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

[2026] SGHC(A) 18

Appellate Division / Civil Appeal No 95 of 2025

Between

Lo Yew Seng

… *Appellant*

And

Astrawati Aluwi

… *Respondent*

In the matter of 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*

Version No 1: 17 Jun 2026 (17:07 hrs)

JUDGMENT

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

TABLE OF CONTENTS

FACTS **2**

THE PARTIES 2

BACKGROUND TO THE DISPUTE 3

THE DECISION BELOW **5**

FRAUDULENT MISREPRESENTATION 6

NEGLIGENT MISSTATEMENT 7

UNLAWFUL MEANS CONSPIRACY 8

ISSUES TO BE DETERMINED **8**

FRAUDULENT MISREPRESENTATION **9**

PARTIES' SUBMISSIONS 10

Appellant's submissions *10*

Respondent's submissions *11*

DID THE APPELLANT MAKE THE REPRESENTATIONS? 12

Ownership Representation *12*

Construction Representation *15*

Did the appellant have a duty to correct false representations up to the time the respondent made progress payments? *15*

DID THE APPELLANT KNOW THAT THE REPRESENTATIONS WERE FALSE, OR WAS HE RECKLESS AS TO THEIR TRUTH? 16

Was the appellant part of the Infinity Group's key management team? *17*

Did the Judge err in drawing adverse inferences against the appellant? *20*

DID THE RESPONDENT RELY ON THE REPRESENTATIONS? 33

Version No 1: 17 Jun 2026 (17:07 hrs)

NEGLIGENT MISSTATEMENT 37

PARTIES' SUBMISSIONS 37

Appellant's submissions 37

Respondent's submissions 38

WERE THE RESPONDENT'S PLEADINGS DEFECTIVE? 38

UNLAWFUL MEANS CONSPIRACY 40

PARTIES' SUBMISSIONS 40

WERE THE RESPONDENT'S PLEADINGS DEFECTIVE? 41

DID THE JUDGE ERR IN FINDING THAT THE APPELLANT, JONATHAN, AND YC ACTED IN COMBINATION WITH THE INTENTION OF INJURING THE RESPONDENT? 42

CONCLUSION 44

Version No 1: 17 Jun 2026 (17:07 hrs)

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Lo Yew Seng
v
Astrawati Aluwi

[2026] SGHC(A) 18

Appellate Division of the High Court — Civil Appeal No 95 of 2025
Ang Cheng Hock JCA, Debbie Ong Siew Ling JAD and See Kee Oon JAD
8 April 2026

17 June 2026 Judgment reserved.

Ang Cheng Hock JCA (delivering the judgment of the court):

1 This is an appeal against the decision of the judge below ("Judge") in *Astrawati Aluwi v Lo Yew Seng* [2025] SGHC 188 ("Judgment"). The Judge allowed the respondent's claims against the appellant for fraudulent misrepresentation, negligent misstatement, and conspiracy by unlawful means. The appellant appeals against the decision on all three claims.

2 We allow the appeal in part. We affirm the Judge's decision that the claim for fraudulent misrepresentation was made out. However, we set aside the Judge's decisions that the claims for negligent misstatement and conspiracy by unlawful means were established, as well as his decision on the costs of the proceedings below. We set out below our reasons.

Facts

The parties

3 The respondent, Ms Astrawati Aluwi, agreed to purchase a residential apartment unit ("Unit") in a housing development that was to be built in Niseko, Japan called Tellus Hirafu ("Development"). The respondent claims that the appellant, Mr Lo Yew Seng, made false representations to her which induced her to purchase the Unit. Ms Serene Wan ("Serene") was the property agent who acted for the respondent in the purchase of the Unit. She communicated and negotiated with the appellant on behalf of the respondent, at least until the key commercial terms were agreed.

4 The Development was overseen by a group called the "Infinity Group", which included three companies:

(a) LC Capital Ltd ("LC Capital"), which was incorporated in Hong Kong;

(b) Infinity Capital Group Ltd ("Infinity Capital"), which was incorporated in the Cayman Islands; and

(c) Infinity Capital Group Japan Development Godo Kaisha ("Infinity Japan"), which was incorporated in Japan.

The Infinity Group was controlled and largely owned by Mr Jonathan Cheng ("Jonathan"). Mr Chen Yicheng ("YC") handled the day-to-day management of the group.

5 The appellant was linked to the Infinity Group through several investments, including the following:

Version No 1: 17 Jun 2026 (17:07 hrs)

(a) On 9 January 2018, he entered into a loan agreement with LC Capital, under which he agreed to lend, and did lend, S$680,000 to LC Capital, repayable on 9 April 2018, at an interest rate of 15% per annum ("First Loan").

(b) On 1 February 2018, the appellant lent A$200,000 to Infinity Capital, and a bond certificate ("Bond Certificate") was issued by Infinity Capital to him for the amount of the loan. Under the Bond Certificate, Infinity Capital agreed to pay the appellant 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. The Bond Certificate secured the appellant's investment through a charge over the land that was designated for the Development ("Land").

(c) By 21 June 2018, the appellant was a 10% shareholder of LC Capital, holding 714,286 shares.

(d) On 31 March 2020, the appellant lent a further amount of S$100,000 to LC Capital ("Second Loan").

Background to the dispute

6 On or around 20 January 2019, Serene and the appellant met at a social gathering. The appellant told Serene about the Development.

7 On 31 January 2019, Serene told the respondent about the Development as she knew that the respondent was thinking about investing in Niseko. After the respondent expressed interest, Serene contacted the appellant to seek more details about the Development. On the same day, the appellant sent Serene a

Version No 1: 17 Jun 2026 (17:07 hrs)

13-page brochure for the Development over WhatsApp. This brochure stated, among other things, a target completion date of 2021. It also stated that the developer was Infinity Capital and that the tenure was "Freehold". Serene forwarded this brochure to the respondent, and they later read it together in person. In a phone call the same day, the appellant, the respondent, and Serene discussed the respondent's interest in purchasing a unit in the Development.

8 On 1 February 2019, the appellant sent Serene a 31-page brochure on the Development over WhatsApp. The brochure identified Infinity Capital as the developer and "Hokkaido, Abuta-gun, Kutchan Cho, Aza Kabayama" as the location for the Development. It also (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".

9 Between 1 February 2019 and 28 April 2019, Serene, acting on behalf of the respondent, negotiated with the appellant on the potential purchase of a unit in the Development.

10 After the appellant and respondent agreed on the key commercial terms, including the price and the actual unit to be selected, the appellant referred Serene to YC and Jonathan to finalise the deal. YC then sent Serene a draft Contract for Sale on 30 April 2019 and a draft Commitment Agreement on 17 May 2019. The parties discussed aspects of these documents and made amendments. On 28 May 2019, the finalised version of the Commitment Agreement was executed between the parties. The finalised version of the Contract for Sale was executed the next day, 29 May 2019. It stated Infinity Japan as the "Seller" and Infinity Capital as the "Execution Partner", with Jonathan as "Execution Director". It stated that the "Scheduled Building

Version No 1: 17 Jun 2026 (17:07 hrs)

Completion Date" was 1 December 2021. This same date was also the "Delivery Date of the Property" to the respondent.

11 Pursuant to the Contract for Sale, the respondent paid US$1,786,000 towards the purchase of the Unit over six progress payments between 31 May 2019 and 19 May 2021.

12 In truth, the Infinity Group never owned the Land on which the Development was to be built. Further, no application was submitted by any developer for a permit to commence construction on the Land. This is shown by, amongst other things, two documents:

(a) A Land Sale and Purchase Agreement ("Land S&P") dated 9 February 2018 where Infinity Capital agreed to purchase the Land from its owner, Zekkei Investment Management K K ("Zekkei"), with completion of the purchase by 31 October 2018. The purchase price was US$10,500,000.

