IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA(I) 03

CA/CA 203/2019

Between

(1) Sheila Kazzaz
(2) Ahmed Kazzaz

… *Appellants*

And

Standard Chartered Bank

… *Respondent*

In the matter of SIC/S 4/2018

Between

(1) Sheila Kazzaz
(2) Ahmed Kazzaz

… *Plaintiffs*

And

(1) Standard Chartered Bank
(2) Laurence Black
(3) Harish Phoolwani
(4) Naushid Mithani

… *Defendants*

GROUNDS OF DECISION

[Banking] — [Advice] — [Negligent]
[Tort] — [Misrepresentation] — [Negligent misrepresentation]
[Civil Procedure] — [Pleadings]

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Sheila Kazzaz and another
v
Standard Chartered Bank

[2020] SGCA(I) 03

Court of Appeal — Civil Appeal No 203 of 2019
Judith Prakash JA, Steven Chong JA, Robert French IJ
11 June 2020

13 July 2020

Robert French IJ (delivering the grounds of decision for the court):

Introduction

1 This case arises out of financial arrangements entered into with Standard Chartered Bank ("SCB") by mother and son, Sheila and Ahmed Kazzaz ("Sheila" and "Ahmed" respectively, and "appellants" collectively). SCB is said to have made misrepresentations, prior to the arrangements being put in place, which constituted breaches of a duty of care owed by SCB, and of provisions of the Dubai International Financial Centre ("DIFC") regulatory law. The claims were dismissed at a trial in the Singapore International Commercial Court before International Justice Anselmo Reyes ("the trial judge"). The appellants now appeal against that judgment in relation to two of the alleged misrepresentations. Following an oral hearing on 11 June 2020, this court dismissed the appeal and ordered that the appellants pay SCB's costs fixed at S$80,000 inclusive of disbursements. At the time of announcing its decision,

this court informed the parties that it would deliver reasons for its decision at a later date. Those reasons are set out below.

Factual background

2 The following factual background is based upon findings by the trial judge in his judgment, *Sheila Kazzaz and another v Standard Chartered Bank and others* [2019] SGHC(I) 15 ("the Judgment").

3 The appellants are citizens of the United Kingdom, resident in Dubai. Sheila's late husband, Ahmed's father, Sarchil Kazzaz ("Sarchil"), had established a range of businesses operating mostly in Dubai through a group of companies known as the ASK Group. He died in 2007. Ahmed succeeded him as Chairman of the ASK Group.

4 The property and financial interests of the Kazzaz family were substantial. They included a property known as Ducie Court in Manchester, United Kingdom. Ducie Court was owned by two Liberian companies, held in a trust called the St Bernard Trust, set up by Ahmed in January 2008. The trustee, a company called Hawksford Trustees, had been established under the name Rathbone Trustees Jersey Ltd by Sarchil in the late 1980s.

5 In April 2010, Ahmed decided he should sell Ducie Court, terminate the St Bernard Trust, place the proceeds with SCB and apply them towards the purchase of a property in London. He met with Harish Phoolwani ("Phoolwani"), an officer of SCB Dubai, on 27 April 2010. Phoolwani suggested that Ducie Court's sale proceeds might be applied to a property financing arrangement which would enable Ahmed to purchase a property and also generate wealth for the Kazzaz family. The trial judge found that at that

meeting Phoolwani had "floated the idea of purchasing [an insurance policy] as part of an arrangement to achieve Ahmed's objectives": Judgment at [18].

6 An email sent by Phoolwani to Ahmed on 28 April 2010 indicated the nature of SCB's response to Ahmed's approach: "step by step we are going to present you on creating value add from Standard Chartered Bank Globally" (Judgment at [17]). Phoolwani said he would arrange for Ahmed to meet with Laurence Black ("Black") of SCB on "[f]iduciary … aspects of [Ahmed's] wealth." Phoolwani made a call to Ahmed on 7 May 2010 but there was no further communication between them until August 2010.

7 Ahmed sent an email to Phoolwani on 5 August 2010 suggesting that they meet to "talk about [his] future investment plan and how [Phoolwani] could best assist [him] with investing the £5m that [he would] net from the property disposal in England": Judgment at [20]. They met on 8 August 2010. At the meeting, Ahmed said he wanted to establish a private banking account, take the proceeds of the sale of Ducie Court out of existing trust arrangements, and move the sale proceeds to SCB. They had a follow-up telephone conversation to a similar effect on 24 August 2010, and Ahmed subsequently sent the trust deeds of the St Bernard Trust and another Kazzaz family trust (known as the ASK Trust) to Phoolwani. Ahmed provided further details of his existing trust structures on 31 August 2010. A meeting was arranged for 8 September 2010 in Jersey between Ahmed and Clive Harrison, a Senior Fiduciary Specialist in SCB's London branch ("Harrison").

8 The trial judge found that, in their preliminary discussions, the parties explored how SCB's trust services might be used to hold the Kazzaz's family assets. It was envisaged that proceeds of the sale of Ducie Court would be

deposited in a private banking account with SCB as one element of a financial arrangement towards which they were working: Judgment at [23].

9 The purpose of the meeting of 8 September 2010, as noted by Black, was to "discuss … [Ahmed's] concerns and evaluate his/the families [*sic*] objectives and assets that they wish to retain/place into trust in order to propose a suitable SCB solution." Ahmed provided Harrison with information about his family's existing trust structures and its assets in France and Iraq. Harrison recorded Ahmed's estimate of the value of the Kazzaz family assets as between US$50m and US$60m. The trial judge accepted that record as a probable account of what Ahmed told Harrison: Judgment at [25] and [33]. The trial judge also referred to an Investment Licence dated 6 July 2010 ("the Investment Licence") held by a company of the ASK Group in Iraq, a copy of which Ahmed sent to Phoolwani on 5 August 2010. The Investment Licence included an undertaking, by Ahmed on behalf of the company involved, to provide a Certificate of Financial Worthiness confirming the company's financial capability to execute a project involving an investment of US$35m: Judgment at [28] and [31].

10 At a meeting on 22 September 2010 with Phoolwani, Black and one Mark Jackman of SCB, Black pointed out the difficulties for Ahmed in passing Iraqi and French assets to his two daughters under the applicable *shari'a* and French inheritance laws. According to Ahmed he was persuaded at that time to establish trusts along lines suggested by Black. Phoolwani and Black had also advised Ahmed at the meeting that the best thing for him to do was to take an insurance policy over his life. After lunch he met with Jyotsna Pandey ("Pandey") of IPG Financial Services Pte Ltd ("IPG"), since SCB could not advise on or sell life insurance policies (Judgment at [36]). On Phoolwani's account of that meeting, which was preferred by the trial judge, Pandey

explained the features of a universal life insurance policy to Ahmed but referred him back to Phoolwani to discuss financing for the premium which would involve a large upfront payment.

