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

[2024] SGHC 103

Suit No 234 of 2022

Between

Chen Qiming

… *Plaintiff*

And

(1) Huttons Asia Pte Ltd
(2) Ong Jianlong
(3) Wu Lisha

… *Defendants*

JUDGMENT

[Tort — Misrepresentation — Fraud and deceit]
[Tort — Misrepresentation — Negligent misrepresentation]
[Contract — Formation — Certainty of terms]
[Statutory Interpretation — Construction of statute — Whether Estate Agents Act 2010 and subsidiary legislation confer private rights of suits in respect of an estate agent's breach of statutory duty]

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Chen Qiming
v
Huttons Asia Pte Ltd and others

[2024] SGHC 103

General Division of the High Court — Suit No 234 of 2022
S Mohan J
21–24 November 2023, 2 February 2024

17 April 2024 Judgment reserved.

S Mohan J:

1 This dispute arises out of a sale and purchase of a condominium unit that went awry. The plaintiff, Mr Chen Qiming ("Chen"), was the purchaser. Throughout the transaction, Chen was attended to by a real estate agent – that agent was the second defendant, Mr Ong Jianlong ("Ong").

2 Chen was granted an option to purchase a condominium unit and made substantial payments toward the purchase price. However, those payments were ultimately forfeited when Chen failed to exercise the option and pay the remainder of the purchase price within the time allowed. Chen now looks to hold Ong responsible for the loss that he has suffered. Chen also makes a claim against the first defendant, Huttons Asia Pte Ltd ("Huttons"). Chen alleges that Huttons is vicariously liable for Ong's putative defaults.

3 Having carefully considered the evidence and the parties' submissions, I dismiss all of Chen's claims against both Ong and Huttons. These are my reasons.

The background

4 Chen is a national of the People's Republic of China. According to Chen, he makes a living by trading in "futures, foreign currency and spot gold".[1]

5 The third defendant, Mdm Wu Lisha ("Wu"), is Chen's former wife. Wu was joined in these proceedings on the defendants' application, but she is only a nominal defendant. Chen is not pursuing any claims against Wu.

6 Chen acquired a Singapore-incorporated company sometime in 2017, which he renamed "Long Asia Capital Pte Ltd" ("Long Asia").[2] It appears that Long Asia is in the business of foreign currency trading.[3]

7 Chen says that in or around May 2018, the Monetary Authority of Singapore gave its "in-principle approval" to Long Asia's application for a foreign currency trading license. It appears that after this "in-principle approval" was given, Chen began to seriously consider the prospect of settling in Singapore on a more permanent basis. Specifically, Chen says that he "began to

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1 Chen's affidavit of evidence-in-chief ("Chen's AEIC") at [3].

2 Chen's AEIC at [3].

3 Chen's AEIC at [11].

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consider applying for [Permanent Residency] under the [Global Investors Programme] Scheme".[4]

8 Consistent with that intention, Chen resolved to purchase a residential property in Singapore. Towards that end, Chen sought the assistance of Mr Ong Yishan ("Yishan") in or around June 2018.[5] At that time, Yishan was the Chief Executive Officer of Long Asia. According to Chen, they had been friends for some five years by that point in time.[6]

9 In response to Chen's queries, Yishan introduced Ong to Chen sometime in June 2018.[7] As I mentioned, Ong is a real estate agent by trade. He is "registered" with Huttons,[8] and here I say "registered" because the parties disagree on the legal nature of Ong's relationship with Huttons. However, nothing turns on this disagreement, as I explain at [166] below.

10 Ong introduced Chen to various properties in Singapore before eventually suggesting that Chen consider apartments for sale in the condominium development known as "Lloyd SixtyFive"[9] (the "Development").

11 TG (2010) Pte Ltd ("TG") is the owner and developer of the Development. Huttons was the real estate agency appointed by TG to market the sale of units in the Development. On this point, Chen says that Huttons was

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4 Chen's AEIC at [11]–[12].

5 Chen's AEIC at [11].

6 Chen's AEIC at [7].

7 Chen's AEIC at [11].

8 Ong Jianlong's affidavit of evidence-in-chief ("Ong's AEIC") at [1].

9 Chen's AEIC at [13].

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also appointed by TG to *sell* units in the Development on TG's behalf;[10] the defendants reject that suggestion.[11] Again, nothing turns on this difference of opinion for the reasons given at [166] below.

12 It is not disputed that between June 2018 and October 2018, Chen visited certain of the Development's show unit(s) and/or actual unit(s) on three separate occasions:[12]

(a) The first viewing took place on or around 15 June 2018 (the "First Viewing");

(b) The second took place on or around 18 October 2018 (the "Second Viewing"); and

(c) The third took place on or around 23 October 2018 (the "Third Viewing").

13 By 25 October 2018 at the very latest, Chen had decided to purchase Unit #06-08 of the Development (the "Property"). That is because on that day, Chen paid to TG a sum of S$514,700.00 by telegraphic transfer. That sum was a booking fee amounting to 10% of the Property's purchase price of S$5,147,000.00 (the "Booking Fee").[13] TG received that payment on 30 October 2018, whereupon it granted Chen an Option to Purchase ("OTP")[14] in respect of the Property on the same day.[15] In essence, the OTP was valid for 24 months

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10 Statement of Claim (Amendment No. 3) ("SOC") at [3]; Reply (Amendment No. 1) ("Reply") at [5].

11 Defence (Amendment No. 1) ("Defence") at [5].

12 SOC at [5]; Chen's AEIC at [13]; Ong's AEIC at [8], [12], [16] and [18].

13 Chen's AEIC at [40]; Ong's AEIC at [17].

14 Chen's AEIC at pp 65–71.

15 Ong's AEIC at [18].

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from the date it was issued, and would (unless exercised) expire at 4.00pm on 30 October 2020 whereupon it would be null and void.[16] In order to exercise the OTP, Chen had to sign that part of the OTP marked "ACCEPTANCE COPY" and deliver the same to TG's solicitors before the expiry of the OTP, upon which a binding contract for the sale and purchase of the Property would be formed.[17] A failure to exercise the OTP (among other things) would result in the forfeiture to TG of all payments made prior thereto (*ie*, payments amounting to 30% of the purchase price) (see [14] below).[18] If the OTP was exercised, completion of the purchase of the Property would take place eight weeks after the date on which the OTP had been exercised and, on the date fixed for completion, the remaining 70% of the purchase price would have to be paid.[19]

14 In addition to the Booking Fee, Chen made the following payments towards the purchase price of the Property:

(a) S$7,350.00 on 14 December 2018 (which Ong paid on behalf of Chen, who later reimbursed Ong);[20]

(b) S$250,000.00 on 19 December 2018;[21]

(c) S$310,000.00 on 1 April 2019;[22]

(d) S$310,000.00 on 6 May 2019;[23] and

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16 Chen's AEIC at p 67, para F.

17 Chen's AEIC at p 68, para G.

18 Chen's AEIC at p 67, para E.

19 Chen's AEIC at pp 68–69, para 6.

20 Chen's AEIC at [45].

21 Chen's AEIC at [45].

22 Chen's AEIC at [52].

23 Chen's AEIC at [52].

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(e) S$152,050.00 on 7 May 2019.[24]

In total, Chen had paid S$1,544,100.00 (representing 30% of the purchase price) by 7 May 2019.

15 Chen failed to exercise the OTP by 4.00pm on 30 October 2020 in the manner described at [13] above. Chen therefore forfeited all of the S$1,544,100.00 he had previously paid to TG.

16 For easy reference, the following table sets out a chronology of the events that were either not disputed or were indisputable having regard to the objective evidence before me. Most of them I have already mentioned; those that I have not, I will come to at the appropriate juncture:

Event	Date
First Viewing	On or around 15 June 2018
Second Viewing	On or around 18 October 2018
Third Viewing	On or around 23 October 2018
Payment by Chen to TG of S$514,700.00 (representing 10% of the purchase price)	On or around 25 October 2018
OTP was issued to Chen by TG	30 October 2018
Payment by Chen to TG of S$7,350.00 (representing approximately 0.14% of the purchase price)	14 December 2018

[24] Chen's AEIC at [52].

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Payment by Chen to TG of S$250,000.00 (representing approximately 4.86% of the purchase price)	19 December 2018
Chen received the keys to the Property	20 December 2019
Payment by Chen to TG of S$310,000.00 (representing approximately 6.02% of the purchase price)	1 April 2019
Payment by Chen to TG of S$310,000.00 (representing approximately 6.02% of the purchase price)	6 May 2019
Payment by Chen to TG of S$152,050.00 (representing approximately 2.95% of the purchase price)	7 May 2019
The first recorded conversation between Chen and Ong (the "First Recorded Conversation")	13 July 2020
The second recorded conversation between Chen and Ong (the "Second Recorded Conversation")	9 September 2020
The third recorded conversation between Chen and Ong (the "Third Recorded Conversation")	22 September 2020
Lapsing of the OTP and forfeiture of the S$1,544,100.00 paid by Chen	30 October 2020 at 4.00pm

17 Apart from the events set out in the table above, there was virtually no common ground between the parties as to what happened in connection with the transaction.

18 If Chen's version of events is to be accepted, then Ong and/or Huttons must answer for his loss. Specifically, Chen claims against Ong for fraudulent and/or negligent misrepresentation; breach of contract; negligence; and breach of statutory duty. As I have mentioned at [2], Chen is also seeking to hold Huttons vicariously liable for Ong's defaults. If, on the other hand, the

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defendants' version of events is to be accepted, then Chen's claims must fail and he is responsible for his own loss.

The general principles on fraudulent and negligent misrepresentation

19 I begin with Chen's claim in fraudulent and/or negligent misrepresentation. Before I turn to the alleged misrepresentations and the factual issues that surround them, it will be helpful to first summarise the general principles of law on fraudulent and negligent misrepresentation.

20 The cumulative ingredients to a claim in fraudulent misrepresentation are settled (see *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14]):

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

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

(e) Fifth, the representation must have been 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.

A claim in fraudulent misrepresentation cannot succeed unless *all* of the foregoing ingredients are made out by the plaintiff.

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21 As regards negligent misrepresentations, the following cumulative ingredients have to be established (see *Ma Hongjin v Sim Eng Tong* [2021] SGHC 84 ("*Ma Hongjin*") at [20]):

(a) That the defendant made a false representation of fact to the plaintiff;

(b) That the representation induced the plaintiff's actual reliance;

(c) That the defendant owed the plaintiff a duty to take reasonable care in making the representation;

(d) That the defendant breached that duty of care; and

(e) That the breach caused damage to the plaintiff.

Again, the plaintiff must establish *all five* of the foregoing elements in order to successfully make out the claim in negligent misrepresentation.

The Occupation Representation

Chen's case

22 It is Chen's pleaded case that Ong had told him that he (*ie*, Chen) "could move into [the Property] immediately upon payment of a sum of $514,700 being 10% deposit".[25] I will refer to this as the "Occupation Representation".

23 In his Statement of Claim, Chen pleaded that Ong had made the Occupation Representation "[d]uring the viewings and in particular at the final viewing".[26] It is similarly stated in Chen's affidavit of evidence-in-chief

[25] SOC at [5(a)].

[26] SOC at [5].

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("AEIC") that the Occupation Representation was made to him "over the course of the 3 viewings … repeatedly",[27] although he further elaborated that at some point during the First Viewing, Ong had told him that:[28]

> … [Chen] could pay 1% of the asking price followed by 9% of the asking price 2 weeks thereafter and *upon paying the aforesaid 10% of the asking price, [he] could immediately move in to reside in the unit* and save on accommodation costs whenever [he was] in Singapore.
>
> [emphasis added]

24 Chen says that he agreed to "pay 10% of the Sale Price upfront" because he found "[the] arrangement to be suitable and convenient for his needs".[29]

25 It was Chen's undisputed evidence[30] that:

(a) Shortly after he paid the Booking Fee, he left Singapore for China;

(b) Chen was in China when TG granted him the OTP on 30 October 2018; and

(c) Yishan forwarded a digital copy of the OTP on the same day *via* a WeChat message.

26 The OTP in fact contained a clause (the "Tenancy Clause") which provides – contrary to the Occupation Representation – that Chen will only be

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27 Chen's AEIC at [37].

