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

[2026] SGHC 169

Suit No 904 of 2019

Between

(1) Oon Koon Cheng
(2) Sin Hong Hwa Pte Ltd

… *Plaintiffs*

And

Li Hua

… *Defendant*

JUDGMENT

[Contract — Consideration — Past consideration]
[Contract — Formation — Certainty of terms]
[Contract — Illegality and public policy]
[Contract — Intention to create legal relations]
[Contract — Misrepresentation]
[Contract — Remedies — Damages]
[Evidence — Hearsay]

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Oon Koon Cheng and another
v
Li Hua

[2026] SGHC 169

General Division of the High Court — Suit No 904 of 2019
Mohamed Faizal J
7–10, 14–15 April, 5 June 2026

18 August 2026 Judgment reserved.

Mohamed Faizal J:

Introduction

1 This case concerns a commercial transaction which, at the time, appeared to have suited everyone involved. The parties entered into a share sale agreement for the acquisition of a company that owned, *inter alia*, a dormitory business. The business was evidently profitable, and this was made all the more so by the fact that the dormitory was housing significantly more workers than the requisite approvals permitted. That reality was known, or at the very least, rather obvious, to those involved. Yet, while the revenues continued to flow and the transaction remained financially advantageous, there appears to have been little complaint.

2 The matter only came to a head years later, when the time came for the defendant to honour a letter of undertaking he had signed as part of the

transaction. Faced with that obligation, he advanced a whole suite of defences and allegations. The difficulty with his case, however, is not merely that each of his arguments faces its own evidential and legal obstacles. Nor is it really about the specific wording of the letter of undertaking or the precise regulatory standing of the dormitory. It is, at its heart, about whether the court should accept what appears to be a self-interested retrospective narrative constructed after the fact, or whether it should instead prefer the more straightforward inference that the parties knowingly entered into a commercially advantageous arrangement, and that the defendant now seeks to escape the consequences of a bargain that has since turned disadvantageous and that he no longer wishes to keep.

3 For the reasons set out in this judgment, I find that having taken the upside of the transaction, the defendant ought to be made to live with its downsides. I therefore allow the claim.

Facts

4 The first plaintiff, Mr Oon Koon Cheng ("Oon"), was at the material time, and remains, one of the directors and sole shareholder of the second plaintiff, Sin Hong Hwa Pte Ltd ("SHH").[1] SHH was at the material time the sole shareholder of Koon Cheng Development Pte Ltd ("KCD").[2]

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1 Affidavit of Evidence-in-Chief of Oon Koon Cheng dated 6 October 2025 ("PA-1") at paras 1 and 8 and pp 56–57; Affidavit of Evidence-in-Chief of Li Hua dated 16 January 2026 ("DA-1") at para 2.

2 PA-1 at para 8; DA-1 at para 2.

5 The defendant, Mr Li Hua ("Li"), was at the material time the executive chairman, chief executive officer ("CEO")[3] and one of the twenty largest shareholders of USP Group Limited ("USPG").[4] USPG is a company listed on the Singapore Exchange ("SGX") and was at the material time the sole shareholder of USP Properties Pte Ltd ("USPP").[5] For the purposes of this judgment, I refer to USPG and USPP collectively as the "USP Group".

6 KCD, at the material time, owned three properties at Woodlands Industrial Park: (a) a four-storey block factory; (b) a two-storey block warehouse and (c) a four-storey block dormitory ("Dormitory").[6] KCD generated its revenue primarily by way of rental income that it received from these properties.[7] In particular, the bulk of the rental income was derived from the Dormitory, with the evidence suggesting that it made up between 40% to 70% of KCD's total revenue.[8]

7 The Dormitory consisted of between 32 and 33 rooms which were leased out to various companies for the accommodation of foreign workers under their employment.[9] Initially, KCD obtained a Grant of Written Permission by the Urban Redevelopment Authority ("URA") on 20 December 2010 for the

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3 PA-1 at para 9; DA-1 at para 3; Bundle of Documents vol 3 ("3BOD") at p 615; 10 April 2026 Transcript at p 51, lines 24–31 and p 52, lines 1–6.

4 PA-1 at para 9; Bundle of Documents vol 2 ("2BOD") at p 243.

5 PA-1 at para 10; 3BOD at pp 653–654.

6 PA-1 at para 11; DA-1 at paras 7–8.

7 PA-1 at para 12.

8 7 April 2026 Transcript at p 16, lines 7–12, p 49, lines 23–25 and p 50, lines 1–3; DA-1 at para 8; 3BOD at pp 212, 276 and 304.

9 PA-1 at para 18.

(continued) use of the Dormitory to accommodate 480 workers ("2010 WP").[10] The 2010 WP specifically stated that the permission was granted only for a period of three years commencing from 7 January 2011 and that a further application must be submitted to extend the period for which such permission was granted.[11] Sometime in January 2014, KCD applied to renew the 2010 WP.[12] However, the Grant of Written Permission issued by the URA on 15 January 2014 only permitted the Dormitory to house 320, instead of 480, workers ("2014 WP").[13] This was apparently the result of the increased living space that was mandated per worker.[14] The 2014 WP, with its reduced capacity of 320 workers, was renewed in 2016[15] and again in 2020.[16] It should also be noted that sometime in May 2017, KCD had applied, among other things, to intensify the use of the Dormitory from 320 to 670 workers, but this application was rejected by the URA.[17]

8 In the midst of all this, by March or April 2015, Oon had begun looking for a buyer to purchase SHH's shareholding in KCD.[18]

10 PA-1 at para 13; 3BOD at p 340.

11 3BOD at p 332, part III, para 3 and p 333, part IV, para 1.

12 PA-1 at para 15.

13 PA-1 at para 16; 3BOD at p 340.

14 3BOD at p 338, para 2(b); 7 April 2026 Transcript at p 19, lines 22–24.

15 DA-1 at para 56; 3BOD at p 373.

16 3BOD at p 376.

17 PA-1 at para 97; Bundle of Documents vol 1 ("1BOD") at pp 695–698.

18 PA-1 at para 24.

9 Sometime in May 2015, Oon was put into contact with Li through a property broker known as "Victor", however, nothing eventuated from this first meeting, as Oon was insistent on his asking price of $32,000,000.[19]

10 Thereafter, in early July 2015, Oon entered into discussions with Avenue Engineering Pte Ltd ("AE"). After some negotiations, they reached an in-principle agreement, subject to contract, for AE to acquire SHH's shareholding in KCD for $29,000,000 in cash ("AE Offer").[20] On 24 July 2015, AE's solicitors, Rajah & Tann Singapore LLP, sent a draft term sheet to Oon's then solicitor, Mr Chua Leong Hin ("Chua"), who had been engaged to assist with the sale of KCD.[21] Significantly, clause 5(c) of the draft term sheet provided that one condition precedent to the acquisition was "approval from Urban Redevelopment Authority … reflecting that the approved capacity of [the Dormitory] is not less than 320 workers…".[22]

11 During the period when Oon was negotiating with AE, Li approached Oon again to persuade him to sell KCD to the USP Group, and Oon informed Li of the AE Offer.[23] Li then offered for the USP Group to acquire KCD for a sum of $32,000,000, with $20,000,000 to be paid in cash and $12,000,000 to be paid in USPG shares at their net asset value ("NAV").[24] However, Oon rejected this offer as he opined that it was not as attractive as the AE Offer.[25] Following

19 PA-1 at para 25; DA-1 at paras 5 and 11.

20 PA-1 at para 26.

21 PA-1 at para 30; 1BOD at pp 63–69.

22 1BOD at p 66.

23 PA-1 at para 27; DA-1 at para 11.

24 PA-1 at para 28; DA-1 at para 15; 7 April 2026 Transcript at p 54, lines 1–4.

25 PA-1 at para 29.

this rejection, Li continued to negotiate with Oon and, according to Oon, also gave a personal undertaking to repurchase the USPG shares (exercisable upon Oon's and/or SHH's election) at the NAV at which they would be issued to SHH and/or Oon.[26] Nevertheless, Oon insisted that at least $25,000,000 of the consideration price be paid in cash and the parties set out to arrange for the USP Group to obtain a loan of $25,000,000.[27]

12 While the loan arrangements were taking place, Li emailed Victor on 28 September 2015, attaching a draft Heads of Agreement ("HOA") and a draft Term Sheet dated 23 September 2015 sent by the United Overseas Bank ("UOB"), who, in turn, forwarded Li's email to Oon. Oon then forwarded the email to Mr Yin Kum Choy ("Yin"), who was at the material time the managing director of SHH's auditor, Reanda Adept PAC,[28] for Yin's views.[29] On 30 September 2015, Yin responded with his views on the draft.[30]

13 On 22 October 2015, Li sent Oon a revised draft HOA.[31] Both this draft and the earlier draft stated the consideration for the transaction to comprise a payment of $25,000,000 in cash and the issuance of ordinary shares in USPG equivalent to $7,000,000 based on the NAV of those shares.[32]

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26 PA-1 at paras 38–42; 7 April 2026 Transcript at p 54, lines 12–14.

27 PA-1 at paras 42–43; DA-1 at paras 15–20; 7 April 2026 Transcript at p 54, lines 19–22.

28 Affidavit of Evidence-in-Chief of Yin Kum Choy dated 21 June 2022 ("PA-3") at para 1.

29 PA-1 at para 44; PA-3 at paras 2 and 5; 1BOD at pp 86–93.

30 PA-1 at para 45; PA-3 at para 7; 1BOD at p 94.

31 PA-1 at para 46; 1BOD at pp 97–101.

32 1BOD at pp 87 and 98.

14 Sometime after the second draft HOA was sent, Oon apparently received a call from one Mr Loo Yee Ming ("Loo") from UOB. Loo informed Oon that a longer approval process had to be undertaken if Oon insisted on a $25,000,000 loan being obtained by the USP Group and asked if Oon was willing to enter the transaction for $24,000,000 in cash and $8,000,000 in USPG shares instead.[33] Oon accepted this adjustment as the consideration of $32,000,000 was higher than the AE Offer and Li's alleged personal undertaking (see above at [11]) amounted, in his view, to an indemnity.[34]

15 On 13 November 2015, Oon and Li signed the final version of the HOA which reflected the adjusted consideration as comprising a payment of $24,000,000 in cash and the issuance of ordinary shares in USPG equivalent to $8,000,000 based on the NAV of those shares.[35] For completeness, I should observe that there was a third draft HOA that was sent to Oon on 9 November 2015 prior to signing, but this was of little moment as it still reflected the previous consideration terms, *ie*, $25,000,000 in cash and $7,000,000 in USPG shares.[36]

16 Following the signing of the HOA, USPG began its due diligence process for the acquisition of KCD.[37] In particular, on 30 November 2015, SHH provided USPG with a copy of the 2014 WP, which, as mentioned above at [7], only permitted the Dormitory to house 320 workers.[38]

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33 PA-1 at para 47; DA-1 at para 21.

34 PA-1 at para 48.

35 PA-1 at para 51; DA-1 at paras 24–26; 1BOD at pp 20–23.

36 PA-1 at para 49; 1BOD at pp 103–107.

37 PA-1 at paras 53–54; DA-1 at para 27.

38 PA-1 at para 55; 1BOD at pp 259 and 264–265.

17 Concurrently, USPG engaged Bird & Bird ATMD LLP to work with Mr Raphael Tham ("Tham"), then a director of USPG, to prepare the sale and purchase agreement ("SPA").[39] On 24 November 2015, Tham sent the first draft of the SPA to Oon.[40] Under the "Particulars of Property" set out in Schedule 2 to the SPA, the property was simply described as consisting of a "total of three (3) building [*sic*] of two (2) blocks of 4 storeys and one (1) block of 2 storeys building in the whole area".[41] This marked the start of extensive discussions and amendments, the key facets of which are as follows:

(a) On 2 December 2015, Chua emailed Tham attaching an "amended Schedule 2".[42] Significantly, in the amended Schedule 2, each of the three properties was described individually and the description of the Dormitory specifically stated "1 Block of 4-Storey Ancillary/Secondary Dormitory with Urban Redevelopment Authority (URA) approval for 320 workers. Currently, the Dormitory houses approximately 500 workers".[43] It is disputed whether this amendment arose due to Oon's or Tham's instructions.[44]

(b) On 3 December 2015, Tham sent an email to Chua and Oon which contained a revised draft of the SPA.[45] This revised draft[46] incorporated the amended Schedule 2 and also a new sub-clause 7.5,

39 DA-1 at paras 36–37.

40 PA-1 at para 57; 1BOD at pp 201–258.

41 1BOD at p 224.

42 PA-1 at paras 58–59; 1BOD at p 267.

43 1BOD at p 268.

44 PA-1 at para 58; DA-1 at para 38.

45 PA-1 at para 61; 1BOD at p 269.

46 1BOD at pp 270–329.

which provides as follows: "Save for the warranties in relation to Schedule 4 Clause 17, the Properties will be sold on an as-is basis and upon Completion, it is the Purchaser's responsibility to seek any approvals with the relevant authorities and/or any rectification works in accordance with the regulations, if required".[47]

(c) On the same day (*ie*, 3 December 2015), Oon forwarded the revised draft of the SPA to Yin.[48] Yin was of the view that it was necessary for parties to meet to address certain concerns that he had and a meeting was arranged on 4 December 2015.[49]

(d) On 4 December 2015, Oon, Chua, Yin, Tham and one Mr Wong Peng Wai ("Wong"), who was another of USPG's representatives, met to discuss amendments to be made to the SPA.[50]

(e) On 6 December 2015, Yin sent Oon and Chua an email setting out "some of the more pertinent issues that parties to the proposed SPA have agreed upon" at the meeting.[51]

(f) On 8 December 2015, a further discussion was held between Oon, Chua and Tham.[52] Following this discussion, Tham sent a further

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47 1BOD at pp 284 and 294–295.

48 PA-3 at para 15; 1BOD at p 330.

49 PA-3 at para 17; 10 April 2026 Transcript at p 21, lines 5–7.

50 PA-1 at para 63; Affidavit of Evidence-in-Chief of Chua Leong Hin dated 21 June 2022 ("PA-2") at para 15; PA-3 at para 18; 9 April 2026 Transcript at p 28, lines 28–32.

51 PA-1 at para 64; PA-3 at para 19; 1BOD at pp 393–394.

52 PA-1 at para 65; PA-2 at para 18; 1BOD at p 402.

revised draft of the SPA to Oon and Chua.[53] This version contained no amendments to Schedule 2 or sub-clause 7.5.[54]

(g) Sometime before 10 December 2015, Oon requested further amendments to be made by Tham, in particular for sub-clauses 7.2–7.4 to be deleted, and for the following sentence to be added to sub-clause 7.5 (*ie*, the new sub-clause 7.2): "For avoidance of doubt, the Vendor will not be liable for any matters whatsoever, with regards to events related to the Property after Completion, including but not limited to the use, approvals, renovations, etc".[55]

(h) On 10 December 2015, Oon requested the insertion of a new sub-clause 7.2 (with the sub-clause referred to above at [17(g)] renumbered to sub-clause 7.3): "Save for the specific representations in this Clause 7 and Schedule 4, the Vendor makes no other representations, warranties and undertakings that will survive after the Completion Date".[56] This was duly incorporated by Tham, who sent a draft incorporating this change to Oon and Chua.[57]

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53 1BOD at pp 402 and 404–437.

