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

[2025] SGHC 188

Originating Claim No 437 of 2023

Between

Astrawati Aluwi

… *Claimant*

And

(1) Lo Yew Seng
(2) Chen Yicheng

… *Defendants*

And

(1) Infinity Capital Group Ltd
(2) LC Capital Ltd
(3) Infinity Capital Group Japan Development Godo Kaisha

… *Third Parties*

JUDGMENT

[Tort — Misrepresentation — Negligent misrepresentation]
[Tort — Misrepresentation — Fraud and deceit]
[Tort — Conspiracy]

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Astrawati Aluwi
v
Lo Yew Seng and another (Infinity Capital Group Ltd and others, third parties)

[2025] SGHC 188

General Division of the High Court — Originating Claim No 437 of 2023
Tan Siong Thye SJ
8–11 April, 26–28 May, 27 June, 18 July 2025

19 September 2025 Judgment reserved.

Tan Siong Thye SJ:

Introduction

1 The claimant, Madam Astrawati Aluwi (the "Claimant"), purchased a residential apartment unit in Tellus Hirafu, a purported development in Niseko, Japan (the "Development") for the sum of US$1.88 million. The purchase was made as a result of several representations given to her by the first Defendant, Mr Lo Yew Seng (the "Defendant"). As a result, the Claimant made several progress payments to the developer for the residential apartment unit, amounting to the sum of US$1.786 million. Subsequently, it was discovered that there was no construction done at the Development and the developer never even owned the land. What had been marketed as a promising and attractive investment property was, in reality, nothing more than an elaborate scam. The Claimant is now seeking for a full refund and interest.

2 The Claimant is suing the Defendant and Mr Chen Yicheng ("Mr YC Chen") for fraudulent misrepresentation, negligent misstatement and conspiracy by unlawful means. The Defendant denies liability and contends that he too was a victim of the scam, having extended loans to the developer himself. Mr YC Chen, the second defendant in this suit, failed to appear and default judgment was entered against him.

3 Having heard the evidence, I find the Claimant's version of events to be more credible and that she has discharged her burden of proof on a balance of probabilities. I am satisfied that the Defendant is liable for fraudulent misrepresentation and negligent misstatement, and that he was involved with Mr YC Chen and one Mr Jonathan Cheng in a conspiracy by unlawful means. Accordingly, I order the Defendant to pay the Claimant damages in the sum of US$1,786,000 with interest at the rate of 5.33% per annum from the commencement date of the suit and costs.

4 I set out my detailed reasons below.

Facts

The parties

5 The Claimant is a wealthy Indonesian who has made several property investments around the world. Since 1995, the Claimant has engaged Ms Serene Wan ("Ms Wan") as her property agent.[1] Ms Wan manages the Claimant's property portfolio in Singapore and Ms Wan acts for her in various property transactions, including the property which is the subject of the present suit.

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[1] Agreed Statement of Facts filed on 30 May 2025 ("ASOF") at S/N 2.

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6 The Defendant is a director at Capella Capital Pte Ltd.[2] He holds a bachelor's degree in Economics from the National University of Singapore and attended the General Management programme at the NUS Business School.[3] He appears to have extensive experience as a board member and a director in several companies, providing financial advisory services.

The events leading up to the sale

7 Sometime on or around 20 January 2019, Ms Wan and the Defendant met at a social gathering and the Defendant informed Ms Wan that there was a luxurious residential development project in Niseko, Japan known as Tellus Hirafu.[4] For context, Ms Wan and the Defendant's wife had been friends for many years, during which time Ms Wan became acquainted with the Defendant. The Defendant was well aware of Ms Wan's occupation as a property agent.

8 Shortly after, on 31 January 2019, the Claimant, who ordinarily resides in Jakarta, came to Singapore and visited Ms Wan at her residence. Ms Wan told the Claimant about the Development as she knew that the Claimant was interested in investing in Niseko. Upon learning of the Claimant's interest in the Development, Ms Wan contacted the Defendant to inquire and to seek more details about the Development.[5]

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2 Mr Lo Yew Seng's 1st Affidavit of Evidence-in-Chief ("AEIC") dated 3 July 2024 ("Mr Lo's 1st AEIC") at p 1.

3 Bundle of Exhibits Tendered at Trial filed on 28 May 2025 ("Trial Bundle"), Enclosure to P-6.

4 ASOF at S/N 13.

5 Claimant's Opening Statement dated 17 March 2025 ("Claimant's OS") at para 17.

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9 The Defendant immediately sent Ms Wan a 13-page investment brochure for the Development via WhatsApp message (the "first investment brochure").[6] The first investment brochure contained a brief history of Niseko's rise as a tourist destination, artist impressions of the Development, the target completion date of 2021, and details of the 20 specified units in the VVIP pre-launch sale, including their price list and payment schedule.[7] Ms Wan forwarded the first investment brochure to the Claimant, and they read through it together as the Claimant was still in Ms Wan's home.[8] In a telephone call on the same day, the Claimant, the Defendant and Ms Wan discussed the Claimant's interest in purchasing one of the units in the Development.[9]

10 Subsequently, on 1 February 2019, the Defendant sent Ms Wan a 31-page investment brochure on the Development via WhatsApp message (the "second investment brochure") which contained specific unit layout plans and project details.[10] On the same day, Ms Wan forwarded this second investment brochure to the Claimant.[11]

11 Between 1 February 2019 and 28 April 2019, Ms Wan, acting on behalf of the Claimant, negotiated with the Defendant regarding a residential apartment unit in the Development and its purchase price. On 29 April 2019, when the price for the residential apartment unit had been agreed upon and the Claimant was ready to enter into a sale and purchase agreement, the Defendant referred

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6 ASOF at S/N 14.

7 Claimant's OS at para 19.

8 Claimant's OS at para 21.

9 ASOF at S/N 40; Claimant's OS at para 23.

10 ASOF at S/N 67; Claimant's OS at para 25.

11 ASOF at S/N 69.

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Ms Wan to Mr YC Chen and Mr Jonathan Cheng to finalise the deal.[12] Mr YC Chen subsequently sent Ms Wan a draft contract for sale on 30 April 2019 and a draft commitment agreement on 17 May 2019 .[13] The parties then discussed the various aspects of these documents, including the deposit amounts, and made the appropriate amendments.

12 On 28 May 2019 and 29 May 2019, the Claimant signed the finalised versions of the commitment agreement ("Commitment Agreement") and contract for sale ("Contract for Sale") respectively, contracting to purchase a 136 m² freehold apartment unit number 301 (the "Unit") in the Development for the price of US$1.88 million.[14] The Contract for Sale was between the Claimant as "Buyer" and Infinity Capital Group Japan Development Godo Kaisha as "Seller", with Infinity Capital Group Ltd as the "Execution Partner" and Mr Jonathan Cheng as the "Execution Director". The completion of the Unit was scheduled for December 2021.

13 Pursuant to the Contract for Sale, between 31 May 2019 and 19 May 2021, the Claimant made a total of six progress payments totalling US$1.786 million towards the purchase of the Unit.[15]

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12 ASOF at S/N 344.

13 ASOF at S/N 346 and S/N 403.

14 ASOF at S/N 547 and S/N 555; Ms Wan Mei Fong's 1st AEIC dated 19 June 2024 ("Ms Wan's 1st AEIC") at pp 211–225.

15 Claimant's OS at para 3.

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The various entities in the Infinity Group and the Defendant's interests and loans to the Infinity Group

14 A separate series of developments regarding the Defendant's involvement with the Infinity Group was unfolding both before and parallel to the Claimant's purchase of the Unit.

15 For context, the Infinity Group consisted primarily of the following three companies:[16]

(a) LC Capital Ltd ("LC Capital"), a company incorporated in Hong Kong on 6 June 2016, which sits at the apex of the group;

(b) Infinity Capital Group Ltd ("Infinity Capital"), a company incorporated in the Cayman Islands on 9 August 2017 and wholly owned by LC Capital; and

(c) Infinity Capital Group Japan Development Godo Kaisha ("Infinity Japan"), a company incorporated in Japan on 1 February 2018, and also wholly owned by LC Capital.

16 The three companies played distinct roles in the Development: (a) LC Capital was the recipient of payments made by the Claimant towards the purchase price of the Unit; (b) Infinity Capital was represented as the developer of the Development in the first investment brochure and the second investment brochure (hereinafter, collectively referred to as the "investment brochures");

16 ASOF at S/N 3, S/N 4 and S/N 6; Claimant's OS at para 9.

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and (c) Infinity Japan was reflected as the developer under the Contract for Sale.[17]

17 The Infinity Group was controlled and largely owned by Mr Jonathan Cheng, who was the Group Chief Executive Officer and Managing Director of LC Capital. The day-to-day management was handled by Mr YC Chen, Mr Jonathan Cheng's subordinate. Mr YC Chen was also a registered director of LC Capital, a director and general manager of Infinity Capital, and a representative member and executive member of Infinity Japan.[18]

18 The Defendant became inextricably linked to the Infinity Group through substantial investments in its various projects. On 9 January 2018, the Defendant entered into an agreement to loan S$680,000 to LC Capital, repayable within three months (*ie*, 9 April 2018), at an interest rate of 15% per annum (the "Loan Agreement").[19]

19 On 1 February 2018, the Defendant loaned a sum of A$200,000 to Infinity Capital, for which a bond certificate was issued by Infinity Capital to the Defendant (the "Bond Certificate"). Under the Bond Certificate, Infinity Capital agreed to pay the Defendant interest under two coupons, each being 15% per annum on the principal, on 1 February 2019 and 1 February 2020 respectively, with final repayment of the principal amount of A$200,000 in full by 1 February 2020.[20] The Bond Certificate secured the Defendant's investment,

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17 Claimant's Closing Submissions dated 27 June 2025 ("Claimant's CS") at para 3.

18 Defendant's Opening Statement dated 17 March 2025 ("Defendant's OS") at paras 5 and 6.

19 ASOF at S/N 5; Claimant's OS at para 10.

20 ASOF at S/N 7; Claimant's OS at para 11.

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as well as those of other bondholders under their respective certificates, through a charge over the land designated for the Development.

20 By 21 June 2018, the Defendant was a 10% shareholder of LC Capital, holding 714,286 shares valued at HK$714,286.[21] This was evinced by the initial return of allotment filed by LC Capital. However, on 12 September 2018, LC Capital filed an amended return of allotment in which the Defendant's shares were valued only at HK$7,142.86.[22]

21 Sometime in 2018, the Defendant's investment in the Infinity Group began to show cracks. On 9 April 2018, LC Capital defaulted in the repayment of the Loan Agreement and it remains unpaid to this day, despite multiple alleged extensions of time being given for the repayment.[23] Further, on 1 February 2019, Infinity Capital defaulted on its coupon payment of A$30,000 to the Defendant under the Bond Certificate.[24] On 1 February 2020, Infinity Capital defaulted on its repayment of the principal amount of A$200,000 and its coupon payment of A$30,000 to the Defendant under the Bond Certificate.[25]

22 The Infinity Group's financial situation took a dive in 2022. Infinity Capital was struck off from the registry of companies in the Cayman Islands on

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21 ASOF at S/N 10; Claimant's OS at para 14.

22 ASOF at S/N 11.

23 Claimant's OS at para 12.

24 ASOF at S/N 64.

25 ASOF at S/N 658.

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29 July 2022,[26] and LC Capital was subsequently wound up by the Hong Kong court on 13 December 2023.[27]

The Claimant's discovery that her investment was a scam

23 The Claimant's initial suspicion arose in or around July 2021, when LC Capital failed to pay the 2% commission fees to Ms Wan's real estate agency following the Claimant's sixth instalment payment on 19 May 2021. When Ms Wan enquired about the commission status by email on 25 June 2021, Mr YC Chen failed to respond. Both the Defendant and Mr YC Chen subsequently evaded Ms Wan's questions, attributing the delay to minor hiccups caused by the Covid-19 pandemic.[28]

24 In September 2022, the Claimant engaged a Japanese lawyer, Ms Rie Toyama ("Ms Toyama"), to look into her investment in the Development. Ms Toyama discovered that the land on which the Development was to be built was never owned by the Infinity Group. Instead, the land was owned by one Zekkei Investment Management K K ("Zekkei") since 1 March 2017, a company with no connection to the Infinity Group. Further, there was no application submitted by any developer for a building permit to commence construction on the land, a necessary regulatory requirement in Japan before any construction can commence. Ms Toyama also found no evidence of any construction on the land during a site visit.[29]

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26 ASOF at S/N 808.

27 ASOF at S/N 865.

28 Claimant's OS at para 45.

29 ASOF at S/N 809 to S/N 812; Claimant's OS at paras 5 and 46; Claimant's CS at para 6.

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25 Two documents produced during the second tranche of trial, namely, the Land Sale and Purchase Agreement ("Land S&P") and the Deed of Settlement ("Settlement Deed"), revealed that the Infinity Group never owned the land.[30] The Land S&P shows that Infinity Capital agreed to purchase the land from Zekkei for US$10.5 million on 9 February 2018, with completion of the payment scheduled on 31 October 2018. However, Infinity Capital only paid US$3.3 million. The Settlement Deed dated 30 January 2020 records that the sale was never completed due to Infinity Capital's failure to pay the full purchase price. Under the Settlement Deed, Zekkei agreed to refund US$3 million out of US$3.3 million paid by Infinity Capital to discharge the Land S&P. Therefore, while the Infinity Group initially intended to acquire the land, this intention was abandoned by 31 October 2018 when they were unable to make the full payment. Hence, from January 2019 to May 2019, when the alleged representations were made by the Defendant, the Infinity Group neither owned the land nor had the ability to begin construction on the Development.[31]

The Claimant's institution of proceedings against various entities and persons

26 On 29 November 2022, the Claimant commenced proceedings in Hong Kong against LC Capital, Mr YC Chen and Mr Jonathan Cheng.[32] The Claimant obtained a default judgment against LC Capital in the sum of US$1,786,000 plus interest and costs on 21 February 2024.[33] However, according to the Claimant, she has been unable to recover any portion of this sum.

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30 Trial Bundle, Enclosure to P-8.

31 Claimant's CS at para 7.

32 ASOF at S/N 858.

33 Defendant's OS at para 17.

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27 On 7 July 2023, the Claimant commenced the present suit, HC/OC 437/2023, against the Defendant and Mr YC Chen.[34] Mr YC Chen has not made an appearance in the suit and accordingly, the Claimant has obtained a default judgment against him.[35]

28 On 14 August 2023, the Defendant filed a third-party notice against the Infinity Group.[36] Subsequently, on 14 September 2023, the Defendant commenced proceedings in Hong Kong against LC Capital for the recovery of S$100,000 plus interest pursuant to the Loan Agreement dated on or around 31 March 2020.[37]

The parties' cases

The Claimant's case

29 The Claimant sues the Defendant for fraudulent misrepresentation and negligent misstatement, alleging that his representations prior to the execution of the Contract for Sale induced her to enter into the contract. Additionally, the Claimant brings a claim against the Defendant for conspiring with Mr YC Chen by unlawful means, namely, making false material representations about the Development.[38]

30 The Claimant seeks damages of US$1,786,000, with interest at 5.33% per annum calculated from the date of each instalment payment, and costs. The

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34 ASOF at S/N 860.

