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28. TORT LAW

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I. Conspiracy and misrepresentation

28.1 In *Chan Pik Sun v Wan Hoe Keet*,[1] the plaintiff claimed losses from her investments in a scheme known as "SureWin4U" against three individuals, who were participants in the scheme, and a company in which the first two defendants were shareholders and directors. The scheme, which started in 2012, promised returns from the winnings of professional gamblers playing baccarat in casinos. Participants in the scheme, including the plaintiff, were invited to attend classes where the formulae (the "99.8% formula" and "100% formula") for winning at gambling were presented. It turned out to be a Ponzi scheme in which the returns came from the moneys invested by fellow participants. The scheme collapsed in September 2014 and the participants lost the value of their packages, and the founders of the scheme could not be contacted.

28.2 The plaintiff commenced actions in misrepresentation (fraudulent, negligent and innocent) as well as conspiracy (lawful and unlawful). The plaintiff's allegations of fraudulent or negligent misrepresentation were largely focused on the first and second defendants whilst the claim in conspiracy was targeted at the three individual defendants and the fourth defendant company. Andre Maniam J, in the General Division of the High Court ("General Division"), dismissed all the claims.

28.3 The first alleged representation made by the first and second defendants was that it was "safe" and "profitable" to invest in the scheme. The learned judge found that the first two defendants were

1 [2023] SGHC 96.

only participants expressing their opinions about the scheme rather than making actionable representations. Moreover, the plaintiff was aware that the first and second defendants, as fellow participants, would not know whether the scheme was safe and profitable.

28.4 The first and second defendants did not represent to the plaintiff that the scheme was, as argued by the plaintiff, legitimate and not a scam. Instead, the defendants' representations were focused on the "viability" of SureWin4U's method of making money through gambling. The plaintiff understood the scheme to be "safe" in the sense that she would be refunded the money on her packages if SureWin4U were unable to prove the 99.8% formula for winning at gambling. Hence, the plaintiff was not relying on the alleged representations as to the legitimacy of the scheme but rather, SureWin4U's "money-back guarantee".

28.5 The plaintiff alleged that there were other representations which led her to make the additional tranches of investment. The first and second defendants made statements about the extent of their earnings and the gift of a Ferrari sports car from SureWin4U. Whilst the statements were "exaggerated" according to the learned judge, they did not make a significant difference to the plaintiff's decision to invest in the scheme given the plaintiff's case that these statements formed part of the representations that the scheme was legitimate and not a scam. Further, evidence from the plaintiff's communications with other fellow participants indicated that she believed in the 99.8% formula and also recognised that there was a risk of loss. Thus, it could not be said that she relied on the defendants' false representations when she invested in the second tranche.

28.6 The second alleged representation related to a term in the "US Property Package" that stated that investment in the package entitled the plaintiff to receive title deeds to houses in Detroit. This was a factual statement that was not false. To the extent that the plaintiff submitted that the term in the package stated that the plaintiff *would* receive title deeds to the houses, the learned judge took the view that the statement did not amount to an actionable representation of fact but merely a statement as to the future or a promise.

28.7 The third alleged representation was that the moneys invested by the plaintiff 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. As mentioned above, the scheme collapsed in September 2014. Similar to the approach for the second alleged representation, Maniam J regarded the statement as one as to the future, or a promise. It was also a term of the Share Investment Package and not a statement of fact by the first and second defendants. Moreover, the

plaintiff had not proved that SureWin4U did not have any real plans to acquire a company for listing.

28.8 The fourth alleged representation – that the plaintiff would be Hong Kong's top salesperson – was not made by the first and second defendants, according to the learned judge. Even if the representation was made, it would not constitute a statement of fact, but a statement as to the future. In any event, the plaintiff had not shown, assuming it was a statement of fact, that it was false.

28.9 The plaintiff's reactions to the collapse of the scheme – that she knew there were risks associated with the scheme – indicated that she had not relied on the alleged representations. There were no references by the plaintiff to the alleged representations in her communications with fellow participants as well as the first and second defendants. The plaintiff's subsequent conduct and interaction with the first and second defendants did not indicate any consideration on her part that the first and second defendants might have made false representations to her.

28.10 The claim in unlawful conspiracy, which was dependent on the allegations of misrepresentation, was dismissed for lack of unlawful means. The plaintiff alleged that the defendants had conspired with one Peter Ong and/or SureWin4U to injure her. However, there was no agreement or combination amongst the parties which would amount to a conspiracy, nor any intention on the part of the defendants to injure the plaintiff.

28.11 With respect to the alternative claim of lawful conspiracy, the requirement of a predominant purpose to harm the plaintiff was not fulfilled. In response to the plaintiff's submission that the defendants had derived financial benefits at the expense of the plaintiff, Maniam J cited *Dynasty Line Ltd v Sia Sukamto*[2] for the proposition that "where the alleged conspirators' actions serve their own commercial purpose, the infliction of loss on the plaintiff will not be the predominant purpose".

28.12 The claim in negligent misrepresentation would also fail. First, there was no reliance by the plaintiff on the defendants' representations. Second, there was no legal duty of care imposed on the defendants in making the representations. In this case, as discussed above, the defendants did not make representations of fact to the plaintiff. The learned judge was not inclined to impose a general duty of care on an investor of the scheme that was owed to fellow investors. With respect to

2 [2013] 4 SLR 253 at [112], citing *Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637 at [50].

the preliminary threshold of foreseeability, the learned judge stated that it was not reasonably foreseeable that, if the defendants were negligent in not being aware that the gambling methods under the scheme would not work, the plaintiff would come to harm. The participants could evaluate for themselves whether the gambling methods would work based on the information that was equally available to all of them. At the first stage of the *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency*[3] ("*Spandeck*") framework, Maniam J also opined that there was no proximity between the parties, and that policy considerations would not incline towards imposing a duty on all participants to take care of fellow participants under the scheme. The defendants did not expressly or impliedly assume any responsibility towards the plaintiff. Finally, the claim in innocent misrepresentation, which was not explained by the plaintiff, was dismissed.

II. Conversion

28.13 The case of *Don King Martin v Lenny Arjan Singh*[4] focused on the measurement of damages resulting from a claim in conversion. The appellant was the owner of a second-hand van which he purchased in 2016. On 1 February 2021, the respondent, who was the appellant's friend, drove the van to a property in Johor Bahru, Malaysia, and secured the van within locked premises under the pretext that he was entitled to the possession of the van due to debts owed to him by the appellant. The appellant made a police report in Johor Bahru regarding the van (which report was later withdrawn) and another report to the police in Singapore.

