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

[2025] SGHC 86

Originating Claim No 129 of 2022

Between

Crystal Beauty Pte Ltd

… *Claimant*

And

(1) Xu Jasmine
(2) ERA Realty Network Pte Ltd

… *Defendants*

JUDGMENT

[Contract — Misrepresentation Act]
[Tort — Misrepresentation — Fraud and deceit]
[Tort — Misrepresentation — Negligent misrepresentation]
[Tort — Misrepresentation — Remedies]
[Tort — Vicarious liability]

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Crystal Beauty Pte Ltd
v
Xu Jasmine and another

[2025] SGHC 86

General Division of the High Court — Originating Claim No 129 of 2022
Mohamed Faizal JC
13 February, 4 April 2025

8 May 2025 Judgment reserved.

Mohamed Faizal JC:

1 In Singapore's mature and structured real estate market, ambiguity represents the exception rather than the rule. Clear, principled regulatory frameworks, market transparency, and standardised industry practices have engendered an environment where transactions overwhelmingly follow well-established norms. Yet, once in a rare while, as this case illustrates, situations arise where the parameters vastly deviate from the convention. When that happens, the role of the property agent and the property agency (that the agent is employed by) – players in the property landscape who otherwise operate largely in the background to facilitate such purchases – come to the fore. Where does their responsibility to safeguard begin and how far does their duty to guide extend? What should a property agent be expected to do by way of due diligence in order to cater to a rare situation that none of the parties may have envisioned?

Facts

The parties

2 The facts of this case are not in much dispute. Crystal Beauty Pte Ltd (the "Claimant") is a beauty salon specialising in cosmetic services and products (the "business").[1] Since its incorporation on 28 October 2019, the Claimant has been operating at 19 Leedon Heights, #01-68, D'Leedon, Singapore 266227 (the "Current Premises").[2] The sole director and shareholder of the Claimant is Mdm Pan Ying (the "Claimant's Director").[3] Since about 2015 to the incorporation of the Claimant in 2019, the Claimant's Director was operating a sole proprietorship at the same premises (*ie*, the predecessor of the Claimant), though the particulars of such operations are irrelevant for present purposes.[4]

3 Ms Jasmine Xu (the "First Defendant") works as a licensed real estate agent under the auspices of ERA Realty Network Pte Ltd (the "Second Defendant"). The First Defendant became acquainted with the Claimant's Director sometime between 2015 and 2018 as their children had been classmates in kindergarten.[5] Thereafter, she became a customer of the Claimant, having patronised her beauty salon.[6]

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1 Statement of Claim (Amendment No 2) dated 30 July 2024 ("SOC(A2)") at [2].

2 SOC(A2) at [9].

3 SOC(A2) at [3].

4 SOC(A2) at [9].

5 Ms Xu Min's Affidavit of Evidence-in-Chief dated 28 August 2024 ("First Defendant's AEIC") at [2].

6 SOC(A2) at [10]; First Defendant's AEIC at [2].

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The intended new premises

4 At or around September 2018, the Claimant's Director expressed to the First Defendant her interest in purchasing larger premises to expand the business.[7] The unit directly across the corridor from the Current Premises – 19 Leedon Heights, #01-62, D'Leedon, Singapore 266227 – was identified as a possible location to facilitate such an expansion (the "Intended New Premises"). There is some dispute between the parties as to how the Intended New Premises first got on the radar of the First Defendant and the Claimant's Director. I will discuss the divergences in accounts later where this might be relevant, but in any event, what appears clear is that the First Defendant, in her capacity as a licensed real estate agent, acted on behalf of the Claimant at all times in its purchase of the Intended New Premises.

5 It would be useful to point out that there were two attempts to purchase the Intended New Premises:

(a) The first attempt was in September 2018 when the Claimant's Director signed an option to purchase to procure the Intended New Premises for a sum of $1.57m.[8] The Claimant's Director accepted in cross-examination that, for the purposes of such an intended purchase, she had viewed the Intended New Premises back in 2018.[9] However, this purchase was eventually aborted, ostensibly as a result of difficulties in obtaining the necessary financing at the time to complete the purchase.[10]

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7 SOC(A2) at [11]; First Defendant's AEIC at [3].

8 First Defendant's AEIC at [6], pp 28–29 (Option to purchase the Intended New Premises dated 20 September 2018).

9 13 February 2025 NEs at p 16 lines 10–19.

10 13 February 2025 NEs at p 18 lines 22–26; First Defendant's AEIC at [6].

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(b) The second attempt was in or around January 2020 when the Claimant's Director re-approached the First Defendant, seeking once more to expand her business and asking the First Defendant to source for a suitable property near the Current Premises.[11] It is not in dispute that for the purposes of the purchase in 2020, the Claimant's Director has expressed a similar aim for the First Defendant to find a property larger than the Current Premises in order to accommodate an expansion of the Claimant's business, although the parties differ on whether any specifics were provided as to what such an expansion would entail.

6 At the time of the second attempt in 2020, the Intended New Premises was tenanted and used as a clinic. The parties disagree on whether there had been a formal physical inspection of the interior of the Intended New Premises at the time of the purchase.[12] In any event, there were considerable negotiations regarding the purchase of the Intended New Premises, ultimately culminating in a decrease from an initial listing price of $1.57m to a final purchase price of $1.49m (or about $1.594m once one includes Goods and Services Tax).[13] An option to purchase the Intended New Premises was eventually executed in early 2020 by a nominee of the Claimant.[14] The tenancy of the clinic remained intact even after the purchase of the Intended New Premises, and endured till late 2021.[15]

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11 Mdm Pan Ying's Affidavit of Evidence-in-Chief dated 29 August 2024 ("Claimant's Director's AEIC") at [10]; First Defendant's AEIC at [7].

12 Claimant's Director's AEIC at [13]–[14]; First Defendant's AEIC at [13].

13 Claimant's Director's AEIC at [15]; First Defendant's AEIC at [8], [17]–[18].

14 Claimant's Director's AEIC at [15]; First Defendant's AEIC at [25].

15 Claimant's Director's AEIC at [16]; First Defendant's AEIC at [26].

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Size of the Intended New Premises

7 Throughout the course of the purchase of the Intended New Premises, both the Claimant's Director and the First Defendant had assumed that the Intended New Premises was around the size of 818 sq ft (or about 76 m^2) (the "official size"). This belief appears to have arisen from two key bases:

(a) the past transaction history data, on PropertyGuru and EdgeProp, two leading commercial listing portals in Singapore for the sale of properties, stated that the size of the Intended New Premises was 818 sq ft;[16] and

(b) in the course of completion, the Claimant's conveyancing solicitor, Mr Gary Chen ("Mr Chen"), conducted a title search on the Intended New Premises, which further corroborated the point that the strata lot area of the Intended New Premises was 818 sq ft, comprising of 786 sq ft (or about 73 m^2) for the strata lot area and 32 sq ft (or about 3 m^2) for the accessory lot area.[17]

8 Sometime in late 2021, the tenancy of the clinic at the Intended New Premises concluded.[18] The Claimant's Director then took possession of the Intended New Premises and hired an interior designer, Mr Gao Xianghe ("Mr Gao"), to design a new layout for the premises.[19] It was only when Mr Gao

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16 Defence of the 1st and 2nd Defendants (Amendment No 1) dated 12 January 2024 at [12(f)]; Claimant's Director's AEIC at [21]; 13 February 2025 NEs at p 70 lines 10–13.

17 First Defendant's AEIC at [23], pp 38–39 (STARS search for the Intended New Premises).

18 Claimant's Director's AEIC at [16]; 13 February 2025 NEs at p 29 line 27–p 30 line 1.

19 First Defendant's AEIC at [26].

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started to do proper measurements of the Intended New Premises to facilitate intended renovations that it became apparent that the actual usable floor area was only approximately 619 sq ft (or about 57.5 m^2) (the "usable floor space").[20]

9 This discrepancy between the official size and the usable floor space forms the crux of the Claimant's case on misrepresentation. As I will expand on below, the Claimant alleges that the First Defendant had misrepresented to the Claimant's Director before the purchase in 2020 that the "usable floor space" of the Intended New Premises was 818 sq ft.

10 Based on the evidence presented before me, the discrepancy between the numbers arises from a unique manner in which one calculates the lot area for properties that are irregularly shaped due to their sloping walls, such that there is a disparity between the floor and ceiling areas.[21] For such properties, the lot area (as is set out in the title documents and in the commercial listing portals) is calculated based on the larger of the two.[22] In this case, therefore, it was the ceiling area that was 818 sq ft, and not the floor area.

