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

[2024] SGHC 110

Suit No 532 of 2021

Between

(1) Wong Ben
(2) Liew Edmund Ket Vui
(3) Wong Tim Fuk Gary
(4) Wong Nga Kok
(5) MCA Limited

… *Plaintiffs*

And

(1) The WatchFund Limited
(2) Dominic Khoo Kong Weng

… *Defendants*

JUDGMENT

[Companies — Incorporation of companies — Lifting corporate veil]
[Contract — Breach — Repudiatory breach]
[Contract — Remedies — Specific performance]
[Contract — Remedies — Damages]
[Evidence — Admissibility of evidence — Hearsay]
[Tort — Misrepresentation — Fraudulent misrepresentation]
[Tort — Misrepresentation — Negligent misrepresentation]

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Wong Ben and others
v
The WatchFund Ltd and another

[2024] SGHC 110

General Division of the High Court — Suit No 532 of 2021
Teh Hwee Hwee J
15–19, 23–26 May, 12–14 July 2023, 15 March 2024

30 April 2024 Judgment reserved.

Teh Hwee Hwee J:

Introduction

1 For the horology enthusiast, watches are more than timekeeping devices or fashion accessories. They represent the intricate craftsmanship and art of watchmakers who have trained for years to perfect their craft. There are others, however, who consider watches as a lucrative investment.

2 Central to the present dispute is an investment scheme involving high-end luxury watches. The plaintiffs are parties associated with a Hong Kong-registered company, Innovest Financial Group Limited ("Innovest"), which provides financial advisory, asset management and succession planning services. The plaintiffs had entered into investment agreements with the first defendant, a Hong Kong-registered investment vehicle. The first defendant is operated by a Singaporean director, who is the second defendant. Pursuant to

those agreements, the plaintiffs were to purchase a number of luxury watches from the first defendant, on the condition that after a period of time, the first defendant would offer to re-purchase those watches from the plaintiffs at a markup. The plaintiffs have now brought claims for fraudulent and negligent misrepresentation as well as breach of contract. There is also a further issue of whether the corporate veil should be lifted to hold the second defendant responsible for the liabilities that may be imposed on the first defendant in this suit.

3 After considering the evidence and the parties' submissions, I dismiss the plaintiffs' claims for fraudulent and/or negligent misrepresentation but find the first defendant liable to the plaintiffs for breach of contract. I decline to lift the corporate veil of the first defendant to hold the second defendant personally responsible for the first defendant's liabilities.

Facts

The parties

4 The first to fourth plaintiffs – Mr Wong Ben, Dr Liew Edmund Ket Vui ("Dr Edmund Liew"), Mr Wong Tim Fuk Gary ("Mr Gary Wong") and Mr Wong Nga Kok respectively – are Hong Kong citizens.[1] Mr Wong Ben, Dr Edmund Liew and Mr Wong Nga Kok were clients of Innovest.[2] Mr Gary Wong

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1 Affidavit of evidence-in-chief ("AEIC") of Mr Wong Ben dated 21 November 2022 ("Mr Wong Ben's AEIC") at para 4 (Bundle of affidavits of evidence-in-chief ("BAEIC") at p 2); AEIC of Dr Liew Edmund Ket Vui dated 21 November 2022 ("Dr Edmund Liew's AEIC") at para 4 (BAEIC at p 235); AEIC of Mr Wong Tim Fuk Gary dated 21 November 2022 ("Mr Gary Wong's AEIC") at para 4 (BAEIC at p 407); AEIC of Mr Wong Nga Kok dated 18 November 2022 ("Mr Wong Nga Kok's AEIC") at para 4 (BAEIC at p 669).

2 Mr Wong Ben's AEIC at para 5 (BAEIC at p 2); Dr Edmund Liew's AEIC at para 5 (BAEIC at p 235); Mr Wong Nga Kok's AEIC at para 5 (BAEIC at p 669).

was not a client of Innovest, as far as the present dispute is concerned, though he was the one who had introduced the second defendant to Mr Fung Ka Lok Adams ("Mr Jowin Fung"), the chief executive officer ("CEO") and vice-chairman of Innovest,[3] in mid-2016.[4] The fifth plaintiff, MCA Limited, is a company registered in Hong Kong,[5] and a wholly-owned subsidiary of Innovest.[6] Mr Jowin Fung is also the CEO of MCA Limited.[7]

5 The first defendant – The WatchFund Limited ("WatchFund HK") – is a Hong Kong-incorporated private company.[8] The second defendant – Mr Dominic Khoo Kong Weng ("Mr Dominic Khoo") – is a Singapore citizen who is the sole director and sole shareholder of WatchFund HK.[9] Mr Dominic Khoo is also associated with The WatchFund Pte Ltd ("WatchFund SG"), a Singapore-registered company.

6 Mr Wong Ben[10] and Mr Gary Wong[11] had previously invested with WatchFund SG, with Mr Dominic Khoo signing the investment agreements for and on behalf of WatchFund SG. WatchFund SG is not a party to the present

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3 AEIC of Mr Fung Ka Lok Adams dated 18 November 2022 ("Mr Jowin Fung's AEIC") at para 4 (BAEIC at p 839).

4 Mr Gary Wong's AEIC at para 6 (BAEIC at p 407).

5 Statement of Claim (Amendment No 1) dated 14 July 2022 ("Statement of Claim (Amendment No 1)") at para 2 (Set-Down Bundle ("SB") at p 149).

6 Notes of Evidence ("NEs") dated 17 May 2023 at p 5, lines 16–18.

7 Mr Jowin Fung's AEIC at para 4 (BAEIC at p 839).

8 First defendant's Defence (Amendment No 1) dated 29 July 2022 ("1D Defence (Amendment No 1)") at para 5 (SB at p 203).

9 AEIC of Mr Dominic Khoo Kong Weng dated 22 November 2022 ("Mr Dominic Khoo's AEIC") at para 1 (BAEIC at p 1414); 1D Defence (Amendment No 1) at para 6 (SB at p 203).

10 BAEIC at pp 59, 78, 85 and 92.

11 BAEIC at pp 462, 469, 476, 482 and 488.

suit. References in this judgment to "WatchFund investment scheme" are to be taken as references to the WatchFund investment vehicles in general, without limitation as to which particular WatchFund vehicle (WatchFund HK or WatchFund SG) is involved.

Background

Introduction of the WatchFund investment scheme to Innovest

7 The first of the plaintiffs to encounter Mr Dominic Khoo was Mr Gary Wong. Mr Gary Wong was introduced to Mr Dominic Khoo in mid-2015 by a mutual friend, and the parties had discussed the WatchFund investment scheme.[12]

8 Thereafter, according to Mr Jowin Fung, Mr Gary Wong introduced Mr Dominic Khoo to officers from Innovest and MCA Limited sometime in mid-2016.[13] These officers were Mr Jowin Fung, Mr Kenneth Li (then the executive vice-president of business development of Innovest) and Mr Yu Lok Man ("Mr Leon Yu") (then the vice-president of Innovest).[14] Following these introductions, Innovest and Mr Dominic Khoo had further discussions to explore the possibility of providing the WatchFund investment scheme to Innovest's clients.[15] Separately, Innovest also conducted due diligence on WatchFund HK and Mr Dominic Khoo, which included web searches and reference checks.[16]

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12 Mr Gary Wong's AEIC at para 5 (BAEIC at p 407); Mr Dominic Khoo's AEIC at para 4 (BAEIC at p 1415).

13 Mr Jowin Fung's AEIC at para 5 (BAEIC at p 839).

14 Mr Jowin Fung's AEIC at para 5 (BAEIC at p 839).

15 Mr Jowin Fung's AEIC at para 6 (BAEIC at p 840).

16 Mr Jowin Fung's AEIC at para 6 (BAEIC at p 840).

9 Sometime in 2016, Innovest and Mr Dominic Khoo struck a deal for Innovest's clients to invest in the WatchFund investment scheme. At this time, WatchFund SG was the adopted investment vehicle. For the purpose of helping Innovest to refer its clients to the WatchFund investment scheme, Mr Dominic Khoo sent a deck of marketing slides, referred to by the parties as the "2016 Investment Proposal", to Innovest.[17] In 2018, Mr Dominic Khoo further sent an updated copy of the marketing slides (the "2018 Investment Proposal") to Innovest.[18] These 2016 and 2018 marketing slides will be collectively referred to as the "2016 and 2018 Investment Proposals". Relatedly, Mr Dominic Khoo had also sent his curriculum vitae ("CV") to Innovest.[19]

Pre-dispute investment agreements

10 Innovest introduced Mr Wong Ben to the WatchFund investment scheme in 2016. According to Mr Wong Ben, he attended a presentation on the WatchFund investment scheme at Innovest's office, where he was shown the 2016 Investment Proposal and Mr Dominic Khoo's CV.[20] Mr Gary Wong gave evidence that in 2016, he separately met up with Mr Dominic Khoo and Mr Dominic Khoo promoted the WatchFund investment scheme to him.[21] Mr Gary Wong deposed that Mr Dominic Khoo had orally explained the WatchFund investment scheme and also provided the 2016 Investment Proposal to him.[22]

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17 Mr Dominic Khoo's AEIC at paras 41 and 48 (BAEIC at pp 1426 and 1429).

18 Second defendant's Defence (Amendment No 1) dated 29 July 2022 ("2D Defence (Amendment No 1)") at para 16 (SB at p 224).

19 AEIC of Mr Yu Lok Man dated 21 November 2022 ("Mr Leon Yu's AEIC") at paras 5 and 9 (BAEIC at pp 1264 and 1265).

20 Mr Wong Ben's AEIC at paras 6–7 (BAEIC at p 2).

21 Mr Gary Wong's AEIC at para 8 (BAEIC at p 408).

22 Mr Gary Wong's AEIC at para 8 (BAEIC at p 408).

Mr Gary Wong clarified that he liaised with Mr Dominic Khoo personally, and was not a client of Innovest in relation to the WatchFund investment scheme.[23]

11 Mr Wong Ben and Mr Gary Wong thereafter entered into multiple investment agreements with WatchFund SG. These investments are *not* the subject of the present suit, and these pre-dispute investment agreements will be referred to as the "Pre-Dispute IAs". The broad structure of these investment agreements was as follows:[24]

(a) The investor would invest moneys in WatchFund SG.

(b) The investor had to pay an investment fee to WatchFund SG for the investment services provided.

(c) Using the invested moneys, Mr Dominic Khoo, as director of WatchFund SG, would use his connections to purchase luxury watches for the investor, at prices allegedly much lower than their recommended retail prices ("RRPs").

(d) The watches would be held by the investor for an investment period of up to a year (the "Investment Period").

(e) WatchFund SG, before the expiry of the Investment Period, would provide a re-purchase offer to the investor to allow the investor to sell the watches back to WatchFund SG at a profit.

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23 Mr Gary Wong's AEIC at para 9 (BAEIC at p 408).

24 Mr Wong Ben's AEIC at paras 12(a)–(d)(i) (BAEIC at pp 5–6); Mr Gary Wong's AEIC at paras 12(f)–(i)(i) (BAEIC at p 411).

12 Mr Wong Ben entered into four Pre-Dispute IAs between 9 November 2016 and 31 May 2018.[25] He paid amounts ranging from HKD$1,144,500 to HKD$4,279,800 per investment agreement, totalling HKD$10,021,137, to WatchFund SG.[26] As for Mr Gary Wong, he entered into five Pre-Dispute IAs between 31 October 2016 and 22 January 2018.[27] He paid amounts ranging from HKD$1,141,623.20 to HKD$3,258,987.20 per investment agreement, totalling HKD$9,734,620.40, to WatchFund SG.[28]

13 Within the Investment Period, Mr Wong Ben[29] and Mr Gary Wong[30] received notices (referred to by the parties as "recall confirmations") from WatchFund SG to re-purchase the watches, and the watches were delivered by them to WatchFund SG. Mr Wong Ben and Mr Gary Wong testified that these Pre-Dispute IAs were performed and completed.[31]

Disputed investment agreements

14 The investment agreements in dispute in the present suit were entered into from September 2018 to August 2019.

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25 Mr Wong Ben's AEIC at paras 13–15 and 21 (BAEIC at pp 6, 7 and 9).

26 BAEIC at pp 53–66 and pp 73–93.

27 Mr Gary Wong's AEIC at paras 14–19 (BAEIC at pp 412–414).

28 BAEIC at pp 457–489.

29 Mr Wong Ben's AEIC at paras 18 and 21 (BAEIC at pp 8–9).

30 Mr Gary Wong's AEIC at para 54 (BAEIC at p 425).

31 NEs dated 16 May 2023 at p 17, line 11 to p 18, line 4; NEs dated 19 May 2023 at p 87, lines 10–18.

15 According to the plaintiffs, at various times in 2018, Mr Wong Ben,[32] Mr Wong Nga Kok[33] and Dr Edmund Liew[34] attended investment presentations in Innovest's office concerning the WatchFund investment scheme, conducted by Innovest personnel. They allege that the 2018 Investment Proposal and Mr Dominic Khoo's CV were shown at these investment presentations. Mr Gary Wong deposed that he continued to meet with Mr Dominic Khoo separately in late 2018, and that Mr Dominic Khoo gave him the 2018 Investment Proposal and Mr Dominic Khoo's CV.[35] Separately, there is a further investor in the WatchFund investment scheme, Ms Yung Choi Ha ("Ms Yung"), who claims that she was introduced to the WatchFund investment scheme by a company related to Innovest, and that she had dealt through this related company.[36] Ms Yung gave evidence that Mr Jowin Fung and another Innovest employee attended at her office sometime in 2019 to give her a presentation on the WatchFund investment scheme. According to her, the 2018 Investment Proposal and WatchFund HK's website were shown to her at this meeting.[37]

16 The plaintiffs and Ms Yung entered into investment agreements with WatchFund HK. The broad structure of these disputed investment agreements ("Disputed IAs"), which form the subject of this suit, was similar to that of the Pre-Dispute IAs outlined at [11] above.

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32 Mr Wong Ben's AEIC at para 24 (BAEIC at p 10).

33 Mr Wong Nga Kok's AEIC at paras 6–7 (BAEIC at p 669).

34 Dr Edmund Liew's AEIC at paras 6–7 (BAEIC at p 235).

35 Mr Gary Wong's AEIC at para 22 (BAEIC at p 415).

36 AEIC of Ms Yung Choi Ha dated 21 November 2022 ("Ms Yung's AEIC") at para 5 (BAEIC at p 1035).

37 Ms Yung's AEIC at paras 6–7 (BAEIC at p 1035).

17 The plaintiffs assert that after the various Disputed IAs were entered into, Mr Dominic Khoo personally delivered the watches to the respective investors for them to hold for the Investment Period.[38] This is not denied by Mr Dominic Khoo, save that he denies ever meeting Ms Yung.[39]

Closure of WatchFund HK's bank accounts

18 Mr Dominic Khoo gave evidence that on 30 August 2019, WatchFund HK received a letter from its Hong Kong bank ("DBS HK") informing them of the bank's decision to close WatchFund HK's bank accounts on 30 September 2019.[40]

19 According to Mr Jowin Fung, between August and September 2019, cash of approximately S$2m held in WatchFund HK's DBS HK accounts were transferred by Mr Dominic Khoo into his personal bank account.[41]

Re-purchase offers and cancellations

20 The plaintiffs gave evidence that near the end of the Investment Period for the Disputed IAs, either they or Innovest had sent chasers to Mr Dominic Khoo by e-mail and WhatsApp asking for re-purchase offers to be made.[42]

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38 Mr Wong Ben's AEIC at para 55 (BAEIC at p 17); Dr Edmund Liew's AEIC at para 40 (BAEIC at p 245); Mr Gary Wong's AEIC at para 42 (BAEIC at p 420); Ms Yung's AEIC at para 33 (BAEIC at p 1043); Mr Leon Yu's AEIC at paras 26 and 28 (BAEIC at pp 1273–1274).

39 Mr Dominic Khoo's AEIC at paras 12–13 and 37 (BAEIC at pp 1417–1418 and 1424); 2D Defence (Amendment No 1) at para 17 (SB at p 224).

40 Mr Dominic Khoo's AEIC at para 99 and p 465 (BAEIC at pp 1455 and 1878).

41 Mr Jowin Fung's AEIC at para 75 (BAEIC at p 861); Plaintiffs' 4th Supplementary Bundle of Documents dated 12 June 2023 at pp 24–25.

42 Mr Wong Ben's AEIC at para 59 (BAEIC at p 18); Dr Edmund Liew's AEIC at para 44 (BAEIC at p 246); Mr Gary Wong's AEIC at para 46 (BAEIC at p 422); Mr Wong

Between September 2019 and March 2020, Mr Dominic Khoo e-mailed Innovest and Mr Gary Wong with re-purchase offers. Re-purchase offers were made in relation to all the Disputed IAs[43] except for the Disputed IA with Ms Yung.[44] Innovest (on behalf of their clients and MCA Limited) and Mr Gary Wong stated their acceptance of the re-purchase offers.[45]

21 However, Innovest, Mr Gary Wong and Mr Dominic Khoo then got into an apparent dispute as to: (a) whether the respective investors had to pay a sale fee (the "Sale Fee") to WatchFund HK *before* the re-purchase was processed; (b) whether Mr Dominic Khoo was entitled to insist that the Sale Fee be paid to his personal bank account instead of WatchFund HK's corporate bank account without providing an accompanying board resolution from WatchFund HK authorising this mode of payment; and (c) whether WatchFund HK or the investors were responsible for making arrangements to return the watches to WatchFund HK. The dispute was not resolved, and between October 2019 and February 2020, Mr Dominic Khoo e-mailed Innovest and Mr Gary Wong purporting to cancel the re-purchase offers that were made.[46]

Nga Kok's AEIC at para 44 (BAEIC at p 680); Mr Jowin Fung's AEIC at para 41 (BAEIC at p 852); Ms Yung's AEIC at para 38 (BAEIC at p 1044); Ms Christine Wong Yan Kei's AEIC dated 22 November 2022 at para 38 (BAEIC at p 1044); Mr Leon Yu's AEIC at paras 32 and 39 (BAEIC at pp 1275–1276).

43 Statement of Claim (Amendment No 1) at Annex B (SB at pp 198–199).

44 Ms Yung's AEIC at para 41 (BAEIC at p 1045); Mr Leon Yu's AEIC at para 39 (BAEIC at p 1276).

45 Mr Wong Ben's AEIC at para 60 (BAEIC at p 18); Dr Edmund Liew's AEIC at para 45 (BAEIC at p 246); Mr Wong Nga Kok's AEIC at para 45 (BAEIC at p 680); Mr Leon Yu's AEIC at paras 33, 35 and 37 (BAEIC at pp 1275–1276).

46 Mr Gary Wong's AEIC at para 56 (BAEIC at pp 425–426); Mr Leon Yu's AEIC at para 51 (BAEIC at p 1280).

22 The details of the Disputed IAs and the re-purchase offers made are summarised as follows:[47]

This has been left intentionally blank.

[47] Statement of Claim (Amendment No 1) at Annexes A and B (SB at pp 196–199).

Investor	**Date/ Commencement of Investment Period**	**Watches**	**Investment moneys invested by investor ("Investment Cost")**	**Investment fee paid by investor**	**Total amount paid to WatchFund HK**	**Date re-purchase offer was made**	**Date re-purchase offer was stated to be accepted**	**Re-purchase price offered ("Sale Price")**
Mr Wong Ben	30 November 2018	Celsius GMT Piece Unique	HKD 1,407,600	HKD 124,080	HKD 2,605,680	30 December 2019	2 January 2020	HKD 1,562,436
		Tag Heuer MikroTourbillons	HKD 1,074,000			30 December 2019	2 January 2020	HKD 1,192,140
Dr Edmund Liew	30 November 2018	Panerai Radiomir GMT RG	HKD 539,000	HKD 96,750	HKD 2,031,750	30 December 2019	3 January 2020	HKD 598,290
		H. Moser & Cie SAW MR	HKD 946,500			30 December 2019	3 January 2020	HKD 1,050,615

		Romain Jerome Moon Orbiter Steel	HKD 449,500			30 December 2019	3 January 2020	HKD 498,945
Mr Gary Wong	7 December 2018	Rudis Sylva RS 16 1/1	HKD 1,082,000	HKD 15,620	HKD 5,911,328	6 December 2019	6 December 2019	HKD 1,201,020
		Breguet Tourbillon Ref. 3657 RG	HKD 480,000			6 December 2019	6 December 2019	HKD 532,800
	6 March 2019	Corum Admiral's Cup Minute Repeating Tourbillon Ti 2478	HKD 1,239,000	HKD 27,018		8 January 2020	8 January 2020	HKD 1,375,290
		Hautlence Moebius Ti 2438	HKD 1,462,800			8 January 2020	8 January 2020	HKD 1,623,708

	13 September 2018	Jaeger Le Coultre Master Antoine LeCoultre Minute Repeater Skeleton LE of 175 RG	HKD 710,500	HKD 15,890		8 September 2019	8 September 2019	HKD 900,000
		Ulysse Nardin Forgerons YG	HKD 878,500			8 September 2019	8 September 2019	HKD 1,128,000
Mr Wong Nga Kok	6 November 2018	Girard Perregaux Skeleton Minute Repeater Piece Unique PT	HKD 1,556,000	HKD 96,900	HKD 2,034,900	30 December 2019	3 January 2020	HKD 1,727,160
		Maitres Du Temps Chapter 3 Piece Unique RG	HKD 382,000			30 December 2019	3 January 2020	HKD 424,020
MCA Limited	8 March 2019	Zenith Academy Open Repetition Minutes WG	USD 125,000	USD 9,781	USD 205,401	4 March 2020	5 March 2020	USD 138,750

		Bulgari Diagono Tourbillion PVD PT	USD 70,620			4 March 2020	5 March 2020	USD 78,388.20
	9 August 2019*	De Bethune Kind of Blue DW1 Piece Unique Revolving Moon	RMB 1,239,000	RMB 97,175	RMB 2,040,675	NIL	NA	NA
		Moritz Grossmann Benu Tourbillon Piece Unique 3-Minute Tourbillon	RMB 704,500			NIL	NA	NA

*Investment Agreement assigned to MCA Limited by Ms Yung on 28 August 2020 (see [23] below).

