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

[2025] SGHC 109

Originating Claim No 366 of 2024 (Registrar's Appeal Nos 202 and 203 of 2024)

Between

Far East Opus Pte. Ltd.

… *Appellant*

And

Kuvera Properties Pte. Ltd.

… *Respondent*

JUDGMENT

[Civil Procedure — Pleadings — Amendment]
[Civil Procedure — Pleadings — Striking out]
[Limitation of Actions — Particular causes of action — Contract — Whether actions under Section 2 of the Misrepresentation Act 1967 founded on contract — Section 6(1)(*a*) of the Limitation Act 1959]
[Limitation of Actions — Particular causes of action — Whether actions under Section 2 of the Misrepresentation Act 1967 are actions for relief from the consequences of a mistake — Section 29(1)(*c*) of the Limitation Act 1959]
[Limitation of Actions — Particular causes of action — Whether actions under Section 2 of the Misrepresentation Act 1967 are actions for breach of duty where the duty exists by virtue of a provision made by or under any written law — Section 24A(1) of the Limitation Act 1959]
[Contract — Misrepresentation Act — Whether damages in lieu of rescission can be claimed if rescission is time-barred — Section 2(2) of the Misrepresentation Act 1967]

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[Limitation of Actions — When time begins to run — Section 24A(3)(*b*) of the Limitation Act 1959]

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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.

Far East Opus Pte Ltd
v
Kuvera Properties Pte Ltd

[2025] SGHC 109

General Division of the High Court — Originating Claim No 366 of 2024
(Registrar's Appeal Nos 202 and 203 of 2024)
Lee Seiu Kin SJ
18 February 2025

10 June 2025 Judgment reserved.

Lee Seiu Kin SJ:

1 These are appeals HC/RA 202/2024 and HC/RA 203/2024 brought by the defendant, Far East Opus Pte Ltd, against the decisions of the learned Assistant Registrar in HC/SUM 1891/2024 ("SUM 1891") and HC/SUM 2855/2024 ("SUM 2855") respectively. The claimant, Kuvera Properties Pte Ltd, has brought a claim against the defendant for allegedly inducing the claimant to purchase a medical unit by making certain misrepresentations. In SUM 1891, the learned AR dismissed the defendant's application to strike out the whole of the claimant's action for being time-barred. In SUM 2855, the learned AR granted the claimant's application to amend its

Statement of Claim ("SOC") to include a claim for breach of contract, and to provide details regarding its attempts to seek expert advice.

2 Having heard the parties, I allow both appeals. These are my reasons.

Background facts

3 I outline the pertinent background facts as alleged by the claimant.

4 Sometime on 29 January 2013, the claimant's representatives allegedly learnt that the defendant was to launch a development (the "Development") that included some medical units.[1] These medical units would collectively form a medical centre (the "Medical Centre").[2] Sometime in March 2013, the claimant's representatives met the defendant's sales agents.[3] At the meeting, the defendant's sales agents allegedly made various representations concerning the medical units to the claimant's representatives either orally or via marketing materials (collectively, the "Representations").[4]

5 The claimant avers that the Representations were made to induce the claimant into buying a medical unit.[5] In reliance on the Representations, the claimant received an option to purchase a medical unit (the "Medical Unit") dated 15 March 2013, and executed a Sale and Purchase Agreement (the "SPA") on 18 April 2013.[6]

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1 Statement of Claim (Amendment No. 1) dated 2 October 2024 ("SOC A1") at paras 3–5.

2 SOC A1 at para 9.4.

3 SOC A1 at paras 7–8.

4 SOC A1 at paras 10–12, 14–15.

5 SOC A1 at para 16.

6 SOC A1 at para 17.

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6 The claimant received the keys to the Medical Unit in August 2016.[7] Immediately thereafter, the claimant attempted to procure a tenant for the unit, but was unable to do so until April 2021.[8]

The 21 May 2018 meeting

7 On 21 May 2018, there was allegedly a meeting between the defendant and various owners of the medical units, including the claimant (the "21 May 2018 Meeting").[9] At the meeting, various owners of the medical units raised troubling issues relating to the medical units and asked if the Medical Centre was capable of functioning as a medical centre.[10] The defendant allegedly maintained the Representations.[11] The claimant says that its representative, Mr Gabriel Ravi Rai, believed these representations.[12]

8 At the same meeting, the defendant allegedly affirmed that the Medical Centre was capable of functioning as a dedicated Medical Centre (the "Assurance").[13] The defendant also allegedly made the following four promises (collectively, the "Promises"):[14]

> (a) to engage an expert to provide a vibration and magnetic site survey report, which would show that the Medical Centre had features

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7 SOC A1 at para 21.

8 SOC A1 at paras 22–24.

9 SOC A1 at para 26.

10 SOC A1 at paras 26–27.

11 SOC A1 at para 28.

12 SOC A1 at paras 29–30.

13 SOC A1 at para 31.

14 SOC A1 at paras 31A–31D.

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that the claimant was concerned it did not have (the "Promised Expert Report");

(b) to extend to the claimant a copy of the Promised Expert Report (the "Promise to Extend Promised Report");

(c) to take steps to increase the electricity supply to the Medical Centre (the "Promise to Increase Electrical Supply"); and

(d) to take steps to install exhaust pipes to expel gas and/or fumes from magnetic resonance imaging ("MRI") machines (the "Promise to Install Pipes").

The 1st and 2nd AGMs

9 On 3 August 2018, the first annual general meeting of the Development took place (the "1st AGM"). In line with the Promises, the defendant supported a special resolution for the use of common property at the Development to provide additional electric supply and mechanical services and to install an exhaust duct. However, the special resolution failed.[15]

10 On 22 August 2019, the second annual general meeting took place (the "2nd AGM"). The defendant again supported a special resolution for the exclusive use of the common property for the purpose of installing pipes and equipment for the operation of medical equipment. This was again unsuccessful.[16]

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15 SOC A1 at paras 36–37; 2nd Affidavit of Gabriel Ravi Rai filed 2 October 2024 ("GRR's 2nd Aff") at paras 16–17.

16 SOC A1 at para 38.

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The expert report

11 By the first quarter of 2020, the claimant had not received the Promised Expert Report. It sought legal advice and was advised to obtain an expert report of its own.[17] The claimant avers that its search for an expert was disrupted by Covid-19, and it faced difficulties locating an expert with specialised knowledge in assessing health facilities.[18] It formally engaged an expert on 9 February 2022.[19] The expert produced a report dated 22 November 2022 (the "Expert Report").[20]

Procedural history

12 On 16 May 2024, the claimant filed HC/OC 366/2024 ("OC 366"). The claimant alleges that it was induced by the Representations to purchase the Medical Unit and suffered losses.[21] It seeks recission of the SPA or damages in lieu of recission under s 2 of the Misrepresentation Act 1967 (2020 Rev Ed) (the "MA").[22] Alternatively, the claimant seeks damages in the sum of $860,841.75 (the difference between the purchase price and the price of a similar office unit[23]), damages to be assessed or damages for misrepresentation under s 2 of the MA.[24]

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17 SOC A1 at para 38B.

18 SOC A1 at para 38C.

19 SOC A1 at para 38G.

20 SOC A1 at para 38I.

21 Statement of Claim dated 16 May 2024 ("SOC") at para 50.

22 SOC at paras 53–54, p 27 paras I–II.

23 SOC at para 54(a).

24 SOC at p 27, paras III–V.

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The striking out application

13 On 5 July 2024, the defendant filed SUM 1891. It applied to strike out the whole of OC 366 on the ground that the claimant's claim in misrepresentation was time-barred.[25] The defendant has not filed its defence yet.[26] While it may of course subsequently contest the facts in the claimant's statement of claim, the defendant rests its case for striking out on the facts as pleaded by the claimant.

14 SUM 1891 was first heard on 18 September 2024. Amongst other things, the claimant submitted that it had advanced an alternative cause of action for breach of contract. It acknowledged that the pleadings for this cause of action were "sloppy" but submitted that it had pleaded the material facts.[27] These facts were that:

(a) the defendant had made certain promises at the 21 May 2018 Meeting; and

(b) the defendant failed to deliver on those promises on 3 August 2018 or 22 August 2019, in breach of contract.[28]

15 The claimant argued that, pursuant to s 24A(3)(*a*) of the Limitation Act 1959 (the "LA"), it had six years to bring the claim from the date on which the

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25 Defendant's written submissions dated 7 February 2025 ("DWS") at para 31.

26 Minutes of hearing in HC/RA 202/2024 and HC/RA 203/2024 on 18 February 2025 ("18 Feb Minutes") at p 2.

27 Notes of Evidence of Hearing in HC/SUM 1891/2024 on 18 September 2024 ("18 Sep NEs") at p 2, lines 8–20.

28 Claimant's written submissions in HC/SUM 1891/2024 dated 10 September 2024 ("CWS (Sep 2024)") at paras 20–21.

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cause of action accrued, *ie*, until 3 August 2024 or 22 August 2025. It had brought its claim within this window.[29]

16 The defendant objected that the alternative cause of action for breach of contract had not been properly pleaded. Neither had any application been made to amend the SOC.[30] In any event, the factual basis for such a claim was lacking. The claimant had not pleaded that there was consideration for the Promises, or an intent to create legal relations.[31]

17 The claimant indicated that it would like an opportunity to amend the SOC.[32] The learned AR adjourned the hearing to allow the claimant to file its amendment application.

The amendment application

18 On 2 October 2024, the claimant filed SUM 2855, its application to amend its SOC. It sought to make two kinds of amendments: (a) amendments concerning the steps and difficulties it faced in finding an expert (the "Expert

29 CWS (Sep 2024) at para 21.

30 18 Sep NEs at p 2 lines 26–27.

31 18 Sep NEs at p 3 lines 22–28.

32 18 Sep NEs at p 6 line 27 to p 7 line 8.

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Advice Amendments"), and (b) amendments to reflect that it was pursuing a claim for breach of contract (the "Breach of Contract Amendments").[33]

The decision below

19 The learned AR allowed the claimant's amendment application, with liberty to the claimant to "make clear in the amended SOC its position on when the breach of the contract occurred and to include particulars on the consideration for the alleged contract, for example, that there was an implied request for forbearance from the defendant".[34] The learned AR dismissed the defendant's striking out application (*ie*, SUM 1891).

20 On SUM 2855, the learned AR did not consider there to be a time bar issue as the action for breach of contract arose out of the same or substantially the same facts as the existing cause of action.[35] Further, she did not consider it plain and obvious at this stage that there was no consideration.[36]

21 On SUM 1891, the learned AR did not consider it plain and obvious that the claimant cannot rely on s 24A(3)(*b*) or s 29(1)(*c*) of the LA. In respect of s 24A(3)(*b*), she did not consider it plainly and obviously unsustainable for the claimant to argue that there had been a statutory breach of duty by virtue of the misrepresentations and the MA.[37] In respect of s 29(1)(*c*), which does not appear to have been considered yet by the Singapore courts, she did not consider it plain

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33 Claimant's written submissions in HC/RA 202/2024 and HC/RA 203/2024 ("CWS") dated 7 February 2025 at para 20.

34 Notes of Evidence of Hearing in HC/SUM 1891/2024 and HC/SUM 2855/2024 on 1 November 2024 ("1 Nov NEs") at p 2 lines 4–9.

35 1 Nov NEs at p 2 lines 14–17.

36 1 Nov NEs at p 2 lines 18–20.

37 1 Nov NEs at p 2 line 28 to p 3 line 2.

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and obvious that the UK position that mistake must be an essential ingredient of the cause of action would be adopted in Singapore.[38] The learned AR also did not consider it plain and obvious that the claim would be time-barred even on the extended time period provided under s 24A(3)(*b*) or s 29(1)(*c*), considering the fact sensitive nature of the question.[39]

The present appeal

22 The defendant now appeals against the decisions in both SUM 2855 and SUM 1891. It argues that the claimant is only advancing a claim in misrepresentation under s 2 of the MA and not in the tort of negligent misrepresentation.[40] It submits that this claim is time-barred under s 6(1)(*a*) of the LA.[41] It denies that the limitation period is extended by ss 29(1)(*c*) or 24A(3) of the LA.[42] Even if these provisions apply, the claim would still be time-barred.[43] The misrepresentation claim should therefore be struck out, along with the Expert Advice Amendments.[44] The defendant also argues that the Breach of Contract Amendments should not be allowed because they do not disclose a viable claim and, in any event, the claim is time-barred.[45]

23 For its claim in misrepresentation under s 2 of the MA, the claimant submits that no limitation period applies.[46] Alternatively, ss 29(1)(*c*) or

38 1 Nov NEs at p 3 lines 4–24.