11 This is apparently a novel situation and arises because the Intended New Premises comes with upward-sloping walls. To illustrate, the irregular shape of the Intended New Premises can be seen in Figure 1 – from a front view, the premise would have an inverse trapezoidal configuration such that the top of such trapezoid (*ie*, the ceiling) would be larger than the base of the trapezoid (*ie*, the floor):

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20 Claimant's Director's AEIC at [18].

21 Mr Tay Kah Poh's Affidavit of Evidence-in-Chief dated 22 August 2024 ("Joint Expert's AEIC") at p 10 (Joint Expert's expert report at [16]).

22 13 February 2025 NEs at p 97 lines 2–7.

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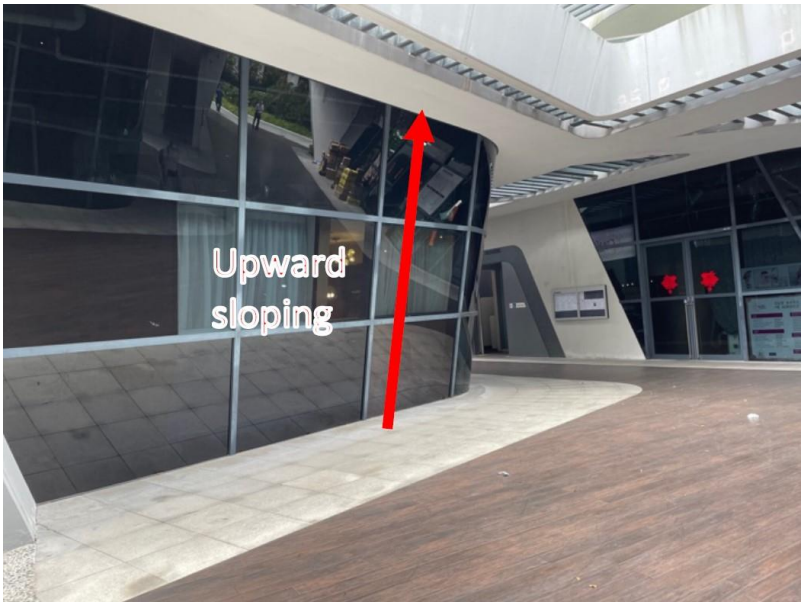


Figure 1. Exterior of the Intended New Premises

12 The Current Premises bears the opposite configuration with downward-sloping walls, such that from a front view, it is shaped as a trapezoid with a top (*ie*, the ceiling) that is smaller than the bottom (*ie*, the floor) of the trapezoid:



Figure 2. Exterior of the Current Premises

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13 It is not disputed between the parties that this unique manner of calculating the size of the premises applies to the Intended New Premises, such that the official size of the Intended New Premises is calculated based on the area of the ceiling, and not the floor area.[23]

After discovering the discrepancy in size of the Intended New Premises

14 In any event, in or around May 2022, the Claimant started operating from the Intended New Premises. However, the Claimant contends that the discrepancy in size from what had been assumed at the time of the purchase significantly hampered its ability to properly expand its business – in particular, even though it had initially sought to have five treatment rooms, one consultation room, one manicure/pedicure area, and a kitchen in the Intended New Premises, due to limitations of space, it eventually had to make do with only four treatment rooms and a kitchen (jettisoning the idea of a manicure/pedicure area altogether).[24] It also contends that as a result of these limitations, it was unable to consolidate its operations within one unit, *ie*, the Intended New Premises, and instead was forced to operate from both the Current Premises and the Intended New Premises concurrently. Indeed, it continues to do so to date.[25]

15 Subsequently, the Claimant sued five parties, namely the First Defendant, the Second Defendant, PLS Holdings Pte Ltd ("PLS Holdings") which was the vendor of the Intended New Premises, Mr Eric Kwek ("Mr Kwek") who was the vendor's estate agent, and Propnex Realty Pte Ltd

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23 First Defendant's AEIC at [29].

24 Claimant's Director's AEIC at [17], [27].

25 Claimant's Director's AEIC at [28].

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("Propnex Realty") which was Mr Kwek's estate agency.[26] However, only the actions against the First Defendant and the Second Defendant endure. The action against PLS Holdings was discontinued as it has since been struck off, with its last annual general meeting held on 29 January 2021.[27] The actions against Mr Kwek and Propnex Realty were discontinued as they had entered into a confidential settlement agreement with the Claimant.[28]

16 Starting first with actions brought against the First Defendant, the Claimant contends that arising from the fraudulent, negligent and/or innocent misrepresentation on the part of the First Defendant regarding the usable floor space, it seeks damages of $591,255.38 (the "claimed sum") with interest and costs. The claimed sum comprises two components as follows:

(a) Savings of $203,400 on operational costs as, if the Intended New Premises had usable floor space of 818 sq ft, the Claimant would not have had to maintain the Current Premises. The Claimant derived this sum by (seemingly arbitrarily) halving the total of the estimated rental fees and staff salaries for the Current Premises:[29]

(i) rental of $118,800 (a rate of $3,300 a month) due to the need to renew its tenancy for the Current Premises for another three-year term;[30]

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26 Statement of Claim (Amendment No 1) dated 25 May 2023 at [4]–[8]; SOC(A2) at [4]–[8].

27 HC/SUM 1744/2024 Mohamed Arshad Bin Mohamed Tahir's Affidavit dated 24 June 2024 ("Claimant's counsel's SUM 1744 Affidavit") at [6], p 5 (Screenshot of the ACRA Bizfile profile of PLS Holdings).

28 Claimant's counsel's SUM 1744 Affidavit at [7].

29 SOC(A2) at [37]. See also Claimant's Closing Submissions dated 24 March 2025 at [45(b)] and Claimant's Director's AEIC at [27] to [30].

30 SOC(A2) at [34]–[35], pp 104, 118.

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(ii) costs of $288,000 for hiring four staff to run the business in the Current Premises (a rate of $2,000 a month for each staff) over the next three years. The Claimant contends that if the usable floor area were indeed 818 sq ft, it would have been able to "cut down on the employment of two of the staff members currently manning the [Current Premises]";[31] and

(b) a sum of $387,855.38 on the premise that the Claimant paid a purchase price of $1.594m for an 818 sq ft property when the pro-rated price for a 619 sq ft property ought to have been $1,206,444.62.[32]

17 In the alternative, the Claimant also contends that the First Defendant was negligent and had failed to satisfy her duty of care owed to the Claimant as its estate agent.[33]

18 As for its claim against the Second Defendant, the Claimant contends that it is vicariously liable for the misrepresentation and/or negligence of the First Defendant, in the latter's capacity as its agent and/or servant.[34]

Claim against the First Defendant: Misrepresentation

19 I first begin with the claim against the First Defendant for misrepresentation. As I alluded earlier (see [9] above), at the very core of the claim against the First Defendant is the contention that the First Defendant had made a representation that the "usable floor area" of the Intended New Premises

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31 SOC(A2) at [36]–[37].

32 SOC(A2) at [28]–[29].

33 SOC(A2) at [31].

34 SOC(A2) at [5], [32].

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was 818 sq ft. In my mind, the issues that arise are as follows and I will first address the elements that are common amongst different types of misrepresentation (see *Ma Hongjin v Sim Eng Tong* [2021] SGHC 84 ("*Ma Hongjin*") at [21]):

(a) Whether a representation was made by the First Defendant to the Claimant that "the *usable* floor space" was 818 sq ft?

(b) Whether the Claimant is able to establish an actionable misrepresentation. Specifically, whether the representation (assuming it was made) induced actual reliance by the Claimant in entering into the purchase of the Intended New Premises?

(c) If an actionable misrepresentation is made out, whether the First Defendant would be liable for fraudulent misrepresentation, negligent misrepresentation under the common law and/or a statutory claim for negligent and/or innocent misrepresentation under the Misrepresentation Act 1967 (2020 Rev Ed) ("Misrepresentation Act 1967")?

20 I turn to each of these matters in turn.

Issue 1: No representation regarding the "usable floor space" was made

21 In my judgment, I am unable to find that any representation was made regarding the usable floor space based on the evidence before me. Preliminarily, I would observe that the Claimant ought to have pleaded its case with more particulars regarding the alleged representation. As was highlighted by the Court of Appeal in *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and*

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others [2020] 2 SLR 1256 (at [116]), "allegations of fraud or misrepresentation must be pleaded with utmost particularity":

> … Full particulars of the misrepresentation relied on must be stated in the pleading, including the nature and extent of the misrepresentation, who the representor and representee are, whether the representation was made orally or in writing, and identifying the documents: *Bullen & Leake & Jacob's Singapore Precedents of Pleadings* vol 2 (Jeffrey Pinsler gen ed) (Sweet & Maxwell, 18th Ed, 2016) ("*Bullen*") at para 20.20. Failure to adequately plead particulars of misrepresentation may lead to an unsuccessful claim: *Bullen* at para 20.20, citing *Wee Soon Kim Anthony v UBS AG* [2003] 2 SLR(R) 554.

