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

[2022] SGHC(A) 38

Civil Appeal No 67 of 2021

Between

United Overseas Bank Limited

… *Appellant*

And

Lippo Marina Collection Pte Ltd

… *Respondent*

In the matter of Suit No 1250 of 2014

Between

United Overseas Bank Limited

… *Plaintiff*

And

(1) Lippo Marina Collection Pte Ltd
(2) Goh Buck Lim
(3) Aurellia Adrianus Ho also known as Filly Ho

… *Defendants*

JUDGMENT

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

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United Overseas Bank Ltd
v
Lippo Marina Collection Pte Ltd

[2022] SGHC(A) 38

Appellate Division of the High Court — Civil Appeal No 67 of 2021
Belinda Ang Saw Ean JAD, Woo Bih Li JAD and Quentin Loh JAD
29 April 2022

28 October 2022 Judgment reserved.

Woo Bih Li JAD (delivering the judgment of the court):

Introduction

1 AD/CA 67/2021 ("CA 67") is an appeal arising from housing loans disbursed by the appellant, United Overseas Bank Limited ("UOB"), to purchasers of 38 units between December 2011 and July 2013 in a condominium development at Sentosa Cove (the "38 Units" and "Marina Collection" respectively). The condominium was developed by the respondent developer Lippo Marina Collection Pte Ltd ("Lippo"). It was launched for sale in or around December 2007. Between December 2007 to 10 March 2011, only 42 of 124 units in the Marina Collection were sold.

2 UOB commenced Suit No 1250 of 2014 against various persons. The focus for the purposes of CA 67 is on the following defendants: Lippo and two property agents, a husband-and-wife team, Goh Buck Lim ("Mr Goh") and

Aurellia Adrianus Ho ("Ms Ho"). The claims were based on the torts of unlawful means conspiracy and deceit. Lippo entered into an arrangement where Lippo would grant "Furniture Rebates" ("FR") to purchasers referred to it by Mr Goh and Ms Ho. All 38 purchasers received the FR and UOB alleged that the FR was not disclosed by the purchasers, in breach of the terms of the loan facilities. This also caused UOB to breach the Monetary Authority of Singapore Notice 632 ("MAS" and "MAS Notice 632" respectively) in operation at the material time which permitted banks to lend up to 80% of the loan-to-value limit ("LTV Limit" and "80% LTV Limit" respectively).

3 In *United Overseas Bank Ltd v Lippo Marina Collection Pte Ltd and others* [2021] SGHC 283 (the "GD"), the judge below ("the Judge") held that only the claims in deceit succeeded as against the two property agents (at [130]). The conspiracy claim against the property agents and Lippo was dismissed entirely. CA 67 is UOB's appeal against the Judge's dismissal of both of its claims against Lippo for unlawful means conspiracy and/or deceit. There is no appeal by either of the two property agents.

4 The dispute between UOB and Lippo was made unnecessarily complicated by the focus adopted by UOB. In that focus, UOB's arguments, which were roundabout and convoluted, did not strike at the heart of the dispute. Having considered the parties' arguments and the evidence, the court's view is that central to the determination and outcome of this appeal is a proper appreciation of the role that Lippo played in the sale of the 38 Units. As the vendor of the 38 Units, Lippo issued each option to purchase ("OTP") and stated the purchase price therein ("SPP").

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5 Accordingly, the approach in this judgment is to identify the role and significance of Lippo in inserting the SPP in the OTP. This judgment addresses the two causes of action against Lippo in that light.

Facts

The parties and witnesses

6 Lippo was the first defendant in the proceedings below. It was represented by its director, Woo Pui Lim ("Ms Woo"). Mr Goh and Ms Ho (who were the second and third defendants in the proceedings below) co-brokered the sale and purchase of each of the 38 Units. While Mr Goh filed an affidavit of evidence-in-chief ("AEIC") and testified at the trial, Ms Ho did not (GD at [26]). Mr Goh was the main broker who liaised with Lippo (including Ms Woo and other representatives of Lippo) while Ms Ho was the main broker who liaised with a representative of UOB, Ong Shuwen Ann ("Ms Ong"), and the purchasers.

7 UOB, who was the plaintiff in the proceedings below, is a commercial bank licensed by the MAS to offer, among other services, commercial loans, including housing loans. Lippo accepted that because UOB would lodge caveats when it granted loans to the purchasers and Lippo would be notified of the caveats, Lippo knew that UOB was the bank making loans to the purchasers. Ms Ong was UOB's Vice-President for Home Loans and the salesperson who liaised with Mr Goh and/or Ms Ho. Ms Ong conferred with Lippo by way of e-mail on at least two separate occasions (GD at [47]). Ms Ong was not, however, called as a witness by either party.

8 UOB engaged the services of several licensed appraisers to value each of the 38 Units. The appraisers estimated the best price at which a property

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might reasonably be expected to be sold at the date of valuation under certain market conditions. This was the open market valuation ("OMV"). The appraisers considered, among other information, the sales of other units in the Marina Collection and other similar properties in the vicinity (the "Comparable Sales Method"). Using the Comparable Sales Method, the appraisers determined a range of acceptable valuations and, *where the SPP was within that range,* ***that SPP was adopted as the OMV***.

9 ***All of the appraisers*** attested that had they been aware of the substantial FR given by Lippo, they would have considered such FR in valuing the units.

10 UOB called two further expert witnesses. Christopher Thomas Koh Kia Yong ("Mr Koh"), the Key Executive Officer of a property and training consultancy firm, provided an opinion on the FR and gave evidence on the cooling measures in force at the material time. Tee Lee Lian ("Ms Tee"), a Partner in the Real Estate Department of the law practice of Bih Li & Lee LLP, provided an opinion on conveyancing practices.

Background to the dispute

The sale of the 38 Units and market conditions at that time

11 Ms Tee explained the payment schedule for each of the 38 Units as follows:

(a) 1% of the SPP was to be paid when Lippo issued an OTP to the purchaser ("1% Option Fee");

(b) 4% of the SPP was to be paid upon the exercise of the OTP by the purchaser ("4% Exercise Fee");

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(c) at least 15% of the SPP was to be paid prior to completion ("Completion Fee"); and

(d) about 70% to 80% of the SPP was to be disbursed by UOB as the amount of housing loan granted to the purchaser (upon the satisfaction of certain conditions such as UOB's satisfaction that the purchaser had paid the difference between the SPP and the housing loan). Close to completion, Lippo's solicitors, TSMP Law Corporation ("TSMP") wrote to the solicitors for the purchasers, PKWA Law Practice LLC ("PKWA") to inform that Lippo had received payment of the Completion Fee for the relevant unit.

12 At the material time, the Government introduced various measures to cool the property market in Singapore from 26 October 2007. The Marina Collection was launched shortly thereafter in or around December 2007. For example, the Government withdrew the Deferred Payment Scheme. Under that former Deferred Payment Scheme, developers could offer buyers of new projects the option to pay a down payment of only 10% and defer payment of the remaining 90% of the purchase price until the collection of keys.

13 In February 2010, the Government announced the lowering of the LTV Limit for housing loans from 90% to 80%. This measure was introduced following a sharp spike in demand for private housing units and property purchase prices, as part of the Government's incremental efforts to temper market sentiments and pre-empt a property bubble from forming. From 13 January 2011, the MAS imposed the 80% LTV Limit and this remained a requirement throughout the 38 transactions (GD at [10]). Both Ms Woo and Mr Goh admitted that they knew banks such as UOB were subject to the 80%

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LTV Limit, and that purchasers are obliged to declare any rebates granted to the financing bank (*ie*, UOB in the present case).

14 On 30 August 2010, the Government announced a further lowering of the LTV Limit from 80% to 70% and increased the minimum cash down payment from 5% to 10% of the valuation limit (that is, the lower of the property value and the purchase price) for buyers with one or more outstanding housing loans, who are obtaining a second or subsequent housing loan. On 14 January 2011, the Government further lowered the LTV Limit for that group of buyers from 70% to 60%. As mentioned at the outset, between the time of its launch in December 2007 and 10 March 2011, only 42 of 124 units of the Marina Collection were sold and some were leased out by Lippo prior to these sales.

15 The cooling measures did not end there. From 8 December 2011, an Additional Buyer's Stamp Duty ("ABSD") was introduced for certain purchases. This coincided with the time that Ms Woo and Mr Goh formulated a plan to award certain rebates to purchasers referred to Lippo by Mr Goh.

The plan to grant Furniture Rebates

16 In or around December 2011, Mr Goh raised "the difficulties faced in getting buyers for the Marina Collection" which arose "*because of* the payment" [emphasis added] of the 4% Exercise Fee and Completion Fee in addition to the ABSD payable by the purchasers. Ms Woo attested to the same. Mr Goh explained to her that his Indonesian clients had "difficulties in bringing out the monies" for the 4% Exercise Fee and Completion Fee. According to Ms Woo, Mr Goh asked if Lippo would be "willing" to allow the purchasers to use the FR to "offset" against the *initial amounts they would otherwise be required to*

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pay (*ie*, the 4% Exercise Fee and Completion Fee) and "pay the remainder" of the FR to the purchaser upon completion, which Lippo acceded to.

