IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 243

Suit No 1080 of 2015

Between

SMRT Alpha Pte Ltd

… *Plaintiff*

And

Strait Colonies Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Contract] — [Misrepresentation] — [Rescission]

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SMRT Alpha Pte Ltd
v
Strait Colonies Pte Ltd

[2017] SGHC 243

High Court — Suit No 1080 of 2015
Chua Lee Ming J
16–17, 21–23, 28 March; 25 April 2017

3 October 2017

Chua Lee Ming J:

Introduction

1 The plaintiff, SMRT Alpha Pte Ltd, sued the defendant, Strait Colonies Pte Ltd, for losses suffered as a result of the defendant's failure to pay rent in breach of a lease agreement. As a consequence of the defendant's breach, the plaintiff terminated the agreement. The defendant alleged that it was induced to enter into the lease agreement by fraudulent, negligent and/or innocent misrepresentations made by the plaintiff. In its counterclaim, the defendant sought an order that the lease agreement be set aside and/or damages.

2 The defendant's claims for misrepresentation arose from four alleged representations which it referred to as Representations on Live Entertainment, Representations on Operating Hours, Representations on Catering and Representations on Take-out (see [24] below). The defendant succeeded in

proving only the misrepresentation arising from the Representations on Live Entertainment. However, I found that the defendant was not entitled to rescind the lease agreement because it had affirmed the agreement. Consequently, the defendant remained liable to pay rent and breached the lease agreement by failing to do so. I therefore gave judgment for the plaintiff. I also found that the defendant failed to prove its loss caused by the misrepresentation and accordingly, I awarded the defendant nominal damages only.

3 The defendant has appealed against the whole of my decision except for my finding that it had proved the misrepresentation arising from the Representations on Live Entertainment.

Background

4 The plaintiff was at all material times the retail operator of Kallang Wave Mall at 1 Stadium Place, Singapore ("the Mall"). The Mall is part of the Singapore Sports Hub which also includes the National Stadium, the Singapore Indoor Stadium, the Aquatic Centre and the Water Sports Centre (collectively "the Sports Facilities").

5 The plaintiff invited the defendant to submit a concept proposal and business budget plan for the lease of certain units at the Mall. The planned trade mix for these units was food and beverage ("F&B"). The defendant was then operating a pub, club and/or bar called "China One" at Clarke Quay, 3E River Valley Road, Singapore. On 17 September 2013, the defendant submitted a concept proposal and business budget plan.[1]

6 Following negotiations, the plaintiff gave the defendant a letter of offer dated 17 December 2013[2] ("the LOO") for the lease of units provisionally known as #01-24 to #01-28[3] ("the Premises") for a period of five years. The

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LOO stated that the plaintiff permitted the defendant to use the Premises as a "Pub cum F&B – a spacious themed pool hall, bar and club … Live music and dance mix while party, play pool and chill-out".[4] On 13 March 2014, the Temporary Occupation Permit for the Sports Hub was issued.[5] The defendant accepted the LOO on 19 March 2014.

7 Subsequently, both parties entered into an agreement dated 8 April 2014 for the lease of the Premises for a term of five years from 9 November 2014 ("the Lease Agreement").[6] The Lease Agreement again stated that the plaintiff permitted the defendant to use the Premises as a "pub cum F&B … providing live music and dance mix for partying playing pool and chilling out."[7] It was unclear when the Lease Agreement was actually signed although it seemed that the Lease Agreement was not signed by the defendant until after 25 August 2014.

8 On 15 May 2014, the plaintiff applied for planning permission to, among other things, change the use of the Premises from "restaurant" to "restaurant cum pub". On 20 June 2014, the Urban Redevelopment Authority ("URA") advised the plaintiff that it could not support the proposal but was prepared to consider a change to "restaurant with ancillary bar" where the primary use was as a restaurant with the ancillary bar supporting the restaurant's operations. This meant that the Premises could not be operated solely as a bar.[8] The URA expressed "concerns that the proposed restaurant cum pub use would cause disamenity to the surroundings". The URA invited the plaintiff to resubmit a revised proposal.

