IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 284

Suit No 686 of 2015

Between

Wang Xiaopu

… Plaintiff

And

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

… Defendants

And

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

… Plaintiffs in Counterclaim

And

Wang Xiaopu

… Defendant in Counterclaim

JUDGMENT

[Contract] — [Misrepresentation] — [Action for rescission]
[Contract] — [Misrepresentation] — [Inducement]
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v
Goh Seng Heng and another

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30–31 October, 1–2, 5, 7– 9, 27–30 November 2018; 19 March, 21–24, 27–31 May 2019; 9 September 2019

5 December 2019 Judgment reserved.

Woo Bih Li J:

Introduction

1 The plaintiff, Mdm Wang Xiaopu ("Wang"), commenced Suit No 686 of 2015 against the first defendant, Dr Goh Seng Heng ("Goh"), and the second defendant, Dr Goh Ming Li Michelle ("Michelle"), for misrepresentations in relation to two agreements for the purchase of shares in Aesthetic Medical Partners Pte Ltd ("AMP").

2 Wang had entered into three agreements to purchase shares in AMP:

(a) a memorandum of understanding with Goh dated 17 October 2013 and signed on or about the same day ("the 1st MOU");

(b) a memorandum of understanding with Goh signed on 21 October 2013 but backdated to 17 October 2013 ("the 1st MOU (as amended)"); and

(c) a memorandum of understanding with Goh and Michelle dated 25 September 2014 ("the 2nd MOU").

Since the 1st MOU (as amended) superseded the 1st MOU, Wang's claims are in respect of the 1st MOU (as amended) and the 2nd MOU.

3 In the alternative, Wang claimed against Goh for breach of contract in respect of the 1st MOU (as amended) and against both defendants for breach of contract in respect of the 2nd MOU. None of the parties dispute that these agreements were binding on the parties thereto and meant to have legal effect. The defendants' counterclaim against Wang is for repudiatory breach of the 1st MOU (as amended) and the 2nd MOU.

Dramatis personae

4 For easy reference, I set out a table of the *dramatis personae* involved in these proceedings:

Abbreviation	**Individual**
For the plaintiff	
Chan	Chan Yue Kuan (who is also known as Denie) was an employee of AMP from July 2013.
Li	Li Ying is a translator and was an expert witness at the trial.
Loh	Loh Ne-Loon Nelson @ Luo Milun, Nelson is an investor and director of AMP.

Potter	Iain Cameron Potter is a Chartered Accountant in Singapore and England, and was an expert witness at the trial.
Reis	Justin Demetrio Reis was a shareholder and director of AMP.
Sun	Sun Huaiqing (who is also known as Alex) is the plaintiff's husband and is a shareholder, director and Chief Executive Officer ("CEO") of Guangdong Marubi Biotechnology Co Ltd.
Wang	Wang Xiaopu (who is also known as Lucy), the plaintiff, is a non-executive director and shareholder of Guangdong Marubi Biotechnology Co Ltd.
For the defendants	
Goh	Dr Goh Seng Heng, the first defendant, is a medical doctor and the founder of AMP. He continues to be a shareholder of AMP to date.
Lee	Lee Kin Yun was employed by Aesthetic Medical Partners Holdings Pte Ltd, a subsidiary of AMP, in various capacities including Chief Operating Officer, Group Vice Chairman and Chairman from April 2012 to July 2015. From July 2015 to February 2016, he was Interim Acting Group CEO of AMP. He is also a shareholder in AMP.
Lin	Madison Lin (formerly known as Lin Pei-Li) was Wang's relationship manager and an executive director at Standard Chartered Bank (Singapore) Ltd and a shareholder of AMP.
Michelle	Dr Goh Ming Li Michelle, the second defendant, is a medical doctor and the daughter of Goh. She was the CEO of AMP from October 2011 to June 2015 and was also a director. She continues to be a shareholder of AMP to date.

5 I mention at the outset that Sun was also involved in the discussions before the signing of any agreement by Wang and played a substantial role in these discussions. This was despite the fact that Wang was the named purchaser in the agreements. I will elaborate on Sun's involvement at [71] and [72] below. I will also make certain preliminary findings regarding Goh and Lin below at [70] and [73]–[75].

6 AMP was incorporated by Goh on 12 August 2008 to operate his medical practice in Paragon Shopping Centre, Singapore.[1] Goh then incorporated Aesthetics Medical Holdings Pte Ltd ("AMH") in 2010 to operate a chain of aesthetic clinics under the "PPP" brand.[2] In or around 2012, AMH became a wholly-owned subsidiary of AMP.[3] Goh served as Group Executive Chairman and director of AMP from 1 September 2008 to 2 February 2016.[4] Michelle served as CEO of AMP from October 2011 to June 2015,[5] and as a director of AMP from 1 January 2012 to 8 June 2015.

7 I also set out below the other companies that were involved in the events leading up to the legal proceedings:

Abbreviation	**Company**
GSHKML	GSHKML Pte Ltd is a company controlled by Goh and owned by his family members.

1 Goh's affidavit of evidence-in-chief ("AEIC") sworn on 12 September 2018 ("Goh's AEIC") at para 7.

2 Goh's AEIC at para 6.

3 Goh's AEIC at para 36.

4 Goh's AEIC at para 8.

5 Michelle's AEIC sworn on 12 September 2018 ("Michelle's AEIC") at para 46.

Liberty Sky	Liberty Sky Investments Ltd is a Seychelles-registered company and was a shareholder in AMP in 2014.
Marubi	Guangdong Marubi Biotechnology Co Ltd is a Chinese company involved in the business of facial and skincare products that was started by Wang and Sun in 2002.
RSP	Rock Star Partners Investments Limited is a company registered in the Cayman Islands and was a shareholder in AMP in 2013. It was involved in efforts to list AMP in Singapore and to expand AMP's business development in China.[6]
Star Titanic	Star Titanic Inc is a company controlled by Loh and Loh's cousin.

The undisputed facts

Events relating to the 1st MOU and the 1st MOU (as amended)

8 Wang was introduced to Goh sometime in October 2013 by Lin, who was then the relationship manager in charge of Wang's bank account with Standard Chartered Bank (Singapore) Ltd ("SCB").[7]

9 It was agreed that Wang, Sun, Goh, Lee and Lin were all present at a meeting held on board Goh's yacht ("the yacht meeting").[8] Michelle was not present. Although it was initially agreed that this meeting took place on 15 October 2013, the defendants changed their case partway through trial after Goh was called as a witness. This was when Lee gave his evidence to say that

6 Goh's AEIC at paras 16, 18.

7 Lead Counsel's Statement, Common Ground between Parties at para 4.

8 Lead Counsel's Statement, Common Ground between Parties at paras 5, 6.

the yacht meeting took place on 14 October 2013 instead. The defendants subsequently maintained in closing submissions that the yacht meeting occurred on 14 October 2013. My finding as regards this issue is set out below at [62] *et seq*.

10 Following the meeting, preparations were made for an investment by Wang and Sun in AMP. Several drafts of a memorandum of understanding were prepared by Lee and circulated to Lin and Goh.[9] This culminated in Wang signing the 1st MOU. The 1st MOU was superseded by the 1st MOU (as amended), which was signed on 21 October 2013 (but backdated to 17 October 2013) following a meeting in Guangzhou, China.[10] The details of the discussions leading to the signing of the 1st MOU and then the 1st MOU (as amended) were disputed and will be discussed below.

11 Under the 1st MOU and also the 1st MOU (as amended), Wang was to purchase 20,000 shares in AMP from Goh at the price of S$500 per share, for a total consideration of S$10m.[11] The 1st MOU (as amended) was in both the English and Mandarin languages, with both versions stipulated to have equal force.[12] The crucial provisions of the 1st MOU (as amended) for these proceedings are cll 1–3 and 6–7 of Annex A, which I will set out later.

12 The English version of the 1st MOU (as amended) was drafted by Lee.[13] There was some dispute as to who drafted the Mandarin version that was also

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9 Goh's AEIC at paras 71–73.

10 Notes of Evidence ("NEs") 22 May 2019, p 20 at lines 15–20.

11 1 Agreed Bundle ("AB") at p 220, Clause A.

12 1AB at p 221, Clause D and p 225-2, Clause D.

13 NE 30 October 2018, p 48 at lines 3–7.

signed (see the discussion below at [69]). In any event, for the legal proceedings, Wang obtained English translations of the Mandarin versions of the 1st MOU and the 1st MOU (as amended). I will refer to those translations as the "English Translations" of the 1st MOU and the 1st MOU (as amended) respectively. The English Translations that Wang relied upon were prepared by Li, her expert witness. There were differences between the English version (signed by the parties) and the English Translation of the 1st MOU (as amended), as I will elaborate on later.

13 The English versions and English Translations of the 1st MOU and the 1st MOU (as amended) are reproduced at Annexes A and B respectively.

14 At the time of the signing of the 1st MOU (as amended) on 21 October 2013, Goh had already entered into two separate agreements which would potentially reduce his shareholdings in AMP:

(a) First, he entered into a call option on 29 May 2012 granting a three-year call option to Julian Leslie Reis to purchase 32,895 shares in AMP at a price of S$152 per share ("the call option").[14] Julian Leslie Reis is the brother of Reis, the shareholder and director of AMP who is listed among the *dramatis personae* at [4] above.

(b) Second, he entered into a share purchase agreement dated 6 September 2013 with Star Titanic, under which Star Titanic agreed to purchase 50,000 shares in AMP for S$300 a share in two tranches ("the share purchase agreement").[15] The first tranche for 30,000 shares

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14 1AB at pp 77–88.

15 Loh's AEIC affirmed on 1 October 2018 ("Loh's AEIC") at para 9.

was completed on 18 September 2013, with the second tranche for 20,000 shares still outstanding at the time the 1st MOU (as amended) was signed.[16]

Neither of these agreements was disclosed to Wang prior to the signing of the 1st MOU or the 1st MOU (as amended).

15 The moneys due under the 1st MOU (as amended) were paid to Goh on 24 October 2013 and 4 November 2013. The share transfer for the 20,000 shares in AMP was effected around 30 October 2013, with Wang bearing the cost of stamp duty.[17]

16 Clause 3 of Annex A to the 1st MOU (as amended) entitled Wang to a certain amount of compensation if AMP's pre-tax profit in FY 2014 fell short of S$12m. On 1 August 2014, Lin forwarded to Wang an email from Lee stating that AMP's earnings before interest, tax, depreciation and amortisation ("EBITDA")[18] for the financial year was S$11,867,000, entitling her to a payment of S$110,000 under cl 3 of Annex A to the 1st MOU (as amended). Wang was offered an alternative form of compensation in the form of 123 additional shares in AMP.[19] Wang eventually elected not to insist on her right to compensation for the missed EBITDA target.[20]

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16 1AB at pp 210–216; Loh's AEIC at para 11.

17 Wang's AEIC affirmed on 12 September 2018 ("Wang's AEIC") at paras 85–87.

18 Potter's 1st AEIC affirmed on 12 September 2018 ("Potter's 1st AEIC") at Exhibit ICP-1 ("Potter's 1st Expert Report") at para 3.1.

19 Wang's AEIC at p 197.

20 Wang's AEIC at para 92.

Events relating to the 2nd MOU

17 Sometime in mid- to late 2014, Goh and other persons involved in the management of AMP (Loh, Michelle and Lee) discussed buying out a group of minority shareholders in AMP whom the parties referred to as the "angel investors" who collectively held about 20% of AMP's shares at the time.[21] Reis represented this group of angel investors.[22] Goh, Loh, Michelle and Lee wanted an investor with sufficient funds to buy out the angel investors' shares, and considered Wang and Sun to be ideal candidates.[23] Goh conveyed this proposal to Lin to pass on to Wang and Sun.[24]

18 On or around 15 August 2014, Wang and Sun met Lin in Singapore.[25] They were receptive to the idea of investing further in AMP. Further discussions followed. A meeting was held on 8 September 2014 in Guangzhou ("the 8 September 2014 meeting"), which was attended by Wang, Sun, Goh, Michelle, Lee, Loh and Lin. At this meeting, Wang and Sun agreed in principle to purchase the angel investors' shares in AMP from Goh at S$450 per share.[26] There was also an in-principle agreement for a joint venture to be operated in China.[27]

19 The terms of what was to become the 2nd MOU were the subject of various emails and discussions in the days following the 8 September 2014

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21 Goh's AEIC at paras 127, 129.

22 Reis' AEIC sworn on 2 November 2018 ("Reis' AEIC") at para 3.

23 Goh's AEIC at para 130.

24 Goh's AEIC at para 131.

25 Wang's AEIC at paras 100–101.

26 Wang's AEIC at paras 114–115.

27 Wang's AEIC at para 115; Goh's AEIC at para 142.

meeting.[28] At the same time, Goh (through Lee) was concurrently in discussions with Reis on the sale of the angel investors' shares to him. As it turned out, Goh intended to buy the shares of the angel investors first, and then onsell them to Wang at a higher price than what he would have to pay for the angel investors' shares.[29]

20 On 15 September 2014, Reis proposed selling 56,049 shares in AMP held by the angel investors to Goh at S$350 per share.[30] On the other hand, the price Goh offered to Wang was S$450 per share. The fact that Goh would be making a profit of S$100 per share from purchasing AMP shares from the angel investors and onselling them to Wang was not disclosed to Wang.[31]

21 The 2nd MOU was eventually signed on or around 25 September 2014. Clause 1 provided that Wang was to purchase 50,000 shares in AMP (owned by the angel investors) from Goh.[32] Clause 7 of the 2nd MOU obliged Goh and Michelle to work "fulltime" in AMP for a period of five years and not to compete with it for five years thereafter.

22 There were some differences as to the mechanics of how the transfer of the shares in AMP from the angel investors to Wang through Goh was to take place. It was eventually agreed that the shares were to be transferred and paid for in three tranches comprising 24,000, 22,000 and 4,000 shares respectively.[33]

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28 Wang's AEIC at paras 126–139.

29 Goh's AEIC at para 179–185.

30 Goh's AEIC at para 192.

31 Goh's AEIC at para 182.

32 1AB at pp 327–328.

33 Wang's AEIC at para 139.

Only the first two tranches were completed, with Wang taking the position on 10 March 2015 that she did not have to proceed with the purchase of the third tranche of 4,000 shares due to various breaches by Goh of the 1st MOU (as amended).[34]

23 The relevant provisions of the English version of the 2nd MOU are reproduced below at Annex C. Wang also provided an English translation of the Mandarin version of the 2nd MOU, but I do not include it in Annex C as the terms of the 2nd MOU are not in dispute and the parties' cases do not turn on any difference between the English and Mandarin versions of the 2nd MOU.

The parties' cases

The plaintiff's case

24 Wang's case against the defendants in relation to the 1st MOU (as amended) and the 2nd MOU was for misrepresentation and/or breach of contract.

The 1st MOU (as amended)

(1) The misrepresentation claim

25 Wang claimed that Goh made fraudulent misrepresentations under common law that induced her to enter the 1st MOU (as amended). Further, or in the alternative, the misrepresentations fell under ss 1 and 2(1) of the Misrepresentation Act (Cap 390, 1994 Rev Ed) ("MA").[35] She sought a

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34 Wang's AEIC at para 214.

35 Statement of Claim (Amendment No 3) dated 31 October 2018 ("SOC") at paras 105, 106; Plaintiff's closing submissions dated 15 July 2019 ("PCS") at paras 123–126, 143–145, 170–171.

declaration that the 1st MOU (as amended) was validly avoided and rescinded, or alternatively sought its rescission.[36]

26 Wang's position was that Lin introduced Goh to Sun and her on 15 October 2013 at AMP's office at Paragon Shopping Centre. They were also introduced to Michelle and Lee, following which they were given a tour of AMP's office and Goh's clinic. During this, Dr Goh was generally conversant in Mandarin and all conversations between those present were conducted in Mandarin. Following this, Wang and Sun accepted Goh's suggestion that they tour some of the "PPP" clinics with Lee. Wang and Sun eventually met up again with Goh that evening for a meeting on board Goh's yacht.[37]

27 Wang alleged three misrepresentations that were made by Goh during this meeting which induced her to enter into 1st MOU and later the 1st MOU (as amended):[38]

(a) First, Goh informed Wang that he had previously sold his shares in AMP for S$600–S$700 per share to other doctors and minority shareholders and that he was willing to sell Wang 20,000 shares at a discounted price of S$500 per share ("the discounted share price representation").[39]

(b) Second, Goh told Wang that he would not sell his shares in AMP to any other third party before AMP's initial public offering ("IPO")

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36 SOC at p 82.

37 Wang's AEIC at paras 15–23.

38 SOC at paras 26, 28, 29, 34, 36, 37.

39 PCS at para 103.

without Wang's consent ("the no further sale of shares representation").[40]

(c) Third, Goh stated that AMP had made pre-tax profits of S$10m in the previous year (*ie*, financial year 2013 ("FY 2013")), and that its pre-tax profit was growing at a rate of more than 30% a year ("the AMP business growth representation").[41]

28 The no further sale of shares representation was repeated by Goh once again during the meeting on 21 October 2013 in Guangzhou prior to the signing of the 1st MOU (as amended).[42]

29 While Michelle did not directly make any of the alleged misrepresentations, Wang's position was that Michelle should be deemed to have impliedly made them on the basis of her involvement in the transaction as the CEO of AMP.[43]

(2) The breach of contract claim

30 In the alternative, Wang claimed for breach of contract against Goh in respect of his contractual obligations under the 1st MOU (as amended), for breaches of cll 1–3, 6 and 7 of Annex A.

31 The English versions of cll 1–3 of Annex A stated as follows:[44]

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40 PCS at para 129.

41 PCS at para 149.

42 PCS at para 129(c).

43 PCS at para 319.

44 1AB at p 222.

> 1. [AMP] consolidated group sales revenue is projected to hit SGD30 million in FY 14 (1 July 2013 through 30 June 2014)
>
> 2. EBITDA projection for this period is SGD12 million.
>
> 3. In the event above SGD12 million EBITDA projection is not met, [Goh] will rebate pro-rated share value to [Wang]. The rebate will be in the same percentage of the shortfall in the EBITDA projection. Example : in the event there is a shortfall of package sales [EBITDA] target by 10%, [Goh] will compensate by returning 10% of the SGD10.0 million sale proceeds, which is SGD1.0 million. In the event of a shortfall of 1 %, [Goh] will return 1% of the SGD10 million sale proceeds, which is SGD 100,000.00

32 Clauses 1–3 of Annex A operated essentially as a profit guarantee to compensate Wang with a percentage of her investment if AMP's pre-tax profit (*ie*, EBITDA) for financial year 2014 ("FY 2014") fell short of S$12m. The term "EBITDA" referred to EBITDA calculated on an accrual basis, as was required by Singapore's accounting standards. Wang's case was that the figure of S$11,867,000 that Lin presented to Wang as AMP's EBITDA for FY 2014 was erroneous as it was calculated on a cash accounting basis and further inaccurately omitted Goh's remuneration of S$3.5m in FY 2014 as an expense (see [76] below for an elaboration on the two bases of calculating EBITDA). Properly calculated, AMP's true EBITDA shortfall was S$7,847,853, entitling Wang to compensation of S$6,539,877.50 from Goh under cl 3 instead of S$110,000.[45]

33 Clause 6 of Annex A to the 1st MOU (as amended) stated:[46]

> 6. After this final pre IPO round of 10,000 new shares, there will not be anymore sales of new shares without approval from [Wang] before the IPO.

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45 SOC at paras 119–120; PCS at paras 200, 209–210, 335.

46 1AB at p 222.

Wang's case was that Goh breached cl 6 on multiple occasions. Under cl 6, Goh could issue (under AMP) 10,000 new shares. He did so on 18 November 2014 but for a nominal price of S$1 for all the 10,000 shares rather than a fair price and without obtaining Wang's permission.[47] Goh also caused AMP to issue a total of 700 new shares to three employees of AMP without obtaining Wang's consent.[48]

34 Clause 7 of Annex A to the 1st MOU (as amended) stated:[49]

> 7. After the completion of [Wang's] shares purchase, [Goh] will not sell anymore vendor shares without the permission of [Wang].

Wang's case was that Goh breached cl 7 by selling shares on seven different occasions without Wang's permission.[50]

The 2nd MOU

(1) The misrepresentation claim

35 Wang's claim in respect of the 2nd MOU was likewise premised on both fraudulent misrepresentation under common law and misrepresentation under ss 1 and 2(1) of the MA. She alleged three misrepresentations made by the defendants that induced her to enter into the 2nd MOU:

> (a) First, the erroneous EBITDA figure for FY 2014 (see [32] above) and compensation calculation for the EBITDA shortfall under the 1st

47 SOC at paras 120A, 120B(a); PCS at paras 339–341.

48 SOC at paras 120B(b)–120B(c); PCS at para 342.

49 1AB at p 222.

