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

[2025] SGHC 201

Originating Claim No 117 of 2024

Between

Tuffi (Pte.) Ltd.

… *Claimant*

And

(1) Techkon Pte Ltd
(2) Techkon Development (Sembawang) Pte. Ltd.

… *Defendants*

JUDGMENT

[Contract — Contractual terms — Interpretation — Whether parties agreed on fixed sum or formula for payment]
[Contract — Contractual terms — Implied terms — Whether implied term for adjusting sum payable exists]
[Contract — Mistake — Mistake of fact — Whether mistake attributable to fault of a party]
[Contract — Privity of contract — Whether joint venture company also party to agreement between principals]
[Evidence — Witnesses — Competency — How witness with speech impediments may give evidence]
[Restitution — Mistake — Mistake of fact — Whether mistaken payment or mistake in formation of contract]

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Tuffi (Pte) Ltd
v
Techkon Pte Ltd and another

[2025] SGHC 201

General Division of the High Court — Originating Claim No 117 of 2024
Wong Li Kok, Alex J
21–25 April, 12 June 2025

14 October 2025 Judgment reserved.

Wong Li Kok, Alex J:

Introduction

1 The claimant, Tuffi (Pte) Ltd ("Tuffi"), is a Singapore-incorporated company holding investments and providing services relating to motor vehicles.[1] Mr Shu Moh Chye ("Robert") and Mr Shu Ang Moh ("Sunny") are shareholders and directors of Tuffi.[2] Robert's daughter, Ms Shu Ping Wen ("Ping Wen") was also involved in the business.[3]

2 The first defendant, Techkon Pte Ltd ("Techkon"), is a Singapore-incorporated company in the building construction and real estate development

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1 1 AB 32.

2 1 AB 34–35.

3 1 AB 34; 1 BAEIC 5.

business.[4] Techkon's shareholders and directors are Mr Goh Chai Hoo ("George") and Mr Ong Pang Sin ("Pang Sin").[5]

3 The second defendant, Techkon Development (Sembawang) Pte Ltd ("TDSPL"), was incorporated as a joint venture company between Tuffi and Techkon, for making investments into real estate development projects.[6]

4 After TDSPL was involved in a loss-making project, Tuffi and Techkon could not agree on the apportionment of those losses between them, resulting in the present proceedings.

Facts

Background to the dispute

5 Robert and Sunny were introduced to George and Pang Sin around 2007, when George and Pang Sin were intending to develop the Westech Building at 237 Pandan Loop ("the Westech Project") and were looking for investors.[7] Tuffi invested in Techkon Investment Co Pte Ltd ("Techkon Investment"), which was set up to develop the Westech Project. The Westech Project was profitable.[8] After the Westech Project was completed, Techkon Investment was struck off.[9]

6 TDSPL was incorporated on 27 May 2010 as a separate joint venture company. Tuffi holds 49% of the shares in TDSPL, and Techkon holds the

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4 1 AB 38.

5 1 AB 40–41.

6 1 AB 43, 46.

7 1 BAEIC 7, 70, 115–116.

8 1 BAEIC 71, 120.

9 1 BAEIC 7, 72, 120.

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remaining 51%.[10] TDSPL made investments in projects at 583 Sembawang Place ("the Sembawang Project") and 10 Worthing Road ("the Worthing Project"). Both projects were also profitable.[11]

The Viio Project

7 In late 2012, Tuffi and Techkon agreed to participate in the building and developing of a mixed development property at 520 Balestier Road ("the Viio Project") through TDSPL.[12] To this end, TDSPL subscribed for 51% of the shares in Techkon Commercial Pte Ltd ("TCPL"), a company incorporated to develop the Viio Project. The remaining 49% of the shares in TCPL were held by another investor.[13]

8 Notwithstanding Tuffi's 49% shareholding in TDSPL, Tuffi was not willing to bear 49% of TDSPL's required contribution to TCPL for the Viio Project.[14] However, Techkon was unable to cover the shortfall resulting from Tuffi's reluctance to take its proportionate stake in the Viio Project. The exact proportion which Tuffi was willing to bear, and when it asserted the exact proportion it was willing to bear, are two of the many disagreements between the parties. For present purposes, it suffices to say that further fundraising was needed to finance the parties' investment in the Viio Project.

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10 1 AB 24, 27.

11 1 BAEIC 75, 123–124.

12 1 BAEIC 9, 77, 125.

13 1 AB 51.

14 1 BAEIC 9, 78, 126.

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Preference shares in TDSPL

9 TDSPL sought to issue preference shares to external investors to raise the needed funds for the Viio Project ("the Preference Share Scheme"). Under the Preference Share Scheme, 17 preference shares were to be issued to 14 preference shareholders.[15] Although parties do not agree on whether the preference shares were formally issued by TDSPL, that is immaterial as it is common ground that the funds were raised and eventually repaid.[16] Each preference share was essentially a $550,000 loan to TDSPL to be repaid within four years with a fixed interest of $50,000. Some of these loans were repaid late at an additional interest rate of 3% per annum.[17]

10 By 2018, the Worthing Project and Sembawang Project had concluded. TDSPL's only ongoing business at this time was its investment in the Viio Project.[18] That year, TCPL's audited financial statements indicated that the Viio Project had accumulated losses, although not all of the units in the Viio Project were sold yet.[19] The negative financials for the Viio Project never recovered and, by 2023, TCPL's accumulated losses amounted to $52,008,481.[20]

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15 1 AB 370.

16 1 BAEIC 13, 83, 131–132.

17 1 AB 369, 371.

18 1 BAEIC 16, 75, 123–124.

19 1 AB 1059, 1061.

20 Defence of the 1st Defendant (Amendment No 1) ("D1D") at para 25; Defence of the 2nd Defendant (Amendment No 1) ("D2D") at para 26.

