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2. Redaction HAS NOT been done.

DISTRICT JUDGE JONATHAN NG PANG ERN
23 JANUARY 2026

**IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE**

**[2026] SGMC 12**

Magistrate's Court Originating Claim No 1115 of 2024

Between

HUTTONS ASIA PTE LTD

… *Claimant(s)*

And

OH MY SUITES PTE LTD

… *Defendant(s)*

---

# JUDGMENT

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[Agency — Termination]
[Contract — Consideration — Promissory estoppel]
[Contract — Contractual terms — Parol evidence rule]
[Tort — Negligence — Duty of care]

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# Huttons Asia Pte Ltd
# v
# Oh My Suites Pte Ltd

**[2026] SGMC 12**

Magistrate's Court Originating Claim No 1115 of 2024
District Judge Jonathan Ng Pang Ern
23 October 2025, 7 January 2026

23 January 2026 Judgment reserved.

**District Judge Jonathan Ng Pang Ern:**

1 This is a trial arising from a bad tenant.

2 The Claimant and the Defendant were parties to an estate agency agreement. The agreement provided that the Defendant was to pay the Claimant a commission if the Defendant entered into a binding lease with a tenant introduced by the Claimant. It is undisputed that the Claimant introduced a tenant to the Defendant. It is also undisputed that the Defendant and the tenant entered into a tenancy agreement. However, the tenant soon defaulted on rent and the tenancy was terminated.

3 This action is the Claimant's claim for its commission. The Defendant denies that the Claimant is entitled to the commission being claimed. In addition, the Defendant has brought a counterclaim for the breach of various duties by the Claimant. According to the Defendant, this entitles it to recover

from the Claimant a sum that it says represents the shortfall in rent it is owed by the tenant. In the course of the trial, it became evident that the Defendant has not sought recourse against the tenant because the tenant is allegedly impecunious.[1]

4 Is the Claimant entitled to its commission? And can the Defendant essentially recover from the *Claimant* the rent it is owed by the *tenant*? Having considered the evidence and the parties' submissions, I allow the claim and dismiss the counterclaim. These are the reasons for my decision.

**Background**

5 The Claimant is a real estate agency[2] while the Defendant is in the business of owning and operating hotels in Singapore.[3] The present action involves one of the hotels operated by the Defendant[4] which is situated in Geylang (the "Property").

6 On 18 April 2023, the Claimant and the Defendant entered into an "Estate Agency Agreement for the Lease of Residential Property by a Landlord" (the "Estate Agency Agreement").[5] Pursuant to cl 2 of the Estate Agency Agreement, the Defendant authorised and engaged the Claimant to introduce to the Defendant a tenant for the Property. Importantly, cl 4(a) of the Estate Agency Agreement expressly provided that if the Defendant entered into a binding lease of the Property with a tenant introduced by the Claimant for one

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1 Certified Transcript for 23 October 2025 at pp 107-111.

2 Statement of Claim at para 1.

3 Defence and Counterclaim at para 8.

4 Certified Transcript for 23 October 2025 at p 123.

5 Affidavit of Evidence-in-Chief of Geeta Arun at pp 63-67.



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year, the Defendant shall pay the Claimant commission of $26,000 plus goods and services tax ("GST").

7 It is undisputed that the Claimant introduced a tenant, Abhi Engineering Pte Ltd (the "Tenant"), to the Defendant.[6] This was done through the Claimant's estate agent, Ms Geeta Arun ("Geeta"). It is also undisputed that the Defendant and the Tenant entered into a "Tenancy Agreement" dated 18 April 2023 in respect of the Property (the "Tenancy Agreement").[7] Under the Tenancy Agreement, the tenancy was for a period of 12 months from 1 May 2023 to 30 April 2024, and the monthly rent was $52,000.

8 The present action is the Claimant's claim for its commission pursuant to the Estate Agency Agreement. Relying on promissory estoppel, the Defendant denies that the Claimant is entitled to the commission being claimed. Specifically, the Defendant's case is that before the Estate Agency Agreement was entered into, the Defendant's director, Ms Lily Kong ("Lily"), and Geeta had a telephone conversation. During this conversation, Lily informed Geeta that the Defendant would not usually enter into an estate agency agreement unless the estate agent agreed to be paid the commission only: (a) on a quarterly basis; and (b) upon the tenant fulfilling the terms of the corresponding tenancy agreement. According to the Defendant, Geeta represented to Lily that the Claimant was agreeable to this arrangement and would not demand for payment of the commission until the Tenant had fulfilled the terms of the Tenancy

6 Statement of Claim at para 5; Defence and Counterclaim at para 16.

7 Affidavit of Evidence-in-Chief of Geeta Arun at pp 69-74.



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Agreement. Lily then caused the Defendant to enter into the Estate Agency Agreement in reliance on this representation.[8]

9 In addition, the Defendant has counterclaimed against the Claimant for the breach of: (a) the Claimant's duty to act with reasonable care and skill and in good faith under the law of agency; (b) the Claimant's duty to carry out its duties with reasonable skill and care under the law of negligence; and (c) the Claimant's duties under the Estate Agency Agreement.[9] The Defendant's case is that the breach of these duties entitles it to recover from the Claimant a sum that it says represents the shortfall in rent it is owed by the Tenant.[10]

**Issues arising**

10 In view of the above, the broad issues that arise for my determination are as follows:

(a) whether the Claimant's claim should be allowed and, if so, what the applicable remedies are ("Issue 1"); and

(b) whether the Defendant's counterclaim should be allowed and, if so, what the applicable remedies are ("Issue 2").

