

## 28. TORT LAW

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### I. Breach of confidence

28.1 The two court decisions in this section deal with disputes between employers and their ex-employees who had undertaken steps to act in concert with a view to competing with and diverting business from their employers even before their formal resignations from the employers. Importantly, the ex-employees had access to the confidential information belonging to the employers and, in some cases, had used the information to the employers' detriment.

28.2 In the first case, *Centricore (S) Pte Ltd v ATT Systems (S'pore) Pte Ltd*,<sup>1</sup> (“*Centricore*”), the respondents claimed that several employees (*ie*, the second to seventh appellants) from the second respondent company, ATT Infosoft Pte Ltd, had conspired to leave the company to set up a new company, Centricore (S) Pte Ltd (*ie*, the first appellant) in order to compete with the second respondent and its parent company, ATT Systems (S'pore) Pte Ltd (*ie*, the first respondent). Centricore (S) Pte Ltd supplied digital information technology infrastructure services. The second appellant, Mr Faruk, was alleged to be the mastermind behind the employees' departure from the second respondent. The eighth appellant, IdGates Pte Ltd (“*IdGates*”), a company in which some of the ex-employees came to hold positions, engaged in the business of installing building automated systems.

28.3 The claims included actions in breach of confidence, breach of employment agreement, breach of fiduciary duties, inducement of breach of employment agreement, and conspiracy by unlawful means. Three of the appellants counterclaimed against the second respondent for wrongful dismissal. The trial judge allowed most of the claims and

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1 [2025] 1 SLR 1426.

dismissed the counterclaim. This review focuses on three tortious claims on appeal to the Appellate Division of the High Court (“Appellate Division”),<sup>2</sup> namely breach of confidence (dealt with in this section) and inducing breach of contract and conspiracy to be dealt with in the section on economic torts below.

28.4 The claim for breach of confidence highlighted the issue of wrongful gain *versus* wrongful loss interests as analysed in the landmark Court of Appeal decision of *I-Admin (Singapore) Pte Ltd v Hong Ying Ting*<sup>3</sup> (“*I-Admin*”). To succeed in a wrongful gain claim based on the defendant’s exploitation of the confidential information, the plaintiff must show three elements:<sup>4</sup>

- (a) the information in question has the necessary quality of confidence;
- (b) the information has been imparted in circumstances importing an obligation of confidence; and
- (c) there was unauthorised use of that information to the detriment of the party from whom the information originated.

28.5 On the other hand, a claim for wrongful loss is established based on proof of only the first two elements unless the defendants (*ie*, the appellants) can show that the defendants’ conscience was unaffected. For example, the defendant may adduce evidence showing that it had come across the information “by accident or was unaware of its confidential nature or believed there to be a strong public interest in disclosing it”.<sup>5</sup>

28.6 Turning to the pleadings, Kannan Ramesh JAD, delivering the judgment of the Appellate Division, observed that the pleadings covered the first two requirements of the wrongful loss claim against all the appellants. The statement of claim also contained facts relating to how some of the appellants had received and retained the confidential information while others had accessed, used and distributed the confidential information to the respondents’ detriment. Thus, the pleadings included both the wrongful gain and wrongful loss claims.

28.7 Ramesh JAD emphasised the need for clarity in drafting pleadings in respect of claims for breach of confidence. Counsel should be mindful of two aspects when drafting the pleadings. First, the distinction in the burden of proof: for wrongful loss, the defendant has to

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2 This case was heard by Woo Bih Li JAD, Kannan Ramesh JAD and See Kee Oon JAD.

3 [2020] 1 SLR 1130.

4 The elements are reproduced from *Centricore (S) Pte Ltd v ATT Systems (S’pore) Pte Ltd* [2025] 1 SLR 1426 at [29].

5 *I-Admin (Singapore) Pte Ltd v Hong Ying Ting* [2020] 1 SLR 1130 at [61].

show that his conscience was unaffected; for wrongful gain, the plaintiff must show that the defendant had used the confidential information to the plaintiff's detriment. Second, the need to delineate clearly the specific classes of documents or information that are subject to a wrongful gain claim *versus* a wrongful loss claim. This point was particularly important for the purpose of avoiding double recovery in respect of the same confidential information.<sup>6</sup> In this case, Mr Faruk was the only appellant whose wrongful loss and wrongful gain claims were both allowed. Hence, the court had to scrutinize the trial judge's decision to determine that there was a sufficiently clear separation of the confidential information that was subject to the respective claims in wrongful loss *versus* wrongful gain.

28.8 With respect to the wrongful loss claim, the appellants could not discharge the burden of proof to show that their conscience was not affected. The trial judge found insufficient evidence of use of confidential information in the wrongful gain claim. This is distinct from a positive finding that there was no use of confidential information for the purpose of a wrongful loss claim. Ramesh JAD clarified that the trial judge's finding did not amount to evidence showing that the appellants' conscience was not affected. In any event, "mere proof that there was no misuse of the confidential information may not always be sufficient to show that the defendant's conscience was unaffected"<sup>7</sup> This is because, as stated in *I-Admin*, merely "accessing, acquiring or threatening to abuse ... confidential information" (*ie*, behaviour falling outside of "actual use and disclosure") can amount to a (presumed) breach of confidence.<sup>8</sup>

28.9 In the second case, *Guy Carpenter & Co Pte Ltd v Choi Okmi*<sup>9</sup> ("*Guy Carpenter*"), the claimant company was in the business of reinsurance brokering. The first defendant, a former senior vice-president of the claimant, and the second defendant, a former junior broker at the claimant's facultative reinsurance broking department, left the claimant for the third defendant, which was incorporated in the Republic of Korea, and/or the fourth defendant, a Singapore subsidiary of the third defendant. Both the third and fourth defendants were engaged in reinsurance brokering. The claimant alleged that the defendants conspired to set up a competing company (*ie*, the fourth defendant) to divert businesses involving a customer's domestic warehouse insurance

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6 *Lim Suk Ling Priscilla v Amber Compounding Pharmacy Pte Ltd* [2024] 1 SLR 741 at [47]–[48].

7 *Centricore (S) Pte Ltd v ATT Systems (S'pore) Pte Ltd* [2025] 1 SLR 1426 at [52].

8 *I-Admin (Singapore) Pte Ltd v Hong Ying Ting* [2020] 1 SLR 1130 at [60], citing *Clearlab SG Pte Ltd v Ting Chong Chai* [2015] 1 SLR 163 at [205].

9 [2025] SGHC 241.

risks in the Republic of Korea from the claimant to the third and/or fourth defendants. In all, the claims comprised breach of confidence against the first defendant, unlawful means conspiracy against all four defendants, breaches of employment contracts against the first and/or second defendants, and inducement of breach of employment contract against the first, third and/or fourth defendants.

28.10 The claimant alleged that the first defendant had sent various sets of confidential information belonging to the claimant to her personal email account. Mohamed Faizal JC analysed the claim in breach of confidence with reference to the requirements in *I-Admin*. The first requirement that the information in question must have the necessary quality of confidence about it was fulfilled for at least one set of information. The first category of information – including the terms offered by the claimant (*ie*, information on the claimant’s premiums, limits on the policy, layer placements and deductions) and information relating to the customers (*ie*, insured property values, historical loss data and survey reports) – was held to be confidential. However, the second category of information, consisting of a general compilation of the property underwriters in Singapore that could be accessed easily from information in the public domain, was not confidential.

28.11 The second requirement – that information in question must have been received or imparted in circumstances importing an obligation of confidence – was satisfied, as the first defendant was under a contractual obligation of confidence under the employment contract and another agreement on code of ethics and confidentiality.

28.12 Upon the satisfaction of the first two requirements in *I-Admin* with respect to the first set of confidential information, there was a presumed breach of confidence. The burden then shifted to the first defendant to show that her conscience was unaffected.

28.13 The first defendant explained that she had forwarded the e-mails to her personal email account to continue completing the work for the claimant’s benefit due to problems with the claimant’s virtual private network. The learned judge found on the evidence that the act of forwarding the e-mails was an unnecessary step for the claimant’s benefit. Moreover, the timing of the act suggested that the first defendant was motivated by her own plan to move to the fourth defendant. As she could not provide adequate explanations as to why she had forwarded confidential e-mails from the claimant to her personal e-mail account, the burden of proof to show that her conscience was unaffected had not been discharged.

28.14 In this case, the claimant had alleged wrongful loss (as opposed to wrongful gain). Such a claim was premised on the requirement of showing an unauthorised access or acquisition of confidential information which triggered the shift in the burden of proof. Hence, the approach in *I-Admin* enabled a presumed breach of confidence in favour of the claimant to be established subject to the first defendant discharging the burden of proving that her conscience was unaffected. Prior to *I-Admin*, the claimant would have faced the more formidable challenge of showing that the first defendant's act of sending the first category of confidential information to her personal e-mail account would amount to use of the confidential information to the claimant's detriment. That being said, the court, in rejecting the first defendant's arguments to show her conscience was unaffected, observed that the circumstantial evidence could give rise to the "damning inference" that the first defendant was motivated to retain access to the confidential information that would likely be "of value at her next employment"<sup>10</sup> with the fourth defendant, thus suggesting future use of the confidential information. The other tortious claims will be discussed below in the section on economic torts.

