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

[2021] SGHC 217

Suit No 427 of 2019

Between

Song Jianbo

… *Plaintiff*

And

(1) Sunmax Global Capital Fund 1 Pte Ltd
(2) Li Hua

… *Defendants*

GROUNDS OF DECISION

[Contract] — [Breach]
[Tort] — [Misrepresentation]
[Tort] — [Misrepresentation] — [Measure of damages]
[Tort] — [Conspiracy]

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Song Jianbo
v
Sunmax Global Capital Fund 1 Pte Ltd and another

[2021] SGHC 217

General Division of the High Court — Suit No 427 of 2019
Chua Lee Ming J
24–26 February, 2–3 March, 4 March, 26 April, 12 May 2021

23 September 2021

Chua Lee Ming J:

Introduction

1 In 2010, the plaintiff, Mr Song Jianbo ("Song"), invested $1.5m in the first defendant, Sunmax Global Capital Fund 1 Pte Ltd ("Sunmax"). Song's investment in Sunmax was for a fixed period of five years. In 2016, Sunmax informed Song that he would receive a cash distribution of $224,510 and an in-specie distribution of 1,500 shares in a liquidating special purpose vehicle ("LSPV"). Certain illiquid non-cash assets in the investment portfolio held by Sunmax were to be transferred to the LSPV.

2 Song claimed that the second defendant, Mr Li Hua ("Li") had represented that Sunmax was a principal-guaranteed fund and that the terms governing his investment also provided that his investment was principal-guaranteed. Li was the sole shareholder and a director of Sunmax. Song brought

the present action against Sunmax and Li for misrepresentation and conspiracy to injure, and against Sunmax for breach of contract.

3 Li counterclaimed against Song for breach of an oral agreement in failing to compensate Li for certain other services performed by Li.

4 I entered judgment for the plaintiff against both defendants in the sum of $1,237,500 with interest. I also dismissed Li's counterclaim. Sunmax and Li have appealed against my decision.

Background facts

The Global Investor Programme

5 The Global Investor programme ("GIP") accords Singapore Permanent Resident ("PR") status to eligible global investors who intend to drive their businesses and investment growth from Singapore. It is administered by Contact Singapore, a division of the Singapore Economic Development Board ("EDB"). Contact Singapore advises entrepreneurs and business owners who are interested in relocating to and investing in Singapore.

6 An applicant for PR status through the GIP has to satisfy certain qualifying criteria and submit an investment plan to Contact Singapore. One of the options available under the investment plan is to invest in funds approved under the GIP ("GIP-approved funds").

Sunmax

7 On 20 January 2009, SPRING Singapore informed Li that an eight-year Section 13H Tax Incentive had been approved for Sunmax, which was to be designated as an approved venture company for venture capital investment

activities, subject to certain conditions.[1] One of the conditions was that Sunmax had to qualify as a GIP-approved fund.[2]

8 SPRING Singapore was a statutory board under the Ministry of Trade and Industry of Singapore. The 8-year Section 13H Tax Incentive was an incentive under the Income Tax Act (Cap 134, 2008 Rev Ed) that provided tax exemption for income from approved funds.

9 At that time, Sunmax had not been incorporated yet. Li's plan was for investments in Sunmax (pursuant to the GIP) to be made by way of subscriptions for preference shares in Sunmax. The preference shares would be redeemable at the end of five years. Li prepared a private placement memorandum dated 1 February 2009 (the "2009 PPM") for the offering of preference shares in Sunmax.[3]

10 The 2009 PPM stated the following:[4]

(a) The 2009 PPM had been prepared in connection with the offer of preference shares of Sunmax.

(b) Sunmax was a GIP-approved Fund.

(c) One of Sunmax's "primary objectives" was to "guarantee [investors'] investment principal (exclusive of management fee) …".

(d) Sunmax was a "principal-guaranteed fund (exclusive of management fee)". Investors who invested $1.5m in the fund would get "at least of [sic] $1,237,500 back just after 5 years".

(e) The target fund size was $500m, and the minimum fund size was $300m.

(f) The charter life of the fund was five years from the subscription date.

(g) Sunmax would charge a management fee of 3.5% per annum.

The sum of $1,237,500 referred to in (d) above was the balance of $1.5m after deducting management fees of 3.5% per annum for five years.[5]

11 On 27 February 2009, Contact Singapore informed Li that Sunmax would be eligible to participate as a "GIP-approved Fund" under the GIP, subject to Sunmax obtaining Section 13H Tax Incentive approval and the necessary approval and licence from the Monetary Authority of Singapore.[6]

12 Sunmax was subsequently incorporated on 7 April 2009. Its business was that of an approved fund under the GIP. On 16 April 2009, Sunmax accepted the offer from Contact Singapore to participate as a GIP-approved fund.[7]

13 At all material times, Li was the sole shareholder of ordinary shares in Sunmax. Li was also a director of Sunmax from incorporation until his resignation on 1 December 2016. Li was re-appointed as a director on 28 November 2018.

14 As an investment fund, Sunmax was managed by a fund management company, Sunmax Global Capital Pte Ltd ("Sunmax Global"). Sunmax Global was incorporated in 2007 and in addition to its role as a fund manager, it was also described as an "Investment Immigration Expert of Singapore".[8]

15 Subsequently, Li prepared another private placement memorandum dated 1 January 2010 for the offering of preference shares of Sunmax (the "2010

PPM").[9] The 2010 PPM was largely similar to the 2009 PPM except that under the 2010 PPM,

(a) Sunmax was no longer described as a principal-protected fund; and

(b) the target fund size was reduced to $150m and the minimum fund size to $20m.

Song's investment in Sunmax

16 In 2009, Song was looking to migrate to Singapore, with his family. He came to know of the GIP. On 31 March 2010, Song submitted his application for PR status through the GIP.[10] Li and/or Sunmax Global helped Song with his application.

17 At the material time, the investment guidelines under the GIP provided three investment options. Song chose the option under which he would invest at least $1.5m in a GIP-approved fund; Song indicated that the fund would be Sunmax.[11] Song was required to make his investment within six months of receiving in-principle approval of his application.

18 Song received in-principle approval of his application and on 31 January 2011, he deposited $1.5m into Sunmax's account. Song also submitted an undated subscription form for preference shares in Sunmax.[12] On 9 February 2011, Sunmax issued a preference share certificate in Song's name for 150 preference shares of $10,000 each in Sunmax.[13] The certificate was deposited with and held by EDB as required under the terms of the GIP.

19 Sunmax managed to raise investments amounting to $65.7m and issued a total of 6,570 preference shares to its investors, including Song.

20 On 27 June 2011, Song was granted PR status pursuant to the GIP. Subsequently, he became a Singapore citizen in 2014.

21 On 1 April 2016, Sunmax informed its investors that its investment portfolio had been fully liquidated save for some illiquid assets that would be transferred to a special purpose vehicle.[14] Shares in the special purpose vehicle would be distributed in-specie to investors.

