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DISTRICT JUDGE TEO GUAN KEE
16 FEBRUARY 2026

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGDC 65

District Court Originating Claim No 1208 of 2023

Between

Sunlight Paper
Products Pte. Ltd.

… *Claimant*

And

Decorial Pte. Ltd.

… *Defendant*

JUDGMENT

Contract – Remedies – Deposit

Restitution – Unjust enrichment – Recovery of deposit on grounds of unjust enrichment

Tort – Misrepresentation – Fraud and deceit

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Sunlight Paper Products Pte. Ltd.
v
Decorial Pte. Ltd.

[2026] SGDC 65

District Court Originating Claim No 1208 of 2023

District Judge Teo Guan Kee

23 December 2024, 19 - 20 May 2025

16 February 2026 Judgment reserved.

District Judge Teo Guan Kee:

Introduction

Parties

1 The Claimant is a Singapore-incorporated company in the business of marketing and distribution of tissue products.[1] The Claimant operates out of a factory building located in Tuas South Street 5, known as The Sunlight Building (the "**Building**"). Its Chief Financial Officer, Choy Tuck Leong ("**Choy**"), was the sole witness for the Claimant at the trial before me.

[1] Agreed Statement of Facts ("**ASOF**") at paragraph 5.

2 The Defendant is a Singapore-incorporated company and is a specialist contractor in shading systems.[2] At trial, two persons gave evidence on its behalf: Ho Khai Hong (also known as "**Raymond**", Business Development Director) and Ng Thian Lye ("**Eric**", a director).

Background

3 In 2020, the Claimant undertook construction works to the Building (the "**2020 Works**"). One part of the 2020 Works involved the construction of an opening in the roof of the Building (the "**Roof Opening**") to enable machinery to be brought into the building using a crane.[3]

4 When approval was obtained from the Urban Redevelopment Authority ("**URA**") for the 2020 Works, one condition imposed by the URA in granting permission for these works was that the height of the Building must not exceed 25 metres above mean sea level (the "**Height Restriction**"). This condition was set out in a document entitled "Grant of Written Permission" dated 1 April 2020, issued by the URA.[4]

5 In early 2022, the Claimant decided to build a retractable awning system for the Roof Opening and eventually approached the Defendant to provide the same.[5]

6 It is not disputed that thereafter, the two parties entered into a contract for the provision of a retractable awning system. To elaborate:

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[2] ASOF at paragraphs 6 and 7.

[3] Choy's AEIC at paragraph 6.

[4] Choy's AEIC at page 14.

[5] Choy's AEIC at paragraph 7.

(a) On or around 4 May 2022, Choy made initial enquiries with the Defendant about the supply and installation of an awning system for the Roof Opening of the Building.[6]

(b) On 6 May 2022, Raymond conducted a site visit of the Building.[7]

(c) On 10 May 2022, the Defendant sent its quotation no. DPL/RC 0509/RH/2022 (the "**Quotation**"), pertaining to the installation of the awning system for the Roof Opening, to the Claimant.[8]

(d) On 20 June 2022, Choy sent an email to Raymond, confirming the Claimant's acceptance of one of the options set out in the Quotation for the installation of an awning system for the Roof Opening.[9] This therefore gave rise to a **Contract** for those works between the Claimant and the Defendant, although it bears noting from the outset that the parties are not aligned as regards the terms of this Contract.

(e) On 29 June 2022, the Claimant paid a deposit of $39,112.78 (inclusive of 7% GST, the "**Deposit**") to the Defendant pursuant to the Quotation.

(f) On 28 July 2022, the Defendant first submitted drawings, for the works it proposed to carry out under the Contract, to the Claimant. These drawings were rejected by the Claimant, on the basis that the design proposed therein contravened the Height Restriction.

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[6] Defence and Counterclaim ("**D&CC**") at paragraph 4.

[7] D&CC at paragraph 4.

[8] D&CC at paragraph 6.

[9] D&CC at paragraph 7.

(g) Thereafter, throughout the period from August 2022 to 3 April 2023, the Defendant prepared further drawings for the Claimant, all of which were rejected by the Claimant. The Claimant's reasons for rejecting the Defendant's drawings during this period included allegations that the revised drawings still contravened the Height Restriction, that the price of the works envisaged in the revised drawings had increased significantly from those provided in the Quotation and that one set of proposals called for the use of scaffolding when the Claimant's expectation had been that none would be required.[10]

7 Owing to the disagreements between the parties, the awning system was never built for the Claimant by the Defendant.

8 On 14 April 2023, Choy emailed Raymond stating, *inter alia*, the following:

> Hi Raymond,
>
> We received your revised quotation.
>
> After discussing this matter internally, we do not accept your proposal.
>
> Please terminate this project and return the deposit to us by 21.4.2023.

9 Choy's email of 14 April 2023, and subsequent correspondence sent by the Claimant's representatives to the Defendant's representatives, did not lead to the return of the Deposit. As such, the Claimant commenced this claim against the Defendant on 23 August 2023 to seek the refund of the Deposit, along with associated interest and costs.

