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

[2021] SGHC 234

Suit No 230 of 2020

Between

Lim Bee Lan

… *Plaintiff*

And

(1) Lee Juan Loong
(2) Brendan Lai

… *Defendants*

JUDGMENT

[Tort] — [Misrepresentation] — [Fraud and deceit]
[Tort] — [Misrepresentation] — [Negligent misrepresentation]

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14 October 2021 Judgment reserved.

Lee Seiu Kin J:

Introduction

1 This is an action by Lim Bee Lan (the "Plaintiff") against Lee Juan Loong ("Lee") and Brendan Lai ("Brendan") (collectively, the "Defendants") in tort for fraudulent misrepresentation and alternatively, negligent misstatement.

2 The Plaintiff alleges that the Defendants made four false representations (collectively, the "Representations") to her, both directly and through her daughter, Lim Pei Wen ("Pei Wen"). The effect of these representations was to induce the Plaintiff to invest S$300,000 into Alpha Bodytec ("ABT"), the Defendants' company, for a 5% interest in ABT.

3 The Defendants deny having made those representations and maintain that the Plaintiff had entered into this investment of her own volition.

Facts

4 The Defendants are the sole directors of ABT, a company incorporated in Singapore.[1] ABT is in the business of manufacturing electro-muscular stimulation ("EMS") products, such as body suits.[2]

5 Prior to the Plaintiff's investment, the sole shareholder of ABT was VisionGym Asia Pte Ltd ("VGA"), a company that is also incorporated in Singapore.[3] The Defendants are the sole directors and shareholders of VGA.[4]

6 Parties vigorously dispute the facts leading up to their dispute.

7 Sometime in August 2018, Pei Wen told one Goh Wanting ("Wanting"), her close friend, that she was thinking of investing in a friend's food and beverage ("F&B") business.[5] Wanting told her about an investment opportunity with ABT. Pei Wen was interested to know more about this opportunity.[6]

The 1st Meeting

8 Parties agree that there was a meeting on 7 September 2018 (the "1st Meeting").[7]

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1 Defendants' Bundle of Affidavits dated 27 April 2021 ("1DBA") at p 5, para 4 and p 92, para 4; Agreed Bundle dated 27 April 2021 ("1AB") at p 156.

2 Transcript dated 7 May 2021 at p 61, lines 24 to 28; Plaintiff's Bundle of Affidavits Vol 1 ("1PBA") at p 6, para 13 and p 35, para 39.

3 Transcript dated 6 May 2021 at p 94, lines 5 to 7.

4 1DBA at p 5, para 4 and p 92, para 4; 1AB at pp 164 and 165.

5 1PBA at p 35, para 7; Transcript dated 5 May 2021 at p 10, lines 4 to 8.

6 1PBA at p 35, para 7; Transcript dated 6 May 2021 at p 74, lines 26 to 30.

7 1PBA at p 35, para 8; 1DBA at p 6, para 10 and p 93, para 9.

9 On Pei Wen's account, she met with the Defendants at their office,[8] where Lee briefed her on ABT's business. Pei Wen claimed that the Defendants said that ABT was a very attractive investment, especially when compared to an F&B business.[9] The Defendants then represented to her that ABT had been around for a few years and was a profitable business (the "1st Representation").[10] The Defendants also handed her some printed PowerPoint presentation slides (the "Slides"), which Lee used as a basis to represent to her that ABT was valued at S$16,000,000 by Mazars, a reputable accounting firm in Singapore (the "2nd Representation").[11] The Slides did not pertain to ABT, but instead pertained to VisionBody Asia Pte Ltd ("VBA"), a company in which the Defendants were the sole directors and through VGA, had wholly-owned.[12] Nevertheless, Lee told her that all business, sales, and profits from VBA were already in the process of being transferred to ABT (the "3rd Representation").[13] When Pei Wen asked for a copy of ABT's profit and loss statement, the Defendants stated that there was nothing to show her as the transfer of business undertaking was still ongoing.[14] Lee also said that ABT was set up to replace VBA.[15] Pei Wen said that she needed more time to think about the proposal and they agreed to meet on 12 September 2018 to discuss the matter further.[16]

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8 1PBA at p 35, para 8.

9 1PBA at pp 35 to 36, para 9.

10 Statement of Claim (Amendment No 3) dated 4 May 2021 "SOC3" at para 5.2.1; 1PBA at pp 35 to 36, para 9.

11 1PBA at p 36, para 10; SOC3 at para 5.2.2.

12 1AB at pp 160 and 161.

13 1PBA at p 36, para 11; SOC3 at para 5.2.3.

14 PCS at para 139; Transcript dated 5 May 2021 at p 20, lines 18 to 21.

15 1PBA at p 36, para 11.

16 1PBA at p 36, para 12 to p 37, para 13.

10 On the Defendants' account, there was a meeting with Pei Wen at a café in the vicinity of the Defendants' office.[17] However, their testimony is unclear as to whether both of them had met with her or only Lee did so.[18] In closing submissions, it appears that the Defendants take the position that both of them were present at this meeting.[19] While Lee admits to suggesting to Pei Wen that she should consider investing in ABT, he denies having made any of the three Representations,[20] , to the extent that he even denies showing the Slides to Pei Wen. He only admits to showing the Slides at a subsequent meeting on 12 September 2018 (see [15] below).[21]

11 Lee claims that in that meeting, he explained to Pei Wen the Defendants' plan for ABT to develop, manufacture, and market EMS products under its own name.[22] This would mark a shift from ABT's then business as a small local gym that used old EMS products left by its previous owners.[23] In the Defendants' view, ABT would "eventually command a better valuation than VBA which is merely a company distributing other people's products in Asia".[24] However, because the Defendants had not started to market their new EMS products in ABT, ABT thus had yet to generate profits, so he offered Pei Wen to buy a 5% stake in ABT at price that reflected a substantial discount to VBA's valuation

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17 Transcript dated 6 May 2021 at p 71, lines 25 to 30.

18 1DBA at p 6, para 10 and p 93, para 9; Transcript dated 7 May 2021 at p 72, lines 10 to 13.

