IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 27

Suit No 541 of 2018

Between

Changi Makan Pte Ltd

… *Plaintiff*

And

(1) Development 2003 Holding Private Limited
(2) Har Yasin Restaurant Pte Ltd
(3) Mohamed Hanifa s/o Abdul Hamid
(4) Mohamed Haneefa Iqbal

… *Defendants*

JUDGMENT

[Contract] — [Misrepresentation] — [Fraudulent] — [Statement as to what will happen in the future]

[Contract] — [Misrepresentation] — [Fraudulent] — [Statement rendered untrue by supervening event] — [Whether sufficiently corrected]

[Contract] — [Misrepresentation] — [Fraudulent] — [Whether statement substantially contributed to purchase of property]

[Tort] — [Conspiracy] — [Unlawful means conspiracy]

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Changi Makan Pte Ltd
v
Development 2003 Holding Pte Ltd and others

[2020] SGHC 27

High Court — Suit No 541 of 2018
Ang Cheng Hock J
25–28 June 2019; 12 September 2019

7 February 2020 Judgment reserved.

Ang Cheng Hock J:

Introduction

1 This is a story of unmet expectations. The plaintiff purchased a property from the first defendant, with the belief that the rental yield of the property would inevitably rise. The plaintiff also believed that it could be re-sold at a higher price. When the plaintiff's expectations did not materialise, the present suit was initiated against the first defendant, as well as the second to fourth defendants, who are the original tenants of the property. The central theme of the plaintiff's complaint is that the defendants had conspired to artificially inflate the rental yield of the property. The plaintiff's purchase was therefore pegged to an allegedly inflated price that did not represent the property's true market value. The two causes of action relied on by the plaintiff are fraudulent misrepresentation and unlawful means conspiracy.

Facts

The Property

2 The property which is the subject of the dispute is a mixed-used building located at 44 and 46 Changi Road, Singapore ("the Property"). The Property comprises three storeys, and is divided as follows:

(a) the first storey of the Property is a commercial unit, with the address of 44 and 46 Changi Road ("the first storey");

(b) the second storey of the Property is a residential unit, which has been referred to by parties as 44A and 46A Changi Road ("the second storey");

(c) the third storey of the Property is the attic ("the third storey").[1]

The parties

3 The plaintiff is a company that is majority-owned by Mr Lee Boon Leng, who also goes by the name of Jason Lee ("Mr Lee").[2] He is an entrepreneur and property investor. He has been involved in the purchase of about six or seven commercial premises in Singapore, which operate as coffee shops or eateries, including the Property.[3] The plaintiff was incorporated for the purpose of buying and holding the Property. There is a minority investor in the plaintiff, who holds a 30% stake, one Mr Seah Boon Lock ("Mr Seah").

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1 Bundle of the Plaintiff's Affidavits of Evidence-in-Chief ("PBAF") p 5, para 3; 1st Defendant's Bundle of Affidavits ("1DAF") p 2, para 7.

2 PBAF p 4, para 1.

3 Transcripts (26 June 2019) p 20 lines 1 to 14.

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4 The first defendant is a family-owned company in the business of purchasing and managing properties for rental revenue.[4] It was the first defendant who sold the Property to the plaintiff.[5] At the time of the sale, it was majority owned and controlled by one Mr Ng Kim Wah ("Mr Ng"), who has since passed away in 2016.[6]

5 The second to fourth defendants (collectively, "the tenants") were the tenants of the first and second storeys of the Property at the time of the sale.[7] The third defendant, who was 86 years old at the time of the trial, is the father of the fourth defendant.[8] It is common ground that the father and son team control the second defendant company. They utilised the Property to operate a well-known 24-hour Indian Muslim eatery by the name of "Har Yasin", as well as to provide a residential unit for their employees.[9] Under their tenancy agreement with the first defendant dated 13 March 2013, the tenants paid S$24,000 and S$6,000 for the lease of the first and second storeys of the Property respectively every month ("the 2013 Lease").[10]

6 Under a separate tenancy agreement dated 23 July 2014, the third storey was tenanted out to one Golden Sands Construction & Engineering Pte Ltd

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4 1DAF p 2, para 3.

5 PBAF p 41.

6 1DAF p 2, para 5.

7 PBAF p 26.

8 Affidavit of Evidence-in-Chief of Mohamed Haneefa Iqbal ("Iqbal") p 2, para 5.

9 1DAF p 39.

10 1DAF p 38.

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("Golden Sands") at a monthly rental of S$5,500.[11] This was a month-to-month tenancy.

Sale of the Property

7 Sometime in November 2014, Mr Hau Boon Ping ("Mr Hau"), a property agent, contacted Mr Lee, informing him that the Property was up for sale.[12] Mr Hau had been acquainted with Mr Lee for four to five years by then, and he had represented Mr Lee in a previous transaction in relation to a residential property.[13] Mr Hau informed Mr Lee that the Property had three storeys, and that it was tenanted and generated a monthly rental income of S$35,500. He showed Mr Lee the two tenancy agreements between the first defendant and its tenants, who were the second to fourth defendants, and Golden Sands.[14]

8 Mr Hau further informed Mr Lee that the second to fourth defendants were "good tenants who had been leasing the Property for a long time, and that they always paid their rent on time", while the third storey was "rented by a construction company [Golden Sands] which had used the premises as accommodation for its workers."[15] Mr Hau suggested a price of S$11m. Mr Lee looked at the rental figures and who the tenants were. He took Mr Hau's advice. Mr Lee did not ask for a valuation of the Property.[16]

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11 PBAF p 31.

12 PBAF p 6, para 6.

13 PBAF p 6, para 6 and Transcripts (25 June 2019) p 40 lines 20 to 21.

14 PBAF p 7, para 8.

15 PBAF p 7, para 9.

16 PBAF p 8, para 10 and Transcripts (25 June 2019) p 41 lines 1 to 14.

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9 It is not in dispute that, at all material times, Mr Lee dealt only with Mr Hau and had never met or spoken with Mr Ng, who represented the first defendant[17].

Offer to purchase

10 Considering the Property to be an attractive investment, Mr Lee made an offer in writing to purchase the Property for S$11m on 13 November 2014 ("the Offer").[18] To carry out the purchase of the Property, the plaintiff company was incorporated on 5 December 2014, with the stated purpose of "letting & operating of eating house and food court".[19] As mentioned earlier, the plaintiff is 70% owned by Mr Lee, and 30% owned by the other investor, Mr Seah.[20] Mr Lee explained that their plan was to realise any capital appreciation from a resale of the Property or to enjoy long-term returns from the rental income generated by the Property.[21]

Termination of the tenancy of the third storey

11 On 3 February 2015, the first defendant received a "Fire Hazard Abatement Notice" from the Singapore Civil Defence Force ("SCDF"), informing them that the third storey could not be used as a dormitory by Golden Sands as had been originally intended because it posed a fire hazard.[22] Upon

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17 Transcripts (25 June 2019) p 40 lines 22 to 27.

18 PBAF p 8, para 10; p 31.

19 PBAF p 36.

20 PBAF p 8, para 11 and pp 36 to 38.

21 PBAF p 7, para 8 and Transcripts (25 June 2019) p 59, lines 7 to 13.

22 1DAF p 62.

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receipt of this notice, the first defendant informed Golden Sands to reinstate the premises to its original layout.[23]

12 Consequently, Golden Sands terminated the month-to-month tenancy and vacated the third storey of the Property, and it ceased paying rent to the first defendant from 14 February 2015 onwards.[24]

Option to Purchase issued

13 On 18 March 2015, the first defendant issued the plaintiff with an Option to Purchase the Property at the purchase price of S$11m ("the OTP").[25] The OTP provided that the sale was "subject to existing tenancies currently comprised in the two (2) Tenancy Agreements", namely the tenancy agreements with the second to fourth defendants and Golden Sands.[26]

14 The evidence of Mr Lee was, however, that Mr Hau informed him that the third storey was in fact no longer tenanted. This did not have any impact on his decision to go ahead with the purchase because Mr Hau assured him that the plaintiff "could just look for another tenant" for the third storey. Given this assurance, Mr Lee "was not too concerned that the [t]hird [s]torey was vacant".[27]

15 Almost a year after the OTP was issued, the plaintiff exercised the OTP on 12 February 2016. The first defendant had granted extensions of time to the

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23 1DAF p 63.

24 1DAF p 145; Transcripts (27 June 2015) p 6 lines 22 to 32.

25 PBAF pp 41 to 46.

26 PBAF p 42, clause 8.

27 PBAF pp 9 to 10, paras 16 to 17.

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plaintiff to allow the late exercise of the OTP.[28] Mr Lee explained that the long time taken to decide whether to exercise the OTP was because he had never purchased a coffee shop which operated an Indian Muslim eatery. He had long discussions with Mr Hau about the transaction before deciding to go ahead. Mr Hau had persuaded him that it was a good deal.[29] The sale of the Property was completed on 12 April 2016.[30]

Alleged conspiracy between the first defendant and tenants

The plaintiff's account

16 According to the plaintiff, sometime after exercising the OTP (on 12 February 2016) and before completion on 12 April 2016, Mr Lee met with the third and fourth defendants to discuss the plaintiff's plans to renovate the Property. Mr Lee explained that he wanted to carry out such renovations because he felt that the building was old. The plaintiff mooted the idea that a rental of about S$45,000 per month would be sought from the tenants after such renovations were complete. However, the fourth defendant did not agree to this proposal. He and his father, the third defendant, in fact wanted a reduction in the rental and saw no need for any renovations to the building. The meeting thus concluded without an agreement being reached.[31]

17 The parties then met again in September 2016, where the tenants proposed to renew the tenancy, which would expire in May 2017, at a rental of

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28 1DAF p 9, para 33 and p 10, para 34.

