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

[2023] SGHC 344

Originating Claim No 77 of 2022

Between

Lam Wing Yee Jane

… *Claimant*

And

Realstar Premier Group Private Limited

… *Defendant*

JUDGMENT

[Tort — Misrepresentation — Negligent misrepresentation]
[Tort — Vicarious liability]

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Lam Wing Yee Jane
v
Realstar Premier Group Pte Ltd

[2023] SGHC 344

General Division of the High Court — Originating Claim No 77 of 2022
Lai Siu Chiu SJ
2 October, 9 November 2023

5 December 2023 Judgment reserved.

Lai Siu Chiu SJ:

Introduction

1 This case spins a tale of trust shattered and expectations dashed in a newly engaged woman's quest for her dream family home. At the heart of the matter lies the following question: should a property agent be held responsible for carelessly passing on marketing brochures from the seller that the buyer claims painted a false picture of the property's true redevelopment potential?

2 In answering this question, we must weigh the scales of trust against the cold, hard duties as imposed by the law. Was the property agent merely a messenger who delivered flawed news he did not write, or did he cross the line into carelessness, not ensuring that the tales told in those glossy brochures matched reality?

3 I begin with the facts.

Facts

The parties

4 Ms Lam Wing Yee Jane is the claimant. She is the purchaser of the property known as 12 Lewis Road, Singapore 258598 (the "Property"). Mr Lam Kong Yin Patrick ("Mr Lam") is the claimant's father. Where appropriate, I collectively refer to the claimant and Mr Lam as the "Lams".

5 The defendant, Realstar Premier Group Private Limited, is a real estate agency company incorporated in Singapore with its registered address at 186 Bukit Timah Road, Singapore 229855.

6 Mr Teo Eng Siong ("Mr Teo"), who also goes by the name of "Darren", is registered as a real estate salesperson with the defendant real estate agency and is its Director of Business Development.[1] It is undisputed that Mr Teo is a "salesperson" under the Estate Agents Act 2010 (2020 Rev Ed)[2] and that he had to comply with the Code of Ethics and Professional Client Care set out in the First Schedule of the Estate Agents (Estate Agency Work) Regulations 2010 (the "Code").[3]

7 Mr Tan Seng Heng Gregory ("Mr Tan") is a real estate salesperson with Gregory Tan Realty Pte Ltd, and is the seller's agent for the sale of the Property.

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1 Statement of Claim (Amendment No. 2) at para 2; Defence (Amendment No. 1) at para 2.

2 Notes of Evidence ("NE") at p 71 lines 18–21.

3 NE at p 70 lines 18–21.

Background to the dispute

8 In or around July 2021, Mr Teo was first introduced to Mr Lam as a person interested in purchasing Good Class Bungalows ("GCB(s)") when Mr Lam responded to an advertisement of a property that the defendant had placed in the Business Times on 3 July 2021.[4] Between July and December 2021, Mr Teo sent around 55 to 60 GCB listings to Mr Lam.[5]

9 On 14 December 2021, Mr Teo sent a WhatsApp message to Mr Lam that the Property at 12 Lewis Road was for sale for the negotiable price of S$21,000,000 and that the area of the Property was 12,454 sq ft.[6] Mr Teo also indicated that the Property was available as a "House for rebuilding".[7] Subsequently, Mr Lam asked to view the Property, to which Mr Teo responded stating that the viewing was available but was restricted only to the external compound of the Property and not the interior of the house itself.[8] The viewing was arranged for the next day, on 15 December 2021.[9]

10 On 15 December 2021, both the claimant and Mr Lam met with Mr Teo to view the external compound of the Property.[10] The seller's agent, Mr Tan, was also present at that viewing.

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4 Affidavit of Evidence-in-Chief of Teo Eng Siong at para 4.

5 NE at p 27 lines 10–14; NE at p 48 lines 21–23.

6 Defence (Amendment No. 1) at para 2.

7 Agreed Bundle of Documents ("ABD") 33; Defence (Amendment No. 1) at para 2.

8 Defence (Amendment No. 1) at para 3.

9 Defence (Amendent No. 1) at para 3.

10 Defence (Amendment No. 1) at para 4.

11 Parties disagree over whether, during the viewing, Mr Teo had shown both the claimant and Mr Lam a hard copy of a marketing brochure consisting of a site plan, cadastral map, photographs of the external compound, and a page depicting three possible potential layouts of the Property when it is redeveloped (the "Marketing Brochure"). According to the claimant, the three potential layouts appeared to indicate that the entire land area of the Property could be fully redeveloped, as no drainage reserve was indicated on the layouts.

12 Mr Teo also sent Mr Lam via a WhatsApp message a Dropbox link to access the soft copy of the documents stated in [11].[11]

13 At the said viewing, the redevelopment potential of the Property was discussed between the claimant, Mr Lam, and Mr Teo.[12]

14 By showing the hardcopy documents and sending a link containing the soft copy of the same, the claimant alleges that Mr Teo had represented to the claimant that the entire land area of the Property (*ie*, 12,454 square feet area) could be fully redeveloped, with there being no drainage reserve on the Property (the "Alleged Misrepresentation"). This, of course, is disputed by Mr Teo and the defendant.

15 Shortly after viewing the Property, on 15 December 2021, the claimant made an offer to purchase the Property for the price of S$18,680,000 and paid a sum of $186,800 for an option to purchase the Property (the "OTP").

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11 Affidavit of Evidence-in-Chief of Teo Eng Siong at p 59.

12 Statement of Claim (Amendment No. 2) at para 5; Defence (Amendment No. 1) at para 5(c).

16 On the same day, Mr Teo informed Mr Lam that the seller of the Property had accepted the claimant's offer. The OTP was issued to the claimant on 16 December 2021.

17 On 29 December 2021, the claimant paid 4% of the purchase price *ie*, the sum of $747,200 to exercise the OTP.[13]

18 On or about 7 January 2022, the Lams discovered via an email from the claimant's conveyancing solicitors that there was, in fact, a drainage reserve of 25.9m^2 (or 278.8 sq ft) on the Property.[14] After consultation with their architect, the Lams learnt that the drainage reserve could neither be used by the claimant in any redevelopment nor be taken into account to calculate site coverage for any redevelopment purposes.[15]

19 After exercising the OTP and being allowed access to the house's interior for bank valuation purposes on 13 January 2022, the Lams observed the presence of the drainage reserve for the first time.[16] The drainage reserve was otherwise not noticeable from the exterior compound of the Property.[17]

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13 Statement of Claim (Amendment No. 2) at para 11; Defence (Amendment No.1) at para 11.

14 Affidavit of Evidence-in-Chief of Lam Kong Yin Patrick at para 20.

15 Affidavit of Evidence-in-Chief of Lam Kong Yin Patrick at para 21.

16 Affidavit of Evidence-in-Chief of Lam Kong Yin Patrick at para 22; Affidavit of Evidence-in-Chief of Lam Wing Yee Jane at para 22.

17 Affidavit of Evidence-in-Chief of Lam Kong Yin Patrick at para 22; Affidavit of Evidence-in-Chief of Lam Wing Yee Jane at para 22.

The parties' cases

The Claimant's case

20 The claimant submits that Mr Teo had falsely represented that the entire land area of the Property could be fully redeveloped, with no drainage reserve indicated on the layouts. This representation was conveyed via the hard copy shown to the claimant at the viewing and the soft copy of the Marketing Brochure, which had been forwarded to the claimant.

21 The claimant further alleges that she was induced by and acted in reliance of the Alleged Misrepresentation to make an offer to purchase the Property on 15 December 2021 for the price of S$18,680,000 and paid a sum of $186,800 for the OTP.

22 Based on the claimant's Statement of Claim (Amendment No. 2), the claimant had pleaded two alternative forms of misrepresentation.[18] First, Mr Teo made the alleged misrepresentation negligently.[19] The claimant avers that Mr Teo owed a duty of care to the claimant as a property agent to ensure that the facts affecting the value of the Property were represented accurately and truthfully to her.[20] This duty of care was breached by Mr Teo.[21]

23 Alternatively, the claimant pleads that Mr Teo had made the Alleged Misrepresentation "recklessly, in that [Mr Teo] made the Misrepresentation not caring whether it was true or false" and/or "not believing that the

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18 Statement of Claim (Amendment No. 2) at para 16.

19 Statement of Claim (Amendment No. 2) at para 16.

20 Statement of Claim (Amendment No. 2) at para 18.

21 Statement of Claim (Amendment No. 2) at para 18.

Misrepresentation was true."[22] I note that the defendant has observed in its Opening Statement and Closing Submissions that "[t]he Claimant has neither pleaded nor alleged fraudulent misrepresentation".[23] However, it does appear that the claimant did, in fact, plead that Mr Teo had committed fraudulent misrepresentation. Fraud is proven where a false representation has been made either (a) knowingly, (b) without belief in their truth, or (c) recklessly, with the representor being careless about whether they were true or false: *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 at [32]). It is not necessary to use the word "fraud" in the claim if it is sufficiently clear and unambiguous that fraud is alleged: *Davy v Garrett* (1878) 7 Ch.D. 473 at 489. However, I note that the claimant has since not proceeded with its claim of fraudulent misrepresentation in its Closing Submissions. Accordingly, I will say no more on this.

24 On the basis that Mr Teo is liable for negligent misrepresentation, the claimant submits that the defendant is vicariously liable for Mr Teo's misrepresentation and/or breach of duty to the claimant carried out in the course of his employment.

