IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 159

HC/Suit No 735 of 2018

Between

Saimee Bin Jumaat

… *Plaintiff*

And

(1) IPP Financial Advisers Pte Ltd
(2) Moi Kok Keong
(3) Quek Miaw Sian Alice

… *Defendants*

JUDGMENT

[Tort] — [Negligence] — [Misrepresentation]
[Tort] — [Vicarious liability]
[Limitation of Actions] — [Particular causes of action] — [Tort]

Saimee bin Jumaat
v
IPP Financial Advisers Pte Ltd and others

[2019] SGHC 159

High Court — HC/Suit No 735 of 2018
Choo Han Teck J
13–14 March, 21 May 2019

4 July 2019 Judgment reserved.

Choo Han Teck J:

1 The plaintiff, Saimee Bin Jumaat ("Saimee") received his training as a professional horse jockey at the age of 16, after he had completed his N-Level examinations. He turned professional about the age of 25, and rode until he retired in 2012 when he was about 40 years old.

2 In 2004, he consulted Candice Lee from the Prudential Insurance Company ("Prudential") with a view of getting insurance cover for himself. After Candice Lee left Prudential and joined the first defendant, IPP Financial Advisers Pte Ltd ("IPP") in 2005, she and her colleague, Mathew Ashok Kumar, became the financial advisers on behalf of IPP to Saimee, and Saimee procured insurance policies through IPP. Mathew and Candice reviewed Saimee's financial and insurance position until 2009 when they left IPP's employ. The second defendant, Moi Kok Keong ("Moi") and the third defendant, Quek Miaw

Sian Alice ("Quek") then took over Saimee's portfolio with IPP from Candice and Ashok.

3 Moi gave Saimee a business card under IPP in which his designation was "Managing Partner". Quek also gave her IPP business card to Saimee in which she was described as "Financial Services Manager".

4 Moi and Quek re-evaluated Saimee's financial portfolio and advised changes to some of his policies and investments. Saimee's insurance policies included policies he took for his wife and children. He testified in his evidence-in-chief that he took the advice of Moi and Quek on "moving funds around when necessary" and he "relied on their professional expertise".

5 This action before me concerned an investment into foreign exchange based on an algorithm trading service offered by a company known as SMLG Inc ("SMLG"). Saimee testified that sometime on or about 24 February 2011, Moi and Quek advised Saimee to sell his shares in various companies and to invest a total of USD$620,900 in SMLG's algorithm trading service ("the SMLG Investment"). Saimee also alleged that Moi and Quek made the following representations:

(a) within a year from the date of investment, SMLG would pay the principal amount invested along with a profit of 40%;

(b) the investment was safe and capital guaranteed; and

(c) they recommended the same to all of their clients.

6 On 11 April 2012, Moi introduced one Seeni to Saimee who was told that Seeni was the fund manager for SMLG. Seeni was not called as a witness

in this trial, but the fact of this introduction was not disputed by the defendants. After the meeting, Saimee, on the advice of Moi and Quek, opened a trading account with FX Primus Ltd ("FX Primus") for the purposes of the SMLG Investment, and deposited a total of US$620,900 into a Barclays bank account in Mauritius, held by FX Primus, in three tranches —

(a) USD$80,300 on 27 April 2011;

(b) USD$240,300 on 17 June 2011; and

(c) USD$300,300 on 3 February 2012.

7 In May 2012 when the first tranche payment of USD$80,300 together with profits became due to Saimee, Moi and Quek told Saimee that due to a technical glitch in the algorithm trading platform, SMLG was unable to pay and needed to raise funds to start trading again. Moi and Quek also represented to Saimee that SMLG required a USD$200,000 loan for the purposes of fund raising, which SMLG would repay within two months. Saimee said that at this point, Moi and Quek disclosed to him that they too had invested in the SMLG Investment, which from the evidence, amounted to USD$49,701.12 and USD$21,023.84 respectively. So, in the interests of all three of them, their loan to SMLG was essential to recover their investment with profit.