22 In this case, the pleadings are of an extremely vague nature. For one, the Claimant springs allegations of an implied representation in its Reply Submissions, despite not having raised this in its pleadings.[35] Nevertheless, for completeness, I will subsequently address this. It is also unclear whether the Claimant is basing its case on an isolated representation or a series of continuing representations (see *Spice Girls Ltd v Aprilia World Service BV* [2002] All ER (D) 190 (Jan) at [63]). Based on the Statement of Claim (Amendment No 2), the Claimant appears to allege that the misrepresentation claim stems from an isolated representation made soon after January 2020, when the First Defendant "informed [the Claimant's Director] that the [Intended New Premises] was for sale and that its usable floor space was 818 square feet (76 square meters)".[36] However, the Claimant's Closing Submissions provide a vastly different account – the Claimant alleges there that the misrepresentation stems from a series of *continuing representations* in which the First Defendant "had always represented the usable square feet to be 818".[37] Presumably, this pivot was to

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35 Claimant's Reply Submissions dated 4 April 2025 ("CRS") at [8]–[9].

36 SOC(A2) at [14]; First and Second Defendants' Closing Submissions dated 24 March 2025 ("DCS") at [4].

37 Claimant's Closing Submissions dated 24 March 2025 at [8].

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ensure alignment with the director's evidence in cross-examination suggesting that the representations had been made "all along":[38]

> Q: The usable floor area? At the very commencement of my cross-examination, Mdm Pan, I asked you for a date as to when the 1st defendant allegedly told you that the useable floor area was 818 square feet. *Initially, you said "2019"*. Then I took you through paragraphs 10, 11 and 12 of your own AEIC, and *then you agreed it was January 2020*. But now you're saying now - half an hour on - you're saying that actually all along she's been telling you the useable floor area was 818 square feet. Is that correct? I just want this down in the evidence, that's all.
>
> A: Yes, it was ***all along***. I met her a few times and *she had always told me that it was 818 square feet.* ***We have messages that can prove that***.
>
> [emphasis added in italics and bold italics]

While I would reject such a variation of the Claimant's case in any event, I nevertheless proceed to explain why I find that the First Defendant did not make any representation (whether on an isolated occasion or on a continuing basis) regarding the usable floor space.

No express representation

23 I begin first with why I find that no express representation(s) that the "*usable* floor space was 818 square feet" [emphasis added] (the "Purported Representation") had been made.[39] In particular, I would make two observations on this.

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38 Claimant's Closing Submissions dated 24 March 2025 at [8], citing 13 February 2025 NEs at p 19 line 30–p 20 line 7.

39 Claimant's Director's AEIC at [12].

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24 First, I examine the text communications adduced by the Claimant, which comprise messages between the First Defendant and the Claimant's Director from 15 January 2020 to 8 July 2022.[40] It is plain to me that, contrary to the allusions made in the exchange in court I had reproduced at [22] above, these messages do not support the Claimant's contention that the Purported Representation was made. Over a period of more than two years of communications, there was nary a mention of any such representation.[41] Even after the Claimant's Director found out about the discrepancy in September 2021, there was no accusation on her part that the First Defendant had, at any time, previously represented the usable floor space to be 818 sq ft.[42]

25 On the contrary, the converse is true – from my reading of the text messages, it shows that both parties were under the impression of having been *jointly* misled by the developer's marketing of the Intended New Premises as being of 818 sq ft, which both parties assumed was a reference to the usable floor space. The following text messages between the Claimant's Director and the First Defendant reflect this:[43]

> 24 Sep. 2021, 9:57 P.M.
>
> Claimant's Director: Ok, let the professional surveyor survey the place. Roughly how much will it cost? At least we will

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40 Claimant's Director's AEIC at pp 39–92 (Text communications between the Claimant's Director and the First Defendant between 15 January 2020 to 8 July 2022).

41 DCS at [13].

42 Claimant's Director's AEIC at pp 66–92 (Translated text communications between the Claimant's Director and the First Defendant between 21 September 2021 to 8 July 2022).

43 Claimant's Director's AEIC at pp 71, 76, 81–82 (Translated text communications dated 24, 26 September, 12 October 2021).

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	have some knowledge about it, right? How big is it?
First Defendant:	If the actual area is different from the area specified in the property ownership certificate, *we may have to look for the developer* (but the boss said that we might not stand any chance. They did a surveying at the time of the delivery of the property.)
26 Sep. 2021, 12:40 P.M.	
First Defendant:	*I hope that I can file a complaint about the surveying done by the surveyor.* Very annoying
Claimant's Director:	The developer is very scheming
12 Oct. 2021, 8:02 P.M.	
First Defendant:	Yes, [a surveyor] can do the measuring, but there will be no proof
Claimant's Director:	Yes, we need an appraisal report from a professional surveyor to persuade the developer!

[emphasis added]

26 These discussions demonstrate that the two had a common understanding and that such an understanding appeared to only morph sometime in March 2022, which was when the Claimant's Director decided to sue the First Defendant after discussions with various surveyors suggested that there was nothing wrong with how the developer had calculated the strata lot area of the Intended New Premises (such that presumably, it became apparent that no cause of action could be meaningfully pursued against the developer).

27 Second, the documentary evidence involving third parties further corroborate the conclusion that no such representation had been made. In the

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Claimant's Director's communications with Mr Gao spanning over more than a year, there was not a single suggestion to him that she was misled by the First Defendant.[44] Instead, her only observation at the time to Mr Gao on this point was that "the contract said it was 880 [*sic*] square feet".[45] In the same vein, in a letter sent by the Claimant's previous counsel to the First Defendant, the Claimant did not contend that the latter had made any such representation involving the "usable floor space". On the contrary, the Claimant had alleged that the representation was that "the floor space was 818 sqft (76sqm)" while concomitantly claiming that the parties understood this to be a reference to usable floor space.[46] In that sense, the Claimant's own position in such pre-trial correspondence appears to be that the specific phrase forming the Purported Representation (*ie*, "usable floor space") was never, in fact, said in the lead up to the purchase of the Intended New Premises. Therefore, on the facts, I am unable to find that the Purported Representation had been expressly made by the First Defendant.

No implied representation

28 The Claimant in its Reply Submissions contends, in the alternative, that even if the Purported Representation had not been expressly made, the First Defendant's statement that the strata lot area of the Intended New Premises was 818 sq ft would have carried with it an implied representation that the *usable*

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44 Mr Gao Xianghe's Affidavit of Evidence-in-Chief dated 29 August 2024 ("Mr Gao's AEIC") at pp 5–27 (Original and translated text communications between the Claimant's Director and Mr Gao dated from 2 September to 4 November 2021).

45 Mr Gao's AEIC at p 21 (Translated text communications between the Claimant's Director and Mr Gao dated 2 September 2021 at 11.21pm).

46 Bundle of Documents dated 27 January 2025 ("BOD") at p 280 para 3 (Letter from the Claimant's previous counsel to the First Defendant date 4 July 2022 and titled "Claim for damages for negligence and misrepresentation against estate agent Ms Jasmine Xu …").

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floor space was 818 sq ft. The Claimant alleges that "a reasonable person in her position would have understood" as such in view of the following facts:[47]

(a) the First Defendant's statement that "the Intended New Premises had an area of 818 square feet";

(b) the commercial listing advertisement "stat[ing] that the [Intended New Premises] had an area of 818 square feet";

(c) "the common understanding" between the Claimant's Director and the First Defendant "that the entirety of the 818 square feet could have been used by the Claimant"; and

(d) the First Defendant's evidence in cross-examination that "if she thought that the Claimant would not have been able to use all 818 square feet, she would have brought this to Pan Ying's attention".

29 In determining whether a statement carries with it an implied representation, the court adopts an objective approach, examining what a reasonable person in the representee's position would have understood the statement to mean, based on an objective reading of the statement in question and the surrounding circumstances (see *Lam Wing Yee Jane v Realstar Premier Group Pte Ltd* [2024] 5 SLR 51 ("*Lam Wing Yee Jane*") at [42]). Having taken the aforementioned facts and the surrounding circumstances into consideration, I disagree with the Claimant's submission that the statement regarding the strata lot area carries an implied representation regarding the usable floor area.

