**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2019] SGHC 39**

Suit No 1311 of 2015

Between

Liberty Sky Investments Limited

… *Plaintiff*

And

(1) Dr Goh Seng Heng
(2) Goh Ming Li Michelle (Wu Mingli)

… *Defendants*

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# JUDGMENT

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[Contract] — [Misrepresentation] — [Fraudulent] — [Misrepresentation Act, section 2(1)] — [Innocent misrepresentation]

[Equity] — [Remedies] — [Rescission] — [Bar to rescission]

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# Liberty Sky Investments Ltd
# v
# Goh Seng Heng and another

**[2019] SGHC 39**

High Court — Suit No 1311 of 2015
Audrey Lim JC
1–5 and 8–12 October; 3 December 2018

20 February 2019 Judgment reserved.

**Audrey Lim JC:**

## Introduction

1 The plaintiff Liberty Sky Investments Limited ("LSI") commenced this suit against the first defendant ("Goh") and the second defendant ("Michelle"), Goh's daughter, essentially for misrepresentations made to LSI's representatives Florence Gong ("Florence") and her husband Andy Lin ("Andy"). LSI alleged that the representations induced it to enter into a Sale and Purchase Agreement ("SPA") to buy 32,049 shares in Aesthetic Medical Partners Pte Ltd ("AMP") from Goh for $14,422,050. On 24 November 2015, LSI proceeded to rescind the SPA. LSI now seeks a declaration that the SPA had been validly avoided and rescinded and for the return of its money and other

reliefs. The defendants deny that they made the representations as claimed by LSI, and claimed that LSI has wrongfully rescinded the SPA and sought damages for wrongful rescission. At the end of the trial, LSI's counsel, Mr Singh SC, stated that LSI would not be proceeding in its claim against Michelle.[1]

## Background

2 LSI is incorporated in the Seychelles with Florence as its sole director and shareholder. Goh, a medical doctor, founded AMP in 2008 to operate his medical practice at Paragon Shopping Centre. He then incorporated Aesthetic Medical Holdings Pte Ltd ("AMH") which operated a chain of clinics ("PPP Clinics") to provide laser facial treatments. Around 2012, AMH became a wholly-owned subsidiary of AMP. Goh was the Group Executive Chairman of AMP from 6 January 2012 to 30 June 2014 and a director from 1 September 2008 to 2 February 2016. Michelle was the Chief Executive Officer and director of AMP, and a director of AMH, at the material time. Goh and Michelle have throughout remained shareholders of AMP.

## Plaintiff's case

### *Florence and Andy's testimonies*

3 In November 2013, Florence and Andy were introduced to Goh and Michelle in Shanghai by Nelson and Terence Loh ("Nelson" and "Terence"), who owned a minority shareholding in AMP through RSP Investments ("RSP") and who were running a franchise of the PPP Clinic in China. Florence and Andy subsequently acquired the franchise rights to operate a PPP Clinic in

[1] LSI's counsel's letter to the court dated 19 Oct 2018.

Suzhou, China ("PPP Suzhou"). In September 2014, Florence met Goh and Michelle for the second time when she attended a training workshop organised by AMP. In early October 2014, Florence arranged to attend training sessions in Singapore conducted by AMP. PPP Suzhou was not doing very well and Florence was looking for a mentor to teach her business management and marketing skills. She thus began to correspond regularly with Goh whom she found to be an "excellent mentor" and whom she placed a "great amount of trust and confidence in".[2]

4 On 23 October 2014, after the training sessions in Singapore, Goh invited Florence to dinner ("the 23 October 2014 dinner") and said the following to persuade her to purchase his shares in AMP ("the SPA deal"):[3]

(a) There would be a trade sale of all AMP shares to an important person in Singapore, which was imminent and would likely take place within one month;

(b) If the trade sale did not materialise, Goh intended to list AMP through an initial public offering ("IPO") on the Singapore Exchange ("SGX"), and the IPO was targeted for completion around March to June 2015 and in any event no later than 24 months after any acquisition of AMP shares by LSI; and

(c) Goh required LSI's financial support to buy out certain minority investors in AMP with voting rights who could stifle the trade sale or IPO ("Minority Shareholders"). At that time, he unable to do so as his

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2 Florence's Affidavit of Evidence-in-Chief ("AEIC"), paras 17 and 19.

3 Florence's AEIC, para 28; 3/10/18 Notes of Evidence ("NE") 2.

money was "stuck" elsewhere ("the Minority Shareholders Representation").

The proposed trade sale and/or IPO will be called a "liquidity event" where convenient. Additionally, Goh also informed Florence that he would protect LSI's investment by guaranteeing its capital.[4] Florence sent a WeChat message to Andy that night to discuss the matter.[5]

5 On 24 October 2014, Florence met Goh and Lee Kin Yun (the Chief Operating Officer of AMH) ("Lee") ("24 October 2014 meeting") where Goh repeated the representations (at [4] above). He also stated that the SPA deal was an excellent investment opportunity as the trade sale would be to one Peter Lim, a Singapore billionaire investor, there was a "99% certainty" of a trade sale and that it would take place "very soon". Goh told Florence that the negotiations on the trade sale were at an "advanced stage", and if the trade sale did not occur, there would be an IPO of AMP on the SGX scheduled for March to June 2015. Goh also stated that he needed her money to buy out the Minority Shareholders as soon as possible, so that the liquidity event would not be jeopardised.[6]

6 That afternoon, Goh sent Florence a WhatsApp (which she forwarded to Andy) to "please persuade Andy to take up the [33,000 AMP] shares" as "it is a good deal [and] will help [Goh and Michelle] a lot".[7] In a telephone call Goh also informed Andy that he and Florence stood to profit as a trade sale or an IPO would take place very soon. Goh told Andy that the trade sale would be

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4 Florence's AEIC, para 29.

5 Florence's AEIC, pp 111–113; Agreed Bundle ("AB") Vol 6, pp 3571–3573.

6 Florence's AEIC, paras 32–33.

7 6AB 3635.

"imminent" and to an entity controlled by a prominent Singapore billionaire, Peter Lim. Goh also repeated that he needed money urgently to purchase the shares from the Minority Shareholders as his own money was stuck in China.[8]

7 On 25 October 2014 during a conference call among Goh, Lee, Florence and Andy, Goh reiterated that the trade sale or IPO would take place very soon. As the SPA deal had to be completed quickly, Florence and Andy did not have time to do due diligence on AMP. In addition to the guarantee on investment capital which Goh earlier suggested, Andy asked for an "internal rate of return" ("IRR") of 15% per annum in order to protect their investment and to incentivise Goh to negotiate a trade sale price that was higher than the 15% IRR.[9] Thereafter, Lee sent a draft Term Sheet to Florence (which she forwarded to Andy), for the sale of 32,049 of Goh's AMP shares to Florence and/or Andy.[10] The draft Term Sheet provided that AMP would guarantee the buyer's capital, and a 15% per annum IRR for 12 months. On 27 October 2014, Goh emailed Florence and Andy to state that if they were not comfortable with the SPA deal they were free to pass, and Goh would have to pass too if the decision was not quick enough as timing was of the essence.[11]

8 On 29 October 2014, after further discussions, Andy proposed some amendments to the draft Term Sheet, in particular that AMP would guarantee the buyer its capital and a minimum of 15% per annum IRR for the first 24 months and the buyer could sell the shares back to the seller at the principal and IRR specified.[12] Andy explained that the guarantee of the capital plus IRR was

8 Andy's AEIC, paras 13–15; 1/10/18 NE 12.

9 Andy's AEIC, para 17; 1/10/18 NE 29–30.

10 Florence's AEIC, pp 210–212; 6AB 3650 and 3682.

11 6AB 3682.

important to ensure that if the price of any trade sale was below the price Florence/Andy paid for Goh's shares, they would still be assured of a 15% return per annum after two years, as they wanted their capital to be protected.[13] On 4 November 2014, Lee forwarded a revised Term Sheet to Andy and Florence incorporating Andy's suggested amendments.[14] The revised Term Sheet contained further amendments to provide that: (a) in the event of an IPO or trade sale within 24 months, the 15% IRR and capital guarantee would not apply; and (b) if there was no IPO or trade sale after 24 months, the buyer could sell the shares back to the seller at the principal and IRR specified.[15]

9 On 10 November 2014, Lee informed Andy that AMP was "doing a dual track IPO and/or trade sale" and that the SGX IPO timing was targeted for around June 2015 – Lee followed up with an email to Andy (copied to Florence and Goh).[16] On 12 November 2014, Lee circulated a draft SPA for Andy and Florence's review.[17] Several discussions ensued and the draft SPA was revised over several email exchanges. In particular, on 22 November 2014, Andy emailed Lee and Goh to propose that the capital and IRR were to be guaranteed *by Goh* in addition to AMP.[18]

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12 Andy's AEIC, paras 21–22; 6AB 3702; 1/10/18 NE 39–40.

13 Andy's AEIC, paras 22 –23 and Exhibit LLJ-6.

14 Florence's AEIC, Exhibit GRL-19; 1/10/18 NE 55.

15 6AB 3744-3748.

16 Andy's AEIC, para 31 and Exhibit LLJ-9.

17 Florence's AEIC, para 60 and Exhibit GRL-24; Andy's AEIC, para 36 and Exhibit LLJ-11.

18 Florence's AEIC, paras 61–62; Andy's AEIC, paras 37–42; 7AB 3970.

10 On 23 November 2014, Goh sent a WhatsApp message to Florence stating that "Andy is the first shareholder [he] guarantee[d] capital [and] IRR" and that this was because he needed a quick decision and there was "no time" for Andy to do due diligence on AMP. Goh needed Andy to simply "trust [and] invest".[19] He also told Andy and Florence that he needed their cash as soon as possible to buy back shares from most of the Minority Shareholders.[20] The next day, Goh emailed Andy and Florence to state that everyone needed "to move fast" as Goh needed the money to "take out a large number of minority shareholders with voting rights very quickly". Goh also stated that he could not provide the guarantee and that it would be provided by AMP only. Goh reiterated that AMP was providing the guarantee as they had "not give[n] you sufficient time [and] material for [d]ue [d]iligence…we needed a quick decision…"[21] Goh also informed Florence that "chances are that nobody need to guarantee anything once IPO or Trade Sales take place very soon".[22]

11 On 25 November 2014, Andy emailed Lee to verify if the guarantee given by AMP was legally viable to ensure that the investment was capital-protected.[23] Lee assured him that AMP was able to provide the guarantee. The guarantee was a "backstop" position in the event that the liquidity event fell through and also to incentivise Goh and AMP's management to achieve a better trade sale price.[24] Florence stated that LSI relied on Goh's repeated representations and assurances that either a trade sale or an IPO would take

19 Florence's AEIC, p 309.

20 Florence's AEIC, para 65 and Exhibit GRL-29; Andy's AEIC, para 44.

21 7AB 4077.

22 Florence's AEIC, paras 66–67 and p 327; Andy's AEIC, para 45; 7AB 4081.

23 Andy's AEIC, pp 156–157.

24 Andy's AEIC, para 52.

place very soon, and that he required her and Andy's money to buy out the Minority Shareholders.

