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

[2024] SGHC 18

Suit No 295 of 2020

Between

Rajesh Harichandra Budhrani

… *Plaintiff*

And

(1) INTL FCStone Pte Ltd
(2) Chandrawati Alie
(3) Song Oi Lan

… *Defendants*

Counterclaim of the 1st Defendant

Between

INTL FCStone Pte Ltd

… *Plaintiff in counterclaim*

And

Rajesh Harichandra Budhrani

… *Defendant in counterclaim*

JUDGMENT

[Contract — Breach]
[Contract — Contractual terms — Exclusion clauses]
[Contract — Formation]
[Restitution — Duress]
[Restitution — Undue influence]
[Tort — Misrepresentation — Fraud and deceit]
[Tort — Misrepresentation — Negligent misrepresentation]

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v
INTL FCStone Pte Ltd and others

[2024] SGHC 18

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24 January 2024 Judgment reserved.

See Kee Oon JAD:

Introduction

1 The present claim and counterclaim arose from a margin call which was made by the defendants on the plaintiff, Mr Rajesh Harichandra Budhrani ("Mr Budhrani") in March 2020, amidst a rapidly falling silver futures market. This led to a series of events culminating in this action.

Undisputed facts

Parties to the dispute

2 Mr Budhrani was a client of UOB Bullion and Futures Limited ("UOBBF") since 20 November 2007. He entered into a Bullion Margin Trading Agreement dated 20 November 2007 ("Margin Trading Agreement") and a Client Agreement dated August 2016 ("Client Agreement") with UOBBF

in respect of margin trading in silver futures (collectively, "the Agreements"). The Margin Trading Agreement encompasses a Customer Agreement among other documents.

3 Mr Budhrani is an accredited investor. He is experienced in trading in silver futures contracts (hereinafter referred to interchangeably as "silver", "lots" and "contracts") since 2007. The Agreements with UOBBF were novated to INTL FCStone Pte Ltd ("INTL FCStone") on 7 October 2019. The events that gave rise to this claim and counterclaim occurred before INTL FCStone changed its name on 17 July 2020 to "StoneX Financial Pte Ltd", by which it is now known.

4 INTL FCStone is a Singapore-incorporated company dealing in capital markets products and exchange-traded derivatives contracts. Ms Chandrawati Alie ("Ms Alie") and Ms Song Oi Lan ("Ms Song") were employees of INTL FCStone at all material times. Both Ms Alie and Ms Song's job scopes involved executing trade orders for clients, including Mr Budhrani. At the material time, they reported to Mr Lee Lian Tuck ("Mr Lee"), the Head of Listed Derivatives (Asia).

5 I refer to INTL FCStone, Ms Alie and Ms Song collectively as the "defendants".

Background to the dispute

6 The equity of a margin trading account refers to the amount of cash in the said account and the market value of the open positions (*ie*, unsold contracts), including any unrealised gains or losses on those positions. INTL FCStone required clients to provide an amount of margin known as "initial margin" to open a position (*ie*, obtain contract(s)). The ratio of equity to the

initial margin is known as the "margin ratio". INTL FCStone also required clients to keep a "maintenance margin" in order to hold on to their contracts, which is lower than the required initial margin.[1]

7 A client's margin trading account may run into two types of deficits. First, where the equity falls below the maintenance margin, a trading account is in a "margin deficit". Second, where the equity is negative, in other words, where the realised and unrealised losses exceed the cash value in the account, a trading account is in an "account deficit" or an "equity deficit". This also means that the owner of that trading account owes INTL FCStone a debt of that quantum.[2] INTL FCStone's policy allowed it to liquidate a client's open positions and require the client to pay the consequent shortfall to INTL FCStone when that client's margin ratio fell below 20%.[3]

8 Each silver futures contract deals with 5,000 troy ounces of silver. It is priced in United States dollars and cents per troy ounce.[4]

9 Prior to 13 March 2020, Mr Budhrani held 88 lots of silver futures.[5] In the early hours of 13 March 2020, Mr Budhrani was speaking to an employee of INTL FCStone, one Mr Jeremy Goh, about a possible margin call.[6] A margin

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1 Defendants' Written Closing Submissions ("WCS") at para 11.

2 Defendants' WCS at para 12.

3 Defendants' WCS at para 13.

4 Defendants' WCS at para 14.

5 Statement of Claim (Amendment No. 5) ("SOC5") at para 9.

6 Agreed Core Bundle of Documents Volume 3 ("3ACB") at Tab 89.

call is a call issued by INTL FCStone for collateral in the form of cash or other property (clauses 1.25.1 and 1.25.11 of the Client Agreement).

10 On 14 March 2020, INTL FCStone sent Mr Budhrani two daily statements by email indicating that there was a margin call for US$398,527.60.[7] On 16 March 2020, INTL FCStone sent Mr Budhrani another email titled "… Margin Call 13/03/2020 *DAY 1*", which states as follows:

> Your account has a margin call today for **USD $ 398,527.60**
>
> Please arrange to send margin call payments to **INTL FCSTONE PTE LTD**, as per our SSI provided.[8]

11 The reference to "SSI" is to INTL FCStone's Standard Settlement Instructions.[9] Over the course of 16 March 2020, the price of silver fell significantly. Mr Budhrani, Ms Alie and Ms Song had various phone conversations during which, among other things, Mr Budhrani gave instructions to sell his contracts and received updates when the said contracts were sold. A summary of the times at which his contracts were sold is set out below:

Number of contracts	Approximate time of sale[10]	Abbreviations		
20	5.22pm	the "20 Contracts"	the "39 Contracts"	the "66 Contracts"
9	Between 5.22pm and 5.36pm	the "9 Contracts"		
10	5.53pm	the "10 Contracts"		

7 Agreed Core Bundle of Documents Volume 4 ("4ACB") at Tab 153 and Tab 154.

8 4ACB at Tab 156.

9 4ACB at Tab 146 (pp 102 and 104–107).

10 (Derived from the time of the commencement of the phone call during which the sale occurred.)

27	10.26pm	the "27 Contracts"	

12 On 16 March 2020 at 10.30pm, Mr Budhrani was informed by Ms Alie that the last 27 of his 66 Contracts had been sold. She also informed him that he had a deficit of US$277,000. Thereafter Mr Budhrani claimed that Ms Alie had advised him, wrongly, that he could "break even … to get out without any deficit" and that he was "forced" to sell all his 66 contracts.[11]

13 Mr Budhrani subsequently commenced this claim on 31 March 2020.

The parties' cases

Mr Budhrani's case

The margin call and the Oral Agreement

14 According to Mr Budhrani, the margin call was only made on 16 March 2020,[12] rather than 14 March 2020, as the defendants claim. Mr Budhrani also claims that the defendants breached an oral agreement by causing or procuring his sale of the 66 Contracts by 16 March 2020:[13] he entered into the said oral agreement with INTL FCStone on 16 March 2020, which provided that he could settle the margin call by 18 March 2020 (the "Oral Agreement").[14] Mr Budhrani also says that he gave consideration for the Oral Agreement by providing for funds to be paid.[15]

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11 4ACB at Tab 142 (p 85).

12 Mr Budhrani's Reply to INTL FCStone and Ms Alie's Defence and Defence to INTL FCStone's Counterclaim (Amendment No. 3) ("RDCC3") at para 54(cc); Mr Budhrani's Reply to Ms Song's Defence (Amendment No. 3) ("R3") at para 24.

13 SOC5 at paras 22A(d)–22A(e), 44(c).

14 SOC5 at para 22A.

15 SOC5 at paras 22A(a)–22A(b).

The 66 Contracts

15 Mr Budhrani claims that he gave instructions to the defendants to sell the 20 Contracts on 16 March 2020 at around 5.22pm as a result of the defendants' undue influence, duress, misrepresentation and/or breach of their duty of care.

(a) Mr Budhrani says that the defendants exercised actual undue influence over him by unlawfully and illegitimately requiring him to immediately liquidate his contracts by 16 March 2020. In particular, he highlights that the defendants were aware that:

(i) he was in fear of defaulting on the Margin Trading Agreement and Client Agreement and did not want to do so;

(ii) he did not want to, consequent upon such default, incur negative consequences in relation to his other margin trading accounts with other brokers;

(iii) he did not want to have a negative credit standing as a result of such default; and

(iv) he did not want the defendants to liquidate these contracts.[16]

As a consequence of this, he consented to the liquidation of the 20 Contracts.[17]

(b) Mr Budhrani's case is that the defendants exerted pressure over him, which amounted to compulsion of his will, and that this pressure

16 SOC5 at para 24.

17 SOC5 at paras 24(i) and 24(p).

was illegitimate. Accordingly, he was subject to duress.[18] He consented to the liquidation of the 20 Contracts as a consequence.[19]

(The parties use the term "illegitimate pressure" to refer to both duress and undue influence,[20] and I adopt that usage.)

(c) Mr Budhrani claims, "[f]urther or alternatively", a conspiracy in that "the [d]efendants each acting individually or in combination or in concert or as a common enterprise exercised duress and/or in concert with [Mr Lee] exercised undue influence over" him.[21]

(d) Mr Budhrani says that Ms Alie and Ms Song falsely represented that his equity (see [112] below) was in deficit of US$127,000 and a sale of 16 contracts would remove the deficit (the "5.22pm Representations").[22] Instead, neither a sale of 16 nor 20 contracts would have "in any way made a difference to the said deficit".[23] These representations were made fraudulently.[24] Mr Budhrani relied on these representations and gave instructions for the sale of the 20 Contracts.[25] Consequently, he suffered loss and damage.[26]

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18 SOC5 at para 24.

19 SOC5 at paras 24(i), 24(p).

20 *Eg*, SOC5 at para 25; Mr Budhrani's WCS at para 67; Notes of Evidence ("NE") for 23 August 2023 at p 12 lines 12–14.

21 SOC5 at para 25.

22 SOC5 at para 23A.

23 SOC5 at para 23C.

24 SOC5 at para 23D.

25 SOC5 at para 23B.

26 SOC5 at paras 23F and 44(d).

(e) Mr Budhrani also states that the defendants owed him a duty of care in tort or as an implied term of their contractual relationship to, *inter alia*, inform him of the true value of his losses, take reasonable care to satisfy themselves of the accuracy of their representations and act as reasonably competent and prudent brokers in making their representations.[27] The defendants negligently and/or grossly negligently breached these duties of care.[28] As a result, Mr Budhrani suffered loss and damage.[29]

16 Next, Mr Budhrani claims that the sale of the 9 Contracts at about 5.35pm was a consequence of the defendants' exercise of undue influence and/or duress over him, and repeats [15(a)]–[15(c)] above.[30]

17 Mr Budhrani also says that the sale of the 10 Contracts on 16 March 2020 at about 5.53pm was made pursuant to the defendants' undue influence, duress or misrepresentation:

(a) Mr Budhrani says that his instructions to sell the 20 Contracts were given when he was subject to undue influence and/or duress, and repeats [15(a)]–[15(c)] above.[31]

(b) Mr Budhrani claims that INTL FCStone and Ms Song falsely represented that a sale of 37 contracts would result in his equity improving to positive without bringing in additional funds to his

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27 SOC5 at paras 38–39.

28 SOC5 at paras 42.

29 SOC5 at para 42A.

30 SOC5 at para 24.

31 SOC5 at para 24.

account, and that a sale of the said 37 contracts at the prevailing price of US$13.195 – US$13.20 would result in his account having a balance of about US$60,000 (the "5.53pm Representations").[32] Instead, there would be a deficit of at least US$226,442 after such a sale.[33] These representations were made fraudulently.[34] Mr Budhrani was induced by these representations and instructed the defendants to sell the 10 Contracts.[35] Mr Budhrani consequently suffered loss and damage.[36]

(c) Mr Budhrani also states that the defendants owed him specific duties of care which they negligently or grossly negligently breached, and repeats [15(e)] above.

18 Mr Budhrani's case is that the sale of the 27 Contracts at around 10.26pm was a result of the defendants' exercise of undue influence and/or duress over him, and/or their misrepresentation to him.

(a) Mr Budhrani says that his instructions to sell the 27 Contracts were given when he was subject to undue influence and/or duress, and repeats [15(a)]–[15(c)] above.[37]

(b) Mr Budhrani further claims that the defendants falsely represented, "acting individually or in combination or in concert or as a common enterprise and/or working with [Mr Lee]", that his equity

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32 SOC5 at para 23AA.

33 SOC5 at para 23CC.

34 SOC5 at para 23DD.

35 SOC5 at para 23BB.

36 SOC5 at paras 23FF and 44(bb).

37 SOC5 at para 24.

would not be in deficit if he placed a limit order at US$13.25 (the "6.33pm Representation") and he could incur an estimated loss of US$40,000 or less if he placed a limit order at US$13 (the "8.46pm Representation").[38] The "true position" was that if Mr Budhrani sold the 27 Contracts at US$12.80, US$13 or US$13.25, he would incur losses of US$278,222.60, US$251,222.60 and US$217,472.60 respectively.[39] These representations were made fraudulently.[40] In reliance on them, Mr Budhrani consented to the defendants placing limit orders, first, at US$13.25, then at US$13, and subsequently instructed the defendants to place a final limit order at US$12.80.[41] Mr Budhrani suffered loss and damage.[42]

(c) Mr Budhrani also states that the defendants owed him specific duties of care which they negligently or grossly negligently breached, and repeats [15(e)] above.

The 18 March and US$80,000 Representations

19 Mr Budhrani further claims that the defendants, "each acting individually or in combination or in concert or as a common enterprise", falsely represented that he had until 18 March 2020 (the "18 March Representation") to settle the margin call and that he could arrange a transfer of US$80,000 to INTL FCStone (the "US$80,000 Representation").[43] According to him, the true

38 SOC5 at para 29.

39 SOC5 at para 32.

40 SOC5 at para 35.

41 SOC5 at para 30.

42 SOC5 at paras 37 and 45.

43 SOC5 at paras 24(d) and 42B.

position was that the defendants encouraged him to remit moneys to settle the margin call despite knowing that the Risk team of INTL FCStone had no intention of allowing him to settle the margin call by 18 March 2020.[44] Mr Budhrani acted in reliance on the defendants' fraudulent representation and arranged payment of US$80,000 to INTL FCStone.[45] Mr Budhrani suffered loss and damage therefrom.[46]

The defendants were in breach of the Agreements

20 Mr Budhrani further avers that the defendants breached the Agreements.[47] Specifically, he says that "pursuant to [the Agreements] it was agreed that [INTL FCStone] would act as a broker for [him]. The essence of the agreement … was an execution service only contract ('Execution Only Contract')".[48] He says that the parties made the Execution Only Contract, under which the defendants had no right to interfere with Mr Budhrani's decisions in respect of the disposal and retention of his contracts.[49] The defendants breached the Execution Only Contract by causing or procuring Mr Budhrani to sell the 66 Contracts by 16 March 2020, notwithstanding that he had until 18 March 2020 to settle the margin call.[50]

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44 SOC5 at para 42D.

45 SOC5 at para 42C.

46 SOC5 at paras 42G, 44(g) and 44(h).

47 SOC5 at paras 22B and 44(a).

48 SOC5 at para 6.

49 SOC5 at para 6.

50 SOC5 at paras 22B(a), 43A–43E.

21 Mr Budhrani pleads that, as the employer of Ms Alie and Ms Song, INTL FCstone is vicariously liable for damage to him caused by Ms Alie and Ms Song's actions or omissions, carried out in the course of their employment.[51]

22 Mr Budhrani also avers that there was no default on his part such that INTL FCStone was entitled to liquidate the contracts in his account.[52] He contends that the 6.33pm and 8.46pm Representations were not *ad hoc* and informal projections but were instead statements of fact intended to induce him to act. If they are regarded as opinion, they were falsely represented as being based on facts.[53] He also denies that he knew or ought to have known the quality of the information.[54]

The defendants' case

The margin call and the Oral Agreement

23 The defendants maintain that the margin call was properly issued to Mr Budhrani via email on 14 March 2020. They deny that any oral agreement was formed on or about 16 March 2020 between Mr Budhrani and INTL FCStone.[55] Mr Budhrani did not provide any consideration for any agreement.[56]

24 The defendants point out that clause 5 of the Customer Agreement and clauses 1.46.1 and 1.46.2 of the Client Agreement provide that these agreements

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51 SOC5 at para 47.

52 RDCC3 at paras 12A and 62; R3 at paras 12A and 63.

53 RDCC3 at para 57(i); R3 at para 59(p).

54 RDCC3 at para 57(h); R3 at para 59(o).

55 INTL FCStone and Ms Alie's Defence and Counterclaim (Amendment No. 6) ("DCC6") at para 102A(a); Ms Song's Defence (Amendment No. 4) ("D4") at para 104A(a).