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47 CRS at [8]–[9].

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30 First, a reasonable person would not have understood the First Defendant's statement to carry the alleged implied representation. Instead, a reasonable person would have understood the statement regarding the strata lot area to be referring to both functionally usable and unusable floor area (see *Liew Soon Fook Michael and another v Yi Kai Development Pte Ltd* [2017] SGHC 88 ("*Liew Soon Fook Michael*") at [36]–[37]). The strata lot area would be inclusive of portions of unusable floor area that may be constrained by structural elements, layout inefficiencies, or practical limitations. For instance, a reasonable person would understand that the fact that a house has a strata lot area of 5000 sq ft does not necessarily suggest that every single square foot of such space is, *in the most technical of ways*, fully usable as some of it would invariably be (largely unusable) walls, pillars or air-conditioner ledges. A reasonable person would have applied the same line of reasoning to the floor area rendered unusable due to the sloping walls in the Intended New Premises.

31 Second, the facts set out at [28(c)] and [28(d)] raised by the Claimant do not assist its case – they instead demonstrate that there was no imbalance of information between the Claimant's Director and the First Defendant (see *Lam Wing Yee Jane* at [42]–[43]). A reasonable person in the Claimant's Director's position thus would not have understood the First Defendant to be providing any implied representation beyond their common understanding, which was based on the details in the commercial listing advertisement.

32 Separately, on the point of the Claimant's first attempt to purchase the Intended New Premises, I do not accept the Claimant's contention in cross-examination that the First Defendant had also made a similar representation that the "usable floor area was 818 square feet" in the course of the first attempt back

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in 2018.[48] This central allegation would have been at the heart of such a claim, and yet, it was neither pleaded, nor articulated in its director's affidavit.

33 For those reasons, I find that on the balance of probabilities, no false representation was made, whether express or implied. To be clear, this is not to suggest that the First Defendant did not, at any point in time during the transaction, represent to the Claimant's Director that the property size was 818 sq ft, or even that the Intended New Premises was larger than the Current Premises – a factual assertion that would be, in a technical sense, accurate given that the Current Premises was 603 sq ft (or approximately 56 m^2),[49] which is smaller than the usable floor space of the Intended New Premises approximating 619 sq ft (or about 57.5 m^2). Indeed, the First Defendant herself does not dispute making statements of a similar nature and, in my view, it would have been entirely logical for her to have made such statements to inform her client about the broad specifications of the Intended New Premises.[50]

34 For completeness, I explain why I have placed little to no weight on the following arguments raised by the parties in coming to the above determination:

(a) During cross-examination, there was a dispute over whether the Claimant's Director had expressly informed the First Defendant of her plans to have five treatment rooms, one consultation room, one manicure/pedicure area, and a kitchen in the Intended New Premises.[51] To me, this was a red herring that bore little relevance in the present instance. Stating the desire to effect such plans for the Intended New

48 13 February 2025 NEs at p 19 lines 21–29.

49 Claimant's Director's AEIC at [10].

50 First Defendant's AEIC at [31]; 13 February 2025 NEs at p 70 lines 17–19.

51 13 February 2025 NEs at p 51 lines 1–9, p 55 lines 6–12, p 66 lines 13–27.

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Premises without any further context would bear little significance for an estate agent with no experience in the beauty salon business. The estate agent would not be able to meaningfully determine the square footage required to accommodate such business' plans as someone who was not in that specific industry. Of course, in saying that, I accept that there may be certain circumstances where it would be obvious that the Intended New Premises could never meaningfully accommodate the intended plans, such as where a buyer shares its plans to use the Intended New Premises as a warehouse, or as a childcare centre for 50 students, such that an estate's agent failure to advise his/her client despite the sharing of such plans could be indicative of the agent's lack of due care in considering the suitability of the property being purchased. Save perhaps such clear circumstances, an estate agent cannot be expected to assume the mantle of a business owner and to make obviously business/industry-centric decisions on behalf of the proposed purchaser. Therefore, I decline to make any findings on whether such express representation was made regarding the Claimant's plans since the question of whether such a representation was made would have little relevance to whether the Purported Representation was made.

(b) The parties spent some time in interrogating the role of Mr Chen, the conveyancing lawyer handling the purchase, and the extent to which he explained the size of the Intended New Premises to his client at the *final* stage of the transaction (*ie*, after signing the option to purchase). In my view, his role is of little relevance to whether the Purported Representation was made in the *early* stages of the transaction. I thus make no finding on the extent to which Mr Chen had explained the

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details of the STARS search, including the strata lot area of the Intended New Premises, to the Claimant's Director.[52]

Issue 2: The Purported Representation is not actionable

35 An actionable misrepresentation is a false statement of existing or past fact made by the representor before or at the time of making the contract, which is addressed to the representee and which induces the representee to enter into the contract (*Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 at [20], citing *Anson's Law of Contract* (28th Ed, 2002) at p 237). I begin with the element of a false statement. Having found that no false representation of fact was made by the First Defendant, the above analysis suffices to dispose of this case. Nonetheless, in the interest of comprehensiveness, I explain why even if I had found that the First Defendant had made the Purported Representation, I would, on balance, not be inclined to find that it induced actual reliance such that the misrepresentation claims still cannot be made out.

36 The element of reliance requires that "the misrepresentation play 'a real and substantial' role in inducing the plaintiff to act, though it need not be the sole or decisive factor" (*Ma Hongjin* at [64], citing *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 ("*Panatron*") at [23]).

37 On the facts, the Purported Representation did not, in my view, play a real and substantial role in inducing the Claimant to enter into the purchase of the Intended New Premises. Crucially, as I observed earlier, the Intended New

[52] See DCS at pp 5–8.

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Premises had been the subject of a prior expansion plan in 2018 which did not materialise. Given this specific context, even if the Purported Representation had played any role at all, it is unlikely that any *additional* representations made by the First Defendant (above and beyond anything said in 2018) would have played a *real and substantial role*. The Claimant's Director would naturally rely on the assumptions and understanding she had already formed about the Intended New Premises back in 2018, including her assumptions regarding the size of the Intended New Premises.[53] Unless there was something said in 2020 that specifically contradicted such assumptions (of which there appears to have been none), there would have been little reliance on what was said in 2020.

38 Although it does not have any impact on my finding that there was no reliance, I briefly explain why I do not accept the Defendants' contention that there was no reliance on the Purported Representation when entering into the sale and purchase agreement because the Claimant could have chosen "not to follow through with the purchase" when Mr Chen "explained the [Intended New Premises'] title to her and the lot area and accessory lot area".[54] For one, I see no reason why Mr Chen would have said anything to challenge the official size of the Intended New Premises since this same number was reflected in the STARS search of the property that he conducted.[55] Indeed, the Claimant's Director hinted at this as well on the stand.[56] There was therefore little prospect of any such misrepresentation being clarified by querying with the solicitors concerned such that her misperceptions would be corrected (*cf Liew Soon Fook*

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53 DCS at [33].

54 DCS at [35].

55 First Defendant's AEIC at [23], pp 36–42 (STARS search for the Intended New Premises).

56 13 February 2025 NEs at p 28 lines 21–31.

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Michael at [38]). For another, it is not clear to me how she would have, by that time, been able to withdraw from the transaction without in any event facing some potential claim for damages from the other side.

39 For completeness, I also make some brief comments on two other elements that are closely linked to the requirement of inducement, but which remain shrouded in some uncertainty.

40 The first element is the *materiality* of the representation, which is an objective inquiry into whether the misrepresentation would affect a normal and reasonable person (*The Law of Contract in Singapore* (Andrew Phang Boon Leong, gen ed) (Academy Publishing, 2nd Ed, 2022) ("Phang (2022)") at para 11.093, citing *Australian Steel & Mining Corp Pty Ltd v Corben* [1974] 2 NSWLR 202 at 207). As it stands, materiality serves as a factor from which reliance is inferred (*Ma Hongjin* at [64], citing *Raiffeisen Zentralbank Osterreich AG v Archer Daniels Midland Co and others* [2007] 1 SLR(R) 196 ("*Raiffeisen*") at [56]). However, it remains unclear whether materiality "needs to be established as an element *separate* from the essential requirement of factual inducement" (see Phang (2022) at para 11.093; see also *Lam Wing Yee Jane* at [59]–[62]). To be clear, even if materiality were to be a distinct element, it would likely only be a requirement for non-fraudulent misrepresentation and would not be a requirement for fraudulent misrepresentation to be established. This is supported in case law and in principle, as it would not make sense to deny a victim of fraud his remedy on grounds of his own gullibility or that the fraud was minor (see Phang (2022) at para 11.098). However, as the present case does not turn on this point, I need not say any more on this point of law. In any case, for the reasons alluded to earlier (see above at [37]), on these facts, the Purported Representation would not have been material in light of the prior expansion plan in 2018.

