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

[2021] SGHC 14

Suit No 258 of 2016

Between

(1) Jasviderbir Sing Sethi
(2) Bashar A F A Alfulaij

… Plaintiffs

And

(1) Sandeep Singh Bhatia
(2) Abhishek Singh

… Defendants

JUDGMENT

[Contract] — [Misrepresentation] — [Fraudulent]
[Contract] — [Formation]

TABLE OF CONTENTS

Jasviderbir Sing Sethi and another
v
Sandeep Singh Bhatia and another

[2021] SGHC 14

General Division of the High Court — Suit No 258 of 2016
Vinodh Coomaraswamy J
14–17, 21–24 May, 10 October 2019; 29 January 2020

22 January 2021 Judgment reserved.

Vinodh Coomaraswamy J

Introduction

1 This action arises out of an investment which each plaintiff made in 2013 in a company owned and controlled by the first defendant ("the Company"). The plaintiffs' case in summary is that: (a) the first defendant made certain misrepresentations to them in 2012 in order to induce them to invest in the Company; alternatively (b) on the facts, the first defendant undertook a contractual obligation either in 2013 or in 2015 to return to each plaintiff the sum which he had invested in the Company plus a 30% premium. In either event, each plaintiff now seeks damages from the first defendant equivalent to the sum invested plus a 30% premium.

2 The first defendant's defence in summary is that: (a) he did not make any representations at all to the plaintiffs in 2012, let alone any

misrepresentations which induced them to invest in the Company; and (b) an offer which he made in 2015 to buy out each plaintiff's investment in the Company with a 30% premium was a non-binding, personal favour and is not a contractual obligation.

3 Having considered the parties' evidence and submissions, I accept the first defendant's defence. Accordingly, I dismiss the plaintiffs' claims in their entirety. This judgment sets out the reasons for my decision.

Background

The parties

4 Each plaintiff made his investment in the company by entering into a Convertible Note Subscription Agreement ("CNSA") with the Company in 2013.[1] Each plaintiff thus lent a sum of money to the Company which was convertible into shares in the Company on the terms set out in the CNSA.

5 The first plaintiff lent the Company US$200,000 under his CNSA. The second plaintiff lent the Company US$100,000 under his CNSA. The first plaintiff's loan has not been converted into shares in the Company. He remains a creditor of the Company. The second plaintiff's loan has been converted into shares in the Company. He is now a shareholder of the Company, holding 104,006 of its shares. That is equivalent to about 0.33% of the Company.[2]

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1 First plaintiff's AEIC at para 32.

2 Second plaintiff's AEIC at para 7; Statement of Claim (Amendment No 2) ("Statement of claim") at para 4.

6 The first defendant is the founder of the Company and holds almost 90% of its shares.[3] He is also the Company's Chief Executive Officer ("CEO") and its sole director.

7 The second defendant is a shareholder of the Company, owning just under 5% of its shares. He was also, between 2014 and 2016, the Company's Chief Operating Officer ("COO"), General Counsel and Company Secretary.[4]

8 The plaintiffs have discontinued entirely their claim against the second defendant.[5] He is therefore no longer a party to this action. He did, however, give evidence at trial for the plaintiffs.

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3 First defendant's AEIC at para 29; Statement of claim at para 6.

4 First plaintiff's AEIC at para 10; Statement of claim at para 7.

5 Notice of Discontinuance dated 3 April 2019.

The Kuwaiti Investors are introduced to the first defendant

9 The first plaintiff and the first defendant came to know each other through the first plaintiff's brother, Mr Sobers Sethi ("Mr Sobers"). In October 2012, the first defendant told the first plaintiff that he was looking for investors in the Company in a "friends and family" fund-raising round.[6] The first plaintiff and Mr Sobers introduced the first defendant to three other friends who they thought might be interested in investing: (a) the second plaintiff; (b) Yousuf Alqabandi ("Mr Alqabandi"); and (c) Mohammad Albader ("Mr Albader").[7] As a result of these introductions, the first and second plaintiffs, Mr Alqabandi and Mr Albader ultimately did invest in the Company. As all four of these investors reside in Kuwait, they were referred to collectively throughout trial as "the Kuwaiti Investors".

10 Out of the four original Kuwaiti Investors, the first defendant has returned Mr Alqabandi's and Mr Albader's investments with a 30% premium. They therefore have no cause for complaint against him[8] and are not parties to this action. Both men did, however, file affidavits of evidence in chief on behalf of the plaintiffs. Mr Albader attended trial to be cross-examined on his affidavit of evidence in chief. Mr Alqabandi did not. Mr Alqabandi's affidavit of evidence in chief therefore does not form part of the evidence before me.

The first defendant's meetings with the Kuwaiti Investors

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6 First plaintiff's AEIC at para 15; First defendant's AEIC at para 53.

7 First plaintiff's AEIC at para 17.

8 Plaintiff's Closing Submissions ("PCS") at paras 80(b)–80(c).

11 The first defendant's initial discussions with the plaintiffs about a potential investment in the Company took place towards the end of 2012. At that time, the first defendant was the Company's sole shareholder. The evidence of the plaintiffs' witnesses is that the first defendant made four oral representations ("the Representations") during these discussions in order to induce them to invest in the Company. The Representations are:[9]

(a) That the plaintiffs would be investing in a "Friends & Family" fund-raising round, and on that basis, would be kept closely informed about the management and operations of the Company ("the Information Representation");

(b) That the plaintiffs would obtain a guaranteed 30% return on their investments and would be able to cash out their investments at any time ("the Investment Exit Representation");

(c) That the first defendant would personally guarantee the plaintiffs' investment and the 30% return under the Investment Exit Representation ("the Personal Guarantee Representation"); and

(d) That the first defendant would not do anything to dilute the plaintiffs' shareholdings or to change the shareholding structure of the Company; or do any act which would adversely impact the value of the plaintiffs' investment before their exit from the Company unless otherwise agreed ("the Non-Dilution Representation").

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9 Statement of claim at para 9.

12 The plaintiffs also allege that the first defendant made the Representations in his personal capacity, *ie,* not as a director of or agent for the Company.[10]

13 The plaintiffs' evidence is that the first defendant made the Representations on four specific occasions:[11]

(a) In November 2012 at the first plaintiff's home in Kuwait to both plaintiffs in the presence of Mr Albader;[12]

(b) Later in November 2012, on a boat in Kuwait to the first plaintiff in the presence of Mr Albader;[13]

(c) In December 2012, at the first defendant's home in Singapore to the first plaintiff alone;[14] and

(d) Later in December 2012, at Mr Sobers' home in Singapore to the first plaintiff in the presence of Mr Sobers.[15]

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10 PCS at para 26; 16 May 2019 Transcript at p 125, lines 19–20; 22 May 2019 Transcript at p 47, lines 24–25, p 48, lines 1–6 and p 50, lines 15–18.

11 First plaintiff's AEIC at para 18.

12 First plaintiff's AEIC at para 20–22; Second plaintiff's AEIC at para 19.

13 First plaintiff's AEIC at para 24–para 25.

14 First plaintiff's AEIC at para 27–28; 14 May 2019 Transcript at p 111, lines 14–22.

15 First plaintiff's AEIC at para 30; Sobers' AEIC at para 21; 22 May 2019 Transcript at p 46, line 23–p 47, line 17.

The Investors subscribe for convertible notes

14 Following their discussions with the first defendant, each Kuwaiti Investor entered into a separate CNSA with the Company. The plaintiffs' evidence is that they relied on the Representations in entering into the CNSAs.

15 The CNSAs as executed are dated March 2013. That is indeed when the Company sent the CNSAs to the Kuwaiti Investors for execution.[16] However, it is common ground that the Kuwaiti Investors executed the CNSAs and lent money to the Company only in May 2013.[17] Nothing in this action turns on this two-month gap.

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16 Defence (Amendment No 1) ("Defence") at para 12(a).

17 Defence at para 12(b); PCS at para 27.

16 The terms of the four CNSAs are identical save for the amount invested.[18] In brief, under each CNSA, each Kuwaiti Investor agreed to make an interest-free loan to the Company subject to an obligation to convert his loan into shares as soon as the Company next received fresh investment. The shares were to be allotted to each Kuwaiti Investor at the same price as they were being allotted to the investor making the fresh investment. As the upside on his investment, each Kuwaiti Investor was entitled to have every US$1.00 of his loan treated as being worth US$1.30 for the purposes of the conversion.[19]

17 The relevant clauses of the CNSAs are as follows:

(a) The recitals:

> The Company proposes to raise limited convertible debt financing in a 'Friends and Family Round' (the F&F Funding) with the intent to convert such financing into ordinary shares of the Company on the occurrence of subsequent Series A Funding (as defined below) …

(b) Clause 1.1, which is the interpretation clause:

> Committed Funding Date means 29 March 2013 or such later date as may be agreed between the Parties
>
> …
>
> Conversion Event means the receipt by the Company, at any time after the Committed Funding Date, of Series A Funding
>
> …
>
> Series A Funding means any funding for the Company in exchange for ordinary shares of the Company, which may be raised from third parties, existing shareholders, the Creditors or a combination thereof at any time after the last Committed Funding Date

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18 PCS at para 29.

19 First defendant's AEIC at para 75.

(c) Clause 3.1:

> Each F&F Convertible Note shall be non-interest bearing, non-assignable and convertible into ordinary shares of the Company on the terms set out in Clause 4 below.

(d) Clause 4:

> Upon the occurrence of a Conversion Event, each Creditor shall convert their respective F&F Convertible Note into ordinary shares of the Company pursuant to an allotment in accordance with this Clause and thereby accepting full discharge the extinguishment of their respective F&F Convertible Note. An allotment pursuant to this Clause shall be of ordinary shares in the Company equivalent to one hundred and thirty percent (130%) of their respective Commitment Amount and based on the price per share established by the Series A Funding valuation of one hundred percent (100%) of the fully diluted ordinary shares of the Company (inclusive of any equity allotted to the Creditors pursuant to this Section). Such allotment to be made at the same time as allotment is to be made to the Series A Funding providers.

18 The first plaintiff lent the Company US$200,000 under his CNSA, whereas the second plaintiff lent the Company US$100,000. Mr Alqabandi and Mr Albader each lent the Company US$50,000.

The parties' relationship comes under strain

19 The friendly relationship between the parties came under strain in the first quarter of 2015. The strain was either precipitated by or manifested in four events.

20 First, in January 2015, the first defendant told the Kuwaiti Investors that the Company had commenced its Series A Funding as defined in the CNSA. If true, this was the first step to forcing the Kuwaiti Investors to convert their loans into shares. The Kuwaiti Investors were sceptical about the first defendant's

claim. When they pressed him on the identity of the Series A Funder, he was evasive.[20]

21 Further, for the purposes of the Series A Funding, the first defendant ascribed to the Company a pre-money valuation (*ie*, a valuation *before* the Series A Funding) of US$35m. The Kuwaiti Investors believed this valuation to be unjustifiably high. When they pressed the first defendant to justify his valuation, he could not do so.[21] The higher the valuation, of course, the more disadvantageous the conversion would be for the Kuwaiti Investors.[22]

22 Second, in February 2015, the first defendant indicated that he intended to extend the Company's business model in a manner which the Kuwaiti Investors believed would expose its business model and their investments to additional and unacceptable commercial and regulatory risk.[23]

23 Third, in April 2015, the plaintiffs travelled to Singapore to discuss their investments with the first defendant. A particular concern was the first defendant's justification for valuing the Company at US$35m. During their discussions, the first defendant alleged that the second plaintiff was merely a front for other investors and had not invested his own money in the Company. The second plaintiff took offence at this allegation.

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20 First plaintiff's AEIC at paras 53, 59–61 and 63.

21 First plaintiff's AEIC at paras 53–55.

22 First plaintiff's AEIC at paras 41–42; Statement of claim at para 32A.

23 First plaintiff's AEIC at para 51.

24 Finally, also in April 2015 but after the plaintiffs' trip to Singapore, the second defendant – acting on behalf of the Company and no doubt at the behest of the first defendant – informed the Kuwaiti Investors formally that a Conversion Event under the CNSA had been triggered because the Company had received the Series A Funding as at 31 March 2015. The second defendant therefore informed the Kuwaiti Investors that the Company would be converting their loans into shares in accordance with the CNSAs.[24] The Kuwaiti Investors did not accept that a Conversion Event had occurred.[25] As a result, on 21 April 2015, they told the first defendant that they did not want their loans to be converted into shares but instead wanted to cash out their investment in the Company at 130% of their initial investment.[26]

The parties meet on 5 June 2015

25 On 5 June 2015, four people met the first defendant to discuss the Kuwaiti Investors' exit from the Company ("the 5 June 2015 Meeting"). The four were: (a) first plaintiff; (b) Mr Sobers; (c) Mr Gurmeet Aman Bedi; and (c) his sister, Ms Simran Bedi. The 5 June 2015 Meeting took place at the home of Ms Simran Bedi. The first plaintiff had authority from the other Kuwaiti Investors to represent their interests at this meeting.[27] '

26 Mr Gurmeet Aman Bedi was another investor in the Company who had come in on the same friends and family round as the Kuwait Investors. Mr

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24 First plaintiff's AEIC at Tab 16, p 276.