28 Chen's AEIC at [16].

29 Reply at [9].

30 Chen's AEIC at [40]–[41].

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granted a tenancy over the Property upon payment of the Booking Fee *and* a further sum amounting to 20% of the purchase price (the "Further Sum"):[31]

> B. The Purchaser shall pay:
>
> (a) *a **further** sum of Singapore Dollars One Million Twenty Nine Thousand and Four Hundred Only (S$1,029,400.00) equivalent to twenty per cent (20%) of the Sale Price by 28 February 2019*;
>
> (collectively, the "Further Sum") and ***in consideration of the Further Sum, the Vendor shall grant a tenancy of the Property***, commencing on the date falling on the fourteenth (14th) business day after the date of the tenancy agreement to be entered into between the Vendor and the Purchaser ("Commencement Date"), on and subject to the terms as set out in the tenancy agreement annexed as Schedule 1 to this Option (the "Tenancy Agreement").
>
> [emphasis in original omitted; emphasis added in italics and bold italics]

27 It was Chen's evidence that sometime in early December 2018, he communicated to Ong his intention to immediately move into the Property upon his return to Singapore from China. He says that it was only *then* that Ong drew his attention to the Tenancy Clause and told him that he could only move into the premises upon payment of the Further Sum.[32]

28 I summarise Chen's account of the events that followed:

(a) He felt "very indignant" and "deceived" upon learning that he could only move into the Property upon payment of the Further Sum. He then "furiously questioned Ong on the WeChat group chat (with Yishan, Ong and I [*ie*, Chen] as members) whether TG was a scam company". He also allegedly told Ong that he was "seriously

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31 Agreed Bundle of Documents ("AB") at pp 9–10.

32 Chen's AEIC at [43].

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considering to cancel [*sic*] the entire purchase"[33] and, according to his Statement of Claim, he "wanted to … obtain refund [*sic*] of the 10% deposit paid under the OTP".[34]

(b) It was pleaded in Chen's Statement of Claim that Ong "persuaded" Chen not to abandon the transaction;[35] in his AEIC, however, he said that Ong *and Yishan* "jointly persuaded" him not to do so.[36]

(c) To resolve this issue, Ong negotiated for a better deal with TG. Ong subsequently informed Chen that TG was prepared to allow him to move into the Property upon payment of a further 5% (as opposed to 20%) of the purchase price, with the remaining 15% to be paid by 28 February 2019.[37]

(d) Although Chen "still felt rather indignant, [he] decided not to abort the purchase altogether. After all, the next 20% would have to be paid sooner or later and Ong was recommended to [Chen] by Yishan and on account of Yishan, [Chen] decided to let the matter slide." He thus agreed to the alternative arrangement negotiated by Ong.[38]

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33 Chen's AEIC at [44].

34 SOC at [7(b)].

35 SOC at [7(b)].

36 Chen's AEIC at [44].

37 Chen's AEIC at [44].

38 Chen's AEIC at [45].

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(e) By 19 December 2018, Chen had made payment of the further 5% (amounting to S$257,350.00). He received the keys to the Property on the next day (*ie*, 20 December 2018).[39]

The defendants' case

29 The defendants, for their part, deny that Ong ever made the Occupation Representation to Chen. To the contrary, they say that Chen *knew* that he would only be entitled to move into the Property upon payment of both the Booking Fee and the Further Sum.[40] For brevity, I will refer to this as the "Occupation Condition". That was a point that was clearly and repeatedly explained to Chen before he decided to proceed with the transaction. In any event, Chen – having signed the Purchaser Particulars Form and Side Letter, both of which I will turn to shortly – was to be treated as having read and understood the terms of the OTP.

30 As a starting point, the defendants say that over the three viewings, Chen was accompanied by Ong, Yishan, one Mr Tang Chee Meng ("Tang", who is sometimes also referred to as "Raymond"), and one Ms Rhea Fellazar ("Rhea"):

(a) Like Ong, Tang is a "real estate salesperson" registered with Huttons. According to Tang, he worked as a "project tagger" for the Development and his "primary responsibility was to market and promote [the] Development". He explains that "[p]roject taggers have a strong familiarity with their particular development and undergo

39 Chen's AEIC at [47]; Ong's AEIC at [20]–[21].

40 Defendants' Closing Submissions ("DCS") at [9]–[20].

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specialised training to enable them to provide potential buyers with the information they need to make informed decisions."[41]

(b) Rhea was not called as a witness in these proceedings but according to Tang, Rhea was TG's "marketing executive" and she was present because "the Development was already completed and had residents living there. The keys to the show units and bare/empty units were held by the Developer's staff for security reasons."[42]

31 It was Ong's evidence that the Occupation Condition was explained to Chen as early as at the First Viewing on 15 June 2018:[43]

> … Mr Tang and I [*ie*, Ong] gave Mr Chen detailed explanations of the Enhanced Deferred Payment Scheme ("**EDP Scheme**"), including the terms and conditions and payment obligations.
>
> …
>
> (b) [The EDP Scheme] also allowed buyers to move into the property *upon payment of 30% of the Sale Price* within eight weeks from the date the option was granted.
>
> …
>
> [emphasis in original in bold; emphasis added in italics]

The Enhanced Deferred Payment Scheme ("EDP Scheme") mentioned in the extract of Ong's evidence is a significant part of the context in which Chen decided to purchase the Property. I will come to this point shortly.

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41 Tang Chee Meng's affidavit of evidence-in-chief ("Tang's AEIC") at [1] and [3].

42 Tang's AEIC at [5].

43 Ong's AEIC at [8].

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32 Ong further deposed that at the Second and Third Viewing, the terms of the EDP Scheme – including the Occupation Condition – were again explained to Chen in detail.[44]

33 Ong says that when Chen indicated (in or around November 2018) his intention to move into the Property upon his return to Singapore from China, Ong *reminded* Chen that the Further Sum had to be paid if Chen were to be permitted to move into the Property. This was met by *Chen's* request that TG allow him to move into the Property upon a further payment of 5% of the purchase price. That request was communicated to TG, who eventually agreed to the same.[45]

I am not persuaded on a balance of probabilities that Ong made the Occupation Representation

34 I first consider if Ong in fact made the Occupation Representation to Chen. I start with the obvious point that Chen bears the burden of proving on a balance of probabilities that Ong made the Occupation Representation to him. In assessing the evidence, my focus was on the merits of Chen's positive case and I bore in mind that Chen could not discharge his burden only by showing that his case was *more* credible than the defendants': *Ma Hongjin* at [57].

The weight to be accorded to the witnesses' affidavit and oral evidence

35 Four witnesses testified at the trial of the action: Chen, Ong, Yishan, and Tang. It is clear to me that Chen (being the plaintiff), Ong (being the second defendant), and Tang (being a representative of the first defendant, Huttons) have to be regarded as interested witnesses.

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44 Ong's AEIC at [12(d)] and [16].

45 Ong's AEIC at [19].

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36 As regards Yishan, Chen challenges his credibility on two bases. First, Chen says that he and Yishan fell out with each other "sometime in late October 2019". On Chen's account, Yishan (who was then Chen's business partner at Long Asia) had "incited [Long Asia's employees] to leave their duties after the payment of salaries were delayed" and "even hatched a plot to force [Chen] to transfer ownership of the company to him at a low price".[46] They are not, it seems, on good terms.

37 Second, it emerged at trial that Yishan received a sum of money from Ong for having referred Chen to him.[47] The characterisation of that payment was contested, but it was plainly intended by Ong as a reward to Yishan for having made the referral in the event Ong earns – as he in fact did – a commission from Chen's purchase of the Property.

38 I accept that Yishan's evidence should be approached with some circumspection for the reasons given by Chen. In any event, however, this is not a case that should be decided primarily on the basis of the witnesses' testimony at trial. Even if I assumed their complete honesty and good faith, they were called to give evidence on disputed events that occurred some *five years* prior and their recollection of those events must be viewed with the appropriate measure of caution. In these circumstances, it is necessary to consider the objective and/or contemporaneous evidence available before me in greater detail.

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46 Chen's AEIC at [9]–[10].

47 Transcript of proceedings on 23 November 2023 at p 8, ln 10 to p 14, ln 4.

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The Purchaser's Particulars Form

39 The defendants referred me to the "Purchaser Particulars Form" that Chen signed at (or shortly after) the Second Viewing on 18 October 2018.[48] For context, the Purchaser Particulars Form is one of TG's standard forms that intending purchasers would fill in to formally express their interest in purchasing a unit in the Development. It contains (among other things) details relating to the unit, the purchaser(s), and the purchase price. However, it was not suggested that the Purchaser Particulars Form was a contractually binding document.

40 Relevant for present purposes is a part of the Purchaser Particulars Form that reads:[49]

> ~~I~~/We* hereby confirm and agree to the following:
>
> …
>
> 2. ~~I~~/We* have been given a copy of the OTP prior to ~~me~~/us* furnishing the option fee and ~~I~~/We* have read, understood and agree to the terms of the OTP.
>
> …
>
> [strikethroughs in original]

I will refer to this as the "Confirmation Clause".

41 The Confirmation Clause affirms – at least on its face – that Chen was given a copy of the OTP prior to him furnishing the Booking Fee, and that he had read and understood the OTP's terms (including the Tenancy Clause). The defendants argue that having signed the Purchaser Particulars Form and thereby affirmed the statements contained in the Confirmation Clause, Chen must be

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48 Chen's AEIC at pp 57–60.

49 Chen's AEIC at p 57.

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taken to have known – at least from the time he signed the Purchaser Particulars Form – of the Occupation Condition.

42 Chen does not dispute signing the Purchaser Particulars Form. His response is simply that he had never been shown a copy of the OTP. The first time he had sight of the OTP's terms was when the actual OTP was issued and a copy sent to him *via* WeChat on 30 October 2018 (as stated at [25] above).

43 In cross-examination, Ong took the position that the "salient points" of the OTP had been verbally explained to Chen on multiple occasions but admitted that Chen was never given a blank copy of the OTP or any other document setting out its terms prior to the issue of the actual OTP:[50]

> Chuah [Chen's counsel]: Based on your evidence, you explained three times the salient points of the OTP to Mr Chen --
>
> Ong: Yes.
>
> Chuah: -- without furnishing to him a copy of the OTP?
>
> Ong: There's no copy to be furnished by the developer.
>
> Chuah: Not even a blank copy?
>
> Ong: Not even a blank copy.
>
> Chuah: I see, Mr Ong.
>
> Ong: Common practice.
>
> Chuah: Common practice? Really? We beg to differ. Mr Ong --
>
> Ong: Yes.

44 Ong later clarified that it was the "salient points" or "salient terms" of the *EDP Scheme* that were explained to Chen:[51]

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50 Transcript of proceedings on 23 November 2023 at p 133, lns 5–15.

51 Transcript of proceedings on 23 November 2023 at p 170, lns 4–12.

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> Chuah: So you decided, Mr Ong, what was salient and what was not salient?
>
> Ong: What that is the key crucial thing to an enhanced deferred payment scheme was explained to him. Well, when the developer trained Raymond [*ie*, Tang] on the enhanced deferred payment scheme, what are the points that need to be shared to the buyer was what are the point that we shared -- was what were the point that was shared to the buyer.

45 Given Ong's clear evidence that Chen was never given a copy of the OTP's terms before he signed the Purchaser Particulars Form, I find that the defendants' reliance on the Purchaser Particulars Form is misplaced.

The Side Letter to the OTP

46 The defendants also rely on a side letter[52] that accompanied the OTP (the "Side Letter"), both of which Chen signed.[53] The Side Letter contains a statement that reads:

> I/We confirm that I/we have read and understood the terms of the Option, and I/we irrevocably and unconditionally accept and agree to the terms of the Option.

47 As I noted at [45] in relation to the Purchaser Particulars Form, Chen never had sight of the OTP's terms prior to 30 October 2018. By that time, Chen had already paid the Booking Fee on 25 October 2018 – in fact, he paid the Booking Fee *in exchange* for the OTP and the Side Letter. It is thus clear to me that the defendants' reliance on the Side Letter is likewise misplaced.

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52 Chen's AEIC at p 73.

53 DCS at [15]–[16].

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The EDP Scheme and Chen's further conditions

(1) The background

48 I now turn to the EDP Scheme, which I mentioned at [31] and [44] above. For context, an EDP Scheme – as its name suggests – is essentially an alternative payment scheme that affords the purchaser a longer window for exercising an option to purchase the property in question; the trade-off is a mark-up on the purchase price of the property.[54] Whether an EDP Scheme is available – and if it is, its precise terms and conditions – may vary between developments.

49 Under the EDP Scheme offered by TG in respect of the Development, purchasers ordinarily had to pay:[55]

(a) A booking fee of 1% of the purchase price in return for an OTP (which is valid for two years from the date of issue);

(b) 9% within the following two weeks;

(c) 20% within the following eight weeks; and

(d) The remaining 70% eight weeks after the date on which the OTP is exercised. Thus, if the OTP was exercised on the last day of its validity (*ie,* 30 October 2020), the remaining 70% would be payable eight weeks thereafter.[56]

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54 Ong's AEIC at [8(c)]; Tang's AEIC at [7].

