IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 209

Suit No 803 of 2017

Between

Jin Ling Enterprise Pte Ltd

… Plaintiff

And

E C Prime Pte Ltd

… Defendant

JUDGMENT

[Contract] — [Misrepresentation] — [Inducement]

Version No 1: 27 Oct 2020 (22:41 hrs)

TABLE OF CONTENTS

INTRODUCTION **1**

PARTIES **2**

PLEADED CASE AND THE REPRESENTATIONS **3**

FACTS **6**

THE FIRST MEETING IN SEPTEMBER 2011 7

SEPTEMBER 2011 TO DECEMBER 2011 8

14 TO 15 DECEMBER 2011 9

15 DECEMBER 2011 TO 13 APRIL 2012 10

13 APRIL 2012: ISSUANCE OF OTPS FOR THE UNITS 11

13 APRIL 2012 TO 16 APRIL 2012: CORRESPONDENCE BETWEEN CONVEYANCING SOLICITORS AFTER GRANT OF OTPS 15

15 MAY 2012: EXERCISE OF THE OTPS AND EXECUTION OF THE SPAS 17

BUILDING PLANS NO.1 AND NO.2 17

EVENTS SUBSEQUENT TO THE EXECUTION OF THE SPAS 18

MY DECISION **24**

THE LAW 24

R1 25

Representations made before 13 April 2012 (ie, Initial R1) *28*

Whether Initial R1 was made 28

Implied meaning of Initial R1 32

Clause 20M, Defendant's Letters, Reassurance 1 and Reassurance 2 35

R2 45

Version No 1: 27 Oct 2020 (22:41 hrs)

R3 50

CONCLUSION.....53

Version No 1: 27 Oct 2020 (22:41 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Jin Ling Enterprise Pte Ltd
v
E C Prime Pte Ltd

[2019] SGHC 209

High Court — Suit No 803 of 2017
Chan Seng Onn J
11–15, 19 March, 9–12 April 2019; 8 July 2019

11 September 2019 Judgment reserved.

Chan Seng Onn J:

Introduction

1 This dispute concerns certain misrepresentations made in the course of the sale and purchase of two commercial units #01-01 and #01-02 ("the Units") of a mixed development (*ie,* housing both commercial and residential units) known as the Alexis ("the Development") along Alexandra Road, for the intended purpose of operating a Chinese-style restaurant, otherwise locally known as a "*zichar* restaurant". The plaintiff, Jin Ling Enterprise Pte Ltd, is a food and beverage ("F&B") operator that entered into two sale and purchase agreements of the Units ("SPAs") on 15 May 2012 with the defendant, E C Prime Pte Ltd, a property development company.

2 According to the plaintiff, the Units were intended for running a *zichar* restaurant that involved heavy cooking. However, the operation of the *zichar*

restaurant in the Units resulted in smell nuisance problems which affected the residents living above the Units. A letter of warning by the National Environmental Agency ("NEA") was issued to the plaintiff and the plaintiff eventually closed its restaurant in September 2017. The plaintiff's case is that it was induced by three misrepresentations made by the defendant to enter into the SPAs.

Parties

3 The plaintiff is a seasoned operator of F&B outlets and stalls in the F&B business with more than 15 years' experience with around 15 coffee shops under its belt.[1] As per the Accounting and Corporate Regulatory Authority's business profile, the plaintiff's business involves two principal activities: "hawkers and stall-holders selling cooked food and prepared drinks" as well as "letting and operating of food courts, coffee shops and eating [houses] (mainly rental income)" ("Principal Activities").[2] The plaintiff has two directors, Mr Neo Eng Seng ("NES") and his wife, Mdm Lim. NES was the main individual with whom representatives from the defendant negotiated with in respect of the sale and purchase of the Units.

4 The defendant is a property development company set up to oversee the construction and management of the Development and was managed by its directors Mr Tan Koo Chuan ("TKC") and Mr Melvin Poh ("MP").[3] MP was in charge of coordinating and liaising with contractors, and managing issues pertaining to the construction of the Development, such as applications for the

---

1 Transcript 11 March 2019 at p 33; 2DBOD at p 130

2 3DBOD at p 199

3 2DBAEIC at para 7

Version No 1: 27 Oct 2020 (22:41 hrs)

Temporary Occupation Permit ("TOP"), Certificate of Statutory Completion ("CSC") and alleged defects issues.[4] On the other hand, TKC, an experienced developer, was in charge of land acquisition and setting the strategic direction for the project.[5] TKC left the project management decisions in respect of the Development to MP, who was paid a management fee to manage the project and coordinate the works.[6]

Pleaded Case and the Representations

5 By the end of the trial, the plaintiff limited its pleaded case to the following three misrepresentations made by the defendant which allegedly induced the plaintiff to enter into the SPAs ("the Representations"):[7]

(a) That the Units could be used both as shops or restaurants that involved heavy cooking and also for the Principal Activities of the plaintiff ("R1");

(b) That the plaintiff could use the walkway decking at the front and back of the Units as an Outdoor Refreshment Area ("ORA") for its intended use of the Units ("R2"); and

(c) That wooden decking would be constructed for the plaintiff to make available the space at the ORA for the plaintiff to carry out its Principal Activities ("R3").

---

4 2DBAEIC at para 10; Transcript 9 April 2019 at p 11

5 2DBAEIC at para 10

6 Transcript 15 March 2019 at pp 98-101

7 Plaintiff's Closing Submissions ("PWS") at para 8

Version No 1: 27 Oct 2020 (22:41 hrs)

The Representations were allegedly made between the parties' first meeting in September 2011 and 13 April 2012 (the date when the Offers to Purchase ("OTPs") for the Units were issued) and between 13 April 2012 and 15 May 2012 (the date when the SPAs were executed).[8] The plaintiff's case is that the Representations were false statements of facts made by the defendant for the purpose of inducing the plaintiff to enter into the SPAs for the Units for the defendant's financial gain.[9] The plaintiff avers that the defendant is liable for fraudulent or negligent misrepresentation.[10] As for remedies, the plaintiff seeks a rescission of the SPAs or in the alternative, claims for damages.

6 In relation to R1 being a false statement of fact, the plaintiff submits that the Units could not be used as a food court or restaurant that involved heavy cooking and also for the plaintiff's Principal Activities. After signing the SPAs, the plaintiff realised that the defendant had not obtained the necessary approvals from the relevant government authorities. In this regard, the defendant failed to fully and frankly disclose to the plaintiff that they did not have approvals from the relevant government authorities, such as Urban Redevelopment Authority ("URA") and NEA.[11] Further, the defendant also failed to ensure that the plaintiff would be able to carry on the plaintiff's Principal Activities and failed as developers to make the necessary applications to the relevant authorities to resolve any issues that might arise.[12] For instance, while NEA did grant a food shop licence for the Units after multiple appeals spanning a period of about 1.5

---

8 PCS at para 9

9 SOC (Amendment No.1) at paras 3, 16

10 SOC (Amendment No.1) at para 33

11 SOC (Amendment No. 1) at para 17

12 SOC (Amendment No. 1) at para 18

Version No 1: 27 Oct 2020 (22:41 hrs)

years, the plaintiff's restaurant's smell nuisance problems still resulted in complaints from the residents living above the Units and a warning issued by NEA. This was because the Units did not have the capacity, infrastructure and approval by the relevant authorities for use as a food court or restaurant that involved heavy cooking and for carrying out the plaintiff's Principal Activities.[13] The Units did not have an effective exhaust fumes system to deal with the smell nuisance problems generated by heavy cooking, rendering the Units unsuitable for heavy cooking.

7 In relation to R2 being a false statement of fact, the plaintiff pleaded that it was not permitted to use the front and back of the Units (the "area") as an ORA.[14] In my view, this has not been precisely pleaded. In fact, the defendant had no objections to the plaintiff's use of the area as an ORA. The real issues are the *approvals* the plaintiff was required to obtain before using the area as an ORA and the *time* when the plaintiff could start using that area as an ORA. What the plaintiff means is that the defendant had represented to the plaintiff that the area could be used *right away* as an ORA for the plaintiff's Principal Activities.[15] To the plaintiff, this implies that the plaintiff's use of the area as an ORA for its Principal Activities could commence (i) *before* the issuance of the CSC; (ii) without submitting its renovation plans to the defendant and obtaining the defendant's approval (before the Management Corporation Strata Title ("MCST") was formed); and (iii) without obtaining the written permission from URA. As such, when the plaintiff commenced renovation works for the ORA at the area before the issuance of the CSC, without submitting renovation plans

---

13 SOC (Amendment No. 1) at para 17; PCS at para 10

14 PCS at para 10

15 2PBAEIC at para 64

Version No 1: 27 Oct 2020 (22:41 hrs)

for the defendant's approval and without obtaining the written permission from URA, MP stopped the plaintiff from renovating the area into an ORA for its use *right away*.[16]

8 In relation to R3 being a false statement of fact, the plaintiff's case is that the defendant had not kept its promise to construct the wooden decking for the ORA for the plaintiff at the defendant's own cost. The plaintiff was allegedly informed by the defendant that the plaintiff would have to construct his own wooden decking for the ORA after submitting an initial plan for the defendant's approval.[17]

Facts

9 Before setting out the facts in more detail, I start by defining some terms used by the parties. A food court is a type of eatery that rents out stalls to other businesses that sell a variety of food and beverages (for instance*, laksa* or *mee siam*).[18] A food court is distinct from a F&B outlet, which is a broader category of shops in the food and beverage industry that includes food chain outlets such as McDonalds. A *zichar* restaurant is a stall or restaurant that engages in "Chinese style cooking", which may or may not involve heavy cooking. Parties also agree that it is possible for a *zichar* stall to be set up as one of the stalls within a food court.[19]

---

16 Transcript 12 March 2019 at pp 23-25

17 1PBAEIC p 30 at para 58

18 Transcript 11 March 2019 at pp 12-13

19 Transcript 11 March 2019 at p 111; Transcript 15 March 2019 at p 72

Version No 1: 27 Oct 2020 (22:41 hrs)

The first meeting in September 2011

10 In or around September 2011, Mr Jasper Tan ("Jasper") introduced NES to TKC. Jasper was NES's insurance agent since 2006 and was well-acquainted with NES and his company.[20] On the other hand, Jasper only first met TKC in September 2011.[21]

11 At their first meeting in September 2011, TKC conducted the marketing presentation at his office and gave NES a brochure of the Development and the floor plan of the Units. TKC testified that he had mentioned to NES that the Units *could be used for F&B purposes, for example, as food courts.*[22] This was because TKC did not see any issue with prospective tenants or purchasers obtaining the relevant approvals to use the units in the Development for F&B purposes, given that some of the other units were previously approved for use as restaurants.[23] He also testified to having told NES that if he had plans to run a F&B business, he would have to submit the necessary applications to the authorities to obtain the relevant approvals.[24] TKC also testified that he would allow the plaintiff to use the front and back areas of the Units as an ORA, but clarified that when the MCST was formed, the continued usage of the common area as an ORA would be subject to approval by the MCST.