22 On 21 July 2016, Sunmax provided its investors with an update.[15] In respect of his investment of $1.5m (comprising 150 preference shares in Sunmax), Song was entitled to a cash distribution of $224,510 and an in-specie distribution of 1,500 shares (out of 28,200 shares) in a LSPV that would hold the non-cash assets that had not been liquidated.[16] The non-cash assets were valued at a total of $3,681,339 as at 31 March 2016, excluding certain shares that were the subject of litigation.[17] Based on the value of $3,681,339, Song's 1,500 shares in the LSPV would have had a value of $195,815.90. It was clear that Song was not going to receive $1,237,500 whether in cash and/or in-specie.

The parties' respective cases

Song's claims

23 Song claimed that during a meeting in or around early 2010, Li handed him the 2009 PPM. Song's case against both the defendants for misrepresentation was based on the following representations made by Li orally and through the 2009 PPM (the "Representations"):[18]

(a) Sunmax was a principal-guaranteed fund and at the end of the five-year investment period, the full sum invested (after deducting management fees) would be returned to the investors.

(b) As an investor, Song would be kept informed of the investments made by Sunmax and would be provided with reports and accounts.

(c) The minimum size of the fund was $300m.

24 Song's case against Sunmax for breach of contract was based on Sunmax's failure and/or refusal to redeem his preference shares pursuant to the terms of the 2009 PPM.[19]

25 In addition, Song claimed that the defendants conspired to injure him by making the false Representations.[20]

26 The defendants claimed that Li handed Song the 2010 PPM and that Song's subscription for preference shares was governed by the terms of the 2010 PPM. They therefore denied the Representations.

27 For the same reason, Sunmax denied liability for the alleged breach of the 2009 PPM. Sunmax also submitted that Song's claim for breach of contract was precluded by Article 11 (d) of Sunmax's Articles of Association ("AOA"). According to Sunmax, Article 11(d) of the AOA gave the directors of Sunmax the discretion to determine the price to be paid when the preference shares were redeemed at the end of five years.

28 The defendants further submitted that Song's claims were precluded by the principle in *Houldsworth v City of Glasgow Bank and Liquidators* (1880) 5 App Cas 317 ("*Houldsworth*"), which (according to the defendants) prevents a member of a company from recovering damages against the company.

29 Finally, the defendants denied any conspiracy to injure Song.

Li's counterclaim

30 As for Li's counterclaim, Li's case was that in or around late 2009, he reached an oral agreement with Song (the "2009 Oral Agreement") pursuant to which:[21]

(a) Li agreed to assist Song in:

(i) setting up three companies, namely Nanshan Group Co Singapore Pte Ltd ("NSG"), Nanshan Aluminium Singapore Co Pte Ltd ("NSA") and Union Capital Pte Ltd ("UC");

(ii) the remittance and transfer of funds between the companies; and

(iii) making arrangements for UC to be approved as a wholly foreign-owned enterprise ("WFOE") in China.

(b) Song agreed to:

(i) allot or transfer to Li a 15% shareholding in UC upon the "public listing of its assets on a stock exchange"; and

(ii) invest $1.5m in Sunmax.

31 As UC's subsidiary had been listed on the Hong Kong Stock Exchange, Li claimed 15% of the shareholding in UC. Li also claimed a sum of $18,082.86 as reimbursement of expenses that he had incurred in carrying out the 2009 Oral Agreement.

32 Song denied the 2009 Oral Agreement and said that:[22]

(a) Li was willing to assist him to incorporate NSG, NSA and UC in order to build a good relationship with him and earn his trust so as to persuade him to invest in the fund set up and/or controlled by Li;

(b) Li's counterclaim was time-barred under the Limitation Act (Cap 163, 1996 Rev Ed); and

(c) he had reimbursed Li for the expenses incurred in incorporating the three companies.

33 Song produced evidence that Li had been reimbursed for the expenses incurred in incorporating the three companies. In the course of the trial, Li abandoned his counterclaim for reimbursement of these expenses.[23]

The issues

34 The issues before me were as follows:

(a) Whether the defendants were liable to Song for misrepresentation?

(b) Whether Sunmax was liable to Song for breach of contract? In turn, this issue depended on the following sub-issues:

(i) Whether Song's subscription for preference shares in Sunmax was based on the terms of the 2009 PPM?

(ii) Whether Song's claim for breach of contract was precluded by Article 11(d) of the AOA?

(c) Whether the defendants were liable for conspiracy to injure?

(d) Whether Song's claims were precluded by the principle in *Houldsworth*?

(e) Whether Song and Li entered into the 2009 Oral Agreement, and if so, whether Li counterclaim was time-barred?

Whether the defendants were liable for misrepresentation

35 Song's claim for misrepresentation raised the following issues:

(a) Whether Li made the Representations?

(b) Whether the Representations were actionable?

(c) What damages did Song suffer?

Whether Li made the Representations

36 Song's case rested on his claim that sometime in early 2010, Li handed him the 2009 PPM.[24] Li denied Song's claim and said that he handed Song the 2010 PPM. I found that it was more probable that Li did hand the 2009 PPM to Song.

37 First, Song was able to produce the original copy of the 2009 PPM that he claimed to have received from Li, in court.[25] Li had no credible explanation as to how Song could have obtained the 2009 PPM if it was not from him.

38 In his affidavit of evidence-in-chief ("AEIC"), Li suggested that Song may have obtained a hard copy of the 2009 PPM from the Xing Group.[26] Sunmax Global had entered into an agreement dated 2 March 2009 with Worldway (Beijing) Immigration Services Co Ltd ("WBIS").[27] WBIS was an immigration broker and a member of the Xing Group. Li testified that he handed a copy of the 2009 PPM to one Dr Xing of the Xing Group.[28] However, it was

not the defendants' pleaded case that Song had obtained the 2009 PPM from Dr Xing or the Xing Group. In any event, apart from Li's bare allegation, there was no evidence that Song had obtained the 2009 PPM from the Xing Group. It was also not put to Song during cross-examination that he knew Dr Xing or that he had obtained the 2009 PPM from Dr Xing. Under cross-examination, Li admitted that it was just conjecture on his part.[29]

39 At the trial, Li abandoned his suggestion that Song obtained the 2009 PPM from the Xing Group. Instead, he instructed his counsel to suggest to Song, during cross-examination, that Song took the 2009 PPM from Song's father in order to make his claim; Song disagreed with the suggestion.[30] Again, it was not the defendants' pleaded case that Song had obtained the 2009 PPM from his father. Li also did not make this allegation in his AEIC or supplementary AEIC ("SAEIC"). In any event, Li's suggestion that Song had obtained the 2009 PPM from his father was just another bare allegation. There was no evidence that Song even knew that Li had handed a copy of the 2009 PPM to Song's father. Li himself said that Song was not present when he met with Song's father.[31] In my view, Li's allegation that Song had obtained the 2009 PPM from his father, was an afterthought.

