceeding. In *Olivine Capital Pte Ltd and another v Chia Chin Yan and another matter* [2014] 2 SLR 1371 ("*Olivine Capital Pte Ltd v Chia Chin Yan*"), the Court of Appeal held (at [43]):

43 [...] a fresh defence that has not been pleaded cannot be relied on by the defendant in O 14 proceedings *unless* the defence is amended or *unless* the case is an exceptional one where the court concerned is of the view that there are good reasons to permit reliance on such a fresh defence (for instance, if the fresh defence strikes at the heart of the court's powers, as was the case in [*Poh Soon Kiat v Desert Palace Inc* [2010] 1 SLR 1129]). [...] [emphasis in original]

28 The Court explained the rationale behind its holding as follows (at [41]):

41 [...] As Woo J pointed out [in *Lim Leong Huat v Chip Hup Hup Kee Construction Pte Ltd* [2008] 2 SLR(R) 786], if a defendant is not bound by his pleadings in O 14 proceedings, it could lead to an absurd situation. *A defendant could succeed in resisting O 14 proceedings on the basis of an unpleaded defence. If an amendment to the defence to include that unpleaded defence is subsequently disallowed, the defendant will not be able to rely on the unpleaded defence at trial, with the potential result that he would have no arguable defence. This paradoxically means that summary judgment should have been entered in the plaintiff's favour in the first place.* This would undermine the *raison d'être* of O 14, which is precisely the expeditious resolution of cases which do not require a full-blown trial. [emphasis added]

29 In the present case, there has been no application taken out by the Defendants to amend their Defence so as to include the hitherto unpleaded allegations that they are seeking to rely on in the present proceeding (see [26] above). Neither have the Defendants demonstrated to my satisfaction that this is an exceptional case where there are good reasons to permit their reliance on such unpleaded defences. All that the Defendants have done in the present case was merely to cite an earlier High Court decision of *PMA Credit Opportunities Fund and others v Tantonio Tiny (representatives of the estate of Lim Susanto, deceased)* [2011] 3 SLR 1021 ("*PMA Credit Opportunities Fund v Tantonio Tiny*") before putting forth their unelaborated conclusion that "the law

as it stands is that in an O 14 application, the defendant is not restricted to raising matters that are confined to the four corners of the defence". [\[note: 9\]](#)

30 To my mind, the Defendants in doing so have advanced nothing of material consequence, other than to invite this court to compare and consider the result in *PMA Credit Opportunities Fund v Tantonno Tiny* where the High Court held that the defendant was not precluded from raising an unpleaded defence in an O 14 proceeding. However, as noted above, *PMA Credit Opportunities Fund v Tantonno Tiny* was an earlier High Court decision to *Olivine Capital Pte Ltd v Chia Chin Yan*. It is furthermore patent from the High Court's reasoning at [30]-[33] in *PMA Credit Opportunities Fund v Tantonno Tiny* that it had arrived at its decision there only because it considered itself bound by the Court of Appeal's decision in *Poh Soon Kiat v Desert Palace Inc* [2010] 1 SLR 1129 ("*Poh Soon Kiat v Desert Palace Inc*"). But as can be gleaned from the Court of Appeal's subsequent decision in *Olivine Capital Pte Ltd v Chia Chin Yan*, the holding in *Poh Soon Kiat v Desert Palace Inc* has been distinguished.

31 Given my view that nothing of material consequence has been raised by the Defendants to permit their reliance on the unpleaded defences mentioned above, I hold that the unpleaded defences should be disregarded for the purposes of the present proceeding.

32 Having said that, I nevertheless find in my ultimate analysis that this is not a proper case for judgment to be entered on the basis of an alleged admission of liability. The main reason is because it is not entirely clear to me in what capacity the 2nd Defendant has signed the alleged Settlement Agreement. On the one hand, the 2nd Defendant's designation as director of the 1st Defendant was inscribed next to his name in the opening sentence of the alleged Settlement Agreement (see [3] above). However on the other hand, in that same sentence it was also stated that the 2nd Defendant "confirm[s] hereby that I owe Max sources pte ltd SGD378578" (emphasis added). Subsequent references to the 1st Defendant and the 2nd Defendant in the alleged Settlement Agreement, and the 2nd Defendant's signing off as "Shareholder/Director/Personal capacity" at the bottom thereof, only serve to further obscure the true position in this regard. On balance, I therefore do not consider entering any form of judgment at this relatively early stage of the proceedings to be a safe and wise thing to do, as there are clearly issues that ought to be tried before a Judge.

