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DISTRICT JUDGE
CLEMENT SEAH CHI-LING
13 OCTOBER 2026

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGDC 329

District Court Originating Claim No 1878 of 2024

Between

Fagumuda

... Claimant

and

Oktay Sahin

... Defendant

JUDGMENT

[Civil Procedure] – [Pleadings] – [Forgery]
[Evidence] – [Parol Evidence Rule]
[Contract] – [Formation] – [Parties]
[Contract] – [Misrepresentation] – [Fraudulent]
[Contract] – [Misrepresentation] – [section 2(1) Misrepresentation Act]
[Contract] – [Implied Term]
[Contract] – [Breach]

[Contract] – [Damages] – [Reliance Loss]

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**Fagumuda
v
Oktay Sahin**

[2026] SGDC 329

District Court Originating Claim No 1878 of 2024
District Judge Clement Seah Chi-Ling
26 March, 10 – 11 June, 3 September 2026

13 October 2026

Judgment reserved.

District Judge Clement Seah Chi-Ling:

Introduction

1 The present case involves a purported sale and purchase by the Claimant of a Turkish kebab business carried on by the Defendant at Golden Mile Food Center. The Claimant claims to have entered into the agreement in reliance on various misrepresentations by the Defendant. The Claimant seeks to rescind the agreement and/or claim for damages. The Defendant denies having made any misrepresentations to the Claimant, claims that the terms of the arrangements between the parties are “independent” of the agreement, and that the agreement is never intended to have any legal effect between the parties.

The parties

2 The Claimant is and was at all material times a Singapore registered partnership trading under the name of M/s FAGUMUDA, UEN No. 53475697B, with its registered office at No. 505 Beach Road, #B1-28, Golden Mile Food Centre, Singapore 199583. Its main business activity is the selling of cooked food.

3 Mr. Gurujeet Singh Sanghar (“**CW1**” or “**Mr. Guru**”) is at all material times one of the three partners of the Claimant. Mr. Guru has been authorized by the Claimant to execute any agreements or documents on behalf of the Claimant, and to represent the Claimant in the current legal proceedings.

4 The Defendant is Oktay Sahin (“**DW1**”), a Singapore resident formerly from Turkey. The Defendant runs a stall selling Turkish kebabs at #B1-28, Golden Mile Food Centre (the “**food stall**” or the “**business premises**”). The lease in respect of the business premises was obtained from the National Environment Agency (“**NEA**”), with the Defendant’s wife, Tran Thi Phuong (“**DW2**”) reflected as the lessee.

Background Facts

5 The dispute in the present case centers around a purported agreement in writing dated 1 November 2023, under which the Claimant was to take over the operation of the food stall from the Defendant (the “**Sale and Purchase Agreement**” or “**SPA**”).

6 Under the terms of the SPA, the Claimant agreed to purchase, and the Defendant agreed to sell, the business and stocks belonging to the business, as well as goodwill generated from operating the food stall and usage of equipment, at a price of \$40,000.00. Thereafter, the food stall would be taken over by the Claimant and his team, with the Claimant paying a monthly rent of \$5,000 to the Defendant.

7 The material terms of the SPA are as follows:

(a) Clause A:

“The Vendor (the Defendant) had been operating and managing his business styled “Bosphorus Turkish Kebab & Grilled” at the Golden Mile Food Centre, 505, Beach Road, stall #B1-28, Singapore 199583 (“the **business premises**”)”.

(b) Clause B:

“The Vendor (the Defendant) has agreed to sell and the Purchaser (the Claimant) has agreed to buy the current stocks in the business as well as the stocks in the warehouse belonging to the business, and goodwill that had been built by the Vendor over the years’ operating at the business premises (“**Goodwill**”)”.

(c) Clause 1.1:

““**Completion date**” means 1 November 2023 or such other date as the Parties may agree. *This has the same meaning as the take-over date of the business premises by the Purchaser*”.
(emphasis added)

““**Business Premises**” means the business operating as Turkish Kebap & Grilled at the Golden Mile Food Centre, 505, Beach Road, stall #B1-28, Singapore 199583”.

(d) Clause 2.1:

“The Vendor shall, as legal and beneficial owner, sell and the Purchaser shall purchase, the Vendor’s equipment and Inventory and Goodwill on the completion Date free from all charges, liens and other encumbrances and with all rights, title and interests now and hereafter attaching thereto”.

(e) Clause 2.2:

“The consideration for the purchase of the equipment and goodwill of the business shall be \$35,000.00 plus \$5,000.00 (refundable deposit).....”.

(f) Clause 4.5:

“If the Purchaser (Claimant) is unable to run the business due to Vendor’s negligence, Vendor (Defendant) will provide a full refund of the purchase value.”

(g) Clause 5.3:

“The Purchaser (Claimant) shall pay the Vendor (Defendant) the sum of \$5,000.00 on the 1st of each month commencing on 1 December 2023 for the rent of the business premises. Failure to do so, shall result in the business premises, the equipment and goodwill returning to the Vendor.”

(h) Under Clause 7.4:

“This Agreement sets out the entire agreement between the Parties and supersedes all previous agreements, whether oral or written, if any, between the Parties, as to its subject matter”.

8 The SPA bears what purports to be the signatures of Mr. Guru and the Defendant. Additionally, various amendments and/or additions have been made to the text of the SPA in manuscript. Where this is so, the alterations/amendments are accompanied by what appears to be the initials or signatures of Mr. Guru and the Defendant.

9 The Claimant paid the sum of \$40,000 and took over the said food stall, and started operating the said stall or business premises on 1 November 2023. The Claimant also paid the rent of \$5,000.00 per month from November 2023 until September 2024 (in the total amount of \$55,000).

The Parties’ Case

Claimant’s case

10 The Claimant’s case is that the SPA was prepared by the Defendant and thereafter executed by the parties. The purpose and intent of the parties entering into the SPA is for the Claimant to buy over the business of the vendor (the Defendant), together with all the vendor's equipment and inventory and goodwill. Concurrently, the Claimant is to take over the business premises by paying the Defendant a monthly rent of \$5,000. The Claimant will operate the business premises as a food stall, and will keep the daily earnings from operating the said stall. In the event the Claimant is unable to continue running the said business, the Claimant will return it back to the Vendor. In reliance on the truth of the representations, expressed and implied, and

induced thereby, the Claimant has paid the Defendant the sum of \$40,000.00, and a further total sum of \$55,000.00 by way of rent for the business premises¹.

11 On or around 16 September 2024, the Claimant attempted to apply for a SGQR Code with NETS, and was informed that it could not do so because it was not the lessee of the NEA lease in respect of the business premises². The Claimant made enquiries of NEA and discovered that any subletting of the said stall or assignment of the stall rights to an unrelated third party is not permitted, and that only the licensee of the stall or business premises is officially and legally permitted by NEA to operate on the business premises. The Claimant then realized that it had bought over a business that was not assignable or transferable. Claimant also discovered that the business with its NEA license did not belong to the Defendant as the SFA license and NEA lease were issued to the Defendant's wife, CW2. By an email of 4 November 2024, NEA again informed the Claimant that "stallholders are allowed to transfer their stall tenancy to an immediate family member or relative [only]. *Stallholders are required to personally operate their stalls and are not allowed to sublet their stalls*"³.

12 According to the Claimant, in light of the above discoveries, the Claimant confronted the Defendant, and the Defendant ordered the Claimant to leave the premises immediately⁴. The Claimant moved out of the said stall on the night of 16 September 2024 with most of the equipment still in the stall as the Claimant did not have much time to move any of the items. Thereafter, by way of a letter of demand

¹ Claimant's trial affidavit dated 3 September 2025 ("CA") at [16]-[17]

² Claimant's Bundle of Affidavit of Evidence-in Chief ("CBAEIC") at p. 34.

³ CBAEIC at p. 30

⁴ Notes of Evidence ("NE") 26 March 2026, 105, 106, 108.

dated 8th October 2024, the Claimant gave the Defendant notice of its intention to rescind the SPA⁵.

13 In the present action, the Claimant claims against the Defendant the following:

- (a) A declaration that the SPA has been validly rescinded;
- (b) Alternatively, rescission of the SPA;
- (c) Return of the sum of S\$ 95,000.00;
- (d) Damages to be assessed;
- (e) Alternatively, damages for misrepresentation pursuant to Section 2 of the Misrepresentation Act (Cap 390);
- (f) Interest;
- (g) Costs; and
- (h) Such other and further relief as the Court deems fit.

Defendant's case

14 The Defendant raises a multitude of defences in his closing submissions, not all of which have been pleaded. A broad overview of the defences raised by the Defendant is as follows.

15 First, the Defendant contends that the SPA does not represent the true agreement between the parties. According to the Defendant, some time in October 2023, Mr. Guru approached him to ask him where he could purchase the equipment necessary to prepare kebabs. Defendant realised that Mr. Guru and two of his friends were interested in setting up their own kebab business, but have no knowledge or experience in running a kebab business. At that time, Defendant had to spend substantial time at home due to his wife's health. Defendant thus suggested to Mr. Guru that Mr. Guru and his friends could operate his stall, retaining the Defendant's

⁵ CBAEIC pp 32-37

business name (styled “Bosphorus Turkish Kebap”). The Defendant will provide Mr. Guru and his friends with on-the job training in return for an upfront training fee of \$40,000. Defendant will thereafter also allow the Claimant to run the business and keep the daily proceeds, in consideration of Claimant paying him a monthly sum of \$5,000: see Defendant’s trial affidavit dated 3 October 2024 (“**DA**”) at [4]-[6].

16 Defendant claims he was always cognizant of the fact that he cannot sell the said business to Mr. Guru and his friends as his wife is the lessee of the stall as far as NEA is concerned. The intent of the SPA entered into by Mr. Guru and him is, therefore, not to sublet the said food stall but rather to allow Mr. Guru and his friends to run the stall to gain experience so that once they have gained confidence, they can venture into the same business at other locations⁶. During this time, Mr. Guru, his brother, Mr. Dharamjeet Singh Sanghar (“**CW2**”), and their other employees will work in his stall as the Defendant’s employees. This is evidenced by DW2’s application to NEA to employ CW1, CW2 and their other employees as DW2’s “hawker assistants” performing the role of “food handlers”: see Defendant’s Bundle of AEIC (“**DBAEIC**”) at pp. 91-106; and paragraph [24] Defendant’s supplemental AEIC dated 2 January 2026 (“**DSA**”).