39 1 Nov NEs at p 3 line 26 to p 4 line 2.

40 DWS at para 4.

41 DWS at para 5.

42 DWS at paras 9–11.

43 DWS at para 141.

44 DWS at paras 11, 95.

45 DWS at paras 47, 73.

46 CWS at para 57.

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24A(3)(*b*) of the LA applies, and the claimant acquired the requisite knowledge sufficiently recently such that its claim fell within the extended limitation period.[47] The claimant also now submits that its pleadings disclose a claim in the tort of negligent misrepresentation (see [57] below), and that s 24A(3)(*b*) of the LA is applicable to this claim.[48] Finally, the claimant submits that its proposed breach of contract claim is neither defective nor time-barred.[49]

24 As this is an appeal from an AR to a Judge in Chambers, it proceeds by way of a rehearing on the documents filed by the parties before the AR (O 18 r 25(4) of the Rules of Court 2021 ("ROC 2021")). Therefore I should treat the matter afresh as though it came before me the first time (*Lassiter Ann Masters v To Keng Lam (alias Toh Jeanette)* [2004] 2 SLR(R) 392 at [10], citing *Herbs and Spices Trading Post Pte Ltd v Deo Silver (Pte) Ltd* [1990] 2 SLR(R) 685 at [12]).

Issues

25 I find it appropriate to first consider whether the claimant's proposed amendments should be allowed, before considering whether the claim, as amended or otherwise, should be struck out. Accordingly, the issues for my determination are as follows:

(a) *Breach of Contract*:

(i) First, do the Breach of Contract Amendments disclose a claim in contract?

47 CWS at paras 59, 81, 99.

48 CWS at paras 5–14, 53–54.

49 CWS at paras 159–162, 166–168.

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(ii) Second, is the putative contractual claim time-barred?

(b) *Negligent Misrepresentation*: Do the claimant's pleadings disclose a claim in the tort of negligent misrepresentation?

(c) *Misrepresentation under s 2 of the MA:*

(i) First, is s 6(1)(*a*) of the LA applicable?

(ii) Second, if so, is s 29(1)(*c*) of the LA applicable?

(iii) Third, is s 24A(3)(*b*) of the LA applicable?

(iv) Fourth, is the claim for misrepresentation under s 2 of the MA time-barred?

The Breach of Contract Amendments

The applicable principles

26 The relevant principles are not disputed. An amendment that is liable to be struck out will not be allowed (*EA Apartments Pte Ltd v Tan Bek and others* [2017] 3 SLR 559 at [25]). In particular, leave to amend a statement of claim should not be granted where the amendment raises no reasonable cause of action (*Lim Yong Swan v Lim Jee Tee and another* [1992] 3 SLR(R) 940 at [43]). The test is "whether the action has some chance of success when only the allegations in the pleadings are concerned" (*Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 (*"Iskandar*") at [17], citing *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [21]). In the present case, this depends, firstly, on whether the Breach of Contract Amendments disclose a claim in contract, and secondly, even if they do, whether that claim is time-barred.

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Do the Breach of Contract Amendments disclose a claim in contract?

27 As a preliminary matter, I note that the claimant did not have a finalised draft of its SOC. This was not ideal. In a striking out application, the court has the power to order that the pleading be amended instead of struck out (O 9 r 16 of the ROC 2021). However, having been granted leave to apply to amend, it was incumbent on the claimant to place its proposed amendments in full before the court, so as to provide the court with a clear basis to decide whether to allow the amendments. The claimant had multiple opportunities to frame its contractual claim. At the outset, the claimant sought to bring a claim for breach of contract, but did not in fact address this claim in its original SOC, as rightly noted by the learned AR at the initial hearing below.[50] The learned AR granted the claimant an adjournment to amend its SOC and warned that a further extension of time might not be given absent exceptional reasons.[51] In its amended SOC ("SOC A1"), the claimant still omitted to include key details of its contractual claim, namely when the breach occurred and particulars of the consideration for the alleged contract. The learned AR granted the claimant's amendment application with leave to make these details clear in its amended SOC (see [19] above). At the hearing before me, I asked if the claimant had a finalised draft of its SOC. It did not. Instead, it was content to proceed on the basis that it wanted the amendments in SOC A1 allowed, subject to the provision of the particulars stated by the learned AR.[52] I therefore proceed on this basis.

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50 18 Sep NEs at p 2 lines 23–24.

51 18 Sep NEs at p 8 lines 22–27.

52 18 Feb Minutes at p 2.

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Parties' cases

28 The claimant highlights that its proposed amendments are sought at a very early stage in the proceedings. Therefore, there is no prejudice to the defendant that cannot be compensated by costs.[53] The amendments would make the issues in dispute clearer and assist the defendant in knowing what case it has to meet at trial.[54]

29 The claimant also submits that its amendment discloses a cause of action in contract. It argues that its forbearance from commissioning its own expert amounts to consideration.[55] This forbearance was implied.[56] If the point needs to be pleaded, the claimant submits that it should be granted liberty to do so.[57]

30 The defendant submits that the claimant's intended breach of contract claim fails because the pleaded facts do not disclose a contract. There was no exchange of mutual promises. The claimant merely claims to have *relied* on the defendant's promises.[58] Similarly, there is no pleading of an offer by the defendant that was accepted by the claimant. The claimant merely *decided* not to take certain steps after the defendant made certain promises unilaterally.[59] The defendant did not *request* that the claimant forebear from taking those steps.

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53 CWS at para 26.

54 CWS at para 27.

55 CWS at para 167.

56 CWS at para 168.

57 CWS at para 169.

58 DWS at paras 48–49.

59 DWS at para 50.

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Thus, this benefit, if it was conferred, does not constitute sufficient consideration.[60]

The proposed amendments do not raise a cause of action in contract

31 In *Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 at [82], Andrew Phang Boon Leong JA explained that the element of *request* is necessary to establish sufficient consideration in the eyes of the law. It is not sufficient if the promisee chooses, of its own volition (and without more), to confer a benefit on the promisor. Nor is it sufficient if the promisee chooses, of its own volition, to suffer a detriment. This principle was applied in *Bay Lim Piang v Lye Cher Kang* [2023] 5 SLR 602, where Kwek Mean Luck J found that the claimant could not enforce the contract for want of consideration (at [126]). This was because there was insufficient evidence of an express or implied request from the defendant for the claimant's forbearance from suing the defendant (at [124]).

32 Turning to the present case, the claimant relies on the following particulars to establish that a contract was formed:[61]

> **Particulars**
>
> (a) In consideration of the Assurance, the Promised Report, the Promise to Extend Promised Report, the Promise to Increase Electricity and/or the Promise to Install Pipes, the Claimant *decided* not to take any steps about its concerns during the 21 May 2018 Meeting and not to commission an expert (the "**Contract**").
>
> (b) In consideration of the Defendant's aforesaid promises, the Claimant did not take any further steps and *relied* on the Defendant to fulfil its promises.
>
> [emphasis added in italics]

60 DWS at para 51, 55–57.

61 SOC A1 at para 54B.

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33 It is not in dispute that a promisor's *forbearance* from taking a certain course of action, if it results in a benefit to the promisee or a detriment to the promisor, could constitute sufficient consideration flowing from the promisor to the promisee. The claimant has pleaded forbearance in so far as it pleads that it had refrained from taking any steps about its concerns during the 21 May 2018 Meeting, and from commissioning an expert. But to constitute good consideration, the defendant must have *requested* such forbearance from the claimant, or *agreed* to carry out its Promises in exchange for such forbearance.

34 The claimant has not pleaded that the defendant *requested* the claimant's forbearance. Neither has it alleged that the defendant *offered* the Promises in exchange for the claimant's forbearance (or vice versa). All that the claimant avers is that it "decided" to forbear and "relied" on the defendant to fulfil is promises. It is true that the claimant states that its actions were "in consideration of" the defendant's Assurance and the Promises. But it is not sufficient for the claimant to simply recite or assert that its actions were "in consideration of" certain promises. The facts alleged by the claimant must actually constitute consideration at law.

35 The claimant seeks to avoid this difficulty by submitting that the forbearance was "implied by circumstances that [defendant's] calling for expert [*sic*], implied that it didn't need [the claimant] to call its own expert".[62] The claimant's position is not entirely clear. It appears to be saying that the defendant made an *implied request* for forbearance from the claimant. But if that is the claimant's allegation, it has to *plead* that there was an implied request. It has not done so. If the claimant is asserting that, since the defendant engaged

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62 Notes of Evidence of Hearing in HC/SUM 1891/2024 and HC/SUM 2855/2024 on 14 October 2024 ("14 Oct NEs") at p 2 lines 27–29; CWS at para 168.

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an expert, it was unnecessary for the claimant to engage one, that does not establish consideration either. It may be that, as a practical matter, the claimant no longer needed to engage an expert. That does not mean that it *agreed* not to engage one in exchange for the defendant doing so.

36 In so far as the claimant invites the court to read into the SOC an implication that the defendant requested the claimant's forbearance, I see no basis for doing so. I am fortified in this conclusion by the claimant's description of the 21 May 2018 Meeting. The claimant describes the defendant making various representations, assurances and promises (see [7]–[8] above). Nowhere does the claimant describe contractually-binding offers made by the defendant or, indeed, by the claimant.

37 The claimant also submits that "the implying of forbearance can be elicited during cross-examination at the evidence stage".[63] This manifests a confusion about the role of pleadings and their relationship with evidence. The claimant has to plead its case before it is permitted to adduce evidence to prove that pleaded fact. The claimant will not be permitted to admit evidence of any matter that is not pleaded and not relevant to the facts in issue (*Basil Anthony Herman v Premier Security Co-operative Ltd and others* [2010] 3 SLR 110 at [25]).

38 Accordingly, I find that the Breach of Contract Amendments fail to raise a reasonable cause of action in contract, and I disallow the amendments.

39 For completeness, I am unable to accept the claimant's submission that it should be granted liberty to plead an implied request for forbearance if this

63 CWS at para 168.

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needs to be pleaded.[64] The claimant had multiple opportunities to rectify its pleadings to make good its contractual claim. It has repeatedly failed to do so. It was content to proceed on the basis of the same amended draft as put before the learned AR. It therefore does not lie in the claimant's mouth to seek yet another open-ended opportunity to make further amendments. There must be some finality in the process of allowing the claimant to amend its SOC, and the learned AR had warned the claimant of this at the hearing below.[65]

Is the contractual claim time-barred?

40 Even if the Breach of Contract Amendments disclose a claim in contract, I find that the claim would be time-barred, and therefore the amendments should not be allowed.

Parties' cases

41 The claimant submits that the breach of contract occurred at some reasonable time after the 2nd AGM on 22 August 2019, when the defendant failed to honour the Promises.[66]

42 Alternatively, the claimant considers the possibility that the breach occurred on or after the 1st AGM on 3 August 2018, when the defendant failed to procure the relevant motions (see [9] above).[67] In this case, the claimant submits that its proposed amendments should be allowed since the breach of contract claim arises out of substantially the same facts as those in its original

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64 CWS at para 169.

65 18 Sep NEs at p 11 lines 22–28, p 23 lines 8–9.

66 CWS at paras 159–160.

67 CWS at para 162; Claimant's written submissions in HC/SUM 2855/2024 dated 9 October 2024 ("CWS (9 Oct)") at para 37.

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pleadings.[68] Although the amendment application was filed on 2 October 2024, exceeding the six-year limitation period which expired on 3 August 2024, the originating claim was filed on 16 May 2024, which would be within the limitation period.

43 The defendant submits that, on the claimant's case, the breach must have occurred a reasonable time after the Promises were made at the 21 May 2018 Meeting.[69] A reasonable time would be three months, since the Promises merely required the defendant to, among other things, engage an expert and "take steps" to increase electricity supply and install exhaust pipes.[70] Thus, the breach would have occurred by 21 August 2018, more than six years before the amendment application was filed.[71] Furthermore, the defendant submits that the very same resolutions were proposed at the 1st AGM and 2nd AGM. On the claimant's case, the defendant's failures to pass the resolutions on each occasion must both have been breaches.[72]

44 The defendant also submits that the proposed amendments involve new facts not in its original SOC. These include that the defendant made "promises" at the 21 May 2018 Meeting, which the claimant relied on.[73]

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68 CWS at para 162.