12 On 25 November 2014, LSI executed the SPA with Goh.[25] In particular, clause 4(vii) of the SPA states as follows:[26]

> (vii) In the event there is no IPO or trade sale at the end of the 24 months from SPA date, [LSI] can sell the above shares back to [Goh] or [AMP] …, at the principle [*sic*] and annualized IRR as specified above. The principle [*sic*] and the IRR return are guaranteed by [AMP]. …

Clause 4(vii) gave LSI the option of selling its shares to Goh or AMP if no trade sale or IPO occurred at the end of 24 months from the SPA date, at the sale price and IRR guaranteed by AMP. I will refer to this as the Guarantee.

13 On 15 December 2014, Goh transferred 32,049 shares to LSI and LSI paid Goh in two instalments.[27] It transpired that Andy and Florence's real interest (through LSI) was 1,500 of the 32,049 shares (or 4.68%) as the remaining shares were indirectly purchased by Andy's friends ("the Chinese investors") through corresponding contracts that LSI had executed with them.[28]

14 In late January 2015, Goh informed Andy and Florence that the negotiations on the trade sale with Peter Lim had fallen through. Although they were disappointed, they requested Goh to focus on the IPO. In March 2015, Goh informed Florence that the IPO would be delayed due to some "regulatory requirements" and as AMP's Chief Financial Officer had resigned.[29]

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25 Florence's AEIC, para 75; 4/10/18 NE 103.

26 7AB 4242.

27 Florence's AEIC, paras 80, 87 and 106.

28 3/10/18 NE 94; 4/10/18 NE 110–111; Exhibit E.

Nevertheless, the IPO was "impending…albeit delayed by [three] months" (*ie*, until October 2015).[30] Andy and Florence continued to repose their trust in Goh.

15 Subsequently internal conflicts in AMP ensued between Goh and Nelson and Terence. Michelle, Melissa (Goh's other daughter) and Goh's wife resigned as AMP's directors and Florence became a director on 8 June 2015. In July/August 2015, Florence's relationship with Goh began to deteriorate. She then discovered, from AMP's unaudited management accounts and draft annual report, that AMP had made a pre-tax loss of nearly $6m. Florence and Andy also discovered that Goh was extracting moneys from AMP by way of royalty and other payments. Further the IPO on the SGX had not taken place and when Goh proposed a listing on the Australian Stock Exchange instead, Florence and Andy did not agree as this was not what had been promised to them.[31] On 24 November 2015, LSI's lawyers issued a letter of demand to Goh and Michelle for fraudulent misrepresentation and gave notice exercising its rights to rescind the SPA and to demand the return of the purchase price of the shares and other damages.[32] Florence resigned as AMP's director on 25 November 2015.

***Andrew Grimmett's testimony***

16 Andrew Grimmett ("Andrew") was called as an expert to testify on the process for the conduct of a liquidity event. A listing via an IPO could be done on the Mainboard or Catalist, and a listing targeted for June 2015 would require

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29 Florence's AEIC, paras 108–109 and p 435.

30 Florence's AEIC, at para 112 and p 436.

31 Florence's AEIC, paras 126–129.

32 Florence's AEIC, para 135 and Exhibit GRL-61.

AMP to have audited financial statements for three years ending 30 June 2014 and a further interim audit for six months ending 31 December 2014. Andrew opined that AMP would not have been able to list on the Mainboard or Catalist by June 2015 given the state of preparation at November 2014.[33] Audited financial statements for FY2013 and FY2014 were produced in April 2014 and June 2016 respectively, suggesting that AMP was not sufficiently equipped to produce financial information on a timely basis as required for an IPO process. AMP had also yet to engage various professionals for the proposed Mainboard IPO even at December 2014.

**Defendants' case**

***Goh Seng Heng's testimony***

17 After Goh came to know Florence and Andy around November 2013 in Shanghai, Florence started to contact Goh frequently for advice and assistance on running PPP Suzhou. At the 23 October 2014 dinner, Goh told Florence to consider investing in AMP by buying its shares, as such an investment would be a good deal for her and Andy.[34] Goh believed that it was worthwhile for them to invest in AMP as it had been working with advisors such as Maybank Kim Eng Securities Pte Ltd ("Maybank"), legal counsel Clifford Chance Pte Ltd ("Clifford Chance") and KPMG Advisory Services Pte Ltd ("KPMG") since October 2013 to achieve a liquidity event. Further, around October 2014, Nelson had been discussing with Thomson Medical on a trade sale, and had informed Goh that the trade sale deal was near completion or "near final".[35]

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33 5/10/18 NE 79–80; Andrew's AEIC, Exhibit AG-1, Report dated 29 June 2018 ("Andrew's Report"), paras 5.10, 5.20, 5.24 and 5.68.

34 Goh's AEIC, para 34; 5/10/18 NE 89.

35 Goh's AEIC, para 35; 8/10/18 NE 81.

18 Hence, at the dinner, Goh informed Florence of the following:[36]

(a) AMP had been working towards a trade sale or an IPO for more than a year.

(b) A hospital chain was interested in buying AMP through a trade sale. Nelson was exclusively conducting the negotiations with the hospital chain, and the trade sale was a likely deal.

(c) He hoped to see Suzhou as the epicentre of AMP and/or PPP Clinics in China and believed that Florence's and Andy's contacts in China would help build AMP's business and presence there.

(d) There were shareholders in AMP who were willing to sell their shares, and Florence and Andy thus had an opportunity to purchase AMP shares.

19 Goh denied that he had made the representations (mentioned at [4] above). He had consistently made it clear to Florence and Andy that a liquidity event might not occur, and informed them that if they were not comfortable with any aspect of the transaction, they were free to decline.

20 Even if he were found to have made the representations, Goh maintained he had a reasonable basis to believe, and did believe, that they were substantially true. From October 2013, AMP had begun working towards a trade sale and an IPO concurrently, and this was spearheaded by RSP.[37] Between August 2014 to January 2015, AMP focused more efforts on a trade sale as its "Plan A", with

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36 Goh's AEIC, para 36.

37 Goh's AEIC, paras 54 and 56.

an IPO as its "Plan B".[38] From October 2014 to January 2015, Thomson Medical had expressed interest in the trade sale of AMP and Nelson had informed Goh on 12 October 2014 that the deal with Thomson Medical was "near final", although the deal subsequently fell through in January 2015.[39]

21 Moreover, when Goh entered into the SPA, he genuinely believed that AMP was able to list on the SGX as some interested investors had given implied valuations of AMP exceeding $150m and AMP was profitable. Even if AMP did not meet the requirements for listing on the SGX Mainboard, it could list on the Catalist with a sponsor. AMP also spent a lot of time and resources on pre-listing work until March 2015. That AMP did not ultimately make a submission to SGX was a result of "a series of unfortunate events that made it difficult or even impossible for an IPO" and were beyond Goh's control. This included the abrupt resignation of AMP's Chief Financial Officer in March 2015, the attempt by some of AMP's shareholders to remove Goh and Michelle from the board of directors in May/June 2015, and a suit commenced by one of AMP's shareholders against Goh and Michelle in July 2015.[40]

22 Goh admitted informing Florence and Andy that he needed their funds to purchase AMP shares from the Minority Shareholders, as he did not then have spare funds to do so. He had intended to transfer to LSI the AMP shares that he would purchase from the Minority Shareholders and use the monies paid by LSI under the SPA to pay for those shares.[41]

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38 Goh's AEIC, para 69; 9/10/18 NE 116–119.

39 Goh's AEIC, paras 108–110; 8/10/18 NE 78–81.

40 Goh's AEIC, paras 64, 78, 80 and 87.

41 Goh's AEIC, paras 114–115.

***Lee Kin Yun's and Chan Yue Kuan's testimonies***

23 Lee was AMH's Chairman at the material time, and in charge of AMP's operations. He became the acting Group Chief Executive Officer of AMP in July 2015. Whilst there were various correspondences and discussions with Goh, Florence and Andy pertaining to Florence's and Andy's investment in AMP, Lee maintained that he did not make the representations claimed by LSI.

24 Chan Yue Kuan ("Chan") was AMP's finance manager from July 2013 and subsequently Group Head of Finance in August 2015 until she resigned from AMP in February 2016. Chan gave evidence pertaining to AMP's financial performance at the material time around 2012 to 2015, the audit of AMP's financial statements by KPMG and other matters. I will revert to Chan's evidence in my findings where necessary.

**Preliminary findings**

25 I first make some preliminary findings. First, I find that Lee was acting as Goh's agent when he participated in discussions and communications pertaining to the sale of Goh's shares to LSI. The communications between Florence/Andy and Goh/Lee related to the draft Term Sheets and SPA pertaining to the sale of shares *by Goh*. Hence, whilst a falsehood (in a claim for misrepresentation) must have been made by the representor, it can be made on his behalf by his agent and need not be made personally (see *The Law of Contract in Singapore* (Academy Publishing, 2012) at para 11.008). That said, Mr Singh SC confirmed in closing submissions that LSI's case is premised on representations made by Goh and not Lee,[42] so I need say no more.

26 Second, there is evidence that AMP had started around late 2013 to explore and take preliminary steps towards a liquidity event. Maybank had, on 8 November 2013, prepared a timetable for "Project Laser" (which pertained to the liquidity event for AMP) for matters that needed to be dealt with pre-SGX submission, and Clifford Chance had, on 12 November 2013, prepared a draft "Legal Due Diligence Request List" pertaining to a proposed IPO.[43] On 3 March 2014, Clifford Chance sent an updated IPO timetable (to Goh/AMP) to target a submission to SGX by July 2014.[44] A draft of Project Laser's "Information Package" dated July 2014 prepared by Maybank was sent by Lee to Florence on 24 October 2014 – Andy agreed this showed that AMP was exploring a liquidity event.[45] There is evidence that discussions between AMP and Maybank on Project Laser continued even in August/September 2014, and internally AMP was working on a dual track process (of trade sale and IPO) with priority on a trade sale at that time.[46]

27 Further, there were some discussions between AMP and Thomson Medical in 2014 on a trade sale. As at 8 October 2014, a draft Heads of Agreement ("HOA") between them had been prepared, and on 10 October 2014, AMP received from Thomson Medical a list of priority questions pertaining to the trade sale.[47] A Non-Disclosure Agreement was signed by AMP and Thomson Medical on 9 October 2014, providing for the confidentiality of information received in the course of discussions for a proposed trade sale of

42 Plaintiff's Closing Submissions ("PCS"), paras 106–107.

43 Goh's AEIC, pp 329–337; 1AB 369–405.

44 2AB 1040–1044.

45 6AB 3578–3624; 2/10/18 NE 35, 38.

46 5AB 2637, 2641 and 2670.

47 6AB 3377 and 3432–3434.

AMP to Thomson Medical.[48] On 12 October 2014, Nelson emailed Goh and Lee enclosing a draft term sheet from Thomson Medical and stated that there were a "[c]ouple of outstanding points to discuss but we are near final".[49] Lee also confirmed that in October 2014, AMP was engaging Thomson Medical on a potential trade sale.[50] Even after the execution of the SPA, there was evidence that AMP was still trying to achieve a liquidity event, and Florence agreed that up till May 2015 AMP had not given up on a public listing.[51]

28 Third, it was clear that whilst Florence signed the SPA on LSI's behalf, Andy had played a major and active role in negotiating its terms, and both of them communicated with Goh and Lee on the SPA before and after it was signed. I find that the Guarantee was very important to Florence and Andy. Andy admitted that there was a chance that a trade sale or an IPO would not take place and hence the Guarantee was very important to protect LSI's investment and Florence agreed that the Guarantee would be "very important" in the event of a small probability that the liquidity event did not occur.[52]

**Plaintiff's claim for misrepresentation**

29 I turn then to LSI's claim. At the end of the trial, it stated that: (a) it would not pursue its claim against Michelle; and (b) it would not rely on the Minority Shareholders Representation on its own, but to prove its case on the

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48 Exhibit D; 4/10/18 NE 50.

