IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 201

Suit No 860 of 2020

Between

Enjin Pte Ltd

… *Plaintiff*

And

Pritchard Lilia

… *Defendant*

JUDGMENT

[Contract — Contractual terms — Bonuses]
[Contract — Formation — Oral Agreement]
[Evidence — Privilege — Communications during marriage — Section 124 Evidence Act 1893]
[Civil Procedure — Inherent powers — Anonymisation and redaction of judgment]

TABLE OF CONTENTS

Enjin Pte Ltd
v
Pritchard Lilia

[2022] SGHC 201

General Division of the High Court — Suit No 860 of 2020
Philip Jeyaretnam J
18–22, 25–29 April, 14 July 2022

22 August 2022 Judgment reserved.

Philip Jeyaretnam J:

Introduction

1 This dispute over whether the defendant was entitled to transfer monies and digital tokens from the plaintiff to herself turns on whether either of two oral agreements were entered into between the plaintiff's co-founder and the defendant. One is said to have happened while that co-founder and the defendant were still husband and wife, while the second is said to have happened after they had divorced. In relation to the first of these oral agreements, I have had to consider the applicability of marital privilege to messages between them.

Facts

The parties

2 The plaintiff is Enjin Pte Ltd ("Enjin"), a blockchain and cryptocurrency technology company in the business of developing and operating proprietary blockchain software products and platforms.[1] Enjin was co-founded by Mr Maxim Blagov ("Mr Blagov") and Mr Witold Radomski ("Mr Radomski"). Mr Blagov is Chief Executive Officer ("CEO") of Enjin, while Mr Radomski is Chief Technology Officer ("CTO"). They are the only directors and shareholders of Enjin. Mr Blagov holds 67% of the shares in Enjin while Mr Radomski holds the remaining 33%.[2]

3 The defendant is Ms Lilia Pritchard ("Ms Pritchard"). She was the Chief Financial Officer ("CFO") of Enjin before she resigned on 22 April 2020.[3] Prior to that, she was the Chief Operating Officer ("COO") of Enjin from October 2017 to early 2019.[4] She was also married to Mr Blagov from 2004 until they divorced in 2019.[5]

Background to the dispute

4 In 2004, Mr Blagov and Mr Radomski started a business known as "Surreal Media". Because Ms Pritchard was married to Mr Blagov at the time, she became involved in the business.[6] Some time later, in 2009, Mr Blagov and

---

1 Blagov's AEIC at para 3.

2 Blagov's AEIC at paras 3, 15 and 17(a).

3 Pritchard's AEIC at para 5.

4 Pritchard's AEIC at para 29.

5 Pritchard's AEIC at para 11.

6 Pritchard's AEIC at para 12.

Mr Radomski incorporated "Enjin Pty Ltd" in Australia.[7] In 2012, Enjin was incorporated in Singapore and Enjin Pty Ltd was wound up in Australia.[8] Ms Pritchard was involved in Enjin's business from its incorporation,[9] but the precise scope of her role is disputed. Common ground, nonetheless, is that Ms Pritchard has never been a shareholder of Enjin, has never been a director of Enjin, and there is no written employment contract between her and Enjin.

5 Prior to 2017, Enjin was a video gaming platform company. In 2017, Enjin changed strategy and focused instead on developing a proprietary blockchain technology for software developers. Their technology allowed software developers to integrate digital tokens within their games, applications and other programs. Enjin began issuing a digital token called "ENJ Coin" ("ENJ") which was based on the Ethereum network.[10] ENJ is a utility token that can be used to create digital assets. There is a fixed amount of ENJ because there is no way to create new ENJ. Therefore, using ENJ to create digital assets gives the asset scarcity and value. In late 2017, through an Initial Coin Offering ("ICO"), Enjin created 1bn ENJ and sold around 700m ENJ to the public to raise capital.[11]

6 During the ICO, around 260m ENJ was retained by Enjin, out of which around 30m to 50m was set aside for Enjin employees.[12] This is because Enjin

---

7 Blagov's AEIC at para 15.

8 Blagov's AEIC at para 17.

9 Pritchard's AEIC at para 28.

10 Blagov's AEIC at paras 20–22.

11 21 April 2022 Transcript, p 182 line 6 to p 183 line 13.

12 21 April 2022 Transcript, p 184 lines 3 to 12.

paid some performance bonuses in ENJ.[13] Out of the total sum set aside for employees, Mr Blagov and Mr Radomski set aside individual amounts of ENJ for some of their employees, including Ms Pritchard. Around the time of the ICO, 6m ENJ was set aside for Ms Pritchard, as reflected in an Excel spreadsheet that was tendered in evidence[14] and which I will refer to as the "ENJ allocation spreadsheet". A key point of dispute in this suit is the legal significance of setting aside this figure – whether it was a provisional, earmarked figure that was subject to change at the discretion of Mr Blagov and Mr Radomski, or a final and irrevocable award. Before coming to a conclusion on that issue, I will simply refer to the sum of 6m ENJ neutrally as having been "set aside for" or "allocated to" Ms Pritchard in late 2017.

7 In March 2019, 3m ENJ, out of the 6m ENJ set aside for her, was paid to Ms Pritchard in the form of USD$300,000 (its value at the time).[15]

8 Around the time of the ICO, Ms Pritchard was formally appointed COO of Enjin.[16] In February 2019, Ms Pritchard was given the role of CFO of Enjin. In August 2019, she was replaced as COO by Mr Caleb Applegate ("Mr Applegate").[17]

9 2019 was also when Ms Pritchard and Mr Blagov's marriage came to an end. The divorce proceedings commenced in July 2019 and final judgment was

---

13 Blagov's AEIC at para 30.

14 Exhibit "D2".

15 Pritchard's AEIC at para 43.

16 Blagov's AEIC at para 23.

17 Blagov's AEIC at para 23.

granted in November 2019.[18] In late 2019, Ms Pritchard entered a serious relationship with a new partner.[19]

10 On 7 February 2020, in a Slack (the messaging platform used by Enjin) conversation, Ms Pritchard informed Mr Blagov and Mr Radomski that she was still waiting for her payment of 3m ENJ. They responded to say that it "need[ed] to be vested" and would be sent in "vested portions" because it was a large amount. They told her that none of the other employees had received the "full amount".[20] Sometime in February 2020 after this conversation, Ms Pritchard was awarded 500,000 ENJ.[21]

11 On 20 April 2020, Ms Pritchard told Mr Blagov and Mr Radomski in a Slack conversation that she wanted the remaining 2.5m ENJ that was due to her to be paid in either cash or Bitcoin. Mr Blagov responded that they needed to have a meeting to discuss "everything". Ms Pritchard objected and said that no meeting was necessary.[22] From this exchange, Mr Blagov became concerned that Ms Pritchard might use her access to Enjin's financial accounts to pay her bonus to herself.[23] He therefore took precautionary measures to prevent this. He called Standard Chartered Bank ("SCB") to instruct them to cancel the digital bank tokens which were in Ms Pritchard's possession.[24] He also changed the passwords on some of Enjin's other payment accounts.[25]