29 Transcripts (25 June 2019) p 62 lines 9 to 23.

30 PBAF pp 8 to 9, paras 13 to 14.

31 PBAF pp 11 to 12, paras 23 to 25.

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S$12,000 per month. Mr Lee stated that the plaintiff was looking at a rental of more than S$30,000 per month, to which the tenants did not agree. Accordingly, this second meeting also concluded without any agreement being reached between the parties.[32]

18 However, what is also notable about this meeting is that the plaintiff alleges in his affidavit of evidence-in-chief that the third defendant had told him that S$12,000 was the "previous rental" the tenants had paid and that they only agreed to enter into the 2013 Lease and to pay a higher rental of S$30,000 to help the first defendant sell the Property.[33]

19 Subsequent to the meeting in September 2016, Mr Lee asked Ms Tang Lee Swan ("Ms Tang") to discuss the renewal of the tenancy with the fourth defendant. Ms Tang was then an employee of Suki Sushi Pte Ltd, a company in which Mr Lee was also a shareholder and director.[34] Ms Tang was to negotiate a renewal of the lease on behalf of the plaintiff.

20 Ms Tang met the fourth defendant and one Mr Clements Christian ("Mr Clements"), who was an employee of the second defendant,[35] in March 2017 to negotiate the terms of the renewal.[36] Mr Clements worked as a cashier, and also carried out administrative tasks such as making online applications for licenses and taking care of the insurance requirements for the workers. He also

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32 PBAF pp 12 to 13, paras 26 to 30.

33 PBAF p 13, para 28.

34 PBAF p 13, para 31.

35 Iqbal p 18, paras 37 to 38.

36 PBAF p 14, para 33.

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moonlighted as a property agent, and would help the second to fourth defendants with any tenancy issues.[37]

21 Ms Tang secretly made an audio recording of what was discussed at the meeting (the "Recording"), which she explained was to help her remember the details of any agreement reached. The transcript of the Recording (the "Transcript") captures Mr Clements suggesting to Ms Tang that the rental of the Property was only S$12,000 per month, and that the monthly rental of S$30,000 per month that had been paid by the tenants was merely "on paper" to inflate the value of the Property.[38] This was done to facilitate the sale of the Property at an inflated price by the first defendant to the plaintiff.[39] The plaintiff refers to this revelation as proof of a "conspiracy" between the defendants.

22 Upon their discovery of the "conspiracy", the plaintiff sought legal advice in respect of the defendants' deceit.[40]

23 Eventually, the parties could not agree to the revised rental for the renewal of the tenancy of the Property, and the tenants thus vacated the Property in May 2017 upon the expiry of the 2013 Lease.[41]

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37 Iqbal p 18, para 38; Transcripts (28 June 2019) p 8 lines 24 to 27.

38 PBAF p 289 paras 9 to 11 and p 297.

39 PBAF p 14 to 16, paras 34 to 35.

40 PBAF p 16, para 36.

41 PBAF p 17, para 38.

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The defendants' account

24 With Mr Ng having passed on, the first defendant's only witness was one Ms Chew Kooi Choon ("Ms Chew"). She is an administrative staff working for the first defendant. She had assisted Mr Ng in preparing the 2013 Lease. She denied having knowledge of any conspiracy between Mr Ng and the tenants to inflate the rental of the Property in the 2013 Lease. While there was a substantial increase in rent from the previous tenancy agreement of the tenants dated 15 April 2011 ("the 2011 Lease"), Ms Chew did point out that the 2011 Lease only let the first storey to the tenants, while the 2013 Lease let to them the first *and* second storeys of the Property.[42]

25 Through the evidence of the fourth defendant, the second to fourth defendants deny the existence of a conspiracy between themselves and the first defendant. The third defendant did not give evidence. According to the fourth defendant, this was because his father was recuperating from a fall and had a heart problem.[43]

26 As regards the alleged inflation in the rent, the fourth defendant's evidence was that the tenants were practically forced to take up the 2013 Lease by Mr Ng at the rent of S$30,000 per month.[44] While it was true that the second to fourth defendants wanted to take up a lease of the second storey to house the restaurant's foreign workers, they baulked at the rental that Mr Ng was demanding for both storeys. However, according to the fourth defendant, they

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42 1DAF paras 1, 7, 11 and 13.

43 Iqbal p 2, para 5 and Transcripts (28 June 2019) p 6 line 17 to p 7 line 1.

44 Iqbal p 6, para 15.

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had already by that time incurred significant costs in renovating the premises so that it could operate as a restaurant.[45] In this regard, he claimed that about S$250,000 had been spent by them from 2011 to early 2013 to renovate the Property.[46] Prior to that, while they had leased the first storey of the Property from the first defendant since 2007, they had sub-let it to a storekeeper.[47]

27 So, when in 2013, Mr Ng, who controlled the first defendant, threatened to evict them unless they agreed to the terms of the 2013 Lease, they felt that they had little choice. They made a business decision to go ahead with the lease. They felt that the business could still be run profitably. The tenants thus signed the 2013 Lease and honoured its terms until expiry.[48] To demonstrate this, the tenants tendered bank account statements showing their due payment of the full S$30,000 rent throughout the duration of the 2013 Lease, both to the first defendant and then later to the plaintiff.[49]

28 As for the negotiations for the renewal of the tenancy, the fourth defendant's evidence was that the plaintiff was reluctant to consider retaining the same rent of S$30,000 per month, but instead proposed an increased rent of S$42,000 per month, or S$50,000 per month in the event that the premises were renovated.[50] The second to fourth defendants could not meet the plaintiff's proposal, and instead counter-offered renewal of the tenancy at the rental of

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45 Iqbal p 6, para 15.

46 Iqbal p 6, para 15; Transcripts (28 June 2019) p 87 lines 14 to 25.

47 Transcripts (28 June 2019) p 17 lines 20 to 31.

48 Iqbal pp 7 to 8, paras 17 to 18.

49 Iqbal p pp 8 to 13, para 19; pp 33 to 70.

50 Iqbal pp 13 to 14, para 23.

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S$24,000 per month.[51] The reason given was that the business was not doing as well as before. The plaintiff was unwilling to accept the tenants' counter-offer, leaving the tenants with no choice but to move out.[52]

29 As for the September 2016 meeting, the fourth defendant denied under cross-examination that his father, the third defendant, had ever said at that meeting that they had only signed the 2013 Lease to help the first defendant sell the Property.[53]

30 With regard to the March 2017 meeting with Mr Clements and Ms Tang, the fourth defendant's evidence was that the meeting took place at the restaurant premises and he was on a phone call for several minutes during the course of the discussions.[54] As he was on a call, the fourth defendant claimed not to have heard what Mr Clements said to Ms Tang about the 2013 Lease being signed to help the first defendant sell the Property.[55] Having since reviewed the Transcript and listened to the Recording, he does not now deny that Mr Clements said what he said to Ms Tang,[56] but he completely denies that there was any agreement with the first defendant to enter into a sham lease arrangement.[57] Instead, his evidence is that he had been forced by Mr Ng to take up the 2013 Lease at the increased rent, and that he had made a "business decision" to do so in light of,

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51 Iqbal p 14, para 24.

52 Iqbal p 14, para 27.

53 Transcripts (28 June 2019) p 97 line 12 to p 98 line 23.

54 Transcripts (28 June 2019) p 44 line 29 to p 45 line 26.

55 Transcripts (28 June 2019) p 116 lines 8 to 10.

56 Transcripts (28 June 2019) p 46 lines 1 to 32.

57 Transcripts (28 June 2019) p 114 lines 15 to 23; p 117 lines 3 to 12.

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amongst others, the goodwill that had been generated by the restaurant at the Property.[58]

31 Regardless, the 2013 Lease was never renewed. Thus, on the expiry of the 2013 Lease in May 2017, possession of the first and second storey of the Property was returned to the plaintiff.[59] As at the time of the trial, Har Yasin restaurant now operates at 48A Changi Road,[60] which is adjacent[61] to the Property. The restaurant's workers are housed at 48C and 48D Changi Road, which are on the upper levels of the property where the restaurant now operates.[62]

Subsequent leases of the Property

32 After the tenants vacated the Property, the Property remained vacant from 15 May 2017 to 31 July 2017.[63]

33 Thereafter, from 1 August 2017 to 31 July 2018, the first storey of the Property was leased to a company related to the plaintiff at the rent of S$25,000 per month.[64] This figure is higher than the S$24,000 rent per month that the tenants were paying under the 2013 Lease for the first storey.

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58 Transcripts (28 June 2019) p 93 lines 17 to 20; p 113 line 31 to p 114 line 11.

