

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 183

Suit No 52 of 2013

Between

Zhang Run Zi

... Plaintiff

And

Ascentsia Law Corp
(Singapore UEN No 200204598E)

... Defendant

GROUND OF DECISION

[Contract] — [Breach]

[Tort] — [Negligence] — [Solicitors' duties]

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Zhang Run Zi
v
Ascentsia Law Corp

[2018] SGHC 183

High Court — Suit No 52 of 2013
See Kee Oon J
20, 21, 22 March, 17 May 2018

17 August 2018

See Kee Oon J:

Introduction

1 By Suit No 52 of 2013, the Plaintiff, Zhang Run Zi (“Zhang”) claimed for loss resulting from the Defendant’s alleged breach of its contractual, tortious, fiduciary and statutory duties as the law firm representing her in the sale and purchase of the property at 10 Hoot Kiam Road Singapore 249395 (“the Property”) in 2007.

2 Zhang was unrepresented. The trial took place over three days and after hearing the submissions from both parties, I dismissed Zhang’s claim with costs. I now set out the reasons for my decision.

Background to the dispute

3 The dispute stemmed from Zhang’s intended purchase of the Property.

Mr Leong Why Kong (“Leong”), a solicitor with the Defendant, was the solicitor in charge of this property transaction. The purchase was abortive and Zhang alleged that there were multiple instances where Leong had failed to advise her adequately.

4 On 3 January 2007, Zhang met the vendors of the Property (“the Vendors”) and was shown the Option to Purchase (“OTP”).¹ The purchase price was S\$1,020,000. Zhang asked a friend who was a property agent,² Mr Adrian Koh Hoong Tse (“Adrian Koh”), to attend the meeting to help her understand the terms of the OTP because of her alleged poor command of the English language. Adrian Koh told her that there were no problems with the OTP.³ Thereafter, she signed the OTP and made payment of the deposit amounting to 1% of the purchase price to the Vendors. The deadline for exercise of the OTP was 24 January 2007 at 4pm. Leong had not entered the picture when Zhang signed the OTP.

5 On or around 5 January 2007, Zhang met Leong for lunch mainly to discuss about her divorce matter, in which Leong was then representing her.⁴ Leong had previously represented her in successfully claiming S\$800,000 in commissions from her former employer.⁵ During this meeting, Zhang informed him that she had secured two options to purchase, one for the Property and another for a property at 112 Jalan Jurong Kechil Singapore (“the Jalan Jurong Kechil property”). She showed him the OTP for the Property and asked him whether there were any problems with it. He advised her that the preamble

¹ NE 20/03/2018 at p 18.

² NE 20/03/2018 at p 21.

³ NE 20/03/2018 at p 22.

⁴ NE 20/03/2018 at p 30.

⁵ NE 20/03/2018 at p 15.

stating that the balance 4% deposit was to be released to the Vendors was unusual.⁶ Leong claimed that he had further drawn her attention to Clause 11 because it was also unusual, but Zhang denied that he had done so. This was one of the central disputes between the parties. Clause 11 of the OTP reads:

The Purchaser has notice and knowledge of the road lines affecting the Property ... and ... shall not annul the sale and purchase herein nor shall any abatement or compensation be allowed in respect thereof.

6 Thereafter, Zhang took out what was described as a “blurry” map which was attached to the OTP (“the blurry document”) and showed it to Leong. Leong told her he did not know what the document was because it was blurry. Zhang asked Leong what she should do and he suggested that she could check with the CrimsonLogic service bureau (“CrimsonLogic”), which was where most of the property searches were conducted.⁷

7 In the same meeting, Zhang and Leong also discussed the financing options for the two properties. Zhang decided to engage the Defendant to represent her only in the purchase of the Jalan Jurong Kechil property. Leong accepted her appointment. Zhang stated that she was not appointing the Defendant to act in the purchase of the Property and would appoint another firm,⁸ so she kept the documents in relation to the Property, including the OTP. Although the parties disputed the exact reason behind Zhang’s decision to appoint Leong only for the Jalan Jurong Kechil property purchase, this was immaterial for the purposes of the present case.

8 Following Leong’s suggestion, Zhang conducted searches on her own

⁶ Zhang’s AEIC at [10].

⁷ NE 20/03/2018 at p 37.

⁸ NE 20/03/2018 at p 31.

on the Property with CrimsonLogic on 7 January 2007. She then went overseas and returned to Singapore on or about 22 January 2007, just before the due date for exercise of the OTP on 24 January 2007.⁹

9 Subsequently, Zhang showed Leong four searches (“the four requisition replies”), namely a land requisition reply from the Building and Construction Authority (“BCA”), a land requisition reply (Street Works) from the Land Transport Authority (“LTA”), a land requisition reply (Rapid Transit Systems) from the LTA and a legal requisition from the Urban Redevelopment Authority (“URA”). Leong’s account was that this took place on 22 January 2007 and during this meeting, he also informed her that she had not carried out all the searches normally required for conveyancing, in particular, the property tax search and the coloured road line plan.¹⁰ Zhang informed Leong that she would be appointing another law firm for the sale and purchase of the Property.¹¹ Zhang’s account was that she had made a call to Leong one or two days before 24 January 2007, and arranged to meet him on 24 January 2007 at about 11am.¹² It was during this meeting that she showed him the four requisition replies.¹³ On 23 January 2007, Zhang went to the URA to verify the blurry document and was allegedly told that the government had no plans to develop the area around the Property.¹⁴

10 On 24 January 2007, Zhang met Leong. She handed him the OTP along with the four requisition replies and asked him to exercise the OTP. Zhang

⁹ Zhang’s AEIC at paras 13 and 14.

¹⁰ Leong’s AEIC at para 16.

¹¹ NE 20/03/2018 at pp 45 and 46.

¹² Zhang’s AEIC at para 14; NE 20/03/2018 at p 48.

¹³ NE 20/03/2018 at p 44.

¹⁴ NE 20/03/2018 at p 47.

alleged that this meeting took place at about noon, while the Defendant alleged that this meeting took place at about 2pm.¹⁵ Leong took the documents but he realised afterwards that the acceptance copy of the OTP had not been signed and rushed to find Zhang to sign it. This occurred at about 3pm on 24 January 2007.¹⁶ Leong successfully exercised the OTP before its expiry which was at 4pm on the same day.

11 Leong sent a letter dated 25 January 2007 to Zhang confirming that the OTP was exercised the day before and that the completion date was tentatively fixed for 21 March 2007. Zhang confirmed that she did receive this letter.¹⁷ On the same day, Leong also applied for the outstanding searches on the Property.¹⁸ After receiving the search results on 1 February 2007, Leong sent a letter to Zhang stating that the Property had been “earmarked as ‘Land Required as Road Reserve’”.¹⁹ Leong also called Zhang on the same day to inform her of the problem with the Property.²⁰ The Property was wholly affected by the proposed Singapore Underground Road System and was partially affected by a road widening line intended for the proposed expansion of Hoot Kiam Road.²¹ Zhang went down to the LTA on the same day to make enquiries, and was allegedly told by the LTA that the land on which the Property was situated would be acquired by the government.²² This issue of conducting a search on the road reserves affecting the Property was another central contention between the

¹⁵ NE 20/03/2018 at p 50.

¹⁶ NE 20/03/2018 at p 51.

¹⁷ NE 20/03/2018 at p 52.

¹⁸ Leong’s AEIC at para 24.

¹⁹ Leong’s AEIC at para 26.

²⁰ NE 20/3/2018 at p 56.

²¹ Zhang’s AEIC at para 27.

²² NE 20/3/2018 at p 57.

parties.

12 Zhang sent a letter (“the termination letter”) dated 9 February 2007 to the Vendors personally, claiming that they had misrepresented to her about the development potential of the Property and had induced her into signing the OTP without informing her that the property was affected by road widening or acquisition.²³ Thus, she demanded a return of the deposit paid. She first drafted the letter in Mandarin on 8 February 2007 and Leong translated it for her on 9 February 2007. Leong informed her that she could either send the letter herself or through another law firm, as the Defendant could not represent her in her claim against the Vendors. In his cover letter to Zhang, Leong also cautioned Zhang that by sending the letter, she would be repudiating the agreement between her and the Vendors, and the Vendors were entitled to accept her repudiation, forfeit the deposit, resell the Property and claim any shortfall in the sale price from her.²⁴

13 On or about 14 February 2007, the government announced that affected owners of compulsorily acquired properties would be compensated based on the market value of the acquired properties, pursuant to the Land Acquisition (Amendment) Act 2007 (No 19 of 2007) (“the statutory amendment”).²⁵

14 On 15 February 2007, Leong helped Zhang to translate another letter she had written with the intent to send to the Vendors. In the letter, Zhang sought to retract her previous letter and indicated that she was going to obtain a valuation of the Property to determine whether the road reserves would affect the Property

²³ NE 20/3/2018 at p 60.

²⁴ Defendant’s BOD at Tab 9.

²⁵ NE 20/3/2018 at p 62. Zhang’s AEIC stated at [50] and [60] that the date of the announcement was 12 February 2007.

adversely (“the retraction letter”). However, on the same day, in response to Zhang’s allegations of misrepresentation and inducement in the termination letter, the Vendors sent a letter to Zhang directly, stating that Clause 11 of the OTP gave express notice of the road lines affecting the Property, which was reflected in the document annexed to the OTP given to her. The Vendors also reserved their rights in respect of the publication of defamatory material in her letter.

