

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 51

Court of Appeal / Originating Application No 13 of 2025

Between

POP Holdings Pte Ltd

... Applicant

And

- (1) Teo Ban Lim
- (2) Han Jieling
- (3) Thia Tiong Siong
- (4) Ting Cher Lan

... Respondents

In the matter of Appellate Division / Civil Appeal No 72 of 2024

Between

- (1) Thia Tiong Siong
- (2) Han Jieling
- (3) Teo Ban Lim
- (4) Ting Cher Lan

... Appellants

And

POP Holdings Pte Ltd

... Respondent

In the matter of Suit No 27 of 2022

Between

POP Holdings Pte Ltd

... Plaintiff

And

- (1) Ting Cher Lan
- (2) Eer Kin Pring
- (3) Thia Tiong Siong
- (4) Teo Ban Lim
- (5) Han Jieling

... Defendants

GROUNDS OF DECISION

[Civil Procedure — Appeals — Leave]
[Tort — Misrepresentation — Measure of damages]

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POP Holdings Pte Ltd
v
Teo Ban Lim and others

[2025] SGCA 51

Court of Appeal — Originating Application No 13 of 2025
Steven Chong JCA and Belinda Ang Saw Ean JCA
25 August 2025

16 October 2025

Steven Chong JCA (delivering the grounds of decision of the court):

Introduction

1 It is axiomatic that a claimant seeking damages for a civil wrong must prove its damage. What this means is that the claimant must plead and prove both the fact and amount of damage so as to establish its right to substantial damages (*McGregor on Damages* (James Edelman, Jason Varuhas & Andrew Higgins eds) (Sweet & Maxwell, 22nd Ed, 2024) (“*McGregor*”) at para 53-001). If the claimant’s case were to falter in the pleadings or on the evidence with the result that the court is unable to satisfy itself of the existence or the quantum of damage, an otherwise viable claim could either fail outright or, at best, sound in nominal damages (*McGregor* at para 11-001; *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd and another* [2008] 2 SLR(R) 623 (“*Robertson Quay*”) at [27]; *Biofuel Industries Pte Ltd v V8 Environmental Pte Ltd and another appeal* [2018] 2 SLR 199 at [41]). A claimant unfortunate

enough to find itself in such a situation would, having incurred the costs of litigation, inevitably find that the game has not been worth the candle.

2 The applicant, POP Holdings Pte Ltd (“POP”), found itself in exactly this position. POP brought claims in, among other causes of action, deceit and unlawful means conspiracy against the respondents, alleging that it had been induced by misrepresentations made by the respondents as to the legally approved accommodation capacity of a foreign worker dormitory to enter into a sale and purchase agreement to acquire a majority shareholding in the company which owned the dormitory. At first instance, POP was successful in proving deceit and was awarded damages of \$3.5m by a Judicial Commissioner of the General Division of the High Court (the “Judge”). This award was, however, subsequently reversed by the Appellate Division of the High Court (the “Appellate Division”), who held that POP had failed to prove its loss and thus substituted the Judge’s award with an award of nominal damages. Having gone the distance only to see a pyrrhic victory, POP sought to reverse its fortunes by this application for permission to appeal against the Appellate Division’s decision.

3 It was clear from the outset that POP faced an uphill task in persuading us that it should be given permission to appeal on the award of damages. As we observed in *UJM v UJL* [2022] 1 SLR 967 (“*UJM*”), a departure from the norm of a single tier of appeal for the Court of Appeal to hear a further appeal would only be warranted in a “truly exceptional case” (at [126]), as while the Appellate Division is akin to an intermediate appellate court, it is intended to be the final frontier in the vast majority of cases (at [60(c)] and [91]). Thus, an application for permission to appeal from a decision of the Appellate Division would be subjected to searching scrutiny (*Tan Hock Keng v Malaysian Trustees Bhd* [2022] 2 SLR 806 at [1]).

4 To discharge the significant onus on it, POP unsurprisingly latched on to the point of divergence between the Judge and the Appellate Division in their respective decisions on the question of damages. The controversy concerned the application of a supposed general rule that, in a case where the claimant had been induced by misrepresentation to enter into a transaction to acquire property, the claimant's loss (and thus the damages it was entitled to in deceit), should be assessed as the difference between the price paid and the real value of the property *at the date of the transaction*. This measure of loss was referred to by the Judge and the Appellate Division as the "Valuation Method", and the use of the date of the transaction as the date of assessment was termed the "Transaction Date Rule" by the Appellate Division. In a nutshell, while the Judge and the Appellate Division agreed that the Valuation Method was appropriate to assess POP's loss, the Judge considered that the Transaction Date Rule did not apply if the claimant only discovered the falsity of the representation after the date of the transaction (as POP did in this case), a proposition that the Appellate Division disagreed with on the principal basis that it rendered the Transaction Date Rule otiose as a default rule in cases of deceit as the fraud would almost always be discovered after the event. The significance of this on the facts was that, while evidence of the value of the dormitory at the time of the transaction was not required to assess POP's loss on the Judge's analysis as the Judge used a different date, it was necessary on the Appellate Division's analysis based on the Transaction Date Rule. There being no such evidence, the Appellate Division concluded that POP had failed to prove its loss.

5 In these premises, POP contended that the Judge was correct in her approach to the Transaction Date Rule and, as the law had taken a wrong turn in the Appellate Division's decision, the present case was an exceptional one

justifying the Court of Appeal's intervention. After considering the parties' submissions, we agreed with POP that the Transaction Date Rule constituted a point of law of public importance and that the Appellate Division's treatment of it was incorrect. However, we decided to dismiss the application and declined permission to appeal. The reason, which we broadly explained to the parties at the hearing, was that despite our reservations on the correctness of the Appellate Division's approach to the Transaction Date Rule, there was no doubt in our minds that its ultimate finding that POP had failed to prove its loss was correct based on how POP had argued its case on damages and the state of the evidence. As the point of law raised by POP had no bearing on the outcome of the case, it furnished no basis for POP to be given permission to appeal (*UJM* at [101]).

6 Nevertheless, as the parties invited us to examine the issue, we take the opportunity to make some observations on the Transaction Date Rule in these written grounds of decision. More importantly, as our decision was founded on an approach to assessing damages which differed quite fundamentally from that of both the parties and the courts below, we think it useful and necessary to explain the dichotomy in our approach. We emphasise that, in fairness to the Judge and the Appellate Division, they were put in an invidious position as the problems we highlight below arose from the way in which the parties conducted their cases. Indeed, our agreement with the Appellate Division's conclusion that POP had failed to prove its loss based on an entirely different analysis was attributable to a significant evidential lacuna which resulted from the parties having developed their cases at the trial on legally defective foundations as to what they were required to establish.

