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

[2021] SGHC 283

Suit No 1250 of 2014

Between

United Overseas Bank Limited

… *Plaintiff*

And

(1) Lippo Marina Collection Pte Ltd
(2) Goh Buck Lim
(3) Aurellia Adrianus Ho also known as Filly Ho

… *Defendants*

GROUNDS OF DECISION

[Tort] — [Conspiracy]
[Tort] — [Misrepresentation] — [Fraud and deceit]

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v
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Introduction

1 This case arose from various housing loans (the "Housing Loans") that the plaintiff bank extended to purchasers (collectively, the "Purchasers") of 38 units (the "Units") in a condominium located in Sentosa Cove, known as the Marina Collection (the "Development"). The Development was developed by the first defendant. The second and third defendants were the property agents involved in the purchase of the Units.

2 The hearing before me was bifurcated. Having considered the evidence and the submissions of the parties, I dismissed the plaintiff's claims against the first defendant entirely. As against the second and third defendants, the plaintiff's claim in deceit succeeded. The plaintiff in this case has appealed

against my decision. Brief remarks were conveyed earlier. These are my full grounds.

Background

3 The Development was launched for sale in or around December 2007.[1] 42 of 124 units in the Development were sold from December 2007 to 10 March 2011 and some of the Units were leased out by the first defendant prior to their sale.[2] Sometime in the fourth quarter of 2009, Ms Woo Pui Lim ("Ms Woo"), who was then the General Manager of the first defendant,[3] became acquainted with the second defendant.[4]

4 From December 2011 to 2013, the second defendant brokered the sale of 38 Units in the Development.[5] For these 38 Units, the second and third defendants made 38 Housing Loan referrals to the plaintiff,[6] and the plaintiff granted and disbursed more than S$181 million in Housing Loans to Purchasers of these 38 Units.[7] The plaintiff's representative whom the second and third defendants liaised with was Ms Ann Ong ("Ms Ong").[8]

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1 Statement of Claim (Amendment No. 1) dated 6 August 2020 ("SOC") at para 12; First Defendant's Defence (Amendment No. 1) dated 24 August 2020 ("D1's Defence") at para 11.

2 SOC at paras 13–14; D1's Defence at para 12.

3 Woo Pui Lim's AEIC dated 21 August 2020 ("Woo Pui Lim's AEIC") at para 3; Goh Buck Lim's AEIC dated 28 March 2016 ("Goh Buck Lim's AEIC") at para 12.

4 Woo Pui Lim's AEIC at para 4; Goh Buck Lim's AEIC at para 12.

5 Goh Buck Lim's AEIC at paras 9–10.

6 Second and Third Defendant's Defence (amended pursuant to HC/ORC 7012) ("D2 and D3's Defence") at para 18.

7 SOC at pp 50–76.

8 Goh Buck Lim's AEIC at paras 26–28.

5 By December 2013, 37 out of the 38 Purchasers had defaulted on the Housing Loans. By 1 April 2015, all 38 Purchasers had defaulted, and remain in arrears to-date.[9] This prompted the plaintiff to investigate and commence the present proceedings against the defendants,[10] alleging deceit and unlawful means conspiracy.[11]

6 It was undisputed that a Furniture Rebate Plan was entered into between the second defendant and Ms Woo in or around December 2011.[12] This Furniture Rebate Plan applied to a group of potential purchasers which the second defendant sought to introduce to the first defendant.[13]

The Furniture Rebate Plan

7 Before going into the details of the Furniture Rebate Plan, it is necessary to first set out the various milestone payments for each Unit:[14]

(a) a 1% option fee (the "1% Option Fee"), based on the price (the "Stated Purchase Price") stated on the Option to Purchase (the "OTP"), was to be paid for an OTP to be granted to the Purchaser;

(b) the balance 4% Option Fee (the "4% Option Fee") was to be paid upon the exercise of the OTP;

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9 See Yen Nee's AEIC dated 11 November 2020 at para 5.

10 Chia Siew Cheng's AEIC dated 11 November 2020 ("Chia Siew Cheng's AEIC") at para 23; Yong Chai Yim's AEIC dated 11 November 2020 ("Yong Chai Yim's AEIC") at para 10.

11 SOC at para 11.

12 Goh Buck Lim's AEIC at para 20; First Defendant's Closing Submissions dated 24 March 2021 ("DCS") at paras 117 and 140.

13 19 January 2021 Transcript at p 34 lines 14–22.

14 SOC at para 32; D1's Defence at para 24.

(c) The completion payment (about 15% of the Stated Purchase Price) (the "15% Completion Fee") was to be paid prior to completion; and

(d) The balance of the Stated Purchase Price (approximately 80%) was to be paid at completion.

8 The Furniture Rebate Plan agreed to by Ms Woo, on behalf of the first defendant, and the second defendant was as follows:[15]

(a) a purchaser of a unit in the Development would provide the first defendant with cheques for the 4% Option Fee and 15% Completion Fee based on the price as stated in the OTP to be granted by the first defendant to the purchaser;

(b) the first defendant would not bank in these cheques upon receipt of the same;

(c) upon the bank's approval of the purchaser's housing loan application for the purchase of his or her unit, the first defendant would issue a Furniture Rebate which would be set-off against the 4% Option Fee and 15% Completion Fee;

(d) the Furniture Rebate to be granted by the first defendant to the purchaser would be for an amount that would comprise the 4% Option Fee and 15% Completion Fee, and would carry a surplus sum which serves the following purposes: (i) incentivise the purchaser to enter into the transaction and (ii) help the purchaser to defray the repayment of the housing loan obtained to purchase

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15 Goh Buck Lim's AEIC at paras 20 and 22; DCS at paras 117 and 140.

the unit to the extent that the Furniture Rebate exceeded the 4% Option Fee and the 15% Completion Fee; and

(e) the first defendant would return the cheques for the 4% Option Fee and 15% Completion Fee to the purchaser on completion.

Notably, Ms Woo's AEIC mentioned that the agreement was to pay the surplus sum, "if any", to the purchaser upon completion.[16] However, the first defendant's written submissions abandoned this earlier caveat,[17] and accepted that there would always be a surplus sum which would be credited to the purchaser upon completion.[18]

9 The Furniture Rebate Plan was a purchase arrangement agreed to by the first defendant to grant discounts in the form of Furniture Rebates to purchasers introduced by the second defendant. Deducting the Furniture Rebate from the Stated Purchase Price would yield a lower price, *ie*, the Actual Purchase Price.

The 80% LTV Limit

10 Under the Monetary Authority of Singapore ("MAS") Notice 632 in operation at the material time, banks were only permitted to lend up to 80% of the purchase price (or current market valuation, whichever was lower, less any discount, rebate or benefit for the purchase of the residential property) (*ie*, 80% of the loan-to-value limit (the "80% LTV Limit")). This was a requirement imposed by MAS since 13 January 2011 and remained a requirement throughout

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16 Woo Pui Lim's AEIC at para 8.

17 Plaintiff's Reply Closing Submissions dated 12 April 2021 ("PRS") at para 9(b); DCS at paras 117 and 140.

18 See First Defendant's Reply Submissions dated 12 April 2021 ("DRS") at paras 89–90.

the 38 transactions.[19] The effect of this regulation was that the plaintiff bank could only loan up to 80% of the Actual Purchase Price. The 80% LTV Limit was not pegged at 80% of the Stated Purchase Price.

11 However, the quantum of Housing Loan disbursed to each Purchaser greatly exceeded the 80% LTV Limit. It was undisputed that the amount of Housing Loans even exceeded the Actual Purchase Prices.[20]

Non-disclosure of the Furniture Rebates in the Housing Loan Application Forms

12 As it turned out, the Initial Property Loan Application Forms ("ILAs") and the Final Property Loan Application Forms ("FLAs") (collectively, the "Housing Loan Application Forms") submitted by all 38 Purchasers indicated the Stated Purchase Price for the relevant Unit, without disclosing the full extent of Furniture Rebates.[21]

13 For 37 of the Purchasers, the FLAs expressly stated that there were "nil" discounts, rebates, benefits and freebies which had been offered for the purchase of the relevant Unit. The exception was Suwendi Santoso's FLA, which stated that he had received a discount, rebate and/or benefit of S$3,510,[22] when in reality, he was given a Furniture Rebate of S$1,784,150.[23]

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19 MAS Notice 632 dated 13 January 2011 (21AB 10869, 10875); MAS Notice 632 dated 13 January 2011 (last revised on 27 July 2011) (21AB 10881, 10888); MAS Notice 632 dated 13 January 2011 (last revised on 5 October 2012) (21AB 10896, 10902–10903); MAS Notice 632 dated 13 January 2011 (last revised on 11 January 2013) (21AB 10911, 10919–10920); MAS Notice 632 dated 13 January 2011 (last revised on 28 June 2013) (21AB 10978, 10987).

20 SOC at para 21; D1's Defence at para 21.

21 Chia Siew Cheng's AEIC at para 124.

22 5AB 2413.

23 1PCB 105.

14 These representations were made by the 38 Purchasers, notwithstanding that under paragraph (a) of the "Declaration and Authorisation" portion of each FLA, each Purchaser:[24]

> [R]epresent[ed] and warrant[ed] that all information and documents given to [the plaintiff] in connection with [the Housing Loan application] are accurate, complete and not misleading. If any information given is or subsequently becomes inaccurate, incomplete, misleading or changes in any way, whether before this application is approved or while the credit facilities are existing, [he or she] will promptly notify [the plaintiff] of any such change.

By signing the FLAs, the Purchasers also declared that they had read, understood and agreed to be bound by the plaintiff's Standard Terms and Conditions Governing Credit Facilities (the "Standard Terms"). The Standard Terms were incorporated as part of the loan agreement between the plaintiff and each Purchaser. Pursuant to Clause 8 of the Standard Terms, each Purchaser warranted and represented that full disclosure had been made of all facts and information which have been requested by the plaintiff, and all representations made by the Purchaser in the Housing Loan Application Forms are true and correct.[25] Each Purchaser also warranted and represented that such representations shall continue to be true and correct so long as any part of the Housing Loan remains unpaid.[26] As things were, these Purchasers had not made full disclosure of the Furniture Rebates they had received.

Nominee Purchasers

15 There was another category of untrue representations made in the Housing Loan Application Forms. 32 Purchasers were acting as nominees for

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24 5AB 2343–2460.

25 19AB 10235–10236.

26 19AB 10236.

various investors,[27] but had applied for the Housing Loans in their own name, and indicated in the Housing Loan Application Forms that they were to be the registered owners of their respective Units.[28] In doing so, they warranted and represented that they were "the true and full owners" of their respective Units,[29] and declared by way of their acceptance of the plaintiff's Letter of Offers ("LOs") that they were "apply[ing] for the Loan for the Purchase of the Property for [their] own use and not for the benefit of any other party".[30]

Recycling of monies

16 The Purchasers also circumvented the plaintiff's requirement for them to place assets under management ("AUM") of amounts between S$200,000 and S$1,200,000 in their bank accounts with the plaintiff.[31] Investigations by the plaintiff revealed that transfers were made between the Purchasers' accounts, the second defendant, and the second defendant's sons (the "Inter-Account Transfers"), so that there would be sums ranging from S$200,000 to S$1,200,000 in a Purchaser's account at the time of the Purchaser's application for the Housing Loans.[32]

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27 D2 and D3's Defence at para 10a.