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41 The second element is the representor's *intention* to induce the representee to action on the representation, which is intricately linked to the element of materiality. The link between the two elements was expanded on in *Raiffeisen* at [53]:

> … it is relevant to consider the state of mind of the representor as the plaintiff must establish an intent to induce. The representor is presumed to have so intended once materiality is proved. The evidential burden then shifts to the representor to displace the *prima facie* case. It follows that materiality and inducement are closely related. Conversely, if the subject matter of the misrepresentation was immaterial to the business at hand, the court will normally find that the defendant had no intention to induce in the absence of evidence otherwise.

42 It remains unclear whether intention to induce is a requirement for all types of misrepresentation – while intention is essential for fraudulent misrepresentation, the "position *vis-à-vis* purely innocent misrepresentation is less clear" (see Phang (2022) at paras 11.085–11.090). In a similar vein, Prof John Cartwright has also hinted that the element of intention must be established for all remedies (see John Cartwright, *Misrepresentation, Mistake and Non-Disclosure* (Sweet & Maxwell, 3rd Ed, 2012) ("Cartwright (2012)") at para 3-49):

> It is sometimes said that all the remedies have a minimum requirement as to the defendant's state of mind: he cannot be held responsible for the consequences of his statement unless he intended the representee to act on it. … However, in relation to other remedies, it means only that the representor, in making the statement, realised that his statement would be received by the representee and that he might therefore act upon it …

43 Similarly, as the present case does not turn on this point, I make no further comments on this point of law. In any case, the Claimant has failed to adduce any evidence demonstrating that the First Defendant intended to induce it to enter into the sale and purchase agreement for the Intended New Premises by way of the Purported Representation (see Phang (2022) at para 11.085).

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Issue 3: No claim in misrepresentation is made out

Fraudulent misrepresentation

44 I next turn to the matter of whether any such representation (if made) would have been a fraudulent misrepresentation, although I note that the Claimant has not canvassed this claim in its Closing and Reply Submissions.[57] As noted in *IM Skaugen SE and another v MAN Diesel & Turbo SE and another* [2018] SGHC 123 ("*IM Skaugen SE*") (at [121], citing *Panatron* at [14]), there are five elements to the tort of fraudulent misrepresentation, as follows:

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

(b) the representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the party seeking to rely on it (*ie*, there must be inducement);

(c) it must be proved that the party in question had acted upon the false statement (*ie*, there has to be reliance);

(d) it must be proved that the party seeking to rely on such misrepresentation suffered damage by so doing; and

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

45 In my view, the tort of fraudulent misrepresentation is plainly not made out. Even taking the Claimant's case at its absolute highest and assuming the

[57] First and Second Defendants' Reply Submissions dated 4 April 2025 ("DRS") at [2].

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first three elements were made out, I agree with the Defendants that there is no evidence whatsoever to suggest that the Purported Representation was made with the knowledge, on the part of the First Defendant, that it was false.[58] There was certainly no "cogent evidence" supportive of such a conclusion (see *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 at [159]–[161]). Instead, as was discussed earlier (at [25] above), I find that the parties were jointly misled. Even on the Claimant's own evidence, all the First Defendant had done was to show the Claimant the commercial listing advertisement and the STARS search which stated the strata lot area.[59] No evidence was brought to show that the First Defendant had knowledge that the usable floor area would have been less than the official area.

46 Indeed, it would have made little sense for the First Defendant to intentionally mislead the Claimant on the specifications of the Intended New Premises, as it was something that she would be taken to task for in due course, if not in proceedings such as these, then potentially through disciplinary sanctions via the Council of Estate Agents if any such complaint had been lodged. Peddling such an intentional misrepresentation, which would have inevitably been found out in due course, would therefore have been a foolhardy move. In the circumstances, I find that there is no case for any liability in fraudulent misrepresentation, even if such a misrepresentation had been made.

Negligent misrepresentation

47 I next turn to the contention that the Purported Representation was a negligent misrepresentation. The elements of such a tort were also discussed *in*

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58 DCS at [25].

59 13 February 2025 NEs at p 22 lines 16–19.

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extenso in *IM Skaugen SE*, and like fraudulent misrepresentation, encompasses five elements (see *IM Skaugen SE*, at [121]):

(a) there must be a false representation of fact;

(b) the representation must have induced actual reliance;

(c) the party making such a representation must owe a duty of care;

(d) there must be a breach of such duty of care; and

(e) the breach must have caused damage to the claimant.

48 I turn first to the element of duty of care. It is not disputed that a duty of care exists between an estate agent and a purchaser (see *Su Ah Tee and others v Allister Lim and Thrumurgan (sued as a firm) and another (William Cheng and others, third parties)* [2014] SGHC 159 ("*Su Ah Tee*") at [214]–[217]), and that such a duty of care finds legislative expression in the Estate Agents Act 2010 (2020 Rev Ed) and the accompanying Code of Ethics and Professional Client Care (the "Code") as set out in the First Schedule of the Estate Agents (Estate Agency Work) Regulations 2010.[60] In particular, a brief overview of the duties owed was set out in *Su Ah Tee* (at [218]):

> … According to ss 6(2)(*a*) and (*b*) of the Code which relates to the general duty to clients and the public, salespersons were required to act according to the instructions of the client and protect the interests of the client. Moreover, the salesperson was not to mislead the client or provide any false information to the client. It is apparent that, as an issue of public policy, the Code took misrepresentations by salespersons seriously and the Code implicitly required a salesperson to take steps to ensure that false information or misrepresentations would not be made. I find this indicative of the need for the protection of

60 CCS at [16]–[18]; DCS at [26].

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> purchasers and sellers from negligent and/or fraudulent salespersons.

49 Next, I move on to the element of breach for such duty of care, for which the key issue is whether the First Defendant has met the requisite standard of care. In determining the requisite standard of care, one should not assume that the standard to adopt for finding a breach is one of strict liability (see *Lam Wing Yee Jane* at [79]–[80]). Instead, one must be realistic about the duties placed on an estate agent in safeguarding their client's interests, for while they serve as guides in a transaction, their role and responsibilities cannot be boundless. In the words of Lai Siu Chiu SJ in *Lam Wing Yee Jane* (at [2]), in considering what the duties of an estate agent would be in a property transaction, one must "weigh the scales of trust against the cold, hard duties as imposed by the law". Requiring too much from them also has an inadvertent undesirable consequence for the purchaser – exhaustive due diligence would lead to escalating costs and delays in completing such property transactions, as additional legal or inspection services may be required to meet such heightened demands which are, in any event, likely unnecessary for the overwhelming majority of transactions in light of the relatively transparent nature of Singapore's property market.

50 Instead, as was noted by the Defendants, the question is whether the estate agent had acted reasonably in the circumstances (see *Lam Wing Yee Jane* at [79]).[61] This question is necessarily context specific in that one would expect much more rigour in a multi-million-dollar transaction with extremely precise needs and requirements than in a generic and plain-vanilla small-scale commercial or residential purchase.

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61 DCS at [27]–[29].

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51 In order to appreciate the proper contours of an estate agent's duty in these circumstances, the parties appointed a joint expert, Mr Tay Kah Poh ("Mr Tay"), who is a registered estate agent and concurrently an Adjunct Associate Professor at the Department of Real Estate in the National University of Singapore Business School.[62] Mr Tay issued a detailed expert report, which I will refer to extensively in my findings below.[63] This expert report addressed a list of issues agreed on between the parties including questions on the types of due diligence checks that an estate agent typically undertakes as part of a property transaction, and whether the courses taught to estate agents apprises them about the oddities of how the strata lot area is defined when it comes to properties which are irregularly shaped.[64]

52 I now turn to address the five breaches alleged by the Claimant in its Closing Submissions as follows:

(a) that the First Defendant did not properly identify what the Claimant required;

(b) that the First Defendant did not take additional care despite knowing that the Intended New Premises was an unusual property;

(c) that the First Defendant breached the duty of care by failing to check the necessary documents before the Claimant proceeded with the purchase;

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62 Joint Expert's AEIC at [1].

