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2. Redaction HAS NOT been done.

DISTRICT JUDGE
GEORGINA LUM
6 FEBRUARY 2025

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2025] SGDC 37

District Court Originating Claim No 64 of 2022

Between

(1) Goh King Kwee
(2) Hon Chin Lan

… *Claimants*

And

(1) Liu Shu Ming
(2) Tong Xin

… *Defendants*

Between

(1) Liu Shu Ming
(2) Tong Xin

… *Claimants in Counterclaim*

And

(1) Goh King Kwee
(2) Hon Chin Lan

… Defendants in Counterclaim

JUDGMENT

[Contract — Breach]
[Contract — Formation — Oral contracts]
[Contract — Misrepresentation — Fraudulent — Whether Statements of future intentions can amount to representations of fact]
[Contract — Misrepresentation — Negligent — Duty to adequately plead elements of negligent misrepresentation]
[Contract — Misrepresentation — Misrepresentation Act (Cap 390)]
[Restitution — Unjust enrichment — Total failure of consideration]
[Remedies — Recission]
[Remedies — Specific Performance]

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Goh King Kwee and another
v
Liu Shu Ming and another

[2025] SGDC 37

District Court Originating Claim No. 64 of 2022
District Judge Georgina Lum
21 December 2023, 25–27 March 2024, 18-19 April 2024, 8 July 2024

6 February 2025 Judgment reserved.

District Judge Georgina Lum:

Introduction

The parties

1 The Claimants and Defendants in Counterclaim are husband and wife. The 1st Claimant and 1st Defendant in Counterclaim, Mr Goh King Kwee ("Mr Goh"), was formerly an engineer and is now retired[1]. The 2nd Claimant and 2nd Defendant in Counterclaim, Mdm Hon Chin Lan ("Mdm Hon"), is working part time as an accounts assistant[2].

2 The Defendants and Claimants in Counterclaim are also husband and wife. The 1st Defendant and 1st Claimant in Counterclaim, Mr Liu Shu Ming

[1] Statement of Claim (Amendment No. 1) dated 10 May 2023 ("SOC") at [1] and Agreed Statement of Facts ("ASOF") at [1]

[2] SOC at [1] and ASOF at [1]

("Mr Liu"), is a freelance trainer conducting public management training to Chinese government officials and management training to entrepreneurs. He has also taught at Nanyang Technological University[3]. The 2nd Defendant and the 2nd Claimant in Counterclaim, Mdm Tong Xin ("Mdm Tong") is the wife of Mr Liu. Together they operate several companies in the Philippines and Singapore[4].

3 The Defendants directed some of their business dealings through a company named Max Property Holding Pte. Ltd. ("Max Property"), an exempt private company limited by shares. The Defendants owned, controlled and were the only directors of Max Property. On or about 4 May 2020, the Defendants struck off Max Property[5].

Background to the dispute

4 Mr Goh and Mr Liu were schoolmates in Pay Fong Middle School, Melaka Malaysia[6]. In February 2016, at a reunion organised by Pay Fong Middle School Alumni Singapore, Mr Liu and Mdm Tong shared a potential investment opportunity with the attendees[7]. Mr Goh and Mdm Hon expressed their interest to learn more about the investments and a meeting was arranged in or around March 2016 at the Defendants' offices at 81 Ubi Avenue 4 #05-23 (Ubi One) Singapore 408830 (hereinafter to be referred to as "the March Meeting" and "the Defendants' Singapore Office" respectively)[8].

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[3] ASOF at [2], SOC at [2] and Defence and Counterclaim filed herein ("D&CC") at [3]

[4] ASOF at [2]

[5] SOC at [3] admitted at D&CC at [3]

[6] SOC at [4] and Defence and Counterclaim

[7] SOC at [5] and [6] admitted at D&CC at [4] and [5]. Also see ASOF at [5] and [6]

[8] SOC at [6] to [8], D&CC at [5] and [6] and ASOF at [7]

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5 At the March Meeting, the Defendants made an investment presentation to the Claimants and proposed and offered for sale to the Claimants two financial instruments[9]. The first was the sale of shares in Max Property and the second was the sale of convertible bonds issued by Max Property[10].

6 On 7 March 2016, the following agreements were entered into:

(a) Two share sale agreements between Mr Goh and Mdm Hon on one hand and Mr Liu on the other[11] ("the Share Sale Agreements"); and

(b) Two investment agreements between Mr Goh and Mdm Hon one hand and Max Property on the other[12] ("the Investment Agreements").

7 In or around April 2017, after another meeting at the Defendants' Singapore Offices ("the April Meeting"), the Claimants entered into a series of agreements with the Defendants for the purchase of an apartment in the Philippines.

(a) The first agreement is for the purchase of a unit at Fort Victoria condominium at Bonifacio Global City, Manila, Philippines ("Fort Victoria") ("the Purchase Agreement")[13].

(b) The second is an agreement for the Defendants to lease the unit at Fort Victoria purchased by the Claimants for a period of three years,

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[9] ASOF at [7] and [8]

[10] ASOF at [8]

[11] ASOF at [9] to [14] and Bundle of Documents ("BD") at 193 to 202

[12] ASOF at [15] to [20] and BD at 173 to 192

[13] SOC at [21] to [29] and D&CC at [24] to [38]

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that is renewable every three years at a market rate[14] ("the Lease Back Agreement").

8 Both the Purchase Agreement and the Lease Back Agreement were evinced in contemporaneous documents in the form of a Lease Back Guarantee signed on 21 April 2017[15] ("the Lease Back Guarantee") and a receipt issued by both the Defendants on the same day[16] ("the Receipt").

9 I note that the Lease Back Guarantee and the Receipt do not contain substantive terms and details one would typically expect to be seen and documented in sale and purchase agreements and/or lease agreements. However, this is not an issue that I will need to go into for the purposes of the present judgment as it is not disputed by the Defendants and accepted by all parties that[17]:

(a) There was an agreement for the sale and lease back of a unit at Fort Victoria;

(b) The Lease Back Guarantee was signed by all parties; and

(c) The Receipt was signed and issued by both Defendants.

10 It is also the Claimant's case that "on or about 21 April 2017, the Claimants and the Defendants orally agreed that while the legal ownership of (Unit 10A14 of Fort Victoria) will remain with the Defendants for administrative and taxation reasons, it can be transferred to the Claimants

[14] SOC at [21] to [29] and D&CC at [24] to [38]

[15] Bundle of Documents ("BD") 99

[16] BD 101

[17] BA 2 at [3] to [6], ASOF at [23] and [24] and D&CC at [24] to [38]

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immediately upon the Claimants' request at no additional cost"[18] ("the Oral Agreement"). It is therefore the Claimants' case that with respect to the purchase of property in Philippines, there are three agreements – the Purchase Agreement, the Lease Back Agreement and the Oral Agreement.

11 The Defendants however deny that any Oral Agreement was reached and aver that the transfer of the unit sold at Fort Victoria to the Claimants was conditional on the Claimants "paying the transfer fee and government taxes to the Defendants and availing the mandatory documents required to initiate the transfer"[19].

12 Within the context of the above agreements, issues began to arise between parties in late 2019 when the Defendants stopped making rental payments under the Lease Back Agreement after August 2019[20]. The disagreements culminated in the present suit which was commenced on 5 May 2022.

Issues to be determined

13 It is the Claimant's pleaded case that:

(a) Various misrepresentations were made by the Defendants at the March Meeting inducing the Claimants into entering the Share Sale Agreements and the Investment Agreements[21];

[18] SOC at [28]

[19] D&CC at [36]

[20] SOC at [30(a)]

[21] SOC at [7] to [20] and [42A]

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(b) Various misrepresentations were made by the Defendants at the April Meeting inducing the Claimants into entering the Purchase Agreement, the Lease Back Agreement and the Oral Agreement[22];

(c) The Defendants breached the Purchase Agreement, the Lease Back Agreement and the Oral Agreement[23];

(d) The Defendants have been unjustly enriched at the expense of the Claimants and are liable to pay the Claimants the sum of S$222,852[24]; and/or

(e) The Defendants and Max Property had wrongfully and with intent to injure and/or to cause loss to the Claimants by unlawful means conspired and combined together to cause loss and damage to the Claimant[25].

14 I note that in the Statement of Claim filed herein[26], the Claimants have pleaded conspiracy on the part of the Defendants. However, this claim appears to have been abandoned by the Claimants with no cross-examination being conducted on a conspiracy claim at trial and no submissions made on a conspiracy claim in the Claimants' closing submissions. As such, I will not be addressing the Claimant's pleaded claims for conspiracy in this judgment.

15 It is the Defendants' pleaded defence and counterclaim that:

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[22] SOC at [21] to [29] and [32] to [42]

[23] SOC at [30] to [31], [47B] and [47C]

[24] SOC at [47B] to 47[E]

[25] SOC at [47A]

[26] BD 104 to 140

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(a) They did not make any misrepresentations[27];

(b) The Share Sale Agreements, the Investment Agreements, the Receipt and the Lease Back Guarantee constitute the entire agreement and understanding between parties and no other representations or inducements were made[28];

(c) They did not enter into the Oral Agreement[29];

(d) The unit stated in the Receipt and Lease Back Guarantee was "incorrect" and "should be 7A14, as unit 10A14 was reclaimed by (the developer of Fort Victoria)"[30];

(e) Pursuant to the various agreements between parties, the Claimants are required to pay title transfer fees, parking fees and government taxes (collectively referred to as "Additional Costs" hereinafter) so as to enable the Defendants to effect the transfer of unit 7A14 at Fort Victoria but did not do so in a bid "to frustrate and coerce the Defendants into buying back the Units"[31];

(f) The Defendants did not breach any agreements as they were and are ready and willing to finalise the transfer of Unit 7A14 at Fort Victoria to the Claimants upon the payment of the requisite fees and

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[27] D&CC at [7] to [38]

[28] D&CC at [13], [18], [31], [58] and [63]

[29] D&CC at [36]

[30] D&CC at [46]

[31] D&CC at [67] to [69]

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taxes and the provision of the mandatory documentation required to initiate the transfer[32]; and

(g) The Court should issue orders[33]:

(i) For the Claimants to pay parking fees and title transfer fees amounting to the sums of S$73,650 ("the Parking Fees") and S$13,400 ("the Transfer Fees") respectively; and

(ii) Compelling specific performance of the "agreements".

16 Bearing in mind the above, the issues before me are as follows:

(a) Whether the Claimants can succeed in their claim for misrepresentation with respect to the Share Sale Agreements and the Investment Agreements;

(b) With respect to the agreements relating to the purchase of property in the Philippines:

(i) What were the contractual terms agreed to between parties in April 2017?

(ii) whether the Claimants and/or Defendants breached the terms of the Purchase Agreement, the Lease Back Agreement and/or the purported Oral Agreement ("the Property Agreements");

(iii) whether the Claimants can succeed in their claim for misrepresentation with respect to the Property Agreements; and

[32] D&CC at [70]

[33] D&CC at pages 9 and 10

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(iv) whether the Defendants were unjustly enriched at the expense of the Claimants in the sum of S$222,852 as a result of there being a total failure of consideration in the Purchase Agreement, the Lease Back Agreement and/or the purported Oral Agreement[34];

(c) In the event that Mr Goh and Mdm Hon succeed in their claim(s), whether they are entitled to the relief they seek; and/or

(d) In the event that Mr Liu and Mdm Tong succeed in their counterclaim, whether they are entitled to the relief sought thereunder.

Plaintiff's claim for misrepresentation with respect to the Share Sale Agreements and Investment Agreements

17 I now turn to consider the legal principles applicable to the first issue before me.

The law on misrepresentation

18 A misrepresentation is an untrue or misleading statement that induces the formation of a contract: See *Halsbury's Laws of Singapore (Volume 7)* (Lexis Nexis, 2023) ("*Halsbury's*") at [80.172]. At its core, a misrepresentation must be false or untrue. To be actionable, a plaintiff must allege and prove that the representation was false: See *Changi Makan Pte Ltd v Development 2003 Holding Pte Ltd and others* [2020] SGHC 27 ("*Changi Makan*") at [64] and [65].

[34] SOC at [47B] to [47E]

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19 A misrepresentation must also be statement of fact, past or present, and not one of opinion, intention or law: See *Halsbury's* at [80.173]

20 In the case of *Deutsche Bank AG v Chang Tse Wen and another* [2013] 4 SLR 886 ("Deutsche Bank v Chang Tse Wen") at [83] referring to *FoodCo UK LLP (t/a Muffin Break) v Henry Boot Developments Limited* [2010] EWHC 358 (Ch) at [198] ("*FoodCo UK*"), the Court of Appeal observed that:

(a) Statements of future intention are *prima facie* not statements of fact which could ground a claim in misrepresentation.

(b) However, a statement of future intention can sometimes be re-characterised as a representation of fact.

(c) A statement of future intention might contain an implicit representation that:

(i) Its maker had an honest belief in the statement;

(ii) Its maker had reasonable grounds to make the statement; or

(iii) Its maker had the present intention to carry out the matters expressed in the statement.

21 To be clear, the position above does not change the primary principle that a bare prediction does not attract legal consequences. It merely recognises that a statement about the future may contain a statement about the present. Where misrepresentation is alleged, it is that implicit representation about a present fact rather than the forecast itself that constitutes the actionable representation: See *FoodCo UK* at [196] and [207].

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22 In the context of the above, broadly speaking, a misrepresentation can be made fraudulently, negligently or innocently.

23 In order to succeed in a claim for fraudulent misrepresentation, the Claimants have to satisfy five elements which have been succinctly set out in *Broadley Construction Pte Ltd v Alacran Design Pte Ltd* [2018] 2 SLR 110 ("Broadley") at [26]:

> 26 The elements of fraudulent misrepresentation are: (a) there must be a representation of fact by words or conduct; (b) the representation must be made with the intention that it should be acted on by the plaintiff; (c) the plaintiff had acted upon the false statement; (d) the plaintiff suffered damage by so doing; and (e) the representation must be made with the knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true: see Panatron Pte Ltd v Lee Cheow Lee [2001] 2 SLR(R) 435 at [14].

24 Under common law, the elements necessary to make out negligent misrepresentation are as follows (See *IM Skaugen SE and another v MAN Diesel & Turbo SE and another* [2018] SGHC 123 ("*IM Skaugen*") at [121]):

(a) the defendant must have made a false representation of fact;

(b) the representation induced actual reliance;

(c) the defendant must owe a duty of care;

(d) there must be a breach of that duty of care; and

(e) the breach must have caused damage to the plaintiff.

25 In addition to the above, claimants have recourse under section 2(1) of the Misrepresentation Act (2020 Rev Ed) ("the Misrepresentation Act") which provides that:

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> 2.—(1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true.

26 A claim under section 2(1) of the Misrepresentation Act co-exists with the tort of negligent misrepresentation at common law to perform the same function – to furnish a remedy in damages where none had hitherto (apart from fraud or deceit) existed: See *RBC Properties Pte Ltd v Defu Furniture Pte Ltd* [2015] 1 SLR 997 ("*RBC Properties*") at [66].

27 There are however some crucial differences between a claim advanced under section 2(1) of the Misrepresentation Act and one under the tort of negligent misrepresentation:

(a) The burden of proof to establish all elements in the tort of negligent misrepresentation rests on the claimant. However, under the Misrepresentation Act, once the claimant proves that a false representation has been made to him/her and as a result thereof loss has been suffered by the claimant, the burden of proof shifts to the representor to prove that he/she "had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true": See *RBC Properties* at [66]

(b) The remedy under section 2(1) of Misrepresentation Act is restricted and only available to one contracting party against the other contracting party, whereas the tort of negligence applies to all cases where a claimant can establish a duty of care: See *RBC Properties* at

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[66] quoting *John Cartwright, Misrepresentation, Mistake and Non-disclosure* (Sweet & Maxwell, 3rd ed, 2012) ("Cartwright") at [6-64].

(c) While the equitable remedy of recission is always available for every type of misrepresentation, section 2(2) of the Misrepresentation Act furnishes the claimant with the additional option of claiming damages in lieu of recission: See *RBC Properties* at [67].

28 Bearing in mind the principles above, I now turn to the facts before me.

The Claimants' case

29 As stated above, it is not disputed that parties attended the March Meeting at the Defendants' Singapore Offices and that the Defendants made an investment presentation to the Claimants at the said meeting[35].

