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

[2025] SGHCR 21

Originating Claim No 139 of 2024 (Summonses Nos 506 and 1132 of 2025)

Between

Palyanitsa Ltd

… *Claimant*

And

Bridgetower Capital, Ltd

… *Defendant*

JUDGMENT

[Civil Procedure – Summary Judgment]
[Civil Procedure – Pleadings – Amendment]
[Contract – Formation – Capacity of parties - Admissibility of extrinsic evidence]

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Palyanitsa Ltd
v
Bridgetower Capital Ltd

[2025] SGHCR 21

General Division of the High Court — Originating Claim No 139 of 2024
Assistant Registrar Leo Zhi Wei
26 May 2025

4 July 2025 Judgment reserved.

Assistant Registrar Leo Zhi Wei:

1 The present suit arises from a staking agreement that was entered into by the Claimant and the Defendant on or about 10 September 2022 ("Staking Agreement"). Pursuant to the Staking Agreement, the Claimant transferred 1,000,000 native digital utility tokens ("NEAR Tokens") of the NEAR Protocol blockchain to the Defendant. In turn, the Defendant's key obligations under the Staking Agreement were to utilise the NEAR Tokens to run staking nodes on the NEAR Protocol and to create security tokens tied to the NEAR Tokens. The Claimant has commenced this suit seeking a return of the NEAR Tokens.

2 Two applications in the suit were heard before me:

(a) HC/SUM 1132/2025 ("SUM 1132"), which is the Defendant's application to amend its Defence and to plead a Counterclaim in the

manner set out in the draft Defence and Counterclaim (Amendment No. 3) ("Defence (A3)" and "Counterclaim" respectively).

(b) HC/SUM 506/2025 ("SUM 506"), which is the Claimant's application for summary judgment against the Defendant in respect of: (i) the Claimant's claim against the Defendant for breach of contract; and/or (ii) the Claimant's claim against the Defendant for breaches of trust, fraudulent misappropriation and/or equitable fraud.

3 As parties made substantial submissions in both applications, I reserved my decision. After taking some time to consider the matter, I have decided to allow SUM 1132 in part, dismiss SUM 506 and grant the Defendant unconditional leave to defend. I provide the reasons for my decision below.

The parties' cases

4 The Claimant, Palyanitsa Ltd, is a BVI company engaged in blockchain infrastructure and cryptocurrency projects. The Defendant, Bridgetower Capital Ltd, is a Singapore company which provides blockchain infrastructure and staking services.

The Claimant's claims

5 The Claimant's claims may be described simply. The Claimant contends that it entered in its personal capacity into the Staking Agreement with the Defendant. Under the said agreement, the Claimant transferred the NEAR Tokens to the Defendant for staking on a NEAR blockchain. In turn, the Defendant was obliged to, among others, share the staking rewards with the Claimant; provide updates on the performance of the staking services; create,

market and distribute a "security Token tied to the NEAR Tokens" ("Security Token"); and share the proceeds of sale with the Claimant.

6 In its main claim, the Claimant pleads that the the Defendant has gbreached its obligations under the Staking Agreement and seeks a return of the NEAR Tokens from the Defendant (the "Contractual Claim"). On the Claimant's account, the Staking Agreement was terminated on or around 19 October 2023. Following the termination, the Claimant alleges the Defendant is obliged to return the NEAR Tokens to it on the basis of an implied term in the Staking Agreement.

7 In the alternative, the Claimant also claims against the Defendant for breaches of trust, fraudulent misappropriation and/or equitable fraud for unlawfully retaining the NEAR Tokens (the "Trust Claim"). These claims arise from the Defendant's alleged actions in: (a) unstaking the NEAR Tokens and off-ramping the Claimant's NEAR Tokens into the Defendant's own wallet; (b) deliberately concealing the above movement of the NEAR Tokens from the Claimant despite the Claimant's requests for status updates; and (c) falsely representing to the Claimant that the staking was still ongoing in accordance with the Staking Agreement.

The Defendant's defences

8 The Defendant disputes the Claimant's claims on two key grounds. First, the Defendant alleges that the Claimant is not entitled to sue on the Staking Agreement as it had signed it in its capacity as an agent for another party, the NEAR Foundation (the "Agency Defence"). The Defendant has described the NEAR Foundation as a non-profit foundation established in Switzerland that is

responsible for the promotion and development of the NEAR Protocol blockchain and its related technology and applications.[1]

9 Second, the Defendant denies having any obligation to return the NEAR Tokens to the Claimant under the Staking Agreement. It claims that the Claimant had transferred the NEAR Tokens as a conduit for the NEAR Foundation, and that parties had intended for full legal and beneficial ownership of the NEAR Tokens to be transferred to the Defendant (the "Ownership Defence"). This was necessary in order for the Defendant to create the Security Token under Clause 3 of the Staking Agreement (the "Project"), and further as the NEAR Foundation intended to invest the NEAR Tokens in the Project and as payment for the Defendant's services.

10 The Defendant claims that it did not breach the Staking Agreement given that it was terminated sometime on 1 December 2022, when the Claimant's Mr Anton Vaisburd ("Mr Vaisburd") and Mr Yessin Schiegg ("Mr Schiegg") (described by the Defendant as the CFO of NEAR Foundation) sent the Defendant's Mr Cory Pugh ("Mr Pugh") various messages indicating that the Claimant was no longer affiliated to the NEAR Foundation.[2] The Defendant understood this to mean that the Claimant no longer had authority to act on behalf of the NEAR Foundation and the NEAR Foundation did not regard the Staking Agreement as having any further legal effect. On this basis, the Defendant and the NEAR Foundation negotiated a new agreement (the "Revised Agreement") for the minting of security tokens on the NEAR blockchain, although the NEAR Foundation eventually terminated the Revised Agreement.

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[1] Defence (A3) at [4]

[2] 5th Affidavit of Cory David Pugh at [45] – [49]

11 In SUM 1132, the Defendant also seeks to introduce additional counterclaims for fraudulent misrepresentation and *quantum meruit* against the Claimant.

Background facts leading to the present applications

12 A brief summary of the relevant background facts are as follows. The Suit was commenced on 5 March 2024. The Statement of Claim (Amendment No. 1) ("SOC") was filed on 12 July 2024 and the initial Defence was filed on 17 April 2024. Sometime in August 2024, the Defendant applied for permission to make various amendments to its Defence, including pleading a counterclaim. In HC/RA 157/2024, the Court ordered the Defendant to remove the counterclaim and specific related paragraphs in its proposed amended Defence. Following this decision, the Defendant filed its Defence (Amendment No. 2) ("Defence (A2)") on 8 October 2024.

13 On 17 December 2024, the Claimant applied for an extension of time to file an application for summary judgment, explaining its grounds for summary judgment based on the amended Defence (A2). On 20 January 2025, the Court granted the extension of time, and directed that the Claimant file its application for summary judgment by 10 February 2025.

14 Shortly before the Claimant was due to file its summary judgment application, on 6 February 2025, Ascendant Legal LLC took over as Defendant's counsel and sought and obtained a short extension to 24 February 2025 for the Claimant to file the summary judgment application on the basis that it needed time to take the Defendant's instructions. The Claimant eventually filed SUM 506 on 24 February 2025.

15 Before the deadline for the Defendant to file its reply affidavit in SUM 506 on 10 March 2025, the Defendant's counsel informed the Claimant's counsel that the Defendant intended to amend its Defence (A2) and sought an extension. As the Claimant did not agree to the Defendant's request and proposed amendments, the Defendant later applied for the Court's permission to file an application to amend its Defence (A2) and a stay of all timelines in SUM 506 pending the determination of the amendment application.

16 On 28 March 2025, the Court granted the Defendant permission to file the amendment application and directed for both the amendment application and SUM 506 to be heard together. The Defendant then filed the amendment application in SUM 1132 on 9 April 2025.

SUM 1132 - The Defendant's amendment application

17 Given that the outcome of SUM 1132 will impact the substance of the Defendant's pleadings to be considered in the Claimant's summary judgment application in SUM 506, I will first deal with SUM 1132 before moving on to determine SUM 506.

18 In SUM 1132, the Defendant sought amendments across the following broad areas in Defence (A3) and the Counterclaim:[3]

(a) In Defence (A3), the Defendant proposed to:

(i) plead additional material facts and particulars in order to fully plead the existing Agency and Ownership Defences. It is

[3] Annex A to SUM 1132 dated 9 April 2025; Defendant's Written Submissions filed in SUM 1132 dated 9 May 2025 at [31], [44] ; Annex-1: Table of Proposed Amendments in the 4th Affidavit of Cory David Pugh

undisputed that the proposed amendments do not change the fundamental substance of these claims;

(ii) remove the existing defences alleging that the Staking Agreement was prematurely terminated and that the Claimant is estopped from enforcing its legal rights under the Staking Agreement;

(iii) plead a new defence of limitation of liability based on Clause 8 of Exhibit A to the Staking Agreement ("Exhibit A");

(iv) introduce amendments and particulars in respect of its pleaded defence in response to the Claimant's allegations of fraud or dishonesty against the Defendant;

(v) plead a new defence of set-off based on its counterclaims for misrepresentation and/or reasonable compensation in *quantum meruit.*

(b) In respect of the Counterclaim, the Defendant proposed to introduce new counterclaims against the Claimant for fraudulent misrepresentation (the "misrepresentation counterclaim") and an alternative claim in *quantum meruit* on the basis of work done and services provided by the Defendant under the Staking Agreement ("the *quantam meruit* counterclaim").

Legal principles governing amendment applications

19 In *Wang Piao v Lee Wee Ching* [2023] SGHC 216 ("***Wang Piao***"), Goh Yihan JC (as he then was) expressed that under O 9 r 14(1) of the new Rules of Court 2021 ("ROC 2021"), the Court retains the same broad discretion in allowing amendments at any stage of the proceedings that was prescribed by its

predecessor provision under O 20 r 5(1) of ROC 2014, with the only exception that a more restrictive approach is prescribed under O 9 r 14(3) of ROC 2021 for the amendment of any pleadings less than 14 days before trial.