## II. Deceit

28.15 Three cases on deceit will be discussed: the first involving the proper approach to assessment of damages; the second on the identification of the representor and whether the alleged misrepresentation was actionable as a statement of fact; and the third on the standing to sue in deceit, the interpretation of the alleged misrepresentations and causation of loss.

28.16 The first case is *POP Holdings Pte Ltd v Teo Ban Lim*,<sup>11</sup> an exceptional case regarding the assessment of damages arising from the appellant's actions in deceit and unlawful means conspiracy against the respondents. The appellant made an application for an appeal to be heard by the Court of Appeal against the decision of the Appellate Division,<sup>12</sup> which is typically the final appellate court in most civil cases. The Appellate Division had awarded nominal damages to the appellant on the basis that it had failed to prove the loss, reversing the trial judge's decision<sup>13</sup> to award substantial damages in deceit. The Court of Appeal opined that the case concerned "a point of law of public importance"<sup>14</sup> and provided useful clarification on the method of assessment. Though the

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10 *Guy Carpenter & Co Pte Ltd v Choi Okmi* [2025] SGHC 241 at [108].

11 [2025] 2 SLR 90.

12 *Thia Tiong Siong v POP Holdings Pte Ltd* [2025] SGHC(A) 9.

13 *H8 Holdings Pte Ltd v RIC Dormitory (SG) Pte Ltd* [2024] SGHC 177.

14 *POP Holdings Pte Ltd v Teo Ban Lim* [2025] 2 SLR 90 at [5].

Court of Appeal disagreed with the Appellate Division on its approach, it agreed with the Appellate Division's ultimate finding that the appellant had not proved its loss and thus dismissed the application.

28.17 The misrepresentation, which led the appellant to purchase a majority shareholding in a company that owned a foreign worker dormitory, concerned the legally approved accommodation capacity of the dormitory. The Appellate Division held that the proper method of assessing damages in deceit cases was based on the difference between the price paid and the value of the property ("Valuation Method") at the date of the transaction ("Transaction Date Rule"). Since there was no evidence of the value of the dormitory at the date of transaction, the Appellate Division ruled that the appellant had not proved its loss.

28.18 According to the Court of Appeal, the crux of the case should instead lie with the purported position of the appellant (*ie*, whether to proceed with the transaction or otherwise) but for the respondents' misrepresentation concerning the legally approved accommodation capacity. The respondents had wrongfully represented that the legally approved accommodation capacity of the dormitory was 362 beds though the authorities had only approved a capacity of 130. In the first scenario, the appellant would have decided not to proceed with the transaction. In the second scenario, they would nonetheless have proceeded with the purchase, though at a lower price. The Court of Appeal held that the Valuation Method and Transaction Date Rule would be applicable in the first scenario but not in the second.

28.19 Determining the position of the appellant but for the respondents' misrepresentation is in line with the purpose of damages in tort law, which is "to put the claimant, as far as money can do it, in the same position that it would have been in had the wrong not been committed".<sup>15</sup> In this case, though the appellant had outlined in its statement of claim the scenarios as to what its position would have been but for the misrepresentations, the appellant did not adduce evidence at trial to support any of the scenarios. The appellant eventually elected to proceed based on the second scenario stated above: that it would have proceeded with the purchase at a lower price, though it lacked the requisite supporting evidence. Thus, the Court of Appeal held that the appellant's claim should be dismissed for lack of proof. This case is a salutary reminder about the importance of assessing carefully the hypothetical position of the claimant on the assumption that the defendant's alleged

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15 *POP Holdings Pte Ltd v Teo Ban Lim* [2025] 2 SLR 90 at [28], citing *ACES System Development Pte Ltd v Yenty Lily* [2013] 4 SLR 1317 at [14] and *Livingstone v The Rawyards Coal Co* (1880) 5 App Cas 25 at 39.

misrepresentation had not taken place and ensuring sufficient evidence of the losses claimed for in cases of deceit.

28.20 The Court of Appeal further clarified that even if there were sufficient proof of the scenario relating to the purchase at a lower price, the Valuation Method would not apply here. Instead, the assessment of damages in such an instance should be based on “the difference between the price that it paid and the lower price that it would have paid if the misrepresentation had not been made”.<sup>16</sup>

28.21 The Court of Appeal also highlighted one point of difference between the trial judge and the Appellate Division concerning the Transaction Date Rule, namely whether the rule would be “disapplied in a case of deceit where the claimant only discovers the fraud at a time after the transaction”.<sup>17</sup> The Court of Appeal answered in the affirmative, which is consistent with the trial judge’s position. It interpreted the English case of *Smith New Court Securities Ltd v Citibank NA*<sup>18</sup> as follows: the Transaction Date Rule is applicable only on the basis that “the claimant is able to exercise a *free choice* to hold on to the acquired asset”<sup>19</sup> [emphasis in original] as at the date of transaction. The transaction date is an appropriate cut-off date. Upon the date of transaction, the claimant would be in a position to extricate himself from the effects of the purchase; at the same time, the defendant would no longer be causally responsible for the claimant’s loss. This is provided there are no special features that prevent the claimant from doing so. The rule does not apply, *eg*, to a situation of a “continuing misrepresentation or the purchaser being locked into a business that he has acquired”.<sup>20</sup>

28.22 The applicability of the rule can also be explained from the perspective of mitigation of damages.<sup>21</sup> In this regard, the claimant’s duty to act reasonably in mitigation of damages and causation of damage may be regarded as “two sides of the same coin”.<sup>22</sup> Prior to the discovery of the deceit, the claimant continues to act under the influence of the deceit. It is only upon discovery of the deceit that the claimant might have an opportunity to mitigate damages arising from the deceit by selling the property.

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16 *POP Holdings Pte Ltd v Teo Ban Lim* [2025] 2 SLR 90 at [37].

17 *POP Holdings Pte Ltd v Teo Ban Lim* [2025] 2 SLR 90 at [57].

18 [1997] AC 254.

19 *POP Holdings Pte Ltd v Teo Ban Lim* [2025] 2 SLR 90 at [59].

20 *POP Holdings Pte Ltd v Teo Ban Lim* [2025] 2 SLR 90 at [59].

21 *POP Holdings Pte Ltd v Teo Ban Lim* [2025] 2 SLR 90 at [64].

22 Andrew Dyson & Adam Kramer, “There Is No ‘Breach Date Rule’: Mitigation, Difference in Value and Date of Assessment” (2014) 130 *Law Quarterly Review* 259 at 263.

28.23 The second case of *da Silveira, Virgilio Tarrago v Hashstacs Pte Ltd*<sup>23</sup> concerned an appeal to the Court of Appeal<sup>24</sup> from the decision of the Singapore International Commercial Court<sup>25</sup> (“SICC”). The SICC dismissed the claims in misrepresentation as well as unjust enrichment and conspiracy. The Court of Appeal dismissed the appeal against the SICC decision. This section discusses the tort of deceit, in particular, the issues relating to the identification of the representor and the actionability of the representor’s statements about the representor’s vision of the future.

28.24 The misrepresentations were contained in a whitepaper issued in 2019 on the prospective aims of a project to develop a global blockchain infrastructure for trading in digital assets (“STACS Protocol”) as well as on a website (“STACS Website”). The first appellant claimed that he was the beneficial owner of crypto-assets on the blockchain (“STACS Tokens”) which were allegedly purchased upon inducement by the misrepresentations. The second appellant held the legal title to the STACS Tokens which were transferred to it by the first appellant in 2020. In addition to deceit, there were claims in unjust enrichment and conspiracy against the first and second respondents. The first respondent, Hashstacs Pte Ltd (“Hashstacs (SG)”), was a wholly-owned subsidiary of Hashstacs Inc (“Hashstacs (BVI)”). The second respondent, a director of Hashstacs (SG), acquired majority control of Hashstacs (SG) from 2020 to 2023. Hashstacs (BVI) was struck off the British Virgin Islands register of companies in 2020.

28.25 On the question of identification of the representor, the appellants pleaded that Hashstacs (SG) was the representor and that Hashstacs (SG) was commonly referred to as “Hashstacs Inc” and “STACS”, but they did not provide any evidence to support this interpretation. The reality was that Hashstacs (SG) and Hashstacs (BVI) were separate entities.

28.26 On appeal, the appellants submitted instead that Hashstacs (SG) had “manifestly approved and adopted” the representations of Gibraltar Stock Exchange Group Ltd (“GSX”) and/or Hashstacs (BVI), which was different from their pleadings in the SICC.<sup>26</sup> In *Bradford Third Equitable Benefit Building Society v Borders*,<sup>27</sup> Viscount Maugham opined that the criterion of a representation of fact by words or conduct in the tort

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23 [2025] 2 SLR 437.

24 This case was heard by Steven Chong JCA, Belinda Ang Saw Ean JCA and Arjan Kumar Sikri JJ.

25 *da Silveira, Virgilio Tarrago v Hashstacs Pte Ltd* [2026] 3 SLR 69.

26 *da Silveira, Virgilio Tarrago v Hashstacs Pte Ltd* [2025] 2 SLR 437 at [75].