30 The Claimants have pleaded and stated in their Affidavits of Evidence in Chief ("AEIC") that the following representations were made by the Defendants during the presentation at the March Meeting[36] and that in reliance on the truth of the following representations and induced thereby they had entered into the Share Sale Agreements and the Investment Agreements[37]:

(a) The Philippines was a good investment destination with a high potential for returns, especially in the real estate sector ("Representation 1");

[35] ASOF at [7]

[36] SOC at [8]

[37] SOC at [10] to [15], Mr Goh's AEIC at [15] and Mdm Hon's AEIC at [15]

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(b) The Defendants had invested into the Philippines and operated a 'condotel' business under the name of "Max Stays" where the Defendants purchased apartment units in upmarket condominium developments in choice districts within Metro Manila and let them out to business travellers and tourists in a similar manner as hotel rooms or apartments on Airbnb ("Representation 2");

(c) The Defendants had identified and purchased about 20 apartment units at a number of developments including (i) Fort Victoria which was located in a safe neighbourhood, being right across the street from the Singapore Embassy in Manila, and (ii) the Venice Luxury Residences at McKinley Hill, Taguig City, Manila, Philippines (the "Venice Residences") , which was conveniently located next to a huge shopping mall with amenities ("Representation 3");

(d) The Defendants were intending to make further property investments in Australia and Malaysia ("Representation 4");

(e) The 1st Defendant was responsible for the growth and financial affairs of the business while the 2nd Defendant was in charge of the day-to-day operations of the business ("Representation 5(a)"), and the Defendants intended to take their business, which was operated primarily through Max Property, public on the Australian Securities Exchange very shortly ("Representation 5b");

(f) In the event that the Defendants failed to take Max Property public on the Australian Securities Exchange, the Defendants intended to take Max Property public on the Philippine Stock Exchange instead ("Representation 6");

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(g) The Defendants required finance to expand their business and were looking for investors ("Representation 7"); and

(h) That upon the listing of Max Property and/or its related companies on either the Australian Securities Exchange or the Philippine Stock Exchange, the financial reward which stood to be gained by the investors of any investments made in Max Property would be substantial ("Representation 8").

(Collectively referred to hereinafter as the "Investment Representations")

31 It is the Claimants primary pleaded case that the Investment Representations were fraudulently made by the Defendants at the March Meeting to induce them to enter into the Share Sale Agreements and Investment Agreements[38]. In the alternative, the Claimants seek to rely on section 2 of the Misrepresentation Act[39] and in the further alternative, the Claimants also plead that the Investment Representations were made negligently[40].

My findings

32 For the reasons below, I am not of the view that the Claimants can succeed in their misrepresentation claim against the Defendants with respect to the Investment Representations.

33 Firstly, the Claimants have not adduced sufficient evidence enabling me to conclude that the pleaded Investment Representations are false or untrue. The

[38] SOC at [43]

[39] SOC at [44]

[40] SOC at [45]

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evidence relied on by the Claimants in support of their assertion that the Investment Representations are false can be found in the Affidavit of Evidence in Chief ("AEIC") of Mr Goh from [172] to [174] and the exhibits referred to therein. Mr Goh's evidence is mirrored at [172] to [174] of Mdm Hon's AEIC.

34 In their AEICs, neither Claimant has placed evidence before me enabling me to conclude that Representations 1 to 4, 5(a) and 7 are untrue or false. There is no evidence before me showing *inter alia* that the Philippines is not a good investment destination with a high potential for returns, that the Defendants did not invest in the Philippines or conduct a 'condotel' under the name "Max Stays", that the Defendants did not purchase 20 apartment units in Fort Victoria and the Venice Residences, that the Defendants did not intend to make further property investments in Australia and Malaysia, that Mr Liu was not responsible for the growth and financial affairs of the business while Mdm Tong was in charge of day-to-day operations and/or that the Defendants did not require finance to expand their business and were looking for investors.

35 Mr Goh's and Mdm Hon's AEICs appear to only address Representations 5(b), 6 and 8 (hereinafter to be collectively referred to as the "Listing Representations" where appropriate) at [172] to [174] of their AEICs. In their AEIC, both Claimants broadly state that the Listing Representations were false as "primarily, there was no reasonable basis for the Defendants to represent to (the Claimants) that Max Property and/or its related companies were likely to be listed on the Australian Securities Exchange or the Philippine Stock Exchange".

36 In my view, it cannot be disputed that the Listing Representations are statements of future intention, not fact, which *prima facie* cannot ground a claim in misrepresentation. The issue before this Court is therefore whether these

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statements of future intention can be re-characterised as representations of fact and if implicit representations were made by the Defendants (See *Deutsche Bank AG* at [83]).

37 The scope of the intentions of the Defendants conveyed via the purported Listing Representations contain no defined prediction of the future of the contemplated investments (with potential alternative listings on different security exchanges being represented as possibilities for future development), no fixed timeline for any listing to be carried out and no guarantee or assurance that Max Property would be listed on either the Australian or Philippines Securities Exchange. I note that Representation 6 itself contemplates a scenario where the Defendants fail to take Max Property public on the Australian Securities Exchange and conveyed the intention of the Defendants to take Max Property public on the Philippine Stock Exchange instead.

38 Given the vague nature of the future intentions conveyed, I am not of the view that they are capable of being re-characterised as representations of fact (expressly or implicitly) on *inter alia* the success or likelihood of Max Property being listed. The Listing Representations are at best representations that the Claimants had future intentions to list Max Property and even if it is accepted that this expression of future intention is itself a representation of fact made (which I do not accept), it must be shown by the Claimants that as at March 2016, the Defendants did not have the general intention to list Max Property shortly or in the future. I am of the view that, in any event, this has not been done.

39 The evidence referred to in the Claimants' AEIC is not sufficient to show that there was no intention on the part of the Defendants to list Max Property in Australia or the Philippines "shortly" or otherwise as at March 2016.

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(a) At [173(a)] of the Claimants' AEICs, the Claimants refer to Max Property being struck off by the Defendants on 4 May 2020 in support of their claim that the Listing Representations are false. While I do appreciate that Max Property was ultimately struck off, this was an event that occurred about four years after the Share Sale Agreements and Investment Agreements were entered into in March 2016 and does not in my view support an assertion that there was no intention to go public in 2016 and/or reflect the viability of the business and/or the likelihood of Max Property going public as at 2016. The commercial landscape for investments and companies is a fluid and fast-moving one and many intervening events can occur resulting in a company being struck off in four years. Without more cogent evidence showing the reasons behind and/or leading up to the closure of Max Property, the striking off of Max Property in itself in 2020 does not support the Claimants' assertions that the Listing Representations were false.

(b) At [173(b)] of the Claimants' AEICs, the Claimants opined that the Defendants' plans for any proposed listing were rudimentary and unsophisticated and assert that it was therefore "highly unlikely that the Defendants had any concrete plans to list" Max Property. In support of this they rely on a document named "MaxStays (Philippines), Inc ("MaxStays"), IPO Plan" ("the IPO Plan") which had purportedly been presented to another investor Ms Koh by the Claimants[41]. Leaving aside the evidentiary issues or weight to be ascribed to a plan which had been purportedly given to another investor by the Defendants at an unspecified date or time in relation to an unrelated investment, the

[41] Mr Goh's AEIC and Mdm Hon's AEIC at [41] and [42]

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contents of the IPO Plan itself[42] do not appear unusual and is insufficient to establish that the Defendants' listing plans in general are rudimentary or unsophisticated and/or that the Listing Representations were false. The contents of the plan also relate to another entity owned by the Defendants, MaxStays and is not a plan for Max Property.

(c) At [173(c)] of their AEICs, the Claimants characterised the Defendants' response to their request for specific disclosure of all "documents, correspondence and/or material evidencing the imminent listing of (Max Property) on the Australian Securities Exchange" as an "admission that they had no plans to list Max Property and/or any of their companies". I do not accept this submission. The Claimants had sought documents evincing the "imminent listing of Max Property" and did not seek the disclosure of documents evincing all plans or steps taken to list Max Property. In the context of the request made, the Defendants' response does not amount to an admission that they had no plans for listing. In their affidavit filed on 11 July 2023, the Defendants were responding to the request made and were therefore confirming that there were no documents "evidencing the imminent listing of Max Property" in response to the Claimant's request for specific disclosure and had further stated that this was because "it was only their intention to list (Max Property) in the future". Their response that "no actual action has been taken" can only be properly taken to mean that no actual action had been taken with respect to an "imminent listing" of Max Property. This response is not equivalent to an admission that there had been no intention or plans to list Max Property in Australia or the Philippines at all given the nature of the request made by the Claimants.

[42] Mr Goh's AEIC at 103 to 133

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(d) At [173(d)] to [173(e)] of their AEICs, the Claimants take issue with the valuation of Max Property in the Share Sale Agreements and the Investment Agreements.

(i) The Claimants essentially argue that the gap between the valuations in both agreements and the inability of the Defendants to provide a clear basis for the valuations establish the "irresistible conclusion that the Defendants have no reasonable basis for valuing Max Property for a possible IPO"[43] and no reasonable basis for asserting that the public listing of Max Property is likely.

(ii) There is however no clear link between the valuations stated in the Share Sale Agreements and the Investment Agreements on one hand and the valuation of Max Property for any potential future public listing or the likelihood of listing on the other.

(iii) The valuation of S$31.5 million in the Share Sale Agreements[44] appears to be extrapolated from the consideration of S$31,500 paid by each of the Claimants for the 10 ordinary shares they each obtained under the Share Sale Agreements. The internal valuation of the price at which shares are sold to potential investors is one subject to commercial negotiations and there is no evidence that the share price agreed to between the parties was meant to form the basis of any eventual listing of Max Property.

[43] Claimants' Closing Submissions at [92] to [98]

[44] Mr Goh's AEIC at 193 to 202

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(iv) The valuation of S$52,500,00 in the Investment Agreements[45] was expressly stated at Clause 3.2 to be "for the purposes of the subscription of Convertible Bonds by the subscribers". Again, the price at which a company is valued for the issuance of bonds is one that is commercially reached between parties depending on *inter alia* the value which the purchaser is willing to ascribe to or pay for the bonds. The link between this agreed price or value and the potential listing valuation of Max Property is again not established.

(v) Further to the above, the relevance of the valuations towards showing that the Investments Representations are false is also unclear as none of Investment Representations and/or the Listed Representations reflect the communication of a representation or statements of fact by the Defendants to the Claimants on the value of Max Property and/or the value at which Max Property would be listed.

(vi) In my view, any disagreements on the valuation of Max Property belatedly raised by the Claimants at this stage does not support their assertion that the Investment Representations and/or Listing Representations are false or untrue.

40 Further to the above, the contemporaneous documents before me and the witness testimony at trial similarly do not show that the Listing Representations were statements of fact or false and lend support to my view that there were no representations of fact made (expressly or implicitly through the intentions

[45] Mr Goh's AEIC at 173 to 192

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expressed by the Defendants) as to the likelihood or success of any potential listing of Max Property in the future.

(a) The Defendants have admitted on the stand that they had an intention to list Max Property and had informed the Claimant of the same[46] but did not any point accept or gave evidence that they had assured the Claimants that a listing would definitely occur "shortly" or otherwise and/or that they had given a representation on the likelihood of Max Property being listed in Australia or the Philippines.

(b) It was accepted by Mr Liu on the stand that he had an intention to list Max Property by the first quarter of 2017[47] and that no application for a listing was made in Australia[48]. This does not however render any of the Listing Representations false as the fact that no listing had ever come into fruition does not in itself indicate or prove that there was no intention on the part of the Defendants to list Max Property in Australia or the Philippines shortly or otherwise.

(c) The Claimants also seek to rely on a set of presentation slides[49] obtained from another individual who invested with the Defendants, Ms Koh Chew Chee, which they assert are substantially similar to the slides they were purportedly shown at the March Meeting. The slides produced do not reflect any timeline being imposed on the listing of Max Property and/or any assurance that a listing would definitely occur. The slides do

[46] NE, 27 March 2024/14-14-24 and 16/15-20;18 April 2024, 53/22 to 54/15 and 57/6-9

[47] NE, 18 April 2024, 61/2-62/6

[48] NE, 18 April 2024, 60/9-23

[49] Mr Goh's AEIC at 76 to 100

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however evince an intention on the part of the Defendants to take steps to list Max Property.

(d) The Investment Agreements[50] do not reflect any agreed timeline being imposed on the potential listing of Max Property and/or any assurance that a listing would definitely occur shortly or otherwise. It does however reflect an intention for a listing to potentially occur with Clause 8 of the Investment Agreements stating the obligations of the investor "in the event that the Board decides to seek…a (listing)" of Max Property on the "Mainboard of the Australian Securities Exchange or any other securities exchange" (Emphasis added).

(e) The Share Sale Agreements[51] are silent as to the listing of Max Property.

(f) Apart from the agreements entered into between parties, in Mr Goh's Supplementary AEIC, a document labelled "Term Sheet – Issuance of Convertible Bond" ("the Term Sheet") is exhibited. While it is not pleaded that the Term Sheet formed part of the agreements entered into between parties, Mr Goh refers to the Term Sheet in his Supplementary AEIC as a "document supplementary to the Investment Agreements" which was handed to him along with the Investment Agreements in support of his case that the Listing Representations were made. I note that the Term Sheet records "the intention of the directors of Max to list on ASX main board latest by 1Q 2017" but in line with the Listing Representations made and the Investment Agreements, the Term Sheet similarly makes clear that there is a likelihood of listing on

[50] BD 173 to 192

[51] BD 194 to 202

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the Australian Securities Exchange not occurring by providing for redemption rights in the event that "listing is not obtained by the end of eighteen months from the disbursement date". Again, this document indicates the intention on the part of the Defendants to list Max Property but highlights that

41 In the circumstances, I find that the Claimants have not satisfactorily proven that: (a) the Investment Representations are false or untrue; (b) the Listing Representations are statements of fact capable of grounding a claim in misrepresentation; and (c) the Listing Representations are false or untrue.

42 Secondly, even if the Investment Representations were shown to be false or untrue, there is no loss or damage particularised or shown by the Claimants as resulting and/or caused by the said representations being untrue.

(a) Under the terms of the Share Sale Agreements[52], in exchange for the payment of the aggregate sum of S$63,000, the Claimants were each entitled to receive 10 shares in Max Property from Mr Liu.

(b) It is not disputed that pursuant to the Share Sale Agreements, 20 ordinary shares in Max property were duly transferred from Mr Liu to the Claimants[53].

(c) Under the terms of the Investment Agreements[54], in exchange for the payment of the aggregate sum of S$105,000, the Claimants were each entitled to:

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[52] BD 193 to 202

[53] ASOF at [14]

[54] BD 173 to 192

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(i) The issuance of convertible bonds in Max Property with an aggregate principal value of S$52,500 (See Recital A read with Clause 2 of the Investment Agreements); and

(ii) The payment of interest on an annual basis at the rate of 6% per annum on the sum of S$52,500 (See Clause 5 of the Investment Agreements).

(d) It is not disputed that pursuant to the Investment Agreements: (a) Max Property had issued convertible bonds amounting to the aggregate value of S$105,000 on 7 March 2016; and (b) interest amounting to the sum of S$6,300 was paid on 25 April 2017[55].

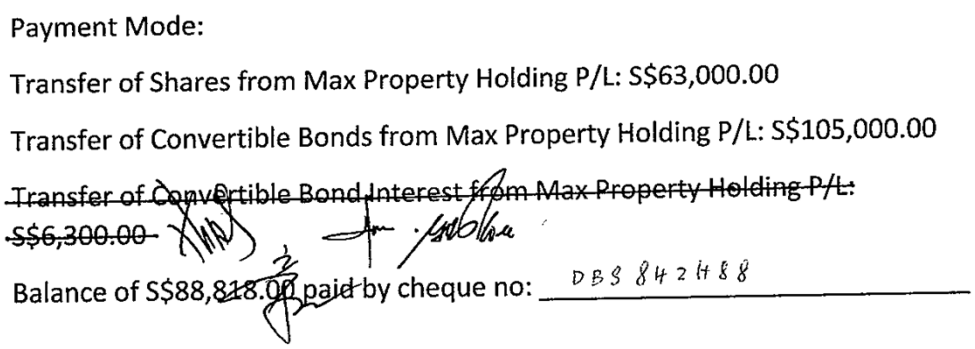
(e) In addition to the above, it is the Claimants' evidence[56] and indisputable that in April 2017 by agreement between the parties, the ordinary shares and convertible bonds issued to the Claimants were "converted" into property in the Philippines pursuant to the Purchase Agreement and the Lease Back Agreement.