12 On the other hand, NES testified that he had informed TKC that he was looking to buy a property to operate a *zichar* restaurant with the view to sell

---

20 Transcript 13 March 2019 at pp 126-127

21 Transcript 13 March 2019 at p 128

22 1DBAEIC at para 11

23 1DBAEIC at para 11

24 1DBAEIC at para 12

Version No 1: 27 Oct 2020 (22:41 hrs)

seafood. NES testified that TKC had replied that he should consider getting a property in the Alexis as it was a mixed development and there were many units on the ground floor that could be used for the operation of a *zichar* restaurant. When NES asked him whether the units in the Alexis were capable of operation as a *zichar* restaurant, TKC allegedly replied that it *should not be a problem* as some of the units on the ground floor were *approved* or were meant for restaurants of F&B operations.[25] TKC also allegedly assured NES that *for such an operation, everything was ready*.[26]

September 2011 to December 2011

13 TKC and NES met a few more times from September 2011 to December 2011. According to NES, the purpose of the meetings was for NES to figure out if the Units could fit into the plaintiff's plan of operating its Principal Activities, including selling cooked food or *zichar* which involved heavy cooking.[27] Jasper was present at these meetings.

14 NES testified that in one of the meetings, NES had told TKC that he was considering purchasing the corner unit #01-01 as he could use the ORA like a beer garden as part of his plan to operate in the evening and sell alcohol.[28] In response, TKC allegedly told him that if he had bought two units, he *would make arrangements for him to use the ORA.* NES then told TKC that he would consider the purchase seriously and revert to him in due course. During all the meetings, NES testified that TKC had never informed NES that the plaintiff had

---

25 1PBAEIC at para 16

26 1PBAEIC at para 16

27 1PBAEIC at paras 7, 17

28 1PBAEIC at para 21

Version No 1: 27 Oct 2020 (22:41 hrs)

to apply for a change of use of the Units from a "shop" to a "restaurant" with URA.[29] Instead, TKC allegedly represented and assured him that he could *do his business without any problem.*[30]

15 According to TKC, NES did not express any requirement for the Units to be fitted with an exhaust system or other mechanical, electrical or technical fixtures, particularly required for heavy duty cooking.[31]

16 After viewing the Units, NES was happy with the Units and expressed interest in purchasing the Units. Sometime in end November 2011, TKC, MP and NES went with the defendant's staff to the plaintiff's *zichar* restaurant at Bedok North to have dinner.[32] At the dinner, NES introduced his daughter-in-law and employee, Ms Kelissa Chan ("KC"), to TKC and MP.

14 to 15 December 2011

17 On 14 December 2011, NES handed TKC a cheque for the option money for the purchase of the Units ("First Cheque"). TKC did not arrange for the OTPs to be issued to NES and did not tender the First Cheque for payment at the bank because NES requested for TKC to hold off the Units for a day so that he could consult with his wife on the purchase.[33]

18 At the meeting, NES testified that TKC had *repeated the Representations*, including the further representations that the Plaintiff (a) *could*

---

29 1PBAEIC at para 24

30 1PBAEIC at para 24

31 1DBAEIC at para 20

32 1PBAEIC at para 18

33 1DBAEIC at paras 22-23; 1PBAEIC 11 at para 30

Version No 1: 27 Oct 2020 (22:41 hrs)

operate a zichar restaurant or food court, and (b) should consider purchasing two units and *use the outdoor area as an ORA* to increase the sitting capacity of the *zichar* restaurant or food court.[34] TKC also allegedly assured NES that he would ensure that the defendant would carry out and fulfil the Representations.[35]

19 On 15 December 2011, NES changed his mind and decided to purchase only the unit #01-01.[36] The First Cheque was returned to NES and NES handed a replacement cheque to TKC for the option sum for only the unit #01-01 ("Second Cheque"). At that point, NES commented that he still wanted to persuade his wife to agree to purchasing both the Units instead and requested TKC to hold off the Units from the market, so that he could persuade his wife to purchase both of the Units.[37] As such, TKC did not tender the Second Cheque for payment at the bank and no OTP for the unit #01-01 was issued.[38]

15 December 2011 to 13 April 2012

20 Between 15 December 2011 to 13 April 2012, TKC and NES met on a few occasions. NES testified that TKC had repeated the Representations and reassured NES on the purported advantages of purchasing the Units (*ie,* both units #01-01 and #01-02).[39] According to NES, TKC also "[emphasised] what the defendant as the [developer] *could* do for the plaintiff for the [Units, including] ensuring that the plaintiff *could operate a* [*zichar*] *restaurant/food*

---

34 1PBAEIC at para 28

35 1PBAEIC at para 28

36 1PBAEIC at para 31

37 1DBAEIC at para 26

38 1DBAEIC at para 26

39 1PBAEIC at para 32

Version No 1: 27 Oct 2020 (22:41 hrs)

court and also including but not limited to the provision of wooden decking and ORA space"[40] and that the plaintiff's business plan would be better achieved if the Units, which were side by side, were purchased.[41]

13 April 2012: Issuance of OTPs for the Units

21 About four months later, NES changed his mind and informed TKC of his intention to purchase the Units (*ie,* both units #01-01 and #01-02).[42] On 13 April 2012, NES and KC met with MP to hand him the cheques for payment of the option sum for the Units and to collect the OTPs.[43] After some negotiations regarding the final purchase price of the Units, NES was given the OTPs for the Units, accompanied by the defendant's covering letters dated 13 April 2012 for the Units ("the Addendums"), which were all in English. As NES was competent only in Hokkien and Mandarin, KC interpreted and explained the contents of the OTPs and the Addendums to NES.[44] MP also explained to NES that the SPAs would be sent to NES at a later time as per standard practice, and it would be expedient for NES to appoint his own conveyancing solicitors to assist him to go through the detailed terms of the SPAs for the Units.[45] MP highlighted cl 2 and cl 7 of the OTPs to NES:

> **2. Obligations of the Developer**
>
> 2.1 We will make available for, your review or, if You have already appointed a solicitor, your solicitor's review by not later than 27 April 2012 [14 days from the Option date]:-

---

40 1PBAEIC at para 32

41 1PBAEIC at para 32

42 1DBAEIC at para 28

43 1PBAEIC at pp 112-129

44 1PBAEIC at para 42

45 2DBAEIC at para 23

Version No 1: 27 Oct 2020 (22:41 hrs)

> (a) the original or copies of the title deeds to the Unit; and
>
> (b) the Sale and Purchase Agreement in *triplicate*.
>
> 2.2 The Sale and Purchase Agreement will be in the form prescribed by the Sale of Commercial Properties Rules (Cap. 281, R 1).
>
> …
>
> **7. Conditions of sale**
>
> The Unit is sold subject to the terms and conditions in the Sale and Purchase Agreement, including all modifications to such terms and conditions which have been approved by the Controller of Housing.
>
> [emphasis in original; emphasis added in underline]

22 At the meeting, KC raised an issue with regards to a clause in the OTPs. KC read, interpreted and explained the contents of the OTPs to NES and highlighted to NES that cl 2.1 of the Addendums drew the attention of the purchaser to cl 20M.1 and cl 20M.2 of the SPAs ("Clause 20M"), reproduced as follows:[46]

---

46 2PBAEIC at para 23

Version No 1: 27 Oct 2020 (22:41 hrs)

> **20M. Approved Use of the Unit**
>
> 20M.1 The Unit is approved for *use as a shop* in the grant of the Written Permission for the Building by the Competent Authority under the Planning Act (Cap. 232).
>
> 20M.2 Unless with the *prior permission of the Competent Authority* under the Planning Act, the Purchaser shall not use the Unit or allow the Unit to be used *for any purpose other than the approved use* as specified above in accordance with the Written Permission of the Competent Authority.
>
> [emphasis added in italics]

NES testified that he had asked TKC and MP why the words "restaurant/food court" were not stated in cl 20M.1 of the SPAs.[47] KC also testified that:[48]

---

47 1PBAEIC at para 43

48 2PBAEIC at paras 24-26

Version No 1: 27 Oct 2020 (22:41 hrs)

> 24 Upon hearing this, TKC and MP replied by repeating the Representations and the Assurances. They reassured him that this was not an issue as the Alexis Units could be used to operate as a Zi Char restaurant. In fact, TKC said to NES in Chinese that the word 'Shop' (in the Addendum to the Options) by using the words 'Xing Shi Shang' (translated into English, it means loosely as "administrative") and that he should not worry too much. In fact, TKC hit his chest and said, ***"we are business people we can do anything in the end".*** He also said that if he had any problem with the authorities in operating a Zi Char restaurant, he and the defendant would resolve any issue for him. …
>
> ….
>
> 26 I was a bit perplexed and I asked TKC what he meant by 'administrative'. TKC replied that the word *'shop' was just a formality* because as developers, they were selling shops and not restaurants. I then asked him whether in such event, the plaintiff was still able to operate a restaurant. TKC replied and said *it was not an issue and if the plaintiff encountered any difficulties, they can rely on him and the defendant for help.* TKC again assured me we should not have any worry and that NES should trust him that the plaintiff could operate a Zi Char restaurant. …
>
> [emphasis in original; emphasis added in italics]

This version of events was corroborated by NES's testimony.[49] The alleged actions of TKC and MP repeating the Representations and reassuring NES and KC that the word "shop" was purely administrative in nature and merely a formality will be referred to collectively as "Reassurance 1".

