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

[2023] SGHC 124

Suit No 707 of 2018

Between

(1) Low Sing Khiang

… *Plaintiff*

And

(1) LogicMills Learning Centre Pte Ltd
(2) Seet Chuen Yee Eunice
(3) Mark Robert Nowacki

… *Defendants*

JUDGMENT

[Contract — Misrepresentation — Action for rescission]
[Contract — Misrepresentation — Innocent]
[Contract — Misrepresentation Act]
[Tort — Misrepresentation — Negligent misrepresentation]

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Low Sing Khiang
v
LogicMills Learning Centre Pte Ltd and others

[2023] SGHC 124

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5 May 2023 Judgment reserved.

Lee Seiu Kin J:

1 In this suit, the plaintiff claims that the second and third defendants had made to him misrepresentations pertaining to the curriculum offered by the first defendant company, inducing him to enter into a joint venture with it.

Facts

Parties to the dispute

2 The plaintiff, Low Sing Khiang ("Mr Low"), is a Singaporean businessman.[1]

3 The first defendant, LogicMills Learning Centre Pte Ltd ("LogicMills"), is a Singapore-incorporated company which provides educational support

[1] Statement of Claim (Amendment No. 2) ("SOC") at para 1; Defence (Amendment No. 4) ("Defence") at para 3.

services and enrichment courses.[2] The second defendant, Seet Chuen Yee Eunice ("Ms Seet"), and the third defendant, Mark Robert Nowacki ("Mr Nowacki"), are a married couple. They are both directors and shareholders of LogicMills.[3]

Discussions between Mr Low, Ms Seet and Mr Nowacki

4 It is undisputed that on or around 8 May 2014, Ms Seet and Mr Nowacki gave a presentation to Mr Low about enrichment programmes offered by LogicMills (the "8 May 2014 Meeting").[4] However, the parties disagree on what had been represented to Mr Low at this meeting.

5 Mr Low alleges that Ms Seet and Mr Nowacki represented to him that the enrichment programmes and curriculum offered by LogicMills were endorsed, validated and certified by the Ministry of Education, Singapore ("MOE") and that Ms Seet and Mr Nowacki had the necessary documentation from MOE in connection with this endorsement, validation and certification (the "Alleged Representations"). Mr Low also received LogicMills' marketing brochure (the "LogicMills Brochure") stating that programmes offered by LogicMills were "MOE-certified" and "Validated & Endorsed".[5]

6 However, the defendants aver that at the 8 May 2014 meeting, Ms Seet and Mr Nowacki had only informed Mr Low of LogicMills' track record and organisation structure and that LogicMills had been part of a MOE-funded research project which culminated in a report on "Explicit Teaching of

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2 SOC at para 2; Defence at para 3.

3 SOC at paras 3–4; Defence at para 3.

4 SOC at para 6; Defence at para 5.

5 SOC at paras 7–8.

Analytical Thinking Skills (ATS) through games-based facilitation for all courses (in Primary and Secondary schools) for higher academic achievement" (the "ATS Report"[6]).[7] While the defendants admit that Ms Seet and Mr Nowacki had provided Mr Low with presentation slides and marketing brochures of LogicMills, they aver that these materials did not state that there was an endorsement by MOE.[8]

LogicMills Academy Joint Venture

Agreement between Mr Low and LogicMills

7 It is not disputed that a shareholders agreement (the "SHA") dated 1 September 2014 was executed between Mr Low and LogicMills,[9] under which they agreed that:

(a) Mr Low and LogicMills would incorporate a joint venture company, LogicMills Academy ("LA") of 100,000 ordinary shares of S$1 each.

(b) LogicMills would transfer and assign all business activity in its private enrichment centre in Singapore to LA.

(c) Mr Low would contribute cash of S$70,000 for 70,000 ordinary shares in LA and a loan of S$30,000 for additional working capital.

(d) LogicMills would contribute cash of S$30,000 for 30,000 ordinary shares.

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6 Plaintiff's Bundle of Documents ("PB") at pp 315–347.

7 Defence at para 5(e).

8 Defence at para 7.

9 PB at pp 168–170.

(e) LogicMills would be entitled to one seat on the LA board of directors, and Mr Low or a person assigned by him would be a board member, and the board chairman.[10] Mr Low and Ms Seet were elected directors[11] with Mr Low as chairman.

8 It is also undisputed that Mr Low contributed $70,000 in return for 70,000 ordinary shares in LA.[12]

Alleged oral agreements between Mr Low and LogicMills

9 The parties disagree on the existence of two oral agreements (the "Oral Agreements"), which Mr Low says he had entered into with LogicMills.

10 First, Mr Low claims that he agreed to contribute an advance of $30,000 on LogicMills' behalf to the paid-up capital of LA so that LogicMills could obtain 30,000 ordinary shares in LA in accordance with the SHA ("the First Oral Agreement").[13] The defendants deny this and aver that they had verbally agreed that LogicMills would contribute assets for its 30% shareholding in LA in lieu of cash of $30,000.[14]

11 Second, sometime in or about December 2014, Mr Low claims that he agreed to temporarily fund LA on behalf of himself and LogicMills ("the Second Oral Agreement") in the form of directors' loans.[15] 30% of the loans

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10 SOC at para 14; Defence at para 12.

11 SOC at para 16; Defence at para 14.

12 Defence at para 13; SOC at para 15.

13 SOC at para 15.

14 Defence at para 13.

15 SOC at para 19 and 19(a).

would be contributed as advances on LogicMills' behalf and 70% would be Mr Low's own share.[16] These advances would be reimbursed to Mr Low once LA became profitable. Mr Low began by loaning $80,000 to LA on behalf of both shareholders and subsequently extended more director's loans to LA. His contributions pursuant to the Second Oral Agreement eventually came to a total of $577,625.[17] The defendants deny any agreement to advance monies on LogicMills' behalf and admit only that Mr Low had loaned $80,000 to LA.[18]

Events during LA's operations

12 Mr Low avers that during LA's operations, Ms Seet continued to represent that programmes and curriculum transferred from LogicMills to LA were certified, validated and endorsed by MOE.[19] Mr Low also avers that whenever he asked for proof of this, Ms Seet either ignored him or said there was an email from MOE authorising the use of such descriptions in the marketing materials. Mr Low never received this email.[20]

13 The defendants, however, aver that it was Mr Low who had instructed the staff of LA to market LA's programmes and curriculum as "MOE-certified" and "Validated & Endorsed".[21] They also aver that whenever Mr Low asked for proof of endorsement by MOE, Ms Seet and/or Mr Nowacki had responded that

16 SOC at para 19(a).

17 SOC at paras 19(b), 19(c) and 21–22.

18 Defence at paras 16, 20–20A.

19 SOC at paras 23–35; Reply at para 5(d).

20 SOC at paras 25–26.

21 Defence at para 22.

the term "endorse" should not be used[22] and Ms Seet had explained what it meant to be MOE-registered and validated.[23]

14 Towards the end of their partnership, Mr Low emailed Ms Seet and Mr Nowacki on 22 June 2016 to request a directors' meeting or an extraordinary general meeting to discuss (amongst other things) the next steps regarding the removal of references to MOE endorsement, validation and/or certification of LA's programmes from LA's materials. A directors' meeting was held on 20 July 2016. At the meeting, Ms Seet resigned by way of letter as director of LA with immediate effect and provided one month's notice of LogicMills' intention to terminate the SHA. Mr Low's solicitors then issued a letter dated 14 September 2016 (the "14 September 2016 Letter")[24] to LogicMills seeking reimbursement of sums loaned or advance by Mr Low on behalf of LogicMills, as well as giving LogicMills seven days to furnish a letter of proof of MOE certification, endorsement or validation of the curriculum of LogicMills and subsequently, LA.[25]

15 Mr Low claims that the parents of students enrolled in LA pulled their children out of LA's programmes, and he had to suspend LA's operations in or around December 2016.[26] The defendants aver that there is no written evidence of any child being pulled out of LA for any reason related to its offerings not being MOE-validated.[27]

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22 Defence at para 23.