**Issue 1: The Claimant's claim**

11 Issue 1 is whether the Claimant's claim should be allowed and, if so, what the applicable remedies are.

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8 Defence and Counterclaim at paras 14-15.

9 Defence and Counterclaim at paras 27-35.

10 Defence and Counterclaim at paras 27-35.



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12 There is no dispute that cl 4(a) of the Estate Agency Agreement expressly provided that if the Defendant entered into a binding lease of the Property with a tenant introduced by the Claimant for one year, the Defendant shall pay the Claimant commission of $26,000. It did so in the following terms (with the "Landlord" defined as the Defendant and the "Estate Agent" defined as the Claimant):[11]

> **4. Commission**
>
> (a) If the Landlord enters into a binding lease of the Property with a Tenant introduced by the Estate Agent for one year, the Landlord shall pay the Estate Agent commission of S$26,000 / half month rent.
>
> …

13 There is also no dispute that GST is payable on top of this $26,000, as cl 4(a) of the Estate Agency Agreement carried on with a field that read "GST is payable upon the commission", to which a box indicating "Yes" was checked and a box indicating "No" was left unchecked. Finally, there is also no dispute that if the Claimant's claim is allowed, the applicable remedy is damages representing the sum of the commission stipulated by cl 4(a) of the Estate Agency Agreement (*ie*, $26,000 plus GST).

14 Accordingly, the only point of contention, insofar as Issue 1 is concerned, is whether the Defendant can establish its defence based on promissory estoppel. As mentioned at [8] above, the Defendant's case here is that before the Estate Agency Agreement was entered into, Lily and Geeta had a telephone conversation wherein Lily informed Geeta that the Defendant would not usually enter into an estate agency agreement unless the estate agent agreed to be paid the commission only: (a) on a quarterly basis; and (b) upon the tenant

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[11] Affidavit of Evidence-in-Chief of Geeta Arun at p 63.



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fulfilling the terms of the corresponding tenancy agreement. As Geeta then represented to Lily that the Claimant was agreeable to this arrangement and would not demand for payment of the commission until the Tenant had fulfilled the terms of the Tenancy Agreement, Lily caused the Defendant to enter into the Estate Agency Agreement in reliance on this representation.

15 For the Defendant to establish its defence based on promissory estoppel, it must prove, on a balance of probabilities, that there was, in fact, this alleged collateral agreement on commission (the "Alleged Collateral Agreement"). In addition, the Defendant must also show that the Alleged Collateral Agreement attracts, as a matter of law, the application of the doctrine of promissory estoppel. However, a preliminary evidential difficulty that presents itself is that the Alleged Collateral Agreement appears to run afoul of the parol evidence rule. Accordingly, in the paragraphs that follow, I will consider the following three sub-issues in turn:

(a) whether the parol evidence rule applies;

(b) whether there was an Alleged Collateral Agreement; and

(c) whether the doctrine of promissory estoppel applies.

16 For the Defendant to succeed in its defence, the first sub-issue must be answered in the negative, while the second and third sub-issues must be answered affirmatively.

***Whether the parol evidence rule applies***

17 I start by considering the first sub-issue, which is whether the parol evidence rule applies. Although neither party raised the parol evidence rule, I find it necessary to consider this sub-issue because, as a rule of evidence, the



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parol evidence rule governs the admissibility of the Defendant's evidence on the Alleged Collateral Agreement. For this reason, it also makes sense to consider this sub-issue first: if the Defendant's evidence on the Alleged Collateral Agreement is inadmissible, then the second and third issues will necessarily be resolved in the Claimant's favour.

18 The starting point of the analysis is the general rule that proof of the content or terms of a contract that has been reduced into writing is simply the production of the contractual document itself (*The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) ("*The Law of Contract in Singapore*") at para 06.025). This general rule finds expression in s 93 of the Evidence Act 1893 (*The Law of Contract in Singapore* at para 06.025) as follows:

> **Evidence of terms of contracts, grants and other dispositions of property reduced to form of document**
>
> **93.** When the terms of a contract or of a grant or of any other disposition of property have been reduced by or by consent of the parties to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence may be given in proof of the terms of such contract, grant or other disposition of property or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this Act.
>
> …

19 From this general rule, the parol evidence rule operates to preclude reliance on evidence of any oral agreement that contradicts, varies, adds to or subtracts from the contract's terms (*The Law of Contract in Singapore* at para 06.027). The parol evidence rule is statutorily embodied in s 94 of the Evidence Act 1893 (*The Law of Contract in Singapore* at para 06.027), which provides as follows:

> **Exclusion of evidence of oral agreement**



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> **94.** When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 93, *no evidence of any* ***oral agreement*** *or statement is to be admitted as between the parties to any such instrument or their representatives in interest for the purpose of* ***contradicting, varying, adding to, or subtracting from its terms*** subject to the following provisions:
>
> …
>
> [emphasis added in italics and bold italics]

20 On the Defendant's case, the Alleged Collateral Agreement was an oral agreement (see [8] above). To the extent that it deferred payment of the commission, and also made the payment of commission conditional upon the Tenant's fulfilment of the terms of the Tenancy Agreement, it added to the terms of the Estate Agency Agreement. In my judgment, s 94 of Evidence Act 1893 squarely applies to preclude reliance on (and, indeed, the admission of) evidence of the Alleged Collateral Agreement.

21 Section 94 of the Evidence Act 1893 contains a series of provisos. Amongst these is s 94(*b*) of the Evidence Act 1893, which creates an exception to s 94 of the Evidence Act 1893 by providing that "the existence of any separate oral agreement, as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved". However, s 94(*b*) of the Evidence Act 1893 does not apply in this case. Given cl 4(a) of the Estate Agency Agreement, the Estate Agency Agreement is patently *not* silent on the matter of commission. Moreover, by deferring payment of the commission, and by making the payment of commission conditional upon the Tenant's fulfilment of the terms of the Tenancy Agreement, the Alleged Collateral Agreement *is* inconsistent with the terms of the Estate Agency Agreement.