7 To state our conclusion upfront, we found the underlying error in the courts below to be an omission to properly appreciate the impact of the position that POP would have been in but for the respondents' misrepresentations. This

position could have taken the form of at least two scenarios, and it was important that the two not be conflated as POP's loss was different under each. The first scenario was where POP would not have entered into the transaction *simpliciter*. In this scenario, POP's loss would have been rightly expressed via the Valuation Method (*ie*, the difference between the price it paid and the real value of the shares). POP could also have been entitled to higher damages if it also suffered consequential losses. But, under the second scenario, POP would have entered into the same transaction it did and proceeded with the purchase albeit at a lower purchase price. Here, the Valuation Method would have been inapposite to assess POP's loss as POP's loss would not have been the price paid less the value of the shares but the price paid less the price that it would have paid under this alternative transaction knowing the truth. Moreover, even before considering the question of assessment of damages, it was necessary for there to first be a factual determination of whether POP's position but for the respondents' misrepresentations was the first or second scenario: without this anterior step, the loss that POP was seeking to be compensated for would have been unclear.

8 As we explain below, in assessing damages to restore the claimant to the position it would have been in but for the defendant's wrong, it is imperative not to lose sight of what the claimant asserts that position to be, as that serves as the point of reference in addressing the compensatory objective. In this case, a number of problems arose from the aforesaid lack of focus on POP's position but for the respondents' misrepresentations.

9 First, there was a striking failure on the part of the parties to lead evidence on what POP's position would have been but for the respondents' misrepresentations. In turn, the courts below did not make a finding on what that position would have been and, in any event, were not equipped by the

parties to do so given the aforesaid evidential gap. However, as mentioned at [7] above, whether POP would have purchased the shares it did but at a lower price, or not at all, required factual determination as the assessment of damages to make good POP's loss would not have been possible without knowing what that loss was to begin with.

10 Second, the parties persuaded the courts below to proceed based on default rules such as the Valuation Method and the Transaction Date Rule when these were logically incompatible with the counterfactual basis of POP's claim. As alluded to at [7] above, and as we explain below, this led to incoherence in the assessment of POP's loss as the Valuation Method gave effect to a counterfactual where POP would not have entered into any transaction or acquired the shares that it did, when POP had instead proceeded on a different counterfactual – that it would have entered into the same transaction albeit at a lower price – for which the Valuation Method was not fit for purpose. This also explained our view that the controversy on the Transaction Date Rule was ultimately academic, as the Transaction Date Rule would not have been engaged in the first place if the Valuation Method had not been applied. In the final analysis, while the development of general rules and principles like the Valuation Method and the Transaction Date Rule can no doubt be useful, an important theme of our analysis below is the importance of looking behind the label and characterisation of a “rule” and focusing on the *logic* underlying the rule and the *context* in which it is applicable (see, for a related observation, *Natixis, Singapore Branch v Seshadri Rajagopalan and others and other appeals* [2025] 1 SLR 1020 at [72]–[73]).

11 As mentioned, these issues really originated from the parties' own cases. Be that as it may, while the way in which the parties and their counsel argued

the matter was not entirely satisfactory, it has presented an opportunity for us to clarify important points on the assessment of damages.

Background facts

12 The parties are two opposing factions of shareholders following a joint venture in RIC Dormitory (SG) Pte Ltd (“RIC Dormitory”) which turned sour. On one side was Lee Boon Leng (“Jason”) and Leong Poh Choo (“Annie”), who were the shareholders of POP. The other side comprised of the first to third respondents – respectively, Teo Ban Lim (“Terrence”), Han Jieling (“Jieling”) and Thia Tiong Siong (“William”) – who were the shareholders of H8 Holdings Pte Ltd (“H8”). Prior to POP and H8’s acquisition of RIC Dormitory, its shareholders were the fourth respondent, Ting Cher Lan (“Ting”) and one Eer Kin Pring (“Eer”). Ting held her shares in RIC Dormitory as a nominee for William, her husband, and although a named defendant, Ting did not participate or give evidence in the proceedings below.

13 In August 2012, RIC Dormitory purchased a leasehold property at 34 Kaki Bukit Place (“34KB”), at which William, Terrence and Jieling operated a foreign worker dormitory on its behalf. In 2013, William approached Jason and Annie to ask if they were interested in a potential joint venture. The joint venture consisted of two steps:

- (a) first, RIC Dormitory would acquire all the shares in RIC Marine Pte Ltd (“RIC Marine”), which held a lease over 8 Enterprise Road (“8ER”) at which H8 ran a foreign worker dormitory; and
- (b) second, POP and H8 would acquire the entire shareholding in RIC Dormitory from its existing shareholders in order to get the benefit of both 34KB and 8ER.

14 On 16 July 2014, CKS Property Consultants Pte Ltd (“CKS”) issued a report valuing 34KB at \$14m (the “2014 Valuation Report”). The valuation was based on information that Annie had obtained from Terrence that the dormitory at 34KB could house 360 workers. However, the dormitory could only legally house 130 workers as the Urban Redevelopment Authority (“URA”) had only approved the use of part of the property as a foreign worker dormitory.

15 On 5 March 2015, RIC Dormitory acquired RIC Marine. On the same day, POP and H8 entered into a sale and purchase agreement (the “SPA”) to purchase the entirety of the shareholding in RIC Dormitory from Ting and Eer, with POP and H8 holding in a 70:30 proportion. The purchase price in the SPA was \$42m and was based on 34KB (held directly by RIC Dormitory) and 8ER (held indirectly by RIC Dormitory through its ownership of RIC Marine) being valued at \$14m and \$28m respectively. POP thus paid around \$29m for its 70% shareholding in RIC Dormitory. The transaction was completed on 18 January 2016.

16 On 5 March 2019 (some four years later), CKS provided a revaluation report on 34KB based on its dormitory capacity being 130 workers (the “2019 Valuation Report”). The 2019 Valuation Report valued 34KB at \$9m instead. For context, as explained at [54] below, the 2019 Valuation Report was adduced by H8 for a different purpose altogether, *ie*, to support a parallel suit against POP for minority oppression which was heard together with POP’s claim against the respondents.

17 In HC/S 27/2022 (“Suit 27”), POP brought claims in, among other causes of action, deceit and unlawful means conspiracy against William, Jieling, Terrence, Eer and Ting. In essence, POP contended that its entry into the SPA

had been induced by the respondents’ misrepresentations as to the legally approved accommodation capacity of the dormitory at 34KB.

Decisions below

The Judge’s decision

18 In *H8 Holdings Pte Ltd v RIC Dormitory (SG) Pte Ltd and others and another suit* [2024] SGHC 177 (“*Judgment (HC)*”), the Judge allowed POP’s claim in deceit and awarded POP damages in the sum of \$3.5m.

19 The Judge found that the respondents had represented that the legally approved accommodation capacity of the dormitory at 34KB was 362 beds. The Judge was also satisfied that (a) the respondents knew that the representations were false as the URA had only approved a capacity of 130 workers; (b) the respondents intended POP to rely on the representations; and (c) POP had indeed relied on the representations in agreeing to enter into the SPA to purchase shares in RIC Dormitory based on 34KB being valued at \$14m.

