IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 155

Suit No 756 of 2019

Between

(1) Meow Moy Lan
(2) Phua Seng Hua
(3) Lim Seng Hoo

… *Plaintiffs*

And

(1) Exklusiv Resorts Pte ltd
(2) Peter Kwee Seng Chio

… *Defendants*

JUDGMENT

[Contract] — [Breach]
[Contract] — [Contractual terms] — [Implied terms]
[Contract] — [Contractual terms] — [Unfair Contract Terms A ct]
[Contract] — [Misrepresentation]
[Contract] — [Remedies] — [Damages]
[Contract] — [Remedies] — [Specific performance]
[Tort] — [Misrepresentation] — [Fraud and deceit]
[Tort] — [Negligence]

Version No 1: 23 Jul 2021 (14:26 hrs)

TABLE OF CONTENTS

INTRODUCTION **1**

FACTS **3**

THE ORIGIN OF THE CLUB 3

THE CLUB OPERATED AT A LOSS 4

PLANS TO REDEVELOP 30SR 5

THE DIALOGUE SESSION 6

SALE OF 30SR TO OXLEY GEM 8

CLUB TO CEASE OPERATION ON 1 NOVEMBER 2013 12

EXKLUSIV DECIDES IT IS IMPOSSIBLE TO OPERATE THE CLUB AT 30SR 12

SOURCING FOR ALTERNATIVE LOCATIONS 14

AMENDMENTS TO THE RULES 14

THE RELOCATION TO LAGUNA CLUB'S PREMISES 15

SATELLITE CLUBHOUSE AT 30SR 17

WHAT THE CLUB'S MEMBERS HAVE TODAY 18

THE PARTIES' CASES **18**

ISSUES TO BE DETERMINED **19**

WHETHER EXKLUSIV AND/OR PETER KWEE ARE LIABLE FOR DECEIT? **20**

WHETHER THE DEFENDANTS MADE REPRESENTATIONS OF FACT WITH THE KNOWLEDGE THAT THEY WERE FALSE 20

WHETHER EXKLUSIV AND/OR PETER KWEE ARE LIABLE FOR NEGLIGENT MISREPRESENTATION? **25**

Version No 1: 23 Jul 2021 (14:26 hrs)

WHETHER EXKLUSIV AND/OR PETER KWEE ARE LIABLE FOR NEGLIGENCE? 25

WHETHER EXKLUSIV IS LIABLE TO THE PLAINTIFFS FOR BREACH OF CONTRACT? 28

THE 27 OCTOBER 2017 LETTER AND THE AMENDMENTS TO RULES 3C, 4 AND 30A 28

Whether the alleged implied terms satisfy the tests in Sembcorp Marine 30

Whether the entire agreement clause precludes any implied terms....33

Exklusiv breached the implied terms....35

SECTION 3(2)(B) UCTA 36

WHAT LOSS HAVE THE PLAINTIFFS SUFFERED AS A RESULT OF EXKLUSIV'S BREACHES OF CONTRACT? 37

CLAIMS FOR RELIEF AGAINST PETER KWEE....38

CLAIM FOR DECLARATION....38

CLAIM FOR EXKLUSIV TO PROVIDE THE CLUBHOUSE AT 30SR....38

ALTERNATIVE CLAIM FOR REPLACEMENT CLUB MEMBERSHIPS....40

CLAIM FOR A SHARE OF THE PRESENT MARKET VALUE OF ABOUT 20 YEARS' USE OF 30SR PLUS CLUBHOUSE BUILDINGS AND FACILITIES 41

DAMAGES TO BE ASSESSED 42

Exklusiv's experts' evidence....42

Plaintiffs' expert's evidence 45

Conclusion on damages 49

ACCOUNT OF PROFITS/INQUIRY AS TO DAMAGES....49

PLAINTIFFS' APPLICATION TO INTRODUCE NEW EVIDENCE....50

CONCLUSION....51

Version No 1: 23 Jul 2021 (14:26 hrs)

ANNEX A.....52

Version No 1: 23 Jul 2021 (14:26 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Meow Moy Lan and others
v
Exklusiv Resorts Pte Ltd and another

[2021] SGHC 155

General Division of the High Court — Suit No 756 of 2019
Chua Lee Ming J
24–26, 30 November, 1 December, 4 December 2020

30 June 2021 Judgment reserved.

Chua Lee Ming J:

Introduction

1 The Pines (referred to in this judgment as "Pines" or "the Club") is a social club. Started in 2002, its clubhouse was situated at 30 Stevens Road, Singapore ("30SR"), which is in close proximity to Orchard Road in central Singapore. The clubhouse at 30SR was demolished in 2013 for 30SR to be redeveloped. Two hotels now stand on 30SR. For reasons that will be explained later, the Club is no longer situated at 30SR. Instead, the Club's members have been informed that "[the Club's] vision will continue its journey at the Laguna National Golf & Country Club and Dusit Thani Laguna Singapore Resort as an integral part of the future Social & Recreation facilities". In plain speak, this means that instead of their own clubhouse at 30SR, the Club's members will have access to the non-golfing facilities of the Laguna National Golf & Country Club ("Laguna Club") and the facilities of the Dusit Thani Laguna Singapore

Resort ("Dusit Thani"). In this judgment, I will refer to the move from 30SR to the Laguna Club's premises as the "Relocation".

2 The Laguna Club is in the eastern part of Singapore, not too far from the Changi International Airport. It is a golf and country club with golfing members and social members. The Dusit Thani is situated within the Laguna Club's grounds. It is a five-star hotel with facilities, which include meeting facilities, dining facilities, three resort pools, three tennis courts, a fitness centre with club studio for yoga and meditation and a spa.[1] The Laguna social memberships will be re-branded as Laguna Lifestyle memberships expiring in 2040 once operations commence.[2]

3 In this representative action, Ms Meow Moy Lan, Mr Phua Seng Hua and Mr Lim Seng Hoo (the "representative plaintiffs"), represent themselves and 167 other members of the Club.[3] In this judgment, I shall use the term "the plaintiffs" to refer to the representative plaintiffs and the 167 other members of the Club collectively.

4 The Club is owned by the first defendant, Exklusiv Resorts Pte Ltd ("Exklusiv"). The second defendant, Mr Peter Kwee Seng Chio ("Peter Kwee") is a director and indirect shareholder of Exklusiv.

5 The plaintiffs are unhappy with the Relocation. They allege that Exklusiv and Peter Kwee are liable for deceit, negligence and misrepresentation and that Exklusiv is liable for breach of contract.

6 The Club is a proprietary club, which is different from a members' club. In a members' club, the club belongs to the members or a class of members collectively; the members (or class of members) decide on matters relating to

Version No 1: 23 Jul 2021 (14:26 hrs)

the club. However, a proprietary club belongs to the proprietor and it is the proprietor who decides on matters relating to the club. The disputes in this case relate to the decisions by Exklusiv (as the proprietor of the Club) to redevelop 30SR, demolish the clubhouse at 30SR, amend the Club's rules to allow the relocation of the clubhouse, and relocate the clubhouse to Laguna Club's premises.

Facts

The origin of the Club

7 The Club was a third attempt at operating a social club at 30SR. 30SR was home to the City Country Club, which was launched in 1981. In 1983, Pinetree Resort Pte Ltd ("Pinetree Resort") bought 30SR together with the City Country Club, which was renamed as The Pinetree Town and Country Club ("Pinetree Club"). Pinetree Resort was placed under receivership in 2002 and 30SR (including the Pinetree Club) was put up for sale by tender. Peter Kwee was successful in his bid, which was made through Group Exklusiv Pte Ltd ("Group Exklusiv").

8 Group Exklusiv was incorporated on 12 January 2000 and owned at all material times by Peter Kwee, his wife, his son and his daughter. Group Exklusiv wholly owns Laguna Golf Resort Holding Pte Ltd ("LGRH"), which was incorporated on 20 April 2001. LGRH manages the Laguna Club.

9 LGRH wholly owns Exklusiv, which was incorporated on 29 July 2002. Exklusiv became the owner of 30SR and proprietor of the Club.

10 Peter Kwee re-branded the Pinetree Club as The Pines. In October 2002, Exklusiv invited members of the Pinetree Club to join the Club as Individual

Version No 1: 23 Jul 2021 (14:26 hrs)

Founder Members at a "special fee" of $9,900, or Corporate Founder Members at a fee between $10,000 (for one nominee) and $50,000 (for six nominees). A member who was not a Pinetree Club member but was referred by an Individual Founder Member paid a reduced membership fee of $12,000 (for individual membership) and between $15,000 and $80,000 (for corporate membership). Individual memberships for the general public were launched subsequently at $18,000.

11 Members of the Club were also given access to the social facilities at the Laguna Club and an optional add-on access (for an additional subscription fee) to use the golf courses at the Laguna Club at discounted rates.[4]

The Club operated at a loss

12 Peter Kwee estimated that the Club would require at least 4,000 members for its operations to break even. This estimate was based on the fact that the Pinetree Club had been making a small profit with a little over 4,000 members. Peter Kwee's membership target for the Club was 8,000 members.

13 The membership drive for the Club was not as successful as Peter Kwee had hoped for. As at 31 December 2002, the Club's membership stood at a little over 1,000 members. The Club commenced operations on 1 January 2003.

14 The Club continued to carry out various membership drives. These membership drives managed to increase the Club's membership to only 1,490 members by 2012. Since the Club is a proprietary club, Exklusiv is responsible for the costs of operating the Club. As a result of the low membership, Exklusiv suffered net losses operating the Club from 2003 to 2012. Peter Kwee estimated the total net loss over the ten-year period at $61m.

Version No 1: 23 Jul 2021 (14:26 hrs)

15 In Exklusiv's audited accounts for the financial year ("FY") 2012, Exklusiv's auditors opined that there was "significant doubt about the company's ability to continue as a going concern". Exklusiv's current liabilities then exceeded its current assets by approximately $36m. Exklusiv was able to prepare its accounts on a going concern basis only because of Peter Kwee's undertaking to provide continuing financial support.

Plans to redevelop 30SR

16 According to Peter Kwee, he started discussions with various parties from around 2010 to explore possible solutions to the Club's loss-making position. One of these parties was Oxley Holdings Ltd ("Oxley Holdings").

17 In June 2011, Exklusiv engaged AM Architects Pte Ltd ("AM Architects") to draw up plans for the redevelopment of 30SR for the purpose of seeking approval from the Urban Redevelopment Authority ("URA").[5]

18 In August 2011, AM Architects submitted an application to URA for the "Proposed Erection of Hotel Development Comprising 2 Blocks of 8-Storey Hotel, 1 Block of 4-Storey Club and 1 Block of 4-Storey Villas with Roof Terraces, a Basement and a Swimming Pool" at 30SR.