---

18 Pritchard's AEIC at para 11.

19 Pritchard's AEIC at para 10.

20 AB/B 109–110.

21 Blagov's AEIC at para 38.

22 AB/B 175.

23 Blagov's AEIC at para 45–46.

24 Blagov's AEIC at para 47.

25 Blagov's AEIC at para 56.

12 The next day, he asked Ms Pritchard to return the device tokens and other Enjin paperwork because he assumed that she did not to intend to continue working at Enjin. Ms Pritchard responded that she planned on continuing to work, and she needed those items to carry out her work. On 22 April 2020 at 7.48 am, Mr Blagov told her that the tokens needed to be in the director's possession, and that there needed to be a discussion so that they could move forward. At 8.28 am, Ms Pritchard replied that the discussion was "straight forward" – just send her 2.5m ENJ. She also said that if the ENJ was withheld past that day, she would assume that Enjin had no intention of ever transferring it to her.[26] At 7.54 pm on 22 April 2020, Ms Pritchard sent a letter of resignation to the Enjin team, stating that she was leaving the company with great regret because Mr Blagov and Mr Radomski were refusing to give her the 2.5m ENJ that she had been promised during the ICO.[27]

13 On 22 and 23 April 2020, Ms Pritchard carried out the following transactions from Enjin's accounts:

(a) On 22 April at 7.01 pm, she purchased two laptops worth S$6,546.64 and S$5,538.00 on Amazon Singapore using Enjin's TransferWise corporate debit card. The transaction for the laptop worth S$5,538.00 was unsuccessful. Later, at 10.44 pm, she purchased two headphones for the total price of S$1,078. I will refer to the successful purchases (one laptop and two headphones) collectively as the "Amazon Purchases".[28]

---

26 AB/B 175.

27 AB/A 214.

28 Blagov's AEIC at para 81.

(b) On 22 April 2020, she executed a transfer of 42,000 ENJ and 3.3 Ethereum tokens ("ETH") from Enjin's virtual wallet to her personal virtual wallet.[29]

(c) On 23 April 2020, she made two transfers of S$50,000 and S$357,000 (total S$407,000) from Enjin's corporate account with SCB to a joint account that she held with Mr Blagov (the "Joint Account").[30]

(d) On 23 April 2020, she transferred a total of S$209,304.86 from the Joint Account to her personal bank accounts. She then sent S$5,828 from one of her personal accounts back to the Joint Account.[31]

14 On 5 May 2020, Enjin commenced this suit seeking, amongst other things, recovery of S$209,304.86 (money transferred from its SCB account), S$9,337 (the value of the ENJ and ETH transferred from its virtual wallet) and S$7,7624.64 (the value of the Amazon Purchases), as well as claims for breach of confidence and wrongful acts in relation its Telegram channel.[32] Ms Pritchard responded with a counterclaim for 2.5m ENJ.[33]

Procedural history

Transfer to High Court

15 Enjin first brought its claim in the District Court because it was for a sum below S$250,000. However, the counterclaim brought by Ms Pritchard

---

29 S/N 9 of the Main Facts Not in Dispute in the Parties' Revised List of Issues and Common Ground dated 8 April 2022 ("Agreed Facts").

30 S/N 6 of Agreed Facts.

31 S/N 7 of Agreed Facts.

32 SOC (Amendment No 2) at pp 23–24.

33 Defence and Counterclaim (Amendment No 2) at paras 56–60.

exceeded S$250,000 and accordingly the proceedings were transferred to the High Court.[34]

Proprietary injunction

16 On 3 June 2020, the District Court granted a proprietary injunction restraining Ms Pritchard from disposing of the balance monies transferred by her to herself, namely S$197,672, and from disposing of the 42,000 ENJ and 3.3 ETH transferred by her from Enjin's virtual wallet to her personal wallet (the "Injunction").[35]

Sealing order

17 On Enjin's application, Mavis Chionh J granted on 9 July 2021 a sealing order and an order that the trial take place *in camera*. Enjin also sought in that application an order that any judgment in the case be redacted and anonymised, but Chionh J made no order on that prayer.[36]

18 I invited parties to consider if they wished to renew the application for anonymisation and redaction of the judgment. Enjin did so by summons to which Ms Pritchard consented on 28 July 2022. Prior to publication, I reviewed the basis for such an order. It was said to flow from the previous order that trial take place *in camera*. Enjin relied on O 42 r 2 of the Rules of Court (2014 Rev Ed) ("ROC") which provides:

> **Judgment in proceedings heard in camera (O. 42, r. 2)**
>
> **2.** Where proceedings are heard in camera pursuant to any written law, any judgment pronounced or delivered in such

---

34 Order of Court dated 4 August 2020 in HC/OS 746/2020.

35 Order of Court dated 3 June 2020 in DC/DC 1139/2020 (DC/SUM 1556/2020).

36 Order of Court dated 9 July 2021 in HC/SUM 2494/2021.

> proceedings shall not be available for public inspection except that the Court may, on such terms as it may impose, allow an inspection of such judgment by, or a copy thereof to be furnished to, a person who is not a party to the proceedings.

19 Enjin submitted that the courts have consistently redacted and/or anonymised trial judgments where proceedings were held *in camera*. That was unsurprising because, in most cases, the considerations taken into account when the decision was made for the proceedings to be held *in camera* would be equally applicable at the time of publication of the judgment. This was not such a case. In this case, the proceedings were held *in camera* because Enjin's claim for breach of confidence was said to involve highly commercially sensitive information. As it happens, this claim was settled in the first few days of trial and the trial did not involve any aspect of it, and nor does this judgment. There is no commercially sensitive information that has to be discussed in this judgment.

20 Even in cases where the proceedings were held *in camera*, the decision whether to redact or anonymise a judgment is a separate and discretionary one, as illustrated by how Chionh J dealt with the original application. In one of the cases cited by Enjin, *BOK v BOL and another* [2017] SGHC 316, Valerie Thean J stated at [2] that she was "[e]xercising [her] discretion under O 42 r 2" to publish the judgment on the terms that the parties' names and details were redacted. As per *Chua Yi Jin Colin v Public Prosecutor* [2021] SGHC 290 at [37]:

> Given the strong public interest in having justice be seen to be done, any departure from the general rule of open justice is only justified "to the extent and to no more than the extent that the court reasonably believes it to be necessary in order to serve the ends of justice" (see [*Attorney-General v Leveller Magazine Ltd and others* [1979] 2 WLR 247] at 252).

In my view, there was no reason for this judgment to be redacted or anonymised and I declined to do so.

Contempt proceedings

21 In breach of the Injunction, Ms Pritchard disposed of the 42,000 ENJ and 3.3 ETH held in her personal virtual wallet. On application by Enjin for committal, Ms Pritchard was found by me to have committed contempt and was fined on 29 October 2021.[37] In mitigation, she had restored equivalent amounts of tokens to another personal wallet and given a fresh undertaking to the court in respect of the same.

Consent order settling breach of confidence and other claims

22 Enjin initially had further claims against Ms Pritchard, but these claims were settled by a consent order in the course of trial.

Preliminary issue: Marital communications privilege

23 Prior to trial, an evidentiary issue arose regarding certain parts of Ms Pritchard's affidavit of evidence-in-chief ("AEIC").

24 Ms Pritchard's AEIC described and included certain communications between herself and Mr Blagov which took place during their marriage. Enjin submitted that these communications were protected by marital communications privilege. They relied on s 124 of the Evidence Act 1893 ("EA"), which provides that:

> No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be

[37] Order of Court dated 29 October 2021 in HC/SUM 3692/2021.