23 On the other hand, MP testified that he could not recall whether KC had asked such a question, whether MP or TKC had given such a reply or whether TKC had even been present at the meeting, since the meeting occurred seven years ago.[50]

---

49 1PBAEIC 17 at para 44

50 Transcript 10 April 2019 at pp 54-55, 59

Version No 1: 27 Oct 2020 (22:41 hrs)

24 NES then decided to proceed with the purchase. NES acknowledged the insertion of Clause 20M in the SPAs by affixing his signature to the Addendums and the OTPs.[51] NES then instructed KC to hand over the last two cheques for the option sum of the Units ("Third Cheque and Fourth Cheque").[52] As such, the OTPs were issued to the plaintiff on 13 April 2012.

13 April 2012 to 16 April 2012: Correspondence between conveyancing solicitors after grant of OTPs

25 After NES received the OTPs and the Addendums, he instructed his lawyer, Ms Wong, to act for the plaintiff in the purchase. After faxing copies of the OTPs and the Addendums to Ms Wong, Ms Wong highlighted to NES that the Addendums to the OTPs had stated the term "shop" and did not mention anything about the use of the Units as "restaurants". NES explained the alleged Representations made by TKC and MP detailed in [22], in particular that the term, "shop", had been represented to him to be purely administrative and that NES could still use the Units to operate a restaurant or maybe a food court.[53]

26 Ms Wong subsequently advised NES that she would write to the defendant's solicitor to confirm the above representations. On 16 April 2012, the defendant received two letters from Ms Wong, in respect of the Units. The letters sought to amend the OTPs and SPAs.[54] Each letter stated that:[55]

---

51 2DBAEIC at pp 92, 100

52 1PBAEIC at para 49

53 1PBAEIC at para 52

54 2DBAEIC at p 17

55 2DBAEIC at pp 102 and 104

Version No 1: 27 Oct 2020 (22:41 hrs)

> …would refer to the Option to Purchase dated 13th April 2012 that you granted to them.
>
> We are instructed by our clients' director, Mr Neo Eng Seng that [the defendant] represented to [NES] that the above unit is **approved for use as a restaurant** and that they will be allowed to **put tables and chairs at the open area in front of the unit**."
>
> We note that under "Approved Use of the Unit", **the unit is approved for use as a shop and not a restaurant**. Please verify and amend same in the Option to Purchase and the Sale and Purchase Agreement.
>
> [emphasis added in bold]

27 On 18 April 2012, MP instructed the defendant's conveyancing solicitor, Ms Choy, to reply with two letters, each clarifying the defendant's position on the units #01-01 and #01-02 ("the Defendant's Letters"):[56]

> (i) Our clients ***deny*** that they represented to your clients' director that **the Unit is approved for use as a restaurant**;
>
> (ii) Our clients ***deny*** that they represented to your clients' director that your clients **will be allowed to put tables and chairs at the open area in front of the Unit**.[57]
>
> The "Approved Use of the Unit" stated in the Option to Purchase is in accordance to the Grant of the Written Permission and hence the Option to Purchase and the Sale and Purchase Agreement **will not be amended.**
>
> [emphasis added in bold and bold italics]

It is crucial to note that the correspondence between both parties' solicitors took place *before* the SPAs were signed. No further written correspondence was exchanged between the parties.

---

56 2DBAEIC at p 105-106; Transcript 10 April 2019 at p 65

57 1DBOD at pp 45–46

Version No 1: 27 Oct 2020 (22:41 hrs)

28 NES testified that after being informed of the letters from the defendant's solicitors, Ms Wong advised him to check with TKC and the defendant if he wished to proceed with the purchase. NES testified that he had contacted TKC for clarifications about Ms Choy's letters. TKC allegedly reiterated that this was *purely administrative* and that he should proceed with the purchase, assuring NES that he would have *no problem* operating a *zichar* restaurant or food court.[58] These actions of TKC will be collectively referred to as "Reassurance 2". NES then informed KC and Ms Wong that he would proceed with the purchase of the Units.

15 May 2012: Exercise of the OTPs and execution of the SPAs

29 In accordance with the defendant's obligations set out in cl 2 of the OTPs, the defendant's solicitor issued the title deeds and the SPAs in triplicate on 25 April 2012 for both Units.[59] On 15 May 2012, the plaintiff proceeded to exercise the OTPs and execute the SPAs, with the Units "approved for use as shops" as stated in Clause 20M.[60] It is apposite to note that the plaintiff was independently and legally advised by Ms Wong from the time of the grant of the OTPs to the execution of the SPAs.

Building Plans No.1 and No.2

30 Notably, there are two Building Plans relevant to the present case. The first is Building Plan No.1 ("BP-1"), which was issued in 2009. In BP-1, the commercial units for the Development were labelled as "shop/restaurant".[61] The

---

58 1PBAEIC at para 55

59 2DBAEIC at para 32, pp 107-212

60 2DBAEIC at para 33; 2DBAEIC at pp 213–269

61 3DBOD at p 190

Version No 1: 27 Oct 2020 (22:41 hrs)

second is Building Plan No. 2 ("BP-2"), which was issued on 5 January 2012. In BP-2, the commercial units for the Development were labelled only as "shop" and the word "restaurant" was removed.[62] The date of issuance of BP-2 was *before* the OTPs were granted on 13 April 2012 and *before* the SPAs were signed on 15 May 2012, meaning that BP-2, not BP-1, applied at that time of the granting of the OTPs and the signing of the SPAs. Most crucially, the Second Schedule of the SPAs made express reference to BP-2.[63]

Events subsequent to the execution of the SPAs

31 The TOP for the Development was obtained on 21 May 2012 and the CSC was only granted on 25 February 2013.[64] Sometime in end July 2012, the plaintiff engaged a contractor, Seah Gim Wah Construction Pte Ltd, to start renovations and construction of the wooden decking meant for the ORA.[65] During the designing and preparatory stage of the plaintiff's renovations for the plaintiff's business, NES realised that TKC had not made any arrangements to construct the wooden decking for the walkway for the ORA, as allegedly promised by the defendant.[66] NES testified that TKC had informed him that the plaintiff would have to construct its own instead and suggested that the plaintiff propose an initial plan for his approval.[67] NES decided "not to make a fuss as it

62 3DBOD at p 193

63 1DBOD at p 171

64 1DBOD at pp 212-213; 2DBOD at pp 94-95

65 2PBAEIC at para 62

66 2PBAEIC at p 296 at para 61; 1PBAEIC at para 58

67 1PBAEIC p 30 at para 58

Version No 1: 27 Oct 2020 (22:41 hrs)

was a relatively minor issue which [he] could rectify by asking [his] contractor to do so".[68]

32 However, one week after the renovations started for the wooden decking, with 11 footings installed in the area for the ORA, MP stopped the plaintiff's contractors from proceeding with the renovation works. This was because before the plaintiff commenced renovation works in July 2012, the plaintiff had not submitted any renovation plans for the defendant's approval nor obtained the written permission of URA and it had commenced renovation works before the CSC was issued. According to MP, the structures and wooden decking that the plaintiff was constructing would have delayed the issuance of the CSC as approvals would be required from government authorities such as URA and NEA.[69] Without the approval from URA regarding the change of use of the Units, the plaintiff could not proceed to construct the wooden decking for the ORA as the plaintiff was not authorised to do so.[70] On the other hand, NES thought that he had purchased the Units on the basis that the area could be converted *right away* into an ORA which could then be used for the plaintiff's Principal Activities immediately.[71] As of 21 February 2019, the 11 footings remained unremoved.[72]

33 On 26 July 2012, the plaintiff applied to URA for the change of approved use of the Units from "shop" to "restaurant".[73] On 20 December 2012,

---

68 1PBAEIC p 30 at para 58

69 2DBAEIC at para 96

70 2PBAEIC at para 64

71 2PBAEIC at para 64

72 2PBAEIC at para 62

73 2DBOD pp 91-92

Version No 1: 27 Oct 2020 (22:41 hrs)

the defendant sent a letter to the plaintiff, stating that it had *no objections* to the plaintiff utilising the open space in the front and the back of the Units, for the purposes of the ORA, subject to the plaintiff obtaining the necessary approvals from the relevant government authorities and there being no complaints received from residents or members of the public arising from the use. The letter also reiterated that the area involved was a common area belonging to the MCST and permission of the MCST would have to be sought once the Development was handed over to the MCST.[74]

34 On 28 December 2012, URA issued the Grant of Written Permission (Temporary) for the plaintiff's requested change of use of the Units from "shop" to "restaurant" for a period of two years. On 3 January 2013, the defendant wrote to the plaintiff, once again confirming the contents of the letter stated in the letter on 20 December 2012 (see above at [33)].[75]

35 After URA approval was obtained, the plaintiff wanted to resume the construction of the wooden decking but was informed by the defendant that it still had to wait for a year as the green verge surrounding the Development represented in BP-2 ("green verge") was under the purview of National Parks Board ("NPB") as they controlled the green zoning area and NPB's approval was required.[76] TKC estimated that the timeline would take up to a year and as a result, the plaintiff ceased renovation of the Units. From late 2013 to early 2014, the plaintiff attempted to sell and rent the Units out, but to no avail.[77] On

---

74 2PBAEIC at p 459

75 2PBAEIC at p 460

76 1PBAEIC at para 82; 3DBOD at p 193

77 1PBAEIC at para 84

Version No 1: 27 Oct 2020 (22:41 hrs)

13 November 2014, URA renewed the Grant of Written Permission for the plaintiff to use the Units as "restaurants/food court" for two more years, which would expire on 28 November 2016.[78]

36 On 21 January 2015, after the formation of the MCST No. 3926 for the Development, the defendant ceded all its management obligations to the MCST.[79]

37 At or around June 2015, the plaintiff applied to NEA for a food shop licence.[80] The process of applying and obtaining the food shop licence took at least 16 months (from 9 June 2015 to September 2016) and involved multiple appeals.[81]

