IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 219

Suit No 1151 of 2017

Between

(1) Zuraimi bin Mohamed Dahlan
(2) Elly Sabrina binte Ismail

… *Plaintiffs*

And

(1) Zulkarnine B Hafiz
(2) Masmunah bte Abdullah

… *Defendants*

JUDGMENT

[Companies] — [Fraudulently inducing investment]
[Contract] — [Misrepresentation] — [Fraudulent]
[Contract] — [Misrepresentation Act]

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v
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12 October 2020 Judgment reserved.

Chan Seng Onn J:

Introduction

1 Investments always carry risk. When the risk pays off, the investor will not cavil. If, however, the venture goes awry, the seeds of dispute are sown and may blossom into a full-blown civil suit. But when can an investor pin its losses arising out of the failed investment on the promoter of the investment? Where does the law consider to be the line between an overzealous business pitch gone bad and an outright fraud? And when can the promoter be considered to have crossed the Rubicon between the former and the latter?

2 These are questions that arise in the present suit. The first plaintiff, Zuraimi bin Mohamed Dahlan, and the second plaintiff, Elly Sabrina binte Ismail, invested a total of $1m in companies owned and/or run by the

defendants. These companies are in the *halal* food and beverage ("F&B") industry, and are as follows:[1]

(a) Mamanda Pte Ltd ("Mamanda"), a Malay-themed restaurant offering authentic Malay cuisine;

(b) Fig & Olive Café Pte Ltd ("Fig & Olive"), an online catering business specialising in Mediterranean-style, healthy tiffin meal deliveries;

(c) Kedai Kopi Pak Dollah Pte Ltd ("Kedai"), an online tiffin and catering business; and

(d) Beta Bakerie Pte Ltd ("Beta"), a bakery that ceased operations around September 2017.

Collectively, I refer to these entities as the "Companies". The first defendant, Zulkarnine B Hafiz, is a shareholder and director of all the Companies.[2] The second defendant, Masmunah bte Abdullah, is a director and shareholder of Kedai, a director of Fig & Olive, and a shareholder of Beta and Mamanda.[3] The first and second defendants are husband and wife.[4]

3 The plaintiffs allege that the defendants made seven distinct misrepresentations to them (see [9] below), which induced them to make their

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1 Statement of Claim dated 8 December 2017 ("SoC") at para 2.

2 SoC at para 2; Defence dated 26 January 2018 ("Defence") at paras 3 and 5.

3 Defence at paras 4 and 5; Second defendant's AEIC dated 23 October 2019 ("2DF AEIC") at para 4.

4 SoC at at para 3; Defence at para 2.

investments in the aforementioned Companies. After the investments were made, the business of the Companies took a turn for the worse. As a result, the plaintiffs made a loss on their investments. Consequently, the plaintiffs brought the present action against the defendants, claiming that the latter induced them to make investments in the Companies. Specifically, they assert that the defendants made several fraudulent misrepresentations in the course of negotiations, representing *inter alia* that the Companies were in a better financial/commercial position than they actually were. Accordingly, the plaintiffs claim from the defendants the sum of $1m, *ie*, the total value of their initial investments.

4 With respect to each of the representations made by the defendants, there are broadly speaking five issues that require determination.

(a) What was the precise representation made by the defendants to the plaintiffs?

(b) Was the representation fraudulently made?

(c) Did the representation induce the plaintiffs to invest in the Companies?

(d) If (b) and (c) are answered in the affirmative, then what is the plaintiff's loss?

(e) Alternatively, and assuming either of (b), (c) or (d) is answered in the negative, is an action under s 2 of the Misrepresentation Act (Cap 390, 1994 Rev Ed) ("Misrepresentation Act") made out?

To the extent that several narrower lines of inquiry have been identified by the parties, these have been subsumed under the five issues listed above.

5 Having considered the evidence and the parties' submissions, I dismiss this suit with costs to the defendants. In this Judgment, I will set out the reasons for my decision.

The facts

Background

6 The plaintiffs are medical practitioners and have been in practice for over 25 years. They claim to have "considerable reputation and standing" in the Muslim community.[5] The plaintiffs first became acquainted with the defendants sometime in August 2014, during a dinner at the restaurant Mamanda located at 73 Sultan Gate ("Mamanda Restaurant"). The first defendant introduced himself as the owner of Mamanda Restaurant.

7 Thereafter, in April 2015, the plaintiffs approached the defendants, proposing that Fig & Olive be one of the sponsors of the plaintiffs' "Geng Sihat" activities. The defendants agreed. It was at or about this time that the defendants first shared with the plaintiffs their ideas and aspirations in relation to the Companies.[6]

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5 First plaintiff's AEIC dated 22 October 2019 ("1PF AEIC") at para 5.

6 2DF AEIC at para 27.

Negotiations between the parties

8 Sometime between October and December 2015, the defendants had several meetings with the plaintiffs.[7] At these meetings, the defendants brought up the topic of raising capital for the Companies in order to facilitate expansion of the respective businesses.[8] According to the defendants, these plans for expansion had already been underway before the parties were acquainted with each other, and there had been earlier investors in some of the Companies.[9] In other words, the plaintiffs were not the first prospective investors that the defendants approached.

9 The plaintiffs allege that the defendants made the following representations in the course of their meetings in late-2015:[10]

(a) the Companies had an aggregate valuation in excess of $10m ("the valuation representation");

(b) the Companies were not in any debt or arrears ("the debt representation");

(c) the Companies did not have any bank or shareholder loans ("the loans representation");

(d) the plaintiffs would receive guaranteed capital return on their investments in the Companies ("the capital return representation");

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7 Defence at para 11.

8 SoC at para 4.

9 2DF AEIC at paras 30 and 31.