56 DCC6 at para 102A(a); D4 at para 104A(a).

cannot be varied or waived save in writing.[57] Furthermore, the officers whom Mr Budhrani spoke to on 12 and 13 March 2020 did not have, or hold themselves out to have, authority to bind INTL FCStone to contracts. INTL FCStone also did not hold them out as having any such authority, nor the authority to communicate that it entered into any contracts.[58] The defendants deny that INTL FCStone breached its obligations under the Oral Agreement by deciding that Mr Budhrani was to settle the margin call as soon as possible.[59] They also deny that their demand for the liquidation of the contracts and/or satisfaction of the Margin Call by 16 March 2020 breached the aforesaid obligations.[60]

The 66 Contracts

25 In relation to all 66 Contracts, the defendants deny subjecting Mr Budhrani to duress or undue influence,[61] for the following reasons:

(a) Mr Budhrani was an experienced investor and an accredited investor.[62]

(b) According to the Margin Trading Agreement and the Client Agreement, Mr Budhrani represented, warranted and undertook that any orders placed with INTL FCStone and any dealings in relation to his

57 DCC6 at paras 89F and 102A(b); D4 at paras 91F and 104A(b).

58 DCC6 at para 102A(c); D4 at para 104A(c).

59 DCC6 at para 103(j); D4 at para 105(j); SOC5 at para 24(j).

60 DCC6 at para 103(k); D4 at para 105(k); SOC5 at para 24(k).

61 DCC6 at paras 103, 103A and 113K; D4 at paras 105, 105A and 114K.

62 DCC6 at para 103(b); D4 at para 105(b).

account were solely and exclusively based on his own judgment after his independent appraisal and investigation into the associated risks.[63]

(c) INTL FCstone had acted in exercise of its rights under the Margin Trading Agreement and the Client Agreement which cannot be regarded as improper pressure or undue influence upon Mr Budhrani.[64]

(d) Mr Budhrani had been informed that he had to liquidate his contracts because his equity had fallen below 20% of the initial margin (the "20% Policy"), and he accordingly sold his contracts of his own volition,[65] making his own decisions as to the number of contracts to sell and the price to sell them at.[66]

The defendants deny informing Mr Budhrani that he had to liquidate the 66 Contracts by 16 March 2020 and thereby exercising duress and/or undue influence over Mr Budhrani.[67]

26 The defendants deny that they and/or Mr Lee made any misrepresentation to Mr Budhrani to cause him to sell the 66 Contracts.[68]

27 The defendants also deny that they owed Mr Budhrani any duty to act with a degree of skill, care and diligence to be expected of reasonably competent

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63 DCC6 at para 103(c); D4 at para 105(c).

64 DCC6 at para 103(d); D4 at para 105(d).

65 DCC6 at para 103(e); D4 at para 105(e).

66 DCC6 at para 103(f); D4 at para 105(f).

67 DCC6 at para 103(i); D4 at para 105(i).

68 DCC6 at para 113K; D4 at para 114K.

and prudent brokers to, *inter alia*, satisfy themselves as to the accuracy of the 5.22pm, 5.53pm, 6.33pm and 8.46pm Representations.[69]

28 The defendants deny that the 5.22pm, 5.53pm, 6.33pm and 8.46pm Representations were negligent or grossly negligent,[70] or that they were false or wrong.[71] The defendants further deny that they knew or ought to have known that Mr Budhrani would be induced by and would rely on the 5.22pm, 5.53pm, 6.33pm and 8.46pm Representations, and they deny that Mr Budhrani did in fact rely on the said representations.[72]

29 Specifically, in respect of the 20 Contracts, the defendants deny that the 5.22pm Representations were misrepresentations. On their case, Ms Alie made the 5.22pm Representations having taken into account the funds that Mr Budhrani had said he would bring in to address the shortfall in the margin required to hold his contracts.[73] The defendants deny that the 5.22pm Representations were false,[74] that they were made fraudulently,[75] and that Mr Budhrani acted in reliance on them.[76] Further, Mr Budhrani did not rely and/or is estopped from claiming that he relied on the 5.22pm Representations, because, *inter alia*, he had:

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69 DCC6 at para 112; D4 at para 113.

70 DCC6 at para 112; D4 at para 113.

71 DCC6 at para 112; D4 at para 113.

72 DCC6 at para 112; D4 at para 113.

73 DCC6 at para 102C.

74 DCC6 at para 102E.

75 DCC6 at para 102F.

76 DCC6 at para 102D.

(a) represented and warranted that he had not wanted financial advice from INTL FCStone and would reject any and all offers for such advice and was solely responsible for determining the merits of each transaction he instructs INTL FCStone to execute (clause 1.22 of the Client Agreement);

(b) represented, warranted and undertook that every order placed was based solely on his own judgment (clause 1.34 of the Client Agreement); and

(c) agreed that INTL FCStone assumed no responsibility for the accuracy and completeness of any trading and investment information provided to him (clause 29 of the Customer Agreement; clause 1.30.2 of the Client Agreement).[77]

The defendants also deny that Mr Budhrani suffered loss and damage as a consequence.[78]

30 As for the 10 Contracts, the defendants also deny that the 5.53pm Representations were misrepresentations. Ms Song told Mr Budhrani that if he brought in funds to address the initial margin requirement for 37 contracts, he would have a positive balance of around US$60,000, after taking into account that his equity was negative US$226,442. Mr Budhrani therefore knew or ought to have known that the 5.53pm Representations were made on the basis that he would bring in funds to cover the initial margin requirement of "[US$]290,000

[77] DCC6 at para 102H.

[78] DCC6 at para 102I.

plus".[79] The defendants deny that the 5.53pm Representations were false,[80] that they were made fraudulently,[81] and that Mr Budhrani acted in reliance on them.[82] They say that Mr Budhrani did not rely and/or was estopped from relying on them for the reasons explained above at [29].[83] The defendants also deny that Mr Budhrani suffered loss and damage as a consequence.[84]

31 Next, in relation to the 27 Contracts, the defendants deny making the 6.33pm and 8.46pm Representations to induce Mr Budhrani to dispose of the 27 Contracts.[85] Instead they say that Mr Budhrani represented to the defendants over telephone conversations and emails that he would bring funds into his account to address the shortfall in margin required to hold his contracts. When Ms Song made the 6.33pm Representation and Ms Alie made the 8.46pm Representation, they had taken into account the funds that Mr Budhrani said he would bring into the account to address the margin shortfall.[86] The 6.33pm and 8.46pm Representations were not false,[87] nor were they made fraudulently or recklessly.[88] The defendants say that Mr Budhrani knew or ought to have known that the 6.33pm and 8.46pm Representations were made on that basis.[89] They also say that Mr Budhrani was aware that any information provided was subject

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79 DCC6 at para 102J; D4 at para 104D.

80 DCC6 at para 102L; D4 at para 104F.

81 DCC6 at para 102M; D4 at para 104G.

82 DCC6 at para 102K; D4 at para 104E.

83 DCC6 at para 102O; D4 at para 104I.

84 DCC6 at para 102P; D4 at para 104J.

85 DCC6 at para 106; D4 at para 108.

86 DCC6 at para 106(e); D4 at para 108(e).

87 DCC6 at para 109; D4 at para 110.

88 DCC6 at para 111; D4 at para 112.

89 DCC6 at para 106(e); D4 at para 108(e).

to quickly-changing market prices. Thus he knew or ought to have known that the 6.33pm and 8.46pm Representations were no more than ad hoc and informal projections or opinions, not representations of fact, which were not intended to be relied on.[90] They plead that Mr Budhrani did not rely and/or is estopped from claiming that he relied on the 6.33pm and 8.46pm Representations.[91] In this regard, Ms Song points further to clauses 1.22, 1.30.2 and 1.34 of the Client Agreement, and clauses 22, 29 and 32 of the Customer Agreement.[92] Mr Budhrani did not thereby suffer any loss or damage.[93]

The 18 March and US$80,000 Representations

32 The defendants deny that they made the 18 March and US$80,000 Representations individually or in combination or in concert or as a common enterprise.[94] They dispute Mr Budhrani's claims that the aforementioned representations were false,[95] were made fraudulently,[96] that Mr Budhrani arranged payment of US$80,000 to INTL FCStone in reliance on the truth of these representations,[97] and that he consequently suffered loss and damage.[98]

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90 DCC6 at para 106(h); D4 at para 108(h).

91 DCC6 at paras 106(f)–106(g); D4 at paras 108(f)–106(g).

92 D4 at para 108(f).

93 DCC6 at para 106(i); D4 at para 108(i).

94 DCC6 at para 113B; D4 at para 114B.

95 DCC6 at para 113D; D4 at para 114D.

96 DCC6 at para 113E; D4 at para 114E.

97 DCC6 at para 113C; D4 at para 114C.

98 DCC6 at para 113E; D4 at para 114E.

The Agreements were not breached

33 The defendants deny that they acted in breach of an Execution Only Contract.[99] INTL FCStone acted as broker in a strictly non-advisory capacity and the services rendered to Mr Budhrani were execution-only services without the provision of any advice.[100] They point out that the Agreements obliged Mr Budhrani to provide additional margin as they required in their absolute discretion within one business day of being informed of a margin call or a margin deficit.[101] INTL FCStone was prepared to give Mr Budhrani up to three business days to provide the requested funds before taking any steps to liquidate or square off his contracts, provided that his equity did not fall below 20% of his initial margin.[102] INTL FCStone was entitled to take all necessary steps to protect its financial interests before the deadline given to Mr Budhrani to meet the margin call (clause 1.6.1(b) of the Client Agreement) and sell or buy any or all securities or commodities outstanding in Mr Budhrani's account (clause 10 of the Customer Agreement).[103]

34 The defendants deny causing or procuring Mr Budhrani's liquidation of the 66 Contracts by 16 March 2020.[104] They disagree that INTL FCStone is vicariously liable for the alleged acts or omissions by Ms Alie and Ms Song stated above.[105]

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99 DCC6 at paras 102AA and 113G; D4 at paras 104AA and 114G.

100 DCC6 at paras 10, 102AA and 113F; D4 at paras 10, 104AA and 114F.

101 DCC6 at paras 37, 89 and 102AA(a); D4 at paras 37, 91 and 104AA(a).

102 DCC6 at paras 89 and 102AA(a); D4 at paras 91 and 104AA(a).

103 DCC6 at paras 89C, 89D and 102AA(a); D4 at paras 91C, 91D and 104AA(a).

104 DCC6 at para 102AA(a); D4 at para 104AA(a).

105 DCC6 at para 119; D4 at para 119.

INTL FCStone's Counterclaim

35 INTL FCStone counterclaims for loss and damages of US$198,222.60, and interest thereon, arising from Mr Budhrani's breach of the Agreements. Mr Budhrani denies any liability for this counterclaim.

Issues to be determined

36 As a preliminary issue, I consider if the parties are bound by the Agreements and whether the defendants are precluded from relying on them. Next, I address the issue of when the margin call was made, before I turn to the two claims concerning the margin call to examine:

(a) whether the parties are bound by the Oral Agreement, which purportedly provides that Mr Budhrani could settle the margin call by 18 March 2020; and

(b) whether the defendants misrepresented to Mr Budhrani that he had until 18 March 2020 to settle the margin call and that he could arrange a transfer of US$80,000 to INTL FCStone.

37 Since Mr Budhrani's case in relation to undue influence and duress rests on his assertion that the defendants acted in contravention of the Execution Only Contract, I go on to consider whether the defendants breached the Execution Only Contract provided for under the Agreements.

38 I turn then to Mr Budhrani's claims in relation to the 66 Contracts, which requires me to determine:

(a) whether he was in default in settling the margin call and, if so, what INTL FCStone was consequently entitled to do in relation to his account;

(b) whether the defendants exercised undue influence and/or duress resulting in the liquidation of the 66 Contracts by 16 March 2020;

(c) whether the defendants made misrepresentations by way of the 5.22pm Representations which induced him to liquidate the 20 Contracts;

(d) whether the defendants made misrepresentations by way of the 5.53pm Representations which induced him to liquidate the 10 Contracts;

(e) whether the defendants made misrepresentations by way of the 6.33pm and 8.46pm Representations which induced him to liquidate the 27 Contracts; and

(f) whether the defendants owed him a duty of care and/or breached their duty to, *inter alia*, inform him of the true value of his losses, take reasonable care to satisfy themselves of the accuracy of their representations and act as reasonably competent brokers in making their representations, as concerns the 20 Contracts, the 10 Contracts and the 27 Contracts.

39 Finally, I consider INTL FCStone's counterclaim.

Whether the defendants are precluded from relying on the Agreements

40 Mr Budhrani objects to the defendants' reliance on the Agreements.[106] I am unpersuaded by Mr Budhrani's arguments in this regard.

41 First, Mr Budhrani says that as there was a past course of dealing where he was never required to fully liquidate his contracts to settle margin calls, the defendants cannot rely on the Agreements.[107] But he does not offer any explanation as to *why* a past course of dealing should necessarily mean that the defendants cannot rely on the Agreements.[108] More importantly, he did not prove that there was such a course of dealing apart from making a bare assertion.[109] It is not disputed that the Agreements were validly made between the parties.

42 Second, he points to the Oral Agreement.[110] Given my finding at [63] below that the Oral Agreement was not made, this argument fails.

43 Third, Mr Budhrani claims that the defendants cannot rely on the Agreements because of the improper pressure, undue influence, fraud and/or breaches of duty they perpetrated.[111] It is not clear what principle(s) of law he relies on for this proposition. In any case, as I go on to find below, there was no

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106 RDCC3 at para 9; R3 at para 9.

107 RDCC3 at para 9(a); R3 at para 9(a).

108 See also Defendants' WCS at para 79.

109 Defendants' WCS at para 78.

110 RDCC3 at para 9(e); R3 at para 9(f).

111 RDCC3 at para 9(b); R3 at para 9(b).

undue influence, duress, fraud or breach of duty on the defendants' part. I therefore dismiss this argument.[112]

44 Fourth, Mr Budhrani claims that the Agreements are not reasonable in the context of an individual customer entering into an agreement with a financial institution.[113] He also says that the defendants cannot rely on them as they are subject to the Unfair Contract Terms Act (Cap 396, 1994 Rev Ed) (the "UCTA").[114] He provides no explanation for how the UCTA operates to preclude the defendants' reliance on the entirety of the Agreements. I deal with his case on specific clauses below:

(a) Clause 1.30.2(e) of the Client Agreement reads:

> 1.30.2 The Customer fully understands:
>
> …
>
> (e) that [INTL FCStone] assumes no responsibility for the accuracy and completeness of any information provided.[115]

As none of my findings turn on the defendants' reliance on this clause, it is not necessary for me to make a finding whether the defendants are precluded from such reliance. Nonetheless, in view of my finding that the defendants were neither negligent nor in breach of any contract, Mr Budhrani's reliance on ss 2(2) and 3(2)(*a*) of the UCTA[116] is

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112 See also Defendants' Written Reply Closing Submissions ("WRCS") at para 104.

113 RDCC3 at para 9(c); R3 at paras 9(c).

114 RDCC3 at para 9(c); R3 at paras 9(c); Mr Budhrani's Further and Better Particulars (Amendment No. 1) in respect of the 1st and 2nd defendants dated 25 May 2022 ("F&BP dated 25 May 2022"); Mr Budhrani's Further and Better Particulars (Amendment No. 1) in respect of the 3rd defendant dated 25 May 2022.

115 3ACB at Tab 5 (p 34).

116 F&BP dated 25 May 2022 at para (a).

groundless. His reliance on ss 3(2)(*b*)(i) and 3(2)(*b*)(ii) of the UCTA[117] also does not assist him as the defendants do not claim to be entitled to render performance different from what was reasonably expected of them or to render no performance at all. I note that Mr Budhrani makes no such assertion either. Instead, he says that the defendants acted contrary to ss 3(2)(*b*)(i) and 3(2)(*b*)(ii) of the UCTA by "assum[ing] no responsibility".[118] Finally, I also note that Mr Budhrani does not challenge the evidence given by the defendants' expert, Mr Tsvetan Nikolaev Beloreshki ("Mr Beloreshki") that such a clause was consistent with industry practice.[119]

(b) Clause 1.34.1(f) of the Client Agreement reads:

> 1.34.1 The Customer represents, warrants and undertakes that:
>
> …
>
> (f) any Orders placed or any other dealings in the Account(s) is solely and exclusively based on its own judgment and after its own independent appraisal and investigation into the risks associated with such Orders or dealings … [120]

As I find that the defendants were not negligent or in breach of any contract both (a) generally; and (b) specifically in the one instance where this clause was relevant (at [120] below), Mr Budhrani's reliance on s 3(2)(*a*) of the UCTA[121] does not take him very far. In any case,

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117 F&BP dated 25 May 2022 at para (a).

118 F&BP dated 25 May 2022 at paras (a)(ii) and (a)(iv); Defendants' WCS at para 59.

119 Mr Beloreshki's Affidavit of Evidence-in-Chief ("AEIC") at pp 7–9; Defendants' WCS at paras 36, 61 and 62.

120 3ACB at Tab 5 (pp 35–36).