20 After undertaking an extensive analysis of the prevailing case authorities and legal principles governing amendment applications, Goh JC formulated the following three-step analytical framework in respect of applications for amendment of pleadings under O 9 r 14(1) of ROC 2021 (at [16] – [18]):

> (a) First, as a threshold question, the court should determine the stage of proceedings at which the amendments are being sought. This is because the principles relating to amendments apply differently depending on the stage of the proceedings in which the amendments are sought. Generally, the later an application is made, the stronger would be the grounds required to justify it.
>
> (b) Second, having determined the stage of the proceedings, the court should consider whether the amendments "enable the real question and/or issue in controversy between the parties to be determined". This entails that the application should be made in good faith. Practically, a court can discern this from the circumstances of the case, including the materiality of the proposed amendment. This will necessarily entail a rudimentary assessment of the merits of the amendment.
>
> (c) Third, having determined whether the amendments sought would enable the real question or issue in controversy between the parties to be determined, the court should consider whether it is nonetheless just to allow the amendments. In this regard, the court may consider a non-exhaustive list of factors, but the principal factors are: (i) whether the amendments would cause any prejudice to the other party

> which cannot be compensated in costs, and (ii) whether the party applying for permission to amend is effectively asking for a second bite of the cherry.

21 In respect of the second stage of the proceedings, an amendment that would not amount to a real question or issue in controversy between the parties to be determined is a pleading that is likely to be struck out in any event (at [19]). A pleading may be struck out under O 9 r 16(1) of ROC 2021 if it does not disclose a reasonable cause of action, is an abuse of process of the Court or if it is in the interests of justice to do so.

22 While the second stage of the framework prioritises the interest of the amending party to advance his or her case substantively, at the third stage, the focus of the enquiry shifts to the interests of the opposing party and the prejudice that may be occasioned to it.

23 Citing the above framework, Jeyaretnam J elaborated in *Riviera Co, Ltd v Toshio Masui* [2023] SGHC 223 that the inverse relationship between the stage of the proceedings and the court's readiness to grant amendments is explained by the operation of two complementary factors, namely, in ensuring fair access to justice and striking an appropriate balance between the private interests of the parties:

> This inverse relationship is explained by the operation of two complementary factors, one concerning the public interest in fair access to justice and the other the balance to be struck between the private interests of the parties. Fair access to justice means that litigants should not be punished for mistakes in their pleadings and should be given the opportunity to amend them where the other party can be compensated for any prejudice by an award of costs and grant of additional time or other consequential directions. But at the same time, judicial resources are scarce, which means that litigants should exercise reasonable diligence and bring forward their cases or

> defences at the appropriate stage of proceedings. As for the balance of private interests, the inconvenience and strain on the other party caused by an amendment worsens the later an amendment is sought. When an amendment is sought only after the original claim or defence has proved unsustainable, then the party seeking the amendment has a considerable burden of explanation concerning why it was not sought earlier.

The amendments in Defence (A3) are allowed

24 Having considered parties' arguments and the specific amendments that the Defendant was proposing in Defence (A3), I am prepared to allow the amendments in full and elaborate on my reasons below.

The stage of the proceedings at which the amendments are sought

25 The Suit is presently at the stage where pleadings have concluded and no trial dates have been fixed. While the Defendant had only sought the amendments after the Claimant had commenced SUM 506, I consider that it was still made at a relatively early stage of the proceedings. This is notwithstanding the Claimant's submission that the Defendant had already made substantial amendments to its Defence in July 2024 and had notice of the Claimant's intended summary judgment application as early as December 2024. As the High Court noted in *Wang Piao*, a summary judgment stage is still relatively early in the entire trial process: at [34]. Further, significant latitude should be afforded to the Defendant given that the amendments have been sought in the pre-judgment context. This is quite different from a situation where amendments are sought in the post-judgment context, i.e. after summary judgment is entered, where amendments are only permitted "sparingly" so as to uphold finality in the proceedings: *Wang Piao* at [20].

26 That being said, it would still be necessary to scrutinize the materiality of the Defendant's amendments to some degree so as to ensure that they are not

merely technical or trivial. The materiality of the amendments would also cast light on whether the Defendant had brought the application in good faith. I move on to consider this issue in the next stage.

Whether the amendments enable the real question or issue in controversy between the parties to be determined

27 In considering the amendments, I had regard to the guiding principle that the Defendant should not be punished for mistakes in its pleadings and that its interest in advancing its case substantively should be prioritised. I therefore do not consider the Claimant's objections relating to the Defendant's conduct prior to SUM 1132, including its earlier round of amendments, and its allegations that the Defendant had brought the amendment application in bad faith,[4] to be significant considerations at this stage. My focus is instead on the substance of the amendments sought.

28 I start by observing that the Defendant has proposed extensive amendments in Defence (A3), which encompasses significant changes to the overall presentation and structure of its defence, the pleading of several additional facts and particulars that were not found in Defence (A2) and new defences. Even a cursory review would reveal that these amendments are substantial, and not merely technical or trivial.

29 With the above in mind, and having considered the nature of the proposed amendments in Defence (A3), I find that they would enable the real question or issue in controversy between the parties to be determined:

[4] Claimant's Written Submissions dated 9 May 2025 at [38]

(a) In respect of the Agency and Ownership Defences, I find that the amendments sought by the Defendant are material and disagree with the Claimant that they are not substantive or constitute evidence as opposed to material facts:

(i) In respect of the Agency Defence, the Defendant had pleaded in greater detail various facts and particulars relating to the background leading to the Staking Agreement, the key terms of the Staking Agreement, the termination of the Staking Agreement and the negotiations of the Revised Agreement, all of which are key events in the Suit.

(ii) In respect of the Ownership Defence, the Defendant had pleaded further facts regarding the distinction between 'delegation' and 'transfer' of the NEAR Tokens, and raised new facts relating to how the NEAR Tokens were transferred to the Defendant as the NEAR Foundation's investment in the Project and how the sale proceeds of the Security Tokens was to be used to purchase additional NEAR Tokens, and the involvement of a separate entity, Bridgetower US Inc ("Subcontractor") in providing various services under the Staking Agreement. These facts would be key in determining the parties' dispute regarding whether the legal and beneficial ownership of the NEAR Tokens were intended to be transferred to the Defendant and the purpose of the said transfer.

(b) As for the removal of the Defendant's existing defences relating to premature termination and estoppel, I see no reason to disallow the Defendant from doing so as it is entitled to decide which defences to pursue.

(c) I also see no reason to deny the Defendant the right to raise the remaining amendments, which include the introduction of the defences of limitation of liability and set-off, and amendments to its existing response to the Claimant's allegations of fraud or dishonesty, as these amendments would have a substantive impact on the Defendant's defence.

30 For these reasons, I find that the Defendant should be afforded the right to advance its case substantively by introducing the proposed amendments in Defence (A3).

Whether it is just to allow the amendments

31 As observed in *Wang Piao*, the court's recognition that summary judgment is still relatively early in the trial process – especially as a full-blown trial with oral cross-examination has not taken place - has resulted in amendments to pleadings being allowed even *after* summary judgment has been entered, on the basis that any prejudice caused to the claimant can be compensated by costs (at [34]). This principle would apply equally if not with greater force where amendments are sought in the pre-judgment context, as in the present situation, particularly as the Claimant has not specifically claimed to suffer any prejudice that cannot be compensated in costs. Further, given that none of the proposed amendments in Defence (A3) have been struck out or disallowed previously, concerns that the said amendments would give the Defendant "second bite of the cherry" do not arise in this context.

32 Given that this is not a situation where the Claimant cannot be compensated for any prejudice by an award of costs, I find that it will be just to

allow the amendments in the interests of ensuring fair access to justice for the Defendant.

The Defendant's Counterclaim is allowed in part

33 Next, I address the Defendant's Counterclaim. Given that the aforementioned analysis under the first and third stages in respect of the amendments to the Defence (A3) would similarly apply, I focus my analysis on the second stage.

34 As mentioned at [21] above, an amendment would not enable the real question or issue in controversy to determined if it is likely to be struck out in any event. In this regard, the Claimant has argued that the Defendant's counterclaims either do not disclose any reasonable cause of action or are factually or legally unsustainable. While the Claimant did not specifically identify the provisions under O 9 r 16(1) of ROC 2021 that it was relying on, I will consider the Claimant's submissions based on O 9 r 16(1)(a) and O 9 r 16(1)(c) of ROC 2021. The guiding principles on these provisions may be stated briefly:

(a) Under O 9 r 16(1)(a), the Court may strike out a pleading as it discloses no reasonable cause of action. The test is whether the pleadings demonstrate some chance of success: *Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 ("*Iskandar*") at [17].

(b) Under O 9 r 16(1)(c), the Court is empowered to strike out the pleadings when it is in the interests of justice to do so. This may be the case if the pleadings are factually or legally unsustainable: *Iskandar* at [19]. A claim is: (a) legally unsustainable if it is clear that a party will not be entitled to the remedy he seeks even if he succeeds in proving all

the facts he offers to provide; (b) factually unsustainable if "it is possible to say with confidence that the factual basis for the claim is fanciful because it is entirely without substance": *The Bunga Melati 5* [2012] 4 SLR 546 at [33], [39].

35 Before I discuss the merits of the Counterclaim, I address a preliminary submission raised by the Claimant regarding the premise of the Counterclaim. The Claimant submitted that the Counterclaim, as pleaded by the Defendant, would proceed only if the Defendant is found liable to the Claimant for the claims in the SOC, based on the following paragraphs of the amended Defence (at [93]) and Counterclaim (at [102], [107]):

> **Defence to Claims in SOC**
>
> 95. For the reasons set out in paragraphs 52 to 60 above, the Claimant is not entitled to any of the reliefs sought, and they are therefore denied. However, in the event the Defendant is so found liable to the Claimant (which is denied):
>
> […]
>
> (b) the Defendant will seek to set off any liability it may have to the Claimant against the Defendant's counterclaim(s) for misrepresentation and/or reasonable compensation in *quantum meruit*.
>
> […]
>
> **COUNTERCLAIM**
>
> 102. In the event that the Claimant is found to have contracted personally under the Agreement with the Defendant, the Defendant repeats and adopts paragraphs 1 to 60 above.
>
> […]
>
> 107. If the Claimant is entitled to any of the relief claimed in its SOC, the Defendant is entitled to set off its counterclaim(s) for misrepresentation and/or reasonable compensation in *quantum meruit* against the Claimant's claim(s).

36 I do not think that this premise is borne out by the Defendant's pleadings. What the Defendant had pleaded was that it would seek to *set off* its

Counterclaim against any of the Claimant's claims it may be found liable for, and not that it would only proceed with the Counterclaim in such an event. As the Defendant clarified in its submissions, the Counterclaim is only premised on a finding that the Claimant had contracted personally under the Agreement with the Defendant.[5] I therefore consider the Counterclaim on this basis.

