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

[2025] SGHC 104

Originating Application No 812 of 2024

(1) Joshua James Taylor
(2) Chew Ee Ling

… *Applicants*

And

Official Receiver

… *Non-party*

JUDGMENT

[Insolvency Law — Administration of insolvent estates — Distribution of cryptocurrencies in liquidation]
[Insolvency Law — Administration of insolvent estates — Disposal of assets — Whether outstanding cryptocurrencies should vest with the Official Receiver]

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2 October 2024, 1 April 2025

4 June 2025 Judgment reserved.

Aidan Xu @ Aedit Abdullah J:

Introduction

1 The present application concerns the distribution of cryptocurrency in the liquidation of a company.

2 Mr Joshua James Taylor and Ms Chew Ee Ling (the "applicants"), in their capacity as the joint and several liquidators of Eqonex Capital Pte Ltd (in creditors' voluntary liquidation) ("Eqonex Capital"), have commenced HC/OA 812/2024 ("OA 812") pursuant to s 181 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA") for orders in relation to the distribution of unclaimed (a) digital assets (the "cryptocurrencies") held in Eqonex Capital's Nano X hard wallets (the "Crypto Wallet") and (b) moneys held in Eqonex Capital's bank account with Standard

Chartered Bank controlled by the applicants (the "bank account"). The orders sought can be classified into the following categories:[1]

(a) that the applicants may deal with the unclaimed cryptocurrencies and moneys in the bank account (collectively, the "assets") as if they were held by Eqonex Capital for the benefit of Eqonex Capital's customers;

(b) that they may distribute the assets to the customers in line with a distribution plan that had been filed (the "Distribution Plan");

(c) that they be granted a right of indemnity against the assets, and that the costs and expenses of the applicants incurred / to be incurred in connection with the assets, including the costs and expenses of OA 812, shall be paid out of the assets; and

(d) that upon the dissolution of Eqonex Capital, any outstanding assets not distributed according to the Distribution Plan shall vest with the Official Receiver ("OR") pursuant to s 213(1) of the IRDA and the applicants shall be entitled to deliver the Crypto Wallet to the OR.

3 The OR takes the position that any outstanding moneys in the bank account, but not the cryptocurrencies, would vest with them on the dissolution of Eqonex Capital.[2] The OR disagrees with the applicants and holds the view that no trust arrangement, whether express, resulting or otherwise, was created

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1 Applicants' Written Submissions dated 27 September 2024 ("AWS") at para 2.

2 Official Receiver's Written Submissions dated 27 September 2024 ("ORWS") at para 3.

in relation to the cryptocurrencies.[3] Accordingly, none of the conditions under s 213(1) of the IRDA for any outstanding cryptocurrencies to be vested with the OR are satisfied, namely, that the assets are vested in Eqonex Capital, Eqonex Capital is entitled to the assets, or that Eqonex Capital has a disposing power over the assets at the time it is dissolved.[4]

4 In my view, OA 812 should be dismissed. I am satisfied that there was no trust created over the cryptocurrencies, and the customers hold legal and beneficial title over the cryptocurrencies. To the extent that the moneys in the bank account were converted from USD Coins ("USDC"), which is one type of cryptocurrency, it would follow that the customers are also legally and beneficially entitled to the moneys. Therefore, the cryptocurrencies and moneys must be returned to the customers, and I decline to grant the orders sought in items (a), (b), and (c) (above at [2]) in relation to the applicants' proposed trust arrangement. Accordingly, it would be premature and imprudent at this stage of the proceedings to decide whether any outstanding assets should vest in the OR. Crucially, Eqonex Capital does not have the standing to invoke s 213(1) of the IRDA as it has not been dissolved. Therefore, I decline to grant the last order sought in item (d) (above at [2]).

Facts

5 Eqonex Capital is a subsidiary of Eqonex Limited (In Liquidation) ("Eqonex Limited"),[5] which operated a digital asset exchange platform,

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3 Official Receiver's Further Written Submissions dated 5 February 2025 ("ORFWS") at paras 5 and 22.