8 On 25 April 2012, Saimee gave SMLG the USD$200,000 loan with Moi executing a guarantee in favour of Saimee for the return of this loan. The guarantee was signed together with the loan that was stated to be repayable on 24 June 2012. On 24 June 2012, the loan was not repaid as agreed, and neither were any of the invested sums paid to Saimee.

9 Between June to September 2012, Saimee continued asking Moi and Quek for his moneys. Sometime around 17 September 2012, Moi and Quek advised Saimee, through a phone call, to enter into three separate settlement agreements with SMLG, dated 17 September 2012 ("the Settlement Agreements"). The Settlement Agreements provided that SMLG will pay Saimee a total sum of USD$711,000 ("the Settlement Sum"), comprising of his total invested principal of USD$620,900 together with his promised returns, by 20 September 2012, as the full and final settlement of all claims against SMLG in relation to the SMLG Investment. On 20 September 2012, no sums were paid to Saimee. Between 20 September 2012 and October 2013, Saimee continued reminding Moi and Quek for payment. Each time Saimee requested for an update regarding the Settlement Sum, Moi assured Saimee that the funds would be transferred to him shortly.

10 Saimee's USD$200,000 loan to SMLG was eventually repaid in two tranches; SGD$50,000 on 16 October 2012 and SGD$240,000 a year later. On 21 July 2018, Saimee filed a writ of summons claiming for the sum of USD$711,000 (his invested sum and promised returns) on the grounds of fraudulent or negligent misrepresentation against Moi and Quek, and on the ground of vicarious liability against IPP. Till this date, Saimee has not received any of his invested sums.

11 There are three main issues before me which I shall address in turn:

(a) Whether Moi and Quek breached their duty of care owed to Saimee by negligently misrepresenting the SMLG Investment.

(b) Whether Saimee's claim against Moi and Quek is time barred.

(c) Whether IPP is vicariously liable for Moi and Quek's breach of their duty of care.

12 Counsel for Moi and Quek, Mr Wilson Tan, submits that Moi and Quek do not owe Saimee a duty of care since the SMLG Investment was merely personal advice by Moi, when Saimee asked to know more about Moi's personal experience in managing his shares. Mr Tan argues that this advice was not given in Moi's official capacity as Saimee's financial adviser, and that Saimee is an experienced investor. In addition, counsel for IPP, Mr Dominic Chan, submits that Saimee ought to have known that such advice was neither official nor professional advice. Counsel for Saimee, Mr Uthayasurian Sidambaram, demurs and submits that Moi and Quek owe Saimee a duty of care as they advised Saimee in their professional capacity as his financial advisers.

13 It is, in my view, reasonably foreseeable that Saimee will suffer economic loss should Moi and Quek, being Saimee's financial advisers, fail to take reasonable care when providing financial advice (*Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 at [73]). We should focus on the twin criteria of voluntary assumption of responsibility and reliance to determine if there was the requisite legal proximity imposing a duty of care on Moi and Quek for pure economic loss. As Lord Morris held in *Hedley Bryne & Co. Ltd v Heller & Partners Ltd.* [1963] 3 W.L.R. 101 ("*Hedley Bryne*") at 124:

> …[I]f someone possessed of a special skill undertakes, quite irrespective of contract, to apply that skill for the assistance of another person who relies upon such skill, a duty of care will arise.

14 Those words have formed the core of liability in law for financial loss since 1963. It has become a principle encrusted in our law because it is simple,

sensible, and just. Moi and Quek were Saimee's financial advisers from 2009 and had provided financial advice – to Saimee, and he acted on those pieces of advice. That was how the SMLG investment came about. Even if it had been personal advice, it was consistent with Moi and Quek's job of providing that kind of financial and investment advice to Saimee, and nothing in the evidence suggested that this was a discrete, by-the-side personal advice. Furthermore, Moi and Quek were a managing partner and a financial services manager of IPP respectively. By virtue of their position and experience, they possessed special financial knowledge and must be deemed to have voluntarily assumed responsibility to take the necessary care in the giving of investment advice (including the SMLG Investment advice), which Saimee would have acted and did act in reliance on. For example, whenever something went awry with the SMLG Investment, Moi and Quek were always Saimee's point of contact. In addition, it was also Moi who introduced Mr Seeni to Saimee, and was present during their meeting on 11 April 2012. Therefore, I am satisfied that the requisite legal proximity exists in imposing a duty of care on Moi and Quek in relation to the SMLG Investment. There are no other considerations, policy or otherwise, that militate against the finding of this duty of care.

