IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2023] SGHC(I) 13

Suit No 5 of 2020

Between

(1) The Micro Tellers Network Limited
(2) Michael Lin Daoji
(3) Rio Lim Yong Chee
(4) Wong Zhi Kang Clement

… *Plaintiffs*

And

(1) Cheng Yi Han (Zhong Yihan)
(2) Ling Hui Andrew
(3) Providence Asset Management
(4) Then Feng
(5) Lee Moon Young

… *Defendants*

JUDGMENT

[Agency] — [Third party and principal's relations]
[Contract] — [Misrepresentation] — [Fraudulent]
[Contract] — [Implied contracts] — [Implied retainer]
[Equity] — [Fiduciary relationships] — [Duties]
[Equity] — [Fiduciary relationships] — [Dishonest assistance]
[Tort] — [Conspiracy]
[Tort] — [Negligence]

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v
Cheng Yi Han and others

[2023] SGHC(I) 13

Singapore International Commercial Court — Suit No 5 of 2020
Simon Thorley IJ
30, 31 January, 1–3 February, 16, 17 May 2023

6 September 2023 Judgment reserved.

Simon Thorley IJ:

Introduction

1 This action was commenced in the High Court (HC/S 916/2019) on 13 September 2019 and was transferred to the Singapore International Commercial Court ("SICC") as SIC/S 5/2020 ("Suit 5") on 27 July 2020.

2 The first plaintiff ("Micro Tellers") is a company incorporated in Hong Kong whose sole director and shareholder is Charles Cuong Tan-Thatch ("Charles"). Charles is a successful businessman who initially worked for Societe Generale in New York and Hong Kong and who, since 2016, has pursued business ventures on his own behalf including various cryptocurrency projects. One of the major projects in which he was involved in his capacity as the chief cryptocurrency officer of Asia Innovations Group ("AIG") was an Initial Coin Offering ("ICO") of a cryptocurrency token called "Gifto".

3 As Charles explained in his second affidavit of evidence-in-chief ("AEIC"):[1]

> An ICO is different from a traditional Initial Public Offering ("IPO"). In an ICO, entrepreneurs seeking to raise funds for their products and services create a cryptocurrency token and offer that token to members of the public to purchase. The purchasers of the tokens can then use the tokens either to pay for the products and services offered by the company in question, or wait to see if the token increases in popularity and gains value.

4 The second, third and fourth plaintiffs are Singaporean citizens each of whom is also a successful businessman. They met in 2014 or 2015 through a network called Entrepreneurs' Organisation and together became interested in cryptocurrency investments, more specifically in ICOs, and pooled their resources for such investments. During the trial, the second plaintiff was referred to as "Michael", the third as "Rio" and the fourth as "Clement". Together they were referred to as "the Regional Group". I shall do the same.

5 Until 16 September 2020, the plaintiffs' claims were made only against the first three Defendants, Cheng Yi Han ("Yi Han"), Ling Hui Andrew ("Andrew") and Providence Asset Management ("PAM"), a company incorporated in the Cayman Islands, of which Andrew is a director and shareholder. I shall refer to these three defendants together as "the Initial Defendants".

6 Yi Han did not give evidence. His relationship with Micro Tellers was described by Charles after they had first met in late 2017 in Charles' second AEIC:[2]

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1 2nd AEIC of Charles Cuong-Tan Thach (22 Dec 2022) ("CT-2") at para 20.

2 CT-2 at paras 25–27.

> 25 After this meeting, I stayed in touch with Yi Han. Subsequently, Yi Han informed me that he could help with over-the-counter ("OTC") trading of cryptocurrencies. OTC trading of cryptocurrencies refers to the process where one purchases or sells a large amount of cryptocurrency directly to a counterparty trading desk. Yi Han informed me that he had a business partner, Andrew, and together they carried out OTC trades using the entity PAM.
>
> 26 Yi Han stated that Yi Han and Andrew had a special bank account that could be used for trades involving large amounts of foreign currency, since personal bank accounts could not be used for such trades. This special bank account was PAM's bank account in Singapore DBS Bank Ltd ("PAM DBS Account").
>
> 27 After speaking to Yi Han, I asked Yi Han if he could help me with OTC transactions for AIG. From on or around 14 January 2018 until June 2018, Yi Han and PAM helped encash more than US$12 million worth of cryptocurrencies for AIG. The process through which these transactions were carried out was smooth and straightforward. Yi Han would send me a cryptocurrency address, to which I would transfer the relevant amount of cryptocurrency. Yi Han would then arrange for this cryptocurrency to be traded for traditional fiat currency. The fiat currency would be placed in the PAM DBS Account, and then transferred to AIG.

7 Clement also met Yi Han in late 2017 and together with the other Regional Group members supported Yi Han in various ICOs in late 2017 and early 2018 which were successful.[3] Clement stated that by February 2017 "[he] enjoyed working with Yi Han and considered him a friend who could be trusted" and that "[o]verall, I was impressed with Yi Han".[4]

8 Andrew did give evidence. He explained his relationship with Yi Han as follows in his second AEIC:[5]

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3 2nd AEIC of Wong Zhi Kang Clement (19 Dec 2022) ("CW-2") at paras 39–49.

4 CW-2 at paras 49 and 61.

5 2nd AEIC of Ling Hui Andrew (20 Dec 2022) ("AL-2") at paras 7–11.

> 7 I was introduced to Yi Han in early 2017. I got to know him through my friend Shawn Lin, who was Yi Han's primary school classmate. Yi Han became my business partner in various business ventures.
>
> 8 Since I knew him, Yi Han had been very interested in cryptocurrency. His technical knowledge of blockchain technology and cryptocurrencies was quite extensive and far surpassed mine. He also possessed cryptocurrency Wallets.
>
> 9 I knew that Yi Han had many contacts in the cryptocurrency space. In early 2018, Yi Han told me that he had investors who held Bitcoin and other cryptocurrencies and wanted him to trade cryptocurrencies on their behalves i.e. he would hold the cryptocurrencies and buy and sell them for a profit. As it turned out, the Plaintiffs were some of these investors of Yi Han. However, I did not know their identities at the time.
>
> 10 Yi Han asked me if he could use PAM in the trades in the following manner:
>
> (a) Yi Han would receive cryptocurrency from these third parties in his own cryptocurrency wallet; and
>
> (b) He would liquidate these into fiat currency by transferring the cryptocurrency to a US entity called Cumberland Mining Materials LLC ("Cumberland").
>
> (c) Cumberland would transfer fiat currency to PAM.
>
> 11 I agreed. I allowed him to use PAM to do so as he would split the commission he made off these trades with PAM and me. However, the actual trades were always carried out by him as he owned and controlled the cryptocurrency wallet. However, I did not myself contact these third-party investors, neither did I tell Yi Han to do so on my behalf.

Background

The plaintiffs' claims against the Initial Defendants

9 The plaintiffs' claims against the Initial Defendants arose out of two incidents referred to in these proceedings as "the Europe Transaction" and "the Private Bank Acquisition". I shall have to go into greater detail in relation to these incidents later.

10 In simple terms, however, the Europe Transaction occurred in April 2018. It involved a proposed trade of Bitcoin ("BTC") purchased by the Initial Defendants with the authority of the Regional Group using funds supplied by them which were held in PAM's bank account. The intention was that those BTC should be sold to buyers in Europe ("the Buyers") at a profit, the consideration being €5m which was to be paid in cash. In the event, it turned out that the banknotes supplied ("the Banknotes") were forgeries. The Regional Group claimed that the Initial Defendants were liable to them in deceit, breach of duty and/or trust, unjust enrichment, conspiracy and negligence. Micro Tellers was not involved in the Europe Transaction.

11 The Private Bank Acquisition involved both sets of plaintiffs. In the case of the Regional Group, following the failure of the Europe Transaction, there were some US$2m of the Regional Group's funds remaining in PAM's bank account which the Group asked to be returned. This was not done and it was asserted that the Initial Defendants had misappropriated the funds by using them without the Group's authority as part of the Private Bank Acquisition. Again, relief was sought based on deceit and other related claims.

12 In the case of Micro Tellers, it did authorise the Regional Group to use some US$2.7m of the funds deposited by it in the PAM bank account as part of the Private Bank Acquisition but, it was asserted, this was done following various false representations made by the Initial Defendants to Charles. Once again, claims were made in deceit and other related claims.

13 In their Defence, again in very simple terms, the Initial Defendants sought to place the blame for any misdoings upon Then Feng ("Feng"), now the fourth defendant.

Suit 8 – the action between the Initial Defendants and Then Feng

14 Unbeknown to the plaintiffs, on 2 July 2019, PAM (and a related company 5 and 2 Pte Ltd ("5&2")) had brought proceedings in the High Court (HC/S 653/2019) against Feng and his wife, Lee Moon Young ("Moon"). On 29 September 2020 the plaintiffs in that action discontinued the claim against Moon. Thereafter that action was transferred to the SICC on 13 October 2020 as SIC/S 8/2020 ("Suit 8").

15 In Suit 8, the plaintiffs ("the Suit 8 Plaintiffs") contended that they had been induced to provide funds for the purpose of the Private Bank Acquisition by certain false representations made to them by Feng. Some of the funds advanced were monies deposited in the PAM bank account by the plaintiffs in this action and which are the subject of the claims in relation to the Private Bank Acquisition incident.

16 Although the plaintiffs in this action became aware of the fact that the Initial Defendants were seeking to place the blame on Feng, prior to transfer to the SICC they did not seek to join Feng as a defendant nor did the Initial Defendants seek to join him as a third party.

17 Once the two Suits were transferred, since it was apparent that similar causes of action based on facts which overlapped arose, a joint CMC was heard at which it was ordered that the two cases should be tried together and thereafter the plaintiffs in this action were given leave to join Feng as a defendant.

18 The two actions came for trial before me on 14 June 2021. The subsequent history of the trial is set out in [1]–[13] of the judgment subsequently given in Suit 8 on 22 September 2021 – *The Micro Tellers Network Ltd and others v Cheng Yi Han and others and another suit* [2021] 5 SLR 328:

1 These two actions, SIC/S 5/2020 and SIC/S 8/2020 ("Suit 5" and "Suit 8" respectively), raise similar causes of action based on facts which, to a certain extent, overlap. They were therefore ordered to be tried together. The trial commenced on 14 June 2021 and was scheduled to last for ten working days.

2 In the days leading up to the trial, the plaintiffs in Suit 5 reached a settlement with the second and third defendants in Suit 5. The third defendant ("3rd Defendant"), Providence Asset Management ("PAM"), is a company incorporated in the Cayman Islands. Its managing partner is the second defendant ("2nd Defendant") in Suit 5, Ling Hui Andrew ("Mr Ling"), who is a Singapore citizen.

3 This resulted in the first defendant ("1st Defendant") in Suit 5, Cheng Yi Han ("Mr Cheng"), who is also a Singapore citizen, seeking leave to issue a Third Party Notice against the 2nd and 3rd Defendants, PAM and Mr Ling. Leave was granted on the basis that any issues arising on the Third Party Notice would not be raised at the trial and that any necessary directions on the Third Party Notice would be given after judgment following the trial.

4 The 3rd Defendant in Suit 5, PAM, is also the first plaintiff in Suit 8. The second plaintiff in Suit 8, 5 and 2 Pte Ltd ("5&2"), is a Singapore company of which Mr Ling is a director.

5 The fourth defendant in Suit 5, Then Feng ("Mr Then"), is a Singapore citizen who is also the first defendant in Suit 8. The second defendant in Suit 8 is Mr Then's wife but the action against her was discontinued on 29 September 2020. Mr Then was thus the only remaining defendant in Suit 8.

6 At the start of the trial, oral opening submissions were first made by counsel for the plaintiffs in both actions, followed by counsel for Mr Cheng, and then by Mr Then, who was at that time a litigant in person. The first witness to give evidence was Frederic Willy Gaillard ("Mr Gaillard"), a Swiss national resident in Singapore. Mr Gaillard provided an affidavit of evidence-in-chief ("AEIC") in each action which were then supplemented by further AEICs in each action. He was cross-examined by Mr Then on his evidence given both in Suit 5 and in Suit 8. Following the conclusion of his oral evidence, counsel for the plaintiffs in Suit 5 informed the court that settlement negotiations between the plaintiffs in Suit 5 and Mr Cheng, the 1st Defendant in Suit 5, were at an advanced stage, and that he was hopeful that an agreement could be reached if the trial was adjourned until the following day. This was not opposed.

7 The following day, 15 July 2021, the court was informed that settlement had indeed been reached and that Mr Cheng

and his counsel would play no further part in the trial. The Third Party Notice also fell away. Mr Then was thus also the sole remaining defendant in Suit 5 as he had become in Suit 8.

8 This change of events raised a number of considerations. First, Mr Then was acting in person and the original trial schedule envisaged that the next four witnesses to be called on behalf of the plaintiffs in Suit 5 would be cross-examined first by counsel for Mr Cheng and then by Mr Then. The time estimate provided for cross-examination indicated that the bulk of the cross-examination would be carried out by counsel for Mr Cheng with only a small amount of time being allocated thereafter to Mr Then. As counsel for Mr Cheng would now play no further part in the trial, this meant that Mr Then would have to conduct the cross-examination himself. Since this new development only happened part way through trial, Mr Then was understandably not in a position to conduct all the cross-examination that day.

9 Second, the pleadings in Suit 5 were complex, involving, inter alia, an allegation of conspiracy involving Mr Then, Mr Ling and Mr Cheng, and it was unclear precisely what case would now be advanced by the plaintiffs in Suit 5 against Mr Then following the settlement of the actions against the other defendants in Suit 5.

10 Third, Mr Then indicated that although he had prepared himself to carry out his part of the cross-examination of the four Plaintiff's witnesses in Suit 5, he was not at that time properly prepared to carry out the cross-examination of Mr Ling who was only scheduled to give evidence the following week.

11 Following submissions, I concluded that it was necessary that the Statement of Claim in Suit 5 should be amended so as to make clear what case was being raised against Mr Then, now the only defendant, and that the AEICs served on behalf of the plaintiffs in Suit 5 should be amended so as to exclude matters which were now irrelevant. This necessarily meant that the trial of Suit 5 could not continue as planned.

12 Counsel for the plaintiffs in Suit 8, however, invited the court to continue with the trial of Suit 8. This was not opposed by Mr Then, provided that he had a proper opportunity to prepare his cross-examination of Mr Ling. This was a course that was acceptable to counsel for the plaintiffs in Suit 5. Accordingly, I directed that Suit 5 should be adjourned and that a case management conference for further directions in that action should be held after judgment in Suit 8 but that Suit 8 should proceed after an appropriate adjournment to enable Mr Then to prepare the cross-examination of Mr Ling.

> 13 The remainder of this judgment is therefore directed solely to the facts and issues arising in Suit 8. It is based and based only on the evidence adduced in Suit 8 and nothing that I say or conclude can have any effect on the now separate trial of Suit 5. Whilst separate trials are undesirable, in the circumstances, this was the only way forward that was fair to all parties.

19 As indicated in that passage, all findings made in that action, particularly since Feng elected not to give evidence, can have no impact on the determination of the issues in this case. It is, regrettably, necessary to start again. But what may be relevant and admissible are the details of the settlement agreements reached between the plaintiffs and (a) Andrew, PAM and 5 &2 on 7 May 2021 ("the PAM SA") and (b) Yi Han on 15 June 2021 ("the Yi Han SA"). For convenience redacted copies of these agreements are annexed to this judgment: see Annexes A and B. So far as concerns the PAM SA, it is cl 1.1–1.4 which are particularly relevant:[6]

> 1.1 In the event that PAM and 5&2 obtain final judgment in Suit 8 against Feng, PAM and 5&2 shall assign absolutely to the Assignees all of PAM's and 5&2's rights and interests in respect of the Assignment Sum, which is defined as the difference between the total judgment sum in Suit 8 and the sum of US$1,300,000.
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> 1.2 In the event that PAM and 5&2 do not succeed in their claims in Suit 8 and/or in the event that the action in Suit 8 is stayed, discontinued, and/or is not finally determined for whatever reason, the Andrew Parties shall be jointly and severally liable to and shall pay the Assignees the sum of US$4,700,000 ("Fixed Sum") within two years from the Effective Date.
>
> 1.3 If the total judgment in Suit 8 is more than US$1,300,000 but less than US$6,000,000, in addition to the obligation in clause 1.1 above, the Andrew Parties shall be jointly and severally liable to and shall pay the Assignees the difference between the Fixed Sum and the Assignment Sum within two years from the Effective Date.

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6 4th Df's Supplemental Bundle (27 Jan 2023) ("4D Supp Bundle") at pp 61–68.

> 1.4 If the total judgment in Suit 8 is less than or equal to US$1,300,000, the Andrew Parties shall be jointly and severally liable and shall pay the Assignees the Fixed Sum within two years from the Effective Date.

20 In the case of the Yi Han SA, the material clause is cl 1:

> 1. Yi Han shall pay to the Plaintiffs the sum of US$2,000,000 ("Settlement Sum") in the following manner:
>
> > a. the sum of US$1,200,000 ("Initial Sum") within 4 months of the Effective Date ("Initial Sum Deadline"); and
> >
> > b. the sum of US$800,000 ("Remaining Sum") in 8 instalments of US$100,000 ("Instalment Sum"). Each Instalment Sum is to be paid to the Plaintiffs every 12 months ("Instalment Deadline"), with the first Instalment Sum due within 12 months of the Initial Sum Deadline.

21 In both agreements the plaintiffs' rights to continue this action against the (then) remaining defendants were specifically reserved.

The persons involved

Then Feng

22 Feng qualified as a solicitor in England in 2007 having had a training contract at a leading London firm of solicitors for whom he then worked. In all he was with that firm for four years when he moved to New York where he was employed for about a year by an equally prestigious US law firm. In 2011 he returned to Singapore and was employed as an assistant solicitor by Walkers Singapore LLP. Walkers Singapore LLP is affiliated to an international law firm based in the Cayman Islands called Walkers and there are other affiliated offices around the world including one in London. All representatives of those affiliates used a common email domain name – "walkersglobal.com". Unless it is necessary to distinguish between the different affiliates I shall refer to

"Walkers" simpliciter. Feng's contract of employment with Walkers Singapore was terminated in or about November 2018.[7]

23 As well as working for Walkers Singapore, Feng also carried on business on his own behalf using (apparently) a number of Singapore and offshore companies. In particular, the company at the centre of the events underlying the Private Bank Acquisition is a company which was incorporated in June 2015 in the British Virgin Islands under the name Walkers Professional Services Limited ("WPS"). The necessary arrangements for setting up the company were effected by Feng but Moon was named as the sole director and shareholder. WPS had no connection with Walkers.[8]

24 In addition to Suit 8, Feng has been a party to other civil litigation in Singapore and is currently a defendant in a criminal trial in the State Courts.[9] The existence of the latter caused difficulties in allowing Feng to comply with his obligations on discovery in this action and resulted in the late disclosure of a number of documents, some of which were admitted and others which were not.[10]

Lee Moon Young

25 As indicated above, Moon was initially a defendant in Suit 8 but the action against her was discontinued before the trial. She was not originally a defendant in Suit 5. Following judgment in Suit 8, an application was made to join her as a defendant in this action on two grounds: dishonest assistance in

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7 Transcript (2 Feb 2023) at p 36 line 24–p 37 line 13 and p 45 line 9–p 45 line 5.

8 Transcript (2 Feb 2023) at p 55 line 12–p 58 line 5 and p 63 line 13–p 66 line 9.

9 Transcript (2 Feb 2023) at p 41 line 11–p 43 line 13.

10 Transcript (30 Jan 2023) at p 80 line 10–p 86 line 23.

relation to Feng's alleged unlawful acts in relation to the Private Bank Acquisition and conspiracy with Feng to commit those acts. Following a hearing, the application was allowed by me in a decision given orally on 18 May 2022 but which has subsequently been reduced to writing ("the Oral Judgment"): see Annex C.[11] I concluded at [47]–[48] of the Oral Judgment that although the grounds pleaded raised at best a tenuous case for her liability, it was not "doomed to failure" which counsel for Moon accepted was the threshold test.

26 Moon is a Korean citizen and she and Feng were married in May 2015. On their return from their honeymoon Feng asked her to become the sole director and shareholder in WPS, which she agreed to do, and she was the only authorised signatory of the WPS bank account. It is these factors which underlie the case against Moon.

The witnesses

27 Evidence was adduced for the plaintiffs by Charles on behalf of Micro Tellers and by Michael, Rio and Clement on behalf of the Regional Group. No criticism was made of the manner in which they gave their evidence.

28 The principal witness for the Regional Group was Andrew and for the fourth defendant it was Feng himself. In the course of cross-examination, it became apparent that both witnesses have little hesitation in telling lies in the course of their business dealings when it is in their commercial interests to do so. In consequence I was asked in oral submissions on behalf of the plaintiffs to decline to place weight on Feng's testimony when in conflict with Andrew's

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[11] Oral Judgment in SIC/S 5/2020 (SIC/SUM 6/2022) dated 18 May 2022 ("18 May 2022 OJ") in Minute Sheet in SIC/SUM 6/2022 dated 18 May 2022.

and to prefer the latter's. Feng, in his closing submissions, made the opposite submission.

29 I do not need to go into the details of the various untruths that were disclosed; suffice it to say that I am satisfied in the circumstances the better route to reaching conclusions as to where the truth lies is to have regard to the contemporaneous documents in seeking to resolve conflicts of evidence.

30 In addition, the plaintiffs adduced evidence from Frederic Willy Gaillard, a former business partner of Feng with whom he had fallen out. Mr Gaillard gave evidence on the first day of the original trial, 14 June 2021, before the hearing was adjourned as a result of the settlements. He did so at the request of the plaintiffs as he had been convicted of a criminal offence relating to one of his business dealings and was due to be imprisoned later in that week.

31 Mr Gaillard swore two AEICs. I excluded much of the first on the basis that it consisted of inadmissible hearsay and a good deal of the remainder of his evidence was of peripheral relevance. Where I see fit to make reference to his evidence, I shall give my reasons for doing so and the weight to be placed on it at the appropriate place.

32 Finally, Moon gave evidence in relation to the case pleaded against her and was cross-examined on her AEICs. In closing submissions little criticism was made of the totality of her evidence and I shall deal with this when considering the issues that arise.

The Europe Transaction

33 The Europe Transaction took place in Nice, France, on 26 April 2018 (it was completed on the evening of 26 April 2018, French time, which was early

morning on 27 April 2018, Singapore time). Since this was prior to the events leading up to the Private Bank Acquisition I propose to deal with it first. Micro Tellers was not involved and no claim is made by the Regional Group against Moon in relation to it.

34 As indicated in [10] above, no claim was made initially by the Regional Group against Feng. The Initial Defendants were the sole defendants. Feng was joined as a defendant by amendment on 16 September 2020 and the claims against him were expressly made as being additional to or in the alternative to the claims made against the Initial Defendants.[12] Following the settlement with the Initial Defendants, the Statement of Claim ("SOC") was further amended on 27 May 2022 so as to delete the claims made against the Initial Defendants and to focus the claims made against Feng.[13]

35 Three claims are made against Feng:

(a) Breach of duties ("the Europe Duties") owed by Feng to the Initial Defendants, acting in their capacity as agents for the Regional Group. Those duties were owed by Feng acting in his capacity as a solicitor of Walkers engaged by the Initial Defendants to carry out various duties.[14]

(b) Breach of fiduciary duties owed by Feng directly to the Regional Group by reason of his voluntary assumption of the Europe Duties in

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12 Statement of Claim (Amendment No 5) (8 Feb 2023) ("SOC") at para 5A.

13 SOC at sections V(*A*) and V(*B*). There were further minor amendments dated 7 February 2023.

14 SOC at paras 59–62.

circumstances giving rise to a relationship of trust and confidence ("the Europe Fiduciary Duties")[15].

(c) Negligence:

(i) Due to his failure when acting in his capacity as a solicitor to carry out the Europe Duties with reasonable skill and care.[16]

(ii) Due to his failure to carry out in a personal capacity the Europe Duties which he had undertaken to carry out with reasonable skill and care.[17]

36 In cross-examination Andrew accepted that Feng was not engaged in his capacity as a solicitor of Walkers in relation to the Europe Transaction and that he was acting solely in his private capacity.[18] In consequence by letter dated 13 March 2023 the solicitors acting for the plaintiffs indicated that they would not be pursuing the allegations made in relation to his conduct as a solicitor in paras 59–60 and 67–68 of the SOC. It necessarily follows that in so far as para 62 relates to Feng's alleged duties as a solicitor that this was also not being pursued.

37 The case against Feng thus rests on the alleged voluntary assumption of the Europe Fiduciary Duties by him in his private capacity in circumstances giving rise to a relationship of trust and confidence and/or negligence in his failure to carry out the Europe Duties with reasonable skill and care.

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15 SOC at paras 63–65.

16 SOC at paras 67–68.

17 SOC at paras 69–70.

18 Transcript (31 Jan 2023) at p 99 lines 1–9.

Breach of fiduciary duties

The pleadings

38 There are three alleged Europe Duties set out in the SOC:[19]

(a) To ensure that the Regional Group BTC will not be released to the Buyers until payment was duly made;

(b) To carry out due diligence on and engage a competent and professional security firm which would verify that payment was duly made; and

(c) To procure and/or ensure the procurement of valid insurance and/or ensure that the security firm which was engaged had valid insurance, such that the Initial Defendants (acting as agents of the Regional Group) would be fully indemnified against any losses arising from the Europe Transaction.

39 The alleged Europe Fiduciary Duties are set out in the SOC and can be summarised as being the duty to be honest and act in good faith in the interests of the Regional Group, not to advance his own or other external interests in conflict with the interests of the Regional Group and to ensure that the Regional Group's assets were not misappropriated.[20]

40 Four reasons are given for alleging that Feng owed the Europe Fiduciary Duties to the Regional Defendants:[21]

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19 SOC at para 59.

20 SOC at para 62.

21 SOC at para 63.

(a) The Regional Group was vulnerable to the actions of Feng. The Regional Group would not be present in person at the conduct of the Europe Transaction, and had no contact with the security firm to be engaged to verify that payment had been duly made. The Regional Group relied on Feng to carry out the Europe Duties.

(b) Feng had the power to affect the Regional Group's interests by causing the Regional Group BTC to be released even if payment had not been duly made.

(c) Feng voluntarily undertook to carry out the Europe Duties and act in the interests of the Regional Group, in circumstances giving rise to a relationship of trust and confidence.

(d) Feng had actual and/or constructive knowledge that the Regional Group BTC used for the Europe Transaction belonged to the Regional Group and/or the owners of the Regional Group BTC.

41 The alleged breaches of the Europe Fiduciary Duties are set out in the SOC:[22]

(a) Feng advised or otherwise caused the release of the Regional Group BTC without ensuring that payment had been duly made. The Banknotes were found to be counterfeit.

(b) Feng engaged SGS Security & Logistik Gesellschaft GmbH ("SGS GmbH") on behalf of the Initial Defendants (acting as agents of the Regional Group) without carrying out due diligence, and did not

[22] Particulars to the SOC at para 64.

ensure that SGS GmbH was competent and fit for the intended purpose of verifying that payment had been duly made.

(i) The paid-up capital of SGS GmbH was only 20,000 Swiss francs.

(ii) SGS GmbH used different company logos on different documents.

(iii) There were no contractual documents establishing the terms of engagement between the Initial Defendants (as agents of the Regional Group) and SGS GmbH.

(c) Feng failed to procure and/or ensure the procurement of valid insurance and/or ensure that SGS GmbH had valid insurance, such that the Initial Defendants (acting as agents of the Regional Group) would be fully indemnified against any losses arising from the Europe Transaction.

(i) The Initial Defendants (acting as agents of the Regional Group) have not been compensated for the losses arising from the Europe Transaction.

(ii) SGS GmbH has failed, neglected and/or refused to indemnify the Initial Defendants (as agents of the Regional Group) for their losses arising from the Europe Transaction.

42 In his Defence Feng asserts that he had only a limited knowledge of and involvement in the Europe Transaction and denies that he was ever engaged to

perform the Europe Fiduciary Duties or that he held the BTC and/or the euros on trust.[23]

The law

43 It is necessary to identify the manner in which the law determines (a) when a fiduciary relationship exists between a fiduciary and a third party or parties and (b) what the duties are that equity imposes on a fiduciary once identified.

44 The underlying principles of law are well settled and are not in dispute.

45 The relevant law was well summarised in the Plaintiffs' Written Closing Statement which I gratefully adopt. It reads:[24]

> 100 The term "fiduciary" has been characterised by the Court of Appeal in *Turf Club Auto Emporium Pte Ltd v Yeo Boon Hua* [2018] 2 SLR 655: ("*Turf Club*")
>
> > 42 There is no universal definition for the term, though we note that there appears to be growing judicial support for the view that a fiduciary is 'someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence'…It has also been said that '[f]iduciary duties are obligations imposed by law as a reaction to particular circumstances of responsibility assumed by one person in respect of the conduct of the affairs of another'…The concept of a fiduciary has also been described as one that 'encaptures a situation where one person is in a relationship with another which gives rise to a legitimate expectation, which equity will recognise, that the fiduciary will not utilise his or her position in such a way which is adverse to the interests of the principal'…

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23 4th Df's Defence (Amendment No 2) (20 Jun 2022) ("4D Defence") at paras 10, 20 and 21.

24 Plaintiffs' Closing Statement (1 Apr 2023) ("PCS") at paras 100–106.

> 43 While there are settled categories of fiduciary relationships – such as the relationship of a trustee-beneficiary, director-company, solicitor-client, between partners – it does not mean that all such relationships are invariably fiduciary relationships. In these relationships, there is a strong, but rebuttable, presumption that fiduciary duties are owed. Equally, the categories of fiduciary relationships are not closed or limited only to the settled categories. Fiduciary duties may be owed even if the relationship between the parties is not one of the settled categories, provided that the circumstances justify the imposition of such duties…

101 The law recognises that there are certain relationships in which one party will be presumed to owe fiduciary duties to another because they fall within what may be called an "established fiduciary relationship": *Aljunied-Hougang Town Council v Lim Swee Lian Sylvia* [2019] SGHC 241 ("*AHTC*"). It is uncontroversial that such established fiduciary relationships include those between express trustee and beneficiary, agent and principal, solicitor and client, and partners of a firm. At the same time, the categories of fiduciary relationships are not closed. The Court first considers whether the relationship falls within a recognised category of fiduciary relationships; if no, the court then examines the factual circumstances of the relationship to determine whether there are hallmarks of a fiduciary relationship for the court to conclude that the relationship is indeed a fiduciary one.

102 To that end, the Court may find that fiduciary duties are owed notwithstanding that the relationship does not fall within one of the settled categories of fiduciary relationships, provided that the circumstances justify the imposition of such duties.

103 The Court has relied on the following indicia for fiduciary duties to be imposed in circumstances other than in established categories of fiduciary relationships:

> a. A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence: *Innovative Corp Pte Ltd v Ow Chun Ming* [2020] 3 SLR 943.
>
> b. The concept captures a situation where one person is in a relationship with another which gives rise to a legitimate expectation, which equity will recognise, that the fiduciary will not utilise his or her position in such a way which is adverse to the interests of the principal.

> c. The expectation is assessed objectively, and it is not necessary or relevant whether the principal or the alleged fiduciary subjectively considered the latter as a fiduciary.
>
> 104 In *Innovative Corp* at [66], the High Court, citing *Turf Club*, added that "[t]he concept encaptures a situation where one person is in a relationship with another which gives rise to a legitimate expectation, which equity will recognise, that the fiduciary will not utilise his or her position in such a way which is adverse to the interests of the principal". The expectation is assessed objectively, and it is not necessary or relevant whether the principal or the alleged fiduciary subjectively considered the latter as a fiduciary.
>
> 105 Importantly, the fiduciary does not need to be subjectively willing to undertake those obligations; where the fiduciary voluntarily places himself in a position, the court can "objectively impute an intention on his or her part to undertake those obligations…": *Tan Yok Koon v Tan Choo Suan* [2017] 1 SLR 654.
>
> 106 *Tan Yok Koon* was affirmed by the Court of Appeal in *Tan Teck Kee v Ratan Kumar Rai* [2022] SGCA 62, where the Court said it did not "see any reason to depart from the open-ended approach preferred in *Tan Yok Koon*".
>
> [emphasis added]

46 In relation to the Europe Transaction, since it is now accepted that Feng was not acting in his capacity as a solicitor, particular attention has to be directed to the question of whether Feng had voluntarily been placed or had placed himself in the position of a fiduciary.