35 Defendant's OS at para 6.

36 ASOF at S/N 861.

37 ASOF at S/N 863.

38 Claimant's OS at para 8.

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interest should run on each progress payment from the date the Claimant made payment to LC Capital until the date of the Defendant's settlement of the judgment sum. The Claimant argues that the Defendant should be held jointly and severally liable with Mr YC Chen.[39]

The Defendant's case

31 The Defendant maintains that he was merely an intermediary with no reason to believe that the information he provided to Ms Wan was untrue.[40] He asserts that he was never an employee or an executive director of the Infinity Group and he did not participate in its day-to-day management.[41] The Defendant states that he only became involved in the matter when he learned of the Development from Mr Jonathan Cheng and/or Mr YC Chen in or around 2018 and he mentioned it to Ms Wan in passing. He maintains that his communications with Ms Wan were purely social, and that he acted merely as a friendly conduit of information between Ms Wan and Mr YC Chen, without any intention to induce the Claimant to enter into the contract.[42] He further asserts that it was Mr YC Chen who made specific representations about the Development to Ms Wan and handled the sale and purchase agreement for the Unit.[43]

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39 Claimant's OS at paras 80 and 81.

40 Defendant's OS at para 41.

41 Defendant's OS at para 8.

42 Defendant's OS at para 9; Mr Lo's 1st AEIC at paras 16 to 20.

43 Defendant's OS at para 10.

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32 In fact, the Defendant contended in court that he too was a victim, having invested in Infinity Capital and loaned monies to LC Capital.[44] The Defendant argues that the Claimant is simply attempting to hold him liable for the consequences of her own poor investment decision and negligence, including her failure to conduct proper due diligence on the Development before executing the Contract for Sale and making the progress payments.[45]

Issues to be determined

33 The following issues are for the court's determination:

(a) Whether the Defendant made fraudulent misrepresentations to the Claimant through Ms Wan regarding the land ownership and construction progress of the Development, with the knowledge that these representations were false before the Claimant signed the Contract for Sale.

(b) Whether the Defendant owed and breached a duty of care to the Claimant when making the representations regarding the Development, and if so, whether the Claimant was contributorily negligent in failing to conduct her own due diligence.

(c) Whether the Defendant is liable for conspiracy by unlawful means with Mr YC Chen.

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44 Defendant's OS at paras 13 and 21 to 23.

45 Defendant's OS at para 14.

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Issue 1: Fraudulent misrepresentation

34 To succeed in a claim in fraudulent misrepresentation, the Claimant has to establish the following elements (*Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 ("*Panatron*") at [14], recently followed in *Bay Lim Piang v Lye Cher Kang* [2023] 5 SLR 602 ("*Bay Lim Piang*") at [8] and *Crystal Beauty Pte Ltd v Xu Jasmine and another* [2025] SGHC 86 ("*Crystal Beauty*") at [44]):

(a) there were false representations of fact by words or conduct made by the defendant to the claimant;

(b) the false representations were made with the intention that it should be acted upon by the claimant (*ie*, inducement);

(c) the claimant acted upon the false representations (*ie*, reliance);

(d) the claimant suffered damage by doing so; and

(e) the false representations were made by the defendant with knowledge that they were false, or in the absence of any genuine belief that it is true (*ie*, recklessly).

35 The grave nature of fraud requires the representee to satisfy a relatively high standard of proof before a claim in fraudulent misrepresentation can be established against the representor (*Fuji Xerox Singapore Pte Ltd v Mazzy Creations Pte Ltd and others* [2021] SGHC 193 ("*Fuji Xerox*") at [50], citing *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 ("*Wee Chiaw Sek Anna*") at [30]). Accordingly, "cogent evidence" is required (*Fuji Xerox* at [50], citing

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Alwie Handoyo v Tjong Very Sumito and another and another appeal [2013] 4 SLR 308 ("*Alwie Handoyo*") at [161]).

Whether the representations were made

36 In the Statement of Claim, the Claimant alleged that several representations were made by the Defendant between 31 January 2019 and 26 May 2019. According to the Claimant, by way of these representations, the Defendant expressly and/or impliedly represented that:[46]

(a) the developer owned the freehold land on which the Development was to be built;

(b) the developer intended to commence construction of the Development;

(c) there was a realistic prospect that the Development would be completed by 2021;

(d) the contents pertaining to the Development in the two investment brochures were true;

(e) the developer had entered into a contract for ground-breaking; and

(f) the developer had obtained the required regulatory approvals to commence construction on the land.

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46 Claimant's OS at para 50; Statement of Claim (Amendment No. 1) dated 16 February 2024 ("SOC") at paras 12(c), 14(c), 14(e), 15, 18 and 20.

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37 However, in Closing Submissions, the Claimant focussed on two fundamental pleaded misrepresentations which encompassed the aforementioned representations allegedly made, expressly and/or impliedly, by the Defendant. These are as follows:

(a) that in early 2019, Infinity Capital, as developer of the Development (the "Developer"), owned the land on which the project was to be constructed, on a freehold tenure ("the ownership representation");[47] and

(b) that in early 2019, Infinity Capital, as the Developer, intended to commence construction of the project soon ("the construction representation").[48]

38 Therefore, these two representations form the focus of my analysis, as they effectively encapsulate all pleaded representations in the Claimant's case (as acknowledged in the Claimant's Closing Submissions).

39 As a matter of general principle, the court's approach to interpreting a particular statement proceeds on an objective basis (*Lam Wing Yee Jane v Realstar Premier Group Pte Ltd* [2024] 5 SLR 51 ("*Lam Wing Yee Jane*") at [37]). Therefore, "the question is not simply what the representee himself did understand, but rather what a *reasonable* person in the representee's position would have understood the statement to mean, based on the objective construction of the impugned statement and the surrounding circumstances" [emphasis in original] (*Lam Wing Yee Jane* at [42]).

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47 SOC at paras 12(b), 12(c), 12(d), 15, 16, 18 and 20(a); Claimant's CS at para 11.

48 SOC at paras 12(b), 12(c), 12(d), 15, 16, 18 and 20(b); Claimant's CS at para 12.

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40 Preliminarily, I shall deal with the Defendant's lacklustre argument that the Defendant did not make the representations to the Claimant as he only communicated with Ms Wan, and it was Ms Wan who subsequently conveyed the representations to the Claimant.[49] As stated in *Bowstead & Reynolds on Agency* (Sweet & Maxwell, 19th Ed, 2010) at para 8-207, which was cited by the Claimant and affirmed in *The "Dolphina"* [2012] 1 SLR 992 ("*Dolphina*") at [216], "[t]he law may impute to a principal knowledge relating to the subject matter of the agency which the agent acquires while acting within the scope of his authority".[50] Therefore, as Ms Wan was acting within her scope of authority as a property agent of the Claimant when receiving information from the Defendant, her knowledge may be imputed to her principal, the Claimant.

The ownership representation

41 I find that the first representation – that the Developer owned, with freehold tenure, the land on which the Development was to be constructed – was indeed made to the Claimant by the Defendant. This conclusion rests primarily on the two investment brochures sent by the Defendant to Ms Wan via WhatsApp, which expressly stated that the Infinity Group owned the freehold land.[51]

42 The first investment brochure, sent on 31 January 2019, stated that the developer was "Infinity Capital Group Limited", and that the tenure was "Freehold". The second investment brochure, sent on 1 February 2019, contained multiple representations regarding ownership and tenure. Beyond

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49 Defendant's OS at para 34.

50 Claimant's OS at para 53.

51 Claimant's CS at para 11(a)–(b).

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identifying "Infinity Capital Group Limited" as the developer and specifying "Hokkaido, Abuta-gun, Kutchan Cho, Ara Kabayama" as the location for the Development, the second investment brochure (i) specified the tenure as "Freehold", (ii) stated that the developer was offering "free-hold ownership", (iii) listed "Freehold strata title" under "Land / building ownership", and (iv) confirmed in the FAQ section that "TELLUS Hirafu is a freehold title". By forwarding these investment brochures to Ms Wan, I find that the Defendant represented to the Claimant that the Developer owned the freehold land.

43 I shall now deal with the Defendant's contention that the mere act of forwarding the investment brochures to Ms Wan cannot constitute a representation and/or warranty by the Defendant to the Claimant that all the contents of the investment brochures were true. In this regard, the Defendant relies on the case of *Lam Wing Yee Jane* (cited above at [39]) for the proposition that he cannot be held responsible for merely forwarding to Ms Wan the investment brochures created by the Developer about which he had no knowledge or belief. The Defendant argues that he never vouched for the accuracy of the investment brochures' contents, did not modify or supplement them in any way, and only forwarded them upon request in the context of his friendly relationship with Ms Wan.[52] Accordingly, the Defendant submits that he did not adopt the representations within the investment brochures as his own.[53] He contends that holding him responsible would set a troubling precedent whereby the mere forwarding of marketing materials could create liability for the sender.[54]

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52 Defendant's OS at para 39; Defendant's CS at para 26.

53 Defendant's CS at para 27.

54 Defendant's CS at para 28.

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44 In *Lam Wing Yee Jane*, Lai Siu Chiu SJ cited with approval at [46] the following passage from Professor John Cartwright's text entitled *Misrepresentation, Mistake and Non-disclosure* (Sweet & Maxwell, 5th Ed, 2019) ("*Misrepresentation, Mistake and Non-disclosure*") at para 3-20:

> **Repetition of another person's statement** A question can sometimes arise as to whether a contracting party makes a representation when he simply passes on information which he has received from another person who is not involved in the transaction. The answer ought to lie in the principles already discussed in this section. If the party makes clear that he is simply passing on information which he believes to be true but for which he cannot vouch, then the question will be one of his honesty in making the statement. But he may, by passing the information on, be seen as taking responsibility for it. Indeed, there is a range of possible forms of responsibility that may be taken where a person (X) passes on information produced by another (Y) to a person (Z) with whom he hopes to contract:
>
> > (i) X may warrant to Z that the information is correct. X may thereby assume contractual liability to Z for the accuracy of the information. That liability may exist under the main contract or a collateral contract.
> >
> > (ii) X may adopt the information as his own, thereby taking on such responsibility as he would have if he were the maker of the statement.
> >
> > (iii) X may represent that he believe, on reasonable grounds, the information supplied by Y to be correct. That involves a lesser degree of responsibility than scenario (ii).
> >
> > (iv) X may simply pass on the information to Z as material coming from Y, about which X has no knowledge or belief. X then has no responsibility for the accuracy of the information beyond the ordinary duties of honesty and good faith.
>
> …
>
> [emphasis in original]

45 Lai SJ reasoned that the main distinguishing factor among the four scenarios outlined by Prof Cartwright is the "degree of responsibility" which is engaged (at [47]). Lai SJ further reasoned that scenario (i) engages a high degree

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of responsibility as the maker of the statement would be taken to have assumed contractual liability by warranting that the information is correct, and scenario (ii) engages a similarly high degree of responsibility as the maker of the statement would be taken to have adopted the information as his own such that he had assumed full responsibility as though he had been the original maker of the statement (at [47]).

46 In *Lam Wing Yee Jane*, the court examined whether actionable representations were made through marketing brochures provided by the defendant's real estate salesperson, Mr Teo, to the claimant. These marketing brochures, furnished in both hardcopy and softcopy formats, depicted three potential layout plans for the property. The layouts appeared to suggest that the entire land area could be fully redeveloped, as they did not indicate any drainage reserve. When the claimant subsequently discovered the existence of a drainage reserve which could not be redeveloped, she commenced proceedings against the defendant for negligent misstatement.

47 The court rejected the claimant's contention that the marketing brochure contained an implied statement of fact regarding the property's complete availability for redevelopment. Three factors were decisive: (a) Mr Teo's absence of knowledge regarding the drainage reserves; (b) the contextual circumstances in which the marketing brochure was conveyed – merely being passed on from one Mr Tan, a fact known to both the claimant and her father, Mr Lam; and (c) the claimant's real estate development expertise (at [42]).

48 Of particular significance was the manner in which the marketing brochure was conveyed. The context established that Mr Teo acted merely as an intermediary passing on information from Mr Tan, rather than as the original

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source of the representations. During the property viewing, Mr Tan had openly requested Mr Teo to forward the marketing brochure's soft copy to Mr Lam in the presence of both the claimant and Mr Lam. This made it clear that the marketing brochure originated from Mr Tan, not Mr Teo. The court found this scenario aligned with Prof Cartwright's scenario (iv), where an intermediary simply transmits information from the seller without assuming responsibility for its accuracy beyond basic duties of honesty and good faith. The evidence showed no indication that Mr Teo had acted with anything less than honesty and good faith in transmitting the marketing brochure to the claimant and Mr Lam (at [52]–[54]).

49 Considering these factors, the court held that a reasonable person would not have believed that the marketing brochure contained an implied statement of fact regarding the entire land's availability for redevelopment.

50 Returning to this case, the facts in this case are vastly different from that in *Lam Wing Yee Jane.* In the present case, the Defendant effectively adopted and endorsed the representations in the investment brochures, thereby assuming responsibility equivalent to that of an original maker of the statements. He presented himself as a member of the key management team and demonstrated substantial involvement in the Development by actively supplying information to the Claimant and Ms Wan. He responded to their queries within minutes, highlighting the Development's advantages over competing projects in the same locality. The Defendant also partook in the negotiation of the purchase price (see below at [81]–[86]). In fact, he demonstrated clear awareness of the information within the investment brochures, even verifying its accuracy, as evidenced when he pointed out that the investment brochures had incorrectly stated the total area of the Development. The evidence shows that the Defendant

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had adopted or taken responsibility for the contents of the investment brochures.[55] In the circumstances, the Defendant's conduct went beyond mere transmission of information, as alleged in his affidavit. Instead, he demonstrated an active endorsement of the representations made within the investment brochures and took responsibility for them. There is no evidence to indicate that the Defendant had disassociated himself from the information about the Development to the Claimant and Ms Wan. The Defendant did not caution the Claimant and Ms Wan to do their independent checks and due diligence before signing the Contract for Sale.

51 Further, I am fortified in my view that the first representation was made by the Defendant's WhatsApp message to Ms Wan on 18 April 2019 regarding the Development's progress, which stated: "Currently on schedule as I know the contract for ground breaking is signed".[56] This statement, once again, gave the implication that the Developer had ownership of the land which was endorsed by the Defendant. The Defendant attempts to argue that the phrase "as I know" creates distance from the sender's (*ie*, the Defendant) knowledge of the purported fact (*ie*, the contract for groundbreaking being signed).[57] However, this interpretation does not align with the plain, ordinary meaning of the phrase, which actually suggests that the Defendant had personal knowledge of the progress of the Development.

52 I shall also address the Defendant's contention that the representation is not actionable as it was a representation of a future event (*ie*, the Developer

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55 Claimant's Reply Submissions dated 18 July 2025 ("Claimant's RS") at para 24; Transcript for 26 May 2025 at p 72, line 20 to p 76, line 16.

56 Claimant's CS at para 11(e).

57 Defendant's CS at para 32.

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would own the land in future), and the Defendant had a reasonable belief in its truth.[58] The Defendant contends that a developer only needs to have obtained the freehold title in a land at the time of completion. In this regard, the Defendant points out that nothing in the investment brochures stated that the Developer owned the land on freehold tenure *at the time* the representation was made. Accordingly, he submits that the ownership representation was a representation of a future event and, therefore, not actionable.

