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

[2026] SGHC 105

Originating Claim No 313 of 2024

Between

BP Projects Pte Ltd

… *Claimant*

And

(1) One Wind Pte Ltd
(2) Jueltech Trading Pte Ltd
(3) Ong Kian Meng
(4) Ong Kian Seng
(5) Yeo Sock Ping Adeline

… *Defendants*

JUDGMENT

[Tort – Conspiracy]
[Tort – Misrepresentation – Fraud and deceit]

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BP Projects Pte Ltd
v
One Wind Pte Ltd and others

[2026] SGHC 105

General Division of the High Court — Originating Claim No 313 of 2024
Wong Li Kok, Alex J
22–23 October 2025, 16 January 2026

14 May 2026 Judgment reserved.

Wong Li Kok, Alex J:

Introduction

1 The tax authorities in Singapore are not shy when it comes to enforcing the payment of taxes that are properly due. Within the sphere of Goods and Services Tax ("GST"), a common transgression is the "missing trader fraud" where a party seeks to profit from a manipulation of non-payment of GST with GST refunds. This judgment touches on exactly this type of fraud in a set of transactions that has left the claimant, BP Projects Pte Ltd ("Claimant") out of pocket. The Claimant seeks compensation against the defendants, One Wind Pte Ltd ("D1"), Jueltech Trading Pte Ltd ("D2"), Mr Ong Kian Meng ("D3"), Mr Ong Kian Seng ("D4") and Ms Adeline Yeo ("D5" and collectively, "Defendants") based on claims in misrepresentation and unlawful means conspiracy.

Facts

Parties

2 The Claimant is a company incorporated in Singapore and having its registered office at 155 Bedok Road, Singapore 469570. It has been GST-registered since the 1990s.[1]

3 D1 and D2 are companies incorporated in Singapore in 2013 and 2014 respectively and are in the business of selling handphones, handphone peripheral equipment and other telecommunication equipment and software.[2] D3 is the director of D1 and the Operations Manager of D2.[3] On D3's own account, he "managed the business of both [D1] and [D2]".[4] D5 is the sole shareholder of D1, the sole director and shareholder of D2, as well as the girlfriend of D3.[5] D4 is the brother of D3.[6]

Background facts

4 The Claimant's representative, Mr Chua Boon Pin ("Mr Chua"), became acquainted with D4 through mutual friends in or around 2000. D4 then introduced his brother, D3, to Mr Chua. They were on friendly terms and met frequently.[7]

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1 Chua Boon Pin's affidavit of evidence-in-chief ("CBP-1") at paragraph 6.

2 CBP-1 at paragraph 7; Ong Kian Meng's affidavit of evidence-in-chief ("OKM-1") at paragraph 10.

3 CBP-1 at paragraph 9(a); OKM-1 at paragraph 1.

4 OKM-1 at paragraph 9.

5 CBP-1 at paragraph 9(b)–(c); OKM-1 at paragraphs 7–8.

6 CBP-1 at paragraph 9(e); OKM-1 at paragraph 5.

7 CBP-1 at paragraph 7; OKM-1 at paragraph 21.

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5 In or around the second half of 2015, Mr Chua met D3 and D4 at City Square Mall.[8] D3 and D4 invited the Claimant to embark on a business venture with them. The venture involved the sale and subsequent on-selling of largely information technology products, such as smartphones or software ("Products"). Under the proposed arrangement ("Arrangement"), the Claimant would first confirm orders of the Products from overseas buyers in Vietnam and Malaysia. The Claimant would then order the Products from D1 and D2, which in turn would buy the Products from their suppliers. Finally, the Products would be delivered to the Claimant to on-sell to the overseas buyers.[9] The overseas buyers would pay the Claimant the purchase price without GST components as these exports were zero-rated.[10] The Claimant would then pay D1 and D2 the purchase price with GST components based on its arrangements with D1 and D2.[11] The Claimant alleges that various representations were made to Mr Chua at the meeting, which led the Claimant to enter into the Arrangement and eventually suffer losses. While details of the precise representations are in dispute, it is common ground that D3 informed the Claimant that the latter would be able to claim refunds for the GST sums that the Claimant paid to D1 and D2.[12]

6 Between November 2015 and February 2016, the Claimant conducted various exports pursuant to the Arrangement ("Claimant's Transactions") and filed claims for the refund of the GST sums with the Inland Revenue Authority

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8 CBP-1 at paragraph 13.

9 OKM-1 at paragraph 23.

10 CBP-1 at paragraph 52(c).

11 CBP-1 at paragraph 52(a).

12 CBP-1 at paragraph 17(d); Hearing Transcript at day 1, page 62, lines 14–23 and page 81, lines 4–14.

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of Singapore ("IRAS") on a monthly basis.[13] On 15 December 2015 and 8 January 2016, the Claimant received GST refunds of $339,679.93 and $145,600.00 for the periods of November and December 2015 respectively.[14]

7 On 1 February 2016, the Claimant filed its GST refund claim for the period of January 2016.[15] However, on 10 February 2016, it received a letter from IRAS stating that IRAS would conduct an audit for the GST refunds claimed for January 2016. Pending the audit, IRAS would not refund the sum pursuant to the Claimant's January 2016 claim.[16] Based on Mr Chua's evidence, when he asked D3, D4 and D5 why IRAS was suddenly carrying out an audit, they replied that IRAS was just doing a check and there was no need to worry.[17]

8 On 16 August 2016, IRAS' representatives attended at the Claimant's office to provide the Claimant with a notice that the Claimant was required to provide IRAS with information for the purposes of IRAS' investigations.[18] Mr Chua contacted D4 and asked why IRAS' representatives were at the Claimant's office.[19] D3 replied that IRAS' representatives were also at D1 and D2's offices.[20] In Mr Chua's evidence, he subsequently contacted D3, D4 and/or D5 to ask whether D1 and D2 had paid the GST due from them to IRAS. They

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13 CBP-1 at paragraph 49(d) and at Tab 5.

14 CBP-1 at paragraph 49(d)(i)–(ii).

15 CBP-1 at paragraph 49(d)(iii) and at pages 133–136.

16 CBP-1 at paragraph 51.

17 CBP-1 at paragraph 54.

18 CBP-1 at paragraph 57.

19 CBP-1 at paragraph 58.

20 CBP-1 at paragraph 58.

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responded that they did make payment of the relevant GST sums and were unaware of why IRAS was investigating.[21]

9 There was no further contact from IRAS until 2024. By way of a letter dated 8 January 2024, IRAS notified the Claimant that it disallowed GST refunds in the amount of $1,747,483.65 to the Claimant. IRAS took the position that D1 and D2 were part of a "missing trader fraud" arrangement.[22] A description of this arrangement can be found on IRAS' website:[23]

> Perpetrators of the Missing Trader Fraud often create chains of sales and purchases transactions involving real or fictitious goods or services. A business upstream in the supply chain typically collects GST from subsequent buyers but vanishes without paying the GST to IRAS. GST-registered buyers downstream in the supply chain then claim from IRAS the GST paid to the upstream suppliers. This results in a loss of government revenue.
>
> To form the fraudulent supply chain, perpetrators may use borrowed identities to register fictitious businesses to enable other entities in the chain to claim fictitious GST refunds from IRAS. Your business could also become a party in the fraudulent supply chain, for example, when you accept offers from perpetrators to buy and sell goods in return for a guaranteed profit with little or no risks.