28 Chia Siew Cheng's AEIC at para 145; ILAs (4AB 1661–1727); FLAs (5AB 2343–2460).

29 Chia Siew Cheng's AEIC at para 146; 19AB 10236 (Standard Terms at Clause 8.2(v)).

30 Chia Siew Cheng's AEIC at para 147; Acceptance of UOB's Letter of Offer at Clause (iv): 1PCB 125, 134, 145, 154, 163, 173, 182, 192, 202, 212, 223, 233, 245, 255, 267, 277, 287, 298, 308, 319, 333, 345, 355, 366, 376, 386, 397, 407, 417, 431, 444, 456, 468, 481, 495, 508, 520, and 532.

31 Chia Siew Cheng's AEIC at para 157.

32 Yong Chai Yim's AEIC at paras 147–148 and Annex G.

The TSMP Letters and pre-disbursement checks

17 Even after a loan application has been approved, several events had to take place prior to the disbursement of the loan. Typically, a purchaser would have to pay the difference between the purchase price and the loan (the "Balance Purchase Price"), since the financing bank is prohibited from lending above the 80% LTV Limit. The Balance Purchase Price includes the 15% Completion Fee.

18 In the present case, Clause 1.1(x) of the Standard Terms provided, as one of the conditions precedent to the disbursement of the Housing Loan, that the plaintiff had to be satisfied that the respective Purchaser had paid the Balance Purchase Price.[33] Close to completion, TSMP Law Corporation ("TSMP"), the first defendant's conveyancing solicitors,[34] wrote letters (collectively, the "TSMP Letters") to PKWA Law Practice LLC ("PKWA"), the solicitors acting for both the Purchasers and the plaintiff, suggesting that payment of the 15% Completion Fee had been made for 37 of the Purchasers. The Confirmation Letters varied in content, but contained at least one of the four phrases:[35]

(a) "Our clients confirm that they have received your client's cheque of $[...] ... our clients will advise us whether the same is cleared before completion can take place...";

(b) "Our clients confirm that they had received a sum of $[...] from your client direct towards part payment...";

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33 19AB 10232.

34 D1's Defence at para 27.

35 SOC at para 38; D1's Defence at para 27.

(c) "We are instructed by our clients that they had received a sum of $[...] from your client direct towards part payment..."; and

(d) "We are instructed by our clients that they had received... cheque(s) ... from your client direct towards part payment...".

19 For the one of the 38 Purchasers, Theodora Budi Halimundjaja ("Theodora"), TSMP did not expressly state in its letters to PKWA any of the four phrases. Instead, TSMP wrote a letter to PKWA, enclosing various documents, including a completion account, and requested that TSMP be provided with a cashier's order for the balance sale proceeds on completion.[36] After PKWA informed TSMP how and when the balance sale proceeds would be paid,[37] the transaction proceeded to completion, following which TSMP issued a second letter enclosing a duly executed Instrument of Transfer, as well as keys and access cards to a Unit.[38]

20 It was noteworthy that the plaintiff was not itself an addressee of the TSMP Letters. The TSMP Letters were correspondence as between PKWA and TSMP.

Summary of the plaintiff's case

21 The plaintiff's case consisted of two causes of action against the first, second and third defendants: (a) tort of unlawful means conspiracy; and (b) tort of deceit.[39] According to the plaintiff, there was a conspiracy, between the defendants and the Purchasers, which sought to obtain financing from the

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36 14AB 7262–7264.

37 14AB 7265.

38 14AB 7268.

39 SOC at para 11.

plaintiff (a) in circumvention or breach of the 80% LTV Limit, and (b) in excess of the Actual Purchase Prices of the Units (the "Conspiracy").[40] In furtherance of this alleged Conspiracy, four acts of deceit were committed by the first, second and third defendants, along with the Purchasers.[41] These four acts served as the unlawful means through which the Conspiracy was effected,[42] and also formed the basis of the plaintiff's claims in the tort of deceit:

(a) the second and third defendants made, procured, or induced the Purchasers to omit declaring the Furniture Rebates in the Housing Loan Application Forms (the "Purchase Price Misrepresentations");[43]

(b) the second and third defendants made, procured, or induced at least 28 Purchasers to make false representations as to the true identity of the purchasers (the "Identity Misrepresentations");[44]

(c) the second and third defendants procured or induced the Purchasers to recycle monies between the accounts of the Purchasers, the second defendant and his sons, which carried the implicit representation that the Purchasers had good financial standing (the "Financial Standing Fraud");[45] and

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40 SOC at para 9.

41 SOC at paras 10 and 45a.

42 SOC at para 45a.

43 SOC at paras 20 and 51.

44 SOC at paras 28 and 56.

45 SOC at paras 29 and 61.

(d) the first defendant represented that it had received payment of the 15% Completion Fee for each Unit, when such payment had not been made (the "Payment Misrepresentations").[46]

22 Apart from these four acts of deceit, the plaintiff also pleaded that three other unlawful means were employed in the Conspiracy, namely: the defendants' commission of an offence under s 415 of the Penal Code (Cap 224, Rev Ed 2008) by procuring the plaintiff to disburse excess loans, a breach of the LOs and the accompanying terms and conditions which required the Purchasers to declare the existence of any Furniture Rebates and that they were applying for the Housing Loans in their own name,[47] and the plaintiff's disbursement of the Housing Loans in breach of MAS Notice 632.[48] That said, the plaintiff mainly focused on the four acts of deceit and the plaintiff's breach of MAS Notice 632 in its written submissions and oral submissions.

Summary of the first defendant's case

23 Against the plaintiff's claim in conspiracy, the first defendant denied that it combined with any other defendant or Purchasers to cause loss to the plaintiff.[49] The Furniture Rebates were given to promote the sale of units in the Development, and not pursuant to the alleged Conspiracy.[50] The manner in which the first defendant accepted payment of the 4% Option Fee and 15% Completion Fee from the Purchasers was solely within its discretion, which was exercised based on its commercial interests and not pursuant to the alleged

46 SOC at paras 37–40.

47 SOC at para 45c.

48 SOC at para 45d.

49 D1's Defence at para 4.

50 D1's Defence at para 4(a).

Conspiracy.[51] The Purchase Price Misrepresentations, Identity Misrepresentations and the Financial Standing Fraud concerned the procurement of financing for the purchase of the Units, which was a matter solely between the Purchasers and the plaintiff that did not involve the first defendant.[52]

24 As for the Payment Misrepresentations, the first defendant averred that it did not make the alleged misrepresentations, whether directly or indirectly, to the plaintiff.[53] It denied that the TSMP Letters induced or caused the plaintiff to disburse the Housing Loans.[54] It also denied having made any representations to the plaintiff dishonestly with the intention that the plaintiff would be acting on it.[55]

25 In the alternative, the first defendant denied that the plaintiff had suffered any damage as a result of any act done by the first defendant. The plaintiff's loss, if any, was caused by its own decision to grant the loan facilities to the Purchasers based on its own independent checks and risk analyses, or its failure to carry out its own independent checks and analyses.[56]

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51 D1's Defence at para 4(c).

52 D1's Defence at para 4(b).

53 D1's Defence at para 4(d).

54 D1's Defence at 30.

55 D1's Defence at para 5.

56 D1's Defence at para 6.

The second and third defendants' positions

26 Neither the second nor the third defendant put up much of a fight. They did not take an active part in the proceedings. The second defendant testified, but the third defendant did not.

The decision

27 The plaintiff failed to establish its case, both in conspiracy and deceit, against the first defendant, though it did succeed against the second and third defendants in its claim in deceit.

Analysis

28 In so far as the plaintiff's claims in deceit were concerned, the Payment Misrepresentations allegedly involving the first defendant were not actionable because any such representations were not relied upon by the plaintiff, who had instead relied on documents known as Form 3s issued by PKWA. The Identity Misrepresentations, Financial Standing Fraud and Payment Misrepresentations were actionable in the tort of deceit as against the second and third defendants. Accordingly, it did not make a difference to the outcome whether there was a conspiracy as between these two. What mattered was whether the first defendant was part of any combination with these two.

29 By participating in the Furniture Rebate Plan, the first defendant knew that there would be over-lending on the part of the plaintiff and concealment of the Furniture Rebates on the part of the Purchasers. However, this knowledge, even when seen alongside the various other factors asserted by the plaintiff, was insufficient to give rise to the inference that the first defendant had combined with the other defendants with the intention cause injury to the plaintiff. There

was another plausible explanation for the first defendant's behaviour, that is, it was primarily concerned with the sale of its own Units and was not bothered by the implications this purchasing arrangement had on the plaintiff. It then sought to keep its own sharp practice under wraps by keeping the Furniture Rebates away from the public eye and its own solicitors.

30 I was not prepared to extend the tort of unlawful means conspiracy to cover situations where the unlawful means reside in the unlawful acts committed by the plaintiff-victim as a consequence of the conspiracy, or an unlawful purpose pursued by the defendants. Separately, even if I were to accept that the first defendant had combined with the other defendants, such combination would still not amount to a combination to employ any of the alleged acts of deceit to harm the plaintiff.

31 Finally, I was doubtful that a conspiracy tied into any alleged inflation above the "true price" itself would have been made out. There is no true price for real property, the Stated Purchase Price were reasonable valuations, and no evidence of the consequence of a breach of MAS Notice 632 was adduced.

The conspiracy claim

32 The claim in conspiracy by the defendants to cause injury to the plaintiff by using unlawful means failed as the elements were not made out. The elements of the tort were laid out in *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings CA*") at [112], namely:

(a) a combination of two or more persons to do certain acts;

(b) such persons had the intention to cause damage or injury to the plaintiff by those acts;

(c) the acts were unlawful;

(d) the acts were performed in furtherance of the agreement between such persons; and

(e) loss was suffered by the claimant as a result of the conspiracy.

Summary of parties' submissions

33 The plaintiff argued that the first defendant had combined with the other defendants to commit the various unlawful acts set out above at [21]–[22], which included acts of deceit. It relied on the first defendant's knowledge of various matters, such as the quiet state of the market. It also relied on the defendant's various conduct, such as the timing the issuance of the letter documenting the Furniture Rebate (the "Furniture Rebate Letter"), which were allegedly aimed at facilitating the approval and disbursement of excess loans. These acts carried out by the first defendant entailed close coordination between all three defendants, and thus supported the inference that the first defendant had acted in combination with the other two defendants.[57] The objective of this was to enable the first defendant to dispose of the Units, following muted sales performance. The excess loans disbursed by the plaintiff also enabled the first defendant to credit a surplus sum to the Purchasers' account, which in turn incentivised the Purchasers to participate in the arrangement.[58]

34 The first defendant accepted that parties' knowledge and conduct can form the basis for inferring their intentions at the material time, but contended that some aspects of knowledge that the plaintiff sought to ascribe to the first

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57 Plaintiff's Closing Submissions dated 24 March 2021 ("PCS") at para 37.

58 PCS at para 36.

defendant were not supported by the evidence. The inferences drawn by the plaintiff were also not borne out by the evidence.[59]

35 Next, on the issue of whether there was an intention to injure the plaintiff, the plaintiff submitted that the defendants had engaged in conduct which was designed to procure the plaintiff to lend over the 80% LTV Limit, thereby placing the plaintiff in breach of MAS Notice 632.[60] The plaintiff also contended that the defendants had intended the plaintiff to bear the risk of default and the attendant consequences,[61] while the first defendant took the benefit of disposing of its Units using monies the plaintiff had lent. Even if such benefit was the primary aim of the conspiracy, the harm to the plaintiff was the "necessary corollary" of the same, and this was sufficient to establish the intention to injure.[62]

36 On the other hand, the first defendant pointed out that what resulted in the plaintiff over-lending was the fact that the Furniture Rebates were not disclosed to the plaintiff, and the non-disclosure of the Furniture Rebates was not part of the Furniture Rebate Plan.[63] There was, in any event, no evidence showing that the consequence of the over-lending was that the plaintiff would be left under-secured.[64] Even if the first defendant was part of the Wider Plan (*ie*, the plan to buy properties with the lowest possible cash outlay and to

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59 DRS at para 55.