49 6AB 3477–3481.

50 10/10/18 NE 95.

51 7AB 4447; 9AB 5609 and 5612; 10AB 5708, 5733–5734, 5737, 5796–5797; 12AB 7481; 4/10/18 NE 66.

52 1/10/18 NE 54, 91, 95, 100–101; 3/10/18 NE 66–67, 71, 73.

representations pertaining to the trade sale and IPO.[53] Although LSI is not pursuing its claim against Michelle, I will deal with it for completeness.

**Applicable principles**

30 LSI has relied on fraudulent misrepresentation, liability pursuant to s 2(1) of the Misrepresentation Act (Cap 390, 1994 Rev Ed) ("the MA") and innocent misrepresentation. It is not pursuing its claim for negligent misstatement.[54]

31 The elements for fraudulent misrepresentation were stated in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 ("*Panatron*") at [14]. There must be a representation of fact, made with the intention that it should be acted upon by the plaintiff. Next, the plaintiff must have acted upon the false statement and suffered damage by so doing. Finally, the representation must be made with knowledge that it is false, it must be wilfully false, or at least made in the absence of any genuine belief that it is true.

32 In *Ernest Ferdinand Perez De La Sala v Compania de Navegacion Palomar, SA and others and other appeals* [2018] 1 SLR 894 ("*Ernest Ferdinand Perez*") at [172]–[173] the Court of Appeal stated that a representation as to the future is not, in itself, actionable, although it can imply an actionable representation. For instance, a person who makes a statement as to the future may make an implied representation of an existing fact. A person who states an intention as to the future may also implicitly represent that he in fact has that intention at the time of making the statement. Next, for the

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53 LSI's counsel's letter to the court dated 19 October 2018.

54 Agreed List of Issues dated 19 October 2018.

representation to be false, it must be *substantially* false. It need not be false in every respect, nor is it invariably sufficient if it is false in a single respect.

33 An action under s 2(1) of the MA is premised on the representee entering into a contract with the representor. Once an actionable representation is established (*ie*, a false statement made by the representor to the representee and induces him to enter into the contract), the representor would be liable under s 2(1) of the MA unless he proves that he had reasonable grounds to believe and did so believe in the truth of the representation (*Lim Koon Park and another v Yap Jin Meng Bryan and another* [2013] 4 SLR 150 at [38]–[39]). Where an actionable misrepresentation is shown, a representor is liable for innocent misrepresentation. Unlike s 2(1) of the MA, it is not a defence in an action for innocent misrepresentation for the representor to claim a belief in a representation that was objectively false: *Forum Development Pte Ltd v Global Accent Trading Pte Ltd and another appeal* [1994] 3 SLR(R) 1097 at [19].

**Claim against Michelle**

34 I find that LSI had failed to prove its case against Michelle. Andy and Florence admitted that Michelle did not make any of the representations.[55] It is undisputed that Michelle was not present at the 23 October 2014 dinner or the 24 October 2014 meeting. She was also not involved in the negotiations that led to the signing of the SPA, and in the correspondences in which she was copied, she did not expressly make the representations asserted by LSI.

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[55] 2/10/18 NE 115 and 120; 4/10/18 NE 122.

**Minority Shareholders Representation**

35 I deal first with the Minority Shareholders Representation. Goh claimed that he only told Florence that there were shareholders in AMP who were willing to sell their shares and Florence and Andy thus had the opportunity to purchase AMP shares. In addition to this, I find that Goh had informed Florence and Andy that there were minority shareholders with voting rights who could stifle a trade sale or an IPO, that he wanted to buy them out, and that he needed Florence's and Andy's financial support to do so as his money was stuck elsewhere. Hence, I accept that the Minority Shareholders Representation was made. This is supported by the contemporaneous documentary evidence.

36 Shortly after the dinner on 23 October 2014, Florence informed Andy that Goh was prepared to sell AMP shares which belonged to other shareholders. On 24 October 2014 (after Florence's meeting with Goh that day) she again informed Andy that there were minority shareholders who "might hinder [Goh's] work" and that Goh wanted to purchase the AMP shares from them.[56] Florence would not have informed Andy of these matters unless Goh had conveyed them to her. Even on 23 November 2014, Goh told Florence that he could only release about 17,000 shares first, and that he needed her cash as soon as possible to buy AMP shares from most of the Minority Shareholders. Hence Goh added a clause in the SPA for the shares to be sold to LSI in two tranches.[57] Then on 24 November 2014, Goh informed Florence and Andy that they needed to move fast (on the execution of the SPA) as he needed the money "to take out a large [number] of minority shareholders with voting rights very quickly".[58]

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56 6AB 3643.

57 7AB 4001; 2/10/18 NE 80–81.

58 7AB 4083.

Even after the SPA was executed, Goh told Florence that he needed some "loose cash to take out some of [his] impatient minority shareholders" and the faster he obtained the money from LSI the faster he could pay the minority shareholders.[59] Goh claimed that he did not want the Minority Shareholders to sell their shares to third parties who may not be aligned to AMP's vision and goals and that he needed funds from Florence or Andy urgently to buy them out as his own funds had been earmarked for other purposes.[60]

37 I found the representations were substantially false and Goh had lied that he did not at the material time have money to buy out the Minority Shareholders. Goh admitted in his Defence that he did not at any time lack funds and that he had the independent financial means to do so.[61] He then tried to explain in evidence that he did not have "spare funds" as his cash was "earmarked for other purposes" and not that he did not have any cash at all.[62] By Goh's evidence, he had the funds, and whilst he claimed that they were earmarked for other purposes, this was but a bare assertion.

38 In court, Goh refused to confirm his purported belief that the Minority Shareholders who had voting rights could stifle a liquidity event. He stated that it was "possible" and that "anybody with a [*sic*] voting rights can do anything".[63] When he was challenged that there were in fact no minority shareholders who could stifle a liquidity event at the material time, Goh said he "[could not]

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59 Florence's AEIC, pp 371, 384 and 395.

60 5/10/18 NE 134–136; 8/10/18 NE 27; Goh's AEIC, para 115.

61 Defence and Counterclaim (Amendment No. 2) at para 67, read with para 36(n) of the Statement of Claim (Amendment No. 2); 9/10/18 NE 137–139.

62 Goh's AEIC, para 115.

63 5/10/18 NE 154–155.

answer that question".[64] When asked whether there were in fact any competing buyers for the Minority Shareholders' shares, Goh said "I don't know".[65] I find Goh to be evasive. There was insufficient evidence that the Minority Shareholders could stifle a liquidity event and I find that Goh did not have a genuine belief or reasonable grounds to believe as such.

39 Nevertheless, I am not satisfied that the Minority Shareholders Representation had induced LSI to enter into the SPA. LSI claimed that it would not have entered into the SPA if Goh had not asked for help to buy out the Minority Shareholders.[66] LSI also claimed that it would not have entered into the SPA if it knew that Goh was selling his own shares (instead of the Minority Shareholders' shares) as it did not want to profit from Goh or cause him to lose his stake in AMP, but then claimed that it actually wanted Goh to remain invested in AMP.[67] I reject LSI's claims and am not persuaded that these reasons, even if true, had induced LSI to enter into the SPA.

40 It is evident that LSI entered into the SPA for commercial reasons. Florence admitted that LSI purchased Goh's shares because Andy and she believed that they could profit if a liquidity event occurred and not that they wanted to assist him.[68] Further, the parties understood that if a trade sale occurred, *all* the AMP shares (including Goh's) would be sold to the buyer in the trade sale.[69] This thus contradicts Florence and Andy's explanation that they

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64 9/10/18 NE 121–122.

65 5/10/18 NE 135–136.

66 Florence's AEIC, paras 73 and 75; 3/10/18 NE 107.

67 2/10/18 NE 88–90 and 97; 3/10/18 NE 108–109.

68 3/10/18 NE 92–93; 4/10/18 NE 11–12 and 112.

69 10/10/18 NE 76; Statement of Claim (Amendment No. 3) at para 17(b).

did not wish to buy Goh's shares as they wanted Goh to retain his shares and remain invested in AMP for a long time. Moreover, the SPA was executed by LSI, an investment company, and it transpired that the Chinese investors were indirectly investing in the bulk of the shares that LSI bought (see [13] above).[70]

41 LSI's claim that it would not have entered into the SPA if it knew that Goh was selling his own shares (rather than shares emanating from the Minority Shareholders) is also contradicted by the SPA. The SPA provided for LSI to purchase shares from *Goh*; Goh was not obliged to sell to LSI shares that came from minority shareholders. As Florence stated, Goh was persuading her to purchase "his" shares, and Andy confirmed that discussions with Goh pertained to the purchase of "Goh's" shares.[71] When LSI executed the SPA, it knew that Goh had yet to purchase shares from the Minority Shareholders (to transfer to LSI), and after the SPA was signed, there were still on-going discussions to buy back shares from minority shareholders.[72] I add also that Goh did purchase at least 26,000 shares from minority shareholders at the material time, and Mr Singh SC did not dispute such shareholders had sold their shares to Goh.[73]

42 That said, I agree with Mr Singh SC that the Minority Shareholders Representation was relevant to the representations on the trade sale and IPO in that Goh repeatedly conveyed a sense of *urgency* to buy out the Minority Shareholders in light of an *impending* liquidity event.[74] I will deal with this further below.

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70 7AB 3907.

71 Florence's AEIC, para 28; Andy's AEIC, para 13.

72 Florence's AEIC, pp 396–397.

73 7AB 4319, 4325, 4327, 4329, 4342, 4344, 4346, 4348; 9AB 5248–5250, 5251–5252; 2/10/18 NE 112; 8/10/18 NE 38.

**Representations pertaining to the trade sale**

***Representations that were made***

43 The representations that were made pertaining to a trade sale was based on what Goh had conveyed to Florence and Andy on 23 and 24 October 2014 and reiterated in various ways until the SPA was signed. First, and based on both Goh's and Florence's evidence, Goh had informed Florence that AMP had been working towards a liquidity event which included a trade sale of all of AMP's shares. Second, I find that Goh had informed Florence that the person interested in buying over AMP's shares was an important person in Singapore, who was a billionaire and owned a medical group[75] or a hospital chain.

44 Third, I find that Goh had mentioned Peter Lim's name to Florence around 24 October 2014 when she met with Goh and Lee. On the same night, Florence informed Andy that "Peter Lim is the person who intends to make the purchase".[76] As she was unfamiliar with the name Peter Lim, she would not have mentioned his name to Andy if Goh had not told her about him. Pertinently, Goh himself stated, in further and better particulars, that when he met Florence on 24 October 2014, a trade sale of AMP to Peter Lim or an entity controlled by him was discussed, and that he and/or Lee had informed Florence that Nelson was negotiating the trade sale to Thomson Medical and/or Peter Lim.[77] Goh's subsequent assertion, that it was Terence or Nelson who had mentioned Peter Lim's name to Florence or Andy, was without basis and I disbelieve Goh that

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74 Plaintiff's Closing Submissions ("PCS"), para 21(b).