53 In this regard, it is trite law that, for a statement to constitute actionable misrepresentation, it must be a statement of present fact. This excludes statements as to future intention (*Deutsche Bank AG v Chang Tse Wen* [2013] 1 SLR 1310 ("*Deutsche Bank*") at [93]). However, a statement as to future matters can include a statement of fact. In *Ernest Ferdinand Perez De La Sala v Compañia De Navegación Palomar, SA and other and other appeals* [2018] 1 SLR 894, the Court of Appeal stated the following at [172]:

> 172 … A representation as to the future is not, in itself, an actionable misrepresentation. However, it can *imply* an actionable misrepresentation in at least two ways:
>
> (a) A person who makes a statement as to the future (whether of intention or otherwise) may, in doing so, make an implied representation as to an existing fact. For example, a statement that certain costs *would* be paid out of a particular fund was found to imply a representation that such costs *were payable* out of that fund, and a statement as to the likely output of a mine was found to imply a representation as to the *present state and capacity* of the mine: see, respectively, the English decisions of *Mathias v Yetts* (1882) 46 LT 497 at 503 and *Gerhard v Bates* (1853) 2 El & Bl 476, discussed (along with other examples) in K R Handley, *Spencer Bower, Turner and Handley:*

[58] Defendant's Reply Submissions dated 18 July 2025 ("Defendant's RS") at paras 1 to 2 and 10 to 13.

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> *Actionable Misrepresentation* (Butterworths, 4th Ed, 2000) ("*Spencer Bower*") at para 27.
>
> (b) A person who states an intention as to the future implicitly represents that he in fact has that intention at the time of making the statement: see the decision of this court in *Tan Chin Seng v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 at [12], citing the famous dictum of Bowen LJ in *Edgington v Fitzmaurice* (1885) 29 Ch D 459 at 483.
>
> [emphasis in original]

54 Therefore, a statement of future intention may still be actionable if it can be re-characterised as a statement implying that (a) the maker of the statement honestly believed that the event would happen in the future; or (b) the maker of the statement had reasonable grounds for making such an assertion (*Deutsche Bank* at [96], followed in *KLW Holdings Ltd v Straitsworld Advisory Ltd and another* [2017] 5 SLR 184 at [31] and *Low Eng Chai and another v Ishak bin Mohamed Basheere and another* [2022] SGHC 207 at [29]). If it can be shown that the maker of the statement had neither honest belief nor reasonable grounds, that would be misrepresentation as to matters of fact (*The Law of Contract in Singapore* vol 1 (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) at para 11.034).

55 For example, in *Forum Development Pte Ltd v Global Accent Trading Pte Ltd and another appeal* [1994] 3 SLR(R) 1097, a landlord's leasing manager represented to a prospective tenant that a brick wall obstructing the view of the premises would be replaced with glass panels within approximately 12 months. The tenant, induced by this representation, entered into the lease. When the wall remained unchanged, the tenant sought rescission based on misrepresentation. Although the statement concerned a future event, the Court of Appeal held that it was actionable as a misrepresentation because it contained an implied

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representation of present fact – namely, that there was a reasonable factual basis for making the statement about the future renovation.

56 In the present case, it was unreasonable for the investment brochures to contain the ownership representation by January 2019, given that the Infinity Group had already defaulted on its payment to Zekkei under the Land S&P by October 2018. This is a significant factor that would undoubtedly influence any potential buyer's decision to invest in the Development. While the Defendant argues that late payment does not invalidate the Land S&P as it could be remedied (for instance, through late payment interest or charges),[59] this ignores the fact that there is no evidence that payment was being processed between October 2018 and January 2019, when the representations were being made. Further, there is no evidence that the Infinity Group had sought for an extension of time to pay for the land from Zekkei. When Infinity Capital failed to make full payment by October 2018, Zekkei had the legal right to cancel the contract and thereafter sell the land to another interested buyer. In the circumstances, when forwarding the investment brochures to the Claimant and Ms Wan from January 2019, the Defendant lacked the honest belief in the Developer's ability to acquire the land to build the Development. As a member of the Infinity Group's key management team and financial adviser responsible for raising funds for the Development, the Defendant possessed extensive knowledge of the Group's dealings (as will be established below) and therefore knew that such land acquisition was not feasible.

57 In any case, even if the Defendant's case is taken at its highest that there was a genuine and reasonable belief in the truth of the ownership representation,

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[59] Defendant's RS at para 13(3).

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by January 2020 when the Settlement Deed was executed, there was a duty for the Defendant to correct this representation with the Claimant, but he never did so. In this regard, it is well-established that there is a duty to correct a continuing representation that a party knows to be incorrect (*Yokogawa Engineering Asia Pte Ltd v Transtel Engineering Pte Ltd* [2009] 2 SLR(R) 532 at [12], affirmed in *Chan Pik Sun v Wan Hoe Keet (alias Wen Haojie) and others and another appeal* [2024] 1 SLR 893 ("*Chan Pik Sun*") at [109]), and a representation is of continuing effect until it is corrected (*Goldrich Venture Pte Ltd and another v Halcyon Offshore Pte Ltd* [2015] 3 SLR 990 at [44], affirmed in *Chan Pik Sun* at [109]).

58 Therefore, based on the forwarding of the investment brochures and the sending of the WhatsApp message on 18 April 2019 which represented that the contract for groundbreaking had been signed, I find that the Defendant made the first representation.

The construction representation

59 I also find that the second representation, *ie*, that the Developer intended to commence construction imminently, was made. I reach this conclusion for two reasons. First, both investment brochures contained specific representations regarding the construction schedule. The first investment brochure specified project completion in 2021 and provided a detailed payment schedule corresponding to construction stages. The second investment brochure contained the same construction-linked payment schedule and reinforced the timeline for project completion.[60]

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60 Claimant's CS at para 12(b).

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60 Second, as noted above at [51], the Defendant represented to Ms Wan on 18 April 2019 that the contract for ground-breaking had been signed and that the Development was progressing on schedule.[61] This clearly implied that a contractor had been appointed and construction was imminent. The Defendant made further representations about the construction's progress in a WhatsApp message on 9 July 2019. When Ms Wan inquired about the Development's progress, he replied: "Suppose to break ground this month. It's up to the management and the contractors to decide on the exact auspicious date I guess [*sic*]".[62]

61 Therefore, based on the investment brochures and the WhatsApp messages from the Defendant to Ms Wan, the construction representation was convincingly made by the Defendant. Given the disclosure of the Settlement Deed and Ms Toyama's unchallenged findings discussed above at [24], it is clear that both representations were also false at the time they were conveyed between January and May 2019. The circumstantial evidence indicates that the Defendant knew or had reason to believe that these representations were false.

62 Before addressing the next element for fraudulent misrepresentation, I shall briefly consider the Defendant's argument that he did not make the alleged representations as he was merely an intermediary conveying information from Mr Jonathan Cheng and/or Mr YC Chen to the Claimant.[63] The Defendant contends that it was Mr YC Chen who made specific representations to Ms Wan concerning the Development and sent the contractual documents to Ms Wan for

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61 Claimant's CS at para 12(c).

62 Claimant's OS at para 43.

63 Claimant's CS at para 12(e); Defendant's OS at para 41; Mr Lo's 1st AEIC at para 3(1).

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her onward transmission to the Claimant.[64] This is a futile attempt to shift blame. The evidence clearly shows that Ms Wan dealt exclusively with the Defendant to finalise all essential terms of the contract until April 2019. If the Defendant were truly an intermediary in every sense of the word, he would have redirected Ms Wan to Mr YC Chen and Mr Jonathan Cheng from the beginning, *ie*, January 2019, rather than answering her queries and offering information about the Development over a period of four months as well as negotiating the purchase price of the Unit with the Claimant. Indeed, Mr YC Chen's involvement only began on 29 April 2019, *after* the Claimant had already decided to purchase the Unit and was merely seeking to execute the formal documentation. In any case, the representations made by Mr YC Chen are irrelevant in establishing the Defendant's *own* liability for fraudulent misrepresentation. As discussed above, the evidence clearly demonstrates that the Defendant himself made the two representations. Therefore, the next element to consider is whether these representations induced the Claimant to enter into the Contract for Sale.

Whether there was inducement by the Defendant and reliance by the Claimant

63 Next, the Claimant must prove that the representations were made with the intention that the Claimant would act upon them, and that the Claimant did in fact rely on these representations. I shall deal with these two elements together as they are closely interrelated. Where a representation is material, the representor is presumed to have intended to induce the representee, and it is more likely that the representee did in fact rely upon it.

64 I find the following passages by Andrew Ang J (as he then was) in *Raiffeisen Zentralbank Osterreich AG v Archer Daniels Midland Co and*

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64 Defendant's OS at para 10.

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others [2007] 1 SLR(R) 196 ("*Raiffeisen Zentralbank Osterreich AG*") at [53]–[57] helpful in setting out the threshold for proving the elements of reliance and inducement:

> 53 First, it is relevant to consider the state of mind of the representor as the plaintiff must establish an intent to induce. **The representor is presumed to have so intended once materiality is proved**. The evidential burden then shifts to the representor to displace the *prima facie* case. It follows that materiality and inducement are closely related. Conversely, if the subject matter of the misrepresentation was immaterial to the business at hand, the court will normally find that the defendant had no intention to induce in the absence of evidence otherwise.
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> 54 Second, it is relevant of course to consider the representee's state of mind to see whether he altered his position as a result of receiving the representation. It is necessary to show actual inducement. Spencer Bower states as follows at para 116:
>
> > Accordingly, whenever the representee has failed to discharge the burden of establishing that he was *in fact* induced he has failed. He may have relied *solely* on something other than the misrepresentation, his own skill or judgment, his general knowledge of business, faith in the venture, special enquiries, or knowledge of the truth. The representee may not have read the document containing the misrepresentation; it may not have been addressed to, or intended for him, or for a class of which he was a member; he may not have examined the article so that the active concealment of its defects had no effect on his decision; or it may appear that he was determined to take the risk, whatever it was. [emphasis in original]
>
> 55 As may be inferred from the passage above quoted, **it is not necessary for the plaintiff to show that he entered into the transactions solely in reliance upon the misrepresentation.** *Clerk & Lindsell on Torts* ([37] *supra*) at para 18-32 sets out the position as follows:
>
> > To entitle a claimant to succeed in an action in deceit, he must show that he acted in reliance on the defendant's misrepresentation. If he would have done the same thing even in the absence of it, he will fail. However, the misrepresentation need not have been the sole cause of the claimant acting as he did: provided it

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> substantially contributed to deceive him, that will be enough. If the claimant's mind was partly influenced by the defendant's misstatements the defendant will not be any the less liable because the claimant was also partly influenced by a mistake of his own.
>
> 56 As Stephenson LJ said in *JEB Fasteners Ltd v Marks Bloom & Co* [1983] 1 All ER 583 at 589:
>
> > [A]s long as a misrepresentation plays a real and substantial part, though not by itself a decisive part, in inducing a plaintiff to act, it is a cause of his loss and he relies on it, no matter how strong or how many are the other matters which play their part in inducing him to act.
>
> Inducement is a question of fact and the burden of proving it is at all times on the representee. However, inducement may be inferred from materiality. Spencer Bower states, at para 126, that:
>
> > A representation is material when its tendency, or its natural and probable result, is to induce the representee to alter his position in the manner he did.
>
> 57 **Where the materiality is patent and the probability of inducement is great, actual inducement may be found with little or no other evidence**: *William Smith v David Chadwick* (1884) 9 App Cas 187 *per* Lord Blackburn. *Per contra*, where materiality is in doubt, the representee's burden of proving inducement is not easily discharged.
>
> [emphasis added]

65 Having considered the evidence, I find that the representations were made with the clear intention to induce the Claimant's reliance. These representations were highly material as they went to the very heart of the Development's viability, specifically the Developer's ownership of the land and the imminent commencement of construction. No reasonable buyer would have entered into the contract if they had known the representations to be false. Given the materiality of these representations, the evidence, particularly the WhatsApp messages, clearly indicates that the Defendant intended to induce the Claimant by his representations to purchase the Unit. On the facts, the Defendant has not

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displaced his burden of proving that he was merely transmitting the information to the Claimant and not inducing her to enter into the Contract for Sale. In fact, the evidence overwhelmingly and clearly indicates that the Defendant sought to induce the Claimant to enter into the Contract for Sale through his representations.

66 The Defendant proactively marketed the Development to the Claimant through Ms Wan, as he drummed up the attractive features of the Development. He also offered perks, incentives and special discounts to the Claimant. On 31 January 2019, the Defendant made specific representations regarding: (a) carpark allocation, stating that "[t]he first 20 apartments will all have an allocated lot"; (b) preferential pricing, claiming the "price is 10% lower than public"; and (c) distance to ski facilities, claiming that the "[n]earest ski lift is about 350m away" and providing details about shuttle service arrangements. Furthermore, in his affidavit, the Defendant stated that while he could not recall the precise details of the call between himself, Ms Wan and the Claimant on 31 January 2019, he acknowledged that he may have said that "the developer of the Project develops high-end properties and had completed two projects in Niseko, which were sold out".[65] However, during the trial, he later conceded that these two projects had neither been completed nor even commenced construction.[66] The evidence clearly shows that the Defendant was attempting to enhance the Developer's credibility to encourage the Claimant to invest in the Development.

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65 Mr Lo's 1st AEIC at para 28, S/N 6.

66 Transcript for 26 May 2025 at p 36, line 21 to p 41, line 14.

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67 Additionally, on 26 April 2019, when Ms Wan posed certain questions to the Defendant comparing the Development with Setsu Niseko (another project the Claimant was considering investing in at the material time), the Defendant replied that the Development was a better investment as it had an underground car park and a Michelin-starred restaurant.[67] This was clearly intended to dissuade the Claimant from investing in Setsu Niseko and to instead invest in the Development.

68 The Defendant also actively discouraged the Claimant from conducting due diligence, presumably so that the Claimant would not discover that the entire project was a scam. On 3 May 2019, when Ms Wan asked whether her client needed a lawyer for the transaction, the Defendant sent messages to Ms Wan suggesting that the transaction was safe and that legal representation was unnecessary.[68] He went further, on 13 May 2019, specifically discouraging the appointment of Mr Satoshi Yoshida ("Mr Yoshida"), an English-speaking lawyer from Niseko who had been identified by the Claimant to conduct due diligence.[69] The Defendant's active dissuasion from conducting due diligence will be discussed below under the claim of negligent misstatement, though it bears noting at this stage that the dissuasion formed part of the Defendant's broader pattern of inducement.

69 The Defendant also conjured a sense of artificial urgency about unit availability to pressure the Claimant into quickly signing the Contract for Sale. On 26 May 2019, the Defendant sent unsolicited messages to Ms Wan claiming

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67 Claimant's OS at para 31; Claimant's CS at paras 22 to 24 and 38; Ms Astrawati Aluwi's 1st AEIC dated 19 June 2024 ("Ms Aluwi's 1st AEIC") at pp 73 to 74.