23 Defence at para 23B.

24 Low Sing Khiang's affidavit of evidence in chief ("AEIC") at Tab 46 p 547–553 (Plaintiff's Bundle of AEICs ("BA") at pp 550–555).

25 SOC at paras 28–30; Defence at 24A, 24C and 24D; Reply at para 16C.

26 SOC at para 32; Low Sing Khiang's AEIC at para 159.

27 Defence at para 25.

16 It is undisputed that on 20 July 2016, Ms Seet resigned as director of LA and provided notice of LogicMills' intention to terminate the SHA.[28] Mr Low suspended LA's operations in or around December 2016.[29]

Parties' pleaded cases

17 Mr Low's position is that as the defendants did not respond to his 14 September 2016 Letter on the issue of MOE certification, endorsement and/or validation, the SHA was rescinded.[30] He avers that the Alleged Representations were false[31] and that the defendants had made the misrepresentations negligently or innocently, and that he is hence entitled to relief under s 2 Misrepresentation Act (Cap 390, 1994 Rev Ed) ("MA").[32]

18 As a result of the misrepresentations, Mr Low suffered loss and damage of $677,625[33], namely:

(a) $100,000 comprising:

(i) the cash payment for his 70,000 shares;

(ii) the advance of $30,000 as an advance on LogicMills' behalf pursuant to the First Oral Agreement;[34] and

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28 SOC at para 29; Defence at para 24C.

29 SOC at para 32.

30 SOC at paras 31 and 36.

31 SOC at paras 34 and 35.

32 SOC at para 37.

33 SOC at para 39.

34 SOC at para 15.

(b) $577,625 in director's loans pursuant to the Second Oral Agreement. This sum includes an $80,000 loan made to facilitate LA's shifting of its premises, and the remaining amount was contributed on Mr Nowacki's requests so that business operations could continue.[35]

19 Alternatively, Mr Low claims reimbursement of a debt of $203,287.50 from LogicMills. This sum comprises the advance of $30,000 made on LogicMills' behalf as paid-up capital of LA (pursuant to the First Oral Agreement) and the advances amounting to $173,287.50 paid on LogicMills' behalf as loans to LA (pursuant to the Second Oral Agreement).[36]

20 Further and in the alternative, Mr Low claims the same sum in damages on the ground that the defendants had breached and repudiated these Oral Agreements by not reimbursing the sum to him.[37]

21 Alternatively, Mr Low claims that LogicMills had been unjustly enriched at Mr Low's expense in its receipt of 30,000 ordinary shares in LA without making payment for them.[38]

22 Mr Low hence seeks the following reliefs:[39]

(a) a declaration that the SHA had been validly rescinded;

(b) alternatively, rescission of the SHA;

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35 SOC at paras 19–22.

36 SOC at para 40.

37 SOC at para 41.

38 SOC at para 42.

39 SOC at p 14.

(c) further or in lieu of rescission, damages in the sum of $677,625 pursuant to s 2 MA;

(d) alternatively, the sum of $203,287.50;

(e) further in the alternative, damages for LogicMills' breach of contracts in the sum of $203,287.50;

(f) alternatively, the sum of $30,000;

(g) interest; and

(h) costs.

23 The defendants deny that the Alleged Representations had been made. Mr Low had only been told that LogicMills was part of a MOE-funded research project, and Ms Seet and Mr Nowacki had repeatedly informed Mr Low that LA was not to be marketed as "endorsed" by MOE.[40] Rather, it was Mr Low who had instructed the staff of LA to market LA's programmes and curriculum as "MOE-certified" and "Validated & Endorsed".[41]

24 The defendants aver that Mr Low had colluded with his wife, Ms Erin Yuen ("Ms Yuen"), and others, to fabricate evidence of parents pulling their children out of LA on the grounds of a lack of MOE validation, to begin using a separate email domain without the defendants' knowledge and consent, and to breach key terms of the SHA pertaining to intellectual property, market segments and confidentiality of information.[42]

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40 Defence at paras 6–7, 22, 28.

41 Defence at para 22.

42 Defence at para 4A.

25 The defendants aver that they did not induce Mr Low to rely on the Alleged Representations, that Mr Low did not rely on it and that parents did not remove their children from LA due to the Alleged Representations.[43] They further aver that Mr Low had elected to affirm the SHA and is not entitled to rescind it, and further and/or alternatively, had waived any alleged right to rescind the SHA.[44]

26 The defendants also deny the existence of the First Oral Agreement and the Second Oral Agreement.[45]

The law on misrepresentation

27 In the contractual context, the elements of actionable misrepresentation are satisfied when a party relies on a false representation in entering the contract with the representor (*Strait Colonies Pte Ltd v SMRT Alpha Pte Ltd* [2018] 2 SLR 441 ("*Strait Colonies*") at [33]). As Mr Low has not pleaded any claim in fraudulent misrepresentation, the focus of the present case is on innocent misrepresentation under s 2 MA, as well as the tort of negligent misrepresentation, which have been alluded to in his statement of claim.[46]

28 Section 2(1) MA co-exists with the tort of negligent misrepresentation at common law. Both perform the same function, *ie*, to furnish a remedy in damages where none, apart from fraud or deceit, hitherto existed (*RBC Properties Pte Ltd v Defu Furniture Pte Ltd* [2015] 1 SLR 997 ("*RBC Properties*") at [66]). However, the remedy under s 2(1) MA is more restricted

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43 Defence at para 27.

44 Defence at paras 27B and 27C.

45 Defence at paras 13 and 16.

46 SOC at para 37.

in its application as it is an action in contract and therefore only available to one contracting party against another contracting party, whereas the tort of negligence applies to all cases where a claimant can establish a duty of care (*Trans-World (Aluminium) Ltd v Cornelder China (Singapore)* [2003] 3 SLR(R) 501 at [124]; *RBC Properties* at [66]).

29 Section 2 MA provides that:

> **2.**—(1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true.
>
> (2) Where a person has entered into a contract after a misrepresentation has been made to him otherwise than fraudulently, and he would be entitled, by reason of the misrepresentation, to rescind the contract, then, if it is claimed, in any proceedings arising out of the contract, that the contract ought to be or has been rescinded, the court or arbitrator may declare the contract subsisting and award damages in lieu of rescission, if of opinion that it would be equitable to do so, having regard to the nature of the misrepresentation and the loss that would be caused by it if the contract were upheld, as well as to the loss that rescission would cause to the other party.
>
> (3) Damages may be awarded against a person under subsection (2) whether or not he is liable to damages under subsection (1), but where he is so liable any award under subsection (2) shall be taken into account in assessing his liability under subsection (1).

30 To make out a claim of negligent misrepresentation, the following elements have to be satisfied (*IM Skaugen SE and another v MAN Diesel & Turbo SE and another* [2018] SGHC 123 at [121], *Ma Hongjin v Sim Eng Tong* [2021] SGHC 84 at [20], S*pandeck Engineering (S) Pte Ltd v Defence*

Science & Technology Agency [2007] 4 SLR(R) 100 ("*Spandeck*") at [77], [81], [83] and [115] and *Fong Maun Yee v Yoong Weng Ho Robert* [1997] 1 SLR (R) 751 at [52]):

(a) The defendant must have made a false representation of fact.

(b) The representation induced actual reliance.

(c) The defendant must owe a duty of care to the plaintiff to take reasonable care in making the representation.

(d) There must be a breach of that duty of care.

(e) The breach must have caused damage to the plaintiff.

