IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2024] SGHC(I) 32

Originating Application No 7 of 2023

Between

(1) Virgilio Tarrago Da Silveira
(2) Munchetty Investments Ltd

… *Claimants*

And

(1) Hashstacs Pte. Ltd.
(2) Soh Kai Jun

… *Defendants*

JUDGMENT

[Tort — Misrepresentation — Fraud and deceit]
[Tort — Misrepresentation — Negligent misrepresentation]
[Tort — Negligence]
[Restitution — Unjust enrichment]
[Tort — Conspiracy]

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v
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16 December 2024 Judgment reserved.

Simon Thorley IJ:

Introduction

1 Between August and December 2019, the first claimant Mr Virgilio Tarrago Da Silveira ("Mr Silveira") purchased on two cryptocurrency exchanges 8,063,470.53 "STACS Tokens", a form of cryptocurrency, then worth in total around US$76,000.00. The STACS Tokens were transferred by him to the second claimant ("Munchetty"), a company owned and controlled by him, in September 2020.

2 The claimants contend that Mr Silveira was induced to buy the tokens on the basis of certain representations for which the first defendant Hashstacs Pte Ltd ("HS") was responsible and that those representations were false. HS is a company with which the second defendant Mr Soh Kai Jun ("Mr Soh") has at all material times been associated.

3 The claimants assert that HS acted either fraudulently or negligently in making the representations and bring a claim against HS based on fraudulent misrepresentation, negligent misrepresentation and negligent misstatement, and against both HS and Mr Soh based on unjust enrichment and conspiracy. They have adduced expert evidence supporting a claim for damages for their loss at between US$20m and US$146m.

4 For its part, HS claims that the statements relied upon were statements that it was not responsible for, that, in any event, they do not constitute actionable representations at all, that they were not false, and that HS had not acted fraudulently or negligently. Both defendants deny that they have conspired to injure the claimants. The claim in unjust enrichment is also denied; indeed, both defendants contend that, as matters stand, each has made a loss.

5 There is thus a great deal at stake, both financially and reputationally.

Background

Technology

6 In this part of the judgment, I shall draw heavily (and with gratitude) from the Expert Report prepared on behalf of the claimants by Mr Jeremy Sheridan ("Mr Sheridan"), the Managing Director, Blockchain and Digital Assets at FTI Consulting Technology LLC.

7 The field involved is what is known as "Distributed Ledger Technology", often referred to as blockchain which is, as Mr Sheridan explains, a revolutionary way of securely recording and sharing data across multiple locations without relying on a single central authority.

8 Mr Sheridan starts by giving a glossary of terms including the following:

(a) Blockchain;

(b) Cryptocurrency;

(c) Tokenisation;

(d) Real World Assets;

(e) Block;

(f) Node;

(g) Smart Contracts; and

(h) Verified Partners ("VPs").

9 When describing "blockchain", Mr Sheridan says this:

> **Blockchains**
>
> …
>
> 3.2 Blockchain is a shared, immutable ledger that facilitates the process of recording transactions and tracking assets in a business network.
>
> …
>
> 3.3 Tracking assets on a blockchain requires the assets to be tokenized. Asset tokenization refers to the process of recording the rights to a given asset into a digital token that can be held, sold, and traded on a blockchain.
>
> 3.4 Cryptocurrencies, such as Bitcoin or Ethereum, are the most commonly known tokenized assets. Cryptocurrencies are a form of digital money, and different cryptocurrencies use different blockchains, each recording every transaction made using that token.
>
> 3.5 Tokenization can be applied to virtually any asset class, such as real estate, securities, bonds, or carbon credits.

…

3.10 There are multiple types of blockchains. This report will discuss public and private blockchains.

3.11 A public blockchain is non-restrictive and permission-less, meaning anyone is authorized to join, participate in the core activities of the blockchain, and access the blockchain records.

3.12 A private blockchain is restrictive and operates in a closed network where the controlling organization determines access. The owner or operator of the blockchain has the right to override, edit, or delete the necessary entries on the blockchain.

3.13 Transactions on a private blockchain are visible only to authorized participants, providing enhanced privacy and confidentiality.

3.14 Public and private blockchains differ primarily in accessibility, decentralization, and governance.

…

3.20 Blockchain nodes are network stakeholders, and their devices are authorized to keep track of the blockchain's distributed ledger while serving as communication hubs for various network tasks. Nodes in a blockchain network are responsible for validating new transactions according to the network's consensus rules. Additionally, nodes maintain a full copy of the blockchain ledger, recording all validated transactions, smart contract executions, and other on-chain data.

3.21 By recording and validating on-chain data and enabling network participation, nodes provide the necessary infrastructure and transparency for extracting valuable metrics that can be used in valuation models. …

3.22 These on-chain metrics provide quantitative insights into a blockchain's usage, security, throughput, decentralization, and value dynamics, which can inform investment decisions and valuation models for cryptocurrencies and blockchain networks.

3.23 Nodes work together to verify the validity of any new blockchain entry using complex mathematical algorithms and agree on adding it to the next "page" or "block" of the record book.

3.24 Once a new block is added through cryptographic verification by the nodes, it becomes virtually impossible to alter or remove any previous entries in the record book because every computer on the network has a copy and can cross-

> reference each other. This creates an immutable, permanent, and transparent ledger of all transactions that have ever taken place. In essence, nodes operating on a blockchain allow many computers to keep and update identical information records without referencing or relying upon a master copy of the data.
>
> …
>
> 3.31 A smart contract is a decentralized computer program running on a blockchain network that automatically and deterministically executes agreements based on predefined conditions. Smart contracts establish the rules for blockchain transactions.
>
> [footnotes omitted]

GSX, GBX, the GSX Group and Mr Cowan

10 In April 2012, Mr Nicholas Cowan ("Mr Cowan") co-founded and was appointed chief executive officer ("CEO") of Gibraltar Stock Exchange Limited ("GSX Ltd"), a Gibraltar based private company that was established to apply for a licence to operate the Gibraltar Stock Exchange. It received its full licence in 2014 which was renewed in 2018. It is regulated by the Gibraltar Financial Services Commission. In 2017, following new investment, the Gibraltar Stock Exchange Group Limited ("GSX Group") was incorporated and GSX Ltd became a wholly owned subsidiary of GSX Group.

11 Mr Cowan has, at all material times, been the CEO of both GSX Group and of GSX Ltd. On 30 January 2024 GSX Group was acquired by Valereum PLC and Mr Cowan is currently CEO of Valereum PLC.

12 Mr Cowan's vision was that GSX Group should eventually become one of the world's first tokenised securities exchanges by implementing a blockchain solution. He outlines the strategy underlying the objectives of the GSX Group in paras eight and nine of his witness statement as follows:

> 8. As the CEO of GSX Group, I was responsible for overseeing the new strategy that encompassed a vision based around

> digital finance including digital securities and cryptocurrencies. I acted as the Group CEO of GSX Group and continued in my role as the CEO of GBX Limited, the operator of the Gibraltar Blockchain Exchange (GBX) which was established as a licensed cryptocurrency exchange. My management team at the GSX Group are essentially the same team members that are now part of Valereum including Mr Adrian Hogg …
>
> 9. From around 2016-2017, the Gibraltar government introduced the development of the Decentralised Ledger Technology regulatory framework. The GSX Group decided to make a strategic move into blockchain technology with the development of a token sale platform and digital asset exchange. In July 2017, Gibraltar Blockchain Exchange Limited ("GBX") was incorporated as a majority owned subsidiary of GSX Group. GBX was established as a utility token sale platform and digital asset exchange licenced under Gibraltar's Financial Services (Distributed Ledger Technology Providers) Regulations 2017 (the "DLT Regulations").

13 Prior to his involvement with GSX Ltd and the GSX Group, Mr Cowan had worked in the finance industry for more than 40 years. He enjoyed a highly successful career working for Yamaichi Securities, ING Barings and Bear Stearns before becoming founding partner and Head of Trading at Caspian Securities, an investment bank in London, in 1995. In October 1996 he was appointed as the Global Head of Equities Trading at ING Barings London to seek to mitigate the losses suffered as a result of the activities of Nick Leeson. In due course he was appointed Global Head of Equities and became a member of the ING Barings Executive Board and of the ING Management Council which comprised the top 20 members of ING within the board of directors of the ING Group, ING Barings, ING Bank, ING Insurance and ING Asset Management. From 2008 to 2013 he ran his own trading fund known as NJC Trading.[1]

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[1] Witness Statement of Nicholas Cowan dated 9 April 2024 ("Cowan WS") at pp 2–4.

14 Mr Cowan gave evidence on behalf of the defendants and was cross-examined on his witness statement by video link from Gibraltar. He was both clear and focused when giving his oral evidence. In oral closing, Mr Vikram Nair ("Mr Nair"), counsel for the defendants, submitted that Mr Cowan's evidence was not self-serving and was objective and truthful.[2] Mr Shaun Leong ("Mr Leong"), counsel for the claimants, did not dissent and accepted that significant weight should be attached to his evidence.[3] I agree. I found him to be an impressive witness.

15 The new investor referred to at [10] above was an investment management company called Stellar Partners Limited ("Stellar") which managed the investments of various private individuals including Mr Soh.

16 Mr Soh has a degree in accountancy from Nanyang Technological University. From 2010–2017 he was a director and shareholder of Broctagon Fintech Group ("Broctagon") which was a Singapore-based consortium of financial technology companies specialising in supplying technological solutions to brokerages and exchanges.[4]

17 In 2015 he co-founded Stellar which he deposes was an investment firm focusing on global equity, real estate and alternative investments. He was one out of eight limited partners and three general partners and was one of two

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2 Transcript Day 8 dated 23 September 2024 ("T8") at Page 12 Line 16 to Page 13 Line 3.

3 T8 at Page 88 Line 17 to Page 89 Line 14.

4 2nd Witness Statement of Soh Kai Jun dated 9 April 2024 ("Soh 2WS") at para 5.

directors of Stellar's management company. Mr Soh had a 51% interest in Stellar.[5]

18 Stellar originally invested £3m in GSX Group and subsequently a further £2m.[6] In consequence, on 28 July 2017[7] Mr Soh was appointed to the board of the GSX Group as a nominee director representing Stellar's interests. Mr Cowan states that Mr Soh was a non-executive director who did not participate in the day-to-day management of GSX Group which was handled by GSX Group's management team. There is a debate as to the degree of involvement that Mr Soh had in the management of the affairs of the GSX Group which I shall have to resolve later in this judgment.

The Rock Token

19 Subsequent to the initial investment of funds by Stellar, in early 2018 Gibraltar Blockchain Exchange Limited ("GBX") issued a prospectus for the sale of tokens named "Rock Token" entitled the "GBX+ Rock Token Sale Whitepaper"[8] (the "Rock Token Whitepaper"). It takes the form of a conventional share offering. A helpful summary is contained on page five of the document:[9]

> **Project summary**
>
> The [Gibraltar Blockchain Exchange] comprises two key components:

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5 Soh 2WS at pp 6-7 and 4th Witness Statement of Soh Kai Jun dated 15 July 2024 ("Soh 4WS") at paras 16-18. See also Transcript Day 2 dated 23 July 2024 ("T2") at Page 91 Line 2 to Page 95 Line 19.

T2 at Page 97 Line 23 to Page 98 Line 10 (Soh); Transcript Day 5 dated 26 July 2024 ("T5") at Page 10 Line 9 to Page 11 Line 19 (Cowan).

7 Trial Bundle Volume 2 ("TB 2") at p 147

8 Trial Bundle Volume 4 ("TB 4") at pp 77-124.

9 TB 4 at p 81.

> (a) establishing GBX, a marketplace for utility tokens and digital assets operating within Gibraltar's regulatory framework; and
>
> (b) creating a financial services and fintech ecosystem with multiple products and services.
>
> GBX is launching an initial token sale for its utility token, the Rock Token ("**RKT**"), which is intended to support the functioning of GBX and the financial services and fintech ecosystem.

20 On page 2 there is a list headed "Important Notice" which contains, *inter alia*, the following:

> **This whitepaper describes a future project**: this whitepaper contains forward-looking statements that are based on the beliefs of GBX Limited, as well as certain assumptions made by and information available to GBX Limited. The project as envisaged in this whitepaper is under development and is being constantly updated, including but not limited to key governance and technical features. Accordingly, if and when the project is completed, it may differ significantly from the project set out in this whitepaper. No representation or warranty is given as to the achievement or reasonableness of any plans, future projections or prospects and nothing in this document is or should be relied upon as a promise or representation as to the future.

21 The relationship between GSX and GBX is explained in Part A Section 4 as follows:

> GBX is a subsidiary of GSX.
>
> GSX operates the Gibraltar Stock Exchange, a regulated market under European Union regulations and is a member of both the Hyperledger Alliance and the Ethereum Enterprise Alliance.
>
> GSX proposes to provide a blockchain-based exchange for capital markets and will aim to be the world's first stock exchange for tokenised securities … Issuers of tokens listed on GBX may have access to the GSX capital markets pathway, giving more options for capital raising, and access to a more diverse investor base as they grow.

22 At Part H the document explains that the GSX Group board has formed an executive committee in order to run the affairs of the group; both Mr Cowan and Mr Soh, amongst others, are identified as being members of the executive committee. Finally parts of Key Facts ii and iv[10] listed in the prospectus' Schedule should be noted:

> **ii About the Project**
>
> …
>
> Timeline and current status: Refer to Section 15.
>
> As of the date of this whitepaper, some of the stages of the Phase 1 Milestones have commenced and/or are completed.
>
> …
>
> Material third party or intra-group service arrangements: A GSX Group member will enter into service arrangements with GBX for the purposes of GBX.
>
> Specifically, Broctagon Fintech Group, who will provide technology and customer support services to GBX. GSX Executive Director Benjamin Soh is the majority shareholder of the Broctagon Fintech Group and the majority shareholder of Cyberhub Fintech Holdings Limited which owns approximately 25% of GSX Group Limited.
>
> …
>
> **iv About the Token Sale**
>
> The following is provided for summary purposes only and does not form part of any agreement to purchase Rock Tokens.
>
> All purchasers should be aware that an active secondary market in [Rock Tokens] may not necessarily develop.
>
> …
>
> Token Sale terms and conditions: To be made available on the Website. Each purchaser of Rock Tokens must ensure that they carefully read them, obtain any necessary professional advice and agree to them before purchase.

[10] TB4 at pp 120-121.

23 The full amount of Rock Tokens was, apparently, sold out on the public offering in nine seconds in February 2018.[11]

24 It is to be noted that although Mr Soh was a non-executive director of the GSX Group, as a member of the executive committee he was referred to in this document and on other occasions as an "Executive Director". Mr Soh explains the function of the executive committee in para 22f of his Witness Statement:[12]

> GBX is a member of GSX Group. GSX Group had formed an "*Executive Committee*" that comprised Mr Cowan, Mr Wang, Mr Chao and I, among others… While the "*Executive Committee*" was said to have been established to "*run the executive affairs of the group*", this did not mean every member of the "*Executive Committee*" was involved in day-to-day management. The affairs of GSX Group were run by a full-time management team including Mr Cowan (Group CEO), Mr Adrian Hogg (Group Chief Financial Officer), Mr Philip Young (Group Chief Marketing Officer) and Mr William Rawley (Group Legal Counsel) all of whom were part of the "*Executive Committee*". Unlike them, Mr Wang, Mr Chao and I were merely included in the "*Executive Committee*" on account of Stellar being the largest single investor in GSX Group at the time. We were not employees of GSX Group. Our role on the "*Executive Committee*" was limited to providing advice and support in terms of networking and promotion of GSX Group to potential partners in Asia given our prior experience. The non-executive members like me did not "*run the executive affairs of GSX Group*".

25 The extent of Mr Soh's involvement in the affairs of the GSX Group in his capacity as a member of the executive committee is in dispute.

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11 TB4 at p 559.

12 Trial Bundle Volume 3 ("TB3") at p 76.

The STACS Protocol and the STACS Token

26 On 14 November 2018 the GSX Group announced the establishment of Hashstacs Inc ("H Inc"), a joint venture with Prime Fintech Co Ltd ("Prime Fintech"),[13] a Chinese blockchain developer based in Chengdu, and Chong Sing Fintech Holdings Ltd ("Chong Sing"), as being "the latest initiative by the GSX Group …in realising our vision for radically transforming the capital markets with our Securities Trading Asset Classification Settlement (STACS) Protocol …".[14]

27 This was followed on 16 November 2017 by a press release by Mr Cowan entitled "The STACS Protocol and what it means for RKT [Rock Token] holders":[15]

> Dear Rock Token holders,
>
> I am writing to you to brief you on an important development which will affect all Rock Token holders. This update covers the following:
>
> - The development of the GSX as a tokenised securities exchange.
>
> - The development of the underlying technology we have named the STACS Protocol.
>
> - The strategy to offer STACS as a global network of exchanges, broker-dealers, investment banks, and financial institutions.
>
> - The implications for RKT holders.
>
> The GSX Group has been working hard to expand its ecosystem to further develop and maximise the use of RKT. As described in our original RKT white paper, we saw the ecosystem expanding via a phased approach which can be summarised as follows:

---

13 Prime Fintech is sometimes referred to as PrimeLedger or Chengdu. I shall use Prime Ledger throughout.

14 TB4 at p 1889.

15 TB4 at pp 237-240. See also TB4 at pp 215-217.

Phase 1 –

Build the GBX as a licensed and regulated token sale platform and secondary cryptocurrency exchange which provides a multi fiat-crypto marketplace, whereby primary and secondary tokens can be traded in a trusted environment. Despite challenges along the way, including having to change our technology solution, we have managed to hit our milestones. Both the GRID and the DAX are open. All listing and sponsor fees are payable in RKT. We also offer benefits to holders including reduced trading fees and referral program rewards.

Phase 2 -

Build the GSX as one of the world's first tokenised securities exchanges providing a digital platform for Security Tokens to be launched and traded. As a Stock Exchange, we see incredible opportunities to disrupt the existing traditional securities processes, thus reducing the speed and cost of capital and opening up markets to a whole new universe of investors. RKT is also going to be used to pay fees within the GSX.

Phase 3 -

Build out the rest of the GSX Group to provide our client base with ongoing solutions …

To explain Phase 2 in more detail, as we looked at the underlying technology that would facilitate the move to a digital securities exchange, we had originally considered a private chain which the GSX would have used as its own, to allow buyers and sellers to trade digital securities.

