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

[2025] SGHC 189

Originating Claim No 265 of 2022

Between

Ding Asset Ltd

… *Claimant*

And

(1) Koh Kien Chon (Gu Jiancong)
(2) Koh Yang Kee
(3) Yang Kee Logistics Pte Ltd (in receivership)
(4) Koh Yang Kee Pte Ltd
(5) Yang Kee Logistics (Singapore) Pte Ltd

… *Defendants*

JUDGMENT

[Civil Procedure — No case to answer]
[Tort — Misrepresentation — Fraud and deceit]
[Tort — Conspiracy]

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v
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Introduction

1 The parties have asked me to resolve a dispute arising from sums paid by the claimant to the third defendant. According to the claimant, these sums were paid in error and resulted from misrepresentations by the first and fourth defendants. According to the first and fourth defendants, there was no error and the parties had agreed for the sums to be paid to the third defendant.

2 The claimant has reached a settlement with the third and fifth defendants. The claimant's case against the second defendant has been discontinued. The claimant's case against the first and fourth defendants remains. At the conclusion of the claimant's case, the first and fourth defendants submitted that there was no case to answer.

Facts

The parties

3 The claimant is a wholly owned subsidiary of DYZ Group Ltd. Both are British Virgin Islands-incorporated companies.[1] Mr Ding Yanzhong ("Mr Ding") is the ultimate beneficial shareholder and director of the claimant.[2]

4 The first defendant is the son of the second defendant. It is not disputed that the first defendant:

(a) was at all material times a director and shareholder of the third defendant;

(b) is the managing director and sole shareholder of the fourth defendant; and

(c) was at all material times a director of the fifth defendant.[3]

5 According to the claimant, he saw the second defendant as the patriarch or "elderly chief" of the group of companies ("Yang Kee Group") of which the third, fourth and fifth defendants are part.[4]

6 The claimant has provided the following corporate structure chart of the Yang Kee Group (to the extent material to this case).[5] It is noted that the first

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1 Statement of Claim dated 15 September 2022 ("SOC") at para 1 and Affidavit of Evidence-in-Chief of Ding Yanzhong dated 13 May 2024 ("Ding's AEIC") at para 4.

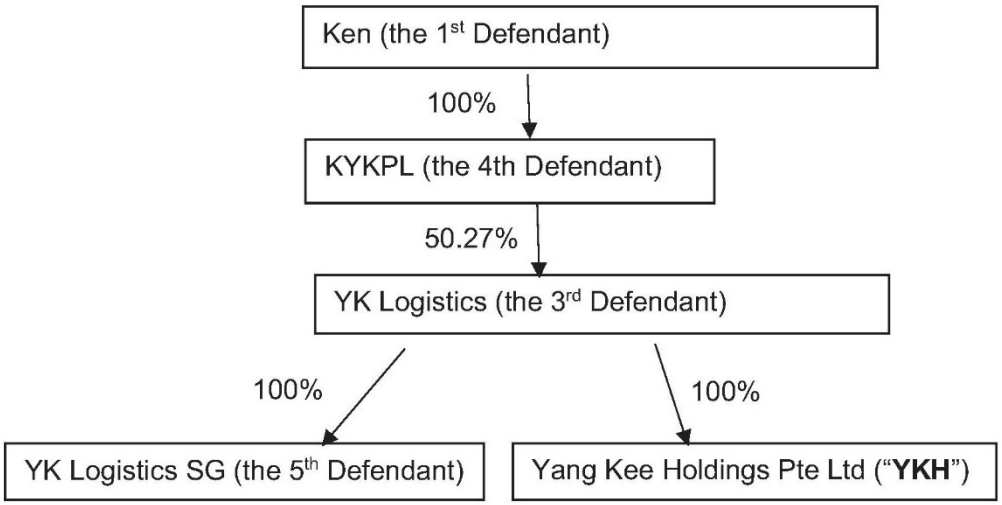
2 Ding's AEIC at para 1.

3 Agreed Dramatis Personae dated 7 January 2025 ("ADP") at s/no 4.

4 Notes of Evidence ("NE") dated 16 January 2025 at p 31 lines 10–14 and p 32 lines 2–11.

5 Ding's AEIC at para 9.

defendant has not conceded that this structure chart is correct but he has also not provided a competing version.[6]



Background to the dispute

7 In or around late 2018, the first and second defendant met with Mr Ding on several occasions to discuss Mr Ding's potential investment in a Yang Kee Group company which would eventually become publicly listed ("Investee Company"). These discussions resulted in a share subscription agreement and a put option agreement in October or November 2018 (respectively, "Subscription Agreement" and "Put Option Agreement").[7]

8 The Subscription Agreement was executed between the claimant and the fifth defendant. It provided that the claimant was to be issued 454,445 ordinary shares in the fifth defendant ("Subscription Shares") for a consideration of S$5 million ("Subscription Consideration").

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6 Defence of the First Defendant dated 10 October 2022 ("1D Defence") at para 11.

7 Agreed Chronology of Key Events dated 7 January 2025 ("ACKE") at s/no 1.

9 The Put Option Agreement was executed between the claimant, the first defendant, and the fourth defendant. Amongst others, it provided that:[8]

> (a) the fourth defendant would irrevocably grant the claimant a "put option" ("Put Option") to sell all the Subscription Shares to the fourth defendant at a certain price ("Put Option Price") during the period between 20 November 2021 to 31 December 2021 ("Put Option Period"); and
>
> (b) the first defendant would guarantee to the claimant payment of the Put Option Price (or any part thereof) payable by the fourth defendant.

10 On 7 November 2018, Mr Ding (on behalf of the claimant) issued a cheque for the sum of S$5 million, being the Subscription Consideration, from his personal bank account to the *third* defendant.[9] The first defendant acknowledged receipt of the cheque two days later, on 9 November 2018.[10] On or around 13 November 2018, the sum of S$5 million was credited to the third defendant's bank account.[11] Finally, on 8 January 2019, Mr Ding received a letter confirming receipt of the investment of S$5 million made by "[his] company" pursuant to the Subscription Agreement with the *third* defendant ("Receipt Confirmation Letter"). This letter was sent under the third defendant's letterhead.[12]

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8 ACKE at s/no 2.

9 ACKE at s/no 3.

10 ACKE at s/no 4.

11 ACKE at s/no 5.

12 ACKE at s/no 6.

11 In 2019, Mr Ding decided to apply for Singapore citizenship.[13] The claimant's investment in a Singapore company was seen as a factor in his citizenship application. Therefore, a letter of support was issued from the third defendant to the Singapore Economic Development Board ("EDB") on 29 July 2019 ("First Letter of Support"). This letter stated that the Subscription Consideration was received from the claimant for the purpose of subscribing up to 2.27% of ordinary shares in the *fifth* defendant.[14]

12 Thereafter, on 26 November 2019, Mr Ding's banker, Mr Peter Loh ("Mr Loh"), received an e-mail from the third defendant's Tan Cai Pin enclosing a portable document format ("PDF") document titled "Share Application Letter_Ding Asset Ltd".[15] Two days later, on 28 November 2019, the first defendant sent a PDF document titled "Share Application Letter_Ding Asset Ltd" ("Share Application Form") to a WeChat group which consisted of the first defendant, the claimant and Mr Loh. The first defendant also sent a voice recording to Mr Ding on WeChat to inform Mr Ding that: (a) the PDF document was a share application form; and (b) the Share Application Form was not in itself a contract, but was instead to apply for shares pursuant to the Subscription Agreement.[16] Mr Ding signed the Share Application Form on or around that same day.[17]

13 From end-2019 to February 2020, Mr Ding engaged WongPartnership LLP ("WongP") to assist with his application for Singapore citizenship.[18] On 10

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13 Ding's AEIC at para 31.

14 ACKE at s/no 8.

15 ACKE at s/no 9.

16 ACKE at s/no 10.

17 ACKE at s/no 11.

18 ACKE at s/no 12.

March 2020, WongP liaised with the first defendant and Mr Poh Choon Lay (an employee of the Yang Kee Group) regarding a further letter of support that would be sent to the EDB about his investment in a Yang Kee Group company ("Second Letter of Support").[19] On 29 May 2020, Mr Ding's Singapore citizenship application was preliminarily submitted to the EDB.[20]

14 In late July 2021, Mr Ding engaged Mr Ravindran s/o Ramasamy ("Mr Ravi") of CNPLaw LLP ("CNP") to act for the claimant in relation to its exercise of the Put Option. Subsequently, Mr Ravi informed Mr Ding that pursuant to company searches carried out by CNP, the claimant was holding shares in the third defendant, rather than the fifth defendant.[21] This discovery led to several discussions on the matter:

(a) On 3 August 2021, a meeting ("First Meeting") was held between Mr Ding, Mr Loh, the first defendant, and Chia Ken Siong (Xie Qingxiang) ("Mr Chia") and Mr Ravi of CNP, to discuss the issuance of shares in the third defendant rather than the fifth defendant to the claimant.[22]

(b) Two days later, on 5 August 2021, Mr Chia called the first defendant to discuss the same.[23]

(c) On or around 6 August 2021, a meeting ("Second Meeting") was held between Mr Ding, the first defendant, and the second defendant to

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19 ACKE at s/no 13.

20 ACKE at s/no 14.

21 ACKE at s/no 15.

22 ACKE at s/no 16.

23 ACKE at s/no 17.

discuss the issuance of shares in the third defendant, this time without lawyers present.[24]

Procedural history

15 A Notice of Discontinuance in the claim against the second defendant was filed on 27 January 2025.

16 Following the trial, I was notified that a settlement had been reached between the claimant and the third and fifth defendants. A Notice of Discontinuance was filed on 23 February 2025.

17 The sum at which this settlement was reached has not been disclosed to me. This sum has, however, been disclosed to the first and fourth defendants. The claimant's position is that, should judgment be entered against the first and fourth defendants, the claimant will give credit for the sum recovered.[25]

18 As a result of the settlement reached between the claimant and the third and fifth defendants, the claimant's restitutionary claims against the third defendant in mistake and unjust enrichment[26] fall away.