[10] Choy's AEIC at paragraphs 21 to 34.

Summary of the Claimant's case

10 In its Statement of Claim (the "**SOC**") and submissions filed post-trial (comprising the Claimant's closing submissions dated 18 July 2025, the "**CCS**" and its reply submissions dated 1 August 2025, the "**CRS**"), the Claimant has asserted that it is entitled to a return of the Deposit on three alternative legal bases:

(a) Breach of contract;

(b) Moneys had and received (unjust enrichment); and

(c) Fraudulent misrepresentation.

11 The Defendant denies that it is liable to return the Deposit on any of the aforementioned bases, essentially arguing that the Claimant is unable to show that the requirements for each of the grounds relied on have been made out.

Summary of the Defendant's counterclaim

12 Stemming from its assertion that it did not breach its contractual obligations towards the Claimant (being the Defendant's response to the Claimant's case premised on breach of contract), the Defendant has taken the position that the Claimant itself was in breach of its contractual obligations when it purported to terminate the Contract.

13 Accordingly, in these proceedings, the Defendant has brought a counterclaim against the Claimant seeking damages for breach of contract.

Preliminary Issue: meeting on 6 May 2022

14 Before turning to consider the parties' respective claims, I will deal with a disputed factual issue which featured prominently in the Claimant's submissions.

15 Choy asserted that he had, on 6 May 2022, verbally informed Raymond of the existence of the Height Restriction, when the latter attended at the Building to carry out a site inspection.[11] However, this was denied by Raymond.[12]

16 According to the Claimant, the fact that Choy had informed Raymond of the Height Restriction on 6 May 2022 was important because it meant that the Defendant did not have any excuse for proposing, by way of its initial drawings sent to the Claimant on 28 July 2022, a design which exceeded the Height Restriction. This was a material part of the Claimant's case on breach of contract, which will be considered later in these grounds.

17 Having considered the available evidence, I am not satisfied that Choy did inform Raymond on 6 May 2022 of the Height Restriction.

18 There is no contemporaneous or near-contemporaneous record of Choy having informed Raymond of the Height Restriction on 6 May 2022. All that the Claimant could point to in support of such an assertion was an email sent by Choy to Raymond on 29 July 2022 which stated, *inter alia*, as follows:

> 1. As spoken, the total height of the building cannot exceed 25m above AMSL.

[11] Choy's AEIC at paragraph 11.

[12] Raymond's AEIC at paragraph 9.

> 2. Your colleague Eric spoke to me and as requested, attached is our requirement, which I thought was made very clear during your visit and our subsequent discussions.

19 The Claimant submitted that the Defendant's failure to contradict the assertions in Choy's email about having informed the Defendant of the Height Restriction showed that the said assertions must have been true.[13]

20 With respect, I do not accept this submission.

21 First, Choy's email to Raymond was sent more than 2 months after the meeting on 6 May 2022. It is not a *contemporaneous* record of what was spoken at the meeting.

22 Secondly, it bears noting that as at 29 July 2022, the parties' relationship was still a collaborative, not contentious, one. Given that the Claimant was still the Defendant's customer at the time, it is hardly surprising that the Defendant did not seek to expressly contradict Choy's assertions.

23 Finally, the Claimant's assertion that it had been alive to the Height Restriction at least since 6 May 2022 is undermined by its failure, given the supposed prominence of this issue, to raise queries with the Defendant when no term relating to the Height Restriction was contained in the Quotation sent to the Claimant on 10 May 2022, just a few days after the site meeting and hence arguably a relatively more "contemporaneous" record of the Defendant's understanding of the Claimant's requirements than Choy's email of 29 July 2022.

[13] CRS at paragraph 2.

24 Indeed, between 10 May 2022 and 29 July 2022, a fair number of messages were exchanged between Choy and Raymond on the WhatsApp messaging platform. However, none of the messages exchanged made mention of the Height Restriction. Instead, in messages sent on 3 June 2022, Choy said that the Claimant's "top priority" was that the Defendant's proposal had to be "BCA approved" and "SCDF approved";[14] the Height Restriction was imposed by the URA.

25 On balance of probabilities, I am not satisfied that Choy had informed Raymond at the meeting on 6 May 2022 of the Height Restriction.

The Claimant's claim

Breach of Contract

26 As mentioned earlier, the Contract between the parties was concluded when the Claimant accepted the Quotation sent by the Defendant but the parties disagree on the precise nature of the Defendant's obligations under the Contract.

27 The key disagreement, in this regard, pertained to what the Claimant has submitted was an obligation on the Defendant to provide "acceptable drawings"[15] for the awning system to be built under the Contract.

28 The Claimant submitted, in the CCS, that the Defendant had breached the terms of the Quotation by:

(a) not providing acceptable drawings in due time to the Claimant,

[14] Agreed Bundle of Documents ("**AB**") at pages 4 and 5.

