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DISTRICT JUDGE
SIA AIK KOR
1 JULY 2026

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGDC 213

District Court Originating Claim No. 781 of 2022

Between

Thirunavukarasu Manikam

... Claimant

And

- (1) Gumanan s/o Nallathambi
- (2) JBR Curry House Pte. Ltd.
- (3) Thomas JohnKennedy Rani
- (4) Arulsamy Thomas
JohnKennedy
- (5) Wai Fong Machinery Pte. Ltd.

... Defendants

JUDGMENT

[Contract — Breach]

[Tort — Misrepresentation — Fraud and deceit]

[Tort — Misrepresentation — Negligent misrepresentation — Whether duty of care was owed]

[Restitution — Unjust enrichment]

[Restitution — Failure of consideration – Total failure of consideration]

[Restitution — Change of position]

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Thirunavukarasu Manikam
v
Gumanan s/o Nallathambi & 3 Ors

[2026] SGDC 213

District Court Originating Claim No. 781 of 2022

District Judge Sia Aik Kor

3 November 2025, 5, 6 January 2026, 23, 26, 27 February 2026, 5 June 2026

1 July 2026

Judgment reserved.

District Judge Sia Aik Kor:

1 In this suit, Thirunavukarasu Manikam (“Thiru” or the “Claimant”) sues Gumanan s/o Nallathambi (“Gumanan” or the “First Defendant”), JBR Curry House Pte Ltd (“JBR” or the “Second Defendant”), Thomas JohnKennedy Rani (“Rani” or the “Third Defendant”) and Arulsamy Thomas JohnKennedy (“John” or the “Fourth Defendant”)(collectively, the “Defendants”). The claim is based on a breach of contract, in the tort of misrepresentation and in unjust enrichment. Wai Fong Machinery Pte Ltd had applied to add itself as a fifth defendant for the purposes of resisting an injunction application by the Claimant which was dismissed when the Claimant was absent from the hearing. It was subsequently not involved in these proceedings.

The Claim

2 In relation to the breach of contract, Thiru claimed that the Defendants had agreed with Thiru that in return for his injection or loan of funds to secure the tenancy of No. 9 Kian Teck Drive Singapore 628826 (“Premises”) including paying off the debts of the earlier tenants of the Premises as a condition precedent and to apply towards the running of a food and beverage business (“Business”) by JBR at the Premises, the Defendants agreed to make him a shareholder of JBR for the value of his capital input, appoint him as a director and allow him to participate in the Business, give him 50% share in the net profits of the Business at the Premises, and for Gumanan, Rani and John to repay the injection in equal shares when the Business was on an even keel and to ink a shareholders agreement setting out the same (collectively “Representations”). The Defendants did so as they were starved of capital to begin or sustain the Business. The Defendants subsequently reneged on the agreement and refused to issue shares in JBR to Thiru or facilitate the appointment of Thiru as director of JBR or to sign the agreement. The Defendants essentially did all things to thwart Thiru’s involvement in the Business and deny Thiru his role in JBR.

3 Thiru claimed that he provided a total of \$162,035.43 in reliance on the Representations which were false and made falsely at the material time, and which were either fraudulent or negligent misrepresentations.

4 Thiru claimed that the Defendants also failed and refused to provide proper accounting records of the Business or to account to Thiru the income and expenditure of JBR. The Defendants operated the Business by employing phantom employees and paying CPF contributions to them as an expense of the Business and engaged in malpractices such as not depositing cash collections of

the Business into JBR's bank account. The Defendants effectively rendered the value of the shares in JBR meaningless and worthless. The Defendants failed to make reparations to settle the loan extended to Rani and John which was received by all the Defendants and occupied the Premises to make financial gains at the expense of Thiru and JBR. Thiru claimed that the Defendants had thereby unjustly enriched themselves at the expense of Thiru and JBR.

5 Thiru therefore claimed against the Defendants repayment of \$162,035.53 and damages for loss of opportunity in respect of the potential earnings of the monies so applied to seed the Business.

The Defence

6 John and Rani are husband and wife. Rani and John, together with Gumanan started the Business at the Premises and together, they operated and managed the Business at the Premises. John was the manager of JBR and Rani was a shareholder of JBR. Gumanan was a director and shareholder of JBR. Rani and John had actual authority of Gumanan and JBR to start, operate and manage the Business at the Premises.

7 The Defendants deny intending to defraud or defrauding Thiru. They deny that the funds were provided by Thiru at the Defendants' request. They alleged that Thiru had voluntarily provided the funds to the Defendants to secure the Premises for JBR. They do not deny that JBR entered into a tenancy of the Premises for \$75,085 with funds provided by Thiru. Thiru was a lender and investor to the Defendants for the Business and financier to secure the Premises. Specifically, Thiru was a lender and investor for JBR in relation to its Business within the Premises only.

8 The Defendants deny that they were starved of capital to begin or sustain the Business and claimed that they had sufficient funds to do so without Thiru's involvement¹. They deny promising or representing to Thiru that he would be made shareholder and director and be permitted to participate in the Business. They also deny that they had represented or agreed that Thiru would receive a 50% share in the net profits of the Business. As Thiru was a lender and investor, Thiru and John had agreed that Thiru would partake in the "profits and losses" of JBR². The Defendants had agreed with Thiru to repay the loan/injection when the Business was on an even keel³. However, JBR was operating at a loss.

9 Rani and John had believed that the agreement to be inked would reflect the understanding between the parties that Thiru was a lender and investor for JBR in relation to its Business within the Premises. However, the agreement was not signed as Thiru had added his own terms and conditions which were not previously discussed and agreed upon.

10 The Defendants alleged that it was misconstrued that the clearance of the bad debts of the previous tenant was a condition precedent for the tenancy of the Premises for JBR. The Defendants admit that Thiru had paid Eng Lee Engineering Pte Ltd ("Eng Lee") the required security deposit and advance rentals for the Premises but deny that he had paid off Eng Lee for the earlier tenancy to pave the way for JBR to commence the Business.

¹ Defence at [21]

² Defence at [26]

³ Defence at [27], [40]

11 While the Defendants assert that JBR maintained proper accounting records, their position is that Thiru was not entitled to any confidential information of JBR, including its income and expenditure.

12 On 15 January 2025, judgment was entered against JBR. JBR was ordered to pay Thiru \$162,035.53 with interest and damages for loss of opportunity, if any, which are to be assessed.

13 On 10 June 2025, consent judgment was entered for Thiru against Gumanan in similar terms. As such, the trial only proceeded against Rani and John.

The Evidence

Thiru's evidence

14 Thiru's affidavit evidence⁴ is that he knew John and Rani through a friend Tamilarasan who ran a food stall at 45 Kian Teck Drive. John passed him his business card showing that he was an executive manager of JBR. Tamilarasan was willing to sell the lease, together with the equipment in the food stall for a lump sum of \$100,000 and suggested that Thiru partner with John and Rani as he had no experience in the food and beverage ("F&B") industry.

15 John and Rani subsequently informed him that a restaurant nearby at 9 Kian Teck Drive was available for lease and that it was a better opportunity as it was larger with more seating capacity and a larger kitchen with the ability to handle catering orders and sell alcohol which could increase revenue

⁴ Claimant's affidavit of evidence-in-chief ("AEIC") dated 14 May 2025 at [25] – [27]

significantly⁵. John and Rani informed him that the 9 Kian Teck Drive lease was available because the previous tenant, Bharathi Restaurants Pte Ltd (“Bharathi”) went into financial difficulties⁶. John and Rani then convinced him to include Samidurai, the person who ran Bharathi, in the business venture and told him that instead of incorporating a new company, time could be saved by moving their existing company, JBR, over from 45 Kian Teck Drive to 9 Kian Teck Drive⁷.

16 Thiru claimed that John and Rani represented that if he were to invest monies in JBR, he would be made a director and shareholder which would allow him to make decisions to participate and/or manage JBR and have a share of its profits⁸. He would not have invested monies in JBR if such representations were not made because he needed to have oversight over JBR to ensure that his hard-earned monies were well utilised and he expected to obtain returns on his investment as a shareholder through profit sharing⁹.

17 Initially the agreement between the Defendants, Samidurai and him was that he would inject one-third of the capital into JBR, together with another one-third from Samidurai and the last one-third from John and Rani collectively, which capital would be used to secure the 9 Kian Teck Drive lease as well as renovate and operate the restaurant there. He would then be made a director and shareholder of JBR after the lease was secured¹⁰. As such, John and Rani attended with him at Regency Legal LLP before Chitra Balakrishnan (“Chitra”)

⁵ Claimant’s AEIC at [29]

⁶ Claimant’s AEIC at [31]

⁷ Claimant’s AEIC at [34]

⁸ Claimant’s AEIC at [36]

⁹ Claimant’s AEIC at [37] – [39]

¹⁰ Claimant’s AEIC at [40]

sometime before or on 22 March 2022. After the first meeting, Chitra emailed him a draft agreement on 22 March 2022 based on what was discussed¹¹. He passed a copy of the draft agreement to John and Rani but they told him that their focus should be on securing 9 Kian Teck Drive as there were other interested tenants and someone else may secure the lease before them if they were distracted by the draft agreement¹². John and Rani repeated their assurance that he would be appointed as a director and shareholder of JBR and assured him that all outstanding matters such as his percentage of shares in JBR could be easily resolved after the lease was secured¹³. He trusted them and acted on their representations and proceeded with the business venture by providing monies to secure the 9 Kian Teck Drive lease, notwithstanding the lack of any written agreement¹⁴.

18 Together with John, Rani and Samidurai, Thiru met Andy Cheng from the landlord of 9 Kian Teck Drive, Eng Lee, sometime in the third week of March 2022. He brought along a \$50,000 cheque but it was rejected by Andy as Eng Lee was looking to call for a tender and award the tenancy agreement to the highest bidder. He later found out from Samidurai that Bharathi owed outstanding rental arrears which Eng Lee wanted to recover¹⁵.

19 On 29 March 2022¹⁶, he wrote a \$100,000 cheque and signed off on a cover letter under JBR's letterhead, offering \$100,000 as a security deposit and payment of Bharathi's outstanding rental arrears, in exchange for a two-year

¹¹ Claimant's AEIC at [43]

¹² Claimant's AEIC at [44]

¹³ Claimant's AEIC at [45]

¹⁴ Claimant's AEIC at [46]

¹⁵ Claimant's AEIC at [47] – [49]

¹⁶ Claimant's AEIC at [50] – [51]

lease of the 9 Kian Teck Drive premises. The cheque was brought to Andy on 29 March 2022 but Andy rejected the same, explaining that there was strong interest in the site amongst other potential tenants and stated that the lease could be awarded to JBR without calling a tender if they fully paid off Bharathi's outstanding arrears amounting to \$49,755.88.

20 John and Rani¹⁷ subsequently persuaded Thiru to prepare cash for the next meeting with Eng Lee and to do so quickly before an open tender was called. John also called him late at night on or around 3 April 2022 to state that Samidurai had no money and could not contribute to JBR. John then suggested that he and Rani would contribute 50% of the capital required.

21 Hence on the morning of 4 April 2022¹⁸, Thiru withdrew \$125,000 in cash and brought the cash to Eng Lee's office together with John, Rani and Samidurai. They offered to pay Eng Lee \$123,755.88 to secure the lease at 9 Kian Teck Drive. The sum comprised \$58,500 of rental and utilities deposit, \$15,500 of advance rental and \$49,755.88 to discharge Bharathi's arrears. Thiru's position is that the sum of \$123,755.88 was an investment in JBR which was then used to discharge Bharathi's rental arrears as required by Eng Lee before the tenancy could be granted to JBR. The agreement signed was a canteen agreement dated 4 April 2022 which allowed JBR to use, occupy and operate the canteen at No. 9 Kian Teck Drive for 1 year from 1 May 2022, with the option of extending the agreement for a further term of 1 year¹⁹.

¹⁷ Claimant's AEIC at [52] – [53]

¹⁸ Claimant's AEIC at [56] – [58]

¹⁹ 1BA 93 - 107

22 Rani proceeded to issue an investment confirmation letter dated 4 April 2022²⁰ on the letterhead of JBR stating that JBR had received the amount of \$123,755.88 from Thiru to be invested into JBR to pay for the shop lease with Eng Lee²¹. John and Rani subsequently had an argument with Samidurai and disagreed that he should have a share of JBR as he did not contribute any monies. Although Thiru agreed with John and Rani, he wanted to give Samidurai a chance and told Samidurai to bring his one-third share of the monies the next day. After Samidurai left, John and Rani said that they would pay for JBR's renovations. They also promised to pay the remaining amount to Thiru, being 50% of \$123,755.88, less the renovation costs which they will pay for. Samidurai did not bring in the monies and he was eventually excluded from the business venture.