19 The claimant's claim against the fifth defendant for breach of contract[27] also falls away. The claimant also has a pleaded claim against the first defendant for breach of contract supposedly arising from the first defendant's alleged breach of the Put Option Agreement but his pleadings in this regard are not

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24 ACKE at s/no 18.

25 Claimant's Written Submissions dated 4 April 2025 ("CWS") at para 1.

26 SOC at paras 30–32.

27 SOC at paras 9–21.

explicit.[28] The claimant has, however, not pursued any arguments relating to this claim in his closing submissions (see below at [36]).

The parties' cases

The claimant's case

20 The claimant notes that the first defendant was aware that Mr Ding spoke and understood very little English.[29] The claimant then states that, with this knowledge, the first defendant misrepresented to the claimant that the bank account into which the claimant's investment was paid was that of the fifth defendant when it was in fact the third defendant's bank account.[30] This representation was communicated to Mr Ding via a text message from the first defendant ("Representation") containing the bank account details of the third defendant ("Bank Account Details") and this is set out in full below:[31]

> YKL Bank Account Details*
> Swift Code : DBSSSGSG
> Bank Code: 7171
> Branch Code: 002
> Branch Name: Jurong Point Branch
> Account Number: [xxxxxxxxxx]
> Bank Name: DBS Bank Ltd
> Bank Address: 1 Jurong West Central 2 #B1-20 Jurong Point Shopping Centre Singapore 648886
> Beneficiary Name: Yang Kee Logistics Pte Ltd

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28 SOC at part II and particularly at paras 13.6 and 21.

29 CWS at para 11.

30 CWS at para 22.

31 CWS at para 21.

21 The Subscription Agreement and the Put Option Agreement were not in dispute. The claimant's investment and share subscription were intended to be with the fifth defendant.[32] In that regard, the claimant's case is that the first defendant knew or ought to have known that the Representation was false and that the claimant would act on the same.[33]

22 The claimant acted on the Representation and has suffered loss because the claimant could have sold the shares in the fifth defendant to the fourth defendant pursuant to the Put Option Agreement and the Put Option Price would have been guaranteed by the first defendant.[34]

23 The claimant also argues that the defendants conspired by lawful and/or unlawful means to defraud, injure and/or deceive the claimant.[35]

24 The claimant's case is that, armed with the knowledge of Mr Ding's poor English (above at [20]), the first and fourth defendants conspired with the other defendants to lure the claimant to pay his subscription consideration into the third defendant rather than the fifth defendant. Shares in the third defendant (rather than the fifth defendant) were then issued to the claimant.[36]

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32 ACKE at s/no 2.

33 CWS at paras 60 and 65.

34 CWS at para 71.

35 CWS at para 73.

36 CWS at para 82.

25 Through unlawful means (the false Representation),[37] the first and fourth defendants intended to cause loss to the claimant through the conspiracy and acts were performed in furtherance of the conspiracy.[38]

26 The claimant thus claims:

(a) damages arising from the claimant's inability to sell the Subscription Shares at the Put Option Price under the Put Option Agreement;

(b) alternatively, payment of $5 million, being the sum the claimant paid for the Subscription Shares, to the claimant;

(c) further and/or alternatively, a declaration that the third defendant received the $5 million as a constructive trustee for the claimant;

(d) interest; and

(e) costs.

The first and fourth defendants' case

27 The first and the fourth defendants argue that there are only three causes of action pleaded by the claimant against them, namely, misrepresentation against the first defendant, and lawful and unlawful means conspiracy against the first and/or fourth defendants.[39]

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37 CWS at para 118.

38 CWS at sections V(b)(iii) and (v).

39 First and Fourth Defendants' Closing Submissions dated 21 March 2025 ("DWS") at para 2.

28 The first and fourth defendants have submitted that there is no case for them to answer. They elected not to call evidence at the trial and rely only on evidence adduced up to the close of the claimant's case.[40]

29 According to the first and fourth defendants, the claimant's case on misrepresentation "does not show any false representation of fact, nor does it establish fraudulent or reckless intent" by the first defendant. In fact, the first and fourth defendants' position is that the claimant's case on misrepresentation arises from the claimant's or Mr Ding's own mistaken assumptions and not from any actionable misrepresentation.[41] The claimant ultimately suffered loss in having been denied the right to sell shares in the fifth defendant at the Put Option Price.[42]

30 With respect to the claimant's case on conspiracy, the first and fourth defendants argue that there was no cogent evidence of an agreement to injure the claimant. The fourth defendant was at a loss as to what role it was supposed to have played in the conspiracy. Similarly, the first defendant takes the position that the claimant had produced no evidence that he was engaged in any agreement to injure, defraud or harm nor were any unlawful means committed.[43]

31 It is also worth noting the first and fourth defendants' pleaded case in their defence. The first and fourth defendants admit that the agreement was for the claimant to invest in an Investee Company which was planned to be listed in a stock exchange, but take the position that the identity of the Investee Company was not initially determined. Specifically, the choice of Investee

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40 DWS at para 3.

41 DWS at para 5.

42 CWS at para 131.

43 DWS at para 6.

Company was between the third defendant, the fifth defendant, or a newly incorporated company – depending on the final choice of Yang Kee's listing corporate vehicle.[44] Therefore, despite the terms of the Subscription Agreement identifying the fifth defendant as the Investee Company, "there was an understanding between the [first defendant] and [the claimant] that the identity of the Investee Company may change depending on the circumstances related to the listing application of the Yang Kee Group".[45]

32 Pursuant to this understanding, there was a subsequent oral agreement to vary the Subscription Agreement and the Put Option Agreement made between the first defendant (on behalf of himself and the third, fourth and fifth defendants) and Mr Ding (on behalf of the claimant) that the Investee Company would be the third defendant instead of the fifth defendant ("Varied Agreement"). The reason for the change was the poor performance of the fifth defendant in the material financial year which made it an unsuitable corporate vehicle for public listing in a stock exchange.[46]

33 As such, at the time of the receipt of the Subscription Consideration, the identity of the Investee Company had not been determined.[47] The Subscription Consideration paid to the third defendant's account was "held in abeyance pending the decision on the choice of the Investee Company", and "[i]n this respect, the [first defendant] says that no steps were taken to allot any shares to

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44 First Defendant's Defence at paras 12.4 and 19.3.

45 First Defendant's Defence at para 15.2.

46 First Defendant's Defence at paras 22.2–22.4.

47 First Defendant's Defence at para 21.2.

the [claimant] (be it in the [third defendant] or the [fifth defendant]) until November 2019".[48]

Issues to be determined

34 Thus, the following broad issues arise for determination:

(a) Has the claimant made out its case in fraudulent misrepresentation against the first defendant?

(b) Has the claimant made out its case in conspiracy against the first and the fourth defendants?

(c) If a case in misrepresentation and/or conspiracy has been made out, what are the remedies or measure of damages to which the claimant is entitled?

35 The claimant also maintained a claim against the third defendant for mistake and unjust enrichment.[49] However, since the claimant's action against the third defendant has been discontinued, the logical conclusion is that the claimant is no longer pursuing this claim. In fact, the claimant makes no further submissions on this claim in its closing submissions other than to confirm that his claim against the third defendant has been discontinued.[50]

36 There is a more nebulous question surrounding the claimant's case for breach of contract against the first defendant. This was summarised in the claimant's opening statement but not pursued in his closing submissions (also

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48 First Defendant's Defence at para 19.4.

49 CWS at para 38(c).

50 CWS at para 39.

see above at [19]).[51] However, reading this part of the claimant's opening statement leads me to surmise that the claimant's breach of contract claim is levied only against the fifth defendant (for failure to issue shares to the claimant in accordance with the Share Subscription Agreement). The case against the fifth defendant has been discontinued (above at [16]). In my judgment, the only explanation for the claimant's silence on his breach of contract claims is that it has been overtaken by events, and it is thus no longer being pursued. The combination of (a) the discontinuance of the claim against the fifth defendant; and (b) the fact that the first defendant's obligations under the Put Option Agreement are at least one step removed from reality (*ie*, those obligations were dependent on the fifth defendant's shares having been issued to the claimant) means the breach of contract claim no longer has any teeth.

Submission of no case to answer

37 The parties are in agreement on the law regarding no case to answer. Where a defendant makes a submission of no case to answer, the claimant would succeed in its case if it can establish that it has a *prima facie* case on each of the relevant facts in issue: *Ma Hongjin v SCP Holdings Pte Ltd* [2021] 1 SLR 304 ("*Ma Hongjin*") at [33]; *Vibrant Group Ltd v Tong Chi Ho and others* [2025] SGHC 14 ("*Vibrant Group Ltd*") at [35].

38 As the defendant is unable to adduce any evidence to either disprove or weaken the claimant's position, the court will assume that any evidence led by the claimant is true, unless it is inherently incredible or out of common sense. Where the claimant relies on circumstantial evidence, the desired inference only needs to be one of the possible inferences. In general, the claimant's evidence

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[51] Claimant's Opening Submissions dated 7 January 2025 at paras 31–34.

is subjected to a minimal evaluation as opposed to a maximal evaluation (*Vibrant Group Ltd* at [36]; *Ma Hongjin* at [32]).

39 Order 15 r 8(11)(*a*) of the Rules of Court 2021 ("ROC") provides that a defendant who submits no case to answer must not give evidence. Moreover, O 15 r 8(11)(*c*) dictates that if there is more than one defendant and not all the defendants make the submission of no case to answer, the defendant who makes the submission cannot rely on or make any submission on the evidence given by any other party. Further, neither party has objected to the first and fourth defendants' defence remaining in the record.[52]

Key factual findings

40 Several factual issues underpinning my decision cut across both the misrepresentation and the conspiracy causes of action. That being the case, I will address my findings on these factual issues first and then apply the respective legal tests to these issues.