15 On 21 February 2007, the Vendors’ solicitors sent another letter to Zhang directly, stating that the Vendors had shown her the road interpretation plan of the Property, and that their rights against her for defamation were strictly reserved. In the same letter, the Vendors’ solicitors asked Zhang to confirm through her lawyers whether she was proceeding with the purchase of the Property. Since the Defendant was copied in the letter, Leong forwarded the same letter to Zhang on 22 February 2007, together with a cover letter asking her for her instructions whether she was proceeding with the purchase.²⁶ On 26 February 2007, the Vendors’ solicitors sent another letter to Zhang, with the Defendant copied, clarifying that she had gone to the Vendors’ office with an agent who read over the OTP and advised her on it. Leong similarly forwarded this letter to Zhang on 27 February 2007, together with a cover letter asking her once again for her instructions as to whether she was proceeding with the purchase. Leong also stated that the completion was on 21 March 2007 and that there would be penalty interest for late completion.²⁷

16 On 5 March 2007, the Vendors’ solicitors sent the Defendant the completion account for the Property. Leong forwarded this letter to Zhang on

²⁶ Defendant’s BOD at Tab 14.

²⁷ Defendant’s BOD at Tab 15.

11 March 2007 with a cover letter urgently asking for her instructions as to whether she was proceeding with the purchase, as the completion date was on 21 March 2007.²⁸ On 15 March 2007, the Vendors' solicitors sent the Defendant the modes of payment for completion.²⁹ On 16 March 2007, Leong replied the Vendors' solicitors stating that the Defendant had no instructions from Zhang, and asked them to communicate with her directly.³⁰ Zhang was copied in the letter.³¹ The Defendant took the position that it was discharged on 16 March 2007. The next day, Leong sent the original OTP back to the Vendors' solicitors. Zhang was similarly copied in this letter.³² Leong called Zhang on 19 March 2007 to explain that the original OTP had been returned.³³

17 On 26 March 2007, the Vendors' solicitors sent the requisite 21 days' notice to complete, starting on 26 March 2007 and ending on 16 April 2007, by registered mail to Zhang's residential address.³⁴ Zhang did not complete the purchase. The dispute between the parties here was whether Zhang had been adequately advised on the timeline of the purchase and whether the Vendor could sell the Property to a third party. On 21 June 2007, Zhang sought Leong's help to draft a letter in English for a meeting with the Vendors directly in order to negotiate the purchase, since it was only then that she had sufficient cash to complete the sale.³⁵ Leong sent her the English draft on 25 June 2007³⁶ and

²⁸ Defendant's BOD at Tab 17.

²⁹ Defendant's BOD at Tab 19.

³⁰ Zhang's AEIC at para 42.

³¹ Defendant's BOD at Tab 20.

³² Defendant's BOD at Tab 20.

³³ NE 20/3/2018 at pp 73–74.

³⁴ NE 21/3/2018 at p 6.

³⁵ NE 20/3/2018 at p 78.

³⁶ Leong's AEIC at Tab LWK-23.

Zhang sent the letter to the Vendors, but was notified a few days later that they intended to sell the Property to a different buyer.³⁷

18 On 5 July 2007, the Defendant received a letter from the Vendors’ solicitors demanding that Zhang withdraw her caveat on the Property since she had decided not to proceed with completion of the purchase and thus had no further interest in the Property. On the same day, Leong forwarded the letter to Zhang, with a cover letter informing her that she had no interest in the Property as previously explained to her, and she would be liable for damages if she refused to withdraw the caveat.³⁸ On 19 July 2007, Leong sent Zhang another letter explaining that since she had not completed the transaction on 21 March 2007, the Vendors were entitled to re-sell the Property after giving her 21 days’ notice. This letter also emphasised that this point had been explained to Zhang earlier via tele-conversations.³⁹ Leong also explained that the caveat on the Property should be removed immediately, as Zhang no longer had any interest in the Property.⁴⁰ On 27 August 2007, the Singapore Land Authority (“SLA”) sent Zhang a letter, with the Defendant copied, notifying her of the Vendors’ application to cancel her caveat on the Property. This was also forwarded by the Defendant to Zhang on the same day.⁴¹

Related litigation history

19 It is pertinent to briefly set out the history of related actions between Zhang and the Vendors to give some context to the litigation that had already

³⁷ NE 20/3/2018 at p 79.

³⁸ Defendant’s BOD at Tab 22.

³⁹ Leong’s AEIC at p 144.

⁴⁰ Defendant’s BOD at Tab 23.

⁴¹ Defendant’s BOD at Tab 25.

taken place in relation to the Property. To a considerable extent, the litigation history would also shed light on Zhang’s mindset and motivations in proceeding with the present claim, which was commenced shortly before it became time-barred.

20 The Vendors commenced Originating Summons (“OS”) No 1639 of 2007 against Zhang on 6 November 2007, seeking to expunge the caveat lodged in favour of Zhang (“the First Caveat”). The court granted the relief sought by the Vendors on 29 November 2007 and directed Zhang to seek legal advice and commence action against the Vendors, if she believed necessary, within two months. Instead of complying with the directions, Zhang lodged another caveat on the Property on 4 December 2007 (“the Second Caveat”). This led to the Vendors taking up OS No 2 of 2008 on 2 January 2008 to expunge the Second Caveat, and the court ordered Zhang to expunge this caveat on 10 January 2008. The hearing of OS No 1639 of 2007 eventually proceeded in July 2012 and the court’s grounds of decision is reported at *Koh Kim Seng and another v Zhang Run-Zi* [2013] SGHC 79. Consequently, Zhang filed Summons No 72 of 2013 in OS No 1639 of 2007 to set aside the following orders: (a) order to expunge the First Caveat and the order to pay costs to the Vendors on an indemnity basis, and (b) the order to expunge the Second Caveat in OS 2 of 2008. The claims were dismissed and the appeal was also dismissed on 23 September 2013.

21 Zhang brought a suit in Magistrate’s Court (“MC”) Suit No 2619 of 2008 against the Vendors claiming the return of the deposit sum on the basis that she was not told the Property was affected by road lines. This suit was struck out.

22 Subsequently, Zhang commenced Suit No 2 of 2013 against the Vendors for misrepresentation and breach of contract, and this was struck out by the court

on the basis of issue estoppel. The decision is reported at *Zhang Run Zi v Koh Kim Seng and another* [2015] SGHC 175. Zhang's appeal was dismissed by the Court of Appeal.

23 Zhang was represented in a number of her prior actions and applications, albeit by different law firms. She commenced the present suit on 21 January 2013 as a litigant-in-person, less than three weeks after she filed Suit No 2 of 2013.

The parties' cases

The plaintiff's case

24 The main thrust of Zhang's submissions was that the Defendant, as her solicitor in the sale and purchase of the Property, had failed to advise her on various issues, which led her to suffer losses. Zhang pleaded that the Defendant had breached its contractual duty, its tortious duty, its fiduciary duties, as well as its statutory duties under the Legal Profession (Professional Conduct) Rules.⁴² In support of these submissions, Zhang highlighted the following points:⁴³

- (a) The Defendant had not perused the OTP thoroughly before exercising the OTP on her behalf;
- (b) The Defendant had not conducted all searches, including but not limited to the road line plan, before advising her to exercise the OTP;
- (c) The Defendant had failed to explain and/or advise her that she could try to seek an extension of time to exercise the OTP so that she

⁴² Zhang's closing submissions at para 9. No specific rule was cited.

⁴³ Zhang's closing submissions at para 8.

could make an informed decision after conducting further searches on the Property;

(d) The Defendant had failed to advise her on the effects of the Land Acquisition (Amendment) Act 2007 on the Property;

(e) The Defendant had failed to advise her on the timelines to comply with in the purchase of the Property and the consequences of non-compliance;

(f) The Defendant had failed to explain to her that the Vendors were entitled to sell the Property to another buyer after the lapse of the 21 days' notice period; and

(g) The Defendant had failed to provide necessary assistance to her to build her case against the Vendors.

25 From the outset, I noted that a recurring theme in Zhang's submissions was that she could not read English and therefore could not understand advice rendered in writing. She argued that she was not aware of advice even if they were sent to her in writing because she could not read them, and that the Defendant had failed to explain the advice to her verbally in Mandarin.

26 With regard to point (a), Zhang claimed that Leong had not, at any point in time, advised her on the effect of the road line plan and Clause 11 in the OTP. She alleged that Leong did not look through the entire OTP on 5 January 2007, and only pointed out the unusual term in the preamble of the OTP stating that the deposit to be paid was to be released to the Vendors forthwith. In response, Zhang showed Leong the blurry document, and Leong said he was not sure of its contents.⁴⁴ Zhang submitted that Leong was negligent in not advising her

about the blurry document because it could be clearly seen from the face of it that it was a road line plan.⁴⁵ She further submitted that Leong could not have advised her on Clause 11 because if he was aware of the clause, he would have understood the importance of the blurry document.⁴⁶ Leong then advised her to conduct searches at CrimsonLogic and later at the URA, and she did so. Zhang submitted that even on Leong's account that he did draw her attention to Clause 11, he should have known, as a lawyer, that the authority in charge of road line plans was the LTA, and should have told her to go to the LTA directly. He was incompetent and negligent in telling her only to go to CrimsonLogic to conduct searches.⁴⁷

27 Zhang's position was that the Defendant's duty of care towards her was extant since 5 January 2007. By giving her professional advice in relation to the OTP, the Defendant had voluntarily assumed responsibility to her as a lawyer on 5 January 2007, based on the test set out in *Spandek Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 ("*Spandek*") to determine the existence of a duty of care.⁴⁸

28 Zhang testified that she made up her mind on 23 January 2007 to appoint Leong to act for her in the purchase of the Property, and called him to arrange a meeting on 24 January 2007.⁴⁹ At the meeting on 24 January 2007, Zhang's position was that Leong did not advise her on Clause 11 of the OTP and any road reserves affecting the Property.⁵⁰ On that day, she handed the four

⁴⁴ Zhang's closing submissions at paras 12–14.

⁴⁵ NE 22/3/2018 at p 3.

⁴⁶ Zhang's closing submissions at para 26.

⁴⁷ Zhang's closing submissions at para 74.

⁴⁸ NE 22/3/2018 at p 2; Zhang's closing submissions at para 69.