4 ORWS at paras 13–25 and ORFWS at para 22.

5 First Affidavit of Joshua James Taylor dated 16 August 2024 ("JJT1") at para 10.

"EQONEX" (the "Exchange").[6] Eqonex Capital and its affiliates, affiliated and other group companies of those companies are collectively referred to as the Eqonex Group.[7] Customers who agreed to certain terms and conditions in the digital asset exchange agreement (the "Terms and Conditions") with Eqonex Capital could open accounts on the Exchange, giving them digital wallets that allowed them to trade, store, send and receive various digital assets.[8] These digital assets were stored in the digital wallets hosted by Eqonex Capital, which were held by Eqonex Group and other third-party custodians such as Digivault Limited (In Administration) ("Digivault").[9]

6 On 15 August 2022, Eqonex Limited announced that it would cease operations of the Exchange. Customers were given until 14 September 2022 to withdraw their digital assets.[10] At the time of this application, the applicants have taken into custody the unclaimed digital assets in the digital wallets, *ie*, the cryptocurrencies in the Crypto Wallet, which were delivered to the applicants by the administrators of Digivault.[11] Investigations by Eqonex Capital also suggested that there were moneys in the bank account that had likely been converted from USDC. The moneys in the bank account may thus be wholly attributable to the customers who held USDC in their digital wallets.[12]

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6 JJT1 at para 11.

7 JJT1 at p 273 at Clause 1(u).

8 JJT1 at paras 12–15 and p 279 at Clause 4.O.

9 JJT1 at paras 24–25.

10 JJT1 at para 16.

11 JJT1 at paras 25–26.

12 JJT1 at paras 30–38.

Preliminary issue: whether the application could be made

7 Preliminarily, there is an issue of the applicants' standing to make the application. The applicants rely on s 181 of the IRDA to do so, and this is not objected to by the OR. Section 181 of the IRDA reads:

> **Application to Court to have questions determined or powers exercised**
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> 181.—(1) The liquidator or any creditor or contributory may apply to the Court —
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> (*a*) to determine any question arising in the winding up of a company; or
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> (*b*) to exercise all or any of the powers that the Court might exercise if the company were being wound up by the Court.
>
> (2) The Court, if satisfied that the determination of the question or the exercise of power is just and beneficial, may —
>
> (*a*) accede wholly or partially to any such application on such terms and conditions as the Court thinks fit; or
>
> (*b*) make such other order on the application as the Court thinks just.

The court will allow an application made under s 181 of the IRDA if the applicants can show that granting the application will be of advantage in the liquidation (*Lin Yueh Hung (as liquidators of CST South East Asia Pte Ltd (in members' voluntary liquidation)) and another v Andreas Vogel & Partner, Rechtsanwaelte, AV & P Legal LLP and others* [2024] SGHC 31 ("*Lin Yueh Hung*") at [31]). In *Lin Yueh Hung* and *Wong Joo Wan (as liquidator of Envy Hospitality Holdings Pte Ltd (in members' voluntary liquidation)) v Lim Siong Heng Raymond and another* [2025] SGHC 52 ("*Wong Joo Wan*"), the court allowed the respective applications made under s 181 of the IRDA for the court to determine whether a liquidator had correctly rejected a creditor's proof of a debt. The apparent lack of time bar against a creditor's right to challenge such a decision taken by the liquidator meant that a creditor could do so in the

undetermined future, which could affect the liquidator's present decision-making. Thus, the court's determination would avert any uncertainty to the liquidation (*Lin Yueh Hung* at [31]–[36] and *Wong Joo Wan* at [10]–[12]).

