

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

[2023] SGHC 96

Suit No 806 of 2018

Between

Chan Pik Sun

... Plaintiff

And

- (1) Wan Hoe Keet
- (2) Ho Sally
- (3) Ho Hao Tian Sebastian
- (4) Strategic Wealth Consultancy
Pte Ltd (formerly known as
SW4U Consultancy Pte Ltd)

... Defendants

JUDGMENT

[Tort — Conspiracy — Unlawful means conspiracy]

[Tort — Conspiracy — Lawful means conspiracy]

[Tort — Misrepresentation — Fraud and deceit]

[Tort — Misrepresentation — Negligent misrepresentation]

[Tort — Misrepresentation — Innocent misrepresentation]

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Chan Pik Sun
v
Wan Hoe Keet and others

[2023] SGHC 96

General Division of the High Court — Suit No 806 of 2018

Andre Maniam J

4–6, 10–13 May, 26–28 July, 16 August 2022, 16 January 2023

14 April 2023

Judgment reserved.

Andre Maniam J:

Introduction

1 Is there a “sure win” way of making money gambling against a casino?

2 The plaintiff (“Sandra”) lost millions of dollars participating in a scheme called “SureWin4U”. SureWin4U sold packages promising lucrative returns from the winnings of professional gamblers playing baccarat at casinos.

3 SureWin4U was however a Ponzi scheme. It did not have a way of consistently winning money through gambling, let alone a “sure win” way. As such, participants’ returns essentially came from the money that they and fellow participants put into the scheme.

4 SureWin4U was also a pyramid scheme involving a multi-level marketing strategy: participants (as “uplines”) received referral bonuses for

bringing in new participants (“downlines”), with the uplines getting further bonuses if their downlines bought more packages themselves or brought in others. A scheme like SureWin4U is inherently unsustainable, for it depends on an ever-increasing inflow of money from an ever-increasing number of participants.

5 The Surewin4U scheme started in July 2012. Sandra became a participant in or around March 2014. Sandra says she invested a total of HK\$36,765,900¹ (some \$6 million using, for convenience, an exchange rate of HK\$6 to \$1). Sandra purchased gambling-related Investment Packages, Share Investment Packages (which supposedly involved the acquisition of a company to be listed on the Singapore Exchange), and US Property Packages (which supposedly involved the purchase of properties in Detroit). She rose to the level of 5-star agent in the Surewin4U hierarchy, and aspired to the rank of 7-star agent.

6 The scheme collapsed in September 2014 – SureWin4U’s Taiwanese representative was arrested, SureWin4U’s website could not be accessed, and SureWin4U’s two founders (brothers Peter and Philip Ong) could not be contacted. Participants had used real money to buy SureWin4U packages, their money being converted into a virtual currency called 贏幣 (“yingbi”) – “winning currency”, abbreviated as “YB”. Participants’ returns were given in terms of YB, which they could convert back into cash and withdraw, leave to their credit in the system, or use to buy more packages. When the scheme collapsed in September 2014, participants lost the value of their packages, and any YB they had earned but not withdrawn.

¹ Sandra’s oral closing submissions slides, slide 49.

7 To recover her losses, Sandra sued three earlier participants in the scheme:

- (a) Ken, the first defendant;
- (b) Sally, the second defendant, Ken’s wife;
- (c) Sebastian (or “Ah Hao”), the third defendant, Sally’s brother.

8 Sandra also sued the fourth defendant company Strategic Wealth Consultancy Pte Ltd (“Strategic Wealth”, formerly known as SW4U Consultancy Pte Ltd), which Ken and Sally are shareholders and directors of. Ken and Sally used Strategic Wealth to hold their earnings from SureWin4U, as well as a yacht purchased with money from Peter Ong.

9 Sandra advanced as her causes of action: fraudulent misrepresentation, conspiracy (by unlawful means or lawful means), negligent misrepresentation, and innocent misrepresentation. I will address them in turn, but it is useful first to consider why SureWin4U was a Ponzi scheme; this has an impact on Sandra’s various causes of action.

SureWin4U was a Ponzi scheme

10 Participants who purchased Investment Packages were entitled to attend classes: a “99.8%” class for those who purchased Bronze, Silver, or White Silver Packages; a “100%” class for those who purchased Gold or Platinum Packages. Sandra attended both those classes. She first attended the 99.8% class, and then the 100% one. She believed that she would receive the lucrative returns SureWin4U had promised her because of SureWin4U’s ability to win money gambling at casinos.

The 99.8% formula

11 The 99.8% formula is described by Ken at para 14 of his AEIC. He says that Philip Ong explained that there was a 50% chance of either the “banker” or the “player” winning each hand at baccarat if he placed a bet in accordance with the SureWin4U method. That suggests that SureWin4U had some way of eliminating the “house edge” (advantage) which one would expect a casino to have over gamblers, such that baccarat became an *even* game of chance between a gambler and a casino. What that “SureWin4U method” was, however, was not explained in the evidence.

12 I doubt that SureWin4U was able to equalize odds with the casino gambling at baccarat, but even if it could, that would just give SureWin4U *equal* chances of winning or losing, like betting “heads” or “tails” on a coin toss. How then would SureWin4U make money to pay its participants the returns it had promised them?

13 Philip Ong’s explanation was: the gambler should increase his bet every time he lost. If he won the next hand, he would recover his previous losses and make a small profit. If he were to play nine hands in a row, there was mathematically only a 0.1953% ($1/2^9$ or $1/512$) chance that he would lose nine out of nine hands. This meant that, correspondingly, there was a 99.8047% chance that he would *not* lose nine hands in a row. Hence, SureWin4U claimed the 99.8% formula gave it a 99.8% winning rate, and mathematically that was true.

14 However, the mere reference to a 99.8% win rate gives an incomplete picture, for it says nothing about what SureWin4U would lose if the 0.2% chance of loss were to happen. Although there is only a *small* (0.2%) chance of

losing nine hands in a row, if that should happen the loss would be a **big loss**, since each bet was larger than the previous one.

15 Consider a gambler who starts with a \$1 bet, and doubles his bet each time he loses. If he wins the first hand, he wins \$1. If he loses the first hand, but wins the second hand, he loses \$1 then wins \$2 (thus winning a net \$1 after two hands). If he loses the first two hands, but wins the third hand, he loses \$1, then loses \$2, then wins \$4 (thus winning a net \$1 after three hands). Likewise, if he loses three, four, five, six, seven, or eight hands in a row, but wins the next hand, he wins a net \$1 after each sequence.

16 But if the gambler loses nine hands in a row, he loses $\$1 + \$2 + \$4 + \$8 + \$16 + \$32 + \$64 + \$128 + \$256$: he loses a total of \$511. He only has a $1/512$ (0.2%) chance of losing nine hands in a row, but that is a $1/512$ (0.2%) chance of losing \$511. He has a $511/512$ (99.8%) chance of not losing nine hands in a row, but that is a $511/512$ chance of only winning \$1 after each sequence. As a matter of probability, the gambler would win \$1 each time after 511 of 512 sequences, but he would lose \$511 once in every 512 sequences: his \$511 from winning \$1 after each of 511 sequences would be cancelled out by the one \$511 loss. That is not a “sure win” way of making money gambling against a casino. It is just a zero-sum game, where expected wins and expected losses cancel each other out. It was, after all, an *equal* game of chance to begin with.

17 One of Surewin4U’s promotional videos (Video 6) shows Ken saying: “What do you call a 50-50 chance? Gambling. What do you call a 99.8% chance? Withdrawal.” The 99.8% formula as described by Ken in his AEIC was, however, still *gambling* based on a 50-50 chance of winning each hand at baccarat. It was certainly not like a *withdrawal* of money from an automated

teller machine (“ATM”). An ATM does not have a 0.2% chance of taking back all the money that it has dispensed the other 99.8% of the time.

18 SureWin4U promised those who purchased a package and attended a 99.8% class that if they could disprove the 99.8% win rate claimed by Surewin4U, they would get back the money they had paid for the package. Sandra attended the 99.8% class, and believed in the 99.8% formula (although she knew there was a risk of loss). She did not seek a return of the money she had paid for her initial packages; instead, she bought more packages and encouraged others to do so too.

The 100% formula

19 Participants who purchased more expensive packages (at least a Gold Package) were entitled to attend SureWin4U’s 100% class.

20 Ken said that whereas the 99.8% formula involved sequences of up to nine bets, the 100% formula involve sequences of up to 19 bets. Like the 99.8% formula, the 100% formula involved the gambler increasing his bet every time he lost (up to 19 losses in a row).² For the 100% formula, bets would not be doubled: Ken’s recollection was, the first bet was 300, the second 400, the third 500; he said it was then seven (presumably 700), nine (presumably 900), and 11 (presumably 1,100).

21 Given that the starting premise was that SureWin4U was engaged in an *equal* game of chance playing baccarat against a casino, I do not accept that the formula described by Ken would give SureWin4U an advantage over the casino.

² Transcript, 16 August 2022, page 191.

Mathematically, the 100% formula would still result in a zero-sum game since the gambler and the casino each have an equal chance of winning any hand.

22 Of course, the probability of losing 19 hands in a row with the 100% formula is smaller (1/524,288) as compared to losing nine hands in a row with the 99.8% formula (1/512). But, if that loss happens it would be a big loss – indeed, the loss from losing 19 times in a row would be bigger than that from losing nine times in a row. The problems with the 100% formula are illustrated by the ill-fated attempt by some SureWin4U participants (including Sandra and Sebastian) to use the 100% formula to win money from a casino after the scheme had collapsed. Ken and Sally had provided \$148,000 as capital for that. Instead of making money, the group lost money. Ken says that the capital of \$148,000 was insufficient to implement the 100% formula fully (until 19 losses in a row) – he says Sebastian told him that \$148,000 was only enough to lose 11 hands in a row.³ Sebastian’s evidence is slightly different in that he says that 18 bets were required (Ken says 19 bets), and that with the capital available they only managed to go up to 10 bets (Ken says 11 bets). On either account, the eventual loss would be very large if \$148,000 were only enough for 10 or 11 bets, and 19 hands in a row were lost with bets increasing each time.

23 In any event, the 100% formula does not result in a 100% win rate – there is still a risk of losing 19 hands in a row. Sandra attended the 100% class, and a related demonstration of the 100% formula in a Macau casino;⁴ Ken and Sally attended the same demonstration. Sandra says participants were introduced to some persons they were told were professional gamblers, and they were all divided into 8 small groups to watch gambling with the 100% formula

³ Transcript, 16 August 2022, page 192.