10 SoC at para 5.

(e) the plaintiffs would receive dividends on their investments in the Companies, which would be paid annually by electronic transfer ("the dividends representation");

(f) the plaintiffs' investments would be used solely for the purposes of future projects and business expansion and will not be used to repay any debts or arrears of the Companies ("the investment utilisation representation"); and

(g) the Companies would be bought over by and form the subsidiaries of a parent company known as Beta Global Limited ("Beta Global"), which would be listed on the stock exchange ("the Beta Global representation").

I refer to these seven representations collectively as "the alleged Representations".

10 During the meetings between October and December 2015, the plaintiffs were also shown the prospectuses of the Companies.[11] These prospectuses detailed, amongst other things, the vision of each of the Companies, actual figures for revenue, cost of sale, profit and loss for the years 2013 and 2014 for Mamanda, other detailed financial projections for Mamanda and the rest of the Companies, and descriptions of the nature of the F&B industry. I will refer to these individually according to the specific company to which each prospectus concerns (*eg*, the "Mamanda prospectus"), and collectively as "the Prospectuses". Powerpoint presentations were also given by the defendants to

[11] 2DF AEIC at paras 29 and 32; 1PF AEIC at para 14 and pp 36 to 49; NEs, 15 June 2020, page 38, lines 7 to 11.

the plaintiffs and other potential investors concerning the Companies, the future plans and the roadmap to listing for them.

The plaintiffs' investments

11 Satisfied with the defendants' proposals, the plaintiffs made payment of the investment sum of $1m in favour of the Companies.[12] The $1m investment sum was spread out among the different Companies as follows.[13]

(a) Mamanda: $200,000. The second plaintiff paid $100,000 via a cheque on 20 November 2015. The first plaintiff paid the outstanding $100,000 via a cheque on 29 January 2016.

(b) Fig & Olive: $300,000. This sum was paid on 29 January 2016 via two cheques of $150,000 each (one cheque from each plaintiff).

(c) Kedai: $300,000. This sum was paid on 29 January 2016 via two cheques of $150,000 each (one cheque from each plaintiff).

(d) Beta: $200,000. This sum was paid on 29 January 2016 via two cheques of $100,000 each (one cheque from each plaintiff).

12 Pursuant to each of the aforementioned payments, the plaintiffs also signed investor agreements with the Companies. A total of eight agreements were entered into, as follows.[14]

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12 Defence at para 12; SoC at para 11.

13 2DF AEIC at paras 17 and 35; 1PF AEIC at para 21; Defence at paras 23, 26, 29, 32, and 43; Reply at para 10.

14 1PF AEIC at paras 21 and 22.

(a) The first plaintiff entered into one investment agreement with each of the Companies. All four investment agreements are dated 29 January 2016.

(b) The second plaintiff likewise entered into one investment agreement with each of the Companies:

(i) the investment agreement with Mamanda is dated 20 November 2015; and

(ii) the investment agreements with the three remaining Companies are dated 29 January 2016.

I refer to these eight agreements collectively as the "Investment Agreements".

13 The plaintiffs' investments in Fig & Olive, Kedai and Beta were used to open a brick-and-mortar outlet at 76 Shenton Way, shared by the businesses owned by these three entities. Business opened at 76 Shenton Way on or about 16 April 2016.[15]

The breakdown in the parties' relationship

14 The businesses of Beta, Kedai and Fig & Olive suffered after opening. Operations at 76 Shenton Way were shut on or about 27 September 2017. Mamanda was however relatively unaffected by the collapse of the other three businesses, and continued to operate at 73 Sultan Gate.[16]

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15 2DF AEIC at paras 75 and 76.

16 Defence at paras 48 to 51; 2DF AEIC at para 82.

15 As a result, the plaintiffs requested the defendants to transfer their shares in Beta, Kedai and Fig & Olive to Mamanda.[17] For reasons that have not been made clear, this transfer was never completed; the defendants allege that this is because the plaintiffs failed to respond to their WhatsApp messages, and did not sign the share allotment papers with respect to the Companies.[18]

16 On 13 November 2017, the plaintiffs' solicitors sent the defendants a letter of demand, asking for repayment of the sum of $1m.[19]

The parties' cases

17 I canvass the parties' cases in broad strokes at this point. This case inevitably turns on a detailed analysis of the specific representations that were made, their nature, and the effect that such representations had on the plaintiffs. It is at that juncture (*ie*, during my detailed analysis) that I will expound on the parties' cases in full where relevant.

18 The plaintiffs' case is that the alleged Representations were made fraudulently. Each of the alleged Representations had been made either expressly or impliedly. The defendants did not believe, and could not reasonably have believed, in the truth of the statements they made. In the alternative, the plaintiffs rely on s 2 of the Misrepresentation Act – under this regime, the burden is on the defendants to show that they reasonably believed in the truth of their representations.

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17 2DF AEIC at paras 83 to 85; NEs, 17 June 2020, page 105, line 9 to page 106, line 1.

18 2DF AEIC at para 86.

19 1PF AEIC at para 39.

19 The defendants deny making many of the alleged Representations. They rely heavily on the Prospectuses, which included statements that contradict the plaintiffs' allegations. The defendants also argue that the plaintiffs were not induced by the alleged Representations to make the investments in the companies. The plaintiffs made their investments relying "upon their own judgment and/or upon their own inquiries", and not upon any statement or representations made by the defendants.[20] In submissions, the defendants also point out the lack of clarity in several of the plaintiffs' allegations. In the alternative, the defendants argue that the plaintiffs (a) suffered no loss; (b) suffered losses that were too remote; (c) failed to mitigate their loss; and/or (d) are liable for contribution, *ie*, they caused their own loss and have to bear the consequences.[21]

The plaintiffs' claims for fraudulent misrepresentation

20 The law on fraudulent misrepresentation is relatively uncontroversial, and most cases, including the present, hinge on a close analysis of the facts and surrounding circumstances. The seminal decision of the Court of Appeal in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 ("*Panatron*") remains good law today. To prove fraudulent misrepresentation, a plaintiff must show that (at [14]):

(a) there was a representation of fact made by words or conduct;

(b) the representation was made with the intention that it should be acted upon by the plaintiff;

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20 Defence at para 6.

