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

[2023] SGHC 171

Suit No 867 of 2018

Between

(1) David Haw Wan Sin
(2) Cindy Yee Ai Moi

… Plaintiffs

And

(1) Wendy Kwek Siang Ling
(2) Poh Wei Leong
(3) WK Events Pte Ltd
(4) WK Investment Network Pte Ltd
(5) Ecohouse Developments Asia Pacific Pte Ltd
(6) Ecohouse Singapore Pte Ltd
(7) Ecohouse Developments Ltd

… Defendants

JUDGMENT

[Contract — Collateral contracts]
[Tort — Breach of statutory duty]
[Tort — Misrepresentation — Fraud and deceit]
[Tort — Misrepresentation — Negligent misrepresentation]
[Trusts — Constructive trusts]

Version No 1: 20 Jun 2023 (16:56 hrs)

TABLE OF CONTENTS

INTRODUCTION **1**

BACKGROUND FACTS **3**

THE PARTIES 3

WENDY'S PROPERTY INVESTMENT PROGRAMMES AND THE INCORPORATION OF WKIN AND WK EVENTS 5

THE WK INVESTMENT NETWORK YAHOO GROUP 6

HOW THE PLAINTIFFS BECAME ACQUAINTED WITH WENDY 7

THE PLAINTIFFS' INVESTMENT IN A PROPERTY VENTURE IN BERLIN, GERMANY WHICH WAS INTRODUCED BY WENDY IN APRIL 2012 8

THE PLAINTIFFS' INVESTMENT IN THE CASA NOVA PROPERTY DEVELOPMENT PROJECT IN BRAZIL **8**

THE PLAINTIFFS' INVESTMENT IN THE BOSQUE PROPERTY DEVELOPMENT PROJECT IN BRAZIL **10**

THE DEEDS OF MODIFICATION SIGNED BY THE PLAINTIFFS **12**

ECOHOUSE BRAZIL ULTIMATELY FAILED TO FULFIL ITS CONTRACTUAL OBLIGATIONS **13**

THE RELATIONSHIP BETWEEN ECOHOUSE ASIA PACIFIC, ECOHOUSE SINGAPORE, ECOHOUSE UK AND ECOHOUSE BRAZIL **14**

THE PARTIES' CASES **15**

THE PLAINTIFFS' CASE 15

Misrepresentation *15*

Negligent misrepresentation *20*

Version No 1: 20 Jun 2023 (16:56 hrs)

Breaches of collateral contracts *22*

Knowing receipt and dishonest assistance *23*

Breach of statutory duty under the Estate Agents Act *24*

THE DEFENDANTS' CASE 25

The First, Third and Fourth Defendants' case *25*

The Second, Fifth and Sixth Defendants' case *29*

ISSUES TO BE DETERMINED 30

MY DECISION 33

WHETHER THE CLAIMS AGAINST WK EVENTS, ECOHOUSE ASIA PACIFIC AND ECOHOUSE SINGAPORE CAN BE SUSTAINED 33

THE PLAINTIFFS' CASE OF FRAUDULENT MISREPRESENTATION AGAINST WENDY AND JOEY 38

The applicable law *38*

Preliminary issue on the Plaintiffs' pleadings *43*

(1) The Plaintiffs' failure to specifically plead a case of *fraudulent* misrepresentation in their Statement of Claim 43

(2) The First, Third and Fourth Defendants' claim that the Plaintiffs' case at the trial on the purported Four Representations differ from the Plaintiffs' pleaded case 44

Whether the Four Representations were made by Wendy *55*

(1) The Casa Nova Project 55

(2) The Bosque Project 73

Whether Joey endorsed the Four Representations by way of his conduct *76*

Whether the Four Representations were false *79*

(1) The Defendants' contention that the Plaintiffs had conceded at the trial that the Four Representations were true 80

(2) The Brazilian Government Representation 82

Version No 1: 20 Jun 2023 (16:56 hrs)

(3) The Escrow Representation 87

(4) The Investment Return Representation 91

(5) The Due Diligence Representation 92

(A) Whether the Due Diligence Representation was false in relation to the Casa Nova Project 93

(B) Whether the Due Diligence Representation was false in relation to the Bosque Project 105

(6) Summary on whether the Four Representations were false at the time they were made by Wendy 107

Whether Wendy and Joey knowingly made fraudulent representations regarding the Escrow Representation and the Due Diligence Representation 107

Whether Wendy intended for the Plaintiffs to rely on the Escrow Representation and the Due Diligence Representation 108

Whether the Plaintiffs did, in fact, act in reliance on the Escrow Representation and the Due Diligence Representation 112

Conclusion on the Plaintiffs' case of fraudulent misrepresentation against Wendy and Joey 120

THE PLAINTIFFS' CASE AGAINST WENDY AND JOEY UNDER S 2 OF THE MRA 121

The applicable law 121

The Plaintiffs have failed to make out a case against the Defendants under s 2(1) of the MRA 121

THE PLAINTIFFS' CASE OF NEGLIGENT MISREPRESENTATION AGAINST WENDY AND JOEY 122

The applicable law 122

The Plaintiffs were induced by Wendy's and Joey's Due Diligence Representation and the Plaintiffs relied on the Due Diligence Representation 125

Whether Wendy and Joey owed the Plaintiffs a duty of care 126

Whether Wendy and Joey breached their duty of care by making the Due Diligence Representation 131

Version No 1: 20 Jun 2023 (16:56 hrs)

(A) Due diligence done for the Casa Nova Project *131*

(B) Due diligence done for the Bosque Project *142*

Whether Wendy's and Joey's breach of duty of care caused the Plaintiffs' losses *150*

The Defendants' contention that when the Plaintiffs signed the Deeds of Modification, the Plaintiffs' entitlement to claim negligence against Wendy and Joey was irrevocably altered *150*

Conclusion on the Plaintiffs' case of negligent misrepresentation against Wendy and Joey *152*

THE PLAINTIFFS' CASE IN RELATION TO THE FIRST COLLATERAL CONTRACT AND THE SECOND COLLATERAL CONTRACT 152

The applicable law *152*

The Court's findings on the First Collateral Contract and the Second Collateral Contract *153*

WHETHER THE PLAINTIFFS HAVE MADE OUT A CASE THAT THE DEFENDANTS ARE LIABLE AS CONSTRUCTIVE TRUSTEES FOR KNOWING RECEIPT 155

The applicable law *155*

The application of the law to the facts of the present case *156*

WHETHER THE PLAINTIFFS HAVE MADE OUT A CASE THAT THE DEFENDANTS HAD DISHONESTLY ASSISTED IN THE FRAUD BY ECOHOUSE BRAZIL 157

The applicable law *157*

The application of the law to the facts of the present case *158*

WHETHER THE PLAINTIFFS HAVE MADE OUT A CASE THAT THE DEFENDANTS HAD BREACHED THEIR STATUTORY DUTY UNDER THE ESTATE AGENTS ACT 159

The applicable law *159*

The application of the law to the facts of the present case *161*

(1) Whether there was a breach of the Estate Agents Act 161

Version No 1: 20 Jun 2023 (16:56 hrs)

(2) Whether the Plaintiffs have shown that the statutory duty was imposed for the protection of a limited class of the public and that Parliament intended to confer on members of that class a private right of action for breach of the duty 167

WHETHER WKIN IS LIABLE IN ANY WAY 168

LOSSES WHICH THE PLAINTIFFS ARE ENTITLED TO CLAIM 170

SUMMARY OF MY DECISION 172

CONCLUSION 177

ANNEX 179

Version No 1: 20 Jun 2023 (16:56 hrs)

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

Haw Wan Sin David and another
v
Kwek Siang Ling Wendy and others

[2023] SGHC 171

General Division of the High Court — Suit No 867 of 2018
Tan Siong Thye J
7–10, 13–17, 21–23 March 2023, 21 April 2023

20 June 2023 Judgment reserved.

Tan Siong Thye J:

Introduction

1 The Plaintiffs in this suit are property investors who signed two sale and purchase agreements (the "two SPAs") with Eco House Brazil Construcoes Ltda ("Ecohouse Brazil"), a company incorporated in Brazil. The Plaintiffs made two separate payments totalling S$598,000 under the terms of the two SPAs. The two SPAs stated that, upon completion, Ecohouse Brazil would sell and the Plaintiffs would buy various residential freehold units in two different residential developments in Brazil. The two SPAs also stated that Ecohouse Brazil would undertake to procure buyers for the Plaintiffs' residential freehold units within 12 months from the date of the signing of the two SPAs. Further, the Plaintiffs would earn a 20% return of the purchase price within 14 days of the 12-month anniversary of the date of the two SPAs. The two payments

totalling S$598,000 were made by the Plaintiffs in Singapore into an escrow account of a law firm in the United Kingdom ("UK") following the signing of the two SPAs.

2 Towards the 12-month anniversary of the date of the two SPAs, it became apparent that Ecohouse Brazil was unable to meet its contractual obligations under the two SPAs. Ecohouse Brazil persuaded the Plaintiffs to sign two deeds of modification granting a 12-month extension to Ecohouse Brazil upon which an additional payment of 20% of the capital investment would be made to the Plaintiffs, *ie*, a sum totalling S$119,600. However, Ecohouse Brazil ultimately failed to deliver the residential freehold units as contracted in the two SPAs. Ecohouse Brazil also failed to deliver the 20% return of the purchase price to the Plaintiffs as contracted in the two SPAs. The Plaintiffs claim that the investments were fraudulent and Ecohouse Brazil did not, at any time, intend to honour its obligations under the two SPAs.

3 The Plaintiffs now seek to claim from the First to Sixth Defendants (collectively referred to as the "Defendants") for the losses which they had incurred. The thrust of the Plaintiffs' claim against the Defendants lies against the First Defendant who had introduced the Ecohouse Brazil developments to the Plaintiffs at two separate presentations conducted by the First Defendant and a Brazilian director of Ecohouse Brazil. Subsequently, the First Defendant sent emails to the Second Plaintiff and the other investors on the Ecohouse Brazil developments. The Plaintiffs claim that various representations were made by the First and Second Defendants, namely that the Ecohouse Brazil developments were backed and supported by the Brazilian government, that extensive and comprehensive due diligence had been done by the First and Second Defendants, that the moneys of the Plaintiffs would be kept safe in an escrow account and that the Plaintiffs would earn the promised 20% return. The

Version No 1: 20 Jun 2023 (16:56 hrs)

Plaintiffs allege that these representations made by the First and Second Defendants were false at the time they were made. Accordingly, the Plaintiffs pursue various heads of claims against the Defendants, namely fraudulent misrepresentation, misrepresentation under the Misrepresentation Act (Cap 390, 1994 Rev Ed) (the "MRA"), negligent misrepresentation, breaches of collateral contracts, loss of opportunity, constructive trusts and losses arising from the breach of duties under the Estate Agents Act (Cap 95A, 2011 Rev Ed) (the "Estate Agents Act").

4 In defence, the Defendants deny making such representations to the Plaintiffs. Further, the Defendants allege that the representations were not false. They claim that they had paid a six-figure sum to engage a Singapore lawyer to conduct due diligence on the Ecohouse Brazil developments. The First and Second Defendants also state that they had bought nine residential freehold units in the Casa Nova Project, which was one of the Ecohouse Brazil developments. Similarly, they had signed a sale and purchase agreement with Ecohouse Brazil and had also suffered losses as a result. Therefore, they deny that they should be held liable for the losses suffered by the Plaintiffs.

Background facts

The parties

5 The First Plaintiff is Haw Wan Sin David ("David"). The Second Plaintiff is David's wife, Yee Ai Moi Cindy ("Cindy").

6 The First Defendant is Kwek Siang Ling Wendy ("Wendy"). The Second Defendant is Poh Wei Leong ("Joey"). At the material time, Wendy and Joey were married to each other. They were, however, divorced on 24 August 2018.

Version No 1: 20 Jun 2023 (16:56 hrs)

7 The Third Defendant is WK Events Pte Ltd ("WK Events"), an exempt private company which was incorporated in Singapore on 1 June 2012. At the material time, Wendy was a director and shareholder of WK Events, and Joey was a shareholder of WK Events. Joey was also a director of WK Events until around 2016. WK Events was struck off the Register of Companies (the "Register") on 4 May 2020.[1]

8 The Fourth Defendant is WK Investment Network Pte Ltd ("WKIN"), an exempt private company which was incorporated in Singapore on 27 February 2012. At the material time, Wendy was a director and shareholder of WKIN, and Joey was a shareholder of WKIN. Joey was also a director of WKIN until around 2016.[2]

9 The Fifth Defendant is Ecohouse Developments Asia Pacific Pte Ltd ("Ecohouse Asia Pacific"), a private company which was incorporated in Singapore on 27 July 2012. Ecohouse Asia Pacific was a joint venture ("JV") set up by Ecohouse Singapore Pte Ltd ("Ecohouse Singapore"), which was incorporated for the purpose of the JV, and Ecohouse Brazil. At the material time, Joey was the managing director of Ecohouse Asia Pacific. The other director of Ecohouse Asia Pacific was Charles Valentine Fraser-Macnamara ("Charles"). Charles was the nominee of Anthony Jon Domingo Armstrong-Emery ("Anthony"). Anthony was a director of Ecohouse Brazil.

10 Charles was a solicitor in the UK at the material time. He was subsequently struck off the roll in the UK following a disciplinary tribunal's decision on his conduct in relation to the Ecohouse Brazil developments. The

---

1 Bundle of Affidavits of Evidence-in-Chief Volume 1 ("1BAEIC") at pp 61 to 64.

2 1BAEIC at pp 65 to 68.

Version No 1: 20 Jun 2023 (16:56 hrs)

shareholders of Ecohouse Asia Pacific were Charles and Ecohouse Singapore. Ecohouse Asia Pacific was struck off the Register on 23 September 2020.[3]

11 The Sixth Defendant is Ecohouse Singapore, an exempt private company which was incorporated in Singapore on 26 July 2012 (see [9] above). At the material time, Joey was the sole director and shareholder of Ecohouse Singapore. Ecohouse Singapore was struck off the Register on 23 September 2020.[4]

12 For completeness, there was a Seventh Defendant, Ecohouse Developments Ltd ("Ecohouse UK"), a private limited company which was incorporated on 28 May 2010 in the UK. Ecohouse UK went into liquidation on 15 January 2015 and was dissolved on or about 14 February 2018.[5] The Plaintiffs did not serve the writ on Ecohouse UK. The Plaintiffs wholly discontinued the action against Ecohouse UK on 8 May 2019.[6] This judgment, therefore, only focuses on the Plaintiffs' case against the Defendants.

Wendy's property investment programmes and the incorporation of WKIN and WK Events

13 Wendy was a property investor and she organised seminars where speakers would give talks on property investment. From 2009, Wendy conducted property investment seminars under the auspices of a company called

---

3 1BAEIC at pp 69 to 72.

4 1BAEIC at pp 73 to 75.

5 1BAEIC at pp 76 to 85.

6 Notice of Discontinuance/Withdrawal filed on 8 May 2019.

Version No 1: 20 Jun 2023 (16:56 hrs)

Executive Directions Pte Ltd ("Executive Directions"). Wendy was a director of Executive Directions together with one Jerome Tan ("Jerome").[7]

14 Later, the relationship between Wendy and Jerome soured.[8] Wendy left Executive Directions and incorporated WKIN with Joey in February 2012. Wendy then purportedly received advice from a mentor that she should not use the words "Investment Network" in her company name because it would attract unnecessary scrutiny from government agencies since the intention for the company was to organise talks and events. Therefore, she incorporated WK Events in June 2012.[9]

15 WK Events was, thereafter, used to organise seminars conducted by Wendy. At these seminars, Wendy would share her experiences on investing in properties, including properties outside of Singapore.[10]

The WK Investment Network Yahoo Group

16 When Wendy left Executive Directions and started her own companies, namely WK Events and WKIN, Wendy also created a WK Investment Network group which was hosted on the Yahoo platform (the "WK Investment Network Yahoo Group"). The participants of Wendy's property investment seminars, including past participants of seminars conducted under the auspices of Executive Directions, were invited to the WK Investment Network Yahoo Group.[11]

---

7 Bundle of Affidavits of Evidence-in-Chief Volume 2 ("2BAEIC") at p 407, para 7.

8 2BAEIC at p 407, para 7.

9 2BAEIC at pp 407 to 408, para 8.

10 2BAEIC at p 408, para 9.

11 2BAEIC at p 408, para 9.

Version No 1: 20 Jun 2023 (16:56 hrs)

17 According to Wendy, the WK Investment Network Yahoo Group was set up for sharing information and networking purposes. Further, according to Wendy, anyone in the WK Investment Network Yahoo Group could share property investment opportunities and could also invite members of the group to events or provide market updates.[12]

How the Plaintiffs became acquainted with Wendy

18 Sometime in October 2011, Cindy came across an advertisement offering a free one-hour seminar on property investment conducted by Wendy under the auspices of Executive Directions.[13] Cindy subsequently attended the seminar in or around October 2011.[14]

19 Thereafter, Cindy signed up for a paid two-day training event conducted by Wendy under the auspices of Executive Directions. Cindy paid S$2,995 to Executive Directions and attended the two-day training event sometime in November 2011.[15]

20 Subsequently, from June 2012 onwards, after Wendy left Executive Directions, she conducted seminars organised by WKIN or WK Events.[16] It is undisputed that Cindy was also a member of the WK Investment Network Yahoo Group.

---

12 2BAEIC at pp 408 to 409, paras 9 and 13.

13 1BAEIC at pp 5 to 6, para 16.

14 1BAEIC at pp 5 to 7, paras 16 to 19.

15 1BAEIC at p 7, para 20.

16 2BAEIC at p 408, para 9.

Version No 1: 20 Jun 2023 (16:56 hrs)

The Plaintiffs' investment in a property venture in Berlin, Germany which was introduced by Wendy in April 2012

21 On 10 April 2012, Wendy extended an invitation to various individuals, including Cindy, to attend a presentation on an investment opportunity for a project to refurbish and convert historical buildings in Berlin, Germany into residential properties (the "Berlin Project").[17]

22 Subsequently, Cindy attended a presentation on the Berlin Project conducted by Wendy. At the presentation, Wendy stated that she had secured an opportunity and structured the investment so that investors could invest a minimum of S$10,000 with a 12% return to be earned within 12 months.[18]

23 Following Wendy's presentation, the Plaintiffs invested a sum of S$300,000. The Plaintiffs received their principal sum and the 12% return when the amounts were due.[19]

The Plaintiffs' investment in the Casa Nova property development project in Brazil

24 On 12 July 2012, Wendy extended an invitation to various individuals, including Cindy, to attend a presentation on an investment opportunity for a purported social housing project called "Casa Nova Residencial" in Brazil (the "Casa Nova Project"). The developer of the Casa Nova Project was Ecohouse Brazil.[20]

---

17 1BAEIC at pp 7 to 8, para 21.

18 1BAEIC at p 8, para 22.

19 1BAEIC at p 8, paras 22 to 23.

20 1BAEIC at p 8, para 24.

Version No 1: 20 Jun 2023 (16:56 hrs)

25 On or about 30 July 2012, the Plaintiffs attended a presentation of the Casa Nova Project (the "30 July 2012 Presentation") conducted by Wendy. The Casa Nova Project was marketed as a project by Ecohouse Brazil under the Brazilian government's social housing programme, "Minha Casa, Minha Vida" ("MCMV"), which means "my house, my life".[21]

26 Following the 30 July 2012 Presentation, Wendy sent an email on 7 August 2012 to the investors, including Cindy (the "7 August 2012 email"). The heading of the email was "IMPORTANT INFO: - CasaNova Residencial – Presentation slides attached". PowerPoint presentation slides on the Casa Nova Project (the "Casa Nova Presentation Slides") were attached to the 7 August 2012 email.[22]

27 On 13 August 2012, Wendy sent another email to the investors, including Cindy (the "13 August 2012 email"). The heading of the email was "FW: Pls read – Clarification on 'investing in far away places'".[23]

28 On 1 September 2012, the Plaintiffs entered into a sale and purchase agreement with Ecohouse Brazil in respect of the Casa Nova Project (the "Casa Nova SPA") for the purchase of five residential units.[24] Under the terms of the Casa Nova SPA, the purchase price was to be paid to Sanders & Co, a law firm in the UK which was the appointed escrow agent. The Plaintiffs paid a sum of S$230,000 by way of a cheque for the purchase of five residential units.[25] The

---

21 1BAEIC at pp 8 to 9, para 25.

22 1BAEIC at p 10, para 27; 1BAEIC at pp 114 to 138.

23 1BAEIC at pp 12 to 14, para 29; 1BAEIC at pp 139 to 141.

24 1BAEIC at p 15, paras 31 to 32; 1BAEIC at pp 143 to 155.

25 1BAEIC at p 15, para 31; 1BAEIC at p 142.

Version No 1: 20 Jun 2023 (16:56 hrs)

Plaintiffs also signed an escrow agreement with Sanders & Co and Ecohouse Brazil dated 1 September 2012 (the "Casa Nova Escrow Agreement").[26]

29 Under the terms of the Casa Nova SPA, Ecohouse Brazil agreed to sell and the Plaintiffs agreed to buy five residential freehold units in the Casa Nova Project in Brazil.[27] The Casa Nova SPA also stated that Ecohouse Brazil undertook to procure buyers for the Plaintiffs' units within 12 months from the signing of the Casa Nova SPA. The Plaintiffs would receive a 20% return of the purchase price within 14 days of the 12-month anniversary of the date of the Casa Nova SPA, *ie*, S$46,000.[28]

30 The Plaintiffs subsequently received a document titled "Declaracao" dated 18 September 2012 setting out the lot numbers of the residential units in the Casa Nova Project which were purchased by the Plaintiffs.[29]

The Plaintiffs' investment in the Bosque property development project in Brazil

31 On 3 October 2012, Wendy sent an email to the investors, including Cindy (the "3 October 2012 email"). The heading of the email was "Wendy Kwek - 20percent Assured Returns plus PROFIT BONUS! - Ecohouse Developments". In the email, Wendy extended an invitation to various individuals, including Cindy, to attend a presentation on an investment opportunity for a second purported social housing project called "Residencial

---

26 1BAEIC at p 15, para 32; 1BAEIC at pp 156 to 162.

27 1BAEIC at p 146, clause 2.

28 1BAEIC at p 149, clause 8.7.

29 1BAEIC at p 17, para 34; 1BAEIC at p 163; Exhibit 163T.

Version No 1: 20 Jun 2023 (16:56 hrs)

Bosque" in Brazil (the "Bosque Project"). The developer of the Bosque Project was also Ecohouse Brazil.[30]

32 On or about 6 October 2012, Cindy attended a presentation of the Bosque Project (the "6 October 2012 Presentation") conducted by Wendy. The Bosque Project was another residential project carried out by Ecohouse Brazil under the Brazilian government's social housing programme, MCMV.[31]

33 On 3 December 2012, the Plaintiffs entered into a sale and purchase agreement with Ecohouse Brazil in respect of the Bosque Project (the "Bosque SPA") for the purchase of eight residential units.[32] Under the terms of the Bosque SPA, the purchase price was paid to Sanders & Co, the appointed escrow agent. The Plaintiffs paid a sum of S$368,000 by way of a cheque for the eight residential units.[33] Similarly, the Plaintiffs also signed an escrow agreement with Sanders & Co and Ecohouse Brazil dated 3 December 2012 (the "Bosque Escrow Agreement").[34]

34 Under the terms of the Bosque SPA, Ecohouse Brazil agreed to sell and the Plaintiffs agreed to buy eight residential freehold units in the Bosque Project in Brazil.[35] The Bosque SPA also stated that Ecohouse Brazil undertook to procure buyers for the Plaintiffs' units within 12 months from the signing of the Bosque SPA. The Plaintiffs would receive a 20% return of the purchase price

---

30 1BAEIC at pp 17 to 18, para 35; 1BAEIC at pp 164 to 165.

31 1BAEIC at pp 18 to 19, para 36.

32 1BAEIC at p 19, paras 38 to 39; 1BAEIC at pp 167 to 181.

33 1BAEIC at p 19, para 38; 1BAEIC at p 166.

34 1BAEIC at p 19, para 39; 1BAEIC at pp 183 to 188.

35 1BAEIC at p 170, clause 2.

Version No 1: 20 Jun 2023 (16:56 hrs)

within 14 days of the 12-month anniversary of the date of the Bosque SPA, *ie*, S$73,600.[36]

35 The Plaintiffs subsequently received a document titled "Declaracao" simply dated 2012 setting out the lot numbers of the residential units in the Bosque Project which were purchased by the Plaintiffs.[37]

The deeds of modification signed by the Plaintiffs

36 Sometime from 16 August 2013 onwards, the Plaintiffs received various emails informing them of delays in the construction of the two developments, namely the Casa Nova Project and the Bosque Project. The Plaintiffs were thereafter offered various options, including an option to sign the deeds of modification granting Ecohouse Brazil a 12-month extension to fulfil its contractual obligations under the Casa Nova SPA and the Bosque SPA. In consideration for granting Ecohouse Brazil a 12-month extension, the Plaintiffs were offered an additional interest amounting to 20% of the purchase price which was paid by the Plaintiffs when they signed the Casa Nova SPA and the Bosque SPA. This additional interest was to be paid within 14 days of the execution of the deeds.[38]

37 On or around 6 November 2013, the Plaintiffs signed two deeds of modification (the "Deeds of Modification") with Ecohouse Brazil for the Casa Nova Project and the Bosque Project. Under the terms of the Deeds of Modification, the Plaintiffs agreed to extend the agreement period of the Casa Nova SPA and the Bosque SPA by 12 months. The Plaintiffs received the

---

36 1BAEIC at p 174, clause 8.7.

37 1BAEIC at p 21, para 41; 1BAEIC at p 189; Exhibit 189T.

38 1BAEIC at pp 29 to 31, paras 61 to 62; 1BAEIC at pp 206 to 209.

Version No 1: 20 Jun 2023 (16:56 hrs)

additional interest amounting to 20% of the purchase price, *ie*, a sum totalling S$119,600 comprising S$46,000 (for the Casa Nova Project) and S$73,600 (for the Bosque Project), after signing the Deeds of Modification.[39]

Ecohouse Brazil ultimately failed to fulfil its contractual obligations

38 Ecohouse Brazil ultimately failed to fulfil its contractual obligations under the Casa Nova SPA and the Bosque SPA despite the 12-month extension granted to Ecohouse Brazil under the Deeds of Modification.

39 Thereafter, the Plaintiffs and the other investors who had purchased units in the Casa Nova Project and the Bosque Project from Ecohouse Brazil engaged lawyers in Singapore to consider pursuing a claim against Sanders & Co in the UK. However, this was abandoned as the Plaintiffs and the other investors were unable to secure third-party financing for the purposes of a claim against Sanders & Co.[40]

40 The Plaintiffs, thereafter, engaged a property lawyer in Brazil, one Fernando Guo Tao ("Fernando"), to purportedly review the Casa Nova SPA and the Bosque SPA and to provide his legal opinion. A legal opinion was rendered by Fernando dated 12 December 2015 ("Fernando's 12 December 2015 Legal Opinion"), with a translation of this opinion thereafter obtained.[41]

---

39 1BAEIC at p 31, para 63; 1BAEIC at pp 210 to 212; 14 March 2023 Transcript at p 54 (lines 16 to 23).

40 1BAEIC at p 38, paras 78 to 79.

41 1BAEIC at p 38, paras 80 to 82; 1BAEIC at pp 222 to 236.

Version No 1: 20 Jun 2023 (16:56 hrs)

The relationship between Ecohouse Asia Pacific, Ecohouse Singapore, Ecohouse UK and Ecohouse Brazil

41 I pause here to explain the relationship between the various entities bearing the name "Ecohouse". Ecohouse Brazil and Ecohouse UK were both entities under the larger Ecohouse Group controlled by Anthony. Ecohouse Brazil was responsible for the construction of the Casa Nova Project and the Bosque Project. Ecohouse UK was responsible for the marketing of the Casa Nova Project and the Bosque Project. As will be seen from the documentary evidence raised during the trial, however, the various entities bearing the name "Ecohouse" were often simply referred to as "Ecohouse Developments". In much of the documentary evidence, the term "Ecohouse Developments" was used when referring to the developer of the Casa Nova Project and the Bosque Project, *ie*, Ecohouse Brazil.

42 In order to market the Casa Nova Project and the Bosque Project in Asia Pacific, Anthony suggested to Joey to set up a JV company, Ecohouse Asia Pacific. The shareholders of Ecohouse Asia Pacific were as follows:[42]

(a) Charles, who was Anthony's appointed nominee; and

(b) Ecohouse Singapore, which was an exempt private company incorporated by Joey to participate in the JV, *ie*, Ecohouse Asia Pacific.

43 Under the terms of the JV marketing and sales agreement for Ecohouse Asia Pacific dated 1 August 2012 (the "JV Agreement"), Wendy was listed as a trainer for Ecohouse Asia Pacific.[43]

---

42 Supplementary Agreed Bundle of Documents ("SAB") at p 365, clause 3.

43 SAB at p 371.

Version No 1: 20 Jun 2023 (16:56 hrs)

44 A diagram summarising the relationship between the various entities bearing the "Ecohouse" name and the key persons involved in each entity was prepared jointly by the parties and is annexed to this judgment.

The parties' cases

The Plaintiffs' case

45 The Plaintiffs claim against the Defendants for the amounts of S$598,000 and S$119,600, being the respective amounts paid under the Casa Nova SPA and the Bosque SPA for the purchase of residential units in the Casa Nova Project and the Bosque Project as well as the 20% return of the investments they were meant to receive under the Casa Nova SPA and the Bosque SPA. The Plaintiffs also claim interest at the rate of 10% per annum. Further, the Plaintiffs seek damages as well as orders in relation to their various claims.[44]

46 The Plaintiffs make various heads of claims against the Defendants. I shall briefly summarise each of these in turn.

Misrepresentation

47 The Plaintiffs claim that Wendy made four representations (collectively referred to as the "Four Representations") in relation to the Casa Nova Project which were untrue:

(a) The first representation was that the Casa Nova Project was a safe investment as it was approved and supported by the Brazilian

[44] Statement of Claim (Amendment No. 1) dated 27 September 2021 ("SOC") at para 37.

Version No 1: 20 Jun 2023 (16:56 hrs)

government as a social housing development (the "Brazilian Government Representation").[45]

(b) The second representation was that the moneys invested by the Plaintiffs in the Casa Nova Project would be deposited into an escrow account maintained by Sanders & Co, and the moneys would only be disbursed for the building of the invested units (the "Escrow Representation").[46]

(c) The third representation was that: (i) Wendy had done all that was possible and had invested a six-figure sum on due diligence checks to ensure that the Casa Nova Project was government-approved and the investment was safe; (ii) Joey and the Ecohouse Group had spent a year in Brazil studying the Casa Nova Project to understand the background of the developer, they had met the Vice Governor and one of the heads of Caixa Economica Federal Bank ("Caixa Bank"), made preparations, including getting the proper approvals, and ensured that everything was in order;[47] and (iii) Phyllis Fong ("Fong") was a Singapore lawyer who was engaged to read through all the documents, and Fong had studied, vetted, and read through the sale and purchase agreements and escrow agreements, and had tightened the terms in the investors' favour (the "Due Diligence Representation").[48]

---

45 SOC at para 8; 1BAEIC at p 9, para 25(iv).

46 SOC at para 9; 1BAEIC at p 13, para 29(iv).

47 1BAEIC at p 9, para 25(v).