31 In cases where s 2(1) MA applies, it is generally more advantageous for the claimant to pursue his claim in statutory misrepresentation rather than in tort, for two reasons. First, it is generally easier for a claimant to make out the elements of a claim in statutory misrepresentation, as opposed to the tort of negligent misrepresentation. This is because, for statutory misrepresentation, the burden is on the defendant/representor to prove he had reasonable grounds to believe and did believe up to the time the contract was made that the facts represented were true. Second, in certain circumstances, the remedy of damages under s 2 might be more extensive than the remedy in negligence (*RBC Properties* at [66]).

Preliminary issue: Claims against the defendants

Misrepresentation

32 Of the three defendants, only LogicMills is party to the SHA or the Oral Agreements, which Mr Low claims to have entered into in reliance on the

Alleged Representations. As mentioned above, the remedy under s 2(1) MA is only available to one contracting party against another contracting party. However, rather confusingly, Mr Low has pleaded that the defendants made the Alleged Representations "negligently or innocently" and that Mr Low will rely on s 2 MA for relief.[47] It is not entirely clear whether Mr Low is seeking to rely on statutory or negligent misrepresentation, and whether each of the two claims is brought against all three defendants.

33 To be clear, Mr Low's claim in statutory misrepresentation can only be brought against LogicMills, with whom he had entered into the SHA.

34 However, he can pursue a tortious claim of negligent misrepresentation against all three defendants – if he has pleaded it. The problem, however, is that save for the fleeting assertion that "the [defendants] made the misrepresentations negligently",[48] Mr Low has made absolutely no mention in his pleadings of how the defendants have behaved negligently. There is no mention of any duty of care owed to him by the defendants, or any breach of this same duty of care (see above at [30]). The state of Mr Low's pleadings is woefully insufficient to disclose the material facts that would support a claim in negligent misrepresentation, and the defendants would not have had fair notice (or, in fact, any notice at all) of such a case against them (see *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 ("*V Nithia*") at [38]–[46]). In light of the general rule that parties are bound by their pleadings and given that I see no reason in this case why this general rule ought to be departed from, I find that Mr Low's pleadings do not support a claim in

47 SOC at para 37.

48 SOC at para 37

negligent misrepresentation against any of the defendants. Mr Low's claim in misrepresentation can hence only be determined as a claim in innocent misrepresentation under s 2 MA.

Breach of contract and unjust enrichment

35 In the alternative, Mr Low has brought claims against the defendants in debts allegedly incurred pursuant to the Oral Agreements, as well as in unjust enrichment. I am of the view that these claims can be brought only against LogicMills as the SHA and alleged Oral Agreements were entered into between LogicMills and Mr Low. Further, the claim in unjust enrichment was pleaded specifically against LogicMills only.[49]

Alter ego

36 This effectively means that Mr Low's claims in misrepresentation, breach of contract and unjust enrichment can be brought only against LogicMills and not the other defendants. I note that Mr Low has pleaded that Ms Seet and Mr Nowacki are "collectively the directing mind and will" of LogicMills.[50] In his affidavit of evidence-in-chief ("AEIC"), Mr Low takes the position that "[Ms Seet and Mr Nowacki] are in complete control and are the alter egos of "LogicMills".[51] It is on the basis that Ms Seet and Mr Nowacki are the directing mind and will of LogicMills that Mr Low submits that they should be personally liable for LogicMills' liabilities.[52]

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49 SOC at para 42.

50 Plaintiff's Reply (Amendment No. 5) at para 3.

51 Low Sing Khiang's AEIC at para 223.

52 Plaintiff's Closing Submissions ("PCS") at para 177; Plaintiff's Reply Submissions ("PRS") at paras 167–170.

37 If Mr Low is trying to argue that LogicMills' corporate veil should be lifted as Ms Seet and Mr Nowacki are LogicMills' alter egos, then he is going *beyond* his pleaded case. The key question to be asked whenever an argument of alter ego is raised is whether the company is carrying on the business of its controller: *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 at [96]; *NEC Asia Pte Ltd (now known as NEC Pacific Pte Ltd) v Picket & Rail Asia Pacific Pte Ltd and others* [2011] 2 SLR 565 at [31]. In *Mohamed Shiyam v Tuff Offshore Engineering Services Pte Ltd* [2021] 5 SLR 188, the plaintiff applied to amend his statement of claim to join shareholders and directors of the defendant company on the basis (*inter alia*) that the defendant company's corporate veil should be lifted and the proposed new defendants made liable for sums under contracts between the plaintiff and defendant, as the proposed new defendants were the controlling mind and will of the defendant company and the defendant company was their alter ego (at [24(a)] and [43]). The court found that mere evidence of sole shareholding and control of a company would not be enough to make out the ground of alter ego: see (at [71] and [76]).

38 Mr Low's pleading that Ms Seet and Mr Nowacki are "collectively the directing mind and will" of LogicMills does not suffice to disclose material facts that would support an argument that they are the alter egos of LogicMills. It would take Ms Seet and Mr Nowacki by surprise if they were expected to meet such a case, especially as Mr Low's pleaded claims for an alleged debt of $203,287.50 and unjust enrichment were directed at LogicMills specifically: see *V Nithia* at [35].[53]

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[53] SOC at paras 40 and 42.

39 In any event, I do not think that Mr Low would have succeeded in piercing the corporate veil such that Ms Seet and Mr Nowacki can be held personally liable for any statutory misrepresentation that LogicMills may be liable for. As the defendants have highlighted in their written submissions,[54] this argument is simply not borne out by the available evidence.

40 As such, Mr Low's claims in contractual debt as well as in unjust enrichment can only be brought against LogicMills.

Issue 1: Statutory misrepresentation

Parties' submissions

41 Mr Low submits that Ms Seet and Mr Nowacki had made the Alleged Representations in the 8 May 2014 Meeting.[55] This is corroborated by the LogicMills Brochure, which Mr Low had been permitted by Ms Seet and Mr Nowacki to take from the LogicMills enrichment centre and which stated that LogicMills' programmes were "MOE-certified" and "Validated and Endorsed".[56] Moreover, the term "Validated & Endorsed" had been used in marketing materials for LogicMills.[57] Further, Mr Low had only received the ATS Report in or around October 2015 and hence would not have known from it that MOE did not make commercial endorsements.[58]

42 Mr Low submits that the Alleged Representations were untrue, as there was no email or certificate from MOE to validate, certify or endorse LogicMills

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54 Defendants' Closing Submissions ("DCS") at paras 822–828.

55 PCS at paras 27–33.

56 PCS at paras 34–39; PRS at paras 15–17, 25.

57 PCS at paras 40–50; PRS at paras 31–32.

58 PCS at paras 51–58; PRS at paras 43–48.

or LA's programmes or curriculum.[59] The certification of LogicMills as a private school and the ATS Report both did not amount to MOE validation, certification or endorsement of LogicMills' curriculum.[60]

43 Mr Low submits that the defendants were aware of the falsity of their Alleged Representations.[61] He also submits that he had suffered losses as parents of students enrolled in LA had withdrawn their children due to the lack of MOE validation, endorsement and certification and he had to suspend LA's operations in December 2016.[62]

44 On the other hand, the defendants contend that in the 8 May 2014 Meeting, they had told Mr Low that there was documentation to show that ATS was MOE-validated, namely, via the ATS Report,[63] which they say they had provided to Mr Low between 2012 and September 2014.[64] The defendants hence submit that there is no misrepresentation as they had only conveyed the objective truth that LogicMills' curriculum was MOE-validated.[65]

45 They submit that they had never claimed that ATS was MOE-certified and/or MOE-endorsed.[66] First, as a matter of policy, MOE would not formally endorse educational programmes not created by itself. Rather, the evidence of MOE's regard shows that the programme had been "endorsed in an ordinary-

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59 PCS at paras 68–71; PRS at paras 61–72.

