DISTRICT COURT OF QUEENSLAND

CITATION:	*Wang v Yang & Ors* [2022] QDC 162
PARTIES:	**YUN WANG** (plaintiff) v **LI YANG** (first defendant) and **LAN LAN HUR** (second defendant) and **QIONG WU** (third defendant) and **LOYAL EDUCATION PTY LTD** ACN 621 786 472 (fourth defendant)
FILE NO:	3841 of 2018
DIVISION:	Civil
PROCEEDING:	Trial
DELIVERED ON:	28 July 2022
DELIVERED AT:	Brisbane
HEARING DATES:	4-7 April 2022 and 7 July 2022, written submissions of the plaintiff dated 6 June 2022, written submissions of the defendants dated 27 May 2022
JUDGE:	Rosengren DCJ
ORDER:	**1. The plaintiff's claim is dismissed.** **2. Unless a party wishes to submit to the contrary within seven days, the plaintiff is to pay the**

defendants' costs of the proceeding.

CATCHWORDS: TRADE AND COMMERCE – COMPETITION, FAIR TRADING AND CONSUMER PROTECTION – MISLEADING OR DECEPTIVE CONDUCT – FALSE OR MISLEADING ORAL STATEMENTS – where the plaintiff entered into an agreement to invest in the fourth defendant – where the plaintiff alleges that oral representations were made by the second defendant personally and on behalf of the fourth defendant – whether the representations were made

TRADE AND COMMERCE – COMPETITION, FAIR TRADING AND CONSUMER PROTECTION – MISLEADING OR DECEPTIVE CONDUCT – FALSE REPESENTATIONS – FALSE OR MISLEADING WRITTEN STATEMENTS – where the plaintiff entered into an agreement to invest in the fourth defendant – where the plaintiff alleges that written representations were made in a document shown to the plaintiff at a pre-contractual meeting – whether the document was shown to the plaintiff on the date alleged and if so whether she read it – whether the representations were made

TRADE AND COMMERCE – COMPETITION, FAIR TRADING AND CONSUMER PROTECTION – MISLEADING OR DECEPTIVE CONDUCT – RELIANCE – whether reliance on alleged representations established

Australian Consumer Law, ss 4, 18, 236, 237
Uniform Civil Procedure Rules 1999 (Qld) rr 149, 380

Armagas Ltd v Mundogas S.A. (The "Ocean Frost") [1985] 1 Lloyd's Rep 1
Australian Competition and Consumer Commission v TPG Internet Pty Ltd (2013) 250 CLR 640
Axon v Axon (1937) 59 CLR 385
Butcher v Lachlan Elder Realty Pty Ltd (2004) 218 CLR 592
Campbell v Backoffice Investments Pty Ltd (2009) 238 CLR 304
Downey v Carlson Hotels Asia Pacific Pty Ltd [2005] QCA 199
Global Sportsman Pty Ltd v Mirror Newspapers Pty Ltd (1984) 2 FCR 82
Guirguis Pty Ltd & Anor v Michel's Patisserie System Pty Ltd & Ors [2017] QCA 83
Hutchison Construction Services Pty Ltd v Fogg; Fogg v Les Quatre Musketeers Pty Ltd (t/as Plastamasta South Coast) [2016] NSWCA 135
James v ANZ Banking Group Ltd (1986) 64 ALR 347
Kabwand Pty Ltd v National Australia Bank Ltd (1989) 11 ATPR 40-950

Ricochet Pty Ltd v Equity Trustees Executives & Agency Co Ltd (1993) 41 FCR 229
Wardley Australia Ltd v Western Australia (1992) 175 CLR 514
Watson v Foxman (2000) 49 NSWLR 315
Yorke v Lucas (1985) 158 CLR 661

COUNSEL: R W Tooth for the plaintiff
D P de Jersey QC and C W Chiang for the first, second, third and fourth defendants

SOLICITORS: Auslaw Partners for the plaintiff
Rice Legal for the first, second, third and fourth defendants

Introduction

[1] The fourth defendant is a consultancy management company of vocational and technical colleges. The second and third defendants are directors of the fourth defendant. On 27 April 2018, the plaintiff executed a Cooperation Agreement which provided for her to invest $600,000 in the fourth defendant. It also provided for her to become a director of the fourth defendant for two years and to hold 30 percent of its shares. The plaintiff paid $600,000 into the bank account of the fourth defendant on 30 April 2018 and acquired the shares a few days later.

[2] In October 2018, the plaintiff commenced this proceeding against the defendants for damages and other orders. On 26 February 2019, the plaintiff filed an amended statement of claim and it was this pleading that was relied on at the trial. At a pre-trial mention on 30 March 2022, the defendants sought and were granted leave to file a further amended defence pursuant to r 380 of the *Uniform Civil Procedure Rules* 1999 (Qld). An amended reply was filed at the commencement of the trial.

[3] The trial was heard over four days in April this year. At the commencement of the trial, the plaintiff's claim against the first defendant was discontinued. Further, the alternate debt claim in paragraph 5 of the amended claim was abandoned. The plaintiff and the first, second and third defendants gave evidence. The first language of each of them is Mandarin. The plaintiff and third defendant gave their evidence with the assistance of an interpreter. At the conclusion of the oral evidence, counsel for the plaintiff informed the court that an application would be made for leave to file a further amended pleading.

[4] On 3 May 2022, the proposed further amended statement of claim containing several amendments was provided. The defendants opposed the amendments to paragraph 8(e) and the addition of the words 'the Internal Document' to paragraph 14(a). On 19 May 2022, I delivered *ex tempore* reasons allowing the amendments and giving the plaintiff leave to file the further amended statement

of claim ('the statement of claim'). Subsequently, the defendants filed a second further amended defence ('the defence') and the plaintiff filed a further amended reply ('the reply'). The parties have provided detailed written and oral submissions.

[5] The plaintiff's case is that in April 2018 there were certain oral representations made by the second defendant personally and on behalf of the fourth defendant, and written representations conveyed in a document titled 'Internal Document' provided by the second defendant to the plaintiff. As to the third defendant, it is alleged that she was present at one of the meetings when the second defendant made one of the oral representations. It is contended that the representations related to the fourth defendant's business, profitability, the training it was providing, the amount of money it had already invested and would continue to invest to establish teaching facilities overseas, and the accreditation it would be granted in May 2018 as a Registered Training Organisation. It is claimed these representations were relied on by the plaintiff in entering into the Cooperation Agreement and in paying the $600,000 to the fourth defendant. It is alleged there was no proper basis for making the representations and therefore they were misleading or deceptive in breach of s 18 of the *Australian Consumer Law* in Schedule 2 of the *Competition and Consumer Act* 2010 (Cth) ('the ACL'). It is said that the third defendant's failure to speak up to rectify a misrepresentation made by the second defendant at one of the meetings constitutes misleading or deceptive conduct. Based on these contraventions of the ACL, the plaintiff claims damages or other compensation under ss 236 and 237 of the ACL in the sum of $600,000, on the basis that she would not have entered into the Cooperation Agreement absent the contravening conduct. Further, the same quantum of damages are claimed for negligent misrepresentation. Finally, an order is sought for the Cooperation Agreement to be rescinded.

