

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CIV-2011-404-008215
[2013] NZHC 2292**

BETWEEN TIAN MIN (MAGGIE) MA
 Plaintiff

AND TONY MENG HIANG TAY
 First Defendant

 SELINA SHAW NYUNG TAY
 Second Defendant

 JIREH HOTEL INVESTMENT LIMITED
 Third Defendant

Hearing: 27, 28 May and 26, 27 June 2013

Appearances: P J Dale for Plaintiff
 M Corlett and A M Swan for Defendants

Judgment: 4 September 2013

JUDGMENT OF ELLIS J

This judgment was delivered by Justice Ellis
on 4 September 2013 at 1.00 pm
pursuant to R 11.5 of the High Court Rules

Registrar / Deputy Registrar

Date.....

[1] On 15 September 2011 Associate Judge Bell entered judgment against the plaintiff, Ms Ma, in favour of Westpac New Zealand Ltd (Westpac) in relation to defaults by Ms Ma under a mortgage she had with the bank. The judgment sum was \$403,034.44 together with interest which continues to accrue.

[2] On 16 May 2012 Associate Judge Gendall (as he then was) granted Ms Ma summary judgment against (inter alia) the first defendant Mr Tay on the basis that he had agreed to indemnify her in relation to her liability to Westpac.¹

[3] The Westpac judgment has still not been met by Mr Tay. An appeal from the learned Associate Judge's decision is pending and Mr Tay has also sought, unsuccessfully thus far, to re-litigate his liability in separate proceedings. His claim in that respect was struck out by Woolford J on 25 March 2013. An appeal against that judgment has also been filed.

[4] As I have said, Associate Judge Gendall entered summary judgment against Mr Tay in the amount of Ms Ma's mortgage debt to Westpac. But he declined to determine Ms Ma's further claims against him for general damages for the emotional distress and reputational harm that she says she has suffered. It is those claims to which this judgment relates.

Facts

[5] Although the factual background to these proceedings is set out in some detail in Associate Judge Gendall's decision, it is convenient to summarise it again here. I record my apologies in advance to the learned Judge for any plagiarism (either accidental or shameless).

[6] Ms Ma is a qualified doctor. She has lived in New Zealand for over 10 years and has a good command of English. Mr Tay was an elder in the church she attends.

[7] At the time material to these proceedings Mr Tay owned and controlled a number of companies which were together called the Tony Tay Group. These

¹ *Ma v Tay* [2012] NZHC 990. Summary judgment was entered against Mr Tay and the second, third and fourth defendants.

companies engaged in many residential and commercial property development projects and other businesses.

[8] In 2006, it seems that Mr Tay encouraged Ms Ma and her father (who is a neurologist) to be involved in wellness centres he was establishing in New Zealand. To that end, in early 2007 Ms Ma and Mr Tay incorporated two companies, Jireh Health Limited (Jireh) and Karapiro Management Limited (KML). Mr Tay's interests had a 60 per cent shareholding and Ms Ma's interests had 40 per cent in each.

[9] Jireh traded as the Jireh Spinal Wellness Centre at Greenlane and Ms Ma and her father worked at the Centre. KML was formed with a view to operating the "Karapiro Wellness Resort", a health retreat to be established on a 4.4 hectare property overlooking Lake Karapiro in the Waikato (the Karapiro property). Ms Ma was appointed the managing director of KML and it is clear that it was intended that she and her father would be involved in running the Karapiro resort.

[10] The Karapiro property was owned by one of Mr Tay's other companies, Jireh Resorts Limited (Jireh Resorts). The plan was to subdivide and develop the property (on which there was eventually to be some 45 units) further.

[11] It is not in dispute that Mr Tay sought to fund the Karapiro development by selling units on the property to family, friends and investors and then entering into leases back to KML. And indeed, on 14 June 2007 Ms Ma entered into an agreement to purchase one such unit (Unit 7) from Jireh Resorts. The agreement for sale and purchase signed by Ms Ma (as purchaser) and Mr Tay on behalf of Jireh Resorts (as vendor) provided that:

- (a) the purchase price was \$450,000, inclusive of GST (if any), being payable
 - (i) as to a deposit of \$90,000 "immediately upon execution of this agreement by both parties and/or at such other time as is specified in this agreement"; and

(ii) as to the balance, on settlement date, which was to be some two weeks later on 29 June 2007.