38 NEA rejected the plaintiff's application on 23 July 2015, noting that the exhaust system was unsatisfactory as the plaintiff's request was to discharge the exhaust fumes at the first level of the Development and the food items declared by the plaintiff involved heavy cooking which would emit fumes, smoke and smell within the premises. NEA explained that:[82]

> Under the Code of Practice on Environment Health, all foodshops are required to provide an exhaust system before they can carry out cooking activities within the premises. The ***cooking fumes extracted must be discharged at or above the roof, facing away and aesthetically screened*** from the immediate neighbouring premises, such that it will not cause smell or other public health nuisance. [emphasis added in bold italics]

---

78 3DBAEIC at pp 77-78

79 2DBOD at pp 115-116

80 2DBOD at p 119-123

81 1PBAEIC at para 86

82 2PBAEIC at p 510

Version No 1: 27 Oct 2020 (22:41 hrs)

39 In or around September 2015, NES asked TKC for contacts for consultants that specialised in exhaust systems. TKC recommended Elead Associates Private ("Elead") who suggested by way of a letter dated 25 September 2015 to NEA, for the relocation of the exhaust point to be at least 5m away from the residential units above the Units and the opening of the exhaust for the food court to be filtered through a clean air filter.[83] However, on 12 October 2015, NEA rejected the proposal as the proposed location of the exhaust discharge was "above the rear shop exit of the first level of the building" and would "cause disamenities to the upper floor residents and those in the nearby residential estates."[84] Elead appealed once more to NEA on 5 November 2015, but was unsuccessful.[85]

40 Subsequently, in January 2016, the defendant assigned LCY Engineering Pte Ltd to write to NEA on behalf of the plaintiff, and proposed the installation of an Electrostatic Air Cleaner and Ozone Clean System ("Electrostatic System") to meet NEA's requirements. However, NEA rejected the proposal to install the Electrostatic System on 28 January 2016 as it would not be able to cope with the cooking fumes in a "Chinese" style restaurant where extensive cooking facilities were involved and the flue discharge from the exhaust outlet at level one would affect the residents living above the Units.[86] TKC then recommended a consultant, Mr David Wong of B Best Breed Advisory, to the defendant. Mr David Wong made an appeal to NEA to grant the plaintiff a temporary licence to operate and allow the Electrostatic System

---

83 2PBAEIC at p 563

84 2PBAEIC at p 565

85 2PBAEIC at p 566

86 2PBAEIC at p 568

Version No 1: 27 Oct 2020 (22:41 hrs)

to be tried out for one year on a pilot scheme.[87] On 13 May 2016, NEA agreed to the appeal, subject to the plaintiff's undertaking dated 12 May 2016, stating that in the event of any nuisance, the plaintiff would seek to resolve all issues relating to the nuisance. The undertaking also stated that where the plaintiff was unable to rectify the issues, the plaintiff understood that the food shop licence would be revoked, and the plaintiff would have to cease business immediately and dismantle the new system.[88] As such, the plaintiff replaced the existing system with the Electrostatic System. On 2 June 2016, the defendant wrote to the plaintiff to confirm that it would subsidise $64,200 of the costs of the Electrostatic System to be installed by LCY Engineering Pte Ltd.[89]

41 On 21 September 2016, NEA eventually granted the plaintiff the food shop licence which was approved with terms and conditions attached: the plaintiff could use the premises as a restaurant but the plaintiff was not allowed to do heavy cooking unless the plaintiff could comply with NEA's regulations and if not, the food shop licence would be revoked.[90]

42 In October 2016, the plaintiff commenced business operations in only the unit #01-01 with no heavy cooking.[91] However, in the middle of November 2016, the plaintiff commenced heavy cooking operations. In December 2016 and January 2017, NEA notified the plaintiff of public complaints relating to the cooking fumes emanating from its business. Further, NEA inspected the

---

87 2PBAEIC at pp 569-570

88 2PBAEIC p 311 at para 113, p 571

89 1PBOD at p 206

90 2PBAEIC at para 127; 3DBOD at p 44

91 2PBAEIC at para 130; Transcript 11 March 2019 at p 132

Version No 1: 27 Oct 2020 (22:41 hrs)

plaintiff's business twice a week.[92] On March 2017, there was a meeting held on-site with NEA to inspect the situation at unit #01-01 of the Alexis and to discuss further rectification of the problem. On 24 April 2017, NEA sent the plaintiff a letter of warning pertaining to public complaints received regarding the smell nuisance from the plaintiff's business, which was affecting the residents living above the Units. In the letter, NEA noted that their inspections revealed that the cooking smell could be detected from the outlet of the plaintiff's exhaust system. The letter warned the plaintiff to "resolve the smell nuisance failing which [NEA] would be compelled to revoke [the plaintiff's] food shop licence".[93] NES was worried about the uncertainty of when NEA would issue the notice for termination for his business and decided to close his business in September 2017.[94] It is noteworthy that there was no formal closure notice or revocation of licence issued by NEA, before the plaintiff closed his business.[95]

My decision

The law

43 A misrepresentation is a false representation of past or existing fact which materially induces the innocent party to enter into the contract in reliance on it: Andrew B L Phang & Goh Yihan, *Contract Law in Singapore* (Kluwer Law International, 2012) at para 462. In *Rahmatullah s/o Oli Mohamed v*

---

92 Transcript 11 March 2019 at p 134

93 2PBAEIC at p 587

94 Transcript 13 March 2019 at p 108; 2PBAEIC at para 134

95 Transcript 14 March 2019 at p 171; 13 March 2019 at pp 43-44

Version No 1: 27 Oct 2020 (22:41 hrs)

Rohayaton binte Rohani and Others [2002] SGHC 222 at [73], the High Court observed that:

> It is trite law that for a misrepresentation to be actionable, the following conditions must be satisfied:-
>
> (i) a representation was made by one party;
>
> (ii) the representation was acted on by an innocent party;
>
> (iii) the innocent party suffered detriment as a result.

44 Further, an actionable misrepresentation must have played a real and substantial part in operating on the mind of the innocent party in inducing the innocent party to enter into an agreement, although it need not be the sole inducement: *Jurong Town Corp v Wishing Star Ltd* [2005] 3 SLR(R) 283 at [72]; and *Panatron Pte Ltd v Lee Cheow Lee* [2001] 2 SLR(R) 435 "*Panatron*" at [23].

45 Having summarised the law on misrepresentation, I now turn to analyse whether R1, R2 and R3 are actionable misrepresentations and if so, whether they had induced the plaintiff to enter into the SPAs.

R1

46 R1, as the plaintiff pleaded, is that the Units could be used both as shops or as restaurants that involve heavy cooking and also for the Principal Activities of the plaintiff. R1 essentially comprises two implied sub-representations: that each of the Units could either be used as a *shop or a restaurant* ("R1(a)") and if the Units were to be used as a restaurant, they could also be used for *heavy cooking* and the plaintiff's Principal Activities ("R1(b)").

47 The plaintiff submits that R1(a) is a representation that the Units could be used for *any* type of restaurant, not just specifically a *zichar* restaurant, which

Version No 1: 27 Oct 2020 (22:41 hrs)

impliedly means that the Units had *already received* URA approval for their use as a restaurant.[96] However, R1(a) is a false statement of fact as the Units were sold to the plaintiff to be used only as "shops" and the plaintiff had to obtain approval from URA for their use as a "restaurant" (see above at [33]).

48 As for R1(b), the plaintiff submits that it is a representation that implies that the Units had been constructed such that they had *already met* NEA's criteria that permitted the Units to be used specifically as a *zichar* restaurant, which involved heavy cooking. Further, it is the plaintiff's case that the defendant had represented that it would ensure that the plaintiff would be able to carry out the plaintiff's Principal Activities, including heavy cooking and if there was any issue, the defendant as developers, had the necessary competence to make the necessary applications to the relevant authorities to resolve any issues that might arise.[97] The plaintiff avers that R1(b) is false as the Units did not have the capacity and infrastructure (such as an effective fumes exhaust system) and approval by the relevant authorities for the full-fledged use as a food court or restaurant that involved heavy cooking and for the plaintiff's Principal Activities.[98] The plaintiff had to appeal multiple times in order to obtain NEA's approval for a food shop licence (see above at [37]-[41]).[99] While NEA did eventually grant a food shop licence to the plaintiff, the plaintiff avers that NEA "continued to be a thorn in the plaintiff's sides".[100] There were smell nuisance issues that resulted in complaints by the residents living above the

---

96 PCS at para 27(a)

97 SOC (Amendment No. 1) at para 18

98 SOC (Amendment No. 1) at para 17; PCS at para 10

99 PCS at para 27(b)

100 PCS at para 28

Version No 1: 27 Oct 2020 (22:41 hrs)

Units to NEA as the Units lacked an effective exhaust fumes system.[101] This resulted in a warning being issued by NEA to the plaintiff and NES's eventual decision to shut down the restaurant. The plaintiff's case, as clarified at trial, is not that the defendant had promised the plaintiff to build an exhaust system, but rather that by virtue of the NEA regulations that applied, the Units *should have had* an effective exhaust system for the fumes resulting from the heavy cooking.[102]

49 In terms of the alleged representations communicated by the defendant to the plaintiff in relation to R1, I have classified them into two categories based on whether they occurred before or after 13 April 2012: (i) the set of representations made by the defendant in relation to R1 before 13 April 2012 (collectively referred to as "Initial R1") and (ii) the representations made by the defendant in relation to R1 from 13 April 2012 to 15 May 2012 (*ie,* Reassurance 1 and Reassurance 2).

50 In my analysis below, I first deal with whether Initial R1 was made. Next, if Initial R1 was made, I then assess the implied meaning of Initial R1. Subsequently, taking into account the objective documentary evidence that arose from 13 April 2012 to 15 May 2012 (*ie,* Clause 20M and the Defendant's Letters) as well as the defendant's alleged Reassurance 1 and Reassurance 2, I will assess whether R1 had still been operative on the mind of NES and whether the plaintiff was induced by R1 to enter into the SPAs.