(b) A Deed of Settlement and Release between Zekkei and Infinity Capital and other parties dated 30 January 2020 ("Settlement Deed") stating that the purchase of the Land was never completed, and that Infinity Capital only paid Zekkei US$3,320,888.37, inclusive of deposits and penalties.

The decision below

13 The Judge allowed the respondent's claims for fraudulent misrepresentation, negligent misstatement, and unlawful means conspiracy (Judgment at [3]). He awarded damages to the respondent in the sum of US$1,786,000 with interest at the rate of 5.33% per annum from the

Version No 1: 17 Jun 2026 (17:07 hrs)

commencement date of legal proceedings. He also awarded the respondent the full costs of the proceedings on the basis that the respondent had succeeded on all her claims against the appellant. The Judge's findings and reasons are summarised below.

Fraudulent misrepresentation

14 The Judge found that the appellant made the following false representations:

(a) In early 2019, Infinity Capital, as the developer of the Development, owned the land on which the project was to be constructed, on a freehold tenure ("Ownership Representation").

(b) In early 2019, Infinity Capital, as the developer, intended to commence construction of the project soon ("Construction Representation").

15 The appellant made the two representations to induce the respondent to purchase the Unit, and she did rely on those representations. The representations were material as they went to the heart of the Development's viability. The appellant also proactively marketed the Development to the respondent through his communications with Serene. He actively discouraged the respondent from appointing Mr Satoshi Yoshida ("Yoshida"), an English-speaking lawyer from Niseko. He conjured a sense of artificial urgency about the popularity of the Unit to potential buyers to pressure the respondent into quickly signing the Contract for Sale. These all caused the respondent to enter the Contract for Sale and pay US$1,786,000.

16 The Judge found that the appellant knew the representations were false

Version No 1: 17 Jun 2026 (17:07 hrs)

or was at least reckless as to their truth. The appellant was part of the Infinity Group's key management team, and he always knew about the Land S&P and Settlement Deed. Moreover, when confronted by Serene about the fraud, his conduct showed that he was not an unwitting participant but a knowing conspirator in the fraud.

Negligent misstatement

17 The Judge found that the respondent had not sufficiently pleaded her case for negligent misstatement, but that there was no prejudice to the appellant in allowing the respondent to pursue her claim for negligence nonetheless.

18 The Judge held that the appellant owed the respondent a duty of care. The proximity factors of voluntary assumption of responsibility and reasonable reliance were made out because the appellant had represented himself as part of the key management team with the authority to deal with the respondent on behalf of the developer. He actively volunteered information about the Development and expected the respondent to rely on the information in the brochures.

19 The appellant breached this duty of care by failing to exercise reasonable care in verifying the truth of his representations before making them. The defaults under the First Loan and the coupons issued with the Bond Certificate should have prompted the appellant to scrutinise the Development's financial position, but the appellant did not do so. He also discouraged the respondent from conducting due diligence.

20 The Judge rejected the appellant's argument that the respondent's failure to conduct due diligence was a *novus actus interveniens* because this required a

Version No 1: 17 Jun 2026 (17:07 hrs)

high threshold of unreasonableness on the part of the respondent which was not met.

21 The respondent was also not contributorily negligent for failing to conduct due diligence. She acted reasonably in the circumstances. The appellant had represented the transaction as safe, actively discouraged her from seeking Japanese legal counsel, and created an artificial sense of urgency by emphasising the purported high demand for the Unit.

Unlawful means conspiracy

22 The Judge found that the appellant engaged in fraudulent behaviour as he knowingly made the representations, which he knew or ought to have known were false, to Serene and the respondent.

23 The Judge inferred that the appellant was working in combination with YC and Jonathan (although the respondent had only pleaded the involvement of YC as a conspirator in her pleadings). This was because the trio formed the key management team of the Infinity Group. The appellant acquiesced to YC's lies about the purported delays in the Development's construction and covered for him. He also sent messages to Jonathan warning that their collective scheme had been uncovered and maintained a friendly relationship with Jonathan despite claiming that he too was a victim of the fraud.

Issues to be determined

24 On appeal, from the parties' respective cases, the issues before this court are as follows:

Version No 1: 17 Jun 2026 (17:07 hrs)

25 *Fraudulent misrepresentation:*

(a) Did the appellant make the representations?

(i) Did the brochures represent that the Infinity Group owned the Land on freehold tenure at the time the brochures were sent?

(ii) Did the appellant have a duty to correct false representations up to the time the respondent made progress payments?

(b) Did the appellant know that the representations were false, or was he reckless as to their truth?

(c) Did the respondent rely on the representations?

26 *Negligent misstatement:*

(a) Were the respondent's pleadings defective?

27 *Unlawful means conspiracy:*

(a) Were the respondent's pleadings defective?

(b) Did the Judge err in finding that the appellant, Jonathan, and YC acted in combination with the intention of injuring the respondent?

Fraudulent misrepresentation

28 To make out a claim in fraudulent misrepresentation, it is well-established law that a claimant must prove the following elements cumulatively (*Broadley Construction Pte Ltd v Alacran Design Pte*

Version No 1: 17 Jun 2026 (17:07 hrs)

Ltd [2018] 2 SLR 110 at [26]):

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

(b) the representation must be made with the intention that it should be acted on by the claimant;

(c) the claimant had acted upon the false statement;

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

(e) the representation must be made with the knowledge that it is false or in the absence of any genuine belief that it is true ("Knowledge Element").

Parties' submissions

Appellant's submissions

29 In his submissions on appeal, the appellant focused on the element of reliance. He argued that the respondent did not rely on the representations because she acted with an independent mind, ignoring the advice of her friends, the appellant, and even her lawyer. She also relied on Serene, who independently verified information given to her, and did not accept everything the appellant said as accurate. Contrary to the Judge's findings, the appellant did not discourage the respondent from conducting due diligence or conjure a sense of artificial urgency to pressure the respondent into signing the Contract for Sale.

30 The appellant also argued that the Judge had wrongly found that the Ownership Representation was made out. The brochures did not state that the developer owned the Land *at the time the brochures were sent*, but represented the *future* ownership of the Land, *ie*, the developer would own the Land by the

Version No 1: 17 Jun 2026 (17:07 hrs)

time the sale and purchase of the Unit was to be completed.

31 Finally, the appellant submitted that the Knowledge Element was not made out. The Judge had wrongly drawn an adverse inference against the appellant even though he had disclosed all documents that he was obliged to disclose, and his disclosures were not drip-fed, as alleged by the respondent. Further, the appellant believed that the Infinity Group owned the Land because this was stated in the Bond Certificate. There was also no reason for him to doubt that construction on the Development would start soon.

Respondent's submissions

32 On the element of reliance, the respondent submitted that the misrepresentation need not be the sole or decisive factor inducing the representee to act, so long as it played a real and substantial role in doing so. Even if other factors also led the respondent to buy the Unit, inducement and reliance were still made out on the facts.

33 Responding to the appellant's argument that the brochure represented the future ownership of the Land, the respondent noted that the appellant did not put this to her or Serene. His own evidence contradicted this point, since he had said that he understood the brochures to mean that the developer already owned the Land on a freehold basis.

34 As for the Knowledge Element, the respondent submitted that the Judge did not err in drawing an adverse inference against the appellant. He had reached this finding not only based on the appellant's limited document disclosures, but also because of the appellant's shifting accounts as to how he obtained the Land S&P and Settlement Deed, his ability to make a specific request to Ms Jessica Yuen ("Jessica"), a former staff member of LC Capital,

Version No 1: 17 Jun 2026 (17:07 hrs)

for the Land S&P, and his position within the Infinity Group's key management team.

Did the appellant make the representations?

35 In our view, the Judge did not err in finding that the appellant made the Ownership Representation and the Construction Representation.