8 While the present application does not involve a liquidator's rejection of a proof of debt, it poses questions which, if determined by the court, would similarly avert any uncertainty to the liquidation. I allow OA 812 to be made for two reasons. First, allowing OA 812 to be made would be advantageous to the liquidation of Eqonex Capital given the existing uncertainty in the legal position and the different positions taken by the applicants and the OR in relation to the distribution of the cryptocurrencies. This uncertainty is compounded by the present lack of response from Eqonex Capital's customers (as only 34 of them, out of 1,119 unique individuals, have responded to the applicants' attempts to engage with them).[13] Second, it would allow for a possible resolution to the liquidation of Eqonex Capital, a company with little to no other assets and cannot therefore finance a protracted liquidation process.[14] In view of these, I find that it is just and beneficial, and of advantage to the liquidation, for me to determine the questions raised in the present application.

Main issues

9 I turn to the substantive application. I note that there are matters not in contention between the applicants and the OR. These are that (a) any outstanding moneys in the bank account should vest with the OR pursuant to s 213(1) of the IRDA;[15] and (b) cryptocurrency constitutes property and would

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13 AWS at para 38.

14 AWS at para 42.

15 ORWS at para 11.

be capable of being held on trust (*Bybit Fintech Ltd v Ho Kai Xin and others* [2023] 5 SLR 1768 ("*Bybit*") at [4] and [36]).[16]

10 The parties' positions have been summarised above (at [2]–[3]). As will be apparent below, whether the cryptocurrencies are held on trust (by Eqonex Capital) will invariably affect my determination of whether any outstanding cryptocurrencies should be vested with the OR on the dissolution of the company pursuant to s 213(1) of the IRDA. To the extent that the moneys in the bank account were converted from USDC, the manner of holding of the cryptocurrencies would also affect the manner of holding of these moneys and thus whether any outstanding amount should be vested with the OR. Therefore, I will take the issues in turn:

(a) Whether the cryptocurrencies are held on trust by Eqonex Capital for its customers, and whether it be in the form of an express, resulting or *Quistclose* trust; and

(b) Whether the outstanding cryptocurrencies and / or moneys in the bank account would vest with the OR upon a dissolution of Eqonex Capital, pursuant to s 213(1) of the IRDA.

Whether there is a trust over the cryptocurrencies

11 The applicants argue that there is an express trust, and / or in the alternative, a resulting trust or a *Quistclose* trust over the cryptocurrencies.[17] For reasons that will be canvassed below, I am not persuaded by the applicants' arguments in favour of finding any trust arrangement.

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16 AWS at para 47; ORFWS at para 17.

17 AWS at para 45; AFWS at para 5.

Whether there is an express trust over the cryptocurrencies

12 For an express trust to arise, the "three certainties" must be present: intention, subject matter and objects of the trust (*Guy Neale and others v Nine Squares Pty Ltd* [2015] 1 SLR 1097 ("*Guy Neale*") at [51]). While the applicants argue that all three certainties are present, I am of the view that the applicants' argument must fail for want of certainty of intention. Therefore, this will be the primary focus of my judgment.

13 The applicants submit that there is certainty of intention to create a trust on the basis of certain clauses in the Terms and Conditions (which is governed by Singapore law) as well as the commercial context.[18]

14 The applicants point to Clause 4.O of the Terms and Conditions, which reads:[19]

> [4.]O. Digital Asset Title. All Digital Assets held in the Digital Asset Wallet are custodial assets held by the Eqonex Group or third-party custodians (each a "Custodial Asset Holder") for your benefit. Among other things, this means:
>
> (a) title to Digital Assets will at all times remain with you and will not transfer to any Custodial Asset Holder and you shall bear all risk of loss of such Digital Assets. No Custodial Asset Holder will have any liability for fluctuations in the currency value of Digital Assets held in the Digital Asset Wallet;
>
> (b) you control the Digital Assets held in the Digital Asset Wallet. Unless provided otherwise in this Agreement or the Policies, and subject to any outages or downtime of the Platform or the Services, you may withdraw your Digital Assets at any time by sending it to a different blockchain address controlled by you or a third-party; and
>
> (c) In order to custodize the Digital Asset more securely, EQONEX may use shared blockchain addresses, controlled by

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18 AWS at para 49.