10 Further, the following diagram from IRAS' website provides an illustration:[24]

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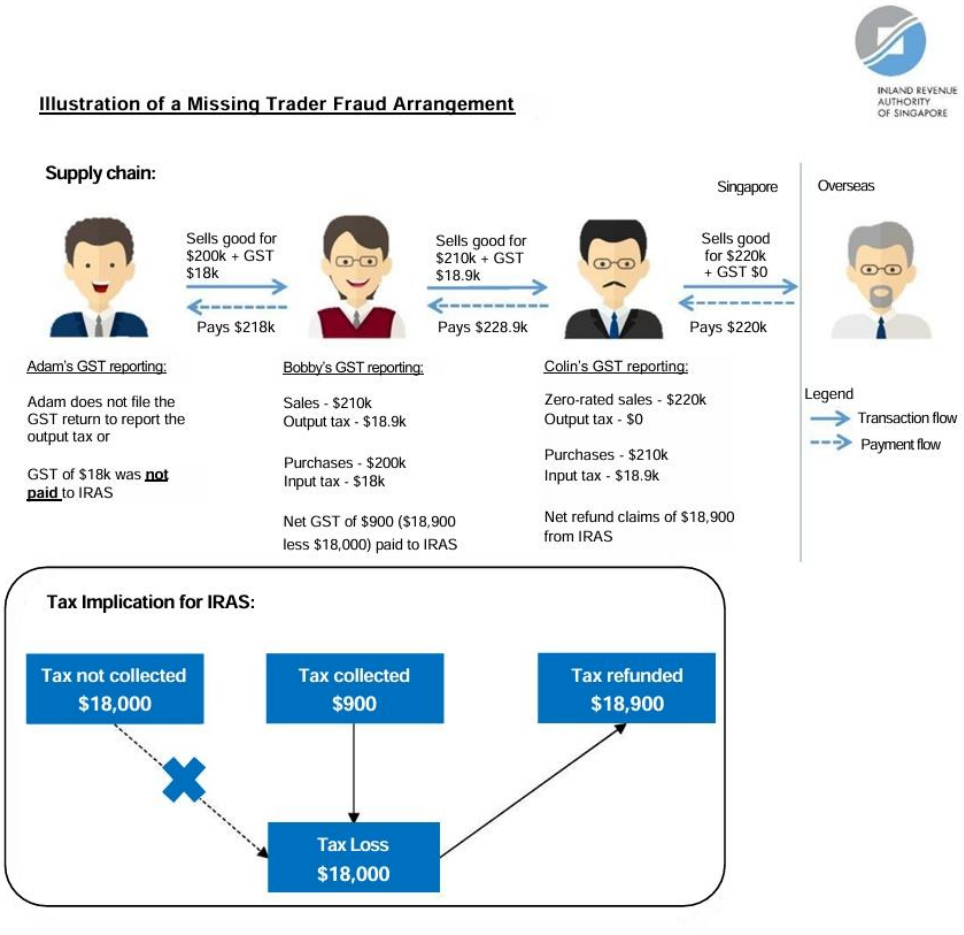
21 CBP-1 at paragraph 60.

22 CBP-1 at paragraph 62 and at Tab 8.

23 https://www.iras.gov.sg/taxes/goods-services-tax-(gst)/getting-it-right/gst-audits-by-iras/audits-and-investigations-on-missing-trader-fraud.

24 CBP-1 at paragraph 63; https://www.iras.gov.sg/media/docs/default-source/uploadedfiles/pdf/attachment-a_illustration-on-missing-trader-fraud-and-case-studies.pdf?sfvrsn=d583f618_14.

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11 The Claimant thus brought the present action against the Defendants in the torts of misrepresentation and unlawful means conspiracy.

Parties' cases

12 The Claimant contends that the Defendants combined to perpetrate a scheme of fraud on it by making the following representations:[25]

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25 Claimant's Opening Statement ("COS") at paragraphs 12–14 and 23; CBP-1 at paragraphs 14 and 17.

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(a) D1 and D2 were doing very well in the business of exporting electronic goods and peripherals to Malaysia and Vietnam ("Export Business Representation").

(b) The Defendants needed the Claimant to take part in the business because D1 and D2 did not have the cash flow to pay the GST when purchasing the Products from suppliers, as GST refund claims could only be made upon export ("Cash Flow Representation").

(c) D3, D4 and D5 controlled and managed D1 and D2 ("Control Representation").

(d) D1 and D2 were "established and legitimate companies in Singapore which engaged in lawful business dealings" ("Legitimate Business Representation").

(e) D1 and D2 complied with all the relevant rules and regulations relating to GST ("Compliance Representation").

(f) The Claimant "would have no issues claiming for the abovementioned GST refunds" ("Refund Representation").

(g) D3, D4 and D5 had also persuaded other companies to conduct export business pursuant to the Arrangement and they had no issues in claiming GST refunds ("Other Companies Representation" and collectively, "Representations").

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The Defendants made all of these Representations knowing that they were false.[26] The Claimant relied on them and suffered losses.[27]

13 The Defendants deny having made any of the alleged Representations, entered into or carried out the Arrangement with the Claimant, or engaged in any missing trader fraud.[28] Their case is that the Claimant's Transactions were part of an ordinary business venture, where:

(a) D3 did nothing more than introducing a business opportunity to the Claimant and assisting as a middleman between the buyers and the Claimant.[29]

(b) D4 introduced customers to D1 and D2 and merely assisted with the delivery of the Products to the Claimant.[30]

(c) D5 assisted with the preparation of invoices.[31]

The Defendants also maintain that D1 and D2 have been paying GST due to IRAS every quarter.[32]

Issues

14 The issues before me are:

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26 COS at paragraphs 39 and 49.

27 COS at paragraphs 32–35.

28 1st to 5th Defendants' Opening Statement ("DOS") at paragraph 4.

29 DOS at paragraph 5(a); OKM-1 at paragraph 22.

30 DOS at paragraph 5(b); OKM-1 at paragraph 25.

31 DOS at paragraph 5(c); OKM-1 at paragraph 26.

32 DOS at paragraphs 5(d), (g) and 6; OKM-1 at paragraph 27.

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(a) whether the Defendants are liable to the Claimant in the tort of fraudulent misrepresentation;

(b) whether D1 and D2 are liable under s 2 of the Misrepresentation Act 1967 (2020 Rev Ed) ("MA");[33] and

(c) whether the Defendants are liable to the Claimant in the tort of unlawful means conspiracy.

Issue 1: whether the Defendants are liable for fraudulent misrepresentation

The law on fraudulent misrepresentation

15 To succeed in a claim in the tort of fraudulent misrepresentation, the Claimant will need to establish (*Chan Pik Sun v Wan Hoe Keet* [2024] 1 SLR 893 ("*Chan Pik Sun*") at [66]):

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

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

(c) Third, it must be proved that the claimant had acted upon the false statement.

(d) Fourth, it must be proved that the claimant suffered damage by so doing.

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33 COS at paragraph 28.

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(e) Fifth, the representation must be made with knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true.

16 For the first element of representation of fact, a representation of the law also constitutes a representation of fact (James Goudkamp & Donal Nolan, *Winfield & Jolowicz on Tort* (Sweet & Maxwell, 20th Ed, 2020) ("*Winfield*") at paragraph 12-009).

17 With respect to the second element of whether a representation was made with the intention that it should be acted upon, a relevant question is the materiality of the representation. Materiality is an objective inquiry, namely whether the representation is one which no reasonable person would consider unimportant (*Jurong Town Corp v Wishing Star Ltd* [2005] 3 SLR(R) 283 ("*Jurong Town Club*") at [119]).

18 For the third element of reliance, the court will consider whether the claimant would have taken the same course of action had there been no representation. However, the representation need not be the sole cause of the course of action taken and only needs to have played a substantial part in inducing the claimant's actions (*Wee Chiaw Sek Anna v Ng Li-Ann Genevieve* [2013] 3 SLR 801 ("*Anna Wee*") at [94]).

19 Lastly, the mental element of fraud may be established by proving recklessness on the part of the representor (*Chan Pik Sun* at [67]). Recklessness means "without caring whether [the representation] be true or false" (*Panatron Pte Ltd v Lee Cheow Lee* [2001] 2 SLR(R) 435 ("*Panatron*") at [13]) or "indifference to the truth, the moral obliquity which consists in a wilful disregard of the importance of the truth" (*Chan Pik Sun* at [69]).