The Defendant's case

25 The defendant denies that it is liable for negligent misrepresentation. The defendant avers that the Marketing Brochure does not contain the Alleged Misrepresentation.[24] The defendant submits that even if the Marketing Brochure conveyed the Alleged Misrepresentation, such a representation was made by the

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22 Statement of Claim (Amendment No. 2) at para 16.

23 Defendant's Closing Submissions ("DCS") at p 2, footnote 1; Defendant's Opening Statement at para 5(a).

24 DCS at para 6.

seller and/or Mr Tan and not by Mr Teo.[25] The defendant is not liable for any inaccuracies or omissions in the Marketing Brochure.[26]

26 The defendant further submits that even if Mr Teo had made the Alleged Misrepresentation, the claimant was not induced by the representation to make an offer to purchase the Property.[27] The Alleged Misrepresentation could not have operated on the claimant's mind at the material time because (a) the total viewing was only a "short span of time of around 19 minutes" and (b) neither the claimant nor Mr Lam had referred to the seller's Marketing Brochure before making the offer.

27 Alternatively, the defendant also submits that the Alleged Misrepresentation was too immaterial to have induced reliance by the claimant in making an offer to purchase the Property.[28]

28 On the issue of loss, the defendant avers that even if there had been a breach of duty of care, no damage was suffered by the claimant.[29]

Issues to be determined

29 The issues to be determined are as follows:

(a) whether Mr Teo had negligently misrepresented that the entire 12,454 sq ft area of the Property could be used for redevelopment ("Issue 1"); and

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25 Defence (Amendment No. 1) at para 7(a).

26 Defence (Amendment No. 1) at para 7.

27 Defence (Amendment No. 1) at para 7(a).

28 Defence (Amendment No. 1) at para 7(b).

29 DCS at para 2(IV).

(b) whether the defendant is vicariously liable for Mr Teo's negligent misrepresentation ("Issue 2").

Issue 1: Whether Mr Teo had negligently misrepresented that the entire 12,454 sq ft area of the Property could be used for redevelopment

30 To succeed in negligent misrepresentation, the claimant must prove the following (*Ma Hongjin v Sim Eng Tong* [2021] SGHC 84 at [20]):

(a) That Mr Teo made a false representation of fact to her;

(b) That the representation induced her actual reliance;

(c) That Mr Teo owed her a duty to take reasonable care in making the representation;

(d) That Mr Teo breached that duty of care; and

(e) That the breach caused damage to her.

31 Based on the elements for negligent misrepresentation, the following sub-issues arose for my determination:

(a) Did Mr Teo make an implied representation of fact that the entire land area of the Property could be used for redevelopment without taking into account any drainage reserve?[30]

(b) Did the claimant act on the faith of the said representations and was induced thereby to make an offer to purchase the Property?[31]

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30 Claimant Lead Counsel Statement at p 5, s/n 3.

31 Claimant Lead Counsel Statement at p 5, s/n 4.

(c) Was Mr Teo under a duty to take care in the making of the said representations to the claimant?

(d) Did Mr Teo breach the said duty, causing the claimant loss and damage?

Did Mr Teo make an implied representation of fact that the entire land area of the Property could be used for redevelopment without taking into account any drainage reserve?

32 In alleging that Mr Teo is liable for negligent misrepresentation, the claimant submits that there is an *implied* statement of fact containing the Alleged Misrepresentation that is conveyed by the Marketing Brochure containing the Potential Layout Page. I took this construction to be the premise of the claimant's argument. This is because, from my perusal of the Marketing Brochure, including the Potential Layout Page, I note that there are no *express* indications that there would be no drainage reserves on the Property.

33 In response, the defendant takes the primary position that there is no implied statement of fact containing the Alleged Misrepresentation. I understood this construction to be the defendant's primary contention where in its Closing Submissions, it submitted that "[t]he Marketing Documents simply did not contain the Alleged Misrepresentation". [32] As an alternative argument, the defendant submits that even if the Potential Layout Page contained the Alleged Misrepresentation by implication, any meaning intended by the potential layouts was a mere puff and not an actionable misrepresentation.[33]

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32 DCS at p 3.

33 DCS at para 8.

34 As noted earlier at [11], whether Mr Teo himself had even shown the hard copy of the Marketing Brochure to the claimant is disputed.[34] On the one hand, the Lams insist that the hard copy had been shown by Mr Teo rather than Mr Tan. On the other hand, Mr Teo contends that he does not recall showing the hard copy of the document to the claimant or Mr Lam.[35] Based on Mr Tan's testimony, he accepts that the hard copy of the document was shown to the claimant and Mr Lam, albeit briefly.[36] However, it remains unclear *who* exactly, whether Mr Teo or Mr Tan, was responsible for showing the hard copy to the Lams. Be that as it may, I did not consider it material whether Mr Teo had, in fact, shown the hard copy of the Marketing Brochure to the claimant or Mr Lam. Ultimately, the claimant's pleaded case on misrepresentation is based on both their reliance on the hard and/or soft copy of the Marketing Brochure. It is undisputed that Mr Teo had forwarded the soft copy to Mr Lam.[37] The soft copy is identical to the hard copy shown to the claimant and Mr Lam.[38] Nonetheless, for the purposes of the analysis below, I am prepared to proceed on the assumption that Mr Teo had shown the hard copy of the Marketing Brochure to the Lams.

35 According to the claimant, she alleges that the Alleged Misrepresentation was "contained in and/or inferred" from the Marketing Brochure, which contained, among other things, a page with the following potential redevelopment layouts (the "Potential Layout Page"):[39]

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34 DCS at para 10; Claimant's Closing Submissions ("CCS") at para 30.

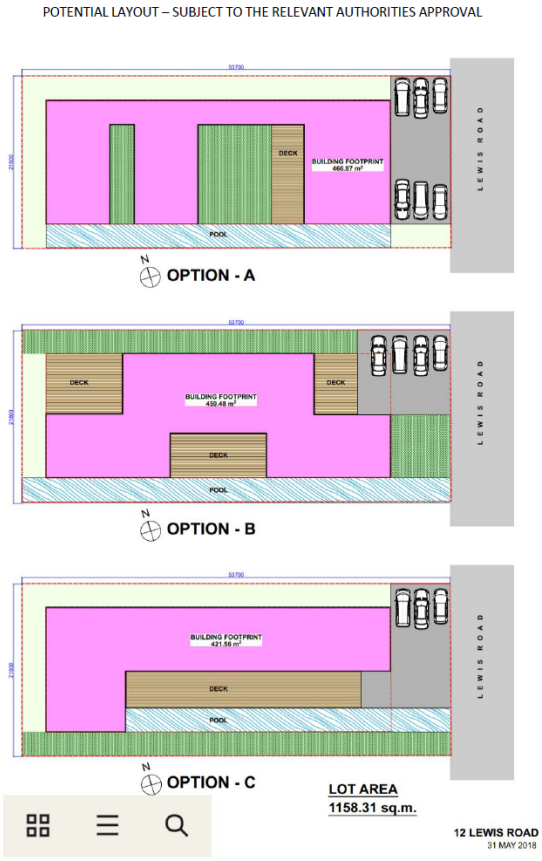
35 NE at p 61 lines 22–25.

36 NE at p 97 lines 17–20.

37 NE at p 62 lines 5–12.

38 NE at p 29 lines 15–20.

39 CCS at para 29.



36 Accordingly, the question which I must decide is whether the Marketing Brochure, which contains the Potential Layout Page, does convey, by way of implication, the Alleged Misrepresentation, *ie*, that the entire land area of the Property of 12,454 sq ft area could be fully redeveloped, with there being no drainage reserve on the Property. Indeed, the answer to this question is critical because if the Marketing Brochure does not convey any statement of fact that the entire land area of the Property could be fully redeveloped, the claimant's case must be dismissed without more.

37 As a matter of general principle, the court's approach to interpreting a particular "statement" proceeds on an objective basis. The applicable approach

to be taken in this assessment has been stated in *Wang Xiaopu v Goh Seng Heng and another* [2019] SGHC 284 at [57], citing K R Handley*, Spencer Bower & Handley: Actionable Misrepresentation* (LexisNexis, 5th Ed, 2014) at para 3.04, to be one where "[t]he court has to consider what a reasonable person would understand was being conveyed by the words and conduct in question, or would infer from them". The essential issue is whether in "all the circumstances" it has been impliedly represented that there exists some state of facts different from the truth: *Thode Gerd Walter v Mintwell Industry Pte Ltd and Others* [2009] SGHC 44 at [30], citing *Chitty on Contracts* vol 1 (Hugh Beale gen ed) (Sweet & Maxwell, 30th Ed, 2008), at para 6-011. The burden lies squarely on the claimant to show that the Marketing Brochure does convey the Alleged Misrepresentation.

38 Was it reasonable for the claimant to believe, based on the Marketing Brochure and/or Mr Teo's words or conduct, that the entire land area of the Property could be fully redeveloped? The defendant raises two points in support of its position that the answer must be "no".

(a) First, the defendant avers that the Potential Layout Page did not convey any implication that the entire land area of the Property could be redeveloped because the Potential Layout Page itself does not show the dimensions of the setback. From the Potential Layout Page itself, the setback could have been wider than the 3m required by the Urban Redevelopment Authority (the "URA").[40] While the defendant accepts that the subsequent page of the Marketing Brochure does show a 3m setback boundary, this is not the page on which the claimant claims there was any misrepresentation.