47 In this respect I was invited to place weight on the suggested analogy between the facts of this case and those in *Tan Teck Kee v Ratan Kumar Rai* [2022] 2 SLR 1250 ("*Tan Teck Kee*"). In that case, some investors wished to purchase land in Cambodia and designated the defendant, Mr Tan, to be their representative on the ground in Cambodia to oversee the purchase. The plaintiff, Mr Rai, contended that Mr Tan had significant oversight and control over the purchase such as to give rise to fiduciary obligations. On the facts it was held

that Mr Tan had undertaken to manage the purchase and that substantial sums had been paid into his personal bank account. He had thus voluntarily undertaken a position with a high degree of control over the investors' interests.

48 At [68]–[69] of *Tan Teck Kee*, Steven Chong JCA said this:

> (A) THE "TEST" FOR IDENTIFYING A FIDUCIARY RELATIONSHIP
>
> 68 We now turn to consider whether the Judge was correct to find that Mr Tan was a fiduciary to Mr Rai and hence liable to account.
>
> 69 In *Tan Yok Koon v Tan Choo Suan* and another and other appeals [2017] 1 SLR 654 ("*Tan Yok Koon*") this court stated that the relevant inquiry is whether the putative fiduciary had "voluntarily place[d] himself in a position where the law can objectively impute an intention on his … part to undertake [fiduciary duties]" [emphasis omitted] (at [194]). This question is notoriously open-ended and, thus, in determining whether such an intention ought to be imputed, the court can rarely be more precise – without being unduly dogmatic – than broadly examining and evaluating the specific nature of the role played by the putative fiduciary (see, eg, the characteristics suggested in *Susilawati v American Express Bank Ltd* [2009] 2 SLR(R) 737 at [41] citing *Frame v Smith* [1987] 2 SCR 99; *Commodities Intelligence Centre Pte Ltd v Mako International Trd Pte Ltd and others* [2022] SGHC 131 ("*Mako*") at [53]–[55] citing *Burdett v Miller*, 957 F.2d 1375 (7th Cir 1992)). These include the extent to which the putative fiduciary may exercise discretion which affects the position of the supposed principal and the degree of vulnerability to which the supposed principal is subject. This was the approach adopted by the Judge (see the Judgment at [60]–[64]).
>
> [emphasis added]

49 He continued at [74]:

> 74 However, we should state that we are mindful that there is some academic criticism against the broad, open-textured approaches adopted in cases like *Tan Yok Koon*. In a recent article by Professor Sarah Worthington, "Fiduciaries Then and Now" (2021) 80(S1) *Cambridge Law Journal* s154 ("*Worthington*"), support was expressed for the view of Professor Len Sealy (see "Fiduciary Relationships" (1962) 20(1)

> *Cambridge Law Journal* 69), who had suggested that the identification of fiduciary relationships should be more specific to cases where the putative fiduciary "has control of another's property or has undertaken to act on another's behalf and for the other's benefit and not the fiduciary's own benefit" (*Worthington* at p s163). These narrower circumstances – called "legally significant facts" by the learned professors – are suggested to be a desirable circumscription of the potential situations capable of giving rise to fiduciary relationships and the corresponding onerous obligations and remedies which follow therefrom.

50 He concluded at [77]–[78]:

> 77 This brings us back to the present appeal. For the purposes of the present appeal, we do not see any reason to depart from the open-ended approach preferred in *Tan Yok Koon*. Even if this approach may engender some uncertainty in its application, it is unclear whether there is, at present, an obviously better and clearer path. As was observed in *Mako*, "the best which can be done, until an effective theory of fiduciaries is formulated and accepted, is to take into account the relevant considerations" [emphasis omitted] (at [55]). Such a task is not one which we are being asked to undertake in the present case; indeed, neither Mr Singh nor Mr Yim has mounted arguments with a view to resolving this long-standing challenge in the law of fiduciaries, and, without the benefit of full arguments, we leave the matter for another case. On this note, we turn to the appeal before us.
>
> 78 In our view, Mr Tan should be *imputed* with the intention to undertake fiduciary obligations to the investors (see the test set out in *Tan Yok Koon* at [69] above). The position which he voluntarily undertook possessed a high degree of control in the handling of the investors' interest in the Venture. Mr Rithy's position as a director of WBL did not, in any meaningful way, limit Mr Tan's exercise of such control and, more pertinently, there was little which the investors could do to protect their interest in the Venture. In other words, they were particularly vulnerable to Mr Tan's exercise of power. This is most evident from the fact that Mr Tan could unilaterally decide to retain in WBL's possession the US$35 million received by WBL from Oxley Diamond, a sum which Mr Tan candidly admitted the investors had an interest in (see the Judgment at [131]). In fact, Mr Rai did not even know that such sum had been paid to WBL until Mr Ching was subpoenaed to produce

> the relevant documents in the course of the trial (see [28] above).
>
> [emphasis added]

51 Once there is a finding that a person has voluntarily undertaken fiduciary obligations to the beneficiaries and the nature of the obligations which arise have been identified as a question of fact, the law then imposes a duty enforceable in equity on the trustee to conduct themselves in carrying out those obligations in good faith so as to advance and protect the interests of the beneficiaries.

The facts

52 In simple terms the Breach of Fiduciary Duties allegation is founded on the assertion that Feng played a pivotal role in the Europe Transaction analogous to the of Mr Tan in *Tan Teck Kee*. In his closing oral submissions, Mr Adrian Tan ("Mr Tan"), counsel for the plaintiffs, asked the rhetorical question "who is the major figure in this" and asserted that it was Feng on the basis that he was "in the centre of it" and had placed himself in a position where he had control and undertook to "[give] the green light" to the transfer of the BTC.[25]

53 This is denied by Feng who asserts that he was only peripherally involved. He accepts that he introduced the Initial Defendants to Stefan Lange-Juergen ("Stefan") (generally referred to as "Stefan Lange" or simply "Stefan"),[26] a Swiss banker, who was a contact that he had made as a result of previous business transactions. It is therefore necessary to make findings of fact as to the parts played by the various parties in the Europe Transaction so as to

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25 Transcript (16 May 2023) at p 20.

26 1st AEIC of Then Feng (24 May 2021) ("TF-1") at para 53.

place the activities of Feng into context. I shall start by considering the facts relating to the setting up of the transaction and then those relating to its implementation.

(1) Setting up of the transaction

54 In the case of the Regional Group the principal part was played by Clement and his primary point of contact was Yi Han.[27] By late January or early February, Clement and Yi Han had established a good working relationship and they discussed whether there were other ways of making money through cryptocurrencies apart from ICOs. Clement said this in his AEIC:[28]

> 52 Through these discussions, Yi Han informed me that he was able to carry out OTC transactions on my behalf. This would involve the sale and purchase of large amounts of cryptocurrency. This is a unique cryptocurrency transaction, as it is typically difficult to carry out such large trades. This is because traditional cryptocurrency exchanges (which facilitate the purchase and sale of cryptocurrencies between private parties) may not have sufficient volume to allow such large trades, and further may not be able to provide attractive conversion rates for such trades.
>
> 53 I informed Yi Han that I, along with Rio and Michael, would be interested in working with Yi Han to carry out OTC transactions. While Michael, Rio and I were interested to work with Yi Han in this respect, we wanted to find out more information on how exactly Yi Han carried out OTC transactions, and whether there were any risks involved. Since I had the closest relationship with Yi Han at the time, I was the individual out of the Regional Group who primarily spoke to Yi Han, to understand his processes further.
>
> 54 In around February 2018, I met Yi Han at the Nandos restaurant at Changi Airport ("Nandos Meeting"). During the Nandos Meeting, Yi Han informed me that:
>
> (a) Yi Han and his business partner, who was an individual named Andrew (i.e. the 2nd Defendant in

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27 Transcript (1 Feb 2023) at p 176 lines 9–23.

28 CW-2 at paras 52–56.

> these proceedings), had numerous connections in the cryptocurrency market which enabled them to liquidate large amounts of cryptocurrency.
>
> (b) In consideration for a fee, Yi Han and Andrew could buy and sell large quantities of cryptocurrency on behalf of the Regional Group.
>
> (c) If the Regional Group transferred fiat currency and/or cryptocurrency to the Initial Defendants, the Initial Defendants would use PAM to carry out cryptocurrency transactions on behalf of the Regional Group. Yi Han stated that PAM was the entity that he and Andrew used to carry out OTC transactions.
>
> (d) Any fiat currency from the OTC transactions would be placed in PAM's bank account with DBS Bank Ltd ("PAM DBS Account"), to be held for the benefit of the Regional Group.
>
> 55 With regards to the PAM DBS Account, Yi Han stated that this was a special bank account that could be used for trades involving large amounts of foreign currency, since personal bank accounts could not be used for such trades. Yi Han stated that the PAM DBS Account would have no trouble handling large amounts of fiat currency because the PAM DBS Account was accustomed to handling large sums of money. This was because, according to Yi Han, PAM was Andrew and Yi Han's investment vehicle, and they were both general partners in PAM.
>
> 56 Yi Han also stated that the Initial Defendants had a very good relationship with a cryptocurrency liquidity provider known as Cumberland DRW LLC ("Cumberland").

55 Thereafter members of the Regional Group made inquiries to satisfy themselves that Yi Han and Andrew could be trusted to hold the Group's money in the PAM bank account. They were eventually satisfied that they could be trusted in part by a representation that the PAM bank account held a balance in excess of US$78 million.[29] This representation was false and thus reflects badly upon Yi Han and Andrew and is one of the reasons that caution must be exercised when assessing the weight to be attached to statements made on oath

[29] CW-2 at paras 62–88.

by Andrew and due notice taken of the fact that Yi Han did not give evidence. However, there is no suggestion that Feng was in any way involved with the affairs of PAM or with the Regional Group's decision to place funds with PAM.

56 Yi Han informed Clement that the proposed Europe Transaction would be carried out in the following manner:

(a) The Initial Defendants would use the Regional Group's funds to purchase BTC.

(b) Almost immediately, the BTC would be sold to the Buyers in the Europe Transaction, at a price that would be 20% above the market rate.

(c) The Buyers would be paying the sum of €5m in cash (*ie*, the Banknotes).

57 Yi Han stated that the Initial Defendants would engage a professional security firm to ensure that the notes were legitimate and, following discussions with Clement, confirmed that insurance had been taken out.[30] Yi Han also made a false representation that the deal would be done through the same broker as the Initial Defendants had used for a previous transaction.[31] However, again, Feng was not involved in the making of these representations.

58 In cross-examination Clement made it plain that he had never met or corresponded with Feng, that the only person he corresponded with prior to the

30 CW-2 at paras 100–109.

31 CW-2 at paras 111–128.

discovery that the Banknotes were false was Yi Han and that he left all decisions on how to verify that the Banknotes were genuine to Yi Han.[32]

59 The evidence of Michael and Rio confirmed that the primary contact so far as the Regional Group was concerned was between Clement and Yi Han.[33]

60 In summary, so far as the Regional Group is concerned, it is accepted that that they were unaware until after the event of the existence of Feng or that he played any part in the arrangements for the Europe Transaction. Their original AEICs, filed before the hearing of this action was adjourned because of the settlements, were directed to the then-subsisting claims against the Initial Defendants and not to the claim against Feng. Each of their assertions in their respective second AEICs that Feng played a pivotal/central/key role in the Europe Transaction was surmise on the basis of what they had been told by Yi Han and Andrew subsequent to June 2019.[34]

61 So far as concerns the Initial Defendants, Yi Han did not give evidence. The overall nature of the part that he played can however be discerned from the documents and the evidence of other witnesses. He was the primary point of contact with the Regional Group and appears to have been the one who started the negotiations with the counterparty to the Europe Transaction, one J C Roguet ("JC"). In his second AEIC Andrew stated that he could not recall whether the suggestion of the deal came from Yi Han or Feng.[35] In cross-

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32 Transcript (1 Feb 2023) at p 182 line 20–p 184 line 18.

33 See Transcript (2 Feb 2023) at p 7 lines 6–17; p 12 lines 9–14; p 17 line 9–p 18 line 10.

34 CW-2 at paras 186–188; 2nd AEIC of Michael Lin Daoji (14 Dec 2022) ("ML-2") at paras 143–146; 2nd AEIC of Rio Lim Yong Chee ("RL-2") at paras 97–98.

35 AL-2 at paras 24 and 28.

examination he was shown an e-mail of his dated 29 April 2018[36] in which he gave details of the manner in which the Initial Defendants were introduced to JC and on reviewing it said this:[37]

> Q. Thank you. If you could go to page 5063, which is the start of your email, this is the email that you had sent to Stefan.
>
> A. Yes.
>
> Q. And you had copied me on it. This, I would say, was the statement that you had referred to in your earlier email?
>
> A. Yes.
>
> Q. "Background of the Deal"?
>
> A. Yes.
>
> Q. I just want to read this out to you:
>
> "The main point of contact (buyer of BTC) is a guy named JC Rouget. He was introduced by a guy named Simon Houttinguer (spelling may be slightly off), we got to know Simon … from a person called Gourish".
>
> A. Yes.
>
> Q. So it is very clear from this email that you sent to Stefan on 29 April 2018, less than, I would say, two days after the transaction went south, that you got to know this person JC from this other person called Simon; correct?
>
> A. Yes.
>
> Q. So just to confirm again, you did not get JC's contacts from either me or Mr Cheng Yi Han?
>
> A. No.
>
> Q. Thank you.
>
> A. I got it from Simon, yes, and Mr Gourish. Okay. I remember now. When is this? Sorry, what was the question?
>
> Q. I'm just letting you know that this email was dated 29 April 2018?

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36 Agreed Bundle of Documents ("ABOD") at vol 10 p 5063.

37 Transcript (31 Jan 2023) at p 119 line 18–p 121 line 10.

> A. Gourish was introduced by Yi Han. He's the friend with Yi Han, I now remember already.
>
> Q. So Yi Han was the person who introduced Gourish?
>
> A. That's right.
>
> Q. That's helpful.
>
> A. This was -- we were working together for some other bitcoin transaction, or Ethereum transaction, one of them. And Gourish was Yi Han's contact. Then, after that, Gourish approached him for this particular deal -- they introduce, introduce and introduce.

62 Earlier in the cross-examination, Andrew accepted that Feng was not in contact with JC or Yi Han, that Yi Han was in contact with the Regional Group and that he, Yi Han, and a person called Leonard Lee Kah Yeen ("Leonard"), a business associate of Yi Han and Andrew,[38] were in contact with JC.[39] On the basis of this evidence, I am satisfied that Feng was not the person who suggested the deal and that he had no contact with JC.

63 In his second AEIC Andrew deposes to the parts played by the various parties in making the arrangements for the Europe Transaction:[40]

> 28 I was introduced to one J.C. Roguet ("JC") as one of the buyers of the Bitcoin. I did not know JC before this. As stated in paragraph 24 above, I cannot remember who introduced me to JC.
>
> 29 We began communicating on WhatsApp on 2 April 2018. We negotiated on the parameters and details of the transaction until around 24 April 2018, when it was agreed that:
>
> (a) The buyers would pay €5,000,000 in cash;
>
> (b) The buyers would transfer the cash in Nice, France at 7 Rue Fodere;

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38 AL-2 at para 33(a).

39 Transcript (31 Jan 2023) at p 100 line 24–p 102 line 2.

40 AL-2 at paras 28–36.

> (c) Our security company, a Swiss company SGS, full name Security & Logistik Gesellschaft (Schweiz) GmbH, would collect the cash there
>
> Annexed hereto at "2AL-4" is the full log of my WhatsApp chat with JC.

30 I pause here to note that the identity of the security company to be used changed several times but eventually we settled on SGS on Feng's recommendation. All introductions of the security companies, proposed banks and contacts were solely through Feng as I did not know any such contacts in Europe and relied on his expertise and contacts.

31 During this time, we sent the buyers very small amounts of Bitcoin to test if they could receive it. Yi Han did the sending from his own Bitcoin wallet

32 I negotiated the deal with JC hard, including demanding a 25% premium on the deal because the buyers were paying in cash (and therefore further arrangements would have to be made in respect of transporting the cash and security arrangements which would need to be paid for), and discussing the security arrangements for the trade which would take place in Nice, France.

33 During this period, Feng, Yi Han and I were making arrangements to ensure that the deal would be secure:

> (a) Yi Han and I agreed that Leonard Lee Kah Yeen ("Leonard"), our business associate, would go to Europe to personally monitor the transaction.
>
> (b) Feng introduced SGS to us and told us to engage SGS to verify the cash received. He told us that SGS was a large security company which could verify the banknotes received. We agreed.
>
> (c) Feng told us to use a company called KippCo Holding a.s.l ("KippCo") to "front" the Europe Transaction. He told us that foreigners like us would have trouble opening bank accounts with local banks there to receive a large sum of money like €5,000,000 without raising compliance red flags and possibly attracting unwanted suspicions. He told us KippCo (which was his contact) was a big company that was part of or invested in by a Gulf state sovereign fund that was had a large enough business so that large money transfers would not be an issue. I checked online and found a similar company that fit the description, and would not face any problems with opening a bank account and depositing €5,000,000 inside, and then remitting it to us in Singapore. He also

told us that KippCo would have no issue taking the money from SGS, who would transport it to them.

(d) He told us that for it to appear that KippCo was the legitimate "front" company, SGS should be engaged by them so that they were the client on record who would receive the money from SGS. We agreed to all this as it appeared that Feng was familiar with and experienced in what he was proposing.

(e) Feng told me that in order for the €5,000,000 to be transferred to us in Singapore without suspicion, we or our nominee had to enter into an agreement with KippCo under which €5,000,000 was to be transferred to us. This was to be the cover story. Feng provided to me, and I signed on behalf of PAM, an Investment Agreement dated 17 April 2018 whereunder KippCo agreed to transfer €5,000,000 to PAM. The Investment Agreement is annexed hereto at "2AL-5".

(f) While I was negotiating the date and time of the transaction with the buyers, I was updating Feng, who was in charge of coordinating with SGS, KippCo and Stefan Lange.

34 It was Feng that spoke to SGS and Stefan at all times and updated them on the various changes, such as the venue of the physical cash exchange. I did not have any contact with SGS or Stefan before the Europe Transaction. He also coordinated the engagement of SGS through KippCo. Feng also told us that SGS was fully insured, such that any losses arising from the Europe Transaction on which they had been engaged to provide security services on would be fully claimable on insurance.

35 Feng was also the one who spoke to KippCo and made the arrangements with them. I did not communicate with KippCo before the Europe Transaction. The Investment Agreement that I signed came from Feng. Annexed hereto at "2AL-6" is an excerpt of the WhatsApp chat between Feng and myself evidencing the same.

36 Shortly before the Europe Transaction, Leonard travelled to Europe. Yi Han stayed in Singapore and I was in Shenzhen, China. I do not know where Feng physically was at this time. At all times during the actual transaction, Yi Han and I kept in contact through the PPG WhatsApp group chat. Annexed hereto at "2AL-7" is the chatlog of the PPG group chat from 22 April 2018 to 28 April 2018.

64 In cross-examination, Andrew accepted that Feng was involved in his personal capacity and not in his capacity as a solicitor and asserted that he relied on Feng's expertise and contacts.[41]

65 In order to place the remainder of Andrew's cross-examination into context so far as it concerns Feng's involvements in the arrangements, it is necessary to consider Feng's evidence as well.

66 In his first AEIC Feng's evidence concerning the part in the preparations for the transaction was brief. He said this:[42]

> In or around April 2018, Andrew asked me if I knew of anyone who could help to broker a cryptocurrency transaction, for which I would receive a fee. I introduced Andrew to a banker named Stefan Lange-Juergen ("Stefan"), who was a business contact based in Europe and who had previously been introduced to me by Fred. To the best of my knowledge, Stefan then helped Andrew procure and arrange for the services of SGS to facilitate the Europe Transaction, and Stefan introduced KippCo Holding a.s. ("KippCo") to Andrew as an entity which could help to process the transfer of these funds from Europe to Singapore.

67 The fees involved for the introduction were €250,000.[43] In his second AEIC, Feng disputes much of Andrew's narrative of the events leading up to the transaction which is summarised in his second AEIC as follows:[44]

> At all times, Andrew knew SGS (and not KippCo) was the relevant party that he (on behalf of PAM) had engaged to assist on the Europe Transaction, and that I was simply an intermediary (acting in my personal capacity) who was promised a fee for my assistance in connecting him with SGS (through Stefan). He was well-informed of what SGS could offer

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41 Transcript (31 Jan 2023) at p 98 line 23–p 99 line 17.

42 TF-1 at para 53.

43 TF-1 at para 57.

44 Reply AEIC of Then Feng (4 Jun 2021) ("TF-2") at para 7.

> and their capabilities before he agreed to engage their services. Andrew (as the sole director of PAM) authorised the transaction structure, agreed to the procedures proposed by SGS (through Stefan) and proceeded to sign the Investment Agreement (dated 17 April 2018) on or after 1 May 2018 to facilitate the insurance claim on Stefan's request. …

68 In the closing submissions attention was focused on the part played by Feng in the appointment of SGS and his alleged responsibility for and failure to satisfy himself as to (a) the standing and repute of SGS and (b) that SGS carried the necessary insurance cover.

69 So far as concerns KippCo, no reliance is placed in the pleadings by the Regional Group on the part played by Feng. It is common ground that KippCo was appointed to carry out the banking and transfer of the money. In cross-examination it was put to Feng that it was Stefan who introduced KippCo and Feng agreed to this.[45]

70 Whilst there was some debate as to when the Investment Contract between KippCo and PAM[46] (dated 17 April 2018) was actually signed, nothing turns on this and I shall not consider it further.

71 The full name of SGS is SGS Security & Logistik Gesellschaft GmbH and the dealings with it were through their Zurich office. The contemporaneous documents relating to the appointment of SGS consist mainly of WhatsApp messages passing between members of a number of different chat groups. From the chat group which contained Andrew and JC[47] it can be seen that initially, it was intended to use a security company called Brinks to handle the money and

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45 Transcript (3 Feb 2023) at p 21 line 11–p 22 line 23.

46 AL-2 at Exhibit 2AL-5.

47 AL-2 at Exhibit 2AL-4.

the change to SGS is recorded in a chat from Andrew at 10.16pm on 19 April 2018.

72 Andrew received the following information from Feng earlier on 19 April 2018 as is shown in this extract from the chat between them:[48]

> 19/04/2018, 13:28 - Feng Then: Hi Andrew, will your guy be on the ground in Monaco / Nice as well? Or are they going to hand over to the security company directly?
>
> 19/04/2018, 13:33 - Andrew Ling: yes he will be thwre but cash is handled by security company. hes there to verify the autentication of notes and final amount . and then xfer btc
>
> 19/04/2018, 13:35 - Feng Then: Let me call you in 1 hour to discuss.
>
> 19/04/2018, 13:35 - Andrew Ling: ok
>
> 19/04/2018, 19:33 - Feng Then: From my banking contact: Meeting SGS director between 13-14 hrs my time and organize it.
>
> 19/04/2018, 19:33 - Feng Then: Should get a confirmation this evening. Thanks Andrew.
>
> 19/04/2018, 19:34 - Andrew Ling: ok nice location is confirmed
>
> 19/04/2018, 19:34 - Andrew Ling: now is date . i havent gotten hold of him to tell him monday
>
> 19/04/2018, 19:34 - Feng Then: Can you get the exact location? Like address.
>
> 19/04/2018, 19:34 - Feng Then: Got it. Monday is ideal. Gives them today and tomorrow to plan.
>
> 19/04/2018, 19:40 - Andrew Ling: got it give me 15 min i come back to you
>
> 19/04/2018, 21:07 - Feng Then: Missed voice call
>
> 19/04/2018, 21:10 - Feng Then: Missed voice call
>
> 19/04/2018, 21:11 - Feng Then: It is a 7 hour drive from Zurich. SGS will not dispatch the team to Nice until the location is confirmed. So if he tells you the location at 9am on Monday, the earliest they will arrive is 4pm.

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48 AL-2 at pp 496–497 (Exhibit 2AL-6 pp 91–92).

> 19/04/2018, 21:12 - Feng Then: I strongly suggest he disclosed the location ASAP. So they will leave Zurich overnight and arrive in Nice to pick up before 12 noon.
>
> 19/04/2018, 21:13 - Feng Then: From Bank: Monday noon is fine pls send me location and pp copy of person on the ground. Funds leave EFG Bank Zurich late Tuesday to Singapore. Pls provide banking coordinates. Paperwork will be signed and transfer done on behalf of Kippco Holding
>
> 19/04/2018, 21:21 - Andrew Ling: ok give me 20 min i need see the best way
>
> 19/04/2018, 21:21 - Andrew Ling: will message you dont keep you up
>
> 19/04/2018, 21:21 - Feng Then: No worries I'm gonna be up till at least 12!
>
> 19/04/2018, 21:21 - Feng Then: Call me anytime. Thanks Andrew.
>
> 19/04/2018, 21:22 - Feng Then: They really shouldn't have any issues disclosing the name of the hotel. The money could be kept in any number of hotel rooms or in buildings next door.
>
> 19/04/2018, 21:22 - Feng Then: But SGS will not move until they have the exact location pinned down in writing
>
> 20/04/2018, 08:44 - Feng Then: Will have a call with the director of SGS Zurich (security company) around 5pm today with the Banker. Would be good to know the location of the hotel in Nice by then if possible. Thanks Andrew. All good to go for Monday.

73 The reference to the Banker is a reference to Stefan. As indicated above it was Feng who introduced Stefan to Andrew and Feng knew Stefan as a result of previous successful business ventures in Europe.[49] Equally it is not in dispute that Stefan was a Swiss Banker working for HSBC[50] and in oral closing submissions Mr Tan accepted that there was no suggestion that Stefan was anything other than a respectable Swiss banker. As with Feng, it was agreed that

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49 Transcript (2 Feb 2023) at p 19 lines 4–20.

50 His e-mail address was [xxx]. See ABOD at p 5064.

Stefan would receive €250,000 for the part that he was to play in the arrangements for the transaction once it has been successfully transacted.[51]

74 It was at one time suggested that by the use of the term "Banker", Feng was seeking to hide the identity of Stefan from Andrew. This does not appear to be the case as his name is freely used in other chats: see [86] below.[52]

75 Feng suggests that Stefan dealt directly with Andrew to arrange the services of SGS[53] whereas Andrew asserts that the introduction to SGS was effected by Feng with no mention being made of the part played by Stefan.[54] There are no documents prior to the date of the failed transaction which indicate any direct contact between Stefan and Andrew and I therefore reject the suggestion that there was any such contact. But, equally it is clear that Andrew was well aware of Stefan's existence, that he was a Swiss banker and that he was being relied upon to establish a relationship with SGS.

76 In cross-examination, Andrew agreed that while Stefan was introduced by Feng it was Stefan that arranged for SGS to be the security company.[55]

77 The only evidence which suggests that SGS was not a competent security firm comes from Mr Gaillard. Mr Gaillard stated that he had recommended that Feng should hire a reputable security firm such as "Ferrari,

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51 See Transcript (3 Feb 2023) at p 17 line 13–p 20 line 12.

52 See AL-2 at p 505 (Exhibit 2AL-6 p 100) and Transcript (2 Feb 2023) at p 29 line 5–p 32 line 3.

53 TF-1 at para 53.

54 AL-2 at para 30.

55 Transcript (31 Jan 2023) at p 121 line 11–p 122 line 1. See also Transcript (3 Feb 2023) at p 21 line 15–p 22 line 2.

Malca Amit, Brinks or SGS (Société Générale de Surveillance SA)".[56] He goes on to say that subsequently he found out that Feng had hired SGS and not the French SGS company. Whilst he states that he referred to SGS, meaning the French company, he does not state that he told Feng that he had in mind a French company rather than a Swiss entity using the same initials, SGS, and it was not suggested to Feng in cross-examination that he did.

78 Feng stated in cross-examination that it was Stefan who had contacts with SGS and that in one of their previous dealings Stefan had used SGS:[57]

> Q. I'm coming to that. According to you, Stefan also introduced SGS to PAM; is that correct?
>
> A. Yes, that's correct.
>
> Q. Were you familiar at that time, in April 2018, with SGS?
>
> A. I had done one transaction, I think, with Stefan before, but I did not get into the weeds of that transaction, but he did mention that he had used SGS for that transaction. So I was familiar with the name, but I was not familiar with the company -- not to the extent that I know of the company now.
>
> Q. Did you ever, prior to the Europe transaction, have any interaction with SGS?
>
> A. No, no direct interaction. Even on the Europe transaction, I believe I did -- I did have calls with SGS. Stefan would set up a WhatsApp group call and I would listen in, but I couldn't understand the guy's accent and in the end Stefan basically said, "There's no need for you to be here, I will just deal with it". I just wanted to sit on to understand what was going on, but in the end I didn't. Then Stefan handled it from there. He had a very -- they spoke German most of the time. I don't understand German, and the accent, I just couldn't get it.

79 When Andrew became aware that SGS services were going to be used he did a Google search which revealed the existence of SGS and it appeared to

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56 Supplemental AEIC of Gaillard Frederic Willy (10 Jun 2021) at para 8.

57 Transcript (3 Feb 2023) at p 23 line 12–p 24 line 11.

him to be a big company such that he did not see the need to ask for any insurance papers. He confirmed that he did not become aware that there was also a French security company using the initials SGS:[58]

> Q. Okay. Mr Ling, while we were discussing the Europe transaction, did you ever ask for, I guess, the insurance papers or the insurance, the indemnity coverage, or evidence of the indemnity coverage of the security company?
>
> A. No.
>
> Q. Did Yi Han ask you for any of those documents?
>
> A. No, I don't think so, no.
>
> Q. So it's fair to say that you never asked -- you didn't ask for these papers from me, because Yi Han didn't ask it from you?
>
> A. Not -- I don't think that's a good characterisation. I think we never thought about asking it from you. I wouldn't speak for Yi Han, I say myself I wouldn't -- I never thought of asking it from you, because there's a trust, and when I Google SGS, they look like a big company, so I didn't do a check there.
>
> Q. Following up on that point, when you said you Googled SGS, what were you Googling for?
>
> A. To see -- I'm familiar with how Brinks is a security company, so I wanted to look at this SGS because I'd never seen SGS before. So I Googled their website and then I saw they are -- it looks like a company.
>
> Q. When you said because you never heard of SGS before, when you Googled for the company name, what exactly did you input into the search fields?
>
> A. I first put "SGS", then after it came up some German security -- not exactly the English word, I cannot remember what's the German of whatever language name it was, then I searched that name and then I got the company, the company website.
>
> Q. So, Mr Ling, just to confirm, the first hit that you got from the Google search was a company with a bit of a German-sounding name?
>
> A. That's right, yes. I wouldn't know it's German. It's a foreign name, a European language name.

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58 Transcript (31 Jan 2023) at p 111 line 22–p 114 line 19 and p 115 lines 10–15.