20 The Judge’s reasoning in awarding POP damages in the sum of \$3.5m can be summarised as comprising the following steps:

- (a) As a starting point, the Valuation Method was the “normal method” for calculating the loss of a claimant who had been induced by fraud to enter into a transaction for the purchase of property (*Judgment (HC)* at [109]). In this case, as POP had purchased 70% of the shareholding in RIC Dormitory at a purchase price based on 34KB being valued at \$14m with a legally approved capacity of 360 workers, POP’s loss could be assessed as 70% of the difference between \$14m (the component of the purchase price under the SPA made up by the value

of 34KB) and the real value of 34KB based on its actual legally approved capacity of 130 workers (*Judgment (HC)* at [109]–[110]).

(b) While the Transaction Date Rule defined the norm and meant that the relevant time for valuing the property acquired was generally the date of the transaction, the Judge interpreted the House of Lords’ decision in *Smith New Court Securities Ltd v Citibank NA* [1997] AC 254 (“*Smith New Court*”) as establishing that the Transaction Date Rule did not apply if (i) the misrepresentation continued to operate on the claimant’s mind after the date of the acquisition so as to induce the claimant to retain the asset; or (ii) the circumstances of the case were such that the claimant was, by reason of the fraud, locked into the property (*Judgment (HC)* at [114]).

(c) The evidence showed that POP had only discovered the falsity of the representations as to 34KB’s capacity in April 2018 and only received official confirmation of this in November 2018. As such, the Transaction Date Rule did not apply and the relevant date for valuing 34KB was the time when POP discovered the truth, being either November 2018 or, at the earliest, April 2018 (*Judgment (HC)* at [115]–[116]).

(d) Although there was no evidence of the value of 34KB at either April 2018 or November 2018, the Judge considered the 2019 Valuation Report to be “sufficiently proximate in time” such that it could be relied on for the valuation of 34KB as at April 2018 or November 2018 (*Judgment (HC)* at [116]).

(e) The Judge assessed POP’s loss at \$3.5m, this being 70% of the difference (\$5m) between (i) the component of the purchase price under

the SPA made up by the value of 34KB (\$14m); and (ii) the value of 34KB in the 2019 Valuation Report (\$9m) (*Judgment (HC)* at [119]).

The Appellate Division’s decision

21 The respondents appealed against the Judge’s decision to the Appellate Division. In *Thia Tiong Siong and others v POP Holdings Pte Ltd and another appeal* [2025] SGHC(A) 9 (“*GD (AD)*”), the Appellate Division affirmed the Judge’s findings on liability but allowed the respondents’ appeal on damages.

22 The Appellate Division noted that the parties had proceeded on the basis that the Valuation Method was appropriate to assess POP’s loss and agreed with the Judge’s application of it (*GD (AD)* at [61]). However, as mentioned, the Appellate Division disagreed with the Judge’s disapplication of the Transaction Date Rule on the basis that POP had only discovered the fraud after the date of the SPA. In the Appellate Division’s view, the Transaction Date Rule was applicable for two reasons:

(a) First, by pleading that “[i]t would have negotiated and/or agreed to a significantly reduced Purchase Price and paid significantly less than \$29m for [its] 70% stake [in RIC Dormitory]” if it had known of the true legally approved capacity of 34KB, POP had itself referred to the date of the SPA as the relevant time for assessing its loss (*GD (AD)* at [65]).

(b) Second, in any event, there was no basis in law to depart from the Transaction Date Rule (*GD (AD)* at [79]). The fact that POP had only discovered the falsity of the representations as to 34KB’s legally approved capacity after entering into the SPA was no basis for disapplying the Transaction Date Rule, as permitting a departure from the Transaction Date Rule just because the fraud took some time to

emerge and/or was discovered at a later date would render the Transaction Date Rule otiose in the context of deceit as it would usually take some time to discover a fraud (*GD (AD)* at [73]).

23 Applying the Transaction Date Rule, the Appellate Division held that POP had to establish the value of 34KB as at the date of the SPA, *ie*, 5 March 2015 (*GD (AD)* at [80]). In this regard, the Appellate Division found that there was no evidence of the value of 34KB at that time or close to it, thus rejecting the 2019 Valuation Report as satisfactory evidence of this (*GD (AD)* at [81]–[82]). In any event, even if the Judge was correct in her decision to disapply the Transaction Date Rule, the Appellate Division doubted that the 2019 Valuation Report was sufficiently proximate to POP’s discovery of the fraud (*GD (AD)* at [84]). It followed that POP had failed to prove the quantum of its loss and was only entitled to nominal damages, which the Appellate Division fixed in the sum of \$1,000 (*GD (AD)* at [85]).

The present application

24 In this application, POP sought permission to appeal on the basis that the Appellate Division’s approach to the Transaction Date Rule was unsound. POP argued that the Judge’s interpretation of the case law, in particular *Smith New Court*, was correct, and that the Transaction Date Rule did not apply where a misrepresentation continued to influence the conduct of the claimant after the date of the transaction.

25 The respondents submitted that permission to appeal should not be granted. Among other things, the respondents argued that the differing views of the Judge and the Appellate Division on the Transaction Date Rule did not raise a question of law but merely concerned the *application* of the law. Even if the

Transaction Date Rule raised a valid question of law, this court should decline to exercise its discretion to hear a further appeal as it was not necessary given that the Appellate Division’s decision was unanimous.

Our decision

26 As prefaced above, we considered the supposed controversy over the application of the Transaction Date Rule to be academic on the facts of this case as it arose in the context of the Judge and the Appellate Division’s application of the Valuation Method to assess POP’s loss. In our view, with respect, the Judge and the Appellate Division were incorrect to have applied the Valuation Method as this was out of step with the loss that POP claimed to have suffered and the premise on which it had mounted its claim for damages. Applying what we regarded to be the correct analysis in place of the Valuation Method, the Transaction Date Rule was irrelevant and any error in the treatment of this point on the part of the Appellate Division fell by the wayside.

27 In our analysis below, we proceed as follows. First, we will explain our view that the Valuation Method and, by extension, the Transaction Date Rule, were not applicable in this case. Second, we will set out what we consider the correct analysis to be, and in so doing, explain how we came to the same conclusion as the Appellate Division that POP had failed to prove its loss despite disagreeing with the Appellate Division’s application of the Valuation Method. Third, we will conclude with some brief observations on the Transaction Date Rule.