60 PCS at paras 226–228.

61 PCS at para 230; PRS at para 51.

62 PCS at para 231.

63 DCS at paras 178–179.

64 DCS at paras 181–183; DRS at paras 41–49.

minimise the monthly instalment payments),[65] the ultimate objective of the Wider Plan was for the properties to be sold and the profits shared. It was thus of fundamental importance to the Wider Plan that the Purchasers avoid defaulting on their loans.[66] The Wider Plan was also structured to reduce the risk of default by making it easier to meet the repayment obligations.[67]

Combination

The meaning of combination

37 The crux of the inquiry is whether the alleged conspirators entered into an agreement with a common objective of effecting certain acts. For there to be any agreement or combination to speak of, it must, at the very least, be shown that the alleged conspirator shared a common understanding of the material facts underlying this agreement: *EFT Holdings CA* at [114].

38 However, merely having knowledge of the material facts would not in itself render a party a co-conspirator. In particular, a defendant who knows that unlawful acts were being committed by others, and yet does nothing to stop those acts, is not necessarily a co-conspirator: *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2013] 1 SLR 1254 ("*EFT Holdings HC*") at [125]. The surrounding circumstances, as well as the alleged conspirator's conduct and state of knowledge, must still be capable of supporting an inference that that party had combined with the other co-conspirators to pursue a particular course of conduct involving unlawful acts: see *OUE Lippo Healthcare Ltd (formerly known as International Healthway*

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65 DCS at para 153.

66 DCS at paras 187–188; DRS at paras 51–52.

67 DCS at para 189.

Corp Ltd) and another v Crest Capital Asia Pte Ltd and others [2020] SGHC 142 ("*OUE Lippo*") at [185].

39 It is trite that direct evidence of such a combination is not necessary: *EFT Holdings CA* at [113]; *Asian Corporate Services (SEA) Pte Ltd v Eastwest Management Ltd (Singapore Branch)* [2006] 1 SLR(R) 901 at [19]. It is also unnecessary to prove that such an agreement was express, or for all the alleged conspirators to have joined at the same time or know what the others have agreed to do: *New Ping Ping Pauline v Eng's Noodles House Pte Ltd and others* [2021] 4 SLR 1317 at [60].

Evidential analysis

40 I had not been persuaded that the evidence showed the existence of any combination, involving the first defendant, for the commission of unlawful acts intended to cause harm to the plaintiff.

41 In the main, I accepted the arguments of counsel for the first defendant that various allegations made by the plaintiff were not borne out. I found that even where the facts were as asserted by the plaintiff, alternative explanations were present which went against the conclusion, even on the balance of probabilities, that a combination had been formed. The inferences that could be drawn from what the plaintiff asserted just as easily pointed to other explanations.

(1) Whether the first defendant agreed to keep the existence of the Furniture Rebates away from the plaintiff

42 On the crucial point about whether there was any agreement by the first defendant to keep silent on the Furniture Rebate, direct evidence emanating

from the alleged parties to the Conspiracy were conflicting. The existence of such an agreement was denied by Ms Woo. She claimed that she left it to the Purchasers to decide whether to declare the Furniture Rebates to the plaintiff.[68] On the other hand, the second defendant's evidence was that Ms Woo told him that the Furniture Rebates should not be so disclosed to the financing bank.[69]

43 However, both the second and third defendants admitted that they had informed Ms Ong, the plaintiff's officer, of the Furniture Rebates.[70] Ms Ong was not called. It was indeed previously determined in Registrar's Appeal No 145 of 2015 that Ms Ong's knowledge of any fraud could not be imputed to the plaintiff so as to defeat the plaintiff's claim of conspiracy against the defendants (*United Overseas Bank Ltd v Lippo Marina Collection Pte Ltd and others* [2016] 2 SLR 597 at [56]). However, as pointed out further below (at [129]), Ms Ong's evidence would have been useful aside from this. On this issue, Ms Ong's absence leaves the second and third defendants' admission unrefuted, and their admission undermined the likelihood that the first defendant had agreed to conceal the Furniture Rebates.

44 Next, the plaintiff contended that the first defendant's agreement to the Furniture Rebate Plan necessarily entailed an agreement to conceal the Furniture Rebates from the plaintiff. In particular, for the Furniture Rebate Plan

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68 19 January 2021 Transcript at p 188 lines 8–19; 20 January 2021 Transcript p 12 lines 5–13, p 99 lines 8–22.

69 PCS at paras 41, 127 and 129; Goh Buck Lim's AEIC at paras 22 and 37; 1 December 2020 Transcript page 97 line 22 to page 98 line 9; 2 December 2020 Transcript page 28 line 15 to page 29 line 20.

70 D2 and D3's Defence at para 8(e); 1 December 2020 Transcript page 100 line 8 to page 101 line 16.

to work, there must have been an agreement to conceal the Furniture Rebates from the plaintiff.[71]

45 On the face of the Furniture Rebate Plan, there was no agreement on the part of the first defendant to suppress the existence of the Furniture Rebates. Even without the first defendant agreeing to conceal the existence of the Furniture Rebates, the Furniture Rebate Plan could still work. In relation to each Purchaser, the Furniture Rebate Plan required the first defendant to perform four acts (see above at [8]): (a) collect cheques for the 4% Option Fee and 15% Completion Fee, (b) issue the Furniture Rebate at an amount comprising the 4% Option Fee, the 15% Completion Fee, and a surplus sum, (c) credit the surplus sum to the Purchaser's account and (d) return the cheques for the 4% Option Fee and 15% Completion Fee to the Purchasers on completion. The first defendant's ability to perform each of these acts was technically independent of whether the Furniture Rebates were made known to the plaintiff.

46 That said, due to the way in which the Furniture Rebate Plan was structured, the first defendant must have realised that the financing bank would over-lend. With the return of the cheques for the 4% Option Fee and the 15% Completion Fee, the outcome of the Furniture Rebate Plan was that the Purchasers only needed to pay the 1% Option Fee. It would have been apparent to the first defendant, at the outset, that the rest of the purchase price would most likely be financed by the bank. From this alone, the first defendant must have known that there would be some unlawful activities going on at the loan procurement stage which would enable the Purchasers to game the system and obtain more loan than was legally permitted. Additionally, Ms Woo admitted that she knew that the bank had over-lent, and that the Purchasers did not

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[71] PRS at para 11.

disclose the Furniture Rebates, because she had excess amounts to credit to the Purchasers' accounts.[72] The fact there would be surplus sums paid to the Purchasers was already contemplated at the outset as part of the Furniture Rebate Plan (see above at [8]). In other words, Ms Woo's admission meant that at the time the first defendant agreed to the Furniture Rebate Plan, the first defendant was already cognisant that there would be over-lending by the financing bank, and non-declaration of the Furniture Rebates by the Purchasers to the financing bank.

47 However, the fact that the first defendant knew of these and went ahead with the Furniture Rebate Plan nevertheless, did not *ipso facto* mean that the first defendant had also agreed to suppress the Furniture Rebates on its part to facilitate the Purchasers' deceit vis-à-vis the plaintiff. There was another plausible explanation for such conduct, that is, the first defendant was simply not concerned with the circumstances under which excess loans were being procured by the Purchasers. Ms Woo took the position that she left it to the Purchasers to declare the Furniture Rebates,[73] and that it was completely up to the bank to decide whether it wanted to over-lend.[74] This could also explain why Ms Woo did not tell Ms Ong of the Furniture Rebates in two sets of email correspondence when information relating to the Units was sought by the plaintiff.[75] The first defendant, through Ms Woo, was more concerned with selling the Units and giving the discount as part of the Furniture Rebate Plan:[76]

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72 19 January 2021 Transcript at p 186 lines 6 to p 188 line 4, p 191 lines 5 to p 192 line 1.

73 19 January 2021 Transcript at p 188 lines 8–19, p 189 lines 11–21; 20 January 2021 Transcript p 12 lines 5–13, p 99 lines 8–22.

74 19 January 2021 Transcript at p 189 lines 2–10.

75 2PCB 619, 735.

76 19 January 2021 Transcript at p 188 lines 2–16.

> Q: And you therefore knew that the furniture rebates were not being declared, correct?
>
> A: Yes.
>
> Q: And you did nothing to stop this, correct?
>
> A: It was not my duty to stop anybody from loaning from the bank.
>
> Q: And you knew that these purchasers had to declare the furniture rebates, correct?
>
> A: I got no idea whether they -- I have got no idea whether they were supposed to or not to. We leave it to them.
>
> Q: Why not?
>
> A: Because we're only interested in giving the discount. That's about it. We don't micro-manage in that sense.

Ms Woo reiterated this again at the close of trial in response to a question from the court:[77]

> Court: So to be clear, when you were working through all these furniture rebate mechanisms and all that with Mr Goh, you are saying you did not think of any impact it might have on the bank and the bank loan?
>
> A: No. I was more concerned about my own furniture rebates and selling the units, more than just a bank, because we always leave the banking and the financial process to the buyers and to the agents themselves.

48 Going along with the Furniture Rebate Plan to facilitate the sales of its own Units, despite knowing that unlawful activities were going on downstream at the loan procurement stage, was sharp practice. But this could not amount to an agreement, on the part of the first defendant, to conceal the Furniture Rebates from the plaintiff.

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[77] 20 January 2021 Transcript at p 106 line 25 to p 107 line 9.

49 In any event, even if there was an agreement or understanding that the first defendant would be concealing the Furniture Rebates from the plaintiff, this would not by itself show a combination to cause harm to the plaintiff by unlawful means. The first defendant suppressing or hiding information about the Furniture Rebates did not involve an unlawful act since there was no duty to disclose on the part of the first defendant. There had to be something more, tying this alleged agreement to a plan employing the use of unlawful means. It could only be actionable if it was part of a larger web of agreements to employ unlawful means.

(2) No link between the first defendant's alleged agreement to conceal and a wider web of agreements to employ unlawful means

50 Here, the plaintiff failed to establish such a link. The key assertions relied upon by the plaintiff were as follows:

(a) the first defendant's knowledge of the 80% LTV Limit, and its effect,[78] as well as the quiet state of the market;[79]

(b) the first defendant's giving of the Furniture Rebates, the use of the Furniture Rebates for various payments and charges (*eg*, stamp duty),[80] and the payment of any balance of the Furniture Rebates;

(c) the first defendant knew of, or was willfully blind to, the weak financial position and lack of *bona fides* of the intended purchasers;[81]

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78 PCS at paras 83–86.