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40 DCS at para 6(b).

(b) Second, the defendant contends that any meaning conveyed by the Marketing Brochure could amount to mere puff. The defendant submits that the crudeness of the drawings and the fact that they were found in a promotional brochure meant that the Marketing Brochure ought to have been treated with circumspection by a reasonable person.[41] Furthermore, it would have been clear to a reasonable person that the three potential layouts were provided only to illustrate the possibility of redeveloping the Property in different ways and to "showcase the untapped potential of the Property".[42]

39 I am not persuaded by the defendant's two points. Regarding the defendant's first point, it is evident from the claimant's Statement of Claim (Amendment No. 2) that they allege that the Alleged Misrepresentation arises from the *entirety* of the Marketing Brochure – be it hardcopy or softcopy.[43] Regarding the defendant's second point, it is trite that some statements made in the lead-up to a sale may be regarded as simply sales talk, which are, on their face, assertions of fact, but which are only exaggerations, "puffing the product" and not to be taken seriously: see *Deutsche Bank AG v Chang Tse Wan and another appeal* [2013] 4 SLR 886 ("*Deutsche Bank AG*") at [87]. Nonetheless, as stated by the Court of Appeal in *Deutsche Bank AG*, what may appear to be a sales puff may be more properly viewed as a representation of fact. This depends on the degree or obviousness of its untruth, the circumstances of its making and the expertise and knowledge attributable to the person to whom it is made: *Deutsche Bank AG* at [87], citing *Fordy v Harwood* [1999] EWCA Civ 1134. In *Deutsche Bank AG* at [89], the Court of Appeal found in relation to the

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41 DCS at para 8.

42 DCS at para 8.

43 Statement of Claim (Amendment No. 2) at paras 5–7.

defendant's counterclaim for misrepresentation that Deutsche Bank's representation to the defendant that the services provided by Deutsche Bank Private Wealth Management were amongst the best when compared to other international banks was one of fact. It was not untrue. As the brochure there illustrates, Deutsche Bank has won many industry awards and accolades over the years. Moreover, this representation was made during a presentation to a potential client. Such a statement would not have been viewed as hyperbole and could have been material in convincing the defendant to open an account with Deutsche Bank. In light of all this, Deutsche Bank could not argue that it was a mere puff that was not actionable.

40 I disagree with the defendant that any meaning which can be derived from the potential layouts would be mere puff.[44] As I have stated above, the Marketing Brochure must be viewed in its entirety. After all, it is the claimant's pleaded case that the Alleged Misrepresentation arose from a holistic reading of the Marketing Brochure. We must look at not only the Potential Layout Page, but the other pages, for instance, the subsequent page setting out the setbacks.[45] Therefore, the defendant has pitched its case too high in submitting that *any* meaning conveyed by the Marketing Brochure is mere puffery. Furthermore, I must emphasise that the present case does not involve an allegation of an express misrepresentation. Rather, it is an allegation of an *implied* representation that the entire land can be redeveloped. This, if borne out, is not a statement of fact that is *obviously* untrue, especially in the eyes of a potential purchaser. This representation is also not obviously untrue when I consider that based on the face of the layouts shown in the Marketing Brochure, a *possible*

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44 DCS at para 8.

45 ABD 54.

inference may be made – as the claimant, Mr Lam, and even Mr Teo himself testified – that there are no drainage reserves on the Property.

41 I am cognisant that the present case concerns a representation found within a Marketing Brochure which had originated from the *seller* of a piece of property, but was forwarded by Mr Teo, the claimant's property agent. Therefore, this, essentially, is a case involving a representation originating from a vendor of land to a prospective buyer. It is true, as Professor Cartwright observes in his text entitled *Misrepresentation, Mistake and Non-disclosure* (Sweet & Maxwell, 4th Ed, 2017) ("*Misrepresentation, Mistake and Non-disclosure*") at para 3-18 that "a vendor of land when speaking about the land he is selling, will normally be held to be making statements of fact because the vendor is generally the better placed to know about the property". However, this is not to say that a vendor of land can be taken to know everything about a property to support an inference that everything communicated by a vendor regarding his land can amount to a statement of fact. Thus, in the case of *Bisset v Wilkinson* (1927) AC 177 ("*Bisset*"), the court refrained from finding a vendor's statement about his land to be a statement of fact. The statement by the vendor of land to his purchasers that "if the place was worked as I was working it, with a good six-horse team, my idea [is] that it would carry two thousand sheep" was held to be only a statement of opinion, and did not entitle the purchasers, who bought the land for use as a sheep farm, to rescind the contract of sale. The following statement by the trial judge was quoted and approved by the Privy Council (*Bisset* at 183–184):

> [I]n ordinary circumstances, any statement made by an owner who has been occupying his own farm as to its carrying capacity would be regarded as a statement of fact … This, however, is not such a case. The (purchasers] knew all about [the plot of deteriorated land] and knew also what sheep the farm was carrying when they inspected it. In these circumstances … the [purchasers] were not justified in regarding anything said by

> the plaintiff as to the carrying capacity as being anything more than an expression of his opinion on the subject.

42 It is clear therefore, that the question is not simply what the representee himself did understand but rather what a *reasonable* person in the representee's position would have understood the statement to mean, based on the objective construction of the impugned statement and the surrounding circumstances. I disagree with the claimant's submission that the Marketing Brochure carry an implied statement of fact that the entire 12,454 sq ft of the Property could be used for redevelopment. If anything, this was merely – to borrow the expression of the defendant – a "private inference" by the claimant.[46] I consider three factors to be relevant in reaching this conclusion. First, Mr Teo's lack of knowledge of the presence or absence of drainage reserves. Second, the context in which the Marketing Brochure had been conveyed was one where Mr Teo had merely passed it on from Mr Tan, which was known to the claimant and Mr Lam. And third, the claimant's expertise in real estate development. I consider each factor in turn.

Mr Teo's lack of knowledge of the presence or absence of drainage reserves

43 First, in assessing what the representee was entitled to understand, the balance of information or access to relevant information held by the representor and the representee, respectively, is critical: *Misrepresentation, Mistake and Non-disclosure* at para 3-18. As Lord Evershed MR states in *Brown v Raphael* [1958] Ch. 636 at 642, "[i]t suffices for the application of the principle if it appears that between the two parties, one is better equipped with information or the means of information than the other". Suppose the representee has significantly less information than the representor about facts or other

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46 DCS at para 6(a).

circumstances which are relevant to the statement expressed. In that case, it is more likely that he will be held entitled to rely on the statement as a statement of fact: see *Smith v Land and House Property Corp* (1882) 28 Ch.D. 7 at 15 *per* Bowen LJ in the context of determining whether an "opinion" could amount to a statement of fact; see also *Misrepresentation, Mistake and Non-disclosure* at para 3-18. It cannot be said that Mr Teo, in this instance, had significantly more information than the claimant or Mr Lam about the presence or absence of any drainage reserve on the Property. Indeed, Mr Teo had only received the Marketing Brochure from Mr Tan in the morning at 7.30am via WhatsApp on the day of the viewing.[47] There is no evidence showing that Mr Teo would have been apprised of whether the entire land area of the Property could be redeveloped and whether there was any drainage reserve. Indeed, based on Mr Lam's WhatsApp message to Mr Teo dated 14 January 2022 at 1.43pm, it appears that even Mr Tan himself – the person who had prepared the Marketing Brochure[48] − was unaware of any drainage reserve on the Property.[49]

The context in which the Marketing Brochure had been conveyed was one where Mr Teo had merely passed it on from Mr Tan, and this was known to the claimant and Mr Lam

44 The context in which the Marketing Brochure had been conveyed to the claimant must also be considered. Such context is critical in assessing whether an implied representation has been made: see *Kong Chee Chui and others v Soh Ghee Hong* [2014] SGHC 8 at [6]. As stated by Lewinson LJ in *Mellor v Partridge* [2013] EWCA Civ 477 at [17]:

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47 Affidavit of Evidence-in-Chief of Teo Eng Siong at para 8; Affidavit of Evidence-in-Chief of Tan Seng Heng Gregory at p 8.

48 NE at p 91 lines 25–26.

49 ABD 126.

> What the court must consider is what a reasonable person would have inferred was being implicitly represented by the representor's words and conduct in their context. These are fact sensitive questions which, in my judgment, can only be fairly determined at trial.

45 In my view, the way Mr Teo had conveyed the Marketing Brochure to the claimant and Mr Lam militates against any finding that there was an implied representation that the entire area of the Property could be redeveloped. A key plank of the defendant's case is that Mr Teo, and hence the defendant, is not liable for misrepresentation because any representation, if made out, was made by the seller and/or Mr Tan, and not by Mr Teo.[50] In other words, there was no misrepresentation made by Mr Teo at all. As alluded to in the defendant's submission, the following represents a critical context within which the Alleged Misrepresentation had been made: a person *passing on* the information made by another. What, then, are the principles at play in such a case?

