IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 284

Suit No 34 of 2017 (Summonses Nos 5512 and 5513 of 2019)

Between

Christopher Yun Hian Chen

… *Plaintiff*

And

(1) BHNV Online Ltd
(2) Dean Taylor
(3) Tom Williams
(4) Michael Cooper
(5) Ben Yitzhak Zur
(6) Gilad Tisona

… *Defendants*

GROUNDS OF DECISION

[Conflict of Laws] — [Choice of jurisdiction] — [Exclusive]
[Conflict of Laws] — [Natural forum]
[Civil Procedure] — [Service] — [Out of jurisdiction]
[Civil Procedure] — [Writ of summons]

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Chen Yun Hian Christopher
v
BHNV Online Ltd and others

[2020] SGHC 284

High Court — Suit No 34 of 2017 (Summonses Nos 5512 and 5513 of 2019)
Mavis Chionh Sze Chyi JC
16, 26, 29 June, 22 July, 6 October 2020

31 December 2020

Mavis Chionh Sze Chyi JC:

Introduction

1 The plaintiff commenced Suit No 34 of 2017 ("Suit 34") alleging that, *inter alia*, the defendants had conspired to defraud and injure him by unlawful means.[1] The nub of the plaintiff's allegation was that the defendants had acted in concert to manipulate his trading activities, misappropriate his money, and knowingly mislead him into thinking that he was trading in binary options when no such trading was in fact taking place.[2] The defendants' fraud purportedly induced the plaintiff to, *inter alia*, make various fund transfers totalling US$11.55m.[3]

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1 Statement of Claim ("SOC") (Amendment No. 2), para 59.

2 SOC (Amendment No. 2), paras 59–60.

3 SOC (Amendment No. 2), reliefs (3) and (5A).

2 The first, fifth and sixth defendants mounted various jurisdictional challenges in respect of the plaintiff's claims. In Summons No 5512 of 2019 ("SUM 5512"), the sixth defendant sought, *inter alia*, (a) a declaration that this court had no jurisdiction over him in respect of the plaintiff's action in Suit 34; (b) an order setting aside the writ as well as service thereof; and (c) a declaration that the writ had not been validly served. The first and fifth defendants sought substantially the same reliefs in Summons No 5513 of 2019 ("SUM 5513").

3 On 22 July 2020, I granted the sixth defendant's application in SUM 5512 as well as the first and fifth defendants' application in SUM 5513, save for the declarations sought regarding the validity of service as it was unnecessary for me to make a finding on that issue. As the plaintiff has appealed against my decision in both SUM 5512 and SUM 5513, I now set out the grounds of my decision.

Facts

The plaintiff's introduction to the Opteck platform

4 The plaintiff is a Singaporean surgeon.[4] The first defendant is a company incorporated in Belize; the fifth defendant, an Israeli citizen, is the founder and has been the sole registered shareholder of the first defendant since its incorporation.[5] The sixth defendant is also an Israeli national and the ultimate shareholder of a Belizean company known as CST Financial Services ("CST").[6]

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4 Affidavit of Christopher Yun Hian Chen dated 18 January 2017 ("CYHC's first affidavit"), para 2.

5 Affidavit of Ben Yitzhak Zur dated 31 October 2019 ("BYZ's first affidavit"), paras 1, 6 and 8.

6 Affidavit of Gilad Tisona dated 31 October 2019 ("GT's first affidavit"), para 19.

The second to fourth defendants are purportedly employees of the first and/or fifth defendants, but they have not been served with the writ to date.[7]

5 The plaintiff alleged that sometime in August 2013, a "pop-up" advertisement for Opteck.com appeared on his computer while he was surfing the internet. At the material time, Opteck.com was owned by BNet Online Limited ("BNet Online"). BNet Online is registered in England and the first defendant is its sole shareholder. According to the fifth defendant, BNet Online's role was to facilitate credit card payments on the Opteck trading platform.[8] The plaintiff clicked on the advertisement and was redirected to the Opteck.com website, which contained information on binary options trading.[9]

6 The website promised high returns with initial investment from as little as US$5,000. Tempted by the prospect of high investment returns and purportedly unaware that Opteck.com was not a registered trading platform in Singapore, the plaintiff submitted an online application and elected to make an initial deposit of US$5,000. It should be noted that contrary to the plaintiff's description of this US$5,000 deposit as "the lowest [possible] amount",[10] the fifth defendant's evidence was that the minimum deposit was in fact US$200.[11]

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7 SOC (Amendment No. 2), paras 4–7.

8 Affidavit of Ben Yitzhak Zur dated 26 March 2020 ("BYZ's fourth affidavit"), para 16.

9 SOC (Amendment No. 2), para 10; CYHC's first affidavit, para 7.

10 CYHC's first affidavit, paras 7–8.

11 BYZ's fourth affidavit, para 35 and p 161.

The signing of the Opteck Terms and Conditions (the "Contract")

7 Following his online application, the plaintiff received an e-mail on 29 August 2013 from Support Team Opteck Account Management containing the Contract for his e-signature.[12]

8 The salient portions of the Contract included:

(a) multiple cautions about the risks that binary options trading entailed, *eg*, that transactions on the Opteck platform were "high-risk financial activities" and that "the potential for losses [was] extremely high";[13]

(b) a disclaimer to the effect that it was the client's sole responsibility to independently establish the accuracy of any information provided by the company prior to making any investment decisions, that the client would be entirely liable for all transactions occurring in his account, and that the first defendant would never provide any form of financial advice to any of its clients;[14]

(c) a disclaimer to the effect that the provision of services on the Opteck platform was "on an 'as is' basis, without warranty, liability or representation of any kind whatsoever by the company" and that "the [first defendant], its directors, employees and associates [could] in no

12 CYHC's first affidavit, pp 27–33.

13 CYHC's first affidavit, p 32, "Risk Factors Disclosure Appendix".

14 CYHC's first affidavit, pp 27–33, cll 6 and 8.

way be held liable for any damages incurred … from the use, or inability to use the company's software";[15] and

(d) a clause which the first and fifth defendants argued was an exclusive jurisdiction clause (clause 33).[16] I address this clause in greater detail below at [42]–[60].

9 It was undisputed that the plaintiff e-signed the Contract. Upon receiving the requisite confirmation, he proceeded to deposit US$5,000 with Opteck[17] and was informed by Opteck via e-mail on 25 September 2013 that his trading account had been created.[18]

The events leading to the telegraphic transfers

10 On or around 10 September 2013, the second defendant introduced himself to the plaintiff and allegedly held himself out to be a senior broker employed or engaged by the first and/or fifth defendants.[19] The second defendant and the plaintiff kept in regular and close contact thereafter, with the former educating the latter on binary options trading and the Opteck platform.

11 The plaintiff and the first/fifth defendants provided significantly divergent accounts as to the plaintiff's familiarity with investments and his risk appetite. The plaintiff "categorically state[d] that Opteck was [his] first

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15 CYHC's first affidavit, pp 27–33, cll 29–30.

16 CYHC's first affidavit, pp 27–33, cl 33.

17 SOC (Amendment No. 2), paras 12–13; CYHC's first affidavit, paras 10–11.

18 CYHC's first affidavit, para 15.

19 SOC (Amendment No. 2), para 4.

exposure"[20] to binary options trading and endeavoured to portray himself as a babe in the woods about such matters:[21]

> Despite my best efforts, I never grasped much. Had it not been for the inducement, encouragement, salesmanship, persuasion, the patter, enticement and the presented expertise from [the second defendant] and his colleagues, I would never have ever traded binary options. I was bewildered by all the charts they were referring to. They were so deft. Soon enough, I was convinced that they were experts who [could] trade for me with a minimal risk of loss.

12 The plaintiff claimed that the second defendant "purported to act as [his] investment mentor and investment advisor". He even described his relationship with the second defendant as "very close and personal" and one in which the second defendant "exercised enormous influence" over him. At the second defendant's encouragement, the plaintiff utilised the TeamViewer software, which allowed the second defendant to remotely access and operate the plaintiff's personal computer.[22]

13 Over the next few weeks, the plaintiff's trust in the second defendant grew. The second defendant informed the plaintiff of live trading sessions that he had arranged between 15 and 17 October 2013. The plaintiff attended those sessions and was left awestruck at the second defendant's abilities. In all, the plaintiff attended 21 training sessions with the second defendant and a handful with the third defendant; the plaintiff recorded the training sessions so that he could review them at his leisure.[23] These training sessions solidified the

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20 Affidavit of Christopher Yun Hian Chen dated 4 February 2020 ("CYHC's seventh affidavit"), para 39.

21 CYHC's seventh affidavit, para 38.

22 SOC (Amendment No. 2), paras 14–16; CYHC's first affidavit, paras 12–13.

23 CYHC's first affidavit, paras 16–18.

plaintiff's confidence in the second defendant's expertise, particularly since the second defendant appeared able to forecast market movements and make winning trades, and professed to be a "specialist" who acted for high net worth clients and whose advice was highly sought after.[24] The second defendant allegedly made various representations to convince the plaintiff to have US$30–US$40m, or a minimum of US$10m, in his Opteck account. The second defendant also purportedly persuaded the plaintiff that binary options trading on Opteck was not especially risky.[25] The plaintiff claimed that, over time, the second defendant stopped guiding him on binary options trading and instead traded directly on his (*ie*, the plaintiff's) account. According to the plaintiff, he simply acquiesced to all of the second defendant's trading decisions on his account as he trusted the second defendant immensely.[26]

14 The first and fifth defendants, on the other hand, rejected the plaintiff's attempts to portray himself as a naïve and guileless first-time investor. Instead, they argued that the plaintiff was a "well-heeled investor who was hooked on high-risk trading in binary options".[27] They pointed to the plaintiff's admission that his experience with trading dated all the way back to 2005,[28] as well as his choice to make an initial deposit on the Opteck platform that was 25 times the minimum amount, despite being new to Opteck (see [6] above). In addition,

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24 CYHC's first affidavit, paras 19–20.

25 CYHC's first affidavit, para 19.

26 CYHC's first affidavit, paras 19(8) and 20.

27 First and fifth defendants' Written Submissions dated 11 June 2020 ("1DWS"), para 13.

28 CYHC's seventh affidavit, para 256.

they contended that the plaintiff's history of leveraging on his trades in stocks demonstrated his large risk appetite.[29]

15 The first and fifth defendants also asserted that the plaintiff's sizable and frequent trades on the Opteck platform showed that he was an almost compulsive trader undeterred by huge losses.[30] In an e-mail to the second defendant on 29 November 2013, the plaintiff stated that "[i]t was [his] intention to perform daily investments, Monday to Friday, [the second defendant's] time permitting, to capitalise on this total sum exceeding $10 million dollars. The money should not be sitting idle".[31] As an example of the plaintiff's willingness to take huge gambles, the first and fifth defendants cited the plaintiff's investment of US$18m in the span of an hour on 17 December 2013, which resulted in a net loss of US$12.14m.[32] That the plaintiff concurrently engaged in high-risk trades on other trading platforms while trading on the Opteck platform further indicated that he was anything but risk-averse.[33]

The telegraphic transfers

16 On 30 September 2013 and allegedly under the fourth defendant's encouragement, the plaintiff made a further deposit of US$45,000 by way of credit card transactions. The plaintiff was, however, startled when he suffered a

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29 1DWS, para 15; BYZ's fourth affidavit, para 33.

