

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

[2026] SGHC(A) 25

Appellate Division / Civil Appeal No 108 of 2025

Between

Tuffi (Pte.) Ltd.

... Appellant

And

- (1) Techkon Pte Ltd
- (2) Techkon Development
(Sembawang) Pte. Ltd.

... Respondents

In the matter of Originating Claim No 117 of 2024

Between

Tuffi (Pte.) Ltd.

... Claimant

And

- (1) Techkon Pte Ltd
- (2) Techkon Development
(Sembawang) Pte. Ltd.

... Defendants

JUDGMENT

[Contract — Contractual terms — Interpretation — Whether parties agreed on fixed sum or formula for payment]

[Contract — Contractual terms — Implied terms — Whether implied term for adjusting sum payable exists]

[Equity — Remedies — Rectification]

[Contract — Privity of contract — Whether joint venture company also party to agreement between principals]

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**Tuffi (Pte) Ltd
v
Techkon Pte Ltd and another**

[2026] SGHC(A) 25

Appellate Division of the High Court — Civil Appeal No 108 of 2025
Woo Bih Li JAD, Debbie Ong Siew Ling JAD and See Kee Oon JAD
7 July 2026

8 October 2026

Judgment reserved.

See Kee Oon JAD (delivering the judgment of the court):

Introduction

1 This is an appeal against the decision of a Judge of the General Division of the High Court (“Judge”) in *Tuffi (Pte) Ltd v Techkon Pte Ltd and another* [2025] SGHC 201 (“Judgment”). The appeal raises issues relating to the proper interpretation of an agreement for the payment of an amount of money derived from certain calculations, and the interplay between interpretation, implication and rectification in construing this agreement.

Background

The parties

2 The appellant, Tuffi (Pte) Ltd (“Tuffi”), holds investments and provides services relating to motor vehicles. Its key representatives at the material time were:

- (a) Mr Shu Moh Chye (“Robert”), a director and shareholder;
- (b) Mr Shu Ang Moh (“Sunny”), a director and shareholder;
- (c) Ms Shu Ping Wen (“Ping Wen”), Robert’s daughter; and
- (d) Ms Shu Yi Mei, Robert’s daughter.

3 The first respondent, Techkon Pte Ltd (“Techkon”), is primarily engaged in building construction and real estate development. Its key representatives at the material time were its shareholders and directors:

- (a) Mr Goh Chai Hoo George (“Goh”); and
- (b) Mr Ong Pang Sin (“Ong”).

4 The second respondent, Techkon Development (Sembawang) Pte Ltd (“TDSPL”), is a joint venture company between Tuffi and Techkon incorporated on 27 May 2010 to undertake certain real estate development projects. The shareholding of TDSPL was:

- (a) From incorporation until 12 April 2019:
 - (i) Techkon – 51%; and
 - (ii) Tuffi – 49%; and
- (b) From 12 April 2019 onwards:

- (i) Techkon – 70.6%; and
- (ii) Tuffi – 29.4%.

Worthing, Sembawang and Viio Projects

5 After its incorporation, TDSPL initially developed some successful and profitable residential projects (“Worthing and Sembawang Projects”). These projects concluded by February 2019.

6 Towards the end of 2012, the parties embarked on another residential project at 520 Balestier Road (“Viio Project”), together with one Ms Dewi, who invested in the project through Charm Joy Pte Ltd (“Charm Joy”). On 11 January 2013, Techkon Commercial Pte Ltd (“TCPL”) was incorporated for this purpose, with the following shareholding structure:

- (a) TDSPL – 51%; and
- (b) Charm Joy – 49%.

7 It is undisputed that around this time, Tuffi informed Techkon that it could only commit to investing up to a 10% share in the Viio Project. Techkon claims that this caused it great concern, as it was only able to finance the Viio Project up to its own proportion of the shareholding in TDSPL (*ie*, about 25% of the Viio Project). It had expected Tuffi to likewise contribute according to its own shareholding in TDSPL.

8 After some discussion, the parties agreed to make up the shortfall by raising funds through the issuance of preference shares to external investors (“Preference Shares”), which would subsequently be redeemable with interest (“Preference Share Scheme”). These were in effect loans from the preference shareholders (“Preference Shareholders”). From February to August 2013,

TDSPL issued a total of 17 Preference Shares at \$550,000 per share, thereby raising a total of \$9,350,000. Following this issuance, TDSPL's 51% commitment to the Viio Project comprised financial contributions in the following proportions:

- (a) Techkon – 24%;
- (b) Tuffi – 10%; and
- (c) Preference Shares – 17%.

9 Tuffi's position is that, at this time, Techkon had agreed that their respective investment proportions in the Viio Project would be 10:24, which is mathematically equivalent to 15:36 or 29.4%:70.6% ("15:36 Ratio"). Tuffi also claims that it was agreed that the loan interest payments ("Preference Share Expenses") would be borne by Tuffi and Techkon in the 15:36 Ratio.

10 Techkon's position is that neither at this juncture, nor prior to the 2019 Agreement (as defined below at [22]), did the parties discuss how the 17% shareholding in TDSPL allocated to the Preference Share Scheme would be distributed to the parties in TDSPL. In the proceedings below, the Judge agreed with Techkon and found that there was no agreement relating to the 15:36 Ratio prior to the 2019 Agreement (Judgment at [39]).

11 Regardless, it is undisputed that, between 2014 and 2016, whenever funds raised from the Preference Share Scheme were insufficient to meet the cash calls required in the Viio Project, Tuffi and Techkon would top up cash in accordance with their existing funding proportions, *ie*, according to the 15:36 Ratio.

The 2019 Agreement

12 As mentioned above, the Worthing and Sembawang Projects concluded by February 2019.

13 Around this time, the Viio Project was ongoing but nearing completion, and it was ultimately loss-making. Over the course of 2018 and early 2019, the parties discussed the balancing of their respective shareholdings in TDSPL (accounting for the profit, loss and expenses incurred thus far) to reflect their investments in the Viio Project.

14 On 9 January 2019, Ping Wen sent an email on behalf of Robert to Kelly Teo (“Kelly”), Techkon’s accounts manager, proposing the following:

Sembawang Accounting

A) Operation on Semi D and Bungalow profit to be shared 49%/51%

B) Preferential share losses total: 29.4% / 70.6%

C) Investment monies sent by Sembawang to Viio (Excluding preferential share under B) (10 shares vs 25 shares or 28.6% vs 71.4%)

D) To calculate how much is owing to SS/RS from Ong/George

15 From Tuffi’s perspective, this balancing exercise was necessary because TDSPL had channelled profits earned from the Worthing and Sembawang Projects directly into TCPL. It was thus necessary to ensure that the parties’ respective returns from TDSPL reflected their differing interests in the Worthing and Sembawang Projects (*ie*, 49:51), and the Viio Project (*ie*, the 15:36 Ratio).