[15] CCS at paragraph 23(b).

(b) demanding additional payments for scaffolding costs not provided for in the Quotation; and

(c) failing to complete the construction and installation of the awning system in accordance with the Quotation.[16]

Provisions of the Contract

29 At this juncture, the following features of the Contract may be noted:

(a) The Quotation contained two options for the Roof Opening works. The Claimant opted for Option 1, which called for the Defendant to provide, for a price of $52,220.00, works described as follows:

> Awning Size – 18.00M X 5.00M
>
> c/w Awning Back Membrane Flashing
>
> Trimdeck Size – 18.00M X 3.20M

(b) Notes accompanying the Quotation provided, *inter alia*, that:

> - The above quoted price is subjected to final site visit and site condition.
>
> …
>
> - The above quoted price excludes submission to any relevant authorities and PE endorsement.

(c) A section of the Quotation entitled "Terms and Conditions" contained, *inter alia*, the following:

> a. Confirmation: Either giving us a signed works order or issuing us a purchase order or confirmation on our quotation.
>
> b. Completion: Within 6-8 Weeks upon confirmation of drawings and also subject to weather condition.

[16] CCS at paragraph 24(b).

> c. Payment: A non-refundable deposit of 70% upon confirmation of order. 30% payment upon completion (Not applicable to MOE School).

Analysis of the breach of contract argument

30 The Quotation itself did not contain any provision expressly referring to the provision of "acceptable" drawings by the Defendant.

31 Further, on the Claimant's own case, the Quotation was the "only document" which the Claimant had "accepted and agreed to" and the contract between the parties "would be **based solely** upon the terms of [the Quotation]" (emphasis added).[17]

32 In the absence of an express provision in the Contract imposing an obligation to provide "acceptable" drawings, the natural question which arises is how such an obligation came to be one of the terms of the Contract, such that a failure by the Defendant to perform this obligation could amount to a breach of the Contract.

33 In the CCS, the Claimant argued that the reference to "confirmation of drawings" in sub-paragraph (b) of the "Terms and Conditions" section of the Quotation[18] meant that drawings for the awning system had to be approved by the Claimant, which consequently also had the right to reject drawings prepared by the Defendant.[19]

34 With respect, having regard only to the language of sub-paragraph (b) of the "Terms and Conditions" section of the Quotation, it is clear that, even

[17] CCS at paragraph 27(a).

[18] See paragraph 29(c) above.

[19] CCS at paragraph 27(b)(1).

accepting that it suggests that the Claimant's confirmation of the Defendant's drawings was required before the works could proceed, that language does not say anything about the grounds upon which the Claimant was entitled to give or withhold such confirmation.

35 In the absence of such express language, the Claimant was understandably left to submit, in the CCS, that the Defendant was under an "implied obligation" to "produce drawings in a competent manner which are acceptable to the Claimant", although the Claimant also accepts that such drawings need only be "reasonably acceptable" in that the Claimant was itself obliged to "act reasonably and not reject the Defendant's drawings arbitrarily."[20] For ease of reference, I will refer to the foregoing as the **Alleged Implied Term**.

(1) The Claimant has not proven the existence of the Alleged Implied Term

36 I am unable to accept the Claimant's submissions as to the existence of the Alleged Implied Term.

37 To begin, there is no averment in the Claimant's pleadings making any reference to the Alleged Implied Term, or indeed to any implied term, in the Contract.

38 This is not a merely technical default on the part of the Claimant. If the Claimant wished to rely on an implied term in the Contract, it had to plead and prove the material facts for its assertion that it was necessary for such a term to be implied into the Contract.

[20] CCS at paragraph 27(b)(6).

39 The absence of any pleading to such effect by the Claimant meant that the Defendant has not had a reasonable opportunity to respond to a properly pleaded case premised on the Alleged Implied Term.

40 In addition, Choy's affidavit of evidence-in-chief ("**AEIC**") did not make any reference to any implied term or explain why such a term had to be implied into the Contract.

41 Even leaving aside the issues mentioned above, the Claimant has also not, in the CCS or the CRS, made any submissions as to why the Court ought, on the facts of this case, find that the Alleged Implied Term existed; there was no citation of any authority pertaining to the existence of implied terms nor was any attempt made to engage with the principles pertaining to this issue.

42 In my view, it is far from obvious that it was necessary for the Alleged Implied Term to be implied into the Contract.

43 In the absence of any term, express or implied, in the Contract regarding which party was to bear the risk of the Defendant producing drawings that contravened regulatory requirements, this risk would naturally be assumed by the Claimant, as the party responsible for the Building, since presumably the relevant public authorities would look to the Claimant in the event the height of the Building exceeded permissible limits.

44 Thus, the effect of the Alleged Implied Term contended for was only to *allocate* the risk of drawings that were not "acceptable" to either the Claimant or the Defendant, as this risk was not one which could be eliminated altogether by way of a contract between the Claimant and the Defendant.