> permitted to disclose any such communication unless the person who made it or his representative in interest consents, except in suits between married persons or proceedings in which one married person is prosecuted for any crime committed against the other.

25 Enjin argued that the prohibition on disclosing any communication protected by marital communications privilege as enshrined in s 124 EA was absolute, subject only to the two exceptions contained in the section. This was not a suit between married persons, because it was between Enjin and Ms Pritchard. Nor were these proceedings where a married person was being prosecuted for a crime committed against the other. Thus, all communications between Ms Pritchard and Mr Blagov during the period of their marriage between 29 January 2004 and 15 November 2019 were protected by the privilege. Mr Blagov had not consented to the disclosure of these communications. Thus, such communications and the paragraphs describing them should be expunged from Ms Pritchard's AEIC.[38]

26 Ms Pritchard contended that Enjin's reading of s 124 EA was untenable, because it was far wider than necessary to achieve the policy objectives underlying the section. The better view was that s 124 EA only protected communications that would not have been made *but for* the marital relationship between the parties.[39] Ms Pritchard's alternative submission was that this suit was, in essence, a dispute between herself and Mr Blagov, and thus the exception under s 124 EA for disputes between spouses applied.[40]

---

38 Plaintiff's Skeletal Submissions dated 24 Feb 2022 at paras 18–21.

39 Defendant's Skeletal Submissions dated 25 Feb 2022 at para 12.

40 Defendant's Skeletal Submissions dated 25 Feb 2022 at para 13.

27 At the hearing, I raised the fact that marital privilege may only be invoked by the spouse or former spouse who made the communication. Here, the party invoking the privilege was Enjin, rather than Mr Blagov. In response, Enjin's counsel indicated that he had firm instructions from Mr Blagov to commence an application on his behalf should that be necessary. Thus, I decided that it was simpler and more convenient to proceed as if such an application had been made.

Origins of the provision

28 Section 124 of the EA was based on s 122 of the Indian Evidence Act (Act No 1 of 1872) which was enacted in Singapore *vide* the Evidence Ordinance (No 3 of 1893). At the time, the statutory position in England with regard to privilege between spouses was contained in the Evidence Amendment Act 1853 ("EAA 1853"). There were two key aspects to the EAA 1853:

(a) Individuals were *competent and compellable* to give evidence in civil proceedings involving their spouses. Section 1 provided that husbands and wives of parties were to be admissible witnesses, meaning that they were competent and compellable to give evidence in a trial involving their spouse. This provision was enacted to displace the prevailing rule to the contrary (see *Rumping v Director of Public Prosecutions* [1964] AC 814 ("*Rumping*") at pp 856–858). However, this new rule did not apply to criminal proceedings by virtue of s 2 of the EAA 1853.

(b) Individuals were *not compellable* in any proceedings to disclose communications made to them by their spouse, pursuant to s 3 of the EAA 1853. While witnesses were entitled to refuse to disclose martial communications, they could do so if they wished (*Rumping* at p 858).

> Further, this privilege only extended to communications made *to*, rather than *by*, the individual (*Rumping* at p 859).

29 It is worth noting that the *prohibitory* aspect of s 124 EA, that no spouse shall disclose marital communications without the consent of the other spouse, (which is relevant here) was not present in the EAA 1853.

Singapore case law

30 There is limited case law on s 124 EA. In *Lim Lye Hock v Public Prosecutor* [1994] 3 SLR(R) 649 at [33], the Court of Appeal explained the effect of s 124 EA:

> Although the husband or wife of a person against whom proceedings are brought is a competent and also a compellable witness, he or she is not compellable to disclose any marital communication made to him or her by his or her spouse. *Further, even if he or she is prepared to disclose such communication, he or she is not permitted to do so without the consent of his or her spouse.*
>
> [emphasis added]

The Court of Appeal described the prohibition against disclosing marital communications as absolute, subject only to the consent of the spouse who made the communication (or his or her representative in interest) and the two exceptions contained in s 124 EA (at [32]).

31 In *EQ Capital Investments Ltd v Sunbreeze Group Investments Ltd and others* [2017] SGHCR 15 ("*EQ Capital*"), the plaintiff ("EQ Capital") argued that the scope of the privilege under s 124 EA was limited to communications which "would not have been the subject of discussion *but for* the existence of the marital relation between the husband and wife" [emphasis added]: *EQ*

Capital at [2]. The AR did not agree with this proposition for the following reasons.

32 Based on the historical background of the legislature in England and India relating to marital communications privilege the AR concluded that the doctrine of marital communications privilege was rooted in the public interest in the protection of marriages and the preservation of domestic harmony: *EQ Capital* at [23]. The privilege promoted absolute frankness and candour in marital communications, and avoided unhappiness that might arise if one spouse were to reveal marital communications without the other's permission. For the privilege to be effective in doing so, it had to apply to *all* marital communications.

33 EQ Capital relied on some American cases to make the argument that there was a "business transaction exception" to marital communications privilege. The AR dismissed this argument because the American statute that was interpreted in those cases referred to "*confidential* communications" between spouses. In contrast, s 124 of the EA referred to "*any* communications" between spouses. There was therefore no room to read such an exception into s 124 EA: *EQ Capital* at [28].

34 EQ Capital then argued that in fact, s 124 EA only applied to "*confidential* communications". It cited John Henry Wigmore, *A Treatise on the Anglo-American System of Evidence in Trials at Common Law: Including the Statutes and Judicial Decisions of all Jurisdictions of the United States and Canada* (Little Brown, 2nd Ed, 1923) ("*Wigmore*") which opined that because "the essence of [marital communications] privilege is to protect *confidences*" [emphasis added], only communications that are intended to be private would be protected (at §2336). The AR did not agree for three reasons. First, the use

of the word "*any*" in s 124 EA could not be ignored. Any interpretation of s 124 EA which read a limitation into the statute would be contrary to its clear words: *EQ Capital* at [30]. Secondly, the marital communications privilege was meant to protect the *relationship* of confidence between spouses, rather than specific communications between them. Thus, it would not be consistent with the object of the statute expressed in its legislative history to protect some communications between spouses, but not others: *EQ Capital* at [31]. Finally, there would be considerable difficulties with applying any test to determine which communications between spouses were confidential and which were not. The "but for" test suggested by EQ Capital would be impossible to apply – the fact that parties are married affects in some way all aspects of all communications between them, so determining what would have been said between them regardless of their relationship would be pure guesswork: *EQ Capital* at [32].

35 Thus, the AR concluded (at [34]) that marital communications privilege extended to "*all* communications, ranging from the most quotidian of daily banalities to the deepest intimacies, and must include matters relating to the ordinary business affairs of the spouses" [emphasis in original]. The AR noted EQ Capital's final argument – that such a conclusion resulted in the practical absurdity where a family-owned company whose board is made up of spouses was able to resist disclosure of all company communications – but held that some degree of unfairness in litigation accompanied all privileges, and that it was for Parliament to decide where to strike that balance. The existence of s 124 EA in its current form made it clear where this balance had been struck with regard to marital communications privilege.

36 The AR's decision was appealed but Chua Lee Ming J dismissed the appeal. Chua J was troubled by the fact that, in that case, communications

between two directors regarding the affairs of the company were being protected by marital privilege, but broadly agreed with the AR's reasons and considered that any reform to s 124 EA (including its repeal) should come from Parliament.