79 PCS at paras 47–50.

80 PCS at paras 196–202.

81 PCS at paras 51–82.

(d) the first defendant's knowledge of the need for the Purchasers to declare the Furniture Rebates to the plaintiff,[82] and its concealment from the plaintiff;[83]

(e) the first defendant's knowledge that the plaintiff would be over-lending;[84]

(f) the first defendant's non-banking in of cheques for the 4% Option Fee and 15% Completion Fee;[85]

(g) the first defendant deliberately delayed banking in the cheques for the 1% Option Fee to after the Housing Loans received in-principle approval;[86]

(h) the first defendant timed the issuance of the letter documenting the Furniture Rebate (the "Furniture Rebate Letter") so as to facilitate the Purchasers in not having to declare the Furniture Rebates in their loan applications;[87] and

(i) the first defendant gave the impression to its own solicitors that payment of the 15% Completion Fee had been made, so that these solicitors would make similar representations to the plaintiff's solicitors;[88]

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82 PCS at paras 97–101.

83 PCS at paras 105–107, PRS paras 22–23.

84 PCS at paras 87–96, 108–119; PRS at paras 9–10.

85 PCS at paras 182–187.

86 PCS at paras 173–181.

87 PCS at paras 126 and 162–172.

88 PCS at paras 188–195.

(j) the first defendant did not publicise the Furniture Rebates notwithstanding the lack of commercial reasons for doing so;[89]

(k) the first defendant made efforts to ensure that the Units sold were tenanted;[90] and

(l) the first defendant's actions were always in tandem with the second and third defendants.

51 I accepted the first defendant's arguments that several of these assertions were not made out. The remaining assertions which were supported by sufficient evidence could not, singly or together, establish a link between the alleged agreement by the first defendant to hide the Furniture Rebate, and a larger web of agreements to employ unlawful means.

(A) WHETHER THE PLAINTIFF'S ASSERTIONS WERE SUPPORTED BY EVIDENCE

52 Save for the assertions that the first defendant had deliberately delayed encashing the cheques for the 1% Option Fee, timed the issuance of the Furniture Rebate Letters so as to facilitate the Purchasers' non-declaration of the Furniture Rebates, and appreciated the Purchasers' weak financial position, I accepted that the facts relied upon by the plaintiff above at [50] had been established.

53 The first defendant agreed in cross-examination that March 2011 to December 2011 was a "quiet" period for the first defendant: beyond inquiries, no one was really closing a sale.[91]

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89 PCS at paras 127–135.

90 PCS at paras 203–206.

91 19 January 2021 Transcript at p 24 line 22 to p 26 line 9.

54 In or around December 2011, the Furniture Rebate Plan was conceived.[92] It entailed the first defendant granting Furniture Rebates to purchasers introduced by the second defendant. The Furniture Rebates were in effect a discount. This discount covers, in addition to the 4% Option Fee and 15% Completion Fee, the payment of various charges, such as stamp duty and the purchaser's share of property tax, management fund, sinking fund and SDC contributions.[93] As the discount itself is not a source of funds, the payment of these various charges were made by the first defendant, who then recouped these payments from the Housing Loans. After covering the aforementioned payments, any balance of the Furniture Rebates would be credited to the Purchasers. Cheques which were initially given for the 4% Option Fee and 15% Completion Fee would also be returned to the Purchasers, instead of being presented for payment. All these were part and parcel of the Furniture Rebate Plan.[94]

55 The first defendant knew that the plaintiff was the bank financing the Purchasers' acquisition of the Units. The records showed that mortgagee's caveats were lodged by PKWA on behalf of the plaintiff bank.[95] Ms Woo admitted that when a caveat was lodged for a unit in the Development, the first defendant would be notified.[96] Moreover, for six of the purchases, PKWA wrote to TSMP referring to the plaintiff as the financing bank.[97] TSMP then forwarded

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92 Woo Pui Lim's AEIC at para 8; Goh Buck Lim's AEIC at para 20.

93 2 December 2020 Transcript at p 53 line 23 to p 54 line 14; Woo Pui Lim's AEIC at paras 24–26, 42 and 67; 19 January 2021 Transcript at p 137 lines 10–14.

94 2 December 2020 Transcript at p 53 line 22 to p 54 line 14; Woo Pui Lim's AEIC at paras 8, 24–26, 42; Goh Buck Lim's AEIC at para 20; DCS at para 117.

95 7AB 3779–3782; 20 January 2021 Transcript at p 64 line 4 to p 65 line 4.

96 19 January 2021 Transcript at p 207 lines 13–19.

97 3PCB 1259–1261, 1275–1277.

these letters to Ms Woo.[98] Ms Woo even directly corresponded with the plaintiff's Ms Ong for some of these purchases to move the sales process along.[99]

56 Both Ms Wu and the second defendant acknowledged during cross-examination that they knew that banks were subjected to the 80% LTV Limit,[100] and that the Purchasers were obliged to declare the Furniture Rebates to the financing bank,[101] *ie*, the plaintiff. The first defendant also knew that the Furniture Rebates were concealed from the plaintiff, and that the plaintiff had over-lent (see above at [46]).

57 It was undisputed by parties that the first defendant did not openly publicise the Furniture Rebates. The first defendant also did not mention the Furniture Rebates on the face of the OTPs issued. Rather, the Furniture Rebates were documented in Furniture Rebate Letters. These Furniture Rebate Letters were issued after the OTPs,[102] and most of them were issued after the Purchasers' FLAs and LOs had been issued by the plaintiff.[103]

58 In relation to the first defendant's dealings with TSMP, its conveyancing solicitors, Ms Woo acknowledged that TSMP did not know of the Furniture Rebates, and as a result, prepared inaccurate completion accounts which

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98 3PCB 1177, 1179–1180, 1182-1183, 1195, 1202.

99 Woo Pui Lim's AEIC at paras 32–33.

100 19 January 2021 Transcript at p 207 line 23 to p 208 line 10; 1 December 2020 Transcript at p 7 line 24 to p 8 line 17.

101 D1's Defence at para 19; 19 January 2021 Transcript at p 190 line 5 to p 192 line 1; 1 December 2020 Transcript at p 101 lines 17–22.

102 Exhibit P1A.

103 Yong Chai Yim's AEIC at para 144 and Annex D; Goh Buck Lim's AEIC at para 43; see PCS at Annex C.

reflected that the payment of the 4% Option Fee and the 15% Completion Fee were made even though the cheques for these two payments were not encashed.[104]

59 Separately, efforts were made by the first and second defendants to ensure that tenanted Units were sold to the Purchasers. There was correspondence revealing that the second defendant and Ms Woo discussed matters relating to the tenancy of the Units to be sold.[105] Furthermore, as at the date of completion for each of the transactions, 31 out of the 38 Units were tenanted. Tenancy agreements were subsequently entered into for an additional five Units.[106]

60 However, I was unable to find that the following assertions had been proven on a balance of probabilities:

(a) the first defendant had deliberately delayed banking in the cheques for the 1% Option Fee to after the Housing Loans received in-principle approval;

(b) the first defendant had deliberately timed the issuance of the Furniture Rebate Letters so as to facilitate the Purchasers in not having to declare the Furniture Rebates in their Housing Loan Application Forms; and

(c) the first defendant knew of, or was wilfully blind to, the Purchasers' weak financial position.

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104 20 January 2021 Transcript at p 35 lines 12–14, p 36 lines 16–18, p 38 lines 4–14.

105 2PCB 905, 910.

106 Chia Siew Cheng's AEIC at pp 77–80 (Annex B).

61 The plaintiff claimed that the defendants had combined to support the Purchasers in their concealment of the Furniture Rebates by delaying the encashment of the cheques for the 1% Option Fee paid by the Purchasers. Save for three of the Purchasers, the first defendant banked in the cheques for the 1% Option Fee only after the plaintiff had issued its LOs to the Purchasers (*ie*, after the loans were approved).[107] This, the plaintiff argued, demonstrated that the first defendant was kept informed of the progress of the loan applications,[108] and had deliberately pegged the encashment of the cheques to whether and when the plaintiff approved the loans.[109] This was a departure of the norm of banking in the cheque for the option fee soon after receipt,[110] and was against the first defendant's commercial interests.[111]

62 However, there was no direct evidence that the first defendant was kept updated as to when the Housing Loans were approved. Neither the second nor third defendant had said that they kept any officer of the first defendant updated as to when the Housing Loans were approved. Furthermore, there were three instances in which the cheques were deposited before the Housing Loans for some of those Purchasers were approved.[112] These instances sit at odds with the plaintiff's contention that there had been close coordination between the defendants in this regard.

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107 PCS at para 173.

108 PCS at para 177.

109 PCS at para 175.

110 PCS at para 174.

111 PCS at para 178.

112 10AB 5459 and 5AB 2633; 11AB 5484 and 5AB 2701; 11AB 5480 and 5AB 2690.

63 The plaintiff also contended that the first defendant had omitted to mention the Furniture Rebates on the OTPs and delayed the issuance of the Furniture Rebates, so as to facilitate the Purchasers' non-disclosure of the Furniture Rebates. The plaintiff submitted that it was odd for the OTPs to omit references to the Furniture Rebates, and that there was no good reason for the late issuance of the Furniture Rebate Letters. Since the quantum of the Furniture Rebates had already been agreed to prior to the issuance of the OTPs, the first defendant would have wanted to reflect it upfront as part of the initial documentation. The Furniture Rebate Letters could also be caveated to limit its applicability to situations where the OTP was exercised.[113]

64 I accepted that the quantum of the Furniture Rebates had already been agreed to between the first and second defendants prior to the issuance of the OTPs.[114] However, that the first defendant could have done a better job at documenting the Furniture Rebates could not support the inference that the first defendant was deliberately facilitating the Purchasers' non-declaration of the Furniture Rebate. The omission to set out the Furniture Rebates on the OTPs did not put the first defendant in breach of any obligation to disclose. The late documentation of the Furniture Rebates did not present any major detriments to the first defendant's commercial interests. In addition, Ms Woo gave two plausible explanations for the late issuance of the Furniture Rebate Letters: (a) if the OTP was not exercised, there would not be a need for the Furniture Rebate Letters since any agreement up to that stage on the sale of Units was only in-

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113 PCS at para 168.

114 20 January 2021 Transcript at p 49 line 9 to p 50 line 10.

principle,[115] and (b) the Purchasers did not ask for the Furniture Rebate Letters at the outset.[116]

65 Importantly, the omission to mention the Furniture Rebates on the OTPs and the late issuance of the Furniture Rebate Letters must be assessed alongside the fact that the first defendant did document the Furniture Rebates in Furniture Rebate Letters issued to the Purchasers, despite being under no obligation to do so. Although the Furniture Rebate Letters were issued only after the Purchasers had obtained approval for their Housing Loans, providing the Purchasers with these letters, which constitute a written record of the Furniture Rebates, would nonetheless have heightened the risk of the plaintiff discovering their existence. Moreover, there were two instances where the Furniture Rebate Letters were issued prior to the respective Purchasers obtaining approval for the Loans. This further weakens the likelihood that the first defendant had coordinated with the second and third defendants to facilitate the Purchasers' non-declaration of the Furniture Rebates to the plaintiff.

66 In addition, I was unable to find that the first defendant knew, or was willfully blind to, the fact that the Purchasers were financially constrained. The plaintiff relied on the second defendant's evidence in his AEIC that the first defendant was aware that the Purchasers lacked financial resources.[117] However, the second defendant claimed at trial that he did not convey any concerns with the Purchasers' creditworthiness to the first defendant.[118] Given the second defendant's conflicting positions as to whether the first defendant knew of the

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115 20 January 2021 Transcript at p 51 line 22 to p 52 line 14.

116 20 January 2021 Transcript at p 52 lines 15–25.

