

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

[2021] SGHC 193

Suit No 549 of 2019

Between

Fuji Xerox Singapore Pte Ltd

... Plaintiff

And

- (1) Mazzy Creations Pte Ltd
- (2) Alice Chua Tien Jin
- (3) Chua Koon Kian

... Defendants

JUDGMENT

[Civil Procedure] — [Costs] — [Indemnity costs based on contract]
[Civil Procedure] — [Damages] — [Interest] — [Contractual interest]
[Civil Procedure] — [Pleadings] — [Whether particulars of representations
sufficiently pleaded]
[Contract] — [Misrepresentation] — [Damages]
[Contract] — [Misrepresentation] — [Fraudulent]
[Contract] — [Misrepresentation] — [Rescission] — [Affirmation]
[Contract] — [Misrepresentation] — [Whether sufficient particulars pleaded]
[Contract] — [Misrepresentation] — [Silence]
[Contract] — [Misrepresentation Act] — [Section 2(1)]
[Contract] — [Remedies] — [Mitigation of damage]
[Credit and Security] — [Guarantees and indemnities]
[Debt and Recovery] — [Right of set-off]

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Fuji Xerox Singapore Pte Ltd
v
Mazzy Creations Pte Ltd and others

[2021] SGHC 193

General Division of the High Court — Suit No 549 of 2019
Tan Siong Thye J
20–22 April, 9 July 2021

16 August 2021

Judgment reserved.

Tan Siong Thye J:

Introduction

1 The plaintiff, Fuji Xerox Singapore Pte Ltd (“Fuji Xerox”), commenced this Suit against the first defendant, Mazzy Creations Pte Ltd (“Mazzy Creations”) to claim arrears of rental and other charges which are due under three agreements it entered into with Mazzy Creations in 2015. Fuji Xerox also claims from the second defendant, Ms Alice Chua Tien Jin (“Ms Chua”), and the third defendant, Mr Chua Koon Kian (“Mr Chua”), as guarantors for Mazzy Creations. In addition, Fuji Xerox claims from Mazzy Creations for goods that it sold and delivered. I shall refer to Ms Chua, Mr Chua and Mazzy Creations by their names or collectively as “the defendants”.

2 On the other hand, the defendants plead that they were induced to enter into the relevant agreements as a result of Fuji Xerox’s misrepresentations. The

defendants counterclaim for rescission of these agreements and for damages for misrepresentation. In addition, Mazzy Creations counterclaims for printing charges arising from several printing jobs it undertook for Fuji Xerox.

Background to the dispute

The parties

3 Fuji Xerox is a Singapore-incorporated company in the business of renting and servicing office machinery and equipment.¹

4 Mazzy Creations is in the printing business.² Ms Chua and Mr Chua are siblings³ and they are partners in M/s Scanagraphic (“Scanagraphic”).⁴ They are also the only shareholders and directors of Mazzy Creations⁵ and Colourcube Pte Ltd (“Colourcube”).⁶ Ms Chua is the managing director of Mazzy Creations.⁷ At all material times, Ms Chua was running both Scanagraphic and Mazzy Creations on her own as Mr Chua has been retired for almost 15 years.⁸

¹ Plaintiff’s Statement of Claim (Amendment No 1) (“PSOC”) at para 1.

² Affidavit of Evidence-in-Chief of Alice Chua Tien Jin (“ACTJ”) at para 2.

³ ACTJ at para 2.

⁴ Defendants’ Defence and Counterclaim (Amendment No 1) (“DDC”) at para 2(ii).

⁵ DDC at para 2(ii); Transcript (21 April 2021), p 111 at lines 24–26.

⁶ Transcript (20 April 2021), p 13, lines 1–3 and 13–20.

⁷ Transcript (21 April 2021), p 112 at line 27.

⁸ ACTJ at para 2.

5 Over the years, Ms Chua and Mr Chua entered into various rental and service agreements with Fuji Xerox, first through Scanagraphic (in 2000, 2004, 2008, 2011 and 2014)⁹ and later through Mazzy Creations (in 2012 and 2015).¹⁰

The 2012 agreements

6 From 2012 onwards, the defendants’ dealings with Fuji Xerox took place through direct conversations, discussions and negotiations between Ms Chua and Mr Andrew Lim Bee Cheng (“Mr Lim”).¹¹ At the material time, Mr Lim was employed by Fuji Xerox as one of its customer account managers.¹² He had dealings with Ms Chua since 2000¹³ and handled Mazzy Creations’ account from 2012 to 2015.¹⁴

7 In July 2012, Fuji Xerox and Mazzy Creations entered into three agreements (collectively, the “2012 Agreements”):¹⁵

(a) Rental Agreement L00023828, under which Mazzy Creations rented a “Color 1000 Press” photocopier with an attached “Fiery Ex Printer Server” and a “FX4127CP” black and white printer from Fuji

⁹ Statement of Agreed Facts (“ASOF”) at para 1.

¹⁰ ASOF at para 2.

¹¹ DDC at paras 3(i) and 3(ii); Transcript (20 April 2021), p 20 at lines 27–30.

¹² Plaintiff’s Reply and Defence to Counterclaim (Amendment No 1) (“PRDC”) at paras 3(a) and 3(b); Affidavit of Evidence-in-Chief of Lim Bee Cheng (“ALBC”) at para 1.

¹³ ACTJ at para 7; Defendant’s Written Submissions (“DWS”) at para 19.

¹⁴ ALBC at para 4.

¹⁵ DDC at para 4.

Xerox for a minimum period of 60 months commencing on 1 July 2012 (the “2012 Rental Agreement”);¹⁶

(b) Service Agreement F00060952, under which Fuji Xerox agreed to service the “FX4127CP” black and white printer for a period of 60 months;¹⁷ and

(c) Service Agreement F00060953, under which Fuji Xerox agreed to service the “Color 1000 Press” photocopier with its attached “Fiery Ex Printer Server” for a period of 60 months.¹⁸

8 Under the 2012 Rental Agreement, Mazzy Creations was required to make an initial payment of \$80,000 and monthly period payments of \$10,367 for each of the 60 months of the minimum period. The total amount payable by Mazzy Creations under the 2012 Rental Agreement was, therefore, \$702,020. Clauses 5.1 and 7.3 of the 2012 Rental Agreement are of particular relevance in these proceedings:¹⁹

5.1 Customer undertakes to pay (a) the Initial Payment; (b) *all Period Payments for the whole Minimum Period*; and (c) the Final Payment. ... If this Agreement terminates before the end of the Minimum Period, *all Period Payments for the balance of the Minimum Period shall become due and payable immediately in accordance with Clause 7.3.* ...

7.3 Upon termination pursuant to Clause 7.2 or otherwise howsoever arising, [Fuji Xerox] is entitled to declare:

a) ... all sums and payments to become due under this Agreement for the balance of the Minimum Period ...

¹⁶ Agreed Bundle of Documents (“AB”), Vol 1 at p 1.

¹⁷ AB, Vol 2 at pp 488–489.

¹⁸ AB, Vol 2 at pp 490–491.

¹⁹ AB, Vol 1 at pp 1–2.

[emphasis added]

9 Thus, pursuant to cl 5.1 of the 2012 Rental Agreement, Mazzy Creations was required to pay Fuji Xerox \$10,367 each month for 60 months from July 2012 to July 2017. If the 2012 Rental Agreement was terminated before these 60 months had lapsed, Mazzy Creations would be liable to pay the period payments for all the remaining months.

10 As part of the value-added services which Fuji Xerox sought to provide to its customers, Fuji Xerox engaged Alliance Trust Pte Ltd (“Alliance Trust”) to provide complimentary consultancy services to Mazzy Creations in 2012.²⁰ Alliance Trust was to assist Mazzy Creations to submit its claims for cash payouts under the Productivity and Innovation Credit Scheme (the “PIC Scheme”) administered by the Inland Revenue Authority of Singapore (“IRAS”) for one financial year, from the Year of Assessment 2012 to the Year of Assessment 2013. It is not disputed that Alliance Trust assisted Mazzy Creations in the submissions of its claims for cash payouts under the PIC Scheme (the “PIC Claims”) to IRAS in 2012.²¹

11 Although the consultancy agreement dated 20 June 2012 (the “Consultancy Agreement”) was signed between Alliance Trust and Colourcube,²² it is not disputed that Alliance Trust rendered these consultancy services to Mazzy Creations instead of Colourcube.²³ The original parties to the 2012 Rental Agreement were Fuji Xerox and Colourcube. Later, the 2012

²⁰ Transcript (20 April 2021), p 13 at lines 21–23 and p 65 at lines 1–9.

²¹ ASOF at para 10.

²² AB, Vol 4 at p 886.

²³ Transcript (21 April 2021), p 106 at lines 24–32 and p 107 at lines 15–24; Transcript (22 April 2021), p 7 at lines 6–8; DWS at paras 18 and 43.

Rental Agreement was assigned from Colourcube to Mazzy Creations.²⁴ Ms Chua clarified that Alliance Trust’s appointment *vis-à-vis* Mazzy Creations was, therefore, governed by the Consultancy Agreement.²⁵

The 2015 agreements

12 Sometime in early 2015, Mr Lim introduced Ms Chua to the latest model of Fuji Xerox’s printers, namely the “Color 1000i Press” photocopier. This was an upgrade of the “Color 1000 Press” photocopier that Mazzy Creations had previously rented under the 2012 Rental Agreement.²⁶

13 Subsequently, on 10 March 2015, Fuji Xerox and Mazzy Creations entered into three agreements (collectively, the “2015 Agreements”):

(a) Rental Agreement L00030096, under which Mazzy Creations rented the “Color 1000i Press” photocopier and “Fiery Ex Print Server” from Fuji Xerox for a minimum period of 60 months commencing on 1 April 2015 (the “2015 Rental Agreement”);²⁷

(b) Service Agreement F00086569, under which Mazzy Creations purchased materials and supplies from Fuji Xerox and Fuji Xerox agreed to provide maintenance for the “Color 1000i Press” photocopier and “Fiery Ex Print Server” (the “2015 Service Agreement”);²⁸ and

²⁴ AB, Vol 1 at p 1 (last line on the page); DWS at para 18.

²⁵ Transcript (22 April 2021), p 7 at lines 16–32.

²⁶ ACTJ at para 37; ALBC at para 8; DDC at para 6.

²⁷ AB, Vol 1 at pp 5–6; PSOC at para 2; ASOF at para 3(a); Plaintiff’s Written Submissions (“PWS”) at para 1(a).

²⁸ AB, Vol 1 at pp 7–8; PSOC at para 14; ASOF at para 3(b); PWS at para 1(b).

(c) Rental and Service Agreement R00005227, under which Mazzy Creations rented the “FX4127CP” printer from Fuji Xerox for a period of 36 months commencing on 1 April 2015 (the “2015 Rental and Service Agreement”).²⁹

The 2015 Rental Agreement, the 2015 Service Agreement and the 2015 Rental and Service Agreement are annexed to this judgment as Annex A, Annex B and Annex C respectively.

14 Under the 2015 Rental Agreement, Mazzy Creations was required to pay monthly period payments of \$10,367 for each of the 60 months. However, Mazzy Creations was not required to make any initial payment. The total amount payable by Mazzy Creations under the 2015 Rental Agreement was \$622,020.³⁰ The 2015 Rental Agreement terminated and superseded the 2012 Rental Agreement before the 60-month minimum period under the 2012 Rental Agreement had expired.³¹

15 On 10 March 2015, Ms Chua and Mr Chua also executed a guarantee and indemnity to guarantee the payment of all sums due from Mazzy Creations to Fuji Xerox under the 2015 Agreements (the “Guarantee”).³²

The rollover and Mazzy Creations’ claims under the PIC Scheme

16 At this point, it is necessary to briefly outline IRAS’s policy regarding claims under the PIC Scheme. Under the PIC Scheme, businesses are offered a

²⁹ AB, Vol 1 at pp 9–10; PSOC at para 20; ASOF at para 3(c); PWS at para 1(c).

³⁰ AB, Vol 1 at pp 5–6.

³¹ ALBC at para 8(c); Transcript (21 April 2021), p 13 at lines 17–19 and p 26 at lines 2–5.

³² AB, Vol 1 at pp 11–12; PSOC at para 26; ASOF at para 6.

cash payout of up to 60% of the cost of acquiring or leasing selected information technology and automation equipment, capped at a maximum of \$100,000 *per* year.³³ However, the amount claimed under the PIC Scheme must exclude any unpaid sums carried forward from a previous lease agreement (known as a “rollover”).³⁴ Further, businesses which are found to have over-claimed for benefits under the PIC Scheme may face a penalty for the cash payouts that were overpaid or would have been overpaid.³⁵

17 The types of colour photocopiers rented by Mazzy Creations from Fuji Xerox under the 2012 Agreements and 2015 Agreements qualify for cash payouts under the PIC Scheme.³⁶ Following the execution of the 2015 Agreements, Mazzy Creations submitted periodic PIC Claims to IRAS in respect of the monthly period payments for the photocopier it had rented from Fuji Xerox.³⁷ These PIC Claims were supported by the tax invoices issued by Fuji Xerox under the 2015 Agreements.³⁸ At this point, it should be noted that Alliance Trust did not provide any consultancy services to Mazzy Creations in relation to the 2015 Agreements.³⁹

18 However, sometime in mid-2016 when Ms Chua attended a Hewlett-Packard open house, she discovered that the amounts stated in Fuji Xerox’s tax invoices included rollovers. Ms Chua then sought an explanation from Mr Lim

³³ ACTJ at para 12 and pp 189 and 203.

³⁴ ACTJ at pp 206–207.

³⁵ ACTJ at p 207.

³⁶ Transcript (20 April 2021), p 46 at lines 16–19.

³⁷ ASOF at para 9.

³⁸ DDC at para 9(v).

³⁹ Transcript (22 April 2021), p 90 at lines 24–32 and p 91 at lines 1–6.

as well as from Fuji Xerox's general manager and sales manager, but they neither denied nor confirmed the rollovers and offered no explanation. Thereafter, the defendants informed Fuji Xerox that unless it disclosed its recommended retail price or the reasonable retail price it offered to all its regular customers, the defendants would not continue to pay Fuji Xerox.⁴⁰

19 In an e-mail dated 27 October 2017, Fuji Xerox's chief financial officer offered to reduce Mazzy Creations' outstanding payments by \$36,202. According to Fuji Xerox, this offer of a reduction was made purely on a goodwill basis.⁴¹ However, the defendants rejected this offer and maintained that they would not pay Fuji Xerox until it disclosed its recommended retail price or the reasonable price it offered to all its regular customers.⁴²

20 Subsequently, Ms Chua wrote a letter to IRAS dated 16 January 2020 to report that Mazzy Creations had erroneously claimed cash payouts under the PIC Scheme in its submissions from 2012 to 2018, as these claims included rollovers. She indicated that she would only be able to submit the proper Disclosure of Error form when the exact amounts of rollovers were disclosed by Fuji Xerox.⁴³ In its letter dated 21 August 2020, IRAS informed Mazzy Creations that it would have to claw back all the cash payouts that Mazzy Creations had previously received under the PIC Scheme relating to the machines rented from Fuji Xerox. These cash payouts amounted to \$349,513.80.⁴⁴

⁴⁰ DDC at para 11.

⁴¹ PRDC at para 9(d).

⁴² DDC at para 11(ix).

⁴³ AB, Vol 6 at p 1650.

⁴⁴ AB, Vol 6 at pp 1660–1661.

21 The defendants only found out the actual amount of the rollover in the course of this Suit,⁴⁵ when Fuji Xerox disclosed a table which indicated that a rollover of \$276,640 from the 2012 Rental Agreement had been included within the rental amount of \$622,020 payable under the 2015 Rental Agreement.⁴⁶ The amount of this rollover was not expressly disclosed in the 2015 Rental Agreement, which stated only that the *total* amount payable thereunder was \$622,020. At the relevant time, Fuji Xerox did not have any policy of disclosing a detailed breakdown of the amounts payable under its rental agreements to its customers as this was regarded as the company's confidential internal information.⁴⁷ However, Ms Toh Sze Ben ("Ms Toh"), the senior manager of Fuji Xerox's Finance Management and Operations team,⁴⁸ explained that Fuji Xerox would have disclosed the amount of the rollover to Ms Chua if she had requested this information for the purpose of submitting Mazzy Creations' PIC Claims.⁴⁹ Indeed, it was possible for the defendants to calculate the amount of the rollover themselves by multiplying the number of remaining months of the minimum period under the 2012 Rental Agreement by the monthly period payment of \$10,367.⁵⁰ However, the defendants never asked Fuji Xerox for the amounts of any rollover contained in each invoice submitted by Mazzy Creations to IRAS in support of its PIC Claims.⁵¹ Although Ms Chua asked for the rollover amounts in her e-mails to Fuji Xerox dated 16 May 2018 and

⁴⁵ Transcript (22 April 2021), p 79 at lines 26–32 and p 80 at lines 1–21.

⁴⁶ AB, Vol 1 at p 116.

⁴⁷ Affidavit of Evidence-in-Chief of Toh Sze Ben ("TSB") at para 40(g).

⁴⁸ TSB at para 1; Transcript (21 April 2021), p 6 at lines 16–17.

⁴⁹ Transcript (21 April 2021), p 85 at lines 23–31, p 86 at lines 10–13 and p 87 at lines 5–11; PWS at para 31(k).

⁵⁰ Transcript (21 April 2021), p 88 at lines 9–13, 17–20 and 29–30.

⁵¹ Transcript (22 April 2021), p 53 at lines 29–32.

18 May 2018, she did not explain that this information was needed for the purposes of Mazzy Creations’ PIC Claims. Instead, in these e-mails, Ms Chua made allegations that she had been “cheated”; that Fuji Xerox’s staff had misled its customers; and that Fuji Xerox had unethically sought to “create unfair competition” among its customers, in respect of which the “relevant authorities should be alerted”.⁵²

22 Since the 2015 Agreements were entered into, there have been two developments in Fuji Xerox’s internal policies relating to rollovers.