The misrepresentation counterclaim is allowed in part

37 In the misrepresentation counterclaim,[6] the Defendant alleged that it was induced to enter into the Staking Agreement in reliance on the following misrepresentations made by Claimant and/or Mr Vaisburd (at Counterclaim [103]):

> 103. The Defendant had entered into the Agreement with the Claimant in reliance on one or more of the following false representations of fact made by the Claimant and/or Mr. Anton Vaisburd to the Defendant: (i) that the Claimant was contracting under the Agreement on behalf of the NEAR Foundation; (ii) that the 1,000,000 NEAR Tokens to be transferred to the Defendant under the Agreement would originate from the NEAR Foundation; and/or (iii) that the 1,000,000 NEAR Tokens to be transferred to the Defendant under the Agreement would be fully transferred under the Agreement to invest in the Project and pay for the Defendant's services.

38 I deal with each statement in turn.

39 In respect of the alleged misrepresentation that "the Claimant was contracting under the Agreement on behalf of the NEAR Foundation", I find that this pleading cannot be sustained in law.

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[5] Defendant's Written Submissions dated 9 May 2025 in SUM 1132 at [54] – [55].

[6] Counterclaim at [102] – [105].

40 As a starting point, this claim proceeds on the basis of a finding that the Staking Agreement is concluded only between the Claimant and the Defendant and would therefore bind each party in the usual way. Against this context, I agreed with the Claimant that it would be important to consider if any of the pleaded misrepresentations contradict the express terms of the Staking Agreement. This stems from the principle in *Broadley Construction Pte Ltd v Alacran Design Pte Ltd* [2018] 2 SLR 110 ("*Broadley Construction*"), which provides that a party would not ordinarily be found to have been induced by a particular misrepresentation in entering into the contract where a true position with respect to the said misrepresentation appears very clearly from the terms of the same contract:

> *Peekay* stands for the proposition that a plaintiff would not ordinarily be held to be induced by a misrepresentation if the express contractual terms, which the plaintiff placed importance on, read and signed, and which the defendant expected that the plaintiff would read and understand, contradict or correct the defendant's misrepresentation…
>
> But where the true position appears clearly from the terms of the very contract which the plaintiff says it was induced to enter into by the misrepresentation (*Peekay* at [43]), the position is quite different. After all, it is a corollary of the basic principle of contract law that a person is bound by the terms of the contract he signs, notwithstanding that he may be unaware of its precise legal effect. Such a claimant should be taken to have actually read the contract and known the falsity of the earlier representation. To hold otherwise would undercut the basis of the conduct of commercial life – that businessmen with equal bargaining power would read their contracts and defend their own interests before entering into contractual obligations, and that they would rely on their counterparties to do the same.

41 This is especially so where the terms were not buried in a mass of small print but appeared clearly on the face of the document: *Peekay Intermark Ltd v Australia and New Zealand Banking Group Ltd* [2006] EWCA Civ 386 at [43].

42 In the present case, I find that the terms of the Staking Agreement had clearly provided that the Claimant had contracted in its own capacity, and disagree with the Defendant's submission that there was ambiguity in this regard. I say so for the following reasons:

(a) The preamble of the Staking Agreement clearly identifies the Claimant, Palyanitsa Ltd, as a party;

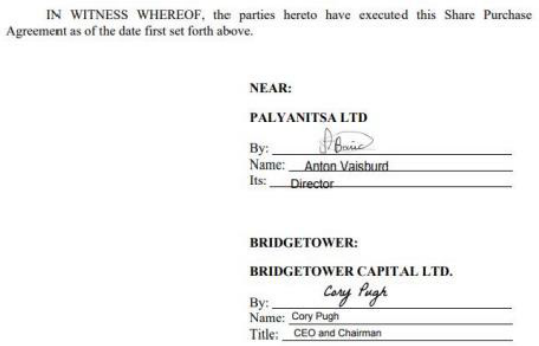
STAKING AGREEMENT

This Staking Agreement ("Agreement") is entered into as of September 10th, 2022 ("Effective Date") between Palyanitsa Ltd. a British Virgin Islands limited company (the "NEAR") and BridgeTower Capital, Ltd., a Singapore public BridgeTower limited by shares (the "BridgeTower"). The parties shall be collectively referred to herein as the "Parties" and individually, a "Party."

(b) The Claimant is abbreviated as "NEAR" in the preamble and consistently referred to as NEAR in the key provisions of the Staking Agreement, such as Clauses 1 to 3. In this regard, I am not persuaded by the Defendant's submissions that the abbreviation "NEAR" bears no resemblance to the Claimant, thereby indicating that it did not contract in its own capacity. Contracting parties are at liberty to abbreviate their names in a contract as they wish – as long as the abbreviation clearly refers to a contracting party, as in the present case, the specific abbreviation used does not, on its own, assist in determining the party's contracting capacity in the absence of clearer language;

(c) Clause 4(k) of the Staking Agreement provides that the Staking Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter and supersedes any prior oral or written agreement or understanding between the parties (the "entire agreement clause"), strongly suggesting that the parties intended for its terms to be contained exclusively in the said agreement;

(d) The Claimant was named in the signature block and signed the Staking Agreement, which is a significant consideration (see the principles described at [89] below). While reference is made to the abbreviation "NEAR", the preamble makes clear that this refers to the Claimant;



IN WITNESS WHEREOF, the parties hereto have executed this Share Purchase Agreement as of the date first set forth above.

NEAR:

PALYANITSA LTD

By: _____
Name: Anton Vaisburd
Its: Director

BRIDGETOWER:

BRIDGETOWER CAPITAL LTD.

By: _____
Name: Cory Pugh
Title: CEO and Chairman

(e) The Staking Agreement neither states that the Claimant is acting on behalf of any other party nor identifies any other entity (apart from the Claimant and Defendant) as a contracting party.

43 Applying the principles in *Broadley Construction*, the above would expressly contradict any alleged misrepresentation by the Claimant or Mr Vaisburd that the Claimant had concluded the Staking Agreement on behalf of the NEAR Foundation. Given that there is no dispute that the Defendant had signed the Staking Agreement, it would be taken to have read its terms, known of the falsity of any such alleged misrepresentation and acted on the basis that the Claimant had signed the Staking Agreement in its personal capacity. In these circumstances, the Defendant could not be said to have been induced by the alleged misrepresentation in entering into the Staking Agreement. I therefore disallow the Defendant's pleaded claim for this misrepresentation and related particulars.

44 I am prepared however to allow the remaining statements pleaded by the Defendant at Counterclaim [103] on the basis that they do not expressly contradict any of the provisions in the Staking Agreement. As both statements concern the transfer of the NEAR Tokens, the key provision to be considered is clause 1 of the Staking Agreement, which provides that:

> **1. Delegation. NEAR** hereby agrees to transfer a minimum of 1,000,000 (one million) NEAR native digital utility tokens (the "**NEAR Tokens**") to BridgeTower for the purpose of running Staking Nodes for the NEAR Protocol ("**Staking Services**")…

45 In respect of the alleged misrepresentation "that the 1,000,000 NEAR Tokens to be transferred to the Defendant under the Agreement would originate from the NEAR Foundation", the Defendant had further pleaded that "…its understanding was always that, for the purposes of the Project and the Agreement, the NEAR Foundation would transfer the 1,000,000 NEAR Tokens to the Defendant and in this regard the NEAR Foundation would use the Claimant as a conduit for this transfer": at Defence [69], which is repeated and adopted at Counterclaim [104(f)]. Given that the pleaded misrepresentation refers to a situation where the NEAR Foundation had used the Claimant as a conduit for the transfer of the NEAR Tokens, I do not consider it to expressly contradict Clause 1, which merely provides that the Claimant would effect the said transfer to the Defendant.

46 I am likewise of the view that the alleged misrepresentation that "1,000,000 NEAR Tokens to be transferred to the Defendant under the Agreement would be fully transferred under the Agreement to invest in the Project and pay for the Defendant's services" would not contradict Clause 1. While Clause 1 had provided that the NEAR Tokens were to be transferred for the purpose of the staking services, it does not expressly preclude the possibility that the transfer could be effected for other purposes as well.

47 The Claimant had also raised two other broad objections to the alleged misrepresentations. The first relates to the legally unsustainability of the misrepresentations due to the presence of a non-representation clause at Clause 7 of Exhibit A providing that neither party had made any "warranty or representation of any kind, whether express, implied, statutory or otherwise" (the "non-representation clause"), which would contractually estop the Defendant from claiming that it was induced by the Claimant's purported misrepresentations.

48 The second objection relates to the factual unsustainability of the Defendant's assertions that it suffered loss and damage, given that: (i) the Defendant's allegation that the Claimant availed itself of "the industry expertise, guidance and reputation of the Defendant and its partners Securitize and Ideasoft" is contradicted by the Defendant's own position in its Defence that the Claimant was not involved in the discussions involving Securitize and Ideasoft; (ii) this assertion is undermined by the Defendant's financial statements for the financial years ending December 2022 ("FY 2022") and December 2023 ("FY 2023") which do not record any cost or expenses; and (iii) the Defendant cannot be permitted to claim compensation for work done in relation to the staking services, which the parties had already contemplated and expressly provided for in the Staking Agreement.

49 I do not think that these objections would render the alleged misrepresentations liable to be struck out. As the Defendant submitted at the hearing, the validity of the non-representation clause merits fuller consideration given that it is subject to the requirement of reasonableness under s 3 of the Misrepresentation Act 1967 read with s 11 of the Unfair Contract Terms Act 1977. Further, I am not persuaded that the matters raised by the Claimant would render the Defendant's claim for loss and damage factually unsustainable.

Damages awarded for fraudulent misrepresentation aim to place the representee in the same position it would have been in if the misrepresentation had not been made: Andrew Phang, *The Law of Contract* (2nd Ed) ("*The Law of Contract*") at [11.182]. This entails an intense factual inquiry into the Defendant's actual losses flowing from his reliance on the alleged misrepresentaions, including all consequential loss: *The Law of Contract* at [11.181] – [11.182]. None of the factual matters raised by the Claimant conclusively establish that the Defendant did not suffer such losses. As is also too early at this stage to draw any conclusions, these matters should be left for determination at the trial of the matter.

50 In line with my decision above, I allow the misrepresentation counterclaim save that the statement "(i) that the Claimant was contracting under the Agreement on behalf of the NEAR Foundation" in [103], and its related particulars at [103(a)] to [103(e)] of the Counterclaim are disallowed.

