

Fuji Xerox Singapore Pte Ltd v Mazzy Creations Pte Ltd and others
[2021] SGHC 193

Case Number : Suit No 549 of 2019
Decision Date : 16 August 2021
Tribunal/Court : General Division of the High Court
Coram : Tan Siong Thye J
Counsel Name(s) : Chang Yen Ping Ian (Averex Law Corporation) for the plaintiff; Bernard Sahagar s/o Tanggavelu (Lee Bon Leong & Co) for the defendants.
Parties : Fuji Xerox Singapore Pte Ltd — Mazzy Creations Pte Ltd — Alice Chua Tien Jin — Chua Koon Kian

Civil Procedure – Costs – Indemnity costs based on contract

Civil Procedure – Damages – Interest – Contractual interest

Civil Procedure – Pleadings – Whether particulars of representations sufficiently pleaded

Contract – Misrepresentation – Damages

Contract – Misrepresentation – Fraudulent

Contract – Misrepresentation – Rescission – Affirmation

Contract – Misrepresentation – Whether sufficient particulars pleaded

Contract – Misrepresentation – Silence

Contract – Misrepresentation Act – Section 2(1)

Contract – Remedies – Mitigation of damage

Credit and Security – Guarantees and indemnities

Debt and Recovery – Right of set-off

16 August 2021

Judgment reserved.

Tan Siong Thye J:

Introduction

1 The plaintiff, Fuji Xerox Singapore Pte Ltd (“Fuji Xerox”), commenced this Suit against the first defendant, Mazzy Creations Pte Ltd (“Mazzy Creations”) to claim arrears of rental and other charges which are due under three agreements it entered into with Mazzy Creations in 2015. Fuji Xerox also claims from the second defendant, Ms Alice Chua Tien Jin (“Ms Chua”), and the third defendant, Mr Chua Koon Kian (“Mr Chua”), as guarantors for Mazzy Creations. In addition, Fuji Xerox claims from Mazzy Creations for goods that it sold and delivered. I shall refer to Ms Chua, Mr Chua and Mazzy Creations by their names or collectively as “the defendants”.

2 On the other hand, the defendants plead that they were induced to enter into the relevant agreements as a result of Fuji Xerox's misrepresentations. The defendants counterclaim for rescission of these agreements and for damages for misrepresentation. In addition, Mazzy Creations counterclaims for printing charges arising from several printing jobs it undertook for Fuji Xerox.

Background to the dispute

The parties

3 Fuji Xerox is a Singapore-incorporated company in the business of renting and servicing office machinery and equipment.[\[note: 1\]](#)

4 Mazzy Creations is in the printing business.[\[note: 2\]](#) Ms Chua and Mr Chua are siblings[\[note: 3\]](#) and they are partners in M/s Scanagraphic ("Scanagraphic").[\[note: 4\]](#) They are also the only shareholders and directors of Mazzy Creations[\[note: 5\]](#) and Colourcube Pte Ltd ("Colourcube").[\[note: 6\]](#) Ms Chua is the managing director of Mazzy Creations.[\[note: 7\]](#) At all material times, Ms Chua was running both Scanagraphic and Mazzy Creations on her own as Mr Chua has been retired for almost 15 years.[\[note: 8\]](#)

5 Over the years, Ms Chua and Mr Chua entered into various rental and service agreements with Fuji Xerox, first through Scanagraphic (in 2000, 2004, 2008, 2011 and 2014)[\[note: 9\]](#) and later through Mazzy Creations (in 2012 and 2015).[\[note: 10\]](#)

The 2012 agreements

6 From 2012 onwards, the defendants' dealings with Fuji Xerox took place through direct conversations, discussions and negotiations between Ms Chua and Mr Andrew Lim Bee Cheng ("Mr Lim").[\[note: 11\]](#) At the material time, Mr Lim was employed by Fuji Xerox as one of its customer account managers.[\[note: 12\]](#) He had dealings with Ms Chua since 2000[\[note: 13\]](#) and handled Mazzy Creations' account from 2012 to 2015.[\[note: 14\]](#)

7 In July 2012, Fuji Xerox and Mazzy Creations entered into three agreements (collectively, the "2012 Agreements"):[\[note: 15\]](#)

(a) Rental Agreement L00023828, under which Mazzy Creations rented a "Color 1000 Press" photocopier with an attached "Fiery Ex Printer Server" and a "FX4127CP" black and white printer from Fuji Xerox for a minimum period of 60 months commencing on 1 July 2012 (the "2012 Rental Agreement");[\[note: 16\]](#)

(b) Service Agreement F00060952, under which Fuji Xerox agreed to service the "FX4127CP" black and white printer for a period of 60 months;[\[note: 17\]](#) and

(c) Service Agreement F00060953, under which Fuji Xerox agreed to service the "Color 1000 Press" photocopier with its attached "Fiery Ex Printer Server" for a period of 60 months.[\[note: 18\]](#)

8 Under the 2012 Rental Agreement, Mazzy Creations was required to make an initial payment of \$80,000 and monthly period payments of \$10,367 for each of the 60 months of the minimum period.

The total amount payable by Mazzy Creations under the 2012 Rental Agreement was, therefore, \$702,020. Clauses 5.1 and 7.3 of the 2012 Rental Agreement are of particular relevance in these proceedings: [\[note: 19\]](#)

5.1 Customer undertakes to pay (a) the Initial Payment; (b) *all Period Payments for the whole Minimum Period*; and (c) the Final Payment. ... If this Agreement terminates before the end of the Minimum Period, *all Period Payments for the balance of the Minimum Period shall become due and payable immediately in accordance with Clause 7.3.* ...

7.3 Upon termination pursuant to Clause 7.2 or otherwise howsoever arising, [Fuji Xerox] is entitled to declare:

a) ... all sums and payments to become due under this Agreement for the balance of the Minimum Period ...

[emphasis added]

9 Thus, pursuant to cl 5.1 of the 2012 Rental Agreement, Mazzy Creations was required to pay Fuji Xerox \$10,367 each month for 60 months from July 2012 to July 2017. If the 2012 Rental Agreement was terminated before these 60 months had lapsed, Mazzy Creations would be liable to pay the period payments for all the remaining months.

10 As part of the value-added services which Fuji Xerox sought to provide to its customers, Fuji Xerox engaged Alliance Trust Pte Ltd ("Alliance Trust") to provide complimentary consultancy services to Mazzy Creations in 2012. [\[note: 20\]](#) Alliance Trust was to assist Mazzy Creations to submit its claims for cash payouts under the Productivity and Innovation Credit Scheme (the "PIC Scheme") administered by the Inland Revenue Authority of Singapore ("IRAS") for one financial year, from the Year of Assessment 2012 to the Year of Assessment 2013. It is not disputed that Alliance Trust assisted Mazzy Creations in the submissions of its claims for cash payouts under the PIC Scheme (the "PIC Claims") to IRAS in 2012. [\[note: 21\]](#)

11 Although the consultancy agreement dated 20 June 2012 (the "Consultancy Agreement") was signed between Alliance Trust and Colourcube, [\[note: 22\]](#) it is not disputed that Alliance Trust rendered these consultancy services to Mazzy Creations instead of Colourcube. [\[note: 23\]](#) The original parties to the 2012 Rental Agreement were Fuji Xerox and Colourcube. Later, the 2012 Rental Agreement was assigned from Colourcube to Mazzy Creations. [\[note: 24\]](#) Ms Chua clarified that Alliance Trust's appointment *vis-à-vis* Mazzy Creations was, therefore, governed by the Consultancy Agreement. [\[note: 25\]](#)

The 2015 agreements

12 Sometime in early 2015, Mr Lim introduced Ms Chua to the latest model of Fuji Xerox's printers, namely the "Color 1000i Press" photocopier. This was an upgrade of the "Color 1000 Press" photocopier that Mazzy Creations had previously rented under the 2012 Rental Agreement. [\[note: 26\]](#)

13 Subsequently, on 10 March 2015, Fuji Xerox and Mazzy Creations entered into three agreements (collectively, the "2015 Agreements"):

(a) Rental Agreement L00030096, under which Mazzy Creations rented the "Color 1000i Press"

photocopier and "Fiery Ex Print Server" from Fuji Xerox for a minimum period of 60 months commencing on 1 April 2015 (the "2015 Rental Agreement");[\[note: 27\]](#)

(b) Service Agreement F00086569, under which Mazzy Creations purchased materials and supplies from Fuji Xerox and Fuji Xerox agreed to provide maintenance for the "Color 1000i Press" photocopier and "Fiery Ex Print Server" (the "2015 Service Agreement");[\[note: 28\]](#) and

(c) Rental and Service Agreement R00005227, under which Mazzy Creations rented the "FX4127CP" printer from Fuji Xerox for a period of 36 months commencing on 1 April 2015 (the "2015 Rental and Service Agreement").[\[note: 29\]](#)

The 2015 Rental Agreement, the 2015 Service Agreement and the 2015 Rental and Service Agreement are annexed to this judgment as Annex A, Annex B and Annex C respectively.

14 Under the 2015 Rental Agreement, Mazzy Creations was required to pay monthly period payments of \$10,367 for each of the 60 months. However, Mazzy Creations was not required to make any initial payment. The total amount payable by Mazzy Creations under the 2015 Rental Agreement was \$622,020.[\[note: 30\]](#) The 2015 Rental Agreement terminated and superseded the 2012 Rental Agreement before the 60-month minimum period under the 2012 Rental Agreement had expired.[\[note: 31\]](#)

15 On 10 March 2015, Ms Chua and Mr Chua also executed a guarantee and indemnity to guarantee the payment of all sums due from Mazzy Creations to Fuji Xerox under the 2015 Agreements (the "Guarantee").[\[note: 32\]](#)

The rollover and Mazzy Creations' claims under the PIC Scheme

16 At this point, it is necessary to briefly outline IRAS's policy regarding claims under the PIC Scheme. Under the PIC Scheme, businesses are offered a cash payout of up to 60% of the cost of acquiring or leasing selected information technology and automation equipment, capped at a maximum of \$100,000 *per year*.[\[note: 33\]](#) However, the amount claimed under the PIC Scheme must exclude any unpaid sums carried forward from a previous lease agreement (known as a "rollover").[\[note: 34\]](#) Further, businesses which are found to have over-claimed for benefits under the PIC Scheme may face a penalty for the cash payouts that were overpaid or would have been overpaid.[\[note: 35\]](#)

17 The types of colour photocopiers rented by Mazzy Creations from Fuji Xerox under the 2012 Agreements and 2015 Agreements qualify for cash payouts under the PIC Scheme.[\[note: 36\]](#) Following the execution of the 2015 Agreements, Mazzy Creations submitted periodic PIC Claims to IRAS in respect of the monthly period payments for the photocopier it had rented from Fuji Xerox.[\[note: 37\]](#) These PIC Claims were supported by the tax invoices issued by Fuji Xerox under the 2015 Agreements.[\[note: 38\]](#) At this point, it should be noted that Alliance Trust did not provide any consultancy services to Mazzy Creations in relation to the 2015 Agreements.[\[note: 39\]](#)

18 However, sometime in mid-2016 when Ms Chua attended a Hewlett-Packard open house, she discovered that the amounts stated in Fuji Xerox's tax invoices included rollovers. Ms Chua then sought an explanation from Mr Lim as well as from Fuji Xerox's general manager and sales manager, but they neither denied nor confirmed the rollovers and offered no explanation. Thereafter, the defendants informed Fuji Xerox that unless it disclosed its recommended retail price or the reasonable

retail price it offered to all its regular customers, the defendants would not continue to pay Fuji Xerox. [\[note: 40\]](#)

19 In an e-mail dated 27 October 2017, Fuji Xerox's chief financial officer offered to reduce Mazzy Creations' outstanding payments by \$36,202. According to Fuji Xerox, this offer of a reduction was made purely on a goodwill basis. [\[note: 41\]](#) However, the defendants rejected this offer and maintained that they would not pay Fuji Xerox until it disclosed its recommended retail price or the reasonable price it offered to all its regular customers. [\[note: 42\]](#)

20 Subsequently, Ms Chua wrote a letter to IRAS dated 16 January 2020 to report that Mazzy Creations had erroneously claimed cash payouts under the PIC Scheme in its submissions from 2012 to 2018, as these claims included rollovers. She indicated that she would only be able to submit the proper Disclosure of Error form when the exact amounts of rollovers were disclosed by Fuji Xerox. [\[note: 43\]](#) In its letter dated 21 August 2020, IRAS informed Mazzy Creations that it would have to claw back all the cash payouts that Mazzy Creations had previously received under the PIC Scheme relating to the machines rented from Fuji Xerox. These cash payouts amounted to \$349,513.80. [\[note: 44\]](#)

21 The defendants only found out the actual amount of the rollover in the course of this Suit, [\[note: 45\]](#) when Fuji Xerox disclosed a table which indicated that a rollover of \$276,640 from the 2012 Rental Agreement had been included within the rental amount of \$622,020 payable under the 2015 Rental Agreement. [\[note: 46\]](#) The amount of this rollover was not expressly disclosed in the 2015 Rental Agreement, which stated only that the *total* amount payable thereunder was \$622,020. At the relevant time, Fuji Xerox did not have any policy of disclosing a detailed breakdown of the amounts payable under its rental agreements to its customers as this was regarded as the company's confidential internal information. [\[note: 47\]](#) However, Ms Toh Sze Ben ("Ms Toh"), the senior manager of Fuji Xerox's Finance Management and Operations team, [\[note: 48\]](#) explained that Fuji Xerox would have disclosed the amount of the rollover to Ms Chua if she had requested this information for the purpose of submitting Mazzy Creations' PIC Claims. [\[note: 49\]](#) Indeed, it was possible for the defendants to calculate the amount of the rollover themselves by multiplying the number of remaining months of the minimum period under the 2012 Rental Agreement by the monthly period payment of \$10,367. [\[note: 50\]](#) However, the defendants never asked Fuji Xerox for the amounts of any rollover contained in each invoice submitted by Mazzy Creations to IRAS in support of its PIC Claims. [\[note: 51\]](#) Although Ms Chua asked for the rollover amounts in her e-mails to Fuji Xerox dated 16 May 2018 and 18 May 2018, she did not explain that this information was needed for the purposes of Mazzy Creations' PIC Claims. Instead, in these e-mails, Ms Chua made allegations that she had been "cheated"; that Fuji Xerox's staff had misled its customers; and that Fuji Xerox had unethically sought to "create unfair competition" among its customers, in respect of which the "relevant authorities should be alerted". [\[note: 52\]](#)

22 Since the 2015 Agreements were entered into, there have been two developments in Fuji Xerox's internal policies relating to rollovers.

23 First, an internal investigation report dated 10 June 2017 was produced by an independent investigation committee established by Fujifilm Holdings Corporation in Japan (the "Fujifilm internal investigation report"). The investigation was conducted as Fuji Xerox New Zealand Limited and Fuji Xerox Australia had adopted certain "inappropriate accounting practices" regarding lease transactions.

One concern was the practice of contract rollovers whereby “[l]ease contracts were renewed before expiration and then recorded as a new sale without reversing the past sale”.[\[note: 53\]](#) Fujifilm Holdings Corporation is a joint owner of Fuji Xerox Co Ltd, which owns Fuji Xerox Asia Pacific Pte Ltd, which in turn owns Fuji Xerox (see *Wong Sung Boon v Fuji Xerox Singapore Pte Ltd and another* [2021] SGHC 24 at [2]). The accounting practice adopted by Fuji Xerox (the plaintiff in the present Suit) was correct as the rollover was not recorded as a new rental price unlike the accounting practice of Fuji Xerox New Zealand Limited and Fuji Xerox Australia.[\[note: 54\]](#)

24 The Fujifilm internal investigation was not initiated as a result of this case but because of the incorrect accounting practice in New Zealand and Australia.