22 Accordingly, in my view, the parol evidence rule applies to preclude reliance on, and the admission of, evidence of the Alleged Collateral



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Agreement. As I foreshadowed at [17] above, it follows from this that the Defendant would not be able to prove that there was the Alleged Collateral Agreement. If the Defendant is not able to prove that there was the Alleged Collateral Agreement, it would also not be able to show that the Alleged Collateral Agreement attracts the application of the doctrine of promissory estoppel. Thus, on this ground alone, the Defendant's defence based on promissory estoppel fails, and the Claimant's claim should be allowed. However, as mentioned earlier (see [17] above), neither party raised the parol evidence rule. Instead, the parties' submissions were focused on the second and third sub-issues. In the circumstances, I will nevertheless proceed to consider the second and third sub-issues.

***Whether there was an Alleged Collateral Agreement***

23 The second sub-issue is whether there was an Alleged Collateral Agreement. As it is the Defendant who wishes the Court to believe in the existence of an Alleged Collateral Agreement, the burden of proving the same lies on the Defendant pursuant to s 105 of the Evidence Act 1893.

24 To this end, Lily's evidence was that she had been in the business of renting out hotels for many years. In the market, her practice had always been that she would only enter into estate agency agreements if the estate agent agreed to be paid its commission: (a) on a quarterly basis; and (b) upon the tenant fulfilling the terms of the corresponding tenancy agreement.[12] Lily referred to this as her "Usual Business Practice" and, for convenience, I will adopt this abbreviation in the remainder of this judgment. According to Lily, all the estate agents she dealt with knew of her Usual Business Practice, as she

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12 Affidavit of Evidence-in-Chief of Kong Lily at para 5.



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would always let them know about it before she entered into any estate agency agreement.[13]

25 On 11 April 2023, Lily sent out a solicitation via the WhatsApp messaging platform ("WhatsApp") for the rental of 56 rooms in the Property. Three days later on 14 April 2023, Geeta responded to the solicitation and informed Lily that she had a potential tenant for the Property (this being, as it turned out, the Tenant).[14] Between 15 and 16 April 2023, Geeta and Lily then agreed, over WhatsApp, that: (a) the Claimant's commission would be half a month's rent, payable by the Defendant; and (b) the Tenant would rent 100 beds at $520 per bed per month, resulting in a monthly rent of $52,000.[15]

26 Crucially, Lily's evidence was that on or around 15 April 2023, before the Estate Agency Agreement was entered into, Lily and Geeta had a telephone conversation wherein Lily reminded Geeta of her Usual Business Practice. Geeta then represented to Lily, on behalf of the Claimant, that the Claimant was agreeable to Lily's Usual Business Practice and would not demand payment of the commission until the Tenant had fulfilled the terms of the Tenancy Agreement.[16] This is, in substance, the Alleged Collateral Agreement. Geeta's evidence, in essence, was that there was no Alleged Collateral Agreement.[17]

27 In my judgment, the Defendant has not discharged its burden of proving that there was an Alleged Collateral Agreement.

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13 Affidavit of Evidence-in-Chief of Kong Lily at para 5.

14 Affidavit of Evidence-in-Chief of Kong Lily at para 8.

15 Affidavit of Evidence-in-Chief of Kong Lily at para 9.

16 Affidavit of Evidence-in-Chief of Kong Lily at para 12.

17 Affidavit of Evidence-in-Chief of Geeta Arun at paras 30-31.



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28 First, the WhatsApp chat log between Lily and Geeta[18] is more consistent with the Claimant's position that there was no Alleged Collateral Agreement.

29 The WhatsApp chat log between Lily and Geeta shows that on 14 April 2023, Geeta had asked Lily to "confirm agency fee paid [*sic*] you", to which Lily replied in the affirmative. Geeta's evidence, it seems, is that this "agency fee" refers to the commission,[19] but I accept that this is not entirely clear. Be that as it may, the issue of commission was explicitly raised the next day on 15 April 2023 in the following exchange:

> Geeta: Thank you so much for allowing us to view the rooms.
>
> Lily: I will let you know how many beds left, and your client can take it. Will try to give him at least 100 beds.
>
> Geeta: Sure thank you
>
> He is very much interested in taking up whatever is remaining.
>
> Lily: Yes, will update you tomorrow night
>
> Geeta: Thank you
>
> He is not paying commission. *So the standard 1/2 month rent plus GST is ok for you to pay?*
>
> Lily: *Yes, ok*
>
> Geeta: Thank you so much
>
> [emphasis added]

30 This exchange indicates that the parties' agreement on commission was that which was eventually reflected in cl 4(a) of the Estate Agency Agreement

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18 Affidavit of Evidence-in-Chief of Geeta Arun at pp 35-59; Affidavit of Evidence-in-Chief of Kong Lily at pp 16-33.

19 Affidavit of Evidence-in-Chief of Geeta Arun at para 30; Certified Transcript for 23 October 2025 at p 71.



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(*ie*, half a month's rent, which is $26,000). It does not suggest, or even hint at, the existence of an Alleged Collateral Agreement.