55 Tang's AEIC at [7].

56 Chen's AEIC at p 68, para 6.

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(2) Chen's further conditions

50 According to Ong, Chen decided at (or sometime shortly after) the Second Viewing to purchase the Property provided TG agreed to three of his requests:[57]

(a) That TG grant an 8% discount on the purchase price;

(b) That Chen be given the option to swap the Property for Unit #02-11 of the Development by 31 December 2018.[58] The reason for this was that Chen and Wu wished to consult a *feng shui* master (*ie*, a Chinese geomancer) on which of the two units would be more auspicious, and the *feng shui* master was only due to arrive in Singapore in December 2018; and

(c) That Chen be given, effectively, 16 weeks – as opposed to the standard eight weeks – to make the 20% payment (see [49(c)] above).

51 Ong then says that "after several rounds of negotiations" between TG and Huttons' staff, TG "substantially agreed to Mr Chen's terms". Specifically, TG agreed to Chen's second and third request. As for the first, TG was prepared to offer Chen a 3% discount on the purchase price. This was, however, subject to Chen paying 10% of the purchase price upfront in exchange for the OTP (as opposed to the usual 1%).[59] I will refer to this as the "Modified EDP Scheme".

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57 Ong's AEIC at [12(c)].

58 AB at p 25.

59 Ong's AEIC at [15].

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(3) The relevance of the EDP Scheme to the Occupation Condition and Occupation Representation

52 The defendants started from the position that the availability of an EDP Scheme was a consideration that weighed heavily on Chen's assessment of the various properties he was introduced to. They submit that so far as the Property was concerned, Chen was thoroughly and repeatedly advised as to the terms of the EDP Scheme that TG offered. It was in that context that Chen would have learnt of the Occupation Condition (insofar as he was not already aware of it). That was the gravamen of Ong's evidence in the extracts I reproduced at [31] and [44] above.

53 It was clear to me on the available evidence that Chen placed a premium on the availability of an EDP Scheme both in his search for a suitable property generally, and in deciding to purchase the Property specifically. I say so for two reasons.

54 First, Ong explained that Chen found the EDP Scheme attractive because he needed time to secure his permanent residency, which would in turn reduce the Additional Buyer's Stamp Duty ("ABSD") payable on the property.[60] There is ample evidence to show that Chen's priority was to reduce the ABSD he would have to pay, and that he intended to do so by securing Singapore permanent residency.[61] Ong's explanation as to why Chen placed a premium on the EDP Scheme appears to be externally consistent with other known facts, and I accept it as true.

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60 Ong's AEIC at [4(b)] and [7].

61 Chen's AEIC at p 99.

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55 Second, when questioned during cross-examination as to why he eventually decided to purchase the Property, Chen himself confirmed – perhaps somewhat reluctantly – that the EDP Scheme in fact contributed to his decision-making:[62]

> Lin [counsel for the first and second defendants]: However, you were not interested in the other developments because it does not have the Enhanced Deferred Payment Scheme. Am I correct?
>
> Chen: Incorrect.
>
> Lin: So why were you not interested in the other developments?
>
> Chen: *Because if I were looking at particular units of this same price level, it would be correct to say that I would be interested in the unit that offered the Deferred Payment Scheme*. However, if they're not of the same price, I would still be interested as well even if there's no Deferred Payment Scheme.
>
> Lin: But what attracted you to Lloyd SixtyFive was the Deferred Payment Scheme. Am I correct?
>
> Chen: What attracted me to look at Lloyd SixtyFive was not because of this Deferred Payment Scheme. *But eventually why I decided to purchase a unit at Lloyd SixtyFive was partly because of this Deferred Payment Scheme.*
>
> [emphasis added]

56 If the availability of an EDP Scheme was a consideration for Chen, one might infer that Chen would not have decided to purchase the Property unless he understood what TG's EDP Scheme entailed. In this regard, I am mindful that it was *Chen* who sought to renegotiate the terms of the EDP Scheme offered by TG (see [50]–[51] above). Chen accepted on cross-examination that the Modified EDP Scheme was something that Ong negotiated and achieved on his behalf.[63] Plainly, Chen understood enough about the EDP Scheme to have made counterproposals of his own.

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62 Transcript of proceedings on 21 November 2023 at p 35, ln 31 to p 36, ln 11.

63 Transcript of proceedings on 22 November 2023 at p 13, lns 19–21.

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57 Chen's evidence (which I accept) is that he is not proficient in English and that he relied on Ong, Yishan, and (to a lesser extent) Tang in negotiating the transaction. If Chen depended on them for information and if he understood the EDP Scheme by the time he decided to purchase the Property (and I find that he did), it would follow that it is more likely than not that Ong, Yishan, and Tang *did* in fact properly explain the salient terms of the EDP Scheme to Chen.

58 It is of course true that (a) the general conclusion that the terms of the EDP Scheme were explained to Chen does *not* inexorably lead to (b) the specific conclusion that he was specifically apprised of the Occupation Condition. However, having regard to the inherent probabilities, I take the preliminary view that the Occupation Condition would in all likelihood have been explained alongside the other terms of the EDP Scheme (insofar as those terms were explained at all).

59 To frame the matter in another way, it is in my judgment *unlikely* that Ong and the others would have dutifully explained the other terms of the EDP Scheme – and even bargain with TG on some of them at Chen's behest – only to omit reference to the Occupation Condition (or still worse, deceive Chen by fraudulently making the Occupation Representation).

The alleged confrontation between Chen and Ong

60 I now consider Chen's evidence that he "furiously questioned Ong on the WeChat group chat" (see [28(a)] above). The messages themselves were not led in evidence, but Ong admitted on cross-examination that the confrontation as described by Chen in fact occurred:[64]

[64] Transcript of proceedings on 23 November 2023 at p 186, lns 3–18.

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> Chuah: Did he go on in the WeChat group to question whether the developer was a scam company?
>
> Ong: He did.
>
> Chuah: Did you also send over website profiles of the developer and stated it was a reputable developer?
>
> Ong: I did.
>
> Chuah: Did Mr Chen tell you, at that point in time, that he was seriously considering about cancelling the whole purchase?
>
> Ong: He did.
>
> Chuah: He did. Isn't it true than you and Yishan then persuaded him not to do so?
>
> Ong: I did. We did, yeah.
>
> Chuah: You told him that you would, instead, approach the developer to try resolve this, let's put it this way?
>
> Ong: Yep. Yes.

61 I therefore accept Chen's account of the confrontation as true, and that goes some way in showing that he genuinely believed he could move into the Property upon receipt of the OTP. At this point, it is useful to recall the real question at hand arising out of Chen's pleaded case, which is whether Chen held that belief *because* Ong made the Occupation Representation. I must weigh that possibility against other likely scenarios, namely that (a) the Occupation Condition was explained to Chen, but he *forgot* or *misunderstood* it; and (b) the Occupation Condition was never explained but Chen assumed he could move in without Ong having made the Occupation Representation.

62 My finding set out at [61] above militates against scenario (a) because it is, in my judgment, unlikely that Chen would have misunderstood or forgotten a clear explanation of the Occupation Condition as otherwise, the confrontation would never have happened. However, that finding offers Chen little mileage in establishing that Ong made the Occupation Representation – that allegation is the foundation of Chen's pleaded case, and it draws the evidential and legal line

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that Chen must cross if he is to succeed. My finding also says nothing about the probability of scenario (b) being true, and this head of Chen's misrepresentation claim would fail *even if* scenario (b) is indeed true.

Conclusion

63 To summarise, for the purpose of determining if Ong had made the Occupation Representation, I place no weight on the Purchaser Particulars Form and the Side Letter. I also do not think that any individual witness' evidence deserves greater weight than the others'. On the other hand, I have considered the circumstances surrounding the (Modified) EDP Scheme, as well as the confrontation between Chen and Ong. The inferences that can be drawn from the evidence in respect of those matters are limited and inconclusive at best. For all of that, the picture remains just as murky. Given the sparsity of the evidence and the limited usefulness of what *is* available, I find that Chen has not discharged his burden of demonstrating, on a balance of probabilities, that Ong made the Occupation Representation.

Even if Ong had made the Occupation Representation, I am not persuaded that Chen suffered any loss in reliance thereon

64 For completeness, I note that the only loss pleaded by Chen with respect to all his pleaded causes of action is a claim for the "sum of S$1,544,100 being 30% of the Sale Price" that was forfeited.[65] This is material because even if I were to assume that Ong did make the Occupation Representation and that Chen did rely on it, there would still be *no causative nexus* whatsoever between Chen's reliance on the Occupation Representation and his pleaded head of loss. Indeed, it is Chen's evidence that:[66]

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65 SOC at [17].

66 Chen's AEIC at [45].

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> Although I still felt rather indignant, I decided not to abort the purchase altogether. *After all, the next 20% would have to be paid sooner or later* and Ong was recommended to me by Yishan and on account of Yishan, I decided to let the matter slide. I accepted TG's proposal and made the payment of $257,350 …
>
> [emphasis added]

65 As I noted at [20(d)] and [21(e)] above, proof of loss or damage flowing from the plaintiff's reliance on the pleaded misrepresentation(s) is an essential ingredient of fraudulent and negligent misrepresentation claims. Were it necessary for me to decide the point, I would have concluded that this ingredient is also not made out in the present case (at least insofar as it relates to the Occupation Misrepresentation), with the result that Chen's claim would fail in any event.

The Loft Representation

66 I turn to the next head of Chen's misrepresentation claim. For ease of explanation, I reproduce below an annotated floorplan of the Property's second floor that was used by Chen in these proceedings to illustrate his case:[67]

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67 Chen's AEIC at [20].

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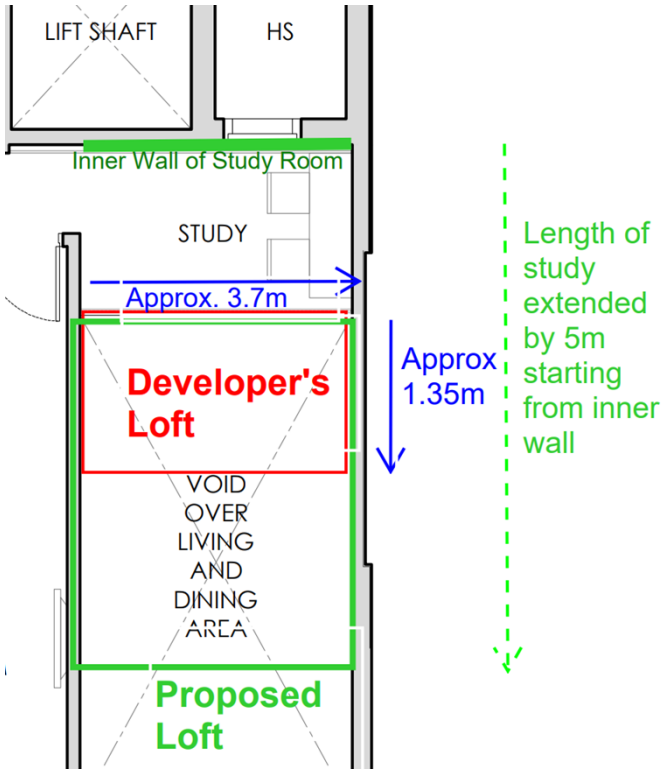

FIG. 1

As Figure 1 shows, a study is located on the second floor (the "Study"). In its unrenovated state, the Study would be enclosed by walls on all sides.[68]

67 The show unit that Chen visited over the three viewings exhibited a renovated second floor that had a loft adjacent to the Study.[69] That loft extended five square metres in floorspace. To construct that loft, the wall in the Study facing the living and dining area on the first floor would have to be removed and the flooring extended over the area marked on Figure 1 as the "VOID OVER LIVING AND DINING AREA". It is marked out in Figure 1 in red lines as the "Developer's Loft", and I will refer to it accordingly.

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[68] AB at p 32.

[69] Chen's AEIC at [19]; Ong's AEIC at [12(b)].

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Chen's case

68 According to Chen's pleaded case, Ong had told him that "[p]rior to completion of the purchase, [Chen] could construct a loft to extend the length of the study room by five metres starting from the inner wall of the study room".[70] I will refer to this as the "Loft Representation". The loft described in the Loft Representation is marked out in Figure 1 in green lines over the Developer's Loft and is labelled as the "Proposed Loft", and I will refer to it accordingly.

69 Chen says that the Loft Representation was made to him as early as at the First Viewing. In his AEIC, Chen stated that:[71]

> … I enquired whether it was possible to have a larger loft constructed to further extend the length of the study room … Ong briefly conferred with Rhea/Raymond [*ie*, Tang] and he then told me that it was possible to extend by *5 metres*. I recall that I specifically asked Ong from where the *5 metres* would start. Ong responded by pointing to the inner wall of the study room and gesticulating that it starts from there and extends outwards. …
>
> [emphasis added]

He further contends that the Loft Representation was repeated to him at the Third Viewing.[72]

70 In his Statement of Claim, Chen states that he engaged contractors to undertake the construction of the Proposed Loft "[i]n or about May or June 2019".[73] After the contractors inspected the Property, he found out that "it was

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70 SOC at [5(b)].