9 The plaintiff resubmitted its application for change of use. On 24 June 2014, the URA granted planning permission to change the use of the Premises

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from "restaurant" to "restaurant with ancillary bar" for a period of three years ending 24 June 2017.[9]

10 On 2 July 2014, the plaintiff informed the defendant of the URA's decision. The defendant asked for a reduction in the rent on the basis that the planning permission would not allow it to operate the business model that it had planned, *ie*, a restaurant with a pub/bar with live entertainment, music and dancing. Discussions and exchanges of correspondence between the parties followed. No agreement was reached on a reduction in rent. One of the issues in dispute in this case was whether a settlement was reached between the parties on 25 August 2014. At about the same time, the defendant had discussions with the URA with a view to revising the planning permission that had been given.

11 On 1 September 2014, the plaintiff gave the defendant notice to take possession of the Premises on 8 September 2014 pursuant to the terms of the LOO and Lease Agreement. The defendant took possession of the Premises on 8 September 2014 and carried out fitting works until 8 November 2014.

12 On 3 November 2014, the defendant informed the plaintiff that the URA was willing to approve the Premises for use as a "restaurant with ancillary bar and ancillary live entertainment".[10] However, the URA required the plaintiff to give its consent to the change of use and its confirmation that it would undertake to manage any complaints arising from the defendant's operations at the Premises.

13 On 7 November 2014, the defendant obtained a liquor licence from the Police Licensing & Regulatory Department ("PLRD").[11] The liquor licence permitted the defendant to sell liquor at the Premises until 10 pm. On either 8

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or 9 November 2014, the defendant officially commenced business at the Premises.

14 On 10 November 2014, the plaintiff gave the consent and undertaking that was required by the URA (see [12] above).[12] On 27 November 2014, the URA gave its formal planning permission for the Premises to be used as a "restaurant with ancillary bar and ancillary live entertainment" for a period of one year.[13] The URA advised that the planning permission was subject to review and further extensions may not be granted if the use became objectionable.

15 On 4 December 2014, the PLRD revised the operating hours for the liquor licence and gave the defendant a liquor licence from 4 December 2014 to 3 December 2015 with daily operating hours ending at 11.59 pm.[14] The defendant also obtained a public entertainment licence for the same period, permitting live entertainment including dancing until 11.59 pm.[15] However, live performances were to be conducted indoors and outdoor music was permitted only until 10.30 pm. By 12 December 2014, the defendant's restaurant, bar and club on the Premises was fully operational.[16]

16 On 15 January 2015, the defendant paid the balance of the rent for December 2014 (part of the rent for December 2014 was paid in advance in May 2014).[17] However, thereafter the defendant began to fall behind in the payment of rent.

17 On 12 February 2015, the plaintiff issued a supplemental letter to the LOO and the Lease Agreement, informing the defendant of the actual floor area after final survey.[18] The actual floor area turned out to be slightly larger than the approximate floor area (expressed to be subject to final survey) as stated in the LOO and the Lease Agreement. The larger floor area meant that the rent payable

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was also higher. The defendant objected to the increase in rent and continued to ask for a reduction in the rent. The plaintiff did not accede to the defendant's requests.

18 On 28 April 2015, the plaintiff demanded payment of the outstanding rent for the period from January to April 2015 amounting to $274,329.43.[19] On 30 April 2015, the defendant informed the plaintiff that it had decided to terminate the lease for the part of the Premises that was used to operate the bar.[20] On 6 May 2015, the defendant informed the plaintiff that it was waiting for payment of its GST claim of $90,000 from the Inland Revenue Authority of Singapore and that it would make payment once it received the money.[21] Concurrently, the defendant continued requesting a reduction in the rental.

19 By way of a cheque dated 15 May 2015, the defendant made partial payment of $64,143.16 towards the outstanding rent.[22] In his evidence, the defendant's director Tan Hock Kian ("Tony") claimed that this payment was made in order to keep the negotiations on the rent alive.[23] On 26 May 2015, the defendant confirmed that it was not terminating the lease for the part of the Premises used to operate the bar.[24] The plaintiff continued to demand payment of the outstanding rent. By 10 July 2015, the arrears in rent amounted to $412,508.96.[25]

20 On 15 July 2015, the plaintiff received a cheque dated 20 June 2015 for $10,000 from the defendant as partial payment of the outstanding rent.[26] Tony claimed that this partial payment was also made to keep negotiations alive.[27] The plaintiff continued to demand payment.