28.14 The appellant subsequently applied for and obtained a letter allowing for the deregistration of the van from the Land Transport Authority ("LTA") in August 2021 in order to obtain the Certificate of Entitlement ("COE") rebate of $25,995. On 21 January 2022, Malaysian customs raided the abovementioned premises, found liquor in the van and seized the van. The Malaysian customs sent to the appellant an "Offer to Compound Offences" which stated that the appellant had committed an offence under the Malaysian Customs Act 1967[5] and an offer to the appellant to compound the offence for the sum of RM 10,000 by a specified date, failing which prosecution would be instituted against the appellant without further notice. The appellant disputed liability and refused to accept the offer to compound the offence.

3 [2007] 4 SLR(R) 100.
4 [2024] 4 SLR 593.
5 No 235 of 1967.

28.15 The appellant claimed as damages the cost of the van as well as for the loss of use of the van from 1 February 2021 to the date of judgment. The parties agreed that the conversion of the van took place on 1 February 2021. The district judge dismissed the claim for loss of value of the van but allowed the claim for loss of use amounting to $20,600 based on a daily rental rate for the van for the period from the date of conversion to the date of deregistration of the van. On appeal to the General Division, Kristy Tan JC held instead that the appellant could recover the damages of the cost of the van but was not entitled to the loss of use.

28.16 With respect to the claim for loss of the van, the district judge was of the view that the conversion of the van ended when the Malaysian customs seized the van on 21 January 2022. Tan JC disagreed and referred to *Aries Telecoms (M) Bhd v ViewQwest Pte Ltd*[6] which stated that the termination of conversion will only arise when the tortfeasor "has ceased to act inconsistently with the chattel owner's ownership rights".[7] In this case, the Malaysian customs had removed the van from the respondent's possession without the respondent taking any step of his own volition to cease to act inconsistently with the appellant's ownership rights.

28.17 The learned judicial commissioner preferred to analyse the issue of damages based on causation to address the question of the extent to which the respondent's conversion of the van had caused the appellant's loss. She opined that the conversion of the van was the "but for" and the legal cause of the loss of the van.[8] But for the respondent's conversion and storage of the van at the premises, the uncustomed liquor would not have been stored in the van at the premises and the Malaysian customs would not have seized the van due to the stored uncustomed liquor. With respect to legal causation, Tan JC cited *Kuwait Airways Corpn v Iraqi Airways Co (Nos 4 and 5)*[9] for the proposition that the tortfeasor, having wrongfully taken possession of another's goods, should be responsible for losses flowing from such wrongful possession notwithstanding that he might be prevented from returning the goods by the intervening acts of third parties which were beyond his control.[10] As such, the respondent bore the risk of not being able to return the van due to the seizure by the Malaysian customs after he had converted it on 1 February 2021. Furthermore, the appellant's loss of the van was a reasonably foreseeable consequence of the conversion by the respondent.

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6 [2020] 3 SLR 750.

7 *Don King Martin v Lenny Arjan Singh* [2024] 4 SLR 593 at [40], citing *Aries Telecoms (M) Bhd v ViewQwest Pte Ltd* [2020] 3 SLR 750 at [79].

8 *Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric* [2007] 3 SLR(R) 782 at [52].

9 [2002] 2 AC 883.

10 *Kuwait Airways Corpn v Iraqi Airways Co (Nos 4 and 5)* [2002] 2 AC 883 at [91]–[92] and [129].

28.18 The respondent argued that the appellant ought to have taken reasonable steps to mitigate his loss flowing from the conversion. This was rejected by Tan JC. The appellant's dispute against liability of the customs offence and refusal to pay a fine to compound the customs offence could not be regarded as an unreasonable failure on his part to mitigate the loss. The innocent party, in considering steps to mitigate a loss, is not required to expose himself to financial or moral hazard.[11] The respondent's argument rests on the implicit assumption that compounding the offence was a condition for the Malaysian customs to release the van. However, such an assumption could not be made from the evidence adduced. The respondent had not discharged his burden of showing that the appellant ought to have taken reasonable steps to mitigate the loss.

28.19 Tan JC held that the measure of damages should be computed by reference to the value of the chattel at the time of the conversion (*ie*, 1 February 2021). The appellant's submission of the market value of $79,000 based on an advertisement was rejected by Tan JC as the advertised sale price did not represent the value of the advertised van in a market with a willing buyer and seller. Furthermore, the conditions of the advertised van and the converted van were not comparable. The van was manufactured in 2008 and purchased in 2016 by the appellant. Evidence indicated problems with the van's suspension, air-conditioning system and brakes.

28.20 In assessing damages, Tan JC regarded the purchase price of the van as the starting position and then took account of depreciation, the van's condition and the COE term remaining in 2021 in order to arrive at the sum of $68,000 representing the value of the van as of 1 February 2021. After deducting the COE rebate of $25,995 received by the appellant, the damages were assessed at $42,005.

28.21 In addition, the claim for loss of use of the van was dismissed. Based on case precedents, damages based on the "user principle" are awarded to compensate the plaintiff for the "interference with or loss of his dominium over his goods".[12] In this case, allowing the claim would result in double recovery for the appellant since he was already entitled to the loss of the van resulting from the respondent's conversion. The appellant also argued for damages for loss of use as "consequential loss". Whilst consequential loss may be claimed in respect of a claim in

11 *The Asia Star* [2010] 2 SLR 1154 at [31].

12 *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua* [2018] 2 SLR 655 at [213] and *Yenty Lily v ACES System Development Pte Ltd* [2013] 1 SLR 577 at [43].

conversion as a matter of principle,[13] the appellant did not, according to Tan JC, provide evidence of any relevant consequential losses.

III. Defamation

28.22 The General Division case of *Karan Bagga v Stichting Chemical Distribution Institute*[14] analysed a range of legal issues relating to defamation. The plaintiff, the managing director of a company that provides marine surveying services and consultancy work, claimed in defamation and malicious falsehood against the defendant ("CDI"), a non-profit-making foundation operating out of the UK which administers inspection schemes for the marine chemical industry. The plaintiff was an accredited inspector of vessels under one of the defendant's inspection schemes ("CDI-M"). Following complaints by a shipping company of excessive fees charged by the plaintiff and the conduct of formal investigations into the allegations, the defendant first suspended and subsequently revoked the CDI-M accreditation. The plaintiff sued the defendant in the UK for wrongful suspension and revocation of the accreditation. The parties to the UK proceedings eventually arrived at a settlement. The present proceedings in Singapore in defamation and malicious falsehood were initiated based on allegedly defamatory statements in the documents that were disclosed in the UK proceedings.

28.23 The allegedly defamatory statements were contained in e-mails disseminated by CDI to internal bodies of CDI, namely the board of directors of CDI ("CDI BOD"), the executive board which oversaw the CDI-M scheme ("CDI EB") and the accreditation committee of CDI ("CDI AC"). See Kee Oon J held that out of the eight statements, the publication requirement was not satisfied in respect of five of them as they were not published to third parties.

