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

[2021] SGHC 246

Suit No 1140 of 2018

Between

(1) Yong Khong Yoong Mark
(2) Emily Hwang Mei Chen
(3) Medivice Investment Limited

… *Plaintiffs*

And

(1) Ting Choon Meng
(2) Chua Ngak Hwee

… *Defendants*

JUDGMENT

[Contract] — [Misrepresentation] — [Fraudulent]
[Contract] — [Misrepresentation] — [Negligent]
[Contract] — [Misrepresentation] — [Inducement]
[Contract] — [Misrepresentation Act] — [Section 2(1)]
[Evidence] — [Admissibility of evidence] — [Hearsay]
[Tort] — [Misrepresentation] — [Fraud and deceit]
[Tort] — [Misrepresentation] — [Inducement]
[Tort] — [Misrepresentation] — [Negligent misrepresentation]
[Tort] — [Conspiracy] — [Unlawful means conspiracy]

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v
Ting Choon Meng and another

[2021] SGHC 246

General Division of the High Court — Suit No 1140 of 2018 and Summonses Nos 1688, 1975, 1976 and 2330 of 2021
Tan Siong Thye J
3–7, 14, 17–20 May, 22, 23, 26–30 July, 2–4 August, 15, 16 September 2021

29 October 2021 Judgment reserved.

Tan Siong Thye J:

Introduction

1 The plaintiffs claim that they were induced by the defendants' misrepresentations to make several loans to HealthSTATS International Pte Ltd ("Healthstats International") from January to July 2016 amounting to S$2.5m and to enter into a subscription agreement in August 2016 (the "Subscription Agreement") for the sum of S$5m.[1] The sum of S$2.5m loaned to Healthstats International formed part of the consideration for the Subscription Agreement.

2 The Subscription Agreement was entered into on 12 August 2016 between the second plaintiff and Healthstats International. Under the

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[1] Plaintiffs' Statement of Claim (Amendment No 2) ("SOC") at para 26; Agreed Statement of Facts ("ASOF") at s/n 16.

Subscription Agreement, Healthstats International issued approximately 3.2 million new shares to the third plaintiff (as the second plaintiff's nominee) for a total consideration of S$5m.[2]

3 The plaintiffs allege that the defendants' representations were all made to paint a misleading picture that Healthstats International was a viable company with many products that were worth investing in. They also contend that the defendants made these representations fraudulently or negligently.[3] Consequently, the plaintiffs claim damages to be assessed for the defendants' fraudulent or negligent misrepresentation. Alternatively, they claim damages for misrepresentation pursuant to s 2 of the Misrepresentation Act (Cap 390, 1994 Rev Ed).[4]

4 Further or in the alternative, the plaintiffs claim that the defendants conspired by unlawful means to defraud them by presenting a false picture of Healthstats International's viability, thereby inducing them to make a large investment in Healthstats International.[5] They seek a declaration that the defendants participated in a conspiracy to injure them by unlawful means, as well as damages for conspiracy.[6]

5 The defendants deny both the alleged misrepresentations and the unlawful means conspiracy. They seek a complete dismissal of the plaintiffs' claims with costs to be borne by the plaintiffs on an indemnity basis.[7]

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2 ASOF at s/n 17.

3 SOC at paras 32–33.

4 SOC, pp 22–23 at paras (1) and (2).

5 SOC at paras 35–37.

6 SOC, p 23 at para (3).

7 Defendants' Opening Statement at para 99.

The parties

6 The first plaintiff in this Suit is Mr Yong Khong Yoong Mark ("Mr Yong"), a businessman and a private investor.[8] The second plaintiff is his wife, Ms Emily Hwang Mei Chen ("Ms Hwang"). Ms Hwang is the sole shareholder and director of the third plaintiff, Medivice Investment Limited ("Medivice"), a company incorporated in the Cayman Islands on 17 February 2016.[9] Medivice is Ms Hwang's investment vehicle.[10] I shall refer to Mr Yong, Ms Hwang and Medivice collectively as "the plaintiffs".

7 The first defendant is Dr Ting Choon Meng ("Dr Ting") and the second defendant is Mr Chua Ngak Hwee ("Mr Chua") (collectively, "the defendants"). Dr Ting is a general medical practitioner and he knew Mr Yong and Ms Hwang personally as he was their personal physician.[11] Mr Chua is a software engineer by training.[12] Dr Ting and Mr Chua founded Healthstats International, a Singapore-incorporated company, in 2000.[13]

Background to the dispute

8 I shall briefly introduce the main entities and individuals involved in the matters which form the background to the present dispute.

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8 Bundle of Affidavits of Evidence-in-Chief ("BAEIC"), Vol 1, Tab 1 (Affidavit of Evidence-in-Chief of Yong Khong Yoong Mark ("YKYM")) at para 2.

9 ASOF at s/n 17, s/n 18 and Annex E.

10 BAEIC, Vol 1, Tab 2 (Affidavit of Evidence-in-Chief of Emily Hwang Mei Chen) at para 2.

11 BAEIC, Vol 4, Tab 13 (Affidavit of Evidence-in-Chief of Ting Choon Meng ("TCM")) at para 29; ASOF at s/n 4.

12 BAEIC, Vol 6, Tab 14 (Affidavit of Evidence-in-Chief of Chua Ngak Hwee ("CNH")) at para 15.

13 ASOF at s/n 1.

9 As I have mentioned at [6] above, Ms Hwang is the sole shareholder and director of Medivice, which is her investment vehicle. Mr Yong is a director and shareholder of Uncharted Holdings Limited ("Uncharted Holdings"), a Mauritius-incorporated company, which is one of his investment vehicles.[14] Mr Yong is also the founder of the Uncharted Group Limited (the "Uncharted Group"), a Mauritius-incorporated private investment management company.[15] In addition, Mr Yong is a shareholder of Success Dragon International Holdings Limited ("Success Dragon"), a company listed on the Hong Kong Stock Exchange.[16] The chairman and chief executive officer ("CEO") of Success Dragon from June 2015 to March 2017 was Mr Carlos Salas ("Mr Salas"),[17] who has also been the chief commercial officer of the Uncharted Group since July 2007.[18] In addition, Mr Douglas Goh ("Mr Goh") was the business development director of Success Dragon[19] and was also part of the Uncharted Group at the material time.[20] Both Mr Salas and Mr Goh are business associates of Mr Yong.[21]

10 Dr Ting was the CEO of Healthstats International from the time it was founded in 2000 until March 2016, and thereafter from April 2017 to October 2017.[22] In the period from March 2016 to April 2017, the CEO of Healthstats

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14 BAEIC, Vol 1, Tab 1 (YKYM) at para 2.

15 Agreed Bundle of Documents ("ABOD"), Vol 1 at p 472; BAEIC, Vol 2, Tab 3 (Affidavit of Evidence-in-Chief of Carlos Salas ("CS")) at para 1.

16 BAEIC, Vol 1, Tab 1 (YKYM) at para 110.

17 BAEIC, Vol 2, Tab 3 (CS) at para 2.

18 BAEIC, Vol 2, Tab 3 (CS) at para 1.

19 Transcript (19 May 2021), p 24 at lines 20–22.

20 Transcript (4 May 2021), p 103 at lines 19–21.

21 BAEIC, Vol 1, Tab 1 (YKYM) at paras 31 and 38.

22 ASOF at s/n 2.

International was Mr Joshua Soh ("Mr Soh"), who was Mr Yong's and Ms Hwang's family friend[23] and who had experience in the medical equipment industry.[24] Mr Soh was also the former Managing Director of Cisco Systems Singapore[25] and Country Manager of IBM Singapore.[26] Mr Yong appointed Mr Soh as the CEO of Healthstats International at the relevant period with the concurrence of the defendants so as to change Healthstats International's business model. Both Dr Ting and Mr Chua were the founding directors of Healthstats International until May 2018. From 1 October 2010 to May 2018, Dr Ting was also its executive chairman, while Mr Chua was its chief technology officer.[27] Dr Ting and Mr Chua are still shareholders of Healthstats International.[28] Healthstats International's chief financial officer was Mr Marcus Chua ("Mr Marcus Chua").[29]

11 Several other present and former employees of Healthstats International testified in these proceedings. These were:

(a) Mr Tan Hwa Seng Michael ("Mr Michael Tan"), the finance manager from 1 October 2010 to the present;[30]

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23 BAEIC, Vol 2, Tab 4 (Affidavit of Evidence-in-Chief of Soh Leng Hiap Joshua Henry ("JS")) at para 3.

24 BAEIC, Vol 1, Tab 1 (YKYM) at para 31.

25 Transcript (14 May 2021) at p 6 lines 3 to 7.

26 BAEIC, Vol 2, Tab 4 (JS) at para 2.

27 ASOF at s/n 2 and s/n 3.

28 ASOF at s/n 3.

29 BAEIC, Vol 1, Tab 1 (YKYM) at para 47.

30 BAEIC, Vol 2, Tab 5 (Affidavit of Evidence-in-Chief of Tan Hwa Seng ("THS")) at paras 1 and 3.

(b) Mr Koh Choon Huat ("Mr Koh"), the head of production from 2006 to the present,[31]

(c) Mr Tey Leong Teck ("Mr Tey"), a firmware consultant in the Research and Development department from 2010 to 2014, and thereafter from 2015 to 2019;[32] and

(d) Ms Lock Mei Chui ("Ms Lock"), the deputy head of the Quality Management Systems and Regulatory Affairs department from July 2012 to February 2015.[33]

12 Healthstats International also had various subsidiaries in China, the UK, Australia, Malaysia and Singapore.[34] Only its subsidiary in China, HealthSTATS Technology (SIP) Co Ltd ("Healthstats China"),[35] is relevant to the present proceedings. Healthstats China was incorporated in 2006.[36] Ms Li Wen Wen ("Ms Li") was a sales manager in Healthstats China from July 2015 to October 2018. She was primarily responsible for running its sales and procurement office.[37]

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31 BAEIC, Vol 2, Tab 6 (Affidavit of Evidence-in-Chief of Koh Choon Huat ("KCH")) at paras 1–2.

32 BAEIC, Vol 2, Tab 9 (Affidavit of Evidence-in-Chief of Tey Leong Teck ("TLT")) at para 1 (read with Transcript (5 May 2021), p 94 at lines 23–25).

33 BAEIC, Vol 2, Tab 10 (Affidavit of Evidence-in-Chief of Lock Mei Chui ("LMC")) at para 1.

34 Joint Defence of the First and Second Defendants (Amendment No 2) ("Defence") at para 4.

35 ASOF at s/n 1.

36 Defence at para 5; BAEIC, Vol 2, Tab 7 (Affidavit of Evidence-in-Chief of Li Wen Wen ("LWW")) at para 2.

37 BAEIC, Vol 2, Tab 7 (LWW) at paras 1, 3 and 4.

13 With this overview, I shall now set out the background to the present dispute in three parts: first, the clinical devices developed by Healthstats International; second, the two contracts entered into by Healthstats International with Healthstats China; and third, the plaintiffs' involvement with Healthstats International.

Healthstats International's clinical devices

14 Healthstats International is in the business of manufacturing medical research and clinical diagnostic instruments.[38] Its flagship products are two clinical devices relating to the measurement and monitoring of blood pressure:[39]

(a) the BPro ambulatory blood pressure monitoring system devices (the "BPro" devices), which are wearable watch-like devices attached to an individual's wrist that are able to measure the individual's blood pressure non-invasively;[40] and

(b) the central aortic systolic blood pressure measurement devices (the "CasPro" devices), which are able to measure an individual's central aortic pressure non-invasively using radial artery pulse waves from the wrist.[41]

15 The first generation of the BPro devices (the "BPro G1") was launched in 2002.[42] The BPro G1 obtained the requisite regulatory approvals from the US's Food and Drug Administration (the "FDA") on 7 April 2006, the European

38 Defence at para 2.

39 Defence at para 7.

40 ASOF at s/n 5; Defence at para 8.

41 ASOF at s/n 5; Defence at paras 7 and 13.

42 ASOF at s/n 5.

Union ("EU")'s Conformité Européenne (the "CE") on 2 June 2006, Singapore's Health Sciences Authority (the "HSA") on 20 April 2006, and China's Food and Drug Administration (the "CFDA") in 2008.[43]

16 Healthstats International had also obtained approval for the CasPro from the relevant regulatory authorities prior to manufacturing the CasPro devices for distribution. Regulatory approvals for the CasPro had been granted by the FDA, the CE, the HSA and the CFDA by April 2012.[44]

17 In or around the first quarter of 2012,[45] Healthstats International started work on the second generation of the BPro devices which featured an added Bluetooth wireless function (the "BPro G2"). Both the BPro G1 and the BPro G2 were targeted for use by medical professionals.[46] However, as at the end of 2016, the BPro G2 had not received any regulatory approval from the US's FDA.[47] The BPro G2 received FDA approval on 21 June 2018.[48]

18 Subsequently, sometime in or around 2015, Healthstats International started work on the third generation of the BPro devices, which were intended to be consumer wearables targeted for mass market consumer distribution (the "BPro G3").[49]

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43 Defence at para 9.

44 Defence at para 14.

45 FBP-2, p 3 at para 2(a).

46 ASOF at s/n 5; Defence at para 12.

47 ASOF at s/n 21.

48 FBP-2, p 4 at para 4(c).

49 ASOF at s/n 5; Defence at para 12.

The two contracts with Healthstats China

19 Healthstats China was initially solely owned by Healthstats Instruments Pte Ltd, a Singapore-incorporated company, of which Healthstats International was a majority shareholder.[50] In July 2015, Winsan (Shanghai) Medical Science and Technology Co Ltd ("Winsan"), a listed company in China, acquired 51% of the shares in Healthstats China. At the material time, Healthstats International held the remaining 49% of the shares.[51] Healthstats China thus became a joint venture between Healthstats International and Winsan.[52]

20 At that time, Winsan had been awarded three tenders to supply an integrated system for the remote monitoring of blood pressure for the population of three cities in China. Winsan, therefore, wanted Healthstats International to supply the BPro G2, BPro G3 and CasPro devices.[53] To this end, Healthstats China entered into two contracts with Healthstats International in 2015 (collectively, the "China Contracts"):[54]

(a) a purchase agreement (Agreement No: P2015080001) dated 13 August 2015, under which Healthstats China was to purchase S$5m worth of the BPro G2 devices and accessories from Healthstats International (the "First China Contract");[55] and

(b) a purchase agreement (Agreement No: P2015090002) dated 26 October 2015, under which Healthstats China was to purchase a total

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50 Defence at para 5.

51 Defence at para 6; ASOF at s/n 1.

52 BAEIC, Vol 2, Tab 7 (LWW) at para 2; BAEIC, Vol 4, Tab 13 (TCM) at para 79.

53 Defence at para 16.

54 Defence at para 17.

55 ASOF at s/n 6; BAEIC, Vol 1, Tab 1 (YKYM) at pp 123–126.

of S$52.785m worth of the BPro G2, BPro G3 and CasPro devices and accessories from Healthstats International (the "Second China Contract").[56]

21 On 20 August 2015, Healthstats International received payment of S$1.5m from Healthstats China pursuant to the First China Contract. Healthstats International then commenced the production process and subsequently delivered certain components to Healthstats China. Healthstats International later issued two invoices (dated 23 June 2016[57] and 13 March 2017)[58] to Healthstats China amounting to a total of S$720,000.[59] This left a balance of S$3.5m of sales, out of the S$5m of sales secured under the First China Contract, which was not fulfilled.[60]

22 Under the Second China Contract, Healthstats China was to purchase S$14,555,000 worth of the BPro G2 and BPro G3 devices (and related devices) from Healthstats International in 2016, and S$38,230,000 worth of such devices in 2017.[61] Clause 9.2 of the Second China Contract is of key importance in the present case and I shall set it out in full:[62]

> 9.2. Any amendments, supplements and modifications to the terms of this Agreement shall be made in writing, and *this Agreement shall become effective upon the satisfaction of the following two conditions*:

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56 SOC at para 16(iv)(s)(2); Defence at para 17(b); BAEIC, Vol 1, Tab 1 (YKYM) at pp 131–136.

57 ABOD, Vol 11 at p 7863.

58 ABOD, Vol 11 at p 7964.

59 ASOF at s/n 20; Defence at para 17(a).

60 SOC at para 16(ii)(s)(1); Reply (Amendment No 1) ("Reply") at para 7(b)(1).

61 ASOF at s/n 23; BAEIC, Vol 1, Tab 1 (YKYM) at pp 131–132 (cl 1).

62 ASOF at s/n 23; BAEIC, Vol 1, Tab 1 (YKYM) at pp 134–135 (cl 9.2).

> 9.2.1. *Party B [ie, Healthstats International] has fully fulfilled its obligations under the supply agreement executed by the parties on 13 August 2015 (Agreement No.: P2015080001) [ie, the First China Contract]*;
>
> 9.2.2. the execution and seal affixed by both parties and upon approval by the board of directors of Party A [*ie*, Healthstats China]'s controlling shareholder.
>
> [emphasis added]

23 A contract approval form dated 23 October 2015 (the "Contract Approval Form") was signed by four of Winsan's representatives in Healthstats China.[63] The Contract Approval Form related to the Second China Contract. It stated that "[t]he conditions for the validity of the contract [had not] been met" and that "there [was] no need to perform the contract immediately even if it [was] signed".[64]

24 Ultimately, no orders were fulfilled under the Second China Contract.[65]

25 In October 2018, Healthstats International re-acquired Winsan's shares in Healthstats China. At this point, Winsan arranged for all documents relating to Healthstats China which it had kept in its office to be handed over to Healthstats China. During this process, Winsan provided Healthstats China with a checklist of all the documents which were handed over (the "Winsan Handover Checklist").[66] Healthstats International is currently the sole shareholder of Healthstats China.[67]

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63 ASOF at s/n 7; BAEIC, Vol 2, Tab 7 (LWW) at pp 1397–1398; translated at BAEIC, Vol 2, Tab 8 (Affidavit of Li Hua dated 31 March 2021 ("LH")) at pp 1617–1618.

64 BAEIC, Vol 2, Tab 8 (LH) at p 1617.

65 ASOF at s/n 23.

66 BAEIC, Vol 2, Tab 7 (LWW) at para 17.

67 ASOF at s/n 1.

The plaintiffs' involvement with Healthstats International

26 Dr Ting had been Mr Yong's and Ms Hwang's personal physician for many years. They trusted Dr Ting and held him in high esteem. Dr Ting also knew them personally and was aware that they were investors in various businesses.[68] In September 2015, Mr Yong and Ms Hwang met Dr Ting for dinner. This was the first time that they had met socially. Over dinner, Dr Ting told them that he was an inventor of medical devices, including the BPro and CasPro devices.[69]

27 From October 2015 to January 2016, the defendants and Mr Yong had several business meetings to discuss the possibility of Mr Yong or Ms Hwang investing in Healthstats International.[70] During this period, there were also several social meetings between Dr Ting, Mr Yong, Ms Hwang and other individuals including Mr Soh, Mr Salas and Mr Goh.

The aborted purchase of Healthstats International's shares by Uncharted Holdings

28 On 2 December 2015, a letter of intent was executed by Mr Yong pursuant to which the Uncharted Group confirmed its intention to purchase shares in Healthstats International (the "Letter of Intent").[71] The purchase price of these shares was to be calculated based on the Uncharted Group's valuation of Healthstats International at S$50m (the "S$50m Valuation").[72] The

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68 SOC at paras 9–10; Defence at paras 25–26.

69 SOC at paras 12 and 13(a)–13(d); Defence at paras 28–29.

70 SOC at para 16; Defence at para 32.

71 ASOF at s/n 11.

72 ABOD, Vol 1 at p 403.

Uncharted Group's investment in Healthstats International was expected to be around S$27m.[73]

29 On 19 January 2016, copies of both the First China Contract and the Second China Contract (in Mandarin) were provided by Mr Marcus Chua to Mr Goh *via* e-mail (the "19 January 2016 E-mail").[74] Mr Goh was assisting Mr Yong with carrying out due diligence on the Uncharted Group's intended investment in Healthstats International.[75]

30 Subsequently, a sale and purchase agreement dated 1 February 2016 was entered into between Uncharted Holdings and the selling shareholders of Healthstats International (the "Sale and Purchase Agreement"). Pursuant to cl 4.1 (read with Schedule 3 para 1) of the Sale and Purchase Agreement, the completion of the sale and purchase of Healthstats International's shares under this agreement was conditional on the completion of due diligence to the satisfaction of Uncharted Holdings.[76]

31 On 1 March 2016, Mr Soh was formally appointed as the CEO of Healthstats International by way of a Master Consultancy Agreement between him and Uncharted Holdings ("the Master Consultancy Agreement").[77] Mr Soh served as the CEO of Healthstats International from March 2016 to April 2017.[78] As Mr Yong's nominee,[79] he represented Mr Yong in Healthstats

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73 SOC at para 16(ii)(m).

74 ABOD, Vol 6 at pp 4283 and 4287–4294.

75 ASOF at s/n 22.

76 ASOF at s/n 12.

77 ABOD, Vol 1 at pp 406–432.

78 SOC at para 22; ASOF at s/n 2.

79 SOC at para 21.

International.[80] Following his appointment, Mr Soh changed Healthstats International's business model for the BPro devices from a sales-based model for the BPro G1 (under which the devices were sold) to a service-based model for the BPro G2 (under which the devices were given to clinical professionals for free with a fee being charged for each use of the device).[81]

32 The Sale and Purchase Agreement was amended on 11 March 2016 to allow Uncharted Holdings an extension of time to complete the due diligence process.[82] Between March and April 2016, three draft reports were prepared by way of due diligence on Uncharted Holdings' potential purchase of shares in Healthstats International:[83]

(a) an intellectual property and regulatory due diligence report by DLA Piper UK LLP ("DLA Piper") dated 14 March 2016 (the "DLA Piper Report");[84]

(b) a report on holding and intellectual property structure by KPMG Services Pte Ltd ("KPMG") (the "KPMG Report");[85] and

(c) a legal review report by Baker & McKenzie, Wong & Leow ("Baker & McKenzie") dated 8 April 2016 (the "Baker & McKenzie Report").[86]

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80 Transcript (6 May 2021), p 157 at lines 2–5 and 8–9.

81 BAEIC, Vol 2, Tab 4 (JS) at para 10(d) and 14(d).

82 BAEIC, Vol 1, Tab 1 (YKYM) at para 66.

83 ASOF at s/n 13.

84 ABOD, Vol 11 at pp 7656–7743.

85 ABOD, Vol 1 at pp 515–578.

86 ABOD, Vol 2 at pp 715–815.

33 Uncharted Holdings did not officially appoint any advisors to conduct due diligence on Winsan, Healthstats China, or the two China Contracts. However, Mr Yong approached his friend, Mr John Sheng ("Mr Sheng"), to assist him with this. Mr Sheng was a partner in a law firm based in Shanghai. He specialised in private equity investments and mergers and acquisitions in China.[87] Between March and April 2016, Mr Sheng looked into Winsan on behalf of Mr Yong.[88]

34 After conducting the abovementioned due diligence, Uncharted Holdings decided not to proceed with the purchase of Healthstats International's shares. In a letter dated 25 April 2016 to the selling shareholders of Healthstats International (the "Notice of Termination"), Uncharted Holdings stated that it did not intend to proceed with the completion of the Sale and Purchase Agreement because the due diligence had not been completed satisfactorily.[89] Paragraphs 2 and 3 of the Notice of Termination stated as follows:

> 2. Under Clause 4.1 of the SPA, Completion of the sale and purchase of a Seller's Sale Shares is conditional on all the matters listed in Schedule 3 to the SPA being either satisfied or waived by Uncharted. Under Paragraph 1 of Schedule 3 to the SPA, *Completion is conditional upon, among other things, the completion of due diligence on the Group to Uncharted's satisfaction (in Uncharted's sole opinion)*, which shall be completed on or before 15 April 2016.
>
> 3. *Uncharted is of the view that due diligence has not been completed to Uncharted's satisfaction (in Uncharted's sole opinion) in accordance with Paragraph 1 of Schedule 3 to the SPA.* Consequently, we hereby give you notice pursuant to Clause 4.4(b) of the SPA to terminate the SPA as regards each Seller without liability on Uncharted's part.
>
> [emphasis added]

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87 BAEIC, Vol 1, Tab 1 (YKYM) at para 45.

88 ASOF at s/n 14.

89 ASOF at s/n 15; ABOD, Vol 1 at pp 433–434.

35 Shortly after the Notice of Termination was sent to the selling shareholders of Healthstats International, on 25 April 2016, Mr Salas e-mailed Dr Ting and Mr Yong (the "25 April 2016 E-mail"). In that e-mail, Mr Salas forwarded the Notice of Termination and stated that:[90]

> … As you can see there [*ie*, in the Notice of Termination], there is no mentioned [*sic*] of failed due diligence but rather that in our sole opinion we … have conducted the due diligence and we believe that we do not want to proceed.

36 Dr Ting replied as follows (the "25 April 2016 Reply"):[91]

> Carlos,
>
> Perhaps you cannot appreciate the impact of the letter in these shareholders when you state that the due diligence is not up to the satisfaction of the uncharted group.
>
> So what if it's your sole opinion.
>
> The implied meaning to them is that there must be some critical lapses during the due diligence or some hidden secrets that were uncovered and significant enough for the group not to proceed.
>
> Basically it has come down to both Chua and I. That's exactly what they are screaming at us about. Since this evening.
>
> *Let me be very clear with you on the reasons for not proceeding the sales. And this has nothing to do with the due diligence. Mark can attest to that.*
>
> In the various discussions with Mark, he has made it clear that there is no outstanding issues in the IP DD. *And the corporate DD, there is no red flag that warrants [a] halt to the sale.* The team engaged has not categorically state[d] that the deal should not proceed.
>
> In fact *the reason for the decision is mainly due to the apprehension that Mark has on the China partner, [W]insan.* Mark asked the Shanghai lawyer to do a check on the chairman and there were some worries that the parent group may run into trouble. However they can also come out even stronger. In Mark's view.

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90 ABOD, Vol 2, Tab 38 at p 1107.

91 ABOD, Vol 2, Tab 38 at p 1106.

> In any case it is also agreed that the China subsidiary HST is striving ahead with the market penetration. Especially when the acceptance of the technology has risen significantly. Basically the HST is NOT a problem at all.
>
> *Due to the uncertainties and apprehension that Mark has on the chairman [of Winsan], he has decided to put the sale on hold.* May be for another few months. As the company execute the roll out plan.
>
> I hope I have made it clear to you that pushing the blame to an unsatisfactory due diligence is simply NOT right.
>
> …
>
> [emphasis added]

37 A few hours later, Mr Yong e-mailed Dr Ting, copying Mr Salas and Mr Chua, (the "First 26 April 2016 E-mail") stating:[92]

> Hi Dr Ting,
>
> Apologies for the difficult position we have put you and Chua under… It was my understanding that no reasons was required for us to turn down the sale. Spoke to Carlos and he said, per the agreement, we had to give a reason to turn down the sale, thus he tried to word it as soft as possible. I agree with you, we should have discuss with you first on how to write the letter before sending it out.
>
> I am thinking if Uncharted can give you a letter to say something along the line of:
>
> We are satisfied with the DD done by our lawyer DA on the patents, and Healthstats Spore, however, our we are not comfortable with China Company and feel that the China company is not sound and may lead to future complication for Healthstats China and as China is a big market, and if the China company does not perform or liquidates, then the Valuation we would have paid for Healthstats Spore(holding Co) would be grossly over valued.
>
> We can reworded it better, but i am thinking along those lines.
>
> Can you give me your thoughts?
>
> Mark

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92 ABOD, Vol 2, Tab 38 at pp 1105–1106.

38 Dr Ting replied as follows:[93]

> …
>
> I am OK that you do not have to give a reason. However, since it has been sent out, this is not an option.
>
> I think that a letter to that effect and addressing [*sic*] to both of us would help.
>
> At least the shareholders can see that it is not due to some lapses, intended or not, on our part.
>
> …
>
> It is also important to have that letter as you have planned to selectively buy some of them out later. Given what has happened, they may not believe us anymore. It's a good way to keep the options open.
>
> …

39 Subsequently, Mr Yong sent Dr Ting the following e-mail for Dr Ting to send to Healthstats International's shareholders (the "Second 26 April 2016 E-mail"):[94]

> Dear Dr Ting,
>
> I am writing this mail to you in my personal capacity as a friend of yours, and would like to explain the primarily [*sic*] reason why Unchartered [*sic*] Group Board of Directors decided not to proceed with the completion of purchasing shares of Healthstats Singapore [*ie*, Healthstats International].
>
> …
>
> Upon Signing the Sale & Purchase Agreement, Uncharted Group used 3 Magic Circle Legal firms or equivalent firm base [*sic*] in USA, Singapore and China to conduct Due Diligence on 3 areas:
>
> 1. Healthstats Singapore (Holding Company)
>
> 2. Patents
>
> 3. Healthstats China and its Parent (China listed Co.)

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93 BAEIC, Vol 1, Tab 1 (YKYM) at p 456.

94 BAEIC, Vol 1, Tab 1 (YKYM) at para 82 and pp 457–458.

> a. Healthstats Singapore – *The Due Diligence highlighted a few administrative issues, but nothing major and Unchartered was fine with it.*
>
> …
>
> c. *Healthstats China – This is the problematic area.* The sole reason why we had to ask for an extension of 1 month to the Due Diligence period is because of *the finding highlighted in Winsan(shanghai) Medical Science & technology Co. Ltd, the parent Company of Healthstats China. We are of the opinion that this company is not financially sound.* Its announcements of a Placement exercise in Jan 2016 has failed. *There is a list of issues with this company and its major shareholder.* Further, Healthstats China has given Healthstats Singapre [*sic*] a small order of $5M for 2015, which up to date only $1.5M has been fulfilled, not to mentioned [*sic*] it has given commitment for 2016 and 2017 which in our opinion, it would most likely not be fulfilled. We are of the opinion, should the parent company go into liquidation, the patents for China that sits [*sic*] in Healthstats China would be in a mess, and as China is a big part of the Valuation, *we do not feel it is worth the risk to proceed with the Purchase at the agreed valuation.*
>
> In Summary, *Unchartered loves your products, but do not feel comfortable with Healthstats China & its Parent Company and feel the valuation is over priced should China fail, thus decided not to proceed with the purchase.*
>
> Unchartered has spent more than USD200K on this exercise and I believe they are still very interested in investing into Healthstats but probably not at the current valuation.
>
> …
>
> [emphasis added]

The loans to Healthstats International

40 It is undisputed that the following loans amounting to S$2.5m were extended to Healthstats International by Mr Yong and/or Ms Hwang (the "Loans"):[95]

(a) S$1m in January 2016;

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95 ASOF at s/n 16.

(b) S$500,000 in April 2016;

(c) S$500,000 on 10 June 2016; and

(d) S$500,000 on 26 July 2016.