19 JJT1 at p 279 at Clause 4.O.

> the Custodial Asset Holder, to hold the Digital Assets on your behalf. Although we maintain separate ledger accounting entries for users of the Exchange and Eqonex Group accounts, no Custodial Asset Holder will have any obligation to segregate, by blockchain address, Digital Assets owned by you from Digital Assets owned by other users or by any Custodial Asset Holder.

15 Clause 4.O thus states that the digital assets are custodial assets held for the benefit of the account holders, *ie*, the customers. The applicants argue that this amounts to a declaration of trust by the customers.[20]

16 It is doubtful to my mind that Clause 4.O goes that far. The reference to the assets being held in custody may indicate a desire to hold only the legal title, with the beneficial title residing in the customers, *ie*, that the digital assets are held on trust. However, the digital assets could just as much be held on a pledge or some level of control less than a propriety interest. The phrase "custodial assets" does not appear to have been interpreted judicially in Singapore. It does seem to echo the usage of the term "custody assets" in the UK Financial Conduct Authority's Client Assets Sourcebook (United Kingdom, Financial Conduct Authority, *Client Assets Sourcebook*, at CASS 6.4), but there does not appear to be any Singapore equivalent of such a term.

17 As argued by the OR, there are contrary indications against any intention on the part of the customers that the digital assets be held on trust for them. For instance, Clause 4.O(a) (reproduced above at [14]) suggests that legal title to the digital assets is held by the customer.[21]

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20 AWS at paras 50 and 53.

21 ORFWS at paras 7–8.

18 Further, the argument made by the applicants that the reference to "title" in Clause 4.O(a) only refers to the customers' beneficial (and not legal) title,[22] is weak in light of Clause 7.D, which excludes fiduciary and equitable duties from arising. Clause 7.D reads:[23]

> [7.]D. No fiduciary Duties or Other Roles. You acknowledge that none of:
>
> (a) the relationship between you and EQONEX;
>
> (b) the activities contemplated by this Agreement; or
>
> (c) any other matter,
>
> gives rise to any fiduciary or equitable duties on the part of EQONEX in you[r] favor, even where EQONEX has better knowledge of the market generally or of any particular transaction. In particular, there are no duties that would oblige EQONEX to accept responsibilities more extensive than those set out in this Agreement or which prevent or hinder EQONEX in carrying out any of the activities contemplated by this Agreement.
> For example, EQONEX does not provide advice of any kind as a service under this Agreement and it does not act as you adviser in relation to any transaction on EQONEX.
>
> Furthermore, unless otherwise required by applicable law, EQONEX is not required to keep you informed of any market price movements (or other risk movements) during the life of a Digital Asset Transaction, even if these may harm your position.

19 The applicants submit that Clause 7.D is only a disclaimer of Eqonex Capital's liabilities *qua* custodian.[24] This argument does not persuade me. First, the applicants seem to distinguish between the different obligations owed *qua* custodian and *qua* fiduciary / trustee, without the support of clear and express words in the Terms and Conditions. Second, the clear wording of Clause 7.D grates against the existence of any equitable duty Eqonex Capital might owe as

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22 AWS at para 54.

23 JJT1 at p 283 at Clause 7.D.

24 AWS at para 60(b).

a trustee, and this must necessarily point against the existence of an intention to create a trust.

20 The other arguments made by the applicants are not convincing either.

21 First, the applicants emphasise that Eqonex Capital was entitled to use shared blockchain addresses controlled by Eqonex Group or third-party custodians. This was to hold the digital assets on behalf of the customers, custodising them more securely.[25] Again, references to the digital assets having been held on custody by Eqonex Capital must not be read as Eqonex Capital having possessed some sort of legal or proprietary interest in these assets (above at [16]).

22 Second, the applicants argue, at some length, that the arrangement between Eqonex Capital and Digivault in relation to the cryptocurrencies point to a trust. It is contended that the balance digital assets are held on trust by Digivault for Eqonex Capital, which in turn holds such interest on trust for the benefit of the customers.[26] While this addresses the type of interest (if any) held by Eqonex Capital, this is irrelevant to the anterior question of whether the cryptocurrencies are even held on trust by Eqonex Capital for its customers.