40 Second, Li asserted in his AEIC that there was no reason for Sunmax to use the 2009 PPM when it had been superseded by the 2010 PPM and it was "onerous" and "inconsistent with the risk profile of the GIP fund".[32] I rejected Li's assertion. Li's testimony under cross-examination showed that this assertion was untrue. Li was asked whether the "risk profile of the GIP fund" mentioned in his AEIC already existed when he drafted the 2009 PPM.[33] After giving some evasive answers, Li eventually admitted that he thought the GIP fund had high risk when he was drafting the 2009 PPM.[34]

41 Li subsequently changed his evidence and said that he concluded that the risk was high because the letter from Contact Singapore (see [11] above) required 50% of the funds managed by Sunmax to be invested in Singapore-based companies in the following sectors – biomedical science, clean energy, environment and water, healthcare, info-communications and media, nanotechnology and urban solutions.[35] Li claimed that when he drafted the 2009 PPM, he was prepared to guarantee the principal and that he changed his mind after he received the letter from Contact Singapore because he knew from the letter that the fund was risky.[36] I rejected Li's explanation. It was inconsistent with his earlier admission. In any event, the letter from Contact Singapore was dated 27 February 2009. The fact remained that having been made aware of the condition imposed by Contact Singapore, Li did not change the 2009 PPM (dated 1 February 2009) until almost a year later when he came up with the 2010 PPM. Instead, Li even showed the 2009 PPM to Dr Xing and "a few selected potential investors".[37] Even more telling was the fact that the 2009 PPM itself contained the very condition in the letter from Contact Singapore that Li claimed to have caused him to change his mind.[38] Li's explanation was clearly untrue.

42 I also rejected Li's claim that the 2009 PPM was shown to Dr Xing as a "draft only" and to potential investors as a "non-binding marketing document". Nothing in the 2009 PPM indicated that it was not binding or that it was a draft. Instead, Li even went so far as to state in the 2009 PPM that the fund's lawyers were Central Chambers Law Corporation ("CCLC"). On the stand, Li admitted that this was not true; Sunmax had not engaged CCLC as its lawyers.[39] In my view, Li named CCLC as the fund's lawyers in the 2009 PPM in order to give the document credence. This showed that he intended to use the 2009 PPM to market his fund.

43 Further, Li claimed that Sunmax had been using the 2010 PPM between March 2010 and April 2012 and that all 39 investors in Sunmax were given the 2010 PPM.[40] Again, this was not true. Another investor, one Sun Ke testified that Li gave him a private placement memorandum dated 1 March 2010 (the "March 2010 PPM"), which stated that the investor "can get back his investment principal (after deducting management fees) and his investment return after 5 years".[41] The March 2010 PPM was clearly different from the 2010 PPM. Sun Ke's evidence was not disputed by the defendants; he was not cross-examined.

44 Third, Li's assertion that it did not make sense for Sunmax to offer principal-protection because of the risks involved, was contradicted by his own evidence. Li admitted that he had personally guaranteed an investment in Sunmax by one Shi Ling.[42] If the alleged risks did not deter Li from providing a *personal* guarantee, there was no reason why the same risks would have deterred Sunmax from offering principal-protection to its investors.

45 Further, in seeking to be indemnified by Sunmax against Shi Ling's claim, Li had asserted on two separate occasions that Sunmax had represented, by its agents and/or employees, to investors that their investments in Sunmax were partly or wholly capital-guaranteed.[43] Li's assertions clearly contradicted his claim that Sunmax did not offer principal-protection.

46 Li tried to explain that he provided the guarantee to Shi Ling because Shi Ling had been introduced by a good friend.[44] I found it unbelievable that if (as Li claimed) it did not make sense for Sunmax to offer principal-protection, Li would have been prepared to guarantee Shi Ling's investment just because Shi Ling was introduced by a good friend. Li's explanation also did not square with his assertions in [45] above.

47 Apart from Shi Ling, Sunmax had also offered principal-protection to Sun Ke (see [43] above). Sunmax did not give Sun Ke the 2010 PPM; instead, it gave him the March 2010 PPM which offered principal-protection. Sun Ke invested in Sunmax in March 2011 on the basis of the March 2010 PPM.[45] Apparently, for reasons that were not in the evidence, Sun Ke redeemed his preference shares for the cash portion offered by Sunmax and did not sue Sunmax or Li for the full amount of his investment (less management fees).[46] Be that as it may, the fact remained that Sunmax was prepared to offer Sun Ke a principal-protected investment even after it had started using the 2010 PPM.

48 In my view, the evidence clearly showed that the alleged risks did not deter Sunmax from offering, and that Sunmax did offer, principal-protection to at least some of its investors. The evidence also clearly showed that Sunmax did not contract with all its investors on the basis of the 2010 PPM; it had also contracted on the basis of the March 2010 PPM which offered principal-protection.

49 The evidence also showed that there was reason for Li to offer principal-protection to Song. By the end of 2009, there were only five investors in Sunmax; the total amount invested was $7.5m.[47] This was far below the minimum fund size stated in the 2009 PPM (*ie*, $300m), or for that matter, the 2010 PPM (*ie*, $20m). Li admitted that he needed Song's investment although he claimed that it was not critical.[48] In my view, it was likely that Li gave Song the 2009 PPM, which guaranteed the principal less management fees, because he needed Song to invest in Sunmax.

50 The defendants submitted that by the time Song made his investment in end January 2011, the fund had 27 investors and a fund size of about $40.5m. The defendants argued that there was therefore no reason to offer Song a

principal-guaranteed investment.[49] I rejected the defendants' argument. The relevant point in time was when Li handed Song the private placement memorandum. As discussed above, at that time, there was reason for Li to offer principal-protection to Song.

51 Li also claimed that providing principal-protection would have meant exposing Sunmax to risks while keeping Song's investment risk-free when where was nothing extra that Sunmax would gain by doing so.[50] I disagreed. Sunmax would have the investors' moneys to manage and that in addition to earning a management fee, Sunmax would also earn 20% of the profits made (if any) from investing the investors' moneys.[51] The fact that the investments made by Sunmax turned out to be loss-making was beside the point.

52 Fourth, in his oral testimony, Li tried to downplay the purpose of the 2009 PPM. Li was evasive when asked about the purpose of the 2009 PPM but finally claimed that he had prepared it for himself whilst waiting for approval from EDB.[52] I did not believe Li. His assertion that he prepared the 2009 PPM for himself was inconsistent with his evidence in his AEIC that the 2009 PPM was "pre-marketing material". Clearly, Li had prepared the 2009 PPM for the purposes of marketing Sunmax. As stated earlier, he showed it to Dr Xing and to a few selected potential investors.[53]

53 Li was asked about the terms on which WBIS would market Sunmax. He gave non-responsive answers before finally asserting that he did not give WBIS any terms for investments into Sunmax.[54] I did not believe Li's assertion. It was too incredulous. WBIS was supposed to market Sunmax to potential Chinese investors. Clearly, he gave Dr Xing the 2009 PPM because he intended WBIS to market Sunmax on the terms of the 2009 PPM.