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20 Section 2(1) of the MA does not alter the common law as to what constitutes a misrepresentation. Instead, it reverses the burden of proof, in that the party who made the misrepresentation must show that he had reasonable grounds to believe that the fact represented was true (*Lim Koon Park and another v Yap Jin Meng Bryan and another* [2013] SGCA 41 ("*Lim Koon Park*") at [39]).

21 The measure of damages for fraudulent representation is not limited by the remoteness rule. In other words, it would include (*Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 ("*Wishing Star")* at [21]):

> all loss that flowed directly as a result of the entry by the plaintiff (in reliance upon the fraudulent misrepresentation) into the transaction in question, regardless of whether or not such loss was foreseeable, and would include all consequential loss as well.

D1, D2 and D3 are liable for fraudulent misrepresentation

22 I begin with my decision on the liability of D3 and, as D3 undertook the relevant acts on behalf of D1 and D2, D1 and D2 by attribution.[34]

D3 made the Representations

23 I first consider whether the alleged Representations were indeed made by D3. I am satisfied that D3 did make all of the Representations, albeit the Control Representation was made on a more limited formulation.

24 D3 admits to having made the Legitimate Business Representation (see [12(d)] above) and Compliance Representation (see [12(e)] above) in the Defence. More specifically, he admits to having made the representations that

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[34] Minute Sheet dated 16 January 2026 ("Minute Sheet") at page 5.

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"[D1] and [D2] were legitimate companies which engaged in lawful business dealings and which complied with all IRAS rules related to GST payments."[35]

25 With respect to the Cash Flow Representation (see [12(b)] above), D3 explained to Mr Chua that the reason why he did not want to do export business was because "it requires a large amount of fund to hold."[36] In my judgment, this statement means that D1 and D2 did not have the cash flow to purchase the Products before exporting them to overseas buyers. D5 further confirmed in her oral testimony that the reason why D3 did not seize the business opportunity for himself was because D1 and D2 would have to pay the GST first before they could claim refunds:[37]

> Q: And [D3] says yesterday and in his affidavit that he discovered the opportunity to export the goods overseas sometime in 2014. Do you know anything about this? Did he tell you about it?
>
> A: Yes.
>
> …
>
> Q: Did he tell you why he didn't want to do that business?
>
> …
>
> A: Are you referring to the exporting overseas?
>
> Q: Yes, the exporting overseas, yes, which is what he said he found out about the opportunity, but they didn't take it up.
>
> A: Could not do it, because the company did not have such a large amount of funds.
>
> Q: Is that amount of funds what the GST payments---in other words, because you would have to pay GST first and then wait for a refund?
>
> A: Yes.

---

35 Defence (Merits) (Amendment No. 1) ("Defence") at paragraph 17.

36 Hearing Transcript at day 1, page 61, lines 12–13.

37 Hearing Transcript at day 2, page 40, line 26 to page 41, line 13.

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Therefore, D3 and D5's evidence is consistent with the Claimant's evidence that D3 approached the Claimant because D1 and D2 did not have the requisite cash flow to conduct export business by themselves. On these bases, I find that the Cash Flow representation was made.

26 D3, however, denies having made the Export Business Representation, Control Representation, Refund Representation and Other Companies Representation.[38]

27 Turning first to the Other Companies Representation (see [12(g)] above), I find that it was made by D3. D3 denies having made this representation in the Defence (above at [26]). During the trial, D3 said that D1 and D2 only undertook domestic sales and their customers would decide for themselves whether they wanted to resell domestically or export the Products overseas.[39] According to D3, the Claimant was the only customer to whom the Products were sold directly for export.[40] However, D3 admitted having made the following statement:

> Q: Did you tell him that there would be no issues getting refunds?
>
> A: I did say it's---I did say, "Sir, I have sold to quite account number of customers. So far, I have never hear any feedback of they can't claim back from---GST from IRAS."

It is clear that D3 represented having other customers. In this context, these other customers could only mean other customers in the export business, as they also claimed GST refunds presumably for zero-rated exports. Therefore, D3 did

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38 Defence at paragraphs 16, 18–19A and 22A; DOS at paragraph 5(a) and (f).

39 Hearing Transcript at day 1, page 59, lines 7–8 and page 60, lines 10–11.

40 Hearing Transcript at day 1, page 60, lines 12–13.

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represent to the Claimant that there were other customers conducting export business pursuant to the Arrangement who had no issues claiming GST refunds (*ie*, the Other Companies Representation).

28 This extract is also instructive for the Export Business Representation (see [12(a)] above), which I find that D3 made. D3 repeatedly denied having represented to the Claimant that D1 and D2 were in the business of exporting.[41] However, in light of the evidence set out above at [27], D1 and D2 did engage in export business. This finding is consistent with D3's admission that he knew about zero-rated exports:[42]

> Q: Did you talk about GST refunds?
>
> …
>
> A: I told him, says, that, okay, when you---because all these basically the overseas customers, they are looking at zero---zero rated, which is a---which is a standard procedures. That means when you sell to a overseas customer, you are not allowed to charge GST.

In fact, he had sufficient knowledge of zero-rated exports to coach Mr Chua on the Arrangement.[43]

29 D3 also appeared familiar with the prices for the export market and was able to suggest the prices at which the Claimant should sell to the buyers:[44]

> A: See, the price itself, I says, "I will sell this price." But because Mr Chua himself is not in the market, so what I did, in a sense, whereby I gave him a proposed price, a proposed market price – that's available in the market.

---

41 Defence at paragraph 16; DOS at paragraph 5(a); OKM-1 at paragraph 20; Hearing Transcript at day 1, page 61, lines 10–11.

42 Hearing Transcript at day 1, page 62, lines 17–20.

43 Hearing Transcript at day 1, page 60, line 22 to page 61, line 23

44 Hearing Transcript at day 1, page 62, lines 4–13.

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30 Further, as will be detailed below at [78] that Mr Chua testified having seen D5 receiving calls enquiring into the availability of the Products, there did appear to be demand for D1 and D2's Products.[45] Based on D3's apparent familiarity with the export business, the demand for D1 and D2's Products, as well as D3's optimism evident in the statement that he had not heard of other customers having difficulty claiming GST refunds (at [27] above), I find that it is more likely than not that D3 made the Export Business Representation.

31 I further find that D3 made the Refund Representation (see [12(f)] above).

32 According to Mr Chua's affidavit of evidence-in-chief ("AEIC"), D3 and D4 represented to him that the Claimant "would have no issues claiming for the abovementioned GST refunds".[46] During the trial, Mr Chua testified that "[D3, D4 and/or D5] were the ones that said that, 'You---you can get your GST claims back'."[47]

33 In contrast, the Defendants (including D3) maintain that at no point did they guarantee that the Claimant's GST refund claims would be allowed.[48] D3's position on the exact words used for the Refund Representation was markedly different from the Claimant's:[49]

> Q: Did you talk about GST refunds?
>
> A: GST refund, yes, I did.

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45 Hearing Transcript at day 1, page 12, lines 12–18.