19 On 23 September 2011, URA informed AM Architects of its planning conditions/guidelines/requirements in respect of the proposed development.[6] One of the conditions required the "[d]eveloper to demonstrate that all members have been informed of the club's redevelopment plans and that a satisfactory resolution has been reached for all affected members". URA also stated that the proposed development was subject to rezoning from "Sports & Recreation" to "Hotel" use.

Version No 1: 23 Jul 2021 (14:26 hrs)

20 On 21 March 2012, AM Architects made a resubmission to URA for a "Proposed Erection Consisting of 2 Blocks of 8-Storey Hotels, 1 Block of 4-Storey Club and 1 Block of 2-Storey Villas with Roof Terraces, Basement and a Swimming Pool" at 30SR.[7] The proposed block of villas was reduced to two storeys instead of four.

21 On 19 April 2012, URA issued its written direction to AM Architects requiring compliance with certain conditions/requirements, and a second resubmission within six months ("URA's 1st Written Direction").[8]

The dialogue session

22 On 7 August 2012, Exklusiv informed the Club's members that there were plans to redevelop 30SR and invited them to attend a dialogue session on 21 August 2012.[9]

23 On 21 August 2012, Peter Kwee and the Club's then General Manager, Mr Jeffrey Leong ("Jeffrey"), conducted the dialogue session (the "dialogue session"); 91 members attended the session. Jeffrey prepared a list of questions and answers ("Q&As") and circulated copies of same to the members in attendance. The Q&As provided the following information, among others:[10]

(a) The redevelopment would take approximately "2–3 years based on proposed plan".

(b) If all relevant approvals were granted, demolition work would commence by March 2013.

(c) All costs of the redevelopment would be borne by the owner.

Version No 1: 23 Jul 2021 (14:26 hrs)

(d) The Club membership, which had a tenure of 30 years, would be extended by two or three years.

(e) Arrangements would be made for full social membership privileges (with no voting rights) at the Laguna Club during the period of redevelopment.

(f) The Club would assist members in selling their membership, if they did not wish to continue with their membership; alternatively, these members could resign.

24 Slides presented at the dialogue session provided the following information regarding the proposed new clubhouse:[11]

(a) The proposed basement would house a "deluxe spa villa", "private VIP rooms" and a private parking area.

(b) The proposed first floor would provide a "multi dimension dining experience" and house a "grand lobby" and a "private members lounge".

(c) The proposed second floor would provide facilities for club events and house a "ballroom", "cocktail reception area" and a "convention and seminar room".

(d) The proposed third floor would house a "deluxe spa villa", an "infinity pool" and "sports & recreation facilities".

25 According to the minutes of the dialogue session prepared by Jeffrey:[12]

(a) Peter Kwee informed the members, among other things, that the then current facilities could cater for 5,000 members but there were only

Version No 1: 23 Jul 2021 (14:26 hrs)

1,500 members, a clubhouse that was half the then size was more than adequate, and that he had been subsidizing the Club for more than nine years.

(b) Most of the feedback from the members focused on two issues – the facilities and the size of the clubhouse.

Sale of 30SR to Oxley Gem

26 On 22 October 2012, AM Architects made a resubmission to URA for the "Proposed Erection of Hotel Development Comprising of 2 Blocks of 8-Storey Hotels, 1 Block of 6-Storey Club and 1 Block of 2-Storey Villas with Roof Terraces, Basement and a Swimming Pool" at 30SR.[13] The evidence does not explain the change from a four-storey clubhouse to a six-storey clubhouse.

27 On 7 December 2012, URA issued a 2nd Written Direction, setting out the conditions/requirements in the 1st Written Direction that had not been complied with.[14]

28 Peter Kwee testified that by around late 2012, he was engaged in "serious discussions" with Oxley Holdings for a potential sale of 30SR to Oxley for redevelopment.[15]

29 On 21 January 2013, AM Architects submitted an application to URA for a "Proposed Erection of Hotel Development Comprising of 2 Blocks of 8-Storey Hotels, 2 Block[s] of 2-Storey Commercial Buildings and 1 Block of 4-Storey Clubhouse with Basement" at 30SR.[16] Again, the evidence does not explain the change from one block of villas to two blocks of commercial buildings, or from a six-storey clubhouse back to a four-storey clubhouse. The plans showed an overall gross floor area ("GFA") of 29,555.5 sq m, of which

Version No 1: 23 Jul 2021 (14:26 hrs)

3% was set aside for the clubhouse (882.2 sq m) and 20% for commercial use (5,904.3 sq m); the GFA for commercial use included the Club's all-day café and function hall (with kitchen).[17] The remaining 77% was set aside for the development of the hotels.

30 On 27 February 2013, URA granted provisional permission for the "Proposed Erection of Hotel Development Comprising of 2 Blocks of 8-Storey Hotels, 2 Block of 2-Storey Commercial Buildings and 1 Block of 4-Storey Clubhouse with Basement" at 30SR.[18] AM Architects was required to resubmit the proposal within six months.[19]

31 On 14 March 2013, Exklusiv informed the Club's members of the following, among other things (the "14 March 2013 Letter"):[20]

(a) The Club had been operating at a loss for the past ten years and such a state of affairs was not sustainable in the long run.

(b) A decision had been made to "comprehensively redevelop the premises in order to provide members with a brand-new, up-to-date clubhouse and facilities and at the same time to optimize the use of the land currently occupied by the Club."

(c) Apart from the new clubhouse, the current plans (which were still subject to refinement and change) included a stand-alone hotel to be built on part of the premises. There were plans to allow the members access to and use of the hotel's facilities and amenities "in addition to the Club's own dedicated clubhouse and facilities".

(d) It would be necessary to suspend the Club's business and activities for a period of time (about three years) to allow for the

Version No 1: 23 Jul 2021 (14:26 hrs)

demolition of the existing clubhouse and facilities and the construction of the new premises.

(e) During the reconstruction period, members would be given temporary social membership at the Laguna Club.

32 On 15 March 2013, Exklusiv granted Oxley Gem Pte Ltd ("Oxley Gem") an option to purchase 30SR at the price of $318m (the "Option").[21] Oxley Gem is a wholly owned subsidiary of Oxley Holdings. On the same day, Oxley Holdings made a public announcement of the Option.[22]

33 The key clauses of the Option were as follows:

> 1(3) [Oxley Gem] acknowledges that [Exklusiv] has obtained the Grant of Provisional Permission dated 27 February 2013 … based on … the planning parameters of 77% Hotel use …, 23% Club and Commercial use;
>
> …
>
> 5(A) [30SR] is sold with vacant possession to be given on 31 December 2013 or on the actual date of completion, whichever is the later. …
>
> …
>
> 7 … In the event that any objection is raised by any member of [the Club] and/or any third party to the sale and purchase of [30SR], [Exklusiv] shall resolve these objections before the Completion Date. …
>
> 7A(1) [Exklusiv] hereby undertakes to notify the members of [the Club] of the sale and purchase of [30SR]. …
>
> …
>
> 7A(3) [Exklusiv] hereby agrees to indemnify [Oxley Gem] on a full indemnity basis from or against all actions, proceedings, claims, demands, damages, losses (direct, indirect or consequential), costs and expenses including all duties, taxes, or other levies and legal costs as between solicitor and client (on a *full indemnity* basis) and other liabilities which [Oxley Gem] may incur or sustain or suffer arising from or in connection with any

Version No 1: 23 Jul 2021 (14:26 hrs)

> injunction by any member of the [Club] after completion or delivery of vacant possession whichever is later, against the construction or commencement of construction on [30SR].
>
> …
>
> 18 [Exklusiv] shall have the first right of refusal to lease from [Oxley Gem] the part of the Development comprising the club facilities ("Club Lease") … The Club Lease shall be for a term not longer than 21 years from the date of the commencement of the operation of the club by [Oxley Gem] or such extended terms as may be agreed between the parties. For the avoidance of doubt, the club facilities shall be for the sole use of the members of [the Club] run by [Exklusiv] …
>
> …
>
> 20(1) Unless otherwise agreed in writing, neither Party shall, directly or indirectly, disclose or permit the disclosure of, the existence of discussions regarding this transaction or any of the terms, conditions or other aspects of this transaction or the Option or the negotiations with regard to matter [*sic*] contemplated herein ("Confidential Information") except to their officers, directors, employees, representatives, agents, advisors, financing banks and financial institutions only on a "need to know basis" or as required by law, regulation, or by any judicial administrative, legislative or regulatory authority (including any stock exchange or Catalist sponsor), body or committee having jurisdiction.
>
> 20(2) Save as required by any rules of the stock exchange or regulatory authority, neither party shall make or authorise any announcement regarding this transaction or any of the terms, conditions or other aspects of this transaction or the Option or the negotiations with regard to matter [*sic*] contemplated herein. …

34 On 24 March 2013, The Straits Times reported Exklusiv's sale of 30SR to "a unit developer" of Oxley Holdings.[23]

35 On 29 May 2013, Oxley Gem exercised the Option[24] and Oxley Holdings issued a public announcement of the same.[25] On 17 July 2013,

Version No 1: 23 Jul 2021 (14:26 hrs)

Exklusiv and Oxley Gem completed the sale and purchase of 30SR and Oxley Holdings issued a public announcement to that effect.[26]

Club to cease operation on 1 November 2013

36 On 13 September 2013, Exklusiv informed the Club's members that the Club would cease operations on 1 November 2013 (the "13 September 2013 Letter").[27] The 13 September 2013 Letter also stated that:

(a) Exklusiv had confirmed the construction schedule of the "new 3-storey Pines clubhouse at [30 SR]" and the "detailed plan [was] in progress with the appointed architects"; and

(b) memberships would be extended by three years and no subscriptions would be charged during the construction period.

37 On 14 January 2014, Exklusiv informed the Club's members that it had completed the handover of the Club to Oxley Gem and that it would be operating a restaurant at the Esplanade for the next three years (the "14 January 2014 Letter").[28]

Exklusiv decides it is impossible to operate the Club at 30SR

38 According to Exklusiv, by late 2015, it became apparent that it was impossible to build and operate the envisioned new clubhouse at 30SR (as designed in the plans submitted on 21 January 2013 – see [29] above) due to "the need to balance the requirements of the hotel operator, the restaurant operator as well as the URA's maximum GFA restrictions".[29] According to the defendants,[30]

Version No 1: 23 Jul 2021 (14:26 hrs)

(a) URA required that a minimum portion of the GFA be used for commercial purposes exclusively, which was distinct from club use; consequently, the size of the clubhouse had to be reduced from four storeys to three storeys;

(b) only around 200 carpark lots were permitted for the entire development; this was insufficient to cater for the patrons of the hotels, the restaurant and the Club's members, and Oxley Gem was unable to cater for the 100 lots that the Club's members required for their exclusive use.