31 At the trial, Lily testified that this exchange took place after the telephone conversation wherein she reminded Geeta of her Usual Business Practice. Importantly, Lily also explained that when she replied "ok", this was only in relation to the reference to GST in Geeta's message because, at that time, the Defendant was not GST-registered.[20] I am unable to accept this explanation. For one, Geeta's prior message was plainly about *who*, as between the Defendant and the Tenant, was going to pay the commission. For another, whether the Defendant was GST-registered has absolutely no bearing on whether the Defendant should be paying GST on the commission. A payor's liability for GST turns on whether the *payee* is GST-registered and not on whether the *payor* is GST-registered. As an experienced businesswoman (see [24] above), Lily must have known this.

32 After this exchange on 15 April 2023, the other mentions of commission were after the parties had entered into the Estate Agency Agreement on 18 April 2023. First, there were two separate exchanges on 1 June 2023 and 22 July 2023. These two exchanges followed the same broad pattern: Geeta would ask for payment of the commission, and Lily would reply to say that commission would be paid quarterly. In the 22 July 2023 exchange, Lily further intimated that the commission would only be paid after the Tenant paid three months' worth of rent, and that the Tenant was "not paying rental promptly". I note that in these two exchanges, Geeta did not dispute Lily's position that commission would be paid quarterly. However, at the trial, Geeta explained that she did not do so

[20] Certified Transcript for 23 October 2025 at pp 89-90.



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because it was the Claimant who collected the commission. Moreover, she also did not want to have an argument, and jeopardise her relationship, with Lily.[21]

33 In any event, by the next exchange, which seems to have taken place between 21 September 2023 to 3 October 2023 (it is not clear if this was one unbroken exchange or two separate exchanges, but this is immaterial), Geeta made it quite clear, in a series of messages on 3 October 2023, that commission should be paid immediately and regardless of whether the Tenant was keeping up with its rental payments and whether the lease had been terminated.

34 To be fair, the WhatsApp chat log between Lily and Geeta does not provide either party with a surefire case. However, taken in the round, it is more consistent with the Claimant's position that there was no Alleged Collateral Agreement.

35 Second, the Defendant could have proven the existence of an Alleged Collateral Agreement via a gamut of other means, but it did not do so. For example, Lily's evidence was that in 2021, she had worked with Geeta (who was with another real estate agency back then) on another tenancy, and this tenancy was conducted on the basis of her Usual Business Practice.[22] To the extent that the WhatsApp chat log between Lily and Geeta reflects a flurry of activity in May 2021,[23] it appears that Lily and Geeta did in fact work together on another tenancy in May 2021. However, the WhatsApp chat log does not indicate that this tenancy was conducted on the basis of Lily's Usual Business Practice. Nor has the Defendant adduced any other evidence to show that this

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21 Certified Transcript for 23 October 2025 at pp 56-58 and 69-70.

22 Affidavit of Evidence-in-Chief of Kong Lily at para 7.

23 Affidavit of Evidence-in-Chief of Geeta Arun at pp 35-39; Affidavit of Evidence-in-Chief of Kong Lily at pp 16-20.



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was the case, even though this would have been easy for the Defendant to do. Indeed, the Defendant could have simply adduced evidence of quarterly payments being made to Geeta or Geeta's former real estate agency.

36 But the argument can be taken yet a step further. As mentioned earlier, Lily's evidence was that *all* the estate agents she dealt with knew of her Usual Business Practice, as she would always let them know about it before she entered into any estate agency agreement (see [24] above). As such, evidence from *any* of these estate agents as to the existence of Lily's Usual Business Practice, or even evidence of quarterly payments to these estate agents or their respective real estate agencies, could have easily been proffered. To the extent that such evidence would have established the existence of Lily's Usual Business Practice, it would have gone some way in establishing that there was an Alleged Collateral Agreement.

37 As the Defendant could have proven the existence of an Alleged Collateral Agreement via other means, but did not do so, this suggests that there was no Alleged Collateral Agreement. Taken together with the WhatsApp chat log between Lily and Geeta, I am not satisfied that, on a balance of probabilities, there was an Alleged Collateral Agreement. In respect of the second sub-issue, I find that there was no Alleged Collateral Agreement.

***Whether the doctrine of promissory estoppel applies***

38 The third sub-issue is whether the doctrine of promissory estoppel applies. Because I have found that there was no Alleged Collateral Agreement (see [37] above), the third sub-issue does not, strictly speaking, arise. Nonetheless, I proceed to consider it for completeness. To this end, the doctrine of promissory estoppel is an equitable doctrine that prevents a person who has promised not to enforce his strict legal rights from going back on his promise



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when it is inequitable to do so (*The Law of Contract in Singapore* at para 04.090). It can be invoked where: (a) a party to an existing legal relationship makes a promise to a counterparty that he will not enforce his strict legal rights with the intention that such promise be relied upon by the other; (b) the latter does in fact rely on the promise and alters his position as a result; and (c) it is inequitable for the promisor to go back on his word in all the circumstances (*The Law of Contract in Singapore* at para 04.092). The doctrine was developed to address the problems arising from contract modifications, and its application therefore often has the same effect as that of a variation of a contractual obligation (*The Law of Contract in* Singapore at paras 04.093 and 04.116).

39 What is immediately evident from these general statements on the doctrine of promissory estoppel is that the doctrine presupposes an *existing legal relationship* between the parties. If one party to that relationship promises not to enforce his strict legal rights, and the other requirements are satisfied, the doctrine applies to hold this party to his promise. In this sense, the parties' contractual obligations under the existing legal relationship are, in effect, modified or varied.