48 SOC at para 10; 1BAEIC at p 9, para 25(v).

Version No 1: 20 Jun 2023 (16:56 hrs)

(d) The fourth representation was that investors in the Casa Nova Project would earn a 20% return of their investment within one year (the "Investment Return Representation").[49]

48 The Plaintiffs allege that the Four Representations in relation to the Casa Nova Project were made by Wendy at the 30 July 2012 Presentation. These representations were then repeated by Wendy in the 7 August 2012 email and 13 August 2012 email which were sent to Cindy and the other investors.[50]

49 The Plaintiffs state that Joey had endorsed the Due Diligence Representation at the 30 July 2012 Presentation. In particular, the Plaintiffs allege that, at the 30 July 2012 Presentation, Joey had smiled and nodded his head in acknowledgment when Wendy mentioned that Joey had gone to Brazil to carry out due diligence for the Casa Nova Project. This, according to the Plaintiffs, amounted to Joey affirming the truth of the Due Diligence Representation.[51]

50 The Plaintiffs also allege that, at the 6 October 2012 Presentation, Wendy repeated the Brazilian Government Representation, the Escrow Representation, the Due Diligence Representation and the Investment Return Representation, though in the context of the Bosque Project.[52]

51 The Plaintiffs allege that the Four Representations were false and that Wendy and Joey had knowledge of the falsehood of the Four Representations or, alternatively, had no belief in the truth of the Four Representations or were

---

49 SOC at para 10; 1BAEIC at p 10, para 25(x).

50 SOC at para 7A to 10C; 1BAEIC at pp 8 to 15, paras 25 to 30.

51 SOC at para 10A; 1BAEIC at pp 9 and 15, paras 26 and 30.

52 SOC at paras 10B to 10C; 1BAEIC at pp 18 to 19, para 36.

Version No 1: 20 Jun 2023 (16:56 hrs)

reckless as to the truth of the Four Representations.[53] The Plaintiffs assert as follows:

(a) In relation to the Brazilian Government Representation, the Plaintiffs state that the Casa Nova Project and the Bosque Project were not approved and supported by the Brazilian government as social housing projects. The Plaintiffs allege that Wendy had relied simply on the assertion of Anthony, who had a vested interest since he stood to gain from the investors' purchase of residential units in the Casa Nova Project and the Bosque Project. Further, Wendy and Joey had failed to carry out independent due diligence but had merely relied on the due diligence reports commissioned by Ecohouse Brazil, the developer. The Plaintiffs state that Wendy was reckless as to the truth of the Brazilian Government Representation.[54]

(b) In relation to the Escrow Representation, the Plaintiffs state that the moneys in the escrow account maintained by Sanders & Co were disbursed even though there was little or no progress in the construction of the Casa Nova Project and the Bosque Project. The Plaintiffs state that Wendy knew that the Escrow Representation was false.[55]

(c) In relation to the Due Diligence Representation, the Plaintiffs state that no proper due diligence was done by Wendy and Joey on the Casa Nova Project, the Bosque Project and the Ecohouse Group. Rather, the Plaintiffs state that the due diligence reports obtained by Wendy and

---

53 SOC at para 12; 1st and 2nd Plaintiffs' Opening Statement ("POS") at pp 13 to 14, para 41.

54 SOC at para 12(a); POS at p 14, para 41(1).

55 SOC at para 12(b).

Version No 1: 20 Jun 2023 (16:56 hrs)

Joey were commissioned by Ecohouse Brazil, and that they had not conducted their own due diligence at the time of the Due Diligence Representation. Therefore, the Plaintiffs state that Wendy and Joey had knowledge that the Due Diligence Representation was false.[56]

(d) In relation to the Investment Return Representation, the Plaintiffs state that the representation was false as the investors in the Casa Nova Project and the Bosque Project, including the Plaintiffs, did not receive a 20% return of their investments within one year. The Plaintiffs assert that Wendy was reckless as to the truth of the Investment Return Representation, as she failed to do any due diligence on the Casa Nova Project and the Bosque Project which would have otherwise revealed that Ecohouse Brazil "did not own any of the land in Brazil that was mooted for development".[57]

52 The Plaintiffs submit that Wendy and Joey intended for the Plaintiffs to rely on the Four Representations which were false when investing in the Casa Nova Project and the Bosque Project. In relation to the Casa Nova Project, they allege that the Four Representations were first made at the 30 July 2012 Presentation to convince the investors and the Plaintiffs to invest in the Casa Nova Project. Thereafter, the Four Representations were repeated in the 13 August 2012 email sent by Wendy to allay the worries of the investors in investing in overseas projects such as the Casa Nova Project. In relation to the Bosque Project, the Plaintiffs allege that the Four Representations were made at

---

56 SOC at para 12(c); POS at p 14, para 41(2).

57 SOC at para 12(d); POS at p 14, para 41(3).

Version No 1: 20 Jun 2023 (16:56 hrs)

the 6 October 2012 Presentation to convince the investors and the Plaintiffs to invest in the Bosque Project.[58]

53 The Plaintiffs state that they relied on the Four Representations when they signed the Casa Nova SPA and the Bosque SPA. Consequently, the Plaintiffs suffered losses when they failed to get back their invested amount and receive the 20% return they were entitled to under the Casa Nova SPA and the Bosque SPA.[59]

54 The Plaintiffs also rely on s 2 of the MRA against the Defendants for the misrepresentations.[60]

Negligent misrepresentation

55 The Plaintiffs claim that Wendy and Joey owed them a duty of care. Applying the test in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 ("*Spandeck*"), the Plaintiffs state that it was evidently foreseeable that the Plaintiffs would suffer losses if they invested moneys into a scheme based on the Four Representations made by Wendy and Joey which turned out to be false.[61]

56 The Plaintiffs state that there was sufficient legal proximity between the Plaintiffs and the Defendants. First, there was physical and circumstantial proximity, given the nature in which the Four Representations were made at the 30 July 2012 Presentation and the 6 October 2012 Presentation, as well as in the

---

58 SOC at para 12A; POS at p 15, paras 42 to 43.

59 SOC at paras 12A to 13; POS at pp 15 to 16, paras 44 to 46.

60 SOC at para 14.

61 SOC at paras 15 to 16C; POS at p 17, para 52.

Version No 1: 20 Jun 2023 (16:56 hrs)

7 August 2012 email and the 13 August 2012 email. Second, there was causal proximity given the direct causal link between the making of the Four Representations and the Plaintiffs' decision to sign the Casa Nova SPA and the Bosque SPA. Third, there was a voluntary assumption of responsibility by Wendy who accepted moneys from Cindy as payment for entry to Wendy's investment network. Wendy and Joey also held themselves out as investment experts.[62]

57 The Plaintiffs state that there are no public policy considerations militating against the imposition of a duty of care upon Wendy and Joey.[63]

58 The proper standard of care, according to the Plaintiffs, is that of a reasonably competent and prudent investment expert, which was what Wendy and Joey held themselves out to be. A reasonably competent and prudent investment expert would have ensured that he had obtained accurate facts about investments before advertising the investments and he also had to take care not to make false statements about the investments. The Plaintiffs state that, in making the Four Representations, Wendy and Joey breached their duty of care by failing to obtain independent due diligence on the Casa Nova Project and the Bosque Project. Therefore, Wendy and Joey had no proper way of knowing whether the Four Representations were true.[64]

59 The Plaintiffs state that, but for the Four Representations, the Plaintiffs would not have signed the Casa Nova SPA and the Bosque SPA.[65]

---

62 POS at pp 17 to 18, para 53.

63 POS at p 18, para 54.

64 SOC at para 19; POS at p 18, para 55.

65 SOC at para 18; POS at p 19, para 57.

Version No 1: 20 Jun 2023 (16:56 hrs)

60 The Plaintiffs state that the losses they have suffered were foreseeable and cannot be said to be remote.[66]

61 In the alternative, the Plaintiffs submit that WKIN owed them a duty of care and that WKIN had breached its duty of care which led to the Plaintiffs suffering losses.[67]

Breaches of collateral contracts

62 The Plaintiffs further state that there were two collateral contracts (hereinafter referred to as the "First Collateral Contract" and the "Second Collateral Contract") between the Plaintiffs and Wendy. Wendy had breached the two collateral contracts. This is even though Wendy was not a party to the Casa Nova SPA and the Bosque SPA signed by the Plaintiffs.

63 The Plaintiffs submit that the First Collateral Contract arose between Wendy and the Plaintiffs as a result of the promise made by Wendy in the 13 August 2012 email that she had done detailed due diligence on the Casa Nova Project. It was this promise that led the Plaintiffs to enter into the Casa Nova SPA with Ecohouse Brazil. The Plaintiffs allege that Wendy breached the First Collateral Contract by wilfully and recklessly failing to do proper due diligence on the Casa Nova Project. The Plaintiffs allege that as a result of signing the Casa Nova SPA, the Plaintiffs were deprived of the opportunity to make profits from alternative projects which they could have invested in.[68]

---

66 POS at p 19, para 58.

67 SOC at para 20A.

68 SOC at paras 21 to 24; POS at p 24, paras 82 to 84.

Version No 1: 20 Jun 2023 (16:56 hrs)

64 Further, the Plaintiffs submit that the Second Collateral Contract arose between Wendy and the Plaintiffs following a meeting between Wendy, Cindy and about 50 other investors of the Casa Nova Project and the Bosque Project on 8 November 2013 (the "8 November 2013 Meeting"). I note that while the Plaintiffs' Statement of Claim states that the meeting took place on 2 December 2013,[69] Cindy's affidavit refers to a meeting which took place on 8 November 2013. At the 8 November 2013 Meeting, Wendy had purportedly assured the investors present that, if they did not demand for the return of their investments, Wendy would "fight for the investors" and "stand with the investors to see that they get back their investments and promised returns". The Plaintiffs' case is that they relied on Wendy's promise at the 8 November 2013 Meeting and did not demand for the return of the amounts they invested in the Casa Nova Project and the Bosque Project. The Plaintiffs state that Wendy breached the Second Collateral Contract by failing to fulfil her promise.[70]

Knowing receipt and dishonest assistance

65 The Plaintiffs also submit that the Defendants are liable to the Plaintiffs on the grounds of knowing receipt and dishonest assistance.

66 In relation to the claim of knowing receipt, the Plaintiffs argue that the Casa Nova Project and the Bosque Project were fraudulent schemes since Ecohouse Brazil did not, at any time, intend to complete the projects or, in the alternative, fulfil its promises to complete the development of the Casa Nova Project and the Bosque Project within one year. The Plaintiffs contend that Ecohouse Brazil and Sanders & Co misapplied the moneys invested by the

---

69 SOC at para 25.

70 SOC at paras 25 to 27; POS at p 25, paras 85 to 86.

Version No 1: 20 Jun 2023 (16:56 hrs)

Plaintiffs, thereby breaching the fiduciary duties which they owed to the Plaintiffs. The Plaintiffs state that the Defendants received monetary gains which were traceable to the fraudulent schemes of Ecohouse Brazil. Further, according to the Plaintiffs, Wendy and Joey had knowledge, whether actual, constructive or implied, that the projects were fraudulent. As a result, they had knowingly received moneys which are traceable to the Plaintiffs' moneys.[71]

67 In relation to the claim of dishonest assistance, the Plaintiffs state that the Defendants, and in particular Wendy, assisted in the promotion of the Casa Nova Project and the Bosque Project which turned out to be fraudulent. Further, the Plaintiffs allege that Wendy and Joey had wilfully and recklessly failed to make all necessary inquiries that an honest and reasonable person would have made before marketing the Casa Nova Project and the Bosque Project. Therefore, the Plaintiffs claim that the Defendants had dishonestly assisted Ecohouse Brazil in its fraudulent schemes.[72]

Breach of statutory duty under the Estate Agents Act

68 The Plaintiffs also seek to hold the Defendants liable for breach of statutory duty. According to the Plaintiffs, ss 28 and 29 of the Estate Agents Act require anyone marketing foreign or local properties to be licensed as real estate agents or real estate salespersons. The Defendants, by marketing the Casa Nova Project and the Bosque Project whilst not being licensed, had breached the requirements under the Estate Agents Act.

69 Whilst breaches of ss 28 and 29 of the Estate Agents Act constitute criminal offences punishable by fines, imprisonment or both under the Estate

---

71 SOC at paras 28 to 30; POS at pp 21 to 22, paras 66 to 72.

72 SOC at para 31; POS at paras 76 to 78.

Version No 1: 20 Jun 2023 (16:56 hrs)

Agents Act, the Plaintiffs submit that there ought to be a private right of action available to them arising from the Defendants' breach of the Estate Agents Act. The Plaintiffs argue that the statutory duty was imposed to protect a limited class of the public, namely purchasers in Singapore who buy foreign properties, by putting in place a licensing regime. Therefore, the Plaintiffs argue that Parliament intended to confer on members of that class a private right of action for breach of that duty.[73]

The Defendants' case

The First, Third and Fourth Defendants' case

70 According to Wendy, she had been asked by Joey in early 2012 to market the Casa Nova Project on behalf of Ecohouse Asia Pacific to members of the WK Investment Network Yahoo Group. She agreed to help market the Casa Nova Project through WK Events. Under the auspices of WK Events, she organised the 30 July 2012 Presentation.[74]

71 Wendy claims that her role at the 30 July 2012 Presentation was primarily to address members of the WK Investment Network Yahoo Group and introduce them to Anthony. Wendy states that she spoke generally about investing in overseas projects. She also spoke on the topic of risks and returns. However, Wendy denies making the Four Representations at the 30 July 2012 Presentation. She states that it was Anthony who spoke about the Casa Nova Project.[75]

---

73 SOC at paras 32 to 36; POS at p 28, paras 93 to 95.

74 2BAEIC at pp 410 to 411, paras 16 to 17.

75 2BAEIC at pp 410 to 412, paras 17 and 18.

Version No 1: 20 Jun 2023 (16:56 hrs)

72 In relation to the 7 August 2012 email and the 13 August 2012 email which the Plaintiffs rely on to support their allegations that Wendy had made the Four Representations, Wendy's defence is as follows:

(a) Wendy alleges that she did not make the Brazilian Government Representation in the 7 August 2012 email. She states that the main text of the 7 August 2012 email does not contain the Brazilian Government Representation. In relation to the Casa Nova Presentation Slides which were attached to the 7 August 2012 email, Wendy explains that the Casa Nova Presentation Slides were prepared by Ecohouse UK and were used only by Anthony during the 30 July 2012 Presentation. Wendy had simply forwarded the Casa Nova Presentation Slides in the 7 August 2012 email.[76]

(b) In relation to the 13 August 2012 email, Wendy admits that there were representations made in the 13 August 2012 email. However, Wendy submits that steps were taken as she had stated in the 13 August 2012 email:[77]

(i) In relation to the Due Diligence Representation, Wendy states that Joey did visit Brazil in early 2012 to see the site of the Casa Nova Project as well as the site of a previous Ecohouse Brazil project called Arco Iris (the "Arco Iris Project").[78] Wendy states that Joey also met with one of the heads of Caixa Bank, a bank owned by the Brazilian government.[79] Further, a due

---

76 2BAEIC at pp 415, para 32.

77 2BAEIC at pp 415, para 33.

78 2BAEIC at p 415, para 34.

79 2BAEIC at p 417, para 42.

Version No 1: 20 Jun 2023 (16:56 hrs)

diligence report from a Brazilian lawyer, Andre Elali ("Elali"), dated 5 September 2012 ("Elali's Casa Nova Due Diligence Report") was obtained as part of the due diligence exercise.[80] Wendy also submits that a Singapore lawyer, *ie*, Fong, was engaged to do due diligence. Fong was paid a six-figure fee of over S$100,000 to review the documents for the purchase and stakeholding of funds for the Casa Nova Project.[81]

(ii) In relation to the Escrow Representation, Wendy states that there was, in fact, an escrow agent, Sanders & Co. Further, the Plaintiffs did sign the Casa Nova Escrow Agreement. Wendy also refers to a document obtained by Fong confirming that Sanders & Co was covered by professional indemnity insurance of £2,000,000.[82]

73 Wendy states that it is unclear what representations are alleged by the Plaintiffs in relation to the Bosque Project.[83]

74 Wendy further mentions that she and Joey had also bought nine residential units in the Casa Nova Project and signed a sale and purchase agreement with Ecohouse Brazil. Their total investment was a sum of S$414,000 which they were also unable to recover.[84]

---

80 2BAEIC at p 415, para 35; 2BAEIC at pp 630 to 636.

81 2BAEIC at pp 415 to 416, para 36.

82 2BAEIC at p 416, paras 37 to 38; 2BAIEC at p 673.

83 2BAEIC at p 416, para 39.

84 2BAEIC at p 416, para 40.

Version No 1: 20 Jun 2023 (16:56 hrs)

75 Wendy alleges that the Plaintiffs were not novice investors. Prior to investing in the Casa Nova Project and the Bosque Project, the Plaintiffs had invested in the Berlin Project as well as invested in another project in New Zealand through a different marketing agent (the "Plaintiffs' New Zealand Investment"). Wendy also highlights that the Plaintiffs themselves are registered property agents. Therefore, the Plaintiffs should have known of the potential risks and pitfalls of investments with high returns.[85]

76 Wendy also denies that the First Collateral Contract and the Second Collateral Contract existed. In particular, Wendy denies making any promises at the 8 November 2013 Meeting.[86]

77 Finally, Wendy denies that she had knowingly assisted or participated in any fraud. She also denies holding any moneys on trust for the Plaintiffs. She states that she did not receive any part of the purchase price paid by the Plaintiffs for the Casa Nova Project and the Bosque Project.[87]

78 In respect of WK Events and WKIN, Wendy submits that the role of WK Events and WKIN was limited to providing administrative support, on behalf of Ecohouse Asia Pacific and Ecohouse UK. In this regard, WK Events and WKIN helped to arrange the paperwork and passed these documents to Ecohouse Asia Pacific.[88] Wendy acknowledges that WKIN was paid by Ecohouse Asia Pacific for organising the events at which the Casa Nova Project and the Bosque Project were marketed, *ie*, the 30 July 2012 Presentation and the

---

85 2BAEIC at pp 418 to 419, paras 48 to 53.

86 2BAEIC at p 419, para 56.

87 2BAEIC at pp 419 to 420, paras 57 to 58.

88 2BAEIC at p 411, paras 17(c) to 17(d).

Version No 1: 20 Jun 2023 (16:56 hrs)

6 October 2012 Presentation. However, Wendy claims that WK Events and WKIN did not receive any commission for the sale of the residential units in either the Casa Nova Project or the Bosque Project.[89]

The Second, Fifth and Sixth Defendants' case

79 Joey states that one Winstorn Ee ("Winstorn") introduced Anthony and the Casa Nova Project to him in early 2012.[90] Thereafter, in June 2012, Joey visited Brazil to meet Anthony. In Brazil, Joey states that he did the following:[91]

(a) He visited the Ecohouse Brazil office.

(b) He visited the site of the Arco Iris Project.

(c) He visited the site of the Casa Nova Project.

(d) He was introduced by Anthony to one of the heads of Caixa Bank. Joey states that Caixa Bank was the entity in charge of funding end-buyers in Brazil for the Casa Nova Project.

(e) He was also introduced by Anthony to Elali, a Brazilian lawyer. Joey states that Elali told him that the land on which the Casa Nova Project was going to be built was owned by Ecohouse Brazil. Joey states that Elali also told him that he would be able to render a due diligence report on the Casa Nova Project.

89 2BAEIC at p 417, para 45.

90 2BAEIC at p 758, para 4.

91 2BAEIC at p 758, paras 5 to 6.

Version No 1: 20 Jun 2023 (16:56 hrs)

80 Thereafter, Joey agreed with Anthony to set up a JV company which led to the incorporation of Ecohouse Asia Pacific.[92] Joey states that Ecohouse Asia Pacific was interested in marketing the Casa Nova Project to members of the WK Investment Network Yahoo Group. He, therefore, asked Wendy to reach out to people in her network.[93]

81 Joey denies that he made any representation, or affirmed the Due Diligence Representation, at the 30 July 2012 Presentation. Joey states that his role at the 30 July 2012 Presentation was to ensure the event ran smoothly.[94]

82 However, Joey states that he did carry out due diligence as described above (see [72(b)(i)]) during his trip to Brazil in June 2012. He also engaged Fong to advise and deal with the legal aspects of the Casa Nova Project. Joey, therefore, submits that he had taken steps which were more than adequate.[95]

83 Joey denies holding moneys on trust for the Plaintiffs. In fact, Joey states that he did not receive moneys from Ecohouse UK. Further, Joey states that Ecohouse Singapore did not receive the commissions owed under the terms of the JV Agreement from Ecohouse UK.[96]

Issues to be determined

84 There are numerous issues which are as follows:

---

92 2BAEIC at pp 758 to 759, para 7.

93 2BAEIC at p 759, para 8.

94 2BAEIC at p 761, para 20.

95 2BAEIC at pp 761 to 762, paras 21 to 25.

96 2BAEIC at pp 761 to 762, paras 19 and 27.

Version No 1: 20 Jun 2023 (16:56 hrs)

(a) First, there is the preliminary issue of whether the claims against WK Events, Ecohouse Asia Pacific and Ecohouse Singapore can be sustained as these entities have been struck off the Register.

(b) Second, whether Wendy and/or Joey had made fraudulent misrepresentations to the Plaintiffs. As I shall explain below at [98], this would depend on the following:

(i) whether the Four Representations were, in fact, made by Wendy and/or Joey;

(ii) whether the Four Representations were false;

(iii) whether Wendy and/or Joey knew that the Four Representations were false;

(iv) whether Wendy and/or Joey intended for the Plaintiffs to rely on the Four Representations; and

(v) whether the Plaintiffs did, in fact, act in reliance on the Four Representations.

(c) Third, whether the Plaintiffs have made out a case against Wendy and/or Joey under s 2 of the MRA.

(d) Fourth, whether Wendy and/or Joey are liable for negligent misrepresentation. As I shall explain below at [217], this would depend on the following:

(i) whether the Four Representations were, in fact, made by Wendy and/or Joey;

(ii) whether the Four Representations were false;

Version No 1: 20 Jun 2023 (16:56 hrs)

(iii) whether Wendy and/or Joey owed the Plaintiffs a duty of care;

(iv) whether Wendy and/or Joey breached this duty by negligently making the Four Representations;

(v) whether it was foreseeable that reliance on the Four Representations would cause the Plaintiffs' losses; and

(vi) whether the Plaintiffs did, in fact, rely on the Four Representations and suffer losses as a result.

(e) Fifth, whether the Plaintiffs and Wendy entered into the First Collateral Contract and the Second Collateral Contract and, if so, whether there were breaches of the First Collateral Contract and the Second Collateral Contract by Wendy.

(f) Sixth, whether the Defendants are liable as constructive trustees for knowing receipt.

(g) Seventh, whether the Defendants dishonestly assisted in any fraud by Ecohouse Brazil when they marketed the Casa Nova Project and the Bosque Project to the Plaintiffs.

(h) Eighth, whether the Defendants breached their statutory duty under the Estate Agents Act and, if so, whether a private right of action arises from such a breach.

(i) Ninth, if Wendy and/or Joey are found to be liable under any of the Plaintiffs' heads of claims above, there is the issue of whether WKIN is liable in any way.

Version No 1: 20 Jun 2023 (16:56 hrs)

(j) Tenth, there is the issue of damages, should any of the Defendants be found liable.

My decision

Whether the claims against WK Events, Ecohouse Asia Pacific and Ecohouse Singapore can be sustained

85 At the outset, there is the issue of whether the Plaintiffs can pursue their claims against WK Events, Ecohouse Asia Pacific and Ecohouse Singapore when these entities had already been struck off the Register. As highlighted above at [7], [9] and [11]:

(a) WK Events is an exempt private company which was struck off the Register on 4 May 2020.

(b) Ecohouse Asia Pacific is a private company which was struck off the Register on 23 September 2020.

(c) Ecohouse Singapore is an exempt private company which was struck off the Register on 23 September 2020.

86 The implication of WK Events, Ecohouse Asia Pacific and Ecohouse Singapore being struck off the Register is that the companies are no longer in existence today. In *Re Asia Petan Organisation Pte Ltd* [2018] 3 SLR 435 ("*Re Asia Petan*"), Audrey Lim JC (as she then was) had to consider the issue of whether to allow an application by a former director of a company, Song, to restore a company which had been struck off the Register so as to commence a derivative action in the company's name against the other director of the company, Tan, who had purportedly breached his fiduciary duties. In this context, Lim JC stated (at [13]) as follows:

Version No 1: 20 Jun 2023 (16:56 hrs)

> … It is inconceivable and illogical that a company would be able to act following its striking off, simply by virtue of s 344A(7)(*a*) of the [Companies Act (Cap 50, 2006 Rev Ed)]. This goes against the very purpose of striking out a company. It is important to bear in mind that the underlying purpose of Song's application for restoration was to allow the commencement of an action by the Company against Tan, and not by Song *in his personal capacity* against Tan. If it were the latter, it is not difficult to see that s 344A(7)(*a*) would allow for the enforcement of Tan's obligations as a result of his position as an officer or member of the Company, even if the Company is not restored. But that was not the case here. In order for a company to bring a claim against a director for breach of his or her duties to the company, the company must be a party to the action, and in that regard the company has to be in existence. Thus, the requirement of the Company being in existence, so as to bring the derivative action that Song intended, rendered restoration of the Company necessary.
>
> [emphasis in original]

87 It is clear from the above that once a company is struck off the Register, it would be unable to act as it is no longer in existence unless the company is first restored to the Register. In the context of *Re Asia Petan*, this meant that the company was unable to bring a claim against a director for breach of fiduciary duties until it was restored to the Register. In the present case, as WK Events, Ecohouse Asia Pacific and Ecohouse Singapore were struck off the Register, this means that they are no longer in existence and cannot, therefore, be included as defendants to the present suit.

88 This, however, does not preclude the Plaintiffs from pursuing claims against the officers or members of the three entities. Under s 344A(7)(*a*) of the Companies Act 1967 (2020 Rev Ed) ("Companies Act 1967"), the liability of officers and members of the company continue even after a company has been struck off and dissolved and may be enforced as if the company had not been dissolved. Section 344A(7)(*a*) of the Companies Act 1967 provides as follows:

Version No 1: 20 Jun 2023 (16:56 hrs)

> **Striking off on application by company**
>
> **344A. …**
>
> (7) Despite the dissolution of the company under subsection (6) —
>
> (*a*) the liability (if any) of every officer and member of the company continues and may be enforced as if the company had not been dissolved …

89 This means that when WK Events, Ecohouse Asia Pacific and Ecohouse Singapore were struck off the Register, the Plaintiffs could still have recourse against Wendy and Joey who were directors and shareholders of WK Events. However, Wendy was not the director or shareholder of Ecohouse Asia Pacific or Ecohouse Singapore.

90 Under s 344(5) of the Companies Act 1967 and as was alluded to above at [87], a company struck off the Register may be restored on an application by any aggrieved party within six years after the company has been struck off the Register:

> **Power of Registrar to strike defunct company off register**
>
> **344.** …
>
> (5) If any person feels aggrieved by the name of the company having been struck off the register, the Court, on an application made by the person at any time within 6 years after the name of the company has been so struck off may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the name of the company be restored to the register, order the name of the company to be restored to the register, and upon a copy of the order being lodged with the Registrar the company is deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

Version No 1: 20 Jun 2023 (16:56 hrs)

91 In *Re Asia Petan*, Lim JC reviewed the law in relation to the question of restoration under s 344(5) of the Companies Act (Cap 50, 2006 Rev Ed) which is *in para materia* with s 344(5) of the Companies Act 1967 (at [31]):

> In the light of the above, I hold that s 344(5) of the [Companies Act (Cap 50, 2006 Rev Ed)] should be interpreted broadly. To demonstrate *locus standi*, a person must demonstrate some proprietary or pecuniary interest arising from the company's restoration. Such interest need not be firmly established or highly likely to prevail, but it must not be merely shadowy. When considering whether it would be just to restore a company to the register, a court has to have regard to all the circumstances of the case, including but not limited to: (a) the purpose of restoring the company; (b) whether there would be any practicable benefit arising from the restoration; and (c) whether there would be prejudice to any persons. If the court were so satisfied, it should order a restoration unless there are exceptional countervailing circumstances. These principles are applicable in the context of an application to restore a company to the register pursuant to s 344(5) of the Act, regardless of whether the company was previously struck off under s 344 or the new s 344A, on its own application or by the Registrar.

92 In the present case, there was no application by the Plaintiffs to restore WK Events, Ecohouse Asia Pacific and Ecohouse Singapore to the Register. Hence, the Plaintiffs' claims against the three companies simply cannot be sustained since the companies legally are no longer in existence.

93 The counsel for the Plaintiffs, Mr Goh Kim Thong Andrew ("Mr Goh"), conceded during the oral closing submissions that the Plaintiffs had not applied to restore the three companies to the Register despite this being an option which was available to them. In fact, he stated that the Plaintiffs had no intention to undergo the process of seeking to restore the three companies to the Register.[97]

---

97 21 April 2023 Transcript at pp 48 (line 18) to 51 (line 9).

Version No 1: 20 Jun 2023 (16:56 hrs)

Mr Goh also accepted that the effect of the three companies being struck off the Register was that they were legally no longer in existence.[98]

94 For the above reasons, the Plaintiffs' claims against WK Events, Ecohouse Asia Pacific and Ecohouse Singapore must, therefore, fail.

95 In any case, I shall nevertheless consider the substratum of the Plaintiffs' claims against WK Events, Ecohouse Asia Pacific and Ecohouse Singapore. The Plaintiffs' primary case is undeniably against Wendy and Joey in relation to the Four Representations purportedly made by them. The Plaintiffs intend to hold Wendy and Joey responsible. The Plaintiffs do not want them to hide behind the companies to evade liability. Cindy stated this in Court:[99]

> A. The reason was because she was using these two company as a kind of tool to contact us, that is why we want her and the company to be collectively responsible because I know that some people will push their duty to the company.

96 There is no evidence against WK Events and Ecohouse Singapore for the following reasons:

(a) First, WK Events only played an administrative role, *ie*, the organisation of the 30 July 2012 Presentation for the Casa Nova Project and the 6 October 2012 Presentation for the Bosque Project. Thus, WK Events could not be held liable for any misrepresentation made by Wendy and Joey.

(b) Second, Ecohouse Singapore had little involvement in the 30 July 2012 Presentation for the Casa Nova Project and the

98 21 April 2023 Transcript at p 48 (lines 7 to 17).

99 7 March 2023 Transcript at pp 24 (line 24) to 25 (line 3).

Version No 1: 20 Jun 2023 (16:56 hrs)

> 6 October 2012 Presentation for the Bosque Project. As I had explained above at [9] and [42], Ecohouse Singapore was an entity which was incorporated for the purpose of the JV entity, Ecohouse Asia Pacific. Thereafter, Ecohouse Asia Pacific became the entity responsible for marketing the Casa Nova Project and the Bosque Project in Singapore. Hence, there is nothing to connect Ecohouse Singapore to any misrepresentation made by Wendy and Joey.

97 As for Ecohouse Asia Pacific, under the terms of the JV Agreement, it was an entity set up for the specific purpose of marketing Ecohouse Brazil's property developments in the Asia Pacific region.[100] Wendy was the trainer under the terms of the JV Agreement. Thus, Ecohouse Asia Pacific was also responsible for the content of the presentations made at the 30 July 2012 Presentation for the Casa Nova Project and the 6 October 2012 Presentation for the Bosque Project. Therefore, Ecohouse Asia Pacific may potentially be held liable if any misrepresentation was made by Wendy or Joey at the presentations which were organised on behalf of Ecohouse Asia Pacific. However, as the Plaintiffs have failed to make an application to restore Ecohouse Asia Pacific to the Register, the Plaintiffs' claims against Ecohouse Asia Pacific must fail.

The Plaintiffs' case of fraudulent misrepresentation against Wendy and Joey

The applicable law

98 The essential elements which need to be established to support a claim of fraudulent misrepresentation were set out in *Bradford Third Equitable Benefit Building Society v Borders* [1941] 2 All ER 205 and endorsed by the

---

100 SAB at p 365.

Version No 1: 20 Jun 2023 (16:56 hrs)

Court of Appeal in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 ("*Panatron*") (at [14]). The elements are as follows:

(a) First, there must be a false representation of fact made by words or conduct.

(b) Second, the representation must be made with the intention that it would be acted upon by the plaintiff, or by a class of persons which includes the plaintiff.

(c) Third, it must be proved that the plaintiff had acted upon the false statement.

(d) Fourth, it must be proved that the plaintiff suffered damage by so doing.

(e) Fifth, 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.

99 The Court of Appeal in *Ernest Ferdinand Perez De La Sala v Compañia De Navegación Palomar, SA and others and other appeals* [2018] 1 SLR 894 ("*Ernest Ferdinand*") (at [173]), explained that in order for a representation to be false, it must be substantially false but need not be false in every respect:

> Secondly, in order for a representation to be false, it must be *substantially* false. It need not be false in every respect, nor is it invariably sufficient if it is false in a single respect. As Justice Handley aptly put it in [K R Handley, *Spencer Bower, Turner and Handley: Actionable Misrepresentation* (Butterworths, 4th Ed, 2000) ("*Spencer Bower*")] at para 70:
>
> > … Truth is not mathematical truth. In the context of communications between men for the purpose of influencing conduct, there are degrees of truth and falsity. The facts may correspond with the statement

Version No 1: 20 Jun 2023 (16:56 hrs)

> entirely, partially, or not at all. The important features may be correctly described, whilst the unimportant details are misstated, or vice versa. Since the law must distinguish between the two categories of falsity and truth, some criterion, other than the scientific, must be adopted for deciding the character of a particular representation. That criterion is the effect of the statement on the mind of the representee.
>
> Specifically, the test of substantial falsity is whether "the discrepancy between the facts as represented and the facts as they existed would have reasonably influenced the mind of a normal representee, in considering whether to alter his position as he did" (*Spencer Bower* at para 70). On a related note, it should also be pointed out that, although the court does not consider the *representor's* perspective in assessing substantial falsity, the court *does* take into account the *representee's* perspective. Hence, as pointed out by Prof Pearlie Koh in her chapter in *The Law of Contract in Singapore* (Academy Publishing, 2012) ("*The Law of Contract*") at para 11.013, "[t]he question as to the *meaning* of a particular representation is tested from the perspective of a reasonable person in the position of the representee, and 'in the light of the circumstances pertaining at the time'" and that "[t]he question is what the representee understands by the words used", with "[t]his [being] generally assessed objectively and the factual context or matrix within which the communication was made is of crucial importance" …
>
> [emphasis in original]

100 Further, in *Panatron*, the Court of Appeal clarified that the misrepresentation need not be the sole inducement to the plaintiff. In *Panatron*, the two individuals to whom the misrepresentation was made were experienced businessmen. In this context, the Court of Appeal found that even where the plaintiff relies partly on his own knowledge and expertise and partly on the misrepresentations, this would not be a bar to establishing a case of fraudulent misrepresentation (see [20]–[23] of *Panatron*):

> 20 Admittedly, both Lee and Yin are experienced businessmen, and undoubtedly they must have made their own evaluation of the prospects of investing in Panatron. In this respect, by reason of the exposure and experience they had had, they must have relied, *inter alia*, on their own expertise and knowledge in deciding whether or not to invest in Panatron.

Version No 1: 20 Jun 2023 (16:56 hrs)

However, it does not follow that they could not have been induced by the representations made by Phua. In this regard, the judge found as a fact that Phua had made the representations to them, which they said were made, and that these representations were false. These findings were not seriously challenged or shown to be plainly in error. The judge also found that both Lee and Yin acted on these representations and they made substantial investments in Panatron. With these findings, the most that can be said on behalf of the appellants was that both Lee and Yin relied partly on their own knowledge and expertise and partly on the representations made by Phua in deciding to invest in Panatron. In this event, the claims of Lee and Yin would still succeed.

21 In *Edgington v Fitzmaurice* (1885) 29 Ch D 459, certain material misstatements were made in a prospectus. The plaintiff was induced partly by his own mistake and partly by those statements to make an investment in the company, and subsequently suffered a loss. He took proceedings against the defendant for deceit. It was held that where the plaintiff was induced partly by his own mistake and partly by fraudulent misrepresentations made by the defendant, the latter would still be liable in an action for deceit. Cotton LJ said at 481:

> It is not necessary to shew that the misstatement was the sole cause of his acting as he did. If he acted on that misstatement, though he was also influenced by an erroneous supposition, the Defendants will be still liable. Did he act upon that misstatement? He states distinctly in his evidence that he did rely on the Defendants' statements, and the learned Judge found, as a fact, that he did, and it would be wrong for this Court, without seeing or hearing the witness, to reverse that finding of the Judge. We must therefore come to the conclusion that the statements in the prospectus as to the objects of the issue of the debentures were false in fact, and were relied upon by the Plaintiff.

22 On the same point, we find that the decision of the Court of Appeal in England in the case of *JEB Fasteners v Marks, Bloom & Co* [1983] 1 All ER 583 is instructive. That case concerned the tort of negligent misstatement which contains a similar requirement of reliance. This requirement was said to be simply another way of stating the issue of causation. Stephenson LJ in the Court of Appeal clarified the matter at 588–589:

> In such a case the cause of action is the same as in all claims for damages for misrepresentation. The representation must be false, and it must induce the plaintiff to act on it to his detriment. If it does, he relies

Version No 1: 20 Jun 2023 (16:56 hrs)

> on it; if it does not, he does not. He may, of course, rely on other things as well. What operates on his mind, or motivates him, or influences him to act as he does, may be a number of things, some operating more or less strongly, one perhaps predominating, as the judge found here was the fact that the plaintiffs 'thought that Mr Godridge and Mr Wigg, in the form of BG Fasteners Ltd, would be the ideal vehicle to complement their existing business (see [*JEB Fasteners v Marks, Bloom & Co* [1981] 3 All ER 289] at 301); another, not 'of critical importance' as the judge found (at 301), was the false accounts in this case. But, as long as a misrepresentation plays a real and substantial part, though not by itself a decisive part, in inducing a plaintiff to act, it is a cause of his loss and he relies on it, no matter how strong or how many are the other matters which play their part in inducing him to act …
>
> … if the plaintiffs' directors were motivated or influenced by the accounts to any substantial extent, there would be the necessary reliance on the misrepresentation they contained to make a case of the kind which the law takes into account, and sometimes describes in Latin as a *causa causans*, and the judge should have found for the plaintiffs … If however, and only if, the false accounts had no real or substantial effect in inducing the plaintiffs' directors to take over the company would the misrepresentation they contained not be that sort of cause, but what the law puts out of account as a mere *causa sine qua non*, and it would be wrong, in my judgment, to regard the plaintiffs' directors as relying on it and acting as they did.

23 Reverting to the case at hand, as found by the judge, the misrepresentations had been made by Phua, and Lee and Yin respectively had been induced by the misrepresentations to invest in Panatron. *The misrepresentations need not be the sole inducement to them, so long as they had played a real and substantial part and operated in their minds, no matter how strong or how many were the other matters which played their part in inducing them to act and invest in Panatron. If* inducements in this sense are proved and the other essential elements of the tort are also made out, as is the case here, then liability will follow.