16 According to Tuffi, in February 2019, the parties orally agreed to balance their respective investments in TDSPL and TCPL according to the following formula:

- (a) TDSPL would repay Tuffi and Techkon their respective shareholder loans made to TDSPL.
- (b) TDSPL would distribute the profits from the Worthing and Sembawang Projects to Tuffi and Techkon in a 49:51 ratio.
- (c) Preference Share Expenses would be borne by Tuffi and Techkon in the 15:36 Ratio.
- (d) TDSPL's share of accumulated losses in TCPL as of 30 June 2018 would also be borne by Tuffi and Techkon in the 15:36 Ratio.
- (e) TDSPL's share of any "net asset balance" (*ie*, outstanding shareholder loans in TCPL as of 30 June 2018, less the accumulated losses), would also be distributed between Tuffi and Techkon in the 15:36 Ratio.

17 Additionally, Techkon agreed to purchase 19.6% of the shareholding in TDSPL from Tuffi for \$196,000. This brought the respective shareholdings of Tuffi and Techkon to 29.4% and 70.6% respectively (*ie*, equivalent to the 15:36 Ratio). The share transfer was effected in April 2019. This aspect of the agreement is not disputed between the parties.

18 On 19 February 2019, Ping Wen sent an email on behalf of Robert to Kelly, which stated as follows:

RE: Balancing shareholding at Sembawang/Viio

1. Attached is the calculations we had provided.
2. Please check and agree, so that we can carry out the transfer of shareholding.
3. The money issue can be discussed separately between ourselves.

19 Attached to the email was a draft of a document titled “Techkon Sembawang and Commercial Investment Analysis – Based on 30/06/2018 Audited Accounts”, as well as extracts of TDSPL’s and TCPL’s financial statements. This was a one-page document containing a set of calculations dated 14 February 2019 (“2019 Calculations”). We reproduce the full document below:

**Techkon Sembawang and Commercial Investment Analysis
– Based on 30/06/2018 Audited Accounts**

A1 Capital Paid Up in Sembawang (\$1 million)

- | | |
|-------------------|--------------|
| 1. Tuffi (49%): | \$490,000.00 |
| 2. Techkon (51%): | \$510,000.00 |

A2 Sembawang Profit

Profit: \$608,439.00 (After Tax)

Tuffi (49%)	:	\$298,135.11
Techkon (51%):		\$310,303.89

A3 Preference Losses in Sembawang Accounts

Preference share loss (interest): (FY2013: \$750k, FY2014: \$100k, FY2018: \$240,884) = (\$1,090,884)

Tuffi – 15 share in Viio:	(\$320,848.23)
Techkon – 36 share in Viio:	(\$770,035.76)

B Viio (Loss)

Viio Losses as at 30/06/2018: (\$25,876,060)

1. Tuffi Loss 15% of (\$25,876,060) : (\$3,881,409)
 2. Techkon Loss 36% of (\$25,876,060): (\$9,315,381.60)
-

C Viio Net Asset 30 June 2018

Shareholders' loan payable in Viio:	\$52,522,781
Accumulated losses in Viio:	<u>(\$25,876,060)</u>
Net Asset balance:	<u>\$26,646,721</u>
Tuffi 15% net asset:	\$3,997,008.15
Techkon 36% net asset:	\$9,592,819.56

D Summary of Tuffi balance in Viio

1. Tuffi Cash Investment:	\$8,623,560.00
2. Tuffi Profit at Sembawang (49%):	\$ 298,135.11
3. Tuffi Loss of Pref Interest in Sembawang:	(\$ 320,848.23)
4. Tuffi Losses of 15% at Viio:	(\$3,881,409.00)
5. Tuffi 15% of net asset at Viio (See C):	<u>(\$3,997,008.15)</u>
Tuffi Balance	<u>\$ 722,429.73</u>

E Proposal to balance shareholding in Sembawang to reflect actual shareholding of Viio

1. Shareholding in Viio: Tuffi – 15% : Techkon – 36%
 2. Translate to reflect shareholding at Sembawang: Tuffi 29.4% vs Techkon 70.6%

New Tuffi shareholding in Sembawang to reduce from 49% (\$490,000) to 29.4% (\$294,000)

New Techkon shareholding in Sembawang to increase from 51% (\$510,000) to 70.6% (\$706,000)
-

F Final Payment due to Tuffi

Techkon to pay Tuffi: \$722,429.73 + \$196,000 for capital
 (\$490k - \$294k) = **\$918,429.73**

Agreed By:

[Signature] [Signature] [Signature] [Signature]

Sunny Shu Robert Shu Ong Pang Sin Goh Chai Hoo

Sign & Date Sign & Date Sign & Date Sign & Date

20 The 2019 Calculations outlined the following:

(a) First, Items A1 to D set out certain calculations, which are consistent with the formula that Tuffi claims was orally agreed. This produced a sum of \$722,429.73 due from Techkon to Tuffi. This is the sum in dispute in the present case.

(b) Second, Item E outlined Tuffi's proposal for Techkon to purchase 19.6% of its shareholding in TDSPL for \$196,000. As mentioned above, this sum is not in dispute in this case.

(c) In total, as outlined in Item F, Techkon was to pay Tuffi \$722,429.73 + \$196,000 = \$918,429.73 ("Final Sum").

21 According to Techkon, there was no prior oral agreement. The draft 2019 Calculations was the first time Techkon learned of Tuffi's proposal to distribute the 17% shareholding funded by the Preference Share Scheme in the 15:36 Ratio (*ie*, 5:12). Goh and Ong found the terms of the 2019 Calculations unfavourable, including the allocation of Preference Share Expenses, which they believed should be allocated in the 49:51 ratio. Nevertheless, Techkon claims that its central concern was the Final Sum of \$918,429.73 that it was required to pay. As Techkon could afford this sum, and they did not want to sour the relationship, Goh and Ong ultimately signed the 2019 Calculations.

22 The 2019 Calculations were signed at a meeting between Goh, Ong, Robert and Sunny on 25 February 2019. We term the agreement between the parties as reflected in the 2019 Calculations the “2019 Agreement”. It is undisputed that, pursuant to the 2019 Agreement, Techkon agreed to pay Tuffi a certain sum. The crux of the dispute is whether the agreement was for Techkon to pay Tuffi a fixed sum of \$918,429.73, as Techkon maintains, or whether the sum agreed upon was subject to adjustment, such as in the case of a calculation error, as Tuffi contends.

Post-2019 Agreement discussions and the Calculation Mistake

23 In January 2021, on Techkon’s initiative, the parties discussed the possible recalculation of the sum of \$722,429.73, on the basis of certain updated figures. These discussions are discussed more fully at [54]–[63] below.