> Q. Can I take you to -- this is again, sorry, we are running around bundles here, my supplemental bundle dated 27 January 2023, the first bundle. If you can have a look at the printout on page 75. I'll just describe it. This is an entry on the Yellow Pages of Switzerland, and it states "SGS Security", and I can't pronounce this in German, Security & Logistiks Gesellschaft Schweuz GmbH?
>
> A. There is no page number here. That's right.
>
> Q. When you say that when I mentioned SGS, this is the SGS you found and this was the one that you were of the opinion was the company that was going to be engaged?
>
> A. I don't think this is the website, though. I didn't get this website, but the name SGS Security & Logistiks, spelt with a "K", looks familiar, what I searched.
>
> Q. Can I draw your attention to one page earlier, page 74. This is a website of another company called SGS, but this company SGS has a French name, and it is the website of SGS Societe Generale de Surveillance SA. Was this the company that you thought would be carrying out the security arrangements?
>
> A. No, this is not familiar.
>
> Q. This is not familiar to you?
>
> A. Yes.
>
> Q. Okay. Just to confirm again, you are certain that it was the earlier one with the German-sounding name?
>
> A. I'm more certain between these two, it is this one, the security, the one on page 75.
>
> …
>
> Q. Even though it was the biggest deal, no additional inquiries about insurance coverage and things like that were ever asked of me, right? You didn't ask for the paperwork, you didn't ask for any of that.
>
> A. No, I didn't ask for the paperwork for insurance coverage from you.

80 It is thus clear from the documents that SGS was appointed on the recommendation of Stefan. The evidence does not establish that any of the participants had any reason to believe that SGS was not an efficient security

company and none was aware that there was an alternative French security company trading under a name including the initials SGS.

81 Further there is no indication in the documents that Feng was ever asked to carry out a due diligence investigation into SGS nor that he volunteered to do so.

82 Turning then to the question of the part played by Feng in relation to the insurance cover provided by SGS, the Regional Group is unable to point to any documentary evidence in support of the assertion that Feng was charged by Andrew to ensure that SGS carried adequate insurance cover. The furthest Andrew could state was that Feng had told him that SGS was fully insured.[59] The matter was expanded upon in cross-examination[60] from which it is clear that it was Stefan and not Feng who made the representation concerning insurance cover and that Andrew never thought of asking Feng for any documents from SGS evidencing the indemnity coverage because of the Google search he did on SGS.

83 On the basis of the foregoing, I find, on the balance of probabilities that in relation to Feng's involvement in the making of the arrangements for the transaction, the facts were as follows:

(a) Feng used his previous relationship with Stefan to obtain his assistance in making arrangements for the security aspects of the transaction and agreed with Andrew the basis on which he would be

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59 AL-2 at para 34.

60 Transcript (31 Jan 2023) at p 105 line 2–p 112 line 14.

rewarded for that assistance on the successful conclusion of the Transaction.

(b) The sum agreed was a substantial sum amounting to €250,000.

(c) Stefan was a respectable Swiss banker who was also going to be rewarded by payment of €250,000.

(d) Stefan selected SGS as the security company because he had had previous dealings with them.

(e) Andrew himself did a Google search to satisfy himself that SGS was a reputable company and did not ask or rely on Feng to do a due diligence search into SGS.

(f) Feng did not volunteer to carry out a due diligence investigation into SGS.

(g) At no time was there any belief on the part of either Andrew, Stefan or Feng (or any of the other participants) that SGS was anything otherwise than a reputable company.

(h) Andrew did not ask or rely on Feng to obtain any documents verifying SGS's insurance coverage.

(i) Feng did not volunteer to obtain any documents verifying SGS's insurance coverage.

(2) The implementation of the transaction

84 The Banknotes, which turned out to be counterfeit, were handed over in Nice, France on the evening of 26 April 2018. At the time Andrew was in the

People's Republic of China, Feng was in Malaysia, Stefan was in Switzerland and Leonard was on the ground in Nice. The interaction between them is contained in a series of WhatsApp messages divided between three groups. The first involved Andrew and Feng,[61] the second involved Andrew, Yi Han and Shawn Lin[62] (a business colleague of Andrew and Yi Han) ("the PPG group") and the third involved Andrew, Feng, Stefan and Leonard ("the Nice group").[63]

85 These contemporaneous documents provide the best record of how the events of that day progressed and are to be preferred to any documents prepared subsequently after it was discovered that the Banknotes were counterfeit or to the recollections of individuals sometime later.

86 The Nice group was formed at 10.10pm (Singapore time) on 26 April 2018 between Andrew, Feng and Leonard. Stefan was added at 11.34pm. The following extracts from that chat group demonstrate the relationship between the participants and the part each played over the next few hours.

> [26/4/18, 11:18:26 PM] Feng: Leonard - SGS director Mr Donner is going to call you on your mobile.
>
> [26/4/18, 11:18:34 PM] Feng: Can you please communicate directly to him.
>
> [26/4/18, 11:18:40 PM] Feng: And he will instruct Willi.
>
> [26/4/18, 11:18:49 PM] Feng: We need to cut out all of this miscommunication.
>
> [26/4/18, 11:30:02 PM] Leonard Lee: Feng no call yet from that guy FYI
>
> [26/4/18, 11:30:10 PM] Leonard Lee: <attached: 00000032-PHOTO-2018-04-26-23-30-09.jpg>

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61 AL-2 at Exhibit 2AL-6.

62 AL-2 at Exhibit 2AL-7.

63 AL-2 at pp 555–558 (Exhibit 2AL-8 pp 150–153).

[26/4/18, 11:30:17 PM] Leonard Lee: We are at the money changer

[26/4/18, 11:30:33 PM] Leonard Lee: Mr W from SGS is doing the test here

[26/4/18, 11:31:07 PM] Leonard Lee: Location: https://maps.google.com/?q=43.700012,7.268616

[26/4/18, 11:31:12 PM] Feng: Cool I'm following up.

[26/4/18, 11:34:11 PM] Feng: Ok if I add the Banker to this group chat?

[26/4/18, 11:34:23 PM] Feng added [xxx]

[26/4/18, 11:34:30 PM] Feng: Hi Stefan

[26/4/18, 11:34:37 PM] Feng: Andrew and Leonard are in this group chat.

[26/4/18, 11:34:42 PM] Feng: This will speed things up.

[26/4/18, 11:36:02 PM] Stefan: Hi there I hope we can sort this out from this end

[26/4/18, 11:36:10 PM] Leonard Lee: <attached: 00000043-PHOTO-2018-04-26-23-36-10.jpg>

[26/4/18, 11:36:47 PM] Leonard Lee: 5 random notes have been changed at the money changer by Mr W from SGS

[26/4/18, 11:36:57 PM] Leonard Lee: In Swiss franc successfully

[26/4/18, 11:37:14 PM] Stefan: Who chose the notes?

[26/4/18, 11:39:22 PM] Feng: Leonard did.

[26/4/18, 11:41:20 PM] Stefan: Thats a good start. Still there will be no checking and counting in the bar! Rent a hotel room if need be nearby and do it there. Mr. Doner from SGS will ring Leonard shortly

[26/4/18, 11:42:30 PM] Andrew Ling: erm can we count in sgs truck?

[26/4/18, 11:46:40 PM] Stefan: They do not allow anybody inside their van as once they take it with them they are responsible. They are not concerned by all means of doing it as much as they can in our direction but we should not overstretch their cooperation. Once the bar came into play all other security companies would have been gone straight away

[26/4/18, 11:47:45 PM] Feng: Thanks for keeping them in play for us Stefan.

[26/4/18, 11:48:33 PM] Andrew Ling: yes thank you

[26/4/18, 11:51:54 PM] Stefan: Did Leonard tell Mr. W from SGS just now to wait for 20 mins and the first tranche will be 5m only?

[27/4/18, 12:12:46 AM] Leonard Lee: Hotel ibis Styles Nice Vieux Port 8 Rue Emmanuel Philibert, 06300 Nice, France +33 4 92 00 59 00 https://goo.gl/maps/hpmqwvh34S62

[27/4/18, 12:12:50 AM] Leonard Lee: Hotel room booked

[27/4/18, 12:27:09 AM] Stefan: Mr. Doner informs now Mr. W to do it in a room there. Please try to not go through main entrance as it raises too much attention with the machine. Ring Mr. W with a time you are ready to start so he comes at this time to the hotel. He will properly count and check with the machine whatever is there and issues a receipt, irrespectively if its 5 or 10m

[27/4/18, 12:27:32 AM] Leonard Lee: Stefan

[27/4/18, 12:27:40 AM] Leonard Lee: Has he called yet?

[27/4/18, 12:27:49 AM] Leonard Lee: You deleted this message.

[27/4/18, 12:28:08 AM] Leonard Lee: Mr W is writing a letter of Attestation for something

[27/4/18, 12:28:12 AM] Leonard Lee: I don't understand

[27/4/18, 12:29:00 AM] Stefan: I will check and come backto you

[27/4/18, 12:33:06 AM] Leonard Lee: Ya now they are asking me to sign the letter

[27/4/18, 12:33:48 AM] Feng: Don't sign anything until Stefan responds.

[27/4/18, 12:36:22 AM] Feng: Leonard - don't sign anything. Mr Doner will call Mr Willi ASAP.

[27/4/18, 12:36:42 AM] Stefan: Just spoke again to Mr. Doner that it will only be done after the counting andchecking in the hotel

[27/4/18, 12:37:02 AM] Stefan: He rings Mr. W now

[27/4/18, 12:45:20 AM] Stefan: Leonard the Italian guy is not willing to have the money counted and checked in the hotel,

you must stand your ground, Mr. W is instructed only to follow your directions

[27/4/18, 12:47:03 AM] Andrew Ling: im settling that apologoes. they will release ina a few mins

[27/4/18, 12:55:58 AM] Leonard Lee: <attached: 00000070-PHOTO-2018-04-27-00-55-57.jpg>

[27/4/18, 12:56:06 AM] Leonard Lee: This is the letter

[27/4/18, 12:59:51 AM] Stefan: I can't read French but as Mr. Andrew has already ruled out the option to do it without proper checking and counting on the ground in Nice its irrelevant what it means

[27/4/18, 1:05:20 AM] Leonard Lee: Mr W is on the line with his Boss now

[27/4/18, 1:05:43 AM] Leonard Lee: Ok call ended

[27/4/18, 1:06:46 AM] Leonard Lee: Stefan call me now please

[27/4/18, 1:06:53 AM] Leonard Lee: <attached: 00000076-PHOTO-2018-04-27-01-06-53.jpg>

[27/4/18, 1:07:11 AM] Andrew Ling: whats that mean

[27/4/18, 1:07:34 AM] Leonard Lee: According to Mr W and translated by those around me, he said that all the money is good

[27/4/18, 1:07:54 AM] Leonard Lee: Can Stefan please confirm with Mr Doner

[27/4/18, 1:08:15 AM] Andrew Ling: whats going on how come sgs so funny?

[27/4/18, 1:14:14 AM] Leonard Lee: Feng trying to call u urgently

[27/4/18, 1:20:12 AM] Feng: Andrew - the letter on SGS letterhead confirms that EUR 5m and CHF 2850 is in SGS's possession.

[27/4/18, 1:20:23 AM] Feng: Stefan is now calling SGS to confirm that everything is in order.

[27/4/18, 1:20:54 AM] Andrew Ling: ok so with that lettwr is ok to send ?

[27/4/18, 1:21:28 AM] Andrew Ling: im so sleepy lol

[27/4/18, 1:21:44 AM] Feng: Stefan - please confirm that Leonard can take possession of the original letter and that all liability now rests with SGS to deliver the funds to Zurich Bank.

[27/4/18, 1:22:19 AM] Feng: Andrew - please send the BTC only after Stefan has confirmed and Leonard is in possession of the original letter.

[27/4/18, 1:22:36 AM] Andrew Ling: ok waiting for that

[27/4/18, 1:22:40 AM] Leonard Lee: <attached: 00000089-PHOTO-2018-04-27-01-22-40.jpg>

[27/4/18, 1:22:41 AM] Leonard Lee: <attached: 00000090-PHOTO-2018-04-27-01-22-40.jpg>

[27/4/18, 1:23:09 AM] Leonard Lee: Validated the original passport and authorisation letter. Mr W does not want his picture taken

[27/4/18, 1:23:58 AM] Leonard Lee: Guys just waiting for Stefan to confirm.

[27/4/18, 1:37:23 AM] Stefan: I have just spoken to SGS and they confirmed the validity of the hand written confirmation letter that they have counted and checked by way of sample picking 5m Euro. From the moment they take possession of the funds they are thereby liable for the transport to Zurich and the delivery to the bank. In case the money proofs to be false or incomplete, they got robbed or they have an accident on the way whereby parts or all of the funds are lost their insurance coverage of up to 10m Euro becomes valid. A proper computer typed receipt is going to follow tomorrow once the funds have reached zurich [emphasis added]

[27/4/18, 1:37:49 AM] Feng: Thanks Stefan.

[27/4/18, 1:38:02 AM] Andrew Ling: so feng ok for me to send?

[27/4/18, 1:38:05 AM] Feng: Leonard please take the originals.

[27/4/18, 1:38:22 AM] Feng: Andrew please send the Btc after Leonard has the original letter issued by SGS.

[27/4/18, 1:38:25 AM] Feng: Finally!

[27/4/18, 1:38:28 AM] Leonard Lee: Ok will confirm when I get the original

[27/4/18, 1:39:04 AM] Andrew Ling: omg thanks i wamma sleep alteady

[27/4/18, 1:39:41 AM] Leonard Lee: <attached: 00000101-PHOTO-2018-04-27-01-39-40.jpg>

[27/4/18, 1:39:55 AM] Leonard Lee: Got 1

[27/4/18, 1:40:44 AM] Leonard Lee: <attached: 00000103-PHOTO-2018-04-27-01-40-44.jpg>

[27/4/18, 1:40:52 AM] Leonard Lee: <attached: 00000104-PHOTO-2018-04-27-01-40-51.jpg>

[27/4/18, 1:40:55 AM] Leonard Lee: Got both

[27/4/18, 1:41:15 AM] Leonard Lee: Andrew your turn now

[27/4/18, 1:42:37 AM] Andrew Ling: feng good to send ?

[27/4/18, 1:49:54 AM] Feng: Yes Andrew please send.

[27/4/18, 1:50:03 AM] Andrew Ling: thank you sending

[27/4/18, 2:08:08 AM] Stefan: Please let me know when its done as Mr. W has a long way back and needs to start as quick as possible

[27/4/18, 2:08:47 AM] Andrew Ling: erm mr W is eating now with the other party??

[27/4/18, 2:08:58 AM] Leonard Lee: Finished eating already

[27/4/18, 2:09:05 AM] Leonard Lee: Mr W

[27/4/18, 2:09:12 AM] Andrew Ling: im waiting for 1 confirmation amd he can leae asap

[27/4/18, 2:09:22 AM] Leonard Lee: The 3 guys from JC's team are drinking beer outside.

[27/4/18, 2:10:03 AM] Stefan: Ok pls let me know when completed

[27/4/18, 2:58:12 AM] Andrew Ling: SGS has left with the cash?

[27/4/18, 2:58:31 AM] Leonard Lee: Yes left

[27/4/18, 2:59:36 AM] Andrew Ling: thank you

[27/4/18, 2:20:37 PM] Andrew Ling: Hi Stefan, i just woke , thank you for the help yesterday. Grateful!

[27/4/18, 2:32:41 PM] Stefan: My pleasure

87 The documents referred to in those interchanges can be seen as attachments to a report written by Leonard[64] on or before 29 April 2018.[65]

88 The comment by Stefan at 24/7/18, 1:37:23 AM (underlined above) was copied and pasted into the PPG group by Andrew a few moments later and thereafter the BTC were transferred:[66]

> [27/4/18, 1:38:07 AM] Andrew Ling: I have just spoken to SGS and they confirmed the validity of the hand written confirmation letter that they have counted and checked by way of sample picking 5m Euro. From the moment they take possession of the funds they are thereby liable for the transport to Zurich and the delivery to the bank. In case the money proofs to be false or incomplete, they got robbed or they have an accident on the way whereby parts or all of the funds are lost their insurance coverage of up to 10m Euro becomes valid. A proper computer typed receipt is going to follow tomorrow once the funds have reached zurich
>
> [27/4/18, 1:38:50 AM] Andrew Ling: wait dont send
>
> [27/4/18, 1:39:02 AM] Yihan: is that from feng
>
> [27/4/18, 1:39:04 AM] Andrew Ling: confirmation oming soon
>
> [27/4/18, 1:39:04 AM] Andrew Ling: image omitted
>
> [27/4/18, 1:39:09 AM] Andrew Ling: from sgs
>
> [27/4/18, 1:39:55 AM] Andrew Ling: stefan is banker from credit suiess to send us the. momey . he engage sgs for us

89 The written and oral evidence of Andrew and Feng does not add anything to this. It is fair to say that in his evidence Andrew sought to maximise the part played by Feng and Feng sought to minimise it. Andrew did however accept that (a) Leonard was instructed by and answerable to PAM through

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64 ABOD vol 10 at pp 5070–5077.

65 See e-mail from Andrew to Stefan, copied to Feng dated 29 April 2018 (ABOD vol 10 at pp 5063–5064).

66 See ABOD vol 10 at pp 5067–5069.

Andrew,[67] and not by Feng, and (b) that it was Stefan, not Feng, who confirmed that risk had passed to SGS which gave Andrew comfort to conclude the deal.[68]

90 So far as concerns Feng, his statements to the effect that he was merely a conduit for the passing of information between Andrew and Stefan was challenged on the basis that he was being promised a great deal of money if the deal went through for playing such a limited part. This would indeed appear to be the case but the amount of money cannot alter the state of affairs as disclosed in the documents.

91 Finally, there was a good deal of evidence directed to the part that Feng played in seeking to assist in recovering the money and/or claiming on the SGS insurance policy. This was relied upon in the Plaintiffs' Closing Statement as being one of the matters that Feng was responsible for.[69] I do not believe that the evidence supports this. Once it was discovered that the Banknotes were counterfeit all the parties appear to have pulled together to try to recover their loss. I shall not however go into this in any detail as I fail to see what the relevance is to the alleged breaches of Feng's duties pleaded in the SOC which all relate to his conduct leading up to the release of the BTC: see [41] above.[70]

92 Drawing this all together, I am satisfied on the balance of probabilities that during the events of 26 April 2018, Feng played only a minor part. The transaction was being overseen by Andrew. The money to be used to purchase the BTC which was then going to be transferred in return for the euros was in

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67 Transcript (31 Jan 2023) at p 150 line 14–p 152 line 15.

68 Transcript (31 Jan 2023) at p 157 line 22–p 159 line 19.

69 PCS at para 243(d).

70 Particulars to the SOC at para 64.

PAM's bank account. The decision to transfer was made by the members of the PPG group, Andrew, Yi Han and Shawn. Affairs in Nice were handled by Leonard who took instructions from Andrew. It was Leonard who oversaw the testing and counting of the Banknotes.

93 Feng did offer advice that Leonard should not sign anything until Stefan had verified the authenticity of the SGS receipt documents, so that the risk would pass to SGS and be covered by its insurance, and that all documents should be on SGS's letterhead. However, he played no part in giving the confirmation that the correct authentic documents had been obtained. This fell to Stefan who was in direct contact with SGS and it was following his confirmation that the risk had passed to SGS that the BTC were released. Those BTC were never under Feng's control and he played no part in deciding to transfer them.

The analysis

94 With that I can return to the Regional Group's cause of action. The Europe Fiduciary Duties are defined in the SOC as being, in essence, duties to act in good faith and to advance the interests of the Regional Group.[71] It was asserted that the Regional Group relied on Feng to carry out the Europe Duties and that he voluntarily undertook to carry out the Europe Duties in circumstances giving rise to a relationship of trust and confidence.[72]

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71 SOC at para 62.

72 SOC at para 63.

95 This brings one back to the duties defined in the SOC as being the Europe Duties.[73] There are three of them which for convenience I shall repeat here:

(a) to ensure that the Regional Group BTC will not be released to the Buyers until payment was duly made;

(b) to carry out due diligence on and engage a competent and professional security firm which would verify that payment was duly made; and

(c) to procure and/or ensure the procurement of valid insurance and/or ensure that the security firm which was engaged had valid insurance, such that the Initial Defendants (acting as agents of the Regional Group) would be fully indemnified against any losses arising from the Europe Transaction.

96 I turn then to assess the part played by Feng in relation to those three aspects of the transaction.

97 As to the first, Feng never had control over the BTC and was not present in Nice. The relevant documents were assessed by Stefan who discussed the matter directly with SGS. The only part that he played was in advising what documents should be obtained.

98 As to the second, Feng was never asked to carry out due diligence on SGS. He was tasked with using his contacts in Europe to identify a suitable security firm. This he did by introducing Stefan who in turn selected SGS and

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[73] SOC at para 59.

it was Stefan who then worked with SGS. Feng acted reasonably in identifying Stefan, as a reputable Swiss banker with whom he had enjoyed a successful business relationship. Such due diligence as was done was done by Andrew.

99 So far as concerns insurance, the evidence is clear. Andrew never asked Feng to look into the question of insurance; it appears to have been assumed by all parties that there would be insurance and any representation that there was insurance came from Stefan and not Feng.

100 In my judgment the part played by Feng in relation to the three alleged duties was a minor one. Overall control over the operation was exercised, remotely by Andrew and Yi Han and on the ground in Nice by Leonard. It cannot be said that Feng had any real degree of control either over the preparations for or carrying out of the operation. He provided assistance when this was sought but decisions in relation to his input were taken by one or other of those three. Feng was not a decision maker.

Applying the facts to the law

101 The relevant relationship was between Feng and Andrew, acting on behalf of the Initial Defendants. At all material times no member of the Regional Group was aware of Feng's existence or that he was to play any part in the Europe Transaction and Feng was unaware that the Regional Group had provided the funds for the Europe Transaction. As the SOC makes clear, it is alleged that Feng was engaged by the Initial Defendants to carry out the Europe Duties and that they were acting as agents for the Regional Group. If therefore the Regional Group cannot establish that Feng owed the Europe Fiduciary Duties to the Initial Defendants, then its case must fail.

102 Since Feng was not acting in his capacity as a solicitor, any relationship between Feng and Andrew does not fall within any of the recognised categories of fiduciary relationships. It is thus necessary to determine whether there are "the hallmarks of a fiduciary relationship" by examining all the factual circumstances so as to evaluate the specific role played by the putative fiduciary and the degree of control which he exerted: see [45]–[50] above.

103 The facts as I have found them are in sharp contrast with the facts in *Tan Teck Kee*. In *Tan Teck Kee*, Mr Tan voluntarily undertook a position which possessed a high degree of control over the handling of the investors' interest in the Cambodian business venture (at [78]) and the investors were particularly vulnerable to Mr Tan's exercise of power. In the present case, Feng did not possess a high degree of control over the Europe Transaction; in truth he exercised little or no control. His input, when sought, was not that of a controlling mind but of a person seeking to assist the controlling minds, Andrew and Yi Han. It was they who made the crucial decisions having evaluated the material available to them, including that provided by Feng. This was not a case where it could be said that the other participants in the Europe Transaction were particularly vulnerable to Feng's exercise of power. Rather, this was a case where the various participants in the transaction had their own roles to play in the team, with Feng playing a relatively minor role. Decision making was left to others.

104 On the basis of the facts as I have found them, I have concluded that the role played by Feng in the Europe Transaction, both in assisting in the preparations and participating on the day, fall way short of constituting conduct bearing the hallmarks of a fiduciary relationship. No such relationship existed between Feng and Andrew, so it must follow that the pleaded duties were not owed to the Regional Group.

105 For the reasons given therefore, the Regional Group's claim for breach of fiduciary duties must fail.

Negligence

106 The applicable legal principles are not in dispute and are summarised in the Plaintiffs' Closing Statement as follows:[74]

> 251. The legal requirements necessary for a plaintiff to establish an action in the tort of negligence are as follows:
>
> a. existence of a duty of care owed by the defendant to the plaintiff;
>
> b. the defendant breached this duty of care to the plaintiff; and
>
> c. the defendant's breach was causative of the damage suffered by the plaintiff, and the resulting damage was not too remote.
>
> *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100.
>
> 252. A duty of care will arise if (a) it is factually foreseeable that the defendant's negligence might cause the plaintiff to suffer harm; (b) there is sufficient legal proximity between the parties; and (c) policy considerations do not militate against the imposition of a duty of care: *Spandeck*.

107 Under the *Spandeck* test, factual foreseeability is in fact a preliminary inquiry that is almost always satisfied in that it relates to *factual* foreseeability, which simply means that the defendant ought to have known that the claimant would suffer damage from his carelessness (*Spandeck* at [75]). The main substance of the question of whether a duty of care arises is addressed at the stage of proximity.

---

74 PCS at paras 251–252.

108 The case of negligence is pleaded in the alternative in the SOC[75] and the claim made against Feng in relation to his capacity as a solicitor has likewise been dropped. The substance of the pleading is based on the same factual assertions with regard to the Europe Duties. It reads as follows:[76]

> In agreeing to Feng's Europe Engagement, Feng voluntarily undertook to carry out the Europe Duties on behalf of the Regional Group (acting through their agents, the Initial Defendants).

109 In their Written Closing Statement the plaintiffs express the position with regard to factual foreseeability in the following terms:[77]

> As to factual foreseeability, the Plaintiffs rely on Feng's involvement in the Europe Transaction, as stated in the above section under Regional Group's claim for breach of fiduciary duty against Feng. In short, *Feng's role was to carry out the Europe Duties*, namely to ensure that the Regional Group BTC would not be released until payment was duly made, to carry out due diligence on a professional security firm that would verify that payment was duly made, and to procure or ensure the procurement of valid insurance such that there was indemnity against any losses arising from the Europe Transaction.
>
> [emphasis added]

110 On the facts, I accept that Feng ought to have known that if he were careless in whatever his role in the transaction was, the plaintiffs might suffer damage. Hence, factual foreseeability is satisfied. However, the requirement of proximity is not satisfied in the circumstances of this case as Feng had not undertaken the Europe Duties, and the minor part that he did play was not sufficiently proximate to the loss suffered by the plaintiffs. Hence, a duty of care did not arise such as to render him liable in negligence.

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75 SOC at paras 66–70.

76 SOC at para 69(d).

77 PCS at para 264.

111 The case based in negligence cannot succeed unless Feng had undertaken the Europe Duties which I have held that he did not. The case in negligence thus also fails.

The Private Bank Acquisition

112 Both Micro Tellers and the Regional Group bring claims against Feng in relation to his involvement in the Private Bank Acquisition but the underlying factual matrix is somewhat different. It is thus necessary to consider their respective claims separately.

Micro Tellers' claims

113 Micro Tellers claim that Feng is liable to them (a) in fraud,[78] (b) breach of trust and/or fiduciary duties[79] and (c) unjust enrichment.[80]

Fraud

114 The applicable principles are not in dispute and are summarised as follows in the Plaintiffs' Written Closing Statement:[81]

> 18. The ingredients of fraudulent misrepresentation are found in *Panatron Pte Ltd v Lee Cheow Lee* [2001] 2 SLR(R) 435 (Court of Appeal)
>
> a. There must be a representation of fact made by words or conduct;
>
> b. The representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff;

---

78 SOC at paras 14–26.

79 SOC at paras 27–34.

80 SOC at para 35.

81 PCS at para 18.

> c. It must be proved that the plaintiff acted upon the false statement; it must be proved that the plaintiff suffered damage by so doing; and
>
> d. The representation must be made with the knowledge that it is false – it must be wilfully false, or at least made in the absence of any genuine belief that it is true.

115 The representations relied upon are representations not made directly to Micro Tellers but to Andrew said to be acting as their agent which the plaintiffs contend is sufficient in law to constitute the intention required under (b) above as is set out in the Plaintiffs' Written Closing Statement:[82]

> 19. A representation may be made to an agent for the claimant: *Swift v Winterbotham* (1873) LR 8 QB 244, cited with approval by Blackburn J in Richardson v Silvester (1873) LR 9 QB 34:
>
> > In order to enable a person injured by a false representation to sue for damages, it is not necessary that the representation should be made to the plaintiff directly; it is sufficient if the representation is made to a third person to be communicated to the plaintiff, or to be communicated to a class of persons of whom the plaintiff is one, or even if it is made to the public generally, with a view to its being acted on, and the plaintiff as one of the public acts on it and suffers damage thereby.
>
> 20. In other words, it is not necessary that the defendant know precisely who the statement is intended for, provided he intends it to be relied on by someone in the claimant's position: *Standard Chartered Bank v Pakistan National Shipping Corp (No.2)* [1998] 1 Lloyd's Rep. 684.

116 The representations relied upon are set out in the SOC as follows:[83]

> 14C. Feng made the following representations to the Initial Defendants with actual and/or constructive knowledge that such representations would be transmitted to the Principals and acted upon by the Initial Defendants on behalf of the Principals:

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82 PCS at paras 19–20.

83 SOC at paras 14C and 14D.

> a. The monies meant for the Private Bank Acquisition ("Acquisition Monies") would be deposited into the WPS Bank Account, which was ultimately owned and/or controlled by Walkers.
>
> b. Any sums deposited in the WPS Bank Account would be held in escrow by Walkers to the Initial Defendants' order (on behalf of the Principals).
>
> c. Walkers would be ultimately responsible and accountable for the Acquisition Monies.
>
> (collectively, the "Private Bank Representations")
>
> 14D. Further, at all material times, Feng led the Initial Defendants to believe:
>
> a. that WPS was connected with Walkers;
>
> b. that the WPS Bank Account belonged to Walkers; and
>
> c. Feng was dealing with the Initial Defendants in his capacity as a solicitor at Walkers.
>
> (collectively, the "WPS Representations")

117 By his Defence, first, Feng asserts that at all times Andrew was aware that WPS was managed by Feng and used as his personal vehicle and that he did not represent that he offered legal services through WPS.[84] Secondly he denies that he was ever aware of the existence of either Micro Tellers or the Regional Group or that the Initial Defendants were acting as their agents.[85] Hence he denies that any representation that he may have made to the Initial Defendants was a representation made with the intention that it should be acted on by Micro Tellers or a class of persons which includes Micro Tellers. This raises a disputed question of law as well as issues of fact.

118 There are two issues of fact. First, what representations were made by Feng to the Initial Defendants in relation to WPS and the WPS bank account

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84 4D Defence at para 6.

85 4D Defence at paras 9(m) and 9(u)–9(w).

("the WPS Issue"). Secondly, there are a number of factors arising out of or related to the allegation that there was an agency relationship between Andrew and Micro Tellers: (a) was there an agency relationship; (b) what knowledge if any, did Feng have of this; and (c) what knowledge did Feng have (if any) of the persons who were providing funds to PAM for the purpose of the acquisition? I shall refer to this as "the Agency Issue" although it is to be remembered that the test in law for fraud is, as set out above, an intention that the false representation should be acted upon "by a class of persons which includes the plaintiff". Proof of agency *per se* may not constitute the requisite intention.

Breach of trust and/or fiduciary duties

119 Micro Tellers put its case in two ways. First it is said that Feng owed duties of trust to the Initial Defendants, as Micro Tellers' agent, as a solicitor of Walkers to hold sums entrusted to him in that capacity "in escrow to the Initial Defendants' order (in their capacity as agents of Micro Tellers), for the purposes of the Private Bank Acquisition", and secondly that Feng had voluntarily assumed fiduciary duties towards the Initial Defendants, again acting as Micro Tellers' agent, by reason of the part he played in negotiating the Private Bank Acquisition on behalf of the Initial Defendants.[86] The particulars of alleged breaches of those duties relied upon are set out in the SOC.[87] In summary, the breaches involved the false representation that the WPS bank account was owned and controlled by Walkers so that sums deposited therein would be held "in escrow" to Andrew's order for the purposes of the Private Bank Acquisition.

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86 SOC at paras 28 and 30 as clarified in the PCS at paras 110–112, 115–117, 135 and 140–142.

87 SOC at para 31.

This enabled Feng to obtain the funds in the WPS account and was thus able to treat them as his own and to dissipate them for his own use.

120 Although expressed in different language, these particulars mirror the representations relied upon in relation to the fraud claim. The underlying law on the existence and breach of trusts was not in dispute.[88]

121 The area of dispute between the parties lay in (a) the factual dispute as to the alleged misappropriation of the funds held in the WPS bank account, which is the same as the WPS Issue; and (b) the correct approach to the question of the circumstances in which a trustee owes an obligation to a third party unknown to the trustee but who is alleged to be a principal for whom the actual beneficiary is acting as agent. This raises questions of both law and fact, but the factual issues are equivalent to those raised under the Agency Issue.