[emphasis added]

Version No 1: 20 Jun 2023 (16:56 hrs)

101 However, as was stated in *Panatron* (at [13]), the plaintiff must show that the false representation was made: (a) knowingly; (b) without belief in its truth; or (c) recklessly, without caring whether it be true or false.

Preliminary issue on the Plaintiffs' pleadings

(1) The Plaintiffs' failure to specifically plead a case of *fraudulent* misrepresentation in their Statement of Claim

102 I pause here to briefly mention that the Plaintiffs have not, in their Statement of Claim, specifically pleaded a case of *fraudulent* misrepresentation. Instead, the Plaintiffs have merely referred to their claim under the heading of "Misrepresentation".[101]

103 However, while the Plaintiffs may have omitted to make specific reference to fraudulent misrepresentation in their Statement of Claim, it is abundantly clear that the Plaintiffs, in substance, intended to pursue a claim of fraudulent misrepresentation. This is evident from the fact that they have alleged in their Statement of Claim that Wendy and Joey "had knowledge of the falsity" of the Four Representations, *ie*, the key element which distinguishes a case of fraudulent misrepresentation from a case of negligent misrepresentation.

104 In any case, it is quite evident from the Defendants' case at the trial as well as their opening statements that the Defendants were aware that one of the Plaintiffs' claims related to fraudulent misrepresentation by Wendy and Joey. Therefore, the Defendants cannot be said to have been taken by surprise or have suffered any prejudice, even if the Statement of Claim did not specifically refer to *fraudulent* misrepresentation (see *Song Jianbo v Sunmax Global Capital*

[101] SOC at paras 7A to 14.

Version No 1: 20 Jun 2023 (16:56 hrs)

Fund 1 Pte Ltd and another [2021] SGHC 217 at [69], cited recently in *Bay Lim Piang v Lye Cher Kang* [2023] SGHC 13 at [93]).

(2) The First, Third and Fourth Defendants' claim that the Plaintiffs' case at the trial on the purported Four Representations differ from the Plaintiffs' pleaded case

105 I shall now consider the issue raised by the First, Third and Fourth Defendants in their submission at the close of trial relating to the Plaintiffs' pleadings. They allege that there are differences in the Plaintiffs' case in relation to the Four Representations.[102] They make this allegation by comparing the case presented by the Plaintiffs in Cindy's affidavit and at the trial with the Plaintiffs' Statement of Claim.

106 The First, Third and Fourth Defendants have focused, in particular, on the Due Diligence Representation. According to them, the Plaintiffs' case as pleaded in the Statement of Claim was limited to a representation made by Wendy that she and/or her companies had spent large sums of money to carry out detailed due diligence to ensure the Casa Nova Project and the Bosque Project were government-approved. Based on the Plaintiffs' pleaded case, Wendy never did any detailed due diligence in the Casa Nova Project and the Bosque Project. However, the First, Third and Fourth Defendants state that the Plaintiffs had deviated from their pleaded case on the Due Diligence Representation by introducing the element of a "safe investment" in Cindy's affidavit.

107 Before considering the contention above, I highlight the salient principles on the adequacy of pleadings. It is trite that, where there are

---

[102] 1st, 3rd and 4th Defendants' Written Submissions dated 10 April 2023 ("Wendy's Written Submissions") at paras 23 to 24 and 57 to 60.

Version No 1: 20 Jun 2023 (16:56 hrs)

allegations of misrepresentation or fraud, these allegations must be pleaded with sufficient particularity. This principle is set out in O 18 r 12(1)(*a*) of the Rules of Court (Cap 332, R 5, 2014 Rev Ed):

> **Particulars of pleading (O. 18, r. 12)**
>
> **12.**—(1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words —
>
> (a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies…

108 The reason for this principle is clear. It is to ensure that the Defendants know the case they have to meet: *BOM v BOK and another appeal* [2019] 1 SLR 349 ("*BOM*") at [39], citing *Singapore Civil Procedure* vol I (Foo Chee Hock JC, gen ed) (Sweet & Maxwell, 2018) at para 18/12/2.

109 However, in *BOM*, the Court of Appeal also emphasised that when assessing the adequacy of pleadings, one must not simply focus on the technicalities. Rather, the focus must remain on whether the scope of issues has been adequately defined in the pleadings so as not to take the parties by surprise or deprive the parties of the opportunity to adduce relevant evidence (see *BOM* at [40]):

> But one must also be careful *not* to descend blindly into technicalities when assessing the adequacy of pleadings, and to always bear in mind that their ultimate purpose is to define the scope of the issues arising for the court's determination and to ensure that the parties are not taken by surprise and deprived of the opportunity to adduce the relevant evidence: see, *eg*, [*Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524] at [94] and *Fu Loong Lithographer Pte Ltd v Mok Wing Chong* [2018] 4 SLR 645 at [61]. It is for this reason that we observed in *OMG Holdings Pte Ltd v Pos Ad Sdn Bhd* [2012] 4 SLR 231 that "evidence given at trial can, where appropriate, overcome defects in the pleadings provided that

Version No 1: 20 Jun 2023 (16:56 hrs)

> the other party is *not taken by surprise or irreparably prejudiced*" …
>
> [emphasis in original]

110 In the same vein, the Court of Appeal explained in *OMG Holdings Pte Ltd v Pos Ad Sdn Bhd* [2012] 4 SLR 231 ("*OMG Holdings*") that the aim of pleadings is to narrow the parties to definite issues (see *OMG Holdings* at [18]):

> Pleadings are meant to "narrow the parties to definite issues" (*Thorp v Holdsworth* (1876) 3 Ch D 637 at 639, *per* Jessel MR). It is trite law that the court may permit an unpleaded point to be raised if no injustice or irreparable prejudice (that cannot be compensated by costs) will be occasioned to the other party (see *Lu Bang Song v Teambuild Construction Pte Ltd* [2009] SGHC 49 ("*Lu Bang Song*") at [17] and *Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Ltd* [1995] 3 MLJ 331 ("*Boustead Trading*") at 341–342). In the same vein, evidence given at trial can, where appropriate, overcome defects in the pleadings provided that the other party is not taken by surprise or irreparably prejudiced (see *Lu Bang Song* at [17]).

111 The question, therefore, is whether the Plaintiffs' pleadings adequately set out the Four Representations which the Plaintiffs claim were made by Wendy. I set out in the table below (the "Table") the Plaintiffs' pleaded case on the Four Representations for the Casa Nova Project in their Statement of Claim, the Plaintiffs' case as stated in Cindy's affidavit and the Plaintiffs' case at the trial:

Version No 1: 20 Jun 2023 (16:56 hrs)

Representation	**Plaintiffs' case on the representation made by Wendy based on the Statement of Claim**	**Plaintiffs' case on the representation made by Wendy as set out in Cindy's affidavit and at the trial**
The Brazilian Government Representation	"The Brazilian Investment was safe as it was approved and supported by the Brazilian government as a social housing development"[103] "The Brazilian Government Representation, the Escrow Representation, the Due Diligence Representation and the Investment Return Representation (together, the Representations) were repeated by [Wendy] in an oral presentation to, *inter alia*, the Plaintiffs on or about 30 July 2012"[104]	"Casa Nova was a safe investment as it was approved and supported by the Brazilian government as a social housing development"[105] "[Wendy] … repeated the Brazilian Government Representation, the Due Diligence Representation, the Investment Return Representation, … in respect of the Bosque project"[106]

103 SOC at para 8.

104 SOC at para 10A.

105 1BAEIC at p 9, para 25(iv).

106 1BAEIC at pp 18 and 19, para 36.

Version No 1: 20 Jun 2023 (16:56 hrs)

The Escrow Representation	"The [moneys] invested by the Plaintiffs were to be deposited into an escrow account with [the law firm, Sanders & Co,] which would only disburse the [moneys] for the building of the specific units which were the subject of the individual Brazilian Investments"[107] "The Brazilian Government Representation, the Escrow Representation, the Due Diligence Representation and the Investment Return Representation (together, the Representations) were repeated by [Wendy] in an oral presentation to, *inter alia*, the Plaintiffs on or about 30 July 2012"[108]	"We have in file a verified Sanders & Co, the UK Lawyer's professional insurance should there be negligence in the process. Each investor is covered up to GBP2million for their investment. We have verified that Lloyds TSB is the Escrow bank and monies can only be released for the building of your invested unit(s)"[109]

107 SOC at para 9.

108 SOC at para 10A.

109 1BAEIC at p 13, para 29(iv), citing the 13 August 2012 email (see 1BAEIC at p 140).

Version No 1: 20 Jun 2023 (16:56 hrs)

The Due Diligence Representation	"[Wendy] also represented through her 13 August 2012 email that [Wendy] and/or her companies had spent large sums of money to carry out detailed due diligence to ensure [the Casa Nova Project and the Bosque Project] were made into government approved project"[110] "The Brazilian Government Representation, the Escrow Representation, the Due Diligence Representation and the Investment Return Representation (together, the Representations) were repeated by [Wendy] in an oral presentation to, *inter alia*, the Plaintiffs on or about 30 July 2012"[111]	"[Wendy] had *"done all that is possible"* and had invested *"a six-figure sum on due diligence checks"* to ensure that the Casa Nova project was government approved and the investment was safe (or words to that effect). Further:- (a) [Joey] (who was also present at the Casa Nova Presentation) and Ecohouse Group, had spent one year in Brazil studying the Casa Nova project to *"get to know the background of the developer", "meet with the Vice Governor and head of Caxia* [*sic*] *Economica Federal Bank", "make preparations, including getting the proper approvals"*, and *"ensure that everything was in order"* (or words to that effect).

110 SOC at para 10.

111 SOC at para 10A.

Version No 1: 20 Jun 2023 (16:56 hrs)

		(b) Phyllis Fong (who was also present at the Casa Nova Presentation) was *"our lawyer in Singapore engaged by us to read through all the documents, and she has studied, vetted, and read through the sale and purchase agreement and escrow agreement, and had tightened the terms in our favour"* (or words to that effect)."[112] [emphasis in original] "[Wendy] … repeated the Brazilian Government Representation, the Due Diligence Representation, the Investment Return Representation, … in respect of the Bosque project"[113]
The Investment Return Representation	"[T]he Plaintiffs would earn a return of 20% of their investment within 1 year"[114]	"Investors would earn a return at the rate of 20% of their investment within one year"[116]

112 1BAEIC at p 9, para 25(v).

113 1BAEIC at pp 18 and 19, para 36.

114 SOC at para 10.

116 1BAEIC at p 10, para 25(x).

Version No 1: 20 Jun 2023 (16:56 hrs)

	"The Brazilian Government Representation, the Escrow Representation, the Due Diligence Representation and the Investment Return Representation (together, the Representations) were repeated by [Wendy] in an oral presentation to, *inter alia*, the Plaintiffs on or about 30 July 2012"[115]	"[Wendy] … repeated the Brazilian Government Representation, the Due Diligence Representation, the Investment Return Representation, … in respect of the Bosque project"[117]

112 It is clear from the Table above that there has been no substantive change in the Plaintiffs' pleadings with respect to the Brazilian Government Representation, the Escrow Representation and the Investment Return Representation. As set out in the Table, the Plaintiffs' case as detailed in the Statement of Claim for these three Representations is largely replicated in Cindy's affidavit and at the trial by the Plaintiffs.

113 As for the Due Diligence Representation, there seems to be a slight but immaterial variation between the Plaintiffs' case as set out in the Statement of Claim and the Plaintiffs' case as set out in Cindy's affidavit. In the Statement of Claim, the Plaintiffs have only stated that Wendy and/or her companies (a) had spent large sums of money; and (b) carried out detailed due diligence to ensure the "Brazilian Investments", *ie*, the Casa Nova Project and the Bosque

115 SOC at para 10A.

117 1BAEIC at pp 18 and 19, para 36.

Version No 1: 20 Jun 2023 (16:56 hrs)

Project, "were made into government approved project".[118] In Cindy's affidavit, however, the Plaintiffs had gone further to claim that Wendy had stated that:

> (a) she had done all that was possible and had invested a six-figure sum on due diligence checks to ensure the Casa Nova Project was government-approved and the investment was safe;
>
> (b) Joey and Ecohouse Group had spent one year in Brazil studying the Casa Nova Project to understand the background of the developer, met with the Vice Governor and one of the heads of Caixa Bank, made preparations including getting the proper approvals, and ensured that everything was in order; and
>
> (c) Fong had been engaged to review and vet the sale and purchase agreements and escrow agreements and to tighten the terms in the investors' favour.

114 These are minor differences in the framing of the Due Diligence Representation and the Plaintiffs' case is consistent with what they have pleaded in their Statement of Claim. In the Statement of Claim, the Plaintiffs have alleged that Wendy had stated, in the 13 August 2012 email, that large sums of money had been paid to carry out detailed due diligence. This representation was also made at the 30 July 2012 Presentation. Significantly, in the Statement of Claim, the Plaintiffs have made reference to the 13 August 2012 email. Therefore, the First, Third and Fourth Defendants' submission ignores the fact that the Plaintiffs' case was premised on what Wendy had said in the 13 August 2012 email.

---

118 SOC at para 10.

Version No 1: 20 Jun 2023 (16:56 hrs)

115 The Plaintiffs' case on the Due Diligence Representation as stated in Cindy's affidavit is not inconsistent with the 13 August 2012 email which was sent by Wendy. I reproduce below the relevant parts of the 13 August 2012 email where Wendy had clearly stated what forms the Plaintiffs' case:

> …
>
> 1) We have been monitoring this deal for 1 year now with regards [*sic*] Ecohouse Developments' social housing projects. When previous project Arco Iris is [*sic*] fully sold and construction is [*sic*] almost completed, Joey went to visit the Developer's office, conducted project site visits to Arco Iris and Casa Nova. He had even met the Vice Governor to discuss about the social housing policies and progress and Joey also met up with one of the Head [*sic*] of Caixa Bank to verify Ecohouse Development's work in Brazil. Checks and cross checks are done in the process.
>
> 2) We invested a six-figure sum for the due diligence for this project. We had to engage a very experienced lawyer to do all the due diligence work on the developer and the project we are investing in . We invested many hours getting the compiled due diligence report on the project's title search, sewage, water, forestry permits, the Caixa Economica Federal Bank endorsement of the developer. Ecohouse Development[s] is as a [*sic*] Geric Certified developer (only Geric Certified Developer qualifies to build the social housing).
>
> …
>
> 4) We have gotten our lawyer to tighten the Sale and Purchase Agreements (S&P), getting Notorial certificate in place so that this deal and the paperwork is also structured to be compliant with Singapore's MAS ruling.
>
> …
>
> While I do not personally guarantee any of the returns, I believe we have done more than anyone else in terms of due diligence. Pls check on how other people are doing their due diligence for their overseas project sharing before you invest.
>
> …

116 Thus, Cindy's affidavit regarding the Due Diligence Representation was an elaboration of the Plaintiffs' Statement of Claim on Wendy's due diligence

Version No 1: 20 Jun 2023 (16:56 hrs)

work as stated in the 13 August 2012 email. The Plaintiffs are not required to reproduce the entire contents of the 13 August 2012 email in the Statement of Claim. Hence, there is no deviation from the Plaintiffs' pleaded case on the Due Diligence Representation in the Statement of Claim.

117 The Court of Appeal in *BOM* (at [40]) and *OMG Holdings* (at [18]), stated that the key issue is whether any deficiency in the pleadings has the effect of causing the other party to be taken by surprise or causing the other party to be irreparably prejudiced. In the present case, the Defendants are not taken by surprise and are not irreparably prejudiced by the Plaintiffs' allegation of the Due Diligence Representation. It would have been abundantly clear to the Defendants that the Plaintiffs were relying on the 13 August 2012 email *sent by Wendy* to investors including Cindy. This would have been clear to the Defendants from the Plaintiffs' Statement of Claim. Given that the 13 August 2012 email was sent by Wendy, she would have been undeniably familiar with the contents of her own email. Further, the Defendants' opening statements and affidavits show that the Defendants were, in fact, fully aware that the Plaintiffs' case hinged, in part, on the statements made by Wendy in the 13 August 2012 email. Hence, the contention of the First, Third and Fourth Defendants that the Plaintiffs' case at trial on the purported Due Diligence Representation differs from the Plaintiffs' pleaded case has no merits.

118 I shall now consider whether the Plaintiffs have established a case of fraudulent misrepresentation against Wendy and Joey on a balance of probabilities. It is important to consider whether Wendy made the Four Representations.

Version No 1: 20 Jun 2023 (16:56 hrs)

Whether the Four Representations were made by Wendy

(1) The Casa Nova Project

119 According to the Plaintiffs, Wendy made the Four Representations, *ie*, the Brazilian Government Representation, the Escrow Representation, the Due Diligence Representation and the Investment Return Representation, at the 30 July 2012 Presentation where the Casa Nova Project was introduced to investors, including the Plaintiffs.[119] Thereafter, Wendy sent two emails, the 7 August 2012 email and the 13 August 2012 email, where the Four Representations were repeated.[120]

120 In defence, Wendy denies making the Four Representations at the 30 July 2012 Presentation. According to Wendy, Anthony was invited to speak to the investors and Anthony was the one who spoke about the Casa Nova Project at the 30 July 2012 Presentation. Wendy alleges that she introduced Anthony to the audience.[121] Further, based on Wendy's affidavit, she only spoke generally about investing in overseas projects as well as about "risks versus returns". Anthony then presented material facts relating to the "property development and opportunity", *ie*, the Casa Nova Project.[122] Wendy stated in her affidavit that Anthony used the Casa Nova Presentation Slides at the presentation and that she did not prepare the slides. She also did not use the slides in her introduction at the presentation.[123]

---

119 1BAEIC at pp 8 to 10, para 25.

120 1BAEIC at pp 10 to 15, paras 27 to 30.

121 2BAEIC at p 411 to 412, paras 17(b) and 18.

122 2BAEIC at p 412, para 19.

123 2BAEIC at p 415, para 32.

Version No 1: 20 Jun 2023 (16:56 hrs)

121 Before considering the 7 August 2012 email and the 13 August 2012 email, I shall deal first with Wendy's role at the 30 July 2012 Presentation. Wendy admitted during the cross-examination by Mr Goh that her involvement at the 30 July 2012 Presentation went further than what she had stated in her affidavit:

(a) First, Wendy clarified that she had spoken beyond investing in overseas projects and the "risks versus returns". She also spoke about investing in Brazil and the economic climate in Brazil. Wendy's evidence in Court during the cross-examination by Mr Goh is as follows:[124]

> Q. Volume 2. Your affidavit is always in volume 2. Now, look at what you say at paragraph 19, 1-9. You say here:
>
> "At the event, as far as I can recall, I spoke generally about investing in overseas projects. I would also have spoken about risks versus returns."
>
> A. Yes.
>
> Q. Now, by this statement, am I understanding it correctly that you did not speak about investing in Brazil specifically?
>
> A. I did mention about the Brazil economic climate.
>
> Q. So you spoke about investing in Brazil and the economic climate in Brazil?
>
> A. Yes.
>
> Q. What is it about the Brazilian economic climate?
>
> A. That it is a growing economy; that there is a growing middle class, because from the lower income aspiring to become middle class. And I talked about the PA -- programme for accelerated growth programme that is launched in Brazil by the government. Yes.

[124] 14 March 2023 Transcript at p 121 (lines 1 to 20).

Version No 1: 20 Jun 2023 (16:56 hrs)

(b) Second, Wendy also admitted that it was not just Anthony who used the Casa Nova Presentation Slides at the 30 July 2012 Presentation. Wendy had also referred to a few slides from the Casa Nova Presentation Slides when she was addressing the audience. This is Wendy's evidence in Court during the cross-examination by Mr Goh:[125]

> Q. … Now, you go on to say:
>
> "I then introduced Ecohouse Developments' [*ie,* Ecohouse Brazil] representative, Anthony Armstrong to present [the] material facts of the property development and opportunity. It was Anthony Armstrong who spoke about the Casa Nova Project and the Bosque Residential Project."
>
> Now, your position is that it was Anthony Armstrong who used those slides during the presentation; you did not use any slides for your presentation, right?
>
> A. I did use a few slides, yes.
>
> Q. You did use a few slides?
>
> A. Yes, I did.
>
> …
>
> Q. So you agree you used these slides during your presentation?
>
> A. A few of these slides, yes, because I mentioned about me being part of this joint venture, and I actually represent Ecohouse to present some of these slides, yes.

(c) Third, Wendy also said during the cross-examination by Mr Goh that she had, in fact, told the audience during the 30 July 2012 Presentation that she represented Ecohouse Asia Pacific. Wendy

---

125 14 March 2023 Transcript at pp 122 (line 5) to 123 (line 5).

Version No 1: 20 Jun 2023 (16:56 hrs)

conceded that this claim was not found in her affidavit. This is Wendy's evidence in Court:[126]

COURT:	Hold on. Madame Kwek, do you want to be more precise? You say you represented Ecohouse; which Ecohouse?
A.	Ecohouse APAC.
COURT:	The joint venture Ecohouse?
A.	Yes. I was honest about the joint venture to everyone. I didn't hide anything. So I just shared that I am actually representing the joint venture company, and Anthony Armstrong as the CEO is here with me to share the project.
MR GOH:	Now, you do not say this in your affidavit that you told everyone you were doing a presentation for Ecohouse Developments, right?
A.	Oh, in the meeting of 30 July I mentioned about the joint venture and that I actually represent the -- because I represent Ecohouse for this deal, that's why I don't need a licence. I did mention that, too. And over here I present all the way to -- until the Ecohouse logo over here, before Anthony phase.
Q.	Okay, hold on. First of all, I want to establish that this allegation that you had told the audience that you were representing [Ecohouse Asia Pacific] in making this presentation is not contained in your affidavit of evidence-in-chief, right?
A.	But that's the main purpose of --
Q.	No, can you answer the question first. This statement that you have just made in court, that you told the audience that you were with this joint venture involving

[126] 14 March 2023 Transcript at pp 123 (line 7) to 124 (line 11).

Version No 1: 20 Jun 2023 (16:56 hrs)

> [Ecohouse Asia Pacific], it does not appear in your affidavit of evidence-in-chief, agree?
>
> A. Yes, I think so. You're right. I think you're right.

122 These discrepancies raised during the cross-examination are serious material inconsistencies in Wendy's account of her role at the 30 July 2012 Presentation. She has not provided any explanation to account for these inconsistencies. This, however, means that Wendy's account in her affidavit that she only introduced Anthony and spoke generally about investing overseas and on risks and returns at the 30 July 2012 Presentation is self-serving and clearly false. Rather, based on Wendy's own account in Court, she went into some details about investing in Brazil specifically, she and Anthony used the Casa Nova Presentation Slides and spoke about the Casa Nova Project in Brazil.

123 In contrast, the Plaintiffs, who were both present at the 30 July 2012 Presentation, have been consistent in their evidence that Wendy had made the Four Representations at the 30 July 2012 Presentation. The Defendants have contended that the Plaintiffs' evidence is not entirely credible in view of David merely adopting Cindy's affidavit without reservation.[127] I accept that there is a need to carefully scrutinise the evidence of the Plaintiffs, in view of the fact that David has, in essence, adopted Cindy's position as his own. However, in light of the contents of the 7 August 2012 email and the 13 August 2012 email sent by Wendy which I shall come to shortly, it is more probable that the Plaintiffs' version of the events, *ie*, that Wendy had made the Four Representations at the 30 July 2012 Presentation, is true.

---

127 Wendy's Written Submissions at para 127.

Version No 1: 20 Jun 2023 (16:56 hrs)

124 The Plaintiffs called Chang Tuck Yuen ("Chang"), another investor, as a witness. Chang attended the 30 July 2012 Presentation. Later, Chang also signed a sale and purchase agreement with Ecohouse Brazil for the purchase of some residential units in the Casa Nova Project. Chang's evidence is consistent with the Plaintiffs' evidence that Wendy had made the Four Representations at the 30 July 2012 Presentation. I am, however, mindful that Chang stated during the cross-examination by the counsel for the First, Third and Fourth Defendants, Ms Oei Ai Hoea Anna ("Ms Oei"), that he had discussed with Cindy the contents of his affidavit before the trial. This is Chang's evidence in Court:[128]

> Q. You see, Mr Chang, when I read your affidavit, I was sort of hit with a sense of deja vu because it seems awfully familiar. Then I realised why, all right? Because a good part of your affidavit is actually identical to Cindy Yee's affidavit. Can you explain why?
>
> A. We shared the same information.
>
> Q. Right. And so you and Cindy Yee had discussed with the lawyer about the information that you shared and did you work on the affidavit at the same time with your lawyers?
>
> A. We agreed to those information.
>
> Q. I see. So you and Cindy Yee agreed on the contents of your affidavit; is that what you are saying?
>
> A. Yes.

125 The Defendants have argued that Chang is not a credible witness as he had worked on his affidavit together with Cindy and they had agreed on the information that went into the affidavit. They had freely discussed matters relating to the present case during the meetings with the lawyers before the commencement of the trial.[129] The Defendants have also focused on Chang's

---

128 10 March 2023 Transcript at pp 49 (line 25) to 50 (line 14).

129 Wendy's Written Submissions at paras 122 to 127.

Version No 1: 20 Jun 2023 (16:56 hrs)

admission at the trial that he stands to gain financially if the Plaintiffs succeed in their claim against the Defendants. This is Chang's evidence in Court during the cross-examination by Ms Oei:[130]

> Q. All right. Were you promised a part of the proceeds here if you -- if the plaintiffs were successful?
>
> A. Yes.
>
> Q. And how much were you to get?
>
> A. I can't say how much, but I would refer to the previous understanding, probably around at least 10 per cent.
>
> Q. Right. And am I correct to say that in dealing with giving instructions to the lawyers that you did not give your own instructions, they were given through Cindy Yee?
>
> …
>
> A. No, my evidence was given directly to the lawyer.
>
> Q. Right.
>
> A. Not through Cindy.
>
> Q. And that was when you and Cindy were in discussion with the lawyers about the case?
>
> A. We discussed the case.
>
> Q. With the lawyers and Cindy Yee?
>
> A. Yes.

126 It is clear from the exchange above that Chang's and Cindy's testimonies need to be treated with extreme caution. Thus, prudence requires the Court to exercise extreme care when evaluating the evidence of the Plaintiffs and Chang. Notwithstanding this, it is undisputed that Wendy sent to Cindy and the other investors the 7 August 2012 email and 13 August 2012 email. The contents of these emails indicate that Wendy did, in fact, make the Four Representations as the Plaintiffs allege.

---

130 10 March 2023 Transcript at p 77 (lines 2 to 22); Wendy's Written Submissions at para 129.

Version No 1: 20 Jun 2023 (16:56 hrs)

127 In the 7 August 2012 email, Wendy forwarded the Casa Nova Presentation Slides which were used at the 30 July 2012 Presentation. This email was sent to Cindy and the other investors in the Casa Nova Project following the 30 July 2012 Presentation. In this email, Wendy provided a set of instructions to the investors on the next steps that they would need to take following their reservation of the residential units in the Casa Nova Project.

128 The following representations can be gleaned from a review of the Casa Nova Presentation Slides forwarded in the 7 August 2012 email:

(a) First, the Casa Nova Presentation Slides reveal that the Brazilian Government Representation was made to the investors, including the Plaintiffs, at the 30 July 2012 Presentation and in the 7 August 2012 email. The evidence of the Brazilian Government Representation is listed below:

(i) The slides found at Bundle of Affidavits of Evidence-in-Chief Volume 1 ("1BAEIC"), pages 120 to 123, show that various representations were made about the Brazilian government's MCMV programme. Representations were made that the government launched the MCMV programme in 2009 to provide significant funding for Brazilians to purchase their own homes.

(ii) The slide found at 1BAEIC, page 124, shows that representations were clearly made that Ecohouse Brazil was a government-backed developer which was certified by the state-owned Caixa Bank:

> "Any company involved in [MCMV] projects must be Geric Certified, which can only be awarded by Caixa Bank.

Version No 1: 20 Jun 2023 (16:56 hrs)

> [T]he advantage of using only Geric Certified developers is that these have all been thoroughly vetted and are known to be reputable and financially stable. *EcoHouse Developments featured at the La Caixa trade show in Brazil as Caixa's leading [MCMV] Developer***.**
>
> *Investing directly with an award-winning fully-backed developer such as EcoHouse ensures safety and guaranteed returns*.
>
> *ECOHOUSE DEVELOPMENTS is fully registered with the government, we have all the required building permits and regulations in place and our investors' money is fully backed by Brazil's largest bank CAIXA BANK* and Fully secured and protected by U.K. Legislation, U.K. Escrow account, U.K Regulated Lawyer through Lloyds London.
>
> [emphasis added]

(b) Second, the Casa Nova Presentation Slides reveal that the investors' moneys for the Casa Nova Project would be deposited into an escrow account, *ie*, the Escrow Representation. This was mentioned at the 30 July 2012 Presentation and in the 7 August 2012 email:

(i) The slide found at 1BAEIC, page 124, shows that a representation was clearly made that investors' moneys for Ecohouse Brazil were fully secured and protected by way of an escrow account in the UK:

> ECOHOUSE DEVELOPMENTS is fully registered with the government, we have all the required building permits and regulations in place and our investors' money is fully backed by Brazil's largest bank CAIXA BANK and *Fully secured and protected by U.K. Legislation, U.K. Escrow account, U.K Regulated Lawyer through Lloyds London***.**
>
> [emphasis added]

(ii) A similar representation was again made at the slide found at 1BAEIC, page 130:

Version No 1: 20 Jun 2023 (16:56 hrs)

> EcoHouse [D]evelopments is an established property development company, based in London and Brazil, which focuses on the Brazilian Government sponsored social housing programme [MCMV] as well as selected first class resort linked land and building plots. With the Brazilian government's wide ranging social and infrastructure improvement programmes, unparalleled opportunities to leave a long lasting legacy to the ordinary citizens of Brazil whilst investing responsibly in the property sector are now available. Investors are able to utilise their funds in a safe and rewarding project which is designed to provide up to 12 million homes over the next six years. *Utilising EcoHouse's unique UK regulated escrow programme allows investors to participate in the world's most rapidly expanding economy with complete security and peace of mind. Additionally, all investor's funds are held in a secure UK structure under the protection of UK regulatory authorities.*
>
> [emphasis added]

(iii) This representation was again made at the slide found at 1BAEIC, page 133, where it was stated:

> Our partners Lloyds TSB provide an escrow facility to protect Investors funds which is managed by UK Lawyers.

(c) Third, the Casa Nova Presentation Slides reveal that the Investment Return Representation was made to the investors and the Plaintiffs at the 30 July 2012 Presentation and in the 7 August 2012 email:

(i) The slide at 1BAEIC, page 133, shows that a representation was clearly made that investors would earn a 20% return of their investment within one year:

> 20% Assured Return In Just 12 months

Version No 1: 20 Jun 2023 (16:56 hrs)

(ii) This representation was again made in the slide at 1BAEIC, page 135:

> Benefits of investing in Ecohouse Social Housing Projects
>
> …
>
> - Short-term Assured Exit in 12 months
> - 20% Returns paid on month 12 upon exit
>
> …

129 From the above, it is clear that the Brazilian Government Representation and the Investment Return Representation were made in the Casa Nova Presentation Slides which were used at the 30 July 2012 Presentation and were attached in the 7 August 2012 email sent by Wendy. In relation to the Escrow Representation, the Casa Nova Presentation Slides only refer to investors' moneys being deposited into an escrow account, though they do not state the conditions under which investors' moneys in the escrow account would be released.

130 Wendy has tried to distance herself from the Casa Nova Presentation Slides. In her affidavit, she stated that the 7 August 2012 email "was merely forwarding the slides that were presented".[131] During the cross-examination by Mr Goh, Wendy stated that the slides attached to the 7 August 2012 email were prepared by Anthony and that her involvement with respect to the contents of the Casa Nova Presentation Slides was merely to include the contact information of the parties as well as to convert the monetary figures stated in the Casa Nova Presentation Slides to Singapore Dollars:[132]

---

131 2BAEIC at p 415, para 32.

132 15 March 2023 Transcript at pp 4 (line 16) to 5 (line 9).

Version No 1: 20 Jun 2023 (16:56 hrs)

> MR GOH: …Witness, is your case that the slides were prepared, all of them were prepared by Anthony Armstrong?
>
> A. The slides were sent to -- were prepared by Anthony Armstrong. However, there was some edit to make it to the Singapore market, including the dollars in Singapore dollars.
>
> COURT: No, can you please answer the question first before you explain. So the answer to Mr Goh's question is a "yes" or a "no"?
>
> A. No.
>
> MR GOH: Okay. You want to elaborate?
>
> A. So the slides were prepared by Anthony Armstrong, it was sent over, and there was some edit to it --
>
> COURT: You mean sent over to whom?
>
> A. Sent over to probably Joey, but there was edited – it was edited by myself, because we need to edit in the contact information, the dollar value in Singapore dollars invested, and something to make it align with Singapore.

131 Regarding the instructions to the investors on the next steps that they would need to take following the reservation contained in the 7 August 2012 email, Wendy stated in Court that she was merely forwarding instructions from Ecohouse Asia Pacific:[133]

> A. … "Thank you for your reservation of the Casa Nova Residencial social housing project.
>
> [Please] read and keep this email for your reference."
>
> Not for your action. *And that is the list of things that were forwarded to me by Ecohouse, which I have then forward out.* So my instruction is, "[Please] read and keep this email for your reference."
>
> COURT: Which paragraph?

---

133 15 March 2023 Transcript at p 50 (lines 4 to 23).

Version No 1: 20 Jun 2023 (16:56 hrs)

A. It's right on top near "Dear Investors". So before all the pointers, I said:

"[Please] read and keep this email for your reference."

Because those following pointers were instructions that were sent to me by Ecohouse Developments Singapore -- sorry, Ecohouse APAC.

COURT: Sorry, were given to you by whom?

A. I'm not sure -- I cannot remember who.

COURT: No, no, which entity. Did you say Ecohouse, what?

A. Ecohouse APAC.

[emphasis added]

132 Wendy's attempts to distance herself from the 7 August 2012 email and the Casa Nova Presentation Slides attached to the email ignore the fact that the email originated from her and did not, in any way, state that the contents of the email or the slides were representations by either Anthony or by Ecohouse Asia Pacific. The email was sent by Wendy to members of *her* WK Investment Network Yahoo Group who had attended the 30 July 2012 Presentation and thereafter reserved units at the Casa Nova Project. At the very least, by forwarding the Casa Nova Presentation Slides in the 7 August 2012 email under her name, Wendy would have been endorsing the contents of the Casa Nova Presentation Slides as true and accurate. This must, therefore, amount to representations made by Wendy. In the 7 August 2012 email, Wendy did not expressly or implicitly indicate that Anthony was the one who presented the Casa Nova Presentation Slides at the 30 July 2012 Presentation. In fact, the impression given in the 7 August 2012 email was that she was marketing the Casa Nova Project and that the Casa Nova Presentation Slides were attached to the email to convince the investors, including Cindy, to invest in the Casa Nova Project.