15 For completeness, I do not accept Mr Chan's submission that Saimee should have known that the SMLG Investment was not professional advice simply because it was not put in writing, or differed from previous practices (elaborated at [30] of this judgment). If Moi and Quek did not wish to assume responsibility for the SMLG Investment advice, they should have qualified, unequivocally, at the time of the advice, that they accepted no responsibility for it (see *Hedley Bryne* at 109). For the reasons above, Moi and Quek owe Saimee a duty of care. I move on to whether there was a false representation of fact which induced actual reliance.

16 Moi and Quek claimed that they did not represent to Saimee that the SMLG Investment was capital guaranteed with 40% annual returns. They clearly had no choice but to deny this claim because it was an obviously false statement as the SMLG Investment was not capital guaranteed, nor did it provide any returns. I have little difficulty finding that Moi and Quek made the representations since there were no other reasons to persuade Saimee to invest in it. I also find that Moi and Quek's credibility is undermined by contradictory evidence given during their cross examination. Moi initially claimed that he did not recommend the SMLG Investment to Saimee on 24 February 2011:

> Q: … I put it to you that on the 24th of February 2011, you did recommend to the plaintiff investments with SMLG in your office in the presence of Alice.
>
> A: I disagree with that. Never will I make a recommend[*sic*] of product that we don't represent.

Subsequently, he claimed that the SMLG Investment was merely a 'personal sharing' of his:

> Q: … [W]hen you first spoke to the plaintiff about SMLG, you were basically saying that SMLG was a system for him to better manage his portfolio? Is that what you are telling, Mr Moi?
>
> A: That was not my suggestion to him. I just sharing my own experience.
>
> …
>
> Q: … [Y]ou told him that he would earn an interest of---returns of 40% per annum under this investment. Agree or disagree?
>
> A: Disagree. Like I said earlier, everything was shared based on my own experience …

Quek on the other hand, maintained that they did not speak about the SMLG Investment on 24 February 2011:

> Q: … [D]uring this meeting on the 24th of February, Max and your goodself had recommended that Mr Saimee invest in this

> forex platform or forex investment known as SMLG during this meeting on the 24th of February 2011. Do you agree, disagree?
>
> A: I do not agree. Because there was no mention at all on SMLG …

17 Secondly, in a text message exhibited in Saimee's evidence-in-chief, Saimee asked Moi:

> Why would you advise me to invest in FX when it's not approved by IPP and you said it's more than safe … I'm prepared to take it to IPP as I feel that they can do it professionally.

Moi did not respond to Saimee's message. Mr Chan submits that Moi's lack of response did not show that he represented to Saimee that the SMLG Investment was "more than safe". Moi had ample opportunities to deny this assertion, but did not to do so. The logical inference to be drawn is that Moi, along with Quek, had represented to Saimee that the SMLG Investment was capital guaranteed, and therefore, had only silence in response.

18 Thirdly, Moi and Quek had always been Saimee's point of contact in relation to the SMLG Investment. They were the ones who told Saimee that the SMLG trading platform suffered a technical glitch and required a loan of USD$200,000 to start trading again. They were also the ones who advised Saimee to enter into the Settlement Agreements with SMLG. In particular, Moi introduced Mr Seeni to Saimee, guaranteed the USD$200,000 loan (witnessed by Quek) to SMLG, and between 20 September 2012 and October 2013, constantly reassured Saimee that the Settlement Sum would be transferred to him shortly. The instrumental role that Moi and Quek played throughout Saimee's ordeal suggests that Saimee's evidence, that they acted as Saimee's financial advisers and represented to Saimee that his investment was capital guaranteed with 40% promised returns, was the version that was closer to the truth.