My decision

37 First, I did not accept Ms Pritchard's submission that s 124 EA was limited to communications between spouses that would not have been made but for their marital relationship. For broadly similar reasons to those given by the AR in *EQ Capital*, such an interpretation is untenable on the wording of s 124 EA. When interpreting a statute, the first step that a court must take is to ascertain the possible interpretations of the provision, having regard not just to the text of the provision but also to the context of that provision within the written law as a whole: *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock"*) at [37]. I do not see Ms Pritchard's proposed interpretation to be a possible interpretation of s 124 EA, which clearly covers "any communication made to [a spouse] during marriage by any person to whom he is or has been married". Ms Pritchard's proposed interpretation failed to satisfy the first step set out in *Tan Cheng Bock.*

38 Nor did I accept Ms Pritchard's submission that her interpretation should be preferred because the courts can, and do, construe statutes in an ambulatory manner, taking into account new situations which arise and were not within contemplation at the time of the statute's enactment.[41] Assuming *arguendo* that when s 124 EA was enacted it was not commonplace for husbands and wives to be in business together, it might be said that the injustice resulting from the situation where a spouse was prevented by s 124 EA from adducing relevant

[41] Defendant's Skeletal Submissions dated 25 Feb 2022 at para 47.

evidence in a commercial dispute would have been occasional when the section was enacted but would now be far more common. However, I disagreed with Ms Pritchard's submission that s 124 EA must be interpreted more narrowly to avoid injustice and to account for this change in societal circumstances. Ms Pritchard cited *AAG v Estate of AAH, deceased* [2010] 1 SLR 769 ("*AAG"*) at [30], where the Court of Appeal held that:

> It is a settled principle that a statutory provision should be construed in a manner which will take into account new situations which may arise and which were not within contemplation at the time of its enactment... The court is to apply to an ongoing Act a construction that continuously updates its wording to allow for changes since the Act was initially framed (see Francis Alan Roscoe *Bennion, Bennion on Statutory Interpretation – A Code* (LexisNexis, 5th Ed, 2008) at p 889 (on s 288(2)). A statutory provision should not be regarded as a historical document but a document written with an eye to the indefinite future, ie, that it will be applied not only to facts in existence at the time it came into force but also to conditions and circumstances which may surface in the future (see Ruth Sullivan, *Driedger on the Construction of Statutes* (Butterworths, 3rd Ed, 1994) at p 139).

39 In my view, the Court of Appeal's remarks in *AAG* did not assist Ms Pritchard. There, the court was making the point that the things that words in a statute may encompass may change over time, with changes in technology or social practices. As an illustration, when the drafters of s 124 EA chose the word "communication", they clearly did not contemplate e-mails. However, given that e-mails are now frequently used by people to convey information to each other, it is clear that the word "communication" in s 124 EA would include them. This is consistent with the first step in *Tan Cheng Bock*. Here, Ms Pritchard's argument was not that any of the words in s 124 EA have broader application now than they did in 1893. She was not suggesting that the meaning of "any" had changed over time. Rather, she was suggesting that the court disregard the meaning of s 124 EA in favour of an interpretation which, in her

view, would strike a more desirable balance between competing policy objectives, given present social conditions.

40 Secondly, I dealt with Ms Prichard's submission that the s 124 EA exception applied to suits that were, in substance, between married persons, even if on one side or both the spouse sued by corporate vehicle. I was not convinced that this was the case as a matter of law, although it had some cogency. In any event, given that there was a minority shareholder in Enjin, I was not able to accept that this suit was, in substance, between Mr Blagov and Ms Pritchard. The s 124 EA exception for disputes between spouses therefore did not apply.

41 However, I was of the view that communications between spouses only fell within s 124 EA if they were made between them in their capacity as spouses as principals; thus, where a spouse communicated with a spouse on behalf of another person, the section would not apply. In such cases, the communication would be by the spouse's principal, rather than by the spouse. Section 124 EA would not apply because it only applies to communications "by any person to whom [the spouse] is or has been married." One example of such a case may arise where two spouses work for different companies that do business with each other. If the wife acting for her employer offers to purchase something from the husband's employer, and conveys this offer to her husband, the conveyance of that offer to her husband is not a marital communication. It is a communication between the spouses' respective employers that happens to take place via the spouses. Another example arises where two spouses work for, or are officers of, the same company. They may communicate with each other in circumstances where the communication is part of the company's business and forms part of the company's record. Take the case where the two spouses are the only directors of that company. The minute kept by one of them of a board

meeting held between them without others present, or a communication between them approving the entry by one of them into a contract with a third party on behalf of the company, would not be protected by marital communications privilege. Those would be records of the company or communications between the company and either spouse.

42 In this case, Ms Pritchard was employed by Enjin first as its COO and then as its CFO. Mr Blagov was its CEO and a 67% shareholder. Thus, it would not be surprising that they communicated with each other concerning the terms of Ms Pritchard's employment and her alleged entitlement to ENJ tokens. Mr Blagov's communications with Ms Pritchard about these matters would arguably be made on behalf of Enjin and be understood by Ms Pritchard as such given the usual authority of a CEO – especially one who was also a majority shareholder. In particular, I noted that even on Enjin's own pleading, Ms Pritchard was authorised to sign contracts on behalf of Mr Blagov so as to bind Enjin.[42] This meant that, necessarily, there would have been communications from Mr Blagov to Ms Pritchard that would have been made on Enjin's behalf.

43 On this basis, I ordered that the paragraphs of Ms Pritchard's AEIC (and the documents exhibited to those paragraphs) which described communications made to her by Mr Blagov which were not made on behalf of Enjin should be expunged. I allowed the paragraphs and exhibits involving communications made by Mr Blagov on Enjin's behalf to remain in evidence.

---

42 SOC (Amendment No 2) at para 13.

The parties' cases

Plaintiff's case

44 Enjin's case is that the S$209,304.86, 42,000 ENJ and 3.3 ETH which Ms Pritchard transferred to herself from Enjin's various accounts ("the Disputed Sums") were transferred without its consent. Thus, Ms Pritchard is liable to return or repay those sums, either because she has been unjustly enriched, because she has breached her duties as an Enjin employee, or because she has breached her fiduciary duties to Enjin.[43] As for the Amazon Purchases, they were not authorised by Enjin and even if they were, they were not legitimate business expenses. She is therefore required to repay the sum of S$7,624.64 to Enjin on the basis of her breach of her implied duty of good faith and fidelity and/or because she has been unjustly enriched in the value of the Amazon Purchases.[44]

45 Enjin's response to Ms Pritchard's counterclaim is that she is not entitled to the 2.5m ENJ. While 6m ENJ was set aside for her some time in 2017, this sum was merely earmarked for her and would be awarded over time at the sole discretion of Enjin's directors. This was in accordance with Enjin's standard procedure for all its staff. After awarding 3m ENJ to Ms Pritchard in March 2019, Enjin's directors exercised their discretion to award her only 500,000 ENJ in February 2020 in light of her poor work performance.[45] The directors had taken notice of Ms Pritchard's poor work performance from at least August 2019.[46] Enjin also submits that, even if Ms Pritchard had any entitlement to 2.5m

---

43 Plaintiff Closing Submissions dated 10 June 2022 ("PCS") at para 9.

44 PCS at para 146.

45 PCS at para 80.

46 PCS at para 124.

ENJ, she waived her right to claim that 2.5m ENJ in these proceedings when she transferred its equivalent value to herself (the sum of S$209,304.86).[47]

Defendant's case

46 Ms Pritchard's case is that the Disputed Sums were transferred with Enjin's consent. This is because she entered an oral agreement with Mr Blagov on 22 April 2020 ("22 April Agreement"), and the Disputed Sums were transferred pursuant to this agreement.[48] The terms of the 22 April Agreement were as follows:[49]

(a) Ms Pritchard would write a formal letter of resignation.