Version No 1: 20 Jun 2023 (16:56 hrs)

133 Even if Wendy denies that she had made the Brazilian Government Representation, Escrow Representation and the Investment Return Representation when she attached the Casa Nova Presentation Slides to the 7 August 2012 email to the investors and Cindy, she cannot reasonably deny that the Four Representations were clearly made in the 13 August 2012 email which she drafted. I shall, therefore, now examine the contents of the 13 August 2012 email.

134 The Brazilian Government Representation was clearly made by Wendy in the 13 August 2012 email as seen below:

(a) First, she stated that Ecohouse Brazil was a Geric certified developer, *ie*, certified by the Brazilian state-owned Caixa Bank:

> 2) … Ecohouse Development[s] is as [*sic*] a Geric Certified developer (only Geric Certified Developer qualifies to build the social housing)

(b) Second, she stated that she had verified an endorsement of Ecohouse Brazil by a minister of the Brazilian government:

> 6) We have also checked on the Brazilian Social Security Minister's public endorsement and congratulatory message to Ecohouse Developments for their good work in Brazil.
>
> (Social Security Minister is similar to our Home Affairs Minister)

(c) Third, she also stated that it was rare to find a deal where the Brazilian government had endorsed and assigned a project to a designated developer (referring to Ecohouse Brazil). Wendy went further to even make a comparison between Ecohouse Brazil's Casa Nova Project and the relationship between the Housing and

Version No 1: 20 Jun 2023 (16:56 hrs)

Development Board ("HDB") in Singapore and its appointed contractors or builders:

> 10) It is rare to find a deal where the Government endorse and assign project only to designated developers like Ecohouse Developments (just like HDB work with only appointed contractors/builders). Moreover, there is a short supply as first time home buyers now buy with no downpayment and yet get concessionary loan rate. Therefore there is a queue for such projects. (similar to queue for HDB by first time buyers)

135 The message from the extracts of the 13 August 2012 email above is clear – the Casa Nova Project was a safe investment as it was approved and supported by the Brazilian government as a social housing development. Therefore, Wendy had made the Brazilian Government Representation in the 13 August 2012 email.

136 The Escrow Representation was also made by Wendy in the 13 August 2012 email. She stated:

> 3) We have in file a verified Sanders & Co, the UK Lawyer's professional insurance should there be negligence in the process. Each investor is covered up to GBP2million for their investment. We have verified that [Lloyds] TSB is the Escrow bank and monies can only be released for the building of your invested unit(s).

137 The above extract of the 13 August 2012 email clearly represented to the investors, including Cindy, that the moneys invested in the Casa Nova Project would be deposited into an escrow account maintained by Sanders & Co. Thus, Wendy assured the investors, including Cindy, that their moneys would be safe and would only be released for the building of the invested units. Therefore, Wendy had made the Escrow Representation in the 13 August 2012 email.

Version No 1: 20 Jun 2023 (16:56 hrs)

138 The Due Diligence Representation was also made by Wendy in the 13 August 2012 email:

(a) First, Wendy stated that she and Joey had been monitoring "this deal", *ie*, the Casa Nova Project, for one year and that Joey had visited Brazil and met various persons:[134]

> 1) We have been monitoring this deal for 1 year now with regards Ecohouse Developments' social housing projects. When previous project Arco Iris is fully sold and construction is almost completed, Joey went to visit the Developer's office, conducted project site visits to Arco Iris and Casa Nova. He had even met the Vice Governor to discuss about the social housing policies and progress and Joey also met up with one of the Head of Caixa Bank to verify Ecohouse [Developments'] work in Brazil. Checks and cross checks are done in the process.

(b) Second, Wendy stated that a six-figure sum had been invested for due diligence for the Casa Nova Project. Here, she gave the impression that the six-figure sum was paid by her and others as she said "We invested …". This included engaging a "very experienced lawyer", *ie*, Fong, as well as obtaining various due diligence reports:[135]

> 2) We invested a six-figure sum for the due diligence for this project. We had to engage a very experienced lawyer to do all the due diligence work on the developer and the project we are investing in . We invested many hours getting the compiled due diligence report on the project's title search, sewage, water, forestry permits, the Caixa Economica Federal Bank endorsement of the developer. Ecohouse Development[s] is as a [*sic*] Geric Certified developer (only Geric Certified Developer qualifies to build the social housing).

---

134 1BAEIC at p 139.

135 1BAEIC at p 140.

Version No 1: 20 Jun 2023 (16:56 hrs)

(c) Third, Wendy stated that she believed she had done more due diligence than others:[136]

> … While I do not personally guarantee any of the returns, I believe we have done more than anyone else in terms of due diligence. Pls check on how other people are doing their due diligence for their overseas project sharing before you invest.

139 The 13 August 2012 email clearly represented that: (a) Wendy had done all that was possible and had invested a six-figure sum on due diligence checks to ensure that the Casa Nova Project was government-approved and the investment was safe; (b) Wendy had been monitoring the Casa Nova Project for one year and Joey had met with the Vice Governor and one of the heads of Caixa Bank, made preparations, including getting the proper approvals, and ensured that everything was in order; and (c) Fong had been engaged to do due diligence work on Ecohouse Brazil and the Casa Nova Project. Therefore, it is clear that Wendy had made the Due Diligence Representation in the 13 August 2012 email.

140 Finally, the Investment Return Representation was also made by Wendy in the 13 August 2012 email:[137]

> 7) This deal is a hands off approach where investors do not need to rent/ sell or manage the property. This is structured as a short term investment with exit in 1 year. The property will be assigned and sold to Brazilians who qualify for the concessionary loan rate within one year. Investors are given 20% returns and additional 2% bonus at the end of the investment period.

---

136 1BAEIC at p 141.

137 1BAEIC at p 140.

Version No 1: 20 Jun 2023 (16:56 hrs)

141 Wendy did not deny in her affidavit that the Four Representations were made in the 13 August 2012 email. Instead, her position is that "it was true that steps were taken as represented".[138] Further, when confronted with the 13 August 2012 email during the cross-examination by Mr Goh, Wendy conceded that the points made in the 13 August 2012 email were a reference to the Casa Nova Project and she was persuading the investors and the Plaintiffs to invest in the Casa Nova Project:[139]

> MR GOH: The question is that every point raised in this email of yours is a reference to the Casa Nova Project that you had just presented two weeks ago, agree?
>
> A. Yes.
>
> …
>
> Q. … [A]ll these points that you are raising in this email are in favour of making the investment in Casa Nova, right?
>
> A. Yes.

142 Therefore, the 13 August 2012 email clearly indicates that Wendy had made the Four Representations in relation to the Casa Nova Project.

143 In light of the above, I find that Wendy had made the Four Representations for the Casa Nova Project at the 30 July 2012 Presentation despite her denial.

144 I pause here to consider Wendy's contention that her 7 August 2012 email and 13 August 2012 email could not have been relied upon by David as he was not a recipient of the emails. It is undisputed by the parties that David

---

138 2BAEIC at p 415, para 33.

139 16 March 2023 Transcript at p 4 (lines 7 to 10) and p 5 (lines 4 to 7).

Version No 1: 20 Jun 2023 (16:56 hrs)

was not a member of the WK Investment Network Yahoo Group and was not one of the recipients of the 7 August 2012 email and 13 August 2012 email. Hence, Wendy contends that any representation, if made via the emails, cannot be said to have been made to David.[140] In view of my finding above at [142] that Wendy had made the Four Representations for the Casa Nova Project at the 30 July 2012 Presentation, this contention is moot since David was present at the 30 July 2012 Presentation.

145 For completeness, I shall address Wendy's contention that David could not have relied on the Four Representations. It is undisputed that the Plaintiffs were husband and wife and they had acted together as one entity when they decided to purchase residential units in the Casa Nova Project. Cindy may have been the point of contact who was responsible for communicating with Wendy as she was a member of the WK Investment Network Yahoo Group. What is more important is that when Cindy received the emails from Wendy which contained the Four Representations, the Plaintiffs relied upon the contents of the emails and *jointly* decided to purchase residential units in the Casa Nova Project. Further, it is worth emphasising that these emails were follow-up emails after the 30 July 2012 Presentation which David attended.

(2) The Bosque Project

146 I shall next consider the Plaintiffs' claim that Wendy repeated the Brazilian Government Representation, the Due Diligence Representation, the Escrow Representation and the Investment Return Representation in the context of the Bosque Project at the 6 October 2012 Presentation. Wendy appears to deny that she made these representations at the 6 October 2012 Presentation.

---

140 Wendy's Written Submissions at paras 25 and 52.

Version No 1: 20 Jun 2023 (16:56 hrs)

147 In order to understand what took place at the 6 October 2012 Presentation, it would be important to analyse the 3 October 2012 email sent by Wendy to investors, including Cindy. I set out the relevant parts of the 3 October 2012 email below:[141]

> Wendy Kwek - 20percent Assured Returns plus PROFIT BONUS! - Ecohouse Developments
>
> …
>
> Dear WK Investors,
>
> We would like to offer our congratulations to ALL of our existing and new investor clients for collaborating with the largest social housing developer in the North East of Brazil. The EcoHouse Group currently employs in excess of 1300 staff globally, over 5 continents, in order to achieve secure and unmatched returns for our investors and to provide desperately needed housing to fulfil the Government quotas in Brazil - a huge undertaking only achievable by the strongest and most progressive construction companies in the country.
>
> The EcoHouse Group of companies has received Awards for Excellence in all of the areas that it operates, has achieved a listing in the Top Fifty Awards - given for rapid and sustainable growth in all sectors - and the CEO, Mr Anthony Armstrong Emery, has recently been voted The International Businessman of the Year by The New Europe Magazine. *In addition, both the company and Mr. Armstrong Emery have been personally endorsed by both senior local and national government offices, including Garibaldi Alves Filho, the Minister for Social Security who is ultimately responsible for the [MCMV] initiative, who praised EcoHouses's* [*sic*] *commitment and quality to the social housing programme*. All of the above proven not only on national television live cover, readily available on our web site and YouTube feeds but also in written registered federal document format readily available to any of our existing or future investors if they wish. something not offered by any other developer in this market.
>
> *We are proud and happy to announce our intention to continue to provide year on year 20% returns in a fully secured and regulated real estate investment product.* The EcoHouse Group social housing investment is the only openly available product of its type in the market today and offers unparalleled levels of security. In addition, all of our clients are able to access our

[141] 1BAEIC at pp 164 to 165.

Version No 1: 20 Jun 2023 (16:56 hrs)

> superb website where we are proud to be able to offer frequent and on-going updates on building progress - you can truly see how your funds are being used as well as being able to review previously finished projects. Remember investors it is very easy to claim achievements - it is another thing entirely to demonstrate actual success with investors funds and returns which is why EcoHouse make available construction images as they actually happen - again, EcoHouse a pioneering force in this respect as no other developers website or material shows you the same.
>
> *Due to the immense success of EcoHouses's* [*sic*] *Residencial Casa Nova, which was fully sold out, we are happy to announce our new investment project, Residencial Bosque, in conjunction with the Brazilian Government as always.*
>
> …
>
> [emphasis added]

148 It is clear from the 3 October 2012 email that Wendy had represented that Ecohouse Brazil had been endorsed by the Brazilian government and was part of the MCMV social housing programme. In fact, in the 3 October 2012 email, Wendy introduced the Bosque Project as Ecohouse Brazil's new project "in conjunction with the Brazilian [g]overnment". Therefore, Wendy had clearly made the Brazilian Government Representation in the 3 October 2012 email.

149 Further, Wendy had also represented, in the 3 October 2012 email, that "year on year 20% returns" would be offered to investors who purchased units in the Bosque Project. Therefore, Wendy had clearly made the Investment Return Representation in the 3 October 2012 email.

150 More significantly, however, it is clear from the 3 October 2012 email that Wendy was marketing the Bosque Project whilst riding on the success of the Casa Nova Project. The Bosque Project was framed as arising from the "immense success" of the Casa Nova Project "which was fully sold out". This sets the context for the 6 October 2012 Presentation where the Bosque Project

Version No 1: 20 Jun 2023 (16:56 hrs)

was marketed. Given my findings above (at [127] to [143]) that Wendy had made the Four Representations at the 30 July 2012 Presentation and in the 7 August 2012 email and 13 August 2012 email in relation to the Casa Nova Project, it is entirely consistent that Wendy would have repeated the Four Representations at the 6 October 2012 Presentation when she promoted and marketed the Bosque Project. This is especially so, when she had already made the Brazilian Government Representation and the Investment Return Representation in the 3 October 2012 email on the Bosque Project.

151 In light of the above, I find that Wendy had repeated the Four Representations in the context of the Bosque Project.

152 Wendy argues that any representations made at the 6 October 2012 Presentation for the Bosque Project would have been made only to Cindy and not David because David was not present at the 6 October 2012 Presentation.[142] I have rejected this same argument above at [145] in the context of the Casa Nova Project. Similarly, the Plaintiffs were acting as one entity for the purchase of the residential units in the Bosque Project.

Whether Joey endorsed the Four Representations by way of his conduct

153 The Plaintiffs allege that Joey had engaged in fraudulent misrepresentation in relation to the Due Diligence Representation made with respect to the Casa Nova Project. The thrust of the Plaintiffs' claim against Joey for fraudulent misrepresentation is that Joey was present at the 30 July 2012 Presentation and had nodded and smiled when Wendy introduced him and stated that Joey had also done due diligence for the Casa Nova Project.

---

142 Wendy's Written Submissions at paras 26 and 63.

Version No 1: 20 Jun 2023 (16:56 hrs)

154 In response, Joey states that he was busy with the back-end work during the 30 July 2012 Presentation and had not been paying attention to what was being said by Wendy. Joey accepted that he nodded and smiled when Wendy introduced him as her husband, but disagreed that it was in response to Wendy stating that he had conducted due diligence for the Casa Nova Project. This is the evidence of Joey in Court:[143]

> Q. So when did she introduce you to the audience in this manner?
>
> A. You see, my role there is to help out in the presentation, and I do a lot of the back end work. So I wasn't attentive to her presentation until she introduced me, then I would just turn around and probably say "hello", wave my head [*sic*], smile or even nodded.
>
> Q. You see, my question is whether this introduction was made while she was on stage doing her presentation.
>
> A. She was on stage, yes.
>
> …
>
> MR GOH: … My instructions are that when Wendy introduced you to the audience, she was in fact telling the audience that you had flown to Brazil and spent time there studying the Casa Nova Project, and you had gotten to know the developer's background, met with various persons who were involved, such as the vice governor and the head of Caixa Bank, and you ensured that everything was in order. Would you agree with that?
>
> A. Disagree.
>
> My acknowledge to her introduction is just to acknowledge the introduction that I'm the husband, at that time.
>
> …

143 21 March 2023 Transcript at pp 48 (lines 1 to 11) and 49 (line 6) to 50 (line 7).

Version No 1: 20 Jun 2023 (16:56 hrs)

> A. My acknowledgement to the introduction was just an acknowledgement to when she said, "That's my husband."
>
> MR GOH: But when she pointed you out to the crowd and said "That's my husband", what I'm trying to say is that there was some context to this introduction: she was trying to tell the audience that you had done all these things, flying to Brazil, what I had said earlier. Do you agree she had said all these things about what you had done in Brazil, done the checks, when she introduced you?
>
> A. I don't agree.
>
> Q. So all she said was "That's my husband"?
>
> A. That is what I understand and heard when I acknowledged.

155 It is undisputed that Joey was present at the 30 July 2012 Presentation. The dispute is whether Joey was introduced to the investors and the Plaintiffs, at the 30 July 2012 Presentation merely as Wendy's husband or as Wendy's husband who went to Brazil to conduct due diligence on the Casa Nova Project. The 30 July 2012 Presentation was conducted for Wendy and Joey to market and convince the investors and the Plaintiffs to invest moneys and buy residential units in the Casa Nova Project. Wendy and Joey stood to gain in monetary terms if people invested in the Casa Nova Project. Ecohouse Brazil had agreed to pay them an attractive commission of 10% for each unit purchased by an investor in the Casa Nova Project.[144] There would have been absolutely no marketing value for Wendy to merely introduce Joey as her husband. It is most probable that Joey was introduced as Wendy's husband who had gone to Brazil to conduct due diligence on the Casa Nova Project. This was precisely Cindy's evidence in Court. The 13 August 2012 email further supports the Plaintiffs' case. As I have set out above at [138(a)], in the 13 August 2012

144 17 March 2023 Transcript at pp 39 (line 24) to 40 (line 20) and 42 (lines 17 to 19).

Version No 1: 20 Jun 2023 (16:56 hrs)

email, Wendy elaborated on *what Joey had done* for the purpose of the due diligence process when he was in Brazil.

156 I recognise that Joey's exposure at the 30 July 2012 Presentation and his dealings with the investors and the Plaintiffs at the presentations and via emails were limited as compared to Wendy. However, the evidence, particularly the contemporaneous documents and exchange of emails, clearly reveal that Joey and Wendy were working together to promote and market the Casa Nova Project and the Bosque Project. I have elucidated at (at [99]) above that in *Ernest Ferdinand* at [173], the Court of Appeal, citing Pearlie Koh, *The Law of Contract in Singapore* (Academy Publishing, 2012) at para 11.013, stated that the question as to the meaning of a particular representation "is tested from the perspective of a reasonable person in the position of the representee, and 'in the light of the circumstances pertaining at the time'" and "[t]he question is what the representee understands by the words used". It cannot be ignored that, based on the Defendants' own case, Wendy was marketing the Casa Nova Project and the Bosque Project following Joey's request. Therefore, they were working hand in glove when marketing the Casa Nova Project and the Bosque Project. While Joey attempts now to shield himself from liability for any misrepresentation by relying on his limited visibility to the investors and the Plaintiffs, the reality is that Joey was also very much involved in the Four Representations that were made to the investors and the Plaintiffs.

Whether the Four Representations were false

157 There is considerable and similar overlap between the Four Representations which were made in relation to the Casa Nova Project and the Bosque Project. Hence, I shall deal with the issue of whether each of the Four

Version No 1: 20 Jun 2023 (16:56 hrs)

Representations was false in relation to both the Casa Nova Project and the Bosque Project.

(1) The Defendants' contention that the Plaintiffs had conceded at the trial that the Four Representations were true

158 Before considering whether the Four Representations were false, I shall consider the Defendants' contention that the Plaintiffs and Chang had conceded at the trial that the Four Representations were true.[145]

159 During the cross-examination by Ms Oei and the counsel for the Second, Fifth and Sixth Defendants, Mr Sng Kheng Huat ("Mr Sng"), Cindy and Chang agreed at various junctures that the Four Representations were true. I set out below a few instances during the cross-examination by Mr Sng where Cindy agreed that the Brazilian Government Representation, the Due Diligence Representation and the Investment Return Representation were true:

(a) In relation to the Brazilian Government Representation:[146]

> Q. Now, I come to this firstly paragraph 25(i), which reads:
>
> "As part of the Programme for Acceleration for Growth in Brazil, the Brazilian government launched the [MCMV] programme in 2009 to provide funding for Brazilians to purchase affordable housing built by the government for families with low income. This was referred to as 'social housing' and home buyers were given 100% financing by Caixa Economic[a] Federal Bank (a state-owned bank) at a subsidised interest rate of 4%. [Wendy] emphasized that Casa Nova Project would also 'help the poor' (or words to that effect)."

145 Wendy's Written Submissions at para 29.

146 9 March 2023 Transcript at pp 50 (line 23) to 51 (line 15).

Version No 1: 20 Jun 2023 (16:56 hrs)

> Now, my question to you: Was this representation true at the point in time when this presentation was made on 30 July 2012?
>
> A. Your Honour, I believe it's true because it came out from Wendy.

(b) In relation to the Due Diligence Representation:[147]

> Q. So how could you say that this due diligence representation [is] false?
>
> A. Your Honour, I did not say this due diligence is false, it must be true because when Wendy was presenting this Joey was there nodding his head to acknowledge that this [is] true.
>
> …
>
> MR SNG: … Now, following from your answer to us, Ms Yee, if it is not false, then the due diligence [representation] has to be true?
>
> A. Yes, your Honour.

(c) In relation to the Investment Return Representation:[148]

> MR SNG: Now, Madame Yee, it's stated [*ie*, stated in Cindy's affidavit found at 1BAEIC, page 10] as investors will earn the return at the rate of 20 per cent of their investment sum within one year, the investment return representation, correct?
>
> A. Yes, your Honour.
>
> Q. So at the time when you invested, was it true that the developer would pay investors a return at the rate of 20 per cent of their investment within one year?
>
> A. Yes, that was promised, and it was presented during the presentation.
>
> …

147 9 March 2023 Transcript at pp 22 (line 3) to 23 (line 4)

148 9 March 2023 Transcript at pp 23 (line 18) to 24 (line 11).

Version No 1: 20 Jun 2023 (16:56 hrs)

> Q. My question to you, that this investment return representation, that you would get a return at the rate of 20 per cent of your investment within one year, at that time was also true?
>
> A. Your Honour, I believe it's true because it came from my teacher/mentor Wendy Kwek.

160 However, it is important to consider the evidence of the Plaintiffs on the Four Representations in their context. While the Defendants rely on the purported concessions made by the Plaintiffs and Chang at the trial that the Four Representations were true, it is clear that their responses were given not because they themselves believed or knew the Four Representations were true as a matter of fact, but because they *relied* on Wendy whom they had trusted as their "teacher/mentor" when she had made the Four Representations. Therefore, their evidence at the trial that the Four Representations were true is based solely on their belief in their "teacher/mentor", Wendy, at the time the Four Representations were made to them. On this basis, I would be slow to simply conclude from what was said by the Plaintiffs and Chang at the trial that the Four Representations were true. Rather, the evidence as a whole should be carefully examined to determine whether the Four Representations were true or false.

(2) The Brazilian Government Representation

161 First, I shall consider whether the Brazilian Government Representation was false as alleged by the Plaintiffs. Cindy stated in Court that the main evidence the Plaintiffs are relying on to support their claim that the Brazilian Government Representation was false are from two newspaper reports which purportedly carry statements by the Brazilian embassy in Singapore and the

Version No 1: 20 Jun 2023 (16:56 hrs)

then-Brazilian ambassador to Singapore. This is Cindy's evidence in Court during the cross-examination by Ms Oei:[149]

> Q. Yes. Now you say the representations made were untrue at subparagraph (a) in respect of the Brazilian government representation, that the Brazilian investments were not in any way approved or supported by the Brazilian government.
>
> Now, isn't it so, Madame Yee, that you have not provided evidence in this court that the investments were not in any way approved or supported?
>
> A. Your Honour, there was one evidence from the embassy, from Brazilian Embassy Singapore, stating that there was no link between Ecohouse Developments [*ie*, Ecohouse Brazil] and the government of Brazil.
>
> Q. Okay, let me just, just so that we can be sure what you are talking about, you are referring to the newspaper report --
>
> …
>
> MS OEI: Yes, you are referring to two newspaper reports, page 237 and 238 of your AEIC.
>
> A. Yes, your Honour.
>
> Q. Yes. Now these are just newspaper reports. It's not proof of the truth or otherwise, isn't it, Madame Yee?
>
> Agree?
>
> A. It did -- your Honour, it did show that the Brazilian -- this Ecohouse didn't have any link to the government, you have to prove.
>
> Q. No, Madame Yee, this is just a newspaper report, it's a report of a complaint made and comments made. It is not proof that it is not supported, isn't that so?
>
> A. I took it as it was -- the report was true.

[149] 9 March 2023 Transcript at pp 69 (line 5) to 70 (line 8).

Version No 1: 20 Jun 2023 (16:56 hrs)

162 The two newspaper reports in the "TODAY" newspaper published on 19 August 2014 and 20 August 2014 respectively which the Plaintiffs rely on are reproduced below:[150]

6 hot news TODAY • TUESDAY 19 AUGUST 2014

ENVOY REFUTES FIRM'S CLAIM OF A MISUNDERSTANDING

Brazilian Ambassador calls on EcoHouse to prove links to his govt

TAN WEIZHEN
tanweizhen@mediacorp.com.sg

SINGAPORE – The Brazilian Ambassador to Singapore yesterday called on EcoHouse to put its money where its mouth is and prove its links to the Brazilian government, as it refuted the developer's claim that a misunderstanding led to the government disavowing any connection to the firm.

Speaking to TODAY over the phone, Mr Luis Fernando de Andrade Serra said: "We believe it is high time for EcoHouse to prove that it has official links with the CEF (Brazilian state-owned bank Caixa Economica Federal). It said there was a misunderstanding, but it has to prove the basis of this misunderstanding. If it can't prove there is a link, nothing can be said to be a misunderstanding."

The United Kingdom-based developer, which has shuttered its Suntec Tower 2 offices, is facing legal action from some investors trying to recover their capital investments.

Last week, the Brazilian Embassy said the Brazilian government had no dealings with EcoHouse, which had touted itself as the only UK company picked officially by the Brazilian government to build developments under Minha Casa, Minha Vida (MCMV), a national housing programme.

The embassy had added that it was not even aware that the company operated in Brazil until recently, when complaints from Singapore investors mounted.

In response to the embassy's statement, EcoHouse chief operations officer Deen Bissessur said last Friday that it was "clearly a result of misunderstanding and/or miscommunication with the embassy and their resulting search, as we are most certainly in compliance for our operations".

He told TODAY: "We operate within what can be viewed as the public-private sector of the MCMV programme, which is where we do not utilise government funds to construct, but end buyers are financed by the programme to purchase our properties. Perhaps this is where the error has been made."

Mr Bissessur also said he could provide documentation from the firm's Brazilian division to back up what he was saying. TODAY's subsequent email queries to him went unanswered.

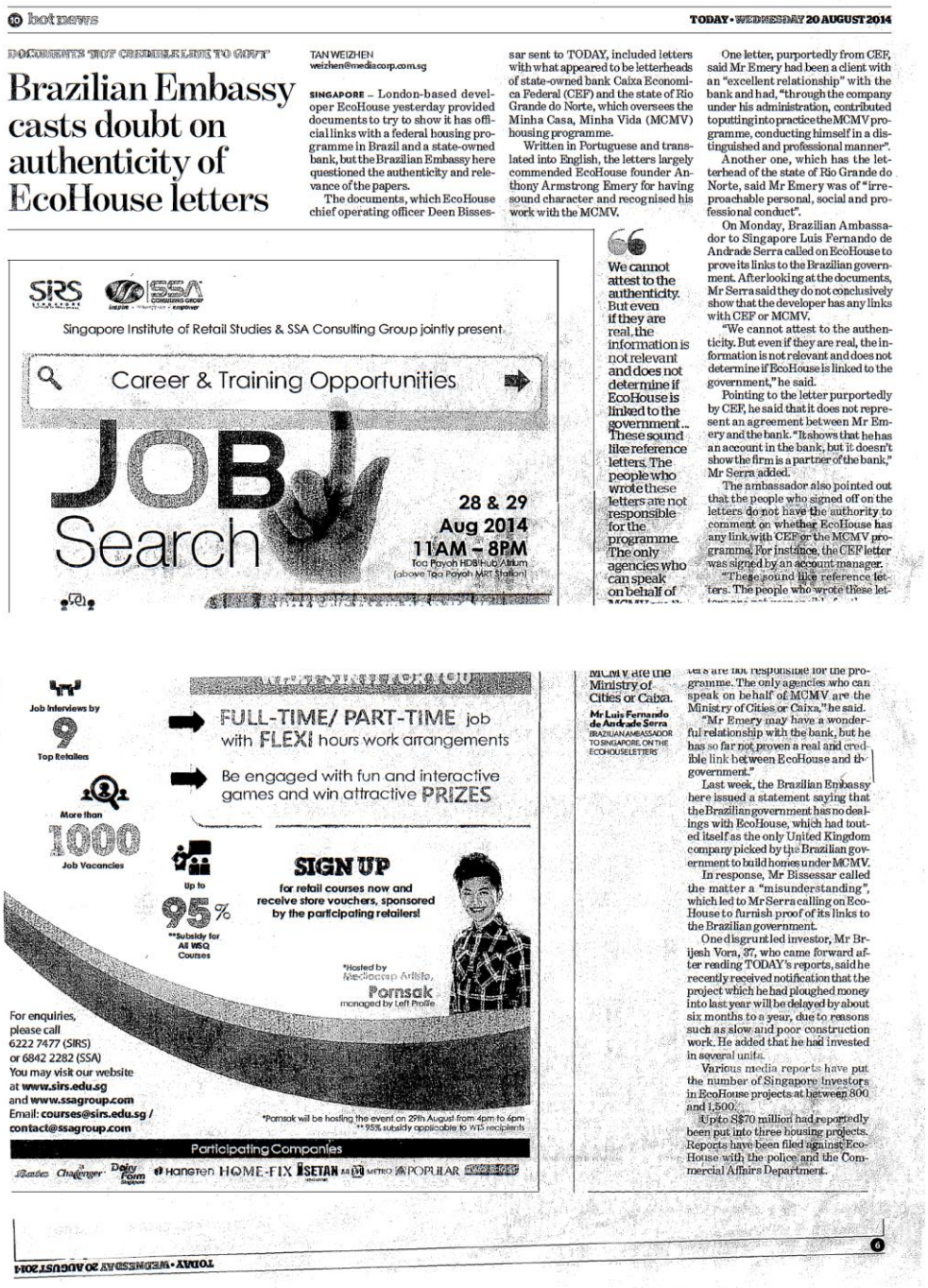
Mr Serra reiterated that the Brazilian government had found "there is no link whatsoever" with EcoHouse. "We feel sorry for these investors," he said.

Various media reports have put the number of Singapore investors in EcoHouse projects at between 800 and 1,500. Up to S$70 million had reportedly been ploughed into three housing projects. Reports have been filed against EcoHouse with the police and the Commercial Affairs Department, which investigates white-collar crimes.

Figure 1: The first newspaper report the Plaintiffs rely on to support their claim that the Brazilian Government Representation was false

150 1BAEIC at pp 237 to 239.

Version No 1: 20 Jun 2023 (16:56 hrs)



10 hot news

TODAY • WEDNESDAY 20 AUGUST 2014

DOCUMENTS 'NOT CREDIBLE LINK TO GOVT'

Brazilian Embassy casts doubt on authenticity of EcoHouse letters

TAN WEIZHEN
weizhen@mediacorp.com.sg

SINGAPORE – London-based developer EcoHouse yesterday provided documents to try to show it has official links with a federal housing programme in Brazil and a state-owned bank, but the Brazilian Embassy here questioned the authenticity and relevance of the papers.

The documents, which EcoHouse chief operating officer Deen Bissessar sent to TODAY, included letters with what appeared to be letterheads of state-owned bank Caixa Economica Federal (CEF) and the state of Rio Grande do Norte, which oversees the Minha Casa, Minha Vida (MCMV) housing programme.

Written in Portuguese and translated into English, the letters largely commended EcoHouse founder Anthony Armstrong Emery for having sound character and recognised his work with the MCMV.

> We cannot attest to the authenticity. But even if they are real, the information is not relevant and does not determine if EcoHouse is linked to the government... These sound like reference letters. The people who wrote these letters are not responsible for the programme. The only agencies who can speak on behalf of MCMV are the Ministry of Cities or Caixa.
>
> **Mr Luis Fernando de Andrade Serra**
> BRAZILIAN AMBASSADOR TO SINGAPORE, ON THE ECOHOUSE LETTERS

One letter, purportedly from CEF, said Mr Emery had been a client with an "excellent relationship" with the bank and had, "through the company under his administration, contributed to putting into practice the MCMV programme, conducting himself in a distinguished and professional manner".

Another one, which has the letterhead of the state of Rio Grande do Norte, said Mr Emery was of "irreproachable personal, social and professional conduct".

On Monday, Brazilian Ambassador to Singapore Luis Fernando de Andrade Serra called on EcoHouse to prove its links to the Brazilian government. After looking at the documents, Mr Serra said they do not conclusively show that the developer has any links with CEF or MCMV.

"We cannot attest to the authenticity. But even if they are real, the information is not relevant and does not determine if EcoHouse is linked to the government," he said.

Pointing to the letter purportedly by CEF, he said that it does not represent an agreement between Mr Emery and the bank. "It shows that he has an account in the bank, but it doesn't show the firm is a partner of the bank," Mr Serra added.

The ambassador also pointed out that the people who signed off on the letters do not have the authority to comment on whether EcoHouse has any link with CEF or the MCMV programme. For instance, the CEF letter was signed by an account manager.

"These sound like reference letters. The people who wrote these letters are not responsible for the programme. The only agencies who can speak on behalf of MCMV are the Ministry of Cities or Caixa," he said.

"Mr Emery may have a wonderful relationship with the bank, but he has so far not proven a real and credible link between EcoHouse and the government."

Last week, the Brazilian Embassy here issued a statement saying that the Brazilian government has no dealings with EcoHouse, which had touted itself as the only United Kingdom company picked by the Brazilian government to build homes under MCMV.

In response, Mr Bissessar called the matter a "misunderstanding", which led to Mr Serra calling on EcoHouse to furnish proof of its links to the Brazilian government.

One disgruntled investor, Mr Brijesh Vora, 37, who came forward after reading TODAY's reports, said he recently received notification that the project which he had ploughed money into last year will be delayed by about six months to a year, due to reasons such as slow and poor construction work. He added that he had invested in several units.

Various media reports have put the number of Singapore investors in EcoHouse projects at between 800 and 1,500.

Up to S$70 million had reportedly been put into three housing projects. Reports have been filed against EcoHouse with the police and the Commercial Affairs Department.

SIRS SSA
Singapore Institute of Retail Studies & SSA Consulting Group jointly present
Career & Training Opportunities
JOB Search
28 & 29 Aug 2014
11AM – 8PM
Toa Payoh HDB Hub Atrium (above Toa Payoh MRT Station)

Job Interviews by 9 Top Retailers
More than 1000 Job Vacancies
FULL-TIME/ PART-TIME job with FLEXI hours work arrangements
Be engaged with fun and interactive games and win attractive PRIZES
Up to 95% **Subsidy for All WSQ Courses
SIGN UP for retail courses now and receive store vouchers, sponsored by the participating retailers!
*Hosted by Mediacorp Artisto, Pornsak managed by Left Profile
For enquiries, please call 6222 7477 (SIRS) or 6842 2282 (SSA)
You may visit our website at www.sirs.edu.sg and www.ssagroup.com
Email: courses@sirs.edu.sg / contact@ssagroup.com
*Pornsak will be hosting the event on 29th August from 4pm to 6pm
** 95% subsidy applicable to WTS recipients
Participating Companies
Hanoten HOME-FIX SETAN METRO POPULAR

TODAY • WEDNESDAY 20 AUGUST 2014

Figure 2: The second newspaper report the Plaintiffs rely on to support their claim that the Brazilian Government Representation was false

Version No 1: 20 Jun 2023 (16:56 hrs)

163 The newspaper reports which the Plaintiffs rely on to support their assertion that the Brazilian Government Representation was false are plainly hearsay evidence and, thus, inadmissible. The maker of the statements, *ie*, a representative from the Brazilian embassy in Singapore or the Brazilian ambassador to Singapore, was not present in Court to give evidence. Instead, the Plaintiffs seek to rely on the report of the journalist, Tan Weizhen, who wrote the two newspaper reports to establish the truth of the contents of the newspaper reports, *ie*, that the Casa Nova Project and the Bosque Project were not approved and supported by the Brazilian government as social housing developments, and that the Brazilian Government Representation was false. However, Tan Weizhen was also not called by the Plaintiffs to testify in Court.