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The 2019 Agreement

11 In early 2019, Tuffi and Techkon agreed that Techkon would pay to Tuffi $918,429.73 ("the 2019 Agreement").[21] Parties disagree on what this amount represented, although they agree that *at least* part of the sum was consideration for Tuffi's transfer of 196,000 shares in TDSPL to Techkon.[22] A document ("the 2019 Calculation") sent by Tuffi to Techkon apparently indicated that the final amount consisted of the following components:[23]

Item (as named in the 2019 Calculation)	**Description (according to Robert in his AEIC)**	**Amount**
Tuffi Cash Investment	Tuffi's total cash investment into TDSPL (excluding shares)	$8,623,560.00
Tuffi Profit at Sembawang	Tuffi's share of the profits in the Sembawang Project and the Worthing Project	$298,135.11
Tuffi Loss of Pref Interest in Sembawang	TDSPL's interest expense under the Preference Share Scheme attributable to Tuffi, being 15/51 of the total loss of $1,090,884	($320,848.23)
Tuffi Losses of 15% at Viio	TCPL's accumulated losses attributable to Tuffi, being 15/100 of the accumulated loss of $25,876,060	($3,881,409.00)

21 Statement of Claim (Amendment No 1) ("SOC") at para 30; D1D at para 29(2)(c).

22 SOC at para 23; D1D at para 29(2)(b).

23 1 AB 103.

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Tuffi 15% of net asset at Viio	TCPL's projected losses attributable to Tuffi, being 15% of the net asset balance in TCPL of $26,646,721	($3,997,008.15)
Tuffi Balance		$722,429.73
$196,000 for capital	Sale of 196,000 TDSPL shares at $1 par value to Techkon to reflect 15% stake in the Viio Project, being the difference between 49/100 and 15/51 of the outstanding TDSPL shares (1,000,000)	$196,000
Final payment due to Tuffi		$918,429.73

A copy of the 2019 Calculation was signed by Robert, Sunny, George, and Pang Sin. Techkon made full payment under the 2019 Agreement to Tuffi through instalments between May 2019 and July 2023.[24]

12 Approximately two years after the parties entered into the 2019 Agreement, Techkon suggested that the "net asset" of the Viio Project may need to be recalculated.[25] Shortly after, Tuffi raised the issue of an error in the 2019 Calculation. According to Ping Wen, Tuffi and Techkon had double-counted the interest payable by TDSPL under the Preference Share Scheme in the 2019 Calculation. It was accounted for as a separate line item (*ie*, "Tuffi Loss of Pref Interest in Sembawang"), when TDSPL's retained earnings (*ie*, "Tuffi Profit at Sembawang") had already accounted for the liabilities in relation to the

[24] 1 AB 118, 307, 314.

[25] 1 AB 128.

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Preference Share Scheme.[26] That being the case, there should have been an additional profit of $1,090,884 (the interest expenses under the Preference Share Scheme) from the Sembawang Project and the Worthing Project, 49% of which Tuffi is entitled to ("Tuffi's Additional Profit"). In 2023, Tuffi demanded Tuffi's Additional Profit of $534,533.16 from Techkon. Techkon denied such entitlement.[27] Tuffi claims for that amount in the present action.

The parties' cases

Tuffi's claims

13 Tuffi primarily argues that by entering into the 2019 Agreement, the parties have agreed on payment based on a formula rather than a fixed sum.[28] Of the sum payable under the 2019 Agreement, $196,000 is to be paid directly by Techkon as purchaser of 196,000 shares in TDSPL. The remaining is strictly TDSPL's obligation, but Techkon had agreed to pay Tuffi directly instead of injecting the funds into TDSPL.[29] Since the 2019 Agreement was premised on miscalculations, the final sum payable must be adjusted.[30] By not agreeing to such adjustment and not making the additional payment to account for Tuffi's Additional Profit, Techkon and TDSPL are in breach of the 2019 Agreement.[31]

14 Tuffi further argues that even if the 2019 Agreement was for a fixed sum, it is subject to an implied term that any calculation errors would be

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26 1 AB 273.

27 1 AB 304.

28 SOC at paras 24 and 40.

29 SOC at para 30(a).

30 SOC at para 48.

31 SOC at para 48.

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adjusted or is otherwise tainted by common mistake.[32] Tuffi also pleaded that the 2019 Agreement is tainted by unilateral mistake but has since withdrawn this specific claim.[33]

15 Finally, in the event that its contractual claims fail, Tuffi argues that Techkon has been unjustly enriched by retaining Tuffi's Additional Profit.

Techkon's defence

16 Techkon argues that by entering into the 2019 Agreement with Tuffi, it had agreed to purchase 196,000 shares in TDSPL for the fixed sum of $918,429.73.[34] TDSPL is not a party to the 2019 Agreement and there was no part of the agreed sum which TDSPL had to pay.[35]

17 Techkon argues that no term for adjustment of the sum payable can be implied into the 2019 Agreement. While the profit and loss in relation to the Viio Project could not be determined in 2019, parties had expressly agreed to compute the sum based on the financial statements prepared in 2018.[36]

18 The 2019 Calculation was prepared by Tuffi and, according to Techkon, was not closely considered by Techkon.[37] Techkon entered into the 2019 Agreement because it thought the sum of $918,429.73 was reasonable. Any

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32 SOC at para 50.

33 NE, 21 April 2025, 15:12–17.

34 D1D at para 29(2).

35 D1D at para 35(2).

36 D1D at para 31(2).

37 D1D at para 31(2).

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mistake as to the 2019 Calculation is thus irrelevant and does not taint the 2019 Agreement.

19 Techkon denies that it has been unjustly enriched.[38] It has not made any gain and, alternatively, has changed its position when it agreed to purchase Tuffi's shares in TDSPL.

TDSPL's defence

20 TDSPL's simple defence is that it is not a party to the 2019 Agreement,[39] and was not involved in any discussion relating to the 2019 Calculation.[40] TDSPL further argues that it did not cause Tuffi to suffer any loss.[41]

Issues to be determined

21 The parties filed a helpful Agreed List of Issues[42] detailing their points of disagreement. However, having considered the parties' cases, not all of those points were relevant and material to Tuffi's claims. The primary factual issue in this case is the content of the 2019 Agreement: did the parties agree on a formula for the sum payable or a fixed amount? In resolving this key issue, I have to consider:

(a) the areas of TDSPL's business which Tuffi and Techkon were respectively involved in;

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38 D1D at para 56(2).

39 D2D at para 30(2).

40 D2D at para 33(2).

41 D2D at para 58(2).

42 Agreed List of Issues dated 14 April 2025 ("ALOI").

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(b) what Tuffi's and Techkon's respective stakes in the Viio Project are, and when they agreed on such an apportionment;

(c) the significance of the 2019 Calculation in relation to the 2019 Agreement; and

(d) the significance of Techkon's request for a recalculation of the "net asset" of the Viio Project.