23 First, an internal investigation report dated 10 June 2017 was produced by an independent investigation committee established by Fujifilm Holdings Corporation in Japan (the “Fujifilm internal investigation report”). The investigation was conducted as Fuji Xerox New Zealand Limited and Fuji Xerox Australia had adopted certain “inappropriate accounting practices” regarding lease transactions. One concern was the practice of contract rollovers whereby “[l]ease contracts were renewed before expiration and then recorded as a new sale without reversing the past sale”.⁵³ Fujifilm Holdings Corporation is a joint owner of Fuji Xerox Co Ltd, which owns Fuji Xerox Asia Pacific Pte Ltd, which in turn owns Fuji Xerox (see *Wong Sung Boon v Fuji Xerox Singapore Pte Ltd and another* [2021] SGHC 24 at [2]). The accounting practice adopted by Fuji Xerox (the plaintiff in the present Suit) was correct as the rollover was not recorded as a new rental price unlike the accounting practice of Fuji Xerox New Zealand Limited and Fuji Xerox Australia.⁵⁴

⁵² AB, Vol 2 at pp 544–547.

⁵³ AB, Vol 2 at p 292.

⁵⁴ Transcript (21 April 2021), p 85 at lines 2–14.

24 The Fujifilm internal investigation was not initiated as a result of this case but because of the incorrect accounting practice in New Zealand and Australia.

25 Secondly, Fuji Xerox’s standard Rental Agreement form now specifies the “[a]mount outstanding from other agreements refinanced by [Fuji Xerox]” alongside information on the initial payment, the period payments and the total amount payable upon execution of the rental agreement.⁵⁵ In other words, the amount of any rollover from previous rental agreements is now expressly stated in the Rental Agreement form. This new form has been used by Fuji Xerox since December 2018.⁵⁶ Ms Toh explained that these changes to the Rental Agreement form were introduced as part of Fuji Xerox’s “internal process for improvement”, having regard to the practice in other countries.⁵⁷ She said that these changes had “nothing to do” with the Fujifilm internal investigation report.⁵⁸

The parties’ cases

The plaintiff’s case

26 From May 2015 to February 2019, Fuji Xerox issued invoices to Mazzy Creations for sums due under the 2015 Agreements and for supplies sold and delivered.⁵⁹ Fuji Xerox claims payment of unpaid rental arrears of \$465,892.98

⁵⁵ ACTJ at p 159.

⁵⁶ Transcript (21 April 2021), p 15 at lines 25–29.

⁵⁷ Transcript (21 April 2021), p 16 at lines 1–2 and p 17 at lines 1–10.

⁵⁸ Transcript (21 April 2021), p 18 at lines 10–12.

⁵⁹ ASOF at para 4; AB, Vol 1 at pp 117–206, 218–219 and 222–226.

under the 2015 Rental Agreement,⁶⁰ maintenance charges of \$20,784.07 under the 2015 Service Agreement⁶¹ and charges of \$1,424.64 under the 2015 Rental and Service Agreement.⁶² Further, Fuji Xerox claims late payment interest of \$64,493.50 (as at 2 January 2019) from Mazzy Creations under the 2015 Agreements.⁶³ In the alternative, Fuji Xerox claims that Mazzy Creations' breach of the 2015 Rental Agreement caused it to suffer loss and damage, in that it lost the benefit of the 2015 Rental Agreement and the rental revenue that it would otherwise have earned thereunder.⁶⁴ Fuji Xerox also claims a sum of \$909.50 for goods sold and delivered to Mazzy Creations, as reflected in Fuji Xerox's invoice to Mazzy Creations dated 28 September 2017.⁶⁵

27 Fuji Xerox's claim against Ms Chua and Mr Chua is pursuant to the Guarantee. Under the Guarantee, Ms Chua and Mr Chua guaranteed the payment of all sums due from Mazzy Creations to Fuji Xerox under the 2015 Agreements.⁶⁶

The alleged misrepresentations

28 With regard to the misrepresentations alleged by the defendants, Fuji Xerox denies that it or Mr Lim ever made any such misrepresentations.⁶⁷ According to Fuji Xerox, Mr Lim had merely informed Ms Chua (acting on

⁶⁰ PSOC at para 12; PWS at para 3(a).

⁶¹ PSOC at para 19; PWS at para 3(b).

⁶² PSOC at para 22; PWS at para 3(c); ASOF at para 5.

⁶³ PSOC at para 25; PWS at para 3(d).

⁶⁴ PSOC at para 13.

⁶⁵ PSOC at para 23; ASOF at para 5; PWS at para 4; AB, Vol 1 at p 206.

⁶⁶ PWS at paras 6–8.

⁶⁷ PWS at para 17.

behalf of Mazzy Creations) that the monthly rental payments under the 2015 Rental Agreement would remain the same as the monthly rental payments under the 2012 Rental Agreement.⁶⁸ In particular, Fuji Xerox denies that it or Mr Lim had assured Mazzy Creations that part of the rental and service charges payable under the 2015 Agreements could be recovered under the PIC Scheme. At all material times, claims under the PIC Scheme were subject to IRAS's approval based on Mazzy Creations' eligibility.⁶⁹ Fuji Xerox also submits that the defendants have failed to show that Mr Lim acted fraudulently.⁷⁰

29 Further, Fuji Xerox denies that it was aware of or assisted Mazzy Creations in submitting its periodic PIC Claims supported by Fuji Xerox's tax invoices. If these PIC Claims were in fact made by Mazzy Creations, they were made on Mazzy Creations' own accord and at its own discretion.⁷¹ In any event, since the defendants had appointed Alliance Trust to assist with Mazzy Creations' PIC Claims in 2012, the defendants must have relied on the advice of Alliance Trust in their submission of Mazzy Creations' PIC Claims to IRAS.⁷²

30 In addition, Fuji Xerox contends that the defendants did not rely on any representations made by Mr Lim when Mazzy Creations entered into the 2015 Agreements. On the contrary, this was an arm's length transaction entered into between two independent business entities.⁷³

⁶⁸ PRDC at para 6.

⁶⁹ PRDC at para 16.

⁷⁰ PWS at para 41; Plaintiff's Reply Submissions ("PRS") at para 17.

⁷¹ PRDC at paras 3(c)–3(f) and 16.

⁷² Plaintiff's Opening Statement at para 26.

⁷³ PRDC at para 8; Plaintiff's Opening Statement at para 25.

The printing services provided by Mazzy Creations

31 It is undisputed that, on various dates and in the course of the dealings between the parties, Mazzy Creations provided printing services to Fuji Xerox at the latter's request. The charges for these printing services amounted to \$93,109.26.⁷⁴

32 Fuji Xerox argues that these charges have been validly set off, paid or settled in full, but otherwise does not dispute this counterclaim.⁷⁵ In particular, Fuji Xerox avers that it issued credit notes to Mazzy Creations to set off these charges against the prior amounts owed to it by Mazzy Creations. The amounts claimed in its Statement of Claim are the balance amounts due and owing from Mazzy Creations after taking into account these credit notes.⁷⁶

The defendants' case

33 It is not disputed that Mazzy Creations defaulted in the payment of rental arrears of \$465,892.98 under the 2015 Rental Agreement,⁷⁷ maintenance charges of \$20,784.07 under the 2015 Service Agreement⁷⁸ and charges of \$1,424.64 under the 2015 Rental and Service Agreement (as at 31 January 2019).⁷⁹ It is also not disputed that Mazzy Creations owes Fuji Xerox a sum of \$909.50 for goods that Fuji Xerox sold and delivered to Mazzy Creations at its

⁷⁴ ASOF at para 7; DDC at para 18; DWS at para 80.

⁷⁵ ASOF at para 8; Plaintiff's Opening Statement at para 19; PWS at paras 62–63.

⁷⁶ PRDC at para 18; Plaintiff's Opening Statement at para 13.

⁷⁷ PSOC at para 12.

⁷⁸ PSOC at para 19.

⁷⁹ PSOC at para 22; ASOF at para 5.

request.⁸⁰ However, the defendants contend that they were induced to enter into the 2015 Agreements by Fuji Xerox's fraudulent misrepresentations.

34 Further, the defendants counterclaim against Fuji Xerox for:⁸¹

- (a) a declaration that the 2015 Agreements have been validly rescinded, or alternatively rescission of the 2015 Agreements;
- (b) damages to be assessed based on the difference between (i) Fuji Xerox's recommended retail prices or reasonable prices for all items of equipment rented to Mazzy Creations under the 2015 Agreements, without any rollovers from the 2012 Agreements, and (ii) the rental amounts stated in the 2015 Agreements;
- (c) damages for misrepresentation pursuant to s 2 of the Misrepresentation Act (Cap 390);
- (d) charges for the printing services provided by Mazzy Creations to Fuji Xerox (amounting to \$93,109.26), which the defendants claim that Fuji Xerox has refused or neglected to settle despite repeated demands;⁸² and
- (e) any penalties that IRAS may impose in relation to Mazzy Creations' erroneous claims under the PIC Scheme or Mazzy Creations' false declaration that the tax invoices it had submitted to IRAS did not contain any rollovers from the 2012 Agreements.

⁸⁰ PSOC at para 23; ASOF at para 5.

⁸¹ DDC at paras 13, 17 and 19 and pp 61–62.

⁸² DDC at para 20 and p 62 at para (i).

35 In the event that Mazzy Creations is found to be liable to Fuji Xerox under all or any of the 2015 Agreements, the defendants argue that the amounts due to Fuji Xerox under the unpaid invoices should be set off against the counterclaims outlined at [34(d)]–[34(e)] above.⁸³

The alleged misrepresentations

36 The defendants argue that Fuji Xerox cannot rely on the 2015 Agreements to claim payment of the outstanding sums due thereunder because they were induced to enter into the 2015 Agreements by Fuji Xerox’s misrepresentations.⁸⁴ In addition, the defendants counterclaim against Fuji Xerox for rescission of the 2015 Agreements and damages for misrepresentation.⁸⁵

37 At para 7 of their Defence and Counterclaim, under the heading “The Representations”, the defendants pleaded that three representations were made to Ms Chua by Mr Lim in their discussions prior to the 2015 Agreements:

- (a) First, that the total rental amount offered in the 2015 Agreements was Fuji Xerox’s recommended retail price or was a reasonable price offered by Fuji Xerox to all its customers (the “Rental Amount Representation”).⁸⁶ According to the defendants, this representation was false because the total rental amount stated in the 2015 Rental

⁸³ DDC at para 13.

⁸⁴ DDC at paras 3(ii), 3(iv) and 12(i).

⁸⁵ DDC at paras 17 and p 61 at paras (1)–(4).

⁸⁶ DDC at para 7(i).

Agreement included a rollover of Mazzy Creations' liabilities under the 2012 Rental Agreement.⁸⁷

(b) Second, that no deposit payment was required under the 2015 Agreements.⁸⁸

(c) Third, that Fuji Xerox would cap the monthly payments due under the 2015 Agreements to the same amount as the monthly payments payable under the 2012 Agreements.⁸⁹

38 The defendants accept that the second and third pleaded representations (at [37(b)] and [37(c)] above) were true.⁹⁰ Indeed, both Ms Chua and the defendants' counsel acknowledged that both of these representations were true⁹¹ and that these were not misrepresentations by Mr Lim, albeit that Mr Lim told Ms Chua that there was no initial payment (and not "deposit payment", which is refundable to the hiree, as pleaded). Therefore, I shall not consider these two representations in analysing the defendants' case based on misrepresentation. However, the Rental Amount Representation (at [37(a)] above) is vigorously contested and it is one of the pivotal issues in this case.

39 At the trial, the defendants also relied on two further alleged representations made to them by Fuji Xerox and/or Mr Lim but these were not clearly pleaded in the Defence and Counterclaim. Instead, these alleged

⁸⁷ DDC at para 11(i)–11(iii).

⁸⁸ DDC at para 7(ii).

⁸⁹ DDC at paras 7(ii)–7(iii).

⁹⁰ Transcript (21 April 2021), p 125 at lines 26–30 and p 126 at lines 3–5.

⁹¹ Transcript (21 April 2021), p 127 at lines 1–3; Transcript (21 April 2021), p 125 at lines 26–30 and p 126 at lines 1–5.

representations were mentioned under the headings “Past Dealings” and “The 2015 Representations were False”:

(a) First, the non-disclosure of the rollover from the 2012 Rental Agreement which was included in the total rental amount stated in the 2015 Rental Agreement. When Mazzy Creations signed the 2015 Agreements, Mr Lim did not mention that the total rental amount in the 2015 Rental Agreement included a rollover from the 2012 Rental Agreement.⁹² The defendants submit that the non-disclosure of this rollover amounted to the “wilful suppression of material facts”.⁹³ This allegation of misrepresentation by non-disclosure was the foundation of the defendants’ case at the trial and in their submissions.

(b) Second, that part of the costs of the rental and service charges payable under the 2015 Agreements could be recovered from IRAS under the PIC Scheme (the “PIC Representation”).⁹⁴ According to the defendants, this representation was false because IRAS does not permit claims to be made under the PIC Scheme in respect of any invoice amount that includes rollovers.⁹⁵

40 Acting on the faith of the representations, Mazzy Creations entered into the 2015 Agreements with Fuji Xerox.⁹⁶ According to the defendants, Mazzy Creations would not have entered into the 2015 Agreements if Mr Lim had told them that the rental amount in the 2015 Rental Agreement included a rollover.

⁹² DDC at paras 11(i)–11(iii).

⁹³ DWS at paras 3.1 and 3.3.

⁹⁴ DDC at para 3(iv).

⁹⁵ DDC at para 11(x).

⁹⁶ DDC at paras 9–10.

This is because the defendants were pleased with the performance of the “Color 1000 Press” photocopier which they had rented under the 2012 Rental Agreement.⁹⁷ Further or in the alternative, acting on the faith of these representations, Mazzy Creations submitted periodic PIC Claims to IRAS supported by Fuji Xerox’s tax invoices.⁹⁸ These PIC Claims were false in that the invoice amounts for the 2015 Rental Agreement included undisclosed penalties for the early termination of the 2012 Rental Agreement.⁹⁹

41 The defendants argue that Mr Lim was clearly motivated by the commission offered to him by Fuji Xerox in respect of the 2015 Agreements when he made these representations. They allege that Mr Lim made these representations knowing and intending that the defendants would rely upon them and thereby be induced to enter into the 2015 Agreements. The defendants further allege that Mr Lim made these representations fraudulently, knowing them to be false, or recklessly without caring whether they were true or false. In the alternative, even if Mr Lim did not make these representations fraudulently, the defendants argue that they are nevertheless entitled to damages under s 2 of the Misrepresentation Act.¹⁰⁰

Mitigation of loss

42 Further or in the alternative, the defendants argue that Fuji Xerox failed to take reasonable steps to mitigate its losses, such as by re-leasing the items rented to Mazzy Creations under the 2012 Agreements. When Mazzy Creations upgraded the “Color 1000 Press” photocopier (which it had rented under the

⁹⁷ DDC at para 11(iv); DWS at para 53.

⁹⁸ DWS at para 79.

⁹⁹ DDC at para 9(v).

¹⁰⁰ DDC at para 8.

2012 Rental Agreement) to the “Color 1000i Press” photocopier (under the 2015 Rental Agreement), Fuji Xerox took possession of the “Color 1000 Press” photocopier from the defendants’ office. Sometime in October 2017, Ms Chua discovered that Fuji Xerox had re-leased this photocopier to M/s Unique Colour Separation Pte Ltd (“Unique Colour Separation”).¹⁰¹ Notwithstanding this, Fuji Xerox did not offer any credit note to Mazzy Creations. On this basis, the defendants argue that Fuji Xerox failed in its duty to mitigate its losses.¹⁰²

Illegality and public policy

43 Initially, the defendants also asserted that the 2015 Agreements are unenforceable on the ground that undisclosed rollovers are illegal or against public policy.¹⁰³ However, this argument was abandoned at the trial and in the defendants’ submissions. During her cross-examination, Ms Chua agreed that the IRAS rules did not state that a rental agreement containing rollovers was illegal *per se*.¹⁰⁴ In my view, this concession was rightly made. It is, therefore, unnecessary for me to consider the defendants’ pleadings regarding illegality and the issue of whether the rental agreement is against public policy.

Set-off of the charges for printing services provided by Mazzy Creations

44 The defendants argue that Fuji Xerox has failed to sufficiently prove that the charges for the printing services provided by Mazzy Creations to Fuji Xerox were validly set off against the prior amounts owed by Mazzy Creations. The defendants contend that Fuji Xerox has not discharged its evidential burden of

¹⁰¹ DDC at para 11(viii).

¹⁰² DDC at para 15.

¹⁰³ DDC at para 12(iii).

¹⁰⁴ Transcript (22 April 2021), p 52 at lines 11–14.

showing that this set-off was effected since it has merely made broad reference to some credit notes being issued to them, without providing proof or details of how this alleged credit note set-off was carried out.¹⁰⁵

Issues to be determined

45 As I have noted at [33] above, there is no dispute regarding the quantum of the unpaid sums due from Mazzy Creations to Fuji Xerox under the 2015 Agreements. There is also no dispute regarding the quantum of charges for the printing services rendered by Mazzy Creations to Fuji Xerox (see [31] above). The main dispute in these proceedings arises in relation to the defendants' defence and counterclaim based on misrepresentation.

46 There are three main issues for my determination:

- (a) Have the defendants established any actionable misrepresentations made by Fuji Xerox's Mr Lim to the defendants, particularly Ms Chua?
- (b) Did Fuji Xerox fail to mitigate its losses?
- (c) Have the charges for the printing services provided by Mazzy Creations to Fuji Xerox been validly set off by Fuji Xerox?

47 I shall consider each of these issues in turn.

¹⁰⁵ Defendants' Opening Statement at para 21; DWS at paras 64–73; Defendants' Reply Submissions ("DRS") at paras 42–44.

My decision

Misrepresentation

The applicable law

48 Before I address the parties’ pleadings and submissions on the issue of misrepresentation, I wish to reiterate several principles governing the law on misrepresentation which are relevant in these proceedings.