(b) the agreement was subject to finance being arranged from a lender of the “purchaser’s choice”, being an amount “sufficient to complete this agreement”. The date for satisfying this condition was to be 10 working days after the contract was signed, i.e. the day before settlement, 28 June 2007.

[12] On 19 June 2007, Ms Ma signed an application for finance to Westpac, seeking a loan of \$360,000. The application was submitted to Westpac by the sixth defendant, Rosgo Financial Services Limited. In a letter accompanying the loan application signed by the seventh defendant, Ms Roshni Golian, it was specified that Ms Ma had “an (annual) income of \$190,000 plus a rental income of \$400 per week”. This was also reflected in the application itself.

[13] Subsequently, Westpac approved a loan of \$360,000 to Ms Ma, to be secured by first mortgage over Unit 7, repayable with an initial interest rate at 9.3 per cent per annum over a 25 year term. The sale and purchase agreement became unconditional at this point.

[14] Ms Ma signed the mortgage documents at the offices of Patel Nand Legal. There is some dispute over whether she was accompanied by Mr Tay and his wife on that day. It is, I think, accepted that the Mr Tay arranged for Patel Nand Legal to act for her.

[15] At about the same time Ms Ma also completed documents to open a bank account with Westpac and on about 28 June 2007 Ms Ma (as landlord) signed a residential tenancy agreement for Unit 7 with KML (as tenant). The agreement provided that the rent would be \$3,000 per month, payable in advance. It was signed by Mr Tay on behalf of KML.

[16] On 28 June 2007, the Tay Group's in-house solicitor forwarded to Patel Nand Legal "a copy of our tax invoice for the above sale" which showed that the purchase price for Unit 7 was \$400,000, plus GST of \$50,000.

[17] Later that day Patel Nand Legal sent a fax to the Tony Tay Group confirming that settlement had occurred. Patel Nand's legal fees had been deducted from the settlement amount of \$360,000. The assumption plainly was that a \$90,000 deposit had been paid by Ms Ma. It is not in dispute that it had not. Nor was it ever demanded of her.

[18] On 5 July 2007 the transfer of Unit 7 into the name of Ms Ma and the mortgage to Westpac were registered against the title.

[19] Ms Ma has consistently contended that when signing the sale and purchase agreement, the loan application, the mortgage documentation and the residential tenancy agreement, she had no knowledge of, or desire to enter into, the underlying transactions. She says that she signed the documents, without looking at them or appreciating their nature and significance, because Mr Tay was an elder in her church and she relied on his assurances that everything was in order, or had been "approved" by him.

[20] For the next three-and-a-half years, rent for Unit 7 under the residential tenancy agreement with KML was regularly paid into Ms Ma's new Westpac bank account, for which she received statements in the mail. Westpac direct debited the mortgage payments from that account.

[21] During this period brochures were also prepared to market the Karapiro Wellness Centre, the Karapiro property and the sale of future units there. These brochures included profiles of Ms Ma and her father as medical specialists who would be involved in the "holistic health care" services to be offered at the Wellness Centre. The brochures were translated by Ms Ma. There were also newspaper articles about the proposed development and Wellness Centre in which Ms Ma was photographed on the property.

[22] By early 2011, however, the Karapiro development and Mr Tay's companies had struck difficulties. Rental payments for Unit 7 stopped and so mortgage payments were not made. In May of that year, Ms Ma received a demand from Westpac for repayment of the sum of \$380,240, being the amount said then to be in default. She was unable to meet this demand. Ms Ma says that she took the demand to Mr Tay and was told not to worry.

[23] On 18 August 2011, Westpac served Ms Ma with a summary judgment application and, as noted earlier, on 15 September 2011 judgment was given against her in the sum of \$403,034.44. Interest continued (and continues) to accrue.

[24] During September and October 2011 there were four meetings between Ms Ma and her father, and Mr Tay and his wife. Others were also present. Some of the meetings appear to have been recorded and later transcribed by Ms Ma. As a result of the third such meeting, on 12/13 October 2011, Mr Tay signed a Heads of Agreement which stated:

A. Westpac loan

A loan of \$360,000 was borrowed by Tony Tay in Maggie Ma's name from Westpac Bank in 2007, mortgaged using Unit 7 of Karapiro Resort, 1002 SH1, Waipa. This was used by Tony Tay, as his injection, to inject into Jireh Health Limited and Karapiro Management Limited to keep the companies afloat.