However, we considered this highly restrictive for our clients' access to liquidity and essentially we would simply be building a new legacy system to replace our old legacy system.

We also discovered, through extensive discussions, that a large number of exchanges, investment banks, broker-dealers, and asset managers were all wrestling with the same question. The general consensus was that the public ledgers have some way to go to be fit for purpose and that there was no single solution that could deliver the complexity of digital securities trading and settlement.

Therefore, the GSX Group came up with the vision of the STACS Protocol - the Securities Trading Asset Classification Settlement Protocol - which is being developed by our new joint venture, Hashstacs Inc…

STACS, we believe, will transform the way capital markets operate, intersecting between global traditional capital markets and crypto finance. The grand vision of the STACS Protocol is to

> *become a global leading Digital Asset platform for the capital markets of the future. A global network where regulated incumbents such as investment banks, exchanges such as the GSX, and broker-dealers will capitalise on the tremendous potential of tokenised securities, including STOs. …*
>
> .
>
> The STACS Protocol will bring an integrated platform and tools, from issuance to settlement, in an open, collaborative and inclusive environment.
>
> The proprietary technology, highlighted in recent communications, will encompass the development of the STACS Protocol, the integration of the STACS enterprise wallet, and the implementation of trading platform services
>
> …
>
> [emphasis added]

28 This was then followed by the publication by GSX Group on or about 23 November 2018 of a document entitled "The Securities Trading Asset Classification Settlement (STACS) Protocol Whitepaper v1.0" ("The First Whitepaper").[16]

29 Unlike the Rock Token Whitepaper, this was not a fund-raising prospectus; it is a very extensive marketing proposal. The nature and extent of it can be seen from the abstract in Section 1.[17]

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16 TB4 at pp 383-437.

17 TB4 at pp 383, 386 and 387.

…

1 Abstract

In its simplest form, progress is a development towards an improved or more advanced condition. Progress has always been fuelled by human ingenuity since the beginning of times. Cave dwellers learned to tame fire, the Phoenician civilisation mastered the art of commerce, British engineers in the 19th century admirably reimagined logistics through ever-expanding railway networks and lately the advent of the internet repositioned human communication and knowledge at global

scale. Human history is paved with cutting edge technological breakthroughs.

In 2009, Satoshi Nakamoto wrote the Bitcoin whitepaper. The genius came from creating a system of economic incentives, based on cryptography, to drive a purely peer-to-peer version of digital currency that would allow online payments to be sent directly from one party to another without going through a financial institution. The initiative attracted unprecedented levels of attention and investment to build from scratch a brand new digital ecosystem. 10 years later, a new chapter is about to be unveiled. Robust infrastructures and appropriate regulations are on their way to drive major adoption, primarily within the financial sector. This particular technology will uplift the global economy as a whole and greatly benefit humankind evolution and wealth creation. Exciting times.

The emergence of Blockchain Distributed Ledger Technology (DLT) and the Blockchain promise to transform securities markets forever. The efficiency, transparency and subsequent liquidity of these technological innovations will produce and undoubtedly transform practices and protocols for improved trading, faster clearing and more secure custody, of securities and their digital equivalents.

We, at the GSX Group, aim to be at the forefront of this capital markets revolution by demonstrating leadership and raising industry standards to effectively bridge the gap between traditional finance and crypto markets.

Since the very beginnings, the GSX Group has gained extensive and practical experience and has positioned itself as an authority from operating multiple regulated financial services subsidiaries which includes: the EU-regulated Gibraltar Stock Exchange (GSX), Blockchain-based firms; like the Gibraltar Financial Services Commission (GFSC) regulated DLT Provider Gibraltar Blockchain Exchange (GBX), and also commercial firms such as the GFSC regulated Juno Services. *The GSX Group has formed a comprehensive technology solution offering which bridges traditional finance, commercial markets and Blockchain, while integrating the ever-growing regulatory requirement component. Through the GSX Group technology subsidiary, Hashstacs Inc., we have developed the Securities Trading Asset Classification Settlement (STACS) Protocol, and its related suite of services. With a first-mover advantage for its users, STACS is GSX Group proprietary technology to enhance liquidity and capital exposure. The first version of live implementation is expected by Q1 2019.*

…

> *STACS is a unique hybrid structure of permissioned/ global Blockchain, tailored especially for the finance industry. Through such a hybrid model, we aim to support multiple financial institutions, whom we call Verified Partners (VPs), in their digital transformation through providing them the Native STACS, permissioned offering, while allowing them to scale globally to a global pool of cleared and eligible investors through the public Global STACS.* With the hybrid model, we combine the performance advantages of the permissioned Blockchain and the public consensus of the public Blockchain, and achieve higher transaction throughput than other public Blockchains, to satisfy the technological needs of the institutions.
>
> The use of the STACS Standard smart contract technology allows us to support the requirements of the financial ecosystem in the issuance, trading, clearing and settling of a plethora of digital assets. With the rare combination of regulatory experience and deep technology resources, GSX Group will enforce rules on the STACS Protocol, to ensure it remains compliant with the strict KYC/AML and regulatory reporting standards of the global financial ecosystem.
>
> We stand on the brink of the next seismic change in technology. Whereas the internet allowed us to exchange data – DLT allows us to exchange assets. Distributed ledger technology has developed sufficiently to facilitate this industry change and we predict that the way capital markets operate is set to change forever. The STACS protocol has been built specifically for tokenised securities and has been designed with adoption as our objective – inclusive, global, transformational and with no license fee.
>
> For those who share our vision, we welcome you to the STACS platform.
>
> [emphasis added]

30 The following sections should be noted:[18]

> **5.1.9 STACS Token**
>
> *The entire STACS Ecosystem will be powered by its own utility token, the STACS Token.* It provides access to VPs to use the STACS Protocol. While there is no license fee to use the STACS Protocol, VPs have to stake a minimum number of STACS Tokens to be able to host nodes and access either the Native or

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18 TB4 at pp 398.

Global STACS. Full details of the STACS Token utility will be expanded in Section 9 of this paper.

…

8.3.1 Consensus Incentives

Transaction fees on Global STACS are based on the Gas price concept, whereby the complexity of the output will incur higher fees. Hence smart contract transactions will cost more while simple transactions will cost less. Transactions are paid using STACS Dollar (a stablecoin pegged to fiat USD), so that VPs have confidence in the stability of transaction fees and valuation of securities, so that there is no uncertainty of using another non-stable cryptocurrency where the fees may become very high for a single transaction, or conversely, asset values dip to negligible if the underlying cryptocurrency is at low prices.

STACS undertakes to use the incurred fees on STACS Dollar to convert to STACS Token token to fulfil its staking rewards to the Global Nodes and Supernodes.

The distribution of the transaction fees is:

- *70% of all transaction fees will be used to purchase STACS Tokens from the open market and shared with Global Nodes and Supernodes, 10% will be used to purchase STACS Tokens from the open market and retained in an Investor Protection and Governance Fund, while 20% will be allocated to Hashstacs Inc to maintain and continually develop the STACS Protocol*

- *Of the transaction rewards of 70% in STACS tokens, it is shared 80/20 with the Global Nodes getting 80%, all to themselves, when packaging a block, while the Supernodes get 20%, shared among all Supernodes, for validating a block.*

…

9.1 Introduction

STACS Token will be the utility token of the STACS Protocol Ecosystem. We mentioned that it is free for all institutions to be a Verified Partner (VP) and use the STACS Protocol, either deploying a Native STACS system or connecting to our Global STACS via APIs. *However to be able to use the STACS Protocol and be a VP, we require them to stake a certain amount of STACS Tokens to be able to use the STACS Protocol.*

VPs also have the option to run Supernodes. We expect to invite a total of 21 Supernodes initially, with each VP only allowed a

maximum of 1, and this will require a staking of STACS Tokens …

9.2 The impact on Rock Token (RKT)

This section outlines the impact on existing GBX RKT holders including detailing the current use and the future use once they can be used to fuel the STACS Protocol

1. All present RKT holders will be invited to swap their tokens into STACS Tokens when the STACS Protocol is accessible, expected to be Q1 2019. To make it straight-forward and avoid confusion, we have replaced our present ECR20 RKT token with the ERC20 version of STACS on 23rd November, 2018.

2. All present ERC20 STACS token holders will then be invited to replace their ERC20 STACS tokens into Protocol STACS Tokens when the protocol is accessible, expected to be Q1 2019, on a 1-1 basis.

3. There will be NO additional tokens minted beyond the 900,000,000 RKT tokens that were minted last February. Once they are all replaced by STACS Tokens, the total circulation of the STACS token will remain at 900 million also.

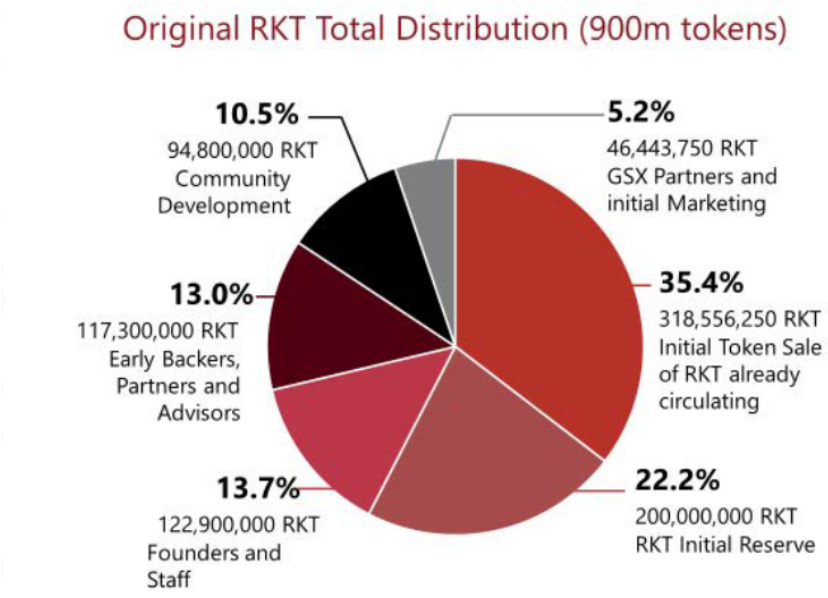

Figure 15 – Initial RKT token distribution

[emphasis added]

31 The Summary in Section 10 includes the following:[19]

> We at the GSX Group believe that it is the right approach to move from traditional securities to those moderated by emerging Blockchain technologies.
>
> …
>
> The STACS Protocol is expected to provide access to the capital markets for a wide variety of issuers and participants including:
>
> ▪ traditional and non-traditional counterparts including global conglomerates, institutional licensees, operating companies, family businesses, investment vehicles, family offices, and ETFs; and
>
> ▪ participants who can trade within the GSX marketplace and build investment portfolios with confidence and without the layers of intermediaries, barriers to entry, and cost associated with traditional markets. This has the potential to give participants access to a spectrum of investments, capital, and/or income generating assets that might not otherwise be possible in the same manner and to the same degree under a traditional stock exchange model.

32 On 21 December 2018, the First Whitepaper was replaced by a second whitepaper (the "Second Whitepaper"),[20] again issued by GSX Group. It differs only in immaterial detail from the First Whitepaper.

33 The First Whitepaper indicated that the Rock Tokens would be swapped for STACS Tokens and this was done pursuant to a document entitled "Terms and Conditions Relating to Token Swap" (the "STACS Token T&Cs") dated 22 November 2018.[21]

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19 TB4 at p 437.

20 TB4 at pp 438-492.

21 TB4 at pp 185-214.

34 This was distributed by GBX to Rock Token holders under cover of an e-mail from Mr Cowan dated 23 November 2018.[22] Paragraphs 20 and 21 of Schedule 2 of the STACS Token T&Cs read as follows:[23]

> 20. you enter into these T&Cs voluntarily and based on your own independent judgment and on advice from independent advisors as you have considered necessary; and
>
> 21. you understand and accept the risks of participating in Token Swaps relating to early stage blockchain start-up businesses and acknowledge that these risks are substantial.

35 Schedule 3 goes on to list the various risk factors in an extensive but non-exhaustive fashion. Paragraph 4 reads as follows:[24]

> **Risk of abandonment / lack of success / business failure**: the creation and issue of STACS Tokens and the further development of the GBX Platform may be abandoned, may suffer from lack of success and may suffer business failure for a number of reasons including but not limited to, lack of interest from the public, lack of funding, lack of commercial success or prospects (e.g. caused by competing projects). There is no assurance that, you will receive any benefits through STACS Tokens that you hold.

36 Although both whitepapers refer to H Inc, H Inc was not in fact incorporated (in the British Virgin Islands) until 21 January 2019. There was a single shareholder, Forever Honest International Limited ("Forever Honest"), and the sole director was Mr Phang Yew Kiat, a Prime Fintech employee.[25]

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22 TB4 at pp 215-217.

23 TB4 at p 209.

24 TB4 at pp 210 and 211.

25 TB4 at pp 562-563, 737.

37 Forever Honest was a wholly owned subsidiary of Chong Sing; the arrangement between Forever Honest, Prime Fintech and the GSX Group was formalised in a Joint Venture Agreement dated 23 January 2019 (the "JVA").[26]

38 Clause 2 of the JVA provided that:[27]

> **2. THE BUSINESS OF THE COMPANY**
>
> 2.1 The business of the Company (including its Subsidiaries) shall be the STACS (subject to and limited by any licensing agreement agreed between GSX and the Company regarding the same), blockchain development and STACS business development and business ancillary or incidental thereto, including but not limited to the business of selling wallet solutions, trading platform whitelabels, and customised development/implementation of the STACS or related blockchain products (Business).
>
> …

39 Clause 3 specified that the company should be called Hashstacs Inc and that the shareholding should be 100 shares divided into 34 for Forever Honest, 15 for Prime Fintech and 51 for GSX Group. Clause 7 provided that H Inc should incorporate two subsidiary companies, one in Singapore for business development, operational support and marketing of STACS (defined as being the STACS Protocol) and the second in Hong Kong to hold the intellectual property rights. The former (HS) was incorporated in Singapore on 15 February 2019 with Mr Soh as a director.[28] The Hong Kong company was never incorporated.

40 On 20 June 2019, Mr Cowan, Mr Soh and Mr Adrian Hogg (The COO of the GSX Group) were appointed directors of H Inc.

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26 Trial Bundle (Confidential) ("TBC") at pp 2413-2442.

27 TBC at p 2417.

28 TB4 at pp 1490-1513.

41 The JVA was amended on 22 July 2019 whereby Stellar became a party and Forever Honest sold its shareholding to Stellar. Recital (F) provided that:[29]

> Further, it has been agreed between the Parties that [Prime Fintech] shall and continue to provide system infrastructure and development services exclusively for and on behalf of the Company [H Inc] (the "**Services Agreement**"). As a result, the Parties affirm that the Company is and shall be the sole and exclusive owner of inter alia the intellectual property that is the result of this contract. The remaining Parties procure that the Services Agreement shall be finalised at the earliest opportunity but that notwithstanding this the Company is and remains the sole and exclusive owner of the intellectual property being provided and/or supplied to it by [Prime Fintech].

42 Following its incorporation, according to Mr Soh, on or around 18 March 2019 HS assisted H Inc to amend the Second Whitepaper and produced the STACS Network Whitepaper v 1.2 (the "Third Whitepaper")[30] on GSX Group's instructions.[31]

43 This version, on its face, emanated from H Inc rather than the GSX Group and the front page is coloured in blue rather than the red of the previous two versions.[32]

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29 TBC at p 2445.

30 TB4 at pp 677-726.

31 Soh 2WS paragraph 52b TB3/105

32 TB4 at p 677.


677

March 2019

STACS

THE SECURITIES TRADING ASSET CLASSIFICATION SETTLEMENT (STACS) NETWORK WHITEPAPER v1.2

A HOLISTIC INTEGRATED SYSTEM FOR THE ISSUANCE, TRADING, CLEARING AND SETTLEMENT OF ANY DIGITAL SECURITY AND ASSET ON THE BLOCKCHAIN

#STACS
HASHSTACS INC.

44 My attention was not drawn to any material alteration to the text of the document in addition to the change of name and colouring other than in relation to the STACS Token. More specifically the Consensus Incentives in section 8.3.1 remained the same. It is this passage that contains the representations relied upon by the claimants in this action as being false. I shall therefore repeat the passage here:[33]

> **8.3.1 Consensus Incentives**
>
> Transaction fees on Global STACS are based on the Gas price concept, whereby the complexity of the output will incur higher fees. Hence smart contract transactions will cost more while simple transactions will cost less. Transactions are paid using STACS Dollar (a stablecoin pegged to fiat USD), so that VPs

[33] TB4 at p 430.

> have confidence in the stability of transaction fees and valuation of securities, so that there is no uncertainty of using another non-stable cryptocurrency where the fees may become very high for a single transaction, or conversely, asset values dip to negligible if the underlying cryptocurrency is at low prices.
>
> *STACS undertakes to use the incurred fees on STACS Dollar to convert to STACS Token token to fulfil its staking rewards to the Global Nodes and Supernodes.*
>
> *The distribution of the transaction fees is:*
>
> - *70% of all transaction fees will be used to purchase STACS Tokens from the open market and shared with Global Nodes and Supernodes, 10% will be used to purchase STACS Tokens from the open market and retained in an Investor Protection and Governance Fund, while 20% will be allocated to Hashstacs Inc to maintain and continually develop the STACS Protocol*
> - *Of the transaction rewards of 70% in STACS tokens, it is shared 80/20 with the Global Nodes getting 80%, all to themselves, when packaging a block, while the Supernodes get 20%, shared among all Supernodes, for validating a block.*
>
> [emphasis added]

45 Section 5.1.9 remained the same. However, although the reference to Section 9 remains, Section 9, in so far as it related to the STACS Token, has been deleted with the Summary becoming Section 9. The claimants place significant reliance on this deletion.

46 Mr Soh accepts that HS uploaded the Third Whitepaper onto the website "stacs.io" but maintains that at that time this was a website owned and controlled by GSX Group and that it was attributed to H Inc, not HS.[34]

The Pleaded Case

47 With this background I can turn to consider the pleaded case.

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[34] Soh WS at paragraph 52c (TB4 at p 105).

48 The first issue that arises did so in a somewhat opaque manner. In para two of the Statement of Claim ("SOC"), it is pleaded that Munchetty holds the STACS Tokens purchased by Mr Silveira on trust for Mr Silveira.[35] This is not admitted in para 6 of the Defence. As the case developed it became clear that the defendants were raising a positive case that the transfer of the STACS Tokens was by way of a capital injection into Munchetty and hence they no longer belonged to Mr Silveira such that he had no title to sue. I shall refer to this as the "Trust Issue".