50 SOC at paras 102–103 and 121–122; PCS at para 351.

MOU (as amended) was conveyed to Wang by Lin on Goh's behalf on 1 August 2014. The FY 2014 EBITDA figures that were communicated by Lin were presented on a cash accounting basis and also omitted Goh's remuneration for that year (see below at [42]). Taken together with the parties' agreement that the term "EBITDA" in the 1st MOU (as amended) would be calculated based on Singapore's accounting standards, this presented a false picture of AMP's financial health to Wang to persuade her to purchase the angel investors' shares in AMP ("the August 2014 EBITDA representation").[51]

(b) Second, Goh represented to Wang at the meeting on 8 September 2014 that the angel investors were only willing to sell their shares at S$450, when in reality they were content to sell at a price of S$350 ("the AI share price representation").[52]

(c) Third, Goh impliedly represented that he would continue to adhere to his previous undertaking not to sell any more of his shares in AMP without Wang's permission ("the second no further sale of shares representation").[53] Lin had informed Wang on behalf of Goh on 1 September 2014 that following the purchase of the angel investors' shares, Wang, Goh and RSP would be the three major shareholders of AMP with 25.8%, 39.5% and 34.8% shareholdings respectively.[54] This representation was false as Goh, having sold some of his shares in AMP, held 21.91% of AMP's shares when the 2nd MOU was entered

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51 SOC at para 49; PCS at paras 173–175, 213.

52 SOC at para 51; PCS at para 221(a).

53 SOC at para 53; PCS at paras 221(b), 275, 284.

54 PCS at para 275.

into.[55] Goh sold more of his AMP shares on several occasions after entering into the 2nd MOU.[56]

36 In the alternative, Wang submitted that in the course of the implementation of the 2nd MOU, Goh offered to transfer 22,000 of his own shares in AMP to Wang first before later acquiring the same amount of shares from the angel investors. This was to avoid any delay in Wang receiving the second tranche of shares. At this time, Goh had no intention of buying back the 22,000 shares in AMP from the angel investors due to the precarious financial situation that AMP was in at that time ("the second tranche representation").[57]

(2) The breach of contract claim

37 In the alternative, Wang claimed against the defendants for breach of contract in respect of the 2nd MOU.[58] Her claim rested on two grounds.

38 First, Goh breached an implied obligation under the 2nd MOU not to sell his shares in AMP without Wang's consent when he sold 32,049 shares in AMP to Liberty Sky on 11 December 2014.[59]

39 Second, cl 7 provided that Goh and Michelle would continue working in AMP for five years after 25 September 2014:[60]

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55 PCS at para 284(b).

56 PCS at para 285.

57 SOC at para 104; PCS at paras 292–300.

58 SOC at para 125.

59 SOC at para 129; PCS at paras 350–351.

60 1AB at p 327.

> 7. [Goh] and Key management must continue to work fulltime in [AMP] for at least 5 years and non-compete for 5 years thereafter. This 5 + 5 years' service contract and non compete clause will be null and void when any of the following takes place:
>
> i. Upon IPO, Trade Sale or Liquidity Event of similar scale or
>
> ii. Upon either [Wang] or RSP selling more than 5% shares of [AMP]

The defendants breached cl 7 when Goh and Michelle resigned from AMP on 2 February 2016 and 30 June 2015 respectively.[61]

The defendants' case

The 1st MOU (as amended)

(1) The misrepresentation claim

40 Goh initially deposed that his first meeting with Wang took place on 15 October 2013 at his clinic in Paragon Shopping Centre.[62] At trial, Goh similarly testified that he met Wang on 15 October 2013, and that she visited the PPP clinics and boarded his yacht on that day.[63] However, when Lee gave evidence, he said that the initial meetings and the yacht meeting took place on 14 October 2013 instead. I will elaborate later on the reasons for this change of position for the defendants. In their closing submissions, the defendants maintained that the initial meetings with Wang took place on 14 October 2013 instead, and that Goh met Wang and Sun on board his yacht on the same evening

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61 SOC at para 128; PCS at paras 355–356.

62 Goh's AEIC at para 62.

63 NE 21 May 2019, p 39 at lines 22–24 and p 40 at lines 12–22.

with Lee and Lin.[64] During this meeting, the parties discussed going into business together. Lin assisted in translation, as Goh and Lee were only able to speak basic conversational Mandarin.[65]

41 Goh denied making any of the three alleged representations. Even if he were found to have made the alleged representations, they were not actionable. Wang did not rely on any of the alleged representations in entering into the 1st MOU and later the 1st MOU (as amended).[66] The no further sale of shares representation was true as Goh held the honest intention not to sell his shares without Wang's permission after the signing of the 1st MOU (as amended).[67] The AMP business growth representation was also substantially true.[68]

(2) The breach of contract claim

42 Goh's main defence was that the parties agreed that the term "EBITDA" in cll 1–3 of Annex A to the 1st MOU (as amended) (reproduced above at [31]) referred to EBITDA calculated on a cash basis.[69] Goh argued in the alternative that Wang had waived her right to compensation under cl 3 of Annex A to the 1st MOU (as amended).[70] As for the restructuring of Goh's remuneration of S$3.5m for FY2014, this was carried out in a transparent manner and disclosed

64 Defendants' closing submissions dated 5 August 2019 ("DCS") at para 28.

65 DCS at para 29.

66 DCS at paras 137–139, 156–159, 174–177.

67 DCS at paras 148–150.

68 DCS at paras 165–173.

69 DCS at para 200.

70 DCS at para 194.

to independent third-party advisors such as Maybank Kim Eng Securities ("Maybank") and KPMG LLP ("KPMG").[71]

43 While Goh admitted at trial that he was in breach of cl 6 of Annex A the 1st MOU (as amended) (reproduced above at [33]) by causing 10,000 new shares in AMP to be issued at the nominal price of S$1 for all the 10,000 shares, he argued in submissions that any breach of cl 6 was a legal question. The plain wording of cl 6 did not impose any restriction on the party to whom the new shares could be issued or the price at which they could be issued.[72] As for the issuance of 700 new shares in AMP to its employees, this was done on 14 July 2015, after Wang had sought to rescind the 1st MOU (as amended) on 18 May 2015.[73] As Goh had himself rescinded the 1st MOU (as amended) on 25 May 2015 based on Wang's alleged repudiation caused by her attempt to rescind on 18 May 2015, the 1st MOU (as amended) was no longer binding on the parties.

44 Finally, as for cl 7 of Annex A to the 1st MOU (as amended) (reproduced above at [34]), Goh's position was that it did not prohibit him from fulfilling his pre-existing contractual obligations under contracts entered into before the 1st MOU (as amended) was signed.[74] Wang was also aware of Goh's strategy of selling shares in AMP to its employees as an incentivisation strategy and the prohibition in cl 7 was not meant to cover such sales. However, Goh admitted that he had breached cl 7 of Annex A to the 1st MOU (as amended) on two occasions by selling (a) 527 shares to a person named Carolyn Wong on or

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71 DCS at para 187.

72 DCS at para 304.

73 DCS at para 307; 10AB at p 5127.

74 DCS at para 308.

around 20 December 2013 and (b) 32,049 shares to Liberty Sky on or around 25 November 2014.[75]

The 2nd MOU

(1) The misrepresentation claim

45 Goh argued that the August 2014 EBITDA representation was true and he had reasonable grounds to believe in it.[76] EBITDA for the purposes of cll 1–3 of Annex A to the 1st MOU (as amended) was to be calculated on a cash basis. As for the omission of Goh's remuneration of S$3.5m for FY 2014, Goh claimed that this restructuring was done for the purposes of preparing for an IPO and was carried out in a transparent manner, with disclosure being made to third-party advisors.[77] Even if EBITDA for FY 2014 was to be calculated on an accrual basis, it correctly excluded Goh's remuneration for services rendered in FY 2014.[78] In any event, Wang did not rely on the August 2014 EBITDA representation in entering into the 2nd MOU.[79]

46 Goh also denied having made the AI share price representation. Goh's position was that he did not inform Wang that the angel investors were only willing to sell their shares at S$450 per share.[80] Loh was the person who first informed Wang at the 8 September 2014 meeting that the angel investors were seeking an internal rate of return of 25%, which worked out to S$450 per share.

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75 DCS at para 309.

76 DCS at para 180–182.

77 DCS at para 183–189.

78 DCS at para 191–193.

79 DCS at para 204–205.

80 DCS at para 228.

Goh merely repeated what Loh had said.[81] Goh also argued that Wang did not rely on the AI share price representation when entering into the 2nd MOU.[82]

47 For the second no further sale of shares representation, Goh's position was that Wang's case had changed in the course of the proceedings.[83] Also, the representation could not be implied based on Wang's pleaded position.[84] Wang was also in any event not induced by the representation.[85]

48 Finally, in respect of the alleged second tranche representation, Goh claimed that the representation was true as he held the honest intention to buy back 22,000 shares in AMP from the angel investors after he transferred 22,000 of his own shares to Wang.[86] In any case, the second tranche representation concerned the mechanics of how Wang was to receive the shares and Wang did not rely on it to her detriment, since she did receive the 22,000 shares even though the share did not come from the angel investors.[87]

(2) The breach of contract claim

49 Goh denied having breached cl 7 of the 2nd MOU (reproduced above at [39]). Wang had committed a repudiatory breach of the 2nd MOU by refusing to complete the purchase of shares in AMP. Goh accepted the repudiation of the

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81 DCS at para 229.

82 DCS at para 235.

83 DCS at para 243–245.

84 DCS at para 246–250.

85 DCS at para 251–253.

86 DCS at paras 259–270.

87 DCS at paras 271–274.

2nd MOU by email on 12 April 2015. The 2nd MOU was thus terminated by the time Goh and Michelle resigned from AMP.[88]

Counterclaim

50 Goh counterclaimed against Wang for repudiatory breach of the 1st MOU (as amended) and both defendants counterclaimed against Wang for repudiatory breach of the 2nd MOU. In a letter sent by her solicitors dated 18 May 2015, Wang had purported to avoid and rescind both agreements based on Goh's misrepresentations. According to the defendants, Wang was in repudiatory breach of both agreements as her misrepresentation claims against them were not valid. The defendants accepted her repudiatory breach by a letter dated 25 May 2015.[89]

51 In the alternative, the defendants submitted that Wang's refusal to complete the purchase of the third tranche of 4,000 shares in AMP pursuant to cl 1 of the section of the 2nd MOU titled "For [AMP] shares" on 10 March 2015 constituted a repudiatory breach, which was accepted in an email dated 12 April 2015.[90] The defendants counterclaimed against Wang for breach of contract when she refused to complete the purchase of the third tranche of shares.

The applicable law on misrepresentation

52 The requirements for a claim in fraudulent misrepresentation were set out by the Court of Appeal in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 ("*Panatron*") at [14]:

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88 DCS at paras 310–312

89 DCS at para 315.

90 DCS at para 317.

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

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

(c) it must be proved that the plaintiff had acted upon the false statement;

(d) it must be proved that the plaintiff suffered damage by so doing; and

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

Implicit in the first requirement is that the representation must be false. In this regard, it is sufficient that the representation be substantially false: *Ernest Ferdinand Perez De La Sala v Compañia De Navegación Palomar, SA and others and other appeals* [2018] 1 SLR 894 ("*Ernest Ferdinand Perez*") at [173]. Where a representation is ambiguous and capable of more than one meaning, the representee must prove how he understood it and that, so understood, the representation was false: K R Handley, *Spencer Bower & Handley: Actionable Misrepresentation* (LexisNexis, 5th Ed, 2014) ("*Spencer Bower*") at para 4.14.

53 The MA supplements the remedies afforded to victims of non-fraudulent representation by the common law. Section 1 of the MA allows for the rescission of such contracts. Section 2(1) enables the victim of a non-fraudulent misrepresentation to claim damages as if the misrepresentation were made

fraudulently unless the representor can prove that he had reasonable grounds to believe and did believe up to the time of the contract that the facts represented were true.

54 It is important to distinguish between a representation and a promise. A representation must relate to a fact which has occurred or exists: see *Spencer Bower* at para 2.10; see also *Bestland Development Pte Ltd v Thasin Development Pte Ltd* [1991] SGHC 27. A promise, on the other hand, is simply an undertaking to do something.

55 As regards the requirement that the representee be induced by the misrepresentation, it is sufficient that the misrepresentation plays a real and substantial part in contributing to the course of action taken by the representee. It is not a requirement for the representee to show that the misrepresentation was the sole cause for entering into the agreement: see *Panatron* at [23]; see also *Spencer Bower* at para 6.09.

56 Several complications arise in the present proceedings as Wang's case against Goh rested partially on instances of implied representations, silence, omissions and concealment of material facts.

57 Addressing first the issue of implied representations, it has long been understood that representations can be implied as part of what is stated by a representor. The test for an implied representation is set out in *Spencer Bower* at para 3.04:

> … The court has to consider what a reasonable person would understand was being conveyed by the words and conduct in question, or would infer from them. …

Examples include (*Spencer Bower* at para 3.04):

> … the implied representation that a person expressing an opinion 'knows facts which justify his opinion,' the representation by a buyer ordering goods that he intends to pay for them, the representation by a patron at a restaurant that he has the means and intention of paying for it before he leaves, the representation implied in a claimant's pleadings that he honestly believes he has a fair chance of success, and the implied representation by a vendor that the bidding at an auction is genuine.

58 One notable scenario in which implied representations have been found to arise involves situations where the representor makes a representation as to the future. While such representations are not, by themselves, actionable misrepresentations, they may amount to actionable implied misrepresentations. For instance, in *Ernest Ferdinand Perez* at [172(b)], the Court of Appeal, citing *Tan Chin Seng v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 at [12], opined that a person who states an intention as to the future implicitly represents that he in fact has that intention at the time the statement is made. If it can be shown that, at the time the statement of intention was made, the person who made it had no intention of doing what he asserted he would do, there would be a misrepresentation of that person's state of mind: *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) ("*The Law of Contract in Singapore*") at para 11.040.

59 Mere silence alone will not suffice to found a claim in misrepresentation: *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 at [65]. However, silence may in certain circumstances be capable of amounting to a representation. The following passage from the Court of Appeal's decision in *Broadley Construction Pte Ltd v Alacran Design Pte Ltd* [2018] 2 SLR 110 at [28] is instructive:

> The law has always been cautious in ascribing legal significance to a party's silence. … Silence, being passive conduct, and

> inherently lacking the definitive quality of an active statement, is rarely considered sufficient to amount to a representation. But the courts have also made it clear that silence can in appropriate circumstances acquire a positive content and amount to a representation. Such cases have been characterised as situations where there is a duty on the alleged representor to speak or disclose certain facts, and in cases of misrepresentation, that failure to do so renders a statement previously made by the representor false or (more rarely) itself constitutes a false statement. Such a duty may arise out of the relationship of the parties and/or other circumstances in which the silence is maintained, and is to be assessed by reference to how a reasonable person would view the silence in the circumstances. …

60 This makes clear that where a misrepresentation claim is brought on the basis of alleged silence, omission or concealment, the plaintiff must show that a statement made is true only with qualifications known to and withheld by the representor: *Spencer Bower* at para 4.17. To succeed in his claim on this basis, the representee must show that the omission makes what is stated misleading: *Spencer Bower* at para 4.19. Ultimately, the court must closely scrutinise the facts to determine that, in the circumstances, a duty to speak on the part of the representor has arisen. It is only in such situations that an actionable misrepresentation may be found from a failure to speak.

The decision

Preliminary findings

61 I now make some preliminary findings.

62 First, I find that the date of the yacht meeting, which was an issue of contention between the parties, was 15 October 2013. The date of this meeting is of some importance as it went towards whether certain representations were made on a certain date, as will be elaborated on below.

63 The parties proceeded on the premise that the yacht meeting took place on the same day that Wang and Sun visited Goh at AMP's office and Goh's clinic ("the Paragon clinic") which were both at Paragon Shopping Centre, before Wang and Sun visited two PPP clinics on the same day. Wang's position was that the visits were on 15 October 2013, and likewise that the yacht meeting took place on 15 October 2013; they all occurred on the same day. The defendants initially accepted in their pleadings that the yacht meeting took place on 15 October 2013. It was also agreed in the affidavits of evidence-in-chief ("AEICs") of Goh, Lee and Michelle and in the parties' lead counsel's statements that the yacht meeting was held on 15 October 2013, being the same day as the initial meetings and visits.[91] Goh himself testified at trial that the yacht meeting took place on 15 October 2013.[92] It was only after Lee took the stand as a witness during the defendants' case that the defendants took the position that the yacht meeting took place on 14 October 2013 instead.

64 Wang submitted that the defendants belatedly changed their evidence in view of the Whatsapp messages sent by Goh on 15 October 2013, which discussed pricing the AMP shares to be sold to Wang at S$650 per share. If the yacht meeting had occurred on 14 October 2014, it would lend credence to the defendants' argument that the discounted share price representation had not been made, since it would have been "illogical" for Goh to continue discussing a higher share price a day after the representation was made.[93]

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91 Plaintiff's Reply Submissions dated 19 August 2019 ("PRS") at para 41; Goh's AEIC at para 63; Lee's AEIC at para 45; Michelle's AEIC at para 53.

92 See Defence and Counterclaim (Amendment No 4) dated 8 November 2018 at paras 20–25; Goh's AEIC at paras 62–70; see also NE 21 May 19, p 35 at line 21 – p 36 at line 2.

93 PRS at para 38.

65 However, Goh pointed to several pieces of evidence purportedly showing that the yacht meeting took place on 14 October 2013:[94]

(a) First, email correspondence between Goh, Lee and Lin from 27 September 2013 to 13 October 2013 arranging for Wang and Sun to visit AMP's office, the Paragon clinic and the PPP clinics on 14 October 2013.[95] Lin also testified at trial to finding an electronic calendar invitation for the yacht meeting that was scheduled for 14 October 2013.[96]

(b) Second, it was unlikely that Wang and Sun's visit to the AMP office, the Paragon clinic and the PPP clinics (which allegedly occurred on the same day as the yacht meeting) could have taken place on 15 October 2013 as the defendants realised that that day was a public holiday. According to Lee, it was unlikely that Wang would have visited AMP's office on that day as there would be no air-conditioning in the office, and the Paragon clinic and the PPP clinics would also have been closed.[97] Lee recalled that the Paragon clinic was open for "business as usual" on the day that Wang visited.[98] Since the yacht meeting was on the same day as the initial visits, which must have been on 14 October 2013, the yacht meeting was therefore on 14 October 2013 too.

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94 DCS at paras 77–81.

95 1AB at pp 501–502.

96 NE 29 May 2019, p 22 at lines 15–20.

97 NE 28 May 2019, p 148 at lines 5–17, p 160 at lines 2–4.

98 NE 28 May 2019, p 148 at line 22 – p 149 at line 2.

(c) Third, there were emails and Whatsapp messages showing that the yacht meeting took place on 14 October 2013. First, on 14 October 2013 at 10.34pm, Goh discussed in an email to Lee and Lin his impression of Wang and Sun, stating, "This couple gives good vibes."[99] Second, a Whatsapp message sent from Lee to Goh on 14 October 2013 at 10.35pm stated that "[Wang and Sun] asking a lot of questions in car on share pricing. Definitely interested."[100] These suggested that Goh must have met Wang and Sun on 14 October 2013.

I also note that Wang claimed to have visited AMP's office on 15 October 2013 after collecting her Singapore Permanent Resident card on the same day.[101] However, the Immigration and Checkpoints Authority would have been closed on 15 October 2013 as it was a public holiday.

66 On the other hand, even if Wang had visited AMP's office, the Paragon clinic and the PPP clinics on 14 October 2013, it does not necessarily follow that the subsequent meeting at Goh's yacht was on the same day and not on 15 October 2013, although the parties proceeded on the premise that the yacht meeting was on the same day.

67 There was evidence suggesting that the yacht meeting had eventually taken place on 15 October 2013 even though the earlier intention might have been to have it on 14 October 2013. Whatsapp messages were sent from Goh to

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99 1AB at p 506.

100 1st Supplementary Agreed Bundle Vol 6 ("6SAB") at p 66.

