

**IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2026] SGHC(A) 13

Appellate Division / Civil Appeal No 69 of 2025

Between

Lee Cheng Mui

... Appellant

And

Lee Say Yng

... Respondent

In the matter of Originating Claim No 867 of 2023

Between

Lee Say Yng

... Claimant

And

Lee Cheng Mui

... Defendant

JUDGMENT

[Land — Interest in land — Tenancy in common — Ouster]

[Tort — Trespass — Land]

[Tort — Damages — Compensatory damages]

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Lee Cheng Mui

v

Lee Say Yng

[2026] SGHC(A) 13

Appellate Division of the High Court — Civil Appeal No 69 of 2025
Woo Bih Li JAD, Kannan Ramesh JAD and See Kee Oon JAD
28 January 2026

28 April 2026

Judgment reserved.

Kannan Ramesh JAD (delivering the judgment of the majority consisting See Kee Oon JAD and himself):

Introduction

1 The objective of the compensatory principle of damages in tort is to address, as far as money can, the consequences of the wrongful act occasioned by the tort by seeking to put the victim in the position he would have been in if the wrongful act had not occurred. The concept of reasonableness serves as a limitation on the compensatory principle, requiring that the compensation awarded should be reasonable and just. What then constitutes reasonable damages, and who bears the burden of establishing reasonableness in this regard? These are the central questions in the present appeal.

2 The appellant, Ms Lee Cheng Mui (“Appellant”), and the respondent, Mr Lee Say Yng (“Respondent”), are siblings and tenants-in-common of the property at the centre of this dispute, 65 Taman Mas Merah (“Property”). The

Respondent, the younger of the two, brought the proceedings below in HC/OC 867/2023 (“OC 867”) against the Appellant. In OC 867, the Respondent claimed rental expenses he had incurred for alternative premises as a result of the Appellant committing trespass by ouster of the Respondent from the Property between November 2017 and October 2024.

3 At the close of the Respondent’s case, the Appellant submitted “no case to answer”. She also argued that the Respondent’s case should be struck out for abuse of process.

4 The judge below (“Judge”) allowed the Respondent’s claim in part. The Judge found that there was actual or constructive ouster of the Respondent by the Appellant between 16 August 2021 and 11 April 2024. The Judge awarded the Respondent damages in the sum of S\$146,400, being the rent the Respondent had incurred for leasing alternative premises between 12 November 2021 and 11 April 2024. The reason why damages were only from 12 November 2021 rather than 16 August 2021 was that the rent the Respondent incurred prior to 12 November 2021 was not caused by the ouster. The reason why damages ended on 11 April 2024 was because the Judge found that the ouster had ceased on that day. The Judge’s decision may be found in *Lee Say Yng v Lee Cheng Mui* [2025] SGHC 126 (“Judgment”). Also, the Judge ordered costs of OC 867 to the Respondent to be paid by the Appellant in the sum of S\$62,232.40 (“Costs Order dated 22 July 2025”), assessed on the State Courts’ scale because the damages awarded fell within the State Courts’ jurisdiction. Dissatisfied, the Appellant brings the present appeal against both decisions of the Judge.

Parties' case on appeal

Appellant's case

5 The Appellant raises six points in the present appeal:

- (a) The Judge's finding that there was actual or constructive ouster by the Appellant of the Respondent between 16 August 2021 and 11 April 2024 was wrong.
- (b) On the defence of *laches*, the Judge erred in concluding that the Respondent was legally and beneficially entitled to his half share in the Property as a tenant-in-common ("Share") because the Judge overlooked or ignored material evidence. The Judge should instead have concluded that the Respondent's interest in the Share was only an equitable interest similar to that of other family members.
- (c) The Judge erred in concluding that OC 867 was not an abuse of process and in declining to dismiss it on that basis.
- (d) The Judge erred in failing to apply the law to the facts as he appeared to act more as a family counsellor or mediator than as a judge.
- (e) The Judge erred in failing to adequately consider the actual loss suffered by the Respondent, thereby overcompensating him.
- (f) In ordering the Appellant to pay costs to the Respondent on the State Courts' scale, the Judge erred in failing to take into account relevant considerations.

Respondent’s Case

6 The Respondent essentially relies on the reasoning of the Judge to resist each of the points raised by the Appellant.

7 We set out the Judge’s analysis and expand on the Appellant’s and Respondent’s arguments in our analysis below, to the extent they are relevant.

Issues to be determined

8 Six issues arise in the present appeal:

(a) Did the Judge err in finding that there was actual or constructive ouster of the Respondent by the Appellant between 16 August 2021 and 11 April 2024? (“Liability Issue”)

(b) Did the Judge err in dismissing the Appellant’s contention that the Respondent’s claim was barred by *laches*? (“*Laches* Issue”)

(c) Did the Judge err in dismissing the Appellant’s application to strike out OC 867 for constituting an abuse of process? (“Striking Out Issue”)

(d) Was the Judge wrongfully influenced by irrelevant considerations in making his decision? (“Judge Issue”)

(e) Were the damages awarded excessive? (“Quantum Issue”)

(f) Were the costs awarded excessive? (“Costs Issue”)

Liability Issue

9 The Liability Issue involves an analysis of the following five sub-issues:

- (a) Did the Judge rely on hearsay evidence to come to his conclusion?
- (b) Was the Judge’s interpretation of the WhatsApp messages that were exchanged between the Appellant and the Respondent and his wife the correct one?
- (c) Did the Judge rely on other circumstances that contradicted the evidence?
- (d) Did the Judge err in finding that the ouster ended on 11 April 2024?
- (e) Did the Judge err in failing to give sufficient consideration to the fact that the burden of proof was on the Respondent as the claimant?

10 For the reasons that follow, in our view, there is no merit in these points. We first make a general observation. Save for the first sub-issue, which raises the question of admissibility of evidence, the other sub-issues challenge findings of fact by the Judge based on his assessment of the evidence. Appellate intervention in such circumstances is permissible where the trial judge’s assessment is “plainly wrong or against the weight of the evidence”, save for inferences of fact or situations where inferences about the credibility of witnesses are drawn from the internal consistency and external consistency of the witnesses’ evidence and extrinsic evidence. In such situations, the appellate court is in as good a position as the trial judge: *Sandz Solutions (Singapore) Pte Ltd v Strategic Worldwide Assets Ltd* [2014] 3 SLR 562 at [37]–[41].

Did the Judge rely on hearsay evidence to come to his conclusion?

11 The Appellant contends that the Judge relied on “double hearsay evidence” to find that the Appellant had ousted the Respondent from the Property. The Appellant pointed to the Respondent’s wife’s WhatsApp message on 16 August 2021 (“Message”) to the Appellant. The Message was in the following terms:

Time and sender	Message
16 August 2021	
8:59 pm, Respondent’s wife:	I’ve just talked to [Respondent]. He said you wouldn’t like we [sic] move back home. [emoji]

The Message was the final message in an exchange between the Appellant and the Respondent’s wife reproduced at [118] of the Judgment. The contention is that there is double hearsay because the Message refers to a conversation between the Respondent and the Appellant where the latter allegedly said that she did not want the former to move back into the Property. The Appellant contends that it is evident from [119] of the Judgment that the Judge relied on the Message. For clarity, [119] of the Judgment is reproduced below:

119 The claimant argues that, from the above messages, the defendant had refused to allow the claimant to move back into the Property. In particular, the claimant submits that the defendant’s lack of response to the last message from the claimant’s wife (above at [118]) “is telling as it confirms the actual reality at the time that **the Defendant would not like them to move back into the Property**” [emphasis in original].

[emphasis in original]

12 In our view, the Appellant’s contention has no merit. Putting to one side the question of whether there was even hearsay to begin with, a point we will address later (at [17]), we are of the view that the Judge did not in fact rely on

the Message in determining whether there was ouster. The question of hearsay therefore does not even arise.