Text message was sent by first defendant

41 The first defendant argues that there is no objective evidence that the text message containing the Representation was actually sent by the first defendant, or that it was sent in his personal capacity and not as director of the fifth defendant. The claimant has not been able to produce the original text message, and the screenshot of the text message provided by the claimant "does not indicate that the claimant's Mr Ding had 'forwarded' the message" (and thereby, does not show that the alleged text message was even sent) and in any case, does not indicate who sent the text message.

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[52] Minute Sheet dated 21 April 2025 at pp 3 and 14.

42 The claimant's Mr Ding had given evidence that "[the first defendant] … sent me a text message with the bank account details for [the claimant] to transfer the Subscription Consideration".[53] The first defendant did not give evidence to refute this. Mr Ding had explained why he did not keep the text message as he "didn't know it was an important thing at the time".[54] I do not find Mr Ding's evidence inherently incredible and subjecting that evidence to minimal evaluation, I accept the claimant's version of events and find that the first defendant had sent the text message containing the Representation to Mr Ding.

43 As regards the question of whether the text message was sent in the first defendant's personal capacity, the claimant argues that the first defendant's arguments are inherently contradictory. The claimant notes that the first defendant cannot deny that he sent the message at all, yet in the same breath allege that he sent it in his capacity as director of the fifth defendant.[55] I disagree. In this case, the first defendant is not positively asserting that he did not send the text message or that he sent it in his capacity as director of the fifth defendant. Rather, he is submitting that the claimant has not disposed of its burden of proof in those respects. The submissions that the claimant has neither proven that the text message was even sent, nor that it was sent by the first defendant in his personal capacity, are not contradictory.

44 In any event, however, I find that the claimant has shown (on a *prima facie* basis) that the text message was sent by the first defendant in his personal capacity. Having established that the first defendant sent the Representation via

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53 Ding's AEIC at para 21.

54 NE dated 17 January 2025 at p 20 lines 31–32.

55 CWS at para 54.

text and not, for example, through the fifth defendant's email (above at [42]), the claimant has made out a *prima facie* case that the first defendant acted in his personal capacity. This has been a consistent element of the claimant's case including in its pleadings (see below at [96]–[97]). The burden then shifts to the first defendant to prove that he sent the message in some other capacity. The first defendant (having elected not to call any evidence) has failed to discharge this burden.

At the First Meeting, first defendant's position was that a mistake was made on the part of the defendants

45 Once the claimant had discovered that he had not received shares in the fifth defendant, a meeting was organised between the claimant and the first defendant, *ie*, the First Meeting (above at [14(a)]). The claimant invited CNP to join the First Meeting. Contemporaneous minutes of the First Meeting were prepared by Mr Chia (and sent in an email to Mr Ravi on the same day).[56] At the First Meeting, the first defendant was questioned on why shares in the fifth defendant were not issued to the claimant. According to these minutes, the first defendant claimed that it was a "mistake":

> (b) Ken Koh: Investment by Ding was made about 3 years ago, plus other funds, to grow the company, and to list YKLS; however, business was affected by trade wars in 2018 and we recovered from 2019 onwards, idea was to issue shares when we IPO as an undertaking of returns. **Agreement signed with log-co (i.e. [the fifth defendant]) but made an error and issued shares in hold-co (i.e. [the third defendant]) instead.**
>
> …
>
> (f) Ken Koh: **I admit a mistake was made re Ding.**
>
> RAV: You clearly know what you are talking about. You know what you were signing. Our client did not receive any share certs, no notice of AGM, no accounts laid before him.

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56 Affidavit of Evidence-in-Chief of Chia Ken Siong (Xie Qingxiang) ("CKS's AEIC") at para 17; Core Bundle ("CB") at p 329–332.

> Ken Koh to client: You should have received all the documents.
>
> Client: I did not receive anything.
>
> Ken Koh: **The person responsible for this left 2 years ago. Brandon Soon.**
>
> Client: I negotiated directly with Ken Koh. The others were just his assistants, how could they have authority?
>
> RAV: There must have been board approval and shareholders' approval?
>
> Ken Koh: **All passed. I didn't realise the mistake until 1 month ago.**
>
> Client: I met Ken Koh recently, why didn't he inform me? He didn't say anything.
>
> Ken Koh to client: **Yes there was a mistake.** There is another company above YKL (i.e. KYKPL) and above that is a trust.
>
> CKS to Ken Koh: No, you are the sole shareholder of that co (i.e. KYKPL). There is no trust.
>
> Ken Koh: Yes, you are right.
>
> Ken Koh to client: Now is not the time to place blame and say who is at fault.
>
> CKS to Ken Koh: Clearly our client is not the one at fault.
>
> RAV: **What about the PG?**
>
> Ken Koh: **I cannot fulfil the PG.**
>
> RAV: You're the CEO, MD, you must have instructed people. You were the one who gave instructions.
>
> Ken Koh: **Legally, I do not deny my obligations. But it was Brandon.**
>
> [emphasis in original]

Given that the first defendant has submitted no case to answer, he has not put forward any evidence to contradict this account of the events of the First Meeting. However, the first defendant argues that the "mistake" is ambiguous,

given that the minutes do not set out the context of the discussion before the alleged admission was made.[57]

46 I disagree with the first defendant. The "mistake" the first defendant refers to at point (f) of the minutes is clearly explained at point (b) of the minutes (above at [45]) – *ie*, the mistake is that shares in the third defendant were issued to the claimant despite the Subscription Agreement being signed by the fifth defendant and providing that the Subscription Shares were those of the fifth defendant.

47 Further, in case there is any doubt, I conclude from this exchange that the first defendant was clearly making the point that it was a mistake on his part. The first defendant did not suggest that Mr Ding made the mistake at any point during the meeting. At multiple points, he clearly and unequivocally admitted that the defendants "made an error and issued shares in [the third defendant] instead [of the fifth defendant]", "a mistake was made re Ding", and "there was a mistake". The only defence raised by the first defendant was that an ex-employee known as Brandon Soon was the person responsible for the mistake. However, when confronted by Mr Ravi that "[the first defendant was] the one who gave instructions", the first defendant confirmed that "[l]egally, [he does] not deny his obligations" (above at [45]).

48 While, during the Second Meeting, the first defendant seemed to have changed his mind, and accused *Mr Ding* of having made a mistake, it is unclear what mistake he was accusing Mr Ding of making. In any case, as the conversation progressed, and Mr Ding threatened to make a police report, the first defendant's tone changed. By the end of the meeting, the first defendant

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57 DWS at para 181.

was completely conciliatory, and was no longer pursuing the point on mistake. For example, when Mr Ding asked the first defendant about what recourse he could expect if the fifth defendant was eventually listed, the first defendant suggested that the defendants "[could] issue [him] the shares after being listed" – *ie*, he was no longer insisting that Mr Ding made a mistake and the intention was always for him to invest in the third defendant, but rather, he suggested to Mr Ding that they could fix the error afterwards:[58]

Ding Yanzhong	To me, this from the… from the top… from the start is a problem. I will not have shares when it is listed, right? When why do we have to help you get listed? You put my… in the one above.
Koh Kien Chon (Ken Koh)	We can issue you the shares after being listed.

First defendant was behind the decision of third defendant to issue shares in the third defendant following payment of the Subscription Consideration

49 I should note at this point that 113,552 of the third defendant's shares were issued to the claimant following the claimant's payment of the Subscription Consideration to the third defendant's account.[59] This was clearly a different number to the 454,554 of the fifth defendant's shares that were agreed to be issued to the claimant under Schedule 2 of the Subscription Agreement.[60] In my judgment, a deliberate decision had clearly been made to issue shares in the third defendant to the claimant in place of what was agreed in the Subscription Agreement.

50 The first defendant was behind this deliberate decision.

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58 CB at p 369.

59 Ding's AEIC at para 44.

60 CB at p 36.

51 The first defendant was a director and shareholder of the third defendant at the material time (above at [4(a)]). The claimant also alleges that the first defendant is the ultimate controller of the Yang Kee Group, which the third defendant is part of. The first defendant had initially denied this allegation in its pleadings and put the claimant to "strict proof thereof".[61] However, it is evident from the line of cross-examination adopted by counsel for the first defendant that it had later changed its position on this matter, and the first defendant's case was that the first defendant was, at the material time, the "group CEO" and "controlling mind" of the Yang Kee Group, and the first defendant "made all the decisions … regarding [the claimant's] investment into the Yang Kee Group".[62]

52 It is clear that the first defendant was aware that the Share Application Form was for shares in the third defendant rather than the fifth defendant. The first defendant was the person who sent the Share Application Form to Mr Ding (see [12] above). Furthermore, immediately after sending Mr Ding the Share Application Form, the first defendant then left a voice message for Mr Ding explaining that "this is the share application form, it is … not a contract, it is to apply for our share contract".[63] It is also the first defendant's case that he was aware of this point.[64]

53 Thus, I accept that the first defendant, being the director and controller of the third defendant and having full knowledge of the situation, was responsible for the third defendant's decision to issue shares in the third

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61 First Defendant's Defence at para 11.

62 NE dated 16 January 2025 at p 31 lines 2–20.

63 CB at p 84–85.

64 DWS at para 118.

defendant rather than the fifth defendant following payment of the Subscription Consideration.

Defendants (including the first and fourth defendant) were aware that the claimant wanted to invest in the Yang Kee Group company that was going to be listed (ie, the fifth defendant)

54 The claimant argues that the defendants, including the first and fourth defendant, were aware that the claimant's intention was to invest in the Yang Kee Group company that was going to be listed, which was the fifth defendant.[65] The first and fourth defendants do not deny this point in their written submissions. It is also the first and fourth defendants' own case that the intention of the parties all along was for the claimant to invest in the Yang Kee Group company that was going to be listed (above at [31]).

55 As such, I find that the defendants were indeed aware that the claimant wanted to invest in the Yang Kee Group company that was going to be listed.