60 PCS at paras 76–83, 84–92; PRS at paras 73–84.

61 PCS at paras 98–104; PRS at paras 89–95.

62 PCS at paras 105–118; PRS at paras 96–98.

63 DCS at paras 18, 47(2).

64 DCS at para 25.

65 DCS at paras 62–70, 137–138.

66 DCS at paras 18 and 23.

language, layman sense of the word".[67] Second, they take MOE-certified to refer to the approval by MOE of "institutions having a physical location"[68] or that LogicMills was a registered commercial school. Third, they submit that validation and endorsement did not necessarily entail certification and the three terms of "validation", "endorsement" and "certification" would not apply meaningfully across the board to all of LogicMills' programmes.[69]

Whether the Alleged Representations were made

46 I begin by saying that it is clear on the evidence that LogicMills had received certification of its private school status from MOE.[70] However, Mr Low's claim in misrepresentation lies in the validation, endorsement and/or certification of the *curriculum and programmes* of LogicMills[71] rather than the institution of LogicMills. I hence do not think the certification of LogicMills as a private school is relevant to the present dispute.

47 It is not disputed that if the Alleged Representations had been made, they would be untrue.[72] The defendants, however, contend that they had communicated something different. They argue that the words "validated", "endorsed" and "certified" cannot be understood as collectively amounting to a representation that the curriculum was MOE-approved. The defendants appear to consider the three terms separately, contending that what they had represented instead was that LogicMills' curriculum was MOE-*validated* but

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67 DCS at para 71.

68 DCS at para 24; DRS at para 29.

69 DRS at paras 29 and 39.

70 Defendants' Bundle of Documents ("DB") Vol 1 at p 126.

71 SOC at paras 7–8.

72 DCS at para 18.

not that it was *certified* or *endorsed*. By validation, they merely meant that MOE had positive regard for (as opposed to a formal endorsement of) LogicMills' ATS programme. The supporting documentation for this would be the ATS Report.[73]

48 I wish to make clear at this point (given that the defendants are unrepresented in this suit) that I am not making findings on the actual quality or strength of LogicMills' curriculum. I am called upon to make a finding of fact as to what exactly has been represented about LogicMills' curriculum and the veracity of that representation. As such, regardless of the defendants' suggested interpretation of the words "validated", "endorsed" and "certified", the real question at hand is the impression conveyed and whether the defendants reasonably believed that this was the impression conveyed. Given that there is no record of the Alleged Representations made at the 8 May 2014 Meeting, the best evidence we have as to the content of the Alleged Representations would be the PowerPoint slides used at the meeting (the "May 2014 Slide Deck")[74] and the LogicMills Brochure.

49 It is true that in the May 2014 Slide Deck, one of the slides titled "Validation of LogicMills Curriculum" makes reference to "[t]he Study and Findings" and cites the ATS Report.[75] However, on the evidence available, it does not appear that the representations made by the defendants stopped at merely saying that MOE had informally validated Logicmills' ATS programme or that this informal validation is supported only by the ATS Report.

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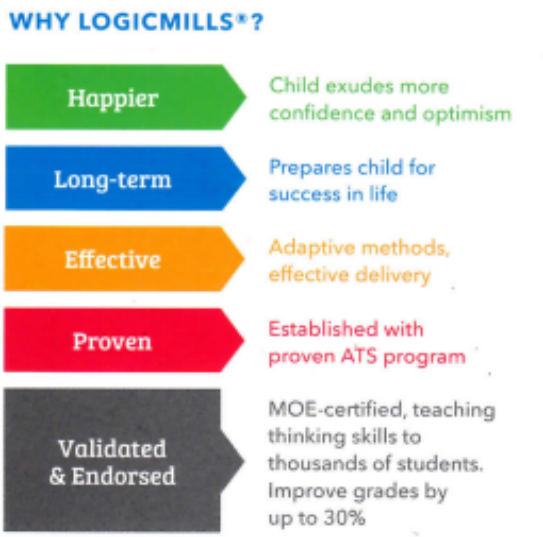
73 DCS at paras 5, 18, 47(2).

74 PB at pp 386–403.

75 PB at p 391.

50 First, the LogicMills Brochure contained the following infographic (the V&E Infographic)":[76]



The brochure also stated that "LogicMills is the only MOE-registered school in Singapore providing Analytical Thinking Skills (ATS) programmes inside Primary, Secondary and International schools" [emphasis in original omitted].[77]

51 It appears from the V&E Infographic that the curriculum had been "validated and endorsed" and "MOE-certified". I also note that the LogicMills Brochure mentions that the *school* is *MOE-registered*, which suggests to me that the term "certified" refers to the LogicMills' *curriculum* rather than to the registration of LogicMills as a private school. The concepts of validation, endorsement and certification would hence not be taken by a reasonable person as referring to discrete and disparate concepts; I do not find in favour of the

[76] Low Sing Khiang's AEIC at Tab 4 (BA at p 154).

[77] Low Sing Khiang's AEIC at Tab 4 (BA at p 158).

defendants' argument that they had only represented LogicMills' curriculum to be validated but not certified or endorsed by MOE.

52 Second, it appears to me that the defendants had reasonably believed that Mr Low understood the Alleged Representations to be that the curriculum had been formally validated, endorsed or certified by MOE. When Mr Low repeatedly asked for documentary support in the form of a certificate rather than the ATS Report, the defendants did not disavow it even though their position was that Mr Low had known from the start that their supporting documentation was the ATS Report.

53 On 12 March 2015,[78] Mr Low sent a Whatsapp group chat message specifically addressed to Ms Seet, saying:

> LM cirliculum [*sic*] is MOE certified
>
> Is there a certificate?

In response, Ms Seet stated:

> Moe registered and moe validated. (1) Registered is location based. (2) Validated is with our study with MOE for 7 schools. Have emails with MOE officials as to what is "approved" to put on website and materials re: improvement of grades.

54 On the stand, she conceded that there was no such certificate. When asked why she had not directly answered Mr Low's query as to whether there was a certificate, she replied that "I needed to understand what he was going to say first",[79] that it was 9.00am and she had four children, and also that it was not a good idea to say there was no certificate as he might then ask if there was a certificate for anything and there was indeed a certificate for MOE school

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78 DB Vol 1 at p 183; Low Sing Khiang's AEIC at para 140 (BA at p 53); PB at p 155.

79 Transcript of 17 November 2022 p 121 ln 10 to ln 15.

registration.[80] She further questioned why, if that query was so important, Mr Low had asked her about it in the middle of messages about logistics.[81]

55 That was not the only instance of Mr Low's request to see the certificate or any supporting documentation. On 16 September 2015, Mr Low again asked to be sent the email indicating MOE validation as he wished to have "proof when [customers] challenge us". Ms Seet agreed to do so.[82] It is to be noted that Ms Yuen had also messaged Ms Seet on 15 and 16 September 2015 to remind her to send the MOE email to Mr Low.[83] On 20 September 2015, Mr Low again queried about "the email for moe [*sic*]", and Ms Yuen sent yet another WhatsApp message reminding Ms Seet to send the "MOE validated email" to Mr Low.[84] On 30 September 2015, Mr Low emailed and stated that he was still waiting for "some form of document to confirm [that] we can use [this information].[85] Ms Seet did not reply to Mr Low's email.[86] On 1 October 2015, Mr Low asked both Ms Seet and Mr Nowacki via email for a copy of the MOE email stating that LogicMills had been validated either by certificate or email, to "protect the claim we put on advertisement".[87]

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80 Transcript of 17 November 2022 p 122 ln 18 to ln 26.

81 Transcript of 17 November 2022 p 123 ln 27 to ln 29.

82 DB Vol 1 pp 203–204; Low Sing Khiang's AEIC at para 145 (BA at p 55).

83 Low Sing Khiang's AEIC at para 144 and Tab 35 (BA at pp 54 and 487).

84 DB Vol 1 p 201; Low Sing Khiang's AEIC at paras 146–147 (BA at p 55).

85 DB Vol 1 p 210; Low Sing Khiang's AEIC at para 148 (BA at pp 55–56).

86 Transcript of 18 November 2022 p 38 ln 14.

87 DB at p 209; Low Sing Khiang's AEIC at para 149 (BA at p 56).

56 Ms Seet has acknowledged that she never sent the requested email to Mr Low.[88] When asked why she did not do so, she explained that:[89]

> Because I went home, thought about it. I might have discussed with my husband, and we decided that it wasn't a good idea to forward communication that … LogicMills Learning Centre had with MOE HQ.