54 Contact Singapore required Sunmax to submit, among other things, a copy of its private placement memorandum ("PPM") upon its acceptance of the offer from Contact Singapore to participate as a GIP-approved fund.[55] Sunmax accepted the offer from Contact Singapore on 16 April 2009.[56] Li claimed that he did not submit any PPM to Contact Singapore and that Contact Singapore did not ask for the PPM.[57] I did not believe Li. The requirement to submit the PPM was the very first condition that Contact Singapore required Sunmax to comply with. In my view, the only inference to be drawn was that Li claimed not to have submitted any PPM to Contact Singapore because the only PPM he could have submitted in April 2009 would have been the 2009 PPM.

55 Fifth, Li claimed that Song had subscribed for preference shares in Sunmax using a subscription form that was attached to the 2010 PPM, and that this showed that he had given Song the 2010 PPM. According to Li, the subscription form attached to the 2009 PPM stated that the fund was "principal-guaranteed (exclusive of management fee)" whereas the subscription form attached to the 2010 PPM did not contain any such statement.[58] The subscription form used by Song did not contain any such statement. I rejected Li's argument that the subscription used by Song showed that Li had given Song the 2010 PPM:

(a) It was not clear from the evidence that the private placement memorandum always had the subscription form attached. The 2009 PPM produced by Song did not have the subscription form attached. Neither did the private placement memorandum exhibited by Sun Ke in his AEIC. Even the copies of the 2009 PPM and 2010 PPM that Li exhibited in his AEIC did not have a subscription form attached.[59] In his oral testimony, Li claimed that he only found the PPMs with the subscription form attached subsequently, after he saw Song's and

Song's wife's AEICs.[60] I did not find Li's explanation persuasive. If the subscription form was a part of the PPMs, there was no reason why the PPMs produced by Li in his AEIC would not have had the subscription form attached.

(b) More importantly, the subscription form signed by Song was in fact sent to Song's wife by Sunmax.[61] Li was unable to explain why Sunmax had to send the subscription form to Song's wife if it was already annexed to the 2010 PPM that Li allegedly gave to Song.[62]

(c) The subscription form signed by Song did not state that the investment would be principal-guaranteed. However, there was nothing in the form that could be said to be inconsistent with the 2009 PPM or the fact that the investment was principal-guaranteed. The form referred the investor to the "Private Placement Memorandum" (which was not identified by date) for details.[63]

56 Sixth, the 2010 PPM had a section that was intended to show who it was issued to and another section for the "Record number" of the PPM. Li explained that this was for the purpose of record and that generally funds would require this.[64] However, he admitted that there was no record of a copy of the 2010 PPM having been given to the plaintiff.[65]

57 Finally, in my view, Li was not a credible witness. As can be seen from the discussions above, he asserted as fact what was nothing more than conjecture, changed his evidence, gave incredulous answers and was evasive and non-responsive. In the 2009 PPM and 2010 PPM, he also falsely represented to potential investors that the fund was represented by CCLC as counsel. During his oral testimony, Li even insisted that sometime between May

and July 2010, he met Song at the lobby area between UOB Plaza 1 and UOB Plaza 2, after which they went to Song's office at Singapore Land Tower where they discussed Song's intended investment in Sunmax.[66] Li claimed that he handed Song the 2010 PPM at this meeting. However, the lease for Song's office at Singapore Land Tower began only on 15 March 2012.[67] Li was not able to produce any other evidence to show that Song had an office at Singapore Land tower in mid-2010.

58 In my judgment, Song had proved on a balance of probabilities that Li handed him the 2009 PPM, and not the 2010 PPM.

59 It was not disputed that Li did meet Song to discuss Song's investment in Sunmax.[68] The dispute was over whether Li gave Song the 2009 PPM or the 2010 PPM. I found that Li handed Song the 2009 PPM. I therefore also found that Li made the Representations to Song. The Representations were consistent with what was stated in the 2009 PPM.

Whether the Representations were actionable

60 It is well established that a representation as to the future is not, in itself, an actionable misrepresentation unless (a) it is an implied representation as to an existing fact, or (b) it implicitly represents the existence of an intention at the time of making the statement: *Ernest Ferdinand Perez De La Sala v Compania De Navegacion Palomar, SA and others and other appeals* [2018] 1 SLR 894 at [172].

61 In the present case, Song alleged that Li made the following representations (see [23] above):

(a) Sunmax was a principal-guaranteed fund;

(b) Song would be kept informed and provided with accounts and reports; and

(c) the minimum size of the fund was $300m.

62 The representation to keep Song informed and to provide him with accounts and reports was not actionable because it was a representation as to the future. It was not Song's pleaded case that it was an implied representation as to an existing fact or that the defendants implicitly represented an intention to keep Song informed and to provide him with accounts and reports at that time.

63 As for the representations that Sunmax was a principal-guaranteed fund and that the minimum size of the fund was $300m, I was under the impression during the trial that the fund was not in existence yet at the time that the representations were made. During closing submissions, Song's counsel confirmed that the fund was not set up at the time that the representations were made.[69] The defendants' counsel did not correct him. Consequently, when I gave my decision on 26 April 2021, I dismissed the claim for misrepresentation on the ground that the representations that Song relied upon were representations as to the future. I realised subsequently that this may not have been correct and asked parties to clarify.

64 On 12 May 2021, I heard the parties on costs. I also sought clarification as to when the fund started. The defendants confirmed that the fund was formally started on 28 May 2009. This meant that the representations (that Sunmax was principal-guaranteed and that its minimum fund size was $300m) were representations as to existing facts. These representations were thus actionable if they were false and relied upon by Song.

65 It was clear that the two representations were false, and that Li knew that they were false. The misrepresentations were thus fraudulent. It was also clear that Song relied on the misrepresentations when he decided to invest in Sunmax. I rejected Li's assertion that Song agreed to invest $1.5m without looking at the terms because $1.5m was "too small".[70] In my view, this was unlikely to have been the case. In the circumstances, Song was in fact entitled to judgment on his claim for misrepresentation.

66 The judgment had not been extracted on 12 May 2021 and the parties agreed that I had the power to change my previous decision. Accordingly, I revoked my earlier decision dismissing the claim for misrepresentation and found instead that that the defendants were liable for fraudulent misrepresentation.

