

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 275

Suit No 762 of 2019

Between

Poh Chiak Ow

... Plaintiff

And

United Overseas Bank Limited

... Defendant

JUDGMENT

[Contract] — [Misrepresentation] — [Fraudulent]
[Tort] — [Negligence] — [Duty of care]
[Tort] — [Vicarious liability]

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Poh Chiak Ow
v
United Overseas Bank Ltd

[2020] SGHC 275

High Court — Suit No 762 of 2019
Andre Maniam JC
12–14 August, 23 October 2020

30 December 2020

Judgment reserved.

Andre Maniam JC:

Introduction

1 “Fraud unravels everything ...” declared Denning LJ (as he then was) in *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702 at 712 (recently cited in *Facade Solution Pte Ltd v Mero Asia Pacific Pte Ltd* [2020] 2 SLR 1125 at [22]).

2 The central issue in the present case is whether the plaintiff (“Mr Poh”) had sufficiently pleaded and proved his allegation of fraud.

3 In 2017, Mr Poh invested US\$500,000 in a company (or group of companies) named “PixelTrade”. The money came from Mr Poh’s account with the defendant bank (“UOB”). He instructed UOB to transfer the money to PixelTrade (UK) Ltd (which also had a UOB bank account then): a sum of US\$200,000 in October 2017, and a further sum of US\$300,000 in December

2017. From 2018 onwards, Mr Poh tried to recover his investment from PixelTrade, but he did not get any of his money back.

4 Mr Poh blamed the investment in PixelTrade on his UOB relationship manager (“Mr Wong”). He claimed Mr Wong had defrauded him by making various false representations about investing in PixelTrade.

5 Mr Poh did not, however, sue Mr Wong. Instead, he sued UOB on the basis that it was vicariously liable for Mr Wong’s alleged fraud. He also claimed that UOB had been negligent in not protecting him against the loss of the money that he had transferred to PixelTrade.

Background

6 Mr Wong was Mr Poh’s relationship manager for the period of February 2017 to August 2018, when Mr Wong left UOB (as he was going for a medical procedure the following month). They grew to become friends.

7 With Mr Wong’s involvement, Mr Poh made three bond investments through UOB, before the PixelTrade investment.

8 On the day Mr Poh made the first transfer to PixelTrade, he made a fourth bond investment through UOB.

9 The four bonds Mr Poh invested in were issued by financial institutions, but they were not risk-free: Mr Poh was still taking a risk on the creditworthiness of the issuer. Neither were the bonds guaranteed by UOB.

10 Mr Poh, however, claims that he was completely risk-averse, unwilling to put the amounts he invested through UOB at any risk whatsoever.¹ Mr Poh says he informed Mr Wong of this, which Mr Wong denies.

Mr Poh's pleadings

The alleged Representations

11 Mr Poh claims that he was induced to invest in PixelTrade because Mr Wong had made the following representations:²

(a) One of UOB's approved investment products was a product called PixelTrade (the "PixelTrade Product") (the "1st Representation").

(b) PixelTrade was an established company that loaned monies to institutions (the "2nd Representation").

(c) The PixelTrade Product had, over the preceding seven years, garnered good yields and/or returns on investment averaging 7–8% per annum for UOB's privilege banking clients who had invested in the PixelTrade Product (the "3rd Representation").

(d) UOB guaranteed the return and/or repatriation of any principal amounts invested in the PixelTrade Product, and that upon a request by Mr Poh for the return and repatriation of any principal amounts, such principal amounts would be returned and/or repatriated to him within a calendar month (the "4th Representation").

¹ Statement of Claim para 7(b).

² Statement of Claim para 9.

(e) UOB was then actively recommending the PixelTrade Product to its privilege banking customers (the “5th Representation”).

(f) Even Mr Wong’s colleagues were investing in the PixelTrade Product (the “6th Representation”).

12 Mr Poh claims that his further investment in PixelTrade in December 2017 was also made on Mr Wong’s recommendation, with Mr Wong saying that “[UOB] was of the view that the PixelTrade Product was continuing to garner handsome yields and returns on investment” (the 7th Representation).³ I shall refer to the 1st to 7th Representations collectively as “the Representations”.

13 UOB and Mr Wong deny that any of the seven Representations was made.

The alleged fraud

14 Mr Poh accuses Mr Wong of fraud.⁴ As such, he needs to prove (among other things) that the Representations were false.

15 UOB acknowledged that there was no “PixelTrade Product” among UOB’s approved investment products. As such, the 1st Representation would be false (if Mr Wong had made it), and as a corollary, the 4th, 5th and 7th Representations would also be false.

³ Statement of Claim para 11.

⁴ Statement of Claim paras 16 and 24(d).

16 It was also UOB's position that Mr Poh's investment in PixelTrade was never guaranteed by UOB. The 4th Representation would thus be false (if Mr Wong had made it).

17 However, the 2nd, 3rd and 6th Representations could well be true, even if there were no UOB-approved PixelTrade investment product (contrary to the 1st Representation), or even if UOB was not guaranteeing Mr Poh's investment in PixelTrade (contrary to the 4th Representation). Indeed, Mr Poh made no attempt to prove that the 2nd, 3rd and 6th Representations were false. Absent proof of falsity, even if Mr Wong had made these three representations, that would not amount to fraud. The fact that Mr Poh did not seek to prove that three of the seven Representations were false casts doubt on his claim that he was defrauded.

18 The 5th Representation (that UOB was recommending PixelTrade to its customers) and the 7th Representation (that UOB had a view on PixelTrade) are essentially dependent on there being a UOB-approved PixelTrade investment product in the first place (which is the subject of the 1st Representation).