39 URA's letters to Oxley Gem's architect, DP Architects Pte Ltd ("DP Architects") between 2014 and 2018 showed that by April 2014, the proposed clubhouse had been reduced to three storeys and by October 2016, it was further reduced to two storeys.[31] Peter Kwee testified that he had not seen these letters until his solicitors downloaded the same from the URA SPACE website after the commencement of this action.[32]

40 The proposed clubhouse at 30SR thus went from a four-storey block in August 2011 (see [18] above) to a six-storey block in October 2012 (see [26] above) to a four-storey block with basement in January 2013 (see [29] above) to a three-storey block in September 2013 (see [36] above) to a three-storey block with basement carpark in April 2014[33] to a two-storey block with basement carpark in October 2016.[34] However, the GFA occupied by the two-storey block is not far off from that of the four-storey clubhouse in the plans submitted on 21 January 2013. The four-storey clubhouse in those plans occupied 882.2 sq m (see [29] above). The two-storey block occupies 784 sq m; the first floor occupies 523 sq m and the second floor occupies 261 sq m.[35] In any event, as stated earlier, by late 2015, it had become clear to the defendants

Version No 1: 23 Jul 2021 (14:26 hrs)

that it was impossible to build and operate the envisioned new clubhouse at 30SR.

Sourcing for alternative locations

41 Peter Kwee tried sourcing alternative locations to situate the Club:

(a) In late 2015, he held confidential discussions with The Legends Fort Canning Park Pte Ltd ("LFCP"). LFCP owned The Legends Fort Canning Park ("The Legends"), a town club at Fort Canning Park. The discussions fell through in late 2016 as LFCP decided not to proceed further.[36]

(b) He considered the Singapore Recreation Club but decided against it because it had a lot of members.[37]

42 Exklusiv could not update the members about its negotiations with LFCP as it had signed a Confidentiality Agreement.[38]

Amendments to the Rules

43 In the meantime, to facilitate the inevitable relocation of the Club, on 28 March 2016, Exklusiv issued a notice of its intention to amend rules 3c, 4 and 30a of its Rules and Regulations (the "Rules") pursuant to rule 66, as follows:[39]

> Rule 3c – The place of business of the Club shall be situated at No. 30, Stevens Road, Singapore 257840 or such other location or locations as the Proprietor deems fit at its sole discretion.
>
> Rule 4 – The Proprietor will provide the Club with a club house at No. 30, Stevens Road, Singapore 257840 or such other location or locations as the Proprietor deems fit at its sole discretion and everything reasonably necessary for the carrying on the Club in accordance with its object … whether together at a single location or separately at different locations …

Version No 1: 23 Jul 2021 (14:26 hrs)

> PROVIDED ALWAYS that the Proprietor reserves the rights to vary at its sole discretion the facilities from time to time.
>
> Rule 30a – All memberships shall expire and terminate … on 31 December 2032 … PROVIDED ALWAYS that in in the event the Club's facilities are suspended or unavailable for an extended period during the terms of membership whether due to relocation or refurbishment or other unforeseen circumstances, the Proprietor may extend the term of the membership of those Members who opt to suspend their membership during the said period instead of availing themselves to the alternative facilities arranged by the Club.
>
> [emphasis in original]

44 Rule 66 provided as follows:[40]

> **66 AMENDMENT OF RULES**
>
> These Rules and any of them may from time to time be revoke, altered or added to by the Proprietor provided that at least 14 days' prior notice (as provided in Clause 60) thereof shall be given to the Members.

It was not disputed that the reference in rule 66 to "Clause 60" was wrong and should have referred to rule 64 which provided for notices to be given to members of the Club by posting at the notice board at the clubhouse or by prepaid letter addressed to members at their last addresses furnished to Exklusiv as proprietor of the Club.[41] Pursuant to rule 66, the amendments to rules 3c, 4 and 30a took effect on 12 April 2016, *ie*, 14 days after the date of the notice.

The relocation to Laguna Club's premises

45 Eventually, Exklusiv decided to relocate the Club to the Laguna Club's premises. The Dusit Thani was then still undergoing development. On 27 October 2017, Exklusiv informed the Club's members of the decision to relocate the Club to the Laguna Club's premises (the "27 October 2017 Letter").[42] The 27 October 2017 Letter explained that:

Version No 1: 23 Jul 2021 (14:26 hrs)

(a) In 2013, there was a "plan and vision" to continue providing the Club's services at 30SR. However, the planning and development of the new project was challenging due to a myriad of factors involved. Exklusiv had to consider space allocation and "most importantly, the financial viability of the operations".

(b) Exklusiv and Oxley Gem were "unable to come to an agreement on the terms and conditions for a club lease".

(c) The facilities at the Laguna Club and the Dusit Thani were expected to open in the second half of 2018.

(d) The memberships would be extended by eight years to 2040. The usual transfer and administration fees would be waived if members decided, within two years after the new club opened, to transfer their memberships to someone else.

46 On 10 January 2018, Exklusiv updated the Club's members on their benefits at the Laguna Club and the Dusit Thani, and repeated that the facilities were expected to open in the second half of 2018.[43]

47 However, the scheduled opening of the Laguna Club and the Dusit Thani to the Club's members was delayed. Peter Kwee gave the following reasons for the delay:

(a) The on-going development project for the mass rapid transit ("MRT") line that was taking place just outside the premises of the Laguna Club involved digging underground. This meant that the piling works for the construction works could not take place concurrently.

Version No 1: 23 Jul 2021 (14:26 hrs)

(b) Tower cranes could not be used because the Laguna Club's premises were within designated flight paths.

(c) After the construction of the Dusit Thani was completed, it took some time for the temporary occupation permit ("TOP") to be issued due to the COVID-19 circuit breaker and Phase 1 measures. The TOP was issued on 29 July 2020.

48 On 15 October 2020, Exklusiv informed the Club's members that, among other things:[44]

(a) The Club would be resuming operations at the Laguna Club's premises in December 2020 and the memberships would be extended to 15 December 2040.

(b) The usual transfer and administrative fees for the transfer or sale of memberships would be waived for two years following the Club's resumption of operations.

(c) The Club had secured a lease at 30SR and there was a plan to convert the space into a "satellite clubhouse".

Satellite clubhouse at 30SR

49 On 16 October 2020, Exklusiv and Oxley Gem entered into a tenancy agreement for a three-year lease of the first floor (with a floor area of 523 sq m) of the now two-storey building on 30SR with an option to renew the lease for another three years.[45] The second floor was converted into a gym after Exklusiv decided not to use the building for the Club.[46] It was anticipated that the satellite clubhouse would "likely commence operations in the first quarter of 2021".[47]

Version No 1: 23 Jul 2021 (14:26 hrs)

The plan was that the satellite clubhouse would house a bar, library, lounge, karaoke rooms, games/function room, meeting room and a business centre.[48]

50 Subsequently, Exklusiv secured complimentary access for the Club's members to the following facilities at 30SR: the swimming pool and gym (150 members per month), tennis courts (60 bookings per month), and carpark (500 slots per month plus during lunch time and dinner time).[49] As these were shared facilities and given the COVID-19 safe distancing measures, these facilities were available to the Club's members on a first come first served basis. The access to these additional facilities is tied to the lease mentioned above.[50]

What the Club's members have today

51 The end result is that the Club is no longer situated at 30SR. Instead, it is now situated at the Laguna Club's premises and the Club's members have access to the non-golfing facilities at the Laguna Club as well as the facilities at the Dusit Thani. However, these facilities are shared with the Laguna Club's members and guests of the Dusit Thani respectively. In addition, the Club's members have access to the facilities of the satellite clubhouse at 30SR (when these facilities open) for at least three years.

The parties' cases

52 The plaintiffs' case is that:

(a) the defendants are liable for deceit, negligence and negligent misrepresentation in relation to the redevelopment of the clubhouse at 30SR; and

Version No 1: 23 Jul 2021 (14:26 hrs)

(b) Exklusiv is liable for breach of its contract with each of the plaintiffs (the "Contract") in relation to the Relocation and the amendments to the rules.

53 The defendants deny liability for any of the plaintiffs' claims.

54 In their defence, the defendants also plead that (a) they do not admit that the representative plaintiffs are proper representatives of all the members named in this action, and (b) the memberships of two of the plaintiffs have been suspended.[51] However, the defendants have not pursued these defences in their closing submissions.

Issues to be determined

55 The issues before me are as follows:

(a) Whether Exklusiv and/or Peter Kwee are liable to the plaintiffs for deceit?

(b) Whether Exklusiv and/or Peter Kwee are liable to the plaintiffs for negligent misrepresentation?

(c) Whether Exklusiv and/or Peter Kwee are liable to the plaintiffs for negligence?

(d) Whether Exklusiv is liable to the plaintiffs for breach of contract?

(e) If the answer to any of the above is "Yes", what is the loss that the plaintiffs suffered?

Version No 1: 23 Jul 2021 (14:26 hrs)

Whether Exklusiv and/or Peter Kwee are liable for deceit?

56 The tort of deceit is no different from the tort of fraudulent misrepresentation: *Ernest Ferdinand Perez De La Sala v Compania De Navegacion Palomar, SA and other and other appeals* [2018] 1 SLR 894 ("*De La Sala*") at [170]. The essential elements of the tort of deceit are as follows. First, there had to be a representation of fact made by words or conduct. Second, the representation had to be made with the intention that it be acted upon by the plaintiff, or by a class of persons which included the plaintiff. Third, the plaintiff had acted upon the false statement. Fourth, the plaintiff suffered damage by doing so. Fifth, the representation had to be made with knowledge that it was false, either made wilfully or in the absence of any genuine belief that it was true. See *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 ("*Panatron*") at [14].

Whether the defendants made representations of fact with the knowledge that they were false

57 It is more convenient to deal with the first and fifth elements in *Panatron* together in this case. The plaintiffs allege that the defendants made numerous misrepresentations to the plaintiffs as regards the "Proposed Redevelopment" and the "Confirmed Redevelopment":[52]

(a) at the dialogue session and in the Q&As (see [23]–[25] above);

(b) via the 14 March 2013 Letter (see [31] above);

(c) via the 13 September 2013 Letter (see [36] above);

(d) via the 14 January 2014 Letter (see [37] above); and

(e) via the 27 October 2017 Letter (see [45] above).

Version No 1: 23 Jul 2021 (14:26 hrs)

"Proposed Redevelopment" refers to the proposed redevelopment of the Club's clubhouse at 30SR presented at the dialogue session, and dealt with in the Q&As.[53] "Confirmed Redevelopment" refers to the Club's confirmation that it had reached a decision to "comprehensively redevelop the premises in order to provide members with a brand-new, up-to-date clubhouse and facilities and at the same time to optimize the use of the land currently occupied by the Club".[54]

58 Many things were said at the dialogue session, in the Q&As and in the letters referred to above. The plaintiffs did not particularise the specific representations that they were relying on in their statement of claim. However, the representations that form the basis of the claim for deceit can only be the representations that the plaintiffs have pleaded to be false since falsity is a necessary element. In this regard, the plaintiffs have pleaded that:[55]

(a) the "Confirmed Redevelopment was implausible in the light of the Option and the Sale"; and

(b) it was false for the defendants to represent that the Confirmed Redevelopment would be taking place.