122 It is convenient therefore to make findings of fact first before considering the questions of law that arise on the facts found under the Agency Issue both in relation to the fraud claim and the claim for breach of trust.

The WPS issue

123 The factual assertion made by Micro Tellers is that the Initial Defendants transferred money from PAM's bank account to the bank account in the name of WPS in the erroneous belief, induced by Feng, that:

(a) Feng was acting in his capacity as a solicitor employed by Walkers and not in his private capacity;

---

88 See PCS at paras 93–106.

(b) the WPS bank account were controlled by Walkers and were not accounts controlled by Feng;

(c) any sums deposited would be held "in escrow"[89] by Walkers to the Initial Defendants' order (although the pleading refers to money being held "in escrow", it was common ground that the term was not being used in the sense of being held by a regulated escrow agent (which Walkers was not) but in the sense of being held by Walkers in its capacity as a solicitor holding client's money to the client's order); and

(d) Walkers would be ultimately responsible and accountable for any sums deposited in the account.

124 The starting point is when Feng and Moon, who were married in May 2015, returned from their honeymoon. On his return to Walkers Singapore's offices Feng became aware[90] that Walkers had announced a "Major Expansion in Response to Client Demand" dated 21 May 2015.[91] Included within this expansion was to be the launch in mid-June of a corporate and fiduciary services business under the name "Walkers Professional Services". This document contains the name Walkers in a particular typeface together with a shield type logo:

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89 See Transcript (1 Feb 2023) at p 67 line 12–p 75 line 9.

90 Transcript (2 Feb 2023) at p 41 lines 4–14.

91 PCS at Annex A (p 151).

WALKERS

FOR IMMEDIATE RELEASE **21 May 2015**

Walkers Announces Major Expansion in Response to Client Demand

In response to consistent client demand, Walkers announced it will be re-entering the corporate and fiduciary services business with the launch of Walkers Professional Services in mid-June. The firm will also be expanding its global legal footprint to Bermuda, where it plans to open an office, becoming the first major international offshore firm to enter that market as a new entrant.

Walkers Professional Services

Walkers Professional Services' core focus will be on providing registered office, corporate and company secretarial services. Walkers Professional Services will also provide fiduciary services to structured and asset finance vehicles to service the needs of its clients.

125 Shortly thereafter on 15 June 2015, WPS was incorporated at Feng's instigation naming his wife as the sole director and shareholder. On 30 June 2015, Moon signed the necessary forms to open the WPS bank accounts with her as the sole signatory.

126 Feng was cross-examined at length on his motives for incorporating WPS under that name when it had no association with Walkers.[92] The thrust of his evidence was that he thought it would be funny to adopt the name and did it as a joke, but that whenever he used the company to interact with clients of Walkers that he was already acting for, he would make it clear that WPS had nothing to do with the law firm, Walkers. Dealing through WPS, he said, arose when his clients requested him to do things that he could not do in his capacity as a solicitor; he would offer to do it in his personal capacity for a fee using his personal phone number and e-mail rather than his Walkers' phone and e-mail address. He gave the example of the provision of assistance in obtaining a visa. He accepted that he never told his employer, Walkers, that he was carrying out

92 Transcript (2 Feb 2023) at p 66 line 10–p 80 line 13.

services for Walker's clients and receiving fees from them in his private capacity trading under the WPS name. He never sought to clarify the position with the partners of Walkers because he considered they would be grateful to him for solving problems for their clients which would lead to further business for Walkers.

127 There is however no evidence as to whether WPS was involved in any of Feng's private dealings between June 2015 and February 2018 when Feng met Andrew. Far less is there any evidence demonstrating that Feng did act towards any client of Walkers in the manner indicated by him so as to leave that client in no doubt that the services provided by WPS were not provided under the auspices of Walkers.

128 Indeed, there is, to my mind, a significant illogicality in naming a company with a name that incorporates the name of your employer in circumstances where you accept that the first thing that you must do is to distinguish the company from your employer or as having any association with your employer. It does not make sense.

129 Drawing this together, I am satisfied that Feng's motive in naming WPS was to enable him to draw upon the reputation and goodwill existing in Walkers' business and upon his reputation as a solicitor employed by Walkers in order to further any private business which he could generate, particularly with entities that were already clients of his at Walkers. More specifically, it was calculated to lead to the belief that the WPS bank account was approved by Walkers and subject to its control.

130 The plaintiffs contend that this was the belief held by Andrew when the Initial Defendants started exploring business opportunities with Feng. Reliance

is placed on contemporaneous documentary evidence as to how Feng explained the services that WPS could offer to Andrew and PAM at this time.

131 The first document (in time) is a WhatsApp exchange between Yi Han and Charles which it is agreed contains no date but is accepted to have been on 3 March 2018 when Micro Tellers and the Initial Defendants were considering certain BTC deals. Charles asserts that Yi Han told him "that the monies meant for the Private Bank Acquisition … would be held by Walkers Professional Services, which was owned and controlled by the law firm known as Walkers".[93]

132 This cannot be correct as on its face since the WhatsApp exchange relates to the purchase and sale of cryptocurrency and the opportunity to acquire a private bank was not first considered until April 2018.[94] However, the contents of the exchange are nonetheless revealing:[95]

> Yi Han: Fund flow
>
> > 1. BTC/ETH/USD sent to providence (i.e. PAM) (will not liquidate BTC/ETH until deal is signed by both parties)
> >
> > 2. providence sends funds to escrow (walkers global)
> >
> > 3. forward contract locked in as the rates are confirmed on both sides to protect downside
> >
> > 4. 1000 btc sent from escrow to trading desk
> >
> > 5. funds in flow to providence and back into escrow client account
>
> Charles: Walker Global LLC, you just them? My wife knows Lisa and Tom, 2 lawyers from Walkers Singapore office

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93 CT-2 at para 106 and Exhibit CCT-13.

94 AL-2 at para 18.

95 CT-2 at pp 313–315 (Exhibit CCT-13).

> Charles: We can call and check on client's identity.
>
> [emphasis added]

133 Whilst this exchange does not refer to WPS, it is consistent with Feng and the Initial Defendants having formed a working relationship whereby funds would be held in escrow by Walkers.

134 The next document takes the form of a WhatsApp exchange between Andrew and Feng on 9 March 2018.[96] It is a long extract but, in the light of Feng's explanation as to how he would make it clear that WPS had nothing to do with the law firm Walkers, it is necessary to set it out in full:

> 09/03/2018, 14:15 – Andrew Ling: Hi Feng, sg acc for escrow accepts usd?
>
> 09/03/2018, 14:16 – Andrew Ling: can share details for agreement?
>
> 09/03/2018, 14:16 - Feng Then: Hi Andrew.
>
> 09/03/2018, 14:17 - Feng Then: Yes we have a USD account here in Singapore.
>
> 09/03/2018, 14:17 - Andrew Ling: please say dbs …
>
> 09/03/2018, 14:17 - Feng Then: Can you disclose name of Seller so I can run this through a quick compliance check?
>
> 09/03/2018, 14:17 - Feng Then: Yes we have accounts with OCBC and DBS Singapore.
>
> 09/03/2018, 14:18 - Feng Then: Also BofA and Wells Fargo USA.
>
> 09/03/2018, 14:19 - Andrew Ling: yes no problem
>
> 09/03/2018, 14:19 - Andrew Ling: first one is the same seller from the previous deal so i dont think there is an issue.
>
> 09/03/2018, 14:19 - Andrew Ling: BANK NAME PT.BANK UOB INDONESIA BANK ADDRESS JL.DANAU SUNTER AGUNG UTARA BLOK D1, JAKARTA UTARA, INDONESIA SWIFT CODE BBIJIDJA BANK OFFICER MR.ARIF SYAMSUDIN ACCOUNT

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96 1st AEIC of Ling Hui Andrew (24 May 2021) ("AL-1") at Exhibit AL-2.

NUMBER [xxx] (USD) ACCOUNT NAME [xxx]. SIGNATORY MR. MOHAMMAD AKRAM GHOWS MOHD BANK OFFICER MR.ARIF SYAMSUDIN BANK OFFICER EMAIL

09/03/2018, 14:20 - Andrew Ling: beni is PT GPH Indonesia kapital

09/03/2018, 14:20 - Feng Then: Understood.

09/03/2018, 14:20 - Andrew Ling: second seller - this is likely monday or tuesday next week .

09/03/2018, 14:20 - Andrew Ling: the beni account should be the following

09/03/2018, 14:20 - Andrew Ling:

09/03/2018, 14:21 - Feng Then: Do you have time for a quick call to run through the deal?

09/03/2018, 14:21 - Andrew Ling: theres a typo, it should be Circles International Solutions

09/03/2018, 14:22 - Feng Then: Missed voice call

09/03/2018, 14:37 - Feng Then: Do you want a stand-alone orphan SPV for these deals (given that you are going to be doing lots of them)? Similar to Jeremy's setup?

09/03/2018, 14:45 - Andrew Ling: maybe not for now

09/03/2018, 14:45 - Andrew Ling: i want a few test tranches out first to be sure these sellers have what they say they have

09/03/2018, 14:46 - Andrew Ling: is it ok to release dbs coordinates for the escrow acc? they want to sign alfeady

09/03/2018, 14:47 - Feng Then: Will speak internally and find you an orphan which we can use for these two test tranches.

09/03/2018, 14:47 - Feng Then: Give me 10-15 mins.

09/03/2018, 14:47 - Feng Then: Thanks Andrew.

09/03/2018, 14:48 - Feng Then: You will be transacting in USD only? Not SGD?

09/03/2018, 14:49 - Andrew Ling: usd only

09/03/2018, 14:49 - Feng Then: And you want a Singapore account right? Not USA.

09/03/2018, 14:49 - Andrew Ling: yes

09/03/2018, 14:51 - Feng Then: Ok we can use this for your first trial

> 09/03/2018, 14:52 - Feng Then: Account Name: WALKERS PROFESSIONAL SERVICES LIMITED
>
> Name of bank: DBS Bank Ltd SWIFT: DBSSSGSG USD Account: [xxx]
>
> 09/03/2018, 14:52 - Feng Then: I have one off clearance to facilitate this for you. =)
>
> 09/03/2018, 14:52 - Feng Then: But we should definitely setup a structure for your future larger tranches.
>
> 09/03/2018, 15:05 - Andrew Ling: thank you let me get thwm sign it
>
> 09/03/2018, 15:06 - Andrew Ling: yes after test clears i will want a dedicafed set up
>
> 09/03/2018, 15:34 - Feng Then: Sounds good thanks. Let me know if I need to work tonight. So I can let the dragon lady (my wife) know!
>
> [emphasis added]

135 It is plain from the language used that Andrew was seeking access to US$ Singapore bank accounts that could provide "escrow" services for the purpose of a proposed business activity and that Feng was representing that the services he offered were provided and authorised by his employer. This is demonstrated by the extract at timestamp 14:47 ("will speak internally") and at 14:52 ("I have one off clearance to facilitate this for you"). Yet the bank account named is WPS's US$ account and not an account controlled by Walkers which is not the impression created by the words used by Feng. These words are consistent, and only so, with Feng having obtained authority to provide the service. This was wholly unnecessary if WPS had nothing to do with Walkers and was controlled by him. This therefore contradicts any suggestion that Feng would have made it clear to Andrew that WPS had nothing to do with Walkers.

136 Andrew gave evidence that on the basis of this exchange he "believed that WPS was owned and controlled by Walkers, and was used by Walkers to provide escrow services for Walkers' clients".[97]

137 This evidence was challenged on the basis that Feng had made it clear to Andrew before 17 February 2018 that Walkers "does not do escrow for btc (bitcoin)" as he relayed this information to Yi Han and Shawn in a WhatsApp exchange on that date:[98]

> [17/2/18, 22:34:40] Shawn: @[xxx] do u know if Feng's firm does escrow for btc? The sellers would like to go through an escrow
>
> [18/2/18, 00:46:35] Andrew Ling: feng side cant do. his firms underwriters wont aunderwrite any crypto base transaction

138 Later, following the exchanges on 9 March 2018, on 19 March 2018 there was a further WhatsApp exchange between Andrew, Yi Han and Shawn which reads as follows:[99]

> [19/3/18, 20:24:44] Andrew Ling: deal wed should be ok , firming down and need feng time to do kyc
>
> [19/3/18, 20:25:09] Andrew Ling: feng called me say jon that side give out his info too freely , a lot of people called his firm say why he do escrow btc . now he in trouble

139 In cross-examination, Andrew explained that as he understood it the concern about dealing in BTC was a concern of Walkers' insurers, and that subsequently Feng had indicated to him that Walkers was doing this as a special

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97 AL-2 at p 35.

98 ABOD at vol 3 p 1387.

99 ABOD at vol 3 p 1497.

arrangement with PAM which had resulted in other parties wishing to do the same, which upset Walkers.[100]

140 Feng was in turn cross-examined on these documents.[101] Much of this focused on the words "internal clearance" in the WhatsApp exchange of 9 March 2018 which Feng sought to suggest was his own internal clearance because he preferred to provide banking facilities through one of his other personal companies. As counsel for the plaintiffs pointed out it would have been easier to say that he had decided to facilitate this through WPS rather than that he had obtained clearance to do this.

141 I found this to be an unedifying aspect of Feng's evidence. I prefer to place weight on the language actually used in the contemporaneous documents. To my mind, the words "internal clearance" coupled with the identification of the bank as being "Walkers Professional Services" is susceptible of only one understanding, namely, that Walkers had agreed for one of its bank accounts to be used for the proposed transaction.

142 Contemporaneously, steps were being taken for Terms of Engagement to be agreed between Walkers and PAM to provide Cayman legal advice and other professional services.[102] The draft Terms of Engagement were headed with the name Walkers in the same typeface and shield type logo as in the document referred to in [124] above.

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100 Transcript (1 Feb 2023) at p 62 line 1–p 65 line 24.

101 Transcript (3 Feb 2023) at p 93 line 11–p 111 line 25 and p 115 line 21–p 118 line 13.

102 See e-mails dated 20 March 2018 and draft Terms at 4D Supp Bundle at pp 37–43; Transcript (31 Jan 2023) at p 88 lines 4–18.

143 It was following this, in April 2018, that the question of purchasing a private bank arose. The bank in question was Alexandria Bancorp Ltd ("Alexandria Bank"), a company established in the Cayman Islands. According to Andrew the purpose of doing so was to obtain a cryptocurrency-friendly bank holding a banking licence to facilitate cryptocurrency transactions.[103] Feng indicated that whilst he would be providing legal advice to PAM in his capacity as a consultant at Walkers, he also wished to invest funds in the purchase in his personal capacity. The legal advice was to be provided pursuant to the Terms of Engagement.[104]

144 It will be necessary to consider the manner in which this proposed purchase progressed in more detail below but for present purposes it is sufficient to record that in preparation for the purchase, sums of money amounting to US$5,268,000 and S$1,223,000 were transferred from the PAM bank account to WPS's bank account between April and November 2018.[105] These sums included the money claimed in this action by both Micro Tellers and the Regional Group.

145 During the course of the dealings between the Initial Defendants and Feng over the proposed purchase, a number of documents and WhatsApp exchanges are relied upon by the plaintiffs as reinforcing Andrew's belief that WPS was owned and controlled by Walkers. I shall refer first to two documents whose authenticity is challenged.

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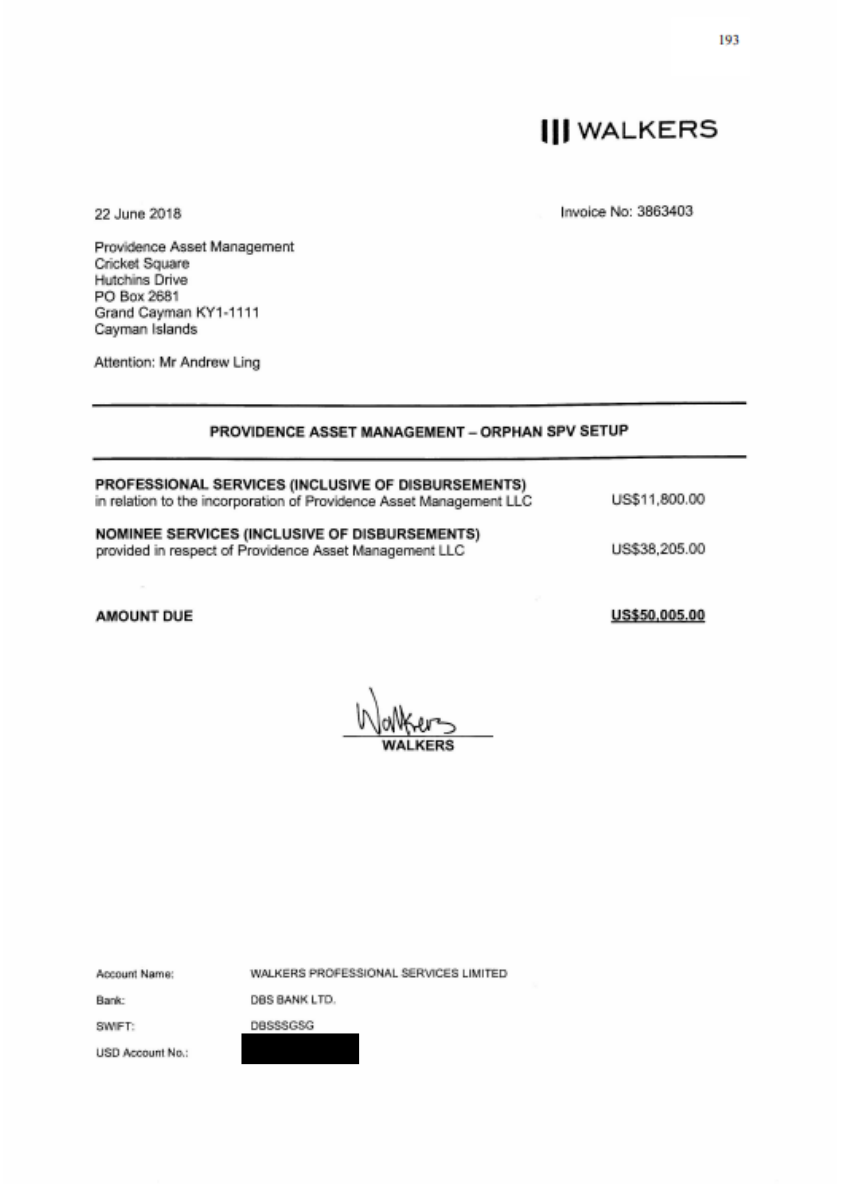
103 AL-2 at p 38.

104 Transcript (2 Feb 2023) at p 182 line 14–p 184 line 16 and p 192 line 9–p 194 line 23.

105 AL-2 at pp 65–66.

146 The first is an invoice issued bearing the Walkers' name and logo dated 22 June 2018[106] which is reproduced below:



193

WALKERS

22 June 2018 Invoice No: 3863403

Providence Asset Management
Cricket Square
Hutchins Drive
PO Box 2681
Grand Cayman KY1-1111
Cayman Islands

Attention: Mr Andrew Ling

PROVIDENCE ASSET MANAGEMENT – ORPHAN SPV SETUP

PROFESSIONAL SERVICES (INCLUSIVE OF DISBURSEMENTS) in relation to the incorporation of Providence Asset Management LLC	US$11,800.00
NOMINEE SERVICES (INCLUSIVE OF DISBURSEMENTS) provided in respect of Providence Asset Management LLC	US$38,205.00
AMOUNT DUE	**US$50,005.00**

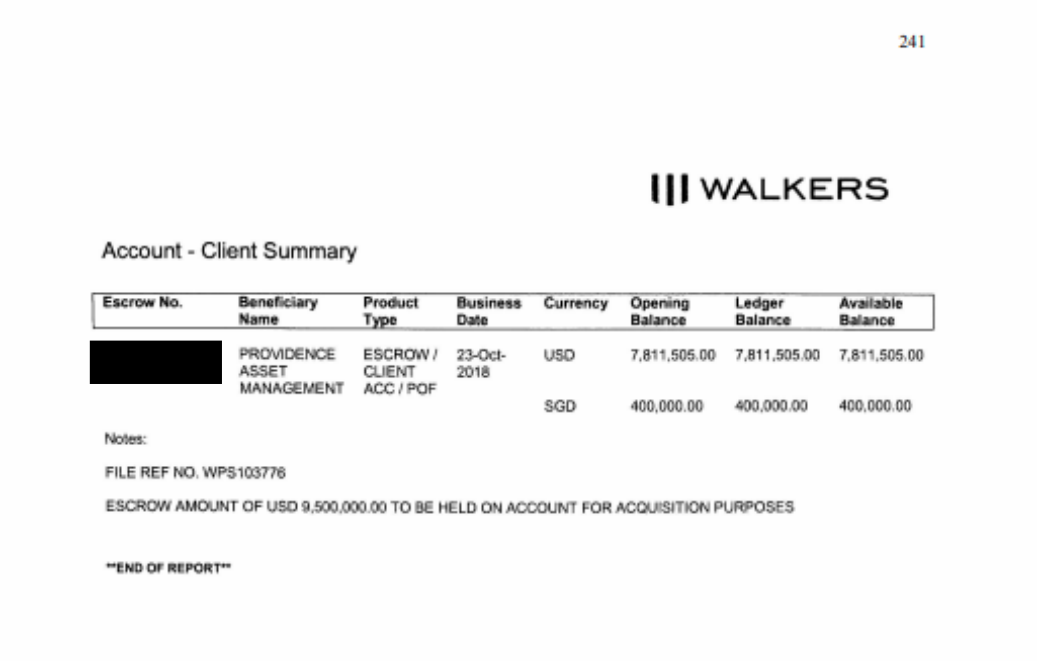
WALKERS

Account Name: WALKERS PROFESSIONAL SERVICES LIMITED
Bank: DBS BANK LTD.
SWIFT: DBSSSGSG
USD Account No.: [redacted]

106 AL-2 at Exhibit AL-9.

147 On its face this document purports to be an invoice issued by Walkers, the law firm, but seeking payment into the WPS bank account. The authenticity of this document is challenged by Feng.

148 The second is a summary of PAM assets ("The Account – Client Summary") held as of 23 October 2018[107] which is reproduced below:



241

WALKERS

Account - Client Summary

Escrow No.	Beneficiary Name	Product Type	Business Date	Currency	Opening Balance	Ledger Balance	Available Balance
[redacted]	PROVIDENCE ASSET MANAGEMENT	ESCROW / CLIENT ACC / POF	23-Oct-2018	USD	7,811,505.00	7,811,505.00	7,811,505.00
				SGD	400,000.00	400,000.00	400,000.00

Notes:

FILE REF NO. WPS103776

ESCROW AMOUNT OF USD 9,500,000.00 TO BE HELD ON ACCOUNT FOR ACQUISITION PURPOSES

END OF REPORT

149 As can be seen, again, this uses the same Walkers' typescript and logo but refers to money held in the WPS account. The authenticity of this document is also challenged by Feng,

150 As to the first, Feng challenged the authenticity of the invoice when it was first produced on discovery. In response Andrew produced photographs from his mobile phone showing that he received the invoice on 25 June 2018.[108]

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107 AL-2 at Exhibit AL-18.

108 AL-2 at Exhibit AL-10.

Due to the fact that his phone had been impounded by the Singapore authorities as part of the criminal investigations involving Feng, the photographs were provided by the authorities.[109] In cross-examination,[110] Andrew explained the process by which he obtained the documents from the Singapore authorities and drew attention to Exhibit AL-10 showing an extract resembling the heading on the invoice and later a blurred image of the invoice.[111] This material satisfies me, on the balance of probabilities, that the invoice is an authentic document which was sent to Andrew on 25 June 2018.

151 So far as concerns the Account – Client Summary, this was first referred to in Andrew's first AEIC which was sworn on 21 May 2021 and it featured prominently at the trial of Suit 8. It was not suggested at that trial that the document was a forgery. No evidence was adduced in Feng's witness statements in this action, sworn on 24 May 2021 and 4 June 2021, purporting to show that it was a forgery. No suggestion was made in Feng's Written Submissions before trial that the document was a forgery and no further written evidence was sought to be adduced by Feng in support of a contention that the document was a forgery.

152 However, when Feng was cross-examining Andrew, he sought, in effect, to introduce evidence directed to demonstrating that the document was a combination of a number of underlying documents and not, of itself, a single genuine document. He sought to do this by an analysis of the metadata underlying the document.

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109 AL-2 at pp 51–52.

110 Transcript (1 Feb 2023) at p 45 line 16–p 49 line 21.

111 AL-2 at pp 197 and 199 (Exhibit AL-10).

153 Counsel for the plaintiffs objected to this course both on the ground that he had been taken by surprise by the late attempt to introduce this evidence and by the fact that, if it were to be given, it would constitute expert evidence which Feng was not qualified to give. The matter was ventilated fully at the end of day two of the trial and again at the beginning of day three.[112] At the end of those submissions I informed parties that I was not going to allow cross-examination in relation to the metadata underlying the document and indicated that I would give my reasons in this judgment.

154 These are my reasons. Whilst I am deeply conscious of the fact that the burden falling on Feng as a litigant-in-person is a heavy one which was not made any easier by the concurrent criminal investigations, nonetheless he is a qualified lawyer who has been deeply immersed in these proceedings for many years. He claims that the first time he obtained the evidence necessary to demonstrate the forgery was in December 2022. This may be so, but it does not alter the fact that he must have known that it was not a genuine document when he first saw it disclosed on discovery. He must have appreciated during the trial of Suit 8 the importance that the plaintiffs in that action were placing on that document as supporting the assertion that Feng had falsely represented that WPS was part of Walkers. Yet he said nothing. Having seen the Judgment in Suit 8 which placed weight on the contents of the document, again he said and did nothing. He did not seek to adduce further evidence of fact nor seek leave to adduce expert evidence in this action. I am satisfied that if the matter were to be fully investigated, this would require an adjournment to allow further evidence, probably expert evidence, to be adduced. In circumstances where Feng could and, in my judgment, should have drawn the court's attention to his

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112 Transcript (31 Jan 2023) at p 165 line 9–p 174 line 6 and p 176 line 6–p 185 line 3; Transcript (1 Feb 2023) at p 4 line 7–p 23 line 15.

contention that a document was a forgery at an early stage, even if at that stage he did not have the means of proof, I consider that it would be wrong in the overall interests of justice to prolong these proceedings further by an adjournment.

155 Following this, Feng continued his cross-examination on the document seeking to have Andrew agree that the document was in some respects inaccurate and to suggest that the inaccuracies were due to manipulation of the data by Andrew.[113] However, this was directed to the figures in the document and not to the fact that it bore the Walkers' name and logo and referred to an escrow account when it was common ground that the only sums held on behalf of PAM were held in the WPS account. When Feng was cross-examined on this, he maintained that the document was not a genuine document but accepted that he would have sent something similar to the document and that he had a template on his phone with the Walkers name and logo.[114] More specifically in answer to questions from the court, he said this:[115]

> A. Your Honour, from how I used to do it, these are three options that I would have reflected, so it would have been either escrow, client acc or POF. It wouldn't have been all three. There would have been a square bracket around and you would have to pick one. That was my practice. That's why I'm saying there was an issue with this document.
>
> COURT: Thank you very much. I'm sorry to interrupt.
>
> MR TAN: Not at all, your Honour. Can you describe, as best as you can remember, the document that you sent in your message at 6640 on 11 October 2018?
>
> A. Yes, Mr Tan. So it would have this table. I don't believe I would have ever used the word "escrow" on the first column, it would have been reference number -- the 01/07, that would

113 Transcript (1 Feb 2023) at p 24 line 1–p 45 line 15.

114 Transcript (2 Feb 2023) at p 229 line 12–p 232 line 14.

115 Transcript (2 Feb 2023) at p 229 line 5–p 230 line 10.

> have been the reference number. Beneficiary name I think would have been there. Product type would have been one of the three, it wouldn't have been all three. Business date would have been -- if you ask me, it would have been the date on which the document was sent or created, so it would have been 11 October or earlier than that. Then it would have listed the currencies. Yes. And, again, notes -- I don't know what would have -- I can't remember what would have been written there, but like I have mentioned before, there was never mention of 9.5 million for an escrow amount for the transaction that we were working on. It was 10 or 8.5. I don't believe we ever mentioned the number 9.5.

156 Accordingly, I can proceed on the basis that a document was sent similar to the Account – Client Summary document with the Walkers name and logo, possibly with the word escrow somewhere on it. Feng sought to suggest that the use of the Walkers' name and logo was a joke between Andrew and him.[116] This was never put to Andrew and runs contrary to the contemporaneous documents. I do not accept, on the balance of probabilities, that Andrew was aware of the fact that Feng misused the Walkers' name and logo in the course of his private business.

157 To the contrary, I accept Micro Tellers' submission that these documents served to reinforce in Andrew's mind that WPS was a company associated with and controlled by Walkers solicitors.

158 The next relevant document is a WhatsApp exchange between Feng and Andrew dated 11 August 2018.[117] In this exchange Andrew asks Feng to prepare a letter to Blue Summit (a corporate vehicle to be used by Micro Tellers to hold its share in the Private Bank once acquired)[118] calling for the remaining funds to

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116 Transcript (2 Feb 2023) at p 232 lines 6–14.

117 CT-2 at Exhibit CCT-11 at paras 290–291; TF-2 at para 15.

118 CT-2 at para 58.

be transferred "*into walkers trust account for imminent completion …* " [emphasis added] ("the Call for Funds Letter"). Feng responded by saying that he understood "*the need to hold the funds on account till completion*" [emphasis added]. Andrew then emphasised that "*most impt is call for funds to walkers trust acc*" and Feng undertook to have the letter on the "*firm letterhead*" [emphasis added].

159 Feng sought to suggest that this interchange was understood by both parties as being a document for internal use to placate Yi Han's uncle to satisfy him to provide funds to PAM and that this was consistent with Feng's understanding that PAM represented a family office.[119]

160 Whilst it may well be that this was a purpose of having the Letter drafted on Walkers' letterhead, it is clear from the text that the Letter was also to be sent to Blue Summit and expressly referred to the "Walkers trust account" on two occasions. The only natural understanding that flows from this is that Feng was acting in his capacity as a solicitor employed by Walkers and that the account in which the funds were to be held was a trust account controlled by Walkers.

161 The next document I should refer to is a Shareholders Agreement[120] dated 8 October 2018 between Micro Tellers and Blue Summit Investments Ltd. Cl 2.1 reads as follows:

> 2.1 The Investor agree to make a capital contribution of USD $2,700,000.00 million dollars (United States Dollars Two Million and Seven Hundred thousand) by transferring the respective amounts to the bank account of Walkers Professional

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119 TF-2 at para 15.

120 CT-2 at Exhibit CCT-13 pp 318–333.

> Services Limited to be held on trust, by the Investment Date, details of which are as follows:
>
> Acct Name: Walkers Professional Services Limited
>
> Acct No.: [xxx]
>
> Bank: DBS Limited
>
> Swift: DBSSSGSG
>
> Transaction reference: [xxx]

162 It is thus apparent that Micro Tellers were content to use the WPS bank account to hold the sums "on trust" pending the successful completion of the purchase of the offshore bank. It is a proper inference from this that Micro Tellers were working on the basis that the WPS bank account was controlled by Walkers, a regulated firm of solicitors used to handling client money. This is confirmed by a WhatsApp exchange[121] between Yi Han and Charles on 4 October 2018:

> Yi Han: discussed with lawyers for your own interest it would be better for your benefit to send directly to law firm (so it fulfils the SHA of sending to the law firm) i'll discuss with them of accepting in tranches with same transaction comment to credit

163 I do not propose to refer to all the WhatsApp exchanges which the plaintiffs claim further reinforces this understanding. It is sufficient to quote from the Plaintiffs' Closing Statement:[122]

> 51. Wherever possible, Feng would continue to give Andrew the impression that the WPS Bank Account was associated with Walkers. For example, in a WhatsApp chat on 10 October 2018, Andrew asked Feng to send across the details of the WPS Bank Account. Feng made the following statements:
>
> > *10/10/2018, 08:43 - FengThen 邓峰: I will pass details onto accounts when you send me details*
> >
> > …

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121 CT-2 at p 317 (Exhibit CCT-13).