49 It is axiomatic that to establish an operative misrepresentation, there must be a false statement of existing or past fact made by one party (*ie*, the representor) before or at the time of making the contract, to the other party (*ie*, the representee), and the representee must have been induced to enter into the contract (see *Lim Koon Park and another v Yap Jin Meng Bryan and another* [2013] 4 SLR 150 at [38]). Where fraudulent misrepresentation is alleged, five elements must be proved (*Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14], recently applied in *Ma Hongjin v Sim Eng Tong* [2021] SGHC 84 at [19]):¹⁰⁶

- (a) there must be a false representation of fact made by words or conduct;
- (b) the representation must be made with the intention that it should be acted upon by the representee (or by a class of persons which includes the representee);
- (c) it must be proved that the representee had acted upon the false statement;

¹⁰⁶ PWS at paras 11–12; DWS at para 9.

- (d) it must be proved that the representee suffered damage by so doing; and
- (e) the representation must be made with knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true.

50 It must be borne in mind that the defendants in this case bear the burden of establishing all five elements set out above (see *Trans-World (Aluminium) Ltd v Cornelder China (Singapore)* [2003] 3 SLR(R) 501 (“*Trans-World*”) at [29]). In particular, they must prove that the alleged representations consisted of something said or done by Fuji Xerox or Mr Lim and that this amounts in law to a misrepresentation. It should also be borne in mind that a relatively high standard of proof must be satisfied by the representee before a fraudulent misrepresentation can be established successfully against the representor. This is because the allegation of fraud is a grave one (see *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 (“*Wee Chiaw Sek Anna*”) at [30]).¹⁰⁷ Hence, cogent evidence is required before a court will be satisfied that fraud is established (see *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 at [161]).¹⁰⁸

51 In assessing whether an alleged representation was in fact made, the particular words used must be read in their context (*Wee Chiaw Sek Anna* at [36]).¹⁰⁹

¹⁰⁷ PWS at para 13(d).

¹⁰⁸ PWS at para 14.

¹⁰⁹ PWS at para 13(a).

52 Silence is rarely considered sufficient to amount to a representation as it is a form of passive conduct “inherently lacking the definitive quality of an active statement” (see *Broadley Construction Pte Ltd v Alacran Design Pte Ltd* [2018] 2 SLR 110 at [28]).¹¹⁰ However, it is possible for silence to amount to a representation in certain circumstances. This will generally require the alleged representor to have been under a positive duty to disclose the facts on which he remains silent. In those situations, the representor’s failure to disclose those relevant facts may render a statement previously made by the representor false or may itself constitute a false statement. Such a duty to disclose may arise out of the relationship of the parties and/or other circumstances in which the silence is maintained. As accepted in *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [196], albeit in the context of estoppel rather than misrepresentation, the circumstances in which a duty to disclose may be found should not be confined within a closed class such as contracts *uberrimae fidei* (utmost good faith) or fiduciary relationships. The silence should be assessed by reference to how a reasonable person would view the silence in the circumstances (see *Beyonics Asia Pacific Ltd and others v Goh Chan Peng and another* [2020] 4 SLR 215 at [179]–[181] and the authorities cited therein). Silence cannot of itself constitute wilful conduct designed to deceive or mislead. However, silence can constitute a misrepresentation when there is a “wilful suppression of material and important facts” (*Trans-World* at [66])¹¹¹ or where there is “active concealment of a particular state of affairs” (*Wee Chiaw Sek Anna* at [65]).¹¹²

¹¹⁰ PRS at para 6.

¹¹¹ DWS at para 10.

¹¹² DRS at para 6.

53 Where the representation is ambiguous, the representee must show in which of the possible senses he understood the ambiguous representation at the time it was made, and that the representation was false in that sense (see *Tradewaves Ltd and others v Standard Chartered Bank and another suit* [2017] SGHC 93 at [69]–[71]). The specific sense in which the representee understood the ambiguous representation must be pleaded by him (see *Goldrich Venture Pte Ltd and another v Halcyon Offshore Pte Ltd* [2015] 3 SLR 990 at [119]). Further, when considering whether the representation was made *fraudulently*, the question is what the representor subjectively intended the ambiguous statement to mean (*Wee Chiaw Sek Anna* at [41]).¹¹³

54 As a matter of procedure, O 18 r 12(1)(a) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) specifically enjoins the party alleging misrepresentation to include in his pleadings the particulars of any misrepresentation on which he relies. This is not a mere technicality. Pleadings serve the important function of giving the other party fair notice of the case which has to be met. Pleadings also define the issues which the court will have to decide on so as to resolve the matters in dispute between the parties (see *Lee Chee Wei v Tan Hor Peow Victor and others and another appeal* [2007] 3 SLR(R) 537 at [61]). In particular, the Court of Appeal emphasised in *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2020] 2 SLR 1256 (“*JTrust Asia*”) at [116] that allegations of fraud or misrepresentation must be pleaded with “utmost particularity”. Full particulars of the misrepresentation must be stated in the pleadings, including the nature and extent of the misrepresentation and whether the representation was made orally or in writing. Failure to adequately plead the particulars of an alleged

¹¹³ PWS at para 13(b).

misrepresentation may lead to an unsuccessful claim (*JTrust Asia* at [116]). The party alleging misrepresentation must plead a *positive representation of fact*. He cannot merely allege concealment and suppression of relevant information (see *EA Apartments Pte Ltd v Tan Bek and others* [2017] 3 SLR 559 (“*EA Apartments*”) at [29]).¹¹⁴

55 This is illustrated by the facts of *EA Apartments*. In that case, the plaintiff had entered into a tenancy agreement with the defendants with respect to two properties. The defendants had not disclosed the fact that two notices of fire safety offences had been served in respect of those properties. The plaintiff commenced proceedings against the defendants based on, *inter alia*, misrepresentation. Hoo Sheau Peng JC (as she then was) found that the plaintiff’s statement of claim was defective as it had failed to plead any positive representation of fact made by the defendants. Furthermore, although the plaintiff had alleged in its further and better particulars that a positive statement had been made to the effect that everything was in order and proper, the plaintiff had not stated how this positive statement was rendered untrue by the alleged wilful suppression of the fire safety notices (*EA Apartments* at [29] and [32]–[33]). *EA Apartments* was applied and distinguished in *JTrust Asia*. In *JTrust Asia*, the Court of Appeal found that the alleged misrepresentations were sufficiently pleaded and particularised in the plaintiff’s statement of claim. For example, in *JTrust Asia*, the plaintiff pleaded that by providing certain financial and accounting information, the defendant had represented that this financial and accounting information represented a true, fair and/or accurate state of its financial position, or alternatively had impliedly represented that there was a reasonable basis for such an opinion (*JTrust Asia* at [121]–[122]).

¹¹⁴ PRS at para 8.

56 With these principles in mind, I shall now consider each of the representations outlined at [37] above.

My findings

57 First, I wish to reiterate that there were three agreements comprising the 2015 Agreements. These were: the 2015 Rental Agreement for the “Color 1000i Press” photocopier; the 2015 Service Agreement for the sale of materials and supplies to Mazzy Creations as well as maintenance for the “Color 1000i Press photocopier and “Fiery Ex Print Server”; and the 2015 Rental and Service Agreement for the “FX4127CP” printer. The defendants in their Defence and Counterclaim pleaded that Fuji Xerox’s Mr Lim made misrepresentations that affected these three agreements. However, at the trial, the defendants’ case was focused solely on the effects of the misrepresentation on the 2015 Rental Agreement for the “Color 1000i Press” photocopier. In other words, the defendants do not challenge Fuji Xerox’s claims relating to the 2015 Service Agreement and the 2015 Rental and Service Agreement. Accordingly, I shall focus my findings on the 2015 Rental Agreement for the “Color 1000i Press” photocopier.

58 Further, out of the three representations expressly pleaded by the defendants, only the Rental Amount Representation is contested (see [38] above). Thus, my findings shall focus on the Rental Amount Representation allegedly made by Mr Lim of Fuji Xerox.

(1) The Rental Amount Representation

59 On the defendants’ pleaded case, the Rental Amount Representation is as follows:

That the total rental and/or price (“**price**”) offered for the equipment(s) particularized in the 2015 Agreements are the Plaintiffs’ [ie, Fuji Xerox’s] **recommended retail price** and/or reasonable price offered by the Plaintiffs to all their customers.

[emphasis in original]

60 It is undisputed that Mr Lim represented to Ms Chua that Mazzy Creations could lease a new and upgraded “Color 1000i Press” photocopier and “Fiery Ex Print Server”, without having to pay any initial payment, for the same monthly period payment of \$10,367 and for the same minimum period of 60 months as the 2012 Rental Agreement which Mazzy Creations had leased the older “Color 1000 Press” photocopier (see [14] above). Under the 2012 Rental Agreement, Mazzy Creations had to pay a total rental amount of \$702,020 (inclusive of an initial payment of \$80,000), while Mazzy Creations only had to pay a total rental amount of \$622,020 (without any initial payment) under the 2015 Rental Agreement. However, Fuji Xerox submits that the defendants have not proved on a balance of probabilities that Mr Lim made the Rental Amount Representation as pleaded by the defendants.¹¹⁵

61 I shall first consider whether the Rental Amount Representation was made by Mr Lim to the defendants, and then consider whether the Rental Amount Representation (if made) was a false representation of fact.

(A) WHETHER THE RENTAL AMOUNT REPRESENTATION WAS MADE BY MR LIM

62 To support its argument that the Rental Amount Representation was not made, Fuji Xerox relies on Mr Lim’s statement in his affidavit of evidence-in-chief that he did not mention anything about any recommended retail price or

¹¹⁵ PWS at para 20; Transcript (30 June 2021), p 4 at lines 20–26.

reasonable price to Ms Chua when they discussed the 2015 Agreements.¹¹⁶ Mr Lim also testified in court that he did not discuss the total amount payable under the 2015 Rental Agreement with Ms Chua.¹¹⁷ On the other hand, the defendants argue that Mr Lim's oral testimony is equivocal.¹¹⁸ They rely on Mr Lim's admission during his cross-examination that he did not recall the discussion he had with Ms Chua prior to the 2015 Agreements.¹¹⁹

63 The defendants, who allege the misrepresentation, bear the burden of proving that the Rental Amount Representation was in fact made by Mr Lim. From the evidence, I find that the defendants have not adduced sufficient evidence to prove on a balance of probabilities that Mr Lim made the Rental Amount Representation as pleaded by the defendants.

64 Nevertheless, even if the Rental Amount Representation was made, the defendants would also need to prove that it was a false representation of fact. It is to this issue that I now turn.

(B) WHETHER THE RENTAL AMOUNT REPRESENTATION WAS FALSE

65 In order to prove that the Rental Amount Representation was false, the defendants must show that the total rental amount offered under the 2015 Rental Agreement was Fuji Xerox's "recommended retail price" or a "reasonable price offered by [Fuji Xerox] to all their customers".

¹¹⁶ ALBC at paras 7 and 13; PWS at paras 17–18.

¹¹⁷ Transcript (20 April 2021), p 24 at lines 16–25; p 32 at lines 1–11; p 60 at lines 7–13.

¹¹⁸ DRS at para 12; Transcript (30 June 2021), p 60 at lines 16–25.

¹¹⁹ Transcript (20 April 2021), p 22 at lines 30–32.

66 However, the defendants' own evidence indicates that the total rental amount in the 2015 Rental Agreement was very reasonable. During her cross-examination, Ms Chua candidly agreed that the total rental amount in the 2015 Rental Agreement was very reasonable,¹²⁰ even if this amount was inclusive of the rollover from the 2012 Rental Agreement:¹²¹

Q I'm saying that, won't it be obvious that by having a lower price for an upgraded machine, the price is in effect reasonable.

A I think in my representations I did say he gave me a reasonable retail price, right?

...

Q My question is: Looking at the amount, it's lower, you are also getting a new machine. Don't you think that this deal, the price of 622 [*ie*, \$622,020], the final price, is actually very reasonable?

A That's what I agree, yes.

...

Q I just want to be clear that you heard my question correctly. My question is looking — you earlier said there is a price of 622,000 under the 2015 agreement, you said it was reasonable. My question then is: Even if this 622 [*ie*, \$622,020] contained the rollover of 276 [*ie*, \$276,640] from the 2015 – 2012 agreement, it would still be reasonable and your answer is yes, I confirm that?

A Yes.

67 Indeed, the 2015 Agreement was without any doubt very reasonable. For the same monthly period payment and for the same minimum period of 60 months, Mazzy Creations got to use a new upgraded colour photocopier for a total rental amount of \$622,020, which was much lower than the total rental amount under the 2012 Agreement. The total rental amount for the 2015 Rental

¹²⁰ Transcript (21 April 2021), p 131 at lines 10–13 and 27–30.

¹²¹ Transcript (21 April 2021), p 132 at lines 22–27; PWS at para 24(f); PRS at para 39.

Agreement shows a saving of \$80,000 to Mazzy Creations. Hence, Fuji Xerox had offered the defendants a very reasonable rental price for the “Color 1000i Press” photocopier. Ms Toh informed the court that “a very so-called special pricing approval [had been] gotten by the sales to give a very good discount” to the defendants,¹²² although she did not disclose the quantum of the discount. It appears that Fuji Xerox applied a significant discount under the 2015 Rental Agreement which effectively equalised the total rental amount that Mazzy Creations would have had to pay with or without the rollover. Given that the amount of the rollover was \$276,640, and yet the monthly period payments payable under the 2015 Rental Agreement remained exactly the same as under the 2012 Rental Agreement (*ie*, \$10,367), the quantum of the discount given to Mazzy Creations must have been enormous, perhaps close to the full amount of the rollover.

68 During his oral submissions, the defendants’ counsel explained that the “crux” of their case was that the amount of the rollover (*ie*, \$276,640) should have been deducted from the total rental amount under the 2015 Rental Agreement (*ie*, \$622,020), leaving a balance of \$345,380. When this figure is divided by the 60-month minimum period under the 2015 Rental Agreement, this would have reduced the monthly period payment to only \$5,756.33.¹²³ This is just over *half* of the monthly period payment under the 2012 Rental Agreement, which was \$10,367. The total rental amount under the 2012 Rental Agreement did not contain any rollover. I find it unbelievable and commercially not viable and profitable that Fuji Xerox would have agreed to Mazzy Creations paying only \$5,756.33 *per* month for the new and upgraded photocopier that it leased under the 2015 Rental Agreement. In my view, the total rental amount

¹²² Transcript (21 April 2021), p 92 at line 11–15.

¹²³ Transcript (30 June 2021), p 48 at lines 27–32 and p 49 at lines 1–26.

and the monthly period payments under the 2015 Rental Agreement were plainly reasonable.

69 In the circumstances, the Rental Amount Representation as pleaded by the defendants (at [59] above) is factually accurate and not misleading in any way. Therefore, it is erroneous for the defendants to plead at para 8(iii) of their Defence and Counterclaim that Mr Lim made the Rental Amount Representation in the manner stated as follows:

“**Fraudulently** well knowing the same to be false and untrue; or recklessly and not caring whether they were true or false. Further or in the alternative, if the representation(s) were not made fraudulently, the Defendants will reply [rely] upon **S.2 of the Misrepresentation Act (Cap. 390)** as entitling them to a relief.”

[emphasis in original]

70 There was no misrepresentation by Mr Lim in the first place. Thus, there could not have been a fraudulent misrepresentation.

71 For the foregoing reasons, the defendants’ pleaded misrepresentation defence against Fuji Xerox’s claim has not been established on a balance of probabilities. Hence, their defence can be dismissed on their pleaded case. However, during the trial, the defendants also raised other misrepresentations. For completeness, I shall deal with these other alleged misrepresentations below.

(2) Representations that were not pleaded by the defendants but were raised during the trial

72 At the trial, Ms Chua alleged that Mr Lim failed to disclose to her that the total rental amount in the 2015 Rental Agreement included a rollover of \$276,640 from the 2012 Rental Agreement. She also alleged that Mr Lim did

not inform her that, as a result of the rollover in the monthly rental, Mazzy Creations could not claim subsidies under the PIC Scheme for the whole rental amount under the 2015 Agreement from IRAS. Further, she relied on Mr Lim's representation that the 2015 Rental Agreement would "supersede" the 2012 Rental Agreement.

73 The defendants did not plead these allegations as active or positive representations made by Fuji Xerox in para 7 of their Defence and Counterclaim. However, the defendants pleaded at para 3 of their Defence and Counterclaim that Mazzy Creations was induced to enter into the 2015 Rental Agreement as Mr Lim assured Ms Chua that part of the costs of the rental could be recovered from Mazzy Creations' PIC Claims. The issues about the non-disclosure of the rollover from the 2012 Rental Agreement and Ms Chua's failure to disclose to IRAS the rollover in Fuji Xerox's monthly invoices in her periodic PIC Claims were also pleaded in para 11 of the defendants' Defence and Counterclaim as particulars of the *falsehood* of Mr Lim's representations. These pleadings collapsed when the defendants failed to prove on a balance of probabilities that the three pleaded representations in para 7 of their Defence and Counterclaim were misleading or false (see [38] and [65]–[71] above). Nevertheless, I shall now consider each of these representations in turn.

(A) NON-DISCLOSURE OF THE ROLLOVER FROM THE 2012 RENTAL AGREEMENT
IN THE 2015 RENTAL AGREEMENT

74 In the Defence and Counterclaim, the defendants contended that Mr Lim's non-disclosure of the rollover in the 2015 Rental Agreement made the Rental Amount Representation false.¹²⁴ It was only apparent in the defendants' opening statement and at the trial that the defendants' case is based

¹²⁴ DDC at paras 11(i)–11(iii).

on misrepresentation by silence or non-disclosure of the rollover. The defendants confirmed that they were not alleging that Mr Lim had made any positive representation to them that Fuji Xerox's invoices under the 2015 Rental Agreement would not contain any undisclosed fees.¹²⁵ According to the defendants, it was Mr Lim's *failure to disclose or draw attention to the concealed rollover* in the 2015 Rental Agreement which led to a "misleading impression" and constituted a misrepresentation because it was a "wilful suppression of important and material facts".¹²⁶

75 Fuji Xerox submits that the defendants have failed to prove on a balance of probabilities that Mr Lim had misrepresented the total rental amount in the 2015 Rental Agreement to the defendants.¹²⁷ As I have mentioned at [62] above, Mr Lim stated that he did not mention anything about any recommended retail price or reasonable price to Ms Chua when they discussed the 2015 Agreements.¹²⁸ According to Mr Lim, he told the defendants that Mazzy Creations would not be required to make any initial payment under the 2015 Agreements and that the monthly period payments under the 60-month 2015 Rental Agreement would be the same as those under the 2012 Rental Agreement.¹²⁹ He did not discuss the total rental amount payable under the 2015 Rental Agreement with Ms Chua.¹³⁰ He also did not discuss the outstanding liability under the 2012 Rental Agreement with Ms Chua. Mr Lim did not disclose the rollover to Ms Chua as he did not know the amount of any rollover

¹²⁵ Transcript (22 April 2021), p 3 at lines 16–25.

