Goldrich Venture Pte Ltd and another *v* Halcyon Offshore Pte Ltd [2015] SGHC 103

Case Number	: Suit No 452 of 2012/W
Decision Date	: 21 April 2015
Tribunal/Court	: High Court
Coram	: Steven Chong J
Counsel Name(s)	: Sim Chong (Instructed), Glenn Knight Jeyasingam and Susan Jacob (Glenn Knight) for the first and second plaintiffs; Chan Kah Keen Melvin, Tan Pei Qian Rachel and Tan Tho Eng (Chen Daorong) (TSMP Law Corporation) for the defendant.
Parties	: Goldrich Venture Pte Ltd and another — Halcyon Offshore Pte Ltd

Contract – Misrepresentation – Fraudulent

21 April 2015 Judgment reserved.

Steven Chong J:

Introduction

1 This suit concerns several alleged representations made between February 2008 and October 2008 by one Choo Swee Leng Michael ("Mr Choo"), who was purportedly an agent of the defendant at the material time, to one Lee Chiang Theng ("Mr Lee"), who was the promoter of the two plaintiff-companies. According to the plaintiffs, Mr Choo had represented that, upon the payment of a service fee to the defendant, each of the foreign workers recruited by the plaintiffs would be deployed to work at the defendant's shipyard. At the material time, the defendant was registered as a "sponsoring shipyard". The plaintiffs assert that, in reliance on these representations, they became the defendant's "resident contractors", recruited some 618 foreign workers to work in the defendant's shipyard, and paid service fees totalling more than $2m (the bulk of which was allegedly paid in cash) to the defendant. The designation of the plaintiffs as resident contractors and the defendant's status as their sponsoring shipyard are central to this suit and will be elaborated below.

2 Throughout the duration of their stay, *none* of the workers was ever gainfully deployed for *any* work at the shipyard. [note: 1] Despite the stark contrast between the alleged representations and the reality on the ground, there was not a single written communication from the plaintiffs to the defendant complaining about the defendant's abject failure to assign any work. In the meantime, the plaintiffs failed to pay the monthly salaries of the foreign workers.

3 This unsatisfactory state of affairs came to the notice of the Ministry of Manpower ("MOM") when 60 of these foreign workers assembled at the MOM to seek redress. Ironically, it appears that it was Mr Lee, the sole registered director of the plaintiffs, who made the transport arrangements that allowed the foreign workers to proceed to the MOM. Investigations revealed that the foreign workers were housed in unacceptable accommodation. In 2010, Mr Lee was prosecuted and convicted for failing to provide acceptable accommodation and for failing to pay the salaries of the foreign workers on time. He was sentenced to four weeks' imprisonment and a fine of $36,000 [note: 2] and his appeal in Magistrate's Appeal No 344 of 2010 ("MA 344/2010") was dismissed (see *Lee Chiang Theng v Public*

Prosecutor and other matters [2012] 1 SLR 751 ("*Lee Chiang Theng v PP*")). At the trial of this action, the defendant relied heavily on the evidence adduced by Mr Lee in his criminal case to contradict Mr Lee's evidence and/or undermine the plaintiffs' case.

4 On 31 May 2012, the plaintiffs commenced the present suit claiming an aggregate sum of $4,985,212. [note: 3] The plaintiffs brought two alternative claims, the first in contract and the second in fraudulent misrepresentation. The defendant counterclaimed for damages arising from the loss of its status as a sponsoring shipyard. Perhaps in recognition of the weaknesses in their case, the plaintiffs abandoned their breach of contract claim on the first day of the trial and proceeded to pursue the claim solely in fraudulent misrepresentation. Following suit, the defendant withdrew its counterclaim on the third day of trial. Both decisions have costs consequences which will be dealt with below. One of the interesting threshold legal issues which emerged from this case is the question whether a representation is actionable by a party who purportedly relied on it even though that party had not been incorporated at the time when the representation was made. Although the threshold issue found favour with the plaintiffs, their claim nonetheless suffers from many shortcomings which, ultimately, proved fatal to their case.

5 I begin first with the facts.

Background

Parties

6 The first plaintiff, Goldrich Venture Pte Ltd ("Goldrich"), was incorporated on 3 November 2007 as "P.A. San Venture Pte Ltd". [note: 4] It changed its name to Goldrich Venture Pte Ltd on 11 July 2008. Its principal activities include the repair of vessels and the provision of dormitory services. [note: 5] It was registered as a resident contractor of the defendant on 11 March 2008. [note: 6]

7 The second plaintiff, Gates Offshore Pte Ltd ("Gates"), was incorporated on 21 May 2008. [note: 7] Similarly, its principal activities include the repair of vessels and the provision of dormitory services. The second plaintiff was registered as a resident contractor of the defendant on 30 June 2008. Mr Lee was the sole director of both plaintiffs at the material time. [note: 8]

8 The defendant, Halcyon Offshore Pte Ltd ("Halcyon"), was incorporated on 10 May 2007. [note: 9] It provides steel works and vessel outfitting services as well as equipment for ship operations. [note: 10] At the material time, it was the holding company of several subsidiaries ("the subsidiaries") through which most of the work in the shipyard was carried out. [note: 11] It was granted the status of sponsoring shipyard on 3 March 2008. [note: 12] Mr Ong San Khon ("Mr Ong") was, at all material times, employed as the defendant's Chief Executive Officer ("CEO"). [note: 13]

The Marine Industry Sponsorship Scheme

9 Lying at the heart of this suit is the MOM's policy as regards the allocation of work permits in the marine industry, which I will refer to as the "Marine Industry Sponsorship Scheme". At the outset of the trial, the defendant indicated its intention to adduce oral evidence on this through an officer from MOM and filed Summons No 5709 of 2014 seeking leave to dispense with the preparation of an affidavit of evidence-in-chief in respect of the MOM officer. I granted leave subject to the condition that the defendant provide the plaintiffs with a list of the questions to be posed to the MOM officer.

However, on the fourth day of the trial, the defendant decided that it no longer intended to call the MOM officer. [note: 14]

10 The witnesses for both parties gave evidence as to the nature and scope of the Marine Industry Sponsorship Scheme at the material time, which was also an issue that was argued before V K Rajah JA in MA 344/2010. Save for one important point (which I will flag later), the parties are *ad idem* as to the salient features of the scheme. Given that, it will suffice if I reproduce Rajah JA's succinct summary, which may be found at [24] of *Lee Chiang Theng* v *PP*:

> … the MOM divided the marine companies in Singapore into two broad groups, *viz*, (a) shipyards and (b) contractors. These groups were further sub-divided into: (a) Sponsoring Shipyards and non-sponsoring shipyards and (b) Resident Contractors and common contractors. The work permit requirements and controls for foreign worker allocation would vary depending on which group the company fell into. The MOM had a pooled quota system which allowed a Sponsoring Shipyard to combine with Resident Contractors in the hiring of foreign work permit holders. From the perspective of the Sponsoring Shipyard, the benefits of this system are first, that the number of local workers for the Sponsoring Shipyard is consolidated and the number of foreign work permits allowed is a percentage of this combined figure, and second, that no further proof of contracts is required before the MOM issues the work permits. This allowed the Sponsoring Shipyard and its respective Resident Contractors great flexibility in using the same pool of foreign work permit holders for different projects with a fast turn-around time. The Resident Contractor can only be registered with one Sponsoring Shipyard and its foreign workers can only be deployed to that Sponsoring Shipyard. …

11 The reference to a "pooled quota system" requires some elaboration. The MOM limited the total number of foreign workers that a company could hire. This limit was calculated with reference to the number of local workers that the entity had in its workforce. The ratio of local to foreign workers was known as the "dependency ratio" and it was expressed as a percentage which, at that time, was 83.3% (*ie*, foreign workers could only comprise a maximum of 83.3% of a marine company's workforce). [note: 15] In the main, shipyards would have more local workers on its payroll than contractors would. Thus, the MOM's Marine Industry Sponsoring Scheme was designed to allow resident contractors to leverage on the sponsoring shipyard's larger foreign worker entitlement (which it had by virtue of its larger local workforce) by allowing the work permit quotas for the sponsoring shipyard and that of its resident contractors to be aggregated. This enlarged pool of work permits would then be allocated by the sponsoring shipyard to its resident contractors as the shipyard saw fit. [note: 16] Thus, the relationship between sponsoring shipyard and its resident contractors is somewhat symbiotic. The former benefits from having a ready stable of contractors who could supply it with the requisite foreign workers for its projects; the latter benefits because it is able to take advantage of the pooled quota of work permits, allowing it to hire more foreign workers than it would otherwise have been able to.

Undisputed facts

The defendant becomes a sponsoring shipyard

12 Sometime in 2007, the defendant acquired a shipyard located at Pandan Crescent. [note: 17] Following that, the defendant proceeded to acquire several companies, all of which had an established presence in the marine industry at the time of their acquisition. [note: 18] Because the defendant was structured as a holding company, [note: 19] each of its subsidiaries functioned autonomously by sourcing for projects, negotiating their terms with the clients, and carrying out the

requisite works under the projects. [note: 20] At the material time, the defendant's primary business lay in investment holding and the provision of management services to its subsidiaries and it did not have any projects of its own. [note: 21]

13 Sometime between the end of 2007 and the first quarter of 2008, Mr Ong met Mr Choo, [note: 22] who was employed by Manifield Agency Enterprises Pte Ltd ("Manifield") as a labour consultant. [note: 23] Mr Ong consulted Mr Choo on the difficulties the defendant faced in recruiting adequate labour for its projects. After assessing the defendant's finances and its business requirements, Mr Choo recommended that the defendant apply to be classified as a sponsoring shipyard under the Marine Industry Sponsorship Scheme. [note: 24]

14 On 20 February 2008, the defendant wrote to the MOM seeking to be classified as a sponsoring shipyard. In its letter, the defendant cited, as the primary basis for its application, that "[the defendant] and our stable of subsidiaries, a list of which is attached herewith, have achieved a group turnover of $78 million for the year ended 2007." [note: 25] On 3 March 2008, the MOM informed the defendant that its application was successful. [note: 26] On 4 March 2008, the defendant wrote to the MOM to request that six companies – including the first plaintiff – be registered as its resident contractors. [note: 27]

The plaintiffs become the defendant's resident contractors

15 On 11 March 2008, the MOM informed the defendant that the nominated companies had been registered as its resident contractors ("the MOM 11 March Approval Letter"). [note: 28]

16 On 13 March 2008, the first plaintiff and the defendant concluded an agreement for the supply of labour ("Goldrich Labour Supply Agreement"). The Goldrich Labour Supply Agreement, which was to last for a period of 12 months, [note: 29] provided that, *should* the defendant require workers for its projects, it could issue a request to the first plaintiff who would then supply the requisite number of workers "expeditiously" at agreed rates. [note: 30] For present purposes, it is pertinent to note that the Goldrich Labour Supply Agreement did not contain any assurance that the defendant would issue requests for workers nor did it oblige the defendant to use the workers from the first plaintiff in preference to the workers from other contractors. [note: 31]

17 On 21 May 2008, the second plaintiff was incorporated. At the time of its incorporation, the second plaintiff had two shareholders: Mr Lee (with a 30% shareholding) and Mdm Kiang Wan Nee ("Mdm Kiang"), who was the wife of Mr Choo at that time (with a 70% shareholding). [note: 32] On 30 June 2008, the second plaintiff was appointed one of the defendant's resident contractors. [note: 33] On 2 July 2008, the defendant and the second plaintiff concluded an agreement for the supply of labour ("the Gates Labour Supply Agreement"). [note: 34] The Gates Labour Supply Agreement also did not contain any assurance that the defendant would issue requests for workers nor did it oblige the defendant to use the workers from the first plaintiff in preference to the workers from other contractors.

The defendant loses its status as a sponsoring shipyard and the GOFF Invoices

18 Between March 2008 and December 2008, the plaintiffs recruited a total of 618 foreign workers. [note: 35] The In-Principle-Approvals ("IPA") for all the work permits of the workers were issued

through the defendant's Work Permit Online ("WPOL") account. [note: 36] Throughout that time, none of the workers were deployed on projects in the defendant's shipyard. [note: 37] A small number were sent for "on-job training" in other shipyards on an *ad hoc* basis but the workers were not paid for the work done during these training sessions. [note: 38] There is also no documentary evidence that any purchase orders were issued in respect of these deployments or that the plaintiffs derived any income from these placements. However, the plaintiffs continued to incur expenses in the upkeep of the workers. [note: 39]

19 Sometime before 16 October 2008, the defendant was informed that its status as a sponsoring shipyard was being re-evaluated due to a drop in its local workforce. The defendant held a meeting with the MOM during which it requested that the MOM reconsider its decision. [note: 40] On 20 November 2008, the defendant received a letter from the MOM stating that it had considered the defendant's representations but had still arrived at the conclusion that the defendant was no longer eligible to be classified as a sponsoring shipyard "due to the drop in [its] local workforce." The MOM also informed the defendant of its right of appeal, which it had to exercise before 12 December 2008. [note: 41] On 14 December 2008, the defendant appealed against the MOM's decision. [note: 42]

20 Between 9 October 2008 and 10 December 2008, a total of eight invoices were issued by the second plaintiff for work allegedly carried out for three of the defendant's subsidiaries: Jack Tat Engineering Pte Ltd, Marine Equipments Pte Ltd, and Anvil Engineering Pte Ltd ("the GOFF Invoices"). [note: 43] While both parties agree that the GOFF Invoices were in fact issued, they disagree on whether the plaintiffs had in fact provided any services in respect of the works listed in the GOFF Invoices.

21 On 7 January 2009, the MOM wrote to inform the defendant that its appeal was unsuccessful. On 8 January 2009, the MOM wrote to the plaintiffs to inform them that, following the defendant's loss of its status as a sponsoring shipyard, they had been reclassified as common contractors. [note: 44]

The Gates Fabrication Agreement

22 On 26 November 2008, Mr Lee received a call from Ms Chai Jian Yi ("Ms Chai"), a manager at the Work Permit Processing Team of the MOM. [note: 45] Ms Chai requested that the second plaintiff submit the contracts which it had concluded with the defendant. On 1 December 2008, following Mr Lee's conversation with Ms Chai, the second plaintiff and the defendant concluded a "Fabrication, Assembly and Installation Service Agreement" ("the Gates Fabrication Agreement"). [note: 46] Unlike the earlier Gates Labour Supply Agreement, which was an agreement for the supply of labour, the Gates Fabrication Agreement was a contract for services. Under the terms of the Gates Fabrication Agreement, the second plaintiff would, upon receiving purchase orders from the *defendant's subsidiaries*, [note: 47] perform the stipulated tasks which include the fabrication, assembly, and installation of exploration and survey equipment. However, like the Goldrich and Gates Labour Supply Agreements before it, the Gates Fabrication Agreement did not contain any assurance that purchase orders *would* be issued.