25 Secondly, Fuji Xerox’s standard Rental Agreement form now specifies the “[a]mount outstanding from other agreements refinanced by [Fuji Xerox]” alongside information on the initial payment, the period payments and the total amount payable upon execution of the rental agreement.[\[note: 55\]](#) In other words, the amount of any rollover from previous rental agreements is now expressly stated in the Rental Agreement form. This new form has been used by Fuji Xerox since December 2018.[\[note: 56\]](#) Ms Toh explained that these changes to the Rental Agreement form were introduced as part of Fuji Xerox’s “internal process for improvement”, having regard to the practice in other countries.[\[note: 57\]](#) She said that these changes had “nothing to do” with the Fujifilm internal investigation report.[\[note: 58\]](#)

The parties’ cases

The plaintiff’s case

26 From May 2015 to February 2019, Fuji Xerox issued invoices to Mazzy Creations for sums due under the 2015 Agreements and for supplies sold and delivered.[\[note: 59\]](#) Fuji Xerox claims payment of unpaid rental arrears of \$465,892.98 under the 2015 Rental Agreement,[\[note: 60\]](#) maintenance charges of \$20,784.07 under the 2015 Service Agreement[\[note: 61\]](#) and charges of \$1,424.64 under the 2015 Rental and Service Agreement.[\[note: 62\]](#) Further, Fuji Xerox claims late payment interest of \$64,493.50 (as at 2 January 2019) from Mazzy Creations under the 2015 Agreements.[\[note: 63\]](#) In the alternative, Fuji Xerox claims that Mazzy Creations’ breach of the 2015 Rental Agreement caused it to suffer loss and damage, in that it lost the benefit of the 2015 Rental Agreement and the rental revenue that it would otherwise have earned thereunder.[\[note: 64\]](#) Fuji Xerox also claims a sum of \$909.50 for goods sold and delivered to Mazzy Creations, as reflected in Fuji Xerox’s invoice to Mazzy Creations dated 28 September 2017.[\[note: 65\]](#)

27 Fuji Xerox’s claim against Ms Chua and Mr Chua is pursuant to the Guarantee. Under the Guarantee, Ms Chua and Mr Chua guaranteed the payment of all sums due from Mazzy Creations to Fuji Xerox under the 2015 Agreements.[\[note: 66\]](#)

The alleged misrepresentations

28 With regard to the misrepresentations alleged by the defendants, Fuji Xerox denies that it or Mr Lim ever made any such misrepresentations.[\[note: 67\]](#) According to Fuji Xerox, Mr Lim had merely informed Ms Chua (acting on behalf of Mazzy Creations) that the monthly rental payments under the 2015 Rental Agreement would remain the same as the monthly rental payments under the 2012 Rental

Agreement.[\[note: 68\]](#) In particular, Fuji Xerox denies that it or Mr Lim had assured Mazzy Creations that part of the rental and service charges payable under the 2015 Agreements could be recovered under the PIC Scheme. At all material times, claims under the PIC Scheme were subject to IRAS's approval based on Mazzy Creations' eligibility.[\[note: 69\]](#) Fuji Xerox also submits that the defendants have failed to show that Mr Lim acted fraudulently.[\[note: 70\]](#)

29 Further, Fuji Xerox denies that it was aware of or assisted Mazzy Creations in submitting its periodic PIC Claims supported by Fuji Xerox's tax invoices. If these PIC Claims were in fact made by Mazzy Creations, they were made on Mazzy Creations' own accord and at its own discretion.[\[note: 71\]](#) In any event, since the defendants had appointed Alliance Trust to assist with Mazzy Creations' PIC Claims in 2012, the defendants must have relied on the advice of Alliance Trust in their submission of Mazzy Creations' PIC Claims to IRAS.[\[note: 72\]](#)

30 In addition, Fuji Xerox contends that the defendants did not rely on any representations made by Mr Lim when Mazzy Creations entered into the 2015 Agreements. On the contrary, this was an arm's length transaction entered into between two independent business entities.[\[note: 73\]](#)

The printing services provided by Mazzy Creations

31 It is undisputed that, on various dates and in the course of the dealings between the parties, Mazzy Creations provided printing services to Fuji Xerox at the latter's request. The charges for these printing services amounted to \$93,109.26.[\[note: 74\]](#)

32 Fuji Xerox argues that these charges have been validly set off, paid or settled in full, but otherwise does not dispute this counterclaim.[\[note: 75\]](#) In particular, Fuji Xerox avers that it issued credit notes to Mazzy Creations to set off these charges against the prior amounts owed to it by Mazzy Creations. The amounts claimed in its Statement of Claim are the balance amounts due and owing from Mazzy Creations after taking into account these credit notes.[\[note: 76\]](#)

The defendants' case

33 It is not disputed that Mazzy Creations defaulted in the payment of rental arrears of \$465,892.98 under the 2015 Rental Agreement,[\[note: 77\]](#) maintenance charges of \$20,784.07 under the 2015 Service Agreement[\[note: 78\]](#) and charges of \$1,424.64 under the 2015 Rental and Service Agreement (as at 31 January 2019).[\[note: 79\]](#) It is also not disputed that Mazzy Creations owes Fuji Xerox a sum of \$909.50 for goods that Fuji Xerox sold and delivered to Mazzy Creations at its request.[\[note: 80\]](#) However, the defendants contend that they were induced to enter into the 2015 Agreements by Fuji Xerox's fraudulent misrepresentations.

34 Further, the defendants counterclaim against Fuji Xerox for:[\[note: 81\]](#)

- (a) a declaration that the 2015 Agreements have been validly rescinded, or alternatively rescission of the 2015 Agreements;
- (b) damages to be assessed based on the difference between (i) Fuji Xerox's recommended retail prices or reasonable prices for all items of equipment rented to Mazzy Creations under the 2015 Agreements, without any rollovers from the 2012 Agreements, and (ii) the rental amounts stated in the 2015 Agreements;

- (c) damages for misrepresentation pursuant to s 2 of the Misrepresentation Act (Cap 390);
- (d) charges for the printing services provided by Mazzy Creations to Fuji Xerox (amounting to \$93,109.26), which the defendants claim that Fuji Xerox has refused or neglected to settle despite repeated demands;[\[note: 82\]](#) and
- (e) any penalties that IRAS may impose in relation to Mazzy Creations' erroneous claims under the PIC Scheme or Mazzy Creations' false declaration that the tax invoices it had submitted to IRAS did not contain any rollovers from the 2012 Agreements.

35 In the event that Mazzy Creations is found to be liable to Fuji Xerox under all or any of the 2015 Agreements, the defendants argue that the amounts due to Fuji Xerox under the unpaid invoices should be set off against the counterclaims outlined at [34(d)]–[34(e)] above.[\[note: 83\]](#)

The alleged misrepresentations

36 The defendants argue that Fuji Xerox cannot rely on the 2015 Agreements to claim payment of the outstanding sums due thereunder because they were induced to enter into the 2015 Agreements by Fuji Xerox's misrepresentations.[\[note: 84\]](#) In addition, the defendants counterclaim against Fuji Xerox for rescission of the 2015 Agreements and damages for misrepresentation.[\[note: 85\]](#)

37 At para 7 of their Defence and Counterclaim, under the heading "The Representations", the defendants pleaded that three representations were made to Ms Chua by Mr Lim in their discussions prior to the 2015 Agreements:

- (a) First, that the total rental amount offered in the 2015 Agreements was Fuji Xerox's recommended retail price or was a reasonable price offered by Fuji Xerox to all its customers (the "Rental Amount Representation").[\[note: 86\]](#) According to the defendants, this representation was false because the total rental amount stated in the 2015 Rental Agreement included a rollover of Mazzy Creations' liabilities under the 2012 Rental Agreement.[\[note: 87\]](#)
- (b) Second, that no deposit payment was required under the 2015 Agreements.[\[note: 88\]](#)
- (c) Third, that Fuji Xerox would cap the monthly payments due under the 2015 Agreements to the same amount as the monthly payments payable under the 2012 Agreements.[\[note: 89\]](#)

38 The defendants accept that the second and third pleaded representations (at [37(b)] and [37(c)] above) were true.[\[note: 90\]](#) Indeed, both Ms Chua and the defendants' counsel acknowledged that both of these representations were true[\[note: 91\]](#) and that these were not misrepresentations by Mr Lim, albeit that Mr Lim told Ms Chua that there was no initial payment (and not "deposit payment", which is refundable to the hiree, as pleaded). Therefore, I shall not consider these two representations in analysing the defendants' case based on misrepresentation. However, the Rental Amount Representation (at [37(a)] above) is vigorously contested and it is one of the pivotal issues in this case.

39 At the trial, the defendants also relied on two further alleged representations made to them by Fuji Xerox and/or Mr Lim but these were not clearly pleaded in the Defence and Counterclaim. Instead, these alleged representations were mentioned under the headings "Past Dealings" and "The

2015 Representations were False”:

(a) First, the non-disclosure of the rollover from the 2012 Rental Agreement which was included in the total rental amount stated in the 2015 Rental Agreement. When Mazzy Creations signed the 2015 Agreements, Mr Lim did not mention that the total rental amount in the 2015 Rental Agreement included a rollover from the 2012 Rental Agreement.[\[note: 92\]](#) The defendants submit that the non-disclosure of this rollover amounted to the “wilful suppression of material facts”.[\[note: 93\]](#) This allegation of misrepresentation by non-disclosure was the foundation of the defendants’ case at the trial and in their submissions.

(b) Second, that part of the costs of the rental and service charges payable under the 2015 Agreements could be recovered from IRAS under the PIC Scheme (the “PIC Representation”).[\[note: 94\]](#) According to the defendants, this representation was false because IRAS does not permit claims to be made under the PIC Scheme in respect of any invoice amount that includes rollovers.[\[note: 95\]](#)

40 Acting on the faith of the representations, Mazzy Creations entered into the 2015 Agreements with Fuji Xerox.[\[note: 96\]](#) According to the defendants, Mazzy Creations would not have entered into the 2015 Agreements if Mr Lim had told them that the rental amount in the 2015 Rental Agreement included a rollover. This is because the defendants were pleased with the performance of the “Color 1000 Press” photocopier which they had rented under the 2012 Rental Agreement.[\[note: 97\]](#) Further or in the alternative, acting on the faith of these representations, Mazzy Creations submitted periodic PIC Claims to IRAS supported by Fuji Xerox’s tax invoices.[\[note: 98\]](#) These PIC Claims were false in that the invoice amounts for the 2015 Rental Agreement included undisclosed penalties for the early termination of the 2012 Rental Agreement.[\[note: 99\]](#)

41 The defendants argue that Mr Lim was clearly motivated by the commission offered to him by Fuji Xerox in respect of the 2015 Agreements when he made these representations. They allege that Mr Lim made these representations knowing and intending that the defendants would rely upon them and thereby be induced to enter into the 2015 Agreements. The defendants further allege that Mr Lim made these representations fraudulently, knowing them to be false, or recklessly without caring whether they were true or false. In the alternative, even if Mr Lim did not make these representations fraudulently, the defendants argue that they are nevertheless entitled to damages under s 2 of the Misrepresentation Act.[\[note: 100\]](#)

Mitigation of loss

42 Further or in the alternative, the defendants argue that Fuji Xerox failed to take reasonable steps to mitigate its losses, such as by re-leasing the items rented to Mazzy Creations under the 2012 Agreements. When Mazzy Creations upgraded the “Color 1000 Press” photocopier (which it had rented under the 2012 Rental Agreement) to the “Color 1000i Press” photocopier (under the 2015 Rental Agreement), Fuji Xerox took possession of the “Color 1000 Press” photocopier from the defendants’ office. Sometime in October 2017, Ms Chua discovered that Fuji Xerox had re-leased this photocopier to M/s Unique Colour Separation Pte Ltd (“Unique Colour Separation”).[\[note: 101\]](#) Notwithstanding this, Fuji Xerox did not offer any credit note to Mazzy Creations. On this basis, the defendants argue that Fuji Xerox failed in its duty to mitigate its losses.[\[note: 102\]](#)

Illegality and public policy

43 Initially, the defendants also asserted that the 2015 Agreements are unenforceable on the ground that undisclosed rollovers are illegal or against public policy. [\[note: 103\]](#) However, this argument was abandoned at the trial and in the defendants' submissions. During her cross-examination, Ms Chua agreed that the IRAS rules did not state that a rental agreement containing rollovers was illegal *per se*. [\[note: 104\]](#) In my view, this concession was rightly made. It is, therefore, unnecessary for me to consider the defendants' pleadings regarding illegality and the issue of whether the rental agreement is against public policy.

Set-off of the charges for printing services provided by Mazzy Creations

44 The defendants argue that Fuji Xerox has failed to sufficiently prove that the charges for the printing services provided by Mazzy Creations to Fuji Xerox were validly set off against the prior amounts owed by Mazzy Creations. The defendants contend that Fuji Xerox has not discharged its evidential burden of showing that this set-off was effected since it has merely made broad reference to some credit notes being issued to them, without providing proof or details of how this alleged credit note set-off was carried out. [\[note: 105\]](#)

Issues to be determined

45 As I have noted at [33] above, there is no dispute regarding the quantum of the unpaid sums due from Mazzy Creations to Fuji Xerox under the 2015 Agreements. There is also no dispute regarding the quantum of charges for the printing services rendered by Mazzy Creations to Fuji Xerox (see [31] above). The main dispute in these proceedings arises in relation to the defendants' defence and counterclaim based on misrepresentation.

46 There are three main issues for my determination:

- (a) Have the defendants established any actionable misrepresentations made by Fuji Xerox's Mr Lim to the defendants, particularly Ms Chua?
- (b) Did Fuji Xerox fail to mitigate its losses?
- (c) Have the charges for the printing services provided by Mazzy Creations to Fuji Xerox been validly set off by Fuji Xerox?

47 I shall consider each of these issues in turn.

My decision

Misrepresentation

The applicable law

48 Before I address the parties' pleadings and submissions on the issue of misrepresentation, I wish to reiterate several principles governing the law on misrepresentation which are relevant in these proceedings.

49 It is axiomatic that to establish an operative misrepresentation, there must be a false statement of existing or past fact made by one party (*ie*, the representor) before or at the time of making the contract, to the other party (*ie*, the representee), and the representee must have been induced to enter into the contract (see *Lim Koon Park and another v Yap Jin Meng Bryan and another*

[2013] 4 SLR 150 at [38]). Where fraudulent misrepresentation is alleged, five elements must be proved (*Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14], recently applied in *Ma Hongjin v Sim Eng Tong* [2021] SGHC 84 at [19]):[\[note: 106\]](#)

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

50 It must be borne in mind that the defendants in this case bear the burden of establishing all five elements set out above (see *Trans-World (Aluminium) Ltd v Cornelder China (Singapore)* [2003] 3 SLR(R) 501 (“*Trans-World*”) at [29]). In particular, they must prove that the alleged representations consisted of something said or done by Fuji Xerox or Mr Lim and that this amounts in law to a misrepresentation. It should also be borne in mind that a relatively high standard of proof must be satisfied by the representee before a fraudulent misrepresentation can be established successfully against the representor. This is because the allegation of fraud is a grave one (see *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 (“*Wee Chiaw Sek Anna*”) at [30]).[\[note: 107\]](#) Hence, cogent evidence is required before a court will be satisfied that fraud is established (see *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 at [161]).[\[note: 108\]](#)

51 In assessing whether an alleged representation was in fact made, the particular words used must be read in their context (*Wee Chiaw Sek Anna* at [36]).[\[note: 109\]](#)

52 Silence is rarely considered sufficient to amount to a representation as it is a form of passive conduct “inherently lacking the definitive quality of an active statement” (see *Broadley Construction Pte Ltd v Alacran Design Pte Ltd* [2018] 2 SLR 110 at [28]).[\[note: 110\]](#) However, it is possible for silence to amount to a representation in certain circumstances. This will generally require the alleged representor to have been under a positive duty to disclose the facts on which he remains silent. In those situations, the representor’s failure to disclose those relevant facts may render a statement previously made by the representor false or may itself constitute a false statement. Such a duty to disclose may arise out of the relationship of the parties and/or other circumstances in which the silence is maintained. As accepted in *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [196], albeit in the context of estoppel rather than misrepresentation, the circumstances in which a duty to disclose may be found should not be confined within a closed class such as contracts *uberrimae fidei* (utmost good faith) or fiduciary relationships. The silence should be assessed by reference to how a reasonable person would view the silence in the circumstances (see *Beyonics Asia Pacific Ltd and others v Goh Chan Peng and another* [2020] 4 SLR 215 at [179]–[181] and the authorities cited therein). Silence cannot of itself constitute wilful conduct designed to deceive or mislead. However, silence can constitute a misrepresentation when there is a “wilful suppression of material and important facts” (*Trans-World* at [66])[\[note: 111\]](#) or where there is “active concealment of a particular state of affairs” (*Wee Chiaw Sek Anna* at [65]).[\[note: 112\]](#)

53 Where the representation is ambiguous, the representee must show in which of the possible senses he understood the ambiguous representation at the time it was made, and that the representation was false in that sense (see *Tradewaves Ltd and others v Standard Chartered Bank and another suit* [2017] SGHC 93 at [69]–[71]). The specific sense in which the representee understood the ambiguous representation must be pleaded by him (see *Goldrich Venture Pte Ltd and another v Halcyon Offshore Pte Ltd* [2015] 3 SLR 990 at [119]). Further, when considering whether the representation was made *fraudulently*, the question is what the representor subjectively intended the ambiguous statement to mean (*Wee Chiaw Sek Anna* at [41]). [\[note: 113\]](#)