Ownership Representation

36 The brochures, read with the exchange of messages between the appellant and Serene, would have conveyed to a reasonable reader that the developer already owned the Land. In determining the meaning of a written representation, the court is not confined to adopting a literal reading of the statement made. Instead, it conducts the inquiry from the perspective of a reasonable person in the representee's position (*Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [71]). The representation in question – namely, that the tenure for units in the Development was freehold – was made in the context of a brochure marketing property *for purchase*. In this context, any reasonable reader would interpret statements about freehold tenure as meaning that the developer already owned the land on which the property was to be built because it is reasonable to expect that, at the point when units in a development are actively being sold, the developer has at least obtained the right to build the development. This interpretation of the references to freehold tenure is bolstered by the messages that the appellant sent to Serene. The appellant sent Serene a message stating, "Currently on schedule as I know the contract for ground breaking is signed". This message necessarily implied that the developer owned the Land because a person that does not own a plot of land cannot ordinarily begin to arrange for construction to begin on that plot.

Version No 1: 17 Jun 2026 (17:07 hrs)

37 The appellant argues against this interpretation by referring to K R Handley, *Spencer Bower, Turner and Handley Actionable Misrepresentation*, (Butterworths, 4th Ed, 2000) at para 53, which was cited with approval in *Thode Gerd Walter v Mintwell Industry Pte Ltd* [2009] SGHC 44 at [27]. That extract reads:

> The person selling or letting property impliedly represents that it exists, that he has power to sell or let it, as the case may be, and *in the case of an agreement to sell, that he intends it to be unencumbered on completion*; if he offers to let premises for offices he represents that planning permission for this use is available or not required. [emphasis added]

The appellant submits that the emphasised portion of the extract above stands for the proposition that, when a person represents that he can sell property, that representation only goes as far as stating that he will have title *at the time of completion*, and not at the time the representation was made. We cannot accept this argument. The extract does not stand for the proposition asserted by the appellant. Rather, the extract states that a "person selling … property impliedly represents that it exists [and] that he has power to sell … it". Ordinarily, a person only has power to sell that which he *currently* owns, meaning that a person who sells property impliedly represents that he owns it. The emphasised portion of the extract does not go as far as stating generally that a vendor who enters into an agreement to sell property need not have title in the property at the time he enters into the contract. At most, it suggests that the property may be encumbered by other interests or claims (*eg*, mortgages or leases) at the time of the contract, and the seller will remove these encumbrances on his property before the sale is completed. In any event, in the present case, there were no qualifications to the vendor's title with reference to any encumbrances that needed to be cleared.

38 The appellant also points to the Contract for Sale to support his argument

Version No 1: 17 Jun 2026 (17:07 hrs)

that no Ownership Representation was made. He noted that the Contract for Sale states "Type of Right after Transfer of Ownership of the Property" as "Freehold Ownership". According to the appellant, this meant that the respondent would only obtain freehold title at the time ownership was to be transferred to her, and so the Infinity Group need not have freehold title to the Land before that time. This argument does not assist the appellant. The fact that the respondent would only obtain title to the Unit on the completion date does not in any way suggest that the developer need not have title to the Land while it was actively marketing the Development for sale.

39 We thus conclude that the Judge did not err in finding that the Ownership Representation was a false representation that the developer owned the Land at the time the brochures were sent.

40 In any event, even if it was true that the appellant only represented that the developer would own the Land in the future, we find that the Judge did not err in holding that the representation was false. Representations of future actions or events may be recharacterised as statements implying (a) that the maker of the statement honestly believed that the action would be carried out or the event would happen in the future; or (b) that the maker of the statement had reasonable grounds for making such an assertion (*Deutsche Bank AG v Chang Tse Wen* [2013] 1 SLR 1310 at [96]). Such representations would be regarded as false if the representor had no honest belief in them. As we explain at [43]–[59] below, we think that the Judge did not err in finding that the appellant had no honest belief that the developer owned the Land or had the financial wherewithal to acquire the Land for the Development to be constructed. So, even taking the appellant's case at its highest, we affirm the Judge's finding that the appellant made a false representation in the form of the Ownership Representation.

Version No 1: 17 Jun 2026 (17:07 hrs)

Construction Representation

41 Turning to the Construction Representation, we agree with the Judge that this was a representation as to a future event, *ie*, that the construction of the Development would begin soon. As discussed above at [40], such a representation is regarded as false if the representor had no honest belief in it. Since the Judge rightly found that the appellant had no honest belief that the developer owned the Land or had financial capacity to own it, it follows that he also had no honest belief that construction on that Land would begin soon. We thus also affirm the Judge's finding that the appellant had made the Construction Representation, which was false.

Did the appellant have a duty to correct false representations up to the time the respondent made progress payments?

42 The discussion above suffices to dispose of this issue of whether the representations were made and whether they were false. However, we briefly address the Judge's finding that the appellant had a duty to correct the Ownership Representation even up to January 2020, when the Settlement Deed was executed (see Judgment at [57]). With respect, we are of the view that this finding was erroneous. In so far as the present claim is concerned, the appellant's duty to correct the misrepresentations, which were continuing ones, lasted only until the Contract for Sale was executed on 29 May 2019. A representor's duty to correct a continuing representation persists until the time the representation is relied on. The High Court noted in *Raiffeisen Zentralbank Osterreich AG v Archer Daniels Midland Co* [2007] 1 SLR(R) 196 ("*Raiffeisen*") at [37] (citing *Clerk & Lindsell on Torts* (Anthony M Dugdale & Michael A Jones gen eds) (Sweet & Maxwell, 19th Ed, 2006) at para 18–16):

> The tort of deceit is complete only when the representation is acted upon. Where there is an interval between the time when

Version No 1: 17 Jun 2026 (17:07 hrs)

> the representation is made and the time *when it is acted on*, and the representation relates to an existing state of things, the representation is deemed to be repeated throughout the interval. Hence if it is false to the maker's knowledge *at the time when it is relied on* there will be a deceit at that time.
>
> Thus if, *during the time between the making of the representation and the claimant acting upon it*, the defendant discovers it to be false or circumstances change to his knowledge so that it is now untrue, liability may be incurred.
>
> [emphasis added]

The question is therefore how and when the respondent relied on the representations. Her case, as pleaded in her Statement of Claim, and set out in her Opening Statement and later her Closing Submissions, is that she relied on the representations by *entering into the Contract for Sale on 29 May 2019*. Although she suggested in her affidavit of evidence-in-chief ("AEIC") that she had also relied on the appellant's representations by *making the progress payments*, she clarified at trial that the appellant's representations did not induce her to make the progress payments, since she was "obliged" to make those payments under the Contract for Sale. Accordingly, the respondent's act of reliance occurred on 29 May 2019, and so, for the purposes of her claim for fraudulent misrepresentation, the appellant's duty to correct the misrepresentations ended at that time.

Did the appellant know that the representations were false, or was he reckless as to their truth?

43 The next issue is whether the Judge had erred in finding that the Knowledge Element was made out. The Judge found that the appellant knew that the representations were false or was, at minimum, reckless as to their truth. This finding was founded on the following three bases (Judgment at [78]):

(a) First, the appellant was a member of the Infinity Group's key

Version No 1: 17 Jun 2026 (17:07 hrs)

management team (Judgment at [79]–[86]).

(b) Second, the appellant had longstanding knowledge of the Land S&P and Settlement Deed – documents which showed that the Infinity Group did not own the Land (Judgment at [87]–[91]).

(c) Third, the appellant's conduct following the respondent's discovery of the fraud suggested that he was collaborating with YC and Jonathan in perpetrating the fraudulent scheme regarding the Development (Judgment at [98]–[104]).

Was the appellant part of the Infinity Group's key management team?

44 We first consider the Judge's finding that the appellant was a member of the Infinity Group's key management team, together with YC and Jonathan. Contrary to the appellant's submissions, we do not agree that the Judge had erred in making this finding.