23 On 15 December 2008, the second plaintiff sent a letter to the MOM exhibiting a set of photographs purportedly showing foreign workers employed by the plaintiffs at work at the defendant's shipyard ("the 15 December letter"). These photographs, which were taken after the conclusion of the Gates Fabrication Agreement, appear to have been taken expressly for the purpose

of giving the MOM the impression that the plaintiffs' workers were gainfully employed. At para 2 of the letter, the second plaintiff stated:

> Going forward into 2009, *we expect Halcyon Offshore Pte Ltd to assign to us many high valued contracts which required [sic] us to recruit and to train additional skilled welders*, pipe-fitters, mechanics, electrician, [*sic*] etc. to carry out these contracts successfully. *At present, we have about 400 workers most of them are still undergoing training* at our in-house training centre. *We expect them to be ready for job deployment early January 2009. Afterwhich, we hope to be able to recruit another 200 to 300 additional workers for training in the various skilled categories* as mentioned above. Thus we will only bring in the outstanding IPA workers in the first quarter 2009. [emphasis added]

MOM investigates and Mr Lee is prosecuted

24 Sometime in December 2008, Mr Lee met Mr Ong for the first time. [note: 48] During this meeting, Mr Lee apprised Mr Ong of the financial troubles that the plaintiffs were facing and requested (a) that the plaintiffs' workers be deployed and (b) for financial assistance. However, no loans were extended to the plaintiffs following that meeting. [note: 49]

25 After this meeting, the plaintiffs informed the foreign workers that they would soon have to be repatriated and made arrangements for the foreign workers to proceed to the MOM to seek assistance. [note: 50] The MOM soon commenced investigations into the plaintiffs which revealed that Mr Lee had committed numerous violations of the Employment of Foreign Manpower Act (Cap 91A, as amended by the Employment of Foreign Workers (Amendment) Act 2007). Mr Lee pleaded guilty to 33 charges and was sentenced to an aggregate sentence of four weeks' imprisonment and a fine of $36,000 and the appeal was subsequently dismissed (see [3] above; *Public Prosecutor v Lee Chiang Theng* [2010] SGDC 446).

26 Between July 2010 and May 2011 (whilst the criminal proceedings were going on), Mr Lee sent numerous letters (in his capacity as the sole director of the plaintiffs) to the defendant requesting compensation for losses sustained. However, the defendant denied liability and refused to offer any sums in compensation. [note: 51]

The alleged representations

27 On 31 May 2012, the plaintiffs commenced the present suit, bringing alternative claims for breach of contract and for fraudulent misrepresentation. However, as the breach of contract claim has been abandoned, it only remains for me to consider the claim in fraudulent misrepresentation (see [4] above).

28 The plaintiffs identify the following three oral representations, allegedly made by Mr Choo on behalf of the defendant (collectively, "the alleged representations"), as forming the basis of their cause of action in fraudulent misrepresentation: [note: 52]

> (a) "[T]hat Halcyon had secured big marine projects in the year 2008 and that there would be a lot of work for its Resident Contractors and the Plaintiffs would have priority in the projects assigned by Halcyon" ("the first representation"). The first representation was allegedly made to the first plaintiff sometime in February/March 2008 [note: 53] and to the second plaintiff in May 2008 (before the second plaintiff was incorporated). [note: 54]

(b) "[T]hat on payment of the service fee of $3,500 per foreign worker, the said worker would be given work on projects assigned by Halcyon to the Plaintiffs" ("the second representation"). The second representation was allegedly made to the first plaintiff in February 2008 [note: 55] and to the second plaintiff in "early July 2008". [note: 56]

(c) "[T]hat the Plaintiffs from March to December 2008 should continue to bring their foreign workers into Singapore so that the said foreign workers could start work immediately in Halcyon's shipyards when projects became available" ("the third representation"). This representation had purportedly been repeated to the plaintiffs on various occasions from March 2008 through to October 2008. [note: 57]

29 I pause to note that, in their statement of claim ("SOC"), the plaintiffs pleaded that *four* representations had been made; however, they only listed *three* in their closing submissions. [note: 58] The missing representation, which is found at para 31(c) of the SOC but is omitted from their closing submissions, reads, "that in assisting Halcyon in the manner described in paragraph 26 [the issuance of the GOFF Invoices], Halcyon would assign projects to the Plaintiffs so that all the Plaintiffs' foreign workers. [sic] would be employed". When questioned on this, Mr Sim, counsel for the plaintiffs, clarified that the plaintiffs would not be relying on this representation as an independent cause of action in misrepresentation. However, Mr Sim clarified that he would be relying on the fact of the issuance of the GOFF invoices as evidence that the alleged representations had been made. [note: 59]

30 Given the plaintiffs' position on this issue, I will examine the claim on the basis of the three alleged representations identified at [28] above.

Two threshold questions

31 Before I proceed to the substantive issues, two threshold legal questions first arise for determination. The first relates to standing. According to the plaintiffs, the first representation was made before the incorporation of the second plaintiff. [note: 60] This raises the question of whether the second plaintiff can bring a claim in misrepresentation on the basis of an alleged representation made to its promoter (Mr Lee) before it was incorporated ("the incorporation issue"). The second relates to agency. According to the plaintiffs' case, *all* the alleged representations were made by Mr Choo. [note: 61] This raises the question of whether Mr Choo was acting within his authority as the defendant's agent when he made the alleged representations ("the agency issue").

The incorporation issue

32 I will begin with the incorporation issue. To the best of my knowledge, this point has not been explicitly considered in Singapore. However, it appears to have been well travelled in several common law jurisdictions and I have had the benefit of their well-reasoned decisions in arriving at a landing on this issue.

The principle in Leslie Leithead

33 I begin first with the seminal decision of the New South Wales Court of Appeal in *Leslie Leithead Pty Co Ltd v Barber* (1965) 65 SR (NSW) 172 ("*Leslie Leithead*"), which appears to have been the first case to consider this issue. In *Leslie Leithead*, the defendant was the owner of a business dealing mostly in imported oils, the supplier of which was the Shell Oil Company ("Shell"). Hart was a representative of Shell. In 1959, the defendant approached Hart and attempted to negotiate a sale of

his business to Shell. Shell was not interested but Hart expressed a personal interest in purchasing the business. During the course of negotiations, the defendant suggested that Hart form a company (in which Hart would hold 75% of the shares and the defendant 25%) to complete the purchase. The defendant later falsified some accounts to give the appearance that his business was turning a profit when it had actually been incurring a loss and presented these accounts to Hart. Relying on the falsified accounts, Hart entered into a sale agreement, in which the sale was purported to be made to "a company to be formed". Hart proceeded to incorporate the plaintiff which then purchased the shares in the business.

34 When the fraud was discovered, the plaintiff brought an action against the defendant in fraudulent misrepresentation. The defendant attempted to argue that the representation was not actionable because it had not been made to the plaintiff, but to Hart, its promoter. This argument was summarily rejected. Brereton J, who delivered the judgment of the court, wrote (at 177):

> It is important to remember that *a company can be induced to do anything only by inducing, directly or indirectly, those individuals who control its decisions* … I agree wholeheartedly with the finding of the learned trial judge that, at any rate after the defendant became aware of Shell's rejection of the second proposal, *it was at all times contemplated that the purchase was to be effected by a company to be formed and controlled by Hart. I infer that the inducement offered to Hart was intended to be communicated to and acted upon by the company when formed*. [emphasis added]

35 Brereton J made two crucial findings: first, he found that the representation was intended to be of continuing character ("the inducement offered to Hart was intended to be communicated to… and acted upon the company when formed"); second, he found that the representation was, in essence, a representation to an agent which was intended to be acted on by the (albeit still unincorporated) principal ("it was at all times contemplated that the purchase was to be effected by a company to be formed and controlled by Hart").

3 6 *Leslie Leithead* has since been applied by other Australian courts (see, *eg*, *Djaw Pty Ltd v Schmitz and Ors* [2002] QDC 168), in Hong Kong (see, *eg*, *Peconic Industrial Development Ltd and Another v Chio Ho Cheong and Others* [2006] HKCFI 524), and also in England and Wales (see, *eg*, *Richard Butler-Creagh v Aida Hersham* [2011] EWHC 2525 (QB)). Ken Handley, the author of *Spencer Bower and Handley, Actionable Misrepresentation* (LexisNexis, 5th Ed, 2014) ("*Spencer Bower and Handley*") wrote, at para 9.03 (citing *Leslie Leithead*), that "[a] continuing representation to a promoter, intended to be acted upon by the company when formed, becomes a representation to the company".

Cramaso LLP

37 The recent decision of the Supreme Court of the United Kingdom ("UKSC") in *Cramaso LLP v Ogilvie-Grant and others* [2014] AC 1093 ("*Cramaso*") is instructive. In *Cramaso*, the respondents were the owners of a grouse moor in Scotland on which commercial shooting took place. The respondents wished to let the moor out and (represented by one Mr Kennedy) entered into negotiations with a Mr Erskine. In the course of negotiations, Mr Kennedy forwarded Mr Erskine an email (originally sent to him by the respondent's chief executive) containing an inaccurate estimate of the grouse population in the moor. Relying on this representation, Mr Erskine formed Cramaso LLP (the appellant) with his wife and used it as a vehicle to take up the lease for the moor. At the material time, Mr Kennedy was aware of Mr Erskine's intention for the lease to be taken up by a limited liability partnership. Cramaso LLP took up the lease but later found out that the estimates were incorrect. It then brought suit against the respondents for negligent misrepresentation.

38 At first instance, the claim was dismissed on the basis that the appellant could not recover damages because it had not been in existence at the time the representation was made. On appeal, the Inner House of the Court of Session held (a point also conceded by the respondent) that the lower court erred in holding that a duty of care could never be owed to a non-entity but it nonetheless found that a duty of care did not arise on the facts. The Supreme Court of the United Kingdom ("UKSC") unanimously reversed the decision of the Inner House and held that a duty of care did arise on the facts. Lord Reed, who delivered the leading judgment in the UKSC, held that the respondent had a continuing duty of care to ensure the accuracy of the representation as to the grouse population in the moor. This duty arose when the representation was first made and continued even after the Cramaso LLP had been formed. After Cramaso LLP was formed, the only thing that changed was the role of Mr Erskine, who now acted as the agent of Cramaso LLP (see *Cramaso* at [56] per Lord Toulson). Thus, the continuing representation (which was first made by the respondent to Mr Erskine) became a direct misrepresentation made by the respondents to Cramaso LLP (through Mr Erskine).

39 In arriving at this conclusion, the UKSC relied on the decision of the House of Lords in *Briess v Woolley* [1954] AC 333 ("*Briess*"). In *Briess*, the plaintiffs entered into a contract for the purchase of shares in X (a company) on the basis of a fraudulent misrepresentation made by R, its managing director. At the time the misrepresentation was first made, R had no authority to negotiate a sale. However, R was subsequently authorised by X's shareholders to do so. The House of Lords held that it did not matter that R had no authority when the fraudulent misrepresentation was first made because the fraudulent misrepresentation was of a continuing character. After R was authorised by X to negotiate a sale, the fraudulent misrepresentation continued to be made by X (through R) to the plaintiffs such that a cause of action arose when the plaintiffs acted on the fraudulent misrepresentation to their detriment. By analogy, the UKSC in *Cramaso* reasoned that it did not matter that Mr Erskine was not Cramaso LLP's agent at the time the misrepresentation was first made (because Cramaso LLP had yet to be formed) because the misrepresentation continued to be asserted to Mr Erskine until and after he became Cramaso LLP's agent (after Cramaso LLP was formed).

40 Mr Chan, counsel for the defendant, submits that *Cramaso* misapplied *Briess*. He argues that "in *Briess*, there was already a company in existence… the principle in *Briess* cannot simply be applied to the situation where a company has yet to be incorporated, as this is not a question of agency, but a more fundamental question of whether there exists a legal entity by which (or to which) representations can be made." [note: 62] With respect, this argument is flawed.

41 Mr Chan focuses his analysis on the legal position *at the time of the representation* and argues that, in the present case, because the second plaintiff did not exist at the time, it could not have been the recipient of the first representation and therefore cannot now bring suit in fraudulent misrepresentation. This analysis is incorrect. The pivotal question is not what the legal position is at the time the representations were made but what the legal position is *at the time the misrepresentations were acted on*, because that is when the tort of fraudulent misrepresentation is complete (see *Briess* at 353 per Lord Tucker). This was also the basis upon which *Cramaso* was decided, as is clear from the following extract from Lord Reed's speech (at [30] of *Cramaso*):

> In the present case, *the change in the identity of the prospective contracting party did not affect the continuing nature of the representation, or the defenders' continuing responsibility for its accuracy.* It appears from the Lord Ordinary's findings that *the negotiations which had been under way between Mr Erskine and the defenders, in the course of which the critical e-mail was sent, simply continued after it had become apparent that a limited liability partnership was to be used as a vehicle for Mr Erskine's investment.* Neither party drew a line under the previous discussions, after the pursuer was formed, in order to begin afresh. Neither party disclaimed what

had previously been said in the course of their discussions, or sought assurances that it could be relied on as between the pursuer and the defenders. The seeking of such an assurance would no doubt have appeared to those involved to be an unnecessary formality. As the Lord Ordinary found, *the representation made in the critical e-mail remained operative in the mind of Mr Erskine after he began to act in the capacity of an agent of the pursuer, up until the time when the lease was executed on behalf of the pursuer. The pursuer was thus induced to enter into the contract by that representation.* [emphasis added]

42 When seen in this light, the difficulty presented by the incorporation issue fades away. It does not matter that the entity bringing suit did not exist at the time the representation was first made *so long as the representation was intended to be communicated to the representee and, having been so communicated, was an operative factor in its mind at the time it was relied on* (see *Cramaso* at [63] and [64], per Lord Toulson).

The ratio of the cases

43 In summary, the ratio of the cases is that if a representation is made to A in the contemplation that the representation will continue in force and be acted on by a third party ("B") then that representation will be of continuing effect and will, when made known to B through A, become a direct representation to B. If B subsequently relies on the representation which proves to be false and suffers a loss, he has a cause of action against the representor. It does not matter that B (a company) had yet to be incorporated at the time the representation was first made.

44 To my mind, this is not entirely a novel point of law, even if it involves the application of two established principles to an unusual fact pattern (see *Cramaso* at [46] per Lord Toulson). These two principles are: first, the doctrine of continuing representation – that a pre-contractual representation is of continuing effect until it is corrected (see *Yokogawa Engineering Asia Pte Ltd v Transtel Engineering Pte Ltd* [2009] 2 SLR(R) 532 at [12]; *Smith v Kay* (1859) 7 HLC 750; *With v O'Flanagan* [1936] 1 Ch 575; *Cramaso* at [22]) and, second, the principle that a representation made to a third party for intended transmission to the plaintiff can be actionable (see *Thode Gerd Walter v Mintwell Industry Pte Ltd* [2009] SGHC 44 at [32]; *Pilmore v Hood* (1838) 5 Bing (NC) 98; *Clef Aquitaine SARL and another v Laporte Materials (Barrow) Ltd and another* [2001] 1 QB 488).