Preparing for the present suit

23 Mr Wong Ben, Mr Wong Nga Kok and Dr Edmund Liew authorised Innovest to deal with the defendants on their behalf in resolving this dispute.[48] As for Ms Yung, she assigned her rights and interests under her Disputed IA dated 22 August 2019 to MCA Limited, and handed over the watches under that investment agreement to MCA Limited.[49] She was paid RMB2,200,000 by MCA Limited in consideration for the assignment.[50]

Issues

24 The plaintiffs have brought three broad claims, giving rise to the following issues:

(a) Firstly, are the defendants liable for fraudulent and/or negligent misrepresentation in relation to the Disputed IAs?

(b) Secondly, are the defendants liable for breach of contract in relation to the Disputed IAs?

(c) Thirdly, in the event that liability is found on the part of WatchFund HK for either, or both, of the claims in (a) and (b) above, should the corporate veil be lifted to render Mr Dominic Khoo liable for the liabilities of WatchFund HK?

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48 Mr Wong Ben's AEIC at para 32 (BAEIC at p 12); Dr Edmund Liew's AEIC at para 18 (BAEIC at p 240); Mr Wong Nga Kok's AEIC at para 18 (BAEIC at p 674).

49 Mr Jowin Fung's AEIC at para 81 (BAEIC at p 862); Ms Yung's AEIC at para 57 (BAEIC at p 1050).

50 Mr Jowin Fung's AEIC at para 82 (BAEIC at pp 862–863); Ms Yung's AEIC at para 58 (BAEIC at p 1050).

Claims for fraudulent and/or negligent misrepresentation

Parties' cases

Plaintiffs' case

25 The plaintiffs claim that the defendants had made a series of representations to the plaintiffs fraudulently and/or negligently, and have thereby committed the torts of fraudulent and/or negligent misrepresentation.[51] In this regard, they assert two main sets of alleged misrepresentations.

26 The first set of alleged misrepresentations is referred to as the "Documentary Representations".[52] These comprise representations made in the 2016 and 2018 Investment Proposals, online interviews given by Mr Dominic Khoo to news outlets, WatchFund HK's website and Mr Dominic Khoo's CV.[53] The contents of these representations are summarised below at [45].

27 The plaintiffs submit that the 2016 and 2018 Investment Proposals were prepared by Mr Dominic Khoo, who then provided them to Innovest, Mr Gary Wong and MCA Limited's representatives.[54] Mr Dominic Khoo had also provided his CV to Innovest via e-mail.[55] It is the plaintiffs' submission that Mr Dominic Khoo had sent copies of the 2016 and 2018 Investment Proposals and his CV to Innovest with the intention that Innovest would share these documents with its clients for the purpose of inducing them to invest in the WatchFund

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51 Plaintiffs' Closing Submissions dated 25 August 2023 ("PCS") at paras 3–46.

52 PCS at para 5.

53 Statement of Claim (Amendment No 1) at paras 18–23 and 27 (SB at pp 153–161); PCS at para 5.

54 PCS at para 7.

55 PCS at para 10.

investment scheme.[56] Thereafter, Innovest had shared the 2016 and 2018 Investment Proposals, Mr Dominic Khoo's CV and WatchFund HK's website with Mr Wong Ben, Dr Edmund Liew, Mr Wong Nga Kok and Ms Yung to market the WatchFund investment scheme.[57]

28 The second set of alleged misrepresentations are referred to as "Oral Representations".[58] The contents of these representations are set out below at [46]. The plaintiffs claim that these Oral Representations were made by Mr Dominic Khoo when he met the plaintiffs and Ms Yung to deliver their watches to them after they had executed their Disputed IAs with WatchFund HK.[59] In addition, for Mr Gary Wong and MCA Limited, the plaintiffs pleaded that the Oral Representations were also made by Mr Dominic Khoo *before* they executed their Disputed IAs, when Mr Dominic Khoo met Mr Gary Wong and MCA Limited's representatives.[60] I note that in the plaintiffs' closing and reply submissions, they attempted to shift away from their pleaded case by submitting that the Oral Representations were also made to Mr Wong Ben and Dr Edmund Liew *before* they entered into their Disputed IA.[61] This account is not pleaded.[62] In the interest of fairness, I hold the plaintiffs to the case that they have pleaded.

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56 PCS at para 17.

57 PCS at paras 17 and 18.

58 Statement of Claim (Amendment No 1) at para 26 (SB at pp 160–161); PCS at para 27.

59 Statement of Claim (Amendment No 1) at paras 24 and 25 (SB at p 160); PCS at para 26(a).

60 Statement of Claim (Amendment No 1) at para 25 (SB at p 160).

61 PCS at paras 26(b) and 28; PRS at paras 23–24.

62 Statement of Claim (Amendment No 1) at paras 24–26 (SB at p 160).

Defendants' case

29 The defendants argue that the plaintiffs have failed to prove that the defendants made the Documentary and Oral Representations to the plaintiffs and Ms Yung, or that these representations were fraudulent or negligent.[63]

30 The defendants argue that the Documentary Representations were not made by the defendants to the plaintiffs or Ms Yung.[64] This is because the 2016 and 2018 Investment Proposals and Mr Dominic Khoo's CV were never sent directly to the plaintiffs or Ms Yung by the defendants.[65] The defendants also assert that there is no proof that the 2016 and 2018 Investment Proposals were prepared by the defendants,[66] and that Innovest or its affiliates may have created their own presentation decks on the WatchFund investment scheme.[67]

31 Moreover, the defendants contend that the plaintiffs have not proven that they had relied on or were induced by the Documentary Representations to enter into the Disputed IAs.[68]

32 In relation to the content on WatchFund HK's website, the defendants contend that there is no evidence that the defendants showed the plaintiffs or Ms Yung the said website to induce them to execute the Disputed IAs.[69] The plaintiffs and Ms Yung had either searched and found the website on their own

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63 Defendants' Closing Submissions ("DCS") dated 25 August 2023 at para 30.

64 DCS at para 37.

65 DCS at paras 38 and 39; Defendants' Reply Submissions ("DRS") dated 22 September 2023 at para 12.

66 DCS at para 38.

67 DCS at para 42.

68 DCS at para 54; DRS at paras 14–16.

69 DCS at para 45.

accord or received the link from Innovest's representatives.[70] As for the online interviews given by Mr Dominic Khoo to media organisations, the defendants submit that the plaintiffs' evidence in this regard was bereft of details.[71]

33 Specifically concerning the Oral Representations, the defendants contend that these could not be relevant for the claim of misrepresentation mounted by Mr Wong Ben, Mr Wong Nga Kok and MCA Limited (as Ms Yung's assignee), as Mr Dominic Khoo only met Mr Wong Ben and Mr Wong Nga Kok *after* they had executed their Disputed IAs.[72] Ms Yung had also confirmed that she had never met Mr Dominic Khoo prior to the execution of her Disputed IA.[73] The defendants argue that Mr Wong Ben and Mr Gary Wong could not have relied on the Oral Representations, as they had decided to invest with WatchFund HK on their own accord due to the successful investments they previously had with WatchFund entities.[74]

34 The defendants also argue that the plaintiffs and Ms Yung conducted their own due diligence on the WatchFund investment scheme,[75] and that if the plaintiffs and/or Innovest as their investment manager had failed to appreciate certain information, there would be a break in the chain of causation which absolved the defendants of liability.[76]

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70 DCS at para 44.

71 DCS at paras 47–48.

72 DCS at para 52.1.

73 DCS at para 52.2.

74 DCS at para 52.5.

75 DCS at para 55.

76 DCS at paras 58–59.

35 Even if the Oral and Documentary Representations were made, the defendants submit that the plaintiffs have failed to demonstrate how the representations were fraudulent and/or negligent misrepresentations.[77] In particular, the defendants point out that Mr Wong Ben's own evidence was that Mr Dominic Khoo had made similar oral representations to him in relation to the Pre-Dispute IAs.[78] Hence, Mr Wong Ben's decision to invest with WatchFund HK after successfully reaping the benefits of his previous investments means that the "similar" Oral Representations which were made to Mr Wong Ben are not fraudulent and/or negligent.[79]

36 The defendants object to the plaintiffs' submission that the defendants failed to provide brand new watches,[80] as this was not pleaded by the plaintiffs.[81]

37 The defendants further contend that the plaintiffs and Ms Yung failed to prove the falsity of the representations regarding the RRPs of the watches, and that the plaintiffs have failed to prove that they suffered loss from the defendants' alleged wrongdoing.[82] They emphasised that the plaintiffs have tendered only two Excel sheets and unverified WhatsApp messages as proof of their alleged loss.[83] In this regard, the defendants highlighted that on 23 November 2022, they had filed a Notice of Non-Admission to the first Excel sheet presented by the plaintiffs as evidence of their loss, on the basis that the

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77 DCS at para 30; DRS at para 23.

78 DRS at para 24.

79 DRS at para 24.

80 DRS at para 37.

81 DRS at para 39.

82 DCS at para 66.

83 DCS at para 69.

maker of the Excel sheet would not be testifying.[84] The defendants hence argue that the plaintiffs had ample opportunity to rectify this deficiency but chose not to do so.[85]

38 The defendants assert that they have, in contrast, provided evidence that the RRPs of the watches in dispute exceed the respective Investment Cost and are in fact nearly twice the Investment Cost warranted.[86] According to the defendants, these RRPs can be easily found if one had tried to do so, and the figures must be credible, as third-party websites can be subject to legal proceedings if such RRPs are misrepresented.[87]

The law

39 The elements of the tort of fraudulent misrepresentation are undisputed,[88] and were restated in *IM Skaugen SE and another v MAN Diesel & Turbo SE and another* [2018] SGHC 123 ("*IM Skaugen SE*") at [121], citing *IM Skaugen SE and another v MAN Diesel & Turbo SE and another* [2016] SGHCR 6 ("*IM Skaugen SE (SGHCR)*") at [65], which in turn referred to the Court of Appeal decision in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14], as follows:

(a) There must be a representation of fact made by words or conduct;

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84 DCS at para 23.

85 DCS at para 23.

86 DCS at para 69.

87 DCS at para 79.

88 PCS at para 3; DCS at para 32.

(b) The representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff (*ie*, there must be inducement);

(c) It must be proved that the plaintiff had acted upon the false statement (*ie*, there must be reliance);

(d) It must be proved that the plaintiff 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.

40 Given the gravity of the allegation of fraud, a relatively high standard of proof is required for the court to be satisfied that fraudulent misrepresentation is established. Hence, "cogent evidence" is required (*Fuji Xerox Singapore Pte Ltd v Mazzy Creations Pte Ltd and others* [2021] SGHC 193 ("*Fuji Xerox*") at [50]).

41 The elements of the tort of negligent misrepresentation are also undisputed.[89] These elements were restated in *IM Skaugen SE* at [121], citing *IM Skaugen SE (SGHCR)* at [66], which in turn referred to the Court of Appeal decisions of *Fong Maun Yee and another v Yoong Weng Ho Robert* [1997] 1 SLR(R) 751 at [52] and S*pandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100, as follows:

(a) The defendant must have made a false representation of fact;

(b) The representation induced actual reliance;

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89 PCS at para 4; DCS at para 33.

(c) The defendant must owe a duty of care;

(d) There must be a breach of that duty of care; and

(e) The breach must have caused damage to the plaintiff.

42 For a statement to constitute an actionable misrepresentation, it must be a statement of a present fact. This would exclude statements as to future intention, predictions, statements of opinion or belief, sales puffs, exaggerations and statements of law (*Deutsche Bank AG v Chang Tse Wen* [2013] 1 SLR 1310 ("*Deutsche Bank AG*") at [93]).

Analysis

43 In my judgment, the plaintiffs' claims for fraudulent and/or negligent misrepresentation must fail. The torts of fraudulent misrepresentation and negligent misrepresentation share these common elements: (a) a false representation of fact; (b) inducement and reliance; and (c) damage to the plaintiff (see *IM Skaugen SE* at [122]–[123] and [127]). In this case, the plaintiffs have failed to prove elements (a) and (c), in that the plaintiffs have not established on the balance of probabilities that the defendants had made *false* representations of fact or that the plaintiffs had suffered damage. This leaves the plaintiffs' claims for misrepresentation dead in the water.

What are the alleged representations put in issue?

44 Before I examine the merits of the plaintiffs' case on the alleged representations, I first consider *which* alleged representations were put in issue by the plaintiffs. It is trite that pleadings "delineate the parameters of the case" and "define the issues before the court and inform the parties of the case that they have to meet". Parties are, therefore, "bound by their pleadings and the

court is precluded from deciding on a matter that the parties themselves have decided not to put into issue" (*V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [36] and [38]).

45 In their closing submissions, the plaintiffs submit that they and Ms Yung had relied on all the Documentary Representations, and in particular, the following:[90]

(a) Mr Dominic Khoo had close connections with luxury watch manufacturers, brands, retailers and distributors, such that he could purchase watches from them when others could not (the "Documentary Close Connections Representation").

(b) With these close connections, Mr Dominic Khoo could buy high-end luxury watches retailing at twice the Investment Cost, such that the watches were held by investors as double-collateral (the "Documentary Double-Collateral Representation").

(c) WatchFund HK "would purchase the investors' watches at more than 50% discount off the current published recommended retail price" (the "50% Discount Representation").

(d) Investors "will receive" an e-mail from WatchFund HK within one year of entering into the investment agreements to sell the watches at a net profit (the "One Year Sale Representation").

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90 PCS at para 6.

46 In addition, the plaintiffs submit that Mr Dominic Khoo had made the following Oral Representations to them and Ms Yung:[91]

(a) Mr Dominic Khoo was a luxury watch expert; he was only one of four qualified luxury watch experts in Asia, a shareholder of four Swiss watchmakers and had previously worked for the renowned Antiquorum auction house (the "Luxury Watch Expert Representation").

(b) Due to the connections from Mr Dominic Khoo's aforesaid positions, he was able to obtain luxury watches at lower prices for his investors to profit when the watches were later sold to buyers under the WatchFund investment scheme run by him (the "Oral Close Connections Representation").

(c) The watches which were purchased by Mr Dominic Khoo using the investors' money and delivered to each of the investors for them to hold had RRPs of at least double the amount of money invested by each of the investors with WatchFund HK (the "Oral Double-Collateral Representation").

(d) Mr Dominic Khoo had a network and connections, and a long waiting list of buyers to purchase the watches obtained by the investors under his WatchFund investment scheme (the "Many Buyers Representation").

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91 PCS at para 27.

(e) If Mr Dominic Khoo did not have a buyer for a watch, he would not use the investors' money to buy the watch for the investors to hold first (the "Ready Buyer Representation").

47 In the plaintiffs' closing submissions, they further allege that the defendants had represented that the watches would be purchased brand-new (the "Brand-New Watches Representation")[92] and that the watches would be bought from the actual watch manufacturers, brands, distributors or retailers (the "Source Representation").[93]

48 The Brand-New Watches Representation and the Source Representation are, however, not pleaded by the plaintiffs. As regards the former, simply reproducing the terms of the Disputed IAs does not suffice. Paragraph 42 of the plaintiffs' Statement of Claim is the only paragraph mentioning the delivery of the watches in "brand-new condition" *via* a reproduction of clause 4.1 of the Disputed IAs. Clause 4.1 states that WatchFund HK "warrant[ed] that the timepieces are genuine products of the corresponding manufacturer, and delivered in a brand-new condition".[94] However, paragraph 81 of the Statement of Claim makes it clear that the plaintiffs' pleaded representations do *not* include paragraph 42 of the Statement of Claim.[95] Similarly, the Source Representation is not pleaded. In fact, there is no mention at all in the Statement of Claim that the watches would be purchased from "manufacturers, brands, distributors or retailers". As the plaintiffs have not pleaded either representation as part of their case, they are precluded from relying on them.

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92 PCS at paras 40 and 45(ii)–(iv).

93 PCS at paras 40 and 45(ii)–(iii).

94 Statement of Claim (Amendment No 1) at para 42 (SB at p 174).

95 Statement of Claim (Amendment No 1) at para 81 (SB at p 189).

49 I turn to consider the alleged representations pleaded by the plaintiffs.

Were the pleaded representations made by the defendants and relied upon by the plaintiffs?

(1) Documentary Representations

50 I first consider the Documentary Representations. The defendants do not dispute that the *contents* of the Documentary Representations were contained in the 2016 and 2018 Investment Proposals and Mr Dominic Khoo's CV.[96] It is helpful at this juncture to set out *where* precisely each representation is found.

51 The Documentary Close Connections Representation can be found in the following statements in the following documents:

(a) 2016 Investment Proposal:[97]

> Why [The Watch Fund ("TWF")] Succeeds
>
> - TWF is connected at the highest levels and has the ability to get into the queue before others do. For most of these pieces – it is not even just a question of having the money – but the *access*.
> - Timepieces that are unattainable by mere mortals – with limited editions sometimes produced in quantities as low as one, certain timepieces/prototypes may not even make it to catalogues/magazines/shop windows. TWF through its worldwide connections has the ability to acquire such pieces.
> - TWF has the ability through its partners and associates to purchase many brands/timepieces at prices lower than any place else in the world.

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96 1D Defence (Amendment No 1) at para 14 (SB at p 205); 2D Defence (Amendment No 1) at paras 13 and 16 (SB at pp 223 and 224).

97 Agreed Bundle of Documents dated 8 May 2023 ("ABOD") at p 8.

(b) 2018 Investment Proposal:[98]

> What is an investment grade watch?
>
> **Two types:**
>
> - A watch that money cannot buy
> - A watch you buy at a price others cannot get
>
> …
>
> How does The Watch Fund work?
>
> …
>
> STEP 01 You invest $1m, we give you investment grade pieces retailing at $2m or more watches.
>
> …

(c) Mr Dominic Khoo's CV:[99]

> **Extremely well-connected** – First name basis with watch retail chain owners, website owners, magazine owners, Swiss watch manufacture CEOs and master watchmakers in Europe. Uses these connections to purchase watches at unparalleled prices making The Watch Fund the largest watch investment vehicle in the world, also with the highest returns.

52 The Documentary Double-Collateral Representation and the 50% Discount Representation can be found in the following statements in the following documents:

(a) 2016 Investment Proposal:[100]

> …
>
> only alt. investment vehicle where investors possess 2x collateral and use from day 1
>
> …

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98 ABOD at pp 24 and 27.

99 ABOD at p 1.

100 ABOD at pp 10 and 11.

- Average performance is 20-30% annualized with 2x physical collateral – beating almost all stocks, funds, bonds, properties.
- Optional 10% annualized guaranteed returns for investors – secured by possession of a watch retailing at 2x the investment cost. Highest guaranteed secured investment returns.

(b) 2018 Investment Proposal:[101]

05 Optional 10% annualized guaranteed returns for investors – secured by possession of a watch retailing at 2x the investment cost. Highest guaranteed secured investment returns.

06 Still the only watch investment vehicle in the world that allows investors to hold double collateral themselves from day one.

…

How does The Watch Fund work?

…

Step 01 You invest $1m, we give you investment grade pieces retailing at $2m or more watches.

…

What sort of returns?

Bear in mind, if you invest $1,000,000 – **you're getting $100,000 free money** every year whilst you're holding watches **retailing at $2,000,000 or more**

…

[emphasis in original]

(c) Mr Dominic Khoo's CV:[102]

101 ABOD at pp 23, 27 and 29.

102 ABOD at p 3.

> …
>
> The only alternative investment vehicle in which investors hold and use 2-3x investment / collateral from day one

53 The One Year Sale Representation can be found in the following statements in the 2018 Investment Proposal:[103]

> How does The Watch Fund work?
>
> …
>
> STEP 02 You keep/hold/store these watches yourself. Don't scratch / damage / lose them!
>
> STEP 03 We email you within a year with an offer to sell at a net profit
>
> …

54 Based on the evidence before me, I am persuaded that the pleaded representations were made by the defendants and relied upon by the plaintiffs and Ms Yung. The plaintiffs and Ms Yung have all given evidence that they had seen and relied on the Documentary Representations when entering into the Disputed IAs. Mr Wong Ben, Dr Edmund Liew and Mr Wong Nga Kok gave evidence that they had relied on the written representations found in, *inter alia*, the 2018 Investment Proposal, Mr Dominic Khoo's CV, online interviews and WatchFund HK's website in entering into the Disputed IAs.[104] Mr Gary Wong and Mr Jowin Fung (who was one of MCA Limited's representatives for entering into MCA Limited's Disputed IA)[105] gave evidence that they had relied on, *inter alia*, the written representations found in the 2016 and 2018 Investment Proposals, online interviews and WatchFund HK's website when entering into

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103 ABOD at p 27.