101 Wang's AEIC at para 15.

Lee on 15 October 2013 discussing preparations for bringing Wang and Sun on board Goh's yacht:[102]

> [15/10/13, 3:06:28 PM] [Goh]: [Lee], check with [Lin] whether we can engage [Wang and Sun] again for further deal progress
>
> …
>
> [I] am ok today till night close
>
> [15/10/13, 3:08:13 PM] [Lee]: Ok will do
>
> …
>
> [15/10/13, 4:32:18 PM] [Goh]: cool… [I] on standby. [B]est is bring them to an evening cruise. [M]y night camera vision working already
>
> …
>
> [15/10/13, 5:52:06 PM] [Goh]: ok. [Lin] will arrive by 615. [W]ill strategize with her approach
>
> drive slowly to reach at 630pm
>
> [15/10/13, 5:53:45 PM] [Goh]: try to close deal if we can n then cheong with products immediately…. heehee
>
> …

The above exchange demonstrates that as of the afternoon of 15 October 2013, Goh and Lee were still making arrangements to have a meeting with Wang and Sun on board Goh's yacht. This is strong evidence of the yacht meeting having taken place on 15 October 2013. When presented with the transcript of messages, Lee testified that Goh brought Wang and Sun on the yacht on both 14 and 15 October 2013 but acknowledged that there was no other evidence that there were meetings on two days on board the yacht.[103]

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102 6SAB at p 67.

103 NE 27 May 2019, p 35 at line 12 – p 37 at line 7.

68 In the circumstances, I am satisfied on a balance of probabilities that Wang and Sun had visited AMP's office, the Paragon clinic and the PPP clinics on 14 October 2013 and that the yacht meeting took place on 15 October 2013. I would briefly add that although both sides seemed to proceed on the basis that Wang's visits took place on the same day as the yacht meeting, the objective evidence pointed towards Wang having met Goh on both days (*ie*, 14 and 15 October 2013). Furthermore, the yacht meeting was on one day and not both days. It is unsurprising that both sides mistakenly proceeded on the premise that all the meetings, before the 1st MOU was signed, took place on the same day as the events occurred several years ago. They had overlooked the fact that 15 October 2013 was a public holiday and the emails of 15 October 2013 referring to an intended yacht meeting on 15 October 2013.

69 There was dispute about the substance of the Mandarin version of the 1st MOU (as amended) and who drafted it. Goh testified that the Mandarin versions that he agreed to had initially been drafted by one Chen Xiaoping. However, the Mandarin version of the 1st MOU (as amended) that he eventually signed was a "fraudulent Chinese edition" that had been amended by a person named Fu Kai.[104] The issue of Fu Kai's involvement in the events leading to the signing of the 1st MOU (as amended) was first raised at trial only when Goh gave oral testimony.[105] Fu Kai was a Marubi employee who was apparently present at the 21 October 2013 meeting in Guangzhou but his/her exact role was disputed by the parties. Wang was not cross-examined about the identity and role of Fu Kai. When Goh and eventually Lin referred to Fu Kai in their testimonies, Wang's position, through her counsel, was that Fu Kai was a female

104 NE 22 May 2019, p 14 at line 19, p 30 at lines 7–14, p 103 at lines 16–24.

105 NE 21 May 2019, p 132 at lines 18–24.

temporary staff who was not legally trained and who did not draft the Mandarin version of the 1st MOU (as amended).[106] On the other hand, Lin stated that Fu Kai was a male and was Marubi's in-house counsel.[107] It is not necessary for me to conclude who Fu Kai was and that person's role at the 21 October 2013 meeting because, in any event, I disbelieve Goh's allegation that he did not understand the Mandarin version of the 1st MOU (as amended) that he signed. The allegation was not pleaded and was also only raised at a late stage, after Wang and Sun had given their evidence.[108]

70 Goh's allegation that he did not understand the Mandarin version of the 1st MOU (as amended) that he signed was also premised on his alleged lack of proficiency in Mandarin. However, I do not find that Goh's command of Mandarin was as weak as he suggested, even though I accept that Lin did translate Mandarin terms to him during his discussions with Wang. Loh gave evidence that Goh was proficient in Mandarin and was accustomed to using complex Mandarin words and phrases in his communications and on social media. Loh provided evidence in the form of Facebook posts made by Goh containing Mandarin idioms and poems.[109] As against this, Goh explained that he had obtained the various Mandarin idioms and poems using Google translation software. I do not accept this explanation. Mandarin idioms often convey ideas and concepts which are not readily ascertainable from their literal meaning. It does not appear to me likely that Goh obtained these idioms by translating his intended posts from English to Mandarin with the help of

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106 NE 21 May 2019, p 133 at lines 1–4; NE 24 May 2019 at p 119 at line 24 – p 120 at line 1; NE 30 May 2019, p 8 at lines 17–25 and p 10 line 25 – p 11 line 1.

107 NE 29 May 2019, p 143 at line 19 – p 144 at line 15.

108 NE 22 May 2019 at p 104 lines 15–25.

109 Loh's AEIC at pp 14–21.

translation software. The use of such software would also not explain why some of Goh's posts were in a mixture of Mandarin and English.[110] If Goh had indeed been using translation software, it would have made more sense to have the entire post translated, rather than the part of it which was coincidentally translated into a Mandarin idiom. Furthermore, as noted in the plaintiff's closing submissions, there was an instance of Goh reading out and translating Mandarin terms unaided during cross-examination.[111] Taken together, I am satisfied that Goh was untruthful about his Mandarin ability which was actually fairly good. While he may not have had the proficiency of Lin or Wang, his proficiency in Mandarin was not as poor as he claimed. He was not as incapable of communicating in Mandarin as he was attempting to convey to the court.

71 I turn now to consider the other persons involved in the case. As stated above at [5], I find that even though it was Wang who entered into the 1st MOU (as amended) and the 2nd MOU, Sun had a substantial part to play in her decisions to do so. While Sun attempted to characterise his role as being essentially passive, with Wang making most of the decisions, this was not borne out by the evidence. Sun was present at all meetings between Wang and Goh and played an active role in negotiations, even by the account of Wang's witness, Loh.[112] Although some messages were sent between Lin and Wang, and Lee and Wang, it appears from internal emails exchanged between Goh, Lee and Lin that they regarded Sun as the chief decision-maker.[113] To illustrate, an

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110 Loh's AEIC at p 14.

111 PCS at para 42; NE 21 May 2019, p 37 at lines 11–21.

112 NE 19 Mar 2019, p 7 at lines 13–22.

113 See DCS at p 120, Annex 6; *eg*, 1AB at pp 530, 556, 558.

email on 16 October 2013 that was sent from Lee to Lin and Goh (copying Michelle) discussing a draft of the 1st MOU stated:[114]

> Hi [Lin] & [Goh]
>
> Pls vet simple draft MOU for [Sun]. Once ok, we will do a Chinese version.
>
> …

Similarly, when discussing the sale of shares to Wang that was to be pursuant to the 2nd MOU, Lin sent an email to Loh, Lee and Goh on 14 September 2014 that indicated that it was important that Sun believed that the AMP shares were justifiably priced at S$450 per share:[115]

> …
>
> We went into the story [Reis] sell [Goh] n [Goh] sell to Marubi, back -to-back. And this story was naturally ok becoz all shares gotta sell back to [Goh] before IPO. And [Sun] ok with this. … all along our agreement both English n Chinese are he will buy from [Goh] total 57,049 shares ([Reis] & minority). And he had no problem with this sentence until yesterday???
>
> …
>
> And we justify the 450 ps becoz of IRR [*ie*, internal rate of return] 25% which equals to 430 and we settled at 450 due to 10% discount from bid price 570ps. In addition, we gave [Sun] another 10% for his personal side. So PLEASE- we fully justify our price. … Nelson - have you given proof to [Sun] why IRR is 430? …
>
> …

72 It follows that Sun's state of mind is relevant for the purposes of Wang's misrepresentation claim in determining whether she was induced by any particular representation to enter into the 1st MOU (as amended) or the 2nd MOU. For convenience, this judgment will only refer to the representations as

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114 1AB at p 560.

115 6AB at p 2902; NE 19 Mar 2019, p 116 at lines 4–7.

having been made to Wang. Such references to Wang alone should be understood to refer to both Wang and Sun, or to Wang alone but on the assumption that she would have discussed the matters with Sun in any event.

73 I also find that Lee and Lin were acting as Goh's agents when they communicated with Wang on Goh's sale of shares in AMP under the 1st MOU, the 1st MOU (as amended) and the 2nd MOU. This is relevant to Wang's claim as a misrepresentation can be made on behalf of a principal by his agent: *The Law of Contract in Singapore* at para 11.008.

74 As for Lin, she was Wang's relationship manager and an Executive Director at SCB (see the table at [4]). She resigned from SCB in 2014 and currently resides in Switzerland. On 27 June 2015, Lin corresponded with Wang's solicitors via emails (which were admitted and marked as Exhibit P18), and discussed a meeting that she attended with Wang's solicitors. It appears that Wang contacted Lin around this period to ask Lin to assist with Wang's legal case against the defendants. Lin initially cooperated with Wang and executed a statutory declaration dated 23 July 2015 ("Lin's SD", admitted and marked as Exhibit P19). However, Lin was initially reluctant to be a witness for Wang and expressed a preference not to be involved in the legal proceedings. In 2019, Lin changed her mind and contacted Wang's solicitors to ask if they needed her assistance, copying Goh. After Wang's solicitors declined Lin's offer, Goh's solicitors approached Lin to ask if she was willing to testify for Goh. Lin eventually agreed to be a witness for Goh.[116] She then swore an AEIC dated 21 May 2019 that was admitted at trial and gave oral testimony.

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116 Lin's AEIC sworn on 21 May 2019 ("Lin's AEIC") at paras 3–9.

75 In her oral testimony, Lin made some amendments to her SD. Even then, Lin's SD, as amended, differed in various aspects from the evidence in her AEIC and in her substantive testimony at trial, as I will elaborate below (see [92]). For instance, Lin sought to correct the use of certain terms in her SD, replacing "financial figures" (at para 29) with "numbers", and "EBITDA" (at para 30) with "sales figures".[117] Although Lin explained that these errors occurred because she was unaware of the need for words to be "accurate" when she executed her SD,[118] I do not find this convincing. As an investment banker holding the senior position of Executive Director at SCB, Lin would have been well-versed in financial concepts, particularly those such as EBITDA. She would also have been aware of the importance of ensuring that whatever she stated in her SD was accurate especially since she was aware that legal proceedings were afoot. It appears to me that Lin was attempting to temper the damage her SD might do to the defendants' case in the guise of clarifying her evidence. The discrepancies between Lin's SD and her later evidence led to Wang relying heavily on Lin's SD to challenge the evidence in Lin's AEIC and her oral evidence. Generally, I find Lin's evidence as set out in her SD to be more credible than her evidence in her AEIC and at trial, especially given that she did not adequately explain her changes in position.

76 I briefly define the accounting terms as used by the parties. Goh's evidence was that AMP sold its customers packages of a fixed number of skincare treatment sessions.[119] The parties referred to two bases of accounting to calculate AMP's revenue: (a) the "cash accounting" basis (which the parties

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117 NE 29 May 2019, p 45 at lines 2–6, p 46 at lines 8–10.

118 NE 29 May 2019, p 44 at lines 9–18.

119 Goh's AEIC at paras 28, 93, 252.

also referred to as the "top line sales", "cash sales" or "package sales" basis); and (b) the "accrual" basis. Which accounting basis was used would affect how AMP's revenue was calculated:

(a) Revenue calculated on a cash accounting basis takes reference to when cash is received from a customer. In this case, if the cash accounting basis were used, AMP would calculate revenue based on when its customers made lump sum advance payment for treatment packages even if they were yet to be redeemed.[120]

(b) On an accrual accounting basis, revenue is recognised by reference to the stage of completion of a transaction at the end of the reporting period.[121] In this context, the revenue derived from the package sales would be deferred until AMP's services were redeemed.[122]

77 Revenue that is calculated on a cash accounting basis would generally be higher than that calculated on an accrual basis. The parties' understanding of these accounting methods will be discussed further below.

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120 Potter's 2nd AEIC affirmed on 24 October 2018 ("Potter's 2nd AEIC") at Exhibit ICP-2 ("Potter's 2nd Expert Report") at para 3.9; Chan's AEIC affirmed on 25 October 2018 at Exhibit CYK-2 ("Chan's AEIC in Suit No 1311 of 2015") at para 37.

121 Potter's 2nd Expert Report at para 3.8.

122 Chan's AEIC in Suit No 1311 of 2015 at para 38.

The 1st MOU (as amended)

The misrepresentation claim

78 Wang's claim against the defendants for misrepresentation in respect of the 1st MOU (as amended) was based on three alleged misrepresentations: the discounted share price representation; the no further sale of shares representation; and the AMP business growth representation. These alleged representations were made on 15 October 2013 on board Goh's yacht, with the no further sale of shares representation being repeated on 21 October 2013 in Guangzhou (see [27]–[28] above).

79 It was not disputed that if Goh had made any of the representations which Wang allegedly relied on when she signed the 1st MOU, the representations and her reliance thereon would also apply to the 1st MOU (as amended). Indeed, there was no suggestion by Goh that if he had made any of the representations and Wang had relied on it, the reliance had ceased when the 1st MOU was signed by the parties thereto. Goh's main defence was that he had not made any of the representations or that some of them were substantially true.

80 I address Wang's contentions in relation to each alleged misrepresentation.

(1) The discounted share price representation

(A) WHETHER THE DISCOUNTED SHARE PRICE REPRESENTATION WAS MADE

81 I have found that the yacht meeting took place on 15 October 2013. The next issue to be determined is whether the discounted share price representation was made by Goh to Wang.

82 Wang and Sun were consistent in their testimony that it was Goh who made the discounted share price representation at the yacht meeting. While this was to be expected given that their interests were aligned, I prefer their evidence over that of Goh, whom I find to be an evasive and unreliable witness.

83 Goh's testimony was that there was no discussion of AMP's figures or financials at the yacht meeting as this was a first meeting with potential investors.[123] During this meeting, he claimed to have relied on translations by Lin as he did not speak fluent Mandarin.[124] The price of S$500 per share for 20,000 shares of AMP was only arrived at after the yacht meeting after Wang discussed the price with Lee and Lin.[125]

84 Goh's account that the discounted share price representation was not made relied heavily on two pieces of objective evidence:

(a) First, in a Whatsapp message to Lee on 15 October 2013 at 2.39pm, Goh told Lee that "our 650 per share sounds cheap valuing us at near 200 m."[126]

(b) Second, in an email to Lin on 15 October 2013 at 3.03pm, Goh stated that "with [Wang and Sun's] recent sale of 10% of their co to LVMH for 50 m usd, our deal to them at 13m for 20k vendor shares is cheap …"[127] Goh was referring to the fact that 10% of Marubi's shares had been sold to LVMH for US$50m.[128]

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123 Goh's AEIC at para 66.

124 Goh's AEIC at para 70.

125 NE 21 May 2019, p 72 at lines 2–8.

126 6SAB at p 66.

127 1AB at p 505.

85 The defendants submitted that these messages suggested that as of about 3pm on 15 October 2013, Goh was still holding out for a sale of AMP's shares to Wang at S$650 per share. As stated above, the defendants' argument rested on the premise that the yacht meeting had taken place on 14 October 2013. If that were the case, these messages would be strong evidence that Goh did not make the discounted share price representation, as it would have been unlikely that he would have continued to discuss a higher share price a day after he allegedly represented to Wang that the shares would be sold at S$500.[129] However, as I have found that the yacht meeting took place later in the evening of 15 October 2013, the correspondence relied on by Goh does not shed much light on whether the discounted share price representation was made.

86 I find that Goh's credibility was severely undermined by his vacillating testimony at trial regarding the discussions between Wang and Goh and/or his agents (Lee and Lin) that led to the agreement on the final price of S$500 per share. As the plaintiff submitted, Goh gave seven versions at trial as to when he was informed that the price of shares was finalised.[130] At one point, Goh stated that information on the purchase price and number of shares was only given to him on the morning of 16 October 2013 when they were included in a draft of the 1st MOU,[131] only to say shortly thereafter that he received that information somewhere between 10pm on 15 October 2013 and the next morning.[132]

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128 NE 21 May 2019, p 69 at lines 6–9.

129 DCS at para 136.

130 PCS at para 114.

131 NE 21 May 2019, p 80 at lines 6–11.

132 NE 21 May 2019, p 82 at lines 13–17.

87 Goh's account that he was not involved in the share price discussions was also contradicted by the objective evidence before the court. As I have stated above, I do not believe that his proficiency in Mandarin was so poor that he could not converse in the language (see [70] above). Also, in a Whatsapp message to Lee at 10.14pm on 15 October 2013, Goh instructed Lee to prepare a sale and purchase agreement, together with the accompanying share transfer forms:[133]

> [15/10/13, 10:14:28 PM] [Goh]: [Lee], kindly proceed with paper works on the sale n purchase agreement like the one we did for [Lin]
>
> …
>
> n arrange for sec to print the share transfer form. they can sign everything tomorrow morning before they fly back to china

This suggests that some form of in-principle agreement on price had been reached during the yacht meeting on 15 October 2013 at which Goh was present. It would otherwise make little sense for Goh to direct Loh to prepare the sale and purchase agreement at this juncture. I do not find Goh's explanation that these were standard templates pending numbers being filled in to be convincing.[134] It is unlikely that he would have asked Lee to prepare the 1st MOU first and that he would expect Wang to sign it the next morning with the share price yet to be determined.[135]

88 Other objective evidence shows that the price at which Goh sold his shares to potential investors was extremely important to him. In an email on 2 August 2013 to Lin, Goh, while discussing the introduction of a potential

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133 6SAB at p 67.

134 NE 21 May 2019, p 78 at lines 20–24.

135 NE 21 May 2019, p 94 at lines 2–15; NE 27 May 2019, p 112 at lines 7–12.

investor, stated that the AMP shares should be "price[d] at 500 per share to achieve a new benchmark for our investors".[136] Similarly, in Whatsapp messages and emails sent on 15 October 2013, Goh discussed with Lee and Lin the possibility of selling 20,000 shares to Wang at S$650 per share.[137]

89 The evidence also does not support Goh's contention that his *modus operandi* was not to discuss AMP's figures or financials at the first main meeting with potential investors. This is plainly contradicted by the objective evidence:

(a) First, in Goh's Whatsapp messages and emails on 15 October 2013 that were discussed in the preceding paragraph, he had discussed selling shares in AMP to Wang at S$650 per share.

(b) Second, in emails from an earlier unrelated transaction where Lin introduced other potential Chinese investors to Goh, he conveyed that he was willing to sell his shares at S$700 per share and made arrangements for a presentation on board his yacht.[138] This was done without having first met these investors at an introductory meeting.

90 While Goh would have the court believe that he would screen his investors thoroughly before allowing them to invest in AMP, it is clear that no such practice existed. Also, it is apparent from the evidence above that AMP's share price was a matter of great concern to Goh. As such, I do not believe that he was not involved in the discussions regarding share pricing. Lin's testimony

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136 1AB at p 424.

137 6SAB at p 66; 1AB at p 505.

138 1AB at p 414.

at trial that there was another meeting between Goh and Wang where the latter bid S$500 per share while Goh passively listened is unbelievable, appearing in neither her SD nor her AEIC. In any event, even if Lin or Lee had made the representation to Wang, they would have done so on Goh's behalf as his agents (see above at [73]), and any representation by them would still be attributed to him.

91 Importantly, Lin's SD corroborates the evidence given by Wang and Sun that Goh made the discounted share price representation at the yacht meeting. Paragraph 33 of her SD states:[139]

> 33. While we were on board [the yacht], [Goh] also said to [Wang] that he had recently sold some of his shares in [AMP] to other doctors and minority shareholders at a price of S$600 to S$700 per share and that he (i.e. [Goh]) was willing to sell to [Wang and Sun] 20,000 of his shares in [AMP] at a discounted price of S$500 per share.

92 However, in her AEIC Lin recanted the version of events in her SD. The differences between the two accounts are set out as follows:

Lin's SD (as amended at trial)	**Lin's AEIC**
34. *All of the conversations* between [Wang] and [Goh], [Michelle] and [Lee], among others, *were primarily in Mandarin* for general topics with my assistance. I would translate technical terms or financial terms from English to Mandarin for [Wang's] benefit and vice versa. [emphasis added][140]	14. I am fluent in written and spoken Mandarin. To my knowledge, neither [Goh], Michelle nor [Lee] are. They know some basic conversational Mandarin but they do not know technical terms and cannot write in Chinese without the aid of translation software.
33. While we were on board [the yacht], [Goh] also said to [Wang] that he had recently sold some of his	Question: On 15 October 2013, before and during the same yacht trip, did [Goh], Michelle, and/or [Lee]

139 Exhibit P19 at para 33.

140 NE 30 May 2019, p 114 at lines 1–7.

shares in [AMP] to other doctors and minority shareholders at a price of S$600 to S$700 per share and that he (i.e. [Goh]) was willing to sell to [Wang and Sun] 20,000 of his shares in [AMP] at a discounted price of S$500 per share.	say that [Goh] had recently sold his shares in AMP to other doctors and minority shareholders at S$600 to S$700 per share but that he was willing to sell to [Wang] 20,000 of his AMP shares at S$500 per share? 29. I believe that [Goh] did mention on the yacht that AMP had sold or issued shares to doctors at around $600 to $700. This was in the course of him explaining to [Wang the] AMP employee incentivization schemes which offered share issuances. [Goh] also mentioned that there had been other investors in AMP but he did not say how much the shares were sold to them for.