13 To explain, we start with [119] of the Judgment, which the Appellant relies on. The paragraph does not assist the Appellant because it simply sets out the Respondent’s submission on ouster based on the WhatsApp exchange between the parties set out at [117] and [118] of the Judgment. It does not reflect the Judge’s analysis or conclusion. In [119], the Judge did not state that he had relied on the Message in making his finding of fact. As the Respondent points out, apart from noting the Respondent’s submission on the Message, the Judge drew no conclusion from the Message and made no further reference to it. The WhatsApp messages the Judge relied on to make his findings of fact are explained in the paragraphs of the Judgment that follow [119], namely [121] to [124]. It is clear from these paragraphs that the Message was not one of the WhatsApp messages he placed weight on. This is particularly so from [121] of the Judgment where the Judge concluded that, based on the Appellant’s WhatsApp messages to the Respondent on 15 and 16 August 2021 (reproduced in [117] of the Judgment), the Appellant’s tone had changed.

14 The messages reproduced at [117] of the Judgment were:

Time and sender	Message
14 August 2021	
1:32 pm, Respondent:	My lease expires in early November and I plan to move back home.
1:37 pm, Respondent:	B4 doing so, I planning off doing some minor renovations like changing the lighting to LED for the downstairs and also the rooms upstairs; put air condition for downstairs; checking the air

condition needs to be replace upstairs. Not sure if the kitchen need some renovations and others.

1:38 pm,
Respondent: If u can get a quote for this and see how best to do this and if needed move to Corals as the lease over there expires in Nov.

1:39 pm,
Respondent: Let me know how u can assist. I will take care of the cost.

15 August 2021

4:48 pm,
Appellant: 2 options:
a) You buy over my shares (50%) of house at current market value. I received, proceed, I leave house. You move in.
b) Sell house. Share proceed equally.

8:53 pm,
Respondent: I have no intention of buying or selling. Bring a owner of the house, I do have the right to live in it

8:54 pm,
Respondent: By the way, I am not asking u to come up with any money for the renovation.

8:55 pm,
Respondent: If u don't have time for the renovations, I will do it myself. Just thought it's easier u manage it.

8:55 pm,
Respondent: Thank u for the 2 options.

16 August 2021

8:12 pm,
Appellant: We each have half ownership of the house. Need to agreed on matters before taking actions. Best to talk face to face on these issues.

8:20 pm,
Appellant: Ask your company to help resolve lease issue. Are you on expat or local terms?

8:23 pm,
Appellant: Based on Peggy's [ie, the Respondent's wife] & yours renovation suggestions, we've very different lifestyles & habits. It is

obvious to me we cannot stay together as conflicts will arise.

8:29 pm,
Appellant: I suggested these 2 options to resolve your issues with lease, renovations, move in etc. To buy over co-own party share of house or to sell house is the norm for co-own property.

He found that the messages sent by the Appellant evinced the position that “we cannot stay together”, so either “[y]ou buy over my shares” or “[we] sell [the Property]”. The Appellant had conveyed to the Respondent that he was not allowed to move in while the Appellant was staying there, and that the Appellant would not leave unless the Respondent bought over her half share – “you buy over my shares ... I leave house. You move in.”

15 In the Judge’s view, the Appellant’s position was that the Respondent was not allowed to return. The way forward was either for the Respondent to purchase her half share or agree to jointly sell the Property. This is plain from [122] of the Judgment. At [123] of the Judgment, the Judge observed that by August 2021, the Appellant’s “attitude had hardened compared to the [Respondent]’s previous attempts to move into the Property”, which he noted at [124] was apparent from the plain reading of the WhatsApp messages at [117] of the Judgment.

16 In these circumstances, the Judge placed no weight on the Message. Indeed, it was unnecessary for him to do so given the plain language of the messages in [117] of the Judgment. We recognise that in [125] of the Judgment, the Judge referred to the exchange of messages at [118] (of which the Message was one). However, it is apparent from [121] to [124] of the Judgment that the messages in [117] were the ones he placed weight on. Thus, the question of hearsay does not arise.

17 Before we conclude on this point, we briefly address whether there was even an issue of hearsay to begin with. It seems to us that the argument on hearsay is misplaced. It is clear from the message thread reproduced at [118] of the Judgment that the Appellant had failed to respond to the assertion in the Message that the Appellant told the Respondent that she did not want him to return to the Property. The Message was not relied on to prove that the Appellant in fact told the Respondent that he should not return to the Property. Had that been the case, the question of hearsay might be pertinent. But that is not the point. Instead, the point is that the Appellant did not respond to the allegation by the Respondent’s wife that she told the Respondent not to return to the Property. It was the Appellant’s inaction in the face of the allegation that was material to the question of whether she was open to the Respondent returning to the Property. Analysed this way, there is no question of hearsay.

Did the Judge choose a less likely interpretation of the WhatsApp exchange?

18 As stated above, the Judge found that based on the 15 August 2021 and 16 August 2021 messages, reproduced at [117] of the Judgment (see [14] above), the Appellant’s position was that the parties “cannot stay together” (Judgment at [121]). The Judge specifically relied on the messages sent at 4.48 pm on 15 August 2021 and 8.23 pm and 8.29 pm on 16 August 2021.

19 The Appellant contends that the Judge had preferred a less plausible interpretation of the 16 August 2021 messages. The Appellant argues that the more plausible interpretation is that “if the Respondent and his wife insist on moving back into the Property, the Appellant would be minded to, or even have no choice but to, move out.” She says that this interpretation is borne out by her desire to move on with her life by finding a new place to live. She relies on her

message sent on 15 August 2021 at 4.48 pm, where she says “I leave house. You move in” to ground this argument (see [14] above).

20 The Respondent submits that the Judge’s interpretation is the better one because the Appellant’s interpretation strains the plain meaning of the 16 August 2021 message sent at 8.23 pm. In that message, “we cannot stay together” meant that the Appellant would not have allowed the Respondent to move in. Adopting the Appellant’s interpretation would mean “adding words into the [16 August 2021 message] that are not there” [emphasis in original omitted].

21 In our view, the Judge’s interpretation of the 16 August 2021 message sent at 8.23 pm is a fair reading of the message. The context is important. From the 15 and 16 August 2021 messages, it is clear that the Appellant gave the Respondent two options: either the Respondent buys the Appellant’s half share in the Property or the parties sell the Property and split the proceeds equally. Despite the Respondent making the point that he was also an owner of the Property, the Appellant was not amenable to allowing the Respondent to move back in without condition. The Appellant’s motive for refusing to allow the Respondent to return was irrelevant. It was the fact that she refused to allow the Respondent to return without condition that was the issue. We need only say that the Appellant’s message was taken out of context in her argument. It pertained to her suggestion that the Respondent was to buy her share of the Property. It was not, as her argument suggested, an offer for the Respondent to move in and for the Appellant to move out, without more.

22 The Appellant contends that it was the Respondent’s lack of reply on 16 August 2021 which “brought the discussion to an end”. However, we see no reason to disagree with the Judge’s finding at [122] of the Judgment that a plain

reading of the WhatsApp messages suggests that the “offer to talk” by the Appellant appeared to be about which of the two options (*ie*, buying the Appellant’s share or selling the house) should be pursued. There was no room for discussion on the Respondent moving in.

23 Furthermore, as noted above at [17], the Appellant’s failure to challenge the Message is telling. The timing of the Message is significant. It was sent at 8.59 pm, just 30 minutes after the Appellant’s final message to the Respondent (see [14] above). If she truly meant for her messages to the Respondent on 16 August 2021 to be “an offer to talk”, as she asserts, she would have corrected the assertion in the Message that she had told the Respondent not to return and clarified her position. However, she did not do that. Accordingly, the Appellant has not shown why her interpretation should be preferred.

Did the Judge rely on other circumstances that contradicted the evidence?