---

101 PCS at para 28

102 Transcript 14 March 2019 at p 85

Version No 1: 27 Oct 2020 (22:41 hrs)

Representations made before 13 April 2012 (ie, Initial R1)

Whether Initial R1 was made

51 I now deal with the question of whether Initial R1 was made before the signing of the OTPs on 13 April 2012. Having considered the totality of evidence placed before this court, I accept that in the meetings prior to the signing of the OTPs on 13 April 2012, TKC did make representations to NES that the Units could be used as a *zichar* restaurant or food court and represented that there "should be no problem" (*ie,* Initial R1).

52 First, NES testified that his initial plan for the Units was to run a food court, where he could set up his *zichar* stall, known as JE Crab Specialist, within the food court.[103] As such, during the first meeting in September 2011, NES communicated to TKC that he wanted to "run a coffeeshop and [*zichar*] business". [104] TKC replied that it was "all right",[105] and that it should not be a problem operate a *zichar* restaurant in the Units. This was because some of the units on the ground floor were intended or had been approved for restaurants or F&B operations.[106] NES testified that TKC allegedly assured NES that "*for such an operation, everything was ready*".[107]

53 Over the course of the meetings from September 2011 to 13 April 2012, NES testified that TKC had repeated R1 and reassured TKC that the plaintiff

---

103 Transcript 11 March 2019 at p 111

104 Transcript 11 March 2019 at p 106

105 Transcript 11 March 2019 at p 106

106 1PBAEIC at para 16

107 1PBAEIC at para 16

Version No 1: 27 Oct 2020 (22:41 hrs)

could operate a *zichar* restaurant or food court.[108] TKC also allegedly assured NES that as the developer, director and shareholder of the defendant, TKC would ensure that the defendant would carry out the Representations.[109] NES also testified that at no point in time during the meetings did TKC inform the plaintiff that the plaintiff had to apply to the authorities for the change of use from a "shop" to a "restaurant" for the Units.[110]

54 Next, Jasper testified that at the first meeting where he introduced NES to TKC, NES had mentioned to TKC that he was looking to buy units to operate his *zichar* business.[111] Jasper also testified that at the subsequent meetings before the signing of the OTPs, he had heard TKC telling NES that the Units could be used as a *food court,*[112] for *F&B operations* and for a *zichar restaurant*.[113] Initially, Jasper went as far as to testify that TKC or MP *guaranteed* NES that the Units would be converted to a restaurant. However, upon further cross-examination, Jasper conceded that the actual words used were the Hokkien words "*bo bun dui*", which means "no problem" in English, and admitted that no guarantee had been given by TKC to NES:[114]

> COURT: Did you say it in Mandarin or English?
>
> A. Sometime they talk in Hokkien, sometime Mandarin.
>
> COURT: What words were used in Mandarin that say they guarantee, definitely will get the spot?

---

108 1PBAEIC at paras 28, 32

109 1PBAEIC at para 16, 28

110 1PBAEIC at para 24

111 Transcript 13 March 2019 at p 131

112 Transcript 14 March 2019 at p 65

113 Transcript 13 March 2019 at pp 147-148

114 Transcript 14 March 2019 at pp 69-70, 72

Version No 1: 27 Oct 2020 (22:41 hrs)

> A. "Bo bun dui", "no problem".
>
> COURT: "No problem" is not a guarantee. When I say guarantee, I mean "guarantee". It's not a guarantee.
>
> A. Guarantee.
>
> COURT: Just a "no problem". So "no problem", it can be converted to restaurant?
>
> A. Yes.
>
> …
>
> COURT: So as far as you are concerned, basically no problem, but not a guarantee?
>
> A. Say no problem.

55 On the other hand, TKC categorically denied representing to the plaintiff that the Units could be used as a restaurant capable of heavy cooking and supporting the plaintiff's Principal Activities.[115] It was TKC's testimony that NES had never said that he was going to use the Units for a *zichar* business and TKC did not ask for further details about the type of business that NES was intending to open.[116] According to TKC's Affidavit of Evidence-In-Chief ("AEIC"), he had merely informed NES that the Units could be used for "F&B" purposes, subject to the grant of approvals of the relevant authorities such as URA.[117] However, it is TKC's evidence at trial that NES had asked TKC whether the Units could be used as a "food court", to which TKC had replied that, "there should not be any problem for the change of use [to a food court]".[118] Subsequently during his cross-examination, TKC admitted that NES had

---

115 1DBAEIC 15 at para 32

116 Transcript 15 March 2019 at p 66

117 1DBAEIC 10 at paras 11 and 12

118 Transcript 15 March 2019 at p 58

Version No 1: 27 Oct 2020 (22:41 hrs)

informed TKC that NES was intending to use the Units as a "food court", and the words "F&B" were not used.[119]

56 It is not surprising that both NES and TKC had diametrically opposite testimonies on whether R1 was made, given their respective self-interest in the matter. However, I am more persuaded by NES's testimony than TKC's testimony for the following reasons.

57 First, the assertion that TKC told NES that the Units could be used for a *zichar* restaurant and that there should be "no problem" (or "*bo bun dui*" in Hokkien) was corroborated by Jasper's testimony, who was present at the meetings. That said, I do note that Jasper was not as impartial as the plaintiff had claimed.[120] Jaspar displayed a strong willingness to help NES out as Jasper felt bad for introducing NES to TKC.[121] As such, I do accord Jasper's testimony its appropriate weight. Second, I note the inconsistencies between the TKC's AEICs and his *viva voce* evidence regarding the use of the terms "F&B" or "food court" in NES's communications to him (see above at [55]). Third, it is unlikely that TKC did not ask and NES also did not mention about the type of business that he intended to operate in the Units, especially after TKC managed to convince NES to purchase two units, instead of one. Fourth, the circumstantial evidence points to TKC's knowledge of NES's intention to set up a *zichar* restaurant. In November 2011, TKC, MP and the defendant's staff visited the plaintiff's *zichar* restaurant in Bedok North to have dinner. According to the plaintiff, this was intended for the defendant to better

---

119 Transcript 15 March 2019 at p 67

120 PCS at para 42

121 Transcript 13 March 2019 at p 145; 14 March 2019 at p 11

Version No 1: 27 Oct 2020 (22:41 hrs)

understand the nature of the plaintiff's other *zichar* business in order to help set up the plaintiff's future business in the Development.[122] This seems probable and I find that TKC must have been aware of NES's intention of possibly setting up a *zichar* restaurant in the Units, especially after visiting the plaintiff's *zichar* restaurant in Bedok North.

58 On the balance of probabilities, I find that in the meetings prior to the signing of the OTPs on 13 April 2012, TKC did make representations to NES that the Units could be used as a *zichar* restaurant or food court and that there "should be no problem" (*ie,* Initial R1).

Implied meaning of Initial R1

59 I now turn to the implied meaning of Initial R1. I am of the view that Initial R1 could not have been (i) a *guarantee* by the defendant that the Units' approved use had already been changed or would be changed from a "shop" to a "restaurant" by URA and (ii) a *guarantee* that the Units would be capable of being used for heavy cooking and the plaintiff's Principal Activities by ensuring that NEA would approve the plaintiff's food shop licence. At best, I can accept that Initial R1 implied that the defendant would *try its best to assist* the plaintiff with (a) its applications to URA to change the use of the Units from a "shop" to a "restaurant"; and (b) its applications to NEA for a food shop licence. These are the reasons for my decision.

60 First, NES and KC admitted in their testimony that at the time of the signing of the OTPs, when NES asked why the words "restaurant/food court" had not been stated in Clause 20M, TKC's reply was that "it was not an issue

---

122 1PBAEIC at para 18

Version No 1: 27 Oct 2020 (22:41 hrs)

and if the plaintiff encountered any difficulties, they [could] rely on him and the defendant for *help.* [emphasis added]" (see above at [22]). This shows that NES and KC were fully aware that the Units were not approved as restaurants before NES signed the SPAs. Further, Jasper conceded during his cross-examination that no guarantee had been given by TKC (see above at [52]).

61 Moreover, it is undisputed that only governmental authorities are able to grant a change of the approved use of the Units or the food shop licences. In *Pender Development Pte Ltd and another v Chesney Real Estate Group LLP and another and another suit* [2009] 3 SLR(R) 1063 ("*Pender*"), a statement was made by the representor, Vincent, to the representee company's consultant, Jenny Pang, that the development at Pender Court would definitely attain foreigner eligibility status with his assistance. The High Court found that the statement, even if made, was nothing more than a mere puff as "no one could guarantee that the development would *definitely attain* foreigner eligibility status save for URA itself": *Pender* at [36]. This was especially so, given Jenny Pang's experience in the property development industry and the fact that she had a team of architects to advise her. It was inconceivable that Vincent's statement could have induced Jenny Pang to enter into an agreement with Chesney LLP.

62 Similarly, in the present case, the statement made by TKC that the Units could be used as a *zichar* restaurant or food court and that there "should be no problem" are nothing more than mere puffs as TKC could not have guaranteed that URA or NEA would definitely have approved of the plaintiff's application. In fact, TKC clarified at trial that "no problem" meant that the defendant would *try to assist* the plaintiff to obtain approval for the change of use of the Units

Version No 1: 27 Oct 2020 (22:41 hrs)

from a "shop" to a "restaurant".[123] TKC had therefore never *guaranteed* NES that the Units' approved use had already been changed or would definitely be changed from a "shop" to a "restaurant" by URA. Just like in Pender, the defendant was not a governmental authority and had no authority to approve the change of use of the Units. This also puts paid to the actionability of the plaintiff's averment that the defendant had further represented (even if it is true) that if there was any issue, the defendant as developers, had the necessary competence to make the necessary applications to the relevant authorities to resolve any issues that might arise.[124]

63 Additionally, just like in Pender, it is also inconceivable that NES could have been induced by the Initial R1 to enter into the SPAs, given his experience in the F&B industry and the fact that both NES's solicitor and KC were advising him prior to his signing of the SPAs. As such, the implied meaning of Initial R1 conveyed by TKC to NES and as understood by NES was not a *guarantee*, but a promise by the defendant to *try its best to assist* the plaintiff in its applications to the relevant government authorities.