28.24 The learned judge cited *Kesavan Engineering & Construction Pte Ltd v S P Powerassets Limited*[15] ("*Kesavan*") for the proposition that a letter read by the employees or a director of the plaintiff company acting in the ordinary course of business did not amount to publication of the letter. The district judge in *Kesavan* in turn endorsed *State Bank of New South Wales v Currabubula Holdings*[16] ("*State Bank*") that "a communication to a company which, because the company can only act by natural persons,

13 *Chartered Electronics Industries Pte Ltd v Comtech IT Pte Ltd* [1998] 2 SLR(R) 1010 at [19] and *Marco Polo Shipping Co Pte Ltd v Fairmacs Shipping & Transport Services Pte Ltd* [2015] 5 SLR 541 at [29].

14 [2023] SGHC 322.

15 [2011] SGDC 179.

16 [2001] NSWCA 47.

is received by someone on behalf of the company in the ordinary course of business, is communication only to the company and does not constitute publication". Despite the differences between the facts of the present case and *Kesavan* and *State Bank*, what is crucial for the purpose of the publication requirement is that the recipient of the allegedly defamatory statement must be external to both the defamed and defaming party. In the present case, the statements were in effect published by CDI to itself.

28.25 Turning to the second requirement of reference to the plaintiff, of the eight statements, two of them (the sixth and eighth statements) did not refer to the plaintiff. The defendant argued that due to the number of CDI-accredited inspectors, it was not obvious to a reasonable reader that the word "inspector" in the statements would refer to the plaintiff. There was no evidence adduced by the plaintiff to show that the recipients of the statements would know that the plaintiff's accreditation was revoked.

28.26 With regard to the requirement of defamatory meaning, See J discussed the various statements (and allegations made by the plaintiff) and concluded that the statements were defamatory in nature save for the third statement. One of the statements referred to the plaintiff charging exorbitant fees, despite repeated warnings, and thereby causing the reputation of an entity to suffer. It was defamatory in nature as it tended to lower the estimation of the plaintiff in the minds of right-thinking members of society generally. Another statement which referred, amongst others, to the plaintiff's abuse of his position as a CDI-M-accredited inspector was also defamatory.

28.27 In the final analysis, none of the eight statements would satisfy all the requirements of the plaintiff's *prima facie* case in defamation. As such, the claim in defamation was dismissed. Nonetheless, See J proceeded to discuss the defences.

28.28 With respect to the defence of justification, the learned judge analysed the various defamatory stings to assess if the defendant could show they were true in substance and in fact. One important sting concerned the plaintiff's excessive pricing behaviour. The defendant failed to prove the truth of the sting. There was no evidence of the range of fees that inspectors may charge and from which it could be ascertained whether the prices charged by the plaintiff were excessive. Further, the defendant did not adopt a definition as to what would amount to "excessive". It was not sufficient to rely on the plaintiff's past experiences to derive a reasonable price for inspections. There were seven instances of complaints from shipping operators during the period from 2014 to 2016 indicating that the plaintiff's prices were excessive, but given the volume of inspections per year, they were inadequate to prove the plaintiff's excessive pricing behaviour. Moreover, the fact that the UK proceedings

were settled did not go towards showing that there was no excessive pricing behaviour.

28.29 All the allegedly defamatory statements were related in some way to the sting concerning the plaintiff's excessive pricing behaviour. The learned judge referred to the defendant's submission that "the 'sting' of the Statements is *singularly* that '[Mr Bagga] had engaged in a pattern of excessive pricing'"[17] [emphasis added]. This may indicate that the defendant was relying on the justification of the "common sting" regarding the plaintiff's pattern of excessive pricing (rather than the usual method of attempting to justify a number of distinct and separate allegations). This strategy of relying on a "common sting" has been applied in the UK[18] and Singapore cases.[19] However, the learned judge did not specifically discuss this point and proceeded to analyse the other allegations as if they were distinct and separate.

28.30 See J found that the allegations that the defendant had warned the plaintiff on several occasions to refrain from excessive pricing were supported by the evidence and therefore justified. In addition, the allegation that an internal body of the defendant had unanimously revoked the plaintiff's accreditation due to his alleged cost-abusive behaviour was justified.

28.31 The defence of qualified privilege applied to all the allegedly defamatory statements based on the legitimate interest of the defendant in communicating the statements and interest of the parties (*eg*, CDI internal bodies, inspectors and auditors) in receiving the communications. The plaintiff, however, contended that the defendant had published the statements maliciously, *ie*, without an honest belief in the truth of the statements and/or was motivated by a dominant improper motive. The learned judge found that there was no evidence that the defendant had not honestly believed in the truth of the statements. With regard to the allegation of dominant improper motive from the statement to ship operators that the defendants possessed control over the inspectors' fees and discouraged the inspectors from determining prices independently, the learned judge observed that this constituted evidence of the defendant protecting its own interests and reputation rather than indicating any improper motive.

17 *Karan Bagga v Stichting Chemical Distribution Institute* [2023] SGHC 322 at [73].
18 *S & K Holdings Ltd v Throgmorton Publications Ltd* [1972] 1 WLR 1036 and *Polly Peck (Holdings) plc v Trelford* [1986] QB 1000.
19 *ANB v ANF* [2011] 2 SLR 1.

IV. False imprisonment, assault and battery

28.32 The General Division case of *Mah Kiat Seng v Attorney-General*[20] concerned the legal duties of police officers to arrest individuals and the rights of the apprehended persons under the Mental Health (Care and Treatment) Act[21] ("MHCTA"). The plaintiff claimed that he was wrongly apprehended and falsely imprisoned by a police officer in 2017. At the time of the alleged tort, according to the then-applicable s 7 of the MHCTA, a police officer is under a duty to arrest any person who is reported to be mentally disordered and whom the officer believes to be a danger to themselves or to others due to this mental disorder.[22] Upon arrest, the person must be taken without delay to a designated medical practitioner at a psychiatric institution or to a medical practitioner who would refer the person to a designated medical practitioner at a psychiatric institution. The police officer is immune from liability to civil or criminal proceedings "unless he has acted in bad faith or without reasonable care" under the statute.[23]

28.33 Philip Jeyaretnam J stated that the person must be informed of the grounds of arrest as soon as reasonably practicable,[24] and be provided with an explanation that the person would be brought to a medical practitioner for assessment of his mental condition. It must be shown under the statute that the apprehending police officer honestly believed that the arrested person was a danger to himself or others by reason of mental disorder and had reasonable grounds for such belief. The term "mental disorder" is defined broadly in the statute to mean "any mental illness or any other disorder or disability of the mind".[25]

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20 [2023] SGHC 14.