46 As Professor Cartwright states in *Misrepresentation, Mistake and Non-disclosure* at para 3-19, the following approach is helpful in analysing a case involving a person passing on (or repeating) information received from another:

> **Repetition of another person's statement.** A question can sometimes arise as to whether a contracting party makes a representation when he simply passes on information which he has received from another person who is not involved in the transaction. The answer ought to lie in the principles already discussed in this section. If the party makes clear that he is simply passing on information which he believes to be true but for which he cannot vouch, then the question will be one of his honesty in making the statement. But he may, by passing the information on, be seen as taking responsibility for it. Indeed, there is a range of possible forms of responsibility that may be taken where a person (X) passes on information produced by another (Y) to a person (Z) with whom he hopes to contract:
>
> > *(i) X may warrant to Z that the information is correct. X may thereby assume contractual liability to Z for the*

[50] Defence (Amendment No. 1) at para 7(a); Defendant's Opening Statement at para 12.

> *accuracy of the information. That liability may exist under the main contract or a collateral contract.*
>
> *(ii) X may adopt the information as his own, thereby taking on such responsibility as he would have if he were the maker of the statement.*
>
> *(iii) X may represent that he believe, on reasonable grounds, the information supplied by Y to be correct. That involves a lesser degree of responsibility than scenario (ii).*
>
> *(iv) X may simply pass on the information to Z as material coming from Y, about which X has no knowledge or belief. X then has no responsibility for the accuracy of the information beyond the ordinary duties of honesty and good faith.*
>
> …
>
> [emphasis in italics]

47 From the above excerpt, it may be seen that the main distinguishing factor among the four scenarios outlined by Professor Cartwright is the "degree of responsibility" which is engaged. Scenario (i) engages a high degree of responsibility as the maker of the statement would be taken to have assumed contractual liability by *warranting* that the information is correct. A claim for breach of warranty may be available under such a scenario. A similar high degree of responsibility is engaged in scenario (ii) as the maker of the statement would be taken to have adopted the information as his own such that he had assumed full responsibility as though he had been the original maker of the statement.

48 I note that the excerpt above deals with a situation involving a person passing on information produced by another to a person with whom he hopes to contract. This is, strictly speaking, different from the present scenario where Mr Teo is not seeking to form a contract with the claimant. Instead, Mr Teo had passed on information produced by the seller or Mr Tan to Mr Teo's client. Notwithstanding the slight nuances in the situation here and that referred to in

the excerpt above, I see no reason why a similar approach should not be taken. Hence, I proceed on the assumption that the above approach suggested by Professor Cartwright applies equally to the present case.

49 On the question of whether a person can be held responsible for passing on a statement of fact made by another, local cases appear to have proceeded on the basis that a defendant is liable for misrepresentation as though he had made the misrepresentation himself via the mere act of passing on or forwarding false information from another. One example is the case of *Su Ah Tee and others v Allister Lim and Thrumurgan (sued as a firm) and another (William Cheng and others, third parties)* [2014] SGHC 159 ("*Su Ah Tee*") at [209]–[212]. In *Su Ah Tee*, the plaintiffs claimed damages for breach of contract and negligence from the defendants who acted as their solicitors in purchasing property. After purchase, the plaintiffs discovered that the property had a shorter lease than expected, and it was subject to a head tenancy agreement instead of two separate tenancy agreements. The defendant solicitors, in turn, brought third-party proceedings for an indemnity or contribution against the property vendor, the plaintiff's property agent, Ng Sing, and Ng Sing's then-employer. The defendants' case against the third parties was that they had each fraudulently and/or negligently misstated that the property had a longer lease remaining and that it was being sold subject to two tenancy agreements when that was not the true position (*Su Ah Tee* at [1], [3] and [5]). Belinda Ang J (as she then was) found that the defendant solicitors were liable to the plaintiffs and, therefore, went on to consider the third-party action brought by the defendants (*Su Ah Tee* at [175]). In so far as the defendants' third-party action against Ng Sing was concerned, Ang J held that although Ng Sing did not make fraudulent misrepresentations to the plaintiffs (*Su Ah Tee* at [211]), he was, however, liable for negligent misrepresentations because there was sufficient proximity

between Ng Sing and the plaintiffs given, in particular, an assumption of responsibility by Ng Sing towards the first plaintiff, and reliance by the first plaintiff on Ng Sing, such that a tortious duty of care was *prima facie* established (*Su Ah Tee* at [216]). What is crucial for our purposes is that Ang J appears to have assumed that Ng Sing, in passing on the false information he had obtained from the vendor and his agent, could be held liable for the misrepresentations as though he had personally made them.

50 A second example is the case of *Lim Koon Park and another v Yap Jin Meng Bryan and another* [2013] 4 SLR 150 ("*Lim Koon Park*") at [28] and [48]–[51]. The case concerned the purchase of two properties via a joint venture with the parties. The respondents had counterclaimed that the first appellant, Park, a professional architect who was providing his expertise, had made a misrepresentation by stating that the maximum plot ratio of one of the properties was 1.4, which was untrue. The Court of Appeal had to decide whether the Judge below was entitled to find that there was an implied misrepresentation to the same effect where Park had merely forwarded two documents. The Court of Appeal overturned the Judge's finding because the two forwarded documents did not contain any such implication (at [48]–[51]). The first document merely indicated the approved proposed plot ratio (which was 1.4) and was not an indication of the maximum permitted plot ratio. In the second document, the word "maximum" was never used. In overturning the Judge's finding on this ground, the Court of Appeal appeared to have assumed that a defendant could be liable for misrepresentation as though he had made the misrepresentation himself via the mere act of passing on or forwarding false information from another.

51 From the above, it can be seen that the courts in *Su Ah Tee* and *Lim Koon Park* appear to have proceeded on the basis that Professor Cartwright's scenario

(ii) applies whenever a person forwards false information from another such that the former is taken to have "adopt[ed] the information as his own, thereby taking on such responsibility as he would have if he were the maker of the statement.": *Misrepresentation, Mistake and Non-disclosure* at para 3-19. I note that in these cases, the courts did not specifically direct their attention to the issue of the *degree* of responsibility assumed by the defendants in merely passing on information or, more specifically, which of the four scenarios, as envisaged by Professor Cartwright in *Misrepresentation, Mistake and Non-disclosure* would have been the most appropriate within those contexts. Indeed, this does not appear to have been a point raised by the parties in those cases. There is room to argue that scenario (ii) may not be an appropriate characterisation of the present case, unlike the cases of *Su Ah Tee* and *Lim Koon Park*. In those cases, while there was a passing on or forwarding of information in those cases, the information had been passed on in circumstances where the defendants had passed on the information *on their own accord*: see *Su Ah Tee* at [185]–[186].

52 This contrasts with the present case in which Mr Tan had directed Mr Teo to forward the Marketing Brochure, and this was known to the claimant.[51] As the defendant points out, Mr Lam and Mr Tan had discussed the Marketing Brochure after the viewing, and it was *Mr Tan* who had explained the materials.[52] Under cross-examination, Mr Lam accepted that Mr Teo did not provide any specific explanation on the contents of the Marketing Brochures apart from indicating that it was "a folder which contains some information of the property." This can be seen from the following exchange in court between Mr Lam and the defendant's counsel:

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51 NE at p 29 lines 5–7.

52 DCS at para 11(b).

> Q: So when you received---when you were flipping through the documents, was it just like silent flipping or did you---did Gregory give an introduction on the layouts or things like that?
>
> A: Actually, when Darren show me the---the hard copy, he just say, "Here is a folder which contains some information of the property." And I browsed through at that time. So that's when Gregory asked Darren whether he had sent me a soft copy. And after I browsed through, we just started the walkabout of the property. This is the physical---the actual---the actual thing is in front of us. So we just walk through first and we did not really go into details or peruse the---the marketing brochure at that time.

53 Crucially, it was at this point when Mr Teo had shown Mr Lam the hardcopy indicating that it "contains some information of the property" that "Gregory asked Darren whether he had sent me a soft copy." I considered it material that during the viewing, Mr Tan had requested Mr Teo to forward the soft copy of the Marketing Brochure[53] to Mr Lam *in the presence* of the claimant and Mr Lam.[54] This would have made it clear to the persons present that the Marketing Documents originated from Mr Tan, not Mr Teo. This is confirmed by the evidence of both Mr Lam and Mr Tan at trial. First, Mr Lam himself testified that he had explicitly inquired of Mr Teo about who had prepared the Marketing Brochure, and it was at that time that Mr Tan interjected to say that Mr Tan's architect friend prepared it.[55] Second, Mr Tan confirmed that during this conversation, he had specifically explained to Mr Lam that the layouts shown in the Potential Layout Page were merely mock-ups. Mr Lam responded by confirming that he understood this to be the case.[56]

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53 NE at p 62 lines 15–17.

54 NE at p 62 lines 20–23.

55 NE at p 31 line 28 to p 32 line 4.

56 NE at p 95 lines 16–19.

54 From the above, I am of the view that Professor Cartwright's scenario (iv) (see above at [46]) is a more appropriate characterisation of the degree of responsibility which had been assumed by Mr Teo – an inquiry which is not to be confused with the inquiry under the duty of care which I will analyse below at [71]–[80] – in forwarding the Marketing Brochure. Specifically, Mr Teo has simply passed on the information to the claimant as material from the seller or Mr Tan, about which Mr Teo has no knowledge or belief. Mr Teo has no responsibility for the accuracy of the information beyond the ordinary duties of honesty and good faith. On this basis, there is no evidence in the present case that Mr Teo acted with anything less than honesty or good faith in passing on the Marketing Brochure to the claimant and Mr Lam.