45 Viewed in this light, it is not clear to me why an Alleged Implied Term would necessarily have allocated the responsibility for "acceptable" drawings to the Defendant, especially where, as in this case, a drawing might only be regarded as "acceptable" if it complied with a height restriction.

46 In this regard, it is significant that the Height Restriction was not a generally applicable one, but was instead specific to the Building, as it was imposed by way of a Grant of Written Permission issued by the Urban Redevelopment Authority dated 1 April 2020 for the 2020 Works.

47 This is especially so when, by way of the Alleged Implied Term, the Claimant also purported to reserve to itself the power to reject drawings proposed by the Defendant, again, for the express purpose (as suggested in the CCS[21]) of protecting itself against the risk of drawings which were not in compliance with regulatory requirements. The reservation of such a power was, from a commercial perspective, inconsistent with a term requiring the Defendant to be responsible for ensuring acceptable drawings, as it effectively left the Claimant the ultimate arbiter of what was compliant or not.

48 In the premises, I am not satisfied that the Claimant has demonstrated the existence of the Alleged Implied Term.

(2) The Claimant has not proven that the Defendant breached the Alleged Implied Term

49 Even if I am mistaken and the Alleged Implied Term was part of the Contract, I am of the view that the Defendant did not breach this term.

[21] CCS at paragraph 27(b)(6).

50 In the CCS, the Claimant asserted that the Defendant breached the Alleged Implied Term obligation by producing drawings which were, according to the Claimant, in "breach of the law" and also in proposing designs for the works which were purportedly different from those set out in the Quotation both in terms of costs and specifications.[22]

51 I take first the allegation that the Defendant breached the Alleged Implied Term because it proposed designs which were different from those set out in the Quotation. Whilst the Claimant accepted it had to act reasonably in rejecting the Defendant's proposals, it did not explain in the CCS how its refusal to accept any of the Defendant's proposals had been reasonable.

52 In particular, the CCS states that on 3 April 2023, the Defendant had eventually produced "acceptable drawings…in line with the [Quotation]."[23] Choy also accepted under cross-examination that drawings sent by the Defendant's representatives on 3 April 2023 had been reviewed and approved by himself.[24]

53 In this regard, in one of his emails sent to Raymond on 14 April 2023, Choy had thanked Raymond for drawings provided by the Defendant and stated "We are agreeable to this approach", save that he also indicated that the Claimant had not anticipated the cost of scaffolding which the Defendant had indicated was required.[25]

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[22] CCS at paragraph 27(b)(8).

[23] CCS at paragraph 27(b)(8).

[24] NE 23 December 2024 62/14-22.

[25] AB 240.

54 He even agreed under cross-examination that as at 14 April 2023, the Defendant had accommodated the Claimant's requests "to the extent of the drawings and design".[26]

55 However, the Claimant still subsequently rejected this proposal on the basis that the Defendant informed it on 5 April 2023 that scaffolding costs of $19,600 would have to be incurred for carrying out the works which had been previously approved.

56 With respect, given that the Quotation expressly provided that the prices set out therein were "subjected to … site condition", I am not satisfied that the Defendant had breached the Alleged Implied Term (assuming it was a part of the Contract) simply because it took the position that scaffolding and its associated costs were required in order to properly carry out works which Choy otherwise acknowledged were "acceptable" to the Claimant.

57 As for the allegation that the Defendant breached the Alleged Implied Term when it produced drawings that contravened the Height Restriction, this assertion was at best applicable to the earlier drawings produced by the Defendant. Under cross-examination, Choy confirmed that there were no height issues with the design which he approved on 3 April 2023.[27]

58 As such, in my view, even if the Alleged Implied Term was part of the Contract, the Defendant did not breach its obligations thereunder.

59 In the CRS, the Claimant has attempted to downplay the significance of its acceptance of the Defendant's design in April 2023 by highlighting that this

[26] NE 23 December 2024 90/2-8.

[27] NE 23 December 2024 67/19-22.

design had been proposed by the Defendant as a variation of the Quotation and that it was not obliged to accept such variations.

60 With respect, this argument is unconvincing. Whilst the Defendant did label some of its later proposals as "variation order", the correspondence passing between Choy and the Defendant's representatives makes it clear that Choy, at least, was assessing these later proposals by reference to the Quotation and there was no suggestion by Choy, until 14 April 2023 that the Claimant was bringing the Contract to an end.

61 For example, as late as 11 April 2023, Choy sent a message via WhatsApp to Raymond, informing Raymond that he (Choy) would inform his "boss" that Raymond had "honored the original proposed price".[28]

62 This reference to the Quotation shows that even in April 2023, the parties were still willing to regard the proposals being put forward by the Defendant as attempts to fulfil the latter's obligations under the Quotation. The Defendant's characterisation of its proposals as VOs therefore has no bearing on my earlier finding[29] that even if the Alleged Implied Term was part of the Contract, the Defendant had ultimately not breached the same.