54 As a matter of procedure, O 18 r 12(1)(a) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) specifically enjoins the party alleging misrepresentation to include in his pleadings the particulars of any misrepresentation on which he relies. This is not a mere technicality. Pleadings serve the important function of giving the other party fair notice of the case which has to be met. Pleadings also define the issues which the court will have to decide on so as to resolve the matters in dispute between the parties (see *Lee Chee Wei v Tan Hor Peow Victor and others and another appeal* [2007] 3 SLR(R) 537 at [61]). In particular, the Court of Appeal emphasised in *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2020] 2 SLR 1256 (“*JTrust Asia*”) at [116] that allegations of fraud or misrepresentation must be pleaded with “utmost particularity”. Full particulars of the misrepresentation must be stated in the pleadings, including the nature and extent of the misrepresentation and whether the representation was made orally or in writing. Failure to adequately plead the particulars of an alleged misrepresentation may lead to an unsuccessful claim (*JTrust Asia* at [116]). The party alleging misrepresentation must plead a *positive representation of fact*. He cannot merely allege concealment and suppression of relevant information (see *EA Apartments Pte Ltd v Tan Bek and others* [2017] 3 SLR 559 (“*EA Apartments*”) at [29]). [\[note: 114\]](#)

55 This is illustrated by the facts of *EA Apartments*. In that case, the plaintiff had entered into a tenancy agreement with the defendants with respect to two properties. The defendants had not disclosed the fact that two notices of fire safety offences had been served in respect of those properties. The plaintiff commenced proceedings against the defendants based on, *inter alia*, misrepresentation. Hoo Sheau Peng JC (as she then was) found that the plaintiff’s statement of claim was defective as it had failed to plead any positive representation of fact made by the defendants. Furthermore, although the plaintiff had alleged in its further and better particulars that a positive statement had been made to the effect that everything was in order and proper, the plaintiff had not stated how this positive statement was rendered untrue by the alleged wilful suppression of the fire safety notices (*EA Apartments* at [29] and [32]–[33]). *EA Apartments* was applied and distinguished in *JTrust Asia*. In *JTrust Asia*, the Court of Appeal found that the alleged misrepresentations were sufficiently pleaded and particularised in the plaintiff’s statement of claim. For example, in *JTrust Asia*, the plaintiff pleaded that by providing certain financial and accounting information, the defendant had represented that this financial and accounting information represented a true, fair and/or accurate state of its financial position, or alternatively had impliedly represented that there was a reasonable basis for such an opinion (*JTrust Asia* at [121]–[122]).

56 With these principles in mind, I shall now consider each of the representations outlined at [37] above.

My findings

57 First, I wish to reiterate that there were three agreements comprising the 2015 Agreements. These were: the 2015 Rental Agreement for the “Color 1000i Press” photocopier; the 2015 Service Agreement for the sale of materials and supplies to Mazzy Creations as well as maintenance for the

"Color 1000i Press photocopier and "Fiery Ex Print Server"; and the 2015 Rental and Service Agreement for the "FX4127CP" printer. The defendants in their Defence and Counterclaim pleaded that Fuji Xerox's Mr Lim made misrepresentations that affected these three agreements. However, at the trial, the defendants' case was focused solely on the effects of the misrepresentation on the 2015 Rental Agreement for the "Color 1000i Press" photocopier. In other words, the defendants do not challenge Fuji Xerox's claims relating to the 2015 Service Agreement and the 2015 Rental and Service Agreement. Accordingly, I shall focus my findings on the 2015 Rental Agreement for the "Color 1000i Press" photocopier.

58 Further, out of the three representations expressly pleaded by the defendants, only the Rental Amount Representation is contested (see [38] above). Thus, my findings shall focus on the Rental Amount Representation allegedly made by Mr Lim of Fuji Xerox.

(1) The Rental Amount Representation

59 On the defendants' pleaded case, the Rental Amount Representation is as follows:

That the total rental and/or price ("**price**") offered for the equipment(s) particularized in the 2015 Agreements are the Plaintiffs' [*ie*, Fuji Xerox's] **recommended retail price** and/or reasonable price offered by the Plaintiffs to all their customers.

[emphasis in original]

60 It is undisputed that Mr Lim represented to Ms Chua that Mazzy Creations could lease a new and upgraded "Color 1000i Press" photocopier and "Fiery Ex Print Server", without having to pay any initial payment, for the same monthly period payment of \$10,367 and for the same minimum period of 60 months as the 2012 Rental Agreement which Mazzy Creations had leased the older "Color 1000 Press" photocopier (see [14] above). Under the 2012 Rental Agreement, Mazzy Creations had to pay a total rental amount of \$702,020 (inclusive of an initial payment of \$80,000), while Mazzy Creations only had to pay a total rental amount of \$622,020 (without any initial payment) under the 2015 Rental Agreement. However, Fuji Xerox submits that the defendants have not proved on a balance of probabilities that Mr Lim made the Rental Amount Representation as pleaded by the defendants. [\[note: 115\]](#)

61 I shall first consider whether the Rental Amount Representation was made by Mr Lim to the defendants, and then consider whether the Rental Amount Representation (if made) was a false representation of fact.

(A) Whether the Rental Amount Representation was made by Mr Lim

62 To support its argument that the Rental Amount Representation was not made, Fuji Xerox relies on Mr Lim's statement in his affidavit of evidence-in-chief that he did not mention anything about any recommended retail price or reasonable price to Ms Chua when they discussed the 2015 Agreements. [\[note: 116\]](#) Mr Lim also testified in court that he did not discuss the total amount payable under the 2015 Rental Agreement with Ms Chua. [\[note: 117\]](#) On the other hand, the defendants argue that Mr Lim's oral testimony is equivocal. [\[note: 118\]](#) They rely on Mr Lim's admission during his cross-examination that he did not recall the discussion he had with Ms Chua prior to the 2015 Agreements. [\[note: 119\]](#)

63 The defendants, who allege the misrepresentation, bear the burden of proving that the Rental

Amount Representation was in fact made by Mr Lim. From the evidence, I find that the defendants have not adduced sufficient evidence to prove on a balance of probabilities that Mr Lim made the Rental Amount Representation as pleaded by the defendants.

64 Nevertheless, even if the Rental Amount Representation was made, the defendants would also need to prove that it was a false representation of fact. It is to this issue that I now turn.

(B) Whether the Rental Amount Representation was false

65 In order to prove that the Rental Amount Representation was false, the defendants must show that the total rental amount offered under the 2015 Rental Agreement was Fuji Xerox's "recommended retail price" or a "reasonable price offered by [Fuji Xerox] to all their customers".

66 However, the defendants' own evidence indicates that the total rental amount in the 2015 Rental Agreement was very reasonable. During her cross-examination, Ms Chua candidly agreed that the total rental amount in the 2015 Rental Agreement was very reasonable, [\[note: 120\]](#) even if this amount was inclusive of the rollover from the 2012 Rental Agreement: [\[note: 121\]](#)

Q I'm saying that, won't it be obvious that by having a lower price for an upgraded machine, the price is in effect reasonable.

A I think in my representations I did say he gave me a reasonable retail price, right?

...

Q My question is: Looking at the amount, it's lower, you are also getting a new machine. Don't you think that this deal, the price of 622 [*ie*, \$622,020], the final price, is actually very reasonable?

A That's what I agree, yes.

...

Q I just want to be clear that you heard my question correctly. My question is looking — you earlier said there is a price of 622,000 under the 2015 agreement, you said it was reasonable. My question then is: Even if this 622 [*ie*, \$622,020] contained the rollover of 276 [*ie*, \$276,640] from the 2015 – 2012 agreement, it would still be reasonable and your answer is yes, I confirm that?

A Yes.

67 Indeed, the 2015 Agreement was without any doubt very reasonable. For the same monthly period payment and for the same minimum period of 60 months, Mazzy Creations got to use a new upgraded colour photocopier for a total rental amount of \$622,020, which was much lower than the total rental amount under the 2012 Agreement. The total rental amount for the 2015 Rental Agreement shows a saving of \$80,000 to Mazzy Creations. Hence, Fuji Xerox had offered the defendants a very reasonable rental price for the "Color 1000i Press" photocopier. Ms Toh informed the court that "a very so-called special pricing approval [had been] gotten by the sales to give a very good discount" to the defendants, [\[note: 122\]](#) although she did not disclose the quantum of the discount. It appears that Fuji Xerox applied a significant discount under the 2015 Rental Agreement which effectively equalised the total rental amount that Mazzy Creations would have had to pay with

or without the rollover. Given that the amount of the rollover was \$276,640, and yet the monthly period payments payable under the 2015 Rental Agreement remained exactly the same as under the 2012 Rental Agreement (*ie*, \$10,367), the quantum of the discount given to Mazzy Creations must have been enormous, perhaps close to the full amount of the rollover.

68 During his oral submissions, the defendants' counsel explained that the "crux" of their case was that the amount of the rollover (*ie*, \$276,640) should have been deducted from the total rental amount under the 2015 Rental Agreement (*ie*, \$622,020), leaving a balance of \$345,380. When this figure is divided by the 60-month minimum period under the 2015 Rental Agreement, this would have reduced the monthly period payment to only \$5,756.33.^[note: 123] This is just over *half* of the monthly period payment under the 2012 Rental Agreement, which was \$10,367. The total rental amount under the 2012 Rental Agreement did not contain any rollover. I find it unbelievable and commercially not viable and profitable that Fuji Xerox would have agreed to Mazzy Creations paying only \$5,756.33 *per* month for the new and upgraded photocopier that it leased under the 2015 Rental Agreement. In my view, the total rental amount and the monthly period payments under the 2015 Rental Agreement were plainly reasonable.

69 In the circumstances, the Rental Amount Representation as pleaded by the defendants (at [59] above) is factually accurate and not misleading in any way. Therefore, it is erroneous for the defendants to plead at para 8(iii) of their Defence and Counterclaim that Mr Lim made the Rental Amount Representation in the manner stated as follows:

"**Fraudulently** well knowing the same to be false and untrue; or recklessly and not caring whether they were true or false. Further or in the alternative, if the representation(s) were not made fraudulently, the Defendants will rely [rely] upon **S.2 of the Misrepresentation Act (Cap. 390)** as entitling them to a relief."

[emphasis in original]

70 There was no misrepresentation by Mr Lim in the first place. Thus, there could not have been a fraudulent misrepresentation.

71 For the foregoing reasons, the defendants' pleaded misrepresentation defence against Fuji Xerox's claim has not been established on a balance of probabilities. Hence, their defence can be dismissed on their pleaded case. However, during the trial, the defendants also raised other misrepresentations. For completeness, I shall deal with these other alleged misrepresentations below.

(2) Representations that were not pleaded by the defendants but were raised during the trial

72 At the trial, Ms Chua alleged that Mr Lim failed to disclose to her that the total rental amount in the 2015 Rental Agreement included a rollover of \$276,640 from the 2012 Rental Agreement. She also alleged that Mr Lim did not inform her that, as a result of the rollover in the monthly rental, Mazzy Creations could not claim subsidies under the PIC Scheme for the whole rental amount under the 2015 Agreement from IRAS. Further, she relied on Mr Lim's representation that the 2015 Rental Agreement would "supersede" the 2012 Rental Agreement.

73 The defendants did not plead these allegations as active or positive representations made by Fuji Xerox in para 7 of their Defence and Counterclaim. However, the defendants pleaded at para 3 of their Defence and Counterclaim that Mazzy Creations was induced to enter into the 2015 Rental Agreement as Mr Lim assured Ms Chua that part of the costs of the rental could be recovered from Mazzy Creations' PIC Claims. The issues about the non-disclosure of the rollover from the 2012 Rental

Agreement and Ms Chua's failure to disclose to IRAS the rollover in Fuji Xerox's monthly invoices in her periodic PIC Claims were also pleaded in para 11 of the defendants' Defence and Counterclaim as particulars of the *falsehood* of Mr Lim's representations. These pleadings collapsed when the defendants failed to prove on a balance of probabilities that the three pleaded representations in para 7 of their Defence and Counterclaim were misleading or false (see [38] and [65]–[71] above). Nevertheless, I shall now consider each of these representations in turn.

(A) Non-disclosure of the rollover from the 2012 Rental Agreement in the 2015 Rental Agreement

74 In the Defence and Counterclaim, the defendants contended that Mr Lim's non-disclosure of the rollover in the 2015 Rental Agreement made the Rental Amount Representation false.[\[note: 124\]](#) It was only apparent in the defendants' opening statement and at the trial that the defendants' case is based on misrepresentation by silence or non-disclosure of the rollover. The defendants confirmed that they were not alleging that Mr Lim had made any positive representation to them that Fuji Xerox's invoices under the 2015 Rental Agreement would not contain any undisclosed fees.[\[note: 125\]](#) According to the defendants, it was Mr Lim's *failure to disclose or draw attention to the concealed rollover* in the 2015 Rental Agreement which led to a "misleading impression" and constituted a misrepresentation because it was a "wilful suppression of important and material facts".[\[note: 126\]](#)

75 Fuji Xerox submits that the defendants have failed to prove on a balance of probabilities that Mr Lim had misrepresented the total rental amount in the 2015 Rental Agreement to the defendants.[\[note: 127\]](#) As I have mentioned at [62] above, Mr Lim stated that he did not mention anything about any recommended retail price or reasonable price to Ms Chua when they discussed the 2015 Agreements.[\[note: 128\]](#) According to Mr Lim, he told the defendants that Mazzy Creations would not be required to make any initial payment under the 2015 Agreements and that the monthly period payments under the 60-month 2015 Rental Agreement would be the same as those under the 2012 Rental Agreement.[\[note: 129\]](#) He did not discuss the total rental amount payable under the 2015 Rental Agreement with Ms Chua.[\[note: 130\]](#) He also did not discuss the outstanding liability under the 2012 Rental Agreement with Ms Chua. Mr Lim did not disclose the rollover to Ms Chua as he did not know the amount of any rollover in the total rental amount stated in the 2015 Rental Agreement.[\[note: 131\]](#) The total rental amount stated in the 2015 Rental Agreement was worked out by the finance department and Mr Lim did not partake in this process.[\[note: 132\]](#)

76 It seems that determining the total rental amount under a new rental agreement was a complex evaluation process. Ms Toh explained that the rental amount depended on many factors such as the value of the new upgraded machine; the customer's track record; the customer's creditworthiness; the goodwill between Fuji Xerox and the customer; the prevailing interest rates; other miscellaneous costs; and the balance amount owing under the existing rental agreement.[\[note: 133\]](#) The determination of the total rental amount for a new rental agreement was not within the purview of Mr Lim. Thus, he would not know the amount of any rollover and he did not know about the amount of the rollover in the 2015 Rental Agreement.[\[note: 134\]](#)

77 In any case, at that time, Fuji Xerox would not have disclosed the rollover amount to the defendants as it was Fuji Xerox's policy not to proactively disclose such information to customers. More so, Mr Lim would not have known about the rollover amount in the total rental amount under the 2015 Rental Agreement. Nor would he have had any reason to discuss the rollover with Ms Chua during their negotiations.[\[note: 135\]](#) However, if Mazzy Creations required the rollover sum for the purpose of its PIC Claims, Fuji Xerox would have disclosed it.[\[note: 136\]](#)

78 Two issues arise in relation to the non-disclosure of the rollover. First, whether the non-disclosure of the rollover was adequately pleaded by the defendants. Second, whether the non-disclosure of the rollover could amount to an actionable misrepresentation in the circumstances of this case.

(I) *Whether the non-disclosure of the rollover was adequately pleaded*

79 As in *EA Apartments*, the defendants' case regarding misrepresentation is "obscured by extremely poor pleading" (*EA Apartments* at [1]). The only positive representation of fact pleaded by the defendants for the purpose of establishing an actionable misrepresentation is the Rental Amount Representation, *ie*, that the total rental amount in the 2015 Rental Agreement was Fuji Xerox's recommended retail price or was a reasonable price offered by Fuji Xerox to all its customers (see [59] above). Nowhere in the defendants' pleadings did they state that the non-disclosure itself constituted a false representation of fact, nor did the defendants explain how the non-disclosure rendered the Rental Amount Representation false. Therefore, the non-disclosure of the rollover was not adequately and correctly pleaded by the defendants.