17 Under such market conditions, Ms Woo and Mr Goh agreed to the following "Furniture Rebate Plan" ("FRP"):

(a) the purchaser received an in-principle sum amounting to the FR from Lippo – which itself *did not exist tangibly* but only ***notionally***, since they were not disbursed from any pool of funds maintained by Lippo (GD at [54]) – prior to issuing the OTP;

(b) despite such in-principle agreement, Lippo issued an OTP to each purchaser stating a purchase price that *did not reflect the FR*;

(c) the purchaser would provide Lippo with cheques for the 4% Exercise Fee and the Completion Fee based on the SPP (GD at [8(a)]);

(d) Lippo, however, *would* ***not encash any*** *of these cheques* (GD at [8(b)]);

(e) upon UOB's approval of a purchaser's housing loan application for the purchase of his unit, Lippo would document the FR by way of letter, which was used to *set-off against the 4% Exercise Fee and Completion Fee* (meaning that these fees were paid from the loan by UOB and *not any other party*) (GD at [8(c)]);

(f) the FR granted by Lippo to the purchaser amounted to the total of the 4% Exercise Fee, Completion Fee, and ***additionally*** a surplus sum *for the purchaser* which functioned as (a) an incentive for the purchaser to enter into the transaction and (b) an aid for the purchaser to defray the repayment of the housing loan to the extent that the Furniture Rebate

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exceeded the 4% Exercise Fee and the Completion Fee (GD at [8(d)]); and

(g) Lippo would *return the cheques* for the 4% Exercise Fee and Completion Fee to the purchaser ***without encashing them*** on completion (effectively meaning that no part of such fees were paid by the *purchaser*) (GD at [8(e)] and [46]).

As it transpired, the amount of the loan was sufficient not only to pay the 4% Exercise Fee and the Completion Fee but also to reimburse the purchasers the 1% Option Fee.

18 From December 2011 to July 2013, the sales of 38 Units were brokered by the property agents. UOB disbursed more than $181m in housing loans to the purchasers of the 38 Units (GD at [4]). Unbeknownst to UOB, however, Lippo gave a substantial FR which ranged from $1,250,007 to $2,390,000 *per unit*. Therefore, the purchase price that each purchaser was liable to pay Lippo for (and which would be paid using the loan with a leftover surplus) was thus the SPP *less* the FR. This judgment refers to this lower price as the Adjusted Purchase Price ("APP").

The housing loans

19 The purchasers were required to declare any rebates that they had received in the Initial Property Loan Application Form (of which only 21 of the 38 purchasers' forms are before the court) and the Final Property Loan Application Form ("FLA") (submitted by all 38 purchasers) (collectively, the "Housing Loan Application Forms"). All except one failed to declare the FR. The sole purchaser who stated that he had received a rebate *grossly underdeclared* it on the FLA as $3,510 compared to the true quantum of the FR

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received of $1,784,150 (GD at [13]). The end result was that UOB was unaware of the FR (or its full extent in that one case) and hence the APP. Moreover, by signing the Housing Loan Application Forms, all 38 purchasers declared that they had read, understood and agreed to be bound by UOB's Standard Terms and Conditions Governing Credit Facilities (the "Standard Terms"). The Standard Terms were thus incorporated as part of the loan agreement between UOB and each purchaser. Pertinently, cl 8.1 of the Standard Terms stipulates:

> 8.1 The Borrower warrants and represents that full written disclosure has been made of all facts and information which shall have been requested by the Bank and all information statement warranties declarations or representations made by the Borrower or *evidenced in any document whatsoever given to the Bank in connection with the Credit Facilities and all particulars indicated …* ***in any application form(s) relating thereto are in all respects true and correct***. The Borrower *confirms that the Bank is entitled to rely on the same* in granting the Credit Facilities to the Borrower.
>
> [emphasis added in italics and bold italics]

In the circumstances, the purchasers failed to comply with cl 8.1.

20 Furthermore, pursuant to the Standard Terms, the purchasers understood that a precondition to the disbursement of the loan was UOB's satisfaction that the purchaser "has met the difference between the purchase price of the [p]roperty and the housing [l]oan". The purchase price refers to the price to be paid by the purchaser. Although this would ordinarily be the purchase price stated on the OTP, this is on the assumption that the stated price is genuine (*ie*, the OTP accurately reflects the actual price to be paid by the purchaser).

21 In the present case, however, it is undisputed that the real purchase price to be paid by the purchasers was the APP. Typically, in a purchase that is to be financed by a bank loan, the borrower-purchaser would meet the difference between the APP and the loan. This would be on the premise that the loan would

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be, at most, 80% of the APP. That was not so in the present case. As only the SPP was disclosed to UOB and UOB was unaware of the APP, each of the loans disbursed by UOB was based on the SPP instead of the APP (*ie*, up to 80% of the SPP). In the present context, UOB was led to believe that the purchasers were to pay the difference between the SPP and the loan. We refer to the difference as the "Balance Purchase Price" (*ie*, the 1% Option Fee, the 4% Exercise Fee and the Completion Fee). As mentioned at [17(c)] above, the purchasers issued cheques for the relevant sums *based on the SPP* even though the purchasers and Lippo knew that the SPP was not the real purchase price to be paid by the purchasers. As will be elaborated below, the Balance Purchase Price was not in fact paid by any of the 38 purchasers. Nor was any part of the APP paid by the purchasers from their own pockets at the end of the conveyancing process.

22 By December 2013, 37 out of the 38 purchasers had defaulted on the loans. By 1 April 2015, all 38 purchasers had defaulted, and remain in arrears to-date (GD at [5]). Counsel for UOB confirmed at the hearing for CA 67 that all 38 Units have been repossessed by UOB but there has been no mortgagee sale.

Procedural history

23 Prior to the bifurcated trial before the Judge below, UOB had sought the determination of a question of law on whether the plaintiff, being a victim of a fraud or a conspiracy to commit fraud (*ie*, UOB bank), may be attributed with the knowledge or actions of a fraudulent employee (*ie*, Ms Ong) so as to preclude it from alleging certain misrepresentations and acts of deceit. The court held that if UOB succeeded in proving that it was a victim of fraud or conspiracy to commit fraud, any knowledge and acts of Ms Ong would not be attributed to

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UOB in order to defeat UOB's claims (see *United Overseas Bank Ltd v Lippo Marina Collection Pte Ltd and others* [2016] 2 SLR 597 at [56]).

24 While that may give some context as to why Ms Ong was not called as a witness by *either* party (see [7] above), the Judge noted that Ms Ong's evidence would nevertheless have been useful for other issues (GD at [43]).

The parties' cases

25 As mentioned, UOB claimed against Lippo in the torts of unlawful means conspiracy and deceit. UOB pleaded that the conspiracy between Lippo and the two property agents were to obtain financing: (a) in circumvention or breach of the MAS Notice 632; and (b) in excess of the APP ("Excess Loans"). In that regard, UOB pleaded that the objectives of the conspiracy were to cause (a) Lippo to dispose of the 38 Units in the face of difficult market conditions with the APP of the 38 Units being fully financed by UOB; and (b) all or a substantial part of the amounts representing the difference between the loans disbursed by UOB and the SPP of the 38 Units to be credited into the accounts of the purchasers. It is noted that the latter is an inadvertent inaccuracy in UOB's pleadings as it is the difference between the loans disbursed and the APP (not the SPP) which was so credited.

26 UOB alleged that in furtherance of this alleged conspiracy, certain acts were committed which served as the unlawful means through which the conspiracy was effected, including that:

(a) the two property agents, –

(i) procured, or induced the purchasers to omit declaring the FR in the Housing Loan Application Forms (the "Purchase Price Misrepresentations");

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(ii) procured, or induced at least 28 purchasers to make false representations as to their true identities (the "Identity Misrepresentations"); and

(iii) procured or induced the purchasers to recycle monies between the accounts of the purchasers, the second defendant and his sons to ensure that (in compliance with UOB's criteria for loan approval) there would be at least $200,000 in the bank accounts of the purchasers when they applied for the Housing Loans, which carried the implicit representation that the purchasers had good financial standing (the "Financial Standing Fraud");

for which Lippo should be equally liable;

(b) Lippo –

(i) represented that it had received payment of the Completion Fee for each property, when such payment had not been made (the "Payment Misrepresentations");

(ii) together with the two property agents, procured UOB to approve and thereafter disburse loan amounts in excess of the APP, "raising questions as to offences" under the Penal Code (Cap 224, Rev Ed 2008) ("PC") (specifically, under s 415 of the PC for cheating ("Cheating"); and

(c) the disbursement of the loans resulted in the circumvention of the MAS Notice 632 (the "Unlawful Purpose").