117 PCS at paras 53 and 56–58; Goh Buck Lim's AEIC at paras 51, 52, 55, 58.

118 2 December 2020 Transcript p 15 lines 6–21, p 18 lines 1–10.

Purchasers' lack of creditworthiness, I could not place much weight on the second defendant's evidence in this regard.

67 The plaintiff also stressed that Ms Woo's muted reaction to a series of "strange facts" must have meant that the first defendant knew that the Purchasers were financially constrained and/or were fronts, or had turned a blind eye to this fact. These "strange facts" include: the Purchasers' unwillingness or inability to pay the 4% Option Fee or the 15% Completion Fee, third parties issuing cheques on behalf of the Purchasers, the lack of request from the Purchasers to view the Units or ask questions about the property, the Purchasers appeared to be interchangeable and replaceable, the Purchasers were young and came from jurisdictions that qualified for additional buyers' stamp duty remission,[119] and the Purchasers' omission to request for the Furniture Rebate Letters at the time when they were granted OTPs.[120] Apart from these, the plaintiff also relied on the first defendant's knowledge that various charges, taxes and expenses would not be borne by the Purchaser.[121]

68 Indeed, in the face of these "strange facts" referred to by the plaintiff, Ms Woo was content with taking the second defendant's word that the Purchasers were people of means,[122] and the various explanations he gave along the way.[123] However, I was unconvinced that the first defendant's failure to inquire further or satisfy itself that the Purchasers had the requisite financial

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119 PCS at para 53.

120 PCS at paras 169–170.

121 PCS at paras 196–202.

122 19 January 2021 Transcript at p 30 line 22 to p 31 line 7, p 70 lines 2–9, p 142 line 14 to p 143 line 1; 20 January 2021 Transcript at p 89 line 12 to p 90 line 21.

123 See *eg*, 19 January 2021 Transcript at p 30 line 22 to p 31 line 7, p 69 lines 5–15, p 83 line 21 to p 84 line 20, p 110 lines 3–11.

standing supported the inference that the first defendant was willfully blind to their lack of financial standing or the fact that they were fronts. The first defendant's indifference could not be properly attributed to a motive to avoid finding out the truth, given that there was another plausible explanation for this muted reaction, that is, the first defendant was not in the position to investigate the creditworthiness of the Purchasers. As pointed out by the first defendant's counsel, the first defendant was merely the vendor of the Units; it was for the Purchasers to take steps to finance the sale and for the financing bank to satisfy itself that the Purchasers were sufficiently creditworthy, even if they were nominees.[124] Indeed, the financing bank would have greater access to a fuller set of information that could enable it to properly assess the Purchasers' financial standing, and it was plausible that the first defendant chose to leave it to the financing bank to ascertain the creditworthiness of the Purchasers. For the same reason, Ms Woo's muted reaction to these "strange facts" could not give rise to the inference that she knew that the Purchasers' lack of financial standing and/or were fronts.

69 Finally, the plaintiff submitted that the first defendant was sufficiently concerned about the Purchasers' lack of financial resources that it only sold Units with existing tenancies. For this submission, the plaintiff relied on the second defendant's evidence in AEIC,[125] but glossed over the parts in the second defendant's oral testimony where he indicated that Ms Woo had identified tenanted Units to be sold to the Purchasers because she was complying with the Purchasers' requests for tenanted Units, and not because she was worried about

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124 DRS at paras 67 and 71.

125 Goh Buck Lim's AEIC at paras 53–54.

the Purchasers' lack of financial resources.[126] According to the second defendant, Ms Woo was aware that the Purchasers would be using the rental income from the tenanted Units to pay off the housing loans,[127] but this did not suggest that Ms Woo knew that the Purchasers were not persons of means. It is common for purchasers to defray housing loan installments by leasing out the property. As Ms Woo explained, it is also common for a purchaser investor to look for a tenanted unit so that they can receive rental income immediately after completion without having to source for a tenant.[128]

(B) NO COMBINATION INVOLVING THE FIRST DEFENDANT

70 Proceeding on the assumption that the first defendant had agreed to conceal the Furniture Rebates from the plaintiff, the remaining acts relied upon by the plaintiff, coupled with the first defendant's implementation of the Furniture Rebate Plan, were still insufficient to show that the first defendant was part of a broader scheme, together with the other two defendants, to commit unlawful acts vis-à-vis the plaintiff. There were alternative explanations for the first defendant's various conduct, which relate to the first defendant acting out of its own self-interest and self-preservation without regard to the dealings as between the Purchasers and the second and third defendants on the one hand and the plaintiff on the other.

71 Many of the acts relied upon by the plaintiff, such as the use of the Furniture Rebates for various payments and charges (*eg*, stamp duty), the

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126 1 December 2020 Transcript at p 83 lines 5–12; 2 December 2020 Transcript at p 12 line 13 to p 13 line 9.

127 1 December 2020 Transcript at p 81 lines 5–14, p 83 lines 13–16.

128 Woo Pui Lim's AEIC at para 16.

payment of the balance of the Furniture Rebates to the Purchasers,[129] and the purported collection of cheques for the 4% Option Fee and 15% Completion Fee, were part of the Furniture Rebate Plan.[130] If the first defendant had, in addition to the Furniture Rebate Plan, agreed to conceal the Furniture Rebates from the plaintiff as well, the effect of these agreements was to facilitate the Purchasers' non-declaration of the Furniture Rebates and procurement of excess loans. This effect would have been apparent to Ms Woo, who admitted that she knew that the Furniture Rebates were being concealed from the plaintiff. However, such knowledge was insufficient to sustain the inference that Ms Woo had combined with the other defendants to deceive the plaintiff. This was because the first defendant's agreement to the Furniture Rebate Plan and its alleged agreement to hide the Furniture Rebates were also consistent with another plausible explanation, that is, the first defendant had chosen to go along with these arrangements to facilitate the sale of its own Units, and was apathetic to the unlawful activities taking place at the loan procurement stage (see above at [47]).

72 The plaintiff also pointed to the various acts of concealment on the part of the first defendant, such as the lack of publicity of the Furniture Rebates and the first defendant's failure to tell its own conveyancing lawyers about the Furniture Rebates, to contend that first defendant had engaged in uncommercial conduct which was only explainable by reference to the first defendant's participation in a plan to facilitate the disbursement of excess loans. However, these could just as readily be explained by the first defendant acting out of self-

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129 PCS at paras 182–187, 197–198, 201–202.

130 2 December 2020 Transcript at p 53 line 23 to p 54 line 14; Woo Pui Lim's AEIC at paras 8, 24–26, 42; Goh Buck Lim's AEIC at para 20; DCS at para 117.

preservation to shield itself from the unlawful activities taking place downstream at the loan procurement stage.

73 Keeping the Furniture Rebates away from the public eye was also consistent with the first defendant's awareness that some unlawful activities were going on behind the scenes in the loan application process, and hence its desire to stay out of the spotlight. I noted that there was correspondence between Ms Woo and the second defendant, in which Ms Woo expressed concerns that the second defendant's proposed Stated Purchase Price for one of the Units was "too high to justify and will draw unnecessary attention". The plaintiff argued that this meant that the first defendant was concerned about attracting unnecessary attention from the plaintiff.[131] I did not think that this was what Ms Woo meant. Ms Woo stated her concerns in response to an earlier email sent by the second defendant, wherein he proposed fixing the Stated Purchase Price at a certain amount and claimed that "bank and valuation can match" that amount.[132] Since the second defendant already explained that the proposed Stated Purchase Price was supported by bank valuation, it was unlikely that Ms Woo's concern was about attracting additional scrutiny from the plaintiff. Ms Woo was simply worried about attracting attention from others in general, as she was aware that there were some unlawful activities involving the Purchasers and the second and third defendants.

74 In a similar vein, it was plausible that the first defendant was merely distancing itself from any illegal activity occurring downstream in the loan procurement process, by keeping its own solicitors in the dark about the Furniture Rebates and taking the position that it received payment for the 4%

131 PCS at paras 149–155.

132 2PCB 726.

Option Fee and 15% Completion Fee. It did not work in the first defendant's interest for more people, including its own lawyers, to find out that it was involved in transactions where Purchasers had procured excess bank loans. It did not want to take responsibility for any misconduct by the second and third defendants in their dealings with the plaintiff.

75 Hence, while the first defendant's non-disclosure of the Furniture Rebates from its own solicitors, and omission to publicise the Furniture Rebates in general, had the effect of keeping the Purchasers' deceit vis-à-vis the plaintiff under wraps, it did not necessarily mean that the first defendant had acted with the purpose of achieving that effect as part of a plan to facilitate the disbursement of excess loans.

76 As a final point for completeness, not much can be made of the coordination between the defendants in identifying tenanted Units to be sold to the Purchasers. The first defendant was merely acting on the demands of the Purchasers, who wanted tenanted Units (see above at [69]). Coordination in this regard was insufficient to sustain the inference that the first defendant was part of a broader scheme employing unlawful means.

(3) Conclusion

77 Ultimately, taken singly or together, the various factors, were to my mind insufficient to show that the first defendant had combined with the other defendants. The behaviour of the first defendant could just as easily be explained as a willingness to go along with the purchase arrangements, without caring how the plaintiff was affected. As it was aware that unlawful activities were taking place downstream causing the plaintiff to disburse excess loans, it sought to keep the existence of this purchase arrangement under wraps to avoid

being implicated in whatever that was going on between the Purchasers, the second defendant, the third defendant and the plaintiff. These might perhaps be sharp practice, but it would not on current law lead to tortious liability.

Intention to injure

The meaning of intention to injure

78 For a claim in unlawful means conspiracy to succeed, there must be combination, accompanied by the intention to injure by unlawful means. This intention to injure need not be the predominant intention: *EFT Holdings CA* at [96]. Injury to the claimant must have been intended as a means to an end or as an end in itself: *EFT Holdings CA* at [101].

79 As a matter of logic, if the conspirators intend the damaging consequences of their actions, they must necessarily know that such an act carries the damaging consequences alleged: *OUE Lippo* at [191]. However, knowledge that a particular conduct would harm the claimant, would not by itself amount to an intention to injure. As the Court of Appeal held in *EFT Holdings CA* at [101]:

> Lesser states of mind, such as an appreciation that a course of conduct would inevitably harm the claimant, would not amount to an intention to injure, although it may be a factor supporting an inference of intention on the factual circumstances of the case. In *Lonrho plc v Fayed* [1990] 2 QB 479 at 488–489 Woolf LJ observed that the requisite intent (for the tort of causing loss by unlawful means) would be satisfied if the defendant fully appreciated that a course of conduct that he was embarking upon would have a particular consequence to a claimant but nonetheless decided to pursue that course of conduct; or if the defendant deliberately embarked upon a course of conduct while appreciating the probable consequences to the claimant. In our judgment, this is inconsistent with the requirement that intention must be shown. It is simply insufficient in seeking to meet the element of *intention* to show merely that there was

> knowledge to found an awareness of the likelihood of particular consequences.
>
> [emphasis in original]

The Court of Appeal in *EFT Holdings CA* at [101] also stressed that it is not sufficient that harm to the claimant would be likely, or probable or even inevitable consequence of the defendant's conduct.

