IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA(I) 3

Court of Appeal / Civil Appeal from the Singapore International Commercial Court No 1 of 2025

Between

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

… *Appellants*

And

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

… *Respondents*

In the matter of 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*

GROUNDS OF DECISION

Version No 1: 26 Nov 2025 (15:00 hrs)

[Tort — Misrepresentation — Fraud and deceit — Applicable principles for ascertaining representor of false representation of fact]
[Tort — Misrepresentation — Fraud and deceit — Whether statement of future vision constitutes actionable false representation of fact]

TABLE OF CONTENTS

INTRODUCTION **1**

FACTUAL BACKGROUND **3**

DRAMATIS PERSONAE 3

FACTUAL MATRIX SURROUNDING THE REPRESENTATIONS 5

GSX issues Rock Tokens through GBX *5*

GSX publishes the First Whitepaper on the STACS Protocol and replaces Rock Tokens with STACS Tokens *5*

GSX publishes the Second Whitepaper *7*

Hashstacs (BVI) and Hashstacs (SG) are incorporated as separate legal entities in two different jurisdictions *8*

The Third Whitepaper is published on or around 18 March 2019 ..... *9*

Limited implementation of the STACS Protocol in Q1 2019 ..... *10*

Mr da Silveira's acquisition of the Transacted STACS Tokens *10*

Divestment to Hashstacs (SG) and striking-off of Hashstacs (BVI) *11*

Launching of GATENet platform and effectuation of the Token Swap of STACS Tokens to Gate Tokens *12*

PLEADINGS IN OA 7 16

THE JUDGMENT BELOW 21

OUR DECISION TO DISMISS CAS 1 ..... **24**

HASHSTACS (SG), BY ITS WORDS OR CONDUCT, WAS NOT THE REPRESENTOR OF THE THIRD WHITEPAPER AND WEBSITE REPRESENTATIONS 26

Summary of the key arguments of the parties *26*

Applicable principles *27*

No misdirection of law by the Judge below *31*

Version No 1: 26 Nov 2025 (15:00 hrs)

THE REPRESENTATIONS WERE STATEMENTS WHICH REFLECTED THE REPRESENTOR'S THEN-VISION CONCERNING THE FUTURE AND, ACCORDINGLY, WERE NOT REPRESENTATIONS OF FACT GIVING RISE TO AN ACTIONABLE TORT 43

Summary of the key arguments of the parties *43*

Applicable principles....*43*

The Whitepaper Representations and the Website Representations *46*

(1) The Whitepaper Representations 46

(A) The third and fourth representations *46*

(B) The first, second, and fifth representations....*48*

(2) The Website Representations....50

Whether the first, second, and fifth of the Whitepaper Representations conveyed any representations of fact *50*

The Judge's conclusion of actionability....*55*

CONCLUSION....60

Version No 1: 26 Nov 2025 (15:00 hrs)

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da Silveira, Virgilio Tarrago and another
v
Hashstacs Pte Ltd and another

[2025] SGCA(I) 3

Court of Appeal — Civil Appeal from the Singapore International Commercial Court No 1 of 2025
Steven Chong JCA, Belinda Ang Saw Ean JCA and Arjan Kumar Sikri IJ
15 August 2025

26 November 2025

Belinda Ang Saw Ean JCA (delivering the grounds of decision of the court):

Introduction

1 Mr Virgilio Tarrago da Silveira ("Mr da Silveira"), the first appellant in CA/CAS 1/2025 ("CAS 1"), acquired utility tokens called STACS Tokens that revolved around a whitepaper published on 18 March 2019 (the "Third Whitepaper") that laid out statements reflecting the publisher's ambitions and projected commercial objective to develop a public/permissioned hybrid global blockchain infrastructure with the ability to issue, trade, clear and settle digital securities. The conventional thinking, as with most crypto-assets, is that investors could gain monetarily by buying in early. Mr da Silveira subscribed to that sentiment. Shorn of technical details of blockchain technology for a project bearing the acronym STACS protocol and its infrastructure as well as various jargons associated with crypto-assets, the resolution of the appellants'

claim for damages centred primarily on the law of deceit. Relatedly, a salient inquiry was whether various statements in the Third Whitepaper, which the appellants had identified in pleadings, could be construed as representations of fact about a project's current position which, if false, could give rise to liability in the tort of deceit. No liability could arise if such statements were construed as statements about the project's desired outcomes that were prospective in nature. An additional inquiry was whether discrete statements in the Third Whitepaper laying out that the transaction fees received from transactions conducted over the said blockchain protocol would be distributed in the manner described could be construed as representations of fact both about a project's current position as well as the then-present intention of its controllers' desired outcomes as to their future implementation of the project which, if false, could give rise to liability in the tort of deceit. Above all, situationally, where a person was undisputedly involved in the editing and uploading of a document, in some capacity other than as its author, could that person be said to have conveyed or adopted alleged misrepresentations of fact contained in that document, and how should a court ascertain whether their words or conduct sufficed to constitute them a representor of those representations in law? These were the principal questions of law which arose out of CAS 1.

2 The appellants in CAS 1 sought the reversal of the decision of the International Judge (the "Judge"), sitting in the Singapore International Commercial Court (the "SICC"), who dismissed the appellants' claims in, *inter alia*, fraudulent and negligent misrepresentation against the first respondent in SIC/OA 7/2023 ("OA 7"). The appeal that was advanced before this court was against the first respondent on the claims for misrepresentations of fact either fraudulently or negligently made in the Third Whitepaper and a "Litepaper" published on a website that the first respondent was said to have control over. The appellants did not appeal against the Judge's decision dismissing the claims

Version No 1: 26 Nov 2025 (15:00 hrs)

in unjust enrichment and conspiracy which were pursued in the SICC against the first and second respondents.

3 In these written grounds, the first respondent, Hashstacs Pte Ltd, a company incorporated in Singapore, is referred to hereinafter as "Hashstacs (SG)". The second respondent is Mr Soh Kai Jun (alias Benjamin Soh) ("Mr Soh").

4 We heard CAS 1 on 15 August 2025. We did not agree that Hashstacs (SG) could be deemed to have made or adopted the pleaded representations or that they could be read as conveying representations of fact and, consequently, we dismissed CAS 1 and awarded default indemnity costs fixed at $130,000 (all-in), with the usual consequential orders applying thereto. The following are the grounds of our decision.

Factual background

Dramatis personae

5 The first appellant, Mr da Silveira, was a citizen of the United Kingdom of Great Britain and Northern Ireland who habitually resided in the Republic of Cyprus. He worked in the financial sector and claimed to be the beneficial owner of around 8.063 million STACS Tokens (a crypto-asset on the blockchain), which he claimed to have purchased in the period from August–December 2019 (the "Transacted STACS Tokens") on the inducement of representations said to have been made by Hashstacs (SG). His beneficial ownership of the Transacted STACS Tokens was disputed by the respondents below and on appeal by Hashstacs (SG).

Version No 1: 26 Nov 2025 (15:00 hrs)

6 The second appellant, Munchetty Investments Ltd ("Munchetty"), was a company incorporated under Cypriot law as a special purpose vehicle in 2020, with Mr da Silveira as Munchetty's sole director and shareholder. Ever since September 2020, when Mr da Silveira transferred the Transacted STACS Tokens to Munchetty, Munchetty held title to the Transacted STACS Tokens.

7 As mentioned, Hashstacs (SG), a Singapore company, was incorporated on 15 February 2019. At the time of Hashstacs (SG)'s incorporation, it was the wholly-owned subsidiary of a British Virgin Islander (BVI) entity called Hashstacs Inc. We will distinguish hereinafter this entity with the abbreviation "Hashstacs (BVI)".

8 Hashstacs (BVI) was incorporated as a joint venture entity pursuant to a technological joint venture between a Gibraltarian entity, *viz*, Gibraltar Stock Exchange Group Ltd ("GSX"), on the one hand, and a blockchain development company and a Hong Kong publicly-listed company (collectively, the "JV Partners"), on the other. A material witness in the SICC trial below was one Mr Nicholas Cowan ("Mr Cowan"). Mr Cowan was, at the material time, the Group Chief Executive Officer (CEO) of GSX, which he had founded and then incorporated in May 2017. By the time of the trial below, he had become the CEO of Valereum plc ("Valereum"), the British parent company of GSX, following Valereum's acquisition of GSX in January 2024.

9 Finally, the second respondent, Mr Soh, was the director of Hashstacs (SG), both at all material times and during the trial below. Moreover, he was added to the board of directors of Hashstacs (BVI) in June 2019, and he was a non-executive nominee director on GSX's board from 2017–2021. Mr Soh – like Mr Cowan – testified for the respondents in the trial below.

Version No 1: 26 Nov 2025 (15:00 hrs)

Factual matrix surrounding the representations

10 A more comprehensive overview of the factual matrix of this case and the parties' pleadings below may be found within the concise and comprehensive summation of the Judge as provided in his published decision in *da Silveira, Virgilio Tarrago and another v Hashstacs Pte Ltd and another* [2024] SGHC(I) 32 (the "Judgment") (at [6]–[71]). Here, we provide only a broad overview of the facts salient to the more limited range of issues engaged in CAS 1 by setting out a general chronology of the commercial context surrounding the alleged misrepresentations with the use of cross-referencing to the detailed facts outlined in the Judgment below, while providing a summary of each stage of relevant developments only in the interest of situating material events in their proper background.

GSX issues Rock Tokens through GBX

11 The STACS Tokens were preceded by the Rock Tokens, of which only 900 million were minted and sold to the public by a Gibraltarian subsidiary of GSX ("GBX") in February 2018. The background of the Rock Tokens' public sale is outlined in greater detail in the Judgment at [19]–[23].

GSX publishes the First Whitepaper on the STACS Protocol and replaces Rock Tokens with STACS Tokens

12 In November 2018, GSX entered into a joint venture with the JV Partners (at [8] above) to develop the project bearing the name of "Securities Trading Asset Classification Settlement" or "STACS" Protocol, which GSX described at the time as a "solution for capital markets of the future". In this regard, the JV Partners envisaged setting up a joint venture entity to develop the STACS Protocol (see the Judgment at [26]–[27]). That joint venture entity, Hashstacs (BVI), was eventually incorporated in 2019.

Version No 1: 26 Nov 2025 (15:00 hrs)

13 In November 2018, a whitepaper was published in the name of GSX. It was entitled *The Securities Trading Asset Classification Settlement (STACS) Protocol Whitepaper v1.0: A Holistic Integrated System for the Issuance, Trading, Clearing and Settlement of Any Digital Security and Asset on the Blockchain* (the "First Whitepaper") and coloured in red, which the appellants said was the signature colour of GSX (which the respondents did not dispute). In brief, the First Whitepaper set out the value added proposition of the STACS Protocol as the use of blockchain technology to create an infrastructure for efficient trading by *inter alia* financial services providers in digital assets in capital markets. It envisaged that the providers of the STACS Protocol's relevant services would be GSX and a proposed joint venture entity (*ie*, "Hashstacs Inc.", a BVI-incorporated legal entity (at [12] above), which we said earlier (at [7] above) will be referred to hereinafter as "Hashstacs (BVI)").

14 Additionally, the First Whitepaper set out the main characteristics of the STACS Protocol, envisioned as a hybridised architecture, as such:

> 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.

15 The STACS Protocol, as a hybridised model, would thus consist of two mechanisms, one known as the "Native STACS", the other as "Global STACS". Native STACS was envisioned as a permissioned blockchain available only to the aforesaid "Verified Partners" or "VPs" in the financial industry, while the

Version No 1: 26 Nov 2025 (15:00 hrs)

Global STACS was conceived of as an open and publicly accessible blockchain system to participate in, and verify, transactions in digital assets or securities.

16 The First Whitepaper was also the first public document to introduce the crypto-asset known as the "STACS Token", which it described as the "utility token" powering the STACS Protocol's ecosystem. The value of the STACS Token, as a utility token, can only be properly understood within the context of the blockchain technology of the STACS Protocol, that served as a distributed ledger of on-chain transactions. A more detailed discussion of how blockchain technology works and its implications for the STACS Protocol project may be found in the Judgment at [8]–[9]. A pertinent point, however, is that the benefit of the STACS Tokens to its holders was that, as a utility token of the STACS Protocol, users would have to stake a minimum amount of STACS Tokens in order to enjoy such privileges as becoming a VP at [15] above, with the power to *inter alia* deploy a Native STACS system or participate in the validation of transactions on the Global STACS, among other benefits.

17 As for how one could acquire the STACS Tokens, the First Whitepaper explained that their numbers would be limited based on a one-to-one swap with the pre-existing 900 million Rock Tokens of GBX (see the Judgment at [30]). Eventually, a swap took place which GBX effected by air-dropping STACS Tokens to Rock Token holders on a one-to-one basis.