⁴ Sandra’s AEIC paras 72–73.

at the casino. The result of the demonstration was that of the eight teams of gamblers, seven teams won but one lost. Sandra says, “This apparently proved that the 100% winning formula worked.” Whatever that demonstration proved, it did not prove that that 100% formula gave SureWin4U a 100% win rate – there was still some risk of loss; indeed, one of the eight teams of gamblers had lost. The evidence does not show that Sandra believed that SureWin4U had a method of achieving a 100% win rate – she knew there was still some risk of loss, but she believed that SureWin4U and its gambling business model could win money for her.

Some other formula?

24 Ken also said, in response to questions by the court after cross-examination, that SureWin4U’s gamblers in fact used some other formula that was not the 99.8% formula, or the 100% formula; it was something more advanced than the 100% formula.⁵ He said Philip Ong said so during the 100% class, and that he could not recall whether this was also disclosed during the 99.8% class.

25 There was no evidence what this other formula was, which was not the 99.8% formula or the 100% formula. Mathematically, however, no formula could give SureWin4U a *winning* advantage over a casino in an *equal* game of chance.

26 Other than the Share Investment Packages, which were introduced shortly before SureWin4U collapsed, all the other types of SureWin4U packages promised periodic returns based on SureWin4U winning money by

⁵ Transcript, 16 August 2022, page 184–185.

having gamblers gamble at baccarat against casinos. As a matter of probability, though, that business model would not generate a net profit for SureWin4U, let alone the vast sums required to pay the lucrative returns it had promised participants, some of which it had actually paid.

27 SureWin4U did not have a viable method of making money to pay scheme participants – it was a Ponzi scheme drawing in money by promising lucrative returns, with SureWin4U actually paying some of that money to participants before the collapse of the scheme.

28 The question is whether Ken, Sally, and Sebastian (earlier participants in the scheme), and Ken and Sally’s company – Strategic Wealth – are liable to compensate Sandra (a later participant) for her losses. I now turn to consider Sandra’s causes of action.

Fraudulent misrepresentation

Preliminary observations

29 In Sandra’s statement of claim (“SOC”), she pleaded a host of misrepresentations,⁶ which she says were false and fraudulent,⁷ and induced her to buy SureWin4U packages.⁸

30 As presented in the SOC, Sandra’s claims for misrepresentation (particularly fraudulent misrepresentation) were at the forefront of Sandra’s claims. The conspiracy claim was pleaded more briefly in paras 76–77 of the

⁶ SOC, paras 33–66.

⁷ SOC, para 73.

⁸ SOC, paras 73 and 78.

SOC, and, in Sandra’s AEIC at paras 136–137, conspiracy was simply described as an alternative cause of action to her misrepresentation claims.

31 Similarly, para 14 of Sandra’s opening statement stated, “The Plaintiff’s *primary* cause of action is in misrepresentation.”

32 By the time of closing submissions, however, Sandra’s focus had shifted to her conspiracy claim: that was addressed first (at paras 20–151 of Sandra’s closing submissions), before her claims for misrepresentation (at paras 152–270 of Sandra’s closing submissions). Sandra submitted that “if the Court accepts the Conspiracy Claim, there is strictly no necessity to discuss the Representations Issue”.⁹ However, the conspiracy and misrepresentation claims cannot be separated so neatly, because Sandra had pleaded fraudulent misrepresentation¹⁰ as the unlawful means of the unlawful means conspiracy¹¹ Thus, if Sandra cannot establish that the representations she alleged were false and fraudulent, and induced her to invest, her claim for unlawful means conspiracy would fail. She could still assert lawful means conspiracy if the representations were not false and fraudulent, provided that the representations induced her to invest. But if she fails on inducement, the lawful means conspiracy claim would fail too.

33 In the circumstances, I first consider Sandra’s claim for fraudulent misrepresentation.

⁹ Sandra’s closing submissions, para 152.

¹⁰ See SOC, para 73.

¹¹ See SOC, para 76.

Who made the alleged misrepresentations?

34 In the SOC, Sandra pleaded that the individual defendants and/or Peter Ong had made fraudulent representations to her which deceived her into investing monies with SureWin4U.¹² She did not mention Philip Ong although he, too, was a founder of SureWin4U together with his brother, Peter (collectively, the “Ong brothers”); Philip Ong had also conducted the SureWin4U gambling classes. Philip Ong is not mentioned at all in the SOC.

35 As for Peter Ong, although Sandra had named him as one of those who had made false and fraudulent representations to her,¹³ her particulars of falsity in the same paragraph do not identify any representation made by Peter Ong as being false. Instead, she only mentioned “Ken and Sally’s claims”,¹⁴ “Ken, Sally and Sebastian’s representations”,¹⁵ and whether Ken and Sally had been gifted a Ferrari and yacht.¹⁶

36 In paras 33–66 of the SOC, where Sandra sets out the representations that she complains of, only one representation is attributed to Peter Ong – at para 51(e) of the SOC, Sandra pleads that at the “1st Presidential Suite Meeting” in June 2014, “Ong, Ken and Sally informed the Plaintiff that SureWin4U was doing well and had a promising future.” Yet, Para 51(e) was not subsequently referred to in her particulars of falsity at para 73.

¹² SOC, para 73.

¹³ SOC, para 73.

¹⁴ SOC, paras 73(a), 73(d), and 73(g).

¹⁵ SOC, paras 73(b), 73(e) and 73(f).

¹⁶ SOC, para 73(c).

37 Sandra does, however, plead that SureWin4U was a Ponzi scheme perpetuated by the defendants and/or Peter Ong,¹⁷ and that the defendants conspired with Peter Ong and/or SureWin4U to cause injury to her;¹⁸ she also refers to SureWin4U’s program booklet¹⁹ and promotional brochure,²⁰ which, on the evidence, Peter and Philip Ong as the founders of SureWin4U would be responsible for.

38 As for Sebastian, Sandra had mentioned him in para 73 of the SOC as having made false and fraudulent representations to her. But in her particulars of falsity she only mentions him in para 73(b), which in turn refers to representations at paras 34(e), 37(c), 40(b), 43(b), 47(a), 53(a), 57(b) and 63. Out of those other paragraphs, representations are only attributed to Sebastian in para 63, which reads as follows:

63. Like Ken and Sally, Sebastian would frequently encourage the Plaintiff to increase her investments and sales by telling her that the investments were safe, that she was a rising star and had potential to be the next “Seven-star Agent”. Sebastian would also keep the Plaintiff informed of the upcoming SureWin4U events or help convey messages from Ken and Sally to the Plaintiff. Such communication was usually done via texts, voice messages or phone calls.

39 In opening Sandra’s case, her lawyers gave a slide presentation of which slide 20 only names Ken and Sally as the defendants who have been “sued for fraudulent / negligent misrepresentation”. Sebastian and Strategic Wealth were said to only have been sued for conspiracy.

¹⁷ SOC, para 1.

¹⁸ SOC, paras 76–77.

¹⁹ SOC, para 39.

²⁰ SOC, para 40.

40 For now, I simply observe that the focus of Sandra’s misrepresentation claims was very much on Ken and Sally.

What were the alleged misrepresentations?

41 Although Sandra had pleaded a host of representations in the SOC, at the stage of closing submissions her lawyers clarified that the core of her case is based on four main actionable representations, set out as follows:²¹

(a) The *primary actionable* representation is that it was represented to her that it was safe and profitable to invest in the Scheme (the “Safe and Profitable Representation”) ...

(b) The Safe and Profitable Representation is applicable to all 3 tranches of her investments. In contrast, the other 3 actionable representations are relevant to only the 3rd Tranche. They are as follows:

(i) that investing in the US Property Package entitled her to title deeds to houses in Detroit (the “US Property Representation”);

(ii) that her monies invested under the Share Investment Package would be used to acquire a company that was going to be listed on the Singapore Stock Exchange in October 2014 (the “Share Investment Representation”); and

(iii) that by investing 4 sets of the US Property and Share Investment Packages, Sandra could become a “Seven-Star Agent” and Ken and Sally would groom her to become Hong Kong’s top representative (the “HK No.1 Representation”).

42 These representations were further addressed in Sandra’s oral closing submissions, in conjunction with slide 38 of the slides presented at the hearing, which I consider in greater detail later.

²¹ Sandra’s reply submissions, para 3.

Fraudulent misrepresentation – principles

43 The parties agreed on the basic principles applicable to a claim in fraudulent misrepresentation, as set out in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14]:

- (a) there must be a representation of fact;
- (b) the representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff;
- (c) the plaintiff must have acted upon the false statement;
- (d) the plaintiff must have suffered damage by so doing; and
- (e) the representation must be made with the knowledge that it is false (it must be wilfully false, or at least made in the absence of any genuine belief that it is true).

44 I now turn to consider the four “main representations” that Sandra relies on.

The first main representation – the “Safe and Profitable Representation”

Sandra’s first tranche investment

45 In April 2014, Sandra first invested in SureWin4U by buying two Silver Packages; cheaper Bronze Packages were available, and would likewise have entitled Sandra to attend the 99.8% class. But Sandra chose to buy Silver Packages because their rate of return was better than Bronze Packages. She also

chose to buy two packages at once, rather than just one, prior to attending the 99.8% class.

46 Sandra says she invested in SureWin4U in reliance on Ken and Sally representing that the SureWin4U scheme was “safe and profitable”. Sandra says that the “Safe and Profitable Representation” was first made by Ken and Sally at a SureWin4U seminar at the Royal Pacific Hotel (“RPH”) in March 2014. Ken and Sally deny making such a representation – they say no such seminar took place. But they acknowledge that they did meet Sandra at RPH through the introduction of Nelly, who became one of Sandra’s uplines when Sandra invested.

47 The key issue is: what did Ken and Sally say to Sandra about SureWin4U?

48 Sandra’s case is not so much that Ken and Sally used the words “safe” and “profitable” but that this was a constant theme in Ken and Sally’s description of SureWin4U.²²

49 Ken and Sally were happy about their participation in SureWin4U: they made a lot of money from it, and they continued buying SureWin4U packages (including Share Investment Packages that were the last to be introduced shortly before SureWin4U collapsed). When Ken and Sally spoke about their participation in SureWin4U, whether at SureWin4U events, or other occasions, they described SureWin4U in positive terms. In itself, their successful participation in SureWin4U would suggest that they believed it was a good scheme to participate in. However, Ken and Sally were not founders of

²² Sandra’s AEIC, para 31.