30 BYZ's fourth affidavit, p 168.

31 BYZ's fourth affidavit, p 165.

32 CYHC's seventh affidavit, paras 149 and 151.

33 BYZ's fourth affidavit, paras 53–59.

loss of US$37,000 – he demanded and obtained the return of the balance of US$13,000 (inclusive of his initial US$5,000 deposit) in his account.[34]

17 When the second defendant returned from an overseas conference, he apparently persuaded the plaintiff to allow him to return the plaintiff's account to profit. Convinced by the second defendant's expertise in binary options trading and his assurances of significant profit, the plaintiff agreed.[35] Between 10 October 2013 and 5 December 2013, the plaintiff made a total of five telegraphic transfers totalling US$11.55m to the first defendant's bank account with Volksbank Romania SA (the "Volksbank Account"),[36] of which the fifth defendant is the sole signatory.[37] The details of the telegraphic transfers are as follows:

	Date of telegraphic transfer	**Amount transferred (US$)**
First transfer	10 October 2013	50,000
Second transfer	7 November 2013	1m
Third transfer	20 November 2013	5m
Fourth transfer	29 November 2013	3.5m
Fifth transfer	5 December 2013	2m
		Total amount transferred: US$11.5m

34 SOC (Amendment No. 2), paras 18–19.

35 SOC (Amendment No. 2), paras 20 and 22.

36 SOC (Amendment No. 2), paras 20–38; CYHC's first affidavit, paras 21–28.

37 SOC (Amendment No. 2), para 9.

18 In effecting the telegraphic transfers, the plaintiff was purportedly motivated by the following factors:

(a) *The second defendant's apparent skill in binary options trading*: From 11 October 2013, the plaintiff attended intensive training sessions with the second defendant and occasionally with the third defendant. Those training sessions cemented the plaintiff's confidence in the second defendant's ability to successfully predict market movements and to make winning binary options trades.[38]

(b) *The second defendant's claims to have returned handsome profits to high net worth individuals*: The second defendant allegedly boasted that he had high net worth clients who had reaped considerable profits. For example, according to the plaintiff, the second defendant claimed to have helped the "President of Google in Poland" to make a profit of EUR$2.2m in a single trading session.[39]

(c) *The second defendant's success in investing the plaintiff's money*: Under the second defendant's guidance, the plaintiff invested US$70,000 on 13 November 2013 and accumulated a profit of US$31,000. The following day, the plaintiff once again heeded the second defendant's advice and invested US$60,000, which yielded a gain of US$20,800.[40] Having made substantial profits over the span of just two days, the plaintiff's confidence in the second defendant's

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38 SOC (Amendment No. 2), paras 21–22; CYHC's first affidavit, paras 22–23.

39 SOC (Amendment No. 2), paras 23 and 28.

40 SOC (Amendment No. 2), paras 25–27.

trading expertise was now unshakeable.[41] Between 18 November 2013 and 4 December 2013, the plaintiff made seven more investments allegedly at the second defendant's behest, with the sum of each investment more than tripling from US$105,000 to US$500,000.[42]

19 Additionally, around the time of the third telegraphic transfer, the plaintiff liquidated his investments in various equities (including LinkedIn shares). He claimed to have done so reluctantly as a result of the second and third defendants' cajoling, in order to fund his investments in binary options.[43] The liquidation of his LinkedIn shares allegedly caused him losses to the tune of US$1,326,239.85.[44]

The seizure of the plaintiff's moneys by the Romanian authorities

20 On 17 December 2013, the plaintiff made a series of ten trades totalling US$18m. Those trades were allegedly made pursuant to various misrepresentations by the second defendant, and the plaintiff noted several "glitches" on the Opteck website when making those trades.[45] Unfortunately, the plaintiff suffered heavy losses, and his Opteck trading account balance was substantially wiped out with just US$1,231,324 remaining.[46] The details of those trades are unimportant for present purposes – what is relevant is that the second

41 CYHC's first affidavit, para 25.

42 SOC (Amendment No. 2), paras 28–37.

43 SOC (Amendment No. 2), para 33.

44 SOC (Amendment No. 2), para 86(1).

45 CYHC's seventh affidavit, paras 148 and 150.

46 SOC (Amendment No. 2), paras 51–52.

defendant then arranged for the moneys remaining in the plaintiff's Opteck trading account to be remitted back to him.

21 The telegraphic transfers effected by the plaintiff on 29 November 2013 and 5 December 2013 were for sums of US$3.5m and US$2m respectively. Although the plaintiff had provided official bank confirmations to his account manager to confirm that the moneys had been transferred to the Volksbank Account, the first defendant still had not received the moneys after several days. Enquiries with Volksbank revealed that the bank was aware of the incoming transfers but needed to carry out some checks on the source of the moneys. Despite not having received the total sum of US$5.5m as of 9 December 2013, the first defendant credited the sums of US$3.5m and US$2m to the plaintiff's trading account ledger on 4 December 2013 and 9 December 2013 respectively, apparently in the belief that it would soon receive the moneys without any issue.

22 In order to be prepared to answer any questions that Volksbank might have about the moneys, the first defendant requested that the plaintiff provide documentary evidence of the source of his funds, which the plaintiff appeared to have done on 16 December 2013.[47] The documents provided by the plaintiff showed that his moneys had come from a regulated broker in the United States and that he had sufficient funds to conduct the transfers. On this basis, and out of goodwill, the first defendant executed a payment order for US$1,231,324 (*ie*, the balance in the plaintiff's Opteck account) to the plaintiff.[48] The plaintiff confirmed receipt of this sum.[49]

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47 BYZ's fourth affidavit, paras 98–99.

48 BYZ's fourth affidavit, para 102.

49 CYHC's seventh affidavit, para 162.

23 What transpired was that Volksbank apparently too the view that it had not obtained a satisfactory explanation for the source of the sum of US$5.5m, and it proceeded to report the transactions to the Romanian authorities. The Volksbank Account was then frozen pending investigations of suspected money laundering.[50] The sums of US$5.5m, US$5m (that the plaintiff had deposited by way of telegraphic transfer on 20 November 2013) and US$1.23m (that the first defendant had returned to the plaintiff) were frozen and seized by the Romanian authorities.[51] The first and fifth defendants said they only found out about the seizure of the plaintiff's moneys on 20 December 2013.[52]

24 Following the Romanian authorities' seizure of the moneys, the plaintiff and his solicitors filed numerous complaints and reports alleging that he was a victim of fraud.

(a) On 5 February 2014, the plaintiff filed a police report with the Commercial Affairs Department ("CAD") of the Singapore Police Force.[53] Allegations of fraud were made solely against the second defendant in the police report and the accompanying memo.

(b) On 22 July 2014, the plaintiff's solicitors filed a criminal complaint with the Romanian authorities against BNet Online and the first to third defendants for fraud/deception.[54]

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50 BYZ's first affidavit, para 16.

51 BYZ's fourth affidavit, para 106; CYHC's seventh affidavit, para 132.

52 BYZ's fourth affidavit, paras 103–104.

53 CYHC's first affidavit, pp 54–59.

54 CYHC's seventh affidavit, pp 421–494.

(c) On 2 October 2014, the plaintiff's solicitors sent a letter to the CAD in which they alleged that BNet Online and the first to fifth defendants had acted in concert to defraud the plaintiff.[55]

The sixth defendant's purchase of the first defendant's assets

25 Sometime in 2015, the sixth defendant was approached by the fifth defendant to purchase some of the first defendant's assets as the first defendant was experiencing financial difficulties.[56] On 2 April 2015, CST purchased some of the first defendant's assets through a corporate vehicular route (the "Asset Purchase").[57] As mentioned at [4] above, the sixth defendant is the ultimate shareholder of CST. In the discussions preceding the Asset Purchase, the sixth defendant learnt about the moneys in the Volksbank Account that had been frozen by the Romanian authorities (the "Frozen Moneys"). Among the first defendant's assets purchased by the sixth defendant were parts of the Opteck business but *not* the Frozen Moneys.[58] The sixth defendant contended that the Asset Purchase was his only involvement with the first defendant and that he was wholly uninvolved in the second to fifth defendants' dealings with the plaintiff in relation to the Opteck platform.[59]

26 On his part, the plaintiff alleged that the sixth defendant: (a) is "a substantial behind the scenes owner" of the first defendant; (b) was, at all material times, "an agent and/or representative" of the first defendant; and (c)

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55 CYHC's first affidavit, pp 61–64.

56 GT's first affidavit, para 20.

57 BYZ's fourth affidavit, para 142(3); affidavit of Gilad Tisona dated 26 March 2020 ("GT's third affidavit"), para 9.

58 GT's third affidavit, para 9.

59 GT's first affidavit, paras 9 and 20.

"became the substantial owner" of the first defendant around late August 2013 or early September 2013.[60] The sixth defendant contested these allegations and maintained that, at all material times, he had never been a shareholder of the first defendant or any entity owning shares in the first defendant.[61]

The present proceedings

Procedural history

27 Between 2016 and 2017, the plaintiff and the first/fifth defendants engaged in settlement talks which the plaintiff subsequently aborted.[62] The plaintiff commenced Suit 34 against the first to fifth defendants on 17 January 2017. In January 2017, the plaintiff sought and obtained leave to serve the writ and Statement of Claim ("SOC") on the first and fifth defendants in England. The plaintiff claimed to have effected service on the first and fifth defendants in London on 23 January 2017, while the fifth defendant was in London attending a meeting to resolve the present dispute.[63] Notwithstanding the plaintiff's commencement of Suit 34, the first and fifth defendants continued to engage the plaintiff in settlement talks in 2017 and 2018; and at one juncture, it appeared that the plaintiff was open to discontinuing Suit 34. However, the settlement negotiations fell through in late 2018.[64]

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60 SOC (Amendment No. 2), paras 8A and 62(4).

61 GT's first affidavit, para 18.

62 BYZ's fourth affidavit, paras 134–140.

63 BYZ's first affidavit, para 27.

64 Affidavit of Ben Yitzhak Zur dated 15 March 2020 ("BYZ's third affidavit"), paras 10 and 13.

28 On 4 April 2018,[65] the plaintiff applied for leave to join the sixth defendant as a defendant in Suit 34 and to amend his SOC to include allegations against the sixth defendant. This was more than a year after he had commenced Suit 34. The plaintiff obtained leave to serve process on the sixth defendant in Israel in July 2018, and claimed to have done so on 14 January 2019.

29 It was revealed for the first time in the plaintiff's affidavit dated 4 February 2020 that the plaintiff had in fact filed a "protective writ" in Belize against the first defendant.[66] The "protective writ" was filed on 13 December 2019,[67] purportedly to forestall potential issues of limitation under Belizean law,[68] and was served on the first defendant on 12 June 2020.[69]

The plaintiff's claims

30 The plaintiff's claims can be summarised as follows:

(a) *Unlawful means conspiracy*:[70] All or any two or more of the defendants conspired to defraud and injure the plaintiff by unlawful means. The conspiratorial acts included opening or operating the Volksbank Account to receive deposits from the plaintiff which were not for the *bona fide* purpose of trading, and appropriating the plaintiff's moneys on the pretext that he had incurred losses in binary options

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65 By way of Summons No 1571 of 2018 and Summons No 558 of 2018.

66 CYHC's seventh affidavit, para 206.

67 Affidavit of Christopher Yun Hian Chen dated 17 June 2020 ("CYHC's ninth affidavit"), para 7.1; transcript, 26 June 2020, 19:11–24 and 20:22–21:3.

