

# SUPREME COURT SINGAPORE

03 May 2019

## Media Summary

**Singapore International Commercial Court Suit No 9 of 2017**  
***HE & SF Properties LP v Rising Dragon Singapore Pte Ltd and another***  
**[2019] SGHC(I) 05**

## Background

1 The Plaintiff (“HE&SF”) is an investment holding company registered in the USA. It is owned by Mr Peter Andreas Eyckeler. The 1<sup>st</sup> Defendant (“RDS”) is a private investment company incorporated in Singapore to hold investments in technology, e-payments and real estate, amongst other things. The 2<sup>nd</sup> Defendant, Mr Eric Schaer, is the Chief Executive Officer of RDS. He is also the CEO of the MySQUAR Group, which is a group of technology start-ups focusing on the social media, entertainment and gaming platforms in Myanmar. Mr Eyckeler and Mr Eric Schaer got to know each other through Mr Eric Schaer’s brother, Mr David Schaer.

2 Suit No 9 of 2017 concerned three main claims brought by HE&SF against the Defendants:

- (a) A claim to recover the sum of US\$300,000 remitted by HE&SF on 2 December 2014 to RDS to purchase shares in the MySQUAR Group (the “MySQUAR monies”). This claim was advanced against RDS on various grounds, including for breach of trust and unjust enrichment and against Mr Eric Schaer on certain grounds including fraudulent misrepresentation.
- (b) A claim to recover the sum of US\$3,235,385 remitted by HE&SF on 20 July 2015 to RDS to purchase shares in another start-up, Fastacash Pte Ltd (the “Fastacash monies”), which was targeted for a listing on the Singapore Stock Exchange. This claim was also advanced against RDS on various grounds including breach

of trust and unjust enrichment, and against Mr Eric Schaer personally on certain grounds including fraudulent misrepresentation.

- (c) A claim to recover the sum of US\$1.5m remitted by HE&SF on 27 November 2015 to a subsidiary of RDS, Rising Dragon Pan-Asia Limited (“RDPA”). HE&SF’s case was that this was a bridging loan (the “Bridging Loan”) for the Schaers and RDPA. The claim was advanced against Mr Eric Schaer personally on two main grounds – fraudulent misrepresentation and unlawful means conspiracy.

3 In addition, HE&SF sought various orders that RDS held the MySQUAR monies and the Fastacash monies (and any profit) on trust for HE&SF as well as other ancillary orders including orders for an account, damages, interest and costs.

4 The Judge rejected a threshold defence raised by the Defendants that these claims were, in effect, all barred by the terms of two Share Purchase Agreements (“SPAs”) allegedly entered into by *inter alia* HE&SF and RDS on the basis that (i) these alleged agreements were not binding in law or (ii) had been validly avoided and/or rescinded.

### **The MySQUAR monies**

5 It was common ground that although HE&SF remitted the MySQUAR monies, it never received any shares. The main defence raised by RDS was that the MySQUAR monies had been returned to HE&SF – but this was rejected by the Judge.

6 The Judge rejected HE&SF’s claim on the basis of a breach of trust, whether express or resulting. Although the MySQUAR monies were paid by HE&SF for the purchase of shares, there was no intention on the part of either Mr Eyckeler or HE&SF to constitute RDS as a trustee. The Judge also did not consider that there was a lack of intention on the part of Mr Eyckeler or

HE&SF to part with the entire beneficial interest in the MySQUAR monies. Accordingly, there was no resulting trust established as well.

7 However, the Judge allowed HE&SF's claim against RDS on the basis of unjust enrichment. The Judge found that there was a failure of basis for the MySQUAR monies, because the monies were paid to RDS to purchase shares, which purchase never materialised. HE&SF was therefore entitled to the return of the sum of US\$300,000 from RDS.

8 The Judge also found Mr Eric Schaer personally liable for fraudulent misrepresentation in respect of the MySQUAR monies. In particular, Mr Eric Schaer had fraudulently misrepresented to Mr Eyckeler and HE&SF that HE&SF would be given shares in consideration of the MySQUAR monies.

### **The Fastacash monies**

9 Around May 2015, the Schaers asked Mr Eyckeler to invest in Fastacash Pte Ltd, a start-up that operated a global platform enabling payments across social media platforms. The Schaers claimed that they had plans to list Fastacash on the Stock Exchange of Singapore in the latter part of 2015.

10 The Judge accepted HE&SF's case that the Fastacash monies were transferred to RDS to enable it to subscribe (at least indirectly) for around 2.5m Series B shares in Fastacash. Similar to HE&SF's claim for the MySQUAR monies, the Judge rejected HE&SF's claim against RDS on the basis of a breach of trust, whether express or resulting but upheld its claim against RDS on the ground of unjust enrichment, finding that there was a failure of basis, since no such shares were ever transferred to HE&SF in return.

11 The Judge, however, rejected HE&SF's claim against Mr Eric Schaer for the Fastacash monies on the ground of fraudulent misrepresentation. None of the alleged misrepresentations were found to be untrue. Although

one of the misrepresentations alleged was that HE&SF would be given shares in Fastacash in consideration of the monies it put in, under the terms of a share purchase term sheet, it was clear that the intended purchase of shares was subject to certain conditions precedent, some of which were not satisfied because the forecasted listing of Fastacash did not take place.

### **The Bridging Loan**

12 The Judge accepted HE&SF's case and concluded on the evidence that the US\$1.5m was transferred as a loan.

13 However, the Judge noted that HE&SF's pleaded case against Mr Eric Schaer was not for a simple return of the loan, but for damages on the grounds of fraudulent misrepresentation and/or unlawful means conspiracy. The requirements for these grounds of claim were not established on the evidence.

14 HE&SF's case was that there was an actionable misrepresentation by Mr Eric Schaer that the loan would be repaid within a year and with interest at 1% per month. The Judge found that the evidence did not establish that such a "promise" was made by Mr Eric Schaer personally, and even if it was, any such promise did not amount to an actionable misrepresentation of fact.

15 As to the claim in unlawful means conspiracy, the Judge found that HE&SF's case was not sufficiently pleaded with proper particulars to give the Defendants a fair opportunity to address the points raised. This is especially so in light of the high threshold of particularity required for an allegation of a conspiracy to defraud, which is a serious charge. The Judge dismissed HE&SF's claim on this basis. In any event, the Judge found that there was insufficient evidence to demonstrate that there was in fact any conspiracy between the Schaers to defraud HE&SF.

**RDS' Counterclaims**

16 The Judge rejected two counterclaims advanced by RDS for (i) return of an alleged loan to HE&SF and (ii) damages for breach of the SPAs.

This summary is provided to assist in the understanding of the Court's judgment. It is not intended to be a substitute for the reasons of the Court.