22 Consequently, the remaining issues can be addressed in the following order:

(a) If the 2019 Agreement relates to a formula, is there an error in calculation?

(b) If the 2019 Agreement relates to a fixed sum:

(i) Is there an implied term allowing for correction of this sum?

(ii) Is there a common mistake?

(c) If the answer to any of the above questions is "yes", is TDSPL also liable to Tuffi?

(d) If the answers to (a), (b)(i) and (b)(ii) are all "no", is Techkon nevertheless unjustly enriched?

The 2019 Agreement was an agreement for a fixed sum

23 As alluded to, the competing interpretations of the 2019 Agreement put forth by the parties is the crux of the present case. Indeed, this question cuts across most of the factual issues that parties had agreed were pertinent to this

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case.[43] I thus spend some time setting out and considering the parties' arguments in this regard.

Tuffi's arguments

24 Tuffi's overall argument is that the 2019 Agreement is an agreement for a formula and not a fixed quantum. In other words, the parties had agreed to a formula which they were to apply to determine the exact amounts which each party would be entitled to or liable for when the dust on the Viio Project had settled. In support of its position, Tuffi argues:

(a) There is nothing preventing parties from entering into an agreement for a formula.[44] This is not disputed by the defendants.

(b) The purpose of the 2019 Agreement was to balance and apportion the parties' different stakes across different projects. An agreement for a fixed quantum is inconsistent with that outcome.[45]

(c) "Sembawang Profit" or "Tuffi Profit at Sembawang" in the 2019 Calculation refers to the retained profits of TDSPL *relating to the Worthing Project and the Sembawang Project*. In this regard, Techkon's position that the same items in the 2019 Calculation refers to the whole of the accumulated profit of TDSPL is incorrect because, *prior* to the 2019 Agreement, parties had orally agreed for Tuffi and Techkon to invest in the *Viio Project* in the 15:36 ratio ("the 15:36 Ratio").[46]

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43 ALOI at s/n 4–6, 10–14.

44 Claimant's Closing Submissions dated 6 June 2025 ("CCS") at para 5.

45 CCS at paras 6 and 15–19.

46 CCS at paras 9–14.

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(d) The conduct of the parties and the contemporaneous documents are consistent with the 2019 Agreement relating to a formula, and there were no discussions over a fixed quantum.[47]

(e) George and Pang Sin of Techkon gave illogical and incredible explanations for why the 2019 Agreement was a final agreement for a fixed sum, including that the two accepted the loss in the Viio Project and acceded to Robert's requested sum out of friendship.[48]

(f) Based on the principles of contractual interpretation and considering the circumstances surrounding the 2019 Agreement and the overall conduct of the parties (both prior and subsequent to the 2019 Agreement), the only conclusion that can be drawn is that the 2019 Agreement relates to a formula.[49]

For the reasons set out below, I disagree with Tuffi.

Tuffi was not merely a passive investor in its ventures with Techkon

25 Tuffi sought to create the impression that it was only a passive investor in its interactions with the defendants.[50] With respect to TDSPL, Tuffi's case is that it was only providing funds and was not actively involved in the commercial decisions.[51] Whilst this issue is only ancillary to the main issue on the nature of the 2019 Agreement, it provides important context regarding the relationship of the parties leading up to the 2019 Agreement.

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47 CCS at paras 20–23.

48 CCS at para 24.

49 CCS at paras 25–30.

50 1 BAEIC 7.

51 ALOI at s/n 1–2.

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26 I find that Tuffi was more than just a passive investor in its dealings with the defendants. Instead, Tuffi was an active participant in its relationship with the defendants and was, understandably, keen to protect its investments.

27 In cross-examination, Robert admitted he gave his opinions "in a small way" when asked, in relation to the marketing, sales and finances of the Westech Project.[52] He further conceded that he was involved in the marketing, sales and finances of the Sembawang Project even when that involvement was not requested.[53] This corroborates Pang Sin's evidence in cross-examination that Robert was consulted on finance and accounting matters of the Westech Project (albeit not construction matters).[54] Pang Sin further testified that Robert was "rather actively involved" in the Viio Project, attending meetings and discussions weekly over lunch and at the project site. At these meetings, Robert would receive updates from Techkon then "contribute his advice and ideas".[55]

28 Beyond his involvement with the construction projects, Robert was also active in managing Tuffi's relationship with the defendants. Robert's evidence was consistent with Ping Wen's that he was the one who prepared and provided the numbers and details to the 2019 Calculation.[56] Ping Wen's only involvement was typing the 2019 Calculation in accordance with Robert's instructions.[57]

29 Most glaringly, Tuffi's own submissions push the narrative of Robert taking the initiative to press for the resolution of Tuffi's share of losses in the

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52 NE, 21 April 2025, 38:21–39:1, 40:2–5.

53 NE, 21 April 2025, 42:16–25.

54 NE, 24 April 2025, 39:12–40:15

55 NE, 24 April 2025, 80:25–81:17.

56 NE, 22 April 2025, 28:7–10.

57 NE, 23 April 2025, 58:5–19; see also 1 BAEIC 41.

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Viio Project. On no less than five occasions between 24 May 2018 and 19 February 2019, either Robert or Tuffi had written to Pang Sin or Techkon to seek this resolution.[58]

There was no agreement prior to the 2019 Agreement for the 15:36 Ratio

30 Tuffi pushed to establish the existence of the 15:36 Ratio having been agreed orally prior to the 2019 Agreement, as it was crucial to bolster its case that "Sembawang Profit" or "Tuffi Profit at Sembawang" would not be capable of being interpreted to refer to the accumulated profits of TDSPL. In the 2019 Calculation, the item "Tuffi Profit at Sembawang" (see [11] above) was a credit to Tuffi of $298,135.11. This amount is first arrived at in an earlier section of the document under what the parties have referred to as "Item A2":

> **A2 Sembawang Profit**
>
> Profit: $608,439.00 (After Tax)
>
> Tuffi (49%) : *$298,135.11*
>
> Techkon (51%): $310,303.89
>
> [emphasis in original in bold; emphasis added in italics]

According to Tuffi, if the 15:36 Ratio was in place prior to the 2019 Agreement and the 2019 Calculation, then Item A2 could not have been referring to the profits of *TDSPL* (which would include the Viio Project). Instead, Item A2 could only be interpreted as referring to the retained profits *of the Worthing Project and the Sembawang Project*.[59]

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58 CCS at para 20(a)–(e).