121 F&BP dated 25 May 2022 at para (c).

preliminarily, I agree with the defendants' submission that this was not a clause excluding or restricting liability but rather one which defined the scope of the parties' respective legal obligations.[122] Mr Budhrani also does not challenge Mr Beloreshki's evidence that such a clause was consistent with industry practice.[123]

(c) Clause 29(v) of the Customer Agreement reads:

> 29. The Customer fully understands:-
>
> …
>
> v) that [INTL FCStone] assume[s] no responsibility for the accuracy and completeness of any information provided.[124]

This is the only clause which Mr Budhrani addressed in his written closing submissions. Even then, all he did was merely assert that it was not a reasonable clause.[125] This submission does not at all explain why reliance on this clause is precluded by the UCTA. Once again, none of my findings herein turn on the defendants' reliance on clause 29(v) of the Customer Agreement. I find that the defendants were neither negligent nor in breach of their contractual obligations, so Mr Budhrani's reliance on ss 2(2) and 3(2)(*a*) of the UCTA[126] does not help his case.

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122 Defendants' WCS at para 58.

123 Mr Beloreshki's AEIC at pp 7–9; Defendants' WCS at paras 36, 61 and 62.

124 Agreed Core Bundle of Documents Volume 2 ("2ACB") at Tab 1 (p 15).

125 Mr Budhrani's WCS at para 147.

126 F&BP dated 25 May 2022 at para (b).

Curiously, in his written reply closing submissions, Mr Budhrani later changes tack and argues that the "UCTA does not even come into play".[127] He says that the UCTA does not apply since the "substance of the contract between the parties involves the giving of 'pricing information'" and "[t]here can be no exclusion clause … if such a clause removes the essence of the contract".[128] He does not explain why giving of such "pricing information" forms the "essence of the contract", nor why this should inexorably render a clause inapplicable. The argument appears to be premised on Mr Budhrani's subjective understanding of the remit of the Execution Only Contract. However, as I explain at [76]–[80] below, there was no Execution Only Contract. There is therefore no basis for this argument.

45 Fifth, Mr Budhrani submits that the defendants cannot rely on the Agreements because they are not applicable to the claims.[129] He does not explain why inapplicability to the facts should preclude the defendants' reliance on the Agreements generally, and I also reject this submission.

46 Finally, he pleads that Ms Song cannot rely on the Agreements because of clause 1.22.3(b) of the Client Agreement.[130] It reads:

> any such advice, representations, trading suggestions or recommendations if made or purported to be made [by its Officers or representatives] on behalf of [INTL FCStone] must therefore be regarded as having been made in the personal capacity of such person giving the same …[131]

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127 Mr Budhrani's WRCS at para 62; Defendants' WRCS at para 94.

128 Mr Budhrani's WRCS at paras 62, 64 and 77.

129 RDCC3 at para 9(d); R3 at para 9(d).

130 R3 at paras 9(e); Mr Budhrani's WCS at para 146.

131 3ACB at Tab 5 (p 23).

Mr Budhrani does not however adequately explain why he makes this argument. In his written closing submissions, he appears to suggest that clause 1.22.3(c) does not *apply* because the defendants say they did not give any advice,[132] but applicability is different from the question of reliance, and his submission deals with a wholly different clause from clause 1.22.3(b) of the Client Agreement. In my view, this clause does not operate to preclude Ms Song's reliance on the Agreements.

Whether the margin call was only issued on 16 March 2020

47 Mr Budhrani pleads that the margin call was not issued on 14 March 2020 but on 16 March 2020, for two reasons. First, he claims that no margin call could be made on a Saturday.[133] He gives no reasons for or evidence in support of this assertion. Even if we accept that Saturday is not considered a business day, this does not necessarily mean that it must also be assumed that margin calls cannot be made on a Saturday. Second, Mr Budhrani says that the email dated 14 March 2020 attaching the daily statement dated 13 March 2020 (the "13 March DS") was only received by him on the next business day (*ie*, 16 March 2020).[134] Again, he has adduced no evidence in support of this statement. It is not clear why this was the case, given that there is no apparent dispute that the email was dated and sent on 14 March 2020 or that an email notification would suffice to constitute notice of a margin call. He also states that the defendants and Mr Lee admitted that the margin call was issued on

132 Mr Budhrani's WCS at para 146.

133 SOC5 at para 11A.

134 SOC5 at para 17.

16 March 2020,[135] but the cited testimony[136] was given only by Mr Lee and says nothing of the date the margin call was made.

48 Mr Budhrani submits that the 13 March DS was not a margin call but just an "update on the financial information",[137] and relies on *Lam Chi Kin David v Deutsche Bank AG* [2011] 1 SLR 800 ("*Lam Chi Kin David*") to submit that a margin call had to take the form of a letter intended to be a margin call, rather than a notification. But this contradicts his own pleaded case that the email attaching the 13 March DS was a margin call, albeit that he only purportedly received it on the next business day, *ie*, 16 March 2020.

49 In any case, *Lam Chi Kin David* does not assist Mr Budhrani. The court there did not say that notifications were generally insufficient to constitute a margin call,[138] instead, it found that the two letters in contention there were notifications of the appellant's collateral availability and the shortfall in his account, and were only for discussion purposes (*Lam Chi Kin David* at [20]). The court found another letter to be "a margin call as it was expressed to be so" and was an express notice to the appellant to either provide additional security or reduce his exposure (*Lam Chi Kin David* at [21]). The facts in our present case may be distinguished because clause 1.25.11 of the Client Agreement provides that a margin call can be made in any form in INTL FCStone's sole discretion:[139]

> 1.25.11 The Customer acknowledges that [INTL FCStone] may make a call for Margins (referred to as "Margin

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135 Mr Budhrani's WRCS at para 68.

136 Mr Budhrani's WRCS at n(n) 106; Mr Budhrani's WCS at para 41.

137 Mr Budhrani's WCS at para 46.

138 Mr Budhrani's WCS at para 48.

139 3ACB at Tab 5 (p 29); Defendants' WCS at para 68.

> Call" for the purposes of this Clause 1.25) on the Customer in respect of the Margin Account orally or in writing or in such other manner as [INTL FCStone] may in its sole discretion deem appropriate. …

In contrast, no similar clause was operative in *Lam Chi Kin David*. Furthermore, the 13 March DS states "MARGIN CALL 398,527.60DR",[140] which explicitly indicates that there was a margin call, and it is unclear if that was similarly the case in *Lam Chi Kin David*. I also note that the 13 March DS is, *per* clause 1.29.2 of the Client Agreement,[141] deemed to be conclusive and binding against Mr Budhrani unless he makes any objection known within five business days of despatch of the statement. The 13 March DS is thus unlikely to have only been for *discussion* purposes.[142]

50 I therefore agree with the defendants that the 13 March DS sent to Mr Budhrani via email on 14 March 2020 constituted the margin call. He was thus obliged to meet the margin call by the next business day, *ie*, 16 March 2020.[143]

Whether the parties are bound by the Oral Agreement for Mr Budhrani to settle the margin call by 18 March 2020

51 To briefly recapitulate, Mr Budhrani's case is that the margin call was made on 16 March 2020.[144] By entering into the Oral Agreement with INTL

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140 4ACB at Tab 153 (p 144). See also 4ACB at Tab 154.

141 3ACB at Tab 5 (p 34).

142 Defendants' WCS at para 32.

143 DCC6 at para 45; Defendants' WCS at paras 16 and 67.

144 RDCC3 at para 54(cc); R3 at para 24.

FCStone on or about 16 March 2020,[145] he was granted an extension to 18 March 2020 to settle the margin call.[146]

52 The defendants however deny that any oral agreement was formed on or about 16 March 2020 between Mr Budhrani and INTL FCStone.

There was no Oral Agreement between the parties

53 In my view, Mr Budhrani and INTL FCStone did not make the Oral Agreement.

54 First, Mr Budhrani has adduced no evidence of the formation of the Oral Agreement. Mr Budhrani says that the Oral Agreement was reached on or about 16 March 2020.[147] He does not plead the particulars of how this Oral Agreement was reached. In other words, he does not identify how his purported offer of the Oral Agreement was made and accepted by INTL FCStone. His Closing Submissions do not assist in this regard, as they focus instead on pointing out evidence which shows that the Oral Agreement exists, rather than evidence of its formation.[148] Mr Budhrani puts forward four pieces of evidence which purportedly show that the Oral Agreement was made. I disagree that any of them prove his assertion.

(a) He points out Mr Lee's agreement that Ms Song "communicated to [him] that … [Mr Budhrani] was to be given until Wednesday to pay

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145 SOC5 at paras 5B, 11–12 and 22A.

146 RDCC3 at paras 50N and 55A; R3 at paras 52N and 57A.

147 SOC5 at para 22A.

148 Mr Budhrani's WCS at paras 40 and 42.

… [a]nd that [Ms Song] had agreed to that".[149] But this is hearsay evidence and, in any case, does not say anything as to whether and how INTL FCStone entered the Oral Agreement with Mr Budhrani.

(b) Mr Budhrani highlights that Ms Song agreed with Mr Budhrani when he said that he "[had] T+3 … to pay".[150] In this regard, "T+3" refers to Mr Budhrani's entitlement to three days to satisfy the margin call. However, the transcript of that conversation shows that Ms Song's response was: "Yes, yes, but… Yes, that's right but if… Can you mail it like, today? Fund in today. *If you want to resolve the margin call then you're supposed to fund in today*." [emphasis added].[151] This does not prove that the parties made or were bound by the Oral Agreement.

(c) Mr Budhrani points out that Ms Song agreed at trial that Mr Budhrani had three days, until 18 March 2020, to satisfy the margin call.[152] Presumably this refers to Ms Song's agreement that she told Mr Budhrani that "as long as the money is on Wednesday, I think that will be fine."[153] However, this does not show that the parties made the *Oral Agreement*, and could similarly support the defendants' position that INTL FCStone had granted Mr Budhrani an *indulgence* instead. It also does not show that INTL FCStone entered the Oral Agreement.

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149 Mr Budhrani's WCS at para 41.

150 Mr Budhrani's WCS at para 52.

151 3ACB at Tab 112 (p 255).

152 Mr Budhrani's WCS at para 52.

153 3ACB at Tab 121 (p 287); NE for 25 August 2023 at p 12 line 23 – p 13 line 5.

(d) Ms Song's statements to Mr Budhrani on 13 March 2020[154] are unhelpful for the same reasons stated above. Furthermore, those statements pre-date 16 March 2020, the date Mr Budhrani pleads the Oral Agreement was made.

55 In the absence of any cogent evidence demonstrating that the Oral Agreement was formed, I do not accept Mr Budhrani's assertion that the parties entered into the Oral Agreement. It is therefore not strictly necessary for me to consider if Mr Budhrani gave consideration for the Oral Agreement. In any case, I am persuaded by the defendants' submission that no consideration was provided. By arranging for funds to be paid,[155] Mr Budhrani was simply doing what he was already contractually required to do under the Agreements, namely to bring in funds to meet the margin call.[156] I disregard Mr Budhrani's further contention that he provided consideration in the form of "buffer" funds over and above the amount of the margin call[157] as this was not his pleaded case.[158]

56 Second, Mr Budhrani has also not explained how the Oral Agreement is not precluded by the terms of the Client Agreement. The defendants say that no Oral Agreement can arise as it would be inconsistent with the Customer Agreement and the Client Agreement.[159] Mr Budhrani was obligated to furnish additional margin within one business day of being informed of a margin call

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154 Mr Budhrani's WCS at para 53; 3ACB at Tab 93.

155 Mr Budhrani's WCS at para 41; SOC5 at para 22A(b).

156 Defendants' WCS at para 88. See also Defendants' WRCS at para 50.

157 Mr Budhrani's WCS at para 41.

158 SOC5 at para 22A.

159 Defendants' WCS at paras 7(a) and 86.

or a margin deficit (clause 1.25.4 of the Client Agreement),[160] and this obligation cannot be varied or waived save in writing.[161] However, the defendants do not explain how clause 5 of the Customer Agreement applies to the terms of the Client Agreement, and instead appear to state explicitly that it applies to "provision[s] of the *Customer Agreement*" [emphasis added].[162] Since Mr Budhrani claims that the Oral Agreement was "made", I do not think clause 1.46.1 of the Client Agreement is relevant, since it applies to a waiver by way of "failure to exercise of enforce [and] delay in exercising or enforcing on the part of [INTL FCStone] of any right, power or privilege".[163] I agree, however, that clause 1.46.2 of the Client Agreement provides that the terms therein cannot be waived "[u]nless … expressly agreed in writing by [INTL FCStone]".[164] This is supported by Mr Lee's evidence that employees of INTL FCStone did not have authority to make the Oral Agreement with Mr Budhrani and thereby bind INTL FCStone to the said agreement.[165] Although Mr Budhrani submits that "all acts carried out by [Ms Songwere] authorised",[166] the cited testimony concerned authority to *provide pricing information to clients*, not employees' authority to *commit INTL FCStone to enter into binding contracts*. Turning back to clause 1.46.2 of the Client Agreement, Mr Budhrani does not address this difficulty with his case.[167] I also note that, although he does not make the following argument specifically, to the extent that he objects to the defendants' reliance

160 DCC6 at paras 45, 88 and 101(a).

161 DCC6 at paras 89F and 102A(b).

162 DCC6 at para 89F.

163 3ACB at Tab 5 (p 40).

164 3ACB at Tab 5 (p 41).

165 Defendants' WCS at para 87.

166 Mr Budhrani's WCS at para 41.

167 Mr Budhrani's WRCS at para 71.

on the Client Agreement, his reasons for this objection include the Oral Agreement (at [42] above). Hence, such an argument would be circular. I find, therefore, that the Oral Agreement did not arise because it is excluded by the terms of the Client Agreement in force between the parties.

57 Third, Mr Budhrani relies on various other pieces of evidence to prove the existence of the Oral Agreement. I do not find them compelling.

58 In order to prove that Mr Budhrani and INTL FCStone entered the Oral Agreement, Mr Budhrani points out that Mr Lee's testimony "shows that at the very least there was [the Oral Agreement]".[168] But the cited part of Mr Lee's testimony (namely, NE for 25 May 2023 at p 82 line 25 to p 83 line 3) shows Mr Budhrani's counsel querying "[s]o in the present case*, if the T3 applied*, right, T1 commences on Monday, 16 March. Do you agree or disagree?" [emphasis added] and Mr Lee agreeing with the statement. "T3" is an abbreviation of "T+3", which refers to Mr Budhrani's entitlement to three days to satisfy the margin call as noted earlier at [54(b)].[169] Evidently, this does not at all *show* that the parties came to a binding agreement for Mr Budhrani to have three days to settle the margin call. It was merely posed as a hypothetical assumption which Mr Lee was invited to adopt for the purposes of answering that question. I also note that Mr Lee thereafter agreed with counsel that Mr Budhrani would have three days or until 18 March 2020 to settle the margin call, *only if* there was no 20% Policy in place.[170] This again does not show that the Oral Agreement was made.

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168 Mr Budhrani's WCS at para 42.

169 NE for 23 May 2023 at p 9 lines 1–6.

170 NE for 25 May 2023 at p 83 lines 12–18.

59 Mr Budhrani also relies on another part of Mr Lee's testimony, concerning the date on which the margin call was made, to prove that the Oral Agreement existed.[171] But closer scrutiny of this reference to Mr Lee's testimony reveals that it says nothing of the existence of the Oral Agreement. Instead, it deals with, first, the purpose of daily statements and, second, whether two emails dated 14 March 2020 constituted notification of a margin call.[172]

60 Mr Budhrani also points out that Mr Lee agreed that Mr Budhrani had until 18 March 2020 to settle the margin call and therefore the parties were bound by the Oral Agreement.[173] However, the two sections of Mr Lee's testimony which he relies on do not say anything about whether the parties agreed to or were bound by the Oral Agreement. The first quoted section, concerning what Ms Song purportedly agreed to,[174] is dealt with at [54(a)] above. The second quoted section[175] deals with how INTL FCStone discerns the first day of a margin call and when the countdown of a given number of days to settle a margin call begins.

61 Mr Budhrani also appears to rely on (a) his intention to retain his contracts; (b) the fact that he informed the defendants that he was arranging to transfer funds to his account; and (c) his arranging remittances of US$80,000 and $943,000, to prove the existence of the Oral Agreement.[176] But even taking them into account as a whole, these points do not positively show that the Oral

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171 Mr Budhrani's WCS at para 46.

172 NE for 25 May 2023 at p 42 line 22 – p 46 line 20.

173 Mr Budhrani's WCS at para 47.

174 Mr Budhrani's WCS at para 47; NE for 25 May 2023 at p 68 lines 10–15.

175 Mr Budhrani's WCS at para 47; NE for 25 May 2023 at p 82 line 11 – p 83 line 6.

176 Mr Budhrani's WCS at paras 42–45.

Agreement was already formed and in force as a binding agreement between the parties. At best, they demonstrate Mr Budhrani's intention to retain his contracts and the subsequent steps he took. Evidently, he lacked sufficient accessible funds and had to arrange for fund transfers from overseas accounts,[177] and also seek assistance from his father.[178] All this was too late and to no avail amidst the market turmoil. He could not do so in time by 16 March 2020, given the complications arising from these funds not being transferred directly from any of his personal accounts.