19 The 4th Representation (that UOB guaranteed the return of any money invested in PixelTrade) is also dependent on there being a UOB-approved PixelTrade investment product, since UOB would not have guaranteed an investment that it had not approved in the first place.

20 The 1st Representation (that there was a UOB-approved PixelTrade investment product) is thus of prime importance to Mr Poh's fraud case.

21 His pleaded case on fraud reinforced this:⁵

In the event that the PixelTrade Product was not one of the Defendant’s approved investment products, the Plaintiff will aver that [the Representations] were made by Mr Wong with no honest belief, and/or no reasonable grounds to believe, and/or no bona fide intention that they were true. In the alternative, [the Representations] were made by Mr Wong fraudulently, with Mr Wong well knowing that they were false and untrue; or made recklessly, not caring whether they were true or false. [emphasis added]

22 If there were a UOB-approved PixelTrade investment product, it follows from Mr Poh’s pleaded case that he would have no claim for fraud at all.

23 In evaluating Mr Poh’s claim for fraud, I will thus focus particularly on the 1st Representation, *ie*, that there was a UOB-approved PixelTrade investment product.

Mr Poh’s claims against UOB

24 Mr Poh says that UOB is vicariously liable because Mr Wong was UOB’s employee⁶ or agent.⁷ Alternatively, Mr Poh claims against UOB in negligence. According to Mr Poh, UOB owed a duty of care to him “to act with reasonable care, or ordinary care and skill, in handling remittance monies and to protect such monies from pure economic loss. This duty arose when [Mr Poh] remitted monies to the PixelTrade Account, and [UOB] processed and handled such remittances”.⁸ He says that UOB breached that duty of care “in failing to take reasonable care ... to ensure that its clients’ monies, including [Mr Poh’s]

⁵ Statement of Claim para 16.

⁶ Statement of Claim paras 24(a)-24(b).

⁷ Statement of Claim paras 24(c)-24(d).

⁸ Statement of Claim para 24(e).

monies, were properly and adequately protected, or ... to ensure that its clients' monies might not be misappropriated or entirely lost, as in this instance.”⁹

25 Mr Poh does not assert a claim in contract on the basis that UOB guaranteed the return of any money invested in PixelTrade, even though that was the subject of the 4th Representation. Mr Poh never called upon UOB to honour any such guarantee.

The evidence

The shift in Mr Poh's case at trial

26 None of the Representations was in writing or evidenced in writing. The contemporaneous WhatsApp messages between Mr Poh and Mr Wong do not refer to any of the Representations. Mr Poh's case thus rested on his own assertion that the Representations had been made,¹⁰ which Mr Wong denied.

27 There was, however, a sea change in Mr Poh's case between what was pleaded and stated in his affidavit of evidence-in-chief (“AEIC”), and what was advanced in his opening statement and at trial.

28 Mr Poh's pleaded case (which he sought to support in his AEIC) was that Mr Wong had made the 1st Representation that there was a UOB-approved PixelTrade investment product.

⁹ Statement of Claim para 24(f).

¹⁰ Mr Wong's AEIC para 45; Notes of Evidence (“NE”), 13 August 2020, p 77 line 22 to p 78 line 27.

29 In his opening statement and at trial, however, this appeared to shift to an allegation that Mr Wong had not corrected Mr Poh's mistaken belief that his PixelTrade investment was UOB-approved.

30 Mr Poh's opening statement states at paras 22–23:

Mr Wong made various representations in relation to the PixelTrade Product which led [Mr Poh] to believe that the PixelTrade Product was [UOB's] approved investment product.
...

If the PixelTrade Product was not [UOB's] approved investment product, Mr Wong neglected and failed to inform [Mr Poh] of the same, whether in writing or otherwise.

[emphasis added]

31 The assertion that Mr Wong neglected or failed to correct Mr Poh's belief that his PixelTrade investment was UOB-approved has not been pleaded. Moreover, it is an allegation of negligence, rather than of fraud.

32 The line of cross-examination taken by Mr Poh's counsel with Mr Wong made the shift in Mr Poh's case even more obvious:¹¹

Q ... essentially, he had thought it was a UOB-approved investment because you'd never mentioned otherwise ...

33 The shift was complete: instead of saying that Mr Wong had fraudulently represented that there was a UOB-approved PixelTrade investment product, Mr Poh was instead saying that that was what he had believed, and that Mr Wong did not correct that mistaken belief. Mr Poh thus appeared to have abandoned his allegation that Mr Wong had fraudulently made the 1st Representation, even though that was the lynchpin of his pleaded allegation of

¹¹ NE, 14 August 2020, p 34 lines 1-2.

fraud. Be that as it may, I will go on to consider whether Mr Poh's pleaded allegation of fraud is made out on the evidence.

The UOB and PixelTrade documents

34 Mr Poh cited the case of *Naughty G Pte Ltd v Fortune Marketing Pte Ltd* [2018] 5 SLR 1208 for the proposition (at [57]) that in determining what had been said orally, the court will consider the relevant documentary evidence and the contemporaneous conduct of the parties; indeed, where possible, the court should look first at the relevant documentary evidence.¹²

35 This is ironic, for the relevant documentary evidence and the contemporaneous conduct of the parties do not support Mr Poh's case. Indeed, Mr Poh's case is contradicted by the documents which he received from UOB and PixelTrade, all of which he claimed he did not read even though he had signed them and returned the signed copies to UOB and PixelTrade.

36 No doubt anticipating that these documents could pose a problem for Mr Poh's case, counsel for Mr Poh said, in his opening statement, that:¹³

Insofar as [Mr Poh] may have signed documents that were contrary to what had been represented to him, and what he consequently understood of the investments, [Mr Poh] intends to amend the Statement of Claim so as to plead *non est factum*.