68 Plaintiff's Supplementary Written Submissions dated 24 June 2020 ("PSWS"), paras 20–21.

69 CYHC's ninth affidavit, para 6.

70 SOC (Amendment No. 2), paras 59–63.

trading. Central to the plaintiff's allegation of fraud was his claim that Opteck was a fraudulent trading platform that displayed pre-determined data to create the illusion of trading in real time.[71] In furtherance of the conspiracy, all or any two or more of the defendants (among other things) manipulated the plaintiff's trading activities via the TeamViewer software on about 10 September 2013, made various misrepresentations that binary options trading was a low-risk activity and that the second defendant was a seasoned investor in binary options,[72] encouraged the plaintiff to make larger transfers to the Volksbank Account and to invest greater sums, and operated a dummy trading platform (*ie*, the Opteck platform) to cloak their misappropriation of the plaintiff's moneys. These acts had the foreseeable result of defrauding the plaintiff.

(b) *Breaches of contractual and/or fiduciary duties*: The defendants failed to exercise reasonable care and skill by advising the plaintiff to make a highly risky investment of some US$18m in binary options, and made undisclosed profits from the plaintiff's investments (which gave rise to a conflict of interests).[73]

(c) *Proprietary claim for moneys had and received*: The sum of US$11.55m transferred to the Volksbank Account is held by the first and/or fifth and/or sixth defendants on a constructive and/or resulting trust for the plaintiff's benefit and payable to him as moneys had and received.[74]

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71 SOC (Amendment No. 2), para 61; CYHC's seventh affidavit, p 422.

72 SOC (Amendment No. 2), para 78.

73 SOC (Amendment No. 2), paras 66–71.

74 SOC (Amendment No. 2), paras 64–65 and 72–77.

(d) *Misrepresentation and deceit*: The defendants, "acting by the [second defendant]", made various misrepresentations that binary options trading was a highly profitable and low-risk activity, and that the second defendant was a highly successful trader who could predict market movements. These misrepresentations induced the plaintiff to transfer moneys to the Volksbank Account, to increase his deposits and to make various investments as recommended by the defendants.[75]

(e) *Undue influence*: The plaintiff entered into the transactions with the defendants under undue influence.[76]

31 The plaintiff sought declaratory relief, rescission of the transactions he had entered into with the defendants, an account of all moneys paid to the defendants, and damages (including US$1,326,239.85 for losses arising from the liquidation of his LinkedIn shares).

SUM 5513 and SUM 5512

32 By way of SUM 5513, the first and fifth defendants sought, *inter alia*:

(a) the setting aside of the writ and service thereof;

(b) a declaration that the writ was not validly served;

(c) to set aside the order of court granting the plaintiff leave to serve the writ and SOC out of jurisdiction; and

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75 SOC (Amendment No. 2), paras 78–81.

76 SOC (Amendment No. 2), para 83.

(d) a declaration that the court has no jurisdiction over them in respect of the subject matter of the plaintiff's claim or the relief sought in Suit 34.

33 In SUM 5512, the sixth defendant also sought to set aside the order of court granting the plaintiff leave to serve the writ by substituted service, in addition to the reliefs stated at [32] above.

The parties' cases

34 The plaintiff claimed that Singapore was the natural forum of the dispute, and that he would be deprived of justice if he were required to pursue his claims in Belize or in the United Kingdom (the "UK") as his claims would likely be time-barred. Clause 33 of the Contract, which the first defendant understood to be an exclusive jurisdiction clause in favour of the Belizean courts, in fact nominated more than one forum and was thus void for uncertainty. The plaintiff also argued that he had satisfied the requirements of Order 11 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") for service out of Singapore; that there was a serious issue to be tried; and that he had validly served the writ on the first, fifth and sixth defendants.

35 The first defendant's chief contention was that clause 33 of the Contract contained an exclusive jurisdiction clause, in favour of the Belizean courts, which the plaintiff had not shown strong cause for breaching. Consequently, the proper forum for the plaintiff's claims against the first defendant was not Singapore but Belize – or in the alternative, Belize *or* the UK. As for the sixth defendant, the baseline of his case was that there was nothing to link him to the alleged conspiracy at all, such that there was no serious issue to be tried. The sixth defendant also submitted that the material non-disclosures in the plaintiff's

application for leave to serve the writ out of jurisdiction warranted the setting aside of the writ and service thereof.

36 All three defendants argued that the plaintiff had established neither a good arguable case that his claims fell within O 11 r 1 of the ROC nor that there was a serious issue to be tried, and that Singapore was not the *forum conveniens*. They also claimed to have been invalidly served with the writ.

The issues in contention

37 The requirements for valid service out of jurisdiction are well established. A plaintiff must show that his claim comes within one of the heads of claim in O 11 r 1 of the ROC; that his claim has a sufficient degree of merit; and that Singapore is the proper forum for the trial of the action: *Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 ("*Zoom Communications*") at [26].

38 In light of the cases put forward by the various parties, the following issues arose for my determination:

(a) whether Belize was the proper forum as against the first defendant, in that clause 33 of the Contract provided for an exclusive jurisdiction clause in favour of the courts of Belize. This necessitated consideration of whether the purported exclusive jurisdiction clause was void for uncertainty and/or if the plaintiff had shown strong cause why he should be released from his contractual obligations thereunder;

(b) whether Singapore was the appropriate forum for the adjudication of the plaintiff's claims against the fifth and sixth defendants;

(c) whether the plaintiff had established a good arguable case that his claims against the first, fifth and sixth defendants fell within O 11 r 1 of the ROC;

(d) whether there was a serious issue to be tried on the plaintiff's claims against the first, fifth and sixth defendants; and

(e) whether service of the writ on the first, fifth and sixth defendants was defective.

39 I set out below my findings and reasoning on these issues.

Was Singapore the proper forum for the plaintiff's claims against the first defendant?

The applicable legal principles

40 Where there is an applicable exclusive jurisdiction clause in favour of a foreign jurisdiction, as the first defendant contends, the court will engage in a two-stage analysis to determine if service out of jurisdiction ought to be set aside. At the first stage, the party seeking to rely on the purported exclusive jurisdiction clause (in this case, the first defendant) bears the burden of showing a "good arguable case" that an exclusive jurisdiction clause exists and governs the dispute in question: *Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Pte Ltd* [2018] 2 SLR 1271 ("*Vinmar*") at [45]; *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, 2020 Reissue) ("*Halsbury's*") at para 75.112. Where there is a valid exclusive jurisdiction clause in a contract, the clause will *prima facie* be enforced: *Halsbury's* at para 75.119.

41 The second stage of the analysis requires the party in breach of the exclusive jurisdiction clause to demonstrate "strong cause amounting to exceptional circumstances" why he should not be held to the jurisdiction agreement: *Halsbury's* at para 75.121; *Vinmar* at [112].

Clause 33 of the Contract

42 The relevant portion of clause 33 of the Contract reads as follows:

> …
>
> ***This Agreement is constructed and enforce[d] in accordance with the laws and regulations of Belize and shall be governed by Belize***, notwithstanding any conflicts of laws principles. Therefore the parties to the agreement (i) consents [*sic*] to ***any suit, legal action or proceeding in relation to this agreement being brought before the courts of Belize exclusively*** (the "Courts") as such, this agreement of action in such situations *waivers* [*sic*] *any objections to the use of the UK legal system in resolving such issues or complaints that the proceeding has been brought in an inconvenient forum*, (ii) *The competence of the UK courts is therefore agreed* herein to hear such action, (iii) ***The courts of Belize ware*** [*sic*] ***agreed to have exclusive jurisdiction over such actions*** (iv) The final judgments of such courts will have binding power over all parties.
>
> [emphasis added in italics and bold italics]

43 At the outset, it should be noted that leaving aside clause 33, the plaintiff did not dispute the validity of the Contract: indeed, its validity was key to his contractual and proprietary claims. Moreover, even in respect of clause 33, the plaintiff's case was not that the entire clause was void and unenforceable. In so far as clause 33 stipulated that the Contract would be construed and enforced "in accordance with the laws and regulations of Belize", the plaintiff conceded in his written submissions[77] that the contracting parties (*ie*, the plaintiff himself

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77 Plaintiff's Written Submissions dated 11 June 2020 ("PWS"), para 151.6.

and the first defendant) had clearly nominated Belizean law as the governing law of the Contract.

Whether clause 33 contained an exclusive jurisdiction clause in favour of the courts of Belize, and whether clause 33 was void for uncertainty

44 I agreed with the defendants that notwithstanding the two references to the UK in clause 33, there was a good arguable case that clause 33 contained an applicable exclusive jurisdiction clause in favour of the Belizean courts.

45 First, clause 33 explicitly stated that proceedings in relation to the Contract would be brought before "the *courts* of Belize *exclusively*" and that "the *courts* of Belize ware [*sic*] agreed to have exclusive jurisdiction over such actions" [emphasis added]. While the court should refrain from ascribing special significance to particular phraseology, "this does not mean that the use of certain words cannot be given their ordinary significance": *Ivanishvili, Bidzina and others v Credit Suisse Trust Ltd* [2020] 2 SLR(R) 638 ("*Ivanishvili*") at [59]. The import of clause 33 was that the *only* proper forum for resolution of disputes relating to the Contract was the Belizean courts. Second, the fact that Belizean law was the governing law of the Contract strongly suggested that the parties had intended for the Belizean courts to adjudicate disputes such as the present.

46 On the plaintiff's case, clause 33 was void for uncertainty: it purported to operate as an exclusive jurisdiction clause, and yet it referred simultaneously to two different forums (*ie*, the courts of Belize and of the UK).[78]

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78 PWS, para 152.1.

47 Mr Eamon Courtenay SC ("Mr Courtenay"), a senior partner of a Belizean law firm and the former Attorney-General of Belize, filed an expert report in these proceedings. His report concluded that the Belizean courts would find clause 33 void for uncertainty owing to the "multiple and obvious consistencies" therein: according to him, it would be "impossible to give the clause any sensible meaning without rewriting or striking out parts of the clause".[79] As parties agreed that Belizean contractual principles are mostly derived from English common law,[80] the plaintiff also engaged Prof Gerard McMeel QC ("Prof McMeel"), a Professor of Commercial Law, who likewise opined that clause 33 was "too internally inconsistent to identify an exclusive forum for disputes". Prof McMeel's opinion was that, on an application of "modern principles of contractual construction", an English court would not "prefer the initial reference to Belize over the later reference to the UK courts".[81]

48 The first defendant, on the other hand, relied on the expert opinion of Prof Adrian Briggs QC ("Prof Briggs"), a Professor of Private International Law. Prof Briggs opined that an English court would have no difficulty interpreting clause 33 as an exclusive jurisdiction clause: the references to the UK courts were "slips of the pen" but "the true meaning of what was agreed to was clear, and provided for Belize law and exclusive jurisdiction".[82] The erroneous references to the UK courts could be easily attributed to an oversight

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79 Affidavit of Eamon Harrison Courtenay dated 30 January 2020 ("EHC's first affidavit"), p 28, para 14 and p 30, para 19.