93 At trial, Lin corrected the version of events set out in her AEIC and stated that the yacht meeting took place on 14 October 2013 instead of 15 October 2013.[141] She maintained that Goh mentioned that he had sold AMP shares to other doctors and minority shareholders at S$600–S$700 per share only in the context of explaining AMP's employee incentivisation scheme.[142] She elaborated that there was no discussion on the price of S$500 per share on board the yacht. It was only after the yacht meeting that Lin suggested to Wang that S$500 per share was a good price.[143] There was a follow-up meeting the next day on 15 October 2013 where Wang suggested that she was going to bid S$500 for AMP's shares, to which Goh merely listened passively with no response.[144]

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141 NE 29 May 2013, p 22 at lines 15–20.

142 NE 29 May 2019, p 51 at lines 1–16.

143 NE 29 May 2019, p 70 at lines 2–7.

144 NE 29 May 2019, p 71 at lines 21–23.

94 As stated above at [74] and [75], I find the evidence in Lin's SD to be more credible than her account at trial. It is clear to me that Lin was not being truthful on disputed matters when giving her AEIC and oral testimony and that she was attempting to tailor her evidence to suit Goh's case. Lin was also unable to offer any explanation as to why her account of the yacht meeting changed so radically between the time she gave her SD and when she executed her AEIC and testified at trial beyond saying that she was unaware of the importance of being accurate in her SD.

95 I now turn to consider Lee's evidence. While Lee's evidence largely corroborated that of Goh's, I do not think that that strengthened the latter's case. Like Lin, Lee appeared to be tailoring his evidence to suit that of Goh's in an attempt to portray a consistent account. For example, Lee echoed Goh's account that the latter had to rely on Lin's translations to communicate with Wang at the yacht meeting even though, as I found above at [70], Goh was actually able to converse in Mandarin. Lee was also found at trial to have what appeared to be a prepared script of answers to issues which may arise at cross-examination. I do not accept Lee's explanation that they were simply notes he had prepared for re-examination. At the time the note was discovered on 28 May 2019 (which was admitted and marked as Exhibit P17), Lee's cross-examination had only covered events relating to the 1st MOU (as amended). Exhibit P17, however, contains references to events relevant only to the 2nd MOU.[145] This cast doubts on the reliability of Lee's evidence and whether the notes were truly his own. I thus give little weight to Lee's evidence.

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145 Exhibit P17; NE 28 May 2019, p 3 at lines 10–15.

96 Finally, the discounted share price representation would explain how the price of S$500 was arrived at between Wang and Goh.

97 In the circumstances, I am satisfied that Wang has proved on a balance of probabilities that the discounted share price representation was made by Goh to her at the yacht meeting on 15 October 2013.

(B) WHETHER THE DISCOUNTED SHARE PRICE REPRESENTATION WAS FALSE

98 The discounted share price representation was false. It is undisputed that at the time the 1st MOU (as amended) was entered into on 21 October 2013, Goh had never sold any AMP shares for a price as high as S$600 or S$700.[146]

(C) WHETHER THE DISCOUNTED SHARE PRICE REPRESENTATION MADE WITH INTENTION THAT WANG WOULD ACT UPON IT

99 I am of the view that the discounted share price representation was made with the intention that Wang would act upon it. By representing to Wang that he had previously sold shares in AMP for a higher price (*ie*, S$600–700 per share) and that he was willing to sell her shares at a discounted price of S$500, the irresistible inference to be drawn is that Goh intended to induce Wang to purchase shares in AMP at a higher price than she might have agreed to by giving her the impression that she was getting a good bargain.

(D) WHETHER WANG ACTED ON THE DISCOUNTED SHARE PRICE REPRESENTATION

100 I also find that Wang relied on the discounted share price representation in entering into the 1st MOU (as amended). Wang was not challenged during

146 See Exhibit P1.

cross-examination about her reliance on the discounted share price representation. In closing submissions, Goh submitted that Wang did not rely on the discounted share price representation as: (a) Lin had previously disclosed to Wang that Lin herself had purchased AMP shares for S$350 each; (b) Wang was financially savvy and a highly successful businesswoman who would have asked for proof of historical transactions if they were important to her; and (c) the yacht meeting was the first time Wang met Goh and she had no reason to trust him.[147]

101 While I accept that Wang might not have been so naïve as to accept the discounted share price representation at face value, the failure to put each of these points to Wang and to cross-examine her on her alleged reliance was fatal to Goh's case as it violates the rule in *Browne v Dunn* (1893) 6 R 67 ("the rule in *Browne v Dunn*").

102 The ambit of the rule in *Browne v Dunn* was considered by the Court of Appeal in *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 at [48]:

> … [T]he effect of [the rule in *Browne v Dunn*] is that 'where a submission is going to be made about a witness or the evidence given by the witness which is of such a nature and of such importance that it ought fairly to have been put to the witness to give him the opportunity to meet that submission, to counter it or to explain himself, then if it has not been so put, the party concerned will not be allowed to make that submission': *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [42]. While we recognise that this is not a rule of inflexible application, … the allegation of auto-forgery amounted in essence to an assertion not only of fraud but of cheating in a criminal sense and it was of such vital importance that it ought to have been put directly to the appellant … This

147 DCS at paras 137–139.

> was not done and as a matter of fairness, the respondent ought not to be allowed to advance this case now. …

103 It is evident from the Court of Appeal's decision that the rule in *Browne v Dunn* is essentially one of fairness; a party should not be permitted to advance a case that the witness has not had an opportunity to rebut.

104 Furthermore, I have found that Goh was trying to induce Wang to agree to a price higher than what she might otherwise have agreed to when he made the representation. In the light of that, it was not open to Goh to suggest that Wang did not in fact rely on the representation, without more.

105 While Wang's counsel also failed to cross-examine Lin on her claim of having told Wang in or around 2012 that she had purchased AMP shares for S$350 per share,[148] this does not go towards proving or disproving Wang's reliance on the discounted share price representation and could not remedy the flaws in Goh's case.

106 In summary, at trial, Goh's counsel had focussed on the argument that the representation was not made and had not raised the point of non-reliance by Wang even if the representation had been made.

(E) WHETHER THE DISCOUNTED SHARE PRICE REPRESENTATION WAS MADE FRAUDULENTLY

107 I am satisfied that the discounted share price representation was made fraudulently by Goh.

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148 See DCS at para 137.

108 The following passage from *Spencer Bower* at para 5.03 illustrates when a misrepresentation will be found to be fraudulent:

> ...[A] misrepresentation is fraudulent when the representor:
>
> (1) knew it to be false;
>
> (2) believed it to be false;
>
> (3) did not know or believe it to be true; or
>
> (4) made it with reckless indifference as to its truth or falsity.

Goh would have been aware that he had never sold AMP shares for S$600–S$700 per share at the time the discounted share price representation was made. The highest price at which he had previously sold AMP shares was S$350 per share.[149] Goh would have known that the discounted share price representation was false when he made it; he acted fraudulently in so making it.

109 It follows that Wang has made out her claim against Goh for fraudulent misrepresentation in respect of the discounted share price representation.

110 I would add that even if I did not find that Goh had made the discounted share price representation fraudulently, a claim would still have been available to Wang under the MA. However, as she has made out her claim in fraudulent misrepresentation, I need not say more.

(2) The no further sale of shares representation

111 Wang's misrepresentation claim succeeds as long as the legal elements for one of the three alleged misrepresentations are made out. I have found that the requirements for misrepresentation in relation to the discounted share price

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149 PCS at para 110; Exhibit P1.

representation have been fulfilled. Nonetheless, I consider Wang's case on the no further sale of shares representation and the AMP business growth representation for completeness.

112 Wang's pleaded case was that the no further sale of shares representation comprised the following representations:

(a) Goh represented to Wang at the yacht meeting on 15 October 2013 that if she invested in AMP, he would not sell any of his AMP shares until AMP was listed on the Singapore Exchange ("SGX").[150]

(b) On 21 October 2013, Goh represented to Wang at the meeting in Guangzhou that he would not sell any more of his AMP shares without her permission.[151]

113 Wang pleaded that it was implied through these two representations that Goh did not intend to sell any of his shares in AMP without Wang's consent until AMP was listed on the SGX.[152] However, he in fact did intend to sell his AMP shares without her consent. He failed to inform Wang at the material time that he had entered into prior agreements with Julian Leslie Reis and Star Titanic which would require him to sell or transfer his AMP shares (see above at [14]).[153]

114 As mentioned above at [54], a representation must relate to a fact which has occurred or which exists. The alleged no further sale of shares

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150 SOC at para 26(d); PCS at para 129(a).

151 SOC at para 34(b); PCS at para 129(c).

152 SOC at paras 28(b), 36(b).

153 SOC at para 105(c)(ii); PCS at para 136(b).

representation, in so far as it was a promise as to future conduct (*ie*, to refrain from selling shares in AMP without Wang's permission), could not amount to a representation in law unless it was a statement as to Goh's *intention* not to sell his AMP shares in the future.

115 In closing submissions, Wang put forward an alternative framing of the no further sale of shares representation, asserting that (a) Goh caused to be represented to Wang that he held 121,789 shares in AMP; and (b) his failure to disclose the two agreements with the potential to reduce his shareholdings in AMP (see above at [14]) constituted a misrepresentation by silence which gave rise to a duty to disclose the existence of the contracts to Wang. Wang argued that Goh's failure to disclose those agreements rendered the initial representation untrue, or at least a half-truth.[154] The defendants responded that Wang did not plead that she relied on Goh's representation as to his shareholding of 121,789 shares in AMP when entering into the 1st MOU (as amended).[155] I agree with the defendants that this alternative framing of the no further sale of shares representation should not be considered as it was not pleaded.

116 I now consider if the elements for misrepresentation are made out as regards the representation framed in the pleadings.

(A) WHETHER THE NO FURTHER SALE OF SHARES REPRESENTATION WAS MADE

117 I find that Wang has proved that the no further sale of shares representation was made on 21 October 2013. Goh's representation that he

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154 PCS at paras 136, 142.

155 DCS at para 151.

would not sell AMP shares in the future without Wang's permission contained an implied representation that he had no intention of selling AMP shares without Wang's permission at the time.

118 As with the discounted share price representation, Wang and Sun's evidence was consistent that Goh represented that he would not sell his shares in AMP prior to AMP's listing on the SGX during the yacht meeting and on 21 October 2013.[156] Their evidence was importantly corroborated by Lin's SD at para 49 as regards the meeting on 21 October 2013 (as amended by Lin at trial):[157]

> 49. [Goh] also told [Wang] that [Goh] would not sell any more of his own shares in [AMP] without [Wang's] permission.

119 Lin's SD corroborates Wang and Sun's evidence as to the representation that Goh allegedly made in Guangzhou on 21 October 2013. I thus find that Wang has discharged her burden of proving that such a representation was made on 21 October 2013. However, Wang has not proved that a similar representation was earlier made during the yacht meeting on 15 October 2013.

120 The incorporation of the no further sale of shares representation in cl 7 of the 1st MOU (as amended) (as reproduced above at [34]) also supports Wang's case that the representation was made at least on 21 October 2013.[158] This clause was not included in the earlier 1st MOU.

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156 Wang's AEIC at para 23(d), 50(a); Sun's AEIC at paras 7, 9.

157 NE 30 May 2019, p 114 at lines 19–21.

158 PCS at para 131(c).

121 Goh submitted that the mere fact that cl 7 incorporated an obligation similar to that under the no further sale of share representation did not mean that he made the representation. He further argued that it could not be that every term in a contract would be the subject of a misrepresentation claim, since this would blur the distinction between tortious and contractual remedies.[159] This submission misses the point. A mere representation is not a contractual term. It is only where Goh falsely represented that he in fact did not intend to sell the shares in the future and where the other limbs of fraudulent misrepresentation are made out that Wang is entitled to rescission. Contractual remedies and any breach of contract by Goh would then cease to be an issue.

(B) WHETHER THE NO FURTHER SALE OF SHARES REPRESENTATION WAS FALSE

122 The next question is whether Goh's statement that he intended not to sell his shares in AMP in the future was false. Wang argued that the representation was false as Goh had existing obligations under the call option with Julian Leslie Reis and the share purchase agreement with Star Titanic (see above at [14]) to sell a total of 52,895 shares, which he did not disclose to her.[160]

123 The defendants argued that even if the no further sale of shares representation were made, it did not cover the sale or transfers of shares pursuant to Goh's pre-existing legal obligations.[161] In any event, Goh was not aware that the call option would be exercised at the time.[162]

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159 DCS at para 143.

160 PCS at paras 137–140.

161 DCS at para 149.

162 DCS at para 150.

124 At trial, Goh was asked whether he recalled in October 2013 that he had obligations to transfer his shares in AMP if the call option were exercised:[163]

> Q. [W]hen you met my client in October 2013, did you not still remember you had a call option given to someone for 32,000 shares? 'Yes' or 'no'?
>
> A. I know it was in existence, but whether I remembered it at the time or not, I'm not sure. …
>
> Q. So you remembered it lasted for three years?
>
> A. When I first signed it.
>
> Q. And then you [signed a novation agreement where Julian Leslie Reis novated the call option to Reis] … in May 2013. Two documents. Right?
>
> A. Yes.
>
> Q. So when you met my client, were you not still bearing at the back of your mind you had a call option?
>
> A. … So whether I remembered at that point in times all the contract that I have signed before that, I cannot remember, because it was conversation about business, general business.
>
> Q. Let me ask you this way; if you were asked on 15 October do you have a call option given to someone, what would your answer have been?
>
> A. Yes. If I were asked on 15 October, I would have recalled, I remember, yes.

125 Goh was also asked about his knowledge of the outstanding transfers under the share purchase agreement on 21 October 2013. By this date, the transfer of the first tranche of 30,000 shares had been completed, but the transfer of the second tranche of 20,000 was still outstanding:[164]

> Q. So … on 21 October, if I were to ask you on 21 October what is the completion date of the second tranche of 20,000 shares, would you have known at that time?

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163 NE 23 May 2019, p 93 at line 8 – p 94 at line 9.

164 NE 23 May 2019, p 105 at lines 2–11.

> A. Within a reasonable period, which is one or two months or a few weeks after. So there is a completion date, just that there was no date mentioned. It's not an open date and it's not as if this deal would not be concluded. This deal would be concluded. It is a commitment.

126 It is clear from Goh's testimony that when he implicitly represented on 21 October 2013 that he did not intend to sell his shares in AMP in the future, that representation was false. I find, to the contrary, that he intended to sell his shares pursuant to the share purchase agreement, and that he intended to sell his shares under the call option if the option was exercised by Reis after the 1st MOU (as amended) was entered into.

127 While Goh claimed that the call option and the share purchase agreement were not at the forefront of his mind on 21 October 2013, I do not believe him. The deed of novation for the call option was dated 8 May 2013[165] and the share purchase agreement was dated 6 September 2013. These dates were sufficiently proximate to 21 October 2013 that it is more likely than not that Goh would have had them in mind.

128 By Goh's own account, he told Wang during the yacht meeting that he "made strategic sacrifices to sell shares to various people and that was articulated to her without specific [*sic*]".[166] When asked why he did not tell Wang about the call option or the share purchase agreement, his only response was that he would have told Wang about these agreements if she had asked about them.[167] This was an unreasonable position for Goh to take given that Wang had no reason to know or suspect that there were any specific or relevant

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165 1AB at p 180.

166 NE 23 May 2019, p 107 at lines 2–6.

167 NE 23 May 2019, p 106 at lines 4–9.

agreements in force. Goh's evidence indicates to me that he did have in mind the call option and share purchase agreement when he made the no further sale of shares representation on 21 October 2013, and that he intended to sell his shares in AMP after the 1st MOU (as amended) was entered into.

(C) WHETHER THE NO FURTHER SALE OF SHARES REPRESENTATION WAS MADE WITH THE INTENTION THAT WANG WOULD ACT UPON IT

129 Wang's evidence in her AEIC was that Goh "said that if [Wang and Sun] bought his shares, he would not sell any more of his shares in [AMP] to other people prior to listing".[168] Lin's SD also stated at paras 44 and 46 as follows:

> 44. During the meeting [in Guangzhou on 21 October 2013], [Wang and Sun] expressed a number of concerns.
>
> …
>
> 46. Second, they said they were concerned that [Goh] would dilute and sell his shares to others before [AMP] listed on the SGX through an IPO.

It was in this context that the no further sale of shares representation was made (see also Lin's SD at para 49 as reproduced above at [118]).

130 Having accepted Wang's evidence and Lin's evidence in her SD, the irresistible inference to be drawn is that Goh made the no further sale of shares representation with the intention to induce Wang's entry into the 1st MOU (as amended).

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168 Wang's AEIC at para 23(d).

(D) WHETHER WANG ACTED ON THE NO FURTHER SALE OF SHARES REPRESENTATION

131 Wang claimed she informed Goh that she and Sun did not want Goh "to sell anymore of his shares to anyone since … he was the main driver and person behind [AMP]", and that Goh made the representation in response to her concerns.[169] Wang was not challenged on this at trial.

132 The defendants submitted that Wang did not rely on this representation, as she did not know how many shares Goh had in AMP at the time of the alleged representation.[170] The defendants also argued that Wang knew that Goh sold AMP shares to his employees pursuant to an incentivisation scheme, and she could not have relied on Goh's statement that he did not intend to sell *any* shares.[171]

133 I prefer Wang's evidence to Goh's and find that she did rely on the no further sale of shares representation. Even if Wang had been aware of any incentivisation scheme, the representation here concerned Goh's statement that he did not intend to sell his AMP shares, which was rendered false by his intention to sell his shares pursuant to the call option and the share purchase agreement.

(E) WHETHER THE NO FURTHER SALE OF SHARES REPRESENTATION WAS MADE FRAUDULENTLY

134 As I have found above, Goh was aware at the time he made the representation that he would: (a) sell the second tranche of 20,000 shares in

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169 Wang's AEIC at para 49(b), 50(a).

170 DCS at para 156.

171 DCs at para 157.

AMP to Star Titanic pursuant to the share purchase agreement; and (b) sell 32,895 shares in AMP pursuant to the call option if it were exercised. He deliberately omitted to bring these agreements to Wang's knowledge. At best, he made the representation as to his intent not to sell the shares with reckless indifference as to its truth or falsity (see [108] above). This fulfils the final element for fraudulent misrepresentation in respect of the no further sale of shares representation.

(3) The AMP business growth representation

135 Wang's case on the AMP business growth representation comprised two separate but interrelated representations: (a) that AMP made pre-tax profits of S$10m in FY 2013; and (b) that AMP's pre-tax profit was growing at a rate of more than 30% a year.[172] I will refer to these representations as the "pre-tax profit representation" and the "30% growth rate representation" respectively. The parties used the terms "EBITDA" and "pre-tax profit" interchangeably and they should be taken to have the same meaning for the purposes of this judgment.

136 Wang also claimed that Lin orally provided her with AMP's financial figures for financial year 2012 ("FY 2012") and FY 2013 and projections for FY 2014.[173] However, while the figures for FY 2012 were calculated on the accrual basis, the figures for FY 2013 and FY 2014 were calculated on the cash basis. In closing submissions, Wang suggested that at the time the 1st MOU (as amended) was signed on 21 October 2013, she insisted that AMP's EBITDA was to be calculated in accordance with Singapore's accounting principles. As

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172 PCS at para 149.

173 NE 1 Nov 2018, p 61 at lines 10–25.

it turned out, such principles required that the package sales be accounted for on the accrual basis. Goh thus came under a duty to inform Wang about the differences between the two accounting methods.[174] I will address this aspect of her case below in the context of determining what Wang's knowledge of the accounting standards used was.

