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

[2025] SGHC(A) 13

Appellate Division / Civil Appeal No 5 of 2025

Between

Glassberg, Jonathan William

… *Appellant*

And

UBS AG, Singapore Branch

… *Respondent*

In the matter of Suit of 1043 of 2021

Between

Glassberg, Jonathan William

… *Plaintiff*

And

UBS AG, Singapore Branch

… *Defendant*

EX TEMPORE JUDGMENT

[Contract — Contractual terms — Construction]
[Contract — Contractual terms — Unfair Contract Terms Act]
[Tort — Negligence — Causation]
[Tort — Negligence — Duty of care]
[Tort — Vicarious liability]

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Glassberg, Jonathan William
v
UBS AG, Singapore Branch

[2025] SGHC(A) 13

Appellate Division of the High Court — Civil Appeal No 5 of 2025
Woo Bih Li JAD, Debbie Ong Siew Ling JAD and Ang Cheng Hock J
22 August 2025

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Woo Bih Li JAD (delivering the judgment of the court *ex tempore*):

1 The present case is factually straightforward. It involves a claim by Mr Jonathan William Glassberg ("Mr Glassberg") against the defendant bank, UBS AG, Singapore Branch ("UBS"), in respect of an investment recommendation made by Mr Glassberg's relationship manager at UBS. The judge below (the "Judge") dismissed Mr Glassberg's claim in its entirety, principally on the basis of various contractual provisions that governed the relationship between the parties. Having perused the evidence and considered the parties' submissions, we agree with the Judge that these provisions lead to the conclusion that Mr Glassberg's case against UBS cannot succeed. We dismiss the present appeal in its entirety.

Facts

2 Mr Glassberg has had an illustrious career as a broker, with almost 40 years of professional experience in the banking industry. He previously headed the non-Yen bond trading department at Credit Suisse First Boston, Tokyo, and went on to establish one of the world's largest brokers of exchange-traded interest rate options.

3 Mr Glassberg had opened an account with UBS in 2012. At that time, the account was governed by UBS' General Terms and Conditions (the "General Terms").

4 In 2015, Mr Glassberg completed an investor profile questionnaire for UBS, in which he identified himself to be "knowledgeable" in relation to various investments such as investment funds, based on his relevant work experience or education.

5 Subsequently, in September 2016, Mr Glassberg subscribed for "UBS Advice Premium – Active Portfolio Advisory Service" (the "APA Service"). In exchange for an annual fee, the APA Service provided Mr Glassberg with access to an investment specialist. The APA Service was governed by Section II of the Investment Services Terms and Conditions (the "Investment Terms"). Like the parties, we will refer to this section as the "APA Terms".

6 From the time that Mr Glassberg opened his UBS account, Mr Stephan Freh ("Mr Freh") was Mr Glassberg's relationship manager, and he remained so at all material times. Mr Freh was not an investment specialist. The investment specialist assigned to Mr Glassberg's account was Mr Souvan Kim ("Mr Kim"). According to Mr Glassberg, he had never met Mr Kim, although

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Mr Kim claims that he was introduced to Mr Glassberg over the phone. From the time that Mr Glassberg applied for the APA Service in 2016 to 2018, Mr Kim had sent about three e-mails to him containing general financial advice.

7 From August 2017 to February 2018, Mr Freh recommended that Mr Glassberg invest in the Direct Lending Income Fund ("DLIF"). Mr Glassberg took up this recommendation, investing US$1m and then another US$1.5m in 2017 and 2018 respectively. During this period, the following exchanges took place between Mr Freh and Mr Glassberg:

(a) On 18 August 2017, Mr Freh sent Mr Glassberg an e-mail to introduce him to the DLIF and encourage him to invest in it. The e-mail mentions:

> A client of mine introduced me to attached US fund focused on write loans to SMEs and underwrite receivables. He has invested around 40m. I have invested 200k myself. UBS gives 40% LV.
>
> One pager attached is straight forward. *This is not a UBS recommendation* [the "6 Words"; emphasis added in italics]. By now the fund has over 1bn in assets. The funds is currently soft closed but by having him as an anchor we might get more allocation [*sic*].

Mr Glassberg accepts that he received the e-mail but claims that he did not read it. The Judge found that he did not read it and UBS does not suggest otherwise in the Respondent's Case.