19 Defendants' Closing Submissions dated 28 June 2021 ("DCS") at para 29.

20 Transcript dated 6 May 2021 at p 76, lines 11 to 17, p 84, line 15 to p 85 line 3, and p 90, lines 5 to 24.

21 Transcript dated 6 May 2021 at p 79, line 19 to p 80, line 12.

22 1DBA at p 6, para 10.

23 1DBA at p 6, para 11 and p 7, paras 12 and 13.

24 1DBA at p 6, para 11.

of S$16,000,000.[25] In doing so, he maintains that he communicated to Pei Wen that ABT was a separate and distinct entity.[26]

12 Following the 1st Meeting, Lee texted Pei Wen on WhatsApp on 10 September 2018 to ask her if she had any questions for him and Brendan before their next meeting.[27] She said that after she got home, she had discussed the Defendants' proposal with the Plaintiff and asked her to attend the next meeting with the Defendants. The Plaintiff agreed.[28]

The 2nd Meeting

13 Parties agree that on 12 September 2018, there was second meeting between Pei Wen and the Defendants (the "2nd Meeting").[29]

14 On the Plaintiff's account, she also attended this meeting in which Pei Wen informed the Defendants that the Plaintiff was the one who would be investing in ABT, and asked them to describe the investment opportunity to her.[30] The Defendants then repeated the 1st to 3rd Representations to the Plaintiff,[31] and showed the Slides to her.[32] The Defendants also showed mother and daughter a term sheet (the "Term Sheet") and said that they are giving the Plaintiff the opportunity to obtain a 5% stake in ABT for a sum of S$300,000,

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25 1DBA at p 7, para 13.

26 1DBA at p 7, para 16.

27 1PBA at p 37, para 14.

28 1PBA at p 4, para 7 to p 5, para 8 and p 38, para 16.

29 1PBA at p 5, para 11, p 38, paras 17 to 19; Transcript dated 6 May 2021 at p 29 to 31; Transcript dated 7 May 2021 at p 72, lines 3 to 9.

30 1PBA at p 5, para 12

31 1PBA at p 5, para 13 to p 6 para 15.

32 PCS at para 84.

effectively granting the Plaintiff a S$500,000 "discount" since ABT's valuation of S$16,000,000 would mean that a 5% stake was worth S$800,000 (the "4th Representation").[33] In doing so, they applied a valuation of ABT at only S$6,000,000.[34] Also, in the middle of this meeting, Lee told Wanting, who was an employee of ABT, to show the Plaintiff a body suit that ABT manufactured,[35] and the Plaintiff proceeded to touch the body suit.[36] As S$300,000 was a large sum of money, the Plaintiff wanted to discuss this with Pei Wen before making a decision.[37]

15 The Defendants deny that the Plaintiff was present, and that they made the Representations at the 2nd Meeting.[38] While Lee admits to showing Pei Wen the Slides at this meeting,[39] he testified that did so only to "introduce her to the EMS industry".[40] Lee maintains that the Defendants did not tell Pei Wen that ABT was profitable or that it was worth S$16,000,000, as they only discussed VBA's valuation.[41] In this regard, Lee claims that he merely told Pei Wen that the Defendants hoped that VBA's existing customers or licensees would contract with ABT instead.[42] Lastly, though Lee acknowledges that Wanting is

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33 1PBA at p 6, para 16 and p 20, para 20; SOC3 at para 5.3.

34 1PBA at p 39, para 20.

35 Transcript dated 5 May 2021 at p 28, lines 8 to 22.

36 PCS at para 85.

37 1PBA at p 6, para 17.

38 Transcript dated 6 May 2021 at p 90, line 25 to p 91, line to 6; Transcript dated 7 May 2021 at p 27 line 24 to p 28 line 9 and at p 80, lines 17 to 24.

39 Transcript dated 6 May 2021 at p 81, lines 11 to 12.

40 Transcript dated 6 May 2021 at p 83, lines 10 to 21.

41 1DBA at p 10, para 24.

42 1DBA at p 8, para 19; Transcript dated 6 May 2021 at p 107, lines 22 to 24.

ABT's employee, he claims that she was not present in this meeting and did not show the Plaintiff a sample body suit.[43]

16 The Plaintiff said that, after the meeting, she discussed the matter with her daughter and decided to proceed with investing in ABT. Pei Wen agreed to provide her with the money to do so.[44]

The 3rd Meeting

17 On 13 September 2018, Brendan emailed Pei Wen a copy of the Term Sheet, which provided, *inter alia*, that the investment offer had to be accepted by 14 September 2018, *ie*, the very next day.[45] Pei Wen then accepted the offer via email[46] and they arranged for the Plaintiff, her, and the Defendants to meet on 18 September 2018.[47]

18 On 18 September 2018, the Plaintiff and Pei Wen met with the Defendants at a law firm (the "3rd Meeting").[48] The Defendants' lawyer briefly described the Share Subscription Agreement ("SSA") to the Plaintiff, under which the Plaintiff would transfer S$300,000 to ABT in exchange for 5% of the issued share capital in ABT.[49] The Plaintiff then signed the SSA. Thereafter, Pei Wen issued a cheque for S$300,000 on behalf of the Plaintiff.[50]

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43 Transcript dated 7 May 2021 at p 28, line 29 to p 29 line 2.

44 1PBA at p 6, para 18 to p 7, para 19.

45 1PBA at p 40, para 25; Transcript dated 7 May 2021 at p 70, line 28 to p 71, line 10, and p 72, lines 14 to 23; 1AB at p 55.

46 1PBA at p 40, para 25.

47 1PBA at p 7, para 20 and p 41, para 29.

48 1PBA at p 43, paras 32 to 34.

49 1AB at p 56.

50 1AB at p 66.

19 The ABT shares were subsequently issued to the Plaintiff on or about 30 November 2018.[51]

The 4th Meeting

20 On 19 July 2019, Pei Wen met with Lee (the "4th Meeting").[52] Lee passed her an annual return form and said that it required the Plaintiff's signature. Pei Wen agreed to return the form with the Plaintiff's signature and left.