11 Regarding the issue of financing the premium for the life insurance policy, Phoolwani told Ahmed he could either borrow up to 90% of the Day 1 cash surrender value of the policy and pay the difference between that and the premium, or provide security in cash or assets for the shortfall amount if he were to take out a loan to cover the entire premium. If the Day 1 cash surrender value of the policy dropped, the account might have to be topped up. Ahmed would be able to use the Ducie Court sale proceeds as collateral since he intended to deposit them with SCB (Judgment at [39]). In this judgment, we refer to the loan to finance the premium of the life insurance policy as the "premium loan".

12 Black sent an email to Ahmed on 29 September 2010 advising him on how SCB's services could advance his objectives and on what options were suitable. He included a brochure on SCB's fiduciary services which it seems Ahmed only flipped through and did not read (Judgment at [47]).

13 Account opening documents were signed at a meeting between Ahmed, Phoolwani and Black some time prior to 4 October 2010 (Judgment at [48]). The SCB forms which Ahmed signed included a Client Agreement, Client Declaration, Memorandum of Charge and Letter of Indemnity. The Client Declaration involved a representation and warranty by Ahmed that he qualified as a "Professional Client" for the purposes of the Dubai Financial Services Authority Rules and did not elect to be treated as a retail client. The reason for this was that SCB did not have a licence to service retail clients in Dubai. It could only service those who qualified as "Professional Clients" under DIFC law. The Client Declaration included representations by Ahmed that he had

"sufficient financial experience and understanding to participate in financial markets in a wholesale jurisdiction (such as the DIFC)". Moreover, Ahmed acknowledged in the Client Declaration that by making that declaration he would "not be afforded the retail customer protections and compensation rights that may generally be available to … him in other jurisdictions" (Judgment at [52]). A similar declaration appeared in the Client Agreement which he signed (Judgment at [53]). As the trial judge accepted, Phoolwani had explained to Ahmed what being a "Professional Client" meant (Judgment at [55]).

14 At a separate meeting on 18 October 2010, Sheila signed the Client Agreement, Client Declaration and a Client Investment Questionnaire. She was to be the settlor of a proposed trust intended to hold the life insurance policy, which she named the SAHLK Trust. The trial judge found that Phoolwani went through the documents with Sheila explaining that SCB, not having a retail licence, could only service her and Ahmed as Professional Clients (Judgment at [63]). Sheila commented that she had run the family business in Sarchil's absence and had also done so when Ahmed was not around. In Sheila's Client Investment Questionnaire, she had indicated her estimated net worth to be approximately US$39.2m. The trial judge found that in indicating such an estimated net wealth, Sheila's Client Investment Questionnaire reflected the Kazzaz family wealth as a whole and not just her own. She regarded Ahmed as the head of the family, who ran the family business and handled financial matters for her. She relied upon him to manage her financial affairs. She regarded him as having authority to do what he did on her behalf (Judgment at [67]).

15 The trial judge further accepted that SCB relied upon information about the Kazzaz family wealth which was provided by Ahmed, and if there were any inaccuracies in that information, those inaccuracies originated from the Kazzaz

family (Judgment at [68]–[70]). The trial judge also formed the view that Sheila was "too prone to play down her business knowledge and accomplishments" (Judgment at [71]).

16 By this stage, for various reasons, it had been decided that the life insurance policy would be over Sheila's, and not Ahmed's, life. Phoolwani sent Ahmed an email on 16 October 2010 attaching financing charts prepared by IPG, based on offers that IPG had obtained for the policy from a firm called "Manulife". Phoolwani explained the charts to Ahmed the next day.

17 The SAHLK Trust was established on 1 November 2010. An SCB-affiliated company, Standard Chartered Trust (Guernsey) Ltd ("SCTG"), as the trustee of the SAHLK Trust, sent an application for a life insurance policy that day. On 2 November 2010, it signed the account opening application with SCB and applied for credit facilities (Judgment at [73]).

18 Ahmed, Phoolwani, Black and Michael Evans ("Evans") of the law firm, Burges Salmon LLP, met on 25 January 2011. Evans advised on legal structures for the establishment of the proposed trusts. He did not advise on whether it was a necessary or beneficial arrangement. Two life insurance policy illustrations – dated 27 October 2010 and 11 January 2011 – had been provided to Ahmed by Phoolwani. Both involved a death benefit of US$21.5m guaranteed until Sheila turned age 100, and were signed by Sheila.

19 On 2 February 2011, Ahmed sent an email to Phoolwani asking that he meet with a close family friend, Walid Fattah ("Fattah'), who had worked for Credit Suisse for some years and resided in Dubai. In that email, Ahmed said (Judgment at [77]):

> To be frank and honest with you although you and [Black] have explained to me the financing charts of the life assurance I am yet to understand the mechanics completely so I would like you to please take some and explain everything to [Fattah] for me so that he can then in turn advise me accordingly. Sorry to be of any inconvenience to you both.

20 In a follow-up letter to SCB dated 5 February 2011, Ahmed described Fattah as his "financial adviser". Phoolwani met Fattah on 6 February 2011. Naushid Mithani ("Mithani"), SCB DIFC's Head of Relationship Management and Investment Advisory, was also present. Following the meeting, Fattah sent Ahmed an email which was very supportive of SCB's proposals. He explained that the proposal involved three trusts over:

(a) financial assets and potentially the insurance policy;

(b) real estate in the United Kingdom and France; and

(c) Iraqi businesses and assets.

In particular, Fattah, in his email, described the proposed life insurance as "an amazing product":

> … In a nut shell, it is true that if you pay up to 2.5 mio USD, [SCB] will leverage that and give you a loan for the extra amount up to 15.6 mio USD. On that loan they will charge you 1.5% (current rate). God forbid, something happens to your mother tomorrow, you will immediately get 21.5mio USD (minus the loan to [SCB]).

Fattah then referred to various scenarios. The worst case scenario was if the returns of the underlying investments by the insurance company never exceeded 3%, then Ahmed would "los[e] the 2.5mio USD [he] put in, but … still get the 21.5mio USD if [his] mother [were] to pass". Fattah said "Ahmed it's a great policy with all the right guarantees. I would advise you to go for this". Fattah continued:

> … If I understand well, once you sell the property in Manchester, you will transfer 5.5mio GBP to your account with [SCB]. They will use that amount to guarantee the mortgage in the UK and to leverage approximately 2.5mio USD for the insurance. This means that even if you have a guarantee for the mortgage and for the life insurance, you are still investing 100% of the 5.5mio GBP.