21 On 14 September 2015, the plaintiff's solicitors issued a notice of forfeiture demanding payment of $551,166.88 and late payment interest by

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17 September 2015 failing which it would exercise its right to terminate the lease by re-entering the Premises.[28] The defendant requested a meeting to negotiate the dispute.[29] Both parties met on 25 September 2015. The plaintiff requested the defendant to demonstrate its sincerity by paying 50% of the amount outstanding.[30] The plaintiff also indicated its willingness to explore other options including downsizing the leased premises and asked the defendant to propose a settlement plan by 30 September 2015.

22 However, the defendant decided to cease its operations by vacating the Premises on 30 September 2015. On 1 October 2015, the plaintiff re-entered and repossessed the Premises.[31] The plaintiff found a new tenant to take over the lease of the Premises on 7 December 2016 at a lower rent than that payable under the Lease Agreement.[32]

The plaintiff's claim

23 The plaintiff's claim was for the following:

(a) $562,441.31 being outstanding rental for the period from February 2015 to September 2015 and late interest as at 1 October 2015;

(b) late payment interest at 12% *per annum* on $538,942.94 from 1 October 2015 up to the date of full payment;

(c) $2,155,294.02 being damages suffered as a result of the defendant's repudiatory breach of contract; and

(d) costs on an indemnity basis.

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The defendant's case

24 The defendant alleged that it had been induced to sign the Lease Agreement by the plaintiff's fraudulent and/or negligent and/or innocent misrepresentations arising from the following representations:

(a) That the defendant would be able to operate a pub, bar and club providing live entertainment services at the Premises ("Representations on Live Entertainment").

(b) That the defendant would be able to operate a pub, bar and club providing live entertainment services at the Premises until the early hours of the morning ("Representations on Operating Hours").

(c) That the defendant would be able to cater for the significant number of events and attendees at the Sports Hub including the Sports Facilities ("Representations on Catering").

(d) That the defendant would be able to provide take-out food and beverage services for the significant number of events and attendees at the Sports Hub including the Sports Facilities ("Representations on Take-out").

25 The defendant sought to set aside the Lease and also claimed damages against the plaintiff.

26 In its defence and counterclaim, the defendant had also claimed that the plaintiff had misrepresented that the Sports Hub would attract a significant number of crowds and host a significant number of events. However, the defendant abandoned this claim at the commencement of the trial.

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Representations on Live Entertainment

27 I found that there was no express representation by the plaintiff that planning permission had been obtained for the use of the Premises as a pub, bar and club providing live entertainment services. However, the LOO clearly stated that the plaintiff permitted the defendant to use the Premises as a "Pub cum F&B" including a "bar and club" with "[l]ive music and dance mix" (see [6] above).

28 In *Laurence and another v Lexcourt Holdings Ltd* [1978] 1 WLR 1128 ("*Lexcourt*"), the plaintiffs described the premises as offices and offered to let them to the defendants as offices for a term of 15 years when the planning permission for use as offices was limited to two years. The defendants argued (at 1134B–C) that by so offering the premises the plaintiffs represented that the premises might lawfully be used as offices during the term of the lease. The court agreed with the defendants and held (at 1137E–F) that the defendants were entitled to succeed on the ground of misrepresentation.

29 In the present case, I agreed with the defendant that by offering to lease the Premises to the defendant and permitting the Premises to be used as a pub with live entertainment, the plaintiff had made an implied representation that there was planning permission for such use during the duration of the lease. *Lexcourt* supported the defendant's case.

30 The plaintiff's Manager (Leasing), Tan Li Sin ("Elyn"), testified that she had informed Tony during their discussions in September 2013 that if he wanted to use the Premises for purposes other than F&B (*eg*, to operate a pub), he would have to make the necessary change of use application on his own.[33] I rejected Elyn's evidence in this regard. First, the evidence showed that Tony's conduct

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was consistent with the fact that he believed that the Premises were approved for use as a pub with live entertainment. The negotiations on rental had also proceeded on the basis that the Premises would operate as a pub with live entertainment.