45 The proposition articulated in *Spencer Bower and Handley*, while correct, need not be narrowly restricted only to representations made to promoters of companies. It suffices that the representation was made to a person who stands in such relation with the nascent company that he will – after the date of the company's incorporation – be the company's agent.

46 This outcome is also consonant with legal policy. If a company could never sue on a misrepresentation made to its promoter before its incorporation then there would be a lacuna in the law: the one who has suffered loss (the company) has no standing; while the one who has standing (the promoter) has suffered no loss. This is analogous to the situation which faced the House of Lords in *White v Jones* [1995] 2 AC 207. In that case, the House of Lords was concerned with a situation in which, due to the negligence of a solicitor, a beneficiary was left out of the inheritance. The House of Lords (per Lord Goff of Chieveley at 259H to 260A) observed that if no duty were recognised, the wrong would not be compensable because the only entity with standing (the estate) has suffered no loss while the person who has suffered loss (the disappointed beneficiary) has no standing.

47 In summary, the fact that the second plaintiff had not been incorporated at the time the first alleged representation was made is not, by itself, an insuperable obstacle to the second plaintiff's claim, provided the alleged representations were intended to be of continuing character and intended

to be relied on by the second plaintiff after its incorporation. [note: 63] On the assumption that the alleged representations were in fact made – the determination of which will be dealt with below – it is clear that they were (a) intended to be of a continuing character; and (b) intended to be relied on by the second plaintiff. This is because, taking the plaintiffs' case at its highest, it was Mr Choo who specifically encouraged the second plaintiff to be incorporated in order that the second plaintiff would bring in additional workers to work on the defendant's projects.

The agency issue

48 Even assuming that all the alleged representations were made, the plaintiffs must still prove that Mr Choo was, at the material time, an *agent* of the defendant and that he was acting within the scope of his authority when he made the alleged representations. As a starting point, I accept the defendant's evidence that Mr Choo was only formally employed by the defendant in October 2008, when he was given the position of "Human Resource Co-Ordinator (Labour Affairs)". [note: 64] This is abundantly clear from Mr Choo's Central Provident Fund ("CPF") statements, which show that he only began receiving CPF contributions from the defendant in October 2008. [note: 65] While the plaintiffs had initially pleaded that Mr Choo was the *defendant's employee* at all material times, [note: 66] under cross-examination Mr Lee admitted that he did not know when Mr Choo was formally employed by the defendant. [note: 67]

The parties' arguments

49 Mr Sim submits that, even before 1 October 2008, Mr Choo played a critical role in the defendant's operations so the alleged representations, if made, would have been within the scope of his apparent, if not actual, authority. He makes this argument in two parts.

(a) First, he submits that Mr Choo was acting within his actual authority in making the alleged representations. He points out that it is undisputed that the defendant had engaged Mr Choo as a "labour consultant" in December 2007 [note: 68] and that, in this capacity, Mr Choo (i) sourced for resident contractors for the defendant; (ii) allocated foreign work permit quotas to each of the resident contractors; and (iii) was effectively in charge of the application of the foreign work permits. [note: 69]

(b) Second, and in the alternative, Mr Sim submits that Mr Choo was acting within his apparent authority in making the alleged representations for three reasons. First, he notes that it is undisputed that Mr Choo was given an office in the defendant's premises (in which the various agreements were signed). Second, he points out that the Goldrich and Gates Labour Supply Agreements were always executed by Mr Ong without variation. Third, he points out that Mr Ong himself had admitted that, whenever one of the defendant's subsidiaries required workers, it would be Mr Choo who would decide which resident contractor to activate.

50 Mr Chan, counsel for the defendant, submits that the plaintiffs cannot make good their case on actual authority because they have not adduced any specific evidence to prove that the defendant had expressly authorised Mr Choo to make the alleged representations. Equally, Mr Chan submits that the plaintiffs cannot rely on the doctrine of apparent authority in this case because there is no evidence that *the defendant* (rather than Mr Choo) had represented to the plaintiffs that Mr Choo had the authority to make the alleged representations. [note: 70] In that connection, Mr Chan points out that Mr Lee did not meet Mr Ong until December 2008 and argues that Mr Lee could not have received any *direct* representations from the defendant regarding Mr Choo's authority before that.

Did Mr Choo have the authority to make representations regarding the defendant's allocation of work?

51 In my view, it is clear that the plaintiffs' arguments in relation to *actual* authority cannot succeed. The plaintiffs have not led evidence on the precise scope of the terms of Mr Choo's engagement as a "labour consultant", having not furnished any documents on the scope of his employment or any oral communications as to the ambit of his actual authority. Furthermore, insofar as the plaintiffs seek to rely on the usual authority of "labour consultants", this must fail because they have not led evidence on the scope of a "labour consultant's" authority in the defendant's corporate structure (see *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another suit* [2009] 4 SLR(R) 788 at [120]).

52 However, those shortcomings do not preclude a finding of apparent authority. Based on the undisputed facts, I find that the defendant had, in the course of its dealings with the plaintiffs in relation to the labour supply agreements as well as through its engagement of Mr Choo as a "labour consultant", held him out as having the apparent authority to make representations as to the defendant's allocation of work.

53 In *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2002] 2 SLR(R) 407 at [48], the Court of Appeal cited, with approval, the following passage from the speech of Lord Keith of Kinkel in *Armagas Ltd v Mundogas SA* [1986] 2 Lloyd's Rep 109 ("*Armagas*") at 112:

> *Ostensible authority comes about where the principal, by words or conduct, has represented that the agent has the requisite actual authority, and the party dealing with the agent has entered into a contract with him in reliance on that representation.* The principal in these circumstances is estopped from denying that actual authority existed. *In the commonly encountered case, the ostensible authority is general in character, arising when the principal has placed the agent in a position which in the outside world is generally regarded as carrying authority* to enter into transactions of the kind in question. *Ostensible general authority may also arise where the agent has had a course of dealing with a particular contractor* and the principal has acquiesced in this course of dealing and honoured transactions arising out of it. [emphasis added]

54 As pointed out by Mr Chan, in order for ostensible authority to arise, there must be a representation by the principal (*ie*, the defendant), and not the agent (*ie*, Mr Choo), to the third party (*ie*, the plaintiffs) as to Mr Choo's authority (see *Sigma Cable Co (Pte) Ltd v NEI Parsons Ltd* [1992] 2 SLR(R) 403 at [30]).

55 However, I disagree with Mr Chan that there is no evidence that such a representation had been made. Following *Armagas* at 112, the representation in question can arise by conduct: *eg*, through the placement of the agent in a position which the outside world generally regards as carrying authority of the type alleged, or through a course of dealing. In my judgment, the defendant had represented – through its conduct – that Mr Choo had the authority to make representations on the allocation of work to the resident contractors. First, I considered the evidence surrounding Mr Choo's role as a "liaison" to the resident contractors. By the defendant's own admission, it "left most of its human resource issues to be handled by [Mr] Choo". [note: 71] During cross-examination, Mr Ong testified that Mr Choo would make the recommendations on the quotas to be allocated to each resident contractor and that, to the best of his knowledge, the defendant had *never* disagreed with Mr Choo's recommendation. [note: 72] In essence, Mr Choo had complete control over the allocation of work permit quotas, including the quotas which were eventually allocated to the plaintiffs. Crucially, it

was Mr Choo who decided which of the resident contractors to deploy whenever work had to be carried out for the subsidiaries.

56 Second, it is notable that Mr Choo had, since December 2007, been engaged by the defendant as a "consultant for labour matters". In his position as a "labour consultant", Mr Choo occupied an office *within the defendant's premises* and was assisted by two staff members who, though not employees of the defendant, were nevertheless stationed at the defendant's office on a full-time basis. [note: 73] It was within these premises that Mr Choo held meetings with Mr Lee. These are representations *by conduct* that Mr Choo was an agent of the company with authority to deal with labour matters.

57 Third, I considered the circumstances surrounding the conclusion of the labour supply agreements. It is undisputed that Mr Choo was the only individual who dealt with Mr Lee in relation to the labour supply agreements. Mr Lee's evidence – which was unchallenged in this respect – was that Mr Lee would first sign the agreements in Mr Choo's presence at the defendant's office before the signed copy of the labour agreement was taken away and returned, duly signed by Mr Ong, without any amendments. [note: 74] Mr Ong's act in signing the labour supply agreements as prepared by Mr Choo must be taken to be a representation to the plaintiffs that Mr Choo had the authority to negotiate the conclusion of labour contracts with resident contractors.

58 In my judgment, the defendant must be taken to have represented to the plaintiffs that he was their agent vested with the authority to deal with issues concerning the recruitment and deployment of foreign workers. It is irrelevant to point out, as Mr Chan does, that Mr Choo's authority was limited in ways unknown to third parties. For example, Mr Chan points out, in relation to the work permit online system, Mr Choo only had access to "key in data" and did not have the password to access the WPOL system. [note: 75] However, this is not relevant in an inquiry into Mr Choo's apparent, and not actual, authority. The point is that each time Mr Choo sought to deal with the defendant's labour issues (be it the allocation of quotas or the application of work permits), he was able to do so and that was how it appeared to the plaintiffs. In summary, I find that the alleged representations, *if made*, would have been made under the cloak of apparent authority.

Were the alleged representations made?

59 The parties' positions are diametrically opposed. The plaintiffs paint a story of lies and broken promises. The plaintiffs assert that the alleged representations were made by Mr Choo to Mr Lee at various times between February 2008 and October 2008. The plaintiffs state that, as the resident contractors of the defendant, the provision of labour to the defendants was their *raison d'être*. The plaintiffs argue that, without these representations having been made, they would not have performed the financially ruinous decisions of bringing in the foreign workers (despite them not having received work for months on end), paid a substantial sum in service fees, or paid for the continuing upkeep of the workers until January 2009, when the entire affair unravelled.

60 The defendant, on the other hand, paints a story of a business venture gone sour. Its position is that the pleaded representations were never made. [note: 76] It disclaims any responsibility for the plaintiffs' financial woes, denies that any representations had been made, and avers that the plaintiffs' predicament is a combination of their poor business decisions and the parlous economic climate that followed the global financial crisis. [note: 77] From the defendant's perspective, Mr Lee's *animus* ought to be directed against Mr Choo, who had some role in the business venture, and that the defendant had only been dragged into the picture because it has deeper pockets. [note: 78]

61 I will first summarise each party's factual narrative and identify the difficulties in their respective case theories before arriving at my findings.

The parties' narratives of events

The plaintiffs' narrative

62 According to the plaintiffs, Mr Choo approached Mr Lee in February 2008 and, after identifying himself as being in charge of the defendant's labour affairs, invited Mr Lee to have his company registered as one of the defendant's resident contractors. [note: 79] At this meeting, Mr Choo told Mr Lee that "Halcyon had many projects in its order books so there was no need for the resident contractor to be worried about any lack of work". However, Mr Choo stressed that the defendant "required a service fee of S$3,500 to be paid to Halcyon… [and] in return, Halcyon would give work for 2 years". [note: 80]

63 Subsequently, in or around May 2008, Mr Choo invited Mr Lee to his office at the defendant's shipyard and encouraged him to incorporate the second plaintiff. At this meeting, Mr Choo told Mr Lee that he had been instructed by Mr Ong to inform him that the defendant had "huge ship-repair projects" which would commence soon for which many workers would be needed. He assured Mr Lee that the workers recruited under the new company would be "fully deployed to work in Halcyon's projects". [note: 81] Acting on the strength of these representations, the second plaintiff was incorporated and it thereafter brought in additional foreign workers and paid the service fees. [note: 82]

64 In the ensuing months, the plaintiffs state that no work was assigned to the workers and they were left idle. Mr Lee then approached Mr Choo on many occasions, requesting that work be assigned to the plaintiffs' workers. [note: 83] However, Mr Choo informed Mr Lee that the plaintiffs ought to continue retaining the workers in Singapore so they could be deployed expeditiously once the defendant issued the requisite purchase orders. [note: 84] Mr Lee, believing that Mr Choo's instructions "made sense", retained the workers.

65 In October 2008, Mr Choo asked to meet Mr Lee to relay a request from Mr Ong. During this meeting, Mr Choo informed Mr Lee that the deployment of the plaintiffs' workers would be expedited if the second plaintiff issued invoices for work which the plaintiffs would in fact not perform. These were the GOFF Invoices. According to this arrangement, the second plaintiff would be given a cheque for the invoiced amount but was expected to return this same sum of money by way of cash or through the issuance of a separate cheque. The plaintiffs termed this process "reversing out" – in essence, it was meant to create the fiction of work. [note: 85] According to the plaintiffs, the GOFF Invoices were shams since none of the works invoiced were ever carried out by the plaintiffs. [note: 86] Mr Lee added that his role in the issuance of the GOFF Invoices was a further reason why he was reassured that his workers would be deployed and he therefore continued to recruit more workers, notwithstanding the fact that none of them had been deployed to date. [note: 87]

66 Following the call with Ms Chai from the MOM (see [22] above), Mr Choo approached Mr Lee to ask that he sign the Gates Fabrication Agreement and also reassured Mr Lee that his workers would soon be deployed. Following this, Mr Lee was also instructed to despatch 25 workers to the defendant's shipyards in order that photos – purportedly showing the workers gainfully employed – could be taken. [note: 88] According to the plaintiffs, the taking of these photos was an elaborate

charade that the defendant had, unbeknownst to the plaintiffs, engineered in order to fabricate evidence to support its appeal to the MOM regarding the loss of its sponsoring shipyard status (see [19] above). [note: 89]

67 Mr Lee deposed that a total of $2,163,000 (representing a sum of $3,500 for each worker) was paid by the plaintiffs to the defendant. He claimed that two cash cheques exhibited (both of which were issued by Mr Lee and encashed by Mr Ong) for a total sum of $78,000 was evidence of the payment of the service fees.