27 The combination or agreement between Lippo and the two property agents is evident from various acts and the benefit that Lippo stood to gain was

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that it disposed of the 38 Units with the purchases fully financed by UOB. Lippo, in particular, *facilitated* the conspiracy in several ways. First, Lippo gave the FR in amounts which eliminated the need for the purchasers to pay the 4% Exercise Fee and Completion Fee. Second, it concealed the existence of the FR from UOB by issuing letters relating to the FR for at least 35 purchasers only *after* they had obtained approval for their Housing Loans. Third, it instructed TSMP to make the Payment Misrepresentations which it knew to be false which had, in turn, induced UOB into disbursing the loans. Fourth, it did not require the Completion Fee to be paid.

28 The Purchase Price Misrepresentations, Identity Misrepresentations, Financial Standing Fraud and Payment Misrepresentations are misrepresentations (whether taken in isolation or cumulatively) that found UOB's claim in the tort of deceit. This cause of action will be elaborated upon later.

29 Lippo denied that it combined or agreed with any other defendant or purchaser to cause loss to UOB pursuant to the alleged conspiracy. In this regard, Lippo averred that the FR were given to "promote the sale of units" in Marina Collection, and "not given pursuant to the Conspiracy". The manner in which Lippo accepted payment of the 4% Exercise Fee and Completion Fee from the purchasers (for example, "whether by way of offset from the [FR] or otherwise") was "solely within its discretion", which was exercised based "solely on its commercial interests and not pursuant to the Conspiracy as alleged".

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Decision below

30 As mentioned, the Judge allowed UOB's claim against Mr Goh and Ms Ho in the tort of deceit (GD at [2]). In this regard, the Judge found that they were liable for the Purchase Price Misrepresentations, Identity Misrepresentations and the Financial Standing Fraud (GD at [108]–[110]).

31 However, the Judge dismissed UOB's claims against Lippo entirely (GD at [2]). In essence, he found that the elements for the tort of unlawful means conspiracy as against Lippo were not satisfied on the facts of the case.

32 The Judge noted the elements for the tort of conspiracy to cause injury by unlawful means as set out in *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT*") at [112]):

(a) a combination of two or more persons to do certain acts;

(b) such persons had the intention to cause damage or injury to the plaintiff by those acts;

(c) the acts were unlawful;

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

(e) loss was suffered by the plaintiff as a result of the conspiracy.

33 We pause here in our narration of the decision below to add that at [96], the Court of Appeal in *EFT* explained that the "crux" of unlawful means conspiracy is that one "cannot combine and undertake an unlawful course of action with the intention to harm another even if the principal "motive" is to benefit oneself". In that regard, it is the "*combination, accompanied by the*

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intention to injure by unlawful means that makes such conduct unlawful" [emphasis in original]. The Court of Appeal also took pains to emphasise that "a focus on the combination to commit a wrong would be erroneous without also looking at the injury being the *purpose* rather than the *consequence* of the combination" [emphasis in original]. Nevertheless, for unlawful means conspiracy, it need not be proved that the conspirators' *dominant* intention was to cause injury to the victim; mere intention to injure is sufficient.

34 In that regard, it is "not sufficient for the claimant to show that it was reasonably foreseeable that the claimant would or might suffer damage as a result of the defendant's act" (*EFT* at [99]). Rather, the law has insisted on the element of "intention" for economic torts in recognition of "the need to keep liability within acceptable bounds" (Hazel Carty, *An Analysis of the Economic Torts* (Oxford University Press, 2nd Ed, 2010) at p 302, as endorsed in *EFT* at [100]). As the Court of Appeal elaborated in *EFT* at [101], a claimant would have to show that "the unlawful means and the conspiracy were targeted or directed at the claimant". Furthermore, it is "not sufficient that harm to the claimant would be a likely, or probable or even inevitable consequence of the defendant's conduct. Injury to the claimant must have been intended as a means to an end or as an end in itself".

35 The Court of Appeal in *EFT* left open the question of whether the "unlawful means" are confined to actionable civil wrongs. However, it found "much force in the view that unlawful means for the purposes of unlawful means conspiracy ought not to be so limited" (*EFT* at [91]). While Chan Sek Keong CJ in *Beckkett Pte Ltd v Deutsche Bank AG* [2009] 3 SLR(R) 452 at [120] noted that the element of unlawfulness in unlawful means conspiracy "covers both a criminal act or means, as well as an intentional act that is tortious", the more difficult question concerns the limits that the law should draw in imposing

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liability for unlawful means conspiracy based on criminal conduct (*EFT* at [92]).

36 Returning to the decision below, the Judge found that the SPP was supported by valuations obtained by UOB (GD at [73]). On the question whether there was an agreement between Lippo and the purchasers (through the brokers) in respect of the FRP, the Judge:

(a) found that there was no agreement on the part of Lippo to suppress the existence of the FR since the FRP "could still work" even without Lippo's agreement to conceal the existence of the same (GD at [45]);

(b) found that Lippo could have been simply unconcerned with the circumstances under which excess loans were being procured (GD at [46]–[47]); and

(c) held that in any event, any agreement that Lippo would conceal the FR from UOB did not show a combination to cause harm to UOB by unlawful means since Lippo *had no duty to disclose* the FR to UOB (GD at [49]).

37 The Judge found that Lippo did not have an intention to injure as it was "plausible that [it] was acting solely in its own interest without paying heed to how [UOB] would be impacted" (GD at [84]). Furthermore, Lippo did not know that UOB "had to over-lend" to sell the 38 Units since it did not know or was otherwise wilfully blind to the purchasers' weak financial positions (GD at [85]). It is worth mentioning, however, that such a finding is somewhat at odds with an earlier finding (GD at [29], [50(e)], [52]) that Lippo *knew* that UOB would be over-lending. Not only were the 4% Exercise Fee and Completion Fee

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effectively paid by UOB, but Lippo also conceded that there would always be a surplus sum which was credited to the purchaser upon completion (GD at [8]).

38 On the question of unlawful means effected in furtherance of any combination or agreement, the Judge:

(a) held that the "unlawful means" in the tort of unlawful means conspiracy does not encompass unlawful acts committed by the victim as a consequence of the alleged conspiracy such that UOB's breach of the MAS Notice 632 (*ie*, the Unlawful Purpose) does not amount to "unlawful means" (GD at [87], [95]–[96]); and

(b) held that the allegations of deceit, *ie*, the Purchase Price Misrepresentations, Identity Misrepresentations, Financial Standing Fraud and Payment Misrepresentations would "in [principle] count as unlawful means" in the tort of unlawful means conspiracy but only the last act of deceit was allegedly committed by Lippo and UOB still had to establish other elements of the tort. These were not made out as against Lippo on the facts (GD at [97]).

39 Furthermore, there was no damage caused to UOB as the Judge found that there was:

(a) "no true price for real property; these are not marked to market as are securities, nor is there any market that can indicate the true market price" (GD at [102]);

(b) no harm caused to UOB since the SPP expressed on the Housing Loan Application Forms "were within what would have been accepted as reasonable valuations" (GD at [102]); and

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(c) no harm caused to UOB by the breach of the MAS Notice 632 (GD at [103]).

40 The Judge also dismissed UOB's claim against Lippo in the tort of deceit in respect of the Payment Misrepresentations (GD at [107]).

Parties' cases on appeal and issues to be determined

41 The parties' cases largely did not change on appeal. UOB contends that Lippo (a) "unlawfully conspired to cause loss" to UOB and (b) is liable in the tort of deceit in respect of the Payment Misrepresentations.

42 Lippo's case, in essence, is that the elements for a claim in unlawful means conspiracy are not made out on the facts. Lippo takes the position that there was no combination or agreement between it and the two property agents because there was "no reason" for it to so conspire with the two property agents to deceive UOB in order to sell the 38 Units. The mere fact that Lippo "knew that the [p]urchasers were concealing the [FR] from UOB and that UOB was 'over-lending' does not necessarily render them co-conspirators". Even if there was a combination or agreement, there was no intention to injure UOB. In that regard, there is no evidence that Lippo knew that the purchasers would default or that UOB had insufficient security. The FRP was part of a wider plan to invest in the Marina Collection (the "Wider Plan"). As against UOB's claim in deceit, Lippo maintained that the crucial element of reliance was not made out on the evidence.

43 The Judge's conclusions were not based on his assessment of the demeanour of Ms Woo as a witness but rather on the validity of the reasons given by Ms Woo based on available evidence and Lippo's arguments. Accordingly, as an appellate court, this court is in an equally good position as

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the Judge to determine the issues. Furthermore, as will be elaborated later, there was, with respect, ample evidence showing that the Judge was plainly wrong in some of his conclusions.

44 This judgment considers UOB's appeal against the Judge's dismissal of its claim in unlawful means conspiracy first, before considering the same in respect of its claim in deceit.