(b) On 3 November 2017, Mr Freh sent another e-mail to Mr Glassberg on the DLIF. His e-mail states:

> I had sent below in the past. US small business loan fund. Mgt fee 0.75%. The fund closed for new capital in July. Because of my client who has approx. $80m with

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> them, we will get another $18m allocation. He will take 14m, I will take $500k.
>
> Do you want to take some. UBS gives 40% LV
>
> Going frd fund expects 10% pa
>
> Look at super low vol
>
> Monthly liquidity
>
> Factsheet attached
>
> I would need to confirm by Monday morning.

(c) On 29 November 2017, Mr Freh forwarded Mr Glassberg an e-mail from Direct Lending Investments, LLC ("DLI LLC"), which was the manager of the DLIF, about an opportunity to subscribe for the DLIF. His e-mail states:

> DLIF has below opening. LV 40%. Let me know if I shall book allocation for you.
>
> Factsheet attached.

(d) On 29 November 2017, Mr Freh and Mr Glassberg had a discussion over the phone. Mr Freh mentioned the DLIF again. He stated that this fund was introduced:

> by one of our large family office clients on the desk. He has now put in … about 70 million bucks. And I had a couple of calls with the manager; I liked him so I put my own little chunk of change in as well … So it's a lending pool … As long as there's no underlying fraud in it, the fact sheet points toward very strong performance and all the loans are secured by either assets, receivables, and so on …, but it's a loan pool lending vehicle with monthly liquidity.

Mr Glassberg asked about the countries in which the loans were made and monthly liquidity, and Mr Freh responded accordingly. Mr Freh suggested that he would "do one million" for Mr Glassberg's account

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and Mr Glassberg confirmed. Pursuant to this discussion, Mr Glassberg invested US$1m in the DLIF.

(e) On 20 February 2018, Mr Freh sent an e-mail to Mr Glassberg containing his recommendations for Mr Glassberg's portfolio. He encouraged Mr Glassberg to invest another US$750,000 in the DLIF, describing it as "[t]he one theme in the [Fixed Income] space I really like".

(f) On 23 February 2018, Mr Freh and Mr Glassberg had a discussion over the phone, in which Mr Freh mentioned the DLIF again. Mr Freh suggested that "these sort of loan portfolios … tend to be highly over collateralized". Mr Glassberg agreed to put more money into the DLIF. Mr Freh suggested a quantum of US$750,000, to which Mr Glassberg agreed. Mr Freh then stated that the DLIF "is my absolutely largest and highest conviction at year". He referred to its returns, stating that:

> for the past five-and-a-half years every single month is positive and clipping 70 to 80 basis points, so the one comment you look at this, you're like, is there a Ponzi scheme in place or that sort of stuff. One of my clients in Asia is a private equity manager, he himself put around $90 million into that fund … this is where it came from and have now two other family offices who invested and did due diligence and they all came back and said, look, it's a very nimble strategy, it's a good fund, we feel comfortable with the risk.

Mr Freh suggested that bringing Mr Glassberg's total investment in the DLIF to US$2.5m was the right fixed income to hold in a portfolio. Mr Glassberg agreed. Pursuant to this discussion, Mr Glassberg invested another US$1.5m in the DLIF.

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8 It is undisputed that UBS did not perform any due diligence in respect of the DLIF.

9 In June 2018, Mr Freh left UBS' employment.

10 On 22 March 2019, the US Securities and Exchange Commission ("US SEC") charged DLI LLC with fraud. According to the US SEC, beginning in 2014, DLI LLC's Chief Executive Officer ("CEO") had falsified payment information from one of DLI LLC's counterparties, which resulted in misrepresentations about the performance of the DLIF. The DLIF was placed under receivership on or about 31 March 2019. It was subsequently placed in liquidation. The receiver had estimated that the liquidation of DLI LLC's investments would return about one-third of its par value.

11 On 23 December 2021, Mr Glassberg commenced action against UBS. By the time of the trial, his claims against UBS were for breach of contract, negligence and vicarious liability for Mr Freh's negligence. The trial was heard in May 2024. On 10 January 2025, the Judge issued his judgment dismissing all of Mr Glassberg's claims. Mr Glassberg filed the present appeal against the Judge's decision.