The quantum meruit counterclaim is disallowed

51 The Defendant has pleaded its *quantum meruit* counterclaim as follows (Counterclaim at [106]):

> Further or alternatively to the Defendant's counterclaim in damages for misrepresentation as set out in paragraphs 103 to 105 above, the Defendant is entitled to payment of a reasonable sum on a *quantum meruit* basis for all such work done and services provided by the Defendant to the Claimant under the Agreement, either on the basis that there is a term implied at law and/or in fact in the Agreement that the Defendant shall be entitled to reasonable compensation for any work done or services provided to the Claimant; or that the Defendant is entitled to reasonable compensation for the Claimant's unjust enrichment in any work done or services rendered by the Defendant under the Agreement. The Defendant repeats and adopts paragraph 105 above that substantial work had been undertaken by the Defendant under the Project and the Agreement.

52 Based on the above wording, it is notable that the Defendant has claimed for payment on a *quantum meruit* basis for *all* work done and services provided by the Defendant to the Claimant under the Staking Agreement. The pleaded claim makes no distinction between the different types of work that the Defendant was contractually obliged to render to the Claimant, and I consider the claim on this basis.

53 A claim in *quantum meruit* may be premised either on contractual grounds, such as an express or implied contract, or on restitutionary grounds. These approaches were described in *Rabiah Bee bte Mohamed Ibrahim v Salem Ibrahim* [2007] 2 SLR(R) 655 ("*Rabiah")* as follows (at [123]):

> … Where there is an express or implied contract which is silent on the quantum of remuneration or where there is a contract which states that there should be remuneration but does not fix the quantum, the claim in *quantum meruit* will be contractual in nature. Where, however, the basis of the claim is to correct the otherwise unjust enrichment of the defendant, it is restitutionary in nature. …

54 It is also relevant that there cannot be claim for *quantum meruit* based on an implied term if the contract already contains an express term with regard to the remuneration that ought to be paid for work done by the plaintiff: *Turns Advisors APAC Pte Ltd v Steppe Gold Ltd* [2024] SGHC 174 at [123]. This is consistent with the general principle that a term can only be implied in law or in fact if a gap in the contract exists in the first place: *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 at [101] ("*Sembcorp")*. Neither can there be a claim in restitution parallel to an inconsistent contractual promise: *Rabiah* at [123].

55 Based on the above principles, the Defendant's *quantum meruit* counterclaim in both contract and restitution is unsustainable in law. The

Defendant's pleading that there should be an implied term entitling it to "payment of a reasonable sum on a *quantum meruit* basis for all such work done and services provided by the Defendant to the Claimant under the Agreement" is inconsistent with the express provisions of the Staking Agreement. Under the Staking Agreement, the Defendant agreed to provide staking services, i.e. the running of staking nodes for the NEAR Protocol, under Clause 2 and to create, market and distribute a Security Token under Clause 3. As the Claimant pointed out, Clause 2(b) of the Staking Agreement states that the Defendant is "responsible for all costs associated with procuring, installing and operating the Staking Nodes". The existence of this express term for the Defendant's remuneration in respect of the staking services suffices to render the term that the Defendant seeks to imply, which encompasses *all* work done and services under the Staking Agreement, legally unsustainable. For the same reason, the Defendant's claim for reasonable compensation for the Claimant's unjust enrichment in respect of "any work done or services rendered by the Defendant" under the Staking Agreement likewise cannot be sustained.

56 For completeness, I do not consider the provisions in the Staking Agreement with respect to the sharing of the net revenue or staking rewards from the staking of the NEAR Tokens and net proceeds from the sale of the Security Tokens to be agreed remuneration terms for the Defendant's services. I accept the Defendant's submission that these are terms for profit sharing and do not specifically address the remuneration for the work done by the Defendant. This is consistent with *Rabiah,* where the Court allowed a claim for *quantum meruit* in contract on the basis that the parties' agreement in the joint venture had only provided for the profit split from the rental proceeds and resale of properties, but not the remuneration for the plaintiff's expertise in sourcing,

renovating and managing the properties under the joint venture. Nevertheless, this does not impact my conclusion at [55] above.

57 I accordingly disallow the *quantum meruit* counterclaim.

SUM 506 – The Claimant's summary judgment application

58 Given that both SUM 1132 and SUM 506 were heard together before me, parties had argued the Claimant's summary judgment application in SUM 506 on the basis that all amendments sought by the Defendant in SUM 1132 would be allowed. I will now consider SUM 506 on the basis of the amendments I have decided to allow in SUM 1132.

Legal principles on which summary judgment is granted

59 The relevant provisions governing applications for summary judgment may be found under O 9 r 17 of the ROC 2021. Under O 9 r 17(1), a claimant may apply for summary judgment against any defendant after the defence has been filed and served in an originating claim on the ground that the defendant has no defence to the claim or a particular part of a claim.

> Summary judgment (O. 9, r. 17)
>
> **17.**—(1) The claimant may apply for summary judgment against any defendant after the defence has been filed and served in an originating claim on the ground that the defendant has no defence to —
>
> (*a*) a claim;
>
> (*b*) a particular part of a claim; or
>
> (*c*) a claim or part of a claim, except as to the amount of any damages claimed.
>
> […]
>
> (7) The Court may —
>
> (*a*) dismiss the application;

> (*b*) grant permission to defend to the defendant without any conditions;
>
> (*c*) grant judgment to the claimant; or
>
> (*d*) grant permission to defend to the defendant with conditions if the defence or any issue raised therein is of a dubious nature.

60 While, O 9 r 17 of ROC 2021 reformulates its predecessor provision, O 14 rr 1–11 of the ROC 2014 in a manner that is clearer and more succinct, there is nothing to indicate that the established legal principles are now different: *Mak-Levrion Kah Kay Natasha v R Shiamal* [2023] SGHC 335 ("*Mak-Levrion")* at [14]; *Singapore Court Practice* (LexisNexis Singapore, 2025) ("*Singapore Court Practice*") at [9.17.3]. Therefore, the earlier jurisprudence under O 14 of ROC 2014 continue to be applicable under O 9 r 17 of ROC 2021.

61 As the Court of Appeal held in *Akfel Commodities Turkey Holding Anonim Sirketi v Townsend, Adam* [2019] 2 SLR 412 ("*Akfel Commodities*"), the power to give summary judgment is intended only to apply to cases where there is no doubt that a claimant is entitled to judgment, and where it is inexpedient to allow a defendant to defend for mere purposes of delay. Where there is an issue or question in dispute which ought to be tried or there ought to be a trial for some other reason, leave to defend should be granted.

62 To obtain judgment, a claimant has first to show that he has a *prima facie* case for summary judgment. In *Mak-Levrion*, the Court held that this standard would require the claimant to demonstrate that: (a) he is able to produce enough evidence to allow the fact-trier to infer the fact at issue and rule in his favour at first sight, but this does not connote a lower standard that the usual civil standard of balance of probabilities; (b) the claimant's case will be considered on its own, without considering the defendant's defences or counterarguments; (c) a *prima facie* case must, at the very least, mean a case

that is: (i) supported by the claimant's own evidence; (ii) internally consistent; and (iii) not inherently unbelievable without good explanation.

63 If the claimant does cross the *prima facie* threshold, the burden shifts to the defendant who, in order to obtain leave to defend, must establish that he has a fair or reasonable probability that he has a real or bona fide defence": *Ritzland Investment Pte Ltd v Grace Management & Consultancy Services Pte Ltd* [2014] 2 SLR 1342 ("*Ritzland")*, *Akfel Commodities* at [41]. This burden is a tactical one, and not a legal or evidential burden of proof, meaning that the defendant need not present an actual substantive defence but merely to raise some evidence which raises a triable issue in respect of the claimant's claims: *Ritzland* at [44] – [48], *Singapore Court Practice* at [9.17.7]. The strength of the defendant's position is not relevant as the court is merely concerned with the question of whether there should be a trial: *Singapore Court Practice* at [9.17.7].

64 In order to do so, it would not be sufficient for the defendant to simply deny the plaintiff's claim, provide mere unsupported assertions on affidavit of a given situation, or assertions which are "equivocal, lacking in precision, inconsistent or inherently improbable": *Singapore Court Practice* at [9.17.7]. The defendant would have to annex the necessary evidence and sufficiently particularise its allegations in its affidavit, which would constitute "such an extent of definite facts pointing to the [defence] as to satisfy the judge that those are facts which make it reasonable that you should be allowed to raise that defence": *Singapore Court Practice* at [9.17.7].

The Claimant's prima facie case

65 After considering the Claimant's pleaded claims and supporting evidence, I am satisfied that the Claimant has established a *prima facie* case.

The Contractual Claim

66 In the SOC, the main reliefs sought by the Claimant against the Defendant in its Contractual Claim are as follows:

> (a) As to the Defendant's breaches of contract:
>
> i. Delivery up of the 1,019,359 NEAR Tokens belonging to the Claimant in the possession, custody or control of the Defendant, its employees, servants, agents, associates, nominees, proxies, successors, assigns, or affiliates or any of th;
>
> ii. Alternatively, damages to be assessed in-lieu for the delivery up…

67 There is no dispute that the Staking Agreement was validly concluded in accordance with the legal formalities required for a binding contract. For the reasons described at [42] above, I also find it clear that from the terms of the Staking Agreement that the Claimant is the contracting party. Further, the Staking Agreement provides at Clause 2(a) and Clause 5(b) of Exhibit A that either party may terminate the said agreement at any time by giving at least 30 days' notice prior to each 12-month term.

68 The Claimant alleges that the Defendant has breached its obligations under the Staking Agreement, by failing to, among others: (a) stake the Near Tokens for the entire one-year term, in breach of Clause 2(a); (b) share Net Revenue (defined in Clause 2(e)) which remains due and owing to the Claimant, in breach of Clause 2(c)(i); (iii) provide current and regular reports on the performance of the staking services, in breach of Clause 2(d); or (iv) launched

the Security Token(s), in breach of Clauses 3(a) and 3(b).[7] It is undisputed that the Defendant did not stake the NEAR Tokens for the full one-year term, create the Security Tokens, or provide regular reports on the staking services.[8] The Claimant has also produced evidence to show that the NEAR Tokens were unstaked and off-ramped from March to December 2023,[9] which was before the expiry of the one-year period under Clause 2(a). On this basis, I find that the Claimant has demonstrated a *prima facie* case that the Defendant has breached the Staking Agreement.