71 Chen's AEIC at [20].

72 Chen's AEIC at [30].

73 SOC at [7(c)].

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not possible to extend the length of the study room by 5 metres, contrary to the [Loft Representation]".[74] The reason it was "not possible" to do so was not pleaded, and I will return to the significance of this shortly.

71 According to Chen, he called Ong and confronted him with the contractors' news:[75]

> … I confronted Ong why he told me that the length of the study room could be extended by 5 metres. I recall that Ong did not deny that he had told me that the length of the study room could be extended by 5m. *Instead, he stated that what is permitted was the construction of a loft to extend the liveable area by up to 5 square metres and not that the study room wall could be extended by 5 metres outwards. I asked Ong whether I could instead seek special approval from TG and/or the relevant authority to build the Proposed Loft.* However, to my dismay, Ong told me that approval may not be given and even if given, the approval process would take very long.
>
> [emphasis in original omitted; emphasis added in italics]

The defendants' case

72 The defendants deny Chen's suggestion that Ong had made the Loft Representation. They accept that Chen was told he could create a loft of five *square* metres – that was what the Developer's Loft was intended to show.[76] However, they reject Chen's allegation that Ong had specifically told him that he was at liberty to construct the Proposed Loft.[77]

73 However, a further nuance emerges from the evidence given by the defendants' witnesses. Ong, Tang, and Yishan have all said the same thing: Chen was explicitly told that if he wished to construct a loft that was *larger* than

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74 SOC at [7(c)].

75 Chen's AEIC at [58].

76 Defence at [18].

77 Defence at [8].

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five square metres, he would require the permission of the relevant authorities.[78] This was in addition to their evidence denying that Chen was told outright that he could construct the Proposed Loft.

The preliminary issue of whether Chen's pleaded case discloses a representation of fact that was untrue

74 As a preliminary point, it is not immediately clear to me from Chen's Statement of Claim that the Loft Representation *as pleaded* is a representation of fact that is untrue.

75 The Loft Representation as framed by Chen in his Statement of Claim states that Chen "*could* construct a loft to extend the length of the study room by 5 metres starting from the inner wall of the study room" (see [68] above). In the particulars that follow, it is stated that:[79]

> In or about May or June 2019, the Plaintiff commenced engaging contractors to undergo renovations at the Property. Subsequent to the engagement of the contractor, the Plaintiff found out that it was *not possible* to extend the length of the study room by 5 metres, *contrary to the said Representations previously made by the 2nd Defendant*. When the Plaintiff discovered that he could not extend the length of the study room by 5 metres, the Plaintiff was extremely aggrieved and immediately informed the 2nd Defendant of his intention not to proceed with the purchase. …
>
> [emphasis added]

Chen repeated this pleaded case in his closing submissions.[80] Thus, on its face, Chen's pleaded claim is that the Loft Representation was made despite it having been *impossible* to construct the Proposed Loft. As I noted at [70] above,

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78 Ong Yishan's affidavit of evidence-in-chief at [8]; Tang's AEIC at [14]; Ong's AEIC at [23].

79 SOC at [7(c)].

80 Plaintiff's Written Closing Submissions ("PCS") at [9(b)] and [26].

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nowhere in Chen's pleadings is the nature of the alleged impediment or impossibility particularised.

76 There are only two sensible interpretations that can be given to the allegation that Chen subsequently "found out that it was *not possible*" to construct the Proposed Loft. The first and strictly literal interpretation is that it was physically or structurally impossible to construct the Proposed Loft – but that was not the position that Chen took at trial. Nor was any evidence led in support of such a contention.

77 The second (and, in my view, more likely) interpretation is that it was "not possible" to construct the Proposed Loft because Chen needed the relevant authorities' approval(s) to do so – but that too is not strictly true on the evidence. Chen himself never took the position that the approval requirement *itself* rendered construction of the Proposed Loft *impossible*. Indeed, it was the defendants' case that it *was*, in principle, possible to construct the Proposed Loft, subject to securing the necessary approval from the authorities. There was no evidence that Chen made any applications to the relevant authorities for the requisite approval, or even attempted to do so.

78 Looking past the Statement of Claim for the moment, Chen deposed in his AEIC that "[his] renovation contractor informed [him] that *approval from the relevant authority would be required* in order to construct a loft large enough".[81] This suggests that Chen's real grievance was that Ong had made the Loft Representation *without* informing him that the relevant authorities' approval(s) would be required. To that extent, Chen's claim – or intended claim – was in truth one of misrepresentation by silence or omission. This is apparent

[81] Chen's AEIC at [56].

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from the following question that Chen's counsel, Mr Christopher Chuah ("Mr Chuah"), put to Ong towards the end of the latter's cross-examination:[82]

> Chuah: My next question is, if the Court agrees with me that you had told Mr Chen that he could extend the loft from the inner wall of the study by 5 metres *without requiring any approval of the authorities, then that would also be a misrepresentation.*
>
> Ong: If that's the case, yes.
>
> Chuah: Okay. Now, I'm also going to put to you that even on your evidence, sworn evidence, that if you had told Mr Chen that he could not extend beyond 5 square metres unless he obtains building and structural plan approval from BCA, *that would also be a misrepresentation of the relevant law or fact because planning permission from URA was also required.* You can agree or disagree.
>
> Ong: I disagree.
>
> [emphasis added]

79 However, if that was the case that Chen intended to advance, it was in my judgment not adequately pleaded. This deficiency in Chen's case has not gone unnoticed by the defendants. In their closing submissions, the defendants have argued that:[83]

> 24. The [Loft Representation] does not state that approvals are not required. It only alleged that the Proposed Loft could be constructed.
>
> 25. The Plaintiff could construct a loft to extend the length of the study room by 5 metres starting from the inner wall if he obtained the relevant approvals required by the authorities. The Plaintiff has not presented evidence demonstrating the impossibility of obtaining these approvals and did not attempt to obtain these approvals. The burden of proof in establishing the falsity of the [Loft Representation] rests with the Plaintiff.

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82 Transcript of proceedings on 24 November 2023 at p 57, ln 29 to p 58, ln 7.

83 DCS at [24]–[25].

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80 In my judgment, there is nothing in Chen's pleadings to put the defendants on notice that this part of his misrepresentation claim is premised on a misrepresentation by silence or omission – or, in other words, that Chen was alleging that Ong had made an actionable misrepresentation by the fact of his alleged *non-disclosure* of the approval requirement. This deficiency is, in my view, significant and has gone unrectified despite three rounds of amendments to Chen's Statement of Claim. In my judgment, the deficiency is not a merely technical one – it goes to the very substance of Chen's misrepresentation claim. As the Court of Appeal held in *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2020] 2 SLR 1256 (at [116]), "allegations of fraud or misrepresentation must be pleaded with utmost particularity" and this means that:

> … *Full particulars of the misrepresentation relied on must be stated in the pleading, including the nature and extent of the misrepresentation*, who the representor and representee are, whether the representation was made orally or in writing, and identifying the documents … Failure to adequately plead particulars of misrepresentation may lead to an unsuccessful claim …
>
> [emphasis added]

81 Ultimately, the defendants were entitled to meet Chen's case as it was pleaded and on any reasonable interpretation of it, the Loft Representation was *true*. Insofar as Chen now says that the Loft Representation was false because it was *incomplete*, he seeks to advance an unpleaded (or at the very least, inadequately pleaded) case. In my judgment, this head of Chen's misrepresentation claim has to fail for these reasons.

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I am not persuaded on a balance of probabilities that Ong made the Loft Representation

82 Assuming that the conclusions I expressed at [81] above are wrong – and given the extensive evidence led and submissions made in relation to the Loft Representation – I will nevertheless set out below my conclusions on the matter, for completeness.

83 For the purposes of this analysis, I will read the Loft Representation as a statement by Ong that Chen could construct the Proposed Loft prior to completion of the purchase *without also* informing him that the approval of the relevant authorities would be required if he wished to do so. I proceed on this basis because it was never suggested by Chen that Ong's representations extended to *positive* statements that Chen would not require any approvals from the relevant authorities.

84 Framed in that way, the question resolves itself into two parts:

(a) First, was the Loft Representation made?

(b) Second, was it disclosed to Chen before he paid the Booking Fee that if he wished to construct a loft that was larger than five square metres, he would first have to procure the relevant authorities' permission?

85 To succeed, Chen had to persuade me that on a balance of probabilities, the answers to those questions are "yes" and "no" respectively. Having considered the evidence before me, I am of the view that Chen has failed to discharge that burden.

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The steps taken by Chen and/or Ong Yi Song to procure the necessary approvals for the construction of a loft

86 At this juncture, I will briefly recount the sequence of events as they unfolded according to Chen:[84]

(a) After Chen's contractors looked into his request to construct the Proposed Loft, he was told that he could only proceed with the relevant authorities' approval.

(b) He then confronted Ong with this information, whereupon Ong did not deny making the Loft Representation. Ong however clarified that "what is permitted was the construction of a loft to extend the liveable area by up to 5 square metres and not that the study room wall could be extended by 5 metres outwards".

(c) Chen "asked Ong whether [he] could instead seek special approval from TG and/or the relevant authority to build the Proposed Loft".

(d) To Chen's dismay, Ong then told him that "approval may not be given and even if given, the approval process would take very long".

There is an implication – although admittedly not a very clear one – in Chen's AEIC that all of this transpired over a phone call.[85]

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84 Chen's AEIC at [56] and [58].

85 Chen's AEIC at [58].

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87 At this juncture, I test Chen's account against the objective evidence that is before me. In this regard, I refer to two text conversations between Chen and Ong. The first conversation took place on 30 May 2019:[86]

> Chen: *I have already found someone on my side to submit a renovation application to the developer*
>
> Ong: Hi brother
>
> Ong: I am contacting yishan.
>
> Chen: OK, Yishan's older brother is helping me to renovate
>
> [emphasis added]

As this conversation shows, Chen had enlisted the help of Yishan's older brother, Mr Ong Yi Song ("Yi Song"), in constructing a loft for the Property. Notwithstanding Chen's reference to multiple "contractors" in his Statement of Claim,[87] it appears – at least so far as the evidence goes – that Yi Song was the primary (and perhaps the only) contractor that Chen liaised with in connection with his intended renovation works.

88 The second conversation took place on 3 June 2019. In this conversation, Chen relayed to Ong a set of requirements that Rhea had earlier communicated to Yi Song by an email sent on the same day (*ie*, 3 June 2019):[88]

> Chen: Shall submit a renovation proposal plan for better understanding of the scope and the location where it is affected. Details/sections/plans/sketches shall be included but not limited to, for evaluation and approval. All works that need PE endorsement and calculation shall be submitted, highlighted to plan and a copy of endorsement and calculation shall be submitted for review and approval. No commencement of works for this matter without any approval. No structural building elements shall be affected in all renovation works. [H]acking of

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86 Ong's AEIC at [27] and p 79; AB at pp 75–76.

87 SOC at [7(c)].

88 AB at pp 78–79; Email Correspondence between Ong Yi Song and TG disclosed in Fervent Chambers LLC's letter to the Court dated 12 December 2023 ("OYS Emails").

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> walls shall be indicated in the proposed plan for review and approval. No hacking works which will affects any existing pipe trench and will cause damage to any water proofing. Plumbing works shall be design and endorse by a professional plumber. Re-routing of any aircon ducting shall be indicated on plans for review and approval. All electrical works shall be design and endorse by professional electrician and shall be indicated in the proposed renovation plan.
>
> Chen: Hi brother, this is the developer's response to Yishan's older brother's email. Can you help with the endorsement
>
> Ong: Hi brother, with regards to the endorsement, no problem. Leave it to me, I will settle it.
>
> Chen: OK. Can you also help get in touch with Yishan's older brother today
>
> Ong: Sure brother

89 For the moment, I leave aside the suggestion in Chen's AEIC that the events recounted by Chen (as set out at [86] above) all unfolded over a single phone call. On one hypothesis, the two text conversations track point (c) of Chen's sequence of events (*ie*, when Chen discussed the procurement of approvals with Ong). This is because the first message in the conversation on 30 May 2019 refers to a "renovation application to the developer". This implies that before Ong and Chen had that conversation, Chen *already* knew – or had been made aware – that some form of approval would be required for him to proceed with the renovation works he had in mind.