GSX publishes the Second Whitepaper

18 On or around 21 December 2018, GSX published a second whitepaper entitled *The Securities Trading Asset Classification Settlement (STACS) Protocol Whitepaper v1.0* [*sic*]: *A Holistic Integrated System for the Issuance, Trading, Clearing and Settlement of Any Digital Security and Asset on the Blockchain* (the "Second Whitepaper"). The contents of the First and Second

Version No 1: 26 Nov 2025 (15:00 hrs)

Whitepapers were the same in all material particulars. Save for minor stylistic and linguistic differences, both were coloured in red (signature colour of GSX) and published in GSX's name, they described the STACS Protocol as a project developed and provided by GSX and Hashstacs (BVI), and described the value of the STACS Tokens as a "utility token" of the STACS Protocol ecosystem in the same or similar terms as the First Whitepaper under "Section 9" of both.

Hashstacs (BVI) and Hashstacs (SG) are incorporated as separate legal entities in two different jurisdictions

19 The detailed facts surrounding the incorporation of Hashstacs (BVI) and Hashstacs (SG) may be found in the Judgment at [36]–[40], [106], and [133]. The salient points are that GSX and the JV Partners incorporated Hashstacs (BVI) in furtherance of a joint venture agreement dated 23 January 2019 (the "JVA"). Its majority shareholder was GSX and the company board consisted of *inter alios* Mr Cowan and Mr Soh. We noted that Mr Cowan was the director who gave various instructions to the staff of Hashstacs (SG) in relation to the STACS Protocol (see at [82]–[88] below). We also noted that his authority to provide instructions on Hashstacs (BVI)'s behalf to Hashstacs (SG) was accepted as it was never opposed by the appellants nor did they make it an issue in the trial below or on appeal.

20 In accordance with the JVA's terms, Hashstacs (BVI) was incorporated on 21 January 2019, and Hashstacs (BVI) went on to constitute Hashstacs (SG) as its wholly-owned subsidiary on 15 February 2019. Mr Soh became one of two co-managing directors of Hashstacs (SG) at its inception (at [9] above). The other co-managing director of Hashstacs (SG) at its incorporation was one Mr Ng Choon Cheong, who stepped down from the board of Hashstacs (SG) in November 2020, leaving Mr Soh as the sole managing director from then on.

Version No 1: 26 Nov 2025 (15:00 hrs)

Both Mr Cowan and Mr Soh described Hashstacs (SG) as the "operating entity" of Hashstacs (BVI) in their evidence.

The Third Whitepaper is published on or around 18 March 2019

21 In March 2019, a whitepaper was published and entitled *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*, *ie*, the Third Whitepaper. Unlike the First and Second Whitepapers, the Third Whitepaper was published in blue and in the name of Hashstacs (BVI), with the wording of "#STACS" and "Hashstacs Inc." at the bottom of the cover page. Additionally, the contents of the Third Whitepaper were mostly similar to the First and Second Whitepapers, with the most material difference being the omission of "Section 9" concerning the features of the STACS Tokens and the one-to-one swap with the Rock Tokens. That was presented as a forthcoming swap in the First Whitepaper, but it had been completed by the time of the Third Whitepaper (see at [17] above).

22 The material portions of the Third Whitepaper which the appellants had relied upon in respect of their pleaded meanings for the representations below were reproduced by the Judge in the Judgment at [30]. Where appropriate, the material portions of the Third Whitepaper are repeated in our analysis of the arguments below. It suffices to point out here that the Third Whitepaper made no mention of Hashstacs (SG). It only listed Hashstacs (BVI) as the author and publisher on the cover page, and, similar to the First and Second Whitepapers (see at [13] and [18] above), presented GSX and Hashstacs (BVI) as the relevant providers of the STACS Protocol. In addition, the Third Whitepaper described the STACS Protocol project as a *future* design of GSX and Hashstacs (BVI) that was in progress and had yet to be fully rolled out.

Version No 1: 26 Nov 2025 (15:00 hrs)

23 The Third Whitepaper was published by Hashstacs (BVI) on 18 March 2019 with the assistance of the staff from Hashstacs (SG). On or about 29 March 2019, Hashstacs (SG)'s employees also uploaded – at the same time as the Third Whitepaper – the Litepaper onto a website bearing the link stacs.io (the "STACS Website") and entitled the *STACS Ecosystem Litepaper: Hybrid Distributed Ledger Technology Tailored for Global Digital Securities* (*ie*, the Litepaper; see at [2] above), coloured in blue, and with the wording "By HashSTACS Inc" imprinted onto the last slide, together with the link for the STACS Website. Both Mr Soh and Mr Cowan's testified that the STACS Website was owned and controlled by Hashstacs (BVI) at the material time.

Limited implementation of the STACS Protocol in Q1 2019

24 In the first quarter of 2019, GSX issued the first live implementation of the STACS Protocol with the issuance of Native STACS. The Judge found as a matter of fact below – which was not challenged on appeal – that the Global STACS was never launched (see the Judgment at [152]). We will elaborate on the reasons for the limited launch at [29] below. GSX, however, continued to develop the STACS Protocol after the first quarter launch of 2019, but these developments were focussed upon fine-tuning and improving aspects of the Native STACS function of the STACS Protocol (see the Judgment at [143]).

Mr da Silveira's acquisition of the Transacted STACS Tokens

25 According to Mr da Silveira's evidence, he saw the representations in March–April 2019 whilst he was in the United Kingdom. The representations are particularised in further detail when discussing OA 7 at [44]–[46] below. Mr da Silveira decided to purchase STACS Tokens. He acquired the Transacted STACS Tokens (see at [5] above) during the period of 15 August to 5 December

Version No 1: 26 Nov 2025 (15:00 hrs)

2019 from two sources, *viz*, GBX and a third-party cryptocurrency exchange called "Liquid/Quoine".

26 In September 2020, Mr da Silveira transferred his title to the Transacted STACS Tokens to Munchetty. He claimed that he retained the beneficial interest in the Transacted STACS Tokens. A documentary exhibit tendered at the trial below dated 5 July 2024, signed by Munchetty's accountant, appeared to confirm that the Transacted STACS Tokens "were contributed alongside other digital currencies in kind as part of constituting share capital of Munchetty Investments Ltd on 27th [*sic*] September 2020 by its sole shareholder Virgilio Tarrago Da [*sic*] Silveira".

Divestment to Hashstacs (SG) and striking-off of Hashstacs (BVI)

27 The background behind Mr Soh's acquisition of control over Hashstacs (SG) and the striking-off of Hashstacs (BVI) may be found in the Judgment at [133]–[137]. In short, one of the JV Partners wished to withdraw from the joint venture. As a result, two agreements were entered into (which we abbreviate as the "July 2019 Agreement" and "October 2019 Agreement") that *inter alia* confirmed Hashstacs (BVI)'s role in the STACS Protocol project *vis-à-vis* GSX's (see at [97(b)] below). Mr Soh then acquired shares in Hashstacs (SG) in March 2020, and he came to acquire majority control over Hashstacs (SG) through a series of purchases from March 2020 to February 2023. Two further agreements were entered into (which we abbreviate as the "August 2020 Agreement" and "October 2020 Agreement") which envisaged Hashstacs (SG) taking over Hashstacs (BVI)'s role in providing technological services to GSX in relation to the STACS Protocol (see at [97(c)] below).

28 Hence, Hashstacs (BVI) was struck off the BVI register of companies in November 2020.

Version No 1: 26 Nov 2025 (15:00 hrs)

Launching of GATENet platform and effectuation of the Token Swap of STACS Tokens to Gate Tokens

29 According to Mr Cowan's evidence, various regulatory obstacles were in place which prevented GSX's plans in relation to the STACS Protocol from being rolled out as they had anticipated. He also averred that GSX was unable to advance an extension application for its subsidiary's licence to operate the Gibraltar Stock Exchange with Gibraltar's financial services regulator, and their discussions with the regulator apparently fell through. These included failed applications for the licensor's approval to expand the scope of their prevailing regulatory approval to operate the stock exchange from a "listing exchange" to a "tokenised securities exchange". In his witness statement, Mr Cowan had mentioned the STACS Protocol becoming the "core infrastructure" of the extended stock exchange in the event that that application was successful. This was Mr Cowan's description of his *ambition* which he had in mind when GSX made the extension request to the regulator; but, to realise that ambition, not only did the extension request have to be acceded to, that expanded tokenised exchange would also have had to be commercially viable as such.

30 Following the aforesaid obstacles, Mr Cowan decided GSX's business model had to change. This led to yet another one-to-one token swap (the "Token Swap") whereby existing STACS Tokens would be swapped for new tokens called "Gate Tokens". The new tokens would apparently encompass an expanded suite of "service offerings including the development of our securities token strategy" and to provide token holders with "increased opportunities" through "fundamental upgrades" to "open[] the gateway to new capital markets".

31 We refer to an announcement on 5 December 2019 in Mr Cowan's name to a Telegram group, which stated the following:

Version No 1: 26 Nov 2025 (15:00 hrs)

> … Within GSX, we have deployed our Native STACS and we look forward to our first digital launch during December. We have also seen a lot of interest from other counterpart uses [*sic*] seeking to join our Native STACS. Hashstacs has also found that not all institutions are legally able to hold utility tokens, either due to their own restrictions or due to legislation within their country of domicile – they can deploy a blockchain – but they can't use a token!
>
> Put simply, the STACS/GATE token can't be an obligation for entities that engage with Hashstacs. However, I absolutely don't see this as an issue. The GSX Group Native STACS is set to grow during 2020 as we go live with our MainNet – and anyone wishing to interoperate with us will have to use GATE.
>
> Moreover, we are in the process of widening our remit way beyond what was laid out in our Whitepaper – which I will talk about in more detail during my AMA [*ie*, Ask Me Anything] including opening exchanges and trading venues outside Gibraltar to create a global exchange platform for round-the-clock price discovery and liquidity all operating on the GSX Group Native STACS; launching a primary platform for STO's; applying for a CSD license to provide services to our issuers and other exchanges. I am also hopeful, subject to shareholder approval, to be able to provide details of a unique opportunity for our GATE token holders – watch this space! All of our initiatives will drive transaction fees and increase the utility. …

32 We pause here to observe that Mr Cowan's reference to "Hashstacs" in his announcement was to GSX's subsidiary, Hashstacs (BVI). It must be so as the second announcement must be read in the context of "Hashstacs" being used in the GATENet whitepaper (at [40] below) to refer to the subsidiary of GSX (*ie*, Hashstacs (BVI)) that developed the STACS Protocol, which is consistent with similar references in the various STACS Protocol Whitepapers.

33 Mr da Silveira accepted that he saw this December 2019 announcement in the group, which he interpreted as "an announcement … that anyone wishing to interoperate with the GSX Group Native STACS will have to use the GATE Token".

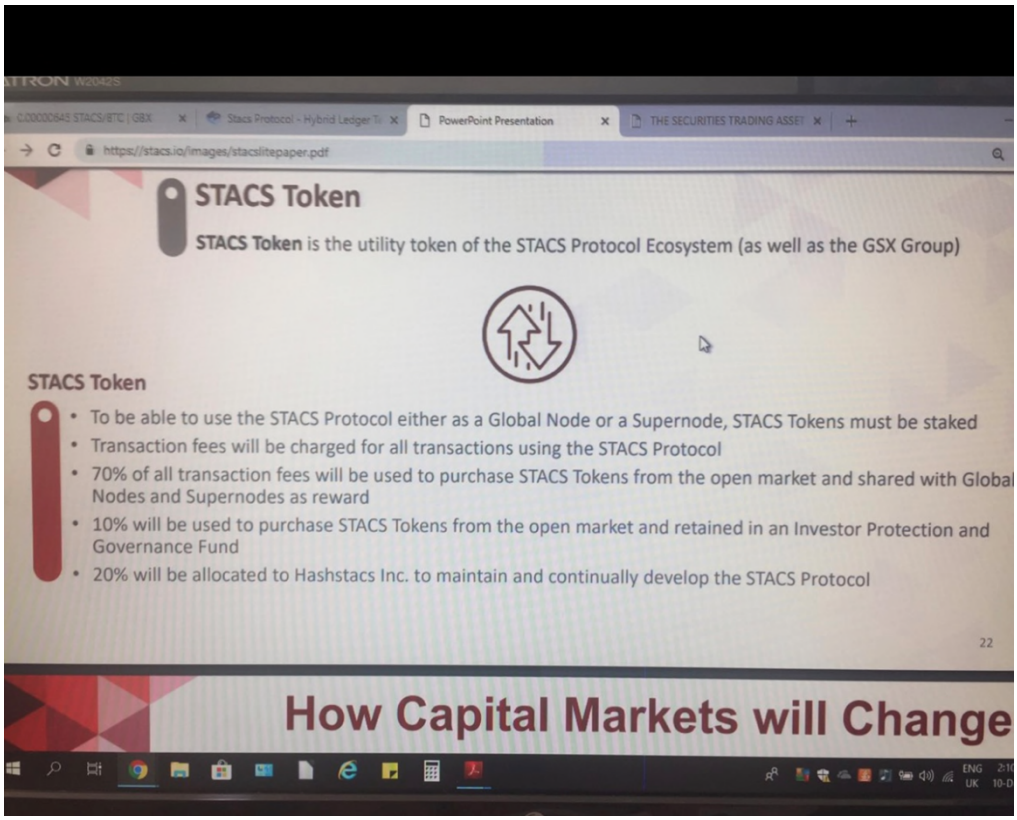
Version No 1: 26 Nov 2025 (15:00 hrs)

34 In February 2020, GSX made a further announcement over a Telegram group regarding the impeding Token Swap. This announcement was also not mentioned in Mr da Silveira's witness statement. Notably, he did make mention of an *April* 2020 announcement over Telegram, but for which there was no screenshot exhibited to his witness statement. Given that he was recounting this announcement from memory, it is possible that this "April 2020" announcement was meant to be a reference to this February 2020 announcement. However, if so, Mr da Silveira's description of the tenor of that announcement, *viz*, that "STACS Token holders would be given the option to convert the STACS Tokens into the Gate Tokens that could be used on the GSX Platform (i.e. GSX's Native Stacs)", does not appear to be supported by the contents of the February 2020 announcement, which stated in categorical terms that: "[w]hen the GATE token goes live it *will replace* the STACS token" [emphasis added]. In other words, the Token Swap was not presented as an "option".