33 Before I leave this issue entirely, I will for completeness add that had I found no triable issue in the present case, I would have rejected the Defendants' argument that the case should nonetheless go for trial on the basis that "there ought for some other reason to be a trial" under the alternative limb provided in O 14 r 3(1) of the Rules of Court (see [9] above). In *Ling Yew Kong v Teo Vin Li Richard* (see [13] above), the court held (at [33]):

33 In deciding whether leave to defend should be granted, the court is also reminded that leave to defend is to be granted not simply in cases where there appears to be a fair case for defence but also where there is "some other reason" for a trial. *Whilst the latter words are of wide scope, ordinarily, it is suggested, there should be some connection between the "other reason" and the substantive merits of the Plaintiff's claim.* Tricky questions can arise where the reason (or even the main reason) why the Defendant wants a trial is because of publicity. That said, *Selvam on Singapore Civil Procedure* at para 14/4/6 gives the example of a decision where the plaintiff's case tended to show that he had acted harshly or unconscionably and it is thought desirable that if he were to get judgment at all it should be in the full light of publicity (citing *Bank für Gemeinwirtschaft v City of London Garages Ltd* [1971] 1 All ER 541 at 548). Yet another example cited was the decision of Chan Sek Keong J (as he then was) in *Concentrate*

Engineering Pte Ltd v United Malayan Banking Corp Bhd [1990] 1 SLR(R) 465. The latter was a case where the evidence showed a bold and unusual scheme to defraud by use of apparently forged cheques. In these circumstances, the defendant bank suspected that someone inside the plaintiff was involved. The decision of Chan Sek Keong J was that the sheer audacity of the sophisticated fraud and the absence of explanation by the plaintiff's directors was "some other reason" for a trial. That said, it does not follow that leave to defend is always appropriate simply because there are background criminal investigations or that the defendant needs more time. *Each case for summary judgment must, of course, turn on its own facts. Where it is clear that there is no defence, the fact that the court disapproves of the general behaviour of the Plaintiff or parties is not a reason to deny summary judgment. The position will be different if the unconscionable conduct of the Plaintiff opens the door to a possible defence.* [emphasis added]

34 Looking at the evidence placed before me at this stage of the proceedings, I find no solid affirmative ground to support a finding of unconscionable conduct on the part of the Plaintiff and/or Ravi as alleged by the Defendants (see [9] above), not least also because those allegations have either been denied or not admitted to by the Plaintiff and Ravi. [\[note: 10\]](#) In any case, the Defendants' allegation of unconscionable conduct at best merely purports to cast aspersions on the general behaviour of the Plaintiff and/or Ravi without further demonstrating in any substantive manner how the alleged unconscionable conduct may open the door to a possible defence to the Plaintiff's action. In the result, I fail to see how there might be "some other reason" for there to be a trial in the present case.

Whether leave to defend should be conditional or unconditional

35 This thus brings me to the final issue at hand: whether leave to defend should be granted to the Defendants with any conditions imposed.

36 The law on the grant of conditional leave to defend is well established and need not be belaboured in this judgment (see *Singapore Civil Procedure 2015* vol I (GP Selvam gen ed) (Sweet & Maxwell Asia, 2014) at para 14/4/12). Applying the applicable legal principles to the present case, conditional leave to defend is in my view warranted as I find the Defendants' defence to be rather "shadowy" (see eg, *Van Lynn Developments Ltd v Pelias Construction Co Ltd* [1969] 1 QB 607; *Mohd Zain bin Abdullah v Chimbuso International Petroleum (Singapore) Pte Ltd and another appeal* [2014] 2 SLR 446). My reasons for holding this view are as follows.

37 First, while I have considered it unsafe to enter any form of judgment in favour of the Plaintiff at this stage given the uncertainty over the true capacity in which the 2nd Defendant has signed the alleged Settlement Agreement (see [32] above), I have also noted earlier (albeit with some doubt) that the alleged Settlement Agreement does on its face appear to embody some form of promise by the 1st Defendant and/or the 2nd Defendant to take responsibility for and to make good a debt that was due and owing to the Plaintiff (see [17] above).