90 There was no evidence whatsoever to show that Chen had previously confronted Ong upon learning that the relevant authorities' approvals were required (see [86(b)] above). Having regard to the tone of the text conversations, there was no indication that Chen was upset at having to seek approval to proceed with the renovation works. As I mentioned, Chen's explanation was that the confrontation happened over the phone. Ong however denied that this

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phone call ever happened and pointed out that if Chen had indeed been upset, it did not show in the text conversations that followed:[89]

> Chuah: Okay. I've just told you according to Mr Chen he says he gave you a phone call and informed you that his renovation contractor had told him that approval was required if the length of the study room is to be extended by 5 metres. He then confronted you as to why you told him the length of the study room could be extended by 5 metres and you did not deny that. … Do you remember that?
>
> Ong: This phone call does not happen; did not happen.
>
> Chuah: You are saying this is fictitious?
>
> Ong: I'm saying it did not happen. That is why it was -- from my recollection, it was this text that he sent to me and greeted me nicely and asked me to introduce him a PE.

91 There is also not a shred of evidence to substantiate the allegation that Ong later told Chen that "approval may not be given and even if given, the approval process would take very long" (or anything to a similar effect) (see [86(d)] above).

92 On another hypothesis, the two text conversations were concerned only with *TG's* approval and not the relevant *authorities'* approval (such as, for example, the Building and Construction Authority). Here, I refer to the emails between Yi Song and TG (which I alluded to at [88] above). On 7 June 2019 (which was four days after the second text conversation between Chen and Ong referred to at [88] above), Yi Song sent an email to Rhea asking, among other things:[90]

> As per our discussion yesterday I would like to clarify if the extension of the study flooring on the 2nd floor *a further 3m*

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89 Transcript of proceedings on 23 November 2023 at p 205, ln 13 to p 206, ln 4.

90 OYS Emails at p 2.

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> *over the void above the living room* is allowed to be done except for the lack of PE endorsements and drawings.
>
> [emphasis added]

Rhea forwarded this inquiry to two colleagues in TG by the name of Jave Hecita ("Jave") and Ong Kai Hoe. Jave gave Rhea a response on 12 June 2019, which Rhea promptly forwarded to Yi Song on the same day. Relevant for present purposes is the part that reads:[91]

> We have no objection on the proposal subject to MCST approval and *any authority approval needed for the proposal.*
>
> [emphasis added]

93 As a starting point, it is striking that Yi Song considered it necessary to "clarify" if the proposed extension by three metres "is allowed to be done". I accept that Yi Song might have been seeking *confirmation* that Chen could proceed with the proposed renovations. However, the way in which Yi Song's question was framed equally suggests that he had hitherto been told *nothing* by Chen about the approvals that were required (or not required) in respect of the works Chen had in mind. If Ong had told Chen in affirmative terms that an extension by five metres could be carried out, one would assume that Chen would have conveyed the same to Yi Song.

94 I now consider the possibility that upon reading Jave's response, Yi Song – and by extension, Chen – learnt for the first time that the relevant authorities' approval would be needed if the proposed works were to proceed. On that premise, it would mean that *all* the events described by Chen (at [86] above) occurred *after* 12 June 2019. There is, however, simply no evidence of what was said and done post-12 June 2019.

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[91] OYS Emails at p 1.

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95 Even if I were to assume that the events recounted by Chen occurred after 12 June 2019, certain aspects of Chen's account do not gel with the available evidence. First, by that time, Chen had already begun taking steps (see [87] above) to seek TG's approval and did not seem to have any qualms with seeking a professional engineer's approval; there is nothing to shed light on why Chen would react so strongly upon finding out that he would also need the relevant authorities' approval (as Chen says he did).

96 Second, I am mindful that in Jave's response, he did not say that the authorities' approval *was required* in respect of the proposed works. He only said that TG had no objections subject to "MCST approval and *any authority approval needed* for the proposal". This non-committal answer by Jave weighs against any finding that it was upon reading Jave's email that Yi Song or Chen first discovered that if the proposed works were to proceed, they *would* require the relevant authorities' approval.

97 Third, there is no evidence whatsoever of Chen having asked Ong if he could procure the necessary approvals from the authorities; nor is there (as I indicated above at [91]) any evidence corroborating Chen's case that Ong told Chen that "approval may not be given and even if given, the approval process would take very long".

98 I am mindful that the available evidence paints an incomplete picture. Neither side had access to contemporaneous WeChat messages exchanged between them which would likely have shed some useful light on the issue, and which meant that there were significant gaps in the narrative. All that notwithstanding, Chen's account of what happened after his contractor Yi Song inspected the Property is difficult to reconcile with the evidence that *is* available; to that extent, the evidential hurdle that Chen must surmount is raised.

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The possibility that Chen confused or misheard "5 square metres" for "5 metres"

99 Chen says that after he visited the Development's show units at the First Viewing, he inquired if he could construct a loft larger than the Developer's Loft. His evidence is that the question was met with the first instance of the Loft Representation by Ong (see [69] above).[92]

100 It is clear that when Chen conceived the idea of building the Proposed Loft – if he conceived that idea at all – he must have done so with the Developer's Loft as a frame of reference. He visited the show unit and saw the Developer's Loft for himself. Insofar as Chen was told anything about the size of the *Developer's Loft*, in my judgment, he must have been told that it was five square metres in size – there is no reason to think that any other answer would have been given to that specific question.

101 The peculiarity of the Loft Representation (as pleaded by Chen) lies in its specificity (see [68] above). "5" is the magic number. Chen maintained in his AEIC and on cross-examination that Ong had told him that he could construct the Proposed Loft extending "*5 metres*" from the inner wall of the Study (see Figure 1 at [66] above).[93]

102 Here, I return to the parties' evidence and the inherent probabilities. If Chen had asked if he could construct a larger loft (as Chen maintains he did) and on the assumption that Ong was prepared to say anything (right or wrong) to please Chen, it would have sufficed for Ong to say that Chen was free to build

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92 Chen's AEIC at [20].

93 Chen's AEIC at [20]; Transcript of proceedings on 22 November 2023 at p 26, lns 10–17.

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a larger loft. There was, in my view, no rhyme nor reason for Ong to have fixed a limit at 5 metres from the inner wall specifically.

103 Weighing the unusual specificity of the Loft Representation against what Chen was probably told about the size of the Developer's Loft, it suggests that there is an alternative and not implausible explanation for Chen's avowed belief that he could build the Proposed Loft and it is this: Chen *misunderstood* what was said to him. This is also a possibility that I must account for in deciding if Chen's misapprehension was caused by a false statement of fact that Ong had made dishonestly or recklessly.

104 In my view, there is in fact some evidence indicating that *Chen himself* accepted the possibility that he had misunderstood what he was told about the loft. Here, I reproduce a part of the Mandarin transcript of the First Recorded Conversation (which took place on 13 July 2020) and the accompanying certified translation. For context, the First Recorded Conversation relates to a phone conversation between Ong and Chen that took place on 13 July 2020, which Chen recorded without Ong's knowledge:[94]

Transcript	**Translation**
Chen: 当时讲如果是 PR 连那 5% 都不用交的。就跟我讲的时候。要么就是我理解的不对，要么就是他讲的，或者说大家不在同一个频道上 … 所以，这其实是本身沟通的时候就有误差，**包括像那个，跟我讲的时候是从墙壁出来五米 … 那实际上到最后是五平米**。这差蛮多的。	Chen: I was told that even the 5% is not required for the PR. It could be that my understanding was incorrect, or we were not on the same page. So it's actually a misunderstanding in our communication. **Also, I was told that it's 5 m from the wall, but it's actually 5 sqm.** There is quite a difference.

94 Chen's AEIC at p 99.

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[emphasis added in bold and bold underline]	[emphasis added in bold and bold underline]

105 On the face of the translation, Chen admits to the possibility that he and Ong had miscommunicated or otherwise misunderstood each other in relation to the amount of ABSD payable by Chen. However, the word "also" suggests that Chen was moving on to a *separate* topic – *ie*, the topic of the loft – and this in turn suggests that the matter of the loft was *not* something in respect of which there had been any miscommunication (at least, from Chen's perspective).

106 In the course of cross-examining Chen during the trial, counsel for the defendants, Ms Sharon Lin ("Ms Lin"), suggested that the certified translation was not entirely accurate and invited the Court interpreter, who was interpreting Chen's evidence on the stand, to provide her translation of what Chen had said based on the transcript of the conversation. Mr Chuah objected to the issue being raised for the first time during Chen's cross-examination. Given the potential relevance of this evidence and materiality surrounding the accuracy of the translation of that particular part of the transcript, I allowed the Court interpreter to review that part of the transcript, provide her translation, and for Ms Lin to put her questions to Chen:[95]

> Interpreter: … "C: So actually, this itself, during the communication, there was a misunderstanding *including*--- such as that telling me when I was being told, it was 5 metres from the wall. O: Yes. See, essentially, in the end, it is 5 square metres. This is quite a difference.
>
> Lin: So the translated version that Mdm Translator gave and the difference between that and the English version of the official translation is, instead of "also", it should be "including" as opposed to "also".
>
> [emphasis added]

95 Transcript of proceedings on 22 November 2023 at p 31, lns 9–16.

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107 When the Court interpreter was invited to repeat her translation, she prefaced her response by saying that she was not privy to the context of the entire conversation and could therefore only offer a literal translation of the spoken words. With that in mind, she provided the following translation:[96]

> Interpreter: … There was a misunderstanding, *including* just like that one when telling me---when it was being told to me 5 metres from the wall. O: Yes. C: So, in fact, eventually it is 5 square metres. This is quite a difference.
>
> Court: Alright. I think that's as far as you can take it, Ms Lin.
>
> Lin: Yes, Your Honour.
>
> [emphasis added]

108 I am mindful that the defendants only disputed the accuracy of the certified translation for the first time during Chen's cross-examination. However, the Court's task is to deduce the meaning – and therefore the weight – to be ascribed to the evidence before it, and here we are concerned with the meaning of words Chen himself used in the First Recorded Conversation. In this connection, the Court is entitled to consider competing translations (including those supplied by court interpreters): *Mann Holdings Pte Ltd and another v Ung Yoke Hong* [2018] SGHC 69 at [81]–[84].

109 In any event, there was no question of me disregarding the certified translation entirely and it is unnecessary for me to decide if one translation should be preferred over the other. The fact of the matter is that there exists an alternative interpretation of the part of the conversation between Chen and Ong that (a) is not inherently unbelievable; and (b) if correct, would disclose a prior concession by Chen that he *could have* misunderstood what he was told in relation to the loft. To that extent, the contents of the First Recorded

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[96] Transcript of proceedings on 22 November 2023 at p 32, lns 14–20.

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Conversation lend credence to the hypothesis that Chen may have misunderstood what he had been told. This, in turn, makes it less likely that Chen's misapprehension was induced by the Loft Representation.

110 Returning to Chen's evidence at trial, this was Chen's response during cross-examination to Ms Lin's suggestion to Chen that he could have misunderstood what Ong said to him:[97]

> Lin: So having read this part of the conversation that you recorded, 13---on 13th July 2020, would you agree with me that you could have misunderstood what was being told to you or misheard what was being told to you when Jianlong say "5 square metre", you thought it was 5 metre?
>
> Chen: First of all, this is impossible. *If I have misheard it on the 18th of October 2018, Ong Jianlong would have corrected me on the spot but he did not.* I mentioned earlier that on the 18th of October 2018, when we went down to the property for the second viewing before I decided to go ahead with the purchase, we were there to discuss about the specific position regarding the starting point of this 5-metres extension. According to the developer's loft, the 5 square metres would end at the fourth cove light of the ceiling. However, the 5-metre extension that I wanted to construct would end at the sixth cove light. So if indeed this had been misheard, Ong Jianlong would have corrected me on the spot. So, in my opinion, I'm of the view that the 5 metre which I received from---the 5 metre that I have received over at my end was the same as what Ong Jianlong had told me. It is about the 5 metres and not the five square metres.
>
> …
>
> Lin: So, anyway, I mean, this is the defendant's case and I'll suggest to you that you could have misheard what was said to you when Jianlong says "5 square metre" and not "5 metre". Do you agree or disagree?
>
> Chen: I disagree.
>
> [emphasis added]

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97 Transcript of proceedings on 22 November 2023 at p 32, ln 21 to p 33, ln 11.

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111 There are two points to note about Chen's responses to Ms Lin's questions. First, Chen says that if he misheard Ong, Ong would have "corrected [him] on the spot but he did not". That, in my view, is not a complete answer to Ms Lin's hypothetical – if Chen misunderstood what Ong had told him, Ong would only correct Chen *if* Chen *repeated* to Ong what Chen thought was told to him by Ong. This brings me to my second observation, which is that Chen goes on to *insist* that the Loft Representation was made to him. His evidence is that there was a discussion in which the "sixth cove light" was used to visualise a distance of 5 metres. Leaving aside the fact that this aspect of Chen's evidence is uncorroborated, it goes to show that Chen wholly rejects any notion of him having misunderstood what he had been told.