(a) Although the appellant denied being a director of the entities under the Infinity Group, the group held him out as a part of its key management team in its marketing materials. Internet archives of Infinity Capital's website from 22 October 2018 show that the appellant was expressly described in these publicly available documents as a member of its "Key Management Team" together with Jonathan and YC. Screenshots of the websites of LC Capital and Infinity Capital taken in 2023 state that the appellant was a "Non-Executive Director" of both companies, which we accept is more equivocal as to his precise role in these companies. While the appellant claimed that company and director searches conducted on 31 August 2023 and 25 September 2023 do not reveal that the appellant was a director of LC Capital or Infinity

Version No 1: 17 Jun 2026 (17:07 hrs)

Capital, these searches are not determinative as to whether the appellant was part of the Infinity Group's key management team at the material time. Infinity Capital was struck off the register in the Cayman Islands on 29 July 2022, and so its corporate records were unavailable for public inspection. The appellant accepted at trial that it was possible that he was registered as a director of Infinity Capital. Moreover, these searches were conducted several years after the appellant made the representations and, in any event, the appellant could have been involved in the companies' affairs without being formally registered as a director.

(b) The Judge's finding that the appellant was part of the key management team is supported by the appellant's own statement to Serene that he was involved at the "company level, [as] investor and advisor". Contrary to the appellant's arguments, this way of describing himself does not suggest that he was merely an external advisor with no insight into the companies' affairs. His representation that he was involved at the "company level" instead acknowledges that he worked in some capacity in the company. On the appellant's own evidence, he had advised the Infinity Group on fundraising for the Development, as well as for the Infinity Group's other projects, Tellus Niseko and Tellus Villas.

45 Given the evidence set out above, we do not think that the Judge's finding that the appellant was part of the Infinity Group's key management team can be said to be against the weight of the evidence or obviously wrong. In the appellant's submissions, he focused on the fact that (a) his chosen descriptors as an "investor" and "advisor" connoted an external capacity; (b) Serene had told him over WhatsApp, "As a friend, I know [you] don't deal with it"; and

Version No 1: 17 Jun 2026 (17:07 hrs)

(c) he did not have "pricing authority" because he had to check with the key management team before communicating certain information on the price of the Unit to the respondent. But these pieces of evidence are equivocal at best and must be weighed against the documentary evidence from the Infinity Group companies expressly holding the appellant out as a member of the "Key Management Team". That documentary evidence is probative of the appellant's role in the Infinity Group because it is from the Infinity Group itself and it states the appellant's role in clear and unambiguous terms.

46 More importantly, it is the appellant who is in the best position to give evidence as to his precise role in the Infinity Group, and how involved he was in the various projects of the Infinity Group, including the Development. However, the appellant chose to be especially reticent about his role and functions in the Infinity Group in the AEICs that he filed in the legal proceedings below. It is not disputed that the appellant lent a sizeable amount of money to the Infinity Group during the period of 2018 to 2020. He held an equity stake in LC Capital. By his own admission, he was advising the Infinity Group on the raising of funds. He also gave evidence that his family members had invested in Tellus Niseko, another project developed by the Infinity Group. With all this evidence, we think that it was plainly incumbent on the appellant to explain what exactly his role or function was in the Infinity Group. However, he failed to give any credible evidence of this, which led to the Judge inferring, based on the documentary evidence, that the appellant was indeed part of the key management team of the group. We reject the appellant's submission that the approach taken by the Judge was wrong. We elaborate more on this point below when we discuss the issue of the adverse inferences drawn by the Judge.

Version No 1: 17 Jun 2026 (17:07 hrs)

Did the Judge err in drawing adverse inferences against the appellant?

47 The Judge's findings in respect of the degree of the appellant's knowledge are based in large part on adverse inferences that he drew from the evidence. In finding that the appellant knew about the Land S&P and Settlement Deed, the Judge drew an adverse inference against the appellant because of his shifting accounts at the trial on how he got hold of the two documents (see Judgment at [87]–[90]). Similarly, in finding that the appellant was collaborating with YC and Jonathan in the fraudulent scheme, the Judge drew an adverse inference against the appellant because he failed to disclose communications in which he had allegedly confronted YC and Jonathan about their deception, despite claiming that such correspondence existed (see Judgment at [98]–[102]).

48 One critical function of a trial judge is to properly assess the evidence adduced and make the findings of fact that are necessary for the determination of the dispute between the parties. In assessing the evidence, the judge may prefer the evidence of one witness over another when each gives conflicting versions of events. The credibility and quality of the testimony, the consistency of his evidence with the undisputed facts, the documentary evidence and that of other witnesses, and the inherent probability of his evidence, amongst other things, will all play a role in the judge's findings of fact. There will often be occasion for the judge to draw inferences from the primary facts that he has already found. The drawing of adverse inferences is simply another facet of the exercise of finding the facts. The difference with drawing inferences from primary facts is that the trial judge is drawing inferences from the absence of certain evidence that could have been adduced in court. In so doing, the judge is simply doing something entirely commonsensical by determining that certain available evidence was not produced by a witness or a party because that

Version No 1: 17 Jun 2026 (17:07 hrs)

evidence, if brought to court, would make it less likely for the court to accept the version of events that the witness or party wishes the court to accept. That process of reasoning is described as the drawing of adverse inferences.

49 Section 116(*g*) of the Evidence Act 1893 (2020 Rev Ed) encapsulates this power of the court to draw an adverse inference against a party that could have, but failed to, produce certain evidence:

> **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[.]

The principles governing the drawing of adverse inferences are as follows (*Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 at [20]):

> (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.
>
> (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

Version No 1: 17 Jun 2026 (17:07 hrs)

> 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.

Provided the requirements for drawing an adverse inference are satisfied, the court may infer "any fact" which is likely to have happened, including the most serious or damning inference against a party (*Chan Pik Sun v Wan Hoe Keet* [2024] 1 SLR 893 at [126]).

50 After considering the evidence on the record, our view is that the Judge was entitled to draw an adverse inference against the appellant that he knew, at the material time, that the Infinity Group did not own the Land.

51 There were serious omissions in the appellant's AEIC and supplementary AEIC that called for a satisfactory explanation.

(a) First, as we have pointed out above, the appellant failed to explain the nature and degree of his involvement with the Infinity Group. The appellant's evidence was stated in the negative – he merely claimed that he was never an employee or director of the Infinity Group entities. This was obviously not true since he was a non-executive director of LC Capital and Infinity Capital. More significantly, the appellant did not state with any clarity what his involvement with the Infinity Group was. He was not a mere bystander. He admitted to lending over S$680,000 to LC Capital and arranging for a bond issuance for Infinity Capital (which he and his clients and friends invested in), in addition to further amounts he lent to LC Capital by way of the Second Loan in 2020. He had a WhatsApp group chat with Jonathan and YC – who were key management personnel in the Infinity Group – to discuss

Version No 1: 17 Jun 2026 (17:07 hrs)

"business" matters concerning LC Capital. Significantly, he advised the Infinity Group on fundraising for their various developments and would have had the relevant knowledge on their financial position in order to have in mind the target amount of funds to raise for the developments. He communicated an exclusive pre-launch price for the Unit to Serene and answered queries about the Development. Taken together, these facts suggested that the appellant was involved with the Infinity Group's operations to a high degree, including having knowledge as to whether the group had managed to successfully acquire the Land on which the Development was to be built. These facts called for an explanation by the appellant since his defence was that he had no knowledge whatsoever that the Land was not owned by the Infinity Group at the time the representations were made. But the appellant never gave such explanations in his AEICs. He chose not to explain how he was related to or involved with the Infinity Group, apart from forswearing any connection with the Infinity Group as an employee or director in an evident effort to distance himself from the Infinity Group.