56 The claimant has also adduced evidence (*ie*, Mr Ding's testimony) to show that the plan was for the fifth defendant to be listed.[66] The defendants have elected to not submit evidence to the contrary. I do not find Mr Ding's evidence to be inherently incredible and subjecting that evidence to minimal evaluation, I accept the claimant's version of events and find that the plan was for the fifth defendant, and not the third defendant to be listed.

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65 CWS at para 17.

66 Ding's AEIC at para 16; NE dated 17 January 2025 at p 39 line 13 to p 40 line 11.

First defendant was aware that the claimant would not be able to rely on the Put Option Agreement if it did not hold the fifth defendant's shares

57 Moreover, the first defendant, being a party to the Put Option Agreement (above at [9]), would be well aware of its terms. Therefore, it is evident that the first defendant was aware that the Put Option was for shares in the fifth defendant and not the third defendant, and the claimant would be unable to exercise the Put Option if it did not hold shares in the fifth defendant.

58 The first (and fourth) defendants also admit that the Put Option Agreement was in fact rendered unenforceable.[67]

Fourth defendant was aware that claimant intended to invest in fifth defendant and knew that claimant would not be able to rely on the Put Option Agreement if it did not hold the fifth defendant's shares

59 A company is attributed with the state of mind of the person who is its "directing mind and will": *Concorde Services Pte Ltd (in liquidation) v Ong Kim Hock and another* [2024] SGHC 324 ("*Concorde Services*") at [145].

60 As noted above (at [51]), the first defendant was the controlling mind of the Yang Kee Group of which the fourth defendant is a part. Given this, as well as the fact that the first defendant is the managing director and sole shareholder of the fourth defendant,[68] the first defendant owned and controlled the fourth defendant for all intents and purposes. Thus, the knowledge held by the first defendant, namely that the claimant intended to invest in the fifth defendant and that the claimant would not be able to exercise its Put Option without the fifth defendant's shares can be attributed to the fourth defendant.

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67 DWS at para 171.

68 CB at p 327.

Mr Ding was not aware that there were two YKL companies until he sought to exercise the put option

61 The first and fourth defendants argue that Mr Ding was in fact aware that there were two different Yang Kee companies with similar names (*ie*, the third and fifth defendants), and that he had been issued shares in the third defendant rather than the fifth defendant. In support of this, they point to the following evidence:

(a) The Subscription Agreement states that the third defendant is a majority shareholder of the fifth defendant. This clearly distinguishes the two companies as separate entities.

(b) The Receipt Confirmation Letter (in Mandarin) confirming receipt of the Subscription Consideration by the third defendant was sent under the third defendant's letterhead with the third defendant's full company name. The third defendant's full company name was also stated in paragraph 1 of the letter itself.

(c) The First Letter of Support clearly states that the *third* defendant ("we") received the Subscription Consideration for the purposes of the claimant's subscription of shares in the *fifth* defendant. The full names of the third defendant and the fifth defendant were clearly on the first page of the letter.

(d) The Share Application Form clearly states that 113,552 shares in the third defendant would be issued. Even if the first and fourth defendants accept that Mr Ding thought that "Yang Kee Logistics" referred to the fifth defendant rather than the third defendant, he would have been able to understand Arabic numerals. The number of shares in

the Share Application Form (113,552 shares) is vastly different from the stipulated 454,554 shares in the Subscription Agreement.

(e) Further, the Share Application Form had been sent to Mr Ding's banker, Mr Loh. Mr Ding's own evidence was that Mr Loh would assist him with translations. In his AEIC, Mr Ding stated that at the First Meeting, "[Mr Loh] would translate [the] discussions to [him] in Mandarin".[69] This was also corroborated by Mr Ravi and Mr Chia's testimonies that Mr Loh sat next to Mr Ding at the First Meeting and "would do the translation in Mandarin for the benefit of Mr Ding".[70] It is thus inconceivable that despite signing the Share Application Form as a director of the claimant, with duties of diligence and care, Mr Ding would not care to ask Mr Loh to explain the Share Application Form to him. Mr Ding's attempts to downplay Mr Loh's role as simply his friend (as opposed to his banker and/or financial advisor) are illogical and should not be believed considering his heavy involvement in the investment.

(f) Ms Sim Bock Eng ("Ms Sim") from WongP, who acted for Mr Ding as his solicitor with respect to his application for Singapore citizenship, had informed him (in Mandarin) of the fact that his shareholding was in the third defendant, rather than the fifth defendant. This is evidenced by:

(i) her testimony;

(ii) the Second Letter of Support for Mr Ding's citizenship application, which was drafted by WongP upon his instructions,

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69 Ding's AEIC at para 45.

70 CKS's AEIC at para 11.

corrects the First Letter of Support and states that Mr Ding's subscription "has since been recorded as a shareholding of 113,552 shares … in [the third defendant]";[71] and

(iii) WongP's letter to EDB dated 26 March 2020, sent upon Mr Ding's instructions, states that "[a]s a point of clarification, ultimately, [the claimant]'s investment is in [the third defendant], the parent company of [the fifth defendant] stated in [the First Letter of Support]".[72]

62 The evidence cited by the first and fourth defendants thus fall into the following categories:

(a) Documents (whether in English or Mandarin) that mention the name of the third defendant and / or fifth defendant were separate entities (*ie*, the Subscription Agreement, the Receipt Confirmation Letter and the First Letter of Support);

(b) The Share Application Form, which should have made it obvious to Mr Ding that he was subscribing for shares that were not in line with the Subscription Agreement; and

(c) Persons who should have informed Mr Ding of the distinction between the third and fifth defendant and that he had been issued shares in the third defendant, rather than the fifth defendant (*ie*, employees of the claimant, Mr Loh and Ms Sim).

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71 CB at p 116.

72 CB at p 121.

Documents which mention the name of the third defendant and / or that the third and fifth defendants are different entities

63 The claimant's explanation regarding these documents is that Mr Ding had simply trusted the first and second defendants and had therefore not paid attention to the documents sent to him. Moreover, his poor English made it such that he did not recognise the difference between the name of the third defendant, (Yang Kee Logistics Pte Ltd) and the name of the fifth defendant (Yang Kee Logistics (Singapore) Pte Ltd). While the Receipt Confirmation Letter was in Mandarin, it referred to the third defendant as "**本公司新加坡永**记物流所" which directly translates to "*Singapore* Yang Kee Logistics Company" [emphasis added].[73] As the claimant was at that point unaware that the third and fifth defendants were separate entities, he had understood this name to refer to the fifth defendant.

64 As regards this latter point, the first and fourth defendants argue that the court should only rely on the certified English translation of the Receipt Confirmation Letter, rather than Mr Ding's personal translation.[74] I am not convinced by this argument. In providing this testimony, Mr Ding was giving evidence as to his own understanding of the Receipt Confirmation Letter. This is a matter he clearly has personal knowledge of and hence is qualified to testify on. Further, Mr Ding's understanding of the Receipt Confirmation Letter is clearly relevant to the issues before the court. As such, I accept Mr Ding's evidence regarding his understanding of the Receipt Confirmation Letter.

65 I accept Mr Ding's explanation regarding his poor English. The first and fourth defendants attempt to cast doubt on Mr Ding's testimony in regard to his

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73 Ding's AEIC at para 27.

74 DWS at para 87.

English abilities and argue that Mr Ding had admitted to being able to understand the words "Yang Kee Logistics" and "Singapore". However, I do not find the fact that Mr Ding could recognise those English words to be inconsistent with his evidence that he did not recognise the distinctions in the names of the third and fifth defendant due to his poor English. Mr Ding's testimony was premised on the basis that he was not initially aware that the third and fifth defendants were separate entities. As such, his poor English capabilities made it such that he was not put on alert by references to "Yang Kee Logistics Pte Ltd" instead of "Yang Kee Logistics (Singapore) Pte Ltd".

66 I also do not find Mr Ding's explanation of his not paying attention to the documents to be incredible. In fact, his behaviour of signing a contract in English when he was not fluent in the language and not paying attention to the contents of said contract or any subsequent documents sent to him is entirely consistent with his approach to this investment. He made the $5 million investment with little to no due diligence, no legal support in the execution and closing of the transaction and largely on the basis of trust in the first and second defendants.[75]

67 Moreover, in my judgment, even if Mr Ding had read the documents, they would not have made it clear to him that the third defendant and the fifth defendants were different entities.

68 The Receipt Confirmation Letter was sent on 8 January 2019, shortly after Mr Ding had made payment of the Subscription Consideration. The said letter states that it is "[w]ith regards to the Share Subscription Agreement entered into by and between your company [(*ie*, the claimant)] and our company

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75 See, for example, NE dated 16 January 2025 at p 53 lines 19–25, p 54 lines 12–21 and 27–32 and p 68 lines 28–32; and NE dated 17 January 2025 at p 16 lines 21–24.

Yang Kee Logistics Pte Ltd [(*ie*, the third defendant)]", and that the third defendant would "notify [the claimant] in writing at the time of public listing of *this company* [(*ie*, the third defendant)]" [emphasis added].[76] In short, the Receipt Confirmation Letter suggests that the Subscription Agreement was entered into between the claimant and the third defendant, and that the third defendant, rather than the fifth defendant, was the company planned to be publicly listed.

69 The First Letter of Support would then have added further confusion, as in that letter the defendants then revert to the position in the Subscription Agreement that the Investee Company was Yang Kee Logistics (Singapore) Pte Ltd, *ie*, the fifth defendant.[77] Given the similarities in the names of the third and fifth defendant, it is reasonable that person would resolve the contradictory positions in the First Letter of Support and the Receipt Confirmation Letter by assuming that "Yang Kee Logistics Pte Ltd" and "Yang Kee Logistics (Singapore) Pte Ltd" were the same company. This is especially so as the third defendant is referred to in the body of the First Letter of Support as "we", not by its full name.

70 As such, even if Mr Ding had read all the documents, including the clause in the Subscription Agreement that mentioned that the fifth defendant was a subsidiary of the third defendant, the Receipt Confirmation Letter and the First Letter of Support would have muddied the waters as to the distinction between the third and fifth defendants.