80 EHC's first affidavit, p 27, para 7; affidavit of Aldo Gianni Reyes dated 26 March 2020, p 9, para 15.

81 Affidavit of Gerard Patrick McMeel dated 30 January 2020 ("GPM's first affidavit"), p 50, para 35 and p 52, para 39.

82 Affidavit of Adrian Briggs dated 17 March 2020 ("AB's first affidavit"), p 9, paras 17 and 19.

when editing clause 33 of the Contract, which was a standard form contract. Despite the errors, "the intention of the parties was settled and clear" and it was obvious that the references to the UK in clause 33 ought to be corrected.[83]

49 Per Lord Hoffmann's remarks in the seminal English case of *Investors Compensation Scheme Ltd v West Bromwich Building Society (No. 1)* [1998] 1 WLR 896 at 912, "[i]nterpretation is the ascertainment of the meaning which the document would convey to a *reasonable person* having all the background knowledge which would *reasonably have been available* to the parties in the situation in which they were at the time of the contract" [emphasis added], save that pre-contractual negotiations and declarations of subjective intent do not form part of the admissible background. Other factors relevant to contractual interpretation include, *inter alia*, any other relevant provisions of the contract; the overall purpose of the clause and the contract; and commercial common sense (per Lord Neuberger in *Arnold v Britton* [2015] 2 WLR 1593 at 1599). Mr Courtenay confirmed that the Belizean courts adopted the same approach to contractual interpretation.[84]

50 Applying the above principles, I found the evidence to be in favour of Prof Brigg's analysis: namely, that the seeming inconsistencies in clause 33 were simply "slips of the pen" in transplanting and editing a type of "forum selection clause". In justifying his position, Prof Briggs observed that:[85]

> This explains, among other things (i) the fact that there is a submission to the court whose jurisdiction has already been chosen, (ii) the waiver of objections, (iii) a promise not to raise arguments about the chosen court being an 'inconvenient

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83 AB's first affidavit, p 10, para 25.

84 EHC's first affidavit, p 29, para 16.

85 AB's first affidavit, p 9, para 18.

> forum', and (iv) the reference to the United Kingdom as a single law and legal system.

51 I agreed with Prof Briggs. Mr Courtenay opined that the "inclusion" of references to the UK in clause 33 was unlikely to be a typographical error, as such references appeared not once, but twice.[86] With respect, Mr Courtenay did not appear to have considered the possibility that a "forum selection clause" had been transposed to clause 33, as Prof Briggs postulated. It appeared to me, therefore, that mentions of the UK courts in clause 33 were failures of omissions, rather than deliberate inclusions.

52 The parties acknowledged that the Contract was a standard form contract.[87] The careless editing of this standard form contract was evident from clause 33 itself, which contained several other obvious typographical errors. For example, clause 33 stated that "[t]he courts of Belize *ware* [*sic*] agreed to have exclusive jurisdiction …" and that the Contract "*waivers* [*sic*] any objections" [emphasis added] to the use of the UK legal system. Despite these errors, the meaning of clause 33 would be apparent to any reasonable person – that parties agreed to litigate any Contract-related disputes in Belize and in Belize only. The errors in clause 33 did not render the exclusive jurisdiction clause contained therein so incoherent as to be void for uncertainty. Rectification would be the more appropriate and less draconian response to these errors as compared to voiding the clause altogether. As Prof Briggs noted, not only had something gone wrong with the language in clause 33, it was "easy to say what that something [was] and what [was] needed to correct it".[88]

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86 EHC's first affidavit, p 29, para 18.

87 PWS, para 152.5; 1DWS, para 78.

88 AB's first affidavit, p 10, paras 22–23.

53 In this connection, the approach adopted by the House of Lords in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] 1 AC 1101 ("*Chartbrook*") was instructive. In *Chartbrook*, the House of Lords had to interpret a term in a contract between land owners and developers which provided for the latter to pay the former something called an "additional residential payment". The developers calculated the sum payable pursuant to this term as £897,051; the land owners claimed that the sum should be £4,484,862. The land owners sued for the unpaid balance of the "additional residential payment" which they claimed was due; the developers counterclaimed for rectification of the contract to accord with what they claimed to be the parties' common agreement. At first instance, the judge found in favour of the land owners' construction of the said term; and this finding was upheld by the Court of Appeal. However, the developers appealed successfully to the House of Lords. In allowing the appeal, the House of Lords held (at 1112) that although a court would not easily accept that linguistic mistakes had been made in formal documents, if the context and the background drove a court to conclude that something had gone wrong with the language of the contract, the law did not require it to attribute to the parties an intention which a reasonable person would not have understood them to have had. Where it was clear that there was a mistake on the face of the document and what correction ought to be made in order to cure it, in that it was clear what a reasonable person, having all the background knowledge which would have been available to the parties, would have understood the parties to have meant in their use of the language in the contract, the court was entitled to correct the mistake as a matter of construction (at 1114). The House of Lords held (at 1132, 1133 and 1135) that the contractual definition of "additional residential payment" was ambiguous and obviously defective as a piece of drafting; that there was always a commercial context to a contract negotiated between businessmen; and that to construe the definition in accordance with the ordinary

rules of syntax made no commercial sense. Accordingly, taking into consideration the background and context but not the pre-contractual negotiations, and applying the established principles of construction, the land owners' construction could not be upheld; and the developers' construction was more appropriate.

54 In following the approach taken in *Chartbrook*, I was conscious that the parties' differing interpretations of clause 33 meant I was essentially faced with an interpretation which would result in clause 33 being found void and unenforceable, versus an interpretation which would give effect to the said clause as an exclusive jurisdiction clause in favour of Belize (or alternatively – according to the first defendant – Belize or the UK). In such a situation, the latter interpretation should surely be preferred: *ut res magis valeat quam pereat*; or, as the learned editors of *Chitty on Contracts* (Professor Hugh Beale Gen Ed) (Thomson Reuters, 33rd Ed, 2020) put it (at para 13-078):

> If the words used in an agreement are susceptible of two meanings, one of which would validate the instrument or the particular clause in the instrument, and the other render it void, ineffective or meaningless, the former sense is to be adopted. …

55 Indeed, it should be pointed out that even Mr Courtenay acknowledged that the Belizean courts would be most reluctant to void a contractual provision for uncertainty.[89]

56 Having found a good arguable case that clause 33 was an exclusive jurisdiction clause providing for Belize as the exclusive forum, I next considered the scope of that clause. Clause 33 applied to "any suit, legal action

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89 EHC's first affidavit, paras 19 and 25.

or proceeding in relation to [the Contract]". Although, in Prof McMeel's opinion, clause 33 had "no or only marginal relevance"[90] to the plaintiff's non-contractual claims against the first defendant (in deceit, misrepresentation, conspiracy, *etc*), the plaintiff did not pursue this line of argument in either written or oral submissions.

57 In any event, regardless of how the plaintiff's non-contractual causes of action were repackaged, they were undeniably connected to the Contract. In this connection, counsel for the first/fifth defendant referred me to the Court of Appeal's judgment in *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2016] 1 SLR 373 ("*Tomolugen*"). In that case, the plaintiff brought a suit for minority oppression against the defendants who included the company in which it was a minority shareholder ("AMRG") as well as other shareholders of AMRG. The Court of Appeal had to consider whether the plaintiff's claims fell within the arbitration clause in the share sale agreement between the parties, which provided that "any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination" was to be referred to and finally resolved by arbitration in Singapore according to the Arbitration Rules of the Singapore International Arbitration Centre. In considering this issue, the Court of Appeal made it clear (at [133]) that its task was to "examine the substance of the controversy without paying undue attention to the details of how it ha[d] been pleaded". It held (at [136]) that in so far as the plaintiff's claim of minority oppression was based on an alleged understanding that it would be allowed to participate in the management of AMRG (what the court termed "the Management Participation Allegation"), the construction of certain clauses in

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90 GPM's first affidavit, p 52, para 40.

the share sale agreement would "form an inescapable and substantial (if not the entire) step in establishing the existence of any understanding or legitimate expectation of management participation by [the plaintiff]". As such, the Management Participation Allegation fell squarely within the ambit of the arbitration clause.

58 While *Tomolugen* concerned an application for a stay under s 6(1) of the International Arbitration Act (Cap 143A, 2002 Rev Ed) based on the arbitration clause in the parties' share sale agreement, I derived useful guidance from the Court of Appeal's approach. In emphasising the importance of identifying the substance of the controversy rather than the formal nature of the proceedings, the court cited (at [124]) Lord Hoffmann's statement at [13] of *Fiona Trust & Holding Corporation and others v Privalov and others* [2007] All ER 951, *inter alia*, his observation that the "construction of an arbitration clause should start from the assumption that the parties, as rational businessmen, are likely to have intended any dispute arising out of the relationship into which they have entered or purported to enter to be decided by the same tribunal". That observation should, in my view, apply with equal force in a case such as the present, where parties had entered into a contract containing an exclusive jurisdiction clause. As rational businessmen, the parties were likely to have intended that any dispute arising out of their contractual relationship ought to be decided in the same forum "unless the language ma[de] it clear that certain questions were intended to be excluded" from the scope of the exclusive jurisdiction clause.

59 In the present case, the plaintiff's various causes of action (in deceit, misrepresentation, conspiracy, *etc*) were premised on his allegation that Opteck was a bogus trading platform which used pre-determined data to give the

impression of real-time trading.[91] According to the plaintiff, the fact that moneys were credited to his account and that he was permitted to trade on Opteck despite the freezing of his funds by the Romanian authorities provided the strongest evidence of the defendants' fraudulent scheme. In the circumstances, the construction of various clauses in the Contract clearly formed an inescapable and substantial step in establishing the credibility of the plaintiff's claims about the nature of the Opteck platform, the information provided by it, and the transactions conducted on it. As counsel for the first and fifth defendants pointed out, for example, in evaluating the plaintiff's allegations about the fraudulent nature of the Opteck trading platform, it would be critical to examine those contractual clauses providing for Opteck to operate under the B Book (Market Maker) model (*ie*, clauses 5 and 6 of the Contract), whereby the first defendant was to be the counterparty to trades conducted on Opteck and Opteck maintained an internal "B Book".[92]

60 For the above reasons, I rejected Prof McMeel's suggestion that the exclusive jurisdiction clause in clause 33 had "no or only marginal relevance"[93] to the plaintiff's non-contractual claims against the first defendant. To reiterate: I found that there was a good arguable case that clause 33 constituted a valid exclusive jurisdiction clause in favour of the courts of Belize, and that the various causes of action relied on by the plaintiff (contractual and non-contractual) fell well within the scope of this clause.

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91 SOC (Amendment No. 2), paras 60(6) and 61.

92 1DWS, para 91(e).

93 GPM's first affidavit, p 52, para 40.

Did the plaintiff show strong cause or exceptional reasons for being released from his contractual obligations under the exclusive jurisdiction clause?

61 It followed from the above findings that the plaintiff was bound by his contractual commitment to litigate in Belize, rather than in Singapore, unless he could demonstrate "strong cause" amounting to exceptional circumstances why he should be allowed to resile from his contractual obligations: *Grains and Industrial Products Trading Pte Ltd and another v State Bank of India and others* [2019] SGHC 292 ("*Grains*") at [70]–[71].

The applicable legal principles

62 In analysing if a plaintiff such as the present plaintiff has shown strong cause, the following factors are relevant (*Shanghai Turbo Enterprises Ltd v Liu Ming* [2019] 1 SLR 779 ("*Shanghai Turbo*") at [94]):

(a) in what country the evidence on the issues of fact is situated or more readily available, and the effect of that on the relative convenience and expense of trial as between the Singapore and Belize courts;

(b) whether the governing law is a foreign law and, if so, whether it differs from Singapore law materially;

(c) with what country either party is connected and, if so, how closely;

(d) whether the defendants genuinely desire trial in Belize or are merely seeking procedural advantages; and

(e) whether the plaintiff would be prejudiced by having to sue in the Belize courts because, *inter alia*, he would have to confront a time bar that would not be applicable in Singapore.