80 During his oral submissions, the defendants' counsel sought to argue that the non-disclosure of the rollover was adequately pleaded because paras 11(iii)–11(v) of the Defence and Counterclaim refer to Fuji Xerox's "undisclosed unethical practice of [r]ollovers". The defendants' counsel submitted that when paras 11(iii)–11(v) are read together with para 7 of the Defence and Counterclaim, it is clear that the defendants were alleging misrepresentation by non-disclosure. [\[note: 137\]](#) However, I disagree. Based on the structure of the Defence and Counterclaim, the three representations which the defendants seek to rely on are set out in para 7. Paragraph 11, below the heading "The 2015 Representations were False", addresses the *falsity* of the representations pleaded in para 7. [\[note: 138\]](#) Thus, in my view, the defendants have failed to properly plead that the non-disclosure of the rollover *itself* constituted a false representation of fact, and if so, what exactly that representation was. Further, for the reasons explained at [65]–[71] above, the non-disclosure did not render the pleaded Rental Amount Representation false.

81 On 5 July 2021, I granted the defendants leave to file further submissions on the sufficiency of their pleadings with regard to misrepresentation by non-disclosure after the parties had completed their oral submissions. In their further submissions, the defendants relied on the Court of Appeal's decision in *Liberty Sky Investments Ltd v Aesthetic Medical Partners Pte Ltd and other appeals and another matter* [2020] 1 SLR 606 ("*Liberty Sky Investments*"). In *Liberty Sky Investments* at [16], the Court of Appeal observed that "[t]he entire spirit underlying the regime of pleadings is that each party is aware of the respective arguments against it and that neither is therefore taken by surprise". As the defendant's failure to plead the bars to rescission did not result in the plaintiff being taken by surprise, the Court of Appeal held that the defendant was not precluded from arguing that rescission should be refused because of the impossibility of *restitutio in integrum* (see *Liberty Sky Investments* at [14]–[16]). In the present case, the defendants contend that their failure to plead that the non-disclosure of the rollover was a false representation of fact did not take the plaintiff by surprise. The defendants argue that para 7(i) of their Defence and Counterclaim dealt specifically with the total rental amount stated in the 2015 Rental Agreement, while para 11 pleaded the concealment of the rollover within that total rental amount. [\[note: 139\]](#)

82 As the Court of Appeal observed in *Liberty Sky Investments* at [14], "[a] balance has to be struck between, on the one hand, instilling procedural discipline in civil litigation and, on the other, permitting parties to present the substantive merits of their case notwithstanding a procedural

irregularity". Imperfections in a party's pleadings should not, in and of themselves, preclude the court from giving due consideration to the merits of that party's arguments. However, where a party's failure to adequately plead the particulars of his claim or defence causes the other party to suffer prejudice, the court must take that prejudice into account as a matter of fairness. As I have explained at [54] above, pleadings are important in giving the other party fair notice of the case which has to be met. In cases where misrepresentation is alleged, the importance of proper pleadings is underscored by O 18 r 12(1)(a) of the Rules of Court. Given the seriousness of the allegation of *fraudulent* misrepresentation, it is especially important for a party making such an allegation to clearly particularise the misrepresentation(s) on which he seeks to rely, so that the other party is able to address these allegations head-on.

83 I am, therefore, unable to accept the defendants' further submissions on the sufficiency of their pleadings. I am of the view that the defendants' failure to plead the non-disclosure of the rollover as *an actionable misrepresentation* caused prejudice to the plaintiff as it was not adequately informed of the case it had to meet during the trial. In the plaintiff's Reply and Defence to Counterclaim, its pleadings were directed at addressing the three representations pleaded by the defendants at para 7 of their Defence and Counterclaim, and did not deal with the non-disclosure of the rollover as a separate misrepresentation.[\[note: 140\]](#) Similarly, the plaintiff's opening statement expressly focused on "the representations alleged in para 7" of the Defence and Counterclaim.[\[note: 141\]](#) Paragraph 7 of the Defence and Counterclaim makes no mention of the non-disclosure of the rollover. It was only at the trial that it became apparent that the main thrust of the defendants' case is misrepresentation by non-disclosure of the rollover. Therefore, during the trial, the plaintiff's counsel had no choice but to deal with the defendants' allegation of misrepresentation by non-disclosure as best as he could notwithstanding the significant shift in the emphasis of the defendants' case. In these circumstances, the defendants' failure to clearly particularise the alleged misrepresentation by non-disclosure, on which they now seek to rely, has prejudiced the plaintiff's preparation of its case.

84 In any event, even if the non-disclosure of the rollover had been adequately pleaded by the defendants, I am of the view that the non-disclosure of the rollover could not have amounted to an actionable misrepresentation in the circumstances of this case. I shall now deal with this issue.

(II) Whether the non-disclosure of the rollover could amount to an actionable misrepresentation

85 As I have explained at [52] above, silence will generally only amount to a representation where the representor was under a positive duty of disclosure arising from the parties' relationship or from the circumstances.

86 The defendants assert that Fuji Xerox had a positive duty to "clearly" inform the defendants that the upgrading of their photocopier under the 2015 Rental Agreement would result in a premature termination under the 2012 Rental Agreement and that Fuji Xerox intended to impose penalties for premature termination (in the form of a rollover). According to the defendants, Fuji Xerox's silence on the rollover amounted to a wilful suppression of material facts because Fuji Xerox and/or Mr Lim knew: (a) that IRAS required rollovers to be excluded from any claims under the PIC Scheme;[\[note: 142\]](#) (b) that Mazzy Creations would be making claims under the PIC Scheme;[\[note: 143\]](#) and (c) that the total rental amount under the 2015 Rental Agreement contained a substantial rollover (amounting to one-third of the total rental amount),[\[note: 144\]](#) which was concealed on the face of the 2015 Rental Agreement.[\[note: 145\]](#) The defendants also rely on the fact that the upgrade was initiated by Fuji Xerox and on Mr Lim's statement that the 2015 Rental Agreement would "supersede" the 2012 Rental Agreement (which I shall deal with at [110]–[113] below).[\[note: 146\]](#) On this basis, the defendants

submit that the non-disclosure of the rollover in the 2015 Rental Agreement gave the false and misleading impression that Mazzy Creations was paying "reasonable rental charges", [\[note: 147\]](#) or at least "open market value", [\[note: 148\]](#) under the 2015 Rental Agreement.

87 I am unable to accept the defendants' submissions. In my view, Fuji Xerox and Mr Lim were not under a positive duty to disclose the rollover to the defendants. I shall now explain my decision.

(A) DIFFERENCES BETWEEN A RENTAL AGREEMENT AND A HIRE PURCHASE AGREEMENT OR SALE AGREEMENT

88 First, it is important to appreciate the differences between a rental agreement and a hire purchase agreement or sale agreement. In a rental agreement like in this case, is it important for the hiree, Mazzy Creations, to know the retail price of the "Color 1000i Press" photocopier and the amount of the rollover from the 2012 Rental Agreement? The defendants argue that this information had to be disclosed to Ms Chua.

89 This explains why the defendants' counsel, in the course of the cross-examination of Mr Lim, asked Mr Lim whether he had told Ms Chua the retail price of the new "Color 1000i Press" photocopier leased to Mazzy Creations under the 2015 Rental Agreement. Mr Lim replied that he did not as the 2015 Rental Agreement was a leasing or rental agreement and he only informed Ms Chua of the monthly period payment and the minimum period of the lease. [\[note: 149\]](#) The defendants' counsel also asked Ms Toh whether it was the policy of Fuji Xerox to disclose the price of the "Color 1000i Press" photocopier to Ms Chua and she answered in the negative. [\[note: 150\]](#)

90 It is significant to know the differences and implications of a rental agreement and compare them to a hire purchase agreement or sale agreement. The 2015 Rental Agreement is a rental agreement and not a hire purchase agreement or sale agreement of the "Color 1000i Press" photocopier. In a rental agreement, Fuji Xerox owns the photocopier, while in a hire purchase or sale agreement, Mazzy Creations would be the owner when the photocopier was fully paid for. This is a significant and critical difference between the two types of agreements. In a rental agreement, what is of key importance is not the retail price of the photocopier, but the monthly period payments and the minimum period of the lease as this information matters the most to the hiree. Hence, it was not important for the defendants' counsel to ask Mr Lim whether he had told Ms Chua the retail price of the "Color 1000i Press" photocopier leased to Mazzy Creations under the 2015 Rental Agreement. During the oral closing submissions, the defendants' counsel eventually agreed with the court that the retail price of the "Color 1000i Press" photocopier would not be relevant to Ms Chua for the purpose of the 2015 Rental Agreement. [\[note: 151\]](#) For similar reasons, the rollover from the 2012 Rental Agreement may not be important if the monthly period payment for the new photocopier remains the same or lower. If the monthly period payment was higher, Mazzy Creations might not want to upgrade the photocopier under the 2015 Rental Agreement. Therefore, in a rental agreement, the focus of a hiree, such as Mazzy Creations, is on the monthly period payments and the minimum period of the lease. Nothing else really matters.

91 In this case, Ms Chua acknowledged that the terms of the 2015 Rental Agreement were very reasonable as the monthly period payments were the same as the monthly period payments under the 2012 Rental Agreement; no initial payment was required; and Mazzy Creations would receive the benefit of an upgraded and new photocopier. Therefore, I cannot accept Ms Chua's assertion that Mazzy Creations would not have entered into the 2015 Rental Agreement if Mr Lim had informed her of the rollover. Fuji Xerox would not have offered Ms Chua a better deal even if it had disclosed the rollover to her.

92 For the same reasons, I am unable to accept the defendants' submission that it would have made "no commercial sense" for any customer to have agreed to prematurely "upgrade" the existing 2012 Rental Agreement to the 2015 Rental Agreement if he had known that he would have to return the older photocopier and still pay the period payments for the balance of the minimum period under the 2012 Rental Agreement, while also paying the period payments for a new photocopier under the 2015 Rental Agreement. [\[note: 152\]](#) In my view, this is an inaccurate understanding of the 2015 Rental Agreement. As I have explained at [65]–[67] above, notwithstanding the rollover, the defendants effectively received the benefit of a new and upgraded model at no additional charge under the 2015 Rental Agreement (as the monthly period payments remained the same and no initial payment was required). Moreover, the total rental amount under the 2015 Rental Agreement was \$80,000 lower than that under the 2012 Rental Agreement over the same 60-month minimum period of the lease. In fact, it made commercial sense to any reasonable hiree who was interested to upgrade his colour photocopier to take up the 2015 Rental Agreement. Ms Chua knew this as she acknowledged that the total rental amount in the 2015 Rental Agreement was very reasonable (see [66] above). Therefore, contrary to what the defendants suggest, this was not a situation where Fuji Xerox was earning "double-income" on a single machine while dealing the defendants a "double-blow" by making them continue to pay rental charges for a machine that they could no longer use. [\[note: 153\]](#)

93 For the above reasons, the terms of the 2015 Rental Agreement were clearly and undisputedly advantageous to Mazzy Creations. In fact, Fuji Xerox did not earn "double income" on the old "Color 1000 Press" photocopier. After Fuji Xerox re-leased the old "Color 1000 Press" photocopier to Unique Colour Separation, it offered its net earnings of \$36,202 to Mazzy Creations out of goodwill in October 2017, provided that the defendants settled their accounts with Fuji Xerox. [\[note: 154\]](#) I acknowledge, however, that this sum was only offered by Fuji Xerox after Ms Chua complained that the rollover was not disclosed to her when Mazzy Creations signed the 2015 Rental Agreement.

94 In my view, Fuji Xerox was not obliged to disclose the retail price of the new "Color 1000i Press" photocopier, the rollover from the 2012 Rental Agreement, the huge discount given to Mazzy Creations under the 2015 Rental Agreement, Fuji Xerox's internal rental pricing practice or strategy, Fuji Xerox's profit margins, the interest rate breakdown, *et cetera*. This information was part of a rental pricing strategy which was confidential to Fuji Xerox and the defendants' counsel accepted during his oral submissions that Fuji Xerox's pricing strategy did not have to be revealed to the defendants. [\[note: 155\]](#) As I have explained at [88]–[90] above, the 2015 Rental Agreement is a rental agreement and this information would not be relevant to the defendants. More importantly, Fuji Xerox did not have a duty nor an obligation to disclose this information to the defendants.

(B) THE CIRCUMSTANCES DID NOT GIVE RISE TO A POSITIVE DUTY TO DISCLOSE THE ROLLOVER

95 Having regard to how a reasonable hiree would view Mr Lim's silence in the circumstances, I agree with Fuji Xerox's argument that the 2015 Agreements were an arm's length transaction entered into between two independent business entities. The law does not oblige parties dealing at arm's length to disclose to each other everything including facts that are detrimental to their bargaining position (*EA Apartments* at [31]). Notwithstanding the arguments made by the defendants, I am of the view that neither Mr Lim nor Fuji Xerox was under a positive duty to disclose the rollover to the defendants. It must be underscored that fundamentally the 2015 Rental Agreement is a rental agreement. Further, using the examples cited in *Loh Sze Ti Terence Peter v Gay Choon Ing* [2008] SGHC 31 at [77], the relationship between the defendants and Fuji Xerox in the present case is far from analogous to contracts *uberrimae fidei* (utmost good faith), nor is there any existing fiduciary or similar relationship between Fuji Xerox and the defendants which might impose an obligation of disclosure.

96 When viewed in context, the non-disclosure of the rollover did not amount to a representation that the 2015 Rental Agreement did not contain any rollovers, nor did it render Mr Lim's other statements regarding the initial payment and monthly period payments payable under the 2015 Rental Agreement false. Further, in my view, the non-disclosure of the rollover alone could not amount to wilful suppression or concealment of the rollover. Mr Lim had testified that he was unaware of the amount of the rollover in the 2015 Rental Agreement (see [76] above).[\[note: 156\]](#) Hence, he could not have actively or wilfully suppressed any information about the amount of the rollover from the defendants when he made his proposals to Ms Chua regarding the 2015 Rental Agreement. Therefore, in the circumstances, the non-disclosure of the rollover did not constitute a misrepresentation.

97 This finding is buttressed by the fact that Alliance Trust had assisted Mazzy Creations with the submission of its PIC Claims to IRAS in 2012 (see [10] above). It would, therefore, have been clear to the defendants that it was the role of the consultants like Alliance Trust, and not Fuji Xerox, to advise the defendants on possible issues relating to Mazzy Creations' PIC Claims. Alliance Trust did not provide any consultancy services to Mazzy Creations in relation to its PIC Claims in respect of the 2015 Agreements (see [17] above). It was Ms Chua's choice not to seek Alliance Trust's advice in relation to the 2015 Agreements and this had nothing to do with Fuji Xerox. As Mr Lim explained, he informed the defendants in 2012 that they might wish to consult Alliance Trust in relation to Mazzy Creations' PIC Claims, but he did not see a need to suggest this again in 2015 as a business relationship had already been established between the defendants and Alliance Trust by this time.[\[note: 157\]](#) Hence, the fact that Alliance Trust did not assist the defendants with Mazzy Creations' PIC Claims in 2015 would not have imposed a positive duty on Fuji Xerox to disclose the rollover from the 2012 Rental Agreement.

(C) IMPLICATION OF FUJI XEROX'S INTERNAL E-MAIL TO ITS STAFF ABOUT THE PIC SCHEME

98 The defendants place great emphasis on an internal e-mail dated 28 January 2015 which was sent by Ms Gladys Toh Joo Peng, Fuji Xerox's general manager for finance management and operations, to its customer account managers (including Mr Lim).[\[note: 158\]](#) In this e-mail, Fuji Xerox's sales representatives were instructed to go through IRAS's guidelines on the PIC Scheme for vendors in detail. In particular, their attention was drawn to the penalties that would be imposed in respect of abusive PIC Scheme arrangements, such as those which resulted in the payment of an amount for goods or services that exceeded the open market value of those goods or services without a *bona fide* commercial reason. The customer account managers were urged to "exercise great care in [their] sales engagement with the customers" and were told that the preparation of any PIC Scheme submissions on behalf of customers was strictly disallowed.[\[note: 159\]](#) The defendants submit that this e-mail shows that Fuji Xerox and Mr Lim knew that rollovers were "prohibited" under IRAS's PIC Scheme criteria.[\[note: 160\]](#) Further, the defendants submit that this e-mail shows that the Rental Amount Representation involved the wilful suppression or concealment of the rollover.[\[note: 161\]](#)

99 I cannot agree with the defendants' submissions. On the contrary, the e-mail further supports my finding that it was not the role of Fuji Xerox or its customer account managers to advise the defendants on the submission of Mazzy Creations' PIC Claims. The e-mail buttresses Mr Lim's testimony that he did not advise Ms Chua on how to go about making Mazzy Creations' PIC Claims as he was prohibited from doing so by Fuji Xerox's internal policy.