The Claimant breached the Contract

63 As I have found that the Defendant did not breach the Alleged Implied Term, either because there was no such implied term within the Contract or because the Defendant had in any event ultimately produced drawings that were

[28] Choy's AEIC at page 52.

[29] See paragraph 58 above.

acceptable to the Claimant, it follows that there was no breach of the Contract which entitled the Claimant to elect whether to discharge or affirm the contract.

64 In this regard, the CCS and CRS are also deficient in that they did not address why a failure by the Defendant to produce acceptable drawings on its first attempt would, in the context of *this Contract*, have given rise to a repudiatory breach entitling the Claimant to bring the Contract to an end, especially when the Defendant was prepared to make further proposals and the Claimant, to consider such proposals. The Claimant's counsel appear to have simply assumed that if the Defendant had breached the Alleged Implied Term on its first attempt at producing drawings, the Claimant would automatically have been entitled to discharge the Contract.

65 As such, in the absence of a demonstrated right to elect to bring the Contract to an end, it is the Claimant's act of purporting to terminate the Contract, by way of Choy's email to Raymond on 14 April 2023, which should properly be seen as a breach of the Contract, since by such an act the Claimant unequivocally communicated to the Defendant that it no longer wished to continue performing its obligations under the Contract and indeed, was asking for the Deposit to be refunded.

The Deposit is not reasonable as an earnest

66 The above finding is still not, however, dispositive of the Claimant's claim; it is necessary to consider whether the Defendant has the right to *forfeit* the Deposit in light of the Claimant's breach of contract.

67 In the decision of the Court of Appeal (the "**CA**") in *Li Jialin v Wingcrown Investment Pte Ltd* [2024] 2 SLR 372 ("***Wingcrown***"), the CA made

it clear that an innocent party's right to forfeit a purported deposit would be subject to the following framework:

(a) The court first determines whether there is a *contractual* right to forfeit the Deposit.[30]

(b) If there is a contractual right to forfeit the Deposit, the court must then determine whether the Deposit was a "true deposit", in the sense that the sum provided for as a deposit was "reasonable as an earnest".[31]

(c) If the sum is a true deposit, it can be forfeited. If it is not a true deposit, the entitlement of the party to recover the same is left to be decided under the "general law".[32]

68 It is important to highlight that in *Wingcrown*, the CA appeared to reject an approach, taken in the earlier decision of *Hon Chin Kong v Yip Fook Mun* [2018] 3 SLR 534, of recharacterising a deposit, which is found to be unreasonable as an earnest, as "part payment" and thereafter to assess the enforceability of such part payment clause by reference to whether it was an unenforceable penalty.

69 This position appears in *Wingcrown* at [73(3)], where the CA opined that

> Where a deposit is not reasonable as an earnest, the right to forfeiture is unenforceable, regardless of whether it is express or implied. **It is not open to the court to recharacterise the right of forfeiture into a right to liquidated damages which remains enforceable subject to the penalty rule** – to do so

[30] *Wingcrown* at [73(a)].

[31] *Wingcrown* at [73(b)].

[32] *Wingcrown* at [73(c)].

> would be to impute an element of compensation which did not otherwise exist… The purchaser may therefore seek a recovery of the sum paid under the general law.
>
> (Emphasis added)

70 Insofar as the "general law" referred to in the preceding paragraph is concerned, in *Wingcrown*, the CA held that the deposit which it had to consider was not reasonable as an earnest and that the party which paid the same was entitled to recover it "in unjust enrichment on the ground of a failure of basis" but subject to the qualification that what had to be returned was moneys received which had not been "earned".[33]

71 Applying the *Wingcrown* framework to the facts of this case, the first question which arises is whether the Defendant had a *contractual* right to forfeit the Deposit.

72 The Deposit was expressly described in the Quotation as a "non-refundable deposit".[34] As such, the only reasonable interpretation of the Contract is that the Deposit was not intended to be returned to the Claimant and, for the purposes of the test in *Wingcrown*, the Defendant did have a contractual right to forfeit the Deposit upon a breach of contract by the Claimant.

73 As for the second stage of the framework set out in *Wingcrown*, the CA opined that a sum would be "reasonable as an earnest" for such purposes if it were "customary" or "conventional".[35] Both of these terms are suggestive of some form of industry practice or other evidence of historical precedent for the sum sought to be forfeited.

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[33] *Wingcrown* at [80].

[34] Choy's AEIC at page 83.

[35] *Wingcrown* at [73(b)].

74 At trial, both Raymond and Eric gave evidence under cross-examination that the Deposit, despite amounting to 70% of the total price of the works under the Quotation, was in line with "industry practice".[36]

75 That being said, both Raymond and Eric, being representatives of the Defendant, clearly are not independent witnesses, and their evidence was accordingly viewed with circumspection.

76 Further, given that the Defendant claimed to be an experienced contractor within the relevant industry, it was also curious that it did not adduce any objective documentary evidence of "customary" or "conventional" deposits typically collected for works of the same nature as that which was to be carried out under the Quotation.