23 After the canteen agreement was signed on 4 April 2022, Thiru followed up with John and Rani as he was not made a director and shareholder in JBR. John and Rani replied that JBR's license was pending from the authorities and that any changes in JBR's management and ownership may delay the approval. John and Rani reassured him that he would be appointed a director and shareholder in JBR, after the authorities have issued JBR the relevant licenses. In reliance on those representations, Thiru made further investments in JBR which was evidenced by a second letter under the letterhead of JBR signed by Rani on 18 May 2022 acknowledging a total investment of \$28,279.55 (comprising \$10,000 received on 28 April 2022, \$10,000 received on 17 May 2022 and \$8,279.55 received on 8 June 2022) from Thiru²² and a third letter, similarly under the letterhead of JBR signed by Rani on 22 June 2022

²⁰ Claimant's AEIC at [65]

²¹ Claimant's AEIC at TM-15, 1BA 114

²² Claimant's AEIC at TM-16, 1BA 116

acknowledging the previous sum of \$28,279.55 and an additional sum of \$10,000 paid in cash by Thiru on 22 June, making the total investment into JBR \$38,279.55²³.

24 It was Thiru’s evidence that on or around 16 June 2022²⁴, Thiru received an unsigned director’s resolution resolving that shares in JBR be transferred from Rani to him. However, the resolution did not specify how many shares would be transferred to him or his percentage shareholding in JBR. It also did not resolve to appoint him as a director in JBR. Hence, Thiru called Gerard s/o D Thanaraj (“Gerard”) of GBS Consultancy, the corporate secretary of his cleaning company, on or around 18 June 2022 to request him to make the necessary arrangements for the transfer of shares in JBR to him and also texted Gerard the name and number of JBR’s accountant whom he knew initially as Prakthisah and whom he subsequently found out was called Ramachandran Pratheeksha (“Pratheeksha”)²⁵. Gerard informed him that he required documents showing each party’s capital input in JBR to determine each person’s shareholding as well as JBR’s financial accounts to ascertain the equity value. Thiru conveyed Gerard’s requests to John and Rani and fixed a meeting at Gerard’s office on 25 June 2022²⁶. Thiru, John and Rani attended at Gerard’s office on 25 June 2022 and Pratheeksha joined them via the telephone. Gerard asked John and Rani whether they were agreeable to give shares to Thiru and appoint him as a director in JBR. John and Rani indicated that they were

²³ Claimant’s AEIC at TM-16, 1BA 117

²⁴ Claimant’s AEIC at [91] – [92]

²⁵ Claimant’s AEIC at [94] and [98]

²⁶ Claimant’s AEIC at [95] – [96]

agreeable²⁷. Gerard then explained to John and Rani²⁸ that the parties' shareholding in JBR can be determined by looking at each investor's capital input, as a percentage of the total capital input and that while the monies Thiru invested in JBR could be ascertained from the investment confirmation letters, John and Rani could only provide unverifiable and skimpy handwritten notes setting out the payments that they had made towards JBR. Gerard then requested for proper documentation in the form of bank statements, bills or receipts and requested Pratheeksha to provide JBR's financial documents. However, such documents were not provided²⁹.

Chitra's evidence

25 Thiru's evidence was corroborated by Chitra whose evidence was that at the meeting on or around 22 March 2022, Rani and John were in agreement that Thiru would be appointed as a director and shareholder of JBR and had represented to Thiru multiple times that he would be appointed as a director and shareholder of JBR. The only question was his entitlement to be a majority shareholder, based on his capital inputs³⁰. Rani had said that she had the authority to act for and on behalf of JBR as she was holding 70% of the shares in JBR at that time. She also said that Gumanan agreed with everything that they said. Chitra's evidence was that Rani and John were aware that Thiru's appointment as a director and shareholder was the main reason why he decided to invest in JBR and Chitra was led to believe that Gumanan would be made aware³¹. After the meeting, Chitra prepared a draft shareholders agreement

²⁷ Claimant's AEIC at [100] – [101]

²⁸ Claimant's AEIC at [102] – [106]

²⁹ Claimant's AEIC at [108]

³⁰ Chitra's AEIC at [5] & [8]

³¹ Chitra's AEIC at [7]

which captured the discussion they had. John and Rani did not raise any objections to the terms at all material times. If they had, she would have informed them that it would be best to engage separate lawyers or that the deal be called off³².

26 The draft agreement forwarded to Thiru on 22 March 2022³³ states that the agreement was to be made between Thiru and JBR. In consideration of Thiru investing \$50,000 into JBR, JBR undertakes to pass resolutions to (a) issue Thiru with new shares to be registered as fully paid up and amounting to half of all issued and paid shares in JBR, (b) appoint Thiru as a director and bank signatory of JBR, (c) transfer the shares owned by Gumanan to Rani; (d) terminate Gumanan’s appointment as director; as well as (e) enter into the lease agreement with the landlord. The draft agreement also provides that JBR repays Thiru all monies in excess of \$50,000 which he shall from time to time be required to invest into JBR within 6 months of the effective date of the agreement (“Excess Cash”). The \$50,000 was to be paid over to the landlord by Thiru upon JBR entering into the lease agreement. Until Thiru is repaid all Excess Cash in full, Thiru shall be required to approve all board and shareholder resolutions, his shareholdings shall remain at 50% of all paid and issued shares in JBR and he shall remain a bank signatory of JBR.

27 Chitra gave evidence that there was at least one more meeting before 4 April 2022 at Regency Legal LLP where the parties were largely in agreement. Otherwise, she would have prepared an updated draft shareholder agreement for circulation after the second meeting.

³² Chitra’s AEIC at [9]

³³ 2BA 551

Gerard's evidence

28 Thiru's evidence that he had been promised shareholding in JBR was also supported by the evidence of Gerard. Gerard's evidence was that Thiru had told him that he had invested monies in JBR and was promised shares and directorship in JBR³⁴. On 18 June 2022, Thiru texted him the name and phone number of JBR's accountant and requested him to facilitate the transfer of shares in JBR to him³⁵. Hence, he met John and Rani together with Thiru³⁶ on 25 June 2022, for the purpose of examining JBR's accounts and determining Thiru's shareholding in JBR³⁷. JBR's accountant, known as Pratheeksha, attended by telephone. Gerard had asked John and Rani if they were agreeable to give shares to Thiru and appoint him as a director in JBR and they said they were agreeable³⁸. He then told Thiru, Rani and John to enter into a shareholders agreement and they agreed with his suggestion of determining each party's shareholding by looking at each investor's capital input as a percentage of the total capital input. Gerard then explained to John and Rani that while the monies Thiru invested in JBR could be ascertained from the investment confirmation letters, John and Rani could only provide unverifiable and skimpy handwritten notes setting out the payments that they had made towards JBR which would not be acceptable³⁹. He therefore asked Rani and John⁴⁰ for bank statements, bill and receipts and requested Pratheeksha, Rani and John for a series of documents including JBR's profit and loss statements, balance sheet, general ledger,

³⁴ Gerard's AEIC at [8]

³⁵ Gerard's AEIC at [9]

³⁶ Gerard's AEIC at [14]

³⁷ Gerard's AEIC at [11]

³⁸ Gerard's AEIC at [15]

³⁹ Gerard's AEIC at [18] – [19]

⁴⁰ Gerard's AEIC at [20] – [21]

debtor's ledger, creditor's ledger, bank statements and bank reconciliation statement, to stamp the share transfer with IRAS. Pratheeksha, Rani and John agreed to provide the requested documents and the meeting ended. The next day, on 26 June 2022, Gerard sent a text message to Pratheeksha asking for JBR's accounts for 31 May 2022 in order to ascertain the value of the company before Thiru comes in as a shareholder and treating the excess money put in by Thiru as a loan, as per Thiru's conversation with John. While Pratheeksha replied that she would check with them, Gerard did not hear from her thereafter and did not receive any of the requested documents⁴¹.

Rani's and John's evidence

29 Rani's evidence⁴² and John's evidence⁴³ was that even before the meeting with Andy Cheng, they had agreed with Thiru that there would be no transfer of shares to him nor any director appointment. Instead, Thiru's investment would secure a 50% return on the net profits of JBR. Rani and John denied that they had told Thiru that they would put in cash amounting to a 50% equity in JBR as part of their investment as they did not have funds at their disposal.

30 Rani's evidence and John's evidence was that there had been two visits before a lawyer⁴⁴. They had attended at Regency Law in March 2022 but claimed that they did not sign the agreement because they disagreed that Thiru would have a 50% stake in JBR and replace Gumanan as a director. Rani and John also claimed that they had also attended before Chitra sometime in April

⁴¹ Gerard's AEIC at [23] – [24]

⁴² Rani's AEIC at [12]

⁴³ John's AEIC at [17]

⁴⁴ Rani's AEIC at [13] – [14], John's AEIC at [18] – [19]

2022 after they had secured the lease. At the meeting, they disagreed that they would appoint Thiru as director and shareholder of JBR.

31 Rani and John's position is that they had never agreed that Thiru would be a shareholder and director of JBR⁴⁵. Their agreement with Thiru was that Thiru would be entitled to a 50% interest in the net profits of JBR and would have to bear 50% share of the losses, if any. There was no agreement that his investments would be repaid to him over time⁴⁶.

Causes of Action

32 Thiru proceeded on a breach of contract and in the alternative, fraudulent misrepresentation, negligent misrepresentation and unjust enrichment which will be dealt with in turn.

Breach of Contract

33 Based on the Defence, the Defendants had agreed with Thiru to repay his monies when the Business was on an even keel⁴⁷. In Rani's and John's affidavits however, they claimed that there was no agreement that Thiru's investments would be repaid to him over time. Instead, they had agreed with the Claimant that he would be entitled to a 50% interest in the net profits of JBR. Notwithstanding the inconsistency as regards the terms of agreement, there is no denial that there was an agreement as regards Thiru's injection of funds.

34 Hence, the issues which fall to be determined in respect of the cause of action in contract were as follows:

⁴⁵ Rani's AEIC at [19] - [20]; John's AEIC at [24] – [25]

⁴⁶ Rani's AEIC at [21]; John's AEIC at [26]

⁴⁷ Defence at [27], [40]

- (a) What was the amount invested by Thiru?
- (b) What were the terms of agreement?
- (c) Were Rani and John contracting parties?
- (d) Was there a breach of contract?
- (e) Was JBR profitable?

What was the amount invested by Thiru?

35 It was not disputed by Rani and John that Thiru invested funds into JBR. They do not deny that Thiru paid Eng Lee the required security deposit and advance rental amounting to \$74,000 for JBR to secure the agreement of Eng Lee for JBR to operate the canteen at 9 Kian Teck Drive for one year⁴⁸. However, they allege that the money that Thiru paid to discharge the rental arrears of Bharathi in the sum of \$49,755.88 was a personal loan by Thiru to Samidurai. Rani and John argued that Eng Lee's official receipt dated PCR 23-00001 dated 4 April 2022⁴⁹ records the payment of \$88,755.88 against the account of Bharathi Restaurant Pte Ltd and that the failure of Samidurai to testify supports their account.

36 I did not accept Rani and John's argument because it was contradicted by the investment confirmation letter dated on 4 April 2022⁵⁰ on which Rani signed and affixed the stamp of JBR. In the letter which was on JBR's letterhead, it was stated that an amount of \$123,755.88 was received from Thiru to be invested in JBR for the purpose of paying for the shop lease with Eng Lee.

⁴⁸ Defence at [7]

⁴⁹ 1BA 92 at TM-12

⁵⁰ 1BA 114 at TM-15

This was supported by a letter from Eng Lee's liquidator dated 15 August 2023 that the cash received on 4 April 2022 was recorded as monies collected from JBR⁵¹.

37 I did not accept Rani's bare allegation that she was forced to sign this letter given that there was no indication that the relationship between the parties then was acrimonious. Such allegation was also inconsistent with the undisputed fact that Thiru subsequently provided further amounts of \$28,279.55 and a further \$10,000 amounting to \$38,279.55 to be invested into JBR, which were also evidenced by subsequent investment confirmation letters dated 18 May 2022⁵² and 22 June 2022⁵³ which continued to be issued and signed by Rani. While the investment confirmation letter dated 18 May 2022 may have been backdated, given that it referred to an investment on 8 June 2022, I note that in paragraph 9 of Rani's and John's opening statement, they do not dispute that JBR had collectively received the sum of \$162,035.43 from Thiru. It was unlikely that Thiru would have provided further funding which Rani continued to acknowledge if the relationship was acrimonious. There was also no reason why Rani would continue to issue subsequent investment confirmation letters if she had indeed been coerced into signing the first investment confirmation letter.

38 I accepted Thiru's evidence⁵⁴ that they were told that Eng Lee would award JBR the canteen agreement without calling a tender if they were to pay off the rental arrears and that the parties had agreed to pay off the rental arrears

⁵¹ CBD 335

⁵² 1BA 116

⁵³ 1BA 117

⁵⁴ Claimant's AEIC at [51]

to avoid a tender and secure the Premises. This was consistent with the investment confirmation letter signed off by Rani on the same day which included the sum of \$49,755.88 as an investment into JBR.