(D) DEVELOPMENTS IN FUJI XEROX'S INTERNAL POLICIES AFTER THE 2015 AGREEMENTS

100 Contrary to what the defendants' submissions suggest,[\[note: 162\]](#) the fact that the *current* version of Fuji Xerox's Rental Agreement form specifically states the amount of any rollover does not show that Fuji Xerox was under a duty to disclose this information to its customers at the time the 2015 Rental Agreement was entered into. Fuji Xerox started using this new Rental Agreement form only in December 2018. The defendants also assert that the Fujifilm internal investigation report "noted [Fuji Xerox's] unethical practi[c]e of rollover of liabilities".[\[note: 163\]](#) However, as I have noted at [23] above, what this report highlighted was the inappropriateness of contract rollovers as an *accounting* practice. During the trial, Mr Lim explained that the changes in Fuji Xerox's Rental Agreement form likely had nothing to do with the Fujifilm internal investigation report, which dealt with an "accounting irregularity".[\[note: 164\]](#) Similarly, Ms Toh opined that the new Rental Agreement form was not introduced as a result of the Fujifilm internal investigation report, which instead highlighted an "accounting irregularity" in the practices adopted in New Zealand and Australia which arose from the fact that the same item of revenue was being recognised twice in two financial years as a result of the rollovers.[\[note: 165\]](#)

101 Be that as it may, I am glad that Fuji Xerox's new Rental Agreement form now discloses the rollover sum as this will avert similar misunderstandings with hirees in the future. It is true that, as the defendants' counsel argued, this dispute between Fuji Xerox and the defendants regarding the rollover would have been avoided if the new Rental Agreement form had been used for the 2015 Rental Agreement.[\[note: 166\]](#) However, that is not sufficient to show that Fuji Xerox was under a positive duty to disclose the rollover to the defendants at the time the 2015 Rental Agreement was entered into.

102 I, therefore, find that the defendants have failed to plead or establish an actionable misrepresentation in respect of the non-disclosure of the rollover. In fact, there was no misrepresentation by Fuji Xerox or Mr Lim to Ms Chua when Mazzy Creations signed the 2015 Rental Agreement.

(B) The PIC Representation

103 As I have noted at [39] above, the PIC Representation was not pleaded as one of the representations relied on by the defendants in para 7 of the Defence and Counterclaim. Instead, it was alluded to in the section of the Defence and Counterclaim on the "Past Dealings" between the defendants and Fuji Xerox[\[note: 167\]](#) and in the section explaining why Mr Lim's representations to Ms Chua were false.[\[note: 168\]](#) The paragraphs alluding to the PIC Representation were introduced as part of an amendment to the Defence and Counterclaim.

104 The PIC Representation is deeply ambiguous and poorly pleaded. The clearest statement of the content of this alleged representation in the Defence and Counterclaim is as follows:[\[note: 169\]](#)

... Plaintiffs (and/or Andrew [*ie*, Mr Lim]) assured the 1st Defendants that part of the costs of the rental and/or service charges can be recovered from IRAS Productivity & Innovation Credit Scheme ...

105 Fuji Xerox denies that the PIC Representation was made to the defendants.[\[note: 170\]](#) According to Mr Lim, he merely mentioned briefly to Ms Chua the general information on IRAS's criteria for claims under the PIC Scheme, which could be found on the IRAS website.[\[note: 171\]](#) Mr Lim explained that it was not his job to go through specific criteria relating to rollovers and early

termination penalties with customers.[\[note: 172\]](#) Instead, it was the role of consultants like Alliance Trust to guide customers in making their claims under the PIC Scheme.[\[note: 173\]](#)

106 The defendants' case regarding the PIC Representation is a non-starter because the PIC Representation made by Mr Lim was not false. The defendants argue that the PIC Representation was false because IRAS does not permit claims to be made under the PIC Scheme in respect of any invoice amount that includes a rollover.[\[note: 174\]](#) However, as I have explained at [16] above, IRAS's policy is simply that the amount claimed under the PIC Scheme must exclude any rollovers. IRAS's guidelines state that, where the amount paid under a lease agreement includes rollover lease payments from a previous lease agreement:[\[note: 175\]](#)

The expenditure claimable under PIC must exclude the amount of outstanding lease payments under the previous lease agreement.

107 Thus, as Ms Chua acknowledged during her cross-examination, the inclusion of a rollover within the total rental amount stated in the 2015 Rental Agreement would not automatically preclude Mazzy Creations from claiming a cash payout under the PIC Scheme in respect of the *entire* rental amount. Mazzy Creations would still be able to make a claim in respect of the total rental amount *less the amount of the rollover*:[\[note: 176\]](#)

Q: Ms Chua, may I refer you to your affidavit? Plaintiff's bundles of — volume 2, bundle of affidavits.

A: Yes?

Q: At page 206.

A: Yes?

Q: I believe this is from the IRAS website setting out some of the criterias *[sic]* for PIC claims. And in particular, I wish to bring your attention to page 206, the column right below that say:

[Reads] "Fees (penalty) incurred by customer for early termination...where the new the new *[sic]* purchase / lease price includes early termination fee"

And the next column says:

[Reads] "What you spent to purchase or lease the PIC IT and Automation Equipment minus any fees..."

Means you can still claim, but you must minus off the fees?

A: Yes.

Q: Correct? And the next page, page 207, the next example given:

[Reads] "Lease agreements with rollover lease payments from a previous lease arrangement"

And what you can claim — so its *[sic]* says that:

[Reads] "The expenditure claimable under PIC must exclude the amount of outstanding lease payments under the previous lease agreement"

A: Yes.

Q: And you agree with that. So I'm saying that these two criterias [sic] does not say that the moment there is rollover, you cannot claim for the entire amount. You can claim for the amount less the rollover amount. Is that correct?

A: Understand.

Court: Sorry, Ms Chua, what did you say?

Witness: I said I understand.

...

Court: Do you agree?

Witness: Ah, yes.

108 The PIC Representation (as pleaded by the defendants) was that *part* of the costs of the rental and service charges under the 2015 Agreements could be claimed under the PIC Scheme. Thus, the PIC Representation was simply not false. In any event, I agree with Fuji Xerox's submission that the success of Mazzy Creations' PIC Claims would depend on Mazzy Creations' own eligibility. Mr Lim was in no position to know whether Mazzy Creations would satisfy the qualifying criteria or whether it had exhausted its cash payouts under the PIC Scheme for the year, [\[note: 177\]](#) which were capped at a maximum of \$100,000 (see [16] above). Indeed, Ms Chua agreed that the reasonable understanding of the alleged PIC Representation (if it was in fact made) was that Mazzy Creations' ability to make a successful claim under the PIC Scheme was subject to it satisfying the qualifying criteria laid down by IRAS: [\[note: 178\]](#)

Q: So my question again I repeat: When he [*ie*, Mr Lim] told you that the 2015 agreement would be eligible for PIC, won't it be a reasonable inference that it's subject to you satisfying the criteria? It's very simple.

A: Yes.

109 In these circumstances, I find that the defendants have failed to prove that the PIC Representation, as pleaded by the defendants, was made by Mr Lim or that it was a false representation of fact.

(C) Representation that the 2012 Rental Agreement was "superseded" by the 2015 Rental Agreement

110 For completeness, I shall also briefly address one further representation which Mr Lim admitted making to Ms Chua: namely, that the 2015 Rental Agreement would "supersede" the 2012 Rental Agreement. [\[note: 179\]](#) Ms Chua interpreted this statement to mean that the 2012 Rental Agreement was "null and void" [\[note: 180\]](#) and "cancelled", and that Mazzy Creations no longer needed to pay Fuji Xerox the period payments for each remaining months of the 60-month minimum period under the

2012 Rental Agreement.[\[note: 181\]](#) On this basis, the defendants submit that this statement gave Ms Chua “an impression that there would be no liability rollover from the 2012 [Rental] Agreement”.[\[note: 182\]](#) However, Ms Chua admitted that Mr Lim did not explicitly tell her that Mazzy Creations was no longer required to pay Fuji Xerox the remaining period payments under the 2012 Rental Agreement.[\[note: 183\]](#) Instead, she *assumed* that no unpaid period payments from the 2012 Rental Agreement would be carried forward to the 2015 Rental Agreement.[\[note: 184\]](#) She did not seek clarification from Mr Lim on whether Mazzy Creations would still be required to pay Fuji Xerox these remaining period payments because she “trusted [Mr Lim] a lot”.[\[note: 185\]](#) Thereafter, she “never g[a]ve it a second thought”[\[note: 186\]](#) and “never thought to clarify with [Mr Lim]”.[\[note: 187\]](#)

111 Mr Lim’s statement that the 2012 Rental Agreement was “superseded” by the 2015 Rental Agreement was also not pleaded by the defendants in the specific sense as understood by Ms Chua.[\[note: 188\]](#) Nor did the defendants show why the statement was false in that specific sense, as they were required to do. This statement was not pleaded at all by the defendants as one of the misrepresentations on which they seek to rely, let alone pleaded with “utmost particularity” (see [53]–[54] above).

112 Moreover, a statement of fact must be sufficiently unambiguous to constitute a potentially actionable misrepresentation (see *Hai Jiao 1306 Ltd and others v Yaw Chee Siew* [2020] 5 SLR 21 (“*Hai Jiao*”) at [443]). Like several of the representations at issue in *Hai Jiao*, Mr Lim’s statement was simply too vague to carry the meaning or significance that Ms Chua appears to have attached to it (see *Hai Jiao* at [443]).

113 In view of the above, Mr Lim’s representation that the 2015 Rental Agreement “superseded” the 2012 Rental Agreement is also not an actionable misrepresentation.

Conclusion on misrepresentation

114 Therefore, I find that the defendants’ case on misrepresentation must fail. The three representations that were pleaded *as representations* by the defendants in their Defence and Counterclaim were factually correct and there were no misrepresentations. Consequently, the defendants’ allegation in their pleadings that Mr Lim made these misrepresentations fraudulently is also completely unmeritorious.

115 The defendants’ primary argument at the trial and in their submissions is that the non-disclosure of the rollover was a wilful suppression of important and material facts which amounted to an actionable misrepresentation. However, the defendants did not plead any positive representation of fact allegedly made by this non-disclosure. The defendants have also not shown that the non-disclosure of the rollover was an actionable misrepresentation. The PIC Representation was also not clearly pleaded, and in any event did not amount to a false representation of fact. As for Mr Lim’s statement that the 2015 Rental Agreement would “supersede” the 2012 Rental Agreement, this representation was not relied on by the defendants in their pleadings. In any event, the defendants failed to plead the specific sense in which they understood this statement and to show why the statement was false in that specific sense. Furthermore, this statement was too vague to constitute an actionable misrepresentation.

116 In view of these findings, it is not necessary for me to consider whether the representations made by Fuji Xerox and/or Mr Lim induced Mazzy Creations to enter into the 2015 Agreements or to submit its PIC Claims to IRAS. However, with regard to the defendants’ allegation of fraud, I wish to

emphasise that cogent evidence is required before a court will be satisfied that fraud is established, in view of the serious implications of fraud (see [50] above). To establish fraud, the defendants must prove that false representations were made knowingly; without belief in their truth; or recklessly, with the representor being careless whether they were true or false (*Wee Chiaw Sek Anna* at [32], applying the UK House of Lords' decision in *Derry v Peek* (1889) 14 App Cas 337).^[note: 189] The defendants must also show that Mr Lim did not subjectively believe in the truth of his representations (*Wee Chiaw Sek Anna* at [37]). In the present case, as in *Zuraimi bin Mohamed Dahlan and another v Zulkarnine B Hafiz and another* [2020] SGHC 219 ("*Zuraimi*"), the defendants have simply asserted in their pleadings that Mr Lim made the representations fraudulently, without providing any particulars or facts to support or substantiate their assertion of dishonesty (see *Zuraimi* at [33]). Even in their submissions, the defendants merely made vague allusions to Fuji Xerox having an "obvious" motive for suppressing or concealing the rollover, namely, so that customers would agree to upgrade their machines before the expiry of their existing rental agreements.^[note: 190]

117 The evidence clearly shows that there was no misrepresentation or fraud on the part of Mr Lim and Fuji Xerox. Furthermore, there is no evidence that Mr Lim had wilfully or deliberately concealed the rollover from the defendants; that he had done so with the intention to mislead the defendants; or that he had acted dishonestly or fraudulently in not disclosing the rollover.^[note: 191] There is simply insufficient evidence to support the defendants' serious allegation of fraud.

118 Given my findings above, the defendants' alternative counterclaim for damages under s 2 of the Misrepresentation Act also fails. The Court of Appeal in *Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 explained that s 2(1) of the Misrepresentation Act (which provides for damages for non-fraudulent misrepresentations) "only alters the law as to the reliefs to be granted for a non-fraudulent misrepresentation *but not as to what constitutes an actionable misrepresentation*" [emphasis added] (at [23]).^[note: 192] In my view, this applies equally to s 2(2) of the Misrepresentation Act, which provides for damages in lieu of rescission for non-fraudulent misrepresentations. Since the defendants have failed to establish any actionable misrepresentations on the part of Fuji Xerox, they are not entitled to relief under s 2 of the Misrepresentation Act.

119 Consequently, I find that the defendants are not entitled to rescission of the 2015 Agreements or damages for misrepresentation. Interestingly, the defendants also appeared to have affirmed the 2015 Rental Agreement after discovering that the total rental amount stated therein included a rollover from the 2012 Rental Agreement.^[note: 193] During the trial, Ms Chua admitted that she did not attempt to return the "Color 1000i Press" photocopier rented by Mazzy Creations from Fuji Xerox after finding out about the rollover in late 2016.^[note: 194] On the contrary, her intention at that time was to continue to use the photocopier.^[note: 195] Indeed, the defendants continued to use the photocopier all the way until January 2019.^[note: 196] The defendants' conduct demonstrated a "clear and unequivocal election to affirm" the 2015 Rental Agreement which was binding upon them (see *Strait Colonies Pte Ltd v SMRT Alpha Pte Ltd* [2018] 2 SLR 441 at [42]).

120 The defendants' failure to establish any actionable misrepresentations on the part of Fuji Xerox is also fatal to their counterclaim for any penalties that IRAS may impose on Mazzy Creations. In any event, the quantum of these penalties has yet to be determined. Although IRAS's letter dated 21 August 2020 indicated IRAS's intention to claw back all the cash payouts that Mazzy Creations previously received under the PIC Scheme relating to the machines it had rented from Fuji Xerox (amounting to \$349,513.80) (see [20] above), this sum of \$349,513.80 includes cash payouts that were not claimed based on any rollovers.^[note: 197] In any event, any such penalties are a matter to be resolved between the defendants and IRAS. As I have found at [85]–[102] and [106]–[109]

above, the non-disclosure of the rollover did not amount to an actionable misrepresentation by Mr Lim or Fuji Xerox, and the PIC Representation (even if made) was not false.

Mitigation of loss

121 The second contention raised by the defendants is that Fuji Xerox failed to take reasonable steps to mitigate its losses. The defendants rely on the fact that after Mazzy Creations and Fuji Xerox had entered into the 2015 Agreements, Fuji Xerox re-leased the "Color 1000 Press" photocopier (which was previously rented to Mazzy Creations under the 2012 Rental Agreement) to Unique Colour Separation, yet did not offer any credit note to Mazzy Creations.

122 In my view, this argument is wholly misconceived. It is well established that a plaintiff must take all reasonable steps to mitigate the loss it suffered as a result of a defendant's breach of contract, and cannot recover damages for any loss which it could have avoided but failed to avoid due to its own unreasonable action or inaction (see *Alvin Nicholas Nathan v Raffles Assets (Singapore) Pte Ltd* [2016] 2 SLR 1056 at [17]). However, I am unable to accept the defendants' assertion that Fuji Xerox failed to take reasonable steps to mitigate its losses. Fuji Xerox's claim against Mazzy Creations in the present Suit is for unpaid sums due under the 2015 Agreements. The fact that Fuji Xerox re-leased a photocopier previously rented to Mazzy Creations under the 2012 Rental Agreement is completely irrelevant to whether Fuji Xerox has mitigated the losses it has suffered as a result of Mazzy Creations' breach of its payment obligations under the 2015 Agreements. Further, given that the "Color 1000 Press" photocopier was owned by Fuji Xerox and the 2012 Rental Agreement had been superseded, I agree with Fuji Xerox's argument that it was fully entitled to re-lease this photocopier to Unique Colour Separation and did not need to account to Mazzy Creations in respect of any amounts earned from this re-leasing.[\[note: 198\]](#) This was a rental agreement and the ownership of the "Color 1000 Press" photocopier in the 2012 Rental Agreement rested with Fuji Xerox who was entitled to re-lease it to Unique Colour Separation.