21 The trial judge referred to the appellants' complaint that no mention was made, at the meeting held on 6 February 2011, of the possibility of margin calls if the investment portfolio did not leverage sufficient returns to cover interest payments on the premium loan or if there was insufficient collateral for the premium loan because of a drop in the value of the policy. They also complained that there was no mention of the fact that interest payments on the premium loan would be about US$250,000 per annum. The trial judge referred to Fattah's email and undated presentation slides which gave a flavour of what was discussed at the meeting. The slides included the following statement:

> Added advantages to this portfolio:
>
> - Cash availability at any time
> - Portfolio growing and producing consistent returns whilst supporting needs for UK property and insurance.
> - Insurance added value against the portfolio providing cash injection to the portfolio upon the demise of a key member of the family.
> - Since [Ahmed] is the only member of the family who is going to be earning so getting Future value of his potential income.

The slides then set out the following points:

> Premium (ie AUM): USD 15,000,000
>
> Sum Assured: USD 21,500,000
>
> Loan: USD 15,000,000
>
> Loan Interest: 2%
>
> Loan Payment: 200,000 USD

> Projected Annual Return
> USD 1,000,000 – 200,000
>
> Client's Potential Estate after Yr 1
> USD 21,500,000 – 15,000,000 + (1,000,000-)
>
> NB: USD financing – 90% of Day 1 cash value

22 A further meeting occurred on 28 February 2011. Present were Ahmed, Phoolwani, Black, Mithani and Fattah. The trial judge found that an email dated 1 March 2011 from Phoolwani to Fattah was the most reliable evidence of what was discussed at that meeting (Judgment at [84]). The email opened with a reference to a revised offering from Manulife, which was for a standard death benefit reduced from 100 to 85 years and an insurance premium reduced from US$15,640,311 to US$13,863,738. The required "collateral/client equity" was therefore reduced. A worst case scenario was identified whereby the credit rate earned on the policy was at a minimum guaranteed rate of 3% as opposed to 4.4%, which was the current credit rate. Phoolwani then said in the email:

> SCB credit and I will monitor the value of the policy on a monthly basis. If the value deviates from the projected plan (i.e. grows less than 3%), we will communicate this to [Ahmed] and assess alternative options. This helps us to mitigate [Ahmed]'s concern of below-expectation returns.

23 The trial judge found that the matters set out in the email had already been discussed in detail and that the email itself was by way of a summary, and noted that the email also referred to Ahmed's concern about the low expected returns. The trial judge held that these "suggest[ed] that Ahmed voiced such concern over lower than expected returns at the 28 February meeting" (Judgment at [85]). The trial judge continued (at [86]):

> In short, contrary to Ahmed's recollection at trial, the email does point to (1) margin financing, in particular the possibility of calls being required if there was insufficient collateral for the premium loan due to a drop in client equity or the value of the Policy, (2) the size of the premium, and (3) the need to monitor the value of the envisaged policy on a monthly basis, having all been discussed at the 28 February meeting.

24 Ducie Court was sold in early March 2011 for £5,313,195.53 (less bank charges). The first part of the Ducie Court sale proceeds, being £2m, was deposited with SCB on 11 March 2011. The Ducie Court sale proceeds were eventually held under a private investment company known as ASK One Ltd, incorporated to hold various financial assets of the appellants. SCTG, as the trustee of the SAHLK Trust, also arranged for the drawdown of the premium loan, and on 11 March 2011 there was a loan drawdown of US$13,863,738. Following the drawdown of the premium loan, premium payment was made to Manulife, and the life insurance policy was issued on the same day (*ie*, 11 March 2011). The life insurance policy was assigned to SCB as security for the premium loan.

25 On 21 March 2011, Phoolwani sent a Client Advisory Proposal to Ahmed. This is a document of some significance, relied extensively upon by the appellants in their appeal. In particular, a table in the document entitled "Proposed Asset Allocation" described the application of Ahmed's funds between "Fixed Income" assets – a reference to bonds – on the one hand and "Equities" on the other. In a separate table, the "Total average coupon cashflow Incom [*sic*] from Bonds per annum Absolute" was indicated to be £127,125.00. That figure was said to disclose that the returns would be insufficient to meet the ongoing interest on the loan and thus falsified the representation which the appellants allege was made by SCB that the arrangements would be "self-funding". The oddity about that proposition, which made no reference to dividend income from equities or their capital growth, was that if it were such

an obvious falsification, the evidence of it was in a communication to Ahmed by SCB. Phoolwani asked Ahmed for his response to that document at a meeting on 24 March 2011. Ahmed, however, said that he was not able to make investment decisions for himself and that he would be guided by the advice and recommendations of SCB. Having regard to the projected bond income shown in the Client Advisory Proposal, the trial judge might have been justified in at least expressing doubt that the alleged representation of a potentially self-funding financing arrangement had been made at all.

26 What happened subsequently was partly explained in an email of 14 May 2011 from Phoolwani to Ahmed. Ahmed remitted £4m to SCB, the equivalent of US$6.52m. Of that sum, the email states as follows:

> US$2.2 Mio [was] blocked for Insurance policy of US$21.5 Mio.
>
> US$2.5 Mio [was] remitted out as per [Ahmed's] instruction[s].
>
> US$0.750 Mio [was] available to utilize (Tightly Managing all the loan position)
>
> US$1.07 million [was] utilized for Investments in Fixed Income Strategy. …

There followed an explanatory note from Phoolwani said to be a detailed explanation of how the value was being utilised:

> In order to create regular cash flow in the account as discussed we are investing in Bonds/Fixed Income Strategy which will produce enough income to cover interest payments. Each Investment instruments have their own loan to value, For example US$100 is invested in Bond. This bond will have Loan to value of 65% which means that only 65% of value could be utilized or drawn against this is the reason why the balance US$1.07 Mio is utilized.

27 By way of background to that email, Ahmed had taken out a number of loans against the value of the portfolio for use in his Iraqi businesses. They were loans of US$850,000, US$650,000 and US$1m taken out on 29 March,

31 March and 21 April 2011 respectively. Ahmed claimed that he took out the loans because he had been assured by SCB that his business needs would be met by the arrangement that had been put in place. The amounts all went into the ASK Group account with SCB.