69 DWS at para 77.

70 DWS at para 78.

71 DWS at para 79.

72 DWS at para 82–87.

73 DWS at para 93.

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The Breach of Contract Amendments introduce a time-barred claim and should be disallowed

45 The claimant's application to introduce the Breach of Contract Amendments is governed by O 9 r 14(4) of the ROC 2021, which states:

> (4) Where an application for permission to amend is made after the relevant limitation period has expired, the Court may allow the amendment in the following circumstances:
>
> …
>
> (*c*) an amendment to add or substitute a new cause of action, if the new cause of action arises out of the same or substantially the same facts as an existing cause of action for which relief has already been claimed in the same action.

46 O 9 r 14(4) mirrors O 20 r 5(2)–(5) of the Rules of Court 2014 ("ROC 2014"). In particular, I outline O 20 rr 5(2) and 5(5) of the ROC 2014 for ease of reference:

> (2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.
>
> …
>
> (5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

47 While there do not appear to have been cases dealing with O 9 r 14(4), the principles expounded in the cases dealing with O 20 r 5(5) of the ROC 2014 would be instructive. The Court of Appeal in *Management Corporation Strata Title Plan No 3322 v Mer Vue Developments Pte Ltd* [2016] 4 SLR 351 at [48]

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outlined the relevant principles applicable to O 20 r 5 of the ROC 2014 as follows:

> (a) First, it must be determined whether the amendment, if allowed, would prejudice the other party's limitation defence. … this is a question of fact that can only be answered on a case by case basis. A key consideration in this regard is whether the amendment *effectively* allows the plaintiff to prosecute a claim which would otherwise have been time-barred if it were brought under a new writ. Courts should have regard not only to the form, but also to the practical effect of the amendment.
>
> (b) If it is determined that the amendment would *not* prejudice the other party's limitation defence, the court should then consider whether it would be just to allow the amendment under O 20 r 5(1).
>
> (c) On the other hand, if it is determined that the amendment *would* prejudice the other party's limitation defence, the court can only allow the amendment under O 20 rr 5(2)–5(5). The court must first consider whether the amendment falls within one of the three categories mentioned in O 20 rr 5(3)–5(5) (*ie*, whether the amendment is an amendment to correct the name of a party, to alter the capacity in which a party sues, or to add or substitute a new cause of action based on facts already pleaded). If it does, the amendment may *only* be allowed if the requirements in the applicable paragraph are satisfied and if the court deems it just to allow the amendment. If it does not, the amendment must be disallowed.
>
> [emphasis in original]

48 I turn to apply these principles to the present case.

(1) The Breach of Contract Amendments would prejudice the defendant's limitation defence

49 First, I find that the Breach of Contract Amendments introduce a claim that would otherwise have been time-barred and thereby prejudices the defendant's limitation defence.

50 It is common ground that the applicable limitation period for the breach of contract claim is six years from the date on which the cause of action accrued,

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pursuant to s 6(1)(*a*) of the LA.[74] The question is when the alleged breach of contract occurred such that time started running.

51 I disagree with the claimant's argument that the alleged breach of contract occurred after the 2nd AGM. In its pleadings, the claimant did not explicitly state when the breach occurred. The claimant itself accepts that the Promises must be "deemed unperformed after a reasonable time".[75] But that would be a reasonable time *after the Promises were made on 21 May 2018*, which is when the claimant says the contract was formed. The claimant has furnished no reason, and I see none, for time to start running from the 2nd AGM, which was one year and three months after the 21 May 2018 Meeting. As the defendant rightly points out, this conclusion is supported by the claimant's own claim for damages.[76] The claimant seeks compensation for certain losses "from 21 May 2018 till date" or "from a reasonable period after 21 May 2018 till date".[77] That implies that the breach took place on 21 May 2018 or some reasonable period thereafter, since the loss could only have been caused by a breach that had already occurred.

52 Further, I find that on the claimant's case, the breaches had occurred by the time the 1st AGM was held on 3 August 2018. For the purpose of bringing its contractual claim, the claimant's own position is that the breaches occurred at the 1st AGM and 2nd AGM, as described at paras 37–38 of the SOC.[78] It acknowledges that it was apparent by the 1st AGM that the defendant did not

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74 CWS at para 160.

75 CWS at para 161.

76 18 Feb Minutes at p 6.

77 SOC A1 at para 54D, p 35–36 para IIIB.

78 18 Sep NEs at p 2 lines 19–20; 14 Oct NEs at p 3 lines 11–21.

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honour its Promises.[79] It is inconsistent to claim that there was a breach at the 1st AGM and 2nd AGM, and in the same breath, take the position that the breach only occurred after the 2nd AGM so as to circumvent the limitation period. The claimant cannot have its cake and eat it. I recognise that the claimant says the defendant only "abandoned" any further actions to honour its Promises after the 2nd AGM.[80] But that is consistent with the claim that by the 1st AGM, the defendant was already in breach for failing to deliver on its Promises by that date, even if it made further efforts to deliver on the Promises until the 2nd AGM.

53 Since the amendment application was brought on 2 October 2024, more than six years after 3 August 2018, it can only be allowed under O 9 r 14(4) if the new cause of action arises out of substantially the same facts as the existing cause of action, which was brought within the six-year period.

(2) The new cause of action in contract does not arise out of substantially the same facts as the existing cause(s) of action in misrepresentation

54 In *Symphony Ventures Pte Ltd v DNB Bank ASA, Singapore Branch* [2021] 5 SLR 1213 at [52], Aidan Xu @ Aedit Abdullah J explained:

> The test is whether there is a sufficient overlap between the facts supporting the existing claim and those supporting the new claim (*Lim Yong Swan* ([12] *supra*) at [29]). The inquiry here is not just limited to the consideration of essential facts (*Smith* at [96]; *Philips* at [27]). The primary objective of the restrictions on amendment is to ensure that the defendant is not unfairly deprived of its time bar defence: *Lim Yong Swan* at [27]; *The Virginia Rhea* [1983–1984] SLR(R) 639 at [5].

79 14 Oct NEs at p 8 lines 14–15.

80 CWS at para 159; 14 Oct NEs at p 3 lines 11–13.

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55 I find that the new cause of action in contract does not arise out of the same facts or substantially the same facts as the existing cause(s) of action. The claimant argues that the material facts surrounding the defendant's promises to engage an expert, provide the expert report to the claimant, and take steps to rectify the situation have been pleaded in its original SOC.[81] I am unable to accept this argument. In its original SOC, the claimant only pleaded that the defendant promised to engage an expert to provide a report.[82] It did not plead any of the other alleged Promises, namely, the Promise to Extend Promised Report, the Promise to Increase Electrical Supply, and the Promise to Install Pipes. Moreover, the claimant did not plead that it refrained from taking any steps about its concerns, which it now claims is the consideration it provided for the Promises. The essential facts required to establish the new claim in contract were absent from the original SOC. To allow the claimant to plead its new cause of action based on these new facts would unfairly deprive the defendant of its time bar defence.

56 Accordingly, I find that, even if the Breach of Contract Amendments raise a reasonable cause of action in contract, this is a new cause of action that is time-barred. I therefore disallow these amendments.

Negligent misrepresentation

Parties' cases

57 At the hearing below, the claimant stated that it was not pursuing a claim for misrepresentation under the tort of negligence, but only a claim for non-

81 CWS at para 165.

82 SOC at para 33.

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fraudulent misrepresentation under the MA.[83] Before me, the claimant seeks to retract from this position.[84] It submits that both claims co-exist,[85] and that the material facts establishing the tort of negligence have been pleaded.[86] These facts, it claims, are largely identical to the elements under the MA except for the additional requirement to establish a duty of care, which is a question to be answered by the court.[87] The claimant finds support for its position in its alternative prayer for relief in the form of damages to be assessed, independent of the MA.[88]

58 The defendant objects that the claimant has not pleaded that there was a duty of care or that such a duty was breached. It is not sufficient for a claimant to simply plead the facts and leave the defendant guessing as to which legal theory it intends to rely on.[89]

59 If the claimant's pleadings disclose a claim in the tort of negligent misrepresentation, it is common ground that s 24A(3) of the LA would be applicable.[90]

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83 14 Oct NEs at p 16 lines 13–16.

84 CWS at para 6.

85 CWS at paras 6–7.

86 CWS at para 9.

87 CWS at para 9.

88 CWS at para 11.

89 18 Feb Minutes at p 3.

90 CWS at para 51.

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The claimant's pleadings do not disclose a cause of action in the tort of negligent misrepresentation

60 I am unable to accept the claimant's revised position. The material facts supporting each *element* of a legal claim must be pleaded, although the particular legal result flowing from the material facts that the claimant wishes to pursue need not always be pleaded (*How Weng Fan and others v Sengkang Town Council and other appeals* [2023] 2 SLR 235 at [19]).

61 The elements required to establish the tort of negligent misrepresentation are as follows: (a) the defendant made a false representation of fact to the claimant; (b) the representation induced the claimant's actual reliance; (c) the defendant owed the claimant a duty to take reasonable care in making the representation; (d) the defendant breached that duty of care; and (e) the breach caused damage to the claimant (*Ma Hongjin v Sim Eng Tong* [2021] SGHC 84 at [20]).

62 I am not convinced that the claimant has pleaded all the necessary material facts. By its own admission, the claimant has not explicitly pleaded that there was a duty of care. At the hearing before me, it submitted that such a duty arose because of the relationship between the parties.[91] Even if I accept that a duty of care can be established on the pleaded facts, the claimant has not sufficiently pleaded the facts to show that the defendant breached its duty *to take reasonable care*. This goes beyond what the claimant is required to prove under s 2 of the MA. The claimant bears the burden of proving not just that the defendant made certain representations that turned out to be untrue, but that the defendant's conduct in making those statements fell below the standard of reasonable care. There has been no pleading to that effect.

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91 18 Feb Transcript at p 2.

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63 The present case differs from *CDX and another v CDZ and another* [2021] 5 SLR 405 ("*CDX*"), which the claimant sought to draw a parallel to.[92] In *CDX*, the claimant explicitly pleaded negligent misrepresentation *simpliciter* in its SOC (see [38], [42]). That is not the case here. In fact, the claimant here has explicitly stated in its SOC that it will rely on s 2 of the MA entitling it to the relief claimed.[93] Its current about-turn is plainly a belated attempt to engage s 24A(3)(*b*) of the LA and circumvent the defendant's time-bar defence.

64 In any event, even if the SOC discloses a claim in the tort of negligent misrepresentation such that s 24A(3)(*b*) of the LA is applicable, I find (at [143]–[157] below) that the claim would be time-barred under that provision.

Misrepresentation under s 2 MA

Addressing ss 29(1)(c) and 24A(3) of the LA prior to trial

65 As a preliminary matter, the defendant submits that this court should determine the applicability of ss 29(1)(*c*) and 24A(3)(*b*) of the LA, which are purely legal matters, without applying the lower bar of whether such applicability is "plainly and obviously unsustainable".[94]

66 The claimant does not seem to dispute that the *legal* question concerning the applicability of ss 29(1)(*c*) and 24A(3)(*b*) of the LA can be addressed at the interlocutory stage. However, it submits that the *factual* question of what knowledge was reasonable for it to have had and when it had the requisite

92 CWS at para 10.

93 SOC A1 at para 49.

94 DWS at paras 107–111.

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knowledge is a fact-centric exercise, which should be left for a trial judge to determine.[95]

67 The distinction between legal and factual grounds for striking out a claim was elucidated by the Court of Appeal in *The "Bunga Melati 5"* [2012] 4 SLR 546 at [39]:

> … a "plainly or obviously" unsustainable action would be one which is either:
>
> (a) *legally unsustainable*: if "it may be clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks"; or
>
> (b) *factually unsustainable*: if it is "possible to say with confidence before trial that the factual basis for the claim is fanciful because it is entirely without substance, [for example, if it is] clear beyond question that the statement of facts is contradicted by all the documents or other material on which it is based".
>
> [emphasis and interpolation in original]

68 Seen in this light, it is imprecise to say that the "plainly and obviously unsustainable" standard applies in respect of some questions but not others. In all cases, the court gives effect to this standard by asking "whether the action has some chance of success when only the allegations in the pleadings are concerned" (see *Iskandar* at [17]). However, the proposition that the court should not undertake an examination of the merits of the parties' cases at the interlocutory stage has much greater force *vis-à-vis* disputes of fact rather than disputes of law (*Group Lease Holdings Pte Ltd (in liquidation) and another v Group Lease Public Co Ltd* [2024] SGHC 302 ("*Group Lease Holdings*") at [43]). There is no reason why discrete issues of law that do not involve any

95 CWS at paras 128 and 130.

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factual dispute between the parties cannot be decided at the interlocutory stage (see *Group Lease Holdings* at [44]).