17 The Defendant also claims that there are other written agreements between Claimant and Defendant which document the arrangements alleged by him⁷, but none were ultimately adduced at trial.

18 Separately, the Defendant further mounts a number of challenges on the validity of the SPA. He denies that the signatures on the SPA were executed by him (“forgery allegation”), and contends that there is a lack of clarity as to the purchaser’s

⁶ DA at [6]-[7].

⁷ NE 10 January 2026, 82-83

identity given the manner in which Mr. Guru and Fagumuda's names are reflected in the SPA⁸. He further highlights: (a) variances between the date of the SPA as it appears on the opening page of the SPA (being 1 November 2023), and on the execution pages (being 2 November 2023)⁹; (b) the fact that the agreement contains multiple handwritten additions and alterations; (c) the fact that execution page expressly provides for witnesses, but these fields were left blank.

19 Separately, the Defendant also disputes having received the \$40,000 and \$55,000 and puts the Claimant to strict proof. He also requires the Claimant to prove the purposes of these payments, even if they have been paid¹⁰.

20 On the Claimant's misrepresentation claim, the Defendant contends that the Claimant has not proven that the elements of a claim in fraudulent misrepresentation have been made out¹¹. He further contends that counter restitution is impossible¹².

21 Defendant also claims that Mr. Guru and his friends have destroyed the reputation of the business when they were running it as evidenced by the negative feedback he received from his customers. He claims some of these customers have sent him WhatsApp messages informing him that the quality of the food had gone down when Claimant was operating the business. He further alleges that since he took back the business sometime late 2024, the daily sales has dropped tremendously and, until today, cannot be restored to their former levels. Defendant alleges that the Claimant has effectively destroyed the business.

⁸ Paragraphs [20]-[21] of the Defendant's Reply Submissions ("DCSR")

⁹ Paragraph [31] of the Defendant's Closing Submissions ("DCS")

¹⁰ Paragraphs [37], [39], [45] of DCS

¹¹ Paragraphs [1], [8], [9] DCSR

¹² Paragraphs [37]-[44] DCSR

Other unpleaded claims

22 In his supplemental affidavit, Defendant raised various other unpleaded claims against the Claimant, including:

- (a) Claimant’s unliteral removal of food products, business equipment, digital files, and confidential food recipes¹³;
- (b) Claimant’s unauthorized use of Defendant’s logo at the Claimant’s other outlets¹⁴;
- (c) Claimant placing orders with Defendant’s suppliers prior to vacating the stall, and thereafter taking the deliveries away without paying for them¹⁵;
- (d) Claimant’s unilateral removal of Defendant’s business records and files¹⁶;
- (e) The existence of a separate agreement in which Claimant agreed to pay Defendant \$100,000 for Defendant’s proprietary kebab marinade formula; and \$50,000 for each shop opened by the Claimant using the Defendant’s know-how and proprietary formula¹⁷ (collectively, “**Additional Allegations**”).

¹³ Paragraph [17] of DSA

¹⁴ Paragraph [18] of DSA

¹⁵ Paragraph [19] of DSA

¹⁶ Paragraph [23] of DSA

¹⁷ Paragraph [41] of DSA

23 Defendant, however, acknowledges that he did not plead a counterclaim, nor were any of the Additional Allegations specifically pleaded in his Defence. He concedes that he is not seeking to convert the above claims into an unpleaded counterclaim, and is merely using such evidence “primarily to answer the Claimant’s pleaded case”. He states that these Additional Allegations are only relevant “insofar as they explain the parties’ relationship, test credibility, answer the Claimant’s loss narrative, or support relief within the pleaded issues¹⁸.”

The trial

24 The trial was heard over three days and the following factual witnesses testified at trial:

<u>Marking</u>	<u>Witness</u>
CW1	Gurujeeet Singh Sanghar, a partner and the authorised representative of the Claimant (“ Mr Guru ”)
CW2	Dharamjeet Singh Sanghar, a partner of the Claimant and the brother of CW1 (“ CW2 ”)
DW1	Oktay Sahin, the Defendant (“ Defendant ” or “ DW1 ”)
DW2	Tran Thi Phuong, the wife of DW1 (“ DW2 ”)

My Decision

25 Based on the parties’ pleadings and closing submissions as summarized above, the following issues arise for determination:

¹⁸ Paragraph [23] of DCS and [7] DCSR

- (a) Whether the Defendant is entitled to argue that the signatures appearing on the SPA are forged, and if so, whether a claim of forgery has been made out;
- (b) Whether the SPA contains the agreement between the parties;
- (c) In the event the SPA is found to have been executed by the signatories thereto, whether the parties to the SPA are unclear, and thus a contract has not been properly formed;
- (d) In the event the SPA is found to be valid, whether the Claimant is entitled to rescind the Agreement and/or claim damages on the grounds of fraudulent misrepresentation and/or pursuant to s. 2(1) of the Misrepresentation Act;
- (e) If a claim in misrepresentation is not made out, whether the Claimant is entitled to treat the contract as discharged for breach of contract, and claim for damages;
- (f) Whether the Claimant is entitled to restitutionary relief on the ground of total failure of basis.

Whether the Defendant is allowed to raise arguments based on forgery

Pleadings

26 It is an established rule of civil procedure that parties are bound by their pleadings and the court is precluded from deciding on a matter that the parties have not expressly pleaded. The rationale of disallowing a claim, or a defence, that is not pleaded, is to prevent injustice from being occasioned to the party who, because of the failure of the opposing party to plead, did not have a chance to respond to the claim or defence in question: see *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [36] – [38]; and *How Weng Fan v Sengkang Town Council* [2023] SGCA 21 at [18].

27 Indeed, there are local authorities which state that allegations of forgery, being a species of fraud, must be specifically pleaded and accompanied by full particulars, failing which fraud may not be raised: see *e.g. Kim Hok Yung v Rabobank* [2000] SGHC 134.

28 A perusal of the Defendant’s Defence suggests that the Defendant at no point pleaded that his signatures on the SPA were forged. The Defendant is, accordingly, precluded from raising allegations of forgery presently. The Claimant has clearly been prejudiced by the belated raising of this point. Had the Claimant been notified earlier that allegations of forgery was a case it had to meet, it would have been open to the Claimant to elect to call a handwriting expert to opine as to the authenticity of the signatures appearing on the SPA.

29 Even if I am wrong in disallowing the forgery contention to be raised, it is trite law that the burden of proving forgery lies on the party alleging it (here, the Defendant): see *Yogambika Nagarajah v Indian Overseas Bank* [1996] 2 SLR(R) at [39] (“*Yogambika*”), and *Bayersiche Landesbank Giozentrale v Khaw Hock Seang* [2023] SGHC 42 (“*Bayersiche*”) at [14]. The governing standard of proof is based on the civil standard of proof, but given the severity of the allegations, more cogent

evidence needs to be presented before a finding of forgery is established (*Yogambika* at [39]). See also *Bayerische* at [14].

30 In the present case, even if the unpleaded point of forgery can be raised, I find that the Defendant has not, in any event, discharged his burden of proving forgery:

- (a) The Defendant's allegation that his signatures appearing on the SPA have been forged is based on the Defendant's bare assertions. The court is invited to come to this conclusion based on visual comparisons of the signatures appearing on the SPA and Defendant's signatures appearing in other documents such as the Defendant's passport¹⁹. Such a method of evaluating the authenticity of a challenged signature is far too rudimentary, subjective and imprecise, and will not, in my view, be sufficient to discharge the Defendant's burden of proving forgery. Notably, no handwriting expert was called to proffer an opinion as to the authenticity (or lack thereof) of the Defendant's signatures. While Defendant's wife, DW2, corroborates his account, quite apart from the fact that DW2 is clearly an interested witness, her testimony is similarly based on her own visual impressions of the signatures, and is not substantiated by any independent expert testimony or other objective evidence. Indeed, the Defendant appears to be laboring under the misconception that the burden of proof is on the Claimant to prove the authenticity of his signature once the allegation of forgery is raised²⁰. As noted above, this is not the legal position.

¹⁹ NE 26 March 2026, 117; and DBAEIC pp 62, 119-120.

²⁰ NE 10 June 2026, 103-104

(b) More crucially, Defendant’s current contention that his signature has been forged sits very uncomfortably with the other evidence adduced at trial. For one, the Defendant has at no point in his pleadings and affidavits of evidence-in-chief (“**AEIC**”) denied that the SPA was “entered [into] by him”. On the contrary, he states on record that the SPA was prepared by him “at the behest of the Claimant”: see paragraph [10] of the Defence and paragraph [9] of the DA. In his affidavit, he goes on to state that “*The SPA was entered by Singh [i.e. Mr. Guru] and myself*. However, this SPA was also made with a view to secure myself in the said transaction”: see paragraph [5] of DA.

Granted that the Defendant did not attach to his DA a copy of the SPA which he stated has been prepared by him “at the behest” of the Claimant. However, I noted that the copy of the SPA relied upon by the Claimant was attached to the CW1’s main trial affidavit dated 3 September 2025 (“**CA**”). The Defendant subsequently applied, and was granted leave, to file a supplementary affidavit (*i.e.* the DSA) on 2 January 2026. He must by that time already have had sight of the version of the SPA the Claimant was relying on in the Claimant’s affidavit (*i.e.* CA). Yet in the subsequent DSA, the Defendant continues to maintain the position that the SPA was drafted by him “at the behest” of the Claimant²¹, and that it was “entered by [Mr. Guru] and myself”²², except he claims that the terms of the actual agreement between him and the Claimant are “independent of the SPA”, and that the SPA is “never intended to have legal effect”. At no

²¹ Paragraph [9] of DSA

²² Paragraph [5] of DSA

point in his DSA does he state that the SPA attached to the CA is not the agreement that he drafted and/or which he entered into.

31 Thus, even if the allegation of forgery can be raised, given the internal inconsistencies in his testimony and the lack of any credible supporting evidence (*e.g.* a handwriting expert report), I would have found that the Defendant has failed to prove his allegations of forgery in any case.