Maggie Ma and Tony Tay hereby agrees [sic] to settle the account as follows:

(1) The mortgage for the above loan owed to Westpac Bank, all related expenses and responsibilities is to be taken by Tony Tay.

(2) Tony Tay will meet up with a representative of Westpac by 14 October 2011 together with Maggie Ma or representative to transfer responsibility for the above loan from Maggie Ma to Tony Tay. This date is subject to an appointment made with Westpac.

[25] Mr Tay says that this agreement was extracted from (and executed by) him and his wife under duress, but that is of no present moment.

[26] The fourth meeting took place on 15 October 2011 at Ms Ma's home in Howick. At the conclusion of the meeting, a handwritten document was signed by Mr and Mrs Tay. It stated:

We, Tony Tay, Selina Tay, Jireh Hotel Investment Limited, and Tony Tay Trust, Elshadai Family Trust guarantee to take full responsibility of the bank loan of Westpac Bank and mortgage on unit 7 Karapiro from Tian Min Maggie Ma by 12am of 14/11/2011 (if before 14/11/2011, the Westpac Bank takes any actions against Maggie, we take full responsibilities).

Caveat over ten units at Auckland City Hotel (consist of one penthouse and nine deluxe suites) owned by Jireh Hotel Investment and 1501/76 Wakefield Street, Auckland City owned by Jireh Wakefield Limited.

Signed by “Tony Tay” “Selina Tay”

15 October 2011

Witnessed by:

Signature of Sim Ah See (Mr Tony Tay’s mother)

15 October 2011

[27] Again, it may be noted that Mr Tay says that he was coerced into signing this agreement.

[28] Mr Tay has not subsequently discharged Ms Ma’s liability to Westpac and it was for this reason that she commenced these proceedings against him and others. It was on the basis of the two October 2011 admissions/indemnities signed by Mr Tay that Associate Judge Gendall entered summary judgment in May 2012. As I have said, he understandably (in a summary judgment context) left Ms Ma’s claims open for general damages and it is to those claims that I now turn.

The claims

[29] For reasons that will become clear, it is relevant at the outset to set out the relevant parts of Ms Ma’s pleadings. Only the first, third and fifth causes of action contained in her statement of claim dated 19 December 2011 remain relevant.

[30] The first cause of action is based on the indemnity entered into between Ms Ma and Mr Tay on 13 October 2011 and which formed one of the bases of the summary judgment decision. As well as claiming judgment in the sum of the Westpac debt together with interest, Ms Ma also claimed general damages in the sum of \$50,000. In argument before me, however, Mr Dale limited Ms Ma’s claim in that respect to something closer to \$20,000.

[31] General damages are also claimed in the third and fifth causes of action. No part of those claims was determined by the learned Associate Judge.

[32] The third cause of action is pleaded as follows:

Third Cause of Action – Fraud – First Defendant

The plaintiff repeats the foregoing allegations and says further:

27. That the first defendant:

- (a) Procured the plaintiff's signature to the agreement notwithstanding the fact that he knew that she did not wish to purchase the property and did not have the means to do so;
- (b) Dishonestly procured the execution of the loan documents and arranged for the Westpac mortgage advance;
- (c) Obtained and utilised for his own benefit, or for interests associated with him and the Tony Tay Group, the proceeds of the mortgage loan advance.

That by reason of the first defendant's:

- (a) Dishonest conduct; and
- (b) His appropriation of the mortgage proceeds; and
- (c) His admission of liability

The first defendant is obliged to indemnify the plaintiff for any losses that she suffers as a consequence of entering into the agreement and the mortgage, including the amount of the judgment and interest and costs thereon.

29. That the plaintiff has suffered the losses particularised in paragraphs 22 and 23 hereof.

WHEREFORE THE PLAINTIFF CLAIMS AGAINST THE FIRST DEFENDANT:

...

- C. General damages in the sum of \$50,000
- D. Indemnity costs
- E. Alternatively costs
- F. Interest

...