⁴⁹ NE 20/3/2018 at p 48.

requisition replies and the original OTP to Leong at about 11am.⁵¹ She also showed Leong the blurry document again. She asked him whether there were any issues with the documents, specifically the blurry document, and Leong replied that there were no issues.⁵² Zhang submitted that Leong was negligent because the words “Road Line Plan” and “Land Transport Authority” as well as a line drawn across the plot demarcated as the Property with an indication that it was “Category 2” could be seen on the blurry document. Therefore, Leong should have known that the Property was earmarked as land required as road reserve.⁵³ Zhang also submitted that Leong’s failure to realise that Zhang had not signed the acceptance copy of the OTP showed that he did not peruse the entire OTP before exercising it. This in turn meant that he could not have explained any clauses in the OTP that were adverse to Zhang, such as Clause 11, on 24 January 2007.⁵⁴

29 Moreover, in the letter sent by Leong to Zhang on 25 January 2007, Leong did not give any advice or mention that any advice was rendered on important clauses such as Clause 11. Since the advice was not reduced to writing, this showed that no advice was given, because it was reasonable to assume that Leong would have reduced his advice to writing to protect the Defendant from any negligence suit.⁵⁵ Zhang alleged that as a result, she was not aware of Clause 11 before and at the moment of exercising the OTP,⁵⁶ and this was proved by the lack of documentary evidence to the contrary.⁵⁷ At all

⁵⁰ Zhang’s closing submissions at para 48.

⁵¹ NE 20/3/2018 at p 50.

⁵² NE 20/3/2018 at p 50.

⁵³ Zhang’s closing submissions at paras 45 and 46.

⁵⁴ Zhang’s closing submissions at paras 50–52.

⁵⁵ Zhang’s closing submissions at para 82.

⁵⁶ Zhang’s closing submissions at para 65.

times, she placed reliance on him and did what he advised her to do, such as going to CrimsonLogic, because of their existing business relationship.⁵⁸ It was on Leong's assurance that there were no problems with the Property that she exercised the OTP.⁵⁹

30 In relation to points (b) and (c), Zhang submitted that Leong should have conducted a search on the road line plan of the Property upon being appointed by her on 24 January 2007, especially since he claimed he was aware of the effect of Clause 11. Although Leong claimed that he only had about two hours to conduct searches before the deadline for the exercise of the OTP, Zhang maintained that the extraction of a road line plan could be obtained easily within a few minutes from the website of the SLA.⁶⁰ In any event, Zhang submitted that Leong ought not to have accepted the appointment to act for her in the purchase of the Property if he was not confident of being able to discharge his professional duties, or could have sought an extension of the deadline to exercise the OTP.⁶¹ Zhang conceded that she did some of the searches on the Property herself, but she insisted that she did the searches based on Leong's advice.⁶² According to Zhang, a failure to obtain the road line plan also showed that Leong was not aware of Clause 11 at the material time.⁶³ If not for the Defendant's negligence, Zhang claimed that she would not have exercised the OTP.

⁵⁷ Zhang's reply submissions at p 3.

⁵⁸ Zhang's closing submissions at para 67.

⁵⁹ Zhang's AEIC at para 16.

⁶⁰ Zhang's closing submissions at para 79.

⁶¹ Zhang's closing submissions at para 79.

⁶² NE 21/3/2018 at p 13.

⁶³ Zhang's closing submissions at para 79(h).

31 Zhang also submitted that after Leong received the searches, including the road line plan, on 1 February 2007, he merely called her to inform her of the road reserve and that she might face problems obtaining bank loans. There was no indication in the 1 February 2007 letter that he had given her advice on the terms of the OTP, particularly Clause 11. Moreover, Zhang claimed that Leong had dishonestly backdated the letter to 25 January 2007 to conceal the Defendant's negligence in failing to conduct the searches earlier.⁶⁴

32 With regard to both the termination letter and the retraction letter (see [12] and [14] *supra*), Zhang claimed that they were Leong's suggestions, and she merely wrote them in Mandarin according to Leong's instructions.⁶⁵ Zhang claimed that Leong did not explain the contents of the translated draft of the termination letter.⁶⁶ Zhang also claimed that Leong had suggested sending the retraction letter because he realised there were some problems and was afraid to get into trouble.⁶⁷ She accused the Defendant of inducing her to believe that it was the Vendors who had cheated her in order to conceal its negligence in not advising her on Clause 11.⁶⁸ Zhang alleged that the suggestion by Leong to simplify her Mandarin draft of the retraction letter, to only state her intention to retract the previous letter and not the issue with the road line plan, showed that Leong was afraid to get into trouble.⁶⁹

33 Zhang further alleged that Leong did not explain the contents of the letters sent by the Vendors on 21 February 2007 and 26 February 2007 stating

⁶⁴ Zhang's closing submissions at p 51.

⁶⁵ Zhang's AEIC at para 34; NE 20/3/2018 at pp 58–59.

⁶⁶ NE 22/3/2018 at pp 15 and 16; Zhang's closing submissions at p 64.

⁶⁷ NE 22/3/2018 at p 19.

⁶⁸ Zhang's reply submissions at p 8 para 5.

⁶⁹ Zhang's closing submissions at p 68.

that Zhang had the road interpretation plan before she signed the OTP.⁷⁰ Specifically, there was no mention of Clause 11 in the cover letters Leong had sent to her even though the Vendors' solicitors mentioned the road interpretation plan affecting the Property. Neither was there mention of any advice that the deposit would be forfeited if she did not complete the purchase.⁷¹

34 Turning to point (d), Zhang denied knowing about the statutory amendment announced on or about 14 February 2007, and claimed that she sent the retraction letter to the Vendors because she was afraid that they might bring a defamation suit, and not because of the statutory amendment. She alleged that Leong had advised her not to induce any lawsuit as that might affect her loan application for the Jalan Jurong Kechil property.⁷² She testified that she only found out in April 2007 about the statutory amendment through the valuation report dated 23 March 2007.⁷³ She claimed that had Leong advised her with regard to the statutory amendment, she would not have sold off a property she owned in Shanghai ("the Shanghai property"). She only did so in order to have sufficient cash to complete the purchase of the Property.⁷⁴

35 With regard to points (e) and (f), Zhang alleged that at no time did Leong adequately explain to her the timeline for completion. She claimed that although she did receive Leong's letter dated 25 January 2007 (see [11] *supra*), she did not understand it at all. She testified that Leong would usually call her to explain any matter to her in Mandarin after sending documents to her; however, for that letter, she could not remember whether he did call her. As a result, she had no

⁷⁰ NE 22/3/2018 at pp 23–25.

⁷¹ NE 22/3/2018 at p 23.

⁷² Zhang's AEIC at para 36.

⁷³ NE 21/3/2018 at p 9.

⁷⁴ NE 21/3/2018 at p 20.

idea what the completion date was and what a caveat meant.⁷⁵

36 Zhang further testified that she did not know that the Vendors were entitled to terminate the transaction and resell the Property to a third party buyer if she did not complete the transaction by 21 March 2007. This was an impression formed on the basis of Leong's cover letter sent on 27 February 2007, in which he only informed her that there would be penalty interest for late completion. Her impression was that she would only have to pay penalty interest for completing after 21 March 2007.⁷⁶ Further, Leong did not explain the letter sent by the Vendors on 5 March 2007 setting out the completion account, and he merely sought Zhang's urgent instructions on whether she wanted to complete the purchase. His delay in forwarding this letter from the Vendors also deprived her of sufficient time to make necessary arrangements to complete the transaction,⁷⁷ and showed his negligence, considering that it was close to the completion date. Moreover, Leong did not advise that if she did not complete the purchase, the Vendors were entitled to forfeit the deposit and terminate the transaction entirely after giving the requisite 21 days' notice. There was no documentary evidence to show that he had informed her about the 21 days' notice period.⁷⁸ On the contrary, the Defendant had wrongfully given her the impression through the letter dated 21 March 2007 that there was still an option for her not to proceed with the transaction without drastic consequences.⁷⁹ Zhang submitted that Leong's letter dated 19 July 2007, in which he stated that he had previously informed her about the 21 days' notice and the removal of her caveat, was only an afterthought to cover up the Defendant's negligence.⁸⁰

⁷⁵ NE 20/3/2018 at p 53 and p 74.

⁷⁶ Zhang's closing submissions at p 83.

⁷⁷ Zhang's closing submissions at p 97.

⁷⁸ NE 20/3/2018 at p 77; 21/3/2018 at p 7.

⁷⁹ Zhang's reply submissions at pp 12–13.

37 As a result of her impression that she only needed to pay penalty interest on late completion, Zhang waited for a valuation report of the Property, and liquidated her Shanghai property so that she would have enough money to complete the purchase and to renegotiate the price of the Property with the owners. She did not have sufficient cash to proceed with the purchase, as the banks would not extend a loan to her in March and April 2007,⁸¹ and she only managed to have enough money to complete the purchase on 21 June 2007.

38 Zhang further claimed that the Defendant had failed to advise her that the Vendors could sell the Property to a third party. According to her, even after 21 June 2007, after informing Leong that the Vendors wanted to sell the Property to a different buyer, Leong had told Zhang not to worry as the Vendors would not be able to sell off the Property to a different buyer without her consent.⁸² Zhang submitted that Leong was also labouring under the misunderstanding that she was still able to purchase the Property in June, because the letter dated 25 June 2007 that he had helped her draft requested for a meeting with the Vendors to negotiate.⁸³ In the same vein, as of 5 July 2007, Zhang submitted that Leong was still under the impression that she could purchase the Property as exemplified by what he had told her, that “if [she] was not proceeding with the purchase of the Property, she should remove the First Caveat”,⁸⁴ indicating that she had a choice whether to proceed with the purchase.⁸⁵

⁸⁰ Zhang’s closing submissions at p 127.

⁸¹ NE 20/3/2018 at p 78.

⁸² NE 20/3/2018 at p 79.

⁸³ Zhang’s closing submissions at p 121.

⁸⁴ Leong’s AEIC at para 53.

⁸⁵ Zhang’s closing submissions at p 125.