40 In the present case, the promise the Defendant is seeking to enforce via the doctrine of promissory estoppel is, in essence, the Alleged Collateral Agreement. If the Defendant manages to enforce the Alleged Collateral Agreement, then this would have the effect of denying the Claimant's claim (or, at the very least, the full extent of the Claimant's claim). However, the Defendant's case on the Alleged Collateral Agreement is that it was entered into *before* the parties entered into the Estate Agency Agreement (see [8] above). In other words, even if I accept that there was an Alleged Collateral Agreement, the Alleged Collateral Agreement would not have been entered into against a backdrop of an existing legal relationship. At the time the Alleged Collateral



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Agreement was entered into, there was simply *no* legal relationship between the parties. The present case is simply not one where the doctrine of promissory estoppel can apply.

41 This general inapplicability of the doctrine of promissory estoppel in the present case is further underscored by how an application of the specific requirements of the doctrine (see [38] above) to the facts yields the same result.

42 The first requirement is that a party to an existing legal relationship makes a promise to a counterparty that he will not enforce his strict legal rights with the intention that such promise be relied upon by the other. Even if I accept that there was an Alleged Collateral Agreement, this requirement is not satisfied because, as mentioned earlier (see [40] above), at the time the Alleged Collateral Agreement was entered into, there was no existing legal relationship between the parties. The Claimant could not have promised that it would not enforce its strict legal rights because there were no such rights to begin with.

43 The second requirement is that the counterparty does in fact rely on the promise and alters his position as a result. Typically, such reliance is evidenced by the counterparty's change of position on the faith of the promise, *ie*, by doing or omitting to do something which he would otherwise not have done or omitted to do (*The Law of Contract in Singapore* at 04.098). In the present case, the Defendant's pleaded reliance is its entry into the Estate Agency Agreement (see [8] above). I am prepared to accept that, in principle, this requirement can be satisfied.

44 The third requirement is that it is inequitable for the promisor to go back on his word in all the circumstances. This is assessed by taking into account all the relevant circumstances (*The Law of Contract in Singapore* at para 04.107).



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In my view, this requirement is incapable of applying in the present case. The notion of inequity here must, I think, refer to the inequity of allowing the promisor to enforce his strict legal rights under the parties' existing legal relationship. As there was no existing legal relationship between the parties in the present case (see [40] above), it does not make sense to speak of whether it is inequitable for the Claimant to resile from the Alleged Collateral Agreement. In any event, even if this requirement can apply in the present case, I am of the view that it is not inequitable for the Claimant to resile from the Alleged Collateral Agreement. On the Defendant's case, the Estate Agency Agreement was entered into after the Alleged Collateral Agreement (see [8] above). There is no reason why the terms of the Alleged Collateral Agreement could not have been reduced into writing and inserted into the Estate Agency Agreement. Indeed, there is no evidence that suggests that the Claimant was in any way averse to this. Moreover, cl 10 of the Estate Agency Agreement expressly allowed the parties to "agree to or add on any other terms" in writing.[24] Thus, if the Defendant had wanted the Alleged Collateral Agreement to govern the payment of commission to the Claimant, it should have inserted the terms of the Alleged Collateral Agreement into the Estate Agency Agreement. The Defendant's failure to do so cannot now give rise to a belated plea of inequity.

45 Accordingly, quite apart from the fact that the doctrine of promissory estoppel is generally inapplicable in the present case, applying the specific requirements of the doctrine yields the same result. In respect of the third sub-issue, I find that the doctrine of promissory estoppel does not apply.

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[24] Affidavit of Evidence-in-Chief of Geeta Arun at p 65.



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***Conclusion on Issue 1***

46 To conclude Issue 1, I answer all three sub-issues in the Claimant's favour: the parol evidence rule applies (see [17]-[22] above), there was no Alleged Collateral Agreement (see [23]-[37] above) and the doctrine of promissory estoppel does not apply (see [38]-[45] above). As I alluded to at [16] above, any one of these conclusions is, by itself, fatal to the Defendant's defence based on promissory estoppel. It follows that the Claimant's claim should be allowed. As for the applicable remedy, this would be damages representing the sum of the commission stipulated by cl 4(a) of the Estate Agency Agreement (*ie*, $26,000 plus GST) (see [13] above).

**Issue 2: The Defendant's counterclaim**

47 Issue 2 is whether the Defendant's counterclaim should be allowed and, if so, what the applicable remedies are.

48 To recap, the Defendant's counterclaim against the Claimant is for the breach of: (a) the Claimant's duty to act with reasonable care and skill and in good faith under the law of agency; (b) the Claimant's duty to carry out its duties with reasonable skill and care under the law of negligence; and (c) the Claimant's duties under the Estate Agency Agreement (see [9] above). The Defendant's case is that the breach of these duties, whether individually or collectively, entitles it to counterclaim the sum of $60,440 from the Claimant. According to the Defendant, this represents the shortfall in rent it is owed by the Tenant.[25] As this sum exceeds the Magistrate's Court limit prescribed under s 2 of the State Courts Act 1970, the Claimant originally took the position, in its opening statement, that the Magistrate's Court did not have jurisdiction to hear

[25] Defence and Counterclaim at paras 27-35.



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the counterclaim.[26] However, this position is no longer maintained in the Claimant's closing submissions. In any event, I agree with the Defendant that pursuant to s 54F (and, in particular s 54F(4)) of State Courts Act 1970, the Magistrate's Court has jurisdiction to hear the counterclaim.[27]

49 In its Defence and Counterclaim, the Defendant pleaded that the Claimant had breached its duties under the law of agency, the law of negligence and the Estate Agency Agreement because of Geeta's supposedly lacklustre response to the Tenant's breach of two terms in the Tenancy Agreement, these being: (a) the Tenant's failure to pay the first month's rent and the security deposit upon the signing of the Tenancy Agreement;[28] and (b) the Tenant's failure to pay rent on a timely basis.[29]

50 The Defendant's position changed somewhat in its closing submissions. Here, it submits that the Claimant had breached its duties under the law of agency, the law of negligence and the Estate Agency Agreement by, essentially, failing to ensure that the rent owed by the Tenant was paid during the duration of the Tenancy.[30]

51 To establish its counterclaim, the Defendant must first establish that the Claimant *owed* duties to the Defendant under the law of agency, the law of negligence and the Estate Agency Agreement. However, even if the Claimant did owe such duties, that is not the end of the matter: the Defendant must further

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26 Claimant's Opening Statement at paras 53-56.