25 First plaintiff's AEIC at para 66.

26 First plaintiff's AEIC at para 67 and Tab 16, p 276.

27 First plaintiff's AEIC at para 86.

Gurmeet Aman Bedi had also asked the first defendant to return his investment with a 30% premium. By 5 June 2015, the first defendant had done so.[28]

27 At the 5 June 2015 Meeting, the first plaintiff reiterated the Kuwaiti Investors' wish to exit their investments. The plaintiffs' case is that the first defendant agreed to buy each Kuwaiti Investor's shares in the Company after conversion at 130% of his investment. He also agreed to buy Mr Alqabandi's and Mr Albader's shares by September 2015 and then to buy the first and second plaintiffs' shares by December 2015.[29] But the first defendant told the Kuwaiti Investors that they were each required by Singapore law to convert their loans into shares before he could buy them out.[30]

28 Following the 5 June 2015 Meeting, and by September 2015, the first defendant returned to Mr Alqabandi and Mr Albader their investment together with a 30% premium.[31] In order to enable this, both men allowed the Company to convert their loans into shares.[32]

29 The first plaintiff did not accept that a Conversion Event had in fact occurred or that his loan to the Company had to be converted into shares before the first defendant could return his investment to him. The first plaintiff therefore refused to allow the Company to convert his loan into shares.[33] The

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28 PCS at paras 32(k), 38 and 80(a); First plaintiff's AEIC at paras 86 and 87(k).

29 First plaintiff's AEIC at para 88.

30 First plaintiff's AEIC at para 89 and Tab 23, pp 341–344; Statement of claim at para 38.

31 First plaintiff's AEIC at para 93; PCS at para 7(h).

32 29 January 2020 Transcript at p 8, lines 2–3.

33 First plaintiff's AEIC at para 89.

second plaintiff, however, allowed the first defendant to convert his loan into 104,006 shares in the Company.[34]

30 The first defendant did not return either of the two plaintiffs' investments. This was despite the first plaintiff sending several reminders to the first defendant to do so in the fourth quarter of 2015.[35]

31 In December 2015, in response to one of the reminders, the first defendant took the position that he had undertaken no legal obligation to return the Kuwaiti Investors' investments at the 5 June 2015 Meeting. His position was that he had offered to do so only as a favour to them, subject to his personal financial and life circumstances.[36]

32 The plaintiffs commenced this action in March 2016.

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34 PCS at para 57.

35 PCS at para 7(i).

36 First plaintiff's AEIC at para 105 and Tab 33, pp 463–466.

The plaintiffs' causes of action

33 The plaintiffs advance three causes of action against the first defendant.

34 First, the plaintiffs claim that the Representations are false, were made by the first defendant fraudulently and induced them to enter into the CNSAs with the Company. The plaintiffs accordingly claim damages against the first defendant in the tort of deceit or under the Misrepresentation Act (Cap 390, 1994 Rev Ed).[37] Each plaintiff accordingly seeks an order that the first defendant pay to him his investment in full plus the 30% premium under the Investment Exit Representation ("the Misrepresentation Claim").[38]

35 Second, and in the alternative, the plaintiffs claim that the Representations gave rise to a separate contract between the Kuwaiti Investors and the first defendant ("the Separate Contract"). The Separate Contract obliged the first defendant to pay each Kuwaiti Investor the amount of his investment together with a 30% premium.[39] The first defendant breached the Separate Contract. Each plaintiff accordingly seeks damages against the first defendant for breach of the Separate Contract ("the Separate Contract Claim").[40]

36 In the final alternative, the plaintiffs claim that the first defendant entered into an oral contract with each of the Kuwaiti Investors at the 5 June 2015 Meeting under which he is obliged to purchase the Kuwaiti Investors' shares at a purchase price equal to 130% of their respective investments by

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37 PCS at paras 66–67.

38 Statement of claim at p 30, paras (a)–(b).

39 Statement of claim, paras 32B–32E.

40 PCS at paras 98–99; Statement of claim at p 30, para (c).

September 2015 (for Mr Alqabandi and Mr Albader) and by December 2015 (for the plaintiffs) (see [25] above) ("the Repayment Contract").[41] The first defendant has breached the Repayment Contract in respect of the plaintiffs.[42] The plaintiffs accordingly seek specific performance of the Repayment Contract[43] or damages against the first defendant for its breach ("the Repayment Contract Claim").[44]

37 I address each of the plaintiffs' three causes of action in turn.

Misrepresentation claim

Two preliminary points

38 Before analysing the plaintiffs' Misrepresentation Claim on the merits, I make two preliminary points.

39 First, the plaintiffs' reliance in their Misrepresentation Claim on the Misrepresentation Act is misconceived. The plaintiffs' claim in this action is that the first defendant acted at all times in his personal capacity and not as the Company's director or agent.[45] The plaintiffs' claim against the first defendant is therefore that *he* made certain misrepresentations to them which caused them to enter into the CNSAs with *the Company*. On the plaintiffs' case, this is therefore a tripartite situation involving two contractual counterparties (a

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41 Statement of claim at para 37.

42 PCS at paras 127–147.

43 Statement of claim at p 30, para (cb).

44 Statement of claim at p 30, para (cc).

45 PCS at para 26.

Kuwaiti Investor and the Company) and a representor who is not a party to the contract (the first defendant). Framed in this way, the plaintiffs' Misrepresentation Claim cannot be brought within the scope of the Act. That is because the Misrepresentation Act applies only in a bipartite situation: where a party to a contract made a misrepresentation to the counterparty to that same contract which induced the counterparty to enter into the contract. The plaintiffs' Misrepresentation Claim can therefore rest only in tort at common law and not on the Misrepresentation Act.

40 Second, insofar as it rests in tort, the plaintiffs rely for the Misrepresentation Claim only on fraudulent misrepresentation. They plead no alternative claim against the first defendant for negligent misrepresentation upon the principle in *Hedley Byrne v Heller* [1964] AC 465. Therefore, if the plaintiffs fail to establish that the first defendant made the Representations fraudulently, their Misrepresentation Claim fails entirely.

41 With those preliminary points out of the way, I now turn to consider the plaintiffs' Misrepresentation Claim, confined as it is to common law misrepresentation and the tort of deceit.

What the plaintiffs must prove

42 It is common ground that, in order to succeed in their claim in fraudulent misrepresentation, the plaintiffs must establish the following facts (*Panatron Pte Ltd v Lee Cheow Lee* [2001] 2 SLR(R) 435 at [14]):

(a) That the first defendant made to them a representation of fact by words or conduct which is false;

(b) That the first defendant made the representation with the intention that the plaintiffs should act in reliance upon it;

(c) That the plaintiffs did indeed act in reliance on the representation;

(d) That the plaintiffs have suffered damage by acting in reliance on the representation; and

(e) That the first defendant made the false representation knowing that it is false or in the absence of any genuine belief that it is true.

43 The heart of the plaintiffs' plea on the Misrepresentation Claim is in paragraphs 9 to 11 of their statement of claim. In paragraph 9, the plaintiffs plead that the first defendant made the Representations in order to induce the plaintiffs to invest in the Company. In paragraphs 10 and 11, they plead that the Representations did induce the plaintiffs to invest in the Company and to enter into the CNSAs. The plaintiffs then plead in paragraphs 15B and 15C that the Investment Exit Representation and the Non-Dilution Representations were false and that the first defendant made those representations fraudulently.

44 The first defendant's defence to the Misrepresentation Claim is somewhat disjointed and unfocused. The heart of his defence appears in paragraphs 10 to 12 of his pleaded defence, responding to paragraphs 9 to 11 of their statement of claim:[46]

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46 Defence (Amendment No 1) ("Defence") at paras 10–12.

> 10. Save that it is admitted that during the original discussion between the 1st Defendant and the Plaintiffs, the 1st Defendant informed the Plaintiffs that they would be investing in a "Friends & Family" round, paragraph 9 of the SOC is denied and the Plaintiffs are put to strict proof. …
>
> 11. Save that it is not admitted that the 1st and 2nd Plaintiffs decided in or around March 2013 to invest … in the Company, paragraph 10 of the SOC is denied and the Plaintiffs are put to strict proof thereof. The 1st Defendant further avers that even if representations were made by the 1st Defendant to the Plaintiffs (which is denied), the Plaintiffs were not and/or ought not to have been induced by or otherwise relied on such representations. Further and/or alternatively, the 1st Defendant honestly believed the said Representations to be true. Further and/or alternatively, the Representations (which is denied save as expressly admitted) were a mere expression of opinion by the 1st Defendant and do not amount to representation(s).
>
> 12. Paragraph 11 of the [statement of claim] is denied and the Plaintiffs are put to strict proof. The 1st Defendant repeats Paragraph 11 above.
>
> [Underlining, strike out and particulars omitted]

45 When this plea is read in conjunction with the defendants' closing submissions, it is possible to discern several defences which can be distilled and restated in the following more logical sequence of propositions:

(a) The first defendant did not make the Representations.[47]

(b) Even if he did, the Representations are mere expressions of opinion, not representations of past or present fact, and are therefore not actionable.[48]

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47 First defendant's AEIC at paras 59, 82–84 and 89; First Defendant's Closing Submissions ("DCS") at paras 77 and 81.

48 DCS at para 81.

(c) Even if the Representations are actionable, the first defendant honestly believed the Representations to be true.

(d) Even if he did not believe them to be true, the plaintiffs did not rely on the Representations,[49] or were unreasonable in doing so, when they decided to invest in the Company and to enter into the CNSAs.[50]

46 For the first defendant to defeat the Misrepresentation Claim, it suffices for him to defeat the plaintiff's case on any one of these four propositions. In my view, he has defeated the plaintiffs' case on the first proposition. I therefore need not and do not deal with the remaining propositions.

The first defendant did not make the Representations

47 The burden lies on the plaintiffs to prove that the first defendant made the Representations (*Trans-World (Aluminium) Ltd v Cornelder China (Singapore)* [2003] 3 SLR(R) 501 at [29]). The plaintiffs have failed to discharge this burden.

48 The events underlying this action can be divided into three critical phases. Phase 1 is the period between October 2012 (when discussions began about the Kuwaiti Investors investing in the Company (see [9] above)) and May 2013 (when the plaintiffs entered into the CNSAs (see [14]–[15] above)). Phase 2 is the period from May 2013 until April 2015 (when the Kuwaiti Investors expressed an intention to exit their investment (see [24] above)). Phase 3 is the

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49 DCS at para 85.

50 DCS at para 82.

period from April 2015 until March 2016 (when the plaintiffs commenced this action).

49 The crucial period for the Misrepresentation Claim is, of course, Phase 1. The Representations must precede the CNSAs, otherwise the Representations cannot have induced the plaintiffs to enter into the CNSAs. But a significant difficulty which the plaintiffs face in discharging their burden is that there is no direct evidence of the Representations in any of the documents which the parties generated in any of these three phases. Indeed, some of the documents, particularly those generated in Phase 3, are completely inconsistent with the inherent probabilities if the plaintiffs' case were true. I analyse these documents further at [144]–[148] and [91]–[115] below.

50 It is not, of course, unusual for there to be no evidence of the Representations in the documents. It is common for a plaintiff to base a misrepresentation claim on misrepresentations which are entirely oral. These plaintiffs are no exception.[51] The lack of documentary evidence of the Representations is therefore not fatal to the plaintiffs' claim.

51 To discharge their burden, the plaintiffs rely on four sets of evidence: (a) the evidence of the plaintiffs and their witnesses, both in chief and under cross-examination; (b) an email from the first plaintiff to the first defendant in Phase 2; (c) the first defendant's conduct in returning both Mr Alqabandi's and Mr Albader's investments and in making arrangements to return the plaintiffs' investments; and (d) the defendant's lack of credibility, which undermine his evidence that he made no representations whatsoever to the plaintiffs.

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[51] PCS at para 11.

52 It is my finding that these four sets of evidence, even taken together, do not suffice to discharge the plaintiff's burden of proof. It is also my finding that the following two sets of evidence support the first defendant's defence: (a) the parties' correspondence in Phase 3, especially the pre-action correspondence between the parties' solicitors; and (b) the first defendant's evidence as to the uncommercial nature of the Representations.