77 In its post-trial submissions[37], the Claimant highlighted the finding in *Wingcrown* that a deposit amounting to 63% of the contract price in that case was not reasonable as an earnest. Relying on this, the Claimant highlighted that the Deposit, amounting to an even higher *70% of the Contract price*, could similarly not be reasonable as an earnest.

78 It is instructive, in this regard, that the CA in *Wingcrown* at [73(3)] appeared to make reference to "excessive and extravagant" deposits as the mischief which the rule requiring deposits to be "reasonable as an earnest" was meant to address.

79 I accept that in this case, the Claimant has not actually adduced objective evidence to show that the Deposit was not in fact "customary" or

[36] NE 19 May 2025 52/13-25 and 20 May 2025 22/22-23/1.

[37] CCS at page 20 paragraph 28(c), erroneously numbered (a) and CRS at paragraph 30(ii).

"conventional". However, in my view, since the Deposit constituted an extremely high percentage of the total sum payable under the Quotation, well in excess of any of the deposits considered by the CA in *Wingcrown*, the overall complexion of the evidence, and in particular the Defendant's failure to adduce any evidence at all of what would have been a "customary" or "conventional" deposit for the works described in the Quotation, or to even explain why such a high percentage was called for, lends itself to a finding, on balance of probabilities, that the Deposit was not "reasonable as an earnest".

80 The upshot of such a finding, as set out in [73(c)] of *Wingcrown*, is that the right to forfeit is unenforceable and the Claimant's right to recovery of the Deposit would be left to be decided under the general law.

Breach of Contract: conclusion

81 I summarise the findings thus far as follows:

(a) The Claimant has not proven the existence of the Alleged Implied Term.

(b) Even if there was an Alleged Implied Term, the Defendant did not breach such a term.

(c) Nevertheless, the Defendant is not *prima facie* entitled to forfeit the Deposit as it was not "reasonable as an earnest".

82 The corollary of my finding that the Defendant did not breach the contract is that the Claimant is not entitled to the recovery of the Deposit on the basis of breach of contract *by the Defendant*.

83 In the next part of these Grounds, I consider whether, in the words of the CA in *Wingcrown*, the Claimant can demonstrate any basis for recovering the Deposit based on the "general law".

Moneys had and received (Unjust enrichment)

84 One of the "general law" grounds upon which the Claimant has sought to recover the Deposit is that of unjust enrichment.

85 In the CRS, the specific unjust factor relied upon by the Claimant was that

> …there was a total failure of consideration, as no part of the [awning] system was ever constructed nor any equipment or material provided.[38]

86 In *Benzline Auto Pte Ltd v Supercars Lorinser Pte Ltd* [2018] 1 SLR 239 ("***Benzline***") at [46], the CA explained that where the unjust factor relied upon by a party seeking to invoke the doctrine of unjust enrichment is failure of consideration (synonymous with "failure of basis"), the court's inquiry has two parts:

> (a) what was the basis for the transfer (here, the Deposit) in respect of which restitution is sought; and
>
> (b) did that basis fail?

87 At [51] of *Benzline*, the CA stated that

> The basis of a transfer must be objectively determined based on what is communicated between the parties; the parties' uncommunicated subjective thoughts are irrelevant…

[38] CRS at paragraph 9.

88 In considering the first stage of the *Benzline* inquiry, based on the passage from the CRS cited above, the Claimant's position was effectively that the "basis" for the payment of the Deposit was the construction of the awning system it wanted for the Building, and that anything short of the aforementioned works being carried out would amount to a failure of consideration.

89 With respect, I do not accept this argument. The responsibilities of the Defendant under the Contract (and hence the basis thereof) included not just the carrying out of the awning works in question, but also included, at least, the preparation of designs and drawings for the Claimant's consideration.

90 Turning now to the second part of the *Benzline* inquiry, it is also not disputed that such designs and drawings were prepared by the Defendant and made available to the Claimant, even if some of the drawings were not satisfactory to the latter. Indeed, one reason the awning works on the Building were not carried out was because the Claimant itself did not accept the proposals put forward by the Defendant.

91 In these circumstances, in my view it could not be said that there had been *total* failure of consideration justifying the return of the entire Deposit.

92 This is a crucial point of distinction between the facts of this case and those in *Wingcrown*, as there was no suggestion in that case that part of the basis for the deposit payment had already been performed.

93 I appreciate that in *Wingcrown*, the CA had allowed the payor of the deposit to recover the same but limited to "moneys received which [the payee]

had not earned",[39] and thereafter allowed the payee of the deposit to retain part of the said deposit.

94 In my view, the apparent reference to recovery of the deposit subject to a deduction for moneys "earned" is not necessarily indicative of a principle that an unenforceable deposit should automatically be returned, subject only to the payee's ability to prove that it had "earned" the deposit, and in this way circumvent the usual requirements for recovery on grounds of total failure of consideration.