Set-off of the charges for printing services provided by Mazzy Creations

123 It is undisputed that the charges payable to Mazzy Creations for the printing services it provided to Fuji Xerox amounted to \$93,109.26. However, Fuji Xerox argues that it has already validly set off these charges against the prior amounts owed to it by Mazzy Creations under the 2015 Rental Agreement *via* the issuance of credit notes to Mazzy Creations. Fuji Xerox contends that it has exhibited detailed statements and the specific invoices from both Fuji Xerox and Mazzy Creations which had been set off against each other.[\[note: 199\]](#)

124 On the other hand, the defendants contend that Fuji Xerox has failed to sufficiently prove that a valid set-off was effected. The defendants emphasise that Fuji Xerox pleaded in its Reply and Defence to Counterclaim that it had set off these printing charges through the issuance of credit notes.[\[note: 200\]](#) However, Fuji Xerox has merely made broad reference to credit notes being issued to the defendants (see [31]–[32] and [44] above). The defendants put Fuji Xerox to strict proof that this set-off was effected.[\[note: 201\]](#) According to the defendants, the documentary evidence does not indicate that the alleged credit notes set-off was effected by Fuji Xerox.[\[note: 202\]](#) In particular, the defendants rely on an e-mail from Fuji Xerox to Ms Chua dated 27 October 2017 (the "October 2017 E-mail"), in which Fuji Xerox informed Ms Chua that the issuance of a credit note to set off the sum of \$36,202 was "[c]ontingent on [Mazzy Creations] making expeditious payment" of the outstanding sums due to Fuji Xerox.[\[note: 203\]](#) The defendants submit that this shows that no credit notes set-off had taken place as at 27 October 2017.[\[note: 204\]](#) The defendants further submit that they asked Fuji

Xerox's counsel to produce copies of these credit notes after the trial, but Fuji Xerox refused to do so on the ground that the credit notes were an "internal credit memo".[\[note: 205\]](#)

125 In my view, Fuji Xerox has adduced sufficient evidence to prove, on a balance of probabilities, that \$83,950.06 of these charges have been validly set off against the prior amounts owed to it by Mazzy Creations. Fuji Xerox produced statements showing that it had set off Mazzy Creations' invoices amounting to \$83,950.06 against the \$93,109.26 it owed to Mazzy Creations for printing services.[\[note: 206\]](#) Even though Fuji Xerox did not produce physical credit notes, it admitted statements of account that show that its invoices were set off against Mazzy Creations' invoices.[\[note: 207\]](#) Further, these statements were supported by copies of Fuji Xerox's specific invoices that had been set off against Mazzy Creations' invoices, and which are not part of Fuji Xerox's claim against the defendants in these proceedings.[\[note: 208\]](#) It is important that when Ms Chua was questioned on these statements, she agreed that they showed that Fuji Xerox had in fact validly set off these invoices against the printing charges owed to Mazzy Creations:[\[note: 209\]](#)

Q: Do you agree that the table ... shown in these four pages would actually show the set offs of Xerox's invoices against Mazzy's invoices? Do you agree?

A: Yes.

126 The existence of this practice of setting off Fuji Xerox's invoices against Mazzy Creations' invoices is further corroborated by Ms Chua's letter to IRAS in March 2018, which referred to "a contra arrangement with Fuji Xerox in settlement of [Mazzy Creations'] lease agreement".[\[note: 210\]](#)

127 The October 2017 E-mail does not support the defendants' submission. The sum of \$36,202 referred to in the October 2017 E-mail represented the "net gain" to Fuji Xerox arising from its releasing of the "Color 1000 Press" photocopier (which it had rented to Mazzy Creations under the 2012 Rental Agreement) to Unique Colour Separation. The return of this sum to Mazzy Creations was offered "in consideration of the long term acquaintance and goodwill" between the defendants and Fuji Xerox.[\[note: 211\]](#) Fuji Xerox further stated in the same e-mail that the credit note for the \$36,202 would be set off against the amount owing to Fuji Xerox contingent on Mazzy Creations and Scanagraphic "making expeditious payment" of outstanding amounts owing to Fuji Xerox.[\[note: 212\]](#) Thus, this had nothing to do with the printing charges of \$93,109.26 payable to Mazzy Creations. Therefore, the October 2017 E-mail does not show that the setting off of the printing charges was contingent on Mazzy Creations making payment of the outstanding sums due to Fuji Xerox as at 27 October 2017.

128 After setting off the sum of \$83,950.06 against Mazzy Creations' counterclaim for printing charges, the balance owed to Mazzy Creations by Fuji Xerox is \$9,159.20.[\[note: 213\]](#)

Liability of Ms Chua and Mr Chua under the Guarantee

129 On the date that Mazzy Creations entered into the 2015 Agreements with Fuji Xerox, Ms Chua and Mr Chua also executed a Guarantee in favour of Fuji Xerox to guarantee the payment of all sums due from Mazzy Creations under the 2015 Agreements (see [15] above). Hence, Ms Chua and Mr Chua are jointly and severally liable to Fuji Xerox under the Guarantee as guarantors for the outstanding sums payable by Mazzy Creations. This was not disputed by the defendants.

Conclusion

130 I make the following findings:

(a) Of the three representations expressly pleaded by the defendants, none of them are false representations of fact. In particular, the Rental Amount Representation is factually accurate and not misleading in any way.

(b) The non-disclosure of the rollover was not adequately and unequivocally pleaded by the defendants as a misrepresentation. In any event, the non-disclosure of the rollover could not amount to an actionable misrepresentation in the circumstances of this case.

(c) Even if the PIC Representation, as alleged by the defendants, was made by Mr Lim to Ms Chua, it was not a false representation of fact.

(d) Mr Lim's statement that the 2015 Rental Agreement would "supersede" the 2012 Rental Agreement was not adequately pleaded. In any event, this statement was too vague to constitute an actionable misrepresentation.

(e) Fuji Xerox had not failed to mitigate its losses arising from the defendants' non-payment of the unpaid sums due under the 2015 Agreements.

131 Fuji Xerox had validly set off a sum of \$83,950.06 against the charges amounting to \$93,109.26 which it owed Mazzy Creations for printing services.

132 For the above reasons, I allow Fuji Xerox's claim against the defendants for \$544,345.49, as follows: [\[note: 214\]](#)

(a) all the unpaid amounts under the 2015 Agreements, *ie*, \$488,101.69 in total (comprising \$465,892.98 due under the 2015 Rental Agreement, \$20,784.07 due under the 2015 Service Agreement, and \$1,424.64 due under the 2015 Rental and Service Agreement);

(b) the sum of \$909.50 for goods sold and delivered to Mazzy Creations;

(c) late payment interest of \$64,493.50 (as at 2 January 2019); and

(d) less the outstanding printing charges of \$9,159.20 owed to Mazzy Creations, which should be set off against the sum due under the 2015 Rental Agreement.

133 I allow Mazzy Creations' counterclaim for printing services rendered to Fuji Xerox amounting to \$93,109.26. I accept that Fuji Xerox had set off a sum of \$83,950.06 against the amount owed by Mazzy Creations. Thus, Mazzy Creations is entitled to the balance of \$9,159.20. I dismiss Mazzy Creations' defence of misrepresentation and its other counterclaims, *ie*, rescission of the 2015 Agreements, damages, and any penalties that IRAS may impose in relation to Mazzy Creations' erroneous claims under the PIC Scheme.

134 The default interest rate prescribed by para 77 of the Supreme Court Practice Directions is 5.33% *per annum*. However, each of the 2015 Agreements stipulates a late payment interest rate:

(a) Under the 2015 Rental Agreement (cl 5.3) and the 2015 Service Agreement (cl 7), a late payment interest rate of 15% *per annum* is stipulated. This late payment interest rate is to be applied both before and after judgment until the date of full payment of the amount due. [\[note: 215\]](#)

(b) Under the 2015 Rental and Service Agreement (cl D), the interest rate is 2% *per month* for invoices not paid within 30 days of the invoice date.[\[note: 216\]](#)

135 The defendants have not offered any reason for not applying these contractually agreed interest rates in the present case. In these circumstances, I award Fuji Xerox interest at the following rates, from the date of the writ (*ie*, 7 June 2019) until the date of full payment:[\[note: 217\]](#)

(a) 15% *per annum* on the unpaid sums due under the 2015 Rental Agreement (*ie*, \$465,892.98 less Mazzy Creations' counterclaim for the sum of \$9,159.20) and under the 2015 Service Agreement (*ie*, \$20,784.07); and

(b) 2% *per month* on the unpaid sum due under the 2015 Rental and Service Agreement (*ie*, \$1,424.64).

136 With regard to Fuji Xerox's claim for the unpaid sum of \$909.50 for goods sold and delivered, I see no reason to depart from the default interest rate of 5.33% *per annum*. Accordingly, interest is to be awarded at the rate of 5.33% *per annum* on the sum of \$909.50 from the date of the writ (*ie*, 7 June 2019) until the date of judgment.[\[note: 218\]](#)

Costs

137 Fuji Xerox seeks costs against the defendants on an indemnity basis,[\[note: 219\]](#) based on cl 7.7 of the 2015 Rental Agreement and cl 10.4 of the 2015 Service Agreement.[\[note: 220\]](#) These clauses provide that the customer (here, Mazzy Creations) shall be liable for all costs and expenses incurred by Fuji Xerox (including all legal fees on a full indemnity basis) flowing from the customer's breach of these agreements.[\[note: 221\]](#) Accordingly, Fuji Xerox seeks costs of \$20,000 for the general care and conduct of the matter since 7 June 2019, \$60,000 for the three days of trial, \$5,000 for the closing and reply submissions, and all reasonable disbursements. These costs claims are all on an indemnity basis.[\[note: 222\]](#)

138 During the parties' oral submissions, the defendants' counsel confirmed that the defendants did not dispute that Fuji Xerox had pleaded its claim for indemnity costs based on cl 7.7 of the 2015 Rental Agreement and cl 10.4 of the 2015 Service Agreement. They also did not dispute the quantum of indemnity costs sought by Fuji Xerox.[\[note: 223\]](#)

139 I, therefore, award costs to Fuji Xerox on an indemnity basis, to be agreed or taxed.

Annex A: 2015 Rental Agreement

RENTAL AGREEMENT



Agreement No.: L 0 0 0 3 0 0 9 6

This Agreement is made on 10/03/2015 between Fuji Xerox Singapore Pte Ltd ("FXS") a company incorporated in Singapore and having its office at 80 Anson Road #01-01 Fuji Xerox Towers Singapore 079907 AND

Customer Name: **MAZZY CREATIONS PTE LTD**
 Customer's Billing Address: **Blk 1092, Lower Delta Road, #03-10/13 Singapore 169203** Tel: 62707148
 Fax No: 62707748
 Customer's Address for Installation ("Installation Premises"): **Blk 1092, Lower Delta Road, #03-10/13 Singapore 169203** Tel: 62707148

FXS agrees to (a) rent to Customer, and Customer agrees to rent from FXS, the Equipment described in the schedule ("Schedule") set forth below; (b) license to Customer, and Customer agrees to license from FXS, the FXS Licensed Software described in the Schedule; (c) source for the benefit of Customer, and Customer agrees to accept from FXS, the tangible materials ("Non-FXS Software Materials") for the Non-FXS Software described in the Schedule, and subject to the terms and conditions found overleaf in this Agreement. Each item of Equipment, and FXS Licensed Software and Non-FXS Software (collectively "Software"), and any and all materials comprising any part of the same, shall be referred to as an "Item" and collectively as "Items".

SCHEDULE

Equipment	Serial Number	Delivery/ Installation Date	Commencement Date:
FXS Equipment			<u>01/04/2015</u>
COLOR 1000i PRESS (C1000iP1641 @)	000625	20/03/2015	Minimum Period: 60 months
			Payment Period: monthly commencing from Commencement Date
			Rental/Fee Payment Day: 1 st day of every month/ every third month
Non-FXS Equipment			Rental/Fees
FIERY EX FRONT SERVER (C1000iP1641 @)	564540	20/03/2015	Initial Payment: S\$ NA
			Period Payment: S\$ 10,367
			Final Payment: S\$ NA
Software			Amount payable upon execution of this Agreement: S\$ 622,020
FXS Licensed Software			
Non-FXS Software			

The Equipment and Software stated above are strictly for use in Singapore only.
 Amount Payable Upon Execution of This Agreement serves to quantify the total liability of the Customer upon execution of the Agreement and is not a sum immediately payable but be progressively extinguished by the Customer as set out in the Schedule.

SIGNED FOR AND ON BEHALF OF FUJI XEROX SINGAPORE PTE LTD Signed: Name: <u>Jennifer Chin</u> Title: <u>Manager</u> Order Management	SIGNED FOR AND ON BEHALF OF THE CUSTOMER Signed: Name: <u>Ms Alice Chua</u> Title: <u>MD</u> Customer Stamp:
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Agreement Terms & Conditions overleaf.

OWNERSHIP
1. The title and ownership of the Equipment and License ("License") of the FXS Licensed Software shall vest in the Customer from the date of the Commissioned Date and continue for the Minimum Period set out in the Schedule. The FXS Licensed Software shall be automatically renewed and continue after the Minimum Period, unless terminated by 2 months' prior written notice expiring on a date after the Minimum Period.

WARRANTY
2. The Equipment and License of FXS Equipment manufactured by FXS or its related companies, and Non-FXS Equipment manufactured by third parties. Legal title in and to the Equipment shall at all times remain in FXS.
3. No warranties are given by FXS in respect of the Non-FXS Equipment. FXS shall, if it is able to do so, assign to Customer the benefit of any manufacturer's or supplier's warranty that it may hold in relation to the Non-FXS Equipment. Any such assignment shall be restricted upon termination of this Agreement.

NON-ASSIGNMENT
4. FXS, its related companies or licensors (in the case may be) shall at all times remain the absolute owners of all rights, title and interest in the FXS Licensed Software. The License is non-assignable and non-transferable, and is valid for use in conjunction with the Equipment in which installation is first made by FXS. Without prejudice to Clause 1 above, Customer will be bound by Clause 1 and 2.3 herein, upon delivery of the FXS Licensed Software.
5. Customer will not do or allow any act or thing which is likely to jeopardize or invalidate any of the intellectual property rights in or to the FXS Licensed Software and will not copy, reproduce or in any other way alter, modify, duplicate, reverse engineer, decompile or disassemble the FXS Licensed Software.
6. Customer will comply with the terms of any license issued by the proprietor of any FXS Licensed Software (which may either be FXS or its related company or a licensor of FXS) for such software.
7. FXS does not warrant that the FXS Licensed Software is defect free or that its use will be uninterrupted or error free. The FXS Licensed Software has not been customized to meet Customer's requirements and Customer must ensure that the software meets its requirements.
8. Any requirement that third parties shall at all times remain the absolute owners of all rights, title and interest in any Non-FXS Software. FXS is not the licensor of any Non-FXS Software and does not warrant or represent that FXS is able to confer any rights to use the Non-FXS Software. FXS's sole obligation is to source for and deliver the Non-FXS Software Materials to Customer. Customer will accept that any license required for use of any Non-FXS Software is licensed and will comply with the terms of such license. No warranties or representations are given by FXS in respect of the Non-FXS Software.
9. The Manufacturer's patent or copyright by Customer do not entitle Customer to upgrade or new versions or new releases in any of the Software.

ASSIGNMENT
10. Customer shall not assign its rights under this Agreement without FXS' prior written consent. If consent is given, FXS may impose an administrative fee at FXS prevailing standard rates. FXS may assign any or all of its rights and obligations under this Agreement to a related company of FXS without prior consent of the Customer. In the event of an assignment of any obligations by FXS, Customer shall accept the performance by the relevant assignee in lieu of the performance by FXS.