69 On the Claimant's case, it terminated the Staking Agreement on or around 19 October 2023. This is supported by two emails:[10]

(a) On 20 September 2023, the Claimant emailed the Defendant to inform it of its decision to terminate the Staking Agreement, as the Claimant has to "request the return of the tokens to be able to fulfill its obligation to the third party according to the Loan Agreement. If a deal is not reached between BridgeTower and the third party that provided the loan to Palyanitsa within the next 15 days, Palyanitsa will consider this email an official termination notice for the Staking Agreement". The Defendant did not reply to this email;

(b) More than 15 days later, on 19 October 2023, the Claimant emailed the Defendant to reiterate its earlier notice of termination and requested the Defendant to immediately return the NEAR Tokens to it.

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[7] SOC at [10]

[8] 3rd Affidavit of Anton Vaisburd dated 3 March 2025 at [22], [29];

[9] 3rd Affidavit of Anton Vaisburd dated 3 March 2025 at [23] – [24]

[10] 3rd Affidavit of Anton Vaisburd dated 3 March 2025 at [18] – [20], Tab 3

70 In my view, the emails show that the Claimant had provided the Defendant with clear notice of its intention to terminate the Staking Agreement. There is nothing on the face of the emails to show that notice was improper.

71 Following the termination of the Staking Agreement, the Claimant claims that it is entitled to seek a return of the NEAR Tokens. This is based on an implied term in law and/or in fact of Clause 5(c) in Exhibit A ("Clause 5(c)"), which provides that upon termination, the Claimant will cease to stake the NEAR Tokens:

> 5. Term & Termination
>
> a. The term of these Terms and Conditions will begin on the date that NEAR first Stakes Tokens with BridgeTower.
>
> b. Either party may terminate these Terms and Conditions at any time for any or no reason.
>
> *c. Upon the termination of these Terms and Conditions, provided that NEAR is not in material breach of these Terms and Conditions, NEAR will cease to Stake Tokens with BridgeTower.*
>
> (Emphasis in italics added)

72 In support of its claim, the Claimant argues that: (a) there is an implied term in law as a matter of fairness, given that staking presupposes that the party contributing the tokens would eventually have the token and its rewards returned; (b) there is an implied term in fact as parties failed to contemplate and provide for the return of the NEAR Tokens in the Staking Agreement; and (c) it would be fair or necessary in the business or commercial sense to imply such a term in law or in fact to prevent an absurd consequence where the party providing the staking services would receive a disproportionate gift of tokens, and the party staking the tokens would suffer a detriment (relying on the principles in *Jet Holding Ltd v Cooper Cameron (Singapore) Pte Ltd* [2006] 3 SLR(R) 769 at [90] and *Sembcorp* at [110]).

73 On the other hand, the Defendant submits that such a term should not be implied into the Staking Agreement for two key reasons. First, given that Clause 1 provides that the Claimant agrees to "transfer" the NEAR Tokens to the Defendant, this would, on the usual and plain meaning of the word "transfer", entail a full transfer of ownership of the NEAR Tokens to the Defendant. Second, such a term would contradict Clause 5(c). The Defendant contends that the clause would show that parties had contemplated what would happen after termination, but only provided that the Claimant would cease to stake the NEAR Tokens and not that they would be returned.

74 I accept the Claimant's submission that the Staking Agreement would *prima facie* contain an implied term in fact providing for the return of the NEAR tokens after the termination of the agreement. To begin with, I find that the Staking Agreement is silent on whether the NEAR Tokens should be returned after termination. I do not agree with the Defendant's submission that such an implied term would contradict Clause 5(c). The said provision had only addressed the specific issue of whether the Claimant would continue to stake tokens with the Defendant after termination, which is distinct from the issue of who would be entitled to possession of the tokens post termination.

75 In considering whether it would be necessary to imply the term sought by the Claimant, I first had regard to the purpose for which the NEAR Tokens were transferred. Clause 1 of the Staking Agreement expressly states, under the heading "Delegation", that the NEAR tokens were transferred to the Defendant "for the purpose of running Staking Nodes for the NEAR Protocol", which was defined as the "Staking Services". I note that Clause 1 is the only provision that sets out the specific purpose for the transfer of the NEAR Tokens. Clause 2 further provides that the Defendant will provide the staking services for an initial term of 12 months from the date of receipt of the NEAR Tokens. In other

words, the NEAR Tokens were transferred to the Defendant for the purpose of enabling the Defendant to provide the staking services. The meaning of "transfer" in Clause 1 and its accompanying legal implications must therefore be construed against the provisions of the Staking Agreement as a whole, and for this reason I do not agree with the Defendant that it would necessarily entail a full transfer of ownership of the NEAR Tokens to the Defendant.

76 Having regard to this explicit purpose of the transfer and Clause 5(c), I agree that it would be necessary to imply a term that provides the return of the NEAR Tokens after termination. If the NEAR Tokens were transferred for the purpose of enabling the Defendant to carry out the staking services, this would imply that the NEAR tokens would be returned to the Claimant after the Defendant ceases to provide the staking services, or when the Staking Agreement comes to an end. This would appear to be consistent with: (a) Clause 2(b) of Exhibit A, which states that the Claimant shall provide the "transferd Tokens to BridgeTower's validator account" *during* the "Term" (defined in Clause 2(a) as the 12 month period from the date of receipt of the NEAR Tokens); and (b) the definition of "staking" on the Defendant's "FAQ" page, where staking is described as a process where participants "lock [the tokens] up in a designated wallet or smart contract, making them inaccessible for a certain period".[11] This suggests that the tokens would only be temporarily inaccessible to the participants, and not that they would be retained permanently by the party providing the staking services.

77 More broadly, this arrangement would also accord with business sense when considered in view of the commercial benefits that parties were contractually entitled to receive for the staking services. Under Clause 2(c)(i) of

[11] 3rd Affidavit of Anton Vaisburd dated 3 March 2025 at pg 822 – 824.

the Staking Agreement, the Claimant was stated to receive the commercial benefit of 50% of the staking rewards (to be shared with the Defendant) for providing the NEAR Tokens. This is consistent with the Defendant's FAQ page, which states that participants who stake their tokens "contribute to the network's security and operations while earning staking rewards in turn".[12] There is nothing in the Staking Agreement to suggest that parties had intended for the Defendant benefit from the value of the tokens in its entirety, over and above the staking rewards it was contractually entitled to receive. Indeed, this would not appear to make commercial sense especially as the staking rewards may fall far below the value of the NEAR tokens – in this situation, Claimant would be significantly worse off and the Defendant would have earned a windfall.

78 For the above reasons, I find that the Claimant has established a *prima facie* case against the Defendant for breach of contract and its entitlement to a return of the NEAR Tokens.

79 While the Claimant has advanced alternative claims against the Defendant in breach of trust, fraudulent misappropriation or equitable fraud, it would not be necessary for me to decide these issues as they would not add anything to the Claimant's *prima facie* case even if successful. I nevertheless go on to express my views briefly.

The Trust Claim

80 The Claimant argues that the Defendant holds the NEAR Tokens on its behalf arising from: (a) an express trust over the NEAR Tokens under the Staking Agreement; (b) a resulting trust over the NEAR Tokens on the basis

[12] 3rd Affidavit of Anton Vaisburd dated 3 March 2025 at pg 822.

that the Defendant had no intention to divest itself of the beneficial interest in the tokens; (c) a constructive trust that arose as a result of the Defendant's fraudulent misappropriation or equitable fraud against the Claimant. The Claimant would only have to establish any of the above trusts in order to satisfy the requirement of a *prima facie* case for the Trust Claim.

81 I am prepared to conclude that the Claimant has establish a *prima facie* case that a resulting trust arose in respect of the NEAR Tokens. In *AG v Aljunied-Hougang-Punggol East Town Council* [2014] 4 SLR 474 ("*AG v AHPETC"*), the High Court endorsed the model of *Quistclose* trust as a form of resulting trust based on Lord Millet's decision in *Twinsectra Ltd v Yardley* [2002] 2 AC 164. In order for a resulting *Quistclose* trust to arise: (i) the donor must have a lack of intention to part with the entire beneficial interest in the asset; (ii) the recipient must not have free disposal of the asset; and (iii) must be under a power or duty to apply the asset in accordance with the stated purpose: *AG v AHPETC* at [114]. Further, as highlighted in *Ho Yew Kong v ERC Holdings Pte Ltd* [2019] 5 SLR, a cricual element of any *Quistclose* trust is that the settlor must have intended for the assert to be used for a specified purpose – it is this very specific intention that causes the beneficial interest to remain with him: at [48] - [50].

82 Following from my view that the Staking Agreement obliged the Defendant to return the NEAR Tokens to the Claimant, I find that there was an absence of intention on the Claimant's part to pass the entire beneficial interest in the NEAR Tokens when it was transferred to the Defendant. Given that the Staking Agreement expressly provides at Clause 2(a) that the NEAR Tokens were provided to the Defendant for the specific purpose of providing staking services and that the Defendant was obliged under Clause 2(d) to provide regular updates detailing performance of the staking services, it is clear that the

Defendant was obliged to utilise the NEAR Tokens for the stated purpose of staking and did not have the right to freely dispose the said asset.

83 However, based on the Claimant's evidence, I was not satisfied that a *prima facie* case for an express trust, fraudulent misappropriation or equitable fraud has been made out. There is insufficient evidence to demonstrate certainty of intention on the Claimant's part to create an express trust with respect to the NEAR Tokens. There is nothing in the Staking Agreement or the surrounding evidence that makes any explicit mention of the Claimant's intention to create an express trust by bifurcating the legal and equitable interests of the NEAR Tokens or to impose fiduciary duties on the Defendant to manage the NEAR Tokens on its behalf under such a trust. Further, even if the evidence suggests that the Defendant had provided inaccurate information on the status of the staking of the NEAR Tokens, this would not on its own necessitate a conclusion that the Defendant had intended to deceive the Claimant. Given that cogent evidence is required to establish fraud, I am not prepared to conclude that the Claimant has made out a *prima facie* case that the Defendant had acted fraudulently.

Triable issues raised by the Defendant

84 Having found that the Claimant has established a *prima facie* case against the Defendant, I next consider whether the Defendant has raised any triable issues or *bona fide* defences.

Agency Defence

85 The main thrust of the Defendant's Agency Defence is that the Claimant did not sign the Staking Agreement personally but instead as an agent for the

NEAR Foundation. Accordingly, the Claimant is not entitled to sue on the Staking Agreement.

(1) Legal principles in relation to agency

86 Before I consider the specific issues raised by the parties, it will be helpful to provide an overview of the applicable legal principles on agency.