[6] During oral submissions, senior counsel for the defendants sought to tender minutes of a meeting that he had overlooked tendering at the hearing through the second defendant. This was objected to on behalf of the plaintiff and I uphold the objection. This is because the document sought to be tendered was not shown to the second defendant during the course of her evidence.

The plaintiff's background in business

[7] The plaintiff has a background in business and finance. In 1989, she graduated with a Business Accounting degree from the Anhui Finance and Economics University in China. Having decided to immigrate to Australia, the plaintiff engaged an immigration specialist to assist with the application process to the then Commonwealth Department of Immigration and Border Protection, for the purpose of applying for a subclass 188A visa. This is a provisional visa for people with business skills and is a pathway to permanent residency. It allows

successful applicants to remain in Australia for a period of four years and to own and manage a business or conduct business and investment activity.

[8] Part of the application process involved submitting a Business Proposal. The plaintiff had an immigration specialist complete and submit hers because of her limited English. Her work history was detailed in this document.[1] It included her abovementioned tertiary qualification. It also stated that since 1989, the plaintiff had worked as an accountant, clerk and vice general manager/financial manager of various family-owned businesses in Yunnan in China. It included the fact that under her guidance in her most recent position, the sales turnover of the company had grown strongly, and had as its customers several major companies and government organisations in China. It was further said that the plaintiff's successful and varied business career would assist her considerably when starting a business in Australia.

[9] One of the questions in the Business Proposal addressed the steps that would be taken by the plaintiff to overcome barriers relating to becoming involved in a business in Australia, including understanding local requirements and expectations. The response provided included the fact that the plaintiff would seek the help of advisers where necessary.

[10] At the time of submitting the Business Proposal, the plaintiff's stated intention was to purchase a leasehold motel on the Gold Coast. It was said that a proprietary limited company would be established to manage the assets of the motel business and that she would manage all aspects of the business. This included its strategic direction, its financial aspects, its day to day running, and the management and supervision of staff. The Business Proposal went on to explain that the plaintiff had considerable experience in developing budgets and other plans. It also stated that she had other relevant experience that would assist her in developing and implementing growth strategies for the new business.

[11] On 21 Febraury 2017, the plaintiff was notified that she had been granted a subclass 188A visa and she immigrated to Australia on 17 April 2017. After her arrival in Queensland, she engaged a local immigration agent, an accountant and a lawyer. The plaintiff's plan was to become a permanent resident by applying for a subclass 888 visa. An immigration agent had informed her that she would need to meet two out of three criteria. These were a personal net worth of at least $800,000; an investment of at least $500,000 in a small business; and/or at least two of the employees of the business would need to be Australian citizens or have permanent residency.

The fourth defendant and its business

[1] Exhibit 5.

[12] The second and third defendant met in approximately 2015 and are friends. In August 2017, the third defendant became a director of Auz Co Pty Ltd ('Auz Co') which traded as Oz Skills Training Institute. This company had been registered by Hui Li in December 2015. The second defendant described Ms Li as the business partner of her and the third defendant. Ms Li resided in Sydney. In June 2017 Auz Co, with the assistance of a consultant, applied for registration as a registered training organisation ('RTO').[2] This accreditation would allow Auz Co to deliver nationally recognised vocational training and qualifications in Australia and offshore. Ms Li contributed $40,000 to assist in funding the application process.[3] The second defendant explained that it was intended that Auz Co would operate as a RTO in Sydney, principally providing accreditation for Recognised Prior Learning ('RPL') in the construction industry. If granted, Auz Co could assess the competency of an applicant with recognised skills that had been gained through prior formal or informal learning or previous work experience. The qualifications it could offer applicants included a Diploma of Leadership and Management, a Certificate III in bricklaying, carpentry and plumbing, and a Certificate IV in building and construction.

[13] Further, in early 2017 the second and third defendants had invested $120,000 in an art school in China.[4] It was their intention to use this facility to establish a RPL centre there.

[14] It was at Ms Li's suggestion that the fourth defendant came into existence. She considered that it would be prudent to establish an agency management company in Queensland that could work with Auz Co once it was registered as a RTO. It was never intended that the fourth defendant would be registered as a RTO. This is because government regulations restricted the fees that RTOs could charge for administering the RPL process and no such restrictions applied to agency or consultancy type businesses.

[15] The plan was that the fourth defendant would be used to connect mainly Mandarin speaking local and overseas workers with Auz Co and other RTOs for them to have their trade skills formally recognised in Australia. More specifically, the fourth defendant would assist these individuals in the compilation of the paperwork and other information to be submitted to the RTO for the RPL assessment to be undertaken.

[16] It is against this background that the fourth defendant was incorporated and commenced business in September 2017, with the second and third defendants as its directors and their respective family trusts as the shareholders. By this time the RTO application by Auz Co had not been determined. For this reason the fourth defendant began working with other RTOs. It was not until approximately

[2] Exhibit 17.
[3] T3-25, ln 4-6.
[4] T3-25, ln 4-17; Exhibit 15.

August 2018 that the third defendant was notified that Auz Co's application had not been successful. This meant that the fourth defendant continued existing business relationships with some RTOs and established new relationships with others.

[17] Further, in February 2018 the fourth defendant entered into an agreement with a Chinese company, Yingtang Culture Communications Co Ltd, for the fourth defendant to set up an official training and testing centre for Chinese language teacher certificates in Australia.[5] The fourth defendant would be responsible for delivering the training. The second defendant knew a person who could provide this training and it was intended that it would be provided in the classroom at the fourth defendant's premises. This did not eventuate as there was a change in Chinese government policy which made performance of the agreement financially unviable for the fourth defendant.

Pre-contractual negotiations

[18] On her arrival in Queensland, the plaintiff commenced investigating potential business opportunities. She had access to a business consultant, an immigration agent, an accountant and a lawyer.[6] Her plan to purchase a leasehold motel on the Gold Coast did not come to fruition. It was while the plaintiff was investigating other business opportunities that she came to meet the first defendant in early 2018. They attended the same church and had met through another churchgoer. They became friends over time. They would attend church services and Bible studies sessions together.

[19] The first defendant had immigrated to Australia from China in 2014. Given that she was familiar with the visa process, she offered to help the plaintiff settle in Australia. It is common ground that the plaintiff told the first defendant that she was looking to apply for a subclass 888 visa which would require her to make an investment of at least $500,000 in an Australian business.