53 I now analyse each of these sets of evidence in turn.

The evidence of the plaintiffs, Mr Sobers and Mr Albader

54 The plaintiffs' witnesses at trial were the two plaintiffs themselves, Mr Sobers, Mr Albader and the second defendant.[52] The second defendant gave his evidence in chief orally, with leave of the court, but without need for a subpoena.[53] I analyse his evidence separately from that of the first four of the plaintiffs' witnesses.

55 These four witnesses filed affidavits of evidence in chief. All four of them claimed that they were present when the first defendant made various of the Representations at various times in November and December 2012 (see [13] above). I have incorporated the evidence of both plaintiffs, Mr Sobers and Mr Albader as to the making and the content of the Representations in my account of the plaintiffs' case at [11]–[13] above. The accounts of these four witnesses in this regard were clear, categorical and consistent.

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52 PCS at p 139, paras (a)–(d).

53 PCS at p 139, para (f); 21 May 2019 Transcript at p 6, lines 6–7.

56 Their accounts were, however, too clear, too categorical and too consistent. An analysis of the affidavits of evidence in chief of the plaintiffs and their witnesses[54] which first defendant's counsel tendered at trial showed 32 instances where entire paragraphs of the first plaintiff's affidavit of evidence in chief had been replicated in the affidavits of evidence in chief of the second plaintiff, Mr Sobers and Mr Albader.[55]

57 The first plaintiff's explanation for the similarities in these affidavits of evidence in chief was that "[i]f they are very similar, that's how the story was". It is, of course, true that if several witnesses testify to the same events, their accounts will inevitably bear similarities. But the 32 passages which the first defendant's counsel identified were not mere similarities. These passages were replicated verbatim or almost verbatim right down to the punctuation and the turns of phrase. The first defendant's counsel is correct that "[t]he replication of content was not just in substance, but also in exact literal form, so much so that vast tracts of the [these four witnesses' affidavits of evidence in chief] were indistinguishable from each other".[56] These similarities go well beyond what would ordinarily be expected from witnesses who are testifying about the same events.

58 The first defendant invites me to infer from this that the plaintiffs and their witnesses, in effect, colluded in preparing their affidavits of evidence in chief. His submission is that the evidence of each of these four witnesses, as set

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54 Exhibit D1.

55 14 May 2019 Transcript at p 64, lines 15–30; 16 May 2019 Transcript at p 63, lines 16–31.

56 DCS at para 17.

out in his affidavit of evidence in chief, is not the product of his own independent memory (as it should be) but is instead the product of a deliberate exercise undertaken by the plaintiffs to pool the memories of their witnesses in order to shape their evidence and put forward a uniform account supporting the plaintiffs' best case.[57]

59 This submission goes much further than it needs to. I do not accept it. It appears to me that what actually happened – as the first defendant's counsel himself alluded to in the first plaintiff's cross-examination[58] – is that the affidavit of evidence in chief of the first plaintiff was drafted first on his instructions in the usual way, and then used as a template for the affidavits of evidence in chief of the other three witnesses. Those affidavits were then put in front of those three witnesses who, at best, skim read them without concentrating on the detail before affirming them. Mr Albader himself conceded that that was how he had approached his own affidavit of evidence in chief.[59]

60 Thus, for example, the affidavit of evidence in chief of the first plaintiff contains a paragraph[60] which describes the second defendant and his role in this action. This paragraph concludes with the following sentence: "The Suit was initially also filed against [the second defendant], but *we, the Plaintiffs* discontinued the action against [the second defendant] on the 3 April 2019." [emphasis added].[61] This paragraph – including the first-person plural pronoun

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57 DCS at paras 18(a)–18(b).

58 14 May 2019 Transcript at p 64, lines 22–30.

59 17 May 2019 Transcript at p 70, lines 22–25.

60 First plaintiff's AEIC at para 10.

61 17 May 2019 Transcript at p 71, lines 17–22.

"we" – is replicated without amendment in Mr Albader's affidavit of evidence in chief. Mr Albader is not, of course, a plaintiff in this action. He could not have played any part in discontinuing this action against the second defendant. This paragraph was clearly cut and pasted into Mr Albader's affidavit of evidence in chief from the first plaintiff's affidavit of evidence in chief without the necessary consequential amendment. Curiously, the same paragraph appears in Mr Alqabandi's affidavit of evidence in chief, but *with* the necessary consequential amendment, *ie* with the "we," correctly deleted so that the final sentence refers simply to "the Plaintiffs" discontinuing the action against the second defendant.

61 The plaintiffs submit that the evidence of the second plaintiff, of Mr Sobers and of Mr Albader are consistent with and serve to corroborate the first plaintiff's evidence.[62] I do not accept that submission. The evidence which emerged at trial about the circumstances in which these four witnesses' affidavits of evidence in chief were drafted and affirmed does not allow me to treat them as independent of the first plaintiff's evidence, and therefore as corroboration of his evidence. As a result of these findings, I give no corroborative weight to the evidence of these three witnesses in assessing the first plaintiff's evidence as to the making and the content of the Representations.

62 It is also the case that Mr Sobers has an obvious financial interest in this suit. The evidence at trial was that the first plaintiff's investment in the Company was in fact one of many joint investments which the two brothers have made in the name of only one brother.[63]

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62 PCS at para 149.

63 14 May 2019 Transcript at p 34, lines 7–12 and p 44, line 11–p 45, line 5.

63 As for Mr Albader, it is true that the first defendant has bought out his investment in the Company.[64] Mr Albader therefore has no cause for complaint against the first defendant or financial interest in the outcome of this suit. But Mr Albader is a good friend of the plaintiffs and of Mr Sobers.[65] This association is in my view sufficient to raise a real possibility that he is not a wholly impartial witness. This may also explain Mr Albader's failure to own the preparation of his own affidavit of evidence in chief and to attain mastery of its contents.

64 However, my finding that the affidavits of evidence in chief of the second plaintiff, Mr Sobers and Mr Albader are not corroborative of the first plaintiff's affidavit of evidence in chief does not, in itself, undermine the weight of the first plaintiff's own evidence. That is because I accept, contrary to the first defendant's submission, that the source of the evidence in the first plaintiff's affidavit of evidence in chief is his own independent memory of the relevant events, assisted in the usual way by reviewing the relevant documents. The shortcomings in the preparation of the other witnesses' affidavits of evidence in chief was, in that sense, downstream from and unconnected to the source of the first plaintiff's evidence in chief. The veracity of the first plaintiff's evidence will therefore have to be assessed like all other oral evidence: by weighing it in the light of the opposing oral evidence, the independent and objective evidence and the associated inherent probabilities.

The second defendant's evidence

65 I turn now to consider the evidence of the second defendant.

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64 Plaintiffs' Reply Submissions ("PRS") at para 37.

65 17 May 2019 Transcript at p 79, lines 13–21.

66 The second defendant admitted in cross-examination that he was not present at any of the discussions between the Kuwaiti Investors and the first defendant in November and December 2012 at which the plaintiffs allege the first defendant made the Representations.[66] He therefore cannot give any direct evidence of the Representations within the meaning of s 61 of the Evidence Act (Cap 97, 1997 Rev Ed).

67 The second defendant also accepted in cross-examination that he had no knowledge of the Information Representation, the Personal Guarantee Representation or the Non-Dilution Representation until he saw the plaintiffs' statement of claim in this action.[67] He therefore cannot give even *indirect* evidence of these three Representations.

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66 21 May 2019 Transcript at p 76, lines 20–28.

67 21 May 2019 Transcript at p 78, lines 12–18.

68 The only evidence that the second defendant can give, therefore, is indirect evidence on the Investment Exit Representation. On that subject, the second defendant's oral evidence in chief was that the first defendant told him at various times that he had agreed to buy out the Kuwaiti Investors:[68]

> Q Is this the first time you're hearing that an allegation has been made that representations were made in November and December 2012? Is this the first time you're hearing this?
>
> A No, Sir. Because [the first defendant] had said---okay, let me---let me clarify. [The first defendant] had told me at various times that he had agreed with [the first plaintiff] that if any of the Kuwaiti investors wanted to exit their investment he would - quote unquote - buy them out.

69 This evidence is, of course, admissible as an admission by the first defendant. However, for three reasons, I do not give much weight to this evidence.

70 First, the second defendant's evidence about the "various times" at which the first defendant made these statements to the second defendant was unsatisfactory. The second defendant joined the Company formally as an employee in September 2014.[69] His evidence was that the first defendant had made these statements to him both before and after he joined the company. That does not, in itself, assist the first plaintiff on the Misrepresentation Claim. To succeed on that, the plaintiff must prove that the first defendant made the Investment Exit Representation to the plaintiffs before May 2013.

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68 PCS at para 82; 21 May 2019 Transcript at p 77, lines 1–7 and p 78, lines 10–18.

69 21 May 2019 Transcript at p 79, lines 15–17.

71 Plaintiffs' counsel asked specifically for further details of the "various times". In response, the second defendant said this:[70]

> Q You just told the Court that you had heard [the first defendant] say this to you at various times. I'm quoting, "various times". Can you be more precise what you mean by "various times"?
>
> A It was after that he had invested their monies into [the Company]. So at various times would be on at most one or two occasions---I think one or two occasions or a handful of occasions at most before I joined the company and then on a handful of occasions after I joined the company.

72 The second defendant's answer is ambiguous. It can mean either that the first defendant made these statements to the second defendant after the Kuwaiti Investors had invested in the Company. Or it could mean that it was only after the first defendant made these statements to the second defendant that the Kuwaiti Investors invested in the company. The plaintiff's counsel did not attempt to clarify this ambiguity. Given that the second defendant was giving his evidence in chief orally, *ie* without an affidavit of evidence in chief, discretion on counsel's part was no doubt the better part of valour. But the ambiguity which he allowed to remain in the second defendant's evidence on this crucial point must, in the final analysis, tell against the plaintiffs, as the party on whom the burden of proof rests.

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[70] 21 May 2019 Transcript at p 78, lines 19–25.

73 Second, the second defendant's more detailed account of the first defendant's statements to him is neutral as between the plaintiffs' case and the first defendant's case. Counsel for the plaintiffs asked the second defendant why the first defendant would volunteer this information to him:[71]

> Q Why would [the first defendant] volunteer this information to you or what was the context in which he would tell you these things?
>
> A It was the way in which he volunteered the information. It was friendly talk early on. It was the tone in which he communicated. It was boastful at first, it was as if to convey the impression that, "I have enough that if an investor is being disruptive or if an investor not to my liking, I can simply buy them out and tell them to be on their way." And that tone changed to almost stressed tone over time, after I joined the company and as the relationship with the Kuwaiti investors frayed, and it appeared his own means were a little constrained.

74 On another occasion, the second defendant expanded on his evidence of the first defendant's statements to him in this way:[72]

> Q Do you recall any more details about any instances after September 2014? It's a bit closer in time to where we are today.
>
> A Specific instance after September is your question, right?
>
> Q If possible.
>
> A Okay. About May of 2015, May of 2015 was when [the first defendant] had bought out Mr [Gurmeet] Aman Bedi's convertible note … and at that time there was a discussion---there was a conversation between him and me about him buying out a number of convertible note holders and the conversation that we had at that time

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71 21 May 2019 Transcript at p 78, line 31–p 79, line 7.

72 21 May 2019 Transcript at p 79, line 20–p 80, line 4.

> in broad terms was that the Kuwaiti investors and Sobers will try and align Aman Bedi and Avtar Gill and they were all trying to collectively pressure me to buy them all out quickly. I want to do it piecemeal and I will do it in the order of nuisance value, so to speak. So the more wealthy and more well-connected an investor was in [the first defendant's] mind, that was a higher priority to finish sooner and he could manage the other investors later. That was the---that's an instance in which I recall him saying, "I do need to buy them out" or that, "I will buy them out, but I have to prioritise and manage my resources."

This account of the second defendant's statement is equally consistent with the first defendant's case that he made a non-binding offer to buy out the Kuwaiti Investors as personal favour, rather than undertaking any obligation to do so.

75 Third, I accept the first defendant's submission that the second defendant is not a wholly impartial witness. The second defendant has a reason to be adversely disposed to the first defendant. The second defendant accepted in cross-examination that he has a fractured relationship with the first defendant,[73] although he hastened to add that he would endeavour to testify truthfully.[74] The catalyst for the fracture was the first defendant's decision to compel the second defendant to transfer part of his shares in the Company to a third party in April 2017.[75] Further, the second defendant is a defendant in a separate ongoing suit brought against him by the Company in July 2017, shortly after the defendants' relationship fractured.[76] That suit was no doubt brought at

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73 21 May 2019 Transcript at p 36, lines 1–3 and 22 May 2019 Transcript at p 97, lines 20–29.