31 Second, in May 2014, the plaintiff applied for the change of use of the Premises from "restaurant" to "restaurant cum pub" on behalf of the defendant without even informing the defendant that it was doing so.[34] This was very strange if indeed Elyn had informed Tony that he would have to apply for a change of use if he wanted to operate a pub.

32 Third, Elyn's evidence was inconsistent with the fact that in August 2014, when her colleague suggested that the change of use be carried out by the tenants, her response was that it was usually the landlord who would apply for the change of use.[35]

33 The plaintiff also relied on cl 2(b) of the LOO which provided that the defendant was responsible "for obtaining … any necessary planning permission for change of approved use from the relevant authorities". In my view, cl 2(b) of the LOO did not assist the plaintiff. The defendant was relying on the plaintiff's representation that the Premises were already approved for use as a pub with live entertainment. The question of applying for a change of use therefore did not arise.

Representations on Operating Hours

34 The defendant alleged that the plaintiff had represented that the defendant could operate a pub, bar and club providing live entertainment at the Premises until "the early hours of the morning".

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35 Pursuant to cl 2(b) of the LOO and cl 5.1.2 of the Lease Agreement, the defendant was responsible for obtaining the necessary liquor and public entertainment licences that would allow it to sell alcohol and provide live entertainment at the Premises. The defendant did not dispute its obligation to do so. There was also no question that the defendant knew that the operating hours for selling alcohol and providing live entertainment depended on the liquor and public entertainment licences that it had to apply for.

36 I found that there was no express representation that the defendant would be able to operate a pub, bar and club providing live entertainment until the early hours of the morning. The application for the liquor and public entertainment licences had nothing to do with the plaintiff. It did not make sense that the plaintiff would have made the express representation as alleged. For the same reason, there was also no reason to imply the alleged representation. The defendant may have expected to be able to obtain the licences with the operating hours that it wanted but clearly, the plaintiff could not be held responsible for the defendant's inability to do so.

37 In any event, even if there was an express or implied representation as alleged, it was clear that the defendant could not be said to have relied on any such representation knowing as it did that the operating hours depended on the licences that it had to apply for.

Representations on Catering and Representations on Take-out

38 The defendant's case was that the plaintiff expressly represented that the defendant would be able to cater and provide take-out food and beverage services for the significant number of events and attendees at the Sports Hub including the Sports Facilities. As it turned out, the defendant could not cater

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for events at the Sports Hub because the Sports Hub had appointed an exclusive caterer for events at the Sports Hub. In addition, the conditions of entry into the Sports Facilities provided that "outside food and beverage" could not be brought into these venues.

39 In my judgment, the evidence fell short of proving the alleged express representations. What seemed clear was that there was mention that there would be a lot of events held at the Sports Hub. What was not so clear was whether Elyn actually said that the defendant would be able to cater the food for these events or that persons could bring food and drinks purchased from the defendant's take-out counter into the Sports Facilities. Obviously, there was nothing to stop the defendant from providing catering services generally. There was also nothing to stop anyone from buying food and drinks from the defendant's take-out counter so long as they did not also bring them into the Sports Facilities.

40 Tony's testimony in court was equivocal. He said that Elyn told him there would be "lots of events around here ... a lot of people coming here for after party and all that. *You can have events and caterings for them*" [emphasis added].[36] This was not the same as a representation that the defendant could cater for other events held at the Sports Hub. Further, the defendant did not even operate a catering business. A sole proprietorship owned by Tony operated the catering business and it catered for its own events at the Sports Hub[37] as well as for events held outside the Sports Hub.[38]

41 As for the take-out business, during cross-examination, Tony was asked whether the plaintiff had represented that the defendant would be able to provide take-out services for events and attendees at the Sports Hub. His answer was that the plaintiff did not inform him of the prohibition against "outside food and

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beverages" in the Sports Facilities.[39] Tony subsequently asserted during re-examination that Elyn had said "guests may take things into the stadium and into the nearby places".[40] In my view, Tony's answer during cross-examination was to be preferred. If Elyn had in fact made such a clear representation as Tony asserted during re-examination, there was no reason why Tony would not have said so during cross-examination. Neither did Tony explain why he gave the answer that he did during cross-examination.