27 [1941] 2 All ER 205.

of deceit would include “a case where the defendant has manifestly approved and adopted a representation made by some third person”.<sup>28</sup> The crucial inquiry, according to the Court of Appeal, was “whether a reasonable person in the position of the representee would consider that Hashstacs (SG)’s words or conduct, in the totality of the circumstances, rendered them a *maker* of the representations of fact”<sup>29</sup> [emphasis in original]. It opined that the “degree of authorial and editorial influence over a representations’ [sic] contents, and the degree of control one exercised over the process of publication”<sup>30</sup> [emphasis in original] are relevant factors.

28.27 The evidence showed that the whitepaper was published in the name of Hashstacs (BVI) in 2019. Hashstacs (BVI) and GSX (through Hashstacs (BVI)) exercised control over the contents on the STACS Website. Hashstacs (SG)’s employees had edited and uploaded the whitepaper representations onto the STACS Website on the instructions of GSX for the benefit of Hashstacs (BVI). Moreover, the contents of the whitepaper did not mention Hashstacs (SG). Other *indicia* included Hashstacs (BVI) being named as the publisher of the whitepaper and that the contents specifically referred to GSX and Hashstacs (BVI) as the service providers in relation to the STACS Protocol. The Court of Appeal therefore held that Hashstacs (SG) was not the representator of the whitepaper representations and the STACS Website representations. This holding was sufficient to justify the dismissal of the appeal.

28.28 Nevertheless, the Court of Appeal proceeded to discuss another basis for dismissing the appeal, *ie*, that the alleged misrepresentations were not actionable in the tort of deceit as they were not statements of fact but rather statements about the representor’s vision for the future. The SICC had taken the position that the representations constituted an inducement to investors to make an investment based on present features relating to the STACS Tokens and the operation of the STACS Protocol. Disagreeing with the SICC on this point, the Court of Appeal held that the following statements concerned acts that would occur in the future and were not about past or present facts:<sup>31</sup>

... the STACS Protocol would be powered by the STACS Tokens as the utility tokens, [Verified Partners]<sup>32</sup> would be required to stake STACS Tokens, and

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28 *Bradford Third Equitable Benefit Building Society v Bolders* [1941] 2 All ER 205 at 211.

29 *da Silveira, Virgilio Tarrago v Hashstacs Pte Ltd* [2025] 2 SLR 437 at [80].

30 *da Silveira, Virgilio Tarrago v Hashstacs Pte Ltd* [2025] 2 SLR 437 at [93].

31 *da Silveira, Virgilio Tarrago v Hashstacs Pte Ltd* [2025] 2 SLR 437 at [123].

32 This term referred to financial institutions.

transaction fees generated on the STACS Protocol would be distributed as held out in the ... Whitepaper, with 80% being used to purchase STACS Tokens ...

28.29 To the Court of Appeal, those were not actionable representations but “future promises which could only be enforced in the event of a valid contract”.<sup>33</sup> More specifically, the whitepaper had contemplated a future project which was yet to be finalised or implemented.

28.30 According to the SICC, a representation as to the future could impliedly convey a past or present fact which may be actionable.<sup>34</sup> The SICC thus considered that the following statement constituted an actionable misrepresentation, *ie*:<sup>35</sup>

... the statement as to how the transaction receipts would be distributed constituted an undertaking that they would be so distributed in the event that the STACS Protocol was successful and generated fees ...

28.31 This holding was premised on the caveat or qualification that it was viable to implement the STACS Protocol. Taking a different position from the SICC, the Court of Appeal explained that the statement on the “undertaking” (even if accompanied by the abovementioned caveat or qualification) would only amount to a promise as to the future and not misrepresentations as to past or present facts. This position of the Court of Appeal would apply notwithstanding any evidence about circumstances that could have resulted in changes to the implementation of a different project flowing from the representor’s change of mind concerning the implementation.

28.32 The upshot of the judgment is that the approach to determining actionable misrepresentations in the tort of deceit is to be treated differently from the analysis concerning the validity of the contractual promises (*ie*, where the representation does not amount to an enforceable promise regarding a future state of affairs). As can be seen, the Court of Appeal has adopted a more stringent approach in the tort of deceit to interpreting alleged misrepresentations of past or present facts in promotional materials compared to the SICC’s holding, which is probably more sympathetic to claims by potential investors.

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33 *da Silveira, Virgilio Tarrago v Hashstacs Pte Ltd* [2025] 2 SLR 437 at [123].

34 See *Ernest Ferdinand Perez De La Sala v Compañía De Navegación Palomar, SA* [2018] 1 SLR 894.

35 *da Silveira, Virgilio Tarrago v Hashstacs Pte Ltd* [2025] 2 SLR 437 at [129], citing *da Silveira, Virgilio Tarrago v Hashstacs Pte Ltd* [2026] 3 SLR 69 at [214].

28.33 The third case, *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd*,<sup>36</sup> concerned a chain of contracts for the sale and purchase of bulk liquid cargo, with the dispute centring on the use of letters of indemnity to facilitate payment under letters of credit. The appellants alleged that the respondent had made a fraudulent misrepresentation on which they relied and suffered financial loss. The first appellant, Banque de Commerce et de Placements SA, DIFC Branch (“BCP Dubai”), was the branch office (located in Dubai International Financial Centre) of the second appellant, Banque de Commerce et de Placements SA (“BCP Geneva”). The appellants were collectively referred to as “BCP”. The respondent was China Aviation Oil (Singapore) Corp Ltd (“CAO”), a Singapore-incorporated company, and the applicable law was Singapore law.

28.34 As is common practice in the industry, the sale and purchase was conducted through a series of chain contracts with title to the goods passing through a series of parties. Zenrock Commodities Trading Pte Ltd (“Zenrock”), a Singapore-incorporated trading house, approached BCP Dubai to seek financing for the purchase of a cargo from CAO. The proposed arrangement was that Zenrock would purchase the cargo from CAO with BCP Dubai providing the financing, with payment to be made by way of a deferred letter of credit (“LC”) within a stipulated period. Zenrock would then sell the same cargo to PetroChina International (East China) Co Ltd (“PetroChina”), with the proceeds of that sale credited to Zenrock’s account with BCP Dubai. Thus, BCP Dubai’s financing would be on a “self-liquidating” basis.<sup>37</sup> BCP Dubai sought and obtained several documents from Zenrock, including the draft Geneva LC which provided that:<sup>38</sup>

... CAO could claim payment against presentation of its commercial invoice and a suitable letter of indemnity, in the event that the original bills of lading and shipping documents were unavailable at the time of presentation.

28.35 As CAO did not consider BCP Geneva an investment grade bank, it required the Geneva LC to be confirmed by UBS Switzerland AG (“UBS”).

28.36 There were two sets of chain contracts. One involved the sale of cargo by Petco Trading Labuan Co Ltd (“Petco”) to Zenrock to be sold to Petrolimex Singapore Pte Ltd. The other, initiated after Zenrock

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36 [2025] 1 SLR 1146.

37 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [12].

38 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [13].

purchased the cargo from Petco, involved a circular transaction in which the title to the cargo was passed through a series of parties before returning to Zenrock – from Zenrock to Golden Base Energy Pte Ltd, to Shandong Energy International (Singapore) Pte Ltd (“Shandong”), to CAO, and back to Zenrock, and finally on to Petrolimex Singapore Pte Ltd. This was contrary to BCP Dubai’s understanding that the cargo was to be sold by Zenrock to PetroChina. Ms Chng was CAO’s gasoil operator managing the Shandong-CAO and CAO-Zenrock transactions in the chain of contracts. In managing these two transactions, Ms Chng believed in good faith that Petco had the original bills of lading and that these would be endorsed and passed down the chain of contracts to CAO.

28.37 Shandong provided Ms Chng with a letter of indemnity which stated that Shandong was not able to provide the bills of lading at the time but warranted that it had full rights to transfer title, and that it would make reasonable efforts to obtain and provide the bills of lading as soon as possible. After confirming that the Shandong documents were in order, Ms Chng prepared CAO’s invoice and letter of indemnity (“CAO LOI”) in order to claim payment under the Geneva LC. The CAO LOI included a representation as to the bills of lading: “WE HEREBY REPRESENT AND WARRANT THE EXISTENCE, AUTHENTICITY AND VALIDITY OF THE DOCUMENTS”<sup>39</sup> [emphasis in original omitted].

28.38 CAO then paid Shandong for the cargo pursuant to the Shandong-CAO Contract, and it presented its invoice and the CAO LOI to UBS to claim payment from Zenrock under the CAO-Zenrock Contract. BCP Geneva paid that sum to UBS, which paid it to CAO. BCP Geneva then debited BCP Dubai’s inter-branch account for the same amount pursuant to the terms of the Dubai LC. BCP Dubai debited this amount from Zenrock’s account and credited it to BCP Geneva. BCP Dubai expected to be repaid by Zenrock from the proceeds of the cargo sale to PetroChina. However, PetroChina did not respond and BCP Dubai subsequently discovered that a tripartite sale and purchase agreement between Zenrock, PetroChina and Golden Base Energy Pte Ltd had been cancelled. Soon after, Zenrock was placed under interim judicial management on application by a separate party. During the winding up of Zenrock, BCP discovered that there were no original bills of lading endorsed to the order of BCP Dubai in existence. BCP sued CAO for recovery under the Geneva LC.