PERIOD OF PAYMENTS
11. Customer undertakes to pay (a) the Initial Payment, (b) all Periodic Payments for the whole Minimum Period, and (c) the Final Payment. The Initial Payment is payable on or before the Commissioned Date and in full. Each Periodic Payment is payable on the Monthly Payment Day throughout the Minimum Period and thereafter if this Agreement continues. If this Agreement terminates before the end of the Minimum Period, all Periodic Payments for the balance of the Minimum Period shall become due and payable immediately in accordance with Clause 7.3. The Final Payment is payable together with the last due Periodic Payment occurring during the Minimum Period, or in the event of early termination, immediately.
12. The Initial Payment, Final Payment and the Periodic Payments (collectively "Installments") and all other amounts payable to FXS under this Agreement are collectively referred to as "FXS Payments". All FXS Payments must be paid to FXS free from any withholding, deduction, set off, reduction, defence, abatement and counterclaim, whether on account of taxes or otherwise. The obligations of Customer under this Agreement, and to pay the FXS Payments, are absolute and shall not be affected by any matter, event or contingency whatsoever, whether such matter, event or contingency results in the damage, destruction or loss of use of the items or any of them or otherwise.
13. Customer agrees to pay all goods and services tax and other taxes and charges that may arise in connection with the transactions and any payments contemplated by this Agreement. In the event that Customer defaults in payment of the amount due under any invoice issued by FXS ("FXS Invoice") Customer shall pay interest at the rate of 10% per annum (which rate will apply before as well as after judgment) from the due date of the FXS Invoice until the date of full payment of the amount due.
14. Customer understands and agrees to its obligations and obligations under any agreement for maintenance and service made with FXS in relation to any item.
15. Customer will bear the risk of loss, theft, destruction or damage to each item from the date of delivery of the said item. Customer will insure and keep insured each item against loss, theft, destruction or damage. FXS is entitled to all amounts payable under such insurance and will appropriate the proceeds towards payments due or becoming due to FXS.
16. The Customer agrees that the Equipment may not be moved or relocated from the original installation position without the prior written consent of FXS. Further, the Customer agrees not to use, allow the Equipment Licensed Software to be used or copied in a location outside the territory of Singapore.

FXS OBLIGATIONS
17. FXS warrants that the FXS Equipment will be free from defects in materials, workmanship and installation for a period of 90 days from the date of installation (the "warranty period").
18. Within the warranty period FXS reserves the right to inspect the Customer or any branch of the Customer of its sold equipment. FXS shall, within a reasonable time, repair or, at its option, replace the FXS Equipment or such parts of it as may be defective. Provided always that the Customer has used and maintained the FXS Equipment in accordance with the terms of this Agreement and Provided the Customer is not in breach of any terms of this Agreement.
19. This warranty will not apply when the defect is caused by any default or neglect or omission of the Customer, its employees, servants or agents.
20. Where an item is not repaired or replaced, FXS shall be liable to the Customer for any loss or damage arising out of or in connection with any breach by FXS of this Agreement (including any warranty), or in tort (including negligence) or breach of statutory duties, or arising out of or in connection with the sale, condition, use, application and/or exploitation of any item or any other matter, and in the event of any such breach, FXS shall, in any event, not be liable for any consequential or indirect loss or damage (including without limitation loss of profits, loss of business or loss of goodwill) arising out of or in connection with the matters aforesaid or any matter whatsoever.

TERMINATION
21. This Agreement cannot be terminated or cancelled except as expressly set forth in this Agreement.
22. Customer may cancel this Agreement before but not on or after the Material Delivery Date indicated in the Schedule by giving written notice to FXS and paying an administrative fee amounting to 20% of the Amount payable upon execution of this Agreement set out in the Schedule.
23. FXS may terminate this Agreement by giving notice in writing if the Customer is in breach of any of the terms and conditions of this Agreement and such breach remains unremedied for seven (7) days following notice by FXS specifying such breach. FXS may terminate this Agreement immediately upon the occurrence of any of the following:
a) any proceeding is commenced or an order is made or a resolution is passed for the dissolution, or winding up of Customer or for the appointment of a liquidator, receiver, judicial manager, administrator, trustee or similar officer of Customer or any part or all of its assets or business;
b) Customer stops or suspends payments to or enters into any composition with creditors, or is unable, or admits its inability, to pay its debts, or shall transfer or otherwise dispose of any material part of its assets or business;
c) Customer abandons any of the Equipment;
d) any agreement described in Clause 5.4 is terminated or
e) if distress or execution is levied or threatened against the Customer.
24. Upon termination pursuant to Clause 23 or otherwise (hereinafter "Termination"), FXS is entitled to declare:
a) all costs and expenses incurred by FXS in relation to the termination of this Agreement and repossession of the material, including but not limited to the total rental in arrears, including any interest that has accrued and continues to accrue, due and owing as at the time of termination of the Agreement, all sums and payments to become due under this Agreement for the balance of the Minimum Period, and a prevailing administrative fee immediately due and payable;
b) require Customer to return immediately all Equipment, all tangible materials containing copies of the FXS Licensed Software and all Non-FXS Software Materials (including any copies) and/or images of all the same from any equipment, and cease any further use thereof;
c) enter any premises owned or controlled by Customer and take immediate possession of all items aforesaid, and/or
d) exercise any right of remedy that may be available to FXS under applicable law.
25. Customer may terminate this Agreement by giving notice in writing if FXS is in breach of any of the material obligations set out under Clauses 6 and 6.1 above, and such breach remains unremedied for thirty (30) days following notice by Customer specifying such breach.
26. Upon termination pursuant to Clause 24, Customer shall immediately return all Equipment, all tangible materials containing copies of the FXS Licensed Software and all Non-FXS Software Materials (including any copies) and/or images of all the same from any equipment, and cease any further use thereof. The Customer shall remain liable for all sums due under this Agreement including but not limited to the total rental in arrears due and owing as at the time of termination of this Agreement. FXS shall have the right to enter any premises owned or controlled by the Customer to make immediate possession of all items aforesaid.
27. Any rights retained by Customer under the License shall automatically cease to be effective upon the termination of this Agreement.
28. Customer shall be liable for all costs and expenses incurred by FXS (including legal fees on a full indemnity basis) flowing from the breach by Customer of this Agreement under the termination and/or the exercise by FXS of its rights and remedies under this Agreement.
29. Any termination of this Agreement shall not affect any accrued rights or liabilities of either party nor the continuing force or continuance in force of any provision hereof which is expressly or by implication intended to continue into or survive in force on or after termination.

SIGNATURES
30. Either party may effect service of any legal process or any document requiring personal service on the other party by leaving it at, or by sending it by air registered post, to the other party's last known address. Having done so, the party so served shall be deemed to have given notice to the other party by leaving it at, or by sending it by air registered post, to the other party's last known address.

ENTIRE AGREEMENT
31. This agreement constitutes the entire agreement between the Customer and FXS. No representation, statement, warranty and condition in this Agreement shall be binding on FXS and no waiver, alteration or modification of the terms of this Agreement shall be binding unless recorded in writing and signed by a Director or General Manager of FXS and by a person authorized by the Customer.

GOVERNING LAW
32. This Agreement shall be governed by and construed in accordance with the laws of the Republic of Singapore. Both parties agree to submit to the non-exclusive jurisdiction of the Courts of Singapore.

RA (Standard) - 0303 Rev 06

Fuji Xerox Singapore Pte Ltd (Reg. No. 19850992E) 80 Anson Road #01-01 Fuji Xerox Towers Singapore 079907

Annex B: 2015 Service Agreement

SERVICE AGREEMENT



Agreement No.: F0086569

This Agreement is made on 10/03/2015 between Fuji Xerox Singapore Pte Ltd (FXS) a company incorporated in Singapore and having its office at 80 Anson Road #01-01 Fuji Xerox Towers Singapore 079007 AND

Customer Name: MAZZY CREATIONS PTE LTD
Customer's Billing Address: Blk 1092, Lower Delta Road, #03-10/13 Singapore 169203
Tel: 62707148
Fax No: 62703108
Customer's Address for Installation: Blk 1092, Lower Delta Road, #03-10/13 Singapore 169203
Tel: 62707148

FXS agrees to provide services ("Services") for the Equipment and Software described in the schedule ("Schedule") set forth below, subject to the terms and conditions found overleaf in this Agreement. Each item of Equipment, and FXS Licensed Software and Non-FXS Software (collectively "Software"), and any and all materials comprising any part of the same, shall be referred to as "item" and collectively as "items".

SCHEDULE

Table with columns for Equipment, Serial Number, Service Commencement Date, Equipment Minimum Period, Minimum Monthly Equipment Maintenance Charge, Committed Number of Copies, Price Per Copy for Full Colour Copy Charge, Price Per Copy for Black & White Copy Charge, Additional Price Per Copy for Full Colour Copy (A4) Charge, Software, and Yearly Software Maintenance Charge. Includes handwritten notes: 'Gold / Silver / Clear toner will be charged separately.' and 'Infra 180,000 color copies POC (once off)'.

SIGNED FOR AND ON BEHALF OF FUJI XEROX SINGAPORE PTE LTD
SIGNED FOR AND ON BEHALF OF THE CUSTOMER
Name: JIBINJIAR CHIN, Order Management
Name: MS ALICE CHUA, MD

SA (Colour) - 809 Rev 15
Fuji Xerox Singapore Pte Ltd (Reg. No. 198500962E) 80 Anson Road #01-01 Fuji Xerox Towers Singapore 079007

- 1. Services will commence on the Service Commencement Date and will continue...
2. FXS will be responsible for the efficient working of the Equipment...
3. Services will be performed during FXS's normal service hours...
4. Technical Support Services for Software shall be provided in the following manner:
4.1.1. Level One Support...
4.1.2. Level Two Support...
4.1.3. Level Three Support...
5. Customer irrevocably consents to the installation of this Agreement...
6. A license is granted to use or more of the FXS Equipment...
7.1. Customer agrees to pay all goods and services tax and other taxes...
8. Customer shall not assign its rights under this Agreement...
9. In the event FXS is unable to perform...
10.1. FXS may terminate this Agreement...
10.2. Customer may terminate this Agreement...
10.3. Upon termination...
10.4. Customer shall further be liable for all costs...
10.5. Any termination...
10.6. This Agreement shall be governed by the laws of Singapore...

SA (Colour) - 809 Rev 15
Fuji Xerox Singapore Pte Ltd (Reg. No. 198500962E) 80 Anson Road #01-01 Fuji Xerox Towers Singapore 079007

Annex C: 2015 Rental and Service Agreement

RENTAL AND SERVICE AGREEMENT



Agreement No.: R0000 5227

THIS RENTAL AND SERVICE AGREEMENT is made on the 10/09/2015 between Fuji Xerox Singapore Pte Ltd a company incorporated in Singapore and having its office at 80 Anson Road #01-01 Fuji Xerox Towers Singapore 079907 (hereinafter called FXS) AND

Customer Name: Muzzy Creations Pte Ltd

Installation Address: Blk 1092 Lower Delta Road Tel: 62761208 #03-10 (169202)

Billing Address: (hereinafter called the 'Hirer') Tel:

Table with columns: EQUIPMENT, SERIAL NUMBER, INSTALLATION DATE. Row 1: FX4127CP, 552147, 22/09/2015

The Equipment listed above is strictly for use in Singapore only.

- 1. This is a HIRING Agreement. The Equipment always remains the property of FXS.
2. The Agreement shall include separate Sub-agreements signed by or on behalf of the Hirer and by a person authorized by FXS.
3. The period for which this Agreement is in force is set out in the Pricing Schedule provided which also mentions the period of written notice required by either party to terminate the Agreement or to amend the terms of the Agreement.
4. FXS may terminate this Agreement and may repossess the Equipment if the Hirer is in breach of any of the terms and such breach remains unremedied for fourteen (14) DAYS following written notice by FXS specifying the breach.

FUJI XEROX

THE HIRER

- 1. Shall install the Equipment (which may or, at its option, may not be used) and will continue to do so pending order.
2. Shall provide service (i.e. inspection, adjustment and repair) free of charge during normal working hours (Monday to Friday 9.00 am to 5.00 pm, Saturday 9.00 am to 12.00 pm, Sunday and Public Holiday) and provide replacement parts without further charge PROVIDED THAT the Hirer shall pay for any materials, all overtime or expenses not necessary when by the Hirer's negligence or willful act or default or by the use of supplies (producing output copy material) or auxiliary Equipment not approved by Fuji Xerox for use with the Equipment.
3. Shall provide consumables supplies as stated in the Pricing Schedule.
4. Shall be entitled through its authorized representatives to enter the Hirer's premises at all reasonable times to inspect service or to carry out necessary maintenance and if necessary to remove or to install the Equipment and any other equipment as may be reasonably necessary incidentally to the removal of the Equipment from the Hirer's premises.

RBA-0514-Rev07

Fuji Xerox Singapore Pte Ltd (Reg. No. 108600062E) 80 Anson Road #01-01 Fuji Xerox Towers Singapore 079907

RENTAL AND SERVICE AGREEMENT

3 - YEAR CONTRACT

- A. Period of Agreement and Termination: This Agreement is for the period of 36 MONTHS (hereinafter known as the Minimum Term) from the date of the Equipment installation...
B. Minimum Charge: There is a minimum charge for each machine, which includes...
C. Copy Charge: Minimum copy charges include the provision of all consumable supplies necessary to ensure the satisfactory operation of the machine...
D. Interest: A 2% per month interest is chargeable for invoices not paid within 30 days of invoice date.
E. New Installation: For the duration of the calendar month in which an item of Equipment is first installed the minimum charge will be calculated on the number of working days of that month for which the equipment is installed.
F. Installation and Re-site Charge: The standard charge for delivery and installation is...
G. FXS reserves the right to vary the copy charges payable under this Agreement...
H. Notwithstanding anything herein contained FXS shall not be liable to the Hirer or others...
I. Deferred Rental: The amount of Deferred Rental payable at the end of the Agreement is...
J. If the Hirer shall make default in payment of any of the sums payable under this Agreement...
K. Should the Hirer terminate this agreement...
L. This Agreement shall be governed by the laws of Singapore and constitutes the entire agreement between the Hirer and FXS...

SIGNED ON BEHALF OF FUJI XEROX SINGAPORE PTE LTD
SIGNED: FUJI XEROX SINGAPORE PTE LTD
NAME: Jennifer Chyn
TITLE: Order Management

SIGNED ON BEHALF OF THE HIRER
SIGNED: Muzzy signed by duly authorized representative of the Hirer
NAME: Alice Chia, Tien Jui
TITLE: M.Z.
COMPANY STAMP

THIS CONTRACT IS SUBJECT TO GOODS & SERVICES TAX AT THE RATE THEN PREVAILING

RBA-0514-Rev07

Fuji Xerox Singapore Pte Ltd (Reg. No. 108600062E) 80 Anson Road #01-01 Fuji Xerox Towers Singapore 079907

[\[note: 1\]](#) Plaintiff's Statement of Claim (Amendment No 1) ("PSOC") at para 1.

[\[note: 2\]](#) Affidavit of Evidence-in-Chief of Alice Chua Tien Jin ("ACTJ") at para 2.

[\[note: 3\]](#) ACTJ at para 2.

[\[note: 4\]](#) Defendants' Defence and Counterclaim (Amendment No 1) ("DDC") at para 2(ii).

[\[note: 5\]](#) DDC at para 2(ii); Transcript (21 April 2021), p 111 at lines 24–26.

[\[note: 6\]](#) Transcript (20 April 2021), p 13, lines 1–3 and 13–20.

[\[note: 7\]](#) Transcript (21 April 2021), p 112 at line 27.

[\[note: 8\]](#) ACTJ at para 2.

[\[note: 9\]](#) Statement of Agreed Facts ("ASOF") at para 1.

[\[note: 10\]](#) ASOF at para 2.

[\[note: 11\]](#) DDC at paras 3(i) and 3(ii); Transcript (20 April 2021), p 20 at lines 27–30.

[\[note: 12\]](#) Plaintiff's Reply and Defence to Counterclaim (Amendment No 1) ("PRDC") at paras 3(a) and 3(b); Affidavit of Evidence-in-Chief of Lim Bee Cheng ("ALBC") at para 1.

[\[note: 13\]](#) ACTJ at para 7; Defendant's Written Submissions ("DWS") at para 19.

[\[note: 14\]](#) ALBC at para 4.

[\[note: 15\]](#) DDC at para 4.

[\[note: 16\]](#) Agreed Bundle of Documents ("AB"), Vol 1 at p 1.

[\[note: 17\]](#) AB, Vol 2 at pp 488–489.

[\[note: 18\]](#) AB, Vol 2 at pp 490–491.

[\[note: 19\]](#) AB, Vol 1 at pp 1–2.

[\[note: 20\]](#) Transcript (20 April 2021), p 13 at lines 21–23 and p 65 at lines 1–9.

[\[note: 21\]](#) ASOF at para 10.

[\[note: 22\]](#) AB, Vol 4 at p 886.

[\[note: 23\]](#) Transcript (21 April 2021), p 106 at lines 24–32 and p 107 at lines 15–24; Transcript (22 April

2021), p 7 at lines 6–8; DWS at paras 18 and 43.

[\[note: 24\]](#) AB, Vol 1 at p 1 (last line on the page); DWS at para 18.

[\[note: 25\]](#) Transcript (22 April 2021), p 7 at lines 16–32.

[\[note: 26\]](#) ACTJ at para 37; ALBC at para 8; DDC at para 6.