104 Mr Wong Ben's AEIC at para 30 (BAEIC at p 12); Dr Edmund Liew's AEIC at para 15 (BAEIC at p 239); Mr Wong Nga Kok's AEIC at para 15 (BAEIC at p 673).

105 Mr Jowin Fung's AEIC at p 97 (BAEIC at p 934).

the Disputed IAs.[106] Ms Yung gave evidence that she relied on, *inter alia*, the written representations found in the 2018 Investment Proposal, online interviews and WatchFund HK's website when entering into her Disputed IA.[107] The plaintiffs and Ms Yung further affirm that WatchFund HK's website repeated the written representations found in WatchFund HK's 2018 Investment Proposal.[108] Mr Wong Ben and Mr Gary Wong, who had seen the 2016 Investment Proposal, also gave evidence that WatchFund HK's website repeated the written representations found in WatchFund HK's 2016 Investment Proposal.[109]

55 Further, I note that the contents of the Documentary Representations were from sources emanating from the defendants, such as the 2016 and 2018 Investment Proposals, the WatchFund HK website, Mr Dominic Khoo's CV and online interviews that the plaintiffs assert they had seen. I note further that the contents of the Documentary Representations are in the same nature as the Oral Representations, and consistent with the sales pitch for WatchFund HK. I also have no reason to doubt the broadly consistent stance taken by the plaintiffs' witnesses in relation to the representations that were made to them as part of the promotion of the WatchFund investment scheme. Accordingly, I find that the defendants had made the Documentary Representations to the plaintiffs and Ms

106 Mr Gary Wong's AEIC at para 31 (BAEIC at p 418); Mr Jowin Fung's AEIC at para 24 (BAEIC at p 848).

107 Ms Yung's AEIC at para 14 (BAEIC at p 1038).

108 Mr Wong Ben's AEIC at para 28 (BAEIC at p 11); Dr Edmund Liew's AEIC at para 13 (BAEIC at p 238); Mr Gary Wong's AEIC at para 28 (BAEIC at p 417); Mr Wong Nga Kok's AEIC at para 13 (BAEIC at p 672); Mr Jowin Fung's AEIC at para 18 (BAEIC at p 846); Ms Yung's AEIC at para 11 (BAEIC at p 1037).

109 Mr Wong Ben's AEIC at para 28 (BAEIC at p 11); Mr Gary Wong's AEIC at para 28 (BAEIC at p 417).

Yung, and that the plaintiffs and Ms Yung had relied on them when entering into the Disputed IAs.

(A) WHETHER *DIRECT* TRANSMISSION OF REPRESENTATIONS TO REPRESENTEE IS REQUIRED

56 The defendants' rebuttal is that the 2016 and 2018 Investment Proposals were "given to Innovest as marketing materials for Innovest to refer clients to The WatchFund" and were not sent directly by WatchFund HK or Mr Dominic Khoo himself to the plaintiffs or Ms Yung.[110] This argument of the defendants is misconceived. As noted by the court in *United Overseas Bank Ltd v Lippo Marina Collection Pte Ltd and others* [2023] 4 SLR 202 at [109], citing Gary Chan Kok Yew & Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) at para 14.016, the false representation need not be made directly to the plaintiff "[as] long as the defendant intended the misrepresentation to be communicated to the plaintiff, through a third party". This conclusion was not disturbed on appeal.

57 In this present matter, it is Mr Dominic Khoo's own evidence that the 2016 and 2018 Investment Proposals were given to Innovest "as marketing materials for Innovest to refer clients to The WatchFund".[111] He also confirmed on the stand that his CV and WatchFund HK's website were provided to Innovest for a similar purpose.[112] The necessary inference is that WatchFund HK and Mr Dominic Khoo had intended for Innovest to convey the Documentary Representations to Innovest's clients, such as the plaintiffs and Ms Yung, so that they could be persuaded and induced to enter into the Disputed

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110 Mr Dominic Khoo's AEIC at paras 41, 42 and 48 (BAEIC at pp 1426, 1427 and 1429).

111 Mr Dominic Khoo's AEIC at para 48 (BAEIC at p 1429).

112 NEs dated 14 July 2023 at p 3, lines 2–12, read with p 5, line 21 to p 6, line 16.

IAs. As for the representations found on WatchFund HK's website, whether the website was accessed by the plaintiffs and Ms Yung themselves, or shown to them by Innovest or by the defendants, the outcome is no different since those representations were made to the world at large, including the plaintiffs and Ms Yung.

(B) WHETHER INNOVEST MADE THEIR OWN MARKETING MATERIALS FOR THE WATCHFUND INVESTMENT SCHEME

58 The defendants pleaded that Innovest had created their own separate set of presentation slides concerning the WatchFund investment scheme, which Innovest used when marketing the scheme to its investors.[113] On the defendants' case, this meant that it was *Innovest*, and not the defendants, that made the representations regarding the WatchFund investment scheme to the investors. The defendants adduced in evidence two sets of slides *after* the commencement of the trial. The first set of "WClub slides"[114] were slides that were provided by the defendants to their counsel.[115] The plaintiffs did not object to their authenticity and contents.[116] The second set – known as the "Chinese slides"[117] – were slides that had been disclosed by the claimant in HC/OC 184/2022 *Tse Siu Hang v The WatchFund Limited & Anor*.[118] The defendants rely on the Chinese slides only for context, to show that Innovest had prepared its own marketing materials in relation to the WatchFund investment scheme beyond

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113 1D Defence (Amendment No 1) at para 13 (SB at pp 88–89); 2D Defence (Amendment No 1) at para 12 (SB at p 62).

114 Defendants' Supplementary Bundle of Documents dated 15 May 2023 at pp 96–112.

115 NEs dated 18 May 2023 at p 7, lines 2–16.

116 Minute Sheet dated 25 May 2023.

117 Defendants' 2nd Supplementary Bundle of Documents dated 17 May 2023 at pp 105–117.

118 NEs dated 18 May 2023 at p 15, line 6 to p 16, line 1.

what the defendants had supplied to Innovest, and not for their content.[119] The plaintiffs did not object to the Chinese slides being used for cross-examination on that basis.[120] However, the plaintiffs assert, in rebuttal, that Innovest did not create a separate version of WatchFund HK's slides for distribution or presentation to their clients.[121] The plaintiffs gave evidence that the WClub slides never went beyond the draft stage and were never shown to Innovest's clients.[122]

59 There is no evidence before me that the WClub slides or the Chinese slides were used to market the WatchFund investment scheme to the plaintiffs or Ms Yung. According to Mr Jowin Fung, the WClub slides were never shown to anyone except Innovest's internal staff,[123] as these were draft slides that were not yet ready for presentation to clients.[124] As for the Chinese slides, he testified that these were the mandarin translations of the WClub slides,[125] which were also not yet ready for use.[126] During cross-examination, the first to fourth plaintiffs denied seeing the WClub slides prior to trial,[127] Mr Wong Ben and Dr Edmund Liew further testified that they had not seen the Chinese slides prior to trial, while Ms Yung stated that she could not remember if the Chinese slides

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119 NEs dated 18 May 2023 at p 9, line 21 to p 10, line 20.

120 NEs dated 18 May 2023 at p 16, lines 3–13.

121 PRS at para 16.

122 NEs dated 17 May 2023 at p 59, lines 16–24 and p 79, lines 3–18.

123 NEs dated 17 May 2023 at p 59, lines 16–24.

124 NEs dated 17 May 2023 at p 79, lines 3–18.

125 NEs dated 18 May 2023 at p 99, lines 2–10.

126 NEs dated 18 May 2023 at p 99, lines 11–19.

127 NEs dated 19 May 2023 at p 100 line 15 to p 101, line 1; NEs dated 23 May 2023 at p 95 line 6 to p 96 line 12; NEs dated 16 May 2023 at p 65, lines 9–22; NEs dated 16 May 2023 at p 72, line 25 to p 73, line 5; NEs dated 25 May 2023 at p 84 lines 1–19.

were the slides used when Innovest representatives gave the presentation on the WatchFund investment scheme to her.[128]

60 Even taking the defendants' case at its highest and assuming that the slides were used, the defendants have not shown how the contents of those slides were different from the contents of the 2016 and 2018 Investment Proposals. The defendants' claim that Innovest, and not the defendants, made the representations to the plaintiffs and Ms Yung, is therefore without merit.

(2) Oral Representations

61 The Oral Representations can be dealt with quite swiftly. Based on the plaintiffs' pleaded case, Mr Wong Ben, Dr Edmund Liew, Mr Wong Nga Kok and Ms Yung could not have relied on Mr Dominic Khoo's Oral Representations because Mr Dominic Khoo had only met them *after* they executed their Disputed IAs with WatchFund HK.[129] Hence, the plaintiffs' claims in fraudulent and/or negligent misrepresentation cannot succeed on this basis as there could not have been any reliance on the Oral Representations.

62 As for Mr Gary Wong and Mr Jowin Fung (a representative of MCA Limited), the evidence, when viewed as a whole, suggests that it is likely true on a balance of probabilities that the Oral Representations were made to them as part of Mr Dominic Khoo's spiels about the WatchFund investment scheme, and that they had relied on these Oral Representations in entering into the

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128 NEs dated 19 May 2023 at p 110 line 24 to p 111, line 2; NEs dated 23 May 2023 p 99, line 22 to p 100, line 10; NEs dated 19 May 2023 at p 16, lines 1–4.

129 Statement of Claim (Amendment No 1) at para 24 (SB at p 160); PCS at para 26(b); PRS at paras 23–24 and 27.

Disputed IAs. While Mr Dominic Khoo denies having made the Oral Representations to any of the plaintiffs,[130] his denial is unconvincing.

63 For one thing, Mr Dominic Khoo admits to having known Mr Gary Wong and Mr Jowin Fung since 2015, long before the Disputed IAs were entered into.[131] Both Mr Gary Wong and Mr Jowin Fung gave evidence that Mr Dominic Khoo had made the Oral Representations to Mr Gary Wong and to MCA Limited's representatives before their Disputed IAs were entered into.[132] Mr Gary Wong further gave evidence that representations with similar content to the Oral Representations were made to him by Mr Dominic Khoo sometime in 2016, prior to Mr Gary Wong entering into his Pre-Dispute IAs.[133]

64 Notably, the Oral Representations are amply corroborated by WatchFund HK's written marketing materials. The Oral Close Connections Representation and the Oral Double-Collateral Representation are materially similar to the Documentary Close Connections Representation and the Documentary Double-Collateral Representation respectively. The Luxury Watch Expert Representation is corroborated by the 2016 Investment Proposal, which touts Mr Dominic Khoo as the "[o]nly certified watch expert in Southeast Asia", with "[y]ears of experience with world's biggest watch auction house *Antiquorum*".[134] The Many Buyers Representation is also corroborated by the 2016 Investment Proposal, which emphasises that the WatchFund investment scheme has a "[g]lobal network of manufacturers, distributors, dealers and

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130 NEs dated 14 July 2023 at p 9, lines 14–22.

131 Mr Dominic Khoo's AEIC at paras 4–5 (BAEIC at p 1415).

132 Mr Gary Wong's AEIC at paras 12 and 26 (BAEIC at pp 410–412 and 417); Mr Jowin Fung's AEIC at paras 20–21 (BAEIC at p 847).

133 Mr Gary Wong's AEIC at paras 12–13 (BAEIC at pp 410–412).

134 ABOD at p 17.

customers"[135] and sells watches to "a database of more than 9,000 shoppers and collectors (people who aren't looking for returns)".[136] In the same vein, in the 2018 Investment Proposal, it is stated that the watches that were under the investment scheme were "Queue-cutting watches (e.g. 200 piece limited edition, 5000 people queuing)".[137] I therefore find, on the balance of probabilities, that the Oral Representations were made to Mr Gary Wong and Mr Jowin Fung (as MCA Limited's representative) as part of the defendants' efforts to promote the WatchFund investment scheme, and that the Oral Representations were relied upon by Mr Gary Wong and Mr Jowin Fung. But the fact that the pleaded representations were made does not dispose of the issue of whether the defendants are liable for fraudulent and/or negligent misrepresentation. The plaintiffs have to prove all the elements of the tort (see [39] and [41] above) in order to succeed.

Were the pleaded representations false representations of fact?

65 The burden lies on the plaintiffs to establish misrepresentation (*Fuji Xerox* at [50], citing *Trans-World (Aluminium) Ltd v Cornelder China (Singapore)* [2003] 3 SLR(R) 501 at [29]). It is incumbent on the plaintiffs to adduce proof that the defendants have made *false* representations of fact. The plaintiffs have, however, produced no evidence to demonstrate the falsity of the representations that underlie their case.

66 In their closing submissions, the plaintiffs specifically submit that the representations made by the defendants were false in that:[138]

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135 ABOD at p 6.

136 ABOD at p 7.

137 ABOD at p 26.

138 PCS at para 45.

(a) The watches under the Disputed IAs did not have current or published RRPs at least double the Investment Cost; the watches were not held by the plaintiffs and Ms Yung as double collateral.

(b) The watches were not purchased new from manufacturers, brands, distributors or retailers.

(c) The watches were purchased from the second-hand market.[139]

(d) The watches were not purchased in brand-new condition and did not have box and papers.

(e) The watches did not have current or published RRPs which were higher than the Investment Cost.

(f) The watches had current published retail prices lower than the Investment Cost.

(g) The defendants' offers to re-purchase the plaintiffs' watches were illusory and intended to evade legal obligations.

67 As stated above at [48], the plaintiffs have failed to plead the Brand-New Watches Representation and the Source Representation as part of their misrepresentation claims, and are therefore precluded from relying on them. It will be highly prejudicial to the defendants if the plaintiffs are allowed to belatedly bring items (b), (c) and (d) in their closing submissions as the defendants would be deprived of the opportunity to lead evidence in their defence to address these allegations. Items (a), (e) and (f) relate to the Documentary Double-Collateral Representation, Oral Double-Collateral Representation and 50% Discount Representation, and these will be considered

139 PCS at paras 41–42.

below. Item (g) relates to the One Year Sale Representation, which will also be considered below.

68 As a preface to the analysis below, I observe that the manner in which the plaintiffs have framed their case requires them to prove multiple negatives in order to demonstrate the falsity of the representations that were made to them by the defendants. The plaintiffs are therefore fighting an uphill battle to find an evidential leg to stand on.

(1) Documentary Close Connections Representation and Oral Close Connections Representation

69 In relation to the Documentary Close Connections Representation and Oral Close Connections Representation, the plaintiffs have presented no evidence to demonstrate their falsity. I note that the plaintiffs did not submit that these two representations were false in their closing submissions (see [66] above). On the contrary, Mr Jowin Fung had deposed that Mr Dominic Khoo had, pursuant to Mr Jowin Fung's due diligence request, shown Mr Jowin Fung a discount purchase agreement with the watch manufacturer Roger Dubuis.[140] I am therefore unable to conclude that the Documentary Close Connections Representation and Oral Close Connections Representation are false.

(2) Luxury Watch Expert Representation

70 In relation to the Luxury Watch Expert Representation, the plaintiffs again led no evidence to show that it was not true. I note that the plaintiffs also did not submit that this representation was false or how it was false in their closing submissions (see [66] above). I further note that the plaintiffs' counsel,

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140 Mr Jowin Fung's AEIC at para 5 (BAEIC at pp 839–840)

in cross-examining Mr Dominic Khoo, put questions to Mr Dominic Khoo on the footing that Mr Dominic Khoo (a) was "a former employee and watch expert at Antiquorum"[141] and (b) had credentials including being "one of only four, or the only Southeast Asian watch expert with all these deep relationships or connections with watch CEOs, watch brands, et cetera".[142] It therefore appears that the plaintiffs themselves may not fully believe that the Luxury Watch Expert Representation is false. I am therefore also unable to conclude that the Luxury Watch Expert Representation is false.

(3) Many Buyers Representation and Ready Buyer Representation

71 In relation to the Many Buyers Representation and Ready Buyer Representation, the plaintiffs similarly presented no evidence to show that these representations were false. Neither did they argue, in their closing submissions, that these representations were false (see [66] above). All that the plaintiffs advanced in their closing submissions was the suggestion that *if* there were waiting buyers, the defendants would not have made and reneged on the re-purchase offers in a short span of time.[143] That argument, however, is premised on the flawed assumption that there could be only one reason for reneging on the re-purchase offers, and that reason was that there were no ready buyers. But it is entirely possible that the defendants had *other* reasons for not fulfilling their contractual obligations under the Disputed IAs. As the plaintiffs have failed to prove that there were no waiting and ready buyers, I am unable to conclude that these two representations are false.

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141 NEs dated 13 July 2023 at p 88, line 19 to p 89, line 5.

142 NEs dated 13 July 2023 at p 145, lines 9–14.

143 PCS at paras 67 and 83.

72 As for the defendants' submission that the plaintiffs' watches were not re-purchased because the conditions for re-purchase were not satisfied, this will be considered below under the claim for breach of contract.

(4) One Year Sale Representation

73 I turn to the One Year Sale Representation. The plaintiffs submitted in closing that the One Year Sale Representation is false as the defendants' offers to re-purchase the plaintiffs' watches were illusory and intended to evade legal obligations (see [66] above).

74 I am unable to see how this constitutes a misrepresentation. The One Year Sale Representation is, in essence, a promise by the defendants to do an act (*ie*, send by e-mail a re-purchase offer within one year of entering into the Disputed IAs) in the future. In *Deutsche Bank AG* at [94], the court, citing *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at paras 11.029–11.030, noted that a "statement by one party that he 'would' do something for the other party in the future is in essence a promise, which becomes actionable only if such promise was subsequently incorporated into the contract as a term". At [92] and [98] of *Deutsche Bank AG*, the court found that statements such as "DB *would* provide a team of competent and responsible bankers, relationship managers and resources …" [emphasis in original] were "at best statements of future intention" and not statements of fact. Similarly, as noted in *Tonny Permana v One Tree Capital Management Pte Ltd and another* [2021] 5 SLR 477 at [183], for claims involving "future promises or statements of intention", the more proper cause of action would be breach of contract as opposed to misrepresentation.

75 The court in *Deutsche Bank AG* noted (at [96]) that statements as to future facts may be re-characterised as statements implying that the maker of the statement honestly believed that the event would happen in the future or that the statement-maker had reasonable grounds for making such an assertion. To the extent that the plaintiffs may be taken to have pleaded that the defendants never intended to make binding offers to re-purchase the watches under the Disputed IAs with an intention to be bound by the offers,[144] the plaintiffs did not manage to prove the defendants' state of mind at the time the One Year Sale Representation was made. There is insufficient evidence to show that the defendants did not honestly believe that the re-purchase offers would be made or honoured, or that the defendants did not have reasonable grounds for making the promise to re-purchase the watches, particularly when the undisputed evidence in relation to the Pre-Dispute IAs is that Mr Wong Ben[145] and Mr Gary Wong[146] had received re-purchase offers for their watches (see [13] above). As far as the defendants' *intentions* are concerned, there is no evidence to suggest that *at the time* the One Year Sale Representation was made, the promise was made with no intention of honouring it.

76 For completeness, I note the plaintiffs' submission that due to the defendants' failure to plead that the alleged representations were not of facts but of future intentions, this is not an issue which has been defined for the court to deal with.[147] I am unable to agree with the plaintiffs. The issue of whether the One Year Representation or any other representation pleaded by the plaintiffs

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144 Statement of Claim (Amendment No 1) at para 84 (SB at p 190).

145 Mr Wong Ben's AEIC at paras 18 and 21 (BAEIC at pp 8–9).

146 Mr Gary Wong's AEIC at para 54 (BAEIC at p 425).

147 Plaintiffs' Further Closing Submissions dated 15 March 2024 ("PFCS") at p 11, para 3.

is actionable as a false statement as to a fact, or is not actionable as it is a statement as to future intention, is a matter *of the legal result* that emerges from an analysis of the *material facts* as pleaded by the parties. In this case, the plaintiffs have not been deprived of fair notice of any material facts pertinent to the determination of the issue.

77 Accordingly, the plaintiffs have not proven the One Year Sale Representation to be actionable or false. I will deal with WatchFund HK's offers to re-purchase below, under the plaintiffs' claim for breach of contract.

(5) Documentary Double-Collateral Representation, Oral Double-Collateral Representation and 50% Discount Representation

78 I turn then to the Documentary Double-Collateral Representation, Oral Double-Collateral Representation and 50% Discount Representation. These alleged misrepresentations are the meat of the present dispute. Unfortunately, the plaintiffs' reliance on them is not without problems.