¹²⁶ DWS at paras 10 and 30.

¹²⁷ PWS at para 20.

¹²⁸ ALBC at paras 7 and 13; PWS at paras 17–18.

¹²⁹ ALBC at para 8.

¹³⁰ Transcript (20 April 2021), p 24 at lines 16–25; p 32 at lines 1–11; p 60 at lines 7–13.

in the total rental amount stated in the 2015 Rental Agreement.¹³¹ The total rental amount stated in the 2015 Rental Agreement was worked out by the finance department and Mr Lim did not partake in this process.¹³²

76 It seems that determining the total rental amount under a new rental agreement was a complex evaluation process. Ms Toh explained that the rental amount depended on many factors such as the value of the new upgraded machine; the customer's track record; the customer's creditworthiness; the goodwill between Fuji Xerox and the customer; the prevailing interest rates; other miscellaneous costs; and the balance amount owing under the existing rental agreement.¹³³ The determination of the total rental amount for a new rental agreement was not within the purview of Mr Lim. Thus, he would not know the amount of any rollover and he did not know about the amount of the rollover in the 2015 Rental Agreement.¹³⁴

77 In any case, at that time, Fuji Xerox would not have disclosed the rollover amount to the defendants as it was Fuji Xerox's policy not to proactively disclose such information to customers. More so, Mr Lim would not have known about the rollover amount in the total rental amount under the 2015 Rental Agreement. Nor would he have had any reason to discuss the rollover with Ms Chua during their negotiations.¹³⁵ However, if Mazzy Creations

¹³¹ Transcript (20 April 2021), p 37 at lines 4–17.

¹³² ALBC at para 13; Transcript (20 April 2021), p 37 at lines 14–17 and p 41 at lines 28–30.

¹³³ TSB at para 40(g).

¹³⁴ Transcript (20 April 2021), p 58 at lines 23–26.

¹³⁵ PWS at para 20(f).

required the rollover sum for the purpose of its PIC Claims, Fuji Xerox would have disclosed it.¹³⁶

78 Two issues arise in relation to the non-disclosure of the rollover. First, whether the non-disclosure of the rollover was adequately pleaded by the defendants. Second, whether the non-disclosure of the rollover could amount to an actionable misrepresentation in the circumstances of this case.

(I) *WHETHER THE NON-DISCLOSURE OF THE ROLLOVER WAS ADEQUATELY PLEADED*

79 As in *EA Apartments*, the defendants’ case regarding misrepresentation is “obscured by extremely poor pleading” (*EA Apartments* at [1]). The only positive representation of fact pleaded by the defendants for the purpose of establishing an actionable misrepresentation is the Rental Amount Representation, *ie*, that the total rental amount in the 2015 Rental Agreement was Fuji Xerox’s recommended retail price or was a reasonable price offered by Fuji Xerox to all its customers (see [59] above). Nowhere in the defendants’ pleadings did they state that the non-disclosure itself constituted a false representation of fact, nor did the defendants explain how the non-disclosure rendered the Rental Amount Representation false. Therefore, the non-disclosure of the rollover was not adequately and correctly pleaded by the defendants.

80 During his oral submissions, the defendants’ counsel sought to argue that the non-disclosure of the rollover was adequately pleaded because paras 11(iii)–11(v) of the Defence and Counterclaim refer to Fuji Xerox’s “undisclosed unethical practice of [r]ollovers”. The defendants’ counsel submitted that when paras 11(iii)–11(v) are read together with para 7 of the

¹³⁶ Transcript (21 April 2021), p 85 at lines 23–31, p 86 at lines 10–13 and p 87 at lines 5–11.

Defence and Counterclaim, it is clear that the defendants were alleging misrepresentation by non-disclosure.¹³⁷ However, I disagree. Based on the structure of the Defence and Counterclaim, the three representations which the defendants seek to rely on are set out in para 7. Paragraph 11, below the heading “The 2015 Representations were False”, addresses the *falsity* of the representations pleaded in para 7.¹³⁸ Thus, in my view, the defendants have failed to properly plead that the non-disclosure of the rollover *itself* constituted a false representation of fact, and if so, what exactly that representation was. Further, for the reasons explained at [65]–[71] above, the non-disclosure did not render the pleaded Rental Amount Representation false.

81 On 5 July 2021, I granted the defendants leave to file further submissions on the sufficiency of their pleadings with regard to misrepresentation by non-disclosure after the parties had completed their oral submissions. In their further submissions, the defendants relied on the Court of Appeal’s decision in *Liberty Sky Investments Ltd v Aesthetic Medical Partners Pte Ltd and other appeals and another matter* [2020] 1 SLR 606 (“*Liberty Sky Investments*”). In *Liberty Sky Investments* at [16], the Court of Appeal observed that “[t]he entire spirit underlying the regime of pleadings is that each party is aware of the respective arguments against it and that neither is therefore taken by surprise”. As the defendant’s failure to plead the bars to rescission did not result in the plaintiff being taken by surprise, the Court of Appeal held that the defendant was not precluded from arguing that rescission should be refused because of the impossibility of *restitutio in integrum* (see *Liberty Sky Investments* at [14]–[16]). In the present case, the defendants contend that their

¹³⁷ Transcript (30 June 2021), p 42 at lines 29–32, p 43 at lines 1–18 and p 52 at lines 26–27.

¹³⁸ DDC at para 11.

failure to plead that the non-disclosure of the rollover was a false representation of fact did not take the plaintiff by surprise. The defendants argue that para 7(i) of their Defence and Counterclaim dealt specifically with the total rental amount stated in the 2015 Rental Agreement, while para 11 pleaded the concealment of the rollover within that total rental amount.¹³⁹

82 As the Court of Appeal observed in *Liberty Sky Investments* at [14], “[a] balance has to be struck between, on the one hand, instilling procedural discipline in civil litigation and, on the other, permitting parties to present the substantive merits of their case notwithstanding a procedural irregularity”. Imperfections in a party’s pleadings should not, in and of themselves, preclude the court from giving due consideration to the merits of that party’s arguments. However, where a party’s failure to adequately plead the particulars of his claim or defence causes the other party to suffer prejudice, the court must take that prejudice into account as a matter of fairness. As I have explained at [54] above, pleadings are important in giving the other party fair notice of the case which has to be met. In cases where misrepresentation is alleged, the importance of proper pleadings is underscored by O 18 r 12(1)(a) of the Rules of Court. Given the seriousness of the allegation of *fraudulent* misrepresentation, it is especially important for a party making such an allegation to clearly particularise the misrepresentation(s) on which he seeks to rely, so that the other party is able to address these allegations head-on.

83 I am, therefore, unable to accept the defendants’ further submissions on the sufficiency of their pleadings. I am of the view that the defendants’ failure to plead the non-disclosure of the rollover *as an actionable misrepresentation* caused prejudice to the plaintiff as it was not adequately informed of the case it

¹³⁹ Defendants’ Supplementary Submissions at paras 5–7.

had to meet during the trial. In the plaintiff's Reply and Defence to Counterclaim, its pleadings were directed at addressing the three representations pleaded by the defendants at para 7 of their Defence and Counterclaim, and did not deal with the non-disclosure of the rollover as a separate misrepresentation.¹⁴⁰ Similarly, the plaintiff's opening statement expressly focused on "the representations alleged in para 7" of the Defence and Counterclaim.¹⁴¹ Paragraph 7 of the Defence and Counterclaim makes no mention of the non-disclosure of the rollover. It was only at the trial that it became apparent that the main thrust of the defendants' case is misrepresentation by non-disclosure of the rollover. Therefore, during the trial, the plaintiff's counsel had no choice but to deal with the defendants' allegation of misrepresentation by non-disclosure as best as he could notwithstanding the significant shift in the emphasis of the defendants' case. In these circumstances, the defendants' failure to clearly particularise the alleged misrepresentation by non-disclosure, on which they now seek to rely, has prejudiced the plaintiff's preparation of its case.

84 In any event, even if the non-disclosure of the rollover had been adequately pleaded by the defendants, I am of the view that the non-disclosure of the rollover could not have amounted to an actionable misrepresentation in the circumstances of this case. I shall now deal with this issue.

¹⁴⁰ PRDC at paras 6 and 9(e).

¹⁴¹ Plaintiff's Opening Statement at para 14.

(II) *WHETHER THE NON-DISCLOSURE OF THE ROLLOVER COULD AMOUNT TO AN ACTIONABLE MISREPRESENTATION*

85 As I have explained at [52] above, silence will generally only amount to a representation where the representor was under a positive duty of disclosure arising from the parties' relationship or from the circumstances.

86 The defendants assert that Fuji Xerox had a positive duty to "clearly" inform the defendants that the upgrading of their photocopier under the 2015 Rental Agreement would result in a premature termination under the 2012 Rental Agreement and that Fuji Xerox intended to impose penalties for premature termination (in the form of a rollover). According to the defendants, Fuji Xerox's silence on the rollover amounted to a wilful suppression of material facts because Fuji Xerox and/or Mr Lim knew: (a) that IRAS required rollovers to be excluded from any claims under the PIC Scheme;¹⁴² (b) that Mazzy Creations would be making claims under the PIC Scheme;¹⁴³ and (c) that the total rental amount under the 2015 Rental Agreement contained a substantial rollover (amounting to one-third of the total rental amount),¹⁴⁴ which was concealed on the face of the 2015 Rental Agreement.¹⁴⁵ The defendants also rely on the fact that the upgrade was initiated by Fuji Xerox and on Mr Lim's statement that the 2015 Rental Agreement would "supersede" the 2012 Rental Agreement (which I shall deal with at [110]–[113] below).¹⁴⁶ On this basis, the defendants submit that the non-disclosure of the rollover in the 2015 Rental Agreement gave the false and misleading impression that Mazzy Creations was

¹⁴² AB, Vol 1 at pp 3–4; Transcript (20 April 2021), p 77 at lines 27–32.

¹⁴³ Transcript (20 April 2021), p 48 at lines 27–29.

¹⁴⁴ DRS at paras 2.4 and 19.

¹⁴⁵ DWS at paras 45–46 and 55.

¹⁴⁶ DWS at para 33.2.

paying “reasonable rental charges”,¹⁴⁷ or at least “open market value”,¹⁴⁸ under the 2015 Rental Agreement.

87 I am unable to accept the defendants’ submissions. In my view, Fuji Xerox and Mr Lim were not under a positive duty to disclose the rollover to the defendants. I shall now explain my decision.

(a) Differences between a rental agreement and a hire purchase agreement or sale agreement

88 First, it is important to appreciate the differences between a rental agreement and a hire purchase agreement or sale agreement. In a rental agreement like in this case, is it important for the hiree, Mazzy Creations, to know the retail price of the “Color 1000i Press” photocopier and the amount of the rollover from the 2012 Rental Agreement? The defendants argue that this information had to be disclosed to Ms Chua.

89 This explains why the defendants’ counsel, in the course of the cross-examination of Mr Lim, asked Mr Lim whether he had told Ms Chua the retail price of the new “Color 1000i Press” photocopier leased to Mazzy Creations under the 2015 Rental Agreement. Mr Lim replied that he did not as the 2015 Rental Agreement was a leasing or rental agreement and he only informed Ms Chua of the monthly period payment and the minimum period of the lease.¹⁴⁹ The defendants’ counsel also asked Ms Toh whether it was the policy of Fuji

¹⁴⁷ DWS at para 47.

¹⁴⁸ DWS at paras 56–57.

¹⁴⁹ Transcript (20 April 2021), p 23 at lines 10–28.

Xerox to disclose the price of the “Color 1000i Press” photocopier to Ms Chua and she answered in the negative.¹⁵⁰

90 It is significant to know the differences and implications of a rental agreement and compare them to a hire purchase agreement or sale agreement. The 2015 Rental Agreement is a rental agreement and not a hire purchase agreement or sale agreement of the “Color 1000i Press” photocopier. In a rental agreement, Fuji Xerox owns the photocopier, while in a hire purchase or sale agreement, Mazzy Creations would be the owner when the photocopier was fully paid for. This is a significant and critical difference between the two types of agreements. In a rental agreement, what is of key importance is not the retail price of the photocopier, but the monthly period payments and the minimum period of the lease as this information matters the most to the hiree. Hence, it was not important for the defendants’ counsel to ask Mr Lim whether he had told Ms Chua the retail price of the “Color 1000i Press” photocopier leased to Mazzy Creations under the 2015 Rental Agreement. During the oral closing submissions, the defendants’ counsel eventually agreed with the court that the retail price of the “Color 1000i Press” photocopier would not be relevant to Ms Chua for the purpose of the 2015 Rental Agreement.¹⁵¹ For similar reasons, the rollover from the 2012 Rental Agreement may not be important if the monthly period payment for the new photocopier remains the same or lower. If the monthly period payment was higher, Mazzy Creations might not want to upgrade the photocopier under the 2015 Rental Agreement. Therefore, in a rental agreement, the focus of a hiree, such as Mazzy Creations, is on the monthly period payments and the minimum period of the lease. Nothing else really matters.

¹⁵⁰ Transcript (21 April 2021), p 38 at lines 5–11.

¹⁵¹ Transcript (30 June 2021), p 48 at lines 7–24.

91 In this case, Ms Chua acknowledged that the terms of the 2015 Rental Agreement were very reasonable as the monthly period payments were the same as the monthly period payments under the 2012 Rental Agreement; no initial payment was required; and Mazzy Creations would receive the benefit of an upgraded and new photocopier. Therefore, I cannot accept Ms Chua's assertion that Mazzy Creations would not have entered into the 2015 Rental Agreement if Mr Lim had informed her of the rollover. Fuji Xerox would not have offered Ms Chua a better deal even if it had disclosed the rollover to her.

92 For the same reasons, I am unable to accept the defendants' submission that it would have made "no commercial sense" for any customer to have agreed to prematurely "upgrade" the existing 2012 Rental Agreement to the 2015 Rental Agreement if he had known that he would have to return the older photocopier and still pay the period payments for the balance of the minimum period under the 2012 Rental Agreement, while also paying the period payments for a new photocopier under the 2015 Rental Agreement.¹⁵² In my view, this is an inaccurate understanding of the 2015 Rental Agreement. As I have explained at [65]–[67] above, notwithstanding the rollover, the defendants effectively received the benefit of a new and upgraded model at no additional charge under the 2015 Rental Agreement (as the monthly period payments remained the same and no initial payment was required). Moreover, the total rental amount under the 2015 Rental Agreement was \$80,000 lower than that under the 2012 Rental Agreement over the same 60-month minimum period of the lease. In fact, it made commercial sense to any reasonable hiree who was interested to upgrade his colour photocopier to take up the 2015 Rental Agreement. Ms Chua knew this as she acknowledged that the total rental amount in the 2015 Rental

¹⁵² DWS at paras 2, 33.3 and 54.

Agreement was very reasonable (see [66] above). Therefore, contrary to what the defendants suggest, this was not a situation where Fuji Xerox was earning “double-income” on a single machine while dealing the defendants a “double-blow” by making them continue to pay rental charges for a machine that they could no longer use.¹⁵³

93 For the above reasons, the terms of the 2015 Rental Agreement were clearly and undisputedly advantageous to Mazzy Creations. In fact, Fuji Xerox did not earn “double income” on the old “Color 1000 Press” photocopier. After Fuji Xerox re-leased the old “Color 1000 Press” photocopier to Unique Colour Separation, it offered its net earnings of \$36,202 to Mazzy Creations out of goodwill in October 2017, provided that the defendants settled their accounts with Fuji Xerox.¹⁵⁴ I acknowledge, however, that this sum was only offered by Fuji Xerox after Ms Chua complained that the rollover was not disclosed to her when Mazzy Creations signed the 2015 Rental Agreement.

94 In my view, Fuji Xerox was not obliged to disclose the retail price of the new “Color 1000i Press” photocopier, the rollover from the 2012 Rental Agreement, the huge discount given to Mazzy Creations under the 2015 Rental Agreement, Fuji Xerox’s internal rental pricing practice or strategy, Fuji Xerox’s profit margins, the interest rate breakdown, *et cetera*. This information was part of a rental pricing strategy which was confidential to Fuji Xerox and the defendants’ counsel accepted during his oral submissions that Fuji Xerox’s pricing strategy did not have to be revealed to the defendants.¹⁵⁵ As I have explained at [88]–[90] above, the 2015 Rental Agreement is a rental agreement

¹⁵³ DWS at para 25.1; DRS at para 46.

¹⁵⁴ AB, Vol 2 at p 513.

¹⁵⁵ Transcript (30 June 2021), p 52 at lines 3–5.

and this information would not be relevant to the defendants. More importantly, Fuji Xerox did not have a duty nor an obligation to disclose this information to the defendants.

(b) The circumstances did not give rise to a positive duty to disclose the rollover

95 Having regard to how a reasonable hiree would view Mr Lim's silence in the circumstances, I agree with Fuji Xerox's argument that the 2015 Agreements were an arm's length transaction entered into between two independent business entities. The law does not oblige parties dealing at arm's length to disclose to each other everything including facts that are detrimental to their bargaining position (*EA Apartments* at [31]). Notwithstanding the arguments made by the defendants, I am of the view that neither Mr Lim nor Fuji Xerox was under a positive duty to disclose the rollover to the defendants. It must be underscored that fundamentally the 2015 Rental Agreement is a rental agreement. Further, using the examples cited in *Loh Sze Ti Terence Peter v Gay Choon Ing* [2008] SGHC 31 at [77], the relationship between the defendants and Fuji Xerox in the present case is far from analogous to contracts *uberrimae fidei* (utmost good faith), nor is there any existing fiduciary or similar relationship between Fuji Xerox and the defendants which might impose an obligation of disclosure.