24 The Appellant contends that [121] and [123] of the Judgment demonstrate that the Judge took into account other circumstances that are contradicted by the evidence. She argues that the evidence actually shows the following:

- (a) The period between the death of their mother (“Mother”) in May 2020 and the issues between the Respondent and the Appellant coming to a head in July 2023 was in fact the most conciliatory period between them, and hardly reflected a “hardening” of her “attitude”, as found by the Judge.
- (b) The issue of how the co-ownership of the Property should be dealt with, specifically the buy-out, was a continuing one from October

2017 until February 2024. Therefore, there was no change of position by the Appellant in that period.

(c) The Judge ignored the reasons the Respondent gave for wanting to move into the Property in the first place.

25 The Respondent submits as follows:

(a) The Judge was entitled to find on the evidence, which the Appellant had not rebutted, that the Appellant’s attitude had hardened.

(b) Whether the “buy-out” was a continuing issue was not relevant to the Judge’s decision on the Respondent’s claim of ouster by the Appellant.

(c) The reasons for the Respondent wanting to move into the Property are irrelevant to the issue of ouster.

26 In our view, there is no merit to the Appellant’s contention.

27 We are of the view that the Judge’s finding that the Appellant’s attitude had “hardened” is supported by a plain reading of the WhatsApp messages and a comparison between her response in 2017 and her response in 2021. This is clear when reading [121] and [123] of the Judgment together.

28 Whether there were ongoing discussions between 2017 and June 2023 about the buy-out of the Appellant’s share, as she contends, does not change what was plainly said by the Appellant in her WhatsApp messages. It was clear from the messages that she had refused to allow the Respondent to move in, putting on the table two options, neither of which was palatable to the

Respondent. Even if we accept that it occurred within the wider context of discussions regarding a “buy-out”, this was ouster, plain and simple.

29 Finally, we agree with the Respondent that his reasons for wanting to move into the Property are irrelevant to the question of ouster. The fact is, as a co-owner of the Property, the Respondent was entitled to occupy it, regardless of his motivations for wanting to do so.

30 Accordingly, in our view, all three points raised by the Appellant are without merit.

Did the Judge err in finding that the ouster ended on 11 April 2024?

31 The Appellant submits that the Judge erred in finding that the ouster ended on 11 April 2024. Instead, the Judge should have found that the ouster ended on 8 January 2024. The Appellant relies on paragraph 11(f) of the Defence in OC 867, which was filed and served on 8 January 2024:

“..., as the Claimant is a child of Father and Mother, and thus a member of the family:

(i) at all material times, the Claimant was and has been at liberty to use or reside in the available space on the Property if he so chose or chooses, upon agreement being reached between the Claimant and the Defendant on the living and other arrangements as are or may be necessary. As set out above, no agreement was reached between the Claimant and the Defendant and the Claimant chose to reside elsewhere; and

(ii) ..., since Mother's death in May 2020, the master bedroom has also been available for the Claimant to use or reside in.”

32 The Appellant further submits that by paragraph 11(f) of the Defence, she had made it clear to the Respondent that he could stay in the Property from at least 8 January 2024, if not earlier. The Appellant argues that the Respondent had, for his own reasons, chosen to continue to stay at the apartment

(“Apartment”) he had leased at the condominium development Corals at Keppel Bay following the ouster on 16 August 2021, instead of moving back into the Property.

33 The Respondent does not address the Appellant’s submissions aside from observing that they are cast in general terms and have no substance.

34 In our view, the Appellant’s argument fails. We make two points. First, we agree with the Judge’s comment at [145] of the Judgment that the onus was on the Appellant to communicate her change of position to the Respondent. There is no evidence that she did.

35 Second, paragraph 11(f) of the Defence does not make it clear that the Respondent could stay in the Property. Although it states that the Respondent “was and has been at liberty to use and reside in the available space on the Property”, significantly, a caveat was added that:

upon agreement being reached between the [Respondent] and the [Appellant] on the living and other arrangements as are or may be necessary. As set out above, no agreement was reached between the [Respondent] and the [Appellant] and the [Respondent] chose to reside elsewhere.

(emphasis added)

36 The caveat harks back to the position expressed in the WhatsApp messages reproduced at [117] of the Judgment (see [14] above). The “Agreement” the Appellant had previously been open to encapsulates the two options she offered on 15 and 16 August 2021 – either the Respondent buys out her share, or the parties sell the Property. Therefore, the Defence does not communicate to the Respondent that she had changed her mind on the Respondent moving back into the Property.

37 We close this point with an observation. The Judge concluded (Judgment at [146]–[147]) that the ouster ended on 11 April 2024 and that conclusion turned on his construction of the 11 April 2024 email from the Appellant’s counsel. The Judge’s construction of the 11 April 2024 email is rather generous. In the 11 April 2024 email, the Appellant stated:

... to avoid further disputes, conflicts and hostilities between the parties, please let us have your client’s *proposal on the living and other arrangements for parties to stay together at the Property, including but not limited to on the use of common areas in the Property and the sharing of expenses.*

[emphasis added]

It is clear that this 11 April 2024 email had subjected the Respondent’s right to stay in the Property to qualifications. There is no representation that the Appellant would *unconditionally* accept the Respondent’s occupation of the Property. It is unclear what would have been an acceptable proposal. The fact of the matter is that as the legal and beneficial co-owner of the Property, the Respondent had the right to occupy it unconditionally. A proposal such as that set out in the 11 April 2024 email is equivocal. There is no clear communication that the Appellant had changed her mind on the Respondent moving back into the Property. Be that as it may, as there is no cross-appeal by the Respondent on this issue, we say no more on this point.

Did the Judge fail to give sufficient consideration to the fact that the burden of proof lay on the Respondent as the claimant?

38 The Appellant argues that the Judge had shifted the burden of proof to the Appellant because at [124] of the Judgment, the Judge had stated that the Appellant’s failure to take the stand to explain the meaning of her WhatsApp messages meant that the plain reading of the messages prevailed.

39 In our view, the Judge did not shift the *legal burden of proof* onto the Appellant. The Judge was merely referring to the *evidential burden of proof*. As held by the Court of Appeal in *Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 at [59]:

59 The court’s decision in every case will depend on whether the party concerned has satisfied the particular burden and standard of proof imposed on him. Since the terms “proved”, “disproved” and “not proved” are statutory definitions contained in the Evidence Act (Cap 97, 1997 Rev Ed)(“EA”), the term “proof”, wherever it appears in the EA and unless the context otherwise suggests, means the burden to satisfy the court of the existence or non-existence of some fact, that is, the legal burden of proof: see ss 103 and 105 of the EA. *However, this is not to say that the evidential burden, which is the burden to adduce sufficient evidence to raise an issue for the consideration of the trier of fact, does not exist. It exists as the tactical onus to contradict, weaken or explain away the evidence that has been led; there is no distinction between such tactical onus and the evidential burden.*

[emphasis added]

40 In our view, the Judge was pointing out that the Appellant did not discharge her evidential burden by offering an explanation that would displace the plain meaning of the WhatsApp messages. Although the Appellant suggests certain other meanings may be read from the 15 and 16 August 2021 messages, she has adduced no evidence on that. The Judge was therefore left to construe the WhatsApp messages on their face and in the context in which they were sent. In our view, the Judge was correct in concluding as he did in [124] of the Judgment.

41 The above disposes of the Liability Issue. We agree with the Judge that the Respondent has established that there was ouster between 16 August 2021 and 11 April 2024.

Laches Issue

42 The Appellant’s argument on *laches* rests on the assertion that the Respondent held the Property on trust for his father (“Father”). Under this alleged trust, the Respondent, together with other family members, had the right to stay in the Property whenever they were in Singapore. Thus, the Respondent’s claim was in equity and not in law, which meant that the doctrine of *laches* applied, which he has fallen foul of.

43 The Respondent submits that the Appellant has failed to prove that the Respondent held the Property on trust for the Father. The Respondent was the registered owner of the Share and had good title against the whole world unless it was proven otherwise.