59 Therefore, based on the plaintiffs' pleaded case, the misrepresentations underlying their claim for deceit are the alleged misrepresentations relating to the Confirmed Redevelopment.

60 As the Court of Appeal pointed out in *De La Sala* (at [172]), a representation as to the future is not, in itself, an actionable misrepresentation unless (a) it is an implied representation as to an existing fact, or (b) it implicitly represents the existence of an intention at the time of making the statement.

Version No 1: 23 Jul 2021 (14:26 hrs)

61 In the present case, the representations relating to the Confirmed Redevelopment in the letters referred to in [57] above were clearly representations as to the future, except for the representations in the 27 October 2017 Letter relating to the redevelopment of the clubhouse at 30SR. The 27 October 2017 Letter stated that there was a plan in 2013 for the new clubhouse to be at 30SR, that the project was challenging due to a myriad of factors, including financial viability, and that parties were unable to come to an agreement on the terms and conditions for the lease of the clubhouse.[56] These were statements of existing facts.

62 It can be seen from the above that the plaintiffs' pleaded case is that (save for the representations in the 27 October 2017 Letter) the defendants falsely represented that they intended to provide the Club's members with a new clubhouse at 30SR.[57] The representations in the 27 October Letter were representations of existing facts but still related to the same question, *ie*, whether the defendants had in fact intended to provide the Club's members with a new clubhouse at 30SR.

63 I find that the plaintiffs have failed to prove that the defendants did not intend to provide the Club's members with a new clubhouse at 30SR. On the contrary, there is ample evidence that the defendants did so intend but were ultimately unable to do so for the reasons that they have given (see [38] above).

64 First, the redevelopment plans for 30SR had included a clubhouse from the very first set of plans submitted to URA in *2011*. Thereafter, although there were changes, the redevelopment plans continued to include a clubhouse. The various approvals given by URA also included approvals for a clubhouse.

Version No 1: 23 Jul 2021 (14:26 hrs)

65 Second, it is clear that the redevelopment of 30SR by Oxley Gem was to include a clubhouse and that the intention was for the clubhouse to be leased to Exklusiv. In the Option, Oxley Gem acknowledged that Exklusiv had obtained the Grant of Provision Permission dated 27 February 2013 for the proposed development of 30SR, which included a "4-Storey Clubhouse with basement".[58] The Option gave Exklusiv a first right of refusal to lease the club facilities from Oxley Gem.[59] The redevelopment plans submitted by DP Architects (Oxley Gem's architects) continued to include a clubhouse. In my view, it is highly unlikely that the defendants would have gone to the extent of obtaining the first right of refusal from Oxley Gem if they had no intention of operating the Club at 30SR. It is also highly unlikely that Oxley Gem would have given Exklusiv the first right of refusal, or continued to include a clubhouse in the plans submitted to URA, if there was no intention or understanding that the redevelopment of 30SR would include a clubhouse that would be leased to Exklusiv. There is no evidence, and it has not been pleaded or alleged, that there was any conspiracy between the defendants and Oxley Gem.

66 The plaintiffs have pleaded that the first right of refusal was inserted into the Option "as a red herring" and that there were "carefully choreographed moves" that amended the redevelopment plans to reduce the four-storey clubhouse to three storeys and subsequently to two storeys.[60] However, the plaintiffs stopped short of alleging any conspiracy between Oxley Gem and Exklusiv. In any event, the plaintiffs have failed to prove that the changes made to the clubhouse in the redevelopment plans were "choreographed".

67 It is true that the Option did not impose a binding obligation on Oxley Gem to build a clubhouse *according to Exklusiv's requirements*. This is, in my view, understandable as the redevelopment was subject to approval from the

Version No 1: 23 Jul 2021 (14:26 hrs)

relevant authorities, in particular, URA. It is also clear from the statements made to the plaintiffs (including the Q&As and the slides presented at the dialogue session) that the building plans were *proposed* plans that were subject to changes. In any event, the fact that Exklusiv had only a first right of refusal does not lead to the conclusion that the defendants did not intend to provide the Club's members with a new clubhouse at 30SR.

68 Third, there is no evidence that suggests that the reasons given by the defendants (as to why it was not feasible to operate the Club at the new clubhouse) were false.

69 Fourth, the plaintiffs argued that the size of the proposed clubhouse (882.2 sq m) was not sufficient for the Club's 1,500 members.[61] The plaintiffs submitted that, therefore, the clubhouse that was included in the plans submitted to URA was not intended for the Club's members. I note that the GFA of 882.2 sq m that was set aside for the clubhouse excluded the Club's all-day café and function hall (with kitchen); the GFA occupied by the café and function hall formed part of the GFA set aside for commercial use (see [29] above). In any event, I reject the plaintiffs' submission. It is not the plaintiffs' pleaded case. It is also irrelevant since the plaintiffs' case is that the defendants did not intend to provide a new clubhouse at 30SR "regardless of the size" of the clubhouse.[62] In any event, the plaintiffs have not adduced any evidence to show that the size of the proposed clubhouse would not have been sufficient for 1,500 members. Peter Kwee testified that the planned size was sufficient because (a) with respect to the business of operating a club, as a rule of thumb, only 30% of the membership would be active, (b) the experience had been that the Club's facilities were very underutilised, and (c) the new clubhouse would be more of a businessman's social club rather than a family club.[63] The plaintiffs have adduced no evidence to the contrary.

Version No 1: 23 Jul 2021 (14:26 hrs)

70 Fifth, during closing submissions, the plaintiffs submitted that the defendants falsely represented during the dialogue session that they had the intention to build a four-storey clubhouse plus basement, which would take up about half the size of the land at 30SR.[64] I reject this submission. It is again not the pleaded case. The statement of claim only pleads that the "Confirmed Redevelopment" was implausible and that the representation that it would take place was false. In any event, the evidence shows that the intention *then* was to build a new four-storey clubhouse; the submission that had been made to URA at that time did include a four-storey clubhouse.

71 In light of my finding above, it is unnecessary for me to consider the remaining elements of deceit. The plaintiffs' claim for deceit fails.

Whether Exklusiv and/or Peter Kwee are liable for negligent misrepresentation?

72 The plaintiffs' claim for negligent misrepresentation is based on the same allegations pleaded in respect of their claim for deceit.[65] I have found that the plaintiffs have failed to prove that the defendants did not intend to provide a new clubhouse at 30SR. It follows that the plaintiffs' claim for negligent misrepresentation also fails.

Whether Exklusiv and/or Peter Kwee are liable for negligence?

73 The plaintiffs' case is that the defendants owed the plaintiffs a duty of care to provide timely, true and accurate information as regards the redevelopment of the clubhouse at 30SR and that the defendants breached this duty. In my judgment, the plaintiffs' claim in negligence fails.

74 First, the statement of claim ought to state the facts upon which the supposed duty is founded: *Singapore Civil Procedure 2020* vol 1 (Chua Lee

Version No 1: 23 Jul 2021 (14:26 hrs)

Ming editor-in-chief) (Sweet & Maxwell, 2020) ("*Singapore Civil Procedure*"), at para 18/12/30. In this case, the plaintiffs have simply pleaded that the defendants owe a duty of care, without pleading the specific facts that are said to give rise to the alleged duty of care.[66] Simply referring to "paragraphs 1 to 55" of the statement of claim[67] is not acceptable. It is not for the defendants, or this court, to try to fathom what the plaintiffs' case is. During closing submissions, the plaintiffs submitted that the duty of care to provide timely information to the members arose because the defendants undertook in the Q&As to update the members.[68] However, the plaintiffs have not pleaded their case as such.

75 The plaintiffs relied on *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 ("*Spandeck*"). In that case, the Court of Appeal held (at [77], [81], [83] and [115]) that the test to determine the imposition of a duty of care is a two-stage test comprising of, first, proximity and, second, policy considerations, which are preceded by the threshold question of factual foreseeability. The first stage of proximity required sufficient legal proximity between the claimant and defendant for a duty of care to arise. The focus is on the closeness of the relationship between the parties, including physical, circumstantial and causal proximity, supported by the twin criteria of voluntary assumption of responsibility and reliance. If a positive answer to the threshold question of factual foreseeability and the first stage of proximity was assumed, a *prima facie* duty of care arose. Policy considerations, such as the presence of a contractual matrix which clearly defined the rights and liabilities of the parties and their relative bargaining positions, then arise and are applied to the factual matrix to determine whether or not to negate this *prima facie* duty.

Version No 1: 23 Jul 2021 (14:26 hrs)

76 It is clear that whether the factual foreseeability and proximity tests are met depend on the facts. It is incumbent upon the plaintiffs to properly plead the facts relied upon in this regard. The plaintiffs have plainly failed to do so.

77 Second, the statement of claim should allege the precise breach of that duty: *Singapore Civil Procedure* at para 18/12/30. Here, the plaintiffs plead that the defendants breached their duty of care by:[69]

> (a) not calling for "general meetings of the Club members, in a timely fashion, to accurately and truthfully inform them of milestones in the completion of the Confirmed Redevelopment, or of any purported obstacles or difficulties";
>
> (b) hiding the "truth of what was in fact happening or had already happened" from the Club's members; and/or
>
> (c) making the misrepresentations as to the Proposed Redevelopment and the Confirmed Redevelopment.

78 The plaintiffs have not pleaded any particulars as to (a) the milestones or obstacles that the defendants are alleged to have failed to timely, accurately or truthfully inform them of, and (b) what was the truth that the defendants are alleged to hidden from them.

79 As for the defendants' misrepresentations as to the Proposed Redevelopment and Confirmed Redevelopment, I have found that there was no misrepresentation as to the defendants' intention to provide the Club's members with a new clubhouse at 30SR.

80 The plaintiffs' claim in negligence therefore fails.

Version No 1: 23 Jul 2021 (14:26 hrs)

Whether Exklusiv is liable to the plaintiffs for breach of contract?