59 Iqbal pp 16 to 17, para 33.

60 Transcripts (28 June 2019) p 36 lines 26 to 32.

61 Transcripts (28 June 2019) p 23 lines 22 to 24.

62 Transcripts (28 June 2019) p 29 lines 16 to 17.

63 PBAF p 17, para 39.

64 PBAF p 17, para 40; p 160.

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34 The Property was then vacant from 1 August 2018 to 30 September 2018. Subsequently, a new tenant of all three storeys of the Property signed a lease at a rental of S$28,000 per month for a period of two years, commencing on 1 October 2018.[65]

The parties' cases

The plaintiff's case

35 The plaintiff's pleaded case is that, sometime before 13 March 2013, that being the date the tenants signed the 2013 Lease, Ng approached the third and fourth defendants to propose a scheme to inflate the rental income of the Property ("the scheme"). Under the scheme, the defendants then executed the 2013 Lease, which would reflect a rental income of twice the *normal* rental income of the Property. This was to falsely convey to potential purchasers, like the plaintiff, that the Property was capable of yielding a higher rental yield so as to induce potential purchasers to buy the Property.[66]

36 Pursuant to the scheme, the tenants, who were then paying a rent of S$12,000 a month for the first storey of the Property, executed the 2013 Lease with the first defendant.[67] Induced by the high rental yield as reflected in the 2013 Lease (for the first and second storeys) and the lease with Golden Sands (for the third storey), the plaintiff agreed to purchase the Property for S$11m from the first defendant.[68]

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65 PBAF p 17, para 41; pp 187 to 188.

66 Statement of Claim (Amendment No 1) ("SOC"), para 6.2.

67 SOC paras 6.3 to 6.4.

68 SOC paras 6.5 to 6.6.

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37 The scheme was revealed to the plaintiff by Mr Clements, during the course of negotiations for the renewal of the second to fourth defendants' lease of the Property.[69]

38 Accordingly, the plaintiff avers that the first defendant had made a fraudulent misrepresentation regarding the rental yield of the Property, which entitles the plaintiff to rescind the contract for the sale and purchase of the Property and to seek repayment for all monies paid in that regard.[70] Further losses claimed by the plaintiff, if rescission of the sale and purchase of the Property is ordered, include all the stamp duties and fees incurred in relation to the sale and purchase. The plaintiff also claims its financing costs paid to its bank, which add up to approximately S$800,000 up to the time of the trial.[71]

39 As against all the defendants, the plaintiff further avers that they had conspired and combined to defraud the plaintiff by inducing the plaintiff to purchase the Property by way of the fraudulent misrepresentation and the scheme.[72] Hence, the plaintiff seeks damages for the losses which it purports to have suffered by reason of the defendants' alleged conspiracy.

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69 SOC para 7.3.

70 SOC paras 10, 13(a) and (b).

71 PBAF p 19, para 46(a); Plaintiff's Closing Submissions ("PCS") p 222, para 366.1.

72 SOC para 6.

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The defences

40 All the defendants flatly reject the plaintiff's allegation of the scheme.[73] According to the first defendant, the rental yield of the Property was accurately reflected at S$35,500 per month, being the sum of the rent payable by the tenants and Golden Sands under their respective leases.[74]

41 To prove that the 2013 Lease was not the subject of the scheme as alleged by the plaintiff, the second to fourth defendants produced a table showing that both the first defendant and then later the plaintiff "collected upon the full rental [during the entirety of the 2013 Lease] and there were no cashback and/or rebates given" to the tenants for the rental. Moreover, the second to fourth defendants assert that they "were not involved in the property purchase" by the plaintiff.[75]

The issues

42 Reviewing the pleadings, two main issues arise for my consideration:[76]

(a) first, whether the plaintiff is entitled to succeed in its claim for fraudulent misrepresentation against the first defendant; and

(b) secondly, whether the plaintiff is entitled to succeed in its claim for conspiracy by unlawful means against all the defendants.

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73 Defence of the 1st Defendants ("D1D") paras 5, 6, 11, 12; 2nd to 4th Defendants' Defence ("D24D") paras 9, 10, 16.

74 Defence of the 1st Defendants ("D1D") para 7.

75 D24D para 24 and Table A.

76 PCS pp 17 to 18, para 27 and 28.

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43 The appropriate remedies, if any, and other ancillary issues will be dealt with under the two broad issues identified.

Fraudulent misrepresentation

44 The tort of fraudulent misrepresentation imposes liability on the representor for false statements that he has knowingly made and for deceptive conduct. For the plaintiff to make out its claim against the first defendant for fraudulent misrepresentation, five elements must be established (*Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 ("*Panatron*") at [14]):

> … First, there must be a representation of fact made by words or conduct. Second, the representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which include the plaintiff. Third, it must be proved that the plaintiff had acted upon the false statement. Fourth, it must be proved that the plaintiff suffered damage by so doing. Fifth, the representation must be made with [the] knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true.

45 In this case, from the submissions of the parties, I find that the only areas of real contention in respect of liability for fraudulent misrepresentation are the following:

(a) whether the first defendant had indeed made a representation to the plaintiff;

(b) whether any such respresentation was indeed false;

(c) whether the plaintiff then acted upon the representation by relying on it to enter into the agreement to purchase the Property; and

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(d) whether the plaintiff suffered damage as a result of its reliance on the representation.

46 I do not think that it can be seriously disputed that, if a representation regarding the rental yield was made by the first defendant, it was one that was intended for the plaintiff to act upon in its consideration of whether to purchase the Property.

A representation of fact by words or conduct

47 The plaintiff submits that the operative representation made by the first defendant to the plaintiff was that the Property *would be able to* generate a rental income of S$35,500 per month (the "Representation"). This Representation was made sometime before the Offer was made, and it was continuing at all material times.[77]

48 From a review of the evidence, I am of the view that a representation was made to the plaintiff *through the first defendant's conduct* that the Property was *then* generating monthly rental income of S$35,500. There is no dispute that the first defendant had passed copies of the two tenancy agreements to his property agent for the purposes of marketing the Property for sale. This had the desired effect. When the Offer was made to buy the Property from the first defendant, it was expressly stated that the offer was made "subject to [the] existing tenancy" of "S$35,000".[78] While the figure in the Offer was S$500 short of the rental yield of the Property at the material time, the parties were

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77 PCS p 15, para 21.

78 PBAF p 34.

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clearly referring to the combined rental yield generated from the second to fourth defendants and Golden Sands. Similarly, when the OTP was granted by the first defendant to the plaintiff, it was expressed that "[t]he Property is sold subject to existing tenancies currently comprised in the two (2) Tenancy Agreements…".[79] The two tenancy agreements referred to were the tenancy agreements with the tenants and Golden Sands. Also, in a valuation report provided by Knight Frank, a property valuer appointed by the plaintiff, on 7 March 2016 ("the Knight Frank report"), it was stipulated that the subject property was tenanted as follows:[80]

Level	Gross Rent	Expiry
1st & 2nd storeys	$30,000/mth	14 May 2017
Attic	$5,500/mth	Month-to-month basis

49 I do not find it material that the representation that the Property was generating monthly rental income of S$35,500 was made by Mr Hau to Mr Lee, rather than directly from the first defendant. As observed in *Thode Gerd Walter v Mintwell Industry Pte Ltd and others* [2009] SGHC 44 at [32], "[t]he law does not require the representation to be made directly to the plaintiff. It is sufficient (as was the case here) if the representation is made to a third person to be communicated to the plaintiff or a class of persons of whom the plaintiff is one, or even if it is made to the public generally with a view of it being acted on …". Ms Chew, who gave evidence on the first defendant's behalf, admitted that she had given the two tenancy agreements of the Property to the first defendant's

79 PBAF p 42, clause 8.

80 Agreed Bundle of Documents Vol 1 ("1AB") p 112.

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property agent to forward to potential purchasers.[81] Hence, regardless of how Mr Lee came to know of the tenancy agreements which showed that the rental yield of the Property was S$35,500 per month, such information undoubtedly emanated from the first defendant, and was fully intended for potential purchasers of the Property like the plaintiff.

50 It was also immaterial that the representation that the Property was generating a monthly rental income of S$35,500 had been made *before* the incorporation of the plaintiff. As Steven Chong J (as he then was) held in *Goldrich Venture Pte Ltd and another v Halcyon Offshore Pte Ltd* [2015] 3 SLR 990 at [42]:

> … It does not matter that the entity bringing the 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* … [emphasis in original]

51 The next question is whether a representation that the Property was *then* generating monthly rental income of S$35,000 is also tantamount to representing that the Property *would be able to* generate rental income of S$35,500 monthly, which is the precise manner in which the Representation has been pleaded. I find that the use of the word "*would*" creates ambiguity. It may suggest a thing that may happen in the future. Having said that, in my judgment, a commonsensical understanding by a potential buyer on being shown the two tenancy agreements was that the Property was generating a monthly rental income of S$35,500 and that the tenancies were genuine. In other words, by

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[81] Transcripts (27 June 2019) p 86, lines 9 to 15 (Ken Bay is the property agent: same transcript, p 26, lines 6 to 7).

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making the two tenancy agreements available to potential purchasers like the plaintiff and or Mr Lee, the first defendant was effectively stating that "this building is *capable of* generating monthly rental income of S$35,500, as shown by the two tenancies in place, which are genuine agreements". In that limited sense, I am prepared to accept that a representation of fact that the Property would be *able to* generate monthly rental income of S$35,500 was indeed made by the first defendant.

52 However, insofar as the plaintiff is suggesting that the first defendant had represented that the Property *would be able to* generate a monthly rental income of S$35,000 *after the expiry of the 2013 Lease*, such a representation would in effect amount to a warranty as to the future rent of the Property, after the 2013 Lease had expired. Such a representation would amount to a statement as to something that would happen in the future, and would not be an actionable representation, since a "representation is a statement which relates to a matter of fact, which may be a *past or present fact*" [emphasis added] (*Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2003] 3 SLR (R) 307 ("*Tan Chin Seng*") at [12]; *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) ("*The Law of Contract*") at para 11.029).