21 Cap 178A, 2012 Rev Ed.

22 This statutory provision has since been amended from 1 January 2020 pursuant to s 180 of the Criminal Law Reform Act 2019 (Act 15 of 2019). Note: the Singapore Parliament passed the Law Enforcement and Other Matters Bill (Bill No 14/2024) on 2 April 2024 to enhance police powers in such cases, which included (at cl 13(*b*)) the following amendments to the Mental Health (Care and Treatment) Act 2008 (2020 Rev Ed):

> …
> (*a*) a police officer's or special police officer's reasonable belief that *P* is endangering *P*'s life or personal safety is sufficient basis for the police officer's or special police officer's reasonable suspicion that *P*'s conduct is attributable to a mental disorder;
> (*aa*) it is sufficient that the danger to life or personal safety is only reasonably likely to occur and need not be imminent, and actual harm is not required …

23 Mental Health (Care and Treatment) Act (Cap 178A, 2012 Rev Ed) s 25(1).

24 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 9(3).

25 Mental Health (Care and Treatment) Act (Cap 178A, 2012 Rev Ed) s 2(1).

28.34 The learned judge opined that the phrase "reported to be mentally disordered" in s 7 of the MHCTA suggests that "something appears to be the case but it has not been proven to be so".[26] It does not require a report to be made to the police officer that the "person" has a mental disorder. This broad interpretation of the phrase is consonant with the statutory objective of public safety and the protection of the mentally disordered person as well as the legislative history. The statutory provision has been amended to remove the phrase with effect from 1 January 2020.

28.35 Jeyaretnam J held that the danger apprehended in the statutory provision must be to the person and not merely a danger to property. The "danger" to others may apply to cases where there is no risk of actual physical harm but includes "behaviour that is threatening or grossly invasive of personal space".[27] The risk of physical harm must be imminent.

28.36 The plaintiff was arrested upon a complaint made by a member of the public that the plaintiff had touched her son's hair and appeared as if he was going to pull the hair. The arrest was made based on the evidence of the police that the plaintiff was mumbling to himself and had spat into a plastic bag when he was interviewed by the apprehending officer. However, video evidence revealed subsequently that these alleged actions did not take place. The police officer gave evidence that the plaintiff mentioned he was "OCD" but the latter denied stating so. When requested by the police officer, the plaintiff did not hand his identity card directly to the police but instead left it on a bench.

28.37 The learned judge found that the police officer did not honestly believe that the plaintiff was a danger to others by reason of mental disorder. Based on the video evidence, Jeyaretnam J stated the plaintiff did not pose a danger to others at the relevant time of the arrest though his behaviour indicated "a degree of eccentricity" and may have appeared disrespectful to the police officer who was thereby motivated to make the allegations that the plaintiff was mumbling to himself and had spat into a plastic bag. As a consequence, the police officer could not rely on the statutory defence that he was acting in good faith.

28.38 Upon being apprehended, the plaintiff was brought to the Central Police Division Regional Lock-Up to see a medical practitioner. This was in compliance with the requirements in s 7 of the MHCTA. The plaintiff also alleged assault and battery by another police officer when the plaintiff was brought to the lock-up. However, the CCTV footage did not show any evidence of the plaintiff being punched by the police officer

26 *Mah Kiat Seng v Attorney-General* [2023] SGHC 14 at [38].
27 *Mah Kiat Seng v Attorney-General* [2023] SGHC 14 at [47].

as alleged. Further, the police did not intentionally injure the plaintiff whilst escorting him between cells in the lock-up.

28.39 The purpose of bringing the plaintiff to the lock-up under the statute was for him to see a medical practitioner. As such, the police were not authorised to search the plaintiff's bag upon him being apprehended according to the learned judge. The medical practitioner then referred the plaintiff to the Institute of Mental Health ("IMH") for treatment under s 9 of the MHCTA. The responsibility of the police ended when they had conveyed the plaintiff to the IMH and there was no evidence they had sought to exert control over the plaintiff at the IMH. The IMH had, upon observation of the plaintiff for a period, found that he had no mental disorder and should not be further detained.

28.40 The learned judge awarded damages of $20,000 for false imprisonment (taking into consideration that the plaintiff was detained and handcuffed in the lock-up instead of being sent to the IMH directly, as well as the minor abrasions he suffered whilst handcuffed) and for the unauthorised search of his bag.

V. Negligence

A. Medical negligence

28.41 The appellant in *Pappa w/o Veeramuthu v National University Health Services Group Pte Ltd*,[28] who had hip surgery at Ng Teng Fong General Hospital, was assessed as a patient at risk of falling who required rehabilitative care. Following her surgery, she was transferred to Jurong Community Hospital ("JCH"), where, following an infection, she was transferred to a single-bed isolation ward with an attached toilet. The room had a single bed, a geriatric chair, a visitor's chair and an emergency call bell. The room had an inner door and an outer door, making it impossible for the claimant to be observed by medical staff from outside the room. For mobility-impaired patients, the only means of communication with the medical staff was the bell. On the day of the incident, a staff nurse entered the room to find the appellant seated in the visitor's chair having her breakfast. The nurse gave the claimant her medication and left. A few minutes later, the appellant attempted to get out of the chair and fell. She crawled to the bed and activated the bell. She suffered a sub-trochanteric fracture of the left femur in the fall.

28 [2023] SGHC 70.

28.42 The appellant brought an action alleging negligence against the respondent for leaving her in the visitor's chair without checking that the bell was within reach and without having any adequate safety protocols. As nobody responded to her shouts for help, the appellant attempted to get out of the chair herself, leading to the fall. The appellant also alleged that the respondent had breached the contract with her by failing to render reasonable treatment and care as well as failing to have adequate measures to prevent her fall. The respondent denied liability, arguing that while the nurse had left the appellant sitting in the visitor's chair, the nurse had checked that the bell was within reach. Further, in the alternative, the respondent argued that the appellant was contributorily negligent in attempting to move without seeking assistance.

28.43 The district judge disbelieved the appellant's version of events, finding that the appellant had self-ambulated from the bed to the visitor's chair and that the bell was within reach. Thus, the respondent was not found negligent in leaving the appellant in the visitor's chair unsupervised. The appeal to the General Division was essentially a challenge to the factual findings of the district judge. The appellant's argument was that she was forced to self-ambulate due to unbearable pain despite not being able to do so independently. Hri Kumar Nair J examined the appellant's hospital records, including her Morse Fall Risk score, which suggested that she was at risk of fall and not fully capable of self-ambulating. Hri Kumar J also noted that the appellant had used the bell 309 times in the 21 days leading up to the fall and had never tried to self-ambulate. Further, the judge was sceptical of the nurses' evidence that the appellant was not suffering pain immediately before the fall, highlighting that the nurse had recorded a pain score of "0" immediately after the appellant had broken her femur.