69 In respect of the *applicability* of ss 29(1)(*c*) and 24A(3)(*b*) of the LA, these are legal questions that can be and have been fully argued before me, and I proceed to decide these questions on the basis of the facts as pleaded by the claimant.

70 In respect of the *application* of ss 29(1)(*c*) and 24A(3)(*b*) of the LA to the facts, this involves determining when the claimant could reasonably have acquired the requisite knowledge to bring an action for damages, this starting the running of time. The claimant cites *Management Corporation Strata Title Plan No 4099 v KTP Consultants Pte Ltd* [2024] 1 SLR 1226 ("*KTP*") at [4], where the Appellate Division of the High Court said that the question "involves a fact-sensitive exercise" and that such an inquiry "would rarely be amenable to determination on a summary basis, such as on a striking out application". Certainly, where the issue of when the claimant could reasonably have been expected to acquire the requisite knowledge turns on questions of fact that can only be decided at trial, the cause of action will not be struck out. By the same token, however, it may be that the claimant can be shown to have the requisite knowledge even on the face of its pleadings. I note that this was the case in *Lian Kok Hong v Ow Wah Foong and another* [2008] 4 SLR(R) 165 ("*Lian Kok Hong*"), in which the Court of Appeal held (at [4]) that the AR at first instance had rightly struck out an action on the basis of s 24A of the LA before a full trial. Similarly, in *SW Trustees Pte Ltd (in compulsory liquidation) and another v Teodros Ashenafi Tesemma and others (Teodros Ashenafi Tesemma, third party)* [2023] SGHC 273 ("*SW Trustees*"), the High Court disallowed certain amendments to a statement of claim because they were time-barred and the time bar was not postponed under s 29(1)(*a*) or 29(1)(*b*) of the LA (at [72]). In

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assessing the viability of the claim, the court will presume the pleaded facts to be true in favour of the claimant (see *Envy Asset Management Pte Ltd (in liquidation) and others v Lau Lee Sheng and others* [2024] 4 SLR 1210 at [18]). If these presumed facts are still capable of establishing the requisite knowledge on the part of the claimant, it would be appropriate to strike out the cause of action for being time-barred.

The nature of claims under s 2 of the MA

71 Before determining the applicability of ss 6(1), 29(1)(*c*) and s 24A(3)(*b*) of the LA, it is useful to consider the nature of claims under s 2 of the MA. The claimant submits that there is only one cause of action under s 2 of the MA and that it is statutory in nature.[96] By contrast, the defendant submits that the claimant's cause of action under s 2 of the MA is an "action in contract".[97]

72 Section 2 of the MA provides as follows:

> **Damages for misrepresentation**
>
> **2.**—(1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true.
>
> (2) Where a person has entered into a contract after a misrepresentation has been made to him otherwise than fraudulently, and he would be entitled, by reason of the misrepresentation, to rescind the contract, then, if it is claimed, in any proceedings arising out of the contract, that the contract ought to be or has been rescinded, the court or arbitrator may

96 CWS at para 47.

97 DWS at paras 4–5, 99.

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> declare the contract subsisting and award damages in lieu of rescission, if of opinion that it would be equitable to do so, having regard to the nature of the misrepresentation and the loss that would be caused by it if the contract were upheld, as well as to the loss that rescission would cause to the other party.
>
> (3) Damages may be awarded against a person under subsection (2) whether or not he is liable to damages under subsection (1), but where he is so liable any award under subsection (2) shall be taken into account in assessing his liability under subsection (1).

73 The most recent discussion of this provision at the apex level appears to be in *RBC Properties Pte Ltd v Defu Furniture Pte Ltd* [2015] 1 SLR 997 ("*RBC Properties*"), which was cited to me by the claimant. *RBC Properties* concerned a claim by a lessee against a lessor for certain misrepresentations the latter made that it had obtained all the necessary approvals for the premises to be used as a showroom (at [54]). The Court of Appeal considered, amongst other issues, whether the lessor had reasonable ground to believe and did believe in the truth of the representations, so as to avoid liability under s 2(1) of the MA. Andrew Phang Boon Leong JA, delivering the judgment of the court, considered the historical background of s 2(1) in the course of deciding this issue (at [58]–[65]). Phang JA then explained (at [65]–[67]):

> … it is clear, in our view, that a claim brought under s 2(1) is … and, indeed, must have been, *ex hypothesi*, a *different legal creature* from an action in *fraud* or *deceit*.
>
> 66 What, then, is its true nature? Section 2(1) of the Misrepresentation Act is, in the first place, undoubtedly *statutory* in nature. It now *co-exists* with the tort of negligent misrepresentation at common law as first established in *Hedley Byrne* and was clearly enacted to perform the *same function* – to furnish a remedy in *damages* where none had hitherto (apart from fraud or deceit) existed. However, it is also *simultaneously different from* the tort of negligent misrepresentation at common law. The burden of proof under the common law, in respect of a claim based on the tort of negligent misrepresentation, is on the plaintiff/representee. However, under s 2(1), as already noted above at [63], *the burden is on the defendant/representor to prove* "that he had reasonable ground to believe and did

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> believe up to the time the contract was made that the facts represented were true". In this regard, the following perceptive observations by Prof Cartwright may be usefully noted (see *Cartwright* ([60] *supra*) at para 6-64):
>
> > … Broadly, the remedy under section 2(1) of the Misrepresentation Act 1967 is more restricted in its application, since it is only available to one contracting party against the other contracting party, whereas the tort of negligence applies to all cases where a claimant can establish a duty of care, including actions between contracting parties. *But in those case where section 2(1) applies it is more attractive for the claimant since the elements of his claim are easier to establish than the elements of the tort of negligence; the burden of proving (in substance) absence of negligence lies on the defendant (rather than, as in the tort of negligence, the burden of proving breach of duty lying on the claimant)*; and in certain circumstances the remedy of damages under the section might be more extensive than the remedy in negligence. It is therefore clear that, where the claimant has a cause of action under section 2(1), it is unlikely to be of any benefit to him to pursue any action he may have in the tort of negligence. But the tort will be used where the Act is not available; in particular, where the claimant and the defendant are not parties to a contract. [emphasis added]
>
> 67 … the equitable remedy of rescission is always available for every type of misrepresentation (subject to any applicable bars to rescission). Section 2(2) of the Misrepresentation Act now furnishes the representee with the *additional option of claiming damages in lieu of rescission*.
>
> [emphasis in original]

74 It is clear from the foregoing excerpt that a claim under s 2(1) of the MA is statutory in nature. It co-exists with the common law tort of negligent misrepresentation. Both furnish a remedy in damages where none had hitherto existed. The salient differences between them lie in their scope of application, and in who bears the burden of proving or disproving the fault element. Section 2(2) of the MA also furnishes the representee with the option of claiming damages in lieu of rescission.

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75 The defendant sought to rely on the Court of Appeal's earlier decision in *Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 ("*Tan Chin Seng*"). In *Tan Chin Seng*, the appellants had brought claims in misrepresentation and breach of contract, which the High Court had dismissed. In relation to the claims in misrepresentation, the Court of Appeal considered whether the relevant statements constituted representations and held that they did not (at [11]–[21]). The Court then proceeded to observe, at [22]–[23]:

> … The appellants have also sought to frame their claim on the basis of s 2(1) of the Misrepresentation Act (Cap 390, 1994 Rev Ed). We think there is a misconception on the scope and effect of s 2(1). *That provision does not alter the law as to what is a representation.* This can be seen from its opening words, "[w]here a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss". The change effected by that subsection is that it enables a party who suffers loss on account of a non-fraudulent misrepresentation to claim for damages which he would not be entitled to do under the then existing law; for such a misrepresentation, rescission was the only remedy. However, the subsection allows the representee to claim damages for any non-fraudulent misrepresentation, subject to the proviso that the representor need not pay damages if he could prove that he had reasonable grounds to believe, and did believe, up to the time the contract was made, that the facts represented were true.
>
> 23 *Thus s 2(1) only alters the law as to the reliefs to be granted for a non–fraudulent misrepresentation but not as to what constitutes an actionable misrepresentation. Chitty on Contracts, Vol 1* (28th Ed, 1999) at para 6-001 put the position quite clearly as follows:
>
> > Prior to the enactment of the Misrepresentation Act 1967, the position broadly speaking was that a misrepresentation which induced a person to enter into a contract gave the representee the right to rescind the contract, subject to certain conditions, but generally gave him no right to damages unless the misrepresentation was fraudulent, or, in some cases, negligent, or unless the misrepresentation had contractual force. Since the coming into force of the Misrepresentation Act the representee will always be able to claim damages for negligent misrepresentation in circumstances in which he could have recovered

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> damages had the misrepresentation been fraudulent. … The Act of 1967 does not, however, alter the rules as to what constitutes an effective misrepresentation.
>
> [emphasis added; interpolation in original]

76 The defendant cited the above passage in support of its argument that s 2(1) of the MA does not impose any statutory duty.[98] I consider the question of whether an action under s 2(1) is one for breach of duty in the context of s 24A of the LA below (at [106]–[127]). But in so far as the defendant relies on *Tan Chin Seng* to oppose the view that a claim under s 2(1) of the MA is statutory in nature, I do not accept that contention.

77 The thrust of the court's discussion in *Tan Chin Seng* was that s 2(1) of the MA altered the law as to the *reliefs* granted for non-fraudulent misrepresentation, but did not alter what *constitutes* a misrepresentation (see also *Lim Koon Park and another v Yap Jin Meng Bryan and another* [2013] 4 SLR 150 ("*Lim Koon Park*") at [39]). The same can be said of s 2(2) of the MA. An actionable misrepresentation "consists in a false statement of existing or past fact made by one party before or at the time of making the contract, which is addressed to the other party and which induces the other party to enter into the contract" (*Lim Koon Park* at [38], citing *Tan Chin Seng* at [20]). This did not change after the MA was passed. Rather, a representee could now claim damages for non-fraudulent misrepresentation under s 2(1), unless the representor could prove, in substance, the absence of negligence (see [73] above). A representee could also now claim damages in lieu of rescission under s 2(2). None of this detracts from the statutory nature of claims under s 2. It merely describes the *effect* of s 2.

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98 DWS at paras 134–135.

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78 A claim under s 2 of the MA can also be described as an "action in contract", as it was in *Trans-World (Aluminium) Ltd v Cornelder China (Singapore)* [2003] 3 SLR(R) 501 ("*Trans-World*") at [124]. This does not mean the action is not a statutory one. It merely captures the fact that a claim under s 2 of the MA is only available to one contracting party against another contracting party (see *Low Sing Khiang v LogicMills Learning Centre Pte Ltd and others* [2024] 3 SLR 759 at [28], citing *Trans-World* at [124] and *RBC Properties* at [66]).

79 Bearing in mind these observations on the nature of claims under s 2 of the MA, I turn to consider the applicability of ss 6(1)(*a*), 29(1)(*c*) and 24A(3)(*b*) of the LA.

Is s 6(1)(a) of the LA applicable?

Parties' cases

80 The defendant submits that since a claim under s 2 of the MA is an "action in contract", s 6(1)(*a*) of the LA is applicable and the limitation period is six years.[99] The claimant's cause of action accrued when it received possession of the Medical Unit that did not fulfil the alleged Representations. This is when damage allegedly occurred.[100] Thus, the limitation period started running from August 2016 and expired in August 2022. The claimant's claim is time-barred since it was filed on 16 May 2024.[101]

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99 DWS at paras 97(a), 98–99.