39 For completeness, as it was Rani and John who were alleging that the sum of \$49,755.88 was a personal loan to Samidurai, it was their burden to prove this and not for Thiru to disprove this. I therefore declined to draw an adverse inference against Thiru in respect of the failure of Samidurai to testify.

40 While Rani and John alleged that the sum of \$10,000 had been returned to Thiru, neither Rani nor John produced any evidence of such return⁵⁵. Rani's evidence as to the sums returned was also inconsistent. While she alleged orally⁵⁶ that she had returned two sums stated in the investment confirmation letter dated 22 June 2022 which was the sum of \$10,000 and the sum of \$8,279.55, this was contrary to her AEIC where she only stated the return of the \$10,000 which Thiru gave in June 2022⁵⁷. Similarly, John was not sure how he had returned the \$10,000 and whether he had done so from his own funds or from JBR's funds⁵⁸.

41 I therefore find that the sum of money invested into JBR by Thiru to be \$162,035.43, which sum had not been returned by Rani or John.

⁵⁵ NE, 5 January 2026, 49/24-32

⁵⁶ NE, 5 January 2026, 44/21 – 45/14

⁵⁷ Rani's AEIC at [15]

⁵⁸ NE, 26 February 2026, 26/8-11, 27/15-19

What were the terms of agreement?

42 As set out earlier, the position of Rani and John was muddled. While their Defence, which was filed while they were represented, accept that the Defendants had agreed with Thiru to repay Thiru when the Business was on an even keel, they claim in their affidavits that there was no agreement that Thiru's investments would be repaid to him over time and disputed that they had agreed to make Thiru a shareholder and director of JBR. However, they accept that they had agreed with Thiru that he would be entitled to a 50% interest in the net profits of JBR.

43 In view of the Defence accepting that the Defendants had agreed with Thiru to repay the monies when the Business was on an even keel, this issue was no longer live in the proceedings. Rani and John had also accepted in their AEICs that they had agreed with Thiru that he would be entitled to a 50% in the net profits of JBR. Hence, what was in issue in respect of the terms of the agreement was whether they had agreed to make him a shareholder for the value of his injection and a director of JBR.

44 In this regard, I noted that Chitra's evidence and the draft agreement supports Thiru's evidence that Rani and John had promised to make him a shareholder and director in exchange for his investment into JBR. Based on Rani and John's affidavits, they did not deny attending twice before a lawyer for the purpose of documenting their agreement. I accepted Chitra's evidence that Rani and John had represented and agreed to make Thiru a director and shareholder of JBR at the meeting on or before 22 March 2022 and did not raise any objections at the meeting.

45 I did not accept the evidence of Rani and John that they had expressed their disagreement at appointing Thiru as director and shareholder of JBR.

46 First, this was not put to Chitra by either Rani or John when Chitra was on the stand.

47 Secondly, if either of them had objected to the same at the meeting, Chitra would have sent them for independent legal advice, as she testified, and would not have proceeded to draft and send the draft agreement to Thiru for follow-up. Based on the Chitra's email to Thiru dated 22 March 2022⁵⁹, the draft agreement was pending the insertion of the proper address of the location where a lease would be taken up by JBR. The WhatsApp correspondence between Thiru and Chitra between 22 March 2022 and 29 March 2022⁶⁰ also appeared to focus on the conclusion of the canteen agreement and the updating of the location. The fact that Thiru forwarded such details to Chitra on 2 April 2022⁶¹ and the fact that John subsequently sent the canteen agreement to Regency Legal on 29 April 2022⁶² suggests that this, as opposed to the contention that Rani and John had objected to making Thiru shareholder and director, was the reason why the agreement was not signed at that visit. There is no indication in the email from John on 29 April 2022 that the draft agreement had to be amended. If there had been a disagreement before Chitra, it is unlikely that Thiru would have offered to make payment to Chitra for her services on 29 March 2022, given that her services would still be needed to resolve the disagreement between the parties and amend the draft agreement.

48 Thirdly, Rani and John needed funds from Thiru to secure the lease at 9 Kian Teck Drive. While it was pleaded in [21] of the Defence that the

⁵⁹ 2BA 549 - 550

⁶⁰ 2BA 555 - 557

⁶¹ 2BA 557

⁶² CBD 211, NE, 26 February 2026, 14/24-29

Defendants had sufficient funds to begin and sustain the Business without the engagement of Thiru, Rani's evidence was she did not have the funds to invest in taking over Tamilarasan's business⁶³. John also gave evidence that he did not have much money and was told by Tamilarasan to get Thiru's help in funding the takeover of his business⁶⁴. On the stand, both of them proceeded to take a different stand. On the stand, Rani had claimed that they were able to fund the start-up costs of JBR and were only unable to pay off the rental arrears of the previous tenant⁶⁵. However, this was contrary to her affidavit evidence⁶⁶ that there was no way they could have come up with any funds to be invested into JBR. Only when she was confronted with the inconsistencies between her affidavit and her oral evidence did she concede that Thiru's financial help was needed to secure the premises⁶⁷. Similarly, John claimed on the stand that they had the money to secure the lease and pay for the startup cost⁶⁸ and need not ask anyone for money⁶⁹ which was contrary to his affidavit evidence that there was no way that they could come up with any funds to be invested into JBR⁷⁰. Based on the fact that there was only \$5,696.54 in JBR's bank account at the end of March 2022⁷¹, it was more likely than not that Rani and John needed funds from Thiru to secure the lease at 9 Kian Teck Drive and had the incentive to get Thiru to provide the funds. Thiru had been running his own business since late 2010 and he had taken the trouble for the parties to visit a lawyer to document the

⁶³ Rani's AEIC at [3]

⁶⁴ John's AEIC at [5]

⁶⁵ NE, 5 January 2026, 32/7-8

⁶⁶ Rani's AEIC at [12]

⁶⁷ NE, 5 January 2026, 36/21

⁶⁸ NE, 23 February 2026, 57/6-14

⁶⁹ NE, 26 February 2026, 23/18-23

⁷⁰ John's AEIC at [17]

⁷¹ CBD 114

agreement as regards his investment of monies in JBR. If Rani and John had disagreed with the draft agreement that Thiru would have a 50% stake in JBR as they claimed, it was hard to believe that Thiru would have continued to volunteer the funds on 4 April 2022 without insisting on his terms, given that his funds were required to secure the canteen agreement. Hence, it was more likely than not that there was no disagreement at the meeting before Chitra on the part of Rani and John and I accepted Thiru's evidence that he had provided the funds pending any written agreement on the assurance of Rani and John that he would be made director and shareholder and that they should focus on securing the canteen agreement before someone else does instead of getting distracted by the draft agreement⁷². Rani and John were the ones with F&B expertise and who were familiar with the locational advantage and potential of the Premises. It was therefore more likely that they, as opposed to Thiru, were the ones who were keen to secure the canteen agreement.

49 In this regard, John's evidence about what happened when they attended before Chitra after they had secured the lease was not credible⁷³. John claimed that Thiru had asked why his name was not listed as a shareholder and director of JBR and they disagreed that they had agreed to list him as a shareholder and director. However, there was no evidence of such a draft agreement where Thiru was not listed as a shareholder and director. It was also contrary to the fact that Thiru continued to invest further monies in JBR in between 28 April 2022 and 22 June 2022. If there continued to be a dispute between the parties on the basis for Thiru's investment of funds, then it was not probable that Thiru would continue to invest funds. I therefore accept Thiru's evidence that Rani and John had told him that JBR's licence was pending approval from the authorities and

⁷² Claimant's AEIC at [45]

⁷³ John's AEIC at [19]

that any changes in JBR's management and ownership may delay approval. They reassured him that he would be appointed a director and shareholder in JBR after the authorities have issued JBR the relevant licences⁷⁴ which he relied and acted on by making further investments in JBR.

50 Thiru's evidence that Rani and John had agreed to make him director and shareholder was also consistent with the parties' conduct. First, it was supported by the fact that Thiru was allowed to write to Eng Lee on 29 March 2022⁷⁵ on JBR's letterhead offering on JBR's behalf to pay \$100,000 as deposit and one month rental as well as clear the rental arrears for Bharathi in exchange for a two-year contract. On the stand, John admitted that he was the one who gave Thiru access to the letterhead and the company stamp⁷⁶ and authorised Thiru to write letters and sign off on behalf of JBR to secure the lease with Eng Lee⁷⁷. Thiru was also allowed to sign off on the receipt given by Eng Lee to JBR⁷⁸. On the stand, Rani testified that Thiru had originally signed on the canteen agreement⁷⁹. This was conduct on the part of Rani and John which indicated to Thiru that he would be involved in the business in a formal capacity that allows him to make representations on behalf of the company and which was consistent with representations having been made to Thiru that he would be made a director and shareholder. If Rani and John had objected to allowing Thiru to be director or shareholder at the meeting with Chitra on or about 22 March 2022, they would not have given Thiru access to JBR's letterhead and

⁷⁴ Claimant's AEIC at [76]

⁷⁵ IBA 89

⁷⁶ NE, 26 February 2026, 32/22-25, 33/13-16

⁷⁷ NE, 26 February 2026, 33/19-32

⁷⁸ CBD 244

⁷⁹ NE, 6 January 2026, 24/13-16

company stamp and allowed him to make representations on behalf of the company or to sign on the canteen agreement, conduct which would bind JBR and which one would expect from a director. While Rani insisted that she did not agree to allowing Thiru to be shareholder and director of JBR and that it was Samidurai and Tamilarasan who had persuaded Thiru to take over the premises at 9 Kian Teck Drive by using JBR⁸⁰, I did not find this credible. Samidurai and Tamilarasan were not connected to JBR in any way while Rani was the majority shareholder of JBR at the material time. Thiru was unlikely to inject such a significant sum of money into JBR without corresponding assurances from Rani that he would be involved as shareholder and director. I therefore accept Thiru's evidence that Rani and John had represented that he would be made director and shareholder if he were to invest monies in JBR.

51 Although she subsequently backpedaled⁸¹, Rani conceded in cross-examination⁸² that there had been such an agreement:

Q: Okay. Is it correct to say that initially, what was agreed is that Mr Thiru would be a director and shareholder, but because he allegedly caused problems, that's why you decide not to let him be a director and shareholder?

A: Yes

52 Thiru's evidence was also consistent with his conduct in following up on the issue of his shareholding and directorship. First, he had gone with Rani and John to a lawyer to document such agreement. The visits to Chitra were not denied by Rani and John. Next, he requested Gerard to follow up with the arrangements to transfer JBR's shares to him given the quantum of funds he has invested. Thiru's account was also corroborated by Gerard whose evidence was

⁸⁰ 3BA 582; Rani's AEIC at [19]

⁸¹ NE, 5 January 2026, 30/14-16

⁸² NE, 5 January 2026, 30/1-5

not challenged by Rani or John when Gerard took the stand. In fact, Rani and John agreed⁸³ that in July 2022, they had met Gerard who said that each party's investment in JBR could be verified by the proper documentation as to the amount put in. Gerard's advice was that each party's investment in JBR could be verified by the proper documentation as to the amount put in and that they could run and manage the affairs of JBR on a 50-50 basis. This was inconsistent with their earlier evidence that the agreement between the parties was that there would be no transfer of shares to Thiru or any position in the board of directors of JBR for Thiru. There is no indication that Rani and John had mentioned such an earlier agreement to Gerard or protested that there was no necessity to meet with Gerard or for their accountant to be present. Based on the WhatsApp message sent by the accountant to Gerard⁸⁴, she was clearly aware of the purpose of the meeting. Such an alleged agreement that there would be no transfer of shares was also inconsistent with the WhatsApp message sent by Gerard to the accountant the next day asking for the accounts for Thiru to be made a shareholder of the company as per his conversation with John. There was no protest from the accountant or John that this had not been the subject of their conversation or that there would be no transfer of shares⁸⁵.

53 Thiru had also followed up with Gumanan on a few occasions⁸⁶ and insisted on being made a director and majority shareholder, even though Gumanan tried to persuade him otherwise. The affidavit evidence of Rani and John⁸⁷ indicated that in June 2022, they had met with Thiru and Gumanan at a

⁸³ Rani's AEIC at [18]; John's AEIC at [23]

⁸⁴ 2BA 575

⁸⁵ 2BA 576

⁸⁶ Claimant's AEIC at [112] – [115]

⁸⁷ Rani's AEIC at [17]; John's AEIC at [22]

food court in Boon Lay to discuss about the parties' participation in JBR. Gumanan told Thiru that he should let the business operate for about 6 months and see its potential. If business was good, Gumanan would readily agree to let Thiru become a director of JBR. If business was poor, then there was no point in Thiru becoming a director. I find this to be consistent with representations having been made to Thiru that he would be made director and shareholder and inconsistent with Rani's and John's evidence that his investment would only secure a 50% return on the net profits of JBR and there would be no transfer of shares or directorship. If the latter were true, there would have been no further need to engage Gumanan to discuss about Thiru's participation in JBR and when Thiru can expect to become a director of JBR. Rani and John could have simply referred Thiru to their earlier agreement that his investment would only secure a 50% return on the net profits of JBR.