The claimant's expertise in real estate development

55 Furthermore, consideration must also be had of the characteristics of the representee in determining whether an implied representation had been made. According to Clarke J in *Raiffeisen Zentralbank Osterreich AG v Royal Bank of Scotland Plc* [2011] 1 Lloyd's Rep. 123 at [81], "[t]he court may regard a sophisticated commercial party who is told that no representations are being made to him quite differently than it would a consumer": see also *Misrepresentation, Mistake and Non-disclosure* at para 3-06. In this case, Mr Lam emphasises his experience in property development and, more specifically, his understanding of URA's setback requirements to justify the reasonableness of his interpretation. As Mr Lam stated at trial:[57]

> Q: So you're saying these drawings are good enough to be submitted to the authorities?
>
> A: No, we won't submit concept drawings to the authority, but the basic information contained here is very well-prepared. It's

[57] NE at p 34 line 27 to p 35 line 6.

> not---it's not done by a layman because *a layman will not know the front setback for a GCB is 7.5 metre, the side setback is 3 metres. Some people say it's 2 metre. Actually, you need professional to prepare this concept drawing.* And if you look at the building footprint coverage, it's 40% of the site, which is a requirement by---by URA. If you---if I'm a layman and I want to build as big as possible and I build---and I propose to URA a 50% site coverage, URA will not approve me. *So after all this consideration, I conclude this is very well-prepared concept drawing and can be relied upon.*
>
> [emphasis added]

56 However, I am inclined to agree with the defendant that the Lams' experience would instead work against them. Given both the claimant's and Mr Lam's experience in the real estate industry and the claimant's own experience in preparing marketing brochures for condominium developments, it would have been unreasonable for the claimant to take the construction that she did of the Marketing Brochure.[58] Apart from their knowledge of URA's setback requirement, it would also have been reasonably known that redevelopment layouts are subject to change. This is particularly the case where the following words were expressly stated at the top of the Potential Layout Page: "POTENTIAL LAYOUT–SUBJECT TO THE RELEVANT AUTHORITIES APPROVAL". Furthermore, it is highly relevant that both the claimant and Mr Lam were well acquainted with the operation of legal requisitions in property transactions. As the claimant acknowledged, she had previously purchased a condominium unit. She accepted that in the purchasing process, it was the responsibility of her lawyers to conduct the necessary legal requisition checks.[59] Mr Lam also accepted that the lawyers would perform the necessary legal requisition checks.[60] Indeed, legal requisition clauses are a

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58 DCS at para 16(b).

59 NE at p 6 line 29 to p 7 line 1.

60 NE at p 25 lines 23–25.

mainstay of contracts for the sale of properties. As Mr Lam acknowledged under cross-examination, "there is normally a provision in the option to purchase that if something is not satisfactory from the replies, then party can cancel the transaction."[61] Such legal requisition clauses allow a purchaser to rescind the contract if the replies to the legal requisitions are unsatisfactory. This assures a purchaser that she or she would obtain what they had substantially bargained for, notwithstanding the absence of an opportunity to check if there are, for example, road proposals or drainage reserves affecting the property. The purpose of a legal requisition clause is succinctly set out in the following excerpt from Chan Seng Onn J's judgment in *Soo Nam Thoong and another v Phang Song Hua* [2011] SGHC 159 at [16]–[17]:

> 16 In *Teo Hong Choo v Chin Kiang Industries Pte Ltd* [1983] 2 MLJ 309, the court considered a clause regarding replies to legal requisitions that did not include a specific proviso, deeming certain types of replies as satisfactory. The court, at 313, commented that the clause regarding replies to legal requisitions was:
>
> > in effect a procedural device, to enable intending purchasers to sign these 'instant contracts' and *yet retain in their hands the right to opt out of the contract should the answers to the legal requisition* to city authorities prove to be unsatisfactory in that the property was affected by any government road, backlane or other improvement scheme.
> >
> > [emphasis added]
>
> 17 Chan Sek Keong JC, as he then was, also commented on the purpose of the clause regarding replies to legal requisitions in *Chu Yik Man v S Rajagopal & Co & Anor* [1987] 2 MLJ 557 at 559:
>
> > In my view, the common thread that runs through these three decisions [he was referring to **Tatlien**`s case, **Teo Hong Choo**`s case and **Peh Kwee Yong**`s case (at first instance)] was the intention of the parties as expressed in the formula `satisfactory reply to requisitions`. In my view, that formula is intended to give the purchaser

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61 NE at p 25 line 26 to p 26 line 2.

> substantially what he has bargained for, taking into account his purpose in purchasing the property and such other circumstances which have a direct or indirect effect on the fulfilment of that purpose. *What seems clear is that the general provision allowing the Purchaser to rescind if the replies to the legal requisitions are unsatisfactory is to give the Purchaser what he substantially bargained for.* The clause regarding legal requisitions allows parties to sign "instant contracts", ie the Option, before checking if there are road plans, etc, affecting the property.
>
> [emphasis added in italics, emphasis in bold in original]

> The commercial context and understanding of clause 10 regarding the replies to the legal requisitions is thus clear – the general provision allowing the Purchaser to rescind if the replies to the legal requisitions are unsatisfactory is to give the Purchaser what he substantially bargained for because parties recognise that the Purchaser had not been given a chance to check if there are road proposals affecting the Property.

57 Given the purpose of legal requisition clauses, it is implicit within the understanding of such parties to transactions – especially where said parties are familiar with the operation of such clauses – that the seller is not imposed with any duty to disclose all details with regard to the property in question, particularly where it concerns matters such as the presence of road plans or drainage reserves, which are properly covered under the legal requisition clause. As the defendant rightly states, it is generally expected that the purchaser would make such inquiries with the relevant legal authorities in the form of legal requisitions.[62] As the claimant herself explained, she had only discovered the existence of the Drainage Reserve from the responses to legal requisitions from the government authorities obtained by her solicitors.[63] Considering the characteristics of the claimant, I am of the view that a reasonable person, having

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62 DCS at para 29(b).

63 Affidavit of Evidence-in-Chief of Lam Wing Yee Jane at para 20; Affidavit of Evidence-in-Chief of Lam Kong Yin Patrick at para 20.

been placed before him several visual representations of the *potential* development layouts of a property, would not have believed that there was an implied statement of fact being made from the Marketing Brochure that the entire land area *will* be available for redevelopment.

58 Accordingly, for the reasons stated above, I find that the Marketing Brochure did not contain an implied statement of fact that the entire area of the Property could be redeveloped.

Did the claimant act on the faith of the said representations and was induced thereby to make an offer to purchase the Property?

59 In a misrepresentation claim, the claimant must show that the misrepresentation played a real and substantial part in his mind as an inducement. It is not required that the misrepresentation was the sole inducing cause: *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 ("*Panatron*") at [21]–[22]. Furthermore, as was stated in *Larpin, Christian Alfred and another v Kaikhushru Shiavax Nargolwala and another* [2022] 4 SLR 83 at [190], citing *Raiffeisen Zentralbank Osterreich AG v Archer Daniels Midland Co and others* [2007] 1 SLR(R) 196 at [53]–[57], the plaintiff must establish an intention in the representor to induce, which is presumed once materiality is proved and the evidential burden then shifts to the representee to displace it. The representee must have altered his position due to receiving the representation. However, it is not necessary for the plaintiff to show that he entered the transaction solely in reliance upon the misrepresentation. Reliance may be inferred from materiality if the representation's tendency or natural and probable result is to induce the representee to alter his position in the manner he did.

60 From the above, two questions fell for my consideration:

(a) Whether the Alleged Misrepresentation was material; and

(b) Whether the claimant was induced by the Alleged Misrepresentation to alter her position.

Whether the Alleged Misrepresentation was material

61 A representation is material when its tendency, or its natural and probable result, is to induce the representee to act on the faith of it in the kind of way in which he is proved to have, in fact, acted. As stated in *Halsbury's Laws of Singapore – Tort* Vol 18 (LexisNexis, 2022 Reissue) ("*Halsbury's*") at para 240.371, there may be, to the knowledge of the representor, circumstances peculiar to the representee of such a character as to render the particular representation of importance to the particular representee to whom it was addressed, even though it would be inoperative on the mind of a normal person under normal conditions. In such cases, the representation is material between the parties.

62 According to its Defence (Amendment No. 1), the defendant pleads that the Alleged Misrepresentation was "too immaterial to have indued reliance by the [c]laimant".[64] I disagree. I am of the view that the Alleged Misrepresentation, if made, is highly material. It goes without saying that a representation that the entire area of the Property can be redeveloped would naturally and most probably induce a prospective purchaser to act on the faith of it. Furthermore, Mr Teo was aware that the redevelopment potential of the Property was essential to the claimant. He had discussed the Property's redevelopment potential at the viewing with the claimant and Mr Lam. He

64 Defence (Amendment No. 1) at para 7(b).

accepted that he had advised on issues which might impact the redevelopment potential of properties shown to the Lams.[65]

Whether the claimant was induced by the Alleged Misrepresentation to alter her position

63 Based on the submissions and pleadings of the parties, there are two potential alleged ways in which the claimant had been allegedly induced to alter her position: (a) to make an offer for the purchase of the Property[66] and (b) to purchase the Property by exercising the OTP.[67] To make out its claim in negligent misrepresentation, it suffices if the claimant can show that either one of these two changes of position is made out. Based on the evidence, I accept that the claimant had been induced by the Alleged Misrepresentation to either make an offer to purchase the Property or to purchase the Property by exercising the OTP.

64 I deal with both in turn.

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65 NE at p 53 lines 13–16.