41 The aggregate sum of the Loans was recorded in the Subscription Agreement.[96]

The Subscription Agreement

42 On 12 August 2016, Ms Hwang entered into the Subscription Agreement with Healthstats International. Under the Subscription Agreement, Ms Hwang's subscription for Healthstats International's shares was to take place in two tranches:

(a) In the first tranche, Healthstats International was to issue 3,172,589 new shares (the "Subscription Shares") to Ms Hwang for a consideration of S$5m (the "Subscription Consideration"). Of this sum, S$2.5m was to be offset against the Loans which had already been extended to Healthstats International, and the remaining S$2.5m (the "Net Subscription Consideration") would be paid thereafter.[97]

(b) In the second tranche, Healthstats International granted Ms Hwang a call option to subscribe for a further 3,095,781 new shares (the "Option Shares") for a consideration of S$4,878,950 (the "Option Shares Consideration") within six months from the completion of the Subscription Agreement. I shall refer to this as the "Call Option". Under

96 ABOD, Vol 1 at p 359 (Recital E).

97 ASOF at s/n 17; ABOD, Vol 1 at pp 362–363 (cll 2.1, 3.1 and 3.2).

> the corresponding put option granted to Healthstats International, Ms Hwang would be obligated to subscribe for these Option Shares if Healthstats China fulfilled its orders under the First China Contract by 31 December 2016 (the "Put Option").[98]

43 Under the Subscription Agreement, Medivice had the right to nominate one person to be appointed as a director of Healthstats International upon the completion of the Subscription Agreement.[99] The completion of the Subscription Agreement took place on or around 15 August 2016.[100] On 26 August 2016, Medivice nominated Mr Soh as its representative on Healthstats International's board of directors. Mr Soh was appointed to Healthstats International's board of directors shortly afterwards.[101] It is not disputed that Mr Soh was representing Mr Yong and Ms Hwang in this capacity.[102]

44 Pursuant to the first tranche of the share subscription under the Subscription Agreement, Ms Hwang directed Healthstats International to allot and issue the Subscription Shares to her nominee, Medivice.[103] The Net Subscription Consideration of S$2.5m was paid by Ms Hwang through Medivice[104] in September 2016, in the following sums:[105]

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98 ASOF at s/n 17; ABOD, Vol 1 at pp 367–368 (cll 8.1(b), 8.2(a) and 8.3(a)).

99 ABOD, Vol 1 at p 366 (cl 6.3(a)(i)).

100 Defence at para 58(l).

101 BAEIC, Vol 2, Tab 4 (JS) at para 42.

102 Transcript (7 May 2021), p 34 at lines 16–25 and p 35 at lines 1–3 and 11–13.

103 ASOF at s/n 17.

104 SOC at para 29.

105 ASOF at s/n 19.

(a) S$40,000 on 8 September 2016;

(b) S$20,000 on 9 September 2016;

(c) S$39,000 on 16 September 2016;

(d) S$401,000 on 19 September 2016; and

(e) S$2m on 26 September 2016.

The parties' cases

The plaintiffs' case

The alleged representations

45 The plaintiffs pleaded that three representations were made to them by the defendants (collectively, the "Representations"):

(a) that all of Healthstats International's products, in particular the BPro G2 and the CasPro devices, had obtained the necessary regulatory approvals from the HSA, the FDA and the CE (the "Regulatory Representation");[106]

(b) that S$18m of sales had been booked for 2016 and another S$38.2m of sales had been booked for 2017 (the "Revenue Representation");[107] and

(c) that Healthstats International was to launch the BPro G3 in the second quarter of 2016 (the "Product Representation").[108]

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106 SOC at para 16(ii)(j)(1).

107 SOC at para 16(ii)(j)(2).

108 SOC at para 16(ii)(j)(3).

46 According to the plaintiffs, the Representations were made to them by Dr Ting and/or Mr Chua on the following occasions:

(a) In or around October 2015, Dr Ting and his girlfriend, Ms Lena Sim ("Ms Sim") invited Mr Yong and Ms Hwang to Dr Ting's house for tea (the "October 2015 Meeting").[109] Also present were Mr Chua, who was introduced as Dr Ting's partner in Healthstats International, and Mr Alan Ho ("Mr Ho"), who was introduced as the person in charge of Healthstats International's London office.[110] According to the plaintiffs, Dr Ting made the following representations to Mr Yong and Ms Hwang during this meeting:[111]

(i) that the BPro and CasPro devices had already obtained approval from the FDA and would easily obtain worldwide approval;

(ii) that Healthstats International was developing the BPro G3 and that the BPro G3 would be rolled out in short order; and

(iii) that Healthstats International had already secured orders for the BPro G3.

At this meeting, Dr Ting also told Mr Yong and Ms Hwang that he was just a doctor and did not know how to run a business. He suggested that

109 SOC at para 16(i)(a).

110 SOC at para 16(i)(b).

111 SOC at para 16(i)(c).

Healthstats International would benefit from investors like them who were business-savvy and asked if they were interested to invest.[112]

(b) In or around November 2015, Mr Yong contacted Dr Ting to follow up on the proposed investment. On 21 November 2015, Mr Yong attended at Healthstats International's office to listen to the defendants' investment pitch (the "21 November 2015 Meeting").[113] According to the plaintiffs, Dr Ting made the following representations to Mr Yong at this meeting:[114]

(i) that in or around 2006, Dr Ting had invented the BPro G1;

(ii) that the BPro G1 had earned Dr Ting various accolades and had been approved by regulatory authorities such as the US's FDA, Singapore's HSA, the EU's CE, and China's CFDA;

(iii) that the BPro G2 was developed in 2012 or 2013;

(iv) that Healthstats International "was launching" the BPro G3 and had secured orders of over 200,000 units of the BPro G3, with its target release date being the second quarter of 2016;

(v) that all of Healthstats International's products, including the BPro G2, had obtained all the relevant regulatory approvals, including approvals from the HSA, the CE, the FDA and the CFDA;

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112 SOC at para 16(i)(d).

113 SOC at paras 16(ii)(f) and 16(ii)(g).

114 SOC at para 16(ii)(h).

(vi) that Healthstats International was in need of working capital and that the defendants were unable to raise funds from its shareholders as they had failed these shareholders too many times given their lack of business acumen;

(vii) that the defendants were looking to secure a business-savvy investor to buy out the other shareholders' shares;

(viii) that an investment by Mr Yong and Ms Hwang would enable Healthstats International's products, especially the BPro devices, to be distributed more widely, which would in turn benefit more patients globally; and

(ix) that Healthstats International had a valuation of S$50m, as evidenced by the joint venture contract entered into between Healthstats International and Winsan.

(c) Following the 21 November 2015 Meeting, on 22 November 2015, Dr Ting sent Mr Yong an executive summary of Healthstats International's business, titled "[a]n opportunity to invest in or acquire a wearable device company focussed on health and medical technology" (the "Executive Summary"). It is undisputed that this Executive Summary was sent to Mr Yong and that it included the following information:[115]

Company Overview

…

- The BPro technology is now well accepted by medical communities around the world. The company has also achieved numerous unsolicited awards recognising its

[115] SOC at para 16(ii)(i); ASOF at s/n 8 and Annex A; ABOD, Vol 2, Tab 30 at pp 1000–1006.

> technology and contributions, including achievements in clinical developments, regulatory, commercial milestones, USA FDA and European CE MDD mark approvals.
>
> …
>
> **Key Considerations**
>
> …
>
> **8. A true consumer wearable – Trend of wearables**
>
> **…**
>
> - Secured advanced orders of over 200,000 units for the consumer wearable device has already been achieved with a target release date in Q2/2016.
>
> …
>
> **Recent Business Development**
>
> …
>
> **2. Advanced device book sales secured including (in SGD$):**
>
> - $1.5m confirmed in Q3/2015.
> - $18.0m booked for Year 2016.
> - $38.2m booked for Year 2017.
> - The book sales comprise of devices for health screening booths, hospitals and point-of-care facilities.
> - Significant advanced orders for current device models and the consumer wearable device have also been secured.
>
> …

(d) On 5 January 2016, Mr Yong attended another meeting at Healthstats International's office with the defendants and Mr Soh (the "5 January 2016 Meeting"). At this meeting, the defendants presented a set of PowerPoint slides containing business updates regarding Healthstats International (the "Business Update Slides"). It is not disputed that the Business Update was presented and that it suggested, among other things, that S$18m was expected from China in 2016 and

S$38.2m was expected from China in 2017.[116] The plaintiffs assert that, at this meeting, Dr Ting also repeated that the BPro devices had received all necessary regulatory approvals, and referred to Healthstats International's contracts for the supply of the BPro devices to certain parties in China.[117]

(e) On 9 January 2016, Mr Yong and Ms Hwang attended a further meeting at Ms Sim's house (the "9 January 2016 Meeting"). Also present were Mr Chua, Mr Marcus Chua, and Mr Ho (*via* Skype).[118] At this meeting, the defendants presented two sets of PowerPoint slides titled "HS Financial Forecast" (the "Financial Forecast Slides") and the other titled "Product Portfolio" (the "Product Portfolio Slides"). It is not disputed that these slides were presented and that they included the following information:[119]

(i) The Financial Forecast Slides stated that the revenue forecast from China was S$18m in 2016 and S$38.2m in 2017.[120]

(ii) The Product Portfolio Slides included a picture of the BPro G3 and listed it as one of Healthstats International's 24-hour ambulatory blood pressure monitoring products and a "consumer wearable".[121]

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116 ASOF at s/n 9 and Annex B; ABOD, Vol 3, Tab 120 at pp 1845–1849.

117 SOC at para 16(iii)(n).

118 SOC at para 16(iv)(o).

119 SOC at paras 16(iv)(q) and 16(iv)(r); ASOF at s/n 10 and Annex C.

120 ABOD, Vol 2 at p 1008.

121 ABOD, Vol 2 at pp 1011–1012.

The plaintiffs contend that the Product Portfolio Slides fortified the Product Representation at [45(c)] above.

(f) On 19 January 2016, as I have noted at [29] above, copies of both the First China Contract and the Second China Contract were provided by Mr Marcus Chua to Mr Goh. The plaintiffs contend that this was done to fortify the Revenue Representation at [45(b)] above.[122]

(g) Between 14 January 2016 and 24 February 2016, a number of further meetings took place (the "January–February 2016 Meetings"). These meetings were attended by (among others) Dr Ting, Mr Chua, Mr Soh, Mr Yong and Ms Hwang, or some of them. According to the plaintiffs, at each of these meetings, Dr Ting represented that the BPro devices (which included the BPro G3) had been developed; that they had received all relevant regulatory approvals; that there were lucrative contracts relating to them; and that "the time was now" to invest.[123]

The falsity of the representations

47 The plaintiffs argue that all of the Representations were false.[124]

48 According to the plaintiffs, the Regulatory Representation was false because Healthstats International did not have the requisite regulatory approvals for the BPro G2.[125] The plaintiffs rely on the following:

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122 SOC at para 16(iv)(s).

123 SOC at para 16(v)(t).

124 SOC at para 31.

125 Defendants' Opening Statement at para 36.

(a) At the material time, Healthstats International had only obtained the HSA, FDA and CE approval for the BPro G1, and not the BPro G2, although the BPro G2 was being sold in (among other countries) the US, the UK or Europe, and Singapore.[126]

(b) The changes from the BPro G1 to the BPro G2 were such that fresh regulatory approvals from the FDA, the HSA, the CE and the CFDA were required for the BPro G2. However, Healthstats International never applied for or obtained such approvals for the BPro G2. Even if fresh regulatory approvals were not required, Healthstats International did not submit the required "change notifications" to the relevant authorities in respect of the changes from the BPro G1 to the BPro G2.[127]

49 In respect of the CasPro, the plaintiffs allege that Healthstats China had obtained approval from the CFDA in 2012 on the basis of a fabricated report containing amended clinical trial data. In any event, even before obtaining the CFDA's approval on 7 June 2012, Healthstats International had already been supplying the CasPro to China.[128]

50 Further, the plaintiffs argue that the Revenue Representation and the Product Representation were false because the Second China Contract (which included sales for the BPro G3) was not a genuine contract and it was instead a sham contract. Specifically, the plaintiffs argue that the Second China Contract was not entered into with the intention of being performed, but was instead

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126 SOC at para 31(a)(1).

127 SOC at para 31(a)(2); Reply at para 4(e).

128 SOC at para 31(a)(3).

entered into for the defendants to make use of the forecasted revenue thereunder to fraudulently solicit investments from potential investors.[129] In this regard, the plaintiffs rely on the following:[130]

(a) The Second China Contract had never been booked into the accounts of Healthstats International.

(b) Neither Healthstats International nor Healthstats China have any official record as to the existence of the Second China Contract.

(c) None of Healthstats International's key employees, including Mr Michael Tan (the finance manager) and Mr Koh (the head of production), were aware of the existence of the Second China Contract.

(d) None of Healthstats China's key employees, including Ms Li (a sales manager) were aware of the existence of a genuine Second China Contract.

(e) At the material time, no working prototype of the BPro G3 existed. Indeed, to date, there is no prototype of the BPro G3. The plaintiffs' position is that no complete prototype of the BPro G3 was ever developed and that there was never any manufacturing or development of the BPro G3 devices.[131]

51 With regard to the Second China Contract, the plaintiffs deny that the defendants informed them of the possibility that Healthstats China would not be able to fulfil its obligations under this contract. The plaintiffs assert that, on the

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129 Defendants' Opening Statement at para 33.

130 SOC at para 31(b).

131 Reply at para 13.

contrary, the defendants had specifically represented to the plaintiffs (in, among other things, the Executive Summary) that the revenue under the two China Contracts was "booked" and that advance orders thereunder had been "secured".[132]

The fraudulence or negligence of the representations

52 The plaintiffs aver that the defendants knew, or must have known, that the Representations were false as the defendants did not have any reasonable grounds to believe that they were true. In particular, the plaintiffs rely on the following:[133]

(a) At the time the Representations were made, Dr Ting was the executive chairman and Mr Chua was the chief technology officer of Healthstats International. Both defendants, therefore, had intimate knowledge of Healthstats International's day-to-day affairs and knew, or must have known, that the Representations were false.

(b) The defendants had no reasonable basis to represent that the revenue from the two China Contracts was "booked" or that the advance orders thereunder had been "secured". At the time the Revenue Representation was made, the balance of S$3.5m under the First China Contract had not been paid and the remainder of the products ordered had not been delivered (see [21] above). Further, the revenue for the Second China Contract was not booked or secured and no orders were fulfilled thereunder (see [24] above).

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132 Reply at para 4(k).

133 Reply at para 7.

(c) Healthstats International did not have CFDA approval for the BPro G2. It also did not submit any "change notification" to the CFDA in respect of the changes from the BPro G1 to the BPro G2. Therefore, Healthstats International did not have the necessary regulatory approval to sell or distribute the BPro G2 in China.

(d) The Second China Contract included revenue for 210,000 units of the BPro G3 devices which amounted to S$21m. This was not feasible given that Healthstats International did not even have a working prototype of the BPro G3 at the time the Second China Contract was entered into.

The plaintiffs' reliance on the representations and damage suffered

(1) Investment in Healthstats International

53 The plaintiffs assert that they were specifically induced by the Representations to invest in Healthstats International.[134]

54 The plaintiffs allege that Mr Yong acted in reliance on the Representations in executing the Letter of Intent pursuant to which the Uncharted Group confirmed its intention to purchase shares in Healthstats International, for a purchase price to be calculated based on the S$50m Valuation of Healthstats International.[135]

55 Further, the plaintiffs claim that, induced by the Representations, Ms Hwang (through Medivice) had subscribed for the Subscription Shares under the Subscription Agreement on 12 August 2016 at a value which was

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134 Reply at para 8.

135 SOC at para 16(ii)(m).

higher than what a buyer would have paid. On this basis, the plaintiffs allege that they had suffered loss and damage by investing in Healthstats International under the terms of the Subscription Agreement.[136]

56 According to the plaintiffs, their investment in Healthstats International was based on the S$50m Valuation, which was put forward by the defendants when they were soliciting the Uncharted Group's investment in Healthstats International. The S$50m Valuation was based on, among other things, the "booked" revenue under the two China Contracts.[137] In addition, the defendants had specifically relied on the two China Contracts and the purported revenue derived therefrom (in, among other things, the Executive Summary) to demonstrate to the plaintiffs that Healthstats International's business would improve from the purported profits from the two China Contracts.[138] Healthstats International's ability to perform the two China Contracts was contingent on it having the necessary regulatory approvals in respect of all its devices, and on it having a working prototype of the BPro G3.[139]

(2) Loans to Healthstats International

57 The plaintiffs also claim that, induced by the Representations, Mr Yong and Ms Hwang agreed to make the Loans amounting to S$2.5m (as set out at [40] above) to Healthstats International. The plaintiffs allege that the circumstances surrounding each loan were as follows:

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136 SOC at paras 27–28 and 34.

137 Reply at para 7(a).

138 Reply at para 7(b).

139 Reply at para 7(c).

(a) At a meeting in January 2016, Dr Ting indicated to Mr Yong and Ms Hwang that Healthstats International needed working capital urgently and would not last beyond the Lunar New Year without fresh funds. Dr Ting pleaded with them to loan S$1m to Healthstats International urgently, pending the outcome of Uncharted Holdings' due diligence exercise, and proposed that this sum be structured as a convertible note or bond subject to Healthstats International's shareholders' approval. Acting in reliance on the Representations, Mr Yong and Ms Hwang agreed to loan S$1m to Healthstats International on this basis. Ms Hwang transferred this sum to Healthstats International on or around 20 January 2016.[140]

(b) Pending the final outcome of Uncharted Holdings' due diligence exercise, in early April 2016, Dr Ting (through Mr Soh) requested Mr Yong and Ms Hwang to extend a further loan to Healthstats International to cover its expenses for April 2016. Acting in reliance on the Representations, they agreed to extend a further loan of S$500,000 with arrangements for this sum to be treated as a convertible note.[141]

(c) Sometime in June and July 2016, acting in reliance on the Representations, Mr Yong and/or Ms Hwang agreed to loan a further S$1m to Healthstats International pursuant to Dr Ting's requests.[142] S$500,000 of this sum was transferred on 10 June 2016 and the remaining S$500,000 was transferred on 26 July 2016 (see [40] above).

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140 SOC at paras 18–19.

141 SOC at para 23.

142 SOC at para 26.

Unlawful means conspiracy

58 Further or in the alternative, the plaintiffs claim that the defendants, wrongfully and with the intent to injure Mr Yong and/or Ms Hwang through Medivice, conspired to make the Representations to the plaintiffs in order to defraud them by presenting a false picture of Healthstats International's viability. The plaintiffs allege that the defendants did so to induce Mr Yong and/or Ms Hwang to make a large investment in Healthstats International through Medivice under false premises, which was injurious to their interests.[143]

59 The plaintiffs allege that Dr Ting and Mr Chua were in a conspiracy to do unlawful acts to them. Pursuant to and in furtherance of this conspiracy, the defendants made the Representations (as outlined at [45]–[46] above).[144]

60 The plaintiffs contend that, by reason of the conspiracy, they have suffered loss and damage, and that the defendants are jointly and severally liable to them in damages for the conspiracy.[145]

The remedy sought

61 The plaintiffs seek damages at common law for the defendants' fraudulent or negligent misrepresentation. Alternatively, they claim damages for misrepresentation pursuant to s 2 of the Misrepresentation Act.[146] With regard to the alleged unlawful means conspiracy, the plaintiffs seek a

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143 SOC at para 35; Plaintiffs' Opening Statement at paras 46–47.

144 SOC at para 36.

145 SOC at para 37.

146 SOC, p 22 at paras (1) and (2).

declaration that the defendants participated in a conspiracy to injure them by unlawful means, as well as damages for conspiracy.[147]

62 The plaintiffs engaged an expert witness, Ms Grace Lui Kit Ying ("Ms Lui"), to perform an indicative share valuation on Healthstats International as at 31 August 2016.[148] Ms Lui considered two possible valuation methods: the Discounted Cash Flow method and the Guideline Public Company method. Applying the former method, Ms Lui assessed the estimated market value of the equity in Healthstats International, without the two China Contracts, to be S$0.[149] On this basis, the plaintiffs argue that they paid S$5m under the Subscription Agreement to subscribe for shares in Healthstats International that were effectively worthless. Therefore, they claim damages of S$5m.[150]

The defendants' case

63 The defendants' position is that both Mr Yong and Ms Hwang were sophisticated, savvy and well-advised investors who were experienced in investing in global companies which operated businesses in various industries.[151] According to the defendants, Mr Yong had initiated the discussions and the proposal to invest in Healthstats International.[152]

64 The defendants deny that the alleged Representations were made. They argue that the representations that they did make to the plaintiffs were true in

147 SOC, p 22 at para (3).

148 BAEIC, Vol 3, Tab 11 (Affidavit of Evidence-in-Chief of Grace Lui Kit Ying ("GL")) at para 2.

149 BAEIC, Vol 3, Tab 11 (GL) at p 1752.

150 Plaintiffs' Opening Statement at paras 49–50.

151 Defence at paras 19, 21 and 31.

152 Defence at para 30.

substance and in fact. They deny that the Representations, or any other representations made by them, were made with the intention of inducing the plaintiffs to invest in Healthstats International. Further, they deny that the plaintiffs were induced by the Representations to invest in Healthstats International.[153]

The representations made by the defendants

65 With regard to the Regulatory Representation, the defendants deny that they made this alleged representation and contend that nothing in the evidence supports this allegation.[154] With regard to the Revenue Representation, the defendants do not deny that they represented to the plaintiffs that S$18m of sales had been booked for 2016 and S$38.2m of sales had been booked for 2017, but they emphasise that these were no more than revenue forecasts and there was no warranty or confirmation of any numbers.[155] With regard to the Product Representation, the defendants accept that they told Mr Yong in November 2015 that Healthstats International was to launch the BPro G3 in the second quarter of 2016. However, they contend that this was no more than a target date to be worked towards.[156]

66 The defendants do not dispute that meetings were held between Dr Ting, Mr Chua and Mr Yong between October 2015 and January 2016. However, the defendants' account of what transpired during these meetings diverges from the

153 Defence at paras 34–35.

154 Defendants' Opening Statement at para 65.

155 Defendants' Opening Statement at paras 46 and 50.

156 Defendants' Opening Statement at para 74.

plaintiff's account of the October 2015 Meeting, the 21 November 2015 Meeting and the January–February 2016 Meetings described at [46] above:[157]

(a) In October or November 2015, during one of Mr Yong's visits to Dr Ting's medical clinic, he asked Dr Ting how the blood pressure monitoring business was doing. Dr Ting informed Mr Yong that the business was in need of funds to scale up development and production. Mr Yong then informed Dr Ting that he had a Hong Kong-listed vehicle (*ie*, Success Dragon) which could play a pivotal role in unlocking funds for Healthstats International. As Mr Yong was interested in finding out more about Healthstats International's business and inventions, Dr Ting invited him to Healthstats International's office where its business could be further explained to him.[158]

(b) In or around October or November 2015, Mr Yong attended at Healthstats International's office together with Mr Soh, Mr Salas (whom Mr Yong introduced as the chairman and CEO of Success Dragon), Mr Goh and Mr Ron Tan (whom Mr Yong introduced as a shareholder of Success Dragon and his nominee).[159] The defendants were present at this meeting. It was after this meeting that subsequent meetings and conversations relating to Healthstats International took place between Mr Yong and Dr Ting, with Mr Chua participating at times.[160]

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157 Defence at para 32.

158 Defence at paras 32(a)–32(d).

159 FBP-2, p 11 at para 9(3).

160 Defence at paras 32(e)–32(g).

(c) In the course of these meetings and conversations, the defendants shared factual representations relating to Healthstats International's business with Mr Yong and his team.[161] For example, these representations related to Healthstats International and its subsidiaries (including Healthstats China), the BPro and CasPro devices, the development of a prototype of the BPro G3, and the two China Contracts with Healthstats China.[162] The defendants contend that these representations were true.[163]

The defendants had reasonable grounds to believe that their representations were true

67 The defendants contend that at all material times, they had reasonable grounds to believe and did believe that all the representations they made to the plaintiffs were true.[164]

68 In particular, with regard to each of the Representations alleged by the plaintiffs, the defendants argue as follows:

(a) Regulatory Representation:

(i) With regard to the BPro devices: Given that the changes from the BPro G1 to the BPro G2 did not affect the core function of the latter, Healthstats International's regulatory and technical team determined that fresh submissions for regulatory approval

161 Defence at para 33.

162 Defence at paras 2–17 (read with para 33).

163 Defence at para 34.

164 Defence at paras 35–36.

were not yet required for the then BPro G2 prototype.[165] In any event, prior to obtaining FDA approval, the BPro G2 was never sold and was only used in clinical trials.[166]

(ii) With regard to the CasPro devices: No fabrication of clinical trial data took place and these clinical trials were in compliance with China's regulatory standards.[167]

(iii) In any event, any supply of the BPro and CasPro devices prior to obtaining the CFDA's approval was to the People's Liberation Army Air Force, which did not require CFDA approval.[168]

(b) Revenue Representation: Under the Second China Contract, Healthstats International was to make sales of S$18m in 2016 and S$38.2m in 2017 to Healthstats China. Shortly after the two China Contracts were signed (*ie*, 13 August 2015 and 26 October 2015), Winsan was suspended from trading on the Shanghai Stock Exchange. According to the defendants, Healthstats International's shareholders were informed of the suspension at an annual general meeting on 4 December 2015, and were told that there was a possibility that Healthstats China would not be able to fulfil its obligations under the two China Contracts. However, Winsan's suspension was lifted on or around 8 December 2015 and Winsan announced on 9 December 2015 that it had been awarded a further tender to provide remote blood

165 Defence at para 11.

166 Defence at para 66.

167 Defence at para 66.

168 Defence at para 66.

pressure monitoring.[169] The defendants deny that the Second China Contract was a sham contract.[170]

(c) Product Representation: The defendants contend that Mr Soh's change of Healthstats International's business model from a sales-based model to a service-based model meant that the funding and focus previously afforded to the BPro G3 would be stopped and shifted to the BPro G2. This left the development of the BPro G3 without the necessary funding and focus.[171]

Whether the plaintiffs relied on the alleged representations

69 Further or in the alternative, the defendants deny that the plaintiffs were induced by any representations to invest in Healthstats International.[172] The defendants emphasise that Mr Yong and Ms Hwang were at all times well-advised by a team of professional advisors, including Baker & McKenzie, DLA Piper and KPMG. They had appointed these professional advisors to carry out due diligence and advise them on various aspects of their investment in Healthstats International. The due diligence exercise was wide-ranging, including intellectual property, licensing and approvals, contracts and taxation. Mr Yong testified that he had spent about S$300,000 in engaging these professional advisors.[173] According to the defendants, Dr Ting met Mr Yong on various occasions between March and April 2016 and was informed by Mr Yong that the due diligence carried out by these professional advisors on

169 Defence at paras 17(c)–17(e).

170 Defence at para 66.

171 Defence at para 54(e).

172 Defence at para 36.

173 Transcript (27 July 2021) at p 37 lines 10–16.

Healthstats International was satisfactory.[174] Further, the Subscription Agreement was prepared by Baker & McKenzie, and Mr Yong and/or Ms Hwang were well-advised on its terms.[175] In addition, in February 2016, while the Sale and Purchase Agreement between Uncharted Holdings and the selling shareholders of Healthstats International was still pending completion, Dr Ting agreed (at Mr Yong's request) to formally appoint Mr Soh as the CEO of Healthstats International in March 2016, to replace Dr Ting (see [30]–[31] above).

70 Instead, the defendants argue that the plaintiffs' decision to invest in Healthstats International arose pursuant to Mr Yong's plans to diversify Success Dragon's portfolio.[176] According to the defendants, Mr Yong was interested in procuring Success Dragon's acquisition of a majority stake in Healthstats International through a transaction involving the purchase of shares in Healthstats International in consideration for shares in Success Dragon (the "Proposed Share Swap").[177] During their discussions, Mr Yong informed Dr Ting that in order to implement the Proposed Share Swap, he (Mr Yong) would first need to acquire an interest of at least 75% in Healthstats International so that he would have the requisite majority to approve a special resolution for the Proposed Share Swap.[178] It was in this context that Mr Yong brought his team to meet the defendants in October or November 2015.[179] The defendants also contend that Mr Soh was installed as CEO by Mr Yong to carry out work

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174 Defence at para 55.

175 Defence at para 58(g).

176 Defence at paras 37 and 41.

177 Defence at para 43(c).

178 Defence at paras 43(d)–43(e).

179 Defence at para 43(f).

relating to Mr Yong's and Ms Hwang's acquisition of a majority stake in Healthstats International and to facilitate the implementation of the Proposed Share Swap.[180]

71 The defendants further contend that it was Mr Yong who proposed the disbursements of the Loans to Healthstats International. According to the defendants, Mr Yong proposed the acquisition of a majority interest in Healthstats International in the following manner:[181]

(a) Mr Yong would acquire shares in Healthstats International through companies under his or Ms Hwang's management and control. These companies included the Uncharted Group, Uncharted Holdings and Medivice.

(b) Concurrently, Mr Yong would disburse the Loans to Healthstats International, which would thereafter (at the option of Mr Yong or Ms Hwang) be set off against the consideration to be paid for the Subscription Shares.

72 The defendants' understanding is that Uncharted Holdings did not complete the Sale and Purchase Agreement, and Ms Hwang did not exercise the Call Option under the Subscription Agreement for the Option Shares, because of financial difficulties faced by Mr Yong. These financial difficulties arose out of unforeseen major regulatory changes in Vietnam which led to a sharp decline in Success Dragon's share price. This adversely affected Mr Yong's ability to raise funds to complete the Sale and Purchase Agreement and the subscription

180 Defence at para 54.

181 Defence at para 44.

for the Option Shares.[182] As a result of Uncharted Holdings' failure to complete the Sale and Purchase Agreement and Ms Hwang's failure to exercise the Call Option, Mr Yong failed to acquire a majority shareholding in Healthstats International and the Proposed Share Swap was not completed.[183]

73 Consequently, the defendants argue that even if the alleged Representations were made, the plaintiffs did not rely on them:

(a) With regard to the Regulatory Representation, the plaintiffs could not have relied on this alleged representation in entering into the Subscription Agreement in view of the due diligence report produced by DLA Piper. Further, Mr Marcus Chua had expressly disclosed the exact number of regulatory approvals which Healthstats International had obtained at the material time.[184]

(b) With regard to the Revenue Representation, Mr Yong never placed any reliance on the Second China Contract being performed. The S$50m Valuation was Mr Yong's valuation, and Mr Yong candidly admitted that he was not concerned about the Second China Contract but instead focused on the First China Contract.[185]

(c) With regard to the Product Representation, the Subscription Agreement was signed in August 2016, well after the second quarter of 2016 when the BPro G3 was targeted to be launched. Hence, by the time the Subscription Agreement was signed, the plaintiffs would have

182 Defence at para 60.

183 Defence at para 62.

184 Defendants' Opening Statement at para 81.

185 Defendants' Opening Statement at paras 78–79.

known that the BPro G3 had not yet been launched. Therefore, the plaintiffs never relied upon the alleged Product Representation when they invested in Healthstats International.[186]

Unlawful means conspiracy

74 The defendants deny that there was an unlawful means conspiracy to injure the plaintiffs. They reiterate that they did not make any false representations to the plaintiffs. Further, they deny that they had any intention to cause injury to the plaintiffs.[187]

The interlocutory applications

75 Apart from the main Suit, four summonses were heard: an application for specific discovery (Summons No 1975 of 2021 ("SUM 1975")); an application for third party discovery (Summons No 1976 of 2021 ("SUM 1976")); an application for declaratory relief (Summons No 1688 of 2021 ("SUM 1688")); and an application for adjournment (Summons No 2330 of 2021 ("SUM 2330")).