Issue 1: Unlawful means conspiracy

The underlying purpose of the FRP

45 The resolution of the dispute between UOB and Lippo lies in a proper understanding of the underlying purpose of the FRP which Lippo participated in. An elaboration of the most important aspects of the scheme by way of an illustration using round figures at this juncture would be helpful. Suppose that the APP for a unit was $4.7m and the SPP was $7m, the difference between the two figures is $2.3m. This is the amount of the FR. Assuming the loan granted is $5m, this is well within 80% of the SPP as directed by MAS Notice 632 but in substantial excess of the APP by $0.3m. Hence, $4.7m of the loan would be used to pay the APP and the surplus of $0.3m will be given to the purchaser. The end result is that the purchaser does not have to fork out from his own pocket to pay the 4% Exercise Fee or the Completion Fee. Even the 1% Option Fee (amounting to only $47,000) was effectively reimbursed to him, along with a further sum of over a quarter of a million dollars.

46 The thrust of UOB's case is that the SPP was a disingenuous price which was deliberately inflated. It was not a genuine rebate. Lippo was thus essentially part of a scheme to unlawfully inflate the real purchase price to be paid by the purchaser for the unit, which was the APP. Lippo's position is that the FRP was

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a genuine marketing device similar to discounts and rebates used by other developers. Lippo contends that the SPP was not a price inflated from the APP and the SPP was supported by valuations which UOB itself had obtained.

47 This court disagrees with Lippo for the following reasons.

Quantum of the FR

48 First, the sheer magnitude of the FR (or the difference between the APP and the SPP), in absolute numbers and in percentage terms suggests that the FR was not a genuine rebate. UOB tabulated, in Annex C to its Statement of Claim (Amendment No 1) ("SOC"), a comparison of the SPP, loan granted, FR granted, and APP for each of the 38 Units respectively. Take, for example, the last three units sold under the FRP. The FR of $2.39m granted for each of the three units was over 52.6% of the APP, which was only $4.541m. With the SPP reflected as $6.931m, UOB granted $5m in housing loans for each of those three units (*ie*, about 72.1% of the SPP). Even though the amounts disbursed under the respective housing loans were well within the 80% LTV Limit based on the SPP, *they* ***exceeded the APP*** *by almost half a million dollars*. That excess, as mentioned earlier, was paid to the purchaser – meaning that each purchaser ***gained a significant cash flow*** *from the purchase*. Using the same percentage of 72.1%, had the OTP reflected the APP, instead of the SPP, the amounts granted under those loans would be about $3,274,061 – the difference being a substantial $1,725,939.

49 Even the *smallest* FR granted was still a handsome sum. At its *lowest*, a FR of slightly over $1.25m still amounted to 30.6% of the APP, which was only $4,088,043. The SPP for that unit was $5,338,050 and UOB granted a housing loan of $4,270,440. Regardless of whether one considers the *smallest or largest*

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amounts, the sheer magnitude of the FR given by Lippo suggests to us that this was simply not a genuine rebate.

50 Consistent with this, Mr Koh gave evidence that in the period of 2011 to 2013, the rebates given by developers were "generally in the range of 1% to 5%" of the initial purchase price, compared to that of Lippo's which ranged "from 22.09% to 34.48% of the [SPP]". Hence, the rebates from Lippo in question were far in excess of the market norm at the time. The FR in the present case "were so substantial that even after deducting a portion of the Balance Purchase Price …, there was still an excess which was paid by [Lippo] to each of the [p]urchasers".

51 Lippo sought to counter this by arguing that Mr Koh agreed that:

(a) there was no central deposit of data relating to FR by developers;

(b) it was possible that there were rebates granted by developers that had not been disclosed to the public; and

(c) it was possible that there were rebates similar to or even higher than the rebates granted by Lippo.

52 Lippo also argued that Mr Koh admitted that he had merely relied on his own knowledge and archived newspaper reports to determine what the "market norm" for rebates was but this was unreliable given the absence of a complete record of all rebates given.

53 This court disagrees with Lippo that there must be a complete record of all rebates given. Mr Koh was giving his opinion as an expert based on his experience and whatever records were available. Importantly, his opinion was

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not challenged by any other expert. Moreover, it was open to Lippo itself to adduce evidence of rebates of similar amounts, in absolute or proportionate terms, from other developers at the material time if indeed its rebates were not much different from those of some other developers as it was arguing. Its omission to do so was telling, especially since it was *part of* ***Lippo's*** *pleaded case* that the "amount of the [FR] were within the market norm at the material time".

54 In any event, this court's decision does not rest only on the magnitude of the rebate from Lippo.

Whether the valuations truly supported the SPP

55 Second, Lippo placed much weight on the valuations obtained by UOB which supported the SPP. Lippo stressed that the appraisers would not place sole reliance on the SPP but would also use sales of units in comparable projects.

56 With respect, Lippo's argument relied upon a somewhat selective reading of the appraisers' evidence. While it is true that the appraisers considered the sale prices of units in comparable projects, the appraisers also attested, as emphasised by UOB, that the SPPs would form the *benchmark* for valuations for the sale of other units within the Marina Collection given the limited transactions in the market then. Significantly, Lippo agreed to admit the evidence of the appraisers without cross-examination. It was open to Lippo to adduce evidence to the contrary or otherwise challenge the evidence of the appraisers. They did not do so.

57 Even if none of the appraisers resiled from their valuations in their AEICs after they were informed of the APP, the SPP of the unit which is the subject of valuation would have been a factor in the valuation as the appraisers

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intimated. Indeed, as mentioned at [9] above, *all* of the appraisers attested that had they been aware of the FR given by Lippo, they would have considered the FR in their appraisal.

58 Furthermore, in taking into account the sale prices of units in comparable projects, the appraisers in turn would be relying on the SPP for the units in those projects as it was that price which was recorded in the relevant land registry when caveats or instruments of transfers are lodged or registered. That information in turn finds its way into property websites which track property prices. As Lippo itself had argued, information about rebates from other developers would not necessarily be available to third parties.

59 The implication of Lippo's position that the FRP was a genuine marketing device is significant. If the true value of the 38 Units in question was as stated in the SPP and in the valuations obtained by UOB, it would mean that Lippo had grossly undervalued their own units when they reduced the price to the APP by granting the FR (to the tune of well over $1m *for each of the 38 Units*). It was also not Lippo's case that Lippo agreed to the FRP as a bulk discount because, at the inception of the FRP, the brokers already had a large pool of buyers ready to purchase the units. On the contrary, the sales were stretched over a period of about one and a half years. This court considers it highly unlikely that Lippo did not know the true value of the 38 Units.

60 In this court's view, the valuations did not reflect the true value of the units in question and could not be said to have truly supported the SPP. The appraisers were influenced by the SPP of these units. The true value was closer to the APP. That was the price which Lippo and the purchasers (through the brokers) were agreeable to and the APP was then inflated to the SPP. That was why the FR was concealed from UOB, as well as the appraisers. This is the third

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reason for our conclusion which will be addressed later. With respect, in this court's view, the Judge was wrong to rely on the valuations.

61 The Judge commented that there is no true price for real property (see [39(a)] above) as the 38 Units were not marked to market price as are securities. Nor is there any market that can indicate the true market price. He found that the SPP was within reasonable valuation. This court is of the view that there might have been some conflation below between the real purchase price and the true value of a property.

62 The real purchase price is the net price which Lippo and the purchasers agree that the purchasers are to pay, that is, after taking into account all rebates by whatever names they are called. The real purchase price is different from the true value. The real purchase price may be good evidence of the true value but, on the other hand, it could be lower or higher than the true value. For example, a buyer may pay less than the real value because of good timing or the seller is more keen to sell than the buyer is to buy. The concepts of price and value should not be conflated.

63 On the facts, the real purchase price was the APP, not the SPP. There is no doubt, in our minds, that Lippo and the brokers knew that the real purchase price was as such. Significantly, Mr Goh testified that Lippo had paid his commission for the sale of the 38 Units *based on a percentage of the APP and not the SPP*. Whether the SPP can be supported by valuations is a separate question and, for the reasons mentioned above, ought to be answered in the negative. As elaborated above, this court is convinced that the SPP was merely a device to obtain higher valuations and, in turn, higher loans than what would otherwise have been disbursed if the real purchase price (*ie*, the APP) was reflected on the OTP.

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The concealment of the FR from UOB

64 This brings us to the third reason for our conclusion, *ie*, the concealment of the FR from UOB. This point is connected with the second reason, *ie*, whether Lippo may rely on the valuations to support the SPP.

65 It is noted that Mr Koh's evidence was that even though some discounts given by other developers would at times exceed 5%, all discounts were "openly given" and, indeed, the loans taken up to finance those purchases were "based on the net price after all these discounts" – in stark contrast to the present case.

