



IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT

No. S ECI 2020 03899

B E T W E E N

CHINA INSURANCE GROUP FINANCE COMPANY LIMITED

Case: S ECI 2020 03899

Filed on: 28/02/2022 03:14 PM

-and-

Plaintiff

PHILLIP JAMES KINGSTON

Defendant

**REPLY TO ~~AMENDED~~ DEFENCE TO FURTHER AMENDED STATEMENT OF CLAIM
AND DEFENCE TO COUNTERCLAIM**

(Filed pursuant to the orders of the Honourable Justice Delany on 14 February 2022)

Date of Document: ~~17 December 2021~~ ~~22 February 2021~~ ~~2021~~ 28 February 2022

Solicitors Code:

Filed on behalf of: Plaintiff

DX: 399 SYDNEY

Prepared by: Ashurst Australia

Telephone: (02) 9258 6638

Level 11, 5 Martin Place

Ref: 1000 074 139

Sydney NSW 2000

Email: wentsai.lim@ashurst.com

As to the allegations in the amended defence to the further amended statement of claim and counterclaim dated 14 February 2022 ~~26 October 2021~~ ~~16 October 2020~~ ~~5 February 2021~~, the plaintiff does not plead to the admissions, non-admissions, and denials in the amended defence and counterclaim, and otherwise joins issue to the allegations in the amended defence and counterclaim and says as set out below:

The parties

1. As to paragraph 1 of the defence, the plaintiff:
 - (a) says that it is a subsidiary of China Taiping Insurance Holdings Company Limited, a company which is headquartered in Hong Kong and whose shares are listed for quotation on the Main Board of The Hong Kong Stock Exchange;
 - (b) says that it is a related company of Taiping Trustees Limited;
 - (c) admits the allegations in paragraphs 1(b) ~~and (c)~~; and

(d) otherwise denies the allegations made therein.

Background

2.0 The plaintiff admits that Sargon Capital Pty Ltd was incorporated in 2015. It otherwise does not admit the allegations in paragraph 2.0 of the defence.

2.0.1 The plaintiff does not admit the allegations in paragraph 2.0.1 of the defence.

2.1 The plaintiff does not admit the allegations in paragraph 2.1 of the defence.

2.2 As to paragraph 2.2 of the defence, the plaintiff says that in about May 2017, Mr Li, an employee of the plaintiff, and Mr Wang, then an employee of the plaintiff, met the defendant but otherwise does not admit the allegations made therein.

2.2.1 The plaintiff objects to plead to paragraph 2.2.1 because it is vague in that the time and place of the alleged discussion are not identified and the alleged meaning of the term “partnership and co-operation arrangement” is not identified. Under cover of that objection, it does not admit the allegations in paragraph 2.2.1 of the defence.

2.2.2 The plaintiff does not admit the allegations in paragraph 2.2.2 of the defence.

2.3 (Not used).

2.4 As to paragraph 2.4 of the defence, the plaintiff says that on 20 October 2017 Taiping Financial Holdings Company Limited wrote to the defendant in the terms of the letter referred to in that paragraph, relies on the whole letter in its context, and otherwise does not admit the allegations made therein.

2.5 As to paragraph 2.5 of the defence:

(a0) (i) the plaintiff denies the allegations in paragraph 2.5(a0)(i):

(ii) the plaintiff does not admit the allegations in paragraph 2.5(a0)(ii):

(iii) the plaintiff denies the allegations in paragraph 2.5(a0)(iii):

(a) the plaintiff does not admit the allegations in paragraph 2.5(a):

(b) the plaintiff denies the allegations in paragraph 2.5(b):

(c) the plaintiff denies the allegations in paragraph 2.5(c):

The plaintiff otherwise does not admit the allegations in paragraph 2.5 of the defence.

2.6 The plaintiff does not admit the allegations in paragraph 2.6 of the defence.

2.7 As to paragraph 2.7 of the defence:

(a) the plaintiff says that by email sent on 9 November 2017, it sent a bundle of standard form documents to the defendant, including a document entitled "Application Form (Companies)" but otherwise denies the allegations made therein.

Particulars

The bundle, a copy of which may be inspected at the office of the plaintiff's solicitors, consisted of:

- (a) Application form (Companies);
- (b) Disclosure of the existence of third parties by intending borrowers;
- (c) Minutes regarding explanation of loan terms;
- (d) MLO notice;
- (e) Personal information collection statement;
- (f) Loan agreement with schedule;
- (g) Trimantium 借贷补充协议 1109.

(b) subject to production of the email referred to in the particulars and the draft agreement titled "Supplementary Agreement 1", the plaintiff admits the allegations in paragraph 2.7(b) of the defence.

2.8 As to paragraph 2.8 of the defence:

(a) the plaintiff does not admit the allegations in paragraph 2.8(a):

(b) the plaintiff does not admit the allegations in paragraph 2.8(b):

(c) the plaintiff denies the allegations in paragraph 2.8(c):

The plaintiff otherwise does not admit the allegations in paragraph 2.8 of the defence.

2.8.1 The plaintiff will rely at trial on the Materials for the Meeting of the Margin Committee dated 16 November 2017 [CIG.001.001.0026] and the Taiping Securities (Hong Kong) Margin Committee, Project Review conclusion, 16 November 2017 [CIG.001.035.3906] for their full terms and effect. Further, the plaintiff knew that the defendant was a sophisticated borrower, being the founder and chief executive officer of Sargon, and that he owned or controlled a substantial shareholding in Sargon and Trimantium GrowthOps Ltd and could therefore be expected to control or receive substantial dividend income. It otherwise denies the allegations in paragraph 2.8.1.

2.9 The plaintiff denies the allegations in paragraph 2.9 of the defence.

2.10 ~~The plaintiff denies the allegations in paragraph 2.10 of the defence. (Not used.)~~

2.11 The plaintiff denies the allegations in paragraph 2.11 of the defence.

2.12 As to paragraph 2.12 of the defence, the plaintiff says that by email sent on 25 November 2017, it sent a bundle of standard form documents to the defendant, including a document entitled "Application Form (Individuals)" and a document entitled "Loan Agreement" but otherwise denies the allegations made therein.

Particulars

The bundle, a copy of which may be inspected at the office of the plaintiff's solicitors, consisted of:

- (a) Application form (Individuals);
- (b) Disclosure of the existence of third parties by intending borrowers;
- (c) Loan agreement;
- (d) Minutes regarding explanation of loan terms;
- (e) MLO notice;
- (f) Personal information collection statement.