49 The main substantive issues in the case however relate to the representations allegedly made in the First to Third Whitepapers. Paragraph 27 of the SOC refers to the First Whitepaper as being a document emanating from the GSX Group *"*where the GSX Group announced that going forward it was developing and going to offer the STACS Protocol through a joint venture and subsidiary, Hashstacs Inc. (i.e. Hashstacs)".

50 However in para three, it is the first defendant, *ie*, HS, the Singapore company, that is defined as being Hashstacs, not H Inc, the BVI company, and it is pleaded that Hashstacs is "commonly referred to as 'Hashstacs Inc.', or generally as 'STACS' in relevant marketing and communication material". This elision of the two company names is repeated throughout the SOC but is denied in para 11 of the defence. Throughout the defence, reliance is place on the fact that H Inc and HS are separate legal entities and on the assertion that HS is not responsible in law for any representations made by H Inc. This distinction lies at the heart of the dispute between the parties.

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[35] See also 1st and 2nd Defendants' Defence (Amendment No 1) dated 6 September 2023 ("Defence") at para 61.

51 The SOC does not refer to the Second Whitepaper but in para 31 pleads as follows:

> 31. In March 2019, a second whitepaper titled "*The Securities Trading Asset Classification Settlement (STACS) Protocol WhitePaper v1.2*" (the "**Hashstacs Whitepaper**") was published by Hashstacs in relation to the STACS Protocol. By this time, Hashstacs had already been formally incorporated, and was the entity that prepared and issued the Hashstacs Whitepaper as the owner, developer and operator of the STACS Protocol infrastructure.

52 The defendants take issue with this in para 82 of the Defence which states:

> 82. In relation to the first sentence of paragraph 31:
>
> > a. It is admitted that the STACS Protocol Whitepaper v1.2 was published in or around March 2019. It is denied that this was the second whitepaper regarding the STACS Protocol. The STACS Protocol Whitepaper v 1.2 was the third whitepaper that had been issued ("**Third Whitepaper**"). The second whitepaper titled STACS Protocol Whitepaper v1.1 was published in or around December 2018 by GSX Group.
> >
> > b. It is denied that the 1st Defendant published the Third Whitepaper. The Third Whitepaper was published by GSX Group.

53 The claimants then set out the representations relied upon in para 34 of the SOC (the "Third Whitepaper Representations"). These are based upon the Consensus Incentives in section 8.3.1 of the Third Whitepaper:

> 34. More importantly, in the Hashstacs Whitepaper, Hashstacs made the following representations (the "**Hashstacs Whitepaper Representations**")
>
> > a. The **entire** STACS Protocol Ecosystem will be powered by the STACS Token.
> >
> > b. Verified Parties (i.e. VPs) on the STACS Protocol would need to stake the STACS Token.
> >
> > c. Transaction Fees on Global STACS are based on the Gas Price Concept (i.e. payments for transaction fees

> would be made on-chain, using the STACS Token, intended to be used as the sole embedded common medium of exchange for the settlement of all transactions among all its user, ie on the STACS Ecosystem).
>
> d. Transactions on the STACS Protocol Ecosystem (including on any Native STACS, the private blockchain subsection on the STACS Protocol) can be paid directly on chain using the STACS Token, or alternatively be invoiced and paid using the STACS Dollar (a stablecoin pegged to Fiat USD), which Hashstacs would convert via an open market purchase into STACS Tokens.
>
> e. 80% of all Transaction Fees from the STACS Protocol will be used to purchase STACS Token from the open market (i.e. via exchanges such as GBX, which operates itself on the same common integrated STACS infrastructure), which would subsequently be distributed to certain nodes within the STACS Ecosystem and/or retained in an 'Investor Protection and Governance Fund'.

54 In para 35 reliance is also placed on representations on the web address "https://stacs.io" (the "Website Representations"):

> 35. From at least around May 2019 onwards until around the end of 2019, Hashstacs had stated on Hashstacs' website (at web address <https://stacs.io>) (the "**Website Representations**") that:-
>
> a. "STACS Token is the utility token of the STACS Protocol Ecosystem (as well as the GSX Group)"
>
> b. "Transaction fees will be charged for all transactions using the STACS Protocol".
>
> c. "70% of all transaction fees will be used to purchase STACS Tokens from the open market and shared with Global Nodes and Supernodes as reward".
>
> d. "10% will be used to purchase STACS Tokens from the open market and retained in an Investor Protection Governance Fund".

55 The Defence denies that the representations were made by HS.[36]

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[36] Defence at paras 101 and 103

56 In paragraph 36, the claimants plead as follows:

> 36. The Hashstacs Whitepaper, the Hashstacs Whitepaper Representations and the Website Representations were publicly accessible information, and were part of Hashstacs' investor, marketing and publicity material. In fact, the First Whitepaper and the Hashstacs Whitepaper are the only detailed, formal or official documents describing the STACS Protocol and the use of and/or utility of the STACS Token throughout the STACS Ecosystem. The First Whitepaper and the Hashstacs Whitepaper were also readily distributed to parties interested in the STACS Protocol.

57 The defendants respond to this paragraph in para 105 and 106 of the Defence.

> 105. In relation to the first sentence of paragraph 36, it is admitted that the Third Whitepaper, Third Whitepaper Representations and the Website Representations were publicly accessible information. They were made available by GSX Group. It is denied that they were part of the 1st Defendant's "*investor, marketing and publicity material*". The 1st Defendant did not publish these materials regarding the STACS Protocol. The Defendants repeat paragraphs 10 and 82.b above.
>
> 106. The second sentence of paragraph 36 is denied. In addition to the First and Third Whitepapers, there was also the Second Whitepaper. The STACS Tokens are also governed by the terms and conditions titled "*TERMS AND CONDITIONS RELATING TO TOKEN SWAP Version 1.0 – 22 November 2018*" ("**STACS Token T&Cs**"). These documents were issued by the GSX Group and/or its subsidiaries.

58 The Defence then cites extensively from the STACS Token T&Cs in para 107 of the Defence and asserts in para 108 that the claimants were bound by those T&Cs. This is denied in paragraphs 6 to 20 of the Reply.

59 The defendants contend that as a purchaser of the STACS Tokens the claimants would have or ought to have known that the holding of such tokens would have been governed by terms and conditions and that accordingly by purchasing the tokens, they were bound by the STACS Token T&Cs . More

specifically, clause 6.5 makes it plain that any transfer of STACS Tokens would serve to bind the transferee.

60 The claimants contend that since the STACS Tokens were bought on the open market rather that as part of the token swap of Rock Tokens for STACS Tokens, neither Mr Silveira nor Munchetty knew of or ought to have known of the terms and conditions and therefore were not bound by them. I shall refer to the issue of whether the claimants were bound by the STACS Token T&Cs and the consequences if they are, which include the question of Munchetty's entitlement to sue, as the "STACS Token T&Cs Issues".

61 Although the Website Representations were pleaded separately from the Third Whitepaper Representations, they are in substance the same and no separate case was raised in relation to them in closing submissions. I shall therefore focus on the Third Whitepaper Representations.

62 The SOC then goes on to plead that the STACS Protocol was successfully implemented and adopted by the financial industry which is not admitted in the Defence.[37]

63 In para 58–60 it is pleaded that Mr Silveira purchased his holdings of STACS Tokens between August and December 2019 "induced by and acting in reliance of [sic]" the Third Whitepaper Representations.

64 This is denied in para 175 of the Defence in the following terms:

> 175. Paragraph 58 is denied. The 1st Claimant is a sophisticated investor and an experienced finance and banking professional, having worked at Goldman Sachs, Merrill Lynch,

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[37] Statement of Claim dated 3 March 2023 ("SOC") at paras 30-41 and Defence at paras 113-121.

> and Barclays bank for over 20 years. He would have acquired the STACS Tokens based on his own judgment and at his own discretion. Further, any STACS Tokens the 1st Claimant allegedly acquired would have been from the GSX Group and/or the open market, not the Defendants.

65 The SOC proceeds to contend that the Third Whitepaper Representations were false. This allegation is based upon the assertion that HS did not implement the STACS Protocol in the manner indicated in the Third Whitepaper Representations but instead subsequently swapped it for a different token, the GATE Token – which only had utility in relation just to GSX as a single user specific token operating only on Native STACS.[38] This is denied in the Defence.[39] The kernel of this defence is contained in paragraphs 10, 48 and 52:

> 10. The second sentence of paragraph 3 is denied. The 1st Defendant did not develop, operate or own the STACS Protocol. It was Prime Fintech Chengdu Co., Ltd and Chong Sing Fintech Holdings Limited that developed and supplied the STACS Protocol to Hashstacs Inc. In turn, the GSX Group Limited ("GSX Group"), purchased the STACS Protocol and the intellectual property rights in the STACS Protocol from Hashstacs Inc.
>
> …
>
> 48. The fourth sentence is denied. The 1st Defendant did not receive any fees in relation to the STACS Protocol infrastructure apart from fees paid by GSX Group for the Technology Services.
>
> …
>
> 52. The first sentence of paragraph 20 is denied. The Defendants did not operate the STACS Protocol infrastructure …

66 The plea of fraudulent misrepresentation is made in para 67–69 of the SOC. It is based in large part on a YouTube video (the "YouTube Video")

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38 SOC at paras 43(v), 44-53 and 64.

39 Defence at paras 10, 48, 52, 99, 101 and 187.

released by Mr Soh in December 2021 in which Mr Soh stated that he expected HS to generate transaction fee revenue escalating to some US$9m in 2022 and then to US$39m in 2024. It is asserted that had this revenue been generated in the manner represented in the Third Whitepaper using the STACS Token as proposed it would have led to a significant increase in the price of the STACS Token. The contention is that Mr Soh knew that this was false and that the removal of Section 9 in the Third Whitepaper served to demonstrate that Mr Soh knew at the time that the transaction fees would not be powered by the STACS Token.

67 The Defence to this is contained in para 193–225. Paragraphs 198 and 202 are particularly relevant:

> 198. Paragraph 69(a) is denied. The 2nd Defendant's YouTube video released sometime in or around April 2021 involved financial projections in relation to the 1st Defendant's business on the assumption that the *development* of its blockchain technology would be successful. The development was *not* successful. Further, any alleged tokens purchased by the 1st Claimant would not have been based on this YouTube video.
>
> …
>
> 202. In relation to paragraph 69(c):
>
> > a. The Claimant's allegation that the Defendants cancelled the STACS Token is denied. The Defendants did [not] do so. It would have been a decision made by the GSX Group. The Defendants repeat paragraph 10 above.
> >
> > b. The Claimants' allegation that they had been deprived of the Transaction Fees is denied. The Claimants was not entitled to receive the Transaction Fees even if they held STACS Tokens (which is not admitted).
> >
> > c. The Claimants' allegation that they had been deprived of the expected increase in price that the STACS Tokens would have enjoyed from the increased user adoption, and exponential growth in transaction volume is not admitted. In any event, the Defendants do not receive or retain any of the Transaction Fees, and did not deprive the Claimants of their alleged Transaction Fees.

> d. The alleged "*expected increase in price of the STACS Tokens*" would not have occurred in any event given the crash in the cryptocurrency market beginning in late 2021, which constituted an intervening event that generally brought down cryptocurrency prices.

68 In simple terms, the Defence draws a distinction between activities under the STACS Protocol which it is alleged was the responsibility of GSX Group who made the decision to change the STACS Token to the GATE Token on the one hand, and the business of HS developed in relation to activities separate from the STACS Protocol on the other. The YouTube Video related, it is said, to the latter and had nothing to do with the former.

69 Based on the same underlying facts and assertions, the claimants raise a case in negligent misrepresentation or negligent misstatement.[40] As pleaded, it was asserted that HS was liable for all three torts but that Mr Soh was personally liable for negligent misrepresentation. This latter allegation was not pursued in closing submissions.

70 Finally, it is asserted that both Mr Soh and HS are liable to the claimants for unjust enrichment and for conspiracy, both by lawful and unlawful means.[41]

71 This is denied in the Defence. Once again the pleading emphasises that the business of HS is wholly separate and distinct from that of GSX Group.[42]

The Issues

72 The following issues therefore arise for consideration:

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40 SOC at paras 70-73.

41 SOC at paras 76-81.

42 Defence at para 253.

(a) the Trust Issue. Does Mr Silveira have title to sue?

(b) the STACS Token T&Cs Issues. Are the claimants bound by the T&Cs and, if so, what are the consequences?

(c) fraudulent misrepresentation;

(d) negligent misrepresentation;

(e) negligent misstatement;

(f) unjust enrichment;

(g) conspiracy; and

(h) assessment of damages.

73 I propose to consider issues (c)–(e) first.

Issue (c): Fraudulent Misrepresentation

The Law

74 The applicable principles of law are not in dispute. They were expressed by the claimants in their written closing submissions as follows:[43]

> 75. To establish a claim for fraudulent misrepresentation, the following elements (as set out in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14]) must be proved:
>
> a. First, there must be a false representation of fact made by words or conduct;

[43] Claimants' Written Closing Submissions dated 16 September 2024 ("CWCS") at paras 75-77.

> b. The representation must be made with the intention that it should be acted upon by the representee (or by a class of persons which includes the representee);
>
> c. It must be proved that the representee had acted upon the false statement;
>
> d. It must be proved that the representee suffered damage by so doing; and
>
> e. The representation must be made with 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
>
> 76. In assessing whether an alleged representation was in fact made, the particular words used must be read in their context, and cogent evidence is required for fraud to be established.
>
> 77. It is possible for silence to amount to a representation in certain circumstances, such as where the representor has a positive duty to disclose the facts on which he remains silent. The representor's failure to disclose those relevant facts may render a statement previously made by the representor false or may itself constitute a false statement. The duty to disclose may arise out of the relationship of the parties and/or other circumstances in which the silence is maintained.
>
> [footnotes omitted]

75 The five elements were also referred to in the Defendants' Written Closing Submissions.[44]

76 The first, second and fifth elements relate to the actions, knowledge and intentions of the person allegedly responsible for the making of the false representation. In the circumstances of this case these three elements are interrelated and should be considered together. They raise the following sub-issues.

(a) First, were the representations in law actionable representations?

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44 Defendants' Closing Written Submissions dated 16 September 2024 ("DCWS") at para 94.

(b) Second, was HS the (or one of the) representor(s)?

(c) Third, were the representations false at the time they were made?

(d) Fourth, did the representations subsequently become false?

(e) Did HS "know" that they were false at the time that they were made?

(f) Did HS become aware that the representations had become false at a later date?

(g) Were the representations made by HS with the intention that they should be acted upon by Mr Silveira or by a class of persons to which Mr Silveira belonged – namely, holders of STACS Tokens?

77 The claimants' case is that HS was responsible for issuing the Third Whitepaper and rely upon the wording of the Consensus Incentives in section 8.3.1 as the passages in the Third Whitepaper which give rise to the representations. They contend that the alterations made to the wording of the Third Whitepaper from that in the First and Second Whitepapers, particularly those relating to the deletion of Section 9 concerning the STACS Token, were deliberately introduced by Mr Soh, acting in his capacity as a director of HS, with the intention that the STACS Protocol should operate without the STACS Token and that HS would reap the rewards of the success of the STACS Protocol rather than the owners of the STACS Tokens.

78 Reliance is placed particularly on some interchanges between Mr Silveira and Mr Soh in a series of e-mails in August and September 2020[45]

[45] Trial Exhibit 4.

which I shall have to consider in some detail below. The crux of the claimants' case is however summarised in para 66(d) of the claimants' written closing submissions:

> d. Hashstacs Singapore has never issued any token (including the STACS Token), never intended to do so and does not plan to issue any tokens in the future:
>
> > "*There has been no token issued on STACS protocol. There has only been 1 token issued by GSX Group in their own private STACS network… there was never a token sale…*".
>
> In other words, Mr Soh informed the 1st Claimant that the STACS Protocol was designed from the outset to operate without any STACS Token.
>
> [footnotes omitted]

79 This is encapsulated in para 130 of Mr Silveira's witness statement:[46]

> 130. Sometime in or around late 2019, following the announcement that the STACS Protocol would not officially launch in Q3 2019 after all (let alone in Q1 2019 as had been formally announced in the STACS Whitepaper), Hashstacs and Mr Soh, having realized that Hashstacs was and/or would be a viable business and was and/or would be successful and lucrative, decided not to use the transaction fees to purchase STACS Tokens, thereby cutting off the holders of the STACS Tokens enjoying any benefit any of the Transaction Fees generated across the STACS Ecosystem. This would allow Hashstacs to directly or indirectly retain 100% of the Transaction Fees generated by the STACS protocol infrastructure since 2019, instead of applying the Transaction Fees towards the purchase of STACS Tokens, of which 80% would be distributed to global nodes and super nodes and retained in an Investor Protection and Governance Fund (as *per* the Website Representations and Hashstacs Whitepaper representations).

80 The defendants' case is that Mr Silveira was working under a misunderstanding of the nature of HS's business and failed to appreciate that

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46 TB3 at p 63.

the STACS Token was specific to the STACS Protocol operated by GSX Group, not by HS.

81 It is thus necessary to consider the history of the developing relationship between GSX Group, GSX, GBX, H Inc and HS (together referred to as the "Participants") from the time of the latter's incorporation in February 2019. This will involve identifying the role played from time to time by Mr Soh and determining on whose behalf he was acting at that time. It is he and he alone who is said to be the controlling mind of HS such that his acts, knowledge and intentions are said to be the acts, knowledge and intentions of HS.

The Witnesses

82 Three witnesses of fact gave evidence: Mr Silveira, Mr Soh and Mr Cowan. I have already considered the standing of Mr Cowan as a witness at [14] above.

83 Mr Silveira's expertise lies in the UK financial industry, particularly in mergers and acquisitions when employed by Barclays Bank for some ten years. He accepted that he had no technical expertise and relied on experts for that. He described himself as being a cautious sophisticated investor.[47] His investment in STACS Tokens was one of his first investments in the crypto field.[48]

84 Much of Mr Silveira's witness statement is based upon documents he had obtained emanating from the Participants from which he asserts that he formed his perceived understanding of the nature of the Participants' business. It was the understanding that he formed as to the proposed nature of the STACS

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47 Transcript Day 1 dated 22 July 2024 ("T1") at Page 39 Line 8 to Page 41 Line 3.