[20] Over the following few months, the plaintiff explored several potential business opportunities. These included a newsagency, a Japanese inspired variety store franchise, a tobacco shop and property management businesses. The plaintiff and the first defendant discussed the potential for them to invest as partners in some of these businesses, although this did not eventuate.

[21] In about April 2018, the first defendant told the plaintiff about Bulkbuild Pty Ltd ('Bulkbuild'). It was owned by the second defendant and her husband. The first defendant was working for this company as a materials engineer and it had been her sponsor when applying for permanent residency in Australia. The first defendant told the plaintiff that it was a large construction company and that the

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[5] Exhibit 14.
[6] T1-79 to T1-80.

second defendant's husband had come from the same province in China as the plaintiff. Up until September 2017, Bulkbuild operated its business from leased premises at Devlan Road in Mansfield. After this time, the fourth defendant took over these premises and Bulkbuild relocated to a nearby address in Mansfield.

[22] The first defendant further told the plaintiff that the second defendant was going to use Bulkbuild to open a training school. The first defendant offered to speak to the second defendant to ascertain whether the plaintiff could potentially invest in the business as a way of helping with the plaintiff's immigration application.

[23] On 15 April 2018, the first defendant messaged the second defendant on WeChat to tell her that the plaintiff was keen to invest between $500,000 and $800,000 in a business to satisfy immigration requirements.[7] The first defendant explained that the plaintiff's English was *"okay"*. She queried whether it might be possible to open a school or set up a similar project with the plaintiff. The second defendant replied that she thought they could discuss school-related matters in detail in the following week. The first defendant responded to the effect that the plaintiff did not mind how much she earned provided that the investment could be recovered.

[24] As to the pre-contractual negotiations, it is common ground that meetings were held on 17, 20 and 27 April 2018. However, the witnesses have differing recollections of how many other meetings there were, the dates on which they occurred and what transpired at these meetings. Each of them were conducted in Mandarin. This is discussed in further detail below.

[25] It is not in dispute that at the initial meeting on 17 April 2018, the second defendant was introduced to the plaintiff as the chief financial officer of Bulkbuild and a director and shareholder of the fourth defendant. The second defendant was informed that the plaintiff was looking at investment opportunities for migration purposes to apply for a subclass 888 visa. There was discussion around the fact that the plaintiff and the second defendant's husband were both from the Yunnan province in China. The plaintiff was told that the second and third defendants were in business together. The second defendant talked about their business interests in a general way. She did not name the fourth defendant.

[26] During this period there were also two WeChat communications between the plaintiff and the second defendant. The first of these occurred on the evening of 20 April 2018 in which the second defendant forwarded to the plaintiff an agreement that she had drafted. There was then a further WeChat exchange on 23 April 2018. It was initiated by the plaintiff saying that she had *"sorted through the ideas for the draft agreement"*. She included in the message the draft agreement.

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[7] Exhibit 13.

[27] Prior to signing the Cooperation Agreement, the second defendant showed the plaintiff a document titled 'Internal Document' which she had prepared.[8] There is a dispute as to when this occurred, and this is addressed below. This confidential document was intended to be the business plan for Loyal Education Group. At the time when the second defendant was showing the Internal Document to the plaintiff, the second defendant made the handwritten notes on the last page of the document.

[28] The plaintiff spoke to an immigration agent and her accountant prior to making the decision to invest. The immigration agent thought the fourth defendant provided a very good investment opportunity for the plaintiff and the accountant advised her to perform due diligence in relation to it. The plaintiff did not do this. Further, she did not speak to her lawyer. These are addressed in further detail below.

[29] Prior to executing the Cooperation Agreement, there were discussions resulting in the amount to be invested by the plaintiff increasing from $500,000 to $600,000. There were also discussions around whether her investment would be by way of a loan or the acquisition of shares.

[30] On 27 April 2018, the plaintiff signed the Cooperation Agreement. It provided for the plaintiff to pay $600,000 to the fourth defendant. It also provided for her to become a director of the fourth defendant for two years and to hold 30 percent of its shares.

The plaintiff's involvement in the fourth defendant's business

[31] The plaintiff deposited $600,000 into the fourth defendant's bank account on 30 April 2018. The third defendant signed the Cooperation Agreement on 3 May 2018. Around this time, 30 shares in the fourth defendant were transferred to the plaintiff and she also became a director of the fourth defendant.

[32] After the plaintiff signed the Cooperation Agreement, she commenced attending the fourth defendant's office almost daily. Her role included promotion of the business, particularly through social media platforms. She also commenced attending weekly meetings with the first, second and third defendants. There are minutes of a meeting on 27 April 2018.[9] These minutes recorded that the second defendant would be responsible for negotiating the initial exclusive agency agreement and also for recruiting full time teachers and that this would be the subject of further discussion. The plaintiff said that she did not understand the matters being discussed. She thought the discussion about recruiting full-time teachers was about filling teaching vacancies in the fourth defendant's existing school.

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[8] Exhibit 1.
[9] Exhibit 8.

[33] There was a further meeting on 30 April 2018. Once again the plaintiff was present with the first, second and third defendants. There are minutes of this meeting.[10] The minutes recorded that the plaintiff and second and third defendants had agreed that the plaintiff had the right to be informed of the operations and finances of the fourth defendant. The minutes confirmed that the fourth defendant had received $600,000 from the plaintiff for the purchase of the shares and that a finance company had been engaged to formally transfer the shares to the plaintiff. The minutes further recorded that the second defendant was to be responsible for the registration, application and negotiations relevant to the school/institution. It further stated that the plaintiff would be responsible for market expansion.

[34] At the plaintiff's request, the first defendant commenced working for the fourth defendant one or two days a week. This was after the plaintiff asked the first defendant to assist her on a consultancy basis in her role in promoting the fourth defendant. This is because the plaintiff thought the first defendant had knowledge of the education sector, given that she had been a university professor.

[35] Within a few months, the plaintiff stopped turning up to work with the fourth defendant and ceased communicating with the other defendants. The first defendant went back to China in September 2018. It was when she returned that she learnt that the plaintiff had instituted these proceedings. It was around the same time the plaintiff established a tyre business with two business partners, namely Superior Wheels Pty Ltd.

The pleaded case in misleading and deceptive conduct

[36] It is pleaded that the alleged representations were made at meetings on 17, 18 and 19 April 2018.[11] However, in oral submissions counsel for the plaintiff abandoned the claim in so far as it relates to 19 April 2018. In these circumstances, it is now alleged that at meetings on 17 and 18 April 2018, oral and written information was provided to the plaintiff conveying the following representations:

(i) The fourth defendant conducted the business of a school specialising in training in all areas of construction ('the business representation').
(ii) The fourth defendant would be approved as an RTO, so that it would be capable of delivering training courses and qualifications recognised by the Australian Qualifications Framework, by May 2018 ('the RTO representation').
(iii) The business of the fourth defendant was very profitable ('the profitability representation').