79 The plaintiffs have adduced two Excel sheets to prove the falsity of these representations. The first Excel sheet (the "Edited Excel Sheet") was exhibited in the AEICs of Mr Jowin Fung and Mr Gary Wong.[148] This Excel sheet sets out the watches held by the plaintiffs under the Disputed IAs with details in a table bearing the headers "Brand", "Model", "Reserve price", "Low estimate (in HKD)", "High estimate", "Investment Cost (in HKD)", "Offer Price", and "Discount". In Mr Jowin Fung's and Mr Gary Wong's AEICs, this Excel sheet was simply described as being "prepared by Ms Connie Siu, the managing director of Antiquorum in Hong Kong, showing the valuation done by

148 Mr Jowin Fung's AEIC at p 123 (BAEIC at p 960); Mr Gary Wong's AEIC at p 262 (BAEIC at p 667).

Antiquorum on the Plaintiffs' and Ms Yung's watches".[149] It emerged during Mr Jowin Fung's cross-examination on 18 May 2023 that the Edited Excel Sheet had in fact been prepared by his staff and not by Ms Connie Siu.[150] Mr Jowin Fung explained on the stand that the Edited Excel Sheet was prepared based on information allegedly given by Ms Connie Siu, save that the information in three columns – "Investment Cost (in HKD), "Offer Price", and "Discount" – were added by Innovest's staff to calculate the difference between the figures allegedly provided by Ms Connie Siu and the Investment Cost for the watches.[151] Later on the same day, the plaintiffs procured what they say is the original of the document allegedly provided by Ms Connie Siu, and they sought to adduce that document ("Original Excel Sheet") as evidence.[152]

80 The Excel sheets suffer from interlinked problems that are fatal to the plaintiffs' claims for misrepresentation.

81 Most fundamentally, as the defendants rightly submit,[153] the Excel sheets constitute hearsay and are inadmissible as evidence of the RRPs or the valuation of the watches contained in them. The person who allegedly provided these figures – Ms Connie Siu – was not called as a witness in this suit to testify that the information in the Excel sheets was provided by her and to be cross-examined on the contents thereof.

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149 Mr Jowin Fung's AEIC at para 59(b) (BAEIC at p 857); Mr Gary Wong's AEIC at para 67(b) (BAEIC at p 429).

150 NEs dated 18 May 2023 at p 33, lines 14–17.

151 NEs dated 18 May 2023 at p 34, lines 8–22 and at p 87, lines 8–12.

152 NEs dated 18 May 2023 at p 76, lines 7–23.

153 DCS at para 27.

82 The rule against the admissibility of hearsay evidence is well-established. As the Court of Appeal in *Soon Peck Wah v Woon Che Chye* [1997] 3 SLR(R) 430 ("*Soon Peck Wah*") noted, citing Jeffrey Pinsler, *Evidence, Advocacy and the Litigation Process* (Butterworths, 1992) at p 64, assertions made out of court which are tendered to prove any facts in issue or relevant facts are inadmissible as hearsay, unless they fall within an established exception (*Soon Peck Wah* at [26]). This is because a witness who does not have personal knowledge of what occurred "cannot verify the truth of the facts". As "the person who does have personal knowledge of the facts is not in court, the accuracy of his perception and his veracity cannot be assessed and tested in cross-examination". Such evidence is therefore unreliable and should be excluded from consideration (*Soon Peck Wah* at [27]).

83 The plaintiffs are asserting that the *contents* of the Excel sheets are true and that the court should rely on the data in the Excel sheets to make a finding on what the RRPs and valuation of the watches are. But the highest that the plaintiffs have been able to pitch their case is that Mr Jowin Fung and Mr Gary Wong had communicated directly with a person known to them as "Ms Connie Siu" and had provided her with photographs of the watches in this suit.[154] Even if it is accepted that Mr Jowin Fung and Mr Gary Wong did *receive* the Original Excel Sheet from someone who claims to be "Ms Connie Siu", all that it proves is that Mr Jowin Fung and Mr Gary Wong had *received* the Excel sheet from a "Ms Connie Siu". Mr Jowin Fung and Mr Gary Wong have no first-hand knowledge of the contents of the Excel sheets or how the data was derived, and "cannot verify the truth of the facts" asserted in these Excel sheets. What was allegedly said by someone who claims to be Ms Connie Siu are statements made

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154 PCS at para 101; Mr Gary Wong's AEIC at para 67 (BAEIC at p 429); Mr Jowin Fung's AEIC at para 59 (BAEIC at p 857).

by her out of court and have not been tested in cross-examination. Therefore, the statements allegedly made by her are not reliable and are inadmissible as *proof* of the *contents* of those statements. Ultimately, the Excel sheets are a classic example of hearsay evidence that is inadmissible unless the plaintiffs can bring the Excel sheets under one of the exceptions to the hearsay rule in s 32(1) of the Evidence Act 1893 (2020 Rev Ed). This, the plaintiffs did not attempt to do. Neither did they attempt to remedy the deficiency in their evidence even though the defendants had, as early as 23 November 2022, filed a notice of non-admission to the Edited Excel Sheet.[155] As the Excel sheets are hearsay, they will be excluded from consideration.

84 Even if the Excel sheets were admitted, the figures contained within would not have taken the plaintiffs' case very far. As the defendants have rightly submitted,[156] in the absence of the testimony of the person who provided these figures, this court is left unable to confirm *what* the figures represent, *how* the figures were arrived at, *what* sort of examination, study, or research went into deriving the figures, and *who* examined the watches. The two Excel sheets purportedly show Antiquorum's estimate of the "Reserve Price", "Low estimate" and "High estimate" for the watches under the Disputed IAs.[157] The defendants have noted that there is no reference to "valuation" and "recommended retail price" in the Excel sheets.[158] Mr Dominic Khoo testified that the "Reserve Price" refers to a price decided as between the seller of an item and the auction house, and this is the minimum price that must be reached

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155 Notice of non-admission of documents filed by the defendants dated 23 November 2022.

156 DCS at para 76.

157 Mr Jowin Fung's AEIC at p 123 (BAEIC at p 960); Mr Gary Wong's AEIC at p 262 (BAEIC at p 667).

158 DCS at para 73.

at the auction before the item would be sold.[159] As for the "Low estimate" and "High estimate", these refer to attractive estimated prices provided by the auction house for the item being auctioned to entice potential buyers to bid in the auction, and these estimates may be significantly lower than the price at which the item is eventually sold.[160] I do not have before me any expert evidence concerning the watch auctioning process or the process of pricing watches. It appears, however, that Mr Dominic Khoo's explanation of the terms "Reserve Price", "Low estimate" and "High estimate" is not incredible. Indeed, these values appear to be distinct from the RRP or the valuation of the watches, and if it was Ms Connie Siu who provided those values in the Original Excel Sheet, she was not called to testify what the "Reserve Price", "Low estimate" and "High estimate" refer to, how they relate, if at all, to the RRP or the valuation of the watches, and how these estimates were arrived at.

85 Ultimately, the fact that has to be proven is the RRPs or value of the watches under the Disputed IAs, but the plaintiffs have failed to adduce any evidence showing that the RRPs or value of the watches they hold were not what they should have been. The plaintiffs' action in misrepresentation based on the Documentary Double-Collateral Representation, Oral Double-Collateral Representation and 50% Discount Representation must therefore fail because they have failed to prove that these are falsehoods.

86 There is a further problem with the plaintiffs' reliance on the Documentary Double-Collateral Representation and Oral Double-Collateral Representation, and this concerns *actionability*. In this regard, my observations

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159 NEs dated 14 July 2023 at p 129, line 22 to p 130, line 5.

160 NEs dated 14 July 2023 at p 127, line 16 to p 128, line 12 and p 128, line 21 to p 129, line 21.

above (at [42] and [74]–[75]) that a promise to do something in the future, not being a statement of fact, cannot ground an action in misrepresentation, apply equally here. In my view, the Documentary Double-Collateral Representation and Oral Double-Collateral Representation are also future promises.

87 In relation to the 50% Discount Representation, I similarly fail to see how it is a statement of fact with respect to the watches of potential investors like the plaintiffs and Ms Yung at the time the representation was made. Here again, the plaintiffs have themselves regarded the 50% Discount Representation as a future promise, as is evident from their submission that WatchFund HK "*would* purchase the [plaintiffs'] watches at more than 50% discount off the current published recommended retail price" [emphasis added].[161]

88 All said, not only have the plaintiffs failed to prove that the Documentary Double-Collateral Representation, Oral Double-Collateral Representation and 50% Discount Representation are false, in so far as they relate to the RRP or value of the watches of potential investors such as the plaintiffs and Ms Yung at the point in time when the representations were made, the plaintiffs have *also* failed to show that the representations are actionable as statements of fact in claims for fraudulent and/or negligent misrepresentation.

Disclaimer and Due Diligence

89 As the plaintiffs have not proven that the representations which were made by the defendants are misrepresentations, there is no need for me to deal with the defendants' submissions on the disclaimer and on due diligence. For completeness, I would only state briefly that the disclaimer on WatchFund HK's

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161 PCS at para 6(c).

website cannot absolve the defendants of liability in misrepresentation if they are found to have made misrepresentations to the plaintiffs. Firstly, the screenshot of the disclaimer shows "© 2021 Watchfund. All Rights Reserved". This means that the disclaimer was present in 2021, but says nothing about whether the disclaimer could have been seen by the plaintiffs and Ms Yung in 2018 and 2019 before they entered into the Disputed IAs. Mr Dominic Khoo claimed that he had evidence that the disclaimer was already on WatchFund HK's website in 2018 or 2019,[162] but he did not provide any evidence in the end to substantiate his bare assertion. Secondly, the disclaimer, in essence, warns prospective investors that the website serves "information purposes only" and that investing under the WatchFund investment scheme is generally risky.[163] It says nothing about the specific claims made in the Documentary Representations and the Oral Representations, or reliance on those representations.[164]

90 In relation to the defendants' argument that the plaintiffs and Ms Yung conducted their own due diligence, which should exonerate the defendants of liability for misrepresentation, it is without merit because the defendants have adduced no evidence that the plaintiffs and Ms Yung, through their due diligence, had come to learn of any misrepresentations before entering into the Disputed IAs, or that they did not rely on the defendants' representations when entering into the Disputed IAs: *Jurong Town Corp v Wishing Star Ltd* [2005] 3 SLR(R) 283 at [114].

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162 NEs dated 14 July 2023 at p 100, line 5 to p 101, line 5.

163 Mr Dominic Khoo's AEIC at Tab 13 (BAEIC at p 1635).

164 Mr Dominic Khoo's AEIC at Tab 13 (BAEIC at p 1635).

Was there damage?

91 For completeness, I deal also with the issue of damage. As the plaintiffs have failed to tender proper evidence on the value of the watches, there is no basis for their contention that they have suffered damage due to the alleged misrepresentations. Further, it is telling that the plaintiffs' closing submissions devoted only a single sentence to the issue of damage.[165] In their reply submissions, they cited the cases of *Zim Integrated Shipping Services Ltd and others v Dafni Igal and others* [2011] 1 SLR 862 ("*Zim Integrated (CA)*") and *Asia Hotel Investments Ltd v Starwood Asia Pacific Management Pte Ltd and another* [2005] 1 SLR(R) 661 ("*Asia Hotel*") in support of their submission that the evidential burden has shifted to the defendants to prove that the plaintiffs have not suffered damage and/or disprove that the plaintiffs have suffered damage.[166] I am unable to agree with the plaintiffs' submissions.

92 The operation of the concept of the evidential burden was summarised by the Court of Appeal in *Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 ("*Britestone*"). In sum, at the start of the plaintiff's case, the plaintiff bears both the legal burden of proving "the existence of any relevant fact that the plaintiff must prove", and the evidential burden of adducing some "not inherently incredible" evidence of such relevant facts (*Britestone* at [60]). After that, the evidential burden shifts to the defendant to adduce some evidence to rebut the plaintiff's evidence (*Britestone* at [60]). However, in this case, the plaintiffs have *completely* failed to discharge their burden, given that the Excel sheets, which formed the basis of their submissions, are plainly inadmissible and unreliable (see above at [81]). Unlike the cases of *Zim Integrated (CA)* and

165 PCS at para 46.

166 PRS at paras 46–58.

Asia Hotel, the plaintiffs in this case have not adduced *any* evidence, in so far as the issue of damages is concerned, to shift the evidential burden onto the defendants. The plaintiffs have not adduced admissible evidence that the watches given to them were worth less than what they say the defendants had promised those watches would be worth. Accordingly, their contention that the evidential burden of proving damage has shifted to the defendants is devoid of merit.

93 The plaintiffs have also argued that it is for the defendants to provide the RRPs of the watches. The plaintiffs argue that under clause 2.7 or 2.8 of the various Disputed IAs, WatchFund HK "warrant[ed] that the [watches] are purchased for the investor at below 50% of the current or published recommended retail price".[167] According to the plaintiffs, it is consistent with logic, commercial reality and principle that the defendants owe disclosure obligations in respect of the RRPs of the watches because of the asymmetry in knowledge between, on the one hand, the plaintiffs and Ms Yung, and, on the other hand, the defendants.[168] I am not persuaded by these arguments for two reasons.

94 First, applying the principles in *Britestone*, there is no basis for the plaintiffs to contend that the evidential burden has shifted to the defendants given, as I have explained, the plaintiffs' abject lack of evidence to discharge their initial evidential burden in the first place. Hence, it is also not necessary for me to examine the material tendered by the defendants as evidence of the value of the watches, namely, the website screenshots of online search results tendered by Mr Dominic Khoo allegedly stating the RRPs of the watches under

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167 PCS at para 88.

168 PFCS at p 16, para 6 to p 17, para 8.

the Disputed IAs.[169] Second, as a matter of contractual interpretation, the warranty found at clause 2.7 or 2.8 of the various Disputed IAs does not give rise to an obligation for WatchFund HK to provide the RRPs of the watches in this suit.[170]

95 The plaintiffs have not shown how this contractual warranty could be interpreted as imposing an obligation on the defendants to provide the RRPs. Further, if the plaintiffs' case is that there has been a breach of the warranty, the plaintiffs must *still* first prove the breach, and thereafter, it is for the defendants to establish any defences under the contract. Shorn of its adornments, the plaintiffs' argument is a desperate attempt to avoid the natural consequence of their failure to adduce evidence of the damage that they had allegedly suffered due to the defendants' representations.

96 In sum, the plaintiffs' claims for fraudulent and/or negligent misrepresentation cannot succeed because they have failed to establish on the balance of probabilities that the defendants had made *false* representations of fact and that the plaintiffs had suffered damage.

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169 Mr Dominic Khoo's AEIC at para 65 (BAEIC at p 1436).

170 Statement of Claim (Amendment No 1) at p 21 (SB at p 169).

Breach of contract

Parties' cases

Plaintiffs' case

97 The plaintiffs next bring claims against WatchFund HK for breach of the Disputed IAs.[171]

98 The plaintiffs argue that clause 3.1 of the Disputed IAs obliged WatchFund HK to make at least one offer to re-purchase the watches from the plaintiffs within the Investment Period of one year.[172] As re-purchase offers were not made in respect of Ms Yung's Disputed IA, the plaintiffs argue that the defendants had repudiated Ms Yung's Disputed IA.[173]

99 As for the rest of the plaintiffs' Disputed IAs for which re-purchase offers were made, the plaintiffs argue that all these re-purchase offers were accepted without qualification by the plaintiffs,[174] and that the defendants thereafter wrongfully cancelled the re-purchase offers.[175]

100 The plaintiffs further contend that a warranty found in the Disputed IAs was breached.[176] According to the plaintiffs, the watches were not purchased for the plaintiffs and Ms Yung at below 50% of current/published RRPs, and this constituted a breach of the warranty found in clauses 3.1, 3.2(a) and 9 of the

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171 Statement of Claim (Amendment No 1) at paras 53–80 (SB at pp 180–188); PCS at paras 54–86.

172 PCS at para 55.

173 PCS at para 75(c).

174 PCS at paras 70 and 77.

175 PCS at para 74.

176 PCS at paras 87–88.

Disputed IAs for all the plaintiffs, clause 2.8 of the Disputed IAs entered into by Mr Wong Ben, Dr Edmund Liew, MCA Limited and Ms Yung, and clause 2.7 of Mr Gary Wong's and Mr Wong Nga Kok's Disputed IAs. In this regard, the plaintiffs rely on the Original Excel Sheet and the Edited Excel Sheet for what they assert to be the "price estimates" or value of the watches (see above at [79]).[177] The plaintiffs also assert that under the said warranty in the Disputed IAs, WatchFund HK had agreed to provide the RRPs to the plaintiffs.[178] As no RRPs of the watches was ever provided to the plaintiffs,[179] the defendants have allegedly breached the warranty clause.[180]

101 The plaintiffs also argue that the loss caused to them by the defendants' repudiatory breach of the Disputed IAs is quantifiable without reference to the valuation allegedly provided by Antiquorum.[181] This is because the Disputed IAs contain clauses that either (a) specify a minimum price at which WatchFund HK was obliged to re-purchase the watches under the Disputed IAs, or (b) provide for a guaranteed return on the investment for the plaintiffs.[182]

102 The plaintiffs also submit that the defendants breached clause 4.1 of the Disputed IAs[183] (see above at [48]) because the watches were not in brand-new condition.[184]

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177 PCS at para 100.

178 PCS at para 88.

179 PCS at paras 92 and 94.

180 PCS at paras 94–96.

181 PRS at para 11.

182 PRS at para 11.

183 PCS at para 103.

184 PCS at para 103.

103 In addition, the plaintiffs pleaded that the defendants breached clauses 3.1, 3.2(a) and 9 of the Disputed IAs (without specifying which *particular* agreement(s) was breached), by failing, refusing and/or neglecting to make at least one offer to re-purchase the plaintiffs' watches during the Investment Period, with time being of the essence.[185]

Defendants' case

104 In relation to the plaintiffs' claim that the watches were not purchased at below 50% of current/published RRPs, in breach of a contractual warranty,[186] the defendants allege that this issue was belatedly raised and was not pleaded,[187] and hence, should be disregarded.[188] Relatedly, the defendants argue that this warranty does not import any obligation for WatchFund HK to provide the plaintiffs and Ms Yung with the RRPs of the watches.[189]

105 In relation to the claims for breach of contract, the defendants state that only the re-purchase offers made to Mr Wong Ben, Dr Edmund Liew and Mr Wong Nga Kok under the Disputed IAs were made late.[190] In that regard, they contend that the plaintiffs had waived WatchFund HK's alleged breach of the Disputed IAs in terms of the *timing* of the re-purchase offers, when the plaintiffs communicated their intention to accept WatchFund HK's re-purchase offers.[191]

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185 Statement of Claim (Amendment No 1) at para 71 (SB at p 185).

186 PCS at para 87.

187 DCS at para 12.

188 DCS at para 14.

189 DRS at para 82.

190 DRS at para 52.

191 DCS at para 81.1; DRS at para 53.

106 The defendants contend that there was no wrongful cancellation of re-purchase offers as WatchFund HK's re-purchase offers were never validly accepted by the plaintiffs in the first place because the plaintiffs had failed to pay the Sale Fee and to return the watches to WatchFund HK.[192]

107 The defendants also argue that even if the court finds a repudiatory breach of the Disputed IAs on the part of WatchFund HK, the plaintiffs have not proven loss.[193] The defendants repeat the criticisms concerning the plaintiffs' inadequate proof of loss via the two Excel sheets allegedly containing valuations of the watches by Ms Connie Siu.[194]

The law

108 The law on repudiatory breaches of contract is well-settled. In *iVenture Card Ltd and others v Big Bus Singapore City Sightseeing Pte Ltd and others* [2022] 1 SLR 302 ("*iVenture*") at [63], the Court of Appeal summarised the applicable legal framework as follows:

> 63 We first set out the applicable legal framework, laid down by this court in [*RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd and another appeal* [2007] 4 SLR(R) 413 ("*RDC Concrete*")], which entitles an innocent party to terminate a contract in the absence of an express provision to do so. *RDC Concrete* set out three scenarios:
>
> > (a) "Scenario 1": Where the party in breach renounces its contract inasmuch as it clearly conveys to the innocent party that it will not perform its contractual obligations at all: *RDC Concrete* at [93]. This amounts to a repudiation of the contract by the party in breach.
> >
> > (b) "Scenario 2": Where the party in breach breaches a condition of the contract that the parties had

192 DCS at paras 81.2–81.3.

193 DCS at para 90.

194 DCS at para 91.

> contemplated was so important that a breach would give rise to a right of termination: *RDC Concrete* at [97].
>
> (c) "Scenario 3": Where the breach in question would deprive the innocent party of substantially the whole benefit it intended to obtain from the contract: *RDC Concrete* at [99]. This is the approach laid down in *Hongkong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd* [1962] 2 QB 26 at 70, under which an innocent party will be entitled to terminate the contract if the nature and consequences of the breach are so serious as to "go to the root of the contract" (otherwise termed a fundamental breach of the contract).
>
> …
>
> 64 A renunciation of contract occurs when one party by words or conduct evinces an intention not to perform or expressly declares that he is or will be unable to perform his obligations in some material respect, and short of an express refusal or declaration, the test is to ascertain whether the action or actions of the party in default are such as to lead a reasonable person to conclude that he no longer intends to be bound by its provisions. For example, the party in default may intend to fulfil the contract but may be determined to do so only in a manner substantially inconsistent with his obligations, or may refuse to perform the contract unless the other party complies with certain conditions not required by its terms: *San International Pte Ltd (formerly known as San Ho Huat Construction Pte Ltd) v Keppel Engineering Pte Ltd* [1998] 3 SLR(R) 447 at [20].

