

**Pg Mohd Yakub Bin Pg Othman**

**... Plaintiff**

AND

**Abdul Aziz Bin Haji Abdul Latip**

**... 1<sup>st</sup> Defendant**

**Daniel Wong Khai Fatt**

**... 2<sup>nd</sup> Defendant**

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**(High Court of Brunei Darussalam)  
Civil Suit No. 117 of 2019)**

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Edward Timothy Starbuck Woolley, J.C.

**Dates of Hearing: 14<sup>th</sup>–18<sup>th</sup> and 22<sup>nd</sup> October 2025**

**Date of Judgment: 27<sup>th</sup> October, 2025.**

*Headnote: Claim for loss in investment funds – whether made following misrepresentation – whether representations relied on by Plaintiff – question of liability of person making investments – validity of acknowledgement of debt – whether claim time barred*

Lt Col (Rtd) Harif Ibrahim assisted by Ms Nur Khairunissa@Masarah Bte Hj Hanipiah (M/S Lt/Col (Rtd) Harif Ibrahim Advocates & Solicitors) for Plaintiff.

Mr Lenny Andrew Albert assisted by Mr Awg Abdul Muqtadir bin Awg Hj Suhaime (M/S AIP Law) for 1<sup>st</sup> Defendant.

Ms Ang Yee Heng assisted by Ms Noradibah bte Ramlee (M/S Melissa Ang & Co.) for 2<sup>nd</sup> Defendant.

**Case cited:**

*Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307

**JUDGMENT**

**Woolley, J.C.:**

In this action the Plaintiff claims the return of a sum of money invested through or with the Defendants for the purpose of foreign currency (forex) trading which, in the event, resulted in the total loss of his funds.

**The background**

2 The background to this is that the Plaintiff, who had a long career working for the Brunei Government, reaching the rank of Director General in the Ministry

of Communications, retired in 2009 and went into estate development and became a company director. Some time in 2010, while undertaking a PhD course he met the 1<sup>st</sup> Defendant who was on the same course.

3 Also in 2010, the 1<sup>st</sup> Defendant rented an office from the Plaintiff in a commercial building owned by the latter where he often visited and they became good friends. The 1<sup>st</sup> Defendant describes himself as a business entrepreneur and he had previously worked with HSBC in Brunei for 17 years from 1986 rising to Senior Manager, Personal Financial Services. He then was employed by the Brunei Economic Development Board (BEDB) as an Assistant CEO from 2003 to 2009. He and the Plaintiff also set up two companies in Brunei which were not successful and which they did not pursue.

4 Meanwhile, in about 2003 when working at BEDB, the 1<sup>st</sup> Defendant met the 2<sup>nd</sup> Defendant who was also working there. A few years later the 2<sup>nd</sup> Defendant left to join JP Morgan in Singapore, returning to Brunei in 2010. While in Singapore he started trading in forex and found that he could make good profits from it. After he returned to Brunei he continued to trade in forex, using a room loaned to him in the 1<sup>st</sup> Defendant's office. At this time, the 1<sup>st</sup> Defendant also did some trading in forex through the 2<sup>nd</sup> Defendant and the Plaintiff came to know of it and discussed it with him. As a result of this, a meeting with both Defendants was arranged to which the Plaintiff invited three of his friends, Pehin Abu Bakar bin Apong, Dato Seri Laila Jasa Haji Ahmad bin Dato Paduka Matnor and Mr. Lee Han Siew.

### **The presentation and investment**

5 This meeting took place sometime in April 2011 at which, after being introduced by the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> Defendant gave a PowerPoint presentation setting out the way forex trading was conducted and the possible profits that could be made, suggesting a target annual return of 25%. The same presentation also explained that trading was usually conducted with a leverage margin of 1% which, it was pointed out, could be risky as it could produce substantial profits but also cause substantial losses.