38 Second, the Defendants' attempt to rely on unpleaded defences in order to impugn the 2nd Defendant's signing of the alleged Settlement Agreement has been held to be impermissible (see [27]-[31] above). This significantly sets the Defendants back in terms of the overall content and substance of the case which they have advanced before me in resisting the Plaintiff's O 14 application.

39 Third, but not least importantly, the evidence tendered before me reveal that a letter appears to have been issued by SK Kumar Law Practice LLP on behalf of the 1st Defendant shortly after the

2nd Defendant signed the alleged Settlement Agreement. The contents of that letter read as follows:
[\[note: 11\]](#)

1. We act for M/s Agrocon (S) Pte Ltd [*ie*, the 1st Defendant].
2. Our clients are clear – they do not owe you \$378,578 as they had and were made to believe.
3. *Their calculation is that a much reduced amount alone may be due and owing.*
4. Accordingly, all the earlier cheques issued would have to be countermanded.
5. *In all these circumstances, please do not bank in the cheques as our clients will revert with the actual amount due and owing to you.*

[emphasis added]

40 I have gathered a sense in the course of oral submissions by Mr Mohammad Haireez and Mr Ong that this letter will most probably be a subject of heavy contestation in the event of a trial of the Plaintiff's action. As such, I am conscious that any substantive comment that I may make at this stage of the proceedings in respect of this piece of documentary evidence may not be the most helpful in the event of trial. But suffice it for me to state for the purposes of the present application that the contents of the said letter do appear to make it seem as if the Defendants will likely have to bear a heavier evidential burden if the Plaintiff's action were to indeed proceed to trial. This, together with the two other factors mentioned, convinces me that the Defendants' defence at the current stage of the proceedings seems to rest on rather precarious and shaky ground, and accordingly I find that conditional leave to defend is justified in the present case.

Conclusion

41 In conclusion, I order that leave be granted to the Defendants to defend the Plaintiff's action in Suit No 1155 of 2014, but on the condition that the Defendants shall each within 21 days hereof either (a) pay a sum of \$50,000 into court, (b) furnish to the Plaintiff a banker's guarantee for a sum of \$50,000 and on terms which are satisfactory to the Plaintiff, or (c) obtain and provide a solicitor's undertaking to the court to secure the payment of a sum of \$50,000 to the Plaintiff in the event that the Plaintiff's action is allowed, in default of which the Plaintiff shall be entitled to enter judgment against the defaulting party forthwith without any further order from this court.

42 In arriving at the condition imposed above, I have taken the view that, relative to the principal sum claimed by the Plaintiff in its action (see [3] above), the total sum of \$100,000 is a fair amount to be required of the Defendants for them to demonstrate their commitment to their claimed defence (*cf. Abdul Salam Asanaru Pillai (trading as South Kerala Cashew Exporters) v Nomanbhoy & Sons Pte Ltd* [2007] 2 SLR(R) 856 at [44]).

43 For the avoidance of doubt, nothing in my judgment shall prejudice the right of the Defendants to take out an appropriate application to amend their Defence at a later time, except that the condition I have imposed in [41] above shall survive all subsequent amendments made to the parties' pleadings.

44 I will hear parties on the issue of costs.

[\[note: 1\]](#) Statement of Claim (filed on 31 October 2014) at para 5.

[\[note: 2\]](#) Defence of the 1st and 2nd Defendants (filed on 19 November 2014) at para 5.

[\[note: 3\]](#) Defendants' Written Submissions (filed on 16 March 2015) at para 10.

[\[note: 4\]](#) 2nd Defendant's affidavit (27 January 2015) at para 15.

[\[note: 5\]](#) 2nd Defendant's affidavit (27 January 2015) at para 16.

[\[note: 6\]](#) Tony Suryamin's affidavit (filed on 28 January 2015) at para 5.

[\[note: 7\]](#) Defendants' Written Submissions (filed on 16 March 2015) at para 39.

[\[note: 8\]](#) Statement of Claim (filed on 31 October 2014) at para 7.

[\[note: 9\]](#) Defendants' Written Submissions (filed on 16 March 2015) at para 34.

[\[note: 10\]](#) Tilokani Bharti Murlidhar's affidavit (filed on 11 February 2015); Ravi Shakar's affidavit (filed on 11 March 2015).

[\[note: 11\]](#) 2nd Defendant's affidavit (filed on 28 January 2015) at pp 46-47.

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