109 A repudiatory breach, narrowly defined, refers to the renunciation of a contract. This is encompassed by Scenario 1 above. In contrast, a repudiatory breach in the broader sense includes situations where there has been a breach of a condition (*Liu Shu Ming and another v Koh Chew Chee and another matter* [2023] 1 SLR 1477 at [106], citing *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) at paras 17.006–17.007).

110 The Court of Appeal in *iVenture*, in analysing Scenario 1, held that where a party refuses to perform a contract unless the other party complied with an invalid condition, this may not necessarily amount to a repudiation. Instead,

the key inquiry is whether such refusal "would lead a reasonable person to conclude that it no longer intended to be bound by the [contract]" (*iVenture* at [65]). This approach was applied in the earlier case of *RBC Properties Pte Ltd v Defu Furniture Pte Ltd* [2015] 1 SLR 997 ("*RBC*"). The Court of Appeal was faced with a situation where the appellant had entered into a lease with the respondent to make certain premises available for the respondent's use as a showroom. The Singapore Land Authority then purportedly exercised its right under the State Lease to charge a differential premium, which the appellant wanted to pass on to the respondent by *still leasing* the premises to the respondent, but at a *higher rent* (*RBC* at [134]–[135]). The Court of Appeal noted that the appellant could not pass that differential premium on to the respondent under the terms of the lease (*RBC* at [134]). The Court of Appeal held at [135] that the appellant had evinced an intention not to be bound by the terms of the lease through a series of communications that indicated that it would pass the differential premium on to the respondent as a supplement to the monthly rent under the lease, and was therefore in repudiatory breach.

Analysis

111 The material terms of the Disputed IAs entered into by the plaintiffs and Ms Yung are similar. For the purposes of this present judgment, extracts from Mr Wong Ben's investment agreement dated 30 November 2018 will be quoted. These extracts are applicable (unless stated otherwise) to the rest of the Disputed IAs as well.

Re-purchase and closing out of investment

112 The broad structure of the Disputed IAs is similar to that which pertained to the Pre-Dispute IAs as outlined above at [11]. The clauses governing the Investment Period and the re-purchase offer read as follows:[195]

> **2. INVESTMENT**
>
> …
>
> 2.5 Parties agree that the Investment Period will be one (1) year, or any other period desirable and agreeable between the Parties. The Investment period starts from the date the Fund furnishes the details of the Timepiece(s) in the Schedule (the "Investment Period").
>
> …
>
> **3. RE-PURCHASING AND CLOSING OUT OF INVESTMENT**
>
> 3.1 The Investor agrees that The Fund [*ie,* WatchFund HK] shall, at least make one offer to re-purchase the investment in the Timepiece(s) during the Investment Period. The investor may elect at the signing of this agreement either re-purchase scheme A or re-purchase scheme B as set out below.
>
> **3.2 Re-purchase scheme A**
>
> (a) The Fund, when offering to re-purchase the Investment in the Timepiece(s) shall do so for a price of at least **11%** absolute above the Investment Cost. Such offer by the Fund shall be made to the Investor by way of written correspondence to the Investor's address and/or e-mail address as set out in the Schedule hereto (the "**Offer**").
>
> (b) The Investor, upon receipt of the Offer from the Fund, shall have the option to accept the Offer and sell his/her Investment in the Timepiece(s) at the price stated in the Offer (the "**Sale Price**") and within the time limit as stated in the Offer.
>
> (c) If the Investor wishes to accept the Offer and elects to sell his/her Investment in the Timepiece(s) to the Fund, the Investor shall pay to the Fund a fee equivalent to **5%** of the Sale Price (the "**Sale Fee**"). Upon payment of the Sale Fee, the Investor shall return possession of the

195 Mr Wong Ben's AEIC at pp 140–141 (BAEIC at pp 140–141).

Timepiece(s) to the Fund. The Investor agrees that the Offer is not deemed accepted until such time that the Investor makes full payment of the Sale Fee and returns possession of the Timepiece(s) to the Fund. Upon receiving from the Investor the relevant Timepiece(s), the Fund shall carry out an inspection of the Timepiece(s) and upon confirmed sale will notify the Investor of payment details within 60 days.

(d) If the Investor does not accept or rejects two such Offers from the Fund, or does not respond in the stipulated time period in respect of two such Offers the Investor is deemed to agree to close out his/her Investment in the Timepiece(s) in the manner provided below under Clause 3.2 (e).

(e) If the Investor closes out his Investment in the Timepiece(s) as provided for under Clause 3.2 (d) above, the Investor agrees that the Fund may retain the entire Investment Cost and also agrees to pay to the Fund an additional close out fee being **10%** of the Investment Cost ("**Close Out Fee**"). The Fund agrees that upon receipt of the Close Out Fee, the title of the Timepiece(s) shall pass to the Investor and will arrange the transfer of all relevant documentation to the Investor.

3.2.1 Re-purchase scheme B

(a) The Fund when offering to re-purchase the Investment in the Timepiece(s) shall do so for a guaranteed price computed based on the Investment Cost plus a premium of 10% per annum of the Investment Cost over the Investment Period. This guaranteed price shall be net of all charges and expenses that may be levied by the Fund.

(b) Such offer by The Fund shall be made to the Investor by way of written correspondence to the Investor's address and/or e-mail address as set out in the Schedule hereto (the "**Offer**")

(c) Paragraph 3.2 (d) and 3.2 (e) shall apply.

(d) Paragraph 3.2 (a) shall apply except that no sale fee shall be payable by the Investor to The Fund.

…

113 All the plaintiffs selected Re-purchase scheme A,[196] while Ms Yung selected Re-purchase scheme B.[197]

114 Under Re-purchase scheme A, WatchFund HK must offer to re-purchase the watches for an absolute price of at least 11% above the Investment Cost. This will henceforth be known as the "Sale Price", which is also the term used to describe the price stated in the re-purchase offers that were cancelled (see last column of the table at [22] above). An investor wishing to accept the re-purchase offer must pay to WatchFund HK a fee equivalent to 5% of the Sale Price (*ie,* the Sale Fee). After which, the investor must return possession of the relevant watches to WatchFund HK.

115 Under Re-purchase scheme B, the watches subject to this re-purchase scheme are to be re-purchased by WatchFund HK at a guaranteed price computed based on the Investment Cost plus a premium of 10% per annum of the Investment Cost over the Investment Period, with this guaranteed price being net of all charges and expenses that may be levied by WatchFund HK. Clause 3.2.1 on Re-purchase scheme B does not appear to expressly provide for a mechanism for returning possession of the watches under this re-purchase scheme to WatchFund HK, but nothing turns on this because no re-purchase offer was in fact made to the sole investor in this suit – Ms Yung – who opted for Re-purchase scheme B.

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196 Mr Wong Ben's AEIC at para 53 (BAEIC at p 16); Dr Edmund Liew's AEIC at para 38 (BAEIC at p 244); Mr Gary Wong's AEIC at para 40 (BAEIC at p 420); Mr Wong Nga Kok's AEIC at para 38 (BAEIC at p 678); Mr Jowin Fung's AEIC at para 34 (BAEIC at p 850).

197 Ms Yung's AEIC at para 31 (BAEIC at pp 1042–1043).

Timing of the re-purchase offers

116 To recapitulate, re-purchase offers were made under all the Disputed IAs except for Ms Yung's Disputed IA. In relation to the re-purchase offers that were made, only those made to Mr Wong Ben, Dr Edmund Liew and Mr Wong Nga Kok were made late. In my judgment, Mr Wong Ben, Dr Edmund Liew and Mr Wong Nga Kok, by stating their acceptance of the late re-purchase offers, had indeed waived WatchFund HK's breach in terms of timing – that is, the belated making of the re-purchase offers after the expiry of the Investment Period.

117 The general principles on waiver by election and equitable (or promissory) estoppel were summarised by the Court of Appeal in *Audi Construction Pte Ltd v Kian Hiap Construction Pte Ltd* [2018] 1 SLR 317 ("*Audi Construction*") at [54]–[61]. Applying these principles, in the context of a breach of contract, waiver by election concerns a situation where the innocent party has the option to either terminate or affirm the contract, and where he elects to terminate the contract, he will be held to have abandoned the right to affirm the contract if he has communicated his election in clear and unequivocal terms to the other party, whilst being aware of the facts which have given rise to the existence of the right he is said to have elected not to exercise. As for the doctrine of equitable (or promissory) estoppel, this doctrine "requires an unequivocal representation by one party that he will not insist upon his legal rights against the other party, and such reliance by the representee as will render it inequitable for the representor to go back upon his representation" (*Audi Construction* at [57], referring to *Motor Oil Hellas (Corinth) Refineries SA v Shipping Corporation of India (The "Kanchenjunga")* [1990] 1 Lloyd's Rep 391 at 399 col 2). Crucially, the Court of Appeal noted that "a party to an

equitable estoppel is representing that he will in future forbear to enforce his legal rights" (*Audi Construction* at [57]).

118 In the present case, the failure of WatchFund HK to make timely offers to re-purchase to Mr Wong Ben, Dr Edmund Liew and Mr Wong Nga Kok before the expiry of the Investment Period gave rise to a right on the part of these investors to terminate their respective investment agreements for breach of clause 3.1 read with clause 9 (which provides that time shall be of the essence) of the Disputed IAs. This falls, in my judgment, within Scenario 2 of the framework set out in *iVenture* (see [108] above). However, these investors, *via* Innovest, unequivocally accepted the re-purchase offers.[198] The investors and Innovest would have clearly known that the respective Investment Periods had lapsed when the re-purchase offers were received. In so indicating their assent to the late offers, they had waived the breach and elected to affirm the contract.

Cancellation of the re-purchase offers

119 I turn to consider the plaintiffs' allegation that the repurchase offers were wrongfully cancelled, and in this regard, examine the purported reasons why the re-purchases were not carried out.

120 Mr Dominic Khoo gave evidence that he had informed the plaintiffs that the re-purchase offers were cancelled because they had failed to make payment of the Sale Fee and to deliver the watches to Singapore to return them to

198 Mr Wong Ben's AEIC at paras 60–62 and pp 149–151 (BAEIC at pp 18 and 149–151); Dr Edmund Liew's AEIC at paras 45–47 and pp 83–90 (BAEIC at pp 246–247 and 316–323); Mr Wong Nga Kok's AEIC at paras 45–47 and pp 83–88 (BAEIC at pp 680–681 and pp 750–755).

WatchFund HK, which were express terms relating to the re-purchases under the Disputed IAs.[199]

121 The plaintiffs, in contrast, allege that WatchFund HK's purported cancellation of the re-purchase offers were invalid.[200] In relation to the payment of the Sale Fee to WatchFund HK, the plaintiffs first argue that the previous practice for investment agreements entered into by Mr Wong Ben, Mr Gary Wong, and Mr Jowin Fung prior to the Disputed IAs was for the relevant WatchFund entity to deduct the Sale Fee from the Sale Price regardless of the payment terms in the investment agreements.[201] The plaintiffs argue that this practice evinced a clear intention on the part of the defendants to waive the requirement to pay the Sale Fee as a *distinct* payment made *ahead of* the payment of the Sale Price, in strict compliance with clause 3.2(c) of the Disputed IAs.[202] Moreover, the plaintiffs argue that they were entitled to insist on payment of the Sale Fee to WatchFund HK's corporate bank account because the Disputed IAs contain a payment clause stipulating that investment moneys invested under the Disputed IAs were to be transferred to WatchFund HK's corporate bank account, and that this clause should also be read as providing that the Sale Fee was to be paid to WatchFund HK's corporate bank account.[203] Furthermore, the plaintiffs argue that since no arrangements were made by the defendants to collect the plaintiffs' watches, the defendants cannot purportedly

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199 Mr Dominic Khoo's AEIC at para 83 (BAEIC at p 1446); See also DCS at paras 81.2, 81.3 and 88.

200 PCS at para 74.

201 PCS at para 60.

202 PCS at para 61.

203 PCS at para 68.

cancel the re-purchase offers for the reason that the watches have not been handed over to WatchFund HK.[204]

122 In my judgment, WatchFund HK's purported cancellation of the re-purchase offers was invalid and constituted a repudiatory breach. The plaintiffs were entitled to insist on making payment of the Sale Fee to a corporate bank account belonging to WatchFund HK. Moreover, the defendants failed to co-operate with the plaintiffs in arranging for the return of the watches to WatchFund HK. The defendants are therefore not entitled to rely on either of these reasons to cancel the re-purchase offers.

(1) Bank account for payment of Sale Fee

123 The Disputed IAs did not expressly specify a bank account into which the Sale Fee was to be deposited. However, clause 2 of the Disputed IAs, which bears the header "INVESTMENT", does contain a sub-clause (numbered clause 2.8 or 2.9 in the various Disputed IAs) that specifies the following:[205]

> … The investor agrees to invest by means of wire transfer to the bank account with the following details:
>
> ***The WatchFund Limited***
>
> ***DBS HK Corporate Account :* [*****7053*]**
>
> ***Beneficiary Bank : DBS Bank (Hong Kong) Limited***
>
> ***DBS Bank Code : 016***
>
> ***Branch Code : 478***
>
> ***SWIFT Code : DHBKHKHH***
>
> ***Bank Address : 11th Floor, The Center, 99 Queen's Road Central, Central, Hong Kong***
>
> [emphasis in original, bank account number partially omitted]

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204 PCS at paras 62 and 75(a)–(b).

205 BAEIC at pp 140, 301, 472, 735, 930 and 1094.

124 The parties to each of the Disputed IAs were explicitly stated to be the investor and WatchFund HK. Mr Dominic Khoo was not a stated party to the Disputed IAs.

125 The Court of Appeal held in *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich*") at [131], citing Gerard McMeel, *The Construction of Contracts: Interpretation, Implication, and Rectification* (Oxford University Press, 2007) at paras 1.124 to 1.133, that contractual interpretation is an exercise based on the entirety of the contract, adopting a holistic approach. Hence, the courts are "not excessively focused" upon particular words or clauses. Instead, "the emphasis is on the document or utterance as a whole". Contractual terms must therefore "always be interpreted in their internal context, which includes other provisions, and the document as a whole" (*MCH International Pte Ltd and others v YG Group Pte Ltd and others and other appeals* [2019] 2 SLR 837 at [36], citing *Zurich* at [53]).

126 Given that clause 2.8/2.9 of the Disputed IAs is the only clause stipulating a bank account for deposit of the investors' moneys, and given that WatchFund HK (and not Mr Dominic Khoo) is expressly stated to be the contracting party to the Disputed IAs, the relevant context and a construal of the agreement as a whole compels me to take the view that the Sale Fee is to be paid to a corporate bank account belonging to WatchFund HK. It would make no commercial sense to interpret the agreement as providing for the deposit of investors' moneys into the bank account of someone who is *not* a named party to the agreement. Furthermore, clause 7 of the Disputed IAs provides that the agreement "shall not be altered, changed, supplemented, or amended except by written instruments signed by the Parties hereto". Plainly, after WatchFund HK's DBS corporate account *****7053 was closed by the bank, it was open

to WatchFund HK to designate another corporate account to receive payment and for the parties to execute written instruments to specify that the Sale Fee should be paid to that account. Alternatively, it was open to the parties to agree to pay into Mr Dominic Khoo's personal bank account instead of WatchFund HK's corporate bank account, but no such written instruments were executed either. The evidence is clear that the plaintiffs were ready to pay the Sale Fee. In this regard, I note that e-mails were sent from Innovest dated 13 February 2020, 21 February 2020 and 28 February 2020 requesting for WatchFund HK to produce documentary proof that it had validly passed a board resolution to authorise a change in the payment bank account to Mr Dominic Khoo's personal bank account.[206] No such board resolution was produced to facilitate an agreement for the plaintiffs to pay the Sale Fee into a bank account that clearly does not belong to WatchFund HK. Indeed, the defendants did not even provide any meaningful response to the request for a board resolution. Based on these facts, it is blatantly obvious that the defendants cannot rely on WatchFund HK's failure to make its bank account available to the plaintiffs for the payment of the Sale Fee as a valid reason to cancel the re-purchase offers which the plaintiffs have stated they wished to accept.

127 In relation to the plaintiffs' argument that the practice adopted for prior investment agreements for the Sale Fee to be deducted from the Sale Price would amount to a waiver by election on the part of the defendants,[207] this argument cannot succeed on several levels. Firstly, referring to the guidance on waiver by election and equitable estoppel as provided by the Court of Appeal in *Audi Construction* (see [117] above), both of these doctrines require an *unequivocal* communication or representation by one party to the other (*Audi*

206 Mr Dominic Khoo's AEIC at pp 454–459 (BAEIC at pp 1867–1872).

207 PCS at para 61; PFCS at pp 4–5, paras 7–8.

Construction at [54] and [57]). There is no such *unequivocal* communication or representation in this case. There is nothing indicating that any of the WatchFund entities were binding themselves, in relation to other investment agreements or future investment agreements, to similarly deducting the Sale Fee from the Sale Price. The conduct in relation to prior investment agreements is equally consistent with, for instance, *ad hoc* dispensations made for the investment agreements to which such a deduction was applied at that time.

128 Secondly, the Disputed IAs at clause 6 contain an "ENTIRE AGREEMENT" clause providing that each Disputed IA "constitutes the entire agreement between the Parties about the subject matter of this Agreement and supersedes all earlier understandings and agreements between any of the Parties and all earlier representations by any Party about such subject matter." The plaintiffs were thus not entitled to insist that any prior practice that was not reduced to writing in the Disputed IAs be followed and adopted for the Disputed IAs, where such practice was not enshrined in the terms of the Disputed IAs. Similarly, to the extent that the plaintiffs had, for prior investment agreements, deposited moneys in bank accounts other than the WatchFund entities' corporate bank accounts,[208] the defendants were also not entitled to insist that such practice be followed for the Disputed IAs.

(2) Arrangements for the return of watches

129 I turn to the arrangements for the return of the watches. In my judgment, the defendants had failed to cooperate with the plaintiffs to accept delivery of the watches, which the plaintiffs were evidently prepared to return. The defendants were therefore not entitled to invoke the plaintiffs' failure to return

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208 1D Defence (Amendment No 1) at para 41 (SB at pp 96–97); 2D Defence (Amendment No 1) at para 39 (SB at pp 231–232).

the watches as a valid reason for WatchFund HK to cancel the re-purchase offers.

130 As regards the return of the watches, Innovest liaised with the defendants on behalf of Mr Wong Ben, Dr Edmund Liew, Mr Wong Nga Kok and MCA Limited. Mr Leon Yu, an Innovest staff member who had been looped into Innovest's correspondence with the defendants, and Mr Gary Wong, both gave evidence that the defendants persistently failed to provide details concerning the location and the date/time for collection of the watches and the timeline for the completion of the re-purchase.[209] Mr Dominic Khoo did not deny his failure to arrange for the recall of the watches. However, he sought to pin the blame on the plaintiffs for failing to pay the Sale Fee, as well as on protests in Hong Kong and the Covid-19 pandemic which had allegedly impeded travel to Hong Kong.[210] Mr Dominic Khoo asserted that the defendants had wanted to make arrangements to take delivery of the watches from Mr Wong Ben and Mr Gary Wong in Hong Kong, but could not.[211] Mr Dominic Khoo was given an opportunity to surface correspondence indicating that he had communicated this to Mr Wong Ben and Mr Gary Wong, and all he pointed to was an e-mail dated 20 October 2019 where he stated, with reference to protests taking place in Hong Kong:[212]

> These are unprecedented times, and no one knows for sure what will happen in this world today.

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209 Mr Leon Yu's AEIC at para 50 and pp 146–151 (BAEIC at pp 1279–1280 and 1408–1413); Mr Gary Wong's AEIC at para 53 at pp 160–180 (BAEIC at pp 424–425 and 565–585).

210 NEs dated 13 July 2023 at p 129, line 14 to p 130, line 16.

211 NEs dated 14 July 2023 at p 132, line 17 to p 133, line 1.

212 NEs dated 14 July 2023 at p 133, line 2 to p 134, line 21; Defendants' Bundle of Documents dated 12 May 2023 at p 252.

> I ask that you remain patient as we try to find solutions for each of our investors that have contracts affected during this period – please write to me directly so that we might discuss the best way forward for your individual situation.

131 Upon further questioning, however, Mr Dominic Khoo conceded that this 20 October 2019 e-mail was sent *before* most of the re-purchase offers relevant to the present suit were made.[213] Of the 15 re-purchase offers (see [22] above), only two were made before 20 October 2019. In any case, this e-mail does not communicate in any way that the defendants had wanted to make arrangements to take delivery of the watches. Mr Dominic Khoo testified that he had no correspondence to show that he had made arrangements or that he had wanted to make arrangements for the collection of the watches, allegedly because he was blocked by an Innovest staff member from speaking to the Innovest clients.[214] I neither believe nor accept Mr Dominic Khoo's account, which does not explain why he had failed to respond to Innovest's and Mr Gary Wong's attempts to confirm arrangements for delivery of the watches. It appears to be nothing more than a bare assertion, and when compared against the weight of the evidence, which shows that he had numerous opportunities to make the necessary arrangements to have the watches returned but did not do so, his evidence is hollow and unconvincing. Further, even if he had been blocked by Innovest from speaking to their clients directly, this was no good reason for him to not liaise with Innovest on the return of the watches – especially since he knew that Innovest was acting on behalf of the plaintiffs other than Mr Gary Wong at that point in time.