23 Third, the applicants highlight that Eqonex Capital's classification of the digital assets as "exchange client funds" on its balance sheet for the purposes of financial reporting demonstrates that Eqonex Capital has been holding these as trust assets.[27] This argument is unpersuasive because the requisite intention to

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25 AWS at paras 60(a), 65 and 67.

26 Applicant's Further Written Submissions dated 5 February 2025 ("AFWS") at paras 10–24.

27 AWS at para 59.

create a trust must have been possessed by the settlor (*Guy Neale* at [58]), *ie*, the customers,[28] and not Eqonex Capital. While a duty to segregate may flow from a pre-existing trust arrangement, the latter has not been proven to exist.

24 Further, in relation to the customers, I do not think that their ownership of individual digital asset wallets evinces the requisite intention either. The presence of segregation is a necessary but not a sufficient condition for the creation of a trust (*Vintage Bullion DMCC (in its own capacity and as representative of the customers of MF Global Singapore Pte Ltd (in creditors' voluntary liquidation)) v Chay Fook Yuen (in his capacity as joint and several liquidator of MF Global Singapore Pte Ltd (in creditors' voluntary liquidation)) and others and other appeals* [2016] 4 SLR 1248 at [61]). There may be many reasons why the digital assets had to be stored in individual digital asset wallets, for instance, such storage might be for security and accounting purposes and does not evince an intention to create a trust.

25 Fourth, the applicants rely on Clauses 4.D, 4.K(a) and 4.W(b) of the Terms and Conditions.[29] These clauses, and Clause 4.W(a) (which provides the necessary context to Clause 4.W(b)), are reproduced as follows:[30]

> [4.]D. Digital Asset Wallet. Your Digital Asset Wallet enables you to: (a) send Digital Assets to, and request, receive, and store Digital Assets from, third-parties; and (b) use the Exchange to transact in Digital Assets, by giving instructions through the Platform (each such transaction is a "**Digital Asset Transaction**"). The Digital Asset Exchange Services enable you to buy Digital Assets using Accepted Currencies for the purpose of a Digital Asset Transaction. Conversely, when you sell Digital Assets you may elect to receive Accepted Currencies. For the avoidance of doubt, (1) any trade or order of Digital Assets that

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28 See AWS at para 53.

29 AWS at paras 8(a), 8(c) and 8(d).

30 JJT1 at p 277 at Clause 4.D; JJT1 at p 278 at Clause 4.K(a); JJT1 at pp 279–280 at Clauses 4.W(a) and 4.W(b).

> you cancel or withdraw before EQONEX matches it with a counterpart's bid or offer (as the case may be) shall not constitute a Digital Asset Transaction nor a transaction that is accepted, processed or executed by EQONEX for the purposes of PSN02, and (2) you shall not use the Services nor the Platform for the sole purpose of exchanging or converting a Digital Asset to any Accepted Currency, or one type of Digital Asset to another type of Digital Asset, or one Accepted Currency to another Accepted Currency, where such exchange or conversion is not done as part of a Digital Asset Transaction.
>
> …
>
> [4.]K. Digital Asset Transactions.
>
> (a) We will process Digital Asset Transactions in accordance with your Instructions. You acknowledge and agree that it is your sole responsibility to verify all the details of an Instruction prior to submitting such Instruction to us. We do not guarantee the identity of any user, receiver, requestee or other third-party and we will have no liability or responsibility for ensuring that any Instruction you provide is accurate and complete.
>
> …
>
> [4.]W. Delivery of Digital Assets
>
> (a) You agree to deliver, or procure the delivery of, all relevant Digital Assets for the purposes of a Digital Asset Transaction or otherwise pursuant to this Agreement, as directed by EQONEX.
>
> (b) Where you deliver any Digital Assets to EQONEX, such Digital Assets are only considered to be received by EQONEX when EQONEX has verified that such Digital Assets have been transferred into the sole name of EQONEX or its nominee (as the case may be) in accordance with our directions.