42 In my view it was more probable that the defendant had simply assumed that it could cater for events (other than its own) at the Sports Hub and that its food and beverages could be brought into the Sports Facilities. This was corroborated by the evidence of one of the defendant's witnesses, Wong Kang Kin, a Food and Beverage Consultant who had invested in the defendant. He testified that when Tony and he were told of the high number of events, they "thought" that they would get some of the business and also have some takeaway business.[41] Clearly, the defendant's own assumptions were not actionable.

Whether the defendant was entitled to rescind the Lease Agreement

43 It could not be disputed that the Representations on Live Entertainment were false and that the plaintiff knew they were false, both when the defendant accepted the LOO and when the defendant entered into the Lease Agreement. However, the plaintiff submitted that the defendant was not entitled to rescind the Lease Agreement because (a) the Representations on Live Entertainment subsequently ceased to be false, (b) the defendant had settled the dispute with the plaintiff, and/or (c) the defendant had affirmed the Lease Agreement.

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Whether the Representations on Live Entertainment subsequently ceased to be false

44 The plaintiff submitted that the defendant lost its right to rescind the Lease Agreement because subsequent appeals to the URA led to the defendant obtaining approvals for its intended use of the Premises. I disagreed with the plaintiff.

45 The URA permitted live entertainment at the Premises only if it was ancillary to the use of the Premises as a restaurant and even then, the permission was only for one year with further extensions being subject to review (see [14] above). This was clearly different from the implied representation that there was planning permission to operate a pub with live entertainment for the duration of the five-year lease (see [29] above).

Whether there was a settlement agreement

46 In its closing submissions, the plaintiff submitted that there was a settlement agreement between the parties dated 25 August 2014. The defendant argued that this had not been pleaded.

47 It was not disputed that that alleged settlement agreement was not pleaded in the statement of claim or the reply and defence to counterclaim. The plaintiff pointed out that in its rejoinder, the defendant had pleaded that it had entered into negotiations with the plaintiff but no agreement was reached. The plaintiff argued that since there was an implied joinder of issues to the defendant's rejoinder, this meant that the plaintiff's position was that the negotiations ended in an agreement.

48 I rejected the plaintiff's creative but unsustainable submission. In my view, the fact that a settlement agreement had been reached had to be pleaded

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as a positive assertion. The plaintiff had not done so and therefore could not raise the alleged settlement agreement as part of its case.

Whether the defendant had affirmed the Lease Agreement

49 Having discovered the misrepresentation arising from the Representations on Live Entertainment at the latest by July 2014, the defendant nevertheless responded to the plaintiff's notice to take possession by taking possession of the Premises in September 2014, carrying out fitting works till November 2014, commencing business in November 2014, paying rent for December 2014 and making the subsequent payments of $64,143.16 and $10,000 towards the outstanding rent. The plaintiff submitted that the defendant had, by its conduct, affirmed the Lease Agreement.

50 A representee's election whether to rescind or to affirm the contract may be by express words or by an unequivocal act: *The Law of Contract in Singapore* (Andrew Phang Boon Leong, ed) (Academy Publishing, 2012) at para 11.120. In the present case, it was clear that the defendant's acts were unequivocal in affirming the Lease Agreement. The acts were done despite the fact that the defendant's requests for a reduction in rent had not been acceded to. There was also no evidence that these acts were being done under protest. The only inference that could be drawn from the defendant's conduct was that the defendant intended to carry on with the Lease Agreement. Even if the payments of $64,143.16 and $10,000 were excluded because, as Tony alleged, they were made in order to keep the negotiations on rent alive, the evidence was still clear that the defendant carried on with the Lease Agreement.

51 However, the defendant submitted that it could not be taken to have affirmed the Lease Agreement unless it had knowledge of the existence, nature

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and extent of his right to rescind. The question was whether knowledge of the facts giving rise to the right to rescind was sufficient or whether the defendant also had to have knowledge that it had a right in law to choose between affirmation and rescission.