46 CBP-1 at paragraph 17(d).

47 Hearing Transcript at day 1, page 30, lines 18–19.

48 DOS at paragraph 5(f); Defendants' Closing Submissions ("DCS") at paragraph 22.

49 Hearing Transcript at day 1, page 62, lines 14–23 and page 81, lines 4–14.

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> Q: What did you talk about?
>
> A: I told him, says, that, okay, when you---because all these basically the overseas customers, they are looking at zero---zero rated, which is a---which is a standard procedures. That means when you sell to a overseas customer, you are not allowed to charge GST.
>
> Q: Did you talk about anything else, about GST?
>
> A: "So at the end of the days, the GST that you actually paid to my company, you are able to file a claim with IRAS."
>
> …
>
> A: I talk about the GST, it's in term of the procedures of the claims.
>
> Q: And---
>
> A: Mr Chua did ask me, "So what happened to the GST?" So I says, "You need to follow the procedures"; I told him about the procedures of the claims.
>
> Q: And did you tell him that, "Of course, [D2] and [D1] follow the law, so there should be no problem"?
>
> A: No.
>
> Q: Did you tell him that there would be no issues getting refunds?
>
> A: I did say it's---I did say, "Sir, I have sold to quite account number of customers. So far, I have never hear any feedback of they can't claim back from---GST from IRAS."

Therefore, on D3's evidence, he only represented to Mr Chua that the Claimant would be able to file claims for GST refunds with IRAS by following the relevant procedures.

34 I agree with the Claimant that D3 likely represented that the Claimant would have no issues claiming GST refunds under the Arrangement. Again, as apparent from the extract at [31], D3 represented to the Claimant that he had not heard of any other customer having issues claiming GST refunds. In my judgment, D3's explanation of the refund process and his representation that he had not heard any customer having issues claiming GST refunds collectively

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constituted a representation that, by following the Arrangement, the Claimant would have no issues claiming GST refunds, similar to D3's other customers.

35 Further, as will be detailed below at [60], IRAS imposed various additional tax assessments and penalties on D1 and D2, which also covered the period of the Claimant's Transactions.[50] However, as the additional tax assessments and penalties only took place several years later, D1 and D2 had yet to encounter any issues in claiming GST refunds at the time of the meeting with Mr Chua.[51] Based on the foregoing, I conclude that it is more likely than not that the Refund Representation was made by D3.

36 Lastly, I find that D3 did not make the Control Representation on the terms pleaded by the Claimant (see [12(c)] above). As will be shown in my analysis below, D4 and D5 had limited involvement in the Arrangement. D4 only assisted with the delivery of the Products. D5 mostly handled administrative matters and was not involved in the management of D1 or D2. In light of these findings, it is unlikely that D3 would represent that all three of them managed and controlled D1 and D2. However, it is clear that D3 did make the more limited representation that he controlled and managed D1 and D2.[52] Therefore, the Control Representation on a more limited formulation has been established.

37 The conclusion that D3 made the Representations (with the Control Representation on the more limited basis set out above at [36]) is further supported by D3's level of involvement in the Arrangement. While the Claimant

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50 Hearing Transcript at day 1, page 102, line 12 to page 104, line 15.

51 Hearing Transcript at day 1, page 104, lines 29–30.

52 Defence at paragraph 13.

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argues that D3 masterminded the Claimant's Transactions,[53] D3 maintains that he only acted as a middleman between the Claimant and its overseas buyers at the beginning of the parties' dealings.[54] To recall, D3 testified that he would convey to the Claimant a proposed market price in the initial transactions.[55] Thereafter, the Claimant had been directly corresponding with the buyers in the subsequent transactions.[56]

38 On balance, I find that D3 was more involved in the Arrangement than he portrayed. The transaction history shows that D1 and D2 were always able to earn a mark-up from the Claimant's Transactions, so the usual ebbs and flows in the profitability of business transactions were absent.[57] This suggests that D3 could effectively influence or even determine the prices at which the Products were sold. Moreover, D3 was always present when the Products were delivered to the Claimant.[58]

39 Before I proceed to analyse the other elements of the tort, I should add that parties do not dispute that the Representations are representations of present facts. It is clear that the Export Business Representation, Cash Flow Representation, Control Representation, Legitimate Business Representation, Compliance Representation and Other Companies Representation are all

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53 Claimant's Closing Submissions ("CCS") at paragraph 34.

54 OKM-1 at paragraphs 22–23.

55 Hearing Transcript at day 1, page 62, lines 5–7.

56 Hearing Transcript at day 1, page 66, lines 3–9.

57 Exhibit C-1, Summary of Transactions (physical copy with court) ("Exhibit C-1"); Agreed Bundle of Documents at pages 260-449; Hearing Transcript at day 1, page 76, lines 5–7.

58 Hearing Transcript at day 1, page 73, line 30 to page 74, line 7.

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representations of facts. The Refund Representation is a representation of the law, which is also a representation of fact (*Winfield* at paragraph 12-009).

40 I also note the Claimant's assertion that all of the Defendants, including D5, repeated the Representations.[59] However, the evidence that it has produced does not support this position. In both Mr Chua's AEIC and oral evidence at the trial, his evidence was that only D5 repeated the Representations.[60] In light of my findings at [74]–[80] below, I conclude that D5, much less the other Defendants, did not repeat the Representations and this argument fails.

The Representations were made with the intention that the Claimant would act upon them

41 The Claimant argues that D3 made the Representations with the intention that they should be acted upon by the Claimant, because D1 and/or D2 would be "guaranteed" to profit from the Arrangement by charging the Claimant a mark-up compared to what they would have to pay their suppliers.[61] On this, D3 asserts that the Representations were not made with the intention that the Claimant would act upon them,[62] but does not appear to have submitted on why that is the case. D3's arguments, in my view, relate more to the Claimant's reliance as will be discussed at [52]–[54] below.[63]

42 I agree that D3 made the Representations with the intention that the Claimant would act upon them. The Representations, especially the Refund

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59 COS at paragraph 16; CCS at paragraph 12.

60 CBP-1 at paragraph 18; Hearing Transcript at day 1, page 12, lines 9–18.

61 CCS at paragraph 18.

62 DCS at paragraph 31.

63 DCS at paragraphs 31–42.

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Representation and the Compliance Representation, are undoubtedly material, as they collectively portray the Arrangement as a viable or even tried and tested method of making profits. The fact that D1 and D2 were suffering from cash flow concerns (at [25] above) and sought the Claimant's participation in the Arrangement to assuage those concerns reinforces this point. A reasonable person in the Claimant's position would be induced to participate, or in other words, to act upon the Representations (*Jurong Town Club* at [119]).

The Refund Representation and Compliance Representation were false

43 I now address the third element of the test. Although I conclude above that D3 made all of the Representations (with the Control Representation on the more limited basis set out above at [36]), only the Refund Representation and the Compliance Representation were false.

44 I find that the Export Business Representation was true. The facts point to D3 having previously operated export arrangements similar to the Arrangement. To recall (at [28]–[29] above), D3 knew about zero-rated exports and was able to establish and coordinate the Arrangement involving back-to-back multi-party transactions.[64] Further, he was able to suggest prices at which the Claimant should sell to overseas buyers.[65] Given D3's apparent familiarity with the export business and his oral testimony that he had other customers operating in the export business (at [27] above), I conclude that the Export Business Representation was likely true.

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64 Hearing Transcript at day 1, page 60, line 22 to page 61, line 23.

65 Hearing Transcript at day 1, page 62, lines 4–13.

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45 The Cash Flow Representation was also true. Both D3 and D5 confirmed that this was the reason why D3 did not take up the business opportunity by himself but rather had to involve the Claimant.[66] The truthfulness of the Cash Flow Representation is further evidenced by the mode of payment under the Arrangement. D3 paid D1 and D2's suppliers using the payment collected from the Claimant, instead of upfront with D1 and D2's own funds.[67] Thus, the Claimant's participation in the Arrangement solved the cash flow issue that D1 and D2 would otherwise face.

46 Further, it is clear that the Control Representation on the more limited formulation at [36] was true on D3's own admission. D3 states in his AEIC that he is the sole director of D1 and the Operations Manager of D2, and that he "managed the business" of both D1 and D2.[68] D3 further testified during the trial that he had "always been the sole person operating the company, since the beginning".[69]

47 The Legitimate Business Representation was also true. The Defendants have admitted in the Defence that D1 and D2 are established and legitimate companies.[70] Further, Mr Chua confirmed during cross-examination that what the Claimant means by "established and legitimate companies" is that D3 and D4 allegedly represented to the Claimant that D1 and D2 were companies

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66 Hearing Transcript at day 1, page 61, lines 12–13 and day 2, page 40, line 26 to page 41, line 13.