96 When viewed in context, the non-disclosure of the rollover did not amount to a representation that the 2015 Rental Agreement did not contain any rollovers, nor did it render Mr Lim's other statements regarding the initial payment and monthly period payments payable under the 2015 Rental Agreement false. Further, in my view, the non-disclosure of the rollover alone could not amount to wilful suppression or concealment of the rollover. Mr Lim had testified that he was unaware of the amount of the rollover in the 2015

Rental Agreement (see [76] above).¹⁵⁶ Hence, he could not have actively or wilfully suppressed any information about the amount of the rollover from the defendants when he made his proposals to Ms Chua regarding the 2015 Rental Agreement. Therefore, in the circumstances, the non-disclosure of the rollover did not constitute a misrepresentation.

97 This finding is buttressed by the fact that Alliance Trust had assisted Mazzy Creations with the submission of its PIC Claims to IRAS in 2012 (see [10] above). It would, therefore, have been clear to the defendants that it was the role of the consultants like Alliance Trust, and not Fuji Xerox, to advise the defendants on possible issues relating to Mazzy Creations' PIC Claims. Alliance Trust did not provide any consultancy services to Mazzy Creations in relation to its PIC Claims in respect of the 2015 Agreements (see [17] above). It was Ms Chua's choice not to seek Alliance Trust's advice in relation to the 2015 Agreements and this had nothing to do with Fuji Xerox. As Mr Lim explained, he informed the defendants in 2012 that they might wish to consult Alliance Trust in relation to Mazzy Creations' PIC Claims, but he did not see a need to suggest this again in 2015 as a business relationship had already been established between the defendants and Alliance Trust by this time.¹⁵⁷ Hence, the fact that Alliance Trust did not assist the defendants with Mazzy Creations' PIC Claims in 2015 would not have imposed a positive duty on Fuji Xerox to disclose the rollover from the 2012 Rental Agreement.

¹⁵⁶ Transcript (20 April 2021), p 58 at lines 14–26.

¹⁵⁷ Transcript (20 April 2021), p 75 at lines 7–14 and 24–32.

(c) Implication of Fuji Xerox’s internal e-mail to its staff about the PIC Scheme

98 The defendants place great emphasis on an internal e-mail dated 28 January 2015 which was sent by Ms Gladys Toh Joo Peng, Fuji Xerox’s general manager for finance management and operations, to its customer account managers (including Mr Lim).¹⁵⁸ In this e-mail, Fuji Xerox’s sales representatives were instructed to go through IRAS’s guidelines on the PIC Scheme for vendors in detail. In particular, their attention was drawn to the penalties that would be imposed in respect of abusive PIC Scheme arrangements, such as those which resulted in the payment of an amount for goods or services that exceeded the open market value of those goods or services without a *bona fide* commercial reason. The customer account managers were urged to “exercise great care in [their] sales engagement with the customers” and were told that the preparation of any PIC Scheme submissions on behalf of customers was strictly disallowed.¹⁵⁹ The defendants submit that this e-mail shows that Fuji Xerox and Mr Lim knew that rollovers were “prohibited” under IRAS’s PIC Scheme criteria.¹⁶⁰ Further, the defendants submit that this e-mail shows that the Rental Amount Representation involved the wilful suppression or concealment of the rollover.¹⁶¹

99 I cannot agree with the defendants’ submissions. On the contrary, the e-mail further supports my finding that it was not the role of Fuji Xerox or its customer account managers to advise the defendants on the submission of Mazzy Creations’ PIC Claims. The e-mail buttresses Mr Lim’s testimony that

¹⁵⁸ AB, Vol 1 at p 3; Transcript (21 April 2021), p 57 at lines 17–23.

¹⁵⁹ AB, Vol 1 at p 3.

¹⁶⁰ DWS at para 37.

¹⁶¹ DRS at para 24.

he did not advise Ms Chua on how to go about making Mazzy Creations' PIC Claims as he was prohibited from doing so by Fuji Xerox's internal policy.

(d) Developments in Fuji Xerox's internal policies after the 2015 Agreements

100 Contrary to what the defendants' submissions suggest,¹⁶² the fact that the *current* version of Fuji Xerox's Rental Agreement form specifically states the amount of any rollover does not show that Fuji Xerox was under a duty to disclose this information to its customers at the time the 2015 Rental Agreement was entered into. Fuji Xerox started using this new Rental Agreement form only in December 2018. The defendants also assert that the Fujifilm internal investigation report "noted [Fuji Xerox's] unethical practi[c]e of rollover of liabilities".¹⁶³ However, as I have noted at [23] above, what this report highlighted was the inappropriateness of contract rollovers as an *accounting* practice. During the trial, Mr Lim explained that the changes in Fuji Xerox's Rental Agreement form likely had nothing to do with the Fujifilm internal investigation report, which dealt with an "accounting irregularity".¹⁶⁴ Similarly, Ms Toh opined that the new Rental Agreement form was not introduced as a result of the Fujifilm internal investigation report, which instead highlighted an "accounting irregularity" in the practices adopted in New Zealand and Australia which arose from the fact that the same item of revenue was being recognised twice in two financial years as a result of the rollovers.¹⁶⁵

101 Be that as it may, I am glad that Fuji Xerox's new Rental Agreement form now discloses the rollover sum as this will avert similar misunderstandings

¹⁶² DWS at paras 25.3 and 27.

¹⁶³ Defendants' Opening Statement at para 8; DWS at paras 38–40.

¹⁶⁴ Transcript (21 April 2021), p 18 at lines 7–12.

¹⁶⁵ Transcript (21 April 2021), p 25 at lines 13–15 and p 84 at lines 13–20.

with hirees in the future. It is true that, as the defendants' counsel argued, this dispute between Fuji Xerox and the defendants regarding the rollover would have been avoided if the new Rental Agreement form had been used for the 2015 Rental Agreement.¹⁶⁶ However, that is not sufficient to show that Fuji Xerox was under a positive duty to disclose the rollover to the defendants at the time the 2015 Rental Agreement was entered into.

102 I, therefore, find that the defendants have failed to plead or establish an actionable misrepresentation in respect of the non-disclosure of the rollover. In fact, there was no misrepresentation by Fuji Xerox or Mr Lim to Ms Chua when Mazzy Creations signed the 2015 Rental Agreement.

(B) THE PIC REPRESENTATION

103 As I have noted at [39] above, the PIC Representation was not pleaded as one of the representations relied on by the defendants in para 7 of the Defence and Counterclaim. Instead, it was alluded to in the section of the Defence and Counterclaim on the "Past Dealings" between the defendants and Fuji Xerox¹⁶⁷ and in the section explaining why Mr Lim's representations to Ms Chua were false.¹⁶⁸ The paragraphs alluding to the PIC Representation were introduced as part of an amendment to the Defence and Counterclaim.

104 The PIC Representation is deeply ambiguous and poorly pleaded. The clearest statement of the content of this alleged representation in the Defence and Counterclaim is as follows:¹⁶⁹

¹⁶⁶ Transcript (30 June 2021), p 69 at lines 9–10.

¹⁶⁷ DDC at para 3(iv).

¹⁶⁸ DDC at para 11(x).

¹⁶⁹ DDC at para 3(iv).

... Plaintiffs (and/or Andrew [ie, Mr Lim]) assured the 1st Defendants that part of the costs of the rental and/or service charges can be recovered from IRAS Productivity & Innovation Credit Scheme ...

105 Fuji Xerox denies that the PIC Representation was made to the defendants.¹⁷⁰ According to Mr Lim, he merely mentioned briefly to Ms Chua the general information on IRAS's criteria for claims under the PIC Scheme, which could be found on the IRAS website.¹⁷¹ Mr Lim explained that it was not his job to go through specific criteria relating to rollovers and early termination penalties with customers.¹⁷² Instead, it was the role of consultants like Alliance Trust to guide customers in making their claims under the PIC Scheme.¹⁷³

106 The defendants' case regarding the PIC Representation is a non-starter because the PIC Representation made by Mr Lim was not false. The defendants argue that the PIC Representation was false because IRAS does not permit claims to be made under the PIC Scheme in respect of any invoice amount that includes a rollover.¹⁷⁴ However, as I have explained at [16] above, IRAS's policy is simply that the amount claimed under the PIC Scheme must exclude any rollovers. IRAS's guidelines state that, where the amount paid under a lease agreement includes rollover lease payments from a previous lease agreement:¹⁷⁵

The expenditure claimable under PIC must exclude the amount of outstanding lease payments under the previous lease agreement.

¹⁷⁰ PWS at para 39.

¹⁷¹ ALBC at paras 5–6; Transcript (20 April 2021), p 68 at lines 7–12.

¹⁷² Transcript (20 April 2021), p 53 at lines 31–32 and p 54 at lines 1–3.

¹⁷³ Transcript (20 April 2021), p 70 at lines 21–23.

¹⁷⁴ DDC at para 11(x).

¹⁷⁵ ACTJ at p 207.

107 Thus, as Ms Chua acknowledged during her cross-examination, the inclusion of a rollover within the total rental amount stated in the 2015 Rental Agreement would not automatically preclude Mazzy Creations from claiming a cash payout under the PIC Scheme in respect of the *entire* rental amount. Mazzy Creations would still be able to make a claim in respect of the total rental amount *less the amount of the rollover*.¹⁷⁶

Q: Ms Chua, may I refer you to your affidavit? Plaintiff's bundles of — volume 2, bundle of affidavits.

A: Yes?

Q: At page 206.

A: Yes?

Q: I believe this is from the IRAS website setting out some of the criterias [sic] for PIC claims. And in particular, I wish to bring your attention to page 206, the column right below that say:

[Reads] "Fees (penalty) incurred by customer for early termination...where the new the new [sic] purchase / lease price includes early termination fee"

And the next column says:

[Reads] "What you spent to purchase or lease the PIC IT and Automation Equipment minus any fees..."

Means you can still claim, but you must minus off the fees?

A: Yes.

Q: Correct? And the next page, page 207, the next example given:

[Reads] "Lease agreements with rollover lease payments from a previous lease arrangement"

And what you can claim — so its [sic] says that:

[Reads] "The expenditure claimable under PIC must exclude the amount of outstanding lease payments under the previous lease agreement"

¹⁷⁶ Transcript (22 April 2021), p 51 at lines 11–32 and p 52 at lines 1–10; PRS at para 28.

A: Yes.

Q: And you agree with that. So I'm saying that these two criterias [sic] does not say that the moment there is rollover, you cannot claim for the entire amount. You can claim for the amount less the rollover amount. Is that correct?

A: Understand.

Court: Sorry, Ms Chua, what did you say?

Witness: I said I understand.

...

Court: Do you agree?

Witness: Ah, yes.

108 The PIC Representation (as pleaded by the defendants) was that *part* of the costs of the rental and service charges under the 2015 Agreements could be claimed under the PIC Scheme. Thus, the PIC Representation was simply not false. In any event, I agree with Fuji Xerox's submission that the success of Mazzy Creations' PIC Claims would depend on Mazzy Creations' own eligibility. Mr Lim was in no position to know whether Mazzy Creations would satisfy the qualifying criteria or whether it had exhausted its cash payouts under the PIC Scheme for the year,¹⁷⁷ which were capped at a maximum of \$100,000 (see [16] above). Indeed, Ms Chua agreed that the reasonable understanding of the alleged PIC Representation (if it was in fact made) was that Mazzy Creations' ability to make a successful claim under the PIC Scheme was subject to it satisfying the qualifying criteria laid down by IRAS:¹⁷⁸

Q: So my question again I repeat: When he [i.e., Mr Lim] told you that the 2015 agreement would be eligible for PIC, won't it be a reasonable inference that it's subject to you satisfying the criteria? It's very simple.

¹⁷⁷ PWS at para 40; PRS at para 23.

¹⁷⁸ Transcript (21 April 2021), p 130 at lines 17–20.

A: Yes.

109 In these circumstances, I find that the defendants have failed to prove that the PIC Representation, as pleaded by the defendants, was made by Mr Lim or that it was a false representation of fact.

(C) REPRESENTATION THAT THE 2012 RENTAL AGREEMENT WAS “SUPERSEDED” BY THE 2015 RENTAL AGREEMENT

110 For completeness, I shall also briefly address one further representation which Mr Lim admitted making to Ms Chua: namely, that the 2015 Rental Agreement would “supersede” the 2012 Rental Agreement.¹⁷⁹ Ms Chua interpreted this statement to mean that the 2012 Rental Agreement was “null and void”¹⁸⁰ and “cancelled”, and that Mazzy Creations no longer needed to pay Fuji Xerox the period payments for each remaining months of the 60-month minimum period under the 2012 Rental Agreement.¹⁸¹ On this basis, the defendants submit that this statement gave Ms Chua “an impression that there would be no liability rollover from the 2012 [Rental] Agreement”.¹⁸² However, Ms Chua admitted that Mr Lim did not explicitly tell her that Mazzy Creations was no longer required to pay Fuji Xerox the remaining period payments under the 2012 Rental Agreement.¹⁸³ Instead, she *assumed* that no unpaid period payments from the 2012 Rental Agreement would be carried forward to the 2015 Rental Agreement.¹⁸⁴ She did not seek clarification from Mr Lim on whether Mazzy Creations would still be required to pay Fuji Xerox these

¹⁷⁹ Transcript (20 April 2021), p 40 at lines 3–4.

¹⁸⁰ Transcript (22 April 2021), p 53 at lines 26–28.

¹⁸¹ Transcript (21 April 2021), p 119 at lines 1–6; DWS at para 32.5.

¹⁸² DWS at para 30.2.

¹⁸³ Transcript (21 April 2021), p 119 at lines 7–11, 24–25 and 27–32.

¹⁸⁴ Transcript (22 April 2021), p 69 at lines 23–25.

remaining period payments because she “trusted [Mr Lim] a lot”.¹⁸⁵ Thereafter, she “never g[a]ve it a second thought”¹⁸⁶ and “never thought to clarify with [Mr Lim]”.¹⁸⁷

111 Mr Lim’s statement that the 2012 Rental Agreement was “superseded” by the 2015 Rental Agreement was also not pleaded by the defendants in the specific sense as understood by Ms Chua.¹⁸⁸ Nor did the defendants show why the statement was false in that specific sense, as they were required to do. This statement was not pleaded at all by the defendants as one of the misrepresentations on which they seek to rely, let alone pleaded with “utmost particularity” (see [53]–[54] above).

112 Moreover, a statement of fact must be sufficiently unambiguous to constitute a potentially actionable misrepresentation (see *Hai Jiao 1306 Ltd and others v Yaw Chee Siew* [2020] 5 SLR 21 (“*Hai Jiao*”) at [443]). Like several of the representations at issue in *Hai Jiao*, Mr Lim’s statement was simply too vague to carry the meaning or significance that Ms Chua appears to have attached to it (see *Hai Jiao* at [443]).

113 In view of the above, Mr Lim’s representation that the 2015 Rental Agreement “superseded” the 2012 Rental Agreement is also not an actionable misrepresentation.

¹⁸⁵ Transcript (22 April 2021), p 96 at lines 20–27.

¹⁸⁶ Transcript (21 April 2021), p 119 at line 16.

¹⁸⁷ Transcript (22 April 2021), p 97 at lines 8–10.

¹⁸⁸ Transcript (30 June 2021), p 8 at lines 19–23.

Conclusion on misrepresentation

114 Therefore, I find that the defendants’ case on misrepresentation must fail. The three representations that were pleaded *as representations* by the defendants in their Defence and Counterclaim were factually correct and there were no misrepresentations. Consequently, the defendants’ allegation in their pleadings that Mr Lim made these misrepresentations fraudulently is also completely unmeritorious.

115 The defendants’ primary argument at the trial and in their submissions is that the non-disclosure of the rollover was a wilful suppression of important and material facts which amounted to an actionable misrepresentation. However, the defendants did not plead any positive representation of fact allegedly made by this non-disclosure. The defendants have also not shown that the non-disclosure of the rollover was an actionable misrepresentation. The PIC Representation was also not clearly pleaded, and in any event did not amount to a false representation of fact. As for Mr Lim’s statement that the 2015 Rental Agreement would “supersede” the 2012 Rental Agreement, this representation was not relied on by the defendants in their pleadings. In any event, the defendants failed to plead the specific sense in which they understood this statement and to show why the statement was false in that specific sense. Furthermore, this statement was too vague to constitute an actionable misrepresentation.

116 In view of these findings, it is not necessary for me to consider whether the representations made by Fuji Xerox and/or Mr Lim induced Mazzy Creations to enter into the 2015 Agreements or to submit its PIC Claims to IRAS. However, with regard to the defendants’ allegation of fraud, I wish to emphasise that cogent evidence is required before a court will be satisfied that

fraud is established, in view of the serious implications of fraud (see [50] above). To establish fraud, the defendants must prove that false representations were made knowingly; without belief in their truth; or recklessly, with the representor being careless whether they were true or false (*Wee Chiaw Sek Anna* at [32], applying the UK House of Lords' decision in *Derry v Peek* (1889) 14 App Cas 337).¹⁸⁹ The defendants must also show that Mr Lim did not subjectively believe in the truth of his representations (*Wee Chiaw Sek Anna* at [37]). In the present case, as in *Zuraimi bin Mohamed Dahlan and another v Zulkarnine B Hafiz and another* [2020] SGHC 219 ("*Zuraimi*"), the defendants have simply asserted in their pleadings that Mr Lim made the representations fraudulently, without providing any particulars or facts to support or substantiate their assertion of dishonesty (see *Zuraimi* at [33]). Even in their submissions, the defendants merely made vague allusions to Fuji Xerox having an "obvious" motive for suppressing or concealing the rollover, namely, so that customers would agree to upgrade their machines before the expiry of their existing rental agreements.¹⁹⁰

117 The evidence clearly shows that there was no misrepresentation or fraud on the part of Mr Lim and Fuji Xerox. Furthermore, there is no evidence that Mr Lim had wilfully or deliberately concealed the rollover from the defendants; that he had done so with the intention to mislead the defendants; or that he had acted dishonestly or fraudulently in not disclosing the rollover.¹⁹¹ There is simply insufficient evidence to support the defendants' serious allegation of fraud.