68 Claimant's OS at para 36.

69 Claimant's OS at para 37.

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that two other buyers were interested in the Unit following the Bangkok launch and that over twenty units had been sold.[70] These communications were plainly calculated to pressure the Claimant into executing the contract, which had been pending since 30 April 2019. The timing of these messages, coming nearly a month after the contract was first presented, demonstrates a deliberate attempt to exploit the Claimant's fear of losing the investment opportunity. This tactic was successful as the Claimant signed the Commitment Agreement two days later on 28 May 2019 and the Contract for Sale three days later on 29 May 2019..[71]

70 I find no merit in the Defendant's argument that the Claimant acted in reliance on the representations made by Mr YC Chen, Mr Jonathan Cheng, Ms Wan and other contact persons rather than his own representations.[72] The evidence clearly shows that Ms Wan dealt exclusively with the Defendant between 31 January 2019 and 28 April 2019, during which period all commercial terms, including the specific unit and purchase price, were agreed. The Defendant only introduced Ms Wan to Mr YC Chen on 29 April 2019 to formalise the deal and finalise the "paperwork".[73] Any representations made by Mr YC Chen came shortly before and/or after the contract had been signed and were presumably intended to induce the Claimant to make further payments. It was, therefore, the Defendant's representations that *primarily* induced the Claimant to enter into the Contract for Sale. In any case, even after introducing the Claimant and Ms Wan to Mr YC Chen, the Defendant remained actively

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70 Claimant's OS at para 38.

71 Claimant's OS at para 40.

72 Defendant's OS at para 10; Mr Lo's 1st AEIC at para 3(2).

73 Claimant's OS at paras 38 and 55.

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involved, as he attempted to dissuade the Claimant from conducting due diligence and messaged her about the successful launch in Bangkok.[74]

71 Further, I cannot accept the Defendant's contention that his representations did not induce the Claimant merely because the Claimant was already interested in investing in Niseko.[75] In particular, the Defendant relies on the Claimant's following admission during cross-examination:[76]

> A: The question is I -- **I was the one who wanted to buy the apartment. It was not Mr Lo after -- chasing after me to buy.** Is that correct? The question is that? I said yes, it was -- it was I who have the intention or interest to invest in Niseko. That is correct. That is.
>
> Q: Would you agree with me, Ms Aluwi, that in fact many people warned you not to buy a unit in Niseko at this point of time. Would you agree with me?
>
> A: I have about two friends who told me to be careful …
>
> [emphasis added]

72 The Claimant's purported admission that she wanted to buy the Unit, and not because the Defendant "chased" her to buy it, must be read in its correct context. While the Claimant was interested in investing in Niseko generally, the overwhelming evidence and the undisputed WhatsApp messages from the Defendant clearly reveal that the Defendant's representations induced her to invest in the Development. Further, for reliance to be established, the misrepresentation need not be the sole or decisive factor in inducing the representee to act and it is sufficient that the representation played a real and substantial role in inducing the representee (see *Panatron* at [23], referred to in

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74 Claimant's CS at para 41.

75 Defendant's CS at paras 7 and 46.

76 Transcript for 8 April 2025 at p 129, line 20 to p 130, line 4.

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Ma Hongjin v Sim Eng Tong [2021] SGHC 84 ("*Ma Hongjin*") at [64]). The evidence shows that the Claimant's friends had dissuaded her from investing in Niseko as the market was "over heated".[77] In spite of the advice by her friends, the Claimant chose to invest in the Development, which, if anything, demonstrates the strong influence the Defendant, the only person from Infinity Group she spoke to about the Development, had over her decision. Basically, the Defendant gave her an offer that was so very attractive and special that it was very difficult for her to decline. This is clearly evidenced from the Claimant's testimony in court:[78]

> COURT: Now, my question to you is: why did you decide to go ahead to buy the Tellus Hirafu project [despite your friend not recommending investing in Niseko at that time]?
>
> A: Because the feature that has been offered to me, offered by Mr Lo, was very interesting. Firstly, that. Secondly, I would get a VVIP pre-launch price. So I was thinking, maybe it's still a good deal at that time.

73 I also do not accept the Defendant's contention that he did not have any motivation to induce the Claimant merely because he did not earn any commission or payments from the Claimant's purchase of the Unit.[79] As noted by the Claimant, the Defendant was clearly invested in the success of the Development. This is evidenced by several facts. By June 2018, the Defendant was a 10% shareholder of LC Capital. He was also indirectly a 10% owner of the land for the Development that Infinity Capital purportedly was going to own. He was a creditor as he loaned at least S$680,000 to LC Capital and at least

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77 Defendant's CS at para 49; Agreed Bundle of Documents, Volume 1, pp 233 to 235.

78 Transcript for 9 April 2025 at p 68, lines 1 to 7.

79 Defendant's OS at paras 14 and 39; Mr Lo's 1st AEIC at para 3(2).

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A$200,000 to Infinity Capital.[80] Thus, while the Defendant would not receive a commission specifically from the Claimant's purchase of the Unit, he would stand to benefit from the overall success of the Development.

74 In the circumstances, I find that the Defendant made the representations with the intention that the Claimant would act upon them, and the Claimant did in fact rely heavily on these representations.

Whether the Defendant made the representations with the knowledge that they were false

75 The Claimant bears the burden of proving that the Defendant made the representations "(1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false" (*Wee Chiaw Sek Anna* at [32], citing *Derry v Peek* (1889) 14 App Cas 337 at 374 with approval). As noted by Andrew Ang J, "[d]ishonesty is the touchstone which distinguishes fraudulent misrepresentation from other forms of misrepresentation" (*Raiffeisen Zentralbank Osterreich AG* at [40]).

76 In *Chan Pik Sun*, the Appellate Division of the High Court provided guidance on what constitutes recklessness in the context of fraudulent misrepresentation at [69]–[72]:

> 69 First, recklessness must be understood in the sense of "indifference to the truth, the moral obliquity which consists in a wilful disregard of the importance of the truth" (see the Court of Appeal decision of *Arab Banking Corp (BSC) v Boustead Singapore Ltd* [2016] 3 SLR 557 at [62]). **A person who is indifferent to the truth cannot possibly have an honest belief in the truth of the representation.**

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80 Claimant's OS at para 60.

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70 Second, while the legal burden is ultimately on the representee to prove the representor's fraudulent state of mind, the evidential burden may in some circumstances fall on the representor to defend against the allegation that he had acted fraudulently. One such circumstance was aptly described by Salmon J in *Regina v Mackinnon and others* [1959] 1 QB 150 (at 155), which was cited with approval by VK Rajah JA in *Public Prosecutor v Wang Ziyi Able* [2008] 2 SLR(R) 61 ("*Able Wang*") (at [85]):

> … once it is proved that the [representation] is misleading, false or deceptive, and that there were no reasonable grounds for believing it, there exists powerful evidence that the [representor] who made the forecast for some purpose of his own either must have known it was untrue or had no real belief in its truth. Often in the case of alleged fraudulent statements the only evidence of dishonesty consists of evidence that no grounds exist on which any reasonable man could have believed in the truth of the statements. In my experience, juries are not slow in a proper case to draw the inference of fraud.

The extract above suggests that **once it is established that a *false* representation was made and there were no reasonable grounds for the representor to believe it, the evidential burden shifts to the representor to show that he honestly believed in the representation.**

71 **Third, if an alleged belief was destitute of all reasonable foundation, this would suffice of itself that it was not really entertained, and that the representation was a fraudulent one** (see the High Court decision of *DBS Bank Ltd v Carrier Singapore (Pte) Ltd* [2008] 3 SLR(R) 261 ("*DBS Bank*") at [53], citing *Derry* at 375, *per* Lord Herschell). This proposition was put in substantially similar terms by the Court of Appeal of England and Wales in *Le Lievre and Dennes v Gould* [1893] 1 QB 491, where it was said that gross negligence may amount to fraud if it were so gross as to be incompatible with the idea of honesty (at 500). In determining whether a representor's belief was reasonable, one factor that the court would consider is the importance or materiality of the representation in the circumstances of the case (see the High Court decision of *Liberty Sky Investments Ltd v Goh Seng Heng and another* [2020] 3 SLR 335 ("*Liberty Sky*") at [55] and [60]). The more significant the representation, the greater is the need for the representor to show that he had an evidential basis, *ie*, honest belief in making the representation, failing which it is open for a court to find that the representor did not make the statement(s) honestly.

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> 72 Fourth, in determining whether the representor had the requisite subjective honest belief in the truth of the statement at the material time, the court may consider whether there were "grounds on which a *reasonable person infused with the attributes of the accused* would have believed in the truth of the statement" [emphasis in original] (see *Able Wang* at [88]). **In other words, the qualification, profession, intellect, experience and skills, amongst other personal attributes, of the representor would be considered in assessing whether there were indeed reasonable grounds for him to believe that the statement or information which he disseminated was true** (see *Able Wang* at [87]). If the representor was in a position to discover the truth, his alleged belief may be found to be unreasonable (see *Liberty Sky* at [82]).
>
> [emphasis added]

77 The Defendant's central contention is that he too was a victim of the fraudulent scheme, having invested as a bondholder and extended a loan to the Developer, all in the genuine belief that the Development was legitimate.[81] The Defendant claims that he was not involved in the Development, had no "in-depth knowledge" about it, and served merely as an "intermediary" between the parties.[82] He further contends that he genuinely believed in the truth of the representations he was making, including those regarding the Infinity Group's ownership of the land, as he had relied on the Bond Certificate which listed the land as a collateral asset.[83]

78 The evidence compels me to conclude that the Defendant made the representations knowing them to be false or, at the very least, recklessly and without care as to their truth. I come to this finding for three reasons. First, despite attempts to characterise himself as a mere intermediary during his defence, the evidence in court establishes the Defendant as an integral member

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81 Defendant's OS at para 13; Mr Lo's 1st AIEC at para 3(2).

82 Mr Lo's 1st AIEC at paras 3(1) and 28.

83 Defendant's CS at para 38.

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of the Infinity Group's key management team. Second, the evidence suggests that the Defendant had always known about the Land S&P and the Settlement Deed, demonstrating that he was well aware that the Infinity Group did not own the land when the representations were made to the Claimant. Third, when confronted by Ms Wan about the discovered fraud, the Defendant's conduct betrayed his role not as an unwitting participant, but as a knowing conspirator in the scheme. I shall elaborate on these points below.

The Defendant's role in the Infinity Group's management

79 The Defendant's characterisation of himself as a mere intermediary is untenable in light of overwhelming evidence demonstrating his substantial involvement in the Infinity Group's management. The Defendant argues that he had never specifically and expressly represented himself as a representative of the Development.[84] However, his conduct would have led any reasonable person to conclude that he was a senior representative of the Development.

80 In his affidavit, the Defendant stated that he was never an employee or director of Infinity Capital and/or LC Capital.[85] Further, the Defendant stated that he was never involved in the day-to-day management of Infinity Capital, LC Capital or the Development as he never spoke to any of their customers in a formal capacity, never held himself out to be an authorised representative, and never signed any documents on their behalf.[86] According to the Defendant, since he had no material involvement in Infinity Capital and LC Capital, he was never

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84 Defendant's CS at paras 67 to 68.

85 Mr Lo's 1st AEIC at para 13.

86 Mr Lo's 1st AEIC at para 15.

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involved in the actual management of the Development and had no oversight of the same.[87]

81 In light of the evidence before me, I find this statement to be manifestly untrue. From the outset, the Defendant represented his senior position in the Infinity Group to Ms Wan in the WhatsApp messages as follows:[88]

> [31/1/19, 1:05:28 PM] Serene Gan: How r u involve?
>
> [31/1/19, 1:07:55 PM] Seng's hp: I am involve in company level, investor and advisor

82 His conduct consistently aligned with this senior position. He was the sole point of contact to the Claimant through Ms Wan for the entirety of the marketing phase until commercial terms were concluded. He demonstrated intimate knowledge of the project beyond the published materials. He regularly aligned himself with the Developer by using collective terms such as "we", "us", and "our" whenever he dealt with Ms Wan.[89] Most tellingly, he actively negotiated the price of the Unit with the Claimant and gave her the impression that he could influence the offer of a preferential price:[90]

> [9/4/19, 5:14:48 PM] Serene Gan: Hi Seng is 301 available? The VIP price still stands? **My client ask if we can negotiate?**
>
> [9/4/19, 5:15:31 PM] Seng's hp: **Sure , let me know .**
>
> […]
>
> [12/4/19, 2:44:58 PM] Serene Gan: **Hi Seng, can chk if what's the best price for unit 301 pls. Thks.**
>
> [12/4/19, 2:47:25 PM] Seng's hp: **Ok I ask to see what they can offer**

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87 Mr Lo's 1st AEIC at para 16(2).

88 Ms Aluwi's 1st AEIC, p 70; Claimant's OS at para 22.

89 Claimant's OS at para 62.

90 Ms Aluwi's 1st AEIC, pp 71 to 74.

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[12/4/19, 2:47:44 PM] Seng's hp: Because already 10% down from launch price

[12/4/19, 2:48:28 PM] Serene Gan: Thks Yew Seng. Price in brochure is before 10%

[16/4/19, 9:03:01 AM] Serene Gan: **Gd am Yew Seng, did u manage to chk what's price they can offer for 301?**

[16/4/19, 9:12:39 AM] Seng's hp: **I will check later this afternoon.** They were all on the road . How serious do you think she is ?

[16/4/19, 9:14:01 AM] Serene Gan: She is serious. On the other hand, I'm not so sure of Japanese property. Many say they r too high. Spoke to a Jap guy and Sup.

[16/4/19, 9:17:59 AM] Seng's hp: Ok I ask for you

[…]

[16/4/19, 3:51:00 PM] Serene Gan: Yes she's aware.

Any possibility of a further disc for 301?

[16/4/19, 3:54:38 PM] Seng's hp: Wait let me ask

[16/4/19, 3:54:54 PM] Serene Gan: Thks

[16/4/19, 8:33:23 PM] Seng's hp: **Ok, settle at further3% disc , valid for 7 days .** I will convert this to email once it's confirm so you can get your comm too ! Thxs

[16/4/19, 9:44:46 PM] Serene Gan: Ok, will let my client know. She's coming in tmr.

[…]

[18/4/19, 12:41:37 PM] Serene Gan: Payment terms and schedule can spread out a bit. She mention 45% for this year a bit high since project not ready till 2021. R there changed to schedule or possible to be more flexible?

[18/4/19, 12:52:57 PM] Seng's hp: Oh the schedule will be adjusted to the surveyor progress report ….

[…]

[26/4/19, 9:53:45 PM] Seng's hp: **Ok I check the price since no other questions**

[26/4/19, 9:53:57 PM] Serene Gan: Ok. Thks

[28/4/19, 8:20:35 PM] Seng's hp: **Hi , I just got the go ahead for USD 1.88m .** If your client is ok , I will ask them to circulate

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> the documents to your email (please txt me) so that all these can be tracked including your commission....Thxs.
>
> [emphasis added]

83 If the Defendant was not involved in the Infinity Group or the Development, his ability to negotiate the price of the Unit is inexplicable. Such pricing authority would only rest with those intricately involved in the organisation, as it requires detailed knowledge of market conditions and profit margins. Therefore, the Defendant's contention that his role was "limited to introducing Ms Wan to Mr [YC] Chen" cannot be believed.[91] The Defendant's involvement extended well beyond a friendly introduction or the conveying of information about the Development. He took an active role in negotiating the final purchase price of the Unit.

84 Despite his initial denial in his affidavit of providing "any professional advice to [Infinity Capital] and/or [LC Capital]",[92] the Defendant later admitted during cross-examination that he served as a professional advisor for all three of the Infinity Group's projects, *ie*, Tellus Villas, Tellus Hirafu and Tellus Niseko, including raising capital for these projects. I reproduce the relevant portion of his cross-examination:[93]

> Q: … You now have it clarified that when you acted through Capella Management as advisory services, you advised all three projects: Tellus Niseko, Tellus Hirafu, Tellus Villas. Right?
>
> A: On certain issues.
>
> …

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91 Defendant's OS at para 47(2).