27 Defendant's Opening Statement at para 18; Defendant's Closing Submissions at para 50.

28 Defence and Counterclaim at paras 27, 28, 31, 32, 33, 34 and 35.

29 Defence and Counterclaim at paras 29, 30, 31, 32, 33, 34 and 35.

30 Defendant's Closing Submissions at paras 33-44.



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show that the *scope* of such duties included ensuring that the rent owed by the Tenant was paid during the duration of the Tenancy. With this broad analytical framework in mind, I now turn to consider the alleged breach of duties under the law of agency, the law of negligence and the Estate Agency Agreement in turn. For reasons that will become apparent, I will start with the alleged breach of duties under the Estate Agency Agreement.

### *Alleged breach of duties under the Estate Agency Agreement*

52 In its Defence and Counterclaim, the Defendant's case as regards the alleged breach of duties under the Estate Agency Agreement was that the Claimant had breached the duties set out in cll 2(a), (b), (d) and (f) of Schedule 2 of the Estate Agency Agreement.[31] These clauses provided as follows:[32]

> SCHEDULE 2-DUTIES OF ESTATE AGENT
>
> The Estate Agent shall:
>
> (a) provide reasonable assistance and advice to the Landlord throughout the process of lease of the Property.
>
> (b) represent the Landlord in negotiations with any prospective Tenant in accordance with his instructions.
>
> …
>
> (d) advance the Landlord's interest unaffected by any interest of the Estate Agent, Salesperson or any other person.
>
> …
>
> (f) comply with all reasonable instructions and requests of the Landlord in relation to the transaction.
>
> …

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31 Defence and Counterclaim at para 34.

32 Affidavit of Evidence-in-Chief of Geeta Arun at p 67.



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53 However, the Defendant once again changed its position in its closing submissions, where it relies solely on cl 2(a) of Schedule 2 of the Estate Agency Agreement.[33] This is the duty to "provide reasonable assistance and advice to the Landlord throughout the process of lease of the Property". On its part, the Claimant's position is that the duties it owed under the Estate Agency Agreement were limited to introducing a tenant to the Defendant and facilitating the transaction between the Defendant and the tenant with respect to the leasing of the Property.[34]

54 It seems clear that the Claimant *owed* the Defendant the duty to provide reasonable assistance and advice. Clause 3 of the Estate Agency Agreement expressly provided that the Claimant's duties "shall be as set out in Schedule 2 to [the Estate Agency Agreement], in addition to the duties placed on the Estate Agent by the other terms in [the Estate Agency Agreement] and any written law".[35] Being one of the duties set out in Schedule 2 of the Estate Agency Agreement, the duty to provide reasonable assistance and advice was clearly owed by the Claimant to the Defendant.

55 The real question is whether the *scope* of the duty to provide reasonable assistance and advice included ensuring that the rent owed by the Tenant was paid during the duration of the Tenancy. In this regard, cl 2(a) of Schedule 2 of the Estate Agency Agreement makes clear that this duty existed "throughout the process of lease of the Property". However, the words "the process of lease" are ambiguous. On the one hand, they could refer to the *entire tenancy* that results from the Estate Agency Agreement (the "Entire Tenancy Interpretation").

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33 Defendant's Closing Submissions at para 29.

34 Defence to Counterclaim at para 18(b)(ii).

35 Affidavit of Evidence-in-Chief of Geeta Arun at p 63.



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Under this interpretation, the Claimant's duty to provide reasonable assistance and advice would have existed throughout the Tenancy. On the other hand, the words could also refer to the process of *leasing* the Property (the "Process of Leasing Interpretation"). Under this interpretation, the Claimant's duty to provide reasonable assistance and advice would have ended when the Defendant entered into the Tenancy Agreement with the Tenant.

56 In my judgment, the Process of Leasing Interpretation is preferable over the Entire Tenancy Interpretation. I arrive at this conclusion based on: (a) a plain reading of cl 2(a) of Schedule 2 of the Estate Agency Agreement; (b) the contractual context of the Estate Agency Agreement; and (c) the statutory context of the Estate Agency Agreement.

57 I start with a plain reading of cl 2(a) of Schedule 2 of the Estate Agency Agreement. At first blush, the Entire Tenancy Interpretation does not seem implausible. This is because the word "lease" can, for present purposes, be said to be synonymous with "tenancy". In this general (but admittedly vague) sense, the words "the process of lease" appear to accord with the Entire Tenancy Interpretation.

58 However, I ultimately agree with the Claimant that the operative words here are the words "process of".[36] If the intended subject matter of the words "the process of lease" was the entire tenancy that results from the Estate Agency Agreement, it would have been more straightforward to simply refer to "the lease". This is because it does not make sense to refer to the "process of" a lease: a lease is essentially a contract and there is no "process" to it. Put another way, the Entire Tenancy Interpretation renders the words "process of" otiose. In

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[36] Claimant's Closing Submissions at paras 27-28.