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76 CB at p 68.

77 CB at p 78.

The Share Application Form

71 The first and fourth defendants argue that even if Mr Ding's poor English comprehension made it such that he did not appreciate the difference in the names of the third and fifth defendants, the fact that the Share Application Form was for 113,552 shares (a vastly different number from the 454,554 shares in the Subscription Agreement) should have put him on alert.[78]

72 While I accept that Mr Ding was able to comprehend Arabic numerals, the fact that he did not notice that the Share Application Form was for a different number of shares is entirely consistent with his explanation that he trusted the first defendant and did not pay attention to such documents (which I have accepted above at [66]). This is especially so in this case as the Share Application Form was accompanied by a representation from the first defendant that the Share Application Form *was not a contract* and was simply to apply for shares *pursuant to the already-existing Subscription Agreement* (above at [12]). Given that the first defendant expressly represented to the claimant that the Share Application Form was not a contract, it is then not open to the first defendant to argue that Mr Ding, as a director of the claimant with duties of diligence and care, should have exercised more care when signing the Share Application Form.[79]

Persons who should have informed Mr Ding of the distinction between the third and fifth defendant

73 It was revealed in cross-examination that Mr Ding had asked someone from his company to translate the Share Subscription Agreement and the Put

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78 DWS at para 124.

79 DWS at para 122.

Option Agreement before he signed the agreements.[80] The first defendant thus argues that Mr Ding should have been well-aware of its contents, including the clause which stated that the fifth defendant was a subsidiary of the third defendant.

74 Mr Ding's evidence is that he found someone in his company to translate and read the contract. In particular, he testified that "[i]t was roughly looked through and to look at the basic terms". With this in mind and given that there is no evidence as to whether the person translating was legally trained or had knowledge of the distinction between the companies in the Yang Kee Group with similar names, I do not conclude based on this evidence alone that Mr Ding would have appreciated the difference between third and fifth defendant.

75 In my judgment, Mr Loh was not someone who was taking on a position as Mr Ding's eyes and ears or even as a proper financial advisor in the sense of someone responsible for due diligence and deal management of this investment. There is no evidence to suggest this. The mere fact that Mr Loh sometimes attended the meetings between Mr Ding and the first defendant and was occasionally asked to pass along documents to the claimant is insufficient to establish that he played such a role in the investment. This is especially so as there is evidence to the fact that he was an acquaintance of both Mr Ding and the first defendant.[81] Hence, given the relative informality surrounding the investment (wherein most discussions of the investments took place during informal gatherings, and no due diligence was done), it is not unreasonable that he would attend some of these informal meetings or that the first defendant

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80 NE dated 16 January 2025 at p 54 lines 1–3 and NE dated 17 January 2025 at p 41 lines 23–30.

81 See, for example, NE dated 16 January 2025 at p 38 lines 11–20 and 28–29.

would request his help in sending documents to the claimant. As such, there is no reason to expect that he would be alive to the details of the dealings between the claimant and the defendants including the issues of the correct entities to the transaction.

76 Ms Sim's testimony does not in fact contradict Mr Ding's account of the events.

77 Mr Ding's testimony is that, as "[a]t that time, there was no 3rd defendant, 5th defendant", so "[m]aybe a company was mentioned, but it did not matter to [him]".[82] Ms Sim's testimony then is that when she informed Mr Ding that his shareholding appeared to be in the third, and not the fifth defendant, Mr Ding simply informed her to "follow what was stated in the 'official records'".[83]

78 These descriptions of Mr Ding's interactions with Ms Sim are consistent with his explanation that he did not check thoroughly. Mr Ding's explanation that a difference in the name of the Investee Company would not have put him on alert as he was not aware that the third and fifth defendants were separate entities is consistent with the lackadaisical response reported by Ms Sim. As such, I have no reason to doubt Mr Ding's testimony in this regard.

79 For the above reasons, I accept Mr Ding's evidence that he was not aware that the third and fifth defendants were distinct companies until the distinction became relevant to him – *ie*, when he sought to exercise the Put Option.

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82 NE dated 16 January 2025 at p 60 lines 28–29.

83 Affidavit of Evidence-in-Chief of Sim Bock Eng dated 13 May 2024 at para 7.

There was no oral variation of the Share Subscription Agreement

80 The first and fourth defendant's pleaded case is that there was an oral variation of the Share Subscription Agreement. However, as they had submitted no case to answer and thereby have not provided any evidence to this effect, I find that there was no such oral variation.

81 In any event, had there been an oral variation, I would have expected that to be the first thing the first defendant raised when confronted by the claimant at the First Meeting. He did not. Instead, he claimed that there was a mistake.[84] Even at the Second Meeting, when the first defendant alleged to Mr Ding that *Mr Ding* was the one in error, he still did not mention any such oral variation.[85] This supports the conclusion that the alleged oral variation did not exist.

Evidence of transfer of monies from 3D / 5D is accepted

82 Mr Chong Yeow Ming, the witness for the third and fifth defendant, provided the following evidence in relation to the movement of the Subscription Consideration between the third defendant and the fifth defendant:[86]

> a. On or about 14 November 2018, SGD 5,000,000 was transferred from the 3rd Defendant to the 5th Defendant.
>
> b. On or about 14 November 2018, SGD 5,000,000 was transferred from the 5th Defendant to the 3rd Defendant.
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> c. On or about 15 November 2018, SGD 4,900,000 was transferred from the 3rd Defendant to Nutrans Logistics Pte. Ltd. ("Nutrans").
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> d. Thereafter, on or about 16 November 2018, SGD 5,326,741 was transferred from Nutrans to Diamond Land Pte. Ltd.

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84 CB at p 331–332.

85 CB at p 339–372.

86 See Bundle of Exhibits dated 24 January 2025 at pp 5–6.

> ("Diamond Land") which was recorded in Nutrans' general ledger as an advance to Diamond Land Investments 1 Pte Ltd.
>
> e. On or about 16 November 2018, that sum of SGD 5,326,741 was transferred to the 3rd Defendant in an intercompany transfer from Diamond Land. Both Nutrans and Diamond Land were entities within the Yang Kee Group (see the group structure at page 14 of the Core Bundle).
>
> f. Thereafter:
>
> > i. On or about 16 November 2018, SGD 3,200,000 was transferred from the 3rd Defendant to the 5th Defendant. On 21 November 2018, approx. SGD 3,127,011.84 was utilized by the 5th Defendant for a full redemption of the EDBI Redeemable Cumulative Convertible Preference Shares ("ECCPS);
> >
> > ii. On or about 16 November 2018, SGD 1,047,280 was converted at the then prevailing exchange rate to USD 760,000. Thereafter, on or about 19 November 2018, USD 767,167 was used by the 3rd Defendant to partially settle the loan interest due to Rising Horizon SPC ("CCBI"), one of the bondholders of the 3rd Defendant; and
> >
> > iii. On or about 19 November 2018, SGD 630,000 was used by the 3rd Defendant to partially settle an intercompany liability owed to Yang Kee Holdings Pte Ltd.

83 The claimant accepts this as evidence of round-tripping by the defendants.[87] The first and fourth defendants also do not deny this evidence, and in fact use it as support for its argument that there was no misrepresentation as the Subscription Consideration was in fact transferred to the fifth defendant (albeit for a matter of hours).[88]

84 As such, I accept the evidence in relation to the transfer of monies to and from the third and fifth defendants. Further, I agree with the claimant that the multiple transfers between related entities in a short period of time raised

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87 CWS at para 123.

88 DWS at para 100.

suspicions. The fact that the Subscription Consideration was transferred to the fifth defendant, then sent back to the third defendant, before being sent to a related company within the span of two days for no recorded reason does, in my view, "cr[y] out for explanation".[89]

Misrepresentation

Summary of the law on fraudulent misrepresentation

85 The parties are agreed on the five elements required to establish a case of fraudulent misrepresentation.[90] The claimant relied on the Court of Appeal's decision in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 (at [14]) which was recently affirmed in *Sun Yongjian and another v Goh Seng Heng* [2025] SGHC 47 (at [38]). The five elements are:

(a) A false representation has been made by words or conduct.

(b) The representation was made by the representor with the intention that the representation should be acted upon by the representee.

(c) The representee acted upon the false representation.

(d) The representee suffered damage by so doing.

(e) The representation was made with the knowledge that it is false. It must be wilfully false or at least made in the absence of any genuine belief in its truth.

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89 CWS at para 123.

90 CWS at para 46 and DWS at para 20.

86 The first and fourth defendants also make the point that the claimant did not plead negligent misrepresentation.[91] The claimant did not challenge this contention in its submissions.

The Representation was made by the first defendant by way of text message

87 The first defendant takes the position that the Representation is neither a clear statement of fact, nor is it false.

88 The first defendant argues that a statement of fact must be sufficiently unambiguous to be an actionable misrepresentation. The Representation as pleaded at [16] of the statement of claim only stated that "the Subscription Consideration should be sent to the [Bank Account Details]". It is thus unclear and ambiguous as to what representation was being made or implied.[92] Further, the Representation as pleaded can also only stand for a direction or a statement of belief and not a statement of fact.[93]

89 The first defendant seeks a literal and isolated reading of the Representation – namely, as the Representation was that "the Subscription Consideration should be sent to the Bank Account Details", it is merely a direction or a statement of belief, not a statement of fact.[94] However and as the claimant rightly points out, the meaning of a representation is objectively assessed from the perspective of a reasonable person in the position of the representee and in the light of the factual matrix within which the

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91 DWS at para 21.

92 DWS at paras 50 and 51.

93 DWS at para 49.

94 DWS at paras 48–49.

communication was made.[95] This may, depending on the facts of each case, require a consideration of any or all of the following non-exhaustive list of factors: (a) the purpose for which a document came into existence; (b) why the statements contained in the document were made; (c) by whom the statements were intended to be read; and (d) the entire course of negotiations leading up to the making of the representation: *Banque de Commerce et de Placements SA, DIFC Branch and another v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [71]. In any case, statements not amounting to statements of fact may be re-characterised as statements implying that (a) the maker of the statement honestly believed at that point in time that the event would happen in the future, or (b) that the maker had, at that point in time, reasonable grounds for making such an assertion: *Deutsche Bank AG v Chang Tse Wen* [2013] 1 SLR 1310 at [96].