66 It is important to bear in mind that the Judge found that it was part of the FRP that the purchasers would conceal the FR from UOB and that Lippo knew this (GD at [29], [46], [56], [70] and [71]). Thus, whether or not Ms Ong (of UOB) had been informed of the FR, the scheme was to conceal it from UOB and this was done.

67 Significantly, Lippo does not contest the finding of concealment of the FR from UOB or that it was aware of the concealment and the following analysis proceeds on that basis. The only dispute is whether it had *agreed* to the concealment and the Judge found it had not. That question will be addressed later.

68 The anterior question to consider is why the purchasers needed to conceal the FR from UOB to begin with. If Lippo had accurately reflected the APP on the OTP (whether by reflecting the FR or specifying the APP as the SPP), that would have been the end of the matter as far as the issue of concealment goes. That was not so in the present case. It follows then that the question to consider is why *Lippo* did not state the APP in the OTP.

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69 Ms Woo explained that the APP was not reflected in the OTP because it wanted to keep its prices "as high as possible" as part of its pricing strategy. However, there were two problems with this explanation.

70 First, as UOB pointed out during the cross-examination of Ms Woo, there were sales to other purchasers during the same period where the lower price or range was stated in the OTP. This information would be known eventually to others and would be inconsistent with Lippo's purported pricing strategy.

71 Second, Lippo's explanation did not explain why the purchasers had to conceal the FR from UOB if the FR was genuine. Ms Woo initially said in oral evidence that she did not know whether the purchasers were supposed to declare the FR to UOB. When it was pointed out to her that Lippo's pleaded case was that Lippo would not have expected the purchasers to fail to disclose the FR to UOB, she had to admit that she knew that they had to disclose it. As mentioned, Lippo accepts that it knew this.

72 It must be borne in mind that since the purchasers did not disclose the FR to UOB, the appraisers that UOB appointed would also not be aware of it. If the SPP, without any rebate, could be supported by valuations as Lippo alleges, then there would be no valid reason to conceal the FR in the first place. In this court's view, there was only one logical reason why Lippo did not state the APP on the OTP and the FR was concealed from UOB and the appraisers. It was to obtain a valuation and a loan that was higher than would otherwise be obtainable if the FR were revealed to UOB and that, in turn, was because the SPP was an inflated price and not the real purchase price.

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73 Indeed, it was UOB's case that Lippo and the purchasers first agreed to the APP and then inflated it to the SPP for the purpose of obtaining a higher loan. The concealment of the FR could only have been to maintain the illusion that the SPP was the real purchase price to be paid by the purchasers.

74 UOB also referred to two sets of e-mails to demonstrate that precise point – the SPP was suggested by the purchasers (through Mr Goh) who wanted a higher price to obtain a higher loan. The SPP was an artificial price *greater than* the price which the purchasers had to pay and at which Lippo was willing to sell (*ie*, the APP).

75 The first set was on 6 August 2012. Mr Goh informed Ms Woo to replace an existing customer with another purchaser because that existing customer's loan application had been rejected by UOB. That e-mail was sent at 8.02am. That same morning, at 9.59am, *Ms Woo* asked Mr Goh to "confirm" that the purchase price was $2,800 per square foot ("psf"). It was *Mr Goh* who stipulated, at 10.03am, that it was actually $2,850 psf instead. Ms Woo accepted that such price referred to the *SPP*.

76 UOB suggested that this showed that it was the *prospective purchaser* who was asking for a higher price to obtain a higher loan. In cross-examination, Ms Woo did not say that her figure of $2,800 psf was an oversight and that the correct figure was $2,850 psf. Rather, Ms Woo candidly admitted that she was simply "willing to go along with" the purchaser's request for a higher price. When she was asked why Mr Goh increased the amount to a figure higher than what she had mentioned, she said that that was because it was still within the price range of $2,800 to $2,900 psf (as stated in the SPP). However, that did not answer the question – especially in circumstances where Ms Woo believed that

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it is "unusual" for a *purchaser* to ask for a higher price. The crucial point is that a purchaser would not suggest a higher price in an authentic transaction.

77 The second set of e-mails was on 28 and 29 November 2012.

78 Mr Goh had sent Ms Woo an e-mail dated 28 November 2012 on the purchase of a unit in Marina Collection, stating that *the buyer* requested a price of $2,950 psf which the bank and valuation "can match". Mr Goh concluded that e-mail asking whether they could "do it".

79 Ms Woo's reply dated 29 November 2012 was telling. Her reply was that the suggested price was "too high to justify" and would draw "unnecessary attention".

80 In response, Mr Goh said, "And is support[ed] by valuation and bank why not".

81 In cross-examination, Ms Woo explained that Lippo's pricing had "not gone up to [$]2,950 [psf] at that point". Lippo wanted to maintain its "general" pricing.

82 In this court's view, that was an absurd explanation. In a genuine transaction, a developer would only be too happy if its price were increased. There was no logical reason to maintain a lower level of pricing. Conversely, the purchaser would be the one seeking a lower price, not higher. The SPP for that particular unit became $2,950 psf, as the purchaser requested. The question that remained – which Ms Woo conveniently eluded – is *whose attention* she was afraid of unnecessarily attracting. The answer is obvious when one reads

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Ms Woo's remarks in the context of the totality of the e-mail chain; she could only have been referring to UOB's attention.

83 This court is of the view that these sets of e-mails belied Lippo's entire explanation of the FRP and supported UOB's case. It was explainable only on the basis that the higher price (*ie*, the SPP) was not the real price and Lippo was acutely aware of this. It was an inflated price to obtain a higher loan from UOB. Lippo was concerned about unnecessary attention because its role would be revealed if the scheme became unravelled.

84 With respect, in this court's view, the Judge had not given due weight to the objective and contemporaneous evidence documented in the two sets of e-mails mentioned above. More importantly, he did not give due weight to the reasons why the FR was concealed from UOB. It was to obtain a higher valuation and loan and this itself was inconsistent with Lippo's argument that the valuations would support the SPP. As mentioned, if the valuations would support the SPP, regardless of the FR, there would be no logical reason to conceal the FR. For the same reason, the related question of whether Lippo had agreed to the concealment of the FR is answered in the affirmative.

85 Furthermore, it was UOB's undisputed evidence that the amount it would lend would be based on the *lower* of OMV or the purchase price which meant the price as stated in the OTP, *ie*, the SPP. Hence, the importance of the SPP. Lippo, in turn, went to great lengths to keep up the façade that the SPP was genuine. Not only did it reflect the purchase price on the OTP as such, Lippo also, as will be elaborated in detail below, represented that it had received the Balance Purchase Price *which was based on the SPP* to PKWA (who were the solicitors for the purchasers and UOB). Suffice it to say that contrary to the

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Judge's finding, the FRP could only work if Lippo agreed with their purchasers to conceal the FR from UOB.

86 Importantly, Lippo never put it to witnesses from UOB that UOB would have lent the same amount as it did if it had known about the APP or the FR. Significantly, Lippo's counsel acknowledged this at the hearing of CA 67 and said that he had no basis to say that UOB would have lent the same amount.

87 The Judge also referred to UOB's argument that Lippo's omission to state the FR in the OTP and its delay in issuing FR letters to the purchasers until after the loans were approved by UOB were deliberate as they facilitated the concealment of the FR. The Judge noted that not all the FR letters were issued after the loans were approved. In any event, the FR was documented in the letters although there was no obligation on the part of Lippo to do so. Such documentation would have heightened the risk of discovery by UOB (GD at [63] and [65]). The Judge was of the view that the documentation by letter was inconsistent with a deliberate concealment on the part of Lippo.

88 This court disagrees that Lippo was not obliged to document the FR. As between Lippo and the purchasers, such documentation was necessary to ensure that the purchasers would not be liable to Lippo for the SPP (as reflected on the OTP) instead of the APP (which was not formally documented until then). Therefore, even though the FR letters would have heightened the risk of discovery by UOB, the FR letters were necessary to protect the purchasers.

89 In any event, the point is that the entire scheme underlying the FRP was to be concealed from UOB. It was immaterial to such concealment whether the FR letters were issued to the purchasers before or after the loans were approved by UOB. In either case, UOB was not supposed to know of their existence.

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UOB's argument on this point was therefore a distraction but this, in any event, does not assist Lippo as it was an immaterial point.

90 As for UOB's argument that Lippo had deliberately omitted to reflect the FR in the OTP, this court agrees that this was deliberate. It was part of the scheme to reflect only the SPP (and not the APP) in the OTP in order to obtain a higher loan from UOB.

Whether there was a combination or an agreement between Lippo and the purchasers to do certain acts

91 It is important to bear in mind, as mentioned at the outset (see [4] above), that it was *Lippo* who issued the OTP *bearing the SPP*. Although this was mentioned in para 8(a) of the SOC, UOB glossed over Lippo's act of preparing the OTP and instead focused on Lippo's act of granting the FR. The emphasis on the FR ultimately distracted the Judge from Lippo's crucial role in inserting the SPP in the OTP. That was the genesis of everything else that followed.