53 By way of illustration, in *Tan Chin Seng*, certain representations were made in promotional materials sent to a "chosen few" prior to the launch of a proprietary social club, which suggested that members who signed up would be part of an exclusive group. After the club opened, the appellants experienced crowdedness at the club premises, and it was subsequently discovered that the club had admitted 19,000 of such "exclusive" founder members. The appellants sued for misrepresentation and breach of contract. The Court of Appeal found that the statements in the promotional materials were not representations of fact,

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as they pertained to "matters as to the future", and were instead "future promise[s]" (*Tan Chin Seng* at [17] and [21]), in which the proper cause of action laid not in an action for misrepresentation, but for the breach of an implied term of the contract.

54 In this case, it has not been pleaded that the Representation amounted to a breach of a promise. Instead, the plaintiff's case against the first defendant rests solely on the allegation that the Representation amounted to a fraudulent *misrepresentation*.[82] *If* the plaintiff meant to say that the Representation included a warranty about the *future* rental yield of the Property, such would not be actionable as a misrepresentation.

55 In any event, and more importantly, I am fortified in my view that the Representation did not include a representation as to the future rental yield of the Property because the only information or representation which emanated from the first defendant were the tenancy agreements. Such tenancy agreements would not have been understood by a reasonable commercial buyer of the Property as an assurance as to the amount of rental income that was obtainable on the Property in the future *after* the expiry of the tenancy agreements (which included the 2013 Lease). Put simply, a reasonable buyer would not expect, through being shown the *existing* tenancy agreements to a property, to be given a warranty that the rental yield would never go down. The rent obtainable is quite obviously dependent on a wide variety of factors, including market forces which are beyond the seller's control.

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[82] See SOC.

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56 Therefore, I find that the Representation was made, although it bears emphasis that such the Representation did not extend to a warranty or a promise relating to the rental yield *after* the expiry of the 2013 Lease. As stated earlier, I also find that the Representation was made with the intention that it be acted upon by potential purchasers, such as the plaintiff. As Ms Chew explained, the tenancy agreements were given to the first defendant's property agent to forward to potential purchasers.[83] In the OTP, it was then made clear that the sale of the Property would be subject to the tenancy agreements.[84]

Whether the Representation was false and made with the knowledge that it was false

57 In my view, the plaintiff's case faces great difficulty in relation to the issue of falsity of the Representation.

58 In this regard, the plaintiff's definition of the Representation is crucial. As the plaintiff explained in its closing submissions:[85]

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83 Transcripts (27 June 2019) p 86, lines 9 to 15 (Ken Bay is the property agent: same transcript, p 26, lines 6 to 7).

84 PBAF p 42, clause 8.

85 PCS p 141, paras 218 to 219.

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> It is not disputed that the [p]laintiff received the rental stated in the [2013 Lease] from [the tenants] for the duration of the term of the [tenants'] tenancy at the Property. The [d]efendants solely rely on this to support their case that they had at all material times complied with the terms of the [2013 Lease], that there was no fraud or misrepresentation of any kind, and that the [p]laintiff therefore got what it had bargained for.
>
> With respect, the [d]efendants have missed the point. The [p]laintiff's case is not that there was a breach of the terms of the [2013 Lease]. **Far from it – the [p]laintiff's case has always been that the [first defendant]** ***fraudulently misrepresented to the [p]laintiff that the Property was capable of generating a rental income of S$35,500.00 when it would ordinarily not have done so without the [d]efendants' connivance. ...***
>
> [emphasis added]

59 The plaintiff's case is premised on the first defendant having represented that the Property was capable of generating a rental income of S$35,500 per month, when in truth the rental income generated at the time of the sale had been artificially inflated as a result of the alleged scheme it had entered into with the second to fourth defendants. Put another way, the plaintiff asserts that the first defendant had utilised the inflated rent which it obtained from the tenants and Golden Sands, which added up to S$35,500 per month, to give the false impression that the Property was in fact capable of generating such a monthly rental yield, when that was in reality not actually possible.

60 The plaintiff refers to the discussion between Ms Tang and Mr Clements. During the course of their negotiations for the renewal of the 2013 Lease on the plaintiff's and the tenants' behalves, the following was recorded:

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> [Tang]: … honestly speaking, my boss is looking at -- on paper, our 30,000 rental. And he's expecting at least that or more.[86]
>
> […]
>
> [Clements]: … In the first place, I told [the tenants] not to sign [the 2013 Lease] but then [Mr Ng] said must sign to help him sell the unit. Because if [Mr Lee] had bought the unit and [Mr Lee] had seen a rental of 12,000, he will never buy the unit. What is the (inaudible)? 0 point something per cent?[87]
>
> [Tang]: I haven't calculated but it will be so low he won't buy. Yah.
>
> [Clements]: Correct. So when they started marketing the place, they had to increase on paper, like what you say, to show and cheat --
>
> [Tang]: But it's --
>
> [Clements]: -- and deceive people.
>
> [Tang]: -- it's not really on paper only but we are actually co[ll]ecting this rental, what.
>
> [Clements]: Now.
>
> [Tang]: Yah.
>
> [Clements]: Of course. Because originally, rental is 12,000 but he had to double it. You see, when you are buying something for investment, right.[88]

61 The plaintiff argues that, apart from the exchange quoted above (at [60]), the fourth defendant also admitted at this meeting with Ms Tang and Mr

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86 PBAF p 318.

87 PBAF p 333.

88 PBAF p 334.

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Clements that there was a scheme to "cheat" the plaintiff. In fact, the plaintiff alleges that the tenants had acknowledged this scheme as early as the September 2016 meeting with Mr Lee, when the third defendant is supposed to have said that the 2013 Lease was only entered into to help the first defendant sell the Property.[89]

62 Further, the plaintiff argues that it made no commercial sense for the tenants to have agreed to the 2013 Lease as they had an ongoing lease with the first defendant, the 2011 Lease.[90] Under the 2011 Lease, the tenants were only liable to pay up to S$15,000 per month to the first defendant for the first storey of the Property.[91] Furthermore, the 2011 Lease, which was to expire in May 2014, included a clause which limited the rate of rental increment:[92]

> The terms of [the 2011 Lease] shall be THREE (3) years for Lease Period and THREE (3) years Optional Period. The rental increment during the Optional Period shall be between 10% to 15% on the discretion of the [first defendant].

63 Yet, before the expiry of the 2011 Lease, the tenants "incredulously (*sic*) agreed" to the 2013 Lease,[93] under which they would have to pay S$30,000 per month on rent for the first and second storeys of the Property. This, according to the plaintiff, supports its case that the tenants acted in concert with the first defendant to fraudulently misrepresent to the plaintiff that the Property was

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89 PCS p 165, para 254.4.

90 PCS pp 138 to 139, paras 212 to 213.

91 1DAF p 30.

92 1DAF p 30.

93 PCS p 138, para 212.

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capable of generating a monthly rental income of S$35,500 when it could not ordinarily have done so.[94]

64 With regard to the falsity of the representation, there are several problems with the plaintiff's arguments. As observed in *The Law of Contract* at para 11.056:

> A misrepresentation is simply a representation that is false or untrue. To be actionable, the plaintiff must allege and prove that the representation was false. *A true statement, even one made with the malicious intent of causing harm, is not actionable as a misrepresentation.* A statement is false when the facts as asserted do not correspond with the facts as they exist. … [emphasis added]

65 An actionable misrepresentation is a representation that is untrue. However, the operative representation here, which the plaintiff defined as "[t]he [first defendant's] representation to the [p]laintiff that the Property would be able to generate a rental income of S$35,500 per month",[95] was not untrue.

Truth of the Representation when the Offer was made

66 The Representation of the rental yield of the Property was first made to Mr Lee (and by extension, to the plaintiff) when he received, through Mr Hau, information about the Property and its rental yield. At the time, there were in fact two subsisting tenancies for the Property, such that, as per the Representation made, the monthly rental yield was indeed S$35,500.[96]

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94 PCS pp 141 to 142, para 219.

95 PCS p 9.

96 PBAF pp 27 and 31.

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Therefore, at the time the Offer was made, the Representation made by the first defendant as to the Property's rental yield was not false.

Vacation of the third storey

67 Sometime in February 2015, Golden Sands quit its monthly tenancy and vacated the third storey of the Property as a result of a notice from the SCDF.[97] Despite this, on 18 March 2015, the first defendant granted the plaintiff with an OTP to purchase the Property, subject to the tenancies with Golden Sands and the tenants.[98]

68 Almost a year later, on 7 March 2016, the Knight Frank report continued to state that the Property was tenanted to two tenants, and that it generated a monthly gross rent of S$35,500 per month.[99] It is obvious that Knight Frank, who had been appointed by the plaintiff, had not been informed that the month-to-month tenancy with Golden Sands was no longer subsisting.

69 In *Yokogawa Engineering Asia Pte Ltd v Transtel Engineering Pte Ltd* [2009] 2 SLR(R) 532 at [12], Judith Prakash J (as she then was) made the following observations:

> … As observed in [Piers Feltham, Daniel Hochberg and Tom Leech, *Spencer Bower, The Law Relating to Estoppel by Representation* (Lexis Nexis UK, 4th Ed, 2004)] at para III.4.7, there is a duty to correct a continuing representation that a party knows to be incorrect:
>
> > … There is such a duty of correction: to disclose a previous fraud by the silent party in relation to the

97 1DAF pp 62 to 63, 145; Transcripts (27 June 2015) p 6 lines 22 to 32.