74 22 May 2019 Transcript at p 98, lines 15–21.

75 21 May 2019 Transcript at p 36, lines 5–10 and 22 May 2019 Transcript at p 97, line 20–p 98, line 2.

76 22 May 2019 Transcript at p 96, lines 19–25.

the behest of the first defendant as the Company's sole director and controlling shareholder. In that suit, the Company makes serious allegations against the second defendant of breach of a number of duties under his employment contract including his duty of confidence.[77] In addition, the second defendant has a reason to be favourably disposed to the plaintiffs. It was only after the plaintiffs agreed to settle their dispute with the second defendant that he agreed to give evidence for the plaintiffs. For both these reasons, I accept that the second defendant has reason to slant his testimony against the first defendant and in favour of the plaintiffs, even while endeavouring to speak the truth.

The first plaintiff's email in May 2015

76 The email from Phase 3 which the plaintiffs rely on as evidence of the Representations is an email from the first plaintiff to the defendant in May 2015.

77 On 19 May 2015, the second defendant sent an email to the Kuwaiti Investors, following up on his 19 April 2015 email (see [24] above), asking for their addresses so that the Company could mail their share certificates to them after conversion.[78]

78 The first plaintiff responded to the second defendant on the same day to point out that the Kuwaiti Investors had asked to exit their investments with a 30% premium:[79]

> I thought everyone has asked not to have their shares converted into shares and wanted to cash out the convertible bond and

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77 Second defendant's affidavit filed on 8 October 2018 at p 20 at paras 6–7.

78 Agreed Bundle of Documents (Vol 4) ("ABD-4") at p 309.

79 PCS at para 74; ABD-4 at p 180.

> take their 30% on principle? [The first defendant], has confirmed to me in the past that when anyone wants to leave he will issue a cheque for principle [*sic*] and 30%. Hence now only that action needs to be taken.
>
> Hence, no need for any conversion into shares and no certificates need to be issued. Dear all, please confirm if this is correct."
>
> [emphasis added]

79 The first plaintiff submits that his assertion of the first defendant's confirmation in this email is corroboration of the first plaintiff's oral evidence of the Representations, and in particular the Investment Exit Representation.

80 For four reasons, I do not accept this submission.

81 First, the first plaintiff sent this email in May 2015. This is two and a half years after the first defendant allegedly made the Representations and two years after the plaintiffs entered into the CNSAs. If the Representations had indeed been made, and if the Representations were indeed so crucial to the plaintiffs' decision to invest in the Company and to enter into the CNSAs, one would have expected some evidence of the Representations to have surfaced in the parties' correspondence much earlier.

82 Second, the assertion in this email is entirely self-serving. The email originates from the first plaintiff. Furthermore, the first plaintiff made this assertion at a time when the parties' relationship had already come under strain. By May 2015, the Kuwaiti Investors had expressed doubts about the first defendant's US$35m valuation for the Company and his assertion that a Conversion Event had occurred. They were seeking the return of their investment with a 30% premium (see [19]–[24] above). The Kuwaiti Investors had thus already taken a position opposed to that of the Company and of the

first defendant. There was therefore every incentive for the first plaintiff to attempt bolster the Kuwaiti Investors' position in the correspondence.

83 Third, the first plaintiff does not, in this email, say when exactly "in the past" the first defendant allegedly gave this confirmation to the first plaintiff. The first plaintiff's assertion in this email may therefore be some evidence that the first defendant gave the first plaintiff a confirmation akin to the Investment Exit Representation at some time before May 2015. But it is not evidence of the crucial issue of fact in this action: that the first defendant made the Investment Exit Representation to the plaintiffs *before* the plaintiffs entered into the CNSAs in May 2013. Indeed, it could be said that the first plaintiff's failure in this email to make any specific reference to the Representations or the plaintiffs' reliance on them supports the first defendant's defence.

84 Fourth, there is nothing in this email which talks about the source of the funds to be paid to the plaintiffs. The first plaintiff's statement in this email that the first defendant "will issue a cheque for principle [*sic*] and 30%" is equally consistent with the first defendant causing the Company to redeem the Kuwaiti Investors' loans with a 30% premium out of its own funds as it is with the first defendant buying out the Kuwaiti Investors personally and paying them a 30% premium out of his own funds.

85 The plaintiffs make much of the fact that the first defendant failed to reject the first plaintiff's assertion in this email.[80] But I do not think that this failure is significant for two reasons.

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[80] PCS at paras 75–76.

86 First, the response to this email on 24 May 2015 amounts to an implicit rejection of the first plaintiff's assertion. The response came from the second defendant to the first plaintiff. It shows that the proposal under discussion at that time was not any payment by the first defendant to the Kuwaiti Investors out of his own funds amounting to 130% of their investment in the Company. Instead, the proposal was that the Kuwaiti Investors exit their investment by converting their loans at 130% into shares and then selling those shares either to the Company's existing shareholders or to outside shareholders in accordance with the pre-emption provisions in the Company's Articles of Association.[81] For that reason, the second defendant explained to the first plaintiff in this email why the Kuwaiti Investors' loans would have to be converted into shares:[82]

> Three topics in this email:
>
> 1. Sale of the shares to be allotted to you;
>
> 2. Need for ID and Residence proof documents; and
>
> 3. Confirmation of beneficial ownership of the shares to be allotted to you.
>
> **Summary**
>
> (1) The way to exit your investment, in the only way the Company can facilitate and be a part of, is to sell your shares in the Company once these are allotted to you. The Company woad have 3 months to sell to other shareholders on your behalf, after which you have 6 months to do so independently to third parties. You can confirm on this by replying (i) Yes to this email.
>
> [emphasis original]

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81 ABD-4 at p 306.

82 ABD-4 at p 306.

87 Second, the first plaintiff disclosed in discovery his private email exchange in May 2015 with Mr Sobers Sethi and with another investor, Mr Avtar Gill, about the proposal in the second defendant's email of 24 May 2015.[83] In that exchange, Mr Sobers Sethi asked what would happen if the Kuwaiti Investors' loans were converted into shares but the shares could then not be sold. Mr Avtar Gill said that he and his wife, Ms Kuldip Gill, were concentrating on preparations for what must have been a child's wedding and would not look at this issue until July 2015:

> Kuldip and I are not making any decisions as of now. We are involved in Sital's Wedding preparations and will look at this in July. It may mean, they will issue shares to us and then we are in a similar boat to you. Sink or swim together.

88 The first plaintiff eventually responded to Mr Avtar Gill in terms that showed he was sanguine about the possibility of allowing his loan to be converted into shares:

> Hi. I think under the current circumstances your thoughts and decision is the best.
>
> I would only request we keep things between all of us for the time being until the wedding is a BIG SUCCESS then we all can discuss how to move forward. Please keep in mind I have 3 other friends who have collectively invested $200,000/- USD and I don't want anything to compromise their monies.
>
> Bobby's initial idea was good…who know's [*sic*] maybe by Jluy he sells it for 35 million and we all cash out happily!
>
> I wish you and Kuldip the best for Sital's wedding.

89 This is not the reaction one would expect if the plaintiffs had actually been induced to invest in the Company by the first defendant assuring them that

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[83] ABD-4 at pp 303–305.

he would buy out the Kuwaiti Investors at 130% from the first defendant's own funds and the first plaintiff had just been told by the second defendant that the first defendant did not intend to honour that promise and was suggesting a sale of shares instead.

Parties' correspondence in Phase 3

90 It is convenient at this point to trace the parties' correspondence in Phase 3. I leave aside, for the time being, the correspondence about the 5 June 2015 Meeting. That correspondence is directly relevant only to the Repayment Contract Claim. I therefore analyse that correspondence separately at [144]–[148] below.

91 The remaining Phase 3 correspondence is wholly at odds with the plaintiffs' case in this action. Reading this correspondence in context bearing in mind the inherent probabilities supports my finding that the first defendant did not make the Representations. The correspondence begins on 11 June 2015 when the first defendant and Mr Alqabandi corresponded about the arrangements for Mr Alqabandi's exit.[84] In due course, Mr Alqabandi received the return of his investment with a 30% premium.[85]

92 In July 2015, Mr Albader and the first defendant exchanged emails on Mr Albader's exit.[86] Despite the strain in the parties' relationship, the tone of the correspondence remained entirely informal and completely friendly. At one

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84 ABD-4 at p 334.

85 Statement of claim at para 45.

86 ABD-4 at pp 340 and 344.

point, the first plaintiff even congratulated the first defendant and the second defendant upon the formal announcement of a positive business development for the Company.[87] Indeed, even at this late juncture, in July 2015, Mr Albader expressed a willingness to reconsider his decision and to remain an investor in the Company if the first defendant could demonstrate that there had been developments which improved the Company's prospects.[88] Having spoken to the first defendant by Skype, however, Mr Albader decided to take the 30% premium and exit his investment in the Company.[89] Mr Albader and the first defendant then exchanged correspondence in July and August 2015 on the formalities of his exit and the mechanics of payment.[90] In due course, Mr Albader too received the return of his investment with a 30% premium.[91]

93 In August 2015, the first defendant initiated discussions about the second plaintiff's exit.[92] When progress stalled, the first plaintiff emailed the first defendant on 9 September 2015 as follows:[93]

> Hi. Please advise if [the second plaintiff's] funds have been transferred?

94 The first defendant replied to the first plaintiff on the same day as follows:

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87 ABD-4 at p 356.

88 ABD-4 at p 344.

89 ABD-4 at p 362.

90 ABD-4 at pp 364–398.

91 Statement of claim at para 45.

92 ABD-4 at p 399

93 ABD-4 at p 411.

> … we had discussed and agree that i [*sic*] would clear or you and [the second plaintiff] in December. [Mr Alqabandi] and [Mr Albader] were to be cleared now. I will check my notes again and if I am mistaken will rectify

95 The first plaintiff replied to the first defendant, also on the same day, as follows:

> Hi. [The second plaintiff] was September and I was to be cleared by December.
>
> You have raised the necessary funding clear it all and get it over with buddy!
>
> I will re check as well.
>
> Thanks!

96 The next day, the first defendant replied to the first plaintiff as follows:[94]

> Yes, [the Company] has raised the funding however purchasing of your shares would be done by me in a personal capacity nothing to do with the company or that account.
>
> Given the outlays I have incurred I had said when we met that while if I can do it early as October I would otherwise December

97 In September 2015, the second plaintiff allowed the Company to convert his loan under the CNSAs into shares in the Company.[95] The first plaintiff did not believe the first defendant's assertion that conversion was required under Singapore law for the first defendant to buy out the first plaintiff's investment in the Company. The first plaintiff accordingly refused to allow the Company to convert his loan into shares.[96]

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94 ABD-4 at p 411.

95 Statement of claim at para 44.

96 Statement of claim at para 44.

98 On 5 October 2015, the second plaintiff asked the first plaintiff to chase the first defendant to progress the second plaintiff's exit.[97] On 16 October 2015, the first plaintiff sent a chaser. In it, he also asked for his own exit to be wrapped up at the same time if possible.[98] The first plaintiff and the first defendant then engaged in a brief exchange about getting the second plaintiff's identification and address documentation translated into English from Arabic.[99]

99 When there was no progress or update on the second plaintiff's exit, the first plaintiff sent the second defendant a reminder on 24 October 2015.[100] The first defendant responded to this reminder on 24 October 2015 as follows:

> I am in Delhi dude...will try today and you can reach me on 9560715299

100 The first plaintiff sent the first defendant two more reminders in November 2015: on 1 November and 13 November 2015.[101]

101 From 11 June 2015 up to this point, 13 November 2015, the plaintiffs' tone in the correspondence remained informal and friendly despite the strain and their by-now adversarial position. The first plaintiff makes no reference in any of this correspondence to the first defendant having made any representations to the Kuwaiti Investors in 2012. He makes no reference to any of the Kuwaiti Investors having relied on the first defendant's personal assurances in deciding to invest in the Company or to enter into the CNSAs. He

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97 ABD-4 at p 415.

98 ABD-4 at p 421.

99 ABD-4 at p 428.

100 ABD-4 at p 434.

101 ABD-4 at pp 440 and 444.

makes no reference to the first defendant having defrauded the plaintiffs by failing to honour his assurances. He makes no reference to the first defendant being under any legally-binding obligation to buy out the Kuwaiti Investors, whether under a Separate Contract or a Repayment Contract.