(b) Second, the appellant failed to explain how and when he came to know that the Infinity Group never owned the Land. This was a critical piece of information which the appellant would reasonably be expected to provide. His defence was that he genuinely believed that the Infinity Group owned the Land, and he only found out the truth *after* the respondent entered into the Contract for Sale in May 2019. Hence, he claimed to be a victim himself of false statements told to him by the Infinity Group. To mount such a defence, it is patently obvious that the appellant must explain when and how he discovered the truth. The silence in the appellant's AEICs on this point was deafening. He provided no details in his AEICs about when and how he discovered that

Version No 1: 17 Jun 2026 (17:07 hrs)

the Infinity Group did not own the Land. He did not reveal any details about how he reacted to this discovery of this fact, which no doubt would have taken him by surprise if his account is to be believed. Nor did he disclose his communications with Jonathan and YC in which he allegedly confronted them about being lied to. He did not even mention what steps, if any, he took to try and recover the sums owed by the Infinity Group to him and his family (who also invested in one of the Infinity Group's developments), let alone whether he was successful in any such attempts. In fact, he did not mention that he had taken any such steps at all in his AEICs.

(c) The appellant tried to fill some of these gaps in his AEICs at the trial when he was cross-examined. He testified that he found out the Infinity Group did not own the Land only in mid-2022, after he began looking into whether the group owned the land for all their developments. He claimed that he started looking into this because LC Capital failed to return certain moneys to investors. The appellant also testified that he had engaged lawyers in the Cayman Islands, Hong Kong, and Japan, and began court proceedings in Hong Kong and arbitral proceedings in Singapore against LC Capital. We think that the appellant's attempt to explain himself could not remedy the situation. As will be discussed in [52] below, he disclosed little or no evidence to support his testimony that he discovered the fraud in mid-2022 or that he took robust legal action to recover his losses.

52 Apart from the omissions in his AEICs, the appellant's disclosure of documentary evidence was woefully inadequate and raised questions about his evidence that he could not adequately explain under cross-examination. As mentioned above, the appellant's AEICs did not include critical evidence or

Version No 1: 17 Jun 2026 (17:07 hrs)

exhibit the documentary evidence that would purportedly support his claims. Certain key pieces of documentary evidence were only produced at the trial following production requests by the respondent. But even these disclosures were unsatisfactory. A review of the record of proceedings shows the following.

(a) On 8 April 2025 (the first day of trial), the respondent referred to a WhatsApp message that the appellant had produced. This message was sent by Jonathan to the appellant on 31 March 2020, and it read as follows:

> Now I'm really worried because I just had a conversation with [YC], if we don't ground break which means this year can't complete. The buyers instead of paying 25% can look to pull out and seek refunds of earlier payments.

The appellant had relied on this message in his AEIC purportedly to give the impression that he believed, even as of March 2020, that the Development was progressing but some unexpected delays were met in starting construction. Counsel for the respondent, Mr Jimmy Yim SC ("Mr Yim"), pointed out that the appellant had not produced any correspondence before or after this message to give the context behind it. So, Mr Yim sought disclosure of the WhatsApp messages between the appellant and Jonathan which came before and after this message. The Judge ordered the production of these messages. That same day, the appellant produced the WhatsApp messages he had exchanged with Jonathan from 30 March to 1 April 2020. It was later revealed at the trial that the message reproduced above related to Tellus Villas, and not the Development.

(b) On 10 April 2025 (the third day of the trial), Mr Yim sought

Version No 1: 17 Jun 2026 (17:07 hrs)

disclosure of WhatsApp messages between the appellant and Jonathan or YC in respect of the Development, Tellus Niseko, and Tellus Villas after May 2019 (this being the earliest date from which the appellant claimed to still have his WhatsApp messages). The next day, the appellant produced *selected* messages he had exchanged with Jonathan (between 24 June 2019 and 5 June 2023) and YC (between 4 December 2019 and 9 March 2022). These messages did not deal with how and when the appellant discovered the truth about the Land and whether he confronted YC or Jonathan about it.

(c) Also on 10 April 2025, Mr Yim cross-examined the appellant on whether he had asked his Hong Kong lawyers if he should file a police report. The appellant answered that he had asked his lawyers what he should do, and they said "they will wait and give [him] their advice". Mr Yim sought disclosure of this specific exchange. The Judge ordered the production of these messages. On 21 May 2025, the appellant's solicitors sent a letter to the respondent's solicitors stating that the appellant was "unable to locate any documents in the exact terms as envisaged" by the specific production order, but the appellant nonetheless voluntarily produced certain messages he had exchanged with his Hong Kong lawyers.

(d) Also, on 21 May 2025, which was five days before the second tranche of the trial, the appellant voluntarily produced the Land S&P and Settlement Deed. These disclosures were not accompanied by an affidavit stating when and how he had obtained the documents. In cross-examination, the appellant said that he had received these documents on 20 or 21 May 2025 from Jessica, a former employee of LC Capital, whom he described as being a "translator and [in] sales". Website

Version No 1: 17 Jun 2026 (17:07 hrs)

screenshots produced by the respondent showed, however, that Jessica was, at the time of the trial, an executive director in a company Jonathan had started called "Rongyao".

(e) While cross-examining the appellant on how he had obtained the Land S&P and Settlement Deed, Mr Yim sought disclosure of the correspondence between the appellant and Jessica. On 27 May 2025 (the second day of the second tranche of the trial), the appellant voluntarily disclosed the emails through which he had received the Land S&P and Settlement Deed.

(f) In his oral evidence, the appellant prevaricated on whether he had exchanged messages with Jessica on WeChat. As such, Mr Yim asked to see his WeChat exchanges with Jessica. The Judge ordered the appellant to show these exchanges, and he complied. In the course of cross-examination, the appellant also testified that Jessica had called him, and so the Judge directed him to check his phone records. These phone records did not show any call from Jessica. The appellant explained this by saying that Jessica had called him on a different phone. The phone records did, however, show that Jonathan had called the appellant on 20 May 2025.

53 Instead of supporting his defence, the appellant's selectively limited disclosures raised even more questions about the extent of his involvement with the Development and the Infinity Group. For instance, the appellant testified that he had a WhatsApp group chat with Jonathan and YC to discuss LC Capital's business matters. Taken on its own, the fact that the appellant was part of a group for discussing the Infinity Group's business matters with its key management personnel would suggest that he was also part of the group's key

Version No 1: 17 Jun 2026 (17:07 hrs)

management team. This called for an explanation from the appellant, since he denied that he had any such role. Given the circumstances, it was surely incumbent on the appellant to produce messages from that group chat to counter the impression that he was involved in the management of LC Capital. Yet the appellant inexplicably never disclosed any of those messages despite insisting that he only had a peripheral role, thereby raising unanswered concerns about the true extent of his involvement with the Infinity Group and the Development.

54 Likewise, the appellant claimed that there were WhatsApp messages in which he had confronted Jonathan and YC about the fraud. Such messages, if produced, would have supported his claim that he laboured under the misconception that the Infinity Group owned the Land. Yet, despite having disclosed certain messages with the key management team of the Infinity Group on no fewer than three occasions, the appellant failed to produce a single message in which he confronted YC or Jonathan about the fraud. On the contrary, the disclosed messages showed the appellant working with Jonathan to manage the fallout from the scheme being uncovered. In this regard, after Serene had alerted the appellant that the respondent had discovered that the Infinity Group never owned the Land, the appellant notified Jonathan of this and urged him to look into "settling" it:

> Bro , looks like the buyer of the [Unit] 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[.]