2.13 The plaintiff admits the allegations in paragraph 2.13 of the defence.

The Facility Agreement

3.2 The plaintiff repeats paragraph 3 of the Statement of Claim and otherwise admits the allegations in paragraph 3.2 of the defence and says further that the documents pleaded in that paragraph constituted:

- (a) a note or memorandum in writing of the Facility Agreement; and
- (b) a single contract for the provision of financial accommodation, the terms of which were varied by the parties at the times of and in the terms set out respectively in, and in consideration of the mutual promises set out respectively in, SA 1, SA 2, SA 3 and SA 4.

Original Loan Agreement

3.3 As to paragraph 3.3 of the defence, the plaintiff:

- (a) says that in around November 2017, the plaintiff provided the defendant with a bundle of documents, including the documents pleaded in that paragraph;

Particulars

The particulars to paragraph 2.12 above are repeated.

- (b) says that in November 2017, the defendant signed the documents in the bundle, including the documents pleaded in that paragraph;
- (c) says that on 27 November 2017, the defendant provided the signed documents and others to the plaintiff;

Particulars

The defendant did so by email from Bonnie Tran of Trimantium on behalf of the defendant to Andy Wang of China Taiping on behalf of the plaintiff, a copy of which may be inspected at the office of the plaintiff's solicitors. The documents so provided were:

- (i) Loan agreement (signed by the defendant);
- (ii) Application form (signed by the defendant);
- (iii) Disclosure of the existence of third parties by intending borrowers (signed by the defendant);
- (iv) Minutes regarding explanation of loan terms (signed by the defendant);
- (v) Personal information collection statement (signed by the defendant);
- (vi) MLO notice (signed by the defendant);
- (vii) Trimantium International Holdings Pty Ltd – ASIC Certificate of Incorporation;

- (viii) Trimantium International Holdings Pty Ltd – Company Constitution;
 - (ix) Sargon Capital Pty Ltd – ASIC Company Statement;
 - (x) PWC – Sargon Capital Share Structure Report;
 - (xi) Certified copy of Phillip Kingston’s Passport;
 - (xii) Certified copy of Phillip Kingston’s Driver’s Licence.
- (d) otherwise denies the allegations made in that paragraph.

3.4 As to paragraph 3.4 of the defence, the plaintiff:

- (a) repeats paragraphs 3 to 8 of the Statement of Claim;
- (b) says that, under the Original Loan Agreement and SA 1, the sum lent was required to be used for the purpose of being provided to Trimantium International Holdings Pty Ltd for the purpose of subscription for shares in the initial public offering of Trimantium GrowthOps Ltd (**GrowthOps**) on the Australian Securities Exchange in accordance with the terms of the GrowthOps prospectus;

Particulars

The plaintiff refers to page 2 of the loan schedule and clause 2.2 of the Original Loan Agreement and to clause 3(2) of SA 1. The GrowthOps prospectus was in writing. A copy may be inspected at the office of the plaintiff’s solicitors. Further particulars may be provided prior to trial.

- (c) otherwise denies the allegations made in that paragraph.

3.5 As to paragraph 3.5 of the defence, the plaintiff refers to and repeats paragraph 3.2 of this reply, relies on the Original Loan Agreement and other agreements referred to in paragraph 3.2 of this reply that together constituted a single contract for the provision of financial accommodation for its full terms and effect and otherwise denies the allegations made in that paragraph.

3.6 As to paragraph 3.6, the plaintiff:

- (a) says that the Original Loan Agreement, SA 1, SA 2, SA 3 and SA 4 constituted a single contract for the provision of financial accommodation, the terms of which were varied by the parties at the times of and in the terms set

out respectively in, and in consideration of the mutual promises set out respectively in, SA 1, SA 2, SA 3 and SA 4;

- (b) says that pursuant to the Facility Agreement the plaintiff advanced money to the defendant in Victoria and for a purpose that required the money lent to be used in Victoria;

Particulars

The plaintiff repeats paragraph 3.4(b) above and the particulars thereto, and refers also to clause 3(2) of SA 2, and the admissions contained in the defendant's submissions dated 21 September 2020, lodged in Supreme Court of NSW proceedings no 2020/246363 at [20]. Further particulars may be provided prior to trial.

- (c) says that, by reason of the fact pleaded in paragraph 3.6(b) above, the *Money Lenders Ordinance* did not and does not apply to the Facility Agreement;
- (d) alternatively to paragraph 3.6(c) above:
 - (i) repeats paragraph 3.10(b) of this reply and says that there was at all material times substantial compliance with section 18 of the *Money Lenders Ordinance*;
 - (ii) says that the defendant was at all material times a sophisticated borrower who had access to legal advice;

Particulars

The defendant was the chief executive officer of a financial services group called the Sargon Group and his wife, Fiona Borelli, was the general counsel. The defendant was the founder and managing director of GrowthOps which was listed on the Australian Securities Exchange in March 2018. Further particulars may be provided prior to trial.

- (iii) says that if section 18 of the *Money Lenders Ordinance* applied to the Facility Agreement, which is denied, it would be inequitable for the Facility Agreement to be held not to be enforceable and under section 18(3) of the Ordinance the Court should order that the Loan

Agreement is enforceable in accordance with its full terms, alternatively to such extent and subject to such modifications or exceptions as the Court considers equitable;

Particulars

Under the Facility Agreement the plaintiff lent the principal sum of HK\$653,000,000 to the defendant who received it and has not repaid any part of the principal sum. Further, the plaintiff repeats sub-paragraphs 3.6(d)(i) and (ii) above and the particulars thereto.

- (e) otherwise denies the allegations in paragraph 3.6 of the defence.

The Supplementary Agreement (SA 1)

3.7 As to paragraph 3.7 of the defence, the plaintiff:

- (a) repeats paragraphs 2.10 and 2.11 of this reply;
- (b) admits that the defendant signed SA 1 in separate Chinese language and English language versions;
- (c) otherwise denies the allegations made in that paragraph.

3.7.1 ~~The plaintiff~~ admits that in entering the Loan Agreement and SA 1 it contemplated a future possible acquisition of an equity interest in Sargon. It otherwise denies paragraph 3.7.1.

3.8 As to paragraph 3.8 of the defence, the plaintiff:

- (d) repeats paragraphs 3 to 8 of the Statement of Claim and paragraph 3.2 of this reply;
- (e) relies on the Facility Agreement for its full terms and effect;
- (f) otherwise denies the allegations made in that paragraph.