39 Zhang also claimed that due to the Defendant's advice to avoid any litigation with the Vendors and the letter from the Vendors' solicitors setting out the completion account dated 15 March 2007, she had no choice but to sell off her Shanghai property because she did not have sufficient cash to complete the purchase at that time.⁸⁶ She alleged that Leong was aware that she had sold the Shanghai property, as she needed to get cash.⁸⁷

40 In relation to the alleged discharge of Leong on 16 March 2007, Zhang claimed that she did not give any instructions to discharge him. At that point, she could not give any instructions as to whether to purchase the Property because she was unable to obtain a loan and had insufficient cash. She did not think that the Defendant had ceased representing her, since Leong only stated in the letter to the Vendors' solicitors that they should communicate with her directly. There was no clear indication of cessation of representation, which would have been especially important in the light of the fact that she had already been in direct communication with the Vendor's solicitors.⁸⁸ Thus, the Defendant was negligent in not sending her a formal letter of discharge. She argued that the words used in Leong's letter sent to her on 25 June 2007 – "[a]s instructed" – also reflected that he was still representing her then.⁸⁹ In the same vein, the words used in Leong's letter dated 27 August 2007 to her also showed that he was still representing her. In that letter, Leong stated "Please let us have your instructions."⁹⁰ Moreover, when the Vendors' solicitors communicated with Leong in June and July 2007, he did not inform them that he had stopped representing Zhang.⁹¹ Leong also only sent her the billing for the work done for

⁸⁶ Zhang's AEIC at paras 36–39.

⁸⁷ NE 21/3/2018 at p 20.

⁸⁸ NE 20/3/2018 at p 70.

⁸⁹ Zhang's closing submissions at p 120.

⁹⁰ Leong's AEIC at p 147.

the purchase of the Property on 18 September 2007.⁹²

41 Zhang submitted that even if there was a discharge, it was only four days before the completion date, and Leong had failed to take reasonable care to avoid foreseeable and significant harm to her.⁹³ She further alleged that the Defendant had returned the original OTP to the Vendors’ solicitors without her permission, and was only informed of the return after it was done.⁹⁴ This left her without legal assistance just four days prior to the completion date and she accused the Defendant of attempting to wash its hands clean by returning the OTP.⁹⁵ The return of the OTP to the Vendors’ solicitors without her permission was also negligent.⁹⁶

42 In support of point (g), Zhang submitted that Leong ought to have met her and explained to her the entire situation and nature of the litigation with the Vendors. She argued that the Defendant’s failure to respond to the Vendors’ letters sent on 21 February 2007 and 26 February 2007 caused her to be placed in a defenceless and vulnerable position *vis-à-vis* the Vendors in the legal actions between her and the Vendors.⁹⁷ Zhang further submitted that Leong’s dishonesty in hiding his mistakes and negligence, and his return of the original OTP to the Vendors caused the Vendors to have a strong case against her. As a result, she lost the litigation against the Vendors.⁹⁸ Zhang maintained her

⁹¹ Zhang’s closing submissions at p 125.

⁹² Leong’s AEIC at p 152.

⁹³ Zhang’s closing submissions at p 113.

⁹⁴ NE 20/3/20018 at p 71.

⁹⁵ Zhang’s reply submissions at p 14.

⁹⁶ Zhang’s reply submissions at p 67.

⁹⁷ Zhang’s closing submissions at p 92.

⁹⁸ Zhang’s closing submissions at pp 134–135.

account that she had been cheated by the Vendors,⁹⁹ and she called Adrian Koh to testify that he did not find any unusual terms in the OTP on 3 January 2007.¹⁰⁰

43 In addition, Zhang accused the Defendant of trying to create a misleading image that she was the “main driver” of the Property transaction. She claimed that the sample of a caveat lodgement form for the Property that Leong claimed she had requested from him in order to file the Second Caveat herself was a fabrication, because there was no recipient indicated on the facsimile transmission report. She pointed to this as an instance of the Defendant attempting to portray her as the main driver of the transaction.¹⁰¹

44 Zhang submitted that the Defendant had not produced any attendance notes, minutes or written notes to prove that advice was given to her via telephone calls. Thus, an adverse inference can and should be drawn against the Defendant (*Law Society of Singapore v Lau See Jin Jeffrey* [2017] 4 SLR 148 at [21]; Law Society’s Practice Directions and Rulings 1989 at Chapter 1 para 58).¹⁰²

45 As a result of the Defendant’s breach of its duty, Zhang claimed, *inter alia*, for the following:¹⁰³

- (a) the Option fee of \$10,200 and the sum of \$40,800 given to the Vendors in the exercise of the OTP;

⁹⁹ NE 20/3/2018 at pp 25–26 and 28.

¹⁰⁰ NE 21/3/2018 at p 52–53.

¹⁰¹ Zhang’s closing submissions at pp 58 and 59.

¹⁰² Zhang’s closing submissions at pp 141–147.

¹⁰³ Statement of Claim (Amendment No 2) at para 45.

- (b) the loss and damage of \$800,000 from rushing to sell her Shanghai property;
- (c) the appreciation in the value of the Property due to the “buoyant property market” in 2007 and the passing of the Land Acquisition (Amendment) Act 2007;
- (d) the loss of chance to buy another property in January 2007 where the real estate market was at its trough; and
- (e) the damages, including legal costs and disbursements, in Originating Summons No 1639 of 2007, an action taken by the Vendors against the Plaintiff.

The Defendant’s case

46 The Defendant’s case was that it had duly advised Zhang of the risks involved in the purchase of the Property, both in writing and verbally, and it had discharged its duty to Zhang as her solicitor. It submitted that any alleged loss or damage suffered by Zhang was a result of her own doing and should be borne by Zhang herself.

47 In response to Zhang’s claim that her command and understanding of English was poor, the Defendant pointed out that she was a savvy businesswoman who had purchased other properties in Singapore before, set up her own businesses and dealt with European companies. Having met and married her Caucasian (Australian) husband in 2006, she must at least have been able to understand simple English.¹⁰⁴ In any case, Leong had advised her verbally in Mandarin and was satisfied that she fully comprehended what he

¹⁰⁴ NE 20/3/2018 at p 11 and 14.

communicated to her.¹⁰⁵

48 With regard to the 1% option fee, the Defendant claimed that it could not be held liable for it, because Zhang had chosen to obtain the OTP when the Defendant had not even entered the picture yet.¹⁰⁶

49 The Defendant's account was that on 5 January 2007, Leong had pointed out and explained to Zhang the effect of Clause 11, and that she would not be able to get a refund of the 4% deposit given to exercise the OTP in the event that the Property was affected by road reserves.¹⁰⁷ Zhang enquired about how to conduct searches on the Property and Leong suggested that she could go to CrimsonLogic. Since Zhang confirmed that she did not want to appoint Leong as her solicitor in relation to her intended purchase of the Property, and would only appoint him to act in respect of the Jalan Jurong Kechil property purchase, Leong advised her to appoint lawyers to act for her with regard to the Property as soon as possible.¹⁰⁸

50 Subsequently, Leong met Zhang on 22 January 2007 when Zhang showed him the four requisition replies.¹⁰⁹ Leong informed her that her searches were not comprehensive and that she should appoint a law firm to conduct the searches on the Property for her (*supra* [9]). In particular, Leong informed her she should obtain the road line plan because it would reveal whether or not the Property was affected by road lines and this was extremely important. He told her he was unaware of where to obtain the road line plan as these searches were

¹⁰⁵ Leong's affidavit at para 6.

¹⁰⁶ Defendant's closing submissions at para 39.

¹⁰⁷ Leong's AEIC at para 11.

¹⁰⁸ Leong's AEIC at para 13; NE 22/3/2018 at p 4.

¹⁰⁹ Leong's AEIC at p 44.

usually conducted by his conveyancing clerk, but suggested that she could try enquiring at the URA or the LTA.¹¹⁰ Zhang indicated that she would be appointing another law firm.¹¹¹ On 23 January 2007, Zhang made enquiries personally at the URA and was allegedly told that there were no plans to develop the land on which the Property was situated.

51 The Defendant submitted it was on 24 January 2007, the day the OTP was due to expire, that Zhang appointed the Defendant to act for her in the purchase of the Property. It was at about 2pm that day when Zhang passed Leong the documents relating to the purchase of the Property.¹¹² Leong warned her again that she would not get a refund of the 4% deposit if she discovered problems with the Property.¹¹³ Zhang indicated that she was satisfied with the searches and enquiries that she had conducted on the Property. Thus, it was submitted that she had relied on her own searches and enquiries with CrimsonLogic and the URA. The Defendant also highlighted that she did not conduct similar searches personally on the Jalan Jurong Kechil property because she had appointed the Defendant on 5 January 2007 to act in that transaction.¹¹⁴

52 At the same meeting, Zhang instructed Leong to exercise the OTP. As there were only about two hours to the deadline for the exercise of the OTP, Leong quickly conducted a title search on the Property and a bankruptcy search on the Vendors before proceeding to exercise the OTP by delivering the OTP and the 4% deposit to the Vendors' solicitors' office personally.¹¹⁵

¹¹⁰ Leong's AEIC at paras 16 and 17.

¹¹¹ Leong's AEIC at paras 15 and 17.

¹¹² Defendant's closing submissions at para 28.

¹¹³ NE 21/3/2018 at p 64.

¹¹⁴ Defendant's closing submissions at paras 46 and 49.