Whether the SPA contains the agreement between the parties

32 The Defendant next contends that the real agreement between the parties is “independent of the SPA”, and that the SPA is “never intended to have any legal effect”²³. According to the Defendant, there was no intent on his part to sublet the food stall to the Claimant²⁴. He claims that the understanding between the parties is for the Defendant to allow Mr. Guru and his associates to learn the kebab trade by running the stall, with the Defendant being around the stall from time to time to ensure that the stall was managed and operated meaningfully²⁵. The Claimant is to be his employee working for him²⁶. Defendant further claims that the \$40,000 was paid by the Claimant by way of training fees, while the further monthly payment of \$5,000 was paid by the Claimant in exchange for the Defendant allowing them to run the stall and keep the daily takings of the business²⁷ (“**Defendant’s Alternate Version of the Agreement**”).

²³ Paragraph [10] of Defence; and paragraph [9] of DA

²⁴ Paragraph [7] of Defence

²⁵ Paragraph [12] of Defence

²⁶ NE 10 June 2026, 133

²⁷ Paragraph [8] of Defence

At trial, Defendant further contends that the parties have signed “other agreements”, but these do not include the SPA. He claims these “other agreements [are] missing”²⁸.

33 The Defendant’s attempt at raising the Defendant’s Alternate Version of the Agreement runs into a number of difficulties.

34 Under the common law parol evidence rule, when a transaction has been reduced to writing, the document becomes the exclusive record of the parties’ agreement, and no evidence may be given to prove the terms of the transaction except the document itself or secondary evidence of its contents. Admission of additional evidence that effectively varies the terms of the agreements would be inconsistent with the parties’ objective intentions and will be disallowed: see *The Law of Evidence in Singapore* (Chen Siyuan and Lionel Leo, 4th Edition) (“*The Law of Evidence in Singapore*”) at [9.012].

35 The parol evidence rule is enshrined in s 94 of the Evidence Act (Cap. 97, 1997 Rev Ed) (“*Evidence Act*”): see *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 (“*Zurich Insurance*”) at [42]. Given my finding above that the SPA is a written document entered into and signed by the Defendant and the Claimant, no extrinsic evidence is admissible to contradict, vary, add to, or subtract from the terms of the contract unless one of the provisos in s 94 applies: see *Zurich Insurance* (at [71]).

36 In this regard, I find that the Defendant has not discharged his burden of proving that any of the provisos in s 94 Evidence Act applied. Though the Defendant claims that “other agreements” were executed, none of these agreements were tendered in court, despite Defendant offering to do so in the course of his cross-

²⁸ NE 10 June 2026, 81

examination²⁹. Even if the alternate agreements are verbal in nature, they are clearly inconsistent with the terms and arrangements expressly documented in the SPA, and will therefore not fall under s 94 proviso (b) of the Evidence Act. Nor were any of the other provisos shown to be applicable.

37 For completeness, I will also highlight that the SPA contains an entire agreement clause. As the authors of *The Law of Evidence in Singapore* noted at [9.048], citing *Exklusiv Auto Services Pte Ltd v Chan Tong Chuan Eric* [1995] 3 SLR(R) 728, where an entire agreement clause is included in a written contract, the presumption that the written document represents the entirety of the parties' agreement will be the strongest, thereby precluding any attempt to qualify or supplement the document by reference to other verbal communications.

38 For all the above reasons, I find that s 94 of the Evidence Act applies and the agreement entered into between the parties is to be found within the four corners of the SPA.

Whether the parties to the contract are uncertain

39 In the Defendant's Reply Closing Submissions ("DCSR"), the Defendant argues that the purchaser's identity and the details of the correct contracting parties have not been clearly established by the Claimant (at paragraph [21]).

40 However, the Defendant's Defence, viewed as a whole, suggests that the Defendant never attempted to raise the defence that the parties to the alleged agreement are uncertain and hence the SPA is not properly formed. There is, for example, no allusion in the pleadings to the fact that the Claimant (*i.e.* Fagumuda, the

²⁹ NE 10 June 2026, 83

partnership) is not the proper party, or lack standing, to sue on the SPA. The Defendant also did not plead that the contract is in fact a three-party contract entered into between Fagumuda, Mr. Guru and the Defendant, and thus improperly commenced in Fagumuda's sole name.

41 Paragraph [10] of the Defence is especially telling. At paragraph [10] the Defendant states:

“... When the agreement was prepared, it was intended to be between [Mr. Guru] and the Defendant. *Only at the last minute did [Mr. Guru] write down the name of the Claimant [i.e. Fagumuda], as being a party to the alleged agreement*”. (*emphasis added*)

42 The italicized words support the inference that the Defendant's pleaded case is that the Claimant is in fact the party to the agreement, albeit the Claimant's name was only added or substituted at “the last minute”.

43 In any case, I take guidance from the case of *The “Luna” and another appeal* [2021] SGCA 84 (at [36]) (“*The Luna*”) in ascertaining who the parties to the contract are. In *The Luna*, the Court of Appeal cited the following dictum of Lord Millett in *Homburg Houtimport BV and others v Agrosin Private Ltd and another (The Starsin)* [2004] 1 AC 715 with approval:

“Where a contract is contained in a signed and written document, the process of ascertaining the identity of the parties and *the capacity in which they entered into the contract must begin with the signatures and any accompanying statement which describes the capacity in which the persons who appended their signatures did so*. This may require interpretation, and to this extent the

process may without inaccuracy be described as a process of construction”.
(*emphasis added*)

44 As the identity of the parties goes towards formation, the Court of Appeal in *The Luna* further endorsed the principle that “the touchstone is whether, in the established matrix of circumstances, the conduct of the parties, *objectively ascertained*, supports the existence of a contract. *Reduced to its rudiments, it can be said that this is essentially an exercise in intuition*. Legal intentions, whether articulated or unarticulated, should not be viewed in isolation but should be filtered through their factual prism. ...” (at [36]). (*emphasis added*)

45 Objectively ascertained, I am of the view that the SPA was entered into between the Claimant (*i.e.* Fagumuda) and the Defendant:

- (a) Based on the cover page of the SPA, it is evident that Fagumuda was not added as a *further* party to the SPA. The SPA was not structured as a tripartite agreement with 3 distinct parties, *i.e.* Fagumuda, Mr. Guru and the Defendant. If it were: (i) Fagumuda would have been added as a distinct, third contracting party on the cover page and on the 2nd page of the SPA, coupled with a separate execution line on the execution page, and with a clear indication of the respective capacities in which Mr. Guru and Fagumuda had entered into the SPA (*e.g. qua* purchaser, co-purchaser, *etc.*); and (ii) Mr. Guru would further have executed the contract two times, once on behalf of Fagumuda, and once in his own personal capacity. All these did not feature in the SPA. The terms of the SPA also did not contemplate separate rights and obligations being conferred and/or assumed on and by Fagumuda and Mr. Guru separately. The rights and obligations on the purchaser’s part, as set out in the SPA, were attributed to a single, distinct purchaser.

(b) Fagumuda’s name was further inserted immediately beside the name of Mr. Guru, rendering it likely that Fagumuda was meant to be the contracting party, and Mr. Guru’s name was merely retained as he was entering into the contract as the authorized representative of Fagumuda to bind the partnership pursuant to s 5 of the Partnership Act 1890 (2020 Rev Ed) (“**Partnership Act**”). In other words, Mr. Guru did not enter into the contract in his personal capacity. The Defendant, on his part, initialed against the addition, suggesting his assent to the insertion and manner of placement of Fagumuda’s name immediately beside Mr. Guru’s name on the cover page and on the 2nd page of the SPA.

(c) By the Defendant’s own admission, Fagumuda was added at the “last minute” as a “party”. In my mind, there is no need for Mr. Guru to remain as a party to the final contract in his personal capacity once Fagumuda was added, since Mr. Guru, as a partner of Fagumuda, is in any event personally liable for the obligations of Fagumuda pursuant to s 6 of the Partnership Act.

46 I am thus of the view that having regard to the structure of the contract and the matrix of circumstances, objectively ascertained, it is more likely that the objective intention of the signatories to the contract is that the contract is to be between Fagumuda and the Defendant, with Mr. Guru’s name merely being retained to signify that he was signing as the authorized representative of Fagumuda. The contract is properly formed, and constitutes a valid contract between the Claimant and the Defendant.

Whether the contract is voidable for misrepresentation

47 The Claimant’s case is that while a valid contract was formed, the SPA is voidable on the grounds of misrepresentation. The Claimant’s claim in misrepresentation is based on: (a) fraudulent misrepresentation: see paragraph [14] of the Statement of Claim (“SOC”); and (b) s. 2 of the Misrepresentation Act: see paragraph [15] of SOC. Claimant seeks a rescission of the SPA (or a declaration that the SPA has already been rescinded), an indemnity in the sum of \$95,000, and, alternatively, damages.

Fraudulent Misrepresentation

48 To establish a claim in fraudulent misrepresentation, the Claimant must prove the following:

- (a) a false representation of fact was made by words or conduct by the representor;
- (b) the representation was made with the intention that it should be acted upon by the representee (or by a class of persons which includes the representee);
- (c) the representee acted upon the false statement;
- (d) the representee suffered damage by so doing; and
- (e) the representation was made with knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true.

See *Panatron Pte Ltd and another v Lee Cheow Lee and anor* [2001] 2 SLR(R) 435 at [14].

Whether false representation made

49 The first requirement in establishing a claim in misrepresentation is proof that a false representation was made by the representor to the representee.

50 Based on the pleadings, it is not clear to me what the exact false representation(s) relied upon by the Claimant is. On a reading of paragraph [7] of the SOC, Claimant seems to be relying on³⁰:

- (a) the representations contained in Clause A, clause B, clause 2.2, clause 4.5, clause 5.3, clause 5.7 and clause 5.9 of the SPA; and
- (b) an oral statement made on 1 November 2023.

51 The oral statement made on 1 November 2023 was never expounded or further addressed at trial. As for the “representations” associated with the 7 clauses cited in [50(a)] above, it is unclear to me if the Claimant is contending that all 7 clauses constitute 7 representations of fact which are allegedly false. Indeed, this cannot be the case as it is certainly not the Claimant’s case that all 7 contractual clauses, even if they are considered pre-contractual representations, were false.