21 Pei Wen later read the document and realised that it stated that: (a) ABT had S$900,000 in paid-up capital; (b) the Plaintiff held 526 out of 10,526 shares in ABT.[53] This meant that the Plaintiff had a 4.997% stake in ABT instead of the 5% stake that was promised.[54] Also, with reference to a S$900,000 paid-up, a 4.997% stake is worth approximately a mere S$44,974, which fell short of the S$300,000 that the Plaintiff had invested.[55] Hence, Pei Wen requested for an explanation from the Defendants on this matter, mostly through WhatsApp messages.[56]

22 In the course of this correspondence, Pei Wen requested for: (a) a copy of ABT's valuation report that shows that ABT was valued at S$16,000,000;[57]

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51 1PBA at p 43, para 36.

52 1PBA at p 44, para 38; 1DBA at p 11, para 30; PCS at para 5.

53 1PBA at p 44, para 39.

54 1PBA at pp 45 to 46, para 41.

55 1PBA at pp 45 to 46, para 41.

56 1PBA at p 46, para 42 to p 49, para 49.

57 1PBA at p 46, para 43.

and (b) a copy of ABT's financial statements for the year prior to the Plaintiff's investment, *ie*, the financial year ending 31 December 2017.[58]

23 In response, on 24 July 2019, Brendan sent her a copy of ABT's unaudited financial statement for the financial year ending 31 December 2018 ("AR 2018") instead, *ie*, the year after.[59] As for the valuation report, Brendan also told her on that day that it was confidential and invited her to view the hard copy in the Defendants' office.[60]

24 After viewing AR 2018, Pei Wen discovered that ABT had profits of only S$97,241 for that financial year and had made a loss of S$21,859 in 2017,[61] which made her sceptical that ABT could be valued at S$16,000,000.[62] As Pei Wen was suspicious, she arranged for the Plaintiff and her to meet with the Defendants.[63]

The 5th Meeting

25 On 25 July 2019, the Plaintiff and Pei Wen met with the Defendants at a café near the Defendants' office (the "5th Meeting").[64] Pei Wen made a voice recording of their discussion.[65]

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58 1PBA at p 49, para 49.

59 1PBA at p 50, para 50.

60 1PBA at pp 50 to 51, para 51.

61 1PBA at p 51, para 52.

62 1PBA at p 52, para 53.

63 1PBA at p 52, para 54.

64 1PBA at p 53, para 58.

65 1PBA at p 53, para 58.

26 Pei Wen claims that, in response to her request for ABT's valuation report, the Defendants passed her a copy of the Slides that was shown to her on the 1st Meeting.[66] She told them that the Slides pertained to VBA and not ABT.[67] She then questioned them about the link between VBA and ABT, to which Lee gave a confusing explanation.[68] Also, when she asked them about the ABT's negative retained earnings in AR 2018, they confirmed that ABT was operating at a loss, which was something she did not know previously.[69] Nevertheless, they maintained that ABT had a valuation of S$16,000,000.[70] Pei Wen also claims that the Defendants could not explain a particular entry in AR 2018, "changes in trading stocks", which had a negative amount of S$693,249.[71] They called an employee that handled ABT's accounts to explain that entry, and that employee's explanation was that the entry reflected capital outlay that was used to buy stocks of "BB suits".[72] Pei Wen was still dissatisfied with this explanation as she felt that it was strange that ABT purportedly spent such a substantial amount on these suits despite having only S$36,694 in inventory.[73] She avers that in the course of their discussion, the Defendants also repeated the 3rd Representation, *ie*, that the business, sales, and profits from VBA were being transferred to ABT.[74] Ultimately, she did not obtain an satisfactory explanation

66 1PBA at p 54, para 60.

67 1PBA at p 54, para 61.

68 1PBA at p 55, para 62.

69 1PBA at p 56, para 63 and p 57, para 64.

70 1PBA at p 57, para 65.

71 1PBA at p 58, para 66 to p 59, para 67.

72 1PBA at pp 61 to 62, para 69.

73 1PBA at pp 61 to 62, para 69.

74 1PBA at p 69, para 76.

by the end of the 5th Meeting and she clams the Defendants told her that the Plaintiff's investment "could be reversed".[75]

27 After the 5th Meeting, Pei Wen discussed the events of the meeting with the Plaintiff.[76] They found that their understanding of ABT from *this* meeting was different from what they previously understood from the Representations. The Plaintiff therefore decided that she wanted to unwind her investment in ABT.[77]

28 On 26 July 2019, Pei Wen informed Lee that the Plaintiff wanted to unwind her investment in ABT.[78] Lee agreed, and they planned for a meeting to reduce this transaction to writing.[79]

29 However, she claims that when she requested Brendan to provide security for this transaction on 14 August 2018, Brendan became evasive and ultimately did not agree to do so.[80]

30 Dissatisfied with the state of the discussions, she asked to meet the Defendants to discuss the matter and they agreed to do so.[81]

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75 1PBA at p 66, para 73 and p 71, para 77.

76 1PBA at p 72, para 79.

77 1PBA at p 72, para 79.

78 1PBA at pp 72 to 73, para 80.

79 1PBA at pp 72 to 73, para 80.

80 1PBA at p 75, para 84.

81 1PBA at p 76, para 85.

The 6th Meeting

31 Pei Wen then met with the Defendants on 13 September 2019, without the Plaintiff (the "6th Meeting").[82] She recorded this meeting as well. She was ultimately dissatisfied with the discussion in that meeting.

32 Shortly after, Pei Wen had a call with Lee, which she also recorded. She claims that Lee assured her that ABT would repay the Plaintiff.[83]

33 Subsequently, she thought that the Defendants were avoiding her, and the Plaintiff then commenced the present action against the Defendants.[84]

The parties' cases

34 For ease of reference, I list the 1st to 4th Representations here:[85]

(a) 1st Representation: ABT was profitable.

(b) 2nd Representation: ABT was valued at S$16,000,000 by a reputable accounting firm in Singapore.