44 In our view, the Judge was correct in finding that the Respondent’s claim was at common law, relying on *Tay Jui Chuan v Koh Joo Ann (alias Koh Choon Teck)* [2010] 4 SLR 1069 (“*Tay Jui Chuan*”) (Judgment at [51]). Therefore, the doctrine of *laches* did not apply. In *Tay Jui Chuan* at [24], the court held that the registered owner of a property had good title against the world unless it was proved otherwise. Therefore, the burden was on the Appellant to prove that the Respondent did not have good title, which she failed to discharge.

45 Further, there is cogent evidence that the Property was not held on trust for the Father. The Property was previously registered in the sole name of the Respondent. To add the Appellant as a tenant-in-common with a half share, the Father requested that the Respondent make the transfer (Judgment at [52]). This was not challenged by the Appellant. If the Respondent was truly holding the Property on trust for the Father, the Father would not have had to seek the consent of the Respondent. He would have simply directed the Respondent to make the transfer.

46 Furthermore, pursuant to s 7 of the Civil Law Act 1909 (2020 Rev Ed), a declaration of trust in respect of any immovable property or interest in such property must be manifested and proved by some writing signed by a person who is able to declare such trust or by his will. If the Respondent was in fact holding the Property on trust for the Father or the family, there must be a written declaration stating so. Absent that, in our view, there is nothing to suggest that the Respondent was holding the Property on trust.

47 Although the Respondent had stated that he was “entrusted” with the Property and referred to the Property as a “family home”, in our view, that does not necessarily suggest a trust. He was simply stating his shared commitment to the Father’s view. We find that this is consistent with his refusal to jointly sell the Property with the Appellant because he wanted to keep the Property as the Lee family home. This is not to say that he was correct to refuse to jointly sell the Property notwithstanding the strained relationship between the parties. However, that is another issue which the court has addressed in separate proceedings.

48 The Appellant relies on the evidence of the parties’ brother, Mr Lee Sea Kian (“Brother”), who was the Respondent’s witness. His testimony that it was the Father who had “bought the house” and “the one who call the shot” must be understood in the context of the question he was responding to. That question was:

... [Father] decided who will get [the Property], correct? It’s your father who made – who decided. Correct?

It is clear that the Brother’s response was regarding “who will get [the Property]” and not whether it was held on trust for someone else. Once the Property was given to the Respondent, it belonged to him, which explains why

the Father had to seek his consent for the transfer of the half share to the Appellant.

49 Accordingly, as the Appellant has not proven that the Respondent was holding the Property on trust, there is no room for the doctrine of *laches* to apply.

Striking Out Issue

50 The Appellant argues that the Judge erred in determining that OC 867 was not an “abuse of process” because the Judge found that the Appellant was liable in part. She argues that the claim was still an abuse of process because it was brought for an improper or collateral purpose.

51 The Respondent argues that the Appellant has failed to show that the claim was not genuine. As the claim had been made out, there could not be any abuse of process.

52 In our view, the Appellant has failed to show how the Judge had erred in not striking out the Respondent’s claim.

53 The grounds to strike out a claim are set out in O 9 r 16(1) of the Rules of Court 2021, which reads:

Striking out pleadings and other documents (O. 9, r. 16)

16.—(1) The Court may order any or part of any pleading to be struck out or amended, on the ground that —

- (a) it discloses no reasonable cause of action or defence;
- (b) *it is an abuse of process of the Court; or*

(c) it is in the interests of justice to do so,
and may order the action to be stayed or dismissed or judgment to be entered accordingly.
...
[emphasis added]

54 As helpfully explained in *Singapore Rules of Court – A Practice Guide (2023 Edition)* (Chua Lee Ming editor-in-chief) (Academy Publishing, 2023) at para 09.053, citing *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 (“*Gabriel Peter*”) at [22]:

22 The term, “abuse of process of the Court”, ... has been given a wide interpretation by the courts. It includes considerations of public policy and the interests of justice. This term signifies that the process of the court must be used *bona fide* and properly and must not be abused. The court will prevent the improper use of its machinery. It will prevent the judicial process from being used as a means of vexation and oppression in the process of litigation. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed and will depend on all the relevant circumstances of the case. A type of conduct which has been judicially acknowledged as an abuse of process is the bringing of an action for a collateral purpose: ...

55 The focus of the “abuse of process” ground for striking out is not the merits of the claim, but rather whether an action was “brought *bona fide* for the purposes of obtaining relief” or “for some other ulterior or collateral purpose”. If the latter, it will be struck out for abuse of process: *Gabriel Peter* at [22]. We add that the striking out of a claim for abuse of process is usually made at the earliest opportunity. In the present case, the argument to strike out was made only after the claimant had closed his case at trial.

56 The Appellant has failed to show how the claim was brought for an ulterior or collateral motive. The Appellant has not adduced any evidence to

show that OC 867 was brought to achieve an ulterior or collateral motive and not to ventilate a genuine grievance. One of the ulterior motives that was alleged was that the Respondent was trying to “claw back as much of the value [from] the half share of the Property”, but this is not grounded in the evidence. On appeal, the evidence that the Appellant points to refers to the Respondent’s offer to purchase her share of the Property at a certain price. However, the Appellant does not explain how this shows that OC 867 was brought to achieve an ulterior purpose. As found by the Judge, there was a “genuine struggle, debate and consternation between the parties” that culminated in the claim (Judgment at [151]).

57 The Appellant also alleges that the Respondent wanted to use OC 867 to cast aspersions on the Appellant in respect of her personal life. This too is not supported by the evidence. The only reference to the Appellant’s personal life was to explain the circumstances surrounding the dispute, specifically her conduct after moving into the Property in 2009. In our view, providing relevant factual background information to the dispute cannot constitute an ulterior or collateral purpose.

58 Accordingly, the Appellant has not shown how the Judge had erred in not striking out OC 867 as an abuse of process.

Judge Issue

59 We see no merit in the Appellant’s argument that the Judge was acting as a mediator or family counsellor. The Appellant cites [182] and [183] of the Judgment and the comments made by the Judge at the trial on 13 December 2024 to ground her case.

60 For a start, it is unclear exactly what the Appellant’s complaint is. It is clear from the paragraphs of the Judgment cited by the Appellant and the remarks of the Judge at trial that he was simply making the observation that it was unfortunate that the parties did not see the benefit of a compromise in a dispute between siblings. The very same observation was made by Brother in his testimony, which the Judge referred to. The Judge was entitled to make this observation and indeed, we think it is wholly appropriate in a dispute involving family members.

61 We make a further point. There is no suggestion that the Judge’s observation impacted his analysis of the issues. That being the case, it is unfortunate that counsel for the Appellant chose to advance an obviously meritless argument against the Judge. In our view, counsel should have shown better judgment.

62 As the Appellant has failed on all issues that relate to liability, we dismiss the appeal on liability and turn to the question of the quantum of damages, which in our view is the central issue in the present appeal.

Quantum Issue

63 Accepting that damages for the tort of trespass by ouster is compensatory, the Appellant nonetheless challenges the damages that were awarded on several grounds, namely that:

- (a) The Apartment is a luxury apartment which provided the Respondent and his wife with privacy and facilities that would not have been available to them at the Property. (“Sub-Issue 1”)

(b) The Apartment provided a home in Singapore for the Respondent’s wife, and thus the amount should have at least been halved. (“Sub-Issue 2”)

(c) In August 2021, the Respondent had “decided to spend more time with [their] kids in Sydney”, and thus they did not intend to live in Singapore. (“Sub-Issue 3”)

(d) The quantum of damages should be reduced as the period of ouster ought to have ended earlier, and in any event the Appellant did not cause the Respondent’s loss between November 2021 and 11 April 2024. (“Sub-Issue 4”)

(e) Lastly, the Judge did not take into account the Respondent’s share of the outgoings and expenses related to the Property, which was borne by the Appellant. (“Sub-Issue 5”)

64 In our view, the Appellant has not shown that the Judge had erred in his assessment of the damages that the Respondent is entitled to.