(A) WHETHER THE AMP BUSINESS GROWTH REPRESENTATION WAS MADE

137 I first consider whether Wang has proved that the AMP business growth representation was made.

138 Wang relied primarily on the oral testimony of herself and Sun. She also relied on Lin's SD, which stated that Goh and Lee shared financial figures with Wang and Sun during the yacht meeting.[175]

139 The original position taken by Wang when she first commenced legal proceedings on 6 July 2015 was that Goh had represented to her that AMP had made pre-tax profits of S$10m in FY 2012.[176] When Wang took the stand, she changed her allegation to say that Goh's representation of pre-tax profits of S$10m was for FY 2013 instead of FY 2012.[177] Sun testified to the same effect.[178] I do not place much weight on this discrepancy, and accept Wang's explanation at trial that this inconsistency arose from a translation error on the part of Wang's solicitors when they took instructions.

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174 PCS at para 168.

175 Lin's SD at para 29.

176 Statement of claim dated 6 July 2015 at para 26(a)(i).

177 See Exhibit P3.

178 NE 27 Nov 2018, p 14 at lines 1–10.

140 On the other hand, Goh and Lee's testimony in relation to the AMP business growth representation was essentially the same as that for the discounted share price representation which I rejected: the yacht meeting was simply an introductory meeting with no discussion of financial figures or numbers (see [83]–[95] above). Their evidence was that there was no pre-tax profit representation or 30% growth rate representation made.[179]

141 To the extent that Goh and Lee had said that there was no discussion of financial figures or numbers, this is contradicted by Lin's SD, which stated:

> 29. I recall that [Goh] and/or [Lee] shared financial figures with [Wang and Sun]. I do not remember the details but I recall they told [Wang and Sun] that the company was doing very well.
>
> 30. I also recall that [Goh] and/or [Lee] told [Wang] that the EBITDA of [AMP] was growing at a certain rate which, I recall was high and very impressive.

Lin sought at trial to amend "financial figures" to "numbers" and "EBITDA" to "sales figures" (see [75] above).[180] Regardless, the general tenor of her evidence is clear: the yacht meeting was not the simple introductory meeting that Goh (and Lee) had made it out to be. Furthermore, although Lin's SD did not mention AMP's specific growth rate, it did say that a growth rate was mentioned.

142 I am of the view that Wang has discharged her burden of proving on a balance of probabilities that both representations under the AMP business growth representation (namely, the pre-tax profit representation and the 30% growth rate representation) were made. Wang and Sun's account is more

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179 See Goh's AEIC at para 44; DCS at para 163.

180 NE 29 May 2019, p 49 at lines 1–5, p 75 at lines 4–15.

believable than Goh's, especially since it is corroborated by Lin's SD, which I prefer over her AEIC and oral testimony (see [75] above).

143 Having found that the pre-tax profit representation and 30% growth rate representation were made, any reference to the "AMP business growth representation" henceforth should be taken to encompass both of these representations.

(B) WHETHER THE AMP BUSINESS GROWTH REPRESENTATION WAS SUBSTANTIALLY FALSE

144 The fact that the AMP business growth representation was made is insufficient to found a claim in misrepresentation. Wang must also show that the representation as she understood it was substantially false.

145 The defendants submitted that even if the AMP business growth representation were made, the representation would be substantially true if it was premised on AMP's pre-tax profits as calculated on a cash basis in FY 2013.[181] The burden lay on Wang to prove that she understood the AMP business growth representation to have been made on an accrual basis and that, so understood, the representation was substantially false (see [52] above).[182]

146 I do not think that Wang has discharged her burden of proving that she understood that the AMP business growth representation was made on an accrual basis. I also do not agree that Wang has proved as a matter of contractual interpretation that the parties had agreed that EBITDA in the 1st MOU (as amended) was to be calculated on an accrual basis for the reasons below. My

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181 DCS at paras 165–166.

182 See DCS at para 168.

reasoning in this regard will be elaborated on further below in so far as this finding also relates to the breach of contract claim at [169] *et seq*.

147 Coming back to Wang's subjective understanding, Wang's case was that she understood all references to AMP's pre-tax profits and growth rate to be based on Singapore's accounting standards (*ie*, the accrual method) as she had asked for audited figures.[183] This was made clear to Goh by the time the 1st MOU (as amended) was signed on 21 October 2013 and she argued that this gave rise to a duty on his part to clarify that his earlier statements were based on a different accounting method.

148 The burden of proof is on Wang to establish her case. Wang claimed at trial that when she entered into the 1st MOU (as amended), she did not know the difference between the two accounting methods. She only knew that accountants would apply "one method" of accounting, but did not know what method this was.[184]

149 However, this does not square with her affidavit and oral evidence, which showed to the contrary that she knew the parties' negotiations and agreements to be calculated on a cash basis. I now consider if Wang understood and intended for the EBITDA figures to be calculated on a cash basis. My findings in relation to this issue will determine if Wang understood the business growth representation to be based on the accrual accounting basis (and therefore false).

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183 NE 1 Nov 2018, p 62 at lines 3–24; PCS at paras 161, 162.

184 NE 2 Nov 2018, p 157 at lines 2–17, p 158 at lines 6–17, p 160 at lines 13–20.

150 In her AEIC, Wang claimed that she and Sun requested at the meeting on 21 October 2013 in Guangzhou for the words "package sales" to be removed from cl 2 of Annex A of the 1st MOU.[185] Since Wang claimed that she did not understand English, I take her case at its highest, which is that the Mandarin version of the 1st MOU (as amended) should be relied upon as reflecting what Wang understood and intended to be the true construction of the contract. The English Translations of cl 2 of Annex A to the 1st MOU and 1st MOU (as amended) are set out for reference:[186]

1st MOU	**1st MOU (as amended)**
2. The projected pre-tax profit during the period will be S$15 million (the pre-tax profit means *the total service package sales* minus the operating cost, i.e. EBITDA in English accounting term). [emphasis added]	2. The projected pre-tax profit (i.e. EBITDA, in English accounting term) during the period will be S$12 million (*to be audited and verified by an accounting firm*). [emphasis added]

151 Various inferences may be drawn from Wang and Sun's removal of the reference to "package sales" in the English Translation of cl 2 of Annex A to the 1st MOU (as amended) and the addition of the words "to be audited and verified by an accounting firm" ("the Phrase"):

(a) The first inference is that "package sales" was removed because it was redundant, as the parties were in agreement that the pre-tax profits would be calculated on the cash accounting basis. The Phrase was inserted to ensure the integrity of the figures and not to change the basis of computation, and no substantive change was intended with the addition of the Phrase.

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185 Wang's AEIC at paras 80–82.

186 2AB at p 597-4; *cf* 1AB at p 225-3.

(b) The second inference is that "package sales" was removed and the Phrase was added because Wang wanted to change the basis that the pre-tax profits would be calculated on. The Phrase was added to ensure that figures would be audited based on the accrual accounting method, that being the applicable accounting standard in Singapore, and that the projected pre-tax profit would be determined on the accrual accounting basis. (Wang also relied on this argument and this interpretation of the Phrase to argue that Goh breached the 1st MOU (as amended): see below at [167]–[191].)

(c) The third inference is that Wang did not know what "package sales" meant and simply wanted to replace it with something she was more comfortable with, *ie*, that the projected pre-tax profit was to be audited and verified by an accounting firm.

152 The issues to be determined are: (a) whether Wang understood what the two accounting bases entailed; and (b) which basis she understood the AMP business growth representation to have been made on. As regards (a), the first and second inferences suggest that Wang understood what the two accounting bases entailed. As for (b), only the second inference would support Wang's case that she understood the AMP business growth representation as having been made on an accrual basis.

153 In my view, Wang has not shown that the second inference is the appropriate inference to draw. On balance, I find that the first inference is best supported on the evidence. Wang knew what the term "package sales" and what the cash accounting basis referred to, and understood the AMP business growth representation to be made on that basis. This is clear from her testimony, which shows that she understood cll 1–3 of Annex A to the 1st MOU (as amended)

(reproduced above at [31]) to be calculated on a cash basis (the interpretation of cll 1–3 of Annex A to the 1st MOU (as amended) is elaborated on below at [167]–[191] in relation to Wang's breach of contract claim). Although she claimed at points not to understand what the cash accounting basis entailed, her credibility is undermined by her vacillating evidence on this issue.

154 As the defendants submitted,[187] Wang confirmed six times under cross-examination that she understood the reference to AMP's sales forecast of S$30m in cl 1 of Annex A to the 1st MOU (as amended) to be computed on the basis of "package sales", a "non-deferred basis" or a "cash earnings basis". However, Wang was initially equivocal as to whether she understood the S$30m projection to be calculated on a cash basis:[188]

> Q. What was the figure given for 2014 [at the meeting in Guangzhou on 21 October 2013]?
>
> A. They said that they had a projected package sale amount of 30 million and the projected profits of 15 million.
>
> …
>
> [Q]: When you got the verification from him, did you discuss about whether these were in respect of … package sales, on a deferred or non-deferred basis?
>
> …
>
> A. I didn't accept his concept of package sales. What I wanted was the profits. I understand package sales and I accept package sales of 30 million. However, I stated specifically that I wanted audited profits which is also known as EBITDA. I did not understand this term at that time and this was specifically explained to me.
>
> …

187 DCS at para 108.

188 NE 1 Nov 2018, p 64 at line 19 – p 66 at line 25.

> COURT: But what was the term that you said you did not understand?
>
> A. They were discussing about profit and then they had written the word 'package' inside. I didn't agree so I deleted it. I don't understand why would profits be tied in with packages. …

155 This does not gel with Wang's later evidence that she understood the pre-tax profits for FY 2014 to be calculated on the basis of package sales, without qualifying that she did not understand what this term meant:[189]

> [Q]: You agree that this figure of $15 million [in cl 2 of the 1st MOU] corresponds with the defendants' forecast of the earnings for FY-2014?
>
> A. I agree.
>
> Q. *And their forecast was based on package sales being recognised on a non-deferred basis?*
>
> A. *Package sales, 30 million.*
>
> …
>
> [Q]: The $30 million you mentioned a short while ago, are you referring to the figure that appears at clause 1 of annex A?
>
> A. Correct.
>
> Q. Madam Wang, when you were given certain figures by the 1st defendant as to their forecasts for 2014 -- firstly, you agree you were given certain figures for the forecast for 2014; agree?
>
> A. Yes, I agree.
>
> Q. *And you understood that forecast to be made on the basis of package sales on a non-deferred basis?*
>
> A. *Yes.*
>
> [emphasis added]

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189 NE 1 Nov 2018, p 99 at lines 1–7; p 100 at lines 4–16.

156 When pressed on whether her acceptance that the EBITDA forecast in cl 1 of Annex A to the 1st MOU (as amended) was made on a cash basis also extended to the profit guarantee in cl 2, Wang equivocated again about her understanding of the terms used:[190]

> Q. Earlier on you told us that for the $30 million figure [in cl 1], you agreed that the computation of the earnings would include package sales on a non-deferred basis; you recall?
>
> A. Yes. You could have sold 30 million in packages but that's money collected in advance, whereas for the services rendered it could be 10 or 20 million. So it would only be 10 or 20 million in sales.
>
> COURT: But when counsel asked you about this 30 million, he said this 30 million includes package sales on a non-deferred basis. What do you understand by 'non-deferred basis'?
>
> A. I feel that I don't quite understand these terms.

157 The defendants' counsel then explained in detail what "non-deferred" and the cash accounting basis entailed. However, Wang refused to accept that the financial figures in cll 1 and 2 were to be calculated on the same basis, *ie*, the cash accounting basis:[191]

> Q. So $30 million, that figure, would be based on a cash earnings basis for FY-2014?
>
> A. Yes.
>
> COURT: So is it your evidence that the $30 million referred to in clause 1 is on a cash earnings basis?
>
> A. Yes, cash earnings.
>
> COURT: Which means once they receive the cash, it will be recognised entirely, whether or not the services had already been rendered?

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190 NE 1 Nov 2018, p 103 at lines 1–15.

191 NE 1 Nov 2018, p 105 at line 21 – p 106 at line 16.

> A. Yes, I understand it to be this.
>
> …
>
> Q. Would you agree with me that the same basis ought to be applied to the $12 million earnings pre-tax profit guarantee?
>
> A. I believe pre-tax profits is a term specifically defined by accounts.
>
> Q. So your answer is you don't know, or no?
>
> A. I had emphasised time and again at that point in time that it has to be audited accounts done by the accountants.

158 Wang eventually accepted that the figures in cll 1 and 2 of Annex A to the 1st MOU (as amended) were to be calculated on the same basis, since the Mandarin version of the clauses included the same requirement that the figures were "to be audited and verified by an accounting firm":[192]

> Q. Both of these clauses have the same requirement for verification by an accounting firm.
>
> A. Yes.
>
> Q. I am suggesting to you, Madam Wang, that there shouldn't be any difference on the computation basis for the 30 million figure [in cl 1] and the 12 million figure [in cl 2]?
>
> A. Yes.
>
> …
>
> Q. … So if it is cash earnings basis for the $30 million, it should also be the cash earnings basis for the 12 million. … Can you please answer 'Yes' or 'No'.
>
> A. Yes.

159 Moreover, there are a number of emails which suggest that the use of the cash accounting basis was communicated and explained to Wang and Sun.

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192 NE 1 Nov 2018, p 107 at line 19 – p 109 at line 9.

In an email to Goh on 18 October 2013, Lin attempted to clarify the provision of information about AMP's financial performance to Wang and Sun:[193]

> So meaning last year [FY 2012] 4.12m, this year [FY 2013] 9.3mio, next year [FY 2014] as promised 15 mio right? I need to get this right to translate to them. My understanding correct?

Goh's reply to Lin's query is notable:

> [E]xactly. [P]lease explain to them.
>
> [B]ut all on sales package recognition, not on redemption

It is not disputed that in using the term "sales package recognition", Goh was referring to the cash accounting basis. There is no suggestion that Lin failed to communicate this response to Wang and Sun.

160 Similarly, in discussing the provision of a profit guarantee in the 1st MOU, Lin informed Goh and Lee in an email dated 16 October 2013 to "just put a very conservative [EBITDA] based on total package sales (not accounting method) [Sun] is aware."[194]

161 Wang's testimony and these emails are strong evidence that Goh's usage of the cash accounting basis was communicated to Wang by Lin and that she understood what this entailed. There was no reason for Lin to seek such clarification from Goh, only to refrain from following up with Wang. As against this, Wang's bare denial that Lin never explained the difference between the "sales package recognition" and accrual accounting bases is unconvincing.[195] I therefore find that Lin had communicated the financial figures discussed with

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193 1SAB at p 4.

194 1AB at p 526.

195 NE 1 Nov 2018, p 52 at lines 2–23.

Goh to Wang (see [159] above), who understood that the AMP business growth representation was based on the cash accounting basis.

162 One additional question that arises from this finding is whether Wang might have understood the profit figures for FY 2012, FY 2013 and FY 2014 to all be calculated on a cash basis when this was not entirely true; the FY 2012 pre-tax profit figure of S$4.12m was in fact calculated on an accrual accounting basis. However, it was not Wang's case that Goh had misrepresented that the AMP pre-tax profit figures for FY 2012 were calculated on a cash basis. There is thus no need to consider the question further.

163 As Wang understood Goh's representation for FY 2013 to be premised on the cash accounting basis, it follows that the AMP business growth representation as she understood it was not substantially false:

(a) As regards the pre-tax profit representation, AMP's FY 2013 pre-tax profit on a cash basis was S$9,374,703.[196] While not quite S$10m, I do not think that this meets the requirement of being substantially false.

(b) Wang has also failed to discharge her burden of proving that the growth rate representation was substantially false. There is no evidence as to what the FY 2012 pre-tax profits on a cash basis were to allow for a calculation of AMP's growth rate.

196 1SAB at p 12.

164 Finally, as I have found that Wang was aware of Goh's use of the cash accounting basis method and what this entailed, it is irrelevant whether Goh was under a duty to explain the two accounting methods to her.

165 Having failed to prove that the AMP business growth representation was substantially false, Wang's claim for misrepresentation in respect of this representation must fail. Nevertheless, for completeness, I briefly consider Wang's argument in closing submissions that there had been a failure by Goh to cross-examine Wang on whether she had relied on the AMP business growth representation in entering into the 1st MOU (as amended).[197] While Goh's counsel stopped short of putting his case to Wang (*ie*, that she did not rely on the AMP business growth representation), I do not think that this fell afoul of the rule in *Browne v Dunn*. The central thrust of Goh's case, that Wang relied not on the AMP business growth representation, but rather on the financial documents and information she was given in the days leading up to the 21 October 2013 meeting, was made apparent in cross-examination. With the exception of an email from Lin to Wang on 28 June 2014,[198] which I do not regard as material, the rest of the documents relied upon by Goh for his submission of non-reliance were raised during cross-examination.

The breach of contract claim

166 I now turn to briefly consider Wang's alternative claim in breach of contract against Goh for breaches of (a) cll 1–3 of Annex A; (b) cl 6 of Annex A; and (c) cl 7 of Annex A. While this discussion is not strictly necessary given that I have found that Wang's claim in misrepresentation has succeeded, the

197 PCS at para 172.

198 5AB at p 2469.

parties' interpretation of the 1st MOU (as amended) and the events discussed in this section are relevant to Wang's claims in relation to the 2nd MOU.

(1) Clauses 1–3 of Annex A

167 Clauses 1–3 of Annex A were essentially a profit guarantee in favour of Wang. Under this, AMP's failure to meet certain financial targets would entitle Wang to compensation from Goh.

168 There are two issues to be determined:

(a) first, whether, as a matter of contractual interpretation, the references to EBITDA in cll 2–3 involve calculation on a cash basis or an accrual basis; and

(b) second, based on the answer to [168(a)], what AMP's true EBITDA shortfall was for FY 2014.

(A) THE ACCOUNTING BASIS FOR CALCULATING EBITDA

169 I am of the view that in this case the EBITDA was meant to be calculated on a cash basis.

170 Wang's case was that the parties had intended for EBITDA to be calculated in accordance with the accounting standard applicable in Singapore, and that was the accrual accounting method.[199] She relied on various drafts of the 1st MOU (as amended) that were sent between the parties via email on 21 October 2013 which showed amendments to terms that originally explicitly

199 PCS at para 178.

stated that EBITDA would be calculated on a cash basis.[200] Specifically, the draft that Lee sent to Fu Kai at 5.38pm removed the phrase "package sales recognition (NOT on redemptions)" from cl 2.[201]

171 Wang also highlighted that the phrase "audited and verified by an accounting firm" was also inserted into cl 2 of the English Translation sometime during the meeting on 21 October 2013, and that this indicated that EBITDA was to be calculated on an accrual basis.[202] Wang's expert witness, Potter, testified that AMP was required by law to prepare its financial statements in accordance with the accrual accounting method.[203] He also testified that as a non-Generally Accepted Accounting Principles measure, EBITDA did not have a definition under financial reporting standards and did not need to be disclosed in a company's financial statements.[204]

172 Goh's arguments that EBITDA was to be calculated on a cash basis can be summarised as follows:

(a) First, Wang was aware that EBITDA was to be calculated on a cash basis as disclosed in internal emails between Goh, Lee and Lin (see [160] above)."[205]

(b) Second, this use of the cash accounting basis could be inferred from cll 1 and 3 of Annex A to the 1st MOU (as amended). Clause 1

200 PCS at paras 49–57; Exhibit P16.

201 Exhibit P16, S/N 9; 2AB at pp 650–653.

202 PCS at para 49(d).

203 Potter's 2nd Expert Report at para 3.7.

204 Potter's 1st Expert Report at para 3.2.

205 1AB at p 526.

states that AMP's sales forecast for FY 2014 was S$30m. Wang accepted that this forecast was computed on a cash basis. Also, cl 3 contains a reference to "package sales EBITDA target" in the context of providing an example of how Wang's compensation would be calculated.