132 As noted by the Appellate Division of the High Court in *Ng Koon Yee Mickey v Mah Sau Cheong* [2022] 2 SLR 1296 ("*Ng Koon Yee*"), based on the

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213 NEs dated 14 July 2023 at p 134, line 22 to p 136, line 7.

214 NEs dated 14 July 2023 at p 136, lines 8–12.

"prevention principle", "a party cannot insist on his contractual rights when he had himself caused the non-performance of a contractual event" (*Ng Koon Yee* at [80]), unless the principle is "excluded by an express provision to the contrary or by the parties' intentions as revealed by the express contractual terms" (*Ng Koon Yee* at [82], citing *Petroplus Marketing AG v Shell Trading International Ltd* [2009] 2 Lloyd's Rep 611 at [17]). As noted at [83] of *Ng Koon Yee*, the prevention principle has the effect of disentitling a contracting party from avoiding his obligations under the contract if the non-fulfilment of the counterparty's obligations under the contract is attributable to the first-mentioned party's own breach of the contract.

133 The plaintiffs submit in this regard that the defendants breached their implied duty to co-operate with the plaintiffs in making arrangements to return the plaintiffs' watches to WatchFund HK.[215] I agree with the plaintiffs.

134 I find that there is an implied duty on the part of WatchFund HK to co-operate with the plaintiffs to take possession of the watches pursuant to the re-purchase offers that the plaintiffs have indicated their intention to accept. At [105] of *Ng Koon Yee*, the Appellate Division of the High Court cited *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 ("*Sembcorp*") at [101] for the steps to apply in determining if a term is to be implied in fact into a contract, which are instructive and reproduced below:

> (a) The first step is to ascertain how the gap in the contract arises. Implication will be considered only if the court discerns that the gap arose because the parties did not contemplate the gap.

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215 PFCS at p 6, para 11.

> (b) At the second step, the court considers whether it is necessary in the business or commercial sense to imply a term in order to give the contract efficacy.
>
> (c) Finally, the court considers the specific term to be implied. This must be one which the parties, having regard to the need for business efficacy, would have responded 'Oh, of course!' had the proposed term been put to them at time of the contract. If it is not possible to find such a clear response, then, the gap persists and the consequences of that gap ensue.

135 In relation to the first step of the test, concerning the ascertainment of how the gap in the contract arises, the Court of Appeal in *Sembcorp* explained at [94]–[95] that only where the parties did not contemplate the issue at all and so left a gap would it be appropriate for the court to even consider if it would imply a term into the parties' contract. The Court of Appeal contrasted this scenario with two other scenarios where an implication of terms would be inappropriate: (a) where the parties contemplated the issue but chose not to provide a term for it because they mistakenly thought that the express terms of the contract had adequately addressed it; and (b) where the parties contemplated the issue but chose not to provide any term for it because they could not agree on a solution. As reproduced above at [112], clause 3.2(c) of the Disputed IAs requires, for the purposes of the re-purchase process, that the investors return the watches to WatchFund HK. Patently, this clause expressly contemplates the investors passing possession of the watches to WatchFund HK and WatchFund HK taking possession of the watches. To the extent that there is now a gap in terms of the *logistics* of passing possession of the watches, this is a gap that was not in the contemplation of the parties. There is no indication that the plaintiffs and WatchFund HK contemplated that an issue concerning the delivery of watches would arise in the re-purchase process but chose not to provide a term out of any mistaken belief, or that they contemplated the gap but could not agree on how to resolve it. Indeed, it would appear that the plaintiffs and WatchFund

HK had understood that they had a shared interest in delivering the watches back to WatchFund HK for the re-purchase of the watches, and that it did not occur to them that there was any need to delineate the steps that had to be taken by each party in relation to such delivery.

136 As for the second and third steps of the test in *Sembcorp*, to imply a term that WatchFund HK had to co-operate with the plaintiffs to take possession of the watches is necessary in the business or commercial sense to give the re-purchase mechanism (and the Disputed IAs more broadly) efficacy, and such a term would also be one that the parties, having regard to the need for business efficacy, would have responded 'Oh, of course!' had the proposed term been put to them at the time of contracting. As a matter of common sense, it would not be possible for the investors to return possession of the watches to WatchFund HK in accordance with clause 3.2(c) of the Disputed IAs (see above at [112]) if WatchFund HK refuses to take possession of the watches or neglects to inform the plaintiffs of how they can return the watches to WatchFund HK.

137 Therefore, WatchFund HK had been in breach of the Disputed IAs by breaching an implied duty to co-operate with the plaintiffs to take possession of the watches. I note that there is nothing in the Disputed IAs to indicate that the parties have excluded the operation of the prevention principle (see *Ng Koon Yee* at [82]). Accordingly, the defendants are not entitled to rely on the failure of the plaintiffs to return the watches as a valid reason for WatchFund HK to cancel the re-purchase offers.

138 I find that, save for Ms Yung's Disputed IA (for which no re-purchase offer was made), WatchFund HK had breached clause 3.2 in relation to all the Disputed IAs by failing to follow through with re-purchase offers made under that clause. I find further that WatchFund HK was in repudiatory breach of those

Disputed IAs by evincing a refusal to perform, which refusal "would lead a reasonable person to conclude that it no longer intended to be bound by the [contract]" (*iVenture* at [65]). In other words, WatchFund HK had effectively renounced these agreements within the meaning of Scenario 1 of *iVenture* (see [108] above).

139 Turning to Ms Yung's Disputed IA, Mr Dominic Khoo conceded that no re-purchase offer was made to Ms Yung during the one-year Investment Period.[216] This was a breach of clause 3.1 of Ms Yung's Disputed IA (see above at [112]). Referring back to Scenario 3 set out in *iVenture* at [63] as reproduced at [108] above, such a breach of contract by WatchFund HK would entitle Ms Yung or her assignee, as the innocent party, to terminate the Disputed IA, because this breach would deprive the innocent party of substantially the whole benefit that Ms Yung or her assignees had intended to obtain from the contract. Plainly, Ms Yung entered into her Disputed IA with a view to WatchFund HK re-purchasing the watches held by her under the Disputed IA and getting back "a guaranteed price computed based on the Investment Cost plus a premium of 10% per annum of the Investment Cost over the Investment Period".[217] The failure of WatchFund HK to make the requisite re-purchase offer therefore wholly undermined the bargain. Indeed, MCA Limited, as Ms Yung's assignee, indicated its election to terminate the Disputed IA.[218] In this regard, I find that MCA Limited had validly terminated Ms Yung's Disputed IA for WatchFund HK's repudiatory breach.

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216 NEs dated 14 July 2023 at p 22, lines 14–21.

217 Ms Yung's AEIC at p 62 (BAEIC at p 1095)

218 Ms Yung's AEIC at Tab 12, para 31 (BAEIC at p 1123).

Failure to deliver brand new watches and breach of warranty to purchase watches at below 50% of current/published RRP

140 For completeness, I deal briefly with two residual claims made by the plaintiffs.

141 In relation to the plaintiffs' claim that WatchFund HK had breached clause 4.1 of the Disputed IAs (see above at [48]) by delivering watches that were not brand new,[219] this was not pleaded by the plaintiffs.

142 Turning to the plaintiffs' claim that the warranty under clause 2.7/2.8 of the Disputed IAs (*viz,* that "the pieces are purchased for the investor at below 50% of current/published recommended retail price") has been breached,[220] as with the plaintiffs' misrepresentation claims, the plaintiffs have not adduced credible evidence of the RRPs of the watches (see [81]–[85] above). They have therefore failed to prove that this warranty has been breached. Relatedly, as a matter of contractual interpretation, nothing in the words of this warranty can be read as obliging the defendants to furnish the RRPs of the watches to the plaintiffs.

143 To summarise, the plaintiffs cannot succeed in their claim that WatchFund HK had breached clauses 4.1 and 2.7/2.8 of the Disputed IAs. The plaintiffs also cannot succeed in their claim in contract against Mr Dominic Khoo as he was not a party to any of the Disputed IAs. However, the plaintiffs succeed in their claim that WatchFund HK had breached clause 3.2 of all the Disputed IAs except for Ms Yung's Disputed IA. The plaintiffs also succeed in

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219 PCS at paras 103–104.

220 PCS at para 87.

their claim that WatchFund HK had breached clause 3.1 of Ms Yung's Disputed IA. I hold WatchFund HK liable for breach of contract accordingly.

Lifting the corporate veil

Parties' cases

Plaintiffs' case

144 The plaintiffs argue that WatchFund HK is Mr Dominic Khoo's alter ego, and as such, Mr Dominic Khoo should be personally liable for any liabilities incurred by WatchFund HK arising out of and/or in connection with the Disputed IAs.[221] In the initial statement of claim filed by the plaintiffs, the plaintiffs had further pleaded that WatchFund HK was a sham as a ground for the lifting of the corporate veil of WatchFund HK. This pleading was, however, struck out pursuant to a striking out application taken out by Mr Dominic Khoo.[222]

145 The plaintiffs argue that WatchFund HK's business model was based almost entirely on Mr Dominic Khoo's personal knowledge, experience, expertise and connections to luxury watchmakers, and that Mr Dominic Khoo was the "key man and face" of WatchFund HK.[223] The plaintiffs placed heavy emphasis on the fact that Mr Dominic Khoo was the sole director and

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221 PCS at paras 105–111; PFCS at pp 8–9, para 4.

222 Statement of Claim (Amendment No 1) at para 38; 2nd Defendant's Written Submissions for HC/SUM 240/2022 dated 24 February 2022 at paras 51 to 62; Minute Sheet for HC/SUM 240/2022 dated 21 April 2022 at p 6.

223 PCS at para 107(a).

shareholder of WatchFund HK,[224] and was thus the brains behind, and the directing will of, WatchFund HK.[225]

146 Furthermore, as a matter of the management of WatchFund HK, the plaintiffs argue that WatchFund HK was a "one-man show" in that Mr Dominic Khoo was the sole decision-maker of WatchFund HK[226] and the sole signatory to WatchFund HK's corporate bank account,[227] and that he ran WatchFund HK from his home.[228] Moreover, the plaintiffs highlight that WatchFund HK had no accountants, auditors nor audited bank accounts.[229] Mr Dominic Khoo had also left instructions with his lawyer concerning contingency plans for WatchFund HK in case Mr Dominic Khoo was incapacitated, which, in the plaintiffs' view, is consistent with WatchFund HK being a sole-proprietorship.[230] The plaintiffs contend that Mr Dominic Khoo had treated WatchFund HK's business as his personal business.[231] The chief example cited by the plaintiffs to support this contention is the fact that Mr Dominic Khoo's name was listed as the purchaser in eight invoices exhibited by WatchFund HK in the suit, which purportedly demonstrates that Mr Dominic Khoo must have bought the watches in his own name and transferred the watches to WatchFund HK, before WatchFund HK delivered the watches to the plaintiffs for them to hold under the Disputed IAs.[232]

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224 PFCS at p 8, para 4(a).

225 PCS at para 107(a).

226 PCS at paras 107(b)–(c).

227 PFCS at p 8, para 4(a).

228 PCS at para 107(c).

229 PCS at para 107(c).

230 PCS at para 107(d).

231 PCS at para 107(e).

232 PCS at para 107(e); PFCS at p 8, para 4(d).

147 In addition, the plaintiffs assert that Mr Dominic Khoo made no distinction between WatchFund SG and WatchFund HK, and conflated the two separate legal entities, which shows that he treated these corporate entities as personal extensions of himself.[233]

148 In terms of the management of funds, the plaintiffs submit that Mr Dominic Khoo similarly conflated WatchFund HK's corporate bank account with his various personal bank accounts, and there was a comingling of funds.[234] The plaintiffs note that Mr Dominic Khoo had allowed investors of the WatchFund investment scheme to pay investment moneys into his personal bank accounts, even though the investments were made with WatchFund SG.[235] As for the Disputed IAs, Mr Dominic Khoo had insisted that the plaintiffs pay the Sale Fee to his personal bank account, despite the Disputed IAs providing for investment moneys to be paid to WatchFund HK's corporate bank account.[236] The plaintiffs also point out that when WatchFund HK's corporate bank account was closed by DBS HK, Mr Dominic Khoo transferred WatchFund HK's funds into his personal bank account in Singapore.[237] This, in the plaintiffs' view, shows that Mr Dominic Khoo had treated WatchFund HK's business as his sole proprietorship.[238]

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233 PCS at para 108.

234 PCS at para 109.

235 PCS at paras 109(a)–(b).

236 PCS at para 109(c).

237 PCS at paras 109(d)–(e).

238 PCS at para 109(e).

Defendants' case

149 The defendants argue that the corporate veil should not be lifted as the plaintiffs have not proven that WatchFund HK is the alter ego of Mr Dominic Khoo.[239] The defendants contend that the plaintiffs' conduct proves that they knew and treated WatchFund HK as a separate legal entity from Mr Dominic Khoo:

(a) First, in every one of the Disputed IAs, it is expressly stated that WatchFund HK was the contracting party.[240]

(b) Second, Mr Dominic Khoo was never named as a contracting party in the Disputed IAs.[241] No request was made to name Mr Dominic Khoo as a contracting party.

(c) Third, in the duly executed letters of authorisation authorising Innovest to deal with this present dispute on behalf of Mr Wong Ben, Dr Edmund Liew and Mr Wong Nga Kok, the documents expressly referred to the contractual relationship shared between the investor and WatchFund HK, not Mr Dominic Khoo.[242]

(d) Fourth, in the Draft Deeds of Undertaking prepared by Innovest, Mr Dominic Khoo was referred to as the "director of The WatchFund Limited".[243]

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239 DCS at para 93.

240 DCS at para 102.1.

241 DCS at para 102.2.

242 DCS at para 102.3.

243 DCS at para 102.4.

(e) Fifth, the plaintiffs insisted on making the payment of the Sale Fee to WatchFund HK's bank account or, alternatively, receiving a board resolution from WatchFund HK authorising payment to Mr Dominic Khoo's personal bank account. This demonstrates that the plaintiffs themselves treated WatchFund HK and Mr Dominic Khoo as legally separate entities.[244]

(f) Sixth, the defendants did not deceive the plaintiffs and Ms Yung as to the corporate structure of WatchFund HK, and they were aware that Mr Dominic Khoo was the "sole shareholder and director" of WatchFund HK.[245]

150 The defendants argue that the fact that Mr Dominic Khoo runs WatchFund HK in a manner consistent with his sole directorship and shareholding is insufficient for the court to lift the corporate veil.[246] The defendants also argue that the proper focus of the court should be on whether the transactions under the Disputed IAs were, in substance, transactions between Mr Dominic Khoo himself on one hand and the plaintiffs and Ms Yung on the other.[247]

The law

151 A company's separate legal personality is the "starting point of modern company law". This was emphasised by the Court of Appeal in its decision of *Miao Weiguo v Tendcare Medical Group Holdings Pte Ltd (formerly known as*

244 DCS at paras 94 and 102.5.

245 DCS at para 100.

246 DRS at paras 102–103.

247 DRS at para 105.

Tian Jian Hua Xia Medical Group Holdings Pte Ltd) (in judicial management) and another [2022] 1 SLR 884 at [114], which referred to the landmark decision of *Aron Salomon v A Salomon and Co, Ltd* [1897] 1 AC 22 ("*Salomon v Salomon*"). The principle of separate legal personality is encapsulated by Lord Halsbury L.C.'s remarks in *Salomon v Salomon* (at 30) that a legally incorporated company "must be treated like any other independent person with its rights and liabilities appropriate to itself". The rationale for this principle is a logical one (*Sitt Tatt Bhd v Goh Tai Hock* [2009] 2 SLR(R) 44 ("*Sitt Tatt*") at [78], citing with approval Stephen W Mayson *et al*, *Mayson, French & Ryan on Company Law* (Blackstone Press, 18th Ed, 2001–2002) at p 145):

> Persons are entitled to incorporate companies for the purpose of separating their business affairs from their personal affairs or for the purpose of separating the affairs of one part of a business from another part. In doing so they are relying on the separate personalities of the companies they incorporate and this separate personality is respected by the courts, even if it is to the detriment of the incorporators.

152 The court in *Mohamed Shiyam v Tuff Offshore Engineering Services Pte Ltd* [2021] 5 SLR 188 ("*Mohamed Shiyam*") at [56]–[57], citing *Walter Woon on Company Law* (Tan Cheng Han gen ed) (Sweet & Maxwell, Revised 3rd Ed, 2009) at paras 2.58–2.59, noted that the case law and commentary have used different expressions to describe various grounds for lifting the corporate veil. The plaintiffs have argued that WatchFund HK's corporate veil should be lifted because the company is the alter ego of Mr Dominic Khoo, its controller (the "Alter Ego Ground") (see [144] above). I will thus focus my analysis on the Alter Ego Ground given that it is the only ground that is relevant here.

153 As held by the Court of Appeal in *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 ("*Alwie Handoyo*"), the key inquiry under the Alter Ego Ground is whether the company was "carrying on

the business of its controller" (*Alwie Handoyo* at [96], citing *NEC Asia Pte Ltd v Picket & Rail Asia Pacific Pte Ltd* [2011] 2 SLR 565 ("*NEC Asia*") at [31] and *Zim Integrated Shipping Services Ltd v Dafni Igal* [2010] 2 SLR 426 at [86]–[88]). In reaching a finding, it must be borne in mind that for "'one-man' companies, the sole shareholder would almost always be the controlling mind and will of the company" (*Mohamed Shiyam* at [71]). Hence, it was observed in *Mohamed Shiyam* (at [71]) that for all such companies to have their corporate veil lifted on the Alter Ego Ground would "defeat the point of incorporation for many small, closely held companies".

154 I turn now to consider the facts of *Alwie Handoyo* and *Sitt Tatt*, which bear some similarities to the present case.

155 In *Alwie Handoyo*, a company – OAFL – had received certain cash and shares pursuant to a share acquisition transaction which OAFL was not a party to (*Alwie Handoyo* at [42(a)] and [43]). The High Court held, *inter alia*, that the corporate veil should be lifted such that OAFL's controller – Alwie – would be personally liable to return the cash and shares received by OAFL (*Alwie Handoyo* at [47]–[48]). On appeal, the Court of Appeal agreed with the decision to lift OAFL's corporate veil on the ground that OAFL was in fact not a separate entity but an alter ego of its controller, Alwie (*Alwie Handoyo* at [100]). Several factors were material to this finding:

(a) Firstly, OAFL had been incorporated by Alwie, "for the sole purpose of receiving payment under" the very sale and purchase agreement which was the subject matter of the action (*Alwie Handoyo* at [97]).

(b) Secondly, Alwie had appointed himself as the sole director and shareholder of OAFL, and had admitted that he "controlled" OAFL as its "directing mind and will" (*Alwie Handoyo* at [97]).

(c) Thirdly, Alwie had declared on the stand that he was entitled under the sale and purchase agreement to personally receive the moneys paid to OAFL (*Alwie Handoyo* at [98]).

(d) Fourthly, in terms of the financial arrangements surrounding OAFL, OAFL's company bank account was controlled by Alwie. Alwie was the beneficial owner of the account, and had operated the corporate bank account as if it was his own personal bank account (*Alwie Handoyo* at [98]).

(e) Fifthly, Alwie had actively procured payments due to OAFL under the sale and purchase agreement in a manner that suggested that he made no distinction between himself and OAFL. Specifically, Alwie had requested for moneys payable under the sale and purchase agreement to OAFL to be deposited via cheque into his personal bank account (*Alwie Handoyo* at [99]).

156 In contrast, the High Court in *Sitt Tatt* declined to lift the corporate veil, emphasising the importance of a company's separate legal personality (at [78]). It held that parties are "entitled to protect themselves by creating companies even if these are effectively one man companies" (*Sitt Tatt* at [79]). While the court may in "limited circumstances" ignore the company's separate legal personality and lift the corporate veil (*Sitt Tatt* at [79]), *Sitt Tatt* was not one such situation.

157 In *Sitt Tatt*, the defendant, Goh, was the sole shareholder and director of a company, Prime (*Sitt Tatt* at [3]). The parties agreed that the plaintiff, ST Bhd, would transfer US$1m to Prime as part of a joint venture agreement (*Sitt Tatt* at [11]). This sum of US$1m was remitted to Goh's personal bank account in Singapore as Prime did not operate a bank account in Singapore (*Sitt Tatt* at [14]). When the parties' relations broke down, Prime withdrew from the agreement and ST Bhd demanded a refund of this sum (*Sitt Tatt* at [18]). ST Bhd sought to lift Prime's corporate veil to hold Goh personally liable for Prime's repudiation of the joint venture agreement "on the basis that he was Prime's *alter ego*" because (*Sitt Tatt* at [77]): Goh had personally steered Prime to repudiate the joint venture agreement; Goh controlled Prime, an A$2 company, and was answerable to no one else and had used Prime as he wished; and Goh should not be allowed to make Prime a shield for himself and avoid the damages suffered by ST Bhd on account of Prime's repudiation of contract.