54 At this stage, I must state that I found the evidence given by Rani and John to be internally inconsistent and confusing. I had earlier highlighted various instances of such inconsistencies, the chief of which is the position they took in their affidavits that there was no agreement that Thiru's investments would be repaid to him over time, which was directly contrary to their Defence where it is pleaded that the Defendants had agreed to repay Thiru when the Business was on an even keel.

55 There were also many instances in which Rani's oral evidence on the stand contradicted her own AEIC. For instance, Rani stated on the stand that she did not know if Samidurai wanted to be part of the business venture⁸⁸. However, when confronted with her AEIC where she had stated Samidurai's

⁸⁸ NE, 6 January 2026, 51/30-31

request for a 60% share in the business⁸⁹, she stated that they could not give him a share in the business when he did not put in money⁹⁰. By the same reasoning, Rani could not have been unaware that Thiru would want a share in the business in return for his investment. Rani's evidence that there were no conditions to Thiru's investment of monies was unworthy of credit⁹¹. Rani also claimed on the stand that she did not speak to Thiru at all⁹² when her affidavit evidence was that she and John had reached agreement with Thiru for an entitlement to 50% of the net profits of JBR. While Rani's AEIC⁹³ mentioned that she and John had attended at the lawyer's office twice, once in March 2022 and the second, sometime in April 2022 after they had secured the lease, on the stand she said that she only saw Chitra once after the lease had been secured⁹⁴. Chitra's evidence was that she was the one who dealt with the parties on both occasions, which evidence was not disputed by Rani.

56 Rani was also an unreliable witness in Court who was evasive and wont to contradict her own evidence in the same breath as illustrated below⁹⁵:

Okay, do you agree that on 4th April 2022, Mr Thiru signed on the tenancy agreement for and on behalf of JBR while you signed as a witness?

A I know that I signed as a witness, I can remember.

Q Okay, So, you signed as a witness on the tenancy agreement?

⁸⁹ Rani's AEIC at [8]

⁹⁰ NE, 6 January 2026, 52/18-20

⁹¹ NE, 6 January 2026, 7/29-31

⁹² NE, 5 January 2026, 37/14, 25-28, 38/3-16

⁹³ Rani's AEIC at [13] – [14]

⁹⁴ NE, 6 January 2026, 16/13-14

⁹⁵ NE, 6 January 2026, 23/5-9

A I don't know whether I signed as a witness or the director.

57 The evidence of Rani and John was internally inconsistent as well as inconsistent with their own pleaded case, which was filed when they were represented by lawyers. It was therefore difficult to place much weight on their evidence.

58 In the circumstances, I find that Rani and John had agreed to make Thiru a shareholder and director of JBR in exchange for his injection of funds in JBR.

Were Rani and John contracting parties?

59 Rani and John made arguments in their closing submissions that they were not personally liable. In her closing submissions, Rani claimed that she is not personally liable as the obligations were JBR's and she had merely signed on the investment confirmation letters as a director of JBR which was the entity which received the funds. As JBR is a genuine trading company and not a shell company, there is no basis to pierce the corporate veil. In addition, she claimed that as she had transferred her shares to Gumanan on 23 November 2022, her personal liability should be limited to the period during which she was a director and shareholder of JBR between April and November 2022⁹⁶.

60 Similarly, John claimed that he was not a contracting party and was therefore not personally liable. The investment confirmation letters were signed by Rani on JBR's letterhead. His name did not appear on the letters and he is not identified as a party in any document. He is neither a director nor a shareholder. He had participated in the discussions with Thiru about the

⁹⁶ Rani's closing submissions at [122]

Business in his capacity as JBR’s prospective executive manager and did not assume personal liability as a contracting party.

61 I did not accept these arguments for a number of reasons. First, these arguments run contrary to their pleaded defence and affidavit evidence. It was pleaded in [26] of the Defence that Thiru and John had agreed that Thiru would partake in the “profits and losses” of JBR. It was also pleaded in [27] that “the Defendants had agreed with Thiru to repay the loan/capital injection when the Business was on an even keel.” It was not pleaded that only JBR was party to the agreement. In addition, both Rani⁹⁷ and John⁹⁸ had in their affidavits stated that they had agreed with Thiru that his investment in their business would secure a 50% return on the net profits of JBR.

62 Secondly, Rani only became a director of JBR on 5 April 2022. At the time she had agreed to make Thiru a director and shareholder of the JBR at the meeting on or before 22 March 2022, she was not a director of JBR who could bind JBR. She was a majority shareholder of JBR. The arrangement to make Thiru a director and shareholder of JBR would have involved Rani in her personal capacity as a majority shareholder who would have the ability to appoint directors to JBR as well as transfer or approve the issuance of new shares to Thiru.

63 While the agreement drafted by Chitra may have been between JBR and Thiru as parties, the agreement was described by Chitra as a draft shareholders agreement and the arrangement between the parties would have involved Rani in her personal capacity as a majority shareholder at the material time to approve

⁹⁷ Rani’s AEIC at [12]

⁹⁸ John’s AEIC at [17]

the issuance of new shares, appoint Thiru as director and to remove Gumanan as a director as well as the agreement of Gumanan as a shareholder to transfer his shares. The arrangement therefore involved not just JBR as a party but also Rani in her personal capacity as a shareholder. In the circumstances, Rani would have made the representations in her personal capacity as a majority shareholder and not just for and on behalf of JBR.

64 I also note that John had largely aligned his position with Rani's and the context in which the agreement had been made. Rani and John were familiar with the operations of running a F&B business. In particular, John was known to be a good cook. While they had the relevant experience and expertise in the F&B industry, they lacked sufficient funds to begin and sustain the business and needed funds from Thiru. The agreement with Thiru was therefore one between co-investors in which Rani and John would contribute their experience and expertise and Thiru would contribute funds to a company in which Rani was already a majority shareholder. I accepted Thiru's evidence that Rani and John had stated that they would also contribute capital. This was consistent with John's own case that he had made payments on behalf of JBR or to JBR as a loan from his own funds, which would not be expected from a mere manager of the Business.

65 I therefore find that Rani and John had represented and agreed in their personal capacities that Thiru would be made director and shareholder of JBR.

66 The investment confirmation letter signed by Rani does not absolve her from personal liability. The fact that she subsequently ceased to be director or shareholder also does not absolve her from personal liability. In this regard, I note that the Statement of Claim was dated 7 October 2022 and served on

Gumanan and JBR on 11 October 2022 as well as on John on 14 October 2022⁹⁹. Rani proceeded to transfer her shares to Gumanan on 23 November 2022. Given that Rani had said that she sold JBR to escape the problems that Thiru was causing them¹⁰⁰ but nevertheless continued to operate the canteen, including witnessing its renewal on 16 January 2023¹⁰¹, it is more probable than not that Rani transferred her shares, upon receiving notice of the claim through John, to avoid association with JBR and to dissociate herself from this suit. Such action, unfortunately, did not have the intended effect that she desired. The fact that both Rani's and John's AEICs referred to the fact that they had received takeover fees for selling JBR¹⁰² in May 2023 suggest that Rani's transfer of shares on 23 November 2022 was a paper exercise as opposed to a substantive transaction.

Was there a breach of contract?

67 In so far as Rani and John failed to make Thiru a director and shareholder of JBR, there is a breach of contract.

Was JBR profitable?

68 As it is the pleaded defence that the Defendants had agreed to repay Thiru when the Business was on an even keel, the issue was whether the Business was profitable and therefore triggered the obligation to repay Thiru. As Thiru had also claimed damages for loss of opportunity in being deprived of the potential earnings of the monies applied to seed the Business, the issue of

⁹⁹ Defence at [1]

¹⁰⁰ NE, 23 February 2026, 34/10

¹⁰¹ CBD 304

¹⁰² Rani's AEIC at [24], John's AEIC at [30]

whether the Business was profitable and the extent of profitability would also determine the quantum of damages payable.

69 Thiru argued that JBR was highly profitable and that its profits were around \$588,456.67 from 1 July 2022 to 30 April 2023¹⁰³. Thiru argued that based on JBR's sales receipts from 1 to 13 July 2022, the average daily collections would have been \$5,700¹⁰⁴. This would amount to an average of \$171,000 for a month of 30 days and a revenue of \$1,026,000 from July to December 2022. Based on the Annual Report¹⁰⁵, which figures Rani did not dispute¹⁰⁶, the cost of sales figures was \$335,348, the other income was \$5,245 and the operating expenses were \$342,823. This would give a net profit of \$353,074 and an average profit of \$58,845.67 per month (averaged over 6 months). Hence, the profits from over the 10 months from 1 July 2022 to 30 April 2023 would have been \$588,456.67. Thiru argued that his quantification ought to be accepted as the sales receipts from 1 to 13 July 2022 were sent by John¹⁰⁷. He also claimed that the figures were conservative for a number of reasons¹⁰⁸:

- (a) The opening day was on 16 June 2022, a Thursday and it is a known fact that for F&B businesses, weekdays were typically quieter than weekends. The opening day revenue alone was \$8,278.90 comprising \$8,000 in cash and \$278.90 in NETS payments;

¹⁰³ Claimant's closing submissions at [35]

¹⁰⁴ Claimant's closing submissions at [52]

¹⁰⁵ CBD 275 - 291

¹⁰⁶ NE, 23 February 2026, 5/19-24

¹⁰⁷ Claimant's closing submissions at [53]

¹⁰⁸ Claimant's closing submissions at [54]

- (b) Revenue increased significantly afterwards as evident from the NETS collections which increased manifold;
- (c) Rani acknowledged during the trial that there would be approximately 500 to 600 paying customers daily¹⁰⁹;
- (d) Rani acknowledged that the price list at [4.16] of Mr Abdul Hadi's report dated 13 May 2025 reflected the price of the food and drinks sold at JBR Curry House prior to 6 May 2023. As beer was sold at \$4 per can or \$10 for 3 cans, a customer could easily spend more than \$10¹¹⁰.

70 Cash was rarely deposited into JBR's UOB account and there is evidence that as at September 2022, a sign at JBR's counter directed customers to make payment directly to John's personal handphone number.

71 In addition, Thiru relied on the following evidence in support of his claim that JBR was profitable:

- (a) JBR renewed the canteen agreement in January 2023 for a further two years at \$15,500 per month. It would not have done so if it were not profitable.
- (b) Thiru claimed that JBR had been sold in May 2023 for \$150,000 which indicated that JBR was profitable.
- (c) Findings by private investigators in 2025 indicated high footfall at the Premises.

¹⁰⁹ NE, 6 January 2026, 64/5-9, 66/9-14

¹¹⁰ Claimant's closing submissions at [54c]

- (d) JBR posted job advertisements offering high salaries for its vacancies, indicating sufficient revenues and the ability to pay the same.
- (e) JBR was solvent as at the end of 2022 and 2023.
- (f) There were no bank loans as no charges have been lodged against the company.
- (g) Thiru has not been asked to partake in any of JBR's losses.

72 Rani and John, on the other hand, argued that JBR's annual report for the financial year which ended on 31 December 2022, prepared by their accountant, Singaram, in accordance with the Singapore Financial Reporting Standards, indicated that JBR suffered a net loss of \$53,130. John argued that the allegation that he had systematically diverted JBR's revenues by collecting payments through his personal PayNow/PayLah account was unproved. He argued¹¹¹ that it was a common payment practice in the hawker and canteen sector to receive payments through their personal mobile number and there is no evidence that payments were made to his personal account and not reflected in JBR's books. Hence, the revenue figure of \$619,796 in the Annual Report¹¹² reflected all collections, including those received through his account that were disclosed to and recorded by Singaram. John argued that the funds he received through his personal PayNow account were used for JBR's operational expenses such as cash wages to staff, supplies and day-to-day operational costs¹¹³.

¹¹¹ John's closing submissions at [48] – [49]

¹¹² CBD 281

¹¹³ John's closing submissions at [52]

73 Rani and John argued that the revenue of \$619,796 stated in the Annual Report covering approximately six to seven months of operation from June to December 2022 was accurate, giving an average monthly revenue of \$88,542 (if divided over seven months) to \$103,300 (if divided over six months)¹¹⁴. Taking 30 days in a month, the average daily revenue works out to be approximately \$2,951.40 to \$3,443.30. The gap between the Annual Report's implied daily revenue of approximately \$3,443 per day and the July 2022 receipts of \$5,782 per day¹¹⁵ could be due to various legitimate explanations such as opening month novelty effect inflating the July 2022 patronage, weekend days being over-represented in the 6-day sample, revenue naturally declining from the opening peak to a sustainable steady state and seasonal and operational variability. Thiru's revenue projection is derived from 6 days of sales receipts from JBR's opening month which represents 2.9% of the operating period of approximately 210 days. Rani and John argued that this sample size would be statistically inadequate and speculative extrapolation. They also argue that Thiru had failed to adjust for variable costs increasing proportionately with the volume of food sold.