102 On 13 November 2015, the first plaintiff's tone changed, but even then, only slightly. The first plaintiff sent the first defendant another reminder,[102] asking the first defendant to settle the second plaintiff's exit as soon as possible and to settle the first plaintiff's own exit by December 2015 or earlier "as agreed". For the first time, the first defendant refers to the 5 June 2015 meeting. He also copies the email, including the preceding email thread going back to August 2015, to Ms Simran Bedi and Mr Sobers. The first plaintiff's tone in this email was now more formal but remained polite and cordial.[103]

103 On 6 December 2015, the first defendant responded to the first plaintiff in a lengthy email. The email made three principal points.[104]

(a) First, that the first defendant did not consider himself under any legal obligation to buy out the Kuwaiti Investors:

> This offer to help facilitate an exit for all of you, was always and only ever extended in a personal capacity on the basis of a personal favour that I would try and do based on my own financial and life circumstances. I would only do what I could, based on my judgment of what's feasible without risking my own financial security or that of my own family. For each of [Mr Alqabandi] and [Mr Albader], I have done what I can when my personal and financial circumstances

102 ABD-4 at p 449.

103 ABD-4 at p 449.

104 ABD-4 at p 473.

> permitted, and it was always in the form of a favour, not as part of any obligation. The case with you and [the second plaintiff] is no different.
>
> …
>
> The so called 'spirit of my intention' that I referred to in my communication after our meeting in June at [Ms Simran Bedi's] residence was as I've communicated time and again: that when my means and circumstances permit from time to time, I will try and facilitate an exit from the company for you. The terms of such exit were never intended to be, and are not, set in stone

(b) Second, that it was the plaintiffs' own delay in confirming the beneficial ownership of the rights under the CNSAs and in providing proof of identity and residency which had caused the delay in progressing the plaintiffs' exits:[105]

> … I was alerted to the possibility that the legal owners of the shares may not be the beneficial owners, and it is good governance to know who the beneficial owners are. We therefore sought the declarations from you (and the Mideast group that invested with you and under your direction) in April 2015 regarding beneficial ownership. None of you have responded. This non compliance remains outstanding for over 6 months. Similarly, its been over 6 months of non-compliance regarding your ID and address proof documents.

(c) Finally, that the 5 June 2015 meeting had been without prejudice and that the first defendant had undertaken no legal obligation to the Kuwaiti Investors at that meeting:[106]

> After the meeting, I communicated respectfully to you, Aman, Sobers, and Simran my surprise at receiving the minutes, and made it amply clear that they were not an accurate record, that they contained inaccuracies and omissions. I made it amply clear that ours was a

105 ABD-4 at pp 474–475.

106 ABD-4 at p 475.

> personal discussion without prejudice, i.e. that it was never intended to be a legal obligation and it is unfair to try and force a burdensome interpretation on me when there is no basis to do so.

Only the first two of the first defendant's points in this email are relevant to the Misrepresentation Claim. I will return to the third point when I analyse the plaintiffs' Repayment Contract Claim (see [181]–[188] below).

104 Following this email, it appears that the first plaintiff tried to contact the first defendant by telephone to discuss its contents. The first defendant declined to take the first plaintiff's calls and asked the first plaintiff to respond in writing.[107]

105 It is telling that the first plaintiff did not respond in writing to the first defendant's 6 December 2015 email to reject any of the first defendant's three principal points. More specifically, if the plaintiffs' case were true, one would have expected the first plaintiff to respond immediately and angrily to assert that the first defendant made the Representations to the plaintiffs in 2012, that the Kuwaiti Investors relied on the Representations in deciding to invest in the Company and to enter into the CNSAs, that the first defendant had defrauded the plaintiffs by failing to honour the Representations and that the plaintiffs considered the first defendant to have undertaken a legally-binding obligation to buy out the plaintiffs, either under a Separate Contract or a Repayment Contract.

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107 ABD-4 at p 479.

Pre-action correspondence between solicitors

106 It appears that the plaintiffs placed their dispute in the hands of his solicitors soon after receiving the first defendant's 6 December 2015 email. The pre-action correspondence between the parties' solicitors is also completely at odds with the case which the plaintiffs now advance.

107 The first letter in this correspondence is a letter before action from the plaintiffs' solicitors to the Company dated 18 January 2016.[108] The letter questions the way the Company was being managed and, in particular, the validity of the Company's declaration of a Conversion Event under the CNSAs. It also asks the Company to provide to the plaintiffs the following information: (a) the basis on which the second plaintiff's loan had been converted into 104,006 shares in the Company; (b) the identity of the Series A Funder, the amount he had invested and the terms of his investment; and (c) the Company's financial statements, its financial condition and its business plan.[109]

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108 ABD-4 at p 482.

109 ABD-4 at p 483, para 5.

108 The letter concludes with the following intimation of legal proceedings if the Company failed to address the plaintiffs' concerns to their satisfaction:[110]

> If you choose to resist our clients' above request for information, then it will be clear to our clients, and consequently the High Court, that the Company and its officers are intentionally withholding information to conceal possible misconduct and/or breaches, contractual or otherwise. If this is the case, we have our clients' express instructions to commence legal proceedings against the Company, its directors and senior management, including but not limited to Mr. Sandeep Singh Bhatia and Mr. Abhishek Singh, and seek the relevant remedies, including but not limited to, the repurchase of their interests in the notes and/or conversion shares based on your own declared valuation of US$35 million or for the Company to be wound up or an action to require the Company to bring an action against its directors for misconduct and mismanagement.

109 Three points are significant about this letter before action. First, the dispute which is the subject-matter of the letter is a dispute between the plaintiffs and the Company, not with the first defendant personally. That is why the letter is addressed to the Company and merely marked for the first defendant's attention (along with the second defendant) rather than being addressed directly to the first defendant. That is also why the reference to the first defendant in the letter's conclusion is a reference to him in his capacity as one of the "officers" and the "directors and senior management" of the Company rather than in his personal capacity.

110 Second, the nature of the dispute which is the subject matter of this letter has nothing whatsoever to do with any misrepresentations of any kind, whether by the first defendant personally or even by the Company, let alone misrepresentations which preceded and induced the plaintiffs' investment and

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110 ABD-4 at p 484, para 8.

entry into the CNSAs, let alone misrepresentations by the first defendant in his personal capacity which had that effect. It appears from the conclusion to the letter that the plaintiffs at that time considered that they had a right to commence proceedings against the Company and its directors for relief from minority oppression under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) or to seek leave to bring a statutory derivative action in the Company's name under s 216A of the Companies Act, with the defendants joined to that litigation as necessary and proper parties and not as direct wrongdoers.

111 Third, the concluding paragraph makes clear that the remedy which the plaintiffs intended then to seek from the courts if their concerns were not addressed is an order for the "repurchase" of their interests in the CNSAs or the resulting conversion shares at the first defendant's disputed valuation of US$35m. That can only be an order against the Company, as the addressee of the letter. And nothing in the preceding seven paragraphs of the letter suggests that there was, at that time, any contractual or other right, primary or secondary, already vested in the plaintiffs to have the Company "repurchase" those interests at any valuation. The foreshadowed relief in the letter's conclusion is therefore inconsistent with both: (a) a right vested in the plaintiffs at the time of this letter to have their interests under the CNSAs or the resulting conversion shares bought out by any person; and (b) a right of any kind vested in the plaintiffs at the time of this letter against the first defendant personally.

112 The Company responded to the letter initially directly through the second defendant[111] and subsequently through solicitors.[112] The Company's

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111 ABD-4 at p 486.

112 First plaintiff's AEIC at pp 287 and 289; First defendant's AEIC at p 517.

solicitors' response dated 31 January 2016 repeated the points which the first defendant made in his 6 December 2015 email:

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(d) We are instructed that your clients traveled [*sic*] to Singapore in April 2015 to meet with the Company and its officers. Following disagreement over their share of the Company, a group of investors comprising at least [the plaintiffs], Mr. Yousuf Alqabandi, and Mr. Mohammad Albader…, under the direction of your clients, decided to exit their investment in [the Company], predominantly because they were unsuccessful in their attempts to renegotiate the [CNSAs].

(e) We are instructed that since at least 21 April 2015, your clients' focus has been on trying to force [the first defendant] to buy out their interests at 130% of the value of their initial investment.

…

(h) In the face of your clients' continuing demand to be bought out at 130% of the face value of their investment, the Company has explained repeatedly to them that in the absence of any buy out obligation in the [CNSAs], that the Company remains willing to help facilitate a sale of their shares to other investors in the Company. The proposed mechanics of the same, consistent with the constitution of the Company, have been explained to your clients in writing in April 2015.

(i) As recently as the 6 Dec Email, despite the matters highlighted therein that continue to threaten the Company, … [the first defendant] has re-conveyed the Company's willingness to speak with your clients in good faith about resolving your clients' concerns amicably, and [the Company's] willingness to help facilitate their exit from the Company.

…

9. Insofar as your clients wish to sell their shares in our client, our client remains prepared to provide reasonable assistance to liaise with other existing shareholders (and/or third parties) to see if they would like to purchase the same. …

113 The plaintiffs' solicitors replied to this letter on 6 February 2016.[113] They did not address the Company's solicitors' central allegations in the paragraphs I have quoted at [112] above, but merely reserved the plaintiffs' position.[114] In particular, the plaintiffs' solicitors did not, in response, advance any of the claims on which the plaintiffs now rely in this action against the first defendant personally or assert any of the facts underlying those claims. The letter concluded by foreshadowing the plaintiffs' intention to commence an action against the Company and the two defendants and by asking the Company's solicitors to confirm that they had instructions to act for the two defendants in addition to the Company.

114 On 12 February 2016, the Company's solicitors confirmed that they had instructions to act and accept service not only for the company but for the two defendants. The solicitors also pointed out – correctly – that none of the plaintiff's solicitors' correspondence up to that date had articulated any cause of action against the Company or either of the defendants.[115]

115 After an exchange of letters on 29 February 2016[116] and 6 March 2016,[117] in which each side merely maintained and reiterated its position, the plaintiffs commenced this action on 18 March 2016.

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113 First defendant's AEIC at p 522.

114 First defendant's AEIC at p 523, para 10.

115 First defendant's AEIC at p 525, para 2.

116 First defendant's AEIC at p 528.

117 First defendant's AEIC at p 531.

116 This entire correspondence is completely inconsistent with the plaintiffs' claims in this action. None of the plaintiffs' claims in this action against the first defendant personally are foreshadowed anywhere in this correspondence. This is yet further support for my finding that the first defendant did not in fact make any of the Representations to the plaintiffs.

The Representations are uncommercial

117 The first defendant struck me from his demeanour and his background as a seasoned and hard-headed businessman. I accept his evidence that the Representations are wholly uncommercial. They tilt the investment entirely in the plaintiffs' favour. They also expose the first defendant to, at the very least, a theoretical risk of personal liability. The first defendant is not so commercially naïve as to have carried on his business through the Company in order to shield himself from personal liability and then to make the Representations, thereby engaging his personal liability, at least theoretically.

118 The first defendant's evidence at trial was that the Investment Exit Representation would be "too good to believe", "completely irrational", "completely insensible" and "preposterous and absurd".[118] I accept the first defendant's evidence. Further, it was not suggested to the first defendant in cross-examination that he had any commercial incentive at the time to give the Kuwaiti Investors such uncommercial assurances in order to induce their investment.

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118 23 May 2019 Transcript at p 8, line 29–p 90, line 19.

119 The plaintiffs too struck me from their demeanour and their background as seasoned and hard-headed businessmen. The first plaintiff has experience running his family business,[119] while the second plaintiff is a board member of a stock broking company.[120] It is true that, in making these investments, the plaintiffs and the first defendant were dealing with each other as friends, and therefore not as adversaries or with any degree of formality. It is also true that the amounts in question are not substantial, both in the context of the plaintiffs' wealth and in the nature of investments in a friends and family round. Despite that, if the first defendant had indeed made the Representations and if they were indeed so critical to the plaintiffs' decision to invest in the Company and to enter into the CNSAs, I consider it contrary to the inherent probabilities that seasoned and hard-headed businessmen like the plaintiffs would have allowed representations as favourable to them as the Representations to remain completely undocumented.

120 The first plaintiff explained his conduct on the basis that he trusted the first defendant because they were good friends,[121] and because he respected the first defendant's financial knowledge.[122] The second plaintiff explained that he trusted the first defendant because the first plaintiff trusted him, even though to the first plaintiff, the first defendant was merely an acquaintance.[123]

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119 14 May 2019 Transcript at p 39, lines 26–31.

120 17 May 2019 Transcript at p 3, lines 17–31.

121 14 May 2019 Transcript at p 92, lines 1–5.

122 14 May 2019 Transcript at p 90, lines 25–31.

123 16 May 2019 Transcript at p 105, lines 3–11.