81 It is not disputed that the Rules and the Bye-Laws and House Rules form part of the contract between Exklusiv and each of plaintiffs (the "Membership Contract"). The plaintiffs' case is that:

(a) In declaring in the 27 October 2017 Letter that the clubhouse will no longer be located at 30SR (see [45] above), Exklusiv committed a "fundamental and repudiatory breach" of its Membership Contracts with the plaintiffs, including in particular rules 3c, 4 and 30a.[70]

(b) The amendments to rules 3c, 4 and 30a (see [43]–[44] above) breached implied terms of the Membership Contract.[71]

(c) Exklusiv breached s 3(2)(*b*) of the Unfair Contracts and Terms Act (Cap 396, 1994 Rev Ed) ("UCTA").[72]

The 27 October 2017 Letter and the amendments to rules 3c, 4 and 30a

82 I shall deal with these together since they are connected. Before they were amended, rules 3c and 4 provided that the Club and clubhouse would be at 30SR. The amended rules 3c and 4 permit Exklusiv to situate the Club and clubhouse at such other location/s "as it deems fit in its sole discretion". The amended rule 30a provides that Exklusiv may extend the term of the memberships if the Club's facilities are suspended or unavailable for an extended period "whether due to relocation or refurbishment or other unforeseen circumstances". The real issue relates to the amendments to rules 3c and 4. The amendments to rule 30a are consequential and, in any event, are still relevant (a) whether or not the Club is relocated, and (b) where the Club is relocated within the central area of Singapore.

Version No 1: 23 Jul 2021 (14:26 hrs)

83 The scope of the amended rules 3c and 4 is broad enough to permit the Relocation. If the amendments are valid, then it must follow that the declaration in the 27 October 2017 Letter (that the clubhouse will no longer be located at 30SR) cannot be a breach of the Membership Contract.

84 Rule 66 expressly allows Exklusiv to amend the Rules subject only to giving at least 14 days' prior notice to the Club's members. It is not surprising that there is such a rule since the Club is a proprietor's club. The question is whether there are any restrictions to Exklusiv's right to amend the Rules. The plaintiffs say that this right is subject to the following implied terms of the Membership Contract (the "Implied Terms"):[73]

(a) The nature and object of the Club is that of a city club located in a central area of Singapore.

(b) Rule 66 cannot be used by Exklusiv to alter the central location of the clubhouse "to the eastern fringe of Singapore at Laguna Club".

(c) Exklusiv cannot act in bad faith or in an arbitrary, irrational or capricious manner when exercising its contractual discretion under rule 66 to amend the Rules.

(d) Exklusiv owes a duty of loyalty and fidelity to the members and to act *bona fide* in the best interests of the members.

The plaintiffs say that the amendments to rules 3c and 4 breach these implied terms.

85 Two issues arise at this stage. The first is whether the implied terms asserted by the plaintiffs satisfy the tests set out in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193

Version No 1: 23 Jul 2021 (14:26 hrs)

("*Sembcorp Marine*"). The second is whether the entire agreement clause in the Membership Contract precludes the implication of terms.

Whether the alleged implied terms satisfy the tests in Sembcorp Marine

86 A term may be implied in a contract only if (a) there is a gap in the contract which the parties did not contemplate, (b) it is necessary in the business or commercial sense to imply a term in order to give the contract efficacy, and (c) the specific term to be implied is one which the parties, having regard to the need for business efficacy, would have responded "Oh, of course!" had the proposed term been put to them at the time of the contract: *Sembcorp Marine* at [101].

87 In my view, the first implied term in [84(a)] above satisfies the tests in *Sembcorp Marine*.

(a) The parties clearly did not contemplate where the Club might be relocated to. In fact, the parties did not even contemplate that the Club might have to be relocated at all. This is clear from the fact the Rules had to be amended to provide for the Club to be situated at other locations.

(b) This implied term is necessary to give the Membership Contract efficacy. I have no doubt that location was an important consideration in the decision whether to purchase a membership in the Club. The Club was situated at a prime location at 30SR when it was launched. The Rules also stated unequivocally that the Club would be situated at 30SR. The marketing brochure for the Club described the Club as a "town club … [n]estled within the unspoilt greenery of Stevens Road …" and emphasised its "exclusive location".[74] I accept that Exklusiv should be

Version No 1: 23 Jul 2021 (14:26 hrs)

permitted to relocate the Club but there has to be limits to where it can relocate the Club to. Without this implied term, Exklusiv would be free to amend the Rules to allow it to relocate the Club anywhere in Singapore. Even Exklusiv did not argue for such a wide and unfettered right during closing submissions.[75]

(c) Finally, I have no doubt that if the parties had been asked *at the time when the members submitted their membership applications*, they would have responded "Oh, of course!" to these implied terms. It seems to me that Exklusiv would have readily agreed that the Club should be situated within the central area of Singapore. After all, the defendants were emphasising the exclusive location of the Club in their marketing brochure.

88 In closing submissions, the plaintiffs submitted that the central area of Singapore refers to the central core region of Singapore as set out in URA's guidelines.[76] As the defendants have not taken issue with this, I proceed on the basis that the central area means the core central region of Singapore as set out in URA's guidelines. I take judicial notice of the fact that, according to URA, the core central region comprises postal districts 9, 10 and 11, the downtown core planning area and Sentosa (see Annex A).[77]

89 The core central region extends well beyond the immediate vicinity of 30SR. It is not disputed that the Laguna Club and the Dusit Thani are not within the core central region of Singapore.

90 The second implied term in [84(b)] above is consequential upon the first. As there is an implied term that the Club is to be a city club located in a central area of Singapore, it follows that Exklusiv cannot change the central location of

Version No 1: 23 Jul 2021 (14:26 hrs)

the clubhouse to the eastern fringe of Singapore at Laguna Club. The term to be implied is as follows – "Rule 66 does not permit amendments to the Rules to allow the Club to be situated outside the central area of Singapore".

91 As for the third implied term in [84(c)] above, it seems unarguable that it should be implied. Exklusiv's concession in closing submissions (that there are limits to its right to relocate the Club) supports the implication of this term. In addition, the implication of such a term is also supported by authority.

92 In *Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 ("*Raffles Town Club*"), the Court of Appeal agreed with the trial judge in rejecting the argument that the relevant rules vested in the Club complete discretion in all matters pertaining to the Club. The Court held that the discretionary power must be exercised in furtherance of its object (at [31]–[32]).

93 In *MGA International Pte Ltd v Wajilam Exports (Singapore) Pte Ltd* [2010] SGHC 319, the High Court held that there is a corresponding expectation that a contractual discretion would be exercised fairly and rationally (at [103]). The Court referred (at [105]) to *Socimer Bank Ltd v Standard Bank Ltd* [2008] 1 Lloyd's Rep 558 in which it was said that the concern is that the discretion is not abused and hence, the court will impose an implied term that the discretion should be exercised in good faith and not arbitrarily, capriciously or irrationally.

94 As for the fourth implied term in [84(d)] above, I see no reason to imply the term that Exklusiv owes a duty of loyalty and fidelity to the members and to act *bona fide* in the best interests of the members. In my view, it is not necessary to imply such a term in order to give the Membership Contract efficacy. Neither is it a term that Exklusiv would have simply responded "Oh, of course!" to. Such a term is inconsistent with the nature of the Club as a proprietor's club. As

Version No 1: 23 Jul 2021 (14:26 hrs)

the proprietor, Exklusiv bears all the costs of purchasing 30SR, maintaining the Club's facilities and operating the Club. Exklusiv has a contractual obligation to provide the Club's facilities for the members' use but that does not carry with it the duties that the plaintiffs seek.

Whether the entire agreement clause precludes any implied terms

95 Exklusiv submitted that there is no scope for implied terms in the Membership Contract because the membership application forms contain the following entire agreement clause:[78]

> [Exklusiv] makes no representations, warranties nor undertakings as to the memberships of the Club and/or the Club. All terms, conditions, obligations, promises, representations, warranties, undertakings or other statement not expressly stated herein (whether implied by law legislation or otherwise howsoever) are hereby expressly excluded.

96 Exklusiv relied on *Ng Giap Hon v Westcomb Securities Pte Ltd and others* [2009] 3 SLR(R) 518 ("*Ng Giap Hon*"). In that case, the entire agreement clause stated as follows (at [29]):

> This Agreement embodies, the entire understanding of the parties and there are no provision, terms, conditions or obligations, oral or written, expressed *or implied*, other than those contained herein. All obligations of the parties to each other under previous agreements ([if] any) are hereby released, but without prejudice to any rights which have already accrued to either party. [Court of Appeal's emphasis in *Ng Giap Hon* in italics]

97 The Court of Appeal held that the entire agreement clause did not preclude the implication of terms into the agreement, noting that the clause itself contemplated the existence of implied terms in the agreement (at [30]). The Court of Appeal went on to state as follows (at [31]):

> However, we would also pause to observe that, even if there is no reference to implied terms in an entire agreement clause, it

Version No 1: 23 Jul 2021 (14:26 hrs)

> is arguable that the presence of such a clause in a contract would not, as a matter of general principle, exclude the implication of terms into that contract for several reasons. First, an implied term, by its *very nature* (as an *implied* term), would *not*, *ex hypothesi*, have been in the contemplation of the contracting parties to begin with when they entered into the contract. Secondly, if a term were implied on, so to speak, a "broader" basis "in law" (as opposed to on a "narrower" basis "in fact"), it would follow, *a fortiori*, that such a term would not have been in the contemplation of the parties for, as we shall see below (at [38]), a term which is implied "in law" (*unlike* a term which is implied "in fact") is not premised on the presumed intention of the contracting parties as such. Thirdly, it is clearly established law that a term *cannot* be implied if it is *inconsistent with* an *express* term of the contract concerned. This principle is, of course, both logical as well as commonsensical. Finally, as pointed out by Nigel Teare QC (sitting as a deputy judge of the English High Court) in *Exxonmobil Sales and Supply Corp v Texaco Ltd* [2004] 1 All ER (Comm) 435 at [27]:
>
> > It [is] … arguable that where it is necessary to imply a term in order to make the express terms work such an implied term may not be excluded by [an] entire agreement clause *because* it could be said that such a term is to be found *in* the document or documents forming part of the contract.
>
> [Court of Appeal's emphasis in *Ng Giap Hon* in italics]

98 However, the Court of Appeal acknowledged that an entire agreement clause could exclude the implication of terms into a contract if it expressed such effect in "clear and unambiguous language" (at [32]).

99 As stated earlier, Exklusiv conceded during closing submissions that there are limits to its power to relocate the Club. That must mean that there is at least some implied term in play that limits its discretionary power to amend the Rules. Exklusiv's reliance on the entire agreement clause to preclude any implied terms is therefore inconsistent with its own concession.

100 In any event, in my view, the language in the entire agreement clause in this case is not sufficiently "clear and unambiguous" such as to preclude the

Version No 1: 23 Jul 2021 (14:26 hrs)

implication of the first three terms asserted by the plaintiffs. If Exklusiv's argument about the entire agreement clause is correct, that would mean that it can amend the Rules even to the extent of providing nothing more than, for example, a members' lounge in a one-room "clubhouse" in the middle of an industrial estate in the west end of Singapore. Admittedly, this is an extreme example. But, as pointed out in *Raffles Town Club* at [32], "it is often by resorting to extreme examples that one would be able to see whether an argument advanced is reasonable and logical".