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39 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [23].

28.39 The key issues at trial were: (a) whether BCP Dubai had standing to sue; (b) whether the CAO-Zenrock Contract was a sham transaction; and (c) whether CAO was liable in the tort of deceit. The trial judge held that BCP Dubai did not have standing to sue as it was merely a representative of BCP Geneva, which should have been the proper claimant. However, BCP Geneva suffered no loss as it had been reimbursed by BCP Dubai and thus had no claim. The judge also found that the CAO-Zenrock transaction was not a sham as it was not uncommon for parties in this business to enter into circular trade agreements. On whether there was deceit, two contrasting interpretations of the representation were offered by the parties. BCP argued for a literal interpretation according to which CAO would have represented that it had the original, endorsed bills of lading. CAO argued for a purposive interpretation according to which the representation simply referred to their warranty that the bills of lading would be presented once it came into their possession. The judge preferred CAO's argument and held that there had not been a fraudulent misrepresentation. Further, the judge held that the representation had not been made to BCP Dubai but to Zenrock.

28.40 On appeal, Stephen Chong JCA addressed the following issues:<sup>40</sup>

- (a) whether BCP has the standing to sue;
- (b) whether the Representation was false;
- (c) whether the Representation was fraudulently made;
- (d) whether the Representation was made to BCP; and
- (e) whether there was reliance by BCP which caused loss.

28.41 Chong JCA agreed with the trial judge that BCP Dubai did not have standing to sue but disagreed that BCP Geneva had not suffered loss, highlighting that a loss was incurred as soon as the bank paid out money in reliance on a fraudulent misrepresentation. Further, at the time BCP Geneva disbursed the money to UBS, BCP Dubai was still a branch office of BCP Geneva and the two were, legally speaking, a single entity. Thus, BCP Dubai's loss was also BCP Geneva's loss. Thus, BCP Geneva had standing to sue.

28.42 On the issues of falsity of the representation and whether it was made fraudulently, Chong JCA reiterated that the two were distinct questions. Whether a representation was false was to be determined objectively, based on how the representation would be understood by a reasonable person in the position of the representee. Whether the

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40 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [59].

representation was fraudulently made was to be assessed subjectively, based on the representor's understanding of the statement. Thus, it is possible that a court may accept a representee's interpretation of a statement to determine its falsity but find that the representor was not acting fraudulently if they honestly believed in a different interpretation. The onus of proving the meaning of the representation is on the representee, in this case, BCP.

28.43 Chong JCA upheld the trial judge's interpretation, although Chong JCA preferred the term "contextual interpretation" over "purposive interpretation". A contextual interpretation would require consideration of the following factors:<sup>41</sup>

... (a) the purpose for which a document came into existence; (b) why the statements contained in the document were made; (c) by whom the statements were intended to be read; and (d) the entire course of negotiations leading up to the making of the representation ...

28.44 On this approach, it was clear that the parties expected the bills of lading to be passed down the chain. Thus, CAO's representation was not that it had the documents in its possession but that it would obtain and pass them down the chain as *per* the usual custom. That was not a false statement. Whether there was fraud depended on whether the representor had acted dishonestly. To prove dishonesty, it had to be established that the false representation was made (a) knowingly; (b) without belief in its truth; or (c) recklessly, careless whether it be true or false.<sup>42</sup> Whether the representor was acting dishonestly was to be assessed on the representor's understanding of the representation, even if that was not the objectively accepted interpretation. The representor's understanding could be rejected only if it was "destitute of all reasonable foundation" or 'so incredible or unreasonable' such that the court may infer an absence of honest belief.<sup>43</sup> Chong JCA found that CAO's honest belief in the representation was supported by the facts.

28.45 Chong JCA disagreed with the trial judge's finding that the representation had not been made to BCP because it was addressed to Zenrock. The test applied in *Panatron Pte Ltd v Lee Cheow Lee*<sup>44</sup> ("*Panatron*") to determine whether a representation was made to the

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41 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [71].

42 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [98], referring to *Chan Pik Sun v Wan Hoe Keet* [2024] 1 SLR 893.

43 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [104].

44 [2001] 2 SLR(R) 435.

claimant was whether it was made “with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff”.<sup>45</sup> CAO argued that under the principle of autonomy, the bank does not rely on representations in a presented document. As Chong JCA explained:<sup>46</sup>

The principle of autonomy supports two distinct assurances: (a) that the seller/beneficiary will be paid by the issuing bank as long as documents that conform to the requirements of the credit are presented, regardless of any dispute with the buyer; and (b) that the bank can confidently pay a seller/beneficiary who presents conforming documents, and it will be entitled to claim reimbursement thereafter without having to look into issues in the underlying sale contract ... [emphasis in original omitted]

28.46 The principle of autonomy is subject to the fraud exception, and a bank is not precluded from relying on the presenter’s implied representation that the presented documents are not false. When CAO made the representation to Zenrock, it knew that BCP would rely on that representation in agreeing to finance the deal. Thus, on the *Panatron* test, the representation was made to BCP as CAO had intended for the former to rely on the latter’s representation. The fact that the CAO LOI had been presented to UBS was irrelevant as, ultimately, it was BCP that paid the money.

28.47 Finally, on causation of loss, Chong JCA disagreed with the trial judge’s use of the “proximate cause” test. Instead, Chong JCA agreed with BCP that the test should be whether the representation “played a real and substantial part in inducing BCP to release the money”.<sup>47</sup> In short, the representation “need only be an inducing cause, not the inducing cause”<sup>48</sup> [emphasis in original omitted]. On the facts, causation was made out. The appeal was ultimately dismissed as BCP had failed to prove that the representation was false or that CAO had acted fraudulently.

### III. Defamation

28.48 The General Division of the High Court’s decision in *Foo Diana v Woo Mui Chan*<sup>49</sup> focused on the assessment of damages in defamation

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45 *Panatron Pte Ltd v Lee Cheow Lee* [2001] 2 SLR(R) 435 at [14].

46 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [124].

47 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [135].

48 *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [134].

49 [2025] 4 SLR 95.

following the earlier decision on liability in *Foo Diana v Woo Mui Chan*.<sup>50</sup> The plaintiff was an advocate and solicitor. The defendant published statements concerning the plaintiff in the Law Society of Singapore's Google page that alleged that she had been "bullied" by the plaintiff and that the plaintiff had engaged in "illegal deals". The defendant subsequently submitted a written complaint to the Law Society of Singapore alleging that the plaintiff acted improperly in lending money to her as a client, making sexual advances towards her and using vulgarities in the course of legal work. The defendant was found liable for the above defamatory statements.

28.49 The plaintiff sought general damages of \$300,000 and aggravated damages of at least \$50,000 while the defendant argued that the award of damages should not exceed \$30,000. Specifically, the plaintiff claimed losses of earnings, business, and clientele which she regarded as part of general damages.

28.50 S Mohan J first cited the old English case of *Harrison v Pearce*<sup>51</sup> for the proposition that the decline in the circulation of the plaintiff's newspaper in that case arising from the defendant's libelous publication constituted general damages. However, the learned judge, relying on subsequent decisions by the House of Lords in *Associated Newspapers Ltd v Dingle*<sup>52</sup> and the English Court of Appeal in *Calvet v Tomkies*,<sup>53</sup> held that loss of earnings, business, and clientele, being pecuniary losses, should be regarded as special damages. This outcome is also consistent with the statement by the Court of Appeal in *Low Tuck Kwong v Sukamto Sia*<sup>54</sup> that the "fall in custom resulting from the damaged reputation" constituted "special damages".<sup>55</sup>

28.51 In the circumstances, the plaintiff would have to plead and particularise the special damages. This does not mean that the plaintiff must adduce evidence of the loss of specific contracts or customers. Proof of a general decline in business or profits would suffice. On the facts, though the plaintiff did not specifically plead the losses, the defendant was aware of the plaintiff's claim for such losses at both stages relating to liability and assessment of damages. Hence, the defendant did not suffer any irreparable prejudice from the plaintiff's omission in pleadings.

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50 [2023] SGHC 221.

51 (1859) 32 LT OS 298.

52 [1964] AC 371.

53 [1963] 1 WLR 1397.

54 [2014] 1 SLR 639.

55 *Low Tuck Kwong v Sukamto Sia* [2014] 1 SLR 639 at [99].

28.52 Nonetheless, the plaintiff did not discharge her burden to prove the special damages. There was no general evidence adduced as to any change in her earnings following the defamatory publications. She had only made bare assertions as to the loss of potential clients. The plaintiff was also under the wrong impression that she was not required to prove special damages. In this regard, her reliance on case precedents relating to general damages was therefore misplaced.

28.53 Turning to the plaintiff's claim for general damages, Mohan J referred to the usual factors (including the gravity of the statement, the extent of publication and the reputation of the plaintiff and defendant) to assess the quantum. Damages were eventually assessed in the sum of \$41,250. This sum comprised general damages and aggravated damages (based on an uplift of 25% of the award of general damages) in respect of both defamatory statements.