28 Ahmed wrote to Phoolwani on about 12 May 2011 requesting a further transfer of US$1m. Phoolwani sent him a cautionary response on that date saying:

> I am able to arrange to [transfer] US$ 1 Mio … but I will be in Margin Call/Sell Down situation. We have always been planning for GBP 5 Mio. As of now we have only received GPB 4.0 Mio approx.
>
> I can … also send you US $ 750k straight away but in that situation I will be running it too tight.
>
> I am able to send you US $ 500k keeping a margin of US $ 250k.
>
> AMEX Credit Cards are on their way for onward delivery to you.
>
> On the other hand we are making decent progress on the investment portfolio. (Attached)

29 Ahmed replied by way of complaint, saying:

> You have received from me £4M which comes to around $6,520,000 and all that you have transferred to me to Dubai is $2.5M and now you are telling me that you are struggling to send me $1M.
>
> There must be something wrong or something that I do not understand so I would appreciate if you explain to me in layman's terms?

30 Phoolwani's email of 14 May 2011, referred to at [26] above, was the response to Ahmed's email complaint. Despite Phoolwani's email, Ahmed took out three further loans of US$500,000 each, on 18 May, 30 May and 16 June 2011.

31 On 20 May 2011, Ahmed informed SCB that Sheila had found a suitable London flat at Westchester House ("the Westchester property") for purchase by the Kazzaz family. He sent an email to Phoolwani saying he would like to be in a position to make a cash offer for the property. The asking price was £1.75m. He asked what would be a good offer to make. Ahmed eventually agreed to obtain financing from SCB via a loan secured by a mortgage over the Westchester property (referred to as the "mortgage loan").

32 Ahmed later complained that he thought the mortgage was for a 25-year term when in fact it secured a fixed advance of up to 12 months which could be reviewed at SCB's discretion.

33 Ahmed complained to Phoolwani on 26 June 2011 about being "thrown" documents to sign without any explanation as to what those documents meant.

34 By way of a facility letter dated 28 July 2011, Ask Three Ltd – a private investment company created for the appellants – obtained the mortgage loan from SCB to finance the purchase of the Westchester property. The loan facility letter was attached to an email from Phoolwani to Ahmed on 28 July 2011. Phoolwani, in his email, also provided Ahmed with an executive summary of the proposed mortgage loan. A company director's resolution to take on the mortgage loan was also forwarded together with other requisite resolutions.

35 The loan facility comprised two elements: one in the amount of US$100,000 and the second in the amount of US$2,115,000 (representing 75% of the current market value of the Westchester property). The facility letter provided, among other things, that:

> The Client undertakes that he will at all times, maintain the Aggregate Collateral Value of the Security above or equal to the Equivalent Amount of the Total Outstandings.

36 At Ahmed's request, Fattah advised him by email about the offered loan facility, describing it as "really good" but suggested he try to get the interest rate down to 2%, from 2.5%, over the cost of funding. The trial judge found that Ahmed knew or ought to have known from Phoolwani's communication what the mortgage loan established (Judgment at [103]). The Kazzaz family's offer to purchase the Westchester property for £1.75m was accepted on 14 May 2011. The purchase was completed on 31 August 2011.

37 In addition, SCB set up trust structures for Ahmed using three trusts: the SAHLK Trust on 1 November 2010 (mentioned above at [17]), the ASK Star Trust on 19 May 2011 and the ASK Trust on 19 August 2011. The trial judge did not accept Ahmed's claim that he was unaware of the details of the trusts and the rationale behind their establishment, as Ahmed had been provided with detailed explanations of the trusts and the assets they were supposed to hold (Judgment at [107]–[108]).

38 Phoolwani sent an email to Ahmed on 11 September 2011 in the following terms:

> I have reassessed the whole Investment portfolio after the property transaction was completed. Below mentioned are figure[s] for your reference.
>
> Approximate Calculation for understanding purpose only:-
>
> GBP 5,500,000.00
>
> GBP -1,341,463.40 @ 1.6400 Block for Insurance Policy in US$2,200,000
>
> GBP -3,149,214.63 @ 1.6400 Loans drawn already in US$5164711.99
>
> Balance GBP 1,009,321.97 (This amount is approximately 18.35% of the Initial capital)
>
> As discussed previously in our last meeting 80% of the initial capital is what you will take it as loan and rest of the 20% will

> remain invested to generate positive cash flow to take care of the mortgages.
>
> After having factored in this fact, I can now confirm that there is no further cash which could be drawn from ASK One Limited.

39 In proceedings below, Ahmed asserted that in mid-2011 SCB had not alerted him to the possible impact on his investment portfolio of what the trial judge described as "his withdrawals from the Ducie Court proceeds". His case, as the trial judge described it, was that "even at this stage, there was no suggestion that the investment portfolio might not generate sufficient returns to cover the interest payments on the premium loan and the mortgage." Ahmed's evidence was that he was reassured by Phoolwani that everything was fine. The trial judge did not accept his evidence in this regard (Judgment at [110]–[111]). It should be noted, as appears below (at [51]), that the pleaded case was that SCB represented that "the returns on the investment of the sale proceeds [with SCB] would be greater than the interest charged on the mortgage for the London property". It did not extend to a representation covering interest payments on the premium loan as well.

40 On appeal, there was criticism by the appellants of the trial judge's use of the term "withdrawals" in reference to the "loans" taken from SCB. That criticism is misplaced. It is clear that the trial judge was referring to those transactions and did not fail to understand their character as loans.

41 The trial judge found it was not credible for Ahmed to say that he believed he could take US$4m from a portfolio of just over US$8m, without affecting investment returns from the portfolio. The trial judge said "[t]here is no evidence that SCB represented to him that his business needs for an indefinite amount would be met". Ahmed himself had observed that Phoolwani also

always told him that his investment positions were very tight each time he wanted to make a withdrawal (Judgment at [112]).

42 The trial judge rejected Ahmed's reliance upon the statement "cash availability at any time" in the presentation slides shown at the meeting of 6 February 2011. The trial judge found as follows (Judgment at [113]):

> … Ahmed would at least have understood that the investment portfolio was supposed to generate returns from which the premium and mortgage loans could be met. It would obviously follow from this that, the lesser the amount invested in the portfolio as a result of withdrawals by Ahmed, the lesser the amount that the portfolio could generate and consequently the less likely that the returns from the portfolio would be able to meet the regular premium and mortgage loan interest payments. …

43 In so finding about Ahmed's understanding, the trial judge went beyond the pleaded case as to misrepresentation alleged in the appellants' Statement of Claim (which we discuss further at [67]–[69] below). The trial judge also made reference to the loan facility letter of 28 July 2011 and the term "collateral value of security" in that letter. He held that in all likelihood Phoolwani had explained the meaning of that term to Ahmed and that Ahmed understood the concept at the time. The trial judge also noted that Ahmed would consult Fattah if there were matters that he did not understand (Judgment at [114]).