Sub-issue 1: The Appellant’s characterisation of the Apartment as a “luxury apartment”

65 The Appellant argues that the Apartment is a “luxury apartment” that offered the Respondent (and his wife) “privacy and facilities that would not have been available to them at the Property”. Therefore, the Judge ought to have lowered the quantum of damages. In our view, this argument fails because it was not properly pleaded or proved by the Appellant. We explain.

66 As a tenant-in-common with an equal share of the Property, the Respondent has a right to live in the Property or share in rental that is earned in

the event the Property is let out: see Tang Hang Wu & Kelvin FK Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 4th Ed, 2019) at paras 1.20 and 9.21. As a result of the ouster, the Respondent was deprived of that right. The Respondent asserts this in the Statement of Claim where he pleads that he has suffered loss by reason of his inability to use the Property, thus having to incur rental expenses for alternative accommodation, and in the alternative, the loss of rental value.

67 Two alternative measures of damages were open to the Respondent:

(a) Restitutionary damage – the value of the benefit which the Appellant has received (*ie, mesne profits*; the market rent during the period of wrongful occupation by the Appellant); or

(b) Compensatory damage – the loss which the Respondent has suffered as a consequence of the Appellant's trespass. The usual measure of damages in the law of tort would be the cost of renting alternative accommodation.

As the two measures of damages are inconsistent, the Respondent must elect between the two: see *Cavenagh Investment Pte Ltd v Kaushik Rajiv* [2013] 2 SLR 543 at [46]–[52]. The Respondent elected for compensatory damages.

68 As mentioned right at the beginning of this judgment, the objective of compensatory damages is to put the victim in the position which he would have been in, as far as money can do, if the tort had not occurred. This exposition on the law of compensatory damages in tort can be traced back to Lord Blackburn's speech in *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25 at 39:

... that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would

have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

Thus, the Respondent ought to be put in the position (as far as money can do) as he would have been in if he had not been ousted: see *Lo Kok Jong v Eng Beng* [2024] 1 SLR 964 at [14].

69 However, the concept of reasonableness serves as a limitation on the application of the compensatory principle. The question is in *what way* does the concept of reasonableness limit the compensatory principle.

70 In our view, the High Court of Australia’s (“HCA”) decision in *Stewart v Metro North Hospital and Health Service* [2025] HCA 34 (“*Stewart*”) provides useful guidance on the appropriate framework. In *Stewart* at [25], the HCA stated that:

25 ... There are two different ways in which the concept of “reasonableness” limits the application of the compensatory principle. *The first is concerned with proof of consequential loss.* In order to recover compensation for consequential losses that have been or will be incurred by some action of the plaintiff, the plaintiff must prove those losses by proving the reasonable cost of steps that the plaintiff has taken, or will take, which are reasonably required to repair the consequences of a defendant’s tort. *The second is that once the plaintiff proves the reasonable cost of those steps, it is for the defendant to establish that the plaintiff failed to avoid or mitigate that cost “by adopting some [other] course which it was reasonable for [the plaintiff] to take”.* *The difference between the first reasonableness limit and the second reasonableness limit is a difference between “the issue of damages for proof by the plaintiff [and] the issue of mitigation for proof by the defendant”.*

[emphasis added]

71 Adopting the above framework with one modification with respect to the proof of the “reasonable cost of steps” (“Modified *Stewart* Framework”) which we discuss further below (at [81]), it is apparent that there are two aspects of reasonableness that serve as limitations on compensatory damages.

(a) The first aspect of reasonableness pertains to *proof* of damage. To recover damages for consequential loss, the claimant must prove that the steps that the claimant has taken or proposes to take are *reasonably* required to repair the consequences of the defendant’s tort. Here, the burden of proof, as with all proof of damage, is on the claimant.

(b) The second aspect of reasonableness pertains to *mitigation*. Once the claimant proves that the steps taken were reasonable, the burden is on the defendant to prove that the claimant had failed to avoid or mitigate the cost by adopting some other course which was reasonable for the claimant to take. The question of mitigation only arises if damages have been proved: *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd* [2008] 2 SLR(R) 623 (“*Robertson Quay*”) at [27]. The burden of establishing the failure to mitigate, which is on the defendant, is ordinarily not one that is easily discharged: *The “Asia Star”* [2010] 2 SLR 1154 (“*The “Asia Star”*”) at [24].

72 The Modified *Stewart* Framework above on the touchstone of reasonableness in these two respects is also supported by James Edelman, *McGregor on Damages* (Sweet & Maxwell, 21st Ed, 2021), which states at [2-001] and [52-006]:

I. The Principle of Compensation

2-001 Compensatory damages are, far and away, the most common type of damages. The object of an award of compensatory damages is, *as far as reasonable*, to put the claimant in the position as if the wrong had not occurred. ...

[emphasis added]

...

I. Burden of Proof

...

52-006 ... The position, as summarised by the Court of Appeal in *Pattni v First Leicester Buses Ltd* is that the burden is, *first, on the claimant to prove the need for a replacement car*. If that is proved, then *the claimant may recover as damages the cost of hiring the replacement car, and that would include if the claimant hires the replacement on credit terms*. However, *if the defendant can show that the cost incurred was more than reasonable, by showing that the credit hire charge was higher than the basic hire rate would have been, damages will be reduced to that extent—unless the claimant can, in turn, show that, through impecuniosity, they had no alternative to credit hire*.

[emphasis added]

73 Applying the Modified *Stewart* Framework above to the present appeal, we are satisfied that the Respondent has discharged his burden of proof of consequential loss, namely that leasing the Apartment for the period of the ouster found by the Judge was reasonably required to repair the consequences of the Appellant’s tort. The burden is then on the Appellant to prove that the Respondent should have taken some other course which was reasonable in the circumstances other than leasing the Apartment, warranting a reduction in the damages. The Appellant has failed to discharge this burden. We elaborate.

74 On proof of consequential damages, the Respondent has to prove that the steps he had taken are objectively reasonably required to restore his position to that before the tort: *Stewart* at [26]. It is an exercise to “determine whether or not what is claimed is something which should be provided by the [Appellant] as a reasonable consequence of the tort... before proceeding to calculate its cost”: *Stewart* at [26]; citing *Chulcough v Holley* (1968) 41 ALJR 336 at 338. To understand its application, the illustrations in *Stewart* are helpful:

26 ... where a defendant’s negligence has rendered a plaintiff’s car unusable, the plaintiff must establish that the expenses that are proposed or that have been incurred are for

the hire of a broadly equivalent vehicle which will actually be used as a substitute. ...

75 Read generously, the Appellant’s argument goes toward this element. Specifically, the argument that the Apartment was a luxury apartment appears to be a contention that leasing a luxury apartment is not reasonably required to address the damage suffered by the ouster from the Property because the Apartment was not a reasonable equivalent of the Property.

76 In our view, labels such as “luxury apartment” are not helpful in this context. They do not provide an objective basis for comparison between the property from which the victim was ousted and the property that the victim leased to repair the wrong, in terms of various metrics such as location, size and features.

77 In our view, the analysis must start with the characteristics of the property from which the victim was ousted. The Property is a semi-detached property, with 4,400 square feet of land and a built-up area of 3,400 square feet. As a tenant-in-common, the Respondent was entitled to live in it rent free by virtue of his co-ownership status. It cannot be gainsaid that if he had rented a semi-detached home with broadly the same specifications and conditions as the Property in the vicinity, that would be a step reasonably required to address the wrong that the Appellant visited on him. However, the fact that he leased a property in a different location and of a different type does not *ipso facto* mean that the step taken was not reasonably required to address the wrong.