95 This is because of the facts peculiar to *Wingcrown*. In that case, part of the deposit (amounting to $357,000 out of a total deposit of $1,195,354.42) had been paid as consideration for the grant of an option to purchase (the "**Option Contract**"), which the CA found was eventually performed, with the corollary that the option fee of $357,000 had been "earned". However, the parties had also agreed that this sum would be applied towards the deposit under a separate sale and purchase contract (the "**SPA**"), the basis for which had failed.[40]

96 On these facts, the CA was in *Wingcrown* able to justify the return of the deposit of $1,195,354.42 premised on the failure of basis of one contract (the SPA), subject to the retention by the deposit payee of a sum of $357,000 pursuant to another contract (the Option Contract), the basis for which had *not* failed.

97 In contrast, no such twinned contracts are present on the facts before me. As such, the Claimant, having chosen to rest its claim in unjust enrichment on

[39] *Wingcrown* at [80].

[40] Wingcrown at [83].

the ground of *total* failure of consideration, is not entitled to recover the same as I have found that there was no total failure of consideration on the available evidence.

98 Apart from total failure of consideration, the Claimant did not put forward any other unjust factor for recovering the Deposit. In the circumstances, the Claimant is not entitled to recover the Deposit on the ground of unjust enrichment.

Fraudulent Misrepresentation

99 The final ground relied upon by the Claimant for seeking the repayment of the Deposit was fraudulent misrepresentation. No other type of misrepresentation (for instance, innocent misrepresentation) was pleaded by the Claimant.

100 The Claimant's submissions pertaining to this basis for its claim were woefully inadequate. In particular, no submissions were made in the CCS or the CRS addressing the established case law pertaining to claims premised on fraudulent misrepresentation and, accordingly, there were also no submissions explaining how the facts of this case gave rise to a claim in fraudulent misrepresentation.

101 The representations pleaded in the SOC (at para 15(a)) as having been fraudulently made by the Defendant were the following:

> (a) The Defendant was competent (the "**Competence Representation**").

(b) The Defendant was very experienced in that it had "38 years of experience in the Weather Automated System Industry" and had undertaken the installation of many such awning systems (the "**Experience Representation**").

102 As highlighted by the Defendant's counsel in the Defendant's Closing Submissions dated 18 July 2025 (the "**DCS**"), in the CA decision in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 ("***Panatron***"), in order to establish a case in fraudulent misrepresentation (referred to in *Panatron* as the "tort of deceit"), the following elements would have to be satisfied:

> First, there must be a representation of fact made by words or conduct. Second, the representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff. Third, it must be proved that the plaintiff had acted upon the false statement. Fourth, it must be proved that the plaintiff suffered damage by so doing. Fifth, **the representation must be made with knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true**.[41]
>
> (Emphasis added)

103 Taking the Competence Representation first, there is no evidence that the Defendant's representatives knew or believed the Defendant to be incompetent.

104 To the contrary, the Defendant's representatives' continued engagement with the Claimant following the rejection of the former's initial drawings suggests that the Defendant's representatives fully believed that they would be

[41] *Panatron* at [14].

able to execute the works required by the Claimant (the fifth element cited by the CA in *Panatron*).

105 As for the Experience Representation, this was a representation as to the Defendant's track record and stood apart from the Competence Representation.

106 The Claimant did not adduce evidence to show that the Defendant did not in fact have the track record represented (38 years of experience in the industry and having undertaken multiple awning system installations).

107 Instead, in the CCS, all that the Claimant alleged was that the Experience Representation could not possibly be true because the Defendant's representatives supposedly did not have sufficient knowledge about height restrictions for industrial buildings. This argument is problematic for a few reasons.

108 First, the sole piece of objective evidence about the existence of a height restriction applicable to the Building stemmed from a single document: a Grant of Written Permission issued specifically for the 2020 Works. In my view, this document is not probative of a requirement so widely known that ignorance of the same (prior to being informed of its existence on 29 July 2022) showed that the Experience Representation was untrue.

109 Secondly, there was no attempt by the Claimant to engage with the documentary evidence of the Defendant's experience. Choy himself adduced in his AEIC a "picture book" highlighting projects that the Defendant purported to have carried out, which in effect substantiated the Experience Representation. Despite this, he did not adduce any objective evidence to challenge the evidence he had himself introduced to show that the Experience Representation was not

true, to say nothing of whether the Defendant itself believed it to be untrue or had no genuine belief in its truthfulness.

110 On the whole, therefore, insofar as the Experience Representation was concerned, the Claimant has not even shown that the representation in question was untrue. The Experience Representation thus cannot form the basis for a claim premised on fraudulent misrepresentation.

111 As the elements of the tort of deceit have not been satisfied in relation to either the Competence Representation or the Experience Representation, the fraudulent misrepresentation claim must therefore fail.

The Defendant's counterclaim

112 As I have found earlier, the Defendant did not breach its obligations under the Contract and it was the Claimant which breached the Contract when, by way of Choy's email to the Defendant on 14 April 2023, the Claimant asked the Defendant to "terminate this project" and return the Deposit, as the contents of this email unequivocally communicated to the Defendant that the Claimant no longer intended to perform its obligations thereunder.