90 The claimant seeks an understanding of the Representation in light of the wider context of the dealings between the parties at the time. The Subscription Agreement had just been signed for a subscription of shares in the fifth defendant. Clause 5.2(b) of the Subscription Agreement required payment of the Subscription Consideration into a bank account to be nominated by the fifth defendant.[96] A text message was sent by the first defendant to Mr Ding with bank account details. Mr Ding's evidence is that these were the "account details for [the claimant] to transfer the Subscription Consideration into".[97] With this context, an objective assessment of the Representation must be that the bank account details were the account details of the fifth defendant and the

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95 CWS at paras 47–49.

96 CB at p 28.

97 Ding's AEIC at para 21.

Subscription Consideration should be paid into this account for the purposes of the Share Subscription Agreement.[98]

91 I agree with the claimant that this is a reasonable interpretation of the Representation in the context of the dealings between the parties at the time.

The Representation was made by the first defendant with the intention that the Representation should be acted upon by the claimant

92 The first defendant has raised several doubts as to whether he made the Representation.

93 Firstly, he alleges that the claimant has been inconsistent as to who made the representation.[99] In the statement of claim, the claimant had stated that the Representation was made by the "1st Defendant, the 2nd Defendant and/or an associate … acting on their behalf".[100] This had then evolved in Mr Ding's Affidavit of Evidence-in-Chief ("Ding's AEIC") to the Representation being made by the first defendant on behalf of the first and second defendants.[101]

94 Secondly, the first defendant argues that there is no objective evidence that the Representation was actually sent by the first defendant. I have already dealt with this issue above at [41]–[44] so I will not elaborate further on this argument.

95 Finally, the first defendant makes the point that there is also no objective evidence from the claimant that the Representation was even made at all. The

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98 CWS at para 60.

99 DWS at paras 29 to 31.

100 SOC at para 16.

101 Ding's AEIC at para 21.

first defendant points to the fact that there was no explicit or implicit evidence that the Representation involved anything other than a text containing bank account details. In other words, the Representation was not accompanied by any instructions or other context so it could not stand for an instruction or request from the first defendant to the claimant to transfer any sums to that account.[102]

96 Addressing the first defendant's arguments in turn, firstly, I do not see that there is inconsistency as to the identity of the representor. In the Further and Better Particulars of the claimant's Statement of Claim served pursuant to the first and fourth defendant's request dated 11 September 2023 ("Claimant's FBP"), the claimant clarifies that his case is that the misrepresentation "was made by way of text message *from the 1st Defendant* on behalf of the 1st and 2nd Defendants" [emphasis added].[103] The statement in Ding's AEIC to this effect therefore was a confirmation of the claimant's pleaded position, rather than the inconsistency alleged by the first and fourth defendants (above at [93]).

97 As the first and fourth defendants had submitted no case to answer, this contention was never refuted. Thus, as noted above (at [41]–[44]), I accept the claimant's version of events and find that the first defendant had sent the text message containing the Representation to Mr Ding.

98 With respect to the first defendant's final point that there was no explicit or implicit evidence that the Representation involved anything other than a statement containing bank account details (above at [95]), I repeat the points made above at [90]–[91]. The Representation has to be read in the context of the wider dealings between the parties and not in isolation.

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102 DWS at paras 39–45.

103 Further and Better Particulars of the Claimant's Statement of Claim served pursuant to the First and Fourth Defendant's Request dated 11 September 2023 at para 2.

The Representation is false and made with the knowledge that it is false

99 The first defendant contends that the Representation is not false. The Subscription Agreement (at cl 5.2(b)) provided that the transfer of the Subscription Consideration could be made by "telegraphic transfer to a bank account as stipulated by the [fifth defendant]". There was nothing to prevent the fifth defendant from nominating the third defendant's account for this purpose. Further and under cross examination, the claimant's previous counsel, Mr Chia conceded that "it may be compliant" with the Share Subscription Agreement if payment by the claimant was made in this way.[104] This was also confirmed when the First Letter of Support was issued in support of Mr Ding's citizenship application.[105] Finally, the defendant points to the fact that whilst the Subscription Consideration had initially been paid to the third defendant's account, there was evidence that it was subsequently transferred to the fifth's defendant's account. Any failure to issue shares in the fifth defendant then becomes an issue of breach of the Subscription Agreement by the fifth defendant and not a misrepresentation by the first defendant.[106]

100 The first defendant also argues that there was no evidence of fraudulent or reckless intent on the part of the first defendant. He points out the claimant's pleaded position that the first defendant, without belief in its truth or recklessly, made the Representation (a) knowing that the bank account details belonged to the third defendant and not the fifth defendant; and/or (b) knowing that the bank

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104 NE dated 20 January 2025 at p 42, line 30.

105 CB at p 78.

106 First and Fourth Defendant's Reply Submissions dated 11 April 2025 ("DRS") at paras 20–22.

account details was not the bank account into which the claimant was supposed to pay the Subscription Consideration.[107]

101 Looking at each of these arguments in turn and starting with the argument referred to at [100(a)] above, the first defendant takes the position that the bank account details in the Representation did in fact belong to the third defendant and it was so stated in the Representation. That being the case, there is no falsity or fraudulent intent.[108] In the same vein, the Representation does not state that the bank account details belong to the fifth defendant. That being the case, any knowledge on the part of the first defendant that the bank account details do not belong to the fifth defendant also does not demonstrate any falsity or fraudulent intent.[109]

102 Moving on to the argument referred to at [100(b)] above, the first defendant says that this knowledge (on the part of the first defendant), cannot be inferred when looking at the evidence adduced by the claimant.[110] The first defendant's case is that he had never concealed the fact that the bank account details belonged to the third defendant. To the contrary, the first defendant was always open on such details.[111] In fact, it was the claimant who was constantly mistaken as to the identities of the third and fifth defendants. The first defendant pointed to the following to support his case:

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107 DWS at para 62.

108 DWS at para 69.

109 DWS at para 67.

110 DWS at para 70.

111 DWS at para 71.

(a) The claimant did not notice that the third and fifth defendants were different entities because the names were similar.[112]

(b) The Receipt Confirmation Letter was plain on its face and concealed nothing.[113]

(c) Finally, the First Letter of Support for Mr Ding's Singapore citizenship application similarly plainly stated that the third defendant had received Subscription Consideration for the claimant for a subscription in shares in the fifth defendant.

103 Whilst there seems to be some logic in the first defendant's position when looking at each of his arguments in isolation, those same arguments unravel when measured against the evidence as a whole. In fact, the broader evidence paints a picture of the first defendant weaving a web that he struggles to untangle.

104 I start first with the first defendant's argument that the Representation was not false.

105 The claimant argues that the first defendant cannot adopt the contradictory positions that (a) the third defendant was the rightful recipient of the money; and (b) the fifth defendant received the money in any event in case the fifth defendant was the rightful recipient. This argument is even more incredible in light of the evidence of the round-tripping of the Subscription Consideration (above at [83]).

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112 DWS at para 72.

113 DWS at paras 85–89 and CB at p 68.

106 In response, the first defendant argues that as he has submitted no case to answer, the issue before the court is whether the *claimant* has made out its case on a *prima facie* basis. He has elected to not submit a defence and hence his pleaded defence is irrelevant to this determination.

107 I agree with the defendant that the court's approach at this stage is to determine whether the claimant has established a *prima facie* case, rather than to scrutinise the defendant's defence. However, the arguments raised by the defendant in its pleadings may still be relevant when evaluating its contentions as to whether the claimant has established a *prima facie* case. For example, a party's adoption of inconsistent positions in the same or related proceedings may amount to an abuse of process: *BWG v BWF* [2020] 1 SLR 1296 at [56].

108 Nevertheless, I do not need to go so far as to determine whether the first claimant's argument regarding the fifth defendant's subsequent receipt of the Subscription Consideration is an abuse of process. As the claimant rightly notes, it is incredible for the first defendant to claim that the fifth defendant had "received" the Subscription Consideration when it (a) was transferred back to the third defendant in a matter of hours for no recorded reason and (b) appears to have been transferred to the fifth defendant for suspicious purposes (above at [84]). I also note that having submitted no case to answer, the first defendant may not make any submissions based on the evidence given by the fifth defendant pursuant to O 15 r 8(11)(*c*) of the ROC. I thus dismiss the first defendant's argument for those reasons.

109 The first defendant's remaining argument that the Subscription Consideration was nominated by the fifth defendant to be placed in the third defendant's bank account (above at [99]) takes the position that the third defendant initially held the Subscription Consideration in abeyance until the

parties determined the identity of the Investee Company. The first defendant argues that, as the pleaded misrepresentation only relates to the payment of the Subscription Consideration by the claimant to the third defendant, the subsequent failure by the fifth defendant is, if proved, a breach of contract. The First Letter of Support demonstrates that the third defendant had, at that point, received the Subscription Consideration for the purpose of subscription in the fifth defendant, notwithstanding any oral variation afterwards.[114]

110 I do not agree that the fifth defendant's subsequent failure to issue the Subscription Shares is irrelevant. The Representation was that the claimant was to transfer the Subscription Consideration to the third defendant in accordance with the Share Subscription Agreement. Given I have found that the first defendant was the controlling mind of the Yang Kee Group (and thus of the fifth defendant) (above at [51]), the fifth defendant's subsequent actions in relation to the Share Subscription Agreement are relevant in considering the truth of the Representation, as well as the first defendant's intentions in making it.

111 Further, while the first defendant points to the First Letter of Support as evidence that the third defendant received the Subscription Consideration on behalf of the fifth defendant, he fails to mention the Receipt Confirmation Letter sent six months prior that states that the third defendant received the Subscription Consideration on its own behalf (*ie*, for the purpose of subscribing for shares in the third defendant) (above at [68]).