¹⁸⁹ PWS at para 13(e).

¹⁹⁰ DRS at paras 2.5, 5.3, 8 and 37.

¹⁹¹ PRS at para 21.

118 Given my findings above, the defendants’ alternative counterclaim for damages under s 2 of the Misrepresentation Act also fails. The Court of Appeal in *Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 explained that s 2(1) of the Misrepresentation Act (which provides for damages for non-fraudulent misrepresentations) “only alters the law as to the reliefs to be granted for a non-fraudulent misrepresentation *but not as to what constitutes an actionable misrepresentation*” [emphasis added] (at [23]).¹⁹² In my view, this applies equally to s 2(2) of the Misrepresentation Act, which provides for damages in lieu of rescission for non-fraudulent misrepresentations. Since the defendants have failed to establish any actionable misrepresentations on the part of Fuji Xerox, they are not entitled to relief under s 2 of the Misrepresentation Act.

119 Consequently, I find that the defendants are not entitled to rescission of the 2015 Agreements or damages for misrepresentation. Interestingly, the defendants also appeared to have affirmed the 2015 Rental Agreement after discovering that the total rental amount stated therein included a rollover from the 2012 Rental Agreement.¹⁹³ During the trial, Ms Chua admitted that she did not attempt to return the “Color 1000i Press” photocopier rented by Mazzy Creations from Fuji Xerox after finding out about the rollover in late 2016.¹⁹⁴ On the contrary, her intention at that time was to continue to use the photocopier.¹⁹⁵ Indeed, the defendants continued to use the photocopier all the way until January 2019.¹⁹⁶ The defendants’ conduct demonstrated a “clear and

¹⁹² PWS at paras 43–45.

¹⁹³ PWS at paras 56 and 60–61.

¹⁹⁴ Transcript (22 April 2021), p 35 at lines 6–9.

¹⁹⁵ Transcript (22 April 2021), p 35 at lines 19–20.

¹⁹⁶ Transcript (22 April 2021), p 38 at lines 1–4; AB, Vol 1 at pp 145–175.

unequivocal election to affirm” the 2015 Rental Agreement which was binding upon them (see *Strait Colonies Pte Ltd v SMRT Alpha Pte Ltd* [2018] 2 SLR 441 at [42]).

120 The defendants’ failure to establish any actionable misrepresentations on the part of Fuji Xerox is also fatal to their counterclaim for any penalties that IRAS may impose on Mazzy Creations. In any event, the quantum of these penalties has yet to be determined. Although IRAS’s letter dated 21 August 2020 indicated IRAS’s intention to claw back all the cash payouts that Mazzy Creations previously received under the PIC Scheme relating to the machines it had rented from Fuji Xerox (amounting to \$349,513.80) (see [20] above), this sum of \$349,513.80 includes cash payouts that were not claimed based on any rollovers.¹⁹⁷ In any event, any such penalties are a matter to be resolved between the defendants and IRAS. As I have found at [85]–[102] and [106]–[109] above, the non-disclosure of the rollover did not amount to an actionable misrepresentation by Mr Lim or Fuji Xerox, and the PIC Representation (even if made) was not false.

Mitigation of loss

121 The second contention raised by the defendants is that Fuji Xerox failed to take reasonable steps to mitigate its losses. The defendants rely on the fact that after Mazzy Creations and Fuji Xerox had entered into the 2015 Agreements, Fuji Xerox re-leased the “Color 1000 Press” photocopier (which was previously rented to Mazzy Creations under the 2012 Rental Agreement) to Unique Colour Separation, yet did not offer any credit note to Mazzy Creations.

¹⁹⁷ Transcript (22 April 2021), p 55 at lines 1–11.

122 In my view, this argument is wholly misconceived. It is well established that a plaintiff must take all reasonable steps to mitigate the loss it suffered as a result of a defendant's breach of contract, and cannot recover damages for any loss which it could have avoided but failed to avoid due to its own unreasonable action or inaction (see *Alvin Nicholas Nathan v Raffles Assets (Singapore) Pte Ltd* [2016] 2 SLR 1056 at [17]). However, I am unable to accept the defendants' assertion that Fuji Xerox failed to take reasonable steps to mitigate its losses. Fuji Xerox's claim against Mazzy Creations in the present Suit is for unpaid sums due under the 2015 Agreements. The fact that Fuji Xerox re-leased a photocopier previously rented to Mazzy Creations under the 2012 Rental Agreement is completely irrelevant to whether Fuji Xerox has mitigated the losses it has suffered as a result of Mazzy Creations' breach of its payment obligations under the 2015 Agreements. Further, given that the "Color 1000 Press" photocopier was owned by Fuji Xerox and the 2012 Rental Agreement had been superseded, I agree with Fuji Xerox's argument that it was fully entitled to re-lease this photocopier to Unique Colour Separation and did not need to account to Mazzy Creations in respect of any amounts earned from this re-leasing.¹⁹⁸ This was a rental agreement and the ownership of the "Color 1000 Press" photocopier in the 2012 Rental Agreement rested with Fuji Xerox who was entitled to re-lease it to Unique Colour Separation.

Set-off of the charges for printing services provided by Mazzy Creations

123 It is undisputed that the charges payable to Mazzy Creations for the printing services it provided to Fuji Xerox amounted to \$93,109.26. However, Fuji Xerox argues that it has already validly set off these charges against the prior amounts owed to it by Mazzy Creations under the 2015 Rental Agreement

¹⁹⁸ PRDC at para 9(c).

via the issuance of credit notes to Mazzy Creations. Fuji Xerox contends that it has exhibited detailed statements and the specific invoices from both Fuji Xerox and Mazzy Creations which had been set off against each other.¹⁹⁹

124 On the other hand, the defendants contend that Fuji Xerox has failed to sufficiently prove that a valid set-off was effected. The defendants emphasise that Fuji Xerox pleaded in its Reply and Defence to Counterclaim that it had set off these printing charges through the issuance of credit notes.²⁰⁰ However, Fuji Xerox has merely made broad reference to credit notes being issued to the defendants (see [31]–[32] and [44] above). The defendants put Fuji Xerox to strict proof that this set-off was effected.²⁰¹ According to the defendants, the documentary evidence does not indicate that the alleged credit notes set-off was effected by Fuji Xerox.²⁰² In particular, the defendants rely on an e-mail from Fuji Xerox to Ms Chua dated 27 October 2017 (the “October 2017 E-mail”), in which Fuji Xerox informed Ms Chua that the issuance of a credit note to set off the sum of \$36,202 was “[c]ontingent on [Mazzy Creations] making expeditious payment” of the outstanding sums due to Fuji Xerox.²⁰³ The defendants submit that this shows that no credit notes set-off had taken place as at 27 October 2017.²⁰⁴ The defendants further submit that they asked Fuji Xerox’s counsel to produce copies of these credit notes after the trial, but Fuji Xerox refused to do so on the ground that the credit notes were an “internal credit memo”.²⁰⁵

¹⁹⁹ Plaintiff’s Opening Statement at para 33; PWS at paras 63, 65, 66 and 69(a)(i).

²⁰⁰ DRS at para 42.

²⁰¹ Transcript (22 April 2021), p 27 at lines 16–30.

²⁰² DWS at paras 64–73.

²⁰³ AB, Vol 2 at pp 512–513.

²⁰⁴ DWS at para 63; DRS at paras 42–44.

²⁰⁵ DWS at para 69.

125 In my view, Fuji Xerox has adduced sufficient evidence to prove, on a balance of probabilities, that \$83,950.06 of these charges have been validly set off against the prior amounts owed to it by Mazzy Creations. Fuji Xerox produced statements showing that it had set off Mazzy Creations' invoices amounting to \$83,950.06 against the \$93,109.26 it owed to Mazzy Creations for printing services.²⁰⁶ Even though Fuji Xerox did not produce physical credit notes, it admitted statements of account that show that its invoices were set off against Mazzy Creations' invoices.²⁰⁷ Further, these statements were supported by copies of Fuji Xerox's specific invoices that had been set off against Mazzy Creations' invoices, and which are not part of Fuji Xerox's claim against the defendants in these proceedings.²⁰⁸ It is important that when Ms Chua was questioned on these statements, she agreed that they showed that Fuji Xerox had in fact validly set off these invoices against the printing charges owed to Mazzy Creations.²⁰⁹

Q: Do you agree that the table ... shown in these four pages would actually show the set offs of Xerox's invoices against Mazzy's invoices? Do you agree?

A: Yes.

126 The existence of this practice of setting off Fuji Xerox's invoices against Mazzy Creations' invoices is further corroborated by Ms Chua's letter to IRAS in March 2018, which referred to "a contra arrangement with Fuji Xerox in settlement of [Mazzy Creations'] lease agreement".²¹⁰

²⁰⁶ AB, Vol 1 at pp 209–213.

²⁰⁷ AB, Vol 1 at pp 209–213.

²⁰⁸ AB, Vol 1 at pp 214–231; PWS at para 66(b).

²⁰⁹ Transcript (22 April 2021), p 35 at lines 1–4.

²¹⁰ AB, Vol 6 at pp 1595–1596; PWS at para 66(c).

127 The October 2017 E-mail does not support the defendants’ submission. The sum of \$36,202 referred to in the October 2017 E-mail represented the “net gain” to Fuji Xerox arising from its re-leasing of the “Color 1000 Press” photocopier (which it had rented to Mazzy Creations under the 2012 Rental Agreement) to Unique Colour Separation. The return of this sum to Mazzy Creations was offered “in consideration of the long term acquaintance and goodwill” between the defendants and Fuji Xerox.²¹¹ Fuji Xerox further stated in the same e-mail that the credit note for the \$36,202 would be set off against the amount owing to Fuji Xerox contingent on Mazzy Creations and Scanagraphic “making expeditious payment” of outstanding amounts owing to Fuji Xerox.²¹² Thus, this had nothing to do with the printing charges of \$93,109.26 payable to Mazzy Creations. Therefore, the October 2017 E-mail does not show that the setting off of the printing charges was contingent on Mazzy Creations making payment of the outstanding sums due to Fuji Xerox as at 27 October 2017.

128 After setting off the sum of \$83,950.06 against Mazzy Creations’ counterclaim for printing charges, the balance owed to Mazzy Creations by Fuji Xerox is \$9,159.20.²¹³

Liability of Ms Chua and Mr Chua under the Guarantee

129 On the date that Mazzy Creations entered into the 2015 Agreements with Fuji Xerox, Ms Chua and Mr Chua also executed a Guarantee in favour of Fuji Xerox to guarantee the payment of all sums due from Mazzy Creations under the 2015 Agreements (see [15] above). Hence, Ms Chua and Mr Chua are jointly

²¹¹ AB, Vol 2 at p 513.

²¹² AB, Vol 2 at p 513.

²¹³ PWS at para 65.

and severally liable to Fuji Xerox under the Guarantee as guarantors for the outstanding sums payable by Mazzy Creations. This was not disputed by the defendants.

Conclusion

130 I make the following findings:

- (a) Of the three representations expressly pleaded by the defendants, none of them are false representations of fact. In particular, the Rental Amount Representation is factually accurate and not misleading in any way.
- (b) The non-disclosure of the rollover was not adequately and unequivocally pleaded by the defendants as a misrepresentation. In any event, the non-disclosure of the rollover could not amount to an actionable misrepresentation in the circumstances of this case.
- (c) Even if the PIC Representation, as alleged by the defendants, was made by Mr Lim to Ms Chua, it was not a false representation of fact.
- (d) Mr Lim's statement that the 2015 Rental Agreement would "supersede" the 2012 Rental Agreement was not adequately pleaded. In any event, this statement was too vague to constitute an actionable misrepresentation.
- (e) Fuji Xerox had not failed to mitigate its losses arising from the defendants' non-payment of the unpaid sums due under the 2015 Agreements.

131 Fuji Xerox had validly set off a sum of \$83,950.06 against the charges amounting to \$93,109.26 which it owed Mazzy Creations for printing services.

132 For the above reasons, I allow Fuji Xerox’s claim against the defendants for \$544,345.49, as follows:²¹⁴

- (a) all the unpaid amounts under the 2015 Agreements, *ie*, \$488,101.69 in total (comprising \$465,892.98 due under the 2015 Rental Agreement, \$20,784.07 due under the 2015 Service Agreement, and \$1,424.64 due under the 2015 Rental and Service Agreement);
- (b) the sum of \$909.50 for goods sold and delivered to Mazzy Creations;
- (c) late payment interest of \$64,493.50 (as at 2 January 2019); and
- (d) less the outstanding printing charges of \$9,159.20 owed to Mazzy Creations, which should be set off against the sum due under the 2015 Rental Agreement.

133 I allow Mazzy Creations’ counterclaim for printing services rendered to Fuji Xerox amounting to \$93,109.26. I accept that Fuji Xerox had set off a sum of \$83,950.06 against the amount owed by Mazzy Creations. Thus, Mazzy Creations is entitled to the balance of \$9,159.20. I dismiss Mazzy Creations’ defence of misrepresentation and its other counterclaims, *ie*, rescission of the 2015 Agreements, damages, and any penalties that IRAS may impose in relation to Mazzy Creations’ erroneous claims under the PIC Scheme.

²¹⁴ PWS at paras 69(a)(i)–69(a)(v).

134 The default interest rate prescribed by para 77 of the Supreme Court Practice Directions is 5.33% *per annum*. However, each of the 2015 Agreements stipulates a late payment interest rate:

(a) Under the 2015 Rental Agreement (cl 5.3) and the 2015 Service Agreement (cl 7), a late payment interest rate of 15% *per annum* is stipulated. This late payment interest rate is to be applied both before and after judgment until the date of full payment of the amount due.²¹⁵

(b) Under the 2015 Rental and Service Agreement (cl D), the interest rate is 2% *per month* for invoices not paid within 30 days of the invoice date.²¹⁶

135 The defendants have not offered any reason for not applying these contractually agreed interest rates in the present case. In these circumstances, I award Fuji Xerox interest at the following rates, from the date of the writ (*ie*, 7 June 2019) until the date of full payment:²¹⁷

(a) 15% *per annum* on the unpaid sums due under the 2015 Rental Agreement (*ie*, \$465,892.98 less Mazzy Creations' counterclaim for the sum of \$9,159.20) and under the 2015 Service Agreement (*ie*, \$20,784.07); and

(b) 2% *per month* on the unpaid sum due under the 2015 Rental and Service Agreement (*ie*, \$1,424.64).

²¹⁵ AB, Vol 1 at pp 6 and 8.

²¹⁶ AB, Vol 1 at p 10.

²¹⁷ PWS at paras 69(a)(vi) and 69(a)(vii).

136 With regard to Fuji Xerox's claim for the unpaid sum of \$909.50 for goods sold and delivered, I see no reason to depart from the default interest rate of 5.33% *per annum*. Accordingly, interest is to be awarded at the rate of 5.33% *per annum* on the sum of \$909.50 from the date of the writ (*ie*, 7 June 2019) until the date of judgment.²¹⁸

Costs

137 Fuji Xerox seeks costs against the defendants on an indemnity basis,²¹⁹ based on cl 7.7 of the 2015 Rental Agreement and cl 10.4 of the 2015 Service Agreement.²²⁰ These clauses provide that the customer (here, Mazzy Creations) shall be liable for all costs and expenses incurred by Fuji Xerox (including all legal fees on a full indemnity basis) flowing from the customer's breach of these agreements.²²¹ Accordingly, Fuji Xerox seeks costs of \$20,000 for the general care and conduct of the matter since 7 June 2019, \$60,000 for the three days of trial, \$5,000 for the closing and reply submissions, and all reasonable disbursements. These costs claims are all on an indemnity basis.²²²

138 During the parties' oral submissions, the defendants' counsel confirmed that the defendants did not dispute that Fuji Xerox had pleaded its claim for indemnity costs based on cl 7.7 of the 2015 Rental Agreement and cl 10.4 of the

²¹⁸ PWS at para 69(a)(viii).

²¹⁹ PSOC, p 27 at para (j) and p 28 at para (g); PWS at para 69(a)(ix).

²²⁰ PSOC, paras 11 and 18; PRS at para 41.

²²¹ AB, Vol 1 at p 6 (2015 Rental Agreement); AB, Vol 1 at p 8 (2015 Service Agreement).

²²² PRS at para 42.

2015 Service Agreement. They also did not dispute the quantum of indemnity costs sought by Fuji Xerox.²²³

139 I, therefore, award costs to Fuji Xerox on an indemnity basis, to be agreed or taxed.

Tan Siong Thye
Judge of the High Court

Chang Yen Ping Ian (Averex Law Corporation) for the plaintiff;
Bernard Sahagar s/o Tanggavelu (Lee Bon Leong & Co) for the
defendants.

²²³ Transcript (30 June 2021), p 29 at lines 5–11.

Annex A: 2015 Rental Agreement

RENTAL AGREEMENT

Agreement No.: L00030096

This Agreement is made on 10/03/2015 between Fuji Xerox Singapore Pte Ltd ("FXS") a company incorporated in Singapore and having its office at 80 Anson Road #01-01 Fuji Xerox Towers Singapore 079907 AND

Customer Name: **MAZZY CREATIONS PTE LTD**

Customer's Billing Address:

Tel: 62707148

Blk 1092, Lower Delta Road, #03-10/13 Singapore 169203

Fax No: 62707748

Customer's Address for Installation ("Installation Premises"):

Tel: 62707148

Blk 1092, Lower Delta Road, #03-10/13 Singapore 169203

("Customer")

FXS agrees to (a) rent to Customer, and Customer agrees to rent from FXS, the Equipment described in the schedule ("Schedule") set forth below; (b) license to Customer, and Customer agrees to license from FXS, the FXS Licensed Software described in the Schedule; (c) source for the benefit of Customer, and Customer agrees to accept from FXS, the tangible materials ("Non-FXS Software Materials") for the Non-FXS Software described in the Schedule, and subject to the terms and conditions found overleaf in this Agreement. Each item of Equipment, and FXS Licensed Software and Non-FXS Software (collectively "Software"), and any and all materials comprising any part of the same, shall be referred to as an "Item" and collectively as "Items".