The defendant's narrative

68 The defendant begins by clarifying that Mr Choo had only been formally retained as its employee in October 2008, when the defendant required Mr Choo's assistance in dealing with the fallout that was caused by the MOM's investigations into the plaintiffs' affairs. [note: 90] Before that, the defendant submits that Mr Choo was not its agent and was merely a consultant for the defendant's labour requirements. [note: 91]

69 The defendant explains that the years preceding October 2008 (before the Lehman crisis) were *halcyon days* for the marine industry as there was a great demand for such workers, particularly from large shipyards like the defendant's. [note: 92] Further, Mr Ong deposed that it was common practice – though it might have been in violation of the terms of the Marine Industry Sponsorship Scheme – for workers brought in by resident contractors to find gainful employment in other shipyards and that many contractors (including the plaintiffs) conducted business on that premise. [note: 93] The defendant suggests that Mr Lee's "business model" was to bring in the foreign workers, each of whom would pay about $5,800 in service fees, [note: 94] of which between $2,000 and $4,300 would be paid to Mr Lee and the foreign agent while a sum of $1,500 would be given to Mr Choo. [note: 95] Mr Choo avers that it was Mr Lee who first approached him to indicate his interest in having the first plaintiff registered as one of the defendant's resident contractors. [note: 96]

70 The defendant states that it always dealt with all its resident contractors, including the plaintiffs, at arm's length and neither encouraged any contractor to apply to become its resident contractor nor encouraged the incorporation of the second plaintiff. [note: 97] The defendant would inform its resident contractors of the quota of foreign workers available for their use but the resident contractors would be responsible for deciding if workers ought to be brought in [note: 98] and, if so, the types of workers that would be recruited. [note: 99] The defendant states that the plaintiffs' workers were not deployed because they – being unskilled – were unsuitable, [note: 100] and asserts that the plaintiffs had never approached the defendant to inform them that their workers were ready for deployment. [note: 101] The defendant claims that it was always ready to deploy the plaintiffs' workers (should they be suitable) but it never received word from Mr Lee that the workers were ready for deployment. [note: 102]

71 On the subject of the GOFF Invoices, the defendant's case is that the works listed in the GOFF Invoices were carried out, even if the plaintiffs did not supply all the workers necessary for the completion of the works listed in the invoices. [note: 103] According to the defendant, Mr Choo was solely responsible for coordinating the manpower requirements for "minor works". [note: 104] Mr Choo explained that once the works were completed, he would request that the second plaintiffs issue an invoice for the total cost of the project. This was an administrative expedience as it allowed the full

sum for each of these "minor works" to be paid without the inconvenience of having to collect separate invoices from each of the contractors who supplied workers. [note: 105]

72 Mr Ong explains that, as far as the defendant was concerned, it did not care which company the workers came from because "[a]s long as the work was done, the [d]efendant and its [s]ubsidiaries were happy to pay for the work". [note: 106] In any case, the defendant submits that any impropriety that might have been involved in the issuance of the GOFF Invoices is a matter between Mr Choo (who admitted to having instructed Mr Lee to issue the GOFF Invoices [note: 107]) and the plaintiffs alone. [note: 108]

73 In relation to the cash cheques encashed by Mr Ong, Mr Choo explained that he had received these cheques from Mr Lee (they were a portion of his "cut" of the service fees) and had handed them over to Mr Ong in discharge of several personal loans which he owed the latter. [note: 109] Mr Ong stated that he regularly lent the defendant's contractors (Mr Choo was the proprietor of M Power Engineering and Zippon Marine & Engineering – both of which were resident contractors of the defendant) sums of money to tide them over when they experienced problems with their cash-flow. Mr Ong stated that he lent Mr Choo a total of $185,000 within a few months of making his acquaintance. [note: 110] The defendant's case is that neither it nor Mr Ong ever received any sums of money in connection with the service fees. Instead, service fees of $1,500 (not $3,500) were paid to Mr Choo *personally*.

Service fees

74 It is apparent that the dispute over the service fees features prominently in this case – whether it was paid, for what amount and to whom. It also serves as the underlying factual premise for the plaintiffs' claims, particularly in respect of the second representation. Based on the evidence before me, my findings on the service fees are set out below:

(a) First, I find that Mr Choo received $1,500 in service fees for his personal benefit as there is no evidence that any portion of the service fees found its way to the defendant. It is common ground that Mr Choo did receive a portion of the service fees. [note: 111] The dispute lies with the quantum and the capacity in which Mr Choo received the payments. Mr Choo had deposed that he received $1,500 in service fees from Mr Lee while the plaintiffs aver that the full sum of $3,500 was paid to the defendant *via* Mr Choo. [note: 112] On this point, I prefer the evidence of Mr Choo because, having already admitted to receiving the service fees, there is no reason for him to be untruthful about the quantum. Besides, Mr Lee was not able to adduce any documentary evidence to prove that he had paid the entire service fees received from the foreign workers (amounting at least to $3,500) to Mr Choo.

(b) Second, I find that Mr Lee must have received a portion of the service fees for himself. It is undisputed that Mr Lee received *at least* $3,500 from the foreign workers (the defendant did not challenge the fact that Mr Lee had received service fees but only disputed its quantum – Mr Choo deposed that $5,800 is the usual amount). I have also already found that Mr Choo received only $1,500. Thus, it must necessarily follow (as there is no evidence to prove the contrary) that the balance remained with Mr Lee. I also note that this finding is consistent with Mr Lee's evidence that the market practice was that the director of the resident contractor would also receive a cut of the service fees. [note: 113]

(c) Third, I find that Mr Ong received the sum of $78,000 paid through the cash cheques for

his personal benefit and that this represented at least a portion of his share of the service fees. It is undisputed that the two cash cheques were issued by Mr Lee and cashed in by Mr Ong. It is also undisputed that the sum of $78,000 had come from service fees paid by the foreign workers. [note: 114] I reject the explanation that these cheques had been given to Mr Ong by Mr Choo as repayment of personal loans. Not only is that explanation completely unsupported by any evidence, it is simply incredible that Mr Ong would extend loans amounting to a staggering $185,000 to a mere "[business] associate" he had met just months before without requiring any commitment to repayment or any documents evidencing the alleged loans. [note: 115] In my view, this is just a convenient explanation for an inconvenient fact which simply cannot be accounted for. As a result of the foregoing, the only reasonable explanation is that the sum of $78,000 went to Mr Ong *personally* and that it represented his share of the service fees.

General comments

75 I now turn to the representations in general. I observe that both parties' narratives are riddled with difficulties. On the one hand, I struggle to understand how the plaintiffs could have endured the staggering losses of which they now complain – several million dollars in service fees and expenses over the course of a year – merely on the strength of Mr Choo's oral representations when the reality is that none of the workers were ever deployed. It is inexplicable that, despite the length of time which has elapsed, there is not a single document (save for two cash cheques) evidencing the payment of any of the service fees to the defendant nor is there written correspondence recording Mr Lee's unhappiness with the defendant over the fact that the foreign workers were not deployed at all. [note: 116]

76 On the other hand, I find it astonishing that the defendant would permit the plaintiffs to take up nearly 30% of its allotment of foreign work permits (of a total of 2000) to bring in unskilled and unsuitable foreign workers, particularly since Mr Ong had deposed that it had applied for classification as a "sponsoring shipyard" in order to alleviate its manpower problems (see [13] above). I also find the explanation for the issuance of the GOFF Invoices (that it was simply an administrative convenience) too convenient by half. If the plaintiffs actually supplied workers in respect of the GOFF Invoices then it would not make sense for the plaintiffs to refund the *full* amount to the defendant without first taking a cut to represent the sums it was owed for the workers it supplied (I note that no evidence was led by the defendant as to what portion was for work done by the plaintiffs or that in respect of such portion, it was in fact paid). Furthermore, it would not make business sense for the plaintiffs to issue invoices (in respect of which it would be liable to pay taxes on the full sum invoiced) if only a portion of the payment was due to them.

77 Mr Sim urged me to accept the plaintiffs' narrative of events because there was no plausible reason why Mr Lee would have acted the way he did – bringing himself to the brink of financial ruin – without an assurance of work. He submitted that there was no reason for the defendant to allow the plaintiffs to take up nearly 30% of its allotment of 2000 foreign work permits if it were not benefitting from the receipt of service fees. Mr Sim also urged me to reject the defendant's explanation that the plaintiffs' workers were unskilled, arguing that it was both inconsistent with the documentary evidence (given that many of the IPA certificates exhibited seem to suggest that at least some of the workers were skilled) [note: 117] but also with the testimony of Mr Choo and Mr Ong that the plaintiffs had supplied workers in relation to the GOFF Invoices, which required the deployment of semi-skilled labour. [note: 118]

78 While Mr Sim has raised some thought-provoking points, the fundamental problem with his submission is that the difficulties in the defendant's narrative, however numerous, do not assist the

plaintiffs with the proof of its affirmative case. I am not faced with a binary choice between accepting either the plaintiff's account of events or that of the defendants. In other words, rejection of the defendant's case theory does not invariably entail acceptance of the plaintiffs'.

79 To my mind, there is at least one other possibility which both parties understandably steered away from. In gist, this possibility is that the three men at the centre of this suit – Mr Lee, Mr Choo, and Mr Ong – had devised a plan (perhaps independently of the defendant) to earn money through the receipt of service fees. The "business plan" was for the plaintiffs to be registered as the defendant's resident contractors and, upon being allocated a generous quota of the defendant's foreign work permits, bring in many foreign workers. Once these workers came in, there would be an immediate financial benefit to the three of them in the form of their respective shares of the service fees (which amounted to a substantial sum in excess of $2m).

80 Under this plan, it was always contemplated that the workers *would in all likelihood* be deployed, because the marine industry was doing very well at that time. The three men, in coming up with this business plan, saw it as a profitable venture. When the workers arrived, they would receive an immediate cut of the service fees. When the workers were deployed, as they were optimistic they would be at that time, they would reap further benefits. However, this plan began to unravel when (a) the economy turned sour at the end of 2008; and (b) when the MOM commenced its investigations into the plaintiffs. The plaintiffs predictably avoided this explanation because it would be fatal to its case on the service fees if they acknowledged that the service fees were paid to Mr Choo and Mr Ong personally and not to the defendant. The defendant, through Mr Ong, understandably wanted to avoid this conclusion in recognition of the impropriety involved.

81 With this finding, many of the puzzling aspects of the parties' narratives described at [75] and [76] above would be rendered explicable. That having been said, it is not necessary for me to find out *exactly* what happened in order to dispose of this case. At the end of the day, the plaintiffs bear the burden of proving the facts-in-issue to establish its claim in fraudulent misrepresentation, chief of which is that the alleged representations *as pleaded* were in fact made. On that count, I am not persuaded that the plaintiffs have succeeded.

The plaintiffs' case theory in light of the conduct of Mr Lee

82 I will first make two preliminary observations. For a start, I note that the plaintiffs have accused the defendant of fraud, which is a serious allegation. In *Tang Yoke Kheng (trading as Niklex Supply Co) v Lek Benedict and others* [2005] 3 SLR(R) 263 at [14] ("*Tang Yoke Kheng*"), the Court of Appeal observed,

> … [B]ecause of the severity and potentially serious implications attaching to a fraud, even in a civil trial, judges are not normally satisfied by that little bit more evidence such as to tilt the "balance". They normally require more. …

83 In *Chua Kwee Chen and others (as Westlake Eating House) and another v Koh Choon Chin* [2006] 3 SLR(R) 469 at [39], Phang JC (as he then was) clarified that the standard of proof to be applied is still the civil test of proof on a balance of probabilities. However, because of the context in question, "more evidence is required than would be the situation in an ordinary civil case". This was applied in Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another [2013] 3 SLR 801 ("Wee Chiaw Sek Anna") at [30], where the Court of Appeal cited its previous decision in Tang Yoke Kheng in the context of a claim in fraudulent misrepresentation and endorsed the position that a more rigorous forensic lens should be applied to claims grounded in fraudulent misrepresentation. In the instant case, both parties do not dispute that

this approach correctly reflects the law. [note: 119]

84 The second preliminary issue concerns my general approach towards the representations. Each of the alleged representations can form the basis of an independent cause of action in fraudulent misrepresentation (though the damages claimed in respect of each of them might differ – for example, recovery of the service fees paid is premised largely on proof of the second alleged representation, and not on the first or third). However, given that the primary evidence for each of the alleged representations is the evidence of Mr Lee, all the alleged representations will stand or fall together, based primarily on my assessment of the veracity of Mr Lee's testimony. In assessing Mr Lee's testimony, I am guided by the observations of the Court of Appeal in *Sandz Solutions (Singapore) Pte Ltd and others v Strategic Worldwide Assets Ltd and others* [2014] 3 SLR 562 at [39] and [46] in which the Court of Appeal cautioned against excessive reliance on assessments based on the demeanour of the witness and advocated a rigorous approach based primarily on a comparison between the witness's testimony in light of the objective evidence before the court. With that in mind, I will analyse the reliability of Mr Lee's account along two indices: (a) its internal consistency (*ie*, the coherence of his testimony throughout the trial); and (b) its external consistency (*ie*, if the evidence given at trial is consistent with the extrinsic evidence such as the behaviour of the parties and the contents of the documentary evidence on record).

Mr Lee's conduct at the material time

85 First, I find it significant that none of the alleged representations, despite the obvious importance placed on them by the plaintiffs, found their way into any of the three agreements: the Goldrich Labour Supply Agreement, the Gates Labour Supply Agreement, or the Gates Fabrication Agreement. Instead, the agreements were vague and unspecific. They regulated the terms on which labour or services would be provided by the plaintiffs *if* the defendant so requested but did not specify that work would, in fact, be requested. This omission is particularly inexplicable in the case of the Gates Fabrication Agreement, which was signed on 1 December 2008. By this time, the plaintiffs claim that their workers had not received work for the whole year and that millions had allegedly been expended in service fees and expenses (see [64] and [68] above). In the circumstances, I find it incredible that the plaintiffs would blithely take the defendant at their word and not insist on reducing the representations into writing, given the opportunity to do so in the Gates Fabrication Agreement.

86 Furthermore, I find the circumstances leading to the issuance of the Gates Fabrication Agreement to be particularly notable:

> Witness: *This agreement [the Gates Fabrication Agreement] was definitely not issued at my request.*
>
> …
>
> Q: Now at paragraph 123 [of Mr Lee's criminal affidavit], you say: [Reads] "In response to my demands that they prove their commitment, a steel fabrication, assembly and installation service Agreement between Halcyon and Gates was signed..."
>
> So which is the correct version, Mr Lee? What you say in your criminal affidavit or what you say in your AEIC?

A: No. This, to me, when I write the paragraph 123 of the affidavit that you are just reading now, this response, *"in response to my demands", you see when I---"my demands" that means when I received the call from Ms Chai of the MOM, I really demanded that you please give me a contract. You please give me a contract. MOM is chasing is investigating my com---the worker because there were no work and I will be in deep trouble because I was the sole director. If not, how I shiver when MOM call me?*

Q: See, Mr Lee, you just changed your evidence on this---

A: No. I never changed.

…

A *So I'm trying to explain this---this paragraph did not contradict my saying that---that I did not demand for the---I did not ask them to give me a---a---the particular steel fabrication contract because I never know that there was a steel fabrication contract* and---and Halcyon is going to give me one.