98 PBAF p 42, clause 8.

99 Agreed Bundle of Documents Vol 1 ("1AB") p 112.

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> subject matter of the contemplated transaction with the representee, not to be economical with the truth so as to mislead, and to correct a continuing representation subsequently revealed to the silent part to be untrue or ***rendered untrue by supervening events***.
>
> …
>
> [emphasis in original removed, emphasis added in bold italics]

70 Hence, a representor is obliged to correct a previously made and still operative representation that was true when made, but which had been rendered untrue by subsequent events. But, as stated in *The Law of Contract* at para 11.063, "[a] misrepresentation that is sufficiently corrected before the representee acts on it will obviously no longer be actionable. This is because, once corrected, there is no longer any misrepresentation."

71 The plaintiff claims that the first defendant failed to inform the plaintiff of the circumstances surrounding Golden Sands' vacation of the Property, despite "knowing full well that this would materially change the rental yield of the Property". According to the plaintiff, given the issues that led to Golden Sands' vacation, "the valuation of the Property must naturally be lower than the S$11 million purchase price." It is therefore submitted that the first defendant's alleged silence relating to Golden Sands' vacation can only be attributable to the fact that the first defendant intended to benefit from the plaintiff's misapprehension.[100]

72 During cross-examination, Ms Chew explained that the plaintiff had been informed that Golden Sands had vacated the third storey of the Property. The plaintiff then informed the first defendant that, if the third storey was to be

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100 PCS p 127, para 199.

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rented out, the first defendant would "have to go through [the plaintiff]".[101] This only made sense since the plaintiff had been issued the OTP in respect of the Property and would be concerned with how much rental income it could expect from renting out the third storey before deciding whether to exercise the OTP.

73 Consistent with the above, the plaintiff's own evidence was that *before* the OTP was exercised, Mr Lee had been informed by Mr Hau that the third storey was no longer tenanted. Nonetheless, Mr Lee "was not too concerned that the [t]hird [s]torey was vacant" as Mr Hau had assured him that he could just look for another tenant.[102] As such, subsequently on 12 February 2016, the plaintiff exercised the OTP.[103]

74 The fact that Knight Frank's valuation report of 7 March 2016 still reflected that there were two ongoing tenancies does not assist the plaintiff because it simply means that the plaintiff or its property agent had, for reasons best known to themselves, neglected to inform Knight Frank about the cessation of the tenancy on the third storey of the Property. This can be the only sensible explanation given Mr Lee's unequivocal admission in his affidavit of evidence-in-chief that "[s]ometime … before [the plaintiff] had exercised the Option to Purchase [in February 2016], Mr Hau told me that the Third Storey was no longer tenanted since the tenant who was occupying the third storey at the Property had moved out".[104]

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101 Transcripts (27 June 2019) p 108, lines 27 to 31.

102 PBAF pp 9 to 10, paras 16 to 17; Transcripts (25 June 2019) p 44 line 30 to p 45 line 4; p 46 lines 9 to 14.

103 PBAF pp 8 to 9, paras 13 to 14.

104 PBAF p 9, para 16.

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75 I thus find that the change in circumstances concerning Golden Sands' lease of the third storey was communicated to the plaintiff. It was fully aware before the exercise of the OTP, let alone the completion of the sale of the Property, that the rental yield of the Property at that time was only S$30,000 and not S$35,500 per month. There was therefore no operative misrepresentation relating to Golden Sands' tenancy and the rental yield of the Property at the time of completion.

Rent fully paid under 2013 Lease

76 The plaintiff pleads that the 2013 Lease was "bogus" and that it "reflect[ed] a rent twice that of the normal rent of the Property in order to inflate the projected rental yield of the Property".[105] However, it is undisputed that, after the plaintiff purchased the Property, it received the full rental payment of S$30,000 per month from the tenants until the expiry of the 2013 Lease.[106] Significantly, the plaintiff's pleaded case was simply that the 2013 Lease was a "Bogus Tenancy Agreement", which reflected a rent "twice that of the normal rent of the Property";[107] it was not pleaded that the tenants received kickbacks or subsidies from the first defendant for the monthly rental payments.

77 In any event, there is also no evidence before me of any such improper payments by the first defendant to the second, third or fourth defendants. Quite the contrary, in the Transcript, the fourth defendant made clear to Ms Tang that "what we are saying is we have already *paying out of our pocket* (*sic*). We

105 SOC para 8.1.

106 PCS p 141, para 218.

107 SOC paras 6.4 and 8.1.

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(inaudible) from the business" [emphasis added].[108] This statement was made in the context of negotiations between the fourth defendant and Ms Tang for the renewal of the 2013 Lease, and was followed immediately with the fourth defendant informing Ms Tang that, despite "suffering every month" due to his poor business, he was paying the plaintiff the rent timeously every month.[109] These statements preceded the commencement of the present suit. In my view, they clearly show that the evidence contradicts the plaintiff's belated allegation that the tenants somehow received kickbacks from the first defendant to support what is asserted to be the artificially inflated rent under the 2013 Lease. Instead, while the tenants were "suffering" in light of business conditions, they continued to pay "out of [their] pocket[s]".

78 That being the case, it is not possible for me to arrive at a conclusion that the 2013 Lease was "bogus", as alleged. The rent may have been high, but the plaintiff has not proven that the tenancy agreement was not genuine. I would also add that there was no expert evidence presented by the plaintiff to show that the monthly rent of S$30,000 per month for the first and second storeys of the Property was much higher than the market rate of similar properties in the vicinity. Put another way, the plaintiff has not shown that the monthly rental of S$30,000 was not a realistically achievable rent for the Property. Evidence of such nature might have lent more credence to the allegation that the rent of S$30,000 was artificially inflated.

79 Therefore, the Representation that the Property would be able to generate rental income of S$35,500 was simply not false – as represented, the

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108 PBAF p 342, lines 5 to 7.

109 PBAF p 342, lines 11 to 18.

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Property generated a monthly rent of S$35,500 at the time the Offer was made. After Golden Sands moved out, the rental yield of the Property fell to S$30,000 per month. However, as the plaintiff admits, the change in circumstances were known to the plaintiff, who decided nonetheless, on Mr Hau's assurance, to continue with the purchase of the Property as it was assumed that another tenant could easily be found to occupy the vacant third storey. Hence, any representation relating to the rental yield of the Property was true, and there is thus no operative misrepresentation to speak of.

Mr Clements' statements to Ms Tang

80 In my judgment, Mr Clements' statements to Ms Tang, which suggests that the quantum of rent had been misstated, does not change the fact that the Representation was at all times true. As Ms Tang herself sceptically observed in her conversation with Mr Clements when told that the rent in 2013 Lease was only "on paper", the full rent of S$30,000 per month was always paid by the tenants.[110] Thus, without more evidence to support Mr Clements' assertion that the first defendant had "cheated" the plaintiff by artificially inflating the rental yield of the Property, it is difficult to abscribe much weight to Mr Clements' statements (see [60] above). Mr Clements' statements to Ms Tang were also inaccurate in several respects. For example, Mr Clements' assertion that the rental was doubled from S$12,000 a month[111] was incorrect, as the rent under the 2011 Lease was S$13,000, S$14,000, and S$15,000 per month for the years 2011 to 2012, 2012 to 2013, and 2013 to 2014 respectively.[112] Mr Clements

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110 PBAF pp 342 to 343.

111 PBAF p 334.

112 1DAF p 30.

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also asserted that one Ken Bay, who was the first defendant's agent in the sale of the Property,[113] was also acting as Mr Lee's agent.[114] This was wrong, as Mr Lee himself admitted that he only dealt with Mr Hau, his agent, and that he never dealt with any representative of the first defendant.[115] All this suggests that a more plausible explanation for Mr Clements' allegation of the first defendant's "cheating" was that it was an attempt to negotiate a lower rent for the tenants, who he was trying to portray as victims of the alleged "cheating" as well. After all, Ms Tang herself admitted that she had told the tenants that the plaintiff had other offers of tenancy for the Property, when in truth there were none. This was part of her "negotiation strategy" to push up the renewal rent.[116]

81 Having reviewed the Transcript of the conversation carefully, I do not find that Mr Clements' statements are sufficient by themselves to show that the Representation was untrue. Not only are his statements unsupported by independent evidence showing that the rental yield far exceeded that of comparable properties in the vicinity, they are *directly contradicted* by the fact that the rent under the 2013 Lease was *fully and timeously* paid by the tenants, and there is *no* evidence (*eg*, evidence of payments having been partly or fully funded by the first defendant, through kickbacks or otherwise) to suggest that the 2013 Lease was not genuine. Despite having been pressed heavily on the allegation of kickbacks during cross-examination, the fourth defendant was adamant and clear that the tenants "never got any kickback, anything like that,

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113 Transcripts (25 June 2019) p 32, lines 2 to 4.

114 PBAF p 336.

115 Transcripts (25 June 2019) p 40, lines 11 to 13 and lines 22 to 29.

116 Transcripts (26 June 2019) p 71 line 26 to p 72 line 14.

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never."[117] At end, there was simply insufficient evidence to conclude that the Representation relating to the rental yield of the Property was untrue.

Alleged admissions by the tenants at the September 2016 and March 2017 meetings

82 I am unable to accept the plaintiff's submission that the third defendant had admitted at the September 2016 meeting with Mr Lee that they had entered into the 2013 Lease only to help the first defendant sell the Property at an inflated price.[118] First of all, this alleged admission was not pleaded by the plaintiff. This is exactly the type of allegation that ought to be pleaded because it would otherwise take the second to fourth defendants by surprise. Since the allegation was never pleaded, the fourth defendant can hardly be faulted for not challenging this allegation in his own affidavit of evidence-in-chief. In fact, this allegation made its first appearance in the affidavit of evidence-in-chief of Mr Lee. Relying on the fourth defendant's silence on this issue in his affidavit of evidence-in-chief, the plaintiff argues that the defendants had conceded and accepted the plaintiff's version of what had transpired at the September 2016 meeting – namely, that the tenants had admitted to entering into the 2013 Lease to help the first defendant sell the Property at an inflated price.[119] I find this argument to be disingenuous and decidedly unconvincing.