¹¹⁵ Leong's AEIC at para 18; NE 21/3/2018 at p 77; Defendant's closing submissions at

Subsequently, the Defendant lodged the First Caveat for the benefit of Zhang. The next day, the Defendant conducted the remaining searches on the Property, including applying for the road line plan. The Defendant submitted that the scope of duty owed by the Defendant to Zhang must be assessed in light of all the circumstances of the case, including the lack of time to conduct comprehensive searches, Zhang's reliance on her own searches and enquiries, and the fact that she had already made up her mind and had given firm instructions to proceed with the purchase of the Property.¹¹⁶ The Defendant further submitted that a client claiming against his solicitor in negligence must show what advice should be given and if such advice had been given, he would not have entered into the relevant transaction or would not have entered into it on the terms he did. The Defendant argued that it had discharged its duty in advising Zhang of the risks involved in the transaction but despite being conscious of the risks, she wanted to exercise the OTP nonetheless.¹¹⁷

53 After the Defendant received the road line plan on 1 February 2007, it called Zhang to inform her about the road line plan and advised that the Property might be compulsorily acquired by the government in the future and she might not be able to obtain financing for her purchase, as the value of the Property would be affected by the road reserves.¹¹⁸ The Defendant also sent a letter informing her of the road line plan and asking for her urgent instructions.¹¹⁹ On 8 February 2007, Zhang wanted to back out of the purchase on her own accord and wrote a letter in Mandarin, which she wanted to send to the Vendors' solicitors. She sought Leong's help in translating the letter into English and

paras 66–68.

¹¹⁶ Defendant's closing submissions at paras 65–66 and 68–69.

¹¹⁷ Defendant's closing submissions at paras 74 and 75.

¹¹⁸ Leong's AEIC at para 27.

¹¹⁹ Defendant's BOD at Tab 6.

Leong did so (see [12] *supra*). The Defendant had then advised her that the Vendors would be entitled to “accept [her] repudiation and forfeit the deposit paid” and that they “[might] thereafter resell the Property” and if “there [was] a shortfall from the subsequent sale, the Vendor [would] be entitled to claim the difference” from her.¹²⁰

54 Following the announcement of the statutory amendment on or about 14 February 2007, Zhang reversed her position and contacted Leong to inform him that she wanted to proceed with the purchase of the Property.¹²¹ On 15 February 2007, Zhang drafted the retraction letter in Mandarin (see [14] *supra*) and sought Leong’s help to translate it. Leong did so and sent it back to her;¹²² later, he also sent her a brief version stating only that she wished to retract her earlier termination letter.¹²³ The Defendant argued that the retraction letter showed that Zhang had known about the statutory amendment.

55 Subsequently, the Defendant sent letters on three separate occasions – 22 February, 27 February, and 11 March 2007 – to seek Zhang’s instructions (see [15] and [16] *supra*). Leong also spoke to Zhang over the phone on 15 March 2007 asking her for her instructions as to whether she wanted to proceed with the purchase of the Property, and informing her about the 21 days’ notice period that the Vendors had to give her before they could re-sell the Property to a third party. She informed him that she was still considering her position and instructed Leong to inform the Vendors’ solicitors that he had obtained no instructions from her and that they were to deal directly with her.¹²⁴ She was still

¹²⁰ Defendant’s BOD at pp 18 and 19; Defendant’s closing submissions at para 51.

¹²¹ NE 20/3/2018 at pp 62–63.

¹²² Leong’s AEIC at p 90.

¹²³ Leong’s AEIC at p 92.

¹²⁴ Leong’s AEIC at para 43.

in the process of getting sufficient cash to purchase the Property and waiting for the valuation report at that time so as to renegotiate the price with the Vendors.¹²⁵ In accordance with her instructions, Leong sent a letter to the Vendors' solicitors on 16 March 2007 informing them that the Defendant received no instructions from her and they should communicate directly with her (see [16] *supra*). The Defendant submitted that it was discharged on that day from representing Zhang in the purchase of the Property.¹²⁶ On the facts, the Defendant submitted that it was clear that Zhang was not ready or able to complete the purchase. She had ample time to complete but elected not to complete when the completion date fell due.¹²⁷

56 It was also the Defendant's case that it had advised Zhang that if she did not proceed with the purchase of the Property, the Vendors would serve a 21 days' notice on her after the completion date, after which they would be entitled to re-sell the Property and claim against her for any shortfall (*supra* [55]). This was evidenced by the letter sent by Leong to Zhang on 19 July 2007 (*supra* [18]). The Defendant disputed Zhang's evidence that it had told her that the Vendors would not be able to sell off the Property without her consent (at [38] above). All that Leong had told her was that with a caveat, she would be notified if the Vendors tried to deal with the Property.¹²⁸

57 After the Defendant discharged itself from representing Zhang in the transaction of the Property, Leong still asked Zhang whether she had received the 21 days' notice from the Vendors and she told him not to bother about the Vendors because she would deal with them.¹²⁹ At this time, the Defendant was

¹²⁵ NE 20/3/2018 at pp 76–77; 21/3/2018 at pp 22–23.

¹²⁶ NE 22/3/2018 at p 31.

¹²⁷ Defendant's submissions at para 60.

¹²⁸ NE 23/3/2018 at p 36.

still representing Zhang for her purchase of the Jalan Jurong Kechil property, which was concluded uneventfully in end April or early May.¹³⁰ On or around 21 June 2007, Leong acceded to Zhang's request to help her draft a letter in English to the Vendors to seek a meeting with them. On 5 July 2007, the Vendors' solicitors sent the Defendant a letter stating that Zhang had elected not to proceed with the purchase of the Property and demanded the withdrawal of the First Caveat lodged in her favour. Leong forwarded this letter to Zhang and advised her verbally to withdraw the First Caveat.¹³¹ The Defendant also sent a letter on 19 July 2007 to Zhang reminding her to withdraw the First Caveat immediately.¹³² Zhang paid no heed to this. As a result, the Vendors commenced OS No 1639 of 2007 to expunge the First Caveat (see [20] *supra*).

My decision

58 I have set out the case background, the litigation history and the parties' respective cases in some detail given that the dispute dates back to January 2007 and numerous factual allegations were made by both Zhang and Leong. To complicate matters further, Zhang commenced this action in January 2013 when it was on the verge of becoming time-barred, and the trial commenced only in March 2018. It was inevitable that memories would have faded and discrepancies would emerge in the parties' recollection of the events, particularly in areas where no corroborative documentary evidence was in existence.

59 The main issue at trial was whether the Defendant had acted with the

¹²⁹ Leong's AEIC at para 49.

¹³⁰ NE 20/3/2018 at pp 76–77.

¹³¹ Leong's AEIC at paras 51 and 52.

¹³² Leong's AEIC at para 53.

standard of care required in representing Zhang in the purchase of the Property. It was not disputed that the Defendant did enter into a solicitor-client relationship with Zhang, though the exact commencement and duration of this relationship was disputed. Both parties agreed that the standard of care is that expected of a reasonably competent and diligent conveyancing solicitor (*Su Ah Tee and others v Allister Lim and Thrumurgan (sued as a firm) and another (William Cheng and others, third parties)* [2014] SGHC 159 (“*Su Ah Tee*”) at [70]). The ambit of a solicitor’s duty depends on the retainer and the particular circumstances of the case (*Yeo Yoke Mui v Ng Liang Poh* [1999] 2 SLR(R) 701 (“*Yeo Yoke Mui*”)).

60 The crucial events that arose for consideration in determining whether the Defendant had breached its standard of care were: (a) the timing of the appointment of the Defendant to act for Zhang in the purchase of the Property; (b) whether any advice was given on Clause 11; (c) the searches conducted on the Property; (d) whether any advice was given on the timeline of the purchase and whether the Vendors could sell the Property to a third party; (e) the timing of the discharge of the Defendant from representing Zhang in the purchase of the Property; and (f) whether any advice was given on the statutory amendment and the sale of the Shanghai property. I shall proceed to address these in turn before making my concluding observations on the credibility of Zhang and Leong.

Timing of the Defendant’s appointment

61 Zhang argued that the Defendant had been acting for her in the purchase of the Property since 5 January 2007, which was the first time she had shown Leong the OTP.¹³³ Her position was that the Defendant had voluntarily assumed

¹³³ NE 21/3/2018 at p 17.

responsibility towards her in the purchase of the Property because Leong had looked at the OTP and given her some advice. She relied on *Spandeck* (*supra* [27]), where the court held at [81] that where a person “voluntarily assumes responsibility” for his acts or omissions towards another, and the other relies on it, it is only fair and just that the law should hold the first person liable for negligence. In the present case, Zhang submitted that since Leong had given her some advice since 5 January 2007, the Defendant had voluntarily assumed responsibility, and therefore, its duty of care towards her in relation to the purchase of the Property started from 5 January 2007.

62 On the facts, I found that Zhang showed Leong the OTP for the Property during the meeting on 5 January 2007 and Leong did give her some advice out of goodwill on the clauses in the OTP. Nevertheless, Zhang expressly told Leong during the meeting that she wanted to appoint him to act for her only for the purchase of the Jalan Jurong Kechil property, and not for the Property. In response, Leong told her to appoint a solicitor to represent her in the purchase of the Property as soon as possible. To my mind, this version of events was the only logical explanation considering that the Defendant had taken on full responsibilities as a law firm in relation to the Jalan Jurong Kechil property after the 5 January 2007 meeting, but not in relation to the Property. Zhang testified that she had also left everything in relation to the Jalan Jurong Kechil property for the Defendant to handle,¹³⁴ in contrast to the multiple searches and inquiries on the Property she had conducted on her own. She expended all this effort by herself, as the Defendant had only been appointed to act for her in relation to the purchase of one of the two properties. In all probability, her decisions were driven primarily by both cost and financing considerations. The Defendant was not unwilling or unable to act for her in relation to both property purchases had

¹³⁴ NE 20/3/2018 at pp 37–38.

she so instructed. Alternatively, she could have appointed two sets of lawyers to act for her in respect of the two transactions, as advised by Leong. In the circumstances, Leong did not voluntarily assume responsibility as Zhang's solicitor in relation to the purchase of the Property from the time they met on 5 January 2007, and the duty of care set out in *Spandeck* did not arise then. The Defendant could not in any event be held liable for Zhang's alleged loss arising from payment of the 1% option fee, as she had made this payment without first seeking any legal advice.