Damages

67 On the evidence adduced at the trial, Song did not prove what loss he suffered as a result of the misrepresentation as to the fund's minimum size. As for the representation that the fund was principal-guaranteed, Song submitted that his claim was for his full investment of $1.5m. I disagreed. It was clear from the 2009 PPM that the amount guaranteed excluded the management fees. Song's loss was therefore $1,257,500, being the principal amount of $1.5m less the management fee of 3.5% per annum as provided in the 2009 PPM. Accordingly, I awarded Song damages in the sum of $1,257,500.

Whether Sunmax was liable for breach of contract

68 Sunmax submitted that Song had not sufficiently pleaded a claim for breach of contract. I disagreed. Song had pleaded that:[71]

(a) the 2009 PPM stated that Sunmax was a "principal-guaranteed fund";

(b) he invested in Sunmax in reliance on the 2009 PPM; and

(c) under the terms of the 2009 PPM, Sunmax was obliged to, but failed to, redeem his preference shares and return the sum of $1.5m after deducting management fees.

69 In my view, Song had sufficiently pleaded his claim for breach of contract. In any event, it was also clear that Sunmax was well aware that Song was making a claim based on a contract the terms of which were found in the 2009 PPM. In its defence, Sunmax "specifically denied that [Song] and [Sunmax] had any agreement on the terms of the 2009 PPM" and pleaded that the "parties' relationship was governed … by the terms of the 2010 PPM".[72] Clearly, even if Song's pleadings in respect of his claim for breach of contract were inadequate, any such inadequacy did not cause any prejudice to Sunmax.

Whether Song's subscription for preference shares in Sunmax was based on the terms of the 2009 PPM?

70 Song's claim against Sunmax for breach of contract was based on the terms of the 2009 PPM. I had found that Li handed the 2009 PPM to Song. I also found that Song's subscription for preference shares in Sunmax was based on the terms in the 2009 PPM. These terms provided that Song's investment was "principal-guaranteed (exclusive of management fee)" and that Song would get back at least $1,237,500 at the end of the five-year investment term. Song's investment in Sunmax had reached the end of its five-year term. By failing and/or refusing to pay Song the sum of $1,237,500, Sunmax was in breach of its contract with Song.

Whether Song's claim for breach of contract was precluded by Article 11(d) of the AOA

71 Article 11(d) of the AOA provided as follows:

> 11. Notwithstanding any other provision in these Articles, the rights and privileges and restrictions and conditions in respect of the Preference Shares are as follows:-
>
> …
>
> (d) Redemption
>
> A Preference Shareholder may redeem his Preference Shares on the 5th anniversary of his Subscription Date (as defined in the Private Placement Memorandum). In such event, the Directors of the Company may (but shall not be obliged to) pay to the Preference Shareholder the issue price of such Preference Share at such time where such funds may be distributed in an orderly manner. All remaining undistributed profits of the Company that may be due to the Preference Shareholder shall be paid to the Preference Shareholder at the end of the charter life of the Company (or any extension thereof) or at such time as the Directors of the Company may decide. A Preference Shareholder may give notice of his intention to redeem his Preference Shares by giving not less than fourteen (14) days' prior notice in writing to the Company. The Preference Shares shall not be redeemed unless they are fully paid up. The *payment of the issue price of such Preference Share* on redemption shall be paid in cash, or at the discretion of the Directors, by distribution of any part of the Company's assets in specie or in such other form or manner and *at such valuation as the Directors may think fit.*
>
> [emphasis added in italics]

72 Sunmax argued that Song's claim based on the 2009 PPM had to fail because:[73]

> (a) section 70(1) of the Companies Act (Cap 50, 2006 Rev Ed) provides that the redemption of preference shares "shall be effected only on such terms and in such manner as is provided by the constitution";
>
> (b) Article 11(d) expressly provided that the distribution upon redemption was "at such valuation as the Directors may think fit"; and

(c) the purpose of Article 11(d) was to allow the directors the discretion to determine the manner of distribution depending on Sunmax's financial status.

73 In my view, Article 11(d) of the AOA did not afford Sunmax any defence to Song's claim. First, Sunmax was not entitled to rely on Article 11(d) because it was not part of the pleaded defence. Sunmax had merely pleaded that the investments that it had made were approved in accordance its AOA; this was in response to an allegation by Song that Sunmax had made investments in breach of its investment strategy as stated in the 2009 PPM.[74] Clearly, what Sunmax had pleaded was wholly inadequate to support a defence based on its interpretation of Article 11(d).

74 Second, in any event, Sunmax's interpretation of Article 11(d) was incorrect. Article 11(d) did not provide for distribution upon redemption to be at such valuation as the directors may think fit. Article 11(d) expressly recognised that the directors of Sunmax may pay preference shareholders the "issue price". It then provided that the issue price may be paid in cash or, at the discretion of the directors, by distribution of Sunmax's assets in-specie at such valuation as the directors may think fit. The words "at such valuation as the Directors may think fit" applied only to the valuation of the assets to be distributed in-specie. Although the directors had the discretion to pay the issue price by distribution in-specie, Article 11(d) did not say that Sunmax could redeem preference shares at a price lower than what Sunmax had agreed to under the 2009 PPM.

75 In my view, nothing in Article 11(d) precluded or was inconsistent with the redemption of Song's preference shares at $1,237,500 (*ie*, at issue price less management fees) based on the terms provided in the 2009 PPM. Article 11(d)

permitted Sunmax to pay the amount of $1,237,500 in cash or in-specie but that was not the issue in dispute. Sunmax's case was that its liability to Song was not $1,237,500 but an amount comprising cash of $224,510 and a distribution in-specie having an estimated value of $195,815.90 (see [22] above).

Conclusion on Song's claim for breach of contract

76 Accordingly, I concluded that Song had proved his claim for breach of contract against Sunmax and was entitled to damages in the sum of $1,237,500.

Whether the defendants were liable for conspiracy to injure

77 Song's case was that the defendants conspired to injure him by making the Representations. As stated earlier, I had initially dismissed the claim for misrepresentation (see [63] above). I also dismissed the claim for conspiracy since it was dependent on the misrepresentation claim.

78 Subsequently, after obtaining confirmation that the fund was in existence at the time the Representations were made, I revoked my order dismissing the misrepresentation claim and found instead that that the defendants were liable for fraudulent misrepresentation (see [66] above). Unfortunately, there was an omission to revoke my previous order dismissing the conspiracy claim, which should have been substituted with a finding that the conspiracy claim had been made out. I would only add that the omission made no difference to what Song was entitled to since the damages for the conspiracy claim and the misrepresentation and breach of contract claims were the same. Song was not entitled to double recovery.

Whether Song's claims were precluded by the principle in *Houldsworth*

79 The defendants relied on *Houldsworth* for its submission that Song, as a shareholder of Sunmax, should not be allowed to claim the return of his investment, as damages.[75] I disagreed with the defendants' submission. In my view, the principle in *Houldsworth* had no application to the facts of the present case.