164 Section 61 of the Evidence Act 1893 (2020 Rev Ed) (the "Evidence Act") states that all facts may be proved by oral evidence and s 62 states that oral evidence must be direct. Further, s 32 of the Evidence Act makes it clear that in the absence of the maker of a statement in court, a written or oral statement of relevant facts can only be admitted if the party seeking to adduce that statement can bring it within one of the exceptions set out in s 32 of the Evidence Act. The Plaintiffs have not, however, sought to establish the facts that would allow the operation of any of the exceptions set out in s 32 of the Evidence Act. Therefore, the newspaper reports are inadmissible and cannot be relied upon as evidence to support the Plaintiffs' claim that the Brazilian Government Representation was false.

165 In any case, a review of the contents of the two newspaper reports show that they do not necessarily establish the Plaintiffs' claim that the Brazilian Government Representation was false. Rather, they contain statements by the Brazilian ambassador calling on Ecohouse Brazil or Ecohouse UK to prove its

Version No 1: 20 Jun 2023 (16:56 hrs)

links to the Brazilian government. I highlight an excerpt of this from the newspaper report of 20 August 2014:

> … On Monday, Brazilian Ambassador to Singapore Luis Fernando de Andrade Serra called on EcoHouse to prove its links to the Brazilian government. After looking at the documents, Mr Serra said they do not conclusively show that the developer has any links with [Caixa Bank] or MCMV. …

166 In view of the above, I find that the Plaintiffs have not produced sufficient evidence to support their claim that the Brazilian Government Representation was false.

(3) The Escrow Representation

167 I shall next consider the Escrow Representation. Based on the terms of the Casa Nova Escrow Agreement and the Bosque Escrow Agreement (collectively referred to as the "two Escrow Agreements") signed by the Plaintiffs, the Plaintiffs' funds could be disbursed from the escrow account maintained by Sanders & Co in situations other than for the building of the invested units. The terms under which funds could be released from the escrow account are set out in Clause 8 of both the Casa Nova Escrow Agreement and the Bosque Escrow Agreement.[151] As Clause 8 in the two Escrow Agreements are largely similar, I set out only Clause 8 of the Casa Nova Escrow Agreement below:[152]

> 8. The Purchase Price as paid into the Escrow Agent's Account shall be released as follows:
>
> i. Upon receipt by the Escrow Agent of the Purchase Price from the Purchaser and a certified true copy of the "Alvara de Construcao" (the building licence and the official document

151 1BAEIC at pp 158 to 159 and 185 to 186.

152 1BAEIC at pp 158 to 159.

Version No 1: 20 Jun 2023 (16:56 hrs)

> issued by a Notary in Brazil verifying and certifying that the Vendor/Developer has complied with all the pre-requisites and obtained all the necessary permissions to enable it to commence the Project), the Escrow Agent shall release to the Vendor 25% of the total Purchase Price received by the Escrow Agent, for the purpose of marketing, commissions and any other legitimate expenditure required to be paid out by the Vendor, to enable it to commence the building and construction of the Project.
>
> ii. The balance 75% retained by the Escrow Agent shall be released to the Vendor by the Escrow Agent on the basis of a certificate produced by an Independent Accountant (" Accountant") being a member of a recognized Body of " Contadores" (Accountants), that he has received, on a monthly basis in arrears, such amounts having been expended for the benefit of the whole Project and such reimbursement to be equal to the amount invoiced and paid out by the Vendor.
>
> iii. All money transfers made by the Escrow Agent shall indicate the " Purchasers" names and the Unit number(s) as reference for the bank transfer. The Vendor shall have the discretion to substitute the Unit/s referenced in this Agreement with such replacement or alternative Unit/s of a value of not less than the Unit/s specified in this Agreement.

168 The contents of Clause 8 of the Casa Nova Escrow Agreement and the Bosque Escrow Agreement are similarly found in Clause 5.2 of the Casa Nova SPA and the Bosque SPA.[153] As Clause 5.2 in the Casa Nova SPA and the Bosque SPA are largely similar, I set out only Clause 5.2 of the Casa Nova SPA below:[154]

> 5.2 The release of the Purchase Price by the ESCROW AGENT from the Purchaser shall be as follows:

---

153 1BAEIC at pp 146 to 147 and 171 to 172.

154 1BAEIC at pp 146 to 147.

Version No 1: 20 Jun 2023 (16:56 hrs)

> (a) Upon receipt by the ESCROW AGENT of the purchase price from the Purchaser, the ESCROW AGENT shall release to the Vendor, 25% of the purchase price towards payment of marketing, commissions and any other legitimate expenditure required to be paid out by the Vendor, to enable it to commence the building and construction of the Project.
>
> (b) The balance 75% retained by the ESCROW AGENT, shall be released to the Vendor by the ESCROW AGENT on the basis of a certificate produced by an independent Accountant ("the Accountant") being a member of a recognized Body of : Contadores" (Accountants) that he has received form [*sic*] the Vendor legitimate receipts and invoices for those amounts expended for the benefit of the whole Project and such reimbursement to be equal to the amount invoiced and paid out by the Vendor.
>
> (c) All monies transferred and paid out by the ESCROW AGENT shall indicate the Purchaser's names and the Unit number as reference for the bank transfer.
>
> The Vendor is entitled and shall use the purchase price as paid herein towards payment of all fees, commissions, on- going construction, building and development and as it deems necessary to advance the Project completion.

169 It is patently clear from the above terms of the Casa Nova Escrow Agreement, the Bosque Escrow Agreement, the Casa Nova SPA and the Bosque SPA that 25% of the purchase price paid by the Plaintiffs into the escrow account could be released almost immediately upon payment by the Plaintiffs to be used towards payment of marketing, commissions and any other legitimate expenditure required to be paid out by Ecohouse Brazil. Further, the remaining 75% of the purchase price in the escrow account could be released so long as legitimate receipts and invoices for amounts expended for the benefit of the Casa Nova Project or the Bosque Project were produced by Ecohouse Brazil which were certified by an independent accountant. Nowhere in the Casa Nova SPA, the Bosque SPA or the two Escrow Agreements was there a requirement that the funds in the escrow account be released only for the building of the invested units as presented by Wendy.

Version No 1: 20 Jun 2023 (16:56 hrs)

170 During the cross-examination by Mr Goh, Wendy conceded that the Escrow Representation found in the 13 August 2012 email which she had sent was false. Further, Wendy acknowledged that she had received a draft escrow agreement from Anthony in June 2012 which contained a term substantially similar to Clause 8 of the two Escrow Agreements. Wendy, therefore, had received notice that the funds in the escrow account would be released to cover expenses other than those incurred for the building of the invested units. Wendy admitted in Court that the Escrow Representation was a mistake and it was false:[155]

> Q. Now, this escrow agreement is dated and signed on 1 September 2012, which is after your email of August 2012, 13 August 2012. But let's look at your supplementary agreed bundle at page 11, please.
>
> Now, at page 11, this would be an email from Armstrong to Joey, dated 19 June 2012. And you will see there he attaches an escrow agreement, right?
>
> A. Yes.
>
> Q. And that escrow agreement is found at the following pages from 12 to 18, right?
>
> A. Yes.
>
> Q. And if you turn to page 14, under clause 8.1, you will see the clauses there for the release of the escrow monies?
>
> A. Yes.
>
> Q. In essence, similar if not the same to what we see at page 3 of the agreed bundle, which is the actual escrow agreement signed by Cindy and David, agreed?
>
> A. Yes.
>
> Q. So what this means, in other words, is that as at 19 June 2012, you should have known what the intention was for the release of escrow monies. Right? In accordance with clause 8.1?

---

155 16 March 2023 Transcript at pp 62 (line 12) to 63 (line 25).

Version No 1: 20 Jun 2023 (16:56 hrs)

> A. Yes, I should have.
>
> Q. And the intention was never that the escrow monies would be released only for the building of the investor's units, right?
>
> A. Agree.
>
> Q. And yet, on 13 August 2013, despite the knowledge of what the terms of the escrow agreement would be, you made the representation that the monies will only be used and released for the purpose of building the investor's units, agree?
>
> A. Agree.
>
> Q. So I put it to you, you agree or disagree, that you have falsely misrepresented to your network as to how the escrow monies would be used; agree or disagree?
>
> A. I agree that it was a mistake, in this clarification email.

(4) The Investment Return Representation

171 It is clear that Clause 8.7 of both the Casa Nova SPA and the Bosque SPA stipulates that Ecohouse Brazil would pay investors of the Casa Nova Project and the Bosque Project a 20% return of the purchase price within 14 days at the end of one year.[156] As Clause 8.7 in the Casa Nova SPA and the Bosque SPA are largely similar, I set out only Clause 8.7 of the Casa Nova SPA below:[157]

> 8.7 The Vendor and its agents undertakes to procure a buyer or buyers under social housing incentive to buy the Unit, on or before 12 months from the date of this Agreement and to ensure that the Purchaser shall enjoy a gain of 20% out of the purchase price and the Vendor undertakes to ensure that this 20% gain shall be paid within 14 days of the twelve (12) months anniversary of the payment of the purchase price or date of the contract herein. …

156 1BAEIC at pp 149 and 174.

157 1BAEIC at pp 149.

Version No 1: 20 Jun 2023 (16:56 hrs)

172 This investment return was embodied as a term in the Casa Nova SPA and the Bosque SPA which were signed and accepted by the Plaintiffs. Thus, the Investment Return Representation made by Wendy was not false. When questioned about the basis of the Plaintiffs' claim that the Investment Return Representation was false, Cindy explained that the Investment Return Representation was false because she did not get the 20% return as promised:[158]

> COURT: … So similarly, your basis for saying that the investment misrepresentation is false because you don't have your 20 per cent back?
>
> A. Yes, your Honour, correct, yes.

173 The fact that the Plaintiffs did not ultimately receive their 20% return as promised does not make the Investment Return Representation false. At best, this would be a breach of contract on the part of Ecohouse Brazil. It would have been entirely open for the Plaintiffs to pursue a claim of breach of contract against Ecohouse Brazil. However, the fact remains that Wendy's representation, *ie*, that the investors would receive a 20% return at the end of one year, did appear in the Casa Nova SPA and the Bosque SPA signed by the Plaintiffs. Therefore, the Investment Return Representation was not false.

(5) The Due Diligence Representation

174 The thrust of the Plaintiffs' claim is that the Due Diligence Representation was false because no proper due diligence was actually done by Wendy and Joey.

---

158 9 March 2023 Transcript at p 102 (lines 13 to 16).

Version No 1: 20 Jun 2023 (16:56 hrs)

(A) WHETHER THE DUE DILIGENCE REPRESENTATION WAS FALSE IN RELATION TO THE CASA NOVA PROJECT

175 These are the various aspects of the Due Diligence Representation made by Wendy:

(a) A six-figure sum had been invested on due diligence checks to ensure that the Casa Nova Project was government-approved and the investment was safe.

(b) Wendy and Joey had been monitoring the deal, *ie*, the Casa Nova Project by Ecohouse Brazil, for one year.

(c) Joey had gone to Brazil and met the Vice Governor and one of the heads of Caixa Bank.

(d) Fong had been engaged to read through all the documents, and she had studied, vetted, and read through the sale and purchase agreements and escrow agreements, and had tightened the terms in the investors' favour.

(e) Wendy had done all the due diligence that was possible.

176 I shall first consider the claim that a six-figure sum had been invested on due diligence checks to ensure that the Casa Nova Project was government-approved and the investment was safe. During the trial, Wendy stated that the six-figure sum referred to the amount of S$110,745.00 paid to Fong for her engagement. A tax invoice and cheque were produced as evidence that this sum had, in fact, been paid to Fong.[159] However, it is important to consider the context of Fong's engagement. These are as follows:

159 Agreed Bundle of Documents ("AB") at pp 197 to 200.

Version No 1: 20 Jun 2023 (16:56 hrs)

(a) As a preliminary point, the tax invoice for the sum of S$110,745.00 was issued by Fong's law firm, Fong Law Corporation, on 27 August 2012.[160] This sum was thereafter paid by way of a cheque on 15 October 2012 issued by Ecohouse Asia Pacific.[161] Therefore, as of the 30 July 2012 Presentation, or when the 7 August 2012 email and the 13 August 2012 email were sent, no sum had actually been paid to Fong Law Corporation. I accept, however, that the Warrant to Act dated 9 July 2012 which was adduced in evidence had set out the estimated costs as being in the range of S$80,000.00 to S$100,000.00.[162]

(b) Wendy had informed the investors and the Plaintiffs that a six-figure sum had been invested on due diligence checks. But the reality is that a six-figure sum had not been paid to Fong *solely* for the purpose of due diligence checks. Rather, as Fong had stated in her affidavit, her primary role was as follows:[163]

> 29) My primary role as lawyer for this project was to advise specifically on the proper acceptable structure to sell the property/product in Singapore, without breaching any securities legislation or Monetary Authority of Singapore (MAS) and to draft such documents as may be acceptable. At no time did I purport or attempt to give advise on Brazilian laws and would ask that the clients seek a Brazilian lawyer's advice.

From the above, it is clear that Fong's primary role, in fact, was to assist with structuring the JV, *ie*, Ecohouse Asia Pacific. This was the primary reason for Joey to engage Fong.

---

160 AB at pp 197 to 199.

161 AB at p 200.

162 SAB at p 387.

163 Affidavit of Evidence-in-Chief of Phyllis Fong ("Fong's AEIC") at p 13, para 29.

Version No 1: 20 Jun 2023 (16:56 hrs)

(c) It is also clear from Fong Law Corporation's tax invoice that a large part of the work done revolved around the structuring of the JV, *ie*, Ecohouse Asia Pacific. Although Wendy attempted to initially frame the JV as being "part of the due diligence" done for the Casa Nova Project because "everything is to be able to support the investors",[164] the JV Agreement clearly sets out the purpose of the JV:[165]

> **1. PURPOSE OF JOINT VENTURE**
>
> The Joint Venture is for the purpose [of] combining expertise, strengths and skill sets, so as to effectively market, sell the Eco House Real Estate Homes in Asia Pacific Region and to achieve sales and profits for the JV Company.
>
> ECO HOUSE GROUP and its nominee, Charles agrees and shall appoint the JV Company exclusively to market and sell Eco House Properties in Asia Pacific for an initial period of 3 years and renewed automatically.

Therefore, Wendy's attempt to frame the JV as being part of the due diligence done for the Casa Nova Project cannot be accepted. The JV was primarily meant to assist Ecohouse Brazil to market its residential developments and sell units to investors in the Asia Pacific region. Fong's primary role, then, was to assist with the structuring of the JV.

(d) It would, therefore, have been false and a gross exaggeration to state that a six-figure sum had been invested on due diligence checks. This is clearly misleading because when the Due Diligence Representation was made at the 30 July 2012 Presentation and in the 13 August 2012 email, the due diligence checks had not been completed by Fong and Wendy had not received Fong's tax invoice.

---

164 16 March 2023 Transcript at p 37 (lines 16 to 18).

165 SAB at p 365.

Version No 1: 20 Jun 2023 (16:56 hrs)

177 Further, it is important to highlight that it was not even Wendy or Joey who paid the sum of S$110,745.00. While Ecohouse Asia Pacific was the entity which issued a cheque to Fong Law Corporation, the funds came from Ecohouse UK or, more specifically, Anthony. When questioned by the Court, both Wendy and Joey agreed that the moneys paid to Fong Law Corporation came from Anthony:

(a) Wendy agreed that the moneys paid to Fong Law Corporation was from Anthony through Ecohouse UK. This was acknowledged by Wendy in Court:[166]

COURT:	Who paid for the bill?
A.	Ecohouse APAC.
COURT:	When you say "Ecohouse APAC", who are you referring?
A.	Ecohouse Singapore and Anthony Armstrong.
COURT:	Did Ecohouse APAC at that time have the money to pay?
A.	Yes.
COURT:	From where?
A.	From Ecohouse Developments, which is UK.
COURT:	So the source of the money came from Ecohouse Developments UK?
A.	Yes.
COURT:	But you will speak under the name of Ecohouse?
A.	APAC.
COURT:	APAC. So Ecohouse UK is actually Mr Anthony Armstrong's company?

166 17 March 2023 Transcript at p 51 (lines 1 to 17).

Version No 1: 20 Jun 2023 (16:56 hrs)

A. Yes.

(b) Similarly, Joey agreed that the moneys paid to Fong Law Corporation was from Anthony through Ecohouse UK. Joey also admitted this in Court:[167]

> MR GOH: Very well. I'll rephrase the question. My understanding is that, ultimately, the monies were paid for by Ecohouse UK and in turn from Anthony Armstrong. Would that be correct?
>
> A. Phyllis Fong's bill was paid by Ecohouse APAC; the funds came from Ecohouse UK, because it's the expenses incurred via rental, operations, marketing. That's why Anthony has got to channel funds into APAC, and APAC pays to Phyllis.
>
> Q. Yes. So funds came from Ecohouse UK into Ecohouse APAC, and those funds were then applied towards payment of --
>
> A. As expenses.
>
> Q. Yes, applied towards the payment of Fong Law Corporation's invoice, which you see at AB 198 and 199, right?
>
> A. Yes.

178 Therefore, Wendy should not have misled the investors and the Plaintiffs that a six-figure sum was incurred to conduct due diligence checks. Further, Wendy did not disclose to the investors and the Plaintiffs that the six-figure sum was paid for by Anthony through Ecohouse UK. Thus, this was, in reality, a due diligence exercise conducted by the developer to check itself, *ie*, Ecohouse Brazil. Wendy suppressed this serious and material conflict of interest from the investors and the Plaintiffs. As I have mentioned above at [138(b)], Wendy gave

---

167 21 March 2023 Transcript at p 69 (lines 7 to 22).

Version No 1: 20 Jun 2023 (16:56 hrs)

the wrong impression to the investors and the Plaintiffs that the Defendants paid for the purported due diligence exercise to Fong.

179 I shall next consider the claim that Wendy and Joey had been monitoring the deal, *ie*, the Casa Nova Project by Ecohouse Brazil, for one year. Before I deal with this issue, I wish to comment on the Plaintiffs' allegation that it was represented that Joey was in Brazil for a year to conduct a due diligence exercise on the Casa Nova Project. Wendy and Joey denied this allegation. Instead, Wendy submits that her representation was that she was monitoring the Casa Nova Project for a year, rather than a representation that Joey was in Brazil for a year. From the evidence, particularly the 13 August 2012 email, it is more likely that the representation made was that Wendy was monitoring the Casa Nova Project for a year. However, this allegation of monitoring the Casa Nova Project for a year was also not true. This claim was clearly false for the following reasons:

(a) From the evidence, Wendy's involvement in the Casa Nova Project arose as a result of Joey asking her to market the Casa Nova Project to members of the WK Investment Network Yahoo Group.[168] Based on the document prepared jointly by the parties setting out the chronology of events, Joey was first approached to discuss the marketing of the Casa Nova Project in or around March 2012.[169] Therefore, if Joey was only introduced to the Casa Nova Project in or around March 2012, it is simply not possible for Wendy or Joey to have monitored the Casa Nova Project for a period of one year as of the date of the 30 July 2012 Presentation, the 7 August 2012 email or the 13 August 2012 email.

---

168 2BAEIC at p 410, para 16.

169 Chronology of Events prepared jointly by parties at S/N 4; 2BAEIC at p 758, para 4.

Version No 1: 20 Jun 2023 (16:56 hrs)

(b) Next, from the contemporaneous documentary evidence, Joey had received an email dated 19 June 2012 from one H B Ooi ("Ooi"), another marketing agent, introducing him to the Casa Nova Project.[170] Based on Joey's evidence, by this time, Joey had already been introduced to the Casa Nova Project by Winstorn.[171] However, as at 19 June 2012, in Joey's reply to Ooi, Joey was only expressing his interest that he "like[d] this project a lot". Therefore, even based on the contemporaneous email, there is little to suggest that Wendy or Joey had monitored the Casa Nova Project for a period of one year.

(c) Wendy has presented a narrative that she had, in fact, been monitoring Ecohouse Brazil's social housing projects in general for one year, giving the impression that she was monitoring the Casa Nova Project for a year.[172] In this regard, Wendy stated that she had organised the presentations for an Ecohouse UK project, the Arco Iris Project, in August 2011 but she was not marketing the Acro Iris Project.[173] This was while Wendy was working under the auspices of Executive Directions. According to Wendy, Winstorn was the main marketing agent for the Arco Iris Project. Winstorn asked Wendy to introduce investors to the Arco Iris Project on the promise of giving her a commission for each referral.[174] I fail to see how Wendy's role in organising presentations for the Arco Iris Project could translate to Wendy having monitored "the deal" for one year. Even if Wendy had been monitoring Ecohouse

---

170 SAB at p 23.

171 21 March 2023 Transcript at pp 20 (line 7) to 21 (line 3).

172 17 March 2023 Transcript at pp 45 (line 18) to 46 (line 8).

173 16 March 2023 Transcript at pp 9 (line 20) to 10 (line 3).

174 16 March 2023 Transcript at p 13 (lines 1 to 10).

Version No 1: 20 Jun 2023 (16:56 hrs)

> Brazil's social housing projects in general rather than just the Casa Nova Project, there is no evidence that she had been, in fact, monitoring Ecohouse Brazil's social housing projects *for a period of one year*. Even if it were true that she was monitoring Ecohouse Brazil's social housing projects for a period of one year, the Due Diligence Representation would still have been misleading as Wendy had informed the investors and the Plaintiffs that she was monitoring "the deal",[175] which has to be the Casa Nova Project, for a year. The fact that she merely organised presentations for the Arco Iris Project in August 2011, *ie*, a year before the 13 August 2012 email on the Casa Nova Project, cannot lead to the conclusion that she had been *monitoring* the latter deal for one year. This simply defies logic and cannot be accepted. Therefore, this aspect of the Due Diligence Representation was false.

180 I shall now deal with Joey's trip to Brazil in June 2012 where he claimed that he was introduced by Anthony to the Vice Governor and one of the heads of Caixa Bank. Joey has produced an email setting out a proposed flight itinerary for his trip to Brazil in June 2012.[176] Thus, it is likely that Joey was in Brazil in June 2012. The more fundamental issue is whether Joey did conduct a satisfactory due diligence exercise when he was in Brazil. Joey alleged that Anthony introduced Elali, Anthony's lawyer, to him in Brazil. Joey was shown a number of legal documents by Elali relating to the titles of the land, development permits, etc.[177] But these were in Portuguese and Joey acknowledged that he could not read and understand Portuguese. He had

---

175 1BAEIC at p 139.

176 Exhibit D7.

177 21 March 2023 Transcript at p 39 (lines 3 to 13).

Version No 1: 20 Jun 2023 (16:56 hrs)

essentially relied on Elali to explain what the respective documents were.[178] Thus, Joey would not have known whether these documents were what Elali represented them to be. However, the impression given by Wendy to the investors and the Plaintiffs when she made the Due Diligence Representation was that Joey had done a thorough due diligence exercise on the Casa Nova Project when he was in Brazil. This would, therefore, have been clearly false.

181 I shall next consider the claim that Fong had been engaged to read through all the documents, and that she had studied, vetted, and read through the sale and purchase agreements and the escrow agreements, and had tightened the terms in the investors' favour. It is undisputed by the parties that Fong had been engaged to review the various agreements. This much is clear from the list of work done as stated in the tax invoice issued by Fong Law Corporation. Therefore, this aspect of the Due Diligence Representation was true, though Fong was engaged by Joey more for the purposes of the JV (see [176(b)] and [176(c)] above).

182 Finally, I shall consider the claim by Wendy that she had done all the due diligence that was possible. Apart from the work done by Fong which I have dealt with at [176]–[177] above, Wendy and Joey point to various due diligence reports and legal opinions which they had obtained from various lawyers in support of their claim that they had, in fact, done extensive due diligence. These comprised the following:

(a) a due diligence report on the Casa Nova Project prepared by a Brazilian lawyer named Gabriela Medeiros ("Gabriela") dated

[178] 23 March 2023 Transcript at pp 7 (line 23) to 9 (line 13).

Version No 1: 20 Jun 2023 (16:56 hrs)

2 July 2012 which was commissioned by Ecohouse Brazil ("Gabriela's Casa Nova Due Diligence Report");[179]

(b) Elali's Casa Nova Due Diligence Report dated 5 September 2012;[180] and

(c) a legal opinion about the Casa Nova Project prepared by a Brazilian lawyer named Lucas Patto de Melo e Sousa ("Lucas") of Pires & Gonçalves Advogados Associados dated 5 September 2012 ("Lucas' Legal Opinion on Casa Nova").[181]

183 There are various issues regarding the three documents relied on by Wendy and Joey. I shall consider these issues when I address the Plaintiffs' claim of negligent misrepresentation against Wendy and Joey. More crucially, however, it is important to highlight at this stage that apart from Gabriela's Casa Nova Due Diligence Report, the other two documents relied on by Wendy and Joey were not even in existence or in the possession of Wendy and Joey at the time the Due Diligence Representation was made, *ie*, at the 30 July 2012 Presentation and the 13 August 2012 email. Therefore, it was wrong for Wendy to have informed the investors and the Plaintiffs that she had done all the due diligence that was possible.

184 If the basis for Wendy's claim is that the due diligence was done by Fong, the Due Diligence Representation would still have been false as Fong had not completed the due diligence exercise at the time of the 30 July 2012 Presentation or Wendy's 13 August 2012 email to the investors and the

179 1st, 3rd and 4th Defendants' Bundle of Documents ("DBD") at pp 4 to 14.

180 AB at pp 316 to 341.

181 2BAEIC at pp 630 to 636.

Version No 1: 20 Jun 2023 (16:56 hrs)

Plaintiffs. When questioned by the Court, Fong's evidence was that she had not completed her due diligence exercise until on or about 5 September 2012, though she continued to carry out due diligence *even after* 5 September 2012. This is Fong's evidence in Court:[182]

COURT:	Can you tell us, when did you complete your due diligence? Not in relation to … the joint venture, I'm now referring to the due diligence pertaining to the sale and purchase of the Casa Nova Project.
A.	I don't really know how to answer you. But can I try? When I was first approached by Joey, I would already be alerted and to do whatever checks I need to do. The checks are ongoing. I don't stop having just got the licences or whatever that was given.
COURT:	Because looking at your emails, even as far back as in September --
A.	Yes, and it went further, too.
COURT:	So you haven't completed your due diligence?
A.	No, we would carry on.
COURT:	Did you tell Mr Joey or Wendy that you haven't completed your due diligence exercise pertaining to the Casa Nova Project?
A.	Because when I approached this sort of legal advice and services, I don't conclude my work, I'll stand by. But I think the conclusion they would derive from is the report by Andre Elali on 5 September and by some sort of reply from Pires & Goncalves' Lucas. So they would rely on those.
COURT:	But they also need to rely on you to tell them as to whether have you completed the due diligence aspect of the sale and purchase agreement relating to the Casa Nova Project.
A.	Yes. Until at that time --

[182] 23 March 2023 Transcript at pp 93 (line 19) to 96 (line 13).

Version No 1: 20 Jun 2023 (16:56 hrs)

COURT: Sorry, "at that time" means what?

A. At the material time.

COURT: Yes, material time.

A. 5 September, when we received the Andre Elali report, then that's the report they would rely on.

COURT: So in other words, are you telling us that you would have completed your end of your due diligence exercise by that time, which is 5 September?

A. Yes, on or about that time.

COURT: And after that you have completed your due diligence exercise, am I right?

A. On or about that time.

COURT: Did you tell them that you completed your due diligence exercise on 5 September?

A. We didn't use the words "due diligence", we just said that we would do the checks. And once Andre Elali's report came, that's when the checks and all the licences came; that's when the checks stopped.

COURT: Of course, I stand corrected by you. If I take your last answer, can I take it that that is the kind of conclusion or the end of your part on the due diligence aspect of the Casa Nova Project, which is 5 September?

A. May I venture the answer yes and no? Yes, as to Andre Elali's due diligence report. No, because I was still pursuing Pires & Goncalves' report, Lucas. As you will see from the emails up 17 September 2012, I was still writing and asking.

COURT: So I'm trying to understand from you, when did you complete your due diligence for the Casa Nova Project?

A. 5 September Andre Elali's project; 5 September, the due diligence report also of Andre Elali, and 5 September, the letter from Pires & Goncalves.

COURT: And Mr Lucas, when did he send in the report? Can the parties assist me what was the date of the Lucas report?

Version No 1: 20 Jun 2023 (16:56 hrs)

MR GOH: 5 September.

MS OEI: 5 September.

COURT: Also 5 September?

MS OEI: Yes.

COURT: So can I take it from your answer that you do not need to do further checks after 5 September then?

A. Yes, you can take it.

185 Having examined the various aspects of the Due Diligence Representation, it is clear that the Due Diligence Representation in relation to the Casa Nova Project was substantially false.

(B) WHETHER THE DUE DILIGENCE REPRESENTATION WAS FALSE IN RELATION TO THE BOSQUE PROJECT

186 I shall next consider the Due Diligence Representation in relation to the Bosque Project. It is even more obvious that the Due Diligence Representation was false in relation to the Bosque Project for the following reasons:

(a) First, there would have been no basis to state that: (i) a six-figure sum had been invested on due diligence checks to ensure that the Bosque Project was government-approved and the investment was safe; and (ii) that Fong had been engaged to read through all the documents, and she had studied, vetted, and read through the sale and purchase agreements and escrow agreements, and had tightened the terms in the investors' favour. When questioned further by the Court, Fong made clear that she had *no involvement* in the Bosque Project:[183]

COURT: I assume you know, I don't know whether you are aware, that there are actually two projects involved in these proceedings,

[183] 23 March 2023 Transcript at pp 92 (line 17) to 93 (line 2).

Version No 1: 20 Jun 2023 (16:56 hrs)

> which is the Casa Nova Project and the Bosque investment project. You are aware?
>
> A. Yes.
>
> COURT: This is something that I need a confirmation from you. We were told that you were not involved in the other project, which is the Bosque investment project.
>
> A. Yes.
>
> COURT: Have I got it right?
>
> A. Yes, correct.

(b) Second, as I have highlighted above at [179] in relation to the Casa Nova Project, the claim that Wendy and Joey had been monitoring the deal, *ie*, the Bosque Project by Ecohouse Brazil, for one year was clearly false.

(c) Third, Joey, upon being questioned by the Court, conceded that the only due diligence report that was obtained and relied on by Wendy and Joey for the Bosque Project was a due diligence report prepared by Elali dated 20 September 2012 which was commissioned by Ecohouse Brazil ("Elali's Bosque Due Diligence Report"). This is Joey's evidence in Court:[184]

> COURT: So for the Bosque investment, for the due diligence aspect of it, there's only one, which is Andre's due diligence?
>
> A. The report is only Andre Elali.
>
> COURT: Correct. For the Bosque?
>
> A. Yes.

[184] 23 March 2023 Transcript at p 20 (lines 5 to 10); Exhibit D5.

Version No 1: 20 Jun 2023 (16:56 hrs)

> What was the basis, then, to state that Wendy had done *all the due diligence that was possible*? The due diligence done for the Bosque Project was to simply obtain a report from Elali which was commissioned by Ecohouse Brazil. This cannot, in any way, mean that Wendy had done all the due diligence that was possible.

187 Having examined the various aspects of the Due Diligence Representation, it is clear that the Due Diligence Representation in relation to the Bosque Project was also substantially false.

(6) Summary on whether the Four Representations were false at the time they were made by Wendy

188 For the reasons above, I find that of the Four Representations made, only the Escrow Representation and the Due Diligence Representation were false at the time when Wendy represented to the investors and the Plaintiffs. I shall next consider whether Wendy and Joey knew that the Escrow Representation and the Due Diligence Representation were false.

Whether Wendy and Joey knowingly made fraudulent representations regarding the Escrow Representation and the Due Diligence Representation

189 For fraudulent misrepresentation, as I have stated above at [101], the Plaintiffs must show that the Escrow Representation and Due Diligence Representation were made by Wendy and Joey: (a) knowingly; (b) without belief in its truth at all; or (c) recklessly, without caring whether it be true or false.

190 This is an undoubtedly high standard that the Plaintiffs have to meet. The Plaintiffs have not adduced evidence to support their claim that Wendy and Joey knew that the Escrow Representation and Due Diligence Representation

Version No 1: 20 Jun 2023 (16:56 hrs)

were completely false or had no belief in their truth or acted recklessly at the time the representations were made. Instead, the Plaintiffs appeared to rely *solely* on some of the false statements in the Escrow Representation and Due Diligence Representation to draw an inference that the representations were made (a) knowingly; (b) without belief in its truth at all; or (c) recklessly.[185] However, as I have pointed out at the oral closing submissions of the parties, this is not a case in which the Escrow Representation and the Due Diligence Representation were wholly untrue. Clearly, there were serious embellishments and exaggeration in the Due Diligence Representation but the evidence does not seem to suggest that Wendy and Joey knew that the Escrow Representation and Due Diligence Representation were totally false or had no belief in their truth or acted recklessly at the time the representations were made. Wendy and Joey had over-reached and over-promised the investors and the Plaintiffs in their zest to market the Casa Nova Project and the Bosque Project.

Whether Wendy intended for the Plaintiffs to rely on the Escrow Representation and the Due Diligence Representation

191 The context surrounding the 13 August 2012 email is important when addressing the issue of whether Wendy intended for the Plaintiffs to rely on the Escrow Representation and the Due Diligence Representation. Wendy, in her affidavit, stated that the 13 August 2012 email was sent to members of the WK Investment Network Yahoo Group as a response to an email which had been sent by Jerome, who was Wendy's former partner while she was at Executive Directions. This is the relevant excerpt from Wendy's affidavit:[186]

> … The email dated 13 August 2012 was written in response to an email from "concern citizen (jerome@exec-directions.com)"

185 21 April 2023 Transcript at pp 3 (line 7) to 13 (line 3).

186 2BAEIC at pp 414 to 416, para 30(b).

Version No 1: 20 Jun 2023 (16:56 hrs)

> or "Administrator (pip@exec-directions.com)". I do not have a copy of the email to which the email of 13 August 2012 was the response. However, I have seen copies of subsequent emails dated 4 and 5 March 2013 from the same sender, which sets out the email to which the email of 13 August 2012 was a response. I wish to only say Jerome Tan and I were in Executive Directions together and we parted on bad terms. …

192 Jerome's email in 2012 was not adduced in evidence. However, Wendy claims that the email sent by Jerome which she was responding to was similar to Jerome's emails of 4 March 2013 and 5 March 2013. Therefore, it may be necessary to consider Jerome's emails. As Jerome's emails of 4 March 2013 and 5 March 2013 are similar, I only reproduce Jerome's email of 4 March 2013 which reads as follows:[187]

> Dear graduates,
>
> I would like to take this opportunity to welcome the latest batch of PIP 18.
>
> Some months ago, I was approached by a developer from a far away land. They promised me a commission of more than 10% and more than 20% per annum for my investors. Without hesitation I rejected the offer. So I wrote to our network and warned them about such investment.
>
> "Dear graduates,
>
> Just a word of caution, if you are investing in faraway places. Please ask yourself these questions, "If there is a problem, can you handle it?" "Will you fly all the way to handle it?"
>
> There is a reason why I don't recommend some properties that are too far away, even though the returns and commissions are high. The reason is that I am not able to help you if the deal turn sour. I am not saying that these deals will go sour but I just want to play safe, taking the advice of Warren Buffett's number 1 rule, "Never Lose Money" If you happen to invest in such deals, please be very careful and remember not to get too greedy. "Greed will lead to poverty" The word greed and poverty in Chinese is quite similar.
>
> Happy investing

---

187 2BAEIC at pp 495 to 496.