92 UOB did not specifically plead that Lippo's failure to reflect the true purchase price (*ie*, the APP) on the OTP was an unlawful act in the conspiracy. Nevertheless, such an omission in the pleadings is not fatal for UOB in respect of the conspiracy claim.

93 It is trite that allegations of fraud or misrepresentation must be pleaded with utmost particularity and this principle finds statutory expression in O 18 r 12(1) of the Rules of Court (2014 Rev Ed) (*JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2020] 2 SLR 1256 ("*JTrust*") at [116]). These give effect to the underlying purpose for pleadings, which is "to ensure that each party was aware of the respective arguments against it and that neither was therefore taken by surprise" (*Ma Hongjin v SCP Holdings Pte Ltd* [2021] 1 SLR

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304 at [35]). In that case, the Court of Appeal allowed UOB to raise certain arguments in respect of consideration in a contractual claim notwithstanding the fact that it was not pleaded. The Court of Appeal also emphasised the same point in *SIC College of Business and Technology Pte Ltd v Yeo Poh Siah and others* [2016] 2 SLR 118 at [46]:

> … it must be emphasised that procedure is the handmaiden of justice, not its master. … the process of pleadings is to ensure, *inter alia*, that the plaintiff knows the nature and substance of the defence. ***A court should not adopt "an overly formalistic and inflexibly rule-bound approach" which might result in injustice*** … *Ultimately, the underlying consideration of the law of pleadings is to prevent surprises arising at trial* …
>
> [emphasis added in italics and bold italics]

94 So it is with our present case. As counsel for UOB mentioned at the hearing for CA 67, UOB had pleaded the concealment of the FR. UOB also did plead that the SPP in the OTP granted ***by Lippo*** to the purchasers was "inflated to the extent of the [FR]". That Lippo misrepresented the true price for each of the 38 Units in the OTP is thus not only *coherent* with such pleading but is, in this court's view, *the* ***flipside*** *of the allegation that the FR was concealed.* As mentioned at [25] above, UOB also pleaded that the Conspiracy was to obtain the Excess Loans from it. There can hence be no doubt as to the case which Lippo had to meet in such circumstances and it cannot be said to have suffered prejudice or to have otherwise been taken by surprise, especially in the present circumstances where it had every opportunity to respond to such an allegation.

95 As elaborated above, the SPP was not the real purchase price. It was an inflated price from the real purchase price which was the APP. This court therefore finds that Lippo had falsely reflected the true purchase price on the OTP as the SPP (instead of the APP) in circumstances where it had orally agreed to the FR *before the issuance of the OTP* although the FR letter itself would be

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issued later. We will refer to the false price stated in the OTP as the "OTP Misrepresentations".

The OTP Misrepresentations

96 In this court's view, the OTP Misrepresentations are crucial because *the entirety of the financing and the conveyancing processes* ***flows directly*** *from the SPP in the OTP*. For example, the SPP was repeated in the Housing Loan Application Forms by the purchasers to UOB and also used in the completion accounts by conveyancing solicitors for Lippo, the purchasers and UOB. The use of the SPP as the purchase price in the OTP was where Lippo's combination with the purchasers to obtain Excess Loans and intention to cause damage and/or deceit, if any, must have started.

The Purchase Price Misrepresentations

97 Lippo argues that it was not part of any combination (or agreement) to conceal the FR from UOB and that Ms Woo's *knowledge* that UOB had over-lent does not necessarily render it a co-conspirator. It further argues that the FR "did not cause the Excess Loans" which was, instead, "caused by the failure by the [p]urchasers … to declare" the FR in their respective Housing Loan Application Forms. Such Purchase Price Misrepresentations were, in turn, not made by Lippo.

98 It is important to note that the Judge acknowledged that the purchasers had deceived UOB by concealing the FR from UOB. Lippo knew of the concealment. As mentioned, the question was whether Lippo also agreed to the concealment. The Judge found that Lippo had not agreed for the reasons summarised at [36] above.

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99 With respect, this court does not agree with the Judge that the FRP could still work even without Lippo agreeing to conceal the FR from UOB. The Judge said that the FRP required Lippo to perform four acts (GD at [45]):

(a) collect cheques for the 4% Exercise Fee and the Completion Fee;

(b) issue the FR letter at an amount comprising these two fees and a surplus sum;

(c) credit the surplus sum to each purchaser's account; and

(d) return the cheques for the two fees to each purchaser on completion.

The Judge found that Lippo's ability to perform each of these acts was technically independent of whether the purchasers had disclosed the FR to UOB.

100 This court disagrees with such analysis as the Judge had got the wrong end of the stick. If the FR had been disclosed in the first place, the entire scheme would have unravelled such that either UOB would not have lent any sum or would have lent a lower sum based on the APP and not the SPP. If the purchasers were still to proceed with the purchases, they would have to pay the 4% Exercise Fee and Completion Fee out of their own pockets, which was contrary to the very purpose of the scheme. As mentioned at [16] above, the FRP was devised to address the "difficulties faced in getting buyers for the Marina Collection" in view of the requisite payments of, among others, the 4% Exercise Fee and Completion Fee.

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101 In so far as the Judge was of the view that Lippo could simply have been "not concerned" with the circumstances under which excess loans were being granted, the Judge also expressed that Lippo was perhaps "apathetic" or had acted "without caring" how UOB would be affected (GD at [47], [71] and [77]). This might be sharp practice by Lippo but it was not unlawful.

102 Significantly, the Judge had overlooked the fact that the genesis of the steps to be taken under the scheme was the issuance of the OTP by Lippo using the SPP and not the APP. As mentioned, the concealment of the FR was merely the flipside of this.

103 This was not a case where Lippo had issued the OTP with the APP and it was the brokers or purchasers who doctored the price in the OTP to deceive UOB without Lippo's consent or prior agreement and Lippo then remained silent. It was Lippo itself who deliberately stated the false price in the OTP. Hence, this was not just a question of apathy, a lack of concern or care or sharp practice by Lippo as the Judge had thought. It was much more than that. Lippo had armed the purchasers with the instrument to deceive UOB.

104 Thus, the Judge erred in holding that there was no duty on Lippo to disclose the FR to UOB. Once Lippo's act of issuing the OTP with a false price is established, it becomes meaningless to consider whether Lippo had a duty to disclose the FR since obviously it would not disclose its own wrongful act. Indeed, at the hearing for CA 67, Lippo's counsel conceded the point if this court were to conclude that the FR was a device to mislead UOB.

105 Likewise, it is also meaningless for Lippo to argue that it was under no obligation to state the FR in the OTP, or it was otherwise "solely within its discretion" as to how Lippo accepted payment of the 4% Exercise Fee and

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Completion Fee from the purchasers. These arguments are premised on the SPP being a genuine price.

106 As for Lippo's argument that the Excess Loans were granted not because Lippo had granted the FR but because the FR was concealed by the brokers and/or the purchasers, this ignores the fact that Lippo concealed the FR and the APP by stating the SPP on the OTP in the first place and the SPP was a false price.

107 In the circumstances, this court finds that Lippo had combined and agreed, either expressly or impliedly, with the purchasers to deceive UOB. As will be elaborated later, the only reason why UOB fails in its claim against Lippo for deceit was because of its poor pleading and not because there was in fact no deceit on the part of Lippo. This court does not agree with Lippo's suggestion that it played a limited role as it was merely the developer of the 38 Units sold. As is obvious from what has been said, Lippo did much more than simply sell the units.

The Payment Misrepresentations

108 The first step that Lippo took in furtherance of the conspiracy to cause UOB to lend in excess of the APP was thus the OTP Misrepresentations. This was part of the Purchase Price Misrepresentations. Another step was to mislead TSMP and in turn PKWA, who were acting for the purchasers and UOB, into believing that the Balance Purchase Price, which amounted to at least 20% of the SPP, had been paid so that UOB would disburse the moneys under the loans. In this court's view, the Payment Misrepresentations made by Lippo were likely conveyed to UOB *in furtherance* of the FRP, but again UOB's case in this category of misrepresentation falters because of poor pleading as will be

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elaborated later. Another issue is whether UOB had *relied* on such representations (*ie*, contained in letters from TSMP) or on other representations (*ie*, Form 3). This issue is addressed later.

Other Misrepresentations

109 In the circumstances, it is not necessary for us to render any view as to whether Lippo participated in the alleged Identity Misrepresentations or the Financial Standing Fraud.

110 For completeness, it is noted that the substance of the alleged Identity Misrepresentations was that some of the purchasers were really nominees of other persons and Lippo knew or ought to have known this. The use of nominees was alleged to be part of the conspiracy.