54 1BOD at pp 418 and 426.

55 PA-1 at para 66; 1BOD at pp 474 and 489.

56 PA-1 at para 68.

57 PA-1 at para 69; 1BOD at pp 544 and 559.

(i) Subsequently on the same day, Tham sent a further draft with a "minor amendment",[58] followed by the clean version for signing.[59] These versions did not amend Schedule 2 or sub-clauses 7.2 or 7.3.[60]

18 On 16 December 2015, Li, Tham and Wong met Chua and Oon at Chua's office, and the SPA was signed and executed.[61] After the execution of the SPA, Oon asked Li for a written letter of undertaking by which Li would undertake to buy back the USPG shares issued to Oon pursuant to the SPA for $8,000,000 ("LOU").[62] After some discussion, Li instructed Tham to draft the LOU by hand. The LOU was then typed out by one of Chua's staff and signed by Li, with Wong affixing his signature as a witness.[63] In essence, the LOU provided that Li undertook to buy back the USPG shares issued to Oon for $8,000,000 upon written notice being provided by Oon and/or SHH to Li, after the expiry of 36 months from the completion date of the SPA.[64] It is a matter of central dispute whether the LOU was intended to be enforceable.

19 On 18 December 2015, USPG made an SGX announcement on the entry into the SPA.[65]

20 On 19 February 2016, completion of the SPA took place. SHH's entire shareholding in KCD was transferred to USPP's nominee, USPP Woodlands

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58 PA-1 at para 70; 1BOD at pp 614 and 616–649.

59 PA-1 at para 70; 1BOD at pp 650 and 652–685.

60 1BOD at pp 629–630, 638, 665 and 674.

61 PA-1 at paras 76–77; DA-1 at paras 43–45.

62 PA-1 at para 78; DA-1 at paras 47–50.

63 PA-1 at para 81; DA-1 at paras 51–53.

64 1BOD at p 24.

65 PA-1 at para 83.

Pte Ltd.[66] In return, Oon received a total of 131,578,947 shares in USPG, comprising 117,633,576 new shares and 13,945,371 treasury shares, on 18 February 2016 and 22 February 2016 respectively.[67]

21 On or around 11 April 2016, USPG carried out a share consolidation exercise and Oon's 131,578,947 shares were consolidated into 13,157,894 shares in USPG ("USPG Shares").[68]

22 Sometime in or around January 2019, *ie*, just shy of 36 months since the completion date, Oon asked Li to meet to discuss the LOU and Li's undertaking to buy back the USPG Shares at the agreed price of $8,000,000.[69] Li gave Oon several reasons why the meeting had to be delayed, and Li and Oon eventually met on 12 February 2019.[70]

23 At the 12 February 2019 meeting, instead of discussing the buy back of the USPG Shares, Li asked Oon to advance him $1,500,000 in exchange for more shares in USPG, citing his legal troubles and possible bankruptcy.[71] This eventuated into a separate agreement on 22 February 2019, under which Li would deliver 12,868,816 shares in USPG to Oon and Oon would advance a total of $1,479,913 to Li, who in turn instructed that it be issued as $1,000,000 to Quahe Woo & Palmer LLC and $479,913 to Sunmax Global Capital Fund 1

66 PA-1 at para 90; DA-1 at para 55.

67 PA-1 at para 92; 3BOD at pp 496–498.

68 PA-1 at para 94; 2BOD at pp 177–178.

69 PA-1 at para 105.

70 PA-1 at paras 105–106; 2BOD at pp 20–22.

71 PA-1 at paras 106–107.

Pte Ltd.[72] Pursuant to this agreement, Li procured five different shareholders to transfer their shares in USPG to Oon.[73]

24 On 15 February 2019, Oon sent a written notice through his then solicitors, Vijay & Co ("V&C"), to Li, stating that Oon was exercising the option under the LOU to sell the USPG Shares to Li at the agreed fixed price of $8,000,000 and that the sale would have to be completed by 1 March 2019 ("15 February 2019 Letter").[74] Pursuant to the LOU, the 15 February 2019 Letter was sent by email to Li and by hand to Li's Orchard address.[75] On 18 February 2019, one Ms Xia Zheng acknowledged receipt of the 15 February 2019 Letter at Li's Orchard Address.[76]

25 After the 15 February 2019 Letter was sent, Oon met with Li again and Oon told Li he had to respond to the 15 February 2019 letter.[77] On 25 February 2019, Li responded to the 15 February 2019 Letter by sending two emails to V&C.[78] In the first email, Li stated that he would sign a new agreement to buy the USPG Shares in two years' time,[79] while in the second email, Li stated that Oon was agreeable to extend the option period by two years.[80]

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72 PA-1 at paras 117–118; 1BOD at pp 61–62.

73 PA-1 at paras 119–120; 2BOD at pp 35–70.

74 PA-1 at paras 109 and 111; 2BOD at pp 23–25.

75 PA-1 at para 109.

76 PA-1 at para 110; 2BOD at p 26.

77 PA-1 at para 112; DA-1 at para 58.

78 PA-1 at paras 113–115.

79 2BOD at p 33.

80 2BOD at p 34.

26 On 18 June 2019, V&C sent a letter dated 14 June 2019 to Li.[81] This letter expressly stated that Oon had not agreed to the two years' extension and that the option would be extended for only two weeks until 3 July 2019.[82] This letter was sent by email to Li and by hand to Li's Orchard address, and Ms Xia Zheng acknowledged receipt of the letter at Li's Orchard Address.[83] However, Li did not respond before 3 July 2019.

27 On 29 July 2019, Oon's new solicitors, Dentons Rodyk & Davidson LLP sent another letter to Li reiterating the written exercise of the option pursuant to the LOU and giving Li until the end of 2 August 2019 to confirm that he would buy back the USPG Shares.[84] This letter was sent by email to Li and by hand to Li's Orchard address, but there was no one present at Li's Orchard address and the letter was left in the mailbox.[85] Li did not respond by 2 August 2019.[86]

28 As such, on 12 September 2019, Oon filed the present proceedings.

29 For completeness, I note that several related proceedings were subsequently commenced by Oon and/or the USP Group. In particular, USPG commenced HC/S 328/2020 ("Suit 328") against Oon, SHH and Li, claiming losses arising from the sale of KCD.[87] However, as I explain below at [105], I ultimately place little weight on these proceedings and their surrounding circumstances.

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81 2BOD at pp 73–74.

82 PA-1 at para 126.

83 PA-1 at para 127; 2BOD at p 72.

84 PA-1 at paras 129 and 131–132; 2BOD at pp 81–84.

85 PA-1 at para 130; 2BOD at pp 85 and 87.

86 PA-1 at para 133.

87 PA-1 at paras 137 and 139–141; DA-1 at para 72.

The parties' cases

30 On Oon's account, as alluded to above at [11], Li had given a personal undertaking to buy back what later became the USPG Shares, and it was this personal undertaking that led to Oon rejecting the AE Offer in favour of the USP Group's offer.[88] As such, on 16 December 2015, it was intended for both the SPA and Li's personal undertaking (*ie*, the LOU) to be signed and executed at the same time.[89] Oon asserts that the terms of the LOU are clear and that it was intended to be enforceable and binding.[90] Moreover, the LOU was drafted and amended with both parties' input, read by Li before Li signed it and there was sufficient opportunity for Li to be advised by Tham or Wong.[91] Therefore, by refusing to honour his obligation under the LOU, Li has acted in repudiatory breach of the LOU.[92]

31 Against this, Li argues that Oon's request for the LOU during the 16 December 2015 meeting came out of the blue and characterises the LOU as an unenforceable "letter of comfort".[93] Specifically, Li argues that the LOU fails as an enforceable contract as there was no intention to create legal relations,[94] its terms are uncertain and/or incomplete,[95] and there was a lack of

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88 PA-1 at para 38; Plaintiffs' Closing Submissions dated 22 May 2026 ("PCS") at paras 6, 41 and 44–45.

89 PA-1 at para 76; PCS at para 58.

90 PCS at paras 61–62.

91 PA-1 at para 82; PCS at para 60.

92 PCS at para 78.

93 DA-1 at paras 47–52; Defendant's Closing Submissions dated 22 May 2026 ("DCS") at paras 80 and 120; Defendant's Reply Submissions dated 5 June 2026 ("DRS") at paras 41(4)–(5) and 42(2).

94 Defendant's Opening Statement dated 24 March 2026 ("DOS") at paras 34–40; DCS at paras 118–124; DRS at paras 39 and 41–42.

95 DCS at paras 76–80 [*sic*] (pp 42–43); DRS at paras 39, 41(1), 41(5)–41(6) and 42(2).

consideration.[96] Even if the LOU was a valid contract, Li avers that it is tainted by the illegality of the SPA[97] and/or Oon's misrepresentation that he had never faced issues with the authorities before and did not anticipate any future action by the authorities in relation to housing more than the permitted number of workers in the Dormitory.[98]

Issues to be determined

32 The facts and arguments raised by parties reduce to one simple question: is Li bound by the LOU to buy back the USPG Shares from Oon? This question can be neatly analysed along the following axes:

(a) Is the LOU a valid contract?

(i) Was there an intention to create legal relations?

(ii) Are the terms of the LOU certain and complete?

(iii) Was there valid consideration supporting the LOU?

(b) If so, is the LOU unenforceable?

(i) Is the LOU tainted by any misrepresentation?

(ii) Is the LOU tainted by illegality?

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96 Defence (Amendment No. 4) dated 21 January 2022 ("Defence") at paras 9(a)–9(d): Set Down Bundle dated 17 March 2024 ("SDB") at p 12; Defence at paras 5–7: SDB at pp 10–11; DA-1 at para 54; DCS at paras 112–114; DRS at paras 21–27.

97 Defence at paras 7(b) and 10: SDB at pp 11 and 13–15; DA-1 at para 54; DRS at paras 55–57.

98 Defence at para 10(g): SDB at pp 14–15; DCS at para 42.

33 Before delving into these issues, however, I first turn to a preliminary point regarding the admissibility of certain hearsay evidence that Li sought to rely on in the proceedings before me.

Are Tham's and Wong's affidavits admissible evidence?

34 As part of Li's defence, he sought to place reliance on two separate affidavits that were ostensibly made by Tham[99] and Wong.[100] These affidavits were procured by Li to be adduced as further evidence in the appeal hearing against Oon's summary judgment application in these proceedings but were never ultimately filed as Li's application to adduce further evidence was dismissed in HC/SUM 1364/2021. Despite this, Li has exhibited these affidavits in his affidavit of evidence-in-chief in the proceedings before me.

35 To provide some context, Tham's affidavit, in very broad terms, essentially mirrors Li's account that the request for the LOU only came on the day of the signing of the SPA and that Li was surprised by such a request and was essentially coerced into agreeing to the LOU on the spot.[101] Indeed, Li makes numerous references to Tham's description of events to corroborate or explain his account.[102] Wong's affidavit, on the other hand, is only tangentially relevant, in so far as it simply speaks of his involvement on the date of the signing of the SPA and LOU, though he was not privy to the discussions that led to the signing of either document.[103]

99 Bundle of Documents vol 4 ("4BOD") at pp 3–156.

100 4BOD at pp 157–198.

101 4BOD at pp 11–13, paras 25–30.

102 DA-1 at paras 38–40; DOS at paras 8, 13 and 35; 9 April 2026 Transcript at p 42, lines 11–14; 10 April 2026 Transcript at p 79, lines 20–25 and p 80, lines 8–12.

103 4BOD at pp 158–160, paras 7–16.

36 During the trial, Oon asserted that such evidence should not be admitted as they amounted to hearsay and were therefore inadmissible.[104] Li did not dispute that such evidence was hearsay but contended that he had attempted to contact both Tham and Wong but was unsuccessful in persuading them to attend court and give evidence.[105]

(a) In relation to Tham, Li claimed that he had "discussed with [Tham] as [*sic*] for [Tham] to come to Court as a witness" but that Tham "was unwilling to do so"[106] and Li "accept[ed] his decision".[107]

(b) As for Wong, Li claimed not to be able to contact him, but when queried as to whether he had Wong's phone number, he indicated that he did and that he had called him but that Wong did not answer.[108] In any case, Li accepted that Wong's affidavit "did not have substantial content" and that his defence was "structured mainly upon [Tham's] affidavit".[109]

37 After hearing the parties' arguments on this issue, I declined to allow the admission of either affidavit as evidence. I accepted that the evidence of Tham and Wong was relevant, even if in Wong's case, only tangentially so. However, it was clear that the evidence in question is hearsay and could therefore only be admitted if it falls within the contours of the hearsay exceptions under the

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104 10 April 2026 Transcript at p 34, lines 26–31, p 35, lines 1–8, p 38, lines 1–31 and p 39, lines 1–5.

105 10 April 2026 Transcript at p 36, lines 13–16.

106 10 April 2026 Transcript at p 36, lines 16–18.

107 10 April 2026 Transcript at p 40, lines 14–16.

108 10 April 2026 Transcript at p 36, lines 16 and 20–23.

109 10 April 2026 Transcript at p 36, lines 31–32 and p 37, lines 3–4.

Evidence Act 1893 (2020 Rev Ed) ("EA") (see O 38 r 1(1) of the Rules of Court 2014 (Cap 322, R 5, 2014 Rev Ed) ("ROC 2014")). It seemed to me that the only potential exception that could have even been remotely applicable under the given facts was s 32(1)(*j*) of the EA. In this regard, the burden was on Li to prove the requirements of s 32(1)(*j*) of the EA were met (*Naughty G Pte Ltd v Fortune Marketing Pte Ltd* [2018] 5 SLR 1208 ("*Fortune Marketing*") at [30], citing *Gimpex Ltd v Unity Holdings Business Ltd* [2015] 2 SLR 686 at [97]).