26 In essence, these clauses state that the account holders needed to give instructions to Eqonex Capital through the Exchange to process a digital asset transaction. It was only on the receipt of instructions that Eqonex Capital would fulfil the transaction and cause the digital assets in the digital wallets to be transferred to a third-party or an account holder in accordance with the instructions. This, as argued by the applicants, showed that Eqonex Capital was unable to freely deal with the digital assets delivered to it by the account holders

or customers.[31] I am of the view that these clauses do not assist the applicants. With respect, it would be a stretch to attribute the existence of restrictions on Eqonex Capital's control over the customers' digital assets to a trust arrangement with the customers. Having these controls in place made perfect commercial sense even in the absence of any trust arrangement.

27 Furthermore, as argued by the OR, in so far as Clause 4.W(b) provides for the customer to transfer the digital assets to Eqonex Capital's sole name for the transaction to be carried out on the Exchange, this showed that legal title over the digital assets always vested with the customers. It is argued that this is consistent with Clause 4.W(d), which gives Eqonex Capital the discretion to refuse to accept or make the delivery of any digital asset to or from the customer.[32] I accept this argument: legal title must have resided with the customers, otherwise, the transfer provision in Clause 4.W(b) would be rendered nugatory. The same can be said for Clause 4.W(d) – if Eqonex Capital had already possessed full legal title to the cryptocurrency, it would not need an explicit contractual right to refuse transfers, as this right would have been inherent in their ownership. I would also add that Clause 4.W(c) shows that all deliveries will be made to an account or address held in the customer's name. Clause 4.W(c) is reproduced as follows:[33]

> [4.W](c) EQONEX agrees to deliver, or procure the delivery of, all relevant Digital Assets for the purposes of a Digital Asset Transaction to you. Unless otherwise agreed by EQONEX, all such deliveries will only be made to an account or address held in your name, of which the details of such account or address (as the case may be) must be notified to EQONEX in accordance with our instructions. EQONEX' [*sic*] delivery obligations are

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31 AWS at para 57.

32 ORWS at para 17.

33 JJT1 at p 280 at Clause 4.W(c).

> satisfied upon the completion of its usual procedures to effect the transfer of such Digital Assets.

The combined effect of Clauses 4.W(b) and 4.W(c) shows that legal title to the digital assets, both before and after a digital asset transaction was executed, is vested with the customers.

28 The OR also relies on Clause 8.H of the Terms and Conditions, which states that:[34]

> [8.]H. Consequences of Termination or Suspension. On termination of this Agreement for any reason, unless prohibited by applicable law or by any court or other order to which EQONEX is subject in any jurisdiction, you are permitted to access the Exchange Account up to ninety (90) calendar days thereafter as determined by EQONEX ("**Closing Period**") for the purposes of transferring Digital Assets and/or Digital Asset Wallet(s). You are not permitted to use the Platform, Services or Exchange Account for any other purposes during the Closing Period and we may, at our discretion, limit the functionality of the Platform and Services for you accordingly. Since EQO Tokens cannot be withdrawn out of the Exchange, if any EQO Tokens remains [*sic*] in the Exchange Account after the Closing Period, you hereby authorize and instruct EQONEX to sell and transfer any and all remaining EQO Tokens held in the Exchange Account in exchange for USDC at the prevailing spot exchange rate at any time at the sole discretion of EQONEX until the account balance of EQO tokens is reduced to zero. Unless otherwise directed by you within the Closing Period, EQONEX will transfer any remaining USDC in the Exchange Account to one of your USDC wallet address that was verified through the Exchange Account for the purpose of closing your Exchange Account. Notwithstanding this paragraph, EQONEX may specify such other period as the Closing Period (including where no Closing Period shall be applicable to you) where EQONEX is of the opinion that such other period is appropriate.
>
> If we suspend or close the Exchange Account or terminate your use of the Platform or the Services for any reason, we reserve the right to require you to re-complete our identity verification procedures before permitting you to transfer or withdraw Digital Assets.