SureWin4U, and they did not run the scheme. What they said to Sandra, they said as earlier participants in the scheme. That context colours what Ken and Sally said to Sandra, and how Sandra understood it.

50 First, I find that what Ken and Sally said to Sandra about SureWin4U was a statement of their opinion, not an actionable statement of fact. As the court put it in *Kong Chee Chui v Soh Ghee Hong* [2014] SGHC 8 at [4] (citing *Deutsche Bank AG v Chang Tse Wen* [2013] 1 SLR 1310 at [93]): “...statements of fact must be distinguished from ‘statements as to future intention, predictions, statements of opinion or belief, sales puffs, exaggerations and statements of law’, all of which cannot give rise to actionable misrepresentation.”

51 Sandra knew that as fellow scheme participants, Ken and Sally would not know – as a matter of fact – whether SureWin4U was “safe and profitable”, any more than she would when she invested in the scheme. Ken and Sally could only tell her their *opinion* of SureWin4U, much like what Sandra would later do at a SureWin4U event, and to her downlines and potential downlines. If the person to whom the representation is made knows that the maker is not in possession of the facts, and can only be giving his opinion, the representation would amount to a statement of opinion: *Chitty on Contracts* (Sweet & Maxwell, 34th Ed, 2021) at para 9.008

52 Second, when questioned about whether Ken and Sally said the scheme was “safe”, Sandra said she understood the scheme to be “safe” in the sense that if SureWin4U could not prove the 99.8% formula, she would be refunded what she had paid for her initial packages.²³ That buying SureWin4U packages was

²³ Transcript, 10 May 2022, pages 32–34

“safe” because a refund had been promised in those circumstances is different from Sandra’s case that she understood “safe” to mean, legitimate, not a scam.

53 Indeed, Sandra said she considered that there was “no risk” in buying her initial packages, because of the promise that if SureWin4U could not prove the 99.8% formula, she would be refunded what she had paid for the packages:²⁴

I decided to join them on 1 May because he said that if, on 1 May, he cannot prove that this method works, I can get back my HK\$300,000 in full. So to me, that contains no risk.

54 Sandra’s reply submissions say the same:²⁵ “Sandra was told that by purchasing a package, she would be entitled to attend the 99.8% class and if she could disprove the method then, she would obtain a full refund. Therefore, it is correct to say that *at that stage*, investing the 1st Tranche carried no risk.” Sandra considered that there was “no risk” in buying the first two packages *not* because she was relying on Ken and Sally representing that SureWin4U was legitimate and not a scam, but because of SureWin4U’s “money back guarantee”. However, if SureWin4U were a scam, then there would be a risk in buying the initial packages, for SureWin4U might not make good on its money back guarantee; indeed, SureWin4U might well have collapsed even before Sandra could attend the 99.8% class!

55 Third, I find that Ken and Sally did not represent to Sandra that SureWin4U was “safe and profitable” in the sense which Sandra says she understood it: that “the Scheme was legitimate, not a scam, and that I would not lose the sums that I invested in it.”²⁶

²⁴ Transcript, 10 May 2022, page 85.

²⁵ Sandra’s reply submissions, para 58(b).

²⁶ Sandra’s AEIC, para 16(a).

56 Fourth, and relatedly, I find that that was not Sandra’s understanding of what Ken and Sally had said about SureWin4U.

57 The case of *Tradewaves Ltd v Standard Chartered Bank* [2017] SGHC 893 is instructive in this regard. The plaintiffs had invested into what turned out to be a Ponzi scheme of Bernard L Madoff. The plaintiffs contended that the defendant bank’s relationship managers had made negligent or fraudulent misrepresentations that induced the plaintiffs to invest, and remain invested, until the fund collapsed. The court held at [75]: “...the Plaintiffs’ understanding of the representation that Fairfield Sentry ‘was a safe and stable investment with consistent good returns and low volatility’ had nothing to do with the risk of loss due to managerial fraud. What the Plaintiffs had in mind when Fairfield Sentry was marketed to them was investment performance and market volatility. Fraud and managerial wrongdoing did not cross their minds.” As what caused the loss was the fraudulent deeds of Madoff, rather than adverse market movements, *ie*, market risk, the representations which the plaintiffs understood to relate to market risk were irrelevant (at [73]).

58 In the same way, what Ken and Sally said about SureWin4U was focused on the *viability* of SureWin4U’s way of making money – by gambling. In describing SureWin4U, Ken and Sally were not talking about whether SureWin4U was legitimate and not a scam. Indeed, it would have been incongruous for Ken and Sally to have said, at SureWin4U events: “Peter and Philip are not fraudsters, SureWin4U is not a scam, you will not be cheated of your money.” SureWin4U events, and its promotional materials, focused on the positive benefits of participation, with success stories like that of Ken and Sally. “Fraud and managerial wrongdoing” was never a topic.

59 On Sandra’s part, at that time, she was not focused on whether SureWin4U was legitimate and not a scam. She was focused on the returns from the packages on offer, and on SureWin4U’s method of making money to pay those returns – by gambling at baccarat.

60 Sandra was introduced to SureWin4U in January 2014 by her husband’s friend, Zhou Jing Hua. She only met Ken and Sally at RPH two months later. I do not believe that Sandra understood what Ken and Sally (as earlier participants) said about SureWin4U as a factual representation that SureWin4U was legitimate, not a scam. The fact that Sandra bought 2 packages, and Silver Packages rather than Bronze Packages at that, prior to attending the 99.8% class, suggests that whether the scheme was legitimate was not a concern of hers then.

61 In summary, I find in relation to the first tranche of Sandra’s investments in SureWin4U, that:

- (a) Ken and Sally did not represent as a fact that SureWin4U was legitimate, not a scam – they only expressed their positive opinion about participating in the scheme;
- (b) Sandra did not rely on what Ken and Sally said about the scheme being “safe and profitable”, in making the first tranche of her investments – she considered that there was no risk in making those investments not because Ken and Sally had assured her that SureWin4U was legitimate and not a scam; she considered that there was no risk because SureWin4U had promised to refund what she had paid, if she could disprove the 99.8% formula; and

(c) Ken and Sally did not represent that SureWin4U was legitimate, not a scam; their description of the scheme was about the *viability* of SureWin4U making money through its gambling business model.

62 To that, I would add that in all the messages in evidence between Sandra and her downlines, Sandra never referred to any of the representations that she now says Ken, Sally or Sebastian made, which she claims induced her to invest in SureWin4U. Instead, she mentioned SureWin4U's promised returns, SureWin4U's gambling formulas, what SureWin4U said in its brochures, and how she believed in SureWin4U. If, in fact, any of the alleged representations by Ken, Sally or Sebastian had played a real and substantial part in Sandra's decision to invest in SureWin4U, one would have expected to see that mentioned in her messages to her downlines. But that is not to be found. The explanation that Sandra offered was that her downlines also attended the SureWin4U seminars, and so they would have heard for themselves what was said at those seminars.²⁷ I do not find that explanation convincing. The same may be said about SureWin4U's gambling methods, which those who purchased packages could attend classes on. Yet, Sandra went on at length about how much she believed in those gambling methods. Gambling, and the lucrative returns promised by SureWin4U, were foremost in Sandra's mind.

63 Sandra's own description of what she told her downline Ms Feng is noteworthy:²⁸

I only told [her] what Ken and Sally had told me. I was just a messenger. I told [her] that [she] needed to purchase a package first before [she] could attend all the meetings by the company and find out more about the packages. If the company could not prove that their method worked, then he could ask for 100

²⁷ Transcript, 5 May 2022, pages 85–88.

²⁸ Transcript, 5 May 2022, pages 6–7.

per cent return of the fee, and that is guaranteed. And all this information was also in the brochure that was passed to me.

64 There is no reference there to any “safe and profitable” representation, nor any other representations by Ken, Sally, and Sebastian on which Sandra’s misrepresentation case is now founded.

65 The AEIC of another downline, Shelley Wong, as to why she invested, is in similar vein:²⁹

5. On or around early May 2014, I met up with Sandra in Hong Kong. She told me that she had just returned from her trip to Singapore, where she attended a conference organised by SureWin4U, which was an investment scheme she was participating in. She told me that the returns were lucrative. She shared with me about how SureWin4U operated, and the 99.8% class that she had attended during the conference.

6. Sandra also showed me a promotional brochure that SureWin4U had distributed. ... I recall that SureWin4U was described in it as a safe and profitable investment scheme. To me, that meant it was a genuine scheme and not some sort of dubious scheme.

7. In reliance on the representations made in the promotional brochure that the scheme was safe and profitable, I purchased...

66 There is again no reference to any “safe and profitable” representation by Ken and Sally, nor any of the other representations that Sandra is now suing on. Shelly Wong invested in reliance on what SureWin4U was saying about itself in the brochure, after being told by Sandra about the lucrative returns, how SureWin4U operated, and the 99.8% class.

²⁹ Ms Wong’s AEIC, paras 5–7.

67 Further, I find that Sandra's conduct in the aftermath of the collapse of SureWin4U is inconsistent with her assertion that she had invested in reliance on representations by Ken, Sally, and Sebastian. I will address this later.

Sandra's second tranche investment

68 The second tranche of Sandra's investments into SureWin4U happened in May 2014, after Sandra had attended the Suntec Conference held from 1 to 3 May 2014, during which she attended the 99.8% class.

(1) The SureWin4U promotional booklet and brochure

69 Sandra claimed that at the Suntec Conference, Ken and Sally were the ones who distributed the SureWin4U promotional booklet and brochure; she seemed to suggest that they thereby bore responsibility for whatever was said in those documents.

70 I find that the SureWin4U promotional booklet and brochure were distributed by SureWin4U, not by Ken and Sally; moreover, Ken and Sally cannot be held responsible for everything said in those documents.

71 Sandra conceded that she had no basis to say that Ken and Sally had authored those documents, or printed them.³⁰ She said that when she passed brochures to her downlines, and spoke to them about SureWin4U and how she believed in it, that was different from what Ken and Sally did to her, because she was honest and they were dishonest.³¹ Putting state of mind to one side, what

³⁰ Transcript, 10 May 2022, pages 43 to 44.

³¹ Transcript, 10 May 2022, pages 47 to 49.

Sandra did in sharing (with her downlines) her positive experience with SureWin4U, was the *same* as what Ken and Sally did in relation to Sandra.