92 Mr Lo's 1st AEIC at para 28.

93 Transcript for 11 April 2025 at p 32, line 11 to p 33, line 16.

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> Q: … what did you do pertaining to advising them on structuring the companies? Broadly, what did you tell them?
>
> A: So my activities will include advisory, meaning like the bonds, is one case. The loans are one case. Selling the property, either by debt or pure sale is another.
>
> …
>
> Q: The bonds and the loans, that's really capital raising, right?
>
> A: That's right.

85 Of particular significance is the Defendant's role in raising capital for all three of the Infinity Group's projects. In early 2018, he spearheaded a bond issuance for the Development, personally bringing in six to seven bondholders and raising approximately US$1.5 million to US$2 million presumably for the purpose of purchasing the land for the Development.[94] His commitment to the Development was further demonstrated by his own subscription to these bonds. His integral role was further evidenced by his active participation at the Development's launch in Bangkok in May 2019, where he was involved in the setup process and received sales figures directly from the staff.[95]

86 Most compelling is the documentary evidence of the Defendant's formal position within the organisation. Despite his denials, documentary evidence confirms his appointment as a non-executive director of both LC Capital and Infinity Capital from June 2018. This is corroborated by multiple sources: (a) screenshots from LC Capital's website dated 12 June 2023 displayed his photograph and name under the title "Non-Executive Director"; (b) screenshots from Infinity Capital's website dated 12 June 2023 listed him alongside

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94 Transcript for 11 April 2025 at p 44, line 12 to p 45, line 9.

95 Transcript for 26 May 2025 at p 114, line 16 to p 115, line 6 and p 124, lines 11 to 15.

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Mr Jonathan Cheng and Mr YC Chen as part of the "Key Management Team"; and (c) internet archives dating back to October 2018 indicating his representation as a non-executive director.[96] This official position aligns with his earlier representation to Ms Wan in January 2019 that he was involved in the Development at the "company level, [as] investor and advisor".

The Defendant's knowledge of documents proving the Infinity Group's lack of land ownership

87 The Defendant's shifting accounts during the trial suggest that he had longstanding knowledge of documents demonstrating that the Infinity Group lacked ownership of the land on which the Development was to be built.

88 Initially, the Defendant claimed to have received the Land S&P and the Settlement Deed mere days before the second tranche of trial from one Ms Jessica Yuen ("Ms Jessica"), whom he portrayed as a former LC Capital employee primarily engaged in translation and sales work. The Defendant maintained that he had contacted Ms Jessica after the first tranche of trial, seeking potentially helpful documents related to the Development.[97] However, this account began to unravel in court with several serious inconsistencies and self-contradictions by the Defendant when an inspection of his WeChat conversations with Ms Jessica revealed no such outreach by the Defendant. Instead, the records showed Ms Jessica inexplicably initiating contact and requesting the Defendant's email address before sending the documents.[98]

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96 Ms Aluwi's 1st AEIC, pp 81 to 82; Trial Bundle, Enclosure to P-3.

97 Transcript for 26 May 2025, p 146, line 5 to p 147, line 23.

98 Trial Bundle, Enclosure to P-16.

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89 Further serious inconsistencies emerged when it was revealed that Ms Jessica had sent the documents from her "Rongyao" work email, where she served as executive director under the company's founder, Mr Jonathan Cheng.[99] Moreover, contrary to the Defendant's earlier characterisation of Ms Jessica as a junior staff member, it was later revealed that she held the position of Assistant Vice-President, Operations at LC Capital – a significantly more senior role than previously suggested by the Defendant.[100]

90 When it was put to him during cross-examination that he had communicated with Mr Jonathan Cheng and not Ms Jessica to obtain the documents, the Defendant's testimony grew markedly evasive with serious self-contradictions. His account shifted repeatedly: first claiming no memory of speaking with Mr Jonathan Cheng, then acknowledging a recent call, and finally asserting separate communications with both Mr Jonathan Cheng and Ms Jessica. Phone records ultimately revealed a call between the Defendant and Mr Jonathan Cheng on 20 May 2025 at 10:59am—notably, just 23 minutes before Ms Jessica's message requesting the Defendant's email address.[101] Most tellingly, in his WeChat exchange with Ms Jessica, the Defendant specifically requested the Land S&P document, betraying his prior knowledge of its existence and, by extension, his awareness that the Infinity Group had never secured ownership of the land for the Development.

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99 Trial Bundle, Enclosure to P-9 and P-12.

100 Transcript for 27 May 2025 at p 58, lines 1 to 7.

101 Transcript for 27 May 2025, p 76, line 2 to p 85, line 25.

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91 This evidence, coupled with my earlier finding of the Defendant's position within Infinity Group's key management team, leads to the conclusion that he had long been aware of both the Land S&P and the Settlement Deed.

92 Even assuming the Defendant did not initially know about the Land S&P and the Settlement Deed, by early 2019, he had compelling reasons, opportunities, and incentives to verify Infinity Capital's ownership of the land and the likelihood of construction commencing. Where a representor had both the opportunity and incentive to verify the truth of his representations but failed to do so, such conduct may be deemed unreasonable and reckless, thereby satisfying the knowledge requirement for fraud (*Chan Pik Sun* at [69], [71]–[72]). In *Chan Pik Sun,* the Appellate Division of the High Court held that the representors' contentment with blindly parroting the representations without taking any steps to ascertain their truth amounted to fraud (at [134]). In the present case, while the Defendant maintains that he relied on the Bond Certificate issued in February 2018 as proof of land ownership, such reliance would have been unreasonable by early 2019 due to three significant events that should have raised concerns about the Infinity Group's financial viability.[102]

93 First, the land intended for the Development was used as collateral in the Bond Certificate. The Defendant, who initiated the Bond Certificate in February 2018, must have been aware that the Infinity Group was attempting to raise capital through the issuance of these Bond Certificates to purchase the land from Zekkei for the Development. This is evident from the timing of both the bond issuance and the execution of the Land S&P in early 2018.[103] In fact, this

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102 Claimant's CS at para 130.

103 Claimant's CS at para 89.

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arrangement appears to have been the Defendant's suggestion to the Infinity Group, as he was assisting them in raising capital for the Development. The Defendant stated that the target amount to raise from the bond issuance was around US$15 million, which would have been sufficient to acquire the land under the Land S&P.[104] However, Infinity Capital was only able to raise between US$1.5 million and US$2 million from the bond issuance, which prevented them from completing the purchase of the land in October 2018, when the payment deadline was due. The Defendant would have known that the Infinity Group did not have sufficient funds to acquire the land by October 2018. Thus, he would have known by January 2019 that the Development could not have proceeded as planned due to insufficient funds to acquire the land. Nevertheless, the Defendant continued to market the Development, hoping to raise funds to eventually realise the Development. The Defendant did not inform the Claimant that the Infinity Group had liquidity issues, as otherwise she would not have purchased the Unit.

94 Second, the Infinity Group defaulted on the repayment under the Loan Agreement for the sum of S$680,000 on 9 April 2018. Despite the Defendant's assertions about extension requests for the repayment of the loan, he produced no documentary evidence of such requests or approvals.[105]

95 Third, the first coupon payment of A$30,000 under the Bond Certificate for the sum of A$200,000, which fell due on 1 February 2019, remained unpaid. These payment defaults, involving substantial sums, should have triggered immediate alarm for any prudent investor, especially someone such as the

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104 Transcript for 28 May 2025 at p 68, lines 9 to 10.

105 Mr Lo's 1st AEIC at para 30(1).

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Defendant who is a degree holder and well-seasoned businessman with financial investment knowledge.

96 Indeed, the Defendant acknowledged during cross-examination that these payment defaults had caused him to question the Infinity Group's and Mr Jonathan Cheng's credibility:[106]

> Q: … So wouldn't you have been concerned about the credibility of the LC Group and Mr Jonathan Cheng that he breaks his word?
>
> A: That's why there is a lot of emails with me chasing him for the repayment, whether it's the bonds or the loans.
>
> Q: Excuse me, all evidence of you having anything to chase comes in the latter period in 2022 or 2023. We're talking about 2019. There is no evidence of you issuing any demand or chaser in 2018 or 2019, isn't that true?
>
> A: That's not true; there is.
>
> Q: You have offered no evidence.
>
> A: Yeah, it has nothing to do with this. This is my loan to LC.
>
> Q: Sorry, is it your evidence that you have chased but you have not offered the evidence to this court?
>
> A: That's correct.

97 However, there is no evidence that the Defendant even asked Mr Jonathan Cheng and Mr YC Chen about the financial viability of the Development, as he has failed to produce any correspondence between them to this effect. By February 2019, any prudent investor would have investigated the Development's financial viability, including the security of bondholders' interests in the land and the Infinity Group's capacity to commence construction. The Defendant's failure to verify these fundamental representations, despite clear warning signs, strongly suggests his prior

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106 Transcript for 27 May 2025 at p 22, line 13 to p 23, line 4.

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knowledge of their falsity or, at the very least, recklessness as he was indifferent to their truth (see above at [76]). The Defendant's conduct was egregious in that he concealed from the Claimant material financial issues pertaining to the Infinity Group, of which he either knew or had reason to believe existed.

The Defendant's conduct following the discovery of fraud

98 The Defendant's conduct following the discovery of fraud suggests that he was collaborating with Mr YC Chen and Mr Jonathan Cheng in the scam. The Defendant has not disclosed any messages between himself, Mr Jonathan Cheng and Mr YC Chen regarding the Development. If he were truly a victim of fraud as he claimed, one would expect to find communications in which he confronted them about their deception.[107]

99 In *Asia-Euro Capital SPV I LLP v Regulus Advisors Pte Ltd and others* [2024] SGHC 279, which involved a claim for fraudulent misrepresentation, Mohamed Faizal JC drew an adverse inference against the plaintiff for his failure to disclose internal correspondence. Faizal JC opined that if the alleged representations were even half as significant as had been suggested by the plaintiff, there would have been a "plethora" of references to these representations in such communications, and the plaintiff would have undoubtedly insisted on having these before the court (at [110]).

100 Illustration (*g*) of s 116 of the Evidence Act 1893 (2020 Rev Ed) ("Evidence Act") provides as follows:

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[107] Claimant's OS at para 64; Claimant's CS at para 152.

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> **Court may presume existence of certain fact**
>
> **116.** The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.
>
> *Illustrations*
>
> The court may presume —
>
> …
>
> (*g*) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it;

101 On the law of drawing an adverse inference, I can do no better than to cite the Appellate Division of the High Court's helpful summary in *Chan Pik Sun* at [115]–[116]:

> 115 As the Court of Appeal in *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 ("*Sudha Natrajan*") explained (at [19]), illus (*g*) of s 116 allows the court to draw an adverse inference as to any fact flowing from the nature of the evidence that would likely have emerged if evidence that could and should have been produced by a party is not so produced. The rationale for this presumption is one of "plain common sense": the natural inference from a party's failure to produce evidence which would elucidate a matter is that the party fears that the evidence would be unfavourable to it (see *Jones v Dunkel* (1959) 101 CLR 298 at 320–321).
>
> 116 The relevant principles governing the drawing of adverse inferences were endorsed by the Court of Appeal in *Sudha Natrajan* as follows (at [20], citing *Thio Keng Poon v Thio Syn Pyn and others and another appeal* [2010] 3 SLR 143 at [43]):
>
> > (a) In certain circumstances, the court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in the matter before it.
> >
> > (b) If the court is willing to draw such inferences, these may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

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> (c) There must, however, have been some evidence, even if weak, which was adduced by the party seeking to draw the inference, on the issue in question, before the court would be entitled to draw the desired inference: in other words, there must be a case to answer on that issue which is then strengthened by the drawing of the inference.
>
> (d) If the reason for the witness's absence or silence can be explained to the satisfaction of the court, then no adverse inference may be drawn. If, on the other hand, a reasonable and credible explanation is given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or annulled.

102 With these principles in mind, I am satisfied that an adverse inference should be drawn against the Defendant. The document disclosure has been drip-fed in nature, with only partial disclosures of the Defendant's correspondence with Mr YC Chen and Mr Jonathan Cheng. During cross-examination, the Defendant admitted to the existence of a WhatsApp group chat with Mr YC Chen and Mr Jonathan Cheng but failed to disclose the complete correspondence.[108] He maintained that there was no correspondence in which he confronted Mr YC Chen and Mr Jonathan Cheng about their deception – a confrontation that any reasonable person would have initiated upon discovering such fraud. The Defendant's explanation that he did not confront them as he was attempting to maintain the illusion of being Mr Jonathan Cheng's "best friend" in order to "get more information" for legal action is wholly unbelievable, illogical and ridiculous.[109] Further, the Defendant acknowledged during cross-examination that he has neither initiated civil proceedings nor filed a police report against Mr Jonathan Cheng and Mr YC Chen, despite three years

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108 Transcript for 11 April 2025 at p 139, line 6 to p 140, line 12.

109 Defendant's CS at para 112(2); Transcript for 28 May 2025 at p 39, lines 15 to p 41, line 5.

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having elapsed since his purported discovery of the fraud in June or July 2022.[110] I am satisfied that full disclosure of the correspondence would reveal the Defendant's longstanding knowledge of the scheme. Accordingly, I draw an adverse inference against the Defendant for failing to disclose his correspondence with Mr YC Chen and Mr Jonathan Cheng.

103 Most tellingly, when Ms Wan questioned the Defendant on whether he was a victim over WhatsApp, his spontaneous response notably lacked the shock or disbelief one would expect from someone who had been deceived. This is particularly evident in their WhatsApp exchange, which I reproduce below:[111]

> [27/9/22, 1:49:26 PM] Serene Gan: Hi Yew Seng, my client's lawyer in Japan has given her a report. There's nothing build at all. It looked like a fraud, but I'm sure that's not the case otherwise u wouldn't have recommended. Hope u can help me by negotiating for a refund pls. At least u can say that u recommended to a friend etc. Thks.
>
> [27/9/22, 1:51:15 PM] Yew Seng: I will suggest that the lawyer who represent ur client , move ahead with the demand for the refund according to your contract
>
> [29/9/22, 4:56:18 PM] Serene Gan: **Hi Yew Seng, are u aware that there's nothing build on the site at all. And the land does not belong to Infinity Capital?**
>
> [29/9/22, 5:13:42 PM] Yew Seng: **Yeap …. The lawyer acting for the bond holders are aware**
>
> [29/9/22, 5:35:29 PM] Serene Gan: So is it a scam fr the start? U mention that there's insurance? Any documentation?
>
> [29/9/22, 6:02:07 PM] Yew Seng: I have no documentation on anything on the sales …. I deal with the bond side and the investors
>
> Let your lawyer advise
>
> [29/9/22, 6:02:56 PM] Serene Gan: As a friend, I know u don't deal with it but could u help negotiate for some form of a refund.

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110 Transcript for 10 April 2025 at p 133, line 14 to p 134, line 3 and p 139, lines 12 to 16.

111 Ms Aluwi's 1st AEIC, pp 78 to 79.

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[29/9/22, 6:03:50 PM] Yew Seng: Just let the lawyers handle it, much easier

[29/9/22, 6:04:29 PM] Yew Seng: Should not be too difficult as the buyer have the documentation

[29/9/22, 6:12:55 PM] Serene Gan: It's not that easy, otherwise I won't be asking u.