59 CCS at paras 9–14.

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31 In this regard, Tuffi relies heavily on a series of e-mails seeking cash calls from Tuffi and Techkon arising out of funding needs of the Viio Project.[60] These e-mails and the calculations referred to therein are sent from Ms Kelly Teo ("Kelly"), an account executive employed by Techkon, from as early as October 2014. The cash calls sought are expressly based on the following proportions of investment in the Viio Project:

(a) 49% from the external investor holding 49% of shares in TCPL;

(b) 24% from Techkon;

(c) 10% from Tuffi; and

(d) 17% from "T. Sembawwang [*sic*] (P.SHARES)".

It was not disputed that (d) referred to the funds raised from the Preference Share Scheme. It is also significant that the sum of (b), (c) and (d) was 51%, the shareholding that TDSPL had in TCPL.

32 The amount raised from the Preference Share Scheme was fixed at $9,350,000, being 17 shares of $550,000 par value each. There came a point in time when there were insufficient funds therefrom to meet the proportionate contributions required under the cash calls. Tuffi and Techkon thus had to make up the difference ("the Preference Share Shortfall"), contributing on behalf of the 17% stake attributable to the Preference Shares.

33 On 15 October 2014, when the Preference Share Shortfall was recorded as $993,269.88, $292,138.20 was allocated to Tuffi and $701,131.68 was

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60 1 AB 59–65.

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allocated to Techkon.[61] On 13 May 2015, when the Preference Share Shortfall was recorded as $2,353,269.88, $692,138.20 was allocated to Tuffi and $1,661,131.68 was allocated to Techkon.

34 Counsel for Tuffi dedicated substantial time cross-examining Pang Sin on the allocation of the Preference Share Shortfall between Tuffi and Techkon.[62] Tuffi's point in this endeavour was that its case of an agreement for the 15:36 Ratio was corroborated by parties' conduct in relation to the cash calls:

(a) Prior to there being any Preference Share Shortfall, Tuffi and Techkon contributed in the 10:24 ratio, which is equivalent to the 15:36 Ratio.

(b) Even the Preference Share Shortfall was allocated in a 10:24 ratio, consistent with the 15:36 Ratio.

The same point is made in Robert's Affidavit of Evidence-in-Chief ("AEIC").[63]

35 Whilst this argument seems compelling, it does not stand up to scrutiny. In my judgment, the 15:36 Ratio is an afterthought to conveniently fit the contemporaneous documents (since it is mathematically equal to 10:24). The cash calls referred to by Tuffi either make no mention of any ratio for the allocation of the Preference Share Shortfall (see [33] above) or only refer to a 10:24 ratio for the same. Indeed, an e-mail from Kelly to Tuffi on 14 May 2015 clearly shows that the allocation of the Preference Share Shortfall was reached by applying a 10:24 ratio:[64]

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61 1 AB 60.

62 NE, 24 April 2025, 51:2–69:25.

63 1 BAEIC 9–11.

64 1 AB 61.

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> Please be noted [*sic*] that the shortfall from P.Shares (17%) $850,000 has been distributed to [Techkon] (*24/34* @ $850,000 = $600,000) and [Tuffi] (*10/34* @ $850,000 = $250,000)
>
> [emphasis added]

36 These e-mails are consistent with Techkon's case that the actual allocation of the 17% stake attributable to the preference shares was only decided later. Under cross-examination, Pang Sin explained that the focus at that time was to allocate the *Preference Share Shortfall* to meet the cash calls.[65] Parties were not allocating the 17% stake then. If the stake was later allocated in a ratio different from 10:24 (which was how the Preference Share Shortfall was allocated), Techkon and Tuffi could then work out the cash balance that had to be paid. In Pang Sin's own words: "So all this is *just a record*, subject to the accountant to verify which is appropriate, *how to apportion it, how to distribute it*."[66] [emphasis added]. George's evidence is also consistent with Pang Sin's that these records were concerned with the allocation of the Preference Share Shortfall, and not the investment stake in the Viio Project.[67]

37 In contrast, Robert did not sufficiently explain how the 15:36 Ratio was arrived at. This is critical if Tuffi is to convince me that the alleged oral agreement exists (see [24(c)] and [30] above), since it was not borne out by the contemporaneous documents (see [35] above). In his AEIC, Robert only stated that Tuffi had initially only wanted a 10% stake in the Viio Project but was "eventually persuaded to increase its stake in the Viio Project to a 15% share".[68]

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65 NE, 24 April 2025, 54:11–24, 61:2–25.

66 NE, 24 April 2025, 61:8–11.

67 NE, 25 April 2025, 23:3–18.

68 1 BAEIC 9.

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Crucially, Robert has not explained how and when during the initial stages of the Viio Project he was so persuaded.

38 Further, Robert also conceded in cross-examination that when the Preference Share Scheme was being discussed, there were no discussions on how the 17% stake attributable to the preference shares would be distributed between Tuffi and Techkon.[69]

39 Given the above, I do not find that there was an agreement for the 15:36 Ratio prior to the 2019 Agreement.

Tuffi and Techkon did not agree on a formula

40 As parties do not dispute that there was an agreement for payment from Techkon to Tuffi (*ie*, the 2019 Agreement), I am only asked to decide the content thereof. The 2019 Agreement is obviously contained within the 2019 Calculation, but that does not mean that the whole of the 2019 Calculation formed the parties' agreement.

41 The purpose of contractual interpretation is to give effect to the objectively ascertained express intentions of the contracting parties as it emerges from the contextual meaning of the relevant contractual language (*Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [30]). The starting point of contractual interpretation is the text of the contract (*CIFG Special Assets Capital I Ltd v Ong Puay Koon* [2018] 1 SLR 170 ("*CIFG*") at [19(a)]). Relevant context may be considered in contractual interpretation as long as the contextual points are clear, obvious, and known to both parties (*CIFG* at

[69] NE, 22 April 2025, 15:1–6.

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[19(b)]). Ultimately, the meaning ascribed to the contractual terms must be one which the expressions used by the parties can reasonably bear (*CIFG* at [19(d)]).