67 Hearing Transcript at day 1, page 68, line 30 to page 69, line 9.

68 OKM-1 at paragraph 9.

69 Hearing Transcript at day 1, page 52, lines 29–31.

70 Defence at paragraphs 16–17.

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incorporated in Singapore.[71] On the facts, D1 and D2 are indeed Singapore-incorporated companies.[72]

48 The Other Companies Representation was also true. In his AEIC, D3 states that Mr Chua was not D1 and D2's only customer.[73] D3 further admitted during cross-examination that he had not heard of other customers having issues claiming GST refunds,[74] which I interpret (at [27] above) to mean that he had other customers conducting export business pursuant to the Arrangement.

49 However, importantly for our purposes, the Refund Representation was false. It is not true that as long as the Claimant filed claims for GST refunds according to the procedure set out in IRAS' website, it would have no issues claiming GST refunds. Clearly, GST rules and regulations would have to be followed in order for any refund to be forthcoming. All parties involved in the Arrangement, including D1 and D2, must pay the correct GST due from them in order for the GST refunds claimed by the Claimant to be payable.

50 Relatedly, the Compliance Representation was also false. It is not in dispute that IRAS disallowed the Claimant's claims for GST refund expressly on the ground that D1 and D2 were involved in a missing trader fraud.[75] In other words, at the very least, they did not comply with the relevant GST rules and regulations, contrary to the Compliance Representation. As will be detailed below at [62], D3 did not understand how to ensure compliance with GST rules

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71 Hearing Transcript at day 1, page 45, lines 1–4.

72 OKM-1 at paragraph 10.

73 DOS at paragraph 5(e); CBP-1 at paragraph 21.

74 Hearing Transcript at day 1, page 81, lines 12–14.

75 CBP-1 at paragraph 62 and at Tab 8.

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and regulations or the implications of not doing so at the time when he made the Representations.

51 In light of the foregoing discussions, I conclude that D3 made two misrepresentations, namely the Refund Representation and the Compliance Representation ("Misrepresentations").

The Claimant relied on the Misrepresentations

52 Moving on to the question of reliance, I am satisfied that the Claimant acted upon the Misrepresentations, as the Claimant would not have entered into the Claimant's Transactions had it not been for the Misrepresentations.

53 In their submissions, the Defendants' counsel place much emphasis on the fact that the Claimant agreed to participate in the Arrangement after having done its own research and verified the legal information on IRAS' website. That being the case, the Defendants' position is that the Claimant was not induced by any of the Representations.[76] In cross-examination, Mr Chua explained:[77]

> Q: Okay. So my question then to you is that, why did you then place reliance on what they had said to you, about the GST refunds, when they are not qualified to make those statements and neither had they expenditure [sic] working … in Inland Revenue Authority of Singapore?
>
> A: Because when they told me about all the claims from exporting the goods, I---example, they told me that, "You know, the---the quarterly claims, you can do it monthly. You can change it to monthly." I checked with IRAS, and IRAS said, "Yes, you can". That---that's why I trusted them.
>
> …

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76 Defendants' Closing Submissions ("DCS") at paragraph 38.

77 Hearing Transcript at day 1, page 23, lines 17–24 and page 24, lines 10–20.

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> Q: Okay. I'm saying, because you made the claim, before you even entered into the agreement with [D1] and [D2], did you check with IRAS about this arrangement?
>
> A: I mean, this arrangement---this---this information is---is actually on the website, so when you export, then you claim the GST back.
>
> Q: Okay. So again, to be clear, that you then---so what you did was to check the IRAS website and you checked that when you export, you could apply for GST refunds?
>
> A: Yes.

I disagree with this argument. Firstly, as the Misrepresentations only need to have played a real and substantial part, rather than being the sole or dominant cause of the reliance (*Anna Wee* at [94]), the fact that the Claimant conducted its own research is neither here nor there. Secondly, the Defendants appear to have taken contradictory positions on the legal effect of the Claimant's own due diligence, by suggesting that the Claimant was negligent when it did not check certain aspects of the Representations,[78] and that it could not have been induced by the Representations when it did conduct its research.

54 The Defendants also argue that it is "inherently implausible" that Mr Chua, an "astute and experienced" businessman, would rely on optimistic statements as inducement.[79] The Defendants attempt to analogise the Claimant to the investor in *Asia-Euro Capital SPV I LLP v Regulus Advisors Pte Ltd* [2024] SGHC 279 ("*Asia-Euro*").[80] I do not accept this argument and it is apposite to reproduce the court's discussion below:

> 129 In any event, even assuming arguendo that the Alleged Representations were made in the manner suggested by the

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78 DCS at paragraphs 37 and 41; Hearing Transcript at day 1, page 22, lines 2–20 and page 28, lines 24–27.

79 DCS at paragraphs 32–36.

80 DCS at paragraph 39.

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> plaintiff, I find that Mr Choo or the plaintiff did not place any reliance on them. … It is difficult to comprehend how the Alleged Representations would have induced the plaintiff and/or Mr Choo to invest in AVIVO, given that any remotely savvy investor would have viewed them as nothing more than preliminary discussions to be followed up by way of written confirmation or proper due diligence.
>
> 130 Indeed, Mr Choo was very much the savvy investor. As Mr Choo acknowledged during cross-examination, he had ten years of experience working in finance and as an investment analyst and possessed detailed and well-rounded qualifications to analyse both conventional and alternative investments, and he runs a company in the UK that offers similar investment analyses for clients. Mr Choo had a sufficiently intimate understanding of investment opportunities in other countries, the nous to enter into an agreement for a private equity transaction, and even structured the plaintiff's investment by way of a third-party corporate vehicle in order to extract even more value from the transaction in the form of a referral fee. Simply put, this was an individual who was a sophisticated investor and one who would have known that sound investments would be grounded in diligent research rather than partial overly optimistic projections of future performance delivered as part of a marketing pitch. …
>
> 131 It was not lost on me that, despite Mr Choo's extensive background in investing and finance, and the fact the Alleged Representations were apparently central to the plaintiff's investment decision, Mr Choo never sought written confirmation of the Alleged Representations at any point, even during his due diligence process. …

In contrast, the same cannot be said of Mr Chua in the present case. The only evidence that the Defendants seek to rely on to suggest that Mr Chua was well-versed in the business world is that he had been the Claimant's director for longer than D3 had managed D1 and D2.[81] I also find that Mr Chua had conducted very basic research by checking IRAS' website.[82] However, nothing indicates that he had any in-depth understanding of the working of GST or that

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81 DCS at paragraphs 32–36; Hearing Transcript at day 1, page 11, lines 2–21.

82 DCS at paragraph 38; Hearing Transcript at day 1, page 24, lines 2–23.

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he possessed any tax-related expertise that is remotely comparable to Mr Choo's experience in the *Asia-Euro* case.

The Claimant suffered losses in reliance on the Misrepresentations

55 The Claimant argues that, by relying on the Misrepresentations and entering into the Claimant's Transactions, it has suffered losses in the form of IRAS disallowing its GST refund claims in the amount of $1,747,483.65.[83]

56 The Defendants' counsel submit that the Claimant did not suffer any loss because they received payments from the overseas buyers.[84] As the Defendants' position is that they are not liable for the Claimant's alleged losses at all, they do not suggest another figure.[85]

57 I am not convinced by this argument. It is clear from Exhibit C-1 that the payments the Claimant received from overseas buyers for the Products were consistently less than the sums that the Claimant had to pay D1 and D2, which included GST components. The Claimant, therefore, would only make a profit if it could claim GST refunds and undoubtedly suffered losses from its GST refund claims being disallowed. According to IRAS' letter, the Claimants' disallowed GST refund claims from November 2015 to February 2016 were in the sum of $1,747,483.65.[86] Hence, the Claimant did suffer losses of $1,747,483.65 by relying on the Misrepresentations.