66 See *eg*, Statement of Claim (Amendment No. 2) at para 8 ("Induced by and acting in reliance upon the representation that the entire 12,454 square feet area of the Property could be used for redevelopment (the "Misrepresentation"), the Claimant made an offer to purchase the Property on 15 December 2021 ("Offer to Purchase") for the price of S$18,680,000, and paid a sum of $186,800 for the Option to Purchase the Property"); CCS at para 56 ("Realstar's competing factual assertion is that Ms Lam "was not induced" by the representations to make an offer for the Property as it "could not have operated on the Claimant's mind … in such a short span of time"); Defence (Amendment No. 1) at para 7(b) ("Further or in the alternative, the Defendant avers that the alleged representation set out in paragraph 7 of the SOC (Amendment No.2) (if any) was too immaterial to have induced reliance by the Claimant in making an offer to purchase the Property").

67 See CCS at para 55 ("Ms Lam's case is that she acted on the faith of the representations and was induced thereby to purchase the Property"); Statement of Claim (Amendment No. 2) at para 15 ("Darren, on behalf of the Defendant, had therefore misrepresented to the Claimant the redevelopment potential of the Property and thereby induced the Claimant to purchase the Property based on the Misrepresentation.")

65 In relation to the claimant's reliance and change of position to make an offer for the Property, the defendant submits that even if Mr Teo had made the Alleged Misrepresentation, the claimant was not induced by the representation to make an offer to purchase the Property. The Alleged Misrepresentation could not have operated on the claimant's mind at the material time because (a) the total viewing lasted only a "short span of time of around 19 minutes" and (b) neither the claimant nor Mr Lam had referred to the seller's Marketing Brochure before making the offer.[68] Furthermore, the defendant disputes whether the claimant had the opportunity to review the Marketing Brochure during the Property viewing. The defendant takes the position that during the viewing of the external compound of the Property, Mr Lam did not have an opportunity to review the Seller's Marketing Brochure.

66 I disagree that this necessarily meant that the claimant was not induced by the Alleged Misrepresentation to make an offer to purchase the Property. To my mind, it is more likely than not that the claimant had been induced by what they had perceived was the Alleged Misrepresentation. It is the consistent case of both the claimant[69] and Mr Lam; they testified that they had looked at and directed their attention to the Marketing Brochure (or at least the hard copy of the document)[70] and the redevelopment layouts. Critically, Mr Teo could not provide any evidence to rebut the claimant's version of events. As Mr Teo conceded, the Lams had stepped aside for a private discussion during the viewing before deciding to make an in-principle offer for the Property. Mr Teo accepted that he was not privy to the Lams' private discussion and did not deny that the Lams could have looked at the marketing material again when they had

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68 DCS at para 16(c).

69 NE at p 14 lines 3–7.

70 NE at p 29 lines 15–20.

stepped aside. It is more likely than not that during this private discussion, the claimant and Mr Lam had, at the very least, discussed the redevelopment potential of the Property and that this included the Alleged Misrepresentation. Given my finding above that the Alleged Misrepresentation is highly material to a prospective purchaser, particularly one in the shoes of the claimant who was interested in the redevelopment potential of the Property, I am prepared to accept that the representation had induced the claimant to make an offer to purchase the Property.

67 In relation to the claimant's alleged change of position where she had been induced to purchase the Property, the defendant submits that there was no actual inducement as the claimant was willing to accept the terms in the Option to Purchase. Crucially, there are three terms within the OTP which suggest a lack of reliance on the claimant's part on the Alleged Misrepresentation. First, the OTP contains a term preventing the claimant from backing out of the purchase as long as any reply to a legal requisition did not affect more than 5% of the land area of the Property.[71] Here, the Drainage Reserve affects only 2.23% of the land area of the Property.[72] Second, the claimant agreed to purchase the Property on an "as is where is" basis under Clause 13 of the OTP.[73] Third, the OTP also provides that the document embodies all the terms and conditions agreed between the parties and supersedes all previous representations, warranties, agreements and undertakings.[74] Apart from agreeing to the three terms above within the OTP, the defendant also stresses that the claimant had exercised the OTP *before* receiving any reply to the legal requisitions. As the

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71 DCS at para 15(a).

72 DCS at para 15.

73 DCS at para 15(a)(i).

74 NE at p 9 lines 14–26.

claimant admitted at trial, this was to "avoid any last minute rush" in consideration of the holiday season.[75] By exercising the OTP early, the claimant demonstrated that any reply affecting less than 5% of the land area of the Property – which includes the Alleged Misrepresentation – would not have been significant enough to cause her to reconsider the purchase of the Property.

68 I do not find the defendant's objections to be persuasive. I am of the view that the claimant had been actually induced by the Alleged Misrepresentation to exercise the OTP to purchase the Property, notwithstanding that she had signed the OTP. Again, as I have found above, the Alleged Misrepresentation is highly material. Where materiality is patent and the probability of inducement is great, actual inducement may be found with little difficulty: *Halsbury's* at para 240.361. In any case, as the claimant had testified at trial, she did not read the OTP in detail. She did not pay attention to the clause dealing with replies affecting less than 5% of the land area of the Property and the fact that the Property was sold on an "as is where is" basis:

> Q: ---100, if you look at Clause 6(b), which is found at page 101--- 26
>
> A: Okay, yes.
>
> Q: ---can I confirm that in purchasing this property, you agreed to accept, amongst other things, that the legal requisitions would be deemed satisfactory if the drainage reserve does not affect the land by more than 5%? And in your case, it's about 2.3%, am I correct?
>
> A: Yes, that's correct. But this agreement is between myself and the seller, not my 1 real estate agent.
>
> Q: Yes. Definitely. This is a contract between you and the seller. And can I refer you to also page 102? At Clause 13.
>
> A: Yes.

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[75] NE at p 8 line 17.

> Q: You also agreed to accept the property on a as-is, where-is basis, with full notice in respect of actual present---and present state and condition and the purchasers shall be deemed to have inspected the same. Would you agree that you also accepted this term?
>
> A: *In all honesty, I didn't really read the OTP in detail. But when I read this statement, "as is where is", I read it more as something that mainly refers to defects.* And because the property that I had purchased was for redevelopment, I didn't think that this would apply when I review it now.

69 What matters is that the claimant had been *actually* induced by the misrepresentation and in this regard, I am prepared to accept the claimant's evidence above that she had been actually induced by the Alleged Misrepresentation. That the claimant had been induced by the Alleged Misrepresentation also provides a likely explanation for why she was confident enough to exercise the OTP one week earlier than the last date on the expiry date of the OTP.[76] As to the defendant's contention that she had exercised the OTP earlier not because of her reliance on the Alleged Misrepresentation but because she wanted to "avoid any last minute rush" in consideration of the holiday season, the evidence of the claimant was that this was done "*also* in consideration of the holiday season" (emphasis added). I do not accept that this was the sole consideration that operated in her mind. This being the case, I disagree with the defendant that the Alleged Misrepresentation could no longer form a real and substantial part in her mind as an inducement. To reiterate, it is not required that the misrepresentation was the sole inducing cause: *Panatron* at [21]–[22].

70 Accordingly, I find that the claimant had been induced by the Alleged Misrepresentation to alter her position in both making an offer to purchase the Property and exercising the OTP.

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[76] NE at p 8 lines 12–15.

Was Mr Teo under a duty to take care in the making of representations to the claimant?

71 The Court of Appeal in the leading case of *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR 100 ("*Spandeck*") laid down a single test to be applied to determine the existence of a duty of care for all claims in negligence. This is irrespective of the type of damages claimed, thereby abandoning the distinction between physical damage and economic loss. Hence, this test applies notwithstanding that the present case involves the claimant's alleged pure economic loss (*Spandeck* at [71]–[72]).

72 The *Spandeck* test involves a threshold finding of factual foreseeability, followed by proximity and policy considerations. Generally, for a *prima facie* duty of care to arise concerning negligent misstatement, it is necessary to show a special relationship between the parties to demonstrate physical, circumstantial and causal proximity. In the wider case of negligence, the existence of a duty of care requires an assumption of responsibility and reliance and that it is fair, just and reasonable to impose a duty, there being no policy considerations to the contrary.

73 In relation to the concept of proximity, this was explained in *Spandeck* at [81]:

> In our view, Deane J's analysis in [*Sutherland Shire Council v Heyman* (1985) 60 ALR 1], that proximity includes physical, circumstantial as well as causal proximity, does provide substance to the concept since it includes the twin criteria of voluntary assumption of responsibility and reliance, where the facts support them, as essential factors in meeting the test of proximity. Where A voluntarily assumes responsibility for his acts or omissions towards B, and B relies on it, it is only fair and just that the law should hold A liable for negligence in causing economic loss or physical damage to B.