42 Specific to reliance on parties' conduct *subsequent* to the formation of a contract, the courts must be cautious not to replace the objective exercise of *interpretation* with subjectivity and uncertainty (*Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna* [2016] 2 SLR 1083 at [54]). The courts' willingness to accept subsequent conduct for determining whether the contract was *formed* is of no relevance as formation is not in issue here (see *Kok Kuan Hwa v Yap Wing Sang* [2025] SGHC(A) 16 at [37]).

43 The 2019 Calculation is remarkable only in its brevity. It is a one-page document which offers little help in understanding whether the 2019 Agreement was an agreement for a formula or fixed sum. The conduct of the parties surrounding the 2019 Agreement and the 2019 Calculation therefore takes on greater significance.

44 That said, the 2019 Agreement does offer *some* help in evaluating the interpretation put forth by the parties. Tuffi insists that "Item D" of the 2019 Calculation is the formula agreed upon by the parties. I reproduce Item D:

D	**Summary of Tuffi balance in Viio**	
1.	Tuffi Cash Investment:	$8,623,560.00
2.	Tuffi Profit at Sembawang (49%):	$298,135.11
3.	Tuffi Loss of Pref Interest in Sembawang:	($320,848.23)
4.	Tuffi Losses of 15% at Viio:	($3,881,409.00)
5.	Tuffi 15% of net asset at Viio (See **C**):	($3,997,008.15)
	Tuffi Balance	$722,429.73

[emphasis in original]

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45 I disagree with Tuffi. Item D is not the final item on the 2019 Calculation. There are two further items that follow and, crucially, the last item is item F titled "Final payment due to Tuffi" ("Item F"). In my judgment, the flow of the 2019 Calculation points towards a conclusive result, *ie*, the calculation of the final payment due to Tuffi. Items A through E of the 2019 Calculation are all geared towards calculating that final amount to be paid in Item F. Further, each item on the 2019 Calculation is separated by solid lines, but there is no such solid line between Item F and the signatures of Sunny, Robert, Pang Sin and George, giving the impression that parties are only agreeing as to Item F, and not the items preceding it. Thus, on a simple review of the 2019 Calculation, it is more likely than not that the 2019 Agreement related only to the fixed sum stated at Item F, and not a formula. However, this is not conclusive in itself, bearing in mind the importance of the parties' conduct as context. I turn now to consider the parties' arguments in this regard.

46 In my judgment, Tuffi's own case is saddled with unexplained inconsistencies. It is undisputed that Robert prepared the 2019 Calculation, but Robert does not explain why the 2019 Calculation was structured and prepared in this specific manner. He only explains that he wanted the shareholding in TDSPL to be adjusted to reflect the 15:36 Ratio (the agreement for which I have found does not exist (see [39] above)).[70] It goes no further. For instance, he does not explain why he insisted on the 2019 Agreement to be in writing and signed, when the parties at that time never demonstrated such formality in their relationship. He also does not explain why he/Tuffi insisted on payment being made in accordance with the sum recorded at Item F if, in his view, the 2019 Agreement was for a formula and hence the sum payable would be subject to

[70] 1 BAEIC 16.

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change. Indeed, Tuffi's insistence on payment came at a time when Techkon could not readily afford the amount in a lump sum, seeing as the latter ultimately had to pay in instalments.

47 Likewise, the contemporaneous documents also do not support Tuffi's characterisation of the 2019 Agreement. The e-mail from Tuffi of 19 February 2019 (which attached the draft 2019 Calculation) says nothing about a formula that is subject to later adjustment.[71] A letter addressed to Techkon on Tuffi's letterhead also confirms the total amount to be paid in accordance with Item F of the 2019 Calculation, and makes no mention of a formula which may require adjustments to individual components.[72] This letter was also signed by Robert, Sunny, Pang Sin and George.

48 In contrast, I find Pang Sin's and George's evidence believable because the discussions between themselves on the issue of Tuffi's insistence on the 2019 Agreement were consistent and realistic. In short, they were unhappy with Robert's request contained in the 2019 Calculation.[73] Amongst other things, it was not reflective of the 49:51 responsibility for the interest expense relating to the Preference Share Scheme.[74] However, Pang Sin and George discussed Tuffi's request and decided they could afford it.[75] It was a cost they were willing to pay to keep the relationship between Tuffi and Techkon harmonious.[76] Further, there was a chance that the Viio Project could be turned around at that

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71 1 AB 95.

72 1 AB 119.

73 1 BAEIC 86, 89,142.

74 1 BAEIC 142.

75 1 BAEIC 90, 144.

76 1 BAEIC 90–91, 147.

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point in time since not all the units were sold yet.[77] In my judgment, these are genuine and detailed considerations from George and Pang Sin. They gave consistent evidence on these points and did not falter under cross-examination.[78]

49 Tuffi made much of the fact that Techkon's explanation was illogical, especially because the arrangement it accepted had the potential to increase its share of the loss in the Viio Project (see [24(e)] above) bearing in mind the project had not been concluded at the time. As alluded to (at [48]) above, I accept Pang Sin's and George's explanations of why they accepted what appeared to be a bad deal for Techkon at the time. I do not find the explanation they offered illogical. It was not wrong to surmise that the Viio Project could be turned around and, if that did manifest itself, Techkon would have been in a position to reap a greater share of that turnaround. Further, Pang Sin's and George's approach to their relationship with Robert/Tuffi was entirely consistent with the other evidence. Robert/Tuffi was more proactive, especially in relation to finance (see [29] above); Techkon was more deferential, even to the extent of being unquestioning at times. There was no evidence which demonstrated Techkon being outwardly negative or disagreeing with Robert/Tuffi, particularly around the time of the 2019 Agreement.

50 Tuffi also pointed to a WhatsApp message from Pang Sin to Ping Wen on 22 January 2021, which apparently shows that Pang Sin thought that the 2019 Agreement was an agreement for a formula:[79]

> We may need to recalculate the viio net asset based on the final losses to reflect the final asset balance to rebalanced the

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77 1 BAEIC 91, 147.

78 NE, 24 April 2025, 99:25–100:8, 116:5–118:11; and 25 April 2025, 12:6–15, 13:8–14:7.

79 1 AB 128.

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> shareholding in techkon sembawang. The previous calculations was based on estimate losses in 2018 account. Shall we have a discussion next week ?