38 In my view, the reasons articulated by Li for the admission of such evidence fell far short of the requirements under s 32(1)(*j*) of the EA. The underlying premise of Li's arguments for why the hearsay evidence ought to be allowed was that it was proving to be inconvenient for him to procure the witnesses' attendance as the witnesses preferred not to testify or be disturbed. Unsurprisingly, the law does not allow for the admission of hearsay evidence on those grounds – the trial process does not, and cannot, operate on such an *à la carte* basis. The EA recognises this and consequently, there is no statutory exception predicated on the personal preference of a party or a witness, and the admissibility of evidence does not turn on whether it is more convenient, desirable or strategically advantageous for a witness not to be called. If the EA did contain such an exception, parties could too easily insulate ostensibly favourable evidence from the scrutiny of cross-examination while insisting on testing only the evidence that disadvantages them. That would undermine the very purpose of the trial process. As noted by the court in *Wan Lai Ting v Kea Kah Kim* [2014] 4 SLR 795 ("*Wan Lai Ting*") at [19], s 32 of the EA is not meant to be used to admit an affidavit where a party decides for ulterior reasons not to present the witness for cross-examination even though the witness could have testified.

39 The simple answer to Li's contentions that Tham would rather not testify and that Wong has not picked up his calls was that Li would be expected to issue a subpoena against them to compel their attendance (see O 38 rr 2(1) and 14 of the ROC 2014). To the extent that Li's *preference* is to respect their wishes not to be involved, he must bear the consequences of such an election. For completeness, there was no suggestion that Wong "cannot be found" such that s 32(1)(*j*)(ii) of the EA would have scope for application – it would seem that all Li has done is to make unanswered phone calls, a rather lackadaisical approach in view of the fact that it was obvious that he must have known Wong's address, such information having been set out on the very affidavit he sought to adduce.

40 I would add, for good order, that to the extent that I have an overriding discretion under O 38 r 2(1) of the ROC 2014 to order such evidence to be admitted notwithstanding the patent absence of an applicable exception under the EA (see *Wan Lai Ting* at [20]), I would not have chosen to do so. As the court in *Fortune Marketing* observed at [36], it would require compelling reasons before a party that has failed to admit an affidavit via s 32 of the EA can convince the court to exercise its discretion under O 38 r 2(1) of the ROC 2014 to admit the same affidavit. In my view, there are no such special considerations here. Moreover, one relevant factor in the exercise of discretion under O 38 r 2(1) appears to be whether satisfactory evidence has been adduced to explain why the witness' attendance could not be procured (see *Industrial & Commercial Bank Ltd v PD International Pte Ltd* [2003] 1 SLR(R) 382 at [21]). On this point, I would observe that no documentary evidence was furnished by Li to suggest that any conversation was had with Tham or Wong to ask them to attend proceedings and they refused to do so. Indeed, Tham's affidavit, at its conclusion, speaks boldly of his desire to give evidence on the matters in his

affidavit,[110] and yet he has since elected not to do so. Similarly for Wong, I saw no reason why he would decline to give what would appear, on its face, to be unexceptional evidence. All in all, there are serious question marks about why such individuals have elected not to attend court and, in these circumstances, the court ought to have severe reservations about the integrity of such evidence and the prejudice that would be visited on Oon from the admission of such hearsay evidence that cannot be meaningfully scrutinised through the process of cross-examination.

41 For what it is worth, even if the affidavits had been admitted, they would not have, in my view, moved the evidential needle in any meaningful way. Wong's evidence, in essence, was simply that Li appeared "distressed and unhappy" immediately before the signing of the LOU.[111] To state the obvious, Li may have been unhappy because he hoped that earlier discussions or assurances would never have to be reduced into writing. He may have been displeased because the insistence on the LOU meant that he could no longer preserve ambiguity or plausible deniability as to what had been agreed. He may also have been upset simply because he was being asked to commit, in writing, to a substantial contingent liability involving a large sum of money, even if this had been previously orally agreed. None of these possibilities (which I raise now as hypotheticals but return to discuss in greater detail below at [52]) is inherently surprising or entirely unreasonable. What matters is that unhappiness, reluctance or even irritation at having to sign a document does not, without more, establish that the document was procured by coercion, or that its contents were wholly foreign to what had previously been discussed between, and agreed to by, the parties.

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110 4BOD at p 14, para 31.

111 4BOD at pp 159–160, paras 12–13.

42 Tham's evidence had, with respect, almost no modicum of credibility. It simply could not be reconciled with the contemporaneous evidence. Tham claimed that he was the one who had insisted on the SPA reflecting the disconnect between the approved occupancy and the actual number of workers housed.[112] As I will explain in due course (see below at [83]), that assertion simply makes no sense and cannot be believed because the clause did not assist him; it positively undermined the USP Group's position by expressly drawing attention to the fact that the Dormitory was operating beyond its approved limits. The suggestion that Tham voluntarily insisted on including such a clause is therefore so inherently implausible as to be difficult to take seriously. Likewise, Tham's claim that the USP Group ultimately agreed to rely on Oon's representations that the Dormitory could house "480 workers rather than the legally permitted 320 workers"[113] did not sit comfortably or logically with his own evidence that he was, at all times, wary of those very representations and that his lawyers had expressly warned him that the position could not be justified by reference to those representations alone.[114] If that were truly his state of mind, one would have expected him and the USP Group to insist on obtaining clear documentary confirmation of the relevant approvals, rather than proceed in reliance on formal assurances. Interestingly, and conveniently, despite making repeated references to such concerns, no contemporaneous documents were produced (nor indeed any evidence of attempts to obtain such documents) that would hint to such reservations, warnings or objections. Tham's claim that such documents exist but that he had no access to them as he was no longer affiliated with the USP Group[115] simply did not make sense. I say this because while

112 4BOD at pp 8–9, paras 16–17.

113 4BOD at p 9, para 18.

114 4BOD at pp 8–9, para 16.

115 4BOD at p 10, para 19.

taking that position, he was somewhat curiously able to produce a considerable body of other material that one would have reasonably expected to be in the possession of the USP Group.[116] This inconsistency seriously undermines his explanation. The piecemeal nature of such disclosure of documents suggests that the inability to produce such contemporaneous documents is more easily explained by the obvious reason that no such documents in fact exist. Seen in the round, Tham's claims, much like his statement that he is "prepared to be cross-examined on any matter deposed" in his affidavit which he has now clearly done a volte-face on, have to be viewed with much wariness and simply cannot be given any significant weight.

43 Having dealt with this preliminary point, I turn to consider the issues set out above in [32] in turn.

Is the LOU a valid contract?

Was there an intention to create legal relations?

44 The intention to create legal relations is one of the essential legal elements of a valid contract (*Oei Hong Leong v Chew Hua Seng* [2020] SGCA 78 ("*Oei Hong Leong (CA)*") at [11], citing *Gay Choon Ing v Loh Sze Ti Terence Peter* [2009] 2 SLR(R) 332 ("*Gay Choon Ing*") at [46]). The content of this requirement has been explained by the Court of Appeal as follows (*Gay Choon Ing* at [71]):

> … Put simply, it must be demonstrated that there was an intention on the part of both parties that the transaction entered into was to *have legal effect* before a valid contract can be said to have been formed. Put another way, the parties must have intended that, if a disagreement arose or the contract was

116 See, *eg*, 4BOD at pp 8 and 10, paras 15, 19 and 20.

> not honoured subsequently, the aggrieved party could invoke the assistance of the court.
>
> [emphasis in italics in original]

45 The test of whether parties intended to create legal relations is objective (*Oei Hong Leong v Chew Hua Seng* [2020] SGHC 39 ("*Oei Hong Leong (HC)*") at [32], citing *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 at [40]) and the mere subjective assertions of the parties are, in and of themselves, insufficient (*Oei Hong Leong (CA)* at [12]).

46 In the context of business and commercial arrangements, there is a presumption that the parties do intend to create legal relations (*Gay Choon Ing* at [72]). Where this presumption applies, the burden of rebutting the presumption falls on the party seeking to deny its legal effects and the burden is a heavy one (*Foo Jong Long Dennis v Ang Yee Lim Lawrence* [2016] 2 SLR 287 ("*Dennis Foo*") at [81(b)], citing *Tan Eck Hong v Maxz Universal Development Group Pte Limited* [2012] SGHC 240 at [60]; *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) ("*The Law of Contract in Singapore*") at para 05.013). However, this presumption does not detract from the fundamental task of ascertaining "the true bargain between the parties, to seek the substance and reality of the transaction and to ascertain what common intentions should be ascribed to the parties" (*Oei Hong Leong (HC)* at [33], citing *Hongkong & Shanghai Banking Corp Ltd v Jurong Engineering Ltd* [2000] 1 SLR(R) 204 at [43]). In seeking to identify the "substance and reality of the transaction", a court is not confined to looking at the parties' conduct prior to, or at the time of, the purported agreement, and may also consider evidence of subsequent conduct (*Oei Hong Leong (HC)* at [34]). Ultimately, the inquiry is an intensely factual one and much would depend

upon the precise facts and circumstances of the case (*Oei Hong Leong (CA)* at [11] and [13]).

47 Turning to the facts, I am satisfied that the LOU was signed in the commercial context. Oon and Li did not know each other before being introduced by Victor for the purpose of negotiating the sale of KCD (see above at [9]). In the roughly seven months from then to the signing of the SPA, it appears that Oon and Li only met up or corresponded to discuss the potential sale of KCD and there is nothing in the evidence to show that this was anything but a commercial association. Accordingly, I find that there is a presumption that Li and Oon intended to create legal relations and therefore the burden falls on Li to displace this presumption. Having considered the evidence and the circumstances leading up to and surrounding the signing of the LOU, I conclude that he has failed to do so.

48 First, Li's primary assertion that neither the personal undertaking nor the LOU were part of the negotiations leading up to the SPA and that Oon had only raised this for the first time after the SPA was signed[117] is simply not borne out on the facts of the case. There is overwhelming evidence to suggest that the LOU was not a spur of the moment request and had stemmed from an earlier understanding that such a guarantee would be furnished as part of the deal. Both Chua's and Yin's testimony corroborate Oon's account (see above at [11] and [30]) that Li had given him a personal undertaking. In particular, Chua's evidence was, in my view, especially textured and nuanced. He testified that Oon had referred to the fact of such a guarantee long before the signing of the LOU.[118] He also explained that, from his perspective, he understood the buyback

117 DA-1 at paras 47–52; DCS at paras 118–120; DRS at para 41(2).

118 PA-2 at para 9; 9 April 2026 Transcript at p 35, lines 7–10 and 22–26.

arrangement to be conceptually separate from the SPA as the repurchase obligation was to be undertaken by Li personally, rather than by the USP Group.[119] Further, Chua's evidence was that such an arrangement had been motivated by Oon's scepticism that the USPG Shares were, in substance, not worth the amount it was being declared for the purposes of the transaction.[120] Yin's evidence was admittedly somewhat broader and more general in nature. Nonetheless, he likewise intimated that he understood there to have been an arrangement between Oon and Li for Li to repurchase the USPG Shares as a prerequisite to proceeding with the transaction,[121] and that Oon would not have accepted the USP Group's offer otherwise.[122] In this connection, it is noteworthy that neither of them had a personal interest in the transaction and their respective involvement in the matter was by way of professional engagement. In that sense, neither Chua nor Yin would have much incentive to paint a false picture of the circumstances. It is also significant that Chua recalls the entire discussion about the LOU as being professional and unexceptional.[123] The upshot of this is that the matter of the need for an LOU cannot plausibly be something that came as a surprise to Li, which itself necessarily suggests that it must have been agreed previously. Having assessed Chua's and Yin's evidence in the round, I see no reason to disbelieve either of their accounts, nor is there, for good order, any basis for me to conclude that Oon had intentionally misrepresented his arrangements with Li to either of them.

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119 9 April 2026 Transcript at p 35, lines 18–21 and 27–29, and p 36, lines 2–5 and 11–14.

120 9 April 2026 Transcript at p 36, lines 9–10.

121 PA-3 at para 13; 10 April 2026 Transcript at p 10, lines 24–27, p 11, lines 24–28, p 12, lines 2–7 and 26–29, p 15, lines 18–22 and p 16, lines 21–27.

122 10 April 2026 Transcript at p 24, lines 27–31 and p 25, lines 1–6.

123 PA-2 at paras 24–25.

49 Moreover, and in any event, the suggestion that the LOU was a last-minute contrivance on the part of Oon is somewhat illogical and inherently difficult to accept. There are at least three reasons I say this:

(a) For one, there was simply no obvious reason for Oon to assume that Li would readily or willingly capitulate to such a demand with no prior notice of the same. It would have been an extraordinary, if not completely foolhardy, gamble to bring negotiations to the brink, after the parties had already invested substantial time and effort on the transaction and after having exchanged many drafts of the SPA, on the speculative hope that Li would immediately agree.

(b) For another, any attempt at coercion would carry an obvious and almost inevitable risk of backfiring. Li could have simply refused to draft or sign the LOU altogether. Indeed, I find it unbelievable that Li would entertain signing an LOU he had not been given any prior notice of – anyone in his position, an educated man who was serving as a CEO of a Singapore-listed entity, would undoubtedly ask serious questions about why he should sign anything that was being forced on him at the eleventh hour with little to no time to react. In any event, even if Li had drafted and signed the LOU under protest in order to salvage the SPA, this would have created an immediate and foreseeable risk that he would, after some reflection, subsequently deny any intention to be bound by it. If Oon truly intended the LOU to have legal force, it would have made little sense for him to procure it in a manner almost guaranteed to undermine its legitimacy and future enforceability.

(c) Yet further, it is difficult to see why Oon would have the parties complete the signing of the SPA, thereby potentially crystallising the underlying transaction, before demanding the LOU, as opposed to requiring the LOU as a precondition to signing the SPA. The entire sequence of events simply did not make sense. Once the SPA had been executed, Li potentially already had the benefit of a concluded bargain. Even if the SPA was not formally handed over, there is at least a real question as to whether it would have nonetheless been binding and enforceable (and there is at least a plausible argument that this is so). On that footing, Oon would have had little, if any, practical leverage left to even persuade Li to craft an LOU. The chronology suggested by Li therefore sits very uneasily with the suggestion that the LOU was a last-minute demand extracted only after the SPA had been concluded.