37 However, Mr Poh never did amend his statement of claim to plead *non est factum*. In any event, such a plea would have failed. *Non est factum* (literally, "it was not done") is an exception to the general rule that a person is bound by a contractual document he signed, even if he did not fully understand its terms.

¹² Plaintiff's Closing Submissions paras 38-40.

¹³ Plaintiff's Opening Statement para 24.

For *non est factum* to be made out, two requirements need to be established: (a) there must be a radical difference between what was signed and what was thought to be signed; and (b) the person who signed the document must prove that he took care in signing it, *ie*, he must not have been negligent: *Mahidon Nichiar bte Mohd Ali v Dawood Sultan Kamaldin* [2015] 5 SLR 62 at [119].

38 Here, Mr Poh fully knew that what he had received from UOB and PixelTrade were documents relating to the investments he was making. He did not say he thought they were some radically different documents. In any event, if he did not read the documents, he was clearly negligent in “blindly” investing hundreds of thousands of dollars.

39 Mr Poh says that if he knew the contents of the documents, he would not have signed them. The short answer to that is: Mr Poh should have read the documents, and if he did not agree with the contents, he should not have signed them. Indeed, had Mr Poh read the documents, he might not have made the PixelTrade investment.

The UOB documents

40 Mr Poh purchased bonds through UOB in February 2017, twice in April 2017 and in October 2017; prior to each purchase, he signed a My Wealth Planner (“MWP”) form. He also signed an “Understanding Your Investment Decision” document and a risk warning statement on each of those occasions, save only for his third bond purchase (just four days after his second bond purchase).

41 Mr Poh acknowledged in his AEIC¹⁴ that he had been told by Mr Wong that he had to sign documents each time he purchased bonds, and that he had done so. But he said he did not read any of the documents.

42 The MWP forms contradicted Mr Poh’s claim that he would only make investments where the amount invested was not at risk. The forms stated that his risk profile was moderate to high:

(a) 10 February 2017: “Current Risk Profile: MODERATE”, “Generally seeks higher potential returns in investments. Willing to accept higher level of risk and potential losses.”¹⁵

(b) 24 April 2017 and 28 April 2017: “Risk Score: 75.0”, “I want to achieve high levels of capital growth. I am comfortable with taking high levels of fluctuation to the value of my investments.”¹⁶

(c) 4 October 2017: “Risk Score: 94.0”, “I want to maximize my return. I am comfortable with taking significant levels of fluctuation to the value of my investments, including the possibility of losing more than my initial investments.”¹⁷

43 The MWP forms also carried investment risk warnings. They reflected Mr Poh’s loss tolerance as: “I am comfortable to lose more than 30%” of the amount invested. That was the highest risk level of the five options, the lowest being “up to 5%”.

¹⁴ Mr Poh’s AEIC para 53.

¹⁵ Agreed Bundle of Documents vol 1 (“1ABD”) p 332.

¹⁶ 1ABD366 and 1ABD398.

¹⁷ 1ABD442.

44 The forms warned Mr Poh that he might suffer, among other things, “[p]otential loss of principal due to poor market or investment performance” and “[p]otential loss of principal and/or returns in the event of any defaults by the product issuer”. Mr Poh should thus have appreciated that investments made by him through UOB carried risks, and that even the bonds he was investing in were subject to the risk of default by the financial institutions which issued them. They were not risk-free.

45 In a section on “Investment Products: Risk to Your Investment Capital”, Mr Poh was told: “Principal is not guaranteed; except for structured deposits, where the principal amount of structured deposits is guaranteed by UOB upon maturity.” Mr Poh should thus have known that UOB did not guarantee his investments. The only investments UOB guaranteed were structured deposits. Mr Poh’s PixelTrade investment, however, was not a structured deposit, nor did he say he thought it was.

46 Each MWP form had a customer declaration, spelling out what it meant for Mr Poh to sign the form and when he ought *not* to sign the form:

(a) “I confirm that I have read, understood and agreed to the points listed above, and also confirm that I possess adequate disposable funds to purchase my investment products.”

(b) “I confirm that my decision to invest in each investment product is based on my thorough understanding of the respective written documents entered into between UOB and me in relation to the respective investment products.”

(c) “**Note:** Do NOT sign on this form if the UOB adviser has not shown and explained to you applicable documents such as My Wealth

Planner, Product Prospectus, Product Highlight Sheet, Application form, Product Summary, Term Sheet/Information Sheet and other offer documents.” [emphasis in original]

47 The “Understanding Your Investment Decision” documents also carried similar warnings, and a similar customer declaration was signed by Mr Poh:

(a) “Credit & Default Risks”: “In an event of default, the principal amount at maturity and/or any coupon amount may not be payable, whether the Security is investment grade or non-investment grade.”

(b) “Please do **NOT** sign the declaration below if you do not understand the contents in this form. We recommend that you seek further clarification from your UOB adviser to fully understand the Securities before you make the decision to purchase the Securities.” [emphasis in original]

(c) “Customer Declaration” – “I/We confirm that I/we have read, understood and agree to the contents in this form, and also confirm that I/we possess adequate disposable funds to purchase the Securities”; furthermore, “I/We confirm that my/our decision to invest in each of the securities is based on my/our thorough understanding of the respective written documents entered into between United Overseas Bank Limited and me/us in relation to the respective Securities”.