122 PCS at paras 51–52; see AL-2 at pp 60–63 and Exhibit AL-13.

> *10/10/2018, 13:52 - FengThen 邓峰: Thanks bro I'll advise accounts accordingly.*

52. Similarly in other WhatsApp chats on 13, 15 and 17 October 2018, when arranging for Andrew to remit funds to the WPS Bank Account, Feng referred to "Accounts Team" as if he was speaking of the accounts department at Walkers:

> 13/10/2018, 12:41 - AL: okok bro . need to check back money issue
>
> 13/10/2018, 13:02 - AL: as in what was the banked in amount and deposits
>
> 13/10/2018, 13:03 - FengThen 邓峰: Hi bro just started lunch. Accounts Team left me yesterday's statement on my desk around 530pm. I had client meeting so didn't go back. I will go back in around 4pm and scan you a copy.
>
> …
>
> 15/10/2018, 09:11 - FengThen 邓峰: Just asked accounts as well. They
>
> waived the cash handling fee as a one-off.
>
> …
>
> 17/10/2018, 10:25 - FengThen 邓峰: Account Name: WALKERS PROFESSIONAL SERVICES LIMITED
>
> Name of bank: DBS Bank Ltd
>
> SGD Account: [xxx]
>
> 17/10/2018, 10:38 - AL: ok what reference to put?
>
> 17/10/2018, 10:41 - FengThen 邓峰: Same reference number as before.
>
> 17/10/2018, 10:41 - FengThen 邓峰: Can you let me know the company
>
> sending and the amount?
>
> 17/10/2018, 10:41 - FengThen 邓峰: So I can let accounts know.

164 Feng sought to suggest that the reference to the word "accounts" was merely an attempt by him to make it appear that the size and scope of WPS's

operation was larger than it was.[123] I do not accept this. The plain and ordinary meaning of the word "accounts" as used in the exchanges is consistent and only consistent with being a reference to the accounts department of Walkers.

165 The primary evidence relied upon by Feng as demonstrating that at all times Andrew was aware that WPS was Feng's personal vehicle and that he was never under the impression that it was associated with Walkers lies in a Statutory Declaration sworn by Andrew in mid-June 2019. This is dealt with in Andrew's first AEIC.[124] In summary, Andrew accepts that he swore the declaration at Feng's request on the basis that it would buy time to get the funds to repay the plaintiffs. Having signed it he was troubled about the fact that it was not true and took legal advice. As a result, he asked Feng to destroy the Declaration and Feng confirmed by a WhatsApp chat instruction to his solicitors to do so.

166 This evidence was not materially challenged in cross-examination[125] and I accept it.

167 Although the initial proposal was to purchase Alexandria Bank, as matters turned out the Initial Defendants then turned their attention instead to seek to buy a Curacao bank, Banco Provincial and/or a bank in the Union of Comoros, Freelance Bank. Whilst Micro Tellers was aware of the change to the Curacao bank, it was unaware of the possibility of purchasing Freelance Bank.[126] In the event it appears that only Freelance Bank was purchased for significantly

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123 Transcript (2 Feb 2023) at p 126 line 6–p 127 line 12.

124 AL-2 at pp 78–83.

125 Transcript (1 Feb 2023) at p 51 line 14–p 54 line 21 and p 107 line 13–p 110 line 19.

126 CT-2 at para 40.

less than the funds that had been deposited in the WPS account. Andrew thereafter sought a refund of the surplus sums in December 2018.

168 It is not necessary to follow the course of events between December 2018 and June 2019 during which Feng was requested to make the refund and failed to do so which led to the Initial Defendants commencing Suit 8 on 2 July 2019.

(1) Conclusion in relation to the WPS issue

169 Drawing all these aspects together, it follows that I find, on the balance of probabilities, that Feng did falsely represent to Andrew that WPS was a company associated with and controlled by Walkers and, accordingly, that at all times Andrew believed that funds paid into the WPS bank account from PAM would be held by Walkers in their capacity as solicitors for PAM to Andrew's order. Had he been aware that WPS was Feng's private company he would not have authorised the transfer of the funds from PAM's account to WPS's account. Accordingly, such sums as remained in the WPS account after the purchase of Freelance Bank would have been held by Walkers subject to their obligations as solicitors when holding clients' monies and not by WPS which owed no such obligations.

170 Referring back to [116] above, I therefore find that that the Initial Defendants transferred money from PAM's bank account to the WPS account in the erroneous belief, induced by Feng, that:

(a) Feng was acting in his capacity as a solicitor employed by Walkers and not in his private capacity;

(b) the WPS bank account was controlled by Walkers and not Feng;

(c) any sums deposited would be held "in escrow" by Walkers to the Initial Defendants' order; and

(d) that Walkers would be ultimately responsible and accountable for any sums deposited in the WPS account;

171 These remaining funds deposited in the WPS account included the sums claimed by both Micro Tellers and the Regional Group in this action.

The Agency Issue

172 The above representations were made by Feng to Andrew and it is not in dispute that Feng knew that Andrew was acting on behalf of the Initial Defendants. Micro Tellers' pleaded case is that Feng also had actual or constructive knowledge that the Initial Defendants were acting as agents of Micro Tellers such that the representations would be transmitted to Micro Tellers and acted upon by the Initial Defendants on behalf of Micro Tellers.[127]

173 Feng's pleaded case is that Andrew told Feng that PAM managed the assets of only three families, Andrew's, Yi Han's and Shawn Lin's[128] and that he was not aware (a) of any relationship between PAM and Micro Tellers; (b) of the existence of any third party funds managed by PAM; (c) that any sums transferred to the WPS account belonged to Micro Tellers; and (d) that the Initial Defendants were acting as agents on behalf of Micro Tellers.[129]

174 The first question is whether the Initial Defendants were acting as agents for Micro Tellers, *ie*, that Micro Tellers expressly authorised the Initial

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127 SOC at paras 14C and 29(a).

128 4D Defence at para 9(a).

129 4D Defence at para 9(m).

Defendants to act for them in respect of the funds it deposited with the Initial Defendants. The primary point of contact between Micro Tellers and the Initial Defendants was between Charles and Yi Han. Charles gives evidence as to the way in which the relationship between them developed and the representations that were made by Yi Han about the proposed purchase.[130] Relying on those representations Micro Tellers transferred both fiat and crypto currency to the Initial Defendants on the understanding that the sums would be "held … on trust for me".[131] He was aware that Andrew had arranged for the monies meant for the Private Bank Acquisition to be "held by [WPS], which was owned and controlled by the law firm known as Walkers".[132]

175 Charles concludes by saying that "Micro Tellers did not communicate with [WPS] or Walkers Law Firm. It was the Initial Defendants who carried out such communication on behalf of Micro Tellers"[133] and makes the assertion that thereby the Initial Defendants were acting as the agents of Micro Tellers in the Private Bank Acquisition.

176 He was cross-examined on this and confirmed that whilst Micro Tellers were aware of the change from the Alexandria Bank to the Curacao bank, Banco Provincial, it did not authorise the change to the Comoros bank, Freelance Bank, but his evidence with regard to his understanding as to the reasons for the arrangement of placing funds in the WPS account was not challenged.

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130 1st Affidavit of Charles-Cuong Tan Thach (24 May 2021) at para 20.

131 CT-2 at paras 29(b), 45 and 57.

132 CT-2 at para 106.

133 CT-2 at para 109.

177 Yi Han did not give evidence. However, Andrew did and he gave evidence that he and his other business partners, Shawn and Yi Han, were also involved in the idea of purchasing an offshore bank and that "Shawn, Yi Han and I would raise money from our business contacts to invest in buying such a bank".[134]

178 One of these business contacts was Micro Tellers and Micro Tellers placed money in the PAM account, which was controlled by Andrew. It was then Andrew acting on behalf of the investors and with their consent who was responsible for the day-to-day affairs relating to the purchase, including arranging for the purchase monies to be moved from PAM to WPS.

179 The defendants sought to argue that the Initial Defendants were not acting as agents in the purchase of the Freelance Bank because Micro Tellers had only authorised the purchase of the Alexandria Bank and then Banco Provincial. This however cannot alter the fact that in arranging and authorising the transfer of funds from PAM to WPS they were acting as agents for the principals, including Micro Tellers.

180 I therefore accept that the Initial Defendants were acting as agents for Micro Tellers when transferring funds from the PAM bank account to the WPS bank account.

181 The second question is the extent of Feng's knowledge of the source of the funds that were transferred to the WPS account.

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134 AL-2 at p 38.

182 Feng gave evidence that when he first met Andrew, Andrew told him that PAM was a family office that only managed the assets of the three families[135] and did not manage third party funds. In cross-examination Andrew accepted that he had told Feng that PAM was a family office but that there were many families who invested together with him and that "we function as like a simple family office, other families are together with us".[136] He made equivalent observations earlier in his cross-examination.[137]

183 Feng was not cross-examined in any detail on his understanding of who the investors in PAM were. He stated that prior to his first meeting with Andrew he had been told by a friend, Darryl Tan, that he was in touch with a big family office in Singapore, that Leonard was the representative of that office and that its name was Providence Asset Management.[138]

184 It was not suggested to Feng that he had any knowledge of Micro Tellers or of the fact that they were investors in the Private Bank Acquisition. The only document which suggests such knowledge is the Call for Funds Letter referred to at [158] above where reference is made to Blue Summit. It appears from this that Feng must have been aware that Blue Summit was a corporate vehicle for one or more of the investors but Feng asserts that it was represented to him in June 2018 that it was a company owned 50/50 by Andrew and Yi Han.[139] Andrew accepts that as at June this was the case but asserts that Feng was aware that the shares in Blue Summit were to be spread out to others once the funds

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135 TF-1 at para 6.

136 Transcript (31 Jan 2023) at p 60 line 19–p 70 line 25.

137 Transcript (31 Jan 2023) at p 15 line 9–p 16 line 21.

138 Transcript (2 Feb 2023) at p 96 line 11–p 97 line 5.

139 Transcript (31 Jan 2023) at p 73 line 21–p 75 line 17.

had come in. It is unclear on the evidence whether Feng was in fact aware of this.

185 Drawing this evidence together I find, on the balance of probabilities, that Feng's knowledge of the persons involved in providing the funds for the Private Bank Acquisition was as follows:

(a) there were a number of individual investors who were pooling their resources in PAM;

(b) the affairs of those investors were being managed by Andrew as the sole director of PAM acting as agent for those investors;

(c) those investors together formed what Andrew referred to as a family office which included members of Yi Han's, Shawn's and his families;

(d) the identities of those who were actually investors in PAM were unknown to Feng but Feng never sought to obtain knowledge of the identities of those persons; and

(e) Feng was aware that the acquisition project was being directed by Andrew and Yi Han on behalf of those investors, whoever they might have been, and Feng did not turn his mind as to whom they were.

Fitting the facts to the law

Fraud

186 I have set out the four requirements of the law on fraudulent misrepresentation in [114] above. First, there must be a representation of fact made by words or conduct. Here the crucial representation made by Feng to

Andrew was that WPS was a company associated with and controlled by Walkers so that funds paid into the WPS bank account from PAM would be held "in escrow" by Walkers in their capacity as solicitors for PAM to Andrew's order.

187 Second, the representation must be made with the intention that it should be acted upon by the plaintiff, *or by a class of persons which includes the plaintiff*. Plainly the representation was intended to be acted upon by Andrew so as to induce him to transfer the funds from the PAM account to that of WPS. But Andrew is not the plaintiff and it appears that Feng was unaware of the identity of all the actual investors, including, specifically, neither Micro Tellers nor the Regional Group. Counsel for the plaintiffs contended that in law this was irrelevant. It did not matter if the defendant did not know precisely to whom the representation was to be communicated – it was sufficient if it was made to an agent acting for a class of persons in circumstances where he knew that the representation would be communicated to and acted on by the agent's principals.

188 As indicated in [115] above reliance was placed on an observation of Blackburn J in *Richardson v Silvester* (1873) LR 9 QB 34 (at 36) quoting from *Swift v Winterbottom* (1873) LR 8 QB 244 (at 253). The full quote from the latter authority reads as follows:

> It is now well established that, in order to enable a person injured by a false representation to sue for damages, it is not necessary that the representation should be made to the plaintiff directly; it is sufficient if the representation is made to a third person to be communicated to the plaintiff, or to be communicated to a class of persons of whom the plaintiff is one, or even if it is made to the public generally with a view of its being acted on, and the plaintiff, as one of the public, acts on it and suffers damage thereby.

189 These authorities have stood the test of time and have been followed by the Singapore courts: *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2020] 2 SLR 1256 at [191]; *Thode Gerd Walter v Mintwell Industry Pte Ltd and others* [2009] SGHC 44 at [32]. It cannot be that a fraudster can avoid liability on the basis that the false representation was made to X but not to Y who relied on it to his detriment in circumstances where it was foreseeable that the representation was intended to be passed on to Y.

190 In the present case Charles' evidence on behalf of Micro Tellers was clear; that he never instructed the Initial Defendants to transfer any moneys to the WPS account in the sense of an account not controlled by Walkers.[140] He was at all times working on the basis that the funds would be held in an account controlled by Walkers, solicitors: see [174] above. It was Andrew who was induced by the representation to transfer the money but the representation was conveyed to Micro Tellers.

191 Both Feng and counsel for Moon contended that on the facts the Initial Defendants were not acting as agents of Micro Tellers for the purchase of the Comoros bank or Freelance Bank, since at all times Micro Tellers was working on the basis that it was the Alexandria or Banco Provincial banks that were to be purchased. Micro Tellers was never told about the change to Freelance Bank, did not authorise it and thus the Initial Defendants were embarking on a frolic of their own, not acting as agents for Micro Tellers.[141]

192 I consider that this is beyond the point. The alleged fraud resides in inducing funds to be placed in the WPS bank account and, on the facts as found,

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140 Transcript (1 Feb 2023) at p 142 lines 6–12.

141 Transcript (1 Feb 2023) at p 126 lines 1–4 and p 143 lines 2–12.

the Initial Defendants did this on the understanding that the funds would be "protected" because of the relationship with Walkers. They would not have done this if the true facts were known to them. The fact that they may thereafter have acted in a manner which was not known to the principals cannot alter the fact that in transferring Micro Tellers' money to WPS, they were acting as agents for Micro Tellers. The position was that Micro Tellers had entrusted the funds to the Initial Defendants for the purpose of purchasing an offshore bank and relied on the Initial Defendants to act in their best interests in doing so. This involved, so they thought, transferring the funds into the hands of the solicitors appointed to act in the purchase so as to facilitate the purchase.

193 The transfer was accordingly done in their capacity as agents for Micro Tellers because the Initial Defendants were satisfied that this was a safe thing to do due to the overriding control of Walkers.

194 The correct factual position therefore is that Feng made the false representations knowing that the Initial Defendants held funds from various sources with the intention that those funds should be transferred to WPS. In these circumstances he must have had within his contemplation that the investors, whoever they were, were people liable to act upon the representations either with actual knowledge of the representations or by placing their trust in the Initial Defendants, acting as their agents.

195 If the latter case, there was no need for further communication with the investors. Agreeing to the transfer was part of the mandate that the Initial Defendants held from the investors.

196 Reverting to the second principle laid down in *Panatron*:

> The representation should be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff.

The representations in this case were made by Feng to Andrew with the intention that the investors, whoever they were, should act upon them by authorising the transfer of the funds to WPS. It can make no difference in law if the Initial Defendants had informed the investors of the representations before authorising the transfer or whether they had existing authority to do so.

197 For all these reasons, I am satisfied that the second principle in *Panatron* is met on the facts of this case.

198 The third requirement is that the plaintiff should have acted on the false statement and suffered damage by doing so. Micro Tellers did act upon the false statement in the sense that its agent, Andrew, relying on the false statements transferred Micro Tellers' funds to the WPS bank account.

199 The question of damage has troubled me and was the subject of some discussion in both the written and oral closing submissions. This issue however applies to all the plaintiffs'claims against Feng in relation to the Private Bank Acquisition and I shall therefore address it at the end of this judgment.

200 The final requirement is that the representation must be made with the knowledge that it is false. This is clearly the case here.

201 Subject therefore to the question of damage, Micro Tellers has made out its case in fraud.

Breach of trust/fiduciary duties

202 Micro Tellers' case on breach of trust/fiduciary duties is founded on two bases. The first is that Feng owed duties to the Initial Defendants, acting in his capacity as a solicitor employed by Walkers in negotiating the Private Bank Acquisition pursuant to the Terms of Engagement between Walkers and PAM.[142]

203 Secondly, Micro Tellers contend that a fiduciary relationship can be created between two people where one, the fiduciary, has undertaken to act for and on behalf of another in a particular manner in circumstances which give rise to a relationship of trust and confidence[143] and this was the case here.

204 I have considered the nature of relationships which give rise to a fiduciary duty in [44]–[51] above and have gained assistance in addition from the succinct summary of the law by Kannan Ramesh J in *Aljunied-Hougang Town Council and another v Lim Swee Lian Sylvia and others and another suit* [2019] SGHC 241 ("*AHTC*") at [162]–[166] (see *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655 ("*Turf Club*") at [42]):

> *Did the first to fifth defendants owe AHTC fiduciary duties?*
>
> 162 It is undisputed that Ms Sylvia Lim, Mr Low Thia Khiang, Mr Pritam Singh, Mr David Chua and Mr Kenneth Foo were town councillors of AHTC at the material time. The pith of the issue is whether town councillors in Singapore owe fiduciary duties to their Town Council by virtue of that position.
>
> (1) The nature of fiduciary duties
>
> 163 The hallmark of the fiduciary obligation is set out in the seminal judgment of Millett LJ (as he then was) in *Bristol and*

142 SOC at paras 28–29.

143 SOC at para 30.

West Building Society v Mothew [1998] Ch 1 ("*Mothew*") at 18A–C, which was cited with approval by the Court of Appeal in *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 ("*Tan Yok Koon*") (at [192]):

> … A fiduciary is someone who has *undertaken to act for or on behalf of another in a particular manner in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary.* This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. They are the defining characteristics of the fiduciary … [emphasis in original]

164 In *Tan Yok Koon*, the Court of Appeal set out two further basic principles of fiduciary duties, which may be understood as corollaries of the principle above. First, fiduciary duties are *voluntarily undertaken*, in the sense that they arise as a consequence of the fiduciary's conduct (at [194]). This refers to the objective intentions of the fiduciary which may be imputed by the law, as opposed to the subjective willingness of the fiduciary to undertake those duties. Second, the court emphasised that as a result, "the label 'fiduciary' is a *conclusion* which is reached only once it is determined that particular duties are owed" [emphasis in original] (at [193], citing James Edelman, "When do Fiduciary Duties Arise?" (2010) 126 LQR 302 at 316).

165 Therefore, while the first to fifth defendants have unsurprisingly admitted in their testimony that they must act in accordance with duties of good faith and loyalty, ultimately these concessions made on their basis of their subjective beliefs do not assist in deciding whether they are fiduciaries.

166 Besides these first principles, the law also recognises that there are certain relationships in which one party will be presumed to owe fiduciary duties to another because they fall within what may be called an "established fiduciary relationship" (see *Tan Yok Koon* at [210]). It is uncontroversial that such established fiduciary relationships include those between express trustee and beneficiary, agent and principal, solicitor and client, and partners of a firm: see, *eg*,*Snell's Equity* (John McGhee gen ed) (Sweet & Maxwell, 33rd Ed, 2015) ("*Snell's Equity*") at para 7-004. Nevertheless, as should be

> evident from the principles canvassed above, the categories of fiduciary relationships are not closed: see, *eg*, *Guerin v The Queen* [1984] 2 SCR 335 ("*Guerin*") at [103]. Thus, the analysis would normally proceed in the following manner (Graham Virgo, *The Principles of Equity & Trusts* (Oxford University Press, 3rd Ed, 2018) ("*Virgo, Principles of Equity*") at 420):
>
> … In determining whether a person is a fiduciary, it is first necessary to consider whether that person is in a relationship with another that falls within one of the recognized categories of fiduciary relationships. If it does not, it is then necessary to examine the factual circumstances of the relationship to determine whether there are sufficient hallmarks of a fiduciary relationship to enable the court to conclude that the relationship is indeed fiduciary.

205 I shall consider first the case based on one of the recognised categories of fiduciary relationships, that of solicitor/client. Feng, in his capacity as a solicitor employed by Walkers, was retained to act on PAM's behalf on the proposed bank acquisition. Accordingly, Feng owed PAM the duties normally associated with such a retainer which include the duty to act in good faith towards the client and at all times to act in its best interests. On the facts of this case, the duties included the obligation to retain any funds entrusted to him in an account controlled by Walkers to PAM's order and to use the funds solely for the agreed purpose of purchasing a private bank.

206 He breached those duties owed to PAM by placing the funds in the WPS account and then misappropriating the residual sums in that account following the purchase of Freelance Bank. Feng was unable to say what had become of the residual funds but accepted that he had removed them from the WPS account.[144]

207 Feng's primary defence was that he had no knowledge that any of the funds belonged to Micro Tellers or any other third party and that, in those

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144 Transcript (2 Feb 2023) at p 210 line 16–p 211 line 8.

circumstances, there was no retainer between Walkers and those parties so that no solicitor/client relationship could come into existence as between Walkers and any person other than PAM.

208 Micro Tellers meet this defence by contending that, on the facts, an implied retainer was created between Feng and, *inter alia*, Micro Tellers because he was aware that Andrew represented a group of investors, even if he did not know the identity of some of those investors, including Micro Tellers. Reliance is placed on the reasoning of the Court of Appeal decision in *Anwar Patrick Adrian and another v Ng Chong & Hue LLC and another* [2014] 3 SLR 761 ("*Anwar*"). In that case there was a retainer between Ng, a lawyer, and his client, Agus, a prominent investor. The action was brought by two sons of Agus for breach of contract and negligence for failing to advise them on a personal guarantee clause in some security documents. The action failed at trial on the basis that Ng did not have a solicitor-client relationship with the sons and owed no duties towards them. The Court of Appeal allowed the appeal in a deeply reasoned decision and in [49] said this:

> 49 The considerations which should feature in a question of the existence of implied retainer can be found in the Singapore Court of Three Judges' decision in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308 ("*Ahmad Khalis*") at [66]. The court cited with approval the following summary in *Cordery on Solicitors* (Anthony Holland gen ed) (LexisNexis UK, 9th Ed, 1995, 2004 release) at para E 425:
>
> > [A] retainer may be implied where, on an objective consideration of all the circumstances, an intention to enter into such a contractual relationship *ought fairly and properly to be imputed to* ***all the parties***. The implication would have to be so *clear that the solicitor ought to have appreciated it*. Circumstances to be taken into account might include, where appropriate, who is paying the [solicitor's] fees, who is providing instructions, and whether a contractual relationship

> existed between the parties in the past. [emphasis in the original added in italics and bold italics]

209 The facts in the present case are different from those in *Anwar*. Here Feng did not know the identity of the actual investors. What he did know was that PAM was being used as a vehicle for the proposed purchase and that the funds held by PAM to be transferred to WPS were not beneficially owned by PAM. On the facts, Feng's knowledge of the identity of the investors is as set out in [185] above. In consequence, Feng ought to have appreciated (and I suspect did appreciate) that his duties to PAM as its retained solicitor extended to those investors, whoever they were. Whilst I accept, as was pointed out in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308 at [66], that the threshold for finding an implied retainer is a high one and that the facts in this case are not as strong as in *Anwar*, in my judgment, the threshold is met on the facts of this case. Hence, Feng owed the same duties as a solicitor to the investors as he did to PAM.

210 The second way in which Micro Tellers put its case is that since Feng knew that Andrew, through PAM, was acting as agent for a number of principals, Feng had undertaken to act on behalf of the principals so as to give rise to a relationship of trust and confidence which falls outside one of the recognised categories of fiduciary relationships.[145]

211 I have set out above the applicable principles to determining whether such duties exist, which can be summarised as follows:

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145 PCS at para 135.

(a) The factual circumstances must be examined to determine whether they bear sufficient hallmarks of a fiduciary relationship: see *AHTC* at [166] cited at [204] above.

(b) In circumstances where the party in question has undertaken a specific role in the transaction in question, that role should be looked at to determine whether *the putative fiduciary had "voluntarily place[d] himself in a position where the law can objectively impute an intention on his… part to undertake [fiduciary duties]"*: see *Tan Teck Kee* at [69] cited at [48] above.

(c) Relevant factors include the extent to which the putative fiduciary may exercise discretion which affects the position of the supposed principal and the degree of vulnerability to which the supposed principal is subject and the degree of control that the fiduciary has over any assets involved: see *Tan Teck Kee* at [69] and [78] cited at [48] and [50] above.

(d) A relevant enquiry is to ask whether the circumstances are such that one person is in a relationship with another which gives rise to a legitimate expectation that the fiduciary will not utilise his or her position in such a way which is adverse to the interests of the principal: *Turf Club* at [103] cited at [45] above.

212 The part played by Feng in the Private Bank Acquisition is not in dispute. It was he who proposed the possibility of such an acquisition in the first place.[146] He volunteered his services as a lawyer and also indicated that he would

146 AL-2 at p 38.

like to invest in the scheme.[147] He carried out or arranged for due diligence searches to be carried out on various target banks.[148] It was he who suggested the change from Alexandria Bank to Banco Provincial and who arranged for Curacao lawyers to oversee the Curacao law aspects "with Walkers Singapore (through me) coordinating in the background".[149] It was he who liaised with overseas contacts such as Frederic Gaillard and Rainer Peleg, to seek to progress the purchases.[150] He acted in the role of fund manager in that he agreed that payments would be handled by WPS.[151]

213 It is not necessary to go into greater detail in order to conclude that Feng was the pivot around which this whole enterprise revolved. Andrew relied on him for legal advice and for the expertise that he and his contacts could provide to engineer the purchase of the desired bank. I have no hesitation in concluding that as between Andrew and Feng, Feng had (objectively) *voluntarily placed himself in a position where the law should objectively impute an intention on his part to undertake fiduciary duties*.

214 These duties would be akin to those which exist in a solicitor/client relationship to act in good faith towards the beneficiary, to advance the beneficiary's interests and not to promote his own to the prejudice of those interests. In the context of the present case, more specifically, it was to ensure the safe custody of the funds held in the WPS account and to use them solely for the purpose of the Private Bank Acquisition.

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147 TF-1 at para 22.

148 Transcript (2 Feb 2023) at p 194 line 2–p 195 line 12.

149 TF-1 at paras 25 and 27; AL-2 at pp 45–47.

150 TF-1 at paras 23 and 26.

151 TF-1 at para 28.

215 Feng therefore was in breach of these duties owed to Andrew when he dissipated the residual sums in the WPS bank account.

216 Feng's defence to the assertion that these duties did not extend to cover a duty to the other investors mirrors that considered in [207] above in relation to the solicitors' duties. By parity of reasoning, it must follow, since Feng was aware that Andrew was representing other investors that, objectively, any duties that Feng owed to Andrew would necessarily also be owed to those investors, whoever they were.

217 For both these reasons, therefore, I have concluded that fiduciary duties were owed to PAM and to Andrew but additionally that they were also owed to all the investors, including Micro Tellers. Feng acted in breach of those duties by inducing the placement of the funds in WPS and then, knowing that those funds were to be held for the specific purpose of the Private Bank Acquisition, being able to misappropriate those assets since they were not held to PAM's order by Walkers.

218 Again therefore, subject to the question of damage, Micro Tellers' case based on breach of trust succeeds.

Unjust enrichment

219 Micro Tellers also raise a claim based on unjust enrichment. Counsel for the plaintiffs sought to pursue this claim even if the court were to find in Micro Tellers' favour on fraud and breach of trust. However, reliance was placed on the same factual matrix as for the other claims.[152] I can therefore see no useful purpose in considering the matter further.

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152 PCS at para 148.

The Regional Group's claim against Feng in relation to the Private Bank Acquisition

220 The Regional Group's claim against Feng in relation to the Private Bank Acquisition is not founded on fraud but does raise allegations of breach of trust/fiduciary duties and unjust enrichment. Although not pleaded in precisely the same way as the case against Micro Tellers, it was apparent from the written and oral closings that the parties were drawing no distinction between the two so far as concerns the existence of the two duties owed by Feng to the Initial Defendants: solicitor/client and voluntary assumption of duties.[153]

221 It is pleaded:[154]

> 41. Acting in their capacity as agents of the Regional Group, the Initial Defendants transferred from the Regional Group's funds the sum of US$2,074,051.80 ("The Float") to the WPS Bank Account for the purposes of the Private Bank Acquisition.

222 Clement gave evidence in relation to his understanding of the way in which this transfer took place:[155]

> **Float:** The Float refers to the outstanding amount of US$2,074,051.80 of the Regional Group's funds that were not used in the Europe Transaction. When the Regional Group asked for this money back, the Initial Defendants concocted a series of excuses as to why they could not repay the Float. It eventually transpired that the Initial Defendants used the Float for the purchase of an offshore private bank, without informing the Regional Group. The Initial Defendants have so far repaid only a small part of the Float. The sum of US$1,901,859.74 remains outstanding.

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153 SOC at paras 40–44.

154 SOC at para 41.

155 CW-2 at para 23(b).

223 His evidence on this concluded that in or around late June 2019 Yi Han admitted that the Initial Defendants had misappropriated that Float for the purposes of purchasing an offshore bank when the understanding was that the Regional Group's funds were only to be used for the purpose of OTC (over the counter) transactions in cryptocurrency.[156] Similar evidence was given by Rio and Michael.[157]

224 This evidence was reinforced by all three witnesses in cross-examination. Clement when asked this at the outset of his cross-examination said this:[158]

> Q. Good afternoon, Mr Wong. I just have one question. Did you at any time authorise the initial defendants to utilise any of the Regional Group's funds to acquire a private bank?
>
> A. No.

225 Equivalent answers to the same question were given by Rio and Michael.[159] Clement also confirmed that the Regional Group's funds were not only to be used solely for the purposes of OTC transactions, they were only to be used once consent had been obtained for a given transaction.[160]

226 Andrew did not deny that the Float had been used as alleged but in cross-examination sought to suggest that Yi Han had told him that the Regional Group had given him permission to use the Float in this way.[161] In the absence of any evidence from Yi Han, I cannot place any weight on this assertion and therefore

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156 CW-2 at paras 184–185.

157 RL-2 at paras 94–95; ML-2 at paras 131–132.

158 Transcript (1 Feb 2023) at p 175 line 25–p 176 line 4.

159 Transcript (2 Feb 2023) at p 4 lines 2–6 and p 15 lines 20–24.

160 Transcript (1 Feb 2023) at p 178 line 10–p 179 line 2.

161 Transcript (30 Jan 2023) at p 108 line 10–p 110 line 1.

shall work on the basis that the Initial Defendants had no authority to transfer the Float to WPS.

227 In the light of this it is not surprising that the Regional Group's claim in this action was first brought against the Initial Defendants only with the claim against Feng being added by amendment once the Regional Group became aware of his involvement both in the Europe Transaction and the Private Bank Acquisition. As indicated above, all claims against the Initial Defendants have now been settled without prejudice to the plaintiffs' right to continue the case against Feng.

228 It will thus be seen that although the case against Feng is founded on the assertion that Feng owed the Initial Defendants the same trust and fiduciary duties as have been found to exist in relation to the Micro Tellers claim, the assertion that the Initial Defendants were acting as agents for the Regional Group is founded on a different factual matrix. In Micro Tellers' case, it was aware that funds were being provided for the purchase of a private bank but it supplied the funds on the wrongly held assumption that those funds were to be held under Walkers' control. The Regional Group did not even know that the Float was to be used for the purchase of such a bank.

229 The defendants both contend that this is a material distinction. In the case of Micro Tellers, the Initial Defendants were acting as Micro Tellers' agents when transferring funds from PAM to WPS. It was part of the process of purchasing the bank which the Initial Defendants had been authorised by Micro Tellers to carry out. In this sense the Initial Defendants were acting as Micro Tellers' agents.