[emphasis added]

87 This exchange is just one example of how Mr Lee often gave inconsistent and contradictory testimony. Apart from that, this also reveals that even Mr Lee did not believe that the defendant had an obligation to deploy his workers. If one examines his testimony carefully, it is clear that he asked *not for work per se but for a contract that would forestall the MOM's investigations*. If, as the plaintiffs now assert, the defendant had represented that they would deploy all their workers, then Mr Lee's demands ought to have been for work – for purchase orders and the like. However, he did not do that and was instead content to receive a vague contract that did not even bind the defendant to use the plaintiffs' workers.

88 Second, I find it significant that, under cross-examination, Mr Lee admitted that *all* the workers brought in by the first plaintiff and 85% of the workers brought in by the second plaintiff were unskilled. [note: 120] This is incongruous when we consider that the plaintiffs have pleaded that the third representation was a promise for *immediate* deployment ("the Plaintiffs *from March to December 2008* should continue to bring their foreign workers into Singapore so that the said foreign workers *could start work immediately*" [emphasis added] (see [28(c)] above)). Given the terms of the third representation, one would expect Mr Lee to bring in workers who were suitable for immediate deployment. However, that was not the case. In the 15 December letter (see [23] above), Mr Lee wrote that "most of [the 400 workers brought in by the second plaintiff] are *still undergoing training* at our in-house training centre. We expect them to be *ready for job deployment early January 2009*" [emphasis added]. In other words, by Mr Lee's own evidence, the plaintiffs' workers were not ready for deployment *because they were unskilled and not ready*. [note: 121]

89 I find the plaintiffs' conduct in bringing in largely unskilled workers at odds with the content of the third representation. If the third representation were made, the plaintiffs ought to have brought in workers which could immediately be set to work but this was not the case. When confronted with his 15 December letter during cross-examination, Mr Lee (perceiving how damaging it was to the plaintiffs' case) attempted to disown his earlier response to the MOM by claiming that he had provided a "false" response to the MOM at that time and that not all of the second plaintiffs' workers were undergoing training (and therefore unsuitable for deployment). [note: 122] This is yet another example of Mr Lee's propensity to tailor his evidence whenever it suited him.

90 Third, it is critical to note that there is no documentary evidence that any correspondence had been exchanged between the plaintiffs and the defendant on anything, let alone on the substance of the alleged representations. During oral argument, Mr Sim attempted to explain this away by suggesting that the individuals in question were "people who [did not] communicate… in writing. It's all phone calls". [note: 123] I find that explanation wholly unconvincing. The subject matter is neither trivial nor casual in nature such that written communication is not usually expected. Here, we are concerned with the recruitment and employment of hundreds of foreign workers towards whom the plaintiffs owed statutory responsibilities. I find it incomprehensible that, if the defendant had in fact represented that the foreign workers would be deployed for two years at its shipyard, the plaintiffs would not have sent any written communication protesting their non-deployment *at all*. Furthermore, from July 2010 to May 2011, after the affair had unravelled and Mr Lee had been prosecuted, the plaintiffs sent 12 carefully written, clear, and forcefully expressed letters to the defendant seeking compensation. Mr Lee is obviously not an uneducated man. During the trial, he was able, under questioning, to discuss the niceties of insurance law with references to the territorial coverage of the insurance contracts and the doctrine of subrogation. [note: 124] In light of that, I am unable to accept Mr Sim's explanation and I find the absence of documentary evidence to support the alleged representations to be a glaring omission.

91 Fourth, I note that there is no evidence that any payments of the service fees, even if made, ever went to the *defendant*. Instead, the only evidence before this court is that part of the service fees was paid and received by Mr Choo and Mr Ong *personally* (see [74(a)] and [74(c)] above). This is a glaring gap in the plaintiffs' case because the substance of the second representation was that, upon payment of the requisite service fees *to the defendant*, work would be given to the plaintiffs' workers. The absence of any evidence that the defendant received the service fees serves only to reinforce the point that the representations (or, at least, the second representation) could not have been made and that the entire affair was merely a private transaction between Mr Lee, Mr Choo, and Mr Ong.

92 Perceiving this difficulty, Mr Sim submitted that payment to an agent constitutes a discharge of the debt due to the principal. [note: 125] However, this submission is misconceived. There is no contractual obligation in any of the three agreements – the Goldrich Labour Supply Agreement, the Gates Labour Supply Agreement, or the Gates Fabrication Agreement – to pay any service fee to the defendant. The only reason why such a "debt" might exist is if the representations had been made – however, that is the very fact-in-issue. It is question-begging to assert that – on the assumption that the representations had been made – this would mean that there is a debt owed to the defendant which the plaintiffs had discharged by paying Mr Choo. Instead, the appropriate conclusion to draw is that the absence of *any* evidence that sums were paid to the defendant suggests that the representations were *never* made to begin with.

93 Fifth, I find it puzzling that there is no evidence that Mr Lee communicated with anyone in the defendant company other than Mr Choo. In fact, it appears that the plaintiffs first wrote to the defendant in July 2010, after Mr Lee had been prosecuted. It is also surprising that Mr Lee only sought to meet Mr Ong for the first time in December 2008, when the plaintiffs were already in dire straits (see [24] above) and not any earlier, when it was clear that Mr Choo was unable to deliver on his alleged representations. This builds on the previous point regarding the absence of evidence of payment to the defendant and gives further reason to believe that this matter is merely a private transaction between the three men.

Mr Lee's conduct before the criminal proceedings

94 Sixth, I find it inexplicable that the plaintiffs failed to mention the substance of the alleged representations in the correspondence exchanged with the defendant in 2010 and 2011. Instead, the plaintiffs referred only to the defendant's obligations under the Marine Industry Sponsorship Scheme. For example, in the first letter dated 13 July 2010, the plaintiffs wrote,

> I, Paul Lee Chiang Theng … would like to state that Halcyon Offshore Pte Ltd, the owner of the shipyard had *failed to exercise due care in assigning projects* to both my companies …
>
> …
>
> I respected and trusted Halcyon Offshore Pte Ltd and *acted upon the trust* to maintain the workers pending commencement of the projects but now I became the victim in this *poorly managed business venture*. [note: 126]
>
> [emphasis added]

95 In his letter dated 13 October 2010, Mr Lee wrote:

> I belong to that generation of Singapore who is brought up under the PAP system of government. The PAP ethos and values are deeply ingrained in our psyche. *That Halcyon Offshore had make [sic] use of the Marine Sponsorship Scheme to register 5 resident contractors over a period of less than 6 months and allotted quota to them to recruit more than 1300 NTS workers without subsequently giving works at Halcyon's yard is something that everyone of my generation finds wholly unacceptable.* [note: 127] [emphasis added]

96 In his letter dated 15 April 2011, Mr Lee wrote:

> **You should be equally quick to ask your clients to *state the legal and moral principles which they relied upon* for their rights which entitled them to sponsor the recruitment of the 610 foreign workers belonging to Goldrich and Gates and subsequently did not offer jobs to a single one of them after their arrival in Singapore. And when I ran out of money to support these 610 foreign workers your clients did not even lift one finger to help me**… [note: 128] [emphasis in original in bold; emphasis added in bold italics]

97 The complaint that comes through the letters is that the plaintiffs felt they had been let down by the defendant's failure to honour its obligations *qua* sponsoring shipyard to allocate work. The letters do not accuse the defendant of having reneged on specific oral representations it had made in 2008, which is their case in this present action. The language of the letters is also telling: it speaks more generally of a betrayal of trust and a failure to live up to its moral obligations ("failed to exercise due care", "I… acted upon the trust… [and] became the victim", "PAP ethos and values", and "legal and moral principles") rather than dishonesty and the perpetration of falsehoods.

Mr Lee's evidence during the criminal proceedings

98 Seventh, I also find the affidavit evidence of Mr Lee filed in MA 344/2010 ("criminal affidavit") highly relevant. In the conclusion to his criminal affidavit, Mr Lee deposed that:

> Halcyon has acted in clear breach of their duty as the Sponsoring Shipyard and Michael was the vehicle for this breach, resulting in huge loss incurred by me. I have consistently made all efforts possible to act in accordance with the guidelines of MOM.

Once again, the gravamen of Mr Lee's grievance is not the falsity of any particular representation made by the defendant, but the fact that the defendant did not (in his view) act in accordance with *its duties under the Marine Industry Sponsorship Scheme*. In para 23 of his criminal affidavit, Mr Lee explains:

> … I was under the impression that they already had specific projects which they had already secured. In fact, this *should have been a prerequisite for them making a request for workers.* [emphasis added]

99 And at para 45, Mr Lee elaborates:

> **The quota allocated to Resident Contractors by the Sponsoring Shipyard must be supported by adequate projects/contracts** so that the foreign workers recruited from overseas *have* work upon arrival in Singapore. **It should not be a case of " *get the worker first and see if we can find him a job"* ! It should be a pre-requisite** that the Sponsoring Shipyard must *already* have projects in hand for the *need* of the workers can be recruited by the Resident Contractors. [emphasis in original in italics emphasis added in bold]

100 The focus of the criminal affidavit is the (allegedly) sloppy manner in which the defendant had conducted its affairs, which was to assign quotas for the recruitment of workers without ensuring, *prospectively*, that it had ready projects on hand. By contrast, the premise of the plaintiffs' case in the present suit is that the defendant is liable because it had made specific representations that the plaintiffs' workers would be deployed but it never deployed them.

101 To be fair to the plaintiffs, Mr Lee does mention several specific representations in his criminal affidavit purportedly made to him by Mr Choo which bear some resemblance to the first and third representations:

> (a) At para 66, Mr Lee deposed, "[Mr Choo] represented to me that there would be a lot of sub contract works for its Resident Contractor". At para 68, Mr Lee deposed, "I was very keen to explore this business opportunity because Resident Contractor enjoys priority over common contractor when come to securing sub-contract projects from Halcyon".
>
> (b) At para 95, Mr Lee deposed that "Goldrich's workers and all additional workers recruited by Gates would be fully deployed to work in the projects without delay".

102 However, it is clear that the evidence in Mr Lee's criminal affidavit departs from his case in the present suit in several material respects. First, there is a conspicuous omission of the payment of service fees (the subject matter of the second alleged representation). Second, with respect to the first alleged representation, there is one crucial difference between Lee's criminal affidavit and that which is found in the plaintiffs' pleadings in the present case. In the former, it appears that Mr Lee independently formed the view that resident contractors would have priority in the allocation of work over common contractors based on his own understanding of the Marine Industry Sponsorship Scheme ("because Resident Contractor enjoys priority over common contractor when come to securing sub-contract projects"), and not because of any specific representation Mr Choo made to the plaintiffs *vis-à-vis* priority in the allocation of work.

103 When confronted with the discrepancies between his pleaded case and his criminal affidavit during cross-examination, Mr Lee explained that he was afraid that revealing information about the service fees would expose him to further criminal liability since the payment of service fees is (putatively) illegal. [note: 129] However, I find this explanation unconvincing because it would not

explain why Mr Lee is now so ready to ventilate evidence of impropriety during these proceedings (though it might explain the complete absence of any paper trail over the payment of service fees). I also mention, in passing, that a further issue which troubles me is that, Mr Lee's explanation, if accepted, would mean that the plaintiffs are founding their cause of action against the defendant on the basis of an illegality: *viz*, that the defendant had represented to the plaintiffs that if they performed an illegal act (the payment of service fees) they would be appropriately rewarded (through the deployment of their workers). Although illegality has not been pleaded by the defendant, the court can take cognisance of illegality if all the relevant facts have been adduced and are before the court (see *Ting Siew May v Boon Lay Choo and another* [2014] 3 SLR 609 at [31]). However, given that the precise nature of the illegality in question has not been placed before this court, I shall say no more about it.

Conclusion in respect of the representations

104 In the final analysis, I am not satisfied that the plaintiffs have placed sufficient evidence before me to prove, on a balance of probabilities, that the alleged representations had been made. Apart from the complete paucity of any documentary evidence or corroborative testimony (other than the testimony of Mdm Tan Chor Tiang, Mr Lee's wife, which is scant of detail), it is clear that Mr Lee's testimony as regards the alleged representations is both internally inconsistent as well as externally inconsistent (particularly when assessed in light of the evidence he gave during MA 344/2010). In coming to this conclusion, I am mindful of the fact that, following *Tang Yoke Kheng*, this court will require more evidence in cases involving allegations of fraud. The evidence adduced by the plaintiffs falls far short.

105 My finding that the alleged representations had not been made is sufficient to dispose of the claim. However, for completeness, I will go on to explain why I am of the view that the plaintiffs' claim is nonetheless beset with deep difficulties that would have barred its success in any event.

The elements of fraudulent misrepresentation

106 The elements of an action in fraudulent misrepresentation are well established and were set out in the decision of the Court of Appeal in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 ("*Panatron*") at [14]:

(a) There must have been a false representation of fact made by words or conduct.

(b) The representation had to have been made with the intention that it be acted on by the plaintiff or a class of persons which included the plaintiff.

(c) The plaintiff acted upon the false statement.

(d) The plaintiff suffered damage by doing so.

(e) The representation was (i) made with the knowledge it was false; or (ii) made willfully; or (iii) made in the absence of any genuine belief that it was true.

Are the alleged representations statements of fact?

107 It is well established that only statements of fact are actionable. [note: 130] Neither promises as to future conduct, exaggerations nor puffs, nor statements of opinion are actionable (see, *eg*, *Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 ("*Tan Chin Seng*") at [12] and

[14], *Bestland Development Pte Ltd v Thasin Development Pte Ltd* [1991] SGHC 27, *Ang Sin Hock v Khoo Eng Lim* [2010] 3 SLR 179 at [42]). With that being said, the distinction between an actionable statement and a non-actionable one is slippery (see generally Pearlie Koh, "Misrepresentation and Non-disclosure" in *The Law of Contract in Singapore* (Phang, Gen Ed) (Academy Publishing, 2012) at para 11.028). It is easy to re-cast statements of opinion or promises as to future conduct as representations as to the representor's state of mind or to interpret them as containing collateral representations of fact (see, *eg*, *Forum Development Pte Ltd v Global Accent Trading Pte Ltd and another appeal* [1994] 3 SLR(R) 1097).

108 In my judgment, most of the alleged representations are not actionable because they are not statements of fact, but are either statements of opinion or promises of future conduct. Of all the alleged representations, only the first half of the first representation (*viz*, that "Halcyon had secured big marine projects in the year 2008") is a statement of fact. The rest are clearly statements of opinion or promises of future conduct. To elaborate:

(a) The second half of the first representation – "there *would* be a lot of work for its Resident Contractors and the Plaintiffs *would have priority* in the projects assigned by Halcyon" [emphasis added] (see [28(a)] above) – is clearly a mixed statement of opinion and a promise of future conduct. The phrase "there *would* be a lot of work" is a mere statement of opinion as to the defendant's economic prospects and not a statement of fact. The phrase "the Plaintiffs would have priority in the projects assigned by Halcyon" is clearly promissory: it is a promise that the defendant would favour the workers supplied by the plaintiffs over that from the other contractors.