21 Defence at paras 62 to 65.

(c) the plaintiff acted upon the *false* statement;

(d) the plaintiff suffered damage by doing so; and

(e) the representation was *made fraudulently*, *ie*, the representors must have made the representation while knowing that it was false, or at least without any genuine belief in the truth of the said representation.

21 The fifth element stated at [20(e)] above is of particular importance. As emphasised by the Court of Appeal in *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 at [37]:

> 37 … it is *the representor's own (subjective) belief that is crucial* … the court *cannot substitute its own view as to what it thinks the representor's belief was* … even if a reasonable person would think that the belief the representor claimed to have had at the time he or she made the statement in question was unreasonable, that would not thereby render that particular statement fraudulent *if the representor honestly believed in what he or she was representing* …
>
> [emphasis in original]

This facet of the inquiry is crucial because it places front and centre the question of the representor's subjective state of mind – this is the pivotal question in any case involving accusations of fraud. It must be shown that the representor was not merely careless, but *dishonest*.

22 I proceed with my analysis addressing each of the alleged Representations in turn. As will be made clear, for reasons specific to each of the alleged Representations, all of the plaintiffs' claims are unviable.

The valuation representation

What was the representation made by the defendants

23 The first issue in relation to the valuation representation is what the precise representation made by the defendants was. The plaintiffs have not maintained a consistent case in this regard. As the defendants rightly point out, the plaintiffs' position in their pleadings is different from that in their affidavits of evidence-in-chief ("AEICs"); their position also appears to differ from that stated in a letter from plaintiffs' counsel to the defendants.[22] Chiefly, the discrepancy lies in whether the $10m valuation was made with respect to Mamanda only, or *vis-à-vis* the Companies collectively.[23]

24 I am persuaded that the valuation representation was made with respect to *Mamanda only*, *ie*, the defendants represented that Mamanda had a valuation of $10m. This is corroborated by what is stated in the Mamanda prospectus: "*We are looking to dilute 10% of our shares for SGD$1M@ SGD$100k per lot*".[24] If the shares are offered for sale without a premium to its valuation and 10% of the shares of Mamanda is priced at $1m, it essentially means that Mamanda as a company or 100% of its shares has been valued by the defendants at $10m. Normally, investors will be adverse to buying shares at a premium to valuation, and sellers will be adverse to selling shares at a discount to valuation. As such, offering shares for sale at a price based on a fair valuation of a company is normally acceptable to all parties.

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22 Defendants' Closing Submissions dated 17 August 2020 ("Defendants' Closing Submissions") at paras 33 to 38.

23 Defendants' Closing Submissions at para 34.

24 2DF AEIC at Exhibit MBA at p 89.

25 During cross-examination, the first plaintiff appears to have accepted that the plaintiffs were buying shares in *Mamanda* at a price based on the defendants' *own* valuation of Mamanda at $10m[25] and, therefore, the shares were not sold to them at a price that was at a premium to valuation. The second plaintiff also understood at the material time that the defendants were basically pricing to sell Mamanda at $10m.[26]

26 The valuation provided by the defendants therein clearly pertains to Mamanda only.[27] While all the Companies are mentioned,[28] the pitch centres on Mamanda's reputation, financial standing and revenue model. The other three Companies are mentioned only as part of "Future Plans Company Structure".[29]

27 Importantly, the plaintiffs do not dispute that, as part of the defendants' business pitch, they were shown the Prospectuses prior to the signing of the Investment Agreements. It would accordingly have been patently clear to the plaintiffs that any representation made with respect to the $10m valuation would have been with respect to Mamanda only. I thus proceed with my analysis on this premise, based on which I will assess, *inter alia*, whether the valuation representation is actionable.

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25 NEs, 15 June 2020, page 39, lines 25 to 28.

26 NEs, 18 June 2020, page 22, lines 13 to 24.

27 2DF AEIC at Exhibit MBA at p 89.

28 2DF AEIC at Exhibit MBA at p 87.

29 2DF AEIC at Exhibit MBA at p 87.

Whether the valuation representation is an actionable misrepresentation

28 I do not find the valuation representation to be an actionable misrepresentation, principally because I consider it to be a statement of opinion by the defendants. It is pertinent to note at this juncture that the first plaintiff accepts that he was told by the first defendant that the valuation of $10m for Mamanda was the first defendant's *own* valuation and not one performed by a professional valuer.[30] If the first defendant had represented that the $10m valuation was furnished by a professional valuer when it was not in fact so, then it would be a false statement of fact by the defendants giving rise to an actionable misrepresentation. It is clear therefore to the plaintiffs that the $10m valuation was the defendants' *subjective* valuation of their own company, Mamanda, and they were offering potential investors (including the plaintiffs) the opportunity to buy shares in Mamanda without a premium to their *subjective* valuation of $10m for Mamanda.

29 Preliminarily, I am not persuaded by the defendants' contention that the valuation representation was mere puff.[31] Mere puff, as established in case law, is reserved for a particular type of *self-evidently hyperbolic* representation (see *Kong Chee Chui and others v Soh Ghee Hong* [2014] SGHC 8). It refers to the classic "hard sell" made off-the-cuff by a salesman. It does not encompass representations such as the valuation representation that has been linked to the sale price for Mamanda's shares. The statement made by the defendants indeed forms the very basis for the defendants' pricing of the shares being offered to

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30 NEs, 15 June 2020, page 34, lines 23 to 32.