6 Following the presentation, the Plaintiff decided to invest with the 2<sup>nd</sup> Defendant and subsequently deposited sums of money in the 1<sup>st</sup> Defendant's bank account totalling in all USD660,000. This was transferred to a company in the Seychelles controlled by the 1<sup>st</sup> Defendant called Petro Aman Ltd. It was subsequently transferred to the 2<sup>nd</sup> Defendant's account in Singapore, together with funds invested by the other three who attended the presentation, to be used in trading by him with a forex trader in London. Each payment by the Plaintiff was acknowledged by a letter from Petro Aman Ltd, signed by the 1<sup>st</sup> Defendant as chairman.

7 At first the venture was successful and dividends were paid to the investors. However, by an email dated 29 December 2011 from the 2<sup>nd</sup> Defendant to the 1<sup>st</sup> Defendant, the former admitted to losses in the forex trading leaving him with only USD38,000.00 to trade with. It is clear from this and subsequent correspondence that the 2<sup>nd</sup> Defendant was extremely distressed that, through his own investment choices, he had caused such a loss to his investors. He was also clearly concerned that the Plaintiff and the three other investors were men of high rank and influence in Brunei who he thought might make life difficult for him. He also wrote that he feared he might go to prison, although that seems a little fanciful and was written when he admitted he was intoxicated and in a state of panic.

8 This email was passed to the Plaintiff and the other investors, as admitted by the Plaintiff in evidence, but in spite of this, only Mr. Lee Han Siew asked to withdraw his latest investment of USD100,000.00 which was returned to him. There is no evidence that the Plaintiff requested return of his investment at this stage. Although he and his witnesses in their evidence in chief claim they asked the 1<sup>st</sup> Defendant to stop trading after the December 2011 notification, none could produce any further evidence of this and Pehin Abu Bakar bin Apong said that he could not remember any verbal or written communication to that effect. In spite of this setback, and apparently with the investment of the 2<sup>nd</sup> Defendant's own funds, things improved in 2012 and further dividends were paid throughout that year, but by April 2013 trading had again deteriorated and at some stage after that it became apparent that all the funds invested had been lost. Meetings were held by the investors with the general consensus that blame for the loss should be attributed to the 2<sup>nd</sup> Defendant. He admitted he felt responsible for the loss and indicated that he wished to try to recover the lost funds and reimburse the investors.

9 On 6 July 2013 the 2<sup>nd</sup> Defendant signed an "*Acknowledgement of Debt and Undertaking to Pay*" admitting he caused the loss to the investors and agreeing to repay the sum of USD2,000,000 by 31 December 2013. I will look at the effect of this document below. In the event, this sum was not paid although some payments, amounting to B\$160,000.00, were made to the 1<sup>st</sup> Defendant with the intention that they be passed on to the investors. This sum remains with the 1<sup>st</sup> Defendant to this day. There is no claim made here by the Plaintiff in respect of that sum, or a share in it.

### **The Plaintiff's claim**

10 In the statement of claim the Plaintiff sets out, in paragraph 4, the representations he claims were made by the Defendants at the April 2011 meeting, namely:

1) that they are dealing in forex trading;

- 2) that the 2<sup>nd</sup> Defendant is a competent and expert trader;
- 3) that the 1<sup>st</sup> Defendant had made profits from the trading;
- 4) that the 2<sup>nd</sup> Defendant had a systematic and well calculated approach to it;
- 5) that the Plaintiff can withdraw his investment at any time; and
- 6) that the Defendants will only trade when sure of success.

There is no claim that these were misrepresentations or false representations or in any way untrue, or that the Defendants believed them to be untrue. The statement of claim also, at paragraph 6, claims that 1<sup>st</sup> Defendant “*guarantees and undertakes verbally that he is personally liable for the Plaintiff’s money and offered his properties in Brunei Darussalam and his condominium in Bangkok, Thailand as a collateral*”. The 1<sup>st</sup> Defendant denies making such a promise.

11 The sequence of events that followed according to the Plaintiff are then set out, although there is no specific pleading of the loss of the Plaintiff’s funds, merely, in paragraph 9, a claim that the Defendants in April 2013 reported “*their failures*” and had “*failed to stop the losses and withdraw from the currency trading market immediately*”. The Plaintiff then relates the purported acceptance of liability by the 2<sup>nd</sup> Defendant, the making of payments by him to the 1<sup>st</sup> Defendant and, in paragraph 16, to the Plaintiff, although this did not appear in the evidence, followed by letters of demand and failure to pay. In the reply to the 1<sup>st</sup> Defendant’s defence the Plaintiff further claimed that there were also representations as to risk control by “*stop loss technique*”, that spending would be capped at less than 10% of the principal investment and a “*guarantee and undertaking by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to pay back the Plaintiff’s losses*”. Again, there is no claim that these were misrepresentations.