(b) After doing so, she would transfer the equivalent monetary value of 2.5m ENJ to her joint account with Mr Blagov.

(c) Mr Blagov would be entitled to 50% of that sum, and Ms Pritchard would be entitled to the remainder.

(d) Ms Pritchard would transfer to herself the balance ENJ and ETH in one of Enjin's virtual wallets and Enjin would write these sums off because their value was relatively low.

47 Ms Pritchard argues that she was awarded 6m ENJ in 2017 and is entitled to the remaining 2.5m ENJ. In consideration of her longstanding efforts and contributions to the business and success of the ICO, a bonus of 6m ENJ was declared in her favour. This bonus was not subject to variation or any other

---

47 PCS at para 80.

48 Defendant's Closing Submissions ("DCS") at para 190.

49 DCS at para 193.

terms once it had been declared. It was a contractual entitlement.[50] The 22 April Agreement was reached to resolve this entitlement.[51] Even if her entitlement to 2.5m ENJ was subject to variation at Enjin's discretion, this discretion was never exercised. The allegations about her work performance being poor are untrue and are being used to retrospectively justify withholding the 2.5m ENJ.[52] If the position on her bonus entitlement appeared different from that of other Enjin employees, that was simply because Ms Pritchard was treated more like Mr Blagov and Mr Radomski because she was Mr Blagov's wife, and had been involved in Enjin's business from the very beginning.[53]

48 Ms Pritchard's counterclaim only becomes relevant if I find that a) she was contractually entitled to 6m ENJ as of 2017 and b) there was no 22 April Agreement. In that situation, Ms Pritchard claims 2.5m ENJ from Enjin, with any sums that she is found to owe to Enjin to be set-off.[54]

49 As for the Amazon Purchases, it is Ms Pritchard's case that these were authorised purchases meant to replace items that she had used for work with Enjin, and had become worn out in the process. She also submits that the payment of S$1,078.00 was withdrawn by the issuer of Enjin's card, and thus Enjin has not suffered any loss in respect of this payment.[55]

---

50 DCS at paras 80–81.

51 DCS at para 27.

52 DCS at para 146.

53 DCS at para 180.

54 DCS at para 28.

55 DCS at para 234.

Issues to be determined

50 Thus, the following issues arise for my determination. I have adopted a slightly modified version of parties agreed list of issues:[56]

(a) Was Ms Pritchard entitled to 2.5m ENJ?

(b) Was there an agreement on 22 April 2020 between Mr Blagov and Ms Pritchard to resolve her entitlement to 2.5m ENJ?

(c) If so, did Mr Blagov have the authority to enter the agreement on Enjin's behalf?

(d) Has Ms Pritchard waived her right to claim 2.5m ENJ in these proceedings?

(e) Was Ms Pritchard authorised to make the Amazon Purchases?

(f) If so, were they a legitimate business expense?

(g) If not, what loss did the Amazon Purchases cause Enjin?

Enjin's claim for the Disputed Sums and Ms Pritchard's counterclaim

Was Ms Pritchard entitled to 2.5m ENJ?

How this issue was framed

51 Both parties expended considerable effort in attacking each other's cases on this issue as being marked by imprecision, obfuscation and evolution over time. By the closing submissions, however, the waters had cleared sufficiently for a degree of common ground to emerge.

---

56 PCS, Annex A.

52 First, in connection with the creation of ENJ, Enjin published a white paper (the "white paper"), that noted under the heading "Allocation" that of the 1bn ENJ, 10% would be distributed to the "Team and Advisors". Elsewhere in the white paper, Ms Pritchard was named a member of the team.[57] The white paper also represented that team tokens would be locked for the first 6 months and would be vested over a period of 24 months total. This note read in full:[58]

> Team tokens are locked for the first 6 months and will be vested over a period of 24 months total. Team members will be transferred 25% of their tokens after 6 months, and then 12.5% every 3 months afterward. The team list may be updated during the 24 month vesting period.

53 Secondly, there were one or more occasions in 2017 when Mr Blagov and Mr Radomski communicated with each other via Slack concerning the allocation of ENJ to the team. During these discussions, the ENJ allocation spreadsheet was worked on. Ms Pritchard was in the same room as Mr Blagov (to Mr Radomski's knowledge) and was involved at least to the extent of inputting figures into the ENJ allocation spreadsheet.[59]

54 The allocation exercise undertaken by Mr Blagov and Mr Radomski was plainly linked to what was stated in the white paper. Part of the quote from the white paper cited at [52] above was reproduced on the ENJ allocation spreadsheet.[60]

55 A claim by an employee for unpaid remuneration must rest in contract. In relation to bonus, it is common for an employee to be given the right to

---

57 Pritchard's AEIC at p 714–715.

58 Pritchard's AEIC at p 732.

59 Transcript (20 April 2022) p 61 line 15 to p 64 line 19.

60 Exhibit "D2".

participate in a bonus scheme. A typical bonus scheme might involve an annual consideration of an employee's performance and then a declaration of bonus. The court would look to the terms of the bonus scheme to determine the employee's rights both before and after declaration. In this case however Ms Pritchard's counsel has specifically disavowed reliance on any right as an employee to participate in the ENJ allocation exercise described in the white paper. Instead, he has put her case on the basis of a standalone oral contract that was formed during the 2017 discussions:[61]

> Lok: Yes, yes, yes. So, Your Honour, I think the analysis would be this, there wasn't an employment contract between the plaintiff and the defendant. At least there's no written employment contract and we say that there is no distinct or discrete contractual provision which entitles the defendant to a bonus. But what we do have, Your Honour, is an agreement made in 2017 for the defendant to be given or awarded---
>
> Court: Yes, so---okay, so you're saying it was an agreement. So that means you're suggesting that it is a standalone agreement, in which case I need to know offer, acceptance and consideration.
>
> Lok: Yes, Your Honour. What we say, Your Honour, is that those issues aren't really the issues which are engaged by the plaintiff in this case, because the matter is really whether or not there is an award or it's just merely an earmarking….

56 In presenting Ms Pritchard's case on this basis, her counsel has sidestepped the evidence adduced by Enjin that other employees' ENJ allocations as set out in the ENJ allocation spreadsheet were not guaranteed, because they varied over time.[62] He has also sidestepped the evidence that some other employees had provisions in their written contracts that Ms Pritchard

---

61 Transcript (14 July 2022) p 6 line 27 to p 7 line 6. I have corrected the transcript based on the audio recording from "disdain to discreet" to "distinct or discrete".

62 Transcript (27 April 2022), pp 130–135.

would have reviewed, by which the award of ENJ tokens was discretionary.[63] More generally, he has sidestepped the point that for other members of the Team any right to the ENJ tokens earmarked for them would arise only upon vesting occurring prior to their leaving Enjin's employment.