Ms Seet also stated that she had told Mr Low that she would not provide him with the emails verbally but was not sure if Mr Low understood what she was trying to communicate.[90]

57 On 1 May 2016, Mr Low then sent a WhatsApp message telling Ms Seet that they had to talk about the issue of MOE validation and whether it should be removed; once more, she did not reply.[91] When on the stand, Ms Seet said she was away in Malaysia and on training.[92]

58 Ms Seet's multiple justifications for failing to reply directly or to send any supporting documentation to Mr Low – that she had been busy, that she had to understand his point first or that she had decided it was inappropriate to forward MOE's emails to him – manifest a high degree of evasiveness. Mr Low had made these requests repeatedly, and it was clear from his messages and emails that he did not think this documentation merely comprised the ATS report or was meant to be proof of mere informal validation, since he intended to use it in case customers decided to challenge LA. Despite multiple opportunities to do so, the defendants did not make any attempt to inform him

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88 Transcript of 18 November 2022 p 24 ln 20.

89 Transcript of 18 November 2022 p 26 ln 22 to ln 25.

90 Transcript of 18 November 2022 p 27 ln 16 to p 28 ln 7.

91 Low Sing Khiang's AEIC at para 150 (BA at p 56).

92 Transcript of 18 November 2022 p 39 ln 1 to ln 17.

that no formal validation from MOE existed. Ms Seet claims that she made a single attempt to verbally inform Mr Low that she would not be sending him the email. However, their subsequent written communications suggest that Mr Low did not think the email would be withheld from him, and Ms Seet and Mr Nowacki did not endeavour to tell him otherwise. The communications between Mr Low and Ms Seet suggest that the defendants were aware that Mr Low understood the representations made to him as pertaining to more than just informal MOE validation. The evidence shows that Ms Seet and Mr Nowacki were aware that Mr Low was under the impression that there was such a certificate.

Whether the defendants had reasonable grounds for believing the representations to be true

59 Having found that the representations made were indeed the Alleged Representations relied on by Mr Low, I proceed to consider the statutory defence afforded in s 2 MA – whether the defendants had reasonable grounds to believe that the Alleged Representations were true. As mentioned above, the defendants do not dispute that MOE does not have the power to formally validate, endorse or certify curriculums, and this is hence a moot question.

60 On top of that, Mr Nowacki and Ms Seet had been in email communications with two persons from MOE between October to November 2012 – one Mr Nick Tan, an Inspector at the Private Schools Section of the Higher Education Division, and one Mrs Chua-Lim Yen Ching ("Mrs Chua-Lim"), the Director of the Curriculum Planning and Development Division.[93] The email correspondence appears to pertain to the updating of LogicMills' school information.

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93 DB Vol 1 at pp 130–154.

61 On 1 November 2012, Mr Nick Tan made clear that even though Mr Nowacki had worked with MOE's schools, collated data and conducted studies, doing so did not allow him to use and term the information as a "MOE-documented survey" on LogicMills' website. Mr Nick Tan asked Mr Nowacki to remove the words "MOE-documented survey" and to refrain from using MOE in any future advertising or information on websites and/or brochures.[94]

62 On 2 November 2012, Mr Nowacki responded to Mr Nick Tan's email (with Mrs Chua-Lim copied), saying that it was understood that there was no question of MOE officially endorsing a particular vendor. He stated that he had had a phone call with Mrs Chua-Lim and asked Mr Nick Tan to hold off on the matter of the website information while Mrs Chua-Lim was looking at the information Mr Nowacki would be sending her.[95] Later the same day, Mr Nowacki emailed Mrs Chua-Lim and suggested various ways of citing the ATS Report instead of as a "MOE-documented survey". Mrs Chua-Lim stated that she would look into it and get back to him.[96]

63 On 6 November 2012, Mr Nick Tan responded that:[97]

> We have consulted Mrs Chua-Lim Yen Ching and our colleagues at MOE and have no objections to the survey being named "The Explicit Teaching of Analytical Thinking Skills Through Games-Based Facilitation for All Courses (in Primary and Secondary Schools) for Higher Academic Achievement", which should better reflect the information published on your website. Please remove the words "MOE-documented survey" and "PSLE".

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94 DB Vol 1 at pp 131–133.

95 DB Vol 1 at p 132.

96 DB Vol 1 at pp 152–154.

97 DB Vol 1 at p 131.

64 It appears that MOE had communicated its clear position that the ATS Report was not to be referred to as MOE-documented. On the stand, Mr Nowacki initially suggested that the defendants had fully complied with MOE's directions since they had changed the name of the ATS Report and did not hear back from MOE thereafter.[98] I am unpersuaded by this, especially in light of the evidence by an ex-employee of LogicMills that LogicMills had continued to represent itself as MOE-validated, endorsed, and certified on its website and brochures in 2013.[99] Moreover, such a representation was indeed present in the form of the V&E Infographic used in LogicMills' brochures.

65 This was pointed out to Mr Nowacki during cross-examination, at which point Mr Nowacki suggested that Mr Nick Tan had "overstepped his authority" and that he did not clarify this with Mr Nick Tan as he did not wish to make Mr Nick Tan "lose face in front of his boss".[100] I am unable to accept this explanation. First, there is simply no evidence of Mr Nowacki's purported belief that Mr Nick Tan had overstepped his authority. The evidence, in fact, suggests the opposite. Mr Nowacki had responded to Mr Nick Tan's email of 6 November 2012, saying that the email was "helpful", that he was grateful for the "kind input" from Mrs Chua-Lim and asking for "a bit of time to loop this through our web person".[101] Mr Nowacki's response, in fact, appears to suggest that he had understood and intended for LogicMills to comply with Mr Nick Tan's directions. Further and more importantly, even if I accept Mr Nowacki's evidence that he believed Mr Nick Tan to have overstepped his authority, it must mean that Mr Nowacki had not complied with the supposedly

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98 Transcript of 26 August 2022 at p 50 ln 1 to ln 9.

99 Lee Rui Xiong's AEIC at paras 12–13; BA at pp 746–747.

100 Transcript of 26 August 2022 p 49 ln 23 to p 51 ln 11.

101 DB Vol 1 at p 131.

unauthorised instructions given by Mr Nick Tan in the first place. There are hence no reasonable grounds for the defendants to believe that the Alleged Representations were true.

Reliance on the Alleged Representations

66 Mr Low submits that the Alleged Representations were an important consideration for him in deciding whether to participate in the business venture with LogicMills, as MOE certification, validation and endorsement would be an "overriding consideration" to students and parents in the Singapore market and would be important in marketing the programmes and curriculums in his desired end-market, China.[102]

67 It is clear that Mr Low had relied on the Alleged Representations in entering into the SHA. This can be seen from how the V&E Infographic was reproduced – and, in fact, actively promogulated – in the marketing of LA.[103] A hot stamp image (the "Hot Stamp") stating "Validated by MOE" was also designed:

The Hot Stamp was used on LA's flyers and the feature wall of its premises.[104]

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102 PCS at para 59.

103 Lee Rui Xiong's affidavit at para 13 (BA at p 747), Zhang Kuanyuan Zechariah's AEIC at para 18.

104 Lee Rui Xiong's AEIC at paras 24–26 and Tabs 5 and 7 (BA at pp 749–750, 821, 837, 846 and 863); Zhang Kuanyuan Zechariah's AEIC at para 21 (BA at p 961).