80 In *Chew Kong Huat and others v Ricwil (Singapore) Pte Ltd* [1999] 3 SLR(R) 1167 ("*Chew Kong Huat*"), a case cited by the plaintiff,[133] the first appellant-defendant, Mr Chew, was a major shareholder and managing director of the respondent-plaintiff, Ricwil. Mr Chew was the managing director of the third appellant-defendant, Sintalow. In breach of his fiduciary duties, Mr Chew procured Sintalow to supply to another company the very goods that were to be supplied by Ricwil, and in doing so, arranged the contracts such that the burden was borne by Ricwil while the benefit was received by Sintalow (at [32]). The Court of Appeal held at [35] found that Mr Chew and Sintalow must have intended to injure Ricwil, because "the loss or damage to Ricwil was a necessary corollary of the profit accruing to Sintalow" and that "[t]here was a direct nexus between these events".

81 The decision in *Chew Kong Huat* is not inconsistent with the holding in *EFT Holdings CA.* In *Chew Kong Huat* Mr Chew was effectively diverting a business contract from Ricwil to Sintalow. This meant that the conspirators not only knew that their benefit inevitably resulted in a loss to Ricwil, but also knew that damage had to be caused to Ricwil so that Sintalow to obtain its intended profits. In other words, the conspirators appreciated that the injury to Ricwil

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133 PCS at para 219.

was a necessary step to Sintalow's intended gain on the facts of that case, and therefore, Sintalow must have intended the injury to Ricwil.

Analysis

82 The first defendant knew that the Purchasers would be obtaining loans in circumvention of the 80% LTV Limit and in excess of the Actual Purchase Price (see at [46] above). The question was whether it can be inferred from such knowledge, along with other pieces of evidence, that the first defendant intended to injure the plaintiff, be it by placing it in breach of MAS Notice 632 or causing it to bear the risk of default. For reasons similar to those given in relation to the absence of a combination involving the first defendant, the various assertions by the plaintiff, even when taken against the background of the quiet property market at the time, were to my mind insufficient to show any intention to injure the plaintiff.

83 The effect of the Furniture Rebate Plan was that it assisted the Purchasers in the procurement of excess loans. The first defendant knew of this effect, but there was insufficient evidence indicating that the first defendant had intended this effect. As mentioned at [47] above, the first defendant's conduct could also be explained on the basis that it went along with the purchase arrangement without caring how the plaintiff was affected. The subsequent acts by the first defendant to keep the existence of the Furniture Rebates under wraps were also explicable on the basis that it was merely masking its own involvement in transactions where over-lending had occurred.

84 When faced with a claim in unlawful means conspiracy, a defendant cannot evade liability simply because its primary motive was to further or protect their own interests, where it has been shown that the conspirators

intentionally injured the claimant: *Lonrho plc v Fayed* [1992] 1 AC 448 per Lord Bridge at 465-466, cited in *EFT Holdings CA* at [97] with approval. This is consistent with the principle that there is no need for the claimant to prove that the conspirators' dominant intention was to cause injury to it; a mere intention to injure was sufficient. However, in the present case, it could not be inferred that the first defendant even had a mere intention to injure, as it was plausible that the first defendant was acting solely in its own interest without paying heed to how the first defendant would be impacted.

85 The plaintiff argued that causing harm to the plaintiff was a "necessary corollary" of the first defendant's disposal of its Units, and this was sufficient to establish the intention to injure, akin to the situation in *Chew Kong Huat*.[134] As held by the Court of Appeal in *EFT Holdings CA* at [101], even if harm to a claimant is an inevitable consequence of the defendant's conduct, that would not suffice to prove an intention to injure. The present case was also distinguishable from *Chew Kong Huat*. As explained, the conspirators in *Chew Kong Huat* knew that the claimant had to be injured in order for it to obtain its intended benefit. Here, there was insufficient evidence showing that the first defendant knew that the plaintiff had to over-lend in order for it to sell the Units to the Purchasers. As I had found above at [66]–[69], it could not be inferred that the first defendant knew, or had blind-eye knowledge, of the Purchasers' financial constraint. Without knowing that the plaintiff had to over-lend before was able to sell its Units, the first defendant could not have intended the injury to the plaintiff as a means to its end (see above at [79]).

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134 PCS at para 231.

86 I was therefore not convinced that the plaintiff had established, on a balance of probabilities, that the first defendant had the intention to injure the plaintiff.

Unlawful means

87 One of the main unlawful means pointed to during the hearing and in further written submissions was the breach of the MAS Notice 632 and hence contravention of s 55 of the Banking Act (Cap 19, 2008 Rev Ed) (the "Banking Act"). The difficulty with this was that any such contravention would have to be by the plaintiff bank, and not the defendants. The plaintiff had not pointed me to case authorities which held that unlawful means, for the purposes of unlawful means conspiracy, included unlawful acts by the plaintiff-victim as a consequence of the alleged conspiracy.

88 The plaintiff put forward two case authorities, the High Court's decision in *OUE Lippo* and the English Court of Appeal case of *Belmont Finance Corporation v Williams Furniture Ltd and Ors (No. 2)* [1980] 1 All ER 393 ("*Belmont Finance*"), which in its view supported such a proposition.[135] I agreed with the first defendant that these two cases did not assist the plaintiff.[136]

89 In *OUE Lippo*, the plaintiff, IHC, entered into a credit facility (the "Standby Facility") and used the funds to indirectly acquire its own shares. In a previous decision, the Standby Facility was determined to be void for contravention of s 76(1A) of the Companies Act (Cap 50, 2006 Rev Ed) (the "Companies Act"). The plaintiff in this case brought a claim against the defendants, which included Mr Fan, an officer of IHC, for their roles in causing

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135 Plaintiff's Further Submissions dated 26 April 2021 ("PFS") at paras 6–10.

136 Defendant's Further Submissions dated 3 May 2021 ("DFS") at paras 14–20.

it to enter into and draw down on the Standby Facility to purchase its own shares. One of the causes of action was the tort of unlawful means conspiracy. There were two unlawful means alleged. The first was the entry into and drawdowns on the Standby Facility in contravention of s 76(1A) of the Companies Act. The second was breaches of fiduciary duties by Mr Fan: *OUE Lippo* at [172].

90 The High Court in *OUE Lippo* held that Mr Fan, and other defendants, had furthered their common object through procuring IHC's entry into and subsequent drawdowns on the Standby Facility (at [189]). The court then went on to hold that the Standby Facility was illegal for contravening the Companies Act, while Mr Fan breached his fiduciary duties by virtue of his role in the transaction (at [190]). Eventually, the High Court found that Mr Fan, and some of the other defendants, were liable for unlawful means conspiracy to injure IHC (at [335(d)]). This finding was not disturbed on appeal.

91 As the first defendant rightly noted,[137] s 76(5) of the Companies Act provides that if a company contravenes s 76(1A), the company shall not be guilty of an offence, but each officer of the company who is in default shall be guilty of an offence. In finding that the Standby Facility was in contravention of s 76(1A) of the Companies Act, the High Court in *OUE Lippo* in effect held that Mr Fan had committed an offence under the Companies Act in addition to having breached his fiduciary duties. As IHC, the plaintiff-victim in this case, was not guilty of an offence, the decision in *OUE Lippo* did not support the plaintiff's proposition that that "unlawful means" extend to infringements of statutory provisions by the plaintiff-victim.

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137 DFS at para 18.

92 The English Court of Appeal case of *Belmont Finance* also involved a breach of the prohibition against financial assistance. Through the agreement of 3 October 1963 (the "contract"), the plaintiff company provided financial assistance to one Mr Grosscurth, one of the defendants, to acquire the plaintiff company's own share capital. This was in contravention of s 54 of the Companies Act 1948 (c 38) (UK) (the "UK Companies Act"), which contains the prohibition against financial assistance. Notably, s 54 of the UK Companies Act penalises the company and every officer of the company who is in default. On the facts of *Belmont Finance*, only the plaintiff company violated the prohibition. None of the defendants could have infringed the prohibition because they were not officers of the plaintiff company.

93 However, Buckley LJ in *Belmont Finance* did not hold that the plaintiff company's infringement of s 54 of the UK Companies Act constituted the unlawful means through which the conspiracy was effected. Buckley LJ (with whom Goff LJ and Waller LJ agreed) found that the acts which the defendants had combined to carry out were the acts of entering into the contract, procuring the plaintiff to enter into the contract, and ensuring that the contract was implemented. This is apparent from the plaintiff's statement of claim, the way in which Buckley LJ had framed the issues, as well as his holding. In the statement of claim, the plaintiff alleged that the contract was in contravention of s 54 of the UK Companies Act, and that the defendants conspired to carry that contract into effect, causing it to suffer damage (at 400). When setting out the issues to be determined in that case, Buckley LJ said (at 400):

> The first question for consideration is whether the agreement did contravene s 54 of the 1948 Act. Only if the answer to that question is affirmative does the question whether the defendants or any of them are guilty of conspiracy arise, for it is the illegality of the agreement, if it be illegal, which constitutes the *common intention of the parties to enter into the agreement* a conspiracy at law.

> [emphasis added]

In finding that the alleged conspiracy was established in respect of three of the defendants (at 404), Buckley LJ held that the agreement was unlawful, for it was a contract by the plaintiff to do an unlawful act (*viz*, to provide financial assistance to Mr Grosscurth to purchase its own share capital) (at 403), and that three of the defendants had participated in a common intention to enter into the contract, to procure the plaintiff to enter into the contract, and then to ensure that it was implemented (at 404).

94 Buckley LJ had instead analysed the plaintiff company's violation of s 54 of the UK Companies Act as part of the element of the intention to injure. Buckley LJ held that for the plaintiff company to succeed in a claim in conspiracy (at 404):

> [T]he plaintiff must establish (a) a combination of the defendants, (b) to effect an unlawful purpose, (c) resulting in damage to the plaintiff (*Crofter Hand Woven Harris Tweed Co Ltd v Veitch* per Lord Simon LC).

It is clear from *Crofter Hand Woven Harris Tweed Company v Veitch* [1942] AC 435, the leading authority on lawful means conspiracy, that the phrase "combination to effect an unlawful purpose" referred to a combination with an intention to injure (see at 440–447 per Viscount Simon LC). Buckley LJ in *Belmont Finance* then proceeded to find that the "unlawful purpose" of the alleged conspiracy was the plaintiff company's provision of financial assistance to Mr Grosscurth in contravention of s 54 of the UK Companies Act.

95 The plaintiff had therefore not pointed me to any authorities which supported the proposition that "unlawful means" in the tort of unlawful means conspiracy encompass unlawful acts committed by the plaintiff-victim as a consequence of the alleged conspiracy.

96 The plaintiff then argued that the fact that the defendants' Furniture Rebate Plan was intended to effect an unlawful purpose (*ie*, breach of MAS Notice 632) was sufficient to establish the element of "unlawful means", notwithstanding that the Conspiracy put the plaintiff (and not the defendants) in breach of MAS Notice 632.[138] However, the tort is one of unlawful means, not unlawful consequences. The defendants' actions might expose the plaintiff bank to possible regulatory action or prosecution, but these were not actionable under the conspiracy to cause harm by unlawful means. I could see no reason to extend the tort to the acts complained of, and it was not strongly contended for anyway.

97 The plaintiff also relied on the allegations of deceit as unlawful means, namely, the Purchase Price Misrepresentations, Identity Misrepresentations, Financial Standing Fraud and Payment Misrepresentations. The first three acts of deceit were allegedly committed by the second and third defendants, whilst the last act of deceit was allegedly committed by the first defendant. These would in principal count as unlawful means, but the plaintiff would need to show that the other elements were fulfilled as well, in order to succeed in its claim in conspiracy.