112 Overall, the available evidence points, in my view, to a real possibility that Chen misunderstood what Ong had said about constructing a loft on the second floor of the Property. Chen rejects this notion, but he has otherwise adduced no evidence to demonstrate its improbability. It is, to that extent, harder to accept Chen's case that Ong told him he could construct the Proposed Loft without also informing him of the approvals that would be required.

Yi Song's Mock-up

113 At trial, Chen relied heavily on a mock-up of the Proposed Loft that Yi Song had apparently prepared for Chen (the "Mock-up").[98] For ease of reference, the Mock-up is annexed to this judgment as Annex A. On Chen's case, the Mock-up shows that Chen in fact intended to build a loft which, together with the Study, would extend over a "space of approximately 4.5m by 3.162m".[99]

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98 AB at pp 35–36.

99 PCS at [25].

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114 Very little is known or understood about the Mock-up. Yi Song was not called as a witness to explain the Mock-up and the circumstances in which it was prepared; while Chen had initially applied for a subpoena to be issued against Yi Song, that application was eventually withdrawn at the start of the trial. The authenticity of the Mock-up was not challenged and the document was admitted into evidence, but its contents remained hearsay. More importantly, even if I accept Chen's explanation of what the Mock-up illustrates – *ie*, a loft that extends approximately 5 metres from the inner wall of the Study – the Mock-up would still shed no light whatsoever on the material issues at hand. Let me explain why.

115 It was Chen's evidence in cross-examination that Yi Song visited the Property with him "in or around end of May 2019 to the beginning of … June 2019".[100] The Mock-up was presumably prepared around that time, and it would therefore have been contemporaneous with the text conversations set out at [87]–[88] above (which took place on 30 May 2019 and 3 June 2019).

116 With that context in mind, the Mock-up only reinforces a possibility that has already been established – namely, that in or around late-May/early-June of 2019, Chen was taking active steps to proceed with his plans to construct the Proposed Loft. The Mock-up does not lend itself to any meaningful inferences as to (a) whether Ong ever made the Loft Representation and, if he did; (b) whether Ong had told Chen *before* Chen paid the Booking Fee that the relevant authorities' approval would be required in the event that he decides to construct a loft larger than five square metres. For this reason, very little assistance can be derived from the Mock-up.

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100 Transcript of proceedings on 21 November 2023 at p 20, ln 17.

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Conclusion

117 Overall, I am not persuaded, on the balance of probabilities, that Ong made the Loft Representation to Chen. On the one hand, there is a total lack of objective and/or contemporaneous evidence to corroborate Chen's evidence that Ong had made the Loft Representation; on the other hand, there is *some* evidence, although also far from complete, that gels more with the defendants' theory – and which I accept as probably true – that Chen may have misunderstood what he had been told by Ong. As mentioned above at [34], it is Chen's burden to prove his positive case to the requisite standard of proof. This he has failed to do.

118 While it is strictly not necessary for me to decide if the defendants have established their case, based on the totality of the evidence I have considered above, it is, in my view, more likely than not that Chen was told prior to payment of the Booking Fee that (a) the Developer's Loft was five square metres in size, and that (b) he would require the relevant authorities' approval if he wished to construct a loft larger than that. On either count, Chen's claim pertaining to the Loft Representation cannot succeed. For these reasons, I dismiss Chen's misrepresentation claim insofar as it relates to the Loft Representation.

The Resale Representation

119 The third misrepresentation that Chen relies on in this action is Ong's alleged representation that:[101]

> … [Ong] would be able to re-sell the Property without much difficulty if [Chen] decided not to continue with the purchase having entered into the OTP. …

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101 SOC at [5(c)].

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I will refer to this as the "Resale Representation".

120 Chen further pleads that:[102]

> … During the viewings, [Chen] had expressed concern to [Ong] that he might not be able to obtain Permanent Residency status within the next 2 years, and if that were to happen, [Chen] may decide not to continue with the purchase. [Ong] reassured [Chen] that he (ie. [Ong]) would be able to re-sell the Property prior to expiry of the OTP. [Ong] represented that as the Property is a freehold property in a prime district and location, and the price of [Chen's] unit being much cheaper compared to others in the same area, [Ong] would be able to sell the Property at the same price or higher.

121 As with the other alleged misrepresentations, the defendants deny that Ong had ever made the Resale Representation. The defendants further rely on the Court of Appeal's decision in *Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 ("*Tan Chin Seng*") (at [12] and [21]) and submit that even if the Resale Representation was made, it was either a representation of intention or belief (and not fact), or a contractual promise in substance.[103]

122 Given that the Resale Representation forms part of Chen's claim pleaded in misrepresentation, the relevant question is whether it was a representation of Ong's intentions or beliefs at the time it was made. In my judgment, the answer to that question must be 'yes'. A representation by Ong that he "*would* be able to re-sell the Property without much difficulty" is clearly a representation that speaks to Chen's estimation of what he could achieve at some later point in time.

123 It is trite that implicit in a representation of one's intentions or beliefs is an underlying representation *of fact*, namely that the maker (a) genuinely holds

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102 SOC at [5(c)].

103 DCS at [46].

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the relevant intention or belief; and (b) has objectively reasonable grounds for holding the relevant intention or belief: *Tan Chin Seng* at [12]–[13] and [16]–[17].[104] There was no evidence led nor submissions made to show that insofar as Ong in fact made the Resale Representation, he either did not genuinely believe it to be true or had no reasonable grounds to entertain that belief. Indeed, the pith of Chen's case was that Ong's subjective beliefs were irrelevant because he effectively gave Chen an undertaking and *guaranteed* the re-sale of the Property – I will turn to this point shortly when I consider Chen's alternative claim in contract. For present purposes, it suffices to say that Chen's misrepresentation claim premised on the Resale Representation is without merit and I have little hesitation in dismissing it.

Chen's claim for breach of contract

124 I turn now to Chen's contractual claim against Ong. This claim was pleaded in two parts. The first – which Chen referred to as the "Oral Understanding"[105] – relates to events prior to Chen paying the Booking Fee in return for the OTP. Specifically, it was pleaded that:[106]

> … [T]he said Representations [*ie*, the Occupation Representation, Loft Representation, and Resale Representation] by [Ong] during the viewings in June to October 2018 gave rise to an oral understanding between [Chen] and the Defendants (the 'Oral Understanding'), the terms of which are as follows:
>
> (1) [Chen] is entering into the OTP as he believes [Ong's] representations that the wall of the study can be extended by 5m to allow a nanny's room and another room to be constructed next to the master bedroom to fulfil the familial needs of [Chen] and that [Chen] would be exempted from paying Additional

104 Plaintiff's Reply Closing Submissions at [20].

105 Chen's AEIC at [39].

106 SOC at [10(1)].

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> Buyer Stamp Duties (ABSD) if he obtains Permanent Residency before exercising the OTP.
>
> (2) [Chen] intends to apply for Permanent Residency to be eligible for ABSD exemption;
>
> (3) In the event that [Chen] does not wish to exercise the OTP, *the Defendants will undertake to procure the successful sale of the Property and to recover the monies paid by [Chen] before the exercise of the OTP.*
>
> [emphasis in original omitted; emphasis added in italics]

125 The second part – which Chen referred to as the "Oral Agreement" – relates to events said to follow Chen's decision to sell the Property:[107]

> … [Chen] was aggrieved and told [Ong] in July 2019 that [Ong] had to find another buyer (ie. Sub-purchaser) for the Property before the deadline to exercise the OTP. … [Ong] indicated that he understood [Chen's] concerns and told [Chen] that he would take immediate steps to sell the Property and will sell it in 3 to 6 months or by the very latest, May 2020. Premised on the earlier Oral Understanding, [Chen] and [Ong], in his capacity as the agent of [Huttons], thus engaged in negotiations from July 2019 and *reached an oral agreement on or about 12 October 2019* ('the Oral Agreement'), the terms of which are as follows:
>
> (1) The Defendants *will procure* a buyer to buy the Property in a sub-sale arrangement by or before May 2020;
>
> (2) The Defendants will market the Property for sub-sale at the approximate price of 10% below market rate and the proceeds of the sub-sale will be used to finance the purchase of another property that [Chen] wishes to purchase;
>
> (3) Commissions of 2% of the sub-sale price as consideration for the Defendants' undertaking as set out above;
>
> [emphasis in original omitted; emphasis added in italics]

126 Chen's Statement of Claim indicates that he is claiming for breach of the putative *Oral Agreement*.[108]

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107 SOC at [10A].

108 SOC at [10E]–[11].

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The parties' positions

127 Chen says that from as early as the First Viewing, he had expressed to Ong his concerns about the consequences of failing to exercise the OTP before it lapsed. According to him, Ong had assuaged his concerns by representing that he would sell the property before the deadline if Chen decided not to see the purchase through:[109]

> … Ong then reassured me that I could still go on with the purchase and if I really fail to obtain PR status or decide that I no longer want the Property, *he will get the Property sold before the deadline to exercise the [OTP].*
>
> [emphasis added]

128 This assurance was later repeated at the Third Viewing when "Ong assured [Chen] yet again that in the event that [Chen decided] not to continue with the purchase in the next 2 years, he will be responsible to get the Property sold for [Chen]."[110]

129 As it turned out, Chen "made a final decision not to proceed with the purchase of the Property and requested Ong sometime in July 2019 to sell it at the earliest opportunity".[111] Ong attempted – unsuccessfully – to locate a buyer for the Property. In the premises, the 30% that Chen had paid was forfeited on 30 October 2020.

130 The defendants' position is simple. Ong never made any promises in connection with the re-sale of the Property when Chen expressed his decision

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109 Chen's AEIC at [17].

110 Chen's AEIC at [31].

111 Chen's AEIC at [63].

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to let go of the Property (or at any time thereafter).[112] The defendants do not dispute that Ong took steps to help Chen on-sell the Property, but their case is that Ong had only assisted Chen out of goodwill.[113]

131 The defendants also say that even if a contract was formed between Ong and Chen, it certainly "did not impose any obligation or duty on [Ong] to ensure the sale of the Property at a predefined price within a specified timeframe".[114] The defendants vigorously reject the contention that Ong had promised that an on-sale *would* materialise.

I am not persuaded that the Oral Agreement was concluded between Ong and Chen

132 There is no document that purports to record or evidence the Oral Agreement. I am called on by Chen to *infer* the existence of the Oral Agreement. In my judgment, the evidence – or rather, the abject lack thereof – makes it impossible to do so. In fact, the evidence that *is* available militates *against* the existence of the putative agreement.

133 Here, I refer to the Third Recorded Conversation, which relates to a phone conversation between Ong and Chen that took place on 22 September 2020 (which Chen also secretly recorded). It clearly shows that as of that date, Chen and Ong were *still* strategising with a view to achieving the sub-sale and Chen was considering the discount he was prepared to offer on the Property:[115]

> Chen: … Regarding the discount, because it's been a long time since I've moved here, and our newly joined investor, a local

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112 Defence at [24].

113 Defence at [24B(a)].

114 Defence at [24B(c)].

115 Chen's AEIC at p 98.

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> Singaporean, also introduced some friends to me who have been helping me with the sale. The price they posted is between S$4.5 million~S$4.6 million, which is more than 10% cheaper.
>
> Ong: Right. It is in the range of 9-12% for over S$4 million.
>
> Chen: In the range of 9-12%.
>
> Ong: Yes, in the range of 9-12%.
>
> Chen: Right. I can also accept this price. It's OK for me to get back S$800,000~S$900,000.
>
> Ong: Yeah. If the selling price exceeds S$4 million, you should get back S$1 million.
>
> Chen: I'm OK with less than S$1 million, in the range of S$800,000 to S$1 million. It depends on how soon it can be sold. *If it's sooner, then it can be lower. If it's later, then it is better if the price is higher, of course.*
>
> [emphasis added]

134 Later in the same conversation, the discussion turns to the agents' commission payable on the sub-sale:[116]

> Ong: He came to Singapore some time ago. We talked in the tea restaurant. Then he went back to Indonesia and never come back to Singapore afterwards. Flights from Indonesia have been banned. So, for the time being, there is no further progress. I feel that the rest are just visitors asking a couple of questions. However, I had a face- to-face talk with this Indonesian.
>
> Chen: What percentage of reduction would you suggest for a successful deal with him?
>
> Ong: Usually, 9% should be reduced.
>
> Chen: Because after discounting the price, actually I still would need to consider giving you commission, right?
>
> Ong: *If we really can help you sell, we would not charge you commission.*
>
> Chen: *But let's discuss it based on the overall price. I think the commission should be paid anyway, whether it is buying or selling …*
>
> Ong: As I promised you, I have spent a lot of monies every month looking for potential buyers, so …

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116 Chen's AEIC at p 100.