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83 CCS at paragraph 22.

84 DCS at paragraph 43; Hearing Transcript at day 1, page 33, lines 8–15.

85 Minute Sheet at page 8.

86 CBP-1 at paragraph 62 and at Tab 8.

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58 The Defendants also attempt to argue that the Claimant's losses stemmed from regulatory intervention, instead of from their Misrepresentations.[87] I disagree. IRAS' intervention took place because D1 and D2's failure to pay the correct GST constituted a "missing trader fraud" and not for any other independent regulatory purpose.

D3 was reckless in making the Misrepresentations

59 I am also satisfied that D3 acted recklessly in making the Misrepresentations.

60 As stated above at [9], IRAS disallowed the Claimants' claims for GST refunds on the ground that D1 and D2 were part of a missing trader fraud.[88] In other words, D1 and D2 had either not paid or underpaid the GST due from them in the Claimant's Transactions. During cross-examination, the Claimant's counsel further established that IRAS imposed various additional tax assessments and penalties on D1 and D2,[89] some of which concerned the period of the Claimant's Transactions.[90] Relying on these facts, the Claimant asserts that D3 made the Misrepresentations knowing that they were false.[91]

61 D3 explained that, in relation to the Claimant's Transactions, he was told by IRAS that it was D1 and D2's suppliers which perpetrated the missing trader

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87 DCS at paragraph 45.

88 COS at paragraphs 36(a) and 37; CBP-1 at paragraph 62 and at Tab 8.

89 Hearing Transcript at day 1, page 96, line 30 to page 97, line 24 and page 102, line 5 to page 103, line 19.

90 Core Bundle of Documents at pages 314 and 322–324.

91 CCS at paragraphs 23–27.

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fraud.[92] In relation to the various additional tax assessments and penalties imposed by IRAS, he said he was only notified of them several years after the Claimant's Transactions and was unaware of them at the material time.[93] These explanations, however, only arose during D3's cross-examination and were not contained in his AEIC.[94] In any event, it appeared from D3's evidence at the trial that he did not know that the Claimant's GST refund claims would be disallowed if D1 and D2 did not pay the correct GST.[95] He plainly admitted that he had "never heard of whereby supplier don't pay GST; the one who buy from it cannot claim GST".[96] He also appeared not to understand why D1 and D2 were penalised by IRAS despite, in his view, having paid the correct GST.[97] As the Claimant points out, the Defendants have not, at any point, challenged or evinced any disagreement with IRAS' decisions.[98] D3's lack of understanding of how to ensure compliance with GST rules and regulations and the implications of not doing so, which was the complete antithesis of the Compliance Representation and Refund Representation respectively, stretched back to the time when he made the Misrepresentations.[99] In other words, D3 made the Misrepresentations without caring whether they were true or false (*Panatron* at [13]). On that basis, D3 acted recklessly in making the Misrepresentations.

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92 Hearing Transcript at day 1, page 83, lines 1–9.

93 Hearing Transcript at day 1, page 111, lines 10–16.

94 Hearing Transcript at day 1, page 84, line 18 to page 85, line 2.

95 Hearing Transcript at day 1, page 76, lines 27–30.

96 Hearing Transcript at day 1, page 77, lines 1–2.

97 Hearing Transcript at day 1, page 108, lines 1–3.

98 CCS at paragraph 24.

99 Hearing Transcript at day 1, page 106, line 22 to page 107, line 13.

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62 However, the evidence does not go so far as to support the Claimant's assertion that D3 made the Misrepresentations knowing them to be false.[100] IRAS' identification of D1 and D2 as being part of a missing trader fraud, as well as the various additional tax assessments and penalties it imposed (see [60] above), shows that D1 and D2 did not comply with GST rules and regulations at the material time, but is insufficient to show that D3 knew that this was the case when he made the Misrepresentations. To buttress its case, the Claimant has invited the court to draw an adverse inference from the Defendants' failure to produce the formal correspondence from IRAS. The adverse inference that the Claimant submits should be drawn is that such formal correspondence, if produced, would be unfavourable to the Defendants' case.[101] It is not necessary for me to draw such an inference as it would still not suffice to show that D3 made the Misrepresentations knowing that they were false. Firstly, it is likely that the correspondence from IRAS would resemble the letter that the Claimant received (at [9] above), which does not provide details as to how the parties identified perpetrated the missing trader fraud. Secondly, given that IRAS only notified the Defendants several years after the Claimant's Transactions, such formal correspondence, even if unfavourable to the Defendants, would unlikely shed light on D3's state of mind at the material time.

63 I would also like to address the legal effect of D3's involvement in the Claimant's Transactions.[102] Despite my finding above (at [38]) that D3 was more involved in the Claimant's Transactions than he claimed, his involvement is inconclusive on whether he made the Misrepresentations knowing that they were false. D3's involvement could point to either him executing the alleged

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100 CCS at paragraphs 23–27.

101 COS at paragraph 38; CCS at paragraph 26(c)–(f).

102 CBP-1 at paragraphs 20–27.

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fraudulent scheme or equally to him engaging in an innocent business dealing. In my judgment and as noted above at [61]–[62], I find that D3 acted recklessly rather than with knowledge that the Misrepresentations were false. Similarly, although I accept that D3 reasonably knew that the Claimant would suffer losses if it could not obtain GST refunds,[103] this does not show that D3 made the Misrepresentations knowing them to be false.

Conclusion on D1, D2 and D3's liability for misrepresentation

64 As I have reached the view that D3 acted recklessly in making the Misrepresentations, the tort of fraudulent misrepresentation has been made out. Since D3 had the authority to represent D1 and D2 (see above at [3]) and did act on behalf of them at the material time,[104] his acts and mental state are properly attributed to D1 and D2 so that they are so liable as well. I therefore do not need to consider whether D1 and D2 are also liable under s 2(1) of the MA, which merely reverses the burden of proof (*Lim Koon Park* at [39]).

65 D1, D2 and D3 are therefore liable for "all loss that flowed directly as a result of" the Claimant's entry into the Claimant's Transactions in reliance on the Misrepresentations "regardless of whether or not such loss was foreseeable" (*Wishing Star* at [21]) and shall compensate the Claimant for the losses of $1,747,483.65 that it suffered.

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103 CCS at paragraph 18.

104 OKM-1 at paragraph 1; Minute Sheet at page 5.

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D4 is not liable for fraudulent misrepresentation

66 The Claimant's case is that D4 made the Representations jointly with D3.[105] Mr Chua testified as such at the trial.[106] According to him, D4 also introduced potential buyers to the Claimant.[107]

67 D4's case is that he, together with D3 and one Joseph Lim, set up D1 and One Wind Indonesia in or around 2011, with D4 fully in charge of One Wind Indonesia. At the end of 2013 or 2014, as the Singapore business was not doing well, D4 withdrew all his shares from D1.[108] He now runs a bakery shop with his wife in Malaysia.[109]

68 In respect of the Claimant's Transactions, D4 said he told Mr Chua about the business opportunity of exporting to overseas buyers and, as a common practice in the insurance industry, linked Mr Chua with his brother, D3.[110] At the material time, as D4 and D3's father was unwell, D4 stayed in Singapore for about six to eight months, during which D3 would contact him to help with delivery of the Products.[111] Although D4 said in his AEIC that he "introduced potential buyers" to the Claimant,[112] D4 explained in cross-examination that he meant that he introduced to the Claimant the business opportunity of buying the

105 CBP-1 at paragraphs 14–17.

106 Hearing Transcript at day 1, page 19, line 25 to page 20, line 7.

107 CBP-1 at paragraph 20.

108 Hearing Transcript at day 2, page 6, lines 5–17.

109 Hearing Transcript at day 2, page 4, line 19.

110 Hearing Transcript at day 2, page 11, lines 1–10.

111 Hearing Transcript at day 2, page 12, lines 24–31.

112 Ong Kian Seng's affidavit of evidence-in-chief ("OKS-1") at paragraph 16.

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Products from D1 and D2 and exporting them to overseas buyers.[113] He denied having introduced potential buyers to the Claimant, [114] made the Representations, [115] verified the goods or signed on the suppliers' delivery orders.[116]

69 I start with the observation that D4 was not a shareholder or director of either D1 or D2 at the material time.[117] I also find his evidence to be credible that he runs a bakery shop with his wife in Malaysia and was only in Singapore when his father was ill, during which he helped his brother, D3, with delivery of the Products.