24 In the course of these discussions, Tuffi discovered that the Preference Share Expenses had been double-counted. It was reflected in Item A3, but had also already been taken into account in deriving the figure of \$608,439.00 in Item A2 of the 2019 Calculations (“Calculation Mistake”). If not for the Calculation Mistake, the 2019 Calculations should have reflected a sum of \$1,256,962.89 instead of \$722,429.73 payable to Tuffi under Item D. Tuffi’s claim in these proceedings is for the difference of \$534,533.16 allegedly owed to it.

25 Techkon denies Tuffi’s claim. In the proceedings below, Techkon did not accept that the 2019 Calculations contained the Calculation Mistake. However, at the hearing before us, counsel for Techkon, Mr Rajan Sanjiv Kumar (“Mr Rajan”), made clear that Techkon did not dispute that the Calculation Mistake was made. Techkon’s case is that any such mistake is irrelevant, because the 2019 Agreement was simply for Techkon to pay Tuffi

the Final Sum. It has made full payment of this sum, resulting in total performance of the 2019 Agreement.

Decision below

26 The Judge dismissed Tuffi's claim entirely, finding as follows:

- (a) There was no oral agreement for Tuffi and Techkon to invest in the Viio Project in the 15:36 Ratio prior to the 2019 Agreement (Judgment at [39]).
- (b) The 2019 Agreement was an agreement for payment of a final sum of \$918,429.73 as recorded at Item F of the 2019 Calculations (Judgment at [53]).
- (c) There was no implied term allowing for an adjustment due to calculation errors (Judgment at [57]).
- (d) There was no common mistake at law or in equity, as Tuffi was at fault for the Calculation Mistake (Judgment at [60]–[63]).

Parties' cases on appeal

27 In this appeal, Tuffi challenges each of these findings. Tuffi submits that:

- (a) The 15:36 Ratio in the Viio Project was in place prior to and during the 2019 Agreement.
- (b) The 2019 Agreement was an agreement as to a formula by which the amount to be paid by Techkon to Tuffi was to be calculated, and not an agreement for a fixed sum.

(c) Alternatively, in the event that the court views the 2019 Agreement as being for a fixed sum, an implied term that any calculation errors would be adjusted should be read into the agreement.

(d) As a second alternative, the court should find that there was a common mistake, at law or in equity, and order the rectification of the contract.

28 Techkon submits that:

(a) The only agreement between the parties is the 2019 Agreement.

(b) The 2019 Agreement was for a fixed sum, not a formula.

(c) There was no implied term in the 2019 Agreement allowing for an adjustment due to calculation errors.

(d) Tuffi was at fault for the Calculation Mistake, and thus the 2019 Agreement is not void or voidable for common mistake, whether at law or in equity, and should not be rectified.

29 TDSPL's submissions in this appeal essentially echo Techkon's submissions, albeit in shorter compass. At the trial below, TDSPL's defence was that it was not party to the 2019 Agreement and was not involved in any discussion relating to the 2019 Calculations (Judgment at [20]). The Judge rejected this defence, finding that TDSPL was a party to the 2019 Agreement and that he would have found both Techkon and TDSPL liable if Tuffi had proven its claim (Judgment at [69], [70]). In its Respondent's Case that TDSPL filed for this appeal, it did not challenge this finding. Instead, like Techkon, it relies on the Judge's other findings dismissing Tuffi's substantive claim. Nevertheless, if this court allows the appeal and finds Techkon liable, the

question arises whether TDSPL should also be held liable under the 2019 Agreement. At the hearing before us, counsel for TDSPL confirmed that TDSPL was taking the position that it was not party to the 2019 Agreement. We address this issue after considering the central dispute concerning the content of the agreement itself.

Issues to be determined

30 In our view, the relevant issues to be determined are as follows:

- (a) first, whether there was any agreement between the parties that their respective contributions in the Viio Project would be in the 15:36 Ratio, prior to the 2019 Agreement;
- (b) second, whether, on a proper interpretation, the 2019 Agreement was for Techkon to pay the Final Sum which could not be adjusted for errors;
- (c) third, in the event that the Final Sum could be adjusted for errors, whether Tuffi can obtain rectification of the 2019 Agreement;
- (d) fourth, and in the alternative, whether there was an implied term that the Final Sum could be adjusted in the event of a calculation error; and
- (e) fifth, whether TDSPL was party to the 2019 Agreement.

31 We address each issue in turn.

Whether there was any prior agreement on the 15:36 Ratio

The parties' submissions

32 Tuffi submits that as early as 2014, or at the very latest by the time of the 2019 Agreement, there was a prior agreement between the parties that their respective contributions in the Viio Project would be in the 15:36 Ratio. Tuffi relies on certain contemporaneous emails and financial documents from 2014 to 2016, as well as contemporaneous documents relating to the 2019 Agreement.

33 Techkon denies the existence of any such prior agreement. It submits that none of the correspondence from 2014 to 2016 makes any reference to the 15:36 Ratio or any agreement in relation to the same. The 2019 correspondence does not make any reference to the 15:36 Ratio either. Neither did Ong or Goh concede at trial that the 15:36 Ratio existed prior to the 2019 Agreement.

There was no prior agreement on the 15:36 Ratio

34 If Tuffi can demonstrate that there was an agreement prior to the 2019 Calculations that Tuffi and Techkon were to share the profits or losses in the Viio Project in the 15:36 Ratio, that will support the conclusion that Techkon was not agreeing to payment of a fixed sum of \$918,429.73 mainly because they wanted to resolve the issue of the apportionment of TDSPL's losses.

35 In our judgment, the Judge was correct to find that there was no such prior agreement for the parties' contributions to the Viio Project (Judgment at [39]). The documents from 2014 to 2016 do not prove the existence of any agreement between the parties to allocate their financial contributions in the Viio Project in the 15:36 Ratio.

36 However, even if there was no prior agreement as such, it is clear that there was no dispute over the apportionment of Tuffi's and Techkon's financial contributions in a 15:36 Ratio. The documentary record clearly shows that the parties regularly made contributions relating to the Preference Share Scheme in that ratio, such as when there was a shortfall in contributions from the Preference Shareholders. Indeed, Techkon concedes that this was the practice over several cash calls from 2014 to 2016. The documents relating to these cash calls were prepared by Techkon itself.

37 The absence of any prior agreement is also not in itself fatal to Tuffi's case. It is clear that the parties agreed to the 15:36 Ratio when the 2019 Calculations were signed off on 25 February 2019. The question is what the substance of the agreement was at that time, an issue we now turn to.