Unlawful acts done in furtherance of combination

98 It is not enough that there is a combination or agreement, and that some unlawful means were used to cause harm. There must be a link between the combination and the unlawful means to clothe all the participants with liability. In this regard, there was insufficient evidence to my mind to establish that there was any combination involving the first defendant to cause harm to the plaintiff in any of these modes of deceit. Even if the acts were done by the second and

138 PFS at paras 19 and 27.

third defendants in furtherance of the conspiracy, I did not find that there was any common design in any of the alleged acts of deceit committed by the second and third defendants that would have involved the first defendant. Even if I were to accept the various assertions made by the plaintiff as showing the existence of a combination which the first defendant was a part of, that would still not show that there was any such combination to employ deceit.

99 Assuming the first defendant had agreed with the other two defendants that it would sell units to purchasers who it knew were financially constrained and were mere nominees,[139] and that it would support the financially constrained Purchasers in the purchase of their Units by delaying the encashment of the 1% Option Fee until they were able to obtain bank financing,[140] this would not be sufficient to show that the first defendant was part of a combination to employ the Identity Misrepresentation and Financial Standing Fraud. As pointed out by the first defendant,[141] there was no evidence indicating that the first defendant was aware that 28 Purchasers were making false representations as to the true identity of the buyers. Neither was there evidence demonstrating the first defendant's knowledge that monies were being recycled amongst the Purchasers' accounts to portray the impression that the Purchasers had good financial standing.

100 There is no need for an alleged conspirator to know what the others have agreed to do. However, an alleged conspirator must, at the very least, know that those acts were being carried before it could sensibly be said to be part of a combination to commit the same. As the Court of Appeal held in *EFT Holdings*

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139 See PCS at paras 53 and 63.

140 PCS at paras 173, 175 and 179.

141 DCS at para 164.

CA at [114], "[i]t is meaningless to speak of an agreement or combination in the absence of a common understanding of the material facts being shared by all the alleged conspirators". Absent evidence showing the first defendant's knowledge of the Identity Misrepresentation and Financial Standing Fraud, it could not be said that the first defendant was part of a combination to commit these two acts of deceit.

101 Finally, as mentioned at [71], assuming that the first defendant had agreed to suppress the existence of the Furniture Rebates on its part, and to this end had issued the Furniture Rebate Letter only after the Purchasers submitted the FLAs, and give TSMP the wrong impression that these payments had been made, these were still insufficient to prove the existence of a combination to employ the Purchase Price Misrepresentations or the Payment Misrepresentations. The first defendant's willingness to go along with these arrangements could just as well be explained by its indifference to the dealings as between the Purchasers and the plaintiff.

Harm or damage caused

102 I was doubtful that the conspiracy claim would be made out on the basis that the Housing Loans were made on something other than what was the "true price". There is no true price for real property; these are not marked to market as are securities, nor is there any market that can indicate the true market price. As the evidence showed that the Stated Purchase Price expressed on the loan application forms were within what would have been accepted as reasonable valuations,[142] I was unable to conclude that there was any harm occurring to the plaintiff in this manner.

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142 See 4AB 1781.

103 As for the breach of MAS Notice 632, some evidence of the consequences of any breach, particularly where these were alleged to have been caused by the actions of other parties, should have been put in. In its submissions, the plaintiff only pointed to the possible imposition of statutory penalties set out in s 55(3) read with s 71 of the Banking Act in force at the material time.[143]

104 For these reasons, I was also doubtful that a conspiracy tied into any alleged inflation above the "true price" itself would have been made out just between the second and third defendants, even allowing this on the pleadings as they stand. That leaves a conspiracy founded on deceit, in relation to the Identity Misrepresentations and Financial Standing Fraud, but as noted below at [106], any finding of conspiracy between the second and third defendants would not add anything to their liability as tortfeasors anyway.

Claims in deceit

105 The elements of the tort of deceit are as follows (*Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14]):

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

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

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

143 PFS at paras 33–34.

(d) the plaintiff acted upon the false statement; and

(e) the plaintiff suffered damage in so doing.

106 Regarding the alleged misrepresentations by the second and third defendants (*ie*, Identity Misrepresentations, Financial Standing Fraud and Payment Misrepresentation), these claims were made out. I noted that neither of these defendants put up any fight as such. Whether their liability arose as tortfeasors, or in conspiracy, did not make a substantial difference to the outcome.

107 As regards the Payment Misrepresentations supposedly involving the first defendant directly, I did find that even if there was any such representation, there was no reliance, given the existence of the Form 3 mechanism. The fact that payment could have been cancelled by the bank was irrelevant: it was effectively assumed that payment would be made. The claim in deceit against the first defendant thus failed.

Purchase Price Misrepresentations, Identity Misrepresentations and Financial Standing Fraud by the second and third defendants

108 In relation to the Purchase Price Misrepresentations and Identity Misrepresentations, the Purchasers did not declare the Furniture Rebates they had received, and represented themselves as "the true and full owners" of the property in their Housing Loan Application Forms (see above at [12]–[15]). These representations were in fact made by the second defendant, who supplied the transaction details, including the purchase price of the Units.[144] The third defendant also assisted the Purchasers in obtaining Housing Loans from the

[144] 1 December 2020 Transcript at p 27 lines 5–17; Goh Buck Lim's AEIC at para 28.

plaintiff,[145] and was complicit in this. In so doing, the second and third defendants knowingly represented a false state of affairs, through the Purchasers, to the plaintiff. They were aware of the existence and approximate quantum of the Furniture Rebates since December 2011,[146] prior to the submission of the Housing Loan Application Forms. They also knew that 32 of the Purchasers were nominees for various investors, and who these investors were.[147] The evidence also showed that the plaintiff's officers had relied on these false representations to approve the Housing Loan Applications and disburse the Housing Loans.[148] I was also satisfied that such reliance by the plaintiff was intended by the second and third defendants, who had deliberately procured these false representations on the Loan Application Forms submitted by the Purchasers.

109 For the tort of deceit to succeed, there is no need for the false representation to be made by the defendant to the plaintiff directly. As long as the defendant intended the misrepresentation to be communicated to the plaintiff, through a third party, the representation so communicated would suffice (Gary Chan Kok Yew & Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) at 14.016). This was the case here in so far as the Purchase Price Misrepresentations and Identity Misrepresentations were concerned.

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145 Goh Buck Lim's AEIC at para 28.

146 Goh Buck Lim's AEIC at paras 20; D1's Defence at paras 15(b)–17; D2 and D3's Defence at para 55; PCS at para 298(b).

147 Goh Buck Lim's AEIC at paras 46–50; D2 and D3's Defence at para 10(a); 2nd and 3rd Defendants' Further and Better Particulars dated 13 March 2015 at para 1.

148 Chia Siew Cheng's AEIC at paras 66, 127 and 152; Chua Bee Kim's AEIC at paras 4, 8 and 11; Tan Ang Ee's AEIC at paras 10, 14 and 24; Ang Tsuey Rong's AEIC at paras 11 and 18; 18 November 2020 Transcript at p 80 line 25 to p 81 line 7, p 86 lines 5–22.

110 The second and third defendants were also liable for the Financial Standing Fraud. They had admitted to arranging the Inter-Account Transfers for the Housing Loan Applications.[149] As a result of these Inter-Account Transfers, the Purchasers could satisfy the plaintiff's AUM requirements. This relayed a false impression of their financial ability to service the loan to the plaintiff, who relied on the AUM to approve and disburse the loans.[150] Having engaged in the Inter-Account Transfers, the second and third defendants must have known that the Purchasers, absent the Inter-Account Transfers, would not be able to satisfy the AUM. Indeed, the second defendant admitted that the Purchasers did not have the requisite financial standing to obtain loans from the plaintiff, and that the Inter-Account Transfers were to mislead the plaintiff into thinking that the Purchasers had sufficient AUM, so that the plaintiff would disburse the Housing Loans.[151]

Payment Misrepresentations by the first defendant

111 The plaintiff's case was that the TSMP Letters, which were addressed to PKWA in its capacity as the plaintiff's solicitors, contained the Payment Misrepresentations.[152] The TSMP Letters were sent out on the first defendant's instructions.[153] Even assuming that the Payment Misrepresentations were made by the first defendant, there was no actionable claim in deceit given that the plaintiff had not relied on any such representation.

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149 D2 and D3's Defence at para 11.

150 Chia Siew Cheng's AEIC at para 156; 1PCB 123–124, 132–133, 143, 152–153, 161–162, 172, 180, 190, 200, 210, 221, 231, 243, 253, 265, 275, 296, 306, 317–318, 331, 343, 353–354, 364, 374, 384, 395, 405, 415, 429–430, 442–443, 454–455, 466, 479–480, 492-493, 506, 518, 530.

151 1 December 2020 Transcript at p 90 line 20 to p 91 line 3, p 113 lines 13–18.

152 PCS at para 353.

153 PCS at para 358.

Summary of parties' submissions

112 The plaintiff emphasised that confirming that the Balance Purchase Price had been paid was a crucial part of the loan disbursement process.[154] Such payment assured the plaintiff that the Purchaser had the financial means to service the Housing Loan, created a buffer between the amount of the Housing Loan and the purchase price of the property which would cushion the plaintiff against a fall in value of the property should the plaintiff need to realise its security, and the Housing Loan had to be disbursed in compliance with MAS Notice 632.[155]

113 The plaintiff submitted that the question of reliance had to be assessed at the point in time when the cashier's order was handed over to TSMP, the first defendant's solicitors. This was because at any prior time the disbursement process could be stopped, and the cashier's order returned to the plaintiff and cancelled without loss. Form 3 was a document filled in by PKWA and submitted to the plaintiff to request for the preparation of the cashier's order. As Form 3 merely kickstarted the process for the preparation of the cashier's orders, it was irrelevant to the issue of reliance. At the time of completion, PKWA, on behalf of the plaintiff, handed over the cashier's orders to TSMP only upon TSMP's confirmation that the Balance Purchase Price had been made, as set out in the TSMP Letters.[156]

114 On the other hand, the first defendant submitted that in approving the disbursement of the Housing Loans, the plaintiff relied on Form 3 to the

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154 19 April 2021 Transcript at p 52 line 15 to line 13.

155 PCS at para 366.

156 PCS at paras 367, 371, 380 and 383; PRS at paras 93–94.

exclusion of the TSMP Letters.[157] This was the case for Theodora as well.[158] Furthermore, there was no evidence that at the time of completion, PKWA had verified that the Balance Purchase Price had been paid.[159]

Analysis

115 It could not be denied that the plaintiff needed to ensure that the Balance Purchase Prices were paid before it disbursed the Housing Loans. However, the way in which the plaintiff ensured this was through Form 3, to the exclusion of the TSMP Letters which contained the Payment Misrepresentations. Form 3 was the document relied upon by the plaintiff in authorising the disbursement of the Housing Loan to each of the 38 Purchasers. There was also no evidence from PKWA as to whether they had verified, at the time of completion, that the Balance Purchase Price had been paid before handing over the cashier's orders to TSMP. In any event, once the plaintiff had authorised the issuance of the cashier's orders to disburse the Housing Loans, it was effectively assumed that payment would be made. It was irrelevant that the plaintiff could have cancelled the payment subsequently.

116 The plaintiff's Standard Terms set out conditions precedent to the disbursement of the loan, one of which being the plaintiff's satisfaction that the Purchaser had paid the Balance Purchase Price (Clause 1.1(x)).[160] The Standard Mortgage Policies, which contained the standard engagement terms on which the plaintiff engaged its lawyers for the purpose of mortgage transactions,[161]

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157 DCS at paras 24–44.