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contrast, the Process of Leasing Interpretation gives meaning to the words "process of". Unlike a lease, leasing is a "process" which culminates in a lease. I accept that it could equally be said that, if the intention was to refer to the process of leasing the Property, the reference could simply have been to "the process of leasing". However, in my view, this is, at its highest, a matter of inelegant drafting. On balance, a plain reading of cl 2(a) of Schedule 2 of the Estate Agency Agreement supports the Process of Leasing Interpretation.

59 The Process of Leasing Interpretation is also supported by the contractual context of the Estate Agency Agreement. The Estate Agency Agreement is clear that the Claimant had been authorised and engaged for the primary purpose of introducing a tenant to the Defendant. This is apparent right from the very start of the Estate Agency Agreement, where the preamble stated as follows:[37]

> This form is prescribed by the Council for Estate Agencies ("CEA") under the Estate Agents Act 2010 for use when an estate agent is authorised or engaged by a prospective landlord *to introduce a tenant* of residential property in Singapore.
>
> …
>
> [emphasis added]

60 The same point was made in cl 2 of the Estate Agency Agreement as follows:[38]

> **2. Appointment of Estate Agent by Landlord**
>
> The above landlord(s) (collectively called "Landlord") hereby authorises and engages the Estate Agent, subject to and in accordance with the terms of this Agreement, *to introduce to him a Tenant* of the following property:
>
> …

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37 Affidavit of Evidence-in-Chief of Geeta Arun at p 63.

38 Affidavit of Evidence-in-Chief of Geeta Arun at p 63.



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[emphasis added]

61 If the Claimant had been authorised and engaged for the primary purpose of introducing a tenant to the Defendant, then it does not make sense that the Claimant's duty to provide reasonable assistance and advice should exist throughout the Tenancy. Instead, the Claimant's duty should end when the Defendant entered into the Tenancy Agreement with the Tenant. The contractual context of the Estate Agency Agreement therefore also supports the Process of Leasing Interpretation.

62 Finally, the Process of Leasing Interpretation is supported by the statutory context of the Estate Agency Agreement. The Estate Agency Agreement follows the form prescribed in Form 3 of the Third Schedule of the Estate Agents (Estate Agency Work) Regulations 2010. This is statutorily required under reg 10(1)(*c*) of the Estate Agents (Estate Agency Work) Regulations 2010. Regulation 10 of the Estate Agents (Estate Agency Work) Regulations 2010 relates to agreements in respect of "estate agency work". This term is defined in s 3 of the Estate Agents Act 2010 as follows:

> …
>
> "estate agency work", subject to subsection (3), means any work done in the course of business for a client or any work done for or in expectation of any fee (whether or not in the course of business) for a client, being work done —
>
> (*a*) in relation to *the introduction to the client of a third person who wishes to acquire or dispose of a property*, or to *the negotiation for the acquisition or disposition of a property by the client*; or
>
> (*b*) after the introduction to the client of a third person who wishes to acquire or dispose of a property or the negotiation for the acquisition or disposition of a property by the client, in relation to *the acquisition or disposition (as the case may be) of the property by the client*;
>
> …



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[emphasis added]

63 This definition of "estate agency work" refers to three phases of the estate agency relationship: (a) the *introduction* to the client of a third party who wishes to acquire or dispose of a property; (b) the *negotiation* for the acquisition or disposition of the property; and (c) the *acquisition or disposition* of the property. In my view, this definition indicates that the Estate Agency Agreement only covered the following matters: (a) the introduction of a tenant to the Defendant; (b) the negotiation of a tenancy; and (c) the entry into a tenancy agreement. This suggests that the Claimant's duty to provide reasonable assistance and advice ended when the Defendant entered into the Tenancy Agreement with the Tenant.

64 As a plain reading of cl 2(a) of Schedule 2 of the Estate Agency Agreement, the contractual context of the Estate Agency Agreement and the statutory context of the Estate Agency Agreement all point in favour of the Process of Leasing Interpretation, I find that the Claimant's duty to provide reasonable assistance and advice ended when the Defendant entered into the Tenancy Agreement with the Tenant. It follows that the scope of the duty to provide reasonable assistance and advice did not include ensuring that the rent owed by the Tenant was paid during the duration of the Tenancy. The Defendant's counterclaim based on the alleged breach of duties under the Estate Agency Agreement therefore fails on this basis, and it is not necessary for me to go on to determine whether the Claimant did in fact fail to ensure that the rent owed by the Tenant was paid during the duration of the Tenancy.

***Alleged breach of duty under the law of agency***

65 I now deal with the alleged breach of duty under the law of agency and the alleged breach of duty under the law of negligence. Turning first to the



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alleged breach of duty under the law of agency, the Defendant's case is that the Claimant, through Geeta, owed the Defendant a duty to act with reasonable care, skill and in good faith under the law of agency.[39]

66 I am prepared to accept that there could be an agency relationship between the Claimant and the Defendant (*Yuen Chow Hin and another v ERA Realty Network Pte Ltd* [2009] 2 SLR(R) 786 at [13]), pursuant to which the Claimant *owed* a duty to the Defendant. The Claimant also does not seriously dispute that the content of this duty was a duty to act with reasonable care, skill and in good faith. Once again, the real question is whether the *scope* of this duty included ensuring that the rent owed by the Tenant was paid during the duration of the Tenancy. In my view, it did not. This is because the agency relationship between the Claimant and the Defendant was terminated when the Defendant entered into the Tenancy Agreement with the Tenant. Accordingly, the Claimant's duty to act with reasonable care, skill and in good faith correspondingly ended at this point.