31 Defendants' Closing Submissions at paras 42 to 47.

potential investors, as can be seen from the Mamanda prospectus. It is not something flimsy, imprecise and to be regarded as mere puff. Investment promoters such as the defendants cannot simply go around expressing in hyperbolic terms the value (in millions, no less) of an enterprise – indeed, they did not. The purport and tenor of such conversations are far more serious than a salesman making an off-hand pitch. A representation of this nature does not fit neatly alongside the "[e]ulogistic commendation[s]" that are commonly recognised as puff: see *Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2002] SGHC 278 at [33].

30 That said, the valuation representation is a statement of opinion, and not of fact. It is trite that as a general rule, statements of opinion do not constitute actionable misrepresentations: see *Bestland Development Pte Ltd v Thasin Development Pte Ltd* [1991] SGHC 27 ("*Bestland*"); *Goldrich Venture Pte Ltd and another v Halcyon Offshore Pte Ltd* [2015] 3 SLR 990 at [107]. Business persons looking for investors, as the defendants were, will surely have in mind as part of their investment pitch their honest belief of what the value of their company is. Such a belief would be informed by, *inter alia*, the relevant company's historical performance, revenue figures, reputation, forecasted growth, and other revenue and financial projections including the nature of that segment of the market the company is operating in. That is precisely what happened in this case. The defendants, based on an assessment of Mamanda's business (as evinced in the Mamanda prospectus),[32] formed their subjective opinion on Mamanda's valuation. It is this opinion that was conveyed to the plaintiffs.

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[32] 2DF AEIC at Exhibit MBA at p 88.

31 The defendants rightly acknowledge that, under certain circumstances, a statement of opinion could well amount to an actionable misrepresentation. As per Chao Hick Tin J (as he then was) in *Bestland*, where the person expressing the opinion did not hold such an opinion, or could not, as a reasonable man having his knowledge of the facts, honestly have held it, the statement of opinion may be regarded as a statement of fact.[33] This is, in substance, a manifestation of the requirement that the representor must be shown to have been *dishonest* in his/her statement of opinion (see also [21] above) before he/she can be held to have made an actionable misrepresentation.

32 However, such circumstances do not exist here. The defendants submit (in the alternative) that the $10m valuation was a statement of opinion that was reasonably and honestly held by them.[34] I am persuaded that the plaintiffs have not proved on a balance of probabilities that the defendants were dishonest or unreasonable in their subjective valuation of $10m for Mamanda. The defendants did not wilfully masquerade their opinion under the guise of the false fact that it was a professional valuation. There is no evidence whatsoever of the defendants having produced forged or inaccurate invoices or using inflated accounts of past profits to support their valuation with the intention to deceive the plaintiffs. The plaintiffs have also not proven that the "Actual Figures" for the financial years 2013 and 2014 stated in the Mamanda prospectus were inaccurate in any material sense.[35] The *projections* of estimated revenue and costs for *future* years (*ie*, 2015 to 2017) in the Mamanda prospectus have not

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33 Defendants' Closing Submissions at para 27.

34 Defendants' Closing Submissions at para 48.

35 2DF AEIC at Exhibit MBA at p 88.

been demonstrated to me to be far-fetched and clearly unachievable. On *hindsight*, the defendants could perhaps be said to be too optimistic in their projections, but that is not the correct basis to find an actionable misrepresentation. Given the facts known to the defendants *at the time the projections were made*, there is, on balance, insufficient evidence for me to conclude that the defendants have been dishonest in their projections or that they could not reasonably have believed that their projections were at all realistic. Basically, I do not find that the defendants had been *dishonest* in their projections on revenue and growth, which resulted in their valuation of $10m for Mamanda.

33 Indeed, the sparseness of the plaintiffs' pleadings is telling. In the Statement of Claim, the plaintiffs simply assert that the representations were made fraudulently, without providing any particulars or facts demonstrating why this is so.[36] No facts have been pleaded demonstrating the plaintiffs' dishonesty. Nor are there any supporting facts pleaded evincing that the defendants, at the time the valuation representation was made, must have known that (a) the valuation representation was false, or (b) the financial forecasts or projections (based on relevant facts that were already known to them) were unrealistic or unsupportable, and if regarded as a statement of opinion, could not have been an opinion that was reasonably or honestly held by them.

34 The expert evidence supports my findings above. Expert witnesses were called by both sides to provide their respective valuations of Mamanda, which should have been as *at the time the alleged valuation representation was made*.

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[36] SoC at para 8.

The defendants' expert, Mr Ambar Agustono bin Macfoedy, values Mamanda at approximately $10m. The defendants' expert used the discounted cash-flow ("DCF") method, which took into account the defendants' projections for 2016 and 2017 as set out in the Mamanda prospectus.[37] Five things are pertinent.

(a) The Mamanda prospectus was available at the time the valuation representation was made.

(b) The plaintiffs have not been able to demonstrate through their expert witness, Ms Grace Lui Kit Ying, that the *projected* figures in the Mamanda prospectus are extremely unrealistic or wholly lacking in any material sense. This is because she (the plaintiffs' expert) was not provided with the Mamanda prospectus and had therefore not focused on this aspect in her valuation analysis and expert report.