48 T1 at Page 50 Line 18 to Page 51 Line 17.

Protocol and its reliance on the STACS Token that induced him to purchase the STACS Tokens in the autumn of 2019. Equally it was his understanding of the way in which Mr Soh then went about developing the business of HS so as not to make any use of the STACS Token that led him to conclude that HS, through Mr Soh, had acted fraudulently. Throughout his witness statement he drew little distinction between H Inc and HS.

85 Mr Silveira was cross-examined on his perceived understandings and the conclusions he had reached on the basis of those understandings. He had a guarded attitude towards answering fairly straightforward questions and tended to answer them at some length with the intention of clarifying his point of view. Regrettably in some cases this had the opposite effect but, in the end, a measure of judicial confusion was resolved. It was not suggested by counsel for the defendants that Mr Silveira was anything other than sincere in giving the evidence that he did or in holding the views that he expressed. I accept that he was sincere in this respect.

86 The question however is not whether the witness truly held the beliefs he expressed but whether the facts support those beliefs.

87 The third witness of fact was Mr Soh. Mr Soh is an accountant by training but since 2010, when he co-founded Broctagon, he has been involved in the financial technology field. In 2017 he left Broctagon.[49]

88 Prior to this, in 2015, Mr Soh co-founded Stellar. It was by virtue of his introduction to Mr Cowan in 2017 that Stellar became an investor in GSX and then the GSX Group and Mr Soh became a director of both entities. Stellar's

[49] Soh 2WS at paras 5-6.

investment was structured through Cyberhub Fintech Holdings Limited ("Cyberhub") which held GSX shares on trust for Stellar.[50]

89 Mr Cowan and Mr Soh gave evidence as to the way in which that relationship developed and the dealings between GSX Group and its joint venture partners.

90 Mr Soh was cross-examined at length. He was at pains to emphasise the distinction between the actions of HS and H Inc but this was not surprising having regard to the fact that Mr Silveira had been at pains to do the opposite. Whilst not technically qualified he plainly had a good understanding of blockchain technology. He became somewhat frustrated when he felt that his explanation of various aspects of the technology which were clear to him were not being accepted by, and possibly not understood by, the cross-examiner.

91 In paras 34–57 of their written closing submissions the claimants expand at length on the reasons why they contend that Mr Soh was evasive, untruthful and gave evidence which was not supported by the documents. It is convenient to consider each of the allegations made against Mr Soh as and when they arise in the course of the factual matrix, following which I shall reach conclusions as to the weight to be attached to Mr Soh's evidence in the light of the claimants' submissions as to his credibility.

The Facts

92 The following facts constitute the factual matrix underlying this dispute. They are either not in dispute or are established on the balance of probabilities.

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[50] Soh 2WS at paras 10-14.

The First Whitepaper

93 The starting point is the issuance of the Rock Token and its subsequent development into the STACS Token and the publication of the First Whitepaper in November 2018 (see [19]–[31] above).

94 Mr Cowan gave evidence that the First Whitepaper was prepared by him and his team at GSX Group.[51] In cross-examination he was asked about the part played by Mr Soh in this exercise.

> Q: Was Mr Benjamin Soh involved in preparing the v1.0 or v1.1 Whitepaper?
>
> A: I think in an advisory capacity, yes, but I held the pen, I was the author with my executive team which included general counsel Will Rawley, included Adrian Hogg who was very much our regulatory and legal expert internally. But with a paper of this complexity the Group Board were involved. I was bouncing it off members of the Group Board and saying to them, "This is what we are thinking of doing, I want to discuss this with you". There were a lot of people involved in understanding what we were trying to articulate and what we wanted to build.
>
> Q: But Mr Benjamin Soh did not, in your words, hold the pen?
>
> A: No. Ben did not hold the pen.
>
> …
>
> A: … Was Ben consulted? I would say yes, regularly, but was he involved in holding any of the pen or drafting any of the paragraphs? I would say absolutely not. But we were consulting lots of different parties within our stakeholder system and then pulling that together in terms of finalising that vision.
>
> Q: So, in other words, it was you, William Rawley and a core team in GSX Group that prepared -- they came up with the vision, prepared the Whitepapers and then you got input from different sources?

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[51] Cowan WS at para 21.

A: Supported and advised by different sources, correct.

95 Mr Soh's evidence was to like effect.[52] On the basis of this I am satisfied that it was Mr Cowan who had the idea underlying the STACS Protocol and the use of the STACS Token in relation to it. He was also the driving force behind the First Whitepaper which was prepared by him and his team at GSX Group.

96 Any input from Mr Soh was limited and was given in his capacity as a director of GSX Group. Such as it was, it cannot be attributed to HS directly since HS had not been incorporated by this date.

97 What then is the character of the First Whitepaper? What is it proposing and to whom? What, in particular, is it proposing with regard to the use of the STACS Token?

98 The First Whitepaper is not a prospectus seeking investment by third parties. As is apparent from reading the document, it is describing a proposed new system for trading assets using the STACS Protocol – as is implicit in its full name – Securities Trading Asset Classification Settlement Protocol. It represents a vision as to the way in which the GSX Group aimed to support financial institutions initially by providing them the Native STACS followed by allowing this to scale up globally through the public Global STACS. It is a marketing document explaining that vision and the way in which it was proposed to be implemented. The aspirational nature of the project is apparent throughout the document as can be seen from the following extracts:[53]

4th: Token Sales

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52 Transcript Day 3 dated 24 July 2024 ("T3") at Page 67 Line 13 to Page 68 Line 1.

53 TB4 at pp 389, 390 and 394.

> A token offering is a type of crowdfunding using cryptocurrencies. *A quantity of cryptocurrency is sold in the form of tokens to contributors (speculators or investors), in exchange for legal tender or other cryptocurrencies such as Bitcoin or Ethereum. The tokens sold are promoted as future functional units of currency if or when the token sale funding goal is met and the project launches.*
>
> …
>
> In simple terms, Tokenised Securities can be seen as programmable ownership. By bridging legacy finance and the Blockchain world, Security Tokens, Tokenized Securities or Investment Tokens are financial securities. *They are investments with anticipation of future profits: dividends, revenue share & price appreciation.* The second generation of tokens can provide an array of financial rights to an equity investor such as dividends, profit share rights, voting rights, buy-back rights etc…). These rights are written and hardcoded into a smart contract and the tokens will be traded on a regulated Blockchain exchange.
>
> …
>
> Whereas the top Exchanges today will undoubtedly change their business models over the next 24 months, the GSX Group will answer this need today, by implementing a Blockchain solution in the form of the STACS Protocol.
>
> *The STACS Protocol has the goal to radically transform the capital markets with Distributed Ledger Technology and by the same token show leadership in the space.* It is aiming to address Capital Markets inefficiencies by unlocking the tremendous potential of Tokenised Securities and Digital Assets.
>
> The STACS Protocol is a unique public/permissioned hybrid global Blockchain to issue, trade, clear and settle Digital Securities. It will endeavour to enforce the best standards accepted by regulators in an open, transparent and inclusive environment. The STACS Protocol is an international effort designed for all stock exchanges, investment banks, broker/dealers, custody providers and qualified financial institutions to join for free as "Verified Partners" (VPs), while providing advantages to both issuers and investors globally. The STACS Protocol approach is collaborative, not competitive. We also welcome all third-party technology providers to build specialised apps on top of the STACS Protocol, to offer services to all participants in our STACS Ecosystem.
>
> [emphasis added]

99 It is in the light of such comments and in the context of the document as a whole that the reader will come to assess the meaning and implications of the undertakings given in Section 8.3.1 as to how the transaction fees would be distributed. The document is not directed to an uninformed audience; it is directed to financial institutions with a view to encouraging them to adopt Native STACS and in the course of time Global STACS. I also consider that it was directed to those "speculators or investors" who are purchasers of tokens.

100 It must be read through the eyes of such people who have a degree of understanding of the marketplace in question. This was an innovative development in the blockchain field, a field that was recognised as being speculative. No serious investor, either in the form of a financial institution or an investor in STACS Tokens, would have considered that involvement in the project was devoid of risk or that there were any guarantees of any degrees of success. But what they would have understood was that, in so far as the project took off, the system would be financed as indicated in Section 8.3.1.

101 I therefore hold that the representations relied upon by the claimants were representations made in the First Whitepaper as to the way in which transaction fees generated by implementation of the STACS Protocol would be distributed with the important caveat that this was to the extent that it proved viable to implement the STACS Protocol. This would depend on the degree of success that was achieved in marketing the proposal.

102 I also hold that the First Whitepaper was published by GSX Group in good faith. It was not suggested to Mr Cowan that he intended to act otherwise than in accordance with the representations, nor that he was not going to use his best efforts to make the project a success.

103 The attack made on Mr Soh's lack of good faith lies in the alterations made to the Third Whitepaper and his subsequent conduct. There is no evidence to suggest that at the date of the First Whitepaper, Mr Soh was anything but fully supportive of the project.

The Joint Venture

104 The Second Whitepaper was published, again by GSX Group, in December 2018 but nothing turns on this. However, by this date, although H Inc was referred to in both Whitepapers as being "the GSX Group technology joint venture", it had yet to be incorporated.

105 As can be seen from the illustration of the various divisions of the GSX Group, H Inc was to be responsible for "STACS Protocol", "Blockchain Development", "Enterprise Wallet", and "Exchange Platforms"[54] whereas GBX was responsible for token sales and cryptocurrency trading.

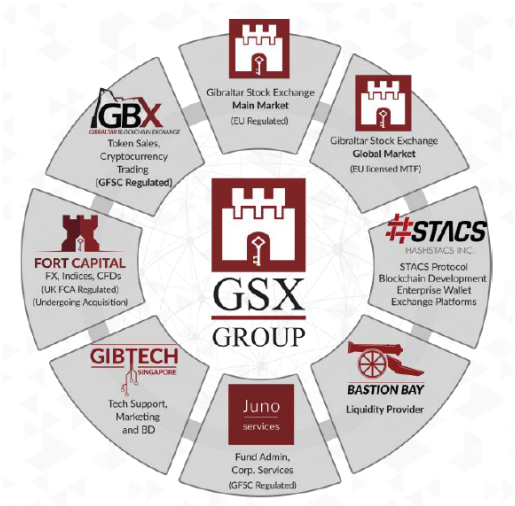

Figure 1 - GSX Group Structure

54 See for example TB4 at p 441.

106 The joint venture referred to was the JVA dated 23 January 2019 (see [37]–[41] above).[55] Clause 3.1 provides for the incorporation of H Inc which is defined as being "the Company" and Clause 2.1 defines the business of the Company as follows:[56]

> **2. THE BUSINESS OF THE COMPANY**
>
> 2.1 The business of the Company (including its Subsidiaries) shall be the STACS (subject to and limited by any licensing agreement agreed between GSX and the Company regarding the same), blockchain development and STACS business development and business ancillary or incidental thereto, including but not limited to the business of selling wallet solutions, trading platform whitelabels, and customised development/implementation of the STACS or related blockchain products (**Business**).

107 STACS is defined as being the STACS Protocol but to avoid any possible confusion with subsequent use of the acronym STACS in other contexts, I shall continue to refer to the STACS Protocol rather than the abbreviation STACS when considering the protocol itself.

108 The "business" of H Inc extends not only to the development, by H Inc or its subsidiaries, of the STACS Protocol blockchain together with the business development of the STACS Protocol but also to the "customised development/implementation of the STACS [Protocol] or related blockchain products".

109 Clause 7 relates to the incorporation of HS which was to be a wholly owned subsidiary of H Inc "for business development, operational support and marketing of STACS [Protocol]".

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55 TBC at p 2413.

56 TBC at p 2417.

110 The working relationship between the joint venture parties and H Inc essentially involved Prime Fintech devising the blockchain code for the various aspects of the STACS Protocol and supplying it to H Inc. This was apparently pursuant to the payment of the sum of US$1.5m by GSX Group to Prime Fintech.[57]

The Third Whitepaper

111 The Third Whitepaper was published on 18 March 2019. On its face it is published by H Inc but the underlying text is taken verbatim from the earlier Whitepapers save for the removal of Section 9. There is no mention of HS. It is quite clear that although it is published by H Inc this is part of a scheme devised by the GSX Group of which H Inc is the entity within the GSX Group that has responsibility for the STACS Protocol. The same wording and the roundel set out at [105] above is reproduced. It is also apparent that it is the GSX Group that has developed the STACS Protocol through the joint venture.

112 Nothing, to my mind, could be clearer than the statement in para 2.3 of this Whitepaper, which also appeared in the earlier versions:[58]

> *The GSX Group, will offer the Securities Trading Asset Classification Settlement (STACS) Protocol, and the STACS Ecosystem of related products and services, through Hashstacs Inc.* The STACS Protocol Ecosystem will be the next generation of trading platforms, powered by the latest Blockchain technologies, serving the global demand for digital securities.
>
> [emphasis added]

113 However, it is the claimants' case that the involvement that HS had in the rewording of this document renders it liable in law for the representations

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57 T2 at Page 149 Line 17 to Page 150 Line 19.

58 TB4 at p 685.

relied upon in this action and that the rewording was orchestrated by Mr Soh in his capacity as a director of HS well knowing and intending that the change was part of a fraudulent venture calculated to enable HS to profit from the successful promotion of the STACS Protocol rather than the GSX Group and holders of STACS Tokens, such Mr Silveira.

114 It is thus necessary to consider the amendments. In essence these consist of the removal of Section 9 although Section 5.1.9 still retains the reference to it. As the document now stands it states that the entire "STACS Ecosystem" will be powered by the STACS Token and that VPs will have to stake STACS Tokens to be able to host nodes.[59] It goes on to refer to the need for VPs to stake more STACS Tokens to be able to run "Supernodes" and then identifies how the fees generated will be shared, *inter alia*, with the "Global" nodes and Supernodes.[60]

115 What is missing is the further explanation of the STACS Token. Section 9.1 in the earlier documents[61] is an amplification of the way in which STACS Tokens will be the utility token of the STACS Protocol. It adds little to the explanation in Section 8.3.1. Section 9.2 is an explanation to existing GBX Rock Token holders of the impact that the change from Rock Tokens to STACS Tokens will have should they accept the invitation to swap their token for the STACS Tokens. It also informs the reader that all 900,000,000 Rock Tokens have been put into circulation and that no further tokens will be minted. Section 9.3 draws together the various factors which serve to provide utility of the

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59 Section 5.1.9 (TB4 at p 692).

60 Section 8.2.2 (TB4 at p 720).

61 TB4 at pp 488-491.

STACS Token which, in the main, have been described more fully in the body of the document.

116 Mr Cowan gave evidence as to the reasons for the omission of Section 9 in paras 29 and 30 of his witness statement:[62]

> … The Third STACS Whitepaper omitted the section on the STACS Tokens. This was part of the efforts to support Hashstacs Inc.'s business of supplying technological solutions (including based on the same underlying technology as the STACS Protocol) to other companies. The Third STACS Whitepaper was meant to be a show case of Hashstacs Inc's capabilities through its supply of the STACS Protocol and related services to GSX Group. This was welcomed by the GSX Group as we believed that the more businesses used the STACS Protocol's underlying technology, the more likely that they would become familiar with the aforementioned technology and become a future user of the STACS Protocol. It followed that there would therefore be more opportunities to collaborate with other STACS technology users to execute GSX Group's vision of building a digital ecosystem.
>
> 30. The Third STACS Whitepaper was prepared with the assistance of staff from the 1st Defendant (being the operating company) for Hashstacs Inc, who published it. The edits made by the 1st and/or the 2nd Defendant were made on my instructions and ultimately for the benefit of Hashstacs Inc and the GSX Group.

117 He was cross-examined on this evidence[63] and in substance confirmed his written evidence. He described the changes as being minor changes which did not affect the way in which the STACS Protocol was intended to operate. It was not suggested that Mr Cowan was being anything other than truthful in his understanding of the reasons for making the amendments and I accept that this was his understanding.

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62 TB3 at p 160.

63 T5 at Page 59 Line 4 to Page 61 Line 11.

118 Mr Soh gave similar evidence in para 52.b of his second witness statement[64] but made the additional point that H Inc was not involved in the Rock Token to STACS Token swap which by then had already occurred. He expanded upon this in his cross-examination[65] where he repeated his reasoning for wishing to remove Section 9 but accepted that so far as the GSX Group was concerned the STACS Ecosystem required the STACS Token.[66]

119 The qualification "so far as GSX Group is concerned" is important. Mr Soh's evidence is that operation of the STACS Protocol did require the STACS Token but that later developments of other blockchain products by HS did not. In cross-examination the expression STACS Ecosystem was on occasions used more widely than merely to refer to the STACS Protocol so as to include these later developments and it is the claimants' case that this was a correct usage as the later developments should have employed the STACS Tokens.

120 Hence although the claimants do not challenge that the amendments to delete Section 9 were made for the reasons given by Mr Cowan and Mr Soh, they contend that, so far as Mr Soh was concerned, he had an underlying motivation in removing the section so as to enable him to defraud the owners of STACS Tokens of revenue which they would have been entitled to had the STACS Tokens been the utility tokens for HS's subsequent developments – which they should have been. I shall return to this issue at [216]–[220] below.

121 Drawing all this together, the Third Whitepaper was a minor update to the earlier Whitepapers containing only insignificant modifications other than

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64 TB3 at p 105.

65 T3 at Page 90 Line 15 to Page 93 Line 18.

66 T3 at Page 93 Lines 14-18.

substitution of the name of H Inc as the publisher, the colour change to blue and the removal of Section 9. The emphasis remained on the GSX Group being the driving force behind the STACS Protocol with GBX being responsible for token sales and H Inc for the STACS Protocol. There was no reference to HS but HS did contribute to the revised wording.

The marketing of the STACS Protocol

122 The purpose of the three Whitepapers was to promote the STACS Protocol to interested parties. This was done as well by a variety of means including through a Telegram (a chat application) channel from November 2018,[67] notices put out on social media by members of the GSX Group from 28 January 2019,[68] by the STACS Litepaper in March 2019,[69] and by attendance at conferences. As the social media extracts show, reference was made to H Inc and not to HS. They also refer to the attendance of representatives of the GSX Group at conferences in London[70] and Hong Kong.[71]

123 The latter conference was attended by Mr Soh, who was quoted as being "Executive Director of the GSX". Mr Soh attended a number of conferences to assist in the promotion of the STACS Protocol. Mr Soh gave evidence in his second witness statement[72] that his role on the executive committee of GSX Group was limited to providing advice and support in terms of networking and promotion of GSX Group to potential partners in Asia.