[33] And the fifth cause of action is pleaded as follows:

Fifth Cause of Action – First, Seventh and Eighth Defendants – Conspiracy to Defraud

The plaintiff repeats the allegations contained in the preceding paragraphs and says further:

33. That the first, seventh and eighth defendants dishonestly conspired to defraud the plaintiff and Westpac by:
- (a) Representing to the plaintiff that it was in order for her to execute the documents that were placed before her by Mr Tay and the seventh defendant including the agreement for sale and purchase and loan documents.
 - (b) Failing to advise the plaintiff that by executing the documents that she was acquiring the unit and taking out a loan from Westpac in the sum of \$360,000 for which she would be personally responsible.
 - (c) Misrepresenting that the plaintiff had an annual income of \$190,000 when in fact her income was only \$73,960.
 - (d) Falsely representing to Westpac that the plaintiff wished to borrow \$360,000 for the purpose of purchasing a unit.
 - (e) Arranging for a solicitor to represent the plaintiff and to receive the loan advance which was subsequently appropriated by the first defendant for his own purposes.
34. That as a consequence of the conduct of the first, seventh and eighth defendants the plaintiff suffered the loss particularised in paragraphs 22 and 23 hereof.

WHEREFORE THE PLAINTIFF CLAIMS:

...

- C. General damages in the sum of \$50,000
- D. Interest
- E. Costs

Mr Tay's defence

[34] The three alternative claims for general damages are resisted by Mr Tay essentially on the grounds that:

- (a) Insofar as the first cause of action is concerned:

- (i) there is no causal link between the alleged wrong and the damages claimed; and/or
 - (ii) general damages are not available in a contractual claim of this sort.
- (b) Insofar as the third cause of action is concerned:
- (i) there is no common law cause of action in “fraud” simpliciter and the pleading discloses no known or tenable cause of action; and/or
 - (ii) the alleged factual basis for the cause of action are not established by the evidence or do not support a relevant finding of dishonesty or wrongdoing.
- (c) Insofar as the fifth cause of action is concerned:
- (i) the pleading does not disclose either a tenable legal claim; and
 - (ii) the alleged factual basis for the cause of action is not established by the evidence or does not support a relevant finding of dishonesty or wrongdoing.

Discussion

First cause of action

[35] The summary judgment decision has, of course, held that Mr Tay was bound by the indemnity agreement he signed on 13 October 2011 and that he was (and remains) in breach of that agreement. The issue that arises is whether that breach entitles Ms Ma to general damages in the order of \$20,000 for the emotional distress and reputational damage she says she has suffered.

[36] I record at the outset that I have no hesitation in accepting that the events giving rise to these proceedings have been very stressful for Ms Ma and her father.

She gave evidence about the physical and mental manifestations of this stress and her ongoing anxiety that Westpac might bankrupt her. Whether the events have caused her significant reputational damage is, however, less clear and it seems to me that that issue has a significant cultural overlay about which I received no evidence and which is difficult for me to assess. Moreover it must be assumed that much of any reputational damage (apart, perhaps, from that which flows from Ms Ma's own naiveté) has been significantly ameliorated by Associate Judge Gendall's decision.

[37] Putting the issue of damage to one side, however, it is fair to say that the issue of when and in what circumstances a Court will award general damages for anguish and distress in a breach of contract case continues to be a vexed one.² It seems that such awards remain unusual, but not unheard of. The traditional approach, which is that the availability of such damages is limited to cases where the object of the contract itself was to provide relaxation pleasure and peace of mind, is often, but not invariably, adhered to. The issue appears most often to arise in cases where claims in contract and tort intersect.

[38] In the present case, however, I do not propose to enter that particular arena. That is because I agree with Mr Corlett that there is a fundamental causation problem here. The "material and substantial" cause of Ms Ma's distress and anxiety was not Mr Tay's breach of the October 2011 agreement; it was (as her own evidence made clear) the (prior) judgment obtained by Westpac against her and her own (prior) decision to sign a variety of very significant, legally binding, documents without considering the potential consequences.³ While Mr Tay's later breach of the indemnity may not have helped her stress and anxiety levels it was not, in my view, the cause of them.

[39] The claim for general damages under the first cause of action must fail.

Third cause of action

[40] In my view this claim is also flawed, both as a matter of law and of fact.

² See for example *Bloxham v Robinson* (1996) 5 NZBLC 104225 (CA) and *Hayes v Charles Dodd* [1990] 2 All ER 815 (CA).

³ Because the first cause of action is in contract any role that Mr Tay may or may not have had in inducing her to sign those documents is immaterial.