230 In the case of the Regional Group, no such agency could be said to exist and hence, say the defendants, the Regional Group's pleaded case that the transfer of the Float was done by the Initial Defendants when acting in their capacity as agents of the Regional Group must fail.

231 The question that falls to be answered however is, to whom does Feng owe his duties, both as retained solicitor and those voluntarily accepted? Once one concludes, as is the case here, that those duties extend beyond the persons to whom the duties are directly owed, it is necessary to ascertain the class of people to whom he is acting as fiduciary.

232 In this case, Feng was aware that the Initial Defendants were not the only persons who had placed funds in PAM for the purpose of the Private Bank Acquisition, but he was unaware of and had not sought to ascertain the members of the class. It must follow from this that he owed his duties to all those that can demonstrate that they are members. The fact that the Initial Defendants were acting in an agency capacity for other investors is, no doubt, a good indication that the principals belong to the class but this does not mean that the class is limited to those in an agency relationship.

233 The class in this case consists of all those who were the beneficial owners of sums placed in the PAM account which were then transferred by the Initial Defendants to the WPS account on the faith of the false representations made by Feng to Andrew.

234 The Regional Group falls within that class. The fact that they were unaware that their funds were being used for this unauthorised purpose cannot absolve Feng of liability to them, as beneficial owners, of funds misused by him.

235 Again therefore, subject to the question of relief, the Regional Group's claim against Feng for breach of trust/fiduciary duty succeeds and I do not propose to consider the additional claim in unjust enrichment.

The claims against Moon

236 Moon was joined as a defendant in this action by an Order dated 18 May 2022 as a result of the decision given on that date: see [25] above.[162]

237 The plaintiffs put their case as follows:

(a) a claim by Micro Tellers of dishonest assistance by Moon;[163]

(b) a claim by the Regional Group of dishonest assistance by Moon;[164] and

(c) a claim by both sets of plaintiffs against Feng and Moon in conspiracy[165].

238 The claims in dishonest assistance are founded on the same underlying facts and assertions. They stand and fall together. The case based on conspiracy is founded on the plea of unjust enrichment and is based on a contention that Feng and Moon acted in concert in incorporating and using WPS to facilitate the unjust enrichment of Feng. The underlying particulars however mirror those relied upon for dishonest assistance. I shall therefore deal first with the case on dishonest assistance and then turn to conspiracy.

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162 Minute Sheet in SIC/SUM 6/2022 dated 18 May 2022.

163 SOC at paras 36–39.

164 SOC at paras 49–52.

165 SOC at paras 53–56.

Dishonest assistance – the pleaded particulars

239 The particulars to the SOC read as follows:[166]

> a. Moon provided assistance in relation to each of Feng's fraudulent misrepresentation and/or deceit and/or breach of the MT Private Bank Trust Duties and/or breach of the MT Private Bank Fiduciary Duties:
>
> > i. Moon was the sole shareholder and director of WPS.
> >
> > ii. Moon was the only authorised signatory of the WPS Bank Account.
> >
> > iii. As the sole shareholder and director of WPS, and the sole authorised signatory of the WPS Bank Account, any and all transfers of the Micro Tellers Investment out of the WPS Bank Account could only be carried out by Moon and/or facilitated with the active participation of Moon.
> >
> > iv. At the request of Feng, Moon became Feng's nominee in WPS, the sole director of WPS, and the sole shareholder of WPS.
> >
> > v. As Feng's nominee in WPS, Moon carried out Feng's instructions in relation to the running of WPS.
>
> b. Moon had actual and/or constructive knowledge that Feng had incorporated and utilised WPS for the WPS Purposes:
>
> > i. Moon is Feng's wife. Moon was the sole shareholder and director of WPS.
> >
> > ii. In the circumstances, Moon would therefore have actual and/or constructive knowledge of the following:
> >
> > > 1. that Feng was a solicitor in the employ of Walkers.
> > >
> > > 2. that the name of WPS (being Walkers Professional Services Limited) carried the same name as that of Walkers, Feng's employer.
> > >
> > > 3. that WPS had no relationship with Walkers.
>
> c. Moon had actual and/or constructive knowledge that the Micro Tellers Investment paid into the WPS Account did not belong beneficially to WPS.

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166 Particulars to the SOC at para 37.

> i. WPS did not carry out any work or services that would justify the receipt of the Micro Tellers Investment.
>
> ii. There was no justifiable reason for the payment out of the Micro Tellers Investment.

240 Particulars (a) relate to the incorporation of WPS in 2015 with Moon being the sole shareholder and director such that any transfers into and out of the WPS bank account could only be facilitated with the active participation of Moon.

241 Particulars (b) cover two aspects. First that Feng had incorporated WPS for the WPS purposes – to induce a connection with Walkers so as to induce persons to deposit money with WPS[167] and secondly that Feng had used WPS for that purpose. In both cases it is alleged that Moon would have had actual or constructive knowledge of this as Feng's wife and the sole director and shareholder of WPS, and that she would have known that he was a solicitor employed by Walkers and WPS had no relationship with Walkers.

242 Particulars (c) are more specific, alleging actual or constructive knowledge that sums paid into the WPS account did not belong beneficially to WPS.

Dishonest assistance – the law

243 The four elements of the cause of action of dishonest assistance set out in *Von Roll Asia Pte Ltd v Goh Boon Gay and others* [2018] 4 SLR 1053 ("*Von Roll*") at [105] are well settled and were not in dispute: see, for example, *Barlow Clowes International Ltd (in liquidation) and others v Eurotrust International Ltd* [2006] 1 WLR 1476 ("*Barlow Clowes*") at [10] and [28]; *George Raymond*

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167 SOC at para 17(b).

Zage III and another v Ho Chi Kwong and another [2010] 2 SLR 589 at [20] ("*Zage*") and *Miao Weiguo v Tendcare Medical Group Holdings Pte Ltd (formerly known as Tian Jian Hua Xia Medical Group Holdings Pte Ltd) (in judicial management) and another* [2022] 1 SLR 884 at [45] ("*Miao*").

244 They are:

(a) the presence of a fiduciary duty owed to the plaintiff;

(b) a breach of that duty;

(c) assistance rendered by the third party towards that breach; and that

(d) such assistance was rendered dishonestly.

245 Hence there can be no liability on the part of the person alleged to have provided the assistance ("the assister"), unless the claim against the principal defendant ("the principal") said to be under the duty succeeds. In this case I have held that the plaintiffs are entitled to succeed against Feng based on breach of fiduciary duty so that the first two requirements are met. It is therefore necessary to focus on the law in relation to the third and fourth requirements.

246 In *Barlow Clowes* at [10], Lord Hoffmann stated as follows:

> 10 The judge stated the law in terms largely derived from the advice of the Board given by Lord Nicholls of Birkenhead in *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378. In summary, she said that liability for dishonest assistance requires a dishonest state of mind on the part of the person who assists in a breach of trust. Such a state of mind may consist in knowledge that the transaction is one in which he cannot honestly participate (for example, a misappropriation of other people's money), or it may consist in suspicion combined with a conscious decision not to make inquiries which might result in knowledge: see *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd* [2003] 1 AC 469. Although a dishonest state

> of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards. The Court of Appeal held this to be a correct state of the law and their Lordships agree.
>
> [emphasis added]

247 Lord Hoffmann continued at [28]:

> Their Lordships consider that this passage displays two errors of law. First, it was not necessary (as the Staff of Government Division had themselves said earlier in the judgment) that Mr Henwood should have concluded that the disposals were of moneys held in trust. It was sufficient that he should have entertained a clear suspicion that this was the case. Secondly, it is quite unreal to suppose that Mr Henwood needed to know all the details to which the court referred before he had grounds to suspect that Mr Clowes and Mr Cramer were misappropriating their investors' money. The money in Barlow Clowes was either held on trust for the investors or else belonged to the company and was subject to fiduciary duties on the part of the directors. In either case, Mr Clowes and Mr Cramer could not have been entitled to make free with it as they pleased. In *Brinks Ltd v Abu-Saleh* [1996] CLC 133, 151 Rimer J expressed the opinion that a person cannot be liable for dishonest assistance in a breach of trust unless he knows of the existence of the trust or at least the facts giving rise to the trust. But their Lordships do not agree. Someone can know, and can certainly suspect, that he is assisting in a misappropriation of money without knowing that the money is held on trust or what a trust means: see *Twinsectra Ltd v Yardley* [2002] 2 AC 164 at para 19 (Lord Hoffmann) and para 135 (Lord Millett). And it was not necessary to know the "precise involvement" of Mr Cramer in the group's affairs in order to suspect that neither he nor anyone else had the right to use Barlow Clowes money for speculative investments of their own.
>
> [emphasis added]

248 In [108] of *Von Roll*, Chan Seng Onn J (as he then was) said this:

> 108 On the final element of dishonesty, the Court of Appeal in [*George Raymond Zage III v Ho Chi Kwong* [2010] 2 SLR 589] at [22] clarified that the standard of what constitutes honest conduct is an objective one, entailing an inquiry as to whether the defendant had "such knowledge of the irregular

> shortcomings of the transaction that ordinary honest people would consider it to be a breach of standards of honest conduct if he failed to adequately query them" (see also *Barlow Clowes International Ltd (in liquidation) v Eurotrust International Ltd* [2006] 1 All ER 333 at [15]).
>
> [emphasis added]

249 In *Miao* at [45] and [46], Andrew Phang Boon Leong JCA said this:

> 45 The elements of the cause of action for dishonest assistance are not in dispute. As the Judge rightly identified, there are four elements to this cause of action: (a) the existence of a trust or fiduciary obligation; (b) a breach of trust or a fiduciary obligation; (c) assistance was rendered for the breach; and (d) the assistance was dishonest (see the High Court decision of Banque Nationale de Paris v Hew Keong Chan Gary and others [2000] 3 SLR(R) 686 ("BNP") at [136]). As this court observed in George Raymond Zage III and another v Ho Chi Kwong and another [2010] 2 SLR 589 ("Zage") at [22]:
>
> > [F]or a defendant to be liable for knowing assistance, he must have such knowledge of the irregular shortcomings of the transaction that ordinary honest people would consider it to be a breach of standards of honest conduct if he failed to adequately query them. …
>
> 46 As Judith Prakash J (as she then was) elaborated in the High Court decision of M+W Singapore Pte Ltd v Leow Tet Sin and another [2015] 2 SLR 271 ("M+W") at [42], the analysis is a two-stage one: (a) first, what did the defendant know of the transaction; and (b) second, does participation in the transaction with this knowledge offend ordinary standards of honesty? The former is a subjective analysis, while the latter is objective. In our view, this distinction between the two stages is helpful – often, the question of dishonesty when taken in the abstract can cloud the inquiry as to what the defendant actually knew about the transaction. It is important to begin with the facts about what a person knew about a particular transaction before turning to evaluate whether the person was dishonest in proceeding to participate in that transaction.

250 It necessarily follows that even where the facts do not demonstrate that the alleged assister did not have actual (objective) knowledge, there may nonetheless be liability if the facts known to the assister were such as would make a reasonable person suspicious so that they would have made enquiries

which would have resulted in knowledge. This may be demonstrated by the fact that the assister made a conscious decision not to make enquiries when they had suspicions: see *Barlow Clowes* at [10].

251 The plaintiffs summarised the correct approach in their Closing Statement:[168]

> 164. When the test of dishonesty is applied, the defendant is not free to be judged according to his own standards. He is judged according to the standards of an ordinary honest person, who would have the same knowledge of the circumstances as he does, and sharing some of his personal characteristics, such as his age and experience. A finding that the defendant was dishonest involves an assessment of his participation in the impugned transaction, judged in the light of his motives and his knowledge of the facts. The "knowledge" requirement is fulfilled either by actual knowledge, or wilful avoidance of knowledge, which may include (a) wilfully shutting one's eyes to the obvious; or (c) wilfully and recklessly failing to make such inquiries as an honest and reasonable man would make: *Comboni Vincenzo v Shankar's Emporium (Pte) Ltd* [2007] 2 SLR(R) 1020.

252 Finally, my attention was drawn to a case where the facts are not dissimilar to those in the present case. In *O'Laughlin Industries Co Ltd and another v Tan Thiam Hock and others* [2021] SGHC 35 ("*O'Laughlin*") the principal defendant, Tan Thiam Hock ("Hock"), an employee of the first plaintiff, was held liable to the plaintiffs, *inter alia*, for breach of fiduciary duties. Hock's sister, Tan Poh Suan Jacqueline ("Jacqueline") was also joined as a defendant on the allegation that she was liable for dishonest assistance owing to the fact that she was a director and authorised signatory of the relevant company, Globchem.

253 At [48] the Judge, Lee Seiu Kin J, stated as follows:

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168 PCS at para 164.

> I find that, on a balance of probabilities, Jacqueline was not involved in the schemes of the First Defendant. The First Defendant's evidence was that he had approached Jacqueline to use her name to incorporate Globchem, appointing her as a nominee director of the company. Jacqueline was also the authorised signatory of Globchem. However, the operation of the email, movements of goods, and various correspondences, however, were left solely to the First Defendant. Both the First Defendant and Jacqueline testified that the latter merely signed blank cheques with no details being filled in. Once she signed those cheques, she handed them over to Huat Chye for safekeeping. [39] At no point in time was she made aware of the actual transactions, or the movements of cash that were carried out on the basis of these signed cheques.

254 He concluded in [51] that:

> In the circumstances, it is more likely that Jacqueline has become implicated as she had trusted the First Defendant, allowing him to incorporate Globchem in her name and signing the cheques for his use. That, however, is insufficient to show any wrongdoings on her part. I accept that it is very difficult for the plaintiffs in such a situation to adduce evidence to prove their case against Jacqueline. However, that is the burden that they have to bear, and I do not find, on the evidence before me, that they have discharged that burden. Accordingly, I find that Jacqueline is not liable in these proceedings."

Dishonest assistance – the facts

255 The primary evidence was given by Moon. She is a Korean citizen who, as indicated above, married Feng in May 2015 and in June 2015 acceded to his request that she should become the director and sole shareholder in WPS as well as being the authorised signatory of the WPS bank account.

256 Her AEIC reads as follows:[169]

> 13. The starting point is that apart from the fact that I was the sole shareholder of WPS and the sole authorised signatory of the WPS Account, I was not involved in the running of WPS at all. I was at all material times merely Feng's nominee in WPS. I

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169 2nd AEIC of Lee Moon Young (28 Dec 2022) ("LMY-2") at paras 13–20.

did not receive any salary or any other benefit as Feng's nominee in WPS.

14. Moreover, precisely because I was not involved in the affairs of WPS, I do not and have never possessed any knowledge whatsoever of the Plaintiffs, the Initial 1st to 3rd Defendants, the Private Bank Acquisition, and/or the Cryptocurrency Transactions. I elaborate below.

III. NO INVOLVEMENT IN WPS AND WPS BANK ACCOUNT

15. WPS was incorporated in June 2015 and was voluntarily wound up in or around December 2018. WPS' Certificate of Incorporation is exhibited hereto at [11] of LMY-2.

16. Prior to WPS' incorporation, Feng asked me to be the sole shareholder and director of WPS and I agreed to do so as his nominee. Feng did not tell me what the intended business of WPS was. He did, however, tell me that WPS was not related to the law firm generally known as "Walkers" (i.e., the law firm where Feng worked at the time). I did not enquire further about WPS because, apart from being my husband, Feng was a lawyer and therefore, in my mind, he would not use WPS for any improper purposes.

17. While I was the sole signatory of the WPS Account, I was never aware of any transactions involving the WPS Account. From time to time, Feng would ask me to pre-sign a set of blank cheques and telegraphic transfer request forms ("TT Forms") for the WPS Account. I would do so and those pre-signed blank cheques and TT Forms would be left with Feng. Again, I did not enquire further about the WPS Account or the blank cheques and TT Forms which I pre-signed because in my mind, Feng would not use the WPS Account for any improper purposes.

18. I was not aware of the Plaintiffs' existence until at or around the time Feng was joined as a defendant to SIC 5. I have never met any of the Plaintiffs. Frankly, I still do not know anything about the Plaintiffs, beyond what they have stated in their Court documents.

19. I have absolutely no knowledge of the Plaintiffs, the Initial 1st to 3rd Defendants or of any alleged dealings, communications, transactions or proposed transactions involving the aforementioned parties, save for what is stated in their Court documents.

20. It bears reiterating that I was never involved in the running of WPS, nor did I carry out Feng's instructions in the running of WPS. Instead, WPS and its affairs were run entirely and solely by Feng, save for the fact that I had on occasion, upon Feng's requests, pre-signed blank cheques and TT Forms and left these

> with Feng. In other words, I have absolutely no knowledge, whether actual, constructive or otherwise, on the affairs of WPS and the WPS Account.

257 She was cross-examined rigorously but fairly by Mr Tan. She confirmed that she had a Bachelor of Industrial Engineering degree from Kongju University in Korea and that she had been working in Singapore first as a financial consultant at Standard Chartered Bank for some two years before joining Citibank in July 2011 where she acted as a relationship manager referring potential clients to colleagues for the purpose of "know your client" procedures.[170]

258 In relation to Feng's request that she should be a director and shareholder of WPS and the way in which she acted in that capacity, the following interchanges occurred:[171]

> MR TAN: When you came back from your honeymoon with your husband in May 2015, did he ask you to become a director and shareholder of Walkers Professional Services?
>
> A. Yes.
>
> Q. We will call this "WPS".
>
> A. Yes.
>
> Q. At that point, in May 2015, had you ever been a director of any company?
>
> A. No, only WPS.
>
> Q. What about today, have you ever been a director of a company besides WPS?
>
> A. No. No.
>
> Q. Were you surprised when your husband asked you to be a director of WPS?

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170 Transcript (3 Feb 2023) at p 96 line 9–p 98 line 16.

171 Transcript (3 Feb 2023) at p 121 line 24–p 124 line 4.

A. Actually, I was not surprised. It's because he has -- before I met my husband, he -- I knew he has a lot of side business, so -- and he travels a lot for business and work, so I thought he might need my help, so I thought, okay, "I will help you", I said.

Q. What sort of help did you think he would need from you?

A. Just ask me to sign cheques and some forms, transfer forms, yes.

Q. Well, let me understand your answer. Just now, you said that you knew that your husband has a lot of side businesses, and that he travels a lot for business, and you thought he might need help. Is that what you said?

A. Yes.

Q. And the help that you thought that he might need was to sign cheques and some transfer forms; is that correct?

A. Yes.

Q. Is this something that you thought of, or that your husband told you?

A. My husband told me.

…

A. I mean, he asked me to be a director and shareholder, so, okay, I -- "You're my husband, I will help you". I just say, "Okay".

Q. Did you ask him why it would be helpful that you were a shareholder of WPS instead of him?

A. I never ask.

Q. Do you agree that the shareholder owns the company?

A. Shareholder owns the company? Okay, yes.

Q. So who is the owner of WPS?

A. I -- to be honest, I'm just nominee director, I just -- whatever he ask me to do something, I just -- just do. I didn't think that shareholder is -- is the owner of the company.

Q. I understand your answers about being a director. Now I'm talking about being a shareholder. Now, you have worked in two banks for more than a dozen years. You are still working in Citibank. You are very experienced. So I suggest to you that you knew very well the implications of being a shareholder; do you agree?

A. I disagree. I don't understand the company structure, actually, because I'm -- my job is not -- it's a pretty simple job. I just looking after my clients. It's not like company structure or, you know, this -- I disagree.

…

Q. I'm going to finish off this point with a final question, and my question is do you understand that by being the shareholder of WPS, you, rather than Mr Feng, are the owner of WPS?

A. I don't find the company -- I own the company, I just -- I feel like I'm a secretary. My husband ask me to do, I just sign, that's all I do. I don't find that I own the company.

Q. Right. I've noted your explanation that you wanted to help your husband and the manner in which you wanted to help your husband was by signing cheques, and TT, transfer forms. I'm wondering, you can do all that as a director. Did you ask him why you needed to be a shareholder as well?

A. I never ask.

Q. Did you ask your husband what the business of WPS was?

A. I didn't ask.

Q. Now, let's talk about your relationship with your husband for a moment. At that point, in May 2015, how long had you known your husband?

A. Two years.

Q. You knew he was a lawyer?

A. Yes.

Q. And his employer?

A. Yes

Q. Walkers law firm; correct?

A. Yes.

Q. When your husband told you in May 2015 that he wanted you to be a director and shareholder of a company called Walkers Professional Services, did you think that Walkers Professional Services was related to your husband's employer, Walkers law firm?

A. You ask me do I -- did I know? Did I ask? What's the question, I'm sorry.

Q. I'm asking you whether you thought that they were related.

A. When he ask me to incorporate this company, I actually ask, "Does it matter to your law firm", and then he said, "There's no issue, no problem". Then I just -- I didn't ask further, I just, "Okay, that's fine then", and then I just go ahead.

Q. When you asked: "When he ask me to incorporate this company, I actually ask, 'Does it matter to your law firm', and then he said, 'There's no issue, no problem'."

A. No, because to me the name -- I think Walkers Professional Services Limited, and then his employer was Walkers Singapore LLC -- yeah, LLC. Because the name -- the common name there, but I think the name -- total name to me is different.

Q. I'm trying to understand what you meant in your previous answer. In your previous answer, you said: ""When he ask me to incorporate this company, I actually ask, 'Does it matter to your law firm', and then he said, 'There's no issue, no problem'." So my question is you asked, "Does it matter to your law firm?" What did you mean?

A. I mean because the name Walker, right -- I mean, can you use this name. He said, "It's okay, because it's different name". "Okay", then I go ahead.

…

MR TAN: Yes, your Honour. Ms Moon, I am talking about the question you asked your husband: "Does it matter to your law firm?" Were you asking whether your husband's law firm had given permission for the use of the name "Walkers" in Walkers Professional Services?

A. Permission? No, I didn't mean that way -- permission, no. I meant -- I just simply asked -- because sometimes you put the name, like -- to explain -- the Walkers name there, so I just ask, "Is there any issue with the law firm?"

Q. Okay. I accept that.

A. So I say -- he say, "There's no issue, you can just go ahead". I say, "Okay, if you think okay, you're a lawyer, you know better than me, I go ahead".

…

Q. Thank you. After the account was opened, you were given cheque books for use for the account; correct?

A. Yes.

Q. Did you -- who is -- sorry, let me rephrase that. How many cheque books were you given?

A. I don't know. I -- cheque book, how many, I don't know. It's actually the -- all the cheque books, the letters, I didn't open. Opened by husband. So how many cheque books we receive, I really don't know.

Q. I see. Did WPS issue cheques?

A. Yes.

Q. And you signed on those cheques; correct?

A. Yes.

Q. You were the only authorised signatory for WPS?

A. Yes.

Q. How many cheques did you sign?

A. How many? I cannot remember, but I think it's less than 10.

Q. Less than 10?

A. Less than -- I can't remember. I cannot remember how many cheques I signed.

Q. For what amounts, do you remember?

A. I only signed my signature, I didn't write the -- all this, the details, so I don't know.

Q. Did you sign all these cheques at the same time?

A. Sometimes I signed few cheques, Feng asked me to sign. I signed my signature. I signed, yes. Sometimes he just ask me, randomly ask me, one cheque, "You sign here", I just sign.

Q. So, based on your answer, sometimes your husband would give you a few cheques to sign, and sometimes he would at random ask you to sign one cheque; is that correct?

A. Yes.

Q. Each time when you sign, the cheque did not indicate the payee's name, the date, or the amount.

A. I just sign and pass to him.

Q. Yes, I understand you just sign and pass to him. But when you signed the cheques, those cheques did not have the payee's name, a date, or amount; is that right?

A. No.

…

MR TAN: Did you ask him what these cheques were for?

A. I didn't ask.

Q. Did you receive -- did Mr Feng ask you to sign other sorts of transfer forms?

A. Yes.

Q. What sorts of transfer forms?

A. The transfer form, telegraphic transfer form.

Q. Okay, we can call that TT forms.

A. Yes, TT forms.

Q. How many TT forms did he ask you to sign? You can estimate.

A. Less than 10, I think.

Q. Less than 10. Were these forms also blank when you signed them?

A. Yes.

Q. Do you know what money laundering is?

A. Yes.

Q. Do you know that it's a crime?

A. Yes.

Q. Were you concerned that in signing these blank cheques and these blank TT forms, you could be, for example, helping in money laundering?

A. I never thought, because -- he's lawyer, and he's husband, of course, I trust him, so -- and then I don't know what he -- I never believe he doing -- using that for something else.

Q. Were you worried that the cheques you were signing would be used to make incorrect payments?

A. I never worried. Actually, I believe him. I trust him, then I sign.

…

Mr Tan: I understand, your Honour. Let's take the one at page 4. The page number is at the top right-hand corner.

A. Yes.

Q. This is a bank statement addressed to Walkers Professional Services Limited and below that is an address. Is that your address?

A. At that time, yes.

Q. Right. That was your residential address?

A. That's right.

Q. In 2018?

A. Yes.

Q. Do you recall that you received bank statements from DBS concerning WPS at your home?

A. It was always on the table unopened, because it -- I -- it's not mine, so I didn't open it.

Q. It's not yours, yes. I heard you say that. We'll get to that. So these statements were in unopened envelopes; is that correct?

A. Yes.

Q. And you saw that these statements were addressed to -- sorry, let me rephrase that. You saw that these envelopes were addressed to Walkers Professional Services Limited, so you did not open them?

A. Because I have no interest in this -- always my maid pick up from my mailbox and then she leave all the letters on the table, so I just leave them.

Q. So whenever you saw an envelope addressed to Walkers Professional Services limited, you would not open it', is that correct?

A. No, I don't open. I didn't open.

Q. What if it contained something important about Walkers Professional Services, would you know?

A. If -- I -- maybe my husband open and if something I need to do, then he will tell me. I leave it to him.

Q. I see. Have you ever seen the document -- sorry, when was the first time you saw the document at page 4?

A. All these statements is -- recently I was asked to collect this, to submit, then was my first time to see.

Q. Your husband asked you to collect?

> A. I was asked to prepare this to submit to you, right? That's why I went to DBS to collect this.
>
> Q. Okay. So are you saying that you obtained these statements from DBS personally?
>
> A. Me?
>
> Q. Yes.
>
> A. Yes.
>
> Q. Was this around 30 December 2022?
>
> A. I don't remember the date
>
> Q. That would be about two months ago?
>
> A. I think recently I just passed this to my lawyer, that time I collect it. I don't know the exact date.

259 Feng confirmed Moon's evidence that his wife would not open the envelopes containing the bank statements.[172]

260 I make no apology for reproducing the bulk of Moon's AEIC and extensive extracts from the cross-examination as I have to decide the weight that I can attach to her evidence having seen her demeanour in the witness box. She was plainly very nervous when giving evidence and it was apparent that she found the process of giving evidence both emotional and burdensome. That said, her evidence was clear and consistent and the longer the cross-examination continued the more satisfied I was that she was a witness of the truth. She demonstrated an element of naivety and deference in her dealings with her husband's requests in relation to the setting up of WPS but I have to take into account the fact that this was immediately after their marriage.

261 Taking all this into account, on the balance of probabilities, I assess Moon's knowledge and involvement in the activities of WPS as follows:

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172 Transcript (2 Feb 2023) at p 83 line 11–p 86 line 21 and p 203 line 19–p 204 line 9.

(a) She agreed to be the sole director and shareholder of WPS and the sole authorised signatory of the bank account in June 2015 just after their return from their honeymoon.

(b) At the time she identified the fact that the company name included the name Walkers and asked her husband "Does it matter to your law firm?" and received the answer "There is no issue, no problem" and she did not ask anything further about the name.[173]

(c) In this respect, she deferred to her husband's position as a lawyer in accepting his answer that there was no issue with his employer.[174]

(d) Subsequent to the incorporation she had no involvement in the affairs of WPS save for signing blank cheques and transfer forms as and when Feng asked her to do so.

(e) She never opened any document addressed to WPS and never saw a bank statement.

(f) She was unaware of the nature of the business that Feng was carrying on under the WPS name.[175]

(g) No incident occurred subsequent to the incorporation of WPS that might have served to alert her to the fact that WPS was being used in furtherance of unlawful activities. More specifically, it was not suggested to her that she was aware that Feng was using a typeface and logo mimicking that used by Walkers.

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173 Transcript (3 Feb 2023) at p 106 lines 13–17.

174 Transcript (3 Feb 2023) at p 108 line 15–p 109 line 4.

175 LMY-2 at para 20.

(h) She possessed no knowledge of the plaintiffs, of the Initial Defendants or of the Private Bank Acquisition.[176]

262 Reverting then to the Particulars, on the basis of the above, Moon had actual knowledge of Particulars (a) above. By her actions in signing blank cheques and transfers, she facilitated Feng's breach of duty by enabling him to misappropriate the funds paid into the WPS account but she was unaware of this. This conduct is sufficient to satisfy requirement (c) above – assistance rendered by the third party towards that breach.

263 So far as concerns Particulars (b) above (which refer to the "WPS Purposes"),[177] Moon knew that she was the sole shareholder and director of WPS, that Feng was a solicitor employed by Walkers and that WPS had no relationship with Walkers. She also appreciated that the use of the WPS name could induce a connection with Walkers and instil confidence that Feng was a solicitor with Walkers which is why she asked the question as to whether the name mattered to Walkers.[178] However, she did not have actual knowledge that Feng had either incorporated or used WPS to induce persons to deposit money with WPS as pleaded in the SOC.[179]

264 As regards Particulars (c), I accept that Moon had no actual knowledge that the sums paid into the WPS account did not belong beneficially to WPS. She had no knowledge about any sums paid into or out of the account.

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176 LMY-2 at paras 14, 18 and 19.

177 See SOC at paras 37(b) and 17(b).

178 See SOC at paras 17(b)(i)–17(b)(ii).

179 SOC at para 17(b)(iii).

265 In oral closings, Mr Tan accepted that the above was the position in relation to actual knowledge when he stated:[180]

> We are not saying that Ms Moon has actual knowledge of what WPS was set up to do. We are quite clear that it is sufficient if you can show wilful blindness.

266 The plaintiffs put their case both on the basis of wilful blindness, in the sense that it is asserted that Moon deliberately did not ask questions about WPS lest she learned something she would rather not know and on the basis that, judged by the standards of an ordinary honest person ("the honest person"), with the same knowledge and in the same circumstances as Moon and sharing her personal characteristics, such a person would have made further enquiries and would have ascertained the pleaded knowledge.

267 The plaintiffs rely on the following factors:

(a) in her capacity as a banker she would have more knowledge than the person on the street about bank statements and the like;

(b) knowing that her husband was employed by Walkers, any person in her shoes would have said that the choice of name was very odd and would have wanted to clear this up with Walkers; and

(c) knowing that Feng already had other investment vehicles, any person in her shoes would have said "why do you need WPS?".

268 They go on to say that the honest person would have asked more questions at the outset and further, when prompted by the arrival of bank statements, should have opened them to see where the money was coming from

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180 Transcript (16 May 2023) at p 15.

and where it was going to. An honest person would not sign blank cheques and transfers.

269 Counsel for Moon, Mr Koh, submitted that at the date WPS was incorporated Feng had not met the Initial Defendants and the Private Bank Acquisition was not in anyone's contemplation. There was thus no evidence that Feng had wanted to incorporate WPS for the purpose of inducing the payment of money into the WPS bank account for this purpose.

270 The furthest that the evidence went was to suggest that Feng selected the name in order to draw upon the reputation of Walkers and his reputation as a solicitor in Walkers when carrying out his private business activities. There was no suggestion that he was intending to be dishonest in those activities. This, it is said, is sufficient to cause either Moon or the honest person to ask questions to satisfy themselves that there was no issue with Feng's employers over the choice of name – but no more than this.

271 Mr Koh went on to submit that this is what Moon did. Newly married, she was asked by her husband to become involved with WPS and her reaction was to ask whether the choice of name mattered to Walkers and received the answer that it did not. She accepted her husband's word both because he was her husband but also because he was a lawyer and she was not. The honest person in her position would have done no more.