Claim in breach of contract

12 The thrust of Mr Glassberg's claim in contract is that UBS was performing the APA Service when Mr Freh recommended him to invest in the DLIF. In turn, this would render the APA Terms applicable. Mr Glassberg seeks to rely primarily on cl 11.1 of the APA Terms, which provides that "the Bank shall act diligently and carefully in providing investment advice".

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13 This term is to be contrasted with cl 7.1, Section 1 of the General Terms which provides that in accepting services from UBS, Mr Glassberg "makes his own assessment and relies on his own judgment". Clause 7.1 also provides that UBS is not obliged to give advice or make recommendations to Mr Glassberg and where it does so, it is done without any responsibility to Mr Glassberg and he will nevertheless make his own assessment and rely on his own judgment. Mr Glassberg accepts that if Mr Freh's recommendation does not fall within the APA Service, his contractual claim fails.

14 In our view, Mr Freh's recommendation of the DLIF was outside the scope of the APA Service. As a starting point, it is common ground that Mr Freh was not an investment specialist. Mr Glassberg emphasises that despite this, Mr Freh *could* give investment advice under the APA Service. In particular, he refers to cl 15 of the APA Terms which allows UBS to "delegate to any Agent … the performance of all or any part of the duties of the Bank in connection with [the APA Service]". But whether or not Mr Freh could, in theory, give investment advice under the APA Service is a red herring. The more important question is whether Mr Freh *in fact provided investment advice pursuant to the APA Service*. We do not think that he did.

15 First, UBS did not instruct Mr Freh to provide investment advice under the APA Service.

16 Second, the DLIF recommendation came from Mr Freh and not any investment specialist of UBS. We accept that investment advice under the APA Service need not necessarily have to come *directly* from an investment specialist. However, there is completely no evidence that the DLIF

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recommendation originated from an investment specialist. While this is not determinative, it is a factor that militates against Mr Glassberg's case.

17 Third, in determining whether Mr Freh's recommendation of the DLIF is part of the APA Service, the e-mail sent on 18 August 2017 that contained the 6 Words forms part of the factual matrix that the court has to consider. It is immaterial that Mr Glassberg did not read this e-mail, as the court has to determine on an objective view of the evidence whether the APA Service was engaged. In our view, the 6 Words are strong evidence to show that Mr Freh was not purporting to provide any investment advice under the APA Service. Whether the 6 Words are a complete disclaimer or whether Mr Freh violated UBS' internal guidelines by recommending a non-approved product, is beside the point.

18 Fourth and relatedly, Mr Freh was not even purporting to render any investment advice on UBS' behalf. Having regard to the e-mails and telephone discussions mentioned above (at [7]), it is clear that he was making a *personal* recommendation based in turn on the recommendation of a client of his and due diligence done by third parties. Mr Glassberg appeared to accept this during cross-examination. Mr Freh never suggested that the DLIF was an investment that UBS was recommending, or that he or UBS had conducted analysis and research on the DLIF and had deemed it suitable for Mr Glassberg's investment objectives. In so far as para 68 of the Appellant's Case suggests that Mr Seow – UBS' Head Business Risk Partner for South East Asia – had accepted that Mr Freh's e-mail of 20 February 2018 had certain characteristics indicative of the APA Service, the argument overlooked the full context of Mr Seow's evidence because the 20 February e-mail did not deal only with the DLIF.

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Further, Mr Seow had clearly stated that the DLIF was not a UBS recommendation.

19 Mr Glassberg argues that his trades had been booked under a portfolio tagged to the APA Service. In our view, this is outweighed by the four factors discussed above.

20 As for Mr Glassberg's reliance on *Albright & Wilson UK Ltd v Biachem Ltd and others* [2002] 2 All ER (Comm) 753, we decline to place any weight on that authority. The facts there are markedly different. In that case, the plaintiff had placed an order for two different chemicals with two different suppliers. However, due to a mistake, a transporter's subcontractor delivered the wrong chemical to one of the plaintiff's plants. When the wrong chemical was mixed with the chemical in that plant, an explosion resulted. The plaintiff commenced action against both suppliers for breach of contract. The House of Lords decided that only one supplier was liable to the plaintiff. Lord Nicholls stated that the acts of the transporter and its subcontractor were to be characterised in a way which made legal and practical sense. When the facts were viewed in this way, the transporter and its subcontractor were performing, or purporting to perform, the contract the plaintiff had with one supplier and not the contract with the other supplier. But that does not assist Mr Glassberg, since Mr Freh was not purporting to offer investment advice on UBS' behalf.