70 As the Claimant's counsel confirmed during oral closing submissions, the facts that the Claimant relies on to establish D4's liability are D4's presence at the meeting with Mr Chua and his introduction of at least one customer to the Claimant.[118] In relation to D4's presence at the meeting, Mr Chua's evidence did not convince. He appeared to simply assert that the Representations were made by both D3 and D4, without giving any details as to what exactly D4 said or did.[119] Mr Chua could easily have, for example, elaborated on whether D4 added any inputs or affirmed what D3 said. This lack of certainty, as I note below at [77], is a central weakness of Mr Chua's evidence. He was unable to pinpoint which defendant made which representation and appeared to simply

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113 Hearing Transcript at day 2, page 11, lines 11–15.

114 Hearing Transcript at day 2, page 10, line 22 and page 11, line 30.

115 Hearing Transcript at day 2, page 18, line 23 to page 19, line 17.

116 Hearing Transcript at day 2, page 14, lines 13–29.

117 OKS-1 at paragraph 7.

118 Minute Sheet at page 5.

119 Hearing Transcript at day 1, page 19, line 31 to page 20, line 7.

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add D4 and D5 as makers of the Representations without specifically attributing any of the Representations to them.

71 I note that there is a seeming concession in D4's testimony:[120]

> Q: And that is why, to convince [the Claimant] to take up the business opportunity, you assured Mr Chua that he would have no issues making his GST refund claims, correct?
>
> A: No.
>
> Q: And that is why you told Mr Chua that [D1] and [D2] complied with all IRAS rules related to GST payments, correct?
>
> A: Yah, he com---they complies, yes.

In my judgment and reading this extract in its context, D4's answer "Yah, he com---they complies, yes" is not a concession that he made the Compliance Representation to Mr Chua, but an affirmation that D1 and D2 complied with GST rules and regulations. This reading is consistent with his overall position that he did not make the Representations and that D1 and D2 did pay the correct GST.[121]

72 Furthermore, I find it credible that D4 did not introduce potential customers to the Claimant, but only the business opportunity of exporting to overseas buyers. D4 does not appear to have the same level of familiarity with zero-rated exports as his brother D3 (at [28]–[29] above), so I am inclined to believe that he connected Mr Chua with D3 out of common practice in the insurance industry with which he was familiar (at [68] above), instead of specifically trying to persuade the Claimant to take part in the Arrangement. The introduction of the business opportunity does not fall under any of the

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120 Hearing Transcript at day 1, page 18, lines 26–28.

121 Hearing Transcript at day 2, page 18, line 23 to page 19, line 17 and page 20, lines 10–17.

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Representations at [12] above.[122] In any event, the Claimant has not produced any authority where mere introduction of customers was held to suffice for liability in misrepresentation. Although actions may constitute representations (*Chan Pik Sun* at [66(a)]), the mere introduction of customers cannot mean, for example, that D4 represented that the Claimant would be guaranteed GST refunds (*ie*, the Refund Representation). In conclusion, neither D4's presence at the meeting with Mr Chua nor his act of introducing the business opportunity to the Claimant establishes that he made any of the Representations. As such, the claim against D4 fails.

D5 is also not liable for fraudulent misrepresentation

73 The Claimant's case against D5 is that D3 and D4 introduced Mr Chua to D5. D5 would repeat the Representations to Mr Chua several times. In particular, she often had phone calls from other people enquiring about whether D1 and D2 had more Products for them to purchase and export to end buyers.[123] D5 would then say to Mr Chua that there would not be so many people interested in buying the Products if they could not subsequently claim GST refunds pursuant to the Arrangement.[124]

74 D5 is the sole shareholder of D1 and D2, as well as the sole director of D2. D5's case is that she was appointed the director of D2 at the time when D3 had an outstanding loan with Hong Leong Finance. Her appointment was intended to avoid D2 being affected in the event that D3 went bankrupt.[125] According to D3's evidence, this was also why the shares in D1 were transferred

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122 CBP-1 at paragraphs 14 and 17.

123 CBP-1 at paragraph 18(a).

124 CBP-1 at paragraph 18(b).

125 Adeline Yeo's affidavit of evidence-in-chief ("AY-1") at paragraph 7.

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to D5.[126] D5 maintains that she merely played an administrative role with D1 and D2, such as preparing invoices, and was not involved in the management or decision-making of D2.[127]

75 I note that the Claimant's representative, Mr Chua, himself admitted during cross-examination that D5's involvement was limited.[128]

> Q: Okay. And during all that process, [D5] was not the person who represented anything to you, you agree?
>
> A: Yes, I agree.
>
> Q: Okay. Now, I then would like to turn your attention to … paragraph 12(a) and paragraph (b), okay. It says that:
>
> [Reads] "(a) How the Defendants approached me with a business proposal that would require [the Claimant]'s involvement;
>
> (b) How I was induced by the Defendants' representations (which were later discovered to be false) into agreeing (on [the Claimant]'s behalf) to the said business proposal…"
>
> Okay? So when you say, firstly, at paragraph 12(a) "Defendants", you are referring to only [D3] and [D4], you agree?
>
> A: Yes.
>
> Q: And at paragraph (b), when you say you were "induced by the Defendants' representations", similarly, you were only referring to [D3] and [D4], you agree?
>
> A: Yes.
>
> Q: Okay. And so, you agree with me that the parties that made representations to you in respect of the GST process and before you entered into the contract to export those items was only [D3] and [D4], you agree?
>
> A: Yes.
>
> …

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126 Hearing Transcript at day 1, page 57, lines 13–24.

127 AY-1 at paragraph 19.

128 Hearing Transcript at day 1, page 14, line 24 to page 15, line 25.

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> Q: You agree that … [D5] did not make any representations contains in paragraph 14, 15, 16 or 17?
>
> A: Yes.

76 It is also clear from cross-examination that D5 did not make any specific representation to the Claimant about GST refunds before the Claimant entered into the Arrangement:[129]

> Q: Okay. So you would also agree with me that what she told you was a general statement, as far as what you recall, right, pertaining to the business opportunity that she could offer for [D2], to you?
>
> A: (No audible answer)
>
> Q: In general?
>
> A: Yes.
>
> Q: And she had not told you anything specifically about GST or the refund process, you agree?
>
> A: I think the---she did. She did, in a---in a later part when---when my GST claim was---was stuck.
>
> Q: Okay. I will just stop you there. Now, you said, she did, but only after your GST process was rejected?
>
> A: Yes.
>
> Q: Okay. But prior to your entering into the project for the purpose of the GST---or rather, the purposes of entering into the business for the export, she had not represented to you anything. Correct?
>
> A: Yes.

77 Further, I observe that there is a lack of certainty as to D5's involvement in Mr Chua's AEIC. There were a total of 18 references to D3, D4 "and/or" D5,[130] demonstrating Mr Chua's inability to testify with certainty as to which acts D5 did jointly with D3 and D4 so as to amount to any of the

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129 Hearing Transcript at day 1, page 12, line 22 to page 13, line 13.