67 The Estate Agency Agreement does not contain any provision as to when the agency relationship between the Claimant and the Defendant would terminate. However, even in the absence of any express contractual terms dealing with termination of an agency relationship, it may be implied that an agency relationship is terminated when the subject matter of the agency no longer exists or when the purpose of the agency relationship has been fulfilled. As noted in Tan Cheng Han SC, *The Law of Agency* (Academy Publishing, 2nd Ed, 2017) (at para 11.002):

> Subject to the express terms of the contract of agency that deal with termination, the court may also imply terms relating to termination. *For example, in appropriate cases, it may be*

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39 Defence and Counterclaim at para 10.



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> *implied that an agency agreement will come to an end when the subject matter of the agency no longer exists. Similarly, even in the absence of express provision, it may be implied that when the purpose of the agency relationship has been fulfilled, this puts an end to the agency.* Thus, where it is clear from the agreement that the agent was engaged to perform a certain act or transaction, and there is nothing left for the agent to do upon the completion of the said act or transaction, the agency will come to an end. … [emphasis added]

68 As mentioned at [63] above, the Estate Agency Agreement only covered the following matters: (a) the introduction of a tenant to the Defendant; (b) the negotiation of a tenancy; and (c) the entry into a tenancy agreement. Thus, the subject matter of the agency between the Claimant and the Defendant and the purpose of the agency relationship must necessarily be limited to these matters. When the Defendant entered into the Tenancy Agreement with the Tenant, the subject matter of the agency ceased to exist. Alternatively, the purpose of the agency relationship had been fulfilled. On either characterisation, the agency relationship between the Claimant and Defendant was terminated, and the Claimant's duty to act with reasonable care, skill and in good faith ended at this point.

69 Accordingly, the scope of the Claimant's duty to act with reasonable care, skill and in good faith did not include ensuring that the rent owed by the Tenant was paid during the duration of the Tenancy. The Defendant's counterclaim based on the alleged breach of duty under the law of agency therefore fails on this basis, and it is, once again, not necessary for me to go on to determine whether the Claimant did in fact fail to ensure that the rent owed by the Tenant was paid during the duration of the Tenancy.



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***Alleged breach of duty under the law of negligence***

70 As for the alleged breach of duty under the law of negligence, the Defendant's case is that the Claimant, as the Defendant's estate agent, owed the Defendant a duty to carry out its duties with reasonable skill and care.[40]

71 The law concerning a duty of care under the law of negligence was set out by the Court of Appeal in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 ("*Spandeck*") (at [73]-[86]). In essence, a duty of care arises where there is: (a) factual foreseeability (a threshold requirement); (b) legal proximity (the first stage of the test); and (c) no countervailing policy considerations (the second stage of the test). I am prepared to accept that the Claimant could have *owed* a duty of care to the Defendant (*Lam Wing Yee Jane v Realstar Premier Group Pte Ltd* [2024] 5 SLR 51 at [75]). Thus, once again, the real question is whether the *scope* of this duty included ensuring that the rent owed by the Tenant was paid during the duration of the Tenancy. I am of the view that it did not. While a duty of care can exist independently from a contractual relationship (Gary Chan Kok Yew and Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) at para 05.006), the relationship between the Claimant and the Defendant was ultimately founded on the Estate Agency Agreement. As mentioned at [63] above, the Estate Agency Agreement only covered the following matters: (a) the introduction of a tenant to the Defendant; (b) the negotiation of a tenancy; and (c) the entry into a tenancy agreement. In my view, this militates against a finding of legal proximity (at the first stage of the *Spandeck* test) beyond the point when the Defendant entered into the Tenancy

40 Defence and Counterclaim at paras 31-32.



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Agreement with the Tenant. By this time, a duty of care would no longer have existed.

72 In the circumstances, the scope of the Claimant's duty of care did not include ensuring that the rent owed by the Tenant was paid during the duration of the Tenancy. The Defendant's counterclaim based on the alleged breach of duty under the law of negligence therefore fails on this basis, and it is, once again, not necessary for me to go on to determine whether the Claimant did in fact fail to ensure that the rent owed by the Tenant was paid during the duration of the Tenancy.

***Conclusion on Issue 2***

73 To conclude Issue 2, the breach alleged by the Defendant (*ie*, the Claimant's failure to ensure that the rent owed by the Tenant was paid during the duration of the Tenancy), even if established, would have taken place after the Defendant entered into the Tenancy Agreement with the Tenant. However, the scope of the Claimant's duties, whether under the Estate Agency Agreement (see [52]-[64] above), the law of agency (see [65]-[69] above) or the law of negligence (see [70]-[72] above), did not extend to this point. The Defendant's counterclaim should therefore be dismissed.

**Conclusion**

74 Given my conclusion on Issue 1 (see [46] above), I enter judgment for the Claimant against the Defendant for the sum of $28,080 (this being $26,000 plus the then-prevailing GST). Given my conclusion on Issue 2 (see [73] above), I dismiss the Defendant's counterclaim. The parties are to file written submissions on interest and costs, limited to five pages each, within two weeks from the date of this judgment.



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75 As I alluded to at the start of this judgment, this action ultimately came about because the Tenant turned out to be a bad tenant. From the evidence placed before me, there is no doubt that the Defendant suffered losses because of the Tenant's default. However, the Tenant's alleged impecuniosity and the concomitant futility of seeking recourse against the Tenant does not then entitle the Defendant to go against the next available person it can lay its hands on. In the present case, there is nothing in fact or in law that allows the Defendant to pass the risk of a bad tenant on to the Claimant. This risk was borne by the Defendant, and it was borne by the Defendant alone.

Jonathan Ng Pang Ern
District Judge

Lim Bee Li and Kurzbock Tsang Yu Han Kenn (Chevalier Law LLC) for the Claimant;
Ling Ying Ming Daniel, Ong Pei Ching and R Arvindren (TSMP Law Corporation) for the Defendant.



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