75 3/10/18 NE 33.

76 Florence's AEIC, exhibit GRL-14 (at p 206); 6AB 3639.

77 Further and Better Particulars of the Defence and Counterclaim, dated 29 April 2016.

he had made a "mistake" as to the contents of the further and better particulars, given also that he had been represented by lawyers throughout this case.

45 Fourth, I find that Goh had informed Florence that there was a "99%" probability or possibility of the trade sale being concluded. I note that Florence had used various descriptions for the "99%" stating that Goh had said "99% probability" or "99% certainty".[78] Despite the nuances in describing the likelihood of the trade sale, I find Florence to be telling the truth – that Goh had essentially informed her that the chances of a trade sale happening was 99%. I find support in Goh's email reply of 12 August 2015[79] (which I set out below) to Florence's email of the same date where she expressed her frustration after it became apparent that no trade sale or IPO was going to take place:

> [H]i [F]lorence,
>
> [T]hank you for your questions [and] let me give you my personal perspectives on a without prejudice level.
>
> [T]hey are embedded below your questions:
>
> *1. We Liberty Sky always wants PPP to be a respectable and profitable listed company.*
>
> Yes, [I] believe everyone here is like you. We all WANT PPP to be this.
>
> *2. When we were asked to buy the shares, we were told PPP was about to listing in Singapore Exchange or will go for a trade sale for 99% possibility. Also, the company will have nice profits due to the new products launch. However, all these didn't happen. Why?*
>
> a. [M]e too believe it when Nelson was dealing with Thomson Medical Centre Trade Sales we have enough [e]mail trails to prove [and] show that Nelson was in charge [and] ask [Lee and] management to take a back seat.

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78 Statement of Claim (Amendment No. 3) at para 17(c); Florence's AEIC, para 32; 3/10/18 NE 37–38.

79 12AB 7439.

…

[Emphasis in italics denote Florence's questions to Goh.]

[Emphasis in underline are mine.]

46 Whilst this was post-SPA, it was cogent evidence of Florence's assertion that Goh had informed her before the SPA was executed that the chance of a trade sale was 99%, and of Goh's reaction to her assertion. When Florence stated in the email that she was informed that there was a 99% possibility of a trade sale and asked Goh why it did not happen, he did not refute this but instead stated that he also believed it! In court, Goh was evasive when asked why he did not reply to Florence's question and assertion that she and Andy had been told there was a 99% possibility of a trade sale. He avoided the issue and claimed that "there was no reason to deny" and that he had answered the question in the email, but then stated that he was not responding to her assertion.[80] By this time, their relationship had deteriorated and if Florence's assertion were untrue, one would have expected Goh to correct her statement or deny it, but he did not.

47 Fifth, I find that Goh had, in addition to informing Florence that the trade sale was a "likely deal", also told her at the 23 October 2014 dinner that the trade sale was imminent and likely to take place within one month, and repeated the imminence of the trade sale to Andy in a telephone call on 24 October 2014. I also find that Goh had told Florence at the 24 October 2014 meeting that a trade sale would take place "very soon". Whilst there were no documents to show that Goh had used the words "imminent" or "likely to take place within one month", Goh had conveyed a sense of urgency regarding the stage of the trade sale deal. On 27 October 2014 (soon after the 23 October 2014 dinner), Goh asked Florence to decide quickly as "timing is of the essence [and] if the

[80] 5/10/18 NE 160–162.

decision is not quick enough, we will just have to pass too". On 24 November 2014 (a day before the SPA was signed) Goh informed Florence and/or Andy that he needed a "quick decision" and that they "need[ed] to move fast, as he need[ed] the money to take out a large [number] of minority shareholders with voting rights very quickly". Goh also stated, "chances are that nobody need to guarantee anything once IPO or Trade Sales take place very soon".

48 To summarise, I find that before the SPA was executed, Goh had represented to Florence and/or Andy that: (a) AMP was working towards a liquidity event which included a trade sale of all its shares; (b) the trade sale was to an important person in Singapore (*ie*, Peter Lim), who was a billionaire and owned a medical group or hospital chain; (c) there was a "99%" probability or possibility of the trade sale being concluded; and (d) the trade sale was a likely deal, it was imminent, it would likely take place within one month and it would take place very soon. I will refer to these as the Trade Sale Representations. The correspondences show that Goh was rushing the process of the sale of his shares and, to get Florence and/or Andy to execute the SPA quickly, he had conveyed to them the urgency of the matter by representing the imminence of a trade sale and the high chance of it being completed.

49 Moreover, I find that the Minority Shareholders Representation impliedly represented that the trade sale deal was imminent and highly likely.[81] Goh had on 27 October 2014 informed Florence that it was an "opportunity" requiring her to *take over the shares* where "timing [was] of the essence [and] if the decision is not quick enough [Goh] will just have to pass too". The urgency that Goh sought to convey as to taking over the Minority Shareholders' shares

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[81] Statement of Claim (Amendment No. 3) at paras 23(c) and 24.

was tied to the opportunity for Florence and Andy to *also* profit from an impending liquidity event. Indeed, Goh admitted that he was trying to persuade them to invest in AMP[82], and I find that he intended them to rely on his statements. There was clear incentive for him to make the Trade Sale Representations and to convey the urgency implied in the Minority Shareholders Representation. Goh had made a quick and tidy profit of at least $100 per share from purchasing the Minority Shareholders' shares and selling them to LSI.[83] Having purchased at least 26,000 shares from minority shareholders around the time the SPA was signed, this amounted to at least $2.6m in profit.

50 That AMP was working towards a liquidity event which included a trade sale of its shares to an important person/billionaire/Peter Lim is a representation of fact and of the present (and past) state of events. That Goh had conveyed to Florence that the trade sale had a 99% probability or possibility of being concluded, it was a likely deal, it was imminent and would likely take place within one month or very soon were statements of opinion or belief as to the likelihood of a future event which carried the implication of a present fact. That is, the present state (in October 2014) of the trade sale deal between AMP and Thomson Medical was at an advanced stage, it was near completion or near final (as Goh claimed)[84] and it would take place very soon, and that Goh had an honest belief in what he said or reasonable grounds for such belief (*Ernest Ferdinand Perez* at [172]–[173]; *Deutsche Bank AG v Chang Tse Wen and another appeal* [2013] 4 SLR 886 ("*Deutsche Bank AG*") at [83]). Indeed, Goh himself claimed

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82 5/10/18 NE 156–157.

83 10/10/18 NE 11–12; 9AB 5250.

84 Goh's AEIC, para 35(c); 8/10/18 NE 64, 81.

that he believed around 23 or 24 October 2014 that a trade sale was imminent and would likely take place within one month and that there was a 99% probability of it being concluded.[85]

***Whether the Trade Sale Representations were substantially false***

51 I find the Trade Sale Representations to be substantially false.

52 Although AMP had been working on a liquidity event even shortly before the SPA was executed, when the representations were made, any trade sale was far from being concluded or that it would take place "very soon". There was no evidence that a trade sale was imminent or had a 99% chance of being concluded. Maybank did not appear to have been involved after 1 October 2014, and the HOA between AMP and Thomson Medical was still a draft at 8 October 2014. On 10 October 2014, Thomson Medical sent a long list of priority questions to AMP for the purposes of due diligence. This included a request for AMP's audited accounts for the financial year 2014, which had not been prepared and was only ready in *September 2015*, some nine months after the SPA was executed.[86] There was no evidence whether AMP had provided Thomson Medical any of the information or documents requested for. When Nelson sent a second draft HOA from Thomson Medical to Goh on 12 October 2014 and informed him that "we are near final", the HOA was still a draft and Goh was told that there were a "[c]ouple of outstanding points to discuss".[87] There was no evidence that the HOA was ever executed.[88] Even if it were, the

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85 5/10/18 NE 152.

86 6AB 3434; 9/10/18 NE 19–21.

87 6AB 3477.

88 9/10/18 NE 27.

HOA provided that the trade sale transaction was "strictly subject to the execution of legally binding definitive agreements", that up to three weeks of due diligence would be allowed upon executing the HOA, and that upon completion of due diligence would the parties "negotiate legally binding definitive agreements".

53 Even on 24 November 2014 when Goh informed Florence that "chances are that nobody need to guarantee anything once IPO or trade sales take place very soon", and when the SPA was signed, the draft HOA had not been signed and key terms such as the price had not been agreed upon. Andrew opined that the due diligence, pricing discussions, negotiation and completion process for a trade sale would have required at least three more months and would have taken even longer for a company lacking the audited information for due diligence (such as AMP at the material time).[89] There was also no evidence of any other activity between AMP and Thomson Medical until December 2014 (post-SPA). Goh produced a few emails between the two entities pertaining to continuing discussions of a trade sale, but it is unclear from these emails whether and what further activities took place to advance the trade sale or at what stage the trade sale deal was when Goh made the Trade Sale Representations.[90]

54 I also add that the Trade Sale Representations were not a sales puff. Whether a representation is a puff would depend on the degree or obviousness of its untruth, the circumstances of its making and the expertise and knowledge attributable to the person to whom it is made (see *Deutsche Bank AG* at [87]). Unlike Goh, LSI's representatives knew little or nothing about the trade sale

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89 Andrew's Report, paras 4.2–4.3, 4.22, 4.27 and 4.29.

90 9AB 5374, 5426–5427, 5452–5453.

negotiations or the proposed IPO and they had no access to information pertaining to AMP's potential trade sale. The Trade Sale Representations were made to convince LSI to buy Goh's shares in AMP. Hence, that Goh stated that the trade sale was a 99% probability or that it was imminent *etc*. would have been viewed by LSI as representing a high chance of a trade sale taking place and that it would take place very soon. This was even Goh's belief at the material time, and hence a reasonable person in Florence and Andy's shoes would not have understood it to be a puff or mere hyperbole.

***Goh's belief or reasonable grounds***

55 I also find that Goh did not have a genuine belief or reasonable grounds to believe, when he made the representations, that a trade sale was near final or near completion, that it was imminent, that it would take place very soon or that it was even a likely deal let alone having a 99% probability of concluding. Goh claimed that his belief was based on a complete trust in Nelson, who was negotiating the trade sale and who told him that the deal was "near final". I find his alleged trust or belief in Nelson to be without basis.

56 Goh claimed he could not recall if (before the SPA was executed) he had asked Nelson about the trade sale price or whether Thomson Medical had agreed on any price, whether he had meetings with Nelson to find out the status of the trade sale, and what he had discussed with Nelson.[91] He did not ask Nelson to clarify what he meant by "near final" or when the trade sale would be concluded.[92] He did not find out whether the HOA was signed and equivocated about whether he had even reviewed it; he also claimed that he had never seen

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91 8/10/18 NE 81–84.