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34 JJT1 at p 286 at Clause 8.H.

29 The OR highlights that if the customers failed to transfer their digital assets and / or digital asset wallet(s) within the closing period of up to 90 days for the customers to access the Exchange one last time (the "Closing Period"), there was to be no holding over of the digital assets by Eqonex Capital on behalf of its customers. This is evident from there being no other provision for the customers to collect or recover their outstanding digital assets from Eqonex Capital after the Closing Period. This, it is argued, militates against the finding of a trust relationship.[35] I agree with the OR and find that Clause 8.H contains clear, express wording that contemplates the termination of any custodial relationship, let alone a fiduciary relationship, between Eqonex Capital and its customers. The presence of such a time-limited arrangement is inconsistent with the intention to establish a trust, which typically contemplates ongoing fiduciary obligations until the proper distribution of the trust assets.

30 Given all the reasons discussed above, I am satisfied that there is no certainty of intention to create a trust. Accordingly, there is no express trust over the digital assets, and thus, the unclaimed cryptocurrencies. The position taken by the applicants is equivocal at most. On this note, I would also hesitate to place sole emphasis on *Bybit* as definitive support for the applicants' argument that cryptocurrencies can be held on an express trust. The OR astutely points out that *Bybit* was decided on the basis of a constructive trust arising because of the inequitable conduct of the first defendant, and not an express trust over those cryptocurrencies in question.[36] Ultimately, much depends on the facts of the case.

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35 ORFWS at para 15.

36 ORFWS at para 17.

Whether there is a resulting and / or* Quistclose *trust over the cryptocurrencies

31 For completeness, I consider whether there is a resulting and / or a *Quistclose* trust over the cryptocurrencies. These are alternative arguments advanced by the applicants. I am of the view that both questions should be answered in the negative.

32 A resulting trust arises in two sets of circumstances, as set out in *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 (at [94] (citing *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 at 708)):

> Under existing law a resulting trust arises in two sets of circumstances: (A) where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions. It is important to stress that this is only a *presumption*, which presumption is easily rebutted either by the counter-presumption of advancement or by direct evidence of A's intention to make an outright transfer … (B) Where A transfers property to B *on express trusts*, but the trusts declared do not exhaust the whole beneficial interest … Both types of resulting trust are traditionally regarded as examples of trusts giving effect to the common intention of the parties. A resulting trust is not imposed by law against the intentions of the trustee (as is a constructive trust) but gives effect to his presumed intention. [emphasis in original]

33 Neither of the two sets of circumstances seem to be present here. In so far as the digital asset transactions comprised voluntary payments of digital assets from the customers to Eqonex Capital to buy other digital assets (see

Clause 4.D above at [25]), the traded digital assets would then vest wholly with the customers, not Eqonex Capital (see Clause 4.W(c) above at [27]).

34 Furthermore, having found that no express trust had arisen, it must follow that there is no express trust which could have failed and given rise to a resulting trust.

35 Moving on to the *Quistclose* trust, the doctrine has been endorsed locally and described as follows in *Envy Asset Management Pte Ltd (in liquidation) and others v CH Biovest Pte Ltd* [2024] SGHC 46 (at [42] citing *Pacific Rim Palm Oil Ltd v PT Asiatic Persada and others* [2003] 4 SLR(R) 731 at [16]):

> … [W]here money is advanced by A to B, with the mutual intention that it should be used exclusively for a specific purpose, there will be implied (in the absence of any contrary intention) a stipulation that if the purpose fails the money will be repaid, and the arrangement will give rise to a relationship of a fiduciary character, or trust.