57 Contending for a standalone oral contract however brings into focus the requirements for contract formation, namely offer, acceptance, consideration and intention to create legal relations. The terms of the contract would also have to be sufficiently certain.

My findings concerning what was said

58 Before I deal with these aspects, I first consider what plaintiff's counsel urged on me, namely that Ms Pritchard's case must fail because she did not prove the precise point of time when the contract was made. The plaintiff relies on *Day, Ashley Francis v Yeo Chin Huat Anthony and others* [2020] 5 SLR 514 ("*Ashley Francis Day*") at [38]–[39].[64] In my view, this reliance is misplaced. It is of course the case that the formation of bilateral contracts requires an event, a point in time when parties achieve the proverbial meeting of minds. As Aedit Abdullah J noted in *Ashley Francis Day* at [49]:

> … It is not desirable nor sufficient for a plaintiff to pool together a universe of emails, messages and conduct, and argue that the collective sum of these show that an agreement must have been reached, without showing when the definitive point was.

However, that is not the same thing as proving the precise time that that meeting of minds took place. A plaintiff may recall that a meeting took place at which the contract was formed but not have recorded the date at that time and be unable

63 Blagov's AEIC at para 31.

64 PCS at para 96.

to remember the date when the matter is litigated. The plaintiff may insist the meeting took place on one date and the defendant another, with no way to tell who is right. Neither situation is fatal to a successful claim. The question is whether the plaintiff has proved that an oral contract was formed at that meeting, notwithstanding that the date of the meeting remains unclear.

59 At the same time, in evaluating credibility and the balance of probabilities, lack of clarity about dates may well count against the plaintiff. It is not however fatal in law. It is simply one point to be considered against the totality of the evidence.

60 Thus, there is no shortcut as contended by Enjin's counsel. It is necessary for the court to determine what happened as a matter of fact and then apply the law of contract formation to those facts.

61 Ms Pritchard's AEIC was short on details. She said:[65]

> Due to the massive success of Enjin's ICO in 2017 and in consideration of my efforts and contributions to the business since its incorporation from 2007, I was awarded a total of 6 million ENJ token as a bonus from the pool of ENJ tokens for the Team that was stated in the ICO Whitepaper. To my understanding, there were no caveats or conditions attached to the bonus where the amount of bonus could be varied, or additional terms imposed in relation to it. I had rightfully earned the same after years of being part of the management of Enjin and for being instrumental to the success of the ICO.

62 I would make three comments on this evidence (other than its lack of detail). First, it is phrased as an award of bonus for past performance and contribution, not as a free-standing contract. Secondly, it dates that contribution from 2007, when Enjin was only incorporated in 2012. Thirdly, it dates the

---

65 Pritchard's AEIC at para 42.

award to a time after the ICO succeeded. As the fund raising achieved by the ICO itself, as opposed to presales, occurred in November 2017, this would date it to November or December 2017 at the earliest.

63 Ms Pritchard's evidence at trial was both more detailed and different in substance. She testified that Mr Blagov told her she would get 6m ENJ in their home office sometime in September 2017.[66] She explained that what she meant by award was as follows:[67]

> When I say award, I'm saying, look this is yours, I'm promising you this amount, I'm awarding you this. Whether it is paid at a later date or not, this is what you get. That's awarding.

64 Enjin's counsel contended that Ms Pritchard had opportunistically tailored her evidence to fit what Mr Blagov and Mr Radomski had said during their respective cross examinations, namely that they had worked on the ENJ allocation spreadsheet over Slack while Ms Pritchard was in the room with Mr Blagov.

65 While Ms Pritchard's memory may have been jogged by the evidence given by Mr Blagov and Mr Radomski, I do not accept that she made up the fact that Mr Blagov told her that she would "get" 6m ENJ. On the contrary, I accept that he did in fact say words to that effect to her in their home office as he and Mr Radomski discussed the ENJ allocation spreadsheet. That he said something along these lines is supported by the WhatsApp conversation that they had on 24 June 2019.[68] Ms Pritchard asked him about the ENJ that was hers from Enjin. Mr Blagov checked the ENJ allocation spreadsheet and told her that 6m ENJ

---

66 Transcript (27 April 2022), pp 75–77.

67 Transcript (27 April 2022), p 79 lines 1–5.

68 Ms Pritchard's AEIC at p 789.

had been assigned to her, of which 3m had been sold by Enjin and paid out to her in cash as US$300,000, so that "3m enj remains for u".

66 As an aside, this was one of the conversations over which Enjin sought to assert Mr Blagov's marital privilege. It is clear however that just as much as statements made by Mr Blagov on behalf of the company in 2017 concerning the company setting aside for her 6m ENJ were not marital communications, nor was this confirmation in 2019. Before responding to Ms Pritchard and in order to give her the accurate figure, Mr Blagov checked a company document, namely the ENJ allocation spreadsheet. I have no doubt that he intended to communicate to her on behalf of Enjin and that she understood him to be so communicating.

67 Eight months later, on 7 February 2020, and following from Mr Blagov's confirmation, Ms Pritchard reminded Mr Blagov and Mr Radomski on Slack of the 3m ENJ that remained for her.[69] Neither of them disagreed that this was the case. Mr Blagov said "yes, the amount needs to vested" and Mr Radomski said "k, we'll send it in vested portions, it's a large amount".

68 Mr Blagov's evidence in chief was that he and Mr Radomski had previously informed Ms Pritchard that "up to 3 million ENJ tokens would be earmarked for her performance bonus, which was to be paid in ENJ tokens, and that it would be based on her work performance" and also "that this would not be awarded immediately but would instead be paid over time".[70]

---

69 AB/B 109.

70 Blagov's AEIC at para 35.

69 I do not accept Mr Blagov's evidence. First, what was discussed was 6m ENJ and not 3m. Secondly, I do not accept that he expressly tied the tokens to future work performance or used the words "up to" or "earmarked". This paragraph in his AEIC is a self-serving afterthought. Had he done any of these, then it would have been natural for him to use the words "up to" or "earmarked" rather than simply the word "assigned" when he responded to her in 2019, and also to remind her that it was conditional on work performance. The same point applies to Mr Radomski's response in February 2020.

70 The question remains, however, whether Mr Blagov's statement to her, while he and Mr Radomski worked on the ENJ allocation spreadsheet, that she would get 6m ENJ, amounted to an enforceable promise. I turn to the questions of certainty of terms, consideration and intention to create legal relations.

Certainty of terms

71 An enforceable contract must be certain in its terms. All that was said here was that Ms Pritchard would get 6m ENJ, in the context of and with reference to the ENJ allocation spreadsheet, which was itself being worked on to aid the exercise of allocating ENJ to the team contemplated by the white paper. Ms Pritchard has disavowed any incorporation of the terms applicable to team members generally, and asserted that her allocation was final and not subject to any further discretion or variation by Enjin. I am not able to find that her being told that she would get 6m ENJ meant that Enjin was offering them to her on terms different from those applicable to the team generally. Simply put, not enough was said to imply or infer that the offer was for her to receive 6m ENJ regardless of whether she remained in Enjin for any particular period of time, or on any other special terms.

Consideration

72 Consideration is a requirement for the enforceability of a contract that is not executed under seal. The Court of Appeal in *Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 ("*Gay Choon Ing*") described it (at [66]) as "a return recognised in law which is given in exchange for the promise sought to be enforced" and broadly endorsed traditional "benefit-detriment analysis". Something that the promisee has already done prior to the promise being made does not count because it cannot have been given in exchange for the promise. Generally, past consideration is no consideration: *Gay Choon Ing* at [83].