272 Having accepted Feng's initial explanation, there was no intervening act which should have alerted her to make further enquiries, and thus Mr Koh submitted that her actions in leaving the bank statements unopened was not an indication of wilful blindness.

273 In my judgment, what is crucial to a determination of this issue is to focus first on Moon's state of mind when she was asked to become involved with WPS. She at once saw the association between WPS's name and Walkers, her husband's employers. Her reaction was not to suggest that the name could only have been chosen to further a dishonest business and to have her husband clarify what the nature of the intended business was. Having seen her in the witness box, I am satisfied that at no time did she harbour any suspicion that her husband's private business activities would be anything other than wholly legitimate, in keeping with his reputation as a successful solicitor employed by a reputable firm.

274 Her concern was not that there was some intention to trade dishonestly under the name but she wanted to be satisfied that there would be no difficulty with Feng's employers in his carrying out a legitimate business under that name. Hence she asked the questions she did and received his assurance that there were no issues with Walkers.

275 One asks rhetorically, what more should she have asked? She had no reason to disbelieve her husband. To ask further questions would have been to indicate a degree of mistrust which runs counter to a married couple in their first few weeks of marriage. At that time therefore, I do not consider that Moon demonstrated "wilful blindness". Likewise, I do not consider that her actions in not opening the bank statements or questioning her husband at a later date as to what the cheques and transfers were being used for constituted wilful blindness on her part. It was not suggested that anything happened in the intervening three years between their marriage and the events surrounding the Private Bank Acquisition in 2018 to alert her to the possibility of wrongdoing on Feng's part. The plaintiffs' position thus has to be that it is indicative of "wilful blindness"

not to open bank statements relevant to your husband's business which I am not prepared to accept.

276 I turn then to consider whether the approach of the honest person in the position of Moon would have been the same. The real question to my mind is whether that person would have adopted the same attitude as Moon at the outset. Would that person have had suspicions that in his choice of name, Feng was proposing to carry out unlawful business activities, and would that person have asked questions relevant to this and not merely to Walkers' position with regard to the name?

277 The plaintiffs have not satisfied me that this is the case. Some wives might have cross-examined their husbands further or merely been more inquisitive but what I have to consider here is a notional honest person sharing Moon's characteristics, newly married to a successful solicitor who carries on some private business on his own account. I consider that such a person would adopt the same approach as Moon and direct their concerns to Feng's relationship with Walkers and not assume some underlying dishonest motive in the choice of name.

278 Once one reaches that conclusion, there is nothing in Moon's subsequent conduct which would have been different when seen through the eyes of the honest person.

279 Accordingly, I am not satisfied that Moon had constructive knowledge, either on the basis of wilful blindness or the honest person test, that the purpose underlying the incorporation of WPS was to induce persons to deposit money

with WPS[181] or that the Micro Tellers investment or the Float paid into the WPS account did not belong beneficially to WPS.[182] To ascribe such knowledge, it would be necessary to hold that Moon was wilfully blind in failing to take an active interest in the affairs of WPS and that the honest person would have done so. For the reasons given, on the facts of this case, I am unpersuaded that Moon should have taken an active part in the running of WPS.

280 The facts of this case thus do bear a distinct similarity to those in *O'Laughlin.* The most that can be said against Moon is that she agreed to be the sole shareholder and director of a company and the sole signatory of its bank account and, having satisfied herself that the choice of name did not matter to Walkers, did not thereafter take any interest in the affairs of the company. That is insufficient on the facts of this case to constitute dishonesty for the purposes of the fourth requirement of the tort.

281 The action against Moon for dishonest assistance thus fails.

Conspiracy

282 The case based on conspiracy is alleged to be founded on a combination by unlawful means to unjustly enrich Feng.[183]

283 Such a plea requires proof that both parties must be "sufficiently aware of the surrounding circumstances and share the object for it properly to be said that they were acting in concert at the time of the acts complained of":[184] see

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181 SOC at paras 37(b) and 17(b).

182 SOC at paras 37(c) and 50(c).

183 SOC at paras 53–56.

184 PCS at para 201.

Kuwait Oil Tanker Co SAK v AL Bader (No 3) [2000] 2 All ER (Comm) 271 at [111] and *EFT Holdings, Inc v Marinteknik Shipbuilders (S) Pte Ltd* [2014] 1 SLR 860 at [113].[185] This cannot be said having regard to the part played by Moon.

284 Since the case on dishonest assistance fails, it follows on the facts of this case that the case based on conspiracy cannot succeed. There was no agreement between Feng and Moon to do the acts relied upon.

Relief

285 In relation to the Private Bank Acquisition, Micro Tellers seeks an order that Feng pay it the sum of US$2,700,198[186] and the Regional Group seeks payment of US$1,901,859.74 (the Float of US$2,074,051.80 less US$172,192.06 already repaid).[187]

286 In Suit 8, damages were assessed on 9 November 2021 in the Suit 8 Plaintiffs' (PAM and 5&2) favour in the sums of US$5,268,000 and S$1,233,000 together with interest which, in total, amounted to US$6,231,213.65 and S$1,427,202.09.

287 Cl 1.1 of the Settlement Agreement dated 7 May 2021 between Andrew (together with the Suit 8 Plaintiffs) and the plaintiffs in this action (see [19] above) provided that in the event that PAM and 5&2 obtained final judgment in Suit 8 against Feng, they would assign their rights to any sum which was the difference between the total judgment sum in Suit 8 and the sum of

185 PCS at para 201.

186 SOC at paras 25 and 34.

187 SOC at para 47.

US$1,300,000. Accordingly, the plaintiffs in this action are the assignees of the debt owed to PAM and 5&2 in the sum of US$4,931,213.65 plus S$1,427,202.09 (in excess of US$1,000,000.00); some US$6m in total.

288 The total sum sought in this action by both sets of plaintiffs in relation to the Private Bank Acquisition is US$4,602,057. Although the sum due in interest has not been calculated, it can be seen that enforcement of their rights as assignees of the judgment debt in Suit 8 to the full value of their entitlement would have been likely to extinguish any award of damages plus interest made in the plaintiffs' favour in this action.

289 As I made clear to counsel at the end of the hearing, I was troubled by the fact that the plaintiffs had maintained their claim in this action in relation to the Private Bank Acquisition when it appeared that, as assignees, they were already entitled to seek payment of sums in excess of those claimed.

290 However, Feng did not seek any order staying these proceedings pending enforcement of the order in Suit 8. Further Mr Tan made the valid point that resolution of the claim made against Moon in dishonest assistance and against Feng and Moon in conspiracy first required the court to make findings as to the legality of Feng's conduct.

291 Mr Tan accepted that it would be wrong for Feng to be exposed to double recovery where there were two orders for the same loss, one in favour of the principal and the other in favour of the agent, particularly where the agent had already assigned its right to the principal: see *Family Food Court (a firm) v Seah Boon Lock and another (trading as Boon Lock Duck and Noodle House)* [2008] 4 SLR(R) 272 at [61]. He proposed that in these circumstances any possibility of double recovery could be eliminated by an undertaking to the

court that the Suit 5 plaintiffs would give credit to Feng for any sums the Suit 5 plaintiffs recovered under the Settlement Agreement.

292 Although I remain troubled by the duplication of the cases against Feng in relation to the Private Bank Acquisition, I accept that this is a regrettable but necessary consequence of not being able to try the two actions together and by the late addition of the claims involving Moon. I consider that justice can be done by an appropriate undertaking to avoid the possibility of double recovery and by considering the appropriate costs order.

293 So far as concerns the undertaking, I have concluded that it should be somewhat broader than that proposed by Mr Tan. Where, as here, the principal is also the assignee of the agent's debt, the undertaking should extend to ensuring that only one set of proceedings seeking to enforce the debts are in being at any given time as well as providing that due credit will be given to Feng for any sums recovered by the Suit 5 plaintiffs.

Conclusion

294 Micro Tellers' case against Feng based on deceit and breach of trust/fiduciary duty succeeds. Micro Tellers is entitled to an order for payment of the sum of US$2,700,198 together with ancillary relief including interest.

295 The Regional Group's case against Feng based on breach of trust/fiduciary duty succeeds. The Regional Group is entitled to an order for payment of the sum of US$1,901,859.74 together with ancillary relief including interest.

296 As a condition of obtaining the above orders the plaintiffs must give an appropriate undertaking to ensure that (a) there is no duplication of recovery

proceedings in relation to those orders and the orders for payment made in Suit 8; and (b) there is no double recovery.

297 The Regional Group's claim against Feng in relation to the Europe Transaction is dismissed.

298 The plaintiffs' claims against Moon in dishonest assistance and against Moon and Feng in conspiracy are dismissed.

299 I should be grateful if counsel could liaise as to the correct form of order to reflect this judgment, to include the question of interest, ancillary relief, the undertaking and costs. To the extent that this cannot be agreed, the parties should within 28 days prepare written submissions (limited to 15 pages) on outstanding matters with an indication as to whether there should be a further hearing to determine those matters or whether it is agreed that an oral hearing can be dispensed with.

Simon Thorley
International Judge

Tan Gim Hai Adrian, Ong Pei Ching, Chin Yen Bing Arthur, S Lingesh Kumar and Siah Jiayi Vivian (TSMP Law Corporation) for the plaintiffs;
The fourth defendant in person;
Koh Junxiang and Ng Pi Wei (Clasis LLC) for the fifth defendant.

Annex A: PAM Settlement Agreement

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made on the 7th day of May 2021 (the "**Effective Date**").

BETWEEN:

(1) **LING HUI ANDREW** ("**Andrew**") (NRIC No. [redacted];

(2) **PROVIDENCE ASSET MANAGEMENT** ("**PAM**") (Cayman Islands Registration No. CT-296200), a company incorporated in the Cayman Islands and having its registered office at Cricket Square, Hutchins Drive, PO Box 2681, Grand Cayman, KY1-1111, Cayman Islands; and

(3) **5 AND 2 PTE LTD ("5&2")** (UEN No. 201423101H), a company incorporated in Singapore and having its registered office at 3016 Bedok North Avenue 4, #07-26, Eastech, Singapore 489947;

(collectively, the "**Andrew Parties**")

And

(4) **THE MICRO TELLERS NETWORK LIMITED** (Hong Kong Registration No. 2546184)

(5) **MICHAEL LIN DAOJI** (NRIC No. [redacted]

(6) **RIO LIM YONG CHEE** (NRIC No [redacted]

(7) **WONG ZHI KANG, CLEMENT** (NRIC No. [redacted]

(collectively, the "**Assignees**").

Hereinafter collectively referred to as "**the Parties**" and each as a "**Party**".

WHEREAS

(A) The Assignees are the plaintiffs in SIC/S 5/2020 ("**Suit 5**"), an action in the Singapore International Commercial Court.

(B) Andrew and PAM are the 2nd and 3rd defendants respectively in Suit 5.

(C) PAM and 5&2 are the plaintiffs in SIC/S 8/2020 ("**Suit 8**"), an action in the Singapore International Commercial Court. Then Feng ("**Feng**") is the defendant in Suit 8.

(D) Andrew is the sole director and ordinary shareholder of PAM, and is a director and owns 50% of the shareholding of 5&2. Andrew has full authority to enter into this settlement agreement on behalf of PAM and 5&2.

(E) On the terms and conditions stated herein in this Settlement Agreement, the Assignees hereby agree to discontinue their claims against Andrew and PAM in Suit 5, and agree not to commence any further claims in relation to the matters in Suit 5 against Andrew and PAM.

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(F) In consideration for the Assignees discontinuing their claims in Suit 5 as against Andrew and PAM, the Andrew Parties agree to (among other things) (i) assign and/or procure the assignment to the Assignees of all the rights and interests in respect of the sum of US$4,700,000 out of any final judgment that PAM and 5&2 obtain against Feng in Suit 8; and (ii) pay the Assignees the sum US$500,000 within two years from the Effective Date.

(G) This Settlement Agreement is personal to Andrew and PAM and will not affect the Assignees' rights and remedies against the other defendants in Suit 5.

(H) For the avoidance of doubt, the Assignees reserve their rights to pursue the claims in Suit 5 to their fullest extent against Cheng Yi Han (Zhong Yihan) ("**Yi Han**") and Feng.

IT IS AGREED as follows:

1. Terms of the Assignment

1.1 In the event that PAM and 5&2 obtain final judgment in Suit 8 against Feng, PAM and 5&2 shall assign absolutely to the Assignees all of PAM's and 5&2's rights and interests in respect of the **Assignment Sum**, which is defined as the difference between the total judgment sum in Suit 8 and the sum of US$1,300,000.

1.2 In the event that PAM and 5&2 do not succeed in their claims in Suit 8 and/or in the event that the action in Suit 8 is stayed, discontinued, and/or is not finally determined for whatever reason, the Andrew Parties shall be jointly and severally liable to and shall pay the Assignees the sum of US$4,700,000 ("**Fixed Sum**") within two years from the Effective Date.

1.3 If the total judgment in Suit 8 is more than US$1,300,000 but less than US$6,000,000, in addition to the obligation in clause 1.1 above, the Andrew Parties shall be jointly and severally liable to and shall pay the Assignees the difference between the Fixed Sum and the Assignment Sum within two years from the Effective Date.

1.4 If the total judgment in Suit 8 is less than or equal to US$1,300,000, the Andrew Parties shall be jointly and severally liable and shall pay the Assignees the Fixed Sum within two years from the Effective Date.

1.5 The Andrew Parties warrant that the rights to be assigned under clause 1.1 ("**Judgment Rights**") are free from any charge, encumbrance or other security interest.

1.6 The Andrew Parties shall not create any further charge, encumbrance, or other security interest in respect of the Judgment Rights, and shall not enter into any agreement with any other party in respect of the Judgment Rights without the Assignees' written consent.

1.7 Andrew agrees to procure PAM and 5&2 to comply with their obligations under this Settlement Agreement. In the event that PAM and/or 5&2 fail to and/or do not for any reason comply with their obligations under this clause, Andrew shall be liable to and shall

pay the Assignees the sums due to be assigned to the Assignees under clause 1.1 within the timeframes set out in this clause.

2. Additional payment

2.1 In addition to the obligations in clauses 1.1 to 1.7 above, the Andrew Parties shall jointly and severally pay the Assignees the sum of US$500,000 within two years from the Effective Date (i.e. by 7 May 2023).

3. Covenant not to sue

3.1 In consideration for the Andrew Parties' obligations undertaken pursuant to this Settlement Agreement, the Assignees shall discontinue the claims in Suit 5 as against Andrew and PAM, and the Assignees agree not to commence any further claims in relation to the matters in Suit 5 against Andrew and PAM.

3.2 Within fourteen (14) days of the execution of this Settlement Agreement:

3.2.1 The Assignees shall file a Notice of Discontinuance to discontinue the claims against Andrew and PAM in Suit 5.

3.2.2 Andrew and PAM shall apply to court to discharge the Order of Court made in HC/ORC 3080/2020 ("**Mareva Order**") granted against them (the "**Application**") by way of a consent order. The Assignees will provide their consent to the Application.

[redacted]

3.3 Andrew and PAM shall not make any claim for damages against the Assignees in respect of the Mareva Order and/or in respect of the claims in Suit 5.

3.4 The Assignees, Andrew and PAM shall bear their own costs in respect of Suit 5.

3.5 The Assignees' agreement to discontinue the claims in Suit 5 and to not make any further claims relating to the matters in Suit 5 as against Andrew and PAM constitutes a covenant not to sue Andrew and PAM in respect of the claims in Suit 5.

3.6 This Settlement Agreement does not affect the Assignees' rights and remedies against Yi Han and Feng, the other defendants in Suit 5.

3.7 The Assignees reserve all their rights to pursue the claims in Suit 5 to their fullest extent against Yi Han and Feng.

[redacted]

3

Annex B: Yi Han Settlement Agreement

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made on the 15th day of June 2021 (the "**Effective Date**").

BETWEEN:

(1) **CHENG YI HAN (ZHONG YIHAN)** ("**Yi Han**") (NRIC No. [redacted]

AND

(2) **THE MICRO TELLERS NETWORK LIMITED** (Hong Kong Registration No. 2546184)

(3) **MICHAEL LIN DAOJI** (NRIC No. [redacted]

(4) **RIO LIM YONG CHEE** (NRIC No. [redacted]

(5) **WONG ZHI KANG, CLEMENT** (NRIC No. [redacted]

(collectively, the "**Plaintiffs**")

Hereinafter collectively referred to as the "**Parties**" and each as a "**Party**".

WHEREAS

(A) The Plaintiffs commenced HC/S 916/2019 in the High Court of Singapore on 13 September 2019, in relation to disputes arising out of or in connection with the Private Bank Acquisition, the Europe Transaction, and the Float ("**Disputes**"). The terms "Private Bank Acquisition", "Europe Transaction", and "Float" shall have the meaning ascribed to it in the Statement of Claim (Amendment No. 3) dated 16 April 2021 filed in Suit 5.

(B) HC/S 916/2019 was subsequently transferred to the Singapore International Commercial Court as SIC/S 5/2020 ("**Suit 5**").

1

(C) Yi Han is the 1st Defendant in Suit 5 (previously HC/S 916/2019).

(D) On the terms and conditions stated herein in this Settlement Agreement, and without any admission of liability by Yi Han whatsoever, the Plaintiffs hereby agree to discontinue their claims against Yi Han in Suit 5, and agree not to commence any further claims against Yi Han in relation to the matters raised in Suit 5.

(E) This Settlement Agreement is personal to Yi Han and does not affect the Plaintiffs' rights and remedies against the 4th Defendant in Suit 5, Then Feng ("**Feng**").

(F) The Plaintiffs reserve their rights to pursue their claims in Suit 5 against Feng to their fullest extent.

IT IS AGREED as follows:

I. Payment and Disclosure of Assets

1. Yi Han shall pay to the Plaintiffs the sum of US$2,000,000 ("**Settlement Sum**") in the following manner:

   a. the sum of US$1,200,000 ("**Initial Sum**") within 4 months of the Effective Date ("**Initial Sum Deadline**"); and

   b. the sum of US$800,000 ("**Remaining Sum**") in 8 instalments of US$100,000 ("**Instalment Sum**"). Each Instalment Sum is to be paid to the Plaintiffs every 12 months ("**Instalment Deadline**"), with the first Instalment Sum due within 12 months of the Initial Sum Deadline.

2. Yi Han represents that his assets have been exhaustively set out in his two affidavits of means filed in Suit 5 (i.e. Yi Han's 4th Affidavit dated 1 July 2020 and 9th Affidavit dated 11 June 2021) (the "**Means Affidavits**"). Copies of the Means Affidavits are set out in **Annex B** herein.

3. If any one of the following events occurs:

   a. Yi Han fails to pay the Initial Sum in full by the Initial Sum Deadline;

2

b. Yi Han fails to pay any Instalment Sum in full by the relevant Instalment Deadline; or

c. it is discovered that there are assets, with aggregate value of more than US$10,000, which should have been but were not disclosed in the Means Affidavits ("**Non-Disclosure Event**"),

any remaining amount of the full Settlement Sum which remains unpaid by Yi Han (the "**Payable Sum**") shall become immediately due and payable by Yi Han to the Plaintiffs. For the avoidance of doubt, a Non-Disclosure Event shall not arise in relation to assets obtained after Yi Han's 9th Affidavit dated 11 June 2021 ("**2nd Means Affidavit**"), including but not limited to any income earned by Yi Han subsequent to the 2nd Means Affidavit.

4. With respect to a Non-Disclosure Event:

a. If the undisclosed asset is in cash or fiat currency, Yi Han shall pay the same to the Plaintiffs.

b. If the undisclosed asset is not in cash or fiat currency, Yi Han shall, subject to Clause 5 herein, take all reasonable endeavours to sell the asset at a fair market value and transfer the net sale proceeds to the Plaintiffs.

c. Any sums payable by Yi Han to the Plaintiffs in accordance with Clause 4 herein are defined as the "**Additional Sums**".

d. The aggregate of the Settlement Sum and the Additional Sums shall be capped at US$4,600,000.

5. With respect to Yi Han's obligation to sell an undisclosed asset as set out at Clause 4(b) herein:

a. Yi Han is required to seek the Plaintiffs' agreement in relation to whether a proposed sale price constitutes fair market value ("**Yi Han's Notice**"). Such agreement shall not be unreasonably withheld. In particular, if the Plaintiffs disagree that the proposed sale price constitutes fair market value, the

3

Plaintiffs' shall, within 14 days from Yi Han's Notice, state their position in writing as regards what the fair market value of the asset is (the "**Plaintiffs' Position**").

b. If the Parties are unable to agree on whether a proposed sale price constitutes fair market value within 14 days from the Plaintiffs' Position, Yi Han shall transfer the assets to the Plaintiffs (or any one of them). The fair market value of the asset shall be deemed to be the value ascribed to the asset in the Plaintiffs' Position.

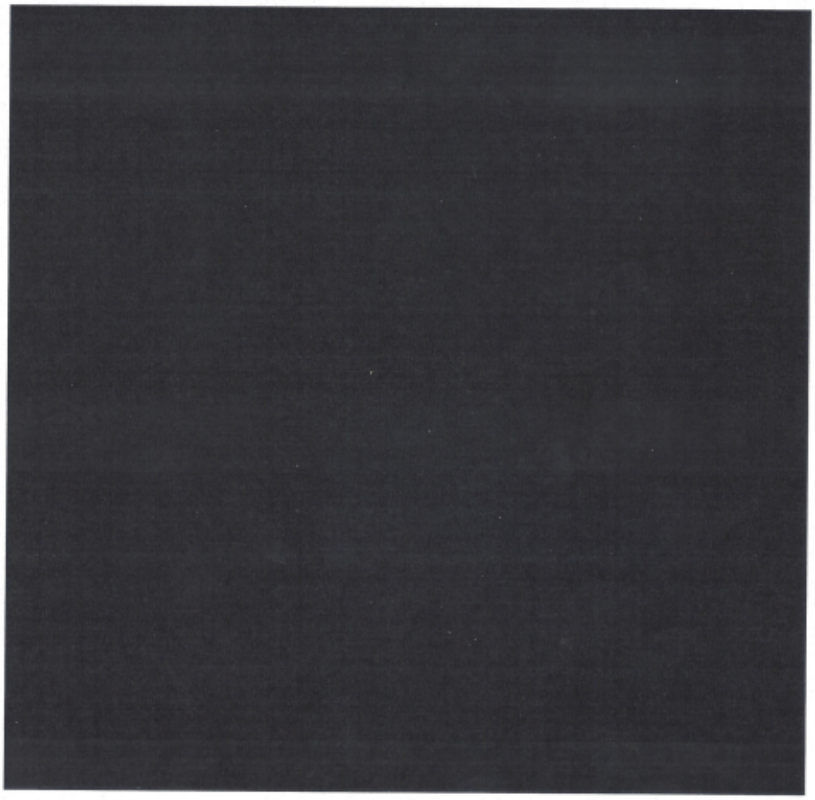
4

II. **Discontinuance of Suit 5 against Yi Han**

6. Within 14 working days of the Effective Date, the Plaintiffs shall file, and Yi Han shall consent to the Plaintiffs' filing of, a Notice of Discontinuance to discontinue their claims against Yi Han in Suit 5, with no order as to costs.

7. Yi Han acknowledges that the Court's acceptance of any Notice of Discontinuance filed by the Plaintiffs is subject to, among other things, Feng's consent and/or the Court's grant of leave.

8. Each Party is to bear its own costs in relation to Suit 5.



5

In witness whereof this **Settlement Agreement** has been entered into on the Effective Date.

SIGNED BY **CHENG YI HAN (ZHONG YIHAN)** (NRIC No. [redacted]

in the presence of:

Witness's signature
Name:

SIGNED BY **CHARLES CUONG-TAN THACH**

for and on behalf of **THE MICRO TELLERS NETWORK LIMITED** (Hong Kong Registration No. 2546184)

in the presence of:

Witness's signature
Name:

SIGNED BY **MICHAEL LIN DAOJI** (NRIC No. [redacted]

in the presence of:

Witness's signature
Name:

8

SIGNED BY **RIO LIM YONG CHEE** (NRIC No. [redacted]

in the presence of:

_____

Witness's signature
Name:

SIGNED BY **WONG ZHI KANG, CLEMENT** (NRIC No. [redacted]

in the presence of:

_____

Witness's signature
Name:

9

Annex C: Oral Judgment in SIC/S 5/2020 (SIC/SUM 6/2022) dated 18 May 2022

SUPREME COURT OF SINGAPORE

18 May 2022
The Micro Tellers Network Limited and others v Cheng Yi Han (Zhong Yihan) and others
SIC/S 5/2020 (SIC/SUM 6/2022)
Oral Judgment

Decision of the Singapore International Commercial Court (delivered by International Judge Simon Thorley):

1 This is a summons by the plaintiffs for leave to amend the writ by the addition of a further party, as well as amending the statement of claim in a number of respects. The trial of this action ("Suit 5") began on 14 June 2021, together with the trial of another action, SIC/S 8/2020 ("Suit 8"). For reasons set out at [1]–[13] of my judgment of 22 September 2021, the trial of this action had to be adjourned:

> 1 These two actions, SIC/S 5/2020 and SIC/S 8/2020 ("Suit 5" and "Suit 8" respectively), raise similar causes of action based on facts which, to a certain extent, overlap. They were therefore ordered to be tried together. The trial commenced on 14 June 2021 and was scheduled to last for 10 working days.
>
> 2 In the days leading up to the trial, the Plaintiffs in Suit 5 reached a settlement with the 2nd and 3rd Defendants in Suit 5. The 3rd Defendant, Providence Asset Management ("PAM"), is a company incorporated in the Cayman Islands. Its Managing Partner is the 2nd Defendant in Suit 5, Ling Hui Andrew ("Mr Ling"), who is a Singapore citizen.
>
> 3 This resulted in the 1st Defendant in Suit 5, Cheng Yi Han ("Mr Cheng"), who is also a Singapore citizen, seeking leave to issue a Third Party Notice against the 2nd and 3rd Defendants, PAM and Mr Ling. Leave was granted on the basis that any issues arising on the Third Party Notice would not be raised at the trial and that any necessary directions on the Third Party Notice would be given after judgment following the trial.

4 The 3rd Defendant in Suit 5, PAM, is also the 1st Plaintiff in Suit 8. The 2nd Plaintiff in Suit 8, 5 and 2 Pte Ltd ("5&2"), is a Singapore company of which Mr Ling is a director.

5 The 4th Defendant in Suit 5, Then Feng ("Mr Then"), is a Singapore citizen who is also the 1st Defendant in Suit 8. The 2nd Defendant in Suit 8 is Mr Then's wife but the action against her was discontinued on 29 September 2020. Mr Then was thus the only remaining defendant in Suit 8.

6 At the start of the trial, oral opening submissions were first made by counsel for the Plaintiffs in both actions, followed by counsel for Mr Cheng, and then by Mr Then, who was at that time a litigant in person. The first witness to give evidence was Frederic Willy Gaillard ("Mr Gaillard"), a Swiss national resident in Singapore. Mr Gaillard provided an affidavit of evidence-in-chief ("AEIC") in each action which were then supplemented by further AEICs in each action. He was cross-examined by Mr Then on his evidence given both in Suit 5 and in Suit 8. Following the conclusion of his oral evidence, counsel for the Plaintiffs in Suit 5 informed the court that settlement negotiations between the Plaintiffs in Suit 5 and Mr Cheng, the 1st Defendant in Suit 5, were at an advanced stage, and that he was hopeful that an agreement could be reached if the trial was adjourned until the following day. This was not opposed.

7 The following day, 15th July 2021, the court was informed that settlement had indeed been reached and that Mr Cheng and his counsel would play no further part in the trial. The Third Party Notice also fell away. Mr Then was thus also the sole remaining defendant in Suit 5 as he had become in Suit 8.

8 This change of events raised a number of considerations. First, Mr Then was acting in person and the original trial schedule envisaged that the next four witnesses to be called on behalf of the Plaintiffs in Suit 5 would be cross-examined first by counsel for Mr Cheng and then by Mr Then. The time estimate provided for cross-examination indicated that the bulk of the cross-examination would be carried out by counsel for Mr Cheng with only a small amount of time being allocated thereafter to Mr Then. As counsel for Mr Cheng would now play no further part in the trial, this meant that Mr Then would have to conduct the cross-examination himself. Since this new development only happened part way through trial, Mr Then was understandably not in a position to conduct all the cross-examination that day.

9 Second, the pleadings in Suit 5 were complex, involving, *inter alia*, an allegation of conspiracy involving Mr Then, Mr Ling and Mr Cheng, and it was unclear precisely what case would

> now be advanced by the Plaintiffs in Suit 5 against Mr Then following the settlement of the actions against the other Defendants in Suit 5.
>
> 10 Third, Mr Then indicated that although he had prepared himself to carry out his part of the cross-examination of the four Plaintiff's witnesses in Suit 5, he was not at that time properly prepared to carry out the cross-examination of Mr Ling who was only scheduled to give evidence the following week.
>
> 11 Following submissions, I concluded that it was necessary that the Statement of Claim in Suit 5 should be amended so as to make clear what case was being raised against Mr Then, now the only defendant, and that the AEICs served on behalf of the Plaintiffs in Suit 5 should be amended so as to exclude matters which were now irrelevant. This necessarily meant that the trial of Suit 5 could not continue as planned.
>
> 12 Counsel for the Plaintiffs in Suit 8 however invited the court to continue with the trial of Suit 8. This was not opposed by Mr Then, provided that he had a proper opportunity to prepare his cross-examination of Mr Ling. This was a course that was acceptable to counsel for the Plaintiffs in Suit 5. Accordingly, I directed that Suit 5 should be adjourned and that a case management conference for further directions in that action should be held after Judgment in Suit 8 but that Suit 8 should proceed after an appropriate adjournment to enable Mr Then to prepare the cross-examination of Mr Ling.
>
> 13 The remainder of this Judgment is therefore directed solely to the facts and issues arising in Suit 8. It is based and based only on the evidence adduced in Suit 8 and nothing that I say or conclude can have any effect on the now separate trial of Suit 5. Whilst separate trials are undesirable, in the circumstances, this was the only way forward that was fair to all parties.

2 This is therefore an application to amend the written statement of claim after the trial has begun. The amendment to the writ seeks to join Ms Lee Moon Young ("Ms Moon") as a party to the action. Ms Moon is the wife of Mr Then Feng ("Mr Then"), the sole defendant at the trial in Suit 8 and currently the only defendant remaining in Suit 5.

3 The amendments proposed in the statement of claim fall into two main categories. First, there are a number of amendments purportedly in compliance with the direction given by me during the trial and recorded in my judgment. Secondly, a number of amendments are proposed to raise three causes of action against Ms Moon; two allegations of dishonest assistance of Mr Then and one of conspiracy with Mr Then.

4 I propose to deal first with the application to join Ms Moon.

5 The Summons states that the application is made pursuant to O 15 r 4(1) read in conjunction with O 110 r 9(1) and O 20 r 5(1) read in conjunction with O 110 r 3(1) of the Rules of Court (2014 Rev Ed).

6 Two affidavits are relied upon. The seventh affidavit of Charles Cuong-Tan Thach filed on behalf of the first plaintiff and the first affidavit of Rio Lim Yong Chee, the third plaintiff, filed on behalf of the second to fourth plaintiffs.

7 So far as joinder of parties is concerned, O 110 r 3 reads as follows:

> **Application of Rules of Court (O. 110, r. 3)**
>
> **3.**—(1) Subject to this Order, the provisions of these Rules apply to all proceedings in the Court and all appeals from the Court.
>
> (2) Despite any provision of these Rules but subject to paragraph (3), the Court may, if it considers that doing so is necessary or desirable for the just, expeditious and economical disposal of any proceedings in the Court —
>
> (*a*) make such order as the Court considers just and appropriate; or
>
> (*b*) set aside, amend or supplement any of the following:
>
> (i) any order made under sub-paragraph (a);

(ii) any order amended under this sub-paragraph;

(iii) any supplementary order made under this sub-paragraph.