21 For the reasons discussed, Mr Freh's recommendation of the DLIF did not fall within the APA Service. We thus uphold the Judge's dismissal of Mr Glassberg's contractual claim.

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Claim in the tort of negligence

22 Next, Mr Glassberg's case in tort is that UBS breached its duty to take due care in the investment recommendations that it provided, by recommending a non-approved investment product on which no due diligence had been done without adequate disclaimer. The Judge held that UBS did not owe Mr Glassberg a duty of care for any investment advice or recommendation, or in any event owed only a low standard of care that had not been breached. The pertinent clauses considered by the Judge are:

(a) Clause 7.1, Section 1 of the General Terms, which we referred to above (at [13]).

(b) Clause 2.4(b), Section 3(C) of the General Terms, pursuant to which Mr Glassberg acknowledged that he had sufficient knowledge and experience to evaluate the risks of investments on his own, and that he was capable of assuming them.

(c) Clause 2.4(k), Section 3(C) of the General Terms, pursuant to which Mr Glassberg acknowledged that UBS had no obligation to carry out any due diligence on his investment in any fund.

(d) Clause 1(e), Section 6 of the General Terms, pursuant to which Mr Glassberg acknowledged that all investment decisions were made pursuant to his own judgment and that he accepted all associated risks.

23 We are of the view that cl 7.1 alone precludes a finding of the legal proximity between UBS and Mr Glassberg required to establish a duty of care, let alone the combined effect of these clauses. These clauses negate any voluntary assumption of responsibility and reasonable reliance (see *Spandeck*

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Engineering (S) Pte Ltd v Defence Science & Technology Agency [2007] 4 SLR(R) 100 at [81]).

24 Mr Glassberg relies on cl 5.1, Section 1 of the General Terms to argue that UBS may still be liable for recommendations or advice rendered negligently. The material part of cl 5.1 states:

> [u]nless due to the Bank's negligence, wilful misconduct or fraud, neither the Bank nor any of the Bank's Affiliates and Agents or any director, officer, employee or agent of any of the foregoing shall be liable for any losses, damages …

However, we agree with the Judge that this clause applies to other aspects of UBS' conduct but to the extent that advice and recommendations are concerned, it is cl 7.1, Section 1 of the General Terms that is applicable. Mr Glassberg has not satisfied us that the Judge erred.

25 Mr Glassberg also challenges the Judge's finding that the clauses excluding or limiting UBS' duty of care were "fair and reasonable" within the meaning of the Unfair Contract Terms Act 1977 (2020 Rev Ed). He advances three arguments in this regard: (a) there was a relationship of trust between UBS and himself; (b) there was a difference in bargaining position between UBS and himself; and (c) the clauses were not brought to his attention or explained to him.

26 In our view, given Mr Glassberg's level of sophistication and professional experience in investments and finance (even though he had not yet invested in a fund like the DLIF), it is not unfair or unreasonable for him to take responsibility for his own investment decisions. It is immaterial whether the clauses were brought to his attention and explained to him. He was aware of the

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existence of clauses like cl 7.1 as they were standard in the banking industry and he understood their effect. Indeed, his own brokerage business used such clauses. Ultimately, it would not have made a difference even if the clauses were specially drawn to his attention. As he admitted in cross-examination, he would have been prepared to accept them because he wanted to open an account with UBS. Hence, the difference in bargaining position and whether Mr Glassberg trusted Mr Freh are neither here nor there. Mr Glassberg was a wealthy individual who could select the banks that he wished to work with. He did not have to open an account with UBS.

27 Accordingly, there is no basis for us to disturb the Judge's finding that the clauses excluding or limiting UBS' duty of care were fair and reasonable. We affirm the Judge's decision that UBS did not owe Mr Glassberg a duty of care in providing investment advice and recommendations.