Exklusiv breached the implied terms

101 In conclusion, I find that the following implied terms form part of the Rules:

(a) The nature and object of the Club is that of a city club located in a central area of Singapore.

(b) Rule 66 does not permit amendments to the Rules to allow the Club to be situated outside the central area of Singapore.

(c) Exklusiv cannot act in bad faith or in an arbitrary, irrational or capricious manner when exercising its contractual discretion under rule 66 to amend the Rules.

102 In making the amendments to rules 3c and 4 and in declaring in the 27 October 2017 Letter that the clubhouse will no longer be located at 30SR, Exklusiv therefore breached the implied terms set out above.

103 The amendments to rule 30a are not in breach of the implied terms as they are still relevant (a) whether or not the Club is relocated, and (b) where the Club is relocated within the central area of Singapore.

Version No 1: 23 Jul 2021 (14:26 hrs)

Section 3(2)(b) UCTA

104 Section 3 of the UCTA states as follows:

> **3.**—(1) This section applies as between contracting parties where one of them deals as a consumer or on the other's written standard terms of business.
>
> (2) As against that party, the other cannot by reference to any contract term —
>
> (a) …
>
> (b) claim to be entitled —
>
> (i) to render a contractual performance substantially different from that which was reasonably expected of him; or
>
> (ii) in respect of the whole or any part of his contractual obligation to render no performance at all,
>
> except in so far as (in any of the cases mentioned in this subsection) the contract term satisfies the requirement of reasonableness.

105 Exklusiv says that the Relocation is permitted under the amended rules 3c and 4. Under s 3(2) of the UCTA, Exklusiv cannot rely on the amended rules 3c and 4 unless they satisfy the requirement of reasonableness. In this regard, as Exklusiv submitted, the question is whether the term in question is reasonable, not whether the discretion under the relevant term is exercised properly.

106 Given my conclusions on the implied terms, in my judgment, the amended rules 3c and 4 would not satisfy the requirement of reasonableness. Exklusiv therefore cannot rely on the amended rules 3c and 4 to justify the Relocation.

Version No 1: 23 Jul 2021 (14:26 hrs)

What loss have the plaintiffs suffered as a result of Exklusiv's breaches of contract?

107 In their statement of claim, the plaintiffs pleaded that they have each "lost around twenty (20) remaining years of Club membership that they had purchased, to enjoy the clubhouse and the facilities at [30SR]".[79] They sought the following reliefs for Exklusiv's breaches of contract:

(a) A declaration that the amendments of rules 3c, 4 and 30a are invalid.

(b) An order for specific performance of the Membership Contracts and the "Claimed Redevelopment" whereby Exklusiv procures one of the hotels from Oxley Gem and converts it into a clubhouse for the Club, furnished and refurnished with the facilities as represented at the dialogue session.

(c) Alternatively, an order for Exklusiv and/or Peter Kwee to procure for each of the plaintiffs' membership in an equivalent city and country club such as the Tanglin Club or the American Club located at a central area of Singapore for a term not less than the remaining membership term that each plaintiff has.

(d) Alternatively, an order to compensate each plaintiff a value equivalent to the present market value of about 20 years' use of 30SR plus clubhouse buildings and facilities divided by the average number of members to be determined.

(e) Damages to be assessed.

(f) An account of profits made by Exklusiv and/or Peter Kwee.

Version No 1: 23 Jul 2021 (14:26 hrs)

(g) Further or in the alternative, an account of profits or an inquiry as to damages and payment of all sums found to be due upon the taking of such account or inquiry.

Claims for relief against Peter Kwee

108 At the outset, I note that Peter Kwee is not a party to the Membership Contracts and there is no claim against him for breach of contract. The plaintiffs' claims for relief of any sort against Peter Kwee for breach of contract are therefore misconceived and cannot succeed.

Claim for declaration

109 In view of my conclusions that the amendments to rules 3c and 4 are in breach of the implied terms, the plaintiffs are entitled to a declaration that the amendments to rule 3c and 4 are invalid. However, the plaintiffs are not entitled to a similar declaration in respect of the amendments to rule 30a as those amendments are not in breach of the implied terms.

Claim for Exklusiv to provide the clubhouse at 30SR

110 In my view, the plaintiffs are not entitled to an order that Exklusiv procures one of the hotels from Oxley Gem and converts it into a clubhouse for the Club. The plaintiffs own case does not even require that the Club has to be situated at 30SR, only that it should be situated within the central area of Singapore.

111 In any event, specific performance is a discretionary remedy and is generally available only when an award of damages is an inadequate remedy or when it will do more perfect and complete justice than an award of damages: *Halsbury's Laws of Singapore* vol 7 (LexisNexis, 2019) at para 80.586. It is

Version No 1: 23 Jul 2021 (14:26 hrs)

clear beyond any doubt that there is no reason to grant specific performance instead of damages in this case. There is nothing so unique about membership in a social club that damages cannot be an adequate remedy.

112 The Membership Contract imposes an obligation on Exklusiv (as the proprietor) to provide certain facilities (including a clubhouse) for the plaintiffs' use. As members of the Club, the plaintiffs have a contractual licence to use those facilities, subject to the terms of the Membership Contract (including the payment of monthly subscription fees). The plaintiffs are also free to sell their memberships, again, subject to the terms of the Membership Contract. That is the extent of the plaintiffs' rights as members of the Club. The Membership Contract does not give the plaintiffs any additional interest in 30SR or the Club's facilities.

113 Damages for breach of contract are to compensate the claimant for the loss or damage suffered by him on account of the breach, so as to place him in the same situation as if the contract had been performed: *Raffles Town Club Pte Ltd v Tan Chin Seng and others* [2005] 4 SLR(R) 351 ("*Raffles Town Club (No 2)*") at [16]. In that case, damages for the club-owner's breach of contract in failing to deliver a premier club were assessed based on the diminution in value of membership in the club as a result of the breach.

114 If Exklusiv did not breach the Membership Contract, the Club would have simply remained as it was, situated at 30SR. Exklusiv has no obligation to build a new clubhouse. However, as a result of the Relocation, the Club is now located on the Laguna Club's premises. There is no evidence that the facilities that the plaintiffs have access to at the Club at Laguna are lacking in any manner. The plaintiffs' complaint is simply that the Club is no longer in the central area of Singapore. The plaintiffs' memberships in the Club today have a market

Version No 1: 23 Jul 2021 (14:26 hrs)

value, just as they had a market value when the Club was situated at 30SR. There is no reason why, as a matter of principle, damages (based on any loss in the value of the memberships as a result of the Relocation) would not be adequate. Further, specific performance in this case would be grossly disproportionate to the damages that the plaintiffs can recover. Granting specific performance in this case would result in injustice.

Alternative claim for replacement club memberships

115 In my view, the plaintiffs are also not entitled to an order that Exklusiv procures a membership in a social club in the central area of Singapore, such as the Tanglin Club or the American Club, for each of the plaintiffs. I can see no reason why such an order (assuming that it is even possible to purchase 1,500 memberships in these clubs) would be appropriate. Such an order is akin to specific performance. The plaintiffs' remedy clearly lies in damages.

116 In any event, neither the Tanglin Club nor the American Club are truly comparable clubs in this regard.

(a) Tanglin Club memberships are non-transferable. The club does not sell new memberships but purchases existing memberships and resells them; there is a long waiting list of over ten years.[80]

(b) The American Club is a clear outlier in terms of its membership price. Its average prices for the years from 2011 to 2019 ranged between $90,600 and $135,400.[81] It was more than 15 times that of the average of other social clubs in July 2020.[82] The selling price of American Club memberships is at a significant premium above the transfer fee of $27,500, compared to other social clubs.[83] Further, the American Club

Version No 1: 23 Jul 2021 (14:26 hrs)

sits on freehold land and had spent $65m renovating its facilities in 2019.[84]

117 The plaintiffs' own expert, Mr Govinda Singh ("Govinda"), an executive director at Colliers International Consultancy & Advisory (Singapore) Pte Ltd, has also expressed his opinion that providing the plaintiffs with memberships at alternative clubs may not be a realistic option.[85]

Claim for a share of the present market value of about 20 years' use of 30SR plus clubhouse buildings and facilities

118 The plaintiffs have not shown any basis for this claim. As stated earlier, the plaintiffs' own case does not even require the Club to be situated at 30SR. Even on the basis of the plaintiffs' case that the Club is to be situated in the central area of Singapore, there is still no basis for this remedy.

119 The value of the right to access and use the Club's facilities is reflected in the market value of the memberships. Anyone who wishes to obtain these rights does so by buying a membership at the prevailing market price. The plaintiffs now have the use of the clubhouse and facilities of the Laguna Club and the Dusit Thani. Their remedy lies in damages based on any loss in the value of their memberships in the Club at Laguna compared to the Club at 30SR.

120 I note as well that in *Raffles Town Club (No 2)*, the Court of Appeal computed damages for the club-owner's breach of contract based on the diminution in the value of the club's membership.

Version No 1: 23 Jul 2021 (14:26 hrs)

Damages to be assessed

121 Damages in the present case are to be assessed based on any diminution in the value of the membership in the Club, by comparing the value of the membership today as compared to its value when the Club was at 30SR.

Exklusiv's experts' evidence

122 In her report, Exklusiv's expert, Ms Yak Chau Wei ("Yak") concluded that there has not been any diminution in the value of membership in the Club that is attributable to the Relocation; on the contrary, the value has increased.[86] Yak assessed the values on a fair value basis, which is defined as follows:[87]

> … the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

Transacted prices were also accepted by the Court of Appeal in *Raffles Town Club (No 2)* as evidence of the fair value of memberships of clubs (at [39]).

123 Yak valued the membership in the Club at 30SR in October 2017 at $4,280.[88] As the Club was no longer operating at 30SR in October 2017, Yak had to forecast what the value would have been in October 2017. The starting point was the last transaction for the sale of membership in the Club, which was in June 2013 at $5,000.[89] Yak then considered two methods to arrive at the value in October 2017.

124 The first method was a univariate projection of the membership price in October 2017, based on past transactions since October 2002; this method does not take into account other economic factors.[90] Yak arrived at an extrapolated

Version No 1: 23 Jul 2021 (14:26 hrs)

price of less than $3,000 in October 2017, which was below the Club's transfer fee of $4,280.

125 The second method was to extrapolate the price of membership in the Club using a social club index. This involved several steps.[91]

(a) An index for social clubs comparable to the Club was constructed, using as the key criteria, affordability, location, facilities and management (*ie*, whether the club was a proprietary or members' club). This led to an index of six social clubs – British Club, Hollandse Club, Polo Club, Singapore Recreation Club, Raffles Town Club and The Legends.

(b) The index was constructed using transacted prices for these six clubs. Extrapolating the price graph of membership in the Club from June 2013 arrived at a price of $4,205 for October 2017. This is also below the Club's transfer fee of $4,280.