If the appellant genuinely did not know that the Infinity Group did not own the Land, one would have expected him to have expressed some surprise or at least to have sought some clarification from Jonathan upon learning that the respondent had "found that the plot does not even belong to [I]nfinity". After

Version No 1: 17 Jun 2026 (17:07 hrs)

all, the appellant's evidence was that he had been "cheated" by Jonathan when he learnt that the Land was not even owned by the Infinity Group. Yet, it is telling that his message only expressed his concern about YC potentially getting into trouble while urging Jonathan to "look into settling this as a priority". In a later message, the appellant repeated the update and made other remarks which suggested that he was covering for Jonathan and taking his side. Indeed, the appellant himself admitted that, in these messages, he was "aligning" himself with Jonathan and "helping to protect him":

> … Both set of lawyers found that the land plot is not held by any … LC [Capital] or [Infinity Group] entities. … *I only can answer that the intention to is there [but] due to the pandemic it may be delayed and not completed yet!*
>
> … For the buyer of the [Unit] I am not sure about the S&P but since you got it covered, *I will like to think that you have some form of recourse.*
>
> …
>
> [emphasis added]

The appellant's failure to produce any messages, which he said he possessed and which would purportedly corroborate his claim that he was upset and had confronted Jonathan and YC about the false statements made to him about the ownership of the Land, cast serious doubts about the true nature of his involvement in the scheme, especially when he had also disclosed messages in which his sole "priority" was to discuss with Jonathan and YC on managing the fallout from the scheme being uncovered.

55 Similarly, the appellant's disclosures of his correspondence with Jessica raised questions about his professed lack of knowledge of the ownership of the Land. These questions were further amplified by his evasive and inconsistent evidence in cross-examination.

Version No 1: 17 Jun 2026 (17:07 hrs)

(a) The appellant first testified that he had called Jessica on WeChat to ask if she had any land documents regarding the Development, and he saw the Land S&P and Settlement Deed for the first time when she sent them over on 20 or 21 May 2025. However, his WeChat records revealed that no such call was made.

(b) The appellant later changed his evidence and asserted instead that it was Jessica who had called him "out of the blue", but his phone records did not show that such a call occurred. He sought to explain this discrepancy by claiming that Jessica called him on his "office phone". Moreover, he could not explain why Jessica would call him about the Settlement Deed without any prompting.

(c) The appellant's phone records showed that Jonathan had called him on 20 May 2025 at 10.59am. Less than half an hour later, Jessica sent the appellant a message asking for his email address, before sending him the Settlement Deed soon after. The appellant later sent Jessica a message in which he requested for the Land S&P by name.

Far from proving that the appellant had no knowledge of the Land S&P and Settlement Deed before the trial, the belatedly disclosed correspondence suggested that he had known of their existence beforehand and had contacted Jonathan or Jessica to obtain them for the trial. His failure to candidly and consistently explain when and how he knew of the Land S&P and Settlement Deed raised questions as to his knowledge of the ownership of the Land, and how involved he was with the Development and the Infinity Group.

56 Given the glaring omissions in the appellant's AEICs, his failure to disclose evidence that could have supported his defence, and his evasive and

Version No 1: 17 Jun 2026 (17:07 hrs)

inconsistent testimony in cross-examination, we do not think that the Judge's drawing of adverse inferences against the appellant was unjustified. The evidence that was disclosed demanded a clear and full explanation of the appellant's involvement in the Development and what he knew about the ownership of the Land at various points in time. But the appellant failed to provide any clear or coherent explanation. The most telling omission was his failure to even explain when and how he came to be aware, as he alleged, that the ownership of the Land was not with the Infinity Group. His failure to do so severely undermined his defence that he believed that the Infinity Group owned the Land at the time he sent the brochures. Accordingly, the Judge cannot be said to have erred in finding that the appellant knew the Infinity Group did not own the Land in the period of 31 January 2019 (when the appellant sent the first brochure to Serene) to 29 May 2019 (when the Contract for Sale was executed).

57 We also think that the Judge was right in drawing an adverse inference that the appellant had collaborated with Jonathan and YC on the Development, in that he was working closely with them in raising funds for the project, and thus ought to have known that the Infinity Group did not own the Land at the time he made the material representations to the respondent. Having said that, we do not think that the evidence goes as far as allowing an inference to be drawn that Jonathan and YC had intended from the outset to carry out a scheme to sell units in a development which they never had any intention to build, or, even if there was such an intent, that the appellant was privy to or knowingly participated in such a fraudulent scheme (see also [84] below). However, what is key to the claim in fraudulent misrepresentation in this case is the appellant's lack of honest belief in the Ownership Representation and the Construction Representation during the material period of 31 January to 29 May 2019. It is not so much whether there was an intent to defraud by selling units that were

Version No 1: 17 Jun 2026 (17:07 hrs)

never intended to be built right from the very inception of the project, and whether the appellant shared such an intent to defraud.

58 In our view, the Judge was also justified in finding, in the alternative, that the appellant was reckless as to the truth of the Ownership Representation. The Judge did not err in finding that the appellant had a strong incentive and ample opportunity to verify the Infinity Group's claim of land ownership. As mentioned above, the appellant had lent S$680,000 to LC Capital under the First Loan and invested A$200,000 in Infinity Capital under the bond issuance (see [5] above). The Infinity Group defaulted on the First Loan on 9 April 2018 and the first coupon payment under the Bond Certificate on 1 February 2019. These defaults must have alerted the appellant to the fact that the Infinity Group was in some financial difficulty. The appellant was in a position to find out about the ownership of the Land (which was the security for the Bond Certificate). He testified that he had advised the Infinity Group on raising capital for their projects by way of loans and bonds, and the capital raised would be used to buy land for the developments. Accordingly, he would have been told of the target amount he had to raise for the Development, and would have known that the target had not been met, such that the Infinity Group could not meet its payment for the purchase price of the Land. This was in fact the case because on 31 October 2018, the Infinity Group had already defaulted in payment of the final instalment of the purchase price. Apart from being able to find out about the ownership of the Land, the appellant had every incentive to do so. These defaults jeopardised a sizeable personal investment he had made. Moreover, several of the other bondholders were clients and friends whom the appellant had convinced to subscribe to the bonds. The appellant's own evidence was that he had to "answer to" them and would be ashamed and angry if they were cheated of their moneys. The appellant had a clear incentive and

Version No 1: 17 Jun 2026 (17:07 hrs)

opportunity to discover that the Infinity Group did not own the Land, but he chose not to ask Jonathan and YC any questions about this. We are therefore of the view that the Judge was right in finding that, at the very least, the appellant was reckless as to the truth of his representation to the respondent that the Infinity Group owned the Land.

59 If the appellant knew that the Ownership Representation was false or was reckless as to its truth, then he would also not have had any honest belief that the Construction Representation was true. The Judge therefore did not err in finding that the Knowledge Element was made out in respect of both representations.

Did the respondent rely on the representations?

60 The final issue that is in contention for the claim for fraudulent misrepresentation is whether the respondent relied on the representations. We affirm the Judge's finding that this element was made out.

61 A representation that is material gives rise to a rebuttable presumption of fact that the representee was induced to enter into the contract by it (see *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) ("*The Law of Contract*") at para 11.093). A material representation is "one that would affect a normal and reasonable person" (*The Law of Contract* at para 11.093). In this case, the Judge rightly considered the representations to be "highly material as they went to the very heart of the Development's viability" (Judgment at [65]), given that the Ownership Representation and Construction Representation affected the fundamental question of whether the Development would even go ahead and be completed as promised. Accordingly, the element of reliance would be made out as a

Version No 1: 17 Jun 2026 (17:07 hrs)

matter of course, unless the appellant could point to evidence disproving such reliance.

62 The appellant argued at length that the Judge was wrong in finding that he had induced the respondent to purchase the Unit and that the respondent had relied on the representations. However, there was clear evidence that the appellant made the representations to induce the respondent into buying the Unit, and that the respondent relied on the representations when she signed the Contract for Sale. The respondent stated in her first AEIC that she relied on the appellant's representations when she decided to purchase the Unit. And the appellant admitted in cross-examination that he had passed the brochures to the respondent expecting her to rely on them.