63 Joint Expert's AEIC at pp 6–14 (Joint Expert's expert witness report).

64 Joint Expert's AEIC at [2].

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(d) that the First Defendant had breached the duty of care by failing to adequately take into account the fact that the previous tenants of the Intended New Premises had erected opaque walls; and

(e) that the First Defendant had breached her duty of care by making the misrepresentation.

53 First, the Claimant alleges that the First Defendant had breached her duty of care by failing to "tak[e] the necessary steps to identify what exactly the Claimant required in terms of space".[65] I accept that it is reasonable to require the First Defendant to identify suitable properties that are larger than the Current Premises, in accordance with the Claimant's Director's instructions. Such a duty is provided for under para 6(2)(*a*) of the Code, which requires estate agents to "act according to the instructions of the client", and is consistent with the checks set out by Mr Tay.[66] This duty was satisfied since the Intended New Premises is indeed larger than the Current Premises, whether it be based on the official size or the usable floor area.

54 However, it would not be reasonable to require the First Defendant to identify suitable properties with a square footage that can precisely accommodate the Claimant's expansion plans based on a broad description of the intended plans alone. As was briefly mentioned earlier (at [34(a)] above), such plans would have little meaning to an estate agent with no experience in the beauty salon business since, for instance, the estate agent would not know how large a treatment room ought to be. Precisely for that reason, I had earlier opined on why there is no need for me to make any findings on the dispute over

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65 CCS at [24].

66 CCS at [23], citing 13 February 2025 NEs at p 93 lines 15–24.

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whether the Claimant had actually shared her expansion plans, as well as the precise details of these expansion plans, with the First Defendant since such findings would not have any impact on my conclusion that there was no breach of duty by way of the first alleged breach.[67]

55 Second, the Claimant alleges that the First Defendant had breached her duty of care by failing to "exercise greater care" despite knowing that the Intended New Premises was an unusual property.[68] I accept that the Intended New Premises is an unusual property – a point which is not disputed by the parties. As was observed by Mr Tay, it was not at all common to find such irregularly shaped stratum or premises where the ceiling, and not the ground plane, is used to calculate the strata lot area stated on the Integrated Land Information Service ("INLIS") portal.[69] Nonetheless, what sort of additional measures could possibly have been *reasonably* taken? As Mr Tay noted, this situation was so unusual and rare that it would not have been covered in the conventional real estate course(s) that an estate agent would have to typically undergo before becoming licensed. Simply put, the present case involved a perfect storm of factors and represented a rarity and an aberration of sorts that even Mr Tay himself confessed to never having seen before.

56 I therefore do not accept the Claimant's contention that additional care should have been taken due to the unusual nature of the Intended New Premises. In my view, it would not have been reasonable to require the First Defendant to conduct further due diligence checks (above and beyond those done for regular properties) in the circumstances as the First Defendant would not have been put

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67 CCS at [20]–[22]; DRS at [5]–[10].

68 CCS at [28].

69 13 February 2025 NEs at p 96 line 18–p 97 line 7.

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on notice as a result of the typical due diligence checks.[70] Mr Tay confirmed that, on the present facts, the typical due diligence checks would not have presented any cause for alarm since the INLIS records also showed that the strata lot area was 73 m^2. Indeed, in his report, Mr Tay hinted to the fact that there was little more that an estate agent could be expected to have done in the circumstances the First Defendant found herself in:[71]

> … I am unable to discern any indication on the Certified Plan that the lot area of 73 square metres refer[s] to anything other than the area on the ground plane. Further, a visual inspection of the subject property and neighbouring properties reveal that the unusual feature that some of the external walls are angled upwards, although that, per se, does not suggest that the strata lot area of 73 square metres in the INLIS documents refer to other than the "floor" area on the ground plane. …

57 Mr Tay himself also conceded that if he had been in the First Defendant's shoes, without the benefit of hindsight, he would have been "none the wiser" since he would have been "ignorant of these fine distinctions".[72] It is thus reasonable that even after taking into account the unconventional property layout, an estate agent in those circumstances would have presumed that the typical methodology applies such that the strata lot area refers to the ground plane.[73]

58 Another reason that requiring estate agents to take additional care would be too exacting a standard is because the First Defendant would not have been put on notice on a visual inspection alone. It would likely have been a visual impossibility, for even the most seasoned of estate agents, to discern with

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70 See 13 February 2025 NEs at p 81 lines 6–14.

71 Joint Expert's AEIC at p 10 (Joint Expert's expert witness report).

72 13 February 2025 NEs at p 105 line 7–p 106 line 4.

73 13 February 2025 NEs at p 96 line 18–p 97 line 4.

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certainty the difference between an 800 and a 600-square-foot property. For one, the Intended New Premises was occupied and the presence of furniture, décor, false walls, and the arrangement of objects would have created illusions of scale, obscuring the true dimensions of such a property. To exacerbate matters, the inverted trapezoid shape of the Intended New Premises creates an optical illusion of expansiveness, making it appear larger than a conventional trapezoid space. Such an effect largely arises from how the human eye perceives and interprets spatial depth and openness. In such a setting, it is inevitable that the eyes would be guided upwards, offering an impression of greater volume, when contrasted with a wider base which tends to provide a sense of visual grounding, thereby making it seem more confined than it is. This appears to be borne out by the facts since even the Claimant's Director herself, the very person who would be intimately familiar with the requirements of the new set-up, did not see any reason to question the parameters of the Intended New Premises until Mr Gao raised questions during the design stage. Therefore, since the visual inspection would not have elicited any concern, it was reasonable for the First Defendant to have fully assumed that the representations made by the vendor that the Intended New Premises had a floor area of 818 sq ft was accurate, especially after she had confirmed that their representations cohered with what the EdgeProp portal recorded as the strata lot size of the Intended New Premises. For those reasons, I find that the First Defendant acted appropriately and did not breach her duty of care by way of the second alleged breach.

59 The First Defendant had indeed conducted all the typical due diligence checks expected for a regular property. When confirming the size of the Intended New Premises, the First Defendant did not simply accept the vendor's word at face value. Instead, she cross-checked those numbers against the property search portal she subscribed to, EdgeProp Singapore, that apparently

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takes reference from the data found within the Government registry.[74] This is broadly in line with the due diligence checks set out by Mr Tay, whereby an estate agent would compare what is being represented as the size of the property against the INLIS or STARS portals by the Singapore Land Authority.[75] Given the unusual and rare circumstances in this case, I thus find that the First Defendant met the requisite standard of care by conducting these typical checks.

60 Consequently, I do not accept the Claimant's contention that the First Defendant ought to have obtained the as-built drawings of the Intended New Premises from the Building and Construction Authority ("BCA") or the condominium's management office.[76] To be sure, an overly cautious estate agent may have done so but it would not be fair to impose such an exacting standard on all estate agents, a standard that even Mr Tay conceded that he himself would not likely have met without the benefit of hindsight.[77] The standard in law cannot be based on what an overly meticulous agent would insist on doing, or chooses to do, but what a *reasonable* agent could or would do.

61 Third, the Claimant alleges that the First Defendant had breached her duty of care by failing to check the necessary documents before the purchase of the Intended New Premises.[78] In particular, the Claimant contends that the First Defendant should have conducted searches on the STARS and the SLA portal, and checked with surveyors.[79] In my mind, while estate agents generally have a

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74 13 February 2025 NEs at p 69 line 27–p 70 line 13.

75 Joint Expert's AEIC at p 9 (Joint Expert's expert witness report); 13 February 2025 NEs at p 93 line 27–p 95 line 20.

76 CCS at [27], citing 13 February 2025 NEs at p 110 lines 3–11.

77 DRS at [11]–[13], citing 13 February 2025 NEs at p 105 line 7–p 106 line 4.

78 CCS at [31].

79 CCS at [29].

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duty to independently verify representations made to them where possible (*Lam Wing Yee Jane* at [77]–[80], citing *Su Ah Tee* at [220]–[222]), it would not be reasonable to mandate that all estate agents are to conduct searches on the STARS and the SLA portal and/or to check with surveyors for all properties. Such a high standard of care would escalate costs unnecessarily, as alluded to earlier (see [49] above). Mr Tay himself did not state that estate agents must conduct all of these checks, instead suggesting that doing so "would be ideal" but not strictly necessary since the solicitors acting for the buyers would also conduct similar checks.[80] Indeed, it is not clear any such checks would have made a discernible difference anyhow, since what was represented as the size of the Intended New Premises was aligned to what the official records show. In the circumstances, I am of the view that the fact that the First Defendant had not conducted these checks does not give rise to a breach of duty of care.