(f) This is reflected in the Receipt which reflects that the "payment mode" for the purchase price of the unit at Fort Victoria under the Purchase Agreement was as follows:

[55] ASOF at [19] and [20]

[56] Mr Goh's AEIC and Mdm Hon's AEIC at [54] to [61]

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Payment Mode:

Transfer of Shares from Max Property Holding P/L: S$63,000.00

Transfer of Convertible Bonds from Max Property Holding P/L: S$105,000.00

~~Transfer of Convertible Bond Interest from Max Property Holding P/L: S$6,300.00~~

Balance of S$88,818.00 paid by cheque no: DBS 842488

(g) Given the subsequent agreed conversion of the ordinary shares and convertible bonds in April 2017 into consideration for the Purchase Agreement and the Lease Back Agreement at the same value of the total sums injected by the Claimants into Max Property, I am of the view that:

(i) the obligations and entitlements accruing to both parties under the Share Sale Agreements and the Investment Agreements effectively came to an end in April 2017 as the Claimants no longer held any interest in Max Property thereafter and no further residual rights or interests under the Share Sale Agreements or the Investment Agreements; and

(ii) There was no tangible or quantifiable loss or damage suffered by the Claimants at the conclusion of the Share Sale Agreements and the Investment Agreements and/or a result of the Investment Representations even if they were untrue.

(h) Save for broadly asserting that they had suffered a loss after purchasing the ordinary shares and convertible bonds as a result of Max Property not being listed[57], no further particulars or quantification of the loss purportedly suffered have been provided by the Claimants in

[57] Claimants' Closing Submissions at [101]

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support of their claim that they had suffered loss arising from the Investment Misrepresentations made in respect of the Share Sale Agreements and the Investment Agreements.

(i) It was also accepted by Mr Goh during cross-examination[58] that after the shares and convertible bonds were used as consideration for the Purchase Agreement: (a) Mr Liu no longer owed him money under the Investment Agreements and Share Sale Agreements; but (b) "what (Mr Liu) owe(d) is the title deed of the condominium".

(j) The obligations that the Defendants owed under the Property Agreements and any failure on their part to fulfil the same is however a separate matter from their obligations under the Share Sale Agreements and the Investment Agreements. In converting their shares and bonds into consideration for the Property Agreements, the Claimants had obtained the benefit of being entitled to *inter alia* the condominium unit that they now say the Defendants failed to transfer to them.

(k) In the circumstances, I am not satisfised that any loss or damage has been suffered by the Claimants as a result of the Investment Representations even if they are untrue or false.+

43 Thirdly, there are also issues with the Claimant's claim for negligent misrepresentation in common law with respect to the Investment Representations. Save for broad assertions that the Investment Representations have been made negligently, the Claimants have not pleaded the duty of care which the Defendants owe to them and/or particulars of how any such duty of care has been breached. The pleadings as they stand do not sufficiently disclose

[58] NE, 25 March 2024/28/18-29/3

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the material facts which would support a claim in negligent misrepresentation against the Defendants. The state of the pleadings before me is similar to that of the pleadings before Justice Lee Seiu Kin in *Low Sing Khiang v LogicMills Learning Centre Pte Ltd* [2024] 3 SLR 759 ("*Low Sing Khiang*"). In *Low Sing Khiang*, the plaintiffs failed to adequately plead the necessary elements supporting their claim in negligent misrepresentation and had their claim dismissed on this basis. Adopting Justice Lee's approach at *Low Sing Khiang* at [34], in the present case, I find that the Claimants are bound by their pleadings and find that the Claimant's pleadings do not support their claim in negligent misrepresentation against the Defendants with respect to the Investment Representations. I accordingly dismiss their claim.

44 Fourthly, the Claimants have no basis for a claim under section 2 of the Misrepresentation Act against: (a) the 2nd Defendant as she was not a contracting party to the Share Sale Agreements and/or the Investment Agreements; and (b) the 1st Defendant with respect to the Investment Agreements as he was not a contracting party to the said agreements.

45 If the Claimants intended to make arguments that the corporate veil should be pierced and that they were in effect contracting with Mr Liu and Mdm Tong instead of Max Property, they would have had to necessarily plead this issue. I do note that it was pleaded that the 1st and 2nd Defendants are the only directors of Max Property who owned and controlled Max Property[59]. This averment does not however sufficiently disclose the material facts that would support a submission to pierce the corporate veil and/or a finding that Mr Liu and/or Mdm Tong are the alter egos of Max Property bearing in mind that: (a) the key question to be asked whenever an argument of alter ego is raised is

[59] SOC at [3]

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whether the company is carrying on the business of its controller; and (b) mere evidence of sole shareholding and control of a company would not be enough to make out the ground of alter ego: See *Low Sing Khiang* at [36] to [37] citing *Mohamed Shiyam v Tuff Offshore Engineering Services Pte Ltd* [2021] 5 SLR 188 at [71] and [76].

Conclusion

46 For the reasons above, I dismiss the Claimants' misrepresentation claim with respect to the Share Sale Agreements and the Investment Agreements.

The contractual terms agreed to in April 2017

47 Turning now to the agreements entered into with respect to the purchase of property in the Philippines in April 2017, the first step this Court has to take is to identify the terms agreed to between parties in April 2017.

48 It is not disputed by the Defendants in their AEICs and on the stand that in April 2017:

(a) A unit in Fort Victoria was sold by the Defendants to the Claimants in 2017 at the value of S$256,818[60]; and

(b) The Claimants would be entitled to a transfer of title upon their request[61].

> Q Mr Liu, you are not answering my question, but it's fine. I can move on, because the next question, the next passage makes this clearer. Go to page 286, same bundle. Okay, are you there? 17:28 timestamp, the long passage by Liu

[60] Mr Liu's AEIC at [3] and Mdm Tong's AEIC at [2]

[61] NE, 18 April 2024, 9/19-21 and NE, 19 April 2024, 63/30-64/13

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> Shu Ming. Okay, in the middle of this long paragraph, I am going to read out the relevant portion: "The first promise I made to you is that I agreed to transfer it to you. No comments on that. But I'll be honest with you. If it goes to Court, this will not be what I am saying now." Now very clearly, from this contemporaneous sentence, Mr Liu, you are acknowledging the presence of the oral agreement between you and the claimants, that at any time that they wanted a transfer of the unit back to them, you were supposed to oblige, correct, Mr Liu?
>
> A If they want a transfer, of course we need to agree. Can I not agree? They bought the unit.

49 However, the following three key areas of contention arise from the Claimants' pleaded case and the Defendants' pleaded counterclaim:

(a) whether the Defendants are entitled to elect to transfer Unit 7A14 in lieu of Unit 10A14 to the Claimants under the terms of the Purchase Agreement;

(b) whether the purported Oral Agreement was entered into between parties as at April 2017 for the property at Fort Victoria to be transferred to the Claimants at no additional costs; and

(c) whether it was a term of the Purchase Agreement or Lease Back Agreement for Transfer Fees, Parking Fees and government taxes arising from the transfer to be borne by the Claimants before a transfer of a unit at Fort Victoria would or could be effected.

Applicable legal principles

50 It is trite law that in ascertaining the terms of a contract a holistic approach is taken with the Court considering both documentary evidence and witness testimony before reaching a determination: See *Forefront Medical*

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Technology Pte Ltd (Pte) Ltd v Modern-Pak Pte Ltd [2006] 1 SLR (R) 927 ("*Forefront Medical*") at [46] cited in *Naughty G Pte Ltd v Fortune Marketing Pte Ltd* [2018] 5 SLR 1208 ("*Naughty G*").

51 In the context of oral agreements, the following guiding principles have been distilled by the Court in *ARS v ART* [2015] SGHC 78 ("*ARS v ART*") at [53] (cited in *Naughty G* at [56]) setting out the proper approach to be adopted in determining the existence of an oral agreement.

> "(a) in ascertaining the existence of an oral agreement, the court will consider the relevant documentary evidence (such as written correspondence) and contemporaneous conduct of the parties at the material time;
>
> (b) where possible, the court should look first at the relevant documentary evidence;
>
> (c) the availability of relevant documentary evidence reduces the need to rely solely on the credibility of witnesses in order to ascertain if an oral agreement exists;
>
> (d) oral testimony may be less reliable as it is based on the witness' recollection and it may be affected by subsequent events (such as the dispute between the parties);
>
> (e) credible oral testimony may clarify the existing documentary evidence;
>
> (f) where the witness is not legally trained, the court should not place undue emphasis on the choice of words; and
>
> (g) if there is little or no documentary evidence, the court will nevertheless examine the precise factual matrix to ascertain if there is an oral agreement concluded between the parties."

The subject matter of the Purchase Agreement

52 In the Defence and Counterclaim (Amendment No. 1)[62] filed herein:

[62] BD pages 145 to 154

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(a) The Defendants admit that in April 2017, they had offered and proposed for sale Unit 10A14 at Fort Victoria ("Unit 10A14") to the Claimants[63]; but

(b) Assert that the unit stated in the Receipt and Lease Back Guarantee was "incorrect" and "should be 7A14, as unit 10A14 was reclaimed by (the developer of Fort Victoria)"[64].

53 Despite the usage of the term "incorrect" in their pleadings, it appears from a review of the Defendants' evidence (in AEICs and on the stand) and closing submissions that the Defendants are not relying on the doctrine of mistake in their defence but are instead asserting that: (a) they did not specifically agree to sell Unit 10A14 to the Claimants but had instead allocated or sold a unit in Fort Victoria to the Claimants in April 2017[65]; and (b) they have a "contractual right to reassign the unit from 10A14 to 7A14"[66].

54 I do not accept their submissions.

55 First, the contractual documentation executed by parties expressly refer to the sale of unit 10A14 (not Unit 7A14 or an unidentified unit) in Fort Victoria and do not contemplate any substitution or reassignment rights vesting in the Defendants.

(a) The Receipt[67] clearly acknowledges that the aggregate value of S$256,818 was transferred to the Claimants by way of cheque, shares

[63] [29] of the D&CC read with [22] of the SOC

[64] D&CC at [46]

[65] See Mr Liu's AEIC at [3] and Mdm Tong's AEIC at [2]

[66] DCS at pages 26 and 37

[67] BD 101

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and bonds in Max Property ("the Purchase Price") as "Full Payment of Purchase Price for one loft unit of Fort Victoria Condominium at Bonifacio Global City, Manila, Philippines, unit no: 10A14, size: 46.44 SQM".

(b) The Lease Back Guarantee[68] similarly refers to the agreement to "lease back the loft unit at Fort Victori Condominium at Bonifacio Global City, Manila, Philippines, unit no: 10A14, size:46.44 SQM from the buyer for 3 years at the lease of 6.5% per annum based on the buyer's purchase price".

56 Second, on all accounts, as at April 2017 there was no discussion and there was no agreement between parties that: (a) any unit in Fort Victoria (of equivalent value or otherwise) can be substituted and/or transferred to the Claimants pursuant to the Purchase Agreement; and (b) the Defendants would have a right to reassign or substitute a new unit to the Claimants in lieu of Unit 10A14.

57 It is not pleaded by either party and there is no evidence that the potential reassignment or substitution of units in Fort Victoria by the Defendants was ever raised in April 2017 when parties entered into the Purchase Agreement. In particular, it is not pleaded by the Defendants that parties had contractually agreed (expressly or implicitly) to the Defendants having a right to reassign or substitute Unit 10A14.

58 It is simply the Defendants' position that when they had discovered that Unit 10A14 was forfeited by the developer in the Philippines (at an unspecified

[68] BD 99

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later date) that they were entitled to claim the contracts were not "correct" and had the "contractual right" to reassign Unit 7A14 because[69]:

(a) Unit 10A14 was allocated or assigned to the Claimants and not chosen by the Claimants;

(b) The Claimants are "investing for a return rather than purchasing the unit for residence" and as such the unit at Fort Victoria "can be viewed as a collateral for the investment";

(c) It was necessary because Unit 10A14 was forfeited by the developers after it was sold to the Claimants;

(d) Unit 7A14 is similar to Unit 10A14 except for being three floors lower; and

(e) The reassignment of Unit 7A14 "ensured that the Claimants would still receive a comparable unit", addresses the "unforeseen challenge of the developer's cancellation" and "is reasonable and should be acceptable"

59 The Defendants' arguments fail to address the crucial point that a contractual right for the unilateral assignment or substitution of units cannot exist if there was never a discussion, understanding and/or agreement reached between parties for Unit 10A14 at Fort Victoria to be substituted with Unit 7A14 or any other unit as at April 2017.

60 Even if Unit 10A14 in Fort Victoria was allocated, selected or assigned by the Defendants for the Claimants' consideration, it was the unit that was

[69] DCS at page 26

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offered to and contractually accepted by the Claimants. The Purchase Agreement was for the sale and purchase of 10A14 and not any other unit at Fort Victoria, however purportedly comparable.

61 The purposes for which the Claimants purchased Unit 10A14 and the fact that it may have been selected by the Defendants to be the subject matter of the Purchase Agreement are immaterial. The bottom line remains that there was no discussion and no agreement that Unit 10A14 could be substituted and another unit in Fort Victoria could be reassigned by the Defendants even if a supervening event purportedly out of the hands of the Defendants had occurred.

62 Third, it appears from the contemporaneous correspondence and witness testimony that the substitution of Unit 10A14 with Unit 7A14 was only first raised in October 2021 and therefor clearly did not form of the Purchase Agreement reached between parties in April 2017.

(a) It was accepted by both Defendants on the stand that in April 2017, Unit 10A14 was sold to the Claimants[70].

(b) When referred to WhatsApp messages exchanged on 23 September 2021 between him and Mr Goh[71], Mr Liu conceded on the stand that as late as 23 September 2021 he was still offering to and had communicated his willingness to transfer Unit 10A14 to the Claimants[72].

[70] See Mdm Tong's evidence at NE, 18 April 2017, 6/1-4 and Mr Liu's evidence at NE, 19 April 2024, 4/12 - 26

[71] 1CA 266

[72] NE, 19 April 2024, 13/31 – 14/16

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(c) It is Mr Goh's evidence[73] that it was only on 17 October 2021 that Mr Liu first informed Mr Goh via a text message (replicated below) that he had decided to "change 10A14 to 7A14"[74] without any explanation.

17/10/2021, 13:44 - Liu Shuming: Change 10A14 to 7A14

(d) When cross-examined on the message he had sent on 17 October 2021, Mr Liu did not dispute that this was the date on which he first informed the Claimants of the proposed re-assignment of units though he did express his views that he "think(s") and "feel(s)" that he "should" have provided an explanation to the Claimants when he had informed them of the change in units.

63 Lastly, Unit 10A14 and Unit 7A14 in Fort Victoria are not equivalent in value or interchangeable commodities.

(a) In comparison to Unit 10A14, Unit 7A14 was given a lower purchase price when it was first sold by the developer of Fort Victoria, New San Jose Builders Inc ("San Jose").

(i) The contract for the sale of Unit 7A14 in Fort Victoria between San Jose and MaxStays[75] dated 8 October 2018 expressly states that the unit was priced at 5,779,237.90 pesos.

[73] Mr Goh's AEIC at [113]

[74] Mr Goh's AEIC at 267

[75] Mr Goh's AEIC at 356 to 361

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(ii) The undated contract for the sale of Unit 10A14 between San Jose and the Claimants[76] expressly states that the unit was priced at 5,817,655.88 pesos.

(b) In a valuation report dated 25 July 2023 issued by Asian Appraisal[77], Unit 10A14 was valued at 9,234,000 pesos and Unit 7A14 was valued at 8,772,000 pesos as at 24 July 2023[78].

(c) In my view, the above difference in pricing and valuation illustrates the fact that an apartment unit is not a fungible commodity which is interchangeable with another apartment unit even if they both happen to be in the same tower block in the same development or have similar floor plans[79]. Apartments are by their very nature unique or differentiated goods with seemingly minor differences in layouts, floor area, floor plans, height and other intangibles potentially resulting in vastly different property valuations.