[\[note: 27\]](#) AB, Vol 1 at pp 5–6; PSOC at para 2; ASOF at para 3(a); Plaintiff’s Written Submissions (“PWS”) at para 1(a).

[\[note: 28\]](#) AB, Vol 1 at pp 7–8; PSOC at para 14; ASOF at para 3(b); PWS at para 1(b).

[\[note: 29\]](#) AB, Vol 1 at pp 9–10; PSOC at para 20; ASOF at para 3(c); PWS at para 1(c).

[\[note: 30\]](#) AB, Vol 1 at pp 5–6.

[\[note: 31\]](#) ALBC at para 8(c); Transcript (21 April 2021), p 13 at lines 17–19 and p 26 at lines 2–5.

[\[note: 32\]](#) AB, Vol 1 at pp 11–12; PSOC at para 26; ASOF at para 6.

[\[note: 33\]](#) ACTJ at para 12 and pp 189 and 203.

[\[note: 34\]](#) ACTJ at pp 206–207.

[\[note: 35\]](#) ACTJ at p 207.

[\[note: 36\]](#) Transcript (20 April 2021), p 46 at lines 16–19.

[\[note: 37\]](#) ASOF at para 9.

[\[note: 38\]](#) DDC at para 9(v).

[\[note: 39\]](#) Transcript (22 April 2021), p 90 at lines 24–32 and p 91 at lines 1–6.

[\[note: 40\]](#) DDC at para 11.

[\[note: 41\]](#) PRDC at para 9(d).

[\[note: 42\]](#) DDC at para 11(ix).

[\[note: 43\]](#) AB, Vol 6 at p 1650.

[\[note: 44\]](#) AB, Vol 6 at pp 1660–1661.

[\[note: 45\]](#) Transcript (22 April 2021), p 79 at lines 26–32 and p 80 at lines 1–21.

[\[note: 46\]](#) AB, Vol 1 at p 116.

[\[note: 47\]](#) Affidavit of Evidence-in-Chief of Toh Sze Ben ("TSB") at para 40(g).

[\[note: 48\]](#) TSB at para 1; Transcript (21 April 2021), p 6 at lines 16–17.

[\[note: 49\]](#) Transcript (21 April 2021), p 85 at lines 23–31, p 86 at lines 10–13 and p 87 at lines 5–11; PWS at para 31(k).

[\[note: 50\]](#) Transcript (21 April 2021), p 88 at lines 9–13, 17–20 and 29–30.

[\[note: 51\]](#) Transcript (22 April 2021), p 53 at lines 29–32.

[\[note: 52\]](#) AB, Vol 2 at pp 544–547.

[\[note: 53\]](#) AB, Vol 2 at p 292.

[\[note: 54\]](#) Transcript (21 April 2021), p 85 at lines 2–14.

[\[note: 55\]](#) ACTJ at p 159.

[\[note: 56\]](#) Transcript (21 April 2021), p 15 at lines 25–29.

[\[note: 57\]](#) Transcript (21 April 2021), p 16 at lines 1–2 and p 17 at lines 1–10.

[\[note: 58\]](#) Transcript (21 April 2021), p 18 at lines 10–12.

[\[note: 59\]](#) ASOF at para 4; AB, Vol 1 at pp 117–206, 218–219 and 222–226.

[\[note: 60\]](#) PSOC at para 12; PWS at para 3(a).

[\[note: 61\]](#) PSOC at para 19; PWS at para 3(b).

[\[note: 62\]](#) PSOC at para 22; PWS at para 3(c); ASOF at para 5.

[\[note: 63\]](#) PSOC at para 25; PWS at para 3(d).

[\[note: 64\]](#) PSOC at para 13.

[\[note: 65\]](#) PSOC at para 23; ASOF at para 5; PWS at para 4; AB, Vol 1 at p 206.

[\[note: 66\]](#) PWS at paras 6–8.

[\[note: 67\]](#) PWS at para 17.

[\[note: 68\]](#) PRDC at para 6.

[\[note: 69\]](#)PRDC at para 16.

[\[note: 70\]](#)PWS at para 41; Plaintiff's Reply Submissions ("PRS") at para 17.

[\[note: 71\]](#)PRDC at paras 3(c)–3(f) and 16.

[\[note: 72\]](#)Plaintiff's Opening Statement at para 26.

[\[note: 73\]](#)PRDC at para 8; Plaintiff's Opening Statement at para 25.

[\[note: 74\]](#)ASOF at para 7; DDC at para 18; DWS at para 80.

[\[note: 75\]](#)ASOF at para 8; Plaintiff's Opening Statement at para 19; PWS at paras 62–63.

[\[note: 76\]](#)PRDC at para 18; Plaintiff's Opening Statement at para 13.

[\[note: 77\]](#)PSOC at para 12.

[\[note: 78\]](#)PSOC at para 19.

[\[note: 79\]](#)PSOC at para 22; ASOF at para 5.

[\[note: 80\]](#)PSOC at para 23; ASOF at para 5.

[\[note: 81\]](#)DDC at paras 13, 17 and 19 and pp 61–62.

[\[note: 82\]](#)DDC at para 20 and p 62 at para (i).

[\[note: 83\]](#)DDC at para 13.

[\[note: 84\]](#)DDC at paras 3(ii), 3(iv) and 12(i).

[\[note: 85\]](#)DDC at paras 17 and p 61 at paras (1)–(4).

[\[note: 86\]](#)DDC at para 7(i).

[\[note: 87\]](#)DDC at para 11(i)–11(iii).

[\[note: 88\]](#)DDC at para 7(ii).

[\[note: 89\]](#)DDC at paras 7(ii)–7(iii).

[\[note: 90\]](#)Transcript (21 April 2021), p 125 at lines 26–30 and p 126 at lines 3–5.

[\[note: 91\]](#)Transcript (21 April 2021), p 127 at lines 1–3; Transcript (21 April 2021), p 125 at lines 26–

30 and p 126 at lines 1–5.

[\[note: 92\]](#) DDC at paras 11(i)–11(iii).

[\[note: 93\]](#) DWS at paras 3.1 and 3.3.

[\[note: 94\]](#) DDC at para 3(iv).

[\[note: 95\]](#) DDC at para 11(x).

[\[note: 96\]](#) DDC at paras 9–10.

[\[note: 97\]](#) DDC at para 11(iv); DWS at para 53.

[\[note: 98\]](#) DWS at para 79.

[\[note: 99\]](#) DDC at para 9(v).

[\[note: 100\]](#) DDC at para 8.

[\[note: 101\]](#) DDC at para 11(viii).

[\[note: 102\]](#) DDC at para 15.

[\[note: 103\]](#) DDC at para 12(iii).

[\[note: 104\]](#) Transcript (22 April 2021), p 52 at lines 11–14.

[\[note: 105\]](#) Defendants' Opening Statement at para 21; DWS at paras 64–73; Defendants' Reply Submissions ("DRS") at paras 42–44.

[\[note: 106\]](#) PWS at paras 11–12; DWS at para 9.

[\[note: 107\]](#) PWS at para 13(d).

[\[note: 108\]](#) PWS at para 14.

[\[note: 109\]](#) PWS at para 13(a).

[\[note: 110\]](#) PRS at para 6.

[\[note: 111\]](#) DWS at para 10.

[\[note: 112\]](#) DRS at para 6.

[\[note: 113\]](#) PWS at para 13(b).

[\[note: 114\]](#)PRS at para 8.

[\[note: 115\]](#)PWS at para 20; Transcript (30 June 2021), p 4 at lines 20–26.

[\[note: 116\]](#)ALBC at paras 7 and 13; PWS at paras 17–18.

[\[note: 117\]](#)Transcript (20 April 2021), p 24 at lines 16–25; p 32 at lines 1–11; p 60 at lines 7–13.

[\[note: 118\]](#)DRS at para 12; Transcript (30 June 2021), p 60 at lines 16–25.

[\[note: 119\]](#)Transcript (20 April 2021), p 22 at lines 30–32.

[\[note: 120\]](#)Transcript (21 April 2021), p 131 at lines 10–13 and 27–30.

[\[note: 121\]](#)Transcript (21 April 2021), p 132 at lines 22–27; PWS at para 24(f); PRS at para 39.

[\[note: 122\]](#)Transcript (21 April 2021), p 92 at line 11–15.

[\[note: 123\]](#)Transcript (30 June 2021), p 48 at lines 27–32 and p 49 at lines 1–26.

[\[note: 124\]](#)DDC at paras 11(i)–11(iii).

[\[note: 125\]](#)Transcript (22 April 2021), p 3 at lines 16–25.

[\[note: 126\]](#)DWS at paras 10 and 30.

[\[note: 127\]](#)PWS at para 20.

[\[note: 128\]](#)ALBC at paras 7 and 13; PWS at paras 17–18.

[\[note: 129\]](#)ALBC at para 8.

[\[note: 130\]](#)Transcript (20 April 2021), p 24 at lines 16–25; p 32 at lines 1–11; p 60 at lines 7–13.

[\[note: 131\]](#)Transcript (20 April 2021), p 37 at lines 4–17.

[\[note: 132\]](#)ALBC at para 13; Transcript (20 April 2021), p 37 at lines 14–17 and p 41 at lines 28–30.

[\[note: 133\]](#)TSB at para 40(g).

[\[note: 134\]](#)Transcript (20 April 2021), p 58 at lines 23–26.

[\[note: 135\]](#)PWS at para 20(f).

[\[note: 136\]](#)Transcript (21 April 2021), p 85 at lines 23–31, p 86 at lines 10–13 and p 87 at lines 5–11.

[\[note: 137\]](#) Transcript (30 June 2021), p 42 at lines 29–32, p 43 at lines 1–18 and p 52 at lines 26–27.

[\[note: 138\]](#) DDC at para 11.

[\[note: 139\]](#) Defendants' Supplementary Submissions at paras 5–7.

[\[note: 140\]](#) PRDC at paras 6 and 9(e).

[\[note: 141\]](#) Plaintiff's Opening Statement at para 14.

[\[note: 142\]](#) AB, Vol 1 at pp 3–4; Transcript (20 April 2021), p 77 at lines 27–32.

[\[note: 143\]](#) Transcript (20 April 2021), p 48 at lines 27–29.

[\[note: 144\]](#) DRS at paras 2.4 and 19.

[\[note: 145\]](#) DWS at paras 45–46 and 55.

[\[note: 146\]](#) DWS at para 33.2.

[\[note: 147\]](#) DWS at para 47.

[\[note: 148\]](#) DWS at paras 56–57.

[\[note: 149\]](#) Transcript (20 April 2021), p 23 at lines 10–28.

[\[note: 150\]](#) Transcript (21 April 2021), p 38 at lines 5–11.

[\[note: 151\]](#) Transcript (30 June 2021), p 48 at lines 7–24.

[\[note: 152\]](#) DWS at paras 2, 33.3 and 54.

[\[note: 153\]](#) DWS at para 25.1; DRS at para 46.

[\[note: 154\]](#) AB, Vol 2 at p 513.

[\[note: 155\]](#) Transcript (30 June 2021), p 52 at lines 3–5.

[\[note: 156\]](#) Transcript (20 April 2021), p 58 at lines 14–26.

[\[note: 157\]](#) Transcript (20 April 2021), p 75 at lines 7–14 and 24–32.

[\[note: 158\]](#) AB, Vol 1 at p 3; Transcript (21 April 2021), p 57 at lines 17–23.

[\[note: 159\]](#) AB, Vol 1 at p 3.

[\[note: 160\]](#)DWS at para 37.

[\[note: 161\]](#)DRS at para 24.

[\[note: 162\]](#)DWS at paras 25.3 and 27.

[\[note: 163\]](#)Defendants' Opening Statement at para 8; DWS at paras 38–40.

[\[note: 164\]](#)Transcript (21 April 2021), p 18 at lines 7–12.

[\[note: 165\]](#)Transcript (21 April 2021), p 25 at lines 13–15 and p 84 at lines 13–20.

[\[note: 166\]](#)Transcript (30 June 2021), p 69 at lines 9–10.

[\[note: 167\]](#)DDC at para 3(iv).

[\[note: 168\]](#)DDC at para 11(x).

[\[note: 169\]](#)DDC at para 3(iv).

[\[note: 170\]](#)PWS at para 39.

[\[note: 171\]](#)ALBC at paras 5–6; Transcript (20 April 2021), p 68 at lines 7–12.

[\[note: 172\]](#)Transcript (20 April 2021), p 53 at lines 31–32 and p 54 at lines 1–3.

[\[note: 173\]](#)Transcript (20 April 2021), p 70 at lines 21–23.

[\[note: 174\]](#)DDC at para 11(x).

[\[note: 175\]](#)ACTJ at p 207.

[\[note: 176\]](#)Transcript (22 April 2021), p 51 at lines 11–32 and p 52 at lines 1–10; PRS at para 28.

[\[note: 177\]](#)PWS at para 40; PRS at para 23.

[\[note: 178\]](#)Transcript (21 April 2021), p 130 at lines 17–20.

[\[note: 179\]](#)Transcript (20 April 2021), p 40 at lines 3–4.

[\[note: 180\]](#)Transcript (22 April 2021), p 53 at lines 26–28.

[\[note: 181\]](#)Transcript (21 April 2021), p 119 at lines 1–6; DWS at para 32.5.

[\[note: 182\]](#)DWS at para 30.2.

[\[note: 183\]](#) Transcript (21 April 2021), p 119 at lines 7–11, 24–25 and 27–32.

[\[note: 184\]](#) Transcript (22 April 2021), p 69 at lines 23–25.

[\[note: 185\]](#) Transcript (22 April 2021), p 96 at lines 20–27.

[\[note: 186\]](#) Transcript (21 April 2021), p 119 at line 16.

[\[note: 187\]](#) Transcript (22 April 2021), p 97 at lines 8–10.

[\[note: 188\]](#) Transcript (30 June 2021), p 8 at lines 19–23.

[\[note: 189\]](#) PWS at para 13(e).

[\[note: 190\]](#) DRS at paras 2.5, 5.3, 8 and 37.

[\[note: 191\]](#) PRS at para 21.

[\[note: 192\]](#) PWS at paras 43–45.

[\[note: 193\]](#) PWS at paras 56 and 60–61.

[\[note: 194\]](#) Transcript (22 April 2021), p 35 at lines 6–9.

[\[note: 195\]](#) Transcript (22 April 2021), p 35 at lines 19–20.

[\[note: 196\]](#) Transcript (22 April 2021), p 38 at lines 1–4; AB, Vol 1 at pp 145–175.

[\[note: 197\]](#) Transcript (22 April 2021), p 55 at lines 1–11.

[\[note: 198\]](#) PRDC at para 9(c).

[\[note: 199\]](#) Plaintiff's Opening Statement at para 33; PWS at paras 63, 65, 66 and 69(a)(i).

[\[note: 200\]](#) DRS at para 42.

[\[note: 201\]](#) Transcript (22 April 2021), p 27 at lines 16–30.

[\[note: 202\]](#) DWS at paras 64–73.

[\[note: 203\]](#) AB, Vol 2 at pp 512–513.

[\[note: 204\]](#) DWS at para 63; DRS at paras 42–44.

[\[note: 205\]](#) DWS at para 69.

[\[note: 206\]](#)AB, Vol 1 at pp 209–213.

[\[note: 207\]](#)AB, Vol 1 at pp 209–213.

[\[note: 208\]](#)AB, Vol 1 at pp 214–231; PWS at para 66(b).

[\[note: 209\]](#)Transcript (22 April 2021), p 35 at lines 1–4.

[\[note: 210\]](#)AB, Vol 6 at pp 1595–1596; PWS at para 66(c).

[\[note: 211\]](#)AB, Vol 2 at p 513.

[\[note: 212\]](#)AB, Vol 2 at p 513.

[\[note: 213\]](#)PWS at para 65.

[\[note: 214\]](#)PWS at paras 69(a)(i)–69(a)(v).

[\[note: 215\]](#)AB, Vol 1 at pp 6 and 8.

[\[note: 216\]](#)AB, Vol 1 at p 10.

[\[note: 217\]](#)PWS at paras 69(a)(vi) and 69(a)(vii).

[\[note: 218\]](#)PWS at para 69(a)(viii).

[\[note: 219\]](#)PSOC, p 27 at para (j) and p 28 at para (g); PWS at para 69(a)(ix).

[\[note: 220\]](#)PSOC, paras 11 and 18; PRS at para 41.

[\[note: 221\]](#)AB, Vol 1 at p 6 (2015 Rental Agreement); AB, Vol 1 at p 8 (2015 Service Agreement).

[\[note: 222\]](#)PRS at para 42.

[\[note: 223\]](#)Transcript (30 June 2021), p 29 at lines 5–11.