50 To add on, it appears to me inherently unlikely that Li would have signed the LOU unless he had appreciated that the parties had already previously come to terms with its substance. It bears repeating that Li contends that he was told that the document was, in his words, nothing more than a "letter of comfort" and was not meant to be legally enforceable (see above at [31]). I find that account to be entirely unpersuasive. As I have explained earlier, Li is a commercially sophisticated businessman (having had many years of experience at the helm of companies including those dealing with mergers and acquisitions and fund management)[124] and, at the time, was the executive chairman and CEO of a listed company (see above at [5]). He would therefore not be an ingenu who would be unaware of the significance of such documents. Just as importantly, the argument is an illogical one: it would have been obvious to all concerned that a document that has no legal effect and that is incapable of ever being enforced would not provide any meaningful comfort at all. Such a paper tiger

124 10 April 2026 Transcript at p 48, lines 29–32, pp 49–51 and p 52, lines 1–10.

would be, one would assume, of no comfort to anyone and both parties would have appreciated this. If the LOU was intended to reassure Oon, then it surely must have been anticipated to have legal force. In this connection, it is, in my mind, telling that the LOU had set out specific timeframes upon which it could be enforced and even prescribed the notice requirements for invoking the specific terms of the undertaking.[125] It would have been self-evident to Li that these were not ornamental provisions and would have no sensible place in a document that was intended to be symbolic. Instead, these provisions indicated that this was a document that was to be given legal effect and potentially acted upon. Having regard to the above, the expression "letter of comfort" appears to be a convenient label deployed by Li whenever it became inconvenient for him to honour a contractual obligation. It was not lost on me that during the course of these proceedings, as part of his oral evidence, Li had characterised yet another agreement – namely, the agreement to advance Li $1,479,913 (see above at [23]) – as being a further "comfort letter".[126] Yet the terms of that agreement were in fact executed. That rather undermines the significance which Li sought to attach to such nomenclature. A document does not cease to have legal effect just because a party chooses to describe it as a "letter of comfort". The court is ultimately concerned with substance, not labels. Here, the evidence suggests that "letter of comfort" was less a meaningful legal classification than it was a convenient expression invoked after the fact whenever Li wished to distance himself from the obligations he previously accepted.

51 I also place weight on the fact that Li's account during cross-examination at times defied logic and betrayed the fact that he was in all likelihood not being honest about what happened during the course of the

125 1BOD at p 24.

126 10 April 2026 Transcript at p 69, lines 19–32 and p 70, lines 1–5.

transaction. As Oon's counsel rightly points out,[127] it would make little commercial sense for Oon to accept consideration comprising $25,000,000 in cash and $7,000,000 in shares (or the eventual deal of $24,000,000 in cash and $8,000,000 in shares), with these illiquid shares valued at their NAV of $0.06 instead of their actual market price of $0.03. On any realistic assessment, that would have meant that the total value of the transaction was closer to $28,500,000 – in other words, less attractive than the AE Offer which Oon had rejected in favour of this deal. When confronted with this, Li's explanation was that Oon was nevertheless content with the arrangement as he "had high hopes that USP[G] shares will rise exponentially".[128] This would seem to be unlikely even by Li's own account; indeed, Li subsequently admitted that Oon "definitely did not want the shares, but he had no choice".[129] This puts paid to Li's contention that Oon was interested in the USPG Shares at the outset for their considerable promise. In addition, such a contention also sits uneasily with the LOU itself. If Oon wanted the USPG Shares because he was confident that they would invariably rise in value, it is difficult to understand the need for an undertaking on Li's part to buy the shares back at a fixed price. The LOU would most logically be explained by Oon assessing that there was a very real and obvious risk that the USPG Shares would not ultimately end up being worth the valuation Li had placed on them. Needless to say, all of this is above and beyond the obvious point that it made no commercial sense for Oon to obtain the shares at NAV, when the market could at the time only bear a price at half of such a valuation, suggesting that there must have been some secondary arrangement that gave Oon some assurance that the USPG Shares would continue to bear the value that had been represented to him at the time they were issued.

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127 PCS at para 38.

128 10 April 2026 Transcript at p 59, lines 11–24.

129 10 April 2026 Transcript at p 68, lines 1–3.

52 In saying all the above, I accept that, in all likelihood, Li did not anticipate the matter to arise in so concrete a form or at least may have hoped that any earlier discussions and assurances would never need to be reduced into writing by way of an LOU. That would have allowed him, in due course, to preserve a measure of plausible deniability or negotiating leverage as to what precisely had been agreed and what the buyback terms might be. This would also explain why, according to Oon, even on the date of signing of the SPA, Li had sought to assure Oon that an LOU was not necessary because Oon should "trust his word".[130] In that limited sense, the insistence on a written LOU may well have come as an unwelcome surprise, a written commitment that he had verbally discussed but never intended (from Li's perspective at least) for there to have been a written record of. Nonetheless, all of that is quite different from saying that the substance of the agreement was itself new, or otherwise not reflective of the agreement of the parties previously. Once Oon raised the matter on 16 December 2015 and made clear that he expected the personal undertaking to be documented, the penny would have dropped for Li that it would now be necessary to make good his prior assurances, *ie*, to commit to paper what had previously been agreed verbally by the parties.

53 To be clear, this is not to suggest that there are no indicia whatsoever that the LOU was, at least in some respects, a somewhat hasty endeavour. Indeed, as I explained earlier, this was a matter that Li likely did not expect to have to deal with when he went down to sign the SPA. It was also rather curious that, for an undertaking involving such a potentially large sum, Oon appeared to take rather little interest in negotiating the detailed terms in advance of the date fixed for the signing of the SPA. While I understand and accept Oon's

130 PA-1 at para 78.

evidence that this, in his view, had no place in the SPA as it constituted a personal-to-holder arrangement,[131] it was still somewhat unusual that he did not take more initiative to specifically consider the contours of such an LOU. I note that Oon has contended that he was not a professional and expected Li to provide the LOU,[132] and that there is some evidence suggesting that the parties did seem comfortable with handwriting million-dollar agreements on pieces of paper,[133] but one may have expected him to either ask Yin or Chua to prepare at least a draft of the relevant terms, or at the very least, to have some informal discussions with Li on the specific mechanics of the undertaking before the day itself. Nonetheless, the question before me is not whether every aspect of Oon's conduct is perfectly explicable. These things hardly ever unfold with such cold and calculated precision, and it would not be sensible to judge the parties' actions on that exacting footing. Indeed, the fact that Oon himself did not bring any pre-prepared LOU that would have been exceptionally one-sided in his favour to the meeting on 16 December 2015 itself reflects the lack of such premeditation. Taking the evidence as a whole, I am satisfied that the balance of probabilities plainly favours Oon's account that the buyback arrangement was something the parties had come to an agreement on some time before and that the LOU merely puts into writing such an agreement. I therefore reject Li's assertion that the personal undertaking and LOU were raised only after the SPA was signed.

54 Second, I am also not convinced by Li's remaining arguments that there was no intention to create legal relations because (a) the LOU was drafted and

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131 8 April 2026 Transcript at p 31, lines 20–23.

132 8 April 2026 Transcript at p 32, lines 15–27; 9 April 2026 Transcript at p 7, lines 2–5.

133 PA-1 at paras 117–118; 1BOD at pp 61–62.

signed in a very short time;[134] (b) Chua was absent during its signing;[135] and (c) the LOU contained informal language and typographical errors.[136]

(a) Taking these in turn, I recognise that in *Oei Hong Leong (CA)*, the brevity of discussions was taken to militate against an intention to create legal relations (at [20]). However, in that case, the discussions lasted only approximately two minutes and were conducted in a primarily informal setting. This is not the case here. The drafting and signing of the LOU were carried out in Chua's office, immediately after the SPA was signed. On Li's own account, the LOU was drafted and signed over the course of an hour.[137] Moreover, the LOU only contains one simple obligation, and as I have found above at [48]–[53], merely puts into writing the personal undertaking that Li had previously given Oon. In these circumstances, I find that the duration of the drafting and signing of the LOU, even if it could be said to be brief, reflects the fact that there had already been a prior agreement, as opposed to the lack of an intention to create legal relations.

(b) Next, on the point of Chua's absence, I begin by observing that the absence of lawyers during the drafting and signing of the LOU is in itself neutral, especially since Oon and Li are rather (and in the case of Li, very) experienced businessmen (see *Oei Hong Leong (CA)* at [20]). In any event, I do not accept Li's claim that Chua was not present. Chua has given evidence that he remained in the meeting room because Oon

134 DCS at para 121; DRS at para 39.

135 DA-1 at paras 45 and 47; DCS at para 121.

136 DCS at para 121; DRS at para 41(1).

137 DA-1 at paras 51–53; 10 April 2026 Transcript at p 83, lines 1–28.

raised the issue of the personal undertaking,[138] and that it would not have made sense for him to have left the meeting room when all the parties were still present.[139] On the other hand, Li has not provided any evidence to refute this and has only raised the fact that Chua had used qualifiers in his testimony, such as "I think" or "to the best of my recollection".[140] There is no merit in that submission. In fact, I note that in an earlier version of his Defence, Li expressly stated that Chua was present for the signing of the LOU,[141] though as discussed below at [104], Li subsequently pivoted from this position. On the whole, I am therefore satisfied that Chua was present during the discussion and signing of the LOU.

(c) Finally, on the point of language, I am unable to agree that the LOU was drafted in informal language. As Oon points out, the LOU was structured in a legalistic manner and contained legal and mandatory language,[142] and the use of such language is a factor that goes towards establishing an intention to create legal relations (*Dennis Foo* at [81(d)], citing *Barbudev v Eurocom Cable Management Bulgaria EOOD* [2012] 2 All ER (Comm) 963 at [37]). There is also no reason why the presence of minor typographical errors would detract from such an intention.

55 Third, I agree with Oon's argument that it is clear from the exchanges between the parties after Oon sought to enforce the LOU that neither side

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138 PA-2 at para 24; 9 April 2026 Transcript at p 38, lines 15–28.

139 9 April 2026 Transcript at p 42, lines 17–18.

140 DCS at paras 83–85.

141 Defence (Amendment No. 1) dated 17 December 2019 at para 5: SDB at p 66.

142 PCS at paras 62 and 88(1).

appeared to understand the LOU to be anything but binding and legally enforceable.[143] That itself is significant because it suggests that both parties understood that they had entered into a genuine commercial arrangement for such an undertaking, whether documented in writing or otherwise, as part of the broader bargain reflected in the SPA. As I have already discussed these conversations at [22]–[25], I do not propose to rehearse them here. Suffice it to say that these responses do not even hint at any belief, on the part of either party, that the LOU was merely symbolic, informal or otherwise devoid of any legal effect. On the contrary, the exchanges proceeded on the footing that the LOU was binding, with the real dispute being when and how it ought to be performed. Indeed, in the informal exchanges between the parties at the time, Li acknowledged that "I feel ur [*sic*] worries",[144] suggesting that he was able to appreciate how frustrating it must have been for Oon to be kept waiting for the LOU to be honoured. When Oon's counsel put it to Li that he ought to have instead expressly told Oon that the LOU was unenforceable, Li could only make general claims such as "[p]eople who do business cannot behave this way" and that he "[did] not wish to break ties with [Oon]".[145] In my judgment, these reasons were clearly engineered after the fact, and this conclusion is only fortified by Li's attempt on the stand to concoct an explanation of why he had sent the two emails to Oon – namely, that he had replied only because Oon had pestered him late into the night – an account squarely contradicted by the objective evidence that the emails were sent in the afternoon.[146]

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143 PCS at paras 10 and 67–72.

144 2BOD at p 21.

145 10 April 2026 Transcript at p 74, lines 19–22, p 76, lines 18–24 and p 78, lines 5–9.

146 10 April 2026 Transcript at p 75, lines 16–31, p 76, lines 1–2 and 27–32 and p 77, lines 1–3; 2BOD at pp 32–33.

56 Fourth, although Li states that he has a poor command of the English language[147] and that he could not fully understand the meaning of the LOU as "[he] was from China",[148] it is clear to me that this is an untenable position. As Oon points out, Li would have had at least a working command of English.[149] While Li had utilised a Mandarin interpreter for the proceedings (which is, of course, his prerogative given that he was more comfortable speaking in Mandarin), it was apparent that he understood, at least substantially, the answers given in English. When I pointed this out to Li and asked him whether he understood those answers, Li confirmed that he did.[150] Moreover, Li's academic and professional credentials bear this out: he obtained a Masters of Engineering from the National University of Singapore (a course conducted entirely in English) and even taught courses on mechanical engineering in English at a local polytechnic.[151] His somewhat lengthy affidavit in the present case was also written in English and he did not have any trouble reading any part of it and did not require it to be interpreted back to him.[152] Several of his emails clearly also reflect his English abilities – to be clear, these were not written in the King's English, but nonetheless underscored his relative fluency in the language,[153] even if I accept that he was, relatively speaking, more proficient in Mandarin.

57 For the foregoing reasons, I find that Li has failed to rebut the presumption. Accordingly, the requirement for the intention to create legal

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147 9 April 2026 Transcript at p 41, lines 8–9.

148 DA-1 at para 52.

149 PCS at para 16.

150 7 April 2026 Transcript at p 36, lines 15–22.

151 10 April 2026 Transcript at p 46, lines 5–28.

152 10 April 2026 Transcript at p 47, lines 20–22.

153 See, *eg*, 2BOD at p 31.

relations is satisfied and the validity of the LOU cannot be impugned in this respect.

Are the terms of the LOU certain and complete?

58 Another requirement before a contract can be said to have been validly concluded is that the terms of the contemplated contract must be both certain and complete (*Gay Choon Ing* at [50], citing *G Scammell and Nephew, Limited v HC and JG Ouston* [1941] AC 251). A term that is "uncertain" exists but is otherwise incomprehensible; on the other hand, an agreement that is "incomplete" has certain terms that do not (but should) exist and the non-existence of these terms make the agreement incomprehensible (*The Law of Contract in Singapore* at para 03.200).

59 In relation to certainty, the court construes documents fairly and broadly without being too astute or subtle in finding defects in their terms (*Arki-Tech International Pte Ltd v Rentak Tebrau Sdn Bhd* [2025] SGHC 233 at [23], citing *Hillas (WN) & Co Ltd v Arcos Ltd* [1932] All ER Rep 494 at 503–504); indeed the law endeavours to give effect to an agreement rather than to strike it down by holding that the agreement is void for uncertainty (*Kiri Industries Ltd v DyStar Global Holdings (Singapore) Pte Ltd* [2023] 2 SLR 47 at [83], citing *Gardner Smith (SE Asia) Pte Ltd v Jee Woo Trading Pte Ltd* [1998] 1 SLR(R) 950 at [10] and Kim Lewison, *Interpretation of Contracts* (Sweet & Maxwell, 5th Ed, 2011) at para 8.13).

60 In relation to completeness, an agreement will only not be regarded as a binding contract if essential matters, without which the contract is too uncertain or incomplete to be workable, remain to be agreed upon (*Norwest Holdings Pte Ltd v Newport Mining Ltd* [2010] 3 SLR 956 ("*Norwest Holdings*") at [28]).

Whether substantial or essential agreement has been reached is a question of fact to be decided with regard to all the circumstances of the parties' dealings with each other, including in particular the nature of the transaction envisaged by the parties (*Norwest Holdings* at [28]).

61 Generally, it takes a rather uncertain or incomplete contract before the court will find it unenforceable (*The Law of Contract in Singapore* at para 03.201).