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67 TB4 at p 336 *et seq*.

68 TB4 at p 1891 *et seq*.

69 TB4 at pp 520-546.

70 TB4 at p 1891.

71 TB4 at p 1897.

72 TB3 at p 76 at [22.f].

124 It was in this capacity that, for example, he attended the 2018 Singapore FinTech Champions event,[73] where his biography stated that he was "Executive Director Gibraltar Stock Exchange Group" and that he was "developing the Group's growth strategy together with the Global Executive Committee and [was] in charge of executing it in newer markets, especially in Asia". Mr Soh had no recollection of this event but accepted that he was involved in advising the GSX Group on strategy in Asia.[74] In his cross-examination he accepted that he had been represented publicly as the executive director of GSX Group on a number of occasions and considered this was appropriate.[75]

125 A number of other occasions on which he spoke at or attended meetings or conferences both before and after the incorporation of H Inc where he was described as being an executive director of GSX Group were put to him in cross-examination.[76] The passage of cross-examination ended with the following:

> I was saying that I do not agree with that statement because if we look at the bigger context, I was involved in one or two activities or events in Asia, whereas 99 per cent of the time there were maybe 100 other events that were fronted by Nick Cowan and other members of the Gibraltar team, as well as other communications and materials in the public domain, be it in the website, in the social media channels or the Telegram group.

126 Mr Silveira himself accepted that it was common in the banking industry to have titles like managing director and executive director as business titles

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73 TB4 at p 494 at 516 and Trial Exhibit 3.

74 T2 at Page 109 Line 13 to Page 114 Line 5.

75 T2 at Page 115 Line 7 to Page 116 Line 23.

76 T2 at Page 114 Line 6 to Page 126 Line 22.

even if the person in question was not on the board of directors and that this was not misleading.[77] Mr Cowan's evidence was to like effect.[78]

127 I conclude from this that at all times both before and after the incorporation of H Inc, Mr Soh was actively promoting the business of the GSX Group in Asia in support of the promotion that Mr Cowan and his team in GSX Group were engaged in in Europe. I see nothing sinister in the use of the title "Executive Director" particularly when Mr Soh was a member of the executive committee. It was a public-facing title to indicate that he spoke with authority about the business of GSX Group which was the case.

128 The documents and evidence also demonstrate that representatives of the GSX Group, including Mr Cowan and Mr Soh, were actively promoting the STACS Protocol both before and after the incorporation of H Inc. It was not suggested that Mr Soh was not doing his utmost to promote GSX Group's STACS Protocol and it is clear that he was. But this was in his capacity as an "Executive Director" of GSX Group, not in his capacity as a director of HS.

129 The Third Whitepaper indicated that the first version of live implementation of the STACS Protocol was expected by Q1 2019.[79] This did not occur.

The Subsequent History

130 The subsequent history of the development of the STACS Protocol project by GSX Group and the contribution made to this by HS, the relationship

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77 T1 at Page 41 Line 13 to Page 42 Line 12.

78 T5 at Page 20 Line 16 to Page 21 Line 9.

79 TB4 at p 680.

between HS on the one hand and GSX Group, including H Inc, on the other and the development work done by HS other than specifically directed to the STACS Protocol is somewhat complex.

131 In simple terms, the defendants' case is that:

(a) The STACS Protocol project was directed from Gibraltar by GSX Group and by Mr Cowan in particular. Although H Inc was the joint venture vehicle and was not wholly owned by GSX Group, GSX Group was the majority shareholder and directed its activities.

(b) One of the functions of HS pursuant to the JVA was to support the STACS Protocol (clause 7.2) but as a subsidiary of H Inc it was also entitled to develop other related blockchain products (clause 2.1). This it did, with the knowledge and agreement of GSX Group.

(c) These related blockchain products did not use the STACS Token (which the claimants contend that they should have done).

(d) Although GSX Group did launch Native STACS, Global STACS was never launched and difficult trading conditions caused it to revise its business plan radically which led to STACS Tokens being swapped into a new token called the GATE Token. HS played no part in this although it did continue to provide technical support for the STACS Protocol.

(e) HS developed a number of related products none of which was successful commercially.

(f) In the course of time the relationship between GSX Group, the joint venture partners and HS changed such that HS became an independent company and H Inc was dissolved.

132 It is convenient to divide up the analysis of the facts into the following:

(a) the changing relationship between the Participants;

(b) the activities of GSX Group in relation to the STACS Protocol; and

(c) the activities of H Inc and HS allegedly not in relation to the STACS Protocol.

The changing relationship between the participants

133 Under the January 2019 JVA, Forever Honest held 34 shares in H Inc, Prime Fintech held 15 shares and GSX Group 51 shares. Mr Soh was not at that time a director of H Inc. HS was incorporated as a wholly owned subsidiary of H Inc on 15 February 2019 and Mr Soh was one of the two directors. In June 2019 there was a capital raise *via* a share allotment which Forever Honest and Prime Fintech did not take up. Stellar took up their allotment and Mr Soh was appointed a director of H Inc.[80]

134 In July 2019 Forever Honest indicated that it wished to withdraw from the joint venture and Stellar purchased Forever Honest's shares in H Inc. This was recorded in the Amendment and Restatement Agreement and Deed of Adherence dated 22 July 2019[81] (the "JVA Amendment Agreement"). The

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80 TB4 at pp 737-743.

81 TBC at pp 2443-2455.

agreement also provided that a service agreement should be executed to regulate the provision of development services from Prime Fintech to H Inc and that the payment for the development services including all relevant intellectual property had been paid by GSX Group on behalf of H Inc. The Service Agreement[82] was executed on 28 October 2019.

135 On 26 March 2020, H Inc divested ownership of HS to the joint venture partners, namely GSX Group, Prime Fintech and Stellar; Stellar transferred its shares in HS to Mr Soh.[83]

136 In para 64 of his witness statement[84] Mr Soh gave evidence as to the consequences of this as follows:[85]

> 64. Following Hashstacs Inc's divestment of the 1st Defendant, the parties to the JVA recognised there was no longer a need for the continued existence of Hashstacs Inc as its supply of services to GSX Group can be handled directly by the 1st Defendant. To that end, GSX Group, Chengdu Prime STACS Technology Co. Ltd ("**Prime STACS**") (who acquired all of Prime Fintech's shares and now stand in its position), Hashstacs Inc and the 1st Defendant entered into a Purchasing, Services and Ratification Agreement ("**PRSA**") dated 5 August 2020, which was later superseded by a version dated 10 October 2020, under which:
>
> > a. the 1st Defendant would provide technology services and upgrades including in relation to the STACS Protocol to GSX Group; and
> >
> > b. parties acknowledged that Hashstacs Inc shall be dissolved.

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82 TB4 at pp 780-819.

83 TB4 at pp 1501-1503.

84 TB3 at pp 114-115.

85 See also TB4 at pp 899-915 and 916-949.

137 In consequence, on 3 November 2020, H Inc was dissolved and between 28 March 2020 and 3 February 2023 the GSX Group gradually divested its shares to Mr Soh.

The activities of the GSX Group in relation to the STACS Protocol

138 It is apparent from the contemporaneous documents that little distinction was drawn between the activities of GSX Group as the holding company and the activity of its two subsidiaries, GBX and H Inc. The promotion of the STACS Protocol was portrayed as being under the overall umbrella of GSX Group under the leadership of Mr Cowan.

139 As indicated in [129] above, the STACS Protocol did not go live in the first quarter of 2019. Pilot projects were carried out between March and June 2019 details of which are given in para 53 of Mr Soh's written statement.[86] In July 2019, in a document entitled "STACS Network" published by H Inc,[87] these pilot projects are reviewed and the document ends by stating "Ready to Deploy. Today." Counsel for the claimants drew my attention to the fact that on page 746 it was stated that H Inc had its "HQ" in Singapore. This was one of a number of references to the business of H Inc being based in Singapore.[88]

140 However it does not appear that any part of the STACS Protocol was ready to be deployed commercially in July 2019. On 19 November 2019, GSX Group announced that it was rolling out a new GSX Group platform which would enable it to "[g]o-live on the GSX 'Main-Net' of Native STACS" and

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86 TB3 at p 106.

87 TB4 at pp 744-762.

88 See TB3 at pp 106-107.

that in consequence it proposed that STACS Tokens would transfer over to a new token, the GATE Token.[89]

141 This was amplified by Mr Cowan in a screenshot from the Telegram channel (now renamed The GSX Group Community) on 5 December 2019.[90] This explains that regulatory compliance was preventing development of the business as proposed in the Whitepapers and that the first digital launch of Native STACS was to be in December.

142 A further announcement was made on 12 February 2020, again dealing with the transfer from STACS Tokens to GATE Tokens indicating that preparations were still in hand for the launch of the "GSX Group Native STACS Mainnet".[91]

143 The focus at this time was on launching Native STACS and by August 2020, it appears that the GSX Group was still focusing on Native STACS rather than Global STACS Protocol as can be seen from the Purchasing, Services and Ratification Agreement ("PS&R Agreement") dated 5 August 2020[92] which related solely to Native STACS as defined in Schedule 1. This agreement provided, *inter alia*, that the technology referred to in Schedule 1 was the property of GSX Group (Clause 5.5) and that this term included the intellectual property and source codes (Clause 1.1).[93]

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89 TB4 at p 820.

90 TB4 at pp 823-826.

91 TB4 at p 867.

92 TB4 at pp 890-915.

93 See also clause 3.1 of the 2nd PS&R Agreement of 10 October 2020 (TB4 at p 926).

144 Mr Cowan was cross-examined on this when he said:[94]

> Q: So was GSX Group only buying Native STACS?
>
> A: At this point, yes.
>
> Q: At this point? Is there another point that you want to refer to?
>
> A: No. The vision was that we would deploy our Native STACS, start to build our own exchange and then start to build out the verified partner network and Global STACS would follow. From our perspective, there was no requirement for Global STACS at this initial stage because we had to get our Native STACS effectively working and also get the Gibraltar Stock Exchange licensed. They were going hand-in-hand.

145 For reasons explained by Mr Cowan in his witness statement the process of swapping STACS Tokens for GATE Tokens was delayed primarily because of adverse trading conditions being experienced by GSX Group. The swap eventually took place in January 2021.[95]

146 A good deal of emphasis was placed on the swap of STACS Tokens for GATE Tokens at the trial, it being part of the claimants' case that this exercise was part of a ploy to deprive holders of STACS Tokens of the benefits which they anticipated would be obtained from a successful implementation of the STACS Protocol. However what is quite plain is that the exercise was conducted by GSX Group and that there was no involvement of HS and that any part played by Mr Soh was not in his capacity as a director of HS.

147 Mr Cowan explained the underlying purpose in paragraph 44 of his witness statement:

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94 T5 at Page 49 Lines 4-15.

95 Cowan WS at paras 46-55.

> 44. This was driven by the GSX Group's desire to further develop its digital asset ecosystem from a single blockchain infrastructure to one that could accommodate multiple blockchains. The Token Swap was also intended to rebrand GSX Group into a global company, and away from the narrow perception that it was a digital assets exchange solely based in Gibraltar. These two developments would potentially allow GSX Group to capture a larger user base, which would in turn result in more profits and revenue from a business perspective.

148 This resulted eventually in the GATEnet Whitepaper published on 31 March 2021.[96] GATE is an acronym for "Global Asset Tokenised Ecosystem". This makes it clear that it is a GSX Group initiative and the authors are stated to be Mr Cowan together with Mr Adrian Hogg, the chief operating officer of GSX Group and Mr Mikko Ohtamaa, the Blockchain Advisor.[97]

149 The history is recorded in Part E:[98]

> **History of the GATE Token**
>
> Rock Token (RKT) launched during January 2018 via the issuance of the GBX and Rock Token Whitepaper. The Rock Token project consisted of two key components; (i) to establish GBX, a marketplace for utility tokens and digital assets; and (ii) creating a financial services and fintech ecosystem with multiple products and services.
>
> During November 2018 the GSX Group issued its STACS Technical Whitepaper setting out its vision for the development of the STACS Protocol, a proprietary hybrid structure of permissioned/global blockchain, tailored for the finance industry, developed by Hashstacs, a then GSX Group subsidiary company, incorporating GATE token utility including staking.
>
> During November 2018, Rock Tokens were swapped for STACS Tokens with the purpose of preparing for the swap from an ERC-20 token to a STACS Protocol token when the STACS Protocol Mainnet was ready to go live. During February 2020, STACS Tokens were available to be swapped, as planned, from

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96 TB4 at pp 1203-1242.

97 TB4 at p 1219.

98 TB4 at p 1215.

> an ERC-20 to a STACS Protocol Mainnet token. The name of the token was changed to GATE (Global Asset Tokenised Ecosystem) to highlight the objective to build the core services that enable issuers to access new avenues of capital raising, while championing the benefits of blockchain adoption in traditional finance.
>
> During January 2021 following feedback from our community, an ERC-20 GATE token was minted to replace the STACS Protocol Mainnet GATE token. The issuance of the ERC-20 GATE token addressed the community's preference to have a token that is issued on a decentralised blockchain network for ease and efficiency of interoperability for listing on multiple exchanges, that holders can self-custody, and that holders are able to control transmission via a public blockchain network. The ERC 20 GATE token replaced all previously issued tokens in entirety as the GSX Group's sole utility token via a 1:1 swap ratio.

150 In paragraphs 58 and 77–80 of his second witness statement Mr Soh gave the following evidence:

> 58. With the STACS Protocol delivered to GSX Group, Hashstacs Inc and its subsidiary, the 1st Defendant, took steps to grow its other business objective of selling whitelabel blockchain-based technological solutions to third party clients, whether based on the technology underlying the STACS Protocol or otherwise. To facilitate Hashstacs Inc and the 1st Defendant's growth efforts, GSX Group agreed to re-brand its STACS Protocol and STACS Tokens to avoid aural confusion between the STACS Protocol / STACS Tokens and Hashstacs Inc and the 1st Defendant. This culminated in the launch of GSX Group's GATENet platform (see Section III(D) below).
>
> …
>
> 77. As mentioned at paragraph 58 above, this transition from STACS Protocol to GATENEt [*sic*] and STACS Tokens to GATE Tokens was, in part, a re-branding exercise to aid Hashstacs Inc and the 1st Defendant's efforts to grow its business of selling 'white label' technological solutions (see paragraph above).
>
> 78. At the same time, I understand that GSX Group was restructuring its business as regulatory challenges in Gibraltar and the advent of unregulated cryptocurrency exchanges meant that it was no longer viable for GSX Group to focus on establishing itself as regulated tokenised securities market operator in Gibraltar alone.

> 79. To facilitate GSX Group's business, GSX Group's Native STACS (or GATENet) was modified to be able to inter-operate with other blockchains apart from the STACS Protocol with a view to capturing a wider the user base.
>
> 80. Apart from this modification, GATENet is identical to STACS Protocol, and GATE Tokens have identical utility to the STACS Token. GATENet users would have pay transaction fees in fiat or GATE Tokens to use GATENet, and transaction fees generated by users of GATENet would similar be used to repurchase GATE Tokens from the market. Indeed, while GATENet is referred to as GSX Group's Native STACS, I understand that it constitutes the entirety of the STACS Protocol and has the same capabilities, ie, the Global STACS, Native STACS and the surrounding eco-system envisioned in the First to Third STACS Whitepapers, save that there was the additional feature of interoperability with other blockchains.

151 Mr Soh was cross-examined on his involvement in, the motivation behind and the effect of the swap.[99] He made it clear that GATENet had nothing to do with him[100] but he did explain why, as a STACS Token holder, he thought that the change to the GATE Token represented greater utility for the token.

152 I accept Mr Soh's evidence that he was not involved in the decision to effect the change. I also accept his evidence that the change did open the door for potential use of the token otherwise than in conjunction with the STACS Protocol. Mr Cowan's evidence satisfies me that the vision of a Native and Global STACS Protocol as set out in the Whitepapers had not become a reality because of the difficulties he encountered. Indeed, Global STACS was never launched.

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99 T3 at Page 132 Line 4 to Page 138 Line 19 and Page 156 Line 6 to Page 159 Line 1.

100 T3 at Page 135 Lines 14-22 and T4 Page 35 Line 24 to Page 36 Line 7.

The activities of H Inc and HS allegedly not in relation to the STACS Protocol

153 Part of the responsibilities of HS, when it was a subsidiary of H Inc and thereafter, was to provide operational support to GSX Group for the STACS Protocol including software updates.[101] However its business was not limited to this and in the course of time HS began to develop and market other blockchain technological solutions.

154 Mr Soh gave evidence about these solutions in para 62 of his second witness statement. The first, in July 2020, was HS's Settlity infrastructure which, as Mr Soh states was based on the same underlying blockchain technology as the STACS Protocol.[102] This reached a proof-of-concept stage with Bursa Malaysia Berhad but was not progressed further. The potential for confusion between HS and the GSX Group's work with the STACS Protocol was introduced by the adoption by HS of the abbreviation STACS for its full name Hashstacs in these and subsequent documents.

155 The second, in October 2020, was another proof-of-concept project this time with EFG Bank and supported by the Monetary Authority of Singapore ("MAS") "using distributed ledger technology (DLT) to automate and manage the entire lifecycle of a structured product … consist[ing] of the underlying STACS blockchain and smart contracts". Mr Soh states that this project, known as the Nathan platform, utilised HS's technological solution based on the Ethereum blockchain but again was not progressed further than the proof-of-concept stage.[103]

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101 See for example the recitals to PS&R Agreement (TB4 at pp 890-894).