126 The six clubs that were included in the index included four clubs that were members' clubs. Yak's evidence was that members' clubs typically have higher membership prices. However, the four members' clubs were included in the index because an index comprising only two proprietary clubs might make the index inaccurate in showing the general market movement of social club memberships.[92]

127 Yak excluded Tanglin Club and the American Club from the index because they did not fulfil her criteria.[93] Tanglin Club's memberships are non-transferable. Govinda also agreed that Tanglin Club should be excluded in calculating the price trend of the clubs because its memberships are non-transferable.[94] The American Club is a clear outlier; as stated earlier, its

Version No 1: 23 Jul 2021 (14:26 hrs)

membership price was more than 15 times that of the average of other social clubs in July 2020.[95]

128 Both methods arrived at a price in October 2017 that was below the Club's transfer fee. Yak opined that, based on what she had seen from other clubs, the membership prices typically have a floor at the transfer fee, since members would rather not pay to get rid of the membership.[96] I note that this would be especially true in this case since, under rule 22 of the Rules, the Club's members have the option of resigning, after which they would cease to have any further liability for subscription fees.[97] Yak therefore valued the membership in the Club in October 2017 at $4,280.[98]

129 As for the price of membership in the Club at Laguna, Yak valued the membership price at $8,250, as follows:[99]

(a) The last recorded transacted priced for the Laguna social membership was in July 2011 at $3,500; the average transacted price was $3,300.

(b) The full Laguna golf membership had increased by 2.5 times since 2010. While the golf courses remained largely the same, members will be able to enjoy the new facilities at Laguna Club and the Dusit Thani. The price of social memberships will possibly enjoy a similar increase.

(c) Applying the multiplier of 2.5 to $3,300 gives the figure of $8,250.

130 Yak thus concluded that the value of the plaintiffs' memberships in the Club at Laguna is worth more than if the Club had remained at 30SR. In fact,

Version No 1: 23 Jul 2021 (14:26 hrs)

the plaintiffs stand to gain even more. Exklusiv has agreed to waive the transfer fee for two years after the Club resumes operations at Laguna (see [48(b)] above). This means that if any of the plaintiffs were to sell their memberships within the two-year period, they would receive an additional $4,280, being the transfer fee that they would otherwise have had to pay if they had sold their memberships at any other time.

131 Exklusiv's other expert was Ms Choo Peck Ling ("Choo"), the founding partner of Active Golf Services Pte Ltd ("Active Golf"), which specialises in providing brokering services for the sale and purchase of club memberships in Singapore, Malaysia and Indonesia and has been doing so for more than 20 years. Govinda agreed that Active Golf is established in its business.[100]

132 Choo was also of the view that the American Club and Tanglin Club are not comparable to the Club, the former because of its membership price and the latter because its memberships are non-transferable.[101]

Plaintiffs' expert's evidence

133 Govinda was instructed to assess the loss suffered by each of the plaintiffs based on the following heads of claim:[102]

(a) Loss of the use of the club facilities and other benefits – Govinda computed the loss of use of the Club's facilities from 1 November 2013 to 31 December 2020 at $6,127.[103]

(b) Loss of the club membership which has a minimum term of 20 years – Govinda computed the loss of use of the Club's facilities from 1 January 2021 to 21 December 2032 at $10,523.[104]

Version No 1: 23 Jul 2021 (14:26 hrs)

(c) Value of yielding vacant possession of the Club to the defendants – Govinda computed this loss at $53,288.[105]

(d) Loss due to the opportunity cost arising from the long delay and wait as a result of the defendants' alleged wrongdoings, thereby depriving the plaintiffs of the chance to locate a suitable alternative club in a timely manner – Govinda computed the loss at between $11,962 and $17,411, on the basis that the delay deprived the plaintiffs of the chance to invest their compensation or to locate a suitable alternative club membership in a timely manner.[106] The compensation refers to compensation that the plaintiffs say they would have received in 2013 as a result of yielding vacant possession of 30SR.

134 I have concluded that the plaintiffs are entitled to damages, in respect of their breach of contract claim, based on the diminution in the value of their memberships in the Club at 30SR compared to the value of their memberships in the Club at Laguna. Govinda's evidence does not assist me in assessing this diminution in value. I note also that Govinda did not express any opinion on the value of the Club at Laguna.

135 Further, the plaintiffs' only pleaded loss in respect of their claim for breach of contract is the loss of use of the Club's facilities for the remaining term of about 20 years.[107] Govinda's assessment of damages for loss of use from 2013 to 2020, the value of yielding vacant possession and loss of opportunity in [133(a)], [133(b)] and [133(d)] above are not relevant to the plaintiffs' pleaded loss. These heads of damages are also not losses suffered as a result of the breaches of contract, *ie*, the declaration in the 27 October 2017 Letter that the clubhouse will no longer be located at 30SR and the amendments to rules 3c and 4 (see [102] above).

Version No 1: 23 Jul 2021 (14:26 hrs)

136 It is also not disputed that the plaintiffs agreed to the suspension of the Club's operations at 30SR during the redevelopment of 30SR (the "Suspension Agreement"). During this period, the plaintiffs were given temporary social memberships at the Laguna Club (see [31(e)] above). The plaintiffs' pleaded case does not seek to set aside the Suspension Agreement. Neither does their pleaded case include a claim for breach of the Suspension Agreement, or misrepresentation in respect of the Suspension Agreement. The plaintiffs have also not shown how the Suspension Agreement was breached.

137 In addition, I have the following observations regarding Govinda's evidence:

(a) Govinda considered that only the American Club and Tanglin Club can be considered to have locations "similar" to the Club at 30SR and that The Legends is in a "different location".[108] This is inconsistent with the plaintiffs' case that the Club should be within the central area of Singapore. As stated earlier, according to the plaintiffs, the central area of Singapore refers to the core central region in URA's guidelines. The Legends is well within the core central region of Singapore.

(b) Govinda said that the location of The Legends was not comparable. One of his reasons was that The Legends is situated in a national park while the Club at 30SR at the relevant time was in a residential area.[109] I cannot see why The Legends' location should be considered to be different for this reason. The Legends is just "about 10 minutes away"[110] from 30SR, at the other end of Orchard Road. Govinda also accepted that there is nothing wrong with the surrounding being a park.[111] In any event, The Legends is situated within the core central region of Singapore.

Version No 1: 23 Jul 2021 (14:26 hrs)

(c) Govinda eschewed relying on transacted prices as the best indicator of the fair value of club memberships. I agree with Yak that this is baffling.[112] Govinda used the original membership fee of $9,900 paid by individual founder members (*in December 2002/early 2003*) to assess the value of the membership in 2013 (when the Club ceased operations at 30SR) and 2020 by applying a price trend based on the membership prices of just two clubs – the American Club and the Singapore Cricket Club.[113] According to Active Golf, the average transacted price for the Club's membership in 2011 was $6,950 and in 2012, it was $5,933; there were no transactions in 2013.[114] Yak found a transaction in June 2013 at $5,000.[115] Govinda simply ignored all these transacted prices and assessed the value of the Club's membership in 2013 at $24,750.[116] Based on the evidence before me, this can only be described as an unrealistic value.

(d) I also agree with Yak that Govinda's choice of the American Club and Singapore Cricket Club, as comparable clubs for the extrapolation of the Club's membership price, is not representative of the broad market movements.[117] First, the American Club is not a comparable club (see [116(b)] above). Second, using the phenomenal increase in membership prices for the American Club between 2003 and 2013/2020 clearly skews the price trend. Third, Govinda's decision to use only two clubs for comparison increases the impact of the increase in membership prices for the American Club. In my view, the inclusion of the American Club and the decision to use only two clubs for comparison cannot be supported.

(e) In his first report, Govinda proceeded on the basis that the transacted prices of club memberships exclude the transfer fees, which

Version No 1: 23 Jul 2021 (14:26 hrs)

according to him, "must be borne by the new member".[118] Choo's evidence was that the transfer fee is factored into the price and is borne by the seller, which is the general industry practice.[119] Clearly, Govinda was wrong and under cross-examination, Govinda conceded that he was wrong.[120] In my view, this fundamental error raises doubts as to the extent of Govinda's expertise concerning prices of club memberships. I note also that in his second report, Govinda did not correct his mistake although he was replying to Yak's and Choo's expert reports and so would have seen Choo's evidence. In my view, this does not reflect well on his credibility.

Conclusion on damages

138 I accept Yak's and Choo's evidence that the American Club and Tanglin Club are not comparable clubs for present purposes. I accept Yak's evidence that there is no diminution in the value of the plaintiffs' memberships in the Club at 30SR as at October 2017 compared to the value of their memberships in the Club at Laguna. I find that Yak's approach is reasonable and logical. Further, the plaintiffs have offered no evidence for such diminution in value of the plaintiffs' memberships.

139 In the circumstances, I find that the plaintiffs have failed to prove that they have suffered loss and I award each plaintiff nominal damages of $1,500 each.

Account of profits/inquiry as to damages

140 During closing submissions, the plaintiffs confirmed that they are no longer pursuing an account of profits.[121] In any event, there is no basis for this remedy.

Version No 1: 23 Jul 2021 (14:26 hrs)

141 The plaintiffs have also accepted that the alternative prayer for an inquiry as to damages is not relevant as the assessment of damages was dealt with during the trial.[122]

Plaintiffs' application to introduce new evidence

142 After the defendants had closed their case, the plaintiffs sought to introduce into evidence documents from URA to show the GFA of the clubhouse at 30SR in 1994 and 1995 when it was the Pinetree Club. The plaintiffs submitted that these documents were relevant to clarify the size of the clubhouse, which Peter Kwee had said was 2,746 sq m.

143 I dismissed the plaintiffs' application. The application was being made at a late stage of the proceedings when clearly, the plaintiffs could have obtained these documents earlier. More importantly, in my view, the documents were not relevant to the issues before me.

144 The size of the clubhouse in 1994/1995 had no bearing on whether the defendants genuinely intended to provide a new clubhouse at 30SR as part of the redevelopment of the property. Neither did it have any bearing on whether the Relocation breached the Membership Contracts.

145 The plaintiffs also submitted that the documents would show that the proposed new clubhouse at 30SR was far too small. In my view, this was irrelevant. The thrust of the plaintiffs' submission was that the clubhouse that was included in the plans submitted to URA was not intended for the Club's members. As stated in [69] above, this is not the plaintiffs' pleaded case. Further, the size of the clubhouse in 1994/1995 could accommodate a far larger membership than what the Club had. Peter Kwee had targeted a membership size of 8,000 members when he launched the Club (see [12] above). Peter Kwee

Version No 1: 23 Jul 2021 (14:26 hrs)

testified that the size of the proposed new clubhouse was sufficient for the Club's 1,500 members. The plaintiffs had not adduced any evidence to the contrary.