I disagree with Tuffi's characterisation of this message. The use of subsequent conduct to interpret the 2019 Agreement must be treated with utmost scrutiny (see [42] above). In my judgment, the message does not elucidate the *parties'* objective intentions or relate to a clear and obvious context (see *Simpson Marine (SEA) Pte Ltd v Jiacipto Jiaravanon* [2019] 1 SLR 696 at [78]). First, whatever Pang Sin thought about the 2019 Agreement is only his *belief*. He may be mistaken about what was objectively agreed upon in the 2019 Agreement. Second, neither Pang Sin's message nor the entire exchange shows that *Techkon* also thought the same. Indeed, Ping Wen's response to the message is telling:[80]

> Hi, *i do not understand what do you mean by rebalance the shareholding*
>
> that breakdown is done base done [*sic*] 2018 when there is a transfer of shares. *As there is no more transfer of shares, i do not understand why we need to do that again*?
>
> [emphasis added]

51 Third, it is also not clear from Pang Sin's message that he was referring to an adjustment of the sum payable under the 2019 Agreement pursuant to an agreed formula. While the message is ambiguous when read as a whole, what is clear is that the recalculation referred to is of the "net asset" of the Viio Project. Pang Sin explains that any such recalculation was to help Tuffi in case it was experiencing the same internal accounting issues faced by Techkon.[81] In Pang Sin's view, the issues arose because the projected loss based on the net asset balance in 2018 differed from the actual loss which materialised only upon sale

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80 1 AB 128.

81 1 BAEIC 152.

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of the commercial units in the Viio Project.[82] If parties wish to enter into a new agreement upon such recalculation, they were free to; this would not be an adjustment pursuant to the 2019 Agreement.[83] Pang Sin points to his reply message that "[t]ransfer of share and valuation are 2 separate matters" to bolster his point.[84] I accept that Pang Sin's intended meaning (as expressed in his AEIC) is a *possible* interpretation of the WhatsApp exchange. The fact that the meaning of the WhatsApp exchange is not clear either way only reinforces why courts should be slow to rely on subsequent conduct in interpreting contracts.

52 Finally, Tuffi also pointed to another message from Pang Sin which read: "We are basing on the same formula for adjustment as agreed with Robert previously to do a final adjustment upon conclusion of the project." Under cross-examination, Pang Sin explained that he did not intend for the message to mean that he wanted to redo the numbers in the 2019 Calculation to arrive at a different figure.[85] I accept Pang Sin's explanation as a plausible one because, once again, the message is not conclusive either way. It is consistent with Pang Sin requesting for a recalculation, which may form the basis of a *new agreement* or a *variation* of the 2019 Agreement, in as much as it is consistent with Pang Sin demanding a recalculation pursuant to an agreement for a formula.

53 In light of the above, especially the dearth of evidence supporting Tuffi's case (see [46]–[47] above), my conclusion is that the 2019 Agreement was an agreement for a final sum, *ie*, $918,429.73 as recorded at Item F of the 2019 Calculation, to be paid by Techkon to Tuffi.

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82 1 BAEIC 152, 154.

83 1 BAEIC 155.

84 1 AB 128; 1 BAEIC 154.

85 NE, 24 April 2025, 132:3–8.

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54 Even if parties agreed on a formula, I disagree with Tuffi's interpretation of how the formula manifests itself in the 2019 Calculation. I have found that there is no agreement for the 15:36 Ratio (see [39] above). I thus disagree with Tuffi's argument that the only sensible interpretation of Item A2 is that it refers only to profits of the Worthing Project and the Sembawang Project. To the contrary, the plain and ordinary meaning of the words is that Item A2 referred to the profits of the "Sembawang" company, *ie*, TDSPL. While that means that the interest expense under the Preference Share Scheme is effectively double-counted to Tuffi's commercial disadvantage, the court is not concerned with bad bargains entered into by contractual parties if that is what they had agreed on (except in the presence of vitiating factors, such as common mistake which I address (at [58]–[63] below). On this interpretation of the 2019 Agreement, Techkon would similarly not be in breach of contract.

No implied term that the sum was subject to adjustment

55 Given my finding that Tuffi and Techkon had agreed on the payment of a fixed sum rather than payment according to a formula, I now deal with Tuffi's argument as to the existence of an implied term allowing for adjustment of calculation errors ("Alleged Implied Term") (see [14] above).

56 The three-step process for the implication of terms is set out in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 ("*Sembcorp Marine*") at [101]:

> (a) The first step is to ascertain how the gap in the contract arises. Implication will be considered only if the court discerns that the gap arose because the parties did not contemplate the gap.

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(b) At the second step, the court considers whether it is necessary in the business or commercial sense to imply a term in order to give the contract efficacy.

(c) Finally, the court considers the specific term to be implied. This must be one which the parties, having regard to the need for business efficacy, would have responded "Oh, of course!" had the proposed term been put to them at time of the contract. If it is not possible to find such a clear response, then the gap persists and the consequences of that gap ensue.

57 Applying this test, I disagree with Tuffi on the existence of the Alleged Implied Term:

(a) There is no true gap in the 2019 Agreement. A key plank of Tuffi's case is that there was an "understanding" between the parties that the final figure was subject to change in the event of mistakes in calculation.[86] Regardless of whether there was indeed such an understanding between the parties, *Tuffi* must have contemplated the possibility of there being errors in the 2019 Calculation. The failure to make express provision for this in the 2019 Agreement simply means there is no "true" gap which can be remedied by the implication of a term (see *CAA Technologies Pte Ltd v Newcon Builders Pte Ltd* [2017] 2 SLR 940 at [75]–[77]).

(b) Further, the Alleged Implied Term is not *necessary* for business efficacy. It is trite that the court will not imply a term on the basis that it would improve the contract, no matter how desirable (*Sembcorp Marine*

86 1 BAEIC 19; NE, 22 April 2025, 72:4–20.

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at [88]). Similarly, a term will not be implied just because reasonable men would have agreed on it. The test is of necessity. Simply put, the term which Tuffi seeks to imply is not *necessary* for the 2019 Agreement to be workable or effective.

(c) Finally, it is not clear that the parties would have definitely agreed to such a term had it been suggested at the material time. As Techkon rightly argues, the Alleged Implied Term represents a significant contingent liability with no theoretical expiration.[87] In my judgment, the parties may not have responded "Oh, of course!" had the Alleged Implied Term been proposed to them at time of signing the 2019 Calculation.