102 Paragraph 62.a (TB3 at p 111) and TB4 at pp 885-888, 1035, 1094-1095 and 1794-1795.

103 Paragraph 62.b (TB3 at p 112) and TB4 at pp 840-861 and 1792-1793.

156 The third, Project Benja, with Deutsche Bank, again supported by the MAS related to the "technological and practical feasibility of digital assets interoperability, liquidity, cross-border connectivity, and smart contract templates". This was based on the same underlying blockchain technology as the STACS Protocol.[104] In the Project Report in section 4.2 at page 19[105] the Technical Architecture is described as follows:

> **4.2 Technical Architecture**
>
> The platform encompasses the Application Layer, comprising of a Frontend GUI component and an Application Backend component which is linked to the underlying STACS Blockchain. The deployment architecture has been designed to be platform-agnostic and deployed on various occasions since 2019 on many different platforms ranging from Amazon Web Services (AWS), Microsoft Azure private cloud and on-premise hardware (Dell).
>
> The STACS Blockchain is an Enterprise permissioned blockchain solution. It has been deployed on various occasions since 2019. Business logic is designed at the Application Layer to facilitate fluidity in business requirements, while a unified data state is maintained at the STACS Blockchain layer.
>
> …

104 Paragraph 62.c. (TB3 at p 112) and TB4 at pp 1110-1157.

105 TB4 at p 1128.

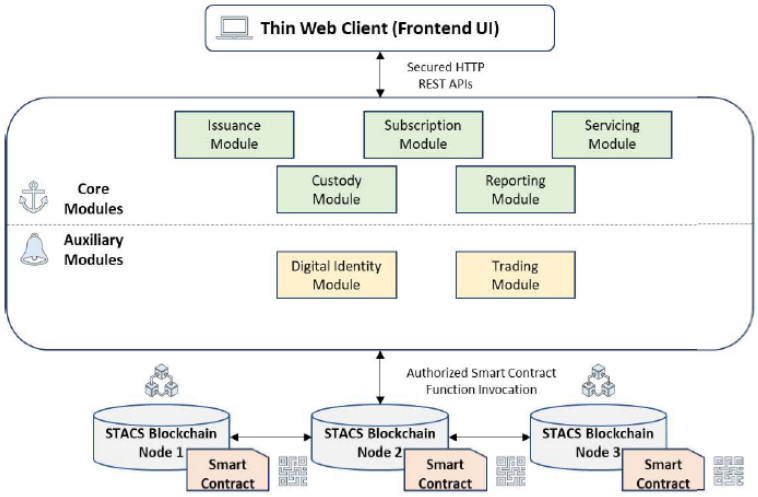

Figure 1: Solution Architecture High-Level Overview

157 Mr Soh continues in paras 63(b) and (c):

> b. The 1st Defendant was collaborating with various financial institutions including UBS, Bursa Malaysia, East Spring Investments, BNP Paribas, Deutsche Bank, EFG Bank, Union Bank, Shanghai Pudong Development Bank, CIMB Bank, Maybank GSX Group, China Construction Bank. However, these clients did not eventually move beyond the POC stage to engage the 1st Defendant on a long-term basis, and therefore the 1st Defendant did not earn any transaction fee revenue from them.
>
> c. At the material time, the 1st Defendant was offering various technological solutions to its clients such as Mercury, Nathan and Trident at the POC stage. Mercury did not involve blockchain technology. Nathan was based on the Ethereum blockchain (see paragraph 62.b above). Trident was initially based on the same blockchain technology underlying the STACS Protocol but was later moved to the Ethereum blockchain.

158 Mr Soh was cross-examined at some length on these developments. He amplified on the nature of Settlity, Trident, Mercury and Nathan:[106]

> Q: To your knowledge, who was in charge of developing the Settlity applications; which entity?

106 T2 at Page 180 Lines 4-10 and Page 180 Line 17 to Page 181 Line 12.

> A: That also has a timeline involved. Up to December 2020 by this time Prime Stacs, the Chengdu company, was involved in it. After 2021 or from 2020, December, onwards it was all in-house by Hashstacs Singapore.
>
> …
>
> Q: Can you explain in simple terms what are Trident, Mercury and Nathan Platforms?
>
> A: Trident, Mercury and Nathan, all three of them are front end applications, think of it like a web application. Trident was connected to the blockchain. Mercury was not connected to the blockchain. Nathan was connected to the blockchain. It could be any blockchain. At that point in time it was connected to STACS' blockchain.
>
> Q: Thanks a lot, but what is the use case for Trident, Mercury and Nathan?
>
> A: Trident would be a web application that would allow for a user to create, for example, a bond token. Shall I proceed? Mercury, which I had mentioned, has nothing to do with blockchain, would be to support the trade reconciliation of different pieces of information and store it in a registry which may or may not be a blockchain ledger. Nathan would be a structured financial product, think of it like derivatives, okay, whereby there will be certain information stored on a blockchain-based ledger.

159 The potential for confusion arose because of the use of the term "STACS Protocol" to refer to the Native STACS as promoted by GSX Group and the use of STACS Blockchain as used by HS in the development of Settlity, which Mr Soh explained was based on the same blockchain technology as was the STACS Protocol, and Trident which he said was initially based on the same blockchain technology underlying the STACS Protocol but which was later moved to the Ethereum blockchain.

160 Mr Soh clarified the position in answer to a question from the court:[107]

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[107] T4 at Page 24 Line 21 to Page 26 Line 8.

> CT: Thank you very much for what you have been saying this morning. You will have to understand that one has to build one's knowledge of this. The only aspect that I would like your assistance on, if you go to page 127 of the core bundle you talk about --and I understand what you are talking about at (a), (b) and (c), the underlying STACS blockchain layer and that was on which you had built your own personal developments. Equally, as I understand it, the STACS Protocol was built on to the STACS blockchain layer. I am getting confused with the use of "STACS blockchain". Why is yours called "STACS blockchain" and why is theirs called "STACS Protocol"; on what is it built? Can you try and clear that block in my mind?
>
> A: Yes, your Honour. I think, firstly, STACS blockchain, in this evidence, okay, STACS blockchain was called a "STACS blockchain" because STACS was the name of our company, Hashstacs Singapore. It was the branding name of our company, Hashstacs Singapore, "blockchain" meaning a little bit more generic and not really something we could name after ourselves any more because it was a blockchain layer, it could be Ethereum private version. We could also try to do another version using Ethereum, yes, but that was the blockchain infrastructure that was developed in Hashstacs Singapore. Now, STACS Protocol, however, was a branding name that actually, starting from GSX Group in November 2018, they have already been mentioning about a global securities protocol, "GSP". After GSP, they started to talk about this STACS Protocol, yes. They started to brand that product, STACS Protocol.
>
> CT: It's a trademarking problem, not a common origin problem?
>
> A: It's actually a totally different origin in the first place.

161 The distinction can be seen visually in the diagram at [156] above which shows the underlying STACS blockchain on which the application layer is superimposed. Mr Soh was at pains to emphasise that everything developed on the same blockchain technology as the STACS Protocol did not necessarily have the same functionality as the STACS Protocol and that Settlity and Trident did not.

162 Mr Soh also explained the reason why HS had a preference for developments based on the Ethereum blockchain:[108]

> A: For the same reason that I said in the beginning we had more than 100 prospects and I can remember very clearly Hong Kong Exchange told me very clearly, "You change the consensus algorithm of the blockchain we cannot recognise this at all, it's not safe for us to do so. If you had chosen the Ethereum blockchain we might have considered that". They told me that in 2019, 2020. So it is very clear that we should be going back to basics which is to provide an application which can support the benefits, which it was also very clear to me by then that we should start to consider the development applications on Ethereum rather than on a STACS Blockchain …

163 The underlying focus of the cross-examination proceeded on the basis that the products developed by HS were developments of the STACS Protocol such that they should have used the STACS Token as the utility token.

164 The first piece of evidence that was challenged was Mr Soh's statement that the STACS Protocol was based on the underlying blockchain developed by Prime Fintech which was not Ethereum based.[109] It was challenged repeatedly and at length and Mr Soh dealt patiently with each challenge. The evidence was summarised in the following passage:[110]

> Q: Mr Soh, I put it to you that Hashstacs Singapore never developed the STACS Ethereum blockchain on its own, but merely customised a blockchain from the STACS Protocol.

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108 T3 at Page 14 Line 15 to Page 15 Line 3; see also T3 at Page 142 Line 20 to Page 143 Line 22.

109 See T3 at Page 143 Line 23 to Page 150 Line 12; T4 at Page 28 Line 13 to Page 30 Line 2; T4 at Page 57 Line 10 to Page 59 Line 14; T4 at Page 61 Line 24 to Page 62 Line 13; T4 at Page 65 Line 25 to Page 67 Line 25.

110 T4 at Page 65 Line 25 to Page 67 Line 25.

A: No. We customised a blockchain from the Ethereum blockchain based on Hyperledger Besu. I am not sure if it's inside the evidence but if you Google online, probably there was a third party article about Hyperledger Besu, but it is in the Github. The Github mentions very clearly it is a Hyperledger Besu which is an 80-room blockchain.

Q: Mr Soh, I put it to you that your testimony today morning revealing to us the STACS Ethereum blockchain is an implied admission that the IP for STACS Protocol was sitting with Hashstacs Singapore all along; yes or no?

A: No. Entirely opposite. It's entirely opposite of what I said this morning.

Q: Mr Soh, I put it to you that Hashstacs Singapore could not have, in your words, developed the STACS Ethereum blockchain without the IP of the STACS Protocol; yes or no?

A: No. Again, it's the entire opposite of what I just said this morning.

Q: Mr Soh, I put it to you that your testimony of this STACS Ethereum blockchain is an afterthought, at best, for a customised version of the STACS Protocol that was never operational.

A: Again, the answer is no, I do not agree. It was fairly clearly a distinct business model, a distinct technological model, a distinct way of working. There was no tokens, there was no desire to have anything that's related in the Whitepaper.

Q: Mr Soh, I put it to you that your reference to the STACS Ethereum blockchain was never presented to financial institutions such as Bursa Malaysia, EFG, Deutsche Bank listed in paragraph 62 of your witness statement to paragraph 66. Do you agree or disagree?

A: Please wait a moment. I disagree. In fact, again it's the entire opposite. The fact that we were able to get a POC was because they were not opposed to Ethereum.

Q: How would Hashstacs Singapore be able to develop the STACS Ethereum blockchain from scratch?

A: We had brilliant people.

Q: From scratch?

A: Yes.

Q: Without reference to the STACS Protocol technology?

A: Absolutely. Entirely 100 per cent referenced to Hyperledger Besu which is an Ethereum blockchain.

165 It is however apparent that Mr Silveira was under the impression that the STACS Blockchain was an enhanced version of the Ethereum chain.[111] Equally Mr Cowan in cross-examination gave evidence of his belief that the STACS Blockchain was based on the Ethereum platform[112] but he accepted that he was not a technologist.[113]

166 Drawing all this together, I am satisfied on the balance of probabilities that Mr Soh's evidence is to be preferred. He was intimately involved in the development of HS's products and gave cogent evidence as to why he felt the need to migrate HS's products away from the STACS Blockchain onto an Ethereum-based blockchain. This would have been unnecessary if the STACS blockchain was itself an Ethereum-based blockchain.

167 The claimants suggest that this distinction was a new case developed during Mr Soh's oral evidence. I do not accept that. It was undoubtedly amplified upon during his oral evidence but this was necessitated by what he saw, with some justification, as confusion on the part of the claimants. However it is consistent with his written evidence and with the contemporaneous documents. It is also consistent with the evidence he gave at paras 52–67 of his third witness statement dated 31 May 2024 in response to the claimants'

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111 T1 at Page 55 Line 14 to Page 56 Line 12.

112 T5 at Page 49 Lines 16-18.

113 T5 at Page 63 Lines 8-19.

application for further disclosure.[114] No contemporaneous document was put to Mr Soh where the blockchain underlying the STACS Protocol was said to be Ethereum-based. While it is true that Mr Cowan said that it was Ethereum-based, he is not a technologist and I prefer the evidence of Mr Soh.

168 I therefore conclude that in giving the evidence he did, Mr Soh was not seeking to mislead the court as to the underlying blockchains and that this was not an attempt on his part to seek to distance the HS developments from the STACS Protocol.

169 Next the claimants sought to rely on some statements made by Mr Soh during some interchanges between Mr Silveira and Mr Soh which took place in August and September 2020. The suggestion is that Mr Soh made some observations which indicated that the STACS Protocol was designed from the outset to operate without any STACS Tokens.[115]

170 These consisted of Zoom calls and e-mail exchanges. The e-mail exchanges were helpfully drawn together in Trial Exhibits 2 and 4. They began on 26 August 2020 following a Zoom call the previous day[116] and consisted of Mr Silveira asking various questions of Mr Soh relating in particular to the relationship between HS and GSX Group. Mr Soh confirmed that the relationship was at arm's length. He refers to Trident, Mercury and Nathan.[117]

171 It is plain that in this exchange Mr Soh was referring to the business of HS as opposed to that carried on by GSX Group. Mr Silveira reverted with some

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114 TB3/205 at 229-234

115 CWCS at para 66.

116 Trial Exhibit 2 ("TE2") at p 5.

117 TE2 at pp 3-4.

more questions on 31 August 2020[118] which, with hindsight, unfortunately referred to the "Stacs protocol". It is clear from Mr Soh's response on 31 August 2020[119] that he took this to be a reference to HS's development work rather than being a refence to GSX's. He did not use the expression STACS Protocol in his reply but did refer to the STACS blockchain and to the three platforms (*ie*, Trident, Mercury and Nathan) as the following passage indicates:[120]

> Only STACS can make changes to Native STACS Networks, and the 3 platforms. Hence we have to do the work in regards to customisation to the blockchain and the 3 platforms. However we do provide a full range of API connectivity, which allows third parties to integrate or build their own platforms and connect them to our blockchain. This allows them to use our blockchain and smart contracts, without having to use our platforms. This is the scalable long-term plan, as we know that most banks will prefer to use their own enterprise user systems, instead of a new system. The revenue will still be charged based on the usage of the API, similarly to if they use our platforms directly. We also keep all the IP in relation to the:
>
> a) Underlying STACS blockchain layer
>
> b) Middle API Connectivity layer
>
> c) 3 Front end platforms that we have built

172 Mr Silveira reverted to Mr Soh on 11 September 2020[121] and Mr Soh replied on 12 September 2020.[122] The response mainly revolved about the fee structure being adopted by HS. The only reference to GSX is in the following passage:[123]

> The market operators may find value in organising a business model around this. In this case, GSX has a business model

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118 Trial Exhibit 4 ("TE4") at p 30.

119 TE4 at p 26.

120 TE4 at p 28.

121 TE4 at p 24.

122 TE4 at p 21.

123 TE4 at p 23.

> which revolves around tokens and staking and hence we will support them, but that's for a private chain that is native. GSX is also growing their global ecosystem in this way, and may onboard other business users using such a business mode.

173 The exchange then continues and indicated a concern on Mr Silveira's part in relation to the fee structure adopted by HS which Mr Soh did not understand. It was on 22 September 2020 that the issue of STACS Tokens first arose, with the following query from Mr Silveira:[124]

> 2) also – on the token front could you perhaps expand a bit why you don't think the stacs token is an issue for Hashstacs? As I understand the situation these tokens were issued by Hashstacs on the stacs protocol as its sole utility token ? In fact they could only have been issued by Hashstacs as that is the company owning and operating the stacs protocol ?
>
> Are these tokens in the process of being bought back ? But wouldn't there be a legal structural legacy issue linking the stacs token to the stacs protocol until all tokens are bought back/redeemed ?

174 Mr Soh's response was as follows:[125]

> We did not issue any stacs token. I think you are talking about the GSX Group tokens, which are issued on its own Native STACS protocol. As mentioned, network operators who run their own Native STACS, get to do whatever they want with the business model. They can operate their own token model etc, but these are not dictated by us. The simple fact is Hashstacs has never issued any token and doesn't intend to do so.

175 On the next day, it became clear for the first time that Mr Silveira had had access to either the First or Second Whitepapers and was focusing on Section 9 which related to the STACS Token. The following exchange occurred, with Mr Soh's response to Mr Silveira's question italicised:[126]

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124 TE4 at p 13.

125 TE 4 at pp 13-14.

126 TE4 at p 11.

> 4) the main issue I have is with point 9 of the Whitepaper where it is explicit that the stacs token is required for staking etc on both native and global stacs protocol – there was never throughout the document a single mentioning this stacs token would relate just to a single native or subset to the global stacs protocol.
>
> *The tokens were minted in Jan 2018, before the existence of STACS, by GSX Group. The paper was released by GSX Group in the context of GSX operating their own Native STACS (which can be operated as Native and Global STACS within their own Native STACS, and is their business plan). There isn't such a thing as a Global STACS in Hashstacs, we are operating a Settlity Network. I am merely using global as a way of describing the global nature of our Settlity Network, but it is not related to GSX plans of operating a Global and Native STACS which we will support them in doing so.*

176 Mr Silveira responded the same day making it clear that he had also read the Third Whitepaper claiming that there was no reference in that document that the STACS Tokens were "meant to be only just for GSX native stacs token as opposed to the stacs token that drove the protocol …". Mr Soh responded by saying "No, [HS] has never minted tokens, any "STACS" token was issued by GSX on its own native STACS and also acknowledged by GSX Group at the time."

177 Matters came to a head on 23 September 2020 when Mr Soh reiterated his position, as follows:[127]

> There has been no token issued on STACS protocol. There has only been 1 token issued by GSX Group in their own private STACS network. When we were part of the GSX Group, the whitepaper was written in the GSX Group context. In fact the GSX Group had first published the paper sometime in Nov 2018. It was not selling any tokens as there was never a token sale, and it was not a token offering document. That was a GSX Group-written paper which if you read through again, it talks about GSX Group throughout the context.

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127 TE4 at p 3.

178 Here it is clear that Mr Soh is himself using the expression "STACS Protocol" to refer to HS's work, not that of GSX Group. One can see from the reply e-mail that Mr Silveira was becoming concerned about the relationship between GSX Group and HS, and was drawing no distinction between HS and H Inc when he said:[128]

> Yes Hahstacs [*sic*] was a subsidiary of GSX Group – doesn't change the fact that the WP was written by Hashstacs on Hahstacs [*sic*] letterhead and committing and binding Hashstacs.
>
> Getting a bit surprised ….

179 Mr Soh's final response was as follows:[129]

> I'm sorry but I don't agree, the whitepaper was written by GSX Group and even from what you are showing me, it comes from the context of GSX Group. Again, I'm not sure what's the issue here. There was no token being issued or sold, and I do have to argue that if you read through the entire context (instead of cherry picking images), it states clearly that the token was the old token issued by GSX Group.
>
> Sorry that I simply do not agree as a matter of principle. However I do understand your concerns, and am just sharing our perspective with you

180 Mr Soh was cross-examined on the e-mails, particularly in relation to his statement that there had been no token issued on the STACS Protocol. Read in context however it is clear that he was referring to HS's development work, rather than that of GSX Group as the next sentence makes clear. The relevant passage ends with the following interchange:[130]

> Q: Can we go further down the page. These are your words: "No, Hashstacs Singapore has never ever minted tokens". Yes?