The Valuation Method and Transaction Date Rule were irrelevant

28 The starting point, in our view, is that the purpose of damages for a private law wrong is to put the claimant, as far as money can do it, in the same

position that it would have been in had the wrong not been committed (*ACES System Development Pte Ltd v Yenty Lily (trading as Access International Services)* [2013] 4 SLR 1317 at [14], citing *Livingstone v The Rawyards Coal Company* (1880) 5 App Cas 25 at 39). In practice, giving effect to the compensatory principle calls for the court to compare the position that the claimant is currently in as a result of the defendant's breach or wrongdoing (the "breach position") with the position that the claimant would have been in if the defendant's breach or wrongdoing had not occurred (the "non-breach position"). The difference between these two positions constitutes the claimant's loss (Adam Kramer, *The Law of Contract Damages* (Hart Publishing, 3rd Ed, 2022) ("Kramer") at paras 1-46 to 1-49, cited in *Crescendas Bionics Pte Ltd v Jurong Primewide Pte Ltd and other appeals* [2023] 1 SLR 536 at [37]; *Stephenson Blake (Holdings) Ltd v Streets Heaver Ltd* [2001] 1 Lloyd's Rep PN 44 at [158]).

29 In the present case, it seemed to us, with respect, that the parties missed the forest for the trees, and did not properly apply their minds to the question of what POP's non-breach position would have been if the false representations of 34KB's capacity had not been made to it. This led them to apply the Valuation Method without assessing if this was consistent with the non-breach position that POP had based its claim for damages upon. As we explain below, this in turn caused the courts below to proceed on a flawed premise.

30 In its Statement of Claim (Amendment No. 1) ("SOC"), POP had pleaded *three* alternative counterfactuals:

- (a) first, that it would not have purchased any shareholding in RIC Dormitory (the "No Transaction Counterfactual");

- (b) second, that it would have acquired less shares in RIC Dormitory than the 70% stake that it did (the “Less Shares Counterfactual”); and
- (c) third, that it would have acquired the same 70% shareholding in RIC Dormitory that it did, albeit at a lower price than the \$29m which it paid (the “Lower Price Counterfactual”).

31 It was clear from this pleading that POP was alive to how a claim for damages in deceit could be framed in *different ways* depending on what the claimant asserted its non-breach position to be. However, at the trial, POP did not lead any evidence to prove any of the three counterfactuals (or non-breach positions) that it had pleaded, save for a rote repetition of what it had pleaded in the SOC – *ie*, the three potential non-breach positions – in the affidavit of evidence-in-chief deposed to by Annie. It was particularly striking that POP did not traverse at least the Less Shares Counterfactual or the Lower Price Counterfactual with the respondents and their witnesses as proof of these non-breach positions required POP to establish not only what *it* would have done or agreed to, but that the other parties to the SPA would also have agreed to transact on these different terms. Even if unchallenged, Annie’s evidence only provided half the picture as she could only testify as to what POP would have done and been willing to agree to; she could not testify as to the readiness and willingness of the other parties to the SPA to enter into a transaction on the terms pleaded in the Less Shares Counterfactual or the Lower Price Counterfactual.

32 This failure by POP (and the respondents) to lead evidence to establish POP’s non-breach position was problematic because, when it came to closing submissions after the trial, neither party addressed the Judge on the issue of what POP’s actual non-breach position was. This placed the Judge in a difficult

position as she was not equipped with any evidence or submissions on what position POP was seeking to be restored to, or, in other words, what loss it was claiming to have suffered as a result of entering into the SPA.

33 What POP did instead was to elect to proceed based only on the Lower Price Counterfactual and drop the other two non-breach positions which it had pleaded. Thus, POP sought to clarify in its submissions after the trial that it was claiming damages on the basis that it had suffered loss by “overpaying for [its] stake in RIC Dormitory” (*ie*, the Lower Price Counterfactual). The loss that POP sought to be compensated for was thus the difference between the price that it had paid under the SPA and the lower price that it would have paid for its 70% stake in RIC Dormitory if the misrepresentations as to 34KB’s legally approved accommodation capacity had not been made to it.

34 It was hardly satisfactory that POP appeared to think that it was open to it to make an unbridled election as between the three non-breach positions it had pleaded without addressing its mind to the question of *proof*. The claimant’s non-breach position is a factual premise of a claim that must not only be pleaded and submitted on but supported by the evidence. Thus, the mere fact that POP opted to proceed on the Lower Price Counterfactual alone as its non-breach position did not obviate the need for it to prove that non-breach position. In this connection, as mentioned at [31] above, to establish the Lower Price Counterfactual, POP had to prove not only that it was prepared to transact on different terms and at a lower price, but that the other parties to the SPA would have been similarly agreeable. But there was no evidence before the court on the latter. In the circumstances, it seemed to us quite arguable that, leaving aside the quantum of its loss, an even more fundamental problem with POP’s case at the trial was that it had not even proven the logically anterior matters of its non-breach position and, *a fortiori*, the fact of loss (*ie*, the difference between its

breach position of entering into the SPA and its non-breach position if the misrepresentations had not been made). It was, however, not necessary for us to rest our decision on this basis, and we make this observation to highlight a potential pitfall that a claimant advancing a claim for damages should be aware of and avoid.

35 POP's failure to anchor its claim for damages on the non-breach position that it was proceeding upon mired the quantification of its loss. Despite relying on the Lower Price Counterfactual, which meant that its loss was the extent to which it had *overpaid* for its 70% stake in RIC Dormitory, POP computed its loss in its closing submissions by adopting the Valuation Method as follows:

Here, it is submitted that the quantum of damages that POP is entitled to under both causes of action i.e., fraudulent misrepresentation and negligent misrepresentation are the same. POP's claim is for the sum of S\$3.5 million, being 70% of the difference between the S\$14 million valuation in the transaction and the market value of 34KB with 130 beds i.e., 70% of (\$14m - \$9m). Since *the loss is simply the difference in the amount that POP had paid for 34KB and the actual value of 34KB at the time of entry into the SPA*, this is reasonably foreseeable. ... [emphasis added]

36 In our judgment, the use of the Valuation Method in the teeth of POP's reliance on the Lower Price Counterfactual was a fundamental error which, with respect, misdirected the courts below. Both the Judge and the Appellate Division considered the Valuation Method to be the applicable method for assessing damages for loss under the Lower Price Counterfactual:

(a) In the context of dealing with a complaint by the respondents that POP had not pleaded the use of the Valuation Method, the Judge cited the pleading of the Lower Price Counterfactual in the SOC and stated that "by this pleading, POP was alluding to the use of the valuation method ... to assess POP's loss" (*Judgment (HC)* at [123]).

(b) In a similar vein, the Appellate Division noted that the parties had considered the Valuation Method to be appropriate, and that the Judge was correct to apply it (*GD (AD)* at [61]), despite recognising that POP had advanced its claim on the Lower Price Counterfactual and that its loss thereunder was “the amount which POP had overpaid for its shares in [RIC Dormitory] ...” (*GD (AD)* at [65] and [73]).