68 Mr Low submits that Ms Seet was responsible for the said depictions as to MOE validation, endorsement and/or certification of LogicMills and LA's programmes and curriculums,[105] while the defendants contend that Mr Low was very much involved in and controlled the marketing and promotion materials of LA.[106] I consider this emphasis on who was responsible for LA's marketing to be misplaced.

69 With respect to the marketing of *LogicMills*, Mr Nowacki acknowledged that he had approved the V&E Infographic, which a marketing consulting firm had designed for LogicMills.[107] With respect to the marketing of *LA*, it does not matter whether Mr Low or Ms Seet had the final say in marketing. The evidence suggests that both Ms Seet and Mr Low had sight of the Hot Stamp, and both were, at the very least, accepting of its usage in LA's marketing.[108]

70 In any event, even if Mr Low had been in charge of approving the marketing materials, the point is that he had relied on the Alleged Representations with respect to LogicMills' curriculum in entering the SHA to set up LA, which is why he would now seek to market LA's curriculum as MOE-validated. I hence find that Mr Low has established his reliance on the Alleged Representations.

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105 PCS at paras 40–50.

106 Transcript of 22 November 22 p 141 ln 13 to ln 18; Seet Chuen Yee Eunice's AEIC at paras 14–16 (BA at p 1992); DCS at paras 272, 291 and 842; DRS at para 40.

107 Transcript of 17 November 2022 at p 81 ln 23 to ln 32; Lee Rui Xiong's AEIC at para 10 and Tab 2 (BA at pp 745–746,792).

108 Lee Rui Xiong's AEIC at para 22 and Tab 6 (BA at p 749, 857–858); DB Vol 2 at pp 61, 63–64.

Loss and damage

71 Mr Low submits that he had suffered losses as parents of students enrolled in LA had withdrawn their students due to the lack of MOE validation, endorsement and certification, and he had to suspend LA's operations in December 2016.[109] His evidence was that about 56 students had withdrawn in consequence of being notified that LA's programmes were not MOE-validated, although he was not certain of the exact number.[110]

72 Mr Low's case is supported firstly by the documentary evidence of fourteen students refunded by way of five cheques. Ms Karen Lee Mei Lan, an administrative manager at LA between 2014 and January 2017,[111] testified that she had helped to fill in the cheques, and these refunds were made to parents who had paid via credit cards. The cheques were issued to the bank, which would then process refunds to the parents in question.[112] The defendants took issue with the veracity of these cheques and sought for the cheque stubs and cheque images[113] to be retrieved. This was done, and, having considered the evidence put before me, I do not find any reason to suspect the authenticity of these cheques or of the refunds made.

73 In any event, Mr Low has also furnished witness evidence from two parents of LA's ex-students. Ms Zhu Xiaohong's affidavit evidence was that after being notified by Ms Yuen that LA's programmes were not MOE-validated, endorsed or certified, she decided not to renew the lesson packages

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109 PCS at paras 105–118.

110 Transcript of 16 August 2022 p 96 ln 3 to p 108 ln 8.

111 Transcript of 24 August 2022 p 2 ln 21 to ln 30.

112 Transcript of 24 August 2022 p 28 ln 18 to p 31 ln 9.

113 See HC/SUM 2593/2022; HC/ORC 3893/2022; 1PE to 10PE.

for her two sons after their pre-existing packages came to an end in 2016. She also emailed LA asking why the programmes were not MOE-validated as she had previously been told.[114] Ms Soh Lay Khim also stated that she was disappointed to hear from Ms Yuen in November or December 2016 that LA's programmes and curriculum were not MOE-validated and did not see the point of paying the high fees for her son to continue attending the courses. She hence made a joint decision with her husband to email stating that she was discontinuing her son's enrolment as the courses were not MOE-validated.[115]

74 The evidence of both witnesses was unchallenged. The defendants have submitted that Ms Yuen had instigated Ms Soh and her husband's email to LA.[116] However, when she took the stand, there was nothing to shake her evidence that she had withdrawn her son from LA because she had discovered that LA's curriculum was not MOE-validated.

75 The defendants also appear to take issue with the fact that Ms Yuen had provided an email address under the domain name "academy.sg" for Ms Soh Lay Khim and Ms Zhu Xiaohong to write to. They say that the usual email address used for communications with LA was a different one under the domain name "logicmills.com"[117] and that Ms Yuen had instigated parents to write to the "academy.sg" email address.[118] However, this is irrelevant to the question of whether Ms Zhu Xiaohong and Ms Soh Lay Khim had opted to withdraw their

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114 Zhu Xiaohong's AEIC at paras 16 and 19, pp 18–19 (BA pp 938–939, 953–954).

115 Soh Lay Khim's AEIC at paras 12–13 (BA pp 890–891); Transcript of 19 August 2022 p 105 ln 10 to p 108 ln 5.

116 DCS at para 883.

117 Transcript of 19 August 2022 p 107 ln 12 to ln 14; Transcript of 18 August 2022 p 18 ln 9 to ln 22; DCS at paras 311, 873–874 and 884.

118 DRS at para 87(4).

children from LA as a result of their realising that its curriculum was not MOE-validated.

76 On the totality of the evidence available, I hence find that Mr Low had suffered loss and damage as LA's students had withdrawn from LA's courses after learning that its curriculum was not in fact MOE-validated, endorsed or certified.

Summary of findings

77 In essence, Mr Low's claim of statutory misrepresentation can be made out against LogicMills.

Issue 2: Relief available to Mr Low

Rescission of the SHA

78 Broadly, rescission entails restoring not only the rescinding party but also the counterparty to its pre-contractual position: *CDX and another v CDZ and another* [2021] 5 SLR 405 ("*CDX*") at [51]. There are two forms of recission – in common law and in equity. The remedy of common law rescission is not applicable here as it is available only if the contract is induced by fraudulent misrepresentation (*CDX* at [52]). However, equitable rescission is available as a remedy for contracts induced by negligent or innocent misrepresentation (*CDX* at [55]).

79 Unlike common law rescission, which requires precise and complete *restitutio in integrum* (*ie*, a precise and complete reversal of benefits exchanged under a rescinded contract), equitable rescission only requires substantial *restitutio in integrum* (*ie*, that practical justice can be done in restoring the misrepresentee and misrepresentor to their pre-contractual positions). Equitable

rescission can be supplemented by other equitable remedies such as a taking of an account or an equitable indemnity to make a representee whole for the losses it has suffered or will suffer in the performance of its obligations under the rescinded contract (*CDX* at [54]–[56]).

80 Mr Low avers that he had rescinded the SHA by the 14 September 2016 Letter.[119] The 14 September 2016 Letter noted that on 20 July 2016, Ms Seet had tendered her resignation as director of LA and sent a letter to Mr Low to give notice of LogicMills' intention to terminate the SHA. Mr Low sought in the 14 September 2016 Letter the return of 30% of the directors' loans which Mr Low had provided to LA on behalf of himself and LogicMills, as well as the $30,000 due under the SHA as LogicMills' consideration for 30% equity in LA.

81 On the totality of the evidence available, I find that Mr Low is entitled to and has rescinded the SHA on 14 September 2016.

82 The defendants contend that Mr Low had affirmed the SHA, and hence rescission was no longer open to him. A binding election to affirm the agreement can be express or implied, and requires the injured party to communicate his choice to the other party in clear and unequivocal terms (*Jurong Town Corp v Wishing Star Ltd* [2005] 3 SLR(R) 283 at [171], cited in *Strait Colonies* at [42]). I do not think any such clear and unequivocal communication of a decision to affirm the agreement was made. On the contrary, the 14 September 2016 Letter clearly sought the return of monies paid pursuant to the SHA.

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119 SOC at para 31; PB at pp 102–107.