52 In *Peyman v Lanjani* [1985] Ch 475 ("*Peyman*") the English Court of Appeal held (at 487F–G) that the plaintiff "must also know that the law gives him that right [to rescind] yet choose with that knowledge not to exercise it." *Peyman* was applied by the Singapore High Court in *The Pacific Vigorous* [2006] 3 SLR(R) 374 at [23] and in *Wishing Star Ltd v Jurong Town Corp* [2005] 1 SLR(R) 339. The Court of Appeal in deciding the appeal in the latter case did not opine affirmatively on the point as the facts of the case showed that the representee possessed knowledge of both facts giving rise to the right to rescind and the right itself: *Jurong Town Corp v Wishing Star Ltd* [2005] 3 SLR(R) 283 at [164]. See *The Law of Contract in Singapore* at para 11.150.

53 Although it appears that *Peyman* represents the law in England on this issue, it is not without controversy. It has been argued that *Peyman* was wrongly decided: K R Handley, "Exploring Election" (2006) 122 LQR 82. In that article, Justice Handley reviewed several Australian and English cases which did not support *Peyman*. Justice Handley also questioned the view in *Peyman* that an elector who affirms without being aware of his right is only bound if there is an estoppel. His Honour reasoned (at 96) that that view was "inconsistent with the principle that an election depends on what a party does, not what he causes the other party to do, and that it takes effect when communicated, without any need for an alteration of position." Finally, Justice Handley expressed the following view (at 97):

> … Ignorance of the law is generally treated as a misfortune, not an advantage. In *Hourigan v Trustees Executors & Agency Co*

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> *Ltd* Dixon J quoted Knight Bruce LJ saying in 1857 "generally when the facts are known … the right is presumed to be known".
>
> Disputes about an election normally arise because the other party relies on an earlier election to defeat a later attempt to elect the other way. Legal professional privilege would make it difficult for that party to prove that the elector was aware of his right at the earlier time. A rule that knowledge of the right had to be proved would encourage perjury and reward those who do not seek advice …

54 The authors of *The Law of Contract* (Michael Furmston, ed) (LexisNexis, 4th Ed, 2010) expressed the view (at p 930) that *Peyman* "might be seen in the context of its special facts, notably, the helplessness of P, however, commercial law rarely makes allowance for ignorance of language or of local law". They also opined that perhaps the better view is that knowledge of the facts giving rise to the right is enough because "a rule by reference to actual knowledge of rights makes it very difficult for the other party to decide whether he can safely rely on what appears to be affirmation".

55 The uncertainty as to whether the electing party must know of its legal rights was also examined in Dominic O'Sullivan, Steven Elliott & Rafal Zakrzewski, *The Law of Rescission* (Oxford University Press, 2008) at paras 23.34–23.49. After reviewing English and Australian cases, the authors concluded (at para 23.48) that affirmation should not require knowledge of the right to rescind, giving reasons similar to those stated in Exploring Election and in *The Law of Contract*.

56 In my judgment, the better view is that knowledge of the facts giving rise to the right to rescind is sufficient, for all of the reasons stated in Exploring Election, *The Law of Contract* and *The Law of Rescission*. I see no reason why a representee should benefit from his own ignorance of the law especially when

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that ignorance arose from his own decision not to seek advice despite having learnt of the representor's wrongdoing in making a false representation.

57 In any event, even if knowledge of the right to rescind was required, I was satisfied that the defendant was aware that it had such a right. In his WhatsApp conversation with Elyn on 1 August 2014, Tony said that he hoped the case could be closed at the meeting to be held later that day "or [the defendant] may have to close this chapter".[42] Tony testified that he merely meant that he would need to seek legal help.[43] On 2 August 2014, Tony was told that the plaintiff would try to secure more season parking for the defendant and Tony replied that that was the least that had to be done "before we have to walk away".[44] Tony testified that he merely meant that he could not go forward.[45] I was not persuaded by Tony's explanations; they were simply too tenuous and unbelievable. In my view, Tony's WhatsApp messages meant that the defendant may have to walk away from the lease.

58 However, "walking away" from the lease would be tantamount to rescinding the lease only if the defendant could do so without being in breach. Tony's testimony during cross-examination was not very clear about who was liable for damages if the defendant "walked away" from the lease. However, his testimony during re-examination clarified that he understood that the plaintiff would have to pay damages to the defendant.[46] In other words, the defendant would not be in breach if it "walked away". In my view, Tony's WhatsApp messages and testimony showed that he was aware that the defendant had the right to rescind the Lease Agreement.