37 However, the Valuation Method was not appropriate, at least when used by itself, to assess POP’s loss under the Lower Price Counterfactual. This is because the Valuation Method gives form to the logic that, to extricate the claimant from the transaction and to restore it to the non-breach position of the *status quo ante* the transaction, the damages awarded would be the difference between what the claimant paid and the value of the benefits it received from the transaction (*ie*, the No Transaction Counterfactual pleaded by POP in the SOC which POP eventually did not rely on to claim its loss). If, as in a claim under the Lower Price Counterfactual, the claimant would have entered into the same transaction albeit at a lower price, its loss would be the difference between the price that it paid and the lower price that it would have paid if the misrepresentation had not been made. The logic that underpins the Valuation Method would thus not apply.

38 The learned author of *Kramer* rightly identifies this point, as he explains that the Valuation Method does not take into account the effect of an alternative or different transaction that the claimant would have entered into (at para 3-24):

The ‘price less value obtained’ formulation tells only half of the damages story; the half that turns on the fact that but for the defendant’s breach the claimant would not have entered into the transaction it entered into. The other half of the story is revealed when the full non-breach position is explored: what would the claimant have done instead? In what used to be called ‘successful transaction’ cases, the answer is that the

claimant would have entered into a similar transaction with the same third party. *In such cases it is quite wrong to award the basic measure of ‘the difference between the price paid by the plaintiff and the value at the date of its acquisition’ because the claimant would but for the breach have acquired the property anyway.* Instead, the measure is the difference between the price paid by the claimant and the price that would have been paid, and between the value of the property acquired and that which would have been acquired. [emphasis added]

The same point is made in *McGregor*. In commenting on the Valuation Method as the “normal measure” of damages in a case where the claimant has been induced by deceit into a contract to purchase shares, the learned editors caveat that the Valuation Method is “based on the very likely assumption that had the claimant known the true facts they would never have bought the shares”, as if the claimant would have been able to buy, and would have bought, the shares but at a lower figure, the measure would be the difference between the price the claimant paid and the price that the claimant would have paid with knowledge of the falsity (at para 50-010).

39 The above commentary in *McGregor* was recently cited with approval, albeit in *obiter*, by the English Court of Appeal in *MDW Holdings Ltd v Norvill and others* [2023] 4 WLR 33 (at [79]). In that case, Newey LJ explained the issue as follows (at [78]):

... Where the claimant would not have entered into the relevant transaction at all but for the deceit, it makes sense that damages should be fixed by reference to the difference between purchase price and real value. Supposing, on the other hand, that the claimant would still have bought, but for less, putting it in “the same position as [it] would have been in if [it] had not sustained the wrong” or giving it “a sum representing the financial loss flowing directly from [its] alteration of position under the inducement of the fraudulent representations” would seem to require it to receive the difference between the actual price and what it would have paid.

40 The point underlying these authorities is that the court must be astute to what the claimant's non-breach position is, in particular, whether it is that the claimant would not have entered into the transaction it did *simpliciter* or that the claimant would have entered into a different transaction. If it is the latter, the compensatory principle requires the alternative transaction to be given effect to in assessing the claimant's loss, for better or for worse. Thus, in *Clef Aquitaine SARL and another v Laporte Materials (Barrow) Ltd and another* [2001] QB 488, the claimant was induced by misrepresentation to enter into a contract that was still profitable. While this meant the claimant did not suffer loss if damages were assessed on the basis that it would not have entered into the transaction, the court found that the parties would have transacted at a lower price if the misrepresentation had not been made and, on this basis, awarded damages representing the amount that the claimant had overpaid by transacting on the terms it did (at 500C).

41 In *Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909, however, the effect of the alternative transaction was that the claimant's breach position was better than its non-breach position such that it suffered no loss. The claimant there awarded a construction project to the defendant based on false representations made by the latter in its bid in a tender exercise convened by the former. The claimant subsequently terminated the contract with the defendant and engaged a different contractor at a higher price. Although the High Court awarded the claimant damages of the difference in value of the two contracts, this court reversed that award on the basis that, if the claimant had not contracted with the defendant, it would have accepted the next lowest bid in the original tender exercise which was for a higher price than what it subsequently contracted for after terminating the contract with the defendant (at [41]).

42 In the present case, it seemed to us that what led the parties and the courts below into error was taking references to the Valuation Method as the “normal measure” of damages in deceit and applying it mechanistically without appreciating the logic behind it. As a result, the logical inconsistency between the Lower Price Counterfactual and the Valuation Method did not register to POP when making its submissions and was not identified by the courts below. In our view, this highlights the importance of the exercise of identifying the non-breach position and ensuring that the inquiry into the claimant’s loss is anchored to it, as that is the crux of the compensatory principle. The Valuation Method is merely an expression of the claimant’s loss under *one* possible non-breach position; it is not a one-size-fits all method for assessing damages for deceit in *all* cases.

43 In the final analysis, the compensatory principle is the governing rule in the assessment of damages. This means that, in so far as the parties adopt a specific formulation from a precedent case, it remains necessary for the court to examine that formulation against the compensatory principle, and that entails a proper appreciation of the context in which that formulation was used and the context at hand to which it is sought to be applied. The relevant context, for this purpose, is invariably the claimant’s non-breach position. Indeed, in *Smith New Court*, Lord Steyn had cautioned that the Valuation Method was “only a means of trying to give effect to the overriding compensatory rule” (at 284B) before going on to state as follows (at 284D–F):

... There is in truth only one legal measure of assessing damages in an action for deceit: the plaintiff is entitled to recover as damages a sum representing the financial loss flowing directly from his alteration of position under the inducement of the fraudulent representations of the defendants. The analogy of the assessment of damages in a contractual claim on the basis of cost of cure or difference in value springs to mind. In *Ruxley Electronics and Construction Ltd v Forsyth* [1996] A.C. 344, 360G, Lord Mustill said: “There

are not two alternative measures of damages, as opposite poles, but only one; namely, the loss truly suffered by the promisee.”
In an action for deceit the price paid less the valuation at the transaction date is simply a method of measuring loss which will satisfactorily solve many cases. It is not a substitute for the single legal measure: it is an application of it. [emphasis added]

The Valuation Method should thus not be the first port of call. Rather, as Lord Steyn recognised in the above extract, as the purpose of damages in deceit is to make good the loss incurred from the claimant’s “alteration of position”, the starting and ending point must be what the claimant’s position would have been if not for the defendant’s tort, *ie*, the non-breach position.

44 By the same token, the controversy over the Transaction Date Rule that engaged the courts below – in particular, the Appellate Division – only came about because the parties and the courts below had adopted the Valuation Method. As the Valuation Method assesses the claimant’s loss by setting off the benefits received by the claimant under the transaction against the price paid, its adoption renders it necessary to fix a date for valuing the said benefits. For this purpose, the Transaction Date Rule is taken as a default rule. It follows that, if the Valuation Method is not applicable, the Transaction Date Rule would not be relevant. Thus, it was said by Lord Steyn in *Smith New Court* that “the date of transaction rule is simply a second order rule applicable only where the valuation method is employed”, and “[if] that method is inapposite, the court is entitled simply to assess the loss flowing directly from the transaction without any reference to the date of transaction or indeed any particular date” (at 284B–C).