Applications for discovery (SUM 1975 and SUM 1976)

76 SUM 1975 was an application for specific discovery in which the defendants sought the following categories of documents from the plaintiffs:[188]

(a) the audited financial statements and/or management accounts of Uncharted Holdings from 2015 to April 2016, evidencing that

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186 Defendants' Opening Statement at para 80.

187 Defence at paras 64–65.

188 HC/SUM 1975/2021; 9th Affidavit of Ting Choon Meng dated 1 May 2021 ("TCM-9", Tab 5 (Annex A) at pp 35–36.

Uncharted Holdings had the means to purchase 17,113,532 of Healthstats International's shares for the sum of $26,970,926.43;

(b) the bank statements of Uncharted Holdings from January to May 2016, evidencing that it had funds to purchase 17,113,532 of Healthstats International's shares for the sum of $26,970,926.43; that Uncharted Holdings had the ability to acquire shares in Healthstats International; and proof of payment to DLA Piper and Baker & McKenzie for their due diligence reports;

(c) in the event that Uncharted Holdings did not pay for DLA Piper's and Baker & McKenzie's due diligence reports, documents evidencing who paid for these reports and evidence of such payments for the period from January to May 2016; and

(d) the legal documents and contracts handed over by Winsan to Healthstats China, which were referred to in the Winsan Handover Checklist exhibited in Ms Li's affidavit of evidence-in-chief.[189]

77 On the first day of trial, I granted leave for SUM 1975 to be kept in abeyance pending Mr Yong's testimony at the trial, as sought by the defendants' counsel.[190]

78 SUM 1976 was the defendants' application for third party discovery against Healthstats China, in which they sought the legal documents and contracts handed over by Winsan to Healthstats China (see [76(d)] above).[191]

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189 BAEIC, Vol 2, Tab 7 (LWW) at para 17 and pp 1391–1395 (translated at BAEIC, Vol 2, Tab 8 (LH) at pp 1445–1450).

190 Transcript (3 May 2021), p 12 at lines 12–24.

191 HC/SUM 1976/2021; TCM-9, Tab 5 (Annex A) at p 36.

SUM 1976 was settled between the parties before the trial commenced.[192] After hearing the parties' brief submissions on costs, I awarded costs of S$500 to Healthstats China on the defendants' counsel's undertaking to make the necessary payment.[193]

Application for declaratory relief under O 33 r 2 (SUM 1688)

79 SUM 1688 was Dr Ting's application under O 33 r 2 of the Rules of Court (2014 Rev Ed) for declarations that Mr Yong and Medivice were not entitled to rely on s 2(1) of the Misrepresentation Act; that Mr Yong and Medivice could not maintain a claim for misrepresentation against the defendants because no detriment and no inducement had been shown; and that the plaintiffs' conspiracy claim be dismissed.[194]

80 With regard to s 2(1) of the Misrepresentation Act, the defendants argued that only Ms Hwang can rely on this provision because it requires that "a person *has entered into a contract* after a misrepresentation has been made to him by another party thereto" [emphasis added]. As the Subscription Agreement was entered into between Ms Hwang and Healthstats International, the defendants contended that neither Mr Yong nor Medivice can rely on s 2(1).[195]

81 With regard to misrepresentation generally, the defendants similarly argued that only Ms Hwang could be a plaintiff in this Suit:

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192 Transcript (3 May 2021), p 3 at lines 13–21.

193 Transcript (3 May 2021), p 10 at lines 17–20.

194 HC/SUM 1688/2021.

195 Defendants' Opening Statement at paras 37–39.

(a) First, the defendants contended that Medivice cannot be a plaintiff because the Subscription Agreement was entered into between Healthstats International and Ms Hwang, in her own name. Medivice was allocated the Subscription Shares as Ms Hwang's nominee. Medivice did not make any investment in Healthstats International.[196] Further, given that Medivice was incorporated on 17 February 2016, after the alleged Representations were made by the defendants, Medivice could not have relied upon or been induced by the Representations.[197]

(b) Next, the defendants argued that it is logically inconsistent for both Mr Yong and Ms Hwang to be plaintiffs. Clause 16 of the Subscription Agreement provides that, save for any nominee nominated by Ms Hwang to hold the Subscription Shares, no third party would have any rights thereunder.[198] However, the plaintiffs pleaded that Ms Hwang entered into the Subscription Agreement "on her own behalf and/or on behalf of Mark [*ie*, Mr Yong]".[199] If Ms Hwang entered into the Subscription Agreement on *her own* behalf, Mr Yong would have no rights under the Subscription Agreement and cannot be a plaintiff. If, instead, Ms Hwang entered into the Subscription Agreement on *Mr Yong's* behalf, then Ms Hwang would merely have been acting as an agent for Mr Yong and cannot be a plaintiff.[200]

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196 Defendants' Opening Statement at paras 24–26.

197 Defendants' Opening Statement at para 76.

198 ABOD, Vol 1 at pp 372–373.

199 SOC at para 28.

200 Defendants' Opening Statement at paras 27–33.

82 After hearing the parties' arguments on this matter, I decided to keep SUM 1688 in abeyance until the end of the trial and declined to make any order. This was because the issues on which declarations were sought in SUM 1688 were live issues for determination in the present proceedings.[201]

Application for adjournment (SUM 2330)

83 SUM 2330 was the plaintiffs' application for the adjournment of the trial after the plaintiffs' witnesses, save for Mr Yong and Ms Hwang, had given their evidence.[202] Mr Yong and Ms Hwang had intended to travel from Zimbabwe to Singapore *via* a transit in Dubai in late April 2021, to attend the trial for this Suit. However, upon their arrival in the Dubai International Airport, Mr Yong was detained by the Dubai authorities as there was a notice issued by INTERPOL against him in respect of certain debts that he was alleged to have had in South Korea. He was taken to a holding facility situated within the Dubai International Airport[203] and was still in custody when SUM 2330 was heard on 20 May 2021.

84 The plaintiffs sought an adjournment in respect of both Mr Yong and Ms Hwang under O 35 r 3 of the Rules of Court or pursuant to the exercise of the court's inherent jurisdiction.[204] It was not disputed that Mr Yong's evidence was of utmost importance to the issues in dispute in the present Suit. The plaintiffs submitted that denying an adjournment in respect of Mr Yong would have severe adverse consequences for their case, and emphasised that he was

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201 Transcript (3 May 2021), p 20 at lines 4–17 and p 21 at lines 14–22.

202 HC/SUM 2330/2021.

203 6th Affidavit of Yeow Guan Wei Joel dated 7 May 2021, pp 5–7 (Affidavit of Emily Hwang Mei Chen dated 12 May 2021) ("EHMC (SUM 2330)") at paras 4–7 and 9.

204 Plaintiff's Skeletal Submissions for Adjournment of Trial ("PWS (SUM 2330)") at paras 23–26 and 39–41.

unable to attend the trial due to circumstances entirely beyond his control.[205] As for Ms Hwang, she had deposed that Mr Yong's situation had left her in great distress and that she was in no state to give evidence in the trial.[206] The plaintiffs submitted that forcing Ms Hwang to give evidence while in such a distressed state of mind would unfairly prejudice the plaintiffs' ability to present their case fully to this court, and that Ms Hwang's evidence is also crucial to the plaintiffs' case.[207] Further, the plaintiffs submitted that an adjournment of the trial would not cause any prejudice to the defendants that would not be compensable in costs.[208]

85 The defendants did not contest the adjournment in respect of Mr Yong but submitted that no adjournment should be granted in respect of Ms Hwang.[209]

86 After considering the parties' submissions, I allowed the plaintiffs' application for the adjournment of the trial and for both Mr Yong and Ms Hwang to give their evidence in the second tranche of the trial.[210] Adopting a practical approach, even if no adjournment was granted for Ms Hwang, an adjournment would need to be granted for Mr Yong. Bearing in mind Mr Yong's and Ms Hwang's predicament in Dubai and her understandable anxiety and distress at the situation in which she and her husband had found

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205 PWS (SUM 2330) at para 4.

206 EHMC (SUM 2330) at para 33.

207 PWS (SUM 2330) at paras 43 and 45–46.

208 PWS (SUM 2330) at para 47.

209 Transcript (20 May 2021), p 33 at lines 2–8 and 21–22 and p 36 at lines 1–10.

210 Transcript (20 May 2021), p 38 at lines 5–7 and 18–19.

themselves, I was prepared to accommodate their application for adjournment as a matter of fairness.[211]

Issues to be determined

87 The main issues that arise for my determination are as follows:

(a) Were the alleged Representations made by the defendants?

(b) If these Representations were indeed made, were they false representations of fact?

(c) Did the plaintiffs rely on the Representations?

(d) If the three questions above are answered in the affirmative, did the defendants make the Representations fraudulently?

(e) Was there an unlawful means conspiracy by the defendants?

88 I shall consider each of these issues in turn.

My decision

Misrepresentation

The applicable law

89 It is trite that to ascertain whether an operative misrepresentation has been made, there must be a false statement of existing or past fact made by one party (*ie*, the representor) before or at the time of making the contract, to the other party (*ie*, the representee), and the representee must have been induced to

[211] Transcript (20 May 2021), p 37 at lines 23–25 and p 38 at lines 1–5.

enter into the contract (see *Lim Koon Park and another v Yap Jin Meng Bryan and another* [2013] 4 SLR 150 at [38]).

90 Where *fraudulent* misrepresentation is alleged, the plaintiff must prove five elements (see *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 ("*Panatron*") at [14], recently applied in *Ma Hongjin v Sim Eng Tong* [2021] SGHC 84 ("*Ma Hongjin*") at [19]):

(a) a false representation of fact was made by words or conduct by the representor;

(b) the representation was made with the intention that it should be acted upon by the representee (or by a class of persons which includes the representee);

(c) the representee acted upon the false statement;

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

(e) the representation was 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.

91 Where *negligent* misrepresentation is alleged, the plaintiff must prove the following five elements (see *IM Skaugen SE and another v MAN Diesel & Turbo SE and another* [2018] SGHC 123 ("*IM Skaugen*") at [121]; *Ma Hongjin* at [20]):

(a) the representor made a false representation of fact to the representee;

(b) the representation induced the representee's actual reliance;

(c) the representor owed the representee a duty to take reasonable care in making the representation;

(d) the representor breached that duty of care; and

(e) the breach caused damage to the representee.

92 The elements common to both fraudulent and negligent misrepresentation are: (a) that the representor made a false representation of fact (the "Representation Requirement"); and (b) that there was inducement and reliance by the representee (the "Reliance Requirement") (*IM Skaugen* at [122]–[123]). I shall consider the Representation Requirement and the Reliance Requirement in turn before going on to address the other elements of fraudulent and negligent misrepresentation.

Whether the Representation Requirement is satisfied

(1) To whom were the Representations made?

93 My analysis of whether the Representations were made to the plaintiffs shall proceed from two perspectives.

94 The first perspective is: did the defendants make the Representations directly to Ms Hwang? This perspective is a technical one. Ms Hwang entered into the Subscription Agreement with Healthstats International on 12 August 2016. Since Ms Hwang is the only plaintiff that was a party to this agreement, the inquiry in this regard should strictly focus on whether the misrepresentations were made to her. This is especially the case for the plaintiffs' claim under s 2(1) of the Misrepresentation Act: as I have stated earlier (see [80] above), the defendants argue that only Ms Hwang can rely on this provision because it requires that "a person *has entered into a contract* after a misrepresentation has

been made to him by another party thereto" [emphasis added]. On this view, the proper inquiry concerns whether the Representations were made by the defendants to Ms Hwang, and not to the other plaintiffs in this action who are not party to the Subscription Agreement, *viz*, Mr Yong and Medivice.

95 On this perspective, it follows that the parties' extensive submissions on whether the Representations were made to Mr Yong would seem to be irrelevant.

96 However, Ms Hwang's own case is that the Representations were *not* made to her by the defendants directly. Indeed, Ms Hwang insisted that it was *Mr Yong* who told her that the Representations were made by the defendants before she signed the Subscription Agreement.[212] She claimed that her involvement in the investment in Healthstats International through the Subscription Agreement was minimal. She also claimed that this was because Mr Yong is a savvy businessman, so she left the details of the Healthstats International investment and the running of its business to Mr Yong.[213] Succinctly put, she relied almost solely on Mr Yong for this investment.[214] Ms Hwang came to the conclusion that Dr Ting had deceived her and Mr Yong when Mr Yong told her about the deceit sometime in 2018 or 2019.[215] She could not remember if she had even asked whether Healthstats International was making profits from 2015 to 2016, *ie*, around the period in which she entered into the Subscription Agreement.[216] She also did not ask Dr Ting whether

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212 Transcript (28 July 2021) at p 58 lines 9–19.

213 Transcript (28 July 2021) at p 44 lines 14–20; p 58 lines 3–8.

214 Transcript (28 July 2021) at p 64 lines 18–20.

215 Transcript (28 July 2021) at p 64 lines 8–14.

216 Transcript (28 July 2021) at p 66 line 21 to p 68 line 11.

Healthstats International was profitable.[217] Ms Hwang said she did not attend any of the business meetings in the offices of Healthstats International in 2015 and 2016.[218]

97 Having considered Ms Hwang's evidence, I find, on a balance of probabilities, that she was merely Mr Yong's nominee in the Healthstats International investment. They, as husband and wife, did not differentiate between their respective assets,[219] and Mr Yong was the brains behind the Subscription Agreement.

98 I now consider the second perspective: were the Representations made by the defendants to Ms Hwang *through* Mr Yong? Hence, my analysis below will focus on whether the Representations were made to Mr Yong on the basis that he would then communicate the Representations to Ms Hwang.

(2) Whether the Regulatory Representation was made

99 As I have noted at [65] above, the defendants denied making the Regulatory Representation, *ie*, that all of Healthstats International's products had obtained the necessary regulatory approvals from the HSA, the FDA and the CE.

100 On the other hand, the plaintiffs allege that the Regulatory Representation was made and they relied on the following evidence:

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217 Transcript (28 July 2021) at p 68 lines 12–16.

218 Transcript (27 July 2021) at p 136 line 20 to p 137 line 9; Transcript (28 July 2021) at p 37 line 23 to p 38 line 10; p 41 lines 20–21.

219 Transcript (22 July 2021) at p 41 lines 4–5.

(a) Mr Yong testified that at the October 2015 Meeting, Dr Ting stated that the BPro and the CasPro had already obtained FDA approval and would easily obtain worldwide approval.[220]

(b) Mr Yong further testified that at the 21 November 2015 Meeting, Dr Ting represented to him that the BPro G1 had been approved by regulatory authorities such as the FDA, the HSA, the CE and the CFDA. Dr Ting further represented that all of Healthstats International's products (including the BPro G2) had obtained all the relevant regulatory approvals, including approvals from the HSA, the CE, the FDA and the CFDA.[221]

(c) It was undisputed that Dr Ting sent Mr Yong the Executive Summary after the 21 November 2015 Meeting. It was stated therein that the BPro technology was "now well accepted by medical communities around the world", that Healthstats International had achieved "USA FDA and European CE MDD mark approvals".[222]

(d) Mr Yong testified that at the 5 January 2016 Meeting, Dr Ting repeated that the BPro devices had received all necessary regulatory approvals, including FDA, CE and HSA approvals.[223]

(e) Mr Soh testified that when he was appointed as the CEO of Healthstats International in March 2016, he understood from the defendants that the BPro G2 had already obtained the required

220 BAEIC, Vol 1, Tab 1 (YKYM) at para 24(a).

221 BAEIC, Vol 1, Tab 1 (YKYM) at paras 26(b) and 26(e).

222 ABOD, Vol 2, Tab 30 at p 1000.

223 BAEIC, Vol 1, Tab 1 (YKYM) at para 41.

regulatory approval. After Mr Soh found out from DLA Piper's report (in March 2016) that only the BPro G1 had FDA approval, the defendants had explained to him that this regulatory approval also covered the BPro G2 as it was a predicate device and there were minimal changes from the BPro G1 to the BPro G2.[224] Mr Soh said that he had no formal knowledge of the regulatory approval process and was not in any position to question or verify the accuracy of what the defendants represented to him. Therefore, he trusted what the defendants represented and accepted this at face value.[225] However, Mr Soh admitted that he had not looked at the documents to satisfy himself that the BPro G2 had obtained the required regulatory approvals.[226] Mr Soh said he only found out that a separate application for regulatory approval had to be made for the BPro G2 "towards the later part of the year of 2016".[227] Thereafter, he informed Mr Yong of this around August 2016.[228]

101 On the other hand, the defendants maintain that they never made the alleged Regulatory Representation. The defendants testified that, in January 2016, the BPro G2 was still in its prototype and testing stages.[229] The development of the BPro G2 had to be conducted in planned stages, and it was

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224 Transcript (6 May 2021), p 158 at lines 8–19; Transcript (7 May 2021), p 13 at lines 10–17; Transcript (14 May 2021), p 47 at lines 14–23.

225 Transcript (7 May 2021), p 17 at lines 1–9; Transcript (14 May 2021), p 62 at lines 1–12.

226 Transcript (7 May 2021), p 29 at lines 3–5.

227 Transcript (14 May 2021), p 63 at lines 18–22.

228 Transcript (17 May 2021), p 100 at lines 1–8.

229 BAEIC, Vol 4, Tab 13 (TCM) at para 94; BAEIC, Vol 4, Tab 14 (Affidavit of Evidence-in-Chief of Chua Ngak Hwee ("CNH")) at para 65.

only after all the stages (including clinical trials and a battery of tests, such as lab tests and safety tests) were completed that Healthstats International could have applied for regulatory approval for the BPro G2. Therefore, there was no way that the defendants would have represented to Mr Yong that the BPro G2 had already received FDA approval.[230]

102 The burden of proving that the defendants made the Regulatory Representation rests on the plaintiffs (see *Trans-World (Aluminium) Ltd v Cornelder China (Singapore)* [2003] 3 SLR(R) 501 at [29]; *Ma Hongjin* at [25]).

(A) THE BPRO G2

103 The documentary evidence suggests that the defendants represented to Mr Yong that FDA approval was obtained for the BPro G2. The Executive Summary sent by Dr Ting to Mr Yong on 22 November 2015 is contemporaneous evidence that the defendants made the Regulatory Representation. The Executive Summary was prepared by Mr Marcus Chua in consultation with Mr Chua.[231]

104 There are two issues with regard to the Executive Summary. First, did the defendants refer to the BPro G2 in this document? Second, did the defendants refer to the *final version* of the BPro G2 in this document?

105 With regard to the first issue, the Executive Summary did give the impression that FDA approval had been obtained in respect of the BPro G2.

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230 BAEIC, Vol 4, Tab 13 (TCM) at paras 45–46; BAEIC, Vol 4, Tab 14 (CNH) at paras 28–29.

231 Transcript (2 August 2021) at p 93 lines 23–25.

106 The first page of the Executive Summary states as follows:[232]

> …
>
> **Key Considerations**
>
> **1. Strong Technology Platform**
>
> - Wireless Wearable Technology – World's first FDA approved watch-based ambulatory blood pressure monitoring device
> - First device in the world that uses applanation tonometry methodology to capture 24-hour blood pressure readings
> - Proprietary algorithm that calculates pulse waves related clinical indices, in particular central aortic systolic pressure
> - Cloud based analysis, reporting and data repository
>
> [graphic]

107 In cross-examination, Dr Ting stated that "Wireless Wearable Technology" referred to the BPro G2 and that the rest of the bullet point referred to the software that the BPro G2 used ("the BPro Soft").[233] Dr Ting claimed that the words "FDA approved" in that bullet point thus meant that FDA approval was obtained in respect of the BPro Soft, not the BPro G2.[234] Dr Ting's explanation does not comport with the plain meaning of that bullet point. The last part of that bullet point states that FDA approval was obtained for the "blood pressure monitoring *device*" [emphasis added]. Hence, the reference must be to the BPro G2 (*ie*, the device) and not to the BPro Soft (*ie*, the software).

108 Moreover, Dr Ting also testified that the third bullet point under the same heading referred to the BPro Soft, and the plaintiffs' counsel rightly

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232 ABOD, Vol 2, Tab 30 at p 1000.

233 Transcript (28 July 2021) at p 105 line 21 to p 106 line 13.

234 Transcript (28 July 2021) at p 106 lines 9–13.

pointed out that there was no reference to FDA approval in that bullet point.[235] Reading this section in totality, I find that a person reading this bullet point would have the impression that the BPro G2 was approved by the FDA. Dr Ting also conceded that this was the case.[236]

109 Furthermore, on the same page of the Executive Summary, there is a graphic just below the bullet points under the heading of "Strong Technology Platform". This graphic shows a watch-like device with a caption, "BPro® G2", which I reproduce below:

Dr Ting similarly conceded that this graphic suggested that FDA approval had been obtained for the BPro G2.[237]

110 With regard to the second issue, the Executive Summary did give the impression that FDA approval had been obtained in respect of the *final version* of the BPro G2.

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235 Transcript (28 July 2021) at p 111 line 22 to p 112 line 3.

236 Transcript (28 July 2021) at p 107 line 21 to p 108 line 2.

237 Transcript (28 July 2021) at p 110 lines 15–21; Transcript (29 July 2021) at p 129 lines 14–19.

111 In re-examination, Mr Chua explained that the graphic in the Executive Summary was simply to show what the final design of the BPro G2 would look like.[238] The reference to a device having obtained FDA approval was to an *earlier* version of the BPro G2. Indeed, Mr Chua explained that there was an earlier prototype of the BPro G2 developed in 2013.[239] In this prototype there was a detachable "cap" or "cradle" over the face of the BPro G1 ("the prototype BPro G2"). This cap had Bluetooth connectivity and a power source to transmit wireless data from the BPro Soft in the BPro G1 to the computer.[240] Mr Chua's testimony at trial in this regard is consistent with that in his affidavit of evidence-in-chief, wherein he described a prototype BPro G2 with an attached cap as a "cover" or "dongle" to house Bluetooth technology so as to transmit the data wirelessly.[241] I reproduce the designs of this prototype here:[242]

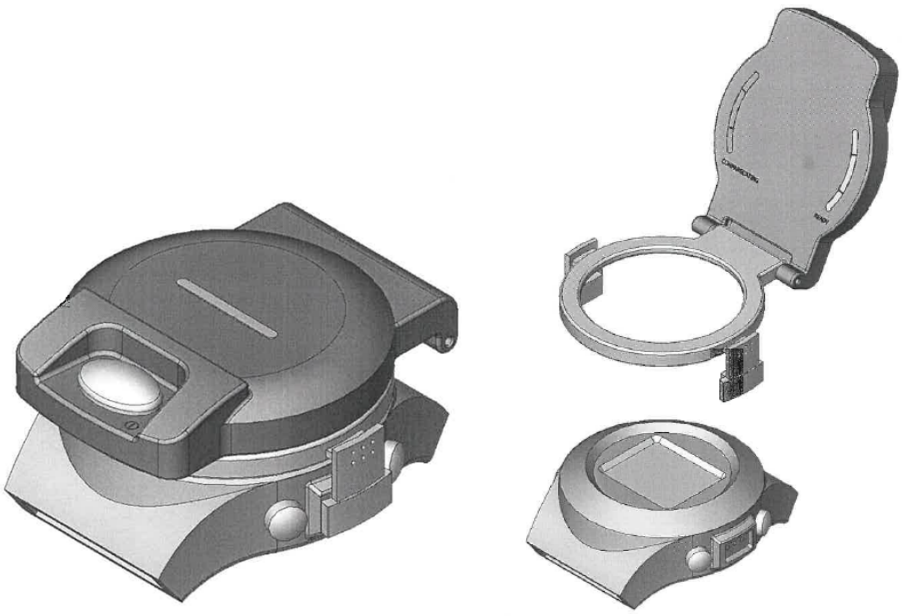
238 Transcript (3 August 2021) at p 128 line 16 to p 131 line 24.

239 Transcript (2 August 2021) at p 121 lines 13–17.

240 Transcript (2 August 2021) at p 129 lines 1–6.

241 BAEIC, Vol 6, p 3291 at para 26.

242 Exhibits D3.14 and D3.16.



This prototype was made as a proof of concept for the BPro G2.[243] Although this prototype BPro G2 was functional using the wireless Bluetooth technology, it was bulky and the design had to be greatly enhanced to make it aesthetically acceptable for the market.

112 Importantly, this prototype version of the BPro G2 did not require FDA approval because it was not a major modification of the BPro G1, which already had FDA approval.[244] Mr Chua considered this prototype BPro G2 as a milestone development. Nevertheless, there was a plan to integrate Bluetooth technology and a power source in the cap *into* the watch device of BPro G1 itself, rather than using a detachable cap, so that the final version of the BPro G2 would be a refined and elegant product. However, this *final version* of the

243 Transcript (2 August 2021) at p 130 line 24 to p 131 line 9.

244 Transcript (2 August 2021) at p 121 line 21 to p 122 line 1; p 129 lines 7–8.

BPro G2 would require FDA approval.[245] I reproduce the design of the final version of the BPro G2 here:

113 According to the defendants, notwithstanding the apparent content of the Executive Summary, they told the plaintiffs that: (a) the prototype version of the BPro G2, *ie*, with the attached cap, did not require FDA approval; and (b) the final version of the BPro G2 had *not* obtained FDA approval and would require a fresh submission. Indeed, Dr Ting insisted that he told Mr Yong orally that the *final version* of the BPro G2 did not have FDA approval in "many discussions".[246] More specifically, according to Dr Ting and Mr Chua, there was a meeting on 27 November 2015 which they attended with Mr Yong, Mr Soh, Mr Salas, Mr Goh and Mr Ron Tan.[247] Mr Chua claimed that Dr Ting referred to the same graphic of the final version of BPro G2 in the Executive Summary

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245 Transcript (2 August 2021) at p 129 lines 9–15.

246 Transcript (29 July 2021) at p 33 line 11 to p 38 line 9.

247 Transcript (2 August 2021) at p 2 line 9 to p 3 line 8; Transcript (3 August 2021) at p 128 lines 9–15.

as the physical device of the final version of the BPro G2 was not available. In relation to this graphic, Dr Ting informed Mr Yong and his team that FDA approval was required in respect of the final version of the BPro G2 but had yet to be obtained.[248] Mr Chua explained that, in this meeting, he also showed Mr Yong and his team a physical prototype BPro G2, *ie*, the BPro G1 with the detachable cap over it.[249] This version of the BPro G2 did not require FDA approval as the BPro Soft and BPro G1 already had FDA approval. Hence, according to the defendants, the content of the Regulatory Representation cannot be accurately described by solely looking at what is shown in the Executive Summary.

114 Dr Ting's and Mr Chua's narratives are plausible. They accord with the "BPro BT Change Requests Decision" document dated 31 December 2015 ("the Internal Justification Document"), which was signed by Mr Chua.[250] This document shows that the Research and Development ("R&D") department of Healthstats International decided, in consultation with its FDA application expert, Mr Stephen Gorski ("Mr Gorski"), that the prototype BPro G2 (*ie*, the BPro G1 with the attached cap) did not require a fresh submission for FDA approval. Dr Ting and Mr Chua explained that all that was needed was to prepare this Internal Justification Document in preparation for a possible unannounced audit by the FDA.[251] Their narratives also accord with their affidavits filed in Originating Summons No 666 of 2018 ("OS 666"), where they maintained their position in 2018 that there was no need for a fresh submission

248 Transcript (3 August 2021) at p 101 lines 19–25.

249 Transcript (3 August 2021) at p 100 line 15 to p 101 line 25.

250 Plaintiffs' Core Bundle ("PCB") Vol 1, at ABOD, Vol 5 at pp 3532–3543.

251 Transcript (29 July 2021) at p 58 line 23 to p 59 line 1.

for FDA approval for the prototype BPro G2.[252] However, Mr Chua opined that FDA approval was required for the final version of the BPro G2 that integrated Bluetooth into the device itself. Dr Ting also explained that FDA approval was needed because it would be difficult to market the final version of the BPro G2 in the UK and Australia, as these countries had stringent data protection regimes.[253] Hence, it is plausible that the defendants had informed Mr Yong and his team that the *prototype* BPro G2 did not need FDA approval, but the *final product* did require FDA approval. This would have caused some confusion as to whether the BPro G2 requires FDA approval, since the issue of whether FDA approval is required depends on whether the reference is to the prototype BPro G2 (*ie*, the BPro G1 with the attached cap) or the final version of BPro G2.

115 However, the documentary evidence shows that the defendants had given the plaintiffs the impression that worldwide regulatory approvals had been obtained for the final version of the BPro G2. The plaintiffs have adduced several written materials in support of their case. These include the Executive Summary, the PowerPoint slides sent by Mr Goh on 18 February 2016,[254] the PowerPoint slides used by Dr Ting on 4 December 2015 for Healthstats International's Annual General Meeting[255] and a proposal sent by Mr Ho of Healthstats International's London office to Mr Salas and Mr Soh in an e-mail on 31 May 2016.[256] These written materials show the graphic of the *final version* of the BPro G2 and varying descriptions that it had FDA approval, several

252 Transcript (29 July 2021) at p 62 line 15 to p 64 line 24; Transcript (2 August 2021) at p 148 line 3 to p 150 line 22.

253 Transcript (30 July 2021) at p 132 line 5 to p 134 line 11.

254 PCB, Vol 1 at pp 462–515, at ABOD, Vol 3 at pp 1945–1998.

255 PCB, Vol 1 at pp 421–448, at ABOD, Vol 3 at pp 1804–1831.

256 PCB, Vol 1 at pp 409 and 411–417, at ABOD, Vol 3 at pp 1783 and 1785–1791.

regulatory approvals, or worldwide regulatory approvals. While not all these materials were sent to the plaintiffs, I find that the written materials in totality show that the defendants had made the representation that the final version of the BPro G2 had obtained *worldwide* regulatory approvals.

116 Having represented that the BPro G2 had obtained worldwide regulatory approvals, the defendants therefore did make the Regulatory Representation to the plaintiffs before Ms Hwang entered into the Subscription Agreement.

117 While the defendants did make the Regulatory Representation in respect of the BPro G2, I shall address the issue of the factual inaccuracy of the Regulatory Representation below. My analysis in that section will show that the factual inaccuracy stemmed purely from the use of the graphic of the *final version* of the BPro G2, and not the prototype BPro G2 (*ie*, the BPro G1 with the attached cap).

(B) THE CASPRO

118 The PowerPoint slides sent by Mr Goh on 18 February 2016 also contained a similar slide that provided information regarding the regulatory approvals obtained for the CasPro. There is a slide titled "Competitor Comparison" under which the features of various products were listed. There is a column in the table on that slide for the "A-Pulse CASPro", and a tick is marked in the row for "Regulatory", "FDA/CE/CFDA". I reproduce the material section below:[257]

[257] PCB, Vol 1 at p 490, at ABOD, Vol 3 at p 1973.