[10] Exhibit 9.
[11] Paras 8, 10 and 12, statement of claim.

(iv) The fourth defendant trained Chinese people to work in the construction industry as well as other industries like cooking and aged care ('the training representation').

(v) The fourth defendant had invested $180,000 and would be investing another $200,000 to set up schools overseas ('the investment representation').[12]

[37] Each of the oral representations allegedly made on 17 April 2018 were made by the second defendant. It is further pleaded that information was also conveyed to the plaintiff in the Internal Document, which it is said was provided by the second defendant to the plaintiff at this meeting.[13] It is common ground that the third defendant was not at this meeting.

[38] It is alleged that only one oral representation was made at the meeting on 18 April 2018. This related to the profitability of the fourth defendant. The pleaded case is that it was again made by the second defendant. The claim against the third defendant is articulated at paragraph 125 of the plaintiff's submissions. It is said that she was present when the second defendant made the profitability representation at this second meeting and her failure to speak up constitutes misleading or deceptive conduct.

[39] In oral submissions, counsel for the plaintiff clarified that it is alleged that the business, RTO and investment representations were partly oral and partly conveyed in the Internal Document; the profitability representation was oral; and the training representation was conveyed in the Internal Document. The parts of the Internal Document said to convey the business and RTO representations are detailed in paragraphs 31(a), (b), (c) and (e) of the plaintiff's written submissions; the parts of the Internal Document said to convey the training representation are detailed in paragraphs 31(d) of those submissions; and the parts of the Internal Document said to convey the investment representation are detailed in paragraphs 31(f) of those submissions.

[40] It was also clarified in oral submissions that the oral representations pleaded in paragraph 8(f) of the statement of claim were made in the context of the second defendant discussing the Internal Document with the plaintiff.

[41] It is claimed that each of the representations were false and were thereby misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the ACL.[14] It is said that in reliance on the representations, the plaintiff entered into the Cooperation Agreement. She pleads that, but for the representations, she would not have:

(i) executed the Cooperation Agreement;

(ii) paid the sum of $600,000 to the fourth defendant; and

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[12] Para 14, statement of claim.

[13] Para 8(e), statement of claim.

[14] Para 21, statement of claim.

(iii) accepted:

(a) an appointment as a director of the fourth defendant; or

(b) the issuance of 30 shares in the fourth defendant.[15]

[42] The claim is defended on the bases that the defendants deny the representations were made, that they were misleading and/or that the plaintiff relied on any of them in entering into the Cooperation Agreement.[16]

[43] As to the applicable law, the fourth defendant will have contravened s 18 of the ACL, if, in trade or commerce, it engaged in conduct that is misleading or deceptive or is likely to mislead or deceive. The first question for determination is whether the facts establish the pleaded representations.

[44] In relation to oral representations, it is not necessary for the plaintiff to prove the precise words spoken by the second defendant on each occasion. However, spoken words must be proven with a degree of precision, sufficient to enable the court to be satisfied that it is more probable than not that words were spoken that would reasonably have conveyed the representations as alleged.[17] That conclusion can be reached if the court is satisfied as to the substance or effect of what was said and that it conveyed the representations alleged. The evidence as a whole, to the extent that it throws light on what was said and what would have been conveyed in the conversations, must establish a reasonable satisfaction on the preponderance of probabilities so as to sustain the relevant factual finding.[18]

[45] It is a question of fact as to whether representations are false, and thereby misleading or deceptive or likely to mislead or deceive. It is not in dispute that the relevant conduct of the defendants upon which the plaintiff places reliance is conduct in trade or commerce. There is also no issue about the authority of the second defendant to engage in the pleaded conduct on behalf of the fourth defendant. It is therefore necessary to consider whether the fourth defendant in its dealings with the plaintiff, through the second and third defendants, engaged in misleading or deceptive conduct.

[46] Conduct is misleading or deceptive, or likely to mislead or deceive, if it has a real tendency to lead into error. This is even if the representor acted honestly and did not intend to mislead or deceive.[19] Whether conduct is misleading or deceptive depends on the context in which the conduct took place.[20] The character of a representation is to be tested at the date of making the representation and not with the benefit of hindsight. The assessment as to whether particular conduct has led a plaintiff into error is a question of mixed fact and law. It is an objective test and

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[15] Para 20, statement of claim.

[16] Paras 14, 18, 23, 24 and 25, defence.

[17] *Watson v Foxman* (2000) 49 NSWLR 315.

[18] *Axon v Axon* (1937) 59 CLR 395 at 403 per Dixon J.

[19] *Campbell v Backoffice Investments Pty Ltd* (2009) 238 CLR 304 at 319 per French CJ.

[20] *Butcher v Lachlan Elder Realty Pty Ltd* (2004) 218 CLR 592 at 625 per McHugh J.

involves a determination of what a reasonable person in the position of the representee, taking into account what they knew, would make of the representor's conduct.[21] The task of the court is to look at the evidence as a whole to determine whether the conduct contravened s 18 of the ACL.

[47] There must be a sufficient causal link between the conduct and error on the part of the person exposed to it.[22] It is an objective question, to be determined in the light of the relevant surrounding facts and circumstances.[23]

[48] Paragraph 22 of the statement of claim pleads that the RTO representation and part of the investment representation in relation to the proposed investment of $200,000 to set up schools overseas, are representations as to future matters. The mere fact that such a representation proves to be inaccurate does not make it false.[24] Rather, the relevant question is whether there were reasonable grounds for making it.[25]

[49] It is not sufficient for the plaintiff to simply show that misleading or deceptive representations were made by the second and/or third defendant or were contained in the Internal Document. She also needs to establish that she relied on those representations, in entering into the Cooperation Agreement, and suffered loss or damage because of it.[26] The representations do not need to be the only material cause that induced the plaintiff to enter into the Cooperation Agreement.[27] However, a mere possibility of inducement is not sufficient.[28] Caution needs to be exercised in accepting self-serving assertions of reliance made in hindsight by a plaintiff. The principles of causation and remoteness in relation to s 236 of the ACL are the same as those applied under the tort of negligence.