The Original Loan Agreement and SA 1

3.9 The plaintiff denies the allegations in paragraph 3.9 of the defence and: ~~(moved) says further that, on the proper construction of the Facility Agreement, after deducting all sums due to the plaintiff under the Facility Agreement from the~~

~~proceeds of any realisation of collateral provided to secure the sums due under the Facility Agreement, the plaintiff was not entitled to retain any surplus remaining.~~

- (a) says further that, on the proper construction of the Facility Agreement, after deducting all sums due to the plaintiff under the Facility Agreement from the proceeds of any realisation of collateral provided to secure the sums due under the Facility Agreement, the plaintiff was not entitled to retain any surplus remaining;
- (b) further, or in the alternative, refers to and repeats paragraph 3.6(b) and (c) says that if section 22(1)(c) of the *Money Lenders Ordinance* applied and clause 11(4) of SA 1 breached section 22(1)(c) of the *Money Lenders Ordinance*, which is denied, it would be inequitable for the Loan Agreement to be held not to be enforceable and the Court should, under section 22(2), order that the Loan Agreement is enforceable, or, alternatively, that it is enforceable to such extent and subject to such modifications or exceptions as the Court considers equitable.

3.10 As to paragraph 3.10 of the defence, the plaintiff:

- (a) repeats paragraph 3.6 of this reply;
- (b) says that the Facility Agreement contained:
 - (i) the name and address of the money lender;
 - (ii) the name and address of the borrower;
 - (iii) the name of the sureties from time to time;
 - (iv) the amount of the principal in figures;
 - (v) the date of making the agreement;
 - (v) the terms of repayment of the loan;
 - (vi) the form of security for the loan;
 - (vii) a declaration as to the place of negotiation and completion of the agreement for the loan;

(viii) the rate of interest charged on the loan expressed as a rate per cent per annum; and

(ix) all other terms and conditions of the financial accommodation provided to the defendant;

and was accompanied by an MLO summary;

(c) repeats paragraphs 3.3(a) and 3.3(b) of this reply;

(d) otherwise denies the allegations made in paragraph 3.10 of the defence.

3.11 [Not used]

~~(a) says that the *Securities and Futures Ordinance* did not and does not apply to the Facility Agreement;~~

Particulars

~~The defendant is not and has not at any material time been a member of the "public" as defined in Schedule 1 of the *Securities and Futures Ordinance*. Further particulars may be provided before trial.~~

~~(b) alternatively, says that if the *Securities and Futures Ordinance* governs the Facility Agreement, which is denied:~~

~~(i) the plaintiff provided financial accommodation for the purpose disclosed in clause 3(2) of SA 1, namely to enable the defendant to provide money to Trimantium International Holdings Pty Ltd for the purpose of subscription for shares in the initial public offering of GrowthOps on the Australian Securities Exchange in accordance with the terms of the GrowthOps prospectus;~~

~~(ii) by reason of the facts pleaded in paragraph 3.11(b)(i) above:~~

~~(A) the loan to the defendant did not fall within the definition of "dealing in securities" in Schedule 5, Part 2 of the *Securities and Futures Ordinance*; and~~

~~(B) — the loan to the defendant did not fall within the definition of "securities margin financing" in Schedule 5, Part 2 of the Securities and Futures Ordinance;~~

~~(c) — further, or in the alternative, says that the provision by the plaintiff of financial accommodation to the defendant under the Facility Agreement did not cause the plaintiff to carry on or hold itself out as carrying on business in a regulated activity, whether or not in contravention of section 114(1) of the Securities and Futures Ordinance;~~

~~(d) — further or in the alternative, says that if by the Facility Agreement, the plaintiff contravened section 114(1) of the Securities and Futures Ordinance, which is denied, any such contravention did not, on the proper construction of the Ordinance, render the Facility Agreement void for illegality or unenforceable;~~

Particulars

~~The Securities and Futures Ordinance is regulatory legislation that imposes penalties for its contravention but does not render a contravening agreement void or unenforceable.~~

~~(e) — otherwise denies the allegations in paragraph 3.11 of the defence.~~

3.12 [Not used]

3.13 The plaintiff denies the allegations in paragraph 3.13 of the defence and, in the alternative, refers to and repeats paragraphs 3.6 and 3.9 above.

Supplementary Agreement II (SA 2)

3.13.1 The plaintiff will rely at trial on the Materials for the Meeting of the Margin Committee dated 16 January 2018 [CIG.001.001.0146] and the Taiping Securities (Hong Kong) Margin Committee, Member's review forms, 16 January 2018 [CIG.001.001.0153] for their full terms and effect. Further, the plaintiff knew that the defendant was a sophisticated borrower, being the founder and chief executive officer of Sargon and that he owned or controlled a substantial shareholding in Sargon and Trimantium

GrowthOps Ltd and could therefore be expected to control or receive substantial dividend income. It otherwise denies the allegations in paragraph 2.8.1.

3.15 As to paragraph 3.15 of the defence, the plaintiff:

- (a) repeats paragraphs 2.10 and 2.11 of this reply;
- (b) admits that the defendant signed SA 2 in separate Chinese language and English language versions;
- (c) otherwise denies the allegations made in that paragraph.

3.15.1 ~~It~~The plaintiff admits that in entering SA 2 it contemplated a future possible acquisition of an equity interest in Sargon. It otherwise denies paragraph 3.15.1.

3.16 As to paragraph 3.16 of the defence, the plaintiff:

- (a) repeats paragraphs 3 to 8 of the Statement of Claim and paragraph 3.2 of this reply;
- (b) relies on the Facility Agreement for its full terms and effect;
- (c) otherwise denies the allegations made in that paragraph.

The Original Loan Agreement, SA 1 and SA 2

3.17 The plaintiff denies the allegations in paragraph 3.17 of the defence and: ~~says further that, on the proper construction of the Facility Agreement, after deducting all sums due to the plaintiff under the Facility Agreement from the proceeds of any realisation of collateral provided to secure the sums due under the Facility Agreement, the plaintiff was not entitled to retain any surplus remaining.~~

- (a) says further that, on the proper construction of the Facility Agreement, after deducting all sums due to the plaintiff under the Facility Agreement from the proceeds of any realisation of collateral provided to secure the sums due under the Facility Agreement, the plaintiff was not entitled to retain any surplus remaining;
- (b) further, or in the alternative, refers to and repeats paragraph 3.6(b) and (c) above says that if (which is denied) section 22(1)(c) of the Money Lenders Ordinance applied and clause 11(4) of SA 2 breached section 22(1)(c) of the

Money Lenders Ordinance, it would be inequitable for the Facility Agreement to be held not to be enforceable and, under section 22(2) of the Ordinance, the Court should order that the Loan Agreement is enforceable, or, alternatively that it is enforceable to such extent and subject to such modifications or exceptions as the Court considers equitable.

3.18 As to paragraph 3.18 of the defence, the plaintiff:

- (a) repeats paragraphs 3.6 and 3.10 of this reply;
- (b) otherwise denies the allegations made in that paragraph.