112 In my judgment, the more contemporaneous Receipt Confirmation Letter reveals the true position at the time of the Representation. In other words, from the outset, the intention was to have Mr Ding pay the Subscription

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114 DRS at paras 23–24.

Consideration to the third defendant for shares in the *third* defendant and not the fifth defendant, *contrary* to the terms of the Share Subscription Agreement. This is supported by the fact that shares in the third defendant, rather than the fifth defendant, were eventually issued to the claimant. As the claimant (rightly) notes, had the payment of Subscription Consideration constituted performance of the claimant's obligations under the Subscription Agreement, the fifth defendant ought to have issued the Subscription Shares to the claimant.[115] The fact that it did not suggests that it had not nominated the third defendant to receive the Subscription Consideration on its behalf. I conclude that, in representing to Mr Ding that the Subscription Consideration should be paid into the third defendant's account *for the purposes of the Share Subscription Agreement* (above at [90]–[91]), the first defendant had made a false representation to Mr Ding.

113 With this context, I turn back to the first defendant's arguments at [99(a)]. Looking also at my findings on the correct interpretation of the Representation (above at [91]), this argument holds no water. It relies on a literal and isolated reading of the Representation.

114 I will take a little more time with the first defendant's points raised at [102] (covering the claimant's arguments at [100(b)]) given they cover a number of factual issues.

115 I have accepted that Mr Ding was not aware of the fact that the third and fifth defendants were different entities (at [79]). However, this fact on its own does not show that the misunderstanding was a result of a mistake by Mr Ding rather than as a result of the Representation. Rather, it shows that Mr Ding was

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115 CWS at para 63.

more vulnerable to the misrepresentation contained in the Representation. As he was not even aware that there were two different companies, he could not have noticed that the Bank Account Details were for the wrong company.

116 As I alluded to above (at [68]), I do not agree that the Receipt Confirmation Letter was plain on its face and concealed nothing. On its face, it was, in fact, confusing, While it stated that the consideration was paid to the third defendant, it also stated that the claimant had entered into the Subscription Agreement with the third defendant (when the claimant had in fact entered into the Subscription Agreement with the fifth defendant). Moreover, Mr Ding's evidence is that he found the reference to the third defendant in the body of the Receipt Confirmation Letter to be unclear. The Receipt Confirmation Letter, which was sent under the third defendant's letterhead, referred to the third defendant as "**本公司新加坡永**记物流所" which directly translates to "our *Singapore* Yang Kee Logistics Company" [emphasis added] (at [63]). This is obviously confusing, as the fifth defendant is known as Yang Kee Logistics (*Singapore*) Pte Ltd and, according to Mr Ding, this in fact led him to believe that the letter referred to the fifth defendant.

117 The First Letter of Support does not assist the first and fourth defendants' case (as I have noted above at [69] and [111]). In fact, when read with the Receipt Confirmation Letter, it suggests that the first defendant had an intention to use the claimant's poor understanding of English to defraud him. Despite predating the First Letter of Support, the Receipt Confirmation Letter reflects the position that the first defendant took up later in the Second Letter of Support, *ie*, that the claimant's payment of the Subscription Consideration was for an investment in the third defendant. It is striking that the letter which went to a third-party authority reflected the correct position under the Subscription Agreement, while the letter sent to the claimant reflected the wrong position

while being phrased in an obfuscating way. Given this, these documents show that the first defendant was in fact aware that the Subscription Consideration should go to an investment in the fifth defendant rather than the third defendant (which is why he represented as such to the EDB) and he was perpetuating the misrepresentation. He continued to do so in his voice message to the claimant, by stating that the Share Transfer Form was "to apply for our share contract" (above at [52]), when it was not in accordance with the Share Subscription Agreement. The fact that the claimant did not notice anything amiss from the documents is also consistent with the claimant's case that the claimant knows little English and pays little attention to detail (above at [65]–[66]).

118 The first defendant's argument also raises further questions. If he did not try to hide what he was doing (*ie*, applying the Subscription Consideration to an investment in the *third* defendant), then why did he do it? Was it an oral variation or was it a mistake? This required explanation and he did not explain.

119 The fact that the First Letter of Support came after the Receipt Confirmation Letter is also inconsistent with the first defendant's allegation that there was an oral variation. If the Receipt Confirmation Letter reflected the alleged oral variation, it is odd that the First Letter of Support, which came more than half a year after the Receipt Confirmation Letter, did not reflect the same.

120 Further, I had earlier alluded to the very deliberate decision to issue shares in the third defendant (above at [49]). This is an inescapable issue for the first defendant. He has made much of the fact that Mr Ding should have been aware that the number of shares issued to him in the Share Subscription Form was different to the number of shares agreed to be issued in the fifth defendant as set out in the Share Subscription Agreement. However, the same argument could be used against the first defendant. If there was no fraudulent intent and

there was a genuine mistake in the Representation in providing the bank account details of the third defendant (instead of the fifth defendant), this could easily have been corrected. By taking the very deliberate step to issue an obviously different number of shares in the third defendant, I can only conclude that the Representation was not an instance of mistake or negligence on the part of the first defendant. It was a deliberate act.

121 Based on my conclusions above, I conclude that the first defendant wilfully made the Representation knowing that it was false.

Claimant relied and acted on the Representation

122 Mr Ding, who acted on behalf of the claimant in this transaction, affirmed that he would not have made payment of the Subscription Consideration had he known that the Bank Account Details belonged to a company other than the company that has the subject of the Share Subscription Agreement. The first and fourth defendants, having submitted no case to answer, have not put forward any evidence to contradict Mr Ding's testimony.

123 As Mr Ding's evidence is not inherently unbelievable, I accept his evidence that he relied and acted on the Representation in making payment of the Subscription Consideration to the third defendant.

Claimant has suffered damage

124 The first defendant alleges that the claimant has not suffered any damage from the alleged misrepresentation. He reiterates his point (above at [99]) that the Subscription Consideration was eventually transferred to the fifth

defendant.[116] How the fifth defendant used the Subscription Consideration thereafter was at the discretion of the fifth defendant.[117] The first defendant also repeats his argument (above at [109]) that the fifth defendant's failure to issue shares results from the fifth defendant's own breach of contract.[118]

125 The first defendant also takes the position that there are intervening acts (and thus no causal link) between the Representation and the alleged loss of the claimant's rights under the Put Option Agreement including the breach of contract by the fifth defendant and the alleged acceptance by the claimant of the shares in the third defendant.[119]

126 The claimant's argument in its written submissions was that, if not for the misrepresentation, the claimant would not have paid the Subscription Consideration to the third defendant's account. Further, as a result of the first defendant's misrepresentation, the claimant had been issued shares in the third defendant instead of the fifth defendant. Therefore, the claimant suffered damage from being unable to exercise its right under the Put Option Agreement to sell the *fifth* defendant's shares to the fourth defendant at the Put Option Price.[120] However, in its oral closing submissions, the claimant stated that "on the misrep[resentation] claim, the argument would be for the $5 million" and "[o]n the conspiracy claim, the argument would be the inability to exercise the put option". I take this to mean that it accepts that the repayment of the $5 million would be the more practical and appropriate remedy for its claim in

116 DWS at para 100.

117 DWS at para 102.

118 DWS at paras 104 and 106.

119 DWS at paras 105 and 106.

120 CWS at paras 70–71.

misrepresentation, though it still maintains its claim for the loss of ability to exercise the Put Option in relation to the conspiracy claims.[121]

127 The object of damages for the tort of misrepresentation is to put the victim in the position in which he would have been if the misrepresentation had not been made: *Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 ("*Wishing Star*") at [28]. The scope of recovery for damages for fraudulent misrepresentation, in particular, is very broad – it encapsulates any loss flowing directly from the fraudulent misrepresentation (*Wishing Star* at [26]–[27]). However, the claimant must account for any benefits received as a result of the transaction (*Wishing Star* at [21], citing *Smith New Court Securities Ltd v Citibank NA* [1997] AC 254 ("*Smith New Court*") at 266–267).

128 I first address the loss of the Subscription Consideration itself, which was conceded by the claimant in its oral closing submissions as the logical quantum of damages.[122] I have found (above at [123]) the claimant only made the payment to the third defendant because of the misrepresentation. The loss of $5 million occurred as a result of the claimant paying that $5 million to the third defendant when it was not contractually obliged to do so. The only argument the first defendant has advanced in respect of this loss is its argument that the fifth defendant received the Subscription Consideration in any case (above at [124]). I have already dismissed this argument above at [108]. That being the case, I find that the claimant had suffered loss as a result of the misrepresentation. In terms of quantum, however, the claimant will have to account for the benefit it received as a result, namely, the shares that it received in the third defendant.

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121 Minute Sheet dated 21 April 2025 at p 24.

122 Minute Sheet dated 21 April 2025 at p 24.

129 I then move to the claimant's claim for loss resulting from its inability to exercise the Put Option. While this is not a live issue considering the claimant's acceptance that the repayment of the subscription consideration is the more practical and appropriate remedy, for completeness, I agree with the first defendant that the fifth defendant's failure to issue the Subscription Shares (and thereby the claimant's inability to exercise the Put Option) did not flow directly from the misrepresentation. While the claimant appears to suggest that the fifth defendant did not issue the Subscription Shares because the claimant (as a result of the misrepresentation) did not pay the Subscription Consideration to the fifth defendant,[123] this position directly contradicts its own pleaded position that the fifth defendant breached the Share Subscription Agreement by not issuing the Subscription Shares to the claimant.

Conspiracy

The law on conspiracy

130 The parties were largely aligned on the applicable legal principles for lawful and unlawful means conspiracy.[124] As the claimant rightly pointed out,[125] in *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860, the Court of Appeal identified the following elements that a claimant must plead and prove to succeed in a claim for unlawful means conspiracy (at [112]):

(a) There is a combination of two or more persons to do certain acts.

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123 CWS at para 71.