(c) 3rd Representation: All business, sales, and profits from one VBA, which was owned by the Defendants, was in the process of being transferred to ABT.

(d) 4th Representation: The Defendants gave the Plaintiff and/or her daughter the opportunity to invest in and hold a 5% interest in ABT for

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82 1PBA at p 76, paras 85 to 87.

83 1PBA at p 83, para 93.

84 1PBA at p 84, para 95.

85 SOC3 at paras 5.2.1 to 5.2.3, 5.3.1 and 5.3.2.

> a consideration of S$300,000 and this represented a substantial "discount" of S$500,000, given that ABT's valuation of S$16,000,000 meant that the 5% interest therein was worth S$800,000.

35 The Plaintiff's primary case is that the Defendants should be held liable for fraudulent misrepresentation, *ie*, in the tort of deceit.[86] She claims that the 1st to 4th Representations were made to her by the Defendants: (a) with the intention that the Plaintiff would rely on them to invest S$300,000 in ABT;[87] and (b) with the knowledge that they were false, or at least in the absence of any genuine belief that they were true.[88]

36 The Plaintiff's alternative case is that the Defendants should be held liable for negligent misrepresentation. She claims that the Defendants owed her a duty of care to her as: (a) they knew that the Representations would be transmitted to the Plaintiff and relied upon by her; (b) they intended, knew, or ought to have known that the Plaintiff would rely on the Representations in entering in the SSA as the Representations were material and the Defendants had personal knowledge of the facts concerning ABT as well as of the Representations' truth; (c) the Defendants had assumed responsibility for the Representations' accuracy; and (d) it was reasonably foreseeable that the Plaintiff would suffer loss and damage as a result as a result of her reliance on the Representations.[89] The Defendants then breached this duty of care by making the Representations, which were false.[90]

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86 SOC3 at pp 7 and 8.

87 SOC3 at para 7.

88 SOC3 at para 9.

89 SOC3 at para 11.

90 SOC3 at paras 12.1 and 12.2.

37 The Defendants deny making the Representations.

38 In respect of the 1st and 2nd Representations, the Defendants claim that these representations were made in respect of VBA and not ABT.[91] In other words, they represented that *VBA* was profitable and had a valuation of S$16,000,000.[92]

39 In respect of the 3rd Representation, the Defendants claim that they represented that they would try to persuade VBA's customers to buy and distribute the products of ABT and to deal with ABT and the Defendants.[93] In this regard, they represented that the team which was working for VBA would be transferred to work for ABT to effect this transfer of business.

40 In respect of the 4th Representation, the Defendants claim that the S$300,000 sum which the Plaintiff had paid in consideration of her 5% interest in ABT, was not a discount on *ABT's* S$16,000,000 valuation. Rather, because ABT had not developed its own product at that time, it did not have its own valuation.[94] Hence, the Defendants' applied a discount on *VBA's* S$16,0000,000 valuation to yield a discounted total share price of S$6,000,000, in view of the Defendants' projection that ABT's business model would allow it to command a better valuation than VBA.[95] In this way, the S$300,000 sum represented 5% of the total share price of S$6,000,000.

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91 Defence Amendment No 2 dated 5 May 2021 ("Defence2") at para 8.

92 DCS at para 50.

93 DCS at para 48; Defence2 at para 9.

94 Defence2 at para 13.

95 Defence2 at paras 12 and 14; DCS at para 66.

41 The Defendants also deny making representations *to the Plaintiff*. They claim that the Plaintiff was Pei Wen's proxy and Pei Wen was the actual person who invested in ABT.[96]

42 The Defendants also deny inducing the Plaintiff or Pei Wen to making any investment in ABT or to subscribe for ABT's shares.[97]

My decision

43 In my judgment, I am satisfied that the Defendants are liable for both fraudulent misrepresentation and negligent misrepresentation, and I set out my reasoning below.

44 I pause to note that the quantum of damages that the Plaintiff is entitled to under both causes of action are the same. The general position at law is that a plaintiff would be potentially entitled to a larger amount of damages for an action in fraudulent misrepresentation than for one in negligent misrepresentation. Damages awarded with respect to an action in negligent misrepresentation are constrained by the doctrine of remoteness of damage (as manifested in the concept of reasonable foreseeability), but those awarded with respect to one in fraudulent misrepresentation are not subject to such a constraint: *Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 at [23]. Here, that distinction is academic. The Plaintiff claims that by investing in ABT, she had suffered a loss of S$300,000 less the fair market value of the shares at the point of entering into the SSA.[98] Since this loss is simply the difference in the amount that she had paid and the actual value of the shares, it is

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96 Defence2 at para 6.

97 Defence2 at paras 18, 22 and 28.

98 SOC3 at p 8.

straightforward and clearly reasonably foreseeable. Hence, the Plaintiff is entitled to the same quantum of damages whether she successfully proves one or the other cause of action.

Were the Representations made?

45 Since the parties dispute *what* the Defendants had represented, it is crucial to first determine the content of the Defendants' representations. In other words, the preliminary issue is whether the Representations were indeed made.

46 It is undisputed that: (a) the Plaintiff concluded the SSA for her investment in ABT at the 3rd Meeting; and (b) prior to this event, the only financial information that could relate to ABT in some way furnished by the Defendants was those contained in the Slides. It was also undisputed that the Slides were shown to Pei Wen at least by the 2nd Meeting (see [10] and [15] above). Yet, the slides pertain to *VBA's* (and not ABT's) projected valuation of S$16,000,000.[99] ABT's financial statements were only shown to the Plaintiff *after* her investment in ABT, upon Pei Wen's request (see [23] above). Furthermore, together with the Plaintiff's expert report, they show that ABT has never generated profits.[100] Indeed, the expert report shows that ABT only had a nominal value of S$1 around the time which the Plaintiff had invested in it.[101] Nevertheless, the Plaintiff was willing to invest in ABT within a day of receiving the Term Sheet as the offer was only valid for that duration (see [17] above).

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99 Transcript dated 6 May 2021 at p 125, line 28 to p 126, line 3.