48 The risk warning statement for overseas-listed investment products contained this risk warning:

An overseas-listed investment product is subject to the laws and regulations of the jurisdiction it is listed in. Before you trade in an overseas-listed investment product or authorise someone else to trade for you, you should be aware of:

- The level of investor protection and safeguards that you are afforded in the relevant foreign jurisdiction as the overseas-listed investment product would operate under a different regulatory regime.

...

- The counterparty and correspondent broker risks that you are exposed to.

...

These and other risks may affect the value of your investment. You should not invest in the product if you do not understand or are not comfortable with such risks.

49 Mr Poh should have known from this that the foreign company he was transferring monies to (*ie*, PixelTrade (UK) Ltd) might not be regulated by the Singaporean authorities.

The PixelTrade documents

50 Although Mr Poh received and signed various UOB documents in relation to the bonds that he purchased through UOB, he did not receive or sign any UOB documents concerning his investment in PixelTrade. He only signed bank transfer forms to authorise the remittances to PixelTrade.

51 This contrast should have alerted Mr Poh to the fact that he was not investing in PixelTrade through UOB, especially when, on the day he made the first transfer to PixelTrade, he also made his fourth bond investment through UOB – he received and signed UOB documents relating to the bond investment, as he had done for his first three bond investments.

52 In relation to his PixelTrade investment, Mr Poh received documents from PixelTrade, not UOB. He dealt directly with PixelTrade, as evidenced by the following:

- (a) He submitted information to PixelTrade to open an account, including photographs of his National Registration Identity Card.¹⁸
- (b) He received e-mails from PixelTrade.¹⁹
- (c) He signed a limited power of attorney (“LPOA”).²⁰
- (d) He received monthly trade reports from PixelTrade.²¹

53 Indeed, Mr Poh’s dealings with PixelTrade predated his first transfer of money to PixelTrade in October 2017. By then, he had already opened an account with PixelTrade, signed the LPOA, and received correspondence from PixelTrade.

54 Mr Poh said in his AEIC that his signature on the LPOA could only have been obtained on 5 October 2017, when he met Mr Wong at UOB’s Northpoint Yishun branch to sign various documents. This was plainly incorrect: Mr Poh had already received a copy of the LPOA (signed by him) by e-mail from PixelTrade on 15 September 2017.²²

55 Confronted with this on the stand, Mr Poh then changed his evidence to say that he had signed the LPOA when he met Mr Wong on 11 September

¹⁸ Defendant’s Bundle of Documents (“DBD”) p 2.

¹⁹ DBD6, DBD8 and DBD12.

²⁰ DBD11.

²¹ DBD157-159.

²² DBD8; NE, 12 August 2020, p 45 line 28 to p 47 line 13.

2017.²³ Mr Wong, however, testified that he had not seen the LPOA before.²⁴ If in fact Mr Poh had signed the LPOA when he met Mr Wong in September 2017 (which was when, or by when, Mr Wong had allegedly made the 1st to 6th Representations to him), he would have remembered that those two events went together. Instead, he first sought to link the signing of the LPOA to the transfer of money in October 2017, only for this to be contradicted by the documentary evidence. I accept Mr Wong’s evidence over Mr Poh’s, and find that Mr Wong was not involved in Mr Poh’s signing the LPOA in favour of PixelTrade.

56 PixelTrade’s e-mail dated 15 September 2017 described PixelTrade as “your access to the world’s leading forex liquidity network”.²⁵ The LPOA which Mr Poh signed was not a UOB document; it was a PixelTrade document. It authorised PixelTrade to trade in foreign exchange on Mr Poh’s behalf. It contained, amongst other things, the following statement: “There will be a hard stop placed by the trading agent/software on the account to avoid draw-down of more than ____% of client’s equity”.²⁶ As that was left blank, there was no “stop loss”, *ie*, limit on potential loss in respect of the money Mr Poh had transferred to PixelTrade.

57 The PixelTrade documents Mr Poh received said nothing about PixelTrade loaning money to institutions (which is what Mr Poh says Mr Wong had represented by the 2nd Representation). Then again, PixelTrade may well have loaned money to institutions – Mr Poh never led any evidence as to what

²³ NE, 12 August 2020, p 47 lines 14-15.

²⁴ NE, 13 August 2020, p 73 lines 9-12.

²⁵ DBD8.

²⁶ DBD15.

business PixelTrade was in – but the LPOA authorised PixelTrade to trade in foreign exchange on his behalf, rather than to lend money to third parties. If Mr Poh had read the PixelTrade documents, he would have had a better idea of what he was investing in.

58 PixelTrade’s e-mail of 15 September 2017 provided Mr Poh with PixelTrade’s bank details²⁷ – the same details that Mr Poh used to transfer funds to PixelTrade in October 2017 and again in December 2017.

59 Mr Poh received trade confirmations for his bond purchases²⁸ but did not receive anything from UOB in relation to his PixelTrade investment. His PixelTrade investment did not feature in the monthly statements he received from UOB.²⁹ He received foreign exchange trade reports from PixelTrade³⁰ rather than cash advice from UOB for coupon payments on bonds³¹ and his returns from PixelTrade’s activities were credited to his account with PixelTrade,³² not to his account with UOB.³³ Mr Wong updated Mr Poh, by way of WhatsApp messages, on Mr Poh’s coupon payments for the bonds he had purchased through UOB; Mr Wong did not do so for Mr Poh’s returns on his investment with PixelTrade. Such information was communicated by PixelTrade directly to Mr Poh.

²⁷ DBD8-9.

²⁸ 1ABD121 and 1ABD124-125.

²⁹ 1ABD66.

³⁰ DBD6.

³¹ 1ABD27.

³² 2ABD158.

³³ 2ABD13.