SCHEDULE

Equipment			Commencement Date:	<u>01/04/2015</u>
FXS Equipment	Serial Number	Delivery/ Installation Date		
COLOR 1000i PRESS	000625	20/03/2015	Minimum Period:	<u>60</u> months
(C1000JPLGU @)			Payment Period:	monthly/3-monthly from Commencement Date
			Rental/Fee Payment Day:	<u>1st</u> day of every month/ every third month
Non-FXS Equipment			Rental/Fees	
FIERY EX PRINT SERVER	564540	20/03/2015	Initial Payment:	<u>SS na</u>
(C1000IEFI @)			Period Payment:	<u>SS 10,367</u>
Software			Final Payment:	<u>SS na</u>
FXS Licensed Software	Serial Number	Delivery/ Installation Date	Amount payable upon execution of this Agreement: <u>SS 622,020</u>	
Non-FXS Software				
The Equipment and Software stated above are strictly for use in Singapore only.				

Amount Payable Upon Execution of This Agreement serves to quantify the total liability of the Customer upon execution of the Agreement and is not a sum immediately payable but be progressively extinguished by the Customer as set out in the Schedule.

SIGNED FOR AND ON BEHALF OF FUJI XEROX SINGAPORE PTE LTD FUJI XEROX SINGAPORE PTE LTD Signed: _____ Name: _____ Title: _____ Jennifer Chin Manager Order Management		SIGNED FOR AND ON BEHALF OF THE CUSTOMER Signed: _____ Name: <u>Ms Alice Chua</u> Title: <u>MD</u> Customer Stamp: _____
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Agreement Terms & Conditions overleaf.

RA (Standard) - 0909 Rev 06

Fuji Xerox Singapore Pte Ltd (Reg. No. 198500962E) 80 Anson Road #01-01 Fuji Xerox Towers Singapore 079907

COMMENCEMENT

1. Rental ("Rental") of the Equipment and license ("License") of the FXS Licensed Software will start on the Commencement Date and continue for the Minimum Period set out in the Schedule. The Rental and the License will automatically renew and continue after the Minimum Period, unless terminated by 2 months' prior written notice expiring on a date after the Minimum Period.

EQUIPMENT WARRANTIES

2. The Equipment may consist of FXS Equipment manufactured by FXS or its related companies, and Non-FXS Equipment manufactured by third parties. Legal title in and to the Equipment shall at all times remain in FXS.

2.1 No warranties are given by FXS in respect of the Non-FXS Equipment. FXS shall, if it is able to do so, assign to Customer the benefit of any manufacturer's or supplier's warranty that it may hold in relation to the Non-FXS Equipment. Any such assignment shall be rescinded upon termination of this Agreement.

SOFTWARE/PERIPHERALS

3. FXS, its related companies or licensors (as the case may be) shall at all times remain the absolute owners of all rights, title and interest in the FXS Licensed Software. The License is non-exclusive and non-transferable, and is solely for use in conjunction with the Equipment in which installation is first made by FXS. Without prejudice to Clause 1 above, Customer will be bound by Clauses 3.1 and 3.2 below, upon delivery of the FXS Licensed Software.

3.1 Customer will not do or allow any act or thing which is likely to jeopardise or invalidate any of the intellectual property rights in or to the FXS Licensed Software and will not copy, reproduce or in any other way alter, modify, duplicate, reverse engineer, decompile or disassemble the FXS Licensed Software.

3.2 Customer will comply with the terms of any license issued by the proprietor of any FXS Licensed Software (which may either be FXS or its related company or a licensor of FXS) for such software.

3.3 FXS does not warrant that the FXS Licensed Software is defect free or that its use will be uninterrupted or error free. The FXS Licensed Software has not been customised to meet Customer's requirements and Customer must itself ensure that the Software meets its requirements.

3.4 Any relevant third party proprietor shall at all times remain the absolute owner of all rights, title and interest in any Non-FXS Software. FXS is not the licensor of any Non-FXS Software and does not warrant or represent that FXS is able to confer any rights to use the Non-FXS Software. FXS sole obligation is to source for and deliver the Non-FXS Software Materials to Customer. Customer will ensure that any license required for use of any Non-FXS Software is secured and will comply with the terms of such license. No warranties or representations are given by FXS in respect of the Non-FXS Software.

3.5 The Rental/Fees paid or payable by Customer do not entitle Customer to upgrades or new versions or new releases to any of the Software.

ASSIGNMENT

4. Customer shall not assign its rights under this Agreement without FXS' prior written consent. If consent is given, FXS may impose an administrative fee at FXS prevailing standard rates. FXS may assign any or all of its rights and/or obligations under this Agreement to a related company of FXS without prior consent of the Customer. In the event of an assignment of any obligations by FXS, Customer shall accept the performance by the relevant assignee in lieu of the performance by FXS.

CUSTOMER'S OBLIGATIONS

5.1 Customer undertakes to pay (a) the Initial Payment; (b) all Period Payments for the whole Minimum Period; and (c) the Final Payment. The Initial Payment is payable on or before the Commencement Date set out in the Schedule. Each Period Payment is payable on the Rental/Fee Payment Day throughout the Minimum Period and thereafter if this Agreement continues. If this Agreement terminates before the end of the Minimum Period, all Period Payments for the balance of the Minimum Period shall become due and payable immediately in accordance with Clause 7.3. The Final Payment is payable together with the last due Period Payment occurring during the Minimum Period, or in the event of early termination, immediately.

5.2 The Initial Payment, Final Payment and the Period Payments (collectively "Rental/Fees") and all other amounts payable to FXS under this Agreement are collectively referred to as "FXS Payments". All FXS Payments must be paid to FXS free from any withholding, deduction, set off, reduction, defence, deferment and counterclaim, whether on account of taxes or otherwise. The obligations of Customer under this Agreement, and to pay the FXS Payments, are absolute and shall not be affected by any matter, event or contingency whatsoever, whether such matter, event or contingency results in the damage, destruction or loss of use of the items or any of them or otherwise.

5.3 Customer agrees to pay all goods and services tax and other taxes and charges that may arise in connection with the transactions and any payments contemplated by this Agreement. In the event that Customer defaults in payment of the amount due under any invoice issued by FXS ("FXS' Invoice") Customer shall pay interest at the rate of 15% per annum (which rate will apply before as well as after judgment) from the due date of the FXS' Invoice until the date of full payment of the amount due.

5.4 Customer undertakes to comply with its undertakings and obligations under any agreement for maintenance and service made with FXS in relation to any item.

5.5 Customer will bear the risk of loss, theft, destruction or of damage to each item from the date of delivery of the said item. Customer will insure and keep insured each item against loss, theft, destruction or of damage. FXS is entitled to all proceeds payable under such insurance and will appropriate the proceeds towards payments due or becoming due to FXS.

5.6 The Customer agrees that the Equipment may not be moved or relocated from the original installation position without the prior written consent of FXS. Further, the Customer agrees not to use, allow the Equipment/ Services/ Software to be used or moved to a location outside the territory of Singapore.

FXS OBLIGATIONS

6. FXS warrants that the FXS Equipment will be free from defects in materials, workmanship and installation for a period of 90 days from the date of installation (the "warranty period").

6.1 If within the warranty period, FXS receives written notice from the Customer of any breach of the said warranty, FXS shall, within a reasonable time, repair or at its option, replace the FXS Equipment or such parts of it as may be defective. Provided always that the Customer has used and maintained the FXS Equipment in accordance with the terms of this Agreement and Provided the Customer is not in breach of any of the terms of this Agreement.

6.2 This warranty will not apply where the defect is caused by any default or wilful or negligent act or omission of the Customer, its employees, servants or agents.

6.3 Save as expressly set forth above, FXS shall not be liable to Customer for any loss or damage arising out of or in connection with any breach by FXS of this Agreement (including any warranty), or in tort (including negligence) or breach of statutory duties, or arising out of or in connection with the state, condition, use, application and/or exploitation of any item or any matter whatsoever, save for death or personal injury resulting from the negligence of FXS.

6.4 Notwithstanding anything to the contrary herein, FXS shall, in any event, not be liable for any consequential or indirect loss or damage (including without limitation loss of profits, loss of business or loss of goodwill) arising out of or in connection with the matters aforesaid or any matter whatsoever.

TERMINATION

7. This Agreement cannot be terminated or cancelled except as expressly set forth in this Agreement.

7.1 Customer may cancel this Agreement before but not on or after the earliest Delivery Date indicated in the Schedule by giving written notice to FXS and paying an administrative fee amounting to 20% of the Amount payable upon execution of this Agreement set out in the Schedule.

7.2 FXS may terminate this Agreement by giving notice in writing if the Customer is in breach of any of the terms and conditions of this Agreement and such breach remains unremedied for seven (7) days following notice by FXS specifying such breach. FXS may terminate this Agreement immediately upon the occurrence of any of the following:

- any proceeding is commenced or an order is made or a resolution is passed for the dissolution, or winding up of Customer or for the appointment of a liquidator, receiver, judicial manager, administrator, trustee or similar officer of Customer or any part or all of its assets or business;
- Customer stops or suspends payments to or enters into any composition with creditors, or is unable, or admits its inability, to pay its debts, or shall transfer or otherwise dispose of any material part of its assets or undertaking;
- Customer abandons any of the Equipment or
- any agreement described in Clause 5.4 is terminated or
- if distress or execution is levied or threatened against the Customer

7.3 Upon termination pursuant to Clause 7.2 or otherwise howsoever arising, FXS is entitled to declare:

- all costs and expenses incurred by FXS in relation to the termination of the Agreement and repossession of the machine; including but not limited to the total rental in arrears, including any interest that has accrued and continues to accrue, due and owing as at the time of termination of the Agreement, all sums and payments to become due under this Agreement for the balance of the Minimum Period; and a prevailing administration fee immediately due and payable
- require Customer to return immediately all Equipment, all tangible materials containing copies of the FXS Licensed Software and all Non-FXS Software Materials (including any copies) and/or expunge all of the same from any equipment, and cease any further use thereof;
- enter any premises owned or controlled by Customer and take immediate possession of all items aforesaid; and/or
- exercise any right or remedy that may be available to FXS under applicable laws.

7.4 Customer may terminate this Agreement by giving notice in writing if FXS is in breach of any of the material obligations set out under Clauses 5 and 6.1 above, and such breach remains unremedied for thirty (30) days following notice by Customer specifying such breach.

7.5 Upon termination pursuant to Clause 7.4, Customer shall immediately return all Equipment, all tangible materials containing copies of the FXS Licensed Software and all Non-FXS Software Materials (including any copies) and/or expunge all of the same from any equipment, and cease any further use thereof. The Customer shall remain liable for all sums due under this Agreement including but not limited to the total rental in arrears due and owing as at the time of termination of the Agreement. FXS shall have the right to enter any premises owned or controlled by the Customer to make immediate possession of all items aforesaid.

7.6 Any rights conferred on Customer under the License shall automatically cease to be effective upon the termination of this Agreement.

7.7 Customer shall be liable for all costs and expenses incurred by FXS (including legal fees on a full indemnity basis) flowing from the breach by Customer of this Agreement and/or the termination and/or the exercise by FXS of its rights and remedies under this Agreement.

7.8 Any termination of this Agreement shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after termination.

SERVICE OF PROCESS

8. Either party may effect service of any legal process or any document requiring personal service on the other party by leaving it at, or by sending it by AR registered post, to the other party's last known address. Nothing herein shall affect either party's right to serve legal process by any other manner permitted by law.

WAIVER

9. No failure or delay on the part of FXS in enforcing any term or condition of this Agreement or to exercise any right or remedy (whether in whole or in part) under this Agreement shall be deemed a waiver of FXS' rights hereunder nor prejudice FXS' right to take subsequent action.

ENTIRE AGREEMENT

10. This agreement constitutes the entire agreement between the Customer and FXS. No representation, statement, warranty not contained in this Agreement shall be binding on FXS and no waiver, alteration or modification of the terms of this Agreement shall be binding unless recorded in writing and signed by a Director or General Manager of FXS and by a person authorised by the Customer.

GOVERNING LAW

11. This Agreement shall be governed by and construed in accordance with the laws of the Republic of Singapore. Both parties agree to submit to the non-exclusive jurisdiction of the Courts of Singapore.

Annex B: 2015 Service Agreement

SERVICE AGREEMENT



Agreement No. : F00086569

This Agreement is made on 10/03/2015 between Fuji Xerox Singapore Pte Ltd ("FXS") a company incorporated in Singapore and having its office at 80 Anson Road #01-01 Fuji Xerox Towers Singapore 079907 AND

Customer Name: MAZZY CREATIONS PTE LTD

Customer's Billing Address:

Tel: 62707148

Blk 1092, Lower Delta Road, #03-10/13 Singapore 169203

Fax No: 62703108

Customer's Address for Installation:

Tel: 62707148

Blk 1092, Lower Delta Road, #03-10/13 Singapore 169203

("Customer")

FXS agrees to provide services ("Services") for the Equipment and Software described in the schedule ("Schedule") set forth below, subject to the terms and conditions found overleaf in this Agreement. Each item of Equipment, and FXS Licensed Software and Non-FXS Software (collectively "Software"), and any and all materials comprising any part of the same, shall be referred to as "Item" and collectively as "Items".

SCHEDULE

Gold / Silver / Clear toners
will be charged separately.

Equipment		Serial Number	
FXS Equipment			
COLOR 1000i PRESS		000625	
(11000 IPLGN @)			
Non-FXS Equipment			
FIERY EX PRINT SERVER		564540	
(11000 36FI @)			
Software			
FXS Licensed Software		Serial Number	
Non-FXS Software			
The Equipment and Software stated above are strictly for use in Singapore only.			
Remarks: Initial 80,000 color copies Poc (once off)			

Service Commencement Date:	26/03/2015
Equipment	
Equipment Minimum Period:	60 months
Minimum Monthly Equipment Maintenance Charge:	SG\$ -
(based on committed number of copies)	
Committed Number of Copies:	-
Price Per Copy for Full Colour Copy Charge:	
(In excess of committed number of copies)	9.5 cents
Price Per Copy for Black & White Copy Charge:	1.5 cents
Additional Price Per Copy for Full Colour Copy (>A4) Charge:	- cents
Software	
Software Minimum Period:	- months
Yearly Software Maintenance Charge:	SG\$ -

SIGNED FOR AND ON BEHALF OF FUJI XEROX SINGAPORE PTE LTD FUJI XEROX SINGAPORE PTE LTD Signed: _____ Name: _____ Title: _____ Jennifer Chin Manager Order Management	SIGNED FOR AND ON BEHALF OF THE CUSTOMER Signed: _____ Name: <u>MS ALICE CHUA</u> Title: <u>MD</u> Customer Stamp: _____
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Agreement Terms & Conditions overleaf.

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Fuji Xerox Singapore Pte Ltd (Reg. No. 198500962E) 80 Anson Road #01-01 Fuji Xerox Towers Singapore 079907