(c) The plaintiffs' expert accepts that the DCF method or the "Income Approach" (adopted by the defendants' expert), which calculates the net present value of the expected future cash flows and therefore relies heavily on the past and projected revenue and cost figures set out in the Mamanda prospectus, is the "primary" method of valuation when a young company (such as Mamanda) with growth potential is involved.[38]

(d) The plaintiffs' expert further agrees with the approximate $10m valuation arrived at by the defendants' expert for Mamanda as at October 2015 (*ie*, around the time of the alleged valuation

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37 Defendants' Closing Submissions at paras 55 and 56.

38 NEs, 22 June 2020, page 53, lines 11 to 19.

representation) based on the revenue and cost figures stated in the Mamanda prospectus, which provides "Actual Figures" that were then available only for 2013 and 2014 but not for 2015 to 2017, which necessarily had to be "Projected Figures".[39]

(e) The plaintiffs' expert used the "Guideline Public Company Multiples Method" or the "Market Approach" for her valuation as she did not have access to any of Mamanda's financial projections.[40] This leads me to the inference that, had she been given the financial projections, she would have applied the DCF method (identical to that adopted by the defendants' expert) since Mamanda is a young company with growth potential.

35 Accordingly, I am inclined to accept the defendants' expert's valuation. The defendants' expert's valuation essentially demonstrates that the defendants were not far off or unreasonable in their subjective valuation of $10m for Mamanda based on certain assumptions of projected revenue and cost estimates. I cannot infer any dishonesty in the defendants' subjective valuation for Mamanda.

36 In contrast, I am not persuaded by the plaintiffs' expert's low valuation of Mamanda at $1.86m. First, as mentioned, the plaintiffs' expert was not provided with a copy of the Mamanda prospectus and, therefore, she did not have any of the revenue and cost projections set out therein to work on or to

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39 NEs, 22 June 2020, page 21 line 2 to page 22 line 1.

40 NEs, 22 June 2020, page 49, lines 4 to 6 and lines 20 to 22.

ascertain the reasonableness of those projections.[41] It bears emphasis that the plaintiffs' expert had to adopt the "Market Approach" instead (which she would not have used if she had the Mamanda prospectus) in order to value Mamanda. The "Market Approach" is basically an application of the "EV/EBITDA ratio" of comparable companies with similar business activities to assist in the valuation process. "EV/EBITDA ratio" is the "Enterprise Value/Earnings Before Interest, Taxes, Depreciation and Amortisation" ratio. The plaintiffs' expert used the unaudited financial statements for the years 2013 to 2016 (*ie*, 31 March 2013 to 31 March 2016[42]) to obtain the weighted average EBITDA of Mamanda for 2014 to 2016 from which she computed the "EV" or enterprise value of Mamanda from the average "EV/EBITDA ratio" of comparable companies. That was how she arrived at her valuation of Mamanda as at 31 March 2016 (which is in any event not appropriate because it is a date well after the alleged valuation representation).[43]

37 The technicalities of the market approach aside, a critical flaw in the plaintiffs' expert's methodology is that, in reaching her valuation, she made use of Mamanda's unaudited financial statement for 2016, which was *not* available to the defendants at the time the valuation representation was made. I may add that the unaudited financial statement for 2015 might also *not* have been available at the time of the preparation of the Mamanda prospectus, which is the reason why only the "Actual Figures" for 2013 and 2014 were provided and the rest were "Projected Figures".[44] The use of factual information unavailable then

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41 NEs, 22 June 2020, page 5, lines 16 to 17; page 12, lines 8 to 10.

42 NEs, 22 June 2020, page 4 lines 3 to 5, and lines 19 to 25.

43 NEs, 22 June 2020, page 6 lines 15 and 16.

44 Bundle of Affidavits (Volume 1) p 39.

to the defendants must be eschewed, given that what is critical is *what a person in the defendants' shoes in October 2015 (ie, the time of the valuation representation) would have known or reasonably foreseen, and how such an individual would have valued Mamanda*. It is with this perspective that the defendants made the valuation representation.

38 The principle that "hindsight information" ought not to be relied upon may be gleaned from the decision of Vinodh Coomaraswamy J in *Poh Fu Tek and others v Lee Shung Guan and others* [2018] 4 SLR 425 at [49]–[53]. Coomaraswamy J held that, in the valuation of a company, "hindsight information" (*ie*, information that post-dates the fixed valuation date) ought to be taken into account only when such information is required to achieve a "fairer result" and in order to remedy effects of *oppression*. Absent such exceptional circumstances that call for such an approach (*ie*, considering information that was *not* available at the valuation date), only information that was available or reasonably known at the valuation date ought to be taken into account. Given that (a) Mamanda's valuation in this case does not concern any finding of oppression; and (b) the plaintiffs have *not* shown how taking into account the "hindsight information" would lead to a "fairer result", it is self-evident that no exceptional circumstances exist that warrant the use of such "hindsight information" for the present misrepresentation action. For the reasons aforesaid, I reject the plaintiffs' expert's valuation.

39 To be clear, my analysis of the experts' valuations above are, in any event, not dispositive of the issue. They serve only to reinforce my findings on the defendants' *bona fide* behaviour. The expert valuations need not be *identical* to the defendants' $10m valuation. In so far as the evidence of the defendants' expert provides *some basis* to support the defendants' valuation of Mamanda, it

buttresses the notion that the defendants were *honest*. If the expert evidence accepted by the court demonstrates a valuation of Mamanda that is a far cry from $10m, that may constitute reasonable grounds to suspect that the defendants had no honest belief in their own valuation representation – this, however, is not the case.