(c) Third, cl 2 of the English Translation of the 1st MOU (as amended) stated that EBITDA was to be "audited and verified by an accounting firm". This was inserted to ensure the integrity of the numbers and not to change the basis of computation. The same phrase was used in cl 1, which Wang accepted was calculated on a cash basis.[206]

173 The starting point for any analysis would be the terms of Annex A of the 1st MOU (as amended). This is substantially complicated in this case as the English and Mandarin versions of the agreement contain significant differences and it was stipulated that both were to have equal force of law (see above at [11]):

English Version	**English Translation**
1. [AMP] *consolidated group sales revenue* is projected to hit SGD30 million in FY 14 (1 July 2013 through 30 June 2014) [emphasis added]	1. The projected *total sale turnover* of [AMP] in FY 2014 (from July 1, 2013 to June 30, 2014) will be S$30 million (*to be audited and verified by an accounting firm*). [emphasis added]
2. *EBITDA* projection for this period is SGD12 million. [emphasis added]	2. The projected *pre-tax profit* (*i.e. EBITDA*, in English accounting term) during the period will be S$12 million (*to be audited and verified by*

206 DCS at para 114–119.

	an accounting firm). [emphasis added]
3. In the event above SGD12 million *EBITDA projection* is not met, [Goh] will rebate pro-rated share value to [Wang]. The rebate will be in the same percentage of the *shortfall in the EBITDA projection*. Example : in the event there is a *shortfall of package sales [EBITDA] target* by 10%, [Goh] will compensate by returning 10% of the SGD10.0 million sale proceeds, which is SGD1.0 million. In the event of a shortfall of 1 %, [Goh] will return 1% of the SGD10 million sales proceeds, which is SGD 100,000.00. [emphasis added]	3. In case that the actual *pre-tax profit* is below S$12 million, [Goh] shall refund [Wang] a sum out of the total investment under this Agreement (the total payment amount) based on the same percentage of the *shortfall in pre-tax profit*. For example, if the actual pre-tax profit is only S$10.8 million, 10% less than the projected pre-tax profit, [Goh] shall refund [Wang] 10% of the total investment (total payment amount), i.e. S$1 million from S$10 million under this Agreement; if the actual pre-tax profit is only S$11.88 million, 1% less than the projected pre-tax profit, [Goh] shall refund [Wang] 1% of the total investment (total payment amount), i.e. S$0.1 million from S$10 million under this Agreement, and so on. [emphasis added]

174 The English version uses "EBITDA" and "package sales" interchangeably, and the English Translation defines EBITDA as "pre-tax profit". I do not find that much turns on this since it was not disputed what the components of EBITDA were, but rather how EBITDA was to be calculated. In this respect, the clauses are ambiguous as to what the agreement was, *ie*, was AMP's EBITDA to be calculated on a cash basis or an accrual basis? Faced with such a scenario, the contextual approach to contractual interpretation requires an analysis of extrinsic evidence to ascertain the sense in which the particular terms are used: see *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [121]. This was not a situation in which the *contra proferentem* rule could be used to resolve

ambiguity against the draftsman given that the 1st MOU (as amended) was the product of joint negotiations conducted between the parties.

175 Several aspects of Annex A to the 1st MOU (as amended) suggest that EBITDA was to be calculated on a cash basis:

(a) First, cl 1 refers to AMP's projected group sales in FY 2014 to be S$30m. Wang agreed that this was to be calculated on a cash basis. It would seem odd for cll 2–3 to adopt an entirely different accounting method given that they were closely linked to cl 1.

(b) Second, the example of how Wang's remuneration for a shortfall would be calculated in cl 3 uses the term "package sales target" in the English version. This is a clear reference to the cash accounting method. It seems unlikely that the example here would be presented on a cash accounting basis if it were truly the case that the parties had agreed that the profit guarantee would use EBITDA calculated on an accrual basis.

176 Additionally, at the time the 1st MOU (as amended) was signed, the unaudited management accounts for FY 13 were already available.[207] Goh would have been aware that AMP was not doing well if its performance were to be measured on an accrual basis as its pre-tax profit would be S$2,972,823.[208] It seems to me unlikely that Goh would have agreed to the quantum of the profit guarantee in cll 1–3 of Annex A to the 1st MOU (as amended) if indeed it were to be calculated on an accrual basis. This would have potentially exposed him

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207 NE 22 May 2019, p 78 at line 1 – p 79 at line 14.

208 2AB at p 761-1.

to a significant liability should AMP's pre-tax profit on an accrual basis fail to increase by more than S$9m in FY 14. He would have known that he could not keep the pre-tax profit on an accrual basis from Wang since that was in fact the basis used by the auditors of AMP.

177 The issue then is how the Phrase (defined at [151] above) should be interpreted given that both English and Mandarin versions of the 1st MOU (as amended) have equal force. In my view, the interpretation that provides for consistency between the provisions is that EBITDA calculated on a cash basis would have to be based on figures audited and verified by an accounting firm to ensure the integrity of that EBITDA. To my mind, the use of the Phrase does not necessarily mean that the accrual method should be adopted for the relevant provisions in the 1st MOU (as amended). This interpretation is further buttressed by the fact that the Phrase is also found in cl 1 of the Mandarin version of the 1st MOU (as amended). It will be recalled that Wang accepted that cl 1 of Annex A to the 1st MOU (as amended) was calculated on a cash basis, and that the same basis would apply for cl 2 (see above at [154]–[158]). If the insertion of the Phrase in cll 2–3 was to ensure that the term EBITDA was calculated according to the accrual method, then it would have been inconsistent with the same phrase in cl 1.

178 While Goh raised allegations during the trial that the Phrase was unilaterally inserted by Wang without his knowledge and that he could not understand the Mandarin version of the 1st MOU (as amended), I do not place any weight on this argument. As stated above at [69], this was an unpleaded allegation raised for the first time at trial. As for Goh's inability to understand the agreement, I have already found above that he was untruthful about his Mandarin ability (see [70] above). It does not seem to me likely that he signed the Mandarin version of the 1st MOU (as amended) without understanding it or

at least obtaining the benefit of a translation given that it specifies that both versions have the same force of law.

179 Accordingly, I am not persuaded by Wang's argument that previous drafts of the 1st MOU (as amended) support her contention that EBITDA was to be calculated on an accrual basis.

180 It is still an open question whether draft agreements, which are essentially evidence of pre-contract negotiations, are admissible for the purposes of contractual interpretation: see *Xia Zhengyan v Geng Changqing* [2015] 3 SLR 732 at [62]. This issue was not squarely addressed by parties in their submissions. In any event, I am of the view that the draft agreements are at best equivocal as to the proper interpretation to be accorded to cll 1–3 of Annex A to the 1st MOU (as amended) and are unhelpful in determining whether EBITDA was to be calculated on a cash basis or accrual basis.

181 In the English version of the 1st MOU, which was signed by Wang on 17 October 2013, cll 2 and 3 of Annex A stated:[209]

> 2. EBITDA projection for this period is SGD15 million on package sales recognition (NOT on redemptions).
>
> 3. In the event above SGD15 million EBITDA projection is not met, [Goh] will return pro-rated share value to the Investor. Example if revenue is SGD12 million, [Goh] will return SGD100.00 per share.

182 Various drafts were exchanged in the interim. The draft agreement in English sent by Lee to one of Marubi's employees on 21 October 2013 at

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209 2AB at p 592.

5.38pm is of critical importance as it is the first time cll 2–3 appear in the form eventually agreed to in the English version of the 1st MOU (as amended):[210]

> 2. EBITDA projection for this period is SGD12 million.
>
> 3. In the event above SGD12 million EBITDA projection is not met, [Goh] will rebate pro-rated share value to [Wang]. The rebate will be in the same percentage of the shortfall in the EBITDA projection. Example : in the event there is a shortfall of package sales EBIDTA target by 10%, [Goh] will compensate by returning 10% of the SGD10.0 million sales proceeds, which is SGD1.0 million. In the event of a shortfall of 1 %, [Goh] will return 1% of the SGD10 million sale proceeds, which is SGD100,000.00

183 This draft agreement incorporated two notable amendments to Annex A to the 1st MOU:

(a) First, the EBITDA projection in cl 2 was reduced to S$12m and the phrase "on package sales recognition (NOT on redemptions)" was removed.

(b) Second, the example showing how the profit guarantee was to be calculated was added in cl 3. To my mind, this was not indicative of an intention that EBITDA would be calculated on an accrual basis. Clause 3 was specifically amended to include a reference to "package sales EBITDA" where none existed in prior drafts. This was more consistent with the amendment having been done intentionally, and not as a typographical error as Wang suggested.[211]

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210 2AB at pp 650–653.

211 PCS at para 53.

Whatever reasons the parties may have had to adopt the wording of cll 2–3 of Annex A to the 1st MOU (as amended), I do not think that the draft agreements evince an intention that EBITDA be calculated on an accrual basis.

(B) WHAT AMP'S TRUE EBITDA SHORTFALL WAS

184 The fact that the profit guarantee in cll 1–3 of Annex A to the 1st MOU (as amended) was to be calculated on a cash basis does not absolve Goh of liability. It remains to be considered if Goh manipulated AMP's EBITDA (even on a cash basis) and whether, in any event, this was permissible under the 1st MOU (as amended).

185 On this point, Wang argued that Goh manipulated AMP's EBITDA in a series of manoeuvres which had the effect of postponing his remuneration of S$3.5m for FY 2014 such that it would only be reflected as an expense in the statements for FY 2015.[212]

186 As for Wang's allegations that Goh had manipulated AMP's EBITDA, Goh submitted that the restructuring of his remuneration was carried out in a transparent manner and disclosed to independent third-party advisors, *ie*, Maybank and KPMG.[213] In any event, Wang had waived her right of compensation when she did not seek compensation on 24 January 2015 when told that AMP's EBITDA for FY 2014 was around S$6 million as calculated on an accrual basis.[214]

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212 PCS at paras 178, 184–185.

213 DCS at paras 183–189.

214 DCS at para 197.

187 Goh received S$3.5m in remuneration from AMP in 2014.[215] He then undertook the following steps to restructure his remuneration for FY 2014:

(a) In June or July 2014, Goh refunded his remuneration of S$3.5m for FY 2014 to AMP.

(b) Goh's remuneration agreement with AMP was novated to GSHKML through a resolution dated 1 July 2013. AMP then terminated the novated service agreement for no cost or penalty, and replaced it with a new service agreement with GSHKML for a sum of S$7m in an agreement dated 1 July 2014.[216] AMP correspondingly increased the remuneration due to GSHKML for FY 2015 to S$7m in a resolution dated 1 June 2014.[217]

(c) GSHKML waived the fees of S$3.5m due to it for FY 14 under the novated agreement in a resolution dated 1 September 2013.[218] The waiver was accepted by AMP in a resolution similarly dated 1 September 2013.[219]

(d) AMP issued a cheque for S$3,727,500 to GSHKML dated 4 July 2014.[220] This allowed this payment to be entered as an expense for FY 2015.

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215 NE 29 Nov 2018, p 14 at line 23 – p 15 at line 1.

216 3SAB at pp 1096–1098.

217 3SAB at p 1108.

218 3SAB at p 1106.

219 3SAB at p 1107.

220 5SAB at p 6.

The evidence is that these measures were only implemented sometime between 30 June 2014 and 16 July 2014. As of 30 June 2014, the resolutions were still being circulated as drafts in emails from Lee to Goh and other employees of AMP.[221] This means the corporate resolutions which were purported to have been signed in 2013 were falsely backdated.

188 The combined effect of these measures was to postpone AMP's expensing of Goh's remuneration of services rendered in FY 2014 to FY 2015. This made AMP's financial performance in FY 2014 appear much stronger than it actually was. As Goh stated, these measures were carried out "to boost the revenue for the IPO valuation, market valuation".[222] Goh justified his manipulation of the FY 2014 figures on the basis that it was a "purposeful action" and an "accepted decision" by Loh and the financial IPO advisers that was carried out in a "transparent" manner.[223] Chan corroborated this account, deposing that Loh suggested deferring Goh's remuneration for FY 2014 to improve AMP's profit and loss position for FY 2014, and that Rock Star Advisors (an entity related to RSP) stated that this arrangement would improve AMP's prospects of achieving a trade sale or IPO in 2014.[224]

189 I do not accept that Goh was entitled to manipulate AMP's FY 2014 figures for the purposes of AMP's IPO valuation. Also, in so far as Goh's submission was that the restructuring of his remuneration was acceptable as long as it was approved by Maybank and KPMG,[225] I disagree. This would go

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221 3SAB at pp 1103–1104.

222 NE 22 May 2019, p 144 at lines 4–5.

223 NE 22 May 2019, p 139 at lines 2–9 and p 145 at line 2.

224 Chan's AEIC in Suit No 1311 of 2015 at para 22.

225 See DCS at paras 187–189.

against the grain of the Phrase in the English Translation of the 1st MOU (as amended), which I found above at [177] to have been inserted by the parties to ensure the integrity of the financial figures used in calculating the profit guarantee. Taken to its logical extreme, Goh's argument would render any manipulation of AMP's financial performance beyond reproach so long as he could get an accounting firm to sign off on this. This could not have been the objective intention of the parties when they entered into the 1st MOU (as amended).

190 It also does not appear that Maybank had signed off specifically on Goh's restructuring of his remuneration; AMP's management accounts were simply reproduced in an information package produced by Maybank to market a potential IPO of AMP with the caveat that they were "being restated and … subject to audit".[226] As for the KPMG audit which Goh claimed did not flag any issue with his FY 2015 remuneration,[227] the defendants highlighted that a KPMG audit partner had enquired with Chan on 17 March 2015 about Goh's FY 2015 remuneration, and submitted that this indicated that KPMG was aware of Goh's remuneration arrangement.[228] However, there is no evidence that KPMG was aware that the restructuring of Goh's remuneration was undertaken through the use of backdated resolutions. In this regard, I prefer the evidence of Potter who testified that Goh's manoeuvres were improper.[229]

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226 Goh's supplementary AEIC sworn on 7 November 2018 ("Goh's supplementary AEIC") at p 182.

227 Goh's supplementary AEIC at para 39.

228 5SAB at p 18; NE 29 Nov 2019, p 95 at lines 15–22.

229 Potter's 2nd Expert Report at para 5.21.

191 In the circumstances, I am satisfied that Goh's restructuring of his remuneration of S$3.5m ought to have been included as an expense in calculating EBITDA on a cash basis in FY 2014 for the purposes of the profit guarantee in cll 2–3 of Annex A to the 1st MOU (as amended). The corollary of this is that the shortfall in FY 2014 is greater than the S$132,707 communicated to Wang.[230] It follows that any purported waiver by Wang of her entitlement to compensation under the 1st MOU (as amended) cannot be effective as she was not fully apprised of the fact that the shortfall was far in excess of what was actually told to her.

(2) Clause 6 of Annex A

192 Clause 6 (reproduced above at [33]) provided that no new AMP shares could be sold after a "final pre IPO round of 10,000 new shares". Wang claimed that Goh breached cl 6 on two occasions: (a) when 10,000 shares were issued on 18 November 2014 to Dr Goh Seng Heng Pte Ltd for S$1; and (b) when 700 shares were issued to three AMP employees on 14 July 2015.[231]

193 Wang submitted that the 10,000 new shares which could be issued under cl 6 were only to be issued to a party named Sun Hung Kai & Co Ltd ("Sun Hung Kai"), and at a fair price.[232] This appeared to be a submission that these terms were implied into cl 6. Unfortunately, neither party elaborated on how any such terms should be implied into the 1st MOU (as amended) in accordance with the principles laid down in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 ("*Sembcorp Marine*").

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230 5AB at pp 2556–2557.

231 See Exhibit P1.

232 SOC at para 34; PCS at para 337.

However, Goh conceded in cross-examination that the shares had to be issued at a fair price and that he had breached cl 6 by causing the 10,000 shares to be issued at a price of S$1 per share.[233] In view of this admission, I find that Goh's sale of 10,000 shares for a nominal price of S$1 constituted a breach of cl 6.

194 As for the issuance of 700 shares to three AMP employees on 14 July 2015, this could not have been a breach of cl 6 of Annex A to the 1st MOU (as amended). Wang purported to rescind the 1st MOU (as amended) on 18 May 2015. On the other hand, Goh treated her rescission as a repudiation which he accepted on 25 May 2015.[234] As the 1st MOU (as amended) would have been terminated by 25 May 2015 at the latest, there could be no further breach thereafter.

(3) Clause 7 of Annex A

195 Clause 7 (reproduced above at [34]) provided that Goh would not sell further AMP shares without Wang's consent after the completion of Wang's purchase of AMP shares under the 1st MOU (as amended). The moneys due under the 1st MOU (as amended) were paid to Goh on 24 October 2013 and 4 November 2013 (see [15] above).

196 Goh accepted that he was in breach of cl 7 on two occasions, (a) when 527 shares were sold to Carolyn Wong on or around 20 December 2013; and (b) when 32,049 shares were sold to Liberty Sky on or around 25 November 2014 (see [44] above). However, he disputed that the following five transfers were in breach of cl 7:

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229 NE 23 May 2019, p 48 at lines 16–24.

234 10AB at pp 5120–5127; 10AB at pp 5156–5158; DCS at para 307.

S/No	Date	No of Shares	Transferee
1	6 Nov 2013	20,000	RSP
2	11 Nov 2013	143	Goh Sin Ee (Wu Xinyi)
3	25 Feb 2014	32,895	RSP
4	4 Mar 2014	63	Dr Chua Teck Meng Henry
5	4 Mar 2014	286	Dr Irene Hii Ik Tiing

197 Goh's arguments in relation to these transfers were that:

(a) First, cl 7 did not prohibit him from selling shares to satisfy pre-existing obligations. The sales in Serial Nos 1 and 3 were made to fulfil the call option and share purchase agreement entered into prior to the conclusion of the 1st MOU (as amended) and were not caught by cl 7.[235]

(b) Second, cl 7 did not prohibit Goh from selling AMP shares to employees as an incentivisation strategy.[236] This covered the remaining transfers (*ie*, Serial Nos 2, 4 and 5).

198 I find that cl 7 did not allow Goh to sell shares in AMP to comply with pre-existing contractual obligations or to sell such shares to AMP employees as part of any incentivisation strategy. The plain wording of cl 7 in both languages does not allow this.

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235 DCS at paras 148–149.

236 DCS at paras 145–146, 308.

199 I note that Wang testified that cl 7 entitled Goh to sell shares to third parties if he was under a pre-existing contract to sell those shares.[237] However, the interpretation of a contractual clause is to be determined objectively.

200 There was also no suggestion by Goh that any qualification could be implied under the test in *Sembcorp Marine*.

201 I therefore find that cl 7 did not allow Goh to sell AMP shares after the sale of shares to Wang was completed on 4 November 2013 without Wang's permission. It follows then that Goh was in breach of cl 7 of the 1st MOU (as amended) in respect of all the sales of AMP's shares referred to above at [196].

The 2nd MOU

The misrepresentation claim

202 Wang's misrepresentation claim in respect of the 2nd MOU was premised on a number of representations, which are defined above at [35]:

> (a) First, Goh communicated to Wang that AMP had achieved an EBITDA of S$11,867,000 for FY 2014 for the purposes of the 1st MOU (as amended), and that she was entitled to compensation of S$110,000 or 123 additional shares in AMP based on the last traded price of S$900 per share.[238]

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237 NE 5 Nov 2018, p 50 at lines 16–21.

238 PCS at para 173.

(b) Second, Goh informed Wang at a meeting on 8 September 2014 in Guangzhou ("the 8 September 2014 meeting) that the angel investors were only willing to sell their shares at S$450 per share.[239]

(c) Third, Goh impliedly represented that he would continue to abide by his undertaking and warranty not to sell any more shares in AMP without her permission.[240]

203 In the alternative, Wang alleged a separate misrepresentation termed the "second tranche representation" (defined above at [36]) which related to statements made by Goh on 20 November 2014 pertaining to the mechanics of how the shares were to be transferred from the angel investors to Wang (through Goh).

(1) The August 2014 EBITDA representation

(A) WHETHER THE AUGUST 2014 EBITDA REPRESENTATION WAS MADE

204 Lee sent an email to Lin (copying Goh) on 24 July 2014 stating AMP's purported FY 2014 EBITDA figure of S$11,867,000 for the purposes of the profit guarantee in the 1st MOU (as amended).[241] Lin translated and forwarded Lee's email to Wang by way of an email sent on 1 August 2014 ("the 1 August 2014 email"). The defendants accepted that the August 2014 EBITDA representation was made to Wang by Lin on Goh's behalf.[242] As I found above

239 PCS at para 221(a).

240 PCS at para 221(b).

241 5AB at pp 2556–2557.

242 DCS at para 181.

at [73], Lin was acting as Goh's agent at the time. The representation is thus deemed to have been made by Goh.

(B) WHETHER THE AUGUST 2014 EBITDA REPRESENTATION WAS SUBSTANTIALLY FALSE

205 The August 2014 EBITDA representation was substantially false. The EBITDA figure communicated to Wang on 1 August 2014 was for the purposes of calculating the compensation due to her under the profit guarantee in cll 1–3 of the 1st MOU (as amended). As I found above at [187]–[191], this was done through the use of falsely backdated resolutions and was impermissible under the 1st MOU (as amended). Even on Goh's argument that the FY 2014 EBITDA figure was to be calculated on a cash basis, Goh's impermissible restructuring of his remuneration meant that the FY 2014 EBITDA figure (on a cash basis) was still overstated by S$3.5m. Based on AMP's draft accounts for FY 2014, which reflected its cash basis EBITDA as S$11,867,652, its true cash basis EBITDA would be S$8,367,652 (*ie*, S$11,867,652 – S$3,500,000).