The proper interpretation of the 2019 Agreement

The parties' submissions

38 Tuffi submits that:

- (a) The agreement between the parties could not have been for a fixed quantum as reflected at the end of Item F. No weight should be given to the absence of a line between Item F and the parties' signatures – a point not raised by either party but mentioned by the Judge. The final amount stated in the 2019 Calculations is on the face of the document derived from the formula set out above at Items A to D.
- (b) Techkon's Ong had testified that the agreed formula with Robert was a reference to Item D.

(c) The relevant context, including the parties' pre-contractual discussions and post-contractual conduct, shows that the parties had agreed for repayment to be based on an applicable formula, rather than a fixed sum.

39 Techkon submits that:

(a) On a plain reading of the 2019 Calculations, the agreement between the parties clearly relates to Item F (*ie*, payment of the Final Sum).

(b) The parties' pre-contractual conduct is silent as to whether the parties intended to contract on the basis of a formula or a fixed sum.

(c) Likewise, the parties' post-contractual conduct is at best ambiguous as to whether the parties had agreed to a formula or a fixed sum.

40 TDSPL's brief submissions are similar to and do not substantially add to Techkon's submissions on this issue.

The applicable law

41 The principles applicable to the interpretation of contracts were briefly restated by the Court of Appeal in *CIFG Special Assets Capital I Ltd v Ong Puay Koon* [2018] 1 SLR 170 at [19] as follows:

(a) The starting point is that one looks to the text that the parties have used.

(b) It is permissible to have regard to the relevant context as long as the relevant contextual points are clear, obvious and known to both parties.

(c) The reason the court has regard to the relevant context is that it places the court in the best position to ascertain the parties' objective intentions by interpreting the expressions used by them in their proper context (see *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 ("*Sembcorp Marine*") at [72]).

(d) In general, the meaning ascribed to the terms of the contract must be one which the expressions used by the parties can reasonably bear.

The 2019 Agreement was not only for payment in accordance with a formula, or only for payment of a fixed quantum

42 Tuffi's case is that the 2019 Agreement is for an applicable formula, and there was no agreement whatsoever for a fixed quantum. Thus, it asks that the court enforces the formula and recalculates the Final Sum in accordance with that formula. On Tuffi's case, the Final Sum of \$918,429.73, as recorded in the 2019 Calculations, effectively has no legal significance in itself. The court should simply order that Techkon pay Tuffi the amount as correctly calculated based on the formula.

43 Conversely, Techkon's case is that its agreement to pay the Final Sum of \$918,429.73 is the *only* agreement between the parties. The Final Sum was fixed and could not be adjusted in accordance with the formula, regardless of whether there was any mistake in the calculation of the Final Sum. It would also follow that there is no scope for the Final Sum to be corrected judicially by way of rectification. This is because there would not have been a common continuing intention between the parties that the Final Sum was to be calculated on the

basis that the parties were rebalancing their shares in the Viio Project according to the 15:36 Ratio. On Techkon's case, the calculations are essentially irrelevant, because the only agreement was for Techkon to pay Tuffi the Final Sum of \$918,429.73.

44 In our judgment, neither party's case is entirely correct. We disagree with Techkon that the 2019 Agreement was *only* an agreement to pay the Final Sum of \$918,429.73. In our view, the calculations by which the Final Sum was derived, as reflected in the 2019 Calculations, formed part of the parties' agreement as well. Conversely, however, we disagree with Tuffi's approach of treating the 2019 Agreement as only an agreement to pay a certain sum in accordance with a formula. The parties calculated that the Final Sum was \$918,429.73, and this is also recorded in the 2019 Calculations. In this case, the Final Sum turned out to be inconsistent with the basis on which that sum was to be calculated, because of the Calculation Mistake. Nevertheless, the 2019 Calculations do state that Techkon is to pay Tuffi the Final Sum of \$918,429.73. In our view, the Final Sum cannot be corrected by way of interpretation, and can only be corrected, if at all, with recourse to rectification. We elaborate as follows. First, we explain why, on a proper interpretation, the 2019 Agreement not only encompasses an agreement to pay the Final Sum or treat that sum as fixed, but also includes agreement as to the calculations leading to the Final Sum (see [45]–[64] below). Next, we explain why it is not possible to correct the Final Sum by way of interpretation, which Tuffi in effect seeks (see [65] below). Finally, we turn to the issue of rectification and explain why the proper approach is to rectify the Final Sum (see [76]–[79] below).

The 2019 Calculations

45 The starting point for our analysis is the text of the 2019 Calculations (as reproduced at [19] above). Considering this document, the Judge below found that Items A through E were all geared towards calculating the final amount to be paid in Item F. Further, each item of the 2019 Calculations was separated by solid lines, but there was no solid line between Item F and the signatures of the parties' representatives, giving the impression that the parties were only agreeing as to Item F, and not the items preceding it. The Judge thus considered that it was more likely than not that the 2019 Agreement related only to the fixed sum stated at Item F, and not a formula, although the Judge did not consider the document conclusive in itself (Judgment at [45]).

46 With respect, we are unable to agree with the inferences the Judge drew in interpreting the 2019 Calculations.

47 In our view, the Judge erred in relying on what he understood to be the “flow” of the 2019 Calculations and the importance of the absence of a line between Item F and the signatures. The absence of a line between Item F and the signatures is neither here nor there. To begin with, Item F itself contains a calculation: “\$722,429.73 + \$196,000 for capital (\$490k - \$294k) = \$918,429.73”. If the absence of a line after Item F indicates that “parties are only agreeing as to Item F, and not the items preceding it” (Judgment at [45]), that raises the question of whether calculation errors contained *within* Item F itself would be open to correction. If they are, then the absent line does not support Techkon's position, which is that the parties agreed to a fixed sum that is not open to correction *at all*. Moreover, we note that subsequent drafts of proposed amendments to the 2019 Calculations prepared by Techkon (further discussed at [56] below) did not contain any solid lines except a single

line between Items A1–A3 and Items B–F. There was clearly no special significance to those solid lines.

48 Indeed, at the hearing before us, Mr Rajan rightly accepted that if there was a typographical error in the calculations leading to the final figure, Techkon could not claim that the final figure was nevertheless what was agreed upon. Likewise, if there had been a mistake in the arithmetic (*eg*, the component sums had been mistakenly subtracted from each other, instead of added together), Techkon could not insist that the final figure was the agreed sum.

49 Mr Rajan sought to distinguish such errors as being apparent on the face of the 2019 Calculations, as opposed to the Calculation Mistake, which was not. However, that does not assist Techkon’s case, which is that the 2019 Agreement was for payment of a fixed sum that is not open to adjustment at all. If the Final Sum is open to adjustment in the case of a calculation error, it is difficult to see why it should make a difference whether the error is apparent on the face of the document or not.