64 As regards the implied meaning of the words "could be used as a *zichar* restaurant or food court", a narrow interpretation of the words would be that the Units had been approved as a restaurant or could be used as a restaurant because its use as such *had already been approved* by the authorities ("narrow interpretation"). This narrow interpretation is supported by the letter of the plaintiff's lawyer, Ms Wong, to the defendant's solicitor on 16 April 2012 as the letter sought to confirm that the defendant had represented to NES that the

---

123 Transcript 15 March 2019 at pp 117-118

124 SOC (Amendment No. 1) at para 18

Version No 1: 27 Oct 2020 (22:41 hrs)

Units had been approved for use as a restaurant. However, a generous interpretation of the words would be that the defendant had represented that it was *possible* for the plaintiff to obtain approvals from URA and NEA for the Units to be used as a *zichar* restaurant ("generous interpretation"). This necessarily means that *a possible technical solution existed*, for the plaintiff to run its operation involving heavy cooking, whilst not creating a smell nuisance problem that would result in the revocation of the plaintiff's NEA food shop licence. I will deal with this generous interpretation of Initial R1 below at [77]. However, it must be emphasised that Ms Wong had never alluded to this generous interpretation as the substance of the representation of R1 when asserting what the actual representation made by TKC to NES was. Due weight must be given to the contemporaneous nature of the written correspondence of Ms Wong, acting for the defendant at that time.

Clause 20M, Defendant's Letters, Reassurance 1 and Reassurance 2

65 I now turn to the objective documentary evidence put before this court and the alleged reassurances made by the defendant from 13 April 2012 to 15 May 2012.

66 The premise of the plaintiff's case on R1 is entirely based on *oral representations* made by TKC or MP over 7 years ago. Hence, in comparison to the testimonies of TKC, NES and Jasper on their recollection of the exact words communicated between the plaintiff and the defendant, I would place greater relative weight on objective *documentary evidence* that was contemporaneous with the signing of the SPAs. Due to its high probative value and reliability, the primacy of documentary evidence in the present case cannot be understated.

Version No 1: 27 Oct 2020 (22:41 hrs)

67 For R1 to be an actionable misrepresentation, it must have played a real and substantial part in operating on the mind of the innocent party in inducing the innocent party to enter into an agreement: *Panatron* at [23]. In the light of the two pieces of objective documentary evidence (*ie,* Clause 20M and the Defendant's Letters) that corrected Initial R1, I find that R1 could not have induced the plaintiff to enter into the SPAs. I now explain my reasons for my decision.

68 First, Clause 20M expressly contradicts R1:[125]

> **20M. Approved Use of the Unit**
>
> 20M.1 The Unit is ***approved for use as a shop*** in the grant of the Written Permission for the Building by the Competent Authority under the Planning Act (Cap. 232).
>
> 20M.2 Unless with the prior permission of the Competent Authority under the Planning Act, the Purchaser ***shall not use the Unit or allow the Unit to be used for any purpose other than the approved use as specified*** above in accordance with the Written Permission of the Competent Authority.
>
> [emphasis in original in bold; emphasis added in bold italics]

Clause 20M.1 (in both the OTPs and the SPAs) stipulates that the Units had only been approved for use as "[shops]". Additionally, Clause 20M.2 places the responsibility on the plaintiff to apply for permission from the Competent Authority for the change of use. Should the plaintiff seek to use either unit for purposes outside of the approved use as a shop (*ie,* as a restaurant), it would have to apply for URA's approval.

---

125 2DBAEIC at pp 91, 99

Version No 1: 27 Oct 2020 (22:41 hrs)

69 Second, the correspondence between the plaintiff's and defendant's solicitors does not support the plaintiff's claim that R1, based on the narrow interpretation, was made. On 16 April 2012, the plaintiff's lawyer, Ms Wong, wrote to the defendant's solicitor, Ms Choy to confirm that "[the defendant had] *represented* to [NES] that the above unit [had been] *approved for use as a restaurant* [emphasis added]". I note that the alleged representation stated in Ms Choy's letter is worded differently from R1, which is that "the Units *could* be used as both shops or restaurants including for heavy cooking and the plaintiff's Principal Activities". In her letter, Ms Wong also sought to amend the unit's approved use as a "shop" to a "restaurant" (see above at [26]). On 18 April 2012, Mr Choy replied to the plaintiff with the Defendant's Letters, and *denied* that the defendant had represented to the NES that the Units had been *approved for use as a restaurant* and rejected the plaintiff's request to amend the SPAs' Approved Use of the Unit: see above at [27].

70 Notably, the Defendant's Letters bear two crucial features. First, it was made while the plaintiff was receiving independent legal advice from Ms Wong. Second, the correspondence occurred *before* the plaintiff had signed the SPAs on 15 May 2012. Despite receiving independent legal advice and an unequivocal written representation by the defendant that it had not represented that the Units had been approved for use as restaurants, the plaintiff went ahead to sign the SPAs. The Defendant's Letters made it very clear to the plaintiff that the defendant *had not represented* that the Units had been approved for use as restaurants and puts paid to the plaintiff's averment that R1, based on the narrow interpretation, was made.

71 As regards the law on the effect of a representor's correction of his earlier misrepresentation, I reproduce the following excerpts from *Broadley*

Version No 1: 27 Oct 2020 (22:41 hrs)

Construction Pte Ltd v Alacran Design Pte Ltd [2018] 2 SLR 110 ("*Broadley*") at [32]–[33]:

> 33 The effect of a representor's correction of his earlier misrepresentation can be analysed in two ways. First, it may be said that there is no longer a misrepresentation at the time of the contract because it has either been withdrawn or corrected. ***Second, even if the earlier misrepresentation was still in effect, the representee, now being aware of the truth or the withdrawal of this earlier misrepresentation, cannot be said to have been induced by it****…* The first approach focuses on whether the correction had extinguished the earlier misrepresentation, whereas the second approach focuses on *whether the earlier misrepresentation had* ***nonetheless induced the representee notwithstanding the correction.*** We think that in practice, there is little to choose between these two approaches… Ultimately, the appropriate analysis depends on the facts, but we generally *prefer the second approach for two reasons.* First, when a misrepresentation has been made to the representee, it cannot as a matter of reality be extinguished or withdrawn. Any further representation really only has *the effect of altering the effect of the earlier misrepresentation on the representee's mind, which is essentially an inquiry into inducement.* Second, we consider this to be more practically feasible because where a further representation falls short of entirely withdrawing or correcting the earlier misrepresentation but merely qualifies it to an extent, or makes no reference to the earlier misrepresentation at all, the court's inquiry should not be limited to determining to what extent the earlier misrepresentation had been corrected, ***but instead focus on the impact both representations, taken together, had on the representee.*** *If there is any ambiguity as to how the representations interact with each other,* ***the determining consideration is whether the earlier misrepresentation was still operative in that it still had the effect of inducing the representee to enter into the contract.*** [emphasis added in italics and bold italics]

Applying the second approach preferred by the Court of Appeal in *Broadley,* I find that the plaintiff could not have been induced to enter into the SPAs by Initial R1 premised on its narrow interpretation.

72 In coming to my decision, I also take into account the plaintiff's allegation that when NES and KC raised the issue of Clause 20M on 13 April

Version No 1: 27 Oct 2020 (22:41 hrs)

2012, TKC and MP repeated the Representations and reassured them that the word "shop" was purely administrative in nature and merely a formality (*ie,* Reassurance 1, see above at [22]). Further, NES testified that after receiving the Defendant's Letters, he had contacted TKC for clarifications about Ms Choy's letter and TKC had allegedly reiterated that this was purely administrative and that NES should proceed with the purchase and allegedly assured NES that he would have no problem operating a *zichar* restaurant or food court (*ie,* Reassurance 2, see above at [28]).[126] Even if I were to assume both Reassurance 1 and Reassurance 2 as true, I still find that the further representations through Clause 20M and the Defendant's Letters had corrected Initial R1. The plaintiff was not induced to enter into the SPAs by R1 premised on its narrow interpretation and I now explain the reasons for my decision.

73 First, the plaintiff is a seasoned operator of F&B outlets and stalls with more than 15 years of experience and 15 coffee shops under its wing. I would expect NES to have had prior experience in signing OTPs and SPAs with property developers for his other businesses. I also would expect an experienced businessman in the F&B industry such as NES to understand the legal significance of clauses in signed contracts. I also do not accept that NES had no knowledge of the legal significance of the Defendant's Letters: an unequivocal denial of R1 based on its narrow interpretation. Strangely, the plaintiff's case rests on the theory that NES chose to believe the alleged Reassurance 1 and Reassurance 2, if they happened at all, over the objective documentary evidence such as the Defendant's Letters and Clause 20M, which squarely contradict Initial R1 based on its narrow interpretation. I find that such Initial R1 could not

126 1PBAEIC at para 55

Version No 1: 27 Oct 2020 (22:41 hrs)

have been operative on NES's mind once NES had notice of Clause 20M and the Defendant's Letters.

74 Second, NES was legally represented by Ms Wong at the material time, especially before the signing of the SPAs on 15 May 2012. There is no reason why NES should not have understood the legal significance of Clause 20M and the Defendant's Letters. In fact, Ms Wong had discussed the issue of the Units' approved use under Clause 20M with NES. This discussion sparked Ms Wong's decision to write to the defendant on 16 April 2012 to confirm that the defendant had represented to NES that the Units were approved for use as "restaurants". Ms Wong also requested the defendant to amend Clause 20M. Instead, the defendant's solicitor replied by way of the Defendant's Letters on 18 April 2012 to *expressly deny* that they ever made such a representation and to reject the plaintiff's request to amend Clause 20M. At that juncture, the combined effect of Clause 20M and the Defendant's Letters would have altered the effect premised on the narrow interpretation of Initial R1 on NES's mind, even if I assume that Reassurance 1 and Reassurance 2 had occurred.