52 Notably, in paragraphs 47 (*the representations*) and 48 (*falsity*) of the Claimant’s Closing Submissions (“CCS”), the Claimant submits as follows:

³⁰ Paragraph [7] of SOC states:

“7. The Defendant *represented* to the Claimants *as above* (note: reference is to the contractual clauses at [7]) *made by and to be inferred from the S&P Agreement dated 1st November 2023* and oral statement made by the Defendant to the Claimants on 1st November 2023. ...” (*emphasis added*) (*my insertions*)

“47. *The representation should not be reformulated too broadly as “the Defendant owned every legal interest in stall B1-28”. The licence itself was in Tran’s name. The relevant representation is narrower and commercially accurate: that the Defendant, as Vendor, was entitled and able to put the Claimant into the contracted position of taking over and operating the business at B1-28 on the stated terms. That proposition was false.*

48. *Falsity. The licence, SFA correspondence, NEA correspondence and Defence establish falsity. The Defendant was not the licensee. His wife was. SFA licences were not transferable. NEA required stallholders personally to operate and prohibited subletting. The Claimant was not an immediate relative. No NEA-approved transfer or subletting right was produced. The Defendant’s own Defence says he could not sell the business because his wife was the lessee.” (emphasis added)*

What was the operative misrepresentation asserted by the Claimant?

53 Based on the foregoing, it appears to me that the false representation of fact that the Claimant is relying on for its claim on misrepresentation is the alleged representation that the Defendant “is able to *sublet* the food stall at B1-28 to the Claimant”: see paragraph [10] read with paragraph [13] of the SOC (the “**Alleged Representation**”). This interpretation is consistent with paragraph [20] of the SOC where Claimant states that the Defendant made a “fraudulent representation *through the said agreement ... that the Defendant had the capacity to **rent out** the said food stall*” (emphasis added). See also paragraph [16] of CCS, and [52] above.

54 If such a representation was indeed made, it will clearly be false as there is ample evidence that the NEA regulations require stallholders to personally operate stalls obtained under NEA leases and prohibit subletting: see [95] below.

55 For completeness, I should state that I do not consider in any detail the alternative case that the false representation pertained *solely* to the contention that the stock, business, goodwill and lease of the business premises (the “**sale assets**”) were in fact *owned* by Defendant’s wife (DW2) and *not* the Defendant, given that the Singapore Food Agency (“**SFA**”) license and the NEA lease were issued in DW2’s name. As noted in [52] above, Claimant confirms in his CCS that he is *not* asserting that the representation is that “*the Defendant owned every legal interest in stall B1-28*”, but rather that the Defendant is “*entitled and able to put the Claimant into the contracted position of taking over and operating the business at B1-28 on the stated terms*”.

56 In any case, the fact that the SFA license and NEA lease were issued in DW2’s name does not ineluctably lead to the conclusion that the sale assets are not ultimately owned by the Defendant, or that the Defendant is unable to bring about the sale of the business to the Claimant in accordance with the SPA (*i.e.* barring the NEA regulations issue). Given that the Defendant and DW2 are husband and wife, the registration of the SFA license and the NEA lease in DW2’s name may be just be for convenience’s sake. Defendant thus deposes in his affidavit that all his assets, including the food stall, are jointly owned by him and his wife: see paragraph [54] of DSA. DW2 deposes to similar effect at paragraph [6] of her affidavit where she confirms that the “defendant was synonymous with the ... business”, that the registration of the food stall under her name was “for convenience” so that she could handle all the administrative and regulatory paperwork, and that the Defendant is the actual “legal owner of the business set up and equipment”³¹. In light of the foregoing, mere reliance on the licensee details in the SFA license and NEA lease is insufficient to discharge the Claimant’s burden of proving that any representations as to ownership of the sale assets (even if made)

³¹ See See DBAEC at p. 39, and also NE 11 June 2026, 14

are false, or that the Defendant is unable (putting aside the NEA regulations issue) to procure the sale of the business to the Claimant in accordance with the terms of the SPA.

Applying the law to the facts

57 In these grounds, I will therefore focus on the Alleged Representation (*i.e.* the representation that the business premises can be sublet to the Claimant) (see [53] above) in determining whether a claim in misrepresentation has been made out.

58 It is settled law that the burden of proving all the elements of a misrepresentation claim falls on the Claimant: see for *e.g.* *Panatron Pte Ltd v Lee Cheow Lee* [2000] SGHC 209 at [102].

59 I am of the view that the Claimant's claim for fraudulent misrepresentation fails at the first hurdle as the Claimant has not surmounted its burden of proving, on a balance of probabilities, that the Alleged Representation (*i.e.* the representation that the business premises can be sublet to the Claimant) was in fact made by the Defendant to the Claimant.

60 Claimant's claim that the Alleged Representation was made was based largely on Mr. Guru's bare assertions as to what was discussed with and represented to him by the Defendant. These were not corroborated by any independent documentary records or independent third-party testimonies. Indeed, the Claimant's only other witness, CW2, confirms that he has no personal knowledge of the history of the dispute and what transpired between Mr. Guru and the Defendant; everything he knows are based on what his brother (*i.e.* Mr. Guru) told him³².

³² NE 26 March 2026, 143-144.

61 The Claimant, however, attempts to rely on various clauses in the SPA (especially Clause A, Clause B and clause 5.3) to suggest that the Alleged Representation was in fact made. Claimant’s Counsel cited the cases of *Toh Wee Ping Benjamin v Grande Corporation Pte Ltd* [2020] SGCA 48 (“*Toh Wee Ping*”); and *Jurong Town Corp v Wishing Star Ltd* [2005] 3 SLR(R) 28 (“*Wishing Star*”), for the proposition that just because a representation has become a term of the contract, a claim in misrepresentation is not lost (see CCS paragraph [3], [11], and [12]).

62 The reasonings in *Toh Wee Ping* and *Wishing Star* are largely influenced by s. 1 of the Misrepresentation Act 1967 (2020 Rev Ed) (“**Misrepresentation Act**”) which provides:

“1. Where a person has entered into a contract after a misrepresentation has been made to him, and —

(a) *the misrepresentation has become a term of the contract*; or

(b) *the contract has been performed*,

or both, then, *if otherwise he would be entitled to rescind the contract without alleging fraud, he shall be so entitled*, subject to the provisions of this Act, *notwithstanding the matters mentioned in paragraphs (a) and (b)*”. (emphasis added)

63 In *Toh Wee Ping*, the plaintiff claimed that it entered into a joint venture with the defendant due to the defendant’s misrepresentations. The representations were incorporated into the joint venture agreement as express terms. The defendant’s defence and counterclaim was subsequently struck out for breach of discovery obligations. The net effect of the defence being struck out was that the defendant was deemed to have admitted to those parts of the statement of claim in which the plaintiff pleaded that the defendant had made various misrepresentations that induced the plaintiff to enter into the joint venture agreement. In relation to the plaintiff’s claim

for fraudulent misrepresentation, the court held that the fact that the representations had also been incorporated as express terms of the joint venture agreement did not obviate the plaintiff's pleaded cause of action based on misrepresentation, citing s. 1 of the Misrepresentation Act.

64 Similarly, in *Wishing Star*, the alleged misrepresentation first appeared in the tender requirements of a project which was eventually awarded to the plaintiff and thus formed part of the final Award Contract. The tender requirements were false. The court similarly held, relying on s. 1 of the Misrepresentation Act, that just because the tender requirements became part of the terms of the final Award Contract, that did not mean that only remedy was for breach of contract and not misrepresentation.

65 It is clear from the cases of *Toh Wee Ping* and *Wishing Star*, as well as s. 1 of the Misrepresentation Act, that if a false representation of fact is proven to have been made and to have induced the innocent party to enter into a contract, a claim in misrepresentation can be made *even if* the pre-contractual representation has *also* become a term of the contract. However, this proposition is predicated on proof of a false pre-contractual representation having been made in the *first place*. Where this is proven, the fact that the representation has *also* become a term of the contract does not affect the Claimant's claim in misrepresentation. The plaintiff can in this instance elect between claiming for misrepresentation or breach of contract.

66 In my opinion, the *reverse* is not necessarily true. Just because a term of the contract (*e.g.* Clause A, Clause B or clause 5.3) exists and states or implies a certain state of affairs, it does not, without more, give rise to the inference that a *prior* representation on similar terms was made by the defendant which induced the contract, so as to give the innocent party the right to claim in both misrepresentation and breach of contract.

67 In *Chitty on Contracts, Vol. I, General Principles (35th ed)* (“*Chitty on Contracts*”) at [10-014]-[10-015], the learned authors thus noted:

“[10-014] **Express contractual warranties and representations.** It is not uncommon for a contract to contain a warranty that certain facts are correct. *A party who merely gives a contractual warranty does not necessarily represent that the fact warranted is true so as to give the other party an alternative claim for misrepresentation if the warranty is broken.* Making an offer may amount to a representation that in general terms the offeror intends and has the ability to perform the proposed contract, as they understand it, but *merely offering for signature a document containing a warranty is not a representation of the truth of the facts warranted. It is different if there was a previous representation, followed by a warranty: in that case, the other party will have a choice of remedies*

[10-015] **Representations made in the contract.** *It is also possible that the contract provides that one party represents certain facts to be true. Where the facts were stated before the contract was made and the representation induced the representee to enter the contract, the contractual provision seems to act merely as confirmation that the statements were made and can be relied on, and if they turn out to have been incorrect the representee will have the normal remedies* **[Note: i.e. claims in both misrepresentation and breach of contract]** (subject to any restrictions imposed by the contract). *If the representations were made for the first time in the contract, or if the representee had not relied on an earlier iteration of them, the position is less clear.* Subject to other provisions of the contract, the separate inclusion of representations in the contract seems to make sense only if the representor is implicitly agreeing that the representee will have a remedy for misrepresentation—for example, rescission—if the representation turns out to have been incorrect. *However, it has been pointed out that damages under s.2(1) of the Misrepresentation Act 1967 may not be available, as that section applies only where a person “has entered a contract after a misrepresentation has been made to him...” (emphasis added) **[my insertions]***

68 The authors of Cheshire, Fifoot & Furmston’s Law of Contract (17th Edition) (“*Cheshire, Fifoot & Furmston*”) adopt a similar stand, opining that not all terms will always give rise to an alternate claim for misrepresentation. The learned authors noted at page 364:

“ Nevertheless it is suggested that *in principle the categories of terms and representations are mutually exclusive and that a plaintiff cannot elect to treat a term as a representation*. If this is so, it would follow that *section 1 of the Misrepresentation Act 1967 had no application to such a case, since it is not one which a misrepresentation has become a term, but one in which a statement has always been a term*. (emphasis added)

69 In my opinion, a claim in misrepresentation is premised on a representation having been made, which is shown to be false, and which has further induced the entering into of the contract. Absent contrary authority, it must be the case that a false representation of fact must *first* be proven by the Claimant relying on misrepresentation to have been made (as was the case in *Toh Wee Ping* and *Wishing Star's* case), and for the same to have induced the making of the contract, before the Claimant may elect to pursue alternative remedies in misrepresentation or breach of contract. To say that *all* terms contained in a contract would, without more, lead to the inference or conclusion that a representation to the same effect was *previously* made which induced the contract, is to place the cart before the horse. The contractual term may, for instance, have been inserted by mutual agreement as part of negotiations, and/or without parties applying their minds as to the significance of the term incorporated, especially of any implied representations that may be argued to arise therefrom. In such cases, unless it is proven that a representation was made before the contract and induced the representee to enter into the contract, then notwithstanding that certain contractual terms featured in the contract, the only remedy available to the plaintiff should be for breach of contract and not misrepresentation. Any other conclusion will lead to the anomalous result that breach of most terms of a contract will automatically give rise to alternative remedies for breach of contract or misrepresentation.