92 8/10/18 NE 86–87.

the priority questions that Thomson Medical sent on 10 October 2014.[93] Indeed, Goh claimed he did not find out the details of the potential trade sale, such as the price, the terms and conditions of the sale, the stage of negotiations, and even his involvement in the business post-trade sale. Goh's conduct was puzzling in light of the fact that he claimed he was "interested" to know and "wanted to know a lot of things", that he was then a director of AMP, and that he would stand to gain substantially if a trade sale materialised. Yet Goh claimed that he left it to Nelson to give him information if and when Nelson saw fit, and he did not see the need to enquire about the status of the trade sale deal.[94] By Goh's evidence of his purported conduct and deliberate failure to enquire, he could not have had a genuine belief or reasonable grounds to believe that a trade sale was near final or near completion, it was imminent and would take place very soon, it was a likely deal or it had a 99% probability of concluding.

57 Whilst Goh was sent the 10 October 2014 email from Thomson Medical pertaining to the list of queries, he claimed he did not receive the list itself.[95] But Goh had notice from the subject header of the email showing that Thomson Medical was requesting information for due diligence. When queried whether he knew about or had been consulted on the due diligence enquires from Thomson Medical, he claimed he did not know, did not remember, and did not see the need to do so as he was merely a medical doctor. When asked if he knew that AMP did not have ready the items on the list, Goh claimed he did not know, he could not remember, and he was not a part of the process.[96]

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93 9/10/18 NE 17–19, 25–26, 120–121.

94 8/10/18 NE 84–85; 9/10/18 NE 43–44.

95 10/10/18 NE 63–64; 6AB 3432–3433.

96 9/10/18 NE 18–20.

58 However, Lee testified it was likely that either he or Nelson would have informed Goh about Thomson Medical's due diligence queries.[97] Goh eventually admitted that he had been informed that there were discussions on the terms regarding the China and Indonesia joint ventures that were present in the 12 October 2014 draft HOA.[98] It was plain that Lee's evidence that AMP's board (including Goh) would be updated and Goh's admission that he had discussed items on Thomson Medical's list of due diligence queries sat uneasily with Goh's claim that he simply left such matters to others in AMP to handle.

59 Indeed, I find that Goh knew the progress of the trade sale (or lack thereof) with Thomson Medical at the material time. In late October/early November 2014, Goh was a substantial shareholder of AMP, its founder and a director – it is unbelievable that he did not verify the status of the trade sale deal, even though he had access to the necessary information and claimed that he was "interested" to know, "wanted to know a lot of things" and would "love to know" how close the deal was to signing.[99] I disbelieve that Goh could not remember whether he enquired about the status or details of the potential trade sale, whether he had any meetings regarding this, or that he could not recall what he discussed with Nelson. Even Lee was able to say that he would have discussed with Goh in October/November 2014 on the trade sale to Thomson Medical as this was then a "current topic".[100]

60 At the material time, Goh was concerned to get the trade sale going. In a group WhatsApp chat (which included Goh, Lee, Terence and Nelson) ("the

97 10/10/18 NE 111.

98 9/10/18 NE 35–37.

99 8/10/18 NE 84–86; 9/10/18 NE 41.

100 10/10/18 NE 114–116.

Group Chat"), Goh raised concerns about AMP's cash flow position and "crisis", stated that it was "urgent" to "find money to pay bills" and informed the chat group to "get [Thomson Medical] to buy [and] save everyone" and to "focus on the [trade sale with Thomson Medical and] get it done".[101] AMP had also invested resources to achieve a liquidity event. Given the importance of the trade sale to Goh especially in light of AMP's finances then, it beggars belief that he did not bother to find out at the material time the status of the trade sale negotiations and its terms. I find Goh to be an evasive and dishonest witness.

61 Goh was clearly aware and involved in trying to meet the criteria required before there was any reasonable prospect of Thomson Medical agreeing to a trade sale. On 8 October 2014, Goh emailed Lee, Nelson and others, in reply to Nelson's email asking Lee to "chase [AMP's Chief Financial Officer] for the revised June 2014 [financial statements]…", where he stated:[102]

> …will be good to configure the Indon[esia] [joint venture] to same as China
> can do 2 things :
> 1. get edmund to **pay us 800k now to stop my last quarter bleeding**. we truly deserve that payment….heehee
> **if [Thomson Medical] see 1st qtr of 2015, our deal will not get thru**.
> with your 1m [and] their 800k our 1 st qtr will look beautiful…
>
> [**Emphasis added**.]

62 Goh's email showed that he was aware that (among other things) the status of the Indonesia and China joint ventures and AMP's audited accounts would be of concern to Thomson Medical. Taken together with his WhatsApp messages (at [60] above), Goh knew that AMP's finances were in a potentially parlous state.[103] This suggests that Goh knew that unless AMP was able to

101 Exhibit J.

102 6AB 3355.

massage its figures, a trade sale deal was an impossibility. As it were, what was certain was that Goh was actively involved in the requirements for a trade sale deal and would have known when he made the Trade Sale Representations that such a deal was not on the near horizon.

*Standard for fraudulent misrepresentation*

63 I turn to deal with defendants' counsel's (Mr Lok SC's) submission[104] that a relatively high standard of proof must be satisfied by the representeee before a fraudulent misrepresentation can be established successfully (*Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 ("*Anna Wee*") at [30]. The Court of Appeal in *Anna Wee* elaborated that this higher standard was because allegations of fraud carried grave implications of dishonesty on the part of the representor. Hence, whilst the standard of proof was one on a balance of probabilities, the more serious the allegation, the more evidence the representee may have to adduce to succeed in his claim (see *Tang Yoke Kheng (trading as Niklex Supply Co*) v *Lek Benedict and others* [2005] 3 SLR(R) 263 at [14]).

64 Even so, I had no difficulty concluding that Goh had the necessary intent for a finding of fraudulent misrepresentation. Goh's intent went beyond wilful blindness or recklessness. Goh claimed he did not know or was unconcerned about the status of the trade sale deal. If so, I could not see how he had any basis to represent that it was going to happen very soon, or by his own words, that it was a "likely deal". On the contrary, the evidence showed that Goh knew the status of the trade sale deal. Knowing the lack of progress, he was dishonest in

103 10/10/18 NE 41.

104 Defendants' Closing Submissions ("DCS"), paras 119–120.

stating that it would happen "very soon", much less that it was imminent, highly likely or there was a 99% probability or possibility that it would happen. His dishonesty continued as he failed to correct, and persisted in repeating, the representations until the time LSI executed the SPA.

***Inducement***

65 Next, I find that Goh had intended the Trade Sale Representations to be acted upon by Florence and Andy (see also [49] above). By Goh's evidence, he felt it would be worthwhile for them to invest in AMP and hence he informed Florence of the potential trade sale to a hospital chain. Goh admitted that he tried to persuade them to invest in AMP, that he was "interested" to have them invest in AMP, that he had asked Florence to persuade Andy to invest, and that he wanted their help to buy out minority shareholders.[105] It was clear from the Trade Sale Representations (taken together with the Minority Shareholders Representation and what was represented regarding the IPO which I will come to) that Goh intended them to act on his words.

**Representations pertaining to an IPO**

***Representations that were made***

66 I find that Goh had informed Florence that AMP had been working towards a trade sale or an IPO for more than a year (as he admitted), and if the trade sale did not materialise, there was an intention to list AMP on the SGX and this was targeted for completion around March to June 2015 ("the IPO Representations"). However, I find that Goh did not inform Andy or Florence

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105 Goh's AEIC, paras 35–36; 5/10/18 NE 156–157.

that the IPO would be no later than 24 months after LSI acquired Goh's shares, and LSI in its closing submissions no longer relied on this representation.[106]

67 Goh stated that between August 2014 to January 2015, AMP had focused more efforts on a trade sale as "Plan A", with an IPO as "Plan B". Between 23 October to 25 November 2014, he had informed Florence and Andy that an IPO was planned for June 2015.[107] Also, on 10 November 2014, Lee emailed Andy (copied to Florence and Goh) to state that AMP was doing a "dual track IPO and/or trade sale" and the "SGX IPO timing target is around June 2015". Goh admitted that Lee's email accurately reflected a tele-conversation among Andy, Lee and Goh.[108] Even if Lee was purportedly representing AMP in that email (as Goh claimed),[109] he was also representing Goh (see [25] above).

68 The IPO Representations were representations of an existing state of affairs, namely that AMP was working towards an IPO and had been doing so for more than a year. It also implied that Goh believed or had reasonable grounds to believe that AMP could be listed by June 2015, that in late October 2014 (when the IPO Representations were first made) preparations were in a sufficiently advanced stage to enable an IPO to be achieved by June 2015, and that AMP could fulfil the requirements for a listing to take place by then. Andy stated that the understanding that the IPO would take place by June 2015 gave him the impression that AMP must have "very robust finances" and "the operations must be very good and the finances of the company would be able to meet the IPO standards".[110]

106 PCS, at para 11(d).

107 5/10/18 NE 97–98, 173.

108 6AB 3810; Goh's AEIC, para 38(h); 5/10/18 NE 172; 10/10/18 NE 116.

109 5/10/18 NE 168–169; 8/10/18 NE 4.

***Whether the IPO Representations were substantially false***

69 There was evidence that AMP had been preparing for an IPO when Goh made the IPO Representations and even after the SPA was signed (see [26]–[27] above). Nevertheless, I find the IPO Representations to be substantially false. Up to the time the SPA was signed, AMP could not have realistically achieved an IPO by June 2015 and the preparations for an IPO was not at a sufficiently advanced stage.

70 For a listing on the SGX (whether on the Mainboard or Catalist) by June 2015, AMP required audited financial statements for three years ending 30 June 2014 and an interim audit for six months ending 31 December 2014. Yet, AMP's FY2013 financial statement (initially prepared by One Partnership PAC) was completed only around 14 April 2014, and *its FY2014 (ending June 2014) financial statement* was completed by KPMG only around 9 *September 2015*, a few months after the planned June 2015 IPO.[111] Andrew opined these suggested that AMP was not equipped to produce financial information on a timely basis for an IPO, and that AMP would not have been able to produce the interim audit for six months ending 31 December 2014 in time for a June 2015 IPO. The FY2015 financial statement was only completed on 15 September 2016.[112]

71 Indeed, Chan explained that the FY2014 financial statement was delayed because KPMG had to first re-audit the FY2011 to FY2013 financial statements, and as KPMG was appointed as AMP's auditors in late 2013, a re-

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110 2/10/18 NE 133.

111 Chan's AEIC, para 27(a)–(b); Exhibit CYK-9 (at p 308).

112 Chan's AEIC, para 27(c), pp 28, 65 and 149.

audit of AMP's accounts was a standard protocol for auditors newly appointed by a company seeking an SGX listing.[113] KPMG and AMP also differed on how revenue derived from licensing fees paid by AMP's overseas joint venture partners, and revenue derived from AMP's package sales, should be recognised.[114]

72 Next, the correspondences between AMP and its IPO advisors did not show that the preparations for an IPO was progressing far.

(a) The first timetable for a submission to SGX was sent on 8 November 2013 from Maybank to Goh and Lee setting out the deadline for submission to SGX for an IPO listing as 5 March 2014.[115]

(b) On 3 March 2014, Maybank sent a revised IPO timetable targeting a submission to SGX on 31 July 2014 with a targeted listing by end October 2014. Maybank's slide showed that this would be a "[s]ubmission using 3 Full Financial Years (FY12-14) results".[116]

(c) On 26 May 2014, Maybank emailed Goh presentation slides which it had used at a meeting on Project Laser.[117] In the slides, Maybank made clear that the timing of an IPO was subject to, among other things, "[c]ompletion of audit of historical financials" and that there was "potential uncertainty around whether the company will meet the SGX mainboard criteria" and hence it "might be an appropriate time to

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113 Chan's AEIC, paras 29 and 32.