19 Mr Chan then submits that even if these representations were made, Saimee never relied on them since he met Mr Seeni as part of his own due diligence and did not rely on Moi's position as a managing partner to influence his investment decision. I reject this submission. The law requires only that the misrepresentations played a real and substantial role in causing Saimee to act to his detriment. On the evidence, it was clear that in reliance of the misrepresentations made by Moi and Quek, Saimee invested and lost USD$620,900 from the SMLG Investment. It was undisputed that Moi and Quek introduced the SMLG Investment to Saimee, referred Mr Seeni to Saimee, and advised Saimee to loan USD$200,000 to SMLG and to subsequently enter into the Settlement Agreements. Further, on cross examination, Saimee was steadfast in maintaining that he relied on Moi and Quek's advice. To illustrate:

> Q: … If [Moi] and [Quek] were to ask you to change some of the policies, you do not just take whatever they suggest. You would try to understand before making a decision, is that correct?
>
> A: No, I would just rely on them and heed their advice.
>
> …
>
> Q: … [Y]ou're telling this Court that whatever [Moi] and [Quek] advised, you follow?
>
> A: Yes.
>
> …
>
> Q: I put it to you that there is no claim against [Moi] and [Quek] under the settlement agreements. Do you agree or disagree?
>
> A: I disagree because they advised me to go into this investment saying that, you know, it's a more than safe investment and … it's a principal guaranteed.

Similarly, on re-examination, Saimee maintained that he relied on Moi and Quek's misrepresentations:

> Q: And on whose representations did you decide to invest into SMLG?

> A: I just rely on---like I've always been, then I just rely on representation of [Moi] and [Quek] … and then trusted them.

For the reasons above, I am satisfied that the false representations alleged by Saimee against Moi and Quek had been proved. I move on to whether there was a breach of a duty of care resulting in damage to Saimee.

20 Moi and Quek were, of course, duty-bound to exercise reasonable skill and care when giving investment advice, and the exact standard of care required of them depends largely on two factors, (a) their financial experience and knowledge relative to Saimee, and (b) the type of investment proposed. I will elaborate on each of these factors:

(a) First, Saimee, who had never received formal financial education, and relied on IPP's advice in the making of his financial decisions, is unlikely to have sufficient knowledge of investment principles to understand the risks involved in a forex algorithm trading platform such as the SMLG Investment; he says he did not; and I believe him. In contrast, Moi and Quek hold a Diploma in Financial Planning, are Chartered Financial Consultants, and have been working in the financial services industry since 1991. As a managing partner and financial services manager respectively, Moi and Quek are likely to be in a position to understand the risks involved in the SMLG Investment. It is the reason why investment advisers need proper certification and licence to render such advice. In this case, both of them held themselves out as financial experts.

(b) Secondly, both Moi and Quek admitted that the SMLG Investment was not an investment offered by IPP. The SMLG Investment, which was based on a forex algorithm trading platform, will

> attract a much higher risk as compared to conventional investments in stocks, bonds or insurance.

Correspondingly, the standard of care imposed on both Moi and Quek was a high one. Even if Moi and Quek had honestly believed that the SMLG Investment was capital guaranteed with 40% annual returns, a negligent, though honest misrepresentation, would still have given rise to an action for damages for financial loss (see *Hedley Bryne* at 486 and 502). Moi and Quek are experienced and qualified financial advisers who ought to have been wary of an investment which allegedly offered 40% annual returns with a capital guarantee, and should have done due diligence to satisfy themselves. Instead of informing Saimee about the potential risks involved with the SMLG Investment (see, for example, *Go Dante Yap v Bank Austria Creditanstalt AG* [2011] 4 SLR 559 at [48] and [51] where the investor was informed about the pros and cons of the investment), Moi and Quek negligently misrepresented that the SMLG Investment was capital guaranteed with 40% annual returns, and did not explain the risks involved. They had thus breached their duty of care owed to Saimee.