72 In a similar vein, Sandra agreed that when she spoke at a SureWin4U event on 15 June 2014, she was expressing her experience of how profitable it had been for her to be an investor in SureWin4U.³²

73 The brochure claimed that SureWin4U was a “profitable and safe option” which “Enables you to make a lot of money, but it’s safe. It’s not just talk, but is proven to work.”³³ “Safe” in the context of those statements by SureWin4U, referred to the viability of SureWin4U’s business model of making money by gambling, particularly given the “proven to work” reference. SureWin4U was not saying, “we are legitimate, we are not a scam”, but if that might be implied because SureWin4U was the party running the scheme, that meaning cannot be attributed to Ken and Sally (or Sebastian), who did not run the scheme, but were participants in it, as discussed earlier.

(2) The representations about Ken and Sally’s earnings from SureWin4U

74 I do however find that Ken and Sally should bear some responsibility for the statements made in the promotional booklet and brochure, and at the Suntec Conference, about their earnings from the scheme. There were three aspects to this:

(a) that Ken and Sally had earnings of HK\$201,325,564.70;³⁴

³² Transcript, 10 May 2022, pages 97 to 98.

³³ 8AB 2221.

³⁴ 7AB 2121.

(b) that SureWin4U had gifted Ken and Sally a Ferrari sports car for them completing something in 58 days;³⁵ and

(c) that Ken and Sally had received a yacht from SureWin4U for their participation in the scheme.

75 Sandra had earlier alleged that it was untrue that Ken and Sally had received the yacht from SureWin4U, but this appears to have been dropped in her closing submissions. In any event, I accept Ken and Sally's position that the yacht was paid for with cash from Peter Ong – there was thus nothing false about the representation that they had received a yacht for their participation in the scheme.

76 The representations about the earnings of about HK\$201 million, and the Ferrari, however, had some element of exaggeration.

77 The HK\$201 million figure included *future* earnings on the packages Ken and Sally had;³⁶ that was not a sum that Ken and Sally could demand immediate payment of.³⁷ Ken and Sally's position is that they had withdrawn some S\$7 million to \$10 million before SureWin4U collapsed, and what they had in the scheme was still worth some \$10.5 million. Based on those figures, their earnings up to the time of SureWin4U's collapse were no more than \$20.5 million (around some HK\$123 million) not the HK\$201 million figure that in May 2022 they were said to have earned.

³⁵ 10 AB 2820.

³⁶ Transcript, 28 July 2022, page 93;

³⁷ 16 August 2022, pages 24–25.

78 The HK\$201 million figure was also exaggerated in that it included the value of what SureWin4U had paid towards the Ferrari (some \$138,000) and the yacht (some \$750,000).³⁸ The impression given, however, was that Ken and Sally had received a Ferrari and a yacht on top of HK\$201 million in earnings.

79 The supposed gift of the Ferrari was itself an exaggeration in that although SureWin4U first paid the full \$398,000 price of the car, that was on the basis that SureWin4U would ultimately only contribute \$138,000 towards it; the balance of \$260,000 was to be repaid by Ken and Sally by 12 monthly deductions of their YB.³⁹

80 SureWin4U had “commitment challenges” with rewards that included “YB 100,000 car rewards”, which accords with Ken and Sally’s position that SureWin4U’s ultimate contribution towards their Ferrari was YB 100,000, which was equivalent to \$138,000.

81 The SureWin4U June Sri Lanka Commitment Challenge in respect of Sandra⁴⁰ made express reference to such “YB 100,000 car rewards”. In a 27 July 2014 message, Sebastian asked Sandra if she wanted 6 property packages under her own name because of “100k for car funds”.⁴¹

82 Had Sandra thought in May 2014 that SureWin4U had given Ken and Sally the full value of a Ferrari, by June or July 2014 she should have realised that the value of SureWin4U’s car rewards was YB 100,000 (\$138,000). I do not, however, consider Ken and Sally’s Ferrari to have played a real and

³⁸ Transcript, 28 July 2022, page 89.

³⁹ Transcript, 28 July 2022, pages 20 and 27; 13 May 2022, page 203.

⁴⁰ 7AB 2149–2150.

⁴¹ 2AB 503.

significant role in Sandra’s decision to invest – what was said about the Ferrari she subsumes in the “safe and profitable” representation, and the difference of \$260,000 (being what Ken and Sally were liable to repay in instalments from their YB) is a small amount in comparison with their earnings figure of HK\$201 million.

83 Returning then to the earnings figure of HK\$201 million: the value of SureWin4U’s contributions towards the Ferrari and the yacht, even if one were to use the full value of the Ferrari (\$398,000), would be some \$1,148,000 or HK\$6,888,000 out of the HK\$201 million figure – around 3.5% of the total. So, it is the exaggeration by including future earnings that is more significant.

84 As I noted above, based on their own evidence Ken and Sally’s earnings from SureWin4U were no more than \$20.5 million (HK\$123 million) at the time SureWin4U collapsed in September 2014. The figure of HK\$201 million was represented in May 2014, some 4 months earlier. As their earnings were accumulated progressively, their earnings as of May 2014 would have been somewhat less than \$20.5 million (HK\$123 million); but those earnings would still have been in the millions of dollars, whether in terms of \$ or HK\$.

85 I do not accept that, if Ken and Sally’s earnings as of May 2014 had been accurately stated, say, as HK\$100 million (\$16 million) rather than HK\$201 million, that would have made a real and significant difference to Sandra’s decision to invest further. It would still have been a sizeable, impressive sum. Again, Sandra’s case is not so much that the exaggeration in the figure made a significant difference to her, but more that Ken and Sally’s success story was part and parcel of the “safe and profitable representation”, in the sense of SureWin4U being legitimate, not a scam. Whether the correct figure

was HK\$201 million, or, say, HK\$100 million, is not material to whether SureWin4U was legitimate and not a scam.

86 On a related note, I accept that Ken and Sally knew that they had not earned the full amount of HK\$201 million as at May 2022, but I do not find that they decided to exaggerate the figure to induce others to invest in SureWin4U. I accept their evidence that the figure was provided by SureWin4U.⁴²

(3) The 99.8% class

87 I find that the 99.8% class was conducted by Philip Ong, rather than by Peter, Ken, and Sally, as Sandra suggests. The classes which Sandra's downlines Shelley Wong and Wujun attended were likewise conducted by Philip Ong.

88 Sandra believed in SureWin4U's 99.8% formula, and praised it – that is clear from what she said contemporaneously. From 1 July 2014, she told her downline Yuan Jun:

I learned in the winner project that I have 99.8% winning chances and I did win it.

It's believable. I hope more people will know this and have this blessing.⁴³

89 However, she went on to caution him against trying SureWin4U's method himself, for there was a risk of loss:

In fact, I don't recommend you go to the casino to play this thing. Because you don't have time for 1, 2, if I encounter that 0.2, I am a little worried. Although he has 512 throws, he will lose with one stroke. This mentality is very important, so I am more worried about you.

⁴² Transcript, 16 August 2022, pages 24–27, 195–200.

⁴³ 2DBD 767

...

So, I don't think you need to keep going to the casino, is meaningless

First, no self-control ability. Secondly, may encounter the 0.2. Third, you don't have that much time.⁴⁴

90 Sandra recognised that although the 99.8% formula had a 99.8% win rate, there was a 0.2% or 1/512 chance of loss.

91 In similar vein, she told one Ms Feng on 5 July 2014:

If I strictly followed the teacher's method, I really swear to Chairman Mao, I really have never lost before. I suggest you to keep practicing in your home, practice every day, practice every day, and then see for yourself if you can encounter. I haven't encountered it anyway.

...

512 rounds, it is hard not to win any. No.

I sometimes do it with my opinion because I can read the cards. This is hard to teach. If you have so many years of experience, maybe you will also read the cards yourself. This method cannot teach other people, because many do not know how to gamble and can only follow the teacher's methods.

...

When there is a clash between my own methods and the teacher's methods, I will choose the teacher's methods.⁴⁵

92 There, she was talking about not having encountered the risk of loss. At trial, she put this down to coincidence:

... coincidentally, I won -- I won everytime. It was just coincidence. But that doesn't mean that -- but it doesn't mean that the method is correct, and it doesn't mean that I can win every time.

...

⁴⁴ 2DBD 776–778.

⁴⁵ 2DBD 670–671.

Yes, the fact is I have never lost.⁴⁶

93 The point is that at the time Sandra was well aware that there was a risk of loss; but she believed in the 99.8% formula, and sought to convince others of it.

94 In her testimony, Sandra also said:

I was misled by them, by all their falsehoods, whatever they had said were all false, they even said that publicly, so I was misled by all they said. They said that it was safe, it was legitimate, it was stable, and they said that the winning risk was 99.8 per cent, and they said that we would 100 per cent win this. They said this openly, and I was cheated by them.⁴⁷

95 The evidence does not bear out Sandra’s allegation that Ken, Sally, or Sebastian ever said, “we would 100 per cent win this”. She knew full well that a 99.8% chance of winning was a 99.8% chance of winning, it was not a 100% chance of winning.

96 On the evidence, I find that Sandra made her second tranche of investments not because of any false representations that she attributes to Ken, Sally, or Sebastian, but because she was attracted by the returns promised by SureWin4U, and she believed in SureWin4 U’s gambling methods, particularly after attending the 99.8% class.

Sandra’s third tranche investment

97 The third tranche of Sandra’s investments into SureWin4U happened in August 2014, shortly before the scheme collapsed in September 2014.

⁴⁶ Transcript, 5 May 2022, page 64.

⁴⁷ Transcript, 5 May 2022, page 18.

(1) What Ken and Sally said after the Suntec Conference

98 Sandra attributes various representations to Ken and Sally, but none of them (nor all of them taken together) amount to a representation that SureWin4U was “safe and profitable” in the sense of the scheme being legitimate, not a scam.

(2) What Sebastian said to Sandra

99 In her closing submissions, Sandra relies heavily on the following exchange of messages with Sebastian on 29 July 2014:

Sandra: I fully trust surewin

I put almost all my money in their hands

Should I do this?

.....

Sebastian: Must see how u play. I also put all my money in. Not as much as u put la.