3.19 [Not used]

~~(a) repeats paragraph 3.11(a) of this reply;~~

~~(b) alternatively, says that if the *Securities and Futures Ordinance* governs the Facility Agreement, which is denied:~~

~~(i) the plaintiff provided financial accommodation for the purpose disclosed in clause 3(2) of SA 2, namely to enable the defendant to provide money to Asia Selangor Investments Pty Ltd for the purpose of subscription for shares in the initial public offering of GrowthOps on the Australian Securities Exchange in accordance with the terms of the GrowthOps supplementary prospectus;~~

Particulars

~~The GrowthOps supplementary prospectus is in writing. A copy may be inspected at the office of the plaintiff's solicitors.~~

~~(ii) by reason of the facts pleaded in sub-paragraph 3.19(b)(i):~~

~~(A) the loan to the defendant did not fall within the definition of "dealing in securities" for the purposes of Schedule 5, Part 2 of the *Securities and Futures Ordinance*; and~~

~~(B) the loan to the defendant did not fall within the definition of "securities margin financing" for the purposes of Schedule 5, Part 2 of the *Securities and Futures Ordinance*;~~

~~(c) — repeats paragraphs 3.11(c) and (d) of this reply;~~

~~(d) — otherwise denies the allegations made in paragraph 3.19 of the defence.~~

3.20 [Not used] .

3.21 The plaintiff denies the allegations in paragraph 3.21 of the defence and refers to and repeats paragraphs 3.6 and 3.17.

Promissory Note between Taiping Trustees and TTIM (P Note 1)

3.21.1 ~~It~~The plaintiff does not admit the allegations in paragraph 3.21.1.

3.21.2 ~~It~~The plaintiff admits that Trimantium Taiping Investment Management Pty Ltd (TTIM) was incorporated on 29 January 2018. It otherwise does not admit the allegations in paragraph 3.21.2.

3.21.3 ~~It~~The plaintiff admits the allegations in paragraph 3.21.3

3.21.4 Subject to production of the secured promissory note between TTIM and Taiping Trustees, the general security deed between TTIM and Taiping Trustees and the general security deed between TCFM and Taiping Trustees, and reference to their full terms and effect, ~~it~~ the plaintiff admits the allegations in paragraph 3.21.4.

3.21.5 Subject to production of the secured promissory note between TTIM and Taiping Trustees, the general security deed between TTIM and Taiping Trustees and the general security deed between TCFM and Taiping Trustees, and reference to their full terms and effect, ~~it~~ the plaintiff admits the allegations in paragraph 3.21.5.

3.21.6 Subject to production of the share sale deed and reference to its full terms and effect, ~~it~~ the plaintiff admits the allegations in paragraph 3.21.6.

3.21.7 Subject to production of the drawdown request and drawdown approval and reference to their full terms and effect, and save that the amount was not A\$50,100,000 but A\$50,000,100, ~~it~~ the plaintiff admits the allegations in paragraph 3.21.7.

Supplementary Agreement III (SA 3)

3.21.8 The plaintiff will rely at trial on the Materials for the Meeting of the Lending Business Management Committee dated 9 April 2018 [CIG.001.001.0307] and the Minutes of

the Taiping Securities (Hong Kong) Lending Business Management Committee dated 9 April 2018 [CIG.001.001.7719] for their full terms and effect. Further, the plaintiff knew that the defendant was a sophisticated borrower, being the founder and chief executive officer of Sargon and that he owned or controlled a substantial shareholding in Sargon and Trimantium GrowthOps Ltd and could therefore be expected to control or receive substantial dividend income. It otherwise denies the allegations in paragraph 3.21.8.

3.21.9 As to paragraph 3.21.9:

- (a) the plaintiff does not admit the allegations in sub-paragraph 3.21.9(a);
- (b) the plaintiff denies the allegations in sub-paragraph 3.21.9(b).

3.21.10 Subject to production of the email of 10:27am on 20 April 2018 and the attachments thereto and reference to their full terms and effect, the plaintiff admits that the defendant sent the said email and the attachments thereto to Mr Wang as proposed security for a proposed further secured loan. It otherwise denies the allegations in paragraph 3.21.10.

3.21.11 Subject to production of the email of 1:17pm on 20 April 2018 and the attachments thereto and reference to their full terms and effect, the plaintiff admits the allegations in paragraph 3.21.11.

3.23 As to paragraph 3.23 of the defence, the plaintiff:

- (a) repeats paragraphs 2.10 and 2.11 of this reply;
- (b) admits that the plaintiff signed SA 3 in a Chinese language version only;
- (c) says that, on 19 April 2018, the defendant represented to the plaintiff (the **Representation**) that:
 - (i) the defendant had had the Chinese language version of SA 3 translated into English; and
 - (ii) the defendant was "fully aware of the contents and approved the contents" of SA 3;

Particulars

The Representation was in writing by email sent on 19 April 2018 by the defendant to Sonia Chan on behalf of China Taiping. A copy of the email may be inspected at the office of the plaintiff's solicitors.

- (d) says that the defendant made the Representation in order to induce the plaintiff to enter into SA 3;

Particulars

The defendant's intention is to be inferred from the making of the Representation.

- (e) says that in entering SA 3 and SA 4 and in advancing money to the defendant pursuant to the Facility Agreement on or after 20 April 2018, the plaintiff acted in reliance on the Representation;
- (f) otherwise denies the allegations in paragraph 3.23 of the defence.

3.23.1 It admits that in entering SA 3 it contemplated a future possible acquisition of an equity interest in Sargon. It otherwise denies paragraph 3.23.1.

3.24 As to paragraph 3.24 of the defence, the plaintiff:

- (a) repeats paragraphs 3 to 8 of the Statement of Claim and paragraph 3.2 of this reply;
- (b) relies on the Facility Agreement for its full terms and effect;
- (c) otherwise denies the allegations made in that paragraph.

The Original Loan Agreement, SA 1, SA 2 and SA 3

3.25 The plaintiff denies the allegations in paragraph 3.25 of the defence and: ~~says further that, on the proper construction of the Facility Agreement, after deducting all sums due to the plaintiff under the Facility Agreement from the proceeds of any realisation of collateral provided to secure the sums due under the Facility Agreement, the plaintiff was not entitled to retain any surplus remaining.~~

- (a) says further that, on the proper construction of the Facility Agreement, after deducting all sums due to the plaintiff under the Facility Agreement from the

proceeds of any realisation of collateral provided to secure the sums due under the Facility Agreement, the plaintiff was not entitled to retain any surplus remaining;

- (b) further, or in the alternative, refers to and repeats paragraph 3.6(b) and (c) and says that if (which is denied) section 22(1)(c) of the *Money Lenders Ordinance* applied and clause 11(4) of SA 3 breached section 22(1)(c) of the *Money Lenders Ordinance*, it would be inequitable for the Facility Agreement to be held not to be enforceable and, under section 22(2) of the Ordinance, the Court should order that the Loan Agreement is enforceable, or, alternatively that it is enforceable to such extent and subject to such modifications or exceptions as the Court considers equitable.