63 It bears emphasis that in a case involving an exclusive jurisdiction clause, the court is not concerned with balancing the conveniences or deciding which of two fora is the more convenient forum – rather, the question is why the plaintiff should be relieved of his contractual obligation to bring his action in the foreign jurisdiction (*The "Vishva Apurva"* [1992] 1 SLR(R) 912 ("*The 'Vishva Apurva'*") at [22]). As the Court of Appeal noted in *Shanghai Turbo* at [88(a)], it will generally be difficult for a party to show strong cause. Factors of convenience which were foreseeable at the time of contracting (save in exceptional circumstances involving the interests of justice) will not suffice; neither will the usual connecting factors set out in *Spiliada Maritime Corporation v Cansulex Ltd* [1087] AC 460 ("*Spiliada*"): *Shanghai Turbo* at [88(a)] and [89].

The prospect of the plaintiff's claims in Belize being time-barred

64 The plaintiff's submissions revolved primarily around the contention that if he were not permitted to litigate in Singapore, his claims in Belize would likely be entirely time-barred and irremediable prejudice would result.[94] In my view, however, the prospect of the plaintiff's claims being time-barred failed to satisfy the threshold of a "strong cause" entitling him to renege on his obligations under the exclusive jurisdiction clause of the Contract.

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94 PWS, paras 80.3, 81 and 153.

65 First, there was no basis for the plaintiff's contention that all of his claims in Belize would likely be time-barred. By the plaintiff's own account, the entire reason for his filing of the "protective writ" in Belize was *precisely* to "ensure that [he] will not be foreclosed from seeking justice … due to any limitation period".[95] In oral submissions, counsel for the plaintiff conceded that the "protective writ" preserved at least some of the plaintiff's causes of action in the Belize courts: the plaintiff was "not fully shut out on all [his] causes of action in Belize" as he could still sue on causes of action that accrued after 13 December 2013 – including, in particular, the alleged loss of US$12.14m on 17 December 2013.[96]

66 Second, time bar *per se* did not amount to an exceptional circumstance that justified releasing the plaintiff from his contractual obligation to litigate in Belize instead of in Singapore. As noted in *Halsbury's* at para 75.121:

> … If the party seeking trial in the forum shows that the lapse (*ie*, the failure to take out a protective writ in the chosen forum) was a reasonable one in the circumstances, then he can rely on the time-bar to show exceptional circumstances why the trial should proceed in the forum where his action is not barred. However, if the party had acted unreasonably in allowing the time limitation to lapse in the chosen jurisdiction, the time-bar is merely a neutral factor. … The party seeking to rely on the time bar in the contractual forum needs to show very compelling reasons why it did not file a protective writ in the contractual forum. It should be born in mind that the parties must be taken to have agreed to the time bar that will be applied by the agreed forum …

67 Even assuming that the plaintiff's claims in Belize would be time-barred, such a result would be entirely of his own doing. The plaintiff filed his

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95 CYHC's seventh affidavit, para 206.

96 Transcript, 26 June 2020, 19:11–24 and 20:22–21:10.

"protective writ" in Belize only in December 2019. This was some 20 months after he had applied for leave to join the sixth defendant as a defendant to these proceedings, and nearly two years after his commencement of Suit 34 against the first to fifth defendants. No coherent explanation was been provided as to why he could not have filed a protective writ in Belize – or even in England or in Romania – prior to December 2019.

68 The plaintiff sought to impugn the defendants' conduct as the cause of the delay in these proceedings, claiming that the defendants were to blame for his being (allegedly) at risk of having no recourse in the Belizean courts. I rejected these submissions as being self-serving and entirely baseless. From the undisputed history of Suit 34, it was plain that these proceedings had been unduly protracted due to the plaintiff's own stalling tactics. For example:

(a) After the plaintiff commenced the suit in January 2017, there was a long period of inactivity on his part as he engaged in settlement talks with the first and fifth defendants and apparently even toyed with the idea of discontinuing the suit.

(b) The plaintiff applied for leave to include the sixth defendant as a party to these proceedings only in April 2018, more than a year after commencing Suit 34. He then took about nine months to effect service (which is disputed) on the sixth defendant in January 2019.

(c) A regular feature of Suit 34 was the plaintiff's multiple requests for additional time. He sought repeated and lengthy extensions of time for various steps required in the proceedings, from the filing of his List of Documents to the filing of various reply affidavits, as well as affidavits of evidence-in-chief ("AEICs"). The numerous delays on the plaintiff's part led the court to remark sternly on one occasion in

December 2018 that "[t]his has dragged on for a very long time".[97] Even then, the court's admonition did nothing to improve the plaintiff's sense of urgency. On more than one occasion, he asked for hearing or trial dates to be adjourned, vacated, or pushed back. For example, at a pre-trial conference ("PTC") on 26 March 2019 (more than two years after the filing of Suit 34), the court had proposed that the trial be held in May 2019, with the AEICs to be filed by April 2019. However, the plaintiff requested eight weeks to file AEICs; and trial dates were pushed back to October 2019.[98] As it turned out, the trial did not proceed in October 2019 either, because at a PTC on 17 July 2019, the court was informed by the plaintiff's counsel that AEICs had not been filed and that an extension of six weeks (to 27 August 2019) was required for this to be done.[99] Then, in February 2020, the plaintiff claimed that his forensics expert should be given more time to "complete his investigations" and to finalise his preliminary report[100] – even though he had relied on this preliminary report in as early as January 2017.[101] In April 2020, the plaintiff applied for leave to file additional affidavits at the eleventh hour.

69 The above is by no means an exhaustive list of the various ways in which the plaintiff has been dilatory in the conduct of these proceedings. The protracted delay in these proceedings has been the plaintiff's fault and his alone.

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97 BYZ's third affidavit, para 11(3) and p 33.

98 BYZ's third affidavit, para 15(5) and pp 41–43.

99 BYZ's third affidavit, para 15(5) and pp 45–46.

100 CYHC's seventh affidavit, para 171.

101 CYHC's first affidavit, para 40.

70 Third, I considered it unjust to allow the plaintiff to be released from his obligations under the exclusive jurisdiction clause on the grounds that his claims in Belize might be time-barred, as this would, in essence, "deprive the [first] defendant of an accrued defence in the chosen forum": *Dicey, Morris and Collins on the Conflict of Laws* (Sweet & Maxwell, 15th ed, 2018) ("*Dicey and Morris*") at paras 12-037 and 12-154. The plaintiff's argument was even more unmeritorious when one considered that the present case involved a *contractually agreed* forum under the exclusive jurisdiction clause – it was even more incumbent on the plaintiff to make an effort to protect his legal position in the forum that parties had expressly chosen. Instead of doing so, he had chosen to hedge his bets by forum-shopping, filing criminal complaints in multiple jurisdictions (Romania and Singapore) and civil writs in others (Singapore, then belatedly Belize), while making claims about his intention to pursue various other courses of action such as requesting "remedies … from the English courts"[102] and "entering into an exclusive choice of jurisdiction agreement with the [d]efendants with a view of naming Singapore and the [Singapore International Commercial Court] as the jurisdiction and forum".[103]

71 With respect, therefore, it did not lie in the plaintiff's mouth to lament that irremediable prejudice would result from the prospect of his claims being time-barred in Belize. He wilfully chose not to litigate in the contractually agreed forum, failed even to issue a protective writ in Belize timeously, and instead gambled on the chance that the Singapore courts would overlook his forum-shopping and allow him to litigate here. That gamble has not paid off,

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102 CYHC's seventh affidavit, p 493, para 451.

103 BYZ's third affidavit, p 22.

and the plaintiff has only himself to blame if he ultimately winds up unable to pursue his claims.

The plaintiff's residence in Singapore

72 The plaintiff's only other recourse in trying to show strong cause for non-compliance with clause 33 was to harp on the fact that he was resident in Singapore. I did not view his residence here as an exceptional circumstance that justified his reneging on clause 33. While his place of residence might be a general connecting factor under the *Spiliada* ([63] *supra*) test, as mentioned at [63] above, a *Spiliada* connecting factor would generally not amount to strong cause. In any event, it was not disputed that the key transactions in this case took place online: as counsel for the first and fifth defendants put it, the plaintiff could have been anywhere in the world when he entered into the Contract, transferred funds to the first defendant, and carried out trades on the Opteck platform. In a modern commercial dispute such as this, a party's current domicile "will provide little guidance to the natural forum", particularly for an individual like the plaintiff who is a "well-heeled" individual with likely a "high degree of mobility": *Halsbury's* at para 75.091; *Rappo, Tania v Accent Delight International Ltd and another and another appeal* [2017] 2 SLR 265 ("*Rappo*") at [71].

Summary

73 In summary, I found that the first defendant had at least a good arguable case that clause 33 contained an applicable exclusive jurisdiction clause in favour of the Belizean courts. I also found that the plaintiff was unable to show strong cause for being relieved of his contractual obligation under clause 33.

74 In light of my findings, it was unnecessary for me to consider the first defendant's alternative interpretation of clause 33 as providing for the exclusive jurisdiction of the courts of either Belize *or* the UK.

Was Singapore the proper forum for the plaintiff's claims against the fifth and sixth defendants?

The applicable legal principles

75 In respect of the fifth and the sixth defendants, the parties were agreed that the applicable test for determining the natural forum of the dispute was the two-stage test set out in *Spiliada* ([63] *supra*), as confirmed by the Court of Appeal in, *eg*, *Zoom Communications* ([37] *supra*) at [30].

76 The first issue to be determined under the *Spiliada* ([63] *supra*) test is whether there is *prima facie* some other available forum where it is more appropriate that the case be tried ("Stage One"): *Rickshaw Investments Ltd and another v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 ("*Rickshaw*") at [14]. The legal burden of proving that Singapore is the proper forum lies on the defendant at this stage: *CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R) 543 at [26]. At Stage One, the court considers the connecting factors that link the dispute with the competing jurisdictions, which include (*Rappo* ([72] *supra*) at [71]; *Grains* ([61] *supra*) at [67]):

(a) the personal connections of the parties and the witnesses, including the compellability of witnesses;

(b) the connections to relevant events and transactions;

(c) the applicable law of the dispute;

(d) the existence of proceedings elsewhere, which could result in inconsistent judgments and duplication of resources; and

(e) the "shape of the litigation", *ie*, the manner in which the claim and the defence have been pleaded.

77 The above connecting factors do not carry equal weight. Instead, the court should accord greater weight to those factors that are likely to be material to the fair determination of the dispute, having regard to the circumstances of the case: *Ivanishvili* ([45] *supra*) at [83]. The search is for the connecting factors which have the "most relevant and substantial associations" with the dispute at hand: *Rappo* ([72] *supra*) at [70].

78 At the second stage of the inquiry, the court is concerned with whether justice requires that it exercise its jurisdiction even if it is not the *prima facie* natural forum ("Stage Two"): *Halsbury's* at para 75.096. In particular, the burden lies on the plaintiff to establish cogently that he will be denied "substantial justice" if the case is not heard in that forum: *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391 ("*JIO Minerals*") at [38] and [43]. In the recent decision of *Oro Negro Drilling Pte Ltd and others v Integradora de Servicios Petroleros Oro Negro SAPI de CV and others and another appeal (Jesus Angel Guerra Mendez, non-party)* [2020] 1 SLR 226 ("*Oro Negro*"), however, the Court of Appeal remarked (at [80(d)]) that it was an "open question" whether Stage Two is applicable in the context of leave applications for service outside jurisdiction.

Stage One: analysis of the connecting factors

Connections to relevant events and the applicable law

79 I analysed these two connecting factors in conjunction as I found them to be closely related. I concluded that these connecting factors strongly tied the dispute to Belize instead of Singapore, and I accorded them significant weight.