For these reasons, the Alleged Implied Term cannot be implied into the 2019 Agreement.

Any mistake leading to the formation of the contract is attributable to the fault of Tuffi

58 Tuffi also argues that the 2019 Agreement is voidable for common mistake, whether at law or in equity, and that the 2019 Agreement should be rectified to reflect parties' agreement. I reject these claims.

59 The law on common mistake at common law is set out at *Olivine Capital Pte Ltd v Chia Chin Yan* [2014] 2 SLR 1371 ("*Olivine Capital*") at [67]. Tuffi's claim can be dismissed on the Second Precondition alone (as defined in *Olivine Capital* at [67]), which requires that the mistake concerned must not be attributable to the fault of either party.

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87 1st Defendant's Closing Submissions dated 6 June 2025 ("D1CS") at para 43.

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60 The double counting of the interest expense under the Preference Share Scheme in the 2019 Calculation is plainly attributable to the fault of Tuffi. Under cross-examination, Robert unequivocally conceded that he/Tuffi was at fault.[88] After all, Tuffi prepared the 2019 Calculation and Robert assured George and Pang Sin that the figures therein were accurate.[89]

61 Further, it was entirely within Tuffi's power to avoid the alleged mistake in the first place by reviewing the relevant financial statements. Whoever prepared TDSPL's financial statements, it is clear that Tuffi had access to those statements. Robert himself testified that he brought a copy of TCPL's audited accounts, extracts from TDSPL's audited accounts, and TDSPL's general ledger with him when meeting George and Pang Sin to have them sign the 2019 Calculation.[90] Robert quite clearly had access, and indeed referred, to the relevant financial statements when preparing the 2019 Calculation. Even in 2021, when Ping Wen wished to review the relevant financial statements, all she had to do was ask Kelly. Kelly then sent the requested statements without delay to Ping Wen.[91] Indeed, neither Robert nor Ping Wen allege that the defendants have ever obstructed or prevented Tuffi's access to the accounts.

62 The relevant financial statements would have revealed that the accumulated retained earnings in 2018 were arrived at after deduction of interest expenses under the Preference Share Scheme. The fixed interest was paid in 2013 and 2014,[92] and the additional 3% interest for late payment was paid in

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88 NE, 22 April 2025, 52:15–20, 56:10–14.

89 NE, 22 April 2025, 36:4–7.

90 1 BAEIC 18.

91 1 AB 164–165.

92 2 AB 905.

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2018.[93] In this regard, I give no weight to Tuffi's argument that the financial accounts were complicated for laypersons to interpret or understand.[94] The ease of committing a mistake is irrelevant to whether the mistake is attributable to the fault of a party. Tuffi could have, for instance, hired accountants to review the 2019 Calculation just as it did in the present action – the experts before me had no apparent difficulty identifying the alleged mistake.

63 Therefore, Tuffi cannot rely on the doctrine of common mistake at law. Since the equitable counterpart has a similar precondition that "the party seeking to set [the contract] aside was not himself at fault" (*Solle v Butcher* [1950] 1 KB 671 at 692–693), Tuffi likewise cannot rely on the doctrine of common mistake in equity. Consequently, there is no room to rectify the 2019 Agreement.

TDSPL is a party to the 2019 Agreement

64 A key factual premise of Tuffi's case is that of the $918,429.73 under the 2019 Agreement, $196,000 was for its transfer of shares in TDSPL to Techkon, and the remaining was for its over-contribution into TDSPL. Thus, the latter component was to be paid by TDSPL, not Techkon.[95] However, instead of requiring Techkon to inject the funds into TDSPL before TDSPL paid Tuffi, Techkon agreed to pay Tuffi directly ("the Direct Payment Agreement").

65 Although I find that the 2019 Agreement was for a fixed sum (see [53] above), I do not wholly agree with the defendants. In my judgment, the sum could not have been only for the transfer of shares. As Tuffi rightly argues, such a transaction means that Techkon valued TDSPL at over $9m, a valuation which

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93 2 AB 1049.

94 CCS at para 62.

95 SOC at paras 24 and 28.

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cannot be reasonable given that TDSPL's only business then was the Viio Project which was loss-making.[96] Further, the first tranche of payment made by Techkon in May 2019 of $218,429.73 was split into two cheques of $196,000 and $22,429.73 respectively.[97] Thus, I agree with Tuffi in so far as $196,000 was for the transfer of shares in TDSPL, and the remaining $722,429.73 was for the re-balancing of parties' contributions. Put another way, since Techkon was buying a part of Tuffi's stake in the Viio Project, Tuffi would be able to avoid some losses which it was otherwise expecting.

66 For the avoidance of doubt, I find that the $722,429.73 was an agreed *fixed sum* to re-balance the parties' contributions. Together with the fixed sum of $196,000 for the shares in TDSPL, the 2019 Agreement was for a whole fixed sum (see [53] above). While Techkon knew that the $722,429.73 was for the re-balancing of parties' respective contributions, Techkon was agreeing to a fixed sum that Tuffi pushed for. It is clear that Techkon did not merely agree to a formula or an unfinalised number representing a payment for such re-balancing (see [45]–[53] above). Techkon also did not check that the amounts Tuffi indicated was correct with reference to the financial records. It simply thought that the amount was workable and hence accepted the 2019 Agreement (see [48] above).

67 I also agree with Tuffi that reimbursement for its over-contributions into the Viio Project (if any) would have originally been TDSPL's liability. It is clear that when Tuffi and Techkon had invested in the Viio Project, funds were transferred *from TDSPL to TCPL*. This is so even when cash calls were made

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96 CCS at para 24(b)(i).

97 1 AB 118.

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after the initial investment. Save for a single transfer made directly to TCPL,[98] every transfer to fund the Viio Project was sent from Tuffi to *TDSPL*.[99] These were then recorded as loans from shareholders in TDSPL's audited financial statements.[100] Thus, if any re-balancing was to be done, it had to be effected in a manner similar to the original contributions. For completeness, I give virtually no weight to the single transfer from Tuffi to TCPL. That transfer was not specifically highlighted in any of the AEICs, it never came up at trial and so no witnesses were asked on it or had an opportunity to explain it, and it is not relied on by any party in their closing submissions. There are countless possibilities as to why the transfer was effected in that manner, but none were canvassed before me. In light of all the other transfers made to TDSPL, the weight of the evidence clearly points to Tuffi treating TDSPL as a vehicle through which Tuffi invested into the Viio Project.