70 On our facts, other than Mr Guru's bare assertions as to the circumstances leading up to the execution of the SPA, there are no independent corroborative

evidence that representations along the lines that the Defendant is able to sublet the business premises to the Claimant were made *before* the SPA was entered into between the Claimant and the Defendant. Indeed, the Defendant, on his part, vigorously contends that in the discussions between the parties, it has always been the understanding that the NEA lease is not intended to be sold, that Mr. Guru and his associates are to assume the positions of employees vis-à-vis the Defendant, and that the agreed arrangement is principally for the Defendant to train the Mr. Guru and his friends on the kebab trade, to gain experience, and thereafter run a kebab business by themselves. The idea of the business premises being sub-letted to the Claimant was never discussed or agreed.

71 There are in fact some circumstantial evidence which support the Defendant's version of the pre-contractual discussions. For instance:

- (a) Despite operating the stall for 10.5 months, the Claimant at no time requested for the license of the stall to be transferred to the Claimant, or for the NEA lease to be regularized or updated, and notified to the authorities;
- (b) The Claimant was, for no less than 10 months, content to allow the Food panda, Grab and CDC voucher receipts due to the Claimant to continue to be credited to the Defendant's account based on the pre-contract arrangements in place, and only sought to deduct these amounts from the monthly \$5,000 rental payments required to be paid by the Claimant to the Defendant.

72 In the absence of objective evidence, I find that *the Claimant has not proven*, on a balance of probabilities, that the Alleged Representation was made which induced the entering into the SPA. The fact that the Alleged Representation is a term of the

SPA may give rise to a claim for breach of contract, but will not, without more, satisfy the first requirement for an alternative claim in misrepresentation.

Restitutio in integrum

73 In any event, to the extent the Claimant seeks rescission of the SPA on the grounds of fraudulent misrepresentation, I find the rescissionary remedy to be unavailable as *restitutio in integrum* is impossible.

74 As the authors of *The Law of Contract in Singapore* (Andrew Phang Boon Leong (General Editor), SAL Academy Publishing, Second Edition) (“**The Law of Contract in Singapore**”) noted at [11.141]:

[11.141] *The principle that undergirds the power to rescind a contract on the ground of misrepresentation is restitutio in integrum.* The fundamental purpose of the remedy is to discharge the parties from the contract which was induced by the misrepresentation and to return the parties to their respective *status quo ante*. As Lord Wrote explained in *Spence v Crawford*:

Restoration... is essential to the idea of restitution. To take the simplest case, if a plaintiff who has been defrauded seeks to have the contract annulled and his money or property restored to him, it would be inequitable if he did not also restore what he had got under the contract from the defendant. Though the defendant has been fraudulent, he must not be robbed, nor must the plaintiff be unjustly enriched, as he would be if he both got back what he had parted with and kept what he had received in return.

Hence, if restitution cannot be achieved, the representee will not be able to rescind the contract but will instead have to resort to damages, if available. (emphasis added)

Pleadings

75 As a preliminary point, the Claimant argues that the Defendant did not plead the impossibility of *restitutio in integrum*. Generally, if a representor desires to contend that the representee is not entitled to the remedy of rescission, the representor should plead the impossibility of rescission and provide full particulars of why this is so: see *Liberty Sky Investments Ltd v Aesthetic Medical Partners Pte Ltd* [2020] 1 SLR 606 at [14], citing Bullen & Leake & Jacob’s Singapore Precedent of Pleadings (Jeffrey Pinsler gen ed) (Sweet & Maxwell, 2016) at paragraph [25.72]. See also *Axis Megalink Sdn Bhd v Far East Mining Pte Ltd* [2024] 1 SLR 524 at [109] (“**Axis Megalink**”).

76 However, as noted in *Axis Megalink* at [106], the Claimant is also subject to a corresponding pleading obligation:

“106 In our view, it follows from the legal position that *the party seeking to avoid the contract must in principle return or account for benefits received, the representee when seeking rescission must itself plead its readiness to restore or account for the benefits received, specifying those benefits*. In this case, it was only at the oral hearing that FEM identified what it proposed to restore.....” (*emphasis added*)

77 In any case, the possibility of *restitutio in integrum* is an integral part of the analysis of whether the Claimant’s claim for rescission can succeed at law. Bearing in mind the Claimant themselves have not pleaded their willingness to effect *restitutio in integrum* and specifying the items to be restored by it, the Defendant should, in my view, be permitted to raise arguments on the impossibility of *restitutio in integrum*, notwithstanding the Defendant’s own pleading deficiencies. As the court noted in *Axis Megalink*:

“114 Moreover, it would not be right to leave out of consideration a point so

bound up with the grant of the remedy sought by FEM, one that is a “condition of relief” (see [84] above). As was noted by Lord Wrenbury in the House of Lords in the case of *Banbury v Bank of Montreal* [1918] AC 626 at 714:

... The appellant has argued that, inasmuch as the point of law that there was no evidence of authority was not taken at the trial, the respondents could not raise in a Court of Appeal a question of law not raised in the Court of first instance. *It would require a great deal to persuade me that a Court of Appeal is bound to adjudicate wrongly because it had not occurred to either judge or counsel to raise a point of law in the Court below. ... The result of the contention, if it be correct, is that the Court of Appeal is bound to make an erroneous order because a point of law has been overlooked below. ...*

115 This proposition coheres with the principle expressed in *Liberty Sky* at [14], that the issue of pleadings should not be approached as “a hard and fast rule”; rather, a “balance has to be struck between, on the one hand, instilling procedural discipline in civil litigation and, on the other, permitting parties to present the substantive merits of their case notwithstanding a procedural irregularity”. *Here, it cannot be overlooked that the effect of FEM’s (note: the plaintiff’s) argument would be that the court may be compelled to order a remedy in FEM’s (note: the plaintiff’s) favour despite the condition for that relief (note: i.e. possibility of restitution in integrum) not being met. That cannot be right.” (emphasis added) (my insertions)*

Can restitutio in integrum be achieved?

78 I am of the view that *restitutio in integrum* cannot be achieved in the present case if rescission were ordered.

79 It is trite that the burden of proving impossibility of *restitutio in integrum* is on the representor. It is further well established that *restitutio in integrum* requires the reversal of the exchange of benefits under the rescinded contract. This reversal is necessarily bilateral; rescission therefore entails restoring not only the rescinding party but also the counterparty to its pre-contractual position: see *CDX v CDZ* [2021] 5 SLR 405 at [51].

80 Claimant relies on fraudulent misrepresentation, which if successful, will entitle the Claimant to the right of rescission at common law. However, one of the prerequisites of common law rescission is that it must be possible to effect precise and complete *restitutio in integrum*, i.e. a precise and complete reversal of the benefits exchanged under a rescinded contract: see *CDX v CDZ* at [54]. This will not be possible in the present case for various reasons – for e.g., the Claimant admits that certain cutleries have been taken by it at the point of the Claimant’s departure from the stall which have then been comingled with the Claimant’s cutleries in its other stall and cannot be precisely identified and restored anymore. The Claimant has further necessarily consumed some or all or part of the food inventory, which accordingly also cannot be precisely restored.

81 Notwithstanding the above, the Claimant’s SOC is wide enough to cover equitable rescission, to which I now turn. Equitable rescission is more flexible than common law rescission as it does not require precise and complete *restitutio in integrum*; only substantial *restitutio in integrum* is necessary. All that is required is that “practical justice” can be achieved in restoring the misrepresentee and the misrepresenter to their pre-contractual positions: see *CDX v CDZ* at [55].

82 However, even applying the more relaxed requirements for equitable rescission, I remain of the view that *restitutio in integrum* is not possible. In this regard, the Defendant has relied on the following to show that *restitutio in integrum* is impossible:

- (a) First, Claimant has conceded that at the time of moving out, some cutleries and one kebab machine were taken³³. The actual cutleries and equipment taken, and the value thereof, were not identified, and indeed

³³ NE 10 June 2026, 40 (lines 1-11)

can no longer be identified as no inventory list was ever prepared. Any attempts at estimating the quantities, types and values of the items taken would necessarily be arbitrary and speculative;

- (b) More significantly, it was not disputed that: (i) the Claimant operated at the stall for some 10.5 months (hereinafter “**rental period**”); and (ii) generated (and kept) not insubstantial sums of daily revenues generated from trading at the Defendant’s premises using the Defendant’s trade name “Bosphorous Turkish Kebap”. The necessary inference must be that the Claimant has already *appropriated or exploited* a not insignificant amount of the *goodwill* associated with the Defendant’s business and trade name *during the rental period*. It is unclear to me how an intangible benefit such as appropriation or exploitation of goodwill can be reasonably quantified or estimated, or practically reversed or restored to the Defendant;
- (c) Defendant further contends that there has been a diminution in the value of the goodwill associated with the Defendant’s business during the period of the Claimant’s operation. By the Claimant’s own version of events, during the rental period, the Claimant’s operations was not profitable, and it in fact suffered an overall net operating loss of at least \$6,122.57 (see paragraph [91] of CCS; read with CBAEIC at p. 38). Defendant further adduced various WhatsApp (“WA”) messages as evidence of complaints made by his former customers (the “Customer Complaints”) as to the food and service quality of “Bosphorous Turkish Kebap” while Claimant was running the stall: see paragraph [12]-[15] of DSA, and DSA at pp 81-82. For present purposes, I ignored the Customer Complaints, as the makers of these statements

were not called, and the WA messages are thus inadmissible hearsay. Be that as it may, it was not disputed that the business at the food stall was unprofitable during the period when it was being operated by the Claimant. So construed, I find that the Defendant has adduced some evidence of likely impairment to the goodwill associated with its business during the subsistence of the SPA.