Version No 1: 20 Jun 2023 (16:56 hrs)

> cheers
>
> Jerome Tan"
>
> They have approached me again and without hesitation, I rejected their offer again. This is because I find that the deal is ridiculous and does not make business sense. I asked myself a few simple questions;
>
> How could government Z provide cheap public housing for their citizens by borrowing from investors from another country at high interest rates and still sell the prope1ties to their citizens at a low price?
>
> Why would government Z want to help citizens from another country to make money at the expense of their own citizens?
>
> How could a company pays [*sic*] 10% or more in commissions, 20% per annum or more to investors, office expenses, free trips, put the money in escrow account without touching it and still make money?
>
> My advice to the network are these;
>
> If you have invested in it, get out as soon as you can.
>
> If you have not, stay clear.
>
> Cheers
>
> Jerome Tan

193 It is clear from Jerome's email of 4 March 2013 that Jerome was seeking to warn members of the WK Investment Network Yahoo Group about the Casa Nova Project or projects akin to the Casa Nova Project which offered a 20% return to investors. It is in this context that Wendy sent the 13 August 2012 email to the investors and the Plaintiffs. Seen in that light, the 13 August 2012 email was an email meant to refute the concerns raised by Jerome. In fact, during the cross-examination by Mr Goh, Wendy stated that the 13 August 2012 email, which was on the Casa Nova Project, was meant to counter the caution that had been administered by Jerome. This is Wendy's response in Court:[188]

---

188 16 March 2023 Transcript at p 1 (lines 16 to 24).

Version No 1: 20 Jun 2023 (16:56 hrs)

> Q. And at the last paragraph of that page, you are explaining there why you had written this email of 13 August.
>
> Now, if I may summarise, it seems that your previous colleague from Executive Directions, by the name of Jerome, had sent out an email to his network warning the network about faraway land investments. Agree?
>
> A. Yes.
>
> Q. And so in order to counter this caution that has been administered by Jerome, you came up with your email dated 13 August 2012 to your network?
>
> A. Yes.

194 However, Wendy claims that she did not intend, by way of the 13 August 2012 email, for investors to rely on the representations made in the 13 August 2012 email. Instead, Wendy stated at the trial that she was merely *clarifying* that there were other important points to consider beyond what Jerome had cautioned when investing overseas. This is Wendy's explanation in Court:[189]

> Q. Now, you have said that it's in clarification of Jerome's email. What are you clarifying about Jerome's email?
>
> A. About – I'm clarifying about investing in a faraway places [*sic*], and therefore I say that "it is true that we need to be cautious" – in the email of 13 August, I say:
>
> "… it is true … to be cautious while investing overseas as rules, [and] regulations may be different, there are other … important considerations other than the location."
>
> Q. So is it not true that by this email, you are trying to assure your investors that just because Casa Nova is located in a faraway land, it is nonetheless safe to invest because of all these points that you are now raising?
>
> A. No, I never said "safe", I said these are the points for consideration.

---

189 16 March 2023 Transcript at pp 4 (line 11) to 5 (line 3).

Version No 1: 20 Jun 2023 (16:56 hrs)

195 In the same breath, though, Wendy accepted at the trial that all the points she had made in the 13 August 2012 email clearly were to assure the investors and the Plaintiffs that it was safe to invest in the Casa Nova Project. This is Wendy's evidence in Court:[190]

> Q. But all these points that you are raising in this email are in favour of making the investment in Casa Nova, right?
>
> A. Yes.

196 It is clear that, by sending the 13 August 2012 email, Wendy intended to convince members of the WK Investment Network Yahoo Group that the Casa Nova Project was too good an investment to be missed. In that context, the representations made in the 13 August 2012 email were meant to refute Jerome's cautionary email. It was particularly important for Wendy to send out the 13 August 2012 email so that the sale of the Casa Nova Project would not be adversely affected. It is clear, therefore, that the intention of the 13 August 2012 email sent by Wendy was to urge investors to rely on the representations in the 13 August 2012 email and act upon it by proceeding to invest in the Casa Nova Project despite Jerome's cautionary email.

197 Therefore, the evidence shows that Wendy intended for the Plaintiffs to rely on the Escrow Representation and the Due Diligence Representation.

Whether the Plaintiffs did, in fact, act in reliance on the Escrow Representation and the Due Diligence Representation

198 For the Escrow Representation, I note that the Plaintiffs conceded at the trial that they had reviewed the terms of the Casa Nova SPA and the Bosque SPA as well as the Casa Nova Escrow Agreement and the Bosque Escrow

---

190 16 March 2023 Transcript at p 5 (lines 4 to 7).

Version No 1: 20 Jun 2023 (16:56 hrs)

Agreement before they appended their signatures on these documents. The terms in the Casa Nova SPA, the Bosque SPA and the two Escrow Agreements stated clearly that the funds in the escrow account could be released for purposes other than the building of the Plaintiffs' invested units. In fact, despite knowing that these terms were not favourable to them, Cindy conceded at the trial that the Plaintiffs just accepted them and did not protest. This is Cindy's evidence in Court:[191]

> Q. Okay. So look at A, this is the first -- the first entitlement to the disbursement from the escrow agent:
>
> "Upon receipt by the escrow agent of the purchase price, the escrow agent shall release to the vendor 25 per cent of the purchase price."
>
> I stop there first. Right? So what it means is, when Sanders & Co receives your money, they can immediately release 25 per cent to the developer, correct?
>
> A. Yes, correct, your Honour.
>
> Q. Okay. Now, look at what the release was for. It's:
>
> "Payment of marketing, commissions, and any other legitimate expenditure required to be paid up by the vendor to enable it to commence the building and construction of the project."
>
> Right? So it's not merely for construction costs, it's also for marketing, commissions, and any other legitimate expenditure. That is what the clause says, correct?
>
> A. Yes, correct.
>
> Q. Yes. So which means that your understanding that it is only towards the construction of the units that you bought is inaccurate, at least as far as A is concerned, agree?
>
> A. Yes, agree, because this is all arranged by our teacher/mentor Wendy Kwek. We just have to accept it.
>
> Q. No, I disagree with you, Madame Yee. If Wendy Kwek had said to you, "This money will only be used for the

[191] 8 March 2023 Transcript at pp 5 (line 14) to 6 (line 20) and 7 (lines 15 to 25).

Version No 1: 20 Jun 2023 (16:56 hrs)

> construction of your units", when you read A, you should have said "No, that is against the representation that was made to me." *Did you protest?*
>
> A. *No, your Honour.*
>
> …
>
> Q. *Yes. But you would have -- first of all, your comment accepts that this term is not favourable to you, agree?*
>
> A. *Agree, yes.*
>
> Q. *Yes, right?*
>
> A. *But it was okay with us, yes.*
>
> Q. Yes. So you nonetheless you accepted it?
>
> A. Yes, your Honour.
>
> Q. Even though you, according to you, it was -- it went contrary to the representation the first defendant allegedly made, right?
>
> A. Yes, correct. But …
>
> [emphasis added]

199 It is clear from the above, despite the terms of the release of moneys from the escrow account being different from the Escrow Representation, Cindy conceded that the Plaintiffs accepted the terms because "it was okay with [them]". Therefore, it is clear that, at the point of signing the Casa Nova SPA and the Casa Nova Escrow Agreement and the Bosque SPA and the Bosque Escrow Agreement, the Plaintiffs had not relied on the Escrow Representation made by Wendy but had accepted the terms stated in those documents that they signed.

200 In relation to the Due Diligence Representation, however, Wendy agrees that there would have been some reliance by the Plaintiffs on the representations made by her. In Wendy's affidavit, she stated as follows:[192]

---

192 2BAEIC at pp 417 to 418, paras 46 to 47.

Version No 1: 20 Jun 2023 (16:56 hrs)

> 46) The Plaintiffs say it is reasonable to expect that they would rely on the representations made. While I can agree that there will be reliance to a certain extent, it does not mean the Plaintiffs can blame me for the losses they incurred, which is what they are trying to do. They heard Anthony Armstrong's presentations and invested.
>
> 47) I do not believe that the Plaintiffs are entitled to rely entirely on what I said and I also believe that the Plaintiffs did not rely entirely on what I said. The presentations on the project were made by Anthony Armstrong.

201 While Wendy has tried to argue that the Plaintiffs would have also relied on the presentations made by Anthony, as I have set out above at [100], the Court of Appeal in *Panatron* clarified that the misrepresentation need not be the sole inducement to the plaintiff. In the present case, the evidence of the Plaintiffs has been consistent – they relied on the Due Diligence Representation made by Wendy when they decided to purchase residential units in the Casa Nova Project and the Bosque Project. Cindy mentioned in Court that this was because she trusted Wendy:[193]

> COURT: … Now, you gave me the impression that the due diligence is very important to you?
>
> A. Yes, your Honour.
>
> Q. Right? So when the -- when Wendy said that there was a six-figure sum for the purpose of having a due diligence for this project, the Casa Nova Project, did you ask to have a copy of the due diligence?
>
> A. Not at that time. Later on when something went wrong --
>
> COURT: No, I'm not talking about when something went wrong. I'm talking about the time before you signed the sale and purchase agreement.
>
> A. No, your Honour.
>
> COURT: Why not?

193 9 March 2023 Transcript at pp 92 (line 20) to 93 (line 11) and 93 (line 25) to 94 (line 6).

Version No 1: 20 Jun 2023 (16:56 hrs)

> A. Because I trust -- I trust her -- because she taught us in the lesson concerning due diligence. Now that she is saying that she has done due diligence, I just trust fully that she know what she mean.
>
> …
>
> Q. But if due diligence is so important to you, why didn't you ask for a copy of the due diligence report?
>
> A. Well, Wendy was my teacher and mentor and then I found her so good -- so knowledgeable and she was the one teaching due diligence. When she said due diligence is done, actually none of her student was asking. She have [*sic*] 2,000 plus student. Nobody ask [*sic*], including me.

202 I pause here to mention that there is other contemporaneous evidence (though after the Casa Nova SPA and the Bosque SPA were signed) which shows that the Plaintiffs had trusted and relied on the Due Diligence Representation made by Wendy. In particular, when it was known to the Plaintiffs in December 2012 that there was a dispute between Wendy and Ecohouse Asia Pacific, Cindy sent an email to Dean Oakford, an employee of Ecohouse UK, on 6 December 2012. In that email, Cindy had stated as follows:[194]

> Dear Dean,
>
> …
>
> I would like to inform you that I want to invest in your project only through Wendy Kwek. And many investors whom I know have strong faith in Wendy. We trust her because she is Singaporean and she did due diligence in checking and protecting our investments. Any attempt to get us to bypass Wendy will not be successful.
>
> …

[194] 1BAEIC at pp 191 to 192.

Version No 1: 20 Jun 2023 (16:56 hrs)

203 It is clear from the email above that, even as at 6 December 2012, Cindy held steadfast in her belief in Wendy and had specifically trusted Wendy because "she is Singaporean and *she did due diligence in checking and protecting our investments*" [emphasis added]. In my view, this is clear, contemporaneous evidence that the Plaintiffs had, in 2012, relied on the Due Diligence Representation made by Wendy when they decided to sign the Casa Nova SPA and the Bosque SPA.

204 In the circumstances, I find that the Plaintiffs did rely substantially on the Due Diligence Representation made by Wendy when they decided to sign the Casa Nova SPA and the Bosque SPA for the purchase of residential units in the Casa Nova Project and the Bosque Project. Wendy's assurance that a thorough and comprehensive due diligence which costed a six-figure sum gave a good boost of confidence to the investors and the Plaintiffs that the Casa Nova Project and the Bosque Project were safe and secure investments.

205 Before moving away from the discussion on reliance, I pause to consider the Defendants' contention that the Plaintiffs chose not to ask questions or do their own due diligence checks. The Defendants have stated that the general rule when purchasing a property is *caveat emptor* and that a vendor has no obligation to disclose defects of title save where they are latent, citing *Huang Ching Hwee v Heng Kay Pah and another* [1990] 2 SLR(R) 666 at [25]–[26] and *Indian Overseas Bank v Cheng Lai Geok* [1991] 2 SLR(R) 574 at [46].[195] The Defendants submit that the Plaintiffs were well-qualified persons and they had knowledge and experience of the real estate industry but chose not to ask

195 Wendy's Written Submissions at paras 98 to 99; 2nd, 5th and 6th Defendants' Written Submissions dated 10 April 2023 ("Joey's Written Submissions") at para 46.

Version No 1: 20 Jun 2023 (16:56 hrs)

questions or do their own due diligence. Thus, they should not be entitled to claim against Wendy and Joey.

206 In *Ong Keh Choo v Paul Huntington Bernardo and another* [2020] SGCA 69 ("*Ong Keh Choo*"), the Court of Appeal had explained that the maxim *caveat emptor* is a basic legal principle in commercial transactions which means "buyer beware", *ie*, it is for the buyer to take his own precautions and familiarise himself with the terms of a document he is accepting: *Ong Keh Choo* at [65].

207 It seems reasonable and prudent that the Plaintiffs ought to have conducted their own checks and should have performed their own due diligence before entering into the transactions for the Casa Nova Project and the Bosque Project as significant monetary amounts were involved.

208 However, this does not mean that the Plaintiffs were not entitled to rely on the Due Diligence Representation made by Wendy and Joey or that Wendy and Joey are able to avoid liability for a fraudulent (or negligent) misrepresentation because of the Plaintiffs' failure to conduct their own due diligence checks. The evidence shows that, particularly for the Casa Nova Project, the Plaintiffs did not have significant opportunity and time to conduct their own due diligence checks. This was demonstrated by the following evidence:

(a) First, Wendy acknowledged that a reservation booth had been set up at the 30 July 2012 Presentation for the Casa Nova Project. This reservation booth was to allow investors to immediately reserve units in the Casa Nova Project after the 30 July 2012 Presentation.[196] Therefore,

196 14 March 2023 Transcript at pp 118 (line 25) to 119 (line 8).

Version No 1: 20 Jun 2023 (16:56 hrs)

as the Plaintiffs have stated in their closing submissions, it was envisaged that the investors would sign up for units in the Casa Nova Project *immediately* by simply relying on all that was presented at the 30 July 2012 Presentation and without the investors needing to conduct their own due diligence. Further, Wendy had assured the investors and the Plaintiffs that she had done all the due diligence and that it was a safe investment.[197]

(b) Second, the 7 August 2012 email sent out by Wendy was primarily to inform the investors and the Plaintiffs to submit the signed sale and purchase agreements within two to three days of receiving their sale and purchase agreements.[198] At the trial, Wendy acknowledged these instructions and she conceded that two to three days would not have been sufficient for any due diligence to be conducted by the investors and the Plaintiffs.[199] Wendy had assured the investors and the Plaintiffs that she had done thorough and comprehensive due diligence checks and had invested a six-figure sum for the due diligence exercise. Hence, she assured the investors and the Plaintiffs that the Casa Nova Project was a "100% secure Brazilian Property Investment".[200]

209 In the circumstances, the Plaintiffs were, therefore, amply justified to have relied on the Due Diligence Representation made by Wendy. Further, I do not accept the Defendants' contention that the principle of *caveat emptor* means that the Plaintiffs should have conducted their own due diligence checks and

197 Plaintiffs' Closing Submissions at para 79.

198 1BAEIC at p 114; 15 March 2023 Transcript at p 52 (lines 3 to 22).

199 15 March 2023 Transcript at p 57 (lines 1 to 7).

200 1BAEIC at p 133.

Version No 1: 20 Jun 2023 (16:56 hrs)

were, therefore, not entitled to rely on any representation made in relation to the Casa Nova Project and the Bosque Project.

Conclusion on the Plaintiffs' case of fraudulent misrepresentation against Wendy and Joey

210 In summary, while the Four Representations were made by Wendy and endorsed by Joey, these did not amount to fraudulent misrepresentations by Wendy or Joey. Out of the Four Representations, only the Escrow Representation and the Due Diligence Representation were false. However, crucially, the Plaintiffs have failed to prove, on the balance of probabilities, that the Escrow Representation and the Due Diligence Representation were completely untrue and made by Wendy and Joey: (a) knowingly; (b) without belief in its truth; or (c) recklessly, without caring whether it be true or false. Hence, the Plaintiffs have failed to prove their claim of fraudulent misrepresentation.

211 On the issue of reliance, while Wendy had intended for the Plaintiffs to rely on the Escrow Representation and the Due Diligence Representation, the evidence showed that the Plaintiffs had not, in fact, relied on the Escrow Representation when they signed the Casa Nova Escrow Agreement and the Bosque Escrow Agreement for the purchase of residential units in the Casa Nova Project and the Bosque Project. The terms of the two Escrow Agreements were clearly different from the Escrow Representation and the Plaintiffs knew the terms of the two Escrow Agreements but nevertheless proceeded to sign the two Escrow Agreements. Hence, the Plaintiffs did not rely on the Escrow Representation.

212 In relation to the Due Diligence Representation, the Plaintiffs had relied on the Due Diligence Representation when they decided to sign the Casa Nova

Version No 1: 20 Jun 2023 (16:56 hrs)

SPA and the Bosque SPA for the purchase of residential units in the Casa Nova Project and the Bosque Project. The Due Diligence Representation made by Wendy gave the Plaintiffs an assurance that the Casa Nova Project and the Bosque Project were safe and secure investments.

The Plaintiffs' case against Wendy and Joey under s 2 of the MRA

The applicable law

213 Section 2(1) of the MRA provides as follows:

> **Damages for misrepresentation**
>
> 2.—(1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true.

214 The Plaintiffs have sought to pursue a claim against the Defendants under s 2(1) of the MRA. However, as was stated in *Trans-World (Aluminium) Ltd v Cornelder China (Singapore)* [2003] 3 SLR(R) 501 (at [124]), a claim under the MRA is founded in contract, *ie*, there must be a contract between the representor and representee.

The Plaintiffs have failed to make out a case against the Defendants under s 2(1) of the MRA

215 It is undisputed that the Defendants were not parties to any contract with the Plaintiffs.[201] The parties to the Casa Nova SPA and the Bosque SPA were

[201] Wendy's Written Submissions at para 92; Joey's Written Submissions at para 43.

Version No 1: 20 Jun 2023 (16:56 hrs)

the Plaintiffs and Ecohouse Brazil, while the parties to the two Escrow Agreements were the Plaintiffs, Sanders & Co and Ecohouse Brazil. Therefore, while Wendy and Joey may have made the Due Diligence Representation to the Plaintiffs, the fact remains that it was not Joey and Wendy (or any of the Defendants) who were parties to the contract which the Plaintiffs entered into. For this reason, the Plaintiffs' claim under s 2(1) of the MRA must fail. I note that during the oral closing submissions by the parties, Mr Goh conceded that the Plaintiffs' case under s 2(1) of the MRA could not succeed as the Defendants were not parties to any contract with the Plaintiffs.[202]

216 I shall next consider the Plaintiffs' claim of negligent misrepresentation against Wendy and Joey.

The Plaintiffs' case of negligent misrepresentation against Wendy and Joey

The applicable law

217 The elements that need to be proven to establish a claim of negligent misrepresentation which were set out in *Ma Hongjin v Sim Eng Tong* [2021] SGHC 84 ("*Ma Hongjin*") at [20], citing *Spandeck* and *IM Skaugen SE and another v MAN Diesel & Turbo SE and another* [2018] SGHC 123 ("*IM Skaugen*") at [121] are as follows:

(a) the defendant made a false representation of fact;

(b) the representation induced the plaintiff's actual reliance;

(c) the defendant owed the plaintiff a duty to take reasonable care in making the representation;

---

[202] 21 April 2023 Transcript at p 51 (lines 10 to 18).

Version No 1: 20 Jun 2023 (16:56 hrs)

(d) the defendant breached that duty of care; and

(e) the breach caused damage to the plaintiff.

218 As observed by the court in *Bay Lim Piang v Lye Cher Kang* [2023] SGHC 13 (at [99]) citing *Ma Hongjin* (at [21]), the common elements for a claim in fraudulent misrepresentation and negligent misrepresentation are that there must be a false representation of fact, inducement and actual reliance.

219 In the case of fraudulent misrepresentation, it must be shown that the person who makes the false representation does so (a) knowingly; (b) without belief in its truth at all; or (c) recklessly, without caring whether it be true or false. However, in a case of negligent misrepresentation, the issue is whether the representor owes to the representee a duty of care and whether this duty was breached by a failure to take reasonable care to ensure that the representation is true.

220 Therefore, even though I have found above at [210] that the Plaintiffs have failed to make out a case of fraudulent misrepresentation against Wendy and Joey, this does not mean that the Plaintiffs' case of negligent misrepresentation also must fail. The key issue, when considering the Plaintiffs' case of negligent misrepresentation, is whether Wendy and Joey owed a duty of care to the Plaintiffs and whether this duty was breached as a result of any negligent misrepresentation arising from the false statements made by them.

221 In relation to the issue of duty of care, according to *Spandeck*, to establish a duty of care, the plaintiff must show that the harm is factually foreseeable, the relationship between the parties is sufficiently proximate, and

Version No 1: 20 Jun 2023 (16:56 hrs)

that there are no policy considerations that negate the finding of a duty of care (see *Spandeck* at [77], [81] and [83]).

222 On the requirement of factual foreseeability, the Court of Appeal in *Spandeck* stated (at [76]) that this is "a threshold question which the court must be satisfied is fulfilled, failing which the claim does not even take off". Further, citing Andrew Phang Boon Leong J (as he then was) in *Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric (practising under the name and style of W P Architects)* [2007] 1 SLR(R) 853 (at [55]), the requirement of factual foreseeability "will almost always be satisfied, simply because of its very nature and the very wide nature of the 'net' it necessarily casts" [emphasis in original omitted]: *Spandeck* at [75]. The focus is on the foreseeability of harm, in general, as well as the class of persons who may be affected by the negligent act or omission (as opposed to a specific identified person): Gary Chan Kok Yew and Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2011) at para 03.042.

223 On the requirement of proximity, the Court of Appeal in *Spandeck* stated (at [79]) that this is "a composite idea, importing the whole concept of the necessary relationship between the claimant and the defendant". It refers to the existence of "sufficient legal proximity between the claimant and defendant for a duty of care to arise. The focus here is necessarily on the closeness of the relationship between the parties themselves" [emphasis in original omitted]: *Spandeck* at [77]. This embraces physical, circumstantial and causal proximity as well as notions of assumption of responsibility and reliance (see *Sutherland Shire Council v Heyman* (1985) 60 ALR 1 at 55–56, which was cited with approval in *Spandeck* at [78]):

> The requirement of proximity is directed to the relationship between the parties in so far as it is relevant to the allegedly

Version No 1: 20 Jun 2023 (16:56 hrs)

> negligent act or omission of the defendant and the loss or injury sustained by the plaintiff. It involves the notion of nearness or closeness and embraces physical proximity (in the sense of space and time) between the person or property of the plaintiff and the person or property of the defendant, circumstantial proximity such as an overriding relationship of employer and employee or of a professional man and his client and what may (perhaps loosely) be referred to as causal proximity in the sense of the closeness or directness of the causal connection or relationship between the particular act or course of conduct and the loss or injury sustained. It may reflect an assumption by one party of a responsibility to take care to avoid or prevent injury, loss or damage to the person or property of another or reliance by one party upon such care being taken by the other in circumstances where the other party knew or ought to have known of that reliance. Both the identity and the relative importance of the factors which are determinative of an issue of proximity are likely to vary in different categories of case. …

224 If the requirements of factual foreseeability and proximity are satisfied, a *prima facie* duty of care would arise. Policy considerations would thereafter apply to determine whether or not to negate this duty based on the specific factual matrix: *Spandeck* at [83].

The Plaintiffs were induced by Wendy's and Joey's Due Diligence Representation and the Plaintiffs relied on the Due Diligence Representation

225 In view of my findings that only the Due Diligence Representation made by Wendy and Joey was false and the Plaintiffs relied on it to invest in the Casa Nova Project and the Bosque Project, I shall focus my analysis on whether the Plaintiffs have made out a case of negligent misrepresentation against Wendy and Joey on the basis of the Due Diligence Representation.

226 I shall now consider whether Wendy and Joey owed the Plaintiffs a duty of care.

Version No 1: 20 Jun 2023 (16:56 hrs)

Whether Wendy and Joey owed the Plaintiffs a duty of care

227 It was factually foreseeable that the Plaintiffs would suffer loss if Wendy and Joey did not take reasonable care in ensuring the accuracy of the Due Diligence Representation to the Plaintiffs for the Casa Nova Project and the Bosque Project. There was also a clear assumption of responsibility by Wendy and Joey.

228 It is important to recognise that Joey was the managing director of Ecohouse Asia Pacific, the JV entity that was tasked to market the Casa Nova Project and the Bosque Project to local investors. Wendy and Joey had the responsibility to ensure that the Due Diligence Representation was correctly and properly communicated to the investors and the Plaintiffs, failing which they may suffer loss or damage. Wendy and Joey knew or ought to have known of such reliance by the investors and the Plaintiffs. Therefore, it is abundantly clear that there is sufficient legal proximity between the Plaintiffs and Wendy and Joey for a duty of care to arise.

229 Therefore, Wendy and Joey did owe a *prima facie* duty of care to the Plaintiffs.

230 At the trial, Ms Oei acknowledged that it is difficult to argue that Wendy did not have a duty of care towards the interested investors and the Plaintiffs. This is the response from Ms Oei upon query from the Court:[203]

> COURT: … is there a duty of care on the defendant[s] in relation to the marketing of these two projects in our case?
>
> MS OEI: The simple answer to your Honour is, yes, there is, in law there is, because if you go on the

[203] 13 March 2023 Transcript at pp 7 (line 11) to 8 (line 21).

Version No 1: 20 Jun 2023 (16:56 hrs)

> proximity principle, there will be a duty of care; there is foreseeability of damage. But what is the extent of that duty? To what does it encompass?
>
> COURT: No, don't worry, then we go to the next stage. There are two stages to it: one, whether is there a duty of care? If the answer is, yes, there is a duty of care, then we move to the next stage, whether the [defendants had] discharged the duty of care in relation to the two projects. That is another matter altogether.
>
> MS OEI: Yes.
>
> COURT: Then whether the [defendants had] discharged the duty is very much on facts.
>
> MS OEI: That's right. If it's a matter strictly on legal principle, your Honour, I cannot in good conscience say there is no duty, because, as I say, on proximity, on foreseeability, on that principle, I cannot say there does not exist a duty.
>
> COURT: So therefore our focus will be whether the defendants had discharged their duty of care when they marketed these two projects.
>
> MS OEI: Well, I would refine that a bit further, your Honour, in that whether the defendants had discharged their duty of care in marketing the project, within the boundaries of the pleadings.

231 However, in closing submissions, Ms Oei has now changed her position and she submits that Wendy does not owe a duty of care to the Plaintiffs.[204] It is difficult for Wendy to legally support this change of position. As I have explained above, Wendy and Joey did owe a *prima facie* duty of care to the Plaintiffs.

232 On the issue of whether there is any policy consideration which would apply to negate this duty, I find that there is no policy consideration which militates against the imposition of a duty of care against Wendy and Joey.

---

204 Wendy's Written Submissions at para 102.

Version No 1: 20 Jun 2023 (16:56 hrs)

233 I pause here to mention that the Plaintiffs have, during the trial, made references to various court judgments relating to the Plaintiffs' New Zealand Investment. They did so in order to buttress their claim that Wendy and Joey owe them a duty of care.

234 In the Plaintiffs' New Zealand Investment, David and Cindy had entered into various agreements with a New Zealand company called Albany Heights Villas Limited ("Albany") for a "First Right of Refusal" in respect of three units in a residential housing project in New Zealand. Albany subsequently went into insolvent liquidation which resulted in David and Cindy suffering loss. David and Cindy thereafter pursued a claim of negligent misrepresentation against Faber Property Pte Ltd ("Faber"), a licensed estate agency, as well as its Key Executive Officer named Mr Sim and one Ms Seah who was an associate director of Faber and a licensed real estate salesperson. David's and Cindy's claim was that they had entered into the agreements with Albany by acting in reliance on six representations made to them by Faber, Mr Sim and Ms Seah. This included, *inter alia*, representations that all relevant and necessary due diligence checks on Albany had been done and everything was in order.

235 In *Haw Wan Sim David and another v Faber Property Pte Ltd and others* [2018] SGDC 143 ("*Faber (DC)*"), the District Court found that only Faber was liable to David and Cindy for negligent misrepresentation. The District Court found that Faber owed a duty of care to David and Cindy as they had voluntarily assumed responsibility to exercise care to avoid loss to the investors. The District Court dismissed their claims against Mr Sim and Ms Seah on the basis that the representations made by Mr Sim and Ms Seah were made as representatives of Faber and on behalf of Faber.

Version No 1: 20 Jun 2023 (16:56 hrs)

236 David and Cindy thereafter appealed against the decision of the District Court, seeking to overturn the District Court's decision in part. In *Haw Wan Sim David and another v Sim Tee Meng and another* [2018] SGHC 272 (*"Faber (HC)*"), the High Court allowed David's and Cindy's appeal in respect of Mr Sim, but dismissed their appeal in respect of Ms Seah:

(a) In finding Mr Sim liable, the High Court found that there was nothing to suggest that Mr Sim had prefaced his statements with a disclaimer that he was speaking solely as the company, Faber, and was not undertaking any personal responsibility. Further, the High Court found that there was no intentional or deliberate structuring of the relationship between Mr Sim and the respondents (*ie*, David and Cindy) to preclude a tortious duty of care. The High Court found that Mr Sim had breached his duty of care by failing to make reasonable checks before making the representations.

(b) In relation to Ms Seah, while the High Court found that Ms Seah owed a personal duty of care to David and Cindy when she made the representations as she was a property agent, the standard of care expected of her did not require her to make such checks, and she therefore did not fall below the requisite standard of care. In this regard, the High Court found that Ms Seah was entitled to expect that Faber had conducted the due diligence checks to support the representations that she was asked to make.

237 Mr Sim thereafter appealed against the decision of the High Court. In *Sim Tee Meng v Haw Wan Sin David and another* [2019] SGCA 71 ("*Faber (CA)*"), the Court of Appeal dismissed Mr Sim's appeal, affirming the High Court's finding that Mr Sim owed David and Cindy a personal duty of care and

Version No 1: 20 Jun 2023 (16:56 hrs)

that he had breached this duty of care by failing to make reasonable checks before making various representations.

238 The factual matrix in the *Faber* decisions and the present case is undeniably broadly similar, involving representations made by individuals marketing foreign property investments. However, there is a difference between the factual matrix of the *Faber* decisions and the present case. In the *Faber* decisions, one of the representations made was that Faber (acting through Mr Sim) had *personally* done all due diligence checks on the developer and the project. This is quite unlike the present case, where Wendy and Joey represented that they had invested a six-figure sum for the due diligence checks and *engaged* Fong and others to obtain various due diligence reports. It is clear from the evidence adduced at the trial that Wendy and Joey were effectively relying on due diligence reports prepared by various lawyers as well as the due diligence work carried out by Fong. Therefore, while the standard of care imposed on Mr Sim and Faber might have been higher because of the nature of the representation there, I am mindful that, in the present case, the focus must be on whether Wendy and Joey had breached their duty of care by way of the Due Diligence Representation made by Wendy based on the various due diligence reports they had in their possession as well as based on the due diligence work carried out by Fong.

239 Be that as it may, it is clear from the broad factual similarities between the *Faber* decisions and the present case that Wendy and Joey did clearly owe a duty of care to the Plaintiffs.

Version No 1: 20 Jun 2023 (16:56 hrs)

Whether Wendy and Joey breached their duty of care by making the Due Diligence Representation

240 Wendy and Joey were promoting and marketing the Casa Nova Project and the Bosque Project. They had to exercise reasonable care in ensuring that the Due Diligence Representation made in relation to the Casa Nova Project and the Bosque Project by Wendy was true and accurate. In order to evaluate whether they exercised reasonable care when making the Due Diligence Representation, the issue is whether they had taken reasonable care in ensuring that due diligence had been satisfactorily completed for the Casa Nova Project and the Bosque Project at the time the representations were made. The material time to consider is: (a) 30 July 2012 (which was when the Casa Nova Project presentation took place) and 13 August 2012 (which was when Wendy had sent an email repeating the Due Diligence Representation) for the Casa Nova Project; and (b) 6 October 2012, which was when the Due Diligence Representation was made for the Bosque Project.

241 Thus, it is important to examine each of the steps taken by Wendy and Joey as well as the due diligence reports or legal opinions relied on by Wendy and Joey in support of their claim that they had done due diligence checks when they assured the investors and the Plaintiffs that the Casa Nova Project and the Bosque Project were safe investments. I shall consider the issues in turn.

(A) DUE DILIGENCE DONE FOR THE CASA NOVA PROJECT

242 I shall first consider the due diligence exercise purportedly carried out for the Casa Nova Project. At the trial, Wendy and Joey have made various claims to support their belief that due diligence had been satisfactorily completed for the Casa Nova Project.

Version No 1: 20 Jun 2023 (16:56 hrs)

243 The first claim made is that Joey had gone to Brazil in June 2012 and met with the Vice Governor and one of the heads of Caixa Bank. Joey was also introduced to Elali as the lawyer for Ecohouse Brazil by Anthony. Joey stated that Elali had shown him the title deeds, the building permits and Elali had stated that he would prepare a due diligence report. This is Joey's evidence during the cross-examination by Mr Goh:[205]

> A. But when I was there in Brazil, I met with Andre Elali.
>
> Q. Yes.
>
> A. He showed me the title deeds, the building permits of Casa Nova, and indicated to me everything was intact.
>
> Q. You see –
>
> A. He was in the midst of preparing this due diligence report.
>
> Q. You see, my problem again is that this is an important part of your case, and it does not appear at paragraph 6 or anywhere else in your affidavit, agree?
>
> A. Yes.

244 Before the trial, Joey had not stated anywhere that Elali had shown documents to him during his trip to Brazil in June 2012. This was first mentioned by Joey at the trial. However, this claim, even if it were true, could not have constituted satisfactory and proper due diligence. This is because, when questioned by the Court, Joey conceded that the documents supposedly shown to him by Elali were in Portuguese and that Joey was unable to read Portuguese. This is Joey's evidence in Court:[206]

> COURT: You also told us that you were shown certain documents, like title deeds, ownership of land, development permit, and a number of documents.

---

205 21 March 2023 Transcript at p 39 (lines 3 to 13).

206 23 March 2023 Transcript at pp 7 (line 23) to 9 (line 13).

Version No 1: 20 Jun 2023 (16:56 hrs)

A. Yes, sir.

COURT: I also assume that these were all shown to you by Mr Andre.

A. Yes, sir.

COURT: I also assume that the documents that were shown to you were all in Portuguese?