100 Sandra asked Sebastian “Should I do this?”, having told him that she fully trusted SureWin4U and had “put almost all my money in their hands”. I accept that she was asking Sebastian if he thought SureWin4U could be trusted. Sebastian’s answer, however, was rather non-committal: “Must see how u play. I also put all my money in. Not as much as u put la.” His response, “Must see how u play” was not a resounding endorsement of SureWin4U’s trustworthiness; rather, it means, “it really depends on how you want to do these things”, as Sebastian explained at trial.⁴⁸

101 In her submissions, Sandra contends that Sebastian lied when he said, “I also put *all* my money in”, for he had not literally put into SureWin4U every

⁴⁸ Transcript, 13 May 2022, pages 56–57.

cent that he had. But that is not what Sebastian conveyed by his remark. He did not mean that he had put in every cent that he had, and that is not what Sandra understood either. He said, “I *also* put all my money in”, in response to Sandra saying that she had “put *almost* all my money in their hands”. His use of the word “also” indicates that he meant the same as Sandra: *almost* all his money, rather than literally *all* his money. I accept his explanation on this point.⁴⁹

102 In that exchange of messages, Sandra did not tell Sebastian what she now claims to be the case: that she fully trusted SureWin4U because Ken and Sally told her it was safe and profitable, that SureWin4U was legitimate, not a scam. Instead, she asked him, “Should I do this”.

103 It is ironic that Sebastian’s response was not specifically pleaded by Sandra as a misrepresentation. If it had operated on her mind in inducing her to make her third tranche of investments, one would have expected her to specifically plead it, especially since the messages were in written form. Nor did Sandra mention these messages in her AEIC. To top it off, in Sandra’s opening statement, she indicated that her causes of action in misrepresentation were being raised against Ken and Sally, but not Sebastian. I find that Sandra did not rely on her exchange of messages with Sebastian as an assurance by Sebastian that she could trust SureWin4U; she did not rely on that in making the third tranche of her investments.

⁴⁹ Transcript, 13 May 2022, pages 50–51.

(3) The 100% class

104 Prior to the third tranche of Sandra’s investments, she attended the 100% class. That made her even more enthusiastic about SureWin4U and its gambling methods, as shown by her messages on 17 July 2014 to Yuan Jun:⁵⁰

Sandra: Just learned 100% yesterday, feeling great. I'm even more excited that I couldn't sleep.

Now I believe in this project even more, I will practice more, keep it up.

Yuan: Did you test it out? you used small money to make big money?

Sandra: Of course. We test it out the day before in Macau

Yuan: Great, I want to learn it too Send me the website again

Sandra: This company is so great

.....

I have not returned to Hong Kong yet. I am practicing 100%.

105 As Sandra said, she was “even more excited” having learned the 100% formula, she had tested it out, and was practicing it; and she considered SureWin4U to be “so great”.

106 In her evidence, Sandra did not provide a description of the 100% formula that she had tested and practised. Her case is that in fact SureWin4U did not have a formula with a 100% chance of winning, but I do not believe that she ever thought that SureWin4U had a 100% chance of winning. Significantly, in her 17 July 2014 messages to Yuan Jun (whom she had warned of the risk of loss earlier that month, when she only knew the 99.8% formula), she did not tell him that the 100% formula gave SureWin4U a 100% chance of winning. I find

⁵⁰ 2DBD 784, 787.

she knew that there was still some risk of loss in SureWin4U's gambling methods, but she nevertheless believed in those methods.

107 Thus, Sandra's claim in relation to the Safe and Profitable Representation fails.

The second "main representation" – the "US Property Representation"

108 The US Property Representation is formulated in Sandra's reply submissions as follows:⁵¹ "that investing in the US Property Package entitled her to title deeds to houses in Detroit". That is said to be false because "Sandra did not receive the title deeds to any US property in respect of the US Property Package."⁵² Sandra's complaint about the US Property Representation is thus that SureWin4U did not keep its *promise* to give her title deeds to houses in Detroit. That, however, involves no false representation of *fact*. In Sandra's oral closing submissions slides, at slide 18 – on "The Representations are statements of fact" – it is merely asserted that "The US Property Representation that Sandra *will* receive a title deed for each Detroit property is a statement of fact." [emphasis added] A statement that something "will" happen in future, is not a statement of fact – it is either a statement as to the future, or a promise. The only thing factual about the US Property Representation, is that it was a term of the US Property Package that those who bought that package were entitled to a title deed to a house in Detroit. There was nothing false in that: this was a term of the US Property Package.

109 Compounding Sandra's problems with this alleged representation, the SOC mentions the US Property Package as something Ken and Sally promoted

⁵¹ Sandra's reply submissions, para 3.

⁵² Sandra's closing submissions, para 249(b).

(at para 53(d)–(f) of the SOC). However, para 53(d)–(f) of the SOC is not referred to in para 73 of the SOC, where Sandra pleads why the representations she complains about were false.

110 The US Property Representation involves no false statement of fact made by Ken, Sally, or Sebastian, and they did nothing fraudulent in that regard either.

111 In buying the US Property Package, Sandra knew that it was a term of that package that she was entitled to a title deed to a house in Detroit, but whether she received that title deed would depend on whether SureWin4U kept its promise in that regard.

112 Her claim against Ken, Sally, and Sebastian in relation to the US Property Representation thus fails.

The third main representation – the “Share Investment Representation”

113 Sandra’s case in relation to the Share Investment Representation is beset with the same problems. The representation is formulated in Sandra’s reply submissions as follows:⁵³ “that her monies invested under the Share Investment Package would be used to acquire a company that was going to be listed on the Singapore Stock Exchange in October 2014 (the ‘Share Investment Representation’)”. Sandra’s complaint about this representation is that SureWin4U did not use her money to acquire any company that was going to be listed in October 2014; instead, the scheme collapsed in September 2014. However, that involves no false representation of *fact*. A statement that something “would be” done in the future, is not a statement of fact – it is either

⁵³ Sandra’s reply submissions, para 3.

a statement as to the future, or a promise. The only thing factual about the Share Investment Representation, is that it was a term of the Share Investment Package that those who bought that package would acquire an interest in a company that SureWin4U would be acquiring. There was nothing false in this: this was a term of the Share Investment Package.

114 Again, Sandra’s submissions involve a shift away from her pleaded case. She pleads at para 58(a) of the SOC that Ken and Sally had represented that “SureWin4U had plans to buy over a company that was going to be listed on the Singapore Stock Exchange in October 2014”; this is said to be false (in para 73(d) of the SOC) in that “SureWin4U had no real plans to nor did it acquire a listed company contrary to Ken and Sally’s claims”.

115 The fact that SureWin4U collapsed before it could keep its *promise* to acquire a listed company, involves no false statement of *fact* on the part of Ken and Sally (or Sebastian), and there was nothing fraudulent in what Ken and Sally (or Sebastian) did in relation to the Share Investment Package. It was a term of the Share Investment Package that SureWin4U would acquire a company that was to be listed, but whether SureWin4U did acquire that company would depend on whether SureWin4U kept its promise in that regard.

116 Moreover, it does not follow that because SureWin4U did not acquire a company to be listed (if that is the case), that it had no real plans to do so – Sandra has failed to prove this. Indeed, Sandra has not even proved that her money was not used by SureWin4U to acquire a company that was to be listed. There is simply no evidence what SureWin4U did with the money it received from Sandra for the Share Investment Packages – SureWin4U may well have used it to acquire some company with a view of listing it.

117 Slide 18 of Sandra’s oral closing submissions slides involves a further shift – the representation is recast as being one “that Sandra’s investment will be used to acquire a particular target company (i.e. China Kunda Technology Holdings Ltd)”. However, it was neither Sandra’s pleaded case nor her evidence that the *particular target company* was ever mentioned to her prior to her purchasing the Share Investment Packages.

118 Sandra’s case ranges from saying that SureWin4U had no intention to acquire “any company that was to be listed”,⁵⁴ to saying that SureWin4U had no intention to acquire China Kunda Technology Holdings Ltd⁵⁵ which was already listed. I accept Ken’s explanation that it was only after the collapse of SureWin4U that he came to know, from one of his downlines, that the intention was to acquire China Kunda Technology Holdings Ltd.⁵⁶

119 The fact that China Kunda Technology Holdings Ltd was already listed, does not help Sandra’s case. The SureWin4U June Sri Lanka Commitment Challenge⁵⁷ document states: “The subsidiary of Surewin will be backdoor listed on Singapore RTO before the end of 2014. Any buyer of the diamond package can get the right of first refusal to subscribe for the internal shares of Surewin subsidiary, (500,000 YB).” A “backdoor listing” pursuant to an “RTO” (in the context, a reverse takeover) involves using one company to acquire another that was already listed, thereby gaining listed status. This is consistent with, as opposed to being inconsistent with, China Kunda Technology Holdings Ltd already being listed.

⁵⁴ Sandra’s closing submissions, para 249(c).

⁵⁵ Sandra’s oral closing submission slide 18.

⁵⁶ Transcript, 16 August 2022, pages 95–100.

⁵⁷ 7AB 2149–2150.

The fourth main representation – the “HK No.1 Representation”

120 In the SOC, Sandra pleads that at the 1st Presidential Suite Meeting, Sally told her:

- (a) even though Sandra had not achieved the top sales position in Hong Kong, she was invited to the meeting because Ken and Sally had told Peter Ong of Sandra’s potential to become the top representative for Hong Kong (para 51(b));
- (b) Sally introduced Sandra to Peter Ong as the “next top representative for Hong Kong” (para 51(c));
- (c) Sally encouraged Sandra to buy and sell more packages so that she could become the next “Sally” of Hong Kong (para 51(d)).

121 Sandra further pleads that at the 2nd Presidential Suite Meeting, Ken and Sally repeated their earlier representations at the 1st Presidential Suite Meeting and told Sandra that they saw potential in her and wanted to groom her to become Hong Kong’s top representative (para 58(e)).

122 In para 73 of the SOC, however, Sandra does not say that the above representations were false; those paragraphs of the SOC are not mentioned in para 73.

123 In her closing submissions, however, the “HK No.1 Representation” was portrayed as one of the four main actionable representations at the core of Sandra’s case. The representation is formulated in Sandra’s reply submissions as follows:⁵⁸ “that by investing 4 sets of the US Property and Share Investment

⁵⁸ Sandra’s reply submissions, para 3.

Packages, Sandra could become a ‘Seven-Star Agent’ and Ken and Sally would groom her to become Hong Kong’s top representative”. That is said to be false in that “Despite investing in the US Property and Share Investment Packages, Sandra did not become Hong Kong’s No.1 salesperson.”⁵⁹ Her submissions are a departure from her pleaded case.