59 I concluded that the defendant was not entitled to rescind the Lease Agreement because it had affirmed the agreement.

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The plaintiff's remedies for the defendant's breaches

60 As the defendant had affirmed the Lease Agreement, it remained liable to pay rent. It failed to do so and thus breached the Lease Agreement. Clause 11.1 of the Lease Agreement gave the plaintiff the right to terminate the lease by serving three days' written notice or by re-entering the Premises if rent or any other amounts payable by the defendant remained unpaid for seven days after becoming due.[47] As stated earlier, the plaintiff terminated the lease by re-entering the Premises on 1 October 2015 (see [22] above).

61 Consequent upon the defendant's breach of the Lease Agreement, the plaintiff was also entitled to recover the outstanding rental, late payment interest at 12% *per annum* (pursuant to cl 13.2 of the Lease Agreement), damages and costs on an indemnity basis (pursuant to cl 18.4.2 of the Lease Agreement).

62 The outstanding rental for the period from February 2015 to September 2015 plus late payment interest as at 1 October 2015 amounted to $562,441.31. Late payment interest continued to accrue at 12% *per annum* on the principal sum of $538,942.94 from 1 October 2015 until full payment.

63 The plaintiff claimed the sum of $2,155,294.02 as damages. This amount comprised the following:

(a)	Costs of re-entry (hoarding the Premises)	$2,846.20
(b)	Costs of reinstating the Premises	$115,842.90
(c)	Clawback of rent (pursuant to cl 2.7 of the Lease Agreement) for the fitting out period which was granted to the defendant	$154,050.77

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	rent-free	
(d)	Loss of rent from 1 October 2015 until 6 December 2016	$941,928.29
(e)	Shortfall in rent from 7 December 2016 to 8 November 2019	$1,181,162.72
(f)	LESS: Security deposit	($240,536.86)
	TOTAL	$2,155,294.02

64 The defendant did not challenge the plaintiff's evidence on the amount of loss suffered. In its closing submissions, the defendant did not challenge the plaintiff's computation of damages. I therefore awarded the plaintiff damages in the sum of $2,155,294.02 plus interest at 5.33% *per annum* from the date of the writ to the date of judgment.

The defendant's claim for damages

65 Although the defendant was not entitled to rescind the Lease Agreement, it remained entitled to damages for loss suffered in respect of its misrepresentation claim based on the Representations on Live Entertainment.

66 However, on 27 November 2014, the defendant received formal written permission to operate a restaurant with ancillary bar and ancillary live entertainment. On 4 December 2014, the defendant was given a liquor licence and a public entertainment licence (which permitted live entertainment including dancing) for a year with daily operating hours ending at 11.59 pm. The defendant was therefore able to operate a pub with live entertainment. By

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12 December 2014, the defendant's restaurant, bar and club on the Premises was fully operational.

67 It is true that the defendant was only given permission to operate a bar with live entertainment ancillary to its operation of the restaurant. However, there was no evidence of the loss suffered by the defendant as a result of this constraint imposed by the URA. Further, although the URA's permission was granted for a period of one year, it could be renewed. In my view, the possibility that a renewal might not be granted by the URA was too speculative. There was no evidence that suggested that it would not be renewed.

68 It is also true that the defendant could not operate its pub and live entertainment business past midnight. However, that had nothing to do with the Representations on Live Entertainment. As stated earlier, the defendant failed in its misrepresentation claim arising from the Representations on Operating Hours.

69 In my judgment, the defendant failed to prove that it suffered any loss as a result of its reliance on the Representations on Live Entertainment (which turned out to be false). In the circumstances, I awarded the defendant nominal damages in the sum of $5,000 in respect of its misrepresentation claim based on the Representations on Live Entertainment.