114 Chan's AEIC, paras 29(b) and (c).

115 Goh's AEIC, pp 329–337; 9/10/18 NE 75.

116 2AB 1040–1044; Goh's AEIC, pp 918–921.

117 3AB 1617, 1621 and 1632.

evaluate other options available to raise equity and provide liquidity to existing shareholders". The timeline for an IPO was now shown as November/December 2014.

(d) From June to September 2014, the correspondences on Project Laser were trade sale-focused. On 13 June 2014, AMP agreed on the terms of Maybank's engagement but this was in respect of a trade sale, and likewise Maybank's "Project Laser Trading Comparables" dated July 2014 was prepared for the purposes of a trade sale.[118] Even the "Project Laser Information Package" prepared by Maybank dated July 2014 and forwarded by Lee to Florence on 24 October 2014 was prepared for the purposes of a trade sale.[119] There was no information within this document pertaining to any IPO timelines.

73 There also seemed to be a break in the activities pertaining to AMP's engagement of Clifford Chance (to advise AMP on the legal and regulatory issues in connection with the proposed IPO). The documents that Goh produced showed that AMP and Clifford Chance corresponded between October 2013 to March 2014, and then only resumed from February 2015 to March 2015.[120]

74 No doubt, AMP had circulated an internal email on 30 August 2014 to state that it should "proceed for IPO asap" and to "consider moving ahead with a proper dual-track process (trade sale and IPO), to keep options open". This was reiterated by Lee to Maybank and Goh on 12 September 2014 that AMP was still proceeding on a dual track IPO and trade sale (though Lee also

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118 Goh's AEIC, pp 929, 931–934.

119 Goh's AEIC, pp 946 – 947; 6AB 3578–3580.

120 Goh's AEIC, para 67.

indicated AMP's preferred choice to be a trade sale).[121] Despite this, and even if AMP had intentions to proceed with the IPO option, it is clear that when Goh made the IPO Representations, AMP's focus then was on a trade sale as its "Plan A". There was also *little evidence of what exactly was being done or what concrete steps were being taken to work towards an IPO*. Indeed, at various stages and based on the timetable prepared by Maybank, which was revised from time to time, key milestones (*eg*, preparing management and audited accounts and the prospectus) were far from complete.[122]

75 Moreover, an email on 8 December 2014 from Joel Ng ("Joel"), AMP's financial officer, which included an "IPO Timetable", showed cogent evidence of the *objective* state of AMP's inability to achieve an IPO. In the Timetable, Joel showed that several steps such as completion of audits, due diligence, formalisation of engagement letters with auditors and counsel, and finalisation of terms for its key executives had to be taken to realistically achieve a listing by *end November 2015*.[123] It will be recalled that Goh had represented that an IPO was targeted for June 2015, which implied reasonable grounds to believe that preparations for an IPO were at a sufficiently advanced stage to meet that target. Joel's email showed that even some time after the IPO Representations had passed, few (if any) of the required steps had been carried out.

76 Finally, the Group Chat showed that even at 28 October 2014 (contemporaneous with the IPO Representations), Goh admitted that AMP was facing a "cash flow crisis", "[AMP] need to survive…with so much outflow and

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121 Goh's AEIC, pp 997 and 1001.

122 9/10/18 NE 67–77, 81, 83–84.

123 Goh's AEIC, p 1005.

so minimal inflow" and that its books "must look better for any IPO or trade sales". This must also be looked at with other matters at the material time. Goh admitted that under a licence agreement dated 1 July 2014 with AMP ("the Licence Agreement"), the one-time down payment of $3.745m by AMP to GSHKML (a company owned by Goh and his family[124]) upon signing of the Licence Agreement, being a royalty licence fee, and an additional $267,500 *per month in perpetuity*, would adversely affect AMP's financials for the six-month period of July to December 2014 and cause AMP's financials to show a loss for that period.[125] This turned out to be the case when the FY2015 audited financial statements showed an "allowance for doubtful receivables" of $7,344,720.[126]

77 Indeed, Goh stated in an email of 27 June 2015 that the royalty licence fees under the Licence Agreement, of about $3.5m a year, and *to be paid in perpetuity*, would have been "a severe liability for any IPO [and] Trade Sales Deal".[127] I disbelieve Goh that this was not apparent to him in 2014[128] or that he would have only realised this in June 2015, given that the impact of the Licence Agreement on any liquidity event would not change with time. Goh knew that AMP had to be profitable to achieve an IPO listing.[129] Even if he claimed that he had intended to convert the royalty payments into shares, any such agreement was merely "under negotiations" and never reached.[130]

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124 Agreed List of Issues (A) at Tab 2a.

125 Goh's AEIC, pp 1118–1129; 9/10/18 NE 89–92.

126 Chan's AEIC, p 154.

127 11AB 6892.

128 9/10/18 NE 104.

129 Goh's AEIC, paras 61 and 62(b).

130 9/10/18 NE 99.

78 As such, I find the IPO Representations to be substantially false and that AMP could not have realistically been listed by June 2015. Amongst other things, there was significant delay in preparing AMP's audited financial statements to comply with a June 2015 listing, and there was no evidence that in October/November 2014 (before the SPA was executed) preparations for an IPO had reached a sufficiently advanced stage to achieve a June 2015 listing. On the contrary, AMP was then focused on a trade sale. Further, the payments by AMP due to Goh under the Licence Agreement would have had a significant impact on AMP's financials for the purpose of achieving a listing.

***Goh's belief and reasonable grounds***

79 Goh knew of the requirements for listing via an IPO since 2013, when AMP had been trying to list, which included preparing the requisite financial statements. Before the SPA was executed, Goh knew of the delays in preparing the audited accounts as KPMG required more time to re-audit the FY2011 to FY2013 statements even before preparing the FY2014 statement.[131] He also knew that KPMG and AMP differed in the treatment of certain revenues of AMP, and could have been told that the initial March 2014 target for an IPO was not met because "one of the many reasons" was the disagreements over accounting issues and how revenue from the Indonesia and China joint ventures should be treated.[132] Despite knowing that such issues had delayed the previous deadline, Goh made the representations. These were not even resolved until *September 2015*.[133] Goh was aware of the matters that contributed to the delay in preparing the FY2014 statement and that one of the key drivers for the IPO

131 9/10/18 NE 49–50, 52.

132 9/10/18 NE 77–78.

133 Chan's AEIC, paras 29(b), 43–45.

timing was the completion of the audited financial statements.[134] When he made the IPO Representations, KPMG was preparing the past financial statements, as even the FY2014 statement was not completed until September 2015.

80 Goh also knew of the significant adverse impact of the Licence Agreement on the prospects of any planned IPO of AMP by June 2015 (see [76]–[77] above). An unaudited management account for January 2015 (that Goh produced) suggested AMP would only be profitable if there was a *variance analysis* replacing his royalty payments with a performance bonus contract.[135] The factors driving such an analysis would have been floated to Goh. This suggested that Goh was aware that unless there was some cancellation or variation of the royalty payments, AMP's financials would be adversely affected and that he was aware of this when he made the IPO Representations. Chan stated that around *mid-2014*, "AMP's Board of Directors and Nelson discussed how [Goh's] remuneration was to be paid and treated in AMP accounts. Nelson suggested deferring [Goh's] remuneration for [financial year] 2014 so as to improve AMP's profit and loss position…[RSP] stated that this arrangement would improve AMP's prospects of achieving a Liquidity Event in 2014".[136] Goh, being a board member, would have been present for such discussions. As it transpired, despite knowing the adverse impact the royalty payments would have on an IPO listing, Goh showed little intention in mitigating it. Even until June 2015, Goh was insisting on his royalty payments. In a WhatsApp message to Florence on 25 June 2015, he stated:[137]

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134 9/10/18 NE 53–57, 81.

135 Goh's AEIC, p 325; 9/10/18 NE 98–99.

136 Chan's AEIC, para 22.

137 11AB 6831.

> …Nelson agrees that IPO is not possible:
> …
> …my licenced agreement is huge in perpetuity due to my sharing of domain knowledge [and] usage of my name [and] faces
> as long as i am not rewarded proportionately in shares, it is not possible for me to give up my royalty agreement…(*sic*)

81 There was ample evidence that Goh was kept in the loop at all material times. He was a member of AMP's IPO Steering Committee and would have been aware of the extent of any preparatory work towards achieving an IPO. He was not merely a "furniture member" as he claimed, and even then, he was present "to know what [was] going on".[138] When confronted with evidence that he had requested for IPO meetings to be postponed for him to attend, Goh stated that he "wanted to be involved" because he "needed to know what [was] going on" in relation to the IPO plan.[139] He was sent the timetable (and revised timetables) for the IPO submissions, was informed of meetings with third parties pertaining to the IPO preparations, was emailed presentation slides on the matter, and admitted to knowing a whole host of matters that needed to be done to prepare AMP for an IPO.[140] Even at May 2014, Goh was aware that there was uncertainty as to whether AMP could list on the SGX Mainboard.[141]

82 Given all the above, I find that in October/November 2014 Goh could not have had and did not have a genuine belief or reasonable grounds to believe that an IPO could be achieved by June 2015 or that preparations were at a sufficiently advanced stage for an IPO by June 2015, regardless of whether a

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138 9/10/18 NE 62.

139 9/10/18 NE 64.

140 9/10/18 NE 65–69, 71–75; Goh's AEIC, p 851.

141 9/10/18 NE 79–80; 3AB 1617.

trade sale would materialise. Indeed, Goh claimed that, before the SPA was executed, he did not verify the status of the re-auditing of financial statements or whether the FY2014 accounts could be audited in time for a June 2015 listing,[142] he could not recall verifying whether KPMG had started preparing the financial statement for July to December 2014, and he could not recall enquiring on the status of various matters which had to be undertaken as part of the IPO process. This is unbelievable. Goh was on the IPO Steering Committee, he was a substantial shareholder of AMP and a director, he was the founder of the business, and he would benefit substantially if a liquidity event occurred.

***Inducement***

83 As with the Trade Sale Representations, I find that Goh had made the IPO Representations with the intention that it should be acted upon by Florence and Andy (see [65] above).

**Reliance on the Trade Sale and IPO Representations**

84 I turn to deal with whether LSI had relied on the Trade Sale and IPO Representations and which induced it to enter the SPA. The Court of Appeal in *Panatron* held at [23] that a misrepresentation is actionable if it played a real and substantial part in the representee's decision to enter the contract and stated:

> … The misrepresentations need not be the sole inducement … so long as they had played a real and substantial part and operated in [the representees'] minds, no matter how strong or how many were the other matters which played their part in inducing them to act and invest in Panatron …

142 9/10/18 NE 83–88.

Although the test for inducement only requires the representee to show that the misrepresentation was *an* (and not *the*) inducing cause, he still bore the burden of proving that the misrepresentation was "actively present to his mind" (*Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 at [192]).