50 In any event, the Final Sum was obviously based on the calculations above Item F. Moreover, these calculations were set out in the same document which the parties signed. In our judgment, the 2019 Agreement includes agreement as to the calculations and not just the Final Sum alone to the exclusion of the calculations. This accords with the commercial purpose of the agreement, which was to rebalance Tuffi’s and Techkon’s financial contributions and losses, as well as their shareholdings in TDSPL, to reflect the 15:36 Ratio in their respective shares of the Viio Project.

51 Although Goh and Ong now aver in these proceedings that they did not think the rebalancing to the 15:36 Ratio was fair or beneficial to Techkon, they

accepted that they agreed to it anyway. They gave various reasons for this. For instance, they thought that Techkon could afford the Final Sum, they did not want to sour the relationship with Robert and Sunny, and by taking an increased stake in the Viio Project, Techkon might be able to benefit from any increase in the price of the unsold units.

52 Whatever Goh's and Ong's subjective reasons for acceding to the 2019 Agreement might have been, we do not think they change the earlier analysis. First, it is the objectively ascertained intentions of the parties that are relevant, not their subjective intentions: *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 ("*Yap Son On*") at [30]. Second, the evidence does not clearly demonstrate that Techkon would not have agreed to the Final Sum if the calculations had resulted in a higher sum than as stated (*eg*, by adding on the \$534,533.16 now in dispute). Mr Rajan pointed to the fact that Techkon had liquidity issues and needed to pay in instalments, but this does not necessarily mean that Techkon would not have agreed to a sum higher than the Final Sum. Third, if Techkon stood to gain from a larger share in the Viio Project in the event of any upturn, it is only logical that it would bear its share of any losses in the same proportion. It was thus consistent for its losses to be calculated according to the 15:36 Ratio, rather than based on a fixed sum.

53 In our view, the Judge also erred in reasoning that even if there was double-counting to Tuffi's commercial disadvantage, the court is not concerned with bad bargains entered into by contractual parties (Judgment at [54]). While it is true that the court will not rescue parties from a bad bargain, this scenario is not engaged in this case. There was no negotiation between the parties over whether the 15:36 Ratio or some other ratio was more appropriate, nor was it Techkon's case that there had been a bargaining process or any form of compromise based on different negotiating positions. The parties were merely

reaching an agreement on the Final Sum as calculated based on a certain presumed ratio, which was agreed and not disputed in the course of negotiations between the parties. There was also no bargain or negotiation over the intended final sum itself. This is not a case where the parties had disagreed over the intended final sum, but ultimately agreed to a compromise figure as a way to resolve the matter and avoid prolonging the dispute. It is also not a case where Tuffi voluntarily accepted a bad bargain, from which it is now trying to extricate itself. The parties had simply made a mistake in their calculations, which could just as easily have been to Techkon's detriment.

January 2021 communications

54 Turning to the parties' post-contractual conduct, we note at the outset that whether evidence of such conduct may be admissible for the purpose of contractual interpretation remains an open question. However, any such evidence must satisfy the tripartite requirements of relevancy, reasonable availability and clear and obvious context (*Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corrina* [2016] 2 SLR 1083 at [56]). Thus, it has been observed that while there is no absolute prohibition against evidence of subsequent conduct in interpreting a contract, such evidence is likely to be inadmissible because it does not elucidate the parties' objective intentions or relate to a clear and obvious context. Such evidence has also been considered unprofitable for the purpose of discerning the parties' intentions at the time of entering into the contract because such evidence can, with the benefit of hindsight, be shaped to suit each party's position (*Simpson Marine (SEA) Pte Ltd v Jiapiro Jiaravanon* [2019] 1 SLR 696 at [78]). In the present case, since the Judge and the parties addressed the significance of the subsequent WhatsApp messages and email correspondence between the parties in January 2021, we have considered them as well. In our view, if these

communications in January 2021 are admissible evidence, they also support the view that the 2019 Agreement did not only encompass agreement as to the Final Sum, but also the calculations leading to that sum. The evidence is probative in this case because Techkon's own conduct at that time *contradicts* its position now; this is not a case where a party's post-contractual conduct may have been tailored to support its preferred interpretation.

55 On 22 January 2021, Ong initiated the following exchange on WhatsApp with Ping Wen:

Mr Ong: **We may need to recalculate the viio net asset based on the final losses** to reflect the final asset balance to rebalanced the shareholding in techkon sembawang. **The previous calculations was based on estimate losses in 2018 account.** Shall we have a discussion next week ?

Ping Wen: Hi, i do not understand what do you mean by rebalance the shareholding

that breakdown is done base done 2018 when there is a transfer of shares. As there is no more transfer of shares, I do not understand why we need to do that again?

Mr Ong: **We are basing on the same formula for adjustment as agreed with Robert previously [sic] to do a final adjustment upon conclusion of the project.**

Transfer of share and valuation are 2 separate matters and in 2018, Robert spearheaded the transfer of shares to tally with viio holding. **The valuation then was an estimated value for reference and subject to final value.**

Ping Wen: Can u ask Kelly redo and tabulate for me to see?

I don't have the figures

Thanks

[emphasis added in bold]

56 On 25 January 2021, Kelly followed up by emailing Ping Wen an updated document containing Techkon’s proposed amended calculations (“25 Jan 2021 Calculation”). On 26 January 2021, Kelly emailed Ping Wen another updated file containing further amended calculations (“26 Jan 2021 Calculation”). These amended calculations replaced certain figures in the 2019 Calculations with updated figures, but otherwise replicated the form and structure of the 2019 Calculations and used the same formula. The net effect of these amended calculations was that Techkon proposed to reduce the Final Sum it was to have paid Tuffi from \$918,429.73 to \$300,780.85. This was derived from a reduction in the “Tuffi balance” amount at the end of Item D from \$722,429.73 to \$104,780.85.

57 Tuffi responded to Techkon’s proposals by requesting further information, and proposing its own amendments to the calculations. There was no suggestion on Tuffi’s part that the parties had agreed to the payment of a fixed sum and therefore that Techkon had no basis for seeking an updated calculation based on the same formula used previously.

58 In our view, the messages and correspondence between the parties clearly indicate that the parties were prepared to revisit the figures and calculations if there was justification for doing so. This necessarily implies that the parties contemplated arriving at a figure different from the Final Sum if recalculations were warranted. This militates against the Judge’s finding that a fixed sum had been agreed upon, and that calculations leading to that sum could not be corrected even if they were wrong.

59 The Judge found that the messages did not elucidate the parties’ objective intentions or relate to a clear and obvious context (Judgment at [50]–

[52]). Techkon and TDSPL make submissions to similar effect. With respect, however, we are unable to agree with this finding.