63 Moreover, Zhang conceded that everything that Leong suggested that she should do before 24 January 2007 was done wholly out of goodwill since Zhang was an existing client of the Defendant.¹³⁵ She also testified in court that she did not have any solicitor representing her on 22 January 2007,¹³⁶ she only made up her mind on 23 January 2007 to appoint Leong as the solicitor for the purchase of Property,¹³⁷ and that she handed him all the relevant searches she had conducted on the Property to Leong on 24 January 2007.¹³⁸ Leong had nothing to act on until he was provided with all the relevant documents and until he was appointed on 24 January 2007. The decision of *Su Ah Tee* (at [50]–[57]) was relevant to the present facts. The question of the timing of retainer in relation to a property purchase also arose in that case, and the High Court held that the retainer only arose after the plaintiff handed the option to purchase (with the correct purchaser stated) and the correct cheque to the solicitor despite prior communications between them regarding the property purchase. It was only necessary for the solicitor to read and act on the documents relating to the sale

¹³⁵ NE 21/3/2018 at p 16.

¹³⁶ NE 20/3/2018 at p 43.

¹³⁷ NE 20/3/2018 at p 48.

¹³⁸ NE 20/3/2018 at p 44.

and purchase of the property after receiving the relevant documents from the plaintiff (at [55]). In the present case, the Defendant was appointed to act and given the relevant documents only on 24 January 2007, and its duty to Zhang in relation to the purchase of the Property arose only from that day.

Advice in relation to Clause 11

64 Zhang’s evidence was that the Defendant had at no time advised her on Clause 11 of the OTP. On the other hand, Leong’s version was that he had explained to Zhang the effect of Clause 11 on 5 January 2007, that she would not be able to get a refund of the 4% deposit given to exercise the OTP in the event that the Property was affected by road reserves. On 24 January 2007, the day of the exercise of the OTP, he warned her again that she would not get a refund of the deposit if she discovered problems with the Property.¹³⁹

65 I acknowledged that there was no documentary evidence to show that Leong had in fact advised her on the effect of Clause 11. Nevertheless, I preferred and accepted Leong’s evidence that he had advised her on the effect of Clause 11. Zhang had herself affirmed in two affidavits for MC Suit No 2619 of 2008 and for OS No 1639 of 2007 respectively that Leong had informed her that “there was an agreement in the contract which stated that after payment of 4% of the deposit, [she] would not be able to get a refund if [she found] any problems with the [P]roperty”.¹⁴⁰ This meant that she was aware she would forfeit the deposit if she found any problems with the Property, which in essence covered the effect of Clause 11. She could not now conveniently distance herself from the affidavits that she had affirmed a few years earlier on the basis that she affirmed them in a hurry or on account of not having understood them fully

¹³⁹ NE 21/3/2018 at p 64.

¹⁴⁰ Defendant’s BOD at pp 85 and 106.

because of her alleged poor command of English (see [92] below).

Conduct of the property searches

66 I found that Zhang was satisfied that there were no problems with the Property, having conducted her own searches with CrimsonLogic and enquiries with the URA, and the Defendant had exercised the OTP based on her firm instructions. She only left the Defendant with about two hours to exercise the OTP before it expired. The Defendant did not have sufficient time to conduct a thorough search on the Property, so it decided to conduct the title search and bankruptcy searches on the Vendors because it assessed these to be of the highest priority. It immediately applied for the rest of the requisite searches the following day.

67 In relation to the road line plan of the Property, Leong did see the words “Road Line Plan” on the blurry document that Zhang showed him on 5 January 2007, but he did not know what the document was for and did not attempt to interpret it for her,¹⁴¹ since it was shown to him before he was appointed. He had asked her to check with CrimsonLogic on the blurry document then. On 24 January 2007, Leong warned Zhang again that she would not get back the deposit if she were to find any problems with the Property later, and he asked her about the road line plan of the Property. Although there was no road line plan in the documents obtained by Zhang, Zhang nevertheless instructed Leong to exercise the OTP. Based on Zhang’s confidence in her own searches, she had made a deliberate and conscious decision to proceed with the OTP despite Leong’s warnings of the potential risks. Having regard to the fact that the Defendant was appointed to act only about two hours to the expiry of the OTP, it was not negligent for the Defendant to have exercised the OTP on 24 January

¹⁴¹ NE 21/3/2018 at p 63.

2007 on Zhang's instructions even though it had not itself conducted complete searches on the Property. Zhang was given adequate warning. The Defendant acted with the standard of care expected of a reasonably competent and diligent solicitor having regard to the circumstances that it was in.

68 The Defendant tried to rely on *Yeo Yoke Mui* (at [21]) for the proposition that if a client had already made up his mind to purchase a property, then eleventh hour advice or explanation of the road reserves given to him would not be of any real assistance to him and would therefore be unnecessary. However, it would appear that this case, cited out of context, was of limited assistance to the Defendant. The real purport of the statement by the Court of the Appeal was to emphasise that any such advice should have been given to the client much earlier, and not left to the eleventh hour. In that case, the Court of Appeal found the solicitor negligent because he had failed to advise on the road reserves even though he had about seven weeks to examine the option to purchase and make searches on the property. The factual circumstances were different from those in the present case, where the Defendant, through no fault of its own, only had about two hours from the time of appointment to the expiry of the OTP to conduct the relevant searches.

69 I should clarify that the mere fact of the Defendant having little time to respond and advise did not necessarily mean that it would be held to a lower standard of care. Nevertheless, I found that the Defendant had not fallen short of its standard of care. I accepted Leong's evidence that after obtaining the outcomes of property searches on 1 February 2007, he had called Zhang immediately and informed her of the road reserves affecting the Property. He specifically explained that the Property might be compulsorily acquired by the government in the future and that she might not be able to obtain financing, as the value of the Property would be affected by the road reserves.¹⁴² Although

Zhang claimed in her reply submissions that Leong had merely forwarded the searches to her without providing any explanation or advice,¹⁴³ this contradicted her affidavit evidence that Leong did call her on 1 February 2007 to inform her that there was a problem with the Property.¹⁴⁴ It was also stated in her AEIC that Leong had followed up with a letter setting out the problem of road reserves affecting the Property.¹⁴⁵

70 On the issue of the termination letter, Zhang’s version of the events, that Leong had advised her to write such a letter, was difficult to believe, for it seemed purposeless for Leong to ask her to draft in Mandarin what he had advised her on, only for him to then translate it back into English. But even if Zhang’s version of events was accepted, it would not have meant that the Defendant had failed to meet the requisite standard of care. Zhang had stated that “[her] lawyer informed [her] that the Property had been marked in the Road Line Plan as ‘Land Required As Road Reserve’” and that this had a “material impact on the value of the Property”. From this, it would have been clear that Zhang had appreciated the materiality and effect of the road reserves. This would have been consistent with Leong having advised her about the problem with the Property on 1 February 2007.

71 Zhang’s accusation of wrongdoing by the Defendant in dating the letter sent on 1 February 2007 (informing her about the road line plan) as 25 January 2007 did not advance her case. The Defendant had admitted from the outset that it sent the letter on 1 February 2007 and the erroneous date on the letter was simply an innocent mistake. I saw nothing sinister in this.

¹⁴² Leong’s AEIC at para 27.

¹⁴³ Zhang’s reply submissions at p 7.

¹⁴⁴ Zhang’s AEIC at para 23.

¹⁴⁵ Zhang’s AEIC at para 26.

72 At this juncture, I note a peculiar incongruity in Zhang's claims. Zhang continued alleging in the course of this trial, as she had repeatedly asserted in the related litigation, that she believed that the Vendors had cheated her by representing to her that there were no problems with the Property.¹⁴⁶ She had even called upon Adrian Koh as a witness to testify that when he read through the OTP on 3 January 2007, he did not see Clause 11. This was not related to the Defendant's alleged negligence at all. Her vehement and unrelenting emphasis on this belief seemed to suggest that it was the Vendors' misrepresentation as she saw it that led her to exercise the OTP and not the Defendant's negligence. Perhaps this incongruity was lost on her; it appeared that her primary objective was to find any means of redress for the perceived wrongdoings that she felt had been unjustly inflicted upon her.

Timeline of purchase and the ability of the Vendors to sell to a third party

73 Zhang claimed that Leong did not advise her at any time on the timeline for the purchase. Firstly, on the completion date, Zhang did not dispute that she received the letter dated 25 January 2007 from the Defendant stating that the completion date was 21 March 2007, but she claimed that she did not know what the completion date meant and no explanation was forthcoming from the Defendant. Secondly, on the 21 days' notice period, Zhang's case was that the Defendant had not advised her on the period at all. Thirdly, on the Vendors' ability to sell to a third party, Zhang alleged that the Defendant had represented to her that the Vendors would not be able to sell the Property to a third party without obtaining her consent.

74 On the first issue of the completion date, a glaring inconsistency in Zhang's evidence emerged. She must have known what the completion date

¹⁴⁶ NE 20/3/2018 at pp 25–26, 28.

meant, as she had testified on the stand that she had asked Leong as to what would happen if she could not pay by 21 March 2007. This could only mean that she was fully aware that the date of completion was 21 March 2007. She also conceded that she was reminded many times that she had to pay the purchase price by the completion date,¹⁴⁷ but she did not have sufficient cash at that time.¹⁴⁸ The documentary evidence showed incontrovertibly that the Defendant had sent letters on three separate occasions – 22 February, 27 February, and 11 March 2007 – seeking Zhang’s instructions on whether she wanted to complete the purchase (see [15] and [16] *supra*). I also accepted Leong’s evidence that he spoke to Zhang over the phone on 15 March 2007 asking her for her instructions as to whether she wanted to proceed with the purchase of the Property, because it was his usual practice to speak to her considering her alleged poor command of English. Faced with the documentary evidence and her own admissions, Zhang could not possibly claim that she was unaware of the completion date.