(3) Where any provision of these Rules makes the exercise of a power by the Court conditional on a party agreeing or consenting to the exercise of that power by the Court, paragraph (2) does not authorise the Court to exercise that power without the agreement or consent of that party.

8 Order 110 rule 9(1), which relates to joinder of other persons as parties, reads as follows:

Joinder of other persons as parties (O. 110, r. 9)

9.—(1) In an action where the Court has and assumes jurisdiction, or in a case transferred to the Court under Rule 12 or 58, a person may be joined as a party (including as an additional plaintiff or defendant, or as a third or subsequent party) to the action if —

(*a*) the requirements in these Rules for joining the person are met; and

(*b*) the claims by or against the person —

(i) do not include a claim for any relief in the form of, or connected with, a prerogative order (including a Mandatory Order, a Prohibiting Order, a Quashing Order or an Order for Review of Detention); and

(ii) are appropriate to be heard in the Court.

9 None of the exceptions in limb (*b*) apply, so reference back to the remainder of the rules is required.

10 The starting point is O 20 r 5, and r 5(1) reads:

Amendment of writ or pleading with leave (O. 20, r. 5)

5.—(1) Subject to Order 15, Rules 6, 6A, 7 and 8 and this Rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such

> terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

There is therefore a liberty given to the court to amend, subject to O 15 r 6.

11 The relevant aspect of O 15 r 6 in the present case is O 15 r 6(2)(*b*)(ii).

> **Misjoinder and nonjoinder of parties (O. 15, r. 6)**
>
> 6.—(1) No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of any party; and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.
>
> (2) Subject to the provisions of this Rule, at any stage of the proceedings in any cause or matter, the Court may, on such terms as it thinks just and either of its own motion or on application —
>
> (*a*) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party; or
>
> (*b*) order any of the following persons to be added as a party, namely:
>
> (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in the cause or matter may be effectually and completely determined and adjudicated upon;
>
> (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.
>
> (3) An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the

> matters in dispute in the cause or matter or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter.
>
> (4) No person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised.

12 The plaintiffs relied on O 15 r 4, which is reproduced below:

> **Joinder of parties (O. 15, r. 4)**
>
> 4.—(1) Subject to Rule 5(1), 2 or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where —
>
> (*a*) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions; and
>
> (*b*) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.
>
> …

13 That provision relates primarily to the circumstances where parties can be joined without leave. It does not deal in detail with the factors that should be considered when leave is required. The relationship between O 15 r 4 and O 15 r 6 was considered by Roger Giles IJ in *Mohamed Shiyam v Tuff Offshore Engineering Services Pte Ltd* [2021] 5 SLR 188 ("*Mohamed Shiyam*") at [30]–[40]:

> *Principles relating to joinder*
>
> 31 Although parties did not draw attention to this provision, it is appropriate to note that under the ROC, there is a separate rule for joinder in proceedings before the SICC: O 110 r 9. This rule requires that the general requirements for joinder to be met, and also requires that the claim does not seek public law remedies, and are appropriate to be heard by the SICC. I reproduce the rule:

> 9.—(1) In an action where the Court has and assumes jurisdiction, or in a case transferred to the Court under Rule 12 or 58, a person may be joined as a party (including as an additional plaintiff or defendant, or as a third or subsequent party) to the action if—
>
> > (*a*) the requirements in these Rules for joining the person are met; and
> >
> > (*b*) the claims by or against the person —
> >
> > > (i) do not include a claim for any relief in the form of, or connected with, a prerogative order (including a Mandatory Order, a Prohibiting Order, a Quashing Order or an Order for Review of Detention); and
> > >
> > > (ii) are appropriate to be heard in the Court.
>
> (2) A State or the sovereign of a State may not be made a party to an action in the Court unless the State or the sovereign has submitted to the jurisdiction of the Court under a written jurisdiction agreement.
>
> (3) In exercising its discretion under paragraph (1), the Court must have regard to its international and commercial character.

32 It is convenient to dispose of the requirements under O 110 r 9(1)(b) at the outset. First, there is no question of public law remedies in this case. Secondly, the proposed defendants are directors and shareholders of the defendant and the claims against them share the international and commercial character of the existing dispute, and are appropriate to be heard in the SICC. This leaves O 110 r 9(1)(*a*), which stipulates that the requirements in the ROC for joining persons are met. As already stated, these are O 15 r 4 and O 15 r 6.

33 Order 15 r 4(1) of the ROC provides:

> **4.**—(1) Subject to Rule 5(1), 2 or more persons may be joined together in one action as plaintiffs or defendants with the leave of the Court or where—
>
> > (*a*) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all of the actions; and
> >
> > (*b*) all rights to relief claimed in the action (whether they are joint, several or alternative) are

> in respect of or arise out of the same transaction or series of transactions.

34 Order 15 r 6(2)(*b*) relevantly provides:

> (2) Subject to the provisions of this Rule, at any stage of the proceedings in any cause or matter, the Court may, on such terms as it thinks just and either of its own motion or on application —
>
> …
>
> (*b*) order any of the following persons to be added as a party,
>
> namely:
>
> (i) any person who ought have been joined as a party or whose presence before the Court is necessary to ensure that all matters in the cause or matter maybe effectually and completely determined and adjudicated upon;
>
> (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

35 Order 15 r 6(2) has a wider operation than O 15 r 4(1). The latter provision requires that there must be some common question of law or fact that would arise if separate actions were brought against the defendants, and the rights and relief claimed against the defendants are in respect of or arise out of the same transaction or series of transactions. If those requirements are satisfied, the plaintiff is entitled to join the multiple defendants: *Oh Bernard v Six Capital Investments Ltd (in liquidation) and others* [2020] SGHC 42 at [11]. However, these requirements are not necessary under O 15 r 6(2).

36 Under O 15 r 6(2), as explained in *Ernest Ferdinand Perez De La Sala v Compañia De Navegación, SA and others and other appeals* [2018] 1 SLR 894 ("*Ernest Ferdinand*") there is first a non-discretionary element and then, if it is satisfied, a discretionary element. The nondiscretionary element is an inquiry whether the "necessity" or the "just and convenient"

limb is satisfied, as to which limbs the court said (at [203]–[204]):

> 203. 203 … If the necessity limb is relied upon, the court must consider whether it is *necessary*, and not merely desirable, to order joinder. The question is, in essence, whether "'there [is anything] to prevent the action… as originally drawn, from being effectually and completely determined'"… The fact that a plaintiff might *wish* to bring a related claim against the third party would not satisfied satisfy the test of necessity. Such situations are more appropriately addressed under the just and convenient limb, which permits joined right where, in brief, there is as between the third party and any existing party some question or issue having a sufficient relation to the main dispute, and the court thinks it would be just in and convenient to decide it.
>
> 204. Even under the latter limb, however, it is not sufficient for there to be some factual overlap between the main dispute and the question or issue involving the third party. Rather, that question or issue must 'relate to *an* ***existing question or issue*** *between the* ***existing parties***' … The nondiscretionary element here is the existence of a question or issue having the requisite relationship with the main dispute; the discretionary element is whether, 'in the opinion of the Court', joinder for the purpose of deciding that question or issue would be just and convenient. If the court determines that the non-discretionary requirement is satisfied, it turns next to a discretionary assessment as to whether the joinder should be ordered.
>
> [emphasis in original]

37 The court continued, explaining at [205] that the discretionary stage concerned "countervailing concerns of fairness":

> 205. At the discretionary stage, the court's concerns are substantially similar whether the necessity limb or the just and convenient limb is relied upon. It should not be thought that where the necessity limb is successfully invoked, and the non-discretionary requirement is met, joinder will follow as a matter of course. Although the need to effectually and completely determine a dispute is in itself a strong reason for joinder, it is entirely possible for countervailing concerns of fairness (among other things) to override it. Either way, the court will consider all the factors which are relevant to the balance of justice in a particular case.

The extent to which merits of the case are considered

38 Whether to allow amendment does not involve an examination of the merits of the applicant's case, beyond whether it is bound to fail or (perhaps) bound to succeed: *Lim Yong Swan v Lim Jee Tee and another* [1992] 3 SLR(R) 940 at [34]. The principles to be applied in the context of O 20 r 5 are similar to those for striking out pleadings under O 18 r 19 of the ROC: *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1990] 1 SLR(R) 337 at [4]; *Wright Norman and another v Oversea-Chinese Banking Corp Ltd* [1993] 3 SLR(R) 640 at [45]. In short, it is sufficient that the amendment discloses a "reasonable cause of action", which was described in *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 ("*Gabriel Peter*") at [21] as:

> … *a cause of action which has some chance of success when only the allegations in the pleading are considered.* As long as the statement of claim discloses some cause of action, or raises some question fit to be decided at the trial, the mere fact that the case is weak and is not likely to succeed is no ground for striking it out … [emphasis added]

39 This standard similarly applies to O 15 r 4 and O 15 r 6(2) which serve a broadly similar purpose to O 20 r 5(1). In *Tan Yow Kon v Tan Swat Ping and others* [2006] 3 SLR(R) 881 ("*Tan Yow Kon*"), it was recognised that O 15 r 6 "stands in relation to parties as O 20 stands in relation to the amendment of pleadings": at [33]. Amendment provides a means of adjusting the pleading of a case so as to enable the dispute to be properly resolved, whilst joinder provides a means of adjusting the parties to a case so as to enable the dispute, or the dispute and a closely related dispute, to be properly resolved. Thus, there is like restraint from examining the merits on an applicant's case for joinder: see *Lee Bee Eng v Cheng William* [2021] 3 SLR 968 ("*Lee Bee Eng*") at [41], where the court declined to find that the case was "so hopeless that it [failed] to withstand basic scrutiny". As was said in *Tan Yow Kon* at [36], the rules in O 15 r 6 "are there to save rather than to destroy, to enable rather than to disable and to ensure that the right parties are before the court so as to minimise the delay, inconvenience and expense of multiple actions".

40 However, it remains that the court will not allow joinder where the pleaded case is doomed or plainly unsustainable: *Lee Bee Eng* at [40] citing *Alliance Entertainment Singapore Pte Ltd v Sim Kay Teck and another* [2007] 2 SLR(R) 869 at [54]–[58]. That will be so if examination of the pleading does not disclose a reasonable cause of action, in the sense explained in *Gabriel Peter*. My use of the phrase hereafter is in that sense.

14 I would respectfully amplify a little upon the comments made by Giles IJ.

15 First, where one is considering an amendment to add a party to an existing action, the existing parties cannot add others without leave. Order 15 rule 4 considers both joinder with leave and the circumstances where parties can be joined without leave at the outset of the action. As Giles IJ makes clear, O 15 r 6 is wider, and this is the rule expressly referred to in O 20 r 5. I consider that in an application such as this, regard should be had to the provisions of O 15 r 6 in order to determine whether it is appropriate for leave to be given.

16 Secondly, Giles IJ draws attention to O 18 r 19 at [38] of *Mohamed Shiyam*. Order 18 rule 19 covers a number of grounds for striking out and I believe Giles IJ was there referring to O 18 r 19(1)(*a*).

> **Striking out pleadings and endorsements (O. 18, r. 19)**
>
> **19.**—(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that —
>
> (*a*) it discloses no reasonable cause of action or defence, as the case may be;
>
> (*b*) it is scandalous, frivolous or vexatious;
>
> (*c*) it may prejudice, embarrass or delay the fair trial of the action; or
>
> (*d*) it is otherwise an abuse of the process of the Court,
>
> and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

The important aspect of this is that if the application is made under O 18 r 19(1)(*a*), that it discloses no reasonable cause of action, then no evidence is to be admitted: see *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed)

(Sweet & Maxwell, 2021) ("*Singapore Civil Procedure 2021*") at para 18/19/5. Further, *Singapore Civil Procedure 2021* states at para 18/19/6 as follows:

> **Exercise of powers under this rule—**It is only in plain and obvious cases that recourse should be had from the summary of process under this rule, *per* Lindley M.R. in *Hubbuck v Wilkinson* [1899] 1 Q.B. 86 at 91 (*Mayor, etc., of the City of London v. Horner* (1914) 111 L.T. 512, CA (Eng); *Resources Mining Pte. Ltd. v Puteh bte Abdullah & Ors.* [1989] 3 M.L.J. 393). See also *Kemsley v. Foot* [1951] 2 K.B. 34; [1951] 1 All E.R. 331, CA (Eng), affirmed [1952] A.C. 345, HL; *Wong Sai Tack v. Chien Hon Keong* [2000] 5 M.L.J. 74. The claim must be obviously unsustainable, the pleadings unarguably bad and it must be impossible, not just improbable, for the claim to succeed before the court will strike it out. It cannot be exercised by a minute and protracted examination of the documents and facts of the case in order to see whether the plaintiff really has a cause of action (*Wenlock v. Moloney* [1965] 1 W.L.R. 1238; [1965] 2 All E.R. 871, CA (Eng); *Gabriel Peters & Partners (suing as a firm) v. Wee Chong Jin & Ors.* [1997] 3 S.L.R.(R.) 649). …

17 With that background, I can turn to consider the application to join Ms Moon. The plaintiffs accept that Ms Moon was initially a party to Suit 8. The causes of action against her were founded in conspiracy and dishonest assistance and were based on similar allegations to those which the plaintiffs now seek to rely on. Subsequent to her filing a defence in Suit 8, the action against her was discontinued on 29 September 2020. The plaintiffs were not parties to that action and the reasons for discontinuance can have no bearing on the question of whether the proposed amended pleading in this action does raise a cause of action against Ms Moon.

18 The correct approach to my mind is to consider first whether the proposed amendment to the statement of claim does disclose a cause of action which has some chance of success when only the allegations in the pleading are considered. Second, if it does, then one turns to consider O 15 r 6(2)(*b*)(ii): first, under the non-discretionary element, whether it is necessary to order joinder; and secondly, even if necessity is shown, whether, under the discretionary

element, there are countervailing concerns (such as those of fairness) which may override the joinder. In the latter step, evidence may be relevant and Ms Moon has filed an affidavit in support of her position.

19 I should deal now with a preliminary point taken by Mr Adrian Tan ("Mr Tan"), counsel for the plaintiffs, who submitted that I should not hear any submissions on behalf of Ms Moon on this application. Mr Tan said that Ms Moon was not, at this stage, a party to the action and thus has no standing. The correct course was for me to hear and determine the Summons to join her in her absence. If I acceded to it, then the amended writ would be served on her and she could make such application as she saw fit either to set aside the order for joinder or to strike out portions of the amended statement of claim under O 18 r 19.

20 To me, this had an air of unreality about it as it was inevitable that Ms Moon, as Mr Then's wife, would become aware of the application. In any event, in this case, the plaintiffs had served Ms Moon with a copy of the Summons. Ms Moon had therefore instructed solicitors and filed her affidavit.

21 The overriding objective of the rules must be to ensure that legal disputes are adjudicated upon with as little expense and delay as the interests of justice require. It can make no sense to expose the parties to the possibility that there should be two hearings at first instance to resolve one issue. Far less that there might be two appeals in addition. I can see no provision in the rules which prevents the court, in an appropriate case, from allowing a non-party from making submissions on an application where that application directly affects the third party. Where justice and convenience demand, this court should in my judgment allow it, and is given that discretion by O 110 r 3(2), which I have already cited. Justice and convenience however would not demand this, if, on

the facts of the case, the non-party sought to retain the right, if unsuccessful at this hearing, thereafter to apply to strike out the writ or statement of claim once formally served with it.

22 In consequence, Mr Koh Junxiang ("Mr Koh"), who appeared on behalf of Ms Moon, on instructions, expressly waived any right to make such an application. Accordingly, there will only be one bite of the cherry and that will be at this hearing.

23 First, I shall consider the question of whether the amended statement of claim does disclose a cause of action against Ms Moon. This requires an examination of the proposed pleading. No recourse may be had to evidence. It must be assumed that the facts and matters relied upon by the plaintiffs will be proved at trial. The question to be asked and answered is whether if all such facts and matters are proved, the plaintiffs would have some chance of success. In other words, would there be some questions fit to be decided by the court even if the case at this stage would appear to be weak?

24 The three causes of action asserted against Ms Moon are as follows:

(a) First, in paras 37 to 40 of the proposed amendment to the statement of claim, there is a claim by the first plaintiff of dishonest assistance by Ms Moon of the various unlawful acts pleaded against Mr Then.

(b) Second, in paras 51 to 53A, there is an equivalent claim by the second to fourth plaintiffs of dishonest assistance by Ms Moon.

(c) Third, in paras 53B to 53E, there is a plea of conspiracy against Ms Moon and Mr Then.

25 The particulars relied upon in relation to each cause of action are, however, the same. Mr Tan accepted that if the plaintiffs failed to obtain leave in respect of one allegation, they would necessarily fail on all three. Likewise, Mr Koh for Ms Moon accepted that the allowability of the three causes of action stood or fell together.

26 I shall therefore consider the pleading at paras 37 to 40 in relation to dishonest assistance, which read as follows:

> ***E. Claim by Micro Tellers against Moon: Dishonest assistance***
>
> 37. Moon is liable in dishonest assistance to Micro Tellers.
>
> 38. Moon acted dishonestly in assisting Feng in relation to each of Feng's breaches of the MT Private Bank Trust Duties and/or breaches of the MT Private Bank Fiduciary Duties as pleaded at paragraphs 14 to 34 above.
>
> **PARTICULARS**
>
> a. Moon provided assistance in relation to each of Feng's fraudulent misrepresentation and/or deceit and/or breach of the MT Private Bank Trust Duties and/or breach of the MT Private Bank Fiduciary Duties:
>
> i. Moon was the sole shareholder and director of WPS.
>
> ii. Moon was the only authorised signatory of the WPS Bank Account.
>
> iii. As the sole shareholder and director of WPS, and the sole authorised signatory of the WPS Bank Account, any and all transfers of the Micro Tellers Investment out of the WPS Bank Account could only be carried out by Moon and/or facilitated with the active participation of Moon.
>
> iv. At the request of Feng, Moon became Feng's nominee in WPS, the sole director of WPS, and the sole shareholder of WPS.

v. As Feng's nominee in WPS, Moon carried out Feng's instructions in relation to the running of WPS.

b. Moon had actual and/or constructive knowledge that Feng had incorporated and utilised WPS for the WPS Purposes:

i. Moon is Feng's wife. Moon was the sole shareholder and director of WPS.

ii. In the circumstances, Moon would therefore have actual and/or constructive knowledge of the following:

1. that Feng was a solicitor in the employ of Walkers.

2. that the name of WPS (being Walkers Professional Services Limited) carried the same name as that of Walkers, Feng's employer.

3. that WPS had no relationship with Walkers.

c. Moon had actual and/or constructive knowledge that the Micro Tellers Investment paid into the WPS Account did not belong beneficially to WPS.

i. WPS did not carry out any work or services that would justify the receipt of the Micro Tellers Investment.

ii. There was no justifiable reason for the payment out of the Micro Tellers Investment.

39. Further and/or in the alternative, Moon had actual and/or constructive knowledge of Feng's dishonest and fraudulent design to utilise WPS for the WPS Purposes. Micro Tellers repeats the particulars at paragraph 38 above.

40. As a result of Moon's dishonest assistance, Micro Tellers has suffered loss and damage, being the Micro Tellers Investment. The Micro Tellers Investment was paid by Micro Tellers, acting through their agents, the Initial Defendants, in reliance on the dishonest fraudulent design perpetrated by Feng that WPS was associated with Walkers.

27 The cause of action of dishonest assistance requires four elements (see *Von Roll Asia Pte Ltd v Goh Boon Gay and others* [2018] 4 SLR 1053 ("*Von Roll*") at [105]):

(a) the presence of a fiduciary duty owed to the plaintiff;

(b) a breach of that duty;

(c) assistance rendered by the third party towards that breach; and

(d) that such assistance was rendered dishonestly.

28 The cause of action requires not only an element of knowledge on the part of Ms Moon of what Mr Then was doing, but that knowledge must extend either to actual or constructive knowledge, that what Mr Then was doing was or might be an unlawful misuse of funds paid into the WPS account or otherwise a dishonest or fraudulent use of the WPS account.

29 Mr Tan referred me to three authorities, *Barlow Clowes International Ltd (in liquidation) and others v Eurotrust International Ltd* [2006] 1 WLR 1476 ("*Barlow Clowes*") at [10], [23] and [28]; *Twinsectra Ltd v Yardley and others* [2002] 2 AC 164 at [24] and [135]; and *Group Seven Ltd and another v Nasir and others* [2019] EWCA Civ 614 at [95] and [104].

30 In *Barlow Clowes* at [10], Lord Hoffmann stated as follows:

> 10 The judge stated the law in terms largely derived from the advice of the Board given by Lord Nicholls of Birkenhead in *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378. In summary, she said that liability for dishonest assistance requires a dishonest state of mind on the part of the person who assists in a breach of trust. Such a state of mind may consist in knowledge that the transaction is one in which he cannot honestly participate (for example, a misappropriation of other people's money), or it may consist in suspicion combined with

> a conscious decision not to make inquiries which might result in knowledge: see *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd* [2003] 1 AC 469. Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards. The Court of Appeal held this to be a correct state of the law and their Lordships agree.

31 Mr Tan also relied on [108] of *Von Roll*, where Chan Seng Onn J said:

> 108 On the final element of dishonesty, the Court of Appeal in [*George Raymond Zage III v Ho Chi Kwong* [2010] 2 SLR 589] at [22] clarified that the standard of what constitutes honest conduct is an objective one, entailing an inquiry as to whether the defendant had "such knowledge of the irregular shortcomings of the transaction that ordinary honest people would consider it to be a breach of standards of honest conduct if he failed to adequately query them" (see also *Barlow Clowes International Ltd (in liquidation) v Eurotrust International Ltd* [2006] 1 All ER 333 at [15]).

32 I therefore must consider the particulars relied upon to determine first, whether if proved, a proper inference could be drawn that Ms Moon had actual knowledge that the transactions in which Mr Then was alleged to be involved were ones that she could not honestly participate in.

33 Secondly, if the pleading is insufficient to demonstrate that Ms Moon had actual knowledge, the inquiry is then whether the facts and matters pleaded were such that, objectively considered, she arguably did have or should have had suspicions, as would a reasonable person in her position, that the transactions in which Mr Then was alleged to be involved might be dishonest. In other words, is it proper from the pleaded particulars to draw an inference that it is arguable that Ms Moon did or should have had suspicions, yet turned a blind eye to them in circumstances where, objectively considered, a reasonable person would have made enquiries? If so, it is arguable that she had constructive knowledge and the amendment should be allowed.

34 I turn then to the facts pleaded and start with para 38(a) of the proposed amended statement of claim. These particulars relate to WPS and the WPS bank account. Ms Moon is alleged to be the sole shareholder and director of WPS and the only authorised signatory of the WPS bank account. In consequence, it is alleged that she would have carried out Mr Then's instructions in relation to WPS. The pleading builds on these facts in para 38(b) to support an allegation that Ms Moon had actual or constructive knowledge that Mr Then had incorporated and used WPS for what were defined in para 17(b) as the WPS purposes.

35 There are three of them. First, that WPS was incorporated to induce a connection with Walkers; second, to instil confidence that Mr Then was a solicitor with Walkers; and third, to induce persons to deposit money with Walkers.

36 In para 38(b)(ii), the pleading seeks to draw the inference that Ms Moon had the requisite knowledge that Mr Then was a solicitor employed by Walkers, that WPS included the name of Walkers and that WPS had no relationship with Walkers. These are reasonable inferences based on the facts pleaded. If WPS had a relationship with Walkers, there would have been no need for Ms Moon to be Mr Then's nominee as director and shareholder of WPS. Hence, I am satisfied that Ms Moon arguably would have had actual or constructive knowledge of the first two of the WPS purposes.

37 The third purpose is said to be that WPS was incorporated under that name to induce persons to deposit money with WPS. I consider that it is a reasonable inference that the purpose was to induce people to do business with Mr Then on the faith of Walker's reputation and that this might include depositing money with WPS.

38 The pleading then continues by asserting in para 38(c) that Ms Moon had actual or constructive knowledge that the money paid into the WPS account did not belong beneficially to WPS for two reasons. First, it is said that WPS did not carry out any work or services which would justify the receipt of those sums and, secondly, that there was no justifiable reason for the payment out of the sums involved. It is a proper inference that as sole signatory of the bank account, Ms Moon would have known of the state of the account and have been aware (on the basis of the allegations in the statement of claim) that significant sums – well above any payment that Mr Then could have sought by way of fees for acting in his capacity as a solicitor – were being paid in and out. The pleading is thus, in my judgment, adequate to ascribe actual or constructive knowledge to Ms Moon that the WPS bank account was holding money which did not belong beneficially to WPS. If she had not asked Mr Then why this money was being held in the WPS bank account, it is arguable that she ought to have done so.

39 Hence, the pleading goes this far in relation to the four elements required to succeed in a cause of action of dishonest assistance.

40 First, there is an adequate allegation of a fiduciary relationship between the plaintiffs and Mr Then or WPS.

41 Second, the relevant alleged breach of trust lay in Mr Then misappropriating the sums deposited by the plaintiffs for his own use, rather than in using them for the agreed purposes of the private bank acquisition: see the proposed amended statement of claim at para 31. It is alleged that he was able to place himself in the position to do this by inducing the plaintiffs to invest money in reliance upon a false representation that WPS was connected with Walkers. Again, this is an adequate allegation for pleading purposes.

42 Third, on the basis of the allegation that Ms Moon was the only authorised signatory of the WPS bank account, if Mr Then is held to have acted in breach of trust, it must follow that Ms Moon arguably assisted that breach by her signing of the cheques.

43 So far as concerns the fourth element, dishonesty, there is no direct plea that Ms Moon had any knowledge that Mr Then was proposing to act in breach of trust. There is no plea that she was intimately involved in Mr Then's business involving WPS. It is not alleged that she knew of the proposal to buy the private bank. It is not alleged that she knew that the persons to whom the money was paid out were not legitimately entitled to receive it. The furthest the pleading goes is to allege in para 38(c) that she had the requisite knowledge that the sums paid into the WPS account did not beneficially belong to WPS.

44 Mr Tan submitted that once she was aware that WPS had no relation to Walkers, any reasonable person in her position would have asked, "why the name "Walkers" and why involve me?" Such a reasonable person would have also asked about the business of the company. In failing to do so, he said she turned a blind eye and thereafter she became, in effect, an active part of the business by paying the money out without satisfying herself that there was no breach of trust.

45 The dishonesty alleged is that she obeyed Mr Then's instructions in relation to the running of WPS knowing or suspecting that Mr Then was doing so to misappropriate the plaintiffs' money. The question is whether the pleading as it stands justifies reaching the conclusion that it is arguable that she turned a blind eye in the way that Mr Tan suggests: see [246] above, per Lord Hoffman at [10] of *Barlow Clowes*. It certainly goes so far as to make it arguable (a) that she knew that Mr Then was inducing others to do business with him by using

the word "Walkers" as part of the name of WPS falsely to represent a connection with Walkers and (b) that the business involved WPS holding money of which it was not the beneficial owner.

46 However, it requires a significant step from the conclusion that she had that knowledge, actual or constructive, to draw the necessary inference that he was going to act in breach of trust by misappropriating the plaintiffs' money once it was deposited in the WPS bank account. The ultimate question is therefore whether the knowledge that she allegedly did have was enough to generate a sufficient suspicion on her part that he might be involved in the misappropriation of money held in the WPS bank account, that she should have made enquiries which, objectively, might have provided her with that knowledge.

47 I have hesitated greatly before reaching a conclusion adverse to Ms Moon. The case pleaded against Ms Moon in this respect is tenuous. However, I have to be satisfied that it is, to use Mr Koh's expression, doomed to failure. If all the facts and matters pleaded are proved, could the necessary inference above be properly drawn (notwithstanding that it might be unlikely) or would that deduction be improper?

48 To my mind, the decisive factor is Ms Moon's knowledge that Mr Then was not acting wholly honestly in relation to the WPS business. She knew, allegedly, that WPS was not controlled by Walkers and knew, because she was acting as his nominee, he was seeking to conceal this fact from Walkers. In the light of this, it is arguable that she should have enquired further and it is conceivable that this would have objectively provided her with the requisite knowledge. There is therefore a case, as pleaded, which cannot be said to be doomed to failure.

49 This then brings me to consider the requirements of O 15 r 6(2)(*b*)(ii).

50 The first question is whether the issue arising in relation to the proposed new party relates to an existing question or issue between the existing parties. It plainly does. Ms Moon can only be liable if Mr Then is liable, her knowledge has to relate to Mr Then's unlawful acts, whatever they may be found to be.

51 The second question relates to discretion. Would it be just and convenient to hear the two actions together? Are there any countervailing factors which suggest that separate trials would be preferable?

52 The starting point has to be my finding that the plaintiffs have an arguable cause of action against Ms Moon. It is not one that can be struck out as being unarguable under the first limb of O 18 r 19.

53 In his written submissions, Mr Koh argued that even if there was a valid cause of action, the present application was nonetheless an abuse of process on two grounds. Firstly, he said the claim was manifestly groundless, which I have rejected. Secondly, he said that it was brought for an ulterior or improper purpose which was to apply pressure to Mr Then and his wife. In support of the latter point, he drew attention to the fact that the claim against Ms Moon in Suit 8 had been discontinued, that the plaintiffs have been aware of Ms Moon's position as a director and sole shareholder of WPS since 2019 and that the application was made very late. Finally, reliance was placed on the fact that Ms Moon was employed by a financial institution where allegations of dishonesty would be taken seriously.

54 In oral submissions, Mr Koh accepted that the factors he was relying on really related to the exercise of discretion. He did not submit that the grounds

relied on were such as to debar the plaintiffs from bringing an otherwise valid claim.

55 The discretion I have to exercise is to decide whether to add Ms Moon as a party to this action or leave the plaintiffs to start a new action. Justice and convenience plainly require the former. Even if Ms Moon was not joined, for reasons explained to me at the hearing, the trial of this action could not recommence until early 2023. The addition of Ms Moon will not jeopardise that date with appropriate case management. Any consequential increase in costs can be catered for after the trial. I therefore grant leave to amend the writ to join Ms Moon as a party together with leave to make the amendments to the statement of claim relating to her joinder.

56 I turn next to the amendments which are said to be consequential to the settlement with the first and second defendants. There are three types of amendments. First, there is the deletion of the causes of action against the first and second defendants. Second, amendments are to be made in relation to the claims made jointly against the first and second defendants and Mr Then such as conspiracy, where references to first and second defendants are to be deleted and the pleading is to be reframed with causes of action against Mr Then alone. Third, the plaintiffs wish to raise additional claims against Mr Then.

57 No objection is raised to the first two categories of amendments. They are amendments which were contemplated at the time the trial was adjourned and the necessity for them was one of the reasons for acceding to the request for an adjournment.

58 The same cannot be said of the third category. At the outset of the trial, the statement of claim raised cause of actions against Mr Then based on

fraudulent misrepresentation, deceit, breach of trust and/or breach of fiduciary duties and unjust enrichment. The plaintiffs now wish to add claims based on unlawful interference causing loss and for fraudulent or negligent misrepresentation: see paras 36, 50 and 69 to 75 of the proposed amended statement of claim.

59 Mr Tan contended that the additional causes of action were premised on the same set of facts as were pleaded in the plaintiffs' original claims so that no prejudice would be occasioned which could not be compensated for in costs. In oral submissions, Mr Tan stated that his clients did not wish to adduce any further evidence in support of the new causes of action. But, he was unable to identify any set of circumstances whereby the new causes of action would succeed if all the existing causes of action failed. Accordingly, these are causes of action which could have been pleaded at a far earlier stage. In my judgment, they should have been and it would be an abuse of process to allow the amendments now. Had the application been made in the course of the trial, I would have had no hesitation in refusing to interrupt the trial to allow proper consideration to be given to the proposed amendments. The hearing was adjourned because the plaintiffs settled with the first defendant in this action on the second day of trial. That should not place them in any better position than they would have been had the trial continued as contemplated.

60 For all these reasons, I grant leave to amend the statement of claim in respect of the first two categories of amendment but refuse leave to add the three new causes of action.

Simon Thorley
International Judge