(d) In the circumstances, I do not accept the Defendants' proposition that it is "reasonable" or "comparable" for them to substitute Unit 10A14 with Unit 7A14 at Fort Victoria.

64 For all the reasons stated above, I find that:

(a) In April 2017, the Defendants had expressly agreed to sell Unit 10A14 to the Claimants under the Purchase Agreement and had not

[76] Mr Goh's AEIC at 368 and 375

[77] Mr Goh's AEIC at 437 to 453

[78] Mr Goh's AEIC at 449

[79] See Exhibits A-4b and A-4B of the Joint Supplementary AEIC filed herein by the Defendants

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merely agreed to sell an unspecified unit in Fort Victoria to the Claimants; and

(b) There were no substitution or assignments rights agreed to in April 2017 and the Defendants are not entitled to and do not have a "contractual right" to unilaterally substitute Unit 10A14 with Unit 7A14 in Fort Victoria thereafter.

The agreement(s) reached with respect to additional costs (if any)

65 Moving on, I will deal with the issues identified at [49(b)49(a)] and [49(c)] above together as the findings of fact to be made with respect to the purported Oral Agreement raised by the Claimants and the purported agreement with respect to Additional Costs raised by the Defendants overlap given that:

(a) It is the Claimants' case that "on or about 21 April 2017 the Claimants and the Defendants orally agreed that while the legal ownership of (unit 10A14 at Fort Victoria) will remain with the Defendants for administrative and taxation reasons, it can be transferred to the Claimants immediately upon the Claimants' request at no additional cost"[80]; and

(b) It is the Defendants' counterclaim that the Claimants were obliged to pay them the Additional Costs under the "various agreements" entered into between the parties so as to enable the Defendants to effect the transfer of a unit at Fort Victoria but did not do so in a bid "to frustrate and coerce the Defendants into buying back the Units"[81].

[80] SOC at [28]

[81] D&CC at [67] to [69]

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66 In summary, in addition to the disagreement between parties on the unit which is the proper subject matter of the Property Agreements, parties were and are also at odds as to whether the transfer of title under the Purchase Agreement is conditional or contingent on the payment of the Additional Costs by the Claimants.

67 To determine this issue, I adopt the approach taken in *ARS v ART* and turn first to the available contractual documentation.

68 In the present case, the two documents evincing the Purchase Agreement - the Lease Back Guarantee and the Receipt - are silent as to the imposition of additional costs or fees for the transfer of Unit 10A14 in Fort Victoria.

69 Both parties have attempted to argue that this omission advances their case. The Claimants argue that a clause for the payment of Additional Costs would have or should have been inserted if there was an agreement for them to bear the Additional Costs as prayed for by the Defendants. The Defendants correspondingly argue that if there was an agreement that the Claimants would not have to bear any further costs, the same would have been reflected as a term in the written documents and that the Receipt would reflect the Purchase Price as an "all-in" purchase price.

70 I am not of the view that the terms contained (or not contained) within the Receipt and the Lease Back Guarantee assists either party.

(a) The Lease Back Guarantee[82] reflects the costs and fees applicable to the rental of Unit 10A14 and provide that monthly maintenance fees and income tax arising from rental is to be borne by

[82] BD 99

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the Claimants during the term of the lease. There is however no reason for this document governing the rental terms between parties to contain terms reflecting an agreement (if any) on the imposition of Additional Costs for the purchase or transfer of Unit 10A14 to the Claimants after the payment of the Purchase Price.

(b) The Receipt[83] merely states that the "purchase price" of Unit 10A14 had been paid. I do not think that the omission of the phrase "all-in" within the Receipt is particularly compelling in itself. The key in the present case is the scope of costs or fees that parties had intended to include within the term "purchase price" when they had entered into the Purchase Agreement and signed off on the Receipt. The comparison drawn by the Defendants between the Receipt issued in the present contract and other receipts issued by them to unrelated parties for the sale of properties in the Philippines which included the phrase "all-in" is not particularly helpful as the receipts issued in other transactions evince (at best) the intentions of the Defendants in those transactions and cannot by imputation reflect or evidence the discussions or agreement reached between parties in the present case. This is particularly true since there is no evidence that the Claimants ever had sight of the transactional documents for these other investments and would therefore not be aware that the term "all-in" would have to be included in the Receipt if they wished to protect their interests or reduce part of the Oral Agreement purportedly reached in writing.

[83] BD 101

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(c) As such, in my view, the terms contained with the Receipt and the Lease Back Guarantee are ambiguous and do not support either the Claimants' case or the Defendants' counterclaim.

71 There are however 3 categories of documents produced recording the contemporaneous communication between partes at the material time which assist:

(a) A translated copy of text messages exchanged in a group chat between Mr Liu, Mr Goh and Mdm Hon from 24 July 2017 to 27 January 2022[84] ("the Group Chat Messages");

(b) A translated copy of text messages exchanged in a chat between Mr Liu and Mr Goh from 26 December 2019 to 14 February 2022[85] ("the Private Chat Messages"); and

(c) A transcript of a recording made at a meeting on 26 December 2021 between Mr Liu, Mr Goh and Mdm Hon translated and produced by Elite Asia (SG) Pte Ltd ("the December Meeting Transcript").

72 On an analysis of the contemporaneous communication above along with the pleadings, affidavits and witness testimony tendered by both parties, I am of the view that on a balance of probabilities there was an agreement and understanding that there would be no additional fees or costs to be borne by the Claimants after their payment of the Purchase Price before Unit 10A14 would be transferred to them. I elaborate below.

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[84] Mr Goh's AEIC at pages 212 to 219

[85] Mr Goh's AEIC at pages 265 to 268

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73 As a starting point, contrary to the Defendants' pleaded case and submissions that there was a firm understanding under the "various agreements" that the Additional Costs would be borne by the Claimants, at various junctures during his cross-examination, Mr Liu conceded that he could not recall if he had agreed to transfer Unit 10A14 in Fort Victoria at no additional costs[86].

> Q We will get to that, Mr Liu. Okay, at the April 2017 presentation, you and Ms Tong represented to Mr and Mrs Goh that upon payment of the total sum amounting to SGD256,818, you and Ms Tong would transfer the title to unit 10A14 to Mr and Mrs Goh upon their immediate request and at no additional cost. Yes or no?
>
> A I do not remember, however, it is not written in black and white. If since it's the plaintiff who purchased it, if they had requested for a transfer, of course, it can be done. There's no reason for us to say that we disallow them to transfer. But if you ask me what were my original words at that time, I cannot remember, unless the plaintiff at that point in time did secretly record down the voices. Then we can play it now for us all to hear what was said at that time
>
> …….
>
> Q Yes, Mr Liu, we will definitely get to this. And this oral agreement also stated that you would transfer it back to Mr and Mrs Goh immediately upon their request at no additional cost, you agree?
>
> A I disagree. Unless can produce documentary evidence. We agreed to transfer and at no additional cost, this one I do not remember.

74 The AEICs filed by both Mr Liu and Mdm Tong in the proceedings herein are also brief and do not contain any evidence or particulars supporting their assertion that there was an agreement reached between parties that the Additional Costs would have to be paid by the Claimants before Unit 10A14 would be transferred.

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[86] NE, 19 April 2024, 10/10-16

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75 I do note that it was Mr Liu's evidence at [4] of Mr Liu's AEIC that the Purchase Price of the unit sold to the Claimants was purportedly significantly lower than other units he had sold to other investors because Mr Goh was his senior from school and the price does not include all costs. This does not however assist the Defendants' case as there is no averment or evidence that these considerations which Mr Liu may have personally had were ever raised or discussed between parties at the material time in April 2017 when the Purchase Agreement or Lease Back Agreement were entered into with respect to Unit 10A14 at Fort Victoria.

76 In contrast, the Claimants' position on the circumstances surrounding the representations made, the Oral Agreement reached and the terms of the Oral Agreement were particularised in detail in their pleadings[87] and AEICs[88]. Both Mr Goh and Mdm Hon have also consistently maintained the position on the stand[89] that it was represented to them and agreed between parties since April 2017 that after the payment of the Purchase Price, Unit 10A14 would be transferred to them immediately upon their request at no additional cost.

77 Secondly, the issue of additional costs was not raised by the Defendants till 24 September 2021 more than 4 years after the Purchase Agreement was entered into on 21 April 2017 and more than about a year after the first request for a transfer of Unit 10A14 was made by Mr Goh in January 2020.

78 From the middle of 2019 to 2020, the Group Chat Messages record Mr Liu asking the Claimants to make further investments and personal loans due to

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[87] NE, 21 December 2023, 31/16-31, 33/26-36/2 and 25 March 2024 13/13-14/19, 21/7-24

[88] Mr Goh and Mdm Hon's AEICs at [53] to [75]

[89] NE, 21 December 2023, 31/16-32/15 and 33/26-36/2; 25 March 2024, 21/16-24, 34/17-35/4, 37/23-39/13; 26 March 2024, 1/14-20 and 17/28-20/4

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inter alia financial difficulties encountered by him and/or his companies at the material time[90]. These conversations did not result in any further investments being made or loans being given but did appear to cause concern on the part of the Claimants.

79 It is the Claimants' evidence that pursuant to the Oral Agreement, they had first requested for the transfer of their property in the Philippines on 30 January 2020 verbally when both Mr Liu and Mdm Tong visited their home during the Chinese New Year. It was the Claimants' further evidence that several excuses were made by Mr Liu during this visit "as to why (that was) no longer possible" and that Mr Liu had said that "it would take too long and that the bureaucracy in Philippines would be too slow and inefficient".

80 The Claimants' recounting of events that had occurred during this 30 January 2020 visit was not disputed by the Defendants, not challenged by the Defendants during cross-examination and consistent with the contemporaneous communication reflected in the Private Chat Messages.

81 The Private Chat Messages record that on 30 January 2020: (a) arrangements were made for a visit in the morning at the request of Mr Liu; (b) Mr Liu informed Mr Goh that he had "assets but lack cash" at the material time; (c) Mr Goh had requested for the transfer of Unit 10A14; and (d) Mr Liu had refused to do so on vague grounds.

[90] Mr Goh's AEIC at 216 to 219 and 265

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> 30/01/2020, 07:10 - Liu Shuming: Happy New Year, Senior! May I visit youtoday to give new year's greetings?
>
> 30/01/2020, 13:19 - Liu Shuming: IMG-20200130-WA0006.jpg (file attached)
>
> Senior, I currently have assets but lack cash. If someone realizes this and buys my assets at a low price, it would solve the problem..
>
> 30/01/2020, 14:14 - KKGOH: Shuming, I hope you can transfer the ownership of my property to me, just in case.
>
> 30/01/2020, 17:13 - Liu Shuming: Senior, some things are beyond my control. If we cannot work together, we have to resign ourselves to fate.

82 Mr Liu claimed on the stand that his last message on "things (being) beyond his control"[91]: (a) was not a response to Mr Goh's request for a transfer and not a refusal to transfer title; but (b) was an effort on his part to "comprehensively" reply to all messages from "26 December 2019". I do not accept this explanation as it does not appear to be logical or true. I further find that even if the message was a "comprehensive" response to a loose collection of messages which preceded it, the message remains (at its essence) a refusal to transfer the title of the property as at January 2020 on the purported basis that "such things are beyond (Mr Liu's) control".

83 In any event, the contemporaneous communications record that the issue of Additional Costs was not raised or discussed by either party at any point during this exchange on the transfer of Unit 10A14 in January 2020.

84 It was the Claimants' evidence that at the material time, they were "shaken" by the Defendants' inability to make further rental payments after August 2019 and the Defendants' refusal to transfer the title of Unit 10A14 to them but were generally at a loss on how to proceed.

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[91] NE, 19 April 2024, 31/3-11

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85 Shortly thereafter, the Covid-19 pandemic began. On 24 March 2020, Mr Goh sent a message to Mr Liu checking in on "the situation over there" and they had a call thereafter during which he was informed by Mr Liu that he was not doing too well.

86 On 15 June 2020, Mr Liu sent a message assuring Mr Goh that "after Manila is lifted from the lockdown, (he would) assist with the transfer of the property". Again, I note that at this juncture, the Claimants were not informed that there would be any additional fees or costs linked to the transfer of Unit 10A14.

87 There appeared to be no communications between parties thereafter for a period and it was only on 24 September 2021 that the Defendants revived the discussions on the transfer of title and raised the Additional Costs for the first time in the Private Chat Messages.

(a) It was accepted by Mr Liu on the stand[92] that it was only on 24 September 2021, via a message sent in the Private Chat Messages[93] that he had first raised the issue of the Transfer Fees and government taxes to the Claimants.

(b) It was also accepted by Mr Liu on the stand that it was only on 17 October 2021 that he had first asked the Claimants to pay him Parking Fees[94].

[92] Ne, 19 April 2024, 13/24-13/6

[93] Mr Goh's AEIC at 266

[94] NE, 19 April 2024/4-6

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88 On the stand, in an attempt to explain the belated imposition of Additional Costs in late 2021, Mr Liu took the position that while management or maintenance fees had to be paid every month, the government transfer fee or the developer transfer fee only needs to be paid when "the buyer raises the matter".

89 In my view, these arguments do not explain why the Additional Costs: (a) were not raised at all in January 2020, 15 June 2020 or thereafter when the Claimants had first requested for the transfer of Unit 10A14 to them; and (b) were only first raised by the Defendants in September 2021.

90 In my opinion, the belated request for Additional Costs by the Defendants more than a year after the request for the transfer of Unit 10A14 was made in 2020 lends credibility to the Claimants' assertion that there was no agreement that the Claimants would have to pay any costs or expenses in addition to the Purchase Price before Unit 10A14 would be transferred to them.

91 Thirdly, the overall substance, tenor and content of the contemporaneous communication produced is consistent with the Claimants' pleaded case that there was an Oral Agreement that no additional costs would be borne by them after the Purchase Price had been paid.

92 From 23 September 2021 to 17 October 2021, Mr Liu made the following requests for fees from the Claimants in the Private Chat Messages:

(a) On 23 September 2021, Mr Liu informed the Claimants via a text[95] that they had to pay the aggregate sum of S$3,150 being 21 months

[95] Mr Goh's AEIC at 266

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of property management fees purportedly owed from April 2020 to December 2021 at the monthly rate of S$150.

(b) On 24 September 2021, Mr Liu informed the Claimants via a second text[96] that they would have to pay:

(i) transfer fees amounting to approximately S$13,400; and

(ii) additional government taxes and fees based on the actual charges incurred.

(c) On 28 September 2021, in addition to the transfer fees and government taxes previously raised, Mr Liu stated in another text[97] that:

(i) if management services were still required in 2022, an additional service fee of S$150 a month would be charged; and

(ii) if the transfer process is not initiated by January 2022 that the Claimants would also have to pay parking fees at the rate of 500 pesos per day to "the company".

(d) On 11 and 17 October 2021[98], Mr Liu sent two texts to Mr Goh requesting for the sum of S$8,966 which he had arrived at by adding the property management fees (S$3,150) to the transfer fees (S$13,400) before deducting rental owed to the Claimants from August 2019 to February 2020 (S$7,584).

93 Mr Goh did not respond to any of the texts above in the Private Chat Messages.

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[96] Mr Goh's AEIC at 266

[97] Mr Goh's AEIC at 266

[98] Mr Goh's AEIC at 266 and 267

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94 On 17 October 2019, Mr Liu informed the Claimants in texts sent in the Group Chat Messages that: (a) the rent for August 2019 had been paid; (b) that the unit had been "change(d from) 10A14 to 7A14"; (c) if they paid the transfer fee, he would "provide a receipt, but will not sign any legal documents"; and (d) repeated that "(their) company will charge a daily property parking fee of 500 pesos from January 1st (2022)".

95 By this time, the Claimants were extremely concerned and engaged their present solicitors and requested for documentation proving the Claimants' ownership of Unit 7A14 in Fort Victoria on the advice of their solicitors[99].

96 Thereafter, parties arranged to meet on 26 December 2021.

97 In the December Meeting Transcript, it was recorded that:

(a) While Mr Goh maintained that he was contractually entitled to Unit 10A14, he was still willing to consider the substitution of Unit 10A14 with Unit 7A14 and the request for additional fees made but[100]:

(i) wanted documentation to be sent to his lawyers assuring him that Mr Liu had title to Unit 7A14 in Fort Victoria;

(ii) wanted to inform Mr Liu of his decision by the end of December 2021; and

(iii) wanted a receipt and guarantee that the newly proposed Unit 7A14 would be transferred to him if he agreed to pay the additional fees amounting to the sum of S$8,966 that the Defendants were asking for.