44 Ahmed fell foul of United States law enforcement authorities in 2012, being arrested in February of that year and imprisoned on 29 October 2012 for 15 months for conspiracy with two others to defraud – the allegation being that he had offered bribes in Iraq to procure a subcontract with a US corporation.

45 In July 2012, SCB DIFC's Head of Investment Advisory, Rohit Sharma, emailed Ahmed with reference to the insurance policy saying:

> [T]he strategy for this insurance policy with premium financing was for the interest costs to be met from the investment portfolio held in ASK One Limited. The portfolio has however been reduced by the withdrawals made for other purposes listed above and market conditions. Given the reduction in size of the ASK One Limited portfolio it has not been possible to generate sufficient income/growth to meet the premium financing and other loan interest costs.

46 Subsequently, at Ahmed's request, Phoolwani was replaced by Marlon Sawaya as Ahmed's SCB relationship manager.

47 Over a period of time from 2013 to 2016 various accounts of Ahmed, Sheila and the appellants' companies with SCB were terminated. On 2 June 2016, SCB asked for additional security of about US$450,000 by 15 June 2016. Ahmed was unable to meet that requirement and SCB surrendered the policy in December 2016 for US$12,801,778.89. That left a shortfall of US$1,225,267.80 to be recovered through enforcement of a pledge over ASK One Ltd's assets. In October 2016 Ahmed sold a property in Iraq to redeem the mortgage over the Westchester property.

48 The appellants' claim against SCB and the other named defendants at first instance – Phoolwani, Black and Mithani – was for compensation or damages being:

(a) US$1,076,857.81 being the interest paid on the premium loan.

(b) US$1,225,267.80 being shortfall on the policy.

(c) US$141,913.64 being the additional cost incurred in purchasing the Westchester property by means of a mortgage rather than cash.

(d) US$1,500,000 on account of the forced sale of an Iraqi property to redeem the mortgage.

(e) US$178,983.66 being fees paid to SCB.

49 The appellants' claims were all dismissed by the trial judge.

The claims relevant to this appeal

50 In paragraph 17 of the Statement of Claim (Amendment No 3) ("the SOC"), the appellants alleged that they had been advised by Phoolwani, Black and/or Mithani to enter into an arrangement — which they designated "the Property Financing Arrangement" or "PFA" — which involved the provision of financial services and the sale of financial products as set out below:

> (a) obtain a mortgage from [SCB] to fund the purchase of the property in London;
>
> (b) invest the full proceeds from the sale of Ducie Court with [SCB];
>
> (c) obtain a life insurance policy over [Ahmed's] life (as stated below, this was later changed to [Sheila's] life); and
>
> (d) establish and/or incorporate various offshore trusts and companies to hold the Kazzaz Family's assets such as the property in London and the life insurance policy, and to obtain financing for the property in London.

51 The appellants alleged that oral representations were made by Phoolwani, Black and/or Mithani "in or around late 2009 to 2011" in order to induce Ahmed to enter into the PFA. The alleged representations, which were set out in paragraph 21 of the SOC, included the following:

> (a) the [PFA] was suitable for the Plaintiffs and the Kazzaz family;
>
> …
>
> (d) as interest rates were low, the returns on the investment of the sale proceeds [with SCB] would be greater than the interest charged on the mortgage for the London property and

> the returns would go towards repayment of the mortgage and generate wealth for the Kazzaz family;
>
> (e) the life insurance policy would go towards repayment of the mortgage for the London property and generate wealth for the Kazzaz family;
>
> (f) the life insurance policy over [Sheila's] life would have a minimum guaranteed death benefit of US 21.5 million up to the age of 100 and this death benefit would grow over time such that [Ahmed] would be able to obtain loans using the policy as security to make further investment and/or to grow the Kazzaz Family's business;
>
> (g) [SCB] would pay the premium for the life insurance policy; and
>
> (h) in the event of [Sheila's] death and the life insurance policy is triggered, [SCB] would recover the amount of premium paid for the life insurance policy from the insurance pay-out and the remainder of the insurance pay-out would be paid to the ultimate beneficiaries of the policy, namely [Ahmed and his daughters].

52 The appellants alleged at paragraph 93 of the SOC that SCB, Phoolwani, Black and Mithani owed them a duty of care at common law to advise and to exercise reasonable care and skill in advising and ensuring that the appellants understood the advice. SCB, Phoolwani, Black and Mithani were said to have been negligent and in breach of the duty of care in a variety of ways set out at paragraph 94 of the SOC, including by making the representations set out in paragraph 21 of the SOC (as per paragraph 94(e) of the SOC). SCB and its officers were also said to have breached their fiduciary duty and to have breached laws, regulations and guidelines in the DIFC applicable to them at the relevant time (at paragraph 97 of the SOC).

The trial judge's findings relevant to this appeal

53 Some of the trial judge's findings have been referred to in the preceding factual history. They include findings of what Ahmed was told and what he understood that were critically inimical to the appellants' case.

54 The trial judge collated his findings at [123] of the Judgment. It is not necessary for present purposes to do more than refer to those directly related to this appeal.

55 As summarised by the trial judge at [122] of the Judgment, the appellants invited him to make a number of findings at trial, namely that:

> (a) The Defendants did not take any steps to verify the Plaintiffs' net worth, income, access to cash or investment profile before onboarding them as Professional Clients and advising them on the suitability of the PFA.
>
> …
>
> (d) The Defendants represented and assured Ahmed that the returns on investments would cover the interest payments for the premium loan and the mortgage.
>
> (e) The Defendants represented to Ahmed that he could obtain funds for his business needs under the PFA. When Ahmed requested funds for his business needs, he was not told of the possibility that the investments may not generate enough returns to cover the costs of maintaining the PFA.

The allegation which the trial judge identified in [122(d)] of his Judgment, which he referred to as "Alleged Misrepresentation (1)", exceeded the alleged representation pleaded in paragraph 21(d) of the SOC. Despite that, the trial judge appears to have decided the case, albeit in favour of SCB, as though the wider misrepresentation had been pleaded.