80 In *Houldsworth*, the plaintiff bought stock from the defendant, which was a co-partnership registered under the Companies Act 1862 (c 89) (UK). The plaintiff was registered (and acted) as a partner and received dividends. Subsequently, the defendant went into liquidation. As the defendant was an unlimited company, the plaintiff (being a contributory) paid for calls. The plaintiff sued the liquidators to recover damages in respect of the sum he paid for the stock, the money he had paid in calls and the estimated amount of future calls. The plaintiff based his claim on the ground of fraudulent misrepresentation made by the defendant's directors and other officials.

81 The House of Lords held that the plaintiff could not maintain his claim for damages; his only remedy was *restitution in integrum* and rescission of his contract to purchase the stock. However, as the winding-up had commenced, it was too late for rescission and *restitutio in integrum*.

82 The fact that the defendant was an unlimited company and the plaintiff therefore had a proportionate liability to contribute towards payment of the defendant's liabilities (if the assets were insufficient) was a factor that influenced the House of Lords' decision in *Houldsworth*.

83 Earl Cairns LC was of the view (at 324–325) that the contract among the partners/shareholders was that the assets of the company would be applied

towards meeting the liabilities of the company and any deficiency would be made good by the partners proportionately; it could not have been intended that such a contract would include any application of the assets and contributions to pay the new partner damages for a fraud committed on himself by the company, *ie*, by himself and his co-partners, in inducing him to enter into the contract.

84 Lord Selborne also referred (at 329) to the contract among the shareholders that they should all contribute equally to the payment of the company's debts. His Lordship considered that the plaintiff's claim for damages was in reality against all the members except the plaintiff and it threw upon the other members the plaintiff's share of the company's debts.

85 Lord Hatherley was of the view (at 333) that allowing the plaintiff's claim could lead to "interlacing claims on the part of misled shareholders *inter se*" and concluded that the plaintiff was trying to reconcile two inconsistent positions, namely that of a shareholder (who bore an aliquot share of the company's debts) and that of creditor of the whole body of shareholders including himself.

86 Lord Blackburn noted (at 337) that the plaintiff's contract with the company was an agreement to become a partner in the company on terms that he would, in common with all his co-partners for the time being, contribute to make good all liabilities of the co-partnership.

87 In *In re Addlestone Linoleum Company* [1887] 37 ChD 191 ("*Addlestone*"), Lindley LJ described the principle in *Houldsworth* as follows (at 206):

> The principle on which the House of Lords decided *Houldsworth v City of Glasgow Bank*: (1) was that a shareholder contracts to contribute a certain amount to be applied in payment of the

> debts and liabilities of the company, and … it is inconsistent with his position as a shareholder, while he remains such, to claim back any of that money—he must not directly or indirectly receive back any part of it …

Lindley LJ's formulation of the principle in *Houldsworth* similarly acknowledged the shareholder's liability, under his contract with the company, to contribute towards payment of the company's debts.

88 It should be noted that both *Houldsworth* and *Addlestone* were decided before the landmark decision in *Salomon v A Salomon & Co Ltd* [1897] AC 22 ("*Salomon*") which established that upon incorporation, the company is a separate legal entity from its shareholders.

89 *Houldsworth* has not been free from criticism and in the UK, it was overruled by s 111A of the Companies Act 1985 (c 6) (UK) which provided as follows:

> A person is not debarred from obtaining damages or other compensation from a company by reason only of his holding or having held shares in the company or any right to apply or subscribe for shares or to be included in the company's register in respect of shares.

90 In *State of Victoria v Hodgson and others* [1992] 2 VR 613 ("*Hodgson*"), Tadgell J observed (at 625) that *Houldsworth* "no doubt bears the stamp of its era" and (at 626) that *Houldsworth* "has received very little judicial comment in its 112 years and appears to have [been] directly applied in England only once in [*Addlestone*]".

91 In *Webb Distributors (Aust) Pty Ltd and others v State of Victoria and another* (1993) 117 ALR 321 ("*Webb*"), which was an appeal from the decision of the Supreme Court of Victoria Appeal Division in *Hodgson*, the majority in the High Court of Australia (at 329) noted:

(a) the comment in Harold Arthur John Ford and Austin Robert P, *Ford's Principles of Corporations Law* (Butterworths, 6th Ed, 1992) at p 299 that it "may be that Houldsworth's case can be confined in Australia to unlimited companies*"*; and

(b) Professor Gower's criticism in Gower Laurence Cecil Bartlett, *The Principles of Modern Company Law* (Stevens, 2nd Ed, 1957) at p 295 that the decision in *Houldsworth* "[did] not seem to have recognised fully the separation between the corporate entity and the member …".

McHugh J (dissenting) described the principle in *Houldsworth* as being "misconceived because a company is an entity separate from the shareholders" and "a source of injustice because, once the company goes into liquidation, the shareholder can neither rescind the contract of allotment nor obtain damages" (at 334).

92 In *Soden and another v British & Commonwealth Holdings PLC and another* [1997] 3 WLR 840 ("*Soden*"), the House of Lords restricted *Addlestone* to cases involving the purchase of shares directly from the company (at 844D and 847C–D). The House of Lords was of the view that allowing claims by shareholders in cases where the shares were existing shares that were purchased from third parties did not "either directly or indirectly produce a reduction of capital" (at 847D).

93 In Hans Tjio, Pearlie Koh & Lee Pey Woan, *Corporate Law* (Academy Publishing, 2015), the learned authors refer to *Soden* and explain (at para 05.037) that the rationale in *Houldsworth* "appears to be that such an award may be tantamount to an impermissible return or reduction of share capital, and its exclusion is therefore necessary for the safeguard of creditor interests".

94 In *Sons of Gwalia Ltd (subject to deed of company arrangement) v Margaretic and Another* [2007] 232 ALR 232 ("*Sons of Gwalia*"), Gleeson CJ thought that the principle in *Houldsworth* was "famously elusive" (at [14]), whilst Gummow J thought that the reasoning in *Houldsworth* "bears the marks of its time" (at [70]).

95 In Singapore, the High Court in *BTY v BUA and other matters* [2019] 3 SLR 786 ("*BTY*") referred to *Houldsworth* and *Webb*, without discussion, as authorities for the following proposition (at [89]):

> … a shareholder who commences litigation against a company on a claim related to his status as a member cannot at common law recover damages from the company as a remedy for that claim … because an award of damages in these circumstances would constitute the shareholder a creditor of the company and elevate the shareholder into impermissible competition with the company's creditors.

I am not aware of any reported decision in Singapore that has discussed the principle in *Houldsworth*.