35 Over the months of August to September 2020, Mr da Silveira contacted Mr Soh, first over Zoom, then through email (the "2020 Emails"), ostensibly to explore the prospect of making further investments into the STACS Protocol's ecosystem. Mr da Silveira averred in his witness statement that it was based on Mr Soh's replies to his queries, seeking further information on the STACS Protocol, in the 2020 Emails, that he formed the belief that Mr Soh's replies contradicted the representations, and that the representations were therefore "false and untrue".

36 It was also in the 2020 Emails that Mr da Silveira sent a screenshot to Mr Soh (the "Screenshot"), which contained the following text in red, shown at the top of the Screenshot to be information extracted from the following Internet link: https://stacs.io/images/stacslitepaper.pdf.

Version No 1: 26 Nov 2025 (15:00 hrs)



37 Mr da Silveira accepted, in his witness statement, that given the link at [36] included the words "stacslitepaper.pdf", the Screenshot "could have been" of the Litepaper referred to in Mr Soh's witness statement (see at [23] above) or of something similar thereto.

38 In or around January 2021, GSX made the decision to go ahead with the impending Token Swap. Mr Cowan sent a letter to STACS Token holders in January 2021, which informed them that Gate Tokens would function as the sole utility token for GSX, and STACS Tokens would be replaced with Gate Tokens going forward, providing details of how the Token Swap would be effected (*eg*, for STACS Tokens held outside of GBX's platform, Gate Tokens would be air-dropped into the holder's private digital wallet).

Version No 1: 26 Nov 2025 (15:00 hrs)

39 The Token Swap was effected via air-dropping on or about 27 January 2021. The result of the Token Swap was that the Transacted STACS Tokens ceased to have any remaining utility going forward, and then-existing STACS Token holders, like Mr da Silveira, received replacement Gate Tokens.

40 On 31 March 2021, GSX published their whitepaper entitled *GATENet Whitepaper v1.0* (the "GATENet Whitepaper"), that described GATENet as "a GSX Group initiative", and charted the history of the development from the STACS Tokens and STACS Protocol to Gate Tokens and GATENet, as stated in the Judgment at [148]–[150].

41 Mr Cowan was one of the authors of the GATENet Whitepaper. The GATENet Whitepaper also included express disclaimers – being absent from the STACS Protocol Whitepapers – that the GATENet Whitepaper "consists of mostly forward looking [*sic*] statements. Their outcome is not guaranteed", coupled with a warning that:

> GATE token holders should specifically and carefully consider that the forward looking [*sic*] statements in this Whitepaper are GATENet's views and vision only and that actual achievements may well differ before making a decision to hold (or otherwise) GATE tokens.

Pleadings in OA 7

42 On 2 March 2023, the appellants commenced the action in the General Division of the High Court, *vide*, HC/OC 134/2023 ("OC 134"). OC 134 was transferred to the SICC on 16 May 2023 and the matter proceeded in the SICC as OA 7.

43 As mentioned at [2] above, the claims in OA 7 against Hashstacs (SG) alone were for fraudulent and negligent misrepresentation, whereas the claims in conspiracy and unjust enrichment were against both Hashstacs (SG) and

Version No 1: 26 Nov 2025 (15:00 hrs)

Mr Soh. The pleaded representations were derived from two main sources, namely, the Third Whitepaper (the "Whitepaper Representations") and the STACS Website (the "Website Representations").

44 The claims in unjust enrichment and conspiracy were based largely on the same factual substratum as the misrepresentation claims. The claim in unjust enrichment alleged that Hashstacs (SG) and Mr Soh were unjustly enriched by retaining the transaction fees generated on the STACS Protocol without having distributed them in accordance with the representations, while the claim in conspiracy alleged that Hashstacs (SG) and Mr Soh conspired to wrongfully injure representees of the representations, who were induced to acquire STACS Tokens through the unlawful means of fraud or with the predominant intention to cause injury to those investors in bad faith.

45 The Whitepaper Representations were pleaded to bear the following meanings:

> a. The **entire** STACS Protocol Ecosystem will be powered by the STACS Token [(the "first representation")].
>
> b. Verified Parties [*sic*, the Third Whitepaper uses "Verified Partners"] (i.e. VPs) on the STACS Protocol would need to stake the STACS Token [(the "second representation")].
>
> 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 [*sic*], ie on the STACS Ecosystem) [(the "third representation")].
>
> 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*

Version No 1: 26 Nov 2025 (15:00 hrs)

> an open market purchase into STACS Tokens [(the "fourth representation")].
>
> 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' [(the "fifth representation")].
>
> [emphasis in original in bold and italics]

46 The Website Representations were pleaded to bear the following meanings:

> 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".
>
> [emphasis in original in italics omitted]

47 The contents of the Website Representations were said to be evidenced by the Screenshot that was exhibited in Mr da Silveira's witness statement and is reproduced at [36] above.

48 The representations were pleaded to have been made accessible to the public over the STACS Website for the period of March to December 2019.

49 The appellants pleaded that Hashstacs (SG) made the representations. The pleading that Hashstacs (SG) was the representor was premised on the appellants' averments that Hashstacs (SG) was commonly referred to as

Version No 1: 26 Nov 2025 (15:00 hrs)

"Hashstacs Inc" and "STACS". The appellants' statement of claim (at para 3) reads as follows:

> The 1st Defendant (hereinafter, referred to as **"Hashstacs"**) is a private company limited by shares incorporated in Singapore on 15 February 2019. Hashstacs is the developer, operator and owner of the "*Securities Trading Asset Classification Settlement* ("**STACS**") *Protocol*". Hashstacs is also commonly referred to as "*Hashstacs Inc.*", or generally as "*STACS*" in relevant marketing and communication material.
>
> [emphasis in original in bold and italics]

50 Resting on the above premise, the appellants asserted at para 33 of the statement of claim that the Third Whitepaper held out the following as regards Hashstacs (SG):

> a. Hashstacs has developed the STACS Protocol and its related suite of services.
>
> b. Hashstacs will operate and offer to third parties access to the STACS Protocol baselayer infrastructure. All third parties will require onboarding by Hashstacs which will perform all required customization before being able to access, interoperate and transact their assets on chain with all other users using the same common underlying capital markets infrastructure and be part of the STACS Ecosystem.

51 It is a convenient juncture to make two points. First, the appellants did not run their case at the trial below that Hashstacs (SG) was one and the same as Hashstacs (BVI) by invoking either an exception to the separate entity principle or a basis for lifting the corporate veil. The appellants' pleadings rested upon Hashstacs (SG) and Hashstacs (BVI) being indistinguishable in identity because Hashstacs (SG) was said to be commonly referred to as "Hashstacs Inc." and "STACS". In other words, they were one and the same. Secondly, no factual basis was proffered as to how Hashstacs (SG) was commonly referred to as "Hashstacs Inc." in the marketing and communication materials. There was never any suggestion of a mistake in the materials, *ie*, that the author or

Version No 1: 26 Nov 2025 (15:00 hrs)

publisher accidentally or wrongfully described the provider of the STACS Protocol as "Hashstacs Inc." (see at [21]–[22] above), or wrongly used the suffix "Inc." in other marketing materials, when they meant to refer to "Hashstacs Pte. Ltd.", *viz*, Hashstacs (SG). Hence, beyond the mere assertion in the appellants' pleadings that references to "Hashstacs Inc." ought to be understood as references to Hashstacs (SG), there was no evidence to support that interpretation of these various publicity and marketing materials, including the Third Whitepaper and Litepaper, among others.

52 In their defence (at paras 7–13), the respondents pleaded that Hashstacs (SG) and Hashstacs (BVI) were separate entities, that Hashstacs (SG) did not own or control the STACS Protocol, and that Hashstacs (BVI) – not Hashstacs (SG) – was the joint venture entity of GSX and the JV Partners. Their case on the relationship between the two entities was pleaded as such (at para 9):

> At the time of [Hashstacs (SG)'s] incorporation, it was wholly owned by Hashstacs Inc. – a company incorporated in the British Virgin Islands ("**BVI**") on 21 January 2019. At the material time, Hashstacs Inc was the holding company while [Hashstacs (SG)] was the operating company.
>
> [emphasis in original in bold]

53 The respondents denied that Hashstacs (SG) made the Whitepaper Representations or the Website Representations. They pleaded that the Third Whitepaper was published by GSX, and that GSX made the Third Whitepaper publicly accessible on the STACS Website. They also pleaded (at para 111) that "[t]he Third Whitepaper originated from [GSX] and/or Hashstacs Inc.", and it was GSX which "made" the Website Representations "available" (at para 105).

Version No 1: 26 Nov 2025 (15:00 hrs)

The Judgment below

54 The trial took place from 22 July 2024 to 30 July 2024. Mr da Silveira testified as a witness of fact for the appellants below, while both Mr Soh and Mr Cowan gave factual evidence for the respondents. The parties also adduced expert evidence below on the proper assessment of damages and the valuation of the Transacted STACS Tokens (before the Token Swap) and the Gate Tokens which were air-dropped to Mr da Silveira at [39] above.

55 The Judge reserved his judgment and, on 16 December 2024, dismissed OA 7 with costs awarded to the respondents (see the Judgment at [269]–[270]).

56 On the appellants' misrepresentation claims against Hashstacs (SG), the Judge referred to the elements of the tort of deceit set out in the Singapore Court of Appeal's decision in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 ("*Panatron*") at [14], *viz* (see the Judgment at [74]) –

(a) there must be a representation of fact made by words or conduct;

(b) the representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff;

(c) the representation of fact was false and the plaintiff acted upon that falsity;

(d) it must be proved that the plaintiff suffered damage by so doing; and,

Version No 1: 26 Nov 2025 (15:00 hrs)

(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.

57 The Judge found that several of the above elements were not satisfied. In particular, he held that Hashstacs (SG) was not the representor of the pleaded representations, having accepted the evidence of Mr Soh and Mr Cowan below that the Third Whitepaper was published by Hashstacs (BVI) on the instructions of GSX. On the Website Representations, the Judge held that it was not necessary to separately consider the Website Representations on their own for it was common ground that the Whitepaper Representations had been made (see the Judgment at [61] and [208]). He went on to observe that, even if Hashstacs (SG)'s employees had uploaded the Third Whitepaper onto the STACS Website, that involvement was insufficient to render Hashstacs (SG) legally liable for its contents (see the Judgment at [196] and [202]). Looking at Hashstacs (SG)'s acts as a whole, the Judge found that the Third Whitepaper, on its face, named Hashstacs (BVI) as the publisher with GSX speaking to the reader through the document (see the Judgment at [196]–[197]), and Hashstacs (SG)'s employees' only role had been to make edits in the drafting process and to upload the Third Whitepaper onto the STACS Website (see the Judgment at [202] and [209]). None of these acts rendered Hashstacs (SG) responsible in law for the Third Whitepaper's published contents (see the Judgment at [209]).

58 As for the other elements of the tort of deceit, the Judge held that one aspect of the Whitepaper Representations was actionable as *inter alia* an undertaking as to how transaction fees on the STACS Protocol would be distributed, subject to the important caveats that it was viable to implement the STACS Protocol and the project proved successful (see the Judgment at [101] and [214]); hence, the undertaking on the distribution of transaction fees in the

Version No 1: 26 Nov 2025 (15:00 hrs)

Whitepaper Representations would have been actionable in law *if* Hashstacs (SG) had made them (see the Judgment at [215]). Moreover, he observed that the undertaking would have been made with the intention that it be acted upon by investors or potential investors in STACS Tokens such that they would invest in STACS Tokens (see the Judgment at [99] and [226]), and that Mr da Silveira had been induced by the Whitepaper Representations to acquire the Transacted STACS Tokens (see the Judgment at [229]).