100 DWS at para 102.

101 DWS at para 104.

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81 The claimant argues that since its claim under the MA is statutory in nature, it is not one in contract or tort. Therefore, s 6(1)(*a*) of the LA does not apply.[102] There is simply no limitation period for actions founded on the MA.[103]

82 In so far as a limitation period applies, the claimant accepts that its cause of action for misrepresentation accrued in August 2016, when it received the keys to the Medical Unit, because it is on the date that the Medical Centre was inherently defective.[104] The claimant's knowledge of the deficiencies is irrelevant to s 24A(3)(*a*) of the LA.

*Section 6(1)(*a*) of the LA is applicable*

83 The fact that claims under s 2(1) and 2(2) are statutory in nature does not preclude them from also being founded on contract. On the contrary, I find that the claimant's actions under ss 2(1) and 2(2) of the MA are founded on contract within the meaning of s 6(1)(*a*) of the LA. This is because actions under both provisions are premised on the existence of the contract (see [78] above). Claims under ss 2(1) and 2(2) of the MA only arise "[w]here a person has entered into a contract". In the absence of any such contract, the claimant would not have a cause of action. In other words, these claims are founded on contract.

84 It is not disputed that the cause of action accrued in August 2016. The claim was filed more than six years later, on 16 May 2024. Therefore, the claimant's action under s 2 of the MA is time-barred unless either s 29(1)(*c*) or s 24A(3)(*b*) of the LA applies to extend the limitation period.

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102 CWS at para 57.

103 CWS at para 58.

104 CWS at paras 3; CWS (10 Sep 2024) at para 29.

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85 I note that if the claimant's action falls within s 24A of the LA, then s 24A(3)(*a*) of the LA applies instead of s 6(1)(*a*) of the LA. This is because the limitation periods in s 6(1) apply "[s]ubject to this Act". Section 24A carves out certain exceptions to s 6(1)(*a*) and the two cannot apply concurrently (*Lian Kok Hong* at [14]). But since both provisions prescribe a default limitation period of six years from the date on which the cause of action accrued, the difference is academic.

86 I turn now to consider whether ss 29(1)(*c*) or 24A(3)(*b*) of the LA apply so as to extend the limitation period.

Is s 29(1)(c) of the LA applicable?

Parties' cases

87 The claimant submits that s 29(1)(*c*) of the LA applies because an action under s 2(1) of the MA is an action "for relief from the consequences of a mistake". Under s 2(1) of the MA, the representor has the defence that he had reasonable ground to believe in the truth of his statements. The claimant argues that this is "another way of saying that a mistake has been made".[105] Here, the claimant is seeking rescission of the SPA. Its action is for relief from the consequence of certain misrepresentations which the defendant had reasonable ground to believe in which is, in other words, "a mistake".[106]

88 The defendant submits that the doctrine of mistake and the doctrine of misrepresentation are different. The former does not encompass the latter.[107] The

105 CWS at paras 61–62.

106 CWS at para 75.

107 DWS at para 114.

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claimant's SOC pleads misrepresentation, not mistake.[108] Moreover, on the claimant's logic, s 29(1)(*c*) of the LA would apply to all cases of misrepresentation, including negligent misrepresentation. This would contradict authorities which have applied s 6 of the LA to claims under s 2 of the MA, and other authorities which have applied s 24A(3) of the LA to claims for negligent misrepresentation.[109]

*Section 29(1)(*c*) of the LA is inapplicable*

89 Section 29(1)(*c*) of the LA provides that:

> **Postponement of limitation period in case of fraud or mistake**
>
> **29.**—(1) Where, in the case of any action for which a period of limitation is prescribed by this Act —
>
> (*a*) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent;
>
> (*b*) the right of action is concealed by the fraud of any such person as aforesaid; or
>
> (*c*) the action is for relief from the consequences of a mistake,
>
> the period of limitation shall not begin to run until the claimant has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it.

90 Given the dearth of local authority, I was referred to and find it appropriate to consider foreign authorities in considering the proper interpretation of s 29(1)(*c*) of the LA. This was also the approach adopted in *SW Trustees*, in which Goh Yihan JC (as he then was) considered the proper interpretation of s 29(1)(*a*) of the LA (at [46]–[58]). The English authorities are

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108 DWS at para 123.

109 DWS at para 124.

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of particular relevance because the LA, as enacted in 1959 in Singapore, was modelled on the Limitation Act 1939 (c 21) (UK) (the "UK LA 1939") (*SW Trustees* at [47], [51]). The UK LA 1939 has since been repealed in favour of the Limitation Act 1980 (c 58) (UK) (the "UK LA 1980"), which consolidated the earlier legislation. Nevertheless, the case law under both the UK LA 1939 and UK LA 1980 can provide useful guidance. This is because s 29(1)(*c*) of the LA is *in pari materia* with s 26(*c*) of the UK LA 1939 and s 31(1)(*c*) of the UK LA 1980.

91 Section 26 of the UK LA 1939 provides as follows:

> **26. Postponement of limitation period in case of fraud or mistake.**
>
> Where, in the case of any action for which a period of limitation is prescribed by this Act, either—
>
> (*a*) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent, or
>
> (*b*) the right of action is concealed by the fraud of any such person as aforesaid, or
>
> (*c*) the action is for relief from the consequences of a mistake,
>
> the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it:
>
> Provided that nothing in this section shall enable any action to be brought to recover, or enforce any charge against, or set aside any transaction affecting, any property which—
>
> (i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed, or
>
> (ii) in the case of mistake, has been purchased for valuable consideration, subsequently to the transaction in which the

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> mistake was made, by a person who did not know or have reason to believe that the mistake had been made.

92 Section 32(1) of the UK LA 1980 substantially re-enacts s 26 of the UK LA 1939, with a minor change to subsection (*b*) that is irrelevant for present purposes:

> **32 Postponement of limitation period in case of fraud, concealment or mistake.**
>
> (1) … where in the case of any action for which a period of limitation is prescribed by this Act, either—
>
> (a) the action is based upon the fraud of the defendant; or
>
> (b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or
>
> (c) the action is for relief from the consequences of a mistake;
>
> the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.
>
> References in this subsection to the defendant include references to the defendant's agent and to any person through whom the defendant claims and his agent.

93 Prior to the enactment of s 26 of the UK LA 1939, claimants could not always avail themselves of certain desirable features of the rules in equity. The doctrine of laches was generally applied by analogy with statutory limitation at law, save that in cases of fraud equity would see that time ran from the point when the fraud was discovered or could with reasonable diligence have been discovered, and not from the accrual of the right as it did at law (*Test Claimants in the FII Group Litigation v Revenue and Customs Comrs (formerly Inland Revenue Comrs)* [2012] 2 AC 337 ("*Test Claimants*") at [179]). The courts of equity also applied the equitable rule relating to fraud by analogy to cases of mistake (*Test Claimants* at [181]). However, this equitable rule only applied in

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cases where there was no statutory limitation period (*Baker v Courage & Co* [1910] 1 KB 56 at 62).

94 In 1936, the UK's Law Revision Committee recommended that the equitable rule for fraud and mistake should apply to causes of action at law, reversing *Baker v Courage* (*Test Claimants* at [179]–[181], citing United Kingdom, Law Revision Committee, *Fifth Interim Report on Statute of Limitations* (Cmd 5334, 1936) (Chairman: Lord Wright) at paras 22–23). Section 26 of the UK LA 1939 was enacted to put this recommendation into effect.

95 Section 26(*c*) of the UK LA 1939 was first directly considered by the UK courts in *Phillips-Higgins v Harper* [1954] 1 QB 411 ("*Phillips-Higgins*"). In that case, the claimant was an employee of the defendant solicitor. The defendant agreed to pay the claimant up to one third of the net profits of his practice but only paid her up to one quarter of his net profits. The claimant discovered the underpayments after 13 years and claimed the balance. The defendant pleaded that her claim in respect of payments beyond six years prior was barred under the UK LA 1939. The claimant contended that the limitation period was extended by virtue of s 26(*c*). Pearson J held that s 26(*c*) did not apply, because the mistake was not an essential ingredient of the cause of action. It was insufficient that by reason of the mistake the claimant "failed to realize that the balance was due to her and by that mistake the right of action was concealed from her" (at 419). Pearson J's interpretation of the provision has become the touchstone for subsequent judicial consideration, and I reproduce it below (at 418–419):

> What, then, is the meaning of provision (c)? The right of action is for relief from the consequences of a mistake. It seems to me that this wording is carefully chosen to indicate a class of actions where a mistake has been made which has had certain

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> consequences and the plaintiff seeks to be relieved from those consequences. Familiar examples are, first, money paid in consequence of a mistake: in such a case the mistake is made, in consequence of the mistake the money is paid, and the action is to recover that money back. Secondly, there may be a contract entered into in consequence of a mistake, and the action is to obtain the rescission or, in some cases, the rectification of such a contract. Thirdly, there may be an account settled in consequence of mistakes; if the mistakes are sufficiently serious there can be a reopening of the account.
>
> …
>
> Probably provision (c) applies *only where the mistake is an essential ingredient of the cause of action*, so that the statement of claim sets out, or should set out, the mistake and its consequences and pray for relief from those consequences.
>
> …
>
> No doubt it was intended to be a narrow provision, because any wider provision would have opened too wide a door of escape from the general principle of limitation by six years' lapse of time, which is, of course, a reasonable and normally salutary principle …
>
> [emphasis added]

96 *Phillips-Higgins* remained the leading authority in the UK until the *Test Claimants* case. *Test Claimants* concerned a claim for repayment of tax that had been purportedly charged without lawful parliamentary authority (see [79]). The test claimants argued that the relevant mistake need not form part of the legal foundation of the claim, as long as it had a sufficient causal nexus with the claim, "in the sense that the facts constituting the cause of action have come to pass because of the mistake" (see [178]). The UK Supreme Court rejected this argument and unanimously approved the principle in *Phillips-Higgins* that the mistake must be an essential ingredient in the claimant's cause of action, with Lord Walker of Gestingthorpe JSC and Lord Sumption JSC discussing this issue (see [10]).

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97 Lord Walker reasoned, firstly, that the statutory language was carefully chosen, and was "more precise than some formula such as 'based' or 'founded' on a mistake" (*Test Claimants* at [62]). Further, the old authorities in equity indicated that where the limitation period was or might have been extended, the mistake "seems to have been an essential ingredient in the cause of action" (*Test Claimants* at [59]). As to policy, a departure from Pearson J's relatively narrow interpretation would bring a real risk of expanding "'the scope of [s 32(1)(c) of the UK LA 1980] … dangerously close to the basic rule of common law limitation that ignorance of the existence of a cause of action does not prevent time from running'. It would be difficult to find any principled stopping-place for such expansion" (*Test Claimants* at [63], citing Michael Franks, *Limitation of Actions* (Sweet & Maxwell, 1959) at pp 206–207).

98 Lord Sumption held that the intention behind s 26(*c*) of the UK LA 1939 "was to replicate the rule of equity by providing that mistake should give rise to an extended limitation period *in the same circumstances in which fraud had that effect under* [*s 26(a)*], namely where it was the legal basis of the claim" [emphasis added] (*Test Claimants* at [181]). His Lordship agreed that once one departed from Pearson J's interpretation, "it is difficult to discern any principled limit to the reach of [the] provision" (*Test Claimants* at [185]). Further, the question of when there is a sufficient causal nexus "will often be incapable of a clear answer", and there are "few areas where clarity is as important as it is in the law of limitation, whose whole object is to foreclose argument on what ought to be well defined categories of ancient dispute" (*Test Claimants* at [185]).

99 The position in Malaysia mirrors that in the UK. Section 29(1)(*c*) of the Limitation Act 1953 (Act 254) (M'sia), which is *in pari materia* with the s 26(*c*) of the UK LA 1939, is only applicable where the mistake is an essential

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ingredient of the cause of action (*Credit Corporation (M) Bhd v Fong Tak Sin* [1991] 1 MLJ 409 at 412A (right-hand column)). It does not apply where it is a "causal mistake or even a material mistake that produced the circumstances from which relief is sought" (*Tenaga Nasional Bhd v Kamarstone Sdn Bhd* [2014] 2 MLJ 749 at [26]).

100 Having considered the foregoing, I agree with the defendant that for s 29(1)(*c*) of the LA to be applicable, mistake must be an essential ingredient of the cause of action. This accords with the plain wording of the provision, which indicates that the cause of action must have arisen due to the consequences of a mistake, from which the claimant seeks relief. It also accords with Parliament's intention in enacting the LA in 1959 to adopt the English law of limitations as contained in the UK LA 1939 (see *SW Trustees* at [50], citing State of Singapore, *Legislative Assembly Debates, Official Report* (2 September 1959), vol 11 at cols 586–587 (Kenneth Michael Byrne, Minister for Labour and Law)).