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> Chen: So I don't want you to waste money, or in other words, *no matter what the commission was when the house was sold and what the selling price is now, you deserve the commission based on your work. Therefore, in terms of discount, I think the commission cost I will pay should also be considered.* Generally speaking, I can accept a loss. But I won't accept a loss of all the S$1.5 million without a single penny being returned, right?
>
> Ong: Of course, of course
>
> [emphasis added]

This plainly indicates that there was no prior agreement between Chen and Ong as to the compensation the latter could expect in return for his services; indeed, the parties still had different expectations at the time the conversation took place.

135 Overall, the weight of the evidence makes it impossible for me to say that the Oral Agreement was ever concluded; when it was concluded; or that there was any consensus between Chen and Ong as to the terms of the purported Oral Agreement. All of this militates against any finding being made that Chen or Ong had made an offer on the terms set out at [125] above which Ong or Chen respectively then accepted. It also demonstrates such uncertainty of terms, which itself erodes the very basis of the Oral Agreement.

136 In addition to the foregoing, I add that it is inherently difficult to believe that a real estate agent would promise (or undertake) to secure a buyer for a property at a defined price-range and within a specified period of time – all in return for "[c]ommissions of 2%", which pales in comparison to Ong's exposure under the alleged Oral Agreement. On cross-examination, Ong took the position that:[117]

> … when an agent agree to market a certain property, it is not a stamp or promise or whatsoever that it will be sold. I don't think

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117 Transcript of proceedings on 24 November 2023 at p 50, lns 10–15.

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> such---such thing happen---is valid in Singapore. I agree to help you market. When you ask me about the price, I answer. You ask me about the comm, I give you the market norm. I ask you to approach other agent too. I start to market. That's about it.

137 On that basis, Ong categorically rejected Mr Chuah's suggestion that he had promised to sell the Property "within 3 to 6 months". Ong explained that "3 to 6 months" was his *estimation* of how long it would take to do so – an estimation that was only given in response to Chen's inquiries on the matter:[118]

> Chuah: You promised Mr Chen you could sell it within 3 to 6 months.
>
> Ong: I did not promise.
>
> Chuah: Okay, you did not promise. Then you said earlier that's the norm. So the question is: You were very confident that property could be sold within 3 to 6 months, weren't you, when you made that assurance?
>
> Ong: It's just a basic answer to a simple query, how long does a house need to be sell. That's why I give that answer.
>
> Chuah: And---
>
> Ong: It does not mean or point to a promise.

138 Ong's explanation is, in my view, consistent with what was said between him and Chen during the Third Recorded Conversation:[119]

> Chen: In fact, I intended to sell the house at the beginning of last year, *and I asked something about it last March and April, and how long it may take to sell it out.*
>
> Ong: Yes.
>
> Chen: [R]ight? You said you could sell it out within three to six months, so I was sure about it.
>
> Ong: Yes.
>
> [emphasis added]

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118 Transcript of proceedings on 24 November 2023 at p 50, lns 23–29.

119 Chen's AEIC at p 134.

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139 The inherent unlikelihood of Ong agreeing to such uncommercial and onerous terms must be placed on the scales in deciding if the Oral Agreement was ever concluded. I also find it more likely than not that when Ong spoke about the on-sale materialising within "3 to 6 months", he was only offering an estimate of how long it would take to sell the Property, and not an affirmative undertaking to procure an on-sale within that time.

140 Having regard to the lack of positive evidence pointing to the existence of the Oral Agreement or what its alleged terms were – and the existence of evidence pointing in the opposite direction – I also dismiss Chen's claim for breach of contract.

Chen's claim in negligence

141 Chen's pleaded claim in tort was that Ong owed a duty of care to Chen as a "duly licensed salesperson", and that "[w]rongfully and in breach of his duty of care, [Ong] had made the said Representations to [Chen] fraudulently and/or negligently with a motivation for his personal gains."[120]

142 The gravamen of this claim is that Ong had made various misrepresentations in breach of his duty of care in tort. In my judgment, this claim is duplicative of Chen's claim in *negligent* misrepresentation, which I have dismissed *in toto*. On that basis, I also dismiss this alternative claim in tort.

Chen's claim for breach of statutory duty

143 I turn now to Chen's claim for breach of statutory duty. Specifically, Chen claims that Ong has:[121]

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120 SOC at [13].

121 SOC at [15].

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> … [B]reached the Code of Ethics and Professional Client Care under the First Schedule to the Estate Agents (Estate Agency Work) Regulations 2010 … which sets out the standard of performance expected of duly licensed real estate agents in their discharge of estate agency work. …

144 As a preliminary matter, the defendants resist this claim on the basis that Chen has no private right of action under the Estate Agents (Estate Agency Work) Regulations 2010 (the "Regulations") read with its authorising act, which is the Estate Agents Act 2010 (2020 Rev Ed) (the "EAA").[122] If the defendants are correct on this point, then whether Ong in fact breached his statutory duties is moot.

145 I note at the outset that Chen has not specified in his pleadings the relevant statutory provisions that he seeks to rely on. The most that was given by way of specifics is the allegation in the Statement of Claim that:[123]

> … In relation to the signing of the OTP, [Ong] had failed to discharge his duty of explaining to [Chen] the meaning and consequence of the provisions under the OTP before requesting [Chen] to sign the same. Furthermore, by way of the said Representations provided to [Chen], [Ong] had failed to act with honesty, fidelity and integrity in accordance with the professional standards set out in the Code.

146 Leaving that aside, it was not seriously argued by Chen that there is anything in the EAA or the Regulations that *expressly* confer upon him a private right of action in respect of Ong's putative breaches of statutory duty. Chen instead relies on the case of *Loh Luan Choo Betsy (alias Loh Baby) (administratrix of the estate of Lim Him Long) and others v Foo Wah Jek* [2005]

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122 DCS at [97]–[98].

123 SOC at [15].

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1 SLR(R) 64 ("*Loh Baby*") to argue that his right of action is *implied* in the EAA and/or the Regulations.[124]

147 In *Loh Baby*, Judith Prakash J (as she then was) endorsed the following summary of the relevant principles (at [25]), which I gratefully adopt:

> … [T]he basic rule is that in the ordinary case, breach of a statutory duty does not in itself give rise to a private law cause of action for damages. It is only when 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" (see *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633 at 731) that such a cause of action will arise. The court therefore has to look at the provisions of the statute that has been breached to determine what private rights, if any, accrue from such breach.

148 The present inquiry therefore proceeds in two stages. First, Chen must persuade me that (a) Ong's statutory duties were imposed for the protection of a "limited class of the public" to which Chen belongs; and (b) Parliament intended to confer on members of that class private rights of action in respect of breaches of those duties.

149 Accordingly, Chen's case is that:

(a) He belongs to a "limited class of the public" (*ie*, "real estate purchasers") that Parliament intended to protect by imposing the statutory duties he says Ong breached;[125] and

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124 PCS at [61]–[66].

125 PCS at [64]–[65].

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(b) On a proper construction of the relevant provisions in the EAA and the Regulations, Parliament intended to confer upon members of that "limited class" private rights of action.[126]

150 For the reasons that follow, I am unable to agree with Chen.

Ong's statutory duties were not imposed for the protection of a "limited class of the public" to which Chen belongs

151 To make good his position that the EAA was enacted to protect "real estate purchasers" as a limited class of persons, Chen relied on the speech by Mr Mah Bow Tan (who was the then-Minister for National Development) (the "Minister") at the Second Reading of the Estate Agents Bill on 15 September 2010.[127] In this regard, Chen cited the following parts of the Minister's speech in his closing submissions:[128]

> Estate agents and salespersons are engaged as intermediaries in the **sale, purchase and lease of properties**, and play an important role in helping their clients to get the best value for their property transactions. To perform this function well, it is essential that they do their work professionally and ethically, and act in the best interest of **their customers**. They must be well acquainted with Government rules and procedures, **help clients through the whole buying and selling process, give them correct and proper advice, and generally ensure that their property transactions are as smooth as possible**.
>
> …
>
> Sir, the existing system is inadequate to deter and deal with such abuses and unscrupulous practices by errant estate agents and salespersons when these arise.
>
> …
>
> Sir, the Estate Agents Bill that I have introduced in Parliament is the result of this review. It will put in place a robust legislative

126 PCS at [66].

127 Plaintiff's Bundle of Authorities ("PBOA") at pp 406–412.

128 PCS at [62].

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> and regulatory framework to better protect **consumer interest** and raise the professionalism of the industry.
>
> [emphasis in original]

152 In my judgment, the Minister's speech in fact *contradicts* the case that Chen seeks to advance. As a starting point, the EAA polices the conduct of "estate agency work", which s 3(1) EAA defines in the following terms:

> "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, being work done —
>
> > (a) 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) 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; …

153 The EAA makes no distinction between the types of properties (*eg*, private or public, commercial or residential) or dealings therein (*eg*, sales, purchases, or leases). The EAA is ultimately concerned to regulate the conduct of estate agency work in order to protect *all persons relying on estate agents in dealing with property*. The extracts from the Minister's speech reproduced at [151] above plainly evinces that intention. The Minister also referred in his speech to the prevalence of home-ownership (and, by extension, estate agency work) as giving impetus to stricter regulation:[129]

> Hence, unlike other countries where property transactions involve only the well-to-do, lower income households in Singapore also buy and sell properties. Many of them do so through estate agents, even though the Housing and Development Board (HDB) is encouraging do-it-yourself (DIY)

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129 PBOA at p 406, col 1080.

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> transactions. For many Singaporeans, their home is the largest single investment they will ever make. Therefore, it is important that they be given the best possible advice and service in making such an investment.

It is therefore obvious to me that Parliament regarded the problem as one that afflicts (or may afflict) a sizeable demographic and it would, in my judgment, be a misuse of language to describe such a wide demographic as a "limited class" of persons that the EAA was intended to protect.

154 The better view is that the EAA was enacted to protect *the public as a whole*, and here I am guided by Lord Browne-Wilkinson's observations in the English case of *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633 (at 731–732) (which Prakash J referred to in *Loh Baby* at [25]):

> Although regulatory or welfare legislation affecting a particular area of activity does in fact provide protection to those individuals particularly affected by that activity, the legislation is not to be treated as being passed for the benefit of those individuals but for the benefit of society in general. Thus legislation regulating the conduct of betting or prisons did not give rise to a statutory right of action vested in those adversely affected by the breach of the statutory provisions, i.e. bookmakers and prisoners …

155 For this reason, Chen's case fails at the first step of the analysis.

It was not Parliament's intention for private individuals to have rights of action under the EAA or the Regulations

156 I also state for completeness that even if I were to assume that Chen belongs to a "limited class" of persons that the EAA was intended to protect, I am unconvinced by the argument that Parliament intended to confer any private rights of action upon that class.

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157 Although Parliament's ultimate objective may have been to protect the public at large against "unscrupulous practices by errant estate agents",[130] the sole mechanism by which the EAA achieves that aim is the direct regulation of estate agency work. In his speech to Parliament, the Minister described the EAA as "[putting] in place a robust legislative and regulatory framework to better protect consumer interest and raise the professionalism of the industry".[131] I also note that the EAA, by its long title, is explicitly described as "[a]n Act *to establish an enhanced framework for the regulation of real estate agents and their salespersons* and to form a Council for Estate Agencies". In short, the EAA brings the force of law to bear on estate agents, but otherwise says nothing about the position of aggrieved clients. I do not therefore think that Chen's arguments can be supported by recourse to the overarching objectives of the EAA.

158 I am fortified in this view by the enforcement mechanisms that *are* expressly provided for under the EAA:

(a) As a starting point, s 49(1) EAA allows for complaints to be lodged to the Executive Director – *ie*, the chief executive of the Council for Estate Agencies (the "Council") – who must then refer the complaint to the Council;

(b) Section 49(4) EAA provides that the Council may thereafter refer the matter for investigation pursuant to s 50 EAA "if it is of the opinion that there is a sufficient case for investigation";

130 PBOA at p 407, col 1082.

131 PBOA at p 408, col 1083.

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(c) Section 49(6) empowers the Council to impose a financial penalty not exceeding $5,000.00, or to censure the errant estate agent/registered salesperson;

(d) The Council may alternatively refer the matter to a Disciplinary Committee if it considers it appropriate, pursuant to s 49(11) EAA; and

(e) Under s 52 EAA, the Disciplinary Committee is empowered to mete out punishments that include admonitions/reprimands, financial penalties, and suspensions/revocations of licenses.

159 Apart from the enforcement measures I have just described, the EAA also creates various criminal offences punishable by fines or imprisonment (*eg*, performing certain acts without a valid license; giving false or misleading information in registering for or renewing one's license).