28.54 In addition to the judicial clarification regarding the scope of and burden of proving special damages, two other points made by the learned judge in the assessment of damages may be highlighted here. The first point relates to the intended deterrent effect of the damages<sup>56</sup> as a factor in assessing damages in defamation actions. The reader may recall that the Privy Council statement in *The Gleaner Co Ltd v Abrahams*<sup>57</sup> that “[t]he damages often serve not only as compensation but also as an effective and necessary deterrent”<sup>58</sup> [emphasis in original omitted]. Mohan J acknowledged the view that a compensatory award in itself could have a deterrent or exemplary effect. He made a distinction between the (potential) deterrent effect of an award of damages and the justification of an award of damages based on deterrence:<sup>59</sup>

Or put in a different way, even though deterrence is not its purpose, a compensatory award for defamation may *incidentally* also achieve a deterrent function. That, to my mind, is a different thing altogether from saying that a court must ensure that its compensatory award of general damages *serves* a deterrent function and therefore it must factor in deterrence as a separate consideration. [emphasis in original]

28.55 The above position that deterrence is not a requirement in assessing compensatory damages is consistent with case authorities such

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56 *Shanmugam Kasiviswanathan v Lee Hsien Yang* [2024] 5 SLR 194 at [28] (cited in *Foo Diana v Woo Mui Chan* [2025] 4 SLR 95 at [20]).

57 [2004] 1 AC 628.

58 *Foo Diana v Woo Mui Chan* [2025] 4 SLR 95 at [117]; *The Gleaner Co Ltd v Abrahams* [2004] 1 AC 628 at 646.

59 *Foo Diana v Woo Mui Chan* [2025] 4 SLR 95 at [119].

as *ACB v Thompson Medical Pte Ltd*<sup>60</sup> and *Li Siu Lun v Looi Kok Poh*,<sup>61</sup> the deterrent element is one of the purposes underlying an award of punitive or exemplary damages (as opposed to compensatory damages).

28.56 The second point relates to the assessment of damages in the present case based on comparisons with damages awarded in prior precedents. The learned judge took the position that courts should generally focus on more recent case precedents rather than make adjustments based on older precedents, noting that awards of damages in the current decade involving public leaders (including the case of *Shanmugam Kasiviswanathan v Lee Hsien Yang*<sup>62</sup> (“*Shanmugam*”)) have generally reduced in quantum. Mohan J then adopted a “broad-brushed approach” that the plaintiff should be awarded “no more than 20% of the general damages awarded to each claimant in *Shanmugam*”.<sup>63</sup> This starting figure of \$30,000 was then adjusted downwards to \$25,000, taking into account another case involving a professional social media personality in *Yeow Khim Seng Mark v Phan Ying Sheng*<sup>64</sup> (“*Mark Yeow*”). The court stated that the “greater importance that the plaintiff’s reputation may have to her as a lawyer is offset by the comparably greater extent of publication in *Mark Yeow*”.<sup>65</sup> While the preference for more recent case precedents is justifiable in view of the downward trend in the quantum of damages, further explanation of the rationale for the cap of 20% *vis-à-vis* the “broad-brushed approach” and the subsequent adjustments based on a more comprehensive comparative analysis of case precedents would be welcomed.

#### IV. Economic torts

28.57 The economic torts discussed in this section are the torts of inducing breach of contract and conspiracy. In *Centricore*, as discussed above in relation to breach of confidence, the appellants had breached the non-compete and loyalty obligations in the employment agreement. Turning to the claim in the tort of inducing breach of contract, the Appellate Division agreed with the trial judge that Mr Faruk (*ie*, the second appellant), the mastermind behind the ex-employees’ departures, had induced the appellants to breach the non-compete and loyalty obligations.

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60 [2017] 1 SLR 918.

61 [2015] 4 SLR 667 at [213].

62 [2024] 5 SLR 194. Each of the plaintiffs (who were politicians) was awarded \$200,000 (consisting of \$150,000 general damages and \$50,000 aggravated damages).

63 *Foo Diana v Woo Mui Chan* [2025] 4 SLR 95 at [140].

64 [2021] SGHC 145.

65 *Foo Diana v Woo Mui Chan* [2025] 4 SLR 95 at [141].

28.58 The more contentious point was whether the losses arose from the breach of contract that was induced (*ie*, whether the causation requirement was satisfied). Disagreeing with the trial judge, the court found that certain alleged losses, namely the increased labour, software costs and liquidated damages from a delayed project, were not caused by the breach of contract (*eg*, non-compete clause) which arose only when the ex-employees joined the competitor firms. Instead, the alleged losses had arisen from the earlier departure of the employees from the second respondent upon lawful termination of the employment agreements. That the loss had to result from the breach of contract is a requirement of the tort, as stated in *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua*.<sup>66</sup> Hence, those losses were not recoverable.

28.59 As to the claim in unlawful means conspiracy, Ramesh JAD, upon reviewing the trial judge's decision, noted that the alleged conspiracy to set up a competing business was committed through firstly, the breaches of the employment agreements and Mr Faruk's inducement of the same, and secondly, Mr Faruk's and IdGates's misuse of the confidential information. That the different unlawful acts were committed by different parties did not bar the claim.

28.60 The appellants submitted that the evidence of the mass resignations of the appellants did not satisfy the requirement of unlawful means or the intention to injure as elements of the tort which were laid out in *EFT Holdings, Inc v Marinteknik Shipbuilders (S) Pte Ltd*<sup>67</sup> ("*EFT Holdings*"). The present decision clarifies the distinction between the elements of the tort and the evidence that goes towards proving these separate elements. First, the Appellate Division clarified that the unlawful means would cover the breach of contract that was induced by Mr Faruk and the misuse of confidential information by Mr Faruk and IdGates. These unlawful means constituted civil wrongs. Second, the mass resignations of the ex-employees, on the other hand, amounted to evidence of the combination of the conspirators which is a separate element of the tort. This element of combination amongst conspirators does not require evidence of any unlawful conduct. Finally, there was evidence that the conspirators intended, by their unlawful acts, to cause injury to the respondents by establishing competing businesses against and diverting business from the second respondent.

28.61 The authors discussed above the claim for breach of confidence in *Guy Carpenter*. Faizal JC also found that the first and second

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66 [2018] 2 SLR 655 at [311], cited in *Centricore (S) Pte Ltd v ATT Systems (S'pore) Pte Ltd* [2025] 1 SLR 1426 at [91].

67 [2014] 1 SLR 860 at [112].

defendants had breached their duties of good faith owed to the claimant and confidentiality obligations under the employment contract, breached their post-employment non-solicitation and non-dealing covenants, and failed to adhere to contractual terms prohibiting employees from engaging in secondary business or employment without the claimant's written permission.

28.62 The above findings set the stage for the analysis of the claim for inducing breach of contract. In contrast to the Appellate Division's decision in *Centricore* above, which applied the five elements in *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua*,<sup>68</sup> Faizal JC in *Guy Carpenter* applied the legal test in *PropertyGuru Pte Ltd v 99 Pte Ltd*<sup>69</sup> which combined the five elements into the following elements:<sup>70</sup>

- (a) That the defendant knew of the contract and intended for it to be breached;
- (b) That the defendant induced the breach; and
- (c) That the contract was breached and damage was suffered.

28.63 As shown above, the elements of knowledge of the existence of the contract and the intention for it to be breached are combined in (a), while the elements of breach and damage are combined in (c). Given the discussion above on the importance of distinguishing the evidence and the separate elements in the tort of conspiracy in *EFT Holdings*, parties would be advised to break down the cause of action into its constituent elements as far as possible and assess the relevant evidence accordingly for clearer analysis.

28.64 Faizal JC acknowledged the element of direct inducement pleaded by the claimant as against the third and/or fourth defendants. However, Faizal JC found that there was insufficient evidence to show that the third and fourth defendants knew that the first defendant had forwarded confidential company information from the claimant to her own personal e-mail account, or that the first and second defendants planned to divert the domestic warehouse risks business from the claimant to the fourth defendant. Thus, the claim in inducement against the third and fourth defendants failed.

28.65 Faizal JC then proceeded by way of *obiter dicta* to consider the possibility that the tort of inducing breach of contract could arise

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68 [2018] 2 SLR 655.

69 [2018] SGHC 52.

70 *PropertyGuru Pte Ltd v 99 Pte Ltd* [2018] SGHC 52 at [80], which had in turn cited *M+W Singapore Pte Ltd v Leow Tet Sin* [2015] 2 SLR 271 at [88].

where the defendant deals with the contract breaker in a way which is inconsistent with the contract, citing *Tribune Investment Trust Inc v Soosan Trading Co Ltd*.<sup>71</sup> He opined that:<sup>72</sup>

[E]stablishing the tort through inconsistent dealings is not without its own difficulties and showing evidence of acts resulting in a mere breach is insufficient, as the requisite intent (to breach the contract as an end in itself, or as a means to a desired end) and level of procuring the infringing act is still necessary ...

28.66 The quote suggests that evidence of the defendant's dealings with the contract breaker in a way that is inconsistent with the contract (in the absence of evidence of direct inducement) may still found a claim in procuring breach of contract. Indeed, in the recent English Court of Appeal decision in *Northamber plc v Genee World Ltd*<sup>73</sup> (which was cited by the learned judge in the quote above), the defendant's act of purchasing products from the seller in a manner inconsistent with the latter's exclusivity agreement with the claimant was held to constitute the tort of inducing breach of the agreement. The English court justified its decision on the ground that the defendant's involvement in the breach was necessary as the seller could not have breached the exclusive agreement without willing purchasers such as the defendant<sup>74</sup> (*ie*, the defendant had a "causal connection" with or "causative participation" in the breaches).<sup>75</sup> Nevertheless, Faizal JC in *Guy Carpenter* decided not to venture further as it would be outside the case pleaded by the claimant, which was based on direct inducement only.