85 I find that LSI's representatives had relied on the Trade Sale and IPO Representations, which played a real and substantial part on their minds and induced them to procure LSI to enter the SPA. This is even if the SPA was a commercial transaction and the Guarantee was important to LSI. Florence stated that she relied on Goh's clear impression of the imminence of the IPO or trade sale and his repeated assurances that a liquidity event would take place very soon, and Andy testified that he relied on the representations to invest in the transaction (the SPA).[143] He explained that he and Florence purchased the shares from Goh because they believed that a liquidity event was likely to happen soon, and if it happened, they would obtain a handsome profit within a short period of time.[144] Clearly they were motivated by the high probability (as conveyed by Goh) of a liquidity event and the opportunity to make a quick and large profit.

86 I turn to deal with some issues that may appear to weigh against reliance. Goh claimed that LSI could not have relied on the representation that a trade sale would take place within one month, because the one month had passed when the SPA was executed.[145] However, LSI's case and Florence's evidence was that Goh had told her that a trade sale was *likely* to take place within one

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143 Florence's AEIC, paras 68 and 75; 2/10/18 NE 133–135, 145; 3/10/18 NE 71, 93.

144 2/10/18 NE 145.

145 Goh's AEIC, paras 121–122.

month, and Andy understood this to mean that the trade sale would take place within one to three months.[146] This representation must also be read with the other representations, *viz*, that a trade sale to a billionaire Peter Lim was imminent, it would take place very soon, and there was a 99% probability or possibility of it being concluded. Taken collectively, it conveyed the impression that the chance of a trade sale being concluded was very high and that the trade sale was likely to happen very soon.

87 The above was understood in the same manner by Goh when he made the representations, *ie*, that the trade sale would be concluded very soon, and not that it would occur within one month (by 23 November 2014). First, when Andy emailed Goh and Lee on 11 November 2014, he asked them to *reconfirm from their discussion* whether he and Florence would be able to retain all the profits if AMP was sold "at a trade sale soon *after* [their] share purchase" [*emphasis added*].[147] Goh and Lee did not correct this statement. Instead, Goh confirmed that if the trade sale price was lower than their investment, the Guarantee would be engaged. Second, Goh had on 24 November 2014 reiterated to Florence that "chances are that nobody need to guarantee anything once IPO or trade sales take place very soon". Goh continued to maintain that a trade sale would take place "very soon" although the one-month period had passed. Third, Goh admitted that, around 23 or 24 October 2014, he believed a trade sale would *likely* take place within one month. Finally, on 13 January 2015 (post-SPA), Goh reiterated to Florence that "Trade Sales deal is on" and "the Peter Lim deal is on tomorrow".[148] Hence the Trade Sale Representations continued to be

146 Statement of Claim (Amendment No. 3), paras 17(a), 19, 21, and 23; 2/10/18 NE 120–121.

147 Florence's AEIC, p 262; 6AB 3825.

148 Florence's AEIC, pp 415–416.

maintained by Goh even until the day prior to the execution of the SPA and was actively present in Florence's and Andy's minds when the SPA was executed.

88 Next, it may be said that the Trade Sale and IPO Representations did not sit easily with the Guarantee and that LSI would not have relied on the representations as the Guarantee had provided for the eventuality of a liquidity event not occurring and a 24-month long-stop period. Mr Lok SC claimed that as the Guarantee was built on the default of a liquidity event not occurring, LSI was "apathetic" about the possibility or timeframe of such event.[149]

89 Undoubtedly, Florence and Andy wanted the Guarantee to protect their significant investment in the event that the trade sale and IPO did not occur and as they could not perform due diligence on AMP and had little time to decide whether to buy Goh's shares. However it was a *non-sequitur* to suggest that because the Guarantee provided for the situation that a liquidity event would not occur within 24 months, and that Florence and Andy expended significant effort to procure the Guarantee, this meant that the possibilities of such an event occurring were "superfluous souvenirs" to them.[150] As a matter of logic, any guarantee envisaged the default of a stipulated event (*ie*, a liquidity event), but was also aimed at ensuring the stipulated event would come to fruition.

90 Hence, even if LSI could call on the Guarantee (if a liquidity event did not occur) this did not mean that it relied solely on it for the purposes of entering the SPA or that the representations did not play a real and substantial part in inducing LSI to enter the SPA. As Andy explained, the 24-month long-stop period was to provide LSI a longer period of protection, and Florence and he

149 DCS, para 223.

150 DCS, paras 183, 186, and 223.

would not have bought the shares if they did not believe that a liquidity event would take place "very soon".[151] That LSI relied on Goh's representations when entering the SPA is reinforced by the very terms of the SPA – in clauses 4(iii), (iv) and (v), the parties provided first and foremost for a trade sale or an IPO materialising, including that the Guarantee would not apply if an IPO occurred.

91 The Trade Sale and IPO Representations were made alongside the parties' negotiations on the Guarantee and must be considered together. Florence and Andy were attracted by what Goh (repeatedly) said and by the potential to make a quick and handsome profit. On 11 November 2014, Andy emailed Lee (copying Goh) to ask if AMP "is sold at a trade sale soon after [LSI's] share purchase at a higher price, can [LSI] retain all the profits?" and further stated that "the principle of the guarantee" was to "make sure the management team has the incentive to drive the sale price above [LSI's] cost [and] 15% IRR." The Guarantee thus had to be read in the context of securing a foreseeable liquidity event. Hence whilst Florence and Andy relied on the representations, they also took the step to protect their investment via the Guarantee if the deal fell through. It must be recalled that Goh was pressing them for a quick decision and they had no opportunity to do due diligence of AMP. As Goh admitted, the Guarantee was thus important to them.[152] Moreover, the Guarantee provided for a fixed return sum. In contrast, a liquidity event could reap a potentially much higher return[153] – this potential, based on Goh's representations of an imminent or 99% chance of a trade sale, would have had a material bearing on Florence's and Andy's decision to enter into the SPA.

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151 3/10/18 NE 93.

152 Florence's AEIC, pp 309 and 316.

153 2/10/18 NE 145.

92 I reiterate. I find that Florence and Andy would not have entered into the SPA if Goh had not made the representations. A substantial influence on their minds was the impression given that a liquidity event was imminent and highly likely (and thus they would stand to gain from it). The Guarantee was important as a "fall-back" position if the liquidity event did not occur.[154] As Andy stated, he and Florence did not invest because of the Guarantee but because they were under the impression that a liquidity event would occur soon.[155] Thus, even if LSI relied on the Guarantee to protect their investment and the Guarantee was an important factor in LSI's decision to execute the SPA, this did not therefore mean that they could not have or did not rely on Goh's representations or were not induced by them to enter the SPA. The two are not mutually exclusive.

93 There were other factors that appeared to weigh against reliance. For one, if a trade sale was "imminent" it would have become apparent to LSI that it had not materialised even when LSI was transferring the second tranche of payment to Goh for the shares on 22 January 2015. For another, even though an IPO had not occurred by June 2015 (after the trade sale did not materialise) LSI still had not registered any protest against Goh's representations.

94 However, the representations were not static but continually repeated. Right before the SPA was signed on 25 November 2014, LSI's representatives were told that a trade sale was going to happen "very soon". Goh then continued to assert those representations *after* the SPA had been executed. Even while Florence was asked to transfer the second tranche of payment over, Goh sent a WhatsApp on 13 January 2015 to Florence and Andy stating, "Trade Sale is

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154 4/10/18 NE 111.

155 1/10/18 NE 98.

on… [trade sale deal] is *immediate* …"[156] When the trade sale eventually did not materialise, it was not unusual that Florence and Andy did not voice their concerns then. After all, the Trade Sale Representations were made *together* with the IPO Representations, in that if a trade sale did not occur, an IPO was nevertheless targeted for June 2015. Indeed, on 13 March 2015, Florence did email Goh to enquire "how the IPO is going in Singapore".[157] When an IPO failed to materialise by around June 2015, Florence also emailed shortly after, on 12 August 2015, to express her frustration (see [45] above).

95 In considering Andy and Florence's conduct *after* the execution of the SPA, I bore in mind that there could have been many reasons for them not insisting on strict adherence to the representations. First, while the relationship between the parties was mainly commercial, there was an element of trust involved. Florence repeatedly referred to Goh as her "shifu", a term of respect connoting a "master", while Goh called Andy and Florence his "disciples".[158] The correspondences post-SPA also showed that Goh repeatedly sought to lay the blame for the purported delays in the liquidity event on others such as Nelson.[159] Next, the correspondences showed Florence remained eager to have Goh help her with PPP Suzhou.[160] It seemed to me that she was not willing to offend him by prematurely raising the representations. This would have been all the more since Florence and Andy may well have felt comforted by the existence of the Guarantee. I stress that any reliance they might have had after

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156 Florence's AEIC, p 415.

157 Florence's AEIC, p 434.

158 Florence's AEIC, para 20.

159 Florence's AEIC, p 397.

160 See *eg*, Florence's AEIC, pp 414, 441-446 and 449-450.

the SPA was executed is not the same as reliance for the purposes of deciding to enter the SPA.

**Conclusion on LSI's claim on misrepresentation**

96 To conclude, I find that LSI has proved its case against Goh on fraudulent misrepresentation. I find that Goh would also have been liable under s 2(1) of the MA. However, I dismiss LSI's claims against Michelle.

**Remedies**

97 As for the available remedies, I focus only in relation to Goh. The parties do not dispute that the SPA is discharged.[161] Mr Singh SC submitted that in the event that I found there was misrepresentation, the proper relief was for rescission or a declaration that the SPA was validly avoided.[162]

***Rescission***

98 Mr Lok SC submitted in closing submissions that LSI could no longer claim rescission of the SPA as third party rights had intervened in the form of the Chinese investors. The beneficial interest in most of the shares were held by the Chinese investors as evidenced by two PPP Equity Investment Agreements signed between LSI and two of the Chinese investors ("Investment Agreements").[163] LSI did not offer evidence that the Chinese investors were willing to transfer their shares all the way back to Goh in the event rescission was ordered, or that it was duly authorised to commence this suit on their behalf.

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161 PCS, para 140; DCS, paras 369–370.

162 PCS, para 145.

163 DCS, para 373; Exhibit E.

There was also a "genuine possibility" that the Chinese investors had further dealt with their beneficial interest such that they were no longer able to return their shares to Goh. Mr Singh SC submitted that these arguments were not pleaded by Goh nor mentioned in his AEIC and not put to Andy and Florence, and hence should be disregarded. Mr Singh SC did not state whether or not third party rights had actually intervened.[164]

99 The principle that undergirds the power to rescind a contract on the ground of misrepresentation is *restitutio in integrum*. As Lord Wright explained in *Spence v Crawford* [1939] 3 All ER 271 at 288:

> Restoration … is essential to the idea of restitution. To take the simplest case, if a plaintiff who has been defrauded seeks to have the contract annulled and his money or property restored to him, it would be inequitable if he did not also restore what he had got under the contract from the defendant. Though the defendant has been fraudulent, he must not be robbed, nor must the plaintiff be unjustly enriched, as he would be if he both got back what he had parted with and kept what he had received in return. The purpose of the relief is not punishment, but compensation.