(C) WHETHER THE AUGUST 2014 EBITDA REPRESENTATION WAS MADE TO INDUCE WANG TO ENTER INTO THE 2ND MOU

206 I am of the view that the August 2014 EBITDA representation was made by Goh with the intention of inducing Wang into entering into the 2nd MOU.

207 The evidence is that in the weeks leading up to the August 2014 EBITDA representation, Goh was already working towards a deal that would see Wang and Sun buy out the angel investors in AMP. In an email dated 4 July

2014, Lin asked Goh for clarifications on the proposed price and structure of such a deal.[243]

208 At the same time, Goh was concerned with ensuring that Wang was given the impression that AMP's finances were healthy. This is borne out in an email that Goh sent to Lee dated 7 August 2014 which forwarded an email attaching AMP's FY 2014 finance report:[244]

> what happen to the 11.9m ebitda we agreed on ?
>
> this is not good presentation to Marubi who is likely to be the trade sales buyer
>
> dun let it circulate first
>
> can check ?

The attached finance report reflects AMP's EBITDA for FY 2014 as S$8,929,409 with total pre-tax profits of S$10,705,352.[245]

209 Though this email was sent *after* 1 August 2014, it makes clear that Goh was concerned that the EBITDA figures in the finance report contradicted the S$11,867,000 figure given to Wang in the 1 August 2014 email, and that this inconsistency would potentially jeopardise the chances of persuading Marubi (*ie*, Wang and Sun) from investing further in AMP. The inference to be drawn from this is that Goh was aware that the EBITDA figure of S$11,867,000 had been communicated to Wang and intended for her to rely on it in her future investment decisions relating to AMP.

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243 5AB at p 2512.

244 3SAB at p 1110.

245 3SAB at p 1121.

(D) WHETHER WANG WAS INDUCED BY THE AUGUST 2014 EBITDA REPRESENTATION

210 I am also satisfied that Wang has proved that she was induced by the August 2014 EBITDA representation to enter into the 2nd MOU.

211 The materiality of a representation is a factor to be considered when determining whether a representee was indeed induced. A representation is material when its tendency or its natural and probable result is to induce the representee to alter his position as he did: *Spencer Bower* at para 6.14. A *prima facie* case of inducement can be established by proving materiality so that the evidentiary burden shifts to the representor: see *Spencer Bower* at para 6.15. The August 2014 EBITDA representation clearly satisfies the requirement of materiality. AMP's financial performance was one of the metrics influencing Wang's decision in entering into the 2nd MOU to further invest S$22.5m in AMP. It is evident from Goh's email considered above at [208] that he shared a similar view.

212 I turn now to consider some of the evidence relied on by Goh to show that Wang was not induced by the August 2014 EBITDA representation to enter into the 2nd MOU.

213 First, Goh submitted that Wang did not seek confirmation of AMP's EBITDA for FY 2014 and did not ask to see the management accounts referenced in the 1 August 2014 email from Lin.[246] He argued that this meant that she was not concerned about the figures that she was presented with.

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246 5AB at p 2557.

214 Second, Goh pointed to Wang's reaction after discovering that AMP's EBITDA in FY 2014 on an accrual basis was S$6,591,099.[247] As I understand it, Goh's argument was that Wang's failure to pursue the matter or raise the issue of AMP's EBITDA in her letter dated 10 March 2015 ("the 10 March 2015 letter")[248] concerning various breaches of the agreements meant that she was not surprised by this revelation or concerned by it. The issue, however, is that this contention is not borne out by the evidence. Wang's evidence was that she raised the issue of AMP's EBITDA at a meeting on 28 February 2015.[249] Goh did not contradict Wang's account of her having raised this issue, but rather testified as to the various explanations that he and Michelle gave her.[250] The 10 March 2015 letter was also sent for the purposes of setting out Wang's grounds for refusing to complete the transfer of shares under the third tranche pursuant to the 2nd MOU, and not to set out all of Wang's claims against Goh.[251] Seen in this context, I do not think that the evidence relied on by Goh warrants an inference that Wang was not induced by the August 2014 EBITDA representation.

215 With respect, I do not think Wang's failure to independently verify AMP's EBITDA for FY 2014 justifies an inference that she did not rely on the August 2014 EBITDA representation at all. To reiterate, it is sufficient for Wang to demonstrate that the misrepresentation operated on her mind and caused her, or helped to cause her, to enter into the 2nd MOU: *Spencer Bower* at para 6.09.

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247 DCS at para 205.

248 Wang's AEIC at pp 1019–1020.

249 Wang's AEIC at para 212.

250 NE 22 May 2019, p 95 at line 17 – p 96 at line 25.

251 See PCS at para 333.

216 I also take guidance from the Court of Appeal's statements in *Panatron* at [20]. The respondents in *Panatron* were experienced businessmen who would have made their own evaluation of the prospects of investing in the company. Nonetheless, they could still have been induced by the false representations that were made to them, including the representation that the company and its subsidiaries were more profitable than they actually were. The most that could be said was that the respondents had relied partly on their own knowledge and expertise, and partly on the representations made to them. Even if this was so, their misrepresentation claim would still have succeeded.

217 In the present case, Wang's failure to follow up on or verify the August 2014 EBITDA representation demonstrates that she trusted Goh. There is no evidence to suggest that other factors operated on her decision to enter into the 2nd MOU such that Wang did not rely on the August 2014 EBITDA representation. I therefore find that this limb has been made out.

(E) WHETHER THE AUGUST 2014 EBITDA REPRESENTATION WAS MADE FRAUDULENTLY

218 I find that the August 2014 EBITDA representation was made fraudulently. Goh would have known that the EBITDA figure of S$11,867,000 provided to Wang was only achievable through an impermissible manipulation of AMP's accounts through the use of backdated resolutions. Goh thus acted fraudulently in making the August 2014 EBITDA representation. It follows that Wang has made out her claim against Goh for fraudulent misrepresentation in respect of the August 2014 EBITDA representation.

(2) The AI share price representation

(A) WHETHER THE AI SHARE PRICE REPRESENTATION WAS MADE

219 The crux of Wang's claim is that one of the matters discussed during the 8 September 2014 meeting was her potential buyout of the angel investors' stake in AMP. During this meeting, Goh informed her that the angel investors were only willing to sell their shares at S$450 per share.[252]

220 Goh, on the other hand, claimed that he did not make the AI share price representation as alleged. While Goh conceded that he offered to sell Wang the angel investors' shares at S$450 per share, he disputed informing Wang that this was the only price at which they were willing to sell their shares.[253] As Lin confirmed at trial, it was Loh who informed Wang during the 8 September 2014 meeting that the angel investors were seeking an internal rate of return of 25% working out to around S$450 per share, and that Goh only repeated what Loh had said.[254]

221 It seems to me that certain aspects of Goh's arguments relating to the alleged AI share price representation are overly technical. To my mind, the fact that Loh could have been the party who first communicated to Wang that the angel investors were seeking S$450 per share would not absolve Goh of liability for any misrepresentation if he had repeated the same to Wang.

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252 Wang's AEIC at para 118.

253 DCS at para 228.

254 DCS at para 229; NE 29 May 2019, p 82 at line 21 – p 83 at line 10.

222 In any case, I am of the view that Wang has proved that the AI share price representation was made by Goh. Wang's account of the 8 September 2014 meeting is supported by the following paragraphs in Lin's SD:

> 72. Between May 2014 and September 2014, [Wang], [Goh], [Michelle], [Lee] and I met on a number of occasions including in or around May or June 2014, when [Wang] came to Singapore, and on 8 and 9 September 2014, when [Goh] and [Michelle] led a group comprising, among others, [Lee], [Loh] and me to Guangzhou, China to meet with [Wang].
>
> 73 I recall that during those meetings, [Goh] and/or [Michelle] told [Wang] that:
>
> …
>
> (e) [Wang] should buy out those '*angel investors*' so that [Wang], [Goh] and a company known as RSP Investments (i.e. [Loh's] Company) would together be the principal shareholders in, and hold more than 85% of the shares of, [AMP];
>
> (f) The '*angel investors*' would only sell their shares at a price of S$450 per share;
>
> [emphasis in original]

This is in contrast to Lin's evidence at trial, where she sought to correct her SD to corroborate Goh's account of the 8 September 2014 meeting (see [220] above).[255] Similar to my findings in respect of the 1st MOU (as amended) (see [91]–[94] above), I am of the view that Lin was tailoring her evidence at trial to suit Goh's case, and that the account in Lin's SD ought to be preferred.

223 The evidence also shows that Goh planned from the outset to purchase the angel investors' shares for S$350 per share and to onsell them to Wang for S$450 per share, thereby allowing him to obtain a profit of S$100 per share.

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255 NE 29 May 2019, p 77 at line 22 – p 78 line 22, p 90 at lines 10–22.

This was to be done without informing Wang that the angel investors were selling their shares for S$350 per share.

224 In an email dated 2 September 2014 sent by Lee to Goh containing the minutes of a meeting held on 1 September 2014, the option of having Marubi (*ie*, Wang and Sun) buy out the angel investors was discussed:[256]

> …
>
> **On Marubi**
>
> Option A
>
> - Marubi to buy over all 15 + 4 % of [the angel investors] at around S$450.00 per share
>
> - Process – [Goh] to buy above 19% at S$350.00 p.s. and resell some or all of them [to] Marubi at $450.00 (Explanation – [Reis] owes [Goh] some old debts)
>
> - Alternatively, can allow [Reis] to retain a token 1-2% if he wish to keep to enjoy some upside after IPO …
>
> …

225 The importance of keeping the difference between the price at which Goh was to buy AMP's shares from the angel investors (at S$350 per share) and the price at which he would onsell them to Wang (at S$450 per share) a secret from Wang and Sun is demonstrated in an email from Loh to Goh (copying Lin, Lee and Michelle) on 8 September 2014 at 7.30am before the 8 September 2014 meeting:[257]

> …
>
> 2. [Goh] on strategy with Marubi later, can we all meet in GZ later and have a quick chat with [Lin] before meeting [Sun]. I still feel we need to strategise properly on the spread of the sale

256 5AB at p 2648.

257 5AB at p 2727.

> of [the angel investors' shares]. [Sun] might just walk away if he thinks that [Goh] is 'arbitraging' the sale. Typical chinaman mentality…

226 Lin's testimony shed further light on Goh's plans. She agreed that Goh had justified to Wang that the angel investors' shares could not be acquired through a direct sale to Wang as there was a requirement that "all contracts from [AMP] investors to another [AMP] investor has to go through [Goh] [*sic*]".[258] However, Lin testified that Sun began to suspect that Goh was "taking a margin out of this arrangement".[259] In an email which Lin sent to Goh, Lee and Loh on 13 September 2014 at 11.37pm, Lin stated:[260]

> …
>
> I think we all put in a lot of effort trying to do this reorg, with [Reis] selling to [Goh] and then [Goh] to [Sun].
>
> Yesterday u all saw the email the email that [Sun] replied ok…
> …
>
> Well I got a feeling somehow something went wrong ..Now he sudden questioned why is shares not directly transfer from [Reis] to him??? Why is [Goh] transferring shares to him? Out of the blue.
>
> The reason why [Reis] cannot transfer direct to [Sun] is that all contracts are signed that shares has to be sold back to [Goh] before IPO. He will be the market maker right? Both my n [Sun]'s contracts are like that. I assume others are like that too. This is my reason and There cannot be any other reason why [Reis] cannot sell direct to [Sun].

227 In Lin's next email to Goh, Lee and Loh on 14 September 2014 at 5.33am, she reiterated the importance of ensuring that Sun's suspicions were not further raised:[261]

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258 NE 30 May 2019, p 61 at lines 4–9.

259 NE 30 May 2019, p 64 at lines 1–11.

260 NE 24 May 2019, p 9 at lines 3–7; 6AB at p 2901.

261 NE 24 May 2019, p 11 at lines 14–19; 6AB at pp 2900 and 2901.

> …
>
> First of all -all shares supposed to go thru [Goh] before ipo so that [Sun] dun feel that we were plotting against him initially. (And this is true at least for me n [Sun]'s contract. That we all hv to sell back to [Goh]. So this was the basis of our plan initially.) we must say this was a natural arrangement. IF NOT - all dead!!!!
>
> …
>
> Just remember - we had a good reason n basis before. Now changing story better make sure ok n dun backfire our initial actions.
>
> Pls discuss before next action ... Dun get [Sun] suspicious of anything handy-panky in between..

In her email, Lin considered alternatives to the initial arrangement, including the direct sale of the angel investors' shares to Wang and utilising an escrow account. Lin explained why she proposed that Goh, Lee and Loh should adhere to the initial plan for Wang and Sun to purchase the angel investors' shares through Goh:[262]

> A. So if we told [Sun] a -- a reason or explanation of how this is going to be done, if we differ from it, [Sun] is going to suspect that there are some other ulterior motive of this whole arrangement.
>
> …
>
> Q. … Here, you do not wish [Sun] to suspect that [Goh] is making a spread in the transaction. Correct?
>
> A. We do not want [Sun] to know that [Goh] is making a spread in the transaction. Yes.
>
> …
>
> A. We do not want to proactively tell [Sun] that there will be a spread in between. But if asked, then we will explain.

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262 NE 30 May 2019, p 74 at line 25 – p 75 at line 21.

228 It can be seen from this that Goh intended to give Wang and Sun the impression that he was just a conduit and that he was not making any profit from the sale of the shares of the angel investors. Otherwise, Wang (and Sun) might just walk away from the deal.

229 The natural inference to be drawn from these emails is that Goh did inform Wang at the 8 September 2014 meeting that the angel investors were only prepared to sell their shares at S$450 per share.

(B) WHETHER THE AI SHARE PRICE REPRESENTATION WAS SUBSTANTIALLY FALSE

230 The AI share price representation was substantially false. The evidence was that the angel investors were willing to sell their AMP shares at a price of S$350 per share. This was made clear in an email dated 15 September 2014 from Reis, who represented the angel investors, to Lee (copying Goh and Michelle):[263]

> Dear [Lee],
>
> I have spoken to the Minorities and they have agreed with the following structure …
>
> …
>
> Transaction Summary
>
> 1. We … will sell up to 56,049 shares … at S$ 350 per share.
>
> …

While this email post-dated the making of the AI share price representation on 8 September 2014, this does not negate the falsity of the AI share price representation. A representation that is not withdrawn is treated as a continuing

263 Reis' AEIC at p 11.

one, being repeated minute by minute until it lapses or is acted on: *Spencer Bower* at para 4.09. By the time the 2nd MOU was signed on or around 25 September 2014, the AI share price representation would clearly have been substantially false.

231 The sale to Wang was to be the sale of the angel investors' shares. However, the mechanism was for the angel investors to sell their shares to Goh and then for Goh to sell those shares to Wang. This mechanism was premised on the explanation that Goh had told Wang: namely, that the angel investors had to sell their shares to him because of certain contractual rights of his. However, the truth was that Goh wanted to hide the fact that he was making the S$100 difference in prices. Although the principle of *caveat emptor* would apply, this is not a case where Goh had simply remained silent as to what price the angel investors would sell their shares at. Had he done so, Goh might have been entitled to pocket the difference. However, the sale was in substance a sale from the angel investors to Wang but the mechanism was to go through Goh. Furthermore, in this case, Goh did misrepresent that the angel investors would only accept S$450 per share.

(C) WHETHER WANG WAS INDUCED BY THE AI SHARE PRICE REPRESENTATION

232 Goh asserted that Wang was not induced by the AI share price representation to enter into the 2nd MOU. Goh raised several arguments in this regard:

(a) First, there was no causal link between the AI share price representation and Wang's entry into the 2nd MOU. The amount that

the angel investors wanted to receive would not matter to Wang as the 2nd MOU was a contract between her and Goh.[264]

(b) Second, the AI share price representation did not play a real and substantial part in her decision to enter the 2nd MOU. Wang and Sun negotiated for various additional benefits under the 2nd MOU, including an additional 10% share in a joint venture company to be set up in China and a restraint of trade clause. It was only upon obtaining these that Wang agreed to enter into the 2nd MOU.[265]

(c) Third, Wang and Sun, being experienced businesspersons, would have known or suspected that the AI share price representation was untrue and therefore would not have relied on it. This could be inferred from the fact that they demanded extra concessions from Goh (see [232(b)] above).[266]

233 I first address the arguments at [232(a)] and [232(b)]. To my mind, these arguments are illogical and ought to be rejected. The chief purpose of the 2nd MOU was for Wang to buy out the angel investors' shareholdings in AMP (see [17] above). As mentioned, this was not a transaction where Wang was simply purchasing shares in AMP from Goh. The terms of the 2nd MOU make this clear:

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264 DCS at para 236.

265 DCS at paras 238, 241.

266 DCS at paras 239–241.

> **For [AMP] shares:**
>
> 1. [Wang] will buy all 50,000 shares ([Reis] & Minority shareholders) at S$450.00 from [Goh]
>
> …

The price at which the angel investors were to sell their shares in AMP would clearly have been an important factor to Wang in deciding whether to enter into the 2nd MOU. Goh admitted as much in his AEIC:[267]

> 182. … I did not tell Sun or Wang the price I was purchasing the Angel Investors' shares at. I knew that Sun was a tough negotiator. I did not want him to use my purchase price of SGD350 per share to try and bargain down his purchase price of SGD450 per share.

234 This is a clear admission on Goh's part that the amount the angel investors received for their shares was important to Wang. Wang's decision to purchase the shares at S$450 per share was inextricably linked to her belief that the angel investors were receiving the same price from Goh for their shares.

235 The fact that Wang might have received additional benefits under the 2nd MOU is irrelevant to the question of whether the AI share price representation played a real and substantial part in contributing to Wang's entry into the 2nd MOU (see [55] above). While Wang might have extracted further concessions from Goh prior to entering the 2nd MOU, this does not mean that she did not rely on the AI share price representation.

236 Turning to [232(c)], I do not accept Goh's submission that Wang and Sun would have known or suspected that the angel investors were selling their shares at less than S$450 per share. Goh admitted to keeping secret the fact that

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267 Goh's AEIC at para 182.

the angel investors were only receiving S$350 per share from Wang and Sun as they were likely to demand a lower price if they knew this. In the circumstances, the fact that Wang eventually agreed to the price of S$450 per share is strong evidence that she was induced by the AI share price representation. I also do not think that Wang obtaining extra concessions from Goh is inconsistent with her having been induced by the AI share price representation. It bears repeating that the AI share price representation need not be the sole cause of Wang's entry into the 2nd MOU, and that a finding that it contributed to her actions is sufficient for a finding of inducement (see [55] and [216] above).

(D) WHETHER THE AI SHARE PRICE REPRESENTATION WAS MADE FRAUDULENTLY

237 The AI share price representation was made fraudulently. Goh was aware by the time the 2nd MOU was signed that the angel investors were selling their shares to him at S$350 per share. He thus acted fraudulently in making the AI share price representation. Wang has thus made out her claim against Goh for fraudulent misrepresentation in respect of the AI share price representation.

(3) The second no further sale of shares representation

238 Wang's submission in relation to the second no further sale of shares representation was that Goh had impliedly represented that he had abided by his obligation in the 1st MOU (as amended) that he would not sell his shares in AMP without Wang's permission prior to AMP's IPO. This implied representation was made in the following manner:[268]

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268 PCS at paras 274–275.

(a) In August 2014, Goh asked Lin to propose to Wang to buy out the angel investors. When Lin did so, Wang accepted the proposal on the premise that Goh would remain as a major shareholder in AMP to prepare it for an IPO.

(b) Second, in emails dated 16 August 2014 and 20 August 2014, Lin informed Goh that Wang and Sun were amenable to this proposal provided that Goh would remain a major shareholder along with RSP and Wang with the three parties sharing control of AMP.