62 Applying these principles to the present case, I am unable to agree with Li that the LOU lacked certainty or completeness. Turning first to certainty, Li argues that the LOU was vague.[154] In my view, the LOU is, on the contrary, remarkably clear as to Oon's right and Li's obligation: it specifically states the subject matter, price, timeline and method of exercise of the buyback option. There is no other reasonable interpretation that could be given to the language in the LOU. I also see no basis for Li's contention that the typographical errors – *eg*, the word "following" missing a letter and therefore spelt as "followig" – evidenced such imprecision as to cause the LOU to lack the certainty required to impose a legally binding obligation.[155]

63 In terms of completeness, Li argues that the LOU does not provide for the completion procedure, timing of payment, the respective obligations of the parties upon exercise of the option or the expiry date of the option.[156] However, bearing in mind that the transaction envisioned in the LOU is in effect a simple sale and purchase of the USPG Shares on demand, these are not essential terms

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154 DRS at paras 39, 41(1) and 41(6).

155 DCS at paras 79–80 [*sic*] (p 43).

156 DCS at para 77 [*sic*] (p 42); DRS at paras 41(5)–41(6) and 42(2).

to the LOU. The LOU provides for the quantity and price of the USPG Shares as well as the specific timeframes upon which it could be enforced and prescribes the notice required to invoke the specific terms of the undertaking (see above at [50] and [62]). In my view, the presence of these terms is sufficient to render the LOU workable, and I do not think that the specific mode of payment and method of share transfer is so vital as to require specification before the LOU is treated as a valid contract.

64 I would add that specifically in relation to the timing of payment, it is unlikely that the absence of a fixed payment date suffices to render the LOU void (see *Gn Muey Muey v Goh Poh Choo* [2000] 1 SLR(R) 704 at [42]). Indeed, in cases where a party to a contract undertakes to do an act, the performance of which depends entirely on itself, and the contract is silent as to the time of performance, the law implies an obligation to perform the act within a reasonable time, having regard to all the circumstances of the case (*Liu Shu Ming v Koh Chew Chee* [2023] 1 SLR 1477 at [83], citing *Chitty on Contracts* vol 1 (Hugh G Beale gen ed) (Sweet & Maxwell, 34th Ed, 2021) at para 24-013 and *Fortune Marketing* at [148], in turn citing *Max Master Holdings Ltd v Taufik Surya Dharma* [2016] SGHC 147 ("*Max Master*") at [98]). The implication of a term as to time is not one of fact and is thus not subject to the framework laid down in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 (*Centre for Competency-Based Learning and Development Pte Ltd v SkillsFuture Singapore Agency* [2024] 5 SLR 481 at [209]; *Max Master* at [98]). I note that in *T2 Networks Pte Ltd v Nasioncom Sdn Bhd* [2008] 2 SLR(R) 1, the court refused to imply a term that payment was to be made within a reasonable time, observing that (at [44]):

> … it is hard to determine what a reasonable time is in a situation where the creditor is desperate for money and the debtor has been stringing out payment for a long time. It was

> also clear to me from the evidence that all along what [the creditor] wanted from [the debtor] was immediate payment.

In my view, these considerations do not arise here because on the evidence, it does not appear that the time of payment was vital to the transaction (see *Siemens Industry Software Pte Ltd v Lion Global Offshore Pte Ltd* [2014] SGHC 251 at [36]). Indeed, Oon himself agreed to the extension of the period before the buyback option could be exercised from two years to three years,[157] which suggests that Oon was not in dire need of funds. I therefore find that a term that the payment was to be made within a reasonable time can be implied on the present facts.

65 In view of the above, I find that the terms of the LOU are neither uncertain nor incomplete.

Was there valid consideration supporting the LOU?

66 Finally, in order for the LOU to be a binding contract, it must be supported by consideration (*Gay Choon Ing* at [64]). Consideration is traditionally analysed through a "benefit-detriment" lens (*Gay Choon Ing* at [67], citing *Currie v Misa* (1875) LR 10 Exch 153 at 162):

> A valuable consideration, in the sense of the law, may consist either in some right, interest, profit, *or benefit* accruing to the one party, *or* some forbearance, *detriment*, loss, or responsibility, given, suffered, or undertaken by the other …
>
> [emphasis in italics in original]

67 Of especial relevance in this case is the past consideration rule, which the Court of Appeal has distilled as follows (*Offshoreworks Global (L) Ltd v POSH Semco Pte Ltd* [2021] 1 SLR 27 at [39]–[40]):

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157 PA-1 at para 80.

(a) An act done before a promise and unconnected to the promise cannot be consideration for the promise because it is not done in exchange for the promise (see also *The Law of Contract in Singapore* at para 04.011).

(b) However, the court eschews a strictly chronological approach in determining whether consideration is past or not (see also *Sim Tony v Lim Ah Ghee* [1995] 1 SLR(R) 886 at [16] and [21]; *Rainforest Trading Ltd v State Bank of India Singapore* [2012] 2 SLR 713 at [38]).

(c) Instead, the court looks to the substance rather than the form of the transaction. What is crucial is the nexus between the act said to be consideration and the promise, and that the later act must be causally linked to the earlier promise. The court's inquiry is whether, at the time of the earlier act, a later promise was contemplated or required. If so, this connects the earlier act to the subsequent promise and establishes that they are part of the same transaction (see also *The Law of Contract in Singapore* at para 04.020; *Gay Choon Ing* at [83]).

68 In the present case, I have earlier found that Li's undertaking to buy back the USPG Shares was always contemplated or required as a prerequisite for Oon to accept the part-cash, part-shares offer instead of the AE Offer. The LOU therefore stems from an earlier understanding that such a guarantee would be furnished as part of the sale of KCD (see above at [48]–[53]). Applying the above principles, it follows that the execution of the LOU was supported by good consideration. It may well be that, strictly speaking, the LOU was signed after the SPA had been executed. However, I agree with Oon that this was a

single, contemporaneous transaction.[158] As explained above, the court takes a practical and commercially realistic view and consideration is not defeated merely because every component of a broader bargain was not reduced into writing or executed at precisely the same moment of time. Commercial transactions do not operate with such artificial precision, and parties often reach an overall understanding before the constituent parts are documented and formalised sequentially. This is exactly what transpired here. In such circumstances, it would be unduly technical, indeed somewhat perverse, to insist that consideration failed simply because one document had been signed shortly after another, in the matter of hours at that.

69 To recapitulate, I find that (a) there was the requisite intention to create legal relations; (b) the terms of the LOU are certain and complete; and (c) the LOU was supported by consideration. In the premises, I conclude that the LOU is a valid contract.

Is the LOU unenforceable?

70 Having found that the LOU is valid, I proceed to consider if the LOU is enforceable. On this front, Li's challenge is twofold. Li appears to claim that Oon had misstated the true regulatory position and had misled Li to believe that the higher occupancy was either permissible or otherwise unlikely to attract adverse consequences.[159] Li further contends that the SPA, and by extension the LOU, were tainted by illegality as the sale of KCD was premised in part on the

158 PCS at para 94(2)(e); Plaintiffs' Reply Submissions dated 5 June 2026 ("PRS") at para 16.

159 Defence at para 10(g): SDB at pp 14–15; DCS at para 42; 14 April 2026 Transcript at p 21, lines 15–23.

Dormitory housing substantially more workers (about 500) than it was formally approved to accommodate (*ie*, 320).[160]

71 This necessarily raises two inter-related but distinct questions: first, whether there was an actionable misrepresentation on the part of Oon which taints the LOU; and second, whether the LOU was tainted with illegality such that it should not be enforceable. I deal with each in turn.

Is the LOU tainted by any misrepresentation?

72 As a preliminary point, I note that Oon argues that Li has not pleaded fraud or misrepresentation.[161] I must confess that it is not immediately clear from Li's pleadings what sort of misrepresentation he is alleging, or if any misrepresentation is pleaded at all. Indeed, in his Defence (Amendment No. 4) dated 21 January 2022, he deleted the section titled "THE MISREPRESENTATIONS OF THE PLAINTIFF" but reinserted several paragraphs originally contained in that section[162] under the new section "ILLEGALITY OF THE SPA AND LETTER OF UNDERTAKING".[163]

73 In particular, one of these paragraphs states as follows:[164]

> Yet, [Oon] told [Li] and [Tham] that this was not a problem because he had never faced an issue with the Ministry of Manpower ("MOM") or the Urban Redevelopment Authority ("URA") before. [Oon] then orally gave several misleading statements as follows:

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160 Defence at para 10: SDB at pp 13–15; DCS at paras 7–10; DRS at paras 55–57.

161 PRS at para 30.

162 SDB at pp 30–34.

163 Defence at para 10: SDB at pp 13–15.

164 Defence at para 10(g): SDB at pp 14–15.

> (i) That the Singapore Land Authority's ("SLA") approval was for up to 480 people;
>
> (ii) [Oon], however did not explain that the SLA's approval was irrelevant, and pertained only to the occupation fitness of the building;
>
> (iii) [Oon] told [Li] that the [workers housed in the Dormitory] were all already registered on the MOM website, and therefore the relevant authorities knew about their existence;
>
> (iv) However, [Oon] did not explain that the MOM and/ or other authorities had not waived the irregularities. Further, the MOM and/ or other authorities had not been alerted to the fact that the number of these [workers housed in the Dormitory] was in excess of the approvals and thereby in breach of the URA approvals; and
>
> (v) [Oon] told [Li] that as he had never had an issue with the authorities before, he did not anticipate any future action by the authorities that would have negative consequences on [the USP Group] provided that [KCD] acted in a similar way in carrying out the operations of the dormitory post acquisition.

74 I also appreciate that an allegation of fraud must be pleaded with sufficient particularity (*BOM v BOK* [2019] 1 SLR 349 ("*BOM v BOK*") at [39]). Nevertheless, the court must also be careful not to descend blindly into technicalities when assessing the adequacy of pleadings, and to always bear in mind that their ultimate purpose is to define the scope of the issues arising for the court's determination and to ensure that the parties are not taken by surprise and deprived of the opportunity to adduce the relevant evidence (*BOM v BOK* at [40], citing *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 at [94] and *Fu Loong Lithographer Pte Ltd v Mok Wing Chong* [2018] 4 SLR 645 at [61]). Bearing this in mind, I am of the view that Li's defence in misrepresentation, although not expressly pleaded as such, can and should be properly be considered by the court and that Oon would not suffer any prejudice. I say this because, as mentioned above, the paragraph alluding to

misrepresentation was moved under the section dealing with Li's illegality defence, which Oon directly engaged with in his pleadings,[165] during the trial[166] and in his submissions.[167] This is apparent in Oon's summing up of Li's illegality defence:[168]

> The alleged illegality is that the Dormitory was housing approximately 500 workers at the time the SPA was signed when the URA had only approved the accommodation of 320 workers at the Dormitory. It is said that [Oon] misrepresented the position …

Accordingly, Oon cannot be said to have been taken by surprise, and I proceed to consider whether any actionable misrepresentation is made out.

75 While the above addresses the question of whether misrepresentation can be taken to have been pleaded, it does not inform the question of what sort of misrepresentation is pleaded. Nevertheless, I note that there are several common elements across the various types of misrepresentations which must be satisfied for the misrepresentation to be actionable. In view of this, for the purposes of this judgment, I do not think it necessary to distinguish between innocent or fraudulent misrepresentation because I am of the view that some of these common elements are plainly not satisfied. I explain.

76 Regardless of the type of misrepresentation, the following common elements must be satisfied for the misrepresentation to be actionable (*Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil*

165 Reply (Amendment No. 1) dated 7 February 2022 at paras 7H(1)–7H(7): SDB at pp 45–46.

166 See, *eg*, 14 April 2026 Transcript at p 31, lines 28–30 and p 32, lines 14–26.

167 PCS at paras 105, 108 and 114(1); PRS at para 41(7).

168 PCS at para 108.

(Singapore) Corp Ltd [2024] SGHC 145 at [170], citing *Rahmatullah s/o Oli Mohamed v Rohayaton bte Rohani* [2002] SGHC 222 at [73]):

(a) a representation was made by one party;

(b) the representation was acted on by an innocent party; and

(c) the innocent party suffered detriment as a result.

77 In order for a statement to amount to a representation, such as to found an action in misrepresentation, it must be a statement which relates to a matter of fact, which may be a past or present fact (*Changi Makan Pte Ltd v Development 2003 Holding Pte Ltd* [2020] SGHC 27 at [52], citing *Tan Chin Seng v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 ("*Tan Chin Seng*") at [12]; *The Law of Contract in Singapore* at para 11.026). The statement must not contain any element of futurity (*POA Recovery Pte Ltd v Yau Kwok Seng* [2022] 1 SLR 1165 ("*POA Recovery*") at [103], citing *Tan Chin Seng* at [21]), nor can they be statements of opinion (*POA Recovery* at [103], citing *Zuraimi bin Mohamed Dahlan v Zulkarnine B Hafiz* [2020] SGHC 219 at [30]). As such, it is important to determine what the representation in question was exactly (*Xia Zhengyan v Geng Changqing* [2015] 3 SLR 732 at [99]).

78 Moreover, the statement must also be false (*Ernest Ferdinand Perez De La Sala v Compañia De Navegación Palomar, SA* [2018] 1 SLR 894 ("*Ernest Ferdinand*") at [170]; *Liberty Sky Investments Ltd v Goh Seng Heng* [2020] 3 SLR 335 at [31] and [33]; *The Law of Contract in Singapore* at paras 11.006–11.007). For a representation to be false, it must be substantially false; in this regard, it need not be false in every respect, nor is it invariably sufficient if it is false in a single respect (*Ernest Ferdinand* at [173]). In assessing falsity, the court will have regard to the sense in which the representation would be

understood by a reasonable person in the position of the representee (*Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [65(a)] and [71]; *Ernest Ferdinand* at [173]).

79 Synthesising the above principles into a practical roadmap, I structure the following analysis broadly around five questions: what precisely the claimed representation was; whether it was in fact made; whether it amounts to a misrepresentation of fact; whether it is false; and whether Li relied on it.

80 As alluded to above, on a careful reading of Li's pleadings and affidavit, it is not entirely self-evident what the precise contours of the representation were. Li does not plead that there was any representation that the SLA approval for 480 persons was legally determinative of the permissible occupancy level, nor does he plead that Oon represented that the relevant URA restrictions were somehow waived. As far as I can tell, it would seem that Li's claim is that Oon had "told [Li] that as he had never had an issue with the authorities before, he did not anticipate any future action by the authorities that would have negative consequences on [the USP Group] provided that [KCD] acted in a similar way in carrying out the operations of the dormitory post acquisition" (see above at [73]).