3.26 ~~The plaintiff denies the allegations in paragraph 3.26 of the defence~~ As to paragraph 3.26 of the defence, the plaintiff:

- (a) denies the allegations made therein;
- (b) alternatively, refers to and repeats paragraph 3.6(b) and (c) and says that if (which is denied) section 22(1)(b) of the *Money Lenders Ordinance* applied and clause 7 of SA 3 breached section 22(1)(c) of the *Money Lenders Ordinance*, it would be inequitable for the Facility Agreement to be held not to be enforceable and, under section 22(2) of the Ordinance, the Court should order that the Loan Agreement is enforceable or, alternatively, is enforceable to such extent and subject to such modifications or exceptions as the Court considers equitable

3.27 The plaintiff admits the allegations in paragraph 3.27 of the defence.

3.28 As to paragraph 3.28 of the defence, the plaintiff repeats paragraphs 3.6 and 3.10 of this reply and otherwise denies the allegations made therein.

3.29 [Not used]

- ~~(a) repeats paragraph 3.11(a) of this reply;~~
- ~~(b) alternatively, says that if the *Securities and Futures Ordinance* governs the Facility Agreement, which is denied:~~

~~(i) — the plaintiff provided financial accommodation for the purpose disclosed in clause 3(3) of SA 3, namely to enable the defendant to provide money to Trimantium Capital Funds Management Pty Ltd for the purpose of subscription for shares in Sargon Capital Pty Ltd, which were not listed for quotation on the Australian Securities Exchange or any other securities exchange;~~

~~(ii) — by reason of the facts pleaded in sub-paragraph 3.29(b)(i) above:~~

~~(A) — the loan to the defendant did not fall within the definition of "dealing in securities" for the purposes of Schedule 5, Part 2 of the Securities and Futures Ordinance; and~~

~~(B) — the loan to the defendant did not fall within the definition of "securities margin financing" for the purposes of Schedule 5, Part 2 of the Securities and Futures Ordinance;~~

~~(c) — repeats paragraph 3.11(c) and (d) of this reply;~~

~~(d) — otherwise denies the allegations made in paragraph 3.29 of the defence.~~

3.30 [Not used]

3.31 The plaintiff denies the allegations in paragraph 3.31 of the defence and refers to and repeats paragraphs 3.6, 3.25 and 3.26. Further, by reason of the facts pleaded in paragraph 3.23 above, the defendant is estopped from asserting that because SA 3 was not executed in an English language version, the Facility Agreement or SA 3 is unenforceable.

Promissory Note between TTIM and Sargon (P Note 2)

3.31.1 Subject to production of the secured promissory note between Sargon and TTIM and Taiping Trustees, the guarantee by Sargon in favour of Taiping Trustees and the general security deed by Sargon in favour of Taiping Trustees, and reference to their full terms and effect, ~~it~~ the plaintiff admits the allegations in paragraph 3.31.1.

3.31.2 Subject to production of the drawdown request and the drawdown approval and reference to their full terms and effect, ~~it~~ the plaintiff admits the allegations in paragraph 3.31.2.

Supplementary Agreement IV (SA 4)

3.31.3 The plaintiff does not admit the allegations in paragraph 3.31.3.

3.31.4 The plaintiff does not admit the allegations in paragraph 3.31.4.

3.31.5 The plaintiff does not admit the allegations in paragraph 3.31.5.

3.31.6 The plaintiff does not admit the allegations in paragraph 3.31.6.

3.31.7 As to paragraph 3.31.7:

(a) the plaintiff admits the allegations in paragraph 3.31.7(a):

(b) subject to production of the Unit Sale Agreement and reference to its full terms and effect, the plaintiff admits the allegations in paragraph 3.31.7(b).

3.31.8 ~~It~~ The plaintiff does not admit the allegations in paragraph 3.31.8.

3.31.9 Subject to production of the email of 16 August 2018 and reference to its full terms and effect, the plaintiff admits the allegations in paragraph 3.31.9.

3.31.10 Subject to production of the email of 23 August 2018 and reference to its full terms and effect, the plaintiff admits the allegations in paragraph 3.31.10.

3.31.11 Subject to production of the email of 27 August 2018 and reference to its full terms and effect, the plaintiff admits the allegations in paragraph 3.31.11.

3.31.12 The plaintiff will rely at trial on the Minutes of the Meeting of the Project Initiation Committee of 28 August 2018 [CIG.001.053.3621] for their full terms and effect. It otherwise denies the allegations in paragraph 3.31.12.

3.31.13 The plaintiff will rely at trial on the Materials for the 24 September 2018 Meeting of the Lending Business Management Committee dated 14 September 2018 [CIG.002.022.8713] and the Minutes of the Taiping Securities (Hong Kong) Lending Business Management Committee dated 24 September 2018 [CIG.001.001.0001] for their full terms and effect. Further, the plaintiff knew that the defendant was a sophisticated borrower, being the founder and chief executive officer of Sargon and that he owned or controlled a substantial shareholding in Sargon and Trimantium GrowthOps Ltd and could therefore be expected to control or receive substantial dividend income. It otherwise denies the allegations in paragraph 3.31.13.

3.33 As to paragraph 3.33 of the defence, the plaintiff:

- (a) repeats paragraphs 2.10 and 2.11 of this reply;
- (b) admits that the plaintiff signed SA 4 in a Chinese language version only;
- (c) says that, on 12 October 2018 the plaintiff sent the defendant an English language version of SA 4;

Particulars

The plaintiff did so in writing by email dated 12 October 2018 from Andy Wang of China Taiping on behalf of the plaintiff to the defendant, a copy of which may be inspected at the office of the plaintiff's solicitors.

- (d) otherwise denies the allegations made in paragraph 3.33 of the defence.

3.33.1 ~~It~~ The plaintiff admits that in entering SA 4 it contemplated a future possible acquisition of an equity interest in Sargon. It otherwise denies paragraph 3.33.1.

3.34 As to paragraph 3.34 of the defence, the plaintiff:

- (a) repeats paragraphs 3 to 8 of the Statement of Claim and paragraph 3.2 of this reply;
- (b) relies on the Facility Agreement for its full terms and effect;
- (c) otherwise denies the allegations in paragraph 3.34.