59 However, the Judge observed that there was no falsehood and there was no false intent nor evidence of any dishonest state of mind. Specifically, the Whitepaper Representations reflected how the transaction fees of the STACS Protocol would be distributed in future (see the Judgment at [220]), and they did not become false at a future date because there was no evidence to show that transaction fees that would be generated would not be distributed in accordance with the Whitepaper Representations to holders of Gate Tokens (see the Judgment at [222]).

60 There was no evidence that Hashstacs (SG), through Mr Soh, believed the Whitepaper Representations were false, as it was not proved that their contents did not reflect the true understanding and intentions of Mr Soh at the material time they were made (see the Judgment at [224]). The Judge rejected the factual inference that the 2020 Emails (see at [35] above) contradicted the Whitepaper Representations. He accepted the evidence of Mr Soh that Hashstacs (SG) had engaged in blockchain projects which were separate and independent from the STACS Protocol, which used the same marketing term "STACS" to refer to them, inclusive of an Ethereum-based blockchain that was distinct from GSX's STACS Protocol (the "STACS Ethereum Blockchain") (see the Judgment at [154]–[168] and [193]). Likewise, reading the whole of the 2020 Emails within their proper context, the Judge was satisfied that the

Version No 1: 26 Nov 2025 (15:00 hrs)

statements made by Mr Soh that were alleged to contradict the contents of the representations concerned the independent STACS Ethereum Blockchain and, as such, did *not* pertain to the STACS Protocol, with Mr Soh having used "STACS" to refer to the former, but which Mr da Silveira had interpreted at the time to refer to the latter (see the Judgment at [180]–[184]).

61 The Judge also dismissed the unjust enrichment and conspiracy claims – which were pursued against *both* respondents – on account of a lack of proof that Hashstacs (SG) had received any transaction fees generated on the STACS Protocol (see the Judgment at [243]–[249]) and his finding that the Whitepaper Representations had not been made fraudulently, respectively (see the Judgment at [255]–[256]).

62 The Judge therefore dismissed OA 7 *in toto* "with costs" awarded to the respondents, while inviting the parties to agree on the quantum of costs and, in the absence of agreement, to make submissions on the appropriate quantum (see the Judgment at [269]–[270]).

63 The Judge subsequently fixed the quantum of costs to the respondents in the sum of $1.05m (all-in) on 16 January 2025, which the appellants were to pay to the respondents in instalments.

64 Dissatisfied with the outcome of OA 7 respecting the misrepresentation claim, the appellants filed CAS 1 on 10 January 2025.

Our decision to dismiss CAS 1

65 We briefly outlined the appeal before us at [2] above. Generally, to explain the conclusions reached in this appeal, in our discussion below, we will summarise the key arguments and evidence that was presented in the appeal in

Version No 1: 26 Nov 2025 (15:00 hrs)

relation to the salient issues before us. Notably, the critical issue which was dispositive of the appeal concerned the identity of the representor. The Judge held that the Third Whitepaper was published by Hashstacs (BVI) and that Hashstacs (SG) did not make the Whitepaper Representations.

66 In this appeal, the appellants argued that, given the Judge's finding that Hashstacs (SG)'s employees were involved, in at least some capacity, in performing acts in relation to the writing, editing, and publishing of the Third Whitepaper, it was no longer open to the Judge to find, as a matter of law, that they did not constitute Hashstacs (SG) as a representor thereof. In adopting this argument, the appellants characterised the question of whether a defendant had made a representation of fact by his words or conduct as a question of fact – *viz*, what they did or did not do. We disagreed with the appellants' characterisation of the matter as purely a question of fact. We will explain below that the identity of the representator as a maker of a representation of fact is a question of mixed law and fact. What the appellants did was to accept some factual findings of the Judge and to proceed therefrom without going further to explain how those facts as determined met or satisfied the legal test.

67 As to the salient matters prefaced at [1] above, the appeal in CAS 1 was dismissed on the primary ground that it was clear to this court that Hashstacs (SG) was *not* a representor of the Whitepaper and Website Representations. That sole ground was sufficient to dispose of the appeal. Nonetheless, we will also explain that the representations were statements which reflected the representor's then-vision concerning the future and, accordingly, were not representations of fact that gave rise to an actionable tort. The Judge found that at least some of the pleaded representations as to *inter alia* the distribution of the transaction fees were actionable (see at [58] above). With respect, the

Version No 1: 26 Nov 2025 (15:00 hrs)

pleaded representations did not disclose a representation of past or present fact which could, if false, be capable of giving rise to liability in the tort of deceit.

Hashstacs (SG), by its words or conduct, was not the representor of the Third Whitepaper and Website Representations

Summary of the key arguments of the parties

68 The appellants relied on certain factual indicia to build their case that Hashstacs (SG) was the representor of the Third Whitepaper. In particular, the appellants relied on Hashstacs (SG)'s use of the "signature blue colour" and the branding name "STACS" to associate it with both Hashstacs entities. Above all, the appellants' focus was on the Judge's findings of fact below that staff of Hashstacs (SG) played a role in editing the Third Whitepaper and uploading it onto the STACS Website. There was also reliance on findings, as interpreted by the appellants, that it was Hashstacs (SG) that controlled the website through which the Whitepaper Representations and Website Representations were published and that Hashstacs (BVI) existed in name only as it did not have any employees. The appellants submitted that, having found as a matter of fact that Hashstacs (SG) played these roles in publishing the Third Whitepaper, the Judge ought not to have gone further in considering and determining if Hashstacs (SG) was "legally responsible" for the contents of the Whitepaper Representations (see the Judgment at [209]) or had "accept[ed] legal liability" by way of such conduct (see the Judgment at [202]). In so doing, the Judge erred in his analysis of what was essentially a pure question of fact.

69 The appellants further submitted that the Judge ought to have accorded separate consideration to the representor of the Website Representations, which inquiry was not interchangeable with that for the Whitepaper Representations. They argued, since the evidence below supported the Judge's finding, which –

Version No 1: 26 Nov 2025 (15:00 hrs)

on the appellants' interpretation – was to the effect that the STACS Website was controlled by Hashstacs (SG), it must be the case that Hashstacs (SG) was the representor of the Website Representations.

70 Finally, the appellants argued, in the alternative, that Hashstacs (SG) had manifestly approved and adopted the Whitepaper Representations by uploading and hosting them on the STACS Website, which it was said to control, among other indicia of ratification.

71 Hashstacs (SG) largely adopted the Judge's approach below regarding the identity of the representor(s) of the Whitepaper Representations. It emphasised that the contents of the Third Whitepaper made no mention of Hashstacs (SG), that the Third Whitepaper was written in GSX's voice and from its perspective, and that nothing in Hashstacs (SG)'s conduct indicated that it adopted the Whitepaper Representations as its own.

72 As for the Website Representations, Hashstacs (SG) emphasised that the evidence of Mr Soh and Mr Cowan below was that the STACS Website was owned and controlled by Hashstacs (BVI), not Hashstacs (SG). Although it was employees of Hashstacs (SG) who directly performed the act of uploading the Whitepaper Representations and Website Representations onto the STACS Website, that fact alone did not indicate that it was Hashstacs (SG) that made those representations and was responsible in law for the truth of its contents.

Applicable principles

73 We noted that none of the parties pleaded any foreign law as the governing law of the representations or of Mr da Silveira's acting in reliance thereupon. In the circumstances, the Judge was correct in applying the forum's law to the alleged misrepresentations (see *EFT Holdings, Inc and another v*

Version No 1: 26 Nov 2025 (15:00 hrs)

Marinteknik Shipbuilders (S) Pte Ltd and another [2014] 1 SLR 860 at [61]–[62]). The Judge thus correctly applied the test for the tort of deceit as set out in *Panatron* ([56] *supra*).

74 We are concerned here with the first ingredient at [56(a)] above, *viz*, whether Hashstacs (SG) made "a representation of fact … by words or conduct". In *Bradford Third Equitable Benefit Building Society v Borders* [1941] 2 All ER 205 ("*Bradford v Borders*"), followed in *Panatron* at [14], Viscount Maugham set out the test for the first ingredient of the tort of deceit in the following terms (at 211):

> … First, there must be a representation of fact made by words, or, it may be, by conduct. The phrase will include a case where the defendant has manifestly approved and adopted a representation made by some third person. On the other hand, mere silence, however morally wrong, will not support an action of deceit…

75 We pause to observe that the reference to Hashstacs (SG) having "manifestly approved and adopted" the representations of GSX or Hashstacs (BVI) was a point that only emerged on appeal. The appellants' case below was that Hashstacs (SG) made the representations, not that Hashstacs (SG) had ratified them. We make two points on this.

76 First, the new point appeared *prima facie* to contradict the appellants' primary case below. The appellants' case before the Judge was that Hashstacs (SG) and Hashstacs (BVI) were one and the same entity (*ie*, that references to "Hashstacs Inc." ought to be understood as referring to Hashstacs (SG)). However, a submission that Hashstacs (SG) had "manifestly approved and adopted" the representations is quite different. It is notably premised on the fact that a third party – *ie*, GSX and/or Hashstacs (BVI) – made the representations, to the *exclusion of* Hashstacs (SG), with Hashstacs (SG) merely ratifying their

Version No 1: 26 Nov 2025 (15:00 hrs)

contents *subsequently*. For this fallback argument to be made out, the appellants had to show that Hashstacs (SG)'s acts in relation to the representations were done on the behalf of GSX and/or Hashstacs (BVI), constituting the latter as the maker, but with Hashstacs (SG) subsequently adopting *their* representations.

77 Secondly, a submission that Hashstacs (SG) had "manifestly approved and adopted" the pleaded representations was a new point on appeal which the appellants required leave of court to pursue, and ought to have been highlighted in their appellant's case *per* O 21 r 22(1)(*b*) of the Singapore International Commercial Court Rules 2021 (see *BCBC Singapore Pte Ltd and another v PT Bayan Resources TBK and another* [2024] 1 SLR 1 at [34]). As we reminded the appellants' counsel at the oral hearing, this was not done. We were prepared to overlook these procedural omissions since the basis for suggesting that Hashstacs (SG) had approved and adopted the representations rested on the same factual substratum considered below, *viz*, Hashstacs (SG)'s involvement in *inter alia* uploading and hosting the representations on the STACS Website. The only difference was that the appellants' case below did not frame those acts as Hashstacs (SG) having *adopted* the representations of another, but as going to show that they *made* the representations to start with. In any case, Hashstacs (SG) was not prejudiced either, since it had the ability to respond to this newly formulated legal argument in the amended respondent's case. As stated, the new point of law was raised as the appellants' fallback argument since the appellants' primary case as summarised at [76] above did not change.

78 All said and done, to be clear, the principal inquiry in both cases – whether Hashstacs (SG) was the maker of the representations and whether Hashstacs (SG) approved and adopted the representations made by another – was whether the words or conduct of the representor could, on a proper analysis, be interpreted as their representing a fact, which was alleged by a claimant to

Version No 1: 26 Nov 2025 (15:00 hrs)

be untrue, to ground the tort of deceit (see, *eg*, the analysis of Viscount Maugham in *Bradford v Borders* at 215, finding that the building society's secretary's "words or conduct" did not show he "represented to the respondent that the statements in the brochure were true").

79 The court's inquiry is based on an objective assessment of the proper meaning that is conveyed by a representation when understood by a reasonable person in the position of the representee, considering the totality of a defendant's words or conduct, in the full context and circumstances of their making. We note that this is the same inquiry that the court undertakes when determining whether the silence or non-disclosure of the defendant, in the circumstances, can be read as making an implied positive representation of fact, in its full context, *ie*, asking how "a reasonable person would view the silence in the circumstances" (see *Broadley Construction Pte Ltd v Alacran Design Pte Ltd* [2018] 2 SLR 110 ("*Broadley*") at [28]). There is a logical connection between the two questions of (a) whether a defendant's silence expressed a representation of fact; and (b) whether the defendant's involvement in a representation sufficed to constitute them as a maker thereof – in both cases, the question being asked is whether the defendant's words or conduct, in their totality, sufficed to support the view that they made a representation of fact, which stands to be assessed as "a circumstance like any other act or statement and in the context in which it occurs", to ascertain how they would sensibly have been understood (see *Trans-World (Aluminium) Ltd v Cornelder China (Singapore)* [2003] 3 SLR(R) 501 ("*Trans-World*") at [68]).