63 The appellant argued that the respondent did not rely on the representations because she had an "independent mind" when making decisions, and that she relied on Serene's representations instead of the appellant's. But to make out the element of reliance, the representation need not be "decisive … in inducing [the representee] to act", so long as it "plays a real and substantial part" in doing so (*Raiffeisen* at [56]). The Judge found that the representations played a "real and substantial part" in the respondent's decision to buy the Unit because they related to fundamental facts about the Development that would have been highly relevant to any purchaser of a unit in the Development. In seeking to buy the Unit, the respondent must have believed that the representations were true. If she did not believe the representations, she would have had serious doubts about whether the Development would even be built, and so it would have been highly unlikely that she would have proceeded to buy the Unit. Again, the fact that the respondent relied on Serene does not preclude her reliance on the representations made by the appellant (see *Raiffeisen* at [55]). And while Serene proffered her own advice at times in her capacity as the

Version No 1: 17 Jun 2026 (17:07 hrs)

respondent's agent, she also passed on the information provided by the appellant directly when they related to details about the Development (*eg*, by forwarding the brochures). Accordingly, the appellant's argument that the respondent exercised independent judgment and accepted advice from Serene does not displace the presumption of inducement arising from the materiality of the representations. Nor does it outweigh the clear evidence of the respondent's reliance.

64 Counsel for the appellant, Mr Jason Chan SC ("Mr Chan"), did make arguments about certain specific findings by the Judge on the issue of reliance which we found to be persuasive. While we do accept that some of the Judge's findings may be problematic, the rest of the available evidence, when viewed holistically, does support the Judge's finding of reliance.

(a) We are of the view that the evidence did not clearly support the Judge's finding that the appellant had dissuaded the respondent not to use a Japanese lawyer. When Serene informed the appellant that the respondent had been advised to engage a Japanese lawyer to conduct a title search, the appellant replied, "Sure, [please] go ahead then". Whatever the appellant's motivations may have been, the evidence does not demonstrate that he had sought to convince Serene that the respondent ought not to engage a Japanese lawyer. Later, Serene discussed with the appellant the possibility of the respondent engaging Yoshida, a Niseko lawyer. The appellant raised concerns about Yoshida's engagement due to the latter's association with Niseko property agents. Crucially, however, after the appellant raised these concerns with Serene, she mentioned the alternative of engaging a Sapporo lawyer to the respondent. A finding that the appellant actively dissuaded the respondent from engaging a Japanese lawyer is thus not

Version No 1: 17 Jun 2026 (17:07 hrs)

borne out by the evidence. As Mr Chan argued, while the appellant may have opined that a lawyer was not needed and raised concerns about the engagement of a *particular* lawyer, he never objected to the idea of the respondent engaging a Japanese lawyer to conduct a title search.

(b) Likewise, the evidence does not clearly support the Judge's finding that the appellant conjured an artificial sense of urgency to pressure the respondent into quickly signing the Contract for Sale. The evidential basis for the Judge's finding was a single message by the appellant, in which he said, "Your client unit very popular! Two person ask for it! [*sic*]" (see Judgment at [69]). We find that this sole message is clearly insufficient to prove that the appellant was pressuring the respondent to quickly purchase the Unit. As Mr Chan argued, the appellant's intentions cannot be readily discerned from that single message. It is just as likely that the appellant sent the message to update Serene on the sales performance of the Development at the launch. With respect, the Judge also erred in finding that the appellant's message was successful in causing the respondent to enter into the Commitment Agreement on 28 May 2019 and execute the Contract for Sale on 29 May 2019. By 25 May 2019, before the appellant sent the message on 26 May 2019, the respondent had already sent Serene WhatsApp messages saying that she would sign the Commitment Agreement together with the Contract for Sale on 27 May 2019. The respondent eventually executed the finalised version of the Commitment Agreement on 28 May 2019, after signing an earlier version of it on 27 May 2019.

Despite our disagreement with the Judge on these discrete findings of fact, we affirm his finding that reliance was made out. The representations were highly material and the evidence showed that the respondent signed the Contract for

Version No 1: 17 Jun 2026 (17:07 hrs)

Sale believing that the developer owned the Land and that the Development was to be constructed soon.

65 Accordingly, we affirm the Judge's decision that the tort of fraudulent misrepresentation was made out.

Negligent misstatement

66 We proceed to discuss the claim for negligent misstatement. The elements of this cause of action are as follows (*IM Skaugen SE v MAN Diesel & Turbo SE* [2018] SGHC 123 at [121]):

(a) the representor must have made a false statement of fact;

(b) the representation induced actual reliance;

(c) the representor must owe the representee a duty of care;

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

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

Parties' submissions

Appellant's submissions

67 The appellant submitted that this claim must fail because the respondent's pleadings were defective. The respondent failed to plead the basis for the appellant's duty of care, the content of such duty, and how the appellant had fallen short of the duty. She also did not plead any voluntary assumption of responsibility by the appellant.

68 Next, the appellant argued that the Judge had erred in finding that the appellant owed and breached a duty of care. The appellant was not an agent or

Version No 1: 17 Jun 2026 (17:07 hrs)

advisor of the respondent – he was her counterparty in an arm's length transaction.

69 Finally, the appellant contended that the Judge had erred in finding that the respondent's failure to conduct due diligence did not break the chain of causation or amount to contributory negligence.

Respondent's submissions

70 The respondent argued that she had adequately pleaded her case because she relied on the pleaded facts for her claim for fraudulent misrepresentation to support her claim for negligent misstatement.

71 On the issue of the appellant's duty of care, the respondent submitted that a representor marketing a property can owe a duty of care to the buyer, even if the representor is a counterparty instead of the buyer's agent.

72 As for causation and contributory negligence, the respondent contended that the respondent's failure to conduct due diligence did not break the chain of causation because the appellant actively dissuaded the respondent from conducting due diligence and the truth regarding the appellant's representations was not discernible from documents available to the respondent or Serene.

Were the respondent's pleadings defective?

73 The Judge rightly held that the respondent's pleadings on negligent misstatement were defective. But, with respect, he erred in holding that the claim could be pursued despite the defective pleadings.

74 In a statement of claim, the "material facts supporting each element of a legal claim" must be pleaded, although the particular legal result flowing from

Version No 1: 17 Jun 2026 (17:07 hrs)

those material facts need not be pleaded (*How Weng Fan v Sengkang Town Council* [2023] 2 SLR 235 ("*How Weng Fan*") at [19]). In this case, the respondent did not plead the material facts supporting the elements of duty of care and breach (see *How Weng Fan* at [32]). To establish a duty of care in respect of loss arising from reliance on statements made by the defendant to the claimant, when there is no pre-existing contractual relationship between the parties, the claimant must typically plead how the defendant's conduct showed a voluntary assumption of responsibility to the claimant, and hence how there is sufficient legal proximity between them. More importantly, the claimant must plead why there was a breach of the duty of care, in that, the defendant must be put on notice of the claimant's claim that certain enumerated steps ought to have been taken by the defendant to meet his standard of care and those steps were not taken. All these were absent in the respondent's pleadings. The only reference to this cause of action was a single line stating, "the Claimant will rely on negligent misstatement", without any specific pleading as to how the duty of care arose, what the standard of care expected of the appellant was, or how the duty of care was breached.

75 Even where pleadings are defective, the court may permit an unpleaded point to be raised and determined if "there is no irreparable prejudice caused to the other party in the trial that cannot be compensated by costs" (*How Weng Fan* at [20]). In this case, we are concerned that the appellant was prejudiced by not knowing the case he had to meet at the trial below. Crucially, there were no particulars about what standard of care was expected of him. Without notice of this, the appellant was prejudiced in his defence because he could not prove how his conduct had met the standard expected of him.