[50] Conclusions that the second defendant is personally liable would require a finding that the second defendant knew of the essential elements of the contravention by the fourth defendant.[29] Therefore, the claim against the second defendant personally can succeed only if the plaintiff has established that the second

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[21] *Downey v Carlson Hotels Asia Pacific Pty Ltd* [2005] QCA 199 at [69] per Keane JA.
[22] *Australian Competition and Consumer Commission v TPG Internet Pty Ltd* (2013) 250 CLR 640 at 651, 655 per French CJ, Crennan, Bell and Keane JJ.
[23] *Global Sportsman Pty Ltd v Mirror Newspapers Pty Ltd* (1984) 2 FCR 82 at 87-88 per Bowen CJ, Lockhart and Fitzgerald JJ; *Campbell v Backoffice Investments Pty Ltd* (2009) 238 CLR 304 at 341-342 per Gummow, Hayne, Heydon and Kiefel JJ.
[24] *James v ANZ Banking Group Ltd* (1986) 64 ALR 347.
[25] Section 4(1) of the ACL.
[26] *Wardley Australia Ltd v Western Australia* (1992) 175 CLR 514 at 525 per Mason CJ, Dawson, Gaudron and McHugh JJ; *Campbell v Backoffice Investments Pty Ltd* (2009) 238 CLR 304 at 318 per French CJ and 341 per Gummow, Hayne, Heydon and Kiefel JJ.
[27] *Kabwand Pty Ltd v National Australia Bank Ltd* (1989) 11 ATPR 40-950 at 50,378.
[28] *Ricochet Pty Ltd v Equity Trustees Executives & Agency Co Ltd* (1993) 41 FCR 229 at 235 per Lockhart, Gummow and French JJ.
[29] *Yorke v Lucas* (1985) 158 CLR 661 at 670 per Mason ACJ, Wilson, Deane and Dawson JJ and 677 per Brennan J.

defendant made the representations knowing that they were false or, in relation to the future representations, knowing that there were no reasonable grounds for making the representations.[30]

[51] In relation to a representation which is said to arise out of what was not said, the authorities make it clear that silence is but a factor, to be considered amongst all the circumstances of the case, in determining whether there has been misleading and deceptive conduct established. So viewed, a determination is required as to whether, in light of all those circumstances, the silence of the alleged representor, being the third defendant, was misleading or deceptive.

Credibility and reliability

[52] The witnesses who gave evidence were the plaintiff and the first, second and third defendants. Much of the plaintiff's case depends on acceptance of her evidence in preference to contrary evidence of the other witnesses. It is my view that the evidence of each of the witnesses was coloured by a desire to support their own interests. While the proceedings were discontinued against the first defendant at the commencement of the trial, I do not accept the defendants' submission that this means that she had no interest in the outcome of the litigation. She introduced the plaintiff to the second and third defendants and had worked for Bulkbuild, of which the second defendant was a director. The interests of the plaintiff and the second and third defendants are obvious as they are parties to the litigation. Further, the imperfect recollections of each of them was exacerbated by the fact that they were purporting to recall details of conversations of some four years earlier and, in most instances, without reference to contemporaneous documents.

[53] I have been mindful to ensure that the inconsistencies between the accounts of the witnesses are not determined merely by having regard to their demeanour. This is particularly important in a case such as this where each of the witnesses were either giving evidence through an interpreter, or in circumstances where English is not their first language.

[54] Wherever possible, I have sought to resolve conflicts in witness accounts by reference to the objective facts proved independently of the testimony given, in particular, by reference to the documents in the case, by paying particular attention to the witnesses' motives, and to the apparent logic of events.[31] Where this has not been possible, it has been necessary to resort to concepts of onus of proof.

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[30] *Guirguis Pty Ltd & Anor v Michel's Patisserie System Pty Ltd & Ors* [2017] QCA 83 at [38] per Fraser JA.

[31] *Armagas Ltd v Mundogas S.A. (The "Ocean Frost")* [1985] 1 Lloyd's Rep 1 at 57 per Robert Goff LJ; *Hutchison Construction Services Pty Ltd v Fogg; Fogg v Les Quatre Musketeers Pty Ltd (t/as Plastamasta South Coast)* [2016] NSWCA 135 at [60] per Leeming JA.

[55] The plaintiff bears the onus of proof to satisfy the court on the balance of probabilities that her version of the events and discussions should be accepted. There are parts of her evidence which I do not accept. For example, I do not accept her evidence to the effect that she did not tell the first defendant that she had significant experience in Chinese business and that she was an accountant. This was all true as evidenced by the contents of the Business Proposal referred to above. Further, I am unpersuaded by the plaintiff's evidence that before she first met the second defendant on 17 April 2018, the first defendant had told her that the value of the second defendant's school exceeded $5 million. I prefer the first defendant's evidence that it was her understanding that the second defendant was not operating a school at this time.[32] Support for this can be found in the first defendant's WeChat message to the second defendant on 15 April 2018. Another aspect of the plaintiff's evidence that I do not accept is her assertion that she was wanting to invest in a mature business. This was clearly not an apt description of the fourth defendant's business, which she knew had only been operational for about eight months.

[56] Further, I do not accept the plaintiff's evidence that one of the principal reasons that she did not follow the recommendation of her accountant to undertake due diligence of the fourth defendant was because of repeated assurances by the second defendant that the fourth defendant's business was worth several million dollars. I also do not accept any such information had any role to play in her decision as to whether to seek the advice of her lawyer in relation to any aspect of the fourth defendant's business. This is because I am not persuaded that the second defendant ever gave the plaintiff such reassurances about the profitability of the fourth defendant and this is discussed in further detail below. I also do not accept that the second defendant attempted to dissuade the plaintiff from seeking the advice of her lawyer on the basis that they already had the necessary legal documents. In addition, I am not persuaded that the first defendant told the plaintiff that the lawyer she was seeking advice from had a very bad reputation in the Chinese community. I accept the first defendant's evidence that she did not know who this lawyer was.[33]

[57] Having said this, I reject the submission made on behalf of the defendants that the plaintiff's evidence should not be accepted unless it is supported by contemporaneous documents. Although I have rejected parts of the plaintiff's evidence, there are other parts of her evidence that I accept. The same can be said for the other witnesses. For this reason, where necessary, I have indicated below the extent to which I have accepted or rejected the evidence of particular witnesses.

Whether the representations were made

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[32] T3-7, ln 20-21.
[33] T3-10, ln 3-8.

[58] It is at two meetings on 17 and 18 April 2018 that the representations are alleged to have been made. There is no dispute that there was a meeting on 17 April 2018 and this was the first occasion the plaintiff met the second defendant ('the first meeting'). It is also common ground that it was at the meeting immediately following the first meeting that the plaintiff first met the third defendant. I do not accept the evidence of the second and third defendants that this did not occur until 20 April 2018. I am inclined to accept the plaintiff's evidence that the second meeting occurred a day or two after the first meeting ('the second meeting'). The first defendant accepted in cross-examination that the second meeting could well have occurred within this time period.[34]

[59] The factual issues to be resolved are whether the plaintiff has established that the Internal Document was shown to her at the first meeting, and whether there were words spoken by the second defendant at either of the meetings that would reasonably have conveyed the representations as alleged.

[60] I have addressed these issues below.