62 Fourth, the defendants argue that the Oral Agreement did not arise because "any agreement to grant an extension of time to a customer is an indulgence, non-binding and subject to [INTL FCStone's] rights to liquidate the customer's positions".[179] While this appears to acknowledge that some understanding in the form of an agreement may have been reached between the parties, I do not think this amounts to a concession by the defendants that the Oral Agreement was made. That statement appears to be an elaboration of their pleading that "even if an extension was granted, it was not binding".[180] The express reference to the non-binding nature of the extension of time (if granted) suggests that the use of "agreement" was not in the legal sense, *ie*, it was not intended to engage the principles of contract law. The defendants' submission is therefore consistent with their case that INTL FCStone's allowance to Mr Budhrani of three days to fulfil the margin call (if the 20% Policy was not applicable) was no more than an indulgence, and not an entitlement which Mr Budhrani could enforce. As I shall explain in due course at [87]–[93] below,

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177 *Eg*, 4ACB at Tab 132 (p 44) and Tab 134 (p 57); Mr Budhrani's AEIC at p 699.

178 *Eg*, NE for 24 May 2023 at p 52 line 19 – p 53 line 22.

179 Defendants' WCS at para 86.

180 DCC6 at para 89F.

this indulgence was not unqualified. It would lapse if the equity in his account fell below 20% of his initial margin,[181] whereupon INTL FCStone had the right to immediately terminate his positions.

63 By virtue of the foregoing, I find that Mr Budhrani and INTL FCStone did not make the Oral Agreement. Accordingly, I do not accept Mr Budhrani's claim that the defendants breached the Oral Agreement.

64 Mr Budhrani asserts his right to have three days to meet the margin call not only by way of the Oral Agreement. He also claims that his entitlement to three days was provided for in a collateral contract, and a representation that gave rise to an estoppel. I deal with these further arguments below.

There was no collateral contract

65 Additionally, Mr Budhrani says that the defendants are obliged to give him three days to settle the margin call, not just because of the Oral Agreement, but also because there was a collateral contract. According to Mr Budhrani, there was a collateral contract "upon which [Mr Budhrani] entered into the Novation Deed with [INTL FCStone]"[182] (the "Novation Deed"). However, he does not plead the particulars of the collateral contract, such as its terms or how and when it was made. Materially, he also testified that:

(a) he "assumed" he would have three days to meet a margin call when he entered into the Novation Deed with INTL FCStone;[183]

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181 DCC6 at para 89; Defendants' WCS at para 71.

182 SOC5 at para 5B.

183 NE for 23 August 2023 at p 6 lines 9 –12.

(b) "they did not promise [him that he would have T+3 to settle any margin call] when [he] signed the [N]ovation [D]eed";[184]

(c) no one in INTL FCStone promised him, before he entered into the Novation Deed, that he would have three days to settle any margin calls;[185] and

(d) he did not tell anyone in INTL FCStone that he entered into the Novation Deed because, among other possible reasons, he assumed that he would have three days to meet the margin call.[186]

These candid concessions contradict his pleading that the collateral contract was the "bas[is] upon which [he] entered into the [N]ovation [D]eed".[187] Mr Budhrani's case shifts in his written reply closing submission, and he says that the collateral contract "is a relationship that existed as at the time of the Novation Deed"[188] – but this is also inconsistent with his testimony. He also does not plead that the said collateral contract was breached. It was only after the end of trial that he appears to submit that the collateral contract was breached, and, even then, the breach was asserted only by way of a heading in his written closing submissions[189] and nothing was said as to *why* there was a breach. Accordingly, I find that there was no collateral contract which provided that Mr Budhrani was entitled to three days to settle the margin call. It follows that the defendants did not commit any breach of contract in this respect.

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184 NE for 23 August 2023 at p 6 line 25 – p 7 line 3.

185 NE for 23 August 2023 at p 7 lines 11–14.

186 NE for 23 August 2023 at p 7 lines 15–19.

187 Defendants' WCS at paras 31(a) and 83; Defendants' WRCS at para 55.

188 Mr Budhrani's WRCS at para 21.

189 Mr Budhrani's WCS at p 22.

There was no representation that gave rise to an estoppel

66 Mr Budhrani submits that even if the "representation"[190] that he says gave rise to the Oral Agreement does not constitute a binding contract, it "would amount to an operative grace period from which the [d]efendants cannot resile".[191] I am not persuaded by this submission. First, this point is not included in any of his pleadings and he cannot be allowed to raise this now. Second, given my findings above, the evidence does not show that the defendants represented to Mr Budhrani that he had three days to settle the margin (*ie*, by 18 March 2020).

67 Finally, Mr Budhrani raises a new argument in his written reply closing submissions. He says that, since clause 1.25.11 of the Client Agreement provides that a margin call can be made in any form, including orally, therefore the defendants' oral communication to Mr Budhrani between 14 and 16 March 2020 that he "had T3 to settle the margin call" is binding.[192] This completely misunderstands the cited clause. Mr Budhrani never alleged in his pleaded case that the later phone communications between the defendants and Mr Budhrani had constituted the margin call, and his attempt to do so now is untenable.

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190 Mr Budhrani's WCS at para 56.

191 Mr Budhrani's WCS at para 57.

192 Mr Budhrani's WRCS at para 68.

Whether the defendants misrepresented that Mr Budhrani had until 18 March 2020 to settle the margin call and could arrange a transfer of US$80,000 to INTL FCStone

68 Mr Budhrani also claims that the defendants made the 18 March Representation and the US$80,000 Representation falsely.[193] The defendants however deny that they made the 18 March and US$80,000 Representations.[194]

The 18 March Representation was not made

69 It is helpful to clarify the contours of the 18 March Representation as pleaded by Mr Budhrani. Mr Budhrani's case is that the defendants made the 18 March Representation, namely, that he had until 18 March 2020 to settle the margin call. But it is evident from his pleadings that the 18 March Representation, as Mr Budhrani understood it, also meant that he would not be made to liquidate his contracts by 16 March 2020,[195] nor settle the margin call as soon as possible.[196] In other words, based on his pleaded case, the 18 March Representation afforded him a completely unfettered right to have until 18 March 2020 to settle the margin call.

70 In my view, the defendants did not make the 18 March Representation. Mr Budhrani does not identify exactly when and how the 18 March Representation was made. Nonetheless, as early as 13 March 2020, Ms Alie informed Mr Budhrani of the 20% Policy, by stating that "we will only activate to cut the position if let's say, your margin really went to the deficit, whereby left only 20%" and that "you currently you may continue to hold the position,

193 SOC5 at paras 24(d), 42B and 42D.

194 DCC6 at para 113B; D4 at para 114B.

195 SOC5 at paras 24(h) and 24(k).

196 SOC5 at para 24(j).

we just hope that the market won't go against you tonight until your equity left only 20%. If it's only 20%, then we will need to… need you to reduce some of the position to bring up the margin variable."[197] The fact that the 20% Policy overrode INTL FCStone's three-day allowance for Mr Budhrani to settle the margin call was also repeatedly emphasised to Mr Budhrani. In a call beginning on 13 March 2020 at 3.11pm, Mr Budhrani asked "Um, you allow T+3 right for the…" and Ms Alie responded with "Yeah, correct, *as long as the market won't go beyond… you won't left only 20%*, the most you can go will be T[+3]" [emphasis added].[198] I therefore find that the defendants did not make the 18 March Representation.

71 In his closing submissions, Mr Budhrani did not make submissions on his pleading that the 18 March Representation constitutes actionable misrepresentation. Instead, he says that either it amounts to a contractual obligation (which I have dismissed above) or, failing that, the defendants are estopped from resiling from the 18 March Representation.[199] This is an inconsistency in his case and calls into question his cause of action in relation to the 18 March Representation. As Mr Budhrani did not include any claim premised on promissory estoppel in his pleadings, he cannot be allowed to raise it so late in the day, especially not after the trial has concluded.

72 In the circumstances, it cannot be said that the defendants made the 18 March Representation to Mr Budhrani. Accordingly, it cannot be said that INTL FCStone made this fraudulent misrepresentation to Mr Budhrani.

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197 3ACB at Tab 95 (p 187).

198 3ACB at Tab 99 (p 203).

199 Mr Budhrani's WCS at paras 55–56.

The US$80,000 Representation was not made

73 Mr Budhrani claims that, by making the US$80,000 Representation, the defendants falsely represented that he could arrange a transfer of US$80,000 to INTL FCStone.[200] In my view, Mr Budhrani's claim, properly understood, requires that the US$80,000 Representation be read with the 18 March Representation. His claim in misrepresentation is in respect of the two Representations *jointly*.[201] What Mr Budhrani takes issue with is not the mere statement that he can arrange a transfer of moneys to INTL FCStone; his complaint is that the defendants made the US$80,000 Representation and, in connection with that, also represented that he would be given the three days to meet the margin call. This is evident from his statement that the defendants made the US$80,000 Representation "to try to assuage [INTL FCStone's Risk team] to give [him] time … to meet the margin call",[202] despite that they were not going to allow him to three days to settle the margin call (*ie*, by 18 March 2020).[203] I note, however, that after trial he submits that the US$80,000 Representation *alone* was a fraudulent misrepresentation, and shifts his focus to a distinct issue, namely, whether Ms Song had been in communication with the Risk team.[204] As this is not part of Mr Budhrani's pleaded case, I disregard it. He cannot pursue what is effectively a new cause of action now.

74 Having decided that the 18 March Representation was not made, it is strictly not necessary for me to consider the US$80,000 Representation, since it alone cannot sustain Mr Budhrani's claim in misrepresentation. Nonetheless, I

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200 SOC5 at para 42B(b).

201 SOC5 at paras 42B–42G.

202 Mr Budhrani's WCS at para 136.

203 SOC5 at para 42D.

204 Mr Budhrani's WCS at paras 136–139.

am doubtful whether the US$80,000 Representation was made. Mr Budhrani does not, in his pleadings, identify where or how the US$80,000 Representation was made. In his written closing submissions, however, he says that the phone conversation on 16 March 2020 at 5.59pm is "particularly relevant".[205] In that conversation, Mr Budhrani told Ms Song that he would arrange a transfer of US$80,000 to INTL FCStone, and Ms Song asked "Do you think you can actually *liquidate the position*? … how I wish I can link you off with the Risk, but I couldn't do anything because it's like, *your account right, it's doing at negative* we've got no choice" [emphasis added].[206] When Mr Budhrani further enquired as to whether he would have three days to fulfil the margin call, she said "No, no, but it's *running a deficit*. It is *running on deficit*." [emphasis added].[207] Ms Song did, therefore, indicate that any allowance given for Mr Budhrani to settle the margin call in three days had been superseded by the 20% Policy. It seems to me that the defendants did not simply say that he could arrange a transfer of US$80,000 to INTL FCStone.

75 For the foregoing reasons, I find that the defendants did not misrepresent that Mr Budhrani had until 18 March 2020 to settle the margin call and could arrange a transfer of US$80,000 to INTL FCStone.

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205 Mr Budhrani's WCS at para 137; 4ACB at Tab 130.

206 4ACB at Tab 130 (pp 33–34).

207 4ACB at Tab 130 (p 35).

Whether the defendants breached the Execution Only Contract

There was no Execution Only Contract between the parties

76 Mr Budhrani avers that the defendants breached the Margin Trading Agreement and Client Agreement.[208] Specifically, he says that the defendants breached the Execution Only Contract by causing or procuring him to sell the 66 Contracts by 16 March 2020, notwithstanding that he had until 18 March 2020 to settle the margin call.[209]

77 I find that the defendants were not in breach of their contractual obligation in this regard, because the obligation which Mr Budhrani says was breached did not, in fact, exist. Mr Budhrani misconstrues the nature of the agreement between the parties. By his conception of their agreement, *ie*, Execution Only Contract, he perceives the "execution only" concept as a limit on what the defendants were entitled to do,[210] when in fact it is a limit on the services the defendants were obligated to provide to him, including any advice at all.[211]

78 Mr Budhrani does not plead the specific clauses in the Agreements he relies on when he states that the essence of these agreements is "an execution service only contract [under which] the [d]efendants were only to take the orders in respect of the [c]ontracts from [Mr Budhrani]".[212] The defendants identify, *inter alia*, clause 1.22 of the Client Agreement which provides as follows:

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208 SOC5 at paras 22B and 44(a).

209 SOC5 at paras 22B(a), 43A–43E.

210 SOC5 at para 6; NE for 23 August 2023 at p 139 line 24 – p 140 line 12.

211 Defendants' WRCS at para 25.

212 SOC5 at paras 5 and 6; Defendants' WCS at para 43.

> 1.22.2 UNLESS OTHERWISE AGREED BY [INTL FCStone] IN WRITING, [INTL FCStone] DOES NOT AND IS NOT WILLING TO ASSUME ANY ADVISORY, FIDUCIARY OR SIMILAR OR OTHER DUTIES OR ACT AS INVESTMENT ADVISER TO [Mr Budhrani]. [Mr Budhrani] REPRESENTS AND WARRANTS TO [INTL FCStone], AND [INTL FCStone] RELIES ON SUCH REPRESENTATION AND WARRANTY, THAT:
>
> > (a) [Mr Budhrani] DOES NOT WISH TO BE PROVIDED WITH ANY FINANCIAL ADVICE BY [INTL FCStone], AND IN PARTICULAR, [Mr Budhrani] DOES NOT WISH TO HAVE, AND THEREFORE WILL REJECT ANY AND ALL OFFERS FOR THE PROVISION OF, SUCH ADVICE BY [INTL FCStone] …
> >
> > (b) IN SO DOING, [Mr Budhrani] IS FULLY AWARE AND ACCEPTS THAT [Mr Budhrani] WILL BE SOLELY RESPONSIBLE TO DETERMINE THE MERITS AND SUITABILITY OF EACH AND EVERY TRANSACTION …[213]

This clearly explains that INTL FCStone did not assume any advisory duties nor act as an advisor to Mr Budhrani. Therefore, if the Client Agreement is to be characterised as "execution only", it means that Mr Budhrani was entitled to an "execution only" service from INTL FCStone.[214] It does not mean that the conduct of INTL FCStone was constrained to only executing trades.[215] Put another way, it was a fetter upon *Mr Budhrani's* rights under his agreements with INTL FCStone, and not upon *INTL FCStone's* rights under those agreements.

79 I note that this is consistent with Mr Lee's evidence: he testified that in a "normal situation",[216] "[w]hen the customer has money … we do not interfere.

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213 3ACB at Tab 5 (pp 22–23).

214 Defendants' WCS at para 44.

215 Mr Budhrani's WCS at paras 16–18; Defendants' WCS at para 44.

216 NE for 23 August 2023 at p 140 lines 22–24.

We will just execute his orders."[217] This suggests that INTL FCStone was not confined in its conduct to only executing a client's orders, since it is possible that they may do more than execute orders. More importantly, Mr Lee disagreed that INTL FCStone "had no right in any way to interfere with [Mr Budhrani's] decisions in respect of the disposal or retention of the silver contracts".[218] This is corroborated by Ms Song[219] and Ms Alie's evidence.[220] While Ms Alie did at one point appear to say that she could not make suggestions to Mr Budhrani,[221] it appears that she understood references to "execution" as the *act* of executing a trade, rather than the legal rights and obligations each party possessed (including, allegedly, the rights and obligations under the Execution Only Contract) – this is evident from her testimony that "this part is more to servicing him, not on the execution"[222] and her statement that her understanding of "execution-only [was that she] should just receive the order, place the order".[223] Accordingly, her evidence also contradicts Mr Budhrani's claim that INTL FCStone was constrained from any conduct other than executing trades as he directed.[224]

80 Based on the foregoing, the Execution Only Contract is not part of the agreement between the parties. There is therefore no need for me to consider if

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217 NE for 23 August 2023 at p 140 lines 14–21.

218 NE for 23 August 2023 at p 146 lines 14–19.

219 NE for 25 August 2023 at p 73 lines 14 – 20, p 74 lines 3–14, p 75 lines 1–5, p 77 lines 5–16.

220 NE for 24 August 2023 at p 35 lines 4–21.

221 NE for 24 August 2023 at p 40 line 24, p 41 lines 6–7. See also Mr Budhrani's WCS at para 26.

222 NE for 24 August 2023 at p 40 lines 18–19. See also NE for 24 August 2023 at p 93 lines 2–8.

223 NE for 24 August 2023 at p 96 lines 23–24, p 161 lines 9–15.

224 See also Defendants' WRCS at para 44.

it was breached by the defendants. The parties' contractual relationship is governed by the Agreements alone. Nonetheless, for the reasons set out below, I disagree with Mr Budhrani that the defendants caused or procured Mr Budhrani to sell the 66 Contracts by 16 March 2020.[225] So, even if there was an Execution Only Contract between the parties, it would not have been breached.