80 After the aforesaid inquiry, the next question is whether a reasonable person in the position of the representee would consider that Hashstacs (SG)'s words or conduct, in the totality of the circumstances, rendered them a *maker* of the representations of fact in that the facts satisfied that prevailing legal

Version No 1: 26 Nov 2025 (15:00 hrs)

criterion (*viz*, the reasonable person test at [79] above). The Judge below was clearly of the view that that legal test was not met, and we would not read his use in the Judgment of the phrases "legally responsible for the publication" (at [209]) and "accept legal liability for the contents of the document" (at [202]) as constituting any misdirection of law, which was the view urged by the appellants. These phrases expressed the Judge's analysis as to whether the facts concerning Hashstacs (SG)'s involvement in the representations sufficed to reasonably consider them a maker thereof *in law*.

No misdirection of law by the Judge below

81 We begin with the Judge's factual findings. It was plain to us that the appellants were being selective in adopting only some of the Judge's factual findings and, in so doing, the facts as presented were invariably taken out of context. It is necessary to understand the evidence relied on by the appellants by placing the Judge's overall factual findings and the actions of Hashstacs (SG) *vis-à-vis* the Third Whitepaper and the Litepaper in their proper context.

82 We refer to Mr Soh's evidence which was clear that any involvement of Hashstacs (SG)'s employees in either the Third Whitepaper or the Litepaper were not done for Hashstacs (SG)'s benefit but for Hashstacs (BVI) and GSX, at the direction of Mr Cowan and GSX. His witness statement deposed (at paras 52(b) and 52(c)) that:

> b. On or around 18 March 2019, [Hashstacs (SG)] assisted [Hashstacs (BVI)] to amend the Second STACS Whitepaper and produced the STACS Network Whitepaper v1.2 dated 18 March 2019 ("**Third STACS Whitepaper**") on GSX Group's instructions, which [Hashstacs (BVI)] published. …
>
> i. The Third STACS Whitepaper was published and issued by [Hashstacs (BVI)], instead of GSX Group.

Version No 1: 26 Nov 2025 (15:00 hrs)

> …
>
> c. On or around 29 March 2019, [Hashstacs (SG)'s] personnel uploaded the Third STACs [*sic*] Whitepaper and the STACS Litepaper (which was revised several times between March to July 2019) onto the website stacs.io. At the material time, stacs.io was the product landing page for the STACS Protocol, and was owned and controlled by GSX Group (through [Hashstacs (BVI)]) at the material time. …
>
> [emphasis in original in bold and underline]

83 That evidence was not challenged in Mr Soh's cross-examination. Mr Soh explained the nature of Hashstacs (SG)'s staff's acts in relation to the Third Whitepaper, Litepaper, and STACS Website as follows:

> Q … "[Hashstacs (SG)] assisted [Hashstacs (BVI)] to amend the Second STACS Whitepaper and produced the STACS Network Whitepaper v1.2 dated 18 March 2019 … on GSX Group's instructions". Do you see that?
>
> A Yes.
>
> Q Where is the evidence of these instructions?
>
> A It was an instruction because GSX Group wanted us to promote the technology to third party financial institutions and so we wanted to have this technology being showcased and being written or produced in a technical format for potential customers.
>
> Q Yes, but where is the instruction?
>
> A I couldn't find it.
>
> Q Who from GSX gave the instructions?
>
> A Nick Cowan.
>
> Q From what you know, did Mr Cowan give the instruction to [Hashstacs (BVI)] or [Hashstacs (SG)]?
>
> A Gave the instruction to myself.

84 Mr Soh also testified that "everything that was published was under 100 per cent subsidiary of [Hashstacs (BVI)]", *ie*, Hashstacs (SG), in that the person(s) "who pressed the button … will be somebody in Singapore but at that

Version No 1: 26 Nov 2025 (15:00 hrs)

time everything was under the ownership of [Hashstacs (BVI)] and, by extension, majority shareholder, GSX Group". He also testified that the STACS Website was "owned and controlled by GSX", and "through" Hashstacs (BVI), since:

> [Hashstacs (BVI)] was a majority subsidiary of GSX Group. Everything that was in operation at the time was meant to support [Hashstacs (BVI)] and, therefore, by extension, supporting the GSX Group.

85 Mr Cowan's evidence was consistent with Mr Soh's on this point, *ie*, that he gave all relevant instructions and directions to Mr Soh and the employees of Hashstacs (SG), who carried them out in relation to the Third Whitepaper. In his witness statement, he averred (at para 30) that:

> The Third STACS Whitepaper was prepared with the assistance of staff from [Hashstacs (SG)] (being the operating company) for [Hashstacs (BVI)], who published it. The edits made by [Hashstacs (SG)] and/or [Mr Soh] were made on my instructions and ultimately for the benefit of [Hashstacs (BVI)] and the GSX Group.

86 He also gave evidence that the STACS Website was "controlled by [Hashstacs (BVI)] at the material time" (at para 34), and the Third Whitepaper was "prepared, issued and made publicly available by the GSX Group and/or GBX" (at para 33) and "published by [Hashstacs (BVI)] on GSX Group's instructions" (at para 34).

87 That evidence of the edits to the Third Whitepaper having been made on his instructions was also not challenged in cross-examination:

> Q You say the edits were my [*sic*] by [Hashstacs (SG)] and/or [Mr Soh] on your instructions and ultimately, for the benefit of [Hashstacs (BVI)] and the GSX Group.
>
> A Correct.
>
> Q How did you instruct [Hashstacs (SG) and Mr Soh] to amend the v1.0 and 1.1 paper?

Version No 1: 26 Nov 2025 (15:00 hrs)

> A Well, the edits were made by [Hashstacs (SG)] and [Mr Soh] to support their objectives of marketing their services to showcase what they could do. So those edits that we worked on, we ultimately worked on them together but I was satisfied with the changes that we collectively wanted to make.
>
> …
>
> Q You said you were satisfied with the changes that were made so you reviewed and cleared the final draft.
>
> A Yes.

88 He also maintained in his cross-examination that the entity with "[administrative] rights to upload and take down content on" the STACS Website was Hashstacs (BVI), and the "content that was being put up on stacs.io was being driven by [Hashstacs (BVI)]". He characterised the Third Whitepaper as "an initiative by [Hashstacs (BVI)]".

89 As the appellants did not challenge the aforesaid testimony of either Mr Soh or Mr Cowan, they were precluded by the rule in *Browne v Dunn* (1893) 6 R 67 from asserting any contrary position. In short, they could not contest the evidence that, while Hashstacs (SG)'s employees may have directly uploaded the Whitepaper Representations onto the STACS Website, it was Hashstacs (BVI) and GSX (through Hashstacs (BVI)) – not Hashstacs (SG) – which controlled the contents on the STACS Website. Having failed to put any contrary facts to Mr Soh and Mr Cowan in their cross-examinations, it was open to the Judge to find (and he did find) that the acts of editing and uploading were carried out on Mr Cowan's instructions for Hashstacs (BVI)'s benefit.

90 With the aforesaid evidence in mind, we turn to the question whether a reasonable person would have considered that Hashstacs (SG)'s words or conduct, in the totality of their circumstances, rendered Hashstacs (SG) a *maker* of those representations of fact in law. Could it be said that, by its words or

Version No 1: 26 Nov 2025 (15:00 hrs)

conduct, Hashstacs (SG) had made or adopted the alleged misrepresentations of facts?

91 It is not the law that *any* involvement in the process of the making of a representation would *ipso facto* render any knowingly involved party – however ancillary, subordinated, or concomitant it was – a representor who is potentially liable in the tort of deceit, should the representation prove to be false. Take *ex hypothesi* a scenario where a director of a company seeks to produce publicity materials in the company's name, dictates the desired text of the materials to his secretary, who types and prints the materials, and then directs a mailroom employee to dispatch them to the representee(s). Taking the analysis of the appellants to its logical conclusion, the court would be bound to conclude that the secretary and mailroom employee in this example were *all* representors of the publicity materials *solely* on account of their intentional involvement in *some* part of the process of producing and delivering them, even with nothing more. That was the necessary end-result of the appellants arguing that the mere act of Hashstacs (SG) being involved in editing and uploading the Third Whitepaper – irrespective of the capacity or circumstances in which those acts were performed, including under another's instructions, *only* for *their* benefit – automatically rendered them a representor personally liable for its contents.

92 That would be plainly wrong. A reasonable person would certainly not regard the intermediaries participating in the workflow at different stages in the above example to be makers of the representations merely because they were involved, somehow or other, in their preparation. Tugendhat J, sitting in the Queen's Bench Division of the English High Court, trenchantly rejected such a notion in the case of *GE Commercial Finance Ltd v Gee and others* [2005] EWHC 2056 (QB), wherein he opined (at [103]):

Version No 1: 26 Nov 2025 (15:00 hrs)

> I found this point troubling. I suggested this example to Mr Tozzi QC. Suppose a young unqualified assistant to a chartered accountant who is the finance director of a large company. The assistant is asked to fax to the bank some figures given to him by the director. The assistant does so, signing the fax in his own name. Does that count as a representation to the bank by the assistant personally? In other words, does that make the assistant a representor? …

93 Tugendhat J later expressed (at [104]) that it was not a "satisfactory answer" to suggest, as counsel did in that case, that the assistant would be a representor and would be liable for the untrue figures, subject to his or her lacking the requisite dishonest state of mind at the time. We would agree. A reasonable onlooker, in appraising the words or conduct of a putative representor, would surely bear in mind common-sensical considerations of the *role* played by the defendant in the representation in determining whether he or she was its maker. In particular, the degree of authorial and editorial influence over a representations' *contents*, and the degree of control one exercised over the process of publication (*viz*, how and to whom the representations would be transmitted) would be relevant to the mind of a reasonable person. In *Libyan Investment Authority and others v King and others* [2020] EWHC 440 (Ch), Judge Simon Barker QC (in the Chancery Division of the English High Court) considered it relevant that the defendants were "at the heart of procuring the KS Letter and determining (including by editing and re-writing) its final content" (at [125]), and "controlled the sending of the KS Letter" (at [126]), to ascertaining if an arguable case could be made out (at the interlocutory stage) that they were the representors of the representations in a letter prepared and sent directly by the valuers. We see no reason why such considerations of authorial and editorial control, and control over publication, would not similarly be relevant to the question whether Hashstacs (SG) was a representor here.

Version No 1: 26 Nov 2025 (15:00 hrs)

94 Taking the totality of the facts, a reasonable person, looking at the whole of Hashstacs (SG)'s words or conduct, would consider that: (a) the contents of the Third Whitepaper made no mention of Hashstacs (SG), (b) Hashstacs (BVI) was named on the cover page as the publisher, (c) it was written from the perspective of GSX as the persona, (d) it expressly identified GSX and Hashstacs (BVI) as the service providers in relation to the STACS Protocol, who were in a position to fulfil the Whitepaper Representations, and (e) the unchallenged evidence of Mr Soh and Mr Cowan, which the Judge accepted below (see the Judgment at [196]), established that Hashstacs (SG)'s only roles in relation to the Third Whitepaper had consisted of its –

(a) editing the Third Whitepaper, on the instructions of Mr Cowan, for the benefit of Hashstacs (BVI) and GSX, not for its own ends; and

(b) uploading it onto the STACS Website, which was controlled by Hashstacs (BVI), not Hashstacs (SG).

95 The analysis at [94(b)] above is consistent with the Judge's view (at [202] of his Judgment) that Hashstacs (SG) "controlled" the STACS Website, but only in a limited sense, *viz*, that "its employees would have effected the uploading of any given piece of material". From this perspective, the Judge accepted the evidence of Mr Soh (at [84] above) and Mr Cowan (at [86] above) that Hashstacs (BVI) – *not* Hashstacs (SG) – controlled the STACS Website in the substantive sense of having control over the *contents* thereon, as opposed to which entity's employees directly performed the technical acts required to upload materials onto the STACS Website.

96 They would not, by comparison, consider that such equivocal indicia as the colour of the Third Whitepaper or the use of the word "#STACS" – which may indicate either Hashstacs (BVI) or Hashstacs (SG) – would point strongly

Version No 1: 26 Nov 2025 (15:00 hrs)

towards Hashstacs (SG) being the publisher, particularly when the above factors at [94] are considered. Nor would that reasonable person give weight to the appellants' contention that Hashstacs (SG) and Hashstacs (BVI) were allegedly referred to in an interchangeable fashion in *other* materials, including internal WhatsApp messages of Mr Soh exchanged within Hashstacs (SG) and disclosed to the appellants in discovery – the appellants did not invoke any exception to the principle of a company's separate legal personality under *Aron Salomon (pauper) v A Salomon and Co, Ltd* [1897] AC 22 (see *Nicholas Eng Teng Cheng v Government of the City of Buenos Aires* [2024] 1 SLR 608 at [31]–[33]). They were taken to have accepted that Hashstacs (BVI) and Hashstacs (SG) were distinct entities in law, irrespective of how their controllers may have referred to them in other contexts (see, *eg*, *Cavenagh Investment Pte Ltd v Kaushik Rajiv* [2013] 2 SLR 543 at [40]–[42]).