40 I accordingly dismiss the plaintiffs' claim on the valuation representation.

The debt representation

41 The defendants rightly point out in written closing submissions that the plaintiffs have not maintained a consistent story as to what the defendants had expressed to them *vis-à-vis* this specific debt representation.[45]

(a) From the Statement of Claim, it appears that the debt representation pertains to all of the Companies, *ie*, that none of the Companies were in debt at the time the investments were made. However, at trial, it became clear that the plaintiffs' gripe was with respect to Mamanda only – their unhappiness lay in the fact that their investments in Mamanda had been used to pay off *loans* that Mamanda took from "previous investors".[46] According to the plaintiffs, this meant that Mamanda was in debt, and that the defendants had falsely represented that Mamanda was debt-free.

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45 Defendants' Closing Submissions at para 62.

46 NEs, 15 June 2020, page 67 lines 1 to 32.

(b) No evidence of any *debts* owed by the other three Companies has been adduced. The plaintiffs, in this respect, may have conflated "debts" with "losses". The plaintiffs argue in closing submissions that, because the defendants failed to disclose that Beta had made *losses* of about $154,000 prior to the date of the plaintiffs' investments, this meant that the defendants' representation that the Companies were not *in debt* was false.[47] This argument demonstrates a fundamental and basic misconception: losses are not debts. That Beta (and indeed the other Companies) had been making losses when starting out is normal – businesses need time to take off. That was in fact the first defendant's evidence.[48] These losses were incurred in the course of business and are *not* debts in the sense of sums owed to creditors.

I accordingly restrict my analysis on the debt representation to Mamanda.

42 The Mamanda prospectus is of particular significance and strongly suggests that the defendants did *not* make the debt representation as alleged:

(a) first, the Mamanda prospectus clearly states that Mamanda "started humbly with a project loan of SGD$700k";[49]

(b) second, it states that Mamanda "ha[s] made prompt monthly repayments to [its] debtors for the last 3 years", and that it "ha[s] made full repayments to *some* upon maturity" [emphasis added];[50] and

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47 Plaintiffs' Closing Submissions dated 17 August 2020 at para 25.

48 NEs, 23 June 2020, page 103 line 27 to page 104 line 25.

49 1PF AEIC at p 35.

50 1PF AEIC at p 35.

(c) third, it also states that 50% of the money raised from investors (*ie*, the plaintiffs) "will be use[d] to pay off *some* of [Mamanda's] project financing".[51]

43 The plaintiffs both confirm that they read the Mamanda prospectus and were aware of the existence of the loan taken up by Mamanda.[52] When questioned on whether they knew that the loan was *still outstanding* at the time they made their investments, neither plaintiff provided a satisfactory answer. For example, the first plaintiff simply alleged that "according to [the defendants], they didn't have any debts and I took their word".[53] The second plaintiff could only repeatedly insist that "[i]t didn't occur to [her]" that at least a part of the $700,000 loan taken out by Mamanda was still outstanding.[54] These are unbelievable explanations – the relevant portions of the Mamanda prospectus, as reproduced above, are clear on their face that there is an outstanding loan.

44 Accordingly, taking into account the unequivocal statement in the Mamanda prospectus, there is only one inexorable conclusion – the plaintiffs were informed at least *via* the Mamanda prospectus and *knew* that Mamanda was in debt or had debts before they made their investments. With this in mind, their case fails for two cumulative reasons.

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51 1PF AEIC at p 38.

52 NEs, 15 June 2020, page 71, lines 4 to 6; NEs, 17 June 2020, page 169, lines 4 to 8.

53 NEs, 15 June 2020, page 71, lines 10 to 11.

54 NEs, 17 June 2020, page 172, lines 1 to 15; page 173, line 22.

(a) First, I am not persuaded on a balance of probabilities that the defendants *made* the debt representation *as alleged*, *ie*, I do not believe that the defendants stated that Mamanda has *no debts at all*. The second defendant accepts that they conveyed to the plaintiffs that "all four companies [did not] have bank loans except for vehicle loan[s]".[55] But critically, the defendants did not represent that Mamanda had never taken up the $700,000 fund-raising loan. If the defendants had made such a representation, it would have been immediately obvious to the plaintiffs that such a representation was inconsistent with the Mamanda prospectus, which the plaintiffs had read prior to making their investments. The plaintiffs would have then, sensibly, sought clarifications. In fact, given the size of the investments, the plaintiffs would *surely* have clarified the position; indeed, the first defendant's evidence at trial is that he clarified with the plaintiffs prior to the making of their investments that the $700,000 fund-raising loan might have been *partially paid up* at that point in time (end-2015), but *not fully paid*.[56] I accept the first defendant's evidence – his statement in this regard is consistent with what is stated in the Mamanda prospectus, which the plaintiffs had sight of (see [42] above).

(b) Second, that being the case, what the defendants did represent was that Mamanda was not in debt, but subject to the *clear and obvious* qualification that the $700,000 project loan was the exception to that statement. The defendants never tried to hide the fact that the loan

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55 NEs, 24 June 2020, page 130, lines 17 to 21.

56 NEs, 24 June 2020, page 30, lines 11 to 20.

existed – it is mentioned front and centre in the Mamanda prospectus, which the plaintiffs had sight of. While the defendants' evidence on whether they had *verbally informed* the plaintiffs about the $700,000 loan is somewhat unclear,[57] this is immaterial given the clarity of the Mamanda prospectus. Indeed, the second defendant's position is that she did not convey this information verbally to the plaintiffs because she considered them "educated people", and felt that "[t]hey should read [the Prospectuses]".[58] Bearing this in mind, it is pertinent that there is no evidence of any other debt incurred by Mamanda – as indicated earlier, the Statement of Claim is extremely sparse as regards the details of the allegations of fraud/falsity (see [33] above). The clear disclosure made of the $700,000 project loan would have neutralised the effect of the falsity (if any) of any representation made by the defendants on this issue.