75 In relation to the second issue of the 21 days’ notice period, there was documentary evidence showing that Zhang had been served with the notice by the Vendors’ solicitors, and this was eventually not disputed by her.¹⁴⁹ Although the record of what transpired was not ideal because no contemporaneous attendance notes of the tele-conversations were made by the Defendant, I ultimately accepted Leong’s evidence that he did advise Zhang on the notice through telephone communications on or around 15 March 2007. The letter sent by the Defendant to Zhang on 19 July 2007 made reference to their previous telephone conversations in which Leong had verbally advised her of the notice

¹⁴⁷ NE 21/3/2018 at p 2.

¹⁴⁸ Zhang’s AEIC at para 37.

¹⁴⁹ NE 21/3/2018 at p 7.

period (see [56] *supra*), and there was no allegation by Zhang that the advice was rendered *ex post facto* at that time.

76 Regarding the third allegation, the Defendant disputed Zhang's evidence that Leong had told her that the Vendors would not be able to sell off the Property without her consent. Zhang claimed that Leong led her to labour under the impression that if she did not complete by 21 March 2007, she would merely need to pay interest (see [37] *supra*), and as a result, she liquidated her Shanghai property in order to raise sufficient cash to complete the purchase of the Property. Leong, on the other hand, testified that all he had told her was that with a caveat lodged, she would be notified if the Vendors tried to deal with the Property.¹⁵⁰ It was not wholly implausible that Zhang might have read too much into this explanation and formed her own conclusion that she had an enforceable interest in the Property once a caveat was lodged.

77 I found that Leong's evidence was more consistent and credible. It could not be the case that Zhang was labouring under a genuine misunderstanding that in every situation, the Vendors had to obtain her consent to sell the Property to a third party, because the Defendant had by letter dated 9 February 2007 informed her of the consequences in the event of her repudiation (see [12] *supra*). It was clearly stated that the Vendors could sell the Property to a third party, and it was not disputed by Zhang in the course of the trial that she did understand this. This meant that there were circumstances where the Vendors did not have to obtain her consent to sell the Property to a third party. Moreover, Zhang's claim that Leong was still advising her in June or July 2007 after finding out that the Vendors intended to sell the Property to a third party that they could not do so without her consent (see [38] *supra*) was illogical, for

¹⁵⁰ NE 22/3/2018 at p 36.

Leong had clearly advised her to remove the First Caveat lodged against the Property on the basis that she had no further interest in the Property during that same period of time. Therefore, I found Leong's evidence to be more believable.

78 What Zhang was possibly seeking to achieve at that time was to wait for the valuation report and use it to renegotiate for a lower purchase price with the Vendors. She was in any event also buying time to consolidate her funds in order to complete the sale and purchase of the Property. Zhang testified that she had told Leong that she wanted to complete the transaction, but she would get the valuation report and consolidate her funds first before completing.¹⁵¹ She did not explain why she seemed to have been rather lackadaisical in her efforts to obtain the valuation report, which was ready only after the completion date. The evidence showed Zhang had always evinced an intention to continue with the purchase, even after finding out about the road reserves affecting the Property. She testified that despite the road reserves, she was prepared to complete the transaction if the valuation was not too big a difference.¹⁵² She might have thought that she could achieve a renegotiated price, and that the Vendors would be willing to sell her the Property even after the completion date and the 21 days' notice. I found that her conduct was explicable on the basis that she was incentivised to do so by the prospect of gain. I will elaborate on this at [86]–[90] below.

Timing of discharge of the Defendant

79 The Defendant submitted that it had discharged itself on 16 March 2007 but Zhang claimed that there was no effective discharge and the Defendant still acted for her in relation to the purchase of the Property well after that date.

¹⁵¹ NE 21/3/2018 at p 22.

¹⁵² NE 20/3/2018 at pp 62 and 66.

80 Nevertheless, Zhang conceded that, in hindsight, she understood that Leong had discharged himself from representing her in the purchase of the Property on 16 March 2007.¹⁵³ It was also stated in her AEIC that on 16 March 2007, Leong called her to inform her that he would be discharging himself, but would still assist her if she required help because of their existing business relationship.¹⁵⁴ In Zhang's affidavit affirmed on 13 April 2011 for MC Suit No 2619 of 2008 at para [15(mm)], she stated that her lawyer, *ie* Leong, was no longer acting for her by the time the 21 days' notice was purportedly sent.¹⁵⁵ Similarly, in her affidavit filed on 12 November 2012 in OS No 1639 of 2007, she also stated that "[o]n 16 March 2007, [her] solicitor [*ie*, Leong] informed [her] that he had discharged himself from the conduct of [her] matter and asked [her] to deal with the [Vendors'] solicitor directly".¹⁵⁶

81 What had happened was that Zhang had called Leong to say that she had no instructions for him, since she was still trying to accumulate cash to complete the purchase and waiting for the valuation report. She had also told Leong that since she had no instructions yet for him to proceed to completion, she would communicate directly with the Vendors. Therefore, Leong told her that he would discharge himself and tell the Vendors' solicitors to communicate directly with her. In the course of dealings between Zhang and the Defendant, it was not disputed that there was no continued retainer and that they dealt with each other on a transactional basis. On the facts, I found that the Defendant had discharged itself on 16 March 2007. The Defendant was acting for her in relation to the intended purchase of the Property for less than two months

¹⁵³ NE 20/3/2018 at pp 70–71.

¹⁵⁴ Zhang's AEIC at para 41; NE 22/3/2018 at p 46.

¹⁵⁵ Defendant's BOD at Tab 29.

¹⁵⁶ Defendant's BOD at Tab 30, at para 37.

altogether, from 24 January to 16 March 2007. It would, however, have been ideal for the Defendant to have sent a formal discharge letter to Zhang to avoid any disputes arising.

82 Zhang alleged that the Defendant's behaviour in discharging himself four days prior to the completion date was negligent and returning the OTP to the Vendors was to wash its hands clean of the entire transaction (see [41] *supra*). In the circumstances, where the client had no instructions for the solicitor, wished to communicate with the Vendors directly and was aware of what she needed to do to complete the purchase before the completion date, I found that it was not negligent for the Defendant to have discharged itself. The returning of the original OTP to the Vendors was not a negligent act, and it did not mean that Zhang no longer wanted to continue with the purchase. This was buttressed by the fact that the Vendors still sent her the 21 days' notice after the original OTP was returned.

The statutory amendment and the sale of the Shanghai property

83 It was not disputed that Zhang took steps to sell her Shanghai property only after 16 March 2007. Leong was no longer acting for her by then and correspondingly was also not in the picture when the 21 days' notice was sent to her by the Vendors, with the notice period commencing on 26 March 2007.

84 Zhang claimed that she decided to sell her Shanghai property in order to obtain sufficient cash to complete the purchase of the Property instead of taking a bank loan because Leong had been negligent in failing to advise her on the statutory amendment.¹⁵⁷ However, she had provided differing versions as to the reason she sold off the Shanghai property: she claimed in her AEIC that the sale

¹⁵⁷ Zhang's AEIC at para 61; NE 21/3/2018 at p 20.

came about due to Leong's advice to avoid litigation,¹⁵⁸ while she alleged in her reply submissions that the sale was necessitated because of Leong's advice that she could not back out of the purchase of the Property and she had to "look for money to complete the transaction".¹⁵⁹

85 Zhang's allegation that she sold the Shanghai property because of Leong's negligence in failing to inform her of the statutory amendment made no sense even going by her own account. Going by Zhang's account, she would have known of the statutory amendment prior to the lapse of the 21 days' notice period, and taken it into consideration in her financing decisions. According to her, she found out about the statutory amendment through the valuation report dated 23 March 2007 (at [34] *supra*). On the stand, she insisted that she only received the valuation report in April 2007, which was different from the date of the report and from her own affidavit affirmed on 12 April 2011 for MC Suit No 2619 of 2008, in which she stated that she received the report on 23 March 2007.¹⁶⁰ I found her allegation that she had only received the valuation report in April 2007 to be baseless.

86 In any case, Zhang claimed in her closing submissions that the statutory amendment was not relevant because the valuation report dated 23 March 2007 stated that the Property was worth \$580,000, which was much less than the purchase price.¹⁶¹ The critical question however was this: given the drastic difference between the low valuation of \$580,000 and the purchase price of \$1,020,000, why would Zhang still have wanted to go ahead with the purchase of the Property? I did not accept her assertion that she was only following the

¹⁵⁸ Zhang's AEIC at para 36.

¹⁵⁹ Zhang's reply submissions at p 53; NE 21/3/2018 at p 20.

¹⁶⁰ Defendant's BOD at p 88 para ii.

¹⁶¹ Zhang's reply submissions at p 51.

Defendant's advice that she ought to do so in order to avoid litigation. After all, if she had indeed been cheated by the Vendors as she maintained, there should have been no fear of litigation and she could have resisted any claims if she had genuinely believed that the merits were in her favour.

87 Zhang conceded that she was prepared to go ahead with the purchase if there was not too big a difference in the valuation. In this regard, she claimed that she intended to renegotiate the purchase price with the Vendors after receiving the valuation report and consolidating her funds, reasoning somewhat curiously that since they had cheated her, they might be persuaded to close the deal at a lower price "once their conscience [hit] them".¹⁶² I found it difficult to follow the logic of her strained arguments. First, it made no sense whatsoever that she would still be prepared to negotiate with the Vendors in the light of her alleged mistrust of them and her insistence that they had cheated her and been guilty of misrepresentation. Next, I could see no reason why the Vendors might be prepared to negotiate with her and lower the price, or why they might possibly feel compelled to do so from a guilty conscience simply because she had accused them of fraudulent conduct.