100 PCS at para 97.

101 Plaintiff's Bundle of Affidavits Vol 2 ("2PBA") at p 29, para 8.3

47 The above undisputed points, taken together, raise the following question. What did the Defendants represent, such that the Plaintiff was willing to *quickly* invest a substantial sum in a company even though: (a) she did not receive a direct report on its financial health prior to the investment; and (b) it has in reality never generated profits?

48 I find that only the Representations, as alleged by the Plaintiff, provide a satisfactory answer to the above question. As a matter of common sense, investors generally seek to invest in profitable ventures that would generate a higher return in the future, at a price that is as low as possible. This is consistent with the Plaintiff's position that the Defendants had painted a picture that ABT was a profitable high-value company which was poised to do even better in the future and that they were offering the Plaintiff an interest in it at a bargain price. This is especially so when one considers how quickly the Plaintiff entered into this investment. This attractive investment opportunity was precisely described by the Representations. On the other hand, when one considers the Defendants' version, they are in effect suggesting that they had simply explained to Pei Wen that ABT was a company that might potentially do as well as VBA in the future, and Pei Wen was convinced that she should quickly invest a substantial sum of S$300,000 through the Plaintiff as a proxy. Even putting aside their often-inconsistent testimony, their narrative is rather incredible.

49 More importantly, the Plaintiff's narrative is consistent with the evidence before me. The Representations accord with Pei Wen's attempt at clarifying with Lee, after the 4th Meeting (see [21] to [24] above) as well as during the 5th Meeting (see [26] above), whether the valuation he previously mentioned pertained to VBA or ABT.[102] The Representations also explain why

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102 1PBA at p 45.

the Plaintiff and Pei Wen did not ask for ABT's financial reports prior to the Plaintiff's investment, their later concern over ABT's financial state after looking at the annual return form, and Pei Wen's shock and disappointment upon finding out ABT's true financial state.[103] The Representations are also consistent with the Plaintiff's eventual decision to unwind her investment after being dissatisfied with the Defendants' explanation of ABT's financial state.

50 I also find that the Plaintiff's and Pei Wen's testimony to be more credible than the Defendants', who were evasive on the stand. The Plaintiff and Pei Wen gave detailed evidence on how the 2nd Meeting proceeded, to the extent that they could accurately describe minor incidents such as Wanting coming in the middle of the meeting to show the Plaintiff a sample product[104] and the seating positions of the people present at the meeting.[105] I also note that Wanting is still an employee of the Defendants' companies and was not called to give evidence to rebut the Plaintiff's evidence that the latter was present at the 2nd Meeting. I thus find that their credible testimony weighs in favour of finding that the Defendants had made the Representations.

51 Having examined the evidence before me, which includes documents, WhatsApp correspondence, and audio recordings of meetings and a call, I am satisfied that the Defendants made the Representations.

52 For the reasons above as well, I find, on balance, that the Plaintiff's version of events accurately represents what had actually transpired between the

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103 1PBA at p 51, para 52.

104 Transcript dated 5 May 2021 at p 28, lines 8 to 11; Transcript dated 6 May 2021 at p 14, lines 19 to 21.

105 Transcript dated 5 May 2021 at p 27, lines 24 to 27; Transcript dated 6 May 2021 at p 14, lines 16 to 17.

parties. Hence, my analysis below will proceed on the basis of the Plaintiff's version of events.

Fraudulent misrepresentation

53 The law on fraudulent representation is clear. Its elements are set out by the Court of Appeal in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14]:

(a) First, there must be a representation of fact made by words or conduct.

(b) Second, the representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff.

(c) Third, it must be proved that the plaintiff had acted upon the false statement.

(d) Fourth, it must be proved that the plaintiff suffered damage by so doing.

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

54 The first element is satisfied. The Defendants communicated the Representations by words. Since the Representations relate to the financial condition and business plan of ABT, and the derivation of the price of a 5% interest in ABT, they were representations of fact and not opinion.

55 The Defendants contest the second element as they assert that the Representations were made to Pei Wen and not the Plaintiff. In this regard, they claim that the Plaintiff was Pei Wen's proxy and Pei Wen was the actual person who invested in ABT.[106] In support of this claim, they contend that the Plaintiff was not present at the 2nd Meeting[107] and they first met the Plaintiff only at the signing of the SSA.[108]

56 As I have found that the Plaintiff's version of events is more credible (see [52] above), the Plaintiff did meet the Defendants on the 2nd Meeting. The Representations were made to her directly at this meeting.

57 In addition, their claim is contradicted by documentary evidence. Prior to signing the SSA, Pei Wen sent Brendan an email on 14 September 2018 at 11.52pm stating that the Plaintiff would be holding the interest in ABT, and that no proxy arrangement would be done:

> Hi Brendan,
>
> I ok with the agreement. Don't have anything to add. As for the proxy to the shares *I won't be doing proxy* so you don't have to found out on that. *My mum will just hold the rights to everything. Anything she will decide*. Just send her the PL statement once a year will do. See you on the 18th.
>
> Pei Wen
>
> [emphasis added]

The above email shows that the Defendants were aware that the Plaintiff would be the investor prior to the Plaintiff's signing of the SSA. Indeed, the email

106 Defence2 at para 6.

107 DCS at para 27.

108 DCS at para 122.

states that "[a]nything [the Plaintiff] will decide", and the Defendants were to send her the profit and loss statement, which shows that Plaintiff would actively monitor her investment in ABT rather than being a mere signatory to the SSA. Hence, they must have made the Representations to the Plaintiff with the intention that she would act upon them in deciding to invest in ABT.

58 In any case, even if I had found that the Plaintiff did not attend the 2nd Meeting in which the Representations were allegedly made to her directly, the above email suggests that Pei Wen would have communicated the Representations to the Plaintiff prior to the Plaintiff's investment in ABT in any case. It thus can be said that the Defendants made the Representations to the Plaintiff *through* Pei Wen. The Defendants also intended for the Plaintiff, falling within the class of potential investors, to act upon the Representations.

59 The third element of the tort is also satisfied on the facts, for the reasons below.

60 It is clear that the Plaintiff had acted upon the Representations since she signed the SSA shortly after having heard the Representations. The Representations are also false.