Whether the Internal Document was discussed at the first meeting

[61] Given that the business, RTO, investment and training representations are alleged to be conveyed or partly conveyed in the Internal Document, it is necessary to determine whether the Internal Document was provided to the plaintiff at the first meeting as alleged. In the original statement of claim filed in October 2018, it was pleaded that it was shown to the plaintiff at a later meeting on 19 April 2018. It was not until the most recent pleading filed after the trial, that it was alleged that it was shown to the plaintiff at the first meeting. The defendants admit that the plaintiff was shown a copy of this document but plead that it occurred at a meeting on 26 April 2018,[35] which was the day before the plaintiff signed the Cooperation Agreement. There is no dispute that by the latter date the plaintiff had already decided to invest in the fourth defendant.[36]

[62] There are no contemporaneous documents which may assist in resolving the question of when the plaintiff was shown the Internal Document. For this reason, in determining this issue, I have assessed the evidence of the witnesses considering the inherent probabilities of particular versions of events, in the context of established facts. Having undertaken this analysis, I am left in the position of having been unable to conclude that it is more likely than not that the plaintiff's evidence on this issue should be preferred. It flows that I am also not persuaded that at the first meeting, the second defendant said to the plaintiff those matters pleaded in paragraph 8(f) of the statement of claim.

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[34] T3-7, ln 36-43.
[35] Para 8(i), defence.
[36] T1-89, ln 9-19.

[63] My principal reservation in accepting the plaintiff's version, namely that she was shown the Internal Document during the first meeting, is that this was the first occasion the plaintiff had met the second defendant. It is my impression that this meeting was in essence an introductory one, at which the second defendant sought clarification around the plaintiff's visa requirements and there was a general discussion around the business interests of the second and third defendants. Some support for the preliminary nature of the discussions at the first meeting can be found in the plaintiff's own evidence.[37] Additionally, it seems implausible that at this very early stage of a potential business relationship, the second defendant would have given this confidential document for the plaintiff to read, or would have discussed the financial matters the subject of the handwritten notes on the last page of the Internal Document. This is particularly so in circumstances where the third defendant, as the other director of the fourth defendant, had not even had the opportunity to meet the plaintiff. The first defendant did not recall the second defendant showing the Internal Document to the plaintiff at this meeting.[38] Further, there is no evidence that the second defendant was actively looking for someone to invest in the fourth defendant and thereby provide a motivation for her to show the plaintiff the Internal Document at the first meeting. Rather, the meeting had been arranged for the benefit of the plaintiff, in an endeavour to assist her in finding an investment opportunity.

[64] The plaintiff gave inconsistent evidence as to whether she read the Internal Document when she was shown it. In evidence-in-chief she said that she did. However, in cross-examination she said that the second defendant "*flashed some materials in front of me*".[39] This is clearly a reference to the Internal Document as there is no suggestion in the evidence that any other material was shown to the plaintiff at the first meeting. The plaintiff then went on to explain that she did not have time to read it and the second defendant just pointed to the parts that she was supposed to read.[40]

[65] It would be unsurprising that the plaintiff did not read the Internal Document at the first meeting. This is because I am not persuaded that she is likely to have attached much importance to it at this very early stage of the negotiations. Her mindset at that time was that it was unlikely that she would be investing in the fourth defendant.[41] She remained of this view even on 20 April 2018, which on her evidence, was the fourth meeting she had in the ongoing negotiations.[42] Further support for this can be found in her evidence that she did not even place much importance on the draft Cooperation Agreement that she said she was

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[37] T2-17, ln 43 to T2-18, ln 2.
[38] T3-5, ln 30-38.
[39] T2-18, ln 27-31.
[40] T2-19, ln 10-34.
[41] T1-87, ln 43-47.
[42] T1-74, ln 25-27; T1-87, ln 46-47.

shown on 20 April 2018. [43] If she did not place much importance on that document when the negotiations were more advanced, it seems improbable that she would have placed sufficient weight on the Internal Document at the first meeting, so as to have caused her to have read it.

Oral representations by the second defendant

RTO and business representations

[66] These representations are alleged to have been made by the second defendant in the first meeting. In so far as the allegations relate to the RTO representation, it is alleged in paragraph 8(d) of the statement of claim that the second defendant said to the plaintiff words to the effect that they had retained the assistance of a key and reliable person from Sydney who could approve a RTO and that they would get the approval by no later than May 2018.

[67] In relation to the business representation, it is contended in paragraph 8(c) that the second defendant said words to the effect that:

(i) There was a good opportunity to invest in a school, specialising in training in all areas of construction, run by the second and third defendants.
(ii) The school would have the support of Bulkbuild, which would give it a special advantage in the area of construction.
(iii) If she invested in the school, she would settle well in Australia.
(iv) The school was very profitable.

[68] It is further said that as a consequence of being told these things, it was represented to her that the fourth defendant conducted a school specialising in all areas of construction. The defendants deny these allegations.

[69] I found the plaintiff's evidence with respect to both representations to be partly contradictory, partly implausible and aspects of it contradicted by other witnesses. In the result, I have concluded that it cannot be preferred over that of any of the other witnesses. In short, I am not persuaded that the plaintiff was told by the second defendant at the first meeting words to the effect that the fourth defendant would be approved as a RTO by May 2018 or that it conducted the business of a school.

[70] As to the RTO representation, the plaintiff did not give evidence consistent with it. The following exchange occurred between her and her counsel in evidence-in-chief:

> *"Was anything mentioned about a registered training organisation?*
>
> *Yes, they mentioned it. They said that 'Yes we will – we will get it very soon. Maybe in May. Very soon'".*[44]

[43] T1-61, ln 9-11.
[44] T1-31, ln 1-4.

[71] This exchange needs to be considered in the context of other evidence of the plaintiff to the effect that the second defendant did not specifically refer to the fourth defendant at the first meeting, and that the discussions were around the broader business interests of the second and third defendant. Against this background, the reference to *'we'* could not be said to be a reference to the fourth defendant, as distinct from any of the other business interests of the second and third defendants. Further, on the plaintiff's own evidence as set out above, the second defendant when discussing the issue of the RTO accreditation did not provide the assurance alleged, namely that it 'would' be approved by May 2018.

[72] Further, it defies logic that the second defendant told the plaintiff that the fourth defendant would be approved as a RTO by May 2018. I can think of no rational reason for the second defendant to have said to the plaintiff words to this effect. The simple fact is that there was no plan for the fourth defendant to be accredited as a RTO. A deliberate financial decision had been made by the second and third defendants for the fourth defendant to operate as a consultancy business and not a RTO. This was to maximise the fees that could be charged for the services it provided. In other words, it was considered that it was more advantageous for the fourth defendant to be a consultancy business rather than a RTO.