60 Mr Poh’s direct dealings with PixelTrade show that he knew he was not investing through UOB.

Mr Poh’s attempts to recover his investment in PixelTrade

61 When Mr Poh became concerned about the recoverability of his PixelTrade investment, he sought first to resolve it with PixelTrade. He did not approach UOB until later on, and never asked UOB to make good any supposed guarantee to return his money.

Closure of PixelTrade’s UOB account

62 In an e-mail of 22 June 2018 from PixelTrade,³⁴ Mr Poh was informed that UOB had closed PixelTrade’s account with the bank. He did not raise this with UOB. One would expect him to have done so, if in fact he believed that his investment in PixelTrade was UOB-approved and that the money he had transferred to Pixeltrade was guaranteed by UOB. Instead, he asked Mr Wong to arrange a meeting with representatives of PixelTrade; that meeting took place on 28 August 2018.

August 2018 meeting with Mr Wong and PixelTrade representatives

63 At the meeting on 28 August 2018 (which Mr Poh recorded), Mr Poh did not mention any of the Representations that he now sues UOB for. What he said instead was:

(a) to Mr Wong: “You are working for UOB. People assume whatever you do, you should be represent [*sic*] UOB”³⁵; and

³⁴ DBD28.

³⁵ 2ABD212.

(b) to PixelTrade’s representatives: “... he represent UOB at that time. He did not explain to me about [*sic*] this thing is not ... is not a deal that is under UOB”.³⁶

64 If in fact Mr Wong had represented to Mr Poh that his investment in PixelTrade was UOB-guaranteed, or at least UOB-approved, Mr Poh would have said so – at least to Mr Wong. But Mr Poh did not say so. What Mr Poh said instead is that because Mr Wong worked for UOB, and because they had spoken about PixelTrade, Mr Poh had *assumed* that he was investing in a UOB-approved PixelTrade investment product, and Mr Wong did not tell him otherwise.

65 Mr Wong is recorded as saying that he understood the PixelTrade investment was “capital-protected” by PixelTrade itself. In response, Mr Poh did not say that Mr Wong had represented to him that UOB was guaranteeing investments into PixelTrade:³⁷

[Mr Wong]: This one is capital-protected.

[Mr Poh]: Where the money?

[Mr Wong]: That’s why right now, right ...

[Mr Poh]: Who protect? Who protect the capital?

[Mr Wong]: By the ... by the company *lor*.

66 Mr Poh’s new UOB relationship manager (“Mr Goh”) informed him that his investment in PixelTrade was not one of the approved investments sold by UOB. Yet, even then, he did not confront UOB about this. He did not even tell

³⁶ 2ABD215.

³⁷ 2ABD211.

Mr Goh that Mr Wong had defrauded him. Instead, Mr Poh continued communicating with PixelTrade’s representatives.³⁸

October 2018 WhatsApp chat between Mr Poh and Mr Wong

67 On 23 October 2018, Mr Poh finally accused Mr Wong of deceiving him. Their WhatsApp chat reads:³⁹

[23/10/18, 23:25:32] Andy Poh: You have no idea and get me into this

[23/10/18, 23:26:47] Andy Poh: Deceive me is a UOB approve fund

[23/10/18, 23:26:57] Ashley Wong Xian Wei Xianwei: Mr poh I nv deceive you

[23/10/18, 23:27:07] Andy Poh: I told you from day one

[23/10/18, 23:26:57] Ashley Wong Xian Wei Xianwei: I alr told you right from the start

[23/10/18, 23:27:20] Andy Poh: I only invest UOB approved fund

...

[23/10/18, 23:34:22] Andy Poh: You tell me they take money and loan to MNC etc etc , this a trading company and trade all FX commodities etc , how to guarantee my fund without risk ?

...

[23/10/18, 23:38:52] Ashley Wong Xian Wei Xianwei: Mr poh, no matter I'll do everything I can in my power to get back the funds for you

68 The WhatsApp chat shows that when Mr Poh accused Mr Wong of deceiving him into thinking that his investment in PixelTrade was UOB-approved, Mr Wong promptly denied any such deception.

³⁸ 1ABD143 and 1ABD177.

³⁹ 1ABD22.

69 Moreover, Mr Poh did not accuse Mr Wong of having represented that UOB guaranteed the return of the money he had invested in PixelTrade; instead, when Mr Poh said “how to guarantee my fund without risk”, he was referring to the nature of PixelTrade’s business and how that was inconsistent with PixelTrade being able to guarantee his funds without risk. If in fact Mr Poh believed that UOB guaranteed his investment in PixelTrade, the nature of PixelTrade’s business would be of little consequence, since he could simply get his money back from UOB.

70 In this context, an earlier WhatsApp chat in May 2018 is also telling. Mr Poh messaged Mr Wong about a Channel News Asia report, titled: “Hyflux applies for court supervision to reorganise liabilities”. Mr Poh commented, “This is why bond other than Bank and government is scary.”⁴⁰ This shows that Mr Poh knew that bond investments carried the risk of default by the issuer; they were not risk-free. Moreover, if Mr Poh truly believed that all his investments made through UOB (or with funds from a UOB bank account) were guaranteed by UOB, he would not have made such a comment. Mr Poh was quite aware that investments generally carried risks and did not have a safety net in the form of a guarantee from a bank.