61 The expert report shows that from the analysis of ABT's annual returns in the years before the Plaintiff's investment, ABT was never profitable,[109] hence, the 1st Representation was false. The report also shows that ABT had a mere nominal value of S$1 at the time of the Plaintiff's investment,[110] so the 2nd and 4th Representation, which are based on the purported valuation of ABT at

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109 PCS at para 97.

110 PCS at paras 47 and 48.

S$16,000,000, must be false. As for the 3rd Representation, the only evidence the Defendants adduced to show a transfer of business, sales, or profits from VBA to ABT was that ABT managed to enter into an agreement with one customer that was also previously a VBA customer;[111] one mere instance is plainly insufficient to show that *all* business, sales, and profits of VBA were in the *process* of being transferred to ABT. They have also not produced the management accounts of VBA and ABT, which would have provided clear evidence on this issue, to support their case.[112] Also, VBA was a distributor of Visionbody International GmbH, the owner of the "Visionbody" brand, but VBA's distributorship rights were terminated by 22 October 2018, just about a month after the 3rd Meeting where the Plaintiff signed the SSA.[113] Accordingly, at all times, there could not have been any transfer of business, sales, or profits where there was none to do so.[114] I am thus satisfied that the 3rd Representation is false.

62 The fourth element of the tort is clearly satisfied, since the Plaintiff is claiming for the difference in the amount that she had invested in ABT with the actual value of ABT shares that she had received.[115]

63 Finally, for the fifth element, I find that: (a) the Defendants' position as the sole directors of VBA, and through VGA, the sole shareholders of VBA and

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111 PCS at para 107.

112 PCS at para 107.

113 PCS at para 22.

114 PCS at para 105.

115 SOC3 at p 8.

ABT;[116] and (b) their suspicious conduct, weighs heavily in my finding that they had knowledge of VBA's and ABT's financial condition.

64 To begin with, as persons entrusted with the management of ABT, they must have had access to all the documents relating to ABT's finances. Yet, it is strange that when Pei Wen had asked for a copy of the profit and loss statement of ABT at the 1st Meeting, they stated that there was nothing to show her, because the alleged transfer of business from VBA to ABT was ongoing (see [9] above).

65 Moreover, despite their role in ABT, the Defendants were consistently unable to satisfactorily explain ABT's financial condition. When confronted by Pei Wen, they were not able to explain to her how certain accounting entries of ABT were made, even with the assistance of an employee that was allegedly in charge of ABT's accounts (see [26] above). At trial, the Defendants were evasive when questioned about ABT's financial documents. Lee initially claimed that they were handled by ABT's "accountant",[117] but later stated that ABT did not have an accountant but "account executives".[118] Lee also testified that Brendan was in charge of ABT's accounts,[119] but Brendan claimed that he was not ABT's "bookkeeper".[120]

66 Furthermore, looking at the huge outflow of funds from ABT that these accounting entries indicate, I find that it was likely that they either intended to,

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116 PCS at para 114.

117 Transcript dated 7 May 2021 at p 55, lines 30 to 31.

118 Transcript dated 7 May 2021 at p 64, lines 23 to 24;

119 Transcript dated 7 May 2021 at p 27, lines 14 to 16.

120 Transcript dated 7 May 2021 at p 92, lines 16 to 28.

or have indeed, procured the transfer of funds out of ABT to VGA, a company which the Defendants owned.[121] For the avoidance of doubt, I state that while proof of the Defendant's motive in making the Representations is irrelevant to proving the tort (*DBS Bank Ltd v Carrier Singapore (Pte) Ltd* [2008] 3 SLR(R) 261 at [48]), their disavowal of knowledge under such suspicious circumstances are relevant in discrediting of their evidence.

67 Having examined the facts in totality, I find on balance that, despite the Defendants' claims of ignorance, the Defendants always had knowledge of VBA's and ABT's financial condition when they made the Representations, which relate to this very subject matter.[122] I therefore find that the Defendants had wilfully made the Representations with the knowledge that they were false.

68 From the above analysis, I hold that the Defendants are liable for fraudulent misrepresentation in making the Representations to the Plaintiff.

Negligent misrepresentation

69 The above finding is sufficient to dispose of the present case. However, in the alternative, I also hold that the Defendants are liable for negligent misrepresentation.

70 To succeed in negligent misrepresentation, the Plaintiff must prove the following (*Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 ("*Spandeck*"); *Ma Hongjin v Sim Eng Tong* [2021] SGHC 84 at [20]):

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121 PCS at paras 192 to 197, 217 and 227.

122 PCS at para 114.

(a) That the Defendants made a false representation of fact to her;

(b) That the representation induced her actual reliance;

(c) That the Defendants owed her a duty to take reasonable care in making the representation;

(d) That the Defendants breached that duty of care; and

(e) That the breach caused damage to her.

71 I held above (at [55]–[61] above) that the Representations are false representations of fact, that the Representations were made to the Plaintiff through Pei Wen, and that the Plaintiff had actually relied on them in entering the SSA. Hence, the first two elements of negligent misrepresentation are satisfied.

72 Also, the Defendants only further dispute whether they owe the Plaintiff a duty to take reasonable care in making the Representations.[123] They do not dispute that they have breached that duty of care or that they have, in doing so, caused damage to the Plaintiff. Hence, I need only examine the third element of the tort: did the Defendants owe the Plaintiff a duty of care?

Did the Defendants owe a Plaintiff a duty of care?

73 In *Spandeck*, the Court of Appeal laid down a single test to determine the imposition of a duty of care in all claims arising out of negligence in the context of pure economic loss (the "*Spandeck* test"), and rejected the English approach of a general exclusionary rule against the recovery of pure economic

123 DCS at paras 167 to 172.

loss. The *Spandeck* test was held to be a two-stage test comprising first, proximity, and second, policy considerations, which were together preceded by the threshold question of factual foreseeability. The court also made clear that the *Spandeck* test was to be applied incrementally with reference to analogous cases.