81 On balance, I am inclined to accept that a representation along those lines was indeed likely made. Specifically, I am prepared to accept that Oon was likely to have conveyed the impression that the regulatory risks of being caught were modest, or that there was only a small likelihood that the excess occupancy would attract any meaningful scrutiny or sanction from the authorities, given his own experience that the reality of over-occupancy had not attracted much, if any, attention. Li's suggestion that this was what was represented to him

seems to be corroborated by Chua's evidence that when he enquired, in his capacity as SHH's lawyer in the transaction, about the disparity between the legal reality of approvals allowing for a maximum of 320 workers to be housed and the practical reality that as many as 500 individuals were in fact occupying the premises, Oon intimated that the authorities would likely not take much action in light of his perception that there was a lack of accommodation options at the time.[169] I further note that this is in line with the alleged representation set out in Suit 328 where it was suggested that Oon represented to Li that "it was the market practice to house more than the approved number of workers as URA and other relevant authorities would not take any action against the owner or operator of the dormitory for overcrowding".[170]

82 I should state, for the avoidance of doubt, that it is clear that no representation suggesting the legality of the arrangement was made. The representation here concerned the perceived likelihood of enforcement, and not whether the arrangement was lawful. These are vastly different propositions. A person may be prepared to take what he regards as a manageable regulatory risk due to the outsized financial rewards. That does not mean that he believes such conduct to be lawful. Here, if anything, the evidence plainly militates against the possibility of such a representation (*ie*, regarding legality) being made. The parties were not acting on the basis of any understanding that their arrangements in the Dormitory were compliant, but rather on the basis that the rewards of non-compliance outweighed what had been perceived by all parties to be the relatively limited risk of regulatory blowback. Indeed, Li accepts this, stating that "[t]he evidence therefore suggests, at most, that [Oon] was asserting some form of practical tolerance or non-enforcement position at the material time,

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169 9 April 2026 Transcript at p 30, lines 25–32 and p 31, lines 1–6.

170 3BOD at p 677, para 42(a)(ii).

rather than the existence of any formal approval permitting 500 workers".[171] In any case, even without Li's concession, there were, on the facts, a myriad of indicia, if not outright evidence, that Li was well aware of the obvious risks of technical non-compliance. I state three points.

(a) First, USPG's own SGX announcement of the SPA (see above at [19]) specifically referred to the Dormitory being approved to house 320 workers.[172] There was not the slightest suggestion that any other approval gave permission for 480 workers to be housed in the Dormitory, nor was there even a factual assertion of how many workers were in fact housed there. The fact that such data points were conspicuous only by their absence is highly telling. It demonstrates that Li – or more precisely USPG – well understood that the only occupancy figure which could properly and publicly be represented as approved was 320. If there was a belief in any way on the part of USPG that it was granted approval to accommodate 480 workers, one would have expected that to be prominently disclosed. The decision to only make reference to the 320 figure, as opposed to 480, therefore speaks volumes.

(b) Second, it is significant to note that KCD, through Li as director,[173] applied for, and obtained, approval at the end of 2016 for an extension of the Dormitory's approved use for 320 workers for a further three years (see above at [7]). This is telling because it demonstrates that Li (and therefore USPG) would have known throughout that the formal approval extended only to 320 workers and no more. Indeed, this must

171 DCS at para 50.

172 3BOD at p 465.

173 14 April 2026 Transcript at p 34, lines 22–32 and p 36, lines 1–5.

have been obvious as even some approvals from other governmental agencies reiterated this planning parameter.[174] If there had truly been some broader approval, waiver or tacit understanding permitting 480 or 500 workers, there would have been little reason to seek a formal renewal expressly pegged to 320 workers. In fact, in 2017, KCD had, again through Li as director,[175] applied to intensify the use of the Dormitory to house 670 workers instead of 320 workers, but URA rejected this application (see above at [7]). In my view, if there was any waiver or tacit understanding beyond the formal approval, such an increased capacity would likely have been raised during this application. I would only further note for completeness that the extension exercise was carried out again in 2020 and approval was likewise granted only for 320 workers. At every material stage, therefore, the official approvals consistently reflected 320 workers as the authorised number.

(c) Third, in an email to a third party in 2019 explaining the situation, Li stated that while the licence from URA only permitted 320 workers, he had been assured by Oon that this would not be a problem as the dormitory had been operating in this manner for a number of years.[176] Implicit in that account is a clear recognition that Li knew full well that the formal approval was for only 320 workers. It would therefore seem that Li's own account does not suggest that he believed that 500 workers had been authorised to be housed at the Dormitory, but rather that the lack of authorisation was not likely to result in any meaningful enforcement consequences.

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174 See, *eg*, 3BOD at pp 379 and 383.

175 14 April 2026 Transcript at p 37, lines 9–13 and p 38, lines 6–9.

176 2BOD at p 94.

83 I am further fortified in my view on Li's awareness of what was being purchased by how the Dormitory is described in Schedule 2 to the SPA. The relevant clause described the property as a "Dormitory with [URA] approval for 320 workers. Currently, the Dormitory houses approximately 500 workers" (see above at [17(a)]). Properly read, the clause does not convey some tacit understanding or accommodation with the authorities that would permit occupation at the higher figure. On the contrary, it requires a conclusion that is quite the opposite. Its wording draws a deliberate and unmistakable contrast between the approved capacity and the actual occupancy. It is therefore difficult to accept that this was inserted, as Li would have me believe,[177] merely as a protective caveat reflecting some representation that the excess occupancy had official sanction. Rather, the clause appears carefully crafted to place any purchaser on express notice that the Dormitory was operating beyond its approved limit. All of this aligns with Oon's contention that he actively sought to include such a line in Schedule 2 to render it unambiguously clear that what was being sold was a Dormitory that had approval for 320 workers.[178] This version of events is also very much in line with the documentary evidence. It was Chua who had emailed Tham with the "amended Schedule 2", to which Tham replied "*Your* Schedule 2 is already included" [emphasis added in italics].[179] In my judgment, it would be odd, to say the least, that Tham would have described the amended Schedule 2 as "Your" (*ie*, Chua's) if the amendment had indeed arisen from Tham's own request. Consequently, I struggle with the logic of Li's contention that it was USPG and/or Tham that had requested the inclusion of the provision in Schedule 2.[180] The clause

177 DA-1 at paras 38–39.

178 PA-1 at paras 58 and 60.

179 1BOD at p 269.

180 DA-1 at paras 38–40; 14 April 2026 Transcript at p 25, lines 11–13 and 23–27.

expressly highlights the lack of permission. To that extent, it seems obvious that such a provision would not have served Li's interest in any meaningful way. If it was Tham who proposed it, he would in effect have been insisting on placing on record, in rather stark and unambiguous terms, that he was purchasing a business that had been operating outside the scope of its approvals. That would be a rather odd thing for a purchaser to insist upon if his concern was to preserve his rights to make the point later that he had been led to believe that the occupancy levels were entirely regular. It should also be remembered that Oon claims he had always informed buyers that the Dormitory could only house 320 workers while marketing the sale of KCD,[181] and this does seem to be supported by the fact that in the very first draft term sheet sent by AE's solicitors, this figure had already been stated as one of the condition precedents to the AE Offer (see above at [10]). I would add that it is apparent, in any event, from the broader evolution of the SPA across the course of negotiations (see above at [17]) that all clauses seeking to expand the scope of the warranties given were unidirectional in nature – that is, they were amendments made by Oon for protection against any claim subsequently. That is entirely consistent with common sense and commercial logic. Oon, *qua* seller, would clearly have an interest to protect himself against contingent liabilities and risks arising from any issues later discovered in relation to the sale. The overall pattern of amendments therefore coheres with Oon's account of the negotiations, rather than Li's suggestion that it was himself, Tham or USPG who were the ones crafting additional warranties.

84 Indeed, there is a certain irony in Li's position. Taking Li's case at its highest and assuming that he was in fact misled by any misrepresentation, it

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181 PA-1 at para 24.

remains striking that he appears to have raised no complaint at all while he was enjoying the seemingly substantial profits that were generated by housing approximately 500 workers for many years. The alleged misrepresentation only assumed significance when it came time to honour the LOU. This sits uneasily with his case. If Li genuinely believed that he had been deceived, one would have expected him to raise some objection or concern once he discovered the true position, rather than continuing to operate the dormitory at the higher occupancy level and reaping the financial benefits that came with it. Instead, the evidence suggests that Li was content to enjoy the upside for as long as it remained commercially advantageous to do so. It is, of course, not difficult to see why Li would nevertheless have been prepared to run the risk of non-compliance. The financial upside of running the dormitory at more than its approved capacity is obvious: a dormitory approved for 320 workers but in fact housing approximately 500 workers would self-evidently generate revenue on an entirely different scale. The evidence clearly suggests that accommodating the additional 180 or so occupants would have resulted in a substantial increase in rental income and, correspondingly, in the profitability and value of the business entity as a whole. Against that commercial reality, it seems to me entirely unsurprising that strict regulatory compliance may not have been Li's primary concern. The facts, seen in the round, suggest that it was the prospect of increased revenue that represented the true attraction. This is apparent from how, as noted earlier at [7] and [82(b)], KCD, through Li as director, applied for, and obtained, approvals for 320 workers while continuing to house about 500 workers in the Dormitory. Indeed, the subsequent application to intensify the use of the Dormitory (see above at [7]) suggests that there was every chance that Li operated on the premise that the necessary applications can be made in due course to regularise such occupancy, or indeed, to even expand it significantly beyond 500. There was, in that sense, much promise in the dormitory as an income-bearing asset even given the regulatory infractions from the continued over-occupancy. In my view, this provides a far more convincing explanation for Li's conduct than the suggestion that he genuinely believed that the Dormitory had the requisite approvals for that level of occupancy.

85 In essence, Li was happy to enter into a Faustian deal. In particular, Li appears to have been perfectly willing to enjoy the considerable profits that came from operating the Dormitory at its higher occupancy for as long as those profits continued to flow. It was only when the time came for him to meet his obligations under the LOU that the arrangement suddenly became, in his telling, objectionable.

86 One further point ought to be made at this juncture. There appeared to be an allusion during the course of cross-examination that Oon may have had much less than 480 to 500 workers occupying the Dormitory at any one point of time because while some employers may have registered workers as staying in the Dormitory, those workers may have been staying elsewhere, *eg*, on their work sites.[182] To the extent the suggestion is that any such representation by Oon would therefore not be false as there is no evidence proving that anything more than 320 workers was physically accommodated at any one point of time, I have little hesitation in rejecting this. From Oon's own evidence, it is clear that he himself accepts that the number of workers at the Dormitory would approximate 500 in any event given the number of beds on-site.[183] In this connection, there was no evidence led to suggest that there would have been a significant disconnect between the number of workers that were registered as residing at the dormitory and those who had been physically living there, even assuming

[182] 7 April 2026 Transcript at p 20, lines 11–14; PA-1 at para 20.

[183] PA-1 at para 23.

this was of any legal significance and even assuming this was permissible in law. It seems to me to be far-fetched to contend, as Oon attempted to at one point of time, that companies were in the habit of leasing empty beds[184] and keeping workers at their work sites, not only because such actions would undoubtedly be illegal but also because it would be simply commercially uneconomical.

87 In the premises, I am of the view that the representation that was made was that even if 500 workers were housed in the Dormitory, given Oon's past experience, this was not likely to result in adverse enforcement consequences. Having come to this conclusion, I next turn to the question of whether it is a representation of fact.

88 In my judgment, this representation does not amount to a representation of fact. Properly understood, it was either a statement about the future, *ie*, that the authorities were unlikely to take enforcement action moving forward, or alternatively, a statement of opinion predicated upon past experience, *ie*, that no issues had arisen previously and consequently, it was opined that none would likely arise in the future. Significantly, nothing in the statement suggests that the Dormitory was in fact compliant, that the relevant approvals that had been obtained rendered the arrangement legally permissible, or that the authorities had otherwise positively (whether explicitly or otherwise) sanctioned the housing of workers beyond the approved limit.

89 Having said that, I note that a statement as to the future (whether of intention or otherwise) may imply a representation as to an existing fact (*Ernest Ferdinand* at [172(a)]). These statements as to the future may be recharacterised

[184] 7 April 2026 Transcript at p 20, lines 14–16.

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 (*Lo Yew Seng v Astrawati Aluwi* [2026] SGHC(A) 18 ("*Lo Yew Seng*") at [40], citing *Deutsche Bank AG v Chang Tse Wen* [2013] 1 SLR 1310 at [96]). In this context, such representations would be regarded as false if the representor had no honest belief in them (*Lo Yew Seng* at [40]). In my view, even if Oon's representation could be recharacterised along the above lines, it is not clear that the representation would have been false. I say this because his opinion had some supporting basis, in so far as the evidence shows that for some time before the SPA, Oon was, in fact, operating the Dormitory at similar levels of occupancy without much fuss. There is therefore little evidence to suggest that, if such a statement was uttered, that it was uttered with Oon believing it to be false – on the contrary, given the track record as I explained above, Oon would have some basis for believing such optimism to be well-placed. Commercial parties often convince themselves that a profitable but non-compliant arrangement can continue indefinitely so long as no complaint is made and no regulator comes knocking. Any representation made on this basis, however, and at the risk of belabouring the point, is very different from an explicit assurance that the occupancy levels were lawful, that the relevant approvals had been obtained, or that the authorities had positively sanctioned the housing of 480 workers. Indeed, implicit in the alleged representation is the recognition that there remained at least *some possibility* of future regulatory action, even if Oon may have assessed it to be relatively slim. This is because it proceeds on the footing that *such action was thought to be unlikely, not that it would be impossible or that there was no legal basis for it*. In the circumstances, the representation, even if recharacterised, does little to advance Li's case as it cannot be said to be false because, in my view, Oon had an honest belief in it.

90 In some sense, the events after the SPA further provided a basis for Oon's belief. As the saying goes, the proof of the pudding is in the eating. The USP Group acquired KCD in late 2015 and it would seem that the Dormitory was able to continue operating at the above-approved capacity until sometime between 2019 and 2021 when an inspection was undertaken by MOM (Li is unclear about when precisely this incident took place, suggesting in Suit 328 that this occurred in 2019[185] while insisting in these proceedings that such checks occurred in 2020 or 2021[186]). Whatever else may be said, this sequence of events and the fact that the arrangement lasted at least three years after the SPA had been signed before the authorities detected the excess occupancy vindicates, in part at least, Oon's ostensible belief that the arrangement was likely able to continue for some time without regulatory intervention. This is not to say that the arrangement was lawful. Nor is it to cast any aspersions on the authorities, which understandably were fully entitled to assume that the parties would comply with the permissions that were granted and which could not be expected to marshal every single issue of compliance. It is to simply recognise the practical reality that it would be humanly impossible for every instance of non-compliance to be substantively detected the moment it occurs.

91 In any event, assuming *arguendo* that I find in favour of Li in all the above respects, I am also of the view that there was insufficient reliance placed on Oon's representation. As highlighted by the Court of Appeal in *Panatron Pte Ltd v Lee Cheow Lee* [2001] 2 SLR(R) 435 at [23], such a misrepresentation must have "played a real and substantial part and operated in" the minds of Li and the USP Group in deciding to sign the SPA (and consequently the LOU) before liability would accrue. This did not appear to be the case here. Indeed,

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185 Bundle of Documents vol 5 ("5BOD") at p 201, para 57.