158 DCS at paras 84–92.

159 DRS at paras 75–77.

160 19AB 10232.

161 19AB 10121–10140; 20 November 2020 Transcript at p 33 lines 8–11.

placed an obligation on PKWA to ensure that all conditions precedent to the disbursement of the loan had been fulfilled, including the condition precedent that the borrower had paid the Balance Purchase Price in full (Clause 9.1(c)).[162]

117 By way of a document known as Form 3, PKWA provided the plaintiff with the confirmation that the conditions precedent, including the payment of the Balance Purchase Price, had been fulfilled. The material portions of Form 3 read:[163]

> 1) *We hereby confirm that*:-
>
> (e) *all conditions precedent* (whether general or specific and whether stipulated in the Facility Letter(s), the Bank's Standard Terms and Conditions Governing Credit Facilities or where applicable, the Bank's Standard Terms and Conditions Governing Banking Facilities or otherwise as advised by the Bank from time to time) for the disbursement or implementation of the loan or banking facilities granted by the Bank to the Borrower(s) are satisfactory and *have all been fulfilled*.
>
> 2) Where applicable, *we confirm that payment in full of the difference between the purchase price and the facilities granted by the Bank to the Borrower(s) has been made*.
>
> …
>
> 6) *We understand that the Bank will proceed with the disbursement or implementation of the loan or banking facilities granted by the Bank to the Borrower(s):*
>
> (a) in full reliance:-
>
> …
>
> (ii) of our confirmations furnished in this Form … in relation to the Mortgaged Property; and
>
> (b) in full reliance and understanding that we have read and accepted and have at all times strictly complied with all the requirements stated under … Annex B - Standard

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162 19AB 10130–10132.

163 Exhibit D2; 20 November 2020 Transcript at p 39 lines 12–14; 24 November 2020 Transcript p 3 line 23 to p 4 line 1.

> Mortgage Policies … and that we have carried out and discharged all our duties stated thereunder prior to us issuing this letter, and we hereby confirm that it is in order for the Bank to proceed with such disbursement/implementation and/or any subsequent disbursement/implementation.

[emphasis added]

118 Before disbursing the Housing Loans, the plaintiff's Retail Loan Operations Centre ("RLOC") carried out a standard set of checks set out in a "Document Checklist for New Purchase / Refinancing (For LM)" (the "Document Checklist") to ensure that the documentation and conditions required for disbursement were fulfilled.[164] One of these checks was whether PKWA had confirmed, via Form 3, that payment of the Balance Purchase Price was made.[165] Upon this confirmation by PKWA, the plaintiff approved the disbursement of the Housing Loan and issued the cashier's order for the loan amount. PKWA then handed the cashier's orders over to TSMP on the date of completion.[166]

119 At the material time, Ms Jenny Ang ("Ms Ang") and Ms Tan Ang Ee ("Ms Tan") were the Assistant Vice President and the Vice President in the document processing team within the plaintiff's RLOC respectively.[167] Ms Ang authorised the disbursement of Housing Loans to 20 Purchasers.[168] Ms Tan

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164 Tan Ang Ee's AEIC at para 10; 20 November 2020 Transcript at p 10 line 8 to p 11 line 5.

165 Tan Ang Ee's AEIC at para 10(f); 20 November 2020 Transcript at p 31 lines 8–9; 24 November 2020 Transcript at p 52 lines 9–13.

166 Tan Ang Ee's AEIC at para 17.

167 Ang Tsuey Rong's AEIC at para 2; Tan Ang Ee's AEIC at para 2.

168 Ang Tsuey Rong's AEIC at para 9; 24 November 2020 Transcript at p 50 lines 5–9.

approved the disbursement of Housing Loans to the remaining 18 Purchasers.[169] Form 3 was received by the plaintiff for each Purchaser.[170]

120 It was clear from Ms Ang's and Ms Tan's evidence that the only document relied on by the plaintiff to ensure that the Balance Purchase Price had been paid was Form 3, not the TSMP Letter. When asked whether she saw the TSMP Letter prior to authorising the disbursement of the Housing Loans, Ms Ang said that most of the time, she only saw the TSMP Letter after the disbursement of the Housing Loans.[171] Ms Ang testified that the Document Checklist only required her to check for Form 3. It was not necessary for her to see Form 3 together with the TSMP Letter before authorising the disbursement.[172] Similar evidence was given by Ms Tan. Ms Tan confirmed that in deciding whether to approve the disbursement of the loan, she relied on PKWA's confirmation as to whether the Purchaser had paid the Balance Purchase Price, and this confirmation was contained in Form 3. Without Form 3, she would not have authorised the disbursement.[173] Ms Ang's and Ms Tan's evidence collectively demonstrated that the TSMP Letter, and the Payment Misrepresentations contained therein, did not play any part in inducing the plaintiff to authorise the disbursement of the Housing Loans.

121 Ms Ang's and Ms Tan's evidence cohered with the plaintiff's Standard Mortgage Policies, wherein the plaintiff expressly stated that it would rely on

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169 Tan Ang Ee's AEIC at para 13.

170 20 November 2020 Transcript at p 41 lines 2–5.

171 24 November 2020 Transcript at p 51 lines 19–23.

172 24 November 2020 Transcript at p 52 line 9 to 53 line 21.

173 20 November 2020 Transcript at p 29 line 1 to p 31 line 18.

its lawyer's confirmations in Form 3 to disburse the loans. Clause 9.2(ii) of the Standard Mortgage Policies read:

> Upon the Bank's receipt of your advice/instructions for disbursement or implementation of the Facilities or any part thereof, *the Bank will forthwith proceed with the disbursement or implementation of the Facilities or any part thereof in full reliance of* your professional advice/instructions, *your confirmations furnished in* the relevant completed Form 1LM, Form 2ROT and *Form 3* and in full reliance and on the understanding that all the aforesaid duties shall have already been discharged by you prior to such advice/instructions for disbursement or implementation.
>
> [emphasis added]

Form 3 contained a corresponding acknowledgment from PKWA that the plaintiff would proceed with the disbursement "in full reliance" of PKWA's confirmations furnished in Form 3. Form 3 confirmed, amongst other matters, that payment of the Balance Purchase Price had been made (Clause 6(a)(ii)).

122 It was also telling that cashier's orders for four of the Purchasers were issued before the date of the relevant TSMP Letters for these Purchasers. In contrast, all 38 cashier's orders were issued after the receipt by the plaintiff of the relevant Form 3.[174] In fact, in Theodora's case, TSMP did not issue any letter to PKWA expressly confirming that the first defendant had received a cheque or direct payment of the 15% Completion Fee.

123 In so far as Theodora was concerned, Ms Ang initially took the position that she had inferred, from the fact that the first defendant was willing to proceed to completion, that the 15% Completion Fee had been paid by Theodora.[175]

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174 Exhibit D-3.

175 Ang Tsuey Rong's AEIC at para 14; 24 November 2020 Transcript at p 72 line 17 to p 73 line 2.

However, Ms Ang admitted at trial that she did not make this inference before authorising the issuance of the cashier's order.[176] The alleged inference had no part to play in her decision to authorise the disbursement of the Housing Loan.[177] She confirmed that the Housing Loan for Theodora was disbursed upon receipt of, and in reliance on, Form 3 from PKWA, just like all the other 37 Purchasers.

124 I therefore find that the TSMP Letters did not play a role in inducing the plaintiff to authorise the disbursement of the Housing Loans to each of the 38 Purchasers. Rather, Form 3 was the document which the plaintiff had relied on. For completeness, I note that there was no direct evidence from PKWA as to what it had relied on to issue the confirmation in Form 3. Most of the Form 3s were issued prior to the TSMP Letters.[178]

125 The plaintiff stressed that reliance should be assessed when the cashier's orders were handed over to TSMP on completion, not at the time when the issuance of the cashier's orders were authorised.[179] However, this was inconsistent with Clause 3.5.1 of the plaintiff's Standard Terms, which expressly provided that "[w]here drawdown is by way of cashier's order…the Credit Facility shall be deemed to have been disbursed on the date of the cashier's order".[180] In other words, the Housing Loan was deemed to have been disbursed when the cashier's order was issued. As set out above, the cashier's order was issued on the back of PKWA's confirmation in Form 3.

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176 24 November 2020 Transcript at p 76 lines 1–7.

177 24 November 2020 Transcript at p 70 lines 2–15, p 74 line 17 to p 75 line 1, p 79 lines 13–24.

178 Exhibit D-4.

179 PRS at paras 90–91.

180 19AB 10234.

126 In oral submissions, counsel for the plaintiff argued that parties could not have intended for the Housing Loans to be disbursed at the point in time when the cashier's orders were issued. Otherwise, the Housing Loan would effectively become an unsecured loan, as completion would not have taken place then.[181] However, as counsel for the first defendant rightly pointed out, Clause 2.1 of the Standard Mortgage Policies obliged the plaintiff's lawyers to lodge a caveat against the mortgaged property. The caveat afforded the plaintiff a measure of protection between the time of the cashier's order was issued and the time of completion.[182]

127 In any event, no evidence from PKWA was adduced as to whether it had verified, at the time of completion, that the 15% Completion Fee was made before handing over the cashier's orders to TSMP. Ms Ang and Ms Tan's evidence was that at the time of completion, PKWA would have to confirm with TSMP again that the Balance Purchase Price had been paid, before releasing the cashier's order.[183] However, at its highest, their evidence only showed that the plaintiff had the expectation that PKWA would undertake this course of conduct. Indeed, Ms Ang and Ms Tan could not give evidence as to what PKWA actually did on the day of completion, because neither of them was present at the completion of any of the 38 transactions.

128 In these circumstances, even if the first defendant had made Payment Misrepresentations, the plaintiff had not relied on any such representation.

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181 19 April 2020 Transcript at p 55 lines 15–24.

182 19 April 2020 Transcript at p 68 line 7 to p 69 line 15; 19AB 10071.

183 24 November 2020 Transcript at p 53 lines 2–9, p 63 line 19 to p 64 line 5, p 67 line 24 to p 68 line 7, p 91 line 18 to p 92 line 9, p 93 line 20 to p 94 line 24; Tan Ang Ee's AEIC at para 21.

Ms Ong's evidence

129 While Ms Ong's evidence was immaterial as regards the knowledge of the plaintiff as to any fraud, she could possibly have been able to testify as to the likely state of affairs involving the defendants, and their knowledge or otherwise. This would perhaps have had an impact on the outcome, but I appreciated that both sides might have had their tactical reasons for not calling Ms Ong as their witness, so I would not comment further on this point.

Conclusion

130 As against the second and third defendants, the claims in deceit succeed. The damages arising from the successful claims in deceit against them remain to be assessed. The claims against the first defendant were dismissed entirely.

131 Directions was given separately for determination of costs. I also gave directions for a pre-trial conference for parties to indicate their position going forward.

Aedit Abdullah
Judge of the High Court

Ng Ka Luon Eddee, Alcina Lynn Chew Aiping, Chan Yi Zhang, Leong Qianyu, Bertrice Hsu and Thaddaeus Tan (Tan Kok Quan Partnership) for the plaintiff;
Siraj Omar SC, See Chern Yang, Teng Po Yew, Audie Wong Cheng Siew and Fitzgerald Hendroff (Drew & Napier LLC) for the 1st defendant;
The second defendant in person;
The third defendant absent and unrepresented.