(b) The second representation is also couched in promissory terms: "on payment of the service fee of S$3,500 per foreign worker, the said worker would be given work on projects assigned by Halcyon to the Plaintiffs" (see [28(b)] above). The form of the statement is structured in the nature of a bargain: it states that *if* the requisite service fees were paid, the worker *would* be given work. It is clearly not a statement of fact but a promise. I also note, parenthetically, that Mr Lee's evidence in his affidavit of evidence-in-chief ("AEIC") was that the defendant had promised to give the plaintiffs work *for two years*. [note: 131] This was, however, not pleaded. Instead what was pleaded was simply that the "said worker would be given work" without any particulars as to when, for how long, or the type of work that will be assigned to the workers. It appears that the plaintiffs, recognising that the alleged representation was too vague and nebulous to be actionable, attempted to address the deficiency belatedly by providing details of the alleged representations in Mr Lee's AEIC.

(c) The third representation is also equivocal and promissory in nature: "the Plaintiffs … should continue to bring their foreign workers into Singapore so that the said foreign workers could start work immediately in Halcyon's shipyard when projects became available" (see [28(c)] above). The statement contemplates that projects *were not available at the time* and that if projects were *subsequently* available, the plaintiffs' workers would be deployed to work on them. This is a promise of future conduct.

109 One gloss that must be placed on this rule is that a statement as to a man's intention can be a statement of fact (see *Edgington v Fitzmaurice* (1885) 29 Ch D 459). In *Tan Chin Seng*, the Court of Appeal at [13] endorsed the observation of Tudor Evans J in *Wales v Wadham* [1977] 2 All ER 125 at 136 that:

A statement of intention is not a representation of existing fact, unless the person making it *does not honestly hold the intention he is expressing*, in which case there is a misrepresentation of

fact in relation to the state of that person's mind. [emphasis added]

The operative question, therefore, is whether the plaintiffs have successfully proved that (assuming the statements had been made to begin with) the defendants did not honestly intend to carry out the promises contained in the alleged representations.

110 The plaintiffs have only one argument. They submit that the defendant was merely the holding company and did not have any projects of its own (all the projects being those of its subsidiaries (see [12] above)). Thus, under the terms of the Marine Industry Sponsorship Scheme, it could not have assigned any work to the plaintiffs so it could not honestly have had the intention to carry out the aforementioned promises. [note: 132]

111 In my view, this argument fails for three reasons. First, as I will go on to demonstrate in the next section, I do not think that the plaintiffs have proven that the Marine Industry Sponsorship Scheme restricts the foreign workers of resident contractors only to deployment on the projects directly concluded by the sponsoring shipyard, and not those concluded by its subsidiaries.

112 Second, even assuming the foregoing were true, all that would show is that the deployment of the plaintiffs' workers would be illegal, not that the defendant had no intention of deploying the workers, which is the crux of the issue. There is an important distinction between the two. Under cross-examination, both Mr Choo and Mr Ong candidly admitted that they were quite prepared to contravene the MOM's regulations in this area (and had done so in the past) given that this practice was rife in the industry. [note: 133] I place much weight on Mr Ong and Mr Choo's testimony on this particular issue because it is evidence which is adverse to their interest. In light of their evidence, the mere fact that the deployment of the plaintiffs' workers on projects of its subsidiaries would be illegal would not, without more, suffice to establish that the defendant did not have the intention to deploy the plaintiffs' workers.

113 Third, at all material times, Mdm Kiang, Mr Choo's former wife, held 70% of the shares in the second plaintiff (see [17] above). She testified that contrary to the plaintiffs' case, she held this 70% share on behalf of Mr Choo and not on behalf of Mr Ong's wife. [note: 134] Her evidence was not challenged. Given this, it appears that Mr Choo had an interest to see the second plaintiff succeed. It would not make sense for him to make the alleged representations without honestly intending to carry out the aforementioned promises and, in so doing, set the plaintiffs up for failure when to do so would be to his own detriment.

Were the alleged representations false?

114 In any event, I find the alleged representations, even if made, have not been proven to be false.

Was the first alleged representation false?

115 Much of the plaintiffs' case rests on the distinction between the "*Halcyon Group*" (*ie*, the defendant and its subsidiaries) and the defendant, which is just the holding company. The plaintiffs argue that the first representation is false because the representation was that "Halcyon [*ie*, the defendant] had secured many big marine projects in the year 2008 and there would be a lot of projects for its Resident Contractors when the reality was that (while it is not disputed that the Halcyon Group had many projects [note: 135]), all these projects belonged to the subsidiaries. [note: 136] Mr Lee admitted, during cross-examination, that this was the "only reason" why he regarded the

first alleged representation to be false. [note: 137]

116 Mr Sim contends that the Marine Industry Sponsorship Scheme imposed two separate requirements on resident contractors: *viz*, the foreign workers brought in by the resident contractors may only be deployed (a) *on projects entered into* by the sponsoring shipyard (and not the projects of its subsidiaries) ("the contractual restriction"); and (b) to work *in the shipyard* belonging to the sponsoring shipyard ("the geographical restriction"). [note: 138] Thus, he argues, the alleged representations are all false at a fundamental level because there was simply no possibility of deployment since the defendant did not have any projects of its own. [note: 139]

117 Mr Chan submits that, under the Marine Industry Sponsorship Scheme, the only restriction was geographical: the foreign workers could only be deployed to work in the shipyard belonging to the sponsoring shipyard but, provided that the projects took place within the shipyard, it did not matter if the projects belonged to the sponsoring shipyard or to its subsidiaries. [note: 140] Mr Chan points out that the letter from the MOM awarding the sponsoring shipyard status to the defendant did not explicitly state that foreign workers brought in by resident contractors could only work on projects belonging to the sponsoring shipyard and not those of its subsidiaries. [note: 141]

(1) Did the plaintiffs understand "Halcyon" to mean the holding company (sans its subsidiaries)?

118 The dispute turns on the ambiguity in the first alleged representation. *Prima facie*, the phrase "Halcyon had secured big marine projects" is ambiguous in that it could be taken to mean either that the Halcyon Group (including its subsidiaries) had many projects (which is true) or that Halcyon Offshore Pte Ltd (the defendant-holding company) had many contracts of its own (which is untrue).

119 In *Trans-World (Aluminium) Ltd v Cornelder China (Singapore)* [2003] 3 SLR(R) 501 ("*Trans-World*") at [63(a)], Belinda Ang Saw Ean J held that:

> … Where there is ambiguity, the representee must do more than show that in its ordinary meaning the representation was false. *He has to show in which of the possible senses he understood it, and in that sense it was false.* The aforementioned is all the more significant where the plaintiffs are trying to show the total effect of oral representations and silence. [emphasis added]

In both *Trans-World* as well as the earlier case of *Chuan Bee Realty Pte Ltd v Teo Chee Yeow Aloysius and another* [1996] 2 SLR(R) 134, the court found that the plaintiffs in each case had failed to plead the specific sense in which they understood the (ambiguous) representation *at the time it was mad*e so the claims were dismissed.

120 At para 33 of their SOC, the plaintiffs plead:

> The said representations were, and each of them was false and untrue, in particular Halcyon did not assign any projects to the Plaintiff or provide work for a single foreign worker of the Plaintiffs although Halcyon applied for work permits for a total of 618 foreign workers on behalf of the Plaintiffs and were at all times aware that *these foreign workers could not be deployed to work for any other shipyard except that belonging to Halcyon.* [emphasis added]

121 The quoted paragraph does not even contemplate any ambiguity in the expression "Halcyon". There is no mention that the plaintiffs understood the first alleged representation to be false because the plaintiffs had understood it to mean that the defendant, the holding company, did not have projects of its own. In fact, the plaintiffs only raised the geographical restriction: "these foreign

workers could not be deployed to work for any other shipyard except that *belonging to* Halcyon" [emphasis added]. There is neither any mention of the contractual restriction nor is there any indication that the distinction between the *Halcyon Group* and Halcyon Offshore Pte Ltd (the defendant) was one that was even within their contemplation.

122 Furthermore, there is no indication, either in Mr Lee's criminal affidavit or in the 12 letters he wrote to the defendant in 2010 and 2011, that he drew a distinction between the defendant and its subsidiaries. This point was only raised at the time the plaintiffs filed their second amended reply and defence to counterclaim on 16 June 2014 ("plaintiffs' reply"). At paragraph 5(c) of the plaintiffs' reply, it is pleaded that:

> *Further, under the Sponsoring Shipyard scheme, the Plaintiffs could not have supplied labour to the Subsidiaries for the Subsidiaries' project(s), if any.* Under the said Scheme, the Plaintiffs could only have supplied labour to the Defendant for the Defendant's project(s), if any. *If the Defendant did not contract with any client such that it did not have any project(s) of its own and/or if the Defendant did not carry out works directly on its own, the Defendant would and/or could not have required labour from the Plaintiffs.* There would have been no need for the Defendant to enter, nor any genuine purpose in entering, into each of the Goldrich Labour Agreement, the Gates Labour Agreement and the Gates Service Agreement. [emphasis added]

123 During the course of oral argument, Mr Sim explained that this point was only raised late in the day because the plaintiffs only found out that the defendant had no projects of its own when the defendant's second amended defence and counterclaim was filed on 26 May 2014. [note: 142]

124 However, Mr Sim's response only scratches the surface of the problem. If the question were that this point was only raised late in the day then the plaintiffs' response – that they only realised that the defendant had no projects of its own at the time the defence was filed – is perhaps adequate. However, the deeper and more troubling issue is that the plaintiffs always seemed to behave as if this distinction did not exist.

125 The clearest example of this is the Gates Fabrication Agreement. Clause 1.1(i) of the Gates Fabrication Agreement reads, "'Purchase Order' means purchase order issued by *the Subsidiaries* during the Term"; cl 1.1(k) reads, "'Subsidiaries' *means the wholly owned subsidiaries of the Company* [*ie*, the defendant] *namely*, Anvil Engineering Pte Ltd, Jack Tat Engineering Pte Ltd and Marine Equipments Pte Ltd". In other words, the Gates Fabrication Agreement is a contract for the second plaintiff to do work *for the subsidiaries*! This conclusively shows that, as at 1 December 2008, the plaintiffs did not draw any distinction between the defendant and its subsidiaries or, at least, that it did not think that the distinction was of any consequence where the deployment of its workers was concerned.

126 In my judgment, at the time the representation was made, the distinction between the defendant and its subsidiaries, which features so prominently in the present suit, was clearly not within the contemplation of the plaintiffs. Thus, they cannot now plead the ambiguity in the expression, "Halcyon", as a basis for making good their claim in fraudulent misrepresentation.

(2) Could the plaintiffs' workers have been deployed on the projects of the defendant's subsidiaries?

127 In any case, I am not convinced that the Marine Industry Sponsorship Scheme would have prohibited the plaintiffs' workers from working on the projects of the subsidiaries.

128 In an attempt to make good this point, the plaintiffs seek to rely on the affidavits filed by two

officers from the MOM for the purposes of MA 344/2010. The first was filed by Mr Then Yee Thong and the second was filed by Ms Chai, the MOM officer who spoke to Mr Lee on 26 November 2008 (see [22] above) (I will refer to both affidavits collectively as "the MOM affidavits"). It is common ground that the MOM affidavits are hearsay evidence. [note: 143] Mr Sim submits that the MOM affidavits are nevertheless admissible under s 32(1)(*k*) of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA") because the parties had agreed to admit them. In response, Mr Chan submits that there is no such agreement. He clarifies that the defendant had agreed that it would not take objection to the admissibility of the MOM affidavits *if* the MOM officer who testified at trial was not the original deponent of the affidavits. In other words, the agreement as to admissibility was premised on the assumption that an officer from the MOM (albeit not the original deponents of the MOM affidavits) *would* be giving evidence at the trial. Now that no MOM officer has testified on this issue, he states that the defendant is entitled to object to the admissibility of the MOM affidavits. [note: 144] Having reviewed the Notes of Evidence, I agree with Mr Chan's account of events. [note: 145]

129 Even though the MOM affidavits are hearsay evidence, Mr Sim still urged me to admit them into evidence because (a) the MOM is the governmental authority overseeing the Marine Industry Sponsorship Scheme; and (b) because they were made by unbiased officer serving in the MOM who can be relied on to give unbiased testimony. With respect, these two points are *non sequiturs*. The exceptions to the "hearsay rule" are statutorily defined in the EA. This court does not have the power to carve out a *de novo* exception to the rule at whim. Furthermore, I will add that even though the affidavits are contained in the parties' agreed bundle, the parties expressly limited the scope of their agreement to the authenticity of the documents, and not to the veracity of their contents.

130 In any event, even if the MOM affidavits had been admitted, I would have placed little, if any, weight on them. At [22]–[23] of *Lee Chiang Theng v PP*, Rajah JA explains the reason why the MOM affidavits were filed:

> … **The Appellant [ie, Mr Lee] argued that the foreign workers of Goldrich and Gates Offshore were *exclusively* tied to Halcyon, their Sponsoring Shipyard, and that these workers could not be assigned to projects undertaken by other shipyards.** The Appellant thus argued that the district judge did not give sufficient weight to the fact that it was Halcyon who largely contributed to the unhappy situation by failing to live up to its side of the bargain to provide employment for the workers. This, his counsel submitted, was the true cause of the predicament.
>
> …
>
> **Following from the above, it was important to clearly establish the responsibilities of the Sponsoring Shipyard and the Resident Contractor with regard to the foreign workers.** To this end, at the first hearing on 1 February 2011, I asked parties to provide further information as to, *inter alia*, the exact division of roles and responsibilities between Halcyon and its Resident Contractors (*ie*, Goldrich and Gates Offshore). In this regard, the Prosecution adduced four affidavits …
>
> [emphasis in original in italics; emphasis added in bold]

131 In short, the affidavits were filed in specific response to Mr Lee's argument that Halcyon had the responsibility of allocating work to the foreign workers since the plaintiffs' workers could not work on the projects of *other shipyards*. The deponents to the MOM affidavits affirmed the fact that there was such a restriction but they did not address their minds to the question of whether the projects

belonging to *subsidiaries* of the defendant would be caught by this restriction. Thus, I am of the view that the MOM affidavits, even if admissible, would be of limited value (in fact, it might even mislead) in determining whether the plaintiffs' workers could have worked on the projects of the subsidiaries.