There was no relationship of agency based on the Execution Only Contract

81 Mr Budhrani submits that the defendants breached their "contractual duties as agent to [him]", which duties include "perform[ing] in accordance with [his] instructions".[226] He says this breach arising from the alleged agent-principal relationship occurred because of two acts:

(a) the defendants and Mr Lee's unlawful interference with Mr Budhrani's sole right to decide whether to hold, dispose of or in any way deal with any of his contracts, which right arose from the Execution Only Contract;[227] and

(b) the defendants and Mr Lee's "duress/undue influence/illegitimate pressure" imposed upon Mr Budhrani.[228]

82 However, Mr Budhrani pleads only that INTL FCStone was an agent for him based on an "execution only service".[229] He does not plead any breach of the agent-principal relationship, nor breach of "contractual duties as agent", on

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225 Mr Budhrani's WCS at paras 20–33, 58–63.

226 Mr Budhrani's WCS at paras 64–66.

227 Mr Budhrani's WCS at paras 16, 17 and 65.

228 Mr Budhrani's WCS at para 66.

229 SOC5 at para 43A.

INTL FCStone's part. He cannot be allowed to include a new cause of action at such a late stage in the proceedings. Further, as I have found above that there was no Execution Only Contract between the parties, the basis for his assertion that INTL FCStone acted as his agent and breached its duties falls away.

The 66 Contracts

Whether Mr Budhrani was in default in settling the margin call

83 Mr Budhrani contends that the defendants should not have imposed illegitimate pressure on him to compel him to sell his contracts. The defendants, on the other hand, assert that Mr Budhrani had been in default in settling the margin call and they were thereby entitled to liquidate his contracts immediately. They aver that they had, in fact, been indulgent in allowing him to sell his contracts on 16 March 2020. It is therefore necessary to consider whether Mr Budhrani was in default and, if so, what INTL FCStone was entitled to do in relation to his account.

Mr Budhrani was in default in settling the margin call and the defendants were entitled to liquidate his positions under the Client Agreement

84 According to Mr Budhrani, the defendants were not entitled to liquidate his positions[230] nor compel him to liquidate his positions.[231] He contends that doing so would be contrary to the Oral Agreement, the 18 March Representation and/or the collateral contract which allegedly provided that Mr Budhrani was entitled to three days to settle the margin call. However, I have found that the Oral Agreement and the 18 March Representation were not made, and there was no collateral contract as well.

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230 SOC5 at para 24(l).

231 SOC5 at para 24(m).

85 In contrast, the defendants correctly point out that Mr Budhrani was in default because, at close of business on 16 March 2020, he failed to make payment of the margin call stated in the 13 March DS (clause 1.17.1(a) of the Client Agreement).[232] He was obligated to furnish additional margin within one business day of being informed of a margin call or a margin deficit (clause 1.25.4 of the Client Agreement).[233] Accordingly, INTL FCStone was entitled to liquidate the positions in his account (clause 1.17 of the Client Agreement).[234] The relevant provisions are reproduced below:

> 1.17.1 A "Default" shall be deemed to occur if:
>
> …
>
> (a) the Customer fails to make, when due, any payment or delivery required to be made by it under this Client Agreement or in respect of any Account or Transaction;
>
> …
>
> 1.17.3 … on or at any time following the occurrence of a Default in respect of the Customer … [INTL FCStone] may, by notice to the Customer, specify a date (the "Liquidation Date") on which [INTL FCStone] will commence the termination, close-out or liquidation of such Transactions as [INTL FCStone] may determine … [235]

The defendants also rightly point out that, in any case, INTL FCStone was entitled to take all necessary steps to protect its financial interests, including to liquidate Mr Budhrani's contracts (clause 1.25.12 of the Client Agreement, clause 10 of the Customer Agreement).[236] I reproduce these clauses below:

> 1.25.12 [of the Client Agreement] Even if [INTL FCStone] has notified the Customer and provided a specific date or time

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232 DCC6 at para 71; Defendants' WCS at para 67.

233 DCC6 at paras 45, 88 and 101(a).

234 DCC6 at para 29A.

235 3ACB at Tab 5 (p 17).

236 DCC6 at paras 89C–89D; Defendants' WCS at para 70.

> by which the Customer is required to meet a Margin Call, [INTL FCStone] can still take necessary steps to protect its financial interests before such specified date, including exercising any of [INTL FCStone's] rights under Clauses 1.25 and 1.6, before the time given for meeting the Margin Call has elapsed.[237]
>
> 10 [of the Customer Agreement] [INTL FCStone] shall have the right, whenever in [its] sole discretion [it] consider[s] it necessary for [its] protection because of margin requirements or otherwise, … to:
>
> a) satisfy any obligation the Customer may have to [INTL FCStone] (either directly or by way of guarantee or suretyship) out of any property belonging to the Customer in [INTL FCStone's] custody or control;
>
> b) sell or buy any or all securities, or commodities outstanding which may be long or short respectively in the Customer's account(s)[;] and
>
> c) cancel any outstanding orders in order to close the account or accounts of the Customer's;
>
> all without demand for margin or additional margin, notice to the Customer, the Customer's heirs, executors, administrators, personal representatives or assigns of sale or purchase or other notice or advertisement and whether or not the ownership interest shall be solely the Customer's or jointly with others.[238]

The fact that INTL FCStone did not call a default or issue a liquidation order does not mean that it was not entitled to liquidate Mr Budhrani's contracts.[239]

86 Nonetheless, INTL FCStone was prepared to give Mr Budhrani up to three business days to meet the margin call, before taking steps to liquidate or square off his contracts. It was palpably clear that this was, in the defendants' words, a "grace period and … not binding".[240] There is no basis for

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237 3ACB at Tab 5 (p 29).

238 2ACB at Tab 1 (p 11).

239 Mr Budhrani's WRCS at paras 75–76.

240 Defendants' WCS at para 69; DCC6 at para 89F.

Mr Budhrani's unreasoned assertion that this shows that the defendants were approbating and reprobating.[241]

The defendants were also entitled to liquidate Mr Budhrani's contracts under the 20% Policy

87 A crucial point is that the grace period was only envisaged provided that the equity in Mr Budhrani's account did not fall below 20% of his initial margin,[242] in which case INTL FCStone had the right to immediately terminate Mr Budhrani's positions and require him to pay the shortfall (*ie*, the 20% Policy) (clause 2.0.1 of the Client Risk Monitoring Procedures Manual).[243] This clause reads:

> Escalation actions are to be taken whenever the Margin Ratio of the client falls below the respective trigger levels:
>
> [Margin Ratio:] … Falls below 20%
>
> [Escalation Process:] Issue liquidation orders to CM Team, copy to CEO (Entity), Desk Heads, Sales Team and Head CRM. Liquidation will not cease until clients recover to 100% IM level.

88 I agree that the defendants were entitled to liquidate Mr Budhrani's contracts pursuant to the 20% Policy.

89 Although Mr Budhrani denies both knowledge of the practice of the 20% Policy and the policy itself,[244] he advances no reasons or evidence in support of his denials. Mr Budhrani says that the 20% Policy is part of INTL FCStone's internal policy but not their contractual right, and relies on Mr Lee's

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241 Mr Budhrani's WRCS at para 69.

242 DCC6 at para 89; Defendants' WCS at para 71.

243 DCC6 at para 89B; Defendants' WCS at para 71; 3ACB at Tab 7 (pp 68–69).

244 RDCC3 at para 50D; R3 at para 52D; Mr Budhrani's WCS at para 189.

testimony at trial to support this contention.[245] In my view, this is more a question of law than of fact. The issue should not be resolved solely by reference to Mr Lee's testimony. Although Mr Lee agreed with Mr Budhrani's counsel that the 20% Policy was not a contractual right, he consistently testified that INTL FCStone had the right to liquidate Mr Budhrani's contracts.[246] The defendants point out two clauses which support their legal right to enforce the 20% Policy:

(a) Pursuant to clause 1.25.12 of the Client Agreement, INTL FCStone was entitled to take all necessary steps to protect its financial interests even if it had notified Mr Budhrani of a specific date or time by which he was required to meet the margin call.[247]

(b) Pursuant to clause 1.6.1(b) of the Client Agreement, INTL FCStone was entitled to terminate any outstanding transactions or other open positions in Mr Budhrani's account or liquidate the same.[248]

Mr Budhrani's only basis for disputing this is that the defendants are estopped from relying on the Client Agreement.[249] I have rejected this argument above.

90 Mr Budhrani's purported ignorance of the 20% Policy[250] is not credible, given that there is objective evidence that he was informed of it on multiple

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245 Mr Budhrani's WCS at para 189; NE for 25 May 2023 at p 72 line 8 – p 74 line 14.

246 NE for 25 May 2023 at p 70 lines 6–15, p 71 lines 8–11, p 72 lines 2–7, p 109 line 21 – p 111 line 14.

247 DCC6 at paras 28, 37(b) and 89C; 3ACB at Tab 5 (p 29).

248 DCC6 at paras 17 and 89C; 3ACB at Tab 5 (p 9).

249 RDCC3 at para 50K.

250 Mr Budhrani's WCS at para 189; Mr Budhrani's WRCS at para 74.

occasions.[251] Mr Budhrani also appears to have accepted at trial that he had been informed of the 20% Policy as early as 13 March 2020.[252] Crucially, Mr Budhrani essentially makes only an assertion but does not explain why his purported lack of knowledge should be a bar to the existence and application of the 20% Policy.

91 The evidence shows that on 16 March 2020 at around 5.22pm (*ie*, the first alleged instance of wrongdoing by the defendants), the equity of Mr Budhrani's account was already in a deficit of US$127,000.[253] This must necessarily be below 20% of the initial margin, since it is negative. (I note that as early as 13 March 2020 at 12.55pm, Mr Budhrani's equity was already negative.)[254]

92 Accordingly, I find that the defendants were entitled to liquidate the contracts in Mr Budhrani's account.[255] I also note that, when Mr Budhrani was asked if INTL FCStone was entitled to forcibly liquidate his positions around 6.22pm on 16 March 2020, he did not object and instead declined to comment on INTL FCStone's entitlements.[256]

93 By 5.22pm on 16 March 2020, Mr Budhrani was in default of the Client Agreement and the 20% Policy was engaged, and INTL FCStone was entitled to immediately liquidate the contracts in his account. The fact that INTL

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251 *Eg*, 3ACB at Tab 95, Tab 99, Tab 112, Tab 125. Defendants' WCS at para 71.

252 NE for 23 May 2023 at p 76 line 18 – p 77 line 21; Defendants' WCS at para 71; Defendants' WRCS at para 37.

253 4ACB at Tab 124 (p 3). See also Defendants' WCS at para 71.

254 4ACB at Tab 143 (p 93).

255 Defendants' WCS at para 72.

256 NE for 23 August 2023 at p 16 lines 8–11.

FCStone decided not to exercise their legal right to liquidate Mr Budhrani's contracts on 16 March 2020 does not mean that this right was not applicable or relevant.[257]

Mr Budhrani's claims in duress and undue influence are untenable

94 The defendants point out that duress and undue influence are grounds for vitiating a contract and not causes of action, but Mr Budhrani "does not seek to set aside the 66 Contracts, which are in any case not between [INTL FCStone] and himself".[258] I agree that this is a barrier to Mr Budhrani's claim for damages arising from the defendants' alleged undue influence and duress over him. Should a finding of undue influence or duress be made, the effect is that the contract entered into is voidable (in respect of undue influence: *Forde v Birmingham City Council* [2009] 1 WLR 2732 at 2759; in respect of duress: *Pao On v Lau Yiu Long* [1980] AC 614 at 635–636; *Contract Law in Singapore* (Andrew B. L. Phang and Goh Yihan gen ed) (Wolters Kluwer, 2nd ed, 2021) at para 811). Mr Budhrani has not pleaded that a contract with the defendants would be voidable, nor has he explained how the sales of the 66 Contracts were contracts with the defendants which are now voidable. His last-ditch attempt to pursue an alternative claim in the tort of intimidation based on the pleaded facts must also fail.[259] I consider these various claims below, but I will first briefly address his contention that the defendants owed him a duty of care and had breached their duty.

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257 Mr Budhrani's WCS at para 189.

258 Defendants' WCS at paras 155–156; Defendants' WRCS at paras 59–60.

259 Mr Budhrani's WRCS at para 138.

The defendants did not owe Mr Budhrani a duty of care or breach their duty

95 Mr Budhrani maintains that the defendants owed him a duty to, *inter alia*, inform him of the true value of his losses, take reasonable care to satisfy themselves of the accuracy of their representations and act as reasonably competent brokers in making their representations (the "Duty of Care").[260] He claims that the defendants negligently and/or grossly negligently breached the Duty of Care, by making the 5.22pm, 5.53pm, 6.33pm and/or the 8.46pm Representations.[261] The defendants deny that they owe Mr Budhrani any such Duty of Care,[262] and any duties at all save for those expressly provided for in the Agreements, the Novation Deed and under law.[263] There is also no implied term or duty imposed upon the defendants.[264] I reject Mr Budhrani's claims in this regard.

96 Mr Budhrani submits that the Duty of Care arises because Mr Budhrani and the defendants are "principal and agent", since Mr Budhrani relies on pricing information given by the defendants. He further explains that "the provision of this pricing information forms the core of the relationship of the Execution Only Contract".[265] I reject this argument for several reasons. First, Mr Budhrani does not explain why his reliance on pricing information provided by the defendants must mean that the defendants were agents of Mr Budhrani.[266] Second, Mr Budhrani is not entitled to rely on the information provided by the

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260 SOC5 at paras 38–39.

261 SOC5 at para 42.

262 DCC6 at para 112; D4 at para 113. See also Defendants' WCS at paras 50–55.

263 DCC6 at para 112; D4 at para 113.

264 DCC6 at para 113; D4 at para 114.

265 Mr Budhrani's WCS at para 166.

266 See also Defendants' WRCS at paras 12–22.

defendants (see [40] and [119]).[267] Finally, to the extent that he relies on the Execution Only Contract to argue that there was a Duty of Care, I have found that the parties did not agree to the Execution Only Contract. I also disagree with some of the other reasons why he says there is a principal-agent relationship.

97 Furthermore, as I shall explain below, I find that the defendants did not make the 5.22pm Representations, the 5.53pm Representations, the 6.33pm Representation and/or the 8.46pm Representation. I dismiss Mr Budhrani's allegation that the Duty of Care was breached.[268]

The 20 Contracts

Whether the defendants exercised undue influence resulting in liquidation of the 20 Contracts

98 Having regard to *BOM v BOK and another appeal* [2019] 1 SLR 349 at [101(a)], in order to prove that the defendants exercised actual undue influence over him with regard to the 20 Contracts, Mr Budhrani has to show that:

(a) the defendants had the capacity to influence him;

(b) the influence was exercised;

(c) its exercise was undue; and

(d) its exercise brought about the sale of the 20 Contracts.

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267 Defendants' WCS at paras 48–54.

268 Defendants' WRCS at para 68.

I find that the defendants did not exercise undue influence in requiring Mr Budhrani to liquidate the 20 Contracts on 16 March 2020.

(1) The defendants did not have the capacity to influence Mr Budhrani

99 Mr Budhrani has not shown that the defendants had the capacity to influence him. He points out that the defendants were aware that he maintained margin trading accounts with other brokers and any margin call would potentially have negative consequences for these other accounts.[269] However, this calls for conjecture as he led no evidence to prove this submission. He also did not explain why the potentially negative consequences of a margin call from the defendants would mean that the defendants had the capacity to influence him.

100 Mr Budhrani also says that he "succumbed to the exercise of … undue influence" because he was in fear of:

(a) defaulting on the Agreements;

(b) having a negative credit standing as a result of such default; and

(c) liquidation of his contracts by the defendants.[270]

But any default on the Agreements would be a consequence of *his* own actions or inactions, and he cannot say that his fear of default occasioned his being susceptible to the *defendants'* influence. I also note that, by the time he says the undue influence was exercised over him, the defendants were already entitled to liquidate his contracts (at [93] above). Mr Budhrani also neither explained

269 SOC5 at paras 24and 6A.

270 SOC5 at para 24.

nor adduced evidence to show how he would have a negative credit standing upon default, or that he was concerned about this at the material time.

101 The court in *Rajabali Jumabhoy and others v Ameerali R Jumabhoy and others* [1997] 2 SLR(R) 296 ("*Rajabali Jumabhoy*") concluded that there was no undue influence (*Rajabali Jumabhoy* at [193]) because, *inter alia*, the persons who had been alleged to be influenced, Yusuf and Mustafa, had been "mature men… able to weigh the consequences of their actions" (*Rajabali Jumabhoy* at [190]). There is no reason for me to doubt that Mr Budhrani was a mature man able to weigh the consequences of his actions. Indeed, there is evidence that Mr Budhrani had knowledge specific to margin trading: for example, he was able to perform his own calculations to identify a price at which to sell his contracts and to derive the loss actualised upon sale of a certain number of contracts at a particular price.[271] I therefore accept the defendants' related argument that Mr Budhrani was not capable of being influenced because he was incontrovertibly both an experienced investor and an accredited investor.[272] He does not claim to be a novice in any event.