56 The trial judge held that in light of the facts and the evidence he was unable to find that the appellants had made out the matters which they had submitted he should find. He then went on to make the following findings, in particular (at [123]):

> (a) SCB (including [Phoolwani, Black and Mithani]) obtained its information about the Kazzaz family wealth and income from Ahmed himself. Ahmed did not really have any idea of his net worth and assets at the time. He most likely dealt

> with broad-brush figures. But, from the [Investment] Licence alone, SCB would understandably have had the impression that the Kazzaz family had significant wealth and assets, such that the family was in a position to undertake to the Iraqi government that Leadstay would invest US$35 million in a development.
>
> (b) SCB through [Phoolwani] and [Black] in particular explained the purposes, features and risk of what the Plaintiffs have called the PFA. … The evidence indicates that SCB through [Phoolwani] and [Black] explained the rationale underlying the trust structures, the possibility of currency risks and margin calls, and interest payment arising from the proposed financing. Ahmed was told that the net benefit of the Policy would only last until Sheila turned 85 and not until Sheila turned 100.
>
> (c) The Defendants did not represent to Ahmed that the financial arrangements that SCB would put in place would take care of the Kazzaz family's needs, regardless of how much Ahmed withdrew from the investment portfolio. In particular, SCB represented that the investment portfolio could generate returns that would pay off the interest due on the premium and mortgage loans. But SCB did not represent that the investment portfolio could generate sufficient returns to meet such interest payments, no matter how much moneys Ahmed withdrew from the investment portfolio. SCB through [Phoolwani], [Black] and [Mithani] did say that cash could be readily available. But this did not mean (and could not reasonably have been understood to mean) that Ahmed could withdraw as much cash as he wished from the portfolio whenever he wanted, without impairing the portfolio's ability to generate returns that would be sufficient to meet the interest payments due on the premium and mortgage loans. What [Phoolwani], [Black] and [Mithani] meant by cash being available was that, when cash was urgently needed, the portfolio's investments could be readily liquidated to meet such needs.
>
> …
>
> (e) I find that SCB explained to Ahmed and Sheila what it meant to become SCB's Professional Client and were justified in classifying them as such.

57 The trial judge's observation in [123(c)] of the Judgment, as reproduced above, that "SCB represented that the investment portfolio could generate returns that would pay off the interest due on the premium and mortgage loans" is undercut by the representation embodied in the Client Advisory Proposal sent

to Ahmed on 21 March 2011 (see [25] above). On that basis, the trial judge could arguably have found that the alleged representation as to the returns in the Client Advisory Proposal, as characterised by the appellants, was inconsistent with their allegation of a representation that the investment return could pay off the interest due on the mortgage and premium loans.

58 In light of his findings, the trial judge discussed the claims of negligent misrepresentation at common law and the statutory cause of action under the Misrepresentation Act (Cap 390, 1994 Rev Ed) ("Misrepresentation Act") holding, for reasons not under challenge, that the common law and the Misrepresentation Act of Singapore applied. There was an extensive analysis of the applicable law which is not necessary to revisit here. On the question of the exercise of the duty of care, the trial judge held that "it would be difficult … to maintain that SCB owed no duty of care at all to the Kazzaz family on the facts" (Judgment at [132]).

59 The findings in relation to Alleged Misrepresentation (1) challenged in this appeal were set out as follows (Judgment at [133]):

> … [I]n relation to Alleged Misrepresentation (1) …, SCB (whether through [Black], [Phoolwani], [Mithani] or anyone else) did not represent that the financial arrangements that they were proposing would be self-funding so that the investment portfolio put together from the Ducie Court sale proceeds would generate sufficient returns to meet the interest payments for the premium and mortgage loans in all circumstances and, in particular, regardless of the amounts withdrawn by Ahmed. All that was represented to Ahmed was that an investment portfolio could be put together out of the Ducie Court proceeds that would generate returns to cover the interest due on the premium and mortgage loans.

60 In elaboration of his finding, the trial judge said the alleged misrepresentation, being in form a statement of opinion, would more accurately be characterised as (Judgment at [134]):

> 134 … an implicit representation that the maker knew of facts that might reasonably have led the maker to believe that the proposed financial arrangements could generate sufficient returns to cover the relevant interest payments in the future. The question would be whether [Phoolwani] reasonably believed when making the proposal to Ahmed that the investment portfolio that SCB was going to put together for the Kazzaz family had the potential to generate sufficient returns to cover the interest on the premium and mortgage loans.

61 The trial judge held that on the evidence, Phoolwani did not expect Ahmed to make substantial withdrawals from the investment portfolio and thereby seriously hamper the portfolio's ability to generate sufficient returns to meet the interest payments on the premium and mortgage loans. He also did not consider Phoolwani at fault in making that implicit representation (Judgment at [137]).

62 Further, the trial judge expressly stated that he had not found that SCB represented that Ahmed would never have to provide further funds as security for the premium loan or the mortgage. On the contrary, it informed him of the need to provide collateral security. The trial judge concluded (Judgment at [138]–[139]):

> 138 … On the contrary, SCB (especially through [Phoolwani]) informed Ahmed of the need to provide collateral security. For instance, the loan facility letter of 28 July 2011 (the terms of which [Phoolwani] specifically asked Ahmed in his cover email to refer to) expressly referred to the client's undertaking to 'at all times, maintain the Aggregate Collateral Value of the Security above or equal to the Equivalent Amount of the Total Outstandings'. Before accepting the same, Ahmed asked [Fattah] for advice on the terms of the letter and only acted upon receiving [Fattah's] positive recommendation.
>
> 139 It follows that Alleged Misrepresentation (1) has not been made out on the facts. In any event, it seems that whatever SCB stated was not causative of Ahmed's entry into financial arrangements with SCB, Ahmed having cleared matters with [Fattah] on at least two occasions before taking specific steps.

63 The other alleged misrepresentation raised in this appeal – referred to by the Judge below as "Alleged Misrepresentation (3)" – was the subject of a finding at [143] where the trial judge said:

> 143 The evidence suggests that [Phoolwani] and [Black] did indicate to Ahmed that in their view the arrangements being proposed by SCB were suitable for the Kazzaz family's needs. Those arrangements included purchasing the Policy by way of a premium loan, purchasing the Westchester Property by means of a mortgage, using the Ducie Court sale proceeds to establish an investment portfolio out of which the interest on the premium and mortgage loans could be paid, and establishing trust structures to hold Kazzaz family assets.

64 The question of "suitability" involves an evaluative judgment and where a representation as to suitability has been made, it cannot readily be falsified without reference to some underlying implied representation of fact. After reviewing Phoolwani's testimony on the point, the trial judge said (Judgment at [144]):

> 144 … In short, [Phoolwani] believed that the arrangements proposed were suitable because: (1) the investment portfolio put together from the Ducie Court proceeds would generate capital growth for the Kazzaz family in the long term, (2) the death benefit from the Policy would provide a degree of security in the longer term, (3) Kazzaz family assets injected into trust structures would be ring-fenced from forced heirship under French and *shari'a* law, and (4) the interest payments on the premium and mortgage loans would be met by the income generated by the investment portfolio. I am unable to say that such view was unreasonable.