132 Apart from the MOM affidavits, the plaintiffs have drawn my attention to the contents of the MOM 11 March Approval Letter (see [15] above). The relevant paragraphs of the letter read:

> 2 … This resident contractor will be using your shipyard's quota to recruit foreign workers *for shipbuilding and ship-repairing activities under your contracts.*
>
> …
>
> 4 As a sponsoring shipyard, it is important that you ensure that your foreign workers, and the foreign workers of your resident contractors, *only work in shipbuilding/ship-repairing areas within your shipyard*. [note: 146]
>
> [emphasis added]

133 Relying on this, the plaintiffs have submitted that each paragraph contains a separate restriction under the Marine Industry Sponsorship Scheme: the first is the contractual restriction; the second is the geographical restriction.

134 Having reviewed the evidence, I am not convinced that the letter supports the plaintiffs' case. The MOM 11 March Approval Letter must be read in context. When the defendant applied to be classified as a sponsoring shipyard on 20 February 2008, it cited, as the primary basis of its application, the combined turnover of the Halcyon Group (see [14] above). Given that no alternative explanation has been advanced to the contrary, the only inference I can draw is that the MOM did not seem to make a distinction between the defendant and its subsidiaries for the purpose of awarding the defendant the status of sponsoring shipyard. When para 2 of the MOM 11 March Approval Letter is read in light of this, it is reasonable to construe the reference to "your contracts" as a reference to the contracts of the *Halcyon Group*, whose financial information was the basis of the MOM's decision to classify the defendant as a sponsoring shipyard.

135 In the circumstances, I find that the plaintiffs have not proven that the Marine Industry Sponsorship Scheme would have prohibited the plaintiffs' workers from working on the projects of the subsidiaries. Thus, the first alleged representation, even if made, was not false.

Were the second and third alleged representations false?

136 As noted above at [108], both these representations relate to promises of future conduct or are statements of opinion. Thus, they can only be proven false if sufficient evidence has been adduced to demonstrate that they were not made honestly and I have already found that not to be the case (see [109]–[113] above).

Were the alleged representations made fraudulently?

137 In an action for fraudulent misrepresentation, it is not enough to prove that false representations had been made. Even if the plaintiffs are able to prove that the alleged representations were made and were false, they must also prove that the representations were made with a fraudulent *mens rea* (see *Derry v Peek* (1889) 14 App Cas 337 ("*Derry v Peek*"), followed in *Panatron* at [13]). In essence, the plaintiffs must prove that Mr Choo either (a) knew that the alleged

representations were false; or (b) made the statement wilfully; or (c) made the representations without a genuine belief in their truth.

138 The plaintiffs' argument on this is brief. They infer that Mr Choo, "as Halcyon's human resource consultant and a Resident Contractor himself" *must have known that* "under the [Marine Industry Sponsorship] Scheme, the foreign workers brought in by the Resident Contractors could only have worked for Halcyon's projects (which did not exist)." [note: 147] Thus, they argue, the representations were made fraudulently in the *Derry v Peek* sense.

139 In my judgment, this argument cannot succeed. The relevant inquiry here is the *subjective belief* of Mr Choo. In order to make good their case, the plaintiffs have to show that when Mr Choo made the alleged representation, he *subjectively knew* that (a) *the defendant* had no projects; (b) that the plaintiffs' workers could not have worked on the projects of the subsidiaries; (c) nevertheless went to represent that *the defendant* had many projects for which the plaintiffs' workers could be deployed. Insofar as (c) is concerned, given that the expression "Halcyon" is ambiguous, the plaintiffs must go on to prove that Mr Choo – at the time he made the representations – *subjectively intended* "Halcyon" to be understood by Mr Lee to mean *the defendant* (rather than the *Halcyon Group*). As observed by the Court of Appeal in *Wee Chiaw Sek Anna* at [37] and [41],

> 37 Another important point - which is also of no small relevance to the analysis of the facts of the present appeal - relates to *the representor's* (here, the Deceased's) *perspective*. **Put simply, it is the representor's own (subjective) belief that is crucial.** Such subjective belief must be ascertained by the court based on the *objective evidence* available, but the court *cannot substitute its own view as to what it thinks the representor's belief was*. …
>
> …
>
> 4 1 **Where the meaning of the statement is ambiguous, the question is what the representor subjectively intended the statement to mean.** In the High Court of Australia decision of *John McGrath Motors (Canberra) Pty Limited v Applebee* (1964) 110 CLR 656 ("*John McGrath Motors*"), the court had to determine what the representor car salesman meant by the word "new" in his description of a motor car. The representee purchaser had taken "new" to mean "not second-hand". Both parties accepted from the outset that the word "new" was susceptible of more than one interpretation and there was no evidence that the description by the salesman was to his knowledge false or made with reckless indifference as to its truth or falsity. The judge in the Supreme Court of the Australian Capital Territory disbelieved the representor salesman's testimony that he had not known the history of the car and thus did not know that the car was in fact, a second-hand one. On appeal, the High Court of Australia resolved the ambiguity of the word "new" in favour of the representor…
>
> [emphasis in original in italics; emphasis added in bold]

140 However, Mr Sim acknowledged that it was never put to Mr Choo that when he made the alleged representations, he used the expression "Halcyon" to mean *the defendant, rather than the Halcyon Group*. [note: 148] In my judgment, this is fatal. When questioned on this, Mr Sim pointed out that, when he started his cross-examination of Mr Choo, he indicated that all references to "the defendant" would be references to Halcyon Offshore Pte Ltd – the defendant. However, the use of this "verbal glossary" does not obviate the need for the case to be put to Mr Choo, particularly on a point as vital as this.

141 In any event, I am not convinced that the MOM Marine Industry Sponsorship Scheme prohibits

the plaintiffs' workers from working on projects of the subsidiaries (see [127]–[135] above). Thus, there is also no basis for concluding that Mr Choo had made the alleged representations fraudulently, either knowing they were false or without a genuine belief in their truth.

Did the plaintiffs rely on the alleged representations?

142 Having arrived at my finding that the plaintiffs' claims fail on several fronts, the question of reliance is rendered moot. Suffice it to say that doubts were raised by the defendant as to the plaintiffs' reliance based on Mr Lee's own evidence, a sampling of which is set out below:

(a) In relation to the first plaintiff, Mr Chan drew my attention to para 67 of Mr Lee's criminal affidavit in which he stated that he had elected to apply for the first plaintiff to be appointed the defendant's resident contractor based on his "own business evaluation". [note: 149]

(b) In relation to the second plaintiff, Mr Chan pointed to paras 95 to 101 of Mr Lee's criminal affidavit in which Mr Lee stated that he was initially hesitant about incorporating the second plaintiff, despite receiving an assurance that the defendant had "huge ship repair projects" and that "all additional workers recruited by Gates would be fully deployed" but only did so in reliance on external opinions on the state of the marine industry and on the defendant's reliability as a business partner. [note: 150]

143 However, given my findings above, it is strictly not necessary for me to decide whether the representations "had played a real and substantial part" (*Panatron* at [23]) in the plaintiffs' decision to sign the various labour agreements and to bring in the workers.

Have the plaintiffs proved their loss?

144 Finally, I consider the question of loss. As bifurcation of the trial was not ordered, the plaintiffs are required to prove their loss as pleaded at the trial of this action. The plaintiffs claim a total sum of $4,985,212. This claim is in two parts. First, the plaintiffs claim $2,163,000 in service fees paid; second, they claim $2,822,212 for expenses incurred in the upkeep of the workers. [note: 151] I will deal with each in turn.

Service fees

145 The plaintiffs have only adduced two pieces of documentary evidence to prove this head of loss. First they have adduced financial statements for each of the plaintiffs for the years ending 31 December 2008 and 31 December 2009 (collectively, "the financial statements"). Second, they assert that the two cash cheques are evidence that the service fees had been paid to the defendant. As far as the cash cheques are concerned, I have already found that they represent *Mr Ong's cut of the service fees* and that none of the money found its way to the defendant (see [74(c)] above) so I need not say more about it. This in itself is fatal to the claim for the service fees.

146 As for the financial statements, little weight can be placed on them because they are not contemporaneous records of the plaintiffs' accounts but, as readily admitted by Mr Lee under cross-examination, had instead been prepared *after the commencement of this suit, upon the advice of their lawyers, and specifically for the purpose of satisfying a request made during discovery.* [note: 152] In other words, they are all self-serving statements prepared to substantiate the present claim and must be viewed with great circumspection.

147 A further problem with the financial statements is that they do not even suggest that the *plaintiffs, rather than Mr Lee*, incurred the losses in question. The first plaintiff's balance sheet as at 31 December 2008 records an accumulated loss of $1,440,752. The entirety of this sum is reflected in the amount "due to director" (*ie*, Mr Lee) – $1,441,748. Similarly, the second plaintiff's balance sheet as at 31 December 2008 records an accumulated loss of $2,435,766, of which almost all – $2,337,366 – is a sum that is "due to director". [note: 153] In other words, the financial statements themselves show that the plaintiffs never *directly* sustained the losses of which they now claim. Instead, it appears that Mr Lee was the one who allegedly sustained the losses. The plaintiffs attempt to explain this away by saying that Mr Lee had paid these sums on the plaintiffs' behalf by way of "virtual" loans to the plaintiffs. [note: 154]

148 Ironically, Mr Lee's use of the expression "virtual" only serves to underscore the point that the plaintiffs' involvement was only notional, and not substantive. In my judgment, Mr Lee's "virtual" loans theory is a contrived attempt to prove the plaintiffs had suffered the losses when, in fact, they had not. Under cross-examination, Mr Lee said that "this money [the service fees] belongs to me" and that he was *personally liable* to Hussein and the workers. [note: 155] Furthermore it is notable that the service fees were always transacted in cash [note: 156] and the only time service fees were ever deposited into a bank account (the $78,000 which was eventually received by Mr Ong by way of two cash cheques), it was *banked into Mr Lee's personal bank account, and not the plaintiffs' bank account*. [note: 157] When viewed holistically, I find that the evidence proves that the entire affair was a private transaction between the three men. The loss of the service fees, if suffered at all, was sustained by Mr Lee and not by the plaintiffs.

149 Furthermore, I also note that Mr Lee had deposed that, should he succeed in his claim, he would give away the full sum of $2,163,000 (the service fees claim) to each of the foreign workers he had brought in or, failing that, to a non-governmental organisation working to combat human trafficking. [note: 158] While superficially well-intentioned, this is tantamount to an acknowledgment that the plaintiffs had not in fact suffered the loss.

Expenses

150 In respect of the expenses, the plaintiffs assert seven heads of loss. These sums, together with the evidence tendered in proof, may be summarised as follows: [note: 159]

S/N	Head of loss	Evidence
1	Housing and food: $870,520	Invoices issued by Dormi-Tree Pte Ltd and S1 Engineering Pte Ltd to the plaintiffs. The plaintiffs claim that Mr Lee settled the accounts on behalf of the plaintiffs so the expenses are now treated as loans from director in the plaintiffs' financial accounts.
2	Customary expenses (*eg*, medical screenings): $296,640	The plaintiffs assert that the bulk of the documentary evidence had been lost. Thus, the invoices annexed only total $33,020.25. [note: 160] The figure of $296,640 is an "estimate" provided by the plaintiffs.

3	Insurance fees: $134,830	Insurance policy documents valued at $134,830 [note: 161]. This amount was purportedly paid by Mr Lee through deductions from commissions he earned with the insurers. The plaintiffs explain that the insurance companies do not issue receipts for commission payments. [note: 162]
4	MOM Levies: $536,415	MOM levy bills amounting to $536,415. [note: 163]
5	Training courses: $32,170	Invoices from TCK Supplies & Service Pte Ltd and S1 Engineering Pte Ltd amounting to $32,170. [note: 164] The plaintiffs claim that Mr Lee paid on behalf of the plaintiffs so the expenses are now treated as loans from director in the plaintiffs' financial accounts.
6	Repatriation costs: $827,574	Letters of demand from EQ Insurance Company Ltd, Mayban General Assurance Bhd, and Liberty Insurance Ltd demanding payment of $827,574. This amount was purportedly paid by Lee through deductions from commissions he earned with the insurers for which no receipt was issued.
7	Air tickets: $20,000	A spreadsheet made out in the name of Gates Offshore Pte Ltd for 20 workers [note: 165] and electronic plane tickets for 20 foreign workers. The plaintiffs claim that Mr Lee paid for the tickets on behalf of the plaintiffs so the expenses are now treated as loans from director in the plaintiffs' financial accounts.

151 I find that, at best, the only head of loss which has been proven is that related to the MOM Levies. The rest cannot succeed.

(a) First, as pointed out by Mr Chan, the heads of loss in S/N 1, 3, 5 and 6 are evinced only by invoices and/or letters of demand, which are proofs of the existence of an alleged debt. There is no documentary proof of *payment.* Mr Lee explained that many of the payments were recorded as "cash outflow[s]" in the Income and Expenditure section of the financial statements which were later recorded as an "amount due to director". As I have pointed out above, the financial statements are of very little probative value since they are, by the plaintiffs' own admission, self-serving documents prepared expressly for this suit.

(b) Second, the loss in S/N 2 is plagued by three serious problems: first, as Mr Chan pointed out, several of the invoices that had been exhibited in support of this head of loss were actually addressed to S1 Engineering Pte Ltd (which is also owned by Mr Lee), and not to the plaintiffs. Second, there is no proof of payment (save for the entries in the financial statements). Third, the invoices annexed do not add up to the total sum claimed.

152 On the whole, it is clear that the plaintiffs' claim for the expenses rests on very weak

foundations. Mr Sim candidly admitted that there is no proof of *payment* for many of the heads of loss [note: 166] but attempted to overcome this problem by submitting that "[it cannot be] seriously challenged that the worker had to be housed and fed and paid" and that "it cannot be seriously challenged that the plaintiffs had suffered these losses." [note: 167] With respect, these explanations are laconic and unpersuasive. No plaintiff can expect deficiencies in his case to be overlooked because of how (ostensibly) "obvious" their heads of loss are. These heads of loss are typically capable of proof with reference to invoices, payments and receipts. However none have been produced and no good reasons have been given (save for a brief remark, in relation to the purported deductions from Mr Lee's insurance commissions, that receipts are not regularly given in the industry) to explain why proof cannot be furnished. The paucity of evidence is staggering, particularly when one considers that the claim for expenses is in excess of $3m.

Conclusion

153 At the end of the day, all the individuals concerned – Mr Lee, Mr Choo, and Mr Ong – thought that this was a good deal: bring the workers in, cream off the service fees, and earn even more money when they are deployed. What they failed to anticipate was the global financial crisis of 2008 or that the defendant would lose its status as a sponsoring shipyard. When the work ran dry, Mr Lee, as the sole director of the plaintiffs and the personal guarantor under the insurance contracts, was the one left holding the bag. He was prosecuted and sentenced to serve a term of imprisonment, allegedly lost "millions", and bitterly disappointed hundreds of workers who came to Singapore on the assurance that there would be work only to return home empty-handed with debts (money they borrowed to pay the service fees) amounting to a lifetime's worth of wages.