74 The claimant is right to point out that sufficient proximity through a voluntary assumption of responsibility can be made out in the presence of certain *general* categories of relationships, such as those between a solicitor and client, a banker and customer, and managing agents and members of an underwriting syndicate managed by the managing agents. This statement of principle is endorsed by the Court of Appeal in *Go Dante Yap v Bank Austria Creditanstalt AG* [2011] 4 SLR 559 at [31]–[33]:

> 31 As for whether there was sufficient proximity between the parties, within the meaning of the first stage of the *Spandeck* test, we were of the opinion that there clearly was such proximity, and that this was well supported by the relevant authorities. In *Spandeck* (at [78]), this court endorsed the views expressed by Deane J in the High Court of Australia decision of *Sutherland Shire Council v Heyman* (1985) 60 ALR 1 at 55 to the effect that proximity might reflect:
>
> > … an assumption by one party of a responsibility to take care to avoid or prevent injury, loss or damage to the person or property of another or reliance by one party upon such care being taken by the other in circumstances where the other party knew or ought to have known of that reliance.
>
> 32 This concept of an "assumption of responsibility" as the basis of a sufficiently proximate relationship so as to give rise to a duty of care in the tort of negligence derived from the seminal decision of *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] 1 AC 465 ("*Hedley Byrne*"), where the various members of the House of Lords formulated the applicable principle in a number of ways, but that which attracted the greatest support was Lord Morris of Borth-y-Gest's statement (with which Lord Hodson (at 514) expressly agreed and Lord Devlin (at 530) was prepared to agree) at 503 that:
>
> > … if in a sphere in which a person is so placed that others could reasonably rely upon his judgment or his skill or upon his ability to make careful inquiry, a person takes it upon himself to give information or advice to … another person who, as he knows or should know, will place reliance upon it, then a duty of care will arise.
>
> In *Hedley Byrne* at 530, after remarking that his Lordship was prepared to endorse such a formulation, Lord Devlin stated that:

> Such a relationship may be either general or particular. Examples of a general relationship are those of solicitor and client and of banker and customer … Where there is a general relationship of this sort, it is unnecessary to do more than prove its existence and the duty follows. [emphasis added]

> 33 *Hedley Byrne* was unanimously approved by the House of Lords in *Henderson v Merrett*, where one of the issues was whether, in addition to the admitted contractual duty of skill and care that was owed by Lloyd's managing agents to members ("Names") of the underwriting syndicate managed by the managing agents ("direct Names"), a duty of care in the tort of negligence was also owed by the managing agents to the direct Names. Lord Goff, with whom all of their Lordships agreed, stated (at 180) that:
>
> > [The principle laid down in *Hedley Byrne*] rests upon a relationship between the parties, which may be general or specific to the particular transaction, and which may or may not be contractual in nature … In particular … where the plaintiff entrusts the defendant with the conduct of his affairs, in general or in particular, he may be held to have relied on the defendant to exercise due skill and care in such conduct.
> >
> > [emphasis added]

75 To my mind, the case of *Su Ah Tee* provides support for the proposition that property agents owe a duty of care to purchasers. I do not find the present case to be distinguishable, at least in relation to the existence of a duty of care. Indeed, I have previously found in *Haw Wan Sin David and another v Sim Tee Meng and another* [2018] SGHC 272 ("*Haw Wan Sin David*") at [107] that *Su Ah Tee* stands for the proposition that a duty of care arises between a property agent and his or her buyer:

> 107 Bearing in mind the need to first refer to decided cases in analogous situations, I am of the view that Belle Seah did owe a personal duty of care to the appellants. There is no need to resort to the application of the *Spandeck* test afresh in relation to Belle Seah. As the Court of Appeal in *Spandeck* noted, the *Spandeck* test is to be applied incrementally, where there is an absence of a factual precedent which implies the presence of a novel situation. Analogous precedents should be relied upon where available, as they determine the current limits of liability

> (see *Spandeck* at [73]). *Su Ah Tee* is a decision on an analogous situation. Ang J held that property agents owe a duty of care towards purchasers, finding that there is sufficient proximity in such a relationship, and that there are no policy considerations militating against the imposition of such a duty of care (see *Su Ah Tee* at [214]–[217]). There is no dispute that Belle Seah was a property agent. On this basis, I find that she did owe a personal duty of care to the appellants. That said, the issue of whether she breached this duty of care is a matter that has to be considered on the precise facts of the present case. It is this which I now address.

76 It is undisputed by Mr Teo that he was always the property agent of the claimant, as was the case in *Su Ah Tee*. Mr Teo acknowledges that he owes a professional duty to his clients. As such, there is an established relationship between a property agent and a buyer. At the time of the viewing, this relationship had spanned a lengthy period of six months, with Mr Teo accepting that the face-to-face client relationship began as early as July 2021.[77] As the claimant points out,[78] Mr Teo confirmed that he had sent the Lams at least 50 listings and met the Lams for at least eight viewings.[79] Mr Teo conceded that, at that time, he had encouraged the Lams to purchase properties through him and advised them on both the pricing and potential issues that might have impacted the redevelopment potential of the properties.[80] Considering the foregoing, I am of the view that the requisite proximity to find a duty of care by Mr Teo to the claimant is made out. By virtue of the property agent-buyer relationship between Mr Teo and the claimant, Mr Teo would have voluntarily assumed responsibility for the provision of his services, and he knew that the claimant would rely on the information that would be communicated to her. There is

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77 NE at p 49 lines 16–23, p 50 lines 1–4.

78 CCS at para 4.

79 NE at p 49 lines 2–4.

80 NE at p 50 lines 5–7, pp 18–19, pp 29–30, p 51 lines 5–8, p 53 lines 17–20, p 54 lines 20–22.

prima facie a tortious duty of care. Furthermore, there are no policy considerations against imposing such a duty of care between a property agent and their client.

Did Mr Teo breach said duty, causing the claimant loss and damage?

Whether Mr Teo had breached his duty of care to the claimant

77 According to the claimant, Mr Teo had not met the requisite standard of care as a salesperson. In support, the claimant refers to the Code, which is indicative of a standard that a salesperson is required to meet: *Su Ah Tee* at [218]. The claimant urges me to find that Mr Teo is liable for a breach of his duty of care by drawing parallels to the case of *Su Ah Tee*.[81] In *Su Ah Tee*, Ang J had found (at [220]) that the salesperson had breached his duty of care and was negligent because he "chose to accept what Cheng [the seller] had told him at face value without making any independent verification; a risk he was willing to assume". Ang J found (at [221]) that the salesperson's negligence was "in not verifying the tenure of the property when he could have done so, and he passed on the information to Su [the purchaser] on the assumption that it was truthful." Similarly, Mr Teo is liable here for simply passing on information to the Lams on the assumption that it was accurate.[82]

78 It is undisputed that Mr Teo failed to conduct checks before forwarding the Marketing Brochure to the claimant. In fact, he did not conduct any checks *at all* on the accuracy of the information in the brochure. Mr Teo claims that he received a copy of the Marketing Brochure from Mr Tan on the morning of the

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81 CCS at para 184.

82 CCS at para 186.

viewing at around 7.30am via WhatsApp[83] and that he acted only as a conduit in relaying this document to the claimant. He argues that he should not be expected to conduct any checks, as it was evident to both the claimant and Mr Lam that the Marketing Brochure came from Mr Tan.

79 The expected standard of care is not a strict liability standard. As I previously stated in *Haw Wan Sin David* at [113], the touchstone remains whether the salesperson acted reasonably in the circumstances. In this regard, I repeat my statements in *Haw Wan Sin David* at [112]–[113] on the approach to be taken in assessing whether a salesperson had acted in breach of his duty of care:

> In *Su Ah Tee*, Ang J held that the Code of Ethics and Professional Client Care set out in the First Schedule of the Estate Agents (Estate Agency Work) Regulations 2010 (GN No S 644/2010) ("the Code") was indicative of a standard that had to be met as a salesperson (*Su Ah Tee* at [218]). The Code requires a salesperson not to mislead the client or provide any false information to the client (see para 6(3) read with para 6(4) of the Code). On the facts of *Su Ah Tee*, Ang J found that the property agent had fallen below the requisite standard of care as he accepted what the vendor of the property had told him without making any independent verification. He also failed to verify discrepancies in documents which ought to have alerted him to the fact that there was another tenancy agreement (*Su Ah Tee* at [220] and [222]).
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> 113 I accept that the Code is indicative of the standard that a property agent is supposed to meet. It does not, however, detract from the need to consider the specific facts in each case to determine whether the property agent breached his or her duty of care. Put differently, although the Code requires, through para 6(3) read with para 6(4), that a salesperson not mislead or misrepresent to any client, that cannot be construed as a strict liability standard. The touchstone still remains whether the salesperson, in the circumstances, acted reasonably.

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83 Affidavit of Evidence-in-Chief of Teo Eng Siong at para 8; Affidavit of Evidence-in-Chief of Tan Seng Heng Gregory at p 8.

80 In my view, Mr Teo's standard of care did not require him to independently verify the contents of the Marketing Brochure. Put another way, it was not unreasonable for Mr Teo to not have independently checked the Marketing Brochure before forwarding it to Mr Lam on the instructions of Mr Tan. The present case is distinguishable from *Su Ah Tee* as Mr Teo had merely relayed the Marketing Brochure to the claimant, which came directly from Mr Tan. It was not, as in *Su Ah Tee*, a case where a real estate salesperson relayed misinformation supplied to him through representations made "on his own accord" without making independent verification.[84] Here, the Marketing Brochure was forwarded at the behest of Mr Tan, and the claimant knew this fact. In this regard, the present case is more akin to that in *Haw Wan Sin David*, where I found (at [115]) that Belle Seah, the defendant, did not fall below the requisite standard of care to the appellants when giving representations which she was instructed to make by her real estate agency. In reaching this finding, I reasoned that it would have been unduly onerous to require the defendant to verify that the facts underlying the representations she was instructed to make were true. Instead, she was entitled to expect that the company providing the factsheet had done its due diligence. I consider this reasoning to apply similarly to the present case. Verification of the Marketing Brochure by Mr Teo would have been impossible in any event, given that the whole basis of the claimant's case is that there was an implied misrepresentation, which I have found above is not the case. Moreover, legal requisitions into the drainage reserve would undoubtedly have taken some time. Having only received the Marketing Brochure from Mr Tan in the morning at 7.30am, [85] a few hours before the viewing at midday, it would be unduly onerous to expect Mr Teo to comb

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84 Defendant's Reply Submissions ("DRS") at para 30.