12 It is not for the Court to try to infer what the Plaintiff’s case is from the evidence, it is for the Plaintiff to set it out clearly in the statement of claim and then support it by the evidence. This has not been done here and I find that the issue of misrepresentation, as alleged by Plaintiff’s counsel in his submissions, has not been pleaded and does not stand up to the light of day. But for the sake of completeness I will look at whether the evidence here would support an allegation of misrepresentation, had it been pleaded.

### **Misrepresentations, assurances and guarantees**

13 The Plaintiff and his witnesses claimed in evidence that representations, assurances and guarantees induced them to enter into the arrangement with the Defendants and invest through them. The Defendants say that the Plaintiff and

the other investors were well educated, high achieving men, familiar with the business world who could, and did, make their own decisions about investments and would not easily be persuaded by what may well have been an enthusiastic and possibly overzealous business presentation. A businessman seeking investment funds for any business will always emphasise the opportunities and advantages of an investment. Equally it would be remiss of him not to mention the risks. This was clearly done here in the presentation itself, and in evidence the Plaintiff admitted that he knew no investments were risk free, Pehin Abu Bakar bin Apong agreed that any investment carries a degree of risk and it was mentioned that this was high risk, and Dato Seri Laila Jasa Haji Ahmad bin Dato Paduka Matnor also gave evidence that risk was mentioned and that there were no guaranteed returns.

14 What then were the misrepresentations, if any? Those representations as to present fact, namely that they are dealing in forex trading, that the 2<sup>nd</sup> Defendant is a competent and expert trader, that the 1<sup>st</sup> Defendant had made profits from the trading, that the 2<sup>nd</sup> Defendant had a systematic and well calculated approach to it, have not been shown by any evidence to be untrue, or even an exaggeration. There cannot therefore be any misrepresentation there. As to the others pleaded, namely that the Plaintiff can withdraw his investment at any time and that the Defendants will only trade when sure of success, these both relate to future events, and there is a difference between actionable misrepresentation and a future promise. This was clearly set out in the Singapore case of *Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 where it was held:

*21 ...A representation... relates to some existing fact or some past event. It implies a factum, not a faciendum, and since it contains no element of futurity it must be distinguished from a statement of intention. An affirmation of the truth of a fact is different from a promise to do something in futuro, and produces different legal consequences.*

Thus a promise of future returns, or actions to be taken should certain events occur, would more readily come within the sphere of contractual terms, and breach of contract has not been alleged or pleaded here. The same applies to any assurances or guarantees which the Plaintiff claims to have been given by the Defendants. Unless part of a contractual situation between the parties, in the absence of fraud, which again is not pleaded here, there is no legal basis upon which such verbal assurances can be relied on.

15 The same principle applies to any assurances given verbally by the 1<sup>st</sup> Defendant at the April presentation. Although he denies specific guarantees or pledging of his property, in view of his admitted close relationship with the 2<sup>nd</sup> Defendant I consider it more likely than not that he would have at the very least supported the 2<sup>nd</sup> Defendant's presentation, in the light of his own experience,

and it would be surprising if this support did not include some sort of assurances. However, these, and any guarantees which may have been given, fall into the same category of assurances of future events or intentions and, unless part of some contractual arrangement, cannot be put forward to support an action such as this.

16 The same applies to a purported guarantee in an email from the 2<sup>nd</sup> Defendant to the 1<sup>st</sup> Defendant dated 18 September 2011 offering a short term opportunity in the Japanese forex market which the former named the Intervention Fund. I need not go into the details of the investment here but much has been made by the Plaintiff's counsel of the fourth FAQ, of those listed in the email, as to risks involved, which says inter alia "*capital protection is guaranteed*". There are two problems with relying on this: the first is that, like the representations made in April 2011, it is an optimistic forecast and assurance of future events rather than a promise as part of a contract; the second is that it was made to the 1<sup>st</sup> Defendant, not the Plaintiff. The 1<sup>st</sup> Defendant forwarding it to the Plaintiff for information does not assist the Plaintiff in relying on it.