1. Services will commence on the Service Commencement Date and will continue: (a) in the case of the Equipment, for the Equipment Minimum Period; and (b) in the case of the Software, for the Software Minimum Period. Service for the Equipment and the Software shall continue after their respective stated minimum period, unless terminated by 30 days prior written notice expiring on a date after the relevant minimum period.
2. FXS will (a) replace parts necessary for the efficient working of the Equipment (replacement parts will be of serviceable quality, may either be new or refurbished and will remain the property of FXS); (b) service (i.e. inspect, adjust and repair) the Equipment; (c) provide xerographic supplies necessary for the operation of the FXS Equipment other than colour toners (unless otherwise specified in the Schedule) and output copy material; and (d) provide any patches or bug fixes ("Relevant Patch") for the Software as and when available (to be determined by FXS). An upgrade, new release or new version of the Software does not fall within the scope of this Agreement and will only be available to Customer on payment of FXS prevailing standard rates for its license and installation.
3. Services will be performed during FXS's normal service hours, between 9.00 am to 5.00 pm on Mondays to Fridays. Services will also be performed for the FXS Equipment between 9.00 am and 12.00 noon on Saturdays. Public holidays are excluded. FXS will attend only at the Installation Address described in the Schedule and is not obliged to attend at any premises outside of Singapore. If FXS agrees to provide any Services outside of the normal service hours, Customer shall pay to FXS additional charges at FXS prevailing standard rates (the reference to which throughout means rates for time and materials).
- 3.1 Technical Support Services for Software shall be provided in the following manner:
 - 3.1.1 **Level One Support:** In the first instance, technical support will be provided via the telephone. If there is any suspected problem in the Software, Customer shall notify FXS of the relevant problem ("Software Problem") via telephone. Customer must have used reasonable efforts to check that the method of use or operation of the Software is in accordance with any operating instructions or manuals provided. FXS will use best efforts to diagnose the Software Problem via telephone and Customer will implement the diagnosis in accordance with the instructions of FXS. Customer is obliged to provide a reasonably skilled and competent in-house or contracted system or network administrator for implementation of the diagnosis and instructions of FXS.
 - 3.1.2 **Level Two Support:** In the second instance, FXS will attend on site and diagnose the Software Problem. Level Two Support will not be undertaken unless the procedures and requirements for Level One Support have been implemented and Customer has discharged its obligations for purposes of Level One Support.
- 3.2 Technical Support Services for FXS Equipment shall be provided in the following manner: If any suspected problem arises in the FXS Equipment, Customer shall notify FXS of the relevant problem ("Equipment Problem") via telephone. Customer must have used reasonable efforts to check that the method of use or operation of the FXS Equipment is in accordance with any operating or user instructions or manuals provided. Subject thereto, FXS will attend on site to diagnose the Equipment Problem.
- 3.3 FXS may require the Customer to pay additional charges, at FXS prevailing standard rates, if FXS performs any Services or attends on site in relation to any Software Problem or Equipment Problem where it is a matter that (a) FXS can subsequently show that such services are not within the scope of this Agreement; (b) a reasonably skilled and competent in-house or contracted systems or network administrator would have been competent to resolve; or (c) for Technical Support Services for Software, Customer ought to have been able to resolve at Level One Support but failed to do so.
- 3.4 It is hereby agreed that FXS shall not be liable to the Customer and shall not be bound by its obligations under Clauses 2 and 3 herein in the event FXS is being prevented from discharging such obligations by circumstances beyond its control, whether or not such circumstances would amount to Acts of God, Force Majeure or other frustrating events in law.
4. Customer undertakes: (a) not to make any modifications to any item; (b) to use each item only in Singapore and in accordance with any operating instructions or manuals furnished by, and any reasonable requirements of FXS; (c) not to use any inappropriate hardware, software or through-put materials with any item; (d) not to use consumables not supplied by FXS on any Equipment; (e) not to move any Equipment from any position, which it is from time to time installed, without the prior written consent of FXS or with the assistance of any person not expressly authorised by FXS; (f) not to install any Software in any equipment other than in the Equipment in which installation is first made by FXS; (g) to keep each item in its safe custody and control and free from any encumbrance and adverse claims; (h) to ensure that each item is not lost or stolen, improperly or negligently used or used by any unauthorised person; (i) to provide all relevant facilities and render all assistance in order that FXS may properly and effectively undertake the Services; (j) to give FXS full access to any item, any premises where they may be found and to other equipment and software that FXS may require to perform the Services; and (k) to maintain an operating environment which conforms with the written specifications (if any) provided by FXS.
- 4.1 The provision of the Services, other than xerographic services, does not include services occasioned by or attributable to any: (a) maintenance, servicing, repairs or modifications to any item by persons other than the authorised personnel of FXS or without the prior written consent of FXS; (b) misuse, insufficiency or infrequency of use of the FXS Equipment; (c) conditions extraneous to any item, or the operating environment; (d) any installation of the Software in any equipment other than equipment in which it was first installed by FXS; (e) harm, damage or destruction incurred by any item; (f) breach or default by Customer of its obligations under this Agreement; or (g) failure to use in substitution for any previous version of the Software any upgrade within the period as notified by FXS. The Services does not include rectification of lost or corrupted data, or harm, damage or destruction of the FXS Equipment or Software caused by viruses and other adverse programming processes, or correction of any error, defect or bug in the Software (other than by means of a Relevant Patch, as and when available).
- 4.2 If services are requested for by Customer and are provided by FXS but are outside, or are precluded by, this Agreement, Customer will pay for such said services at FXS prevailing standard rates for such services.
5. Customer irrevocably commits by the execution of this Agreement to pay the Maintenance Charges (for both Equipment and Software) for the whole Minimum Period. Maintenance Charges shall be payable monthly, as invoiced by FXS. If this Agreement terminates before the end of the Equipment Minimum Period, Maintenance Charges (for both Equipment and Software) due or becoming due for the balance of any applicable minimum period shall be payable immediately. The amount of Maintenance Charges for the Equipment is (a) the Minimum Monthly Equipment Maintenance Charge added to (b) the Price Per Copy in Excess of Committed Number of Copies multiplied by the number by which the Meter reading for any calendar month is in excess of the Committed Number of Copies. Component (b) above shall be disregarded in the event of termination before the end of the Equipment Minimum Period for the period after termination.
6. A Meter is affixed to one or more of the FXS Equipment for measuring output copy material. Customer shall notify FXS of the output copy material consumption as reflected on the Meter on or before the 25th day of each month and FXS shall render an invoice for the month's Maintenance Charges. In the event of a discrepancy between any output copy material consumption as notified by Customer and any Meter reading done by FXS for the same period, the Meter reading done by FXS shall be binding and conclusive for purposes of computation of any charges payable by Customer to FXS. Customer shall ensure that the Meter is not removed or tampered with, damaged or destroyed. If any such event arises, Customer shall notify FXS immediately. FXS will estimate the level of output copy material consumption for the relevant period if Customer fails to notify FXS of the output copy material consumption as stated above, or if the Meter has been removed or tampered with or is damaged or destroyed. FXS's estimation will be binding and conclusive for purposes of computation of any charges payable by Customer to FXS.
- 6.1 The Maintenance Charges and all other amounts payable to FXS under this Agreement are collectively referred to as "FXS Payments". Customer shall pay all FXS Payments immediately upon receipt by Customer of the relevant invoice issued by FXS. All FXS Payments must be paid to FXS free from any withholding, deduction, set off, defence, claim and counterclaim, whether on account of taxes or otherwise. The obligations of Customer to pay the FXS Payments are absolute and shall not be affected by any matter, event or contingency whatsoever, whether such matter, event or contingency, results in the damage, destruction loss of use of the items or any of them or otherwise.
- 6.2 FXS reserves the right to increase the monthly Maintenance Charges payable at any time upon 30 days prior notice to Customer. Such increase is effected by increasing the Minimum Monthly Equipment Maintenance Charge, the Software Monthly Maintenance Charge and/or the Price per Copy in Excess of Committed Number of Copies, save that any increase to each of the aforesaid shall not in any year exceed 15% of the value applicable on 1st January for that year.
7. Customer agrees to pay all goods and services tax and other taxes and charges that may arise in connection with the transactions and any payments contemplated by this Agreement. In the event that Customer defaults in payment of the amount due under any invoice issued by FXS ("FXS Invoice") Customer shall pay interest at the rate of 15% per annum (which rate will apply before as well as after judgment) from the due date of the FXS Invoice until the date of full payment of the amount due.
8. Customer shall not assign its rights under this Agreement without FXS's prior written consent. If consent is given, FXS may impose an administrative fee due to such assignment at FXS prevailing standard rates. FXS may assign any or all of its rights and/or obligations under this Agreement to a related company of FXS without prior consent of the Customer. In the event of an assignment of any obligations by FXS, Customer shall accept the performance by the relevant assignee in lieu of the performance by FXS.
9. In the event FXS is under any circumstance liable for any defect or deficiency in the services or any performance of or lack of or delay in performance with respect to the services to be provided under this agreement, FXS's only liability shall be (at the election of FXS in its sole discretion) to repeat the performance of the services to the best of its ability or to replace or repair the item on which the services were performed or required to be performed within a reasonable time. Save as expressly set forth above, FXS shall not be liable to customer for any loss or damage arising out of or in connection with any breach by FXS of this agreement (including any warranty), or in tort (including negligence) or breach of statutory duties, or arising out of or in connection with the performance of or lack of or the delay in the performance of any services or the state, condition, use, application and/or exploitation of any item or any matter whatsoever, save for death or personal injury resulting from the negligence of FXS. Notwithstanding anything to the contrary herein, FXS shall in any event not be liable for any consequential or indirect loss or damage (including without limitation loss of profits, loss of business or loss of goodwill) arising out of or in connection with the matters aforesaid or any matter whatsoever.
10. This Agreement cannot be terminated except as expressly set forth in this Agreement.
- 10.1 FXS may terminate this Agreement by giving notice in writing if (a) Customer breaches any term of this Agreement; (b) any proceeding is commenced or an order is made or a resolution is passed for the dissolution, or winding up of Customer, or for the appointment of a liquidator, receiver, judicial manager, administrator, trustee or similar officer of Customer or any part or all of its assets or business; (c) Customer stops or suspends payments to or enters into any composition with creditors, or is unable to pay its debts, or shall transfer or otherwise dispose of any material part of its assets or undertaking; or (d) Customer abandons any of the Equipment.
- 10.2 Customer may terminate this Agreement by giving notice in writing if FXS is in breach of its obligations under Clauses 2 and 3 above and such breach remains unremedied for thirty (30) days following notice by Customer to FXS specifying such breach.
- 10.3 Upon termination pursuant to Clause 10.1 or otherwise howsoever arising, FXS is entitled to: (i) declare all sums and amounts due or to become due under this Agreement for the balance of the Minimum Period immediately due and payable; and/or (ii) exercise any right or remedy that may be available to FXS under applicable laws.
- 10.4 Customer shall further be liable for all costs and expenses incurred by FXS (including solicitors and clients costs on a full indemnity basis) as a result of the breach by Customer of this Agreement and/or the termination and/or the exercise by FXS of its rights and remedies under this Agreement.
- 10.5 Any termination of this Agreement pursuant to this clause shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after termination.
11. This Agreement constitutes the entire agreement between the Customer and FXS. No representation, statement, warranty not contained in the Agreement shall be binding on FXS and no waiver, alteration or modification of the terms of this Agreement shall be binding unless recorded in writing and signed by a Director or General Manager of FXS and by a person authorised by the Customer.
12. This Agreement shall be governed by and construed in accordance with the laws of Singapore and the parties hereby submit to the non-exclusive jurisdiction of the courts in Singapore.

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Fuji Xerox Singapore Pte Ltd (Reg. No. 198500962E) 80 Anson Road #01-01 Fuji Xerox Towers Singapore 079907

Annex C: 2015 Rental and Service Agreement

RENTAL AND SERVICE AGREEMENT



Agreement No.: R0000 5227

THIS RENTAL AND SERVICE AGREEMENT is made on the 10/03/2015 between Fuji Xerox Singapore Pte Ltd a company incorporated in Singapore and having its office at 80 Anson Road #01-01 Fuji Xerox Towers Singapore 079907 (hereinafter called 'FXS') AND

Customer Name: MAZZY CREATIONS PTE LTD

Installation Address:

BK 1092 LOWER DELTA ROAD Tel: 6221208
#03-10 (169203)

Billing Address:

Tel:

(hereinafter called the 'Hirer')

SERVICE COMMENCEMENT DATE: 01/04/2015		
EQUIPMENT	SERIAL NUMBER	INSTALLATION DATE
FX4127CP	552147	28/03/2012
The Equipment stated above is strictly for use in Singapore only.		

- This is a HIRING Agreement. The Equipment always remains the property of FXS.
- This Agreement (which includes applicable Schedules) comes into force when signed by or on behalf of the Hirer and by a person authorised by FXS.
- The period for which this Agreement is in force is set out in the Pricing Schedule overleaf which also mentions the period of written notice required by either party to terminate this Agreement in all circumstances apart from those mentioned in the next paragraph.
- FXS may determine this Agreement and may repossess the Equipment if the Hirer is in breach of any of the terms and such breach remains unremedied for fourteen (14) DAYS following written complaint by FXS specifying the breach.

FUJI XEROX

- Shall install the Equipment (which may or, at its option, may not be new) and will maintain it in good working order.
- Shall provide service (i.e. inspection, adjustment and repair) free of charge during its normal working hours (currently 9.00 am to 5.00 pm, Monday to Friday and 9.00 am to 12 noon on Saturday excluding Public Holidays) and shall provide replacement parts without further charge PROVIDED THAT the Hirer shall pay for any repairs, adjustments or replacements made necessary either by the Hirer's negligence or wilful act or default or by the use of supplies (including output copy material) or ancillary Equipment not approved by Fuji Xerox for use with the Equipment.
- Shall provide xerographic supplies as stated in the Pricing Schedule(s).
- Shall be entitled through its authorised representatives to enter the Hirer's premises at all reasonable times to inspect service or lawfully repossess the Equipment and if repossessing the equipment to do all things and use all Equipment as may be reasonably useful incidentally to the removal of the Equipment from the Hirer's premises.

THE HIRER

- Shall ensure that the installation area, access ways and electrical supply of its premises are suitable respectively for the installation, passage and electrical connection of the Equipment when it is delivered for installation and thereafter. Once installed, the Hirer will not move the Equipment but may request FXS to move it by giving at least 14 DAYS written notice.
- Shall return a correctly completed meter card to FXS on or before the 25th of every month based on which FXS shall render an invoice for the month's rental and service charges. FXS reserves the right to estimate the Hirer's copy consumption and to invoice the Hirer on the basis of this estimate in the event that the Hirer fails to return a correctly completed meter card.
- Shall pay for service outside FXS normal working hours (as defined) at the rates then currently charged by FXS.
- Shall pay all charges invoiced under this Agreement promptly and in accordance with invoice terms. FXS may include in these charges any tax or other government levies imposed directly in connection with the Agreement.
- Shall not make or permit any unauthorised alterations to the Equipment or any nameplates thereon, and will arrange insurance cover on the Equipment.
- Shall not assign its interest in this Agreement without the prior written consent of FXS.

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Fuji Xerox Singapore Pte Ltd (Reg. No. 198500962E) 80 Anson Road #01-01 Fuji Xerox Towers Singapore 079907

RENTAL AND SERVICE AGREEMENT

3 - YEAR CONTRACT

A. Period of Agreement and Termination

This Agreement is for the period of 36 MONTHS (hereinafter known as the Minimum Term) from the date of the Equipment Installation (or where the Equipment is already installed the date of this Agreement) except when clause G is applied. The charges and payment terms of this Agreement remain unchanged after the expiry of the Minimum Term and shall continue to subsist, unless otherwise terminated by either party giving at least two months' notice in writing.

B. Minimum Charge

There is a minimum charge for each machine, which includes _____ copies per month payable on invoice of _____

SS _____ per month

C. Copy Charge

Metered copy charges include the provision of all xerographic supplies necessary to ensure the satisfactory operation of the machine except output copy material which is ordered and paid for separately by the Hirer.

There are two rates of metered copy charge:

i) Copies from _____ to _____ copies per month

Color: _____ B/W: 0.9 cents per copy

ii) Copies in excess of _____ per month

Color: _____ B/W: _____ cents per copy

D. Interest

A 2% per month interest is chargeable for invoices not paid within 30 days of invoice date.

E. New Installation

For the balance of the calendar month in which an item of Equipment is first installed the minimum charge will be calculated on the number of working days of that month for which the equipment is installed.

F. Installation and Re-site Charge

The standard charge for delivery and installing a _____ is SS _____. If any special lifting or other tackle will be required in the course of the installation the Hirer will either ensure that it is made available (together with competent operative personnel) at the delivery of the Equipment or will, not less than two weeks prior to the delivery date, request FXS to arrange at the Hirer's expense for the provision of that tackle and personnel. If alterations to the buildings are required the cost will be paid by the Hirer. A charge will be made for re-siting of the Equipment subsequent to installation.

G. FXS reserves the right to vary the copy charges payable under this Agreement or the basis of such charges at any time upon 60 (sixty) days prior written notice. Notwithstanding any other terms of this Agreement, if during any one calendar year the charges payable under this Agreement are increased by FXS and such increased charges increase the total amount payable by the Hirer by more than 15% the copy charges payable on January 1st of the year, the Hirer shall be entitled to terminate this agreement by giving not less than 30 (thirty) days written notice to FXS such notice to expire on the date on which the increase would otherwise come into effect.

H. Notwithstanding anything herein contained FXS shall not be liable to the Hirer or others nor shall the Hirer have any claim against FXS for any physical damage, injury or loss of life or loss of business or profit or data or any other consequential loss however in respect of any act omission or negligence of any technician or servant or employee or independent contractor of FXS in or about the performance or purported performance of any duty relating to the provision of the installation and other services or any of them under this Agreement and it is further provided that the Hirer is not permitted to withhold rental payment to FXS in event that either or any of FXS covenants in this Agreement has not been fulfilled.

I. Deferred Rental

The amount of Deferred Rental payable at the end of the Agreement is SS _____.

J. If the Hirer shall make default in payment of any of the sums payable under this Agreement or shall fail to observe or perform any of the other terms and conditions of this Agreement whether express or implied or if FXS shall on any reasonable ground consider itself insecure FXS may without prejudice to any pre-existing liability of the Hirer to FXS by notice in writing left at or sent by prepaid post to the billing address or at or to the registered office or any business address of the Hirer or the Hirer's last known business address determine this Agreement and upon such notice being so served sent or left this Agreement shall for all purposes determine and thereafter the Hirer shall no longer be in possession of the Equipment with the consent of FXS and subject to the provisions hereinafter contained and any pre-existing liability of the Hirer thereunder neither party shall have any rights against the other.

If a winding-up order shall be made against the Hirer if the Hirer shall pass a resolution for voluntary winding up (otherwise then by way of amalgamation or reconstruction) or shall make any arrangement with its creditors or any assignment for the benefit of such creditors or if distress or execution shall be levied or threatened upon the Equipment or upon any of the Hirer's property or if any judgment against the Hirer shall remain unsatisfied for more than fourteen days or if the Hirer shall abandon the Equipment then this Agreement shall automatically and without notice determine and subject to the provisions hereinafter contained and any pre-existing liability of the Hirer thereunder neither party shall have any rights against the other.

Where this Agreement is determined or comes to an end pursuant to the provisions contained in this clause and FXS suffers loss as a result of being unable to re-let the equipment at a rental as much as that payable under this Agreement for the whole period between the date of such determination or coming to an end and the date on which this Agreement would have expired by effusion of time if it had not been determined or come to an end as aforesaid FXS shall be entitled to recover the amount of such loss from the Hirer.

K. Should the Hirer terminate this agreement whether deliberately or otherwise before the expiry of the term in force (minimum or renewal), the Hirer shall pay to FXS upon termination, the minimum charge and deferred for the machine up to the expiry of the current term. The Hirer agrees that this amount represents the minimum compensation to FXS for the loss of rental income arising from the early termination.

L. This Agreement shall be governed by the laws of Singapore and constitutes the entire agreement between the Hirer and FXS and no representation or statement not contained in this Agreement shall be binding on FXS as a warranty or otherwise. No alteration, waiver or modification of the printed terms of this Agreement shall be valid unless signed by the General manager of FXS and by a person authorised by the Hirer.

SIGNED ON BEHALF OF FUJI XEROX SINGAPORE PTE LTD

SIGNED FUJI XEROX SINGAPORE PTE LTD

NAME Jennifer Chin

TITLE Manager
Order Management

SIGNED ON BEHALF OF THE HIRER

SIGNED [Signature]

Must be signed by duly authorised representative of the Hirer

NAME ALICE CHUA TIEN JIN

TITLE M.D.

COMPANY STAMP

THIS CONTRACT IS SUBJECT TO GOODS & SERVICES TAX AT THE RATE THEN PREVAILING

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Fuji Xerox Singapore Pte Ltd (Reg. No. 198500962E) 80 Anson Road #01-01 Fuji Xerox Towers Singapore 079907