28.67 There was evidence, however, from which Faizal JC could infer the first defendant's inducement of breaches of the second defendant's contractual obligations not to engage in secondary business or employment and the non-solicitation and non-dealing covenants. The first defendant was the second defendant's supervisor and mentor and was a figure to whom the second defendant deferred.

28.68 In respect of the claim in unlawful means conspiracy based on the elements in *EFT Holdings*, the combination was inferred from the

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71 [2000] 2 SLR(R) 407 at [18].

72 *Guy Carpenter & Co Pte Ltd v Choi Okmi* [2025] SGHC 241 at [154].

73 [2024] 1 WLR 4826.

74 *Northamber plc v Genee World Ltd* [2024] 1 WLR 4826 at [61].

75 *Northamber plc v Genee World Ltd* [2024] 1 WLR 4826 at [51] and [61]. See also *Northamber plc v Genee World Ltd* [2024] 1 WLR 4826 at [51], referencing *Kawasaki Kisen Kaisha Ltd v James Kimball Ltd* [2021] 3 All ER 978 at [32]–[33] wherein Popplewell LJ (with whom Henderson and David Richards LJJ agreed) cited Lord Hoffmann on "causal connection" and Lord Nicholls of Birkenhead on "causative participation" in *OBG Ltd v Allan* [2008] AC 1.

evidence showing each defendant's involvement in the agreement to compete with the claimant and divert its business. The defendants had also intended by the unlawful acts (namely the first defendant's breach of confidence and the breaches of contract by the first and second defendants) to cause the claimant financial loss by diverting the customer's domestic warehouse risks from the claimant to the fourth defendant.

## V. Negligence

28.69 *Lorinet, Pierre Andre Jacques v Helu-Trans (S) Pte Ltd*<sup>76</sup> ("Lorinet") involved a claim for damage to a wall-mounted sculpture that fell off, allegedly due to the negligent installation by the defendant movers. The sculpture in question was an egg-shaped bowl weighing over 22kg and valued at £522,000. It was insured under a syndicated policy. When the claimant moved homes, he engaged the defendant to uninstall, transport, and reinstall the sculpture. The defendant installed the sculpture using a 5cm-long screw with washers in a rawl plug. Two years later, the sculpture fell off the wall and sustained damage. Nobody witnessed the fall. The claimant's wife heard a loud noise and, on investigation, found the sculpture on the floor. The claimant was compensated by the insurers who restored the sculpture at a cost of £81,850 and sold it at an auction for £180,000. Exercising their right of subrogation under the insurance policy, the insurers sought to recover from the defendant.

28.70 It was alleged that the defendant had breached both its contractual obligations and common law duty by improperly installing the sculpture using a small screw that was too small for its purpose. The defendant argued that the contract claim was time-barred and that it had not breached either its contractual or tortious duty. Lee Seiu Kin SJ noted that under s 24A of the Limitation Act 1959,<sup>77</sup> the cause of action for breach of contract accrued at the time of the breach and not when the damage occurred. As such, the contract claim was time-barred as it was brought more than six years after the alleged breach of contract.

28.71 The tort claim, on the other hand, was not time-barred as the cause of action only accrued when the damage materialised. The action was brought within the six-year limit, albeit with just two days to spare. Lee SJ then proceeded to apply the test for duty of care set out in *Spandek Engineering (S) Pte Ltd v Defence Science & Technology Agency*<sup>78</sup> ("Spandek"). The defendant conceded that the preliminary threshold and

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76 [2025] SGHC 66.

77 2020 Rev Ed.

78 [2007] 4 SLR(R) 100.

the first limb of the *Spandeck* test (*ie*, foreseeability and proximity) were satisfied but argued that the contract between it and the claimant negated any common law duty for policy reasons as the rights and obligations of the parties were governed exclusively by the contract. Lee SJ noted that “a duty of care will not generally be imposed if doing so would disturb the contractual allocation of risk that parties have freely negotiated for themselves”<sup>79</sup> [emphasis in original omitted]. However, he rightly went on to reject the defendant’s argument, as it was well-established that tortious and contractual duties could coexist unless there were valid policy considerations negating a tortious duty.

28.72 The defendant relied on three contractual terms in support of its argument:<sup>80</sup>

(a) Clause 12(b): “The Company shall only be responsible for any loss of or damages to goods or any nondelivery or misdelivery, if it is proved that the loss, damage, nondelivery or misdelivery occurred whilst the goods were in the actual custody of the Company and under its actual control and that such loss, damage, nondelivery or misdelivery was due to the wilful neglect or default of the Company or its own servants.”

(b) Clause 13: “In no case whatsoever shall any liability of the Company howsoever arising and notwithstanding any lack of explanation exceed the value of the relevant goods or a sum at the rate of S\$1000 *per* tonne of 1000 kilos on the gross weight of the goods whichever is the lesser. The Company may, if it wishes, pay for repairing or replacing the damaged items instead.”

(c) Clause 14(a): “In event the Company shall be discharged from all liability ... for loss from a package or unpacked consignment or for damage or misdelivery (however caused) unless notice be received in writing within seven days after the end of the transit where the transit ends in the Republic of Singapore or within fourteen days, after the end of the transit where the transit ends at any place outside of the Republic of Singapore.”

28.73 Lee SJ held that cll 12 and 14 were limited to excluding the defendant’s liability for damage to goods while the goods were in the defendant’s custody or control for the purpose of transportation. They did not extend to potential liability for any negligent installation of items, and thus the defendant could not rely on them to exclude liability in

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79 *Lorinet, Pierre Andre Jacques v Helu-Trans (S) Pte Ltd* [2025] SGHC 66 at [27].

80 *Lorinet, Pierre Andre Jacques v Helu-Trans (S) Pte Ltd* [2025] SGHC 66 at [36] and [38].

tort for negligent installation. Clause 13 was broad enough to exclude potential liability for negligent installation, but Lee SJ found that it was unreasonable and therefore unenforceable pursuant to s 2(2) of the Unfair Contract Terms Act 1977.<sup>81</sup> Limiting liability based on tonnage was wholly unreasonable in the context of transporting an item that weighed 22kg. Having undertaken to transport and install an expensive artefact, it was unreasonable for the defendant to include an exclusion clause that was not “remotely commensurate to any damage caused”.<sup>82</sup>

28.74 Having found that the defendant owed the claimant a duty of care, Lee SJ went on to consider whether the duty had been breached. It was here that the claim failed as the claimant could not prove that it was the installation that was negligent. Based on the evidence, including photographs of the wall where the sculpture hung, it was more likely that the cause of the fall was the failure of the wall rather than the screw installed by the defendant. The screw itself was not damaged and the claimant’s arguments about negligent installation were speculative. Lee SJ also rejected the claimant’s attempt to rely on the doctrine of *res ipsa loquitur* as the defendant was not in control of the premises or the circumstances surrounding the incident.

28.75 *Res ipsa loquitur* was also raised in *Feida Bus Consortium Pte Ltd v Royal Autoz Exporter Pte Ltd*<sup>83</sup> (“*Feida*”). The claimant, Feida Bus Consortium Pte Ltd, rented a warehouse to the defendant, Royal Autoz Exporter Pte Ltd. The defendant was in the business of purchasing deregistered vehicles for export or scrapping. A fire broke out in the warehouse while it was tenanted to the defendant, causing damage both to the plaintiff’s and the defendant’s property. Both parties provided expert reports. The plaintiff’s expert had prepared a report for the fire insurance company (*ie*, the first report) and, upon being appointed by the plaintiff, prepared a second report. The plaintiff’s expert conducted a site investigation, unlike the defendant’s expert who relied on photographs in reports prepared by the Singapore Civil Defence Force and the plaintiff’s expert. It was not disputed that the fire had started in a vehicle that the defendant had towed into and stored in the warehouse. However, it was not known how the fire started.

28.76 The plaintiff based its claims on breach of contract, alleging breaches of the tenancy agreement and, on the tort of negligence, arguing that the defendant had caused the fire and failed to curb its spread. There were two employees of the defendant’s, along with a third person,

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81 2020 Rev Ed.

82 *Lorinet, Pierre Andre Jacques v Helu-Trans (S) Pte Ltd* [2025] SGHC 66 at [47].

83 [2025] SGHC 141.

present in the warehouse when the fire broke out. The plaintiff alleged that the defendant's employee must have been working on the vehicle and somehow caused the fire to start. The plaintiff pointed to the tools of the employees that were found next to the vehicle. The defendant counterclaimed, arguing that the fire hose in the warehouse did not work and that it was the plaintiff's responsibility to ensure it was operational.