[41] As far as the law is concerned, I accept Mr Corlett's submission that there is no independent civil cause of action in fraud.⁴ Rather, as the cases to which I was referred make clear, fraud is an element that is required to be proved in the context of some other cause of action, such as deceit, breach of s 60 of the Property Law Act 1952,⁵ breach of s 62 of the Land Transfer Act 1952⁶ or breach of s 320(1)(c) of the Companies Act 1955.⁷

[42] Although at various times during the hearing Mr Dale submitted that he was using the concepts of "common law fraud" and "deceit" interchangeably, the reality is that those terms are not synonymous. As I have said, there is no such thing as "common law" fraud, and his pleading did not disclose a claim in deceit.

[43] More particularly, in order to establish deceit, a plaintiff must prove (inter alia) that the defendant made a representation of fact, knowing it to be false.⁸

[44] Here, no such representation is pleaded which (in a case where dishonesty is alleged) should really be the end of the matter. But even if that deficiency were to be forgiven, the only relevant representation suggested by Mr Dale to have been made by Mr Tay to Ms Ma was that it was "in order" for her to sign the sale and purchase and loan documents.

[45] Although I would be prepared to accept that a "representation" of this kind was in all likelihood made by Mr Tay at some point, it is plainly not only a statement of opinion, but the opinion was one which was honestly held. I have no doubt whatsoever that Mr Tay fully intended that Ms Ma would be able to meet the mortgage payments from the rent he had arranged for her to receive. Indeed, that is precisely what occurred for the next three years

[46] Accordingly, even if deceit had been pleaded, it could not be established on the facts here.

⁴ *Armitage v Nurse* [1997] 2 All ER 705 at 710; *Gray v Wilson* (1998) 8 NZCLC 262,530 (HC); Todd *The law of Torts in New Zealand* (6th ed, Thomson Reuters, Wellington, 2013) at 787.

⁵ *Swann v Secureland Mortgage Investment Nominees Ltd* [1992] 2 NZLR 144 (CA); *Julius Harper Ltd v FW Hagedorn & Sons Ltd* (1990) 3 PRNZ 560 (CA).

⁶ *Nathan v Dollars & Sense Ltd* [2006] 1 NZLR 490 (HC).

⁷ *Gray v Wilson*, above n 3.

⁸ *Kerridge v Kerridge* [2009] 2 NZLR 763 (CA) at [46].

[47] For completeness, I turn now briefly to address the three factual allegations made in the statement of claim as the foundation for the “common law fraud” claim. As noted above, these were that Mr Tay:

- (a) Procured the plaintiff’s signature to the agreement notwithstanding the fact that he knew that she did not wish to purchase the property and did not have the means to do so;
- (b) Dishonestly procured the execution of the loan documents and arranged for the Westpac mortgage advance;
- (c) Obtained and utilised for his own benefit, or for interests associated with him and the Tony Tay Group, the proceeds of the mortgage loan advance.

[48] As to the first, I do not accept that Ms Ma at any stage conveyed to Mr Tay that she did not wish to purchase the property. Such a finding would be inconsistent with her own evidence that she did not, in fact, know that she was purchasing a property. Furthermore, it seems to me that Mr Tay was at great pains to ensure that Ms Ma did in fact have the means to purchase the property; he forewent the \$90,000 deposit and arranged for the unit to be let for a rent that would cover the mortgage.

[49] As to the second matter, the evidence does not satisfy me that Mr Tay himself directly procured the execution of the loan documents or arranged the advance or, indeed, that there was any relevant dishonesty about what occurred.

[50] As far as the application for the mortgage is concerned it is not in dispute that this was prepared by Ms Golian, the seventh defendant, although I am sure that it was arranged through Mr Tay or his company. But to the extent there was any “dishonesty” associated with the application (in particular in connection with the inflation of Ms Ma’s salary on the loan application form) then that was potentially a fraud by her on Westpac, not by Mr Tay on Ms Ma.

[51] And as far as the execution of the loan documents is concerned, there is doubt as to whether Mr Tay did or did not accompany Ms Ma to Patel Nand’s offices that day. Ms Ma says he did, but the legal executive, Ms Weir, said that to her knowledge, he did not. Regardless of that, however, I accept Ms Weir’s evidence that she met with Ms Ma alone and explained the loan documents to her in the usual

way.⁹ Whether or not Ms Ma listened to what Ms Weir told her, or understood what she was signing, I consider that she executed these key documents of her own volition.