74 In addition, Rani and John argued¹¹⁶ that there were legitimate commercial reasons for JBR's renewal of the canteen agreement in January 2023 for a further two years at \$15,550 per month and it does not follow that JBR was profitable.

¹¹⁴ Rani's closing submissions at [47]

¹¹⁵ Rani's closing submissions at [51] – [59], John's closing submissions at [54] – [58]

¹¹⁶ Rani's closing submissions at [66] – [68]; John's closing submissions at [59] – [60]

75 Rani and John also argued¹¹⁷ that JBR's \$150,000 sale price represented (a) the right to operate at 9 Kian Teck Drive, which has significant locational value; (b) kitchen equipment with a net book value of \$37,545 and (c) limited good will. A more efficient operator may have paid for his expectation of future cash flows at the Premises, as opposed to JBR's past financial performance. Rani and John also argued that they did not receive anything personally from the sale as the sale proceeds were used to pay creditors¹¹⁸.

76 Rani and John submitted that the surveillance evidence at 9 Kian Teck Drive on 1 May 2025 estimating daily revenue of \$5,000 to \$6,000 based on customer count and an assumed average spend of \$10 per person had no probative value on JBR's profitability in 2022 and 2023¹¹⁹ as there is a three year temporal gap, the canteen was operated by a different entity in 2025 and there was no transactional data obtained in the report.

77 Lastly, Rani and John also submitted¹²⁰ that as costs sanctions have been imposed on them for non-compliance with the production orders, drawing an additional adverse inference and treating non-production as positive proof of profitability would amount to double punishment for the same non-compliance and be disproportionate. Rani argued that the documents were misplaced when she and John moved house and their non-production was born out of ignorance rather than calculated concealment. Even if JBR's bank statements would have shown higher revenues, the question is how much higher. The burden of proof remains on Thiru and the financial figures in the Annual Report which was

¹¹⁷ Rani's closing submissions at [70] – [72]; John's closing submissions at [62]

¹¹⁸ Rani's AEIC at [24]; John's AEIC at [30]

¹¹⁹ Rani's closing submissions at [73] – [75]; John's closing submissions at [65] – [67]

¹²⁰ Rani's closing submissions at [76] – [80]; John's closing submissions at [68] – [71]

independently prepared should be accepted as the best available evidence of JBR's performance.

Whether the revenue figures in the 2022 Annual Report were under-reported

78 Save for the revenue, Thiru does not appear to dispute the other figures in the Statement of Comprehensive Income in JBR's Annual Report for the financial year ended 31 December 2022. While Thiru claimed that the system generated sales receipts from JBR's digital payments and cash terminals from 1 to 13 July 2022 show an average daily revenue or collection of around \$5,781.95¹²¹, there is no evidence as to how these various receipts should be interpreted and whether there is any overlap among the various receipts. In this regard, I note that the sum of the NETS collection from Nets Terminal ID 70591101 and Nets Terminal ID 70591103 on 1, 2, 4, 6 and 13 July 2022 was close to the amounts credited into JBR's UOB account in respect of the same days. However, there is no indication of the NETS collection from the Terminal VP-POS01 being deposited into JBR's bank account and there is no evidence that such collection related to payments made to John's mobile number. In addition, the handwritten calculations¹²² appear to be reconciliation calculations. For example, the handwritten calculations¹²³ appear to reconcile the NETS collection dated 2 July 2022 from Terminal ID 70591103 in the sum of \$2,276.27 against the NETS collections generated by Terminal VP-POS01 in the sum of \$1,892.10 resulting in an extra sum of \$384.17. Similarly, the handwritten calculations¹²⁴ appear to reconcile the NETS collection dated 4 July 2022 from Terminal ID 70591103 in the sum of \$1,039.00 against the NETS

¹²¹ Claimant's AEIC at [157]

¹²² CBD 256, 258, 266, 268,

¹²³ CBD 258

¹²⁴ CBD 266

collections generated by Terminal VP-POS01 in the sum of \$1,009.50 resulting in an extra sum of \$29.50. The calculations go on to state the total sales of the day as \$2,140.40, including the cash collections, which is the output from Terminal VP-POS01. The receipt from the sale of the set meals on 4 July 2022¹²⁵ were also reconciled against the cash used as well as the NETS collection from Terminal 70591101 to arrive at a total sales of \$567.90 and an extra \$98.90. Adding the reconciliation calculations of \$2,140.40 and \$567.90 together gives a revenue of \$2,708.30 on 4 July 2022. Similarly, adding \$3,034.10 to \$730.60 gives a revenue of \$3,764.70 on 6 July 2022¹²⁶ and adding \$2,694.10 to \$781.70 gives a revenue of \$3,475.80 on 13 July 2022¹²⁷. These do not support Thiru's arguments that the average daily collections were \$5,781.95.

79 Even if there is no overlap among various receipts, there is no evidence as to whether the NETS collections generated by Terminal VP-POS01 went into another bank account other than JBR's UOB account and whether such amounts were nevertheless taken into consideration in arriving at the reported revenue quantum. There is no evidence that the NETS collections related to the funds that JBR's customers have paid into John's account via his mobile number and that these have not been taken into account in the Annual Report accounts. John's bank account statements, especially those of the account to which his PayNow number is linked, are not before the Court and Suppiah Singaram¹²⁸, who is believed to have prepared the accounts, was not produced as a witness.

¹²⁵ CBD 265

¹²⁶ CBD 267 - 268

¹²⁷ CBD 269 - 270

¹²⁸ 1BA 389

80 It is also unclear if the revenue obtained in these six days in the first month of opening persisted into the months which follow. Even among the selected six days, there was significant variability in the revenue received for each day.

81 Based on the bank statements, the NETS collections appeared to have increased from July 2022. However, it is unclear whether the cash collection has correspondingly dropped and the corresponding impact on the revenue and cost of sales.

82 While Rani did confirm that there were approximately 500 to 600 customers per day, it was unclear if they spent an average of \$10 per person. Based on the bank statements of JBR¹²⁹, the small value deposits paid by PayNow over 2 September to 12 September 2022 amount to \$537.40 over 45 transactions. Hence, Thiru argued that the average spend by customers paying by PayNow was \$12.74 per transaction. However, it was unclear whether the average spend of the 45 transactions over 11 days would be representative of the average spend of the 5,500 or 6,600 customers over those days, including those who may have paid in cash.

83 In the circumstances, Thiru was unable to prove on a balance of probabilities that the revenue figures in the Annual Report in 2022 were under-reported and that JBR was profitable as at 31 December 2022. Even if I accept that Rani had used the funds in JBR's UOB bank account for personal expenses, it is unclear if such amounts had been excluded from the accounts. Even if they were included, it is not clear that their exclusion would have caused JBR to be otherwise profitable.

¹²⁹ CBD 151 – 157, NE, 23 February 2026, 7/16 – 9/3

Renewal of canteen agreement

84 Rani and John do not dispute that JBR renewed the canteen agreement in January 2023 for a further two years at \$15,500 per month. In my view, this alone does not mean that JBR was profitable at that time. While the canteen agreement entered into in April 2022 was with Eng Lee, the canteen service agreement entered into on 16 January 2023 was with Wai Fong Machinery Pte Ltd¹³⁰ which had taken over the premises from Eng Lee. The renewal of the canteen agreement, even before it had expired, did not therefore point to the fact that JBR was profitable at the time. While the desire to secure the premises at which the Business is conducted for a longer period indicates optimism about JBR's prospects, this was insufficient indication that it was in fact profitable at that time.

Sale of JBR

85 According to Rani's affidavit affirmed on 3 February 2025, the Business was sold off on 6 May 2023¹³¹. Thiru gave evidence that he had a conversation with one George on or about 15 March 2024 who told him that he had paid John and Gumanan approximately \$150,000 in June 2023 to buy over JBR. In support, Thiru enclosed WhatsApp messages which he sent to George referring to the conversation. However, there is no reply from George and George was not called as a witness. Neither was Shaik Rajee Mohameed Shaik Abdullah, the person to whom Gumanan transferred 80,000 of his shares in JBR on 6 May 2023, called as a witness. In the circumstances, the evidence that John and Gumanan were paid \$150,000 in June 2023 was technically hearsay evidence and inadmissible.

¹³⁰ 1BA 233-247

¹³¹ 3BA 621

86 In her affidavit dated 7 July 2025¹³², Rani stated that when they came to the realisation that JBR was no longer a going concern, she had no choice but to sell it off and that the takeover fees that she received for selling JBR was used to pay off their creditors. On the stand, Rani admitted that she sold JBR to escape the problems that Thiru was causing them¹³³. However, Rani claimed that she could not remember how much JBR was sold for and was unwilling to disclose her bank statements to show how much she received from the sale of JBR¹³⁴. John said they did not sell the shop but they could not run the business so they left and ran¹³⁵. However, he subsequently said he could not remember who they sold JBR to¹³⁶ and that he did not receive a single dollar from the sales proceeds and that Gumanan had handled the sale¹³⁷.

87 I did not find either Rani or John to be credible witnesses in this regard as it is unlikely that they would not be able to remember who they sold JBR to or how much it was sold for. In their closing submissions¹³⁸, they claimed that the sale price represents (a) the right to operate at 9 Kian Teck Drive, an address with significant locational value; (b) kitchen equipment with a net book value of \$37,545; and (c) limited goodwill given its short operating history. They claimed that they did not personally benefit as the sale proceeds were used to pay off the creditors which was the position taken by Rani in her affidavit.

¹³² 3BA 583 at [24]

¹³³ NE, 23 February 2026, 34/10

¹³⁴ NE, 23 February 2026, 35/17-30

¹³⁵ NE, 27 February 2026, 17/6-7

¹³⁶ NE, 27 February 2026, 29/25-27

¹³⁷ NE, 27 February 2026, 30/6-11

¹³⁸ Rani's closing submissions at [70] – [72], John's closing submissions at [62] – [64]

88 The fact that JBR was able to be sold on 6 May 2023 at a positive price is indicative that JBR has the potential to generate positive cash flows in the future but there is no evidence of when that would be the case. In particular, a sale price of \$150,000 did not support an annual profit of \$588,456.67. If JBR was indeed that profitable, the sale price would probably have been much higher.

89 In John’s closing submissions, it was argued on behalf of Rani¹³⁹ that as she resigned as director on 29 September 2022 and transferred all her shares in JBR on 23 November 2022, she ceased to have any legal authority over JBR. The renewal of the canteen agreement in January 2023 was authorised by Gumanan and the management and operation of JBR was his responsibility. Gumanan made the decision to sell JBR in May 2023 and the sale proceeds accrued to him alone. I did not accept this argument given that it ran counter to their evidence that they had received the sale proceeds and used it to pay off their creditors¹⁴⁰. On the stand, Rani had also testified that the decision to sell JBR was made by her, John and Gumanan¹⁴¹.

Surveillance Evidence on 1 May 2025

90 Thiru also relied on an investigative report dated 9 May 2025 which was based on investigations conducted based on visits to 9 Kian Teck Drive on 31 December 2024, 1 January 2025 and 14 January 2025. The investigations indicated that the sign board above one of the “cooked food sections” read “Al Sheika Banana Leaf Indian Muslim Food”¹⁴². The staff working at that counter

¹³⁹John’s closing submissions at [114] – [116]

¹⁴⁰ Rani’s AEIC at [24], John’s AEIC at [30]

¹⁴¹ NE, 5 January 2026, 8/18-20

¹⁴² 2BA 454 at [4.1(g)]

were attired in plain orange-coloured polo t-shirt¹⁴³ while those attending to the drinks counter with “JBR Curry House” signage above it were not uniformly dressed¹⁴⁴. Mr Abdul Hadi gathered that the cooked foods part of the business was run by Al Sheika Banana Leaf Restaurant and Al Shika Restaurant while the drinks, beers and other beverages, including the minimart, were run by JBR Curry House¹⁴⁵. At the JBR Curry House drinks counter, there were 2 wireless digital payment machines and 1 electronic cash register. Payment made via one wireless digital machine produced a receipt showing “Al Sheika Restaurant” while payment made via the other wireless digital machine produced a receipt showing “Al Shika Pte Ltd”. The electronic cash register displayed “JBR Curry House” on the monitor but did not produce any receipt. Upon request, the staff at the drinks counter produced a hand written receipt with the “JBR Curry House Pte Ltd” stamp on it¹⁴⁶. Over at the cooked food sections, digital payments for the purchases were also directed to “Al Sheika Restaurant” and “Al Shika Pte Ltd”. Contactless payment made via QR Code, which was generated from the wireless digital payment device showed that the payment was made to “Al Sheika Restaurant” and “Al Shika Pte Ltd.” There was also a cash register at “Al Sheika Banana Leaf Restaurant” for patrons who prefer to pay by cash¹⁴⁷. In the later part of the evening, a lot of patrons were seen purchasing alcoholic beverages from the drinks counter at JBR Curry House. Most of the purchases were made via digital payments¹⁴⁸.