83 In view of the above, the evidential burden then shifts to the Claimant to show that practical *restitutio in integrum* is still possible. Here is where the Claimant runs into a number of practical difficulties:

- (a) No inventory list was ever prepared stating the inventory and equipment taken over by the Claimant at the start of the SPA, versus those returned when the Claimant vacated the premises. All the Claimant offered, in an attempt to demonstrate that practical justice could be achieved, was a sum to compensate for the inventory and equipment that cannot be restored. However, the sum of \$600 offered by the Claimant appears wholly arbitrary, being no more than a figure plugged from the air. The model, description, brand name, age and market value of the kebab machine; and the quantities, types and value of the cutlery, which Claimant admits to retaining, were never specified nor substantiated by any cogent evidence.
- (b) More critically, it is not clear to me how the Claimant has purportedly quantified or valued the Defendant's goodwill, including the usage of the Defendant's tradename, logo and the benefits linked to the Defendant's pre-existing customer base, which must to some extent have been appropriated or exploited by the Claimant during the rental

period. Claimant also fails to address how a restoration of any impairment in the goodwill of the Defendant's business, as evidenced by the abysmal performance of the business during the rental period, is possible. In other words, the business the Claimant purports to "restore" to the Defendant is not the exact business which it took over from the Defendant at the start of the SPA.

Claimant does nothing to discharge its evidential burden other than to voluntarily offer an arbitrary sum of \$600 by way of compensation for the equipment and inventory that cannot be restored. Why the sum of \$600 (as opposed to say \$6,000) is capable of achieving practical justice was never explained or substantiated. In my mind, a distinction needs to be drawn between practical justice and arbitrary justice.

84 For the above reasons. I find that the impossibility of achieving *restitutio in integrum* will constitute a further hurdle as regards Claimant's attempt to rescind the SPA on the grounds of fraudulent misrepresentation, even if the other requirements of fraudulent misrepresentation are satisfied.

Restoration based on notional "occupational value"?

85 Even if I am wrong in concluding that *restitutio in integrum* is not achievable by the making of a monetary award, and that the benefits enjoyed by the Claimant during the rental period (and the corresponding deprivation of use by the Defendant of the food stall during the same period) can in fact be quantified by reference to some "occupational value" of the premises during the relevant period, I am unable to agree with the Claimant's submission that the quantum of the benefit received by the

Claimant should be pegged to the monthly rental amount of \$2,252 paid by the Defendant to NEA, or \$3,108 (if NEA's ancillary charges were included)³⁴.

86 The benefits which accrued to the Claimant during the rental period when it used the premises to carry on the kebab trade cannot be said to be limited to the rental value of the bare premises as charged by NEA. To begin with, Claimant also utilized or appropriated the goodwill, reputation and the customer base built up by Defendant associated with the *business premises* and the “Bosphorous Turkish Kebab” trade name and logo during the rental period. Claimant would also have benefited from the contacts with the Defendant's pre-existing suppliers, which would necessarily have facilitated to some extent the continuation of the business during the rental period, given Mr. Guru's own admission that he was completely new to the kebab business. Thus, if the value of the practical benefits enjoyed by the Claimant which are to be restored to the Defendant are to be quantified on a broad-brush, practical basis, it cannot, in my view, be pegged to the rental due to NEA for the rental of the business premises simply. Instead, it should be pegged at the negotiated rental value of the premises under the SPA, *i.e.* \$5,000 per month, which represents the parties' own valuation of the assumed occupational value of the business premises with all the goodwill attached.

S. 2(1) Misrepresentation Act

87 For the same reasons that I have dismissed the Claimant's claim in fraudulent misrepresentation (*i.e.* failure to prove a false representation of fact), I am similarly dismissing the Claimant's claim for the misrepresentation based on s. 2(1) of the Misrepresentation Act.

³⁴ NE 11 June 2026, 27

88 As noted in Chitty on Contracts, Volume I, General Principles (Sweet & Maxwell, 2008) (“*Chitty on Contracts*”) at [10-088], s. 2(1) of the Misrepresentation Act encompasses the same elements as a claim in fraudulent misrepresentation, save that dishonesty need not be proven, and losses must be proven in a s. 2(1) claim. Thus, for the reasons set out above as to why a claim in fraudulent misrepresentation and rescission cannot succeed, a claim for misrepresentation under 2(1) of the Misrepresentation Act (which is necessarily predicated on a claim in negligent misrepresentation or innocent misrepresentation, both of which require proof of a false representation of fact which induced reliance) similarly cannot succeed. I will say no more of the claim grounded on 2(1) of the Misrepresentation Act.

Claim in contract

89 The fact that a claim in misrepresentation, whether under fraudulent misrepresentation or s. 2(1) of the Misrepresentation Act, fails does not preclude the Claimant from pursuing an alternative claim based on breach of contract: see *RBC Properties Pte Ltd v Defu Furniture Pte Ltd* [20145] SGCA 62 (“*RBC Properties*”) at [133]-[134]. To be sure, a claim for damages for breach of contract was specifically pleaded by the Claimant as an alternative cause of action: see paragraphs [6], [12], [32(d)] SOC, and paragraph [4] of the CCS.

Implied Term

90 Construing the SPA, I find that there is an implied term in the SPA that the Defendant has the ability to sublet the business premises to the Claimant (the “**Implied Term**”).

91 As the Court of Appeal noted in *Sembcorp Marine Ltd v PPL Holding Pte Ltd and another* [2013] 4 SLR 193 (“*Sembcorp Marine*”), the implication of terms into a contract is best understood as an exercise in giving effect to the parties’ *presumed* intentions. The test for the implication of terms is the business efficacy test and the officious bystander test used in conjunction and complementarily (*Sembcorp Marine* at [98]). While the business efficacy test is helpful in identifying the existence of a lacuna or gap, it is the officious bystander test that defines the term which can be said to reflect the parties’ presumed intention *vis-à-vis* the gap in the contract: see *Sembcorp Marine* at [91], [98].

92 In my view, the implication of a term that the Defendant has the ability to sublet the business premises will satisfy the business efficacy test. The implication of such a term is necessary for “giving efficacy to the transaction and preventing such failure of consideration as [could not] have been within the contemplation of either side”: see *The Moorcock* (1889) 14 PD 64. The subject matter of the SPA is not just the sale and purchase of any equipment and inventory, but includes the goodwill that has been built by [the Defendant] over the years operating at the *business premises*. Clause 5.3 goes on to provide that the purchaser shall pay the Defendant a monthly rent of \$5,000 “for the rent of the business premises”. If the subletting of the business premises is in fact not permitted under NEA regulations and the lessee must operate on the premises personally, the contract clearly will not work. The requirement of necessity is made out on the facts of our case: see Chitty on Contracts at [13-005].

93 Furthermore, I am of the view that the implication of a term requiring the Defendant to be able to sublet the premises will also satisfy the officious bystander test. That a subletting of the premises is contemplated under the SPA is clear when the SPA is construed as a whole. In particular:

(a) The “Completion date” of the SPA is defined as “1 Nov 2023 or such other date as the Parties may agree”. The definition goes on to provide that the Completion date of the SPA has “the same meaning as *the take-over date of the business premises by the Purchaser*”.

(b) Clause 5.3 of the SPA further provides that the Purchaser shall pay the Vendor the sum of \$5,000 on the 1st day of each month “*for the rent of the business premises*”.

94 In view of the above two contractual clauses and the surrounding contractual matrix, if at the time the contract was being negotiated, someone had said of the parties “was it a requirement that the Defendant should have the ability to sublet the lease”, both parties would have replied with a resounding “Of course... we did not trouble to say that, it is too clear” (*Sembcorp Marine* at [90]).

Whether there was a breach of the Implied Term

95 Having found that the Implied Term was implied, I further find that the Defendant has breached the Implied Term:

(a) First, there was a correspondence from NEA dated 4 November 2024 issued by the Assistant Director (Allocation and Systems Department), Hawker Centers Group, in response to Claimant’s Counsel’s queries, stating that “stallholders are required to personally operate their stalls and are not allowed to sublet their stalls”: see Claimant’s Bundle of Affidavit of Evidence-in-Chief (“**CBAEIC**”) at p. 30. Defendant objects to the admissibility of the NEA email on the grounds of hearsay

as the writer was not called as a witness. I disagree, and find that the email is admissible under s 32(b) of the Evidence Act by way of the business record exception.

(b) More importantly, even without relying on the NEA email, the Defendant and DW2 never disputed throughout, and in fact admitted, that the NEA lease is not sub-lettable: see NE 10 June 2026, 85 (lines 13-15); NE 10 June 2026, 120 (lines 16-25); and NE 11 June 2026, 3 (lines 20-28). In fact, the Defendant's Alternate Version of the Agreement is always predicated on the basis that Defendant never agreed to transfer or sublet the NEA lease as the Defendant and his wife are aware that they are not permitted to do so under NEA regulations.

96 It follows from the foregoing that there is evidence that the business premises cannot in fact be sub-letted to the Claimant. In light of the Implied Term which I found at [90] above, the Defendant is in breach of a term of the SPA.

97 Defendant seeks, in the alternative, relief for breach of contract, namely "rescission" of the SPA and damages. It will be more accurate for the Claimant, in a breach of contract context, to frame the relief sought in terms of treating the SPA as discharged for breach (rather than rescission): see *RBC Properties* at [138]. That said, the intention of the Claimant to treat the SPA as at an end is clear. For completeness, I will also note that the defence of waiver was not pleaded by the Defendant and cannot presently be raised. In any event, the Defendant failed to adduce any evidence to show that the Claimant continued to operate the stall for an extended period of time *after* knowing that they were entitled to treat the contract as discharged. In fact, the Claimant's case is that they only found out from NEA on 16 September 2024 when

Claimant made a call to NEA to ask about the application for a SGQR Code with NETS. Claimant was informed during the call that as the NEA lease could not be sub-letted, Claimant could not apply for the SGQR code (see Claimant's Counsel's letter at CBAEIC p. 34). Claimant's Counsel's letter of 8 October 2024 clearly states that the Claimant only discovered that the NEA lease cannot be sub-letted on 16 September 2024 (at [5]); there is no response on record from the Defendant, whether via email, WA messages or any other documentary record, refuting the content of Claimant Counsel's letter.