186 14 April 2026 Transcript at p 22, lines 3–28 and p 46, lines 4–6.

the evidence suggests that, if nothing else, Li and the USP Group viewed the position askance from the outset. It is, after all, Li's own case that the USP Group remained "worried about the differenced [*sic*] in numbers allowed by the permits from different government agencies and the number of workers actually housed in [the Dormitory]".[187] Indeed, Li further claims the USP Group's lawyers at the time had advised that "the mismatch in numbers from what was approved by the authorities and the actual numbers being housed by [Oon] was material".[188] It is not necessary for present purposes for me to conclude whether such advice was in fact given. The more salient point is that Li's own case reveals that due diligence had already brought the issue into extremely sharp focus, and that their starting point appeared to be not to take any such representation at face value. Once that is so, any purported earlier representation to the effect that enforcement action was unlikely (indeed, even a representation that any approval from SLA trumps that of MOM) would appear to be tangential and fade into irrelevance. Indeed, I would again reiterate the points set out above at [82]–[85] that plainly show that Li moved forward knowing full well that the approvals involved just 320 workers.

92 In view of the above, I find that there is no actionable misrepresentation that would be capable of tainting the SPA and/or the LOU. Given this finding, it is not strictly necessary for me to consider whether Oon could rely on any of the clauses in the SPA as a defence against misrepresentation. Nevertheless, for completeness, I make a few observations on this point.

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187 DA-1 at para 34.

188 DA-1 at para 38.

93 To start, it is important to distinguish between an entire agreement clause on the one hand and a "no representation" or "non-reliance" clause on the other.

(a) The effect of an entire agreement clause is to deny contractual force to statements which are not contained in the contract and thereby preclude any claim based on a side agreement or collateral warranty; it does not purport to affect the status of any statement as a (pre-contractual) misrepresentation, and thus does not preclude a claim for misrepresentation (*H8 Holdings Pte Ltd v RIC Dormitory (SG) Pte Ltd* [2024] SGHC 177 ("*H8 Holdings*") at [101]). Notably, misrepresentations have been held not to be excluded by the mere inclusion of the word "representation" in an entire agreement clause (*Creative Technology Ltd v Huawei Technology Pte Ltd* [2017] SGHC 201 ("*Creative Technology*") at [79], citing *AXA Sun Life Services plc v Campbell Martin Ltd* [2012] 1 All ER (Comm) 268 at [94], *RBC Properties Pte Ltd v Defu Furniture Pte Ltd* [2015] 1 SLR 997 at [113] and *BSkyB Ltd v HP Enterprise Services UK Ltd* [2010] EWHC 86 at [382]).

(b) In contrast, a "no representation" or "non-reliance" clause may give rise to a contractual estoppel where the parties bind themselves by contract to a fictional state of affairs in which no representations have been made, or if made, have not been relied on (*H8 Holdings* at [102], citing *First Tower Trustees Ltd v CDS (Superstores International) Ltd* [2019] 1 WLR 637 ("*First Tower Trustees*") at [47]). These clauses may also be capable of operating as an evidential estoppel provided that the three requirements in *Lowe v Lombank Ltd* [1960] 1 WLR 196 are satisfied, *ie*, (i) the statement of "no representation" or "non-reliance" in the clauses is clear and unequivocal; (ii) the party providing this statement had intended that the counterparty should act on this statement; and (iii) the counterparty had believed the statement of "no representation" or "non-reliance" to be true and had acted upon it (*H8 Holdings* at [102], citing *Orient Centre Investments Ltd v Société Générale* [2007] 3 SLR(R) 566 at [44]). In effect, such clauses are terms which exclude liability for misrepresentation (*H8 Holdings* at [105], citing *First Tower Trustees* at [52]–[53], [60]–[63], [67], [97]–[98] and [109]).

94 Bearing the above distinction in mind, if the intention of the parties is to exclude all misrepresentations by way of contract, the clause effecting such an intention would have to be very clearly expressed (*Creative Technology* at [79]).

95 The relevant clauses, as they appear in the SPA after the extensive discussions described above at [17], provide as follows:[189]

> 7.2 Save for the specific representations in this Clause 7 and Schedule 4, the Vendor makes no other representations, warranties and undertakings that will survive after the Completion Date.
>
> 7.3 Save for the warranties in relation to Schedule 4 Clause 5, the Properties will be sold on an as-is basis and upon Completion, it is the Purchaser's responsibility to seek any approvals with the relevant authorities and/or any rectification works in accordance with the regulations, if required. For avoidance of doubt, the Vendor will not be liable for any matters whatsoever, with regards to events related to the Property after Completion, including but not limited to the use, approvals, renovations, etc.

96 In my view, clause 7.2 is a "no representation" clause (see *H8 Holdings* at [102]) while clause 7.3 is an outright exclusion clause from liability "for any

189 1BOD at p 38.

matters whatsoever", which would include misrepresentations. As both clauses exclude or restrict liability for misrepresentation, they are subject to s 3 of the Misrepresentation Act 1967 (2020 Rev Ed) ("MA") and would be ineffective except in so far as they satisfy the requirement of reasonableness in s 11(1) of the Unfair Contract Terms Act 1977 (2020 Rev Ed) ("UCTA") (*Asia-Euro Capital SPV I LLP v Regulus Advisors Pte Ltd* [2024] SGHC 279 ("*Asia-Euro Capital*") at [165]–[167]). The burden falls on the contracting party seeking to rely on such a clause to establish that it was reasonable (s 3 of the MA; *Asia-Euro Capital* at [168], citing *First Tower Trustees* at [67]). Importantly, the established position at law is that a principal cannot exclude his own liability for fraudulent misrepresentation (*H8 Holdings* at [105], citing *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank* [2003] 2 Lloyd's Rep 61 at [16] and [76]). Thus, if clauses 7.2 and 7.3 are construed to exclude fraudulent misrepresentations, these clauses would be rendered ineffective at common law and pursuant to s 3 of the MA (*Asia-Euro Capital* at [165], citing *H8 Holdings* at [105]).

97 The upshot of the above discussion is that assuming that Oon's representation was actionable, clauses 7.2 and 7.3 would not afford Oon a defence if the misrepresentation were fraudulent and would only afford Oon a defence if the misrepresentation were innocent, and even then, this would be subject to the reasonableness requirement in s 11 of the UCTA. However, given that I have decided that there is no actionable misrepresentation on the basis of elements common to all types of misrepresentations (see above at [75]), I go no further than to note that the outcome of such an assessment would depend on the nature of the misrepresentation found.

Is the LOU tainted by illegality?

98 I come finally to Li's argument that the SPA, and by extension the LOU, is tainted by illegality.

99 In *Ochroid Trading Ltd v Chua Siok Lui* [2018] 1 SLR 363 ("*Ochroid Trading*"), the Court of Appeal set out a two-stage framework in analysing the doctrine of illegality for contracts. For present purposes, given that Li is not seeking to recover any benefits on a restitutionary basis, only the first stage relating to the validity and enforceability of contracts is relevant. The analysis under the first stage proceeds as follows (*Yangbum Engineering Pte Ltd v Liang Xihong* [2025] 5 SLR 219 at [79(a)], citing *Ochroid Trading* at [20]–[40] and [64]):

> (a) If a contract is prohibited, whether by statute (expressly or impliedly) or under one of the established heads of common law public policy, the contract is void and unenforceable.
>
> (b) If a contract is not prohibited by statute or under common law public policy but has been entered into with the object of committing an illegal act, the enforceability of the contract is subject to the principle of proportionality; and
>
> (c) The factors relevant to assessing proportionality include: (i) whether allowing the claim would undermine the purpose of the prohibiting rule; (ii) the seriousness of the offence; (iii) the causal connection between the claim and the illegal conduct; (iv) the conduct of the parties; and (v) the proportionality of denying the claim.

100 As mentioned above at [70], Li contends that the SPA, and by extension the LOU, were tainted as the sale of KCD was premised in part on the Dormitory housing substantially more workers (about 500) than it was formally approved to accommodate (*ie*, 320). He argues that the profitability and value of the business depended materially on this excess occupancy, such that the bargain was in substance one which contemplated or facilitated unlawful conduct.[190]

101 In my view, this defence is a non-starter. Whether there existed regulatory breaches in the Dormitory at the time of the sale simply does not inform the matter of whether the contract *as a whole* was illegal. The Dormitory and the associated assets plainly had substantial inherent value even at their approved capacity. This was not a case where the entire transaction only made commercial sense because of the excess occupancy. The fact that the Dormitory was housing approximately 500 workers as opposed to 320 may well have enhanced its attractiveness and increased the price that the USP Group was prepared to pay, for the reasons explained above at [84]. But there is an important distinction between a transaction whose value was augmented by some unlawful state of affairs and a transaction whose very object is to profit from illegality. In my view, the former is not, without more, sufficient to render the contract illegal. To put it differently, the excess occupancy may have given the business a commercial boost (and was, in some sense, part of the commercial considerations) but it does not follow that the SPA was, in substance, a contract for the continuation of unlawful overcrowding. The Dormitory arrangements, land, buildings, business relationships and underlying income-generating capacity all had independent significant value, even at lawful occupancy levels. On those facts, the regulatory non-compliance would appear more collateral

190 Defence at para 10: SDB at pp 13–15; DCS at paras 7–10; DRS at paras 55–57.

than central to the bargain. It is akin, in my mind, to the sale of a condominium unit with an open penthouse level that has been enclosed and converted into additional living space. The conversion may make the unit more attractive and may increase the price that a purchaser is willing to pay, especially if the aim on the part of the purchaser is to profit from it, for example, by subletting the unit to multiple tenants. Nonetheless, it would seem perverse to contend that the entire sale agreement was an illegal contract. The unit itself obviously has substantial independent value apart from the unapproved extension. Likewise, the excess occupancy here may have enhanced the value of the Dormitory business, and its value proposition, but it was not the whole of what was being bought and sold. There were suggestions that even as late as April 2019, KCD's valuation was in the range of $29,000,000 to $30,300,000,[191] not all that far off from the valuations of KCD's business that led to the SPA in 2015.

102 The argument of illegality becomes especially strained when directed at the LOU. Even if one assumes that the excess occupancy may have marginally enhanced the value of the Dormitory business, the LOU itself was not an agreement to house excessive numbers of workers, nor was it an agreement requiring either party to commit any unlawful act. It was simply a personal undertaking governing what would happen if Oon wished, after three years, to require Li to buy back the shares at a specific price. Put another way, the LOU sat yet another step removed from any alleged illegality. It did not oblige the parties to continue operating the Dormitory without the requisite approvals. It did not require any breach of regulatory requirements. It did not depend upon the continuation of any unlawful state of affairs for its operation. At most, the alleged non-compliance formed part of the factual backdrop against which the

191 2BOD at p 71.

parties entered into the broader transaction. Whatever, therefore, one may say about the Dormitory's occupancy levels, the LOU remained, in substance, a standalone promise as to the future repurchase of shares.

103 For all the above reasons, I find that the LOU is a valid and enforceable contract, under which Oon was entitled to have Li buy back the USPG Shares at the agreed price of $8,000,000. Despite Oon serving Li with the requisite written notice on several occasions and giving Li multiple extensions (the latest being until the end of 2 August 2019) (see above at [24]–[27]), Li failed to perform his obligation of buying back the USPG Shares. Li is therefore in breach of contract.

104 Before turning to the issue of remedies, I highlight two further points. First, though this did not form part of the primary considerations in this case, having considered all five defences that have been filed by Li, I am constrained to conclude that the defence possessed a clear organic feel to it, evolving and morphing over the course of litigation. The first Defence, filed on 5 November 2019,[192] was in substance not a defence at all. As Li himself admitted on the stand,[193] it was nothing more than a bare denial, devoid of any meaningful particulars, notwithstanding the fact that it was responding to a Statement of Claim that had expressly provided the particulars of the LOU, the circumstances in which it was signed and its significance.[194] The second Defence, filed on 17 December 2019,[195] presented an altogether different picture. In that version, Li claimed to have been made to sign the document on

192 Defence dated 5 November 2019: SDB at pp 62–64.

193 10 April 2026 Transcript at p 78, lines 15–26; 14 April 2026 Transcript at p 15, lines 15–32 and p 16, lines 1–20.

194 Statement of Claim (Amendment No. 1) dated 21 October 2019: SDB at pp 58–61.

195 Defence (Amendment No. 1) dated 17 December 2019: SDB at pp 65–69.

the spot on 16 December 2015 and had felt pressured by Oon to do so. Significantly, Chua was expressly stated by Li as being amongst those who were present in the discussion for the LOU.[196] By the time the third Defence was filed on 22 June 2020,[197] the narrative shifted yet again. Li now claimed that Oon had urged the signing of the LOU as it was no more than a comfort letter with no legal significance given that it was "not even written by lawyers".[198] Unsurprisingly, given the emergence of this new narrative – one in which Li claimed that if the LOU was ever truly part of the transaction between the parties then Chua would be involved – the only lawyer who was present, namely Chua, was removed from the list of persons allegedly involved in the discussions and stated to have inexplicably left the meeting after the execution of the SPA.[199] Parenthetically, I note that Li claimed that this was because Chua's non-involvement only became something he realised when Tham gave his evidence which was not admitted earlier.[200] Without going into the substance of the affidavit in question, this was plainly untrue – Tham's affidavit was dated 25 March 2021, many months after the third Defence was amended purportedly to align with it. The fourth Defence, filed on 7 July 2021,[201] introduced Li's defence of illegality, while the final Defence, filed on 21 January 2022, as mentioned above at [72], deleted the section on misrepresentation and moved several paragraphs under the section on illegality. To be clear, the mere fact of the amendments *per se* is not the problem – parties, of course, amend their

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196 Defence (Amendment No. 1) dated 17 December 2019 at para 5: SDB at p 66.

197 Defence (Amendment No. 2) dated 22 June 2020: SDB at pp 70–81.

198 Defence (Amendment No. 2) dated 22 June 2020 at para 18: SDB at p 75.

199 Defence (Amendment No. 2) dated 22 June 2020 at paras 5 and 9: SDB at pp 71 and 73.

200 10 April 2026 Transcript at p 79, lines 20–25 and p 80, lines 11–12.

201 Defence (Amendment No. 3) dated 7 July 2021: SDB at pp 94–106.

pleadings from time to time for a variety of benign or legitimate reasons and the fact of an amendment is therefore, in and of itself, unexceptional. Instead, it is the extent to which the *factual* storyline evolved over time that is, in my view, rather striking. This was not merely a case of additional details being supplied as matters progressed; rather, the very character of the defence shifted in material respects, with new allegations emerging and inconvenient features of earlier versions disappearing inexplicably. All of this gave the court further pause in assessing the reliability of Li's account.