102 Furthermore, there was ample evidence that Mr Budhrani was perfectly capable of making decisions for himself and disagreeing with the defendants' suggestions.[273] In particular, even where the defendants suggested that he liquidate some of his positions, he would give instructions to sell at prices higher

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271 4ACB at Tab 142; NE for 24 May 2023 at p 85 lines 8–22. See also Defendants' WCS at para 110.

272 DCC6 at paras 3 and 103(b).

273 *Eg*, 3ACB at Tab 90, Tab 93, Tab 94, Tab 112; 4ACB at Tab 125.

than the market price, which would mean that the contracts were less likely to be sold.[274]

103 On the evidence, I therefore find that the defendants did not have the capacity to influence Mr Budhrani (see, *eg*, *Ahmad Ebrahim s/o S M E Mohamed Sadik v Ilangchizian Manogaran* [2019] SGHC 167 at [153]–[154]).

(2) The defendants did not exercise influence over Mr Budhrani

104 Second, I find that the defendants did not exercise influence over Mr Budhrani. It thus cannot be said that the alleged influence brought about the sale of the 20 Contracts. Mr Budhrani says that he was subject to undue influence "as a result of" his fears stated at [100] above,[275] but for the reasons I have articulated above, I do not accept this. Mr Budhrani appears to say that the defendants' exercise of influence concerning the 20 Contracts is evident from the facts that Ms Alie:

(a) initiated the call on 16 March 2020 at 5.22pm, in coordination with and pursuant to the directions of Mr Lee, to make Mr Budhrani dispose of his contracts;[276]

(b) imposed INTL FCStone's directions on Mr Budhrani by saying that he needed to sell his contracts[277] and denying that he could wait to sell his contracts;[278]

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274 Defendants' WCS at paras 164 and 178; 4ACB at Tab 124; 4ACB at Tab 129; NE for 23 May 2023 at p 142 lines 1–19.

275 SOC5 at para 24(l).

276 Mr Budhrani's WCS at paras 74–76.

277 Mr Budhrani's WCS at paras 76(b) and 76(f).

278 Mr Budhrani's WCS at paras 76(e) and 76(h).

(c) agreed with Mr Budhrani that he was being forced to liquidate his contracts;[279] and

(d) directed Mr Budhrani to place a near order[280] (which is an order to sell at a price that is "near the current price").[281]

105 None of the abovementioned facts show that Mr Budhrani was influenced. The fact that Ms Alie initiated the call is a neutral consideration. It certainly does not show that Mr Budhrani was influenced. Ms Alie's statements that he "need[ed] to square some of [his] position[s]" and that she "guess[ed Mr Budhrani] need[ed] to reduce some" contracts[282] do not, in my view, constitute an exercise of influence, and should instead be read as suggestions. Instead, I agree with the defendants that they tried to assist Mr Budhrani to the extent possible.[283] Ms Alie's offer to "let [Mr Budhrani] wait for a while and then [she would] give [him] a call in a short while?" and to "watch the market for a while for [Mr Budhrani]"[284] does not suggest that the defendants influenced Mr Budhrani to liquidate his positions. Instead, she appears to be trying to indulge Mr Budhrani's preference to bide his time while hoping for a market rebound. Hence, I do not accept Mr Budhrani's submission that the "will of the Risk [t]eam and the [d]efendants … was unrelenting" and made him feel

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279 Mr Budhrani's WCS at paras 76(i)–76(k).

280 Mr Budhrani's WCS at para 76(m).

281 Ms Alie's AEIC at para 86; NE for 24 August 2023 at p 54 line 20 – p 55 line 8.

282 NE for 24 August 2023 at p 32 lines 20–24, p 33 lines 10–17, p 38 line 24 – p 39 line 4, p 39 line 23 – p 40 line 1, p 45 lines 18–23, p 50 lines 5–14, p 50 line 23 – p 51 line 5, p 52 lines 11–13, p 88 line 20 – p 89 line 3, p 107 lines 6–9; Defendants' WCS at paras 162–165; Defendants' WCS at paras 162 and 165.

283 Defendants' WCS at para 159.

284 4ACB at Tab 124 (p 5).

"helpless".[285] Regardless of whether the defendants could have contributed to his subjective feeling of helplessness, his reactions had to be viewed in the context of the prevailing extreme market conditions.

106 I also do not think the fact that Ms Alie said "no" to Mr Budhrani's request to hold off on selling his contracts constitutes influence. She was instead answering his question: "Can I just wait or what?" and "OK, but can I still wait …".[286] (For the reasons explained above at [93], at the material time, INTL FCStone already had the right to liquidate Mr Budhrani's contracts.)

107 I disagree with Mr Budhrani that Ms Alie's ostensible "agreement" that he was being forced to liquidate shows the defendants' exercise of influence over him.[287] Ms Alie testified that she had understood him to mean that *the market*, and not she, had forced him to liquidate his positions.[288] This is reasonable. This is also supported by the fact that Mr Budhrani appeared to panic over the falling price of silver immediately before directing that Ms Alie sell five of the 20 Contracts.[289] Similarly, towards the end of the call, Ms Alie informed him that that the price of silver hit a new market low and he responded with "Oh God!" before giving his instructions: "OK, OK! Sell everything… sell everything."[290]

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285 SOC5 at para 24(m).

286 Defendants' WCS at para 163; 4ACB at Tab 124 (pp 3–4).

287 NE for 24 August 2023 at p 51 lines 11–24.

288 NE for 24 August 2023 at p 51 line 11 – p 52 line 10; Defendants' WCS at para 166.

289 Defendants' WCS at para 162; 4ACB at Tab 124 (p 2); NE for 24 August 2023 at p 52 line 11 – p 53 line 7. See also Defendants' WCS at paras 162 and 166; Mr Budhrani's WRCS at para 142.

290 Defendants' WCS at para 162; 4ACB at Tab 124; NE for 23 May 2023 at p 159 lines 2–3, 12–25.

108 Furthermore, Ms Alie did not direct that Mr Budhrani place a near order and had instead asked him about it.[291] When asked at trial whether Ms Alie had forced him to place a near order, Mr Budhrani instead pointed out that Ms Alie had told him to put in a stop order[292] immediately after her suggestion of a near order and stated that the pressure had therefore been ongoing.[293] But I note that no stop order was eventually placed, and Mr Budhrani himself later admitted that Ms Alie had not forced him to place a stop order.[294] These do not suffice to show that the defendants exercised their influence over Mr Budhrani.

(3) Any influence exercised over Mr Budhrani was not undue

109 Third, I find that even if the defendants exercised influence over Mr Budhrani, it was not undue. Mr Budhrani does not explain why the influence was undue, or specify if the defendants' threat was lawful or otherwise.[295] Although he refers to an unlawful threat by way of threatening contractual breach, and a threat of lawful action, he does not say that the defendants have made either threat. He cannot say that the same threat is both lawful and unlawful. In any case, given my dismissal of his various complaints above and finding that INTL FCStone was well within its rights to liquidate his contracts (at [93]),[296] I do not see any evidence of direct pressure, in the form of illegitimate threats and action, bullying tactics, or indirect pressure, such as deliberate concealment of material facts or domination over mind and will

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291 4ACB at Tab 124 (p 8).

292 NE for 24 August 2023 at p 55 lines 17–20.

293 NE for 23 May 2023 at p 156 lines 2–11.

294 NE for 24 August 2023 at p 55 line 23 – p 56 line 6; NE for 23 May 2023 at p 156 lines 24–25.

295 Mr Budhrani's WCS at paras 68–69.

296 See also NE for 24 August 2023 at p 48 line 22 – p 49 line 21.

(*Halsbury's Laws of Singapore* volume 7 (LexisNexis Singapore) at para 80.230).[297] It therefore cannot be said that the defendants' threat of liquidating his contracts, even if made, amounted to undue influence.

Whether the defendants exercised duress resulting in liquidation of the 20 Contracts

110 In order to show that he acted under duress, Mr Budhrani must prove that: (a) there was exertion of illegitimate pressure; and (b) such pressure amounted to the compulsion of his will: *Tjong Very Sumito and others v Chan Sing En and others* [2012] 3 SLR 953 ("*Tjong Very Sumito*") at [247]. In my view, Mr Budhrani did not act under duress in selling the 20 Contracts.

111 I do not think the defendants subjected Mr Budhrani to illegitimate pressure, much less pressure amounting to the compulsion of his will, for the same reasons explained above at [104]–[108]. Mr Budhrani says that the defendants exerted illegitimate pressure by "unlawfully and illegitimately requiring [him] to immediately liquidate the said 66 Contracts by 16 March 2020".[298] Mr Budhrani says the defendants exerted illegitimate pressure by breaching the Execution Only Contract,[299] unlawfully interfering with the Execution Only Contract,[300] and breaching the Oral Agreement.[301] In the first place, there was no threat to breach the contracts as there was no Execution Only Contract and no Oral Agreement. Thus, as a consequence of my findings on these issues, it cannot be said that the defendants placed illegitimate pressure on

297 See also Defendants' WCS at para 158.

298 SOC5 at para 24.

299 Mr Budhrani's WCS at paras 20–33, 67.

300 Mr Budhrani's WCS at paras 58–63, 67.

301 Mr Budhrani's WCS at paras 40–46, 67.

Mr Budhrani by threatening to breach contracts (see, *eg*, *Tjong Very Sumito* at [249]–[250]). INTL FCStone was, in fact, entitled to liquidate Mr Budhrani's contracts (at [93] above), and it cannot be said that the defendants made a threat of unlawful action.

Whether the defendants made misrepresentations by way of the 5.22pm Representations

112 Mr Budhrani says that Ms Alie and Ms Song falsely made the 5.22pm Representations – that his equity was in deficit of US$127,000 and a sale of 16 contracts would remove the deficit[302] – when that would not have made a difference to the said deficit.[303] Mr Budhrani's case is that the 5.22pm Representations included that the sale of 16 contracts *alone* would remove the deficit, since he denies that the 5.22pm Representations "took into account the funds that [Mr Budhrani] had said he would bring in to address the prevailing shortfall in the margin required to hold the positions in his account."[304] The defendants say that Ms Alie made the 5.22pm Representations having taken into account the funds that Mr Budhrani had said he would bring in to address the shortfall in the margin required to hold his contracts.[305] Further, they aver that Mr Budhrani did not rely and/or is estopped from claiming that he relied on the 5.22pm Representations.[306]

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302 SOC5 at para 23A.

303 SOC5 at para 23C.

304 DCC6 at para 102C; RDCC3 at para 55G.

305 DCC6 at para 102C.

306 DCC6 at para 102H.

113 I find that Ms Alie did not make the 5.22pm Representations. She told Mr Budhrani that his account had an equity deficit of US$127,000, but not that a sale of 16 contracts *alone* would remove the deficit.

114 First, Ms Alie told Mr Budhrani that the sale of 16 contracts would remove the deficit *provided that he transfers moneys, amounting to the initial margin*, to his account.[307] Ms Alie said:

> So based on the current market, right, you… I'm using the… *I'm using the margin… the initial margin…* hold on, ah. Another 16 lots that you need to reduce, at least, at the moment.
>
> …
>
> Yeah, correct. That is only to bring up to positive, because currently it's deficit.[308]
>
> [emphasis added]

I therefore disagree that the 5.22pm Representations were made.

115 Second, it is not possible for the sale of 16 contracts to remove the equity deficit in Mr Budhrani's account, and it is only if Mr Budhrani brings funds into the account that the deficit can be eradicated.[309] I find it difficult to accept that Mr Budhrani was genuinely unaware of this. At the least, as a seasoned investor, he ought reasonably to have known and understood what the situation entailed. I therefore find that Ms Alie did not make the 5.22pm Representations. Ms Alie's evidence on the concepts of equity, equity deficit and margin deficit, which was unchallenged by Mr Budhrani, is relevant and I reproduce it below:

> "Equity" refers to the net value in the customer's account, considering the cash in his account and the value of his positions, including any realised and unrealised profits and

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307 Defendants' WCS at paras 103 and 116.

308 4ACB at Tab 124 (p 3).

309 Defendants' WCS at paras 95–96.

> losses. If the customer's equity falls below the Maintenance Margin, he is in a margin deficit. If his equity falls below zero, he is in an account deficit or equity deficit.[310]

Mr Budhrani already had an equity deficit of US$127,000, which accounted for the unrealised losses of the contracts he was holding then. A sale of 16 contracts would mean that what were previously unrealised losses would become realised losses (since the price of silver was falling). This would not reduce the deficit in his equity. Mr Budhrani also does not allege that Ms Alie's calculations were inaccurate or illogical.[311]

116 More importantly, he does not provide any plausible explanation for why she would provide inaccurate calculations.[312] I disagree with Mr Budhrani that it is not for him to do so.[313] He bears the evidential burden of proving his case. To the extent the defendants have provided plausible evidence in support of their case, if Mr Budhrani hopes to succeed in meeting his burden of proof, he must rebut that evidence (*Britestone Pte Ltd v Smith & Associates Far East Ltd* [2007] 4 SLR(R) 855 at [60]). Indeed, it was plainly and objectively not in the defendants' interest to make their calculations on the basis that Mr Budhrani would transfer additional moneys if they did not believe that he was going to do so, given that they would eventually suffer a deficit which he may not pay back for whatever reason. Accordingly, Mr Budhrani's insistence that the defendants proceeded on the basis that he would not bring in additional funds, while providing no explanation of any plausible motivation for this, is even less believable. That being the case, I find that Ms Alie did not represent that a sale

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310 Ms Alie's AEIC at para 13.

311 Defendants' WCS at paras 95–96 and 117.

312 Defendants' WRCS at paras 3 and 82.

313 Mr Budhrani's WRCS at paras 112–113.

of 16 contracts *alone* would remove the equity deficit on Mr Budhrani's account.

117 Mr Budhrani claimed that he would not have known that in a falling market "the only way [to] eliminate an account deficit is [to bring] in funds", and that he had just done what Ms Alie had told him to do.[314] I have serious doubts as to the truth of this claim, given his experience in trading, especially with margin trading accounts (see also [99] above),[315] but this consideration is not central to my decision. Mr Budhrani's alleged inability (or unwillingness) to appreciate how an equity deficit may or may not be eliminated at the material time does not change the fact that, on his case, Ms Alie's calculations would objectively not make any sense. Mr Budhrani's eventual appreciation of the impossibility of removing the equity deficit solely by selling his contracts, as reflected in his pleadings,[316] supports this point.

118 Third, I accept that, preceding the 5.22pm call, Mr Budhrani told the defendants that he would arrange for funds to be transferred to his account and Ms Alie therefore made her representations on that basis.[317] Mr Budhrani himself accepts that he had arranged for funds to be transferred to his account.[318] Mr Budhrani disagrees with Ms Alie's evidence that she had the impression that he would bring in funds to cover his initial margin and accordingly did her calculations on that basis.[319] This is because, according to him, he never

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314 NE for 23 May 2023 at p 138 lines 15–23.

315 See also Defendants' WCS at para 110.

316 SOC5 at para 23C; Defendants' WCS at para 107.

317 Defendants' WCS at paras 97–98.

318 Mr Budhrani's WRCS at para 28.

319 Ms Alie's AEIC at para 71; Defendants' WCS at paras 99–101.

mentioned that he would bring in funds to cover the initial margin. Instead, he said he would bring in enough money to address the margin call with some buffer.[320] In my view, it is reasonable for the defendants to have nonetheless proceeded on the assumption that Mr Budhrani would be bringing in a smaller sum, given especially the difficulties he appeared to have in transferring funds to his account. Furthermore, it would be impossible for Ms Alie to do the requested calculations on the basis that he would bring in "enough money to address the margin call with some buffer",[321] without any specified amount to work with. It therefore made sense for her to have used a specific sum, like the initial margin. I also accept that Ms Alie and Ms Song both proceeded on the basis that, since Mr Budhrani said he would bring funds into the account, they had no reason to doubt that the minimum amount he would bring in would cover the initial margin.[322]

119 Fourth, I accept that the fact that Ms Alie did not explain, after Mr Budhrani had liquidated all of the 66 Contracts, that she had done her calculations on the basis that he would bring in the initial margin[323] does not help the defendants' case. Nonetheless, this is not fatal to Ms Alie's case, as I find her explanation – that she was tired and had forgotten to do so – believable.[324] Furthermore, the questions asked by Mr Budhrani were not in relation to the 5.22pm call but instead the 6.33pm and 8.46pm calls,[325] and I find

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320 NE for 23 May 2023 at p 139 line 13 – p 140 line 10.

321 See also NE for 24 August 2023 at p 43 line 20 – p 44 line 22.

322 NE for 24 August 2023 at p 44 lines 8–19; NE for 25 August 2023 at p 32 lines 12–19; Defendants' WCS at para 100; Defendants' WRCS at para 77.