The Original Loan Agreement, SA 1, SA 2, SA 3 and SA 4

3.35 The plaintiff denies the allegations in paragraph 3.35 of the defence.

3.36 The plaintiff denies the allegations in paragraph 3.36 of the defence and: ~~says further that, on the proper construction of the Facility Agreement, after deducting all sums due under the Facility Agreement to the plaintiff from the proceeds of any realisation of collateral provided to secure the sums due under the Facility Agreement, the plaintiff was not entitled to retain any surplus remaining.~~

- (a) says further that, on the proper construction of the Facility Agreement, after deducting all sums due to the plaintiff under the Facility Agreement from the proceeds of any realisation of collateral provided to secure the sums due

under the Facility Agreement, the plaintiff was not entitled to retain any surplus remaining;

- (b) further, or in the alternative, refers to and repeats paragraph 3.6(b) and (c) and says that if section 22(1)(c) of the *Money Lenders Ordinance* applied and clause 11(4) of SA 4 breached section 22(1)(c) of the *Money Lenders Ordinance*, which is denied, it would be inequitable for the Facility Agreement to be held not to be enforceable and under section 22(2) of the Ordinance the Court should order that the Loan Agreement is enforceable or, alternatively, that it is enforceable to such extent and subject to such modifications or exceptions as the Court considers equitable

3.37 The plaintiff denies the allegations in paragraph 3.37 of the defence- and further, or in the alternative:

- (a) refers to and repeats paragraph 3.6 of this reply;
- (b) says that if section 22(1)(c) of the *Money Lenders Ordinance* applied and clause 7 of SA 4 breached section 22(1)(c) of the *Money Lenders Ordinance*, which is denied:
- (i) such a breach is a minor and unintentional breach of section 22(1)(c) of the Ordinance;
- (ii) such a breach did not cause the defendant to suffer any prejudice because (among other things) the defendant did not express any desire to repay the principal sum and the plaintiff did not enforce the term;
- (iii) it would be inequitable for the Facility Agreement to be held not to be enforceable and under section 22(2) of the Ordinance the Court should order that the Loan Agreement is enforceable in accordance with its full terms, alternatively to such extent and subject to such modifications or exceptions as the Court considers equitable.

3.38 The plaintiff repeats paragraph 3.33(c) above and otherwise admits the allegations in paragraph 3.38.

3.39 The plaintiff repeats paragraphs 3.6 and 3.10 of this reply and otherwise denies the allegations in paragraph 3.39.

3.40 [Not used]

~~(a) — repeats paragraph 3.11(a) of this reply;~~

~~(b) — alternatively, says that if the *Securities and Futures Ordinance* governs the Facility Agreement, which is denied:~~

~~(i) — the purpose of the advance was to enable the defendant to provide money to Sargon Capital Pty Ltd and GrowthOps for working capital and business development and to provide money to enable Sargon Capital Pty Ltd through Sargon CT Holdings Pty Ltd, a subsidiary of Sargon Capital Pty Ltd, to acquire shares in Australian Executor Trustees (NSW) Pty Limited, Australian Executor Trustees (SA) Pty Limited, and AET Corporate Trust Pty Limited;~~

Particulars

The plaintiff refers to clauses 3(2) and 3(3) of SA 4.

~~(ii) — by reason of the facts pleaded in sub-paragraph 3.40(b)(i) above:~~

~~(A) — the loan to the defendant did not fall within the definition of "dealing in securities" for the purposes of Schedule 5, Part 2 of the *Securities and Futures Ordinance*; and~~

~~(B) — the loan to the defendant did not fall within the definition of "securities margin financing" for the purposes of Schedule 5, Part 2 of the *Securities and Futures Ordinance*;~~

~~(c) — repeats paragraph 3.11(c) and (d) of this reply;~~

~~(d) — otherwise denies the allegations made in paragraph 3.40 of the defence.~~

3.41 [Not used]

3.42 The plaintiff denies the allegations in paragraph 3.42 of the defence and refers to and repeats paragraph 3.6, 3.36 and 3.37 above.

The First to Fourth Tranches

3.43 As to paragraph 3.43 of the defence, the plaintiff

- (a) denies sub-paragraph 3.43(a);
- (b) denies sub-paragraph 3.43(b);
- (c) admits that the defendant disclosed to the plaintiff that his monthly and other income totalled approximately AUD500,000 per year, does not admit that the disclosure was accurate, and otherwise denies sub-paragraph 3.43(c);
- (d) does not admit that it made no further enquiries whether the defendant had other assets or financial means to repay the loans or interest thereon, and otherwise denies sub-paragraph 3.43(d);
- (e) denies sub-paragraph 3.43(e);
- (f) relies on the Facility Agreement for its full terms and effect and otherwise denies sub-paragraph 3.43(f);
- (g) admits that it required the defendant to provide security, does not admit that it required the security to have, or that the security did have, a market value of between four and six times the principal sum lent, and otherwise denies sub-paragraph 3.43(g);
- (h) denies sub-paragraph 3.43(h) and repeats paragraphs 3.9(a), 3.17(a), 3.25(a) and 3.36(a) above;
- (i) denies sub-paragraph 3.43(i);
- (j) does not admit that the defendant is unable to read the Chinese language, repeats paragraphs 3.23 and 3.33(c) above and says that the defendant is estopped from making or relying on the allegation in sub-paragraph 3.43(j), and otherwise denies sub-paragraph 3.43(j); and

otherwise denies paragraph 3.43 of the defence.

3.44 The plaintiff denies the allegations in paragraph 3.44 of the defence.

Construction of the Loan Agreement

3.45 The plaintiff denies the allegations in paragraph 3.45 of the defence.

Estoppel

3.46 As to paragraph 3.46 of the defence, the plaintiff:

- (a) admits the allegations in paragraph 3.46(a);
- (b) otherwise denies the allegations in paragraph 3.46 of the defence.

The sums advanced

11A As to paragraph 11A:

- (a) the plaintiff admits the allegations in paragraph 11A(a);
- (b) the plaintiff does not admit the allegations in paragraph 11A(b).

12 As to paragraph 12:

- (a) the plaintiff admits that on 28 October 2018, the sum of HK\$252,999,990 was received into the Margin Account;
- (b) the plaintiff does not admit the allegations in paragraph 12(b);
- (c) the plaintiff does not admit the allegations in paragraph 12(c).

12.1 As to paragraph 12.1:

- (a) save that the debit note for interest of HK\$7,246,345.81 was issued on 19 December 2018, the plaintiff admits the allegation in paragraph 12.1(a);
- (b) save that the debit note for interest of HK\$7,130,419.04 was issued on 22 March 2019, the plaintiff admits the allegation in paragraph 12.1(b);
- (c) save that a debit note for interest of HK\$7,229,227.06 was issued on 24 June 2019, the plaintiff admits the allegation in paragraph 12.1(c).