A. Yes, sir.

COURT: So how do you know what sort of documents are those?

Unless you can read Portuguese. Can you read Portuguese?

A. I can't, sir.

COURT: So do you know what are those documents?

A. Basically he explained to me.

COURT: So it's all what Andre – in other words, Andre tells you that this is a title deed, this is a permit.

A. No, sir. Roughly from the format, I also concluded it's true, that what he says is true.

COURT: No, no –

A. Because if it's –

COURT: No, no. How do you know this is a permit, this is a land title? Since you can't read Portuguese, I assume it must come from Mr Andre; am I not right?

A. Sir, because Portuguese, yes, but some of them is very close to English. Some of the words is very close to English. So "building permit" is "building permit". There's no Portuguese "building permit". It's stated there as "building permit".

COURT: No, no, please answer my question. Are you telling me that all the documents in Portuguese you understood what are these documents, or is it that Mr Andre told you that, "Eh, this is the permit, this is the land" – the information came from Mr Andre, or you on your own have understood the documents? That's all I'm trying to ask you.

A. Yes, sir. With the help of Andre.

Version No 1: 20 Jun 2023 (16:56 hrs)

> COURT: So he told you this and this. Because you told us you can't read Portuguese.
>
> A. Yes, sir.

245 In other words, Joey was unable to verify if the documents shown to him were, in fact, what Elali said they were during the trip in June 2012. Therefore, it simply cannot be said that this amounted to satisfactory and proper due diligence on Wendy's and Joey's part.

246 Wendy and Joey also relied on Gabriela's Casa Nova Due Diligence Report dated 2 July 2012 as part of the due diligence checks done. I am mindful that the evidence adduced at the trial showed that Wendy and Joey had learnt sometime after the 30 July 2012 Presentation and the 7 August 2012 email and 13 August 2012 email that Gabriela was, in fact, Anthony's step-daughter.[207] However, to assess whether Wendy and Joey had taken reasonable care for the purpose of due diligence in relation to the Casa Nova Project, the material time is when the Due Diligence Representation was made, *ie*, 30 July 2012 (when the Casa Nova Presentation took place) and 13 August 2012 (when the 13 August 2012 email was sent).

247 Wendy admitted that Gabriela's Casa Nova Due Diligence Report which she relied upon was done at the request of the developer of the Casa Nova Project, Ecohouse Brazil.[208] This is also expressly mentioned in Gabriela's Casa Nova Due Diligence Report.[209] The question, then, is whether it was reasonable for Wendy and Joey to have relied on Gabriela's Casa Nova Due Diligence Report. The fact that Gabriela's Casa Nova Due Diligence Report was requested

---

207 16 March 2023 Transcript at p 85 (lines 10 to 25).

208 16 March 2023 Transcript at pp 71 (line 14) to 72 (line 2).

209 DBD at p 5.

Version No 1: 20 Jun 2023 (16:56 hrs)

by Ecohouse Brazil, the developer of the Casa Nova Project, should have immediately stood out as a red flag to Wendy and Joey. A due diligence report commissioned and paid for by the developer to be conducted on its own project would have, to the reasonable person, immediately raised questions about a potential conflict of interest. Instead, Wendy and Joey nevertheless relied on Gabriela's Casa Nova Due Diligence Report as evidence of due diligence done to support the Due Diligence Representation which she had made. This could not have reasonably amounted to satisfactory and proper due diligence.

248 Next, Wendy and Joey rely on the due diligence work carried out by Fong. At the trial, Fong said that she had not completed her due diligence exercise on or about 13 August 2012. She had not completed the due diligence exercise until on or about 5 September 2012 and she continued to carry out due diligence *even after* 5 September 2012. Therefore, as at 30 July 2012 and 13 August 2012, Wendy and Joey should not have assumed that the due diligence exercise for the Casa Nova Project was completed by Fong. Wendy should not have informed or given the impression to the investors and the Plaintiffs that the due diligence exercise had been completed at the 30 July 2012 Presentation and in the 13 August 2012 email. Wendy went further and assured the investors and the Plaintiffs that the outcome of the due diligence checks was that the Casa Nova Project was a safe investment that should not be missed. She should have informed the investors and the Plaintiffs that the due diligence exercise was on-going.

249 Further, Wendy and Joey also rely on Elali's Casa Nova Due Diligence Report. There are two issues with their reliance on Elali's Casa Nova Due Diligence Report. First, as stated above at [183], Elali's Casa Nova Due Diligence Report was only completed on 5 September 2012. Therefore, at the time the Due Diligence Representation was made, *ie*, 30 July 2012 (which was

Version No 1: 20 Jun 2023 (16:56 hrs)

when the Casa Nova Project presentation took place) and 13 August 2012 (which was when Wendy had sent an email repeating the Due Diligence Representation), Wendy would not have been in possession of Elali's Casa Nova Due Diligence Report. Moreover, Elali's Casa Nova Due Diligence Report was not an independent report as it was commissioned and paid for by Ecohouse Brazil, the developer of the Casa Nova Project. This is a clear case of a conflict of interest situation.

250 I pause here to highlight that Joey was clearly aware of what a conflict of interest entailed. In the course of the trial, Joey was referred to the email dated 19 June 2012 between him and Ooi, another marketing agent who introduced him to the Casa Nova Project (see above at [179(b)]). When Ooi sought to introduce Joey to the Casa Nova Project, Joey's instinctive response to Ooi was to ascertain his relationship with Ecohouse Group to understand whether there was any conflict of interest. This is Joey's email to Ooi:[210]

> …
>
> Hi Ooi,
>
> I like this project a lot. *But I need to understand the relationship between you and Eco House so as not to have any conflict of interest.*
>
> Do you have any agency agreement with the developer?
>
> [emphasis added]

251 At the trial, Joey accepted that he understood what a conflict of interest entailed.[211] Why, then, did he not take any issue with the fact that Gabriela's Casa Nova Due Diligence Report and Elali's Casa Nova Due Diligence Report were both requested by the developer of the Casa Nova Project, Ecohouse

---

210 SAB at p 23.

211 23 March 2023 Transcript at pp 2 (line 7) to 3 (line 4).

Version No 1: 20 Jun 2023 (16:56 hrs)

Brazil? Joey's claim at the trial that there was no conflict of interest when considering Gabriela's Casa Nova Due Diligence Report and Elali's Casa Nova Due Diligence Report is unbelievable.[212]

252 Finally, Wendy and Joey relied on Lucas' Legal Opinion on Casa Nova. There are a number of serious issues with relying on Lucas' Legal Opinion on Casa Nova. First, as I had similarly highlighted above at [249] in relation to Elali's Casa Nova Due Diligence Report, Lucas' Legal Opinion on Casa Nova was only produced on 5 September 2012. Therefore, at the time the Due Diligence Representation was made, Wendy and Joey would not have been in possession of Lucas' Legal Opinion on Casa Nova. Further, Lucas' Legal Opinion on Casa Nova does not, in any way, support Wendy's and Joey's claim that proper due diligence had been done.

253 For context, it is worth highlighting that Lucas' Legal Opinion on Casa Nova was produced because Joey and Fong learned that Gabriela was the step-daughter of Anthony. During the cross-examination by Mr Goh on the discovery that Gabriela was the step-daughter of Anthony, Fong stated as follows:[213]

MR GOH:	Madame Fong, we know that by latest 2 September 2012, Joey had already told you that he discovered that Gabriela Medeiros was, in fact, Armstrong's daughter or step-daughter, agree?
A.	Yes.
Q.	Yes. This was a cause of concern for you, was it not?
A.	Yes.
Q.	You would have told Joey and Wendy that this discovery was, in fact, a cause for concern?

212 23 March 2023 Transcript at p 23 (lines 1 to 4).

213 23 March 2023 Transcript at pp 62 (line 12) to 63 (line 4).

Version No 1: 20 Jun 2023 (16:56 hrs)

> A. Yes.
>
> Q. Would that be why you then proposed for Joey to engage the services of Lucas Sousa from P&G?
>
> A. All along, from the outset, I required a Brazilian lawyer who is independent. But at this juncture it became critical.
>
> Q. I see.
>
> A. That is why I contacted him on the same day, despite the time difference.

254 Further, Lucas' Legal Opinion on Casa Nova, in fact, questioned the basis of Gabriela's Casa Nova Due Diligence Report and concluded with the following:[214]

> …
>
> As a conclusion, with the documents that were sent by Mr. Joey and Mrs. Fong, we cannot assure and guarantee that the legality required was fulfilled by the developer, but, facing the legal opinion issued by Gabriela, we have glue [*sic*] that the documents are fine.
>
> We highly recommend a legal due diligence there in Natal, in the presence of Gabriela, or not, to analyse all documents, licences, permits, certificates, titles, etc., so we can assure that the legal requirements were fulfilled.
>
> …

255 It is, therefore, clear that based on Lucas' Legal Opinion on Casa Nova, the state of due diligence in relation to the Casa Nova Project was not satisfactory as of 5 September 2012. What is even more telling, however, is the email correspondence between Fong and Lucas which took place after Lucas' Legal Opinion on Casa Nova was produced. Soon after Lucas' Legal Opinion on Casa Nova was produced, Lucas had received the purported titles of the land on which the Casa Nova Project units were to be built. However, after reviewing

---

214 2BAEIC at pp 635 to 636.

Version No 1: 20 Jun 2023 (16:56 hrs)

the purported titles, Lucas' email of 17 September 2012 at 09.56am to Fong and Joey stated that the title only referred to a small parcel of land and more complete information was required for Lucas to be satisfied that the investment in the Casa Nova Project is "without any problem". This is the email from Lucas to Fong which was copied to Joey:[215]

> Dear Mrs. Phyllis [*ie*, Fong],
>
> We only have the title nr. 11.446, referred to a land with 2,500 square meters, but the Residencial Casa Nova foresee multiple times more land than solely this title.
>
> …
>
> In accordance with Gabriela's legal opinion, to build and execute what is foreseen under Residencial Casa Nova project's, phases 1 to 4, is necessary 98,374.74 square meters and the title we have is the minor part of the project.
>
> …
>
> We need more and complete information about this Casa Nova project to affirm that you can buy it without any problem.
>
> …

256 Thereafter, Fong replied via email on the same day to ask Lucas if this meant that Ecohouse Brazil did not have title to the land that was being sold to the Singapore investors. In Lucas' reply of 17 September 2012 at 10.33am, Lucas stated that he required further documents and suggested that he speak to Gabriela to clarify the matter. This is Lucas' reply email to Fong which was copied to Joey:[216]

> Mrs. Phyllis [*ie*, Fong],
>
> With the information I had and I could gather, I analyzed only a minor part of the totality of the houses to be sold under the social housing programme.

---

215 SAB at p 257.

216 SAB at p 256.

Version No 1: 20 Jun 2023 (16:56 hrs)

> To assure that Ecohouse is selling in good faith and has power to sell, we need further documents.
>
> If I could talk with Gabriela, I guess we can clarify everything.
>
> …

257 Fong then replied via email on the same day instructing Lucas to speak to Gabriela. The only documentary evidence that followed this instruction was an email from Lucas on 17 September 2012 at 11.53pm stating that he would speak to Gabriela. This is Lucas' email to Fong which was copied to Joey:[217]

> Dear Mrs. Phyllis [*ie*, Fong],
>
> Yes, for sure, I will not mention you or Mr. Joey.
>
> Later today I will talk to [Gabriela] and revert to you.
>
> …

258 However, the documentary trail detailing the correspondence with Lucas abruptly ends with this email. Joey testified at the trial that Lucas had spoken to him (*ie*, Joey) thereafter and assured him that the due diligence done was satisfactory. During the cross-examination by Ms Oei, Joey stated as follows:[218]

> Q. Did Mr Sousa [*ie*, Lucas] come to a conclusion?
>
> A. Yes.
>
> Q. What was his conclusion?
>
> A. That Andre Elali's due diligence report and with all the documents probably from Gabriela to Lucas, the due diligence report is intact.
>
> Q. All right, okay. You have used this word "intact" a few times. What do you mean "intact"?
>
> A. That means it's sufficient.

---

217 SAB at p 255.

218 22 March 2023 Transcript at pp 74 (line 19) to 75 (line 5).

Version No 1: 20 Jun 2023 (16:56 hrs)

> Q. Okay. This would be when that you spoke to Mr Sousa? Approximately. Just a month.
>
> A. Late September.

259 However, there is no documentary evidence to support this conclusion. Notably, Fong stated at the trial that she had no knowledge of what was discussed between Lucas and Joey after Lucas' last email which was adduced as evidence. Fong's evidence during the cross-examination by Mr Goh is as follows:[219]

> Q. If you turn now to paragraph 27 of your affidavit, page 12, the last sentence found at the bottom, it says:
>
> "In the end, the issue of the documents to support the due diligence report from Andre Elali was to be resolved by Joey Poh with Lucas Sousa."
>
> So you have no direct knowledge of whether it was resolved, how it was resolved, right?
>
> A. Yes, 17 September onwards, 2012. But I did raise it with Joey Poh and he mentioned to me that he has resolved it with Lucas and Andre Elali.
>
> Q. But how it was resolved was not known to you, right?
>
> A. Not known to me.

260 It is illogical why Fong, who had been allegedly appointed by Joey to conduct due diligence on the Casa Nova Project, would not have been informed of Joey's subsequent communications with Lucas. With the lack of documentary evidence to support Joey's claim of the contents of what Lucas had communicated to him after Lucas' last email, it is not prudent to accept Joey's verbal version of the events. This is especially so, in light of my finding that Joey is not a reliable witness (at [267]–[269] below). Based on the documentary evidence then, it is clear that Lucas' Legal Opinion on Casa Nova

---

[219] 23 March 2023 Transcript at pp 73 (line 25) to 74 (line 11).

Version No 1: 20 Jun 2023 (16:56 hrs)

casted doubt on the state of the due diligence in relation to the Casa Nova Project. Therefore, it is unclear how, if at all, Lucas' Legal Opinion on Casa Nova supports a finding that Wendy and Joey had reasonable grounds to believe in the truth of the Due Diligence Representation in relation to the Casa Nova Project.

261 On the evidence, it is difficult to accept that Wendy and Joey had taken reasonable care in ensuring that the Due Diligence Representation in relation to the Casa Nova Project was true and accurate at the material time the representation was made, *ie*, 30 July 2012 (which was when the Casa Nova Project presentation took place) and 13 August 2012 (which was when Wendy had sent an email repeating the Due Diligence Representation).

(B) DUE DILIGENCE DONE FOR THE BOSQUE PROJECT

262 I shall now consider the due diligence purportedly carried out for the Bosque Project. It was conceded at the trial that the only due diligence carried out for the Bosque Project was Elali's Bosque Due Diligence Report which was provided to Wendy and Joey.

263 However, when Wendy made the Due Diligence Representation at the 6 October 2012 Presentation, there would have been numerous red flags which would have been known or ought to have been known by Wendy and Joey. These are as follows:

(a) First, by 6 October 2012, there would have been the issue that Gabriela was the step-daughter of Anthony. This would have, undoubtedly, led a reasonable person to be concerned that Gabriela's Casa Nova Due Diligence Report may not be reliable. In fact, based on what I have set out above at [253], it was clear that the discovery of

Version No 1: 20 Jun 2023 (16:56 hrs)

Gabriela's relationship to Anthony caused concern and led to the engagement of Lucas to provide Lucas' Legal Opinion on Casa Nova. In fact, Wendy agreed at the trial that there was cause for concern about the relationship between Gabriela and Anthony which made Gabriela's Casa Nova Due Diligence Report unsafe to rely on.[220] Joey himself acknowledged at the trial that Fong had concerns about Gabriela's relationship with Anthony.[221]

(b) Next, Lucas' Legal Opinion on Casa Nova dated 5 September 2012 and the emails exchanged between Lucas and Fong thereafter showed that there was clear doubt over Gabriela's Casa Nova Due Diligence Report. While Joey stated in Court that this was eventually addressed between him and Lucas, there is no objective evidence to support this. This aspect of the evidence is also not in Joey's affidavit. It was revealed for the first time in Court during cross-examination. As highlighted above at [252]–[260], based on the documentary evidence, it is clear that Lucas' Legal Opinion on Casa Nova casted doubt on the state of the due diligence in relation to the Casa Nova Project.

264 Further, there is the fundamental issue that Elali's Bosque Due Diligence Report was commissioned by the developer, Ecohouse Brazil. A due diligence report commissioned and paid for by the developer to be conducted on its own project would have, to the reasonable person, immediately raised an issue of a

---

220 16 March 2023 Transcript at p 86 (lines 4 to 10); 1st and 2nd Plaintiffs' Closing Submissions dated 10 April 2023 ("Plaintiffs' Closing Submissions") at paras 64(3)(a) and 64(3)(b).

221 22 March 2023 Transcript at p 23 (lines 6 to 9); Plaintiffs' Closing Submissions at para 64(3)(c).

Version No 1: 20 Jun 2023 (16:56 hrs)

conflict of interest. As I have highlighted above at [251], Joey understood what a conflict of interest entailed, but he chose to ignore the conflict of interest.

265 Despite the red flags highlighted above, Wendy proceeded to make the Due Diligence Representation in relation to the Bosque Project at the 6 October 2012 Presentation. Fong was not engaged to perform due diligence for the Bosque Project. Hence, Wendy should not have told the investors and the Plaintiffs that a six-figure sum was expended for due diligence for the Bosque Project. There is no evidence that Wendy revealed to the investors and the Plaintiffs of the adverse findings that had arisen from the due diligence exercise. In all probabilities, she did not do so. In other words, she presented a rosy picture to the investors and the Plaintiffs so that they would invest in the Bosque Project. I am unable to accept that Wendy and Joey had taken reasonable care in ensuring the accuracy and truth of the Due Diligence Representation in relation to the Bosque Project. Why did Wendy proceed to make the Due Diligence Representation despite all the red flags? Further, why did Wendy and Joey not disclose to the investors and the Plaintiffs that various due diligence reports relied upon by Wendy and Joey were commissioned by Ecohouse Brazil? As Wendy alluded to in the course of the trial, perhaps it was because the JV Agreement meant that Joey was contractually obligated to continue to market Ecohouse Brazil's projects in Singapore. This is Wendy's explanation in Court:[222]

> COURT: So this also is one of the concerns sometime in September already, all right? Am I right?
>
> You look at all the supposed checks and balances to ensure that this is a safe investment, you have Anthony Armstrong's fingerprint all over, right? Then why did you continue to

[222] 17 March 2023 Transcript at p 59 (lines 1 to 15).

Version No 1: 20 Jun 2023 (16:56 hrs)

> market the Bosque Project, which was in October?
>
> A. Yes. Your Honour, we have been hassling Anthony Armstrong all these months, and he always is able to come back to us and explain to us what is happening. *And the project's ongoing.*
>
> *So from what I understand also is that the JV company has an obligation towards the developer, in the sense of Anthony Armstrong to meet certain so-called -- to meet the business objectives of the developer.*
>
> [emphasis added]

266 This is where the truth appears to lie. Wendy and Joey continued to market the Bosque Project and Wendy made the Due Diligence Representation because of a legal obligation that Joey had under the terms of the JV Agreement towards Ecohouse Brazil, although Wendy alleges that they were satisfied with Anthony's explanation in relation to the due diligence exercise. More significantly, as disclosed at the trial, Joey stood to gain significant commissions by continuing to market the Bosque Project. This would explain why Wendy and Joey continued to market the Bosque Project and Wendy made a similar Due Diligence Representation at the 6 October 2012 Bosque Presentation.

267 The objective evidence shows that Joey failed to take reasonable care to ensure the accuracy and truth of the Due Diligence Representation for the Casa Nova Project and the Bosque Project, despite being intimately involved in the due diligence work carried out by Fong as seen in the email correspondence which would have made clear that the Due Diligence Representation was inaccurate and unsatisfactory. Instead, at various instances of the trial, Joey's account was contradicted by the objective evidence:

(a) First, in relation to his discovery about Gabriela's relationship with Anthony, Joey stated that this was not a concern to him because he

Version No 1: 20 Jun 2023 (16:56 hrs)

had been informed by Fong that Gabriela was "duty-bound by the Law Society". This is Joey's evidence in Court:[223]

> MR SNG: Mr Poh, earlier, his Honour had asked you about the relationship between Gabriela and Anthony Armstrong. I recall your evidence that you said that it was not a concern, correct?
>
> A. Yes.
>
> Q. Can you elaborate why you say it's not a concern in the light of this father and step-daughter relationship? Would you care to elaborate?
>
> A. My view is that Gabriela is a real lawyer and she's duty-bound by the Law Society, and the due diligence report should be based on her professionalism. And I also feel that if there's an issue with the company, if she knows, would she want to sabotage her own career as a lawyer to do anything wrong?

Yet, this ran directly against the contemporaneous emails between Joey and Fong as well as between Fong and Lucas which made clear that Joey was, in fact, concerned about the relationship between Gabriela and Anthony.[224] Despite the contemporaneous emails which show that he was, in fact, concerned, Joey persistently maintained at the trial that he was not worried.

(b) Next, despite the adverse opinion contained in Lucas' Legal Opinion on Casa Nova, Joey stated that Lucas' Legal Opinion on Casa Nova was fine. To recapitulate, Lucas was concerned with Gabriela's Casa Nova Due Diligence Report but Joey stated that Lucas' Legal

---

223 23 March 2023 Transcript at p 29 (lines 7 to 20).

224 2BAEIC at pp 842 and 879.

Version No 1: 20 Jun 2023 (16:56 hrs)

Opinion on Casa Nova was, at best, "inconclusive" because of Joey's own failure to provide enough documents to Lucas. Joey's evidence in Court during the cross-examination by Mr Goh is as follows:[225]

> Q. You have seen this opinion, I'm sure, right? Can you confirm with me that basically this opinion says that they cannot, on their own, ascertain ownership and title to the land over which Casa Nova Project was to be built?
>
> A. No.
>
> Q. They did not say that?
>
> A. Not that it did not say it, but I have to explain it was my fault initially, because I didn't have enough documents to send to him. That's why the first –
>
> Q. Let's come to that later. I'm just focusing on this particular legal opinion.
>
> In this legal opinion, is it not true that P&G lawyer had basically said that they are unable to confirm from documentation as to ownership and title to the land?
>
> A. My answer is no.
>
> Q. Do you want to explain why?
>
> A. I would deem the first part as inconclusive.

However, Joey ignored the adverse observations in Lucas' Legal Opinion on Casa Nova, in which Lucas had recommended for a legal due diligence to be carried out "in Natal, in the presence of Gabriela, or not, to analyse all documents, licences, permits, certificates, titles, etc., so [Lucas] can assure that the legal requirements were fulfilled".[226]

---

225 22 March 2023 Transcript at p 10 (lines 5 to 23).

226 2BAEIC at pp 635 to 636.

Version No 1: 20 Jun 2023 (16:56 hrs)

268 Further, Joey's evidence that he had paid a sum of over S$20,000 out of his own pocket for what was essentially an exploratory trip to Brazil in June 2012 does not make economic sense.[227] Why would Joey have to fork out a large amount of money for the June trip to Brazil when, by his own evidence, he had not yet decided whether or not to market the Casa Nova Project? Why did Joey not ask Anthony to pay for this exploratory trip which appears more beneficial to Anthony? This was what Joey had allegedly done for the investors when he negotiated with Anthony for the investors who had purchased a certain number of units in the Casa Nova Project and the Bosque Project to be entitled to a free trip to Brazil to conduct a site visit.[228] Joey's claim that he had paid a sum of over S$20,000 out of his own pocket for the trip in June 2012 to Brazil appeared to be an attempt by Joey to present his trip in June 2012 as a trip where he had actually performed checks and conducted due diligence using moneys out of his own pocket.

269 It is clear from these instances highlighted above that Joey's evidence at the trial could not be relied upon as he sought to present a version of the events that was clearly contradicted by the objective evidence or was plainly illogical.

270 I shall consider the reliance by Wendy and Joey on the fact that they, too, had purchased nine residential units in the Casa Nova Project and had signed a sale and purchase agreement on 1 October 2012.[229] The key issue to consider here is: why did Wendy and Joey themselves sign a sale and purchase agreement for the Casa Nova Project on 1 October 2012 for the purchase of nine units even after the various red flags had emerged in September 2012? Further,

---

227 23 March 2023 Transcript at pp 9 (line 25) to 10 (line 10).

228 23 March 2023 Transcript at p 9 (lines 14 to 24).

229 23 March 2023 Transcript at p 12 (lines 7 to 10); 2BAEIC at pp 443 to 465.

Version No 1: 20 Jun 2023 (16:56 hrs)

it is also important to highlight that, based on the evidence adduced at the trial, Joey had stated that as of 1 October 2012, he was, in fact, owed commissions by Anthony for the sale of the units in the Casa Nova Project. For context, Joey had already received two commission payments of S$207,409.80 (on 30 August 2012)[230] and S$1,031,290.90 (on 19 September 2012)[231] made by Anthony to a bank account held in the name of Joey's offshore company, JP Global Investment Inc.

271 Despite these two payments, Joey was still owed commissions by Anthony as of 1 October 2012 and the various red flags had arisen before 1 October 2012. How did it make logical sense, then, for Wendy and Joey to have purportedly paid a considerable sum of S$496,800[232] for the purchase of nine units in the Casa Nova Project? Curiously, no evidence had been adduced at the trial that Wendy and Joey had, in fact, paid this sum for the purchase of the nine units in the Casa Nova Project. It is also undisputed that Wendy and Joey did not invest in the Bosque Project. Thus, the reliance by Wendy and Joey that they had purchased nine units in the Casa Nova Project is neutral at best. This purchase does not necessarily mean that Wendy and Joey had performed satisfactory and proper due diligence before making the Due Diligence Representation.

272 The fundamental issue is whether Wendy and Joey had failed to take reasonable care in ensuring the accuracy of the Due Diligence Representation made to the Plaintiffs. For the reasons which I have elucidated above, it is clear to me that Wendy and Joey had failed do so.

---

230 SAB at p 188.

231 SAB at p 262.

232 2BAEIC at p 449, clause 8.7.

Version No 1: 20 Jun 2023 (16:56 hrs)

Whether Wendy's and Joey's breach of duty of care caused the Plaintiffs' losses

273 The next question is whether Wendy's and Joey's breach of duty of care did cause the Plaintiffs losses and whether such losses were foreseeable. It is clear that losses were suffered by the Plaintiffs as a result of Wendy's and Joey's breach of their duty of care. The losses are the amounts they paid under the Casa Nova SPA and the Bosque SPA. It is also clear that these losses were foreseeable.

The Defendants' contention that when the Plaintiffs signed the Deeds of Modification, the Plaintiffs' entitlement to claim negligence against Wendy and Joey was irrevocably altered

274 In view of my findings above, the Plaintiffs have succeeded in their claim of negligent misrepresentation against Wendy and Joey. However, I pause here to consider the Defendants' contention that the Plaintiffs are no longer entitled to pursue their claim of negligent misrepresentation against Wendy and Joey because the Plaintiffs signed the Deeds of Modification on 6 November 2013.

275 According to the First, Third and Fourth Defendants in their closing submissions, even if the Plaintiffs have a valid cause of action against them, their decision to sign the Deeds of Modification on 6 November 2013 means that their claim of negligent misrepresentation against Wendy and Joey is no longer actionable.[233] No reasons were advanced for this submission.

276 The Plaintiffs entered into the Deeds of Modification with Ecohouse Brazil on 6 November 2013. The Deeds of Modification were new contracts

---

233 Wendy's Written Submissions at paras 103 to 104.

Version No 1: 20 Jun 2023 (16:56 hrs)

which allowed Ecohouse Brazil an extension of 12 months to fulfil its obligations under the Casa Nova SPA and the Bosque SPA. Ecohouse Brazil provided fresh consideration of 20% of the original sums to the Plaintiffs. The Deeds of Modification did not extinguish or terminate the terms of the Casa Nova SPA and the Bosque SPA. On the contrary, the Deeds of Modification specifically bound Ecohouse Brazil to the Casa Nova SPA and the Bosque SPA. This is particularly seen in Clause 4 of the Deed of Modification for the Bosque Project which states as follows:[234]

> 4. In all other respects the parties confirm that the Agreement remains in full force and effect.

277 The Deeds of Modification merely granted Ecohouse Brazil an extension of 12 months to fulfil its legal obligations under the Casa Nova SPA and the Bosque SPA. Therefore, the Deeds of Modification do not prevent the Plaintiffs from pursuing their claim of negligent misrepresentation against Wendy and Joey for failing to exercise reasonable care in ensuring the accuracy of the Due Diligence Representation. Further, there is no evidence to suggest that, when the Plaintiffs signed the Deeds of Modification, they had knowledge of the falsity of the Due Diligence Representation. Therefore, the First, Third and Fourth Defendants' argument that the Plaintiffs' claim of negligent misrepresentation against Wendy and Joey is no longer actionable because they signed the Deeds of Modification is unmeritorious.

278 In their reply submission, the First, Third and Fourth Defendants have instead stated that the Plaintiffs' signing of the Deeds of Modification led to a break in the chain of causation such that any reliance placed on the Due

---

234 1BAEIC at p 211.

Version No 1: 20 Jun 2023 (16:56 hrs)

Diligence Representation was no longer operative.[235] This argument ignores the fact that the Deeds of Modification were signed on 6 November 2013, *ie*, a year after the Casa Nova SPA and the Bosque SPA were entered into following the Plaintiffs' reliance on the Due Diligence Representation. The focus must remain on whether the Plaintiffs relied on the Due Diligence Representation at the time when they entered into the Casa Nova SPA and the Bosque SPA. It is clear from the evidence that they did. Further, as I have explained above, the Deeds of Modification did not extinguish the terms of the Casa Nova SPA or the Bosque SPA, but merely allowed Ecohouse Brazil an extension of 12 months to fulfil its obligations under the Casa Nova SPA and the Bosque SPA. Therefore, the First, Third and Fourth Defendants' argument is unmeritorious.

Conclusion on the Plaintiffs' case of negligent misrepresentation against Wendy and Joey

279 In summary, I find that Wendy and Joey both owed a duty of care towards the Plaintiffs. This duty was clearly breached as they failed to take reasonable care to ensure that the Due Diligence Representation was true and accurate when it was made to the Plaintiffs.

The Plaintiffs' case in relation to the First Collateral Contract and the Second Collateral Contract

The applicable law

280 The Plaintiffs have pleaded that there were two collateral contracts between them and Wendy and that Wendy had breached the two collateral contracts.

---

235 1st, 3rd and 4th Defendants' Reply Submissions dated 17 April 2023 ("Wendy's Reply Submissions") at para 7.

Version No 1: 20 Jun 2023 (16:56 hrs)

281 The court in *Goldzone (Asia Pacific) Ltd (formerly known as Goldzone (Singapore) Ltd) v Creative Technology Centre Pte Ltd* [2011] SGHC 103 summarised (at [45]) the requirements that need to be met for a finding to be made that an oral collateral contract was formed:

(a) the statement must be promissory in nature or effect rather than representational (*Lemon Grass v Peranakan Place Complex Pte Ltd* [2002] 2 SLR(R) 50 at [116]–[117]);

(b) there must be certainty of terms;

(c) there must be separate consideration; and

(d) existence of *animus contrahendi*, *ie*, a statement must be intended to be legally binding (*Inntrepreneur Pub Co (GL) v East Crown Ltd* [2000] 2 Lloyd's Rep 611 at [614]).

The Court's findings on the First Collateral Contract and the Second Collateral Contract

282 The Plaintiffs have not adduced sufficient evidence to show that the First Collateral Contract and the Second Collateral Contract were formed between the Plaintiffs and Wendy. To recapitulate, the Plaintiffs' case as set out above at [63]–[64], is that the two alleged collateral contracts which were formed are as follows:

(a) The First Collateral Contract purportedly arose between Wendy and the Plaintiffs as a result of the promise made by Wendy in the 13 August 2012 email that she had done detailed due diligence checks on the Casa Nova Project. It was this promise which led to the Plaintiffs signing the Casa Nova SPA with Ecohouse Brazil. The Plaintiffs state

Version No 1: 20 Jun 2023 (16:56 hrs)

that Wendy breached the First Collateral Contract by wilfully and recklessly failing to do detailed due diligence on the Casa Nova Project.

(b) The Second Collateral Contract purportedly arose between Wendy and the Plaintiffs at the 8 November 2013 Meeting where Wendy had assured the investors present, including Cindy, that, if they did not demand for the return of their investments, Wendy would "fight for the investors" and "stand with the investors to see that they get back their investments and promised returns". The Plaintiffs state that they relied on Wendy's promise at the 8 November 2013 Meeting and did not demand for the return of the amounts they invested in the Casa Nova Project and the Bosque Project. The Plaintiffs state that Wendy breached the Second Collateral Contract by failing to fulfil her promise.

283 As stated at [281(c)] above, one of the requirements of a collateral contract is fresh consideration. This was similarly emphasised by the court in *Thillainathan Aravinthan v EMC Information Systems Management Ltd Singapore Branch* [2021] SGHC 289 (at [107]).

284 The Plaintiffs' submission that they had provided consideration for the First Collateral Contract by entering into the Casa Nova SPA is flawed. The consideration for the Casa Nova SPA was the payment made by the Plaintiffs in exchange for a promise by Ecohouse Brazil to deliver a 20% return of the purchase price in 12 months and to procure a buyer for the Plaintiffs' units in the Casa Nova Project. For the First Collateral Contract to come into existence, the Plaintiffs had to provide fresh consideration. They have failed to show that fresh consideration was provided.

Version No 1: 20 Jun 2023 (16:56 hrs)

285 In relation to the Second Collateral Contract, it is important to note that the Plaintiffs signed the Deeds of Modification with Ecohouse Brazil in relation to the Casa Nova Project and the Bosque Project on 6 November 2013. The Deeds of Modification were signed before the alleged Second Collateral Contract on 8 November 2013. The Plaintiffs had not informed Wendy that they had signed the Deeds of Modification with Ecohouse Brazil.[236] The fact that the Plaintiffs had not demanded for the return of the amounts they invested in the Casa Nova Project and the Bosque Project was because they had already agreed to offer a 12-month extension to Ecohouse Brazil when they signed the Deeds of Modification. Thus, the Plaintiffs' claim under the Second Collateral Contract cannot succeed.

286 For the reasons above, it is clear that the Plaintiffs' claims in relation to the First Collateral Contract and the Second Collateral Contract and the breach of these contracts by Wendy must fail.

Whether the Plaintiffs have made out a case that the Defendants are liable as constructive trustees for knowing receipt

The applicable law

287 The Plaintiffs also claim that the Defendants are liable to the Plaintiffs as constructive trustees for knowing receipt.

288 A claim of knowing receipt concerns the liability of a person who has received assets, which is subject to a trust, with the requisite level of awareness or knowledge that the assets in question are trust assets. Such a person would

[236] 8 March 2023 Transcript at p 37 (lines 13 to 16).

Version No 1: 20 Jun 2023 (16:56 hrs)

be a constructive trustee of the assets he has received and would be under a duty to immediately restore the assets to the beneficiary.