113 It is trite that the Defendant is entitled to claim damages stemming from the Claimant's breach of contract.

Quantum of damages

114 In its Defence and Counterclaim ("**D&CC**"), the Defendant claimed that, arising from the Claimant's breach of the Contract, the Defendant had been

"deprived of its profit for the potential installation of the" awning system for the Building.[42]

115 The Defendant quantified its lost profits by taking the difference between the full contract sum which it was to have been paid under the Quotation, being $52,220, and its alleged costs of carrying out the works thereunder, quantified by the Defendant at $8,357.09 (excluding GST). This gives $43,862.91.

116 Taking into account the Deposit (excluding the GST on the same) of $36,554[43], the amount of lost profit *which had not been received* by the Defendant as at 14 April 2023 (when the Claimant purported to terminate the Contract) was therefore, according to the Defendant, $7,308.91.

117 The full contract sum and the amount of the Deposit are not disputed between the parties. However, the Claimant has objected to the Defendant's assertion that the costs of carrying out the works would have amounted to $8,357.09.

118 In Eric's AEIC, he explained that the figure of $8,357.09 comprised:

(a) a "system cost" of $6,790.49; and

(b) labour costs of installing the awning system of $1,566.60.

119 Eric explained, in his AEIC, that the system cost related to the "cost of purchasing parts and materials" for the works under the Contract.[44] He also

[42] D&CC at paragraph 24.

[43] DCS at paragraph 96.

[44] Eric's AEIC at paragraph 47.

adduced a document containing a listing of the costs of each of these parts and materials.[45]

120 However, Eric did not adduce any other evidence supporting the breakdowns given in his AEIC.

121 For example, when it was highlighted to Eric under cross-examination that he had not explained how he arrived at the labour costs of $1,566.60, his initial response was to claim that these were "all detail". When given a further opportunity to explain, he gave the following non-answer:

> A Okay. Usually, contracts---contracts, it depend on how many days we work at the site. Usually, even the worker if they can go faster, probably those kind of senior, what they call, foreman, we probably pay them more in the range. So, we addressed our workers are helping only. They are not so costly. So, it depends on our schedule. So, this figure, I'm just giving a general figure because the amount is not big. It's not big. In fact, if---if the Sunlight don't sue us, I'm not going to claim for this amount. You're wasting my time. Seriously (indistinct). I'm not really interested at all at very beginning.[46]

122 As for the "system" costs, Eric also had to admit that the Defendant had not adduced any evidence substantiating his material costs, such as invoices, quotations or brochures from suppliers.[47]

123 In summary, the figures put forward by the Defendant as representing the cost of carrying out the works under the Contract were nothing more than mere assertions by the Defendant, bereft of any independent supporting evidence even where, as in the case of materials purchased from third parties,

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[45] Eric's AEIC at page 55.

[46] NE 19 May 2025 58/27-59/5.

[47] NE 19 May 2025 60/12-20.

one would reasonably have expected the Defendant to be in a position to substantiate these costs.

124 Given that the Defendant has failed to substantiate the costs which it would have had to incur in performing the works under the Contract, this also means that one crucial component of its loss of profit calculations is completely unsupported.

125 Further, it is worth highlighting that whilst the Defendant claimed a sum of $7,308.91 by way of its counterclaim, this has to be taken alongside the consideration that it had already received the Deposit of $36,554 from the Claimant. The effect of the foregoing is that the Defendant was effectively asserting that, based on the contract price of $52,220 set out in the Quotation, it would have made a profit of $43,862.91 for carrying out the Contract, a profit margin of more than 80% of the total contract sum under the Quotation.

126 This last consideration, taken together with the Defendant's failure to substantiate the figures making up the "system" cost and its labour costs, can only add to the Court's scepticism regarding the quantum claimed by the Defendant in its counterclaim.

127 In my view, the Defendant has not discharged its burden of proving its loss of profit to the extent that it should be awarded the further sum of $7,308.91 for its counterclaim. I will instead award a nominal sum of $100 to the Defendant for its counterclaim.

Judgment

128 By virtue of the foregoing, I grant final judgment in the following terms:

(a) The Claimant's claim is dismissed in its entirety.

(b) The Defendant's counterclaim is allowed and the Claimant is to pay a nominal sum of $100 to the Defendant.

129 The costs and disbursements of this suit are to be fixed by this Court if the parties are unable to agree on the same. The parties are to file and exchange their respective written submissions on costs and disbursements within 14 days hereof, limited to six pages, if required.

Teo Guan Kee
District Judge

Mr Tan Heng Thye [CSP Legal LLC] for the claimant/defendant in counterclaim;
Mr Derek Wong Kim Siong, Mr Uthayasurian s/o Sidambaram [Phoenix Law Corporation] for the defendant/claimant in counterclaim.