62 Fourth, the Claimant alleges that the First Defendant had breached her duty of care "by failing to take adequate steps to account for the fact that the previous tenants of the [Intended New Premises] had erected opaque walls".[81] I am unable to accept this allegation. For one, it is not clear to me what steps could have been taken by an estate agent. It would appear that the Claimant's Director herself is unable to conceive of what these steps should be as well, as she appeared unable to elaborate on this. The purpose of a visual inspection, even where there are opaque walls in the property, is precisely for the purchaser to survey whether the property in question is suitable for their intended usage. The onus would thus be on the purchaser to account for the opaque walls when considering whether to purchase the property. Therefore, the First Defendant's

80 13 February 2025 NEs at p 94 line 1–p 95 line 20.

81 CCS at [35].

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duties as an estate agent does not extend to taking such steps, and no breach arises from the fourth allegation.

63 Fifth, the Claimant alleges that the First Defendant had breached her duty of care by misrepresenting the usable floor area of the Intended New Premises, as this fell short of the standard set out in para 6(2)(*b*) of the Code which states that estate agents and salespersons "must not mislead the client or provide any false information or misrepresent any relevant law or fact to the client".[82] Given my finding that the First Defendant did not actually make the Purported Representation, there was no misrepresentation and consequently, no breach of her duties as an estate agent.

64 Since there was no breach of the First Defendant's duty of care as an estate agent, the claim in negligent misrepresentation cannot be made out.

Statutory claim under s 2 Misrepresentation Act 1967

65 As an aside, claimants can also seek recourse through a statutory claim for negligent and/or innocent misrepresentation under s 2(1) and 2(2) of the Misrepresentation Act 1967 respectively. However, it appears that the Claimant is no longer pursuing these statutory claims since references to s 2 of the Misrepresentation Act 1967 in the original Statement of Claim dated 12 July 2022 were removed in subsequent versions.[83] Similar to the common law claim for fraudulent misrepresentation, the Claimant has not addressed these statutory claims in its Closing and Reply Submissions.[84] Nevertheless, for completeness, I explain why I would have dismissed such statutory claims.

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82 CCS at [36]–[37].

83 SOC(A2) at pp 4–5.

84 DRS at [2].

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66 I first highlight why a statutory claim under s 2(1) of the Misrepresentation Act 1967 for negligent misrepresentation is not made out. For context, claimants typically prefer a statutory claim for negligent misrepresentation since, unlike a claim in common law where the burden of proof lies on the *representee* to prove all elements of the claim, for a statutory claim, the burden instead shifts to the *representor* to prove that "he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true" (see *RBC Properties Pte Ltd v Defu Furniture Pte Ltd* [2015] 1 SLR 997 ("*RBC Properties*") at [66]). A claim under s 2(1) comprises five elements as follows (see *Anita Hatta v Lee Siow Kiang Georgia* [2020] 5 SLR 304 at [30], citing *The Law of Contract in Singapore* (Andrew Phang Boon Leong, gen ed) (Academy Publishing, 2012) at para 11.215; see also Cartwright (2012) at para 7-03):

(a) an actionable misrepresentation made by one person to another;

(b) a subsequent contract between them;

(c) consequential loss;

(d) the representor would have been liable to pay damages if he had been fraudulent; and

(e) an absence, at the time the contract was made, of a belief or reasonable grounds in the truth of the facts represented. The burden of proving this element lies on the representor.

67 Even assuming that the Purported Representation was made and an actionable misrepresentation was established (which, for the avoidance of doubt, I do not find), the statutory claim would not have succeeded. There is no

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sale and purchase contract between the Claimant and the First Defendant.[85] Additionally, the First Defendant would likely be able to prove that she had reasonable grounds to believe and did believe up to completion that the Purported Representation was true given my earlier findings that the two were likely jointly misled.[86]

68 I next turn to explain why a statutory claim under s 2(2) of the Misrepresentation Act 1967 for innocent misrepresentation would similarly not have been made out. Although the Claimant does not specify whether its claim for innocent misrepresentation is in equity or under the Misrepresentation Act 1967, since the Claimant is seeking damages, it is presumably bringing a statutory claim under s 2(2) of the Misrepresentation Act 1967. A claimant has no right to damages in equity whereas under s 2(2), the court can exercise discretion and declare the contract subsisting and award damages in lieu of recission (*RBC Properties* at [117]; Phang (2022) at para 11.244).

69 I note that no domestic reported decision has set out in full the elements necessary for s 2(2) of the Misrepresentation Act 1967 to be successfully invoked. In my view, for a court to be able to exercise its discretion under s 2(2) of the Misrepresentation Act 1967, the following three elements must be established:

(a) an actionable misrepresentation made by one person to another (*Liberty Sky Investments Ltd v Goh Seng Heng and another* [2020] 3 SLR 335 at [33]; *Fuji Xerox Singapore Pte Ltd v Mazzy Creations Pte Ltd and others* [2021] SGHC 193 at [118]);

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85 DCS at [23].

86 DCS at [21]–[22].

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(b) a subsequent contract between them; and

(c) the representee's entitlement to rescind the contract in question, although there are still questions as to whether this entitlement must still exist at the time of the action (Halsbury's Laws of Singapore – Contract vol 7 (LexisNexis Singapore, 2023) at para 80.213; see *Arnold Nicklaus D'Cruz and Nicholas Lee Yong Heng v Alexander Migunov and Lotus International Luxury Yachts Pte Ltd* [2017] SGDC 75 at [158]–[159]).

70 Even assuming that the Purported Representation had been made by the First Defendant and an actionable misrepresentation was established, the statutory claim under s 2(2) would not have succeeded for similar reasons to the statutory claim under s 2(1).

Claim against the First Defendant: Negligence

71 I turn next to briefly deal with the allegation of negligence, which no longer appears to be pursued as it was eventually not covered in the Claimant's Closing and Reply Submissions. In essence, as far as I can tell, the Claimant's case on this front is that the First Defendant owed the Claimant a duty of care as its estate agent and had "acted negligently by failing to check the usable floor area of the unit and informing the Claimant of this before the purchase".[87] It was suggested that given that she was an experienced property agent, she should have been alerted by the sloping walls of the Intended New Premises, and therefore "should have done the necessary checks before the purchase went through".[88]

87 Claimant's Director's AEIC at [23].

88 Claimant's Director's AEIC at [23].

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72 Since there is little to no distinction between the claims for negligence and negligent misrepresentation, I dismiss this claim for the same reasons as covered earlier, namely that there is no breach of the First Defendant's duty of care owed to the Claimant as its estate agent (see [49]–[64] above).

Claim against the Second Defendant: Vicarious liability

73 I next examine whether vicarious liability should be imposed on the Second Defendant for the First Defendant's alleged negligence or actionable misrepresentation. The court undertakes the following three inquiries in determining whether vicarious liability should be imposed (see *Hwa Aik Engineering Pte Ltd v Munshi Mohammad Faiz and another* [2021] 1 SLR 1288 at [18], citing *Ng Huat Seng and another v Munib Mohammad Madni and another* [2017] 2 SLR 1074 at [42], [44]):

(a) whether the primary tort has been made out;

(b) whether the relationship between the primary tortfeasor and the defendant is sufficiently close so as to make it fair, just and reasonable to impose vicarious liability on the defendant for the primary tortfeasor's acts; and

(c) whether there is sufficient connection between the defendant's relationship with the primary tortfeasor on the one hand, and the commission of the tort on the other. In particular, the court examines whether the relationship created or significantly enhanced the risk of the tort being committed.

74 Given that the First Defendant was not found to be negligent or to have made an actionable misrepresentation for the reasons I have stated above, it

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would follow that no liability accrues to the Second Defendant. For what it is worth, however, I should add that in the event a primary tort had been made out, the Second Defendant would have been vicariously liable as a matter of course (and it appears to readily accept this) as it did not raise any substantive arguments for why the second and third inquiries should be answered in its favour.[89]

Damages

75 Given my conclusions above, none of the claims are made out. In light of that, the issue of damages, which is contingent on a logically anterior finding of liability, simply does not arise.

76 Be that as it may, even if there had been an actionable misrepresentation, the damages sought by the Claimant appear to be considerably inflated. In my mind, the claim at present does not seem to have satisfied the "cardinal requirement in the law of damages that the plaintiff must prove its loss before it may be awarded damages for the same" (*Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 at [2]). I make five points in this regard.