323 4ACB at Tab 141; NE for 24 August 2023 at p 116 lines 6–17, p 117 lines 3–4, p 140 line 23 – p 141 line 6.

324 Defendants' WCS at para 114.

325 4ACB at Tab 141.

it reasonable that she did not explain the basis of her statements made during the 5.22pm call.

120 On the totality of the evidence, I find that the 5.22pm Representations were not made. There is therefore no need for me to consider the other elements of a claim in misrepresentation, though I make one further comment: I agree with the defendants that, even if the 5.22pm Representations were made, Mr Budhrani is estopped from relying on them by virtue of clause 1.34 of the Client Agreement.[326] This clause is reproduced at [44(b)] above. For the reasons explained above at [40]–[46], I accept that the defendants are entitled to place reliance on the Client Agreement generally.

The 9 Contracts

Whether the defendants exercised undue influence and/or duress resulting in liquidation of the 9 Contracts

121 For the reasons set out above at [99]–[103], the defendants were not capable of influencing Mr Budhrani.

122 I also find that the defendants did not, in fact, influence or put pressure on Mr Budhrani: he does not identify the sections of conversations in which the defendants allegedly influenced or exerted pressure on him to sell the 9 Contracts, and thus has not proven that there was influence, or that pressure was exerted on him. Nonetheless, it appears to me that the 9 Contracts were sold between the 5.22pm and 5.36pm conversations. This is because, towards the end of the 5.22pm call, Ms Alie confirmed that Mr Budhrani still had 46 contracts, and at the beginning of the 5.36pm call she told him that he had 37

326 Defendants' WCS at para 129.

contracts left.[327] The transcript suggests that the sale of the 9 Contracts was a consequence of Mr Budhrani's direction: "OK, OK! Sell everything… sell everything."[328] Mr Budhrani testified that he had been "affected" by the conversation[329] and that he gave the said direction as a response to Ms Alie's statement that he could no longer hold on to the contracts.[330] But Ms Alie did not, in the time just preceding his direction, say that. Instead she said "I can't hold it anymore" twice. I accept her explanation that she meant that she could no longer hold the *phone line* since she had not been able to get proof of payment although they had been on the call for more than ten minutes, not that she could not hold *the positions* for him anymore.[331] Mr Budhrani made no effort to explain why the latter interpretation must be preferred. In any case, I find his interpretation questionable as there is no reason why Ms Alie would say *she* "held" the contracts or chose to use such language. I also agree with the defendants that Ms Alie explored ways to assist Mr Budhrani to hold on to his contracts.[332] Mr Budhrani also says that he was subject to actual undue influence "as a result of" his fears stated at [100] above[333] – for the reasons articulated above, I reject this.

123 Finally, I find that any influence over Mr Budhrani was not undue, and any pressure was not illegitimate for the reasons set out above at [109].

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327 See also NE for 24 May 2023 at p 3 lines 10–18.

328 4ACB at Tab 124.

329 NE for 23 May 2023 at p 159 lines 2–3.

330 NE for 23 May 2023 at p 159 lines 12–25.

331 NE for 24 August 2023 at p 62 line 9 – p 64 line 9; Defendants' WCS at paras 169–170.

332 Defendants' WCS at para 168; 4ACB at Tab 124.

333 SOC5 at para 24(l).

124 I add that Mr Budhrani is not allowed to pursue a new cause of action that the 9 Contracts were disposed of "without mandate".[334] He did not plead this and only raised this complaint at trial.[335] He only raised it *as a matter of evidence* relevant to his claims in undue influence, duress, and breach of contract in his written reply closing submissions,[336] and I have rejected all of these claims.

The 10 Contracts

Whether the defendants exercised undue influence and/or duress resulting in liquidation of the 10 Contracts

125 For the reasons set out above at [99]–[103], the defendants were not capable of influencing Mr Budhrani.

126 Mr Budhrani appears to say that the defendants influenced or exerted pressure on him to sell the 10 Contracts because Ms Song emphasised numerous times "that 'Risk' wanted a liquidation if no payment was made by 16 March 2020".[337] But all Ms Song said, prior to the sale of the 10 Contracts, was "[w]e talked to the Risk, right… yeah, because it is not our call. We have to consult the Risk."[338] Ms Song disagreed that she had, by saying this, put the fear of the Risk Team in Mr Budhrani's mind to get him to do what she wanted.[339] I do not think Ms Song's statement is sufficient to amount to her influencing or exerting pressure on Mr Budhrani. The transcript of the 5.53pm call does not show that

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334 Mr Budhrani's WRCS at para 33.

335 Defendants' WCS at para 171.

336 Mr Budhrani's WRCS at para 33.

337 Mr Budhrani's WCS at paras 77–78.

338 4ACB at Tab 129 (p 28).

339 NE for 25 August 2023 at p 59 lines 6–14.

the defendants exerted influence or pressure on Mr Budhrani.[340] I have also rejected Mr Budhrani's case that he was subject to actual undue influence "as a result of" his fears stated at [100] above.[341]

127 For the reasons set out above at [109], I find that any influence over Mr Budhrani was not undue, and any pressure was not illegitimate.

Whether the defendants made misrepresentations by way of the 5.53pm Representations

128 Mr Budhrani claims that INTL FCStone and Ms Song falsely made the 5.53pm Representations, *viz*, that a sale of 37 contracts would result in his equity being positive without bringing in additional funds, and that a sale of the said 37 contracts at the prevailing price of US$13.195 to US$13.20 would result in his account having a balance of about US$60,000.[342] The defendants say that Ms Song had told Mr Budhrani that if he brought in funds to address the initial margin requirement for 37 contracts, he would have a positive balance of around US$60,000, after taking into account that his equity then was in a deficit of US$226,442. They therefore deny that the 5.53pm Representations were false.[343] They also say that Mr Budhrani did not rely and/or was estopped from relying on them.[344] Mr Budhrani's claim in misrepresentation concerning the 10 Contracts fails because the defendants did not make the 5.53pm Representations.

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340 Defendants' WCS at para 178.

341 SOC5 at para 24(l).

342 SOC5 at para 23AA.

343 DCC6 at para 102L; D4 at para 104F.

344 DCC6 at para 102O; D4 at para 104I.

129 First, Mr Budhrani asked Ms Song for the price at which he could sell his contracts and "not have a deficit and … just a slight gain", and where he "[does not] fund in anything more".[345] I disagree, however, with Mr Budhrani's submission that he had said "I want to just liquidate and get out *without having to top up*" [emphasis added] at 00:01:00 of the 5.53pm call.[346] What he said then was this: "I'm just saying if you can give me that level, I'll put in a limit order there, and we liquidate the whole position." I accept, nonetheless, that, as a matter of his subjective intent, Mr Budhrani could have been asking for the price at which he could liquidate all his contracts without transferring any more money to his account.[347] But Mr Budhrani's subjective intent in making his query is not relevant to assessing if the 5.53pm Representations were misrepresentations. Moreover, he did not follow up on his query by immediately liquidating all his contracts. Instead, he decided to sell only 10 lots at US$13.20, but went on thereafter to instruct the sale of another 10 lots at US$13.30, above the market.[348]

130 Second, Ms Song testified that her understanding was that Mr Budhrani was asking for the price at which he could sell his contracts and eradicate his equity deficit, on condition that he provide the initial margin but no additional funds beyond that.[349] She provided the following explanations, which I find reasonable:

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345 4ACB at Tab 129 (p 26).

346 Mr Budhrani's WCS at para 127.

347 NE for 24 May 2023 at p 27 line 20 – p 28 line 1, p 28 lines 11–15.

348 4ACB at Tab 129 (p 28).

349 NE for 25 August 2023 at p 21 lines 2–19, p 23 line 18 – p 24 line 17, p 24 line 18 – p 25 line 8, p 32 lines 7–19, p 70 lines 19–20, p 71 lines 2–5, p 71 lines 10–25, p 79 line 20 – p 80 line 3.

(a) It was impossible for Mr Budhrani to achieve a positive balance in a falling market without providing any additional funds.[350]

(b) When Mr Budhrani first asked her for the price at which he could sell his contracts and eradicate his equity deficit, he made no mention of the condition that he not "fund in anything more", accordingly, she understood that he was "not going to fund in anything addition, more than what [he had] already arranged".[351]

Her subjective understanding (that Mr Budhrani would bring in funds to cover the initial margin but nothing more) alone would probably not weigh significantly in assessing if the 5.53pm Representations were misrepresentations. However, Mr Budhrani submits that they were misrepresentations *because* Ms Song was disingenuous and her subjective understanding was an afterthought.[352] As I accept Ms Song's evidence, I reject Mr Budhrani's submission in this regard.

131 Third, Mr Budhrani also appears to submit that Ms Song did, during the 5.53pm call, acknowledge that Mr Budhrani made his query on the basis that he would not bring in *any* money. He says that Ms Song gave the following false evidence:[353] Ms Song testified that, when she had asked "[s]o you're asking right if you want to sell the 37 lots, which is the price you should liquidate without funding in any money, right?" on the call, (a) what she had meant was that he would not fund in "any *more* money" [emphasis added]; and (b) probably

350 NE for 25 August 2023 at p 27 lines 8–13, p 28 lines 1–8, p 29 lines 4–24.

351 NE for 25 August 2023 at p 21 lines 12–19.

352 Mr Budhrani's WCS at para 126.

353 Mr Budhrani's WCS at para 128.

missed out stating that.[354] While I agree that this seems like a convenient explanation, the totality of the evidence shows that Ms Song did communicate to Mr Budhrani that her calculations had been made on the basis that he would transfer funds to cover the initial margin to his account.

132 Fourth, I find that Ms Song told Mr Budhrani that a sale of 37 contracts at the prevailing price of US$13.195 – US$13.20 would result in his equity being positive, provided that he transfers moneys to the account to cover the initial margin. This explains why Ms Song said "OK, in fact let's say if you're going to *cover now*, right?" [emphasis added], to which Mr Budhrani replied "Yeah". She later continued to tell Mr Budhrani on the phone call:

> Yeah, you should have a positive balance.
>
> …
>
> Yeah, because the margin we're using is 290,000 plus, for the margin for 37 lots.
>
> …
>
> OK, and then now your net liquid value minus 226,442 (-226,442). So after squaring everything, in fact you have like, maybe like 60,000 left.[355]

I accept Ms Song's evidence that her mention of "cover now" meant that "if [Mr Budhrani] was going to cover his [i]nitial [m]argin, then he would have a positive balance of about US[$]60,000".[356] Mr Budhrani says that "cover now" meant that he would sell everything, as shown from his later question "If I sell

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354 NE for 25 August 2023 at p 30 lines 9–24, p 31 lines 14–17.

355 4ACB at Tab 129 (pp 27–28).

356 Ms Song's AEIC at para 76; NE for 25 August 2023 at p 33 lines 9–20, p 33 line 21 – p 34 line 2; Defendants' WCS at para 119.

everything now, is it?".[357] No reason was advanced for his strained interpretation that "cover now" should mean "sell everything" rather than "cover [the] [i]nitial [m]argin".[358] In addition, it was evident from Ms Song's statement thereafter that "Yeah, because the margin we're using is 290,000 plus, for the margin for 37 lots", that her representations were made on the basis that Mr Budhrani would bring in funds to cover the initial margin.[359] On Mr Budhrani's case, there would be no reason for Ms Song to explain the quantum of the initial margin she used in her calculations, and he advances no alternative argument for that statement.

133 Fifth, Ms Song's calculations would not make any sense if, accepting Mr Budhrani's argument, she had not done them on the basis that he would pay the initial margin. Since Mr Budhrani does not allege that her calculations were inaccurate or illogical, and instead agreed with them,[360] I find that Ms Song did not make the 5.53pm Representations. For the same reasons explained at [115] above in relation to the 5.22pm Representations, it was impossible for Mr Budhrani to obtain a positive equity on his account without bringing in more funds,[361] and Mr Budhrani provides no plausible alternative explanation for the calculations (which is not premised on him bringing in additional funds).[362] To reiterate, Ms Song's calculations only make sense if Mr Budhrani brought in the initial margin:[363] Ms Song gave evidence that margin excess was "[t]he

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357 NE for 24 May 2023 at p 29 lines 12–15, p 32 line 1; Mr Budhrani's WRCS at paras 118 and 123.

358 Defendants' WCS at paras 105 and 119.

359 Defendants' WCS at para 104.

360 NE for 24 May 2023 at p 30 line 25 – p 31 line 10; Defendants' WCS at para 120.

361 See also NE for 25 August 2023 at p 27 lines 8–13, p 28 lines 1–8, p 29 lines 4–24.

362 Defendants' WRCS at paras 3 and 82.

363 Defendants' WCS at para 120.

difference in value between the 'Net Liquidity Value' [*ie*, equity] and the 'Initial Margin'",[364] which was unchallenged. Putting the numerical values given by Ms Song on the 5.53pm call: the margin excess of around US$60,000 would be the difference in value between the equity of negative US$226,442 and the initial margin of around US$290,000. In other words, Mr Budhrani's equity can only go from negative US$226,442 to around US$60,000 if there was an injection of equity of around US$290,000. Since that increase in equity cannot possibly come from selling contracts in a falling market, it can only be attained if Mr Budhrani transferred funds to his account. Mr Budhrani does not anywhere allege that her calculations (*ie*, as opposed to the *premise* concerning whether he transfers additional funds to his account) are incorrect. This suggests that the defendants did not make the 5.53pm Representations.

134 I therefore find that the defendants did not make the 5.53pm Representations. That being the case, it is not necessary for me to consider the other elements of misrepresentation, though, as I have noted above at [120], it appears that Mr Budhrani is estopped from claiming reliance on the 5.53pm Representations even if they were made.

The 27 Contracts

Whether the defendants exercised undue influence and/or duress resulting in liquidation of the 27 Contracts

135 I have found that the defendants did not have the capacity to influence Mr Budhrani (at [99]–[103] above).

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364 Ms Song's AEIC at paras 13, 18(d) and 18(f).

136 They also did not, in fact, influence or put pressure on Mr Budhrani to sell the 27 Contracts. I have found that Mr Budhrani was not subject to undue influence "as a result of" his fears stated at [100] above.[365]

137 Mr Budhrani appears to say that the defendants influenced or exerted pressure on him because Ms Song emphasised numerous times "that 'Risk' wanted a liquidation if no payment was made by 16 March 2020",[366] and Ms Song called Mr Budhrani at 5.59pm with the intention of "making [Mr Budhrani] sell his remaining 27 Contracts".[367] But this call was about four hours before the sale of the 27 Contracts. Furthermore, Ms Song was unlikely to have influenced Mr Budhrani, much less intimidated him,[368] to sell the 27 Contracts on this call by making reference to the Risk team, for two reasons. First, Mr Budhrani objected to her statement that the Risk team wanted him to transfer moneys to the account. He said "Yeah, *but there's supposed [to] be T+3, right*? If there's a margin, there's supposed to be T+3… they're not…*Even if it is a deficit, you have to give … us the time to find [funds] right*?"[369] [emphasis added]. He was clearly capable of expressing disagreement (see also [102] above). Second, and crucially, during that call, Ms Song tried to help Mr Budhrani by "trying [to] get a special approval",[370] and in fact managed to do so: she eventually offered that, if he sent an email telling INTL FCStone how much he would transfer to his account, he would be allowed to hold on to his contracts. Mr Budhrani agreed that Ms Song had tried to get approval for him

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365 SOC5 at para 24(l).

366 Mr Budhrani's WCS at paras 77–78.

367 Mr Budhrani's WCS at para 78; 4ACB at Tab 130. See also NE for 24 May 2023 at p 40 line 13 – p 41 line 18, p 45 lines 13–21.

368 Mr Budhrani's WCS at para 80.

369 4ACB at Tab 130 (p 35).

370 Defendants' WCS at para 179.

to hold his positions.[371] Finally, Mr Budhrani concedes that, following this arrangement being made, Ms Song cancelled his order to sell the 27 Contracts on her own volition and did not force him to sell the contracts.[372] Accordingly, Mr Budhrani's argument based on Ms Song's emphasis on the what the "Risk" team wanted on the 5.59pm call is unfounded.

138 Mr Budhrani further argues that his "fear of 'Risk' taking action and making him suffer an unknown loss made [him] then call up the [d]efendants to give instructions to dispose of the last 27 Contracts",[373] and that he was "completely dejected and worn out by all the illegitimate pressure".[374] He also argues that the defendants lied about "Risk" to compel him to sell his contracts.[375] However, his testimony at trial contradicts this submission. Mr Budhrani in fact testified that, when he gave the directions to sell the 27 Contracts at US$13.25,[376] Ms Song did not ask him to place that order.[377] Mr Budhrani also testified that when he placed the amended order on the 8.46pm call,[378] Ms Alie had not asked him to do so.[379] Finally, Mr Budhrani agreed that the final amendment to his order to sell the 27 Contracts (*ie*, this was the transacted order), on a call starting at 9.07pm,[380] was made on his own

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371 NE for 24 May 2023 at p 44 line 23 – p 45 line 1.