[99] Mr Goh's AEIC at [115] and [116]

[100] Mr Goh's AEIC at 280 to 296

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(b) Mr Liu urged Mr Goh to decide and make payment of the additional costs sought that very day[101] but refused to give any assurance that a unit would be transferred after payment of S$8,966 was made[102].

223	[37:23] Mr Goh King Kwee	你保证你会转给我?	You promise you'll transfer it to me?
224	[37:24] Mr Liu Shu Ming	我签给你。	I'll sign it for you.
225	[37:28] Mr Goh King Kwee	没有，这句话，特地再讲一句话，听我讲，你听我讲，你刚才讲过，你保证你会...	No, this sentence, specifically say it once for me, listen to me, you listen to me, what you just said, I want you to promise you will...
226	[37:32] Mr Liu Shu Ming	你给八千多我会签给你。	You give me eight thousand more I'll sign for you.
227	[37:34] Mr Goh King Kwee	你保证你会给我。	You promised you would give it to me 297
228	[37:38] Mr Liu Shu Ming	但是发展商在割名，是他在做。他那份会有什么风险我是不知道。我不可以代表发展商说话哦。因为我也准备告他，如果他做不到我也要告他。因为我不告他我怎么跟你交代。你告我我告谁，我可以告他们。如果我欠发展商钱，我告他个屁？【inaudible】都欠我钱我【inaudible】。我没有欠他一毛钱。他应该把房子割给我卖给的人。这是他们的责任。你给我钱是让我写信跟他讲，哦，你可以把房子割给他了，如此而已。这就是你给这笔钱的供用。那他要花多少时间，菲律宾政府要花多少时间，菲律宾那边，我又不是当菲律宾总统我希望他们快，他不会因为我希望，他就快。他们盖几万套房子，我是其中一两套，你觉得我有影响力吗？	But the developer is the one transferring names. I don't know what risks he has to bear. I can't speak for the developer. I'm also preparing to sue him, if he doesn't do it then I will sue him. Because if I don't sue him how do I account to you. You sue me then who do I sue, I can sue them. If I owe the developer money, I sue him for what? [Inaudible] they owe me money [inaudible]. I don't owe him a penny. He should have transferred the house to the person whom I sold the house to. It is their responsibility. You give me money for me to write to him and say, 'Oh, you can transfer him the house, that's all.' That's what you are giving this money to me for. How much time he spends, how much time the Philippine government spends, in the Philippines, it is not as if I am the president . I hope they're fast, but he won't be fast just because I hope he is fast. They build tens of thousands of houses, I am just one or two of them, do you think I have an influence?
229	[38:48] Mr Goh King Kwee	我们不要讲这种话，这种话没有什么营养啦。	Let's not talk like that, there's nothing useful about that.

(c) At the end of the meeting, no resolution was reached and parties agreed that Mr Goh would inform Mr Liu of his decision at the end of the month.

[101] Mr Goh's AEIC at 293

[102] Mr Goh's AEIC at 296 to 297

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98 After the meeting on 26 December 2021, further discussions on additional costs and fees occurred in the Private Chat Messages between Mr Liu and Mr Goh[103]:

(a) On 31 December 2021, Mr Liu repeated his request for the sum of S$8,966.

(b) On 1 January 2022, Mr Liu informed Mr Goh that the parking fee had been increased to 5,000 pesos a day.

(c) On 27 January 2022, Mr Liu informed Mr Goh that if he insisted on a transfer of Unit 10A14 and did not accept Unit 7A14 that the processing time would be longer and that the transfer fee of Unit 7A14 would be increased to S$24,000 with effect from 1 February 2022.

(d) On 11 February 2022, Mr Liu: (i) informed Mr Goh that the "best choice for (him) is to transfer the title immediately" as in the event that Mr Liu lost the appeal in another law suit, Mr Goh "will get nothing"; but (ii) refused to guarantee the transfer of a unit.

> 11/02/2022, 00:00 - Liu Shuming: Mr Goh, the best choice for you is to transfer the title immediately. If I losed the appeal, you will get nothing.
>
> 11/02/2022, 15:27 - KKGOH: Can you guarantee I can get my unit if I initiate the transfer?
>
> 11/02/2022, 17:15 - Liu Shuming: Mr. Goh, as I have explained clearly to you in our meeting on 26 Dec 2021. The title is with the developer, I have fully paid the unit of 7A14. The developer should transfer the title to my buyer upon my request according to my agreement with the developer. Should the developer fail to transfer the title to my buyer, I have my legal right to sue them. I am not in the position to guarantee anything on behalf of the developer. What I can guarantee to you is that I will initiate the transfer once you have paid the processing fee and submit whatever documents requested by the developer. I hope you understand the real situation in this matter.

(e) The last two messages from Mr Liu were sent on 14 February 2022 in which he urged Mr Goh to fill up forms and initiate the transfer

[103] Mr Goh's AEIC at 268

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as his "prompt action will save (him) cost on processing fee and parking fee".

99 In its Defence and Counterclaim (Amendment No. 1) filed on 3 May 2023, the Defendants streamlined their requests for additional fees from the Claimants and now seek orders from this Court compelling the Claimants to pay:

(a) The sum of S$73,650 being Parking Fees incurred till 20 May 2023;

(b) The sum of S$13,400 being Transfer Fees for Unit 7A14; and

(c) An unspecified quantum of government taxes.

100 The above contemporaneous communications reflect an *ad hoc* imposition of different categories of fees by Mr Liu (in stages) over a period of 5 months from September 2021 to February 2022 with the quantum of certain categories of fees being increased without any apparent breakdown or justification as the conversation between parties continued. I further note that in their present pleaded counterclaim, for reasons that are not apparent to this Court, the Defendants are not pursuing a claim for property management fees and service fees sought in late 2021.

101 The Defendants' changing position on the nature and quantum of additional costs that the Claimants had purportedly agreed to and that they are purportedly entitled to lends support to the Claimants' case that they had never been informed of or agreed to bear any additional fees and/or the Additional Costs. I am unable to accept that parties could have reached an agreement for

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the Claimants to bear the Additional Costs in 2017 when the scope of costs and fees insisted on by the Defendants remained fluid and uncertain in late 2021.

102 It was also apparent from the December Meeting Transcript that: (a) the Claimants had not agreed to the imposition of any additional costs or the substitution of Unit 10A14 with Unit 7A14 prior to the meeting on 26 December 2021; (b) Mr Liu was keen on convincing them to accept both the additional fees imposed and the substitution of Unit 10A14 with Unit 7A14; and (c) while Mr Goh had agreed to consider Mr Liu's proposals in a bid to avoid litigation, he had not agreed to them on 26 December 2021.

103 As such, on a holistic view of the contemporaneous communications between parties and the factual matrix of the matter, I am of the opinion that on a balance of probabilities: (a) the Oral Agreement was reached; (b) the various costs and fees were only belatedly raised by the Defendants in 2021 for the Claimants' consideration; and (b) there was no agreement for the Additional Costs to be borne by the Claimants before a transfer of property in the Philippines could be effected.

104 Fourthly, further to the above and in any event, there does not appear to be any basis for the Defendants' claim for Parking Fees in contract or otherwise. The contractual or factual basis for the imposition of the Parking Fees by MaxStays in 2021 was not adequately particularised or explained in the pleadings and evidence tendered by the Defendants before trial.

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105 On the stand, Mr Liu clarified for the first time that parking fees were imposed on investors who "continue to park property under our company's name"[104].

106 In the closing submissions filed, the Defendants further elaborated that[105]:

(a) The Parking Fees were imposed by MaxStays (a company in which they were the main shareholders);

(b) The Parking Fees are levied "on buyers who refuse to transfer their units on or before the date requested by the defendants on behalf of MaxStays" and are a "necessary measure to encourage timely compliance with the title transfer process";

(c) "In this case, the fee was imposed on 1 January 2022"; and

(d) The imposition of the Parking Fees was "communicated" to the Claimants who were "aware of their obligation to transfer the unit and pay the associated fees before 31 December 2021".

107 I cannot accept the Defendants' pleaded counterclaim that the Claimants were obliged under the "various agreements" entered into between parties to pay the Parking Fees when:

(a) MaxStays was not a party to any of the discussions leading up to or the agreements entered into between the parties including the Purchase Agreement and the Lease Back Agreement;

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[104] NE, 19 April 2024, 20/28-31

[105] DCS at pages 31 and 32

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(b) There is no evidence or basis for claiming that the Claimants had ever asked or agreed to "park" Unit 10A14 (or any other unit) in Fort Victoria with MaxStays as at April 2017 or otherwise;

(c) There is no evidence that MaxStays ever held the title to Unit 10A14 at any material time;

(d) There is no evidence that the Claimants had ever agreed to the Defendants' proposed substitution of Unit 10A14 with Unit 7A14 which was the subject of a contract to sell[106] entered into between San Jose and MaxStays;

(e) It is the Defendants' evidence and case that the Parking Fees were only raised and communicated to the Claimants in October 2021 (more than 4 years after the Purchase Agreement was entered into);

(f) The contemporaneous communication records that the Claimants had never accepted the belated and unilateral imposition of the Parking Fees by MaxStays and/or the Defendants in 2021 or otherwise; and

(g) There is no contractual or reasonable basis for the Defendants to be entitled to unilaterally elect to substitute Unit 10A14 with Unit 7A14 and thereafter look to the Claimants for Parking Fees imposed by MaxStays for the "parking" of Unit 7A14 in the MaxStay's name.

108 Lastly, there are no documents or evidence tendered by the Defendants evincing the basis and/or quantum of the Additional Costs imposed.

[106] Mr Goh's AEIC at 356 to 361

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(a) To date, the government taxes or fees which the Defendants claim the Claimants are obliged to pay remain unparticularised and unquantified. There is no evidence placed before this Court on the nature and/or quantum of fees that would be imposed by the Philippine government with respect to the transfer of Unit 10A14 or any other unit in Fort Victoria.

(b) On the stand, Mr Liu[107]: (i) accepted that the quantum of Transfer Fees kept changing; (ii) explained that part of the Transfer Fees are paid to the developer and part of the Transfer Fees cover the administrative fees of the company as "someone needs to monitor the entire transfer process"; and (iii) took the position that the increase of Transfer Fees from S$13,400 to S$24,000 from 1 January 2022 was to account for employees' salary and rental incurred due to the delay. It is not apparent from this explanation why or how an increase of S$10,000 is attributable to the transfer being initiated at a later date in 2022 when: (i) the Purchase Agreements had been effected since 2017; and (ii) the length of or amount of work expended in monitoring each transfer should not change depending on when a transfer is initiated. There is also no explanation as to why the pleaded quantum of Transfer Fees is S$13,400 notwithstanding the position taken by the Defendants in December 2021 that it would be increased to S$24,000 from 1 January 2022. There are also no particulars or evidence tendered before this Court showing how the administrative costs and/or developer fees (which purportedly add up to form the Transfer Fees) were calculated and/or justified.

[107] NE, 19 April 2024, 18/2-19/3

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(c) With respect to the Parking Fees, Mr Liu took the position on the stand[108] that he could not provide a "consistent basis" for the "figure of the parking fee(s)" as he was "not representing (MaxStays)" in the present proceedings and "cannot answer that position on their behalf".

109 For all the reasons above, I am of the view that on a balance of probabilities:

(a) the Oral Agreement had been reached between parties; and

(b) there was no understanding reached under the "various agreements" entered into between the party for the purchase of Unit 10A14 that the Claimants would have to pay the Additional Costs as pleaded by the Defendants.

Was there a breach of the Property Agreements by the Claimants and/or the Defendants?

110 Having established the framework of relevant contractual terms within which the parties had conducted themselves, I turn to determine if the Claimants and/or Defendants have breached the terms of the Purchase Agreement, Lease Back Agreement and/or the Oral Agreement.

Did the Claimants breach the Purchase Agreement, the Lease Back Agreement and/or the Oral Agreement?

111 As stated above, it is the Defendants' counterclaim that:

[108] NE, 19 April 2024, 22/2-7

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(a) The unit stated in the Receipt and Lease Back Guarantee was "incorrect" and "should be 7A14, as unit 10A14 was reclaimed by (the developer of Fort Victoria)"[109];

(b) the Claimants were obliged to pay them the Additional Costs under the "various agreements" entered into between the parties so as to enable the Defendants to effect the transfer of unit 7A14 at Fort Victoria but did not do so in a bid "to frustrate and coerce the Defendants into buying back the Units"[110]; and

(c) The Court should issue orders[111]:

(i) For the Claimants to pay the Parking Fees and the Transfer Fees; and

(ii) Compelling specific performance of the "agreements".

112 In line with the findings I have made in the preceding section of this judgment and for all the reasons stated above, I am of the view that the Claimants have not breached the Purchase Agreement, the Lease Back Agreement and the Oral Agreement because:

(a) The Claimants had met all the payment obligations imposed upon them under the Purchase Agreement after they transferred bonds, shares and monies to the Defendants in satisfaction of the Purchase Price stipulated in the Purchase Agreement as reflected in the Receipt;

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[109] D&CC at [46]

[110] D&CC at [67] to [69]

[111] D&CC at pages 9 and 10

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(b) The Claimants were and are entitled to ask for the transfer of 10A14 under the Purchase Agreement and the Oral Agreement;

(c) The Claimants were and are not obliged to accept the Defendants' offer or attempt to re-assign Unit 7A14 in Fort Victoria to them in place of Unit 10A14 under the Purchase Agreement and Oral Agreement; and

(d) The Claimants are not obliged to pay the Additional Costs sought by the Defendants in 2021.

113 In the circumstances, I dismiss the Defendants' counterclaim.

Did the Defendants breach the Lease Back Agreement?

114 It is pleaded by the Claimants that[112] the Defendants had breached the Lease Back Agreement by failing to make payments after August 2019 and that rental amounting to the aggregate sum of S$12,580 for the period from September 2019 to June 2020 remains outstanding.

115 The terms with respect to the payment of rental are clearly stated in the Lease Back Guarantee[113]. The salient terms in the Lease Back Guarantee are as follows:

(a) For a period of three years commencing on 21 June 2017, the Defendants would pay the Claimants monthly lease back rental amounting to S$1391;

[112] SOC at [30]

[113] BD 99

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(b) Maintenance fees of S$133 per month (subject to change) should be paid by the Claimants and deducted from the rental; and

(c) Income tax from the rental should be borne by the Claimants.

116 It is accepted by the Defendants in the contemporaneous communications exchanged, the Agreed Statement of Facts, on the stand and/or in their submissions that:

(a) They were obliged to make monthly payments of S$1258 under the Lease Back Agreement[114];

(b) They only made payments under the Lease Back Agreement till August 2019[115];

(c) The term of the lease under the Lease Back Agreement ended on 20 June 2020 and there are outstanding payments due to the Claimants[116]; and

(d) They still owe rent to the Claimants under the Lease Back Agreement[117].

117 However, the Defendants took the position on the stand and in their closing submissions that the Lease Back Agreement had not been breached but had been complied with on their part because:

[114] DCS at age 23, Mr Goh's AEIC at 265 and 266

[115] DCS Page 23, NE 19 April 2024/10-19, Mr Goh's AEIC at 265 to 267 and ASOF at [25]

[116] Mr Goh's AEIC at 265 and 266

[117] NE, 19 April 2024, 60/10-19

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(a) There was no monthly deadline for payment stipulated in the Lease Back Guarantee and in their view[118]: (i) they could "pay once a year"; and (ii) there was no breach "unless the lease back guarantee has stated on which date it should be paid";

(b) External factors, such as the Covid-19 pandemic and other operational issues disrupted their ability to continue these payments and any cessation in payments were out of their control[119]; and

(c) They have communicated these challenges to the Claimants and have acted in accordance with the agreements as much as possible given the circumstances[120].

118 I am unable to accept the arguments made by the Defendants.

119 It is trite law that where a contract does not specify the time for performance by a party that has undertaken to carry out such performance, an obligation to perform within a reasonable time is implied in law. What is "reasonable" would depend on all the circumstances of the case, and the court is not limited to what the parties contemplated or ought to have foreseen at the time of entry into the contract: *Naughty G* [148] citing *Max Master Holdings Ltd v Taufik Surya Dharma* [2016] SGHC 147 at [98].