¹⁴³ 2BA 454 at [4.1(o)]

¹⁴⁴ 2BA 454 at [4.1(p)]

¹⁴⁵ 2BA 454 at [4.2(a)], 2BA 461 at [5.12] – [5.13]

¹⁴⁶ 2BA 457 at [4.4]

¹⁴⁷ 2BA 458 at [4.8]

¹⁴⁸ 2BA 459 at [4.13]

91 A subsequent report produced by Mr Abdul Hadi dated 13 May 2025 is based on visits carried out on 1 and 13 May 2025¹⁴⁹. At the drinks counter, where the signboard had the name “JBR Curry House” covered with a yellow tape¹⁵⁰, payment made via one wireless digital payment machine produced a receipt showing “North Indian Food / SN Pioneer Lot” while payment made via the other wireless digital machine produced a receipt showing “Indian Food Stall Maple Tree”. The electronic cash register displayed “JBR Curry House” on the monitor but did not produce any receipt. Upon request, the staff at the drinks counter produced a hand written receipt with the “JBR Curry House Pte Ltd” stamp on it¹⁵¹. Digital payments for purchases made at the cooked food section, including the unnamed cooked food stall, were issued with a receipt from “Al Sheika Banana Leaf”¹⁵². Payments in cash for purchases made at the cooked food section were not issued with receipts. Upon request, the staff at the “Al Sheika Banana Leaf Indian Muslim Food” counter produced a handwritten receipt with the “JBR Curry House Pte Ltd” stamp on it¹⁵³.

92 It was estimated that there were between 100 and 150 customers between 0811 hours and 1021 hours on 1 May 2025, between 150 and 200 customers between 1329 and 1600 hours and between 150 and 250 customers between 1800 and 2100 hours¹⁵⁴. Based on the report¹⁵⁵, the numbers appear to be based on discrete video footage taken from 0811 hours to 1021 hours on 1

¹⁴⁹ 2BA 504 at [3.1.1]

¹⁵⁰ 2BA 506 at [4.1(i)]

¹⁵¹ 2BA 509 - 510 at [4.3]

¹⁵² 2BA 510 at [4.5]

¹⁵³ 2BA 510 at [4.6]

¹⁵⁴ 2BA 510 at [4.8], 2BA 511 at [4.12] and at [4.14]

¹⁵⁵ 2BA 510 at [4.7]

May 2025 which is a public holiday. Based on the price list of the items sold at the restaurant, it is estimated that each customer who purchased food at the restaurant would spend an average of \$5.00 while those who bought beer would spend an average of \$10.00. Other food items e.g. snacks, titbits, desserts etc would cost each customer an average of \$2.00¹⁵⁶.

93 In my view, the findings by the private investigators in 2025 were not probative of the situation back in 2022, given the temporal gap of three years and the fact that the cooked food section did not appear to be run by JBR anymore. No evidence was advanced as to how many customers in 2025 would purchase food and how many would purchase beer or other items and the basis on which one can estimate the average spend of each customer. No figures were also available as to the cost of sales or the operating expenses in 2025 and it is unclear how the corresponding figures in JBR's Annual Report for 2022 could be extrapolated to subsequent years. There is therefore insufficient evidence for me to make any finding in respect of JBR's profitability subsequent to December 2022.

94 Similarly, I do not find that the fact that JBR posted a job application (from 5 October 2024 to 19 October 2024) for a store assistant with an advertised monthly salary of \$3,000 to \$5,000 and another job application (from 22 January 2025 to 5 February 2025) for a business development manager with an advertised monthly salary of \$8,000 to \$14,000 to be of assistance to Thiru's case. First, it is unclear whether the positions were ultimately filled and what the salaries that were ultimately paid were. Secondly, it is unclear if and how such high operating expenses would in fact affect JBR's profits.

¹⁵⁶ 2BA 513 at [4.17]

Failure to provide documents

95 Pursuant to an order made at the hearing of DC/SUM 627/2023 on 17 July 2024, Gumanan, Rani and John were ordered to produce the following documents to the extent that they were in their possession or control: (a) JBR’s audited financial statements for its food and beverage business within the Premises for all financial years that overlap with any part of the period between April 2022 and 31 July 2024 and (b) if such audited financial statements do not exist, JBR’s unaudited financial statements for such business and the supporting documents relied upon to arrive at such unaudited financial statements¹⁵⁷. The deadline for doing so was extended to 31 December 2024 on 19 November 2024. On 15 January 2025, Rani and John were stated to be in breach of the 17 July 2024 order and asked to comply with the order¹⁵⁸. Rani and John subsequently filed affidavits on 3 Feb 2025. While Rani disclosed the annual report of JBR and JBR’s bank accounts between March and October 2022, her evidence was that the other documents requested for had been misplaced or lost in transit.

96 On 5 February 2025, the deputy registrar (“DR”) found that Rani and John had filed affidavits on 30 July 2024 to respond to the orders made at the hearing on 17 July 2024 so they were clearly aware of the orders made on 17 July 2024. She was satisfied that they could have disclosed the UOB bank statements earlier but only did so in their affidavit of 3 February 2025. Together with Gumanan, they were ordered to pay Thiru costs fixed at \$3,000 for the time wasted at the hearings on 9 October 2024, 19 November 2024 and 15 January 2025 as a result of their failure to fully comply with the orders made.

¹⁵⁷ DC/ORC 189/2025

¹⁵⁸ NE, 15 January 2025, 30D-E

97 I did not accept that Rani and John's non-compliance with the production order was due to procedural ignorance. The DR had found that they were clearly aware of the orders made, given that they had filed affidavits to respond to the same. However, their non-production related to the unaudited financial statements from 1 January 2023 to 31 July 2024 and the supporting documents relied upon for the same. As set out earlier, their inability to produce such statements and documents flow from their misconceived efforts to dissociate themselves from JBR. Having said that, it is clear however that there must be some evidence, even if weak, that is adduced by the party seeking to draw the inference on the issue in question, before the Court would be entitled to draw the desired inference. Section 116(g) does not afford the court the opportunity to speculate as to what the evidence may be without some basis for the drawing of the inference: *Muhammad Nabill bin Mohd Fuad v PP* [2020] 1 SLR 984 at [74].

98 In the present case, there is no prima facie evidence that JBR was profitable, subsequent to December 2022. For completeness, the fact that JBR has filed annual returns with ACRA for financial years ending 31 December 2023 that JBR is solvent does not necessarily imply that it is profitable. The declaration that JBR is solvent simply means that JBR is able to pay its debts as they fall due. An entity which makes losses can nevertheless be solvent if there is sufficient cash, assets, financing or investor support to meet its liabilities. The fact that JBR did not take any bank loans is also not determinative of its profitability, given that there may be other sources of funds such as equity injections and director or shareholder loans. There is no evidence as to whether there was any further injections of funds in JBR following the change in ownership in May 2023. I am also unable to infer from the fact that Thiru was not asked to put in any further funds as indication that JBR had been profitable from the start.

99 In the circumstances, on the Defendant's pleaded case that they would repay the loan or injection monies when the Business was profitable, which Thiru does not dispute, Thiru has not proved on a balance of probabilities that JBR was profitable and that the obligation for the Defendants to repay Thiru's investment monies has been triggered. As for Rani's and John's breach of their obligation to make Thiru a director and shareholder of JBR, Thiru's case as set out in his affidavit¹⁵⁹ quantifies damages for loss of opportunity as 50% of the profits of JBR. The burden of proof is on Thiru to prove such damages. In this regard, the financial statements for the financial year ended 31 December 2022 indicated that JBR was loss-making and Thiru was unable to prove otherwise. In respect of the period after 31 December 2022, there is no prima facie evidence that JBR was profitable, to which an adverse inference could be drawn or applied in strengthening the evidence. Even if, for the sake of argument, an adverse inference were to be drawn against Rani and John that JBR was profitable after 31 December 2022, it was unclear how profitable it would have been to form a basis on which damages for loss of opportunity could be assessed.

100 In the circumstances, there was insufficient evidence for me to find any damages for a breach of contract. I therefore find that Thiru has failed to make out his claim in contract.

¹⁵⁹ Claimant's AEIC at [181]

Misrepresentation

Issues

101 The essential elements in a claim for fraudulent misrepresentation are summarised at [55] of *Toh Wee Ping Benjamin and another v Grande Corp Pte Ltd* [2020] 2 SLR 308:

- (a) there must be a representation of fact made by words or conduct;
- (b) the representation must be made with the knowledge that it is false;
- (c) the representation must be made with the intention that it should be acted upon by the plaintiff;
- (d) the plaintiff had acted upon the false statement; and
- (e) the plaintiff suffered damage by doing so.

102 The issues which fall to be determined in respect of the cause of action in fraudulent misrepresentation are therefore as follows:

- (a) Did Rani and John make representations of fact to Thiru?
- (b) Were these representations false and made with the knowledge that they were false?
- (c) Were the representations made with the intention that they should be acted by Thiru?
- (d) Did Thiru act upon the false statement or did the representation induce actual reliance?
- (e) Did Thiru suffer damage?

Thiru's arguments

103 Thiru claimed¹⁶⁰ that Rani and John had represented that he would be appointed as a director and shareholder of JBR from March to June 2022 to persuade him to invest by (a) attending the two meetings at Regency Legal LLP to discuss the terms concerning such appointment, (b) repeatedly assuring him that he would be made a director and shareholder of JBR, (c) preparing an unsigned JBR Director's Resolution dated 16 June 2022 for the transfer of shares to him and (d) attending a meeting at GBS Consultancy on 25 June 2022 to determine his percentage of shareholding in JBR.

104 Thiru argued that the statements by Rani and John that he would be made a director and shareholder of JBR in return for his investment of monies qualify as a representation of fact as it is a statement of their intention or state of mind to appoint Thiru as a director and shareholder should he provide the funding.

105 Thiru argued that the representations were made to convince him to provide funding and were made with the intention that they should be acted upon by him. Thiru pointed to the fact that on or around 10 June 2022, Rani and John had specially engaged a Hindu priest to say prayers and bless JBR's business when they and Gumanan were Christians and Thiru was the only Hindu in the group. Thiru naturally felt touched by the gesture and felt that Rani and John were sincere in making him a key part of the business venture. Thiru relied on the representations and provided the funds to his detriment.

106 Thiru argued that the representations were made with the knowledge that they were false and Rani and John did not intend to fulfil the representations. This was because appointing Thiru as a director placed them at risk of criminal

¹⁶⁰ Claimant's AEIC at [120]

liabilities for making CPF payments to phantom workers. Appointing Thiru as a shareholder would also mean sharing the profits with Thiru which Rani and John were unwilling to do.

107 Thiru argued, relying on *Sim Tee Meng v Haw Wan Sin David and another* [2020] 1 SLR 82 (“*Sim Tee Meng*”) at [47] that Rani and John would be personally liable for their own torts committed in relation to the company’s affairs, whilst acting as a director or employee of the company.

Rani’s and John’s arguments

108 Rani argued¹⁶¹ that she did not make any false representation of existing fact to Thiru. She denied promising Thiru a directorship or an equity stake. While she genuinely agreed to share 50% of the net profits, this was a true statement of her intention. She has expressed general optimism about the business’s potential but these were reasonable and honestly held statements about commercial prospects from an experienced F&B operator and do not constitute misrepresentations of existing facts. Rani also argued that Thiru was not thereby induced to invest because Thiru’s principal investment of \$123,755.88 made on 4 April 2022 was made after the meeting at Regency Legal where they had refused to give him an equity stake. The investment of \$38,279.55 was made two months thereafter, without any equity documentation. This showed that Thiru had proceeded on the basis of a profit-sharing arrangement instead of on the basis of any representation on equity.

109 Similarly, John argued¹⁶² that his communications with Thiru were not false statements of fact but honest expressions of commercial expectation about

¹⁶¹ Rani’s closing submissions at [107] – [109]

¹⁶² John’s closing submissions at [33], [75] – [100]

the canteen's potential. He had reasonable grounds for and honestly believed in the truth of his statements at the time. John's argument was that he had shared with Thiru his genuine assessment of the commercial potential of 9 Kian Teck Drive location, based on his experience working at 45 Kian Teck Drive, his knowledge of the dormitory workforce and his general F&B expertise. His assessment was honest, based on reasonable knowledge and was not a false statement of fact. His representations that he intended to operate the canteen diligently and to share profits as agreed were genuine intentions which he subsequently devoted over a year of his life to honouring. While he expected the business to be profitable, this was a reasonable commercial expectation and not a guarantee. John denied making a representation about directorship or shareholding as he had no shares in JBR and did not have the authority to offer shares or a directorship to Thiru. If any such representations were received, they would have come from Gumanan or Rani.