80 The thrust of the plaintiff's claims against the fifth and sixth defendants was for unlawful means conspiracy to defraud him. The starting presumption in relation to tortious claims is that the place where the tort occurred is *prima facie* the natural forum for determining that tortious claim: *Oro Negro* at [90]. The place of the tort was not immediately apparent in the present case, as the constituent acts of the alleged unlawful means conspiracy spanned multiple jurisdictions (*eg*, Romania and the UK). However, I did not need to ascertain the place of the conspiracy: I found that the plaintiff's tortious claim was so intimately connected to his contractual claim that Belizean law, which governed the Contract, also applied to the plaintiff's tortious claim.

81 The two authorities which the defendants cited – *Oro Negro* and *Trafigura Beheer BV v Kookmin Bank Co* [2006] EWHC 1450 ("*Trafigura*") – were instructive. In *Oro Negro*, the appellants (a group of Singapore-incorporated companies) commenced proceedings against the respondents who comprised the appellants' former directors and parent company. The appellants' tortious claims against the respondents included unlawful means conspiracy and inducement of breach of contract. The Court of Appeal found (at [90]) that as the alleged torts had occurred in Mexico, Mexico was *prima facie* the natural forum for the appellants' tortious claims. However, the Court of Appeal held (at [91]) that this starting point was displaced as "the underlying acts that allegedly attracted tortious liability arose from the breaches of the appellants'

constitutions": as the tortious claims were "parasitic" on the non-tortious claims, the two "inextricably linked issues" ought to be determined in a single forum.

82 *Trafigura*, on the other hand, concerned a dispute over a letter of credit issued by the defendant, a Korean bank, to the claimant company. The defendant contended that the claimant, as the beneficiary under the letter of credit, had breached the terms of the letter of credit as well as its tortious duty not to jeopardise the security interest in certain cargo. The court held that although most of the significant elements of the tort had occurred in Singapore, the applicable law governing the tortious claim was English law. In so concluding, the court reasoned that:

> … the most significant factor that relates to the two parties is the pre-existing relationship of the [letter of credit]. *Without that pre-existing contractual relationship, [the defendant] cannot create the necessary connection between itself, as issuing bank, and [the claimant], as beneficiary under the [letter of credit], so as to give rise to the duties that [the defendant] says are owed to it by [the claimant]* under Korean law. That factor connects the alleged tort to England because English law is the governing law of the pre-existing contractual relationship between the parties.
>
> [emphasis added]

83 In the instant case, the plaintiff's tortious claim was parasitic on the Contract in several ways. The Contract formed the basis for the plaintiff's use of the Opteck platform, which platform was the primary conduit by which the defendants were alleged to have perpetrated their conspiracy. In this regard, I was guided by the approach that Aikens J adopted in *Trafigura* in considering the events that set the tortious claim into motion. In *Trafigura*, the letter of credit (out of which the tortious claim arose) "only came into existence" by virtue of a sale contract, which was governed by English law and contained an exclusive jurisdiction clause in favour of the English courts. Similarly, had the present plaintiff not e-signed the Contract, he would not have been able to use the

Opteck platform, and there would have been no conspiracy against him to speak of. Per the SOC (Amendment No. 2), the acts that constituted and/or were carried out in furtherance of the alleged conspiracy all arose from and occurred *after* the plaintiff's signing of the Contract.[104] In fact, according to the plaintiff's own pleaded case, the defendants' act of encouraging him to invest substantial moneys was relevant to both his conspiracy and contractual claims.[105]

84 The Contract also created the "necessary connection" between the plaintiff on the one hand and the fifth and sixth defendants on the other. The fifth and sixth defendants' involvement in Suit 34 was primarily based on their ownership (actual and alleged, respectively) of the first defendant, whom the plaintiff claimed had received the moneys he deposited. The Contract created the pre-existing contractual relationship between the plaintiff and the first defendant, and that contractual relationship in turn formed the basis for the fifth and sixth defendants' roles in the alleged conspiracy.

85 Furthermore, the present dispute inevitably concerned the *terms* of the Contract. As stated at [8] above, the Contract expressly warned that trading on the Opteck platform was a high-risk financial activity and disclaimed liability on the first defendant's part for any losses incurred by trading on the Opteck platform. Key to the plaintiff's tortious claim were his assertions to the contrary – that the second defendant had sweettalked him into believing that binary options trading carried minimal risks, and that the defendants ought to be liable for the losses he had sustained. Weighing these considerations in totality, I considered that the contractual matrix underlying the plaintiff's conspiracy

104 SOC (Amendment No. 2), paras 59–60.

105 SOC (Amendment No. 2), para 60(5) and 70.

claim pointed towards Belizean law (*ie*, the governing law of the Contract) as the applicable law for the conspiracy claim. It would be preferable for the Belizean courts rather than the Singaporean courts to apply Belizean law; the Belizean courts would undoubtedly be more adept at applying their own law, and such an arrangement would also be more expedient (*Rickshaw* ([76] *supra*) at [42]); also *Siemens AG v Holdrich Investments Ltd* [2010] 3 SLR 1007 at [16]. I therefore held that at Stage One of the *Spiliada* ([63] *supra*) analysis, the proper forum for the plaintiff's conspiracy claim was Belize.

86 In respect of the plaintiff's equitable claim, this arose out of the same factual matrix as his tortious and contractual claims. His equitable claim was founded on the defendants' alleged advice to him to invest US$18m in binary options, on breach of the "no profit" rule, and on "knowing receipt" of the US$11.55m that he had remitted to the Volksbank Account.[106] These allegations stemmed from the very same facts as those which grounded the plaintiff's tortious claim, and which I concluded (at [85] above) was governed by Belizean law. More pertinently, the defendants' alleged equitable duties to the plaintiff also "[arose] from a factual matrix where the legal foundation [was] premised on … contract" (*ie*, the Contract): see [83]–[85] above and *Rickshaw* ([76] *supra*) at [81]. Consequently, the applicable law for the plaintiff's equitable claim should be Belizean law (*ie*, the governing law of the Contract), and this significantly militated in favour of Belize as the natural forum to determine the equitable claim (*Rickshaw* at [42] and [81]).

87 It would not be desirable for the plaintiff's contractual and/or tortious claims to be heard in Belize while his equitable claim was heard in Singapore.

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106 SOC (Amendment No. 2), paras 70–71; CYHC's seventh affidavit, para 225.

Where claims "arise from the same factual matrix" and "involve a determination of the same central issues", they ought to be heard in the same jurisdiction to minimise the risk of inconsistent findings and to avoid duplication of resources: *Rappo* ([72] *supra*) at [106]. For these reasons, although the fifth and sixth defendants were not party to the Contract, the exclusive jurisdiction clause therein was still a persuasive reason why the plaintiff's equitable claim should be heard by the Belizean courts in accordance with Belizean law. The plaintiff's equitable claim was closely connected to the Contract, and it would not be conducive to the interests of justice for the litigation to be fragmented across multiple jurisdictions.

88 Finally, the plaintiff's own conduct suggested that he himself did not believe Singapore to be the natural forum. As mentioned, he filed a "protective writ" in Belize to preserve his causes of action there. On the other hand, the criminal complaint he filed with the Romanian authorities on 22 July 2014 stated, *inter alia*, that an "act of instigation" or an "act of complicity" had been "committed in the Romanian territory".[107] I also agreed with defence counsel that had the plaintiff truly regarded Singapore as the proper forum, he would not have informed the court in July 2017 (after filing the writ) that he was "considering [the] option of entering into an exclusive choice of jurisdiction agreement with the [d]efendants with a view of naming Singapore … as the jurisdiction and forum".[108]

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107 CYHC's seventh affidavit, p 494.

108 BYZ's third affidavit, p 22.

The availability of witnesses and documents

89 In respect of the availability of witnesses and documents, on the facts of this case, these connecting factors had little bearing on the question of the natural forum. In terms of witnesses, only the plaintiff was resident in Singapore. The defendants were located in the UK and Israel. Many of the potential witnesses – such as the bank officials of Volksbank (Romania), the expert witnesses on English and Belizean law, and finance experts – were or would likely be located outside of Singapore.

90 As for the documents material to the present dispute, they were either easily transportable between jurisdictions (*eg*, the Contract – see *John Reginald Stott Kirkham and others v Trane US Inc and others* [2009] 4 SLR(R) 428 at [40]), or would more readily be obtained outside of Singapore (*eg*, the paper trail of the Frozen Moneys and correspondence with the Romanian authorities would likely be more easily disclosed in Romania). I therefore regarded the availability of witnesses and documents as neutral factors.

Stage Two: whether the plaintiff would be denied substantial justice in Belize

91 As I noted at [78], it remains an open question whether Stage Two is applicable in cases involving leave for service out of jurisdiction. Nevertheless, in the present case I considered Stage Two for the sake of completeness. The plaintiff relied chiefly on the possibility of his claims being time-barred in Belize to argue that he would not be able to obtain substantial justice there. For the reasons stated at [65]–[71] above, I decided that if Stage Two of the *Spiliada* test did apply, the plaintiff had also failed to establish that he would be denied substantial justice in Belize. I make three points in this regard.

92 First, the fact that the Belize courts would be more suited than the Singapore courts for the task of applying Belize law constituted, in my view, a factor that increased the likelihood of the plaintiff obtaining substantial justice. Although the governing law of the Contract has already been considered at Stage One of the analysis, Stage Two requires all circumstances to be taken into consideration, "including factors already taken into consideration in Stage One" (*Halsbury's* at para 75.096). I was thus not precluded from having regard to this material circumstance again in Stage Two.

93 Second, the plaintiff failed to produce "cogent evidence" (*JIO Minerals* ([78] *supra*) at [43]) that he would not be able to obtain substantial justice in Belize. As his counsel admitted before me, he was "not fully shut out on all [his] causes of action in Belize" owing to the "protective writ" that he had filed in Belize in December 2019. In other words, there was a real chance that the plaintiff would be able to pursue at least *some* of his claims in Belize. I did not treat "substantial justice" as being synonymous with the plaintiff's entitlement to pursue *all* his claims in Belize; and certainly he did not put forward any authorities to persuade me that this should be the position.

94 Third, even if some or all of the plaintiff's claims in Belize turned out to be time-barred, I considered that to be the very justice of the case. As the editors of *Dicey and Morris* have noted (at para 12-155), it "may be a rare case in which the claimant is able to say that allowing time to run in an expressly-chosen court was not unreasonable". In this case, given the plaintiff's forum-shopping and the brazen delays in his conduct of these proceedings (see [68]–[71] above), he could not claim to have acted reasonably in allowing time to run in Belize.

95 Finally, in so far as the plaintiff sought to suggest that the Singapore courts afforded certain juridical advantages which the Belize courts did not (*eg*,

in terms of the scope of discovery and the use of technology), such suggestions did not assist his case. As the Court of Appeal noted in *Rappo* ([72] *supra*) at [109], any such "differences in procedure and remedies will generally be irrelevant, and not having the benefit of the procedures or remedies of the forum will not by itself amount to denial of substantial justice".

Summary

96 To sum up: an examination of the connecting factors at Stage One of the *Spiliada* ([63] *supra*) test pointed to Belize, not Singapore, as the proper forum for the plaintiff's claims against the fifth and sixth defendants. I also found that the plaintiff had failed to establish that he would be denied substantial justice in Belize. Whatever grievances the plaintiff might have against the fifth and sixth defendants, they ought properly to be aired in Belize, not Singapore.

Did the plaintiff establish a good arguable case that his claims fell within O 11 r 1 of the ROC?