28.44 The judge found that the appellant was not able to self-ambulate and had done so only out of desperation because she could not reach the bell. Thus, the judge found that the respondent was negligent in leaving the appellant in the visitor's chair and failing to ensure that the bell was within reach knowing that she was suffering backache and might need to return to the bed. While the judgment did not involve any novel principle of law, it is an important reminder that hospitals should be especially vigilant when dealing with vulnerable patients and should ensure that they are not left without adequate supervision or ready means of emergency communication. The case is also significant for the appellate judge's readiness to review the objective evidence and witness statements to reverse the trial judge's factual findings.

B. Economic loss

28.45 The claimant in the General Division case of *Lam Wing Yee Jane v Realstar Premier Group Private Limited*[29] ("*Lam Wing Yee*") had purchased a landed property ("Property") from the vendor to be redeveloped as a family home. She had relied on representations by her real estate agent's salesperson ("Mr Teo") about the size of the plot available for redevelopment which turned out to be inaccurate. Mr Teo had sent a message informing that the Property was for sale at $21,000,000 with a land area of 12,454 sq ft, and advised that the Property was available as a "[h]ouse for rebuilding".[30]

28.46 A hard copy of a marketing brochure ("Brochure"), including information on the possible layouts of the Property when developed, was given to the claimant and her father during the viewing of the Property. The Brochure, which was provided by the vendor's agent to Mr Teo, indicated that the plot size was 12,454 sq ft. Shortly thereafter, on the same day, the claimant made an offer to purchase the Property for $18,680,000 and paid the sum of $186,800 for an option to purchase the Property ("OTP"). The OTP was issued the next day, and on 29 December 2021 the claimant paid 4% of the purchase price to exercise the OTP.

28.47 Subsequently, on or around 7 January 2022, the claimant's conveyancing lawyer informed the claimant that there was a drainage reserve of 278.8 sq ft. On 13 January 2022, the claimant was given access for the first time to the interior of the house for the purpose of a bank valuation, and therefore observed for the first time the presence of the drainage reserve, which was not visible from the exterior compound of the Property. The drainage reserve area could not be redeveloped, resulting in less than the entire area of 12,454 sq ft being available for redevelopment.

28.48 The claimant brought an action against the defendant alleging that it was vicariously liable for Mr Teo's negligent misrepresentation contained in the Brochure that the entire 12,454 sq ft of area was available for redevelopment. The claimant alleged that Mr Teo owed her a duty of care and that he was negligent in making representations about the Property. She had been induced by and had relied on Mr Teo to make the offer to purchase and had thereby suffered financial loss by overpaying for the Property, which had a smaller area available for redevelopment than was represented to her.

29 [2023] SGHC 344.

30 *Lam Wing Yee Jane v Realstar Premier Group Private Limited* [2023] SGHC 344 at [9].

28.49 The trial judge held that there were two issues to be determined:[31]

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

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

28.50 The trial judge found that Mr Teo owed the claimant a duty of care as there was a clear relationship of proximity. The judge also found that the claimant had relied on and was induced by the representation in making the offer, which caused her loss. However, referring to contract cases and a treatise, the trial judge found that the Brochure "did not contain an implied statement of fact that the entire area of the Property could be redeveloped".[32] Further, the trial judge found against the claimant on the breach of duty issue, holding that Mr Teo had not acted negligently in passing on the Brochure provided by the vendor's agent.

28.51 The trial judge noted that it was unclear whether it was the vendor's agent or Mr Teo who had provided the hard copy of the Brochure during the viewing. However, there was no dispute that Mr Teo had sent a soft copy of the same Brochure electronically to the claimant. The trial judge held that it was not material whether Mr Teo had provided the hard copy as the claimant relied on both the hard copy and the soft copy, the latter of which was clearly provided by him. The trial judge resolved this issue by stating that she was "prepared to proceed on the assumption that Mr Teo had shown the hard copy of the Marketing Brochure to the Lams".[33]

28.52 The trial judge's analysis of the misrepresentation issue conflated contract law and tort law principles, treating the matter not as a representation by the salesperson but as a representation by the vendor that was simply passed on by the salesperson to the claimant. According to the trial judge, the salesperson was not obliged to check the accuracy of information provided by the vendor, despite finding that the claimant was entitled to and did rely on the salesperson. The trial judge acknowledged that an agent could be held liable for information that is passed on (*Su Ah*

31 *Lam Wing Yee Jane v Realstar Premier Group Private Limited* [2023] SGHC 344 at [29].

32 *Lam Wing Yee Jane v Realstar Premier Group Private Limited* [2023] SGHC 344 at [58].

33 *Lam Wing Yee Jane v Realstar Premier Group Private Limited* [2023] SGHC 344 at [34].

Tee v Allister Lim and Thrumurgan[34] ("*Su Ah Tee*"); *Lim Koon Park v Yap Jin Meng Bryan*[35] ("*Lim Koon Park*")).

28.53 The trial judge distinguished *Su Ah Tee* and *Lim Koon Park* from the present case on the ground that the defendants in those cases had passed on the information of their own accord, whereas the salesperson in this case had merely passed on information provided by the vendor's agent. The trial judge appeared to ignore the fact that the vendor's agent and the salesperson were on opposite sides of the transaction. The salesperson was obliged to protect the claimant in the transaction rather than blindly obey the vendor's agent's directions to pass on potentially misleading information.

28.54 Another judgment in the year under review, *Haw Wan Sin David v Kwek Siang Ling Wendy*[36] ("*Haw Wan Sin David (2023)*"), is instructive. The claimants were induced by the defendants to invest in a property development in Brazil. The claimants suffered financial loss as the defendants' representations were false. On the negligent misrepresentation claim, Tan Siong Thye J found the defendants had breached their duty. In particular, Tan J held that it was negligent of the defendants to rely on a report prepared by the developer, stating:[37]

> The fact that Gabriela's Casa Nova Due Diligence Report was requested by Ecohouse Brazil, the developer of the Casa Nova Project, should have immediately stood out as a red flag to Wendy and Joey. A due diligence report commissioned and paid for by the developer to be conducted on its own project would have, to the reasonable person, immediately raised questions about a potential conflict of interest. Instead, Wendy and Joey nevertheless relied on Gabriela's Casa Nova Due Diligence Report as evidence of due diligence done to support the Due Diligence Representation which she had made. This could not have reasonably amounted to satisfactory and proper due diligence.

28.55 The trial judge's approach in *Lam Wing Yee* to the standard of care risks providing a "rogue's charter". Vendors' agents can provide inaccurate information to buyers' agents at the last minute for transmission to the potential buyer, who, if relying on it and suffering loss, is left with no claim against either agent, as the vendors' agents generally do not owe a duty to buyers and the buyers' agents would not be in breach of their duty for failing to verify the information and warn the potential buyer. Having found that there was no liability, the trial judge did not proceed to analyse vicarious liability.