73 Ms Pritchard's pleaded case, carried through into her evidence at trial, is that she was awarded a total of 6 m ENJ due to the success of the ICO and in consideration of her efforts and contributions to the business since 2007.[71] This is past consideration. It cannot support the alleged free-standing contract on which she now relies.

74 Ms Pritchard did not plead, nor did the evidence establish, that she was promised the 6m ENJ tokens in return for her continuing to work in Enjin. In any case, that would be wholly inconsistent with her strict position that 6m ENJ was awarded to her in 2017 and was "immediately payable with no strings attached."[72]

---

71 Defence and Counterclaim (Amendment No. 2) para 18, SDB Tab 9.

72 Defendant's Reply Closing Submissions (5 July 2022) at para 62.

Intention to create legal relations

75 An intention to create legal relations is a further requirement for contract formation. The court must be able to infer this intention from the circumstances in which the promise is made. The intention to create legal relations is an intention that the transaction was to have legal effect, such that if a disagreement arose or the contract was not honoured subsequently, the aggrieved party could invoke the assistance of court: *Gay Choon Ing* at [71].

76 The discussions in this case took place in the context of a company and a business. The context of the conversation does not of itself negate an intention to create legal relations. Moreover, there was a degree of informality in how Enjin was run, including the fact that Ms Pritchard's terms of employment were not reduced into writing. Where there is informality, it cannot be said that the lack of writing itself suggests the absence of an intention to create legal relations. I have also considered the fact that she and Mr Blagov were then husband and wife, which might help to explain both the absence of a written contract of employment and their not feeling the need to put into writing an award of bonus to her.

77 However, I accept Mr Blagov's and Mr Radomski's evidence that in substance what was happening was "brainstorming", with the ENJ allocation spreadsheet being a tool for that. Mr Blagov seems to have spoken casually and without detail. In a way, it would have been a passing comment made naturally in the context of discussions with Mr Radomski while Ms Pritchard was in the room. I therefore find that not only were the terms uncertain, the lack of clarity and absence of detail leads to the inference that Mr Blagov was not intending to create legal relations. I also find that when Ms Pritchard was told by Mr Blagov that she would get 6m ENJ, she could not reasonably have believed that this was

meant to establish a legal right such that she could sue Enjin if the number was reduced subsequently.

Conclusion

78 Upon clarification that Ms Pritchard's case was that there was a standalone or free-standing contract for her to receive 6m ENJ, the requirements for contract formation and enforceability became critical. I am unable to find that any offer was certain as to its terms, supported by consideration or made with an intention to create legal relations. I conclude that Ms Pritchard was not legally entitled to the 6m ENJ prior to its being transferred or its equivalent in money being paid to her.

Was there an agreement on 22 April 2020 between Mr Blagov and Ms Pritchard to resolve her entitlement to 2.5m ENJ?

79 Even though Ms Pritchard was not entitled to 2.5m ENJ, she was claiming that she was so entitled in April 2020. If she compromised that claim with Enjin, that compromise agreement would be binding.

80 As with the issue of entitlement, Ms Pritchard alleges an oral contract. According to her, as of April 2020, she still wished to continue to work for Enjin. However, on 22 April 2020, while they were speaking over Slack, Mr Blagov told her she did not have to continue working for Enjin and suggested that she leave peacefully, by submitting a formal letter of resignation and then transferring a sum of money equivalent to her remaining entitlement from Enjin's account to their joint bank account. They would each be entitled to half of this money. In addition, she could also transfer the balance of the ENJ and ETH tokens in the company's virtual wallet to herself, after which Enjin would write them off. Ms Pritchard says she agreed to this and proceeded to act on

their agreement. To her surprise, Mr Blagov immediately reneged on their agreement. In fact, even while proposing this course of action to her, he was acting in bad faith, as he had already cancelled the digital tokens that she held for access to and operation of Enjin's account with Standard Chartered Bank.[73]

81 Mr Blagov denies that he ever made such a proposal to her. Consequently, when she started messaging him on WhatsApp on 23 April 2020 about the transfers, he had no idea what she was referring to and was shocked when he discovered that she had transferred S$407,000 from Enjin to their joint account.[74] He transferred to Enjin what he received from Ms Pritchard, namely S$209,328.[75]

82 Enjin notes that there is no record of any call made on Slack on 22 April 2020 between Ms Pritchard and Mr Blagov.[76] Ms Pritchard's response is that the record must have been deleted by someone at Enjin.[77] She produced a screenshot of her own mobile telephone taken earlier that day[78] but ceased to have access to the Slack platform before she could take a screenshot showing the record of the call with Mr Blagov. Enjin contends that Ms Pritchard bears the burden of proof to show that in the first place it was technically possible for Enjin to delete the Slack record.[79]

---

73 Pritchard's AEIC at paras 52–61.

74 Blagov's AEIC at paras 58–61.

75 Blagov's AEIC at para 72.

76 PCS at para 30.

77 Transcript (21 April 2022), p 111 line 18 to p 112 line 4.

78 AB/F 74.

79 PCS at para 36–38.

83 I do not accept that this conversation took place nor that there was ever an agreement that Ms Pritchard help herself to the monetary equivalent of 2.5m ENJ tokens. I find it quite implausible that Mr Blagov would have deliberately tricked Ms Pritchard into transferring money out of Enjin with a view to then holding her to account for taking money from Enjin. Having observed him giving evidence, I do not think such behaviour would accord with his character. While he was at times grudging concerning Ms Pritchard's role in Enjin and was not altogether forthcoming concerning how the 6m ENJ was set aside for her, this does not support in any way the allegation that he, in effect, framed Ms Pritchard for unauthorised withdrawals from Enjin.

84 I am fortified in this conclusion by the fact that Ms Pritchard's account was not supported by the documentary evidence before the court. She was unable to provide any documentary evidence to show that the conversation with Mr Blagov took place on 22 April 2020. At the same time, the documentary evidence that was available only highlighted inconsistencies in her account. In particular, I refer to her email of 24 April 2020 to Mr Radomski.[80] In that email she said that the deal between them was that *Mr Blagov* would purchase her ENJ and deposit the money into their joint account. This is not an inconsequential detail of the alleged agreement but goes to its crux. Her prevarication over it is a strong indication that she made it up in an attempt to justify her actions.

If so, did Mr Blagov have the authority to enter the agreement on Enjin's behalf?

85 In view of my conclusion that there was no such agreement, this issue is moot. However, I would note that the agreement, if it had been made, would

---

[80] AB/A 230.

have entailed a secret profit on Mr Blagov's behalf. Thus, even if compromising the claims of departing employees was within his authority as CEO, a compromise that involved his secretly sharing in the payments made to that employee would be potentially voidable by Enjin.

Has Ms Pritchard waived her right to claim 2.5m ENJ in these proceedings?