85 Affidavit of Evidence-in-Chief of Teo Eng Siong at para 8.

through the Marketing Brochure for any false impressions – particularly one in the form of the Alleged Misrepresentation which, as I have found above, was one which a reasonable person in the claimant's shoes would not have been entitled to make. Apart from submitting a legal requisition himself, Mr Teo would have had no other means of verifying the Marketing Brochure, especially since Mr Tan appeared not to have known of the presence of drainage reserves. Indeed, I would add that it is implicit within *Su Ah Tee* itself that the duty of care owed by a property agent would be breached by a failure to verify underlying communications only when verification was possible. So it was that Ang J found (at [221]) that the salesperson's negligence was "in not verifying the tenure of the property *when he could have done so*, and he passed on the information to Su [the purchaser] on the assumption that it was truthful" [emphasis added].

81 For these reasons, I find that Mr Teo did not breach his duty of care when he forwarded the Marketing Brochure as instructed.

Whether the claimant had suffered loss in reliance on the Alleged Misrepresentation

82 The defendant submits that even if the claimant succeeds in establishing that a tort has been committed against her, the claimant has failed to prove that any alleged loss or damage was, in fact, suffered.[86] As such, the claimant is only entitled to nominal damages. In contrast, the claimant takes the position that she had suffered losses in the form of 25.9m^2 of the Property which cannot be used or considered for redevelopment due to the presence of the drainage reserve.[87] This loss is derived by using the purchase price of $18,680,000 divided by the

86 DRS at para 22.

87 Affidavit of Evidence-in-Chief of Lam Wing Yee Jane at para 28.

proportion of the area of the Property which cannot be used for redevelopment, *ie*, 25.9m^2 / 1,157 sq ft x $18,680,000. This loss amounts to a sum of $418,160.76.[88]

83 The claimant relies on *Lie Kee Pong v Chin Chow Yoon and another* [1998] 1 SLR(R) 457 ("*Lie Kee Pong*") as authority for the proposition that an appropriate means of assessing the quantum of compensation or damages is a straightforward abatement of the purchase price based on the unusable space. In *Lie Kee Pong*, the plaintiff purchaser agreed to buy a house from the defendants, the vendors. The house was advertised as having 3,500 sq ft of land. Beyond the rear boundary wall of the house, there was a common drain. The property agent allegedly told the purchaser that the drain was not part of the property. When the purchaser obtained a legal requisition reply from the authorities revealing that the drain formed 4.3% of the land, he sued the vendors for the misrepresentation that the common drain beyond the boundary wall did not form part of the property. Chao Hick Tin J (as he then was) was satisfied that an innocent misrepresentation had been made. In deriving the quantum of damages, what is relevant for our purposes is that Chao J appeared to accept (at [33]) that where the sale concerned the land alone, a simple calculation, based purely on land value alone would mean that there should be an abatement in the price of $81,700 based on a shortfall in the land area. However, on the facts, given that the price paid was for the land and the house, Chao J held that it would have been wrong to assess the quantum based on the simple formula of the shortfall in the land area alone and accordingly reduced the figure by one-third.

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88 Affidavit of Evidence-in-Chief of Lam Wing Yee Jane at para 32.

84 I accept that *Lie Kee Pong* supports the claimant's case that the quantum of loss on straightforward calculation is based on the proportion of the purchase price paid. Unlike *Lie Kee Pong*, there should be no reduction in quantum in this case as the purchase price was computed primarily for the land alone. This was because the parties, including Mr Teo, knew the claimant was looking for land for redevelopment purposes. It is also undisputed that Mr Teo had recommended the Property to Mr Lam as one "for rebuilding".[89] Indeed, the Potential Layout Page contains potential layouts for the redevelopment of the Property.[90] However, in the light of my conclusion that there is no implied misrepresentation or a breach of duty of care by Mr Teo, the question of loss does not arise.

85 For completeness, I disagree with the defendant's submission that the chain of causation had been broken because the claimant had exercised the OTP one week early on 29 December 2022. The defendant avers that the claimant could have waited until 5 January 2023 to check with her lawyers on the replies to the legal requisitions before exercising the OTP and that she would have had the benefit of receiving the Drainage Interpretation Plan before the exercise of the OTP. However, I am unable to agree with the defendant's submission that this would "have allowed her to avoid the purchase of the Property if she had deemed the drainage reserve unacceptable" and the claimant's choice of exercising the OTP early was the "sole effective cause of the alleged loss she claims she has suffered."[91] The OTP provides that only legal requisitions affecting more than 5% of the land area of the Property would have granted the claimant the right to avoid the purchase. The drainage reserve did not affect

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89 ABD 33.

90 ABD 88.

91 DCS at para 34.

more than 5% of the Property – which the defendant accepts to affect only 2.23% of the total land area –[92] and thus would not have in any event allowed the claimant to avoid the sale.[93]

Issue 2: whether the defendant is vicariously liable for Mr Teo's negligent misrepresentation

86 The defendant submits that it does not dispute that the relationship between the defendant and Mr Teo is of a type which is capable of giving rise to a finding of vicarious liability. However, it stresses that the claimant is still required to satisfy the Court that the conduct of Mr Teo possesses a sufficient connection with the relationship between Mr Teo and the defendant, such that it may be said that vicarious liability may arise. Crucially, the question before the Court is whether, taking into account all the relevant circumstances, it would be fair and just to impose vicarious liability on the defendant. A precondition for the imposition of vicarious liability is that the victim seeking compensation should be without fault himself: *Rohini d/o Balasubramaniam v Yeow Khim Whye Kelvin and another* [2017] SGHC 149 at [30].[94] The defendant submits that vicarious liability on the part of the defendant should not be found since the claimant's purported loss is directly attributable to her own actions or gross negligence.[95] The defendant emphasises that the claimant had proceeded to make an offer to purchase the Property within 20 minutes of viewing the Property without fact-checking the purportedly important fact about whether the entire area of the Property could be redeveloped.[96]

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92 DCS at para 15(a).

93 CCS at para 126.

94 DCS at para 39.

95 DCS at paras 3, 40.

96 DCS at para 40.

87 Given my finding above that Mr Teo did not make any implied representation that the entire land area of the Property can be redeveloped, it is not necessary for me to decide on the question of the defendant's vicarious liability. I would only add that I disagree with the defendant's submission that it would not be fair and just to impose vicarious liability on the defendant because the claimant had proceeded to make an offer to purchase the Property within 20 minutes of viewing the Property without fact-checking the purportedly important fact about whether the entire area of the Property could be redeveloped. While it is true that the imposition of vicarious liability is that the victim seeking compensation should be without fault himself, I do not consider this proposition to apply here. It is trite law that a representee's failure to exercise reasonable diligence to discover the falsity of the statements is insufficient to defeat a claim of misrepresentation: *Redgrave v Hurd* (1881) 20 Ch D 1; *Axis Megalink Sdn Bhd v Far East Mining Pte Ltd* [2023] SGHC 243 at [125]. This applies even if it is alleged that the representee should have conducted such checks by virtue of their knowledge and experience: *Panatron* at [24]. I consider it a logical extension of this principle that a representee's failure to conduct reasonable checks into the truth of a misrepresentation would not defeat a claim for vicarious liability.

Conclusion

88 In conclusion, we return to the tale initially spun – one of trust shattered and expectations dashed in the claimant's pursuit of a dream family home. This narrative, set against the backdrop of a property transaction, raised questions

touching on the duties imposed upon property agents in the course of such transactions.

89 In summary, I find that while the claimant was induced by the marketing materials provided, the evidence did not demonstrate that Mr. Teo had made a negligent misrepresentation as claimed. It was determined that any false impression given by the Marketing Brochure that the entire area of the Property could be redeveloped was a misimpression on her part. Furthermore, Mr Teo, in forwarding the Marketing Brochure, was merely acting upon the instructions of the seller's agent, Mr Tan. His role was limited to that of a conduit. In these circumstances, Mr Teo did not act below the standard of care expected of him when he did not independently verify the contents of the Marketing Brochure but rather passed them on as received.

90 For the reasons given above, I dismiss the claimant's claim. As costs follow the event, the defendant, having succeeded, is entitled to its costs.

Costs

91 In regard to costs, the claimant's costs estimate and disbursements are $108,000 and $13,580.00, respectively, while the defendant's figures are $87,000 and $2,058.54. Both parties' estimates of their profit costs on a standard basis are on the high side, taking into account that the one day's trial concluded early at 3.30pm and there were only two witnesses for each side.

92 In my view, a fair and reasonable figure for costs on a standard basis would be $48,000. Accordingly, the defendant is awarded costs of $48,000

against the claimant with the actual disbursements that it incurred to be reimbursed by the latter.

Lai Siu Chiu
Senior Judge

Looi Ming Ming and Shen Lin (Eldan Law LLP) for the claimant;
Lin Hui Yin, Sharon and Zephan Chua Wei En (Withers KhattarWong LLP) for the defendant.