83 It also appears from the evidence that LA's business operations were suspended in end-2016. While the defendants aver that Mr Low voted at LA's Annual General Meetings ("AGM") in 2017,[120] Mr Low expressly mentioned at the AGM of 16 November 2017 that the suspension was to continue till there was a further update on the MOE validation of LogicMills' programmes.[121] Moreover, regardless of whether the SHA had been rescinded, as Mr Low highlights in his affidavit, he was still obliged as a director to hold the AGMs pursuant to the Companies Act.[122] Mr Nowacki has also acknowledged that based on the minutes of an earlier AGM conducted on 21 April 2017, there was no discussion of business in 2017.[123] The continuance of Mr Low's participation at LA's AGM hence does not evince any affirmation of the SHA on his part. Also, while the defendants also submit that Mr Low should have wound up LA if he had rescinded the SHA,[124] the failure to wind up LA also did not amount to a clear and unequivocal affirmation.

84 The defendants also take issue, again, with Mr Low's registration and use of the "academy.sg" domain in August 2016 without the defendants' knowledge (see above at [75]). The crux of their submissions is that rescission was not on Mr Low's mind at the material time and that he had intended to carry on LA's business and to continue using LogicMills' intellectual property without LogicMills' knowledge.[125]

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120 Defence at para 27B(b).

121 PB at p 542.

122 Low Sing Khiang's AEIC at paras 183–184 (BA at pp 68–69).

123 Transcript of 29 August 2022 at p 55 ln 22 to ln 24.

124 DCS at para 300.

125 DCS at paras 311–314, 934–940.

85 I reserve my comments on LogicMills' intellectual property as it is not fully relevant to whether Mr Low had rescinded the SHA or not. I only note that if the SHA was indeed rescinded, then LogicMills' assignment of rights and intellectual properties pertaining to its products under cl 7 of the SHA is one of the items that would have to be dealt with to restore parties to their pre-contractual positions substantially.

86 With respect to whether Mr Low's registration of the "academy.sg" domain in 2016 suggests that he had intended to carry on LA's business, the setting up of a domain alone is insufficient to suggest this, especially when there is nothing to contradict Mr Low's pleaded case that LA's operations were suspended by the end of 2016.

87 For completeness, while Mr Low seeks to rely on Mr Nowacki's email, where he considered the SHA to have been rescinded on 31 July 2017,[126] I attribute little weight to this particular email in light of Mr Nowacki's lack of professional legal advice or knowledge of the legal difference between the rescission of a contract versus termination.[127] In any event, the remaining evidence suffices to show Mr Low's clear expression of his intent to rescind the SHA, made within a reasonable frame of time.

88 I hence grant Mr Low's prayer for a declaration that the SHA had been validly rescinded. The next question is what must be done to substantially restore parties to their pre-contractual positions. I am of the view that LogicMills is entitled to have the shares held by Mr Low in LA transferred back to LogicMills. However, as it is not clear whether LA is still a going concern or

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126 PCS at para 162.

127 DCS at paras 315–316.

has any value (which may affect the remedy available to Mr Low), Mr Low has liberty to apply for orders in this regard.

Damages

89 Mr Low also pleads that he had suffered loss and damage (specifically, $577,625 pursuant to the Second Oral Agreement) due to the misrepresentations as he would not have funded LA's operations through directors' loans if not for the false representations made to him.[128] The defendants, however, argue that while Mr Low did loan monies to LA, they were unable to verify the amounts of money which he had put in or taken out.[129]

90 I begin by noting that at this point, there is no need for me to determine whether the Second Oral Agreement was indeed entered into. It would suffice for Mr Low to establish that he has expended the sum of $577,625 as a result of his entry into the SHA after the Alleged Representations had been made to him.

91 I find, on a balance of probabilities, that Mr Low had provided the sum of $577,625 to LA. He is hence entitled to this sum of $577,625 as damages suffered due to the misrepresentation.

92 Mr Low furnishes three sets of documents to establish that he had made director's loans totalling $577,625.[130] First, he relies on LA's general ledger dated up to 30 May 2017 (the "LA General Ledger"). The LA General Ledger also reflects credited payments amounting to $577,625.39.[131] Second, he relies

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128 SOC at para 39.

129 DCS at para 372.

130 Low Sing Khiang's AEIC at paras 69–71, Tabs 13, 15 and 16 (BA at pp 28, 277–343, 349–403).

131 BA at p 350.

on LA's financial statements. The financial statement for the year ended 30 September 2017 (the "FY2017 Financial Statement") specifies that an amount of $577,625 is due to a director of the company.[132]

93 Finally, Mr Low relies on copies of LA's bank statements (the "DBS Bank Statements") dated from 31 October 2014 to 31 January 2017. The DBS Bank Statements display multiple transactions crediting sums of money into LA's account between 31 October 2014 and 31 January 2017, many of which are recorded in the LA General Ledger as well. I hence consider the DBS Bank Statements to corroborate the presence of Mr Low's transfers of monies to LA. As the parties focus more on the LA General Ledger and financial statements in their submissions, and as the sum of $577,625 that Mr Low is claiming for is laid out in these two types of documents, I will proceed to consider their arguments with respect to these two types of documents.

94 Mr Low has exhibited financial statements for the financial years of 2015, 2016 and 2017 (collectively, the "Financial Statements"). The financial statement for the year ended 30 September 2015 (the "FY2015 Financial Statement") reflects that the amount of $301,528 was due to a director.[133] The financial statement for the year ended 30 September 2016 reflects that the amount due to a director had increased to $499,879.[134] Finally, the FY2017 Financial Statement specifies that a sum of $577,625 is an "[a]mount due to

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132 BA at p 338.

133 BA at p 292.

134 BA at p 315.

director".[135] Mr Low's pleadings vis-à-vis the Second Oral Agreement expressly rely on the FY2017 Financial Statement.[136]

95 The defendants' pleadings pertaining to the Financial Statements seem to focus on the authenticity of the FY2015 Financial Statement specifically.[137] They submit that Ms Seet's signature on the FY2015 Financial Statement was not truly hers,[138] the audit of the same FY2015 Financial Statement had failed to comply with statutory requirements[139] and the audit documentation had been tampered with.[140] That being said, they also argue that "[o]nce the balance sheet for FY2015 is wrong, it affects all succeeding years".[141]

96 To be very clear, my findings, at the end of the day, will have to be concerned with the authenticity of the FY2017 Financial Statement, since that is the statement relied on as evidence of the loan of $577,625 by Mr Low. However, the defendants' submissions on the FY2015 Financial Statement do bear some relevance to my findings on the FY2017 Financial Statement. If the defendants succeed in establishing that the FY2015 Financial Statement and the auditing of it had been doctored, then they can possibly have a case against the authenticity of subsequent financial documentation, such as the FY2017 Financial Statement.

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135 BA at p 338.

136 SOC at para 22.

137 Defence at para 24B.

138 DCS at paras 29–30.

139 DCS at para 528.

140 DCS at para 533–534, 556.

141 DRS at para 117.

97 In response to the defendants' disputing the authenticity of the Financial Statements, I granted leave for Mr Low to adduce rebuttal evidence pertaining to the auditing performed on the FY2015 Financial Statement from the auditors, Ark Alliance LLP.[142] Mr Tan Chong Hiang, a partner of Ark Alliance LLP, was called as a witness to testify on the audit of the FY2015 Financial Statement.[143] Mr Tan's evidence was that the FY2015 Financial Statement had been audited in accordance with Singapore's auditing standards.[144] While the defendants attempted from multiple angles – including an examination of Ms Seet's signatures and an examination into the loss of the audit work plan due to a server crash – to contest the integrity and quality of the audit,[145] their lines of inquiry turned out to be largely speculative. I do not think that they were able to prove on a balance of probabilities that Ms Seet's signature had been forged, or that the auditors had been acting in concert with and rendering assistance to Mr Low.[146]

98 Therefore, Mr Low is entitled to damages arising from the Misrepresentations under s 2(1) MA. It is hornbook law that damages, being compensatory in nature, should put the injured party in the same position it would have been in had the wrong not been committed (*Main-Line Corporate Holdings Ltd* v *United Overseas Bank Ltd and another* [2017] 3 SLR 901 at [63]; James Edelman, *McGregor on Damages* (Sweet & Maxwell, 21st Ed, 2021) at 2-003, citing *Livingstone v Rawyards Co* (1880) 5 App Cas 25 at 39).