88 I found that Zhang's actions after she received news of the statutory amendment and in spite of the low valuation were in fact more consistent with another explanation she alluded to. It will be recalled that she had sought to invest in property transactions at a time when, by her own account, the property market was at a trough. She made the bold commitment to pay the option fees for not one, but two landed property purchases at around the same time. She knew that she was short of cash and would require mortgage loans. In order to complete both purchases, she would need to liquidate her Shanghai property, as

¹⁶² NE 20/3/2018 at p 77, and 21/3/2018 at pp 22–23.

she was not able to obtain sufficient loan financing to support both purchases. She remained intent on wanting to purchase both properties, and this was a strikingly peculiar decision given the low bank valuation relative to the sale price of the Property and her claims that the Vendors had cheated her by misrepresenting to her about the road line plan. I found that her conduct was only explicable on the basis that she was extremely eager to purchase the Property and upon receiving news of the statutory amendment, she felt confident that she would eventually be adequately compensated at market rates by the government should the land be subsequently subject to compulsory acquisition. Having committed to the purchase when the market was at a trough, she must have reasoned that at some future point in time, the market would recover and she might possibly stand to profit as a result even if the scenario was one involving compulsory acquisition. The low valuation only became material in presenting another challenge for her when it came to obtaining loan financing.

89 Notably, in the termination letter dated 9 February 2007, Zhang herself had noted that the property market for downtown Singapore had been “rising steadily”. She consequently claimed for the appreciation in the value of the Property due to the “buoyant property market” in 2007. It could be inferred that Zhang had hoped to capitalise on market movements and was banking on the prospect of future gain. This became an even more attractive prospect once the news of the statutory amendment was made known on or about 14 February 2007, well before the completion date. Even on her account, assuming she had indeed known of the statutory amendment only on 23 March 2007, this was before the expiry of the 21 days’ notice period.

90 By 16 March 2007, Zhang had not given any instructions to Leong to complete the purchase and he informed the Vendors’ solicitors accordingly to

deal directly with her. There was no reason why Leong would have unilaterally done so without first securing her agreement or acquiescence. Zhang's failure to instruct him was allegedly because she was still waiting for a valuation report on the Property. She was managing her property affairs on her own by then and was making decisions on her own. Why Zhang had left it until rather late to obtain the valuation report or to sell her Shanghai property was not explained. What was clear was that her inability and failure to complete the purchase of the Property was a direct consequence of her not having sufficient funds both on the completion date of 21 March 2007 and on 16 April 2007 when the 21 days' notice period was up. As for how she would source for financing, this was not within the scope of the Defendant's retainer. The Defendant owed her no corresponding duty to advise her on her financial decisions.

Zhang's credibility

91 Zhang was intent on buying the Property. She paid the 1% option fee without seeking any legal advice, and exercised the OTP without any regard to the likely valuation price of the Property or her prospects of obtaining two bank loans. She was satisfied with her own searches with CrimsonLogic and her enquiries with the URA. Swept along by her own exuberance and hoping to catch the anticipatory wave of a "buoyant property market", she had badly miscalculated or overestimated her ability to obtain financing for her intended simultaneous purchases of two properties. I accepted the Defendant's submission that Zhang had sufficient time to take steps to complete the purchase, but failed to do so. Selling her Shanghai property was in all likelihood a last resort, when she had convinced herself that all she had to do was pay an interest penalty for late completion and that the Vendors would continue with the sale to her, and chosen to disregard the Defendant's advice on the implications of the 21 days' notice.

92 To sum up, I found that Zhang’s assertions were lacking in credibility. She changed her positions as and when it suited her purpose, readily disavowing significant components of the affidavits she had filed in previous proceedings. She claimed that her previous affidavits were not accurate because of her poor command of English,¹⁶³ or because she was in a rush to go to Bintan when she affirmed her affidavit with a Commissioner for Oaths through a phone call.¹⁶⁴ In my view, these were feeble excuses to gloss over the fact that there were obvious inconsistencies and contradictions in her case, as I have highlighted above.

93 Zhang sought to portray herself as an unfortunate victim of others’ misdeeds and manipulations. In my assessment, she was neither naïve nor ignorant. Taking all the circumstances into account, I found that Zhang’s accounts of the various events and her explanations for her conduct were not credible. Her claim against the Defendant was a contrived afterthought, conceived *ex post facto* only after she had exhausted her attempts to seek recourse against the Vendors. This was the irresistible inference to be drawn from the undisputed fact that Zhang had no apparent quarrel with Leong’s conduct or professionalism all along. According to Zhang, it was only during the trial of OS No 1639 of 2007, which had proceeded to hearing in July 2012, that she came to realise that Leong had purportedly made “a lot of mistakes”.¹⁶⁵

Leong’s credibility

94 I found Leong to be frank and forthright. He conceded that he did not explain the legal process of second-hand property transactions to Zhang on 5 January 2007. He also did not fully explain the legal process to her on 24

¹⁶³ NE 20/3/2018 at pp 38–39.

¹⁶⁴ NE 20/3/2018 at p 41.

¹⁶⁵ NE 17/5/2018 at p 31.

January 2007 except for handing the 4% of the purchase price and the OTP over to the Vendors, because there was barely enough time to exercise the OTP on that day. He felt that the legal process involved technical details that Zhang would not be interested in. He conceded that he did not explain the process in relation to the Jalan Jurong Kechil property as well.¹⁶⁶ He further conceded that Zhang did not read English,¹⁶⁷ so he would explain matters to her in Mandarin,¹⁶⁸ although for one occasion, he could not remember if he had called Zhang to explain the letter sent by the Vendors' solicitors on 26 February 2007.¹⁶⁹

95 I accepted that Leong's conduct of the matter in the circumstances did not fall short of the required standard of care and competence, but I would also note that many of the claims put forward regarding the advice he had rendered over telephone communications were not supported by documentary evidence such as attendance notes. To cite one instance, there was no documentary evidence that Leong had advised Zhang about the 21 days' notice period on 15 March 2007 through a telephone conversation. The lack of contemporaneous notes did not *ipso facto* deprive a solicitor's testimony of all credibility (*Law Society of Singapore v Tan Phuiay Khiong* [2007] 3 SLR(R) 477 at [83]), and on the facts of this case, I found that in all the circumstances, Leong was credible and the Defendant's version of events ought to be believed.

96 Nevertheless, contemporaneous attendance notes of advice rendered over oral conversations would have very much assisted the Defendant in cementing its defence, especially because Leong had verbally advised Zhang in light of her alleged poor command of English in the course of their interactions.

¹⁶⁶ NE 21/3/2018 at p 68.

¹⁶⁷ NE 21/3/2018 at p 65.

¹⁶⁸ Leong's affidavit at para 6.

¹⁶⁹ NE 22/3/2018 at p 25.

Solicitors should be mindful of the importance of keeping accurate and contemporaneous attendance notes, and exercise prudence in confirming advice and clarifying instructions in writing. Where a solicitor fails to do so, the court may disbelieve his account in favour of the client's or draw an adverse inference against him (*Lie Hendri Rusli v Wong Tan & Molly Lim (a firm)* [2004] 4 SLR(R) 594 at [63]–[64]).

Costs

97 The Defendant sought costs of \$130,000 on a standard basis to the date of the offer to settle (“OTS”) served on Zhang on 27 July 2016, and costs of \$220,000 on an indemnity basis after the service of the OTS based on Order 22A, rule 9(3) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), and disbursements of \$5,836.63. In seeking such high costs, the Defendant highlighted the numerous pre-trial conferences (“PTC”) (26 before the OTS was served, including some where the Defendant attended on watching briefs, and 17 after the OTS was served) and the high volume of email correspondences between the parties. The Defendant also pointed out that there were wasted costs because the matter was originally fixed for trial in April 2017, and that was vacated five days before it was scheduled to commence on an application by Zhang, as she was admitted to a hospital.

98 On the other hand, Zhang claimed that she had accepted the OTS served by the Defendant. However, the evidence showed that in the communications between Zhang and the Defendant on the OTS, she counter-proposed terms on the settlement sum and the issue of costs. I did not accept that the OTS had been accepted. The evidence clearly revealed that negotiations as to the terms of the OTS continued and although Zhang wrote a letter to the Defendant purportedly agreeing to the settlement sum proposed by the Defendant, there was ultimately

no agreement on the issue of costs and no valid acceptance of any OTS conforming with Order 22A, rule 6(1) of the Rules of Court. Zhang submitted that costs should not be on an indemnity basis after the OTS was served because she had made counter offers to the Defendant which it had rejected, and she had wanted to mediate the matter but the Defendant refused. With regard to the PTCs prior to the service of the OTS, Zhang claimed that most of them were in relation to interlocutory matters, and the costs for these matters had already been awarded.

99 No doubt there were numerous PTCs and a high volume of correspondence exchanged, but the fact remained that the legal issues in the present case were not complicated, even though the factual background was highly contested. The trial was not lengthy; it was heard and concluded within four days. The Defendant was right to ask for costs on a standard basis before the service of the OTS and on an indemnity basis after the service of the OTS, but the quantum sought in relation to both costs components was excessive in my view. A reasonable quantum would be \$80,000 in respect of the pre-OTS costs, and \$120,000 for the post-OTS costs, given that this had to be assessed on an indemnity basis, taking into account the necessary preparation for trial.

Conclusion

100 Zhang's insistence on proceeding with this claim was fuelled by her stubborn and unshakeable belief that she had been cheated and wronged by the Vendors, and that Leong should eventually be held accountable to her. To quote her own words: "I can't let it go".¹⁷⁰ When she failed to obtain any recourse against the Vendors, she subsequently turned her attention to the Defendant as a last resort. Regrettably, her objectivity was completely obscured by her

¹⁷⁰ NE 17/5/2018 at p 31.

obdurate refusal to accept that she was solely responsible for her own predicament.

101 I found that Zhang's claim was clearly unsustainable on the facts. She had failed to show that the Defendant had breached its duties as the law firm representing her in respect of her intended purchase of the Property. I therefore dismissed her claim with costs fixed at \$200,000 in the aggregate to be paid to the Defendants, with disbursements at \$5,836.63.

See Kee Oon
Judge

The plaintiff in person;
Alfonso Ang Cheng Ann and Cheah Shu Xian (M/s A. Ang, Seah &
Hoe) for the defendant.