21 Damages awarded for negligent misrepresentation are constrained by the concept of reasonable foreseeability, and the purpose of damages for tort is to place the victim in the position he would have been, had the misrepresentation not occurred (*Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 at [23] and [28]). In this regard, had it not been for Moi and Quek's negligent misrepresentations, Saimee would not have invested USD$620,900 in the SMLG Investment. That is the loss that he had suffered. In conclusion, Moi and Quek are both jointly and severally liable to compensate Saimee the sum of USD$620,900 under the tort of negligence for their negligent misrepresentations.

22 For completeness, I will deal with Saimee's alternative claim on the ground of fraudulent misrepresentation. The crucial element required to establish a case of fraudulent misrepresentation is that the misrepresentation must be made with knowledge that it is false, or wilfully false, or made in the absence of any genuine belief that it is true (*Panatron Pte Ltd v Lee Cheow Lee* [2001] 2 SLR(R) 435 at [14]). Mr Tan submits that Moi and Quek did not act with any fraudulent intention since they had invested their own monies and also incurred losses. I accept Mr Tan's submission that Moi and Quek's personal investment in the SMLG Investment suggests a lack of any fraudulent intention – one is unlikely to defraud himself. Further, the evidence did not suggest that Moi or Quek knew that the SMLG Investment was not capital guaranteed, or was unable to provide 40% annual returns. Therefore, Saimee's alternative claim on the ground of fraudulent misrepresentation fails. The evidence suggests negligence rather than actual fraud.

23 Saimee also made reference to recourse pursuant to s 2(1) of the Misrepresentation Act (Cap 390, 1994 Rev Ed) ("Misrepresentation Act") in his statement of claim. However, apart from one or two statements claiming recourse under Misrepresentation Act, there were no details provided and parties did not submit on this basis. Therefore, no finding on this ground can be made. I move on to the second main issue, namely, whether Saimee's claim against Moi and Quek is time barred.

24 The main thrust of Mr Tan's submission is that Saimee's claim against Moi and Quek, which is founded on tort, is time barred pursuant to s 6(1)(a) of the Limitation Act (Cap 163, 1996 Rev Ed) which states as follows:

> 6. — (1) Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:
>
> (a) actions founded on a contract or on tort;

Saimee filed his writ of summons on 21 July 2018. Mr Tan submits that Saimee's claim is time barred as the latest date in law that Saimee could have pursued his tortious claim was 24 June 2018, six years from 24 June 2012, the date where the SMLG was supposed to repay the USD$200,000 loan to Saimee. Mr Tan argues that by 24 June 2012, Saimee had been informed that there was a technical glitch, and he had also admitted under cross examination that there was something wrong with the SMLG Investment. Mr Sidambaram demurs and argues that the representations made by Moi and Quek were ongoing and Saimee continued to rely on their advice when he entered into the Settlement Agreements on 17 September 2012. Therefore, Mr Sidambaram submits that the latest date in law that Saimee could have pursued his claim was 16 September 2018 and he is not time barred.

25 A cause of action in tort accrues when the damage occurs (*Lian Kok Hong v Ow Wah Foong* [2008] 4 SLR(R) 165 at [24]), and that loss must be an actual, not a potential or prospective loss (*Wiltopps (Asia) Ltd v Emmanuel & Barker* [1998] 2 SLR(R) 778 at [10]). Such a determination requires "an assessment of the precise factual matrix of the case itself to determine the nature of the obligation owed and the time of its breach" (*Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric (practising under the name and style of W P Architects)* [2007] 1 SLR(R) 853 ("*Sunny Metal*") at [128]). In this case, Saimee's cause of action accrued at the point when he could say, with certainty, that he had lost his invested sum of USD$620,900 as a result of Moi and Quek's negligent misrepresentations.