45 Accordingly, I find that the plaintiffs' case in respect of the debt representation is not made out. I accept that the defendants had at all times maintained that the Companies were not in debt or arrears *except* for Mamanda due to its first-round fund-raising from lenders.[59] There is no false representation.

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57 NEs, 24 June 2020, page 132 line 27 to page 133 line 9; NEs, 24 June 2020, page 30, lines 11 to 14.

58 NEs, 24 June 2020, page 133, lines 2 to 9.

59 Defence at para 38.

The loans representation

46 The plaintiffs' allegation in this regard is that the defendants represented that they did not have any bank or shareholder loans. For reasons provided in the preceding paragraphs, the fund-raising loan of $700,000 does not assist the plaintiffs. It is clear from the Mamanda prospectus and the parties' evidence at trial that the plaintiffs knew of the existence of this loan and, *despite this*, went ahead to make their investments in the Companies. The defendants never concealed the existence of this loan. The question then is whether the Companies had taken up *other* bank loans or shareholder loans.

47 With respect to *bank* loans, the first plaintiff confirmed during cross-examination that he wished to retract this portion of his pleadings (*ie*, in paragraph 7(c) of the Statement of Claim).[60] I hence disregard this allegation.

48 As for shareholder loans, it is unclear from the Statement of Claim what "loans" the plaintiffs are referring to. Again, in this respect, the pleadings are sparse (see [33] above). Apart from the fund-raising $700,000 loan, there is simply no evidence of any shareholder loan. Accordingly, and given that the burden of proof is on the plaintiffs to show that such loans exist, this claim must fail. The only loans the defendants admit to taking up are vehicle hire purchase loans, which are loans reasonably incurred in the ordinary course of business;[61] these do not aid the plaintiffs as they are not shareholder loans.

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60 NEs, 17 June 2020, page 75 line 26 to page 76 line 2.

61 Defence at para 39.

49 On a final note, while the plaintiffs make further allegations in their AEICs relating to *directors'* loans, this has not been pleaded – the Statement of Claim refers only to bank and shareholder loans.[62] I therefore do not consider this allegation.

The capital return representation

50 This claim may be dealt with briefly. During trial, the first plaintiff confirmed that he was retracting paragraph 5(d) of the Statement of Claim.[63] He did so in light of his acknowledgment of the disclaimer in the Prospectuses, which states, *inter alia*, that "[i]nvesting involves a great deal of risk, including the loss of *all or a portion of your investment*" [emphasis added].[64] Conceivably, the first plaintiff understood that his allegation in this regard simply could not square with the documentary evidence available. The second plaintiff did not appear to adopt a different course of action during trial; nor could she explain how the capital return representation, if made, could be reconciled with the existence of the aforementioned disclaimer in the Prospectuses. I hence dismiss this portion of the plaintiffs' claim.

The dividends representation

51 The plaintiffs' case in this regard fails because the dividends representation pertains to a future event. It is a statement made by the defendants that the plaintiffs may *in future*, after making investments in the Companies, receive dividends. Existing case law makes it clear that actionable

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62 Defendants' Closing Submissions at para 87.

63 NEs, 17 June 2020, page 3, lines 7 to 15.

64 Defendants' Closing Submissions at para 91; 1PF AEIC at p 34.

misrepresentations *cannot* bear elements of futurity. In this respect, it is worth reiterating the words of the Court of Appeal in *Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 ("*Raffles Town Club*") at [21]:

> 21 … A representation… relates to some existing fact or some past event. It implies a *factum*, not a *faciendum*, and since it contains no element of futurity it must be distinguished from a statement of intention. An affirmation of the truth of a fact is different from a promise to do something *in futuro*, and produces different legal consequences. This distinction is of practical importance. …

52 This point of law has been reiterated in numerous cases (see for example *Deutsche Bank AG v Chang Tse Wen* [2013] 1 SLR 1310 at [93], citing *Bestland* ([30] *supra*)). What is clear is that there is a crucial distinction between actionable misrepresentations and a *future promise*. In the context of commercial contracts, a claim relating to the latter (a future promise of commercial returns) would fall more properly into the realm of contractual terms and the enforcement of the same. This could manifest in a claim in, for example, breach of contract (and not misrepresentation). Breach of contract, however, is not the plaintiff's pleaded case; their pleadings are solely limited to a claim based on various misrepresentations.

53 For completeness, I simply note that any claim in contract would have its own obvious problems as well, given that (and as pointed out by the defendants) dividends must be paid out of *profits*. The plaintiffs would have difficulty showing that there were available profits from which such dividends could be paid out pursuant to cl 2 of the Investment Agreements. Their claim in contract would thus also have been hamstrung. I say no more on this issue, given that a claim for breach of contract has not been pleaded.

The investment utilisation representation

54 The plaintiffs' case on this representation suffers from multiple difficulties. Preliminarily, as clarified at trial, the plaintiffs' case is that this representation pertained *to Mamanda only*, *ie*, the representation was that the plaintiffs' investments would be used *only* for the purposes of future projects and business expansion, and will *not* be used to repay any debts or arrears of *Mamanda*.[65] Accordingly, the Statement of Claim is demonstrably incorrect in so far as it characterises the investment utilisation representation as one pertaining to *all four* of the Companies.

55 On that premise, there are two reasons why the plaintiffs' case is unviable. First, the Mamanda prospectus states clearly that "50% of the money raised will be use[d] to pay off some of [Mamanda's] project financing".[66] That being the case, I am not persuaded that the defendants made the investment utilisation representation as alleged by the plaintiffs – if they did so, they would have in effect expressed the exact *opposite* of what was printed in black and white on the Mamanda prospectus. My analysis in this regard is closely intertwined with my reasoning with respect to the debt representation (see [42] and [43] above). As mentioned, it is also pertinent that the second plaintiff accepts that she knew that, *prior to the plaintiffs' investments*, Mamanda had undertaken a loan worth $700,000.[67] Putting two and two together, the plaintiffs *must* have known that part of their investments would be used to repay this loan. At the time the plaintiffs were shown the Mamanda prospectus, there was no

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65 NEs, 17 June 2020, page 167 line 11 to page 168, line 18.