86 Enjin contends that Ms Pritchard's transfer of monies from its bank account in purported settlement of her claim to the 2.5 m ENJ, even if wrongful, amounted to a waiver by election such that she cannot now reverse course and claim the 2.5 m ENJ.[81] A waiver by election operates where there is a choice between two inconsistent courses of action. This is illustrated by the Court of Appeal decision in *Ang Sin Hock v Khoo Eng Lim* [2010] 3 SLR 179 ("*Ang Sin Hock*"), where one party had consigned jewellery to the other. The consignee sold the jewellery without paying any share of the sales proceeds to the consignor. The consignor took steps to claim a share of the proceeds, including by writing letters of demand. He was held to have thereby waived any right to claim in conversion, as he had chosen to treat the consignee's actions as an authorised sale. There, the claim for conversion was inconsistent with the claim for the sale proceeds: *Ang Sin Hock* at [31]. In this case, on 22 April 2020, Ms Pritchard did not choose a course of action that was inconsistent with the right she seeks to enforce in this suit. Instead, she then sought to take what she believed was hers by self-help, instead of by a legal suit as she is doing now. In short, she used her authority with Enjin's bank to pay herself what she believed was due to her rather than commencing a legal suit for the tokens or their equivalent in money. A failed attempt at self-help would not bar a plaintiff from continuing to assert the right in respect of which self-help was attempted.

---

81 PCS at paras 139–143.

Conclusion

87 Ms Pritchard's counsel did not dispute that if she failed in relation to the two alleged oral contracts she was not entitled to retain the balance of the S$407,000 in her hands, namely S$197,672, nor was she entitled to transfer to herself the ENJ and ETH tokens in Enjin's virtual wallet. She must repay the sum of S$197,672 together with simple interest at the court rate of 5.33% per annum from the date of the writ originally filed in the District Court until date of judgment. I note that Enjin's claim is for S$209,304.86, derived from the sum she transferred from the Joint Account to her personal accounts (see [13(d)] above).[82] Given that a total of S$407,000 was taken from Enjin's accounts, and Mr Blagov returned S$209,304.86 of this to Enjin (see [81]), S$197,672 (the remainder) is the appropriate figure, and plaintiff's counsel accepted this to be the case.[83]

88 Turning to the 42,000 ENJ and 3.3 ETH that she replaced in a personal virtual wallet following her breach of the Injunction, both parties proceeded throughout on the basis that the ENJ and ETH tokens were property that could properly be injuncted and be the subject of proprietary remedies. However, in its pleadings and in submissions to me, Enjin quantified the value of the 42,000 ENJ and 3.3 ETH in monetary terms, while Ms Pritchard's counsel agreed in oral submissions that if Enjin succeeded, the remedy should indeed be payment of money, in either currency that had been pleaded, and that consequently the Injunction should be discharged.[84] As parties were in agreement on this point of a monetary remedy, I order payment of the sum of S$9,337 together with simple

---

82 SOC (Amendment No 2) at p 23 para (1).

83 Transcript (14 July 2022), p 108 lines 7–9.

84 Transcript (14 July 2022), pp 100-101.

interest at the court rate of 5.33% per annum from the date of the writ originally filed in the District Court until date of judgment. For avoidance of doubt, I also discharge the Injunction.

Enjin's claim for Amazon Purchases

Was Ms Pritchard authorised to make the Amazon Purchases?

89 Ms Pritchard asserts that her "defence to this claim is straightforward. The transactions were corporate in nature, being purchases to replace her laptop and headphones which she had worn out by using them for work. As Enjin's CFO she was fully authorised to make these purchases."[85]

90 These purchases were carried out on the day of her resignation, albeit shortly before she sent her email of resignation. Even if she had implied authority to make purchases of this kind for her own personal benefit while she held the position of CFO, her resignation would terminate any such authority she might have had. I find that she made these purchases in anticipation of her resignation and would clearly have understood that any implied authority she might have to make such purchases could no longer be relied on without first checking with Enjin. This comes from her duty of good faith and fidelity as an employee to Enjin, which entails not making use of Enjin's property for her own purposes, and giving due consideration to the interests of Enjin: *Piattchanine, Iouri v Phosagro Asia Pte Ltd* [2015] 5 SLR 1257 at [242]. To put it simply, she was acting in bad faith and in disregard of Enjin's interests. Accordingly, the purchases were not authorised.

---

85 DCS at para 229.

If so, were they a legitimate business expense?

91 This issue is moot, but ordinarily justification of an expense would (in all but the most obvious cases) start by reference to a policy adopted by the company. Compensating an employee for having used personal equipment for work purposes by replacing that equipment is not an obvious case. Ms Pritchard made no attempt to show that these purchases came within any established policy of the company.

If not, what loss did the Amazon Purchases cause Enjin?

92 Ms Pritchard produced an e-mail dated 10 July 2020 that she received from Amazon the ("Amazon E-mail") stating, *inter alia*, the following in respect of S$1,078 paid towards the Amazon Purchases:[86]

> The issuer of the card used to pay for an order from your Amazon.sg account has contacted us. You disputed this charge with them, and they withdrew the payment made to Amazon.

She contends that this e-mail suggests that Enjin was never charged S$1,078 out of the total S$7,624.64 that it claims in respect of the Amazon Purchases.

93 Enjin accepts the authenticity of the Amazon E-mail but submits that it is equivocal as to whether the sum of S$1,078 was ever refunded to it. All that is said in the e-mail is that the *issuer* withdrew the payment to Amazon. Enjin also relies on a debit statement from TransferWise generated on 31 August 2020 (the "TransferWise Statement") which reflects the S$1,078 transaction.[87]

---

86 AB/A 248.

87 AB/D 143.

94 I find that Enjin has not proven that it was ultimately charged the sum of S$1,078 for the Amazon Purchases such that it suffered loss totalling S$7,624.64. While the TransferWise Statement reflects the S$1,078 transaction, the heading under which the transaction appears is "USD balance on 24 April 2020 [GMT]". Thus, it is possible that some of the transactions reflected therein were refunded or voided after 24 April 2020. In fact, the transaction of S$5,538 which Enjin accepts was ultimately not successful is also reflected in the TransferWise Statement. It is entirely possible that some time between 24 April 2020 and 10 July 2020, Enjin disputed the S$1,078 transaction with TransferWise and TransferWise in turn refused to pay Amazon. I find it unlikely that in such a situation, TransferWise would have withheld the sum from Amazon without returning it to Enjin's account. Thus, on the evidence, I accept Ms Pritchard's submission that Enjin has not proven S$1,078 of its loss in respect of the Amazon Purchases.

Conclusion

95 Enjin is entitled to recover the sum of S$6,546.64 from Ms Pritchard together with simple interest at the court rate of 5.33% per annum from the date of the writ originally filed in the District Court until date of judgment.

Conclusion

96 I dismiss Ms Pritchard's counterclaim and allow Enjin's claim in that Ms Pritchard is to pay to Enjin the total sum of S$213,555.64 together with simple interest at the court rate of 5.33% per annum from the date of the writ originally filed in the District Court until date of judgment.

97 I will hear parties on any other consequential or ancillary orders and on costs. Parties are to file costs submissions limited to 10 pages each within 14 days.

Philip Jeyaretnam
Judge of the High Court

Mahesh Rai s/o Vedprakash Rai, Yong Wei Jun Jonathan, Melissa Ng Li Ling, Ng Chee Wei, Kenneth (Huang Zhiwei) (Drew & Napier LLC) for the plaintiff;
Lok Vi Ming SC, Qabir Sandhu (LVM Law Chambers LLC) (instructed), Chong Xin Yi, Tan Lena (Chen Lina) (Gloria James-Civetta & Co) for the defendant.