65 The trial judge rejected propositions put by the appellants at trial that it was unreasonable for Phoolwani to regard the proposed financial arrangements as suitable. The appellants had argued that it was unreasonable for the following reasons: (a) the arrangements were not suitable for a person of Ahmed's risk profile; (b) the arrangements were not suitable for a person of Ahmed's investment experience and knowledge; and (c) the arrangements were not suitable for a person of Ahmed's net wealth, income and access to cash. The

trial judge pointed out that Fattah had advised Ahmed of the worst case scenarios of the proposed package and concluded that the risk was acceptable. Further, no complaint was made about the investment portfolio that SCB actually put together. Nor was it suggested that the actual investments were too aggressive or otherwise unsuitable. The trial judge said (Judgment at [147]):

> 147 … The problem was that, shortly after the Ducie Court proceeds were remitted to SCB, Ahmed made substantial withdrawals. It was accordingly not possible for the diminished investment portfolio funds to generate sufficient returns to cover the premium and mortgage loans, much less provide significant capital growth. I have already dealt with the allegation that SCB told Ahmed that cash of any amount would always be available as and when Ahmed wished. Third, I do not think that it was unreasonable for SCB's officers to believe that someone with a net worth of US$41 million and who was in a position to undertake in the Licence to invest US$35 million in an Iraqi development, could afford interest costs of about US$250,000 per year.

66 These findings were fatal to the appellants' case based on misrepresentation, including those breaches of DIFC regulatory law which rested upon those alleged misrepresentations.

Alleged Misrepresentation (1) — a pleadings argument

67 As appears in its Respondent's Case, SCB emphasised at the outset that Alleged Misrepresentation (1) was not pleaded. The closest representation identified in the SOC was that set out in paragraph 21(d) as a representation to Ahmed that the returns on the investment of the sale proceeds with SCB would be greater than the interest charged on the mortgage and the returns would go towards repayment of the mortgage and generate wealth for the Kazzaz family (see [51] above).

68 SCB said that by the time of their closing submissions, the appellants abandoned most of the pleaded representations and reformatted the

representation under paragraph 21(d) of the SOC into what has now been identified as Alleged Misrepresentation (1) that the returns could cover both the mortgage interest and premium interest payments. The appellants, it was said, sought to justify that departure from their pleadings by relying upon paragraph 24(a) of the SOC in which it was said:

> … Therefore, at the material time, [Ahmed] understood and believed the [PFA] to be as follows:
>
> > (a) the returns on the investment of the sale proceeds and the life insurance policy would assist the repayment of the [mortgage loan] and any liabilities to [SCB] in relation to its payment of the premium for the life insurance policy, and generate wealth for the Kazzaz family.

69 That, of course, was a pleading of Ahmed's understanding and not a pleading of an alleged representation. SCB also made the point in its Respondent's Case that even a representation that sufficient returns would be generated to meet interest payments in respect of both the mortgage and the premium loan is different from a representation that the entire PFA would be self-funding. SCB pointed out that apart from interest, other payment obligations such as miscellaneous costs, trust fees and margin calls might also arise under the PFA. Further, the appellants' pleaded definition of the PFA did not even include the premium loan.

70 SCB submitted that the appeal and all claims based on Alleged Misrepresentation (1) should be dismissed simply on the ground that the purported representation was unpleaded. They argued that pleadings define the boundary of the parties' cases and the general rule is that the court is precluded from deciding on a matter that the parties have decided not to put in issue — citing *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422

("*V Nithia*") at [34]–[38]. SCB observed that their objection was raised in their reply submissions at trial but that it was not necessary for the trial judge to deal with it having found on the facts that there was no misrepresentation.

71 The appellants responded in their skeletal arguments that SCB was impermissibly attempting to reopen the issue about whether Alleged Misrepresentation (1) was pleaded. The trial judge, it was said, had made a factual finding and did not reject the claim outright on the basis that it was unpleaded. The appellants argued that the trial judge was very explicit in rejecting claims on the basis that they were not pleaded. Had he found that misrepresentation was unarguable for being unpleaded, he would have said so and then considered that he did not need to deal with whether it was made out on the facts.

72 The appellants further referred to the observation in the decision in *V Nithia* that a court is "not required to adopt an overly formalistic and inflexibly rule-bound approach" (at [39]), adding that a departure from the general rule that the court cannot decide on an unpleaded matter is permitted where no prejudice is caused to the other party or where it would be clearly unjust for the court not to do so. SCB was said to have been aware of the appellants' arguments on Alleged Misrepresentation (1) and prepared to meet them. It had suffered no prejudice nor pointed to any.

73 The appellants' arguments on this point must be rejected. The fact that the trial judge dealt with Alleged Misrepresentation (1), as he formulated it, on its merits adversely to the appellants and did not deal with the pleading point does not mean that the pleading point is a bad one. Significantly, no application was made in this court to amend the pleading.

74 As appears from the commentary in *Singapore Civil Procedure 2020*, (vol 1) (Chua Lee Ming gen ed) (Sweet & Maxwell, 2020) at para 20/8/18 on O 20 r 8 of the Rules of Court (Cap 332, R 5, 2014 Rev Ed), the Court of Appeal has all the powers and duties as to amendment or otherwise of the High Court and specifically:

> The Court of Appeal has a discretion to allow an amendment of the statement of claim when the plaintiff will already succeed on the amended claim and where all the facts are before the court and the defendant could not lead any other evidence …

75 Absent such an application the court cannot speculate on whether, had the wider representation been expressly pleaded, SCB could have cross-examined or led additional evidence-in-chief to specifically address that issue. SCB was plainly entitled to take the point if only as a fallback against the possibility of success by the appellants in relation to Alleged Misrepresentation (1) as formulated in the Judgment. In a sense this point is in the nature of a contention by SCB that the trial judge's judgment in respect of Alleged Misrepresentation (1) can be supported on a basis other than that on which he decided it. The pleading point is fatal to the appellants in relation to Alleged Misrepresentation (1). Nevertheless, the trial judge's reasoning in relation to that alleged misrepresentation was argued and is considered on its merits in the section that follows.

Alleged Misrepresentation (1) — the merits

76 It is not necessary for present purposes to deal with SCB's argument that Sheila had no claim because she was not the addressee of any alleged misrepresentation. SCB also argued that there could not be an appeal against it alone, which could leave the judgments in favour of its officers standing. That argument misconceives the nature of an appeal which is directed to setting aside the formal judgment or orders appealed against — not the reasons for those

orders. The appeal here is against the trial judge's dismissal of the appellants' claims against SCB. The fact that the appeal, if allowed, would leave standing orders of dismissal of the claims brought against the other defendants at first instance does not affect the court's jurisdiction to entertain this appeal or powers to give relief in relation to it.