83 During cross-examination, the fourth defendant gave evidence that his father never made any such admission at the September 2016 meeting with Mr

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117 Transcripts (28 June 2019) p 124, line 31.

118 PCS p 165, para 254.

119 PCS p 165, para 254; Transcripts (28 June 2019) p 51 line 15 to p 52 line 3.

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Lee.[120] Having assessed his credibility and the events that followed that meeting, I accept this evidence. Mr Lee's own conduct is inconsistent with any such admission being made. If he was indeed told of a scheme by the defendants in September 2016 to cheat him, I would be very surprised that he took no action at all in the months that followed to find out more about the scheme or to seek legal redress. Instead, his instructions were for Ms Tang to continue to negotiate a renewal of the tenancy with the third and fourth defendants, which she did in March 2017.

84 As for the March 2017 meeting between the fourth defendant, Ms Tang and Mr Clements, my review of the Transcript, the Recording and the evidence of Ms Tang and the fourth defendant under cross-examination, leads me to find that the fourth defendant did not acknowledge or confirm Mr Clements' statements that there was a scheme to cheat the plaintiff.

85 While it might sound convenient, it does indeed appear true that, for several minutes during the meeting, the fourth defendant was engaged in a phone call. This is discernible from the fact that, in the Recording, the fourth defendant can clearly be heard speaking to someone in Tamil throughout the period when Mr Clements was detailing the alleged scheme to Ms Tang.[121] The fourth defendant only returned to the discussion with Ms Tang and Mr Clements and started speaking in English *after* Mr Clements had outlined the scheme to Ms Tang.[122] This lends some credibility to his evidence that he was not listening

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120 Transcripts (28 June 2019) p 97 line 12 to p 98 line 23.

121 Voice Recording of Discussion at 11:02 to 15:00.

122 Voice Recording of Discussion at 15:34.

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when Mr Clements spoke about the plaintiff being cheated by the first defendant.[123]

86 Furthermore, while the fourth defendant was an active participant throughout the discussions, it can be seen from the Transcript that he provided no input while Mr Clements was giving details about the alleged scheme to Ms Tang.[124] A review of the Transcript shows that he re-joined the discussions abruptly, and that he had a different idea of what the alleged "cheating" referred to. This requires some elaboration. According to the fourth defendant, the first defendant had informed the tenants that they could use the third storey of the Property as an office and that the relevant permission from the authorities had been obtained. Relying on this assurance, the tenants renovated and occupied the third storey as an office, but they were then promptly ordered by the Urban Redevelopment Authority ("URA") to move out as no permit had in fact been granted to the first defendant ("URA's order"). The tenants were thus required by URA to demolish the office, and were out of pocket because the first defendant did not compensate them.[125]

87 Prior to the fourth defendant re-joining the discussions, Mr Clements was suggesting to Ms Tang that the rental for all three storeys of the Property was not genuine.[126] Mr Clements then started recounting the circumstances surrounding URA's order.[127] At this point, the fourth defendant re-joined the

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123 Transcripts (28 June 2019) p 44 lines 29 to 31 and p 116, lines 8 to 10.

124 PBAF pp 332 to 339.

125 Iqbal pp 6 to 7, para 16.

126 PBAF p 337.

127 PBAF pp 338 to 339.

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conversation, and he explained that, on the day of URA's order, the Property was "such a messy place". He followed this up by checking with Mr Clements about the condition of the third storey, to which Mr Clements replied that it was "[a]ll cleaned up".[128] In this context, the fourth defendant then said:[129]

> That – that time (inaudible) cheat people like this, you know. That is why the problem is he had cheated and they are, like, caught. We don't know what to do.

In response, Ms Tang tried to bring the conversation back to the point about the scheme, and the alleged "sham" tenancies which Mr Clements had earlier alluded to:[130]

> Okay, so we are now caught in a situation where [Mr Lee] believe whatever that's put in writing, you see. It was represented to him that this is the rental that he is supposed to collect, you see.

The fourth defendant then explained that the tenants had been paying their monthly rent promptly and consistently, and made no direct response to Ms Tang's suggestion that the tenancy agreement was "on paper" only.[131]

88 Reviewing the above conversation in the Transcript, it can be seen that, while the "cheating" the fourth defendant was speaking of related to the first defendant's alleged assurances that the relevant permission from the authorities had been secured to utilise the third storey as an office, the "cheating" Ms Tang

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128 PBAF p 339.

129 PBAF p 340 lines 21 to 24.

130 PBAF p 341, lines 1 to 5.

131 PBAF pp 341 to 343.

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was referring to related to the 2013 Lease. The parties were thus clearly speaking at cross purposes.

89 There are also parts of the discussion where the fourth defendant was attempting to convince Ms Tang that the business of the restaurant was not doing as well as before, and that was why they could not afford to pay as much rent for any renewed tenancy.[132] This is consistent with the fourth defendant's position that he was seeking a lower rental because of changed financial circumstances and not because the 2013 Lease was a sham arrangement under which the tenants never paid S$30,000 in rent.[133]

90 Under cross-examination, Ms Tang also made several concessions that undermined the plaintiff's submission that the fourth defendant had confirmed the existence of the scheme at this meeting. She accepted that one part of the Transcript had been improperly quoted in her affidavit of evidence-in-chief, which then gave the wrong impression that the scheme pertained not only to the first and second storeys, but also to the third storey of the Property.[134] In fact, in the quoted portions, Mr Clements was relating the incident about the fourth defendant being "cheated" by the first defendant because he had been misled into incurring expenditure to change the third storey of the Property to an office, which was wasted because of URA's order.[135] This has been explainied at [86].

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132 PBAF p 321 lines 2 to 9; p 360, lines 15 to 24; Voice Recording of Discussion at 03:02 – 03:04.

133 Iqbal p 20, paras 42 to 43.

134 PBAF p 299, para 19.

135 Transcripts (26 June 2019) p 103, lines 23 to 29;

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91 Ms Tang also accepted that she had quoted part of the Transcript out of context when she said that the fourth defendant had asked her to convey to Mr Lee that he should "let go" of the fact that he had been cheated,[136] when in fact, the fourth defendant was telling her to tell Mr Lee that he should "let go" of his demand for a higher renewal rent. This was because the preceding part of the conversation centred around the fourth defendant's explanations about the business being bad and that the tenants could not afford to pay such a high rent after the expiry of the 2013 Lease.[137]

92 For the above reasons, I find that the fourth defendant cannot be taken to have acknowledged or agreed with what Mr Clements had stated about the scheme.

No adverse inference is to be drawn

93 I also do not find that any adverse inferences ought to be drawn against the second to fourth defendants because of their failure to call Mr Clements as a witness for the trial. In its closing submissions, the plaintiff argues that Mr Clements "could have provided a cogent and coherent explanation as to why he made the statements he made" to Ms Tang, and "whether he had any basis to do so."[138] As such, the plaintiff invites the Court to infer that, if Mr Clements had been called as a witness, he would have given evidence that would be detrimental to the second to fourth defendants' case, in particular on why he had

136 PBAF p 300, para 20.

137 Transcripts (26 June 2019) p 106 lines 9 to 20; p 106 line 30 to p 107 line 1.

138 PCS p 54, para 103.

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said to Ms Tang that the plaintiff or Mr Lee had been "conned" and or "cheated".[139]

94 As the Court of Appeal observed in *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 at [50]:

> … Whether or not in each case an adverse inference should be drawn depends on all the evidence adduced and the circumstances of the case. There is no fixed and immutable rule of law for drawing such inference. Where, as was the case here, the trial judge is of the view that the plaintiffs themselves had not made out their claim to the requisite standard, then no drawing of an adverse inference against the defendants is necessary. *The drawing of an adverse inference, at least in civil cases, should not be used as a mechanism to shore up glaring deficiencies in the opposite party's case, which on its own is unable to meet up to the requisite burden of proof.* Rather, the procedure exists in order to render the case of the party against whom the inference is drawn weaker and thus less credible of belief. [emphasis added]

95 The plaintiff has failed to show that the Representation as to the rental yield of the Property was false, which is a key element of making out its claim in fraudulent misrepresentation. That being the case, it was not open to the plaintiff to then attempt to meet its burden of proof by urging this court to draw adverse inferences against the second to fourth defendants.

96 In any case, the plaintiff's submission is also misplaced. As the second to fourth defendants submit, it was entirely open to the plaintiff to call Mr Clements as a witness. However, the plaintiff failed to do so.[140] The second to fourth defendants had made clear during their answers to the plaintiff's

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139 PCS pp 55 to 56, para 105.

140 2nd to 4th Defendants' Closing Submissions ("2DCS") pp 90 to 91, para 219.

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interrogatories that the Transcript accurately recorded what Mr Clements said to Ms Tang (*ie,* to the effect that the plaintiff had been cheated by the first defendant).[141] They were not challenging that Mr Clements said what he said. It was thus unnecessary for the tenants to call Mr Clements as a witness. If the plaintiff intended to establish the facts which they are now inviting the court to *infer* from Mr Clements' absence, it was open to the plaintiff to subpoena Mr Clements as a witness, and to lead evidence or cross-examine him as to the reasons for his statements to Ms Tang. After all, it is the plaintiff's burden to establish its case that the 2013 Lease was "bogus".