[29/9/22, 6:13:51 PM] Serene Gan: I think it was terrible of YC to keep lying to us that the ground breaking is done, project is delayed when they don't even own the land and nothing is being built.

[29/9/22, 6:50:05 PM] Yew Seng: If you have the email then just forward it to your lawyers

[29/9/22, 6:50:49 PM] Serene Gan: **Were u aware of all this throughout fr the the beginning?**

[29/9/22, 6:51:32 PM] Yew Seng: **Nope**

[29/9/22, 6:51:50 PM] Serene Gan: **What happened?**

[29/9/22, 6:52:07 PM] Yew Seng: **Just told you the lawyers are looking at it and I just leave it as that**

[29/9/22, 6:53:07 PM] Serene Gan: **But don't u agree that this is a fraud? Now we have to engage lawyers in all 3 countries.**

[29/9/22, 6:53:52 PM] Yew Seng: **I left it with the lawyers .**

[29/9/22, 6:54:20 PM] Serene Gan: **R u saying u r a victim in all this too?**

[29/9/22, 6:54:48 PM] Yew Seng: **Let the lawyers do their work**

[29/9/22, 7:01:42 PM] Yew Seng: I feel that all can be settled

[29/9/22, 7:21:17 PM] Serene Gan: Really? Doesn't seem so reassuring from our side.

If the business has trouble bec of Covid it's prob not so upsetting.

[29/9/22, 7:42:11 PM] Yew Seng: Definitely all business are affected

[29/9/22, 7:42:57 PM] Serene Gan: But this doesn't seem a case where the business is affected. It seems like a scam.

[emphasis added]

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104 The Defendant's contemporaneous conduct following Ms Wan's confrontation at the point when he claimed to have first learned of the fraud seems inconsistent with that of someone who has just discovered a fraud. The Defendant's behaviour suggests that he had prior knowledge of the fraudulent scheme. The Defendant contended that his lack of reaction was because he had more pressing matters to deal with, including his bondholders, and that he would not be able to provide any recourse to the Claimant in any case, as he was not involved in the sale of the Unit.[112] I find this explanation completely out of order, lame and unbelievable. If Ms Wan was truly his friend, as the Defendant repeatedly contends, surely he would have expressed outrage or at the very least shared that he was also a victim like the Claimant.

105 For the foregoing reasons, I find that the Defendant made these representations knowingly, or without belief in their truth.

Whether the Claimant suffered damage

106 The Claimant has clearly suffered damage, having made six progress payments totalling US$1.786 million between 31 May 2019 and 19 May 2021.[113] The Claimant has no prospect of recovery from the Infinity Group, as Infinity Capital had been struck off from the registry of companies, LC Capital had been wound up, and Infinity Japan has no known assets or operations in Japan. Further, the Claimant's default judgment obtained against Mr YC Chen is a mere paper judgment, as his whereabouts are unknown and there is no information about his assets.[114]

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112 Defendant's CS at para 124; Transcript for 26 May 2025 at p 129, lines 13 to 17.

113 Claimant's CS at para 43.

114 Claimant's CS at para 44.

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107 For the avoidance of doubt, I find that the Claimant acted reasonably in mitigating her losses. The Defendant argues that the Claimant's failure to conduct due diligence was unreasonable.[115] However, as noted in *Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 at [21], the duty for the representee to mitigate his losses only arises once he has discovered the fraud. The Claimant became suspicious in July 2021 when Ms Wan's agency fees were not paid, and immediately withheld her last payment and made no further payments thereafter.[116] I find this to be reasonable conduct by the Claimant to mitigate her losses.

108 For the foregoing reasons, I am satisfied that the claim in fraudulent misrepresentation has been made out.

Issue 2: Negligent misstatement

109 To succeed in a claim for negligent misstatement, the Claimant has to prove the following elements (*Ma Hongjin* at [20], *Bay Lim Piang* at [99] and *Crystal Beauty* at [47]):

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

(b) the defendant's representation induced the claimant's actual reliance;

(c) the defendant owed the claimant a duty of care in making the representation;

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

115 Defendant's OS at para 57.

116 Defendant's OS at para 69.

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(e) the breach caused damage to the claimant.

110 There are several common elements between the claims in fraudulent misrepresentation and negligent misstatement (*Ma Hongjin* at [21] and *Bay Lim Piang* at [99]). Elements (a), (b) and (e) have been addressed in the preceding analysis and apply equally to a claim for negligent misstatement. The remaining issues for determination are twofold: (i) whether the Defendant owed the Claimant a duty of care in making the representations, and (ii) whether this duty was breached.

Whether the Claimant's pleadings are deficient

111 Preliminarily, I shall deal with the argument raised by the Defendant that the Claimant's pleadings in relation to negligent misstatement are deficient.[117] In *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] 2 SLR 235 ("*How Weng Fan*") at [18], the Court of Appeal held that the general rule is that parties are bound by their pleadings and the court is precluded from deciding matters that have not been put into issue by the parties (referring to V *Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1442 ("*V Nithia*") at [38] and *OMG Holdings Pte Ltd v Pos Ad Sdn Bhd* [2012] 4 SLR 231 at [21]). In applying this rule, the following two principles are relevant (*How Weng Fan* at [19] and [20]):

(a) First, only material facts supporting each element of a legal claim need to be pleaded. That said, the particular legal result flowing from

[117] Defendant's CS at paras 130 to 133; Defendant's RS at paras 28 to 31.

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the material facts that the claimant wishes to pursue need not be pleaded, and the relevant propositions or inferences of law need not be pleaded.

(b) Second, a narrow exception exists where the court may permit an unpleaded point to be raised (and to be determined) where there is no irreparable prejudice caused to the other party in the trial that cannot be compensated by costs or where it would be clearly unjust for the court not to do so.

112 The Court of Appeal in *How Weng Fan* summarised the applicable principles relating to deficient pleadings at [28]–[30]:

> 28 … If all the material facts of each element of the claim have been pleaded, the party will generally be allowed to proceed to advance the legal claim premised on those material facts, even if the legal result was not pleaded (such as in *Drane* ([19] *supra*) (see [19] above)). However, in such cases, the courts have generally gone on to examine whether there would be any irreparable prejudice occasioned to the opposing party if the reformulated claim were allowed to proceed (see, for instance, *Ho Soo Tong* at [26] above). If the material facts of each element of the claim have not been pleaded, but the unpleaded point has been put into issue (whether through the parties' opening statements, submissions, or the evidence) such that it is clear to the opposing party that the unpleaded issue was a case it had to meet, then the court may nonetheless allow the unpleaded claim to be advanced, as there would have been no irreparable prejudice occasioned to the opposing party (see, for instance, *BCBC* at [27] above and *Acute Result Holdings* at [25] above).
>
> 29 The principles may thus be summarised as follows:
>
> (a) Where the material facts of each element of the legal claim *have been pleaded*, albeit in support of a different legal conclusion than that which is subsequently advanced, the court will be more inclined to allow the legal claim unless there is clear evidence that the defendant will be unduly prejudiced. It will generally be for the party resisting the reformulated claim to show such prejudice.

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> (b) Where the material facts of each element of the legal claim *have not been pleaded*, the court will only allow the legal claim if the court is satisfied that there will be no prejudice occasioned as a result because both sides engaged with the issue at trial. It will generally be for the party advancing the unpleaded claim to show that there is no prejudice and this could be shown, for instance, by establishing that the issue was raised in evidence, it was clearly appreciated by the other party, and no reasonable objections were taken at the trial to such evidence being led and the point in question being put into issue.
>
> 30 In our view, a plaintiff's failure to adequately plead a legal claim or cause of action would generally have one of the consequences set out below. Assume hypothetically that the unpleaded cause of action lies in negligence:
>
> (a) Where a plaintiff *does* plead the material facts underlying a claim in negligence but does not frame this specifically as a claim in negligence, the court can, applying the Material Facts Principle (see [19] above), find the defendant liable for negligence unless there is clear evidence that the defendant will be unduly prejudiced (see [29(a)] above).
>
> (b) Where a plaintiff *does not* plead the material facts and legal claim of negligence, but the plaintiff had adduced the evidence supporting each element of negligence and cross-examined and put to the defendant its case of negligence, this was understood by the other party, and there were no objections by the defendant to such evidence being led, the court may, applying the Prejudice Principle (see [20] above), find the defendant liable for negligence.
>
> (c) Where a plaintiff has neither pleaded the material facts and legal claim of negligence nor adduced any evidence in support of a case in negligence, the court will not find the defendant liable for negligence.
>
> [emphasis in original]

113 In the present case, the Claimant has not sufficiently pleaded her case in negligence, as each element of the legal claim has not been adequately pleaded (see *V Nithia* at [44]). In the Statement of Claim, the Claimant only mentioned her alternative claim in negligence at para 56 which I reproduce below:

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> 56 Further or alternatively, if (contrary to the Claimant's primary case) each or any of the representations and statements were not made fraudulently, the Claimant will rely on negligent misstatement as entitling her to the relief claimed.

114 While I accept that there are many similarities between a claim in negligent misstatement and fraudulent misrepresentation, important distinctions exist, particularly regarding the existence of a duty of care and whether this duty has been breached on the facts. However, these elements were not properly pleaded by the Claimant.

115 That said, I find that there was no prejudice to the Defendant in allowing the Claimant to pursue her claim in negligent misstatement. It was clear from the Claimant's Opening Statement that this claim was being pursued, and that the Claimant would be relying on the material facts pleaded in her claim for fraudulent misrepresentation to support her claim in negligent misstatement.[118] The Claimant had also addressed the element of duty of care and set out the material facts (which had been pleaded in the Statement of Claim) that she was relying on for this specific element. In fact, the Defendant's pleadings, affidavits and Opening Statement show that he understood from the outset that he had to meet this claim in negligent misstatement, and therefore he cannot claim to have been taken by surprise by the Claimant's pursuit of this claim.[119]

116 In *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd (formerly known as CIMB Securities (Singapore) Pte Ltd)* [2023] 5 SLR 406 ("*Acute Result Holdings*"), the plaintiff had changed its case from asserting that a company was in a trustee/beneficiary relationship with the plaintiff by

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118 Claimant's OS at paras 70 to 75.

119 Defence at para 26; Mr Lo's 1st AEIC at para 2(2) and 3(2)(d); Defendant's OS at paras 45 to 49.

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virtue of certain contractual terms to one based on a resulting trust when the plaintiff had transferred shares to the company. Although the plaintiff had changed its case between its pleadings and its closing submissions, Vinodh Coomaraswamy J permitted the plaintiff to advance its modified case. This decision was based on the absence of prejudice to the defendant, who had been aware of the changed position since the plaintiff's oral opening at trial. Furthermore, the cross-examination of witnesses had proceeded with full knowledge of this modified position (at [66]).

117 In *Ho Soo Tong and others v Ho Soo Fong and others* [2023] SGHC 90 ("*Ho Soo Tong*"), although the plaintiffs had not expressly pleaded the doctrine of common intention constructive trust, their pleadings were sufficient to allow them to advance such a claim because the material facts which supported a claim of common intention constructive trust had been pleaded (at [44]). Mavis Chionh Sze Chyi J also noted that the defendant's defence would remain the same whether the plaintiffs relied on an express trust or a common intention constructive trust (at [46]).

118 In *BCBC Singapore Pte Ltd and another v PT Bayan Resources TBK and another* [2023] SGCA(I) 1 ("*BCBC*"), the Court of Appeal considered whether the respondents had adequately pleaded their claim regarding the first respondent's intention to wind up PT Kaltim Supacoal for payment default. Despite noting that the respondents' pleadings lacked clarity on this issue, the court permitted them to advance this argument. This was because the expert's report and the respondents' opening statement at trial, coupled with the appellants' failure to take a more substantive objection, were enough to put the point in issue (at [38]).

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119 In the present case, the situation is distinguishable from *V Nithia*, where the Court of Appeal held that the appellant had been irreparably prejudiced by the lower court allowing an unpleaded claim of proprietary estoppel to proceed. It is also distinct from *Asia Business Forum Pte Ltd v Long Ai Sin and another* [2004] 2 SLR(R) 173, where the Court of Appeal did not grant the appellant leave to amend its pleadings on appeal to reclassify certain documents and information from "confidential information" to "trade secrets". Such changes would have been fundamental, causing prejudice as they would have necessitated different lines of cross-examination or additional evidence.

120 Rather, the present case is similar to *Acute Result Holdings*, *Ho Soo Tong* and *BCBC*, where the Defendant clearly understood the claim he had to address and had sufficient opportunity to do so, having been adequately notified through the Opening Statement and the evidence led at trial. The Defendant was also fully aware from the Statement of Claim that the Claimant had an alternative claim against him for negligent misstatement. In the circumstances, I allow the Claimant to proceed with her claim in negligent misstatement.

Whether the Defendant owed the Claimant a duty of care

121 I turn first to determine whether the Defendant owed the Claimant a duty of care in making the representations. The Court of Appeal in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 ("*Spandeck*") established a single test to be applied to determine the existence of a duty of care for all claims in negligence, regardless of the nature of the damage caused. The *Spandeck* test involves a threshold finding of factual foreseeability, followed by a two-stage test comprising proximity and policy considerations (at [73] and [115]).

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122 The threshold inquiry of factual foreseeability "will *almost always be satisfied*" [emphasis in original] (*Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric (practising under the name and style of W P Architects)* [2007] 1 SLR(R) 853 at [55], cited with approval in *Spandeck* at [75]). The scope of foreseeability at this preliminary stage "should be the foreseeability of *harm*, in general, as well as the foreseeable *class of persons* who may be affected by the negligent act or commission" [emphasis in original] (Gary Chan Kok Yew and Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) ("*The Law of Torts in Singapore*") at para 03.042).

123 Turning to proximity, "[t]he focus here is necessarily on the closeness of the relationship between the parties themselves" (*Spandeck* at [77]). Such closeness may be proven by the factors expressed by Deane J in *Council of the Shire of Sutherland v Heyman* (1985) 60 ALR 1 at 55–56, which include physical, circumstantial, and causal proximity between the parties as well as the twin criteria of voluntary assumption of responsibility and reliance, *ie,* "where A voluntarily assumes responsibility for his acts or omissions towards B, and B relies on it, it is only fair and just that the law should hold A liable for negligence in causing economic loss or physical damage to B" (*Spandeck* at [81]).

124 The Court of Appeal in *Ngiam Kong Seng and another v Lim Chiew Hock* [2008] 3 SLR(R) 674 has noted that, in a situation involving liability for pure economic loss, the twin criteria of voluntary assumption of responsibility and reliance would more appropriately apply (at [100]). This has been followed in several local cases such as *Straits Advisors Pte Ltd v Michael Deeb (alias Magdi Salah El-Deeb) and others* [2014] SGHC 94 ("*Straits Advisors*") at [90], *Resource Piling Pte Ltd v Geospecs Pte Ltd* [2014] 1 SLR 485 at [26], and *Lim Bee Lan v Lee Juan Loong and another* [2021] SGHC 234 at [77]. However,

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the court may also refer to the other indicia where they are relevant in determining proximity.