97 In the circumstances, we simply could not see how a reasonable person would conclude that Hashstacs (SG)'s words expressed that it was the maker of the Whitepaper Representations or its conduct intimated that it was adopting the contents of the Whitepaper Representations and holding them out as true to the representees. That impression would only be reinforced, in the appraisal of the reasonable person, when he or she was apprised of the relevant commercial background showing that GSX controlled the STACS Protocol, and consequently, that GSX – not Hashstacs (SG) – was capable of honouring any representations about how the STACS Protocol would come to function. The proof of GSX's envisaged control over the STACS Protocol included that:

(a) the JVA provided (at cl 6.1) that GSX was purchasing the design and development services from Hashstacs (BVI) for the development of the STACS Protocol;

Version No 1: 26 Nov 2025 (15:00 hrs)

(b) the July 2019 and October 2019 Agreements confirmed (at cll 5.1) that one of the JV Partners would provide relevant technological services to Hashstacs (BVI) in relation to the STACS Protocol, and (at cll 11.2) that Hashstacs (BVI) would acquire intellectual property rights in the deliverable work *vis-à-vis* the STACS Protocol;

(c) the recitals of the August 2020 and October 2020 Agreements confirmed that the joint venture arrangement all along had been for GSX to purchase the technology relating to the STACS Protocol, supplied to it by Hashstacs (BVI) (through its operating company, Hashstacs (SG)), *per* recitals (D)–(E), and GSX would own all the intellectual property rights in relation to the STACS Protocol and any relevant services and upgrades provided by Hashstacs (BVI) (via Hashstacs (SG)), *per* recitals (D)–(G); and,

(d) the fact that GSX owned and controlled the STACS Protocol – and not Hashstacs (SG) – received external corroboration from the fact that the audited accounts of Hashstacs (SG) showed that they received *no* transaction fees in connection to the STACS Protocol (see also the Judgment at [247]), despite the fact that the Native STACS function had been launched in a limited capacity in 2019 (see at [24] above).

98 Given that everything Hashstacs (SG) did in connection with the Third Whitepaper was solely under the direction of GSX and its majority subsidiary, Hashstacs (BVI), as expressed via the instructions of Mr Cowan, and performed *only* for the purposes of GSX and Hashstacs (BVI), Hashstacs (SG) could not reasonably be regarded as the representor of the Whitepaper Representations. Further, Hashstacs (SG)'s act of uploading them onto a website that Hashstacs (BVI) controlled would not be viewed by a reasonable person as Hashstacs (SG)

Version No 1: 26 Nov 2025 (15:00 hrs)

either making the Whitepaper Representations or adopting its contents as its own, on an objective assessment of that act in all the circumstances.

99 As for the Website Representations, we note that the Judge did not go on to consider them once he disposed of the Whitepaper Representations (see the Judgment at [208]). Although the issue of whether Hashstacs (SG)'s words or conduct could be reasonably understood as constituting it a maker of the Whitepaper Representations was conceptually distinct from the same question *re* the Website Representations, read in its context, the Judge's analysis was simply that an examination of the Website Representations added nothing new to the analysis, on the facts below, having regard to his conclusions on Hashstacs (SG) not being a representor of the Whitepaper Representations.

100 Given the state of the appellants' evidence below as to the source of the Website Representations, the Judge's approach was hardly surprising. The appellants' *only* basis for the Website Representations was Mr da Silveira's Screenshot. We noted his admission in cross-examination that he never saw the Website Representations on the website they were taken from – instead, he only saw the Screenshot when it was posted by someone else on a Telegram group chat. In short, there was an evidential gap since the appellants had not adduced evidence of the Website Representations within the context of their original source of publication. As our analysis at [93]–[98] above shows, that context is critical in determining whether Hashstacs (SG)'s words or conduct reasonably rendered it a representor of the Website Representations to satisfy the first ingredient of *Panatron* at [14] (see ss 103(1) and 105 of the Evidence Act 1893 (2020 Rev Ed); see also *Loo Chay Sit v Estate of Loo Chay Loo, deceased* [2010] 1 SLR 286 at [14]). In our view, the appellants failed to adduce sufficient evidence to prove that Hashstacs (SG) made the Website Representations or adopted their contents as its own.

Version No 1: 26 Nov 2025 (15:00 hrs)

101 For completeness, we turn to Mr da Silveira's written submissions on Hashstacs (SG)'s non-production of the contents of the STACS Website to rebut the asserted contents of the Screenshot in his pleadings. The submissions appeared to insinuate something amiss in the non-production. We note that there was no basis to expect the other side to adduce evidence regarding the contents of the STACS Website when the evidential burden had not shifted to them to disprove Mr da Silveira's claims as to the source of the Website Representations and their surrounding context. In any event, it was Mr Soh's evidence (which was not successfully impugned on appeal) that Hashstacs (SG) no longer had access to the STACS Website at the time of the trial, having been "removed previously as part of [Hashstacs (SG)'s] business pivot".

102 Mr da Silveira claimed in his witness statement that the Screenshot *could* have been reflective of the Litepaper at [23] above. That added little to the analysis in his favour. The Litepaper appended in Mr da Silveira's witness statement at Tab 71 (a replication of the Litepaper annexed in Mr Soh's witness statement at Tab 30) was in blue; whereas, the Screenshot was in red. Whilst the link in the Screenshot, "stacs.io/images/stacslitepaper.pdf", suggests that it was *a* STACS litepaper uploaded onto the STACS Website, the Litepaper was not *the* source of the Website Representations that Mr da Silveira actually read which induced him to buy the Transacted STACS Tokens. Ultimately, we are left with the point at [100] above that the appellants could not discharge their onus of proving that Hashstacs (SG), by its words or conduct, made the Website Representations in the Screenshot.

103 In any event, we note that the Litepaper in evidence (the one in blue) was written in the voice of Hashstacs (BVI). Hashstacs (SG) was nowhere mentioned, and one slide (titled "Company Overview") stated that Hashstacs (BVI) "has developed" the STACS Protocol. Moreover, the concluding slide

Version No 1: 26 Nov 2025 (15:00 hrs)

specifically stated that the presentation was "[b]y HashSTACS Inc", *ie*, made by Hashstacs (BVI). These indicia pointed against Hashstacs (SG) being the representor of the Website Representations, in so far as they were derived from the Litepaper. In any event, the information within the Screenshot as to *inter alia* how the transaction fee receipts of the STACS Protocol would come to be distributed were not present in the contents of the Litepaper.

104 As for Hashstacs (SG)'s employees' uploading the Litepaper or the Website Representations onto the STACS Website, our analysis at [89]–[98] above applied *mutatis mutandis* to this factor. The evidence of Mr Soh and Mr Cowan was clear that Hashstacs (BVI) controlled the STACS Website, not Hashstacs (SG). That fact pointed against a reasonable person interpreting this act, in the circumstances, as intimating either that Hashstacs (SG) was the maker or adopted the representations' contents as its own. On the evidence available to us, we were satisfied that it was not proved that Hashstacs (SG) made or adopted the Website Representations. Consequently, the appellants failed to prove that Hashstacs (SG) made or adopted any of the pleaded representations. On that basis alone, the misrepresentation claims – fraudulent and negligent – against Hashstacs (SG) could not succeed on appeal.

105 We therefore dismissed CAS 1 on this ground. For completeness, we go on to discuss our views as to the Judge's analysis at [58] above in relation to the actionability of the representations. As will become clear from our analysis, this afforded a *further* reason why the appellants were not entitled to succeed on their misrepresentation claims in OA 7 below. Accordingly, we turn to discuss whether the representations disclosed representations of fact capable of giving rise to liability in the tort of deceit.

Version No 1: 26 Nov 2025 (15:00 hrs)

The Representations were statements which reflected the representor's then-vision concerning the future and, accordingly, were not representations of fact giving rise to an actionable tort

106 We reiterate that to satisfy the first element of the tort of deceit in *Panatron* ([56(a)] *supra*), there are two sub-requirements to be met – first, a defendant's "words or conduct" must be such that they can reasonably be construed as having made a representation, as we have analysed in our principal ground for dismissing CAS 1; and second, such a "representation" must have amounted to a "representation *of fact*" [emphasis added], to which we now turn.

Summary of the key arguments of the parties

107 The appellants largely adopted the Judge's analysis below to argue that, upon a plain reading of the Third Whitepaper, the pleaded representations were not statements as to the future, but an inducement to investors to make an investment based on present characteristics held out to them regarding the features of the STACS Tokens and how the STACS Protocol was to operate. In response, Hashstacs (SG) sought to challenge the Judge's findings (see at [58] above) as to the actionability of the pleaded representations. Hashstacs (SG) submitted that, since the Third Whitepaper only concerned a future state of affairs, there was no past or present fact being represented that, if false, could be actionable in the tort of deceit. Specifically, they concerned prospective conduct as to how the STACS Protocol would come to be managed and operated in future.

Applicable principles

108 A representation of "fact" is to be distinguished from other categories of non-factual representations, including *inter alia* statements of opinions (see, *eg*, *Bisset v Wilkinson and another* [1927] AC 177 on a vendor's opinion (at 183–

Version No 1: 26 Nov 2025 (15:00 hrs)

184) on the likely sheep-carrying capacity of land), mere exaggerated puffery not meant to be understood literally (see, *eg*, *Dimmock v Hallett* (1866) LR 2 ChApp 21 concerning a general descriptor of land as fertile, better understood (at 27) as "a mere flourishing description by an auctioneer"), and, of relevance here, statements as to future state of affairs and promises regarding one's future conduct (see *Clerk & Lindsell on Torts* (Andrew Tettenborn gen ed) (Sweet & Maxwell, 24th Ed, 2023) ("*Clerk & Lindsell*") at para 17-12).

109 The distinction between future facts (which are generally not actionable in the tort of deceit) and past and present facts (which generally are) is better conceptualised, in principle, as a specific application of the general rule that a defendant must have made a representation of *fact*, *viz*, a statement of something that is either objectively true or false *at the time that* he or she is speaking. As a matter of logic, a statement that "it rained yesterday" or "it is raining now" are factual representations which are either true or false at the time they are made; whereas, a statement that "it will rain tomorrow" stands on a similar footing as a statement of opinion – *ie*, an expression of one's *belief* as to what will happen in the future – being a personal evaluative judgment of what one *thinks*, at the time, is likely to occur. Put another way, as it was aptly described by the learned authors of *Spencer, Bower & Handley: Actionable Misrepresentation* (LexisNexis, 5th Ed, 2014), an actionable representation is a "representation of something which *has or has not occurred* or *does or does not exist*" [emphasis added] (at para 2.04).

110 Similarly, where the matter being represented is one that the representor has some measure of control over – *eg*, a representation that "my shop made a profit last year" or "my shop is making a profit now" – these may be construed as statements of a past or present fact that are either true or untrue at the time they are made. In contrast, a statement that "my store *will* make a profit in two

Version No 1: 26 Nov 2025 (15:00 hrs)

years' time" is *not* a representation of fact. Similar to the illustration given at [109] above, it is unfalsifiable because it represents a state of affairs that does not exist at the time of the representation. However, the position is different where the representator has control over a representation about a future fact because such a representation is capable of a wider range of interpretations. It is either a promise that the shop owner will ensure that that fact comes to pass, an expression of one's belief that it will happen, or the conveying of an aspiration or ambition to make it come true. In none of those interpretations, however, is the representation one of past or present facts which are capable of being false *at the time* the representation is made. While it *may* be capable of giving rise to liability in contract law, it is incapable of forming the basis for tortious liability in deceit.

111 We now turn to consider which of the pleaded representations at [45]–[46] above were proven to have been laid out in the first place in the Third Whitepaper. In ascertaining whether the source of the representation – *eg*, the Third Whitepaper for the Whitepaper Representations – conveyed the pleaded meaning of the representation at issue, the test is an objective one. As we stated in relation to the first ingredient of *Panatron* at [14] ([56(a)] *supra*), whether a defendant made an alleged representation of fact is assessed with reference to the following question: would a reasonable person, looking at a defendant's words or conduct in the totality of their circumstances, objectively, come to the conclusion that the defendant made the representation at issue, following *Bradford v Borders* at 215 ([78] *supra*), *Broadley* at [28] ([79] *supra*), and *Trans-World* at [68] ([79] *supra*). In the prior ground, we applied that legal test to determine whether Hashstacs (SG) may be objectively considered the *maker* of the representations. Now, we apply that same legal test to demonstrate the appellants' further difficulty in satisfying the remaining element of the first ingredient of *Panatron*: whether the representations in the Third Whitepaper

Version No 1: 26 Nov 2025 (15:00 hrs)

could be objectively regarded as having conveyed the pleaded meanings of the representations as alleged by the appellants, based on how a reasonable person would regard their act of publishing the Third Whitepaper's contents, among others. Applying that objective test, we arrived at the view that *only three* of the Whitepaper Representations could be reasonably regarded as having been made.