Features of various CASP products		[graphic] A-PULSE CASPro®
…		…
Regulatory	FDA/CE/CFDA	√
…		…

There is a graphic listed above "A-Pulse CASPro®", which shows a finished product.

119 Anyone reading this slide would have the impression that FDA, CE and CFDA approvals had been obtained for the CasPro. Dr Ting admitted that the contents of the discussions he had between October 2015 and February 2016 with Mr Yong and his team were reflected, *inter alia*, in this set of slides.[258] It therefore follows that Mr Yong and his team would have had the impression during this period of time that FDA, CE and CFDA approvals had been obtained for the CasPro. Hence, I find that the defendants did represent that FDA, CE and CFDA approvals had been obtained for the CasPro.

120 Nevertheless, I pause to emphasise that the plaintiffs' case in relation to the CasPro is that the CFDA approval was invalid as false data was used in obtaining this approval. I shall deal with this issue in detail below.

(C) CONCLUSION ON WHETHER THE REGULATORY REPRESENTATION WAS MADE

121 I have found above that the defendants represented that worldwide regulatory approvals had been obtained for the *final version* of the BPro G2. I

258 Transcript (29 July 2021) at p 131 lines 14–24.

have also found that the defendants represented that the necessary approvals for the CasPro had been obtained. I, therefore, find that the defendants did make the Regulatory Representation to the plaintiffs.

122 I shall now consider whether the Representations were false representations of fact.

(3) Whether the Representations were false representations of fact

(A) THE REGULATORY REPRESENTATION

123 The Regulatory Representation, as pleaded by the plaintiffs, is that all of Healthstats International's products, in particular the BPro G2 and the CasPro devices, had obtained the necessary regulatory approvals from the HSA, the FDA and the CE (see [45(a)] above). Notably, the Regulatory Representation as pleaded by the plaintiffs excludes CFDA approval from China, as it was not the responsibility of Healthstats International to secure such approval. It is not disputed that it was more advantageous for Healthstats China to apply for CFDA approval for the devices, particularly the BPro G2 and the CasPro. According to the plaintiffs, the Regulatory Representation was made over the period from October 2015 to February 2016.

124 The basis on which the plaintiffs contend that the Regulatory Representation was false is that Healthstats International did not have regulatory approvals from the HSA, the FDA and the CE for the BPro G2. Such regulatory approval was required before the BPro G2 could be sold in (among other countries) the US, the UK, Europe and Singapore. Further, although the BPro G1 had obtained regulatory approval in 2006 and 2008, fresh regulatory approval was needed for the final version of the BPro G2.

125 Regarding the CasPro, the plaintiffs allege that Healthstats China obtained regulatory approval from the CFDA in 2012 on the basis of a fabricated report containing amended clinical trial data. The plaintiffs also argue that even prior to obtaining the CFDA's approval for the CasPro, Healthstats International had already been supplying the CasPro to China.

126 The defendants do not dispute that fresh regulatory approval was needed for the final version of the BPro G2 and that the BPro G2 only received FDA approval in 2018. However, the defendants contend that prior to obtaining FDA approval, the BPro G2 was never sold in the US and was only used in clinical trials. The defendants also deny that the CFDA's regulatory approval of the CasPro was based on a fabricated report. The defendants explained that, for the purpose of lower import duties, the components of the BPro and the CasPro devices were sent to Healthstats China for assembly there.[259] They further explained that it was the responsibility of Healthstats China to secure regulatory approval from the CFDA as it would be faster.

127 I shall consider the regulatory status of the BPro G2 and the CasPro in turn.

(I) THE BPRO G2

128 The plaintiffs' allegation that the Regulatory Representation was false in respect of the final version of the BPro G2 focuses on the lack of regulatory approvals from the FDA, the HSA and the CE.

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259 Transcript (30 July 2021) at p 22 lines 5–13; Defendants' Reply Submissions ("DRS") at para 105.

129 The plaintiffs mount a two-pronged argument. First, they argue that regulatory approval was required for the final version of the BPro G2 at the material time when the BPro G2 devices were being *sold* in Singapore, the US and the EU. Second, they argue that the defendants represented that the necessary regulatory approvals had been obtained for the BPro G2 when they had not.

130 I shall first address the plaintiffs' argument that the final version of the BPro G2 was *sold* in Singapore, the US and the EU when it did not have regulatory approvals. In this regard, the plaintiffs' allegations that the BPro G2 devices were being sold in these places does not stand up to scrutiny.

131 First, the plaintiffs rely on the expert opinion of Ms Natasha Leskovsek ("Ms Leskovsek"), an American attorney specialising in FDA regulatory compliance matters.[260] Ms Leskovsek opined that Healthstats International had supplied the final version of the BPro G2 in the US before it obtained the requisite FDA approval on 21 June 2018. This was based on Healthstats International's supply of a total of three units of the BPro G2 to Dr Dan Field ("Dr Field") on 13 April 2016 and 22 December 2017, and its supply of one unit of the BPro G2 to Dr Abdellatif Abdellatif ("Dr Abdellatif") on 21 November 2017.[261]

132 However, the defendants testified that the BPro G2 was supplied to Dr Field for him to conduct clinical trials. Dr Field would pay a deposit for the BPro G2 units he received and this deposit would be returned to him when he

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260 BAEIC, Vol 3, Tab 12 (Affidavit of Natasha Leskovsek ("NL"), p 1764 at para 1.

261 BAEIC, Vol 3, Tab 12 (NL), p 1768 at paras 30–32.

returned the BPro G2 units.[262] The e-mail communication between Dr Field and Healthstats International in March 2016 refers to Dr Field obtaining a "demo unit" of the BPro G2.[263] This is also corroborated by Mr Soh, who stated during his cross-examination that Dr Field was given "samples" of the BPro G2 and that these devices were not sold to him.[264] These samples were given to Dr Field by Ms Hwang's younger brother, Mr Charles Hwang, and Mr Soh during their business trip to the US in May 2016.[265] The plaintiffs submit that Mr Soh did not know the purpose of giving the two samples of the BPro G2 to Dr Field. It is difficult to accept that Mr Soh, the CEO of Healthstats International, besides meeting other business associates in the US, did not know that the purpose of the two samples was for Dr Field to conduct clinical tests. Mr Soh knew that it would be difficult to export or to bring in the BPro G2 to the US without FDA regulatory approval.[266] Mr Soh's knowledge of such a difficulty, perhaps, explains why he brought only two samples of the BPro G2. Therefore, Mr Soh would have known that the BPro G2 did not have FDA approval in May 2016, otherwise the BPro G2 would not have to undergo clinical tests. Thus, even if the defendants had represented to Mr Yong and Mr Soh that the BPro G2 had FDA approval during the defendants' presentation in the later part of 2015 and early 2016, Mr Soh would have informed Mr Yong that this was not the case, *ie*, that the BPro G2 did not have FDA approval at that time.

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262 BAEIC, Vol 4, Tab 13 (TCM) at para 108; BAEIC, Vol 6, Tab 14 (CNH) at para 83.

263 BAEIC, Vol 5, Tab 13 (TCM) (cont'd) at p 991.

264 Transcript (7 May 2021), p 53 at lines 22–25 and p 54 at lines 1–5.

265 Transcript (7 May 2021), p 52 at lines 10–19 and p 53 at lines 2–9 and 15–17.

266 Transcript (7 May 2021), p 55 at lines 10–14.

133 In preparing her expert report, Ms Leskovsek did not interview Mr Soh.[267] Her expert report was premised on the assumption that the BPro G2 was *sold* in the US. During her cross-examination, Ms Leskovsek explained that even if the BPro G2 was not sold, the samples of the BPro G2 given to Dr Field would still have had to be properly labelled as investigational devices and accompanied by an investigational-use disclaimer.[268] There would ordinarily also be a clinical trial agreement with device-handling restrictions in place for investigational devices, which appeared to be absent in this case.[269] Be that as it may, there is insufficient material before this court for me to make a finding that the BPro G2 was not properly labelled or accompanied by the appropriate disclaimers and clinical trial agreements. The focus of the plaintiffs' case was on the *sale* of the BPro G2. Further, the sample of the BPro G2 was sent to Dr Abdellatif in Egypt, where he lived at the relevant time, and not to the US. During her cross-examination, Ms Leskovsek confirmed that the supply to Dr Abdellatif would, therefore, fall outside the scope of her expert opinion, which was confined to supply to the US.[270]

134 Second, the plaintiffs rely on Ms Lock's testimony that she had discovered sometime in 2014, when reviewing some of Healthstats International's sales reports, that sales of the BPro G2 had taken place in certain countries notwithstanding that it did not have the necessary regulatory approvals to do so.[271] However, Ms Lock's evidence in this regard was flimsy. When I questioned her, she acknowledged that the BPro G2 was not in the production

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267 Transcript (18 May 2021), p 8 at lines 1–6.

268 Transcript (18 May 2021), p 11 at lines 2–25, p 12 at lines 1–2 and 11–25.

269 Transcript (18 May 2021), p 13 at lines 1–13.

270 Transcript (18 May 2021), p 24 at lines 12–25 and p 25 at lines 1–19.

271 BAEIC, Vol 2, Tab 10 (LMC), paras 3–4 read with p 1658 at para 19.

line for sale at that time.[272] She admitted that she did not know whether the reference to the BPro G2 (instead of the BPro G1) on the sales reports was a typographical error[273] and also did not pursue the matter further.[274] Moreover, Ms Lock clarified that only about six BPro G2 devices were recorded in the sales reports. Furthermore, even though her affidavit stated that they were sold in "certain countries", these devices were sold only to Australia.[275] Ms Lock also appeared to be uncertain about whether these BPro G2 devices were sold, as opposed to being used in clinical testing, as she stated that it "*looked* to [her], from the sales report at the time, that it was for sale" and that it was "*possible*" to sell very few units at a time [emphasis added].[276] Therefore, Ms Lock's evidence provides little support for the plaintiffs' assertion that the BPro G2 was being sold without regulatory approvals.

135 Hence, the first prong of the plaintiffs' argument does not support their case.

136 I turn now to examine the second prong of the plaintiffs' argument, *viz*, that the defendants represented to them that the necessary regulatory approvals had been obtained for the BPro G2 when they had not.

137 I shall first address whether it was factually inaccurate that the necessary regulatory approvals had been obtained for the final version of the BPro G2. It is sufficient to consider one instance of factual inaccuracy and I shall focus on

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272 Transcript (5 May 2021), p 84 at lines 23–25 and p 85 at lines 1–4.

273 Transcript (5 May 2021), p 86 at lines 6–8.

274 BAEIC, Vol 2, Tab 10 (LMC), paras 3–4 read with p 1658 at para 19.

275 Transcript (5 May 2021), p 86 at lines 17–19 and 25 and p 87 at lines 1–4.

276 Transcript (5 May 2021), p 86 at lines 20–24.

the issue of whether FDA approval had been obtained for the final version of the BPro G2.

138 It is undisputed that the application for FDA approval for the final version of the BPro G2 was filed in 2017[277] and FDA approval was eventually obtained for the BPro G2 on 21 June 2018 (see [17] above).

139 I found earlier that from late 2015 to the time before Ms Hwang signed the Subscription Agreement in 2016, the defendants did in fact represent to the plaintiffs that worldwide regulatory approvals had been obtained in respect of the *final version* of the BPro G2. This finding follows from the written documents of Healthstats International, some of which were given to Mr Yong or his team. Hence, this Regulatory Representation was made *before* 21 June 2018, *ie*, before FDA approval was obtained for the BPro G2. The Regulatory Representation was, therefore, factually inaccurate at the time that it was made to the plaintiffs.

140 To recapitulate, I also considered the defendants' case that they represented that worldwide regulatory approvals had been obtained only for the *prototype* BPro G2 (*ie*, the BPro G1 with an attached cap).

141 In my view, the problem here is that the defendants should not have used the graphic of the final version of the BPro G2 as it gave the wrong impression that it had worldwide regulatory approvals notwithstanding their insistence that they had informed Mr Yong and his team that the final version of the BPro G2 required FDA approval. Unfortunately, there is no contemporaneous written document to support the defendants' insistence that they informed Mr Yong that

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277 BAEIC, Vol 3, Tab 12 (NL), p 1767 at para 22(c).

the final version of the BPro G2 required regulatory approvals. The defendants were overzealous and had overreached in their enthusiasm to attract investors.

142 The situation would have been materially different if, instead of using the graphic of the final version of the BPro G2, the defendants had used a graphic of the prototype BPro G2 (*ie*, the BPro G1 with the attached cap). As I stated earlier, the prototype BPro G2 had worldwide regulatory approvals. This would have been factually accurate and there would not have been a misrepresentation of fact.

143 Notwithstanding the lack of regulatory approvals for the final version of the BPro G2, it seems that at that time, *ie*, in 2015 and 2016, the evidence shows that Mr Yong was not concerned about the lack of regulatory approvals. Since the BPro G1 had already obtained worldwide regulatory approvals, to Mr Yong, it should not have been a problem to secure the same for the BPro G2. Indeed, Mr Yong was attracted by the vast commercial potential of the BPro devices which he assessed to have a huge profit margin. I shall elaborate on this below.

144 It thus follows that the Regulatory Representation was false in relation to the final version of the BPro G2 at the time it was made.

145 For completeness, I shall deal with whether CFDA approval was obtained for the BPro G2.

146 The evidence suggests that the final version of the BPro G2 did not have the necessary CFDA regulatory approval when the Regulatory Representation was made. Ms Li, who was a sales manager in Healthstats China at the relevant time, testified that Healthstats China only applied to the CFDA for the approval of the BPro G2 in February 2016. She also exhibited Healthstats China's letter

showing that this application was withdrawn on 30 March 2018.[278] However, on 13 August 2015, Healthstats International entered into the First China Contract, under which it was to sell S$4m worth of the BPro G2 devices (together with S$1m worth of BPro G2 accessories) to Healthstats China. On 20 August 2015, Healthstats International received payment of S$1.5m from Healthstats China and subsequently produced and delivered certain components to Healthstats China. It is clear from the invoices dated 23 June 2016 and 13 March 2017 that these components included the BPro G2 *devices*, and their related accessories.[279]

147 At the trial, Dr Ting admitted that CFDA approval was never obtained for the BPro G2.[280] Nevertheless, I reiterate that the failure to secure CFDA approval for the BPro G2 is not pleaded by the plaintiffs as part of the Regulatory Representation. Thus, this issue is not relevant to the present case.

(II) THE CASPRO

148 The CasPro was approved by the CFDA, then known as the SFDA, on 20 April 2012.[281] Hence, the issue here does not concern whether CFDA approval was obtained for the CasPro. Rather, the plaintiffs allege that CFDA approval of the CasPro was obtained based on a fabricated report containing amended clinical trial data. The present issue therefore concerns whether *valid* CFDA approval was obtained. Indeed, it is undisputed that it was Healthstats China and not Healthstats International that secured the CFDA approval for the CasPro. As regards the Regulatory Representation, there was thus no issue as to

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278 BAEIC, Vol 2, Tab 7 (LWW) at para 15 and p 1311 (translated at p 1438).

279 ABOD, Vol 11 at p 7863 (23 June 2016 invoice) and Vol 12 at p 7964 (13 March 2017 invoice).

280 Transcript (30 July 2021) at p 86 lines 18–20.

281 Defence at para 14.

whether CFDA approval was obtained, since such approval had already been obtained before the Subscription Agreement was signed.

149 To support the allegation that the CFDA approval was obtained based on a fabricated report, Mr Yong relies on an affidavit of Mr Lian Chin Chiang ("Mr Lian") filed in OS 666, in which Mr Lian had alleged that the defendants had authorised the submission of false data to the Chinese authorities.[282] However, the plaintiffs did not call Mr Lian as a witness in these proceedings and the defendants did not have an opportunity to cross-examine Mr Lian on these allegations.

150 On the other hand, the defendants have testified that there was no such fabrication and that the clinical trials were in compliance with China's regulatory standards.[283] The defendants have also said that any supply of the BPro G2 and CasPro devices prior to obtaining CFDA approval was to the People's Liberation Army Air Force, which did not require CFDA approval.[284]

151 At the trial, Mr Chua was cross-examined on the background to the clinical trials for the submission to the CFDA. He stated that the CasPro used a module known as a "non-invasive blood pressure module". This module was used in a predecessor device to the CasPro, known as the "MC3100", and the CasPro itself.[285] Since the two devices shared this same module, Mr Chua testified that Healthstats China used the clinical data that had been obtained for

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282 BAEIC, Vol 1, Tab 1 (YKYM) at para 125 and pp 732–738.

283 BAEIC, Vol 4, Tab 13 (TCM) at para 109; BAEIC, Vol 4, Tab 14 (CNH) at para 84.

284 BAEIC, Vol 4, Tab 13 (TCM) at para 110; BAEIC, Vol 4, Tab 14 (CNH) at para 85.

285 Transcript (3 August 2021) at p 41 line 16 to p 42 line 13.

the MC3100 in 2004 for the purposes of submitting the application for CFDA approval for the CasPro.[286]

152 Mr Chua claimed that Ms Joyce Han ("Ms Han") from Healthstats China, who was responsible for the CFDA approval application for the CasPro, told him that she had discussed and explained to the CFDA's officer in charge of this application about the use of the clinical data for the MC3100 obtained in 2004 for the submission for the CasPro in 2012. She was told she could use this data in the submission.[287]

153 Although it seemed that the CFDA allowed Ms Han to use the clinical data for the MC3100 obtained in 2004 for its submission for CFDA approval for the CasPro in 2012, this fact was not mentioned in the submission. The plaintiffs assert that there is no evidence that the CFDA allowed the clinical data for the MC3100 obtained in 2004 for its submission for CFDA approval for the CasPro in 2012. Thus, the plaintiffs allege that the CFDA approval for the CasPro was obtained by fabricated data. Mr Chua was involved as Ms Han from Healthstats China sent an e-mail to Mr Chua and Ms Serene Chang of Healthstats International dated 13 April 2012, which states as follows:[288]

> Dear Mr. Chua,
>
> Regarding to the CASPro Clinical verification report have been got the doctor signature and seal of Yangpu Yinhang Diduan Hospital (Shanghai), *please check the attachment.*
>
> …
>
> [emphasis added]

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286 Transcript (3 August 2021) at p 44 lines 1–8.

287 Transcript (3 August 2021) from p 62 line 17 to p 63 line 22.

288 Plaintiffs' Supplementary Bundle of Documents ("PSBOD") at p 65.

Hence, there is documentary evidence that seems to indicate that Mr Chua was responsible for checking this report. However, there is no reply e-mail to Ms Han adduced before the court.[289] Mr Chua could not remember whether he or Ms Serene Chang attended to Ms Han's e-mail and replied to Ms Han.[290] He also could not recall if he or Ms Serene Chang had checked the attachment.[291]

154 In my view, there is no evidence to indicate that Mr Chua had checked the report that was submitted to obtain CFDA approval for the CasPro and he was not responsible for *preparing* this report. Mr Chua said he could not remember whether he or Ms Serene Chang checked the report. Furthermore, there is no evidence that he and Ms Han collaborated to forge the report. Thus, he could not have fabricated the report for submission to the CFDA as alleged by the plaintiffs in their pleadings. There is no evidence to suggest that Ms Han and Mr Chua took part in the fabrication of the report for submission to the CFDA seeking approval for CasPro. Even if Mr Chua was careless in checking the report for submission to CDFA, it cannot be taken that he knew and condoned the submission of the false report to the CFDA. In the circumstances, there is no countervailing evidence to rebut Ms Han's testimony. As I have stated earlier, she claimed that she had informed Mr Chua that she sought the advice of the officer in charge of the CFDA approval application regarding the use of the clinical data for the MC3100 obtained in 2004. The officer in charge permitted her to use such data. Till today, the CFDA has not taken any action on this matter.

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289 PSBOD at p 65.

290 Transcript (4 August 2021) at p 80 lines 8–13.

291 Transcript (4 August 2021) at p 85 line 21 to p 86 line 3.

155 In the absence of any further evidence to support the plaintiffs' allegation that the CFDA approval of the CasPro was obtained based on a fabricated report, I find that the plaintiffs have not discharged their burden of proof. I, therefore, find that the plaintiffs have not shown that the Regulatory Representation regarding the CasPro was false and that the defendants, particularly Mr Chua, knew that the CFDA approval for the CasPro was secured with fabricated data.

(III) CONCLUSION ON WHETHER THE REGULATORY REPRESENTATION WAS FALSE

156 I have found that FDA and CFDA approvals were not obtained for the final version of the BPro G2 even though the documents indicated that the approvals had been obtained. Since the Regulatory Representation relates to *all* of Healthstats International's products, including the BPro G2 and the CasPro, it is sufficient for the plaintiffs to show just one instance where regulatory approval was not obtained. Hence, although I was not satisfied that the Mr Chua had knowingly assisted Healthstats China to submit a false report to seek CFDA approval for the CasPro, the plaintiffs have nevertheless proven their case that the Regulatory Representation (for BPro G2) is false.

(B) THE REVENUE REPRESENTATION

157 I turn now to the alleged Revenue Representation. It is important to note that the Revenue Representation, as pleaded by the plaintiffs, is that S$18m of sales had been booked for 2016 and another S$38.2m of sales had been booked for 2017 (see [45(b)] above). The plaintiffs' pleaded case is not based on the allegation that the defendants suppressed the true state of Healthstats International's finances from them, *ie*, that Healthstats International had not been making money for many years. On the contrary, based on the plaintiffs' pleaded case, Dr Ting had candidly admitted to them that he did not know how

to run a business and that Healthstats International was in urgent need of working capital (see [46(a)], [46(b)(vi)] and [57] above). Instead, the plaintiffs' assertion as to the falsity of the Revenue Representation is premised on their allegation that the Second China Contract was a sham. Under the Second China Contract, Healthstats China was to purchase a total of S$52.785m worth of the BPro G2, BPro G3 and CasPro devices from Healthstats International.

(I) WAS THE REVENUE REPRESENTATION A STATEMENT OF PRESENT FACT IN 2016-2017?

158 I shall first turn to address a preliminary issue: was the Revenue Representation a statement of present fact or a statement of future intention?

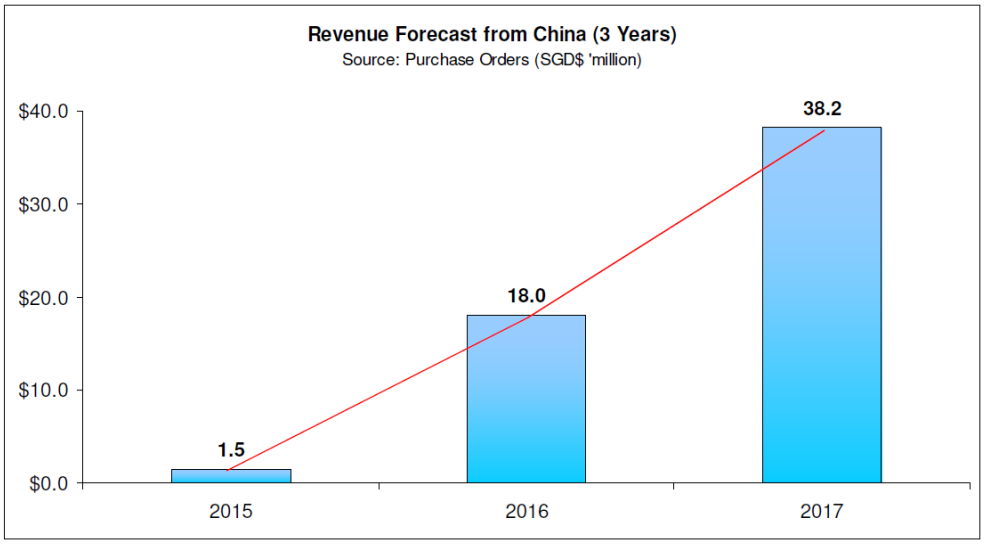
159 As recently emphasised in *Tonny Permana v One Tree Capital Management Pte Ltd and another* [2021] SGHC 37 ("*Tonny Permana*"), there is "a crucial distinction between actionable misrepresentations and a *future promise or statement of intention*" [emphasis in original]. A future promise or statement of intention may manifest as a claim in breach of contract, but "[o]nly false statements *as to present fact* can constitute the subject matter of a misrepresentation claim" [emphasis added] (*Tonny Permana* at [183]). A statement of intention can only constitute an actionable misrepresentation if it is shown that, at the time it was made, the person who made it had no intention of doing what he asserted he would do. In such a case, the relevant misrepresentation would be a misrepresentation of that person's state of mind (see *Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 ("*Tan Chin Seng*") at [12]; and *HE & SF Properties LP v Rising Dragon Singapore Pte Ltd and another* [2019] 4 SLR 149 ("*HE & SF*") at [97(a)]).

160 The defendants submit that the Revenue Representation is not an actionable misrepresentation since it relates to a statement of future intention. To recapitulate, the Revenue Representation as pleaded by the plaintiffs states that "S$18 million of sales had been *booked* for 2016 and another S$38.2 million of sales had been *booked* for 2017" [emphasis added].[292] The word "booked" is also used in the Executive Summary, where it states "$18.0m *booked* for Year 2016" [emphasis added] and "$38.2m *booked* for Year 2017" [emphasis added]. The Executive Summary also included a graph which states "*Revenue Forecast* from China (3 Years)" [emphasis added]. I reproduce the material section of the Executive Summary below:[293]

> **2. Advanced device book sales secured including (in SGD$):**
>
> - $1.5m confirmed in Q3/2015.
> - $18.0m booked for Year 2016.
> - $38.2m booked for Year 2017.
> - The book sales comprise of devices for health screening booths, hospitals and point-of-care facilities.
> - Significant advanced orders for current device models and the consumer wearable device have also been secured.

292 SOC at para 16(ii)(j)(2).

293 ABOD, Vol 2, Tab 30 at p 1003.



In relation to the above, the defendants submit that "booked" and "forecast", in contradistinction to "confirmed" in the Executive Summary, connote references to future events rather than to present facts.[294]

161 The plaintiffs submit that the words in the above graph, "Source: Purchase Orders", imply that the source of the revenue of Healthstats International was certain and would be realised.[295]

162 Another point of contention relates to the report of the defendants' expert, Mr Tan Wei Cheong. In that report, he states:[296]

> 3.7 The statements "$18.0m booked for Year 2016" and $38.2m booked for Year 2017" suggest *there was some form of orders but that does not mean that the revenue had crystallised* compared to the "$1.5m confirmed in Q3/2015" since delivery is still based on terms of the

294 Defendants' Closing Submissions ("DCS") at para 108.

295 Plaintiffs' Closing Submissions ("PCS") at paras 339–342.

296 BAEIC, Vol 8, Tab 17 (Affidavit of Evidence-in-Chief of Tan Wei Cheong) at p 4582, paras 3.7–3.8.

> China Contracts. I am instructed that the "$1.5m confirmed in Q3/2015" relates to an advance deposit that was received by the Company under the China Contracts and this is not disputed by the Plaintiffs. The aforesaid understanding also matches the contractual arrangement between the Company and Healthstats China under the China Contracts, which I had elaborated at paragraphs 2.7 to 2.11 above.
>
> 3.8 The Financial Reporting Standard 18 – Revenue ("FRS 18") (applicable for the relevant period from 2015 to 2017) states that "Revenue from the sale of goods shall be recognised when all the following conditions have been satisfied:
>
> - the entity has transferred to the buyer the significant risks and rewards of the ownership of the goods*;
> - the entity retains neither continuing managerial involvement to the degree usually associated with ownership nor effective control over the goods sold;
> - the amount of revenue can be measured reliably;
> - it is probable that the economic benefits associated with the transaction will flow to the entity; and
> - the costs incurred or to be incurred in respect of the transaction can be measured reliably."
>
> *In most cases, the transfer of the risks and rewards of ownership coincides with the transfer of the legal title or the passing of possession to the buyer.
>
> [emphasis in original omitted; emphasis added]

The defendants rely on this report to show that "booked" does not connote certainty as the revenue referred to by that word has not crystallised. In response, the plaintiffs submit that Mr Tan Wei Cheong conceded in cross-examination that for revenue to be "booked" in the account of any company, it would need to satisfy all five bullet points above.[297] They, therefore, argue that

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[297] PCS at para 345; Transcript (4 August 2021) at p 92 lines 12–21.

"a party representing that any sum of money has been 'booked' would know that any commercially savvy third party would think there was a very high degree of certainty that the sum of money would be received…".[298]

163 In my view, both the plain meaning of "booked" and the findings of Mr Tan Wei Cheong's expert report indicate that "booked" does not connote revenue that has crystallised, but instead suggests that the Revenue Representation relates to future events. Mr Tan Wei Cheong was largely confused during cross-examination, especially about what the plaintiffs' counsel meant by "booked".[299] In such circumstances, I doubt that he made the concession alleged by the plaintiffs. In any case, even if Mr Tan Wei Cheong did so concede, taking the plaintiffs' case at the highest, this would only imply that there was a "very high degree of certainty that the sum of money would be received". There is still no connotation of *absolute* certainty that what was conveyed through the Revenue Representation was that the "S$18 million of sales" and "$38.2 million of sales" had crystallised for 2016 and 2017 respectively.

164 Since the Revenue Representation was not a statement of present fact, I therefore find that it cannot be an actionable misrepresentation, even if it is found to be false.

(II) WAS THE SECOND CHINA CONTRACT A SHAM AGREEMENT?

165 I turn next to the issue of whether the Second China Contract is a sham agreement. To be clear, the plaintiffs allege that the Second China Contract was

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298 PCS at para 346.

299 Transcript (4 August 2021) at p 92 lines 4–11; p 94 lines 6–12; p 94 line 25 to p 95 line 11.

a sham so as to secure the framework agreement in China and that Healthstats China and Healthstats International had no intention to fulfil the Second China Contract. The plaintiffs do not take issue with the First China Contract. However, towards the end of Mr Yong's testimony, he vacillated and said that the First China Contract could also be a sham as it could not be fulfilled. A contract is not a sham just because it is not fulfilled.

166 The principles relating to sham contracts were recently restated in *Toh Eng Tiah v Jiang Angelina and another appeal* [2021] 1 SLR 1176 ("*Toh Eng Tiah*"). There, the Court of Appeal noted that "the essential element of a sham is that the parties *did not intend to create the legal relations* that the acts done or documents executed give the impression of creating" [emphasis added] (*Toh Eng Tiah* at [74]). The burden of proving a sham lies on the party alleging that a document is a sham. There is a very strong presumption that the parties intend to be bound by the provisions of the agreement that they have entered into. There must be a common intention to mislead and it is necessary to examine the subjective intentions of the parties (*Toh Eng Tiah* at [80]).

167 Therefore, in order to show that the Second China Contract was a sham, the plaintiffs must prove that Healthstats China and Healthstats International had a common intention for the Second China Contract to "give the *impression* of creating legal relations which did not reflect the *true* legal relations between the parties" [emphasis in original] (*Toh Eng Tiah* at [79]).

168 In the present case, the plaintiffs have not succeeded in proving that the Second China Contract was a sham. The evidence relied on by the plaintiffs in this regard is extremely weak.