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128 TE4 at p 1.

129 TE4 at p 1.

130 T4 at Page 31 Lines 2-23.

> A: Yes.
>
> Q: "... any 'STACS' token was issued by GSX on its own Native STACS and also acknowledged by GSX Group". Do you see that?
>
> A: Yes.
>
> Q: What you are saying here is that the STACS Protocol was designed from the outset to operate without a STACS Token; correct?
>
> A: No. I disagree. I was telling him -- again, the context is -- this is September 2020. At that time, September 2020, I was already presenting to the market about a STACS blockchain, I was trying to raise funds for investors. I was telling them that the STACS blockchain, Ethereum-based blockchain network, a private version, did not require a utility token if the financial institution simply doesn't want to have one.

181 I have gone through this e-mail exchange in some detail because it formed an important plank in the claimants' case that HS's development work was in fact a development of the STACS Protocol which should have been, but was not, using STACS Tokens as the utility token for the HS products.

182 I do not see that the exchanges help the claimants' case. It is unfortunate that the terms used, such as STACS Protocol and STACS Tokens, were not defined and used consistently. Equally it is unfortunate that Mr Silveira did not disclose that he was a holder of STACS Tokens and identify his concerns at the outset. Mr Soh gave evidence that he thought that Mr Silveira was a potential investor responding to a series of investor decks put out by HS to encourage investors[131] and that he did not know that he was a STACS Token holder. Had he done so, he said he would have responded differently.[132]

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131 See for example T4 Page 4 Line 24 to Page 6 Line 10 *et seq*.

132 T4 at Page 5 Line 2 to Page 7 Line 5.

183 Read as a whole, I am satisfied that this was indeed the position. Mr Soh went to great lengths to deal with each point raised by Mr Silveira explaining what the HS proposals were and how they were designed to be implemented. He explained that they differed from the GSX Group's products and that the only tokens to have been issued were those issued by the GSX Group. I see nothing sinister or underhand in what he said. He was explaining the position as he saw it with great courtesy.

184 The e-mail exchange does not support the assertion that the STACS Protocol was designed from the outset to operate without any STACS Tokens. The STACS Protocol was designed to use the STACS Tokens as its utility token; HS's subsequent developments were not.

185 The final question therefore is whether those subsequent developments were embodiments of the STACS Protocol such that, consistent with the representations in the Third Whitepaper, they should have been designed to use the STACS Token and thus confer a benefit on the holders of STACS Tokens – which included not only Mr Silveira but also Mr Soh.[133]

186 As is set out in detail in the Whitepapers the vision of the STACS Protocol was of two systems, Native STACS and Global STACS, with any institution being able to become a verified partner on staking a certain amount of STACS Tokens with transaction fees on Global STACS being converted to STACS Tokens on the open market to fulfil the distribution regime set out in Section 8.3.1.

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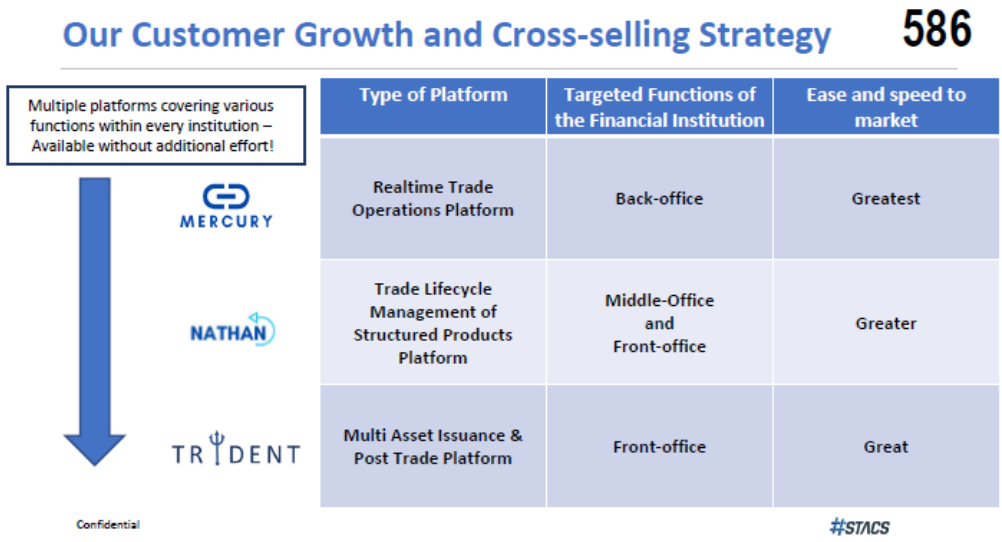
133 T4 at Page 109 Line 13 to Page 110 Line 7.

187 As is stated in the Abstract in the Whitepapers:[134]

> STACS is a unique hybrid structure of permissioned/ global Blockchain, tailored especially for the finance industry. Through such a hybrid model, we aim to support multiple financial institutions, whom we call Verified Partners (VPs), in their digital transformation through providing them the Native STACS, permissioned offering, while allowing them to scale globally to a global pool of cleared and eligible investors through the public Global STACS. With the hybrid model, we combine the performance advantages of the permissioned Blockchain and the public consensus of the public Blockchain, and achieve higher transaction throughput than other public Blockchains, to satisfy the technological needs of the institutions.

188 In one of the Investor Slides put out by HS[135] which I was told were published between August and December 2020,[136] the functionality of HS's then products, Mercury, Nathan and Trident were described in the following table:



134 See for example TB4 at p 387.

135 See for example TB4 at p 586.

136 T3 at Page 7 Lines 18-19.

189 In cross-examination Mr Soh sought to clarify what the difference was between the STACS Protocol promoted by GSX Group and HS's then products. This involved a number of passages.[137]

190 I shall try to draw all this evidence together. Mr Soh gave unchallenged evidence that Trident, Mercury and Nathan were front end applications. Whilst Trident and Nathan were connected to a blockchain, Mercury was not. Trident was designed to allow a user to create a bond token, Mercury was to support trade reconciliation of different pieces of information and Nathan was a structured financial product where information would be stored on a blockchain-based ledger. GSX Group had an option to purchase these products but did not take up that option. GSX Group wanted to use the STACS Protocol to run a global ecosystem which allowed staking which HS did not want to do, so there were two different blockchains with different functionalities.

191 The applications of HS's products as front-end applications were such that they were not tied to any blockchain but had the ability to talk to any blockchain. They were, as Mr Soh put it, apples in contrast to GSX Group's oranges. Hence HS's products were designed not to operate using a proprietary token such as the STACS Token. In contrast, the whole underlying strategy of the STACS Protocol was that it should become a global enterprise based on a proprietary token, the STACS Token. When Global STACS failed to materialise, rather than move in the direction chosen by HS, it elected to seek to create utility and hence value in the STACS Token by expanding it into the GATE Token.

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137 T2 at Page 180 Line 17 to Page 181 Line 20; T3 at Page 7 Line 12 to Page 9 Line 17; T3 at Page 16 Line 21 to Page 17 Line 24; T4 at Page 8 Line 18 to Page 13 Line16; T4 at Page 22 Line 14 to Page 24 Line 14; T4 at Page 31 Line 24 to Page 36 Line 12.

192 On the basis of the foregoing, I am satisfied that Mr Soh was correct in using the apples/oranges analogy. The STACS Protocol was designed to be a complete ecosystem driven by its reliance on the staking of STACS Tokens; Trident, Mercury and Nathan played no part in this and did not require a dedicated token. Indeed one of the driving forces behind the development was to avoid this. I therefore conclude that the HS's products were not an embodiment of the STACS Protocol such that they should have used STACS Tokens.

The attack on the veracity of Mr Soh

193 A substantial attack was made in the claimants' written closing submissions[138] on the credibility of Mr Soh as a witness. I have considered many of the grounds of attack when reviewing the facts. Mr Soh was cross-examined at length over three days and dealt fully and patiently with the matters which were put to him. He came across as a well-informed competent businessman who understood the technology. He appeared on occasions to be perplexed as to what it was he was supposed to have done wrong as the division between his work in promoting the STACS Protocol on the one hand and the development of the HS's products on the other was to him clear both as a matter of technology and in terms of timing.

194 I unhesitatingly reject any suggestion that he was not doing his best to assist the court either in his written or oral evidence. I found him to be a careful, focused and helpful witness. For the reasons given I have given weight to much of his evidence.

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138 CWCS at para 34 *et seq*.

Conclusions on Fraudulent Misrepresentation

195 I have set out the five elements of the legal approach to fraudulent misrepresentation at [74] above and at [76] indicated that I would consider the first, second and fifth elements first under a number of headings.

Was HS the (or one of the) representor(s)?

196 The first sub-issue is whether HS was one of the representors, in the sense that it was legally liable for the representations being made in the Third Whitepaper. It cannot have been the representor in relation to the publication of the First and Second Whitepapers as they were both published before HS was incorporated. On its face the Third Whitepaper was published by H Inc as Mr Silveira accepted.[139] Both Mr Cowan and Mr Soh gave evidence that the Third Whitepaper was published by H Inc on GSX Group's instructions and this is consistent with the language used relating to GSX in the document. The whole emphasis is on the activity of GSX Group with H Inc being the joint venture company responsible for the STACS Protocol and GBX having responsibility for the STACS Tokens.

197 Mr Silveira accepted that on reading the Third Whitepaper it was GSX Group that "is speaking to [him] through this Whitepaper" and that he knew he was "dealing with the GSX Group", though he disagreed that he would have known that the token sales were not handled by H Inc.[140] In my view, the understanding of the informed reader would have been that it was indeed GSX Group that was speaking through the Whitepaper, and that the token sales were not handled by H Inc.

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139 T1 at Page 75 Lines 12-25.

140 T1 at Page 80 Line 25 to Page 83 Line 4.

198 The claimants rely on five factors for contending that, notwithstanding this, HS made the representations.[141] The question however needs to be a little more focused than this. As indicated above what one is considering is the legal liability for the making of the representations. I shall consider the five factors individually and then consider the combined effect of them.

199 First, they assert that HS had *de facto* responsibility for creating and producing the marketing materials in relation to the STACS Protocol and STACS Token. I consider that on the evidence this is an overstatement. The evidence relied upon[142] goes no further than demonstrating that HS personnel, including Mr Soh, assisted H Inc to make the amendments to the Third Whitepaper but no amendments were made to the passages relied upon as being the source of the representations.

200 I do not consider that this degree of assistance could of itself render HS personally liable for representations which were originally written by GSX Group and then adopted and published by H Inc, a separate legal entity from HS, such that HS would be liable in law for the consequences of publication.

201 The second factor is a development of the first relating to certain comments made by Mr Soh and others in a WhatsApp group chat.[143] Again these relate to work HS did in assisting in the preparation of marketing materials and the same comments apply.

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141 CWCS at paras 114 to 141.

142 CWCS at para 115.

143 CWCS at paras 116 to 117.

202 Third, reliance is placed upon the fact that the representations were available on a website ("https://stacs.io") which it is contended was controlled by HS, not H Inc. There is a dispute as to whether the website was actually owned by HS or by H Inc but I am satisfied on the evidence that it was controlled by HS in the sense that its employees would have effected the uploading of any given piece of material. Merely uploading another party's material onto your website is not of itself an indication that you accept legal liability for the contents of the document.

203 Fourth, reliance is placed upon two matters: first, on the fact that the Third Whitepaper was "redesigned in the Signature [HS] blue colours" and secondly that HS and H Inc have been referred to in the public domain interchangeably.[144] As to the first, the evidence reference relied upon by the claimants in paragraph 122 is a passage of transcript in Mr Cowan's cross-examination:[145]

> Q: So you approved for Hashstacs to put it in their colours and affix their logo on the paper.
>
> A: Yes.

204 However, read in context it is plain that in that passage both counsel and Mr Cowan were using the word Hashstacs to refer to H Inc.[146]

205 As to the second, the claimants draw attention to the fact that HS has referred to itself as "STACS" in a number of documents. These all postdate the publication of the Third Whitepaper, the earliest being in November 2019 and the remainder in mid to late 2020. It is accepted that both H Inc and HS were

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144 CWCS at paras 122 to 127.

145 T5 at Page 52 Lines 22-24.

146 T5 at Page 50 Line 17 to Page 52 Line 17.

referred to as STACS and this would create the possibility of confusion between them and between the products developed by HS, such as Nathan, Trident and Mercury and the STACS Protocol but I do not see how this confusion can assist me in deciding which entity or entities were legally responsible for the publication of the Third Whitepaper.

206 The claimants also rely upon the contention that H Inc and HS "operated interchangeably"[147] with H Inc being the holding company while HS is the operating company. They go on to state "[t]his must therefore mean that any operating activities would have been undertaken by [HS], which also include the making of the [Third Whitepaper] and Website Representations".

207 The difficulty with this broad assertion is that it fails to take into account the facts concerning the marketing of the STACS Protocol which was done under the auspices of GSX Group and that any contribution by Mr Soh was in his capacity as "Executive Director" of GSX Group, not as a director of HS. In this respect I cannot accept the assertion at para 135 that HS "(through Mr Soh) was making decisions for the GSX Group…". On the facts, this is not so.

208 The fifth ground relates to the question of whether the Website Representations have ever been made.[148] Since it is common ground that the representations in the Third Whitepaper were made I need not consider this question further.

209 I revert therefore to the fundamental question: is HS legally responsible for the publication of the representations in the Third Whitepaper

147 CWCS at para 125.

148 CWCS at para 128.

notwithstanding the fact that its name nowhere appears on the document, that it did not authorise its publication and that its sole contribution to the drafting did not alter the wording of the representations? In substance it is asserted that the corporate veil between H Inc and HS should be lifted. In my judgment, on the facts as I have found them, the matters relied upon by the claimants fall far short of justifying this. HS was not responsible in law for the publication of the Third Whitepaper.

Were the representations in law actionable representations?

210 There was no material dispute as to the applicable law. It was succinctly summarised in para 133 of the defendants' written closing submissions:

> To constitute actionable misrepresentation, the statement must relate to a matter of fact, whether present or past. Statements as to something that will happen in future, or as to what the maker will or intends to do in future, are not statements of a present or past fact and are generally not actionable.
>
> [footnotes omitted]

211 In oral closing submissions, Mr Nair referred me to the case of *Meow Moy Lan and others v Exklusiv Resorts Pte Ltd and another* [2021] SGHC 155 where at [60] Chua Lee Ming J said this:

> As the Court of Appeal pointed out in *De La Sala* (at [172]), a representation as to the future is not, in itself, an actionable misrepresentation unless (a) it is an implied representation as to an existing fact, or (b) it implicitly represents the existence of an intention at the time of making the statement.

212 The reference to *De La Sala* is a reference to the Court of Appeal decision in *Ernest Ferdinand Perez De La Sala v Compañia De Navegación Palomar, SA and others and other appeals* [2018] 1 SLR 894 ("*De La Sala*") where at [172] Andrew Phang Boon Leong JA, having cited the passage from

Panatron Pte Ltd and another v Lee Cheow Lee and another [2001] 2 SLR(R) 435 ("*Panatron*") set out above at [74], made these observations:

> 172 First, some complications arise with regard to statements as to future events or conduct. A representation as to the future is not, in itself, an actionable misrepresentation. However, it can *imply* an actionable misrepresentation in at least two ways:
>
> (a) A person who makes a statement as to the future (whether of intention or otherwise) may, in doing so, make an implied representation as to an existing fact. For example, a statement that certain costs *would* be paid out of a particular fund was found to imply a representation that such costs *were payable* out of that fund, and a statement as to the likely output of a mine was found to imply a representation as to the *present state and capacity* of the mine: see, respectively, the English decisions of *Mathias v Yetts* (1882) 46 LT 497 at 503 and *Gerhard v Bates* (1853) 2 El & Bl 476, discussed (along with other examples) in K R Handley, *Spencer Bower, Turner and Handley: Actionable Misrepresentation* (Butterworths, 4th Ed, 2000) ("*Spencer Bower*") at para 27.
>
> (b) A person who states an intention as to the future implicitly represents that he in fact has that intention at the time of making the statement: see the decision of this court in *Tan Chin Seng v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 at [12], citing the famous dictum of Bowen LJ in *Edgington v Fitzmaurice* (1885) 29 Ch D 459 at 483.

213 Mr Nair submitted that the representations did not contain statements of fact but rather statements as to what will happen in the future or, alternatively, statements as to what the statement maker intends to do with the transaction fees generated on the STACS Protocol. Mr Leong, for the claimants, submitted that reading the Third Whitepaper as a whole it was plain that this was a statement of what the statement maker intended would happen in the future, which intention the statement maker had at the time of making the statement and hence was actionable in the second way set out in *De La Sala* at [172].

214 I consider that on the facts of this case Mr Leong is correct. In fact, I would go a little further. As indicated at [101] above, the statement as to how the transaction receipts would be distributed constituted an undertaking that they would be so distributed in the event that the STACS Protocol was successful and generated fees. It was part of the inducement for institutions to adopt the protocol and for "speculators or investors" to purchase STACS Tokens.

215 Accordingly had HS been responsible for the making of the representations I would have held that they were in law actionable representations.

Were the representations false at the time they were made?

216 This is the crux of a case based on fraudulent misrepresentation. It is a case of deceit and, as the claimants accept, cogent evidence is required for fraud to be established.[149]

217 On the facts as I have found them there is no such cogent evidence in this case. There is no evidence that at the time the Third Whitepaper was published, Mr Soh, regardless of the capacity in which he was acting, held any belief other than that any transaction fees generated by operating the STACS Protocol would be distributed in accordance with the scheme set out in the Consensus Incentives section of that Whitepaper (Section 8.3.1). Indeed he was actively involved in promoting the project.

218 There is no evidence that, at the time HS was incorporated and the Third Whitepaper was published, he had formed the intention that HS should be used

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149 CWCS at para 76.

as a vehicle to deprive investors in STACS Tokens of their just rewards. No reason was suggested why he should do this when he was, through Stellar, the owner of STACS Tokens.

219 The work of HS in developing and seeking to market the other products was done alongside the work of GSX Group in developing and seeking to market the STACS Protocol. There was no dishonesty in this. It was one of the things H Inc and HS were set up to do. The former was not part of the latter and there was no evidence that Mr Soh ever thought that they were.

220 Accordingly I am satisfied that the representations did reflect the true intentions of all the Participants, namely GSX Group, GSX, GBX, H Inc and (so far as relevant) HS as to how any transaction fees would be distributed.