60 First, it is clear that Techkon was seeking to recalculate the Final Sum that it owed to Tuffi. Even if this was not clear from Ong’s messages, as the Judge suggested (Judgment at [51]), it is clear from the 25 Jan 2021 and 26 Jan 2021 Calculations that Techkon had sought to adjust the Final Sum from \$918,429.73 to \$300,780.85. This would only be possible if the Final Sum was not fixed and immutable, as Techkon now claims it was. Thus, it also does not assist Techkon to claim that it was merely offering “recalculations” to assist Tuffi with its internal accounting. The fact is that Techkon itself had treated the Final Sum as open to recalculation.

61 Second, we reject the contention that the January 2021 communications only reflected Ong’s personal belief and not the parties’ objective intentions. In our judgment, the parties’ conduct does “go towards proof of what the parties, from an objective viewpoint, ultimately agreed upon” (*Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 (“*Zurich Insurance*”) at [132(d)]). The law disregards the parties’ real or subjective intentions in favour of what the reasonable person would understand based on what the parties expressed (*Zurich Insurance* at [126]). However, in this case, the WhatsApp messages and emails, including the proposed recalculations contained therein, express both parties’ objective intentions that the Final Sum was open to adjustment.

62 Third, the fact that any adjusted sum would in any event be subject to agreement between the parties does not imply that the earlier agreement was for a fixed sum. It is logical that even where parties accept that an adjustment is possible, the fact and the extent of the adjustment will still have to be agreed.

63 In sum, Techkon’s previous attempt to recalculate the Final Sum militates against its present position that the Final Sum was not open to such recalculation. The January 2021 communications between the parties are thus clear and obvious context supporting the view that the 2019 Agreement was not only as to the Final Sum, and that the Final Sum was not intended to be fixed and immutable.

64 To be clear, Techkon’s previous attempt to recalculate the Final Sum merely reinforces the view we have already reached. Even if we were to place no weight on that attempt, it is our view that the 2019 Agreement did not only pertain to the Final Sum, and that the Final Sum was not intended to be fixed and immutable.

65 For the above reasons, we reject Techkon’s case that the agreement to pay the Final Sum is the only agreement between the parties. However, this is not dispositive of the matter, as it does not necessarily mean that we accept Tuffi’s case that we should simply enforce the formula in the 2019 Calculations and recalculate the Final Sum in accordance with that formula. When interpreting a contract, the meaning ascribed to the term must be one which the expressions used by the parties can reasonably bear. While the court is entitled to depart from the plain and ordinary meaning of the expression used, there is a limit to what the court can legitimately do in the name of interpretation (*Yap Son On* at [31]). Where the court seeks to reject the actual words used by the parties altogether, the alternative of rectification exists and may be the more appropriate remedy (*Yap Son On* at [40]). In the present case, Item F of the 2019 Calculations states “**Techkon to pay Tuffi: \$722,429.73 + \$196,000 ... = \$918,429.73”.** Tuffi is in effect asking that the court reads this instead as “**Techkon to pay Tuffi: \$1,256,962.89 + \$196,000 ... = \$1,452,962.89”** [emphasis in underline]. In our judgment, this crosses the line from

interpretation to variation of the contract. Thus, the appropriate relief that Tuffi seeks lies elsewhere, in the form of rectification. We turn now to consider whether Tuffi can obtain an order for rectification of the 2019 Agreement.

Whether Tuffi can obtain rectification of the 2019 Agreement

The decision below and parties' submissions

66 The Judge rejected Tuffi's claim of common mistake, on the ground that Tuffi was at fault for the Calculation Mistake. The Judge relied on Robert's admission to that effect, and also on Robert's assurances to Goh and Ong at the time of contracting that the figures were accurate (Judgment at [60]). The Judge also found that it was within Tuffi's power to avoid the Calculation Mistake by reviewing the relevant financial statements of TDSPL and TCPL carefully before preparing the calculations (Judgment at [61]). The Judge gave no weight to Tuffi's argument that the financial accounts were complicated for laypersons to understand, noting that Tuffi could have hired accountants to review the 2019 Calculations (Judgment at [62]).

67 Techkon and TDSPL largely rely on the Judge's reasoning.

68 Tuffi submits that the Judge erred in finding that the fault lay at Tuffi's feet alone. Both parties were unaware of the mistake, and Tuffi had asked Techkon to "check and agree" to the 2019 Calculations. The parties' expert witnesses also testified that the Calculation Mistake would not have been obvious to laypersons. It is unrealistic to expect commercial parties to hire accountants in such situations – Techkon did not do so either. Tuffi thus seeks rectification of the agreement to take into account the Calculation Mistake.

The pleadings

69 Although Tuffi did not specifically seek rectification of the 2019 Calculations in its pleadings, this is not fatal to its claim. The remedy of equitable rectification might be available even if it is not pleaded (*Yap Son On* at [68]). The basis for seeking rectification was pleaded, *ie*, a mistake. Rectification is merely the relief sought and this would have been obvious to the respondents. Indeed, they do not suggest any prejudice in Tuffi seeking such a relief if Tuffi establishes the basis for it.

The applicable law

70 Before considering whether the 2019 Agreement should be open to rectification, we first consider the applicable legal principles.

71 We begin by highlighting the conceptual difference between the processes of rectification and interpretation. This distinction was explained by the Court of Appeal in *Yap Son On* at [61]. The equitable doctrine of rectification refers to the reconstruction or amendment of a document where there is a mismatch between the parties' agreement and the instrument which purports to record it. This may be contrasted with what is known as "common law rectification", which is simply the use of the process of contractual interpretation to remedy obvious drafting errors. It has been said that this is not substantively rectification in so far as the document itself is not amended but interpreted (*The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd ed, 2022) at para 10.305) ("*The Law of Contract in Singapore*").

72 The parties before us had proceeded on the basis that the applicable principles were those set out in *Olivine Capital Pte Ltd v Chia Chin Yan*

[2014] 2 SLR 1371 at [67], which quoted the following summary from *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at para 10.090:

(v) Summary

In summary, therefore, the application of the doctrine of common mistake at common law may be approached by applying the following steps: firstly, the two preconditions; and secondly, two requirements (bearing in mind throughout the two general principles which constitute the background against which the aforementioned preconditions and requirements are applied). These may be summarised as such:

(a) The **general principles**, which are to be considered as part of the background, are as follows:

(i) The First General Principle is that the law has as its paramount policy concern the sanctity of contracts. It will seek to uphold them, rather than destroy them.

(ii) Thus, according to the Second General Principle, the doctrine of mistake caters (in a more specific vein) only to unexpected and wholly exceptional circumstances.

(b) Before one considers how the doctrine of common mistake at common law is to be applied, the following **preconditions** must be met:

(i) The First Precondition is that there must have been no allocation of risk to either party of the consequences occasioned by the mistake.