154 Understandably, he felt hard done by and instituted these proceedings claiming to be a victim of a fraud. However, he is no innocent victim. He admitted to paying service fees, a practice he believed to be "illegal", he issued the GOFF Invoices knowing full well that they were shams, [note: 168] and when investigated, he worked with Mr Choo and Mr Ong to devise an elaborate charade to deceive the MOM into thinking that his workers were gainfully employed. He was clearly a willing participant in an arrangement that he knew was not entirely kosher. It is therefore astonishing that he now comes to court asserting that he is the victim of a fraud.

155 In conclusion, I dismiss this suit for the following four alternative reasons:

(a) First, I find that the plaintiffs have failed to prove that the alleged representations as pleaded had been made to begin with.

(b) Second, I find that the alleged representations, even if made, are not actionable because they are not false statements of fact.

(c) Third, I find that the plaintiffs have failed to prove that the alleged representations, even if made, had been made with a fraudulent *mens rea*.

(d) Fourth, I find that the plaintiffs have, in any event, failed to prove their heads of loss (save for the sums paid in respect of the MOM levies: see [151] above).

Costs

156 As I had alluded to at [4] above, the abandonment of the plaintiffs' contractual claim and the withdrawal of the defendant's counterclaim both have costs consequences. The parties' submissions

on costs are as follows:

(a) The plaintiffs submit that a net sum of $40,000 should still be awarded in their favour (because they submit the amount they should be entitled to in respect of the wasted costs for the abandoned counterclaim exceeds the costs which should be awarded against them should they lose the suit).

(b) The defendant submits that, taking into account the wasted costs in respect of the abandoned contractual claim, they should be entitled to costs of $180,000 (all in).

157 The plaintiffs' costs submissions are not realistic. It is clear that there was no evidence before the court to establish that the defendant's loss of its status as a sponsoring shipyard had anything to do with the plaintiffs. As I had observed at the onset of the trial, this is not a complicated factual issue. Either the evidence is there or it is not. As was clear, the evidence was conspicuously absent so the plaintiffs could not have expended much cost in defending it. By the same token, the wasted costs incurred in respect of the contract claim *alone* would not be that significant because the plaintiffs' claims in contract and for fraudulent misrepresentation both rely on the same factual substratum and the work would still have needed to be done. On balance, I am of the view that a fair order would be to set off the costs of both against each other. In doing so, I am mindful of the fact that notice of the abandonment of the contractual claim was given to the defendant prior to the trial (by way of a letter dated 24 December 2014) while the counterclaim was only withdrawn on the third day of the trial.

158 Taking into account the facts and issues of this case as well as the various interlocutory orders for which costs were ordered to be in the cause, I award the defendant costs fixed at $100,000 (excluding disbursements, which are to be agreed or taxed) to be paid forthwith by the plaintiffs.

[note: 1] Notes of Evidence, Day 1 (8 January 2015) ("NE1"), page 48, lines 7–14.

[note: 2] *PP v Lee Chiang Theng* [2010] SGDC 446.

[note: 3] Plaintiffs' Closing Submissions at [1].

[note: 4] Affidavit of Evidence-in-Chief of Lee Chiang Theng ("Lee's AEIC") at [6].

[note: 5] Lee's AEIC at pp 65-67.

[note: 6] Lee's AEIC at [54].

[note: 7] Lee's AEIC at [7] and pp 68 – 70.

[note: 8] NE1, p41, line 24 to p25, line 3.

[note: 9] Lee's AEIC at pp 61 – 63.

[note: 10] Defendant's Closing Submissions at [6].

[note: 11] Defendant's Closing Submissions at [9].

[note: 12] Agreed Bundle of Documents Volume 1 ("AB1") at p 12.

[note: 13] Affidavit of Evidence-in-Chief of Ong San Khon ("Ong's AEIC") at [1], [3]; Plaintiff's Closing Submissions at [5].

[note: 14] Notes of Evidence, Day 4 (14 January 2015) ("NE 4"), at p 1, lines 5-10.

[note: 15] Lee's AEIC at [11].

[note: 16] Lee's AEIC at [15] and [16].

[note: 17] Ong's AEIC at [4].

[note: 18] Ong's AEIC at [7].

[note: 19] Ong's AEIC at [6].

[note: 20] Ong's AEIC at [7]; Defendant's Closing Submissions at [9].

[note: 21] Notes of Evidence, Day 3 (13 January 2015) ("NE 3") p 29, lines 5–7; NE3, p 32 at lines 31 to p 33, line 1.

[note: 22] Ong's AEIC at [9] – [10]; Affidavit of Evidence in Chief of Choo Swee Leng Michael ("Choo's AEIC") at [5].

[note: 23] Choo's AEIC at [4].

[note: 24] Ong's AEIC at [11]-[12]; Choo's AEIC at [6]-[7].

[note: 25] Agreed Bundle of Documents Vol 1 ("AB1") at p 10.

[note: 26] AB1 at p 12.

[note: 27] AB1 at p 13.

[note: 28] AB1 at p14.

[note: 29] Clause 4 of the Gates Labour Supply Agreement contained at AB1 at p15.

[note: 30] Clause 3.1 and appendix 1 of the Gates Labour Supply Agreement

[note: 31] NE1 at p90, line 25 to p91, line 18.

[note: 32] Defendant's Supplementary Bundle of Documents ("DSBOD") at pp 375–376.

[note: 33] Lee's AEIC at p120.

[note: 34] AB1 at p 38.

[note: 35] Lee's AEIC at [81]; NE1, p29 lines 27–30.

[note: 36] Plaintiff's Statement of Claim at [32].

[note: 37] Lee's AEIC at [100], NE1 at p21, lines 8–10.

[note: 38] NE1, p114 at line 1 to p115 at line 15

[note: 39] Lee's AEIC at [99]

[note: 40] AB1 at pp 84

[note: 41] AB1 at pp 84–85

[note: 42] AB1 at p144.

[note: 43] Lee's AEIC at [114] and pp 735–750

[note: 44] AB1 at pp 144–145

[note: 45] Affidavit of Chai Jian Yi at [9], found at AB1 at p 186; Lee's AEIC at [127]

[note: 46] Gates Fabrication Agreement, which may be found at AB1, at p98–115.

[note: 47] Clause 1.1(i) of the Gates Fabrication Agreement.

[note: 48] Notes of Evidence, Day 2 (9 January 2015) ("NE2"), p 90, lines 16–21; Lee's AEIC at [142]

[note: 49] Lee's AEIC at [143].

[note: 50] Lee's AEIC at [146]–[149].

[note: 51] AB1 at 147–177

[note: 52] Plaintiff's Closing Submissions at [58]; Plaintiff's SOC at [31].

[note: 53] Plaintiff's Closing Submissions at [59]; Plaintiff's 2nd Reply to the Defendant's Request for Further and Better Particulars dated 23 August 2012 at p203 of the Setting Down Bundle ("SDB").

[note: 54] Plaintiff's Closing Submissions at [60]; Plaintiff's SOC at [21]; Lee's AEIC at [72] – [76].

[note: 55] Plaintiff's Closing Submissions at [59]; SDB at p 231.

[note: 56] Plaintiff's Closing Submissions at [60], SDB at p 231.

[note: 57] Plaintiff's Closing Submissions at [60], SDB at pp 232-233.

[note: 58] Plaintiff's Statement of Claim at [31]

[note: 59] Notes of Evidence, Day 5 (6 February 2015), p 5 at line 12 to p 6, line 17

[note: 60] NE1, p 124, line 17–31

[note: 61] SOC at [31].

[note: 62] Defendant's Written Submissions at [71].

[note: 63] Notes of Evidence, Day 5 (6 February 2015), p 1 at lines 22–32

[note: 64] Defendant's Bundle of Documents, Vol. 1 ("DBOD 1"), pp 7 –9, p 20; Defendant's Bundle of Documents, Vol. 2, pp 408–410

[note: 65] Defendant's Bundle of Documents, Vol. 2 ("DBOD 2"), pp 408–410.

[note: 66] SOC at [3(b)].

[note: 67] NE1, page 60, lines 8–13.

[note: 68] NE3, page 43, line 21 to page 44, line 15; Defendant's written submissions at [150].

[note: 69] Plaintiff's written submissions at [139].

[note: 70] Defendant's written submissions at [159]–[160].

[note: 71] NE3, p 45, line 1–9.

[note: 72] NE3, p 59, line 12 to p 60, line 6.

[note: 73] NE1, page 82 line 25 to page 83, line 4.

[note: 74] NE 2 at p 113; Lee's AEIC at [59] – [61]; [76]–[78].

[note: 75] Defendant's Closing Submissions at [163].

[note: 76] Defendant's Closing Submissions at [97] and [99]; NE5 at p 8, lines 10–18

[note: 77] Choo's AEIC at [70]

[note: 78] Defendant's Closing Submissions at [4]

[note: 79] Lee's AEIC at [38], [40]–[41]

[note: 80] Lee's AEIC at [42]

[note: 81] Lee's AEIC at [73]–[74]

[note: 82] Lee's AEIC at [79]

[note: 83] Lee's AEIC at [94], [103], [128]

[note: 84] *Ibid*

[note: 85] Lee's AEIC at [107]

[note: 86] Plaintiff's Closing Submissions at [15]; Lee's AEIC at [108] and [137].

[note: 87] Lee's AEIC at [105]

[note: 88] Lee's AEIC at [136] and [137].

[note: 89] Lee's AEIC at [137].

[note: 90] Ong's AEIC at [19]

[note: 91] Defendant's Closing Submissions at [3]–[4]; Choo's AEIC at [72]

[note: 92] Ong's AEIC at [17];

[note: 93] Ong's AEIC at [17]; NE4 at p 21, lines 4–16; p 23, line 22 to p 24, line 17

[note: 94] NE4, p 6, line 3; NE 5, p 66 line 29 to p 67, line 3

[note: 95] Defendant's Closing Submissions at [31]

[note: 96] Choo's AEIC at [14]–[17]

[note: 97] Ong's AEIC at [51] and [59]

[note: 98] NE3 at p 62, lines 9–16

[note: 99] NE3 at p 65, lines 26 to p 66 line 5

[note: 100] NE3 at p 69, lines 18–21.

[note: 101] Defendant's Statement of Claim ("SOC") at [20]; Ong's AEIC at [70]

[note: 102] Ong's AEIC at [71].

[note: 103] NE2, p 105 at lines 21–24.

[note: 104] NE2, p 105 at lines 21–24.

[note: 105] Choo's AEIC at [55].

[note: 106] Ong's AEIC at [90].

[note: 107] Choo's AEIC at [55]; NE4, p71 at lines 3–5.

[note: 108] Defendant's Closing Submissions at [35]; Ong's AEIC at [89].

[note: 109] Choo's AEIC at [48].

[note: 110] NE3, page 98, line 5 to page 99, line 29.

[note: 111] Choo's AEIC at [32].

[note: 112] NE2, page 13, line 22–29.

[note: 113] NE2, page 13, line 22–29.

[note: 114] NE2, page 39, line 10–18.

[note: 115] NE3, page 102, line 1–19.

[note: 116] NE3, page 107, line 24–28.

[note: 117] Plaintiff's Closing Submissions at [103]; NE4, page 39 lines 28 to p 40, line 31

[note: 118] Plaintiff's Closing Submissions at [104]–[105]

[note: 119] NE5, p 6, line 22 to p 7, line 2

[note: 120] NE2, page 59, lines 2–25.

[note: 121] NE2, page 62, line 25 to page 63, line 12.

[note: 122] NE2, page 64, line 15 to page 65, line 3.

[note: 123] NE5, page 72 and lines 4–6

[note: 124] NE2, page 88, line 21 to page 90, line 10

[note: 125] Plaintiffs' Written Submissions at [186]–[191].

[note: 126] AB1 at pp 147–149

[note: 127] AB1 at p 156

[note: 128] AB1 at p 173

[note: 129] NE1, p76, line 21 to p77, line 21.

[note: 130] Plaintiffs' Closing Submissions at [114]; Defendant's Closing Submissions at [111]

[note: 131] Lee's AEIC at [51].

[note: 132] Plaintiffs' Closing Submissions at [119]–[120]

[note: 133] NE4, p21, lines 1–16; p24, lines 12–24.; NE3, p37, line 26 to p38, line 5.

[note: 134] NE2, page 127, line 15–22.

[note: 135] NE2, page 4, lines 10–11.

[note: 136] Plaintiff's Closing Submissions at [123] – [124].

[note: 137] NE2 at pp 3 – 4.

[note: 138] Plaintiff's Closing Submissions at [126]–[128]

[note: 139] Plaintiff's Closing Submissions at [124].

[note: 140] Defendant's Closing Submissions at [129]; Notes of Evidence, Day 1 (8 January 2015) ("NE 1"), at p32, lines 21–25

[note: 141] Defendant's Closing Submissions at [129].

[note: 142] NE5, page 75, line 29 to page 76, line 4.

[note: 143] Defendant's Reply Submissions at [38]; Plaintiff's Written Submissions at [129].

[note: 144] NE5, page 20, line 13 to page 21, line 21.

[note: 145] NE1, page 100, line 19–26.

[note: 146] AB1 at p 14

[note: 147] Plaintiffs' Closing Submissions at [159] – [160]

[note: 148] NE5, page 55, line 29 to page 58, line 20.

[note: 149] Defendant's Closing Submissions at [179] – [183]; 1 ABOD at [67]

[note: 150] Defendant's Closing Submissions at [184] – [188].

[note: 151] Plaintiff's Closing Submissions at [1]

[note: 152] NE2, page 49, line 14–20; page 50, lines 1–13.

[note: 153] Lee's AEIC, Tab 13.

[note: 154] Plaintiffs' written submissions at [168], [192]–[198].

[note: 155] NE2, page 37, line 25 to page 38, line 10.

[note: 156] NE2, page 36, line 7–23.

[note: 157] NE2, page 38, line 14–27.

[note: 158] Lee's AEIC at [164]–[167].

[note: 159] Plaintiff's Closing Submissions at [192]–[198].

[note: 160] Lee's AEIC at pp 411 - 429

[note: 161] Lee's AEIC at pp 431 - 478

[note: 162] Plaintiffs' written submissions at [194].

[note: 163] Plaintiffs' written submissions at [195].

[note: 164] Lee's AEIC at pp 614 – 646.

[note: 165] Lee's AEIC at pp 663 -719.

[note: 166] NE5, page 81, lines 19 to page 82, line 5.

[note: 167] NE5, page 83, line 29–30.

[note: 168] NE2, p102, line 4–7.