372 NE for 24 May 2023 at p 45 lines 7–12.

373 Mr Budhrani's WCS at para 84. See also 4ACB at Tab 139.

374 Mr Budhrani's WCS at para 85.

375 Mr Budhrani's WRCS at paras 26, 50–55.

376 4ACB at Tab 133.

377 NE for 23 August 2023 at p 17 lines 21–23; Defendants' WCS at para 182.

378 4ACB at Tab 138.

379 NE for 23 August 2023 at p 28 line 25 – p 29 line 2, p 29 lines 9–13; Defendants' WCS at para 185.

380 4ACB at Tab 140.

initiative.[381] This further casts doubt on his claim that he had been influenced or pressured by the defendants to sell the 27 Contracts.

139 I therefore find that Mr Budhrani was not influenced by the defendants to sell the 27 Contracts.

140 In any case, any influence over Mr Budhrani was not undue, and any pressure was not illegitimate (at [109]). Mr Budhrani submits that Ms Alie and Ms Song concocted the lie that the Risk team was putting pressure on Mr Budhrani to sell his contracts,[382] but does not explain how this shows that there was undue influence or duress. To the extent he seeks to thereby suggest that the defendants' actions were undue or illegitimate, I disagree. He does not explain why an alleged lie by the defendants pertaining to the Risk Team's position should mean that the influence or pressure was undue or illegitimate, respectively.

Whether the defendants made misrepresentations by way of the 6.33pm and 8.46pm Representations

141 Mr Budhrani further claims that the defendants falsely made:

(a) the 6.33pm Representation that his equity would not be in deficit if he placed a limit order at US$13.25; and

(b) the 8.46pm Representation that he could incur an estimated loss of US$40,000 or less if he placed a limit order at US$13.[383]

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381 NE for 23 August 2023 at p 29 lines 17–21; Defendants' WCS at para 186.

382 Mr Budhrani's WCS at paras 82, 87–89.

383 SOC5 at para 29.

It must be noted here that Mr Budhrani's case was that the 6.33pm and 8.46pm Representations were made on the basis that no additional funds from him were necessary. In other words, the 6.33pm Representation was that *solely* by placing a limit order at US$13.25, this would eradicate his deficit, and the 8.46pm Representation was that, *solely* by placing a limit order at US$13, this would result in an estimated loss of US$40,000 or less.[384] He says that if he sold the 27 Contracts at US$12.80, US$13 or US$13.25, he would incur losses of US$278,222.60, US$251,222.60 and US$217,472.60 respectively.[385] The defendants deny making the 6.33pm and 8.46pm Representations.[386] Instead, they say that when Ms Song made the 6.33pm Representation and Ms Alie made the 8.46pm Representation, they had taken into account the funds that Mr Budhrani said he would bring into the account to address the margin shortfall.[387]

(1) The 6.33pm Representation was not made

142 I find that the defendants did not make the 6.33pm Representation.

143 First, I repeat my reasoning set out at [115]–[116]. At the time of the 6.33pm call, Mr Budhrani's account was still in an equity deficit.[388] I add to the aforementioned reasoning that I am, however, reluctant to accept Ms Song's calculations[389] as evidence of the equity of Mr Budhrani's account during the 6.33pm call. None of the numbers in her calculations match the numbers she

384 RDCC3 at para 57(d); R3 at para 59(d).

385 SOC5 at para 32.

386 DCC6 at para 106; D4 at para 108.

387 DCC6 at para 106(e); D4 at para 108(e).

388 NE for 24 May 2023 at p 79 line 19 – p 80 line 1, p 80 line 7 – p 81 line 24.

389 Ms Song's AEIC at paras 89–93; Defendants' WCS at para 123.

told to Mr Budhrani on the 6.33pm conversation, and are in any case approximations based on numbers obtained through Mr Lee's calculations.[390] Nevertheless, this does not detract from my reasoning that, since Mr Budhrani does not object to the accuracy of Ms Song's calculations on the 6.33pm call, and those calculations only make sense on the basis that he would bring in funds to cover the initial margin,[391] it is more likely that Ms Song did not make the 6.33pm Representation.

144 Second, I accept Ms Song's unchallenged evidence that she had, prior to the 6.33pm call, confirmed with Mr Budhrani that he would be bringing in the initial margin.[392] I note that on the 6.22pm call immediately preceding the 6.33pm call, Mr Budhrani had told Ms Song that he was trying to transfer funds into the account.[393] Therefore, when she answered Mr Budhrani's query by stating that "That will be like [US$]13.25", it cannot be said that she represented that selling the remaining contracts at US$13.25 *alone* would eradicate the equity deficit.

(2) The 8.46pm Representation was not made

145 I find that Ms Alie did not make the 8.46pm Representation.

146 First, Mr Budhrani misstates what Ms Alie told him. His case is that Ms Alie said that he would incur an estimated loss of US$40,000 or less if he placed a limit order at US$13.[394] However, what she said was:

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390 Mr Lee's AEIC at para 169.

391 Defendants' WCS at paras 123–124; Defendants' WRCS at paras 3 and 82.

392 NE for 25 August 2023 at p 82 line 14 – p 83 line 9.

393 4ACB at Tab 132 (p 44).

394 Mr Budhrani's WCS at paras 129–130.

> Uh, let's say the 27 lots you square off at [US]$13, then the account for th[e] equity will be *down by 40K*. Around that level.[395]
>
> [emphasis added]

The "US$40,000" figure was thus the *difference* in equity if Mr Budhrani sold his contracts at US$13 instead of US$13.25, not the *equity* he would finally arrive at.[396] This was a fair and reasonable response to Mr Budhrani's query posed in the preceding call at 8.41pm: "OK, my limit at 13.25, if I lower to 13 even, then what will be my deficit?".[397] I do not think that, given how he had posed his query, Ms Alie's response had to provide his equity deficit, and the US$40,000 figure therefore could not be the difference in equity instead.[398] Mr Budhrani's misapprehension of what was said to him cannot constitute a misrepresentation on Ms Alie's part.

147 Mr Budhrani makes the curious submission that, since Ms Alie had said during a 5.36pm call that "Marked to the market right now, you have a negative of 40,000. Around there", she therefore made the 8.46pm Representation to Mr Budhrani.[399] Clearly, in mentioning the term "negative", she had told Mr Budhrani that he had an equity *deficit* of around US$40,000, rather than telling him that he would have an equity of US$40,000 if he sold the remaining contracts at a particular price. Further, Mr Budhrani fails to explain how Ms Alie's statements on the 5.36pm call is evidence of her alleged misrepresentation on the 8.46pm call.

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395 4ACB at Tab 138.

396 NE for 24 August 2023 at p 110 line 21 – p 111 line 22; Defendants' WCS at para 124.

397 4ACB at Tab 137.

398 NE for 24 May 2023 at p 74 lines 8–13.

399 Mr Budhrani's WCS at para 129; 4ACB at Tab 125.

148 Second, I note that Ms Alie did not explain the basis of her calculations during and immediately after the 10.30pm call[400] and told Mr Lee that "[Mr Budhrani] will [be] against [Ms Alie] and [Ms Song] … For giving wrong advi[c]e on the prices" via a text conversation on WhatsApp.[401] However, I do not think that these aspects of her evidence are materially adverse to her case. I accept her evidence that she was tired as it was already late at night.[402] Crucially, the weight of the evidence suggests that she did not make misrepresentations to Mr Budhrani. Further in this connection, I briefly address Mr Budhrani's point that the defendants withheld WhatsApp text conversations between Mr Lee and Ms Alie (the "WhatsApp Chats") which include the abovementioned message from Ms Alie:[403] Mr Lee claimed that he had thought that the WhatsApp Chats were personal messages and were not relevant, and no one had asked him to disclose them.[404] This was not a particularly convincing explanation for the delay in disclosing the WhatsApp Chats, but I do not find that this significantly reduces the credibility of the defence.[405] The WhatsApp Chats were promptly disclosed after their existence was raised at trial[406] and they did not contain pivotal evidence. There was no real advantage to be gained by the defendants in withholding or delaying the disclosure of such evidence.

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400 4ACB at Tab 141; NE for 24 August 2023 at p 116 lines 6–17, p 117 lines 3–4, p 140 line 23 – p 141 line 6, p 141 lines 7–13.

401 Mr Lee's Second Supplemental AEIC at p 43.

402 NE for 24 August 2023 at p 116 lines 6–17, p 117 lines 3–4.

403 Mr Budhrani's WCS at para 12.

404 Mr Lee's Second Supplemental AEIC at para 9; NE for 23 August 2023 at p 119 lines 1–25.

405 Mr Budhrani's WCS at para 15.

406 Defendants' WCS at para 35.

149 I therefore find that the defendants did not make the 6.33pm and 8.46pm Representations. It is not necessary for me to consider the other elements of misrepresentation, though, as I have noted above at [120], it appears that Mr Budhrani is estopped from claiming reliance on the 6.33pm and 8.46pm Representations even if they were made.

Conclusion on the 66 Contracts

150 I therefore find that all of Mr Budhrani's claims in relation to the 66 Contracts – in undue influence, duress, misrepresentation and negligence – have not been proved and must thus fail. His claims in conspiracy and vicarious liability are dismissed accordingly as well.

Whether Mr Budhrani is liable to INTL FCStone for US$198,222.60, and interest thereon

The parties' cases

151 INTL FCStone makes a counterclaim for loss and damages of US$198,222.60, and interest thereon, arising from Mr Budhrani's breach of the Customer Agreement and the Client Agreement.

152 INTL FCStone avers that it issued to Mr Budhrani a daily statement dated 17 March 2020 (the "17 March DS") which reflected a deficit of US$198,222.60 in Mr Budhrani's account.[407] According to clause 1.29.2 of the Client Agreement, a daily statement dated 16 March 2020 (the "16 March DS") and the 17 March DS are deemed to be conclusive and binding against

[407] DCC6 at para 133.

Mr Budhrani, and he is not entitled to now object to them.[408] I reproduce clause 1.29.2 of the Client Agreement here:

> 1.29.2 Each such statement, Confirmation and advice shall be deemed conclusive and binding against [Mr Budhrani], who shall not be entitled to object thereto and who shall be deemed to have ratified all matters therein stated, unless [Mr Budhrani] makes any objection known to [INTL FCStone] within five (5) Business Days after despatch of such statement, Confirmation or advice to [Mr Budhrani] … [409]

Pursuant to clause 11 of the Customer Agreement, Mr Budhrani is liable for any debit balance, including interest thereon, owing on and/or any deficiency, in the event of liquidation, remaining in his account, as well as all costs of collection.[410] Further, pursuant to clause 1.20 of the Client Agreement and clause 28 of the Customer Agreement, Mr Budhrani is required to indemnify INTL FCStone from and against any costs, expenses, loss and liabilities, including any deficit incurred in his account.[411] However, he failed, refused and/or neglected to pay INTL FCStone the sum of US$198,222.60 and/or indemnify INTL FCStone against the aforesaid deficit.[412]

153 Mr Budhrani denies the counterclaim. Mr Budhrani pleads that he unequivocally objected to the 16 March DS by way of a letter from his solicitor dated 17 March 2020, in respect of which INTL FCStone acknowledged receipt.[413] On that basis, he says that subsequent statements based on the 16 March DS have been objected to and/or are deemed to have been objected

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408 DCC6 at para 134.

409 3ACB at Tab 5 (p 34).

410 DCC6 at para 136; 2ACB at Tab 1 (p 11).

411 DCC6 at para 138.

412 DCC6 at para 139.

413 RDCC3 at paras 46 and 71(a); R3 at para 46.

to. He therefore denies that he did not object to the 17 March DS.[414] Further and/or in the alternative, Mr Budhrani pleads that INTL FCStone "cannot rely on its own wrong and/or undue influence and/or misrepresentation (fraudulent or otherwise)".[415] He also says that the counterclaim is denied because INTL FCStone was in default.[416] He denies that any moneys are owed to INTL FCStone and avers that his US$80,000 was wrongly used to pay a portion of his purported debt to INTL FCStone.[417]

154 I therefore consider the following issues:

(a) whether Mr Budhrani was entitled to, and did, object to the 16 March DS and 17 March DS; and

(b) whether INTL FCStone wrongly used Mr Budhrani's US$80,000 to pay a portion of his purported debt to them.

Whether Mr Budhrani was entitled to, and did, object to the 16 March DS and 17 March DS

155 Mr Budhrani says that he objected to the 16 March DS by way of a letter from his solicitor dated 17 March 2020. This appears to refer to a letter from Mr Budhrani's counsel to INTL FCStone dated 17 March 2020 (the "17 March

414 RDCC3 at para 71(b).

415 RDCC3 at para 72.

416 RDCC3 at para 74.

417 RDCC3 at para 47.

Letter").[418] He claims that he "unequivocally objected to [the 16 March DS]"[419] and "den[ied]"[420] it since the said letter states:

> 5. Kindly note that our client *takes issue with the sale of the Contracts which had led to the purported loss of USD 278,222.60*. In this respect, kindly let us have the contract between your good office and our client and the relevant terms and conditions governing the Contracts by no later than close of business 20 March 2020.
>
> 6. Until having sight of the said contract and our client *informing you of his position in respect of the sale of the Contracts*, we trust that it would be apropos for parties to hold their hands in respect of the matter.
>
> [emphasis added]

156 In my view, this does not amount to an objection, much less an unequivocal one, to the 17 March DS, on which INTL FCStone bases its counterclaim.

157 First, according to the 17 March Letter, although Mr Budhrani did say that he "takes issue with the sale of the Contracts which had led to the purported loss of USD 278,222.60", he also did not yet inform INTL FCStone "of his position in respect of the sale of the Contracts" as indicated in paragraph 6 of the 17 March Letter. Although the defendants appear to accept that Mr Budhrani contested liability,[421] I do not think the 17 March Letter rises to the level of an unambiguous objection. It remained unclear what exactly he was taking issue with as far as the sale of the contracts was concerned.

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418 4ACB at Tab 187.

419 RDCC3 at para 71(a).

420 RDCC3 at para 71(b).

421 Defendants' WCS at para 266.

158 Second, the 17 March Letter does not contain any mention of *the 17 March DS*, let alone any unequivocal objection to it. I also note that the 17 March DS appears to have been sent to Mr Budhrani on 18 March 2020[422] and he could not have objected to it before it was even sent or received. I therefore find that he did not object to the 17 March DS.

159 Third, Mr Budhrani argues that all subsequent daily statements based on the 16 March DS should be deemed to have been objected to,[423] but he gives no reasons in support of this proposition.

160 I reject Mr Budhrani's argument that INTL FCStone cannot rely on the Client Agreement "as [INTL FCStone] cannot rely on its own wrong and/or undue influence and/or misrepresentation".[424] I have found that INTL FCStone has not committed any of the aforementioned acts.

161 In the circumstances, Mr Budhrani is, on the basis of his non-objection to the 17 March DS, liable to INTL FCStone for US$198,222.60, and interest thereon. I disagree that INTL FCStone's counterclaim should fail because INTL FCStone "is a party in default".[425] I have found that INTL FCStone has not defaulted on any of its obligations.

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422 Agreed Core Bundle of Documents Volume 5 at Tab 188.

423 RDCC3 at para 71(b).

424 RDCC3 at para 72.

425 RDCC3 at para 74.

Whether INTL FCStone wrongly used Mr Budhrani's US$80,000 to pay a portion of his purported debt to them

162 Mr Budhrani asserts that his US$80,000 was wrongly used to pay a portion of his purported debt to INTL FCStone. His only explanation for this is by way of the allegation that no moneys were owed to INTL FCStone.[426] Given my finding that he did owe INTL FCStone moneys, this argument cannot stand.

Conclusion

163 Mr Budhrani's claims are unfortunately misconceived. As an experienced investor and an accredited investor, he should have well understood the implications of a rapidly falling market and a margin call on his margin trading account in the highly volatile market environment at the material time. The liquidation of his silver futures contracts arose from his own actions under extreme market pressure. The deficit in his account remained outstanding as he did not bring in additional funds, despite having told the defendants that he would. The defendants acted within their contractual rights and Mr Budhrani's loss must therefore lie where it falls.

164 I therefore find that all of Mr Budhrani's claims are not made out. I find that there was no undue influence, duress, misrepresentation, breach of contract or breach of a duty of care on the part of the defendants. I also determine that the defendants' counterclaim is well-founded and they are entitled to judgment for the sum of US$198,222.60 and interest thereon as pleaded, at the rate of 2% per calendar month from 16 March 2020 until the date of payment.

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426 RDCC3 at para 47.

165 Costs should follow the event, and the defendants are entitled to costs in this action. I will hear the parties separately on costs.

See Kee Oon
Judge of the High Court

Gabriel Peter, Manoj Nandwani and Sameer Melber (Gabriel Law Corporation) for the plaintiff;
Disa Sim, Torsten Cheong and Jodi Siah (Rajah & Tann Singapore LLP) for the defendants.