120 The Lease Back Guarantee clearly provides that the Claimants would be entitled to "monthly lease back rental" amounting to the sum of S$1391 and though it did not specify a date by which such rental should be paid to the

[118] NE, 19 April 2024/23/10-24/6, 68/4-6

[119] DCS at pages 23 and 32

[120] DCS at pages 23 and 32

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Claimants, I am not of the view that the Defendants are contractually entitled to pay rent to the Claimants on an annual basis, at an unspecified date in the future or indefinitely delay payment of the rental due such that they would not be in breach of the contract despite failing to make rental payments since August 2019.

121 On the facts of the present case, I find that it would be reasonable for the monthly rental payments to be made by the end of the following month.

122 My finding above is in accord with the common understanding and conduct of the parties recorded in contemporaneous communications.

(a) Save for a gap in the messages from December 2017 to June 2018, the Group Chat Messages show that from July 2017 till in or around June 219, the Defendants made regular monthly rental payments to the Claimants at the end of the month after which rent fell due[121]. The regular monthly rental payments only stopped after Mr Liu began informing the Claimants of the financial difficulties that him and his companies were facing.

(b) On 28 October 2019 at 3.49pm, in the Group Chat Messages, Mr Liu asked both Claimants for assistance to "help (him) tide over (his) current financial difficulties" and assured both the Claimants that if they invested "in one more property sold at cost price, (he) guarantee(s) that the rent will be paid on time every month".

[121] Mr Goh's AEIC at 212 to 217

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(c) On 15 June 2020 in the Private Chat Messages[122],, Mr Liu acknowledged that the lease ended on 20 June 2020, asked Mr Goh to "waive rent for the period from February 21st to June 20th" 2020" and assured Mr Goh that he would "do (his) best to repay the outstanding rent owed earlier".

123 Further to the above, while the covid pandemic and operational issues are circumstances which could potentially explain why the Defendants were unable to make the rental payments after August 2019, the Defendants have not pleaded that the Lease Back Agreement has been frustrated and there is also no evidence before me proving that these events could have or did render the Lease Back Agreement impossible to fulfil. The mere fact that unforeseen events have occurred or that best efforts had been taken to comply does not justify or excuse the Defendants not meeting their payments obligations under the Lease Back Agreement.

124 In the circumstances, I find that the Defendants have breached the Lease Back Agreement.

Did the Defendants breach the Purchase Agreement and/or the Oral Agreement?

125 It is the Claimants' pleaded case[123] that the Defendants have breached the Purchase Agreement and the Oral Agreement by failing to transfer title upon and after their request made on 30 January 2020.

[122] Mr Goh's AEIC at 265 and 266

[123] SOC at [30A]

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126 It is not disputed by the Defendants that Unit 10A14 has not been transferred to the Claimants to date and that Unit 10A14 was forfeited by the Developers in June 2017[124].

127 Notwithstanding these concessions, the Defendants take the position that they had not breached the Purchase Agreement and/or the Oral Agreement because: (a) the Claimants had failed to pay them the Additional Costs and provide the mandatory documentation necessary for the transfer of Unit 7A14 or Unit 10A14; and (b) they were and are ready, willing and able to transfer either Unit 7A14 and Unit 10A14 in Fort Victoria to the Claimants.

128 For the reasons stated from 52 to 109 above, I find that the Defendants:

(a) are not contractually entitled to replace Unit 10A14 with Unit 7A14 under the Purchase Agreement and therefore do not accept that any purported readiness or ability on their part to immediately transfer Unit 7A14 to the Claimants fulfils their contractual obligations to the Claimants; and

(b) are not entitled to demand payment of the Additional Costs as a pre-condition to the transfer of Unit 10A14 to the Claimants and as such do not accept that any refusal on the part of the Claimants to pay the Additional Costs justified the Defendants' failure to transfer Unit 10A14 to the Claimants.

129 While I accept that the Claimants did not fill in and/or submit the necessary documentation for a transfer of Unit 10A14 to the Defendants, this omission did not arise from any fault on the part of the Claimants. A request for

[124] NE, 19 April 2024, 67/24-30

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relevant identification documents for the transfer was first made on 23 September 2021 in the Private Chat Messages[125] and documents for the transfer were sent by Mr Liu in the Private Chat Messages to Mr Goh in February 2022[126]. However, the requests for documentation were accompanied by demands for the Claimants to pay the Additional Costs and the documentation was requested by the Defendants for the transfer of Unit 7A14, not Unit 10A14. In light of the disagreement between parties since 2021 on the issue of Additional Costs and the replacement of Unit 10A14 with Unit 7A14, it was entirely reasonable for the Claimants not to have completed the transfer documents and send them over to the Defendants. The Defendants should have made arrangements for the transfer of the Unit 10A14 but did not do so. As such, I am not of the view that the Defendants are able to justify their failure to transfer Unit 10A14 to the Claimants on the fact that the documents necessary for such a transfer had not been provided by the Claimants.

130 Further to the above, I am not convinced by the Defendants' alternative submission that they were and are ready, willing and able to transfer Unit 10A14 to the Claimants. The basis of this position appears to be the Defendants' assumption that even though Unit 10A14 had been forfeited by San Jose, they would be able to repurchase unit 1014 at any material time and merely needed time to do.

131 This belief is reflected in *inter alia* Mr Liu's evidence on the stand. Mr Liu was: (a) firm in his view that the Defendants were and are able to transfer title of Unit 10A14 to the Claimants even though it had been forfeited in June 2017; and (b) took the position that "the unit might have been still in the

[125] Mr Goh's AEIC at 266

[126] Mr Goh's AEIC at 266

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developer hands" or "on other people's hands" and the Defendants "can buy it back"[127].

132 There is no cogent evidence before me supporting the Defendants' assertion that they were and are in a position to repurchase Unit 10A14 and transfer the same to the Claimants in line with their contractual obligations. While the Defendants may have hoped and still hope that the unit would be available for re-purchase, they have no reasonable or firm basis (in 2017, 2021 and presently) to equivocally state that they can obtain ownership of Unit 10A14 and transfer the same to the Claimants.

133 In the circumstances, I find that the Defendants have breached the Purchase Agreement and the Oral Agreement by failing to transfer Unit 10A14 to the Claimants to date.

The Claimant's claim for misrepresentations with respect to the Property Agreements

Parties' arguments

134 It is the Claimants' pleaded case[128] that at the April Meeting, the Defendants had represented that:

(a) the shares and bonds the Claimants had purchased in Max Property can be converted to physical property in the Philippines ("Property Representation 1");

(b) the aforementioned property would be Unit 10A14 at Fort Victoria ("Property Representation 2");

[127] NE, 19 April 2024, 61/25-62/3

[128] SOC at [21]

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(c) the sum of S$88,818 must be topped-up and paid to the 1st Defendant in order for the shares and bonds in Max Property to be converted to Unit 10A14 ("Property Representation 3");

(d) the value of the shares, bonds and the top-up payment of S$88,818 would cover the price of Unit 10A14 paid or payable by the Defendants to the developer and the cost incurred by the Defendants in renovating and outfitting Unit 10A14 ("Property Representation 4");

(e) upon the Claimants' full settlement of the Purchase Price for the Unit, the Defendants would transfer their title to the Unit to the Claimants upon their immediate request, at no additional cost ("Property Representation 5");

(f) the Defendants guaranteed the Claimants fixed returns for 3 years of 6.5% per annum of the Purchase Price, which the Defendants would pay as lease back payments to the Claimants for leasing back the units to the Defendants for the operation of the 'condotel' business ("Property Representation 6");

(g) the Defendants represented that they would buy back the Unit from the Claimants after the 3-year lease back period at the same Purchase Price, even if the then prevailing market price had fallen below the Purchase Price. In the event that the then prevailing market price had risen above the Purchase Price, the Defendants may first repurchase the Unit from the Claimants at a mutually agreeable price to be negotiated or if the Defendants refuse to repurchase, the Claimants may sell the Unit in the open market. Otherwise, the lease could be renewed every three years at market rate ("Property Representation 7" or "the Buy-Back Representation"); and

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(h) the Defendants were offering the Claimants the opportunity to obtain higher returns on their capital than placing the same in the bank, with both capital and returns guaranteed ("Property Representation 8").

(hereinafter to be collectively referred to as the "Property Representations')

135 The Claimants further plead that the Property Representations were fraudulently made by the Defendants at the April Meeting to induce them into: (a) signing the Receipt and the Lease Back Guarantee; (b) entering into the Oral Agreement; and (c) issuing a cheque for the sum of S$88,818[129]. In the alternative, the Claimants seek to rely on section 2 of the Misrepresentation Act[130] and in the further alternative, the Claimants also plead that the Property Representations were made negligently[131].

136 It is further pleaded that as a result of the Property Representations being untrue, the Claimants had suffered loss and damage in the form of[132]: (a) the sum of S$222,852 (arrived at by deducting the aggregate total of lease payments made by the Defendants from June 2017 to August 2019 amounting to S$33,966 from the Purchase Price for Unit 10A14); and (b) the sum of S$12,580 being the outstanding sum of payments due under the Lease Back agreement; and (c) expenses incurred in verifying the ownership and existence of encumbrances on Unit 10A14 and Unit 7A14 in Fort Victoria.

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[129] SOC at [21] to [28A] and [43] to [45]

[130] SOC at [44]

[131] SOC at [45]

[132] SOC at [47]

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137 In response, the Defendants[133]:

(a) deny that any misrepresentations were made;

(b) deny that they had any fraudulent intent;

(c) assert that the Lease Back Guarantee and the Receipt constitute the entire understanding between parties with no reliance on external representations being made by the Claimants;

(d) assert that the Claimants had refused pay the Additional Costs in "an attempt to frustrate the Defendants and coerce them into buying back the units" and are trying to avoid fulfilling their contractual obligations by raising unfounded allegations; and

(e) maintain that they had acted in good faith throughout the transaction and had attempted to complete the title transfer despite the Claimants' lack of cooperation.

138 As a starting point, the Claimants' claim for negligent misrepresentation in common law with respect to the Property Representations suffer from the same deficiencies as their claim for negligent misrepresentation with respect to the Investment Representations. Save for broad assertions that the Property Representations have been made negligently, the Claimants have not pleaded the duty of care which the Defendants owe to them and/or particulars of how any such duty of care has been breached. As such, for the same reasons stated above, I find that the Claimants' pleadings do not support their claim in negligent misrepresentation against the Defendants with respect to the Property Representations and dismiss the same.

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[133] DCS at pages 22 to 28

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139 I am however of the view that the Claimants should succeed in their claims for fraudulent misrepresentation and misrepresentation under section 2 of the Misrepresentation Act. I provide my reasons below.

Were the Property Representations made by the Defendants?

140 In the Defence and Counterclaim filed herein[134], the Defendants admitted that they made the bulk of the Property Representations to the Claimants. In summary, the Defendants:

(a) denied that the Buy Back Representation and Representation 8 have been made; and

(b) accepted that the remaining Property Representations have been made save that: (i) the Purchase Price agreed upon was exclusive of transfer fees and other government taxes; and (ii) the transfer of Unit 10A14 was conditional upon the payments of the said fees and submission of mandatory documentation by the Claimants.

141 Shifting slightly from their pleaded position, the Defendants[135] accepted at trial that all the Property Representations were made (including Property Representation 8) but maintained that they did not make the Buy Back Representation. Their acceptance above was made with the caveat that in their view, they were entitled to reassign Unit 7A14 to the Claimants as Unit 10A14 had been allocated by them and that there was never any agreement for no Additional Costs to be borne by the Claimants.

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[134] D&CC at [24] to [28]

[135] NE, 18 April 2024, 8/8-27, 9/1-21; NE, 19 April 2024, 3/10-4/26, 5/3-6/20 and 7/24-30

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142 For the reasons stated below, I am of the view that the Defendants had made all the Property Representations to the Claimants at the April Meeting save for the Buy Back Representation.

143 In line with my findings above, I am of the view that through their words and conduct, the Defendants had expressly and/or implicitly represented at the April Meeting that: (a) the subject matter of the Purchase Agreement and the Lease Back Agreement would be Unit 10A14; and (b) the Claimants would be entitled to the transfer of Unit 10A14 upon their request without the payment of any additional costs or taxes. These representations and the understanding reached in April 2017 are reflected in *inter alia* the terms of the Purchase Agreement and the Lease Back Agreement contained within the Receipt and the Lease Back Guarantee and the record of contemporaneous messages between parties thereafter.

144 I am not however satisfied that the Buy Back Representation had been made. Unlike the representations made with respect to the sale of Unit 10A14 under the Purchase Agreement and the rental or returns that the Claimants would receive under the Lease Back Agreement, there are no contemporaneous communications reflecting that an understanding had been reached for the buy back of Unit 10A14 after 3 years even if the prevailing market price for Unit 10A14 falls below the Purchase Price and there are no terms stated within the contractual documentation executed by parties recording such a representation or understanding. Given the significant benefits that the Buy Back Representation would grant the Claimants, objectively speaking, terms or a reference to such an agreement should have been reflected in the documents executed between parties. Such references are however not present. I further note that even after Mr Liu informed the Claimants that they would not be able

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to extend the Lease Back Agreement on 15 June 2020[136] that no objections had been raised and no reference to any part of the purported Buy Back Representation was made by the Claimants in the Group Chat Messages, the Private Chat Messages and at the meeting on 26 December 2021. In the circumstances, I find that on a balance of probabilities, the Buy Back Representation had not been made by the Defendants.

145 Further to the above, I note that Mdm Tong has taken the position in her AEIC and on the stand that she was not directly involved in the transactions[137] and had not personally communicated the Property Representations made to the Claimants[138].

146 It should be highlighted that Mdm Tong's purported lack of involvement was not pleaded as a defence against the claims of misrepresentation made against her and not addressed in the closing submissions filed by the Defendants.

147 However, for good order, I state for the record that I am of the view that Mdm Tong was clearly party to all material meetings and contracts and had on a balance of probabilities made the Property Representations (save for the Buy Back Representation) verbally and/or through her conduct jointly with Mr Liu to the Claimants for the following reasons:

(a) It is the Defendants' position on the stand that they operated several companies in the Philippines together and that Mdm Tong was in charge of the daily operations of *inter alia* Max Property since at least

[136] Mr Goh's AEIC at 265

[137] Mdm Tong's AEIC at [3]

[138] NE. 18 April 2025

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17 January 2017 with Mr Liu in charge of the growth and development of the company[139].

(b) Mdm Tong was present at the April Meeting when the representations were made;

(c) Mdm Tong was party to both the Purchase Agreement and the Lease Back Agreement;

(d) Mdm Tong and Mr Liu had jointly sold[140] Unit 10A14 to the Claimants;

(e) Mdm Tong had executed the Receipt which evinced and recorded the representations referred to at [134(a)] to [134(e)] above;

(f) Mdm Tong had executed the Lease Back Guarantee which evinced and recorded the representations referred to at 134(b), 134(f) and 134(h) above;

(g) Mdm Tong was present in April 2019 when the Claimants visited the Philippines and had met the Claimants on that visit[141]; and

(h) Mdm Tong was present at the lunar new year visit to the Claimants' home when the request for a transfer of Unit 10A14 was first made in January 2020.

148 In the factual matrix above, even if Mr Liu was the primary person communicating with the Claimants, Mdm Tong was at all material times a joint

[139] NE, 27 March 2024, 7/21-8/3 and 18 April 2024, 18/16-30 and 53/9-21

[140] NE, 27 March 2024, 8/12-20

[141] NE, 27 March 2024, 25/57-26/3

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owner and sufficiently active participant in the engagement between parties who stood to benefit from the Property Agreements to the same extent as Mr Liu. She was also at all material times the individual in charge of operations in the various businesses run jointly by the Defendants (including Max Property) and as such, I find that Mdm Tong cannot be said to be unaware of and/or not involved in the transactions before this Court and in particular the Property Representations made to the Claimants.

Were the Property Representations relied on?

149 Moving on the next point, given the admissions that Property Representations 1 to 6 and 8 were made and the nature/substance of the said representations, I am of the view that it cannot be seriously disputed that the Claimants relied on and were induced by Property Misrepresentations 1 to 6 and 8 into entering the Purchase Agreement and/or Lease Back Agreement.