Whether the representations became false?

221 It is accepted that even if a representation was true when made but subsequently the representor alters its position so that it is no longer true, there is a duty on the representor to withdraw or modify the representation, in so far as the representation is a continuing representation.[150]

222 The claimants contended in the alternative to their main submission that the representation was false from the outset that it became false at a later date when the decision was made to swap the STACS Token for the GATE Token. Setting aside the fact that this decision was made by GSX Group and not by HS, on the evidence the GATE Token was to continue to be used as the utility token of the STACS Protocol but it was to have additional uses as well. It was not suggested to Mr Cowan that in so far as transaction fees might be generated on

150 See for example CWCS at para 147c.

the STACS Protocol after the swap, they would not be distributed in accordance with the representations to the holders of GATE Tokens.

223 There is thus no substance in the submission that the representations subsequently became false.

Did HS "know" that the representations were false at the time they were made?

224 It necessarily follows from the finding that the representations were not false that HS, through Mr Soh, did not know they were false. The finding that they were not false is based upon the understanding and intentions of Mr Soh at the time.

Did HS become aware that the representations had become false at a later date?

225 Again, this is not the case.

Were the representations made by HS with the intention that they should be acted upon by Mr Silveira or by a class of persons to which Mr Silveira belonged – namely holders of STACS Tokens?

226 For the reasons given at [99] above, I consider that the Third Whitepaper was not only directed to potential users of the STACS Protocol, it was also directed to the "speculators or investors" in STACS Tokens. Hence, had the representations been false, I would have held that they were made, *inter alia*, with the intention that they should be acted upon by investors or potential investors in STACS Tokens.

227 However, since I have found that HS was not legally responsible for the making of the representations, that the representations were not false, and that

they were made without HS's knowledge that they were false, the action based on fraudulent misrepresentation must fail.

228 I have reached this conclusion based on a consideration of the first, second and fifth elements of the cause of action as set out in *Panatron* (see [196]–[209], [216]–[223], and [224]–[225] above). It is not therefore necessary to deal at any length with the third and fourth elements: that Mr Silveira acted on the (false) statements and has suffered damage in consequence.

229 It is plain that Mr Silveira decided to invest in STACS Tokens as a result of the information he obtained from the Third Whitepaper and similar documents. He invested the equivalent of some US$72,000 in doing so. He would have known as a sophisticated investor that the return on his investment was entirely dependent on the success of the STACS Protocol, based on blockchain technology, which was recognised as being a novel and highly speculative field.

230 The reason Mr Silveira suffered the losses he did was not because of any fraudulent activity on the part of HS, but because the STACS Protocol did not take off to any material extent. That was a risk a cautious but sophisticated investor such as Mr Silveira would have appreciated was a very real risk. Equally he would have appreciated that the rewards if the project did take off had the potential to be significant.

231 Accordingly I accept that he did act on the representations but any damage suffered was not in consequence of that reliance. It was due to the lack of success of the STACS Protocol.

Issues (d) and (e): Negligent Misrepresentation and Negligent Misstatement

232 It is convenient to deal with these two causes of action together.

233 Although the parties formulated their propositions of law somewhat differently, there was little, if any, difference in substance.

234 The claimants' formulation was set out in paras 78–81 of their written submissions:

> **C. The Law on Negligent Misrepresentation**
>
> 78. In *Lim Bee Lan v Lee Juan Loong and another* [2021] SGHC 234 at [70] and *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100, the Court held that to succeed in negligent misrepresentation, the Plaintiff must prove that:
>
> a. the Defendant made a false representation of fact to the Plaintiff;
>
> b. the representation induced the Plaintiff's actual reliance;
>
> c. The Defendant owed the Plaintiff a duty to take reasonable care in making the representation;
>
> d. The Defendant breached that duty of care; and
>
> e. The breach caused damage to the Plaintiff
>
> 79. To determine if a duty of care arises, the *Spandeck* two-stage test is to be applied:
>
> a. That the preliminary requirement of factual foreseeability has been met, followed by
>
> b. whether there is proximity (i.e., that there must be sufficient legal proximity) and a consideration of any policy considerations against the imposition of a duty of care.
>
> **D. The Law on Negligent Misstatement**
>
> 80. To establish a duty of care in negligent misstatement, two limbs must be satisfied: (a) a special relationship existed

> between the parties; and (b) there was an assumed responsibility towards the Claimant.
>
> 81. A special relationship can arise where:
>
> a. The advice was required for a purpose and the adviser knew, or should have known the purpose;
>
> b. The Claimant is a person or a member of an ascertained class whom the adviser knew or should have known might use the advice for that purpose;
>
> c. The adviser knew, or should have known that the Claimant was likely to act on that advice for that purpose without independent enquiry; and
>
> d. The Claimant acted on that advice to its detriment.
>
> [footnotes omitted]

235 The defendants' formulation was set out in paras 95–99 of their written submissions:

> 95. As for negligent misrepresentation, Singapore law recognises two types of such claims.
>
> 96. The first type is referred to as the statutory paradigm actionable under section 2(1) of the Misrepresentation Act 1967 where: *Sheila Kazzaz and anor v Standard Chartered Bank and ors* [2020] 3 SLR 1 (HC(I)) ("*Sheila Kazzaz (HC(I))*") at [127]
>
> (a) a defendant makes a representation of present fact or law (as opposed to a prediction about the future) to a plaintiff;
>
> (b) the representation is false;
>
> (c) the representation induces the plaintiff to enter into a contract with the defendant; and
>
> (d) the plaintiff suffers loss as a result.
>
> 97. The second type of negligent misrepresentation claim is referred to as the general, common law paradigm where: *Sheila Kazzaz (HC(I))* at [128]; *IM Skaugen* at [121]; *Banque de Commerce et de Placements SA, DIFC Branch and anor v China Aviation Oil (Singapore) Pte Ltd* [2024] SGHC 145 ("Banque de Commerce") at [204]
>
> (a) a defendant makes a representation of present fact or law (as opposed to a prediction about the future) to a plaintiff;
>
> (b) the representation is false;

> (c) the representation induces the plaintiff to enter into a transaction (not necessarily contractual) with a third party;
>
> (d) the defendant owed the plaintiff a duty to take reasonable care when making the relevant representation to the plaintiff;
>
> (e) the defendant breached the duty of care;
>
> (f) the plaintiff suffers loss as a result.
>
> 98. The Court's analysis in *Sheila Kazzaz (HC(I)* distinguishing the two types of negligent misrepresentation claims was not disturbed on appeal before the Court of Appeal: *Sheila Kazzaz and anor v Standard Chartered Bank* [2021] 1 SLR 1 (CA(I)) at [58], and is shared by the authors of Law of Contract in Singapore Vol 1 ([11.201]-[11.203]).
>
> 99. Turning to negligent misstatement, which the Claimants have pleaded as a separate claim from negligent misrepresentation, Singapore case law appears to deal with negligent misstatement and common law negligent misrepresentation (which is distinct from negligent misrepresentation under the Misrepresentation Act 1967) interchangeably likely because the elements of the two claims are similar if not identical. The authors of Law of Contract in Singapore appear to regard both causes of action as one and the same: Vol 1 at [11.201]-[11.203].
>
> **[footnotes omitted]**

236 Here the claimants' case is not based on an assertion that there was any inducement to enter a contract with HS. The appropriate approach to negligent misrepresentation is thus that set out in para 78 of the claimants' formulation and that in para 97 of the defendants'.

237 Both require that there is a false representation of fact by the defendant as opposed to a prediction about the future. This is the same distinction as exists in the case of fraudulent misrepresentation and the findings of fact made above are equally applicable and determinative.

238 Whilst there might have been an actionable representation with regard to the representations, they were not made by HS and they were not false. On this basis the action in negligent misrepresentation cannot succeed.

239 Further, whilst I accept that potential investors in STACS Tokens constituted a class of people to whom the Whitepapers were addressed, on the facts as found any duty towards that class was not owed by HS as it did not make the representations and, in any event, it was not in breach of any such duty.

240 The position with regard to negligent misstatement is no different. The misstatement is said to reside out of the wording of the Consensus Incentives in Section 8.3.1. The wording was chosen by Mr Cowan on behalf of GSX Group in the earlier Whitepapers and was adopted by H Inc in the Third Whitepaper. It was a true statement of those parties' intentions. Further, there was no special relationship between the claimants and HS nor had HS assumed a special responsibility to the claimants.

Issue (f): Unjust Enrichment

241 A claim in unjust enrichment is raised against both defendants. The principles applicable are correctly summarised in para 83 of the claimants' written submissions:

> 83. The elements that must be established in a claim in unjust enrichment are as follows:
>
> a. That the defendant has been enriched;
>
> b. The enrichment was at the plaintiff's expense;
>
> c. An unjust factor is present which makes it unjust to allow the defendant to retain the enrichment; and
>
> d. The defendant has no defences available to it.
>
> **[footnote omitted]**

242 Both defendants submit that the claim should be rejected primarily on the first ground: that neither of them has been enriched by any transaction fees generated on the STACS Protocol.

243 So far as concerns HS, it disclosed its audited financial statements and general ledgers from its inception. Mr Soh gave evidence based on those records that HS had not received any STACS Protocol transaction fees.[151]

244 During the course of the disclosure process, the claimants made extensive requests for disclosure of specific documents. These were considered at hearings on 11 January 2024 and 12 June 2024. The defendants' position in respect of a number of the categories of documents, particularly those relating to HS's dealings in the STACS Protocol, was that it has never had such documents since it played no part in the operation of the STACS Protocol.

245 At the hearing on 11 January 2024, Mr Soh was ordered to provide a witness statement in respect of certain relevant documents which were said never to have been or were no longer in the possession, custody or control of either of the defendants. This resulted in a witness statement dated 25 January 2024.[152] In it Mr Soh stated that HS did not receive any transaction fees in relation to usage of the STACS Protocol, that, other than documents already produced, the defendants had no documents relating to the swap of STACS Tokens for GATE Tokens and that HS had never paid any dividends.

246 There was then a further application for disclosure by the claimants in relation to which Mr Soh provided a further witness statement dated 31 May 2024.[153] Again Mr Soh reiterated that the defendants did not develop the

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151 Soh 2WS at paras 129-131 (TB3 at pp 141-142).

152 CB at pp 2362-2370.

153 TB3 at pp 205-235.

STACS Protocol nor procured the STACS Token for GATE Token swap nor received any transaction fees from the STACS Protocol.[154]

247 Mr Soh was cross-examined on this evidence.[155] He explained that the accounts of HS were the subject of an external audit and he dealt clearly with all the questions put to him on the contents of the documents. He rejected, correctly in my view, the suggestion by Mr Leong that the ledgers could not be relied upon to support the assertion that HS had received no transaction fees on the STACS Protocol. The evidence of Mr Soh which I have accepted provides cogent reasons for why the ledgers are in the form they are and I am satisfied that they represent a true record of the financial position of HS at any given time. In consequence I hold that HS was not enriched by the receipt of any transaction fees generated by the use of the STACS Protocol.

248 The position of Mr Soh is even more stark. There is no evidence to support any assertion that he received any STACS Protocol transaction fees or any benefit derived therefrom. HS paid no dividends. Stellar, in which Mr Soh had an interest of around 51%, itself held around 53m GATE Tokens and there was no evidence that it had received any transaction fees.[156] The last passage of cross-examination ended as follows:[157]

> Q: So if your answer is no to all three questions just asked, do you agree that -- sorry, let me rephrase. Do you suffer any losses from holding these tokens?

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154 Witness Statement of Soh Kai Jun dated 31 January 2024 at paras 10.c., 40, 46 and 61-63 (TB3 at pp 210, 224-225, 227 and 231-232).

155 T4 at Page 37 Line 5 to Page 49 Line 12.

156 Soh 2WS at para 138; TB3 at p 144; T2 at Page 90 Lines 21-23 and T3 at Page 51 Line 4 to Page 52 Line 4.

157 T3 at Page 51 Line 20 to Page 52 Line 4.

> A: I personally do not believe that it is a loss yet and if I was to subscribe to Mr Silveira I would be in the same boat as him, yes, but I do not agree in that case anyway. It may not have performed to our original aspiration as a token holder and that's very disappointing, but I haven't given up any hope at all.

249 The claim based on unjust enrichment therefore fails.

Issue (g): Conspiracy

250 It is alleged that Mr Soh and HS conspired to cause damage to the claimants. The claimants' case is based both upon lawful means and unlawful means conspiracy.

251 The claimants accept that a necessary element of lawful means conspiracy is that a predominant intention of the conspiracy must be to cause damage to the claimant. On the facts as found, there was no such intention on the part either of HS or Mr Soh to cause damage to Mr Silveira specifically or to the class of persons, being STACS/ROCK Token holders, to which he belonged. The suggestion that HS and Mr Soh conspired together to cause damage to such holders, which included Stellar, is somewhat fanciful.

252 The case law on the circumstances in which a director can be liable in unlawful conspiracy with the company of which he is a director when he was acting in his capacity as a director is complex. This is particularly so where the alleged unlawful means is a tort rather than involving a breach of contract between the company and a third party. No contract is involved in this case.

253 I was referred to *Lim Leong Huat v Chip Hup Hup Kee Construction Pte Ltd* [2009] 2 SLR(R) 318, *Nagase Singapore Pte Ltd v Ching Kai Huat and others* [2008] 1 SLR(R) 80 and *PT Sandipala Arthaputra and others v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] 1 SLR 818 ("*Sandipala*") as well as the well-known English case of *Said v Butt* [1920] 3 KB 497 ("*Said v Butt*").

254 The effect of these cases was drawn together comprehensively by Steven Chong JA in paragraphs [51]–[79] of *Sandipala*. However, on the question of whether the principle in *Said v Butt* applied in cases where the director had allegedly conspired with the company's commission of a tort (such as deceit) he concluded as follows at [79]:

> 79. Although the two-stage test is not dissimilar from our elucidation of the *Said v Butt* principle, it requires a closer assessment of the conceptual and policy considerations behind holding directors personally liable for *other* torts that have been directed, authorised and procured by directors. The basic tenet of tort law is that civil wrongs must be remedied, but the question is *who* should be liable for such remedies. When a director personally *participates* in the tort, such as personally trespassing on another's property even though authorised by the company, there may well be a good reason to hold him personally liable as a tortfeasor. Where the director authorises or directs the tort on behalf of the company, although his involvement may be materially different, it is understandable that the victim may view him as equally culpable. As this issue is not directly material to the present appeal, we do not express a concluded view but raise these observations for future consideration when this issue becomes central to the outcome. Suffice it to say that there are compelling arguments in support of both views.

255 In the present case, it is not alleged that Mr Soh is personally liable for the torts allegedly committed by HS; it is said that he conspired with HS for HS to commit them. In his oral submissions Mr Leong accepted that it was an essential integer of liability that Mr Soh knew or was reckless to the fact that

the representations were false.[158] Where, as here, I have held that the representations were not false and that HS did not intend to cause damage to the claimants, the allegation of conspiracy by unlawful means must necessarily also fail.

256 Hence, although the matter was argued at length before me, I do not find it necessary to reach any conclusion on the legal issue.

Issue (h): Assessment of damages

257 With hindsight I regret not ordering bifurcation of the issues of liability and damage. This was considered at the hearing of the application for further disclosure in June 2024 when the claimants were seeking an adjournment of the trial through lack of disclosure and the defendants were contending that, in so far as they had access to relevant documents, these had been disclosed.

258 The defendants were insistent that the trial should not be adjourned as, understandably, they wished the allegations of fraud to be resolved without further delay. Since I was satisfied that such relevant documents as the defendants had would be available in time for the trial to proceed on both issues I declined to adjourn it and did not order bifurcation.

259 This necessarily meant that the experts had to prepare their reports on the basis of the limited material available to them. As matters have turned out, this was due to the fact that the STACS Protocol was the responsibility of GSX Group and not HS. It was not due to any underhand behaviour on the part of either defendant. In so far as the STACS Protocol may have generated transaction fees, these would be recorded in the records of GSX Group.

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158 T9 at Page 18 Line 18 to Page 22 Line 11.

260 The experts were thus faced with making their assessments on the basis of a number of assumptions and it is not surprising that they reached very different conclusions.

261 The underlying position now that the facts have been found is that the STACS Protocol was implemented by GSX Group and that it did not prove possible to implement it in the manner anticipated in the Whitepapers. It was one of many blockchain projects which failed to take off. Any loss that Mr Silveira has suffered cannot be laid at the defendants' door.

Issues (a) and (b): the Trust Issue and the STACS Token T&Cs Issue

262 It is convenient to consider these two issues together as they are interrelated.

263 Mr Silveira was not the owner of the original ROCK Tokens and thus did not receive the notifications which owners of ROCK Tokens received in late 2018. These included the STACS Token T&Cs. Mr Silveira purchased his STACS Tokens around a year later between August and December 2019 on the open market from the Gibraltar Stock Exchange and from the Quoine trading platform in Singapore.

264 Mr Silveira contends that he transferred the tokens to Munchetty on 9 September 2020 and that the effect of the transfer was that Munchetty held the tokens on trust for Mr Silveira so that he remains the beneficial owner thereof.

265 The defendants contend that the transfer to Munchetty was by way of a capital injection by Mr Silveira and that the tokens are therefore held by

Munchetty absolutely. Hence Mr Silveira is not the beneficial owner and therefore does not have title to sue in his own name.

266 The defendants also contend that Mr Silveira does not have standing to sue because although he bought on the open market he was bound by the STACS Token T&Cs which were at the relevant time available on the GBX website.

267 Further, if Mr Silveira was bound by the T&Cs, the defendants contend that the claimants' claims against the defendants are, in any event, precluded by virtue of clauses 13 and 15 of the T&Cs.

268 These raise difficult questions and on further consideration I am not satisfied that they have been adequately ventilated by the parties for me to reach a reasoned decision. Had it been necessary to reach a conclusion I would have asked the parties to address me at a further hearing. However this is not necessary on the facts as found and I decline to do so.

Conclusion

269 The action is dismissed with costs.

270 The parties should seek to agree on an appropriate award of costs failing which they should provide written submissions by Monday 13 January 2025. These submissions should address the question of costs incurred both before and after transfer to the Singapore International Commercial Court. In so far as the claimants contend that any costs incurred by the defendants are unreasonable, they should provide details of the costs incurred by them for the purpose of comparison.

271 Should any other issue arise, it should be addressed in the written submissions.

Simon Thorley
International Judge

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