121 I find this explanation unconvincing. I consider it far more likely that seasoned and hard-headed businessmen, even if dealing with friends and with relatively small sums, would have recorded the fact that the Representations were made and their content in writing in some way, even if only to evidence them after entering into the CNSAs. After all, businessmen know that when the time comes to rely on oral representations, even ones made by a friend, the representor has every incentive to deny having made them.

122 In summary, my view is that proceeding entirely on trust in these circumstances, even with a friend and even given the relatively small amount invested, is inconsistent with the plaintiffs' sophistication and experience. That is yet another reason I find that that the first defendant did not make the Representations.

The first defendant's conduct in buying out other investors

123 Finally, as evidence that the first defendant made the Representations, the plaintiffs point to the fact that the first defendant actually bought out Mr Albader and Mr Alqabandi as well as an unrelated friends and family investor Mr Gurmeet Aman Bedi at 130% of their respective investments between May and August 2015.[124]

124 I begin the analysis with the buyouts of Mr Alqabandi and Mr Albader.[125] These buyouts occurred after the 5 June 2015 Meeting. The plaintiffs' case is that, during or after the 5 June 2015 Meeting, the first defendant entered into an

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124 PCS at para 80.

125 First defendant's AEIC at para 48(d).

oral contract to buy out the Kuwaiti Investors at 130% of their investments. In the circumstances, if the buyouts for Mr Albader and Mr Alqabandi evidence anything, they evidence the plaintiffs' case that the first defendant entered into a contract at the 5 June 2015 Meeting to buy out the Kuwaiti Investors[126] and not that the first defendant made the Representations.

125 I turn now to the buyout of Mr Gurmeet Aman Bedi.[127] The first defendant bought out Mr Bedi's investment in May 2015, before the 5 June 2015 Meeting. So Mr Gurmeet Aman Bedi's buyout cannot be connected to anything which the first defendant said or did at the 5 June 2015 Meeting. His buyout may be some evidence that the first defendant made the Representations to Mr Gurmeet Aman Bedi. But it is not evidence that the first defendant made any of the Representations *to the plaintiffs*. The first defendant's conduct in buying out Mr Gurmeet Aman Bedi, when considered in the light of all the evidence, is far too slight to warrant drawing the inference that the first defendant made the Representations to the plaintiffs in 2012.

The first defendant's lack of credibility

126 I must at this point deal with the first defendant's credibility. I accept the plaintiffs' submission that he was an unsatisfactory and unreliable witness.[128] He was, in the course of cross-examination caught out in several statements which were easily demonstrated to be false. I list only six of them.

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126 PRS at para 31.

127 PRS at para 30(a).

128 PCS at para 41.

127 First, the first defendant claimed in cross-examination that, while he was confident about the Company's prospects, he had never informed investors in the Company that he believed that their investments could increase threefold to fivefold, using those specific numbers. Plaintiff's counsel was able to demonstrate easily that this was false by putting two specific emails from January 2015 to the first defendant showing that he had indeed used those precise numbers on at least two occasions.[129]

128 Second, the first defendant stated in his affidavit of evidence in chief, and indeed on other occasions, that the Company's paid-up capital was $300,000 divided into 300,000 shares with par value $1.00 each even before the investment funds from the friends and family round came in. However, when the first defendant was cross-examined on this statement at trial, he gave contradictory and unsatisfactory answers in an effort to explain evidence which suggested that he paid that capital in to the Company, not upon incorporation, but only in December 2013, long after incorporation and well after the funds from the friends and family round had come in.[130]

129 Third, in October 2014, during the Phase 2 correspondence and before the parties' relationship came under strain, the first defendant told the Kuwaiti Investors in an email that he was not drawing a salary from the Company. Under cross-examination, the first defendant had to concede that he did in fact draw a salary of $5,000 a month in cash from the Company in 2014. Further, although

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129 PCS at 150(a).

130 PCS at para 150(b).

his salary in other years was not drawn in cash, it remained due and continued to accrue as a liability to him in the Company's books.[131]

130 Fourth, when the first defendant told the Kuwaiti Investors that he had valued the company at US$35m, they asked him to justify the valuation. In March 2015, he sent by email several documents to the Kuwaiti Investors which he said in the covering email justified his valuation and which, on their face, appeared to do so. But when asked at trial to explain how precisely those documents justified his valuation, the first defendant conceded that the attachments were not the basis on which he valued the company at US$35m. He was then unable to justify the figure. The second defendant also testified that he considered the valuation to be too aggressive and unsupported by the Company's performance figures and prospects at that time.[132]

131 Fifth, the first defendant claimed in his affidavit of evidence in chief that he had, when he received draft minutes of the 5 June 2015 Meeting under cover of an email from Mr Gurmeet Aman Bedi on 9 June 2015 ("the Draft Minutes", (see [144] below)), reviewed the Draft Minutes and made amendments and annotations to them in the soft copy Microsoft Word document itself.[133] The first defendant also claimed that he had attached his amended and annotated version of the Draft Minutes to his reply email dated 10 June 2015 (see [145] below). A copy of the Draft Minutes with the first defendant's amendments and

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131 PCS at para 150(c).

132 PCS at paras 150(d)–150(f).

133 First defendant's AEIC at para 176.

annotations[134] appeared in both his affidavit of evidence in chief and the agreed bundle of documents immediately after his 10 June 2015 email.[135]

132 First defendant's counsel – presumably on the first defendant's instructions – cross-examined the first plaintiff on the basis that the first defendant had indeed attached the amended and annotated Minutes to his 10 June 2015 email and that the Draft Minutes as amended and annotated was the more correct reflection of what was discussed at the 5 June 2015 Meeting.[136] The first plaintiff initially expressed doubt in his answers that the first defendant had attached anything at all to his 10 June 2015 email. The first plaintiff then produced incontrovertible evidence from his electronic records that the first defendant had indeed sent the email with no attachment.

133 It was only at that point that the first defendant's counsel confirmed – again, presumably on the first defendant's instructions – that the first defendant had attached nothing to his 10 June 2015 email.[137] Later, when the first defendant took the stand, he corrected his affidavit of evidence in chief to remove the assertion that he had attached the amended and annotated minutes to his 10 June 2015 email.[138] Neither the plaintiff nor his counsel explained why the first defendant had made an untrue claim in his affidavit of evidence in chief. Neither the plaintiff nor his counsel explained why the amended and annotated

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134 ABD-4 at p 325; First plaintiff's AEIC at p 508.

135 ABD-4 at p 324; First plaintiff's AEIC at p 507.

136 15 May 2019 Transcript at p 72, line 30–p 74, line 10 and p 75, line 2–p 84, line 2.

137 15 May 2019 Transcript at p 84, lines 7–10; 16 May 2019 Transcript at p 1, lines 9–18.

138 23 May 2019 Transcript at p 51, lines 6–8; 24 May 2019 Transcript at p 3, lines 13–22 and p 5, lines 21–24.

version of the Draft Minutes had been presented in the agreed bundle and in the first defendant's affidavit of evidence in chief in a manner which suggested that the first defendant had indeed attached it to his 10 June 2015 email.

134 Sixth, the first defendant's case at trial was that a Conversion Event under the terms of the CNSAs was triggered as at 31 March 2015 by an external investor making an investment in March 2015 under an agreement executed in August 2014. However, the plaintiffs managed to secure documentary evidence in discovery which established that the investor had signed the agreement only in May 2015[139] and received his shares only in September 2015. I therefore find that there was no Conversion Event in existence as at 31 March 2015, the date by which the first defendant asserted to the Kuwaiti Investors one had occurred.[140] The plaintiffs managed to secure this evidence to prove this only after doggedly pursuing the underlying documents through discovery applications. The first defendant resisted all of these applications, culminating in an unless order against him.

135 These discrepancies, taken together with others, establish that the first defendant was not a credible witness. However, this finding serves only to diminish the weight to be attached to his evidence. It does not prove the contrary, *ie* that the first defendant did indeed make the Representations. Nor does this finding suffice, in itself, to outweigh the difficulties with the plaintiffs' own witnesses' evidence and the inferences to be drawn from the inherent probabilities which I have outlined above. It therefore remains my finding that the first defendant did not make the Representations.

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139 PCS at para 116.

140 PCS at para 118.

Conclusion on the Misrepresentation Claim

136 For these reasons, I find that the first defendant did not make the Representations to the plaintiffs. That finding alone suffices to dismiss their Misrepresentation Claim. It is therefore not necessary for me to analyse the remaining limbs of this claim.

Separate Contract Claim

137 The plaintiffs' case on the Separate Contract Claim is that the Representations gave rise to a collateral or a "concurrent" contract, as the plaintiffs plead it in the statement of claim.[141] By making the Representations, the first defendant made an offer to the Kuwaiti Investors.[142] The Kuwaiti Investors accepted the offer and also furnished consideration for it by conduct, *ie* by agreeing to invest in the Company and by entering into the CNSAs.[143] The only two terms of the Separate Contract which are pleaded are the Investment Exit Representation and the Non-Dilution Representation.[144]

138 The Separate Contract Claim cannot succeed unless I find that the first defendant made the Representations. I have found that the first defendant did not make the Representations (see [136] above). That finding alone suffices to dismiss the Separate Contract Claim.

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141 Statement of claim at para 32B.

142 Statement of claim at para 32D.

143 Statement of claim at para 32E.

144 Statement of claim at para 32B.

Repayment Contract Claim

139 I turn now to the Repayment Contract Claim.

140 The plaintiffs claim that the first defendant entered into the Repayment Contract with the Kuwaiti Investors at the 5 June 2015 Meeting. The plaintiffs also claim that, under the Repayment Contract, the first defendant is contractually obliged to buy out each of the Kuwaiti Investor at 130% of the amount invested.[145]

141 To establish the Repayment Contract Claim, the plaintiffs rely on the oral evidence of their witnesses as well as on the exchange of emails following the 5 June 2015 Meeting.

142 The first defendant's defence is that: (a) the parties did not have any intention to create legal relations at the 5 June 2015 Meeting; and (b) the plaintiffs provided no consideration for the Repayment Contract.[146]

143 I accept both of the first defendant's defences. To explain why, I begin with an analysis of the email communication following the 5 June 2015 meeting.

Emails following the 5 June 2015 Meeting

144 The exchange begins on 9 June 2015 with an email from Mr Gurmeet Aman Bedi addressed to the first plaintiff, Mr Sobers and the first defendant. He attached to his email the Draft Minutes. Those minutes were prepared by the

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145 PCS at para 33.

146 Defence at para 48.

first plaintiff and checked by Mr Gurmeet Aman Bedi.[147] The plaintiffs' case is that the Draft Minutes record the first defendant's agreement at the 5 June 2015 Meeting to buy out the Kuwaiti Investors at 130% of their respective investments:[148]

> 4) [The first defendant] confirmed his will to exit all existing investors as per his agreement with all. For a principle [*sic*] + 30%. [The first defendant] further offered to clear one of the investors on Monday 8th of June. The second in 4 weeks [*sic*] time and the remaining 2 investors by December 2015. It was agreed [the first plaintiff] would discuss the timelines with other investors and confirm. [The first defendant], clarified he has no intention of any wrong hence he had offered the principle [*sic*] + 30% and is holding firm to his word. Hence, the actions required from now until [December] 2015. [The first defendant] made it very clear that it was his personal responsibility to ensure [the Kuwaiti Investors] are exited as this was per his commitment to all during the friends and family round. [The first defendant] further confirmed if the value of the company is to increase as he plans on conducting another larger funding round for the investors remaining in October – December 2015 that he is willing to pay them out at the higher valuation. All attendees agreed that was very kind of [the first defendant] but would like to stick to the original principle [*sic*] amount + 30% which was further agreed by all the other investors.
>
> 5) [The first defendant] is requesting a six month window to repay as he is raising money from the Series A round and would need time to raise the funds while paying the existing investors who are exiting the principle [*sic*] + 30%. [The first defendant] confirmed that he has raised 1.1 million USD for Series A for which all attendees congratulated his accomplishment and wished him all the best for the future.
>
> 6) It was confirmed by [the first plaintiff] he would discuss the exit terms with all the other [Investors] and confirm to [the first defendant] the actions. All the [Investors] being: [the first plaintiff] – S$250,000/- USD. [The second plaintiff] - $ 100,000/- USD. [Mr Albader] - $ 50,000/- USD. [Mr Alqabandi] - $50,000/-. All have agreed to exit from [the Company] at the agreed principle [*sic*] + 30% return. Only

147 PCS at para 37.

148 ABD-4 at pp 319–320.

> request the investors have is that the exit is executed as per these stated timelines. [Mr Alqabandi] - June 8. [Mr Albader] – July 8, [the second plaintiff] – August 15th, [the first plaintiff] 2 part payments, September 15th 50% of principle [*sic*] + 30% and October 15th 50% + principle [*sic*]. To Complete the payments by [the first defendant] by October.
>
> 7) [The first defendant] confirms that he had already purchased [Mr Gurmeet Aman Bedi's] investment at principle [*sic*] + 30%. And has offered the same as mentioned above principle [*sic*] + 30% to … another investor in [the Company].