78 The Respondent leased the Apartment, which was a two-bedroom apartment. Was leasing the Apartment a step that was reasonably required to place the Respondent, as far as money can, in the position he would have been but for the Appellant’s tort? On the one hand, the Apartment is much smaller

and has fewer rooms than the Property, and the Property has far more liveable and usable space than the Apartment. On the other hand, however, we recognise that the Apartment was part of a development that had facilities of the sort one might expect to see in such projects, and such facilities are not usually found in landed properties of the nature and character of the Property. These differences have to be accounted for. However, given the dissimilarities between the properties, in assessing whether the step of leasing the Apartment was reasonable, the relevant metric cannot be whether the Apartment was a “luxury apartment” that is part of a development with facilities. It is important to bear in mind that the relevant question is not whether the Apartment is a reasonable equivalent of the Property, but whether leasing it was reasonably required to address the Respondent’s loss. In our view, the dissimilarities between the Apartment and the Property would produce an equivocal answer to this question.

79 In these circumstances, it would, in our view, be more appropriate to approach the issue by comparing the rent which the Respondent paid for the Apartment to that which he would have paid to rent a property in the vicinity of the Property. The question then is whether the rent that was paid for the Apartment was equal to or less than the rent that the Respondent would have paid for a property in the vicinity of the Property that was its equivalent. If the answer is in the affirmative, in our view, it may be said that renting the Apartment was reasonably required to repair the consequence of the Appellant’s tort. This is because, if the Respondent had rented a property which is obviously equivalent (*ie*, a property in the vicinity of the Property), the Appellant would have to pay as damages the value of the rent incurred. Therefore, if the Respondent rents another property which was of even lower rental value, the Appellant would have no cause to complain that it was not reasonably required to repair the consequences of her tort.

80 The Respondent has adduced expert evidence of the market rent of the Property during the period of ouster. The rental value of the Property would serve as a proxy for the rent that would have been paid for an equivalent property in its vicinity. Comparing the rent paid by the Respondent for the Apartment and the market rent of the Property for the period of the ouster, it is clear that the rent that was paid for the Apartment was lower than the market rent of the Property (see Judgment at [176]). The Respondent has adduced evidence of the rent that was paid for the Apartment for the period of the ouster found by the Judge. Thus, he has discharged his burden of proof to establish loss. That leaves the question of whether the rent that was paid for the Apartment during the period of the ouster should be reduced on account of the fact that the Respondent had sole (with his wife) occupation of the Apartment but would have had shared occupation of the Property as tenants-in-common with the Appellant if he had not been ousted. We consider this issue below (at [87]).

81 In *Stewart*, the HCA added a further facet to the first element of proof of loss, namely that the claimant should also prove the reasonable cost of taking the steps which are reasonably required to repair the consequences of the tort. *Stewart* at [27] extended the illustration set out above at [74] to make the point:

27 ... Thus where a defendant's negligence has rendered a plaintiff's car unusable, the recovered cost of hiring the equivalent vehicle must be the reasonable cost of hiring a vehicle of that kind. ...

This point does not arise in the present case, as the rent that was paid by the Respondent for the Apartment was not contested on the ground that it was not reasonable for *that property*. The contest was instead on whether it was reasonable for the Respondent to rent the Apartment. Preliminarily, we question whether the further facet is a necessary feature of the claimant's burden to prove

loss. It seems to us that once the claimant is able to demonstrate that the step taken was reasonably required, it is for the defendant to show that the costs incurred or to be incurred for those steps were not or would not be reasonable. As the issue does not arise here, we leave it for consideration in an appropriate case in the future.

82 Having found that the Respondent has proven his damages, we now turn to the second element - mitigation – which arises only after damages have been proved: see *Robertson Quay* at [27]. The “duty to mitigate” requires the victim to take *reasonable* steps to mitigate the loss resulting from the defendant’s tort. Loss which could have been *reasonably* avoided is not recoverable: *Don King Martin (trading as King Excursion & Transport Provider) v Lenny Arjan Singh* [2024] 4 SLR 593 (“*Don King Martin*”) at [58]. The “duty of mitigation” is a “restriction placed on compensatory damages”, where a “claimant should not sit back and do nothing to [minimise] loss flowing from a wrong but should rather use its resources to do what is reasonable to put itself into as good a position as if ... the tort [were] not committed”: see *Golden Pacific Shipping & Holdings Pte Ltd v Arc Marine Engineering Pte Ltd* [2024] 6 SLR 555 (“*Golden Pacific*”) at [95], citing *Cristian Priwisata Yacob v Wibowo Boediono* [2017] SGHC 8 (“*Cristian Priwisata Yacob*”) at [310].

83 As the question of mitigation arises only after the claimant has proved loss, the presumptive position is that the claimant is entitled to his damages *unless the defendant can demonstrate otherwise*. It is for this reason that the burden of proof to establish a failure to mitigate is squarely on the shoulders of the defendant. Accordingly, the defendant must plead *and* prove the failure to mitigate: *Jia Min Building Construction Pte Ltd v Ann Lee Pte Ltd* [2004] 3 SLR(R) 288 at [71]. This requires the defendant to assert that the claimant failed to take steps that were reasonably open to the claimant to take to mitigate the

loss and what those steps were, *and* prove that assertion: *Don King Martin* at [59]. It is only if the defendant successfully discharges its burden that the loss claimed by the claimant would be reduced to the extent appropriate: *Golden Pacific* at [95]; *Cristian Priwisata Yacob* at [310]. It must be reiterated that the burden of proving a failure to mitigate is ordinarily one which is not easily discharged: *The “Asia Star”* at [24].

84 The above principle is aptly described in the context of negligence in Gary Chan Kok Yew, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) at paras 20.098 and 20.099:

20.098 It is the defendant’s burden to show that the plaintiff ought to have taken reasonable steps to prevent or reduce the plaintiff’s loss arising from the defendant’s tort. If the defendant is able to discharge his or her burden, the loss claimable by the plaintiff would be reduced accordingly. The question of mitigation is one of fact, not law. The standard of conduct expected of the plaintiff in mitigation is generally not a high one, considering that the defendant is the wrongdoer.

20.099 For instance, where the plaintiff’s motor vehicle is damaged due to the defendant’s negligence, and the plaintiff claims for the loss of use of the vehicle during the period of repair, the defendant may show that the plaintiff failed to mitigate damages where (a) the amount of the claim exceeds the costs of hiring an equivalent replacement vehicle for that period, or (b) it was not necessary for the plaintiff to use a vehicle during that entire period. ...

85 The nature of the burden on mitigation that the defendant bears is relevant in the present appeal. The Appellant’s case suffers from two significant deficiencies. First, apart from the bare assertion that the Respondent “failed to mitigate” and that the Apartment was a “luxury apartment”, the Appellant has failed to plead the course of action which was reasonable for the Respondent to have taken and which he did not take, to mitigate his loss. This is a significant deficiency as the Appellant has failed to shed light on the steps that were reasonably available to the Respondent to take to mitigate his loss. It was for

the Appellant to make the case so that the Respondent was in a position to meet it.

86 Second, aside from the paucity of her pleadings, the Appellant has adduced no evidence to discharge her burden. This is a consequence of her submission of no case to answer. Even if her pleadings were adequate, which was not the case, the Appellant has failed to adduce any evidence that the Apartment was not a reasonable alternative to the Property or indeed, what would be the reasonable alternative to the Property. Accordingly, having elected not to open her case, the Appellant has not proven that the Respondent had acted unreasonably by renting the Apartment.

Sole Occupancy vs Shared Occupancy: Impact on compensatory damage?

87 Does the fact that the Respondent had sole occupancy of the Apartment impact the quantum of damages he should be awarded? The argument is on the basis that the Respondent would have had shared occupancy of the Property, but for the ouster. The Appellant submits that the damages awarded should thus be no more than one-quarter of the rental paid for the period of ouster, less a half share of the property tax for that period. The Respondent submits that this issue is irrelevant to the quantum of damages.