45 In the present case, our conclusion that the Valuation Method was not applicable meant that the Transaction Date Rule was similarly irrelevant. Thus, even if the Appellate Division had erred in its understanding or application of

the Transaction Date Rule, the point was academic, and POP could not rely on it as a ground for seeking permission to appeal against the Appellate Division's decision. For this reason, as we explained at the hearing to POP's counsel, Mr Low Chai Chong, we dismissed the application.

46 Nevertheless, given the importance of the point and our concerns on the potential uncertainty that may arise from the Appellate Division's decision, we will examine the Transaction Date Rule briefly below. But before turning to our observations, we will first explain our reasons for joining in the conclusion of the Appellate Division that POP had failed to prove its loss despite disagreeing with the use of the Valuation Method.

POP failed to prove the quantum of its loss

47 As indicated above, there were serious deficiencies in the evidence that cast doubt on whether POP could have proven the Lower Price Counterfactual that it had relied on. In that event, POP would have failed to prove even the fact of loss. But even if it were assumed in POP's favour that it had proved that the parties to the SPA would have agreed to the same terms albeit for POP to pay a lower price for its 70% shareholding in RIC Dormitory, to establish the quantum of its loss, POP would have had to prove what that lower price would have been. In our judgment, there was no reasonable prospect that POP could have succeeded in doing so based on the evidence before the court.

48 It was clear from the evidence that the purchase price under the SPA was based on valuations of 34KB and 8ER undertaken in 2014:

- (a) A Letter of Intent issued by POP to RIC Dormitory dated 23 May 2014 referred to a purchase price of \$42m "subject to the two properties at [34KB] value at Singapore Dollars Fourteen Million Only

(S\$14,000,000.00) and [8ER] value at Singapore Dollars Twenty-Eight Million Only (S\$28,000,000) ...”.

(b) Shortly after, on 19 June 2014, Annie instructed CKS to perform a full valuation of 34KB. On 16 July 2014, CKS issued the 2014 Valuation Report confirming that the market value of 34KB was \$14m (*ie*, the value stated in the Letter of Intent), although this valuation was based on information (provided to Annie by Terrence) that 34KB could house 360 workers.

(c) The SPA provided for a purchase price of \$42m, meaning that there was no change from the Letter of Intent. In cross-examination, both William – who negotiated the SPA on behalf of H8, as well as Eer and Ting – and Terrence – who, with William, negotiated the SPA on behalf of H8 – agreed that the breakdown of \$14m and \$28m for 34KB and 8ER in the Letter of Intent were “sums that came from Annie’s valuers” (*ie*, the 2014 Valuation Report).

49 From the aforesaid, it appeared to us that if the misrepresentations as to 34KB’s legally approved accommodation capacity had not been made, the parties would have obtained a valuation of 34KB *in 2014* based on its true legally approved accommodation capacity of 130 workers. *Ex hypothesi*, under the Lower Price Counterfactual, POP’s non-breach position would have been acquiring 70% of the shareholding in RIC Dormitory at a purchase price based on the true valuation of 34KB and the \$28m valuation of 8ER in 2014. Subject to negotiations, if any, that would have been the purchase price at which the parties would have transacted under the Lower Price Counterfactual. In turn, POP’s loss would have been the difference between this lower purchase price and the \$29m it paid under the SPA.

50 To prove the quantum of this loss, POP would have had to establish the value of 34KB in 2014. Based on the state of the evidence before the court, we were left in no doubt that there was no prospect that POP could have done so. It would be recalled that, based on a misapplication of the Valuation Method and the Transaction Date Rule, the Appellate Division considered that POP had to establish the value of 34KB in 2015 and found that it was unable to do so as the 2019 Valuation Report relied on by POP was too far removed from 2015 to be satisfactory evidence of the value of 34KB in 2015 (*GD (AD)* at [80]–[82]). Since our analysis required POP to establish the value of 34KB at an even earlier point in time, the same conclusion followed *a fortiori*, and we thus agreed with the Appellate Division that POP had failed to prove the quantum of its loss. We think it useful, however, to clarify two points arising from POP’s case.

51 First, POP suggested before us that the Appellate Division had erred in rejecting the 2019 Valuation Report as evidence of the value of 34KB in 2015 as it was the best available evidence on this issue. In this connection, POP relied on this court’s statement in *Robertson Quay* that “where the plaintiff has attempted its level best to prove its loss *and* the evidence is cogent, the court should allow it to recover the damages claimed” [emphasis in original] (at [31]), and submitted that the Appellate Division’s refusal to accept the 2019 Valuation Report departed from the compensatory principle which imposed on the court an “inherent duty to achieve a just outcome” in cases involving fraud or deceit.

52 In our view, this was a flawed argument. POP’s allusion to the court having an “inherent duty to achieve a just outcome” was an undisguised attempt at substituting satisfactory evidence of its loss with vague and arbitrary notions of justice. But, as S Mohan J recently observed in *Foo Diana v Woo Mui Chan* [2025] 4 SLR 95, “[a] claim for damages is not, contrary to what an optimistic litigant may think, akin to a lottery”, as “the basic premise [is] that a court of

law is required to assess damages based on principle, precedent and proof” (at [1]).

53 POP’s reliance on *Robertson Quay* was similarly misconceived. The point made in *Robertson Quay* was that, if the claimant had tried to put its best foot forward by reasonably exhausting the means at its disposal and adducing the best evidence it could to prove its loss, the fact that there could remain a measure of uncertainty was not reason in itself to deprive it of an award of damages. *Robertson Quay* does not, contrary to POP’s argument, allow a party to rest on its laurels on the evidential front and simply present the court with a *fait accompli* of accepting whatever evidence has been put before it as the “best available evidence”. As Moore-Bick LJ explained in *Capita Alternative Fund Services (Guernsey) Ltd v Drivers Jonas (a firm)* [2013] 1 EGLR 119, while the court is generally loath to send a claimant away empty-handed, “an obvious failure to obtain better evidence may result in its being unpersuaded of the claimant’s case” (at [80]). In a similar vein, Lloyd LJ observed that “the court requires as good evidence as can reasonably be obtained, and should only be forced to ‘do the best it can’, in the absence of evidence, *if the evidence is not reasonably obtainable*” [emphasis added] (at [122]).

54 In this case, we found it rather disconcerting that POP had in fact led no evidence at the trial on the value of 34KB. The 2019 Valuation Report which POP nailed its colours to was not its own evidence to begin with, but evidence that found its way into the record as part of the corpus of material cited by H8’s expert witness in his expert report valuing RIC Dormitory’s shares in 2018, which H8 adduced to support a parallel suit against POP for minority oppression which was heard together with Suit 27. Having not taken any positive step to adduce evidence of the value of 34KB and opportunistically seizing on evidence adduced by H8 for a completely different purpose, we did not think that POP

could sensibly bring itself within the ambit of this court’s observations in *Robertson Quay*.