124 CWS at para 74 and DWS at para 108.

125 CWS at para 74.

(b) The alleged conspirators had the intention to cause damage or injury to the innocent party by those acts.

(c) Those acts were unlawful.

(d) The acts were performed in furtherance of the agreement.

(e) The innocent party suffered loss as a result.

131 The elements that constitute lawful means conspiracy mirror those for unlawful means conspiracy save that (a) there is no requirement for an unlawful act; and (b) the alleged conspirators must have had the *predominant* intention or purpose of causing damage or injury to the plaintiff and that purpose was in fact achieved: see *ACE Spring Investments Ltd v Balbeer Singh Mangat and another* [2024] SGHC 277 ("*ACE Spring*") at [103]; *Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637 (at [45]).[126]

132 The first and fourth defendants also argue that the claimant has failed to include any details of the fourth defendant's alleged role in its pleadings. The only oblique mention of the fourth defendant's alleged role in the conspiracy (whether lawful or unlawful) was the statement that "[a]t all material times, *the 1st to 5th Defendants* were aware that the intention had all along been to invest in the 5th Defendant and not the 3rd Defendant" [emphasis added], as well as a statement noting the Put Option Agreement executed between the claimant, the first defendant, and the fourth defendant. In the Claimant's FBP, the claimant further elaborated that "the 1st to 5th defendants knew that the Claimant would not be able to rely on the Put Option Agreement to sell the Subscription Shares to the 4th Defendant at the Put Option Price during the Put Option Period".[127]

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126 CWS at para 75 and DWS at para 108 and 109.

127 DWS at paras 152–155.

133 Following *Kapital Fund SPC v Lee Tze Wee Andrew and another* [2024] SGHC 289 at [81], it is necessary for a claimant to plead particulars of how the alleged conspirators combined, which entails pleading the role of each conspirator, *ie*, what they did as part of the conspiracy. It is not a requirement that all conspirators commit or are able to commit the unlawful means in question, so long as they participate in the overall conspiracy to cause loss: *Petrotech Marine Services Sdn Bhd v Wong Wai Leng (trading as Win Services & Agency) and another and another matter* [2025] SGHC 105 at [144], citing *PT Sandipala Arthaputra and others v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] 1 SLR 818 at [52].

134 In my view, the claimant has pleaded the role of the fourth defendant in the conspiracy with sufficient particularity. The fourth defendant entered into the Put Option Agreement with the claimant while conspiring to deprive the claimant of its rights therein. The fourth defendant would therefore have contributed to the conspiracy to defraud the claimant of his Subscription Consideration by entering into the Put Option and thereby convincing the claimant to agree to invest the Subscription Consideration in the first place.

The first and fourth defendant intended to injure the claimant

135 In my judgment, the first defendant knew what he was doing from the beginning. As the person who dealt directly with the claimant regarding his investment in the Yang Kee Group throughout,[128] he knew the terms of the Subscription Agreement and Put Option Agreement and that the claimant's intention was to invest in the fifth defendant.

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128 NE dated 16 January 2025 at p 32 lines 17–23.

136 However, he then asked for and had the claimant's investment placed into the third defendant. This was a deliberate decision, not a mistake (above at [49] and [120]). If this was honestly a mistake, as was alleged by the first defendant at one point, there were many opportunities for the first defendant to remedy this. Instead, the first defendant perpetuated the fraud through the Receipt Confirmation Letter, the First Letter of Support, and the voice message he sent the claimant along with the Share Subscription Form up until he was confronted at the First Meeting (above at [116]–[121]).

137 That being the case, this was a clear scheme on the part of the first defendant to place the claimant's investment in the third defendant despite the claimant's intentions to invest in the fifth defendant.

138 The fourth defendant, being a company, is attributed with the state of mind of the first defendant, its directing mind and will (above at [59]).

The first and fourth defendants combined to injure and cause damage to the claimant

139 The claimant relies on the holding in *ACE Spring* (at [109]) that the court may infer an agreement from the acts of the parties alleged to be conspiring. It thus argues that the court should infer an agreement between the defendants, including the first and fourth defendant, to deceive Mr Ding into transferring the Subscription Consideration to the third defendant instead of the fifth defendant, and thus deny the claimant of its right to exercise the Put Option and to sell the Subscription Shares to the fourth defendant.

140 The claimant submits that it is reasonable and possible for the court to infer that the five defendants were acting in concert. The third, fourth and fifth

defendants were managed and/or controlled by the first defendant and/or the second defendant, and the first and second defendants are son and father.

141 Given that the claimant has withdrawn its claims against the second, third and fifth defendants, I will refrain from making concrete findings regarding those parties.

142 A company can conspire with its controlling director to damage a third party by unlawful means: *Park Hotel Management Pte Ltd (in liquidation) and others v Law Ching Hung and others* [2025] SGHC 149 at [368], citing *Concorde Services* at [144]; *Lim Leong Huat v Chip Hup Hup Kee Construction Pte Ltd and another* [2011] 1 SLR 657 at [198]; and *Nagase Singapore Pte Ltd v Ching Hai Huat and others* [2008] 1 SLR(R) 80 at [20]–[21].

143 I have found (above at [135]–[137]) that the first defendant had orchestrated a scheme to place the claimant's investment in the third defendant rather than the fifth defendant (by way of fraudulent misrepresentation). This scheme would not have been possible without (a) the fifth defendant and the *fourth* defendant entering into the Share Subscription Agreement and Put Option Agreement respectively for said Subscription Consideration; and (b) the third defendant receiving the Subscription Consideration and issuing shares to the claimant. I have also found (above at [51]) that the first defendant was the controlling mind behind the Yang Kee Group. It is thus evident that there was combination between the Yang Kee Group companies (*ie*, the third, fourth and fifth defendant) and the first defendant to execute the scheme.

The parties had combined to commit an unlawful act

144 The element of unlawfulness covers an intentional act that is tortious, provided that they are the means by which harm is intentionally inflicted on the

plaintiff (rather than being merely incidental to it): *ACE Springs* at [104], citing *Beckkett Pte Ltd v Deutsche Bank AG and another and another appeal* [2009] 3 SLR(R) 452 ("*Beckkett*") at [120].

145 The alleged unlawful act in this case is the tort of fraudulent misrepresentation. As I found that the claimant's claim in fraudulent misrepresentation was made out, this requirement is satisfied.

The first and fourth defendants' acts were performed in furtherance of their agreement

146 The first defendant clearly performed acts in furtherance of the unlawful means conspiracy by committing the unlawful act, *ie*, making the misrepresentation.

147 I have also found (above at [136]) that the fourth defendant, had, in furtherance of the conspiracy, entered into the Put Option Agreement with the claimant.

The claimant suffered loss as a result

148 As noted above at [129], the claimant had in fact suffered loss as a result of the conspiracy.

149 The claimant suggests that the loss suffered as a result of the conspiracy would be "higher than the damages for misrepresentation" (above at [126]).[129] However, I note that to establish unlawful means conspiracy, the claimant must demonstrate that, *inter alia*, the conspirators combined to commit certain acts and *those acts* were unlawful. In this case, the claimant cites the

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[129] Minute Sheet dated 21 April 2025 at p 13.

misrepresentation by the first defendant as the said "unlawful act". In my judgment, it is incongruous to claim that the first and fourth defendants combined to commit fraudulent misrepresentation whilst simultaneously alleging that the loss resulting from this combination differs from that arising from the misrepresentation itself.

150 In any case, I have other, more fundamental doubts regarding this measure of loss. I note that the claimant's argument is not that it would have exercised the Put Option and thereby suffered loss from its inability to do so. Rather, the claimant frames its loss as a loss of bargain.[130] Accordingly, the claimant has not put forward any evidence as to when, or even if he would have exercised the Put Option. The protection of a victim's expectations is not the purpose of damages in tort – the purpose of such damages is simply to put the victim in the position in which he would have been, if the tort had not been committed (*Wishing Star* at [28]). Therefore, as the claimant has not shown this court that he would have exercised the Put Option had the tort of conspiracy not been committed, it is difficult to see how I can find that he should be entitled to damages for the same.

Lawful means conspiracy

151 Having found that the claimant has made out its primary claim for unlawful means conspiracy as regards the first and fourth defendants, I do not need to make a finding on its alternative claim for lawful means conspiracy. However, even if I am wrong in my conclusion on unlawful means conspiracy, lawful means conspiracy has nonetheless been made out based on the test in *ACE Spring*.

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130 Minute Sheet dated 21 April 2025 at p 13.

152 As noted above (at [131]), the elements of lawful means conspiracy mirror those of unlawful means conspiracy, save that a claimant must show that the parties' predominant intention was to cause harm to the claimant. This element is clearly established in the current case. As noted above (at [135]–[137]), the aim of the conspiracy was to place the claimant's investment in the third defendant despite the agreement that the claimant would invest in the fifth defendant. It is thus evident that the first and fourth defendant's predominant intention was to cause harm to the claimant, by robbing it of the consideration it had contracted for and paid to receive.

Conclusion

153 For the above reasons, I find that the first and fourth defendants are jointly and severally liable to repay the sum of $5 million to the claimant. However, bearing in mind that the claimant has already recovered the settlement sum from the third and fifth defendants, and received a benefit in the form of shares in the third defendant, this settlement sum should be deducted from the judgment sum and the claimant is ordered to return the shares to the third defendant.

154 I will hear the parties on interest and costs.

Wong Li Kok, Alex
Judge of the High Court

Narayanan Sreenivasan SC, Tan Si Xin Adorabelle and Liew Xuan Ning (Sreenivasan Chambers LLC) for the claimant.
Mansurhusain Akbar Hussein, Pillai Ramesha Chandan and Shauna Low (Jacob Mansur & Pillai) for the first and fourth defendants;
Jagjit Singh Gill s/o Harchand Singh and Benjamin Gabriel Sew Jia Jun (Gurdip & Gill) for the second defendant;
Koh Junxiang and Ng Pi Wei (Clasis LLC) for the third and fifth defendant.