Whether the Claimant is entitled to treat the contract as discharged

98 Having found that the Implied Term exists and was breached, the Claimant is, in my view, entitled to treat the SPA as discharged. The current breach falls within Situation 3B of *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd* [2007] 4 SLR(R) 413, *i.e.* the breach of the Implied Term would deprive the party not in default (*i.e.* Claimant) of substantially the whole benefit which it was intended that it should obtain under the contract. The arrangement under the SPA, as mentioned above, is for the Defendant to sell the equipment, the inventory and the goodwill built up by the vendor *at the business premises* and for Claimant to be able to rent and run the kebab business *at the business premises*: see Clauses A and B read with clause 2.2 and 5.3 of the SPA. The rental or subletting of the stall being prohibited under the NEA regulations, the Claimant is no longer able to carry on the business at the business premises and exploit the associated goodwill. It follows that the Claimant has been deprived of substantially all the benefits under the SPA.

Did Claimant elect to treat the contract as discharged?

99 The evidence before me point unequivocally to the fact that the Claimant did elect to bring the contract to an end:

(a) I make the finding of fact that the Claimant moved out of the business premises on 16 September 2024. According to the Claimant, after calling NEA and being told that the food stall could not be sub-letted, the Claimant had called the Defendant, who then ordered the Claimant to move out of the stall that very day. The Claimant did so on the night of 16 September 2024³⁵. That the Claimant did move out on the night of 16 September 2024 was corroborated by the Defendant’s WA message at CW1’s supplemental affidavit dated 16 January 2026 (“CSA”) at CBAEIC at p. 93, sent two days later on 18 September 2024, in which the Defendant stated: “My kebab machine and other equipment, *bring here by today*. Other (*sic*) I police report you!!!”.

(b) Furthermore, on 26 September 2024, the Defendant sent the Claimant another text message containing the following words: “GRAP (*sic*), Food panda machine where? *Return to me by today!!... Why u take it.*” (CBAEIC at p. 94). All these corroborated the Claimant’s case that it had elected to treat the SPA as at an end, and had moved out of the premises on the night of 16 September 2024.

(c) At any rate, by a letter dated 8 October 2024, Claimant, through its solicitors Ong & Ong LLC, has clearly communicated its right and intention to “rescind” the contract: see CBAEIC pp. 32-37, esp. p. 37.

³⁵ NE 26 March 2026, 105, 106, 108.

Therefore, by 8 October 2024 at the latest, I am of the view that the Claimant has clearly evinced and communicated its intention to treat the contract as discharged.

Claim for damages

100 Post-termination, the Claimant has a right to claim damages. As a starting point, damages for breach of contract are “designed to put the Claimant into the position that he would have been in had the contract been performed”, *i.e.* to compensate the Claimant for its “expectation loss”: see Chitty on Contracts at [30-024], and The Law of Contract in Singapore at [20.099] - [20.100].

101 Another commonly claimed type of damages is what is termed “reliance loss”, *i.e.* the expenditure or losses incurred by the Claimant in reliance of the promised performance and which were wasted by the Defendant’s breach: see Chitty on Contracts at [30-022].

102 However, as the Appellate Division noted in *Liu Shu Ming v Koh Chew Chee* [2023] SGHC(A) 15 (“*Liu Shu Ming*”), even in cases where reliance damages are awarded, the underlying principle is still to put the innocent party in the position he would have been had the contract been performed. The Appellate Division noted at [132]:

“132 It is clear that even in cases where reliance damages are awarded, the underlying principle is still that as laid down in *Robinson*: that the innocent party should be placed in the position he would have been had the contract been performed. As the CA noted in *Alvin Nicholas Nathan v Raffles Assets (Singapore) Pte Ltd* [2016] 2 SLR 1056 at [23] and [24]:

.....

24 Following this principle, *damages for breach of contract are ordinarily assessed in terms of the claimant's expectation loss, which refers to the value of the benefit that the claimant would have obtained but for the breach of contract, or, to put it another way, the gains the claimant expected as a result of the full performance of the contract*: Andrew Phang Boon Leong, *The Law of Contract in Singapore* (Academy Publishing, 2012) ('The Law of Contract') at para 21.033. *On occasion, damages for breach of contract may be quantified in terms of the claimant's reliance loss – that is, the costs and expenses the claimant incurred in reliance on the defendant's contracted-for performance, but which were wasted because of the breach of contract*: The Law of Contract at para 21.034. ***The basis for awarding reliance loss is the assumption that were the contract performed, the claimant would have at least fully recovered the costs and expenditure incurred***: *Van Der Horst Engineering Pte Ltd v Rotol Singapore Ltd* [2006] 2 SLR(R) 586 at [54]–[55]. *Indeed, in cases where a claimant enters into a bad bargain and would not have recovered all his costs/expenditure even if the contract had been performed, his losses may not be quantified by reference to his reliance expenditure*: *C & P Haulage v Middleton* [1983] 1 WLR 1461 at 1468. Thus, the underlying principle, even in cases where reliance loss is awarded, is to place the innocent party in the position he would have been in had the contract been performed.

[emphasis added]

103 The authors of *The Law of Contract in Singapore* discussed the possibility of rationalizing the reliance measure of loss, in cases where the promisee has not made a bad bargain, as “expectation loss”. The reasoning is that “the court will assume in the claimant's favour that he would have recouped all the costs incurred in his performance and so will be willing to award damages to reimburse the claimant”: see *Chitty on Contracts* at [30-027]. The authors referred to the Singapore High Court decision of *Van Der Horst Engineering Pte Ltd v Rotol Singapore Ltd* [2006] 2 SLR(R) 586, where the High Court proceeded on the assumption that the “benefit to be derived” would be “worth at least the expenditure” (in cases where the promisee has not made a bad bargain). Viewed in this light, the relationship between the “expectation measure” and the “reliance measure” may not be mutually opposed: see *The Law of Contract in Singapore* at [21.051].

104 In *Liu Shu Ming*, the lower court (*i.e.* the General Division of the High Court) had held that there were cases where the court had allowed innocent parties to recover the *purchase price* they paid as a form of wasted expenditure within the ambit of reliance damages: see *Koh Chew Chee v Liu Shu Ming* [2022] SGHC 25 at [109]. The Appellate Division did not expressly disagree with this proposition. However, the Appellate Division highlighted two important caveats to the ability to claim reliance damages:

- (a) First, it is not open to a plaintiff to claim reliance damages simply because he chooses not to adduce evidence of expectation damages. A plaintiff does not have an unfettered option to switch to a claim for reliance damages and the court does not have a wide discretion to grant such damages in every case (at [124]); and
- (b) Second, in the case of a breach of contract, a plaintiff may only claim reliance damages in two scenarios:
 - i. where it was impossible, or at least extremely difficult for the plaintiff to prove expectation damages; or
 - ii. where the contract was not entered into for the purpose of making a profit (at [179])

105 In the present case, the Claimant has, under the contractual route, indicated its intention to seek damages by way of “wasted expenditure” (*i.e.* the reliance measure): see paragraph [67] of CCS.

106 The present case is further one in which it is exceedingly difficult or impossible to quantify expectation losses, given the indeterminate duration of the SPA. This is further complicated by the fact that it is nearly impossible to determine what the expected monthly profit the Claimant could reasonably expect to make would be, given that this is dependent on numerous variables such as the Claimant's skills and its ability to preserve the goodwill of the business, among others. The fact that NEA regulations do not permit sub-letting further make it difficult to obtain a valuation of a comparable sale that is accompanied by the requisite NEA approvals. As noted by Toulson LJ in *Parabola Investments Ltd v Browallia Cal Ltd (formerly Union Cal Ltd)* [2011] QB 477 (cited in *Liu Shu Ming* at [144]):

“Some claims for consequential loss are capable of being established with precision (for example, expenses incurred prior to the date of trial). Other forms of consequential loss are not capable of similarly precise calculation because they involve the attempted measurement of things which would or might have happened (or might not have happened) but for the defendant's wrongful conduct, as distinct from things which have happened. In such a situation the law does not require a claimant to perform the impossible, nor does it apply the balance of probability test to the measurement of the loss.”

107 I am of the view that the present case is one in which the uncertainties are such that it is not possible to make any reliable estimate of the value of the Claimant's contractual rights. This is thus a case where damages may be quantified based on reliance loss.

Reliance loss claimed by Claimant

108 The Claimant claims two heads of reliance losses:

- (a) \$40,000 paid upfront under clause 2.2 of the SPA for the purchase of equipment and goodwill of the business (the “\$40,000 Sum”); and

(b) \$55,000, being rent for 11 months, which has been paid by the Claimant (the “**\$55,000 Sum**”)

The \$40,000 Sum

109 I deal first with the preliminary issue of whether the \$40,000 Sum was in fact received by the Defendant. The Defendant does not deny receiving the sum, save that he claims that the sum was not paid for the sale of the business, but rather by way of training fees: see paragraph [8] of DA. I reject this argument as being contrary to the parol evidence rule discussed above. Absent any other proof that there are other training agreements requiring the payment of the sum of \$40,000 to the Defendant, I find that the \$40,000 was paid pursuant to clause 2.2 of the SPA for the purchase of inventory, equipment and goodwill as set out therein.

110 As the \$40,000 Sum was paid by the Claimant for the purchase of the inventory, equipment and business of the Company, this has now become wasted expenditure with the discharge of the SPA. As regards the \$40,000 Sum, given the unspecified duration of the SPA, the Defendant has clearly not shown that this was a bad bargain, *i.e.* that had the SPA not been breached, the P would *never* have turned a nett profit. The Claimant is therefore entitled to recover the \$40,000 as reliance loss.

111 I also mention in passing that clause 4.5 of the SPA contains what may reasonably be construed as a liquidated damages clause. Clause 4.5 provides that “if the purchaser is unable to run the business due to the vendor’s negligence, vendor will provide a full refund of the purchase value” (*i.e.* \$40,000). Had the Claimant elected to claim liquidated damages, I see no reason why clause 4.5 would not have been upheld as an enforceable liquidated damages clause. The refund of the purchase price (*i.e.* \$40,000) as contemplated under clause 4.5 represents a genuine estimate of the

loss that will be suffered by the promisee at the time the contract was made, and was not a clause that was inserted “*in terrorem*” of the promisor – see *Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd* [1915] AC 79, which was affirmed by the Court of Appeal in *Denka Advantech Pte Ltd v Seraya Energy Pte Ltd* [2021] 1 SLR 631. This is, however, not strictly relevant in the present case as the Claimant has not elected to sue for liquidated damages only, and has in fact claimed general damages in addition.