The Whitepaper Representations and the Website Representations

112 We refer to the pleaded meanings of the representations which have been outlined at [45]–[46] above. As a preliminary matter, it was clear that at least *some* of the pleaded meanings did not cohere with the contents of the Third Whitepaper. We begin with two such pleaded representations – the third and the fourth representations (at [45] above).

(1) The Whitepaper Representations

(A) THE THIRD AND FOURTH REPRESENTATIONS

113 The third representation was pleaded to mean:

> 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 [*sic*], ie on the STACS Ecosystem).

114 The Third Whitepaper did state (at para 8.3.1) that transaction fees on Global STACS would be based on the "Gas Price Concept", which it defined as a system whereby the fees would increase based on the relative complexity of the outputs at hand; however, it did *not* state that transactions would be paid using the STACS Tokens. Instead, it stated that:

> … Transactions are paid using the STACS Dollar (a stablecoin pegged to Fiat USD), so that VPs have confidence in the stability of transaction fees and valuation of securities. This prevents the

Version No 1: 26 Nov 2025 (15:00 hrs)

> uncertainty surrounding the use of other non-stable cryptocurrencies where the fees may become very high for a single transaction, or conversely, asset values drop significantly if the underlying cryptocurrency price is low.

115 In other words, the STACS Dollar – not STACS Tokens, which are simply utility tokens – would be used to pay the transaction fees on the Global STACS. Moreover, it was not stated that the STACS Tokens would function as a common medium of exchange on the STACS Protocol's ecosystem. That was the role envisaged for the STACS Dollar, with the Third Whitepaper stating (at para 5.8) that GSX would "adopt the STACS Dollar as its currency of choice for entry into the STACS Ecosystem", the "STACS Dollar will be used by all entrants into the STACS Ecosystem as well as other industry participants who wish to adopt the STACS Dollar as their currency of choice", which would be a "Fiat-pegged stablecoin (e.g. digital STACS Dollar credit token)", minted to serve as the "foundational cryptocurrency of the Blockchain". Applying the objective test at [111] above, a reasonable person would not read the contents of the Third Whitepaper to bear the meaning of the pleaded third representation.

116 Likewise, for the fourth representation in relation to transaction fees on Native STACS, that was pleaded to mean (see at [45] above) that:

> 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.
>
> [emphasis in original]

117 The fourth representation regarding the conversion from STACS Dollars to STACS Tokens could, perhaps, be arrived at based on the statement in the Third Whitepaper (at para 8.3.1) that: "STACS undertakes to use the incurred

Version No 1: 26 Nov 2025 (15:00 hrs)

fees on the STACS Dollar to convert to STACS Tokens to fulfil its staking rewards to the Global Nodes and Supernodes"; however, there is nothing in the Third Whitepaper to support the first half of the pleaded fourth representation that transaction fees on Native STACS would be paid directly on-chain using STACS Tokens. To the contrary, various aspects of the Third Whitepaper suggested that STACS Dollar – not the STACS Tokens – would be used to pay the transaction fees, including the representation (at para 5.1.3) that: "in order to trade and settle securities utilising STACS, a cryptocurrency is required … a Fiat-pegged stablecoin (the STACS Dollar) … will act as an appropriate medium", and STACS Dollar would be "the foundational currency in the STACS Protocol" and "the method of exchange for transaction fees, and it can also be used as the trading currency for the securities and asset tokens". Likewise, the Third Whitepaper also held out (at para 5.8; see at [115] above) that STACS Dollar would be the "currency of choice for entry into the STACS Ecosystem" and would "be used by all entrants into the STACS Ecosystem as well as other industry participants who wish to adopt the STACS Dollar as their currency of choice", thereby serving as the "foundational cryptocurrency of the Blockchain".

118 Given the incongruencies identified at [113]–[117] above, applying the objective test at [111] above, a reasonable person would not construe the act of publishing the Third Whitepaper as conveying the pleaded meanings in the third and fourth of the Whitepaper Representations. We turn now to consider the remainder of the Whitepaper Representations.

(B) THE FIRST, SECOND, AND FIFTH REPRESENTATIONS

119 The first, second, and fifth of the Whitepaper Representations were congruent with an *ex facie* examination of the Third Whitepaper's contents, as:

Version No 1: 26 Nov 2025 (15:00 hrs)

(a) the representation that the STACS Protocol's ecosystem would be powered by the STACS Tokens was supported by para 5.1.9 of the Third Whitepaper, *viz*, "[t]he entire STACS Ecosystem will be powered by its own utility token, the STACS Token";

(b) the representation that Verified Partners would have to stake the STACS Tokens was supported by para 5.1.9 of the Third Whitepaper, *viz*, "[w]hile 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 Global STACS"; and

(c) the representation as to how transaction fees generated from the STACS Protocol would be distributed cohered with the following part of the Third Whitepaper (at para 8.3.1):

> The distribution of the transaction fees is:
>
> - 70% of all transaction fees will be used to purchase STACS Tokens from the open market to then be 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. …
> - Of the transaction rewards of 70% in STACS Tokens, share percentage is an 80/20 split, with the Global Nodes getting 80% when packaging a block, while the Supernodes get 20%, shared among all Supernodes, for validating a block. …

120 Hence, applying the objective test at [111] above, it is not difficult to accept that a reasonable person in construing the act of publishing the Third Whitepaper would consider that the maker was objectively conveying the pleaded meanings of the first, second, and fifth of the Whitepaper Representations. But that is not the end of the analysis, and we will come to examine the remaining question at [122]–[126] below.

Version No 1: 26 Nov 2025 (15:00 hrs)

(2) The Website Representations

121 The only evidence that the Website Representations were made was the Screenshot at [36] above (see at [46]–[47] above). We make two points –

(a) First of all, as mentioned, the appellants have not provided the *full context* of the Website Representations situated in their original source. To reiterate, context is critical to determine how they would have been understood by a reasonable reader. The Screenshot in isolation is not capable of shedding light on what the Website Representations mean without the original source explaining what various terms therein are supposed to signify ("Global Nodes", "Supernodes", *etc*).

(b) In any event, the text of the Website Representations shows that they pertain only to future conduct, and applying the principles at [108]–[110] above, they are therefore not actionable.

Whether the first, second, and fifth of the Whitepaper Representations conveyed any representations of fact

122 We return to the remaining question of whether the pleaded meanings (as accepted), *viz*, the first, second, and fifth of the Whitepaper Representations, themselves contained any representations of fact capable of forming the subject-matter of a valid action in deceit. When we use the abbreviation "Representations" within this sub-section, we refer only to these representations that were, in fact, laid out in the Third Whitepaper as found by us at [120] above.

123 On the facts, it was clear that these Representations could not be read to have been representations *of fact*, as required in *Panatron* at [14] and *Bradford v Borders* at 211. We did not agree with the appellants that they could be read as descriptors of the present characteristics of an investment in order to induce

Version No 1: 26 Nov 2025 (15:00 hrs)

investments. They, on their face, merely represented that certain acts *would* happen *in the future*, *viz*, the STACS Protocol would be powered by the STACS Tokens as the utility tokens, VPs would be required to stake STACS Tokens, and transaction fees generated on the STACS Protocol would be distributed as held out in the Third Whitepaper, with 80% being used to purchase STACS Tokens for the Global Nodes, Supernodes, and the Investor Protection and Governance Fund. None of these actions were taking place in the then-present day nor had they already occurred. They could not sensibly be read as representations of past or present fact which were either true or false at the time they were being made. Accordingly, as was held by the Singapore Court of Appeal in *Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2003] 3 SLR(R) 307 ("*Tan Chin Seng*"), these were not actionable representations of fact but future promises which could only be enforced in the event of a valid contract (see *Tan Chin Seng* at [21]; see also *Banque de Commerce et de Placements SA, DIFC Branch and another v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 ("*Banque de Commerce*") at [94], citing *Deutsche Bank AG v Chang Tse Wen* [2013] 1 SLR 1310 at [94]).

124 Here, the totality of the Representations, considered in their full context in the Third Whitepaper, reinforced our view that the Representations could not be understood as representations of any past or existing facts. In particular, the language used in the Third Whitepaper envisaged a *future* project that was in the works but had yet to be finalised or fully rolled out to the public. To illustrate:

(a) The abstract stated that the "first version of live implementation is *expected by* Q1 2019" [emphasis added], reinforced by the description "[w]e stand on the brink of the next seismic change in technology", and

Version No 1: 26 Nov 2025 (15:00 hrs)

the representation that "we aim to support multiple financial institutions, whom we call Verified Partners (VPs), in their digital transformation".

(b) Likewise, para 2.3 used language pointing to the futurity of the various aspects of the STACS Protocol described therein, including that GSX "will offer the [STACS] Protocol" and that the STACS Protocol's ecosystem "will be the next generation of trading platforms, powered by the latest Blockchain technologies, serving the global demand for digital securities".

(c) The value proposition of the STACS Protocol as described at para 4.1 emphasised the prospective nature of the project envisaged, as evidenced by such phrases as: "the GSX Group will answer this need today by implementing a Blockchain solution in the form of the STACS Protocol", "[t]he STACS Protocol is an international effort designed for all stock exchanges … and qualified financial institutions to join for free as 'Verified Partners' (VPs)", "[t]he Protocol will encompass functions including but not limited to … external APIs, and decentralised trading with high throughput and scalability", and "[t]he STACS Protocol and its related solutions will provide a secure and controlled environment for the issuance, trading, and holding of Tokenised Securities for market participants", among others.

(d) The descriptions of various aspects of the ecosystem envisioned made clear that these characteristics were merely what the representor(s) envisaged *would be* contained therein when the STACS Protocol, and all its related suite of services, were fully rolled out – *eg*, "we will also create the STACS Market" (at para 5.1.7), "we will offer a white label version of the STACS Platform" (at para 5.1.8), "[t]he entire STACS Ecosystem will be powered by its own utility token, the STACS Token"

Version No 1: 26 Nov 2025 (15:00 hrs)

(at para 5.1.9), and "we foresee the development of a collaborative ecosystem in partnership with many other third-party specialists" (at para 5.1.10), to name just a few examples.

(e) The same was true of the Third Whitepaper's descriptions of the contemplated prospective features of the STACS Dollar, *viz*, "[w]e have proposed the creation of a Fiat-pegged stablecoin (the STACS Dollar) which will act as an appropriate medium" and "[t]he STACS Dollar will be the native crypto token on the STACS Protocol … [d]etails of this structure will be made available in a separate paper" (at para 5.1.3) and "GSX Group will adopt the STACS Dollar as its currency of choice for entry into the STACS Ecosystem", with it being "proposed that", for instance, "STACS will work with a top-tier, credible global institution to issue the stablecoin", it "will initially be named the STACS Dollar", it "will be programmed and issued by the Issuer on a one-for-one basis", and it "will be used by all entrants into the STACS Ecosystem as well as other industry participants who wish to adopt the STACS Dollar as their currency of choice" (at para 5.8).

(f) The Global STACS was envisaged as a function of the STACS Protocol which would be rolled out only after the Native STACS were rolled out, which VPs could scale up to. The abstract made that clear by stating that, through the STACS Protocol's hybridised mechanism, "we aim to support multiple financial institutions, whom we call Verified Partners" by giving them access to the initial Native STACS function, "while allowing them to scale globally to a worldwide pool of cleared and eligible investors through the public Global STACS". Hence, it was stated (at para 6.4): "[w]e expect Global STACS to easily support 400-700 TPS, which is at least 4000% more than existing public chains,

Version No 1: 26 Nov 2025 (15:00 hrs)

while Native STACS can easily support from 12,000-130,000 TPS". As we stated at [24] above, the Native STACS was only implemented in a limited capacity, and the project failed to unfold up to the Global STACS stage of development for the reasons at [29] above.

(g) The concluding remarks of the Third Whitepaper made it plain that the representor(s) were describing an ambition or aspiration which they hoped would materialise in future, writing: "[t]he STACS Protocol is expected to provide access to the capital markets for a wide variety of issuers and participants", "[w]ith the adoption of the Blockchain-based trading system, the STACS Protocol will dramatically boost efficiencies whilst reducing costs by integrating the entire spectrum of exchange services", and "the full application of this revolutionary technology is only possible when we create an infrastructure that supports the financial industry in a complete ecosystem".

125 Ultimately, the project being described in the Third Whitepaper was a work in progress. The characteristics mentioned therein reflected the ambitions and aspirations of its writers, which they were desirous of implementing. As we intimated to the appellants at the hearing, this was the "vision" of the publishers: what they *envisaged* the STACS Protocol to provide in an ideal state of affairs overlaid with an ambition to bring it to fruition. As the abstract itself put it:

> 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 value. 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.

Version No 1: 26 Nov 2025 (15:00 hrs)

126 Where the Representations concerned only a prospective vision that the representor was desirous of turning into a reality, it is not clear to us how there could have been a representation of past or present fact – false at the time they were uttered – capable of being made the subject of an action in deceit.