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142 Transcript of 29 August 2022 p 33 ln 26 to p 42 ln 2.

143 Tan Chong Hiang's AEIC at paras 1, 4.

144 Tan Chong Hiang's AEIC at para 52.

145 Transcript of 15 November 2022 p 45 ln 7 to ln 18; p 46 ln 3 to p 60 ln 26; p 89 ln 3 to p 90 ln 14.

146 DCS at paras 536–538.

Had the Alleged Representations not been made, Mr Low would not have decided to provide financial support to LA. LogicMills is hence to return the sum of $577,625 to Mr Low.

Oral Agreements

99 In light of my findings above on rescission and damages, there is no need for me to consider the issue of the First Oral Agreement and the Second Oral Agreement, as these are events which occur consequent to Mr Low entering into the SHA. For completeness, however, I briefly consider the parties' claims and arguments with respect to these two Oral Agreements.

100 Firstly, Mr Low claims that he had advanced $30,000 on behalf of LogicMills pursuant to the First Oral Agreement so that LogicMills could receive its 30% shareholding in LA.[147] The defendants say, instead, that LogicMills had contributed assets in kind in return for its 30% shareholding.[148]

101 I find the evidence available insufficient to establish the existence of the First Oral Agreement. Clause 4 of the SHA provides that Mr Low was to contribute $70,000 for 70% shares and $30,000 as a loan for working capital.[149] Mr Low has acknowledged that there is no evidence of a $30,000 loan from him to LogicMills for the 30,000 shares.[150] Mr Low's case, instead, is that the SHA, which was signed in October 2014, had been backdated to 1 September 2014. This was so that LA could bear LogicMills' costs and expenses for the month of September 2014, such that about $32,000 would be provided in consideration

147 SOC at paras 15, 40(a) and 42; PCS at paras 9(a), 10(a) and 12.

148 DCS at para 347.

149 PB at p 168.

150 Transcript of 19 August 2022 p 51 ln 15 to ln 19.

for the assets which LogicMills had transferred to LA's premises. In other words, LogicMills could not have provided assets in return for its 30% shareholding as a separate arrangement of backdating the SHA had been used to pay for LogicMills' transferred assets.[151]

102 However, as Mr Low acknowledged, this backdating arrangement was never mentioned in the SHA.[152] More importantly, LA eventually issued the 30% shares to LogicMills without LogicMills making any direct payment of $30,000.[153] Therefore, even if I were to take Mr Low's case at its highest, it would be LA which LogicMills owes $30,000. Mr Low's loan was provided to LA, and he does not have a claim against LogicMills for the alleged advance of $30,000.

103 Next, Mr Low also claims for $577,625, which he says he had contributed as director's loans to sustain LA's business operations, pursuant to the Second Oral Agreement.[154] The defendants submit that there is also no evidence of a second Oral Agreement.[155]

104 Mr Low relies on LA's letter of undertaking dated 25 March 2016 to Ark Alliance LLP, in which both Mr Low and LogicMills undertook to provide financial support to LA as and when required to meet LA's obligations when they fell due and to defray all expenses incidental to running the business.[156]

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151 Transcript of 19 August 2022 p 21 ln 29 to p 25 ln 26.

152 Transcript of 19 August 2022 p 26 ln 4 to ln 20.

153 Transcript of 19 August 2022 p 51 ln 6 to p 52 ln 1.

154 PCS at para 9.

155 DCS at para 372.

156 PCS at para 133.

Mr Low also contends that LogicMills had asked him to confirm with Ark Alliance LLP that it owed Mr Low $301,528.42 as at 30 September 2015.[157]

105 Mr Nowacki, however, took the position that this was merely a letter of comfort required to secure approval for audits, as it would assure the auditors that Mr Low would not call on his debts against LA right away. Mr Nowacki was then questioned on why the letter was not worded so as to say that Mr Low – as opposed to *all* shareholders – would be the one providing financial support. Mr Nowacki responded that it came down to the intentions of Mr Low, to which he was not privy.[158] It was then put to Mr Nowacki that the letter was consistent with Mr Low's obligation to provide cash injections proportionate to his shareholding to sustain LA. In response, Mr Nowacki stated:

> First, there is no such mention of anything like proportional bearing of cash injections in this three-line document. However, if you ask me just formally speaking, would this be consistent in general with both sides putting in cash, yes, it's consistent with both sides putting in cash as well as just one side or neither side choosing to put in cash. That's the nature of a letter of comfort, Mr Lye.[159]

106 I do not find this to be a coherent explanation of the letter of undertaking. More importantly, it is inconsistent with the fact that Mr Nowacki had subsequently sent Mr Low a letter dated 25 March 2016 stating that the undertaking to provide financial support for LA was withdrawn. I note that Mr Nowacki did not concede that the undertaking had conferred any financial obligation on LogicMills to finance LA. Rather, his position was that the letter dated 25 March 2016 was just to express his disavowment *in case* the

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157 PCS at para 134.

158 Transcript of 29 August 2022 p 14 ln 7 to p 15 ln 9.

159 Transcript of 29 August 2022 p 15 ln 10 to ln 22.

undertaking was construed as creating any obligations.[160] However, taking the evidence in its totality, the letter of undertaking and the letter of 25 March 2016 appear consistent with the purported Second Oral Agreement for shareholders to contribute proportionately, and this is further supported by the evidence in the Financial Statements and the LA General Ledger of Mr Low making such contributions to LA.

107 In the absence of evidence to the contrary, it is hence more likely that the Second Oral Agreement existed than that the letter of undertaking was a letter of comfort which was inexplicably poorly worded or that LogicMills' withdrawal from said undertaking was merely done in abundance of caution. As such, Mr Low is entitled to the sum of $577,625 as damages pursuant to the Second Oral Agreement.

108 There are, however, two limitations or difficulties to any claim Mr Low may be entitled to with respect to the Second Oral Agreement:

(a) Mr Low has not pleaded for rescission of the Second Oral Agreement, but instead claims reimbursement of the advances made (amounting to $173,287.50) by way of debt, or damages of $173,287.50, on the grounds that the defendants had breached and repudiated the Second Oral Agreement in refusing to reimburse the same sum to him.[161] This would not entitle him to the full sum of $577,625.

(b) Another spanner thrown into the works of this claim is that pursuant to the Second Oral Agreement, the advances he had paid on behalf of LogicMills would be reimbursed back to Mr Low only when

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160 Transcript of 29 August 2022 p 16 ln 25 to p 18 ln 18.

161 SOC at para 40.

LA became profitable.[162] It appears from the Financial Statements that LA had consistently been making losses.

109 However, as I have found that LogicMills is liable to Mr Low for $577,625 in damages for statutory misrepresentation, I do not need to further consider these limitations to Mr Low's alternative claims.

Conclusion

110 In summary, I find that:

(a) LogicMills is liable to Mr Low for innocent misrepresentation under s 2 MA.

(b) Ms Seet and Mr Nowacki are not personally liable to Mr Low as there is no claim made against them in negligent misrepresentation in the statement of claim. Therefore, Mr Low's claims against them are dismissed.

(c) Mr Low has validly rescinded the SHA, such that LogicMills is entitled to have the shares held by Mr Low in LA transferred back to LogicMills.

(d) LogicMills is liable to Mr Low for the sum of $577,625 in damages.

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162 Low Sing Khiang's AEIC at para 65(b) (BA at p 27).

111 I will hear parties on costs.

Lee Seiu Kin
Judge of the High Court

Raymond Lye and Ooi Jian Yuan (Union Law LLP) for the claimant;
The third defendant represented the first defendant;
The second and third defendants in person.