145 On 10 June 2015, the first defendant replied to Mr Gurmeet Aman Bedi, copying the first plaintiff and Mr Sobers. The first defendant expressed surprise at the fact that any minutes had been recorded at all, and took the position that the 5 June 2015 Meeting had been a without prejudice meeting and that the Draft Minutes did not record accurately or without omission what was discussed at the 5 June 2015 Meeting:

> … I was duly surprised to receive the minutes. As you know and confirmed the meeting was a personal meeting to be conducted between you [Mr] Sobers and myself. I had specifically stated that if [the first plaintiff] (a noteholder) has to be present I would have requested someone to be there from my side and made it official. Please read this as I am addressing you with due respect and the correct intent.
>
> Given, it was a personal discussion without prejudice. I didn't realize our discussion was being recorded and minutes of the discussion would be distributed. If we are to record minutes of the meeting then I would suggest they cover the entire conversation comprehensively including all topics discussed and not only [the Company]. The current document provided by you is not comprehensive and contains inaccuracies and omissions. [Mr Gurmeet Aman Bedi], with all due respect, and given the fact the business discussion between [the first plaintiff] and me as stakeholders of [the Company], should be initiated, discussed, and remain between stakeholders. Therefore, I would request you and [Mr] Sobers to excuse yourself from this discussion.
>
> Having said that the spirit of my intention remains the same.

Evidence of the 5 June 2015 meeting is admissible

146 There is an evidential privilege which attaches to communications between litigants in a genuine attempt to settle their dispute. This privilege is commonly referred to as the "without prejudice" privilege. It is recognised in Singapore both in our common law of evidence and by s 23 of the Evidence Act.

147 Although the first defendant attached the label "without prejudice" to the 5 June Meeting, his counsel concedes that evidence of the discussions at the meeting is admissible. In other words, it is common ground between the parties that I do not need to determine whether the 5 June 2015 Meeting was or was not subject to the without prejudice privilege.[149]

148 Defendant's counsel's concession is correctly made. It appears from the defendants' evidence that what they meant by the label "without prejudice" was not that the discussions were cloaked with a privilege from compulsory disclosure in litigation, whether pre-trial or at trial. Instead, what they simply meant was to reserve the parties' right to resile from positions taken at the meeting and to withdraw admissions made at the meeting. The phrase "without prejudice" is commonly misused in this way, even by lawyers.

The first defendant offered to buy out the investors

149 The first defendant alleges in his email of 10 June 2015 that the Draft Minutes contain inaccuracies and omissions. But, apart from the amended and annotated Minutes which the first defendant now accepts he did not send

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[149] 24 May 2019 Transcript at p 30, line 18–p 31, line 3.

contemporaneously to the plaintiffs (see [133] above), the first defendant has never deigned to identify any specific inaccuracies or omissions, whether contemporaneously in June 2015 or in the course of his evidence at trial. Furthermore, his counsel was unable even at the end of trial, in the course of his of oral closing submissions, to identify any specific inaccuracies or omissions in the Draft Minutes.

150 I therefore take the Draft Minutes as a broadly accurate record of the discussions at the 5 June 2015 Meeting, even after making the necessary allowances for the inevitable self-serving shading that one would expect to find in a document of this nature, prepared as it was by only one party to a dispute after the battle lines in the dispute had been drawn.

151 Reading the Draft Minutes in the context of the first defendant's response dated 10 June 2015, the entire correspondence in Phase 3 and the first defendant's subsequent conduct, I find that the first defendant did, at the 5 June 2015 Meeting, offer to buy each Kuwaiti Investor out at 130% of his investment after he had converted his loan into shares in the Company. But that does not get the plaintiffs home on the Repayment Contract Claim. An offer is not, in itself, a contract. Even a promise is not, in itself, a contract. Amongst other things, both an intention to create legal relations and consideration must accompany an offer or a promise to give rise to a contract.

152 I therefore turn now to consider the first defendant's defences that the parties had no intention to create legal relations at the 5 June 2015 meeting and that the Kuwaiti Investors supplied no consideration for the Repayment Contract.

No intention to create legal relations

153 The test of whether parties intended to create legal relations is objective: *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 at [40]. It is presumed that parties who enter into agreements in a business or commercial context do intend to create legal relations. The converse presumption operates in a social or domestic context (*Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 ("*Gay Choon Ing*") at [72]).

154 The difficulty, of course, is that the plaintiffs and the first defendant had both a business relationship and a social relationship. The case of *Oei Hong Leong and another v Chew Hua Seng* [2020] SGHC 39 ("*Oei Hong Leong*") is instructive on the effect of the approach when the contexts overlap in this way.

155 In *Oei Hong Leong*, a shareholder of a company and the company's founder and chief executive officer were also friends. The friends had a disagreement about how the company should be run. They met to discuss the way forward for the shareholder's investment in the company. As a result of their meeting, they signed a handwritten note which provided that the founder was to procure a buyer for the shareholder's shares in the company. The founder failed to do so. The shareholder sued the founder on the handwritten note, claiming that it amounted to a contract.

156 Lee Seiu Kin J rejected the shareholder's claim. In finding that the parties had no intention to create legal relations, Lee J made the following findings and observations:

(a) The meeting between the parties was not conducted in a purely business context. Their discussion was not convened in a formal setting or in the presence of legal advisors. Instead, they met outside business hours at the house of the shareholder's sister, with family members in attendance. This would have been "an unlikely setting in which to negotiate a contractual … agreement": at [41].

(b) Both parties were given an indication that the purpose of the meeting was to each party to hear the other out in an informal setting: at [42].

(c) The handwritten note was drafted by a lay person and could not have been intended by the parties to carry legal effect. As commercial men, the parties would have instructed lawyers to draft a legal document to capture their obligations correctly: at [54].

157 Lee J's observations are pertinent to the present case. Much like the meeting in *Oei Hong Leong*, the first plaintiff and the first defendant were friends whose friendship had come under strain. The 5 June 2015 Meeting was convened for the first plaintiff and the first defendant to hear each other out.[150] The Meeting was held in the absence of legal representatives. It was held in a domestic setting rather than a business setting. There were friends and family members in attendance who were not parties to the underlying business transaction between the Kuwaiti Investors and the Company, *ie* Mr Sobers, Mr Gurmeet Aman Bedi and Ms Simran Bedi. In my view, the parties did not

150 First plaintiff's AEIC at para 87(a); First defendant's AEIC at para 148.

manifest objectively an intention to create legal relations when they attended the 5 June 2015 Meeting in these circumstances.

158 I turn to the form of the alleged agreement. In *Oei Hong Leong*, the alleged agreement was reduced to writing, albeit in the form of a handwritten note drafted on the spot by lay people. By contrast, the plaintiffs' case is that the Repayment Contract is an entirely oral contract concluded at the 5 June 2015 Meeting. I note Lee J's observation that businessmen ordinarily instruct lawyers to document their obligations accurately, and do not base their legally binding commitments on notes drafted by lay people.

159 There is evidence in this case that the first defendant relied on the second defendant for that very purpose. Indeed, it is common ground that the first defendant sought the assistance of second defendant (as the Company's General Counsel) to draft the CNSAs in 2013.[151] Lee J's observation applies *a fortiori* to the entirely oral agreement which the plaintiffs allege in the present case. It is in my view contrary to the inherent probabilities that the parties intended to create legal relations in this case purely orally.

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151 Defence at para 11(b); DRS at para 11.

160 Indeed, Mr Gurmeet Aman Bedi's email attaching the Draft Minutes notably does not assert that the parties had entered into a contract at the 5 June Meeting by which the first defendant was now legally bound. Instead, he said in his covering email:[152]

> Buddy,
>
> Just a [*sic*] concise minutes of the meeting. Have all the points included. Let me know if anything needs to be added and a final contract can be drafted from the attachment.
>
> Thanks again for all the understandings.
>
> Best regards
>
> Aman

161 It is true that the first defendant's response to this email (see [145] above) did not assert that the parties did not enter into any contract at the 5 June 2015 Meeting by which the first defendant was legally bound. But that is because Mr Gurmeet Aman Bedi made no such assertion in his covering email. Nor did the Draft Minutes themselves purport to record a contract between the first defendant and the plaintiffs. In fact, Mr Gurmeet Aman Bedi's request to the first defendant to let him know if anything needed to be added to the Draft Minutes and his reference to "a final contract" being drafted from the Draft Minutes all support the first defendant's case that the parties had no intention to create legal relations at the 5 June 2015 Meeting.

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152 ABD-4 at p 318.

The meaning of "agree"

162 The plaintiffs' submissions place great weight on the parties' use of the verb "agree" and its cognate expressions – especially the noun "agreement" – in their correspondence. The plaintiffs place similar weight on verbs such as "promise" and "confirm". The submission is that the use of these words amount to an admission or acknowledgement by the first defendant that he considered – contemporaneously with the 5 June 2015 Meeting and while he was buying out Mr Alqabandi and Mr Albader and preparing to buy out the plaintiffs – that he had indeed entered into a binding contract to do so at the 5 June 2015 Meeting.[153]

163 I do not accept this submission. The verb "agree" and the noun "agreement" have very different meanings as ordinary words of the English language and in legal usage. As an ordinary word of the English language, the word "agree" simply means to have the same opinion or view as another person or to concur with that person. The noun "agreement" thus means simply an accordance between two more persons in opinion or feeling. In legal usage, however, the verb "agree" and the noun "agreement" have dual meanings. They bear their usual meaning as ordinary words of the English language. But they also used loosely as a synonym for "contract".

164 I do not accept that the parties used the word "agree" or "agreement" as a synonym for "contract" in their correspondence, let alone "promise" or "confirm". That is simply not how lay people use these words. I therefore give no weight to these words as carrying any legal effect or expressly a legal

153 PCS at para 50.

conclusion where they appear in the correspondence between the parties. I consider the use of these words – and indeed, all of the statements by the first defendant of his intent to buy out the Kuwaiti Investors in this correspondence – to be more consistent with the first defendant's defence that, at the 5 June 2015 Meeting, he concurred with the plaintiffs' opinion on the way forward than with the plaintiffs' case that these words were intended to and did give rise to a contract.

165 I therefore do not find it surprising that the first defendant did not deny that he was under a legal obligation to buy out the Kuwaiti Investors in this correspondence. The plaintiffs did not suggest at any time that the first defendant was under any such obligation. Furthermore, the plaintiffs did not follow up on their suggestion (through Mr Gurmeet Aman Bedi's email in June 2015 to which the Minutes were attached (see [144] above)) that the parties' "agreement" (used as an ordinary word of the English language) be formalised as a contract.

166 For all these reasons, I find that the first defendant and the plaintiffs had no intention to create legal relations in their discussions at the 5 June 2015 Meeting. That suffices in itself to dismiss the Repayment Contract Claim. But I also consider that the plaintiffs provided no consideration for the Repayment Contract.

No consideration

167 The plaintiffs' case, as pleaded in their reply, is that the plaintiffs provided a variety of consideration for the Repayment Contract including by forbearing to sue him on the Representations:[154]

> The consideration provided by the Plaintiffs in relation to the Repayment Contract…includes but is not limited to (i) the release of the 1st Defendant's obligation to keep the Plaintiffs closely informed about the management and operations of the Company as set out at paragraph 9(a) of the SOC; (ii) the Plaintiffs giving the 1st Defendant more time to personally purchase the 1st and 2nd Plaintiffs' shares in the Company after conversion of the respective convertible notes into shares of the Company, at a purchase price equivalent to 130% of their initial investment; (iii) *the Plaintiffs' forbearance from suing the 1st Defendant*; and/or (iv) the Plaintiffs agreeing not to exit the Company immediately …
>
> [emphasis added]

168 In their closing submissions and supplementary submissions, the plaintiffs settle on two types of consideration for the Repayment Contract:

(a) forbearing to sue the first defendant on the Representations;[155] and

(b) giving the first defendant more time personally to buy out the plaintiffs' investments.[156]

169 The consideration which the plaintiffs plead in their reply and rely on in their submissions are all simply facets of a forbearance to sue the first defendant

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154 Reply (Amendment No 1) at para 46(b).