100 However, where third party rights have intervened and title passes from the representor (or representee) to an innocent third party purchaser for value, this may bar rescission (*see* Birke Hacker, "Rescission and Third Party Rights" 14 RLR 21 (2006) ("Birke Hacker") at pp 30–31). As misrepresentation does not make a contract void ab initio but only voidable, the contract is, until the moment of rescission, effective to create rights and obligations, and to transfer property (see *The Law of Contract in Singapore*, at para 11.100). Hence, if restitution cannot be achieved, the representee is unable to rescind the contract but will have to resort to damages if available. The requirement for restoration

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164 LSI's counsel's letter dated 3 December 2018, paras 3–4.

does not mean that it must be possible to place the parties in exactly the same position they were respectively in all respects. The court has the flexibility, in the exercise of its equitable jurisdiction, to make such orders as are necessary and appropriate to adjust for any change to property in the interim between the making of the contract and its rescission, and as long as substantial restitution is possible, the remedy will not be withheld. (See *The Law of Contract in Singapore,* at para 11.136).

101 Returning to LSI's submissions (at [98] above), I disagree with LSI. First, it is LSI who is claiming a declaration that the SPA is validly avoided or alternatively for an order for rescission, and for the return of the entire purchase price. LSI cannot be taken by surprise at its own claim for relief, and the onus is on it to satisfy the court that rescission is possible. As such, LSI should have presented its evidence at trial on this issue. This is all the more so in the present case when it is LSI (the representee) who had transferred the beneficial interest in the property (shares) to a third party (the Chinese investors) and thus it would be in the position to show whether it could avail itself of the remedy sought. Second, that Goh's reliance on the Investment Agreements was not pleaded in his Defence was because they were only produced by LSI in discovery, although they were within LSI's knowledge and possession all along.[165]

102 Third, the Investment Agreements, whilst not raised by Goh in his AEIC, were raised in court (albeit for a different issue). Nevertheless, Florence had confirmed that, save for 1,500 AMP shares, the rest of the shares had been sold to the Chinese investors and that all the investment agreements had clauses similar to the two Investment Agreements.[166] Clause 1 of the Investment

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165 LSI's Supplementary List of Documents dated 2 December 2016.

Agreements stated that LSI was *holding the AMP shares on behalf of the Chinese investors*, while clause 8 stated that without the Chinese investors' consent, LSI as agent would not undertake any action that would impair the integrity of the warehoused equity, such as a transfer.[167]

103 The court cannot ignore the above evidence, which was confirmed, and based on documents produced, *by the plaintiff itself* that the beneficial interest of most of the shares were no longer with LSI, but had been transferred to the Chinese investors. Indeed, Florence stated that the Chinese investors had given good consideration in the form of money which she in turn paid to Goh and that LSI now owned only 1,500 AMP shares.[168] I accept that rescission as an equitable remedy has sufficient flexibility. However, LSI did not adduce evidence to show that it was currently the beneficial owner of all or most of the AMP shares; on the contrary, the Investment Agreements showed otherwise.

104 Admittedly, LSI continued to own, legally and beneficially, 4.68% of the AMP shares it had purchased from Goh. Nevertheless, I am of the view that the third party rights of the Chinese investors precluded rescission as a remedy. Rescission operates as a general rule to set aside the contract in its entirety and a representee cannot choose to rescind parts of a contract (see *The Law of Contract in Singapore* at para 11.109). In this case no substantial restitution was possible and LSI has not adduced evidence showing otherwise.

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166 4/10/18 NE 106.

167 4/10/18 NE 106; Exhibit E, pp 12–13, 15–16.

168 4/10/18 NE 110.

***Damages for misrepresentation***

105 However, LSI can claim damages for fraudulent misrepresentation (and under s 2(1) of the MA). In *Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 ("*Wishing Star*") at [21], the Court of Appeal stated that where the plaintiff has proved that there was fraudulent misrepresentation, it is entitled to damages for all losses flowing directly as a result of the entry into the transaction, regardless of whether the loss was foreseeable, and these would include all consequential loss as well.

106 It follows that the losses from the fraudulent misrepresentation suffered *by LSI* would be any decline in the value of the 1,500 AMP shares that they beneficially owned. As for the shares beneficially owned by the Chinese investors, there is no evidence that LSI has suffered any loss. To the contrary, clause 1 of the Investment Agreements show that LSI had sold the AMP shares to the Chinese investors at $450 each, the same price that LSI had paid Goh for the shares.[169] There is also no evidence that the Chinese investors had made any claims against LSI pertaining to the AMP shares that they had bought.

107 As the current value of the AMP shares was not adduced in evidence, I would exercise my discretion to allow for damages to be assessed. Although the trial was not bifurcated, there is no prejudice to Goh by my order for an assessment, given that if rescission had been ordered, he would have had to return to LSI the purchase price. Hence, for the 1,500 shares that LSI beneficially owns, I award LSI the difference in the purchase price (of $450 per share) and the current value which is to be taken as the date of the assessment of damages. I also allow LSI interest for the difference in the value, at 5.33%

169 Exhibit E, pp 12 and 15.

per annum from 19 December 2014 (the date when LSI transferred moneys to Goh for the first tranche of the shares) to the date of judgment.

*Stamp duty*

108 LSI also claimed for the stamp duty that it had incurred for the purchase of the shares, namely the sum of $28,844.10. I accept that the stamp duty was a direct loss flowing from the misrepresentations, given that LSI's obligation to pay stamp duty was embodied in clause 3 of the SPA.

109 However, the onus is on LSI to prove the quantum of the loss that it had incurred in relation to the stamp duty. Under clause 11 of the Investment Agreements, LSI paid for the stamp duty using a reserve fund from the Chinese Investors, and hence the stamp duty relating to the shares which the Chinese investors bought through LSI was paid for by them.[170] LSI has not proved that it had suffered loss in relation to the stamp duty that was paid ultimately by the Chinese investors. Hence, I award LSI the loss of stamp duty for 4.68% of the shares, which is rounded up to $1,350, with 5.33% interest per annum from 22 December 2014 (the date LSI paid the stamp duty)[171] to the date of judgment.

*Foreign exchange losses*

110 LSI also sought foreign exchange ("forex") losses suffered given that it had to convert monies from Chinese Renminbi ("RMB") into an equivalent SGD amount. Mr Singh SC submitted that the quantum of loss can only be assessed at the date of judgment, which would then be compared with the prevailing exchange rate as of 17 December 2014 and 19 January 2015 (the

170 Exhibit E, pp 13 and 16.

171 Florence's AEIC, para 140 and Exhibit GRL-63.

dates on which LSI had converted moneys to pay Goh in two tranches).[172] Mr Lok SC pointed out that the shares were sold by LSI to the Chinese investors at SGD prices. Accordingly, any loss due to the foreign exchange rates would be borne by the Chinese investors and not by LSI.[173]

111 I accept Mr Lok SC's submission in general, though I note from Florence's AEIC that she had converted the *full* share purchase price of $14,422.050,[174] including LSI's own share, from RMB into SGD. Accordingly, I award LSI any forex losses suffered for 4.68% of the shares (which it beneficially owned) – which should be computed based on the difference between the prevailing exchange rate at the time LSI had converted RMB into SGD to pay for 4.68% of the shares and the date of judgment. Given that there are two dates on which LSI had converted moneys from RMB to SGD, I order that the earlier date of 17 December 2014 be used, on the assumption that LSI would have used its own money to pay off the first tranche of the purchase price for some the shares. There is evidence from the Investment Agreements (one of which was executed on 11 January 2015) that LSI was at that date still sourcing for more Chinese investors. LSI in closing submissions have not asked for pre-judgment interest, and I will make no award.

*Exemplary damages*

112 LSI further sought exemplary damages of the 15% IRR for two years (*ie*, as per the Guarantee), which would amount to $4,651,112. It claimed that punitive damages were appropriate as Goh had made a profit of approximately

172 PCS, paras 151-152.

173 DCS, para 386.

174 Florence's AEIC, paras 141(b) and 141(d).

$3m and he had procured the use of AMP, in breach of his fiduciary duties, to indemnify LSI solely for his personal benefit.[175]

113 In *ACB v Thomson Medical Pte Ltd and others* [2017] 1 SLR 918 at [176], the Court of Appeal held that "punitive damages may be awarded in tort where the totality of the defendant's conduct is so outrageous that it warrants punishment, deterrence, and condemnation." Whilst Goh may have, as I had found, made the representations fraudulently, this did not necessarily lead to an award of punitive damages. To hold otherwise would mean that every case in which fraudulent misrepresentation is made out would justify an award of punitive damages. I do not consider this a proper case for a punitive award as I did not find Goh's conduct so outrageous that it warranted punishment, deterrence or condemnation.

114 That Goh may have procured AMP to indemnify LSI, would be a breach of Goh's fiduciary duties (if any) in respect of AMP and not LSI. It should also be noted that Goh had executed the SPA in his personal capacity, which LSI was aware of. Next, it is not the case that Goh was obliged to sell to LSI shares which he procured only from the Minority Shareholders and at "cost" (*ie*, the price that Goh was buying from the Minority Shareholders). The SPA was a commercial transaction which Florence and Andy had entered into (via LSI) because they hoped to profit from a liquidity event and they were prepared to pay $450 per share. That Goh may have profited from selling the AMP shares to LSI is thus irrelevant. Moreover, notwithstanding the misrepresentations, LSI could have called on the Guarantee to sell the shares back to Goh at the end of 24 months from the date of the SPA at the purchase price plus IRR, as there had

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175 PCS, para 158.

been no trade sale or IPO. Instead, LSI elected to avoid and rescind the contract before the 24-month period.

*Tracing*

115 Mr Singh SC submitted that the "equitable remedy of tracing" would be pursued by a separate action if the court finds fraudulent misrepresentation. Based on its closing submissions, LSI is not asking this court to make a determination on tracing.[176] I thus make a brief observation.

116 Tracing is not a claim or remedy but essentially a process to identify an asset as a substitute for the original asset that belongs to a claimant (see *Foskett v McKeown* [2000] 2 WLR 1299 at 1323G). However, tracing would seem to be available only upon rescission of a contract. As was observed in *Shalson v Russo* [2005] Ch 281 at [122], "upon rescission of a contract for fraudulent misrepresentation, the beneficial title which passed to the representor under the contract revests in the representee. The representee then enjoys a sufficient proprietary title to enable him to trace, follow and recover what, by virtue of such revesting, can be regarded as having always been in equity his own property". As I had found that rescission was barred and I had ordered damages instead, tracing would not have been available to LSI.

**Goh's counterclaim for wrongful rescission**

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176 PCS, paras 5 and 166.

117 Goh counterclaimed for nominal damages of $3,000 for wrongful repudiation of the SPA. Since I have found him liable for fraudulent misrepresentation, it did not lie in his mouth to claim there was a wrongful repudiation of the SPA. Although LSI could not obtain the remedy of rescission due to a bar, it was entitled to damages. I thus dismiss Goh's counterclaim. In any event, even if I am wrong and that LSI had wrongfully terminated the SPA, Goh has not proved that he has suffered any damage (let alone the quantum of it) from the purported wrongful repudiation. He would then have obtained the full benefit of the purchase price transferred to him pursuant to the SPA.

**Conclusion**

118 In conclusion, I allow LSI's claim, with damages in part, and dismiss Goh's counterclaim. I will hear parties on costs.

Audrey Lim
Judicial Commissioner

Harpreet Singh Nehal S.C., Keith Han and Tan Tian Yi (Cavenagh Law LLP) for the plaintiff;
Lok Vi Ming S.C., Joseph Lee, Evans Ng and Kelly Tseng (LVM Law Chambers LLC) for the defendants.