34 [2014] SGHC 159.
35 [2013] 4 SLR 150.
36 [2023] SGHC 171.
37 *Haw Wan Sin David v Kwek Siang Ling Wendy* [2023] SGHC 171 at [247].

C. Psychiatric injury

28.56 The claimant in *Li See Kit Lawrence v Debate Association (Singapore)*[38] was the father and personal representative of the estate of the deceased who had taken his own life. The defendant was the Debate Association (Singapore) ("DAS"). The claimant alleged that the defendant had negligently and recklessly caused the deceased to suffer an acute stress reaction ("ASR") which resulted in the deceased committing suicide. Three causes of action were pleaded: (a) breach of contract; (b) tort of negligence; and (c) an action under the rule in *Wilkinson v Downton*[39] ("*Wilkinson*"). The deceased was a prominent member of the debate scene in Singapore and was the founder and director of the Debate Development Initiative ("DDI"). He had been suffering from mental health issues prior to the events leading to his suicide.

28.57 On 7 August 2018, the Executive Committee ("ExCo") of DAS issued a public statement about allegations of misconduct against the deceased. The statement alleged that the deceased had engaged in inappropriate behaviour on a WhatsApp chat group that he moderated. He was the only adult in the group and it was alleged that the deceased had made inappropriate sexual comments and engaged in a physical sexual encounter. The ExCo further stated that, following an audit, it had decided to ban the deceased from all its events and notified partner organisations to blacklist the deceased. The deceased was notified of the ban on the same day. The deceased committed suicide the next day, 8 August 2018.

28.58 See Kee Oon J noted that the issues to be determined for the negligence claim were whether a duty was owed and whether it was breached; for the *Wilkinson* claim, the issues were whether the conduct, mental and consequence elements were satisfied. Referring to *Spandeck*[40] and *Ngiam Kong Seng v Lim Chiew Hock*,[41] See J noted that the claimant had to prove that the deceased had suffered a recognised psychiatric illness. While ASR was a recognised psychiatric illness, See J was critical of the claimant's psychiatric expert's conclusion that the deceased had suffered ASR. Referring to Sundaresh Menon CJ's observations in *Kanagaratnam Nicholas Jens v Public Prosecutor*,[42] See J highlighted the importance of setting out the underlying analytical process and evidence

38 [2023] SGHC 154.
39 [1897] 2 QB 57.
40 *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100.
41 [2008] 3 SLR(R) 674.
42 [2019] 5 SLR 887.

supporting an expert's conclusion. See J found that the claimant's expert had failed to prove that the deceased suffered from ASR.

28.59 Despite finding that the threshold requirement of a psychiatric illness had not been proved, See J went on to consider whether the defendant had breached any duty of care. The claimant argued that because the defendant knew that the deceased had a prior history of mental health struggles, it should have exercised greater care in how it handled the matter. However, See J held that the defendant had to balance the deceased's interest in his psychiatric health against the defendant's obligation to protect its vulnerable members and its integrity. See J noted that the defendant did not publish the deceased's name although acknowledged that the deceased's identity was readily ascertainable by those within the debating community. This ignores the reality of social media in today's world where information spreads like wildfire. See J concluded that the defendant had not acted unreasonably in publishing the information. While acknowledging that it reflected poor judgment on the part of the defendant not to give prior notice to the deceased, that failure was also not negligent.

28.60 On the *Wilkinson* claim, See J noted that it was also doomed to failure as the claimant had not proved that the deceased suffered from ASR. Nonetheless, See J went on to set out the elements of the action, following the finding that there was no proof of any intention to cause harm to the deceased. The defendant's intention was to carry out its functions and protect its members, not to harm the deceased. However, See J held that "the sum total of the facts above which the plaintiff relies upon only demonstrates that the defendant was at most reckless or negligent as to whether its actions would cause the Deceased severe mental or emotional distress".[43] This observation sits at odds with See J's findings on the negligence claim, where he held that there was no negligence.

VI. Remedies

A. Assessment of damages

28.61 The appellant in *Eng Beng v Lo Kok Jong*[44] was an 84-year-old female Singapore citizen who suffered serious injury after being involved in a motor vehicle accident with the defendant. The appellant was treated at a public hospital before being transferred to a community hospital.

43 *Li See Kit Lawrence v Debate Association (Singapore)* [2023] SGHC 154 at [168].
44 [2023] SGHC 63.

As a member of the "Pioneer Generation", the claimant benefitted from government grants and subsidies that substantially reduced her medical expenses. The appellant sought to recover her full medical expenses without deducting the government grants and subsidies. The deputy registrar disallowed the claim on the ground that it would amount to double recovery. The appeal was dismissed by the district judge on the same ground. The appellant appealed to the General Division, which allowed the appeal.

28.62 Tan J began by setting out two fundamental principles. One was that the aim of compensatory damages is to return the claimant to the same position as if the tort had not occurred.[45] The other was the rule against double recovery, which necessitated consideration of certain collateral benefits in assessing the claimant's damages.[46] Collateral benefits may be ignored in the assessment of damages in two situations: (a) where claimants receive money under an insurance policy for which they have paid premiums; and (b) where claimants receive money or services from the benevolence of third parties sympathetic to the claimants. The rationale for excluding insurance gains is to ensure claimants are not penalised for their thrift and foresight while the rationale for excluding benevolent gifts is to recognise that these gifts are given to claimants for their enjoyment and not as compensation. Tan J noted that these exceptions to the double recovery rule are not exhaustive.

28.63 The issue in this case was whether the government subsidies and grants should be deducted from the appellant's damages. Tan J referred to *Noor Azlin bte Abdul Rahman v Changi General Hospital Pte Ltd*[47] ("*Noor Azlin*") in which the claimant had received insurance payouts and government medical subsidies. These payments were not taken into account in assessing her compensatory damages for medical costs. The deputy registrar distinguished *Noor Azlin* and held that subsidies and grants had to be taken into account in assessing the appellant's damages. The district judge dismissed the appellant's appeal. Tan J allowed the appeal, holding that the grants and subsidies were not intended to compensate the appellant or to alleviate the respondent's liability.

28.64 Tan J found that the government subsidies were means tested and given to those who qualified. The Pioneer Generation subsidies were given to honour and recognise that generation of Singaporeans. These particular subsidies were specifically tailored to individuals based on equity and merit, and they reflected the "government's generosity and

45 *ACES System Development Pte Ltd v Yenty Lily* [2013] 4 SLR 1317.
46 *Lo Lee Len v Grand Interior Renovation Works Pte Ltd* [2004] 2 SLR(R) 1.
47 [2021] SGHC 10.

its desire to ensure affordable healthcare services for its citizens".[48] These subsidies were not intended to relieve the respondent of its liability, but were aimed at benefitting the appellant. Tan J classified them as falling within the benevolence category of collateral benefits which were not to be taken into account in assessing damages.