155 Plaintiff's Skeletal Submissions ("PSS") at para 19.

156 PSS at para 21.

on the Representations. To forbear from suing simply means to refrain from suing. The plaintiffs' forbearance to sue the first defendant on the Representations simply means that the plaintiffs will refrain from suing the first defendant on the Representations while the forbearance is in place. The practical effect is that, during the period of forbearance, the first defendant need fear no legal consequences for (on the plaintiffs' case) having fraudulently made the Representations.

170 Tellingly, the plaintiffs argue in their closing submissions that:[157]

> The … Investors were entitled to insist that the Representations be fulfilled, and that they be bought out immediately. *However, they agreed to a delayed buy-out schedule. There was therefore either a forbearance to sue* and a promise to compromise on their immediate entitlement. This constitutes good consideration.
>
> [emphasis added]

The framing of this submission shows that even the plaintiffs do not, on their own case, distinguish between a forbearance to sue and an agreement to delay the first defendant's buy out of their investments.

171 While the plaintiffs' reply pleads that the consideration for the Repayment Contract moved from the *plaintiffs* alone, their case according to their statement of claim[158] is that the Repayment Contract was between the first defendant and *the Kuwaiti Investors* as a group (represented in the negotiations by the first plaintiff with their authority). The plaintiffs take the same position

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157 PCS at para 138.

158 Statement of claim at paras 34 and 36–37.

in their closing submissions.[159] Accordingly, despite the terms of the plaintiffs' reply, it is more accurate to say that the plaintiffs' case is that the consideration (if any) for the Repayment Contract moved from the Kuwaiti Investors as a group to the first defendant rather than only from the plaintiffs to the first defendant. Therefore, the central question that I must resolve is whether the Kuwaiti Investors furnished consideration for the Repayment Contract by forbearing to sue the first defendant on the Representations.

172 I accept, of course, that a forbearance to sue is capable in principle of constituting consideration for a contract (*Currie v Misa* (1875) LR 10 Ex 153 at 162, *per* Lush J) provided that: (a) there are reasonable grounds for the underlying claim; and (b) the claimant honestly believes that the postponed claim has a fair chance of success (*Callisher v Bischoffsheim* (1870) LR 5 QB 449 at 451–452, *per* Cockburn CJ).

173 It is not, however, enough for a promisee simply to forbear to sue a defaulting promisor for that forbearance to constitute consideration for a fresh promise from the promisor. The element of bargain which lies at the root of the doctrine of consideration makes it necessary for the promisor to *request* the consideration as the price of the promise: *Gay Choon Ing* at [82]. Applying that principle to the facts of this case, if the first defendant volunteered a promise to buy the Kuwait Investors out at 130% of their investments but did not request anything in exchange for the promise, and if the Kuwaiti Investors thereafter decided unilaterally to refrain from suing the first defendant because of his

159 PCS at paras 135–138.

volunteered promise, their forbearance to sue is not the price of the first defendant's promise and does not constitute consideration for the promise.

174 For three reasons, I am satisfied that the first defendant did not ask the Kuwaiti Investors to forbear from suing him on the Representations in exchange for his offer to buy out the Kuwaiti Investors.

175 First, there is no objective evidence that the first defendant asked the Kuwaiti Investors to forbear from suing him on the Representations. I take the plaintiffs' case at its highest and assume that the Draft Minutes accurately record the discussions at the 5 June 2015 Meeting. There is no hint in the Draft Minutes that the Kuwaiti Investors intended to sue the first defendant on the Representations at or around 5 June 2015. It is therefore not surprising that there is likewise no hint in the Draft Minutes that the first defendant asked the plaintiffs to forbear from suing him on the Representations as the price of his offer to buy them out.

176 The correspondence between the first defendant and the Kuwaiti Investors in Phases 2 and 3 also contain no hint that they were threatening to sue the first defendant on the Representations or that the first defendant had asked the Kuwaiti Investors to forbear from doing so in exchange for his offer to buy them out. Tellingly, even the letter before action which the plaintiffs' solicitors sent to the Company in January 2016[160] makes no mention of the Representations, let alone of the plaintiffs terminating a voluntary forbearance in order to sue the first defendant on the Representations.

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160 ABD-4 at pp 482–484.

177 Second, the evidence from the plaintiffs' witnesses does not suffice to establish that the first defendant asked the Kuwaiti Investors to forbear from suing him on the Representations in exchange for his offer to buy them out.

178 I begin with the second defendant's evidence. The second defendant testified that the first defendant was indeed afraid after the 5 June 2015 Meeting that the Kuwaiti Investors would sue him if he did not buy them out.[161] I have two difficulties with this evidence. First, the second defendant did not make it clear whether the first defendant feared the Kuwaiti Investors suing him on a gratuitous promise which he made at the 5 June 2015 Meeting or on the Representations. Only a forbearance to sue the first defendant *on the Representations* can constitute good consideration for the Repayment Contract. Forbearance to sue on a gratuitous promise made at the 5 June 2015 Meeting obviously cannot constitute consideration to turn that promise itself into a contract. A contract cannot pull itself up by its own bootstraps. Second, even if the first defendant was indeed afraid that the Kuwaiti Investors would sue him *on the Representations*, it remains the case that the first defendant must then act on that fear by asking the Kuwaiti Investors to forbear from doing so in exchange for his offer for the forbearance to constitute consideration. Once again, there is no evidence of any such request.

179 I now consider the first plaintiff's evidence. He testified that, if he had known that the first defendant's position was that the first defendant did not enter into any binding agreement at the 5 June 2015 Meeting, the first plaintiff would have commenced suit immediately.[162] I have two difficulties with this

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161 PSS at para 20(b).

162 PSS at para 20(a).

evidence. First, it is not clear *against whom* the first plaintiff would have commenced suit: whether it would have been the first defendant or the Company. Only proceedings against the former are relevant, given that the plaintiffs' plea is that the consideration for the Repayment Agreement was the Kuwaiti Investors' forbearance to sue the *first defendant*. However, the only evidence of any intention by the plaintiffs to commence suit comes from the plaintiffs' solicitors' letter before action. For the reasons I have already given, that foreshadows a quite different suit against the Company, either under s 216 or s 216A of the Companies Act, with the two defendants joined in their capacity as the Company's officers and management. In any event, I do not see how the first plaintiff's evidence of *his own* state of mind is evidence that the *first defendant* asked the Kuwaiti Investors for a forbearance to sue him on the Representations.

180 Accordingly, I find that the first defendant did not ask the Kuwaiti Investors to forbear suing him on the Representations in exchange for his offer to buy them out. The Repayment Contract is unsupported by consideration. The Repayment Contract Claim fails on this ground also.

The first defendant's defence is not an afterthought

181 The plaintiffs submit that the first defendant's defence to the Repayment Contract should be given little weight because it is an afterthought. At the core of this submission is the allegation that the first defendant's 6 December 2015 email amounts to a sudden change in the first defendant's position on a basis which the second defendant contrived for him at his request in December 2015. I reject this submission. In my view, the second defendant's evidence does not support this submission.

182 It is true that the second defendant drafted the first defendant's 6 December 2015 email for him at his request and on his instructions.[163] The second defendant's evidence is that, around this time, the first defendant learned that the first plaintiff was considering legal action against him. So, according to the second defendant, the first defendant wanted a legal basis to get out of the promise he had made at the 5 June 2015 Meeting. He therefore asked the second defendant, being legally trained, to draft an email for him setting out that legal basis.[164]

183 But the plaintiffs' submission that the position which the second defendant drafted for the first defendant in this email is contrived reads far too much into the second defendant's evidence. The second defendant's evidence was actually as follows:

> Q: Okay. What did [the first defendant] tell you about what the contents of the email should cover?
>
> A: He essentially wanted to have it [*sc.* an] out from having to do the buyouts that he had ostensibly promised [the plaintiffs].
>
> Q: What do you mean "have an out"?
>
> A: Have a way to have an option not to do them.
>
> Q: So he wanted an option to not do them and how would this email achieve that purpose?
>
> A: Well, Sir, when [the first defendant] had shown me the email … where [the first plaintiff] was discussing legal action apparently with a lawyer, at that point in time, I had actually made the suggestion to [the first defendant], I had asked him an open question, bearing

163 PCS at para 62.

164 21 May 2019 Transcript at p 108, line 28–p 113, line 16.

> in mind at the time that the Kuwaiti investors were painted as villains and disruptive. I had asked him, "Did you always promise to buy them out or was it something like a non-binding favour?" And he picked up on that suggestion and said it was on---"It was always a non-binding favour and I've actually promised to buy them out." So I said, "Well, then you should just make that position clear." And the result, the culmination of that was the email that was sent on December 6th.
>
> Q: Okay, so I want to be very clear on this. You just used the words "non-binding favour", okay. Before this---before you had drafted this email, okay, had [the first defendant] told you that anything he had said in the past was a non-binding favour?
>
> A: No, Sir, not in those terms, no.
>
> …
>
> Q: … "Was always and only ever extended in the personal capacity on the basis of a personal favour that I'll try and do based on my own financial in light of circumstances." Now what I need to ask you is these words, or rather the meaning behind these words, were they communicated by Mr Bobby Bhatia to you, or were you the one who drafted words containing this meaning?
>
> A: Latter, Sir.
>
> Q: Latter.
>
> A: Latter---essentially, Mr Bhatia's ask of me was it was always a non-binding favour, it was never an obligation. Craft me an email which gets that point across effectively.

184 If anything, the second defendant's evidence in fact supports the first defendant's case. I make three points about this passage.

185 First, going by the plaintiffs' solicitors' letters before action sent just over a month after this email (see [107]–[109] above), the legal action which the first plaintiff was contemplating was not an action against the first defendant

for breach of a personal obligation owed to the plaintiffs. Instead, the contemplated action was against the Company, with the two defendants joined in their capacity as officers and management of the Company.

186 Second, even if the first plaintiff was indeed contemplating action against the first defendant personally, there is nothing in the second defendant's evidence which establishes that the first defendant's true position, at the time he instructed the second defendant to draft this email, was that he had undertaken a legal obligation to the Kuwaiti Investors at the 5 June 2015 Meeting. The second defendant's evidence is more consistent in my view with the first defendant having made an offer to the Kuwaiti Investors at that meeting as a non-binding personal favour and then finding the Kuwaiti Investors determined to treat his non-binding offer as a binding contract. An offer is not in itself a contract any more than an agreement (in the ordinary sense of the word) or a promise is in itself a contract.

187 Finally, the second defendant's evidence falls far short of establishing that the first defendant asked the second defendant to contrive a legal defence for him contrary to the facts. In my view, his evidence establishes quite the opposite. It appears to me that the second defendant did no more for the first defendant in drafting this email than a competent and ethical lawyer would do for a client: frame the most plausible legal argument which is consistent with the truth in order to advance the client's interests.

188 It is therefore not to the point for the plaintiffs to point out that the first defendant's counsel failed to cross-examine the second defendant on this

evidence.[165] To my mind, this evidence either supports the first defendant's case or, at worst, is not detrimental to it.

No estoppel

189 Before I conclude my analysis of the Repayment Contract, I must deal with the plaintiffs' allegation that two items of correspondence emanating from the first defendant estop him from denying the Repayment Contract. In their statement of claim, the plaintiffs rely on the first defendant's email in September 2015 (see [96] above) as a personal admission by the first defendant:[166]

> By virtue of the Personal Admission, the 1st Defendant had personally affirmed the Repayment [Contract] in that he had assumed personal responsibility and liability to re-purchase the Plaintiffs' investments with a 30% return, and is now precluded from denying the same".[167]

190 The plaintiffs also plead reliance on the first defendant's email in October 2015 (see [99] above) to broadly the same effect.

191 These pleas add nothing to the plaintiffs' Repayment Contract Claim. If there was offer, acceptance and consideration on 5 June 2015, then the Repayment Contract exists and binds the first defendant regardless of any personal admission in any subsequent email. And if there was no offer, no acceptance or no consideration on 5 June 2015, this email cannot, in itself, give rise to a cause of action. It is trite that an estoppel amounts to a shield and not a sword.

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165 PCS at para 64.

166 Statement of claim at paras 42–43.

167 Statement of claim at para 43.

192 This email does not assist the plaintiffs given my finding that there was no intention to create legal relations at the 5 June 2015 Meeting and no consideration for the Repayment Contract.

Conclusion

193 For the foregoing reasons, I have dismissed the plaintiffs' Misrepresentation Claim, Separate Contract Claim and Repayment Contract Claim.

194 I shall hear the parties separately on costs.

Vinodh Coomaraswamy
Judge of the High Court

Khelvin Xu, Jason Gabriel Chiang and Marissa Zhao (Rajah & Tann Singapore LLP) for the plaintiffs;
Terence Tan and Tay Chie Chiang (Robertson Chambers LLC) for the first defendant.