The applicable legal principles

97 On behalf of the first, fifth and sixth defendants, it was further submitted that the plaintiff should not have been given leave for service out of jurisdiction under O 11 r 1 of the ROC. It is trite that a plaintiff who seeks leave for service out of jurisdiction needs to meet the standard of a "good arguable case" that one or more limbs under O 11 r 1 has been satisfied – in other words, that he has "the better of the argument": *Shanghai Turbo* ([62] *supra*) at [49]; *Vinmar* ([40] *supra*) at [45]. Having considered the affidavit evidence and parties' submissions, I concluded that the plaintiff was unable to establish a good arguable case under any of the limbs of O 11 r 1 that he purported to rely on.

Order 11 r 1(d)(i) of the ROC

98 Order 11 r 1(*d*)(i) of the ROC concerns claims brought in relation to a contract or breach thereof, where the contract was made in Singapore or was made as a result of an essential step being taken in Singapore.

99 The plaintiff posited that the present case involved two types of contracts: (a) the Contract; and (b) individual "Financial Contracts" made when each binary order trade was performed. He argued that as the plaintiff had executed each contract in Singapore, they were contracts "made in Singapore" and/or "made as a result of an essential step being taken in Singapore".[109]

100 On a preliminary note, I was not persuaded by the plaintiff's belated argument that these proceedings related to the "Financial Contracts". These "Financial Contracts" were mentioned for the first time in the plaintiff's written submissions (filed on 11 June 2020) in relation to SUM 5512 and SUM 5513: they were not pleaded nor even mentioned in the affidavit filed by the plaintiff (on 4 February 2020) in relation to the two summonses. Nevertheless, even taking the "Financial Contracts" into consideration for the sake of argument, I found that O 11 r 1(*d*)(i) of the ROC was not made out.

101 Order 11 r 1(*d*)(i) of the ROC was plainly inapplicable as against the fifth and sixth defendants, who were not party to the Contract and the purported "Financial Contracts". As against the first defendant, I was not persuaded that the plaintiff had the better of the argument that the Contract and/or the "Financial Contracts" were "made in Singapore". Where an offer is made and accepted over the telephone, a contract is formed at the place where the offeror

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109 PWS, paras 135–141.

"receives the notification of acceptance by the offeree": *Transniko Pte Ltd v Communication Technology Sdn Bhd* [1995] 3 SLR(R) 941 at [17]. Applying the same logic to the present case, it would suggest that the Contract and "Financial Contracts" were made in Belize, where the plaintiff's acceptances were received by the first defendant. In any event, and as the fifth defendant pointed out, the plaintiff did not adduce any evidence to show that he was actually in Singapore when he e-signed the Contract and when he made each trade on the Opteck platform.

102 The plaintiff also tried to rely on his pre-trading Skype conversations with the second defendant as an "essential step" taken in Singapore for the purposes of O 11 r 1(*d*)(i) of the ROC.[110] However, this argument was an obvious non-starter in relation to the Contract, which predated the plaintiff's introduction to the second defendant; the Contract could not possibly have been made "as a result" of the plaintiff's Skype conversations with the second defendant. In addition, O 11 r 1(*d*)(i) makes it clear that the "essential step" must have been taken in Singapore – but the second defendant was based in the UK at all material times. It was perhaps for this reason that the plaintiff contended that the "essential step" taken in Singapore was his *"receiving"* the second defendant's misrepresentations via Skype,[111] rather than the second defendant's *making* of such misrepresentations. With respect, such an argument would require much straining of the imagination before one could accept that the receipt of misrepresentations could amount to the taking of an "essential step". I rejected this argument as being devoid of merit.

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110 PWS, para 139.

111 CYHC's seventh affidavit, para 215.

Order 11 rr 1(f)(i) and 1(f)(ii) of the ROC

103 For O 11 r 1(*f*)(i) of the ROC to be satisfied, the claim must be founded on a tort which is at least partly constituted by an act or omission occurring in Singapore. On the other hand, the lynchpin of O 11 r 1(*f*)(ii) of the ROC is that damage was suffered in Singapore and was caused by a tortious act or omission wherever occurring.

104 Turning first to O 11 r 1(*f*)(i) of the ROC, the plaintiff was unable to show a good arguable case that the alleged unlawful means conspiracy comprised acts or omissions occurring in Singapore. According to the plaintiff's written submissions, the "core wrongs" of the defendants included:[112]

(a) collectively devising a scheme to influence the plaintiff's trading patterns on the Opteck platform;

(b) manipulating the Opteck platform and controlling the plaintiff's trades;

(c) misappropriating the plaintiff's money; and

(d) inducing the plaintiff to transfer increased sums to the Volksbank Account.

105 None of the aforementioned constituent acts of the alleged conspiracy occurred in Singapore.

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112 PWS, para 128.

106 A closer look at the matters pleaded in the SOC (Amendment No. 2) in relation to the alleged conspiracy yielded the same result.[113] The Volksbank Account was opened and operated in Romania, and any misappropriation of the moneys in that account would not have occurred in Singapore. Any wrongdoing by the second defendant, *eg*, using the TeamViewer software to manipulate the plaintiff's computer and making various misrepresentations to induce the plaintiff to invest or deposit huge sums of money, would have taken place in the UK where he was said to be based. It was also undisputed that the first defendant operated the Opteck platform in Belize, not Singapore, and that the fifth and sixth defendants were based in Israel at the material time. On the basis of the plaintiff's own pleadings, therefore, there was no good arguable case that O 11 r 1(*f*)(i) of the ROC had been made out.

107 As for O 11 r 1(*f*)(ii) of the ROC, I likewise found that the plaintiff did not have the better of the argument that he had suffered damage in Singapore. The key losses pleaded were the sums of US$1,326,239.85 (in relation to the liquidation of the plaintiff's LinkedIn shares – see [19] above) and US$11.55m (*ie*, the amount transferred to the Volksbank Account). Any losses in relation to the liquidation of the LinkedIn shares would appear to have been sustained in the United States.[114] I also noted that the plaintiff's claim for losses of US$11.55m included the sum of approximately US$1.23m which he acknowledged had been returned to him.[115] No satisfactory explanation was provided for the inclusion of this returned amount in his claim for losses; and I was obliged to agree with the defendants that it appeared to be an unprincipled

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113 SOC (Amendment No. 2), paras 59–60.

114 CYHC's seventh affidavit, p 265.

115 CYHC's seventh affidavit, para 162.

attempt by the plaintiff to acquire for himself a windfall. In any event, any damage suffered in relation to the US$11.55m would more likely have occurred in Romania, where the plaintiff's moneys were frozen and allegedly misappropriated.[116] O 11 r 1(*f*)(ii) of the ROC was therefore not satisfied.

Order 11 r 1(o) of the ROC

108 Order 11 r 1(*o*) of the ROC imposes conjunctive requirements that (a) the claim is a restitutionary one or against a defendant as trustee or fiduciary; and (b) the defendant's alleged liability arises out of any act done in Singapore. The plaintiff's reliance on this limb was patently misguided. It was not at all apparent from his pleadings and his affidavit evidence why the first, fifth or sixth defendants should be regarded as having acted as his trustees or fiduciaries. Indeed, in his written submissions, the plaintiff asserted that *the second to fourth defendants* owed him fiduciary duties.[117] The fifth and sixth defendants barely had a relationship with the plaintiff, much less a relationship of "trust and confidence", which is the cornerstone of a fiduciary relationship (*Bristol and West Building Society v Mothew* [1998] 1 Ch 18). As for the first defendant, the Contract expressly cautioned that all transactions were carried out at the plaintiff's own risk (see [8(b)] and [8(c)] above). Furthermore, any liability on the defendants' part could not have arisen out of acts done *in Singapore* as they remained overseas at all material times.

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116 SOC (Amendment No. 2), para 59(3).

117 PWS, para 145.

Order 11 r 1(p) of the ROC

109 This limb is applicable where a claim is founded on a cause of action arising in Singapore. I have set out the plaintiff's causes of action at [30] above. For the reasons provided at [104]–[107], the plaintiff's pleaded causes of action of unlawful means conspiracy, misrepresentation, deceit and undue influence did not arise in Singapore; neither did the plaintiff's contractual claim (see [101]–[102] above). That left the plaintiff's restitutionary claim. Any alleged breaches of fiduciary duty by the defendants could not have arisen in Singapore as they were overseas at all material times, and the plaintiff's moneys of US$11.55m were received in Romania, not Singapore. In the circumstances, there was no basis for the plaintiff's reliance on O 11 r 1(*p*) of the ROC.

Summary

110 To sum up: I found that the plaintiff had failed to establish a good arguable case that any of the grounds under O 11 r 1 of the ROC were made out. Accordingly, I set aside the orders for service of the writ on the first, fifth and sixth defendants out of jurisdiction. Given my findings, it was not strictly necessary for me to consider if the plaintiff had established a serious issue to be tried. I also considered this in the interests of completeness and set out my conclusions below.

Was there a serious issue to be tried?

The plaintiff's claims against the first and fifth defendants

111 Fraud lay at the heart of the plaintiff's claims against all the defendants. The plaintiff claimed not only that the defendants had defrauded him, but that they had done so in concert by means of an elaborate and carefully devised

scheme conducted across multiple countries with the aid of a dummy trading platform.

112 The plaintiff's allegations of fraud were mainly premised on:

(a) the advice of one Mr Alireza Fazeli Nasab ("Mr Alireza"), an information technology forensics expert, who reviewed the plaintiff's recordings of his trading sessions on his computer (see [13] above) and concluded that "pre-determined data on simulated screens was used so as to create real time trading";[118]

(b) the fact that he could trade on his moneys even though they had been seized by the Romanian authorities;[119]

(c) "errors" and "glitches" that he encountered when trading on the Opteck platform;[120] and

(d) the fact that his telegraphic transfer of US$5m (on 20 November 2013) was quickly credited to his Opteck account the very next day.[121]

113 Despite relying on Mr Alireza's advice in denouncing the Opteck platform as a dummy trading platform, the plaintiff did not produce in evidence a copy of Mr Alireza's advice. Instead, Mr Alireza's report was produced *by the fifth defendant* as an annex to the plaintiff's criminal complaint of 22 July 2014

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118 CYHC's first affidavit, para 40.

119 CYHC's seventh affidavit, para 113.

120 CYHC's seventh affidavit, paras 55, 150 and 152.

121 CYHC's seventh affidavit, paras 98–101.

to the Romanian authorities.[122] When the fifth defendant challenged the accuracy of and assumptions undergirding Mr Alireza's report, the plaintiff rapidly backpedalled, claiming instead that Mr Alireza's report was merely a "preliminary" report pending completion of his "investigations".[123] This was an excuse which struck me as being glib and disingenuous. Six years after the plaintiff made a criminal complaint to the Romanian authorities, Mr Alireza's report remains as tentative as ever. The plaintiff subsequently engaged a forensic accountant, Mr Wan Yew Fai ("Mr Wan"), to assess "whether the strike price, outcome and payout/loss for trades" made on the plaintiff's Opteck account were "consistent with comparative data obtained from the Bloomberg Terminal".[124] But Mr Wan's "preliminary" report is subject to similar qualifications: at the time of his report, he had "not yet completed the assessment for all the trades" made on the plaintiff's Opteck account; he is not an expert in options trading; and he could not provide an opinion on whether the trading strategies adopted for trades made on the plaintiff's Opteck account "were legitimate and/or sensible".[125]

114 The plaintiff also sought to cast his ability to trade on the Frozen Moneys in a sinister light. However, the first and fifth defendants' expert, Dr Tal Mofkadi, explained that "trading while actual funds are frozen is not indicative of fraud" – it is "common practice" for firms to credit their clients bonuses over their actual deposits, such that clients can trade on the bonuses reflected in their online account ledgers, even though those moneys are not actually in their bank

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122 BYZ's first affidavit, pp 48–57.