26 As Saimee's financial advisers, Moi and Quek owe Saimee a continuing duty of care that stretches throughout Saimee's investment ordeal (see for example, *Sunny Metal* at [131] and [132]). The breach of Moi and Quek's duty of care occurred on February 2011, when they negligently misrepresented to Saimee that the SMLG Investment was capital guaranteed with 40% annual returns. However, the damage caused to Saimee did not occur on this date. It was in May 2012, that Saimee was informed by Moi and Quek that due to a technical glitch, SMLG required a USD$200,000 loan before he could recover his investment with profit. Shortly on 17 September 2012, Moi and Quek then advised Saimee to enter into the Settlement Agreements where SMLG promised to pay Saimee his total invested sum with the promised returns by 20 September 2012. Even on 17 September 2012, Saimee did not suffer actual loss since SMLG's promise to pay was consistent with Moi and Quek's representations that the SMLG Investment was capital guaranteed with 40% annual returns. As such, looking at the events that transpired as a whole, it was only on 21 September 2012, when Saimee did not receive any of the Settlement Sum, that it could be said with certainty that he suffered actual loss as a result of Moi and Quek's negligent misrepresentations. Therefore, the latest date in law that Saimee could have pursued his tortious claim is 21 September 2018, and his claim is not time barred. I move to the last issue on whether IPP is vicariously liable for Moi and Quek's breach of their duty of care due to negligent misrepresentations.

27 Vicarious liability should be imposed on IPP only if the following two requirements are satisfied (see *Ong Han Ling and another v American International Assurance Co Ltd and others* [2018] 5 SLR 549 ("*Ong Han Ling*") at [160] and *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v*

Asia Pacific Breweries (Singapore) Pte Ltd and another and another appeal [2011] 3 SLR 540 ("*Skandinaviska*") at [87]):

> (a) First, the relationship between the tortfeasors (Moi and Quek) and IPP must be one that is capable of giving rise to vicarious liability. Simply put, it must be fair, just and reasonable to impose liability on IPP for Moi and Quek's negligent misrepresentations.
>
> (b) Secondly, the relationship between the tortfeasors and IPP must have materially increased the risk of negligent misrepresentations being committed. This is commonly referred to as the 'close connection test'.

I will deal with each requirement in turn.

28 Mr Chan submits that IPP is not contesting the first requirement, and rightly admits that the relationship between Moi and Quek vis-à-vis IPP is one that is capable of giving rise to vicarious liability. Even if Moi and Quek were not IPP's employees as IPP claims, IPP engaged financial advisers like them to sell its financial products, and thereby created the risk of its financial advisers committing wrongs against third parties, and should consequently bear responsibility when financial harm occurs as a result (this is known as "enterprise risk" as discussed in *Ong Han Ling* at [153]). Furthermore, IPP compensates its financial advisers, provides the premises for them to give financial advice, and has the power to select and terminate them (see for example, *Ong Han Ling* at [172] – [173]). More importantly, Moi and Quek were not independent contractors as they were not engaged in their own enterprise nor were they running an independent business distinct from IPP (see, for example, *Ng Huat Seng v Munib Mohammed Madni and another* [2017] 2 SLR 1074 at [64]). Therefore, the relationship between Moi and Quek vis-à-

vis IPP is one that justifies the imposition of liability on IPP for Moi and Quek's negligent misrepresentations and the first requirement is satisfied.

29 Nevertheless, Mr Chan submits that in applying the close connection test, it is not fair and just to impose vicarious liability on IPP. Relying on *Skandinaviska* at [78] which states that "a precondition for the imposition of vicarious liability is that [Saimee] should either be without fault himself, or be less at fault than [IPP]", Mr Chan argues that Saimee was at fault as he ought to have known that the SMLG Investment was not offered by IPP. This is because there were numerous differences between the process and forms involved in the SMLG Investment as compared to products typically offered by IPP. Furthermore, Mr Chan submits that Saimee was not a vulnerable investor and could simply have checked with IPP on whether the SMLG Investment was approved by them, which was not a reasonable suggestion because Saimee had relied precisely on IPP's senior managers. IPP had not shown evidence as to how it supervises or keep watch over Moi and Quek's portfolios.