160 Separately, the Regulations also expressly provides for specific enforcement mechanisms. The First Schedule to the Regulations is entitled "Code of Ethics and Professional Client Care", and the Second Schedule is entitled "Code of Practice for Estate Agents". Paragraphs 3 of both Schedules are identical:

> Violation of Code
>
> 3.—(1) Estate agents and salespersons who breach any provision of this Code may be subject to disciplinary action *before a Disciplinary Committee formed under the Act.*
>
> (2) A breach of any provision of this Code may result in the imposition of *sanctions including financial penalties, demerit points and the suspension or revocation of a licence or registration under the Act.*
>
> [emphasis added]

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161 In my view, the overall scheme of the EAA and the Regulations plainly shows that Parliament intended for the enforcement of estate agents' duties to be within the purview of specialised bodies formed for that specific purpose. It offers aggrieved clients an avenue for lodging complaints that will then be acted upon by the appropriate body. Importantly, however, the steps that follow from those complaints are matters within the prerogative of the responsible body. The entire procedure is governed by clear and elaborate statutory provisions. The penalties that may be handed down are disciplinary or quasi-criminal (if not actually criminal) in nature. Against that backdrop, I find it impossible to say that Parliament intended for powers of enforcement to *concurrently* reside in the hands of private individuals by way of rights of private action. Chen's claim for breach of statutory duty therefore also stumbles at the second step of the analysis.

In any event, Chen cannot prove that his pleaded losses were caused by Ong's alleged breaches of statutory duty

162 Before moving on, I add that *even if* (a) Ong breached certain provisions of the EAA or the Regulations by failing to "[explain] to [Chen] the meaning and consequence of the provisions under the OTP before requesting [Chen] to sign the same" (see [145] above) and (b) Chen has a private right of action in respect of those breaches, (c) it is still incumbent on Chen to demonstrate that he suffered loss in consequence of the hypothesised breaches.

163 As I noted at [64] above, the loss that Chen has pleaded and particularised relates to the "sum of S$1,544,100 being 30% of the Sale Price" that was forfeited. Taking Chen's pleaded case at face value for the moment, I am unable to see how that loss would have been avoided had Ong dutifully explained to Chen the terms and implications of the OTP:

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(a) The OTP had nothing to say about Chen's liberty to construct a loft on the second floor of the Property.

(b) The OTP spelt out the Occupation Condition – which Chen says he learnt of only *after* he paid the Booking Fee – but as I observed at [64] and [28(d)] above, it was *Chen's* evidence that he was content to proceed with the arrangement negotiated for by Ong *anyway* on account of Yishan and because "the next 20% would have to be paid sooner or later".

(c) Chen *knew* that under the terms of the OTP, the sums he had paid would be forfeited in the event that he failed to complete the transaction – it is for precisely that reason that Chen now places considerable emphasis on Ong's alleged affirmations in respect of the on-sale of the Property (*ie*, the Resale Representation and the alleged Oral Agreement). Even if I were to accept Chen's bare assertion that he only learnt of the forfeiture mechanism "[o]n or about 20 December 2018, [when] the keys to the Property were handed over to [him]",[132] the fact of the matter is that still he went on to pay a *further* 15% of the purchase price between 1 April 2019 and 7 May 2019.[133]

164 I also note Chen's allegation that "by way of the said Representations … [Ong] had failed to act with honesty, fidelity and integrity in accordance with the professional standards set out in the Code" (see [145] above). It suffices to say at this juncture that Chen has failed to prove that any of the pleaded misrepresentations were in fact made to him by Ong. On that basis also, this part of Chen's claims for breach of statutory duty must fail.

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132 Chen's AEIC at [47]–[48].

133 Chen's AEIC at [52].

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Conclusion

165 To summarise, I am not at all persuaded that Chen has any private right of action in respect of Ong's alleged breaches of statutory duty. Chen has failed to demonstrate that the relevant statutory provisions were enacted to protect a limited class of the public to which Chen belongs and *even if* that were the case, I am not convinced that Parliament intended for those provisions to confer private rights of action. In any event, Chen has failed to establish a causative nexus between his pleaded losses and Ong's alleged defaults. Accordingly, I dismiss Chen's claim for breach of statutory duty.

Whether Huttons can be held vicariously liable for Ong's defaults

166 In light of my decision that Chen has failed to make out any of his claims against Ong, it follows that there is also no basis upon which Huttons can be held vicariously liable. In the premises, it is unnecessary for me to delve into the precise nature of the legal relationship between Ong and Huttons, or Huttons' role *vis-à-vis* the Development. Accordingly, Chen's claims against Huttons are also dismissed.

Conclusion

167 For all the foregoing reasons, Chen's claims against Ong and Huttons are dismissed entirely.

168 I shall hear the parties separately on costs.

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S Mohan J
Judge of the High Court

Chuah Chee Kian Christopher and Hoe Siew Min Deborah (Christopher Chuah Law Chambers LLC) (instructed) and Low Hong Quan (Fervent Chambers LLC) for the plaintiff;
Lin Hui Yin Sharon and Lim Chong Hian (Withers KhattarWong LLP) for the first and second defendants;
The third defendant absent and unrepresented.

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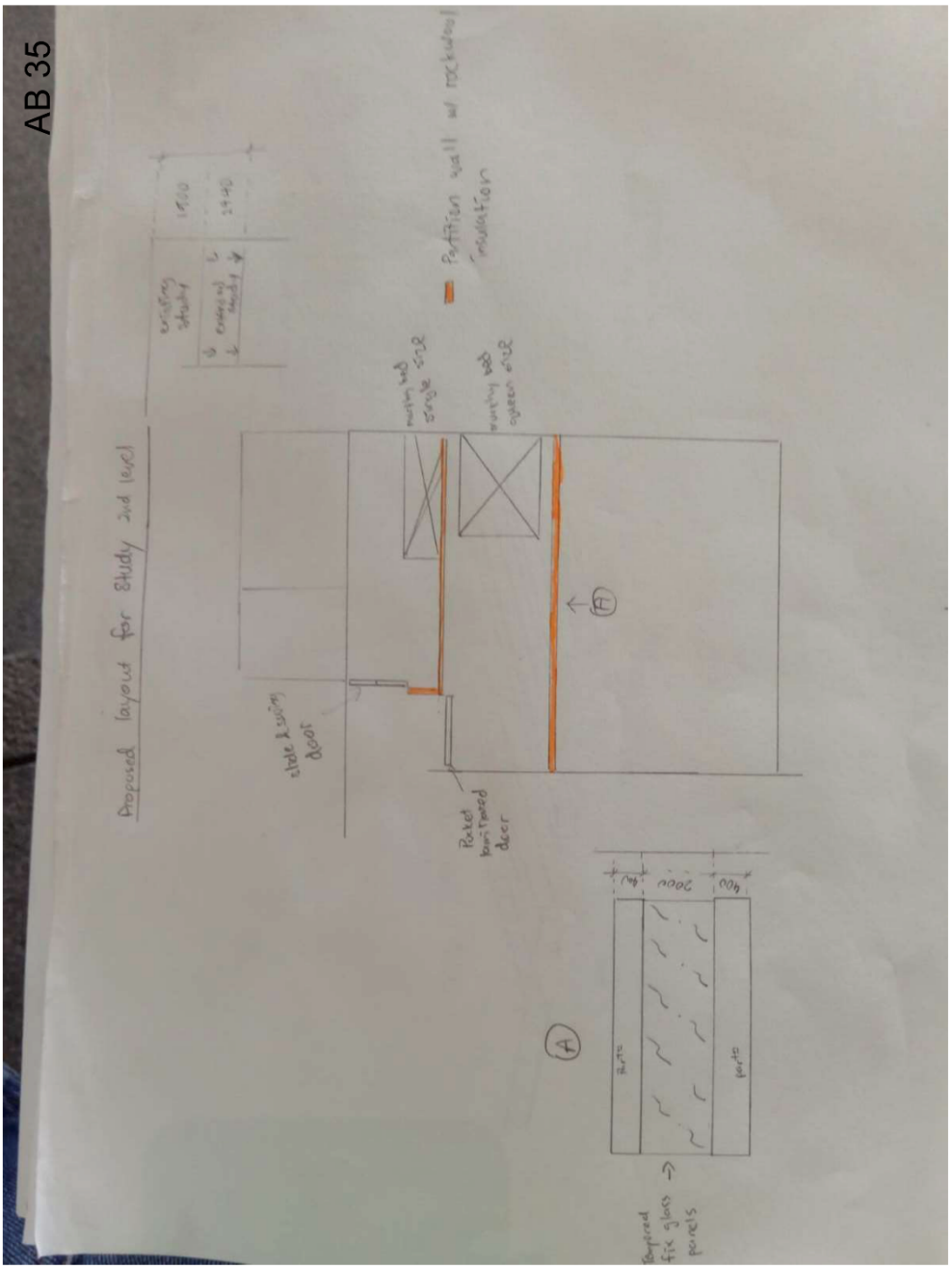
Annex A: The Mock-up



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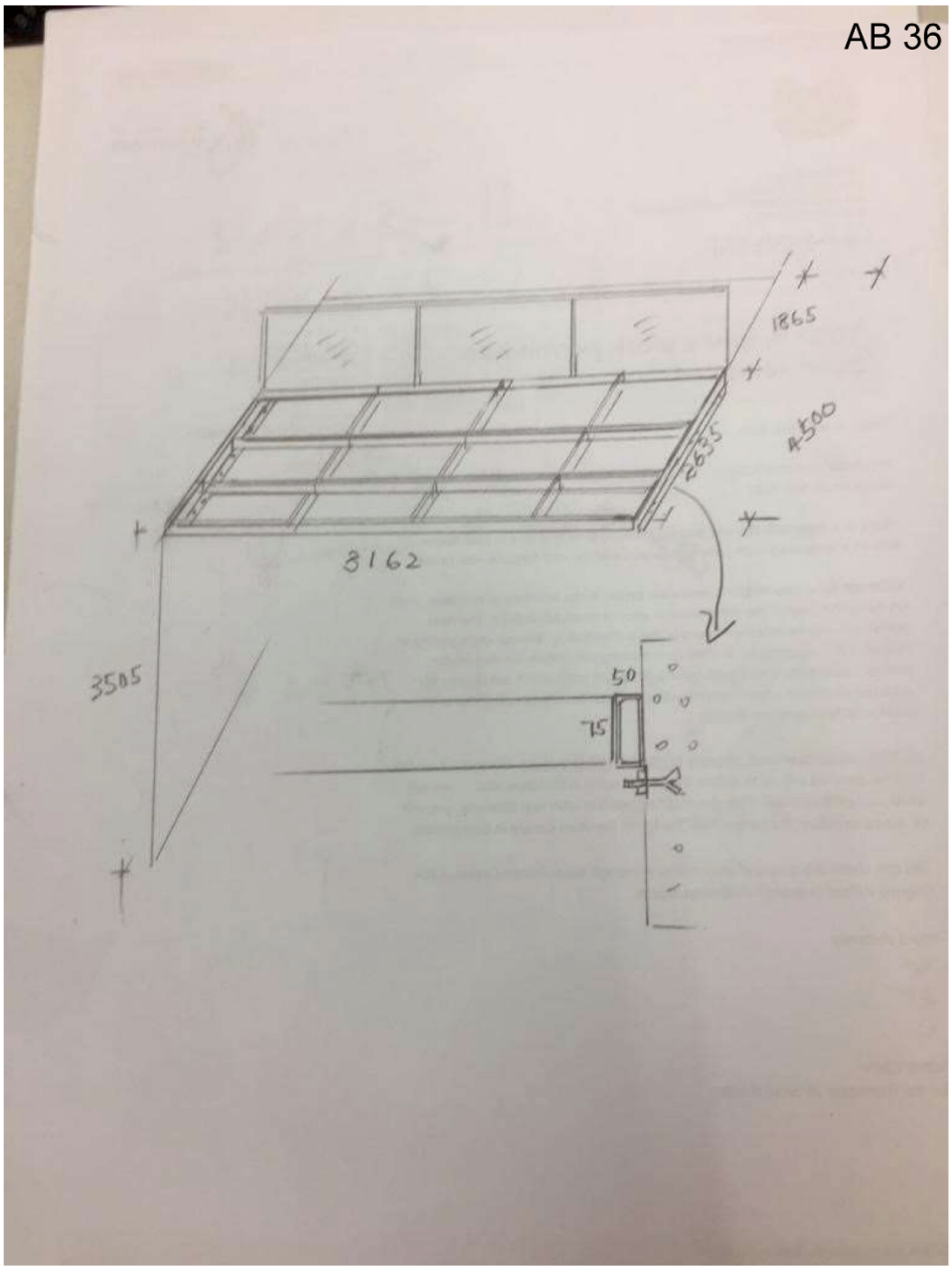

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