(a) First, the Claimant has conspicuously failed to adduce any evidence on its revenue since its business (physically) expanded to incorporate the Intended New Premises. Such evidence is crucial to the mitigation analysis – one would assume that running the operations across both premises would have resulted in a significant uptick in revenue, which would then significantly depress any intended claim for damages since it is trite that the Claimant cannot be put in a better position than it would have been in without any misrepresentation (see

[89] 13 February 2025 NEs at p 10 line 21–p 11 line 3.

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Phang (2022) at para 21.058–21.060). I would add that if the Claimant were to adduce financial records demonstrating a decrease in revenue, this would itself raise questions regarding the Claimant's motivations for expansion to begin with and the wisdom of its decision to hire additional staff.[90] At worst, such evidence may even demonstrate that it was the Claimant's own actions that led to its losses.[91] These concerns are substantiated by the Claimant's Director's own evidence in cross-examination, where she confirmed that "business remained the same as before".[92] I stress that it may very well be that the Claimant has suffered a nett loss despite any uplift in revenue but the burden is on the Claimant to particularise this, and this was not done.

(b) Second, it is not clear how the purported operational costs savings of $203,400 was arrived at due to discrepancies between the Claimant's case and the evidence adduced by the Claimant. For instance, in relation to the costs for hiring additional staff, one is unable to determine the number of additional staff who were hired, or which unit each staff was assigned to based on the salary vouchers alone.

(c) Third, the purported loss of $387,855.38 on the premise of a pro-ration of the purchase price of the property is both overly simplistic and plainly unrealistic. While I see some value in calculating damages on a pro-rated basis where *land* is concerned, which was the factual matrix in both the cases cited by the Claimant in its Reply Submissions (see *Lam Wing Yee Jane* at [83]–[84], citing *Lie Kee Pong v Chin Chow Yoon*

90 See DCS at [33]–[34].

91 DCS at [32].

92 13 February 2025 NEs at p 46 lines 11–14.

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and another [1998] 1 SLR(R) 457 at [33]),[93] I agree with the Defendant that the sale price of built-up strata properties cannot be rationalised on a pro-rata basis given that real estate pricing for such developments is influenced by a myriad of factors, beyond square footage.[94] There is, in my mind, no linear relationship to be had with property prices in that smaller units tend to have a higher per square foot cost due to fixed costs, higher demand and market segmentation. Furthermore, regardless of size, properties necessarily incur baseline costs for land, construction and amenities, which clearly do not scale proportionately. To put it in simple terms, a 600 sq ft residential property would, in almost every circumstance, cost considerably more than half the price of a 1200 sq ft residential property in the same area as the price per sq ft (the "PSF") for smaller units is typically higher than the PSF for larger units. A pro-rata price calculation would thus almost inevitably have the effect of inflating the losses. Now, it may be that the Intended New Premises in this case is an aberration to the above-stated conventional wisdom, but if so, one would imagine that some evidence would have to be led on this. This has not been done.

(d) Fourth, the Claimant has not adduced any evidence to demonstrate that it overpaid for the Intended New Premises. There has not been any suggestion that the market had wrongly priced the Intended New Premises in a way that was out of sync with the market rate. For instance, the Claimant could have adduced commercial listings showing properties with a floor area of 818 sq ft and similar specifications being sold for the same sum. This would suggest that the Claimant had

93 CRS at [10]–[12].

94 DCS at [29].

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overpaid for what it obtained. In the absence of such evidence, it again begs the question as to whether any such properties exist, and if not, whether there was any real "loss" to begin with in relation to the bargain that had been struck and the price paid for the Intended New Premises; and

(e) Fifth, it appears the Claimant has not fully mitigated its losses, in so far as its director claims it left half of the Current Premises vacant.[95] The Claimant did not adduce any evidence to explain why it was not taking active steps to assess if the remaining half of the Current Premises could be productively used, whether to generate more business for itself or by way of sub-leasing it out. This may result in the Claimant falling short of the reasonable steps that it must take to be able to recover the damages for reasonably avoidable loss (see Phang (2022) at para 22.114, citing *The "Asia Star"* [2010] 2 SLR 1154 at [24]).

77 There is also the issue of a confidential settlement that had been arrived at with two of the other parties initially involved in this case (see [15] above), which attracts the issue of double recovery. The double recovery rule was succinctly summarised in *Eng Beng v Lo Kok Jong* [2023] SGHC 63 (at [11]; see also *Lo Kok Jong v Eng Beng* [2024] 1 SLR 964 at [16]):

> It would also generally mean that any collateral benefits conferred upon the injured plaintiff by parties unrelated to the tortfeasor which compensate for the loss sustained by the injured plaintiff should be taken into account when considering the amount recoverable from the tortfeasor. This has generally been referred to as the rule against double recovery, and was set out in *Lo Lee Len v Grand Interior Renovation Works Pte Ltd and others* [2004] 2 SLR(R) 1 …

95 Claimant's Director's AEIC at [30].

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78 To the extent the confidential settlement involved any monetary compensation (although I am in no position to confirm this at this stage as I did not request for the specifics of such confidential arrangement), such collateral benefits would have to be taken into account when assessing damages in the present case to ensure that there is no double recovery. To be fair, counsel for the Claimant accepted this to be right in principle, although all parties agreed that the court should defer consideration of this until after the matter of liability is resolved.[96] Given my findings above, this has become entirely academic.

79 Nonetheless, all in all, it is clear that even if damages were to be granted, the damages that would accrue would have been significantly lower than the $591,255.38 that is sought and indeed potentially even lower than the range for High Court matters generally.

80 However, I need say no more about this since the matter of the quantification of damages would be moot given my earlier findings.

Conclusion

81 In Singapore's highly regulated, transparent, structured and objective property market, the risk of pricing errors due to incorrect assumptions is minimal as market forces, valuation standards, and government oversight help ensure fair and transparent pricing mechanisms. That said, as this case illustrates, even the best of systems would possess inadvertent blind spots, and minimal risk does not mean no risk.

82 This case reflects the reality that both property agents and buyers should remain vigilant. Variations in layout efficiency, unique methodologies for

[96] 13 February 2025 NEs at p 9 line 5–p 10 line 6, p 117 line 22–p 118 line 27.

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calculating the square footage of a property, or misinterpretations of pricing structures may still, on occasion, lead to purchases of property that misalign with expectations. Complacency is the enemy of diligence in that when systems appear air-tight and documents seemingly unimpeachable, taking documents at face value (while entirely understandable) can entail its own risks. Conducting comprehensive due diligence in the form of a buyer assessing that any property they wish to purchase truly meets his/her needs (whatever the numbers or data points may suggest on paper, as this case sadly proves) ultimately remains essential to ensuring that a property's value and specifications are aligned to its intended purpose.

83 Having said that, on the present facts, I am unable to conclude that there was anything done by the First Defendant (and by extension, the Second Defendant) that ought to lead to liability on their respective parts. Given the novelty of the situation, all the parties were caught unaware about the disparity between floor space and the strata lot size listed on the title search, and there was little a conscientious property agent could have done to have been more alive to a problem that simply was not viewed as a concerning feature in Singapore's property market. I accordingly dismiss the claim in full. If costs are not otherwise agreed, the parties are to file submissions on costs, limited to no more than five pages each, within two weeks of the issuance of this judgment.

84 Let me end off by commending the parties for their decision to utilise a joint expert in this case, and for agreeing on a list of issues to be submitted to the expert. It is obvious that a jointly appointed expert focusing on the key issues would be able to provide an impartial and independent assessment, reduce the risk of either party alleging bias on the part of party-appointed experts, and largely eliminate the risk of conflicting expert testimonies – a reality in the adversarial process that can prolong litigation and increase costs. Some cases

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may benefit from multiple perspectives that can only be had with party-appointed experts, but in reality, a fair number do not. While it is unfortunate that the parties have needed to go to court to resolve this dispute, I am appreciative of the spirit of cooperation that the parties (and their counsels) have displayed in this regard to narrow the issues in dispute and to facilitate a focused dispute resolution process. Mr Tay's evidence was clear, cogent and sensible, and he significantly assisted the court in understanding the uniqueness of the property's architecture and in surveying the foundational information available to property agents that would allow them to spot and assess such rare idiosyncratic design features and their impact on floor area determinations. Furthermore, the hearing of the matter before me was very much focused on the key issues (taking just one hearing day), and it is a credit to the parties and their counsels that they were able to streamline the issues, documents and questioning in such a manner.

Mohamed Faizal
Judicial Commissioner

Mohamed Arshad Bin Mohamed Tahir, Patrick Fernandez, Lee Yun En (Fernandez LLC) for the claimant;
Raymond Wong (Wang Xukuan) (RWong Law Corporation) for the defendants.

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