97 For similar reasons, I also decline to draw any adverse inferences against the second to fourth defendants for their failure to provide unredacted versions of their bank account statements. According to the plaintiff, the tenants' redaction of their bank account statements and withholding of the discovery of their personal bank accounts casts serious doubts about whether the tenants had received any cashbacks or rebates for the monthly rent under the 2013 Lease.[142] However, as explained above at [76]–[78], the point about rebates or kickbacks was not even part of the plaintiff's pleaded case, and thus, strictly speaking, was not even an issue in dispute. Furthermore, the plaintiff has not tendered any evidence showing that the 2013 Lease was "bogus", or represented an unrealistic rent in the market conditions, such that a kickback may have been required.

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141 Documents Relating to Plaintiff's Interrogatories Issued on the 2nd to 4th Defendants pp 32 to 33.

142 PCS p 153, para 234.

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Legitimate reasons for entering into the 2013 Lease

98 I also find that the tenants had legitimate reasons to enter into the 2013 Lease, even though it resulted in a significant increase of the rent chargeable under the 2011 Lease, the latter of which expressly limited any rental increment to "between 10% to 15%" only.[143]

99 First, while the rental was increased in the 2013 Lease, the tenants also enjoyed an increased use of the Property as a result. As the tenants submit, a comparison of the 2011 Lease and the 2013 Lease reveals that the phrase "and residential units of known as 44A & 46A Changi Road … (second floor units only)"[144] was inserted into the 2013 Lease showing that, in addition to the first storey, the second storey was also being let under the 2013 Lease.[145] To add, while the 2011 Lease permitted the tenants to utilise the Property "strictly as an EATING HOUSE only",[146] the 2013 Lease extended the tenants' use of the Property, such that it could be used "as an EATING HOUSE and RESIDENTIAL UNITS"[147] [emphasis in original removed]. According to the fourth defendant, this was useful as the tenants required more space to provide housing for its workers, a number of whom were foreigners.[148]

100 Furthermore, as the fourth defendant explained during cross-examination, the tenants had factored in their goodwill in the Property, as well

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143 1DBAF p 30.

144 PBAF pp 26 to 27, clause 1, compare with 1DBAF pp 29 to 30, clause 1.

145 2DCS p 84, para 205(ii).

146 1DBAF p 32.

147 PBAF p 28.

148 Transcripts (28 June 2019) p 81 line 23 to p 82 line 14.

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as the fact that they could use and afford a bigger space at the time, as part of their reasons for entering into the 2013 Lease:[149]

> Court: ---why is it that you---you had certain rights under the agreement of 2011. They can only---Mr Ng can only increase your rent by a certain amount. Why---he wants to know why you so easily gave up that right and agreed to pay more. That's the question that he wants to---you to answer it.
>
> Witness: That---that---that---that's why I answered earlier, Your Honour. We thought about it and within---like I said, at that time, ***we could have---we have a bigger space and can make---get to happen---make it to happen like we can pay that amount***. And second, earlier, I told you it's a business decision we make. Because we are---again, the same thing, Your Honour, that---that the place and we are already there and we are---***our name is there, our goodwill is there*** and---and then---with that strength, we had paid the rent completely for them, Your Honour. For both of them. So that's why we---we could manage to pay the rent also for every---all the---
>
> Q You see---
>
> Witness: ---agreement for that, Your Honour.
>
> [emphasis added in bold italics]

101 Additionally, I accept that the tenants spent a not insignificant sum in renovating the premises to make it suitable for the restaurant. In this regard, while the precise amount spent on renovations was not supported by any documentary evidence, I find that the fourth defendant had been candid and forthright in his testimony, as seen from the following exchange:[150]

> Q ---to suit your needs as a restaurant, did you spend over a period of time or did you right at 2011, "Here's 250,000" to the contractor and do everything one shot? Very simple question I'm asking you, Mr Iqbal.

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149 Transcripts (28 June 2019) p 113 line 26 to p 114 line 11.

150 Transcripts (28 June 2019) p 89 line 1 to p 90 line 7.

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> A Yah, I know but the---the major lump---like we---we have said here, over the years, we were there so it's like we---major---
>
> Q Over a period of time, okay.
>
> A Ah, all---so---yah.
>
> Q Thank you. You see, what I am concerned is that there is no evidence you have provided in this trial before this Court to support this statement that you've incurred 250,000 in renovation cost. You see, I look at it, I said you "over 250,000", no invoice, no contract with contractors, no invoices from suppliers; most importantly, no invoice for the supply and installation of a (*sic*) expensive exhaust system, nothing. All I have is your bare assertion on affidavit – "I spent over 250,000", that's all I have, you agree?
>
> A Disagree. Yah, yah, I---affidavit, yes, Your Honour, agree, I don't have it, I didn't provide.
>
> Q So it---you might as well say you spent 500,000 because nobody is the wiser, am I right?
>
> …
>
> Court: ---no one will know unless you provide the documentation. That's what he's saying. So do you agree with that? Yes?
>
> Witness: *250,000, yah, invoices we are---yah, we have not produced the invoices but the---we know it was around that range, 500 would be too much to say.*
>
> …
>
> [emphasis added]

102 In my view, the amount that the tenants had expended on renovating the premises factored into their decision-making process when the tenants decided to enter into the 2013 Lease.[151]

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151 Iqbal p 6, para 15.

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103 Viewing the circumstances in totality, I accept that the tenants made a business decision to accept the higher rent under the 2013 Lease, even though it was higher than what the first defendant was entitled to charge, given the rent-increment ceiling under the 2011 Lease. The business decision took into account the goodwill they had generated from operating at the premises, the fact that they would further enjoy the use of the second storey of the Property, that they could still afford to pay the higher rent and remain profitable, as well as the fact that they had incurred renovation expenses in relation to the Property. Therefore, I do not accept that the circumstances surrounding the tenants' entry into the 2013 Lease necessarily casts doubt about the truthfulness of the Representation.

104 For the reasons above, I find that the plaintiff has not discharged its burden of proving that the Representation was false.

Substantial contribution to decision to purchase

105 My findings above as to the truthfulness of the Representation is sufficient to dispose of the plaintiff's claim for fraudulent misrepresentation. Nonetheless, assuming *arguendo* that the Representation was false, I will deal with the issue of whether the Representation substantially contributed to the plaintiff's decision to purchase the Property.

106 In *Raiffeisen Zentralbank Osterreich AG v Archer Daniels Midland Co and others* [2007] 1 SLR(R) 196 ("*Raiffeisen*"), the court observed that the alleged misrepresentation need not be the sole factor which induced the plaintiff into entering into the transaction. Instead, all that is required is for the misrepresentation to have "substantially contributed" to deceiving the plaintiff

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(*Raiffeisen* at [55], citing *Clerk & Lindsell on Torts* (Anthony M Dugdale & Michael A Jones gen eds) (Sweet & Maxwell, 19th Ed, 2006) at para 18-32).

107 As explained by Stephenson LJ in *JEB Fasteners Ltd v Marks Bloom & Co* [1983] 1 All ER 583 at 589 (cited with approval in *Raiffeisen* at [56]), "as long as a misrepresentation plays a *real and substantial* part, though not by itself a decisive part, in inducing a plaintiff to act, it is a cause of his loss and he relies on it…" [emphasis added].

108 In his evidence in chief, Mr Lee explained that Mr Hau had called him to inform him about the Property, and how it was an "excellent investment opportunity." Following Mr Hau's call, Mr Lee had several meetings with Mr Hau to discuss the investment potential of the Property. During the meetings, Mr Hau informed Mr Lee that the second to fourth defendants were "good tenants who had been leasing the Property for a long time, and that they always paid their rent on time". Furthermore, the third storey was being rented by Golden Sands. Based on what Mr Hau told him about the rental income from the Property and its long term tenants, Mr Lee considered the Property to be an attractive investment, and he thus agreed to purchase the Property at S$11m.[152]

109 When Mr Lee was cross-examined, he explained that he relied on Mr Hau's advice even though there had not been any valuation of the Property at the time "because [Hau] was the one who suggested it and also based on the rental."[153]

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152 PBAF pp 6 to 8, paras 6 to 10.

153 Transcripts (25 June 2019) p 41, lines 3 to 14.

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110 Along with Mr Hau's representations, which did not emanate from the first defendant, Mr Lee was also content with relying on his own "experience". He claimed that he had 30 years' of experience as a property investor and had purchased six to seven coffee-shops in Singapore as investments.[154] According to Mr Lee, prior to making the Offer, he had personally visited the Property, and observed that the tenants operated a 24-hour coffee shop, which business was "doing alright".[155] Armed with these observations, Mr Lee anticipated that the Property's rental yield or value would increase over time. Thus, he could either make a profit by selling it off, or he could turn it into a "long-term money-making business". This was because he considered that the tenants had occupied the premises for about a decade, and that they were "good operator[s]". Given their lengthy occupation of the premises, Mr Lee believed that they would continue with their lease after it had expired. Hence, if he could make the tenants pay a monthly rental of "40 or 50 thousand per month" after he incurred some capital expenditure in refurbishing the Property, he would be able to make a profit of "about 7, 8 thousand a month", after deducting the plaintiff's monthly mortgage repayments of S$42,000 on the Property.[156] This was a key factor for Mr Lee because his evidence was that, based on the existing rental paid by the second to fourth defendants under the 2013 Lease, he knew that the plaintiff would not receive sufficient rental to cover the plaintiff's monthly payments to the bank.[157] It was thus important for the plaintiff to be

154 Transcripts (26 June 2019) p 20 lines 1 to 14.

155 Transcripts (25 June 2019) p 52, lines 20 to 30.

156 Transcripts (25 June 2019) p 59, lines 9 to 25.

157 Transcripts (26 June 2019) p 21 lines 15 to 19.

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able to raise the rental significantly for the first and second storeys going forward and to also find a tenant for the third storey.