68 Thus, TDSPL had simply confirmed its liability of $722,429.73 when *its* directors signed on the 2019 Calculation.[101] It is therefore a party to the 2019 Agreement. It is also noteworthy that on Tuffi's subsequent letter setting out Techkon's indebtedness to Tuffi, the four gentlemen expressly signed on behalf of Tuffi and Techkon: Sunny and Robert "on behalf of Tuffi Pte Ltd", and Pang Sin and George "on behalf of Techkon Pte Ltd".[102] Quite unlike in this letter, the four of them did not expressly qualify the capacities in which they signed the 2019 Calculation.

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98 2 AB 838.

99 2 AB 823, 840, 841, 873, 907, 909, 911, 943–948, 980.

100 2 AB 972.

101 1 AB 104.

102 1 AB 118.

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69 I find that the Direct Payment Agreement was part of the 2019 Agreement as well. The plain and ordinary words under Item F confirm that *Techkon* would pay the full sum:

> **F Final payment due to Tuffi**
>
> ***Techkon* to pay Tuffi:** $722,429.73 + $196,000 for capital ($490k - $294k) = **$918,429.73**
>
> [emphasis in original in bold; emphasis added in bold italics]

That Techkon agreed to pay the sum directly to Tuffi, instead of through TDSPL, is corroborated by the letter Tuffi issued upon receipt of the first tranche of payment which Techkon signed and acknowledged:[103]

> 5. This is to confirm that Techkon Pte Ltd has an outstanding balance of $700,000 due to Tuffi Pte Ltd …

70 However, as I have found that Tuffi's contractual claims have no merit, my decision on this issue has no bearing on the ultimate outcome. I would have been prepared to decide that both Techkon and TDSPL are liable under the 2019 Agreement if Tuffi proved its cause of action.

Benefits transferred pursuant to a valid contract cannot constitute unjust enrichment

71 For completeness, I also dismiss Tuffi's claim that Techkon was unjustly enriched by retaining Tuffi's Additional Profit. Tuffi identifies the mistake in double counting the interest expense under the Preference Share Scheme as the relevant unjust factor.[104] That is at best a mistake in the formation of the 2019 Agreement, and not a mistaken payment *simpliciter* (see *Info-communications Development Authority of Singapore v Singapore Telecommunications*

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103 1 AB 118.

104 CCS at para 78.

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Ltd [2002] 2 SLR(R) 136 at [85]–[89]). Tuffi's claim therefore fails since I have found (at [63] above) that the 2019 Agreement is not vitiated for mistake.

Conclusion

72 For the reasons above, I dismiss Tuffi's claims entirely. I will hear the parties on costs.

Postscript: Robert's giving of typed evidence in real time

73 I use this postscript as an opportunity to record the manner in which Robert gave evidence at trial. Robert suffered three strokes in November 2019. Whilst his mind remained sharp, his speech was slurred such that any oral evidence that he gives is likely to be incomprehensible.[105] As the key person from Tuffi involved in correspondence between Tuffi and Techkon, Robert's evidence was undoubtedly relevant and material. This was raised at the case conference conducted by me about a month before the start of trial, and it was debated whether it would be possible for Robert to give evidence by video-link and by typing out his answers. At the case conference, I directed counsel to discuss how best to allow Robert's evidence to be taken in the circumstances.

74 Their discussion culminated in HC/SUM 1024/2025 ("SUM 1024"), a summons by consent. Parties had agreed for Robert to give evidence in the following manner:

(a) He was to give evidence via live video link over Zoom. He would have access to the live trial transcripts on the same laptop. He was to refer to soft copies of the trial bundles on a personal tablet.

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105 Robert's affidavit sworn on 11 April 2025 for HC/SUM 1024/2025 ("SMC-2") at p 20.

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(b) He was to type his answers onto another tablet, the screen of which would be shared over Zoom. The court could thus see his answers in real time as Robert typed them. He was to indicate that his answer is complete by typing "OK", thereby avoiding arguments over whether a partially-typed answer could be considered his evidence in a situation where he changes his mind or makes a typographical error.

(c) He was to be accompanied only by his full-time caregiver, and a trainee solicitor from the law practice he engaged. The latter was only to assist Robert with technical issues and referring Robert to pages of the trial bundles. Techkon and TDSPL could also attend from the same room as Robert upon request.

75 SUM 1024 also provided for Tuffi's counsel to read out Robert's typed answers on a *verbatim* basis "if necessary". Before the start of trial, I accepted the parties' suggestion for Tuffi's counsel to read in court Robert's answers, which allowed for a comprehensive record in the trial transcripts.

76 Whilst this manner of giving evidence seemed to be theoretically workable, I had concerns over whether it would hold up against the rigours of cross-examination in the heat of a trial. My concerns were ultimately unjustified. Robert's evidence was taken exactly as anticipated in SUM 1024 with only minor hiccups. Out of an abundance of caution, counsel had arranged for three trial days to take Robert's evidence through separate cross-examinations by Techkon and TDSPL, as well as re-examination by Tuffi. Robert managed to give his evidence in under 1.5 days. In my judgment, a key intangible that oiled this process was the additional preparation taken by Techkon's lead counsel, Mr Rajan Sanjiv Kumar in preparing his cross-

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examination questions in a manner that ensured the witness was not frustrated and was able to answer concisely.

77 I stress that taking Robert's evidence in this manner was only possible with outstanding collaboration between the three sets of counsel in this claim and the technology now available to us. Counsel communicated well together and worked in the best traditions of the Bar to set an exemplary example of how to take evidence from a witness afflicted by a difficult medical condition that renders the taking of oral evidence in the usual way impossible.

Wong Li Kok, Alex
Judge of the High Court

Deborah Evaline Barker SC, Tan Sheng An Jonathan and U Sudharshanraj Naidu (Withers KhattarWong LLP) for the claimant;
Rajan Sanjiv Kumar, Marrissa Miralini Karuna, Prabu Devaraj s/o Raman and Mohamed Khairulnizam bin Abdul Jaffar (Allen & Gledhill LLP) for the first defendant;
Ng Lip Chih (Foo & Quek LLC) (instructed) and Tan Jinwen Mark (Chen Jinwen) (NLC Law Asia LLC) for the second defendant.

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