124 In her oral closing submissions, at slide 18, Sandra asserts that “The HK No.1 Representation that if Sandra purchased 4 US Property and 4 Share Investment Packages, she would become Hong Kong’s top salesperson with Ken and Sally’s grooming is a statement of fact as Ken and Sally had no such intention – SureWin4U was about to collapse!”.

125 I find that the HK No.1 Representation was never made by Ken and Sally – they never said that if Sandra purchased 4 US Property and 4 Share Investment Packages, she would become Hong Kong’s top salesperson (whether with Ken and Sally’s grooming or otherwise).

126 In any event, this (if it had been said) would not have been a statement of fact; it would be a statement as to the future, at most a promise. But Ken and Sally were in no position to promise that Sandra would become Hong Kong’s top salesperson (and Sandra knew that) – that would depend on how she did, relative to others in Hong Kong. If someone else in Hong Kong outperformed Sandra, Sandra would then not have become Hong Kong’s top salesperson.

127 In any event, Sandra has failed to prove that she had not become Hong Kong’s top salesperson – on the evidence, she may well have become that by the time of SureWin4U’s collapse.

⁵⁹ Sandra’s closing submissions, para 249(d).

128 For completeness, I find that there was nothing false or fraudulent in what Ken, Sally, or Sebastian said to Sandra about her performance and potential in the context of SureWin4U.

The aftermath of SureWin4U's collapse

129 Sandra's conduct in the aftermath of SureWin4U's collapse shows that Sandra had not relied on the representations she alleges Ken, Sally, and Sebastian had made to her, in investing into SureWin4U.

130 First, just a few days after the collapse, there is the following exchange of messages on 14 September 2014 between her and her upline Mr Zhou Jing Hua:

Zhou: I am very sorry! Take care! A healthy body is your asset!

Sandra: *It's OK, **I knew the risk.** I will face it.*

Next time work every day in a casino in Macau, haha.

Zhou: You're a manly lady, you're broad-minded!

I heard that Ken, Sally have gone to Hong Kong. You can meet them and give them some advice.

Sandra: That's great, thank you.

[emphasis added]

131 There are two points of note:

(a) Sandra told Mr Zhou: "It's OK, I knew the risk, I will face it." She did not say she thought her participation in SureWin4U was free of risk, and she did not say she thought it was free of risk because Ken and Sally told her SureWin4U was "safe and profitable".

(b) Sandra did not say that she had invested in SureWin4U because of representations made by Ken and Sally (and Sebastian) – instead,

when Mr Zhou suggested that she can meet Ken and Sally (who have gone to Hong Kong where Sandra was) and give them some advice, she said, “That’s great, thank you.”

132 That is not the behaviour of someone who thought that Ken and Sally had defrauded her, or that they had made false representations which had induced her to invest in SureWin4U and consequently lose millions of dollars.

133 Second, there is an exchange with Sally on 17 September 2014 where Sally asked Sandra whether the latter had given her downlines any guarantees, and told her that that she cannot do so. In response, Sandra said, “I have not guarantee them one bit... *I told them there are risks* but the problem is that they trust me...” [emphasis added]. What Sandra said contemporaneously – that she had told her downlines that there are risks – is fundamentally inconsistent with her present position that she thought her participation in SureWin4U was free of risk because Ken and Sally (and Sebastian) had assured her that SureWin4U was “safe and profitable”. She knew there were risks, and she told her downlines as much. Sandra did not say to Sally that she had invested in SureWin4U because of representations that Ken, Sally, or Sebastian had made to her.

134 Third, in October 2014 Sandra came to Singapore and stayed at Ken and Sally’s home for about a week. At that time, a group of ten investors, including Sebastian and Sandra, went to the Marina Bay Sands Casino with \$148,000 in capital provided by Ken and Sally to attempt to win money using the 100% formula. Sandra still believed in SureWin4U’s 100% formula (as did Ken, Sally, and Sebastian), she went to live with Ken and Sally, and she was part of this effort with Sebastian (using Ken and Sally’s money) – she evidently did not think then, that they had defrauded her or made false representations that had induced her into investing in SureWin4U.

135 I find that Ken and Sally provided the \$148,000 capital because they too believed that the 100% formula could be used to win money at a casino, and Sebastian believed that too. I do not believe they spent that sum to create the impression that they were innocent parties. At that time, they were not facing any allegations that they were fraudulent, or in cahoots with the Ong brothers.

136 Fourth, in May 2015 Sandra had the following exchange with Yuan Jun:

Why are ken and sally accused? It's because they now earn about 50 million Singapore dollars in this project Now they don't want to spit out the money, so everyone is forcing them to catch them and return the money to us.

...

Thank you for willing to reply me. You're right, it's my fault and I don't blame you for your reaction. I just wanted good for everyone in the first place. I also studied a lot and then put in the money. I didn't expect it was such a big scam. I didn't run away and chose to stay with everyone to find solutions together. But now I'm not the one to take your money, I'm also the victim. You lost 3 million and I lost 2 million. You all know Mijian is now 54 years old and lost all of his savings. He is now in debt. Every time I think of this, I'm terribly guilty and I can't sleep at night. The good relationships we used to have is now gone, and this makes me very sad.

137 There, Sandra said the reason for going after Ken and Sally was because they had made money, while others had lost money; she did not say that Ken and Sally had made false representations that had induced her and others to invest in SureWin4U. She further said that it was her fault; she had studied a lot and then put in the money, but she didn't expect that it was such a big scam. She did not blame Ken and Sally for having induced her to invest in SureWin4U by the "safe and profitable" representation, or other representations. Instead, she said it was her fault that others had lost money, and she felt terribly guilty.

138 The evidence does not show that Sandra invested in SureWin4U because of any false representations of fact made by Ken, Sally, or Sebastian. The picture which emerges instead is:

- (a) Sandra was attracted by the lucrative returns SureWin4U promised, which she had started receiving on her initial packages.
- (b) To her, there was no risk in purchasing her initial packages because of SureWin4U's "money back guarantee" if she could disprove the 99.8% formula;
- (c) She attended the 99.8% and 100% classes, and believed in SureWin4U's gambling methods, which she had successfully tried herself;
- (d) She did not believe that investing in SureWin4U was free of risk – she knew there was a risk in SureWin4U's gambling methods; she knew there was a risk in investing in SureWin4U, and said "I knew the risk. I will face it." She said she told her downlines that there were risks.
- (e) In getting her downlines to invest, Sandra never told them about any representations made by Ken, Sally, or Sebastian; she told them about the returns promised by SureWin4U, SureWin4U's gambling methods, SureWin4U's brochure, and her belief in SureWin4U.
- (f) Sandra's conduct in the aftermath of SureWin4U's collapse is inconsistent with her case that she had invested because of false representations made to her by Ken, Sally, or Sebastian.

139 SureWin4U had exaggerated the extent of Ken and Sally's earnings, as presented at the Suntec Conference, and Ken and Sally must take some

responsibility for that, for they knew that their earnings up to that point were not that much. However, I find that if Ken and Sally's earnings had been accurately represented by SureWin4U, it would have made no difference to Sandra's investment decisions.

140 Further, many of the representations Sandra sues on are not even statements of fact, but statements as to the future, or promises, or statements of opinion.

141 I also generally find that Ken, Sally, and Sebastian were not fraudulent in the sense of them having made statements knowing they were false, or not genuinely believing in the truth of what was said (I will discuss this further in relation to the claim for conspiracy to defraud). At most, I would fault Ken and Sally for not insisting that SureWin4U make a correction to what it planned to say about their earnings. But I find that although Ken and Sally associated themselves with the exaggeration of their earnings, they did not condone the exaggeration with the intention of inducing others to invest in SureWin4U. Nor did the exaggeration of earnings play any real and substantial part in Sandra's decisions to invest.

Unlawful means conspiracy

Preliminary observations

142 As I noted above at [29]–[33], the unlawful means Sandra relies on for her unlawful means conspiracy claim, are the same representations that she relies on for her misrepresentation claims.

143 My finding that Sandra did not rely on the alleged representations to invest in SureWin4U, is fatal to both the unlawful means conspiracy claim, and the lawful means conspiracy claim.

144 I nevertheless consider whether Sandra had made out the elements of agreement, and intention, for her conspiracy claims.

The element of agreement

Sandra's case

145 Sandra pleads that the defendants conspired with Peter Ong and/or SureWin4U to cause injury to her.⁶⁰ The SOC does not mention Philip Ong, but her closing submissions include him as a conspirator – this is not a satisfactory way of putting forward a conspiracy claim.

146 I have noted above at [129]–[138] that Sandra's conduct in the aftermath of SureWin4U's collapse is inconsistent with her thinking that Ken, Sally, and Sebastian had, by false representations, induced her to invest in SureWin4U. The same conduct is likewise inconsistent with Sandra thinking that Ken, Sally, and Sebastian were involved in a conspiracy to defraud her.

147 The evidence before the court as to events up to the collapse of SureWin4U does not prove any agreement – between the defendants on the one hand, and SureWin4U and/or the Ong brothers (or either of them) on the other hand – to cause injury to Sandra.

148 Unsurprisingly, Sandra relies heavily on two events *after* the collapse of SureWin4U in attempting to prove the alleged conspiracy:

⁶⁰ SOC, para 76.

- (a) a meeting between Ken and Sally, and Peter Ong, in Macau in 2018; and
- (b) Ken, Sally, and Sebastian all changing their mobile phones in or around 2015, without retaining any of the messages in them that related to SureWin4U, other than one message that Sally had made a point to retain.

Ken and Sally's 2018 meeting with Peter Ong in Macau

149 It appears that the 2018 meeting in Macau was the first time since the scheme's collapse, that Ken and Sally met with Peter Ong.

150 In the intervening period, Ken and Sally had been sued by another SureWin4U investor in April 2016. Sandra filed an affidavit giving evidence on behalf of the plaintiff. However, that suit did not proceed to trial, as it was settled in October 2017 and discontinued in November 2017.

151 Ken says in his AEIC (at paras 127 to 129) that out of the blue, in March 2018, Peter Ong asked some of the former top investors in SureWin4U to meet him in Macau, claiming that he had some plan for them to recover their losses. Ken says that he and Sally decided to go as they wanted to find out what had happened with SureWin4U.

152 Ken says:

- (a) Peter had about 20 bodyguards with him, and was aggressive and intimidating;
- (b) Peter asked that they take a group photograph with him, which they initially refused. But Peter got very upset and angry, and so they

agreed to be photographed; they smiled because Peter had demanded that;

(c) They found out that Peter’s proposal was another scheme similar to SureWin4U; they did not reject that on the spot but did so when they returned to Singapore.