55 Second, even if the 2019 Valuation Report could be considered relevant evidence of the value of 34KB in 2014, we had doubts over its admissibility as its maker was not called to testify. It was clear that the inclusion of the report in an agreed bundle of documents only dispensed with formal proof and the truth of its contents had to be proven absent an agreement or admission to the contrary (*Jet Holding Ltd and others v Cooper Cameron (Singapore) Pte Ltd and another and other appeals* [2006] 3 SLR(R) 769 at [44]; *Chubb Insurance Singapore Ltd v Sizer Metals Pte Ltd* [2023] 1 SLR 1553 (“*Chubb Insurance*”) at [111]). In this regard, while the respondents did not make any express objection as to admissibility, it was noted in their closing submissions before the Judge that the maker of the 2019 Valuation Report had not been called to give evidence on what had been recorded therein, and, in any event, the absence of objection does not make inadmissible evidence admissible (*Keimfarben GmbH & Co KG v Soo Nam Yuen* [2004] 3 SLR(R) 534 at [17]; *Chubb Insurance* at [126]; *Aw Kew Lim and others v Public Prosecutor* [1987] SLR(R) 443 at [12]).

56 To the extent that POP relied on the 2019 Valuation Report to prove that the value of 34KB was \$9m, POP was relying on the *truth* of its contents which rendered it inadmissible hearsay and/or opinion evidence. Although the 2019 Valuation Report was adduced as part of the material forming the basis of the opinion of H8’s expert witness, and the case law does recognise a measure of flexibility in the application of the hearsay rule to such material by drawing a distinction between “general” and “specific” hearsay, the report was specific hearsay to which the rule would apply with full rigour as the value of 34KB was “the very issue in dispute” (*Anita Damu v Public Prosecutor* [2020] 3 SLR 825 at [30]–[31], cited in *Kiri Industries Ltd v Senda International Capital Ltd and*

another [2021] 3 SLR 215 at [86]–[88]). In the circumstances, it appeared to us that the failure to call the maker of the 2019 Valuation Report to give evidence made it unlikely that the 2019 Valuation Report could have been of much, if any, assistance to POP.

The proper understanding of the Transaction Date Rule

57 Finally, we turn to briefly address the Transaction Date Rule in the light of the difference between the Judge and the Appellate Division on the issue of whether the Transaction Date Rule would be disapplied in a case of deceit where the claimant only discovers the fraud at a time after the transaction. It would be recalled that the Judge thought so while the Appellate Division disagreed.

58 In our view, the Judge was correct on this point and her reading of the relevant case law. In *Smith New Court*, Lord Browne-Wilkinson had deprecated the “strict and inflexible” application of the transaction date as the relevant time in older authorities in the following passage that bears close analysis (at 266C–G):

... the old 19th century cases can no longer be treated as laying down a strict and inflexible rule. In many cases, even in deceit, it will be appropriate to value the asset acquired as at the transaction date if that truly reflects the value of what the plaintiff has obtained. Thus, if the asset acquired is a readily marketable asset and there is no special feature (such as a continuing misrepresentation or the purchaser being locked into a business that he has acquired) the transaction date rule may well produce a fair result. *The plaintiff has acquired the asset and what he does with it thereafter is entirely up to him, freed from any continuing adverse impact of the defendant's wrongful act.* The transaction date rule has one manifest advantage, namely that it avoids any question of causation. One of the difficulties of either valuing the asset at a later date or treating the actual receipt on realisation as being the value obtained is that difficult questions of causation are bound to arise. In the period between the transaction date and the date of valuation or resale other factors will have influenced the value or resale price of the asset. It was the desire to avoid

these difficulties of causation which led to the adoption of the transaction date rule. ***But in cases where property has been acquired in reliance on a fraudulent misrepresentation there are likely to be many cases where the general rule has to be departed from in order to give adequate compensation for the wrong done to the plaintiff, in particular where the fraud continues to influence the conduct of the plaintiff after the transaction is complete or where the result of the transaction induced by fraud is to lock the plaintiff into continuing to hold the asset acquired.***

[emphasis added in italics and bold italics]

59 The Transaction Date Rule, as Lord Browne-Wilkinson notes, applies in cases with “no special feature[s]”, such as a “continuing misrepresentation or the purchaser being locked into a business that he has acquired”. In a case where such circumstances are absent, the Transaction Date Rule may well produce a fair result as no question of causation of the claimant’s loss would generally arise. This may be so if, as at the date of the transaction, the claimant is able to exercise a *free choice* to hold on to the acquired asset such that “what he does with it thereafter is entirely up to him, freed from any continuing adverse impact of the defendant’s wrongful act”. As the claimant is able to extricate itself from the consequences of the defendant’s wrong as at the date of the transaction, that date is the cut-off point at which the defendant ceases to be liable for subsequent losses incurred by the claimant from retaining the asset as the chain of causation between the defendant’s wrong and such losses has been broken. But where special features exist such that the claimant is unable to exercise a free choice to retain the asset because it continues to labour under the misimpression created by the defendant’s deceit, it would not make sense to apply the Transaction Date Rule; the imposition of a similar cut-off date at the date of the transaction would lead to undercompensation because the causal influence of the defendant’s wrongful act on the claimant’s retention of the asset would continue to subsist past that date. As the claimant has not had an opportunity to extricate itself from

the consequences of the defendant's wrong, it is right that the defendant should continue to be liable for the claimant's losses.

60 This interpretation of the Transaction Date Rule and *Smith New Court* is borne out in the case law. In *Gestmin SGPS SA v Credit Suisse (UK) Ltd and another* [2013] EWHC 3560 (Comm), Leggatt J (as he then was) explained that the appropriate date at which to assess the claimant's loss was the earliest date at which (a) the claimant was aware of the facts giving rise to the claim; (b) the claimant could readily have sold the property acquired as a result of the defendant's wrong at a price which fairly reflected the value of the property; and (c) it would not have been unreasonable for the claimant to sell the property (at [185]). The rationale underlying these three conditions is that, where they are satisfied at a certain date, the claimant's continued retention of the asset past that date "can be seen as the claimant's free choice and any subsequent gain or loss can properly be regarded as a consequence of the claimant's trading decision to retain the property rather than the defendant's wrong" (at [186]). Similarly, in *Invertec Ltd v De Mol Holding BV and another* [2009] EWHC 2471 (Ch), where the claimant had been induced to invest in a company by deceit and the claimant made a "commercial decision" after discovering the fraud to continue supporting the company, Arnold J (as he then was) held that damages should be assessed at the time when the claimant discovered the fraud as any losses suffered from then on were not caused by the deceit (at [384]). As the learned judge put it, the claimant "was entitled to take the commercial gamble, but not to treat the Defendants as insurers if the gamble went wrong" (at [385]).