111 As such, the purchase price of S$11m was thus arrived at after Mr Lee considered a multitude of factors, with the rental yield of S$35,500 per month being but one of the many factors considered:[158]

> Q So when you made the offer for 11 million, how did you contemplate financing the purchase? Out of your own pocket?
>
> A We have always been selling and purchasing coffee shops. So *we would know the approximate price based on experience.*
>
> …
>
> Q Right. So when you are making the offer for 11 million, that is a figure that you worked out with Richard Hau?
>
> A Richard Hau gave his opinion. We also had some conclusions based on our own experience. ***Most importantly**, we saw that the coffee shop was running for 24 hours and they had been a long time operator.*
>
> Q So would I be right to say then your decision to purchase [the Property] was governed by these two factors, the fact that you were getting that rental of about 30,000 a month and you had a long time operator, meaning the 2nd to 4th defendants.
>
> A *Yes, and that the rental could be increased to more than 40,000 after the contract has ended.*
>
> Q Right. That is an assessment you made or Richard made? Or both of you?
>
> A He told me that---Richard said that as well and I also made *my own assessment based on experience.*
>
> [emphasis added in italics and bold italics]

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158 Transcripts (25 June 2019) p 60 line 23 to p 61 line 14.

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112 As seen from the above, the *most important* factor appeared to be the stability guaranteed by the tenants, who were long time operators at the Property. The importance of having a "long time operator" in the tenants was explained by Mr Lee as being consistent with his "long-term" plan for the Property:[159]

> Q Now, you said "long-term investment". What are we talking about? How does the shareholder get his money back or get the returns back?
>
> A *Usually* in such cases, as Singapore is so small, the *price will increase* maybe 8 or 10 years later.
>
> Court: Price of?
>
> Witness: The property price. Then we can sell the property.
>
> Q Okay. So, your intention ultimately was to allow the property to appreciate and then to sell it off?
>
> A We can sell it or we can treat it as a long-term money-making business.
>
> Q Then when you say "money-making", what are we referring to?
>
> A *So if they can give me 40 or 50 thousand per month and after deducting my payments to the bank every month about 42,000, I can still make about 7, 8 thousand a month.* That's an ***assumption***.
>
> Q Yes.
>
> A I don't really know how to put it. But we saw that it was a good operator.
>
> …
>
> [emphasis added in italics and bold italics]

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159 Transcripts (25 June 2019) p 59, lines 1 to 15.

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113 In my judgment, while the rental income being generated by the Property at the material time was not the most important factor, it nonetheless contributed substantially to the plaintiff's decision to purchase the Property. It was based on the fact that the second to fourth defendants were paying S$30,000 per month that Mr Lee formed the view, based on his "experience" and Mr Hau's recommendation that, since the tenants were "good operators", they would eventually be prepared to stay on and pay up to S$40,000 to S$50,000 in rent each month after the Property was refurbished. This made the Property a good investment from the perspective of the plaintiff. Hence, even when the rental income fell to S$30,000 before the OTP was issued, the plaintiff continued with its purchase of the Property at the price of S$11m, without renegotiating its offer. I therefore find that the element of reliance on the Representation is made out on the facts of the case.

114 I should add that, from my analysis of Mr Lee's evidence, he made a number of assumptions about the second to fourth defendants, which turned out to be erroneous. He assumed that the tenants would be prepared to pay significantly higher rent (in the region of S$40,000 to S$50,000) if the plaintiff renovated the building. But, as became clear during his discussions with the tenants before and after he completed the purchase of the Property, they did not think that there was any need for any renovations for the Property, and they were not prepared to pay such a high rent (see [16]–[17] above). Mr Lee also assumed that the second to fourth defendants would definitely want to stay on as tenants given their long association with the Property. But, he did not seem to appreciate that the second to fourth defendants could move to alternative premises just a few doors away, if they really could not afford the rent being demanded for the Property. The unchallenged evidence of the fourth defendant was that, at various times, his and the third defendant's businesses had use of

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leased premises at not only the Property, but also at 48A, 48C, 48D and 58 Changi Road, which were all within close vicinity of the Property.[160]

Whether damage has been suffered

115 Again, assuming *arguendo* that the Representation is false and that it contributed substantially to the plaintiff's decision to purchase the Property, I will also deal with the issue of whether the plaintiff has shown that it has suffered loss as a result of its reliance on the Representation. On this issue, I find that there are serious evidential difficulties with the plaintiff's case.

116 In *Kea Holdings Pte Ltd and another v Gan Boon Hock* [2000] 2 SLR(R) 333, the Court of Appeal observed at [39] that "it is trite law that the person against whom a tort has been committed must prove that he has suffered actual damage." Similarly, it has been observed that "[t]he fact of damage is an *essential element* of a claim based on the tort of deceit. This can be contrasted with a claim for breach of contract where the fact of damage is not an element of the claim, and nominal damages can be recovered in the absence of damage or where damages cannot be proved on a balance of probabilities" [emphasis added]: *Oriental Investments (SH) Pte Ltd v Catalla Investments Pte Ltd* [2013] 1 SLR 1182 at [65].

117 On the facts, it has not been proven that the plaintiff suffered loss in the rental income received. The alleged misrepresentation was that the Property was capable of generating rental income of S$35,500 per month. This amount fell to S$30,000 after Golden Sands vacated the premises, but the plaintiff

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160 Transcripts (28 June 2019) p 31, lines 6 to 26.

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remained content with proceeding with the purchase of the property. The main difficulty for the plaintiff is the fact that the S$30,000 rent was actually paid in full and punctually by the second to the fourth defendants until the expiry of the 2013 Lease.[161] It cannot therefore be argued that the plaintiff suffered any loss of the rental income attributable to the Representation (which related to the rental yield of the Property) for the period that the 2013 Lease subsisted. As for the period thereafter, it bears emphasising that the Representation did not operate as a warranty as to the quantum of rent obtainable in the future.

118 The plaintiff has argued that it overpaid for the Property as a consequence of its reliance on the Representation. The plaintiff's case is that it purchased the Property at the price of S$11m on the basis that the rental income payable under the 2013 Lease was indeed S$30,000. Assuming that the rent was "bogus", in that it was artificially inflated for the purposes of inducing the plaintiff to buy the Property, there is no expert evidence before me as to what then would have been the actual market value of the Property. The material times would be when the plaintiff offered to purchase the Property for S$11m in November 2014, and when he eventually exercised the OTP in February 2016. The onus is on the plaintiff to establish that he overpaid for the Property and thus show that he suffered some loss in the form of the overpayment. But, no expert evidence was led as to the true market value of the Property at the material times. Thus, the plaintiff has also failed to show that it has suffered loss in relation to the value of the Property.

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161 Iqbal pp 8 to 13, para 19.

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119 In totality, for all the reasons above, I therefore find that the plaintiff's claim in fraudulent misrepresentation is flawed in several important aspects and must fail.

Conspiracy

120 Turning to the claim in conspiracy against all four defendants, the Court of Appeal explained in *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 at [112] that, to succeed in an unlawful means conspiracy claim, a plaintiff must show that:

(a) there was a combination of two or more persons to do certain acts;

(b) the alleged conspirators had the intention to cause damage or injury to the plaintiff by those acts;

(c) the acts were unlawful;

(d) the acts were performed in furtherance of the agreement; and

(e) the plaintiff suffered loss as a result of the conspiracy.

121 The plaintiff's claim in unlawful means conspiracy is fraught with much of the same difficulties that plague its claim in fraudulent misrepresentation.

122 The plaintiff's case in conspiracy is premised on the scheme, under which it is alleged that the first defendant entered into an arrangement with the second to fourth defendants to artificially inflate the rental income of the

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Property so as to induce potential purchasers like the plaintiff to purchase the Property.[162]

123 However, given my finding that the 2013 Lease was not a "bogus" one (at [76]–[79] above), and that the tenants had legitimate reasons to enter into the lease (at [98]–[103] above), it is clear that the defendants did not combine together to inflate the rental income of the Property so as to cause damage to the plaintiff. My finding that there was no fraudulent misrepresentation made to the plaintiff also renders the claim in conspiracy untenable. There was no unlawful act to speak of.

124 Furthermore, even if a conspiracy is proven, the plaintiff has not shown how it has suffered any loss, whether in rental income or in the loss of value of the Property, which would have been the alleged result of said conspiracy. The same difficulties that afflict the claim for fraudulent misrepresentation apply here (see [117]–[118] above).

125 Therefore, for the above reasons, the claim in conspiracy is also dismissed.

Conclusion

126 In conclusion, for the reasons above, I find that there are no merits to the plaintiff's claims against the defendants, and they are accordingly dismissed. There is therefore no need to consider the appropriate quantum of damages, or whether rescission ought to be ordered.

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162 SOC, para 6.2.

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127 I will deal with the issue of costs separately.

Ang Cheng Hock
Judge

Subramanian s/o Ayasamy Pillai, Joel Wee Tze Sing and Roe Ervin Jun Zhi (CNPLaw LLP) for the plaintiff;
Chen Shujun (Ong & Co LLC) for the first defendant;
Joseph Ignatius and Suja Susan Thomas (Ignatius J & Associates) for the second to fourth defendants.

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