[52] The third pleading at [47] above is not disputed. But it does not advance Ms Ma's position. The vendor of the property was Mr Tay's company, Jireh Resorts Ltd. It was entitled to apply the purchase price for the unit (funded by the Ms Ma's mortgage) in furtherance of its (and Mr Tay's) business.

[53] Accordingly, the third cause of action fails on both its legal and factual merits. No question of general damages therefore arises

Fifth cause of action

[54] The fifth cause of action is stated to be a "conspiracy" claim against Mr Tay, Ms Golian and her mortgage broking company. It is, however, not all together clear from the pleading whether what is alleged is an unlawful "means" conspiracy or an unlawful "purpose" conspiracy. I therefore analyse the claim in terms of both.

[55] The elements required to be proved for an unlawful purpose conspiracy are:¹⁰

- (a) an agreement or understanding between two or more people;
- (b) a concerted course of action taken pursuant to that agreement or understanding;
- (c) a dominant intention by the combiners to injure the plaintiff's legitimate interests by that course of action;
- (d) the absence of any legitimating object or just cause/excuse for the actions; and

⁹ There is no suggestion that Patel Nand Legal were part of any alleged dishonesty on the part of Mr Tay and I expressly record that, in my view, Ms Weir treated Ms Ma just as professionally she would any other client of the firm.

¹⁰ *Wagner v Gill* [2013] NZHC 1304 at [88].

- (e) actual injury caused to the plaintiff thereby.

[56] In the present case I would be prepared to accept that there was a relevant “combination” between Mr Tay, Ms Golian and her mortgage broking company and that arranging a mortgage application for Ms Ma was an act done pursuant to that combination.¹¹ But there it ends. As I have already said, I do not accept for one moment that Mr Tay (or Ms Golian or her company) intended to harm Ms Ma or her interests. On the contrary, Mr Tay and Ms Ma were engaged in something akin to a joint venture; their interests were largely aligned. And to the extent their interests were not wholly aligned, the actuating purpose of the “conspiracy” was necessarily the furtherance of Mr Tay’s and Ms Golian’s own business interests. That purpose would, in my view, constitute a legitimating object or just cause.

[57] There is no unlawful purpose conspiracy here.

[58] As far as unlawful means conspiracy is concerned, what is required is proof of:¹²

- (a) an agreement or understanding between two or more people;
- (b) a concerted course of action taken pursuant to that agreement or understanding;
- (c) knowledge by the conspirators that that course of action was likely to cause loss to Ms Ma;
- (d) the unlawfulness of one of the steps in that course of action;
- (e) knowledge by the conspirators of the facts which would make that step unlawful;
- (f) loss caused to Ms Ma thereby.

¹¹ There might be an issue about the extent of Ms Golian’s knowledge of the wider circumstances here but, in the event, I do not need to decide that point.

¹² *MESB Berhard v Lu* HC Auckland CL12/98, 16 June 2000 at [102].

[59] Again, I am prepared to proceed on the basis that there was a relevant combination and concerted course of action here. I am also prepared to proceed on the basis that deliberately misrepresenting Ms Ma's income to Westpac could constitute a relevant unlawful act.¹³ I might be prepared to infer that Mr Tay knew about that act. But as I have noted, I do not consider that the "conspirators" intended to cause Ms Ma any loss and nor do I consider that that loss was considered by them to be a likely outcome of what they did. No doubt Mr Tay's (and Ms Golian's) state of mind in 2007 was the same as that of many other entrepreneurs and property developers prior to the global financial crisis. The prospect of failure seemed remote. Risk cannot be judged with hindsight; there is no unlawful means conspiracy here.

[60] Accordingly, the fifth cause of action also cannot succeed and no possibility of general damages arises.

Conclusion

[61] In reaching the views expressed above, I emphasise that I have attempted to give Ms Ma the benefit of every possible doubt. I trust that my doing so does not cause her to lose sight of the fact that the pleading in relation to the third and fifth causes of action were, in my view, inadequate to found claims that have allegations of fraud and dishonesty at their heart.

[62] All of the claims for general damages must fail for the reasons I have given.

[63] Ordinarily, Mr Tay would be entitled to (at least) 2B costs. I record, however, that Mr Corlett has asked that they be reserved, no doubt in recognition of the fact that their summary judgment debt has not yet been discharged. I reserve them accordingly.

Rebecca Ellis J

¹³ For the reasons I have already given I do not consider there was anything unlawful in Mr Tay/his companies using the money from the sale and purchase for their own purposes.