Mr Poh’s police report

71 On 26 October 2018, Mr Poh made a police report at the Commercial Affairs Department. In his report, he did not say that Mr Wong had deceived him, or that Mr Wong had represented that his investment in Pixeltrade was UOB-approved or UOB-guaranteed. If Mr Wong had defrauded him, Mr Poh would surely have told the police that. Instead, he said: “[Mr Wong] told me

⁴⁰ 1ABD15.

that there is no guaranteed promised return, but according to the company's 7 years track record, investors can make on average 1% every month from the investment. The capital is guaranteed 100%. ... I can make a request to withdraw my investment anytime and I will get back my full capital by the end of next month.”⁴¹ In that context, the statement “[t]he capital is guaranteed 100%” was a reference to Mr Poh expecting to get his money back from PixelTrade; it was not a reference to him expecting UOB to guarantee what he had invested in PixelTrade.

72 Mr Poh's follow-up correspondence with the police was focused on PixelTrade rather than on Mr Wong or UOB.⁴² Indeed, Mr Wong had encouraged Mr Poh to make a police report.⁴³ He was most unlikely to have done so if he had defrauded Mr Poh into making the investment in Pixeltrade.

Mr Poh's correspondence with UOB

73 Mr Poh finally raised the matter with UOB on 3 November 2018, by writing to UOB's Deputy Chairman and Chief Executive Officer, Mr Wee Ee Cheong:⁴⁴

Allow me to write to you for your urgent attention in the recovering of my investment worth US\$500,000, under the act of your employee.

...

As a non-sophisticated investor, I only invest in bonds or investment that has high capital protection and/or under the advise [*sic*] of your relationship manager. My risk appetite and

⁴¹ 2ABD219-221.

⁴² 1ABD217-221.

⁴³ 1ABD19.

⁴⁴ Mr Poh's AEIC at pp 641-642.

profile has always been maintained with UOB's relationship manager.

...

Under the impression and trust that this is UOB's investment coupled with your employee's aggressive selling tactics, I invested US\$200,000 on 5 October 2017. I transferred US\$200,000 over the counter at UOB North Point Yishun branch to ... (UOB PixelTrade (UK) Limited) as instructed.

...

Only in August 2018, I received an email from UOB sharing that [Mr Wong] is leaving UOB. A new relationship manager (Sebastian Goh) then contacted me. Following discussion with him, I was told that PixelTrade is not an authorized UOB investment portfolio.

...

My decision to make the investment is clearly make [sic] on the basis that this is with UOB and an assigned UOB relationship manager.

I believe this is a serious matter that warrants your urgent attention and that you will find a way to return back immediately my hard-earned US\$500,000 with UOB.

...

74 Mr Poh's letter does not mention any of the Representations – he merely refers to his “impression and trust that this is UOB's investment”. If Mr Wong had defrauded him, Mr Poh would have said so, but he did not. In particular, if Mr Wong had represented that Mr Poh's investment in PixelTrade was guaranteed by UOB, Mr Poh would have mentioned that, but he did not. He did not demand that UOB honour such a guarantee. Instead, Mr Poh's position was that he had thought his investment in PixelTrade was UOB-approved because he was dealing with a UOB relationship manager. That is not the same as his pleaded case that Mr Wong had fraudulently made the Representations to him. For completeness, I do not find that Mr Wong had, by his conduct, led Mr Poh to believe that any potential investments they discussed were all UOB-approved, let alone guaranteed by UOB.

75 Mr Poh’s assertion in his letter – that he would only invest in bonds or investments that had high capital protection and/or only invest under the advice of his relationship manager – is not what he now claims: that he was unwilling to take *any* risk of loss of the principal sums he invested, and that he believed that UOB guaranteed all his investments.

76 On 15 November 2018, UOB replied through one “Mr Yong”, the team leader for Mr Poh’s new relationship manager (*ie*, Mr Goh). The letter referred to Mr Poh’s “compensation request” and asked him to inform UOB when the case had been concluded by the police. It also asked for a copy of the police report and related documents for UOB to investigate internally.

77 Some months passed before Mr Poh e-mailed Mr Yong on 3 April 2019, asking to meet. Mr Poh said:⁴⁵

I had never been involved in any risk financial instrumental investment, not even stock and share.

...

And I had repeatedly instructed your banker that I’m not a sophisticated investor, and that I would only invest in capital guaranteed instrument, because the money is my retirement fund.

78 This time, Mr Poh claimed that he had informed Mr Wong that he would only invest in capital-guaranteed instruments. But even then, he did not say that Mr Wong had represented to him that his investment in PixelTrade was UOB-approved or UOB-guaranteed.

⁴⁵

1ABD238-239.

Mr Poh's meeting with UOB representatives, and further correspondence

79 On 15 April 2019, Mr Poh met with UOB's Mr Yong and his colleagues, Mr Beh and Mr Tham.

80 Mr Poh says he told the UOB representatives about the Representations, but the UOB representatives say this did not happen. In his AEIC, Mr Poh says that at that meeting, he asked if UOB was going to accept liability for his loss of US\$500,000. The UOB representatives deny that he had asked such a question. It is curious that Mr Poh would ask if UOB was going to accept liability for his *loss*, if Mr Wong had represented to him that his investment was guaranteed by UOB. Had Mr Wong made that representation, one would expect Mr Poh to simply demand that UOB honour that guarantee, rather than to talk in terms of liability for loss.

81 The fact of the matter is that Mr Poh always knew that there was no such guarantee from UOB. This explains why Mr Poh did not bring a contractual claim against UOB based on such a guarantee; instead, he brought a claim against UOB on the basis of vicarious liability for Mr Wong's fraud.

82 The UOB representatives say that, at the meeting, Mr Poh had admitted or acknowledged that he was aware that his investment in PixelTrade was not a product of UOB nor approved by UOB. Mr Poh denies having said that he had known this at the time of the investment, thereby implying that the UOB representatives had misunderstood him.