158 The High Court was not persuaded, and observed at [81] that:

> In this case, all parties knew that the defendant was the controlling mind behind Prime. They also knew that they were contracting with Prime and not the defendant. Prime had an office in Perth. It operated its own bank account, its own assets, telephone line, fax line and letterheads. As the defendant submitted, the mere fact that he held all the shares in Prime would not make him liable for Prime's debts. There was no assertion of any impropriety in the defendant or Prime's dealings and Prime had not been used by the defendant to further any improper purpose. Prime's venture with the plaintiff and KTR was a *bona fide* commercial transaction. Thus there was no evidence that Prime had been created as a sham or a façade to shield the defendant from responsibility for nefarious transactions. No false picture was presented to KTR in its dealings with Prime or with the defendant as the representative of Prime. In these circumstances, whilst the plaintiff might have been aggrieved that its contractual recourse was only against Prime, a company with few assets, I cannot simply on the basis that the defendant as the only director of Prime was

> instrumental in Prime's breach of contract hold him personally liable for that breach.

159 The appeal against the decision in *Sitt Tatt* was dismissed by the Court of Appeal with no written grounds of decision rendered. I note that *Sitt Tatt* was a case where it was pleaded that the defendant should be held liable on the Alter Ego Ground (*Sitt Tatt* at [32] and [33(e)]). This was rejected by the court (*Sitt Tatt* at [77]–[78]). At [77] of *Sitt Tatt*, the court referred to the plaintiff's argument that the defendant "was [his company's] *alter ego* [and] … it would be appropriate for the court to pierce [the company's] corporate veil and hold the defendant personally liable for [the company's] final repudiation of the [contract]". The Judge stated at [78] that she "[could not] accept that submission" and refused to lift the corporate veil.

Analysis

160 Having set out the applicable principles and case law, I turn now to address the key question of whether WatchFund HK could be said to be "carrying on the business of its controller [*ie*, Mr Dominic Khoo]" in a manner that warranted the lifting of its corporate veil (*Alwie Handoyo* at [96]). In my judgment, the answer to this issue is in the negative when the evidence on how Mr Dominic Khoo ran WatchFund HK is viewed in its entirety.

161 On a preliminary note, I accept that (a) Mr Dominic Khoo is the sole director and shareholder of WatchFund HK,[248] (b) Mr Dominic Khoo is the driving force behind WatchFund HK, and (c) WatchFund HK's business model is based significantly on Mr Dominic Khoo's personal knowledge, experience, expertise and connections. However, these factors are not uncommon in one-

[248] Mr Dominic Khoo's AEIC at para 1 (BAEIC at p 1414).

man companies and would not, whether alone or together, constitute sufficient reason for the corporate veil to be lifted. As explained by the High Court in *Sitt Tatt* at [79], "the general proposition in law is that parties are entitled to protect themselves by creating companies even if these are effectively one man companies". The natural incidence of a concentrated power and personality in one-man companies without more, cannot thus be the reason for the lifting of the corporate veil.

162 The plaintiffs, however, raise a number of arguments to which I now turn.

163 First, the plaintiffs' claim that WatchFund HK had no accountants, auditors, or audited bank accounts.[249] While this might have been a relevant factor in the analysis, I note that the plaintiffs have not canvassed this issue in any detail in the proceedings or in their submissions. I am therefore not able to derive any assistance from the claim.

164 Second, the plaintiffs argue that Mr Dominic Khoo had treated WatchFund HK's business as his personal business[250] by purchasing, in his own name, eight watches that WatchFund HK subsequently delivered to the plaintiffs under the Disputed IAs.[251] In my view, this point does not take the plaintiffs' case very far. In *Commodities Intelligence Centre Pte Ltd v Mako International Trd Pte Ltd and others* [2022] 5 SLR 837 ("*Commodities Intelligence*"), the plaintiff ("CIC") sought to lift the corporate veil of the first defendant-company ("Mako") and hold Mako's director ("Jonathan")

249 PCS at para 107(c).

250 PCS at para 107(e).

251 PCS at para 107(e).

personally liable based on the Alter Ego Ground. One of the factors relied on by CIC was that Jonathan had made a payment of US$80,000 on behalf of Mako in connection with a transaction, suggesting that Jonathan had "no qualms about assuming what [were] rightfully the financial obligations of Mako" (*Commodities Intelligence* at [150]). However, the court held that little could be inferred from the fact of payment alone as there was insufficient evidence as to how Mako's accounts had recorded this payment (*Commodities Intelligence* at [151]). It may well have been that a liability of US$80,000 was recorded in Mako's accounts in Jonathan's favour, showing that a distinction was drawn between Mako's and Jonathan's money (*Commodities Intelligence* at [151]). In the absence of evidence on Mako's accounts, the court declined to lift the corporate veil. In the present case, evidence as to how the watches were paid for and how these transactions were recorded in WatchFund HK's books is similarly lacking, and therefore, the fact that the eight watches were purchased in Mr Dominic Khoo's own name alone cannot justify the lifting of the corporate veil of WatchFund HK.

165 Third, the plaintiffs rely on the argument that Mr Dominic Khoo had conflated WatchFund SG and WatchFund HK.[252] In my judgment, this too cannot support their case for lifting the corporate veil. In particular, the plaintiffs rely on Mr Dominic Khoo's AEIC, in which he had referred to previous occasions where Mr Gary Wong and Innovest made payments to WatchFund SG by transferring funds to Mr Dominic Khoo's personal HSBC account.[253] Further, they point out that Mr Dominic Khoo had referred to "The WatchFund", which was defined in his AEIC as WatchFund HK, when he

252 PCS at para 108.

253 PCS at para 108(a), citing Mr Dominic Khoo's AEIC at paras 85–86 (BAEIC at pp 1450–1452).

should have referred to WatchFund SG.[254] While I acknowledge that Mr Dominic Khoo, in his AEIC, was imprecise in his use of terminology, and had used the term "The WatchFund" to refer interchangeably to WatchFund SG and WatchFund HK, I am of the view that it would be tenuous and highly pedantic to use such imprecisions in an AEIC as the basis for lifting the corporate veil. In my view, the key point that Mr Dominic Khoo was making in the portions of his AEIC relied on by the plaintiffs was that there was a pattern of past conduct, in relation to the WatchFund investment scheme, whereby the parties had dealt with each other on the basis that Mr Dominic Khoo's personal bank accounts could be used for the transactions. This pattern of conduct thereby formed the foundation of Mr Dominic Khoo's argument – one that I disagree with (see [128] above) – that he was entitled to insist on a similar arrangement in relation to the payment of the Sale Fee under the Disputed IAs. These paragraphs from Mr Dominic Khoo's AEIC are insufficient for me to conclude that Mr Dominic Khoo treats WatchFund SG and WatchFund HK as one and the same, and in any event, are insufficient to lift the corporate veil of WatchFund HK.

166 I turn finally to the issue of WatchFund HK's financial management.

167 There is a preliminary point to be made here. In persuading this court to lift the corporate veil of WatchFund HK, the plaintiffs rely on the fact that Mr Dominic Khoo had previously allowed investors of the WatchFund investment scheme to pay investment moneys into his personal bank accounts, even though the investments were made with WatchFund SG.[255] These past investment agreements are not the subject of this suit. Moreover, the plaintiffs are *not*

254 Mr Dominic Khoo's AEIC at para 86 (BAEIC at p 1452).

255 PCS at paras 109(a)–(b).

seeking to lift WatchFund *SG's* corporate veil. These references to past practices are therefore of little relevance to the present dispute.

168 The present case shares similarities with *Sitt Tatt*. In *Sitt Tatt*, the sum of US$1m that ST Bhd was trying to claw back was remitted to Goh's personal bank account in Singapore instead of a corporate bank account because Goh's company, Prime, did not operate a bank account in Singapore at the time of the transfer (*Sitt Tatt* at [14]). This, even when coupled with other facts showing that Prime was, in essence, a one-man company with the defendant as "the controlling mind behind Prime" (*Sitt Tatt* at [81]), was insufficient on the facts of *Sitt Tatt* to lift the corporate veil of the company.

169 In contrast, the factors cited by the Court of Appeal in *Alwie Handoyo* (see [155] above) that led the court to lift the corporate veil are absent here. In *Alwie Handoyo*, there was evidence that the company, OAFL, had been incorporated "for the sole purpose of receiving payment under" the very sale and purchase agreement which was the subject matter of the action (*Alwie Handoyo* at [97]). Alwie, the controller of OAFL, was not a contracting party to the agreement under which OAFL stood to receive payment, but he declared under cross-examination that he was *personally entitled* to receive the moneys that were supposed to be paid to OAFL under the agreement (*Alwie Handoyo* at [98]). He also conceded that he operated OAFL's bank account "as if it was his own personal bank account" (*Alwie Handoyo* at [98]). He even stated that he instructed payment that was due to be made to OAFL to instead be paid *via* cheque made out to OAFL's bank (*ie*, with the payee's name being the bank's name instead of the company's name) so that the cheque could be cleared by the bank quicker, allowing him to personally receive the payment sooner (*Alwie Handoyo* at [100]). Here, there is no evidence that Mr Dominic Khoo saw himself as *personally entitled* to receive the cash paid to WatchFund HK under

the Disputed IAs, or that he claims to be a beneficial owner of the moneys in WatchFund HK's corporate bank account, or that he operated WatchFund HK's bank account as if it was his own personal bank account. Instead, it is in evidence that the moneys in WatchFund HK's corporate bank account was transferred to Mr Dominic Khoo's personal bank account after WatchFund HK's corporate bank account was closed by the bank.

170 The fact that WatchFund HK had, at the time of entering into the Disputed IAs and for some time thereafter, operated its own corporate bank account is, in my view, salient. The court in *Mohamed Shiyam* at [76] observed that when lifting the corporate veil on the Alter Ego Ground, "the company must be the *alter ego* at the time of, and in relation to, the incurring by it of the liability sought to be imposed on the controllers". While the controllers' subsequent conduct or conduct in other respects could be relevant, the core inquiry is whether, in the entry into the impugned contracts, the company was in truth carrying on the controllers' business, or whether the controllers drew no distinction between themselves and the company (*Mohamed Shiyam* at [76]). Considering the dealings of the parties in the present case, it is clear that all parties treated WatchFund HK, and not Mr Dominic Khoo, as the contracting party to the Disputed IAs and as an entity that is distinct from Mr Dominic Khoo. This position was consistently reflected not only in the Disputed IAs but in the letters of authorisation that Mr Wong Ben, Dr Edmund Liew and Mr Wong Nga Kok had given to Innovest, as well as the Draft Deed of Undertaking that Innovest had prepared. It is clear thus, from the contractual arrangements and their context, that WatchFund HK was the real contracting party, and that it was known and treated as such by all relevant parties.

171 Further, as noted above at [123], each of the Disputed IAs specified WatchFund HK's corporate bank account (the "DBS Hong Kong Corporate

Account") as the bank account to which the investment moneys were to be paid. WatchFund HK had operated multiple corporate bank accounts, but these were closed by DBS HK on 30 September 2019. Thus, between August 2019 and September 2019, Mr Dominic Khoo transferred approximately S$2m from two of WatchFund HK's corporate bank accounts, one of which was the DBS Hong Kong Corporate Account, into Mr Dominic Khoo's personal POSB bank account.[256] According to Mr Dominic Khoo, WatchFund HK's funds were comingled with his personal funds when a practical need arose – the closure of WatchFund HK's corporate bank accounts by the bank.[257] This echoes the defendant's use of his personal bank account to receive funds in *Sitt Tatt* because the company did not operate a bank account in Singapore. I further note that the evidence suggests that the closure of WatchFund HK's corporate bank accounts was a decision apparently taken by DBS HK and not by Mr Dominic Khoo, and there is no evidence that this closure was engineered for a nefarious or deceptive purpose.

172 The threshold for lifting the corporate veil is a high one. In my judgment, that threshold is not met in the present case. Here, there is evidence that Mr Dominic Khoo had asked for the Sale Fee payable under the Disputed IAs to be deposited into his personal account and that he had transferred the moneys of WatchFund HK to his personal account, ostensibly necessitated by the closure of WatchFund HK's corporate bank account by DBS HK. I agree with the observations in Alan K Koh, Dan W Puchniak and Tan Cheng Han SC, "Company Law" (2021) 22 SAL Ann Rev 203 ("*Company Law*") at para 9.6, that "while the controller having treated the company's moneys as his own may be an indication [that the real contracting party is the controller], it should not

256 Mr Jowin Fung's AEIC at paras 75–78 (BAEIC at pp 861–862).

257 Mr Dominic Khoo's AEIC at paras 96–98 (BAEIC at pp 1454–1455).

be decisive in itself because diversion of corporate assets *per se* does not mean that corporate personality should be disregarded". In so far as the plaintiffs are insinuating misappropriation of corporate funds by Mr Dominic Khoo, the remedy does not lie in lifting the corporate veil as there is insufficient evidence showing that WatchFund HK was the *alter ego* of Mr Dominic Khoo or that Mr Dominic Khoo was the true contracting party. The remedy for misappropriation lies elsewhere. Accordingly, I decline to lift the corporate veil on the Alter Ego Ground.

Remedies

173 Having found that WatchFund HK has breached the Disputed IAs, I address the remedies to be awarded to the plaintiffs.

174 The plaintiffs prayed for the following remedies:[258]

> a) Payment of the sum of **RMB 2,127,950** by the 1st and 2nd Defendants to the 5th Plaintiff being the guaranteed Sale Proceeds which were due to Ms Yung, and now, the 5th Plaintiff, for the guaranteed repurchase/sale of the watches delivered to Ms Yung, and the 1st and 2nd Defendants take delivery of the said watches, or such other sum as the Court deems fit, or damages to be assessed;
>
> b) Payment of the sum of **HKD13,123,702.80 + USD 206,281.29** by the 1st and 2nd Defendants to the 1st to 5th Plaintiffs for the repurchase/sale of the 1st to 5th Plaintiffs' watches, and the 1st and 2nd Defendants take delivery of the said watches, or such other sum as the Court deems fit;
>
> c) Alternatively, damages in the sum of **HKD 12,872,703.30 + USD 206,281.29** be paid by the 1st and 2nd Defendants to the 1st to 5th Plaintiffs, and the 1st and 2nd Defendants take delivery

258 Statement of Claim (Amendment No 1) at paras 97(a)–(h) (SB at pp 194–195).

> of the 1st to 5th Plaintiffs' watches, or such other sum as the Court deems fit, or damages to be assessed;
>
> d) Further or in the alternative, a declaration that all of the 1st to 5th Plaintiffs and Ms Yung's Investment Agreements have been validly rescinded or rescission of all of the said Investment Agreements, and the return/payment by the 1st and 2nd Defendants to the 1st to 5th Plaintiffs of the sum of **HKD 12,583,658 + USD 205,401 + RMB 2,040,675** paid by them and Ms Yung to the 1st Defendant, and the 1st and 2nd Defendants take delivery of the 1st to 5th Plaintiffs and Ms Yung's watches, or such other sum as the Court deems fit;
>
> e) Further or in the alternative, by reason of the 1st and 2nd Defendants' liability in the tort of negligent misrepresentation, the 1st and 2nd Defendants pay the 1st to 5th Plaintiffs damages in the sum of **HKD 12,583,658 + USD 205,401 + RMB 2,040,675**, or such other sum as the Court deems fit, or damages to be assessed;
>
> f) Interest pursuant to Section 12 of the Civil Law Act (Cap 43);
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> g) Costs; and
>
> h) Such further and/or other relief as this Honourable Court deems fit.
>
> [emphasis in original]

Specific Performance

175 Prayers (a) to (d) are reliefs sought by the plaintiffs for their action in contract, and involve the defendants making payments to the plaintiffs and taking delivery of their watches.[259] In this regard, the plaintiffs stated in their further closing submissions that prayers (a) to (c) are prayers for specific performance of the Disputed IAs based on their affirmation of the same.[260] As

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259 Letter from the court dated 23 February 2024 at para 8(3).

260 PFCS at p 18, para 2(i) and p 19, paras 3(i) and 4(i).

for prayer (d), it is an alternative relief based on the rescission of the Disputed IAs.[261]

Parties' cases

176 The plaintiffs submit that they are entitled to the remedy of specific performance.[262] It is their case that damages would not be adequate as the watches under the Disputed IAs are "rare and ultra high-end luxury watches", some of which are "so rare they are one-of-a-kind ('*piece unique*') and with a very small and limited field of potential buyers with the knowledge of, and means to appreciate, such watches".[263] Also, the watches were hand-picked by Mr Dominic Khoo with the plaintiffs having no say in their selection.[264] The plaintiffs further submit that the defendants should not be allowed to evade their re-purchase obligations[265] and that the defendants would not suffer substantial hardship if specific performance is ordered against them.[266]

177 The defendants argue that there is no legal basis for the plaintiffs to seek specific performance.[267] They submit that an order for specific performance would cause undue hardship to WatchFund HK because it will likely be forced to acquire these *specific* timepieces under the Disputed IAs, when it would not ordinarily have done so but for the plaintiffs' investments.[268] The defendants

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261 PFCS at p 19, para 4(i).

262 PFCS at p 21, para 6(i)(iv).

263 PFCS at p 21, para 6(i)(iv).

264 PFCS at p 21, para 6(i)(iv).

265 PFCS at pp 21–22, para 6(i)(iv).

266 PFCS at p 22, para 6(i)(iv).

267 Defendants' Further Submissions dated 15 March 2024 ("DFS") at para 43.

268 DFS at para 51.

also submit that damages would suffice,[269] and that in that regard, the plaintiffs have neglected to adduce the necessary evidence to prove and/or quantify damages.[270]

The law

178 The law on the availability of specific performance as a remedy is well-established. The Court of Appeal stated as follows in *Lee Chee Wei v Tan Hor Peow Victor and others and another appeal* [2007] 3 SLR(R) 537 ("*Lee Chee Wei*") at [53] and [55]:

> 53 While the dominant principle is that equity will only grant specific performance *"if under all the circumstances, it is just and equitable to do so"* (*Stickney v Keeble* [1915] AC 386), factors affecting the court's discretion include considerations such as (a) whether damages would be an adequate remedy; and (b) whether the person against whom the relief of specific performance is being sought would suffer substantial hardship (*Chua Kwok Fun Kevin v Etons Management Consultants Pte Ltd* [1999] 1 SLR(R) 1088 ("*Chua Kwok Fun*")).
>
> …
>
> 55 While the subject matter of the contract may readily lend itself to an order of specific performance, *the more pertinent issue in every case is whether specific performance constitutes the just and appropriate remedy in the circumstances*.
>
> [emphasis added]

179 The contributors to *Halsbury's Laws of Singapore – Contract* vol 7 (LexisNexis Singapore, 2023) ("*Halsbury's on Contract*") at para 80.586 note that:

> The remedy is generally available only when an award of damages is an inadequate remedy for the aggrieved party.

269 DFS at para 2(e).

270 DFS at para 55.

> Where damages provide an adequate remedy for a breach of contract, specific performance will not be ordered and the aggrieved party will be confined to his remedy in damages. As such, specific performance will not be available when substitute performance is available as, for example, in a sale of commodities or a sale of listed shares. *Specific performance should be ordered when it will 'do more perfect and complete justice than an award of damages'.*
>
> Damages may be considered an inadequate remedy if they prove difficult to quantify. This explains the availability of specific performance in a contract of indemnity, where there is a promise to execute a mortgage to secure a loan, and where there is a promise to pay an annuity to a third party.
>
> [emphasis added; footnotes omitted]

180 Another point to note is that where an innocent party terminates the contract by accepting the counterparty's prior repudiatory breaches, the innocent party necessarily abandons his claim for specific performance: *CSDS Aircraft Sales & Leasing Inc v Singapore Airlines Ltd* [2022] 1 SLR 284 ("*CSDS Aircraft Sales & Leasing Inc*") at [3].

Analysis

181 At the outset, the parties are aligned that Mr Wong Ben, Dr Edmund Liew and Mr Wong Nga Kok have affirmed, and not terminated, their respective Disputed IAs.[271] The defendants have remained silent as regards Mr Gary Wong's and MCA Limited's affirmation of their Disputed IAs and did not take issue with this position. As for Ms Yung, I have found above (at [139]) that MCA Limited, as Ms Yung's assignee, had validly terminated Ms Yung's Disputed IA for WatchFund HK's repudiatory breach. This is evident from paragraph 31 of the plaintiffs' Letter of Demand dated 9 April 2021, which

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[271] Mr Jowin Fung's AEIC at p 136, at paras 22–24 (BAEIC at p 973); 1D Defence (Amendment No 1) at para 47(e) (SB at p 216); Statement of Claim (Amendment No 1) at para 67 (SB at p 184).

stated in unequivocal terms that "MCA Limited elect[ed] to terminate [Ms Yung's Disputed IA]".[272] Accordingly, specific performance is no longer available as regards her agreement. In this section, I will deal with whether Mr Wong Ben, Dr Edmund Liew, Mr Wong Nga Kok, Mr Gary Wong and MCA Limited (with respect to only *its own* Disputed IA, and not the Disputed IA assigned to it by Ms Yung) are entitled to the remedy of specific performance.

182 In my judgment, given the framework of interlocking obligations under the Disputed IAs and the unique subject matter of the bargain entered into by the parties, an award of damages would be wholly inadequate to meet the parties' expectations in entering into the contracts, and an order of specific performance for all the Disputed IAs (other than Ms Yung's Disputed IA) is the option that would offer a "just and appropriate remedy in the circumstances" (*Lee Chee Wei* at [55]).