The Judge's conclusion of actionability

127 We turn to consider the Judge's grounds for finding that the Whitepaper Representations were actionable in the tort of deceit. In most respects, the Judge's approach appeared to us to accord with the authorities holding that a statement as to the future may implicitly convey a statement as to a *present* fact. That includes the representor's present state of mind to bring about a future state of things; thus, *Ernest Ferdinand Perez De La Sala v Compañia De Navegación Palomar, SA and others and other appeals* [2018] 1 SLR 894 ("*De La Sala*") held (at [172]) that, whilst a representation as to the future was not actionable, a representation as to the future could impliedly convey a past or present fact, which may be actionable.

128 This principle was envisaged by the Judge when he referenced the submissions of the appellants (see the Judgment at [213]). His examination of the alleged falsity of the Representations also focussed on the intention of the respondents *at the time* they were made (see the Judgment at [217]). He held that "[t]here 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" therein. Accordingly, he held that the Representations were not shown to be false, for they "did reflect the true intentions of all the Participants", including GSX, Hashstacs (BVI), and Hashstacs (SG), "as to how any transaction fees would be distributed" (see the

Version No 1: 26 Nov 2025 (15:00 hrs)

Judgment at [220]). In so far as the Judge's holding that the Representations were actionable in deceit was limited only to the implied representation of the *then*-present fact that the representor(s) held a genuine intention to implement the Third Whitepaper, we agree with the Judge's analysis.

129 One aspect of the Judge's analysis below, however, seemed to us to militate against this more limited application of the principle in *De La Sala* at [172] of an implied representation of a past or present fact. Here, the Judge held that the Representations were actionable not only as a statement of the then-present intention, but that "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" (see the Judgment at [214]). While this could be read to mean only that the actionable representation was of a genuine *intention* to effectuate the said "undertaking" *at the time* it was made, the undertaking was "caveat[ed]" (see the Judgment at [101]) with the qualification that they were "representations … as to the way in which transaction fees generated by implementation of the STACS Protocol would be distributed … to the extent that it proved viable to implement the STACS Protocol" and "depend[ing] on the degree of success that was achieved in marketing the protocol".

130 The need for such caveats and qualifications as to the future viability of the "undertaking" would add little in the event that the actionable statement was only of a sincere desire to implement the undertaking *at the time* the statement was being made (*ie*, not being actionable on the basis that the *future conduct* of the representor failed to live up to the representation). It is implicit, after all, that any representation of a sincere intention to perform something in the future is based on the representor's belief that it will be possible to so perform. Such a caveated undertaking, therefore, envisages an enforceable representation as to

Version No 1: 26 Nov 2025 (15:00 hrs)

the *future actions* of the representor in implementing the STACS Protocol. They set the parameters to determine whether a failure to distribute the receipts of the STACS Protocol in accordance with the Third Whitepaper constitutes a falsity of the representation. Only if the STACS Protocol proved "viable to implement" would a failure to distribute the fees as represented give rise to liability. In other words, the actionable representation described at [214] read with [101] of the Judgment bears the hallmarks of an enforceable *promise*, which, in contract law, is resolved with reference to the principles of contractual interpretation, *force majeure* clauses, and the doctrine of frustration, to determine if a promisor has wrongfully defaulted on their promise when an undertaking as to a future fact fails to materialise due to circumstances said by the promisor to be outside of their control.

131 A promise as to a present fact, which impliedly represented the existence of that fact, was a very different thing from the making of "a promise as to what [the representor] will do", for, where "that promise does not relate to an existing fact, nobody can say at the date when that statement is made that it is either true or false" (see *Beckett v Cohen* [1972] 1 WLR 1593, holding (at 1596–1597), in a different but related context, that promises as to future facts or conduct could not fall under a statutory prohibition on the attachment of false descriptions to services being provided in a trade). There must be a clear conceptual distinction drawn between what is capable of giving rise to liability for misrepresentation in the tort of deceit and what is only capable of being a breach of contract. It was that distinction which the Singapore Court of Appeal affirmed at [20]–[21] of *Tan Chin Seng* and more recently again in *Banque de Commerce* at [94]. If a representor is to be bound by the prospect of legal liability *vis-à-vis* their future acts, they must have made a valid contract, with all the necessary ingredients justifying the law holding a person to their promises as to the future, be it requisite formalities, consideration, or intention to be legally bound. The tort of

Version No 1: 26 Nov 2025 (15:00 hrs)

deceit protects a very different interest, however. It guards against the fraudulent misrepresentation of existing or pre-existing facts. It does not bind a representor to honour the facts described as to a future state of being (see *Clerk & Lindsell* at para 17-12). Nothing in the tort of deceit constrains the representor's freedom of action going forward. The representor must consent to be so bound – that is what contract law is for.

132 The Judge's approach, *viz*, of a caveated undertaking, came close to holding a representation to be actionable in a manner analogous to a contractual promise as to the future. His analysis went beyond a finding that the Representations were actionable as representations of fact of a state of mind present *solely* at the time they were made by applying a prior representation to a subsequent state of affairs. He considered whether the Representations would be adhered to even after the Token Swap was effected and the STACS Protocol was replaced with GATENet. That was not solely about determining whether a representation as to a representor's state of mind was untrue about that state of mind *at the time it was made* as envisaged in *De La Sala* at [172(b)]. Rather, it was about holding the representor to that earlier communicated state of mind in the future, even as the facts changed and a newer, different project was being implemented.

133 We were cognisant that the Judge's finding on the actionability of the Representations as an "undertaking" was based upon his analysis at [222] of the Judgment concerning the evidence on GATENet where he said that it was not suggested to Mr Cowan that, in so far as transactions fees might be generated on GATENet after the Token Swap, they would not be distributed in accordance with the Representations. In our view, the implementation of a different project following a genuine change of heart arising from circumstances that materially impacted the viability of an old project in no way renders any implied

Version No 1: 26 Nov 2025 (15:00 hrs)

representation about a representor's *then*-present state of mind to implement the old project untrue in light of those subsequent events. Such a representation is only of a representor's state of mind *at that particular* point in time and not in future.

134 Thus, with respect, we did not think that such an "undertaking" could be enforced in tort in the circumstances here, concerning representations as to a future state of affairs. Such an approach would come close to blurring the distinction between enforceable contractual duties as to the future, on the one hand, and misrepresentations of past and present fact in the tort of deceit, on the other. The learned authors of *Clerk & Lindsell* correctly cautioned (at para 17-13) that, in so far as a representation as to the future could be actionable as a representation of a then-present intention, "this principle cannot be taken too far", and the "mere fact that an expressed intention is not eventually carried into effect is little evidence of the original non-existence of the intention", for there may have been a genuine change of heart from the representor. Such was the case here when the STACS Protocol project was amended to GATENet and the Token Swap was effected to replace STACS Tokens with Gate Tokens.

135 The plain language of the Representations points to their futurity – *eg*, the STACS Protocol "will be powered by" the STACS Tokens, VPs would "have to stake a minimum number of STACS Tokens" (at para 5.1.9), and the representor "undertakes to use the incurred fees on the STACS Dollar … to fulfil its staking rewards to the Global Nodes and Supernodes" (at para 8.3.1). The Representations were statements of a future vision that the representor(s) desired to implement and they were not representations of a past or present fact. Hence, they were not actionable for the reasons given in *Tan Chin Seng* at [12] and [19]–[21]. This afforded a further reason why the appellants were not entitled to succeed in their misrepresentation claims in OA 7, in addition to our

Version No 1: 26 Nov 2025 (15:00 hrs)

holding that Hashstacs (SG) was not a maker of the representations. It would follow that, on either view, the appellants' appeal in CAS 1 could not succeed.

136 Counsel for the appellants expressed Mr da Silveira's primary grievance in graphic terms, such as having the rug pulled out from under him, *viz*, that he was induced to act in detrimental reliance on the Representations being honoured in the future, and when they were not so honoured, from then on, "the goal post shifted" after he had "put in his own monies to invest". We did not accept that characterisation. The Representations, on their true construction, made no binding promises or guarantee that the STACS Protocol *would* succeed and that commercial and regulatory conditions *in the future* would *certainly* be viable so as to allow the authors' vision to be implemented *in toto*. Nothing in the Representations bound the authors to *never* change or adapt that vision based on future circumstances in the market. Nothing in the Representations precluded the makers from effecting the Token Swap or amending their project as needed, such as through their implementation of GATENet and the roll-out of the Gate Tokens. Accordingly, there was no bait-and-switch as the appellants believed, because all that the Representations held out from the very start was a vision, one which – unfortunately – did not pan out as envisaged.

Conclusion

137 To summarise, we dismissed CAS 1 and affirmed the Judge's decision to dismiss the appellants' misrepresentation claims against Hashstacs (SG), for:

(a) Hashstacs (SG) was not a representor, as:

(i) the appellants failed to prove that Hashstacs (SG)'s words or conduct, in relation to the Third Whitepaper, could be reasonably understood as evincing that Hashstacs (SG) was

Version No 1: 26 Nov 2025 (15:00 hrs)

either the maker of the Whitepaper Representations or had conveyed, adopted and affirmed the truth of their contents as its own (see at [93]–[98] above); and,

(ii) the appellants failed to discharge their burden of proof that Hashstacs (SG)'s words or conduct, in relation to the making of the Website Representations, supported a reasonable interpretation that Hashstacs (SG) either made, conveyed or adopted those representations (see at [100]–[104] above).

(b) Representations of fact had not been made in respect of all the pleaded representations, as:

(i) the appellants failed to discharge their burden of proof as to the reasonable meaning of the Website Representations (see at [121(a)] above), and in any event, none of them could be read as representations of past or present fact, but representations as to the future which were not actionable (see at [121(b)] above);

(ii) the appellants failed to show, on the contents of the Third Whitepaper, that the pleaded meanings of the third and fourth of the Whitepaper Representations had been objectively conveyed (see at [113]–[118] above); and,

(iii) while the pleaded meanings of the first, second, and fifth of the Whitepaper Representations cohered with the contents of the Third Whitepaper when objectively construed in context (see at [120] above), none of them were representations of fact, being representations of a future state of affairs reflecting the vision of the representor(s) as opposed to any existing or pre-existing facts (see at [122]–[136] above).

Version No 1: 26 Nov 2025 (15:00 hrs)

138 The first element in *Panatron* at [14] that a defendant made, by its words or conduct, a representation of fact, is one that is common between the actions in fraudulent and negligent misrepresentation (see *Low Eng Chai and another v Ishak bin Mohamed Basheere and another* [2022] SGHC 207 at [25]). Absenting that first element, none of the misrepresentation claims could prevail. We dismissed CAS 1 *in toto* and we affirmed the Judge's decision below in dismissing OA 7 and we awarded costs against the appellants.

139 For completeness, although now rendered moot by our dismissal of CAS 1, we clarify that we affirmed the Judge's factual findings below that the Whitepaper Representations were not false nor were they made with any fraudulent intention at the time (see the Judgment at [216]–[220] and [224]). The main piece of evidence as to their falsity and the respondents' knowledge thereof were Mr Soh's statements in the 2020 Emails, which were said to contradict the Whitepaper Representations. The Judge correctly found, in our view, that Mr Soh's evidence below was credible as to the existence of the STACS Ethereum Blockchain, which was independent of the STACS Protocol owned and controlled by GSX, and that the parties were communicating at cross-purposes in the 2020 Emails (see at [60] above), with Mr Soh referring to the STACS Ethereum Blockchain, while Mr da Silveira's inquiries were directed at gleaning information about the features of the STACS Protocol (see the Judgment at [171]–[184]). The criticisms by the appellants of the Judge's factual findings fell far short of meeting the appellate intervention threshold, and on the totality of the evidence below, it was clear to us that his impeccable factual findings in this respect were certainly not "plainly wrong or manifestly against the weight of the evidence" below (see *Yong Kheng Leong and another v Panweld Trading Pte Ltd and another* [2013] 1 SLR 173 at [24]). As such, we affirmed the Judge's factual findings summarised at [60] above. It followed that, *even if* we were not persuaded of the grounds at [137(a)] and [137(b)] above,

Version No 1: 26 Nov 2025 (15:00 hrs)

we would still have dismissed CAS 1 on the basis that the representations were not proven to be false or made with any dishonest state of mind.

140 Finally, we awarded costs of $130,000.00 (all-in, inclusive of disbursements) upon the default indemnity basis in respect of CAS 1. The usual consequential orders shall apply.

Steven Chong
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of Appeal

Arjan Kumar Sikri
International Judge

Leong Li Shiong, Ang Ting Wei and Aaron Tan Kai Ran (Holman Fenwick Willan Singapore LLP) for the appellants;
Vikram Nair, Foo Xian Fong and Liew Min Yi Glenna (Rajah & Tann Singapore LLP) for the respondents.

Version No 1: 26 Nov 2025 (15:00 hrs)