28.65 Tan J noted that the appellant had offered to return her subsidies to the government if she were fully compensated. While there was no clawback provision attached to the subsidies, Tan J ordered counsel for the appellant to inform the Ministry of Health that the appellant would be compensated for her medical costs which were also covered by the subsidies. It would be up to the Ministry of Health to determine whether to recover the subsidies or to allow the appellant to retain them. This is a sensible outcome that fairly balances the rights and obligations of the respondent, appellant and public interest in safeguarding public moneys.

28.66 The General Division case of *Salmizan bin Abdullah v Crapper, Ian Anthony*[49] ("*Salmizan*") raises important practical and legal questions pertaining to the assessment of damages in litigation where the parties have settled on the liability question but wish to contest the assessment of damages. *Salmizan* involved a claim for personal injuries sustained in a motor vehicle accident. Personal injury in motor vehicle accident ("PIMA") claims are common and often involve modest sums. To facilitate efficient resolution of such claims, the Pre-Action Protocol for Personal Injury Claims and Non-Injury Motor Accident Claims (the "Protocol") was introduced as Appendix B of the State Courts Practice Directions 2021 ("PD2021"). The Protocol encourages early disclosure and settlement. Parties have three options: (a) they may agree on liability and enter into a consent interlocutory judgment on liability with damages to be assessed later; (b) they may disagree on liability and proceed to trial; or (c) they may agree on both liability and damages and record a final settlement or enter into a consent final judgment.

28.67 A challenge presents itself when parties agree on liability and enter into a consent interlocutory judgment but contest the assessment of damages. The issue is whether the defendant may raise causation issues at the assessment of damages stage ("AD Stage") in order to reduce the quantum of damages. In *Salmizan*, the defendant's expert stated that the collision was not likely to have caused the neck and lower back pain. Thus, while agreeing on liability, the defendant, at the AD Stage, sought to argue that the defendant's negligence had not caused these specific injuries. Goh Yihan JC, in a detailed judgment, considered whether causation

48 *Eng Beng v Lo Kok Jong* [2023] SGHC 63 at [59].
49 [2023] SGHC 75.

could ever be raised at the AD Stage once liability had been agreed in a motor accident claim based on the tort of negligence. The crux of the issue was that causation was an element of the cause of action – therefore it had to be resolved at the liability stage and could not be relitigated at the AD Stage.

28.68 Goh JC identified three possible arguments: (a) the "Total Causation at AD Stage Approach"; (b) the "Partial Causation at AD Stage Approach"; and (c) the "No Causation at AD Stage Approach". These arguments were illustrated with this scenario: Assume the defendant negligently collided with the claimant and caused injuries A, B and C. According to the Total Causation at AD Stage Approach, the parties can enter into a settlement on liability as long as it was agreed that the accident was caused by the defendant's negligence and the defendant could challenge causation of all damage at the AD Stage. Under the Partial Causation at the AD Stage Approach, if there was sufficient evidence that the defendant had caused injury A, the parties may agree to a settlement on liability, with assessment of damages to be tried. Here, the defendant would be entitled to challenge causation with respect to injuries B and C. Under the No Causation at AD Stage Approach, the defendant would not be entitled to challenge causation with respect to any of the injuries.

28.69 Goh JC endorsed the No Causation at AD Stage Approach, relying on Menon CJ's observation in *Tan Woo Thian v PricewaterhouseCoopers Advisory Services Pte Ltd*[50] ("*Tan Woo Thian*") "that in a bifurcated trial, the plaintiff at the liability stage would need 'to show that he did, in fact, suffer one or more types of loss that was causally connected to the alleged breach'".[51] Goh JC noted that *Tan Woo Thian* was not a PIMA claim but held that the principles were universally applicable. While it is indeed correct that a cause of action in negligence is made out only upon proof of damage caused by the defendant, Goh JC's application of *Tan Woo Thian* may raise some questions.

28.70 As Goh JC rightly noted, *Tan Woo Thian* concerned a claim for pure economic loss. The claimant alleged that as a result of the defendant's statements, the claimant had suffered a loss of business reputation, loss in value of his shareholdings and loss of influence in his company. Menon CJ doubted whether the third head even qualified as actionable damage, but nonetheless went on to state that regardless of that, the claimant had not

50 [2021] 1 SLR 1166.

51 *Salmizan bin Abdullah v Crapper, Ian Anthony* [2023] SGHC 75 at [10], citing *Tan Woo Thian v PricewaterhouseCoopers Advisory Services Pte Ltd* [2021] 1 SLR 1166 at [8].

introduced any evidence to connect the defendant's negligence with any of the claimant's loss.

28.71 *Tan Woo Thian* may be distinguished on two grounds. First, it concerned a bifurcated trial unlike *Salmizan* where there was a consent interlocutory judgment, which means both parties have agreed that the elements of the cause of action are established. What remains is the extent of liability, which necessarily includes an assessment of what losses were caused. Secondly, the claimant in *Tan Woo Thian* had not established any loss suffered as a result of the defendant's negligence. In *Salmizan*, there was no doubt that the claimant had suffered some injury that was not *de minimis* in the accident. Note that the defendant had negligently collided his motorcycle with the claimant's motor car. Invariably, there would have been some property damage to the plaintiff's car when the defendant's motorcycle collided with it, which is sufficient to establish the cause of action in negligence. What remains is to establish all the injuries that were caused by that collision.

28.72 Goh JC took the view that causation of the accident was to be distinguished from causation of damage suffered by the claimant. In theory, this is correct, but in practice, for a substantial majority of motor vehicle accidents that do not involve *de minimis* damage, the accident and the damage are indistinguishable. Once liability in negligence is established, the consequential injuries and loss that flow from the accident fairly belong to assessment of damages. The question of causation of these heads of damage may fairly be challenged at the assessment stage. The seminal case of *Performance Cars Ltd v Abraham*[52] ("*Performance Cars*") is instructive. In that case, the defendant's car collided with the claimant's car, causing a dent. The defendant accepted responsibility for the accident but argued that he was not liable for damages as the claimant's car had earlier been damaged in the same area and the claimant had already obtained judgment for compensation which would cover the same losses incurred in the present accident. The Court of Appeal of England and Wales held that the defendant was not liable to compensate for the claimant's loss. Lord Evershed MR stated:[53]

> In my judgment in the present case the defendant should be taken to have injured a motor-car that was already in certain respects (that is, in respect of the need for respraying) injured; with the result that to the extent of that need or injury the damage claimed did not flow from the defendant's wrongdoing.