28 The contractual clauses aside, much of Mr Glassberg's case on negligence proceeds on the misconceived premise that *UBS* was giving investment advice to him by recommending the DLIF. Therefore, UBS ought to have conducted due diligence. However, for the same reasons given above (at [18]), we do not accept that UBS was giving investment advice. Instead, the e-mails and the discussions over the telephone show that the DLIF was a personal recommendation by Mr Freh, who was not making a recommendation on behalf of UBS. There is enough objective evidence to show that Mr Glassberg knew this, even if he had not actually read the 6 Words in Mr Freh's e-mail of 18 August 2017 (at [7(a)]) above). In the circumstances, UBS did not owe Mr Glassberg any duty of care to conduct due diligence on the DLIF.

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29 Given our view that no duty of care arose, the issue of causation is academic and we will not express any conclusion on this issue. We will only make two observations.

30 The first pertains to whether Mr Freh would have nonetheless made the DLIF recommendation if due diligence had been performed. Mr Glassberg's case is that the recommendation would not have been made. In particular, he avers that if due diligence had been done by Mr Freh, Mr Freh would have discovered an Operational Due Diligence Report dated 17 February 2016 on the DLIF published by Albourne Partners Limited ("Albourne"), which was said to be a leading due diligence provider. This report gave the DLIF a "D" rating overall. The difficulty for Mr Glassberg's case is that this was an outdated report published about 18 months before Mr Freh's first e-mail to Mr Glassberg dated 18 August 2017. Significantly, he did not adduce evidence of any report from Albourne published at or around the time when Mr Freh made his recommendation. Whether Mr Freh would have relied on an outdated report is speculative. The fact is that the DLIF appeared to have been sought after by some investors at the time of Mr Freh's recommendation. There is insufficient evidence to show that at that time, a due diligence exercise would have resulted in a contrary recommendation.

31 Our second observation concerns the point of *novus actus interveniens*. We respectfully disagree with the Judge that the fraud by DLI LLC constituted a *novus actus interveniens*. The Judge referred to para 07.077 of Gary Chan Kok Yew & Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) ("*The Law of Torts in Singapore*"), where the authors set out the principle that deliberate and intentional third-party acts are likely to constitute a *novus actus interveniens*. However, this principle is qualified by an earlier

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paragraph, where the authors clarify that the deliberate act of the third party must have occurred between the date of the defendant's negligent conduct and the damage: *The Law of Torts in Singapore* at para 07.071. Here, a fraud had been perpetuated by the CEO of DLI LLC since 2014, well before Mr Freh first recommended the DLIF and before Mr Glassberg made his first investment in it. UBS argues that the fraud continued thereafter, but there is no evidence to show that the continuation of the fraud after the first investment until the discovery of the fraud was the sole cause of Mr Glassberg's loss.

32 In the circumstances, we dismiss Mr Glassberg's appeal in respect of the claim in the tort of negligence, as we agree with the Judge that there was no duty of care owed by UBS.

Claim in vicarious liability for Mr Freh's negligence

33 We turn finally to the claim in vicarious liability for Mr Freh's negligence. This claim is a non-starter in the light of cl 5.1, Section 1 of the General Terms, which makes available to every employee of UBS all exemptions from liability and defences that UBS is entitled to. We agree with the Judge's view that since UBS owes no duty of care to Mr Glassberg for investment advice and recommendations, Mr Freh similarly owes no such duty.

34 Further, were it necessary for us to decide the point, we would not have found Mr Freh to be liable for negligence. In our view, he did not owe a duty of care in respect of the *personal recommendation* that he made to Mr Glassberg. Accordingly, no question of vicarious liability arises.

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Conclusion

35 In summary, we dismiss the appeal in its entirety. As for costs, Mr Glassberg accepts that UBS is entitled to indemnity costs should he be unsuccessful in his appeal. We award UBS costs of the appeal on an indemnity basis fixed at S$65,000 (all-in). The usual consequential orders apply.

Woo Bih Li
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

Ang Cheng Hock
Judge of the High Court

Tham Lijing (Tham Lijing LLC) (instructed), Yu Kexin and Rochelle Lim (Yu Law) for the appellant;
Teo Chun-wei Benedict, Tham Feei Sy, Lim Siyang Lucas and Ho Wei Wen Timothy (Drew & Napier LLC) for the respondent.

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