(c) Third, Lin sent Wang several messages on 1 September 2014 using the WeChat platform stating that Goh hoped that she would "purchase the shares of the angel investors" such that her equity in AMP would be "6.8 + 19 = 25.8", while Goh's would be "39.5".[269]

239 It appears to me that Wang's case at trial departed to some extent from her pleaded position. I first set out the relevant portions of Wang's pleadings in relation to the second no further sale of shares representation:

> 51. In order to induce [Wang] to purchase more shares in [AMP], *in August 2014*, when [Wang and/or Sun] came to Singapore, and *on 8 and 9 September 2014*, when [Goh and Michelle] together with [Lee], [Loh], and [Lin] went to Guangzhou, China to meet with [Wang and/or Sun], [Goh and/or Michelle] represented and/or caused to be represented to [Wang and/or Sun] that:
>
> …
>
> (e) [Wang] should buy out those 'angel investors' so that [Wang], [Goh] and a company known as [RSP] would together be the principal shareholders in, and together hold more than 85% of the shares of, [AMP];
>
> …

269 Wang's AEIC at p 242.

> 52. The representations in paragraph 51 above were made by and are to be inferred from oral statements made to [Wang] by *[Goh] and/or [Michelle] and/or [Lee] and/or [Loh].*
>
> [emphasis in original removed; emphasis added]

240 Wang pleaded that the alleged representations which constituted her claim in misrepresentation were made *in August 2014 and on 8 and 9 September 2014* and were to be inferred from oral statements made by Goh, Michelle, Lee or Loh. Her pleadings did not include any representations that were made by Lin on behalf of Goh. Lin's WeChat messages to Wang of 1 September 2014 also fell outside the timeframe specified in the pleadings. I therefore disregard the aspect of Wang's submission that relies on these WeChat messages.

241 Another difficulty with Wang's claim is that with the exception of the representations constituted by Lin's WeChat messages on 1 September 2014 (which were unpleaded), Wang could not point to any statements made by or on behalf of the defendants from which the second no further sale of shares representation could be implied.

242 It will be recalled that I found that the discounted share price representation, the no further sale of shares representation and the AI share price representation were made in part because Lin's SD materially corroborated Wang and Sun's evidence that those representations were made on specific occasions. However, no such evidence was forthcoming in relation to the alleged second no further sale of shares representation. While Wang and Sun deposed in their AEICs that they attended meetings with Goh and Lin (amongst others) in August 2014 and on 8 and 9 September 2014, they did not refer to any representations that were made during those meetings which related to

Goh's intention not to sell his AMP shares.[270] Lin's emails to Goh dated 16 August 2014 and 20 August 2014 also did not state that any such representations were made. The email dated 16 August 2014 was mainly a summary of Wang and Sun's views regarding their potential further investment into AMP.[271] Likewise, Lin's email dated 20 August 2014 mainly summarised Sun's concerns about purchasing Reis's shares and his proposals for AMP's shareholding structure. Goh's intention to retain his shareholding in AMP did not appear to have been discussed during these meetings.[272]

243 To my mind, the fact that Wang was amenable to the proposal of buying out the angel investors provided that Goh remained a major shareholder is indicative only of her subjective intention and does not show that the defendants had made the second no further sale of shares representation.

244 In the circumstances, I find that Wang has not established that the second no further sale of shares representation was made.

(4) The second tranche representation

245 The second tranche representation related to alleged misrepresentations that Goh made following the conclusion of the 2nd MOU (which was signed on or around 25 September 2014).

246 As I have found against Goh on the August 2014 EBITDA representation and the AI share price representation, it is unnecessary to consider this claim. In any case, I am doubtful that any representation following

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270 Wang's AEIC at paras 100–125; Sun's AEIC at paras 13–18.

271 Tab 25 of WXP-11 exhibited to Wang's AEIC at pp 202–206.

272 5AB at pp 2630–2631.

the conclusion of an agreement can be the basis of a claim in misrepresentation giving rise to a right to the representee to rescind the original agreement. In other words, Wang could not have said that she relied on this representation when she entered into the 2nd MOU because the representation allegedly occurred after the 2nd MOU was entered into.

247 There is also merit in the defendants' argument that the second tranche representation pertained to the mechanics of how Wang was to receive the second tranche of shares and does not show that at the time the 2nd MOU was entered into, Goh had already decided not to acquire further shares from the angel investors.[273]

The breach of contract claim

248 In the same vein, as the misrepresentation claim in respect of the 2nd MOU has succeeded, it is unnecessary for me to consider Wang's alternative argument for breach of contract in relation to the 2nd MOU.

The claims against Michelle

249 As regards the 1st MOU (as amended), even on Wang's account, Michelle was not present at the yacht meeting where the discounted share price representation and AMP business growth representation were made.[274] No authority was cited to me for the proposition that Michelle could be found to impliedly make the representations by virtue of her position as CEO of AMP. I therefore find that Wang has not made out her claim against Michelle for misrepresentations in respect of the 1st MOU (as amended).

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273 DCS at paras 271–274.

274 See Wang's AEIC at para 26.

250 Wang's case against Michelle in respect of the 2nd MOU was essentially similar to that for the 1st MOU (as amended). Michelle cannot be found to have impliedly made the representations simply by virtue of her position as CEO of AMP. I therefore dismiss Wang's claim against Michelle in misrepresentation in respect of the 2nd MOU.

Counterclaim

251 Since I have found that both the 1st MOU (as amended) and 2nd MOU were obtained as a result of fraudulent misrepresentations, it follows that both agreements were validly rescinded by Wang on 18 May 2015.[275] It is thus not open to the defendants to bring a counterclaim against Wang for her alleged breach of contract.

Remedies

252 The relief sought by Wang for fraudulent misrepresentation was a declaration of her valid rescission of the 1st MOU (as amended) and the 2nd MOU and repayment of what she had paid plus interest.[276] Wang also sought reimbursement for her incurrence of RMB 993,169.97 in fees for the registration of the "PPP" logo trademark in China and other related expenses in connection with the incorporation of corporate entities in China.[277] Further, Wang sought an order for Goh to account for the sales proceeds of the sale of the shares in AMP to Wang, together with a consequential tracing order.[278]

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275 10AB at pp 5120–5127.

276 PCS at para 361.

277 PRS at para 170.

278 PCS at paras 97, 361(e).

253 The first issue is whether the court should declare that Wang has validly rescinded the 1st MOU (as amended) and the 2nd MOU and give effect to the rescission. In this regard, Wang must establish that substantial restitution is possible; once established, the representor has the evidentiary onus of introducing evidence that rescission would cause injustice to himself or others: *Spencer Bower* at para 17.09.

254 I am satisfied that substantial restitution is possible in this case as Wang still holds 66,000 shares in AMP (as at 31 July 2018).[279] No evidence has been provided to show that this state of affairs has changed. The defendants have also not raised any bars to rescission in their submissions. I therefore grant Wang the declaration that the 1st MOU (as amended) and 2nd MOU are validly rescinded. Goh is to repay S$30,700,000, being the purchase moneys for 66,000 shares in AMP, to Wong in exchange for the re-transfer of those shares. Goh is also to pay any duty or charge associated with the re-transfer.

255 As regards Wang's claim for an account and a tracing order in respect of the purchase moneys, the defendants in their submissions focussed on the reliefs that Wang would be entitled to for innocent misrepresentation. There was no submission in reply to her claim for an account or a tracing order based on fraudulent misrepresentation. It seems that the defendants do not dispute Wang's claim for these reliefs based on fraudulent misrepresentation. However, given that Wang's submissions addressed the availability of a tracing order at some length, I briefly set out my thoughts on the issue.

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279 18AB at pp 9518–9520

256 Wang submitted that if she were entitled to rescind the agreements for fraudulent misrepresentation, she would be entitled to claim a tracing order. Her submissions implied that she need not establish any breach of trust or of a fiduciary duty for such an order. Wang referred to various English cases like *Lonrho plc v Fayed (No 2)* [1992] 1 WLR 1 at 12, *El Ajou v Dollar Land Holdings Plc* [1993] 3 All ER 717 at 734 and *Shalson v Russo* [2005] Ch 281 at [122] ("*Shalson*").[280] She specifically cited [122] of *Shalson*, which states:[281]

> … The representee then enjoys a sufficient proprietary title to enable him to trace, follow and recover what, by virtue of such revesting, can be regarded as having always been in equity his own property. This may be an essential means of achieving a proper restoration of the original position *if the representor has in the meantime parted with the property and is ostensibly a man of straw unable to satisfy the court's orders for restoration of the original position.*
>
> [emphasis added]

257 These English cases were cited for the proposition that disaffirming a voidable transaction confers an equitable interest in the assets transferred if the contract were procured by fraud; the rescinding party would obtain an equitable title to property transferred after the election to rescind: see also Dominic O'Sullivan, Steven Elliot and Rafal Zakrzewski, *The Law of Rescission* (Oxford University Press, 2008) at para 16.23, citing *Alati v Kruger* (1955) 94 CLR 216, 223–224. The effect of this is that when Wang exercised her right to rescind the agreements, she obtained equitable title to the purchase moneys paid to Goh, which would justify the grant of a tracing order.

258 However, Wang did not clarify in her submissions whether she was seeking an account of and a tracing order for the purchase moneys even if Goh

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280 PCS at paras 97–98.

281 PCS at para 97.

was to repay the purchase moneys, or whether these reliefs were sought even if Goh were to repay the moneys. The passage quoted from *Shalson* (see [256] above) suggests that a tracing order is necessary only if a defendant does not repay the moneys.

259 I also note that in *Caltong (Australia) Pty Ltd (formerly known as Tong Tien See Holding (Australia) Pty Ltd) and another v Tong Tien See Construction Pte Ltd (in liquidation) and another appeal* [2002] 2 SLR(R) 94, a case involving a breach of fiduciary duty, the Court of Appeal said at [57] that it was not necessary that the traceable proceeds must first be identified before a tracing order may be made as that was the very object of a tracing order.

260 In the circumstances, given the absence of dispute by the defendants on these reliefs, I am of the view that Wang, having succeeded in her claim against Goh for fraudulent misrepresentation in respect of the 1st MOU (as amended) and 2nd MOU, is entitled to an account of the sales proceeds of the sale of the shares in AMP to Wang by Goh and a consequential tracing order for the said proceeds, but only in the event that Goh does not repay the purchase moneys for the AMP shares within 30 days from the date of my decision.

261 I now address the question of interest. Wang initially sought interest at a compound rate of 9% per annum.[282] The defendants argued that she was only entitled to an interest rate of 5.33% per annum.[283] In Wang's reply submissions, she stated that it was agreed between the parties that interest should be awarded at 5.33% per annum.[284] I therefore order that Goh is to pay the following sums

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282 SOC at para 109(e); PCS at para 361(d)(iii).

283 DCS at para 323.

284 PRS at para 169.

to Wang in exchange for the re-transfer of 66,000 shares in AMP to him by Wang, with interest at a rate of 5.33% per annum from the stated dates:

(a) S$8,000,000 from 24 October 2013;[285]

(b) S$2,000,000 from 4 November 2013;[286]

(c) S$10,800,000 from 26 September 2014;[287] and

(d) S$9,900,000 from 26 November 2014.[288]

262 Goh is also to pay the following sums to Wang for the stamp duty and bank charges incurred by Wang in obtaining the transfer of shares under the 1st MOU (as amended) and the 2nd MOU, with interest at a rate of 5.33% per annum from the stated dates:[289]

(a) US$16,364.20 from 28 October 2013;[290]

(b) S$21,626.77 from 16 October 2014;[291] and

(c) S$19,832.79 from 3 December 2014.[292]

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285 Wang's AEIC at p 186.

286 Wang's AEIC at p 188.

287 Wang's AEIC at p 349.

288 Wang's AEIC at p 433.

289 PCS at para 361(d)(iii); DCS at para 327.

290 Wang's AEIC at p 190.

291 Wang's AEIC at p 351.

292 Wang's AEIC at p 895.

263 I turn next to Wang's claim for reimbursement of costs incurred for registration of the "PPP" logo trademark and the incorporation of corporate entities in China. Wang submitted that it followed from the rescission of the 1st MOU (as amended) and the 2nd MOU that she should be reimbursed for her incurrence of RMB 993,169.97 in fees for the registration of the "PPP" logo trademark in China and other related expenses in connection with the incorporation of corporate entities in China.[293] In their submissions, the defendants disputed that Wang was entitled to be reimbursed these expenses as she has not established that the amounts were in fact incurred in furtherance of her obligations under the 2nd MOU. More specifically, they disputed that Wang was entitled to claim registration fees of RMB 2,000 to register AMP's "PPP" logo trademark in China, as this registration was done surreptitiously without the defendants' knowledge.[294]

264 I find that Wang has not proved that she incurred the RMB 993,169.97 in fees as part of her obligations under the 1st MOU (as amended) and the 2nd MOU. All that was adduced in support of the RMB 993,169.97 figure were untranslated receipts in Mandarin that purported to state the expenses which she incurred.[295] This is only slightly better than a bare allegation that she incurred those expenses under the 1st MOU (as amended) or the 2nd MOU. Furthermore, she had apparently gone ahead to register the "PPP" logo trademark in China without the consent of Goh or Michelle or anyone else representing AMP. Indeed, this was why Goh protested that she had unilaterally done so.[296] In the

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293 PCS at para 361(d)(ii)(2); PRS at para 170.

294 DCS at para 324.

295 Wang's AEIC at para 186 and pp 435–893.

296 DCS at para 324.

circumstances, this is another reason why she is not entitled to claim for fees for registration of the logo trademark and incorporation of corporate entities in China.

Summary

265 For the foregoing reasons, I find that Wang has made out her claim in fraudulent misrepresentation against Goh. Wang is entitled to the following reliefs:

(a) A declaration that the 1st MOU (as amended) and the 2nd MOU have been validly rescinded by Wang.

(b) Goh is to repay the sales proceeds of S$30,700,000 from the sale of 66,000 shares in AMP to Wang in exchange for the re-transfer of those shares, with interest at a rate of 5.33% per annum from the dates on which the payments were made as set out in [261]. Goh is to bear any duty or charge associated with the re-transfer of those shares.

(c) In the event that Goh does not repay the sales proceeds of S$30,700,000 from the sale of 66,000 shares in AMP to Wang within 30 days from the date of this decision, Goh is to account for the sales proceeds and a consequential tracing order for those proceeds is granted. For the avoidance of doubt, the time to repay may be extended by agreement between Goh and Wang or by order of court.

(d) Goh is to repay the stamp duty and bank charges with interest at a rate of 5.33% per annum from the dates on which the payments were made as set out in [262].

266 The counterclaim by the defendants against Wang is dismissed.

267 I will hear the parties on costs.

Woo Bih Li
Judge

Yim Wing Kuen Jimmy SC, Mahesh Rai s/o Vedprakash Rai, Erroll Ian Joseph, Dierdre Grace Morgan, Kevin Lee and Stephania Wong (Drew & Napier LLC) for the plaintiff;
Lok Vi Ming SC, Lee Sien Liang Joseph and Kelly Tseng Ai Lin (LVM Law Chambers LLC) for the defendants.

Annex A

1st MOU dated 17 October 2013[297]

English Version	English Translation
Annex A	**Appendix A**
1. [AMP] consolidated group sales revenue is projected to hit SGD30 million in FY 14 (1 July 2013 through 30 June 2014)	1. The projected total sale turnover of [AMP] in FY 2014 (from July 1, 2013 to June 30, 2014) will be S$30 million. (The total sale turnover means the total service package sales rather than the recognised package sales under accounting principles.)
2. EBITDA projection for this period is SGD15 million on package sales recognition (NOT on redemptions).	2. The projected pre-tax profit during the period will be S$15 million (the pre-tax profit means the total service package sales minus the operating cost, i.e. EBITDA in English accounting term).
3. In the event above SGD15 million EBITDA projection is not met, [Goh] will return pro-rated share value to [Wang]. Example if revenue is SGD12 million, [Goh] will return SGD100.00 per share.	3. In case that the actual pre-tax profit is below S$15 million, [Goh] shall refund [Wang] a sum of investment amount based on the same percentage of the shortfall in pre-tax profit. For example, if the actual pre-tax profit is only S$12 million, 20% less than the projected pre-tax profit, [Goh] shall refund [Wang] S$100 per share, which is 20% of the total investment, and so on.
4. And in the event IPO did not take place on 31st Dec 2014, [Wang] has the option to sell [her] shares with voting rights to any 3rd party. The exercise period is 1 week from 31st Dec 2014.	4. If an IPO fails to be launched by December 31, 2014, [Wang] shall have the right to redeem the voting rights of the Sale Share and sell to any third party without any restriction.

[297] 2AB at pp 592, 597-4; 1AB at p 559.

5. In the event of expansion into Guangzhou, PPP China will consider Marubi as the preferred partner.	5. Subject to any intention to expand business in Guangzhou, PPP China shall regard Marubi as its favoured collaborative partner.

Annex B

1st MOU (as amended) dated 17 October 2013 and signed 21 October 2013[298]

English Version	English Translation
Annex A	**Appendix A**
1. [AMP] consolidated group sales revenue is projected to hit SGD30 million in FY 14 (1 July 2013 through 30 June 2014)	1. The projected total sale turnover of [AMP] in FY 2014 (from July 1, 2013 to June 30, 2014) will be S$30 million (to be audited and verified by an accounting firm).
2. EBITDA projection for this period is SGD12 million.	2. The projected pre-tax profit (i.e. EBITDA, in English accounting term) during the period will be S$12 million (to be audited and verified by an accounting firm).
3. In the event above SGD12 million EBITDA projection is not met, [Goh] will rebate pro-rated share value to [Wang]. The rebate will be in the same percentage of the shortfall in the EBITDA projection. Example : in the event there is a shortfall of package sales [EBITDA] target by 10%, [Goh] will compensate by returning 10% of the SGD10.0 million sale proceeds, which is SGD1.0 million. In the event of a shortfall of 1 %, [Goh] will return 1% of the SGD10 million sale proceeds, which is SGD 100,000.00	3. In case that the actual pre-tax profit is below S$12 million, [Goh] shall refund [Wang] a sum out of the total investment under this Agreement (the total payment amount) based on the same percentage of the shortfall in pre-tax profit. For example, if the actual pre-tax profit is only S$10.8 million, 10% less than the projected pre-tax profit, [Goh] shall refund [Wang] 10% of the total investment (total payment amount), i.e. S$1 million from S$10 million under this Agreement; if the actual pre-tax profit is only S$11.88 million, 1% less than the projected pre-tax profit, [Goh] shall refund [Wang] 1% of the total investment (total payment amount), i.e. S$0.1 million from S$10 million under this Agreement, and so on.

[298] 1AB at pp 222, 225-3.

4. And in the event IPO did not take place on 31st Dec 2014, [Wang] has the option to sell [her] shares with voting rights to any 3rd party. The exercise period is 1 week from 31st Dec 2014.	4. If an IPO fails to be launched by December 31, 2014, [Wang] shall have the right to redeem the voting rights of the Sale Share and sell to any third party without any restriction. The period for excising [*sic*] such option shall be one week and shall be completed within the week immediately after December 31, 2014.
5. In the event of expansion into Guangzhou, PPP China will consider Marubi as the preferred partner.	5. Subject to any intention to expand business in Guangzhou, PPP China shall regard Wan Mei Company as its favoured collaborative partner.
6. After this final pre IPO round of 10,000 new shares, there will not be anymore sales of new shares without approval from [Wang] before the IPO.	6. Except for the last round of pre-IPO fund-raising of 10,000 new share placement, [AMP] shall not proceed any further pre-IPO fund-raising without the consent of [Wang].
7. After the completion of [Wang's] shares purchase, [Goh] will not sell anymore vendor shares without the permission of [Wang].	7. Except for the transfer of Sale Share under this Agreement, the shares held by [Goh] shall not be transferred without the consent of [Wang].
8. Upon IPO taking place, the above conditions will be deemed as null and void without any claims by both parties.	8. All the terms stipulated above shall be rescinded upon the completion of the proposed IPO.
9. Upon transfer of shares, [Wang] will be invited to attend Key Decision Making Committee meetings (KDMC).	9. [Wang] shall be invited to participate in all the Key-Decision-Making-Committee (KDMC) meetings.

Annex C

2nd MOU (as amended) dated 17 October 2013 and signed 21 October 2013[299]

English Version
For Aesthetic Medical Partners Pte Ltd (AMPPL) shares
1. [Wang] will buy all 50,000 shares ([Reis] & Minority shareholders) at S$450.00 from [Goh].
2. Total amount $22,500,000.00 plus Singapore Government Stamp Duty Fees of 0.2% equivalent to S$45,000.00. Total amount will be S$22,545,000.00.
3. This represent 17.085% of [AMP] pre-IPO, and [Wang] will hold a total of 23.885% after adding her original shareholding of 6.8%.
…
7. [Goh] and Key management must continue to work fulltime in [AMP] for at least 5 years and non-compete for 5 years thereafter. This 5 + 5 years' service contract and non compete clause will be null and void when any of the following takes place: i. Upon IPO, Trade Sale or Liquidity Event of similar scale or ii. Upon either [Wang] or RSP selling more than 5% shares of [AMP]

[299] 1AB at p 327.