(a) Employees' awareness of Second China Contract's existence

169 The plaintiffs initially asserted that the Second China Contract did not exist as none of Healthstats International's and Healthstats China's key employees were aware of the existence of a genuine Second China Contract. However, when these witnesses were cross-examined, their evidence did not stand up to scrutiny.

170 The plaintiffs called Mr Michael Tan, Healthstats International's finance manager, who stated that he was "entirely unaware of the Second China Contract until sometime in 2018". He also stated that Healthstats International did not have any record of the existence of the Second China Contract and that there was also no record in its accounts of the Second China Contract having been booked.[300] Mr Michael Tan opined that it was "incredible" that the defendants would not have provided Healthstats International's finance department with a copy of the Second China Contract if it was legitimate, given the "enormous contract sum" of S$52.785m.[301]

171 However, during his cross-examination, Mr Michael Tan admitted that he was aware of the Second China Contract in 2015 and 2016 because it was referred to in a note to Healthstats International's shareholders dated 2 November 2015; it was discussed in an annual general meeting on 4 December 2015; Mr Marcus Chua had sent an e-mail attaching both China Contracts for due diligence; and the two China Contracts were referred to in the Baker & McKenzie Report.[302] It became clear over the course of the cross-examination that Mr Michael Tan's opinion that the Second China Contract was

300 BAEIC, Vol 2, Tab 5 (THS) at paras 11–12.

301 BAEIC, Vol 2, Tab 5 (THS) at para 14.

302 Transcript (4 May 2021), p 103 at line 25 and p 104 at lines 1–18.

not legitimate or not genuine was based on the fact that he had not seen a physical copy of the Second China Contract and it did not translate into actual revenue.[303] However, Mr Michael Tan did not ask to see the Second China Contract because he saw himself as "just a small fry" within Healthstats International.[304] Further, when he was asked how he understood cl 9.2.1 of the Second China Contract, he acknowledged that it meant that the Second China Contract did not become effective because the fulfilment of the First China Contract was a condition precedent which had not been satisfied.[305] Therefore, Mr Michael Tan's assessment that the Second China Contract was not genuine is fundamentally flawed.

172 The plaintiffs also called Mr Koh, Healthstats International's head of production, to establish that the Second China Contract was a sham. Mr Koh was similarly unaware of the existence of the Second China Contract. While he was broadly aware of the existence of the First China Contract, he was never informed or made aware of an order worth S$14.5m in 2016 or S$38.2m in 2017. He stated that it would have been "highly unusual" for Healthstats International to have entered into a contract with such large production obligations without the defendants informing him so that he could make the necessary procurements and prepare for the production of a large number of components and units. As at 31 December 2015, Healthstats International did not have "anywhere near sufficient quantities" of the components required to perform the Second China Contract.[306]

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303 Transcript (5 May 2021), p 13 at lines 21–25, p 14 at lines 1–2 and p 15 at lines 13–21.

304 Transcript (4 May 2021), p 86 at lines 21–25 and p 87 at lines 1 and 13–19.

305 Transcript (4 May 2021), p 125 at lines 12–13, p 126 at lines 16–22 and p 127 at lines 21–23.

306 BAEIC, Vol 2, Tab 6 (KCH) at paras 10–14.

173 However, Mr Koh's evidence is inconclusive at best. During his cross-examination, Mr Koh explained that his job was only to act on *purchase orders and sales orders*.[307] He clarified that he would not be informed when Healthstats International entered into new *contracts*.[308] Ultimately, Mr Koh agreed that based on his history of not being shown the contracts entered into by Healthstats International, there was no question of him having been kept in the dark on the existence of the Second China Contract in 2015.[309] Indeed, since no purchase orders under the Second China Contract would have been placed until the First China Contract was fully performed (pursuant to cl 9.2.1 of the Second China Contract), I do not find it surprising that Mr Koh was not informed of the Second China Contract. Notwithstanding the large production obligations thereunder, there was no imminent need for these obligations to be performed.

174 The plaintiffs further called Ms Li, then a sales manager in Healthstats China, to testify that the Second China Contract was a sham. Ms Li stated that in or around October 2015, Healthstats China's general manager, Ms Yan Zi Xun ("Ms Yan"), had told her that the Second China Contract was signed only at the request of Healthstats International's shareholders for the purpose of its initial public offering, and that the Second China Contract was not meant to be implemented.[310] She also stated that the Contract Approval Form for the Second China Contract had been signed by Winsan's representatives with the express caveat that no feasibility study was conducted in respect of the Second China Contract and that it was not meant to be implemented.[311] In addition, Ms Li said

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307 Transcript (5 May 2021), p 47 at lines 8–11.

308 Transcript (5 May 2021), p 58 at lines 9–20 and p 59 at lines 1–6.

309 Transcript (5 May 2021), p 66 at lines 11–15.

310 BAEIC, Vol 2, Tab 7 (LWW) at paras 20–21.

311 BAEIC, Vol 2, Tab 7 (LWW) at paras 18.

that she was unable to locate any copies of the Second China Contract in Healthstats China's internal records,[312] and that there was no record of the Second China Contract in the Winsan Handover Checklist prepared in 2018.[313] The Winsan Handover Checklist included a "Purchase contract (Contract No P2015*8*0002)" [emphasis added],[314] whereas the agreement number for the Second China Contract was P2015*9*0002.

175 However, Ms Li's evidence in this regard fell apart over the course of her cross-examination. She clarified on the stand that after submitting her affidavit of evidence-in-chief, she had managed to find a scanned electronic copy of the Second China Contract in Healthstats China's old records.[315] This had been e-mailed to her by a colleague in Healthstats International.[316] She also accepted that the reference to "Purchase contract (Contract No P2015080002)", instead of P2015090002, in the Winsan Handover Checklist could have been a typographical error.[317] Further, she explained that Ms Yan had told her that it would be "not easy" to have the Second China Contract implemented because the conditions in both cll 9.2.1 and 9.2.2 of the Second China Contract had to be satisfied first.[318] According to Ms Li, Ms Yan had said there was a "very low chance" of satisfying both of these conditions together because there was "no 100 per cent confidence in the contract being executed".[319] It, therefore, became

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312 BAEIC, Vol 2, Tab 7 (LWW) at paras 24.

313 BAEIC, Vol 2, Tab 7 (LWW) at paras 17.

314 BAEIC, Vol 2, Tab 7 (LWW) at p 1393 (at s/n 8-9); translated at BAEIC, Vol 2, Tab 8 (LH) at p 1447 (at s/n 8-9).

315 Transcript (6 May 2021), p 32 at lines 9–18.

316 Transcript (6 May 2021), p 100 at lines 7–16.

317 Transcript (6 May 2021), p 110 at line 6.

318 Transcript (6 May 2021), p 107 at lines 7–9 and p 108 at lines 4–12.

319 Transcript (6 May 2021), p 116 at lines 24–25 and p 117 at lines 1–4.

clear that when Ms Li said that the Second China Contract was not meant to be implemented, she simply meant that its implementation depended on the conditions precedent in cl 9.2 being satisfied. This is corroborated by the wording of the Contract Approval Form, which stated that the conditions for the validity of the Second China Contract had not been met and that there was no need to perform the contract *immediately* (see [23] above).

176 In any event, Ms Li's account of what Ms Yan had told her is hearsay evidence. Ms Yan's statement was made out of court and was tendered by the plaintiffs to prove the truth of the *contents* of Ms Yan's statement (*ie*, that the Second China Contract was not meant to be implemented), rather than to prove that the statement was indeed made by Ms Yan to Ms Li (see *Saga Foodstuffs Manufacturing (Pte) Ltd v Best Food Pte Ltd* [1994] 3 SLR(R) 1013 at [11], recently cited in *Management Corporation Strata Title Plan No 3556 (suing on behalf of itself and all subsidiary proprietors of Northstar @ AMK) v Orion-One Development Pte Ltd (in liquidation) and another* [2020] 3 SLR 373 at [21]). Therefore, what Ms Yan said to Ms Li falls within the hearsay rule and is only admissible in accordance with s 32(1) of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA"). The plaintiffs seek to rely on s 32(1)(*j*)(iii), which provides that a statement of relevant facts made by a person is relevant and therefore admissible when it is made by a person "in respect of whom it is shown … that he is outside Singapore and it is not practicable to secure his attendance". The plaintiffs submit that Ms Yan is outside Singapore and it was not practicable to secure her attendance at the trial.[320] She could give her testimony through a live video link just like Ms Li, Mr Yong and Ms Hwang. However, s 32(1)(*j*)(iii) does not assist the plaintiffs in this case. The burden is on the

320 Transcript (6 May 2021), p 21 at lines 6–25 and p 22 at line 1.

plaintiffs to prove the ground of unavailability and a mere allegation that Ms Yan was unavailable to give evidence is not acceptable. For example, the plaintiffs should have adduced evidence of how Ms Yan was previously contacted and what efforts had been made to contact her (*Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 ("*Gimpex*") at [97] and [101]). However, they failed to do so. In these circumstances, Ms Yan's statements are hearsay evidence and I shall not take them into account.

177 The truth is that the Second China Contract did exist and is genuine (*ie*, not a sham). Mr Yong admitted in court that he was given the two China Contracts sometime in the later part of 2015 and he had read them.[321] The plaintiffs' assertions that Healthstats International and Healthstats China had no official record of the Second China Contract, and that their employees were unaware of the existence of the same, are not borne out by the evidence.

178 Further, I am unable to accept Mr Yong's argument that the Second China Contract was a sham because no working prototype of the BPro G3 existed at the material time. It bears reiterating that cl 9.2 of the Second China Contract provided that it would only be operative upon the fulfilment of the First China Contract. The date on which the BPro G3 devices had to be manufactured and delivered to Healthstats China under the Second China Contract was, therefore, uncertain. Thus, the absence of a working prototype of the BPro G3 at the time the Second China Contract was made does not show that Healthstats International and Healthstats China had a common intention for the Second China Contract to give a false impression of creating legal relations.

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321 Transcript (22 July 2021) at p 53 lines 11–17; Transcript (23 July 2021) at p 22 lines 9 to 21 and p 25 lines 5–7; Transcript (27 July 2021) at p 39 lines 5 to 11.

(b) The Second China Contract's role in Winsan's tender bids

179 The background leading to the two China Contracts also supports the existence of the Second China Contract.

180 Healthstats China entered into the First China Contract on 13 August 2015 and the Second China Contract on 26 October 2015. Winsan, the then major shareholder of Healthstats China, entered into a framework agreement to supply remote monitoring of health parameters (including blood pressure) for the population of Wenzhou, Dafeng and Jiangsu in July and August 2015. In December 2015, Winsan secured another similar contract for the city of Lishui.[322] The population and the value of the contract for the four cities are as follows:[323]

Area	**Amount (in RMB)**	**Population as at 2015** (rounded to the nearest thousand)
Wenzhou	400,000	9,117,000
Dafeng	60,000,000	720,000
Jiangsu	100,000,000	80,400,000
Lishui	112,000,000	2,663,000
Total	**672,000,000**	**92,900,000**

The total amount of the contracts for the four cities is RMB 672,000,000, *ie*, about S$134m.

322 Defendants' Opening Statement at para 60.

323 Defendants' Opening Statement at para 60.

181 The plaintiffs submit that the real reason for the Second China Contract was that the shareholders of Healthstats International were becoming impatient and disgruntled with Healthstats International's inability to turn a profit. Hence, they submit that Dr Ting and Mr Chua urgently needed the Second China Contract to be concluded so that they could use this contract to placate these disgruntled shareholders, to get new investors to buy over the shares of these shareholders, and to alleviate Healthstats International's cash-flow problems.[324]

182 In contrast, at trial, Dr Ting explained that Winsan wanted the Second China Contract to be signed urgently so that Winsan could put a proposal which included the Second China Contract in the tender applications submitted to local governments in China.[325]

183 The plaintiffs submit that Dr Ting's testimony is contradicted by Mr Chua's account of events. Mr Chua testified that Winsan had won the tender for Wenzhou on 8 July 2015 and by 7 August 2015, Winsan had won the tenders for Jiangsu and Dafeng.[326] Since the Second China Contract was only signed on 26 October 2015, after Winsan won the tender bids for Wenzhou, Jiangsu and Dafeng, the plaintiffs submit that Dr Ting's explanation that Winsan required the Second China Contract to be signed urgently for the purpose of its tender bids was therefore entirely concocted.

184 In my view, the plaintiffs have wrongly described Dr Ting's explanation as to why the Second China Contract was urgently needed. The plaintiffs submit that Dr Ting's explanation was that the Second China Contract had to be quickly

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324 PCS at para 401.

325 Transcript (30 July 2021) at p 71 line 1 to p 75 line 14.

326 PCS at para 396; BAEIC, Vol 7, Tab 15, 2nd Affidavit of Evidence-in-Chief of Chua Ngak Hwee ("CNH2") at paras 24 and 25.

concluded so that they could be used for the tender *bids*. However, this was not the case. Dr Ting's explanation was that the Second China Contract was needed for two things. First, it was needed as a reference for the proposal to be submitted by Winsan in its tender bids. Second, it was needed so that Winsan knew that it could perform its obligations under the tenders once the tenders were awarded.

185 In Dr Ting's affidavit of evidence-in-chief, he stated that the two China Contracts were "for [the] purposes of meeting Winsan's obligations under the tenders".[327] At trial, Dr Ting explained as follows:[328]

> Q: You wanted [the Second China Contract] urgently because you needed to show your shareholders that you were doing something; correct?
>
> A: That's not true.
>
> Q: And the truth was you had nothing. The second China contract was a sham. Agree?
>
> A: Disagree.
>
> Q: Now, I'll let you explain to the court what great urgency there was for the second China contract to be entered into.
>
> A: First of all, when they won the remote monitoring for the –
>
> Court: "They" refers to whom?
>
> A: Sorry. When Winsan through Healthstats China –
>
> Court: Winsan what?
>
> A: Winsan through Healthstats China, they are now the majority shareholder of China, but the contract was won by Winsan, not by Healthstats China.
>
> Court: What contract?

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327 BAEIC, Vol 4, Tab 13 (TCM) at para 53.

328 Transcript (30 July 2021) at p 70 line 19 to p 75 line 10.

A: The remote monitoring tenders that were put out by the four cities. It was three and then finally one more cities.

Court: Yes.

A: They required – there were many competitors for this tender. It's a very massive tender, involved hundreds of millions of renminbi. So in order to put in the tender, which we are only a small part, because the remote monitoring requires other parameters like temperature, ECG, et cetera, they have to tender and *put in a proposal* that shows the state of the art.

Court: "They" refers to whom?

A: Show to the government, the –

Court: "They" refers to whom?

A: The Winsan – sorry, the Winsan Medical. So Winsan has to submit for tender – submit for tender to get this. And you cannot submit a tender with a blank proposal, so he has to gather all the different parts; for example, ECG. So he will have to acquire an ECG company. He will acquire different companies to come in together and *make in the proposal*. In order to meet that timing, he has to *submit this urgently to show*. That's how he finally won the tender. *So he has to then work backwards, how many that he needs in terms of devices and services, and the set-up of the server or the cloud-serving.* That's why we had people sent up to China to help set up the server in China. So he has to meet that.

In fact, chairman Qian won the tender, and he went up on the national TV to be interviewed, because – and he wore the watch up to show that is the thing to come.

So if you do not meet the tender in time, you will not be able to win any tender. So that was the urgency that presses on him that he had relayed to us.

…

Q: … So, *Dr Ting, you're saying that Winsan needed to show [the Second China Contract] to the authorities in China to tender; correct?*

A: ***No, no***. *Winsan need to put a* ***proposal*** –

Q: Yes.

A: – *which shows that they can meet the requirement.*

Q: I understand.

A: Yeah.

Q: So in order to put forward a proposal that shows that they can meet the requirements, they must have this contract; correct?

Court: The second contract?

Q: The second China contract; correct?

…

Q: … So I'll just ask the question again. *For the purposes of the tender, Winsan needed to have [the Second China Contract] in hand*; correct?

A: Correct.

Q: And so they urgently asked for it to be signed so –

Court: "They" refers to whom?

Q: "They" referring to Winsan and, in particular, Mr Guan and Mr Qian. These parties requested the second China contract to be signed *so that they could put in the tender*?

A: *Yes*.

[emphasis added in italics and bold italics]

While the final portion of this excerpt above might suggest that the Second China Contract was needed for the tender *bids*, this answer has to be construed in the context of Dr Ting's whole explanation. First of all, the plaintiffs' counsel's question was whether the Second China Contract was needed so that Winsan could *put in the tender bids*, not that Winsan wanted to *put the Second China Contract in the tender bids*. The plaintiffs' counsel's question was also whether Winsan needed the Second China Contract at hand for the purposes of the tender, which was broadly phrased. More importantly, Dr Ting's answer here must be read in the context of his previous answers. Dr Ting emphasised that what was chiefly urgent was a proposal to be submitted as part of the tender bids and denied that the Second China Contract itself had to be shown as part of these bids. The *preparation* of this proposal required the Second China Contract as a reference, as a gauge to see how much supply Winsan would have

to allow it to discharge its obligations under the tenders if these tenders were awarded. The need for such a reference necessitated some urgency in concluding the Second China Contract. After the tenders were awarded, it was then even more urgent for the Second China Contract to be concluded, such that Winsan could indeed discharge its tender obligations.

186 Hence, it is immaterial that the Second China Contract was concluded after three tenders were awarded to Winsan. What matters is that the submission and the awarding of tender bids, as well as the conclusion of the Second China Contract, occurred around the same period of time. Similarly, Winsan also had to submit a proposal which included the Second China Contract for its tender for the fourth city of Lishui in December 2015. Hence, I find that Dr Ting's and Mr Chua's account of the events adequately explain why Winsan needed the Second China Contract to be concluded urgently, and their accounts therefore lend support for the authenticity of the Second China Contract.

(c) The subsequent conduct of a feasibility study

187 I shall turn to another issue arising from the background events surrounding the Second China Contract. In Healthstats China's "Contract Approval Form"[329] for the Second China Contract, it was mentioned that the shareholders of Healthstats China and Healthstats International wanted to waive the need for a feasibility study as there was no need to perform the Second China Contract immediately even when it was signed. When the plaintiffs learned of the Contract Approval Form, they became suspicious and alleged that the Second China Contract was a sham to deceive and lure the plaintiffs into investing in Healthstats International.

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329 PCB, Vol 2 at p 952, at ABOD, Vol 7 at p 4471.

188 I have canvassed Dr Ting's explanation as to why the Second China Contract had to be urgently concluded. However, Dr Ting also explained that because of this urgency, the feasibility study had to be postponed. This is Dr Ting's lengthy explanation:[330]

> Q: You wanted [the Second China Contract] urgently because you needed to show your shareholders that you were doing something; correct?
>
> A: That's not true.
>
> Q: And the truth was you had nothing. The second China contract was a sham. Agree?
>
> A: Disagree.
>
> Q: Now, I'll let you explain to the court what great urgency there was for the second China contract to be entered into.
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> A: First of all, when they won the remote monitoring for the --
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> Court: "They" refers to whom?
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> Q: Sorry. When Winsan through Healthstats China --
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> Court: Winsan what?
>
> A: Winsan through Healthstats China, they are now the majority shareholder of China, but the contract was won by Winsan, not by Healthstats China.
>
> Court: What contract?
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> A: The remote monitoring tenders that were put out by the four cities. It was three and then finally one more cities.
>
> Court: Yes.
>
> A: They required -- there were many competitors for this tender. It's a very massive tender, involved hundreds of millions of renminbi. So in order to put in the tender, which we are only a small part, because the remote monitoring requires other parameters like temperature, ECG, et cetera, they have to tender and put in a proposal that shows the state of the art.

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330 Transcript (30 July 2021) at p 70 line 19 to p 77 line 20.

Court: "They" refers to whom?

A: Show to the government, the –

Court: "They" refers to whom?

A: The Winsan -- sorry, the Winsan Medical. So Winsan has to submit for tender -- submit for tender to get this. And you cannot submit a tender with a blank proposal, so he has to gather all the different parts; for example, ECG. So he will have to acquire an ECG company. He will have to acquire different companies to come in together and make in the proposal. In order to meet that timing, he has to submit this urgently to show. That's how he finally won the tender. So he has to then work backwards, how many that he needs in terms of devices and services, and the set-up of the server or the cloud-serving. That's why we had people sent up to China to help set up the server in China. So he has to meet that.

In fact, chairman Qian won the tender, and he went up on the national TV to be interviewed, because -- and he wore the watch up to show that is the thing to come.

So if you do not meet the tender in time, you will not be able to win any tender. So that was the urgency that presses on him that he had relayed to us.

In terms of feasibility studies, as mentioned here, these do not make the contract a sham. It just means that they have to fine-tune –

…

A: This feasibility study refers to how they would implement remote monitoring in 90 million people, which is a very huge task, so you need the logistics of how to get the thing to the people, especially the villages. So that's where we have the healthcare kiosks, if you see in our contract. We set up healthcare kiosks in the village, in Chengdu and all that.

Court: No, I don't want the details. I just want you to explain –

A: To the question.

Court: – on the issue of urgency.

A: Yes. So we have to coordinate with him to meet the tender requirement.

…

Court: Coordinate with …?

A: Winsan.

Court: For the tender –

A: For the tender requirement.

Court: Yes.

A: That was how they also won the fourth tender on 9 December 2015 from Lishui.

…

Q: … neither of you cared about whether the [Second China Contract] was going to be performed or not. You just needed to have the contract signed. Correct?

A: No.

Q: And that is why they didn't even bother to do a feasibility for this. They just wanted the contract signed; correct?

A: The feasibility study will follow after that.

Q: No. My question was: before signing the contract, they didn't bother with doing a feasibility study because what they really wanted and what you really wanted was just to have the contract signed; correct?

A: I disagree.

Q: And you say you do a feasibility after the contract is signed?

A: Yes.

…

Q: Dr Ting, my question was: in your business, do you do your feasibility first and then sign a contract –

A: Depends on –

Q: – or do you sign a contract first and then do your feasibility afterwards, in your business?

A: Yeah, it depends on what are you referring to, what business.

Q: So you're saying in some businesses, you sign your contract first, and then you decide later whether you need it?

A: No, no, no, we have to see how you are feasible to do because sometimes the logistics play a part, especially in villages. Then we have to improvise. But some, you

> are direct in the city. So feasibility in China is a massive thing, but if you don't have a tender that shows you have the technology, you're not even considered for the contract. So feasibility is to follow for such a tender, but he has to show he has the device.

From the above explanation, Dr Ting claimed that the feasibility study had to be conducted only *after* the tenders were awarded because the tender bids had to be urgently submitted. The feasibility study was a large-scale logistical exercise to ascertain how the BPro devices could be used remotely to monitor the health of the people in the four cities.[331] This feasibility study would take about four to six months.[332] Thus, if the feasibility study had been conducted before the tender bids were submitted, it would have been unlikely for Winsan to submit its tender bids on time. This would then lessen the prospects of Winsan securing the contracts for the four cities. Having considered Dr Ting's evidence as a whole, I find his explanation to be reasonable.

(d) Healthstats China's ability to perform the Second China Contract

189 The plaintiffs submit that Healthstats China never had the financial ability to perform the First China Contract, let alone the Second China Contract.

190 In support, they refer to a WhatsApp message from Ms Li to Mr Chua on 22 June 2016:[333]

> Hi Mr Chua, Can we import 400 BPRO BT first? today I will ask my colleague to issue PO, since we can't afford all the tax one time. But instruction from Winsan is, we have to import all 1000 BT and 200 CASPRO. so we will arrange accordingly

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331 Transcript (2 August 2021) at p 53 lines 6–13 (Dr Ting).

332 Transcript (2 August 2021) p 54 line 6 to p 55 line 17 (Dr Ting).

333 PCS at paras 403–405.

The plaintiffs submit that this message shows that as of 22 June 2016, Healthstats China could not even afford the import tax for 1,000 units of the BPro G2 and 200 units of the CasPro, and had to reduce its request for delivery to 400 units instead. This message suggested that Healthstats China did not have the financial means to fully perform the First China Contract.

191 It is unnecessary to examine in detail whether Healthstats China indeed had the financial ability to meet its obligations under the First China Contract or the Second China Contract. What matters is Mr Yong's perception of its finances at the point when the Subscription Agreement was concluded. Mr Yong had already expressed concerns over Winsan's financial standing, which led to the abortion of the Sale and Purchase Agreement. Hence, he was aware of the potential financial issues regarding the two China Contracts. As I detail below in my analysis on the Reliance Requirement, Mr Yong was consistently enthusiastic about investing in Healthstats International: notwithstanding Winsan's financial uncertainty in April 2016, he proposed other offers such as a convertible bond and a share swap in July 2016, and even sought to bring in other investors to Healthstats International. When the shareholders of Healthstats International did not accept Mr Yong's two options, Mr Yong eventually nominated Ms Hwang to sign the Subscription Agreement in August 2016. If his perception of Healthstats International's or Healthstats China's finances was so poor, he would not have been willing to invest in Healthstats International. Hence, Mr Yong cannot now perform a *volte face* and say that he perceives Healthstats China's finances to be so abysmal that the Second China Contract must be a sham.

192 Moreover, it should be borne in mind that Healthstats China was a party to the Second China Contract and Healthstats China was manned by a board of directors from Winsan. The defendants' counsel suggested to Mr Yong that the

plaintiffs' claim that the Second China Contract is a sham agreement implies that the four members of the board of directors who were involved in the Second China Contract had acted fraudulently in entering into the Second China Contract.[334] It is undisputed that the four members of the board of directors were Ms Yan, the general manager of Healthstats China; Gan Quan, the chief financial officer ("CFO") of Winsan; Xu Rong Rong, the deputy general manager of Healthstats China; and Guan Wen Lian, the CEO of Healthstats China.[335] The implication is that the highest echelons of Healthstats International's, Healthstats China's and Winsan's management were involved in a conspiracy to defraud by entering into the Second China Contract. This is a veneer speculation or assertion at most as there is no evidence to support this serious allegation. The plaintiffs submit in response that they only need to adduce evidence of the defendants' state of mind, in that the defendants knew that the Second China Contract was never going to be performed but, nevertheless, represented that the revenue thereunder was a certainty.[336] Hence, the plaintiffs submit that the state of mind of Winsan's board of directors is irrelevant to this issue. In my view, the plaintiffs' submission misses the point. Evidence of fraud on the part of the Winsan's board of directors would directly indicate that the Second China Contract is a sham agreement. However, no such evidence was adduced.

193 Therefore, I am not convinced by the plaintiffs' submission regarding Healthstats China's financial inability to perform the two China Contracts before Ms Hwang signed the Subscription Agreement.

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334 Transcript (23 July 2021) at p 39 line 20 to p 40 line 4.

335 ASOF at s/n 7.

336 PRS at para 57.

(e) Conclusion on whether the Second China Contract was a sham

194 From the above analysis, I find that the evidence shows that the Second China Contract was not a sham agreement.

195 I shall also add that the plaintiffs' overall case is incoherent and self-serving, for the reasons below.

196 The irony of the plaintiffs' argument is that, while they do not doubt the genuineness of the First China Contract, Mr Yong now doubts Healthstats International's ability to fulfil the First China Contract.[337] Yet, the fact of the matter is that the two China Contracts were interdependent and they came about because of the framework agreement for the supply of the BPro G2, BPro G3 and CasPro to the population of the four cities in China. Indeed, cl 9 of the Second China Contract states, *inter alia*, that it shall only be effective after the First China Contract had been fulfilled. Therefore, if the plaintiffs had initially accepted that the First China Contract was not a sham, they cannot argue that the Second China Contract was a sham without any legitimate basis.

197 Moreover, the plaintiffs initially even questioned the existence of the Second China Contract. When this did not succeed, they accepted that there was a Second China Contract and argued that it was a sham because the Second China Contract was not operative and was not intended to be carried out. The Second China Contract was not operative because the First China Contract was not completely fulfilled and the conditions in cl 9 of the Second China Contract were not fulfilled. However, the fact that the Second China Contract is inoperative does not entail that it was a sham.

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337 Transcript (27 July 2021) at p 54 line 8 to p 57 line 3 (Mr Yong).

198 Lastly, Mr Yong further said that he believed that the Second China Contract did not exist because Mr Lian, the present CEO of Healthstats International, said he did not see the Second China Contract. Yet, Mr Lian was not called as a witness.

199 I, therefore, find that the Second China Contract was not a sham contract.

(III) EVEN IF THE SECOND CHINA CONTRACT WAS NOT A SHAM, WAS THE REVENUE REPRESENTATION FALSE?

200 I shall now evaluate the truth of the Revenue Representation on the basis that the Second China Contract was not a sham. As pleaded by the plaintiffs, the Revenue Representation is that S$18m of sales had been booked for 2016 and another S$38.2m of sales had been booked for 2017. The Revenue Representation was made, *inter alia*, in the Executive Summary (sent by Dr Ting to Mr Yong in late November 2015) which stated that these sales had been "booked" for 2016 and 2017 (see [46(c)] above); the Business Update Slides (presented by the defendants in January 2016) which suggested that S$18m was expected from China in 2016 and S$38.2 was expected from China in 2017 (see [46(d)] above); and the Financial Forecast Slides (presented by the defendants in January 2016) which stated that the revenue forecast from China was S$18m in 2016 and S$38.2m in 2017 (see [46(e)(i)] above). It was also stated in these documents that S$1.5m was confirmed in Q3 2015. The plaintiffs take no issue with this representation. In the 19 January 2016 E-mail, copies of the First China Contract and the Second China Contract were provided by Mr Marcus Chua to Mr Goh, who assisted Mr Yong with the due diligence on Healthstats International (see [29] above). Mr Yong also admitted to having

been given the two China Contracts and to having read them.[338] In the circumstances, he would have understood that when the defendants presented the *forecast* of S$18m in 2016 and S$38.2m in 2017, these were factually accurate, and the figures were derived from the two China Contracts.

201 In my view, the plaintiffs have failed to prove on a balance of probabilities that the Revenue Representation was false. Under the Second China Contract, which was dated 26 October 2015, Healthstats China was to purchase S$14,555,000 worth of the BPro G2 and BPro G3 devices (and related devices) from Healthstats International in 2016, and S$38,230,000 worth of such devices in 2017 (see [22] above). As Mr Marcus Chua explained in the 19 January 2016 E-mail, the balance of S$3.5m of sales under the First China Contract was expected to materialise in 2016. Therefore, the sum of S$18m expected in 2016 comprised the balance of S$3.5m due under the First China Contract and the S$14.5m due under the Second China Contract in 2016.[339] I agree with the defendants that the description of these sales as having been "booked" or "forecast" indicates that these sales were not yet confirmed.[340] In contrast, the Executive Summary stated that S$1.5m of sales had been "confirmed" in the third quarter of 2015, reflecting that Healthstats International had received payment of S$1.5m from Healthstats China pursuant to the First China Contract on 20 August 2015 (see [21] above). The word "booked" was used in contradistinction to the word "confirmed", indicating that the sums of S$18m and S$38.2m had not yet been paid and that Healthstats International's production and delivery obligations under the Second China Contract had not

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338 Transcript (22 July 2021) at p 53 lines 11–17; Transcript (23 July 2021) at p 22 lines 9 to 21 and p 25 lines 5–7; Transcript (27 July 2021) at p 39 lines 5 to 11.