87 It is well established that the starting point in interpreting a contract is to consider the objective intention of the parties based on the terms of the contract and its surrounding context within the parties' knowledge. In the context of agency law, an agent is liable under a contract where the circumstances are such that the contract, objectively construed, shows that the agent intended to contract personally in his name, whether on his own or together with his principal: Tan Cheng Han, *The Law of Agency* (Academy Publishing, 2017) ("*The Law of Agency*") at [09.009]. Where a contract is wholly in writing, the intention depends on the true construction, having regard to the nature of the contract and the surrounding circumstances of the documents in which the contract is contained: *The Law of Agency* at [09.010] – [09.011].

88 In determining the identity of a contracting party or whether a party had signed a contract as principal or agent, the court may also have regard to extrinsic evidence, as the High Court held in *Bhoomatidevi d/o Kishinchand Chugani v Nantakumar s/o V Ramachandra* [2023] 4 SLR 1644 ("*Bhoomatidevi*") (citing Jackson LJ in *Hamid (t/a Hamid Properties) v Francis Bradshaw Partnership* [2013] EWCA Civ 470 ("Hamid") at [57]; the same principles are also cited in Chitty on Contracts (Sweet & Maxwell, 2025) ("*Chitty on Contracts*") at [22-061]) :

> i) Where an issue arises as to the identity of a party referred to in a deed or contract, extrinsic evidence is admissible to assist the resolution of that issue.
>
> ii) In determining the identity of the contracting party, the court's approach is objective, not subjective. The question is what a reasonable person, furnished with the relevant information, would conclude. The private thoughts of the protagonists concerning who was contracting with whom are irrelevant and inadmissible.
>
> iii) If the extrinsic evidence establishes that a party has been misdescribed in the document, the court may correct that error as a matter of construction without any need for formal rectification.
>
> iv) Where the issue is whether a party signed a document as principal or as agent for someone else, there is no automatic relaxation of the parol evidence rule. The person who signed is the contracting party unless (a) the document makes clear that he signed as agent for a sufficiently identified principal or as the officer of a sufficiently identified company, or (b) extrinsic evidence establishes that both parties knew he was signing as agent or company officer.

89 Relying on these principles, the Court held that if there are inconsistencies between the way the contract was signed and the definition of who the parties were in the contract, such consistencies can be resolved by looking at the capacity in which the parties had signed the contract: *Bhoomatidevi* at [28]. On the facts of *Bhoomatidevi*, the Court found that while the second defendant was named as a party at the start of the contract, the signature box stated that the first defendant (a director of the second defendant at the material time) had signed the contract on behalf of the second defendant. As the first defendant had clearly qualified that he was signing the contract not in his personal capacity but on the second defendant's behalf, the second defendant was held to be the proper party to the contract.

90 In this vein, the learned authors of *Chitty on Contracts* have expressed that even if the written contract does not indicate whether a party was acting as principal or agent, the counterparty who had reason to know that the former only

dealt as agent may give evidence on the capacity in which parties acted, and this would clarify the contract without contradicting it (at [22-060]):

> If a person who might be an agent is simply named without more in a contract (which in such circumstances is more likely to be in writing) the first assumption must be that the person is in fact acting as a party to the contract and will be the party liable and entitled on it. It is possible however that the party may, despite lack of indication in the written contract, be acting not as principal but only as agent. **It may be argued that the factual matrix surrounding the agent's dealings with the third party gave the third party reason to know that the former dealt only as agent for another person, who can be identified and that this clarifies the meaning of the contract without contradicting it. Even if the parol evidence rule were applied, it is established that evidence may be given as to the capacity in which the parties acted**. Clear evidence would be required of the understanding of the parties and of the identity of the principal for whom the agent was acting, ascertained on an objective basis.

91 I further note with some interest that the same authors have observed that there may perhaps be some general tension between the line of English cases where a party's signature has been held to prevail over other indications in the body of the document and those where external evidence has been admitted to determine the parties to a contract: at [22-061].

92 In any event, it is in my view at least clear under Singapore law that there are no restrictions on a party's ability to admit extrinsic evidence to assist the Court on issues of contract formation, such as the determination of the proper parties to the contract. In *The Luna and another appeal* [2021] 2 SLR 1054 ("*The Luna")*, the Court of Appeal expressed that unlike cases involving contractual interpretation, which are governed by the parol evidence rule and the restrictions on the admissibility of extrinsic evidence, the same restrictions do not constrain the Court in cases involving contract formation (at [30] – [31]):

> Such a distinction between formation and interpretation cases is sound as a matter of principle. Although the court in both

> cases is concerned with ascertaining the parties' objective intentions, the circumstances surrounding such an exercise are fundamentally different. In interpretation cases, the court is ascertaining "what the parties, from an objective viewpoint, ultimately agreed upon" [emphasis added] (see Zurich Insurance at [132(d)]). The underlying premise is therefore that the parties had reached an agreement. **Accordingly, the parol evidence rule and the Zurich Insurance principles apply because the parties' mutual understanding of such agreement and its terms can only be based on matters that were relevant, reasonably available to both parties and related to a clear or obvious context. This premise obviously does not apply in formation cases, where the court is considering the anterior question of whether the parties had even reached an agreement in the first place.**

93 In *B High House International Pte Ltd v MCDP Phoenix Services Pte Ltd and another* [2023] SGHC 12, the Court had to determine the proper parties to a contract for payment processing services. It considered that this would turn on an issue of contract formation and held that in view of the above principles in *The Luna*, it was entitled to consider the subsequent conduct of the parties and their alleged representatives in determining who the proper contracting parties were.

(2) Parties' submissions

94 The Defendant submits that it has raised a *bona fide* defence on agency based on three broad grounds.

95 First, for the same reasons described at [42], the Defendant argues that it is apparent from the express terms of the Staking Agreement that the Claimant acted as an agent for the NEAR Foundation, given that it was abbreviated as "NEAR" in the preamble and the same abbreviation appears in the signature block.

96 Second, the Defendant submits that extrinsic evidence would show that the parties dealt with each other on the basis that NEAR Foundation was the true contracting party. This is evinced by prior negotiations leading up to the execution of the Staking Agreement that would show the NEAR Foundation's heavy involvement in leading the negotiations between June and September 2022,[13] and that the NEAR Foundation had intended to contract with the Defendant to facilitate the development of a staked security product, which would eventually come to be the Security Token under Clause 3 of the Staking Agreement.[14] The Defendant's Mr Pugh also attested that the NEAR Foundation had informed him that it wanted to use another entity to enter into the Staking Agreement as its agent so as to avoid having to reflect payments made from the foundation's treasury on a public ledger.[15]

97 Third, the Defendant relies on parties' subsequent conduct as well. The NEAR Foundation was the main entity that performed all obligations even after the Staking Agreement was signed and discussed technical aspects of the Project with the Defendant.[16] Further, it was the NEAR Foundation that terminated the Staking Agreement on 1 December 2022 and consistent with this move, the Defendant immediately began negotiating the Revised Agreement with the NEAR Foundation after the termination of the Staking Agreement without the Claimant's involvement.[17]

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[13] 5th affidavit of Cory David Pugh at [15]

[14] 5th affidavit of Cory David Pugh at [12]

[15] 5th affidavit of Cory David Pugh at [16]

[16] 5th affidavit of Cory David Pugh at [35] – [44]

[17] 5th affidavit of Cory David Pugh at [45] – [49]

98 The Claimant submits that the Agency Defence is not a *bona fide* defence, given that the express terms of the Staking Agreement make clear that the Claimant contracted personally and not on the NEAR Foundation's behalf – it contained no reference to the Claimant's capacity as an agent, defined the Claimant the contracting party in the preamble and was signed by the Claimant. Further, Clause 4(i) of the Staking Agreement, which provides that "*Bridgetower*" (i.e. the Defendant) is the only intended third-party beneficiary of the representations, warrants and covenants contained therein (the "third party beneficiary clause"), precludes the NEAR Foundation from being a third-party beneficiary of the Staking Agreement.

99 Insofar as the Defendant seeks to rely on extrinsic evidence relating to prior negotiations and subsequent conduct to construe the Staking Agreement, the Claimant argues that such evidence is inadmissible. First, parties' intentions for all its rights and obligations to be contained within the four walls of the Staking Agreement are made clear by the non-representation clause (see [47] above) and the entire agreement clause. Second, the Claimant relies on *Bhoomatidevi* to argue that the Claimant ought to be regarded as the party to the Staking Agreement since it had signed the contract without qualification as to its capacity. In these circumstances, extrinsic evidence would not be admissible for the purpose of showing that were other unnamed parties were parties to the contract.[18]

[18] Claimant's Written Submissions dated 9 May 2025 at [113] – [115]

(3) My decision: the Defendant has raised triable issues

100 Having considered the evidence adduced by the Defendant, I am satisfied that the Defendant has raised triable issues in respect of the Agency Defence.

101 For the reasons described at [42] above, I agree with the Claimant's submission that the Staking Agreement, when considered on its own, does not indicate that the Claimant contracted as an agent. However, notwithstanding the lack of any such indication, the Court may have regard to extrinsic evidence to determine if the Claimant had in fact acted as an agent on behalf of the NEAR Foundation based on the principles described at [87] – [93] above. As I explain below, I find that the Staking Agreement does not unequivocally preclude an unnamed principal from suing on it.

102 With reference to the legal principles, my respectful view is that *Bhoomatidevi* did not, as the Claimant contends, go so far as to hold extrinsic evidence is not admissible for the purpose of showing that there were unnamed principals if a person had signed a contract without qualifying his capacity.[19] While this may militate in favour of a conclusion that the signing party was the proper party thereby requiring clear evidence to dispel that conclusion, it would not preclude the admissibility of such evidence in the first place. In *Bhoomatidevi,* the Court's remarks on the importance of the capacity of the party signing the contract was made in the context resolving inconsistencies between the identity of the parties described in the contract and the parties who signed the contract (see [89] above). Indeed, the Court had also cited the principles distilled by Jackson LJ stating that extrinsic evidence may be

[19] Claimant's Written Submissions dated 9 May 2025 at [113]

admitted to establish if the signing party is indeed the contracting party, without expressing any intention to depart from them (see [88] above).

103 Further, I do not agree with the Claimant that the third party beneficiary clause and the entire agreement clause unequivocally exclude an unnamed principal from suing on the contract.

104 The third party beneficiary clause reads as follows:

> (i) Third Party Beneficiary. The BridgeTower is the only intended third-party beneficiary of the representations, warrants and covenants contained in this Agreement and shall have the unlimited right to enforce the terms hereof.