30 Belinda Ang J held in *Ong Han Ling* that *Skandinaviska* did not stand for the proposition that the lack of relative fault is a precondition before vicarious liability can be imposed. In particular, Ang J stated at [166] that:

> … [T]he Court of Appeal in *Skandinaviska (CA)* did not make the lack of relative fault an absolute precondition to the imposition of vicarious liability. Its point was simply that where the victim is more at fault than the tortfeasor or defendant, the policy consideration of victim compensation as a justification for imposing vicarious liability loses much of its moral force…

I agree with Ang J, and am of the view that although there were indeed differences between the process and forms involved in the SMLG Investment compared to products typically offered by IPP, it was not unreasonable for

Saimee, who was a lay investor (as elaborated at [20](a) of this judgment above), to have relied on the representations and advice of Moi and Quek in relation to the SMLG Investment, and it was also reasonable for Saimee to have assumed that the SMLG Investment was a product offered by IPP. Moi and Quek were after all, a managing partner and a financial services manager of IPP, and they, not Saimee, were in the better position to know the process and the forms required for the SMLG Investment. Therefore, I find no reason for Saimee to have doubted Moi and Quek, and he was not obliged to conduct his own due diligence.

31 There are two further considerations that justify the imposition of vicarious liability, that is, (a) victim compensation and (b) deterrence of future harm (*Skandinaviska* at [76]). Unlike the appellants in *Skandinaviska* who were banks with the resources to protect themselves (*Skandinaviska* at [92]), Saimee is a vulnerable individual with little investment knowledge. In addition, IPP, which is the enterprise that hired Moi and Quek as its financial advisers, has control over its financial advisers and is in the best position to manage its own risk and prevent any further wrongdoing to its clients. Lord Nicholls puts it succinctly in *Dubai Aluminium Co Ltd v Salaam* [2003] 2 AC 366 at [21]:

> … [C]arrying on a business enterprise necessarily involves risks to others. It involves the risk that others will be harmed by wrongful acts committed by the agents through whom the business is carried on. When those risks ripen into loss, it is just that the business should be responsible for compensating the person who has been wronged.

32 More importantly, the relationship between Moi and Quek vis-à-vis IPP has significantly increased the risk of negligent misrepresentations for the following reasons:

(a) First, IPP's business model afforded Moi and Quek the opportunity to abuse or exploit their functions as financial advisers (see for example, *Ong Han Ling* at [178]). Moi and Quek were financial advisers who were selling and recommending IPP's financial products. They acted as intermediaries between the clients and IPP. IPP also held Moi and Quek out to be representatives of IPP by giving them name cards under the name of IPP. This promotes and creates a relationship of trust and confidence between clients and financial advisers which increased the risk of financial advisers making negligent misrepresentations.

(b) Secondly, Moi and Quek's introduction of the SMLG Investment to Saimee was consistent with their job of providing financial advice to Saimee, and furthered IPP's business of selling and recommending financial products to their clients.

(c) Lastly, Saimee is a vulnerable client. He is not highly educated and predominantly relied on Moi and Quek's financial advice.

Considering the factors above and the policy reasons for the imposition of vicarious liability, I find IPP vicariously liable for Moi and Quek's tort of negligence.

33 I therefore find as follows:

(a) Moi and Quek had breached their duty of care owed to Saimee by negligently misrepresenting the SMLG Investment to Saimee.

(b) Saimee's claim against Moi and Quek is not time barred.

(c) Moi and Quek are jointly and severally liable to compensate Saimee the sum of USD$620,900, plus interests from date of breach.

(d) IPP is vicariously liable for Moi and Quek's tort of negligence.

34 I will hear arguments on costs at a later date.

- Sgd -
Choo Han Teck
Judge

Uthayasurian Sidambaram (instructed) and Vishnu Aditya Naidu (Phoenix Law Corporation) for the plaintiff;
Chan Wai Kit Darren Dominic and Ng Yi Ming Daniel (Characterist LLC) for the first defendant;
Tan Teck Hian Wilson, Kelvin Lee and Samantha Ong Xin Ying (WNLEX LLC) for the second and third defendants.