The \$55,000 Sum

112 I start by making the finding that the Claimant has clearly proven, on a balance of probabilities, that it has made 11 payments of \$5,000 each in respect of rent under Clause 5.3 of the SPA. I reject the Defendant’s contention that WA messages and the corresponding transmission slips (at DA pp. 39-59) do not support the Claimant’s claim that it has indeed made the \$5,000 monthly payments during the rental period as the amounts remitted are not exactly in the sum of \$5,000 each. Although each monthly amount remitted falls slightly short of \$5,000, the WA messages at CBAEIC pp. 39-50 clearly explain why this is so. The relevant WA messages always start off with a reference to a “monthly payment” or “rent” of \$5,000, and then effects various adjustments to the \$5,000 on account of Foodpanda, Grab, and CDC Voucher receipts credited to the Defendant’s account (though they were earned by the Claimant during the rental period). Also reflected on the WA messages are sums added to the \$5,000 by way of Claimant reimbursing the Defendant for food items or stock Claimant bought from the Defendant (*e.g.* CBAEIC pp. 39, 42). Most of these net sums were acknowledged by Defendant to be correct (*e.g.* CBAEIC pp. 39, 41, 45, 48 and 50).

113 Turning now to the issue of whether the Claimant is entitled to recovery of the paid rental amounts by way of reliance loss. In my mind, the Claimant’s right to

recover the \$55,000 Sum stands on a different footing compared to the \$40,000 Sum. Subject to the qualifier in [114] below, I find that the Claimant is unable to recover the \$55,000 Sum even on a reliance loss basis based on two alternate reasonings:

- (a) It is well established that the right to claim reliance loss is not available when the Claimant has made a bad bargain, *i.e.* when the gross profits will not have been adequate to cover the gross expenditure. The burden of proof is on the promisor-in-breach (*i.e.* the Defendant) to prove that the bargain is a bad one: see *The Law of Contract in Singapore* at [21.054] - [21.056].

In the present case, the \$55,000 in rental payments sought to be recovered by way of wasted expenditure is for the use of the food stall during an 11-month period from November 2023 to September 2024 (the “**rental period**”). The Claimant’s own case is that the gross receipts the Claimant received *during the rental period* in fact fell short of the gross expenditure during the same period, with the Claimant suffering a net loss of \$6,122.57 over that period: see paragraph [91] of CCS and the Claimant’s self-compiled sales and profit Excel spreadsheet at CBAEIC p 38. I would note that the Excel spreadsheet is not backed by any supporting documents, and I will regard it, at best, as a concession/admission by the Claimant that there is a net accounting deficit when the Claimant ran the business *during the rental period*. Based on the Claimant’s own averment, the rental payments paid during the rental period evidently represented a bad bargain, and the election to frame the Claimant’s loss for the rent paid during the rental period by way of reliance loss is therefore not available since the Claimant will not have been able to recover the reliance expenditure

even if the contract has been fully performed without breach. Allowing the Claimant to recover the rental payments will result in over-compensation: see *The Law of Contract in Singapore* at [21.052]-[21.053].

- (b) An alternate and, in my view, the preferred way of rationalizing the inability to recover the \$55,000 Sum is to proceed from the perspective of causation. As the authors of *The Law of Contract in Singapore* noted at [22.014]:

“Damages may only be awarded if the claimant-promisee proves that the defaulting promisor’s breach of contract *caused* the loss which the promise claims to have sustained. As the Court of Appeal put it in *Salcon Ltd v United Cement Pte Ltd*, “[t]hat causation must be established before the question of quantification of damages arises is obvious.” (*emphasis added*)

In the present case, the Claimant paid rent, and in return occupied and carried on the business at the business premises during the rental period as contemplated under the SPA, notwithstanding the NEA regulations. There is no evidence that the regulations prohibiting sub-letting were enforced by NEA against the Claimant during the rental period. Any losses arising out of the payment of rent during the rental period was therefore not *caused* by, and was not a result of, the breach of the Implied Term, and is hence not recoverable.

114 I will, however, add a qualifier to the foregoing. The Claimant has paid the rent for September 2024 in full³⁶. I have made the finding of fact that the Claimant vacated the business premises on 16 September 2024 following its discovery of the

³⁶ See CBAEIC at pp. 50 and 59

breach of the Implied Term. Thus, part of the September 2024 rental payment, specifically for the period from 17 to 30 September 2024 (14 days), constituted wasted expenditure from the Claimant's perspective as the Claimant did not use the business premises during this period (the "**unoccupied period**"). In this regard, the Defendant (as promisor in breach) has not discharged his burden of showing that the rental paid during the unoccupied period would necessarily have constituted a bad bargain as it is purely speculative whether the Claimant would have been profitable had it run the business during the unoccupied period. And unlike the rest of the \$55,000 Sum, the wasted rental expenditure during the unoccupied period was clearly *caused* by the breach – viz. it was the breach of the Implied Term by the Defendant that led to the Claimant discharging the SPA on 16 September 2024, which resulted in the rental paid in advance for September 2024 being partially wasted. In relation to the rental payments, I therefore find that the Claimant is entitled to recover the rental expenditure wasted in respect of the unoccupied period from 17 to 30 September 2024, being \$2,333.33 (*i.e.* 14/30 x \$5,000).

Whether the amount of equipment retained by the Claimant should be deducted?

115 It follows from the above that the Claimant is only entitled to recover the sum of \$40,000 plus the sum of \$2,333.33 pursuant to its claim for damages for breach of contract.

116 Claimant, however, concedes that it has, at the point of vacating the premises, taken a kebab machine as well as some items of cutlery which have since been intermingled with his cutleries used in his other shops.

117 It is trite that recovery on the reliance measure is equally subject to the rules of mitigation. As The Law of Contract in Singapore noted at [21.058]- [21.060]:

“21.058 If it is correct that the expectation and reliance measures are alternatives means of placing the claimant promisee in the position it would have been in had there been no breach by the promisor, the complete elimination of losses quantified by reference to the expectation measure through successful mitigation efforts cannot entitle the claimant to recover damages on the reliance measure...

....

21.060 In other words, the mitigatory steps taken (in hiring the vessel out at market rates) would not just be in mitigation of losses on the *expectation measure*: they would *also* be in mitigation of losses on the *reliance measure*...”
(*emphasis added*)

118 It is further well established that where losses claimed by the claimant are reduced in light of the mitigatory steps taken by the Claimant, the losses recovered will be reduced accordingly. In other words, “the aggrieved party cannot recover avoidable *or avoided loss*...”: see *The Asia Star* at [24]; and *The Law of Contract in Singapore* at [22.148]-[22.153].

119 The difficulty in the present case is that no inventory list was adduced, and in fact does not appear to have been prepared both at the time of the handover, nor at the time of the return of the business premises. Hence, it is not possible to say with certainty what type of kebab machine (and the value thereof), as well as the number of cutlery items (and the value thereof), were retained by the Claimant.

120 The onus of proving failure to mitigate and avoidable losses is on the Defendant: see *Chitty on Contracts* at [30-100]. Correspondingly, where there has been avoided losses, it will necessarily follow that the onus is also on the Defendant, who claims that there are compensating advantages that should be taken into account to avoid over-compensation of the Claimant, to adduce evidence to prove what the

value of the compensating advantages to be accounted for is. In *The Law of Contract* in Singapore at [22.0182], the learned authors thus noted:

“... successful instances where the defendant manages to persuade the court to take these kinds of “compensating advantages” into account before awarding damages will also depend on the defendant’s ability to muster *some* credible evidence in support of its own position. Where such evidence is lacking – and this may often be the case as the circumstances of a claimant’s pre-breach actions and those of third parties will often be beyond the evidence gathering abilities of any defendants, the defendant’s contention will fail.”

121 In my mind, the Claimant is candid in conceding that it has retained some of the Defendant’s equipment, but is unable to state precisely what their value is. In this situation, absent credible proof by the Defendant as to what the amount of avoided loss is, I am of the view that only a nominal adjustment of \$400 should be imposed to reduce the damages recoverable by the Claimant.

Restitutionary damages

122 I do not propose to deal with this head of claim in great detail. As Chitty on Contracts noted, damages to recover the money by way of a claim in restitution is only possible if there has been a total failure of consideration (at [30-029]). At any rate, the Claimant has run its case on the basis that it is mounting a restitutionary claim on account of failure of basis *only* in the event “there was no subsisting contract [which] governs the transfer or where the transaction [under the SPA] is unenforceable”: see paragraph [15] of CCS.

123 I make three observations:

- (a) For the reasons discussed above, there is clearly no total failure of basis on our facts as the Claimant has used part of the inventory as well as exploited the Defendant's goodwill when it operated the stall during the 10.5-month rental period. The Claimant has further retained some items of equipment at the point it vacated the premises. The Claimant further generated revenue and kept the daily proceeds when it operated the stall during the rental period. Against this backdrop, any claim for restitutionary damages on the grounds of total failure of basis is a non-starter;
- (b) Further, based on the case run by the Claimant, there was clearly a subsisting contract which the Claimant elected to discharge on 16 September 2024. In this regard, I have awarded damages for breach of contract as set out above; and
- (c) The claim of illegality was never pleaded and/or properly developed, and there was at no time a finding that the SPA was unenforceable.

124 It follows that based on an application of legal principles, and further upon a consideration of the case run by the Claimant, a claim for restitutionary damages is without merit and is accordingly dismissed.

Conclusion

125 Based on the foregoing, the damages awarded to the Claimant is therefore \$40,000 *plus* \$2,333.33 *minus* \$400 = \$41,933.33.

126 I therefore grant the Claimant the following reliefs:

- (a) A declaration that the SPA was validly discharged by the Claimant on 16 September 2024 (or by 4 October 2024 at the latest) on account of breach of contract;
- (b) Claimant is entitled to damages in the amount of \$41,933.33, plus interest at the statutory rate from the date of writ to the date of judgment.

127 I will hear parties on costs separately. Parties are to tender written submissions on costs within 14 days from the date of this judgment limited to 5 pages each.

128 To avoid doubt, time for appealing against this judgment will start to run from the date the decision on costs is delivered.

Clement Seah Chi-Ling
District Judge

Jeffrey Lau (instructed counsel) (Ong & Co. LLC) for the Claimant;
The Defendant in-person.