75 Third, the present case is one where the misrepresentation was dispelled by the express terms of the contract: *Broadley* at [35]. I now reproduce an excerpt from *Broadley* at [36], on the Court of Appeal's commentary of the English case *Peekay Intermark Ltd v Australia and New Zealand Banking Group Ltd* [2006] 2 Lloyd's Rep 511 ("*Peekay*"):

> *Peekay* stands for the proposition that a plaintiff *would not ordinarily be held to be induced by a misrepresentation if the* ***express contractual terms****, which the plaintiff placed importance on, read and signed, and which the defendant expected that the plaintiff would read and understand,* ***contradict or correct the defendant's misrepresentation****.* … It is still the law that representees are not obliged to test the accuracy of the representations made to them, and it does not matter if they had the opportunity to discover the truth as long

Version No 1: 27 Oct 2020 (22:41 hrs)

> as they did not actually discover it (*Peekay* at [40]). But where the true position appears clearly from the terms of the very contract which the plaintiff says it was induced to enter into by the misrepresentation (*Peekay* at [43]), the position is quite different. After all, it is a corollary of the basic principle of contract law that a person is bound by the terms of the contract he signs, notwithstanding that he may be unaware of its precise legal effect. ***Such a claimant should be taken to have actually read the contract and known the falsity of the earlier representation.*** To hold otherwise would undercut the basis of the conduct of commercial life – that businessmen with equal bargaining power would read their contracts and defend their own interests before entering into contractual obligations, and that they would rely on their counterparties to do the same. [emphasis in original; emphasis added in bold italics]

Clause 20M clearly contradicts and dispels Initial R1 premised on its narrow interpretation. It is incumbent on NES to have read and understood the effect of Clause 20M of the SPAs, especially when he had independent legal advice and ample time to go through the clauses of the SPAs. If the issue of the Units' approved use as restaurants that involved heavy cooking had been such a crucial factor in NES's decision to enter into the SPAs, it should also have been expressly incorporated as a clause in the SPAs. In fact, Clause 20M specifies that the Units' approved use was the contrary. In the Specifications of the Unit under the First Schedule of the SPAs, there is also no reference to an effective fumes exhaust system.[127] Moreover, NES admitted during his cross-examination that he had been aware that no exhaust system was provided in the Units before he signed the SPAs.[128] Despite the defendant's rejection of the plaintiff's request to amend Clause 20M of the SPAs through the Defendant's Letters, NES still went ahead to sign the SPAs. As such, the plaintiff could not have been induced to enter into the SPAs by R1.

---

127 1DBOD at pp 168-169

128 Transcript 12 March 2019 at p 37

Version No 1: 27 Oct 2020 (22:41 hrs)

76 As a side note, I am also unconvinced by the plaintiff's submission that NES was never informed of the *change* of Building Plans from BP-1 (where the Units were labelled as "shop/restaurant") to BP-2 (where the Units were labelled as "shop") that occurred before he was granted the OTPs and signed the SPAs. First, KC admitted at trial that the plaintiff only had actual notice of both BP-1 and BP-2 after they commenced the present suit in 2017 by searching and purchasing the Building Plans from Building Control Authority.[129] As such, the plaintiff could not have relied on BP-1 prior to signing the SPAs, as it was a document that they never had sight of prior to commencing the present suit. Second, the change of Building Plans from BP-1 to BP-2 occurred on 5 January 2012, before the OTPs were granted and the SPAs were signed. Third, the SPAs made express reference to BP-2 and the plaintiff must be taken to have read and understood the SPAs before entering into the contracts.[130] Finally, the plaintiff was well aware that the Units were only approved for use as a "shop", by virtue of Clause 20M and the Defendant's Letters.

77 Additionally, even if I accept the generous interpretation of Initial R1 (see above at [64]), which rests on the factual assumption that a possible technical solution existed such that it was therefore *possible* for the Units to have obtained NEA approval, I find that Initial R1 premised on this generous interpretation is not a false statement of fact. There are in fact *possible* solutions and viable options that remained unexplored by the plaintiff before NES prematurely decided to close down the restaurant in September 2017. Most notably, NEA only issued the plaintiff a warning to resolve the smell nuisance and there was neither any formal closure notice issued nor revocation of licence

---

129 Transcript 14 March 2019 at p 144; 2PBAEIC at para 49

130 Transcript 12 April 2019 at p 26; 1DBOD at p 171

Version No 1: 27 Oct 2020 (22:41 hrs)

by NEA. The plaintiff could have addressed NEA's concerns and continued to use the Units for heavy cooking and its Principal Activities by discharging the exhaust fumes at alternative locations.

78 For instance, MP proposed a solution of exhausting the hot fumes from heavy cooking in the Units by expelling the fumes through an exhaust outlet *beside* the carpark exhaust of the Development, behind the Units ("Carpark Exhaust Solution").[131] This would involve renting the space at the back of the Units from the MCST, in order to discharge the fumes through an exhaust outlet installed beside the car park exhaust and blowing the fumes in the same direction as the car park exhaust.[132] With the installation of a fan that was sufficiently powerful, the velocity of the air leaving the exhaust outlet could be fast enough to blow the fumes even further away from the windows of the residents living above the Units.[133] The vents of the exhaust outlet would also have been located more than 5m away from the windows of the residents living above the Units.[134] The exhaust outlet would be near to the substation of a neighbouring telephone exchange and would likely not generate any complaints.[135] This would have been a marked improvement over the Elead proposal dated 25 September 2015 (see above at [39]).

79 Both Mr Ying Kee Yeow ("Mr Ying"), the Director of Elead, as well as Mr Sim Lye Huat ("Mr Sim"), an architect practising under Landmark Architects Associate, testified that the Carpark Exhaust Solution was feasible.

---

131 Transcript 9 April 2019 at pp 151-154

132 Transcript 9 April 2019 at pp 152, 165

133 Transcript 9 April 2019 at p 154

134 Transcript 9 April 2019 at p 164

135 Transcript 9 April 2019 at p 154

Version No 1: 27 Oct 2020 (22:41 hrs)

Mr Ying confirmed that with MCST approval to construct the exhaust duct beside the car park exhaust, there would be no issues.[136] Further, Mr Sim testified that the Carpark Exhaust Solution was a possibility, engineering-wise, albeit it would be subject to (i) MCST approval for the use of common property and (ii) URA approval, depending on the available Ground Floor Area.[137] Further, Mr Sim agreed that the exhaust pipes of the Carpark Exhaust Solution could have been constructed overhead as a trellis in order not to obstruct pedestrians from using the walkway and the trellis could be decorated for aesthetic purposes.[138] In any case, both Mr Ying and Mr Sim confirmed that the Carpark Exhaust Solution was a possibility, one which the plaintiff had not explored before prematurely closing his business in September 2017. Moreover, in NEA's letter to the plaintiff dated 13 May 2016, NEA had waived its original requirements of having the "discharge point located [to] be above the roof" subject to the installation of the Electrostatic System, and there was a reasonable possibility that NEA would also provide such a waiver for the Carpark Exhaust Solution.[139]

80 Moreover, Mr Ying gave evidence on the reasons why Elead did not explore such an option in 2015. For instance, Elead had been requested by the plaintiff to work with certain constraints, including retaining the existing exhaust system (*ie,* numerous cooker hoods that had already been constructed) as far as possible.[140] Mr Ying also testified that Elead would have been able to

---

136 Transcript 10 April 2019 at p 202

137 Transcript 11 April 2019 at p 234

138 Transcript 11 April 2019 at pp 74, 233

139 2DBOD at pp 209-210

140 4DBAEIC at para 43

Version No 1: 27 Oct 2020 (22:41 hrs)

smoothly design and install a suitable exhaust system, (i) had the plaintiff commenced works in relation to the exhaust system *earlier*, when the defendant was still the owner of the Development, thereby having the power to facilitate proposed works to the common property, and (ii) had the plaintiff not already installed an exhaust system *in the Units*.[141] Furthermore, it is Mr Ying's testimony that his team did not explore other possibilities, such as the Carpark Exhaust Solution, as they tried to solve the issue without utilising common property that would involve the MCST.[142]

81 As such, the plaintiff closed the business prematurely and simply had not sufficiently explored these options. It is entirely *possible* for the Units to have retained its food shop licence granted by NEA and still operate as a *zichar* restaurant that involved heavy cooking. Thus even on the generous interpretation of Initial R1, it is not an actionable misrepresentation as it is not a false statement of fact.

82 For all of the above reasons, I find that R1 is not an actionable misrepresentation.

R2

83 In relation to R2, the plaintiff pleaded that the defendant had represented to the plaintiff that the plaintiff could use the area in the front and back of the Units as an ORA for its intended use of the Units.[143] This is imprecisely pleaded as the defendant had no objections to the use of the area as an ORA, as long as

---

141 4DBAEIC at para 45

142 Transcript 11 April 2019 at pp 2-4

143 PCS at para 10

Version No 1: 27 Oct 2020 (22:41 hrs)

certain conditions were met (see above at [7]). Instead, what the plaintiff means is that the defendant had represented to the plaintiff that the plaintiff could have used the area as an ORA *right away* (i) *before* the issuance of the CSC; (ii) without obtaining the approval of the defendant (before the MCST was formed) by submitting its renovation plans to the defendant; and (iii) without obtaining the written permission from URA for the change of use of the Units.[144]

84 As a result, when the plaintiff commenced renovation works and installed the 11 footings for the wooden decking in the area for the ORA (i) before the issuance of the CSC; (ii) without submitting the renovation plans to the defendant for approval; and (iii) before the written permission of URA had been obtained, the renovation works were stopped by MP.[145] As such, the plaintiff submits that R2 is a false statement of fact.