88 In our view, the sole as opposed to shared occupancy argument is a red herring. The correct approach is to understand what the damages awarded seek to compensate the Respondent for. To reiterate, the objective is to restore the Respondent, as far as money can, to the position he would have been in if the tort had not been committed. Accordingly, if the tort had not been committed, the Respondent would have resided in the Property. As a result of being displaced by the Appellant, he had to find a substitute residence. The Respondent should be entitled to the full measure of the rent that was paid, if

the substitute residence was a reasonable equivalent of the Property. The only reason why the Respondent had sole occupation was because of the Appellant's tort, which compelled him to find a new place of residence. Where the Respondent has taken a step that was reasonably required to remedy the consequences of the tort, it is neither fair nor reasonable for the Appellant to seek to benefit from the consequences of her wrongful action. Indeed, the Appellant's argument does not fall within the first or second facet of the concept of reasonableness as discussed above, *ie*, it cannot be characterised as the Respondent taking a step not reasonably required to repair the consequences of the tort (the first element of proof of loss) or the Respondent failing to take a course that was reasonably open to him (mitigation). The rent for the Apartment was a direct consequence of the Appellant's tort.

89 Accordingly, in our view, the Appellant has failed to show that the Respondent's decision to rent the Apartment was unreasonable. As the Respondent has proved his loss, he is entitled to the ordinary measure of compensatory damages, *ie*, the full rent he paid for the Apartment for the period of ouster.

Sub-issue 2: The Appellant's argument that the Respondent's wife also benefitted from the Apartment

90 The Appellant argues that the Respondent's wife also benefited from the Apartment, and therefore, the rent that was paid should be halved.

91 In our view, the argument fails. The analysis here is similar to that for the sole and shared occupancy issue. Once it is established that renting the Apartment was reasonably required, it matters not whether the Respondent allowed others to occupy that property. In any event, it must be remembered that the Respondent would have been entitled to occupy the Property *with his*

wife if he had not been ousted, for as tenant-in-common to the Property, he had every right to give his wife a license to reside at the Property. It was entirely foreseeable that the Apartment would rightfully be occupied by the Respondent and his wife, as they would have been legally entitled to occupy the Property but for the ouster. The Appellant would not legally have been able to raise an objection then. The ouster had resulted in the Respondent having to find alternative accommodation for himself and his wife. It is therefore difficult to understand on what legal basis it would be objectionable for the Respondent's wife to also occupy the alternative property that was rented to address the Appellant's tort.

Sub-issue 3: The Appellant's argument that the Respondent had decided to stay in Sydney

92 The Appellant argues that since August 2021, the Respondent had “decided to spend more time with [their] kids in Sydney” and therefore the Respondent and his wife did not need to rent an apartment in Singapore. This statement was part of a WhatsApp message that was sent on 16 August 2021 at 10.07 am by the Respondent's wife to the Appellant. The message is reproduced below:

Time and sender	Message
16 August 2021	
10.07 am, Respondent's wife:	Hi Michelle [<i>ie</i> , the Appellant], After mum passed away, we've decided to spend more time with our kids in Sydney. There is no point to renew our current lease in Singapore that is going to expire in Nov. We are going to move back home and live with you. ...

93 In our view, the Appellant takes the statement out of context. The last sentence in the message – “we are going to move back home and live with you” – explains the statement. It is clear that the Respondent and his wife initially did not want to renew the lease for the Apartment and wanted to move into the Property. But because of the Appellant’s objection, the Respondent had to renew the lease for the Apartment. It is clear, therefore, that the ouster had caused the Respondent to incur the rent.

Sub-issue 4: The Appellant’s argument that the ouster ended earlier

94 The Appellant argues that the quantum should be reduced as the ouster period ought to have ended earlier, on 8 January 2024. In essence, she is claiming that the period of ouster ended when she filed her Defence in OC 867 on 8 January 2024. The Appellant also argues that she did not cause the loss from November 2022 because the Respondent did not allege any further act of ouster by the Appellant in November 2022.

95 As outlined above at [34], we affirm the Judge’s finding that the onus is on the Appellant to make her change of position clear to the Respondent. As found at [34]–[37] above, there was no such communication from 16 August 2021 (*ie*, start of the ouster) to 11 April 2024 (*ie*, end of the ouster). Therefore, the ouster did not end before 11 April 2024. The Appellant would be liable for the damages for the period before that.

Sub-issue 5: The Appellant’s argument that the Judge did not consider that the Respondent did not share in the expenses of the Property

96 The Appellant submits that the Judge did not consider the fact that the Respondent did not share in the expenses of the Property, such as property tax.

Credit should be given for such amount against the damages payable by the Appellant.

97 However, the Appellant did not adduce evidence of those expenses at trial. Although the expenses were in her affidavit of evidence-in-chief, that was not adduced in evidence because of her election to submit no case to answer (see Judgment at [35]). Thus, the Judge had no evidence of those expenses and could not account for them when quantifying losses. Accordingly, the Judge did not err in not accounting for those expenses.

98 In the round, there are no grounds to disturb the Judge's finding on the quantum of damages. Accordingly, the appeal on quantum of damages is also dismissed. That leaves the question of the costs below, which we now consider.

Costs Issue

99 The Appellant argues that the Judge failed to take into account relevant considerations which either should have resulted in the Respondent paying costs to the Appellant, or the costs ordered to be paid by the Appellant to the Respondent being substantially reduced or even nullified. The Appellant makes three broad points. First, she argues that she had offered an amount to the Respondent before the commencement of the action that was higher than the sum awarded by the Judge. Mediation was also offered in 2017 by the Appellant, which was rejected by the Respondent. Second, she argues that costs should be reduced because the Respondent only obtained judgment for one of the four periods of ouster he had claimed. Third, despite the Judge and the Appellant raising the possibility of OC 867 being transferred to the State Courts, the Respondent had refused.

100 The Appellant’s argument is without merit. Costs follow the event. As the successful party, the Respondent was entitled to the costs of the action, unless there are circumstances that warrant a different result. We see none here. Indeed, the only argument that potentially pertains to such circumstances is the first – that an offer to resolve the claim amicably and to mediate had been made. The other arguments relate to the quantum of costs.

101 The offer of amicable resolution was in relation to HC/OA 928/2023, which was an application to sell the Property. It therefore is not relevant to costs in OC 867. The only offer from the Appellant in relation to OC 867 was for the Respondent to discontinue the action with costs to be reserved. The offer to mediate was raised before the Judge and it was considered by the Judge. We therefore agree with the Judge’s decision to award costs against the Appellant.

102 Next, it is clear from the Costs Order dated 22 July 2025 that the Judge had taken into account the fact that the Respondent only succeeded on one period of ouster. At [9] of the Costs Order dated 22 July 2025, the Judge said as follows:

9. The quantum of costs awarded takes into account the following issues:

a. There were 6 full days of trial. Five full days and two half days.

b. There were arguments from both sides that there were irrelevant issues brought up during the course of the claim and the trial that led to added costs. As I noted in my judgment, both sides were guilty of this and, from a costs perspective, those arguments cancelled each other out.

c. The points raised in DCS at [25] – [27].

d. *The claimant did not succeed in all the issues that he argued* (see [7(d)] above).

[emphasis added]

103 Finally, it is apparent from the fact that the Judge ordered costs for OC 867 on the District Court scale that he took on board the Respondent's refusal to agree to transfer the action to the State Courts (see the Costs Order dated 22 July 2025 at [7(c)]).

104 Accordingly, the Appellant's arguments on costs have no merit and the appeal on costs is also dismissed.

Conclusion

105 For the reasons above, we dismiss the present appeal. We award the Respondent costs of the appeal fixed at \$30,000 inclusive of disbursements, with the usual consequential orders to apply.