61 The decision of the English Court of Appeal in *Downs and another v Chappell and another* [1997] 1 WLR 426 ("*Downs*") is illustrative. The plaintiffs had been induced by the defendants' misrepresentations to purchase a

bookshop for £120,000. After the plaintiffs learnt of the fraud, they received offers to sell the business for £76,000 but declined. By the time of the trial, the value of the bookshop had fallen further to £60,000. Although the plaintiffs claimed damages of £60,000 (the difference between the purchase price and the value of the bookshop at the date of trial), the court held that they were only entitled to damages of £44,000, being the difference between the purchase price and the offers that the plaintiffs had turned down. Hobhouse LJ (as he then was) reasoned that, once the opportunity for the plaintiffs to sell the business and avoid further loss arose, they could not visit any further loss resulting from the subsequent depreciation of the value of the bookshop from £76,000 to £60,000 as they had “freely made” the choice to hold on to the bookshop, and were “no longer acting under the influence of the defendants’ representations”. This meant that “[t]he causative effect of the defendants’ faults was exhausted” such that they could not lay any loss caused by the subsequent depreciation at the defendants’ door (at 437F–G).

62 It is worth pointing out that the law of damages for breach of contract tells a similar story *vis-à-vis* what has sometimes been called the “breach date rule”. It is well-established that in a paradigm case of sale of goods from *A* to *B* where *A* acts in breach of contract by failing to deliver, *B*’s loss is generally assessed at the date of the breach. This rule finds statutory expression in s 51(3) of the Sale of Goods Act 1979 (2020 Rev Ed), which provides that if there is an available market for the goods, *B*’s loss is *prima facie* assessed as the difference between the contract price and the market price at the time when the goods ought to have been delivered. The logic underpinning this is that if there is an available market to obtain substitute performance, *B* should ordinarily avail himself of that option to mitigate and thereby crystallise his loss on the date of *A*’s breach. If *B* does not do so, any losses incurred thereafter are not caused by *A*’s breach

but by *B*'s decision not to enter the market (*Koch Marine Inc v D'Amica Societa Di Navigazione ARL (The "Elena D'Amico")* [1980] 1 Lloyd's Rep 75 at 89–90; *Golden Strait Corpn v Nippon Yusen Kubishika Kaisha* [2007] 2 AC 353 at [79]; *Sharp Corpn Ltd v Viterro BV (formerly Glencore Agriculture BV)* [2024] Bus LR 871 at [94]–[95]). But, if there is no available market, the breach date would not be appropriate as this underlying premise would not hold (*iVenture Card Ltd and others v Big Bus Singapore City Sightseeing Pte Ltd and others* [2022] 1 SLR 302 at [133], citing *Hooper v Oates* [2014] Ch 287 at [38]). This was all lucidly explained by Lord Toulson JSC in *Bunge SA v Nidera BV (formerly Nidera Handelscompagnie BV)* [2015] Bus LR 987 (“*Bunge*”) as follows (at [78]–[80]):

78 The broad principle ... is that where a contract is discharged by reason of one party's breach, and that party's unperformed obligation is of a kind for which there exists an available market in which the innocent party could obtain a substitute contract, the innocent party's loss will ordinarily be measured by the extent to which his financial position would be worse off under the substitute contract than under the original contract.

79 The rationale is that in such a situation that measure represents the loss which may fairly and reasonably be considered as arising naturally, ie according to the ordinary course of things, from the breach of contract: *Hadley v Baxendale* 9 Exch 341. It is fair and reasonable because it reflects the wrong for which the guilty party has been responsible and the resulting financial disadvantage to the innocent party at the date of the breach. The guilty party has been responsible for depriving the innocent party of the benefit of performance under the original contract (and is simultaneously released from his own unperformed obligations). The availability of a substitute market enables a market valuation to be made of what the innocent party has lost, and a line thereby to be drawn under the transaction.

80 Whether the innocent party thereafter in fact enters into a substitute contract is a separate matter. He has, in effect, a second choice whether to enter the market—similar to the choice which first existed at the time of the original contract, but at the new rate prevailing (the difference being the basis of the normal measure of damages). The *option* to re-enter or stay

out of the market arises from the breach, but it does not follow that there is a causal connection between the breach and his *decision* whether to re-enter or to stay out of the market, so as to make the guilty party responsible for that decision and its consequences. The guilty party is not liable to the innocent party for the adverse effect of market changes after the innocent party has had a free choice whether to re-enter the market, nor is the innocent party required to give credit to the guilty party for any subsequent market movement in favour of the innocent party. The speculation which way the market will go is the speculation of the claimant.

[emphasis in original]

63 The contract cases usefully draw the link between the “breach date rule” and the law of mitigation. Seen in perspective, the true reason why damages are assessed at the breach date is that, if the claimant has the opportunity to acquire substitute performance at the breach date but chooses not to do so, it is assumed by the law of mitigation to have done so and damages would be assessed on that basis regardless of how it has actually acted (*Thai Airways International Public Co Ltd v KI Holdings Co Ltd (formerly known as Koito Industries Ltd) and another* [2016] 1 All ER (Comm) 675 at [34]; *Stanford International Bank Ltd (in liquidation) v HSBC Bank plc* [2023] AC 761 at [42]–[43]). As Lord Toulson JSC explained in *Bunge* at [81]:

... the so-called duty to mitigate is not a duty in the sense that the innocent party owes an obligation to the guilty party to do so ... it is an aspect of the principle of causation that the contract breaker will not be held to have caused loss which the claimant could reasonably have avoided.

64 In our view, the same linkage is apt to explain the Transaction Date Rule in the context of deceit and misrepresentation claims. Until the time when the deceit is discovered, the claimant is unable to mitigate its loss by selling the property acquired under the influence of the defendant’s deceit, and therefore, any losses which it continues to suffer would be chargeable to the defendant. But once the deceit is discovered and the claimant is able to sell, it would have

had the opportunity to mitigate its loss and will be deemed to have done so. To use the case of *Downs* as an example, the plaintiffs there had the opportunity to extricate themselves from the acquisition of the bookshop induced by the defendants' fraud when they discovered the truth and received offers to sell the bookshop for £76,000. The law of mitigation deemed them to have availed themselves of that opportunity (even though they did not), and assessed the loss caused by the defendants' deceit on that basis.

65 In the present case, the Appellate Division found itself unable to accept that the Transaction Date Rule could be disapplied where the claimant only discovered the deceit at a time subsequent to its entry into the transaction as this would render the Transaction Date Rule “otiose” in the context of deceit claims (*GD (AD)* at [73]). As explained, we do not agree with this view. As we have cautioned at [10] above, the potential danger with framing a proposition as a “rule” is that it can lead to the proposition being applied outside of its proper context and without due regard to the logic behind it. Based on a principled understanding of the Transaction Date Rule as unpacked above, there is little difficulty in seeing why the Transaction Date Rule would not apply in at least the vast majority of deceit claims.

Conclusion

66 For the foregoing reasons, we dismissed the application with costs fixed at \$10,000 (all-in) to be paid by POP to the respondents.

Steven Chong
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of Appeal

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