96 I should add that *Webb, Soden* and *Sons of Gwalia* concerned shareholder claims made against companies under liquidation or administration. The courts in those cases had to interpret statutory provisions that subordinated claims by a person, in his character or capacity as a member of the company, to claims by other creditors. It is not necessary for me to go into the discussions in respect of those statutory provisions as no similar issue arose in the present case.

97 In my view, it is doubtful whether *Houldsworth* should be followed. There is much to be said for Professor Gower's criticism that the decision in *Houldsworth* does not recognise fully the separation between the corporate entity and the member. Further, as Gleeson CJ pointed out in *Sons of Gwalia* (at

[5]), the "reality of modern commercial conditions [is that] assets and liabilities usually are more significant for creditors than paid-up capital".

98 In any event, in my judgment, the principle in *Houldsworth* had no application to the present case. To the extent that the decision in *Houldsworth* was influenced by the fact that the company was a partnership and the shareholders had unlimited liability, it is distinguishable. In the present case, Sunmax is a limited company and its preference shareholders (including Song) were liable only for the value of the preference shares that each had subscribed for.

99 To the extent that the decision in *Houldsworth* is to be explained on the ground that an award of damages to a shareholder would be tantamount to an impermissible return or reduction of share capital, it is also distinguishable. In the present case, Sunmax was a fund in which investments were made by way of redeemable preference shares. Sunmax had expressly agreed that, at the end of five years, Sunmax would pay Song at least the principal amount invested (less management fees). Sunmax accepted Song's investment on this very basis. It was known to all that the preference shares were to be redeemed at the end of five years. Sunmax was contractually bound to pay Song his capital investment of $1.5m less management fees. I could see no reason why the principle in *Houldsworth* should apply to preclude Song from being awarded what Sunmax had expressly agreed to pay him. Nor could I see how this would be tantamount to an impermissible return of capital.

Li's counterclaim

100 As stated in [30] above, Li claimed that pursuant to the 2009 Oral Agreement, Song had agreed to allot or transfer to Li a 15% shareholding in UC

"upon the public listing of its assets on a stock exchange". It was not disputed that on 15 March 2019, UC's Hong Kong subsidiary company, International Alliance Financial Leasing Co Ltd ("IAFL"), was listed on the Hong Kong stock exchange. In his counterclaim, Li sought 15% of the issued shareholding in UC, alternatively, the value of such shareholding.

101 I found that the Li failed to prove the 2009 Oral Agreement. In my view, the 2009 Oral Agreement was an afterthought. I agreed with Song that Li's evidence regarding the 2009 Agreement was not credible.

102 First, there was no mention of the 2009 Oral Agreement by Li until the defence and counterclaim was filed in these proceedings on 17 May 2019.[76] This was despite the fact that Li claimed to have lost trust in Song as early as 2010.[77] Further, in 2018, Li sent to Song invoices for reimbursement of expenses that Li had incurred in connection with the setting up of NSG, NSA and UC, but did not mention the 2009 Oral Agreement.[78] Li even wrote to Song's wife on 4 December 2018 and pointed out inaccuracies relating to the shareholding of UC in the listing prospectus of IAFL. According to Li, the listing of IAFL would trigger his entitlement to 15% of the shareholding in UC. Yet, Li made no mention whatsoever of the 2009 Oral Agreement or the fact that he was supposed to be given 15% of the shareholding in UC.[79]

103 Second, the defence and counterclaim that was first filed on 17 May 2019 did not include all the terms of the alleged 2009 Oral Agreement; further terms had to be added by way of amendment to the defence and counterclaim on 14 October 2019. On the stand, Li claimed that his former solicitor did not want to include the additional terms because he thought that they involved money laundering issues, and that the additional terms were included in the defence and counterclaim after the defendants changed lawyers.[80] However, Li

had to concede that his evidence was not correct after it was pointed out to him that the amendments on 14 October 2019 were in fact made *before* the defendants changed lawyers.[81]

104 Third, I found it unbelievable that Song would have agreed to give Li a 15% shareholding in UC *upon listing* as compensation for the scope of services that Li agreed to perform. Li himself said that the value of listed companies would range from "10 million to a few hundred [million]".[82] The alleged compensation of 15% of the shares in UC was wholly disproportionate to the value of Li's services.

105 As set out in [30] above, Li's services were to assist in (a) incorporating NSG, NSA and UC, (b) attending to the transfer of funds between the companies, and (c) arranging for UC to be approved as a WFOE in China. Li's services were largely administrative in nature.

106 Li enlisted the services of Company Secretarial Services Pte Ltd to incorporate the three companies. Li agreed that there was nothing complex about the incorporation of the companies.[83]

107 As for the inter-company transfer of funds, Li claimed that the transactions were "an extremely delicate and elaborate process" because he had to (a) withdraw US$9.5m from NSG's bank account and deposit the same in cash into UC's bank account on 4 May 2010, and (b) withdraw another US$9.5m from NSA's bank account and deposit the same in cash into UC's bank account in late May 2010.[84]

108 I did not believe Li's evidence. In my view, it was exaggerated to support his claim. In addition, his evidence was full of gaps and inconsistencies.

(a) There was no evidence that at the time when the alleged oral agreement was entered into in 2009, Song and Li had discussed these "delicate" transfers which only took place in 2010.

(b) It was unbelievable that Li would have tried to withdraw US$9.5m in cash from NSG's account to be deposited in UC's account in cash. In fact, Li did not do so. The evidence showed that on 4 May 2010, Li had issued a cash cheque for US$9.5m from NSG's account[85] and deposited the cheque into UC's account.[86]

(c) On the stand, Li claimed that Song had instructed him to withdraw US$9.5m in cash from NSG's account and deposit the same in cash into UC's account, so that the funds could not be traced to NSG.[87] Yet, Li had issued a cash cheque and deposited the cheque into UC's account, thereby showing the very source of the funds.

(d) Further, in his letter dated 4 December 2018 to Song's wife, Li said that it was one Ms Chen Aijun (whom Li described in the letter as Mrs Song's representative) who had given the instructions for the bank transactions in 2010.[88] Li's explanation, on the stand, was simply that what he stated in the letter was incorrect.[89]

(e) In any event, even on Li's own evidence, there was nothing "delicate" or "elaborate" about issuing a cash cheque drawn on NSG's account and depositing the same into UC's account. According to Li, the bank teller suggested that he issue a cash cheque. Li asserted that the whole transaction was possible only because the teller knew him as a reliable person and the bank was willing to dispense with "certain regulatory steps" because of his relationship with the bank.[90] I found

Li's assertion unbelievable. Also, none of these details were in his affidavit of evidence-in-chief either.

(f) Finally, there was in fact no second transfer of US$9.5m from *NSA* to UC in late May, as alleged by Li.[91] UC's bank statement for May 2010 did not show a second deposit of US$9.5m in cash or by way of cheque.[92] NSA's bank statements for May and June 2010 also did not show any cash or cheque deposit.[93]

109 With respect to UC's approval as a WFOE, Li said that he "arranged for the certification and notarisation of documents for use in China" and obtained two letters of reference from the bank confirming that UC had US$22m in its account with the bank and that the account had been "satisfactorily conducted to-date".[94] These were administrative tasks; there was nothing at all complex about them.