66 1PF AEIC at p 38.

67 NEs, 17 June 2020, page 169, lines 4 to 8.

evidence that this loan had been fully repaid. Indeed, when I questioned the second plaintiff on whether she was cognisant, at the time of investment, that such a loan was still outstanding, she simply asserted that "[i]t didn't occur to [her]" – for obvious reasons, this cannot suffice.[68] The first plaintiff has also offered no convincing reason for why he would have believed that (a) Mamanda did not have outstanding loans; and (b) his investments, *contrary to what the Mamanda prospectus indicated*, would *not* be used to repay such loans.

56 Second, in any event, this representation is also a statement on something to be done in the future. It is about how the invested funds *will be utilised* moving forward. This point alone is fatal to the plaintiffs' claim. As explained in the context of the dividends representation, this is a matter that ought to be governed instead by the terms of the agreement (see [51] and [52] above). A representation of this nature is not actionable in a misrepresentation claim.

The Beta Global representation

57 The Beta Global representation, as it appears in the Statement of Claim, appears to have been made. The defendants accept in the Defence that "Beta Global Limited was created as the Special Purpose Vehicle… to list the business on the Stock Exchange if the companies together had performed to expectations".[69] However, this representation, much like the dividends and investment utilisation representations, is clearly a statement of future intent. The representation is that the Companies *will become subsidiaries of Beta Global in*

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68 NEs, 17 June 2020, page 172, lines 1 to 15; page 173, line 22.

69 Defence at paras 55 and 56.

the future, for an *anticipated* listing on the Singapore Stock Exchange. For reasons already made clear, such a statement cannot constitute an actionable representation (see [51] and [52] above).

Concluding observation

58 As a final but critical observation on the plaintiffs' case *as a whole*, I do not accept that the plaintiffs were *induced* to enter into the Investment Agreements by any of the defendants' representations. All in, the plaintiffs' investments were worth $1m, which is a big investment. The plaintiffs *must* have read the Prospectuses with some care and done some due diligence before making their investments. I do not believe that investors of the plaintiffs' stature would have taken the defendants' words at face value, and made their investments simply by hanging onto the defendants' every word based entirely on trust. It bears mention that there were other prospective investors present during the defendants' pitches to the plaintiffs; these other investors, who were the plaintiffs' "doctor-friends", eventually opted *against* making investments in the Companies.[70] In spite of this, the plaintiffs went ahead because they were predominantly persuaded by the defendants of their ambitious plans, the Companies' future growth prospects and the potential listing of the parent company Beta Global Limited (with the Companies as its subsidiaries) on the Singapore Stock Exchange through an Initial Public Offering ("IPO"). If so, they would be able to reap the profits on their pre-IPO investments after listing takes place. They cannot subsequently rely on the court to unravel their investments if it later turns out (as it has at present) that the Companies have not done as well as expected, and the possibility of an IPO is now extremely remote.

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70 2DF AEIC at para 33.

The claim under section 2 of the Misrepresentation Act

59 Section 2(1) of the Misrepresentation Act provides as follows:

> **2.**—(1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true.

60 As per *RBC Properties Pte Ltd v Defu Furniture Pte Ltd* [2015] 1 SLR 997 at [66], the elements of a statutory action under the Misrepresentation Act are similar to those at common law, except that it is for the defendant to prove an absence of negligence. In other words, and sensibly so, it must still be shown that there was an actionable misrepresentation to begin with, *ie*, a *false statement of fact*.

61 On this basis, the plaintiffs' claims under the Misrepresentation Act must fail. As explained above with respect to each of the representations, the defendants have *not* made any *false statements of past or present fact*.

(a) The valuation representation was a reflection of the defendants' genuine belief (*ie*, opinion) of the value of Mamanda (see [32] above), which forms the basis upon which the defendants priced the shares to be sold to the plaintiffs as per the Mamanda prospectus.

(b) The debt representation, as alleged in paragraph 5(b) of the Statement of Claim, was never made. The defendants had been candid

about the outstanding loan they took up during fund-raising and did not represent that Mamanda was debt-free (see [44] above).

(c) The loans representation, as alleged in paragraph 5(c) of the Statement of Claim, may have been made – the defendants do not seem to deny this in the Defence.[71] However, it is not false. The defendants disclosed to the plaintiffs the existence of the $700,000 fund-raising loan in the Mamanda prospectus – apart from this loan, there were no bank or shareholder loans taken out by the Companies (see [47] and [48] above).

(d) The capital return representation was never made, and the plaintiffs have tellingly retracted this claim (see [50] above).

(e) The remaining three representations are statements of future intention, and not false statements of past/present fact. They are not actionable under the Misrepresentation Act (see [51], [56] and [57] above).

62 Accordingly, the action under the Misrepresentation Act is untenable in its entirety.

Conclusion

63 I therefore dismiss the plaintiffs' claim. Unless parties inform the court within one week from the date of this Judgment that they wish to be heard on

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[71] Defence at para 39.

costs, I will order costs against the plaintiffs in favour of the defendants to be taxed if not agreed.

Chan Seng Onn
Judge

Valliappan Subramaniam (Veritas Law Corporation) for the plaintiffs;
Suhaimi bin Lazim (Mirandah Law LLP) and Abdul Rohim bin Sarip (A. Rohim Noor Lila LLP) for the defendants.