[73] As to the business representation, the plaintiff did not give compelling evidence about being told that the fourth defendant was a school. She in fact said that she was not sure whether it was a school or a company.[45] There are a few potential reasons for her confusion in this regard. It seems likely there were some discussions around the fourth defendant's business being involved with schools and RTOs. A consultant in Sydney had been engaged to assist with the RTO accreditation process for Auz Co and the fourth defendant was at that time connecting applicants with RTOs that offered many different courses in the construction industry. Further, the second and third defendants had invested in an art school in China with the intention of using the premises to operate a RPL centre. Additionally, there was a plan that the fourth defendant would deliver training and assessment for Chinese language teacher certificates in Australia pursuant to the agreement that it had signed in February 2018 with Yingtang Culture Communications Co Ltd. It seems likely the second defendant told the plaintiff of these business interests, if only in a general sense. Finally, to add to the confusion, the first defendant had told the plaintiff prior to the meeting on 17 April 2018 that Bulkbuild was going to open a training school.[46]

[74] There is a cogent reason why the plaintiff did not seek to clarify her confusion about these matters. This is because she was not overly concerned with whether the fourth defendant was going to be accredited as a RTO, was operating as a school, or was a consultancy company connecting individuals with schools. As

[45] T1-85, ln 4-5.
[46] T1-28, ln 29-30.

she said in evidence, she only had a vague idea about how schools operated in Australia.[47]

[75] I do not accept the plaintiff's evidence that she *"wanted to invest in a mature and highly profitable school"*.[48] Rather, in my view, at the time of the first meeting the plaintiff was attracted to the prospect of investing in the fourth defendant for other reasons. These included the fact that she had formed a friendship with the first defendant. She considered the first defendant to be trustworthy and skilled in business management and the first defendant considered the fourth defendant to be a good investment and a rare opportunity for her.[49] Further, the second defendant was a director of the fourth defendant and the plaintiff trusted her as her husband came from the same province in China as the plaintiff.[50] This was in circumstances where there was some urgency in the plaintiff making the investment as she required *"two years of business experience"* in order to enable her to lodge her subclass 888 visa application.[51] The plaintiff accepted in cross examination that she may well have told the first and second defendants at the first meeting that she needed to invest by May 2018 to meet her visa requirements.[52] This was against a background of the plaintiff having investigated a few other potential investment opportunities that had not come to fruition.

[76] Therefore, I am not persuaded oral representations which conveyed the business and/or RTO representations were made at the first meeting by the second defendant to the plaintiff, in her capacity as a prospective investor of the fourth defendant.

Profitability representation

[77] In oral submissions, counsel for the plaintiff clarified that the profitability representation was made only orally. It is alleged in paragraphs 8(c), 8(f)(2) and 10(c) of the statement of claim that the second defendant repeatedly told the plaintiff at the first and second meetings words to the effect that the school was very profitable and was worth millions. This is denied by the defendants. As explained above, the claim against the third defendant is limited to the allegation that she was present at the second meeting when the second defendant told the plaintiff that the "*school was worth millions*" and that she remained silent.

[78] It is common ground on the pleadings that the second defendant told the plaintiff at the first meeting that the fourth defendant would be quite profitable. This is in circumstances where the second defendant had a business plan and saw great

[47] T1-61, ln 25-27; T1-74, ln 25-27.
[48] T2-26, ln 42.
[49] T2-9, ln 38-46; T2-11, ln 26-27; T2-33, ln 18-20.
[50] T2-13, ln 15-18.
[51] T2-27, ln 16-18; T3-40, ln 36-47.
[52] T2-14, ln 31-33; T2-27, ln 11-18.; T3-34, ln 5-9.

potential for the fourth defendant in the education sector because the economy was strong and there were increasing numbers of Chinese people immigrating to Australia.[53] This is quite distinct from the alleged profitability representation, namely that the fourth defendant 'was' very profitable.

[79] While the plaintiff may presently believe her evidence on this issue to be the truth, I am not persuaded by it. It is internally inconsistent, is influenced by hindsight and is contrary to compelling inferences. An example of an inconsistency can be found in her evidence where she said that she was told by the second defendant that the value of the fourth defendant's business exceeded $2 million. However, in cross-examination she said that on 17 April 2018 the second defendant told her that the fourth defendant was currently making more than $1 million. Later in cross- examination she said that she had been told by the second defendant at that same meeting that the fourth defendant was currently worth $2 million.

[80] It seems improbable that the second defendant would have said this about a business that had only been operating for eight months. As the plaintiff said, the second defendant told her that it had not been operating for long enough to have its financial records audited.[54] It was in its infancy in the sense that its operations were at that stage limited to providing consultancy services to a few RTOs. Its business plan included working with Auz Co once it was accredited and providing training to aspiring Chinese language teachers in accordance with its agreement with Yingtang Culture Communications Co Ltd. Given these future plans, it is perhaps unsurprising that the second defendant told the plaintiff that she was confident that the fourth defendant would be quite profitable.[55]

[81] The plaintiff's contention as to the importance to her of being allegedly told that the fourth defendant was very profitable and worth millions appears to have been influenced by hindsight. Support for this can be found in the WeChat message from the first defendant to the second defendant on 15 April 2018, whereby the first defendant said that the plaintiff did not mind how much she earned provided that her investment could be recovered. I am satisfied that this reflected the plaintiff's true position.

[82] As discussed above, in my view the plaintiff's interest in investing in the fourth defendant was influenced by other unrelated matters. These included that it was being recommended to her by the first defendant and she felt that she had something in common with the second defendant's husband. Further, by the second meeting the plaintiff had received some favourable advice from an immigration agent about the fourth defendant. It was her evidence that on the evening of 17 April 2018, she had dinner with this immigration agent at a

[53] T3-35, ln 31-35; T3-43, ln 1-3.
[54] T1-86, ln 3-7.
[55] This is admitted in paragraph 4(b) of the reply; T2-20, ln 13-16.

Japanese restaurant in Sunnybank. He had been introduced to her by the first defendant. He had assisted the first defendant with her visa application. He had some 47 years' experience in this field and told the plaintiff that the fourth defendant's business was the best business he had seen from an investment perspective.[56]

[83] Finally, as to the claim against the third defendant, there is no evidence that at the second meeting she heard the second defendant say words to the effect that "*the school was worth millions*". This is an insurmountable hurdle for the plaintiff in respect of this aspect of her claim.

Representations conveyed by the Internal Document and discussion about it

[84] Given my findings above that I am not persuaded that the plaintiff was shown the Internal Document at the first meeting, it may be unnecessary to make findings as to whether the representations were conveyed in the Internal Document or by information provided by the second defendant to the plaintiff at the time the plaintiff was shown it. To the extent considered necessary, for the reasons that follow, I am not persuaded that the plaintiff has made out her claim in this regard.

Business, training and investment representations

[85] It is alleged in paragraphs 8(e) of the statement of claim, that the business, training and investment representations are conveyed in the Internal Document. I accept that the contents of this document are not overly clear. This may be explained by the fact that it has been translated from Mandarin to English and that it was only intended to show the plaintiff what the forecast was for their business interests.