339 ABOD, Vol 6 at p 4283.

340 Defendants' Opening Statement at paras 41–44, 48 and 50; BAEIC, Vol 4, Tab 13 (TCM) at para 41.

yet been performed. Further, the Financial Forecast Slides clearly stated that these figures were part of Healthstats International's "Revenue Forecast".[341] The plain meaning of the word "forecast" indicates that it was merely a conjectural or provisional estimate of the likely revenue that Healthstats International would be able to secure in 2016 and 2017. At the time the Revenue Representation was made, the defendants had indeed arrived at such an estimate based on the First China Contract and the Second China Contract.

202 Therefore, I find that the Revenue Representation was not a false representation of fact.

(C) THE PRODUCT REPRESENTATION

203 The Product Representation, as pleaded by the plaintiffs, is that Healthstats International was to launch the BPro G3 in the second quarter of 2016.

204 To recapitulate, as I have stated above in relation to the Revenue Representation, the court in *Tonny Permana* emphasised that there is "a crucial distinction between actionable misrepresentations and a *future promise or statement of intention*" [emphasis in original]. A future promise or statement of intention may manifest as a claim in breach of contract, but "[o]nly false statements *as to present fact* can constitute the subject matter of a misrepresentation claim" [emphasis added] (*Tonny Permana* at [183]). A statement of intention can only constitute an actionable misrepresentation if it is shown that, at the time it was made, the person who made it had no intention of doing what he asserted he would do. In such a case, the relevant

341 ABOD, Vol 2 at p 1008.

misrepresentation would be a misrepresentation of that person's state of mind (*Tan Chin Seng* at [12]; *HE & SF Properties* at [97(a)]).

205 The plaintiffs submit that representations that contain statements of future intention can still be actionable misrepresentations if, at the time the representation was made, the maker of the statement had no intention whatsoever to carry out the matters expressed in the statement.[342] This was stated by the Court of Appeal in *Deutsche Bank AG v Chang Tse Wen and another appeal* [2013] 4 SLR 886 (at [83]):

> In so far as most of the alleged representations consisted of statements that DB or Mr Wan "would" do something, the Judge viewed these as statements of future intention. They were *prima facie* not statements of fact which could ground a claim in misrepresentation. We would add that they might possibly be construed as statements of the capability that *could* be placed at Dr Chang's service *if* he did engage DB as managers and advisors. It is true that a statement of future intention can sometimes be re-characterised as a representation of fact. As Lewison J (as he then was) held in *FoodCo UK LLP (t/a Muffin Break) v Henry Boot Developments Limited* [2010] EWHC 358 (Ch), a statement of future intention might contain an implicit representation that (at [198]):
>
> > (a) its maker had an honest belief in the statement;
> >
> > (b) its maker had reasonable grounds to make the statement; or
> >
> > (c) its maker had the present intention to carry out the matters expressed in the statement.
>
> …
>
> [emphasis in original]

206 To this end, the plaintiffs submit that implicit in the Product Representation is the representation that "Healthstats [International] had developed (or was very close to finalizing the development) of a final

342 PCS at para 295.

marketable version of the BPro G3 such that advanced orders could be secured".[343] This implicit representation is a statement of fact.

207 I first address the Product Representation as pleaded, which is that Healthstats International "was *to launch* the BPro G3 in the second quarter of 2016" [emphasis added].[344] In my view, it is clear that the Product Representation was not a statement as to present fact at the time it was made, *ie*, during the period from October 2015 to February 2016. The defendants submit that the Product Representation used language that expressed Healthstats International's *intentions* with regard to a *future event*, namely, to launch the BPro G3 in the second quarter of 2016.[345] Further, the Executive Summary stated that the BPro G3 had a "target release date in Q2/2016".[346] The Product Representation, therefore, cannot constitute an actionable misrepresentation unless the plaintiffs show that the defendants had *no intention* for Healthstats International to launch the BPro G3 in the second quarter of 2016.

208 Next, I turn to the plaintiffs' argument that the Product Representation contains an implicit representation that is a statement of fact. As the defendants submit, it is for the plaintiffs to plead this implicit representation with specificity at the outset.[347] The plaintiffs did not do so.

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343 PCS at para 275.

344 SOC at para 16(ii)(j)(3).

345 DCS at paras 108 and 109.

346 ABOD, Vol 2, Tab 30 at p 1002.

347 DRS at paras 85–88.

209 In any case, for the reasons below, the plaintiffs have not proven their case based on the Product Representation as pleaded or the alleged implicit representation.

210 The plaintiffs assert that Healthstats International never even developed a working prototype of the BPro G3.[348] The plaintiffs rely on the testimony of Mr Tey, Mr Koh and Mr Soh that they had never seen a prototype of the BPro G3. However, the evidence given by these witnesses does not assist the plaintiffs in showing that the defendants or Healthstats International had no intention to launch the BPro G3 in the second quarter of 2016.

211 First, Mr Tey stated in his affidavit of evidence-in-chief that he was instructed to develop the firmware for the printed circuit board ("PCB") of the BPro G3 in late 2015. Firmware essentially refers to the software which is to be embedded into the hardware.[349] The PCB was a key component needed for the BPro G3 devices to work. However, it was only one component of the BPro G3 devices and various other components were required in order to create a working prototype of the BPro G3 (such as the wrist sensor). Mr Tey said that the prototype PCB of the BPro G3 was ordered on or around 1 December 2015 and arrived in February or March 2016, and that he worked on preparing the firmware for the PCB of the BPro G3 thereafter. However, by mid-2016, they had ceased work on the BPro G3. He also stated that to date, as far as he was aware, Healthstats International has not made any marketable prototype of the

348 Plaintiffs' Opening Statement at para 34.

349 Transcript (5 May 2021), p 97 at lines 2–6.

BPro G3.[350] During his cross-examination, Mr Tey clarified that by "marketable" he meant a finished product that could be sold.[351]

212 Mr Tey's evidence does not support the plaintiffs' assertion that the Product Representation was false. On the contrary, it shows that up until mid-2016 (*ie*, after the Product Representation was allegedly made), Healthstats International was in fact developing a prototype of the BPro G3. Indeed, Mr Tey acknowledged during his cross-examination that the reason for Healthstats International ceasing further development of the BPro G3 was that he was instructed to shift his focus to the BPro G2 under the service-based model.[352] As I have explained at [31] above, this service-based model was introduced by Mr Soh after his appointment as the CEO of Healthstats International. Thus, far from showing that the Product Representation was false at the time it was made, Mr Tey's evidence is consistent with the defendants' position that Healthstats International had initially intended to launch the BPro G3, with the second quarter of the 2016 being the target date. To this end, at the time the Product Representation was allegedly made, Healthstats International was working on the prototype of the BPro G3. However, as a result of the change in business model led by Mr Soh (as Mr Yong's nominee), the development of the BPro G3 ceased to be a priority for Healthstats International.[353]

213 Next, the plaintiffs relied on Mr Koh's evidence that he was "surprised" that the Second China Contract contained orders for components of the BPro G3 as he was not aware that a working prototype of the BPro G3 existed. Mr Koh

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350 BAEIC, Vol 2, Tab 9 (TLT), pp 1634–1635 at paras 28–31 (read with paras 2–3).

351 Transcript (5 May 2021), p 108 at paras 14–20.

352 Transcript (5 May 2021), p 106 at lines 16–20 and p 107 at lines 1–4 and 15–22.

353 Defendants' Opening Statement at para 75.

stated that, although Healthstats International had been working on a prototype of the BPro G3 from 2015 to 2016, it had never successfully developed a working prototype. According to Mr Koh, if a working prototype of the BPro G3 had indeed been developed, Healthstats International's production team (himself included) would have received instructions to begin producing the components of the BPro G3 in preparation for any upcoming sales orders, but no such instructions were forthcoming.[354]

214 However, as I have noted at [173] above, Mr Koh's job was only to act on purchase orders and sales orders. Pursuant to cl 9.2.1 of the Second China Contract, no purchase orders for the BPro G3 devices would have been placed under this contract until the First China Contract was fully performed. Therefore, the fact that Mr Koh was not instructed to prepare the components of the BPro G3 does not suggest that Healthstats International had no intention, at the time the Product Representation was allegedly made, of launching the BPro G3 in the second quarter of 2016. Moreover, despite his limited knowledge, Mr Koh nevertheless conceded on the witness stand that he knew that the BPro G3 was being developed and that research and development was being conducted for this product.[355] This would thus lend support for an intention by Healthstats International to launch the BPro G3 in the second quarter of 2016.

215 The plaintiffs also rely on Mr Soh's testimony that he had never come across any documents in relation to the production or manufacturing of any of the components of the BPro G3, such as contracts, payment orders or invoices. Like Mr Tey and Mr Koh, Mr Soh stated that there was no working prototype

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354 BAEIC, Vol 2, Tab 6 (KCH) at paras 15–16.

355 DCS at para 492; Transcript (5 May 2021) at p 72 lines 1–8.

of the BPro G3 at any time during his tenure with Healthstats International.[356] However, Mr Soh's evidence is similarly inconclusive. During Mr Soh's cross-examination, he accepted that Mr Tey's evidence that he was working on the prototype PCB of the BPro G3 in early 2016 was correct, and that he was simply not aware of this at the time.[357] Indeed, Mr Soh acknowledged that his own presentation to Healthstats International's board of directors in September 2016 indicated that the BPro G3 "had always been the next thing that we [*ie*, Healthstats International] were going to develop".[358]

216 Dr Ting testified that Mr Yong had explained that the US market was more lucrative than the China market. Regarding the US market, Healthstats International obtained a "CPT" code and this enabled the medical practitioners in the US to charge insurance companies on the usage of the BPro G2 devices by their patients (the "CPT Code"). Hence, the implementation of the service model in the US market would be more lucrative than to sell the BPro G2 devices to Healthstats China, which would be a one-time payment. Mr Yong estimated that the potential revenue from the US market would be far more than the Second China Contract. Thus, Mr Yong told Dr Ting to put the development of the BPro G3 on hold and concentrate on the BPro G2. This is Dr Ting's testimony:[359]

> Court: What does "CPT" stand for?
>
> A: It's a code for reimbursement for the medical fee. When the patient in the US see a doctor, almost all of them are covered with insurance, and you need to code – this is a

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356 BAEIC, Vol 2, Tab 4 (JS) at paras 36–37.

357 Transcript (17 May 2021), p 135 at lines 2–12.

358 BAEIC, Vol 2, Tab 4 (JS) at pp 1121 and 1125; Transcript (17 May 2021), p 138 at lines 20–25.

359 Transcript (2 August 2021) at p 13 line 11 to p 18 line 7.

code to the – it's something like a code to Medisave Singapore to claim money from the government.

Court: Yes.

A: So the doctor need to use this code. This is the event that leads to why Mark asked us to can the G3, and that reason is very important. It's actually here.

During the presentation –

Court: Mark told you to what, can the G3 –

A: To stop the G3 for the moment. And there's a good reason for him to do that, because he has – from his good business sense, he made the decision after this presentation. I'd like to just explain this slide and take you through the thought that why Mark did this.

CPT code is almost, is in every – in US itself when you see a doctor, every time you see a doctor, finish, they will actually have a code to claim. Those who have no insurance will have a big problem. So this money comes from the government to the doctor. The doctor must know how to claim. Getting the right code is important.

So on 1 January, which is just four days before this, the US announced –

…

Court: 1 January 2016?

A: 2016, yes. It's written on point 2 of the –

Court: Yes.

A: The USA, the Medicare approve a code for the measurement of central aortic pressure that is non-invasive. That means every time you measure, the doctor can claim. So even if it's five minutes, the doctor who measure you can claim. So that code became very important, because with that the doctor can now use our CASPro.

At the same time, the code for ABPM, which is the next code, page 459, the CPT code 93790, the ABPM code, and again at that time the reimbursement criteria changed. So the moment you are diagnosed to be high, you can go and claim to do an ABPM and claim for the money. So this became a very important route for the income if we were to rule out – I mean, to install a lot of service model.

So what Mark had in mind, he explained to us, is if you look at the G3 in the contract – in China contract, each one of the device, we are asking them for $100. Actually, they are paying us $100. Our cost is about $47.

Court: Who is paying?

A: The Healthstats China, in the second contract. That's how you came up with 20 million.

The intention of the G3 was a subscription. That means the patient will subscribe, yeah. But that subscription will not come to us because the tender was won by Winsan, and we are like the supplier to the device. It's a one shot and that's it, and the continuous income actually is going to Winsan, not to Healthstats.

So if you were to compare this, if say you go to US, you will see that you can put in – with this code now, you don't have to see a doctor. You can put them in pharmacy, you can put them in the nurses' centre. And when you have this code, the patient can then just – so one day – he calculated that one day, you may do one 24-hour, which the code give rise to 55 to $300. But if you do a central pressure, you can do six a day, easily come out to a few hundred dollars. So that was why he said three things: one, "I will – my part, I will contact Prof Brian William." Prof Brian William is a world expert and a collaborator in my invention. Ask him to get a contact in US, key opinion leader. Can he arrange to meet Joshua and the team when he go to US to explore? Prof Brian William then wrote to Michael Weber – it's in my defence – and then he contacted – and then got them involved.

The second part is Joshua, together with Charles, was supposed to go to US for one month, to then go to the key opinion leaders to see if they can do a feasibility study and a trial, getting ready that when we apply for FDA approve, these device are already in, and central pressure we already approve, so they can start with central pressure.

Court: What's central pressure?

A: "CAP" stand for "central aortic pressure". CASPro.

Court: CASPro.

A: Yes. Sorry, sir. In fact, "CASPro" is a term coined by Prof Brian William and I in our paper.

> So what happened is that – that's how Joshua got the presentation later on, and this forecast of 800 million he was showing to the team and Mark later on. From this little exercise of installing the basis, you are able to get, on the fifth year, up to 800 million recurring income, compared to a 20 million that is a one-shot. He says it is better to go to US and set the team and the thing in US.
>
> And that's how it led to Dr Dan Fields, who was given devices on loan for a trial. It was never a sales model. As a matter of fact, G2 could not have been a sale – could not have been sold because, as your Honour understands, G2 need to work with our server. So if there is no server in the country, you cannot sell, you cannot work. The only place that we set up a server is in China. We actually – Winsan asked our people, the DB9, the host server, to go there and set up.
>
> Court: So did Mr Yong tell you how he got his 800 million?
>
> A: No, he tell us it is far more beneficial to go to this route than to just concentrate on G3. These –
>
> Court: No, no. 800 million per year –
>
> A: 800 come from Joshua in his presentation. In his forecast, on the fifth year, it's 800. On the third year, it's US 60 million. That's a basis for why he come to this –
>
> …

217 Mr Chua also testified that Mr Yong told him in January 2016 to put the development of the BPro G3 on hold so that more resources could be diverted to seeking FDA approval for the BPro G2.[360]

218 The plaintiffs submit in response that it is inconceivable that the defendants, as the directors of Healthstats International, would follow instructions by Mr Yong to stop the development of the BPro G3. Such instructions would lead to the loss of S$21m in revenue from the purported advance orders of 210,000 units of the BPro G3 and would thus be "patently

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360 Transcript (3 August 2021) p 103 line 8 to p 104 line 4 (Mr Chua).

absurd". The plaintiffs also contend that there was no reason for the defendants to follow such instructions given by Mr Yong, who was neither a director nor a shareholder at the time.[361]

219 In my view, the defendants had reasonably explained why Mr Yong decided to stop the development of the BPro G3. They explained the implications of the CPT Code and Mr Yong added that it was commercially sound to shift Healthstats International's focus to the service model of the BPro G2. One of the reasons for Mr Soh to be appointed as CEO of Healthstats International was to make Healthstats International profitable. Mr Soh's idea was to implement the service model for the BPro G2. Thus, the service model was in line with Mr Yong's strategy and thinking.

220 I also accept the defendants' explanation that they listened to Mr Yong although he was merely a potential investor in Healthstats International and not its director or shareholder at the time. At that stage, the defendants had trusted Mr Yong to the extent that Dr Ting willingly stepped down as founding CEO of Healthstats International to make way for Mr Soh, who was Mr Yong's chosen CEO for Healthstats International. This is because Mr Yong indicated to the defendants that he would be a very substantial investor. Therefore, it is plausible that the defendants had listened to Mr Yong's instructions to stop the development of the BPro G3. The plaintiffs cannot now perform a *volte face* and allege that the defendants had misled Mr Yong in representing that the development of a working prototype of the BPro G3 was completed in end-2015 and that the BPro G3 was to be launched in the second quarter of 2016.

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361 PCS at para 322.

221 In these circumstances, the plaintiffs' claim that the Product Representation was a false representation of fact is plainly unsustainable. The finding that it was Mr Yong who directed the defendants to put the development of the BPro G3 on hold weighs heavily in my analysis. Furthermore, when the Subscription Agreement was signed in August 2016, Mr Yong must have known that Healthstats International had not achieved its projected launch date of sometime between April and June 2016 for BPro G3. Nevertheless, Mr Yong told Ms Hwang to sign the Subscription Agreement. Therefore, Mr Yong did not rely on the Product Representation when the Subscription Agreement was signed.

(4) Conclusion on the Representation Requirement

222 In summary, I find that the plaintiffs have only satisfied the Representation Requirement in respect of the Regulatory Representation. This is one out of the three representations pleaded by the plaintiffs: the Regulatory Representation, the Revenue Representation and the Product Representation.

223 I briefly summarise my findings in this section.

224 The plaintiffs have shown that the Regulatory Representation was made (see [103]–[121] above).

225 The plaintiffs would also need to show that the Representations were *false* representations of fact. The Regulatory Representation was false in respect of the BPro G2, but not in respect of the CasPro (see [128]–[156] above). The plaintiffs have failed to show that the Revenue Representation and the Product Representation were false:

(a) With regard to the Revenue Representation, the plaintiffs have not succeeded in proving that the Second China Contract was a sham (see [165]–[199] above). Further, the representation that Healthstats International had "booked" S$18m of sales for 2016 and S$38.2m for 2017 was also not false (see [200]–[202] above).

(b) With regard to the Product Representation, the representation that Healthstats International was to launch the BPro G3 in the second quarter of 2016 was a statement of intention and not a statement as to present fact. Therefore, it would only constitute an actionable misrepresentation if the defendants had no intention for Healthstats International to launch the BPro G3 in the second quarter of 2016. However, the evidence adduced by the plaintiffs provides no support for this contention. As regards the plaintiffs' argument that the Product Representation contains an implicit representation that is a statement of fact, this was not pleaded with specificity and there was insufficient evidence to support this argument in any case. Crucially, Mr Yong himself had directed the defendants to put the development of the BPro G3 on hold (see [203]–[221] above).

226 Hence, on the facts, only the Regulatory Representation has satisfied the Representation Requirement. It follows that the next inquiry concerns whether the Regulatory Representation satisfies the Reliance Requirement.

Whether the Reliance Requirement is satisfied

(1) The applicable law

227 In both fraudulent and negligent misrepresentation, the Reliance Requirement necessitates that the misrepresentation must have played a "real

and substantial" role in inducing the representee to act, though it need not be the sole or decisive factor (*Panatron* at [23]; *Fong Maun Yee and another v Yoong Weng Ho Robert* [1997] 1 SLR(R) 751 at [52]; and *Ma Hongjin* at [64]). Reliance may be inferred from the materiality of a representation where the natural and probable result of the representation is to induce the representee to act as he did (*Raiffeisen Zentralbank Osterreich AG v Archer Daniels Midland Co and others* [2007] 1 SLR(R) 196 at [56]; *Ma Hongjin* at [64]).

228 As the Court of Appeal explained in *Jurong Town Corp v Wishing Star Ltd* [2005] 3 SLR(R) 283 ("*Wishing Star*") (at [114]):

> … A person who has made a false representation cannot escape its consequences *just because the innocent party has made his own inquiry or due diligence*, unless the innocent party has come to learn of the misrepresentation before entering into the contract or does not rely on the misrepresentation when entering into the contract. …
>
> [emphasis added]

This principle applies regardless of whether the due diligence is conducted by the representee himself or by his agents (*Wishing Star* at [114]). Thus, so long as it is proved that the representee was induced by the representations, it is no defence that the representee failed to exercise reasonable diligence to discover the falsity of the statements (*Panatron* at [24]).

229 Further, the representee's expertise and experience do not necessarily mean that he was not induced by the representation. In *Wishing Star*, the trial judge had found that the representees – Jurong Town Corporation and its consultant, Jurong Consultants Pte Ltd – were "not unschooled and inexperienced parties" (see *Wishing Star* at [115]). Similarly, in *Panatron*, the representees were both "knowledgeable and experienced businessmen" who "undoubtedly … must have made their own evaluation of the prospects of

investing" in the company of which the representor was the managing director (*Panatron* at [20] and [24]). Nevertheless, in both cases, it was found that the representees had relied partly on their own knowledge and expertise and partly on the representor's representations. On that basis, the Court of Appeal found that the Reliance Requirement had been satisfied (see *Wishing Star* at [117]–[118] and *Panatron* at [20] and [24]).

(2) My findings

230 The plaintiffs' alleged reliance on the Representations, and consequent damage suffered, takes two forms:

(a) First, the Loans amounting to S$2.5m which Mr Yong and Ms Hwang extended to Healthstats International from January to July 2016.

(b) Second, Ms Hwang entered into the Subscription Agreement on 12 August 2016 at a Subscription Consideration of S$5m (with the Net Subscription Consideration of S$2.5m being paid by Ms Hwang through Medivice in September 2016).

231 To satisfy the Reliance Requirement, the plaintiffs must show that the Representations played a real and substantial role in inducing the plaintiffs to make the Loans and enter into the Subscription Agreement. As the primary focus of the plaintiffs' case is on the Subscription Agreement, I shall consider the Subscription Agreement and the Loans in turn.

(A) MR YONG'S CAUTIOUSNESS DESPITE HIS FRIENDSHIP WITH DR TING

232 A fundamental part of the plaintiffs' case is their claim that Mr Yong reposed a great degree of trust in Dr Ting.[362] Due to this trust, the plaintiffs claim that Mr Yong relied heavily on the Representations. It is, therefore, apposite to first address whether this was indeed the case.

233 I find that Mr Yong was very careful and cautious in his decision to invest in Healthstats International although Dr Ting was his personal physician and trusted friend. Notwithstanding the good and long friendship that he had with Dr Ting, Mr Yong did not allow that to cloud his business decision on whether to invest in Healthstats International.

(I) THE DUE DILIGENCE EXERCISE

234 To begin with, the defendants gave Mr Yong several comprehensive presentations on Healthstats International and the medical devices, particularly the BPro devices and the CasPro devices. There were also several meetings between the plaintiffs and the defendants.

235 Mr Yong, being a savvy and experienced businessman and a careful investor, also commissioned a thorough and comprehensive due diligence exercise on Healthstats International which cost more than S$300,000.[363] He also sought the assistance of his friend, Mr Sheng, a lawyer in Shanghai, to conduct informal due diligence on Winsan, Healthstats China and the two China Contracts.[364]

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362 PRS at para 40.

363 Transcript (27 July 2021) at p 37 lines 10–16.

364 BAEIC, Vol 1, Tab 1 (YKYM) at paras 45–46.

(II) MR SOH'S APPOINTMENT AS CEO OF HEALTHSTATS INTERNATIONAL

236 In addition, Mr Yong sought the concurrence of the defendants to appoint Mr Soh, a family friend, as the CEO of Healthstats International from March 2016 to April 2017. In reality, Mr Soh was in Healthstats International before March 2016. Prior to March 2016, Dr Ting was the CEO of Healthstats International. According to Mr Yong, the purpose of appointing Mr Soh as the CEO of Healthstats International was to make it profitable.[365] At the same time, with Mr Soh as the CEO of Healthstats International, he could also assist in the due diligence exercise tremendously. The remuneration of Mr Soh was not paid by Healthstats International but by Uncharted Holdings, one of Mr Yong's investment vehicles, as the employment contract was between Mr Soh and Uncharted Holdings. Therefore, before Mr Yong decided to make his investment in Healthstats International, he procured an independent and objective due diligence exercise and appointed his nominee CEO to helm Healthstats International.

237 At the trial, Mr Yong initially sought to downplay Mr Soh's role as CEO, testifying that his role was merely to increase sales and that Dr Ting retained control over the finance department of Healthstats International.[366] The plaintiffs also submit that Mr Soh had repeatedly said he was not involved in the due diligence exercise.

238 However, the e-mail exchanges clearly showed that Mr Soh was also involved and had assisted in the due diligence exercise. On 7 April 2016,

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365 Transcript (22 July 2021) at p 55 lines 11–25; Transcript (23 July 2021) at p 68 lines 4 to 24; Transcript (27 July 2021) at p 40 line 23 to p 41 line 6.

366 Transcript (23 July 2021) at p 68 lines 4–24.

Mr Salas wrote an e-mail that was addressed to, *inter alios*, Mr Soh, as follows:[367]

> Dear all
>
> We have *commissioned DLA Piper* a Global Firm to *conduct a very specific due diligence* on the Intellectual Property (patents) of Healthstats and also on the *administrative authorisations that are required (such as FDA in USA)*. They have come up with the enclosed draft report.
>
> *Initially I have made the report available to Joshua for his preliminary review on some areas that could impact the future commercial model. Joshua has also discussed with Marcus Chua with respect to some concerns raised in the report with respect to registrations in UK, Japan and China.*
>
> …
>
> *As such, the first concern is that raised by Joshua and Marcus to the reports findings in Japan, UK and China. To which Joshua has indicated that Marcus has provided him with the enclosed document that summarises matters.*
>
> …
>
> Marcus/*Joshua*: If you can please specify what is the concern in the report that you have seen and which the enclosed document should address so that Claire may review and determine if the report needs to be amended.
>
> [emphasis added]

Mr Soh replied to this e-mail by Mr Salas on 7 April 2016, stating:[368]

> Dear Carlos,
>
> Thanks for your email.
>
> A point of clarification, the Mr Chua I mentioned refers to our CTO, NH Chua. I've placed him on copy as well.
>
> Thanks.

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367 ABOD, Vol 6 at pp 4298–4299.

368 ABOD, Vol 8 at p 4298.

On 8 April 2016, Mr Marcus Chua sent an e-mail to Mr Soh, Dr Ting and Mr Chua, which states as follows:[369]

> Dear *Josh*, Doc, NH,
>
> - …
> - DUE D report dated 14 March – more information was supplied on 16 March which was lacking in the report, thus the gap.
> - HealthSTATS replies have been directly inserted into 3 noted areas: (1) Regulatory Issues; (2) Patents & (3) Further Enquiries – Regulatory Matters
> - …
> - Do review and let me know further instructions.
>
> [emphasis added]

On 12 April 2016, Mr Marcus Chua sent an e-mail to Mr Salas in reply to the e-mail sent by Mr Salas on 7 April 2016 (stated above). This e-mail states as follows:[370]

> Dear Carlos,
>
> Our replies *on behalf of Joshua*.
>
> What we have done was to cut and paste the 3 critical areas being (1) Regulatory Issues; (2) Patents & (3) Further Enquiries – Regulatory Matters.
>
> HealthSTATS replies have been directly inserted following the "Action" row and are titled "HealthSTATS reply".
>
> …
>
> [emphasis added]

369 ABOD, Vol 8 at p 4300.

370 ABOD, Vol 7 at p 4310.

From the above e-mails, it is clear that Mr Soh was not only copied in the e-mail correspondence regarding the due diligence exercise but had also actively participated in reviewing the due diligence report.

239 Moreover, it is difficult to believe that Mr Soh was not involved in the due diligence exercise when he was appointed by Mr Yong as the CEO of Healthstats International, and Mr Yong wanted the due diligence to be conducted to safeguard his investment. Thus, it is incredible for Mr Yong to assert that Mr Soh was not involved in the due diligence process. Eventually, Mr Yong conceded that Mr Soh's role was not limited to sales and was much greater, including but not limited to overseeing Healthstats International's accounts and payroll as CEO.[371] Indeed, Mr Soh's wide-ranging duties as CEO can be gleaned from the CEO's "Description of Services" under Annexure A of the Master Consultancy Agreement with Uncharted Holdings:[372]

> The CEO shall
>
> - devote the whole of his time, attention and skills to the duties of his office;
> - faithfully and diligently perform such duties and exercise such powers as may from time to time be assigned to or vested in him;
> - abide by the Memorandum and Articles of Association of HealthSTATS International Pte Ltd and obey all reasonable and lawful directions given to him by or under the authority of the Board of Directors of HealthSTATS International Pte Ltd;
> - use his best endeavours to promote the interests of HealthSTATS International Pte Ltd and it's associated companies;
> - report to the Chairman and Directors of the Board of HealthSTATS International Pte Ltd;

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371 Transcript (23 July 2021) at p 122 line 16 to p 123 line 8.

372 ABOD, Vol 1 at p 431.

- In particular, but without prejudice to the generality of the foregoing, the CEO shall as part of his duties:
    - chart the strategic direction of the HealthSTATS International Pte Ltd and ensure the vision and long-term objectives are met while drawing up short-term goals in order to deliver those objectives;
    - o perform an *overall executive management* and *operational role* in the implementation of HealthSTATS International Pte Ltd's business and R&D plans;
    - lead the core leadership team of HealthSTATS International Pte Ltd;
    - identify and hire strong leaders to grow the leadership team;
    - account to shareholders for the performance of HealthSTATS International Pte Ltd and increase shareholder value by constructively expanding and enhancing HealthSTATS International Pte Ltd and its business;
    - Serve as the spokesperson for HealthSTATS International Pte Ltd in dealing with and liaising with Governments, Government Officials and all media channels.

[emphasis added]

Furthermore, when Mr Soh was appointed as CEO, he brought in three of his own staff to fill senior positions in Healthstats International. These were Mr Steven Ng Choon Keong as Research and Development Manager, Ms June Tan Yuet Mei as Operations Director/ Human Resource and Mr Ryan Ng Yeow Teck as Marketing, Communication and Alliance Director.[373] Therefore, Mr Soh would have had a very good feel of the affairs of Healthstats International. Mr Soh was also appointed to Healthstats International's board of directors in 2016.[374] Dr Ting testified that he candidly bared Healthstats International to

373 BAEIC, Vol 4, Tab 13 (TCM) at para 11(4).

374 DCS at p 13, "Other notable people", point 3.

Mr Yong and his team, especially when the due diligence exercise was conducted.[375]

240 Accordingly, I find that Mr Soh was able to oversee virtually all matters in Healthstats International as its CEO and to report any matters of interest to Mr Yong. Hence, it was very difficult for the defendants to conceal any important matters in Healthstats International from the large due diligence teams, comprising three entities, and Mr Soh and his hand-picked staff. It would *a fortiori* be very difficult for the defendants to hide any adverse matters from Mr Soh or to perpetuate any fraud on the plaintiffs. Mr Soh, therefore, must have had actual knowledge of the regulatory status of Healthstats International's devices, including the BPro G2 and the CasPro.[376]

(III) MR YONG'S CONDUCT

241 I also consider the above evidence with the fact that Mr Yong had originally intended to invest in Healthstats International by buying shares from the existing shareholders through the Sale and Purchase Agreement. However, he decided not to go ahead with the Sale and Purchase Agreement as the due diligence reports were unsatisfactory. Mr Yong's e-mail to Dr Ting explained that "we are not comfortable with China Company and feel that the China company is not sound and may lead to future complication for Healthstats China and as China is a big market, and if the China company does not perform or liquidates, then the Valuation we would have paid for Healthstats Spore(holding Co) would be grossly over valued" (see [37] above).