12.2 The plaintiff denies the allegations in paragraph 12.2. Further:

- (a) on its proper construction, clause 7 of SA 4:
 - (i) required the defendant to pay interest on the First to Third Tranches quarterly;

(ii) did not prohibit the defendant from paying, or override or in any way affect his obligation to pay, interest on the First to Third Tranches as and when such interest fell due, before principal and outstanding interest on the Fourth Tranche had been fully repaid;

(b) if there is any uncertainty as to the construction of clause 7 of SA 4, which is denied, then pursuant to clause 18 of SA 4, to the extent of any inconsistency between the Chinese version and the English version, the Chinese version shall prevail;

(c) the Chinese version of SA 4 confirms the construction pleaded in paragraph 12.2(a) above.

12.3 As to paragraph 12.3:

(a) the plaintiff admits that on 29 January 2019 the defendant paid HK\$7,246,345.81 but otherwise does not admit the allegations in paragraph 12.3(a);

(b) the plaintiff admits that on 29 April 2019 the defendant paid HK\$7,130,419.04 but otherwise does not admit the allegations in paragraph 12.3(b);

(c) the plaintiff admits that on 3 July 2019 the defendant paid HK\$7,229,207.06 but otherwise does not admit the allegations in paragraph 12.3(c).

12.4 The plaintiff denies the allegations in paragraph 12.4 and repeats paragraph 12.2 above.

12.5 The plaintiff admits that it calculated interest on a compound basis rather than a simple basis for interest payments that were due and payable in respect of the First to Third and Fourth Tranche in the manner and to the extent described in the witness statement of Ke Guo dated 10 September 2021. It says further that a correct calculation of interest is set out in the spreadsheet referred to in paragraph 25 of the said witness statement [CIG.002.054.0001]. The plaintiff otherwise denies the allegations in paragraph 12.5.

12.6 The plaintiff admits the allegation in paragraph 12.6.

Non-payment

13. As to paragraph 13(a) of the defence, the plaintiff:

(aa) admits that on 23 September 2019 it issued a debit note in the sum of HK\$7,252,036.89 in respect of interest due for payment on 30 September 2019 on the First to Third Tranches. It repeats paragraph 12.5 above and otherwise denies paragraph 13(ia):

(a) denies sub-paragraph 13(a)(i); and

(b) denies sub-paragraph 13(a)(ii) and repeats paragraph 13 and 13A ~~18(a)~~ of the Statement of Claim and the particulars thereto.

13A.1 Subject to production of the email dated 21 October 2019 from Mr Yi Kai Huang to the defendant and reference to its full terms and effect, the plaintiff admits the allegations in paragraph 13A.1.

14. As to paragraph 14, the plaintiff:

(aa) admits the allegation in paragraph 14(aa):

(a) repeats paragraphs 12.1 to 12.5 above;

(a1) denies the allegations in paragraphs 14(a1).

14.1 Subject to production of the email dated 5 November 2019 from Mr Yi Kai Huang to the defendant and the attachments thereto and reference to their full terms and effect, the plaintiff admits the allegations in paragraph 14.1.

15(a1)The plaintiff admits the allegations in paragraph 15(a1).

15(c) The plaintiff denies the allegations in paragraph 15(c) and repeats paragraphs 12.2 and 12.5 above.

15.1 Subject to production of the email dated 6 December 2019 and reference to its full terms and effect, the plaintiff admits the allegations in paragraph 15.1.

15.2 The plaintiff admits that on 11 December 2019 the defendant caused a transfer of A\$4,400,000 to be made to the Ashurst trust account. It otherwise ~~does not admit~~ denies the allegations in paragraph 15.2 and says further that the sum of A\$4,400,000

was paid in partial discharge of the sums set out in the letters of demand pleaded by the defendant in paragraph 15(a1) of the defence.

15.3 The plaintiff admits the allegations in paragraph 15.3.

15.4 The plaintiff denies the allegations in paragraph 15.4 and repeats paragraphs 12.2 and 12.5 above.

15.5 The plaintiff denies the allegations in paragraph 15.5 and repeats paragraphs 12.2 and 12.5 above.

16.1 Subject to production of the said letter dated 19 December 2019 and reference to its full terms and effect, the plaintiff admits the allegations in paragraph 16.1.

16.2 Subject to production of the said letter dated 19 December 2019 and reference to its full terms and effect, the plaintiff admits the allegations in paragraph 16.2.

16.3 The plaintiff repeats paragraph 12.5 above and refers to the spreadsheet referred to in paragraph 25 of the witness statement of Ke Guo dated 10 September 2021 [CIG.002.054.0001] on which it will rely at trial. It otherwise denies the allegations in paragraph 16.3.

16.4 Subject to production of the email dated 30 December 2019 and reference to its full terms and effect, the plaintiff admits the allegations in paragraph 16.4.

16.5 The plaintiff repeats paragraph 12.5 above and refers to the spreadsheet referred to in paragraph 25 of the witness statement of Ke Guo dated 10 September 2021 [CIG.002.054.0001] on which it will rely at trial. It otherwise denies the allegations in paragraph 16.5.

19.1 The plaintiff admits the allegations in paragraph 19.1. Further, the plaintiff does not:

- (a) rely on the said transfer as increasing the plaintiff's defendant's liability;
- (b) rely on the said transfer as any pro tanto reversal of the application of the payment of A\$4,400,000 on 19 December 2019 in diminution of the defendant's indebtedness to the plaintiff; or
- (c) include the amount of the said transfer in its claim against the plaintiff defendant in this proceeding.

19.2 ~~[Not used]~~

19.3 Subject to production of the email dated 4 January 2020 and reference to its full terms and effect, the plaintiff admits the allegations in paragraph 19.3.

19.4 Subject to production of the email dated 6 January 2020 from Mr Wang to Ms Lau and reference to its full terms and effect, the plaintiff admits the allegations in paragraph 19.4.

19.5 Save that the said email is dated 6 January 2020 and not 7 January 2020, subject to production of the email dated 6 January 2020 from Ms Lau to Mr Liu copied to Mr Wang and reference to its full terms and effect, the plaintiff admits the allegations in paragraph 19.5.

19.6 Subject to production of the emails dated 8 January 2020 between Mr Cheng and Mr Liu and reference to their full terms and effect, the plaintiff admits the allegations in paragraph 19.6.

19.7 Subject to production of the email dated 9 January 2020 and reference to its full terms and effect, the plaintiff admits the allegations in paragraph 19.7.