70 It seemed to me that the real reason for the defendant's unhappiness was the plaintiff's refusal to reduce the rent despite that fact that the defendant was unable to operate the bar and provide live entertainment past midnight or, as the defendant put it, until the early hours of the morning. However, the plaintiff was under no legal obligation to reduce the rent. It was the defendant itself that was unable to obtain the necessary liquor licence and public entertainment licence

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with longer operating hours. The defendant had made its plans on the assumption that it would be able to obtain the licenses to operate past midnight. This assumption turned out to be wrong and the defendant had to bear the consequences. The defendant had not protected itself against this eventuality in the Lease Agreement and it was not for the court to rewrite the Lease Agreement.

Conclusion

71 Although the defendant succeeded in its misrepresentation claim arising from the Representations on Live Entertainment, it was not entitled to rescind the Lease Agreement because it had affirmed the agreement. In the circumstances, the defendant's failure to pay rent was a breach of the Lease Agreement. The plaintiff was therefore entitled to judgment for outstanding rent, interest and damages. As the defendant failed to prove its loss arising from its misrepresentation claim, it was only entitled to nominal damages.

72 I entered judgment for the plaintiff for (a) $562,441.31 being outstanding rent and interest as of 1 October 2015 together with interest at 12% *per annum* (as provided for under the Lease Agreement) on the principal sum of $538,942.94 from 1 October 2015 until payment, and (b) $2,155,294.02 being damages together with interest at 5.33% *per annum* from the date of the writ until judgment. As for the defendant's counterclaim, I awarded it nominal damages in the sum of $5,000. Finally, I awarded the plaintiff costs on an indemnity basis (as provided for under the Lease Agreement) fixed at $250,000 plus GST, and disbursements to be fixed by me if not agreed.

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Chua Lee Ming
Judge

Ling Tien Wah, Wah Hsien-Wen Terence, Chew Di Shun Dickson (Zhou Dishun) (Dentons Rodyk & Davidson LLP) for the plaintiff; Suhami Bin Lazim, Chow Jian Hong (Mirandah Law LLP) for the defendant.

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1 Tan Li Sin's Affidavit of Evidence-in-Chief ("AEIC"), exh TLS-4.
2 1 AB 505–524.
3 These unit numbers were subsequently officially approved as units #01-24 to #01-28 and #01-K13 and #01-K17: 1 AB 860.
4 1 AB 514.
5 1 AB 850.
6 1 AB 685–799.
7 1 AB 739.
8 Tan Li Sin's AEIC, exh TLS-19, at pp 335–336.
9 2 AB 1682–1683.
10 3 AB 2286.
11 3 AB 2293.
12 3 AB 2292.
13 3 AB 2429–2430.
14 3 AB 2438.
15 3 AB 2439.
16 3 AB 2454.
17 Tan Yang Poh's AEIC at para 27; NE, 21 March 2017, at 141:24–142:11.
18 4 AB 2832–2841.
19 4 AB 2992.
20 4 AB 2996.
21 4 AB 2997.
22 4 AB 3057.
23 Tan Hock Kian's AEIC, at para 128.
24 2 AB 1643.
25 4 AB 3132.

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[26] 4 AB 3157–3158.
[27] Tan Hock Kian's AEIC, at para 132.
[28] 4 AB 3202–3203.
[29] 4 AB 3215.
[30] 4 AB 3243.
[31] Tan Li Sin's AEIC, at para 135.
[32] Tan Yang Poh's AEIC, at paras 56 and 59.
[33] Tan Li Sin's AEIC, at para 16; NE, 16 March 2017, at 22:5–20 and 23:9–22.
[34] NE, 21 March 2017, at 2:10–3:5.
[35] 3 AB 2171.
[36] NE, 21 March 2017, at 103:24–104:3.
[37] NE, 21 March 2017, at 109:25–110:6.
[38] NE, 21 March 2017, at 104:7–13, 106:2–14 and 111:14–20.
[39] NE, 21 March 2017, at 112:22–113:4.
[40] NE, 22 March 2017, at 61:11–62:6.
[41] NE, 23 March 2017, at 37:12–20.
[42] 3 AB 1806 (1/8/14, 3:43:49 PM).
[43] NE, 22 March 2017, at 10:5–11:1.
[44] 3 AB 1807 (2/8/14, 12:08:20 AM and 10:55:56 AM).
[45] NE, 22 March 2017, at 13:18–14:17.
[46] NE, 22 March 2017, at 52:20–53:12.
[47] 1 AB 721.

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