(1) Factual foreseeability

74 As Andrew Phang Boon Leong J (as he then was) elucidated in *Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric (practising under the name and style of W P Architects)* [2007] 1 SLR(R) 853 (cited with approval in *Spandeck* at [75]), the threshold inquiry of factual foreseeability "will almost always be satisfied" [emphasis in original omitted] (at [55]). Indeed, on the facts, I find that to be the case. It is readily foreseeable that the Defendants' negligence in making the Representations would cause the Plaintiff to suffer loss in terms of the difference in value between the Plaintiff's invested sum in ABT and the actual value of ABT's shares. The effect of the Representations was that ABT was valued at S$16,000,000, so they were giving the Plaintiff a substantial discount when they allowed her to invest S$300,000 for a 5% interest in this profitable company. It turned out that the ABT shares were worth much less. It is evident that the loss of the difference in share value is factually foreseeable.

(2) Proximity

75 The more pertinent issue here is whether legal proximity can be proven. In *Spandeck*, the court stated (at [77]) that "[t]he focus here is necessarily on the closeness of the relationship between the parties themselves" and (at [81]) that such closeness may be proven by the factors expressed by Deane J in *Council of the Shire of Sutherland v Heyman* (1985) 157 CLR 424 ("*Sutherland*"), which

included the physical, circumstantial, and causal proximity between the parties as well as the twin criteria of voluntary assumption of responsibility and reliance (at 499). The court added that in determining proximity, the court should apply these factors first by analogising the facts of the case for decision with those of decided cases.

76 With regard to the nature of the present claim, the Court of Appeal in *Ngiam Kong Seng and another v Lim Chiew Hock* [2008] 3 SLR(R) 674 has noted in passing (at [100]) that in a situation involving liability for pure economic loss, the twin criteria of voluntary assumption of responsibility and reliance would more appropriately apply.

77 In the same vein, this court has also previously noted that where pure economic loss is concerned, it may be more practicable to adjudge whether the requisite proximity existed based on the twin criteria of voluntary assumption of responsibility and reliance: see *Straits Advisors Pte Ltd v Michael Deeb (alias Magdi Salah El-Deeb) and others* [2014] SGHC 94 at [90] ("*Straits Advisors*") and *Resource Piling Pte Ltd v Geospecs Pte Ltd* [2014] 1 SLR 485 at [26]. However, the court can have reference to the other relational *indicia* where they are relevant in determining proximity.

78 In my analysis, it is useful to compare the facts of the present case with that of *Straits Advisors*. In that case, the plaintiff entered into a contractual engagement with the second and third defendants, wherein the plaintiff was to provide corporate finance advisory services through two of its personnel with the aim of steering the third defendant towards an initial public offering (the "IPO"). To this end, the third defendant had presented a draft prospectus to the plaintiff (the "Preliminary Prospectus") during pre-contractual negotiations. The Preliminary Prospectus contained the false qualifications of the former

managing director of the second and third defendants and the chief operating officer of the third defendant to the plaintiff: at [8]. In this regard, the plaintiff submitted that the negligence of the third defendant's board of directors in verifying the accuracy of the Preliminary Prospectus had induced it to accept the engagement on the basis of incorrect information and it thereby suffered loss and damage: at [13].

79 The court in *Straits Advisors* found that there was no voluntary assumption of responsibility by the second and third defendants in respect of the Preliminary Prospectus, for three reasons.

80 Firstly, neither was there any express representation that the Preliminary Prospectus was entirely free from error, nor were there any other relevant communication or conduct by the second and third defendants from which the court could infer an assumption of the risk of losses that might flow from any inaccuracy in the Preliminary Prospectus: at [99]. Furthermore, the plaintiff also did not place any degree of stress on the Preliminary Prospectus which might have reasonably put the second and third defendants on notice that the information there was of particular importance: at [99].

81 Secondly, the plaintiff effectively sought to justify proximity on the basis of the parties' relationship. as It claimed that external consultants ordinarily relied on its corporate client to provide accurate and complete information before accepting a potential engagement: at [100]. However, it cannot be the case that the second and third defendants had, simply by virtue of the positions which the parties' were respectively in (*ie*, external advisor and corporate client), voluntarily assumed responsibility for the accuracy of all information which could have been passed on to the plaintiff: at [100].

82 Thirdly, the terms of the Preliminary Prospectus clearly stated that it was only to be relied on by a specific class of persons and in connection with a specific purpose, and the plaintiff did not fall within the class of persons who could rely on the Preliminary Prospectus: at [102].

83 Applying the above considerations to the present case, I find they indicate that Lee and Brendan had voluntarily assumed responsibility for the accuracy of the Representations. I examine the above considerations in turn.

84 Firstly, unlike the facts *Straits Advisors*, I find that there *is* conduct by the Defendants from which the court could infer an assumption of the risk of losses that might flow from any inaccuracy from the Representations. The Defendants wanted the Plaintiff to invest in ABT. The Plaintiff, as a profit-driven investor, would invest based on her perception of ABT's current and projected future financial performance – to which the 1st to 3rd Representations relate – as she would be concerned with her share price and whether dividends would be paid to her. She would also consider whether the price she would be paying for her stake in ABT is likely to be profitable, and the 4th Representation relates to this. Hence, should the Representations be inaccurate, the Plaintiff would suffer loss.

85 Secondly, the court in *Straits Advisors* considered that the parties' relationship, without more, were insufficient to find an assumption of responsibility of the defendants' part. However, as I elaborate below, the facts of the present case are much stronger, such that even assuming for the sake of argument that potential investors cannot simply rely on directors of a company to provide accurate and complete information before investing (*ie*, they should conduct their own due diligence as well), that assumption does not assist the Defendants here.

86 To begin with, the Defendants, as directors of ABT, had knowledge of ABT's financial condition and business plans, and there is no legitimate reason for them to state the same inaccurately. Moreover, the inaccuracy was patently egregious here: they represented that ABT was profitable and worth S$16,000,000 when it was actually a company that was losing money and worth a nominal S$1.