77 As to Alleged Misrepresentation (1), the question before the trial judge, as his Honour identified it, was whether Phoolwani had a reasonable basis for saying what he did about the investment arrangements being put in place for the appellants under the general rubric of the PFA. The appellants contend that it was obvious on the evidence that there was no such basis.

78 The first point to be made is that the trial judge found as follows (Judgment at [133]):

> All that was represented to Ahmed was that an investment portfolio could be put together out of the Ducie Court proceeds that would generate returns to cover the interest due on the premium and mortgage loans.

79 That, as the trial judge found was an opinion, not of itself an express representation of a fact. It involved, as the trial judge said (Judgment at [134]):

> an implicit representation that the maker knew of facts that might reasonably have led the maker to believe that the proposed financial arrangements could generate sufficient returns to cover the relevant interest payments in the future.

80 On the trial judge's findings there was no representation that the arrangements would certainly have that effect — that would have amounted to a guaranteed outcome. The question was one of the potential of such arrangements. It did not take into account the possibility that Ahmed might, by taking out substantial loans, (referred to as "withdrawals") hamper the portfolio's ability to be self-funding (Judgment at [137]). The trial judge did not

believe that was an unreasonable assumption on Phoolwani's part. The portfolio would have to generate returns of about 5% from almost all of the Ducie Court sale proceeds if it was to have any prospect of wholly or even substantially covering the interest due on the premium and mortgage loans. The trial judge accepted that the contemplated arrangement would have been a "tight" package with little room to manoeuvre.

81 The appellants say that the trial judge's reference to "withdrawals" was a logical error. The trial judge, it was said, used a future event to justify Phoolwani's opinion. However, with all due respect to the appellants, that is not what the trial judge did. He simply indicated the limited circumstances supporting the reasonable belief which was open about the potential of the arrangements. In so doing he proceeded from a basis which was unduly favourable to the appellants as to the content of the alleged misrepresentation in regard to what had appeared in the Client Advisory Proposal of 21 March 2011 and, of course, by reference to the representation actually pleaded.

82 Much emphasis was placed by the appellants on the Client Advisory Proposal. The difficulty for the appellants, as already noted, is that on their submission, the very document said to have shown insufficient returns from the investment, is the document which was presented to them.

83 The trial judge, as SCB pointed out in its skeletal arguments, did have regard to the projected returns and formed the view that returns of about 5% on an investment of US$5m (instead of the entire Ducie Court proceeds of £5m) were achievable but tight. This was said to be supported by the bond proposal and expert evidence.

84 The contention advanced by the appellants that there was a continuing misrepresentation was also said to be inconsistent with the trial judge's correct finding that Ahmed was informed by Phoolwani of the consequences of his borrowings and in fact complained about those warnings.

85 Ultimately, although it does not go to whether the alleged misrepresentation was made, it is clear that the appellants relied significantly upon the advice of Fattah. SCB referred to the appellants' evidence at trial that Fattah's email of 6 February 2011 "concreted everything" for him and was the "go ahead" and "green light" for him to proceed with the PFA.

86 Having regard to the conventional way in which the trial judge formulated the implicit representation as to reasonable belief and the basis for its existence, its characterisation as a misrepresentation is not made out.

87 The appeal in so far as it relates to Alleged Misrepresentation (1), as formulated by the trial judge, is not made out.

Alleged Misrepresentation (3)

88 As to the alleged misrepresentation as to suitability, *ie*, what parties referred to in proceedings below as "Alleged Misrepresentation (3)", the trial judge linked that to a concept of the reasonableness of Phoolwani's belief in the suitability of the arrangements proposed (see [63] and [64] above). That involved an evaluative judgment by the trial judge and is not shown to have been in error.

89 The appellants contended that the trial judge's finding was "incorrect and against the weight of the evidence". They argued that the trial judge did not deal with whether the PFA, which was highly leveraged and could result in a

71% potential loss over a five year period in the worst case scenario, was indeed suitable for someone of Ahmed's risk profile. The trial judge was also said to have failed to consider that on the evidence most of the appellants' net worth was illiquid.

90 The appellants argued that tested against Ahmed's risk profile, investment experience and knowledge and net wealth, income and access to cash, the PFA was objectively unsuitable. They referred to "the toxic combination of the policy and the leverage introduced by the [p]remium [l]oan" which they argued made the PFA highly risky.

91 Further the PFA was said to be "unsuitable" because it was complicated and Ahmed did not have sufficient experience to appreciate its risk. Nor was it suitable for a person of Ahmed's net wealth, income and access to cash.

92 Given the asset position of the Kazzaz family and Ahmed's role in it — and his and Sheila's positive acceptance of their characterisation as "Professional Clients" of SCB and given the availability to Ahmed of experienced advice from Fattah — there is an air of unreality about the appellants' complaint in relation to suitability.

93 SCB argued that suitability is to be assessed by reference to a relevant objective or goal. The PFA had been suggested as a means of family estate planning and not by reference to the appellants' rather narrow perspective of immediate investment risk/return. The PFA also sought to generate capital growth in the long term and ring-fence the family's assets from forced heirship under French and *shari'a* law. Given that broad perspective, it is said, that the trial judge rightly held that there were reasonable grounds for Phoolwani to form the view that the proposed arrangements were suitable.

94 SCB submitted that the appellants had misstated the risk of the PFA based on a worst case scenario of a total potential loss over five years of 71%. The total potential loss was to be distinguished from the risk assessed upon an evaluation of the worst case scenario. The trial judge had appreciated that distinction and had observed "it is in the nature of even conservative financial products … that … the entire value of an investment may be lost" (Judgment at [147]).

95 SCB also pointed to the trial judge's findings of Ahmed's ample actual knowledge of concepts such as collateral negative equity and differential interest rates. He was, SCB submitted, more than capable of appreciating the risks and benefits of the financial arrangements entered into.

96 Having regard to the observations already made in these reasons and the points referred to in SCB's submissions, the trial judge is not shown to have been in error in holding that Phoolwani had not misrepresented the suitability of the arrangements.

Conclusion

97 For the above reasons this court held that the appeal be dismissed and fixed SCB's costs at S$80,000, inclusive of disbursements, to be paid by the appellants.

Judith Prakash	Steven Chong	Robert French
Judge of Appeal	Judge of Appeal	International Judge

Chia Voon Jiet, Grace Lim Rui Si and Sim Bing Wen (Drew & Napier LLC) for the appellants;
Tan Xeauwei, Daniel Seow Wei Jin, Mak Sushan Melissa and Marrissa Miralini Karuna (Allen & Gledhill LLP) for the respondent.