83 Mr Poh questions the evidence of Mr Beh, Mr Tham and Mr Yong, on the basis that their AEICs about the meeting are couched in the same terms. I do not agree that the UOB representatives' evidence should be faulted on this

account: they were at the same meeting, and moreover, they had a discussion among themselves after Mr Poh left. The UOB representatives also elaborated on the meeting in their oral testimony. According to Mr Beh, not once did Mr Poh say at the meeting that he thought the PixelTrade investment was a UOB product. If Mr Poh had said that, then there would have been something for Mr Beh to follow up on. But from what was said at the meeting, Mr Beh's impression was that the case was closed, as he felt that UOB was totally not responsible. The fact that Mr Poh had met with PixelTrade's representatives instead of going straight to UOB indicated that he was well aware that his PixelTrade investment did not form part of his investment portfolio with UOB.⁴⁶ At trial, Mr Beh said that "when Tham arranged for the meeting for me to meet [Mr Poh], actually it was his chance to tell me what it is about because I would – I can decide whether he gets paid or not. ... But there was no claim. He was not claiming from us." Mr Tham similarly said in his oral testimony that Mr Poh had stated that he was aware that the PixelTrade investment was not a UOB product, and that Mr Poh did not bring up the matter of compensation at the meeting.⁴⁷

84 I accept the UOB representatives' evidence, in their oral testimony (as highlighted above) and in their AEICs, about what transpired at the meeting:⁴⁸

In fact, during the Meeting, [Mr Poh]:

- a. admitted and acknowledged that he was aware that [UOB] did not have any investment product known as PixelTrade nor was PixelTrade an investment product approved by [UOB]. In this regard, [Mr Poh] said something to the effect of "*I got to know of PixelTrade*

⁴⁶ NE, 14 August 2020, p 71 lines 4-19.

⁴⁷ NE, 14 August 2020, p 117 lines 6-30, p 118 lines 24-29 and p 124 lines 1-8.

⁴⁸ Mr Yong's AEIC para 17; Mr Beh's AEIC para 10; Mr Tham's AEIC para 10.

through [Mr Wong] but it was very stupid of me, I know it is not by UOB”;

- b. admitted and acknowledged that he had made over the counter transfers in the sums of USD200,000.00 and USD300,000.00 on 5 October 2017 and 16 December 2017 respectively from his account maintained with [UOB] to PixelTrade’s bank account;
- c. said something to the effect of “*I can’t believe that I could fall for this scam, I am in the IT security line*”; and
- d. said something to the effect of “*I am trying all ways to recover my money*” and he explained that he did not come to [UOB] sooner as he was trying to resolve the matter with PixelTrade directly.

[emphasis in original]

85 On 23 May 2019, Mr Poh e-mailed Mr Yong. That e-mail does not mention any of the Representations. Instead, it reads:⁴⁹

My decision to invest in the Pixel Trade was solely based on the fact that [Mr Wong] was the RM who UOB Privilage [sic] Banking assigned to me.

Any investment advice from the RM, the bank must have done necessary evaluation, risk assessment, before it can recommended [sic] to the customer.

The period [Mr Wong] was assigned to me, he had done many of my Investment, those which are approved only by UOB.

The reason I selected UOB, because UOB is one of the most trusted bank in singapore and also the region.

My trust that the Bank in Singapore, Singapore as the Regional Financial Hub, should protect individuals like myself through their policies, governance, to ensure such issue should not had happen.

How could me or any customer/investor can have trust to UOB or Singapore as the Financial Hub in the future that such rouge [sic] behaviour can happen in an established Bank like UOB?

Pardon me for my frustrations, I hope to get this issue resolve asap, and get on with my normal life.

⁴⁹

1ABD222.

Hope to hear from your [*sic*] or your bank soon on the solution.

86 That e-mail is telling. Mr Poh did not say his decision to invest in PixelTrade was based on the Representations by Mr Wong; instead, he said his decision was *solely* based on Mr Wong being a UOB relationship manager. The e-mail’s silence on the Representations is also inconsistent with Mr Poh’s claim that he had mentioned the Representations at the April 2019 meeting. I do not believe he had.

87 On 10 June 2019, UOB sent Mr Poh a letter.⁵⁰ In it, UOB referred to Mr Poh having made a compensation request and said that the bank had investigated the matter. UOB noted that the two fund transfers had been processed in Mr Poh’s presence, with the branch operations officer having sighted his transactional vouchers before processing the transfers; moreover, the signature on the fund transfer forms matched the bank’s record of his specimen signature. Consequently, UOB informed Mr Poh that it was unable to accede to his compensation request on the amounts transferred.

Mr Poh’s letter of demand, further correspondence, and the present suit

88 On 12 June 2019, Mr Poh’s lawyers sent UOB a letter of demand. In it, they said that Mr Poh had been induced to invest in PixelTrade by three representations made by Mr Wong:

- a. a UOB approved investment product was a product called PixelTrade (the “**PixelTrade Product**”);
- b. the PixelTrade Product had, over the preceding 7 years, garnered handsome yields and/or returns on investment for UOB’s customers; and

⁵⁰ 1ABD245.

- c. UOB was then actively recommending the PixelTrade Product to UOB's privilege banking customers.

[emphasis in original]

89 Representation (a) was referred to in Mr Poh's WhatsApp chat with Mr Wong in October 2018 (and denied by Mr Wong), but representations (b) and (c) appear for the first time in this letter of demand. The other four Representations in the statement of claim were still conspicuously missing. In particular, the 4th Representation that UOB was guaranteeing investments in PixelTrade was not in the letter of demand. If, as Mr Poh claims, he had mentioned all seven Representations at the meeting with the UOB officers on 15 April 2019, why were only three of the seven Representations mentioned in the letter of demand sent approximately two months later?