[86] The parts of the Internal Document that are said to convey these representations are set out in paragraph 31 of the plaintiff's written submissions. Whether these parts of the document convey the alleged representations involves a consideration of the document as a whole and the surrounding circumstances in which it came to be shown to the plaintiff. As explained above, in my view any discussion about the fourth defendant at the first meeting was of a general nature. It was in the context of the second defendant discussing the broader business interests of her and the third defendant. Consistent with this, the Internal Document provides information about these broader business interests. The heading on the first page of the document reads "*Brief Introduction to the Loyal Education Group*" and the heading at the top of the second page reads "*Outlook of Loyal Education Group*". It does not identify which company or entity within the Loyal Education Group had any particular attribute or future aspiration. It does not refer to the fourth defendant in relation to those parts of the document relied on by the plaintiff to support any of these representations. Considering the evidence as a whole, I am not persuaded the Internal Document makes the alleged business, training or

[56] T2-25, ln 1-9; T2-33, ln 25-32.

investment representations. Further, in my view, for the reasons provided in paragraph 75 above, at the time of the first meeting, any confusion the plaintiff may have had about the content of this document is unlikely to have troubled her.

[87] Further, in relation to the business representation, even if the plaintiff had understood Loyal Education Group to be the fourth defendant, the document does not refer to this group of entities operating as a school. Rather it refers to "*a comprehensive education organisation*" with a plan to "*have long-term cooperation agreements with migration and education agencies in Australia and some Asian countries through mutual cooperation to eventuate a win-win situation*".[57]

[88] In addition, it is alleged in paragraph 8(f) that while the second defendant was discussing the Internal Document with the plaintiff, that on repeated occasions and in a few different contexts, she referred to the fourth defendant as a school. For the reasons set out in paragraphs 73 and 74 above, I am not persuaded that the second defendant described the fourth defendant as a school in any of her discussions with the plaintiff at either of the meetings. For completeness, I also do not accept the plaintiff's evidence that she was told that the fourth defendant as a school had a long history. It is inconsistent with the plaintiff's own evidence that she was told the fourth defendant had been incorporated as recently as September 2017.[58]

[89] As to the investment representation, it is not pleaded in the statement of claim that it was conveyed by the second defendant at either of the meetings. However, in oral submissions, counsel for the plaintiff contended that the claim included an allegation that the investment representation had been conveyed by the second defendant when discussing the Internal Document with the plaintiff. Reliance was placed on paragraph 4(c)(vii) of the reply, where it is pleaded that the handwritten note at the end of the Internal Document, which reads "*RTO and Delivery - $180,000*", was made at the time the second defendant told the plaintiff that $180,000 had already been spent applying for a RTO. This is clearly a material fact relied on by the plaintiff and should have been pleaded in the statement of claim.[59]

[90] In any event, I have been unable to conclude that the plaintiff's evidence on this point is reliable. This is because there are other aspects of her recollection about the discussion in respect of the Internal Document that I simply do not accept. For example, it is implausible that the plaintiff was told that $60,000 had already been spent on the salaries of teachers, when in fact no such expense had been incurred in respect of any of the business interests of the second and third defendants. I prefer the evidence of the second defendant that the plaintiff was told that this sum represented the likely expenses to be incurred in paying

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[57] Exhibit 1 at pp 2 and 3.
[58] T1-84, ln 42-45.
[59] Rule 149 of the *Uniform Civil Procedure Rules* 1999 (Qld).

assessors at the RPL centre in China. It is also inherently improbable that the plaintiff was told that $450,000 in cash had already been paid to the consultant in Sydney who was assisting them with the RTO application, and there remained an outstanding cash payment in the order of $500,000. There is no evidence that the consultant was to be paid such an exorbitant sum of money for his services and there is no reason for the second defendant to have led the plaintiff to believe this.

[91] Further, I am not persuaded by the plaintiff's evidence that she was told that $180,000 had been spent on the RTO application. Rather, the second defendant said in evidence that she told the plaintiff that this sum represented a combination of the amounts that had been spent on both the RTO application (which was for Auz Co) and the RPL school in China. I prefer this evidence.

RTO and profitability representations

[92] It is not alleged in the pleading that the RTO or profitability representations are conveyed in the Internal Document. Rather, as to the RTO representation, it is pleaded in paragraph 8(f)(iv) of the statement of claim that when discussing the Internal Document the second defendant said that RTO approval would occur in May 2018. However, as discussed in paragraphs 70 and 71 above, the plaintiff did not give evidence to this effect. Further, she said that the discussion was triggered by the reference to a RTO in the fifth dot point under the heading *"Outlook of Loyal Education* Group". This also does not covey the RTO representation. Instead, it refers to the approval of a RTO institution within one month to be one of the many possibilities for the development of Loyal Education Group over the next two years. Further, for the reasons detailed in paragraph 72 above, I am not persuaded that the plaintiff was told by the second defendant that it was the fourth defendant who was applying for the RTO approval.

[93] Further, as to the profitability representation, it is alleged in paragraph 8(f)(ii) that when discussing the Internal Document, the second defendant repeated to the plaintiff that the school was "*worth millions of dollars*". For the reasons set out in paragraphs 79 and 80 above, it is implausible that the plaintiff was told this at any time during the first or second meetings.

Conclusions

[94] The plaintiff's claim in misleading or deceptive conduct personally by the second and third defendants and on behalf of the fourth defendant fails on the facts.

[95] I need not decide the remaining issues, including whether the representations were misleading and whether the plaintiff relied on them. However, for completeness, even if I had been persuaded that the alleged representations about the fourth defendant had been made, an assessment of the prospects of reliance by reference to objective criteria leads me to the conclusion that none of them induced the plaintiff to enter into the Cooperation Agreement. For the reasons explained above, I am persuaded that other unrelated factors operated as

inducements to the plaintiff entering into the Cooperation Agreement. These included that:

(i) There were time pressures around finding a suitable investment opportunity, in circumstances where attempts to find a business over the previous few months had not been successful.
(ii) The fourth defendant's business was being recommended by the first defendant.
(iii) The very experienced immigration agent had said that the fourth defendant was the best business he had seen.
(iv) The plaintiff felt a sense of connection with the second defendant and took some comfort from this.

[96] It is also unnecessary for me to consider the further cause of action in negligent misrepresentation given that I am not persuaded that the facts establish the pleaded representations.

[97] In these circumstances, the plaintiff has failed to prove her case against the defendants and her claims are dismissed.

[98] As to the costs of the proceeding, the defendants have been successful. There will be an order that the plaintiff pays the defendants' costs unless another order is sought. If this is to be contested, the party advancing the contest should file and serve a written outline on the issue, within seven days of delivery of the judgment, with the opposing party to have seven days to respond.