85 I first turn to assess whether R2 was made and examine what was actually communicated. In that respect, I accept TKC's testimony, which was that before the OTPs were signed, when NES asked TKC if the plaintiff could use the area as an ORA for their intended use of the Units, TKC had merely represented to the defendant that he had "no objections".[146] However, TKC admitted that he had not informed NES about the approvals required by URA, or that the plaintiff could not start renovation works before the issuance of the CSC.[147] This is corroborated by MP's testimony:[148]

---

144 PCS at para 10; 1PBAEIC at para 58

145 Transcript 12 March 2019 at pp 23-25

146 Transcript 19 March 2019 at pp 67-68

147 Transcript 19 March 2019 at pp 76

148 Transcript 9 April 2019 at pp 71-72

Version No 1: 27 Oct 2020 (22:41 hrs)

> COURT: Did Mr Tan tell you that he had promised Mr Neo that he could use the areas outside the units that he was purchasing for his own use?
>
> A. I think what Mr Tan told me was that he's thinking of using the areas outside as ORA, and if he wanted to use them, we *could try to support them. Support the use.*
>
> [emphasis added]

86 In my view, TKC's representation of "no objections" does not impliedly mean that the plaintiff would be allowed to operate the plaintiff's Principal Activities *right away* with the ORA, without any qualifications. A reasonable interpretation of "no objections" would be that the defendant merely had no objections to the plaintiff to utilise the open space in front and behind the Units for the use as an ORA, subject to the government regulations. This position is corroborated by the letters written by the defendant to the plaintiff dated 20 December 2012 and 3 January 2013.[149] The letters state that the defendant had no objection for the plaintiff to utilise the open space outside the Units as an ORA, as long as the plaintiff had obtained all the necessary approvals from the relevant government authorities for the use. As I reiterate earlier above in [61]-[62], just like in *Pender,* the defendant could not have exempted the plaintiff from obtaining the necesssary approvals from the relevant government authorities as the defendant simply had no such power nor authority to do so. NES should have been fully aware of this, given his 15 years of experience in the F&B industry. In fact, the plaintiff's own contractor, Seah Gim Wah Construction Pte Ltd, sent the plaintiff an email dated 3 July 2012, disclaiming the following before commencing renovation works:[150]

> As instructed by you, we will proceed to start renovation works without any application (necessary forms to submit, etc) to

149 2DBOD at pp 90, 93 and 102

150 1DBOD at p 218

Version No 1: 27 Oct 2020 (22:41 hrs)

> Authorities. If any non-compliance arise during demolition/renovation works, we will not be held responsible for it.

It is likely that the plaintiff's own contractor found it unusual to commence renovation works without submitting plans for approval by the developer or the governmental authorities and felt it necessary to record its position to disclaim responsibility in the event of any non-compliance.

87 Most crucially, the terms of cl 20J of the SPAs and cl 2(j), 2(0), 2(p) and 2(z) of the Third Schedule of the SPAs expressly contradict R2, that the plaintiff could use the front and back of the Units as an ORA *right away,* without obtaining prior written consent or approval by the Vendor or the relevant competent authorities:[151]

> **Clause 20J. Roofing Over/ Enclosing Private Enclosed Space, Open Terrace and Balcony**
>
> "The Purchaser acknowledges … and that the Purchaser shall therefore not be entitled to cause or require the Open-Air Spaces (if any) to be roofed over or enclosed in any manner unless prior written consent of the relevant competent authorities and the Vendor or the management corporation (when formed) are first had and obtained …
>
> …
>
> **Third Schedule**
>
> …
>
> 2. The Purchaser will not –
>
> …
>
> (j) make any addition or alteration to the … exterior areas of the Unit … without the prior written approval of the Vendor or which is not in accordance with the design and specifications of the Vendor;

---

151 1DBOD at pp 176, 179-180, 205, 208-209

Version No 1: 27 Oct 2020 (22:41 hrs)

> (o) mark, paint, drive nails or screws or the like into, …any structure that forms part of the common property without the approval in writing of the Vendor;
>
> (p) affix or erect any shade, … or the like to the common lobbies of the Building … without prior written approval of the Vendor and the relevant competent authorities;
>
> (z) make any additions or alterations to the front or facade of the Unit without the prior written consent of the Vendor and the approval of the relevant authorities; …

NES must be taken to have read and understood the above clauses of the contracts and be bound by the above clauses when he signed the SPAs (discussed above at [75]). Furthermore, he had legal advice. NES must be taken to have known that prior consent of the developer and prior approval of the relevant authorities were required before commencing renovation works for the ORA. As such, I find that R2 (*ie* that the area could be used *right away* as an ORA) was not made.

88 Even if I accept that R2 was made, it would have been corrected by the Defendant's Letters. When the plaintiff's solicitor wrote on 16 April 2012 to verify if the defendant had represented that the plaintiff would be "allowed to put tables and chairs at the open area in the front of the [Units]", the defendant, through the Defendant's Letters, expressly denied that such a representation had been made.[152] At that point, this representation through the Defendant's Letters made prior to the plaintiff entering into the SPAs directly contradicted R2 and would have corrected R2. The same principles in *Broadley* discussed above at [71] would apply in this instance.

---

152 2DBAEIC at pp 102, 104-106

Version No 1: 27 Oct 2020 (22:41 hrs)

89 On the balance of probabilities, I find that R2 was not made. Even if R2 had been made, it is not an actionable misrepresentation as it would have been corrected by the Defendant's Letters and the plaintiff could not have been induced by R2 to enter into the SPAs.

R3

90 I now turn to R3, that the defendant had allegedly represented that the defendant would, at its own cost, construct the wooden decking to make available the ORA space for the plaintiff to carry out its Principal Activities.[153]

91 I start with the testimony of the witnesses. First, NES testified that TKC had made R3 to NES during the 14 December 2011 meeting[154] as well as the meetings from 15 December 2011 to 13 April 2012.[155] In particular, during one of the walkabouts with NES, TKC and Jasper to visit the Units, NES testified that when he queried why the unit #01-01 was pushed further to the edge, leaving no walkway around the back of the premise of #01-01, TKC allegedly replied that the defendant would "still be constructing the walkway area around the corner all the way to the back and round the whole stretch covering the units on the ground floor and not [the Units]."[156] TKC also allegedly represented to NES that the walkway area would be made of wooden decking and therefore the natural grass would be removed for easy maintenance. On top of that, it is Jasper's testimony that he had heard TKC or MP tell NES, at some point in time before the signing of the OTPs, that the wooden decking would be constructed

153 Transcript 11 March 2019 at p 109

154 1PBAEIC at para 28

155 1PBAEIC at para 32

156 1PBAEIC at para 33

Version No 1: 27 Oct 2020 (22:41 hrs)

for the plaintiff to make the ORA available for NES to carry out the plaintiff's Principal Activities.[157]

92 On the other hand, TKC denied making R3 in relation to the construction of the wooden decking.[158] It is TKC's testimony that he and MP had merely informed NES that they would be happy to reconsider NES's proposal to renovate the said areas (including the construction of the wooden decking) only *after* the CSC was obtained. This was because the structures and wooden decking proposed by the plaintiff would delay the issuance of the CSC, as approvals would be required from government authorities such as URA and NEA.[159]

93 I now turn to the documentary evidence, or the lack thereof in the present case. I take into consideration the fact that the plaintiff did not include any clauses regarding the provision of the wooden decking for the ORA in the OTPs, SPAs or the Building Plans for the Development.[160] Under BP-2, it is also evident that there would be a green verge surrounding the Development, and not a wooden decking.[161] It is also undisputed that the SPAs clearly referenced BP-2, which was applicable to the Development.[162]

94 In contrast, NES produced a plan ("Wooden Decking Plan") where a shaded area of the floor plan of the Development allegedly depicted the extent

---

157 Transcript 14 March 2019 at p 66

158 1DBAEIC at para 70

159 1DBAEIC at para 73

160 3DBOD at pp 190-193, 195

161 3DBOD at p 193

162 3DBOD at p 193; Transcript 12 April 2019 at p 26

Version No 1: 27 Oct 2020 (22:41 hrs)

of the wooden decking works that the defendant would undertake.[163] However, when cross-examined on the origin of the Wooden Decking Plan as well as the markings, NES admitted that he did not know who had marked the shaded area in the Wooden Decking Plan.[164] Subsequently, NES testified that it could have been shaded by him but he did not write the handwritten notes, as he was not proficient in English.[165] As such, I accord little or no weight to this Wooden Decking Plan, without evidence of the provenance of the document as well as the maker of the handwritten notes on the document.

95 On the balance of probabilities, I find that the plaintiff has not discharged the burden of proof that R3 was in fact made. To my mind, it is unlikely that the defendant, as a property developer, would have made a representation to undertake such an onerous obligation to construct a wooden decking specially for the plaintiff's intended ORA at its own cost. There is also no such documentation that evidenced a plan to build a wooden decking in the SPAs or in BP-2. In fact, BP-2 evidenced the contrary, that a green verge, not wooden decking, would surround the Development.

96 Even if I were to accept that R3 had been made, I find that the plaintiff could not have relied on R3 to enter into the SPAs. R3 is clearly not a material representation that would have played a real and substantial part in operating on the mind of NES in inducing him to enter into the agreement: *Panatron* at [23]. It is NES's testimony that the construction of the wooden decking was a "relatively minor issue". NES therefore decided "not to make a fuss" and asked

---

163 1 PBAEIC at p 90

164 Transcript 13 March 2019 at pp 64-65

165 Transcript 13 March 2019 at pp 64-66

Version No 1: 27 Oct 2020 (22:41 hrs)

his own contractor to rectify the issue.[166] On that basis, NES conceded at trial that the plaintiff was waiving its rights as against the defendant with regards to the wooden decking.[167]

97 Moreover, promises as to future conduct are not actionable: *Goldrich Venture Pte Ltd and another v Halcyon Offshore Pte Ltd* [2015] 3 SLR 990 at [107]. R3, if made, is only a promise by the defendant to do something for the plaintiff which the defendant later did not fulfil but that promise does not amount to a false representation of any past or existing fact by the defendant that can form the basis of the plaintiff's claim for misrepresentation.

98 For the above reasons, I find that R3, even if made, is not an actionable misrepresentation.

Conclusion

99 In conclusion, this is a case whereby a legally represented plaintiff made a bad commercial decision without fully understanding the implications of the clauses in the SPAs that he signed. Unfortunately, this mistake resulted in a broken dream of operating a successful *zichar* restaurant along Alexandra Road. For the foregoing reasons, I dismiss the plaintiff's entire claim for misrepresentation against the defendant.

---

166 1PBAEIC at para 58; Transcript 12 March 2019 at p 22

167 Transcript 12 March 2019 at p 23

Version No 1: 27 Oct 2020 (22:41 hrs)

100 I will hear parties on costs, if not agreed.

Chan Seng Onn
Judge

Troy Yeo Siew Chye (Chye Legal Practice) (instructed counsel) and Lau See-Jin Jeffrey (Lau & Company) (instructing counsel) for the plaintiff;
Lee Hwai Bin, Valerie Koh and Deborah Hoe (WongPartnership LLP) for the defendant.

Version No 1: 27 Oct 2020 (22:41 hrs)