125 To elucidate the concept of assumption of responsibility, Chan Seng Onn J (as he then was) in *Straits Advisors* provided the following helpful guidance at [95]:

> 95 What 'assumption of responsibility' conveys in this context is that the defendant has performed a task in circumstances where he is 'deemed' to have assumed responsibility for the consequences in law of the task being performed negligently. This does *not* mean that the defendant must have knowingly and deliberately accepted responsibility for the potential loss which he had foreseen might flow from his negligence; his subjective intentions are irrelevant: see *Customs and Excise Commissioners v Barclays Bank plc* [2007] 1 AC 181 ('*Customs and Excise Commissioners*') at [5], per Lord Bingham of Cornhill; *Phelps v Hillingdon London Borough Council* [2001] 2 AC 619 at 654, per Lord Slynn of Hadley. **All that it means is that, after an *objective* assessment of the circumstances in which the defendant had performed the task in question, the court, *as a matter of law*, 'imposes' a duty of care on the defendant.** And, in undertaking this objective assessment, the 'primary focus' for the court must be, as Lord Steyn stated in *Williams and anor v Natural Life Health Foods Ltd* [1998] 1 WLR 830 ('*Williams*'), on exchanges which may take the form of statements and conduct that 'cross the line' between the claimant and the defendant (at 835-G).
>
> [emphasis in original in italics; emphasis added in bold]

126 The landmark decision on negligent misstatement is *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465, which was succinctly summarised by Lord Oliver in *Caparo Industries plc v Dickman* [1990] 2 AC 605 at 638:

> What can be deduced from the *Hedley Byrne case*, therefore, is that the necessary relationship between the maker of a statement or giver of advice ('the adviser') and the recipient who acts in reliance upon it ('the advisee') may typically be held to exist where (1) **the advice is required for a purpose**, whether particularly specified or generally described, which is made known, either actually or inferentially, to the adviser at the time

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> when the advice is given; (2) **the adviser knows, either actually or inferentially, that his advice will be communicated to the advisee,** either specifically or as a member of an ascertainable class, in order that it should be used by the advisee for that purpose; (3) **it is known either actually or inferentially, that the advice so communicated is likely to be acted upon by the advisee for that purpose without independent inquiry**, and (4) it is so acted upon by the advisee to his detriment.
>
> [emphasis added]

127 From the above, it can be observed that the advisor's knowledge that his advice will be communicated to the advisee for a specific purpose is key to establishing an assumption of responsibility in negligent misstatement cases.

128 The final limb of the *Spandeck* test concerns the ascertainment of any policy considerations against the imposition of a duty of care on the defendant (*Spandeck* at [83]). As noted in *The Law of Torts in Singapore* at para 04.059, policy considerations may carry greater weight in negligence cases involving pure economic loss:

> The recoverability of economic loss claims may be affected by policy considerations. The spectre of indeterminate liability for an indeterminate amount as a policy restriction on recovery at the duty-of-care stage would pose a greater problem in respect of claims for loss of profits (without associated physical damage) arising from negligent misstatements as compared to, for instance, a claim for personal injuries by a victim in a typical motor accident. In cases of damage to property or physical injury to persons, there is an overall loss of social wealth whilst pure economic losses typically involve mere transfers of wealth. These arguments do not necessarily prevent the recovery of all purely financial losses. However, this means that the courts would be more hesitant to allow recovery of pure economic loss than physical damage …

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129 The Claimant relies on established precedents which demonstrate that a representor marketing a property owes a duty of care to the buyer.[120] One such example relied upon by the Claimant is *Sim Tee Meng v Haw Wan Sin David and another* [2020] 1 SLR 82 ("*Sim Tee Meng*") where the Court of Appeal affirmed that a key executive officer ("KEO") and director of an estate agency owed a duty of care to the agency's customers regarding representations made about a First Right of Refusal ("FRR") in respect of a residential housing project ("the Project'). Applying the twin criteria of assumption of responsibility and reliance, the court made the following findings: First, the respondent customers specifically approached the appellant in his capacity as KEO, as he could reasonably be expected to know whether necessary due diligence checks had been conducted for the Project. The appellant chose to make representations knowing the respondents were interested in investing in the FRR scheme, thereby assuming personal responsibility for those representations. Notably, he made no disclaimer of responsibility. Second, the respondents relied on the appellant's representations when entering into the various agreements with the developer. Moreover, there was no policy consideration militating against imposing a duty of care on the appellant.

130 In response, the Defendant raises several arguments against the existence of a duty of care. He contends that his relationship with the Claimant does not fall within established categories where a duty of care has been recognised, such as those between estate agents and purchasers (*Crystal Beauty* at [48]) or property agents and buyers (*Lam Wing Yee Jane* at [76]).[121] Further, and in the alternative, the Defendant argues that the requirement of proximity is

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120 Claimant's CS at para 192.

121 Defendant's CS at paras 136 and 137.

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not satisfied, given that the Claimant and the Defendant only shared a single telephone call on 31 January 2019.[122] He maintains that the Claimant and Ms Wan understood that he was acting merely in the capacity of a "friend" and no "special relationship" existed between the parties.[123] According to the Defendant, his role was confined to introducing Ms Wan to Mr YC Chen, after which Ms Wan conducted all correspondence regarding the purchase of the Unit directly with Mr YC Chen and he was no longer involved.[124]

131 I am not persuaded by the Defendant's arguments that the present case does not fall within established categories. I find that there is some similarity to the case of *Sim Tee Meng*, as the Defendant was in a similar position of authority, having represented himself as a director of the Infinity Group and part of its key management team (see [86] above). Nonetheless, I shall apply the three-step *Spandeck* test to ascertain whether a duty of care did, in fact, exist between the Claimant and the Defendant.

132 On the first threshold element, it was clearly foreseeable to the Defendant that his failure to take reasonable care in making representations about the land ownership and construction progress would result in loss to the Claimant, especially when it was eventually discovered that there was no land and no construction for the Development.

133 On the second element, I find that there was a clear voluntary assumption of responsibility by the Defendant and reliance by the Claimant. The Defendant consistently represented himself as part of the key management

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122 Defendant's CS at para 138.

123 Mr Lo's 1st AEIC at paras 16(4) and 27.

124 Defendant's OS at para 47(2).

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team with authority to deal with the Claimant on behalf of the Developer, as explained in [79]–[86] above.[125] He actively volunteered information about the Development and acknowledged during cross-examination that he expected the Claimant to "rely" on the investment brochures he had forwarded about the Development.[126]

> Q: And you had passed this investment brochure to the plaintiff for the plaintiff to review and rely on to understand the project, correct?
>
> A: Yes.
>
> …
>
> Q: The point is you know that when you sent it to her, the first and second investment brochure, you expected her to rely on it to an extent, right?
>
> A: Yes.

134 Therefore, I cannot accept the Defendant's assertion that his relationship with Ms Wan was merely friendly rather than professional. His own response below during cross-examination reveals that he was leveraging his personal connection with Ms Wan to attract the Claimant to buy a unit from the Development:[127]

> Q: So the point I'm making to you is this, that on 31 January 2019, when you had sent this investment brochure over to Ms Wan, knowing that she is a professional land agent, you were also trying to make it attractive to her that she will be offered a commission if her friend buys the property, correct?
>
> A: If you look at it, yes.

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125 Claimant's CS at para 195.

126 Transcript for 26 May 2025 at p 138, line 18 to p 139, line 10.

127 Transcript for 26 May 2025 at p 31, lines 6 to 12.

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135 The Defendant also took it upon himself to deal directly with Ms Wan and the Claimant throughout the entire marketing phase, *ie*, from January to April 2019, until the critical commercial terms were agreed, and did not introduce them to any other sale representative of the Infinity Group.[128] Significantly, at no point in time did the Defendant disclaim responsibility or characterise himself as a mere intermediary in his communications with Ms Wan and the Claimant.[129] Therefore, I cannot accept the Defendant's argument that it was Mr YC Chen who owed a duty of care for making representations and he fell out of the picture afterwards.

136 While Ms Wan and the Defendant were acquaintances, their interactions were clearly business-oriented in nature, evidenced by his self-representation as part of the management team and his active involvement in the process, including negotiating precise details such as the purchase price. I cannot accept the Defendant's argument that proximity cannot be established merely because he had only one direct phone call with the Claimant. Ms Wan, as the Claimant's agent, had multiple communications and calls with the Defendant, all of which demonstrated his assumption of responsibility for the representations made. Having regard to all the circumstances, I find that proximity has been established as there was an assumption of responsibility by the Defendant in making representations and reliance on those representations by the Claimant.

137 Lastly, no cogent policy reasons were advanced which militated against the imposition of a duty of care. In fact, the Defendant partook in an unethical sales tactic, despite knowing or having reasons to believe as early as January

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128 Claimant's CS at para 195.

129 Claimant's OS at para 73; Claimant's CS at para 197.

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2019 that the Development might not materialise due to the Infinity Group's lack of financial resources. Yet, the Defendant continued to encourage the Claimant to buy a unit in the Development without disclosing to her or Ms Wan that the Infinity Group did not have the finances to buy the land and/or construct the Development. In fact, this is a scam and public policy certainly would impose a duty of care on the Defendant to be truthful and to exercise reasonable care in making representations to the Claimant about the Development. Based on the foregoing, I find that the Defendant owed the Claimant a duty of care in respect of the representations made.

Whether the Defendant breached this duty of care

138 The expected standard of care is not a strict liability standard and is the objective standard of a reasonable person using ordinary care and skill (*Lam Wing Yee Jane* at [79]). I find that the Defendant failed to exercise reasonable care in verifying the truth of his representations before making them.

139 First, the defaults on both the Loan Agreement repayment in April 2018 and the first coupon payment under the Bond Certificate in early 2019 should have prompted the Defendant to scrutinise the Development's financial status. Despite these red flags, there is no evidence that the Defendant had taken even basic verification steps regarding the land ownership and construction progress of the Development, such as requesting documentary proof from Mr Jonathan Cheng and Mr YC Chen. The reality, from the evidence, is that the Defendant was the adviser of the Infinity Group and had tried to raise capital for the Development. Hence, he knew that the Infinity Group faced liquidity issues to realise the Development but suppressed this adverse information from the Claimant. Instead, he merely relayed the positive information about the

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Development to Ms Wan despite knowing the poor financial status of the Infinity Group.

140 Furthermore, the Defendant made specific assertions to Ms Wan about the execution of the ground-breaking contract and the project being "on schedule" without any verification of either claim.[130] Given the Development's questionable financial position at the time, the Defendant should have, at minimum, examined the contract or sought concrete evidence of the project schedule. By his own admission, he took neither step, despite knowing the Claimant would rely on these representations.

141 I draw an analogy to the case of *Su Ah Tee and others v Allister Lim and Thrumurgan (sued as a firm) and another (William Cheng and others, third parties)* [2014] SGHC 159 where Belinda Ang Saw Ean J (as she then was) found that the salesperson breached his duty of care because he "chose to accept what Cheng [the seller] told him at face value without making any independent verification; a risk he was willing to assume" (at [220]). Similarly, in the present case, the Defendant's negligence arose from his failure to conduct basic verification checks while passing on information on the assumption of its accuracy. This is particularly significant given that the Defendant had personal knowledge of the Infinity Group's financial difficulties, as evidenced by its inability to repay the US$680,000 loan owed to him and the Bond Certificate, even as he was trying to attract the Claimant through Ms Wan to buy the Unit in the Development in early 2019.

130 Claimant's CS at para 207.

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142 Second, the Defendant actively discouraged the Claimant from conducting her own due diligence to verify the Infinity Group's land ownership.[131] This will be explained below at [153]–[163]. On the Defendant's best case, having failed to verify the information himself and having purportedly relayed what he received from Mr YC Chen and Mr Jonathan Cheng, the Defendant should have encouraged the Claimant to conduct her own due diligence. His active discouragement from such verification further reinforces my finding above that he had assumed responsibility for his representations.

143 In the circumstances, I find that the Defendant breached his duty of care by failing to verify the truth of his representations to Ms Wan and the Claimant. This case is particularly egregious as the evidence demonstrates that the Defendant was aware of the Infinity Group's poor financial situation when he made these representations to the Claimant.

Whether the breach caused damage to the Claimant

144 The test is whether the Claimant would have suffered damage if the Defendant had not been negligent. The burden of proof in respect of "but for" causation lies with the Claimant alleging negligence and must be discharged on a balance of probabilities (*The Law of Torts in Singapore* at para 06.017).

145 For reasons that will be discussed below, the Defendant's argument that the chain of causation was broken by the Claimant's failure to conduct due diligence, allegedly constituting a *novus actus interveniens*, cannot be sustained

131 Claimant's CS at para 205.

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given the high threshold of unreasonableness required for the defence to succeed.[132]

146 On the facts, I find that the Defendant's breach caused the Claimant to rely on the negligent misstatements, enter into the Contract for Sale and suffer the loss (see above at [106]–[108]).

Whether the Claimant was contributorily negligent

147 The Claimant is not contributorily negligent for failing to conduct due diligence. Contributory negligence is a partial defence that reduces the quantum of damages payable to plaintiffs if they fail to safeguard their own interests (*Cheng William v Allister Lim & Thrumurgan and another and another appeal* [2015] 3 SLR 201 ("*Cheng William*") at [13], affirmed recently in *Nagarajan Murugesan v Grand Rich Electrical & Engineering Pte Ltd and others* [2024] SGHC 36 at [60]).

148 In determining contributory negligence, one looks solely at the claimant's conduct in the circumstances (*Charlesworth & Percy on Negligence* (Sweet & Maxwell, 15th Ed, 2022) ("*Charlesworth & Percy on Negligence*") at para 4-03, affirmed in *Asnah Bte Ab Rahman v Li Jianlin* [2016] 2 SLR 944 ("*Asnah*") at [18]). As noted by the Court of Appeal in *Asnah*, "the standard of care expected of the claimant is measured against a person of ordinary prudence, corresponding in most cases to the standard of care in negligence" (at [20]). In apportioning liability, the courts take into account both the "causative potency" and the moral "blameworthiness" of the parties involved (*The Law of Torts in Singapore* at para 08.101).

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132 Defendant's CS at paras 92 and 144 to 148.

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149 A finding of contributory negligence may arise where a person fails to take reasonable measures to protect himself against harm that he objectively ought to have foreseen could result from his lack of prudence (*Cheong Ghim Fah and another v Murugian s/o Rangasamy* [2004] 1 SLR(R) 628 at [83], affirmed in *Asnah* at [18]). However, taking a reasonable risk does not amount to contributory negligence – "[t]he fact that the claimant has taken a risk does not amount to contributory negligence if the need to take the risk was created by the negligence or breach of statutory duty of the defendant and a reasonably prudent person in the claimant's position would have acted as he did" (*Charlesworth & Percy on Negligence* at para 4-07, affirmed in *Thorben Langvad Linneberg v Leong Mei Kuen* [2013] 1 SLR 207 at [74]).

150 In Singapore, this defence is statutorily enacted in s 3(1) of the Contributory Negligence and Personal Injuries Act 1953 (2020 Rev Ed) ("CNPA") which reads:

> **3.**—(1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

151 The term "fault" is defined under s 2 of the CNPA as follows:

> **2.** …—
>
> …
>
> "fault" means negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would, apart from this Act, give rise to the defence of contributory negligence.

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152 As noted by the Court of Appeal in *Cheng William* at [15], the definition of "fault" is a broad one – it is not just an "act" that is caught but also an omission.