111 The substance of the Financial Standing Fraud was that the purchasers had timed the movement of money among various accounts of the purchasers in UOB to create an inaccurate picture of the amounts held in their accounts and hence their financial standing so that UOB would grant the loans. It was alleged that this too was part of the conspiracy.

Intention to injure and loss suffered

The parties' cases on appeal

112 Lippo's case is that there was no intention to injure UOB and that there was no injury to UOB at the point when the loans were disbursed. In that regard, there is no evidence that Lippo knew that the purchasers would default or that UOB had insufficient security since UOB relied on its own independent valuations of the 38 Units. In any case, the FRP was part of the Wider Plan, by virtue of which there "could not have been any intention to cause … economic

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loss" as the plan was for the purchasers to profit from the purchases. In particular, the success of the Wider Plan depended on UOB *not* suffering any such economic loss. In other words, this was not a case where the intention, from inception, was that the purchasers would default on the repayment of the loans.

113 Lippo argues that UOB has not demonstrated that, as a result of the Excess Loans, it was left under-secured or otherwise suffered loss. Lippo relies on the same fact that the Judge had found below – that the independent appraisers determined that the OMV was equal to the SPP. Lippo highlights that "none of these [appraisers] resiled from their respective valuations or qualified these valuations" despite having now known about the FR [emphasis in original]. Lippo submits that this is to be expected, since other factors were also considered in coming to the valuations. In any case, even if UOB had over-lent, it was "never under-secured" *because there was* "always at least a 20% buffer between the OMV of a [u]nit and the [l]oan granted for that [u]nit".

114 Furthermore, Lippo submitted, at the hearing for CA 67, that at the time the FR was granted, there was only a "contingent loss" which could only arise *upon default*.

115 UOB's case is that there was an intention to injure and loss was suffered as a result. UOB submits that the Judge erred in effectively requiring a "level of intent equivalent to a predominant intention to injure" and whether Lippo was "primarily concerned" with the sale of the 38 Units is wholly immaterial. UOB also argues that the Judge's reasoning that Lippo did not know that UOB had to "over-lend" is incorrect since Lippo "must have known that this was a necessary ingredient to implement" the FRP. That was because the FRP could proceed "**if**

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and only if the [p]urchaser obtained the Excess Loans from" UOB [emphasis in original].

116 UOB also argues that its claims against Lippo cannot be defeated on the Judge's difficulty in determining the "true price for real property" because the Judge allowed the claims in deceit against Mr Goh and Ms Ho (GD at [130]). In that regard, UOB also submits that the loans exceeded the "true value" of the 38 Units and as such UOB was left "partially unsecured". Relatedly, the Judge erred in finding that since the SPP "matched the independent valuations" of the 38 Units, UOB could not have suffered loss.

Intention to obtain Excess Loans as intention to injure

117 Lippo's reliance on the valuations has been addressed earlier. It is worth reiterating that UOB would have based the loan granted on the *lower* of the purchase price and the OMV. Whether the true value would have been sufficient to provide a buffer is a separate question. It cannot be disputed that UOB had lent more than they would have if the APP were stated in the OTP or the Housing Loan Application Forms.

118 An illustration may assist to demonstrate this point. Suppose a supplier of goods issues a false invoice to a buyer in which the price is inflated, *knowing* that the buyer is going to use the invoice with the inflated price to obtain a higher loan from the bank. In this court's view, the intention to injure the bank is obvious even if the bank has security over the goods. In principle, the scheme which Lippo entered into with the purchasers is similar. Although UOB has security over the 38 Units and it had obtained valuations from independent appraisers, this does not change the substance of the illustration. UOB had, at the very least, lent more than it would have by basing its loan on the inflated

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purchase price as reflected in the OTP. Indeed, the crux of Lippo's defence is that the SPP is not an inflated price. Once that premise fails, it undermines Lippo's argument that there was no intention to injure UOB.

119 The Wider Plan does not demonstrate that Lippo had no intention to cause damage to UOB. As mentioned at [34] above, the requirement of intention may be satisfied if the damage to UOB was intended *as a **means to an end** and not only where such intention was the end in itself*. Accordingly, whether the FRP was part of the Wider Plan to earn profits by way of investing in the 38 Units cannot *ipso facto* demonstrate that there was no intention to cause damage to UOB. Put another way, even if the Wider Plan was conceived with the objective of the purchasers making gains, this does not alter the fact that it was also to injure UOB.

120 Lippo's contention that the Wider Plan depended on UOB *not* suffering any economic loss is thus both unpersuasive and immaterial. In so far as Lippo also argues that any investment bears significant risks, that is not the point. In the context of the present analysis, the point here is UOB lending more than it would have. It does not matter that UOB would not have suffered economic loss *in the event that the investment succeeded*. Even taking Lippo's case at its highest, injury to UOB must have been intended as a ***means** to an end*.

121 In so far as Lippo argues that UOB had a buffer because the valuations exceeded the loan amounts, this argument assumes that the valuations reflect the true value of the 38 Units which, for the reasons elaborated earlier, this court disagrees with.

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Loss suffered as a result of the conspiracy

122 The question that follows is whether UOB suffered loss as a result of the conspiracy.

123 UOB argued that it was sufficient for UOB to establish the *risk* of loss if the scheme unravelled. It relied on two cases, *JTrust* at [209] and *Bank Gesellescharft Berlin International SA v Zihnali and others* [2001] All ER (D) 192 at [31] to [33]. There was no response by Lippo to this argument and the authorities cited in its written submissions before this court. It was only at the hearing that Lippo's counsel referred this court to *IPP Financial Advisers Pte Ltd v Saimee bin Jumaat and anor appeal* [2020] 2 SLR 272, in its supplemental bundle of authorities filed just two days prior to the hearing of CA 67. Lippo's response is a non-starter as Lippo's counsel conceded that that case dealt with the question of when a cause of action arose for the purpose of limitation.

124 The facts in the two cases cited by UOB are different from the present case although this court accepts the general principle that the risk of loss is sufficient to sustain a claim for conspiracy. UOB had lent more than it would have and it does not assist Lippo to say that there would have been no actual loss *if the purchasers had not defaulted*. That is a rhetorical argument since all 38 purchasers in the present case have defaulted on their respective loans.

Acts constituting "unlawful means"

The OTP Misrepresentations and Purchase Price Misrepresentations

125 UOB's pleaded case focused on various acts including the Purchase Price Misrepresentations which was, in turn, based on the concealment of the FR. That was not, in fact, the only unlawful act. In this court's view, the first

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obvious act which was unlawful was the issuance of the OTP with an inflated figure as the *SPP* that did not reflect the actual purchase price to be paid by the purchaser (*ie*, the OTP Misrepresentations). As discussed, though this was not pleaded (as such) in UOB's SOC, such lack of pleading is not fatal. Fortunately for UOB, it did plead the concealment of the FR which, as this court held earlier, is the flipside of the OTP Misrepresentations.

126 The Judge was of the view that the unlawful activities took place at a later stage downstream at the loan procurement stage (GD at [71] and [72]). Such unlawful activities were perpetuated by the purchasers and not Lippo and hence Lippo was not tainted by them. As mentioned, the Judge was of the view that Lippo could simply have been "not concerned" with such unlawful activities. However, as earlier elaborated, there was more than a lack of concern on Lippo's part. The Judge had erred because he had concluded that the SPP was supported by the valuations when in fact it was an inflated price. Once that is established, his reason for not finding Lippo liable for unlawful acts is not supportable.

Unlawful Purpose and Cheating

127 UOB also stressed that Lippo's conduct had caused it to breach MAS Notice 632, a directive which Lippo was aware of. This was because UOB had effectively lent more than 80% of the real value (as represented by the APP).

128 The Judge was of the view that the breach of MAS Notice 632 was a consequence of the FRP and not the purpose of the scheme (GD at [96]). It is unnecessary for us to determine whether this was a valid distinction because, in this court's view, UOB can succeed on the conspiracy claim without relying on the breach of MAS Notice 632.

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129 Nor does UOB need to rely on Cheating to succeed on its conspiracy claim. This court need not say more on that.

Conclusion on the claim in unlawful means conspiracy

130 For the reasons mentioned above, this court holds Lippo liable for the tort of unlawful means conspiracy. The Conspiracy was planned by Ms Woo and Mr Goh as a way to essentially (and brazenly) circumvent the Government's property cooling measures.

131 This is sufficient to determine UOB's appeal. We nevertheless briefly consider UOB's claim in the tort of deceit for completeness.

Issue 2: Deceit in making the Payment Misrepresentations

The issue to be determined

132 Regarding the claim in the tort of deceit, UOB had pleaded the Purchase Price Misrepresentations as against Mr Goh and Ms Ho only. Even though it pleaded that Lippo ought to be "equally liable for the Purchase Price Misrepresentations", it did not plead this specific *act of deceit* against Lippo, which it could easily have done. As mentioned above, the issuance of the OTP with the false price (*ie*, the SPP) would have clearly constituted an act of deceit by Lippo.