375 Transcript (28 July 2021) at p 115 lines 12–21.

376 DRS at para 30.

242 Given the unsatisfactory due diligence reports, one would have thought Mr Yong would not be interested in investing in Healthstats International at all. But Mr Yong continued to grant loans of various sums amounting to about S$2.5m to Healthstats International from January to July 2016. Nevertheless, prior to the signing of the Subscription Agreement, Mr Yong proposed further transactions such as a convertible bond and a share swap with Success Dragon shares. Mr Yong then continued to invest, albeit a smaller sum, in Healthstats International by way of the Subscription Agreement instead of the Sale and Purchase Agreement. After the Subscription Agreement was signed, Mr Yong was also active in looking for investors into Healthstats International in 2017, and had indeed brought in an investor.

243 In light of the above, I find that Mr Yong had independently assessed the investment and was satisfied that Healthstats International had potential for growth. Hence, despite the risks indicated in the due diligence reports, Mr Yong was nevertheless enthusiastic about investing in Healthstats International. Also, any false representation by the defendants would have been discovered by the comprehensive and vigilant due diligence exercise and by Mr Soh and his hand-picked staff during the relevant period. Thus, Mr Yong's decision to invest in Healthstats International could not have been due to any Representations made by the defendants.

244 When analysing the issues below, I shall refer to the above analysis and elaborate where it is necessary.

(B) THE SUBSCRIPTION AGREEMENT

(I) THE REGULATORY REPRESENTATION

(a) The due diligence reports and Mr Soh's oversight of Healthstats International

245 It is not disputed that Mr Salas, who is a lawyer by training, on the instruction of Mr Yong, engaged DLA Piper, KPMG and Baker & McKenzie to prepare three separate due diligence reports on Healthstats International between March and April 2016, for the purpose of Uncharted Holdings' proposed investment in Healthstats International.[377]

246 One such report is the DLA Piper Report, which provided due diligence on the status of the regulatory approvals that had been obtained by Healthstats International in various jurisdictions, including the US, the EU and China.[378]

247 I pause here to deal with the plaintiffs' strong reliance on the proposition in *Wishing Star* (see [228] above) to argue that the defendants cannot assert that the plaintiffs did not rely on the Regulatory Representation simply because Uncharted Holdings engaged DLA Piper to conduct a due diligence exercise on the regulatory approvals obtained by Healthstats International.[379] I accept the legal pronouncements in *Wishing Star*. The plaintiffs also acknowledge that, applying the proposition in *Wishing Star*, "[t]he [d]efendants must establish that through the due diligence process, the [p]laintiffs in fact knew that the BPro G2 did not have FDA or CFDA approval, and that despite being aware of this,

377 BAEIC, Vol 2, Tab 3 (CS) at para 11.

378 ABOD, Vol 11 at p 7659.

379 PCS at para 249.

proceeded with the investment in Healthstats [International]".[380] The defendants, indeed, have established this *precise* state of affairs.

248 I now turn to the DLA Piper Report. In particular, under the heading "Key Issues, Recommended Next Steps and Further Inquiries", the DLA Piper Report stated:[381]

> 2.1 We have set out below a summary of the key legal issues arising from our Review, along with suggested actions that could be taken to address these matters and also recommended further enquiries to make to move forward with the Transaction. …
>
> …
>
> **Issue 1: Target [*ie*, Healthstats International]'s regulatory approvals – in general**
>
> **Action:** *We recommend that you satisfy yourself that the products described in the regulatory approvals reflect the products as sold by the Target.* As a minimum, we recommend that you seek appropriate protection in the transaction agreements (including warranties and indemnities) in relation to this.
>
> *For the USA, the Target should confirm the "510(k) number" under which each of the three devices listed in the HS Product Regulatory Document is currently marketed.*
>
> [emphasis added]

A 510(k) number signified that the product had been granted FDA approval.[382] The plaintiffs accept that Healthstats International disclosed during the due diligence process that a 510(k) number, K060315, was obtained.[383] As I shall

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380 PCS at para 249.

381 ABOD, Vol 11 at p 7663.

382 BAEIC, Vol 8, Tab 16 (Affidavit of Stephen H Gorski ("SHG") at para 8.

383 PCS at para 250.

elaborate later (see [250] below), this number corresponds to the BPro G1 and not the BPro G2.

249 Further, under the same heading, the DLA Piper Report goes on to state:[384]

> 2.2 In addition to the further enquiries noted in the recommended actions above, we recommend making the following *further enquiries on the regulatory side*:
>
> …
>
> **Enquiry 2: Target's continued development of products**
>
> **Comment:** Products produced should conform to the specifications on file with the regulatory authorities, and *any design or material changes that have been made to the product over time* should have been evaluated by the Target's quality and regulatory personnel to determine whether the changes triggered the need for a new regulatory approval.
>
> **Action:** We suggest *at a minimum inquiring whether the target has policies and procedures in place to ensure that changes made were within the boundaries of the regulatory approvals.*
>
> [emphasis added in italics]

This section of the DLA Piper Report thus indicates that one cannot assume that just because the BPro G1 had obtained FDA approval, this FDA approval also applied to Healthstats International's products that were based on the changes made to the BPro G1. In other words, the DLA Piper Report specifically cautioned that it was unknown as to whether regulatory approval had been obtained for products like the BPro G2.

250 In light of the issues raised in the DLA Piper Report, Mr Salas wrote to Mr Marcus Chua on 16 March 2016 to seek further information.[385] In his reply

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384 ABOD, Vol 11 at pp 7666–7667.

385 BAEIC, Vol 2, Tab 3 (CS) at para 15.

on the same day, Mr Marcus Chua disclosed that Healthstats International had only obtained eight FDA approvals:[386]

> …
>
> 3. We have identified a number of 501(k) approvals with the FDA. Please could you confirm the "501(k) number" under which each of the three devices listed in the HS Product Regulatory Document is currently marketed (i.e. the current approvals; we presume the others have been superseded).
>
> - [Mr Marcus Chua:] *Please find the info below, I hope these are numbers the lawyers are referring to*

	FDA (510K)
CASPro	K101002
BPro	K060315
CASPal	K101002
A-Pulse	K072593
MC3100	K051546
CASPal+	K131788
MC3100+	K131788
BProSOft 24 hour CASP	K131916

> …
>
> [emphasis added in italics and in grey table cells]

As can be seen from the above, this list of FDA approvals included only the 510(k) number, K060315, for the "BPro". The "BPro" here must have referred to only the BPro G1 and I shall explain below.

386 ABOD, Vol 11 at p 7328.

251 Next, the defendants submit that the plaintiffs knew that the "BPro" referred to the BPro G1. To begin with, the plaintiffs' pleadings reveal that they knew that the BPro G1 was invented in 2006: they state in their statement of claim that "[i]n or around 2006, Dr Ting had invented the BPro G1" and that "[t]he BPro G2 was developed in 2012/2013".[387] Next, the DLA Piper Report refers to the "HealthSTATS BPro® Ambulatory Blood Pressure Monitoring System (2006)" under cl 4.1.1.2:[388]

> **4. USA**
>
> **4.1 Accuracy and completeness**
>
> 4.1.1 Based on publicly available records, we can confirm that there are 510(k) clearances issued by the U.S. Food & Drug Administration (FDA) to the Target [*ie*, Healthstats International] for the following products, listed according to the precise trade names on the FDA clearance letters:
>
> …
>
> 4.1.1.2 HealthSTATS BPro® Ambulatory Blood Pressure Monitoring System (2006);
>
> …

The reference to "HealthSTATS BPro® Ambulatory Blood Pressure Monitoring System (2006)" shows that the reference is to a BPro device made in 2006. Hence, after the plaintiffs reviewed the DLA Piper Report, they would have known that the reference to "BPro" could only refer to this "HealthSTATS BPro® Ambulatory Blood Pressure Monitoring System (2006)", which in turn refers to the BPro G1.[389] Furthermore, Mr Gorski testified that the list of FDA

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387 SOC at paras 16(ii)(h)(1) and 16(ii)(h)(3).

388 BAEIC, Vol 1, Tab 1 (YKYM), p 312 at cl 4.1.1.2.

389 DCS at paras 401 and 405.

approvals that Healthstats International had only included the 510(k) number for the BPro G1.[390] There was no 510(k) number listed for the BPro G2.[391] Hence, the reference to "BPro" must be to the BPro G1.

252 While the due diligence process was ongoing, Mr Salas and Mr Soh would provide Mr Yong with updates.[392] In fact, besides the three professional entities that were paid to conduct the due diligence exercise, Mr Yong had a team of at least four people to assist him to conduct due diligence: Mr Salas, Mr Soh, Mr Goh and Mr Patrick Wong, who worked for Uncharted Holdings.[393] Sometime in March 2016, Mr Yong was informed by Mr Salas that the DLA Piper Report had flagged several issues. This is corroborated by Mr Salas's e-mail update to Mr Yong on 11 April 2016, which indicated that the issues raised in the DLA Piper Report had "already [been] highlighted" to Mr Yong.[394] At trial, Mr Yong confirmed that Mr Salas would send him e-mails regarding the due diligence process.[395] Mr Soh also testified that he spoke to Mr Yong to inform him that no FDA approval had been obtained for the BPro G2,[396] and Mr Yong's testimony corroborates this.[397]

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390 BAEIC, Vol 8, Tab 16 (SHG) at para 6 and p 15.

391 ABOD, Vol 11 at pp 7327–7328.

392 BAEIC, Vol 1, Tab 1 (YKYM) at para 68; Transcript (26 July 2021) at p 25 lines 4 to 10.

393 Transcript (27 July 2021) at p 37 line 17 to p 38 line 16.

394 ABOD, Vol 2 at p 712.

395 Transcript (23 July 2021) at p 98 line 24 to p 99 line 7.

396 Transcript (17 May 2021) at p 112 lines 17–21.

397 Transcript (23 July 2021) at p 102 line 13 to p 103 line 19; p 106 line 1 to p 107 line 22.

253 Furthermore, as I have stated earlier (see [236]–[237] above), Mr Soh was the CEO of Healthstats International from March 2016 to April 2017. He was involved in the affairs of Healthstats International even earlier than March 2016. I also found that Mr Soh was able to oversee virtually all matters in Healthstats International as its CEO and to report any matters of interest to Mr Yong, so it was very difficult for the defendants to conceal any adverse matters in Healthstats International, including the adverse findings from the due diligence exercise. On top of this, Mr Soh was tasked with "flooding the market" with the BPro G2 and his main focus was the US market.[398] In order for him to do so, Mr Soh must have had thorough knowledge of the regulatory status of the BPro G2, otherwise Healthstats International could not market the BPro G2 in the US. He would then have informed Mr Yong immediately that the BPro G2 did not have FDA approval.

254 It is important to note that there is no evidence to suggest that, when Mr Soh was the CEO of Healthstats International, his leadership or authority was in any way restricted or curtailed by the defendants. On the contrary, the defendants acknowledged Mr Soh as the CEO and they gave him full access to the management of Healthstats International. The defendants also fully supported Mr Soh.

255 In view of the above, the strong inference that can be drawn from these facts is that Mr Yong must have been informed of the regulatory approval status of Healthstats International's products by April 2016. This includes both FDA and CFDA approvals as the US and China were the primary markets that Mr Yong and Mr Soh were very keen to sell Healthstats International's products

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398 DCS at para 43; Transcript (17 May 2021) at p 29 line 16 to p 30 line 3; p 101 line 23 to p 102 line 4.

in. Mr Yong agreed with the defendants' counsel that "[a]nything that, say, you did not get regulatory approval for the G2 [*ie*, BPro G2] would show up in the due diligence process".[399] I place much weight on (a) the fact that Mr Yong had arranged for a dedicated team of at least three entities to assist him in conducting due diligence; (b) the DLA Piper Report and the e-mail communications between Mr Marcus Chua, Mr Salas and Mr Yong outlined above; and (c) Mr Soh's deep involvement as CEO of Healthstats International during the important period before the Subscription Agreement was signed in August 2016.

256 Next, I examine whether Mr Yong was concerned about the lack of FDA or CFDA approval for the BPro G2, after being so informed.

257 I first consider Mr Yong's allegation that he was only concerned with the "big picture" of the investment into Healthstats International and that he only focused on the patents and whether the two China Contracts could be fulfilled.[400] Yet, the regulatory aspects of Healthstats International's medical devices, particularly the BPro G2 and BPro G3, must have been Mr Yong's important consideration as these would affect the performance of the two China Contracts. In court, he admitted to relying on his team to flag out the findings of the due diligence reports to him.[401]

258 I next consider the DLA Piper Report which explicitly advised that further inquiry is required to ascertain if other products by Healthstats International had obtained regulatory approval, especially if changes were made

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399 Transcript (23 July 2021) at p 62 lines 9–13.

400 Transcript (26 July 2021) at p 85 line 22 to p 86 line 3.

401 Transcript (26 July 2021) at p 24 line 19 to p 25 line 10.

to the BPro G1. In this regard, Mr Yong asserts that he trusted Dr Ting, who told him that the changes between the BPro G1 and the BPro G2 were "very small" and that the BPro G2 had FDA approval.[402] Nevertheless, it must be noted that by April 2016, Mr Yong's professional team would have completed the due diligence exercise. As I have stated above, Mr Yong alleges that he relied on the written documents to establish that the defendants had misrepresented to him that the BPro G2 had FDA and worldwide regulatory approvals (see [115] and [139] above). Mr Yong said that the Regulatory Representation was a very important factor to him. Hence, in view of the DLA Piper Report which indicated that only the BPro G1 had FDA approval, he would have checked with Mr Soh, who was then the CEO of Healthstats International, by around April 2016. Mr Soh would have known by then that the final version of the BPro G2 did not have FDA and worldwide regulatory approvals. Thus, notwithstanding the documentary evidence presented by the defendants which suggested that the final version of the BPro G2 had FDA and worldwide approvals, the due diligence process would have disclosed that the final version of the BPro G2 did not have regulatory approvals. Mr Yong was shown the prototype BPro G2 with the cap and Mr Chua told him FDA approval was not required. This was well before the Subscription Agreement was signed in August 2016.

259 From the above analysis, in 2015 and 2016, the economic potentials of the final version of the BPro G2, *ie*, the intellectual property rights, and the accounts were very important to Mr Yong. That was what he told Mr Salas to focus on. Mr Salas stated in his e-mail to Mr Goh that "… Mark [*ie*, Mr Yong] had said that he did not care about anything except accounts and IP".[403] When

402 Transcript (26 July 2021) at p 34 lines 11–25; p 35 lines 23–25.

403 ABOD, Vol 9 at p 6107.

Dr Ting told Mr Yong that BPro G2 did not have regulatory approval, Mr Yong said to get the device approved. Thus, the Regulatory Representation was not an important consideration to him when he decided to invest in Healthstats International as he knew that it would not be an issue to apply for regulatory approvals.

260 Hence, the present situation is one where the due diligence exercise and the surrounding circumstances show that Mr Yong *did in fact have knowledge* of the BPro G2's lack of FDA approval, but nevertheless decided to proceed with the investment in Healthstats International. Thus, the case of *Wishing Star* does not operate to bar the court from examining the significance of the due diligence exercise in Mr Yong's reliance on the Regulatory Representation. The evidence, therefore, strongly suggests that the Regulatory Representation did not play a "real and substantial role" in inducing the plaintiffs to enter into the Subscription Agreement (see [227] above).

(b) The proposed convertible bond and Proposed Share Swap

261 I now turn to the events *after* Mr Yong and his team became aware of the adverse due diligence report findings but *before* Ms Hwang entered into the Subscription Agreement. This is the period between April and August 2016.

262 On 25 April 2016, Uncharted Holdings stated in its Notice of Termination that it did not intend to proceed with the completion of the Sale and Purchase Agreement (see [34] above). Had this agreement been concluded, the Uncharted Group's investment in Healthstats International would have been around S$27m (see [28] above).

263 Nevertheless, Mr Yong made two subsequent substantial investment offers to Dr Ting after this failed deal. At the trial, Mr Yong testified that it was his idea to make these offers at that time.[404]

264 The first offer was for a convertible bond from Success Dragon. The terms of this proposal were sent in an e-mail by Mr Goh to Dr Ting on 21 July 2016, in which Mr Yong and Mr Salas were copied. The material terms are as follows:[405]

> **Share purchase for HealthSTATS Pte Ltd**
>
> **The Valuation**
>
> HealthSTATS International Pte Ltd to be valued at $50 million SGD. Which is equivalent to $285 miliion [*sic*] HKD
>
> **The Offer**
>
> To offer 250M fully paid Convertible Bond from Success Dragon International Holdings Limited (HKSE:1182), at HKD0.52 cents per share with total Value of HKD130M in-exchange for 45.6% of HealthSTATS International Pte Ltd
>
> …
>
> [emphasis in original in bold]

From the above terms, the value of all of Healthstats International's shares was S$50m or HK$285m at that time. Mr Yong confirmed this at the trial.[406] By simple arithmetic, 45.6% of Healthstats International's shares would have been worth (HK$285m / 100 * 45.6) = HK$129.96m. Hence, HK$129.96m worth of Healthstats International's shares were to be swapped for a fully paid convertible bond from Success Dragon worth HK$130m or about S$22.8m

404 Transcript (27 July 2021) at p 46 lines 22–25.

405 ABOD, Vol 11 at p 7881.

406 Transcript (27 July 2021) at p 47 lines 6–18.

(using HK$285m = S$50m as the exchange rate). In other words, this offer was for an exchange of equivalent value.

265 The second offer was the Proposed Share Swap. This offer was sent in a subsequent e-mail by Mr Goh to Dr Ting on 21 July 2016, in which Mr Yong and Mr Salas were copied. The material terms are as follows:[407]

> **Share purchase for HealthSTATS Pte Ltd**
>
> **The Valuation**
>
> HealthSTATS International Pte Ltd to be valued at $50 million SGD. Which is equivalent to $285 miliion [*sic*] HKD.
>
> **The Offer**
>
> To offer 250M of ordinary shares of Success Dragon International Holdings Limited (HKSE:1182), at HKD0.52 cents per share with total Value of HKD130M in-exchange for 45.6% of HealthSTATS International Pte Ltd
>
> …
>
> [emphasis in original in bold]

Following the same calculation above using the same parameters (see [264] above), 45.6% of Healthstats International's shares were valued at HK$129.96m and was to be swapped for HK$130m (or about S$22.8m) worth of Success Dragon's shares. Hence, the Proposed Share Swap was also for an exchange of equivalent value.

266 Mr Yong testified that after the aborted purchase of Healthstats International by Uncharted Holdings, Dr Ting faced a lot of pressure from his shareholders. Hence, Mr Yong proposed these two offers to provide the shareholders with an option to exit Healthstats International. Ultimately,

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407 ABOD, Vol 11 at p 7884.

however, these offers were not accepted by the shareholders of Healthstats International.[408]

267 The above two offers came after the aborted purchase of Healthstats International's shares by Uncharted Holdings, which was worth about S$27m. The purchase was called off either because of the adverse due diligence findings or Mr Yong's concerns about Winsan's financial situation (see [34]–[39] above). Yet, Mr Yong was willing to make two subsequent offers of about S$22.8m barely three months later.

268 On top of these two offers, when the Sale and Purchase Agreement was discussed, Mr Yong testified that he was concurrently discussing the Subscription Agreement with the defendants.[409] To recapitulate, the Subscription Agreement was worth S$5m with the potential to increase a further investment of an additional S$4,878,950 by way of the Call and Put Options (see [42(b)] above). These options were inserted on Mr Yong's instructions when he engaged his lawyer to draft the Subscription Agreement.[410] Mr Yong explained that the Sale and Purchase Agreement would not have injected fresh funds to Healthstats International.[411] Thus, he suggested to Dr Ting that he would bring fresh funds to Healthstats International first by way of loans to Healthstats International and then convert the loans to the Subscription Agreement at the same time when the Sale and Purchase Agreement was discussed.[412]

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408 Transcript (27 July 2021) at p 48 line 10 to p 49 line 22.

409 Transcript (27 July 2021) at p 45 lines 16–23.

410 Transcript (27 July 2021) at p 59 lines 23–25.

411 Transcript (27 July 2021) at p 45 lines 7–12.

412 Transcript (27 July 2021) at p 45 lines 16–23.

269 Hence, notwithstanding the aborted purchase by Mr Yong, he was considering other options to invest (S$22.8m + S$5m) = S$27.8m in Healthstats International during this period of time. In my view, this shows that he was very interested in investing in Healthstats International even after the aborted Sale and Purchase Agreement. Clearly, what was operative in Mr Yong's mind at this time was the prospect of having good returns on his investment in Healthstats International, regardless of whether there were adverse due diligence findings or whether Winsan was in a poor financial situation.

(c) Mr Yong's search for investors in 2017

270 After the above two offers were not taken up, the Subscription Agreement was signed on 12 August 2016. In the meantime, Mr Yong was active in looking for investors for Healthstats International.[413] In 2017, he convinced his childhood friend, one Mr Tan Shern Liang from One Tree Partners Pte Ltd ("One Tree Partners") to invest in Healthstats International. Mr Tan Shern Liang eventually persuaded Tupai Singapore Pte Ltd ("Tupai") to invest in Healthstats International in September 2017.[414] Thus, this shows that Mr Yong's enthusiasm for investing in Healthstats International did not wane even a year after the Subscription Agreement was signed.

271 Hence, Mr Yong's conduct further buttresses the findings that: (a) he personally assessed that Healthstats International had a huge potential; and (b) he was confident that he could eventually turn Healthstats International around into a profitable business, regardless of the adverse due diligence findings or Winsan's poor financial situation.

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413 DCS at para 46.

414 DCS at paras 47 and 49; ABOD, Vol 7, pp 4730–4731 at para 10 and p 4740 at para 42.

272 Given his mental state at this time, even if the Regulatory Representation was not completely true, it did not operate at all in his mind. As far as Mr Yong was concerned, if the necessary regulatory approvals were not obtained, it would just be a matter of time to secure the necessary relevant regulatory approvals. After all, the BPro G1 had worldwide regulatory approvals and changes to the BPro G2 were only to improve the connectivity of the BPro G1, which were not major. I am fortified in my view by Mr Yong's testimony. As the defendants emphasise in their submissions,[415] Mr Yong testified that FDA approval for the BPro G2 was not operative in his mind:[416]

> Q: I made you read paragraphs 2 to 17 of the defence of what constituted the representations they made at the meetings and to your team, and you gave a summary of what you understood to have happened at the meetings. This is a critical point, because when you find out from Joshua Soh that you need a fresh application just after signing the subscription agreement, assuming you are telling the truth, you were content to accept what Dr Ting explained to you.
>
> A: Yes.
>
> Q: You didn't take it as a misrepresentation at that time?
>
> A: Dr Ting says it's not an issue, then it's not an issue, because you already have – your BPro is already approved now. If we needed another approval for improved version and Dr Ting says it's not a problem, then why should I worry about it? *My main focus, right, is to make sure that the company satisfy the China contract, because this is where the big money is going to come in.* All right? And Joshua Soh is doing his best to sell the products, and I don't think he was – whether the FDA was important at that point of time to what the company was selling outside of China, I am not sure. I don't think so.
>
> Court: No, what you don't think so? I don't understand.

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415 DRS at paras 64 and 65.

416 Transcript (23 July 2021) at p 110 line 5 to p 111 line 14; p 115 line 22 to p 116 line 18.

A: No, so Dr Ting said that the FDA needed approval and he was going to be getting it soon, something to that effect. Okay? It was not something of concern. So I didn't – I just took it as that, because for me the biggest focus at that point was to make sure that they deliver on the Chinese contract because this is where the revenue was coming from.

…

Q: When Joshua told you in 2016 that the G2 needed a fresh application, you said that you went and spoke with Dr Ting; correct?

A: That's correct.

Q: Dr Ting's response to you, according to you, is that the G2 application is ongoing and should be of no concern; correct?

A: That's correct.

Q: Did you not at that time tell him, "Hey, you misrepresented to me before, in 2015"?

A: No, I didn't.

Q: Why not?

A: Because *I didn't think it was such a big deal*. Dr Ting's – I mean, you already had the G1. The G2, if it's just a revision, it is – if Dr Ting says not to worry about it, I didn't – it *didn't cross my mind*.

Q: In 2016, when you found out, it was not a big deal for you?

A: Yeah, Dr Ting says it is – it is – it's not a problem; it's just a matter of doing the application and waiting for it to be approved.

[emphasis added]

Hence, it cannot be said that the Regulatory Representation played a "real and substantial" role in inducing Mr Yong to invest in Healthstats International (see [227] above) through the Subscription Agreement signed by Ms Hwang.

273 In this case, it was apparent that the defendants did not deliberately or intentionally mislead Mr Yong regarding the Regulatory Representation.

Clearly, the evidence does not disclose any fraud or fraudulent intention on the part of the defendants notwithstanding the documentary Regulatory Representation to the contrary. At most, what can be concluded is that the defendants were overzealous in the marketing pitch when they proudly showed the final version of the BPro G2 in the Executive Summary and other marketing materials to advance the interest of Healthstats International. The final version of the BPro G2 was used as early as 2011 when there were articles published about Healthstats International's revolutionary development of a watch-like device that monitored a patient's heart rate and blood pressure wirelessly in real time.[417] If the defendants had used the working prototype of the BPro G2, *ie*, the BPro G1 with the attached cap, there would not have been an issue with the Regulatory Representation as regards the BPro G2 since this prototype did not require fresh regulatory approval.

274 I agree with the decision in *Wishing Star* that a person who has acted carefully and cautiously by conducting an independent due diligence exercise and who does not discover the falsehood in the representation should not be penalised when he acts on the misrepresentation. However, if the person who conducted the due diligence knows the misrepresentation or does not rely on the misrepresentation when he signs the contract, he cannot later take action against the other person for the misrepresentation. In this case, the evidence shows, on a balance of probabilities, that Mr Yong knew the Regulatory Representation in the written documents was not accurate and he clearly did not rely on it.

417 Exhibits P14 and P15.

(d) Conclusion on whether the Regulatory Representation was relied on

275 From the above analysis, I found that Mr Yong would have been aware of the adverse findings in the due diligence reports he commissioned, and thus could not have relied on what Dr Ting represented through the documentary evidence that the BPro G2 had FDA and worldwide regulatory approvals. In 2015 and 2016, Mr Yong was deeply optimistic about the potential of Healthstats International notwithstanding that it had been making losses in the preceding years. Mr Yong was not concerned about the lack of regulatory approval of Healthstats International's products, especially those of the BPro G2, before entering into the Subscription Agreement through Ms Hwang. Thus, I find that the Regulatory Representation did not play a real or substantial role in inducing the plaintiffs to enter into the Subscription Agreement. In fact, the evidence indicates that the plaintiffs, particularly Mr Yong, did not rely on the Regulatory Representation when they invested in Healthstats International through the Subscription Agreement.

(II) THE REVENUE REPRESENTATION

(a) The S$50m Valuation

276 The crux of the plaintiffs' assertion that they relied on the Revenue Representation is that their investment in Healthstats International was based on the S$50m Valuation. The S$50m Valuation was introduced in the context of the Uncharted Group's potential investment in Healthstats International (see [28] above). The plaintiffs claim that the S$50m Valuation was put forward by the defendants, and that it was based in part on the "booked" revenue under the two China Contracts (see [56] above). They also rely on Mr Soh's statement in his affidavit of evidence-in-chief that he "specifically recall[ed] Dr Ting talking about the fact that Healthstats [International] had secured in excess of

S$50 million revenue through two contracts with its subsidiary in China, and *based on this*, Mr Yong's investment would be based on a S$50 million valuation of Healthstats" [emphasis added].[418]

277 On the other hand, the defendants contend that the S$50m Valuation was put forward by Mr Yong himself, and that Mr Yong never relied on the Second China Contract being performed (see [73(b)] above). The defendants allege that Mr Yong derived the S$50m Valuation using the following method. First, he looked at the price at which Winsan had acquired 51% of Healthstats China in 2015, *ie*, S$16m. Next, he divided the world's markets into three segments: the US, Europe and Asia. He then multiplied the figure of S$16m by three to arrive at S$48m, which he then rounded up to S$50m. Therefore, the defendants argue that the revenue which Healthstats International was expected to earn from the two China Contracts were never in Mr Yong's contemplation when he arrived at the S$50m Valuation.[419]

278 In response, the plaintiffs argue that it made no sense to equate the China market with the USA and Europe markets since there were already the two China Contracts worth approximately S$56m in China. In contrast, there were no contracts and hardly any sales in the USA or Europe.[420] The plaintiffs further submit that Dr Ting had purportedly conceded in cross-examination that coming to a valuation of Healthstats International in this manner would be absurd:[421]

> Q: Now, Dr Ting, there were no large contracts available in the US in December 2015; correct?
>
> A: Correct.

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418 BAEIC, Vol 2, Tab 4 (JS) at para 9.

419 BAEIC, Vol 4, Tab 13 (TCM) at para 67; BAEIC, Vol 4, Tab 14 (CNH) at para 47.

420 PCS at para 431.

421 PCS at para 432; Transcript (30 July 2021) at p 157 lines 1–15.

> Q: There were no large contracts available in Europe in 2015?
>
> A: Correct.
>
> Q: And you repeatedly told Mr Mark Yong and Mdm Emily Hwang that you had these two very lucrative contracts in China; correct?
>
> A: Correct.
>
> Q: Now, Dr Ting, I suggest to you that it would be absurd for Mr Yong, in those circumstances, to value Europe, Asia and the US at the same value. Do you agree or disagree?
>
> A: I agree.

Dr Ting was merely expressing his opinion at how Mr Yong's method of valuation was absurd. It does not simply follow from Dr Ting's opinion that such a method of valuation was absurd and that Mr Yong therefore did not employ that method. Hence, I disagree with the plaintiffs' submission.

279 In any case, the evidence suggests that the S$50m Valuation was not based on the expected revenue from the two China Contracts. There is no contemporaneous documentary evidence of any link between the two China Contracts and the S$50m Valuation. The Letter of Intent dated 2 December 2015 stated only that "the Purchaser's [*ie*, Uncharted Group's] valuation of the Company [*ie*, Healthstats International] [was] SGD $50,000,000.00".[422] There was no reference to the China Contracts. Further, the quantum of the Subscription Consideration provided for in cl 3.1 of the Subscription Agreement (*ie*, S$5m) was based on "the aggregate Issue Price for the Subscription Shares",[423] where the "Issue Price" was defined as being S$1.576

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422 ABOD, Vol 1 at p 403.