36 I am unable to see how a *Quistclose* trust could have arisen, even if I could accept that (a) the customers had transferred digital assets to Eqonex Capital (see Clause 4.D above at [25]) (b) with the mutual intention that they should be used exclusively for the specific purpose of buying other digital assets. While this purpose has failed with the winding up of Eqonex Capital and Eqonex Limited and the closing of the Exchange, the tenor of Clause 8.H (reproduced above at [28]) demonstrates that after the Closing Period lapses, Eqonex Capital is entitled to sell and / or transfer any and all remaining digital assets, for the purposes of closing the customer's account. Thus, there is no intention for the unclaimed cryptocurrencies in the digital wallets to be repaid

to the customers after the Closing Period – Eqonex Capital is free to close the accounts and empty the accompanying digital wallets.

37 Accordingly, no trust mechanism seems to suggest itself. Thus, both the legal and beneficial titles over the unclaimed cryptocurrencies are vested with the customers. It must follow that the title over the moneys in the bank account, which had been converted from USDC in the accounts, is also held by the customers.

38 Therefore, the onus is on Eqonex Capital to return the cryptocurrencies and the moneys in the bank account to the customers who are so entitled to these assets. In these circumstances, I decline to grant the orders sought in relation to the Distribution Plan and the right of indemnity. As Eqonex Capital is not a trustee, it does not have the power to distribute the assets that are legally and beneficially held by the customers.

Whether the assets should be vested in the OR on dissolution

39 In view of my decision on the manner of holding of the cryptocurrencies, this next issue does not arise for my determination. Eqonex Capital does not have the standing to invoke s 213(1) of the IRDA, which states that:

> **Outstanding assets of defunct company to vest in Official Receiver**
>
> 213.—(1) Where, after a company has been dissolved, there remains any outstanding property, movable or immovable, including things in action and whether in or outside Singapore, which was vested in the company or to which the company was entitled, or over which the company had a disposing power at the time the company was so dissolved, but which was not got in, realised upon or otherwise disposed of or dealt with by the company or its liquidator, such property (except called and uncalled capital), for the purposes of sections 214, 215 and 216 and despite any written law or rule of law to the contrary, by the operation of this section, is and becomes vested in the Official Receiver for all the estate and legal or equitable interest

> in such property of the company or its liquidator at the date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect of such property.

The cryptocurrencies are not vested in Eqonex Capital, as the legal and beneficial title have remained with the customers. Eqonex Capital is not entitled to the cryptocurrencies. What it might have is disposing power over the cryptocurrencies, at the time of its dissolution, but it has not yet been dissolved.

40 Eqonex Capital ought to carefully consider what it should do under its existing agreements with its customers. Although only 34 customers have responded to the applicants' notice and customers were given until 14 September 2022 to withdraw their digital assets,[37] the applicants should continue their efforts to return the unclaimed cryptocurrencies and moneys to their rightful owners. Notably, Clause 4.W(c) of the Terms and Conditions (reproduced above at [27]) suggests that customers who executed digital asset transactions would have provided Eqonex Capital with their accounts or addresses held in their name. Further, Clause 2.C stipulates that customers must have successfully completed certain verification procedures in order to use the Exchange's services.[38] These clauses suggest that customers may be traceable and the cryptocurrencies and moneys which belong to them can be returned to them. In any event, s 213(1) of the IRDA only becomes operative upon the dissolution of Eqonex Capital. The point is that at this stage of the ongoing liquidation, it would be premature and imprudent to make any determination regarding whether these assets should be vested with the OR on dissolution.

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37 JJT1 at paras 16 and 41.

38 JJT1 at p 72 at Clause 2.C.

41 Parties will, however, be given liberty to apply for further directions from this court should there be any outstanding assets on the dissolution of Eqonex Capital, despite the best efforts of the applicants to return them to the customers.

Conclusion

42 Accordingly, I dismiss OA 812, finding that there is no basis for a trust over the unclaimed cryptocurrencies and moneys in the bank account. Orders are to be made consequent upon my judgment.

Aidan Xu
Judge of the High Court

Tay Kang-Rui Darius (Zheng Kangrui), Loh Song-En Samuel and Charis Magdelena Quek (BlackOak LLC) for the applicants;
Lim Yew Jin and Yip Liang Jie Jeffrey for the Official Receiver.