90 On 24 June 2019, UOB denied liability through its lawyers. Specifically, UOB's lawyers said that it was within Mr Poh's personal knowledge at all material times that his investment in PixelTrade was neither a product of UOB nor approved by UOB; further, at the meeting on 15 April 2019, Mr Poh had admitted or acknowledged that he had been aware of the same, at the time he instructed the transfers to PixelTrade.

91 Mr Poh then instructed new lawyers who replied UOB on 26 July 2019 to say that Mr Poh found UOB's position regrettable, that he denied all allegations made against him by UOB, and that he would be suing UOB. Significantly, Mr Poh did not add to the three Representations stated in his letter of demand.

92 On 29 July 2019, Mr Poh sued UOB.

Fraud

93 I find that Mr Wong had not made the Representations to Mr Poh, and that Mr Poh did not invest in PixelTrade in reliance on any such Representations from Mr Wong. I find that Mr Poh knew at all material times that there was no UOB-approved PixelTrade investment product, that his investment in PixelTrade was not risk-free, and that his investment in PixelTrade was not guaranteed by UOB.

94 In this regard, I accept Mr Wong’s evidence that he had told Mr Poh that PixelTrade was not UOB-approved.⁵¹

95 I also accept Mr Wong’s evidence that Mr Poh knew that even bonds issued by banks or financial institutions were not risk-free. Mr Poh had mentioned during a discussion that the 2008–2009 crisis was because of Lehman Brothers’ default on bonds; he therefore knew that banks or financial institutions had defaulted on bonds before.⁵² Indeed, Mr Poh went on to purchase ten more bonds from UOB, after he had been informed that his PixelTrade investment was not a UOB-approved investment product. Those ten bonds, like the first four he invested in, were neither risk-free nor guaranteed by UOB, but that did not deter him.

Vicarious liability

96 Even if Mr Wong had defrauded Mr Poh (which I find is not the case), it does not necessarily follow that UOB would be vicariously liable. As Belinda

⁵¹ NE, 13 August 2020, p 79 lines 8-31; NE, 14 August 2020, p 1 line 11 to p 2 line 10 and p 45 line 24 to p 46 line 8.

⁵² NE, 14 August 2020, p 48 lines 10-22.

Ang Saw Ean J said in *Ong Han Ling and another v American International Assurance Co Ltd and others* [2018] 5 SLR 549 at [160]:

Ultimately, vicarious liability should only be imposed where it is fair, just and reasonable to do so, having regards to the aims of effective victim compensation, deterrence of future harm, and in the light of the concept of enterprise risk. These aims should also be balanced against the competing public policy consideration militating against holding a person liable for another person's torts.

97 Given that Mr Poh's claims are thoroughly contradicted by the documents which he received from UOB, and which he signed and returned to UOB, it would not be fair, just and reasonable to hold UOB vicariously liable. By those documents, UOB represented to Mr Poh that it did not guarantee any investments other than structured deposits (which the PixelTrade investment was not), and that investments carried risks (at least the risk of default by the issuer). By signing and returning the documents, Mr Poh represented to UOB that he understood all of that. Further, the complete lack of any UOB documentation on Mr Poh's investment with PixelTrade, in contrast to the UOB documentation on the bonds that he had invested in through UOB, was a further sign to him that he was not investing in a UOB-approved PixelTrade investment product.

Negligence

98 Mr Poh's negligence claim is not made out. His remittances to PixelTrade were done in accordance with his instructions to UOB. UOB did not owe him any duty to ensure that he did not lose money by investing in PixelTrade. Customers transfer money out of their bank accounts for all sorts of reasons: to make a gift, to pay a debt, to purchase goods, for investment, *etc.* A bank must take care in carrying out a customer's remittance instructions; but it owes no duty to ensure that the customer does not suffer loss as a result of his

decision to remit the money. To take a simple example, if a customer remits money to buy gold, a bank is under no duty to check whether that is a good purchase or investment, let alone to reimburse the customer for any losses if the price of gold falls.

99 None of the UOB representatives was cross-examined about Mr Poh’s negligence claim. The furthest Mr Poh’s counsel went was to ask Mr Wong whether *he* had been negligent in talking to Mr Poh about PixelTrade, when it was not a UOB-approved investment.⁵³ When it was pointed out that this had not been pleaded, Mr Poh’s counsel said: “I appreciate that that is not plead[ed]” and “I don’t think that I need to pursue that point.”⁵⁴

100 Undeterred, Mr Poh submits that Mr Wong ought to have ensured that his investment in PixelTrade was, at the very least, an investment product approved by the Monetary Authority of Singapore (“MAS”). This was not pleaded, it was not put to Mr Wong, and Mr Poh led no evidence that the MAS approves investment products, let alone investments in foreign entities like PixelTrade (UK) Ltd. Further, Mr Poh had acknowledged in his letter of demand that it was only on 8 January 2018 (after Mr Poh’s two transfers to PixelTrade) that the MAS had issued an investor alert placing PixelTrade Technologies Pte Ltd and Pixel Group Holdings Pte Ltd on the MAS’s Investor Alert List.

Conclusion

101 For the above reasons, I dismiss the plaintiff’s claim with costs. I will hear parties further as to how those costs are to be dealt with.

⁵³ NE, 14 August 2020, p 40 lines 5-20; p 42 line 20 to p 43 line 1.

⁵⁴ NE, 14 August 2020, p 43 lines 20-21 and p 44 lines 3-4.

Andre Maniam
Judicial Commissioner

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Thangavelu (Trident Law Corporation) (instructed) for the plaintiff;
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