17 The Plaintiff and his witnesses say that they relied on the representations and assurances given by the Defendants when deciding to invest and I have no doubt that they were persuaded as to the possible profitability of the venture. But as has been mentioned above, the Plaintiff, like his friends and fellow investors, was a well-educated man who had reached high office and was acquainted with the business world. He not only had his doctorate for which he wrote his thesis, later published as a book, on Brunei economics, but also had earlier graduated as an MBA and had lectured on an MBA course. He was aware of the risks of the investment and clearly accepted them by putting his funds into it. In the event it was one which for whatever reason went badly wrong and he, like others before him in similar situations, now seeks someone to blame. I am far from satisfied that he entered into this investment solely relying on what he had heard in the 2<sup>nd</sup> Defendant's presentation.

### **Acknowledgement of Debt**

18 Following news of the final collapse of the investment in April 2013, there were meetings and discussions between the investors, including the 1<sup>st</sup> Defendant who portrayed himself as one who had also lost money and had no connection with the forex trading venture except as another investor. This is not strictly correct, as I shall examine below. The outcome of these discussions was in the end to blame the 2<sup>nd</sup> Defendant for the losses and to get him to repay some or all of the funds invested. As I have said above, in paragraph 7, the 2<sup>nd</sup> Defendant was distressed to have been the cause of the losses and he made it clear that he felt responsible and that he wished to make amends. As has also been mentioned, he says he also felt pressure because of the standing of the investors in Brunei society and the possibility of damage to his personal and business reputation. It

was in this situation that, on 6 July 2013, he signed the document headed “*Acknowledgement of Debt and Undertaking to Pay*” in which he acknowledged that the five investors, the Plaintiff and his witnesses, Mr. Lee and the 1<sup>st</sup> Defendant, had invested a total sum of USD2,000,000.00 and he had caused the loss of it. The document went on to say that he agreed and undertook to pay to them that sum on or before 31 December 2013. This was signed only by the 2<sup>nd</sup> Defendant. It should be noted here that the 2<sup>nd</sup> Defendant alleges that he was forced to sign under duress. While it is clear that he felt responsible and under pressure to deal with the matter of the lost funds, I am not satisfied that the evidence shows that there was sufficient duress to negate the document, were it otherwise legal and binding.

19 It is important to note that the 2<sup>nd</sup> Defendant has throughout never admitted a legal obligation to the Plaintiff. He has accepted only a moral obligation. In this, in view of my findings above, he is correct. What then is the status of this document? It cannot be an admission of a debt which does not exist. There is no sustainable legal claim against him for the lost investments. It cannot be a contract as no other person is a party to it, having been signed only by the 2<sup>nd</sup> Defendant and a witness to it. Which leaves it as an interesting document but a bare promise of no legal force. I have no difficulty in finding that this cannot be the basis, or indeed evidence, of any claim against the 2<sup>nd</sup> Defendant.

20 The findings above in effect put an end to the Plaintiff’s claim but several other matters were raised in the course of these proceedings which, for the sake of completeness I will look at below.

### **The 1<sup>st</sup> and 2<sup>nd</sup> Defendants and Petro Aman Ltd**

21 As noted above, the 1<sup>st</sup> Defendant has throughout put himself forward as a mere fellow investor with the Plaintiff and the other three. However, it is clear from his own evidence of the close relationship between himself and the 2<sup>nd</sup> Defendant, their previous dealings in forex trading, the use that was made of Petro Aman Ltd to transfer investment funds to the 2<sup>nd</sup> Defendant and his role in direct dealings with the investors, that he was working with the 2<sup>nd</sup> Defendant in arranging this venture into forex trading as a partner. This is supported by the evidence of the 2<sup>nd</sup> Defendant, which I accept, that the arrangement was that they should share any profit over and above the 25% indicated to the investors, and an email from him to the 1<sup>st</sup> Defendant dated 4 August 2011 setting out the dividends to be paid to the investors and “*USD90,000.00 partners’ drawing – USD30,000.00 each*” being the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and a third partner who I take to be “*Lucas*” who is mentioned in correspondence. It follows that, had I found any liability to the Plaintiff in this matter, it too would have been shared between the two Defendants.