183 I start with the observation that it may be tempting to conclude that, from the plaintiffs' perspective, the Disputed IAs were investment agreements with a focus on monetary returns. Indeed, if this were in fact the case, specific performance would not be available, because like a vendor of land who is interested not in the land but in the monetary returns that can be generated from it, damages would be an adequate remedy since the vendor is "really interested in receiving money in return for the property, and, potentially, anyone can provide for the property: it does not have to be the *purchaser's* money" [emphasis in original] (Paul S Davies, "Being specific about specific performance" (2018) 4 The Conveyancer and Property Lawyer at 329).

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272 Ms Yung's AEIC at Tab 12, para 31 (BAEIC at p 1123).

184 However, the foregoing conclusion, though tempting, is a mistaken characterisation of the real nature of this fairly complex contractual bargain between the parties. When the interlocking obligations and the subject matter of the contracts are considered as a whole, and we examine carefully what the plaintiffs are due to receive under the bargain, it will be clear that the essence of the Disputed IAs is not only the procurement of investment returns, but rather, the packaged right to procure and then liquidate these one-of-a-kind watches leveraging upon the contacts and resources of the defendants and in the process realise a profit that would not otherwise be obtainable. This analysis can be broken down into three aspects.

185 First, the uniqueness of the watches as the subject matter of the Disputed IAs is evident. It is Mr Dominic Khoo's own evidence that the watches under the WatchFund investment scheme are either "[a] timepiece that money cannot buy" or "[a] timepiece [one] can buy at a price others cannot get".[273] Some of these watches are also "*piece unique*", which, according to Mr Dominic Khoo, means that "there is only one of this timepiece in the world".[274]

186 Second, and relatedly, the uniqueness of these watches renders the contacts and resources of the defendants to be of utmost importance. It is patently obvious from the evidence that the plaintiffs had no intention of retaining the watches beyond the Investment Period in their own possession. Indeed, the watches could well be an unintended liability to the plaintiffs, as the watches would likely need to be maintained, serviced and stored in a safe place under proper conditions. Therefore, an essential aspect of the bargain is precisely for the plaintiffs to have the assurance that they would be able to

273 Mr Dominic Khoo's AEIC at para 66 (BAEIC at p 1438).

274 Mr Dominic Khoo's AEIC at para 67 (BAEIC at p 1438).

leverage upon the resources of the defendants not just in procuring the watches at a discount, but also in liquidating these watches in a ready market. An ordinary person would not appreciate or value the watches as fully as the watch aficionados whom the defendants purport to know. An ordinary person would also not be able to find a ready buyer for the watches, who would be willing to pay for their full value, like the defendants purport to be able to. It is not seriously disputed that the market for these purportedly rare and ultra high-end watches is niche.[275] The deal between the parties thus includes, as an essential element, provision for the watches to be re-purchased by WatchFund HK so that the plaintiffs would not themselves have to dispose of the watches.

187 Third, the Disputed IAs provide for interlocking obligations that are not easily separable or quantifiable as damages. The initial Investment Cost, for example, is paid by the plaintiffs to WatchFund HK for the latter's acquisition of the relevant watch, but upon acquisition that watch is (by default) to be held in the possession of the plaintiffs rather than WatchFund HK itself (clause 2.3 of the Disputed IAs). During this time, however, while the watches are in the plaintiffs' possession, title to these watches remain with WatchFund HK (see clause 2.7). Within one year from the time of investment, WatchFund HK is obliged to make an offer to re-purchase the watches, which if accepted by the plaintiffs, must result in the return of the watches' possession to WatchFund HK and the provision of certain minimum returns (less fees) to the plaintiffs unless the watches are not in a condition for re-purchase (see clauses 3.2 and 4). Given the nature of the obligations arising from the Disputed IAs, it would be overly simplistic to focus solely on the fungible monetary returns and not the unique way in which those returns are designed to be procured and secured, in

275 PFCS at p 19, para 6(iii).

determining the appropriate remedy. It bears emphasis that it was never the parties' intention that the plaintiffs would be responsible for finding suitable buyers for these watches, unless the plaintiffs have themselves elected to close out the accounts (which they have not).

188 The same outcome is also reached through the lens of prejudice. On one hand, there is simply no indication of any prejudice that will be suffered by WatchFund HK from having to carry out its promise to re-purchase the watches. The defendants' complaint[276] that ordering specific performance will cause WatchFund HK hardship because it will be forced to acquire the specific timepieces under the Disputed IAs is a complete non-starter as this is the very bargain that it had struck with the plaintiffs. Furthermore, it was and remains the defendants' position that the watches are highly sought after, procured at a profitable discount, and that WatchFund HK has access to a market of ready buyers waiting to acquire them (see [46(d)] above). Given these, I find it hard to see what the prejudice to WatchFund HK might be, if any at all, beyond having to discharge its contractual obligations. On the other hand, to require the plaintiffs, who have no knowledge and experience in dealing with such watches, nor access to the niche market for such watches, to retain the watches and dispose of them on their own through auctions or other platforms to liquidate their investment, will most certainly be arduous and prejudicial.

189 To this analysis I add two points. Firstly, it must be recalled that under clause 2.7 of the Disputed IAs, title to the watches remains with WatchFund HK. Secondly, the defendants admitted at trial that under the WatchFund investment scheme, investors such as the plaintiffs only have the watches, but

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276 DFS at para 51.

not the box and papers for the watches.[277] The plaintiffs' ability to sell the watches in the open market at the prices that such luxury watches ought to command if the watches had been in a full and complete set, would thus be significantly curtailed. These issues will not arise should the watches be returned to WatchFund HK for their disposal. Once again, these are factors unique to this case that weigh in favour of granting specific performance.

190 Therefore, while the Disputed IAs may seem at first glance to be straightforward investment agreements, they in fact reflect a much more nuanced and sophisticated bargain as between the parties. Based on the unique facts in this case, I consider that specific performance is appropriate and that it "will 'do more perfect and complete justice than an award of damages'" (*Halsbury's on Contract* at para 80.586).

191 I find that the plaintiffs are entitled to the remedy of specific performance from WatchFund HK in relation to the Disputed IAs (other than Ms Yung's Disputed IA). Taking into account the material terms of the Disputed IAs and the re-purchase offers that were made by WatchFund HK pursuant thereto, I grant specific performance in the following terms:

(a) The re-purchase of the watches is to be carried out by WatchFund HK within 3 months after the date of this judgment, unless the parties agree to a different time period or the court otherwise directs.

(b) The plaintiffs and WatchFund HK are to agree on how to effect the re-purchase (including such of the following matters as the parties may consider relevant) within two weeks after the date of this judgment:

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277 NEs dated 12 July 2023 at p 78, lines 8–15.

(i) the appointment of a person with the relevant expertise (the "Expert") to inspect the watches and to certify the condition of the watches[278] with reference to clauses 4.1(a)–(d) of the Disputed IAs;

(ii) the Expert's terms of reference; and

(iii) In relation to the watches certified by the Expert in accordance with clause 4 of the Disputed IAs to be in a condition for re-purchase, the arrangements for their delivery to WatchFund HK, including the specification of the place and mode of delivery, and the person designated to take delivery.

(c) WatchFund HK is to pay a plaintiff the total amount due to the plaintiff for the re-purchase of the plaintiff's watches upon the delivery by that plaintiff of that plaintiff's watches.

(d) The plaintiffs are granted liberty to seek directions for judgment to be entered against WatchFund HK in the amounts due under the re-purchase in the event that WatchFund HK defaults in making any payment to a plaintiff or in taking delivery of a plaintiff's watches.

(e) Liberty is given to the plaintiffs and WatchFund HK to apply for any consequential or other order and directions to give effect to the order for specific performance.

Damages for breach of contract

192 Given my findings that the first to fifth plaintiffs are entitled to specific performance of the Disputed IAs save for Ms Yung's Disputed IA, the issue of

[278] DFS at para 58(a).

damages is moot in so far as their claims are concerned. I turn to discuss Ms Yung's Disputed IA. To be clear, while I have granted MCA Limited specific performance in relation to its Disputed IA, that does not extend to the Disputed IA assigned by Ms Yung to MCA Limited, which, as explained above (see [139]), was terminated by MCA Limited. Indeed, the plaintiffs' primary pleading in relation to Ms Yung's Disputed IA is that MCA Limited accepted the defendants' repudiatory breach and terminated it.[279] This is reflective of the position taken in the Letter of Demand dated 9 April 2021 sent by the solicitors of the plaintiffs to the defendants.[280]

193 MCA Limited, having elected to terminate Ms Yung's Disputed IA, cannot now be awarded the remedy of specific performance (see *CSDS Aircraft Sales & Leasing Inc* above at [180]). As noted at para 80.497 of *Halsbury's on Contract*, "[a]cceptance of repudiation puts an end to all outstanding primary obligations. The innocent party is not entitled to accept repudiatory breach of one or more terms and at the same time require the rest of the contract to be performed" [footnotes omitted]. The remedy of specific performance is thus not available to MCA Limited (so far as Ms Yung's Disputed IA is concerned), and MCA Limited is confined to its claim in damages for breach of contract.

Proof of damage and quantum of loss

194 The Court of Appeal in *Robertson Quay Investment Pte Ltd and another v Steen Consultants Pte Ltd and another* [2008] 2 SLR(R) 623 ("*Robertson Quay*") at [27] held that a plaintiff claiming damages must prove his damage. Otherwise, the plaintiff may be awarded only nominal damages. In this regard,

279 Statement of Claim (Amendment No 1) at para 80 (SB at p 188).

280 Mr Jowin Fung's AEIC at p 138, para 31 (BAEIC at p 975).

it referred to an explanation of this requirement by the learned author of *McGregor on Damages* (Sweet & Maxwell, 17th Ed, 2003) (at para 8-001) as follows:

> *A claimant claiming damages must prove his case. To justify an award of substantial damages he must satisfy the court both as to the fact of damage and as to its amount.* If he satisfies the court on neither, his action will fail, or at the most he will be awarded nominal damages where a right has been infringed. If the fact of damage is shown but no evidence is given as to its amount so that it is virtually impossible to assess damages, this will generally permit only an award of nominal damages; this situation is illustrated by *Dixon v Deveridge* [(1825) 2 Car & P 109; 172 ER 50] and *Twyman v Knowles* [(1853) 13 CB 222; 138 ER 1183]. [emphasis added as in *Robertson Quay*]

195 In this case, the defendants have rightly submitted that MCA Limited has failed to prove that it suffered damage. The plaintiffs have tendered as evidence of their loss two Excel spreadsheets, which I have found to be inadmissible for the reasons stated at [81]–[85] above. An order for a further assessment of damages is inappropriate because the present trial is *not* a bifurcated trial. As the Court of Appeal noted in *Grains and Industrial Products Trading Pte Ltd v Bank of India and another* [2016] 3 SLR 1308 at [117], "a plaintiff can only be awarded substantial damages if such damages have been proved" and to do away with this position by ordering a further assessment of damages absent a bifurcated trial would "give a plaintiff a second bite at the proverbial cherry".

196 The present case is also distinguishable from *Lee Chee Wei*, where the Court of Appeal ordered a further assessment of damages. In that case, the plaintiff's failure to adduce evidence on damages was seen in light of the fact that he had "timeously put forward both [his claims for damages and specific performance] in one and the same cause of action, and had, as he was perfectly entitled to, *focused on the claim for specific performance at the trial*" (*Lee Chee*

Wei at [73]) [emphasis added]. His neglect to adduce evidence on damages was understandable given that the resolution of any one of his pre-cursor issues of agency, liability or specific performance would have rendered his claim in damages otiose (*Lee Chee Wei* at [72]). The present case is distinguishable given that MCA Limited elected to terminate Ms Yung's Disputed IA by way of the plaintiffs' Letter of Demand, as stated at [181] above. In so doing, MCA Limited is no longer entitled to seek the remedy of specific performance. Consequently, there is no justifiable reason as to why the plaintiffs have failed to adduce evidence of damage. Indeed, in the plaintiffs' Statement of Claim, it is stated that MCA Limited terminated Ms Yung's Disputed IA and "demanded compensation for loss and damage",[281] although they also sought specific performance[282] (despite the termination of Ms Yung's Disputed IA).

197 Moreover, in *Lee Chee Wei*, the contract had been brought to an end by the court's decision to refuse specific performance. This is unlike the present case, as Ms Yung's Disputed IA had been terminated even *before* the present suit commenced. Indeed, the plaintiffs have sought to adduce evidence of damage suffered. However, as I earlier found, such evidence is inadmissible for being hearsay (see [81]–[85] above). For the court to now order a further assessment of damages just because the plaintiffs have failed to adduce proper evidence will not be fair.

198 I deal next with the plaintiffs' contention that the loss suffered by the plaintiffs as a result of WatchFund HK's repudiatory breaches can also be quantified based on clauses in the Disputed IAs that either, (a) specify a

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281 Statement of Claim (Amendment No 1) at para 80 (SB at p 188).

282 Statement of Claim (Amendment No 1) at pp 46–47 (SB at pp 194–195); PFCS at p 18, para 2.

minimum price at which WatchFund HK was obliged to re-purchase the watches under the Disputed IAs, or (b) provide for a guaranteed return on the investment.[283]

199 I am unable to agree with the plaintiffs. The measure of damages is *not* simply the promised payment under the Disputed IAs which have now been breached by WatchFund HK. The plaintiffs also have to adduce evidence of the value of the watches that are currently in their hands to establish their losses, if any at all. The assessment of damages conceptually requires a comparison between the present (in a situation of breach) and what should have been (if there had been no breach). The formulas in the Disputed IAs can at best only answer one half of the equation. If the plaintiffs had sold the watches, they might adduce the price at which the watches had been sold by them and claim any shortfall of what they are entitled to under the Disputed IAs. But the plaintiffs have not sold the watches, and they did not adduce any evidence of the value of the watches. On this basis, it is not simply that damages have not been quantified, but that the fact of damage has not even been proved.

Flexibility in quantification

200 The plaintiffs also submit that some flexibility should be given to them and the figures they have provided could still be relied on.[284] The plaintiffs argue, relying on *Robertson Quay* at [28], which was followed in *Ramesh s/o Krishnan v AXA Life Insurance Singapore Pte Ltd* [2017] SGHC 197 ("*Ramesh s/o Krishnan*") and *MFM Restaurants Pte Ltd and another v Fish & Co Restaurants Pte Ltd and another appeal* [2011] 1 SLR 150 ("*MFM*

283 PRS at para 11.

284 PCS at para 102.

Restaurants"), that "where it is clear that some substantial loss has been suffered, the fact that an assessment is difficult because of the nature of the damage is no reason for awarding no damages or merely nominal damages".[285] The plaintiffs further submit that the "Court must do the best it can on the evidence available and adopt a flexible approach where it is clear some substantial loss has been incurred, so as to balance the plaintiff's burden of adducing sufficient evidence of his loss and the fact that absolute certainty and precision is impossible to achieve in some cases on the other, and that 'some educated guesses have to be made'" [emphasis and footnotes omitted].[286]

201 In my view, it is not open to the court, however flexible it wishes to be, to conjure numbers for the plaintiffs' benefit. I would have been prepared to view the valuation numbers with some degree of leniency. But such leniency cannot extend to tolerating the complete absence of evidence. Furthermore, in principle, the plaintiffs' arguments appear to conflate two related but distinct concepts: the *fact* of damage/loss, and the *quantum* of the damage/loss. The plaintiffs, in their submissions as quoted in the preceding paragraph, *assume* that it is clear to the court that some substantial loss has been incurred. But this assumption is unfounded and without basis. Thus, *Robertson Quay*, along with the two later cases of *Ramesh s/o Krishnan* and *MFM Restaurants*, do not assist the plaintiffs. This is because the holding in *Robertson Quay* does not absolve the plaintiffs of their burden of proving the fact and amount of loss in assessing a claim for damages. A summary of the legal position in this regard can be found at [65] of *Ramesh s/o Krishnan*, as follows:

> 65 The remarks of the Court of Appeal in *Robertson Quay* show that a court called upon to assess a claim for damages

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285 PCS at para 102.

286 PCS at para 102.

> must carefully balance two competing principles. On one hand, the burden of proving the fact and *amount* of loss falls squarely on the plaintiff, who must give the court sufficient evidence with which it may quantify the damage. The court expects a plaintiff to do "its level best" to prove its loss, and to provide cogent evidence thereof (*Robertson Quay* at [31]). On the other hand, the court must adopt a flexible approach and allow for the fact that in some cases, absolute certainty and precision is impossible to achieve (at [30]). The Court in *Robertson Quay* also gave the following guidance on how these two competing principles may be balanced: Where precise evidence is obtainable, the court expects to have it; where it is not obtainable, the court must do the best it can (*Robertson Quay* at [30], citing the remarks of Devlin J in *Biggin & Co Ltd v Permalite Ltd* [1951] 1 KB 422 at 438). [emphasis in original]

202 In this case, evidence was obtainable, because it was always open to the plaintiffs to call Ms Connie Siu to testify if they wish to rely on her evidence, or to call an expert to testify on the RRPs or at least an estimate of the value of the watches. The plaintiffs chose not to do so.

203 The Court of Appeal's holding in *Robertson Quay* at [31], which was reaffirmed in *MFM Restaurants*, is also instructive:

> 31 To summarise, a plaintiff cannot simply make a claim for damages without placing before the court sufficient evidence of the loss it has suffered even if it is otherwise entitled in principle to recover damages. On the other hand, where the plaintiff has attempted its level best to prove its loss *and* the evidence is cogent, the court should allow it to recover the damages claimed. … [emphasis in original]

204 I have found at [139] above that WatchFund HK was in breach of the Disputed IA with Ms Yung. Given that the plaintiffs have not established either the fact of damage or the amount of damage, I award MCA Limited, as Ms Yung's assignee, nominal damages of $1,000 for WatchFund HK's breach of clause 3.1 of Ms Yung's Disputed IA in failing to make at least one re-purchase offer within the Investment Period.

205 I mention for completeness that the plaintiffs have prayed for a declaration that Ms Yung's Disputed IA had been validly rescinded.[287] In this regard, the plaintiffs have submitted, relying on *RBC* (at [137]–[138]), that they are referring to the notion of "rescission" in both the sense of unwinding a contract from the beginning for misrepresentation, as well as the sense of accepting a repudiatory breach of contract and allowing the innocent party to claim damages.[288] This distinction was explained by the Court of Appeal in the case of *RBC* (at [137]–[138]) as follows:

> 137 However, given our finding that the Appellant *had* made a misrepresentation to the Respondent, albeit an innocent misrepresentation, the Respondent *must* therefore choose whether to rescind the Lease *ab initio* for misrepresentation, albeit without the award of damages under s 2(1) (and we would *not* endorse a finding that damages would be available under s 2(2) for the reasons at [130]–[131] above), *or* to rescind it (for repudiatory breach of contract) and claim damages for such breach.
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> 138 We should add, for the sake of clarity, that whilst we have used the same term "rescission" in both cases, the remedy afforded to the Respondent in the *latter* option is *not*, strictly speaking, rescission of the contract such as to *unwind it from the beginning* (rescission for *misrepresentation*, in contrast, involving an allegation that there was a defect in the *formation* of the contract), but is, rather, legal shorthand for *accepting* a repudiatory breach of contract, *absolving* either party from further *performance*, *and allowing* the innocent party to claim damages for breach (see, for example, the English Court of Appeal decision of *Howard-Jones v Tate* [2012] 2 All ER 369 at [15] as well as *Treitel* ([84] *supra*) at para 9-082). Should the Respondent elect in favour of this latter option, it would be entitled to have its damages assessed by the Registrar, but it also remains open to the Appellant to assert its counterclaim for damages against the Respondent, an issue to which we now turn.
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> [emphasis in original]

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287 Statement of Claim (Amendment No 1) at p 47, para (d) (SB at p 195).

288 PFCS at pp 19–20, para 4.

I have found above that the plaintiffs' claims for fraudulent and/or negligent misrepresentation cannot succeed (see [96] above). Ms Yung is therefore not entitled to recission for misrepresentation. I have also explained why MCA Limited cannot get more than nominal damages for WatchFund HK's repudiatory breach of Ms Yung's Disputed IA (see [194]–[204] above). This prayer for rescission thus takes the plaintiffs no further.

Conclusion

206 I dismiss the plaintiffs' claims against the defendants in fraudulent and/or negligent misrepresentation.

207 I find WatchFund HK to be in breach of all the Disputed IAs.

208 I order specific performance of the Disputed IAs (save for the Disputed IA with Ms Yung), in the terms as stated at [191] above.

209 I grant the fifth plaintiff, as Ms Yung's assignee, nominal damages of $1,000 for WatchFund HK's breach of the Disputed IA with Ms Yung.

210 I decline to lift the corporate veil of WatchFund HK.

211 I will hear the parties on the issues of interest and costs.

Teh Hwee Hwee
Judge of the High Court

Lye Hoong Yip Raymond (Union Law LLP) for the plaintiffs;
Zhulkarnain bin Abdul Rahim, Lum Rui Loong Manfred, Sean Chen Siang En and Lam Zhi Yong Daniel (Dentons Rodyk & Davidson LLP) for the defendants.