153 In their oral testimony, Sally and Ken say that at the meeting, Peter Ong explained that SureWin4U had collapsed because of the actions of the authorities in Taiwan and Malaysia.⁶¹ Sally says she did not go further and ask him what had happened to the money that they still had in the scheme when it collapsed.⁶² Ken, however, says that Peter Ong’s new scheme would allow them to recover that, but only if participants put in fresh money.⁶³

154 In the event, the photographs with Ken and Sally in them, smiling, with wads of money, and making a “thumbs up” gesture, were used by Peter Ong to launch his new Prince Sun City Scheme.⁶⁴

155 I do not, however, believe that Ken and Sally were part of Peter Ong’s new scheme. I accept their evidence that they did not participate in that, although they obliged his request for photographs. I bear in mind that by the time of that meeting in 2018, Ken and Sally had already been sued by one SureWin4U investor; another – Sandra – had also given affidavit evidence against them in that suit. If Ken and Sally got involved with Peter Ong’s new scheme, they would be inviting lawsuits from Sandra and possibly others too.

⁶¹ Transcript, 27 July 2022, pages 106 – 116; 16 August 2022, page 127.

⁶² Transcript, 27 July 2022, page 216.

⁶³ Transcript, 16 August 2022, page 138–139.

⁶⁴ 11 AB 3048 and 3049.

Indeed, in June 2018, Sandra found out about the Prince Sun City Scheme, and saw the photographs of Ken and Sally with Peter Ong that were used to promote that scheme; she was convinced that Ken and Sally were in cahoots with Peter Ong, and in August 2018 she sued.

156 Unlike the Ong brothers, Ken and Sally did not go missing for years; they stayed in Singapore and defended the suits against them.

157 Considering the evidence about the meeting with Peter Ong in Macau, in the context of the rest of the evidence in this case, I do not find that Ken and Sally had conspired with SureWin4U and/or the Ong brothers (or either of them) to defraud or injure Sandra.

Ken, Sally, and Sebastian's missing messages

158 The last piece of evidence (or, rather, missing evidence), is the messages that Ken, Sally, and Sebastian once had in their mobile phones, which they did not retain when they all changed mobile phones in or around 2015.

159 I agree with Sandra's contention that it is unusual for a person to change his mobile phone without retaining the messages in it – either by transferring those messages to his new phone, or making a backup of the messages. For three persons to do the same, in the year after SureWin4U's collapse, is too much of a coincidence to be coincidental. It is more likely that one or more of them deliberately did not keep messages from the time they were involved in SureWin4U. But why? And what should the court do now that the messages are not available as evidence?

160 Sandra contends that the messages would show that Ken, Sally, and Sebastian were conspirators with SureWin4U and/or the Ong brothers (or either

of them), and so they got rid of the messages; and that the court should now draw that very inference – that they were conspirators.

161 Sally only kept one page of the messages between her and Peter Ong. On 18 September 2014, some 8 days after the scheme collapsed, she sent two texts saying “We need you! Pls pls help us!”, “Many wants to committ suicide”, followed by sad and tearful cartoon pictures.⁶⁵

162 In a previous affidavit,⁶⁶ Sally stated she had “only printed and kept that one screenshot...to demonstrate to [Ken and Sally’s] downlines, who had been harassing them, that they had, in fact, tried to get in touch with Peter Ong, but there was no response from him, and that in essence, the screenshot was taken, and printed to appease their downlines, and show them that [Ken and Sally] had genuinely tried to help them.”

163 Why then did Sally not keep any of her other messages concerning SureWin4U? She said, “I was very, very depressed. I don’t even dare to look at the phone. Yeah. And I was told – and I was been [*sic*] encouraged [by people who cared, SureWin4U members] to throw away the phone, to don’t answer, get rid of everything, wash it off.”⁶⁷ So she decided to change her phone. She gave it to someone – possibly her helper then, but she could not remember who – with the information that was in it.⁶⁸

⁶⁵ 7 AB 2048.

⁶⁶ Exhibit P3. See also transcript, 27 July 2022, pages 148–152.

⁶⁷ Transcript, 26 July 2022, pages 19–20.

⁶⁸ Transcript, 26 July 2022, pages 20–22.

164 Those responses are telling, for they indicate that Sally wished to dissociate herself from SureWin4U. I find that in similar vein, the name of the fourth defendant company was changed from “SW4U” to “Strategic Wealth” to dissociate it (with its original name being “SW4U”) from SureWin4U.

165 Under s 116(g) of the Evidence Act 1893, the court may “presume that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it”.

166 In *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 (“*Tribune Investment*”), the Court of Appeal stated at [50]:

Whether or not in each case an adverse inference should be drawn depends on all the evidence adduced and the circumstances of the case. There is no fixed and immutable rule of law for drawing such inference. Where, as was the case here, the trial judge is of the view that the plaintiffs themselves had not made out their claim to the requisite standard, then no drawing of an adverse inference against the defendants is necessary. The drawing of an adverse inference, at least in civil cases, should not be used as a mechanism to shore up glaring deficiencies in the opposite party’s case, which on its own is unable to meet up to the requisite burden of proof. Rather, the procedure exists in order to render the case of the party against whom the inference is drawn weaker and thus less credible of belief.

167 In the present case, if I were to put to one side the issue of the missing messages, I would find that on the rest of the evidence Sandra has failed to prove the conspiracy she alleges. In the words of *Tribune Investment*, she has “not made out [her] claim to the requisite standard”, and her case, “on its own is unable to meet up to the requisite burden of proof”. In the circumstances, no drawing of an adverse inference against Ken, Sally, and Sebastian is necessary.

168 If, however, Sandra’s case on the rest of the evidence does provide a foundation for the drawing of an adverse inference in relation to the missing

messages, whether to draw such an inference – and what inference – still depends on the circumstances. As the court put it in *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 at [23]: “s 116(g) does not afford the court the opportunity to speculate as to what the evidence may be without some basis for the drawing of the inference which the opposing party seeks to persuade the court to draw. That is, the court must put its mind to the manner in which the evidence that is not produced is said to be unfavourable when drawing the adverse inference under s 116(g).”

169 In the present case, I can accept that the missing messages would have shown more contact between Ken, Sally, and Sebastian, on the one hand, and the Ong brothers and others involved in running SureWin4U, on the other hand. The messages may have shown that Ken, Sally, and Sebastian were closer to those running SureWin4U, than appears from the available evidence.

170 But would the messages have shown that Ken, Sally, and Sebastian had conspired with SureWin4U and/or the Ong brothers (or either of them) to defraud investors? That is what Sandra urges me to find.

171 In Sandra’s AEIC, she did not put her case that high. She said:⁶⁹ “One way for Ken and Sally to establish that their relationship with Peter Ong was nowhere as close as the objective evidence clearly suggests is for them to show their communications with him, for example, their exchange of phone messages. Yet, in discovery, they claimed that they were no longer in possession of such messages because they allegedly changed their phones in February 2015 and kept no backup of such messages...”

⁶⁹ Sandra’s AEIC, para 125.

172 Sandra's point there was that Ken and Sally do not have the benefit of using the missing messages to show that they were not as close to Peter Ong as the objective evidence suggests. Sandra did not say there that the missing messages would have shown them to be conspirators. Contrary to Sandra's contention, I do not find the objective evidence suggests that Ken and Sally were very close to Peter Ong. Ken and Sally do not need the missing messages to counter the picture which emerges from the objective evidence. Rather, Sandra is the party who is now saying, in effect, that the missing messages would have proven her case in a way that the objective evidence cannot. Put another way, Sandra does not have evidence to prove the alleged conspiracy, but she says that the missing messages would have been the evidence she needed.

173 If it were appropriate to draw an adverse inference against Ken, Sally, and Sebastian on account of the missing messages, in the circumstances I would still not draw an adverse inference that the missing messages would have shown them to be in a conspiracy with SureWin4U and/or the Ong brothers (or either of them).

174 The rest of the evidence does not support a finding that Ken, Sally, and Sebastian were other than investors in SureWin4U. There were just like Sandra was, save that they were earlier investors, and so they did better out of the scheme than she did.

175 I agree with the defendants that those involved in a conspiracy to defraud thousands of people out of millions of dollars are unlikely to document that conspiracy in messages left in mobile phones – which might be misplaced, or might be seized by authorities. If they were truly conspirators, it is more likely that their incriminating discussions would have been oral, rather than in a form of a convenient paper (or digital) trail.

176 In declining to draw an adverse inference, I have considered not only the objective evidence, but also the evidence given by the parties, and how Ken, Sally, and Sebastian came across as witnesses. My impression of them is that they were simple rather than cunning, and that they genuinely did not think that SureWin4U was a Ponzi scheme. Sandra too did not think SureWin4U was a Ponzi scheme, and so she actively sold SureWin4U packages, and spoke enthusiastically about her participation in the scheme at a SureWin4U event.

177 Thus, not only does Sandra's claim for unlawful means conspiracy fail because she has failed to prove reliance on the representations that she has sued on, it also fails because she has failed to prove the requisite agreement between the alleged conspirators.

The element of intention

178 Further, I find that Sandra has failed to prove the requisite intention on the part of Ken, Sally, and Sebastian to cause damage, or injury to her. I do accept that Sandra was defrauded by SureWin4U, and those behind it; but I do not find Ken, Sally, or Sebastian to be amongst those behind the scheme.

The position of Strategic Wealth

179 For completeness, Sandra's conspiracy claim against Strategic Wealth fails for additional reasons too. Sandra's contention is that Strategic Wealth is liable as a conspirator because it owned the yacht that Ken and Sally received from participating in SureWin4U.⁷⁰ However, there was nothing false in the representation that Ken and Sally had been gifted the yacht in relation to their participation. Strategic Wealth also held Ken and Sally's earnings from the

⁷⁰ See SOC, para 76.

scheme, but that does not make it a conspirator in a conspiracy to defraud Sandra. All that is left is the fact that one of the meetings that Sandra relied upon took place on the yacht; but I do not accept that providing the venue for an occasion on which Sandra says false representations were made, is sufficient to make Strategic Wealth a conspirator. The other points I have made as to why Sandra’s unlawful means conspiracy claim fails, would also apply.