101 Further, this interpretation coheres with the statutory scheme in s 26 of the UK LA 1939, as adopted in Singapore in s 29(1)(*c*) of the LA. The purpose of that scheme was to extend the equitable rules regarding the running of time in cases of fraud and mistake to actions at law. Fraud was relevant in equity in two circumstances: (i) "the right to equitable relief was itself based on fraud, in the sense that fraud was a legally essential element of it" (now reflected in subsection (*a*)), and (ii) "whether or not the right to relief was based on fraud, its existence had been concealed from the plaintiff by the fraud of the defendant" (now reflected in subsection (*b*)) (see *Test Claimants* at [179]). As observed above at [93], the equitable rule was extended to cases of mistake by analogy. It is now confirmed in Singapore that s 29(1)(*a*) of the LA requires that fraud be an element of the cause of action (*SW Trustees* at [57]). I agree with Lord

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Sumption that subsection (*c*) should apply in the same circumstances in which fraud has effect under subsection (*a*), namely where it is the legal basis of the claim.

102 Turning to the claimant's action under s 2 of the MA, I find that s 29(1)(*c*) of the LA is inapplicable. Mistake is not a prerequisite for relief under s 2 of the MA. Section 2(1) merely requires the claimant to show that it entered into a contract after a misrepresentation has been made to him, and he suffered loss as a result. The burden of proof then shifts to the defendant, who may or may not be able to show he had reasonable ground to believe in the truth of the representation. This is what the claimant in this case terms "mistake" (*ie*, that the defendant had made a "mistake" as to the truth of its representations). However, as the claimant itself has pointed out, this "mistake" is in fact a *defence* to an action under s 2 of the MA.[110] In other words, if the defendant successfully pleads "mistake", the consequence would be that the claimant would be *disentitled* to relief. Clearly, the claimant cannot claim to be seeking relief from the consequences of the *defendant's* "mistake".

Is s 24A(3)(b) of the LA applicable?

Parties' cases

103 The claimant submits that an action under s 2 of the MA is an action for "breach of duty" under s 24A(1) of the LA. They say that "breach of duty" is to be interpreted widely.[111] This includes a statutory duty, since s 24A(1) of the LA

110 CWS at para 61.

111 CWS at para 83.

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encompasses duties provided for under "any written law".[112] The MA sets out a statutory cause of action.[113] Therefore s 24A of the LA is applicable.

104 The defendant disagrees. It points out that the plain wording of s 2 of the MA does not mention any express duty.[114] The provision does not alter what constitutes an actionable misrepresentation, only the reliefs to be granted.[115] And breach of a duty of care is not an element of misrepresentation under s 2 MA.[116] Therefore, s 24A(3)(*b*) of the LA does not apply.

105 The defendant also submits that on any interpretation of "breach of duty", the claimant's action for *recission* must be struck out since s 24A of the LA applies to actions for damages. Additionally, the claimant's action for damages *in lieu of* recission must be struck out as well.[117] Going further, the defendant submits that actions under s 2 of the MA do not fall under s 24A of the LA, because Parliament could not have intended s 24A to cover some actions under s 2 of the MA but not others.[118]

*Section 24A(3)(*b*) of the LA is applicable to the claim under s 2(1) of the MA but not the claim under s 2(2) of the MA*

106 Section 24A(1)–(3) of the LA provides:

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112 CWS at para 84.

113 CWS at paras 85, 95.

114 DWS at para 134.

115 DWS at para 135.

116 DWS at paras 136–140.

117 18 Feb Minutes at p 4.

118 18 Feb Minutes at p 5.

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> **Time limits for negligence, nuisance and breach of duty actions in respect of latent injuries and damage**
>
> **24A.**—(1) This section shall apply to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any written law or independently of any contract or any such provision).
>
> (2) An action to which this section applies, where the damages claimed consist of or include damages in respect of personal injuries to the claimant or any other person, shall not be brought after the expiration of —
>
> (*a*) 3 years from the date on which the cause of action accrued; or
>
> (*b*) 3 years from the earliest date on which the claimant has the knowledge required for bringing an action for damages in respect of the relevant injury, if that period expires later than the period mentioned in paragraph (a).
>
> (3) An action to which this section applies, other than one referred to in subsection (2), shall not be brought after the expiration of the period of —
>
> (*a*) 6 years from the date on which the cause of action accrued; or
>
> (*b*) 3 years from the earliest date on which the claimant or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action, if that period expires later than the period mentioned in paragraph (*a*).

107 The legislative history of s 24A of the LA has been discussed in some detail by the Singapore courts (see, *eg*, *Yan Jun v Attorney-General* [2015] 1 SLR 752 ("*Yan Jun*") at [22]–[51]; *KTP* at [32]–[35]). I outline this history in brief.

108 Section 24A(1) of the LA is the product of the Limitation (Amendment) Act 1966 (Act 7 of 1966) ("the 1966 amendments") and the Limitation

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(Amendment) Act 1992 (Act 22 of 1992) ("the 1992 amendments") (*Yan Jun* at [22]–[24]).

109 The 1966 amendments reduced the limitation period from six to three years where damages were claimed in respect of personal injury in actions for negligence, nuisance or breach of duty. The rationale was to prevent the institution of stale proceedings in general actions for personal injuries arising, for example, from motor-car accidents (*Yan Jun* at [23]). The 1966 amendments brought Singapore law in line with the law in England as enacted by s 2(1) of the Law Reform (Limitation of Actions, etc) Act 1954 (c 36) (UK) (the "UK LRA 1954") (see *Yan Jun* at [23] and [30]).

110 Section 2(1) of the UK LRA 1954 had been considered in *Letang v Cooper* [1965] 1 QB 232 ("*Letang*"). In that case, the English Court of Appeal held that the words of that provision were wide enough to "cover not only a breach of a contractual duty, or a statutory duty, but also a breach of any duty under the law of tort" (at 241C). On the facts, the words "breach of duty" were wide enough to cover the cause of action for trespass to the person (at 241E–F).

111 Between the passing of the UK LRA 1954 and the 1992 amendments in Singapore, there were several other developments in the English legislation.

112 First, s 1 of the Limitation Act 1963 (c 47) (UK) (the "UK LA 1963") was enacted to provide an alternative limitation period of one year from the date the plaintiff came to know of material facts relating to the cause of action, in respect of *actions for damages for negligence, nuisance or breach of duty* involving *personal injury*, where the damage suffered was latent (see *Yan Jun* at [40]). This was done to ameliorate the harshness of the House of Lords decision in *Cartledge and others v E Jopling & Sons Ltd* [1963] AC 758, which

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held that the plaintiffs' causes of action for contracting pneumoconiosis by exposure to silica dust accrued when the damage was sustained, instead of when the damage was discovered (or could with reasonable diligence have been discovered). Subsequently, the one-year alternative limitation period was extended to three years (see *Yan Jun* at [41]).

113 When the UK legislation was consolidated in 1980, the provision became s 11 of the UK LA 1980 (see *Yan Jun* at [42]). Section 11 of the UK LA 1980 arose for interpretation by the House of Lords twice. In *Stubbings v Webb* [1993] AC 498, the House of Lords unanimously declined to follow *Letang*, holding instead that the phrase "breach of duty" meant breach of a duty of care. However, in *A v Hoare* [2008] 1 AC 844, the House of Lords reversed course and unanimously decided to depart from *Stubbings*, instead reaffirming the position in *Letang*.

114 Finally, the UK LA 1980 was further amended by the Latent Damage Act 1986 (c 37) (UK) (the "UK LDA 1986"). The new s 14A prescribed a similar time limit of three years from the date of discovery for *negligence actions* not covered by s 11 of the UK LA 1980 (*ie*, not involving personal injuries). This addressed the harshness of the outcome in *Pirelli General Cable Works Ltd v Oscar Faber & Partners (A Firm)* [1983] 2 AC 1, in which the House of Lords held that the plaintiff's cause of action in respect of certain construction defects accrued when the damage came into existence, not when the damage was discovered or could with reasonable diligence have been discovered (at 19D–E).

115 The 1992 amendments in Singapore were intended to address the same issue of latent damage that the UK enactments dealt with (see *Yan Jun* at [24]). Parliament amended the LA along the lines of the UK LA 1980 and the UK

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LDA 1986. It extended the limitation periods for *both* personal and non-personal injury claims by providing an alternative starting date, namely the date the aggrieved person has knowledge of the damage (Singapore Parl Debates; Vol 60, Sitting No 1; Cols 31–32 [29 May 1992] (Prof S Jayakumar, Minister for Law)). The approach taken was to "collapse the functions of ss 11, 14A and 14B of the UK LA 1980 into a single provision, which persists today as s 24A of the LA" (*KTP* at [35]). One difference between the two statutory schemes is that s 14A of the UK LA 1980 only applies to *negligence* actions, whereas s 24A of the LA applies to *actions for negligence, nuisance or breach of duty* (see Law Reform Committee, *Discussion Paper of the Sub-Committee on Civil Law and Civil Proceedings* (24 August 1989) at para 9 (Secretary: Jeffrey Chan Wah Teck)).

116 The leading authority in Singapore concerning the ambit of s 24A of the LA is the Court of Appeal's decision in *Yan Jun*. In that case, the appellant claimed "damages against the Respondent for wrongful arrest, false imprisonment, assault and battery, excessive use of force, malicious prosecution, abuse of process and defamation" (*Yan Jun* at [13]). These were all actions in tort. Andrew Phang Boon Leong JA, delivering the judgment of the court, held that the phrase "'breach of duty' is to be read *widely*, and therefore encompassing *all torts and breaches of contract*" [emphasis in original] (at [62]). In particular, the phrase encompasses both intentional and unintentional torts (*Yan Jun* at [60]), and both torts of strict and fault-based liability (*Yan Jun* at [62]).

117 Phang JA reasoned that Parliament's intention when passing the 1966 amendments was to "align the law in Singapore with that in England" (at [59]). In particular, Parliament passed the 1966 amendments – as well as the 1992 amendments – "against the backdrop of the interpretation given to the phrase

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'breach of duty' in *Letang*" (*Yan Jun* at [56]–[60]). Therefore, a purposive interpretation of s 24A(1) would entail "reading the phrase 'breach of duty' as *encompassing all torts*" [emphasis in original] (*Yan Jun* at [61]). In this connection, Phang JA cited with approval (at [63]) Lord Denning's observation in *Letang* that "[o]ur whole law of tort today proceeds on the footing that there is a duty owed by every man not to injure his neighbour in a way forbidden by law" [amendment in original].

118 I turn to address the claimant's submission that its claim is an action for a breach of a statutory duty or a duty under any written law.

119 At the outset, I accept that the existence of a duty of care is not required for an action to be one for "breach of duty" under s 24A(1) of the LA. This is clear from *Yan Jun*, which establishes that torts of strict liability also fall within the ambit of s 24A(1).

120 However, the question is, in the words of the statute, whether the claimant has brought an action for breach of duty, where the duty exists by virtue of a provision made by or under any written law. While a claim under s 2 of the MA is statutory in nature, the question is whether that statute imposes a duty.

121 In this regard, I find that s 2(1) of the MA does impose a duty, whereas s 2(2) of the MA does not. Section 2(1) of the MA creates a statutory tort with the following elements:

(a) a misrepresentation is made by the defendant to the claimant;

(b) the claimant was induced to enter into the contract on account of the misrepresentation;

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(c) the claimant suffers loss as a result;

(d) the defendant would be liable to damages *if* the misrepresentation had been made fraudulently (and therefore fraud is not a necessary element); and

(e) the defendant is *unable to prove* that, up to the time the contract was made, he had reasonable ground to believe and did believe that the facts represented were true.

122 Section 2(1) does not change the law as to what constitutes an actionable misrepresentation, *ie*, elements (a) and (b). However, it introduces elements unique to it, and lacks certain elements of other types of claims for misrepresentation. Elements (c)–(e) are absent in a claim for rescission due to innocent misrepresentation, or a claim under the tort of negligent misrepresentation. Compared to the tort of negligent misrepresentation, s 2(1) also does not require proof of a duty of care or breach of that duty, although it requires a contractual relationship between the parties. By virtue of s 2(1) of the MA, a contracting party is under a duty not to induce his counterparty to enter into the contract on account of a misrepresentation, where he did not believe, or did not have reasonable ground to believe, that the facts represented were true (with the burden of proving this belief or reasonable ground falling on the defendant). This is a duty that would not exist apart from the statute. Breach of this duty renders the representor liable to the representee in damages. Therefore, an action under s 2(1) of the MA is an action for breach of duty under s 24A of the LA.