28.77 Christopher Tan JC dismissed the contractual claims, finding that the plaintiff had failed to prove that the defendant had breached any material express or implied terms of the tenancy agreement. On the negligence claim, Tan JC began with the duty of care analysis set out in *Spandeck*. With respect, it is unnecessary to apply *Spandeck* to cases where a duty of care has been recognised. This was a straightforward occupiers' liability claim, as Tan JC acknowledged, referring to relevant precedents.<sup>84</sup> A duty was clearly owed, which Tan JC described as "a duty to take reasonable care to prevent fires from starting or spreading in the Warehouse"<sup>85</sup> [emphasis in original omitted]. Indeed, the defendant did not deny that a duty of care was owed.

28.78 As the plaintiff could not prove negligence on the facts as nobody knew how the fire had started, the plaintiff sought to rely on the *res ipsa loquitur* maxim. The operation of the maxim was set out in *Grace Electrical Engineering Pte Ltd v Te Deum Engineering Pte Ltd*<sup>86</sup> ("*Grace Electrical*"), in which the Court of Appeal explained that the maxim was merely a rule of evidence that a claimant could rely on to establish a *prima facie* case of negligence when there was insufficient direct evidence. If the defendant could offer evidence to rebut the *prima facie* case, the claimant would have to discharge its legal burden by direct evidence. There are three elements for the invocation of the maxim:<sup>87</sup>

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84 *Virco Metal Industries Pte Ltd v Carltech Trading and Industries Pte Ltd* [1999] 2 SLR(R) 503; *Saatchi & Saatchi Pte Ltd v Tan Hun Ling* [2006] 1 SLR(R) 670; *Te Deum Engineering Pte Ltd v Grace Electrical Engineering Pte Ltd* [2016] SGHC 232.

85 *Feida Bus Consortium Pte Ltd v Royal Autoz Exporter Pte Ltd* [2025] SGHC 141 at [73]. While this is correct, there is wisdom in Andrew Phang Boon Leong JA's *dictum* in *Go Dante Yap v Bank Austria Creditanstalt AG* [2011] 4 SLR 559 at [19], admonishing against particularising the duty of care narrowly as that results in a conflation of duty and breach. The duty in *Feida Bus Consortium Pte Ltd v Royal Autoz Exporter Pte Ltd* [2025] SGHC 141 was simply a duty to take care not to cause harm to the plaintiff. The breach of duty would go to the starting of the fire or failing to prevent its spread.

86 [2018] 1 SLR 76.

87 *Grace Electrical Engineering Pte Ltd v Te Deum Engineering Pte Ltd* [2018] 1 SLR 76 at [39].

- (a) The defendant must have been in control of the situation or thing which resulted in the accident ...
- (b) The accident would not have happened, in the ordinary course of things, if proper care had been taken ...
- (c) The cause of the accident must be unknown ...

28.79 In *Feida*, the cause of the fire was unknown, thus satisfying element (c). The defendant was clearly in control of the premises when the incident occurred, thus satisfying element (a). The point of contention centred on element (b). The experts both agreed that it was possible for an electrical fault to be triggered spontaneously even as the car lay dormant as there would always be some electricity flowing through some of the car's devices. Thus, it could not be said that the accident would not have happened, in the ordinary course of things, if proper care had been taken. The cause of the fire could well have been accidental spontaneous combustion due to an electrical fault. Tan JC rejected the claimant's argument that the defendant's employees must have contributed to the cause of the fire as there was no such evidence to support that argument. Just because there were tools and workers present did not mean that work was done on the car, much less negligent work. The defendant's counterclaim was dismissed as there was no evidence that the claimant owed a duty to maintain the hose reel, nor was there evidence that the hose reel was in fact defective.

28.80 The claimant in *Cheng Shi Ying Cherissa v Khoo Chong Kiat*<sup>88</sup> was the patient of the first defendant, a senior consultant obstetrician and gynaecologist. She was pregnant for the first time and had ten consultations with the first defendant prior to the incident giving rise to the action. The claimant was admitted for labour just after midnight on 2 May 2020. At 9pm that day, her cervix remained closed. The first defendant performed a vaginal examination at 9.20am on 3 May and, on finding that the claimant's cervix had only dilated to 4cm, advised the claimant that she might have to undergo an emergency caesarean section, to which she consented. The first defendant arranged for an operating theatre and an anaesthetist to be on standby. However, at 9.40am, he found that the cervix had dilated to 10cm. The claimant alleged that the first defendant had performed a cervical sweep to widen her cervix, but the first defendant denied that he had done that. Given the full dilation, the first defendant decided to proceed with a natural delivery.

28.81 After pushing for a while, the claimant was informed by the nurse that the baby was crowning. She was told to stop pushing until

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88 [2025] SGHC 53.

the first defendant arrived. The first defendant performed a mediolateral episiotomy to relieve tension and prevent extensive vaginal tears during childbirth. An episiotomy involves making a controlled cut at the area between the vagina and anus. He instructed the claimant to continue pushing while he applied pressure at the top of the uterus to expedite the delivery in a process known as “manual fundal pressure”. The baby was safely delivered soon after. The claimant alleged that the first defendant informed her that he had noticed some faecal matter in her vagina and that he would stitch her up. The first defendant denied saying this and testified that he had noted a rectovaginal buttonhole tear of 0.5cm when he was repairing the episiotomy. He informed the claimant of this and proceeded to repair two layers of the tear.

28.82 On 5 May, the claimant noticed that she was still excreting faecal matter and informed the first defendant, who saw her on 6 May. He told the claimant that she had a rectovaginal fistula that had developed as a result of the repair of the tear breaking down and the tear extending to form an abnormal communication between the vagina and rectum. He sent her to see a colorectal specialist who did not find a fistula and recommended conservative treatment. Later that day, she saw another colorectal specialist who also recommended conservative treatment with the advice that she repair the rectovaginal tear later. This was done six months later, and the claimant healed two months after the surgery. She sued the first defendant and the second defendant (as his employer) for the injuries, postpartum depression, and post-traumatic stress disorder which adversely affected her ability to bond with her baby.

28.83 The cause of action was in negligence with the claimant alleging that the first defendant had failed to obtain her informed consent before performing the cervical sweeps, performing an episiotomy, applying manual fundal pressure, and repairing the rectovaginal tear. Choo Han Teck J accepted the first defendant’s argument that it was not necessary to obtain consent to perform a cervical sweep, apply manual fundal pressure, or perform an episiotomy as these were routine procedures in natural childbirth. Choo J stated that it “would have been an act more of courtesy than duty to let a patient know before performing an episiotomy or applying manual fundal pressure”.<sup>89</sup> It was not a breach of duty.

28.84 The claimant also alleged that the first defendant had not informed her of the rectovaginal tear, and there was no mention of a rectovaginal tear in the first defendant’s notes. His clinical notes, timestamped 11am on 3 May, noted a “fistula” not a tear. Further, the claimant argued that the notes were not made contemporaneously but were in fact added later

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89 *Cheng Shi Ying Cherissa v Khoo Chong Kiat* [2025] SGHC 53 at [14].

at 11.30am by a nurse. The notes also recorded a midline episiotomy when the first defendant had performed a mediolateral episiotomy. Choo J expressed the view that doctors are often busy and may not make contemporaneous notes throughout and accepted that occasionally there may be mistakes in the record. However, Choo J saw “no reason to question the overall reliability of Dr Khoo’s entry on 3 May 2020 at 11am”.<sup>90</sup>

28.85 The claimant further alleged that the first defendant had negligently failed to provide appropriate advice, diagnosis, treatment, and care in applying manual fundal pressure. It was alleged that this pressure had contributed to the rectovaginal tear. The claimant’s expert stated that “fundal pressure is not practised in any civilised or developed country in the world”.<sup>91</sup> The first defendant’s expert stated that manual fundal pressure was commonly used in Singapore, especially when there was indication that the baby was in distress. Given that the baby’s head was crowning, a caesarean would not have been an appropriate option. The first defendant’s expert also rejected the claimant’s expert’s view that the first defendant should have attempted a vacuum or forceps delivery, arguing that such an attempt would have increased the risks during delivery. Choo J found the first defendant not negligent for using fundal pressure. Further, Choo J found that as the baby was crowning, it was unlikely that fundal pressure could have caused the rectovaginal tear.

28.86 The claimant’s third allegation was that the first defendant was negligent in repairing the tear, arguing that such tears should be repaired in three, not two, layers. Choo J found, against the claimant that, as there had been no faecal discharge during the incident, it was not negligent of the first defendant to repair it without consulting a colorectal surgeon. Given that the tear was only 0.5cm, Choo J found that it was not necessary to do a three-layer repair, and that a two-layer repair was adequate. Ultimately, Choo J found in favour of the defendants and against the claimant on all allegations.

28.87 While the decision turned largely on the facts and expert opinion, it raises some important questions. One is that medical professionals must take care to record their notes accurately and meticulously. If an entry is made later, it should be noted as such to ensure accuracy rather than creating ambiguities around the record. Choo J’s comments that doctors are not obligated to inform patients of routine matters during surgery should not be taken out of context or seen as a licence to act

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90 *Cheng Shi Ying Cherissa v Khoo Chong Kiat* [2025] SGHC 53 at [18]. However, based on the facts, there was no entry made at 11am. The entry was made later at 11.30am.