423 ABOD, Vol 1 at p 363.

per share.[424] Only the First China Contract was expressly referred to in the Subscription Agreement (in cl 8), in relation to the Put Option. Clause 8.1(b) provided that Healthstats International would have the right to require Ms Hwang to subscribe for the Option Shares in the event that it completed and received the balance sale proceeds of S$3.5m under the First China Contract by 31 December 2016.[425] However, the Put Option was never exercised as the balance of S$3.5m of sales under the First China Contract was not fulfilled (see [21] above).

280 The Call Option and Put Option were inserted by the lawyer in the Subscription Agreement on Mr Yong's instructions. In other words, Mr Yong saw the potential in Healthstats International in 2016 and he was interested to invest further if Healthstats International did well. He started to loan Healthstats International various sums totalling S$2.5m in the early part of 2016 with the view that the loans would be used for payment towards the Subscription Agreement. At the same time, he was cautious and preferred not to invest more than S$5m in the first instance but initiated an option to invest more should Healthstats International do well after his initial investment.

281 Moreover, Mr Yong stated in his affidavit of evidence-in-chief that the defendants had told him, at the 21 November 2015 Meeting, that Healthstats International's valuation at S$50m was "evidenced by the *joint venture contract* entered into between Healthstats [International] and a China company listed on the Shanghai Stock Exchange known as Winsan (Shanghai) Medical Science and Technology Co Ltd [*ie*, Winsan]" [emphasis added].[426] This statement is

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424 ABOD, Vol 1 at p 360.

425 ABOD, Vol 1 at p 367.

426 BAEIC, Vol 1, Tab 1 at para 26(i).

repeated in the plaintiffs' pleaded case (see [46(b)(ix)] above). This is erroneous. When Mr Soh was cross-examined on this paragraph of Mr Yong's affidavit, he stated that he could not specifically recollect a joint venture contract being referred to at the 21 November 2015 Meeting,[427] but he accepted that the only joint venture contract that existed related to Winsan's investment in Healthstats China.[428] He agreed that this was separate from the two China Contracts, which were sale agreements.[429] This is consistent with the defendants' position that the S$50m Valuation was derived based on the price at which Winsan had acquired 51% of Healthstats China in 2015.

282 In any event, even if the S$50m Valuation was based on the two China Contracts, this valuation would be consistent with the total value of the two China Contracts. I have earlier found that the two China Contracts are genuine and their total value was S$5m + S$52.785m = S$57.785m.

283 The plaintiffs also submit that Dr Ting had suggested the S$50m Valuation to Mr Yong in a set of PowerPoint slides used for Healthstats International's 15th Annual General Meeting ("AGM") on 4 December 2015 ("the 4 December 2015 slides").[430] The material portion of the slides reads as follows:[431]

China Update

1. Option to invest S$5M in HS at S$50M valuation. option has lapsed by 30th Nov 2015.

…

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427 Transcript (7 May 2021), p 58 at lines 12–25 and p 59 at lines 1–11.

428 Transcript (7 May 2021), p 59 at lines 24–25 and p 60 at lines 1–4.

429 Transcript (17 May 2021), p 98 at lines 23–25 and p 99 at lines 1–4.

430 PCS at para 428; PRS at para 24.

431 ABOD, Vol 3 at p 1816.

During cross-examination, Dr Ting testified as follows:[432]

> Q: Now, at AB 1826, this is your slides to the shareholders; right?
>
> A: At the AGM.
>
> Q: 4 December 2015?
>
> A: Correct.
>
> Q: It says "Offer For Vendor Shares": "Have a valuation of S$50 [million] set by Winsan as basis for investment." Correct?
>
> A: Correct.
>
> Q: And this valuation of 50 million from Winsan came from – if you look at page AB 1816, under "China Update", this was an: "… option to invest S$5 [million] in [Healthstats Singapore] at S$50 [million] valuation. Option … lapsed by 30th November 2015." This is where the $50 million figure came from; correct?
>
> A: Correct. I need to add some meat, your Honour.
>
> …
>
> Court: No, no. I think Mr Nair referred you to page 1826, where there is a figure of 50 million valuation set by Winsan as a basis for investment.
>
> A: Yes.
>
> Court: Right?
>
> A: Yes.
>
> Court: So I stand corrected by Mr Nair. Then he referred you to page 1816 and *says the figure of $50 million came from this slide*, bullet point 1.
>
> A: Yes.
>
> Court: So what is your answer?
>
> A: My answer is that *this was presented to Mark*, and he tell me how he – this was – *I told this to Mark* ***before the meeting*** *because* ***Mark wanted me to present his proposal to the shareholders****. So Mark took the 50 million.* He said this is cheap because he – Winsan has

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[432] Transcript (30 July 2021) at p 151 line 24 to p 154 line 19.

> come into China at the valuation of 16 million, which is RMB80 million, and he would think – he thinks the world, simply you can divide into US, Europe and China. If you put everyone at 16, you will come up to 48. Even if I round up to 50, it's cheap. And the very fact is that he feel it is cheap to come in. When he came in, he even start trying to sell the company for a valuation between 70 to 100 million. So at that point in time, ***his conclusion from the 50 million was that he has a basis***; a very simple calculation will tell that it is cheap, 16 times 3. That's the basis for me saying he did not rely on the China contract for the valuation.

[emphasis added in italics and bold italics]

In my view, Dr Ting's testimony above does not amount to a concession that Mr Yong had taken the S$50m Valuation from this set of slides. In the first place, the Letter of Intent which states "the Purchaser's [*ie*, Uncharted Group's] valuation of the Company [*ie*, Healthstats International] [was] SGD $50,000,000.00" was signed by Mr Yong on 2 December 2015 (see [279] above). This letter *precedes* the 4 December 2015 slides. Moreover, a careful examination of Dr Ting's testimony above shows that Dr Ting was explaining Mr Yong's own derivation of the S$50m Valuation *prior to the AGM*. What Dr Ting meant by "[Mr Yong] *took* the 50 million" in his testimony above is that Mr Yong wanted Dr Ting to *select* the S$50m Valuation as a figure to be presented to Healthstats International's shareholders during the AGM.

284 Hence, in so far as the plaintiffs submit that they relied on the Revenue Representation because their investment in Healthstats International was based on the S$50m Valuation, I find that this submission has no merit.

(b) Other factors showing lack of reliance

285 In any case, as I examine below, the plaintiffs have failed to show that Mr Yong relied on the Revenue Representation to enter into the Subscription Agreement.

286 The plaintiffs had the benefit of three due diligence reports prepared by professional advisors and his team of staff such as Mr Salas, Mr Soh, Mr Goh, *etc* as well as Mr Sheng's informal advice on Winsan. KPMG, in its due diligence report, opined that "[t]he IP owned by HIPL [*ie*, Healthstats International] is currently valued at between USD $80 – 120 million (although no formal valuation has been undertaken)".[433] Having the benefits of the due diligence process, Mr Yong decided that Uncharted Holdings should not proceed with the purchase of Healthstats International's shares.

287 However, in the First 26 April 2016 E-mail and the Second 26 April 2016 E-mail sent to Dr Ting, Mr Yong stated that the reason for not proceeding was that he was not comfortable with Healthstats China and Winsan. In these e-mails, Mr Yong specifically raised the concern that the S$50m Valuation might be an over-valuation as Healthstats China was not financially sound, as evidenced by (among other matters) the fact that only S$1.5m of sales had been fulfilled under the First China Contract. He also referred to Winsan's failed placement exercise in January 2016 (see [37] and [39] above). Consistent with this, Mr Yong stated in his affidavit of evidence-in-chief that by February 2016, he had "doubts as to Healthstats China's financial ability to fulfil its obligations under the China Contracts in their entirety", which would have made Healthstats International "greatly overvalued" at the S$50m Valuation.[434]

288 Was this the real reason for Mr Yong to abort the Sale and Purchase Agreement in April 2016 or was this an excuse not to go through with this agreement? If Mr Yong's main concern was that Healthstats China might not have the financial ability to fulfil its obligations under the two China Contracts,

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433 BAEIC, Vol 1, Tab 1 (YKYM) at p 384.

434 BAEIC, Vol 1, Tab 1 (YKYM) at para 56.

then why did he subsequently propose to Dr Ting the options of a convertible bond and share swap between Healthstats International and Success Dragon? The value of these two options was about S$23m. This sum of investment was close to the S$27m Sale and Purchase Agreement which Mr Yong had aborted. These two options were suggested by Mr Yong in July 2016, barely three months after he aborted the Sale and Purchase Agreement in April 2016. Moreover, these proposals for two options came after Mr Yong and Mr Soh knew that Winsan had been taken over by a new major shareholder in June 2016. Mr Soh even knew that this new major shareholder was a property development group called "Lanrun" from Chengdu.[435] As regards Mr Yong, the plaintiffs submit that Mr Yong only knew that there was a "change of major shareholder" and did not even recall who Lanrun was until it was explained to him during cross-examination.[436] I reproduce the relevant excerpt of his testimony at trial:[437]

> Q: You found out in June 2016 that a property developer from Chengdu called Lanrun took over Winsan; is that correct?
>
> A: The major – I think there was a change of major shareholder.
>
> Q: In June 2016, itself, there was a question mark as to whether Winsan would continue with the medical device business; is that correct?
>
> A: I simply had my reservation about the financial health of Winsan.
>
> Q: Do you recollect that the bosses of Lanrun had come to Singapore, I think around October/November 2016, and you had met with them in the office of Healthstats?
>
> A: Who?
>
> Q: The bosses of Lanrun.

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435 DCS at para 56(5); Transcript (17 May 2021) at p 38 lines 16–24; p 93 lines 15–18 (Mr Soh).

436 PRS at para 54(5).

437 Transcript (23 July 2021) at p 57 line 7 to p 58 line 1.

A: Who is Lanrun?

Q: The major shareholder, the new shareholder from Chengdu.

A: No, I never met the shareholder before.

To begin with, given that Mr Soh knew of Lanrun's identity, Mr Soh would have informed Mr Yong about this. Hence, I find Mr Yong's testimony difficult to believe. In any case, even if I were to accept Mr Yong's testimony, what is pertinent is that regardless of whether he knew of the exact identity of the new major shareholder of Winsan, he was clearly unconcerned about a possible change in Winsan's business focus by the entry of this new major shareholder. The irresistible inference must be that Mr Yong was still very keen on investing in Healthstats International in July 2016 that he persisted in proposing the idea of a convertible bond and share swap to Dr Ting thereafter. These proposals did not materialise as Dr Ting said the shareholders of Healthstats International were not interested and not because Mr Yong had a change of heart. Hence, the Revenue Representation and his team who conducted the due diligence clearly had not stopped Mr Yong from investing in Healthstats International.

289 Moreover, Mr Yong also said that he continued to be interested in investing in Healthstats International because the China Contracts "did display Healthstats' ability to penetrate the Chinese markets and its potential for growth".[438] Mr Yong's initial reasons for being "very interested" in investing in Healthstats International as at November 2015, which included his assessment that it had "much room for growth",[439] thus remained essentially unchanged even after the due diligence process showed that the Revenue Representation could not be relied upon.

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438 BAEIC, Vol 1, Tab 1 (YKYM) at para 84.

439 BAEIC, Vol 1, Tab 1 (YKYM) at para 34(b).

290 Thus, by Mr Yong's own account, he did not rely on the Revenue Representation at the time of the Subscription Agreement. Mr Yong was well aware of the risk that the Second China Contract would not be fulfilled, such that the revenue expected thereunder would not materialise. Instead, his continued interest in investing in Healthstats International was due to its potential for growth. This is not a case where Mr Yong relied partly on the Revenue Representation and partly on his own knowledge and expertise as a savvy and well-advised investor. On the contrary, both the contemporaneous documentary evidence and Mr Yong's own evidence indicate that the Revenue Representation did not play a real or substantial role in the conclusion of the Subscription Agreement.

(III) THE PRODUCT REPRESENTATION

291 I turn now to the Product Representation. In my view, the plaintiffs' argument that they relied on the Product Representation in entering into the Subscription Agreement is a non-starter. The Product Representation, as pleaded, was that Healthstats International was to launch the BPro G3 *in the second quarter of 2016* (*ie*, in or around April to June 2016). By the time the Subscription Agreement was signed in August 2016, it would have been clear to the plaintiffs that the BPro G3 had not yet been launched. Mr Soh, as CEO of Healthstats International, would have known this and he would have told Mr Yong.

292 Moreover, as I have explained above in relation to Mr Tey's evidence (see [212] above), Healthstats International had been developing a prototype of the BPro G3 up till mid-2016. However, after Mr Soh's appointment as the CEO of Healthstats International, he introduced a service-based model for the BPro G2. Under this model, the devices were given to clinical professionals for

free with a fee being charged for each use of the device. As a result, Mr Soh directed that further development of the BPro G3 should cease so that Healthstats International could focus on funding the service-based model for the BPro G2.[440]

293 Dr Ting's evidence corroborates the above narrative. At the trial, Dr Ting testified that following his presentation on 5 January 2016, it was *Mr Yong* who directed Mr Soh in March 2016 to temporarily stop the development of the BPro G3.[441] In this presentation, Dr Ting told Mr Yong about the CPT Code and how the medical practitioners in the US used the CPT Code.[442] Dr Ting explained that, where there is an applicable code for a particular device, a doctor would be able to use this code to claim fees from the government for every instance that the device was used. Hence, the change from a sales model to a service model for the BPro G2 meant that Healthstats International could reap the huge profits from the recurring fees claimable. Mr Yong felt that this was more commercially sound than a one-off profit from the sales of the BPro G2 devices.[443]

294 Mr Chua testified that Mr Yong told him to put the development of the BPro G3 on hold and to focus on the BPro G2 as the R&D department of Healthstats International only had six engineers (including Mr Chua himself).[444]

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440 Defence at para 54(e).

441 Transcript (28 July 2021) at p 136 line 21 to p 137 line 10; Transcript (2 August 2021) at p 10 line 20 to p 14 line 5.

442 PCB, Vol 1 at p 459, at ABOD, Vol 3 at p 1848.

443 Transcript (2 August 2021) at p 14 line 6 to p 17 line 23.

444 Transcript (3 August 2021) at p 84 line 21 to p 85 line 10; p 86 lines 18–22.

295 In any case, since Mr Yong's team was responsible for the extensive due diligence exercise and Mr Yong had procured the appointment of Mr Soh as the CEO of Healthstats International at the material time, I find that Mr Yong must have known that the development of the BPro G3 was halted prior to the conclusion of the Subscription Agreement.

296 Therefore, the plaintiffs would have known by the time the Subscription Agreement was signed that the BPro G3 had not yet been launched and that Mr Yong was the one who halted the development of the BPro G3. Hence, Mr Yong could not have relied on the Product Presentation before Ms Hwang signed the Subscription Agreement.

(C) THE LOANS

297 I shall now consider whether the plaintiffs relied on the Representations in extending the Loans to Healthstats International. As I have outlined at [40] above, the Loans were made in four separate sums: S$1m in January 2016; S$500,000 in April 2016; S$500,000 on 10 June 2016; and S$500,000 on 26 July 2016.

298 Mr Yong's affidavit of evidence-in-chief explained the reasons for the loans, as follows:

> (a) The loan of S$1m in January 2016 was made because Dr Ting had pleaded with him and Ms Hwang for the loan of this sum to Healthstats International as it needed working capital urgently and would not last beyond the Lunar New Year without fresh funds.[445]

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445 BAEIC, Vol 1, Tab 1 (YKYM) at paras 51–52.

(b) The loan of S$500,000 in April 2016 was made as a "show of good faith" to enable Healthstats International to cover its expenses for that month while Mr Yong considered a smaller investment (after the investment by Uncharted Holdings was aborted).[446]

(c) The loan of S$500,000 on 10 June 2016 was made to help Healthstats International cover its expenses while negotiations for the Subscription Agreement were ongoing. The parties agreed that this loan could be used as partial payment towards the Subscription Consideration.[447]

(d) The loan of S$500,000 on 26 July 2016 was made to allow Healthstats International to meet its monthly expenses while the parties' discussions on the Subscription Agreement were ongoing. As discussions were at an advanced stage at this juncture and it looked likely that an agreement was imminent, the loan was "essentially an advance on the consideration" that would be paid under the Subscription Agreement.[448]

299 Based on the above, the Representations had no direct bearing on Mr Yong's and Ms Hwang's decision to extend each loan to Healthstats International. Although the first loan in January 2016 was made before the due diligence on Healthstats International had been completed, Mr Yong's own account of the reason for this loan indicates that it was not made in reliance on any of the Representations. As for the three loans made from April to July 2016, these were linked to the plaintiffs' interest in investing in Healthstats

446 BAEIC, Vol 1, Tab 1 (YKYM) at paras 74–76.

447 BAEIC, Vol 1, Tab 1 (YKYM) at paras 94–95.

448 BAEIC, Vol 1, Tab 1 (YKYM) at paras 96–97.

International which culminated in the Subscription Agreement. By this time, as I have explained above, the plaintiffs had the benefit of the due diligence reports and Mr Sheng's advice on Winsan. Nevertheless, they continued to be interested in investing in Healthstats International due to its potential for growth. There is no evidence that the specific issues of Healthstats International's regulatory approvals, the sales booked under the Second China Contract, and the launch of the BPro G3 in the second quarter of 2016 (which formed the subject of the Regulatory Representation, the Revenue Representation and the Product Representation respectively) played any real or substantial role in the plaintiffs' decision to make any of the Loans.

(3) Conclusion on the Reliance Requirement

300 With regard to the Loans, I find that the plaintiffs have failed to satisfy the Reliance Requirement as they have not shown that the Representations played a real and substantial role in inducing them to make the Loans which later became part of the Subscription Consideration for the Subscription Agreement.

301 With regard to the Subscription Agreement, the salient points of my analysis above are as follows. The plaintiffs had the benefit of three due diligence reports produced by DLA Piper, KPMG and Baker & McKenzie in March and April 2016. In addition, they obtained informal advice on Winsan from Mr Sheng. Furthermore, Mr Yong had other staff to assist in the due diligence exercise such as Mr Soh, Mr Salas and Mr Goh. In the course of this due diligence process, the plaintiffs were informed of the regulatory approval status of Healthstats International's products by April 2016. Further, the S$50m Valuation was not based on the expected revenue from the two China Contracts as there is no contemporaneous documentary evidence of any link between the

two China Contracts and the S$50m Valuation. Moreover, by the time the Subscription Agreement was signed in August 2016, it would have been clear to the plaintiffs that the BPro G3 had not been launched in the second quarter of 2016. Therefore, the evidence suggests that the plaintiffs did not rely on the Regulatory Representation, the Revenue Representation or the Product Representation in entering into the Subscription Agreement (see [230]–[296] above).

302 As for the Loans, Mr Yong's own account of the reasons for extending the loan of each sum of money to Healthstats International indicates that the Representations did not play a real or substantial role in these decisions (see [297]–[299] above).

303 I, therefore, find that the Reliance Requirement is not satisfied on the facts of the present case.

Conclusion on misrepresentation

304 For the reasons explained above, the Representation Requirement is not satisfied for the Revenue Representation and the Product Representation, and the Reliance Requirement is not satisfied for all the Representations. Consequently, the plaintiffs have failed to prove that the alleged Representations were actionable misrepresentations made by the defendants. The plaintiffs have not proven, on the balance of probabilities, that they, particularly Mr Yong, relied on the three Representations when they invested in Healthstats International through the Subscription Agreement. The plaintiffs' claim based on misrepresentation must, therefore, fail.

305 In view of these findings, it is not necessary for me to determine whether the alleged Representations were made by the defendants fraudulently or

negligently. I reiterate that, regarding the Regulatory Representation, the defendants should not have shown the graphic of the final version of the BPro G2 in their documents as this gave the impression that the BPro G2 had FDA and worldwide regulatory approvals. If the defendants had used the prototype version of the BPro G2 that had an attached cap over the BPro G1, which had worldwide approvals, there would not have been a misrepresentation; Healthstats International, in consultation with Mr Gorski, opined that FDA approval was not required. The defendants chose to use the aesthetically pleasing final version of the BPro G2 that contradicted the Regulatory Representation notwithstanding their insistence that they had informed Mr Yong that the BPro G2 required FDA approval. Nevertheless, this was not a dishonest act as the defendants allowed a transparent and in-depth due diligence exercise to be conducted. The defendants even allowed Mr Yong to replace Dr Ting with Mr Soh as CEO of Healthstats International before the signing of the Subscription Agreement. The thorough due diligence exercise identified that the BPro G2 did not have the requisite regulatory approvals and Mr Yong was alerted to this.

Was there fraud by the defendants?

306 With regard to the plaintiffs' allegations of fraud, I wish to emphasise that a relatively high standard of proof must be satisfied by the representee before a fraudulent misrepresentation can be established successfully against the representor. This is because the allegation of fraud is a grave one (see *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 ("*Wee Chiaw Sek Anna*") at [30]). Hence, cogent evidence is required before a court will be satisfied that fraud is established (*Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 at [161]). Further, to establish fraud, the

plaintiffs must prove that false representations were made knowingly; without belief in their truth; or recklessly, with the defendants being careless whether they were true or false (*Wee Chiaw Sek Anna* at [32], applying the UK House of Lords' decision in *Derry v Peek* (1889) 14 App Cas 337). The plaintiffs must also show that the defendants did not subjectively believe in the truth of their representations (*Wee Chiaw Sek Anna* at [37]). In the present case, the plaintiffs have not adduced sufficient evidence to show that the allegedly false Representations were made knowingly or recklessly.

Is the Misrepresentation Act applicable?

307 Given these findings, the plaintiffs' alternative claim for damages based on the Misrepresentation Act also fails. The relevant provision is s 2(1) of the Misrepresentation Act, which allows a representee to claim damages for non-fraudulent misrepresentations. The Court of Appeal in *Tan Chin Seng* explained (at [23]) that s 2(1) "only alters the law as to the reliefs to be granted for a non-fraudulent misrepresentation *but not as to what constitutes an actionable misrepresentation*" [emphasis added]. Since the plaintiffs have failed to establish that the alleged Representations were actionable misrepresentations made by the defendants, they are not entitled to damages for misrepresentation, whether at common law or under s 2(1) of the Misrepresentation Act.

Unlawful means conspiracy

The applicable law

308 To succeed in a claim for conspiracy by unlawful means, the plaintiffs must establish the following (see *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") at [91] and [112]):

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

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

(c) the acts were unlawful (which include acts which are actionable civil wrongs);

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

(e) the plaintiff suffered loss as a result of the conspiracy.

309 The essence of unlawful means conspiracy is the defendants' combination and undertaking of an unlawful course of action, accompanied by the intention to injure by unlawful means (*EFT Holdings* at [96]; recently reaffirmed by the Court of Appeal in *Crest Capital Asia Pte Ltd and others v OUE Lippo Healthcare Ltd (formerly known as International Healthway Corp Ltd) and another and other appeals* [2021] 1 SLR 1337 at [128(a)]). In the absence of evidence of an express agreement, the requisite combination may be inferred from the circumstances and acts of the alleged conspirators (*EFT Holdings* at [113]). However, the alleged conspirators must be sufficiently aware of the surrounding circumstances and share the same object (*EFT Holdings* at [113]; see also *New Ping Ping Pauline v Eng's Noodles House Pte Ltd and others* [2020] SGHC 271 at [60]).

310 Moreover, it is not sufficient that harm to the plaintiffs would be a likely, probable or even inevitable consequence of the defendants' conduct. Injury to the plaintiffs must have been intended by the defendants as a means to an end, or as an end in itself (*EFT Holdings* at [101]).

My findings

311 The plaintiffs' case on unlawful means conspiracy rests on the allegation that the defendants conspired to defraud them by making the Representations, which (according to the plaintiffs) presented a false picture of Healthstats International's viability (see [58] above).

312 In the present case, I have found that the Representations allegedly made by the defendants did not constitute actionable misrepresentations. Therefore, there is no unlawful act which the plaintiffs can rely on to establish an unlawful means conspiracy. In any event, the requirement of a combination is not satisfied as there is no evidence of "an agreement between [the defendants] to pursue a particular course of conduct, and that concerted action was taken pursuant to that agreement" (*EFT Holdings* at [113]). The plaintiffs have also not adduced sufficient evidence to show that the defendants *intended to injure them* as a means to an end, or as an end in itself.

313 Therefore, the plaintiffs' claim based on unlawful means conspiracy must fail.

The parties' credibility

314 The plaintiffs and the defendants both accuse each other of dishonesty and lying. Thus, I shall analyse the parties' credibility. In particular, the plaintiffs' counsel referred to *Jian Li Investments Holding Pte Ltd and others v Healthstats International Pte Ltd and others* [2019] SGHC 38 ("*Jian Li Investments*") in which Ang Cheng Hock JC (as he then was) observed at [99(b)] that Dr Ting and Mr Chua had not acted with candour and honesty.[449]

449 PCS at paras 14 and 468.

The applicable law

315 Section 54 of the EA provides as follows:

> **In civil cases character to prove conduct imputed irrelevant**
>
> **54.** In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

316 In *Ng Kong Yeam (suing by Ling Towi Sing (alias Ling Chooi Seng) and others) v Kay Swee Pin and another* [2019] SGHC 219 ("*Ng Kong Yeam*") at [36], the court was faced with the issue of whether the plaintiff in that case could refer to the prior court proceedings in which the first defendant was found to be untruthful and unreliable, to impugn the credibility of the first defendant. The court held at [37] that s 54 of the EA applied and stated at [38] that:

> [U]nless the plaintiff is able to identify a provision in the EA that would render the evidence on the first defendant's propensity to be dishonest relevant, such bad character evidence is irrelevant to the present proceedings. In the absence of such a provision, the first defendant should be allowed to defend the present proceedings on a clean slate, without any doubts cast on her credibility from the outset.

317 Indeed, the rationale behind s 54 of the EA has been explained by the High Court in *Rockline Ltd and others v Anil Thadani and others* [2009] SGHC 209 at [2]:

> Section 54 is not a shelter for bad character. In civil cases, as it is generally, the law protects a person from adverse findings against him only on the evidence that he was of bad character. Character in itself is an irrelevant fact. A person might be in breach of contract whether or not he was of good character; and conversely, a person of bad character might suffer a civil wrong inflicted on him by a person of good character. …

My findings

318 The plaintiffs submit that the defendants' evidence was "vague, ever-changing, internally inconsistent, externally inconsistent with each other, and almost always unsupported by any contemporaneous documentary evidence".[450] In support, they allege a host of contradictions in the defendants' accounts and explanations of the events. They further raise purported instances of the defendants' lack of candour in other cases.[451] In OS 666, Ang JC described, *inter alios*, Dr Ting and Mr Chua as having "not acted with candour and honesty": see *Jian Li Investments* at [99(b)]. In *Attorney-General v Lee Kwai Hou Howard, Xu Yuen Chen, Loh Hong Puey Andrew, Choo Zheng Xi, Lee Song Kwang and Ting Choon Meng* [2015] SGDC 114 at [73], the district judge described Dr Ting's testimony as "delirious, to say the least …".

319 Since OS 666 was begun by originating summons, the defendants' affidavits in that case would not have been tested by the rigour of a trial. Hence, the court's description of the defendants' credibility in OS 666 was based primarily on their affidavits. In this case, there was a long trial in which the defendants, Mr Yong and Ms Hwang were thoroughly cross-examined at great length by counsel.

320 It is apparent from my analysis in the sections above that there are inconsistencies in both the testimonies of the defendants and the testimonies of Mr Yong and the plaintiffs' witnesses who testified in court. The court has the unenviable task of navigating through the inconsistencies and contradictions carefully and of thoroughly "sift[ing] the grain from the chaff" in order to

450 PCS at para 465.

451 PCS at para 14.

ascertain the truths of the case: *Abdul Gani and others v State of Madhya Pradesh* AIR 1954 SC 31 at [10]. It is wrong to jettison the testimony of a witness because he has lied in a few areas. There is no rule of law that a witness's testimony must either be believed in its entirety or not at all. The court can accept one part and reject the other: *Public Prosecutor v Datuk Haji Harun Bin Haji Idris (No 2)* [1977] 1 MLJ 15 at 19.

321 In the present case, the evidence does not indicate that the defendants were patently dishonest or that they had intentionally lied. Their testimonies were also not delirious. Dr Ting was able to support his assertions at crucial times when the plaintiffs' counsel tried to show him up as a liar. For example, in response to the plantiffs' claim that Mr Yong had worn the BPro G2 during several visits to Dr Ting's clinic,[452] Dr Ting was certain that was not the case and that the truth would be in his clinical notes which the plaintiffs' counsel wanted him to produce. When Dr Ting produced his clinical notes the next day, they showed that he did not use the BPro G2 on Mr Yong and Ms Hwang as his patients.[453] Thus, Dr Ting was telling the truth. Mr Chua was also able to explain how the prototype BPro G2, *ie*, the BPro G1 with the cap, functioned with reference to documentary evidence showing its industrial design.[454]

322 As for the plaintiffs, there are serious inconsistencies in Mr Yong's testimony. For instance, Mr Yong said he did not want to proceed with the Sale and Purchase Agreement of the shares of Healthstats International's shareholders because of Winsan's financial instability or the adverse findings

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452 Transcript (29 July 2021) at p 106 line 10 to p 107 line 5; DCS at para 377.

453 Transcript (29 July 2021) at p 106 lines 22–25; Transcript (30 July 2021) at p 7 lines 4–20; Exhibits P1 to P12.

454 Transcript (3 August 2021) at p 125 line 1 to p 128 line 6; Exhibits D3.1 to D3.35.

from the due diligence exercise. Yet, Mr Yong nevertheless proposed two offers to Dr Ting: a convertible bond and the Proposed Share Swap. Mr Yong even actively went to look for investors and eventually caused Tupai to invest in Healthstats International. Hence, the plaintiffs' case paints different pictures of Mr Yong's enthusiasm in investing in Healthstats International.

323 In view of the inconsistencies in both the plaintiffs' and the defendants' cases, I have adopted a cautious approach in evaluating the plaintiffs' and the defendants' evidence above and I was especially advertent to reliable corroborative evidence in ascertaining the truth of the matter.

Conclusion

324 For the above reasons, I dismiss the plaintiffs' claims against the defendants. My findings are as follows:

(a) The plaintiffs have adduced sufficient evidence to prove that the alleged Regulatory Representation was made by the defendants, which may not be factually accurate, especially regarding the final version of the BPro G2.

(b) While the defendants do not deny making the Revenue Representation and the Product Representation, these were not false representations of fact.

(c) Even if the Representations were false representations of fact made by the defendants, the plaintiffs have not shown that these Representations played a real and substantial role in inducing them to make the Loans amounting to S$2.5m to Healthstats International, or in

inducing them to enter into the Subscription Agreement with Healthstats International.

(d) Therefore, the plaintiffs' claim based on misrepresentation fails.

(e) There is no unlawful act by the defendants on which the plaintiffs can rely to establish an unlawful means conspiracy. In any event, there is no evidence of the defendants' intention to injure the plaintiffs.

325 The plaintiffs are to pay costs to the defendants, to be taxed if not agreed.

Tan Siong Thye
Judge of the High Court

Nair Suresh Sukumaran, Yeow Guan Wei Joel and Bhatt Chantik Jayesh (PK Wong & Nair LLC) for the plaintiffs;
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