123 By contrast, s 2(2) of the MA does not create any freestanding duty that does not otherwise exist. Section 2(2) only applies to a representee where he "*would be entitled*, by reason of the misrepresentation, to rescind the contract"

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[emphasis added]. It is entirely parasitic on the claimant's pre-existing entitlement to rescind the contract due to misrepresentation. Therefore, an action under s 2(2) of the MA is not one for breach of a duty that exists by virtue of a statutory provision.

124 Accordingly, based on the plain meaning of the words in 24A(1) of the LA, that provision applies to actions under s 2(1) of the MA but not to actions under s 2(2) of the MA.

125 While "breach of duty" has been and is to be read widely, the claimant's position would entail reading the phrase so widely that there is no logical stopping point as to its ambit. Indeed, the claimant supports its position by arguing that one person's duty is another person's right.[119] The claimant bases this on the words of Diplock LJ in *Letang* at 247B–C:

> … *In the context of civil actions a duty is merely the obverse of a right recognised by law.* The fact that in the earlier cases the emphasis tended to be upon the right and in more modern cases the emphasis tends to be upon the duty merely reflects changing fashions in approach to juristic as to other social problems, and *must not be allowed to disguise the fact that right and duty are but two sides of a single medal.*
>
> [emphasis added]

126 I am unable to accept this submission. Firstly, the reasoning of Diplock LJ on this point appears to go beyond what was necessary to decide *Letang*, which was concerned specifically with whether an action for trespass to the person was a "breach of duty"; this reasoning is thus strictly speaking *obiter*. Secondly, whereas it might be possible to conceptualise the whole law of tort as involving a duty owed by each person not to injure their neighbour, it is not clear that all legal actions can be rationalised as being premised upon a

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119 CWS at para 88.

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breach of some duty by the defendant. Claimants enforcing their right to rescind a contract due to innocent misrepresentation, mistake or some other vitiating factor do not necessarily claim that there was a breach of a duty by the defendant. Finally, this reasoning was also not adopted by Lord Denning MR and Danckwerts LJ, who held that "breach of duty" applied to any *tort*, because all torts involve a breach of duty (not to injure one's neighbour) (*Letang* at 241C–E, 242F). Diplock LJ's opinion appears not to have been the received interpretation of the law in England at the time that the 1966 amendments were enacted. Therefore, adopting a purposive interpretation, Parliament did not intend the statutory words to bear the meaning that the claimant seeks to attribute to them.

127 Furthermore, if the words "breach of duty" are to be understood as referring to *any* civil action, s 24A of the LA would essentially apply to any action for damages *simpliciter*. The entire clause "for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any written law or independently of any contract or any such provision)" would be redundant. Parliament would have legislated in vain, and to quite a significant extent. Based on the claimant's submission, the meaning of s 24A(1) would in effect be that "[t]his section shall apply to any action for damages". If that was Parliament's intent, the draftsman would simply have used those words. I recognise that in *Yan Jun*, the court considered that its interpretation arguably rendered the words "negligence" and "nuisance" superfluous (at [54]) and yet adopted it anyway. But at least that narrower superfluity may be explained by the fact that "[n]egligence and nuisance are the commonest causes of action which give rise to claims for damages in respect of personal injuries" (*Letang* at 247F per Diplock LJ). It is unlikely that Parliament intended the words "breach of duty" to be read so much more broadly such as to render most of the other words in the provision otiose.

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128 In any event, I agree with the defendant that s 24A of the LA does not assist the claimant at least in respect of its claim under s 2(2) of the MA, because the underlying action for rescission is time-barred. To begin with, the claimant's action for *rescission* falls outside the scope of s 24A of the LA, which only applies to an action for damages. The claimant's action for rescission is time-barred by virtue of s 6(1)(*a*) of the LA (see [83] above). The question then is whether the claimant can rely still on s 2(2) of the MA to claim damages *in lieu of* rescission, notwithstanding that his action for rescission is barred.

129 Section 2(2) of the MA only provides for damages where the representee "would be entitled … to rescind the contract" and claims "that the contract ought to be or has been rescinded". The court then "may declare the contract subsisting and award damages in lieu of rescission". In my view, this statutory language clearly points towards the conclusion that s 2(2) of the MA cannot be invoked where the claimant's right to rescission is barred. Moreover, the court must have regard to "the loss that would be caused … if the contract were upheld, as well as to the loss that rescission would cause to the other party". The court is required to perform a balancing exercise before awarding relief under s 2(2) (*RBC Properties* at [131]). It is only logical that for it to decide whether to substitute the remedy of rescission with damages, the former remedy must be available for substitution.

130 This question does not appear to have been previously decided in Singapore. It was briefly addressed in *Arnold Nicklaus D'Cruz and Nicholas Lee Yong Heng v Alexander Migunov and Lotus International Luxury Yachts Pte Ltd* [2017] SGDC 75, where the learned DJ held (at [159]) that "the court does not have the discretion to award any damages in lieu of rescission pursuant to section 2(2) of the MA given that the Plaintiffs have lost their right to rescind".

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131 Historically, there has been some difference of opinion concerning this issue. In *Thomas Witter Ltd v TBP Industries Ltd* [1996] 2 All ER 573 (*"Thomas Witter*"), Jacob J held at 590j–591a that

> … the power to award damages under s 2(2) does not depend upon an extant right to rescission—it only depends upon a right having existed in the past. … It is damages in lieu of that right (even if barred by later events or lapse of time) which can be awarded.

132 By contrast, in *Government of Zanzibar v British Aerospace (Lancaster House) Ltd and others* [2000] 1 WLR 2333, Judge Raymond Jack QC, sitting as a High Court judge, held at 2341H–2342A that:

> … the wording of section 2(2) shows clearly enough that the effect of the subsection is to give the court an alternative to rescission where a right to rescission has been established but the court considers that damages would be a more equitable solution.

133 And at 2343G–H he continued:

> … section 2(2) gives the court a discretionary power to hold the contract to be subsisting and to award damages where it would otherwise be obliged to grant rescission or to hold that the contract had been rescinded by the representee. The court does not have that power, and does not need to have that power, where rescission is no longer available.

134 In the UK, the position has now been clarified by the Court of Appeal's decision in *Salt v Stratstone Specialist Ltd (t/a Stratstone Cadillac Newcastle)* [2015] 2 CLC 269 ("*Salt v Stratstone*"). In that case, Longmore LJ, with whom the two other members of the court agreed, held (at [17]) that:

> … the words 'in lieu of rescission' must … carry with them the implication that rescission is available (or was available at the time the contract was rescinded). If it is not (or was not available in law) because e.g. the contract has been affirmed, third party rights have intervened, an excessive time has elapsed or restitution has become impossible, rescission is not available and damages cannot be said to be awarded 'in lieu of rescission'.

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135 I agree that the same interpretation should be applied in Singapore, where the Misrepresentation Act 1967 as enacted in the UK applies by virtue of s 4 of the Application of English Law Act 1993. This interpretation accords with the position taken in Andrew B L Phang and Goh Yihan, *Contract Law in Singapore* (Wolters Kluwer, 2nd Ed, 2021) ("*Contract Law in Singapore*") at para 714.

136 It has been argued that, as a matter of policy, it is hard to see why the factors which bar the right to rescind (such as the intervention of third party rights) should limit the discretion to award damages (Edwin Peel, *Treitel on The Law of Contract* (Sweet & Maxwell's, 15th Ed, 2020) at para 9-069). A similar point was made in *Thomas Witter* at 590b–c, where Jacob J observed that "rescission might or might not be available at the time of trial depending on a host of factors which have nothing to do with behaviour of either party". But as the learned authors of *Contract Law in Singapore* note (at para 709), these considerations must yield to the actual language of the provision. Moreover, if the claimant is allowed to invoke s 2(2) even though their right to rescission is barred, and if the claimant is awarded damages under s 2(2), that would put them (in a situation of wholly innocent misrepresentation) in an even better position than they would have been under the pre-existing law. That would defeat the rationale of the balancing exercise under s 2(2), which is that where the misrepresentation is relatively unimportant in the circumstances of the case, so that rescission may be disproportionately harsh on the representor, damages may be awarded in lieu of rescission (*RBC Properties* at [130]–[131]). In other words, s 2(2) seeks to provide a more proportionate remedy in the form of damages where rescission would be disproportionately harsh, and not to provide an additional remedy where rescission is unavailable.

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137 Accordingly, since the claimant's right to rescission is no longer available by virtue of being time-barred, I would hold that its claim for damages in lieu of rescission under s 2(2) of the MA must be struck out on this basis as well.

138 However, since s 24A(3)(*b*) of the LA is applicable to the claimant's claim under s 2(1) of the MA, I turn to consider if that aspect of the claimant's action is time-barred.

Is the misrepresentation claim time-barred?

Parties' cases

139 The defendant submits that even if ss 29(1)(*c*) or 24A(3)(*b*) of the LA apply, the claimant's claim would still be time-barred.[120] The defendant argues that many of the claimant's complaints in the SOC relate to physical dimensions that ought to have been apparent to the claimant when it took possession of the Medical Unit in 2016.[121] Additionally, the claimant would have learnt from conversations with potential tenants about any alleged deficiencies with the Medical Unit within a few months of August 2016, when it allegedly tried and failed to rent out the Medical Unit.[122] The claimant also knew or ought to have known of alleged deficiencies with the Medical Unit by the 21 May 2018 Meeting,[123] or the 1st and 2nd AGMs on 3 August 2018 and 22 August 2019 respectively.[124] The claimant had the requisite knowledge and belief in its

120 DWS at para 141.

121 DWS at paras 151–154.

122 DWS at paras 155–164.

123 DWS at paras 165–172.

124 DWS at paras 173–176.

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intended claim to seek legal advice in early 2020.[125] The claimant did not require expert advice to ascertain the material facts of its claim.[126] Even if it did, it had not taken all reasonable steps to obtain said advice.[127]

140 The claimant submits that, for the purposes of ss 29(1)(*c*) and 24A(3)(*b*) of the LA, it only had the requisite knowledge on 22 November 2022, when the Expert Report was produced or, alternatively, on 9 February 2022, when the claimant commissioned the expert.[128] The claimant submits that whether the Medical Centre was in fact a "one-stop" dedicated medical centre as represented by the defendant was a technical question requiring an expert's confirmation.[129] The claimant avers that it had suspicions at the time of the 21 May 2018 Meeting, but not knowledge or reasonable belief.[130] The claimant argues that it took all reasonable steps to obtain expert advice.[131]

141 Alternatively, the claimant submits that what knowledge was reasonable for it to have had and when it had the requisite knowledge is an extremely fact-centric exercise. Therefore, this should be determined by a trial judge.[132]

The misrepresentation claim is time-barred

142 While I have found s 29(1)(*c*) of the LA to be inapplicable, I will briefly consider its application since this issue is closely related to the application of

125 DWS at paras 177–182.

126 DWS at paras 183–188.

127 DWS at paras 189–194.

128 CWS at paras 96, 99.

129 CWS at paras 100–120.

130 CWS at paras 121–127.

131 CWS at paras 139–143.

132 CWS at paras 128–138, 144–147, 148.3.

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s 24A(3)(*b*) of the LA. Under s 29(1) of the LA, the limitation period of the action – in this case, six years – begins to run when "the claimant has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it". The pertinent issue in this case is whether the claimant could, *with reasonable diligence*, have discovered that the defendant's representations were false before 16 May 2018 (this being six years prior to the filing of the claim on 16 May 2024).

143 As for s 24A(3)(*b*) of the LA, the limitation period of three years begins to run when the claimant "first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action". The relevant question is whether the claimant possessed the requisite knowledge for bringing its misrepresentation claim before 16 May 2021.