(ii) The Second Precondition is that the mistake concerned must also not be attributable to the fault of either party.

(c) The **requirements** of the test to determine if common mistake operates to void the contract at common law are as follows:

(i) The First Requirement is that the mistake must be shared by both parties and relate to facts or law before the contract was concluded.

(ii) The Second Requirement is that the mistake must render the subject matter of the contract fundamentally different from the subject matter which the parties contracted on as constituting the basis of their contract.

[emphasis in original]

73 However, in our judgment, these requirements, which relate to the establishment of the defence of common mistake, cannot be mechanistically applied to a claim for rectification, such as the present one. The defence of common mistake is generally raised to *avoid* a contract. Common mistake at common law, if successfully established, renders the contract *void*; common mistake in equity, if successfully established, renders the contract *voidable* (*The Law of Contract in Singapore* at para 10.148). In the present case, however, Tuffi is seeking to rectify the 2019 Agreement. To succeed in a claim for rectification on the basis of “common mistake”, the claimant must show the following (*Yap Son On* at [65] and [67]):

- (a) the parties had a common continuing intention, whether or not amounting to an agreement, in respect of a particular matter in the instrument to be rectified;
- (b) there was an outward expression of accord;
- (c) the intention continued at the time of the execution of the instrument sought to be rectified; and
- (d) by mistake, the instrument did not reflect that common intention.

74 Even though the defence of common mistake at common law and a claim for “common mistake” rectification are closely related, they should not be conflated. In the former case, the justification for the claim is that the parties had reached an agreement on the basis of an assumption that was so fundamentally mistaken that it nullifies the consent of the parties (see *Bell v Lever Brothers Ltd* [1932] AC 161 at 217; Edwin Peel, *Treitel on the Law of Contract* (Sweet & Maxwell, 16th ed, 2025) at para 8-001; *The Law of Contract in Singapore* at paras 10.009 and 10.033).

75 In cases of “common mistake” rectification, by contrast, the court is not rectifying a mistake in the transaction itself, but in the way the transaction has been expressed in writing (*Peter Edward Nathan v De Silva Petiyaga Arther Bernard* [2016] 3 SLR 361 at [27]). The process of rectification seeks to give effect to the parties’ intentions, rather than to nullify them (*The Law of Contract in Singapore* at para 10.311). The appropriate principles to apply in such cases are those set out by the Court of Appeal in *Yap Son On* at [67] (see [73] above). We turn to apply these principles to the present case.

Rectification should be ordered

76 In the present case, we do not think it is possible to remedy the Calculation Mistake without recourse to “common mistake” rectification. Interpretation of the 2019 Agreement in its proper context, as we have explained above, would only establish that the Final Sum is capable of being adjusted in the event of any calculation errors. This is critical to our analysis. However, having regard to the observations of the Court of Appeal in *Yap Son On* at [61] (see [71] above), we are unable to say that there is any obvious drafting error or obvious typographical error within the 2019 Agreement which is liable to be corrected through “common law rectification” or contractual interpretation. For this reason, we adopt a different approach from how Tuffi had put forward its submissions in this appeal. In our view, rectification rather than interpretation is the correct basis for adjustment of the Final Sum.

77 It will be evident from our analysis above that, in our judgment, Tuffi and Techkon had a common continuing intention that their financial contributions and losses would be rebalanced in accordance with the 15:36 Ratio of their shares in the Viio Project, and that this was outwardly expressed in the communications leading up to the 2019 Calculations and in the

2019 Calculations itself (see [13]–[14] and [17]–[21] above). By virtue of the Calculation Mistake, however, the Final Sum did not accurately reflect the amount that Techkon had to pay Tuffi to effect this rebalancing.

78 In our view, “common mistake” rectification should be applied to afford Tuffi the appropriate remedy it seeks. It is clear that the Preference Share Expenses should not be double-counted in computing the sum which Techkon owed Tuffi. The 2019 Calculations included double-counting of the Preference Share Expenses, but this did not reflect the true agreement between the parties, resulting in the incorrect Final Sum. This demonstrates a clear mismatch between the parties’ agreement, as reflected in their common continuing intention, and the record of the Final Sum. Additionally, the January 2021 communications lend further support to the view that the Final Sum could be adjusted in accordance with the formula utilised by the parties in their initial calculations (see [55]–[64] above). In an action for rectification, all relevant evidence can be considered (*Yap Son On* at [64]). To be clear, we do not purport to lay down any rule or principle of law that whenever a contract contains calculations leading to a final figure, errors in the calculation will entitle a party to seek rectification of the contract. The requirements for rectification (see [73] above) must still be satisfied. In this case, the parties demonstrated a common continuing intention to calculate the payment in accordance with the rebalancing of their shares in the Viio Project in the 15:36 Ratio, and the parties made outward expressions of accord on this point. Furthermore, even after the Final Sum had been calculated, Techkon itself sought to recalculate the Final Sum in accordance with the formula initially agreed.

79 Accordingly, we allow the appeal as Tuffi should be entitled to the appropriate adjusted Final Sum of \$1,452,962.89, and the 2019 Agreement should be rectified for this purpose.

80 We further observe that Tuffi should not have been faulted for the Calculation Mistake. While Robert had prepared and checked the 2019 Calculations, that does not in itself mean that any error would be entirely his fault, such that the court ought not to find that there was a common mistake. If Tuffi can be faulted for failing to check the 2019 Calculations more thoroughly, or for failing to verify the calculations with its accountants, then Techkon could equally be faulted for the same. Indeed, Goh's and Ong's evidence was that they did not check the 2019 Calculations in much detail, despite being asked to check the same by Tuffi. While Tuffi had access to the relevant financial statements, it had requested them from Techkon, which had possession of those statements and could have referred to them as well. In as much as Tuffi could be faulted, both parties could equally be said to have been at fault. The better view, however, is that the Calculation Mistake was simply an honest mistake that neither party caught before signing the 2019 Calculations.

81 We note that the Judge and the respondents relied on the evidence of Robert who had accepted that he was at fault when he prepared the calculations. However, that is not the complete picture. Robert did not concede that he was solely at fault. Indeed, he mentioned that Techkon was asked to check the calculations. While it is true that Robert had told Goh and Ong that the 2019 Calculations were accurate, that by itself was not a conclusive assurance of accuracy when Robert's evidence is understood as a whole.

82 We now briefly address Tuffi's alternative implied term argument as well for completeness, as this argument was canvassed on appeal.