123 CYHC's seventh affidavit, para 171.

124 Affidavit of Wan Yew Fai dated 31 January 2020 ("WYF's first affidavit"), p 12, para 5.

125 WYF's first affidavit, p 19, paras 30–31.

accounts.[126] It was for this reason that US$5.5m was credited to the plaintiff's Opteck account in early December 2013, even though the first defendant had not yet received those moneys from him.[127] As counsel for the first/fifth defendants noted, clause 6 of the Contract in fact provides for such a practice and draws a distinction between (a) moneys transferred to the first defendant, and (b) moneys in a customer's trading account ledger.[128]

115 As for the "errors" and "glitches" on the Opteck platform that purportedly caused the plaintiff's trades to "disappear",[129] the evidence *prima facie* showed that those "disappearing" trades had in fact gone through smoothly.[130] Neither Mr Alireza nor Mr Wan commented on what those "glitches" meant for the authenticity (or lack thereof) of the plaintiff's trades.

116 I also gave short shrift to the plaintiff's complaint that his telegraphic transfer of US$5m (on 20 November 2013) was quickly credited to his Opteck trading account the very next day as "part of the [d]efendants' scheme to cause [him] loss".[131] The first defendant's bank statement showed that the US$5m was received in the Volksbank Account on 20 November 2013 itself; however, as that transfer was made close to or after business hours, it was only registered in the plaintiff's Opteck account the next day.[132] This was thus no basis for asserting dishonesty on the defendants' part; and the plaintiff himself

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126 Affidavit of Tal Mofkadi dated 26 March 2020, p 15, para 19.

127 BYZ's fourth affidavit, para 91.

128 1DWS, para 158; CYHC's first affidavit, p 28, cl 6.

129 CYHC's seventh affidavit, para 152.

130 BYZ's fourth affidavit, para 150(4)(b).

131 CYHC's seventh affidavit, para 101.

132 BYZ's fourth affidavit, p 173 and para 150(3).

acknowledged implicitly that he was really grasping at straws ("I appreciate that I am *inferring about this fact*" [emphasis added]).[133]

117 In the premises, I found that the plaintiff's story about a conspiracy by the defendants to defraud him was simply that – a story, cooked up in a desperate attempt to recoup his losses. In addition to the points traversed above, I make the following other observations. First, integral to the alleged conspiracy was the second defendant's gaining the plaintiff's trust. Yet just a month after signing the Contract, the plaintiff suffered losses of US$37,000 that prompted him to withdraw the balance in his Opteck account as he was "shaken and wanted out".[134] He subsequently suffered net losses of nearly US$160k and US$12.14m on 27 November 2013 and 17 December 2013 respectively.[135] Any crook intent on defrauding him would surely have attempted to conceal these hefty losses from him. Second, it was undisputed that the US$1.23m that remained in the plaintiff's account after 17 December 2013 was returned to him – conduct that was, once again, atypical of conniving fraudsters.[136] Having examined the merits of the plaintiff's claims against the first and fifth defendants, I concluded that there was no serious issue to be tried.

The plaintiff's claims against the sixth defendant

118 My observations at [111]–[117] above applied with equal force in respect of the sixth defendant. In addition, I found that the plaintiff's conduct in

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133 CYHC's seventh affidavit, para 102.

134 CYHC's seventh affidavit, p 430, para 46.

135 SOC (Amendment No. 2), paras 18–19 and 34; BYZ's fourth affidavit, para 100.

136 SOC (Amendment No. 2), paras 52 and 54.

these proceedings betrayed a deplorable degree of cynicism in the claims he sought to advance against the sixth defendant.

119 As highlighted at [28] above, the plaintiff only applied to include the sixth defendant in Suit 34 on 4 April 2018, more than a year after commencing the suit. In gist, the sixth defendant's inclusion in these proceedings was based on two meetings that he had attended in June 2015 and August 2016, and a letter that he had written in November 2015.[137] The plaintiff himself was not present at those meetings and was not the addressee of the letter.[138] According to the plaintiff, the letter and meetings demonstrated that the sixth defendant "clearly knew" of the moneys that the plaintiff had remitted to the Volksbank Account. The plaintiff further charged that the sixth defendant had represented at the June 2015 meeting that he "owned 50% of the [first defendant]".

120 Even leaving aside the sixth defendant's objection that those meetings were conducted on a "without prejudice" basis, the plaintiff's position was shorn of any merit. First, there was an unexplained gap of some 20 months between the August 2016 meeting and the plaintiff's application for leave to join the sixth defendant as a party to these proceedings. Second, the plaintiff's own account was that he communicated with the second defendant via Skype, telephone and e-mail.[139] However, the sixth defendant was not copied in those e-mails, and there was no evidence that he was privy to the Skype and telephone conversations. Third, and more tellingly, in the plaintiff's seventh affidavit which was filed on 4 February 2020 (*ie*, nearly two years after the plaintiff had

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137 SOC (Amendment No. 2), paras 62(4) and 62(5).

138 SOC (Amendment No. 2), paras 62(4) and 62(5); GT's first affidavit, para 21.

139 See, *eg*, CYHC's first affidavit, paras 13, 16 and 52.

applied to join the sixth defendant as a defendant) and which spanned some 600 pages, the plaintiff traversed the facts of these proceedings in painstaking detail – yet there was conspicuously no mention of the substance of the two meetings and the letter that formed the very basis for the sixth defendant's entanglement in these proceedings. Indeed, in his seventh affidavit, the plaintiff entirely abandoned his claim that the sixth defendant substantially owned the first defendant. This was perhaps inevitable, because the documentary evidence before me – namely, the first defendant's Certificate of Incumbency – upended the plaintiff's allegations about the sixth defendant's substantial ownership of the first defendant: it showed that the fifth defendant had been the *sole shareholder* of the first defendant since 7 September 2011.[140]

121 Having abandoned the allegations about the sixth defendant's substantial ownership of the first defendant, the plaintiff pivoted in his seventh affidavit to alleging that CST's Asset Purchase would have taken place in "late 2013/early 2014".[141] Again, however, there was simply no basis for these belated allegations. The plaintiff sought to rely on the fact that the employment of the sole local director of BNet Online (one Robert Benjamin Gersohn) was terminated in June 2014 and that the gazette notice for the compulsory strike-off of BNet Online was filed on 9 September 2014. Once again, these allegations really amounted to grasping at straws: the plaintiff was unable to explain how these events were connected to the timing of the Asset Purchase, or even how BNet Online was connected to the purported conspiracy against him.

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140 BYZ's first affidavit, pp 28–31.

141 CYHC's seventh affidavit, paras 283–284.

122 In fact, the plaintiff himself acknowledged receipt of an e-mail from Opteck dated *29 April 2015* informing him that there was a change in the ownership of the Opteck platform.[142] This was evidence which corroborated the sixth defendant's assertion that the Asset Purchase was carried out in April 2015.

123 In light of the above evidence, I agreed with the sixth defendant that his belated inclusion in Suit 34 was no more than an attempt by the plaintiff to cast his net as widely as possible in the hopes of recouping his losses from one or more of the defendants, in cynical disregard of the merits (or lack thereof) of his claims.

124 The alleged misrepresentations (see [18] above) were made by the second defendant and clearly predated the sixth defendant's involvement in this saga by way of the Asset Purchase in April 2015. All that tied the sixth defendant to the second defendant's purported misrepresentations was the plaintiff's bare assertion that all of the defendants, "acting by the [second defendant]",[143] made those misrepresentations. Even at this preliminary stage, the plaintiff's claim rang hollow: there was simply no evidence of the sixth defendant's participation in the making of the said misrepresentations. Indeed, the sixth defendant asserted that he did not even know the second defendant;[144] and no evidence was put forward to show that he did.

125 The plaintiff's charges of conspiracy *vis-à-vis* the sixth defendant were similarly founded on nothing more than speculation. The acts purportedly

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142 CYHC's seventh affidavit, para 279.

143 SOC (Amendment No. 2), para 78.

144 GT's first affidavit, para 20.

carried out in relation to or in furtherance of the alleged conspiracy occurred in late 2013, way before the sixth defendant came into the picture during the Asset Purchase in 2015. Relying on the "without prejudice" meetings and the sixth defendant's letter of November 2015 (see [119] above), the plaintiff claimed that:[145]

> *If the [sixth defendant] contends that he became the substantial owner of the [first defendant] after late August or early September 2013*, the [p]laintiff contends that,
>
> > (1) the [sixth defendant] was aware of the surrounding circumstances pertaining to the [alleged conspiracy] and shared the same object as the other [d]efendants;
> >
> > (2) the [sixth defendant] participated or condoned or countenanced the overt acts pleaded in paragraph 60 …
> >
> > …
> >
> > [emphasis added]

126 The conjectural language employed in these pleadings was revealing. However, even assuming for the sake of argument that all of the above allegations could be established, they did not support an inference being clearly and properly drawn to the effect that the sixth defendant was party to the alleged conspiracy. None of these allegations, even if accepted and even if taken together, could support even an inference that the sixth defendant was actually involved in such a conspiracy.

127 In the circumstances, I held that the plaintiff had failed to show a serious issue to be tried *vis-à-vis* the sixth defendant.

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145 SOC (Amendment No. 2), para 63A.

Conclusion

128 For the above reasons, I set aside service of the writ on the first, fifth and sixth defendants pursuant to O 12 r 7(4) and/or O 32 r 6 of the ROC. Given the findings that I arrived at, I did not find it necessary to make any findings on whether the writ was validly served on the three defendants or whether service on the sixth defendant ought to be set aside on the grounds of material non-disclosure.

129 As for costs, I ordered that the plaintiff pay the costs of SUM 5513 (fixed at $30,000 plus reasonable disbursements) to the first and fifth defendants, and the costs of SUM 5512 (fixed at $24,000 plus reasonable disbursements) to the sixth defendant.

Afternote

130 As an afternote, I should add that following my dismissal of the plaintiff's application for leave to appeal my decision in Summons No 1273 of 2020 ("SUM 1273") and Summons No 1298 of 2020 ("SUM 1298") (the defendants' applications for, *inter alia*, a declaration that the time for the filing of their jurisdictional challenges had been extended to 31 October 2019), the plaintiff's counsel clarified that he intended to pursue as a "preliminary" issue in the present appeal the argument that the defendants' jurisdictional challenges had been filed out of time. In this connection, I had already indicated in the course of the hearing of SUM 1273 and SUM 1298 that I agreed with the defendants' counsel that the High Court's judgment in *Bunge SA and another v Indian Bank* [2015] SGHC 330 provided a complete answer to this "preliminary" objection. In that case, it was held that given the PTC Registrar's directions on the timeline for the filing of the stay application, there was no need for the defendant to apply for an extension of time. In any event, and with

respect, this "preliminary" objection appeared to me to be yet another cynical attempt by the plaintiff to distract from the substantive issues raised in the jurisdictional challenges – especially considering his own failure to raise such objection until February 2020, months after the filing of the jurisdictional challenges.

Mavis Chionh Sze Chyi
Judicial Commissioner

Raeza Khaled Salem Ibrahim, Kulvinder Kaur and Charlene Wee Swee Ting (Salem Ibrahim LLC) for the plaintiff;
Calvin Liang (Essex Court Chambers Duxton (Singapore Group Practice)), Yu Kexin (Yu Law) (instructed) and Eugene Jedidiah Low (Ark Law Corporation) for the first and fifth defendants;
Gregory Vijayendran SC, Tan Eu Shan Kevin and Andrew Tan Jian Ming (Rajah & Tann Singapore LLP) for the sixth defendant.