150 The abovementioned representations essentially established the essential elements of the Purchase Agreement and Lease Back Agreement and were clearly made by the Defendants as part of the negotiations between parties with the intention of convincing the Claimants into entering the said agreement by *inter alia* communicating the framework within which the Claimants could benefit from the conversion of their shares and bonds in Max Property into Unit 10A14 in Fort Victoria.

(a) Property Representations 1 to 4 confirm *inter alia* the amount and nature of valuable consideration agreed to between parties and the subject matter of the Purchase Agreement as Unit 10A14 in Fort Victoria.

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(b) Property Representation 5 confirms the circumstances in which Unit 10A14 (the subject matter of the Purchase Agreement) would be transferred to Claimants.

(c) Property Representations 6 and 7 established *inter alia* the lease period and the quantum of monthly rent payable to the Claimants with respect to the rental of Unit 10A14.

151 Save for the failure of both parties to record the Oral Agreement reached on additional costs in writing (which I have addressed in [65] to [109] above), Property Representations 1 to 6 and 8 were also broadly reflected in and consistent with the terms recorded in the Receipt and Lease Back Guarantee.

152 In the circumstances, I find that Property Representations 1 to 6 and 8 were fundamental to the Property Agreements, consistent with the terms found within the documents recording the Property Agreements and relied on by the Claimants who were induced by the said representations into: (i) entering into the Purchase Agreement and Lease Back Agreement; (ii) signing off on the Lease Back Guarantee; and (iii) transferring monies, shares and bonds equivalent to the Purchase Price to the Defendants.

Were the Property Representations false, made fraudulently and/or made with no genuine or reasonable belief that they were true?

153 It is the Claimants' case that the Property Representations were false, fraudulently made and/or made with no genuine or reasonable belief that they were true because the Defendants had no legal or equitable title or right to sell Unit 10A14 to the Claimants as at 21 April 2017 or otherwise. Further and in the alternative, the Claimants submit that even if the Defendants did possess certain rights over Unit 10A14 at the point of sale, they had failed to inform the

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Claimants that Unit 10A14 had been forfeited by San Jose in 2017 and had continue to give the impression thereafter that the agreements entered into between parties were still valid and had fraudulently maintained the continuity of the Property Representations despite the change in circumstances.

154 For all the reasons below, I accept the Claimants' submissions.

155 Firstly, the contractual documents governing the rights of the Defendants with respect to Unit 10A14 in Fort Victoria expressly provide that the Defendants had no legal or equitable title to Unit 10A14 as at 21 April 2017 (or thereafter) to sell or transfer to the Claimants under the Purchase Agreement and no right to occupy Unit 10A14 and enter into the Lease Back Agreement.

156 The first contractual document executed by the Defendants with respect to Unit 10A14 is the Residential Unit Reservation Application Form bearing a stamp noting that the reservation was received by San Jose on 7 April 2016 ("the Reservation Application")[142].

157 It was accepted by Mr Liu on the stand that: (a) both him and Mdm Tong signed the Reservation Application with respect to Unit 10A14 and (b) under the terms of the Reservation Application[143], the Defendants[144]: (i) entered into a contractual relationship with San Jose where they were able to reserve Unit 10A14 by paying a small reservation fee of 25,000 pesos upfront ("Reservation Fee") with the balance payments deferred; (ii) were obliged to make an outright payment of 5% of the contract price of 6.923 million pesos on 8 May 2016 (hereinafter referred to as the "Outright Payment" and the "Contract Price"

[142] BD 211 and 212

[143] NE, 19 April 2024, 31/22-29

[144] NE, 19 April 2024, 33/4 – 34/8

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respectively); (iii) were obliged to pay a further 15% as downpayment over the next 24 months ("the Downpayment"); and (iv) would have to pay the balance 80% of the Contact Price on 8 July 2018.

158 The Reservation Application is material in that it records the Defendants' reservation of Unit 10A14 in 2016 and the payment terms imposed on the Defendants by the developer, San Jose. It does not however in itself define or convey any ownership rights or title to Unit 10A14.

159 The scope of rights that the Defendants had with respect to Unit 10A14 are encapsulated within a contract to sell entered into between the Defendants and San Jose with respect to Unit 10A14[145] (the "Contract to Sell") shortly after they executed the Reservation Application[146].

160 The salient terms of the Contract to Sell are as follows:

(a) Mr Liu and Mdm Tong are the buyers of Unit 10A14 and had agreed to buy Unit 10A14 at the Contract Price.

(b) Clause 2.1 states that time being of the essence, upon default by the buyers of any instalment payments due, all other instalments, and the entire purchase price shall become immediately due and payable, for which the buyer agrees to pay the seller an additional penalty at the rate of 36% per annum on the total amount due until fully paid, payable and computed monthly without prejudice to the seller's right to immediately and summarily cancel this contract to sell and forfeit any and all payments made by way of liquidated damages.

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[145] BD pages 283 to 290

[146] NE, 19 April 2024, 39/17-20

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(c) Section 3 states that San Jose undertakes to deliver Unit 10A14 to the Defendants upon completion of the project.

(d) Section 5 states that San Jose may allow the Defendants to use and occupy Unit 10A14 upon full payment of the stipulated Downpayment being made but expressly stipulates that if the Defendants defaults in paying stipulated amortizations/instalments resulting in the rescission, cancellation or termination of the Contract to Sell that the Defendants shall voluntarily and peacefully vacate Unit 10A14 within thirty (30) days from receipt of the notice of cancellation or demand for recission.

(e) Section 7 states that San Jose will execute and sign a deed of absolute sale in favour of the Defendants ceding, transferring and conveying all rights, title and interest in Unit 10A14 upon full payment of the Contract Price and other relevant fees.

(f) Section 9 states that the Defendants shall not sell, cede, transfer, encumber, assign or in any manner dispose of the Defendants' rights, title or interest or any obligation created or established under the Contract to Sell without the prior written consent of San Jose and payment of a transfer fee of 25,000 pesos to San Jose.

161 In summary, under the express terms of the Contract to Sell, the Defendants would not obtain the right to occupy Unit 10A14 till they had paid the Downpayment and would not obtain title to Unit 10A14 till they made full payment of the Contract Price.

162 With respect to the payments made pursuant to the Reservation Application and the Contract to Sell, it was Mr Liu's evidence on the stand that:

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(a) The payment terms and fees stated in the Reservation Application match those within the Contract to Sell[147];

(b) He "(felt) that he did not pay (the 5% outright payment)" on 8 May 2016 but in 2017[148];

(c) He could not recall how much the Defendants had paid to San Jose as at 21 April 2017 (when Unit 10A14 was sold to the Claimants) but believed that the Defendants should have at least paid 5% of the contract price[149]; and

(d) The Defendants had not paid the Downpayment for Unit 10A14 when they sold Unit 10A14 to the Claimants and received payment of S$256,818[150].

163 On the stand, Mdm Tong accepted that:

(a) Under the Reservation Application and the Contract to Sell, the first payment by the Defendants for Unit 10A14 was due in May 2016[151]; and

(b) According to the notice of cancellation and demand to vacate dated 23 June 2017 issued by San Jose ("Notice of Cancellation and Forfeiture"), Unit 10A14 had been forfeited by San Jose on or before 23

[147] NE, 19 April 2024, 35/10-29

[148] NE, 19 April 2024, 39/27-40/3

[149] NE, 19 April 2024/40/4-18

[150] NE, 19 April 2021, 42/10-13

[151] NE, 18 April 2021, 5/7-17

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June 2017 due to payments not being made by the Defendants "since May 2016 continuously"[152].

164 From the evidence above, it appears that as at April 2017, the Defendants did not make any payments to San Jose save for the initial Reservation Fee of 25,000 pesos since the Notice of Cancellation and Forfeiture state that they had failed to make the first 5% Outright Payment due in May 2016. It flows from this that under the terms of the Contract to Sell, as at April 2017:

(a) San Jose was entitled to and had the contractual right to immediately cancel the Contract to Sell and forfeit all payments made by the Defendants; and

(b) the Defendants: (a) had no title to or ownership rights over Unit 10A14 to sell to the Defendants; and (b) had no right to occupy or lease out Unit 10A14.

165 When cross-examined on the terms of the Contract to Sell, Mr Liu:

(a) accepted that San Jose had the right to cancel the Contract to sell entirely if he defaulted on any of his instalment payments but maintained that while "it's stated as such. whether it will be done is another matter"[153];

(b) accepted that section 3 of the Contract to Sell bearing the header "Delivery" grants the Defendants occupancy rights to Unit 10A14 upon

[152] NE, 18 April 2024, 4/16-5/27

[153] NE, 19 April 2024, 36/2-37/4

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completion of the project but does not confer any ownership rights on him or Mdm Tong[154];

(c) accepted that Section 7 of the Contract to Sell bearing the header "Title and Ownership" makes it clear that it is only upon the full payment of the Contract Price that he and Mdm Tong would have any legal or equitable rights to Unit 10A14 but maintained that "it's stated as such in the document, but in reality, we had already transferred and transferred not just only one unit…because Philippines, many a times, what is written and what is actually done are two separate matters[155]; and

(d) Accepted that Section 9 of the Contract to Sell bearing the header "Assignment" provides that "the Buyer shall not sell, cede, transfer, encumber, assign or in any manner dispose of the buyer's interest, or any obligation created or established under this Contract to Sell without the prior written consent of the Seller of its assign and/or successors-in-interest, and subject to the payment to the seller by the buyer of a transfer fee in the amount of twenty-five thousand pesos".

166 It is essentially the Defendants' position that notwithstanding the express terms of the Contract to Sell, the Defendants were the beneficial owners of Unit 10A14, had the right to sell Unit 10A14 and the ability to fulfil their obligations under the Property Agreements because:

(a) there was a contractual "arrangement between (the Defendants) and the developer" that they would hold equitable title to Unit 10A14,

[154] NE, 19 April 2024, 37/8-16

[155] NE, 19 April 2024, 38/12-39/16

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could pay the reservation fee and thereafter proceed to transfer Unit 10A14 to others[156];

(b) it is common practice in the Philippines for developers to retain legal title until all payments and fees are settled but equitable title can be transferred through contractual arrangements[157]; and

(c) this practice was communicated to the Claimants and was part of the understanding when the sale was agreed upon.

167 There is however no evidence tendered by the Defendants in the form of contracts, documents, communications, correspondence and/or expert opinions proving that the abovementioned arrangement existed or exists and/or that the purported common practice exists in the Philippines. It is also not pleaded by the Defendants and/or stated in any of their AEICs that this purported common practice in the Philippines had been informed to the Claimants in April 2017 and formed part of the understanding when the Purchase Agreement or the Lease Back Agreement was entered into.

168 In short, there is nothing before this Court to show that as at April 2017 there was any basis for the Defendants to honestly believe or assert that they honestly believed that:

(a) The contractual terms expressly stated in the Reservation Application and the Contract to Sell could be wilfully disregarded;

(b) San Jose was not entitled to or would not exercise its rights under the Contract to Sell to cancel the contract and forfeit the payment of the

[156] NE, 19 April 2024, 19-41/2 and DCS at page 25 and 27

[157] DCS at page 26 and 27

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Reservation Fee when the Defendants had failed to make payments to San Jose since May 2016;

(c) They had any legal or equitable rights or title to Unit 10A14;

(d) Any representations based on the premise that the shares and bonds purchased in Max Property by the Claimants could be converted into Unit 10A14 at Fort Victoria are true;

(e) Any representation that the Defendants were in a position to transfer Unit 10A14 (immediately or otherwise) after the Claimant's settlement of the Purchase Price is true;

(f) Any representation that Unit 10A14 could be leased for a 3 year period at the rate of 6.5% or otherwise is true; and

(g) they were offering the Claimants the opportunity to obtain higher returns on their capital than placing the same in the bank, with both capital and returns guaranteed.

169 I further note that the property search results[158] obtained by the Claimants' Philippine solicitors record that as at December 2021: (a) the title to Unit 10A14 remained with San Jose and was never transferred to the Defendants; and (b) there is a mortgage over Unit 10A14 for the sum of two billion pesos in favour of Banco De Oro Unibank, Inc.

170 In the circumstances, I am unable to accept the Defendants' submissions and find that as at April 2017:

[158] Mr Goh's AEIC at 314 to 319

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(a) The Defendants were aware that they had no legal or equitable rights to Unit 10A14 under the terms of the Contract to Sell and could not have honestly believed that: (i) they were in a position to legitimately enter into the Purchase Agreement; and/or (ii) Property Representations 1 to 6 and 8 were true;

(b) The Defendants were aware that they had no right to occupy Unit 10A14 under the terms of the Contract to Sell and could not have honestly believed that: (i) they were in a position to legitimately enter into the Lease Back Agreement; and/or (ii) Property Representations 6 and 8 were true;

(c) Property Representations 1 to 5 and 8 were false, misleading and fraudulently made by the Defendants at the April Meeting; and

(d) The Defendants had no basis for any genuine belief or reasonable ground to believe that Property Representations 1 to 5 and 8 were true when they were made at the April Meeting.

171 Secondly, it is trite law that there is a duty to correct a continuing representation that a party knows to be incorrect. A representor is obliged to correct a previously made and still operative representation that was true when made, but which has been rendered untrue by subsequent events: See *Changi Makan* at [69] and [70] citing *Yokogawa Engineering Asia Pte Ltd v Transtel Engineering Pte Ltd* [2009] 2 SLR(R) 532 at [12].

172 Prior to the transfer of Unit 10A14 to the Claimants, Property Representations 1 to 6 and 8 remain continuing and operative. Even if I accept that the said representations were true as at April 2017 (which for the reasons above I do not), I am of the view that the Defendants: (a) had not only failed to

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inform the Claimants that a change in circumstances had occurred when Unit 10A14 had been forfeited by San Jose in 2017; but (b) had also deliberately and dishonestly concealed the forfeiture of Unit 10A14 from the Claimants till late 2021. I elaborate below.

173 In the Notice of Cancellation and Forfeiture dated 23 June 2017[159], San Jose informed the Defendants that:

(a) They have failed to meet their monthly payment obligations with respect to Unit 10A14 in Fort Victoria "since May 2016 continuously up to the present" and that as a consequence their contract to sell "had not been perfected"; and

(b) The Defendants were to immediately vacate Unit 10A14.

174 Mdm Tong accepted on the stand that the Notice of Cancellation and Forfeiture was sent in June 2017[160] but took the position that she "cannot be sure of the details of the forfeiture" as it is "written to (her) husband"[161]. She further confirmed that she had never informed the Claimants that Unit 10A14 had been forfeited but did not take a position as to when the Defendants were first informed by Mr Liu that Unit 10A14 had been forfeited[162].

175 Mr Liu does not dispute receiving the Notice of Cancellation and Forfeiture but claims that he does not recall and/or would not know when he had actually received the notification[163].

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[159] BD 292 and 293

[160] NE, 18 April 2024, 6/14-18

[161] NE, 18 April 2024, 4/4-5/6

[162] NE, 18 April 2024, 11/27-12/24

[163] NE, 19 April 2024, 47/32-48/23

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176 Mr Liu further accepted on the stand that after receiving the Notice of Cancellation dated 23 June 2017, the Defendants had continued making payments under the Lease Back Agreement till August 2019 and kept up the appearance that the Receipt was valid[164]. Mr Liu however maintained that this was because he "did not strictly remember which unit was sold to who" and asserted that it was only when the Claimants asked for a transfer that he "discovered" that "there's a problem with this unit"[165] in 2021.

177 I do not accept Mr Liu's or Mdm Tong's evidence in this regard and am of the view that the Defendants had deliberately and dishonestly hid the fact that Unit 10A14 had been forfeited from the Claimants since 2017.

(a) As a starting point, I am not satisfied that the Defendants could have forgotten which unit was the subject of the Purchase Agreement and had only discovered that the unit purchase by the Claimants (being Unit 10A14) had been forfeited by San Jose in 2021, 5 years after the Notice of Cancellation and Forfeiture was issued in 2017.

(i) As at June 2017 when the Notice of Cancellation and Forfeiture was issued, Unit 10A14 was not an inactive or idle unit sitting within the Defendants' portfolio of properties but a property which was subject to a Purchase Agreement and Lease Back Agreement freshly entered into less than 2 months ago in April 2017.