22 Included in the events following revelation of the losses was a series of dealings between the Plaintiff and the 1<sup>st</sup> Defendant as a result of which, on 2 May 2013, the latter agreed to release to the Plaintiff various assets to the value of USD309,000.00 thereby reducing the Plaintiff's investment amount to that now claimed of USD351,000.00. The 1<sup>st</sup> Defendant claims that he was forced to make this arrangement by the Plaintiff under duress. This is not supported by the evidence. The document he signed that day originally required the release of four assets, of which he then only agreed to three, later adding more to make up the final sum. This appears more to be the result of negotiation rather than being forced to act against one's will. Further, in an email dated 16 September 2015, from the 1<sup>st</sup> Defendant to the Plaintiff he refers to "*the amount of your investment less the amount we agreed as written on that piece of paper we both signed in my office*". In the absence of any independent evidence of duress, this remains a bare allegation and it appears to me to be an agreement made voluntarily between two equal parties.

23 For these reasons I find no merit either in the 1<sup>st</sup> Defendant's counterclaim.

24 As to Petro Aman Ltd, it is clear from the evidence, including that of the Plaintiff, that this was allowed to be used by the 1<sup>st</sup> Defendant as a conduit for money to be transferred from accounts in Brunei to the 2<sup>nd</sup> Defendant's trading account in Singapore. It appears, according to the evidence of Pehin Abu Bakar bin Apong, that it was at least partly to keep their trading confidential. In any event, in spite of the letters under the Petro Aman Ltd heading acknowledging receipt of the funds deposited, whose contents take the matter no further, being statements made after payment, there is no evidence that this company would have been liable in any way, were such liability established.

### **The Limitation defence**

25 It is the submission of the 1<sup>st</sup> Defendant that this action is in any event time barred as the cause of action, if any, arose in April 2013 when the investors were told that their investments had totally been lost. This action was commenced in December 2019, which is more than the 6 years allowed under the Limitation Act. In so far as it purports to be a claim based on misrepresentation, this must be right, as that is when the Plaintiff knew of his loss and any possible claim. As to the part of the claim based on the "*Acknowledgement of Debt*", that is within time, as the cause of action, if any, arose after 31 December 2013 when the sum thereunder was not paid.

26 In any event, the point is academic in the light of my findings above.

### **Illegality**

27 It is further pleaded by the 1<sup>st</sup> Defendant that, the 2<sup>nd</sup> Defendant not being an employee of a licensed onshore bank and/or a person who has obtained the

approval of the Autoriti Monetari Brunei Darussalam to trade in foreign currency, the 2<sup>nd</sup> Defendant's trade in forex was unlawful and this action accordingly falls within the maxim "*ex turpi causa non oritur actio*".

28 There are a number of problems with this. The first is that no laws or regulations have been produced to me to show that such authority is required. Further, no evidence has been put forward to show that the Plaintiff knew that the 2<sup>nd</sup> Defendant had no such authority. But the major difficulty the 1<sup>st</sup> Defendant has is that it is clear from the evidence that the forex trading in question was not conducted in Brunei. There is no evidence that a resident of Brunei investing money overseas which is then used for forex trading is itself illegal. The investment funds were paid to Petro Aman Ltd in the Seychelles, then passed to the 2<sup>nd</sup> Defendant's account in Singapore and used for forex trading with a company in London. How that can fall foul of any law or regulation in Brunei has not been explained. This submission is accordingly rejected.

29 For the reasons given above the Plaintiff's claim is dismissed with costs to the Defendants to be taxed. I also dismiss the 1<sup>st</sup> Defendant's counterclaim with costs to the Plaintiff to be taxed.



**EDWARD TIMOTHY STARBUCK WOOLLEY**  
Judicial Commissioner