What were the representations made?

110 I had earlier made a finding that Rani and John had made representations to Thiru that he would be made a director and shareholder of JBR in exchange for his investment of funds into JBR. While no agreement was signed, I find that Rani and John had verbally agreed to make Thiru a director and shareholder and engaged in various acts to assure Thiru that he would be made director and shareholder. These include going with him to the lawyer's office on two occasions and making such representations before Chitra and going to Gerard's office with JBR's accountant joining them virtually over the telephone. In addition, they do not deny that they had hired a Hindu priest to bless the business on 10 June 2022, even though they and Gumanan were Christians. It is noted that following the ceremony, Thiru had invested another \$10,000 into JBR on

22 June 2022. In my view, they were clearly doing this to assure Thiru that he was an important part of the business.

111 Rani was a majority shareholder of JBR at the material time and clearly had the ability in her capacity as a majority shareholder to appoint Thiru as director and issue new shares or transfer her shares to Thiru. John was her husband, whose interests were aligned with her and who brought his culinary skills and F&B expertise to JBR. In the circumstances, I find that they had made the representations in their personal capacity as shareholder and potential investors in JBR.

Were there representations of fact?

112 As held in *Tan Chin Seng v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 at [12] citing Bowen LJ in *Edgington v Fitzmaurice* (1885) 29 Ch D 459, a statement as to a man's intention, or as to his own state of mind, is no less a statement of fact and a misstatement of the state of a man's mind is a misrepresentation of fact. The Court of Appeal went on to cite Tudor Evans J in *Wales v Wadham* [1997] 2 All ER 125 at 136

A statement of intention is not a representation of existing fact, unless the person making it does not honestly hold the intention he is expressing, in which case there is a misrepresentation of fact in relation to the state of that person's mind.

113 In *Uday Mehra v L Capital Asia Advisors & ors* [2022] 5 SLR 113 at [125] and [128], the High Court set out the following:

125 To be actionable, a misrepresentation must be a false statement of a past or present fact (*Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 at [20]–[21]). This excludes statements as to the future. A representor's statement that a state of affairs will come about in the future is either a promise or a prediction. It is a promise when that state of affairs is within the promisor's control. It is a prediction when

that state of affairs is outside the promisor's control. Neither a promise nor a prediction is a statement of past or present fact. Therefore, neither a broken promise nor a failed prediction is actionable as a misrepresentation.

.....

128 A broken promise gives rise to a viable claim in fraudulent misrepresentation only if the representor had no intention of fulfilling the promise at the time he made it. This is not an exception to the rule that an actionable misrepresentation must be a statement of fact. That is because, in truth, it is not the broken promise which is the actionable misrepresentation. The actionable misrepresentation is the implicit representation which accompanies every promise: that the promisor genuinely intends to honour his promise. If the promisor has no such intent, the promise is made fraudulently. That is because the implicit representation which accompanies the promise is false. That is so even if, by some happenstance, the subject of the promise ultimately eventuates. Another way of putting the same point, albeit somewhat inaccurately, is that a broken promise is actionable in misrepresentation if and only if the representor makes the promise having no intention of fulfilling it, and the representor is in that sense fraudulent.

114 In *Chan Pik Sun v Wan Hoe Keet (alias Wen Haojie) and others and another appeal* [2024] 1 SLR 893 at [156], the Appellate Division of the High Court held that a statement as to the future or a promise can be regarded as a statement of fact as to the representor's state of mind if it can be shown that the maker of the statement had no honest belief in the statement or had no reasonable grounds to make the statement: *Deutsche Bank AG v Chang Tse Wen and another appeal* [2013] 4 SLR 886 at [83].

Were the representations made with the knowledge that they were false?

115 In *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 at [32], the Court of Appeal cited Lord Herschell in *Derry v Peek* (1889) 14 App Cas 337 in finding that fraud is proved when it is shown that a false representation has been made knowingly or without belief in its truth or recklessly, careless

whether it be true or false. If fraud is proved, the motive of the person guilty of it is immaterial and it matters not that there was no intention to cheat or injure the person to whom the statement was made.

116 Given the position taken by Rani and John that they had no intent of giving Thiru equity in the company or making him a director, there is no evidence from which I can draw an inference that they had an honest belief in the truth of the representation of making Thiru a shareholder and director and the inference is that they did not intend to honour their representations to make him a shareholder and director.

117 On the stand, Rani stated that they did not have enough money because they had to pay the old owner. As Thiru said he would give them the money, they allowed Thiru to join them¹⁶³. When she realised that she may have conceded a crucial point, she corrected herself and said that they did not allow him in as a partner because Thiru had told them to get the agreement first and talk after that. At that point of time, they wanted to secure the place but they were not thinking about adding any partners¹⁶⁴. They did not allow Thiru to join them as they did not think about it¹⁶⁵. When she was confronted with the inconsistency in her evidence about whether they allowed or did not allow Thiru to join them, she said that while they said they can see, they did not say he could join¹⁶⁶. She subsequently said that she did not let him join them as he had told them to go to the lawyer within 10 days of getting the agreement¹⁶⁷.

¹⁶³ NE, 5 January 2026, 25/4-7, 26/1-4

¹⁶⁴ NE, 5 January 2026, 25/10-13

¹⁶⁵ NE, 5 January 2026, 25/23

¹⁶⁶ NE, 5 January 2026, 25/26

¹⁶⁷ NE, 5 January 2026, 26/20-24

118 In my view, Rani had tied herself in knots because of her concession that they had allowed Thiru to join them because Thiru said he would give them the money which they needed to pay off the rental arrears. In trying to explain her inconsistencies, she had also conceded that they were in fact not thinking of adding any partners at the time and subsequently conceded that she had no interest in doing business with Thiru from the start¹⁶⁸ and did not wish to let Thiru become a director or shareholder of JBR¹⁶⁹.

119 In the circumstances, I find that Rani and John had made representations to Thiru that he would be made director and shareholder of JBR in return for his investment, with no real intent of fulfilling such obligation.

120 Thiru raised the point that Rani and John did not intend to appoint Thiru as a director because it placed them at risk of criminal liabilities for making CPF payments to phantom workers in order that John may obtain a work pass. John had stated in his affidavit¹⁷⁰ that he had made payment of \$9,625 in respect of CPF contributions on behalf of JBR on 18 May 2022. There is evidence that one Thanalechmi Rajoo Gopal had made a police report on 18 April 2023 that she had received CPF contributions from JBR in the month of April and May 2022 even though she did not work in the company. There is also evidence that one Kank Lata Pandey had been offered a letter of appointment dated 28 March 2022 as a hand baker with JBR at the basic pay of \$1,400 with CPF contributions of \$196.00, even though it is the position of Rani and John that operations only

¹⁶⁸ NE, 6 January 2026, 8/12-14

¹⁶⁹ NE, 6 January 2026, 9/17-21

¹⁷⁰ John's affidavit affirmed on 3 February 2025 at [7(i)]

commenced on 16 June 2022¹⁷¹. In this regard, John claimed¹⁷² that he had done so at the behest of Thiru who had sent the NRIC screenshots of the individuals to him so that JBR could make the monthly CPF contributions for them and have sufficient quota to apply for foreign manpower. Based on the exhibits, Thiru had forwarded John the NRIC screenshots of Ramanand Panday s/o Pandey on 5 April and that of Thanalethmi Rajoo Gopal on 14 April 2022, and screenshots of a few other persons on 17, 18 and 23 April 2022. On the stand, Thiru explained that he had recommended some of his former workers for John to interview and keep them on standby so that they would not have to look for workers at the last minute when the shop opens. He had told John that after they have made payment for the local workers and contributed to their CPF, they would then be able to get the quota for the S pass workers¹⁷³.

121 While I accept that Thiru may have sent the NRIC screenshots of the individuals to John, it was John who claimed to have used his own funds to pay the CPF contributions on 18 May 2022 and John who needed a pass from MOM. No evidence was offered by John as to why there was a need to appoint hand bakers on 28 March 2022 even though operations only commenced on 16 June 2022. Be that as it may, it is unclear whether Thiru was involved in the preparatory work leading to the commencement of operations and whether Thiru was aware of JBR's hiring of workers and payment of CPF contributions before the commencement of operations. There was therefore insufficient evidence that Rani and John did not want Thiru to join as director and shareholder because they did not want him to expose their misdeeds. In any event, it was not necessary for me to determine this point in coming to my

¹⁷¹ Defence at [40], Rani's AEIC at [16]

¹⁷² John's AEIC at [27]

¹⁷³ NE, 3 November 2025, 41/3-23

conclusion above that Rani and John had made the representations that Thiru would be made shareholder and director of JBR with no real intent of fulfilling them.

Were the representations made with the intention that they should be acted upon?

122 Having found that Rani and John lacked funds and needed Thiru's monies to secure the canteen agreement, I find that that the representations were made with the intention that they should be acted upon by Thiru.

Did Thiru act upon the false statement or did the representation induce actual reliance?

123 The representor's statement need not be the sole inducement, so long as it had played a real and substantial part and operated in the representee's mind, no matter how strong or how many were the other matters which also played on the representee's mind: *Panatron Pte Ltd & anor v Lee Cheow Lee & anor* [2001] 2 SLR(R) 435.

124 If Rani and John had not made the representations, it was more probable than not that Thiru would not have invested funds into JBR. Thiru gave evidence that he was concerned about being appointed as director so that he could have oversight over JBR to ensure that his hard-earned monies were well-utilised to run the restaurant. Being a shareholder was also very important to him as he expected to get returns on his investment in JBR through profit sharing. This evidence was not challenged and was consistent with his conduct in engaging professionals to put the representations into effect. Thiru acted upon the representations and invested \$162,035.43 into JBR over the months of April to June 2022.

Did Thiru suffer damage?

125 In measuring damages in a claim for fraudulent misrepresentation, the court assesses the position the representee would have been in if the fraudulent misrepresentation had not been made. If the fraudulent misrepresentation had not been made, Thiru would not have invested \$162,035.43 into JBR. He is hence entitled to this sum as damages suffered due to the fraudulent misrepresentations. In the circumstances, I order that Rani and John pay Thiru the sum of \$162,035.43.

Negligent Misrepresentation

126 Having found Rani and John liable in the tort of fraudulent misrepresentation, it is not necessary to consider the tort of negligent misrepresentation. I nevertheless proceed to do so for reasons of completeness. The elements in a claim in negligent misrepresentation are summarised at [30] of *Low Sing Khiang v LogicMills Learning Centre Pte Ltd* [2024] 3 SLR 759 as follows:

- (a) the defendant must have made a false representation of fact;
- (b) the representation induced actual reliance;
- (c) the defendant must owe a duty of care to the plaintiff to take reasonable care in making the representation;
- (d) there must be a breach of that duty of care; and
- (e) the breach must have caused damage to the plaintiff.

127 As many of the elements have already been dealt with above, it remains to consider whether Rani and John owed a duty of care to Thiru and whether there was a breach of this duty.

Did Rani and John owe Thiru a duty of care

128 Thiru argued that Rani and John owed him a duty of care for the following reasons:

- (a) It was factually foreseeable that their negligent representations might cause Thiru to suffer harm;
- (b) There was physical proximity in that Rani and John met Thiru multiple times prior to and after they secured the 9 Kian Teck Drive canteen agreement on 4 April 2022;
- (c) There was circumstantial proximity because Thiru, Rani and John shared a business relationship;
- (d) There was a causal connection between the misrepresentations and Thiru's losses as he would not have provided the funds if not for the misrepresentations;
- (e) Through Rani and John's personal and direct interactions with Thiru, they had assumed responsibility for the accuracy of their representations: *Sim Tee Meng* at [37];
- (f) Thiru placed the funds in reliance on the representations; and
- (g) There is no policy considerations against imposing a duty of care as Rani and John did not act with due care, with a view to advancing JBR's interests: *Sim Tee Meng* at [46]

129 Thiru claimed that Rani and John had breached their duty of care to Thiru as they had made the representations negligently, without checking whether the relevant approvals could be obtained to appoint Thiru as a director and shareholder.

130 I do not find that there is a duty of care owed by Rani and John to Thiru. In *Sim Tee Meng*, the Court of Appeal found that the requisite legal proximity for imposing a duty of care on the appellant was present. There, the appellant was aware that the respondents had sought him out as a key executive officer (“KEO”) and that they placed some importance on his role as such. As a KEO and sales person, the appellant would have voluntarily assumed the various responsibilities that his roles carried and held himself out as possessing the relevant qualifications, knowledge and skills necessary to discharge those roles. Thus, when the respondents sought him out because as the KEO he could be expected to know whether the necessary due diligence checks for the project had been conducted, and the appellant chose to make the representations knowing that the respondents were interested in investing, the appellant assumed personal responsibility for those representations.