Conclusion

146 For the reasons stated above, I dismiss the plaintiffs' claims against Exklusiv and Peter Kwee for deceit, negligent misrepresentation and negligence. Exklusiv is liable to the plaintiffs for breach of contract but the plaintiffs have failed to prove that they have suffered loss. Accordingly, I award each of the plaintiffs nominal damages in the sum of $1,500.

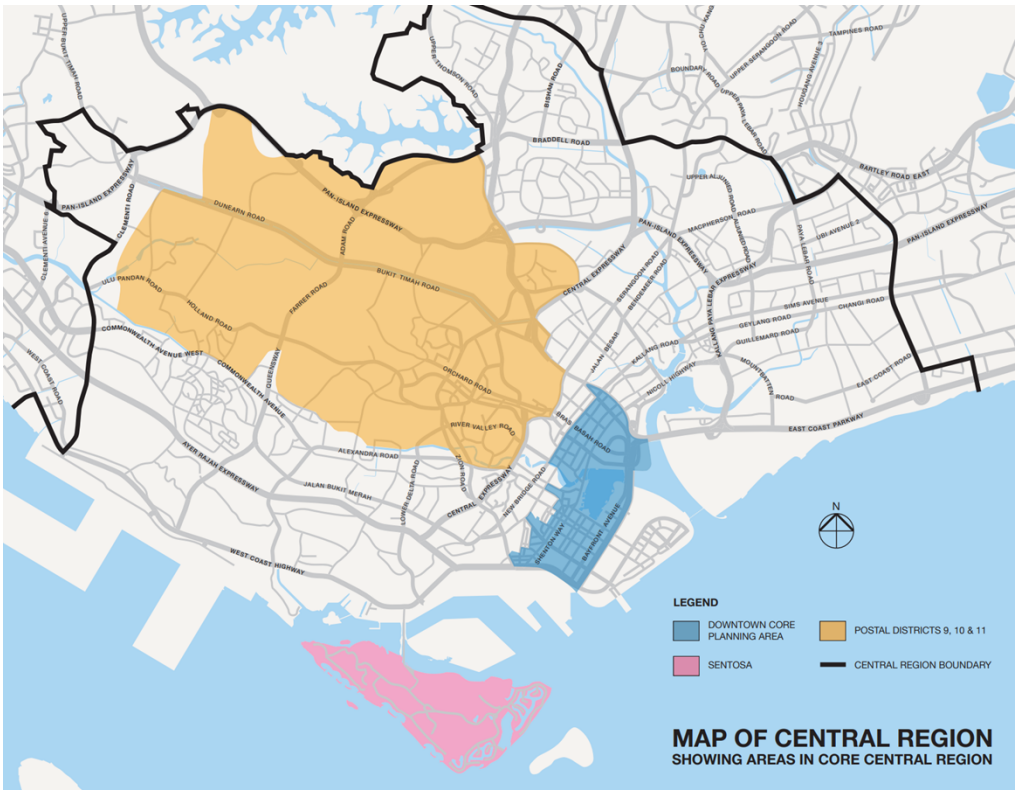
147 I will hear parties on costs.

Chua Lee Ming
Judge of the High Court

Lau Kah Hee and Fikri Yeong (BC Lim & Lau LLC) for the plaintiffs;
Vikram Nair and Foo Xian Fong (Rajah & Tann Singapore LLP) for the defendants.

Version No 1: 23 Jul 2021 (14:26 hrs)

Annex A



Version No 1: 23 Jul 2021 (14:26 hrs)

[1] 2 Agreed Bundle ("AB") 668.
[2] Peter Kwee's 2nd Supplemental Affidavit of Evidence-in-Chief sworn on 17 November 2020 ("Peter Kwee's 2nd SAEIC"), at para 7.
[3] Statement of Claim (Amendment No 4) ("SOC (No 4)"), at para 1.
[4] Peter Kwee's of Evidence-in-Chief, sworn on 12 August 2020 ("Peter Kwee's AEIC"), at para 25(e); 1 AB 140–143 (at 142).
[5] Peter Kwee's AEIC, at para 47.
[6] Exhibit D13.
[7] Exhibit D15.
[8] Exhibit P4.
[9] 1 AB 167.
[10] 1 AB 173–174.
[11] 1 AB 168–172.
[12] 1 AB 177–179.
[13] See Exhibit D14.
[14] Exhibit D14.
[15] Peter Kwee's AEIC, at para 63.
[16] 1 AB 317–332.
[17] 1 AB 318.
[18] 1 AB 333–334.
[19] 1 AB 333–334.
[20] 1 AB 335–336.
[21] 1 AB 339–351.
[22] 1 AB 365–367.
[23] 1 AB 368–369.
[24] 1 AB 351.
[25] 1 AB 372.
[26] 1 AB 373.
[27] 1 AB 378.
[28] 1 AB 395.
[29] Peter Kwee's AEIC, at para 84.
[30] Peter Kwee's AEIC, at para 85.
[31] 1 AB 397–404, 414 and 578–585; 2 AB 184–186.
[32] Peter Kwee's AEIC, at para 86.
[33] 1 AB 397
[34] 1 AB 578.
[35] Defendants' Bundle of Confidential Documents, at tab 2; Exhibit D17.
[36] Peter Kwee's AEIC, at paras 89–91.
[37] Peter Kwee's AEIC, at para 92.
[38] 1 AB 408–411.
[39] 1 AB 412.
[40] 1 AB 71.
[41] 1 AB 71.
[42] 2 AB 177–178.
[43] 2 AB 179–183.
[44] 2 AB 667–672.
[45] Defendants' Bundle of Confidential Documents, at tab 2.

Version No 1: 23 Jul 2021 (14:26 hrs)

[46] NE 30 November 2020, at 90:1–14.
[47] Peter Kwee's Supplementary Affidavit of Evidence-in-Chief sworn on 19 October 2020 ("Peter Kwee's SAEIC"), at para 15.
[48] Peter Kwee's SAEIC, at para 14.
[49] Peter Kwee's 2nd SAEIC, at para 10.
[50] NE, 30 November 2020, at 141:8–25.
[51] 1st and 2nd Defendants' Defence (Amendment No 2) ("Defence (No 2)"), at para 5.
[52] SOC (No 4), at paras 57(a) and (b).
[53] SOC (No 4), at paras 25 and 30.
[54] SOC (No 4), at para 31(a).
[55] SOC (No 4), at paras 57(d)(1) and (4).
[56] 2 AB 177.
[57] See, also, NE 4 December 2020, at 42:110–44:16.
[58] 1 AB 340, at cl 1(3).
[59] 1 AB 349, at cl 18.
[60] Reply (Amendment No 2), at para 23.
[61] NE, 4 December 2020, at 51:17–19.
[62] NE, 4 December 2020, at 55:14–56:4.
[63] NE, 30 November 2020, at 68:22–69:6.
[64] NE, 4 December 2020, at 43:10–25.
[65] SOC (No 4), at para 58.
[66] SOC (No 4), at para 59(a).
[67] SOC (No 4), at para 58 read with para 56.
[68] NE, 4 December 2020, at 64:2–9.
[69] SOC (No 4), at paras 59(b) and (c).
[70] SOC (No 4), at para 61.
[71] SOC (No 4), at para 62.
[72] SOC (No 4), at para 63.
[73] SOC (No 4), at para 62 read with para 23.
[74] 1 AB 26.
[75] NE, 4 December 2020, at 77:11–15.
[76] NE, 4 December 2020, at 9:2–4.
[77] <https://spring.ura.gov.sg/lad/ore/login/map_ccr.pdf> (accessed 25 June 2021).
[78] 1 AB 31–42 (cl 8(b) on p 36 and cl 5(b) on p 42).
[79] SOC (No 4), at para 64(b).
[80] Govinda Singh's Report dated 28 August 2020, exhibited as GS-1, Tab 1, in Govinda Singh's AEIC affirmed on 2 September 2020 ("Govinda's Report"), at pp 18 and 24.
[81] Choo Peck Ling's Report dated 4 September 2020, exhibited as APL-1, Tab 2, in Choo Peck Ling's AEIC sworn on 4 September 2020 ("Choo's Report"), at pp 6–13.
[82] Yak Chau Wei's Report dated 4 September 2020, exhibited as YCW-1, Tab 2, in Yak Chau Wei's AEIC affirmed on 4 September 2020 ("Yak's Report"), at p 27 (para 144).
[83] Choo's Report, at p 5 (para 13) and at p 15.
[84] Choo's Report, at pp 4–5 (para 11).
[85] Govinda's Report, at p 24.
[86] Yak's Report, at p 6 (para 31).
[87] Yak's Report, at p 16 (para 79).
[88] Yak's Report, at p 5 (para 21).
[89] Yak's Report, at p 9 (para 51).

Version No 1: 23 Jul 2021 (14:26 hrs)

90 Yak's Report, at pp 22–23 (paras 121–125).
91 Yak's Report, at pp 25–32 (paras 138–174).
92 Yak's Report, pp 29–30 (paras 159–162).
93 NE, 1 December 2020, at 54:15–21.
94 Govinda's Report, at p 16 (sub-para (c)).
95 Yak's Report, p 27 (paras 144–146).
96 Yak's Report, at p 23 (para 125).
97 1 AB 65.
98 Yak's Report, at p 32 (para 175).
99 Yak's Report, at pp 35–36 (paras 192–195).
100 NE, 25 November 2020, at 155:14–16.
101 Choo's Report, at p 5 (paras 13–14).
102 Govinda's Report, at p 1 (para 1.2).
103 Govinda's Report, at p 21 (para 4.2).
104 Govinda's Report, at p 22 (para 4.3).
105 Govinda's Report, at pp 23–27 (para 4.4).
106 Govinda's Report, at p 28 (para 4.5).
107 SOC (No 4), at para 64(b).
108 Govinda's Report, at p 12.
109 NE, 25 November 2020, at 161:13–19 and 162:5–7.
110 NE, 25 November 2020, at 161:23–25.
111 NE, 25 November 2020, at 162:11–12.
112 Yak's Reply Report dated 5 October 2020, exhibited as YCW-2 in Yak's Supplementary Affidavit of Evidence-in-Chief affirmed on 6 October 2020 ("Yak's Reply Report"), at p 5 (para 19a).
113 Govinda's Report, at p 21 (para 4.2).
114 Choo's Report, at pp 6–8.
115 Yak's Report, at p 30 (para 162).
116 Govinda's Report, at p 21 (para 4.2).
117 Yak's Reply Report, at p 5 (para 19b).
118 Govinda's Report, at pp 16 and 18.
119 Choo's Report, at p 3 (para 7).
120 NE, 25 November 2020, at 140:17–141:5.
121 NE, 4 December 2020, at 70:4–7.
122 NE, 4 December 2020, at 69:3–11.

Version No 1: 23 Jul 2021 (14:26 hrs)