28.73 The action in *Performance Cars* did not fail because there was no cause of action in negligence; it failed because the defendant successfully

52 [1962] 1 QB 33.
53 *Performance Cars Ltd v Abraham* [1962] 1 QB 33 at 40.

argued that he had not caused the damage and thereby the loss. Goh JC rightly distinguished between loss and damage, but in some cases the distinction may be artificial, and to insist on it would be to undermine the policy of the Protocol which is to facilitate early settlement. Imagine that in *Performance Cars*, the claimant subsequently suffers a psychiatric illness due to the collision. Under the authority of *Salmizan*, the defendant would not wish to enter into an early settlement agreement on liability if he could not reserve the right to challenge causation of damage subsequently. Similarly, the claimant would be reluctant to enter into an early settlement if that meant the claimant would be prevented from claiming for the psychiatric injury as that was not proven to be caused at the time of the settlement. Goh JC acknowledged the line of authority prior to *Tan Woo Thian* which recognised that a defendant was entitled to challenge causation at the AD Stage. With respect, it is suggested that that line of authority should survive *Tan Woo Thian* as it provides a practical approach to personal injury cases. Regardless, the judgment in *Salmizan* has highlighted some of the tensions in doing practical justice while maintaining conceptual integrity.

B. Injunctions

28.74 The General Division in *Gazelle Ventures Pte Ltd v Lim Yong Sim*[54] addressed the question of whether there exists a right to apply for injunctive relief with a view to pre-empting the commission of a tort. Gazelle, a private holding company, sought a *quia timet* (or precautionary) injunction against the defendants to restrain them from taking steps to pass certain shareholder resolutions at a general meeting on the basis that they would likely constitute overt acts of causing loss by unlawful means or conspiracy (lawful or unlawful). The defendants comprised Lim Yong Sim ("Mr Lim"), a private company ("GuGong") and a public company listed on the Catalist Board of the Singapore Stock Exchange ("No Signboard"). Mr Lim was the chief executive officer of No Signboard and the executive chairman of its board of directors. GuGong was the majority shareholder of No Signboard.

28.75 In early 2022, Gazelle provided rescue financing to No Signboard pursuant to agreements entered into with No Signboard. In June 2022, Gazelle appointed two nominee directors to No Signboard's board of directors. The completion of a certain implementation agreement ("Implementation Agreement") was conditional on Mr Lim and GuGong providing an undertaking to vote in favour of the resolutions to be obtained at the extraordinary general meeting ("EGM") that took

54 [2024] 4 SLR 1066.

place on 30 November 2022. GuGong and Mr Lim respectively executed a deed containing the undertakings on 8 November 2022 in favour of No Signboard.

28.76 No Signboard had entered into two agreements to sell intellectual property to GuGong and to appoint GuGong as a business consultant, but these agreements were terminated. GuGong commenced legal proceedings against No Signboard for wrongful termination. Subsequently, in June 2023, GuGong issued a requisition notice to hold an EGM to pass resolutions to: (a) remove all of No Signboard's directors except for Mr Lim; (b) appoint five replacement directors; and (c) to annul the 30 November 2022 resolutions. Gazelle applied for a precautionary injunction in respect of these requisitioned resolutions.

28.77 Jeyaretnam J outlined the approach to determining whether a precautionary injunction should be granted in *Bhavin Rashmi Mehta v Chetan Mehta*[55] which had in turn adopted the two-staged formulation[56] in the English High Court in *Vastint Leeds BV v Persons Unknown*[57] as follows:

> (a) whether there is a "strong probability that, unless restrained by injunction, the defendant will act in breach of the claimant's rights";[58] and
>
> (b) if question (a) is answered in the affirmative, then the next question is whether the harm resulting from the breach would be "so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction (at the time of *actual* infringement of the claimant's rights) to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate"[59] [emphasis in original].

28.78 At the first stage for the granting of a precautionary injunction, with respect to the tort of causing loss by unlawful means, the claimant must show that:[60] (a) the defendant committed an unlawful act affecting a third party; (b) the defendant acted with an intention to injure the claimant; and (c) the defendant's conduct in fact resulted in damage to the claimant.

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55 [2022] SGHC 173.
56 *Bhavin Rashmi Mehta v Chetan Mehta* [2022] SGHC 173 at [43].
57 [2019] 4 WLR 2.
58 *Vastint Leeds BV v Persons Unknown* [2019] 4 WLR 2 at [31(3)].
59 *Vastint Leeds BV v Persons Unknown* [2019] 4 WLR 2 at [31(3)].
60 *Raffles Education Corp Ltd v Shantanu Prakash* [2023] SGHC 89 at [239], applying the test set out in *Paragon Shipping Pte Ltd v Freight Connect (S) Pte Ltd* [2014] 4 SLR 574 at [83].

28.79 Jeyaretnam J held that the three requirements were not satisfied. Mr Lim and GuGong executed the deed in favour of No Signboard. Gazelle was not in a position to enforce the deed. Moreover, Mr Lim and GuGong fulfilled their obligations to perform their undertakings at the 30 November 2022 EGM.

28.80 A special resolution was passed at the 30 November 2022 EGM to facilitate Gazelle's acquisition of redeemable preference shares in No Signboard. Gazelle argued that if the defendants had voted in favour of annulling the 30 November 2022 resolutions, they would have breached their duty to act *bona fide* for the benefit of No Signboard as a whole. However, Gazelle was a creditor, not a shareholder, of No Signboard. The alleged breach would be a wrong against No Signboard and the minority shareholders but not against Gazelle. Further, it was not clear that Mr Lim and GuGong intended to injure Gazelle as an end in itself or as a means to an end. Voting in favour of the requisitioned resolution might have been for their own interests.

28.81 Based on the above reasons, the tort of unlawful conspiracy would also fail. There was no unlawful act nor the requisite intention for the purpose of establishing the tort. In addition, the tort of lawful conspiracy would fail for lack of a predominant purpose to harm Gazelle.

28.82 At the second stage of determining whether a precautionary injunction should be granted, it was not shown that Gazelle would likely suffer irreparable harm if the injunction were not granted. The completion of the Implementation Agreement was dependent on other reasons and not merely based on the granting of the injunction. If the agreement were not completed for these other reasons, Gazelle might not have any claim against the defendants.

28.83 As a final point, the learned judge declined to follow Gazelle's argument based on the *dicta* in *Sulzer Pumps Spain, SA v Hyflux Membrane Manufacturing (S) Pte Ltd*[61] that "the court has equitable jurisdiction to issue freestanding injunctions even when there is no cause of action".[62] Jeyaretnam J explained that though the jurisdiction may be

61 [2020] 5 SLR 634.

62 *Sulzer Pumps Spain, SA v Hyflux Membrane Manufacturing (S) Pte Ltd* [2020] 5 SLR 634 at [93].

broad, the exercise of that jurisdiction is "incidental to and dependent on the enforcement of a substantive legal right".[63]

63 *Gazelle Ventures Pte Ltd v Lim Yong Sim* [2024] 4 SLR 1066 at [69].