144 Section 24A(4) of the LA defines the requisite knowledge as follows:

> (4) In subsections (2) and (3), the knowledge required for bringing an action for damages in respect of the relevant injury or damage (as the case may be) means knowledge —
>
> (*a*) that the injury or damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty;
>
> (*b*) of the identity of the defendant;
>
> (*c*) if it is alleged that the act or omission was that of a person other than the defendant, of the identity of that person and the additional facts supporting the bringing of an action against the defendant; and
>
> (*d*) of material facts about the injury or damage which would lead a reasonable person who had suffered such injury or damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

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145 The applicable principles as to the requisite knowledge were summarised by the Court of Appeal in *Lian Kok Hong* at [42]:

> (a) First, in respect of s 24A(4)(*a*) read with s 24A(5), *viz*, attributability, the claimant need not know the details of what went wrong, and it is wholly irrelevant whether he appreciated that what went wrong amounted in law to negligence, as long he knew or might reasonably have known of the factual essence of his complaint.
>
> (b) Second, the requirements under ss 24A(4)(*b*) and 24A(4)(*c*) as to the identity of the defendant or otherwise, which we have not elaborated on above because of their relative simplicity, should be addressed when appropriate.
>
> (c) Third, in relation to s 24A(4)(*d*), the material facts referred to need not relate to the specific cause of action, and the assumptions as to the defendant not disputing his liability and his ability to satisfy a judgment, coupled with the requirement of "sufficient seriousness", must be read to mean that the case must be one sufficiently serious for someone to actually invoke the court process given these assumptions.
>
> (d) Finally, conditioning the above is the *degree* of knowledge required under paras (a) to (c), and this does not mean knowing for certain and beyond the possibility of contradiction.
>
> [emphasis in original]

146 In respect of the *degree* of knowledge, reasonable belief rather than absolute knowledge is enough to start the time running. Knowledge does not mean "knowing for certain and beyond possibility of contradiction", but knowing with "sufficient confidence to justify embarking on the preliminaries to the issue of a writ, such as submitting a claim to the proposed defendant, taking legal and other advice and collecting evidence" (*Lian Kok Hong* at [41], citing *Halford v Brookes* [1991] 1 WLR 428 at 443).

147 For the purposes of s 24A of the LA, knowledge also includes constructive knowledge, which is defined in s 24A(6) as follows:

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> (6) For the purposes of this section, a person's knowledge includes knowledge which he might reasonably have been expected to acquire —
>
> (*a*) from facts observable or ascertainable by him; or
>
> (*b*) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek.

148 In the present case, it is not clear on the basis of the pleadings alone that the claimant possessed the requisite knowledge prior to the 21 May 2018 Meeting. I accept that several of the alleged deficiencies of the Medical Unit would have been observable or ascertainable by the claimant after it took possession in August 2016. These include the allegations that essential medical equipment were incapable of gaining access to the Medical Centre,[133] that the Development did not cater for the required electrical load or exhaust pipes for expelling gases,[134] and that the corridors were not wide enough for patient and clinician access.[135] That is not to say that the claimants did in fact observe these deficiencies, merely that they were physical attributes that could have been observed. It is also the case that, as the claimant says it was actively looking for tenants once it took possession, the deficiencies may well have surfaced some time thereafter based on interactions with potential tenants. However, based on the pleadings alone, it is not possible to tell whether the claimant could have, with reasonable diligence, acquired knowledge of these deficiencies prior to 16 May 2018 specifically. This issue would therefore have had to be determined at trial. It follows that, were it necessary to decide the issue, I would not have struck out the cause of action as being time-barred under s 29(1)(*c*) of the LA.

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133 SOC A1 at paras 46, 48.3–48.4.

134 SOC A1 at paras 47, 48.5.

135 SOC A1 at para 40.3.

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149 However, I find that at the time of the 21 May 2018 Meeting, the claimant would have known about, or be reasonably expected to acquire knowledge of, all the material deficiencies. It would therefore have possessed the requisite knowledge for the limitation period under s 24A(3)(*b*) of the LA to start running.

150 To begin with, I do not agree with the claimant that it only had the knowledge required for bringing an action against the defendant when the Expert Report was produced on 22 November 2022. The claimant relies on the following passage in *Prosperland Pte Ltd v Civic Construction Pte Ltd and others* [2004] 4 SLR(R) 129 ("*Prosperland (HC)*") at [11]:

> By s 24A(6), "knowledge" for the purposes of s 24A(4) includes knowledge reasonably expected to be acquired. A firm belief held by the plaintiff that the damage was attributable to the acts or omission of the defendant, but in respect of which he thought it necessary to obtain reassurance or confirmation from experts, would not be regarded as knowledge until the result of his inquiries was known to him or, if he delayed in obtaining that confirmation, until the time when it was reasonable for him to have got it. If the plaintiff held a firm belief, which was of sufficient certainty to justify the taking of the preliminary steps for proceedings by obtaining advice about making a claim for compensation, then such belief would be knowledge and the limitation period would begin to run.

151 The claimant emphasises the first half of the above passage to argue that it did not have the requisite knowledge until it received the Expert Report.[136] But as the rest of the passage makes clear, if the claimant held a firm belief of sufficient certainty to justify the taking of preliminary steps for proceedings, such belief would be sufficient knowledge for the limitation period to start running.

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136 CWS at paras 106–107.

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152 In *Prosperland (HC)* itself, the developer of a condominium brought a claim against the contractor and architects after some external façade tiles de-bonded and fell off. Judith Prakash J (as she then was) took the view (at [39]) that the claimant had knowledge of the problem in September 1999, when two tiles de-bonded and fell off, showing that the tile-debonding was not an isolated problem but could be attributed to defaults by the defendants. This was before the claimant received a surveyor's report in May 2000. On appeal, the Court of Appeal considered that knowledge should be imputed to the claimant even earlier, in August 1999, when it emerged that other tiles had de-bonded (but not fallen off). That should already have "sounded the alarm" and alerted the claimant that something was amiss (*Chia Kok Leong and another v Prosperland Pte Ltd* [2005] 2 SLR(R) 484 at [68]). Ultimately, the question is whether the knowledge was that which the claimant might reasonably have been expected to acquire from facts ascertainable by him with the help of appropriate expert advice which it was reasonable for him to seek (s 24A(6) of the LA).

153 The claimant's key contention is that it required the Expert Report in order to know that the Medical Centre was not in fact a dedicated medical centre, because this is a technical question involving a collection of deficiencies.[137] However, at the 21 May 2018 Meeting, various owners of medical units allegedly "sought answers from the Defendant if the Medical Centre was capable of functioning as a Medical Centre as previously represented".[138] The claimant would therefore have been alive to this issue. Moreover, the Expert Report's conclusion that the Medical Centre could not be said to be a medical centre was based on certain alleged deficiencies.[139]

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137 CWS at para 101; SOC A1 at paras 43–44.

138 SOC A1 at para 27.3.

139 SOC A1 at para 40.2.

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According to the claimant's own case, all of these deficiencies were brought up at the 21 May 2018 Meeting, either by various owners of medical units or by the defendant. This can be seen in the following comparative table.

Expert Report[140]	**21 May 2018 Meeting**
Corridor width for patient and clinician access	The corridor width and the emergency stretcher bed clearance at corridor lifts being too narrow and inadequate.[141]
Emergency patient egress	Patients in emergency cases being conveyed via stretchers being not property catered to enter/exit the Medical Centre.[142] No access for ambulance and other emergency response service providers.[143]
Provision for main equipment delivery, access and removal	There being no provision for any suitable lifts to ferry the medical equipment to the medical units.[144] MRI machines being incapable of reaching any medical unit due to inadequate lifts and other alternative access to the medical units.[145] MRI machines and heavy bulky medical equipment necessary for the functioning of a Medical Centre being unable to be ferried to any unit on the 3rd, 4th or 5th levels because there was no provision for "break out panels" on the external façade curtain wall to facilitate external entry of such equipment to these floors.[146]

140 SOC A1 at paras 40.3–40.10.

141 SOC A1 at para 27.4.7.

142 SOC A1 at para 27.4.9.

143 SOC A1 at para 27.4.10.

144 SOC A1 at para 27.4.1.

145 SOC A1 at para 27.4.3.

146 SOC A1 at para 27.4.4.

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	No provision for medical specialists to bring their specialist equipment into the Medical Centre.[147]
Provision for removal of hazardous laboratory exhaust and hazardous anaesthetic gas exhaust	The defendant promised that it would take steps to install exhaust pipes to expel gas and/or fumes from MRI machines.[148]
Provision for delivery and management of toxic, biohazard and sharp wastes	No provision for handling of biohazard waste, toxic waste and sharp waste.[149]
Provision for delivery and management of medical gases	There being no exhaust pipes and/or shafts required to expel exhaust gases and/or fumes that emanate from medical equipment in a medical unit and why no provision was made for the same.[150] No medical gas storage farm.[151]
Provision of uninterrupted power supply (UPS)	The defendant promised that it would take steps to increase the electricity supply to the Medical Centre.[152]

154 It must be borne in mind that the degree of knowledge required is "reasonable rather than absolute or certain" (*Lian Kok Hong* at [40]). The claimant may have required the Expert Report for final confirmation that the Medical Centre was not fit for purpose. But it did not require the report to obtain

147 SOC A1 at para 27.4.11.

148 SOC A1 at para 31D.

149 SOC A1 at para 27.4.13.

150 SOC A1 at para 27.4.2.

151 SOC A1 at para 27.4.14.

152 SOC A1 at para 31C.

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a reasonable belief that that was the case. Nor did it require the expert's advice to know about all the underlying deficiencies. It would then already have been in possession of the material facts required to embark on the preliminary steps for instituting proceedings.

155 Even if the claimant required expert advice before it had the requisite knowledge, I find that the claimant did not take all reasonable steps to obtain that advice. The claimant chose not to commence its search for an expert until the first quarter of 2020, more than one and a half years after the 21 May 2018 Meeting and more than three years after first taking possession of the Medical Unit. This was despite the fact that it was unable to procure a tenant throughout this entire period.

156 The claimant says that it was waiting for the defendant's Promised Expert Report. However, this was a narrower report concerning a vibration and magnetic site survey, not a report concerning whether the Medical Centre was more generally fit for purpose. The claimant would, on its case, have had to commission the latter report anyway. It could have proceeded to do so. Additionally, once the claimant was aware of all the issues raised at the 21 May 2018 Meeting, it could reasonably have been expected to seek expert advice to determine if the Medical Centre was fit for purpose. If the claimant decided it wished to wait for the defendant's report, it took on the risk of waiting for a report that might or might not materialise, and has to bear the legal consequences of its decision. The claimant also says that its search was disrupted by Covid-19. Leaving aside the fact that the claimant could possibly have contacted and instructed experts remotely, Covid-19 hardly provides an explanation for more than a year of delay before the pandemic even took hold or movement restrictions took effect. Covid-19 cannot be used as a silver bullet

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to explain away the claimant's delays. Having sat on its hands, it cannot now claim that it had taken all reasonable steps to obtain expert advice.

157 For completeness, I do not agree with the claimant's submission that the defendant's act of attempting mediation indicates that the defendant's limitation defence does not apply or is waived. The claimant's argument is that if their claim was time-barred, there would have been no live dispute, thus mediation would serve no purpose and the defendant would not have agreed to mediate.[153] This argument misunderstands the nature of amicable resolution. While the defendant believes it has a limitation defence, the claimant clearly disagrees. Therein lies the dispute. The limitation defence, like any other defence, would defeat the claim if it is successfully pleaded. But that does not mean that there is no live dispute before the validity of the defence is adjudicated. The claimant's argument results in the absurd conclusion that whenever a potential defendant engages in amicable resolution, it concedes or waives any defence it might later raise in court.

Conclusion

158 In conclusion, I disallow the claimant's Breach of Contract Amendments because they do not raise a reasonable cause of action, and the claim is in any event time-barred. I find that the claimant's pleadings do not disclose a cause of action in the tort of negligent misrepresentation, and that its claim for misrepresentation under s 2 of the MA should be struck out because it is time-barred. It follows that the Expert Advice Amendments should be struck out as well.

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153 CWS at paras 149–158.

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159 Accordingly, I allow the defendant's appeals in both HC/RA 202/2024 and HC/RA 203/2024.

160 I will hear the parties on costs.

Lee Seiu Kin
Senior Judge

Cavinder Bull SC, Lin Shumin, Tan Shihao Sean, Tan Jun Hao
(Drew & Napier LLC) for the appellant;
Mahmood Gaznavi s/o Bashir Muhammad, Rezza Gaznavi
(Mahmood Gaznavi Chambers LLC) for the respondent.

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