105 On a plain reading, questions of construction arise from this clause. While the header of the clause, "Third Party Beneficiary" would appear to refer to third parties beyond the Staking Agreement, it only refers to "Bridgetower", which is a named party in the contract. Curiously, while it states that "Bridgetower" (i.e. the Defendant) is the only intended beneficiary with an unlimited right to enforce the contract terms, it makes no mention to the Claimant's right to do so. Yet this appears inconsistent with the terms of the Staking Agreement that expressly confers on the Claimant benefits such as the staking rewards. In any event, this clause would arguably not even apply to any party found to be a principal to the Staking Agreement, since such a principal would not be "third party beneficiary" but a contracting party. I am therefore unable to agree with the Claimant that this clause would definitively preclude NEAR Foundation from being a principal to the Staking Agreement.

106 I likewise do not agree that the entire agreement clause would altogether exclude this possibility. The entire agreement clause at Clause 4(k) of the Staking Agreement is reproduced below:

> (k) Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written agreements or understandings with respect thereto.

107 While the clause provides that the Staking Agreement constitutes the entire agreement between the parties, this only applies in respect of the "subject matter" of the said agreement, but does not go further to state that the names parties were the only parties that could sue or be sued.

108 The decision of *Filatona Trading Ltd v Navigator Equities Ltd* [2020] 1 Lloyd's Rep. 418 ("*Filatona*"), which was cited by the Defendant, is instructive. In this case, the English Court of Appeal found that the true principal to the contract was a party whose name did not even appear in the contractual provisions, after considering all the relevant extrinsic evidence and contractual documents. In considering the effect of an entire agreement clause worded similarly to the present case, the Court held that the clause would only indicate that parties intended only to contract with each other, but did not unequivocally exclude a disclosed or undisclosed principal from suing on it; the phrase "complete and exhaustive agreement" was qualified by the subsequent phrase "in respect of the subject matter" in the clause, and the clause did not say that the *only* persons who may sue upon it were the named parties. Ultimately, the entire agreement clause would form part of the 'evidence that can go into the mix', that is the whole of the extrinsic evidence to be considered on the question of whether a party was willing to contract with a person not named in the contract: at [84] – [89].

109 In arriving at this conclusion, the Court was assisted by following draft clauses found in *A-Z Guide to Boilerplate and Commercial Clauses (Anderson*

and Warner) that would explicitly exclude a principal from suing on the contract:

> Precedent 7 – No agency
>
> Each party represents and undertakes that it is entering this agreement as principal and not as agent for any other party
>
> Precedent 9 – No undisclosed principal
>
> [Party A] warrants that it is not the nominee or agent of any undisclosed principal and that it will assume sole and complete responsibility for the performance of the obligations under this agreement expressed to be informed by [Party A].

110 I found these draft clauses to be a helpful reference point in the present case as well. By contrast with the express language used in these clauses, the third party beneficiary clause and entire agreement clause could not be said to have stated in clear and unequivocal terms that the only parties who were entitled to sue on the agreement were the named parties, to the exclusion of any principal's ability to do so.

111 More broadly, there is also a principled reason why the court would usually require a contract to unequivocally exclude the ability of a principal to sue on it. As explained in *Filatonia,* this is due to the 'beneficial assumption' in commercial cases:

> 46. …In the context of an argument that an undisclosed principal should be excluded from the right to sue on a contract of insurance, Lord Lloyd (at p.208H) warned of the particular danger:
>
> > If courts are too ready to construe written contracts as contradicting the right of an undisclosed principal to intervene, it would go far to destroy the beneficial assumption in commercial cases, to which Diplock LJ referred to in *Teheran-Europe Co Ltd v. S.T. Belton (Tractors) Ltd* [1968] 2 QB 545, 555.

112 What the above demonstrates is that the extrinsic evidence surrounding the Staking Agreement would be admissible in ascertaining the identity of the true contracting parties. While the points raised by the Claimant – the identity of the named parties, the capacity in which the Claimant signed the contract, and the third party beneficiary and entire agreement clauses – may be factors that could support the Claimant's position, it would ultimately form part of the overall evidence to be assessed in determining whether the Claimant was acting as an agent or in its own name

113 I now turn to consider whether the Defendant has raised sufficient evidence to demonstrate that there are triable issues in respect of agency defence. As mentioned above at [63], the strength of the Defendant's position is not relevant at this stage as the court is merely concerned with whether there are issues meriting further investigation at trial.

114 In this regard, I am satisfied that the Defendant has demonstrated triable issues having considered the totality of the evidence. I describe notable examples below:

(a) The Defendant has produced documentary evidence to show that the NEAR Foundation's representations were closely involved in discussions for the negotiations and performance of the Staking Agreement. This includes telegram messages between Mr Pugh, the Mr Vaisburd and various representatives of NEAR Foundation in negotiations leading up to the Staking Agreement, and telegram messages and emails between NEAR Foundation's representatives and Mr Pugh which appear to relate to the performance of the Staking

Agreement.[20] There are also telegram messages showing that Mr Vaisburd was initially introduced as the head of NEAR Ukraine at the start of negotiations in June 2022,[21] which raise questions on whether Mr Vaisburd was representing the NEAR Foundation in negotiations with the Defendant.

(b) There were also various telegram messages that allude to the possibility that the NEAR Foundation was the Claimant's principal, such as the following, which are described based on the Defendant's evidence: (i) a telegram message from Mr Vaisburd to Mr Pugh on 5 September 2022 informing him that "we also have an entity to enter into the agreement";[22] (ii) a telegram message from Mr Vaisburd to Mr Pugh on December 2022 informing Mr Pugh that although the Claimant would no longer be part of the NEAR Foundation, he would work with the NEAR Foundation to decide if the Agreement "should be transitioned to their entity";[23] (iii) a telegram group chat between one Mr Schiegg (representing the NEAR Foundation) with Mr Pugh and other NEAR Foundation executives, which contained messages informing Mr Pugh that the Claimant and Mr Vaisburd had been terminated by the NEAR Foundation, and that since Mr Vaisburd had "routed the NEAR financing through his entity to you" the NEAR Foundation "would like to make sure that [the Defendant's] engagement for NEAR is not

[20] 5th affidavit of Cory David Pugh at [28] – [30], Tabs 4 – 5, 7 – 9, 11.

[21] 5th affidavit of Cory David Pugh at [28], Tab 4

[22] 5th affidavit of Cory David Pugh at [30(b)(vii)], Tab 9

[23] 5th affidavit of Cory David Pugh at [46], Tab 12 - 13

> impacted in any way" and would need "[Mr Pugh's] help to adjust the respective paper and organise [his] new contact at NEAR".[24]

115 As the Defendant has highlighted, the Claimant has not provided any affidavit evidence to challenge the above or the authenticity of the correspondence adduced by the Defendant. The evidence is therefore, in my view, sufficient to raise issues that would merit further investigation at trial that are relevant to the Agency Defence, such as the role of NEAR Foundation in negotiating the Staking Agreement, the relationship between the NEAR Foundation, the Claimant and Mr Vaisburd, and the true account of the events in December 2022.

Ownership defence

(1) Parties' submissions

116 Next, I consider the ownership defence raised by the Defendant.

117 The key dispute in this issue concern the interpretation of Clause 1 of the Staking Agreement, and whether, under this clause, parties had intended for the Claimant to effect an absolute transfer of both legal and beneficial ownership of the NEAR Tokens to the Defendant, or for the Claimant to retain beneficial ownership pending the return of the NEAR Tokens by the Defendant after they cease to be staked. Clause 1 is reproduced for ease of reference:

> **1. Delegation. NEAR** hereby agrees to transfer a minimum of 1,000,000 (one million) NEAR native digital utility tokens (the "**NEAR Tokens**") to BridgeTower for the purpose of running Staking Nodes for the NEAR Protocol ("**Staking Services**"). "Staking Nodes" shall mean a collection of server hardware and software required to maintain a current copy of the NEAR blockchain and produce or validate new blocks.

[24] 5th affidavit of Cory David Pugh at [47], Tab 13

118 The Defendant submits there are triable issues relating to the proper construction of the Staking Agreement, and whether the NEAR Tokens were intended to be transferred in law and equity not merely delegated to it based on the following grounds:

(a) The provisions of the Staking Agreement, such as Clause 1, together with various other terms of the Staking Agreement, such as the preamble, Clauses 2(c), 2(e) and 3(b), provide for the NEAR Tokens to be "transferred". The Defendant submits that these provisions support its Ownership Defence, namely, that parties intended for an absolute transfer of ownership. Viewed against these provisions, the use of the term "Delegation" in the heading of Clause 1, which would entail the pledging of delegated tokens as opposed to an outright transfer, appeared to be an oversight.[25]

(b) The surrounding context and evidence, including correspondence between the Defendant, NEAR Foundation and the Claimant, would support its interpretation that the NEAR Tokens were intended to be transferred to it.[26] According to the Defendant, this would be consistent with the purpose of the Staking Agreement, which was for the creation of a Security Token which is "tied to" the NEAR tokens – in order for the Defendant to fulfil its obligations under Clause 3 of the Staking Agreement to "create, market and distribute a security token tied to the NEAR Token", it would first have to own the NEAR Tokens.[27] This would further be in line with Mr Pugh's discussions with Mr

[25] 5th Affidavit of Cory David Pugh at [61] – [62], [65]

[26] 4th Affidavit of Cory David Pugh at [45] – [51]

[27] 5th Affidavit of Cory David Pugh at [11] – [14], [63]

> Vaisburd which reflected that the NEAR Tokens were intended to be in the nature of an investment by the NEAR Foundation into the Project as payment for the Defendant's services.[28]

119 In response, the Claimant contends that Clause 1, when read in its proper context, makes clear that the Claimant had only transferred the NEAR Tokens specifically for the purpose of running the staking nodes on the NEAR protocol. This supports the Claimant's case that that the Claimant was merely "transferring" the *right* to stake the tokens to the Defendant, without transferring the *ownership* over the tokens, consistent with the meaning of "Delegation" at the header of Clause 1.

120 Insofar as the Defendant is seeking to rely on extrinsic evidence such as prior negotiations, subsequent conduct and other supporting documents to interpret the Staking Agreement, the Claimant argues that such evidence is inadmissible by reason of entire agreement clause and the parol evidence rule under s 93 and 94 of the Evidence Act 1893 ("parol evidence rule"), which does not permit extrinsic evidence to be permitted to contradict, vary, add to or subtract from the Staking Agreement.