Lawful means conspiracy

180 Sandra’s alternative claim for lawful means conspiracy does not assist her. For such a claim, she would need to show (as she pleads in para 77 of the SOC) that “the predominant intent of the Defendants was to injure the Plaintiff”. She says it was their predominant intent to injure her “*inter alia*, by deriving financial benefit at the Plaintiff’s expense”. This contention is flawed in law, and in fact.

181 As a matter of law, the High Court observed in *Dynasty Line Ltd (in liquidation) v Sia Sukamto* [2013] 4 SLR 253 that “where the alleged conspirators’ actions serve their own commercial purpose, the infliction of loss on the plaintiff will not be the predominant purpose” (at [112], citing *Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637 at [50]). It is thus insufficient for Sandra just to say that Ken, Sally, and Sebastian’s purpose was getting richer, such as by way of referral bonuses, or by getting her to provide funds to SureWin4U from which SureWin4U could pay returns to them.

182 Sandra’s claim fails on the facts because I find that Ken, Sally, and Sebastian (and Strategic Wealth) did not have the predominant purpose of injuring Sandra, or other investors. Indeed, Ken, Sally, and Sebastian did not have any intention of injuring other investors. On the contrary, they as

SureWin4U investors were happy for other SureWin4U investors to also prosper from participating in the scheme.

Negligent misrepresentation

183 The elements necessary to make out negligent misrepresentation are (*IM Skaugen SE and another v MAN Diesel & Turbo SE and another* [2018] SGHC 123 at [121], citing *IM Skaugen SE and another v MAN Diesel & Turbo SE and another* [2016] SGHCR 6 at [65]–[66]):

- (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;
- (d) There must a breach of that duty of care; and
- (e) The breach must have caused damage to the plaintiff.

184 Sandra’s claim for negligent misrepresentation fails because I do not accept that the representations on which she relies (for both the fraudulent misrepresentation claim, and the negligent misrepresentation claim) induced her to invest in SureWin4U.

185 I also do not accept that Ken, Sally, and Sebastian owed Sandra a duty of care that they breached, as she contends.

186 Sandra says that by virtue of Ken and Sally’s special status in SureWin4U, their capacity as her “uplines” and their role as her “mentor” in SureWin4U, it was reasonably expected that she would rely on Ken and Sally

to give reliable advice or information relating to SureWin4U.⁷¹ She says it was also reasonably expected that she would rely on Sebastian’s advice as he was Ken and Sally’s agent (so she claims). She contends that Ken, Sally, and Sebastian owed her a duty of care by reason of their assumption of responsibility over persons like her who relied on them for information concerning the business and offerings of SureWin4U.

187 Sandra’s case on the imposition of a duty of care was fleshed out in para 265 of her closing submissions, as follows:

(a) In view of the Scheme’s unorthodox *modus operandi*, it was reasonably foreseeable that Sandra would rely on their representation of the Scheme’s safety and profitability.

(b) As Ken and Sally knew that Sally was interested in attaining the status of a 7-Star Agent, it was reasonably foreseeable that Sandra would rely on the HK No. 1 Representation in deciding to invest in the US Property and Share Investment Packages.

(c) Sally testified that she did not have to help Sandra. However, she took steps to do so and in fact, actively encouraged her to invest vast amounts into the Scheme. In addition, as we have seen, in relation to the 3rd Tranche, they were strongly encouraging her to invest in the US Property and Share Investment Packages.

188 I do not accept that these are good reasons for imposing a duty of care on Ken, Sally, and Sebastian. I have rejected Sandra’s case on the “Safe and Profitable Representation”, and the “HK No.1 Representation”, in discussing her claim for fraudulent representation – among other reasons, because those representations were never made by Ken, Sally, and Sebastian to Sandra.

189 That leaves Sandra’s third point – that because Ken, Sally and Sebastian encouraged her to invest in SureWin4U, they owe her a duty of care. However,

⁷¹ SOC, para 74.

an aspect of a typical Ponzi scheme (and SureWin4U was no different) is that participants are incentivised to encourage others (whether existing or prospective participants) to participate in the scheme. Sandra herself did so.

190 If Sandra’s case on negligent misrepresentation were accepted, it might result in the imposition of a duty of care on each SureWin4U investor, in relation to every other SureWin4U investor.

191 In essence, Sandra is saying that if Ken, Sally, and Sebastian were not fraudulent (and so they did not know that SureWin4U was a Ponzi scheme), they were nevertheless negligent for not figuring out that SureWin4U was a Ponzi scheme, and she could sue them for that (although she too did not figure out that SureWin4U was a Ponzi scheme). But Ken, Sally, and Sebastian might equally say that Sandra ought to have figured out that SureWin4U was a Ponzi scheme, and warned them against investing further.

192 Applying the framework in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 (“*Spandeck*”) at [73], the threshold question is whether the defendant reasonably ought to have foreseen that his negligence would cause harm to the plaintiff.

193 In the context of SureWin4U, each person purchasing a package was invited to try and disprove SureWin’s 99.8% formula after attending a 99.8% class (with a money back guarantee if the formula could be disproved). Sandra attended that class, and she believed in SureWin’s gambling methods – not because of anything Ken, Sally, and Sebastian told her, or even because Ken, Sally, and Sebastian themselves were participants; she believed because she had seen the 99.8% formula for herself, and tried it successfully. She became even more enthusiastic after attending the 100% class.

194 In that context, I do not consider that Ken, Sally, and Sebastian reasonably ought to have foreseen that if they were negligent in not figuring out that SureWin4U's gambling methods did not work, their negligence would cause harm to Sandra. Each participant was invited to see and evaluate SureWin4U's gambling methods for themselves. Moreover, the relevant information was equally available to Sandra, Ken, Sally, and Sebastian – how the 99.8% formula was supposed to work, and how the 100% formula was supposed to work.

195 If Sandra did get past the threshold question, there is still no requisite proximity in terms of the closeness, and directness of the relationship between the parties, in relation to the first stage inquiry in the *Spandeck* framework. In any event, at the second stage inquiry, policy considerations would militate against imposing a duty of care on a whole class of persons (SureWin4U participants) in relation to the same class of persons, to take care for one another (in relation to finding out – based on common information – that each of them was being defrauded by a scheme they were all participating in).

196 Sandra's closing submissions do not go that far: she does not say that all participants owe each other a duty of care, or that earlier participants owe later participants a duty of care, or that those who made money owe those who lost money a duty of care; instead, she seeks to put Ken, Sally, and Sebastian on a pedestal so as to impose a duty of care on them. But on the facts, Ken, Sally, and Sebastian were essentially just earlier (and so more successful) participants in the scheme.

197 It is also instructive to consider the breaches of duty that Sandra complains of, for this will inform the inquiry as to the duty she would have the court impose on Ken, Sally, and Sebastian. She says at para 266 of her closing

submissions that Ken, Sally, and Sebastian breached the standard of care they owed to her in the following manner:

- (a) As Ken admitted, he had in fact never seen any of the alleged professional gamblers in action.
- (b) The Wans admitted that they never conducted any due diligence or valuation on the US properties.
- (c) The evidence shows that the Wans did not even bother to find out anything about the target company under the Share Investment Packages. If Ken's testimony is to be believed, they only made enquiries about the Target after the collapse.
- (d) In relation to the 3rd Tranche, Sebastian admitted that he did not even know the owners of the several bank accounts when he instructed Sandra to make payment."

198 The same points may be made about Sandra:

- (a) Sandra had in fact never seen any of the alleged professional gamblers in action (other than at the demonstration of the 100% formula, which Ken and Sally also attended).
- (b) Sandra never conducted any due diligence or valuation on the US properties.
- (c) Sandra did not even bother to find out anything about the target company under the Share Investment Packages.
- (d) In relation to the 3rd Tranche, Sandra did not even know the owners of the several bank accounts that she was instructed to make payment into.

199 The question is thus: should a duty of care be imposed on Ken, Sally, and Sebastian to do what Sandra herself did not do? Ken, Sally, and Sebastian were not Sandra's financial advisors, or estate agents. They were not even her

financial advisor or estate agent friends that she was approaching for assistance within their area of expertise. Ken, Sally, and Sebastian were scheme participants interacting with Sandra as a fellow participant. Ken, Sally, and Sebastian did not expressly or implied assume responsibility towards Sandra, to do all the things which she says they should have done *for her*, things which she did not do herself, things which she never even asked them to do for her. I find that no such duty should be imposed.

200 In the circumstances, Sandra’s claim for negligent misrepresentation claim fails.

Innocent misrepresentation

201 Finally, Sandra had pleaded a strange claim for innocent misrepresentation: “If, which is denied, the representations were not made fraudulently, or negligently, the Defendants are liable for innocent misrepresentation.” (SOC, para 75B)

202 This was repeated in Sandra’s AEIC at para 130: “If, which is denied, the representations were not made fraudulently, or negligently, the Defendants are liable for innocent misrepresentation.”

203 It was never explained how the defendants could be found liable to Sandra for *innocent* misrepresentation – Sandra’s submissions are silent on this.

204 I dismiss the claim for innocent misrepresentation.

Conclusion

205 It is tragic that Sandra lost millions of dollars by investing in SureWin4U, but she has no recourse against the defendants for that. Sandra was

attracted by the lucrative returns promised by SureWin4U, and she believed in its gambling methods. But she knew that SureWin4U’s gambling methods involved risk – she knew that SureWin4U did not have a “sure win” way of making money gambling against a casino. She also knew that there was a risk of her losing what she had invested in SureWin4U. She nevertheless believed it was a good scheme to participate in – because of what SureWin4U said about itself, and because of SureWin4U’s gambling methods (which she learned from attending SureWin4U’s gambling classes and demonstrations, and then successfully tried on her own). Sandra was not induced to invest by false representations made by Ken, Sally, or Sebastian; and she has failed to prove that they (and Strategic Wealth) were in some conspiracy to injure her.

206 For the reasons stated in these grounds, I dismiss all of Sandra’s claims (some of which had been withdrawn earlier, but I dismiss them too for good order).

207 As the defendants have succeeded in their defence, I award them costs to be assessed, if not agreed. Unless the parties agree on costs, they shall put in

their costs submissions, limited to ten pages (excluding any schedule of disbursements), within three weeks.

Andre Maniam
Judge of the High Court

Lok Vi Ming, SC, Joseph Lee, Jonathan Muk, Tanya Tan and Clara
Lim (LVM Law Chambers LLC) for the plaintiff;
Christopher Anand Daniel, Harjean Kaur, Eileen Yeo, Saadhvika
Jayanth and Lim Yi Zheng (Advocatus Law LLP) for the defendants.