Kannan Ramesh
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

Woo Bih Li JAD (dissenting):

106 I have read the judgment of the majority delivered by Kannan Ramesh JAD and I respectfully differ only on the Quantum Issue as I elaborate below.

107 The majority judgment has set out the background facts which I need not repeat. I adopt the definitions used therein.

108 The majority judgment has explained that the concept of reasonableness limits the compensatory principle in two aspects, first, as regards proof of damage and second, as regards mitigation. The majority judgment goes on to articulate that as a matter of proof of consequential loss, the Respondent (as the claimant in the suit) bears the burden of showing that the leasing of the Apartment for the period of the ouster was reasonably required to repair the consequences of the Appellant's tort. I agree with the majority judgment's elucidation of the law in this regard. To reiterate, a claimant must prove consequential loss by proving the cost of the steps that the claimant has taken or will take which are reasonably required to repair the consequences of a defendant's tort. Only then would it be for the defendant to establish that the claimant had failed to avoid or mitigate that loss by adopting some other course which it was reasonable for the claimant to take (see the majority judgment at [71]).

109 In my view, there are two common ways in which a claimant may show that the steps he had taken were reasonable and thereby be *prima facie* entitled to claim the consequential losses associated with these steps, subject to the defendant's case on mitigation:

- (a) First, the claimant may show, by a comparison of the characteristics of the property which the claimant was wrongly denied

possession of (“subject property”) and the substitute property, that the substitute property was broadly equivalent to the subject property.

(b) Second, the claimant may show that he is entitled to claim the full rent for leasing the substitute property, though it may not be broadly equivalent to the subject property. This can be done by comparing the market rent payable for the subject property with the rent paid for the substitute property and showing that the latter is not higher than the former.

110 I understand the approach taken in the majority judgment (at [78]–[80]) to be in line with the second way mentioned above. It is quite clear that the Apartment is not easily comparable to the Property. The Property is a two-storey semi-detached house in a different location from the Apartment. It is not disputed that the Apartment is nearer the city where the Respondent works. The Property is older and has no condominium facilities unlike the Apartment. On the other hand, the Property is larger in terms of land and built-up area. In light of the disparate characteristics of the Apartment and the Property, the majority judgment compares the rent that was paid for the Apartment with the market rent for the Property itself.

111 The Respondent had shown that the monthly rent for the Apartment, for the relevant periods of 12 November 2021 to 1 November 2022 and 12 November 2022 to 11 November 2024, was \$4,200 and \$6,000 respectively. Against this, the Respondent’s expert assessed the monthly market rent for the Property at the higher figures of \$5,900 and \$7,900–\$8,100 respectively.

112 Where I respectfully depart from the majority, however, is on whether the Respondent’s expert evidence sufficed to show the appropriate market rental

for the Property in the circumstances before the court. The majority judgment, having found that the expert evidence for the market rent of the Property was higher than the rent actually paid for the Apartment, concluded that the Respondent had discharged his burden of proof to establish loss (at [80]). I respectfully disagree with the majority judgment's finding, on the premise that the Respondent's expert evidence was flawed.

113 Even though the Respondent's expert assessed the market rent of the Property to be higher than the monthly rent incurred by the Respondent in the rental of the Apartment, there was one important factor which had not been taken into account by the expert. The Property was occupied by the Appellant. At most, as a co-owner, the Respondent was entitled to shared occupation and not sole occupation. In my view, that is an important distinction. The Respondent cannot claim that because he was ousted and had to seek alternative accommodation, it is not reasonable to expect him to seek shared accommodation. That is not the point. The point is whether the fact that he would have to share occupation at the Property should be taken into account in assessing the proper market rent of the Property to be used as a comparator. There was no suggestion that it would have been difficult for an expert to take the shared occupancy factor into account. In the present case, the Respondent's expert was not informed about the shared occupancy of the Property and did not take it into account in his assessment of the market rent for the Property. When the expert was asked in cross-examination whether the rental value for the Property would have to be reduced if four persons were staying in it, he said that that was possible. In re-examination, the expert explained that his area of expertise was in relation to the market rent for the entire house. Unfortunately, no more evidence was given on the point.

114 I am of the view that shared occupancy is an important factor in principle in the assessment of the Respondent's entitlement and cannot be disregarded simply because the Respondent is the victim in the circumstances. For example, if the Respondent would have had to share accommodation with, say, five other persons at the Property, I suggest that it would be more obvious that the shared occupation would have to be taken into account in assessing, in light of the circumstances, what the proper market rent of the Property is.

115 The majority judgment, however, does not take into account the fact that the Respondent's entitlement is only to shared occupation of the Property. The majority judgment suggests at [87]–[88] that the distinction between sole and shared occupancy is a red herring and should not impact the quantum of damages that the Respondent should be awarded. This is because the majority judgment concludes, based on the expert evidence about the market rental for the Property, that the rent paid for the Apartment was lower and therefore the Respondent had established his loss. Consequently, the Respondent had established that the renting of the Apartment was reasonable.

116 The majority judgment does not consider, in ascertaining the market value for the Property as a comparator, that the Respondent's expert evidence was premised on sole and not shared occupation of the Property. The majority judgment accepts the expert evidence as to the market rent of the Property which was advanced on a sole occupation basis. The result of that approach is that the Respondent's entitlement to only shared occupation and not sole occupation does not feature in the analysis. As mentioned above, my view is that shared occupancy is an important factor to be considered in the assessment of the market rent of the Property in light of the Respondent's entitlement.

117 Although the expert's evidence was flawed, this was through no fault of his own as he was not informed about the shared occupancy. Importantly, the Judge used the expert's valuation of the market rent for the Property as a comparison with the rent for the Apartment before determining that the Respondent should be awarded the full rent for the Apartment as damages. Although the Judge did mention that he noted that the Respondent would have had to co-live with the Appellant at the Property (see Judgment at [176]), this appears to have been a mere passing remark. The Judge did not appear to have made any adjustment for that fact or explain why no adjustment needed to be made. It may well be that even with an adjustment to take into account the shared occupancy at the Property, the market rent thereof would still be higher than the rent paid for the Apartment. But there is no evidence to that effect.

118 In the circumstances, I do not think that the Respondent has discharged his burden to prove that the rental of the Apartment was reasonably required to repair the consequences of the Appellant's tort. That accommodation must be proven to be broadly equivalent or reasonably required in the sense of being broadly commensurate with the market rent for the Property bearing in mind the shared occupation. Until then, the evidential burden does not shift to the Appellant to prove that the Respondent had failed to mitigate his damages.

119 The difficulty is what the court should do in the present circumstances. One possibility is to say that the Respondent should be granted nominal damages. An alternative would be to say that, in the absence of more evidence, half the rent for the Property would be an appropriate discount to be applied in light of the shared occupation at the Property and to allow the Respondent to claim reimbursement of a sum equivalent to half the market rent for the Property as his damages. I would have been prepared to adopt the alternative as the Appellant did not take the position that nominal damages should have been

awarded. Instead, the Appellant contended in her submissions that compensatory damages should be no more than one quarter of the rental paid by the Respondent for the Apartment during the relevant period, on the premise that the Respondent would be one of four occupants at the Property, if he had not been ousted. This alternative also appears to be in line with the Appellant's position as reflected in the cross-examination of the Respondent's expert except that there, the suggestion was that the Respondent should only be entitled to a quarter of the market rent of the Property. I should mention that at the material time, the Property was occupied only by the Appellant and not three occupants as the Appellant was suggesting. Hence, my inclination to allow a sum equivalent to half, rather than a quarter, of the market rent for the Property as the Respondent's damages.

120 I agree with the majority judgment that the Appellant fails on the other sub-issues in respect of the Quantum Issue.

121 In the circumstances, I would have allowed the appeal in part on the aspect of the Quantum Issue I have discussed. I would have allowed the Respondent to claim reimbursement of a sum equivalent to half the market rent for the Property as his damages.

Woo Bih Li
Judge of the Appellate Division

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