(ii) Under the Lease Back Agreement, the Defendants were obliged to *inter alia* guarantee the payment of monthly rental for

[164] NE, 19 April 2024, 50/7-28

[165] NE, 19 April 2024, 50/7-28

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the next three years to the Claimants. It is therefore logical that as at June 2017, the Defendants would be actively vested in taking steps towards obtaining occupation rights to Unit 10A14 by making the Downpayment and leasing out the said unit so as to cover the monthly payments they had to make to the Claimants to protect their commercial interests.

(iii) Unfortunately due to the Defendants failure to make payments under the Contract to Sell since May 2016, it is within this same time frame that the Notice of Cancellation and Forfeiture was issued and steps for the surrender of Unit 10A14 to San Jose would have necessarily been taken by the Defendants.

(iv) In this context, even if the Defendants and/or their companies had purchased multiple units in Fort Victoria, I cannot accept that the forfeiture of the subject unit of the Lease Back Agreement (being Unit 10A14) would not have come to the notice of the Defendants in or around 2017 and was only discovered after a lag of 5 years in 2021.

(b) My view above is fortified by the fact that monthly rental payments were regularly made by the Defendants to the Claimants for the period from June 2017 to August 2019[166]. It is commercially illogical and improbable for the Defendants not to have taken steps during these two years to rent out Unit 10A14 under their condotel business or otherwise to cover these monthly rental payments they had promised to and were making to the Claimants under the Lease Back Agreement and

[166] ASOF at [25]

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the Lease Back Guarantee. As such, I am also of the view that during the course of making these payments, the Defendants would have been aware that Unit 10A14 had been forfeited and had deliberately concealed the same from the Claimants.

(c) Even if I accept that the forfeiture had not come to the attention of the Defendants when it was surrendered to San Jose (which I do not), the Defendants would at the very least have been aware since April 2019 that Unit 10A14 had been forfeited when the Claimants visited Manila, met the Defendants at Fort Victoria and had asked to view Unit 10A14.

(i) The Claimants had visited Manila from 18 April 2019 to 21 April 2019 on a holiday. It is their evidence that during this visit, the Claimants were invited to Fort Victoria by the Defendants and had asked to view Unit 10A14 but were told that Unit 10A14 was presently occupied and brought to view a different unit on a lower floor[167].

(ii) The Claimants' version of events on what had transpired during the Manila trip is corroborated by text messages exchanged within the Group Chat Messages[168] and pictures[169] exhibited in the Claimant's AEICs. The Claimants' evidence on their trip to Manila was also not challenged during cross-examination and/or in the Defendants' closing submissions.

(iii) During his cross-examination, Mr Liu did not deny that he did not let the Defendants view Unit 10A14, did not provide

[167] Mr Goh's and Mdm Hon's AEIC at [80] to [82]

[168] Mr Goh's AEIC at 213 to 214

[169] Mr Goh's AEIC at 228 to 236

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any explanation as to why he did not inform them about the forfeiture and merely responded to say that he could not remember which unit he had showed them in Fort Victoria[170].

> Q Okay, we will get to that, Mr Liu. In April 2019, just 2 years after this letter was received, the Goh family visited Manila, correct? You remember this?
>
> A Yes.
>
> Q They wanted to visit their unit that they purchased, unit number 10A14. And you did not let them view that unit, correct?
>
> A I remember I brought them there, but as to which unit they viewed, I cannot remember. All I know was that the unit they bought was at Fort Victoria.

(iv) In the circumstances, I am of the view that on a balance of probabilities in April 2019, the Claimants had asked to view Unit 10A14 during their trip to Manila and both the Defendants had deliberately concealed the fact during the visit that they no longer had title or access to Unit 10A14 by informing the Claimants that Unit 10A14 was occupied and bringing the Claimants to view another unit.

(d) Lastly, even if I accept that the Defendants did not discover that Unit 10A14 was forfeited when the Claimants visited Manila in April 2019 (which I do not), the Defendants should have and would have discovered that Unit 10A14 was forfeited when the Claimants first requested for a transfer of Unit 10A14 in January 2020.

(e) In summary, I find that the Defendants' position that they had only discovered that Unit 10A14 in late 2021 is untenable and unlikely

[170] NE, 19 April 2024/51/4-12

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given the contractual obligations placed upon them since 2017, the visit by the Claimants to Manila in April 2019 and the Claimants' request for the transfer of Unit 10A14 made in January 2020.

(f) In the circumstances, I am of the view that on a balance of probabilities, the Defendants were well aware since in or around June 2017 that Unit 10A14 was forfeited by San Jose and had both deliberately and dishonestly concealed this fact from the Claimants till late 2021 when the substitution of Unit 10A14 with Unit 7A14 was first raised.

178 As such, for all the reasons given above, I find that:

(a) Property Representations 1 to 6 and 8 were false and made fraudulently with no genuine or reasonable belief that they were true by the Defendants as at 21 April 2017; and

(b) Even if the abovementioned representations were true, the Defendants had: (i) failed to inform the Claimants that Property Representations 1 to 6 and 8 would have been rendered misleading and untrue after Unit 10A14 had been forfeited by San Jose in or around June 2017; and (ii) deliberately and dishonestly concealed the forfeiture of Unit 10A14 from the Claimants till late 2021.

Did the Claimants suffer loss and damage

179 Given the fact that the Defendants never held title to Unit 10A14, were never in a position to rent out Unit 10A14 as part of its condotel business and

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remains unable to transfer Unit 10A14 to the Claimants to date, I accept that the Claimants had suffered loss and damage in the form of[171]:

(a) the sum of S$222,852 (arrived at by deducting the aggregate total of lease payments made by the Defendants from June 2017 to August 2019 amounting to S$33,966 from the Purchase Price for Unit 10A14); and

(b) the sum of S$12,580 being the outstanding sum of payments due under the Lease Back Agreement.

180 I am however not of the view that the expenses incurred by the Claimants in verifying the ownership and existence of encumbrances on Unit 10A14 and Unit 7A14 in Fort Victoria are attributable to the Claimant's reliance on Property Representations 1 to 6 and 8. In my opinion, the conduct of the property searches are part of the steps taken by the Claimants to ascertain if they have a viable case or claim against the Defendants and/or gather evidence in in support of their present Claim. These expenses should therefore properly form part of the costs or disbursements sought by the Claimants and are not by their nature loss and damage caused by the Claimants' reliance on Property Representations 1 to 6 and 8.

Conclusion

181 In summary, for all the reasons stated above, I find that:

(a) The Property Representations (save for the Buy Back Representation) were made by the Defendants to the Claimants at the April Meeting;

[171] SOC at [47]

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(b) Property Representations 1 to 6 and 8 were relied on by the Claimants and induced them into: (i) entering into the Property Agreements; (ii) signing off on the Lease Back Guarantee; and (iii) paying the Purchase Price to the Defendants;

(c) Property Representations 1 to 6 and 8 were false and made fraudulently with no genuine or reasonable belief that they were true by the Defendants as at 21 April 2017;

(d) The Claimants had suffered loss and damage as a result of acting on the false representations;

(e) The Claimants have succeeded in establishing that fraudulent misrepresentations had been made by the Defendants at the April Meeting; and

(f) The Claimants have succeeded in establishing that they have a claim under section 2(1) of the Misrepresentation Act against both the Defendants.

Were the Defendants unjustly enriched?

182 It is the Claimants' case[172] that:

(a) There has been a total failure of consideration given that the Claimants have transferred the Purchase Price to the Defendants for Unit 10A14 and the Defendants have failed and/or refused to transfer title of Unit 10A14 to the Claimants to date; and

[172] SOC at [47B] to [47E]

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(b) the Defendants have therefore been unjustly enriched at the expense of the Claimants in the sum of S$222,852.

183 The Defendants submit[173] that they have not been unjustly enriched by the Claimants' payments because:

(a) They have fulfilled their obligations under the Lease Back Agreement by making monthly payments till August 2019 and had only ceased payments due to external factors beyond their control;

(b) The transfer of Unit 10A14 was conditional on the payment of the Additional Costs and the provision of required documentation by the Claimants;

(c) They had not made any misrepresentations or acted in bad faith; and

(d) The Claimants in their refusal to pay the Additional Costs and provide necessary documentation necessary for the title transfer are the actual primary impediment to the title transfer.

184 To succeed in a claim for unjust enrichment, a claimant must prove that: (a) the defendant has been enriched; (b) the enrichment was at the plaintiff's expense; (c) an unjust factor is present which makes it is unjust to allow the defendant to retain the enrichment; and (d) the defendant has no defences available to it: See *Ok Tedi Fly River Development Foundation Ltd v Ok Tedi Mining Ltd* [2023] 3 SLR 652 ("*Ok Tedi*") at [140] citing *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another appeal* [2011] 3 SLR 540 at [110]

[173] DCS at pages 28 to 30

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and *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 ("*Anna Wee*")at [98].

185 Where a claim for unjust enrichment is premised on failure of consideration, it must be borne in mind that the concept of consideration as an unjust factor is distinct from the concept of consideration as a requirement for a valid contract. Failure of consideration as an unjust factor means a failure of basis and the inquiry as to whether there is a failure of basis has two parts: (a) first, what was the basis for the transfer in respect of which restitution is sought; and (b) second, whether that basis has failed: See *Ok Tedi* at [159] and [160] citing *Benzline Auto Pte Ltd v Supercars Lorinser Pte Ltd and another* [2018] 1 SLR 239 at [46] and [48].

186 The concept of failure of basis is summarised in Charles Mitchell, Paul Mitchell & Stephen Watterson, Goff & Jones: The Law of Unjust Enrichment (Sweet & Maxwell, 9th Ed, 2016) ("Goff & Jones 9th") at para 12–01, as follows:

> "… The core underlying idea of failure of basis is simple: a benefit has been conferred on the joint understanding that the recipient's right to retain it is conditional. If the condition is not fulfilled, the recipient must return the benefit. …"

187 Applying the principles above in the present case, I am of the view that the Claimants have sufficiently satisfied all four elements for a claim in unjust enrichment.

188 Firstly, I am satisfied that the Defendants were enriched at the expense of the Claimants in the sum of S$222,852.

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(a) It is not disputed that pursuant to the terms of the Property Agreement[174]: (i) the Claimants had paid the Purchase Price of S$256,818 to the Defendants by transferring their shares in Max Property valued at S$63,000, transferring their bonds in Max Property valued at S$105,000 and issuing a cheque for the sum of S$88,818; and (ii) the Claimants had received rental payments amounting to the aggregate total of S$33,966 from the Defendants.

(b) It is uncontroversial that monetary transfers can constitute a "benefit". The requirement that such benefit be at the expense of the claimant means that there must be a nexus between the parties. Such nexus can be established where the defendant receives an immediate benefit from the claimant or receives a benefit traceable from the claimant's assets: See *Zhou Weidong v Liew Kai Lung* [2018] 3 SLR 1236 ("*Zhou Weidong*") at [51] citing *Anna Wee* at [112] and [115]–[116].

(c) In present case, the Defendants had received a benefit traceable to assets from the Claimants and were enriched at their expense in the sum of S$222,852.

189 Secondly, I am satisfied that in the circumstances of the present case, there has been a total failure of consideration and it would be unjust to allow the Defendants to retain the benefit of S$222,852 that they had received.

(a) The transfer of the Purchase Price (and the consequential nett benefit of S$222,852) by the Claimants to the Defendants was made on the basis and condition that:

[174] See the Receipt at BD 101 and ASOF at [24] and [25]

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(i) Unit 10A14 was sold to the Claimants as at April 2017 and that the title to Unit 10A14 would be transferred to the Claimants at their request under the Purchase Agreement and the Oral Agreement; and

(ii) Unit 10A14 would be leased to the Defendants for a period of 3 years under the Lease Back Agreement.

(b) As it transpires and for the reasons stated above, the Defendants have never been in a position to sell, transfer or lease Unit 10A14 from April 2017 to date and were well aware that they were not in a position to do so having no legal or equitable title to or right to occupy Unit 10A14 as at April 2017 or otherwise.

(c) The conditions under which the Purchase Price was paid (and the nett benefit consequently conferred) to the Defendants were therefore never fulfilled and there is therefore a total failure of consideration.

190 Thirdly, none of the arguments raised by the Defendants or the facts in the present case appear to form applicable defences to the claim of unjust enrichment like ministerial receipt or change of position.

191 I therefore find that the Defendants been unjustly enriched at the expense of the Claimants in the sum of S$222,852.

The appropriate relief in the present circumstances

192 In their Closing Submissions[175], the Claimants make several alternative pleas for relief but primarily:

[175] CCS at [156] to [163]

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(a) seek the recission of the Share Sale Agreements, Investment Agreements, Lease Back Agreement and the Purchase Agreement on the basis that these agreements were procured by fraud and/or misrepresentations;

(b) seek an order for damages in the sum of S$222,852 (being the Purchase Price less the payments made under the Lease Back Agreement) with respect to their claim for fraudulent misrepresentation with respect to the Property Agreements;

(c) seek an order for the sum of S$222,852 to be paid to the Claimants with respect to their claim for unjust enrichment; and/or

(d) submit that an order for specific performance and the delivery of Unit 10A14 is not appropriate or feasible in the present case.

193 It is trite that the equitable remedy of recission was and is always available for all types of misrepresentation subject to the operation of any applicable bars to recission: See *RBC Properties* at [64] and [67].

194 I am however not of the view that a complete recission of the Share Sale Agreements, Investment Agreements, Purchase Agreement, Lease Back Agreement and the Oral Agreement is appropriate in the present case because:

(a) The Claimants have not succeeded in their misrepresentation claim with respect to the Investment Representations and are therefore not entitled to a recission of the Share Sale Agreements and the Investment Agreements; and

(b) Max Property has been struck off and a recission of the Purchase Agreement is not possible in view of the fact that the shares and bonds

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in Max Property transferred as valuable consideration by the Claimants to the Defendants can no longer be returned to the Claimants.

195 I further find that an order for specific performance is also not appropriate in the present case given that:

(a) The Defendants have never held and do not presently hold the title to Unit 10A14;

(b) The Defendants do not know who presently holds the title to Unit 10A14; and

(c) There is no cogent evidence before this Court showing that the Defendants can obtain ownership of Unit 10A14 and transfer the same to the Claimants at this material point in time even if an order was made compelling specific performance of the Purchase Agreement.

196 It appears therefore that damages are the most appropriate remedy for the Claimants in the present case.

197 The measure of damages awarded for the tort of fraudulent misrepresentation or deceit includes all loss that flowed directly from the entry into the contract in question, regardless of whether or not such loss was foreseeable; the damages awarded would include all consequential loss as well: see *RBC Properties* at [81] citing *Smith New Court Securities Ltd v Citibank NA* [1997] AC 254 and *Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909.

198 In the case of *Cristian Priwisata Yacob v Wibowo Boediono* [2017] SGHC 8 ("*Cristian Priwisata*"), a contract had been entered into in which monies had been transferred by the plaintiffs for the acquisition of shares in

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properties but the investments were never carried out. At [189] of *Cristian Priwisata*, George Wei J: (a) held that failure of consideration can be found in both contractual and non-contractual contexts where advances are made to further a particular purpose or goal, and the purpose or goal fails; and (b) where the defendants have failed to perform any part of the contractual duties that was promised, it follows that the plaintiffs are entitled to recover the sums that have been paid by way of a claim for unjust enrichment.

199 Applying the approaches taken above, I am of the view that

(a) The Claimants are entitled to an award for damages in the sum of S$222,852 with regards to their claim advanced under section 2(1) of the Misrepresentation Act and their claim for fraudulent misrepresentations made with respect to the Property Agreements; **or**

(b) In the alternative, with respect to their claim in unjust enrichment, the Claimants are entitled to an order that the Defendants pay the Claimants the sum of S$222,852 being the value of the assets or benefit that the Defendants received at the expense of the Claimants.

Conclusion

200 For the reasons set out above, I order that the Defendants are jointly and severally liable to pay the sum of S$222,852 to the Claimants forthwith.

201 Parties are to file and serve written submissions on the appropriate cost orders to be made (both as to incident and quantum), limited to 5 pages (excluding any schedule of disbursements), within 14 days.

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Georgina Lum
District Judge

Mr Victor David Lau (Drew & Napier LLC) for the Claimant and Defendants in Counterclaim;
The Defendants and Claimants in Counterclaim in person.

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