289 The requirements of knowing receipt were set out by the Court of Appeal in *George Raymond Zage III and another v Ho Chi Kwong and another* [2010] 2 SLR 589 ("*George Raymond Zage III*") (at [23]):

> (a) there is a disposal of the plaintiff's assets in breach of fiduciary duty;
>
> (b) there is beneficial receipt by the defendant of assets which are traceable as representing the assets of the plaintiff; and
>
> (c) there is knowledge that the assets received are traceable to a breach of fiduciary duty and this state of knowledge makes it unconscionable for the defendant to retain the benefit of the receipt (endorsing the test in *Bank of Credit and Commerce International (Overseas) Ltd v Akindele* [2001] Ch 437).

The application of the law to the facts of the present case

290 The Plaintiffs have failed to adduce any evidence to support a claim of knowing receipt.

> (a) First, the Plaintiffs have not shown that there was a disposal of the Plaintiffs' assets in breach of the fiduciary duty. The release of the funds from the escrow account appears to have been made in line with the contractual provisions of the Casa Nova SPA and the Casa Nova Escrow Agreement as well as the Bosque SPA and the Bosque Escrow Agreement. The Plaintiffs have not adduced evidence to show otherwise.

Version No 1: 20 Jun 2023 (16:56 hrs)

(b) Further, while it is undisputed that Joey had, in fact, received commissions from Anthony for his role in the JV, the Plaintiffs have not adduced any evidence to show that these are traceable to the assets of the Plaintiffs. The Plaintiffs have also not led the evidence to show that any of the Defendants had beneficially received assets.

(c) Third, the Plaintiffs have also failed to adduce any evidence to support a claim that there is knowledge that the assets received by Joey or any of the other Defendants are traceable to a breach of fiduciary duty and this state of knowledge makes it unconscionable for them to retain the benefits of the receipt.

291 In view of the above, it is clear that the Plaintiffs have not made out a case that the Defendants are liable as constructive trustees for knowing receipt.

Whether the Plaintiffs have made out a case that the Defendants had dishonestly assisted in the fraud by Ecohouse Brazil

The applicable law

292 The Plaintiffs also claim that the Defendants are liable to the Plaintiffs in dishonest assistance. Such a claim would be available against the Defendants if they had dishonestly assisted in the misapplication of trust property.

293 In *George Raymond Zage III*, the Court of Appeal set out the elements of dishonest assistance (at [20]) as follows:

(a) there must be a trust;

(b) there must be a breach of that trust;

Version No 1: 20 Jun 2023 (16:56 hrs)

(c) there must have been assistance rendered by a third party towards the breach; and

(d) there must be a finding that the assistance rendered by the third party was dishonest (citing *Bansal Hermant Govindprasad and another v Central Bank of India* [2003] 2 SLR(R) 33 and *Caltong (Australia) Pty Ltd v Tong Tien See Construction Pte Ltd* [2002] 2 SLR(R) 94).

The application of the law to the facts of the present case

294 The Plaintiffs have led no evidence whatsoever that there was a trust or a breach of the trust to begin with. Even if there was, in fact, a trust and a breach of that trust, the Plaintiffs have failed to adduce any evidence that assistance was rendered by the Defendants and that such assistance was dishonest. In the light of the patently bare assertion made by the Plaintiffs without any substantiation, the Plaintiffs have failed to make out a case that the Defendants had dishonestly assisted in the purported fraud by Ecohouse Brazil.

295 The Plaintiffs have sought to rely on two documents to support their argument that the Casa Nova Project and the Bosque Project were fraudulent:

(a) The first document relied upon by the Plaintiffs is an article published in the Law Society UK Gazette dated 28 March 2019 titled "Solicitor struck off over Ecohouse Ponzi scheme".[237] According to the article, Charles was struck off the roll in the UK as he was involved "in a dubious scheme which bore the hallmarks of fraud and/or money laundering". There are two issues with the Plaintiffs' reliance on this document. First, this document constitutes hearsay evidence and is, thus,

[237] 1BAEIC at pp 244 to 245.

Version No 1: 20 Jun 2023 (16:56 hrs)

inadmissible. The Plaintiffs did not call the writer of the article to give evidence during the trial. Second, even if the contents of the article are accepted as true, *ie*, the Casa Nova Project and the Bosque Project were fraudulent schemes perpetrated by Ecohouse Brazil, the article does not point to Wendy, Joey or the other Defendants partaking in any fraud perpetrated by Ecohouse Brazil. Therefore, the Plaintiffs' reliance on the article does not take their case very far.

(b) The second document relied upon by the Plaintiffs is a newspaper article by the Mirror UK dated 3 January 2021 titled "Boss seized over alleged £21m Brazil homes con".[238] Again, this document constitutes hearsay evidence. Further, even if the Ecohouse Brazil projects were part of a "con" by Ecohouse Brazil, this does not point to Wendy, Joey or the other Defendants partaking in any fraud perpetrated by Ecohouse Brazil.

296 Therefore, there is clearly no evidence that Wendy, Joey and the other Defendants had partaken in any fraud perpetuated by Ecohouse Brazil.

Whether the Plaintiffs have made out a case that the Defendants had breached their statutory duty under the Estate Agents Act

The applicable law

297 The Plaintiffs have also claimed that the Defendants had breached their statutory duty under the Estate Agents Act.

298 The elements of the tort of breach of statutory duty were recently considered by the Court of Appeal in *How Weng Fan and others v Sengkang*

[238] 1BAEIC at p 250.

Version No 1: 20 Jun 2023 (16:56 hrs)

Town Council and other appeals [2022] SGCA 72 ("*How Weng Fan*") (at [131]–[134]):

> 131 … First, we begin by observing that, while the tort of negligence is concerned with the negligent performance of an act, the tort of breach of statutory duty is concerned with allowing a private plaintiff to bring an action against a public body or officer charged with a statutory duty in order to indirectly enforce the performance of that duty by way of an action for damages arising from a breach of that duty.
>
> 132 Second, the tort of breach of statutory duty is an independent cause of action that is distinct from the tort of negligence (see [*Animal Concerns Research & Education Society v Tan Boon Kwee* [2011] 2 SLR 146 ("*Animal Concerns*")] at [24]). Unlike the tort of negligence, a breach of statutory duty is tethered specifically to the relevant statute. It is not the case that every breach of a statutory duty will sound in damages pursuant to a private law claim.
>
> 133 Third, the tort of breach of statutory duty is not constituted just by the "careless performance of a statutory duty" (see *Animal Concerns* at [21]).
>
> 134 The elements of the tort of breach of statutory duty have not been definitively laid out in Singapore. Nevertheless, it suffices for present purposes for us to note that there are at least two important elements that have been established in our jurisprudence. First, it has been observed by this court in *Animal Concerns* (at [24]), citing the House of Lords' decision in *Cutler v Wandsworth Stadium Ltd* [1949] AC 398 (at 407 and 412), that the key question as to whether a breach of statutory duty will sound in damages pursuant to a private law claim is whether, based on a construction of the statute in general and the particular provision, Parliament *intended* to provide for a right of civil action to enforce the statutory duty. Second, as Judith Prakash J (as she then was) held in *Loh Luan Choo Betsy (alias Loh Baby) (administratrix of the estate of Lim Him Long) and others v Foo Wah Jek* [2005] 1 SLR(R) 64 (at [25]), endorsing the approach of the House of Lords in *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633 (at 731), a breach of a statutory duty does not in itself give rise to a private law cause of action for damages. It is only when the construction of the statute in question establishes "that the statutory duty was imposed for the protection of a *limited class of the public* and that Parliament intended to confer on members of that class a private right of action for breach of the duty" that such a cause of action will arise [emphasis added] (see also Gary Chan and Lee Pey

Version No 1: 20 Jun 2023 (16:56 hrs)

> Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) at para 09.011).
>
> [emphasis in original]

299 Based on the observations made by the Court of Appeal in *How Weng Fan*, there are two issues that have to be addressed:

(a) Did the Defendants, in particular Wendy and Joey, breach the Estate Agents Act?

(b) If so, does the construction of the Estate Agents Act establish that the statutory duty was imposed for the protection of a limited class of the public and that Parliament intended to confer on members of that class a private right of action for breach of the duty?

The application of the law to the facts of the present case

(1) Whether there was a breach of the Estate Agents Act

300 As a fundamental point, I shall consider whether the Defendants, particularly Wendy and Joey, have breached their statutory duty under the Estate Agents Act. According to the Plaintiffs, ss 28 and 29 of the Estate Agents Act require anyone marketing foreign or local properties to be licensed as real estate agents or real estate salespersons. The Defendants, by marketing the Casa Nova Project and the Bosque Project whilst not being licensed, had breached the requirements under the Estate Agents Act.

301 I set out ss 28 and 29 of the Estate Agents Act below:

> **Estate agents to be licensed**
>
> 28.—(1) Subject to this Act, no person shall —
>
> (*a*) exercise or carry on or advertise, notify or state that he exercises or carries on, or is willing to

Version No 1: 20 Jun 2023 (16:56 hrs)

exercise or carry on, the business of doing estate agency work as an estate agent;

(*b*) act as an estate agent; or

(*c*) in any way hold himself out to the public as being ready to undertake, whether or not for payment or other remuneration (whether monetary or otherwise), estate agency work as an estate agent,

unless he is a licensed estate agent.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $75,000, or to imprisonment for a term not exceeding 3 years or to both, and in the case of a continuing offence, to a further fine not exceeding $7,500 for every day or part thereof during which the offence continues after conviction.

(3) No fee, commission or reward in relation to anything done by a person in respect of an offence under this section shall be recoverable in any action, suit or matter by any person whomsoever.

Salespersons to be registered

29.—(1) Subject to this Act —

(*a*) a person shall not be or act as a salesperson for any licensed estate agent, nor shall he hold himself out to the public as being a salesperson unless he is a registered salesperson; and

(*b*) a person shall neither accept employment or an appointment as a salesperson from, nor act as a salesperson for, any other person who is required by this Act to hold, but is not the holder of, an estate agent's licence.

(2) Subsection (1) shall not be construed as —

(*a*) requiring any registered salesperson, by reason only of the fact that he does estate agency work solely as a salesperson, to hold an estate agent's licence; or

(*b*) requiring any licensed estate agent to be registered as a salesperson.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not

Version No 1: 20 Jun 2023 (16:56 hrs)

> exceeding $25,000 or to imprisonment for a term not exceeding 12 months or to both.
>
> (4) No fee, commission or reward in relation to anything done by a person in respect of an offence under this section shall be recoverable in any action, suit or matter by any person whomsoever.

302 In order to fully appreciate ss 28 and 29 of the Estate Agents Act, it would also be useful to set out various definitions in s 3(1) of the Estate Agents Act:

> …
>
> "estate agency work", subject to subsection (3), means any work done in the course of business for a client or any work done for or in expectation of any fee (whether or not in the course of business) for a client —
>
> (*a*) being work done in relation to the introduction to the client of a third person who wishes to acquire or dispose of a property, or to the negotiation for the acquisition or disposition of a property by the client; or
>
> (*b*) being work done, after the introduction to the client of a third person who wishes to acquire or dispose of a property or the negotiation for the acquisition or disposition of a property by the client, in relation to the acquisition or disposition, as the case may be, of the property by the client;
>
> "estate agent", subject to subsection (3), means a person who does estate agency work, whether or not he carries on that or any other business;
>
> …
>
> "salesperson" means an individual who in the course of his employment or engagement (whether under a contract of service or contract for service) by, or as a director or limited liability partner of, an estate agent does estate agency work;
>
> …

303 Based on the above provisions of the Estate Agents Act, any person seeking to market properties, where this amounts to the introduction of a client

Version No 1: 20 Jun 2023 (16:56 hrs)

to a third person who wishes to acquire or dispose of a property, would be involved in estate agency work. Under s 28 of the Estate Agents Act, such persons would be required to be licensed as estate agents. In the present case, it is undisputed that Wendy and Joey were not licensed as estate agents at the material time.

304 During the trial, however, the Defendants have adduced a document containing an email correspondence between Fong and a representative of the Council for Estate Agencies ("CEA"). In an email dated 17 July 2012, the following opinion was stated by the representative of the CEA:[239]

> …
>
> 2, A developer or its related companies (as defined under the Companies Act (Cap 50, 2006 Rev Ed)) and their employees may sell the property owned by the developer without need for licensing or registration under the Estate Agents Act. . [*sic*] If the company is selling properties other than the developers, the company will have to apply for a licence and register the salespersons.
>
> …

305 The Defendants claim that, based on Fong's advice, they had relied on this email by the representative of the CEA. The issue, therefore, is whether the Defendants, in particular, Wendy and Joey, could be said to be employees of Ecohouse Brazil or its related companies.

306 Sections 5 and 6 of the Companies Act (Cap 50, 2006 Rev Ed) set out the parameters of when a company would be deemed as a related company of another company:

---

239 DBD at pp 27 to 28.

Version No 1: 20 Jun 2023 (16:56 hrs)

Definition of subsidiary and holding company

5.—(1) For the purposes of this Act, a corporation shall, subject to subsection (3), be deemed to be a subsidiary of another corporation, if —

(*a*) that other corporation —

(i) controls the composition of the board of directors of the first-mentioned corporation;

(ii) controls more than half of the voting power of the first-mentioned corporation; or

(iii) holds more than half of the issued share capital of the first-mentioned corporation (excluding any part thereof which consists of preference shares and treasury shares); or

(*b*) the first-mentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.

(2) For the purposes of subsection (1), the composition of a corporation's board of directors shall be deemed to be controlled by another corporation if that other corporation by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove all or a majority of the directors, and for the purposes of this provision that other corporation shall be deemed to have power to make such an appointment if —

(*a*) a person cannot be appointed as a director without the exercise in his favour by that other corporation of such a power; or

(*b*) a person's appointment as a director follows necessarily from his being a director or other officer of that other corporation.

(3) In determining whether one corporation is a subsidiary of another corporation —

(*a*) any shares held or power exercisable by that other corporation in a fiduciary capacity shall be treated as not held or exercisable by it;

(*b*) subject to paragraphs (*c*) and (*d*), any shares held or power exercisable —

Version No 1: 20 Jun 2023 (16:56 hrs)

(i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other corporation;

(*c*) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned corporation or of a trust deed for securing any issue of such debentures shall be disregarded; and

(*d*) any shares held or power exercisable by, or by a nominee for, that other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (*c*)) shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) A reference in this Act to the holding company of a company or other corporation shall be read as a reference to a corporation of which that last-mentioned company or corporation is a subsidiary.

(5) For the purposes of this Act, the Depository, as defined in section 130A, shall not be regarded as a holding company of a corporation by reason only of the shares it holds in that corporation as a bare trustee.

When corporations deemed to be related to each other

6. Where a corporation —

(*a*) is the holding company of another corporation;

(*b*) is a subsidiary of another corporation; or

(*c*) is a subsidiary of the holding company of another corporation,

Version No 1: 20 Jun 2023 (16:56 hrs)

> that first-mentioned corporation and that other corporation shall for the purposes of this Act be deemed to be related to each other.

307 Based on the terms of the JV Agreement and the shareholding of Ecohouse Asia Pacific, Ecohouse Asia Pacific was not a subsidiary of Ecohouse Brazil. This is because Ecohouse Brazil did not: (a) control the composition of the board of directors of Ecohouse Asia Pacific; (b) control more than half of the voting power of Ecohouse Asia Pacific; or (c) hold more than half of the issued share capital of Ecohouse Asia Pacific. Therefore, Wendy and Joey cannot avail themselves of the exception set out in the email by the representative of the CEA dated 17 July 2012. Hence, when marketing the Casa Nova Project and the Bosque Project, Wendy and Joey were required to be licensed as estate agents under s 28 of the Estate Agents Act. Their failure to do so may give rise to criminal liability punishable by a fine or imprisonment or both.

(2) Whether the Plaintiffs have shown that the statutory duty was imposed for the protection of a limited class of the public and that Parliament intended to confer on members of that class a private right of action for breach of the duty

308 A breach of the statutory duty under s 28 of the Estate Agents Act carries criminal liability which is punishable by a fine or imprisonment or both. In this regard, the Plaintiffs have failed to show how the statutory duty under s 28 of the Estate Agents Act was imposed for the protection of a limited class of the public. Further, it is entirely unclear how the Plaintiffs can make the assertion that Parliament intended to confer on members of that class a private right of action for the breach of duty. The Plaintiffs state, in their closing submission that "it could not have been the Parliament's intention to deprive victims of a

Version No 1: 20 Jun 2023 (16:56 hrs)

private right of action".[240] The issue is whether Parliament specifically intended to confer on members of a limited class of the public a private right of action for the breach of the statutory duty: *How Weng Fan* at [134]. The Plaintiffs have failed to adduce evidence to support such an argument.

309 Further, Wendy and Joey may reasonably point to the legal advice given by Fong.[241] On this basis, even if the Plaintiffs were able to show that a private right of action arises from the breach of the statutory duty under s 28 of the Estate Agents Act, Wendy and Joey may be able to avoid liability for a breach of the Estate Agents Act.

310 On the whole, the Plaintiffs have failed to make a case under the tort of breach of statutory duty against the Defendants, particularly Wendy and Joey.

Whether WKIN is liable in any way

311 Finally, I shall consider whether WKIN is liable. Cindy conceded at the trial that the thrust of the Plaintiffs' claim against WKIN was founded on the fact that Wendy had used a company email address which carried the domain name "@wkinvestmentnetwork.com". Cindy's evidence in Court during the cross-examination by Ms Oei is as follows:[242]

> Q Yes. Now, what I'm saying to you, Madam Yee, is that -- I'm now back at page 114, that just because the email domain name says WK Investment Network, it does not mean that it must belong to WK Investment Network Pte Ltd.
>
> A. But to me as a student of Wendy Kwek, I just know that this -- Wendy was using two companies, it could

240 Plaintiffs' Closing Submissions at para 152.

241 23 March 2023 Transcript at p 75 (lines 9 to 19).

242 7 March 2023 Transcript at pp 23 (line 25) to 24 (line 8).

Version No 1: 20 Jun 2023 (16:56 hrs)

> be concurrently, one after the other, the order I may not remember correctly, *but I remember correctly she was using two, yes. Two company email address*.
>
> [emphasis added]

312 The fact that Wendy had used an email address containing a domain name belonging to WKIN does not necessarily mean that WKIN was liable for the misrepresentations made by Wendy. Wendy alleges that she used her various company email addresses due to her own tardiness.[243]

313 Cindy stated during the trial that she included WKIN as a party to the present suit because of her own experience in the earlier *Faber* decisions where the lower court had only imputed liability on the company, and not the individuals personally. Cindy's explanation in Court during the cross-examination by Ms Oei is as follows:[244]

> Q. Because WK Investment Network Pte Ltd was used to contact you, therefore you hold the company responsible for your loss, is that what you are saying?
>
> A. But this company were owned by Wendy Kwek – together with Wendy Kwek.
>
> Q. I see. And in what way has this company -- sorry, let me rephrase that. How has this company caused your loss?
>
> COURT: This company, which company?
>
> MS OEI: WK Investment Network.
>
> A. Your Honour, the reason we consider to sue also the company, it was because of our bad experience in our suit against the Faber property, the lower judge – the lower court judge award the -- the lower court judge met [*sic*] the company to pay us but the company was a two-dollar company, the company was even closed during that time but the

243 14 March 2023 Transcript at p 104 (lines 15 to 16).

244 7 March 2023 Transcript at pp 25 (line 4) to 26 (line 2).

Version No 1: 20 Jun 2023 (16:56 hrs)

> lower court judge made a mistake to make the company pay us. That is how we end up with our appeal to High Court.
>
> Q. I see. So because your experience in the District Court was that judgment was given against a two-dollar company, you decided that you will include the director and shareholders as well?
>
> A. Yes, you are right, your Honour.

314 The Plaintiffs' attempt to include WKIN as a party to the present suit simply because of their own previous litigation experience is unsatisfactory. On the evidence, WKIN's involvement, if at all, appears to have been limited to the administrative aspects of organising the presentations at which the Casa Nova Project and the Bosque Project were launched before WK Events took over as the entity responsible for organising the presentations. This is because, as Wendy had stated at the trial, the transition to using WK Events rather than WKIN as the entity to organise the presentations took a few months.[245] Therefore, I find that WKIN should not be held liable for any misrepresentation made by Wendy or the negligence of Wendy and Joey.

Losses which the Plaintiffs are entitled to claim

315 For the above reasons, Wendy and Joey are jointly liable for the Plaintiffs' losses. The losses which the Plaintiffs are entitled to claim are fairly straightforward. They include the sums of S$230,000 (for the Casa Nova Project) and S$368,000 (for the Bosque Project) which they had paid.

316 The Plaintiffs have sought to also claim the 20% return of the investments they were entitled to under the Casa Nova SPA and the Bosque SPA, *ie*, S$46,000 (for the Casa Nova Project) and S$73,600 (for the Bosque

[245] 17 March 2023 Transcript at pp 23 (line 1) to 24 (line 5).

Version No 1: 20 Jun 2023 (16:56 hrs)

Project). During the oral closing submissions of the parties, however, Mr Goh conceded that the 20% return of the investments was not actual loss suffered by the Plaintiffs.[246]

317 The general tortious principle is that damages are compensatory in nature. In other words, damages seek to put the injured plaintiff in the same position, as far as possible, as if the tort had not been committed. This was clearly set out by the court in *ACES System Development Pte Ltd v Yenty Lily (trading as Access International Services)* [2013] 4 SLR 1317 (at [14]):

> The compensation principle is a general principle which prescribes that when a tortious wrong is committed by the defendant, the plaintiff ought – as a matter of logic, commonsense as well as justice and fairness – to be put in the same position (as far as it is possible) as if the tort had not been committed. In the oft-cited words of Lord Blackburn in the House of Lords decision of *Livingstone v The Rawyards Coal Company* (1880) 5 App Cas 25 (at 39):
>
> > [W]here any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

318 What this means, therefore, is that the Plaintiffs cannot recover more in damages than their actual loss. For this reason, the Plaintiffs are unable to succeed in their claim for the 20% return of the investments they were entitled to under the Casa Nova SPA and the Bosque SPA, *ie*, S$46,000 (for the Casa Nova Project) and S$73,600 (for the Bosque Project).

---

246 21 April 2023 Transcript at pp 45 (line 16) to 46 (line 22).

Version No 1: 20 Jun 2023 (16:56 hrs)

319 The Plaintiffs also claim loss of opportunity but there is no evidence to support it. Therefore, the claim of loss of opportunity is dismissed.

320 The Plaintiffs are also awarded interest on the judgment sum, at the rate of 5.33% per annum pursuant to s 12(1) of the Civil Law Act 1909 (2020 Rev Ed), from the date of service of the writ till the date of judgment. While the Plaintiffs initially sought interest on the judgment sum at the rate of 10% per annum, Mr Goh accepted at the oral closing submissions that the Plaintiffs did not have evidence to support the claim for the higher interest rate of 10% per annum.[247]

Summary of my decision

321 In summary, I make the following findings:

(a) On the preliminary issue, the claims against WK Events, Ecohouse Asia Pacific and Ecohouse Singapore cannot be sustained as these entities no longer exist as they had been struck off the Register. Further, the Plaintiffs had not made any application to restore WK Events, Ecohouse Asia Pacific and Ecohouse Singapore to the Register.

(b) The evidence reveals that Wendy and Joey were deeply involved in the marketing of the Casa Nova Project and the Bosque Project. They were jointly responsible for the Four Representations, *ie*, the Brazilian Government Representation, the Escrow Representation, the Due Diligence Representation and the Investment Return Representation for the Casa Nova Project and the Bosque Project, although it was Wendy who presented the Four Representations.

---

247 21 April 2023 Transcript at pp 41 (line 10) to 42 (line 7).

Version No 1: 20 Jun 2023 (16:56 hrs)

(c) The Plaintiffs have failed to prove on a balance of probabilities that the Brazilian Government Representation and the Investment Return Representation were false. Instead, only the Escrow Representation and the Due Diligence Representation were false in relation to both the Casa Nova Project and the Bosque Project.

(d) However, the Plaintiffs have failed to make out a case to prove that the Escrow Representation and Due Diligence Representation were fraudulent misrepresentations made by Wendy and Joey: (i) knowingly; (ii) without belief in its complete truth; or (iii) recklessly, without caring whether it be true or false. A case of fraudulent misrepresentation requires a high standard of proof which the Plaintiffs have failed to meet.

(e) I find that Wendy and Joey had intended for the Plaintiffs to rely on the Escrow Representation and the Due Diligence Representation. The evidence shows that the Plaintiffs had only relied on the Due Diligence Representation when they entered into the Casa Nova SPA and the Bosque SPA. The Plaintiffs had not relied on the Escrow Representation as they had knowingly signed the two Escrow Agreements with full knowledge of the terms contained therein which were different from the Escrow Representation made by Wendy.

(f) The Plaintiffs have failed to make out a case of misrepresentation under s 2(1) of the MRA against Wendy and Joey in relation to the Due Diligence Representation. A claim under the MRA is founded in contract, *ie*, there must be a contract between the representor and the representee. In the present case, the Defendants were not parties to any contract with the Plaintiffs. For this reason, the Plaintiffs' claim under s 2(1) of the MRA must fail.

Version No 1: 20 Jun 2023 (16:56 hrs)

(g) The Plaintiffs have made out a case of negligent misrepresentation against Wendy and Joey for the following reasons:

(i) It was factually foreseeable that the Plaintiffs would suffer losses if Wendy and Joey did not take reasonable care in ensuring the accuracy of the Due Diligence Representation to the Plaintiffs. There was also a clear assumption of responsibility by Wendy and Joey. Wendy and Joey had to exercise care to ensure that the Due Diligence Representation to the investors and the Plaintiffs were factually accurate and true. Wendy and Joey knew or ought to have known of such reliance by the investors and the Plaintiffs. Therefore, there is sufficient legal proximity between the Plaintiffs and Wendy and Joey for a duty of care to arise. There are no policy considerations which militate against the imposition of a duty of care against Wendy and Joey. Wendy and Joey had breached the duty of care which they owed to the Plaintiffs by failing to take reasonable care in ensuring the accuracy of the Due Diligence Representation made to the Plaintiffs.

(ii) The Plaintiffs had suffered losses, *ie*, the sums they paid under the Casa Nova SPA and the Bosque SPA.

(h) The Plaintiffs have failed to make out a case in relation to the First Collateral Contract and the Second Collateral Contract for the following reasons:

(i) For the First Collateral Contract, the Plaintiffs have failed to show that there was fresh consideration.

Version No 1: 20 Jun 2023 (16:56 hrs)

(ii) For the Second Collateral Contract, just before the purported promise made by Wendy at the 8 November 2013 Meeting, the Plaintiffs proceeded to sign the Deeds of Modification with Ecohouse Brazil in relation to the Casa Nova Project and the Bosque Project on 6 November 2013. Therefore, the Plaintiffs did not demand for the return of the amounts they invested in the Casa Nova Project and the Bosque Project because they had already agreed to offer a one-year extension to Ecohouse Brazil to fulfil its contractual obligations under the Deeds of Modification. Wendy's purported promise had no bearing on the Plaintiffs' decision not to demand for the return of their investment amounts since they had independently signed the Deeds of Modification.

(i) The Plaintiffs have failed to make out a case that the Defendants are liable as constructive trustees for knowing receipt. The Plaintiffs have not led evidence to show that there was a disposal of the Plaintiffs' assets in breach of fiduciary duty. The Plaintiffs have also failed to adduce any evidence to support a claim that there is knowledge that the commissions received by Joey or any of the other Defendants are traceable to a breach of fiduciary duty and that this state of knowledge makes it unconscionable for them to retain the benefits of the receipt.

(j) The Plaintiffs have failed to make out a case that the Defendants had dishonestly assisted in the fraud perpetuated by Ecohouse Brazil. There is no evidence that there was a trust or a breach of the trust to begin with. The Plaintiffs have also not produced evidence to show that Wendy and Joey were working with Ecohouse Brazil and Anthony to defraud the Plaintiffs.

Version No 1: 20 Jun 2023 (16:56 hrs)

(k) The Plaintiffs have failed to make out a case under the tort of breach of statutory duty under the Estate Agents Act. It is undisputed that Wendy and Joey were not licensed as estate agents at the material time. Wendy and Joey had sought to rely on an email from the CEA which stated that a developer or its related companies and their employees may sell the property owned by the developer without the need for a licence. However, Ecohouse Asia Pacific does not appear to be a related company of Ecohouse Brazil under the Companies Act (Cap 50, 2006 Rev Ed). A breach of the statutory duty under s 28 of the Estate Agents Act carries criminal liability which is punishable by a fine or imprisonment or both. The Plaintiffs have failed to show how the statutory duty under s 28 of the Estate Agents Act was imposed for the protection of a limited class of the public or that Parliament intended to confer on members of that class a private right of action for breach of the statutory duty.

(l) The thrust of the Plaintiffs' claim against WKIN is because Wendy had used WKIN's email address which carried the domain name "@wkinvestmentnetwork.com". However, the fact that Wendy had used an email address containing a domain name belonging to WKIN does not necessarily mean that WKIN was liable for the misrepresentations made by Wendy. WKIN's involvement, if at all, appears to have been limited to the administrative aspects of organising the presentations at which the Casa Nova Project and the Bosque Project were launched. Therefore, WKIN cannot be held liable for the conduct of Wendy or Joey.

(m) Finally, the Plaintiffs have succeeded in their claim against Wendy and Joey for negligent misrepresentation. Therefore, Wendy and

Version No 1: 20 Jun 2023 (16:56 hrs)

Joey are to be held jointly liable for the damages which the Plaintiffs are entitled to. The Plaintiffs' entitlement would be the sums of S$230,000 (for the Casa Nova Project) and S$368,000 (for the Bosque Project) which they had paid. The Plaintiffs' claim for the 20% return of the investments they were entitled to under the Casa Nova SPA and the Bosque SPA, *ie*, S$46,000 (for the Casa Nova Project) and S$73,600 (for the Bosque Project) is dismissed given that these amounts did not constitute actual losses suffered by the Plaintiffs. The Plaintiffs are awarded interest on the judgment sum, at the rate of 5.33% per annum pursuant to s 12(1) of the Civil Law Act 1909 (2020 Rev Ed), from the date of service of the writ till the date of judgment.

Conclusion

322 The investments in the Casa Nova Project and the Bosque Project were clearly risky. As Wendy herself acknowledged at the trial, the Casa Nova Project and the Bosque Project were projects which came with "high risk, high returns".[248] In such a context, it was incumbent upon Wendy and Joey to act with utmost care and caution when marketing the Casa Nova Project and the Bosque Project to investors. Their failure to present an accurate and true Due Diligence Representation ultimately caused investors and the Plaintiffs to rely on the Due Diligence Representation which ultimately led to their losses. This could have been avoided had there been reasonable care exercised by Wendy and Joey in the Due Diligence Representation made when marketing the Casa Nova Project and the Bosque Project.

[248] 14 March 2023 at p 122 (line 1).

Version No 1: 20 Jun 2023 (16:56 hrs)

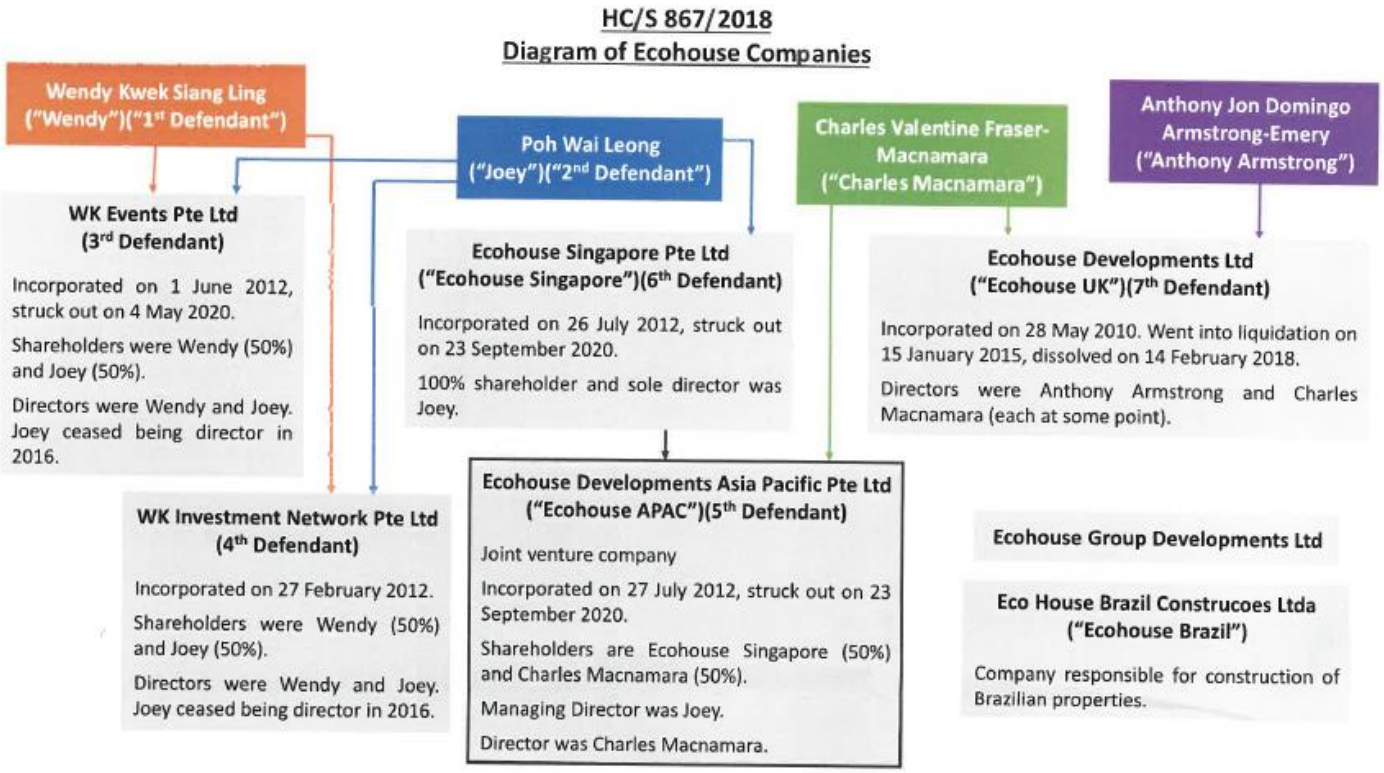
323 The Plaintiffs have succeeded in their claim against Wendy and Joey. Thus, Wendy and Joey are ordered to pay costs to the Plaintiffs to be agreed upon or taxed. As for the rest of the Defendants, the Plaintiffs' case against them is dismissed. For the companies that were struck off the Register, namely WK Events, Ecohouse Asia Pacific and Ecohouse Singapore, I shall make no order as to costs as they are non-existent entities. As for WKIN, the Plaintiffs are ordered to pay costs to WKIN to be agreed upon or taxed.

Tan Siong Thye
Judge of the High Court

Goh Kim Thong Andrew (De Souza Lim & Goh LLP) (instructed), Lim Joo Toon and Michael Lukamto (Joo Toon LLC) for the plaintiffs;
Oei Ai Hoea Anna (Tan Oei & Oei LLC) for the first defendant, the third defendant and the fourth defendant;
Sng Kheng Huat (Sng & Co) for the second defendant, the fifth defendant and the sixth defendant

Version No 1: 20 Jun 2023 (16:56 hrs)

Annex



Version No 1: 20 Jun 2023 (16:56 hrs)