130 CBP-1 at paragraphs 18, 20–23, 26–27, 32–33, 39, 42, 49 and 60.

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Representations. This contrasts strongly with D3's clear and consistent testimony on D5's lack of involvement.[131]

78 On the evidence which the Claimant has produced *vis-à-vis* D5's involvement, Mr Chua testified during the trial that:[132]

> Q: … do you recall what specifically was she saying in those discussions?
>
> A: … What I can remember was, it was outside my office corridor. I think she picked up a phone call, and then it was her client. They were discussing the phones to be delivered, when to be delivered. And after hanging up, she told me, I---"You know, see, the---the business is so---so good." And she told me to, you know, grab the opportunity to try to export more.

I observe that Mr Chua's evidence does not go so far as to support the Claimant's case that D5 said if one could not obtain GST refunds through the Arrangement, there would not be so many companies interested in purchasing the Products (at [73] above). In any event, given my findings above at [48] on the Other Companies Representation, the statement that "the business is so---so good" is likely true.

79 Mr Chua also testified that D5 "has been around to introduce the buyer" and told the Claimant "the buyer's company name, the price, the product".[133] The Claimant's counsel put to D5 that she was facilitating all the administrative roles, including preparing invoices, signing delivery orders and arranging payments.[134] The Claimant's counsel further rely on other facts which emerged

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131 OKM-1 at paragraph 26; Hearing Transcript at day 1, page 108, line 31 to page 110, line 15.

132 Hearing Transcript at day 1, page 12, lines 12–18.

133 Hearing Transcript at day 1, page 17, lines 13–14.

134 CCS at paragraph 36(e); Hearing Transcript at day 2, page 51, lines 1–7.

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from cross-examination: D5 might have attended the delivery of the Products once or twice;[135] she worked at D1 and D2's shared office;[136] and she filed D2's annual returns which were prepared by an accountant.[137] Similar to my analysis for D4 above (at [72]), these actions do not establish that D5 made any of the Representations or that she did so knowingly or recklessly.

80 I therefore do not find that the Claimant's case against D5 has been made out on a balance of probabilities. The claim against D5 in fraudulent misrepresentation also fails.

Issue 2: whether the Defendants are liable for unlawful means conspiracy

The law on unlawful means conspiracy

81 I now turn to examine the Claimant's claim in unlawful means conspiracy. The elements of the tort are (*Chan Pik Sun* at [170]):

(a) Two or more persons combined to do certain acts.

(b) The alleged conspirators intended to cause damage or injury to the claimant by those acts.

(c) The acts were unlawful (including intentional acts that are tortious).

(d) The acts were performed in furtherance of that agreement.

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135 CCS at paragraph 36(f); Hearing Transcript at day 1, page 74, lines 6–16 and day 2, page 13, lines 8–10.

136 CCS at paragraph 36(c); Hearing Transcript at day 2, page 31, lines 7–10.

137 CCS at paragraph 36(d); Hearing Transcript at day 2, page 45, lines 29–31.

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(e) The acts caused loss.

82 Further guidance on the elements of this tort can be found in case law. In respect of the first element of combination, there must be an agreement between the defendants to pursue a particular course of action. The alleged conspirators must be "sufficiently aware of the surrounding circumstances and share the object for it properly to be said that they were acting in concert at the time of the acts complained of" (*EFT Holdings, Inc v Marinteknik Shipbuilders (S) Pte Ltd* [2014] 1 SLR 860 at [113]).

83 For the second element of intention, the Appellate Division of the High Court has clarified that the unlawful means and the conspiracy must be "targeted or directed" at the claimant. In other words, damage or injury to the claimant must be intended as either a means to an end or an end in itself. It is not sufficient that harm to the claimant is "a likely, or probably or even inevitable consequence" of the defendant's acts, and neither would "an appreciation that a course of conduct would inevitably harm" the claimant suffice (*Chan Pik Sun* at [171]).

The claim in unlawful means conspiracy against the Defendants is not made out

84 The Claimant argues that the Defendants have combined to carry out the missing trader fraud on the Claimant,[138] and that they intended to cause injury to the Claimant through their acts.[139]

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138 CCS at paragraphs 31–36.

139 CCS at paragraphs 37–41.

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85 Firstly, noting that the Arrangement involves the participation of a GST-registered company, the Claimant argues that it was specifically targeted by the Defendants as it is also GST-registered (see [72] above).[140] To support its position, the Claimant names a few of D1 and D2's customers which are GST-registered companies.[141]

86 Secondly, the Claimant repeats its earlier arguments made in the context of misrepresentation that the Defendants were aware that the Claimant would suffer losses if it could not claim GST refunds, and that the Defendants were under-declaring GST payable to IRAS at the time of the Claimant's Transactions.[142]

87 Since, in my judgment, the Claimant has not successfully proven that the Defendants made the Misrepresentations knowing that they were false and thereby perpetrated a scheme of fraud on it (see [62] above), various elements in the tort of unlawful means conspiracy cannot be made out. In particular, the Claimant's evidence is insufficient to establish that the Defendants intended to cause the Claimant injury or that their acts were done in furtherance of a conspiracy.

88 For the first element of combination, in light of my findings at [61]–[62] above that D3 made the Misrepresentations recklessly rather than knowing than they were false, there is insufficient factual basis to support the Claimant's assertion that the Defendants shared the same object of defrauding the Claimant. This conclusion also has an impact on the fourth element of the tort. As I do not

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140 CCS at paragraph 37.

141 CCS at paragraph 38.

142 CCS at paragraph 39.

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find a combination to defraud the Claimant, the Defendants could not have performed their acts in furtherance of the alleged fraudulent object. This conclusion is strengthened by my findings that D4 and D5 played limited roles.

89 The conclusion on the second element of intention is even clearer. The Claimant has not proven that the losses it suffered were intended by the Defendants as a means to an end or an end in itself. The Claimant's submission that the Defendants were aware that it would suffer losses if it could not claim GST refunds is, in view of the Appellate Division's clarification in *Chan Pik Sun* at [171] (above at [83]), plainly insufficient.

90 The Claimant, in its last argument, points to various sums that D3 had withdrawn from D1 and D2 for several years, which were recorded on the companies' accounts as loans,[143] to suggest that D3 had all along intended to strip D1 and D2 of all their assets before shutting them down.[144] D3's explanation was that he had personally borrowed money to pay for D1 and D2's expenses when they struggled financially and these sums were withdrawn from D1 and D2 to help service those loans.[145] I find D3's explanation believable. He was able to explain that the personal loans he incurred were used to pay for the D1 and D2's expenses such as rent.[146] I also accept that he was unfamiliar with how those withdrawals should be reflected in the companies' accounts.[147] His answers were straightforward and to the point. Therefore, I am not convinced

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143 Hearing Transcript at day 1, page 89, line 2 to page 91, line 17.

144 CCS at paragraph 40–41; Hearing Transcript at day 1, page 93, lines 23–25.

145 Hearing Transcript at day 1, page 91, line 22 to page 94, line 23.

146 Hearing Transcript at day 1, page 114, lines 17–19.

147 Hearing Transcript at day 1, page 92, lines 22–23.

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that D3 had all along intended to strip D1 and D2 of their assets before shutting them down.

91 I thus dismiss the claim in unlawful means conspiracy.

Conclusion

92 I conclude that the claims against D1, D2 and D3 in the tort of fraudulent misrepresentation have been made out and they are to compensate the Claimant in the amount of $1,747,483.65. I will hear the parties separately on costs and interest.

Wong Li Kok, Alex
Judge of the High Court

Reuben Tan Wei Jer, Derek Tan Chang Shen and Teh Ryan Christopher Wei Jun (Quahe Woo & Palmer LLC) for the claimant;
Kishan Pratap (Kishan Law Chambers LLC) for the defendants.

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