87 More importantly, it should be borne in mind that the Plaintiff was introduced to the Defendants by *her own daughter*, Pei Wen, who was in turn introduced to the Defendants by Wanting, who was Pei Wen's *close friend*. This closeness would have made her more trusting of the Defendants and thus less sceptical of claims that the Defendants made about ABT, which includes the Representations. On top of that, the Plaintiff is an unsophisticated investor: she is a housewife of many years and has, apart from purchasing some shares in Singtel and SingPost, never made any other investments.[124]

88 Furthermore, in terms of physical proximity (which involves the notion of nearness or closeness in respect of both space and time), I place weight on the fact that the investment opportunity in ABT was only open for *one* day. Indeed, since the Term Sheet was sent to Pei Wen on 13 September 2018 and stated that the investment opportunity was open only up till 14 September 2018 (see [17] above), I find that the Plaintiff was rushed in her decision to invest in ABT.

89 Hence, for the above reasons, I find that the Defendants' position as directors *who were introduced to the Plaintiff* in such circumstances, and the

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[124] Transcript dated 6 May 2021 at p 4, lines 3 to 12.

Plaintiff's haste in entering into the SSA, inclines heavily in favour of finding an assumption of responsibility of the Defendants' part.

90 Lastly, unlike the Preliminary Prospectus in *Straits Advisors*, the Representations here were clearly intended to be relied on by the Plaintiff. In *Straits Advisors*, the court stated (at [103]) that:

> … The plaintiff was *not a potential subscriber of shares in the third defendant* and if it had placed any reliance on the Preliminary Prospectus this was for the purpose of informing its decision to accept the engagement with the Companies or not. Accordingly, I do not see how it can properly be said that the Companies had assumed responsibility when the Preliminary Prospectus was provided in circumstances where it was never contemplated that liability should arise.
>
> [emphasis added]

Here, the Plaintiff *is* a potential subscriber of shares and the Representations relate to considerations that such a potential subscriber would rely on; this is for the same reasons I have set out in my analysis above at [84].

91 I am therefore satisfied that the Defendants had voluntarily assumed responsibility to take reasonable care in accurately describing to the Plaintiff: (a) whether ABT was profitable at the material time; (b) what ABT was valued at; (c) whether ABT's business, sales, and profits were in the process of being transferred from VBA to it; and (d) how the price for the 5% interest in it was derived.

92 As for the criterion of reliance, that is to be found where there is "reliance by one party upon such care being taken by the other in circumstances where the other party knew or ought to have known of that reliance" (*per* Deane J in *Sutherland* at 55–56, cited with approval in *Spandeck* at [78]). Earlier, in the context of fraudulent misrepresentation, I reasoned that the evidence shows

that the Defendants made the Representations with the intention that they will be acted upon by the Plaintiff (see [55]–[58] above). That same analysis is applicable here. I would add that I also place weight on the fact that when Pei Wen asked for a copy of the profit and loss statement of ABT at the 1st Meeting, the Defendants stated that there was nothing to show her because the transfer of business from VBA to ABT was still ongoing (see [9] above). In this regard, I agree with the Plaintiff's submission that the Defendants had invited the Plaintiff to rely on them as the sole source of information from which the truth of the pleaded representations could be ascertained. I am therefore satisfied that the Plaintiff had relied on the Defendant to take reasonable care in making the Representations, as the Defendants knew that the Plaintiff would rely on the Representations when deciding to invest in ABT.

(3) Policy considerations

93 The final limb of the *Spandeck* test concerns the ascertainment of any policy considerations against the imposition of a duty of care on the Defendants in the present circumstances (*Spandeck* at [83]).

94 I agree with the Plaintiff's submission that there is no policy consideration which militates against holding directors responsible for the representations they make when courting investments from unsophisticated persons like the Plaintiff. This is especially so when they purport to be the sole source of information regarding the investment and when they impose time constraints on the unsophisticated investor.[125]

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125 PCS at para 144.

95 I also agree with the Plaintiff's submission that, conversely, policy considerations favour the imposition of such a duty.[126] In my view, the law should reprobate and discourage such predatory practices to protect unsuspecting victims. Such practices could also discourage investment in shares, which would negatively impact well-meaning seekers of capital for their companies.

(4) Conclusion on duty of care

96 From the above analysis, I find that the Defendants did owe the Plaintiff a duty to take reasonable care in accurately describing: (a) whether ABT was profitable at the material time; (b) what ABT was valued at; (c) whether ABT's business, sales, and profits were in the process of being transferred from VBA to it; and (d) how the price for the 5% interest in it was derived. I should add that this duty is a limited one. It does not extend to, for example, a duty on the part of the Defendants to advise the Plaintiff as to whether investing in ABT would a commercially sound decision. Hence, any concern of indeterminate liability is unfounded.

Conclusion on negligent misrepresentation

97 Since the Defendants only dispute whether they owe the Plaintiff a duty to take reasonable care in making the Representations (see [72] above), having found that the Defendants did owe such a duty, I am satisfied that the Defendants made the Representations to the Plaintiff negligently.

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126 PCS at para 145.

Conclusion

98 For the reasons above, I allow the Plaintiff's claim. The Defendants are to pay the Plaintiff the sum of S$298,535.09, which is the difference between the sum invested by the Plaintiff for 5% of ABT shares and the actual value of those shares at the time of investment.[127] I also order the Defendants to pay interest on this sum at 5.33% per annum from 12 March 2020, the date on which the writ was filed.

99 On the issue of costs, after considering the submissions of counsel for both sides, I order the Defendants to pay costs to the Plaintiff fixed at $90,000, plus reasonable disbursements to be agreed or taxed. I also order the Plaintiff to pay costs to the Defendants in relation to the Plaintiff's application on the first day of trial to amend the Statement of Claim, fixed at $1,500 all in.

Lee Seiu Kin
Judge of the High Court

Subramanian S/O Ayasamy Pillai, Daphne Francesca Tan and Roe Ervin Jun Zhi (CNPLaw LLP) for the plaintiff;
Han Wah Teng and Winston Chui (CTLC Law Corporation) for the defendants.

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127 PCS at paras 147 and 148.