91 *Cheng Shi Ying Cherissa v Khoo Chong Kiat* [2025] SGHC 53 at [19].

paternalistically in the best interests of the patient. Medical jurisprudence, including in Singapore, has moved in the direction of respecting patient autonomy and ensuring patients are involved in decision-making.<sup>92</sup> Even if applying fundal pressure is common in Singapore, it is clearly a practice that is rejected in many advanced countries; indeed, the World Health Organization has specifically recommended against it.<sup>93</sup> Patients should be given a choice to take the risk unless it would be impossible to obtain consent due to an emergency.<sup>94</sup>

28.88 An episiotomy is not a minor procedure, yet there is evidence that it is overused with unnecessary adverse outcomes.<sup>95</sup> It is invasive, painful, and risky; patients should be informed not as a matter of courtesy but as a matter of patients' rights. In this case, the claimant was experiencing her first pregnancy and would not be familiar with routine processes during delivery. She had ten consultations with the first defendant during which she should have been informed of the nature of the procedure and material risks, especially were things not to have proceeded according to plan. Both the first defendant's and the claimant's expert agreed that it was not necessary to obtain formal consent for an episiotomy, but both agreed that the patient should have been informed of the procedure. The claimant's expert went further to state that verbal consent should be obtained before procedures such as cervical sweeps and episiotomies.

## VI. Trespass

28.89 *Lee Say Yng v Lee Cheng Mui*<sup>96</sup> involved a dispute between two siblings over a two-storey semi-detached house (*ie*, "the property"). The property was originally purchased in the names of the claimant and his grandmother, and they owned it as joint tenants. Upon the grandmother's death, the claimant became the sole registered owner as the surviving joint

92 *Hii Chii Kok v Ong Peng Jin London Lucien* [2017] 2 SLR 492.

93 "WHO Recommendations: Intrapartum Care for 'A Positive Childbirth Experience'", *World Health Organization: Regional Office for South-East Asia* <[https://www.who.int/docs/default-source/reproductive-health/maternal-health/ipc.pdf?sfvrsn=dc30fc00\\_8](https://www.who.int/docs/default-source/reproductive-health/maternal-health/ipc.pdf?sfvrsn=dc30fc00_8)> (accessed 3 June 2026).

94 While the test in *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582 applies to the duty to advise of alternative treatments, once an alternative treatment is adopted, the test in *Montgomery v Lanarkshire Health Board* [2015] AC 1430 applies to the duty to advise of risks inherent in that treatment: see *McCulloch v Forth Valley Health Board* [2024] AC 925.

95 Jiangfeng Ye *et al*, "A Nationwide Cross-Sectional Survey of Episiotomy Practice in China" (2022) 19 *The Lancet Regional Health – Western Pacific* 1; Justin R Lappen & Dana R Gossett, "Changes in Episiotomy Practice: Evidence-Based Medicine in Action" (2010) 5(3) *Expert Review of Obstetrics & Gynecology* 301.

96 [2025] SGHC 126.

tenant. Subsequently, at the request of his father, the claimant executed a transfer of a half-share of the property to his older sister in 2009, after which the defendant and claimant became co-owners as tenants in common. Several members of the Lee family lived at the property until 2010 when the claimant's elder brother and wife moved out. The claimant himself resided primarily in Australia. Thus, from 2010, the defendant lived in the property with her mother.

28.90 In 2017, the claimant wanted to move back into the property and informed the defendant that he would stay in one of the rooms of the property ("Room 3"). The defendant had her belongings in Room 3 which she did not want to remove, thus creating the dispute. In 2018, when the claimant returned to the property to discuss the matter, the defendant called the police as she felt threatened. The claimant entered into a two-year lease to rent a unit at a condominium. The lease was renewed for two years in 2019. The mother passed away in 2020 and toward the end of his second lease, the claimant informed the defendant that he wished to move into the property. The defendant was not co-operative, and the claimant renewed his lease two more times until 2024. The defendant applied for and obtained a court order to dispose of the property, with the claimant given the right of first refusal to purchase the defendant's share of the property. The claimant could not afford to purchase the property and reiterated his wish to move in but continued to be unsuccessful. The property was disposed of in November 2024 with the proceeds split between the two parties.

28.91 The claimant brought an action claiming he was the victim of trespass by ouster. The defendant sought to have the claim struck out as an abuse of process. Wong Li Kok, Alex JC set out the issues to be addressed:<sup>97</sup>

- (a) whether the claim for trespass by ouster is barred by the equitable doctrine of laches;
- (b) whether the defendant has committed trespass by ouster;
- (c) whether the claimant's action should be struck out for an abuse of process; and
- (d) if trespass by ouster is made out, whether the claimant is entitled to the damages claimed.

28.92 On the first issue, Wong JC held that the defendant's argument was internally inconsistent, as she claimed that the defendant did not have a beneficial interest, but at the same time asserted that his claim

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97 *Lee Say Yng v Lee Cheng Mui* [2025] SGHC 126 at [30].

was based on equity and thus defeated by the defence of laches. If the defendant did not have a beneficial interest, he could not have a claim in equity. The defence of laches is based on unconscionability; the defendant argued that it would be unjust to give a remedy when there had been substantial delay by the claimant in bringing the claim. The defence failed as Wong JC found that the claimant had both legal and equitable interests in the property. Thus, his claim was not restricted to equity, and as the defence of laches does not apply to a common law claim, Wong JC held that the claim should not be struck out.

28.93 The main issue to be resolved was whether there had been trespass by ouster. The defendant relied on the judgment of Belinda Ang Saw Ean J in *Tan Chwee Chye v P V R M Kulandayan Chettiar*<sup>98</sup> (“*Tan Chwee Chye*”). Wong JC noted that *Tan Chwee Chye* involved adverse possession between co-owners and thus some of Ang J’s comments were inapplicable. Nonetheless, Wong JC adopted Ang J’s test for ouster, namely that:<sup>99</sup>

[T]he test for determining if there has been ouster is whether the *conduct* of the occupying co-owner, objectively viewed, can be unequivocally inferred to be a denial of the other co-owner’s title. [emphasis in original]

28.94 Where the defendant’s actions are open to other interpretations that do not suggest an intent to deny the other co-owner’s title, trespass by ouster will not be made out. Thus, in *Jacobs v Seward*,<sup>100</sup> the actions of the defendant in placing a lock on a gate were not sufficient to establish ouster as there was no evidence that the gate was always locked, and more importantly, it was established that a lock was necessary to prevent the hay from being stolen. Thus, the plaintiff failed to establish ouster.

28.95 Ouster may be actual or constructive. To determine constructive ouster, the court “must consider objectively whether, having regard to the subjective characteristics of the occupants themselves, the impugned conduct [of the occupying co-owner] amounts to an ouster”.<sup>101</sup> The court must be satisfied that the parties’ beliefs are genuinely held and not being feigned. Wong JC noted the four instances listed by the claimant as constituting ouster:<sup>102</sup>

- (a) the defendant refusing to clear her belongings from Room 3 at his request from the period of April 2017 to January 2018;

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98 [2006] 1 SLR(R) 229.

99 *Lee Say Yng v Lee Cheng Mui* [2025] SGHC 126 at [63].

100 (1872) LR 5 HL 464.

101 *Lee Say Yng v Lee Cheng Mui* [2025] SGHC 126 at [69], citing *Goh Rosaline v Goh Nellie* [2021] SGHC 153 per Philip Jeyaretnam JC at [38]–[39].

102 *Lee Say Yng v Lee Cheng Mui* [2025] SGHC 126 at [72].

- (b) the defendant calling the police on 20 January 2018;
- (c) the defendant disagreeing with his suggested renovations in August 2021; and
- (d) the defendant allegedly refusing his request to move in in April 2024.

28.96 Wong JC held that the defendant had a genuine reason for not wanting to move her belongings in the period from April 2017 to January 2018. The defendant's conduct was not unreasonable, and the claimant was not in fact prevented from residing in the property on occasions. Thus, there was no actual or constructive ouster at the first instance. Similarly, the second instance was not an ouster as the calling of the police was not unreasonable because the defendant felt threatened by the claimant's aggressive behaviour. However, at the third instance, the defendant's conduct passed the test for ouster. As Wong JC noted, her position had hardened and she insisted that the claimant could not live with her and that if he wanted to move into the property he would have to buy over her share of the property. On the fourth instance, Wong JC found that the defendant had not refused the claimant's request but simply insisted on certain conditions to protect herself as she felt threatened by the claimant. Thus, there was no ouster here. Ultimately, Wong JC found that there was a continuous ouster from August 2021 to April 2024 when the defendant was willing to allow the claimant to move in under certain conditions.

28.97 The claimant sought damages to compensate him for the rental costs, the loss of the value of rental income from his share of the property, inconvenience caused, and the loss of opportunity to spend time with his mother before she passed away. Wong JC dismissed the last two heads of damages as unsupported. Wong JC held that the claimant was entitled to compensatory damages for the rental costs or alternatively restitutionary damages for loss of rental income. Given that the claimant elected the former, Wong JC assessed damages based on the claimant's rental costs between November 2021 and April 2024. The defendant's argument that the claimant had failed to mitigate his loss by renting an expensive condominium was dismissed as the condominium, while expensive, was not unreasonably so. An appeal to the Court of Appeal was dismissed.<sup>103</sup>

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103 *Lee Cheng Mui v Lee Say Yng* [2026] SGHC(A) 13.