153 In this case, the Defendant contends that the Claimant was expected to conduct her own due diligence checks, particularly emphasising her failure to conduct searches on the Development until three years later.[133] In response, the Claimant asserts that the Defendant actively dissuaded her from engaging a Japanese lawyer to conduct the necessary due diligence.[134]

154 I find that the Claimant acted reasonably in the circumstances, which were largely engineered by the Defendant's conduct. The Defendant had represented the transaction as safe, actively discouraged the Claimant from seeking Japanese legal counsel, and created an artificial sense of urgency by emphasising purported high demand for the Unit, thereby pressuring the Claimant to expedite the signing of the Contract for Sale.

155 I reproduce the following messages between the Defendant and Ms Wan, where the Defendant subtly but actively dissuaded Ms Wan from engaging a lawyer and conducting due diligence checks:[135]

> [3/5/19, 7:03:36 PM] Serene Gan: Hi Yew Seng, does my client need to engage a Jap solicitor for the transaction or its all arranged like the SC Global one.
>
> [3/5/19, 7:12:33 PM] Seng's hp: **For this , since the contract is a HK contract , I feel that like buying in Singapore , YC who is a trained lawyer can go through with your client together with you.**

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133 Defendant's OS at paras 46 and 57.

134 Claimant's CS at paras 213 to 218..

135 Ms Wan's 1st AEIC, p 57

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> [3/5/19, 8:44:24 PM] Serene Gan: **I've chked with her lawyer here in Singapore. He advised to engage a Jap lawyer to to ensure title deeds r in order. For SC Global, they have engaged a Jap solicitor.**
>
> [3/5/19, 8:47:23 PM] Seng's hp: Sure , pls go ahead then
>
> [9/5/19, 9:40:01 PM] Serene Gan: Hi Yew Seng, not sure if u saw my email to YC, cc u.
>
> **I got this reply fr the Jap lawyer, therefore asking if ok or how do we proceed. Thks.**
>
> [9/5/19, 9:40:06 PM] Serene Gan: <attached: 00000153-PHOTO-2019-05-09-21-40-05.jpg>
>
> [9/5/19, 9:49:43 PM] Seng's hp: Ok let me follow up for you on this , Thxs
>
> [9/5/19, 9:51:08 PM] Serene Gan: Thk u
>
> [9/5/19, 9:54:09 PM] Seng's hp: No problem ... thx for helping
>
> [13/5/19, 10:08:56 AM] Serene Gan: **Hi Seng, any news from YC abt lawyer? In the meantime shall I get the contract and payment ready.**
>
> [13/5/19, 10:36:42 AM] Seng's hp: Can chat ?
>
> [13/5/19, 1:08:48 PM] Serene Gan: Convenient now?
>
> [13/5/19, 1:33:57 PM] Seng's hp: Sure
>
> [emphasis added]

156 On 3 May 2019, when Ms Wan inquired whether her client needed to arrange her own lawyer or if the Developer would provide one, the Defendant actively discouraged this course of action. By drawing a comparison to property purchases in Singapore, the Defendant represented the transaction as safe and lawyer-free. The Defendant instead suggested that the Claimant rely on Mr YC Chen, despite the clear conflict of interest.

157 Nevertheless, Ms Wan persisted in her efforts to engage Japanese legal counsel. The following day, she identified Mr Yoshida and contacted him

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regarding his potential appointment.[136] On 7 May 2019, Mr Yoshida agreed to assist, subject to obtaining the Developer's approval. Ms Wan promptly sought this approval from Mr YC Chen, copying the Defendant, but received no response.

158 While the Defendant initially replied on 3 May 2019 that the Claimant should "go ahead" with her appointment of the lawyer, subsequent events revealed his reluctance. Following up on 9 May 2019 via WhatsApp, Ms Wan inquired about Mr Yoshida's engagement. On 13 May 2019, the Defendant requested a phone call with Ms Wan. According to Ms Wan, during this call, the Defendant discouraged Mr Yoshida's engagement, suggesting that his connections with local Niseko agents might compromise the confidentiality of the Claimant's special discount. This effectively communicated the Developer's disapproval of Mr Yoshida's appointment.[137]

159 I accept this account of the phone call, which is corroborated by Ms Wan's contemporaneous WhatsApp messages to the Claimant. Moreover, the Defendant's unusual request for a phone call, departing from his typical WhatsApp communications, lends further credence to this version of events. Given the Defendant's position as the Developer's representative, Ms Wan and the Claimant's reliance on his representations during the call was reasonable.

160 Subsequently, on 17 May 2019, Mr YC Chen emailed Ms Wan promising to "recommend an English-speaking lawyer in Sapporo". The

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136 Claimant's CS at paras 214 to 215.

137 Ms Wan's 2nd AEIC dated 6 September 2024 ("Ms Wan's 2nd AEIC") at paras 24 and 25.

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Claimant, awaiting this recommendation, delayed executing the Contract for Sale.

161 On 26 May 2019, which coincided with the purported exclusive launch of the Development in Bangkok, the Defendant messaged Ms Wan claiming: "Your client unit very popular! Two person ask for it! [*sic*]". Ms Wan relayed this information to the Claimant, who expressed concern about potentially losing the Unit to another buyer. The Claimant's reliance on the Defendant's representations was reasonable, particularly given his intimated presence at the launch.[138] Later that evening, when Ms Wan inquired about the launch's success, the Defendant immediately responded claiming over 20 units had been sold. As Ms Wan testified during the trial, this appeared to be a "veiled threat" suggesting that someone else would buy the Unit if the Contract for Sale was not executed soon.[139]

162 This sequence of events reveals a calculated strategy to pressure the Claimant into executing the Contract for Sale. Consequently, Ms Wan and the Claimant felt compelled to proceed without the Japanese legal counsel as they did not want to miss the investment opportunity to secure the Unit at a VVIP price. Over the following two days, the Claimant signed both the Commitment Agreement and the Contract for Sale. In the circumstances, I find that the Defendant subtly dissuaded the Claimant from conducting due diligence checks and, therefore, the Claimant cannot be held to be contributorily negligent.

163 Based on the foregoing, I find that the Defendant is wholly liable for the claim in negligent misstatement.

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138 Claimant's OS at paras 38 to 39; Claimant's CS at paras 219 to 221.

139 Transcript for 9 April 2025 at p 148, line 24.

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Issue 3: Conspiracy by unlawful means

164 To establish a claim for conspiracy by unlawful means, the Claimant must prove the following elements (*EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") at [112], referring to *Nagase Singapore Pte Ltd v Ching Kai Huat* [2008] 1 SLR(R) 80 at [23] and *Tjong Very Sumito v Chan Sing En* [2012] SGHC 125 at [186]):

(a) there was a combination of two or more persons to do certain acts;

(b) the alleged conspirators had the intention to cause damage or injury to the plaintiff by those acts;

(c) the acts were unlawful;

(d) the acts were performed in furtherance of the agreement; and

(e) the plaintiff suffered loss as a result of the conspiracy.

165 The agreement between conspirators need not be explicit in nature, and the court may infer such an agreement from the conduct of the alleged conspirators (*Raiffeisen Zentralbank Osterreich AG* at [95]–[96]; *EFT Holdings* at [113]). The existence of an agreement can typically be inferred by examining the relevant acts committed, as these acts, when considered alongside the surrounding circumstances, often sufficiently demonstrate that they resulted from coordination between the alleged conspirators (*Dolphina* at [264]).

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166 Based on my findings above, the Defendant was aware of both the Land S&P and the Settlement Deed from the beginning as he was the financial advisor of the Infinity Group and assisted the group to raise capital for its three projects. Therefore, he must have known that there was neither construction taking place nor any ownership of land when he made the representations to Ms Wan and the Claimant. Hence, he was knowingly engaging in fraudulent behaviour.

167 From the circumstantial evidence and the behaviour of the Defendant, particularly after the discovery of the fraud, the appropriate inference is that the Defendant was working in concert with Mr YC Chen and Mr Jonathan Cheng, although the Claimant has only implicated Mr YC Chen in the pleadings. They were the trio who formed the key management team of the Infinity Group. The undisputed evidence shows that the Defendant took multiple steps to entice the Claimant to enter into the Contract for Sale.[140] Even after he claimed to have withdrawn from the situation when Mr YC Chen was facilitating the signing of the Contract for Sale, he actively dissuaded the Claimant from conducting due diligence.[141]

168 Furthermore, the Defendant was copied in emails from Ms Wan to Mr YC Chen in May 2021 where she enquired about the status of her commission and requested progress photos of the Development. The Defendant, who was aware that there was no Development, not only acquiesced to Mr YC Chen's lies about the purported delays in the Development's construction due

140 Claimant's CS at para 230.

141 Claimant's CS at para 231.

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to the pandemic but also appeared to be covering for Mr YC Chen by evading Ms Wan's direct questions.[142]

169 The finding that the Defendant was acting in concert with Mr YC Chen and Mr Jonathan Cheng to defraud the Claimant is strengthened by the fact that the Defendant maintained a close and friendly relationship with Mr Jonathan Cheng, even after Ms Wan informed him that the Development was a scam. In fact, the Defendant remained in contact with Mr Jonathan Cheng up until the second tranche of trial. The Defendant specifically reached out to him for documents relating to the Settlement Deed and the Land S&P.[143] The Defendant was also working together with Mr Jonathan Cheng even up till November 2022, when Mr Jonathan Cheng authorised him to sell the Tellus Niseko project.[144] Indeed, even after allegedly discovering the fraud, the Defendant appeared to maintain his close collaboration with Mr Jonathan Cheng. When Ms Wan confronted the Defendant about the Development being a scam on 29 September 2022, his immediate response was to alert and report this conversation to Mr Jonathan Cheng, suggesting a coordinated effort to protect themselves.[145]

> [29/9/22, 6:58:06 PM] Yew Seng Lo: Bro , looks like the buyer of the Tellus niseko has engaged lawyers and they found that the plot does not even belong to infinity. And I guess (I have not seen) that they have YC statements that ground breaking has commence . (I hope not as he will be in trouble cast a professional lawyer). You should look into settling this as a priority
>
> [29/9/22, 6:58:30 PM] Jon - Alicia : Huh?

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142 Claimant's CS at para 234.

143 Claimant's CS at paras 232 to 233.

144 Transcript for 11 April 2025 at p 114, line 1 to p 115, line 22.

145 Trial Bundle, Enclosure to P-5.

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> [29/9/22, 6:58:37 PM] Yew Seng Lo: I think he/she is Indonesian
>
> [29/9/22, 6:58:46 PM] Jon - Alicia : Ah
>
> [29/9/22, 6:58:52 PM] Jon - Alicia : Bro don't worry we are covered
>
> [29/9/22, 6:58:57 PM] Jon - Alicia : I'll explain on Monday
>
> [29/9/22, 6:59:06 PM] Jon - Alicia : We have it under control

170 The general tenor of these text messages reveals no shock at discovering the Infinity Group's lack of land ownership. Instead, the Defendant's message to Mr Jonathan Cheng appears to serve as a warning that their collective scheme had been uncovered.

171 The circumstantial evidence indicates that the Defendant and Mr YC Chen were in agreement to intentionally cause damage to the Claimant by defrauding her into investing in the Development. Several acts, including but not limited to making the aforementioned misrepresentations and dissuading her from conducting due diligence, were done in furtherance of this agreement. Thus, I find that the claim for conspiracy by unlawful means has been made out.

Demeanour of the witnesses

172 I make one final point regarding the demeanour of the witnesses and the manner in which they gave their evidence, which has led me to conclude that the Claimant's account of events is more credible. The Claimant and Ms Wan gave their evidence candidly and did not embellish the facts to support their case. I am of the view that they are truthful witnesses, and their evidence is both credible and believable.

173 On the other hand, the Defendant's evidence was replete with inconsistencies and contradictions. He altered his evidence during cross-

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examination to suit his position. His evidence was particularly difficult to believe, especially given his testimony that he too was a victim of fraud. Despite being allegedly defrauded, he continued to be friendly and protective of Mr Jonathan Cheng and Mr YC Chen. His friendly behaviour towards the perpetrators of the fraud on him is completely illogical. His explanation that he remained friendly with them to gather evidence for a potential legal action is absurd and ludicrous, particularly given his failure to institute proceedings against them personally.

174 Another instance of the Defendant's lack of credibility emerged in his testimony about visiting the site of the Development in Niseko, where he claimed to have seen the site boarded up.[146] This was clearly contradicted by the unchallenged testimony of Ms Toyama, a Japanese lawyer who visited the site in 2022. Ms Toyama's photographs clearly showed a forested area with no evidence of any construction having taken place. Clearly, the Defendant was not an honest and credible witness. He was parsimonious with the truth and audaciously lied in the face of the law. Notwithstanding the Defendant's serious lack of credibility I did not completely jettison his evidence, but I treated his evidence with great caution.

175 In the circumstances, I am fortified in my finding that all three claims against the Defendant are made out.

Conclusion

176 In summary, I hold the Defendant liable for fraudulent misrepresentation, negligent misstatement and conspiracy by unlawful means.

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146 Transcript for 11 April 2025 at p 135, lines 11 to 12 and p 136, line 24 to p 137, line 1.

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177 In terms of fraudulent misrepresentation, I find that the Defendant represented that the Developer owned the land on which the Development was to be constructed on a freehold tenure, and that construction would commence soon. This was evidenced by the investment brochures and WhatsApp messages sent by the Defendant to Ms Wan. There was also active inducement by the Defendant, who played up the Development's attractive features, offered incentives, discouraged the Claimant from conducting due diligence, and created artificial urgency about unit availability to pressure the Claimant into signing the Contract for Sale. The Defendant had represented to the Claimant that he was an investor and adviser and gave the impression that he was a member of the Infinity Group's key management team. The Defendant's conduct and illogical reaction to the discovery of the fraud and his demeanour during cross-examination suggest that the Defendant made the representations either knowing they were false or recklessly as to their truth. As a result of these false representations, the Claimant suffered damage.

178 Regarding negligent misstatement, I find that the Defendant owed the Claimant a duty of care, evidenced by his clear voluntary assumption of responsibility and the Claimant's reliance, which he never disclaimed. The Defendant breached this duty by failing to verify the truth of these representations, despite knowing of the Infinity Group's financial troubles. Further, the Defendant actively discouraged the Claimant from conducting her own due diligence. If due diligence had been conducted, the scam would have been exposed *ab initio*. This breach caused damage to the Claimant, and it cannot be said that the Claimant was contributorily negligent for failing to conduct due diligence checks when the Defendant had actively discouraged the Claimant from doing so.

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179 Finally, regarding conspiracy by unlawful means, I find that the Defendant, Mr YC Chen and Mr Jonathan Cheng worked in concert, as evidenced by their continued close and friendly relationship even after the Defendant discovered the fraud, and the Defendant's apparent attempts to cover up for Mr YC Chen and Mr Jonathan Cheng when Ms Wan became suspicious about the Development.

180 For all the foregoing reasons, I allow the Claimant's claim for the sum of US$1,786,000 with interest at the rate of 5.33% per annum from the commencement date of the suit. As costs follow the event, the Claimant, having succeeded, is entitled to costs to be agreed or taxed.

Tan Siong Thye
Senior Judge

Jimmy Yim Wing Kuen SC, Manoj Belani, Nikhil Daniel Angappan, Sia Tian Wa Jeremy Marc, Adam Tan (Drew & Napier LLC) for the claimant;
Chan Tai-Hui Jason SC, Kek Meng Soon Kelvin, Gan Yun Han Rebecca, Kenneth Wang Ye (Allen & Gledhill LLP) for the first defendant;
The second defendant and third parties absent and unrepresented.

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