76 Accordingly, the Judge had erred in finding that the claim of negligent misstatement was made out despite the inadequately pleaded case. We therefore

Version No 1: 17 Jun 2026 (17:07 hrs)

set aside the Judge's decision on negligent misstatement on the ground that the pleadings were defective. Given our decision on this pleading issue, it is unnecessary for us to address the merits of this head of claim.

Unlawful means conspiracy

77 We turn to the final claim for unlawful means conspiracy. The elements of this cause of action are as follows (*EFT Holdings, Inc v Marinteknik Shipbuilders (S) Pte Ltd* [2014] 1 SLR 860 ("*EFT Holdings*") at [112]):

(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 claimant by those acts;

(c) the acts were unlawful;

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

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

78 At the outset, it was obvious that this claim was not seriously pursued by the respondent. Hardly any questions were asked in the cross-examination of the appellant regarding whether there was an agreement between him, Jonathan, and YC. Further, the respondent's Closing Submissions barely addressed this claim, devoting about two pages out of 80 to this claim.

Parties' submissions

79 The appellant's chief argument was that the respondent's pleadings were defective. She had initially pleaded that the alleged conspiracy involved the appellant and YC, but she belatedly alleged in her Closing Submissions that the

Version No 1: 17 Jun 2026 (17:07 hrs)

conspiracy also involved Jonathan. In any event, the appellant argued that there was no evidence of any combination.

80 The respondent submitted that it was inconsequential that her pleadings did not allege that Jonathan was a conspirator. The Judge's decision should be understood as deciding in favour of the respondent on her pleaded case that the appellant and YC agreed to intentionally cause damage to her.

Were the respondent's pleadings defective?

81 We agree with the appellant that the respondent's pleadings on unlawful means conspiracy were defective. It is axiomatic that a claimant must plead the material facts that support each element of a legal claim (*How Weng Fan* at [19]). Thus, the respondent was required to plead the material facts showing that there was a combination between the appellant, Jonathan, and YC, and that the impugned acts were done in furtherance of an agreement between these three to intentionally injure the respondent. This entails "pleading the role of each conspirator and his or her participation, *ie*, what he or she did (or omitted to do) as part of the conspiracy" (*Kapital Fund SPC v Lee Tze Wee Andrew* [2024] SGHC 289 at [81]). The respondent's pleaded case, as stated in her Statement of Claim and Opening Statement, was that the conspiracy only involved the appellant and YC. But in her Closing Submissions, she changed her case to one in which the combination comprised the appellant, YC, and Jonathan. The pleadings were thus inconsistent with the final position taken by the respondent. The appellant was prejudiced because he did not have the opportunity to challenge Jonathan's alleged involvement in the conspiracy, given that this fact was only raised belatedly during the trial.

82 Accordingly, our view is that the Judge should not have found that the

Version No 1: 17 Jun 2026 (17:07 hrs)

claim for unlawful means conspiracy was made out given that the respondent's position at the trial departed materially from her pleaded case, and there was no attempt by the respondent to amend her pleadings.

Did the Judge err in finding that the appellant, Jonathan, and YC acted in combination with the intention of injuring the respondent?

83 Leaving aside the defective pleadings, there was a more fundamental problem with the respondent's claim for unlawful means conspiracy. We take the view that there was insufficient evidence of any combination or agreement between the appellant, YC, and Jonathan to injure the respondent by the making of the representations. In fact, a finding that such a combination even existed would be contrary to the respondent's own case. At trial, the respondent put her case to the appellant that the scheme between Jonathan and the appellant was as follows – the appellant would find buyers for the Development who would pay the developer their deposits, and the developer would use these moneys to buy the Land and complete the Development. If this was so, the alleged conspirators of the scheme would not have had the requisite intention to injure the respondent because they would not have intended for buyers like the respondent to lose their money, even if this might have been the outcome of their scheme if, for example, insufficient money was raised to acquire the Land or complete the construction. To make out the element of a shared intention to injure the claimant, "[i]t is not sufficient that harm to the claimant would be a likely, or probable or even inevitable consequence of the defendant's conduct. Injury to the claimant must have been intended as a means to an end or as an end in itself" (*EFT Holdings* at [101]). The respondent's case was not that the appellant and his alleged co-conspirators had intended for the respondent to lose any money, whether as an end or a means to an end. Her case was that they had intended to complete the Development, and this intended purpose did not necessitate buyers

Version No 1: 17 Jun 2026 (17:07 hrs)

losing their money; rather, it entailed the buyers ultimately receiving just what they paid for. So, even taking the respondent's case at its highest, the element of a shared intention to injure the respondent was not made out.

84 The evidence did not prove such a shared intention either. The WhatsApp messages produced at trial went no further than suggesting that the appellant, YC, and Jonathan collaborated on the Development, and that the appellant sought to manage the fallout from the respondent discovering that the Infinity Group did not own the Land. It is one thing to say that the appellant had made representations to the respondent that he knew to be false, or for which he was reckless as to their truth, but quite another to say that the appellant, Jonathan, and YC had agreed at the outset to act in concert to cause injury to the respondent. The latter had simply not been established on the evidence before the court.

(a) There was no evidence that the appellant and his alleged co-conspirators intended to cause the respondent to lose money. While the evidence showed that the appellant knew that his representations were false, this was not sufficient to prove that he and his purported co-conspirators intended to injure the respondent (as opposed to simply knowing that the respondent was likely to suffer loss because of a significant risk that the Development might not be completed). As discussed in [83] above, it was the respondent's own case that the appellant made the false representations to induce the respondent to enter into the Contract for Sale as part of a scheme to raise funds to buy the Land and build the Development.

(b) Moreover, even if it is assumed that Jonathan and YC planned all along to collect money from the respondent and other buyers of units

Version No 1: 17 Jun 2026 (17:07 hrs)

> in the Development without ever having any intention to build the Development (which is not the respondent's case), there is insufficient evidence to show that the appellant shared this intention. We do not think the adverse inference that the appellant was part of the Infinity Group's key management team, and that the three of them had collaborated on this Development, goes as far as allowing an inference to be drawn that the appellant shared Jonathan and YC's intention to injure the respondent and other buyers of units in the Development through a fraudulent scheme. In our view, it is likely that the appellant learnt towards the end of 2018 or early 2019 that insufficient funds had been raised to complete the purchase of the Land, and his attempts to interest the respondent in acquiring a unit in the Development from 31 January to 29 May 2019 were just part of his efforts to continue to raise more funds for the project to be completed.

85 Accordingly, we hold that the Judge had erred in finding that the unlawful means conspiracy claim was made out, and we set aside that decision.

Conclusion

86 In the result, we affirm the Judge's decision in so far as the claim in fraudulent misrepresentation is concerned. The appellant remains liable for the damages awarded by the Judge in the sum of US$1,786,000 with interest at the rate of 5.33% per annum from the date of the commencement of the action below.

87 However, we allow the appeal in part by setting aside the Judge's decisions on the claims for negligent misstatement and unlawful means conspiracy. We also set aside the Judge's order on the costs of the proceedings

Version No 1: 17 Jun 2026 (17:07 hrs)

below, given that the order was made on the basis that the respondent had succeeded entirely in all her claims against the appellant.

88 Unless parties come to an agreement on costs of the appeal and the costs of the proceedings below, we direct that the parties file and exchange their submissions on these costs, limited to ten pages, within 14 days of the date of this judgment.

Ang Cheng Hock
Justice of the Court of Appeal

Debbie Ong Siew Ling
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

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Jimmy Yim Wing Kuen SC, Lau Wen Jin, Chloe Shobhana Ajit and Nikhil Daniel Angappan (Drew & Napier LLC) for the respondent.

Version No 1: 17 Jun 2026 (17:07 hrs)