Whether, alternatively, a term should be implied that the Final Sum could be adjusted

The parties' submissions

83 Tuffi submits that, in the event that the court views the agreement as one for a fixed quantum, there is a gap in the agreement concerning what ought to be done in the event of any calculation errors or erroneous assumptions in the calculations. It would be necessary to imply a term that any calculation errors could be taken into account to adjust the Final Sum (“Implied Term”), otherwise the commercial objective of the agreement – to account for the profit, loss and expenses relating to TDSPL’s investment in TCPL – would be wholly unsuccessful and ineffective.

84 Techkon and TDSPL submit that there is no true gap in the 2019 Agreement, as Tuffi contemplated that the figures in the 2019 Agreement could be erroneous or could change but did not provide a term for it. Moreover, the Implied Term is not necessary, as the 2019 Agreement remained commercially workable without it, even if it was a bad bargain for Tuffi (which it was not). Techkon would also not have agreed to the Implied Term. Techkon also submits that Tuffi’s proposed Implied Term is incapable of clear expression and expressly contradicts Item F of the 2019 Calculations.

The applicable law

85 The law governing the implication of terms is well-established. The court considers a three-step process (*Sembcorp Marine* at [101]):

- (a) First, the court ascertains how the gap in the contract arises. Implication will be considered only if the court discerns that the gap arose because the parties did not contemplate the gap.

(b) Second, the court considers whether it is necessary in the business or commercial sense to imply a term in order to give the contract efficacy.

(c) Finally, the court considers the specific term to be implied. This must be one which the parties, having regard to the need for business efficacy, would have responded “Oh, of course!” had the proposed term been put to them at the time of the contract. If it is not possible to find such a clear response, then the gap persists and the consequences of that gap ensue.

A term that the Final Sum could be adjusted if there are calculation errors would have been implied

86 We would have implied a term that the Final Sum would be adjusted if there are any calculation errors. In the present case, there would have been a gap in the 2019 Agreement that the parties did not contemplate – the situation of calculation mistakes. It appears that neither party had anticipated such a scenario to begin with, and it was not argued that the risk of any such mistake had been allocated to either party by agreement. It would be necessary to imply a term to maintain the efficacy of the agreement to rebalance the parties’ financial contributions and losses in line with the 15:36 shareholding they had agreed upon. If an officious bystander had suggested that the Final Sum could be adjusted in case of any calculation mistakes, the parties would surely have responded unhesitatingly, “Oh, of course!” (*Sembcorp Marine* at [101]).

87 Assuming hypothetically that Techkon had allegedly *overpaid* Tuffi instead on account of a mistaken calculation and had sought recovery of the overpayment, it is likely that we would have implied a term that allows Techkon to recompute the Final Sum. It is difficult to see why a different analysis should

be adopted in the present case, where Techkon had *underpaid* Tuffi based on the erroneous Final Sum.

Whether TDSPL was party to the 2019 Agreement or had any obligation thereunder

88 As mentioned, we allow the appeal against Techkon.

89 However, in our judgment, the appeal should not be allowed against TDSPL. This is because it was not a party to the 2019 Agreement. In this regard, the fact that Tuffi transferred funds to TDSPL when funds were required for the Viio Project is immaterial. The question is whether TDSPL is a party to the 2019 Agreement. The Judge held that TDSPL had confirmed its liability when its directors (namely, Goh and Ong) signed the 2019 Calculations (Judgment at [68]). In this regard, the Judge distinguished between the 2019 Calculations and a letter dated 27 May 2019 and signed by Sunny and Robert “on behalf of Tuffi Pte Ltd” and by Ong and Goh “on behalf of Techkon Pte Ltd”, the quoted words being absent from the 2019 Calculations. In the Judge’s view, this suggested that the two signatories of Techkon who signed the 2019 Calculations were signing on behalf of TDSPL as well as on behalf of Techkon, because they did not expressly confine the capacities in which they signed the 2019 Calculations as they did for the 27 May 2019 letter. With respect, this is too narrow a view. The signatories for Tuffi for the 2019 Calculations also did not include any express indication that they were signing only on behalf of Tuffi, although it is clear they were signing in such a capacity only. Moreover, the signatories to each document were lay persons and no one gave evidence that when he signed the 2019 Calculations, he was also signing on behalf of TDSPL. It was more likely the case that the signatories had inadvertently omitted to state in the 2019 Calculations who they were signing on behalf of.

90 More importantly, even if TDSPL was a party to the 2019 Agreement, that agreement expressly stipulated that it was Techkon that was to pay Tuffi. Indeed, the Judge recognised that the plain and ordinary words of the agreement stated that *Techkon* would pay the full sum, instead of requiring any payment from TDSPL to Tuffi (Judgment at [64], [69]). Whether TDSPL would have been liable to pay Tuffi outside of the 2019 Agreement is a separate matter. Tuffi had no basis to include TDSPL as a party to the action since it was suing only under the 2019 Agreement.

91 Thus, the straightforward defence for TDSPL was that it was not party to the 2019 Agreement and in any event bore no liability under that agreement. As mentioned earlier, TDSPL did not raise this argument in its Respondent’s Case, but instead aligned itself to the points made by Techkon in this appeal. That said, Tuffi was given the chance to address this point. There is no basis for allowing the appeal against TDSPL since it cannot be found liable under the 2019 Agreement, and thus we decline to do so.

Observation

92 We note that, initially, Techkon did not accept that there was a double-counting error in the 2019 Calculations to begin with. Hence, Tuffi and Techkon each obtained a report from an expert. The purpose of the report from Tuffi’s expert was to explain what the error was. The purpose of the report from Techkon’s expert was less clear. In his report, Techkon’s expert opined that the 2019 Calculations did not contain any “material calculation mistakes”. However, his analysis merely consisted of a verification that each of the figures listed in the 2019 Calculations had been correctly copied over from audited accounts of TDSPL and TCPL, and that the calculations themselves were mathematically accurate. In oral evidence, Techkon’s expert accepted that the

retained earnings of TDSPL amounting to \$608,439 (as reflected in Item A2 of the 2019 Calculations) had been calculated after deducting the Preference Share Expenses. He also accepted that by deducting the Preference Share Expenses of \$1,090,884 (as reflected in Item A3 of the 2019 Calculations) again, a double deduction had taken place.

93 As mentioned above (at [25]), Techkon has made clear that it does not dispute that the Calculation Mistake was made. Thus, this turned out to be a non-issue and unnecessary time and costs were wasted on it. Techkon should not have contested this issue.

Conclusion

94 For the foregoing reasons, we allow the appeal in respect of Tuffi's claim against Techkon, and dismiss the appeal in respect of Tuffi's claim against TDSPL. Techkon is to pay Tuffi the sum of \$534,533.16 with interest as claimed. If parties are unable to agree on costs in respect of both the appeal and the proceedings below, they are to submit further written costs submissions to us within 14 days from the date of this judgment, with costs to be fixed by the court subsequently.

Woo Bih Li
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

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respondent.