121 Aside from the above, the Claimant contends that the Ownership Defence is contradicted by the Defendant's own financial statements for FY 2022 and FY 2023. Given that there was no trace of the NEAR Tokens, which were worth at least US$3.65 million in or around 2022 or 2023, in the Defendant's financial statements, whether as an asset or income, this would

[28] 5th Affidavit of Cory David Pugh at [30(a)], [30(b)(i) – (iv)], [69], [70] and Tab 7

objectively show that the Defendant did not hold any genuine belief that it owned the NEAR Tokens.[29]

122 On the other hand, the Defendant argues that the financial statements are irrelevant given the Claimant's admission that the NEAR Tokens were in fact transferred to the Defendant. It also adduced an accountant's letter to explain that the the NEAR Tokens were not recorded in the Defendant's financial statements as they were recorded in the financial statements of the Subcontractor. The Subcontractor had received the NEAR Tokens as it was engaged to perform the Staking Agreement on the Defendant's behalf under a separate contract between the Defendant and the Subcontractor.[30] In view of these circumstances, its financial statements are inconclusive on the issue of ownership of the NEAR Tokens.

(2) My decision: the Defendant has raised triable issues

123 While the principles on contractual interpretation are well-established, it is nevertheless worthwhile to set them out briefly. These principles were summarised by the Court of Appeal in *CIFG Special Assets Capital I Ltd (formerly known as Diamond Kendall Ltd) v Ong Puay Koon and others and another appeal* [2018] 1 SLR 170 as follows (at [19]):

> (a) The starting point is that one looks to the text that the parties have used (see *Lucky Realty Co Pte Ltd v HSBC Trustee (Singapore) Ltd* [2016] 1 SLR 1069 at [2]).
>
> (b) At the same time, it is permissible to have regard to the relevant context as long as the relevant contextual points are clear, obvious and known to both parties (see *Zurich Insurance*

[29] 5th Affidavit of Anton Vaisburd at [19]

[30] 5th Affidavit of Cory David Pugh at [75] – [78] and Tab 20 and Tab 21

> *(Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [125], [128] and [129]).
>
> (c) The reason the court has regard to the relevant context is that it places the court in "the best possible position to ascertain the parties' objective intentions by interpreting the expressions used by [them] in their proper context" (see *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 at [72]).
>
> (d) In general, the meaning ascribed to the terms of the contract must be one which the expressions used by the parties can reasonably bear (see, *eg*, *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [31]).

124 In *CIFG*, the Court of Appeal had to consider the effect of an indemnity clause in a convertible bond subscription agreement. The clause contained extremely broad language which could potentially cover a wide class of beneficiaries, including non-parties, with respect to an unlimited range of matters. Due to the sheer breadth of the clause, the Court gave due consideration to the relevant context of the clause, including the entirety of the contract, commercial documents entered into as part of the transaction, and the circumstances in which the clause was admitted into the agreement. The Court considered evidence such as the parties' pre-contract negotiations, the draft and final term sheets exchanged between the parties, and the circumstances in which the clause was introduced. After considering the evidence and the overall commercial structure of the deal, the Court concluded that the parties could not have intended for the extended meaning of the clause as permitted by its broad language, as this would have the effect of overriding the calibrated allocation of risk reflected in other parts of the agreement.

125 In the present case, while Clause 1 of the Staking Agreement provides for the "transfer" of the NEAR Tokens under the header "Delegation", the Staking Agreement as a whole is silent on the issue of whether parties had intended for the *ownership* of the NEAR Tokens – whether legally or

beneficially – to be transferred to the Defendant. Given that Clause 1 refers to both the "delegation" and "transfer" of the NEAR Tokens despite the potentially different legal effect of each term (as the parties contend),[31] and as the term "transfer" is in principle capable of referring to the transfer of legal and/or beneficial interest, I agree with the Defendant's submission that issues relating to the true construction or interpretation of the Staking Agreement arise for determination.

126 As issues of construction or interpretation arise from the text, it would be necessary for the Court to have regard to the relevant context to ensure it is placed in the best possible position to ascertain parties' objective intentions. As the Court held in *CIFG*, extrinsic evidence pertaining to the parties' pre-contractual negotiations and other relevant documents that are clear, obvious and known to the parties may be considered as part of the relevant context.

127 In this regard, I disagree with the Claimant that all of the evidence raised by the Defendant are inadmissible by reason of the parol evidence rule and the entire agreement clause. While the Defendant would not be permitted to adduce any extrinsic evidence for the purpose of "contradicting, varying, adding to, or subtracting from" the terms of the Staking Agreement, there is nothing to prevent the Defendant from doing so for the purpose of interpreting the meaning of "transfer" in Clause 1 and related provisions. This is particularly so given the issues of interpretation I have described above.

128 While it is not for this Court to examine the strength or admissibility of the evidence at this stage, I note that the Defendant has produced at least some evidence which would appear to be part of the context that is clear, obvious and

[31] 4th Affidavit of Cory David Pugh at [40] – [44]

known to both parties. This includes the telegram messages exchanged between Mr Vaisburd and Mr Pugh discussing the purpose of the NEAR Tokens[32] and the "Draft Delegation Agreement", which was an earlier draft of the Staking Agreement.[33] As the Defendant highlighted, the latter agreement had originally used the term "delegation" in Clause 1 before it was eventually amended to "transfer" in the Staking Agreement.[34] Such evidence may well shed light on the circumstances surrounding the drafting of Clause 1 and the relevant context, which merits further investigation at trial.

129 Further, as the Defendant's Mr Pugh has attested that it would not have been possible for it to create the Security Tokens without owning the underlying NEAR Tokens, Clause 1 would also have to be construed against the context of the entire Staking Agreement, including Clause 3 (which provides for the Defendant's obligations to create the Security Token).[35] Further investigation is needed in respect of whether the interpretation advanced by the Claimant, namely, that legal title of the NEAR Tokens were not intended to be transferred, would contradict or undermine the mechanism under Clause 3. As the Claimant has not challenged the Defendant's evidence regarding the mechanism for the creation of the Security Tokens, there is no basis for me to reject the Defendant's evidence at this stage. I also do not consider that the absence of any indication of the NEAR Tokens in the Defendant's financial statements would conclusively address the issues of interpretation described above.

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[32] 5th Affidavit of Cory David Pugh at [30(a)], [30(b)(i) – (iv)], [69] , [70] and Tab 7

[33] 5th Affidavit of Cory David Pugh at [63] and at Tab 6, pg 147 - 154

[34] 4th Affidavit of Cory David Pugh at [44]

[35] 4th Affidavit of Cory David Pugh at [50]

130 Finally, I also note that the Claimant has raised various allegations regarding the Defendant's inconsistent positions in its affidavits and pleadings. While these are issues which the Claimant is entitled to raise at the trial of the matter, I do not consider that these inconsistencies would render the defendant's defence inherently improbable as a whole. The significance of these inconsistencies, the inferences to be drawn, and the extent to which it impacts the strength of the defendant's position, are matters best determined only at the trial of the matter.

131 For the above reasons, I do not find myself to be in a good position to decide on the proper construction of the Staking Agreement, without the full picture of the circumstances surrounding the drafting of Clause 1 and the relevant provisions, parties' prior negotiations, and evidence on the overall commercial purpose of the Staking Agreement. I am therefore satisfied that the Defendant should be allowed to raise the Ownership Defence as it has advanced triable issues that are unsuitable for resolution at the summary determination stage.

Whether conditional leave should be granted

132 The Claimant submits that even if summary judgment is not granted, the Defendant should at most be granted conditional leave to defend. It relies on three key factors: first, the inconsistencies between the Defendant's pleadings that the ownership of the NEAR Tokens were vested in it from the outset, and the Defendant's own financial statements for FY 2022 and FY 2023 which did not reflect the NEAR Tokens as part of its assets; second, the difficulties with the extrinsic evidence that the Defendant seeks to introduce, such as a Draft Disclosure Document that appears unrelated to and appears to have been created *after* the Staking Agreement was signed, and the Subcontract, which not only

contradicts the Defendant's financial statements and was only introduced in the course of this application; and third, its claims that the Defendant had deliberately concealed the movement of the Claimant's NEAR Tokens, and falsely represented to the Claimant that the staking was still ongoing in accordance with the Staking Agreement.[36]

133 In *Akfel Commodities*, the Court of Appeal held that the grant of conditional leave would be warranted where the defendant has not established a fair probability of a *bona fide* defence, but only that the defence raised is not hopeless (at [41]). In other words, this would apply in situations where "the defendant's evidence is barely sufficient to rise to the level of showing a reasonable probability of a *bona fide* defence" and where "the evidence is such that the plaintiff has very nearly succeeded in securing judgment": at [51], citing *Wee Cheng Swee Henry v Jo Baby Kartika Polim* [2015] 4 SLR 250 at [81]. This would depend on the court's overall assessment of the defendant's defence and whether the case calls for a demonstration of commitment from the defendant: at [46] and [64], citing *Abdul Salam Asanaru Pillai (trading as South Kerala Cashew Exporters) v Nomanbhoy & Sons Pte Ltd* [2007] 2 SLR(R) 856 at [44].

134 Indeed, the rather exceptional requirements for the grant of conditional leave is explicable given that the failure of the defendant to meet any requisite conditions, such as the furnishing of a certain monetary sum as security for its claim, would typically entitle the claimant to obtain judgment against the defendant.

[36] Claimant's Written Submissions dated 9 May 2025 at [150] – [158]

135 I am not persuaded that this is an appropriate case for the grant of conditional leave to defend. For the reasons I have elaborated above, I am not prepared to conclude that the Claimant had established a *prima facie* case of fraud on the Defendant's part (see [83]) above) and have found that the Defendant has raised numerous triable issues which would demonstrate that it has established a fair probabiltiy of a *bona fide* defence. The apparent inconsistencies and difficulties that the Claimant has raised in respect of the Defendant's pleadings and evidence may well be cross-examination material for it to deploy at trial, but it does not as a whole render the Defendant's defence one that would call for a demonstration of commitment from the Defendant.

Conclusion

136 As I have found that the Defendant has established *bona fide* defences, it is not necessary for me to consider if the Counterclaim raised by the Defendant would militate against the grant of summary judgment.

137 For the foregoing reasons, I allow SUM 1132 in part, dismiss SUM 506 and grant the Defendant unconditional leave to defend its claims in the Suit. Unless parties are able to agree on costs, they are directed to provide written submissions on costs, limited to five pages each, within 14 days of this decision.

138 In closing, I thank the Claimant's counsel and Defendant's counsel for their helpful submissions.

Leo Zhi Wei
Assistant Registrar

Yam Wern-Jhien, Ian Mah, Ayana Ki (Setia Law LLC) for the claimant;
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