110 In my judgment, it was unbelievable that Song would have agreed to give Li 15% of the shareholding in UC upon listing as compensation for such services.

111 As I found that Li had not proven the 2009 Oral Agreement, it was not necessary for me to deal with Song's defence that Li's claim was time-barred. Nevertheless, it was clear that had Li succeeded in proving the 2009 Oral Agreement, the limitation defence would have failed; Li's cause of action could not have accrued until after the listing of IAFL took place in 2019.

112 In the circumstances, I dismissed Li's counterclaim for 15% of the shareholding in UC.

Conclusion

113 I entered judgment for Song against the defendants in the sum of $1,237,500, with interest at 5.33% from the date of the writ to judgment.

114 I dismissed Li's counterclaim.

115 I ordered the defendants to pay the plaintiff costs fixed at $160,000 with disbursements to be fixed by me if not agreed.

Chua Lee Ming
Judge of the High Court

Andy Lem Jit Min, Toh Wei Yi and Marcus Ng Hua Meng (Harry Elias Partnership LLP) for the plaintiff;
Daniel Koh, Ng Wei Ying and Clarence Cheang (Eldan Law LLP) for the first and second defendants.

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1 1 Agreed Bundle ("AB") 1–6.
2 1 AB 3 (sub-para (i)).
3 1 AB 30–52.
4 1 AB 30 and 33.
5 $1.5m – (0.035 x $1.5m x 5).
6 1 AB 76–79.
7 1 AB 80.
8 2 AB 32.
9 1 AB 93–113.
10 6 AB 2578–2610.
11 6 AB 2584 and 2597.
12 1 AB 231.
13 1 AB 234.

14 1 AB 487–488.
15 1 AB 524–553.
16 1 AB 550.
17 1 AB 525.
18 Statement of Claim (Amendment No 1) ("Statement of Claim"), at para 19; NE, 24 February 2021, at 20:4–16.
19 Statement of Claim, at paras 11 – 14.
20 Statement of Claim, at para 21A.
21 Defence of the 1st and 2nd Defendants and Counterclaim of the 2nd Defendant (Amendment No 3) ("Defence & Counterclaim"), at para 6.
22 Reply and Defence to Counterclaim of the 2nd Defendant (Amendment No 3) ("Reply & Defence"), at para 3.
23 NE, 25 February 2021, at 59:15-18.
24 Song's AEIC, at paras 12–14.
25 Exhibit P1.
26 Li's AEIC, at para 39.
27 1 AB 81–85.
28 Li'a AEIC, at paras 24–25.
29 NE, 2 March 2021, at 24:20–28.
30 NE, 25 February 2021, at 12:18–27
31 Li's AEIC, at para 22; NE, 2 March 2021, at 16:16–26.
32 Li's AEIC, at paras 43–46.
33 NE, 26 February 2021, at 114:2–115:6.
34 NE, 26 February 2021, at 115:7–30.
35 NE, 26 February 2021, at 120:26–121:13; 1 AB 77 (sub-para (vii)).
36 NE, 3 March 2021, at 51:3–16.
37 Li's AEIC, at paras 25–26.
38 1 AB 36.
39 NE, 26 February 2021, at 122:3–20.
40 Li's AEIC, at paras 41–43.
41 Sun Ke's AEIC, at para 5 and p 35.
42 NE, 3 March 2021, at 65:3–5.
43 8 AB 3886 (at para 3a) and 3899 (at para 2).
44 NE, 3 March 2021, at 68:31-69:3.
45 Sun Ke's AEIC, at para 6.
46 Li's SAEC, at para 40.
47 NE, 3 March 2021, at 43:25–29.
48 NE, 3 March 2021, at 45:7–11, 46:12–15.
49 Defendants' Skeletal Closing Submissions, at para 88.
50 Li's AEIC, at para 78.
51 1 AB 33.
52 NE, 26 February 2021, at 112:12–113:15.
53 Li's AEIC, at paras 25–26.
54 NE, 26 February 2021, at 130:7–132:12.
55 1 AB 76 (at para 3(i)).
56 1 AB 80.
57 NE, 26 February 2021, at 123:25–124:30.
58 Li's SAEIC, at paras 29–30, 35–36 and pp 148–150, 201–206.

[59] Li's AEIC, at paras 25, 38 and pp 145–167, 175–195.
[60] Li's SAEIC, at para 31; NE, 2 March 2021, at 40:22–41:10.
[61] Plaintiff's Bundle of Documents, at pp 15 and 18–21; NE, 24 February 2021, at 64:1–23.
[62] NE, 3 March 2021, at 61:20–31.
[63] Li's SAEIC, at p 206 (para 3).
[64] NE, 3 March 2021, at 66:1-17.
[65] Ne, 3 March 2021, at 66:18-20.
[66] NE, 2 March 2021, at 2:16–3:18.
[67] Song's SAEIC, at para 9(2) and p 37.
[68] Li's AEIC, at para 33; Song's AEIC, at para 12.
[69] NE, 4 March 2021, at 4:4–11.
[70] NE, 3 March 2021, at 58:8-12.
[71] Statement of Claim, at paras 7(2), 8 and 11.
[72] Defence, at para 24.
[73] Defendants' Skeletal Closing Submissions, at paras 83–87.
[74] Defence & Counterclaim, at para 29(6).
[75] Defendants' Skeletal Closing Submissions, at paras 89–98.
[76] NE, 3 March 2021, at 5:28-30.
[77] NE, 3 March 2021, at 11:23-12:5.
[78] 3 AB 1642, 1644 and 1646; NE, 3 March 2021, at 13:1-14:1.
[79] 3 AB 1673–1674; NE, 3 March 2021, at 14:5-15:4.
[80] NE, 3 March 2021, at 7:31-8:32.
[81] NE, 3 March 2021, at 9:12-10:9.
[82] NE, 3 March 2021, at 69:11–17.
[83] NE, 3 March 2021, at 20:30–21:3.
[84] Li's AEIC, at paras 110–111.
[85] 3 AB 1562 and 1564.
[86] 3 AB 1560.
[87] NE, 3 March 2021, at 23:8–9, 25:10–17.
[88] 3 AB 1673.
[89] NE, 3 March 2021, at 27:17–26.
[90] NE, 3 March 2021, at 24:1–7, 16–19.
[91] NE, 3 March 2021, at 28:17–23.
[92] 3 AB 1560–1561.
[93] Exhibit P4 (affidavit of Fan Qidi affirmed on 22 February 2021, at tab 1).
[94] Li's AEIC, at paras 112–114; 3 AB 1555 and 1582.