19.8 The plaintiff repeats paragraph 12.5 above and refers to the spreadsheet referred to in paragraph 25 of the witness statement of Ke Guo dated 10 September 2021 [CIG.002.054.0001] on which it will rely at trial. It otherwise denies the allegations in paragraph 19.8.

20(a2) The plaintiff repeats paragraph 12.5 above and refers to the spreadsheet referred to in paragraph 25 of the witness statement of Ke Guo dated 10 September 2021 [CIG.002.054.0001] on which it will rely at trial. It otherwise denies the allegations in paragraph 20(a2).

20A.1 Subject to production of the email dated 20 January 2020 and the attachments thereto, and reference to their full terms and effect, the plaintiff admits the allegations in paragraph 20A.1.

20A.2 ~~The plaintiff says that paragraph 20A.2 ought to be struck out as embarrassing, vexatious and liable to delay the fair trial of the proceeding because it is inconsistent with paragraph 19.2 of the defence and is premised on the sum of HK\$10,054,964.81 being double-counted in diminution both of the defendant's indebtedness under the First to Fourth Tranches and of the separate debt of Sargon, TTIM and TCFM under P~~

Note 1. Under cover of that objection, the plaintiff denies the allegations in paragraph 20A.2.

20A.3 The plaintiff admits that on 29 January 2020, Taiping Trustees appointed receivers to Sargon, TTIM and TCFM, and that the plaintiff through its agents was aware of the appointments. It otherwise denies paragraph 20A.3.

20A.4 Subject to production of the letter dated 1 February 2020 and reference to its full terms and effect, the plaintiff admits the allegations in paragraph 20A.4.

20A.5 As to paragraph 20A.5, the plaintiff repeats paragraph 12.5 above and refers to the spreadsheet referred to in paragraph 25 of the witness statement of Ke Guo dated 10 September 2021 [CIG.002.054.0001] on which it will rely at trial. It otherwise denies the allegations in paragraph 20A.5.

~~(a) repeats paragraph 12.5 above and refers to the spreadsheet referred to in paragraph 25 of the witness statement of Ke Guo dated 10 September 2021 [CIG.002.054.0001] on which it will rely at trial. It otherwise denies the allegations in paragraph 20A.5(a);~~

~~(b) says that paragraph 20A.5(b) ought to be struck out as embarrassing, vexatious and liable to delay the fair trial of the proceeding because it is inconsistent with paragraph 19.2 of the defence and is premised on the sum of HK\$10,054,964.81 being double-counted in diminution both of the defendant's indebtedness under the First to Fourth Tranches and of the separate debt of Sargon, TTIM and TCFM under P Note 1. Under cover of that objection, the plaintiff denies the allegations in paragraph 20A.5(b);~~

~~(c) denies the allegations in paragraph 20A.5(c).~~

21.2 The plaintiff denies the allegations in paragraph 21.2 and repeats paragraphs 12.1 to 12.5, 13, 14, 15(a1), 15(c), 16.1-16.5, 19.7, 19.8, 20(a2), 20A.4 and 20A.5 above.

21.3 The plaintiff denies the allegations in paragraph 21.3 and repeats paragraphs 15(a1), 15(c), 16.1 and 20(a2) above.

21.4 The plaintiff says that paragraph 21.4 ought to be struck out as embarrassing, vexatious and liable to delay the fair trial of the proceeding because it fails to identify "all the circumstances" which the defendant relies upon to allege the plaintiff has engaged in conduct that is unconscionable in contravention of section 12CB(1) of the

ASIC Act and merely sets out the particulars conduct of the plaintiff referred to elsewhere in the defence. Under cover of that objection, the plaintiff denies the allegations in paragraph 21.4.

21.6 The plaintiff denies that the defendant is entitled to the relief sought in paragraph 21.6, which relief has not been properly sought by the defendant.

Restitution

24. As to paragraph 24 of the defence, the plaintiff repeats paragraphs 2.1 to 2.12 above.

26. As to paragraph 26 of the defence, the plaintiff:

(a) repeats paragraphs 2.1 to 2.12, 3.4(b), 3.5, 3.8, 3.11(b)(i), 3.16, 3.19(b)(i) 3.24, 3.29(b)(i), 3.34 and 3.39(b)(i) above;

(b) does not admit the allegations in paragraphs 26(d)(ii)(A), (B), (C) and (E) of the defence;

(c) denies the allegations in paragraphs 26(d)(ii)(D) and 26(d)(iii)(A) of the defence;

(d) says that, pursuant to clause 1.4 of SA 4, the plaintiff held security over 58,950,000 ordinary shares in GrowthOps, 120 ordinary shares in Dragon Shield, 1,340,000 ordinary shares and 475,000 preference shares in Sargon, and otherwise denies the allegations in paragraph 26(d)(iii)(B) of the defence.

28. As to paragraph 28 of the defence, the plaintiff:

(a) denies paragraph 28(a) and:

(i) says that by reason of the facts pleaded in paragraphs 3 to 12 of the amended statement of claim, the defendant knew from the time of each advance that each advance was not a gift or otherwise unrecoverable by the plaintiff, and that the plaintiff expected to be repaid the amount of each advance together with interest in accordance with the terms of the Facility Agreement;

(ii) denies that the alleged uses to which the defendant alleges he put the amounts advanced constitute a change of position in good faith; and

(b) repeats paragraphs 3.12, 3.13, 3.20, 3.21, 3.30, 3.31, 3.41 and 3.42 above.

COUNTERCLAIM

29. The plaintiff refers to and repeats paragraphs 1, 2.0, 2.01, 2.1, 2.2, 2.2.1, 2.2.2, 2.4, 2.5, 2.8, 2.8.1, 2.11, 3.2, 3.6, 3.7, 3.7.1, 3.13.1, 3.15.1, 3.21.1 to 3.21.5, 3.21.8, 3.21.9, 3.23.1, 3.31.3 to 3.31.5, 3.31.9 to 3.31.13, 3.33.1, 3.34, 12.1 to 12.4, 13, 13A.1, 14, 14.1, 15(a1), 15(c), 15.1 to 15.5, 16.1 to 16.5, 19.6 to 19.8, 20(a2), 20A.1 to 20A.5, and 21.1 to 21.6 above and denies that the defendant is entitled to the relief claimed.

30. The plaintiff says further that it denies that the defendant is entitled to the relief claimed or any relief at all.

Dated: ~~5 December 2020~~ ~~22 February 2021~~ 17 December 2021 28 February 2022

P A Neskovcin

J D S Barber (save for 28 February 2022 amendments)



Wen-Ts'ai Lim
Ashurst Australia
Solicitor for the plaintiff