133 Instead, UOB pleaded another act of deceit committed by Lippo, *ie*, the Payment Misrepresentations which is the issue in the appeal on deceit.

The applicable legal principles

134 The elements of the tort of deceit are as follows (*Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14]):

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

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

(c) the representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff;

(d) the plaintiff acted upon the false statement; and

(e) the plaintiff suffered damage in so doing.

135 The elements assume that the representation is made directly to the plaintiff or indirectly through its agent. In most cases, the party to whom such representation was made is not disputed. However, it is disputed in the present case and, in this court's view, it is a threshold issue in respect of UOB's claim in deceit against Lippo. Relatedly, the fourth element is also in issue (*ie*, whether UOB acted or relied upon the representation).

Background to the disbursements of the Housing Loans

136 Before UOB disbursed moneys under the loans, cl 1.1(x) of the Standard Terms provides that one of the conditions precedent to the disbursement of the housing loan is that UOB must be "satisfied" that the purchaser has paid the Balance Purchase Price. In ordinary circumstances, the Balance Purchase Price entails the sum of the 1% Option Fee, 4% Exercise Fee and the Completion Fee (*ie*, at least 20% of the SPP, this being in accordance with the 80% LTV Limit).

137 TSMP had written to Lippo requesting confirmation that all these fees had been paid so that TSMP "may proceed to complete the sale" of the property.

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Lippo replied to TSMP stating that it had received the cheques for the Balance Purchase Price *without stating that it* ***had not encashed the cheques for the same***. It is worth emphasising that the Balance Purchase Price referred to therein was based *on the SPP and not the APP*. Ms Woo also admitted that Lippo had not informed TSMP, its own conveyancing solicitors, of the FR. As such, TSMP's completion accounts incorrectly reflected that the 4% Exercise Fee and Completion Fee (as well as the 1% Option Fee) were paid. These completion accounts were also, again, based on the SPP and not the APP.

138 TSMP, in turn, wrote letters to PKWA (the "TSMP Letters") suggesting that the Completion Fee had been paid by 37 out of the 38 purchasers. Lippo knew that this was false information but TSMP did not know. Neither did PKWA. It is common ground between parties that the TSMP Letters addressed to PKWA generally contained one of the four statements (GD at [18]):

(a) "Our clients confirm that they have received your client's cheque of $[...] ... our clients will advise us whether the same is cleared before completion can take place...";

(b) "Our clients confirm that they had received a sum of $[...] from your client direct towards part payment...";

(c) "We are instructed by our clients that they had received a sum of $[...] from your client direct towards part payment..."; and

(d) "We are instructed by our clients that they had received... cheque(s) ... from your client direct towards part payment...".

139 For the remaining purchaser, Theodora Budi Halimundjaja, TSMP did not expressly state in its letters to PKWA any of the four phrases (GD at [19]). Instead, TSMP wrote a letter to PKWA, enclosing various documents, including

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a completion account, and requested that TSMP be provided with a cashier's order for the balance sale proceeds on completion. After PKWA informed TSMP how and when the balance sale proceeds would be paid, the transaction proceeded to completion, following which TSMP issued a second letter enclosing a duly executed Instrument of Transfer, as well as keys and access cards to that unit.

The TSMP Letters

140 Unfortunately for UOB, it had not paid sufficient attention to the fact that PKWA was acting in two different capacities. PKWA had acted, on the one hand, as solicitors for the purchasers, and, on the other hand, as solicitors for UOB. The letters which UOB relied upon in its SOC were letters written by TSMP to PKWA *in PKWA's capacity as solicitors for the purchasers*. UOB pleaded that the TSMP Letters were sent to PKWA, in PKWA's capacity as solicitors *for UOB*. Lippo pleaded that the TSMP Letters were addressed to PKWA solely in PKWA's capacity as solicitors *for the purchasers*. Thus Lippo took the position that UOB's pleading was defective. This court agrees that the substance of the letters shows that they were addressed to PKWA as solicitors for the purchasers and not for UOB. It would have been a simple matter for UOB to elaborate that Lippo knew and intended that the false information would be further conveyed to UOB's solicitors and hence to UOB too for both of them to act upon. UOB did not do so and, to that extent, this court agrees that UOB's pleading was defective.

141 If that had been resolved by proper pleading, the other point would have been whether UOB had relied upon the Payment Misrepresentations made by Lippo. This issue involves a form, *ie*, Form 3, which PKWA issued to UOB as

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UOB's solicitors. In that form, PKWA confirmed that the Balance Purchase Price (excluding the loan amounts) had been paid (GD at [117]).

142 The Judge found that PKWA had issued Form 3 and UOB relied on this form to disburse the loan amount by way of a cashier's order in each case. Since UOB's witnesses said they relied only upon Form 3, UOB had failed to prove that it had relied on the TSMP Letters on the Payment Misrepresentations before disbursing the loan amount (GD at [120] and [128]). It was also telling to the Judge that in four cases, the cashier's order was issued before the date of the relevant TSMP letter (GD at [122]).

143 In the light of the defective pleading by UOB, this court need not decide on this point of reliance. Nevertheless, if UOB had sufficiently pleaded its case, this court might not have agreed with the Judge's conclusion on this issue. Even though UOB relied on Form 3, and not the TSMP Letters, it seems likely that PKWA would not have issued Form 3 *but for* the false information in the TSMP Letters which, in turn, was based on information which it had received from its client, Lippo. As intimated, Lippo would know that the false information would be further conveyed to UOB's solicitors and to UOB in one way or another.

144 The fact that in four cases, the cashier's order was issued before the date of TSMP's letter is not necessarily fatal to UOB's case on reliance. As UOB argues, the cashier's order is released to PKWA in order to complete the transaction on UOB's behalf.

145 It would have been unlikely for PKWA to then release the cashier's order to Lippo's solicitors if PKWA was not satisfied that the Balance Purchase Price had been paid, and PKWA would have been satisfied of this upon receipt of the relevant letter from TSMP. Hence, the earlier issuance of the cashier's

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order by UOB and its release to PKWA, as UOB's solicitors, did not necessarily mean that there was non-reliance by UOB or PKWA, as UOB's solicitors, on the TSMP Letters.

146 It is noted that UOB did not call the conveyancing solicitor from PKWA in charge of its files to give evidence for UOB or any other solicitor from PKWA to do so. This was not a satisfactory situation. It was for UOB to prove that PKWA relied on the TSMP Letters, which contained the Payment Misrepresentations, in the course of the conveyancing process. Yet, no witness was called upon to attest to such fact. It may be that PKWA had declined to give evidence on the ground of conflict of interest as it had acted as solicitors for the purchasers and UOB but, without elaboration, this court is not persuaded that this is a valid point for PKWA to take, if it did. While Ms Tee's evidence was helpful to some extent, it was not a satisfactory substitute for the evidence of the relevant solicitors from PKWA. She would not have been able to speak for PKWA as to whether PKWA in fact relied on the TSMP Letters when issuing Form 3.

Conclusion

147 In summary, this court allows CA 67 in part as against the Judge's decision on the claim in conspiracy. UOB's claim in the tort of unlawful means conspiracy succeeds while the claim in the tort of deceit fails. Lippo is liable to pay damages to UOB, the quantum of which will be determined at the assessment of damages.

148 As for costs, under Appendix G to the Supreme Court Practice Directions, the applicable range of costs is between $30,000 and $150,000. Parties also agree that costs should follow the event. The dispute involving

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Lippo would not have been particularly complex had UOB focussed on Lippo's role in inserting the SPP in the OTP. It is also noted that UOB did not succeed in its claim for deceit. This court awards UOB 70% of the costs of the appeal which we assess to be $70,000. 70% of that is $49,000. This does not include disbursements of the appeal for which UOB claims $45,256.04 because of voluminous documents. However, a substantial part of the documents was not necessary for CA 67 as they were repeat documents which were common to the purchasers. UOB should have sought directions whether they could have used sample documents instead. In the circumstances, this court awards UOB $10,000 for disbursements of the appeal.

149 We set aside the costs order of the Judge in respect of costs below as between Lippo and UOB. We order Lippo to pay UOB 90% of the costs below plus reasonable disbursements since UOB has not succeeded in its claim on deceit but most of the factual getting up for the conspiracy claim would include the getting up for deceit. For the avoidance of doubt, there is no certificate for three counsel for the costs below.

150 The usual consequential orders apply.

Observation

151 It is noted that Lippo does not appear to fully appreciate the gravity of its conduct. This matter should have been settled before it reached a trial. Not only did it deceive UOB, other appraisers and purchasers would also rely on the SPP in the OTP to value other units in Marina Collection which are purchased

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or in comparable projects. The SPP presented a distorted picture of a segment of the property market.

Belinda Ang Saw Ean
Judge of the Appellate Division

Woo Bih Li
Judge of the Appellate Division

Quentin Loh
Judge of the Appellate Division

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