105 Second, in coming to the above conclusions, I placed little weight on the events surrounding Suit 328 and its circumstances, including the police reports made by various interested parties at around the same time[202] that appear clearly intended to buttress Suit 328. In my view, the evidence suggests that, at least from Li's perspective, the primary purpose of Suit 328 was to use USPG as a corporate vehicle through which to distract Oon from pursuing his rights in the present proceedings. That appears, in large measure, to be pellucid from the exchanges between Li and the various parties when they were involved in coordinating Suit 328. In some exchanges, it was self-evident that the parties had commenced Suit 328 purely as a means to provide negotiation leverage in this suit.[203] In other instances, the genesis of the information that formed the foundation of Suit 328 was Li and the narrative had been framed in a manner that aligned entirely to Li's own self-serving account of events.[204] While those matters do not reflect well on Li, and raise broader questions about his *bona fides*, I do not think it meaningful to allow these developments to play a significant role in my reasoning on the present facts. The findings in this case

202 2BOD at p 148; 5BOD at p 378.

203 5BOD at pp 269, 333 and 363.

204 2BOD at p 94.

ought to stand or fall on the evidence that is directly relevant to the issues before me. Accordingly, while the events surrounding Suit 328 serves as useful background and context, they did not ultimately materially inform my findings in this case.

What is the extent of damages Oon should be awarded?

106 Having dealt with the issue of liability, I now turn to the question of the extent of damages to be awarded for Li's breach of the LOU.

107 It is well-established that the objective of damages for breach of contract is to put the claimant, so far as money can, in the same position as if the contract had been performed (*Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua* [2018] 2 SLR 655 at [124], citing *PH Hydraulics & Engineering Pte Ltd v Airtrust (Hong Kong) Ltd* [2017] 2 SLR 129 at [62]). This compensates the claimant for his expectation loss, *ie*, the gap between what was actually received and what was promised under the contract, and such damages are the primary and default remedy for a contractual breach (*Terrenus Energy SL2 Pte Ltd v Attika Interior + MEP Pte Ltd* [2025] 1 SLR 306 at [39]).

108 As a general rule, compensatory damages are assessed as at the date of the breach of contract, *ie*, the "breach date rule", although this rule may be departed from if to follow it would give rise to injustice (*Fantom Foundation Ltd v Multichain Foundation Ltd* [2024] SGHC 173 ("*Fantom Foundation*") at [22] and [41], citing *iVenture Card Ltd v Big Bus Singapore City Sightseeing Pte Ltd* [2022] 1 SLR 302 ("*iVenture Card*") at [133]). In determining whether to exercise such a discretion, the "key question" is whether the claimant ought to have mitigated his loss in the circumstances (*Tay Joo Sing v Ku Yu Sang* [1994] 1 SLR(R) 765 at [37]; *The Law of Contract in Singapore* at

paras 22.003–22.004). The reason undergirding the breach date rule is that, if the claimant has the opportunity to acquire substitute performance at the breach date but chooses not to do so, it is assumed by the law of mitigation to have done so and damages are to be assessed on that basis regardless of how the claimant actually acted (*POP Holdings Pte Ltd v Teo Ban Lim* [2025] 2 SLR 90 ("*POP Holdings*") at [63], citing *Thai Airways International Public Co Ltd v KI Holdings Co Ltd* [2016] 1 All ER (Comm) 675 at [34] and *Stanford International Bank Ltd v HSBC Bank plc* [2023] AC 761 at [42]–[43]). Accordingly, the breach date rule will be displaced if the claimant was either: (a) unaware of the breach at the time of its occurrence; or (b) unable to take mitigatory steps at the time of its occurrence (see *Kalen, Alexandru v World Exchange Services Pte Ltd* [2026] 3 SLR 1094 ("*World Exchange*") at [35]–[39]; *The Law of Contract in Singapore* at para 22.005).

109 In the specific context of a sale of goods, if there is an available market to obtain substitute performance and the claimant does not avail himself of the option to mitigate and crystallise his loss on the date of the defendant's breach, any losses incurred thereafter are not caused by the defendant's breach but by the claimant's decision not to enter the market (*POP Holdings* at [62], citing *Koch Marine Inc v D'Amica Societa Di Navigazione ARL (The Elena D'Amico)* [1980] 1 Lloyd's Rep 75 at 89–90, *Golden Strait Corp v Nippon Yusen Kubishika Kaisha* [2007] 2 AC 353 at [79] and *Sharp Corp Ltd v Viterra BV* [2024] Bus LR 871 at [94]–[95]). By contrast, the breach date rule is not applicable where there is no immediately available market for the sale of the relevant asset or for the purchase of an equivalent asset (*iVenture Card* at [133], citing *Hooper v Oates* [2014] Ch 287 at [38]). In this regard, the fact that there is a potential difficulty in selling goods, due to either quantity or quality, does not mean that there is insufficient demand and therefore no available market

(*Oei Hong Leong (HC)* at [76]). These principles extend by analogy to the sale of shares and the default measure of damages upon a breach by the purchaser is the difference between the contract price and the market price at the date of the breach, with an obligation on the part of the seller to mitigate the damages by getting the best price he can upon that date (*3N Investments Group Ltd v Lim Boon Chye Victor* [2023] SGHC 76 at [83]–[84], citing *City Securities Pte Ltd v Associated Management Services Pte Ltd* [1996] 1 SLR(R) 410 at [18]).

110 Turning to the facts of the case, as established above at [18] and [103], the contract price for the USPG Shares is $8,000,000 as set out in the LOU and the date of breach is 3 August 2019. On that date, the share price of the USPG Shares was $0.075 each, which means that the loss suffered would be $7,013,157.95 (*ie*, $8,000,000 - 13,157,894 x 0.075).[205]

111 However, Oon instead relies on the share price of the USPG Shares of $0.043 each on 12 September 2019, the date of the commencement of proceedings, and submits that the sum of $7,434,210.56 should be awarded as damages (*ie*, $8,000,000 - 13,157,894 x $0.043).[206] In effect, Oon's submission invites the court to depart from the breach date rule. While Oon does not expressly address the breach date rule or explain why a departure from the rule is warranted, it appears that Oon alludes to the fact that the USPG Shares are traded "thinly" as a possible justification.[207] On the evidence before me, it appears that there is some merit to this justification, since the average three-month trading volume of the USPG Shares as of 20 March 2020 was

205 PA-1 at para 153; 2BOD at p 174.

206 Statement of Claim (Amendment No. 2) dated 15 June 2021 at para 12: SDB at p 8; PA-1 at para 153; 2BOD at p 174.

207 Reply (Amendment No. 1) dated 7 February 2022 at para 7A(d)(ii): SDB at p 42; PA-1 at para 29(2); PCS at paras 7, 37, 39 and 94(2)(c)(i).

250,000.[208] Nevertheless, such an argument is, at its core, grounded in the consideration that there was a potential difficulty in selling goods due to quantity, the very submission rejected in *Oei Hong Leong (HC)* at [76] (see above at [109]). Indeed, I note that the court in *Oei Hong Leong (HC)*, in refusing to depart from the breach date rule, observed that the relevant shares in that matter were, as is the case here, publicly listed shares on SGX, which offered a broad pool of potential buyers (at [76]). It may be that there are some *sui generis* reasons for why the shares ought to be treated as illiquid despite being listed. Nonetheless, these have not been pleaded or articulated meaningfully. In those circumstances, as Oon has provided no further justification for, or indeed any express consideration of, why the breach date rule should not apply, it is not for the court to fill in those gaps and I am not satisfied that the threshold for such departure has been met on the facts, even if I acknowledge (based on trading volumes) that the present facts present a slightly more compelling case than those of *Oei Hong Leong (HC)*. Therefore, applying the breach date rule (see above at [108]), I adopt the share price on 3 August 2019 as the market price of the USPG Shares. I pause here to note that this only possesses a marginal impact on the damages that are to be awarded, in view of the already extremely depressed price of the shares on 3 August 2019 relative to the price that was agreed for the buyback option in the LOU.

112 I make one further observation. The above analysis assumes that the present facts fall within the "archetypal situation where an individual claimant should mitigate the losses from their transaction with a single counterparty by entering the market", in which case "the entry of one such claimant is generally assumed, as a starting point, not to affect the market price" (*Kupetz, Jonathan v*

[208] 2BOD at p 167.

Terraform Labs Pte Ltd [2026] 1 SLR 355 ("*Terraform Labs*") at [141]). However, there are at least two possible instances where modifiers ought to be applied to the market price:

(a) First, where the block of a publicly traded stock is so large relative to the normal trading volume that an instant sale would probably be at a discounted price compared to the prevailing market or else would take a long time to sell, a blockage discount may be applied to the current market price of the block to reflect the decrease in the per share value of the block (*Oei Hong Leong (HC)* at [78]; *Terraform Labs* at [141]; *Fantom Foundation* at [32]).

(b) Second, where the shareholdings involved confer a degree of control or influence over company operations, a control premium may be applied to reflect the perceived incremental value of being able to exercise control over a company's operations and strategies (*Oei Hong Leong (HC)* at [84]).

113 In the present case, the relevant modifier would be a blockage discount. As Oon briefly alludes to,[209] the significant increase in trading volume of USPG shares (roughly 14.57% of the total number of issued USPG shares as of 2 September 2019[210]) if Oon's entire shareholding was sold as a block would likely have depressed the prevailing market price. In principle, I accept that this would likely have been the case. In this connection, while I recognise that such an inquiry is ultimately highly fact sensitive, I note by way of simple comparison that the court in *Oei Hong Leong (HC)* found that a blockage

[209] PCS at para 94(2)(c)(ii).

[210] 2BOD at p 273.

discount was applicable to the market price of the plaintiff's 12.88% stake and therefore adjusted the appropriate quantum of damages payable by the defendant (at [79], [87] and [92]). Having said that, unlike *Oei Hong Leong (HC)* and *Fantom Foundation*, no expert evidence has been adduced in this matter to quantify the applicable discount. In this regard, I note that the court in *Fu Hao v Evancarl Ltd* [2021] SGHC 137, when considering the applicability of blockage discounts and control premiums, accepted the plaintiff's submission that in the absence of expert evidence, he should not claim a larger amount than that computed using the market price (at [146]). While the absence of expert evidence is not a strict bar to the court applying such a discount (see *Terraform Labs* at [146] and [148]), no alternative price for the USPG Shares possibly representing such a discount was put forward by Oon that would have allowed the court to arrive at any principled figure. Given further that Oon does not appear to pursue this particular point, I therefore find that no modifier is applicable.

114 Finally, I consider the issue of mitigation of damages. It is trite that mitigation of damages as a defence must be properly pleaded and proved (*ISU Specialty Chemical Co Ltd v C&D (Singapore) Business Pte Ltd* [2025] 5 SLR 70 at [38], citing *Yip Holdings Pte Ltd v Asia Link Marine Industries Pte Ltd* [2012] 1 SLR 131 at [23]–[24]). The burden of proving that the aggrieved party has failed to fulfil its duty to mitigate falls on the defaulting party and this burden is not easily discharged (*The Asia Star* [2010] 2 SLR 1154 at [24]).

115 On the present facts, Li has not made a single reference to mitigation in his pleadings nor raised it at any stage of the trial process. As will be clear from the earlier portions of this judgment, the thrust of Li's defence is that the LOU is invalid and unenforceable, whether due to the lack of an intention to create

legal relations, its terms being uncertain or incomplete, the lack of consideration or by reason of it being tainted by misrepresentation or illegality. Put another way, Li adopted an all-or-nothing approach by solely contesting the claim on liability without even cursorily addressing the question of quantum. In the premises, there is simply no scope for an argument on mitigation of damages to operate. Accordingly, I find that the measure of damages to be awarded is simply $8,000,000 less the market price of the USPG Shares as of 3 August 2019, which sums up to $7,013,157.95.

116 Before concluding, I address one last point which may cause some confusion. One might query how the conclusion that there is no scope for mitigation of damages as a defence to operate squares with the principles set out above in [108]–[109], which appear to envisage an inbuilt inquiry of mitigation of damages in determining the date on which loss is to be assessed. In my view, this may be explained as follows. In cases where there is an available market, the court rightly assumes that it would be eminently reasonable that the first port of call by way of mitigation would be to find another buyer or seller in the market, with the result that the inquiry of mitigation is folded into the determination of the appropriate date on which loss is to be assessed. A similar observation has been made in *McGregor on Damages* (James Edelman, Jason Varuhas & Andrew Higgins eds) (Sweet & Maxwell, 22nd Ed, 2024) at paras 10-039–10-040:

> There are not many decisions which illustrate the rule that loss which should have been mitigated is not recoverable. The reason for this is that either the court has held that the claimant has not failed to mitigate the loss so that they recover in respect of the whole damage, *or, probably more commonly, the issue has never reached the point of litigation because the claimant has in their own interests taken the necessary steps to mitigate. Indeed, so clear is the way of mitigation in many cases that it often tends to become incorporated into the normal*

> *measure of damages. When this happens it loses its identity and does not expressly appear as a separate issue.*
>
> *Such a situation arises particularly in cases of sale of goods.* Thus, if a seller fails to deliver the goods contracted for, the buyer cannot sit back on a rising market or wait until their sub-sale to a third party has fallen through, but must go into the market with all reasonable speed and buy equivalent goods there. This mitigating step is incorporated into the normal measure of damages by [s 51(3) of the Sale of Goods Act 1979 (UK)] … Conversely, if a buyer of goods fails to accept them, the seller must take steps to resell them to another and not sit back on a falling market. This, similarly, is incorporated into the normal measure of damages by [s 50(3) of the Sale of Goods Act 1979 (UK)] …
>
> [emphasis in italics added]

Importantly, however, this does not detract from the general position that it is for the defendant to plead and prove a failure on the claimant's part to mitigate damages (see above at [114]) beyond entering the market timeously.

117 By contrast, where there is an absence of an available market, there may not be such a straightforward alternative, and the court cannot therefore simply treat the claimant as having notionally mitigated by finding a buyer or seller on the date of the breach. In these cases, the defendant's duty to plead and prove a failure of mitigation of damages is then brought into sharp focus as the court has no basis at all to engage with the question of mitigation independently of the valuation date. Seen in this light, there is, in reality, no inconsistency.

Conclusion

118 For the reasons set out above, I find that Li is in breach of contract and award Oon damages of $7,013,157.95.

119 On the matter of costs, if these are not otherwise agreed, the parties are to file submissions on costs, limited to no more than five pages each, within two weeks of the issuance of this judgment.

Mohamed Faizal
Judge of the High Court

Chu Hua Yi and Goh Jia Jie (FC Legal Asia LLC) for the plaintiffs;
The defendant in person.