131 In the present case, Rani and John’s relationship with Thiru was a commercial one. On Thiru’s own case, the transaction was one where he was going to be investing in a company in which the majority shareholder and her husband would also be putting in funds and expertise. The relationship was therefore one between fellow investors or shareholders. In relation to the representation that Thiru would be shareholder and director, there is no voluntary assumption of responsibility or specific reliance as would be typical in an established category of relationship such as solicitor and client, banker and customer or financial adviser and client or even that present in *Sim Tee Meng* as would establish sufficient legal proximity to ground a duty of care. As such, I am of the view that Rani and John did not owe Thiru a duty of care. Even if there was a duty of care, there would have been no breach given that as the majority shareholder, there appeared to be no legal impediments to Rani appointing Thiru as director and approving the issuance of new shares or transferring shares to him.

Unjust enrichment

132 As I have found for Thiru in the tort of fraudulent misrepresentation, there is strictly speaking no need for me to consider Thiru's claim in unjust enrichment. However, I nevertheless do so for completeness.

Thiru's arguments

133 Thiru relied on the case of *Ooi Ching Ling v Just Gems Inc* [2003] 1 SLR(R) 14 at [43] that where money is paid by a plaintiff to a defendant under a contract and the defendant fails completely to discharge his part of the bargain, the plaintiff may treat the contract at an end on the ground that the defendant has repudiated it and sue for the refund of the money in quasi-contract. Failure of consideration occurs when one party has not enjoyed the benefit of any part of what it bargained for. In the present case, there was a total failure of consideration as Thiru was not appointed a director or shareholder which was the key objective. He did not enjoy the benefit of any part of what he had bargained for. Accordingly, Rani and John are personally liable to refund Thiru's funds.

Rani's arguments

134 Rani argued¹⁷⁴ that she was not personally enriched. Thiru's funds were paid to Eng Lee for JBR's account and were used for JBR's operating expenses and did not flow to Rani personally. She had merely received director's remuneration of \$5,600 per year plus CPF of \$952 as recorded in the Annual Report. She denied that there was a total failure of consideration as Thiru received the opportunity to participate in 50% of a canteen business' net profits. Just because the commercial enterprise failed does not mean there is a total

¹⁷⁴ Rani's closing submissions at [112] – [117]

failure of consideration. She denied that JBR was profitable or that she diverted and personally retained such funds. In addition, she had genuinely and irreversibly changed her position in good faith by committing to the canteen agreement and its associated rental obligations, engaging a team of canteen staff and taking on payroll obligations, investing her personal professional time and expertise over more than a year and taking on and continuing to service creditor obligations from personal funds. The change of position defence therefore protects her from a restitutionary award that would require her to repay sums which she has not personally retained.

John's arguments

135 John's arguments¹⁷⁵ were similar. John argued that Thiru's funds did not flow to him personally. He had merely received director's remuneration of \$5,600 per year plus CPF of \$952. Revenue collected through his personal PayNow account were used for JBR's operational expenses. He denied that JBR was profitable or that he had diverted the profits and retained funds that represented Thiru's 50% profit share. In addition, he argued that he had changed his position in good faith and irreversibly by (a) giving up other employment opportunities and committing his full professional time to JBR's operation for over a year; (b) devoting his F&B expertise to JBR; (c) taking on personal obligations to JBR's staff and suppliers; and (d) continuing to make personal monthly payments towards JBR's remaining creditor obligations. John argued that these changes of position are genuine and irreversible and protects him from a restitutionary award that would require him to repay sums he has not personally retained.

¹⁷⁵ John's closing submissions at [101] – [107]

Issues

136 In *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 at [98], the Court of Appeal set out the elements of a claim in unjust enrichment:

- (a) Has the defendant been benefited or been enriched?
- (b) Was the enrichment at the expense of the claimant?
- (c) Was the enrichment unjust?
- (d) Are there any defences?

137 Applying this to the present case, the issues which fall to be determined in respect of the cause of action in unjust enrichment are as follows:

- (a) Did Rani and John benefit at the expense of Thiru?
- (b) Was there a total failure of consideration?
- (c) Does the change of position defence apply?

Did Rani and John benefit at the expense of Thiru

138 It is clear from the evidence that Thiru paid \$123,755.88 to Eng Lee with \$58,500 as rental and utilities deposit and \$15,500 of advance rental for the first month for the canteen agreement between JBR and Eng Lee and \$49,755.88 to discharge the rental arrears owed by Bharathi. In respect of this amount, it is clear that neither Rani nor John received the monies. It is therefore unclear how Rani and John benefited directly from such investment in JBR and how such benefits can be quantified. There was no obligation to enter into the canteen agreement. As Rani and John lacked the funds to secure the canteen agreement, it was unclear whether Rani and John would have nevertheless done so by

finding other sources of finance. It was therefore difficult to argue that they would have otherwise injected funds in JBR to secure the canteen agreement in the absence of Thiru's investment. Correspondingly, there is no direct correlation between Thiru's investment in JBR and any benefit flowing to Rani and John, which Thiru did not particularise in any event.

139 Subsequently, a further \$38,279.55 was acknowledged by Rani to have been paid by Thiru to be invested in JBR. Out of \$38,279.55, \$18,279.55 (being \$10,000 on 28 April 2022 and \$8,279.55 on 8 June 2022) were deposited into JBR's UOB account by way of cheque. It is quite clear that Rani and John had used the monies in JBR's account for their own personal expenses¹⁷⁶, given the following¹⁷⁷:

Date	Place	Amount
4 May 2022	Decathlon	\$286
4 May 2022	Decathlon	\$4
5 May 2022	Bega	\$137
24 June 2022	JD Sports	\$246
28 June 2022	Sri Eswar	\$851
1 July 2022	SBCC Clinic	\$245.35

¹⁷⁶ NE, 5 January 2026, 57/27 – 60/20

¹⁷⁷ CBD 114 - 143

15 July 2022	CCRD John	\$3,000
13 August 2022	McDonald's	\$56.35
Total		\$4,825.70

140 I did not find credible Rani's explanation that the expenses were incurred for JBR's workers, given that similar expenses were already incurred from the same account long before the Business started operations on 16 June 2022. However, given that JBR had a balance of \$5,313.73 before receiving Thiru's funds of \$10,000 on 28 April 2022, I am unable to find that Rani and John were personally enriched at the expense of Thiru through these personal expenses.

141 The \$10,000 given in cash on 17 May 2022 and the \$10,000 given in cash on 22 June 2022 were not deposited into JBR's UOB account. There is no evidence that Rani and John retained these funds personally instead of using them for the expenses of JBR. As such, I was unable to find that Rani and John benefitted personally from the receipt of such funds.

142 In the circumstances, Thiru was unable to prove, on a balance of probabilities, that Rani and John were personally enriched at his expense.

143 While this would dispose of Thiru's claim in unjust enrichment, I go on to consider the other issues for the sake of completeness.

Was there total failure of consideration.

144 In *Benzline Auto Pte Ltd v Supercars Lorinser Pte Ltd & anor* [2018] 1 SLR 239, the Court of Appeal said at [46] – [54] that the inquiry into the specific

unjust factor of a failure of consideration has two parts: (a) what was the basis for the transfer in respect of which restitution is sought and (b) whether that basis failed. “Consideration” in the context of unjust enrichment meant either the performance of a counter-promise, to be distinguished from the counter-promise itself, or the fulfilment of a non-promissory contingent condition, meaning an expected event or state of affairs which neither party was responsible for bringing about. The basis of a transfer must be objectively determined based on what is communicated between the parties. While a basis may be expressed, it may also be implied, based on objective features of the transfer and its context and not merely on a fortuitous overlap between the unexpressed expectations of the parties. As a transfer may have more than one basis, the issue was whether a fundamental component of the basis had failed such that it could legitimately be said that the basis had wholly failed. The failure had to be total and not partial with an exception in divisible contracts where it can be said that there has been a total failure of the consideration for a discrete part of that contract.

145 In the present case, I find that the basis for Thiru’s injection of funds in JBR was that he would be made director and shareholder of JBR. There was a total failure of consideration as Thiru was not appointed a director or shareholder, which would have entitled him to partake of a share of the profits of JBR.

146 Rani and John argued that there was no total failure of consideration as Thiru received the opportunity to participate in 50% of a canteen business’ net profits. Just because the Business failed did not mean that there was a total failure of consideration.

147 I did not accept such an argument. It was clear from the first visit to the lawyer's office on or around 22 March 2022 and the contents of the draft agreement that Thiru's objective for the investment was to be a shareholder and director of JBR which would have given him control over his investment. On Rani and John's evidence, they were aware of such intention at that meeting and alleged that their disagreement with this was the reason why the agreement was not signed on that day. It would also have been clear from the second visit to the lawyer's office as well as the visit to Gerard on 25 June 2022 to facilitate the transfer of shares to Thiru that Thiru's investment of funds was on the joint understanding that he would be made a director and shareholder of JBR. Any share in the net profits of the Business would necessarily flow from Thiru's shareholding and ownership of JBR. Given the failure of Rani and John to appoint Thiru as director and shareholder of JBR, there has been a total failure of basis for Thiru's investment.

Did Rani and John make out a change of position defence

148 In *Management Corporation Strata Title Plan No. 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418 at [35] – [36], the Court of Appeal referred to *Seagate Technology Pte Ltd v Goh Han Kim* [1994] 3SLR(R) 836 and set out the three elements to the defence: (a) the payee has changed his position; (b) the change is bona fide; and (c) it would be inequitable to require him to make restitution or to make restitution in full. The mere fact that the defendant has spent the money, in whole or in part, does not of itself render it inequitable that he should be called upon to repay, because the expenditure might in any event have been incurred by him in the ordinary course of things.

149 In *Seagate Technology Pte Ltd & another v Goh Han Kim* [1994] 3 SLR(R) 836 at [31] – [34], the Court of Appeal was of the view that the

availability of the change of position defence depends on whether the defendant's position has so changed that it would be inequitable in all the circumstances to require him to make restitution or restitution in full to the plaintiffs. A circumstance crucial to the availability of the defence of change of position is the bona fides of the defendant. The defence is not open to one who has changed his position in bad faith, such as where the defendant has paid away the money with knowledge of the facts entitling the plaintiff to restitution, and it is commonly accepted that the defence should not be open to a wrongdoer. Knowledge of the facts entitling the plaintiff to restitution would bring the defendant's bona fides into question and disentitle him from relying on this defence. Knowledge can comprise any one of five different mental states: (i) actual knowledge; (ii) wilfully shutting one's eyes to the obvious; (iii) wilfully and recklessly failing to make such inquiries as an honest and reasonable man would make; (iv) knowledge of circumstances which would indicate the facts to an honest and reasonable man; and (v) knowledge of circumstances which would put an honest and reasonable man on inquiry.

150 In the present case, the change of position defence was not pleaded by Rani or John. Aside from the pleading issue, the defence was not made out on the evidence before the Court. First, Rani and John did not adduce evidence of how they had acted detrimentally following the receipt of the funds. While John was working at 45 Kian Teck Drive as a cook for Tamilarasan, there is no evidence of what Rani was doing before the receipt of the funds. There is no evidence that running JBR's operations following Thiru's investment of monies was a change for the worse and to their detriment. There is also no reason why they would take on personal obligations in relation to JBR's operations, for which neither Rani nor John produced any evidence. John claimed that he injected \$104,488.70 into the company from his personal funds. However, this was a bare assertion that the sums came from his personal funds as opposed to

funds or cash receipts from the Business given that John did not adduce any bank statements from his own personal account to support this. Given my earlier finding that Rani and John lacked the initial funds to invest in JBR, there is no evidence that Rani and John had changed their position for the worse.

151 Second, by their own evidence, they had no intention to make Thiru director or shareholder. They would therefore be fully aware that they would not have received the funds if Thiru had known of this. They have therefore failed to demonstrate that their change of position was done in good faith and therefore cannot seek to rely on the defence of change of position.

152 Lastly, it would not be inequitable for Rani and John to make restitution in full. Upon receiving notice of the law suit against them, they proceeded to close JBR's bank account and sell off their stake in JBR for a positive price. While they claimed that the sale proceeds were used to pay off creditors incurred on behalf of JBR, no evidence was produced in this regard.

153 In summary, while there was a total failure of consideration and Rani and John failed to make out a change of position defence, Thiru's claim in unjust enrichment would have failed as he has failed to show that Rani and John were enriched personally at his expense.

Conclusion

154 I find that Thiru succeeded against Rani and John in the tort of fraudulent misrepresentation and order that they pay Thiru the sum of \$162,035.43 with interest at the rate of 5.33% per annum from the date of the Originating Claim to the date of judgment.

155 The parties are to file and exchange written submissions on the issue of costs (limited to 10 pages) within 14 days of this judgment.

Sia Aik Kor
District Judge

Joseph Li Jing Xin (ReThink Legal) for the claimant;
The third defendant in person;
The fourth defendant in person.
